

Bahaa-Eldin Law Office in  
cooperation with BonelliErede

Covid-19 Task Force  
Q&A on key issues under Egyptian  
law  
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**Bahaa-Eldin**  
Law Office

In cooperation with  
**BonelliErede**

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Bahaa-Eldin Law Office in cooperation with BonelliErede prepared this document to assist businesses in addressing the key legal issues arising from the Covid-19 pandemic:

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Employment

Issue	Points for consideration
What are employers' obligations in relation to Covid-19?	<p>Under Egyptian Labour Law No. 12 of 2003, employers must ensure – at all times – that they are taking the necessary measures to protect their employees, inc. health and safety measures to prevent all types of hazards, inc. the spread of bacteria and viruses. During pandemics like Covid-19, employers are expected to pay more attention to health and safety.</p> <p>All employers have a general duty of care to employees and must ensure that working practices do not create undue risks to employees. Employers are also required to assess potential hazards and disasters and to have an emergency plan in place ready to protect the workplace and employees in such events; they must also have employees undergo periodic medical examinations.</p>
Are employees entitled to be paid if the business temporarily closes down or reduces operations due to Covid-19?	<p>In principle, employees are entitled to be paid. However, labour law stipulates that if employees are unable to work for reasons beyond the employer's control, the employer can pay a reduced salary, subject to certain conditions. The rationale is to prolong the time the business can remain operative and thus protect jobs. However, whether this general rule applies to the Covid-19 situation is unclear; case-by-case analyses are thus required.</p>
Can employers lay off employees/permanently close down their business because of Covid-19?	<p>Labour law regulates full and partial closure for financial reasons. The impact of the Covid-19 outbreak may justify the closure of an establishment. For such closure to take place, employers must first submit a request to a labour committee indicating the number of employees to be laid off and the reason. However, employers that make employees redundant for financial reasons are still required to pay the employee the equivalent of one month's gross salary for each year of service for the first five years of service, and one and a half month's gross salary for each year of service thereafter.</p> <p>Labour law further states that the dissolution, liquidation, closure or bankruptcy of a business does not relieve the business from outstanding employment obligations.</p>
Can employers require employees to take unpaid leave or use holiday entitlement as an alternative to layoffs?	<p>Employers have the right to decide when employees take annual leave, based on work requirements. Employers may thus oblige employees to use their annual leave for this year and any left over from previous years as an alternative to layoffs due to the Covid-19 crisis. Employers cannot, however, force employees to take unpaid leave, as this would violate the safeguards conferred on employees under labour law.</p>

## Contracts

Issue	Points for consideration
How does Egyptian law view force majeure and what are the implications of applying this doctrine?	<p>The timing during which a contract is being concluded and the provisions relating to force majeure in the contract have to be considered. Generally, if a party proves that an obligation is impossible to fulfil due to outside factors that are not attributable to a debtor's actions, and the event was neither foreseeable nor avoidable when entering into the contract, the obligation terminates by operation of law.</p> <p>The general rule is that the state in which the parties were before contracting must be restored if a contract is terminated. If restoration is impossible, compensation is payable. Also, the parties to a contract may usually agree that the debtor bears the risk of a force majeure event.</p> <p>Egyptian law distinguishes between force majeure and hardship.</p>
Are there forms of relief if an obligation is not impossible but difficult to fulfil?	<p>If the obligations are not impossible to fulfil but excessively onerous, the exceptional circumstance doctrine or hardship principle might apply. The following conditions are generally required for an event to qualify as an exceptional circumstance: (a) the event occurred after the contract was concluded; (b) the event is of a general character and was unforeseeable when the contract was concluded; and (c) the event has made carrying out the contractual obligations considerably more burdensome or onerous.</p> <p>If the hardship conditions apply, a court may amend the agreement between the parties to remove the considerably burdensome obligation.</p>
Are there any other issues concerning construction or contracting agreements?	<p>Whether force majeure is a legitimate ground for a claim depends also on the terms of the contract in question (inc. the definition of force majeure, if there is one). A force majeure claim may appear legitimate at first glance but might in fact be illegitimate under the contract or not meet the cause and effect requirements. Parties seeking to invoke force majeure should thus carefully review the requirements under the contract to avoid claims.</p> <p>As indicated above, contracting agreements are subject to force majeure and hardship clauses. However, in respect of some types of contracting agreements (mainly those on a lump-sum basis where the design is agreed), a court may increase the contract price or terminate the contracting agreement. Hence, this contracting specific provision is mainly a form of applying the general rules of hardship but with the additional right of a court to terminate the contracting agreement.</p>
Regulatory issues	Your business should not only rely on contractual issues relating to hardship and force majeure but should also take into account any decrees or actions that regulatory authorities take and communicate with these authorities on potential hardships, or defaults that may be expected.

Companies

Issue	Points for consideration
Voice and video meetings and online ratification of shareholder assembly meetings	<p>In light of the ongoing events, the General Authority of Investment (GAFI) has undertaken protective measures to promote the prevention of the spread of Covid-19, inc. encouraging companies to follow and carry out hygiene standards and practices in their offices and increasing its own readiness to provide services electronically.</p> <p>With regard to raising the efficiency of electronic services, GAFI issued rules permitting companies subject to the Companies Law No. 159 of 1981 and the Investment Law No. 72 of 2017 to hold BoD meetings and ordinary and extraordinary general assemblies using voice or video methods.</p> <p>Moreover, GAFI introduced a process to ratify the minutes of ordinary and extraordinary general assemblies of companies established under the Companies Law No. 159 of 1981 and the Investment Law No. 72 of 2017, meaning that they may now be carried out electronically <a href="#">here</a>.</p>
Can financial statements be submitted online?	<p>Also in the vein of raising the efficiency of electronic services provided by governmental authorities, financial statements may now be submitted electronically as follows:</p> <ul style="list-style-type: none"> <li>- Companies subject to the Capital Market Law No. 95 of 1992 may now submit their financial statements by email to <a href="mailto:Financial.Statements@fra.gov.eg">Financial.Statements@fra.gov.eg</a>, provided that they specify the type of service in the subject line. This is in accordance with the latest update by the Financial Regulatory Authority (FRA).</li> <li>- Companies established under the Investment Law and the Companies Law must submit their financial statements electronically in the same manner referred to under the ratification process of ordinary general assemblies.</li> </ul>
Listed company IPOs	<p>The FRA has extended the deadline for companies that had listed their stocks on the EGX prior to the Covid-19 outbreak but not yet begun trading. Listed companies now have nine additional months, ending on 31 December 2020 (instead of an original deadline of 31 March 2020) to do so. This is on the condition that said companies provide the FRA with a planned timeline for an offering by the end of May 2020.</p>
What measures has the government taken in respect of treasury share purchases by listed companies to stem the Covid-19 fallout?	<p>In light of recent developments in the global financial markets and the FRA's keenness to protect the Egyptian financial markets and investors' rights, the FRA amended the EGX listing and delisting rules that regulate treasury share dealing by listed companies. This amendment exempted these companies from the prior notification requirement. The FRA also issued exceptional measures on an interim basis that allow the aforementioned companies to notify the stock exchange on the same day of purchasing treasury shares from the open market, provided that the purchased amount does not exceed the legally prescribed percentage (10% of the company's shares).</p>

Issue	Points for consideration
What measures have been taken with respect to free zone projects?	<p>GAFI introduced the following measures for companies operating in a free zone:</p> <ul style="list-style-type: none"> <li>- free-zone companies may sell 50% of their products in the local market for six months;</li> <li>- industrial manufacturers may sell 20% of their raw materials/production in the domestic market for six months;</li> <li>- the deadline for the submission of financial statements for free-zone companies is extended by three months; and</li> <li>- the deadline for meeting mandatory financial reserve requirements and updating insurance policies is extended by six months.</li> </ul>
Grace periods for companies in certain financial services sectors	The FRA has instructed mortgage, financial leasing, factoring, and securitisation companies to implement a six-month grace period on maturities due from corporate and individual clients.

Banking

Issue	Points for consideration
What measures has the CBE announced to counter the Covid-19 effects?	<p>In addition to the Monetary Policy Committee's cutting, by 300 basis points, of the overnight deposit rate, overnight lending rate, rate of the main operation and discount rate, the CBE has issued several circulars since mid-Mar. instructing banks to:</p> <ul style="list-style-type: none"> <li>- increase their use of electronic means;</li> <li>- exempt local bank transfers in EGP from all fees and commissions;</li> <li>- postpone loan repayments for companies and individuals (on consumer loans and mortgages), and MSMEs, and suspend the application of default penalties for 6 months;</li> <li>- make credit available necessary to finance essential goods from importing companies;</li> <li>- extend the application of the CBE's initiative on corporate NPLs to individuals (for debts under EGP 1 m);</li> <li>- reduce interest rates from 10% to 8% to finance private sector manufacturing, mortgage finance for middle-income clients and tourism sector retail facilities;</li> <li>- expand the scope of the above initiative to encompass a larger number of companies by removing a previous cap that required companies to have an annual sales volume between EGP 50 m and 1bn (slashing the latter maximum threshold) to be able to benefit from the initiative, as well as extending the initiative to include agribusiness companies; and</li> <li>- offer credit facilities to tourist establishments and airline travel companies, to be paid over two years with a six-month grace period.</li> </ul>
Are there any restrictions on foreign currency transactions?	No restrictions imposed on foreign currency transactions other than measures to boost the Egyptian pound and limit dealing on unofficial foreign exchange markets.
Are there any restrictions on the deposit or withdrawal of local currency?	The Central Bank of Egypt imposed a daily limit on cash withdrawals in Egyptian pounds of EGP 50 k for individuals and companies. This excludes withdrawals for employee salary payments and exceptional circumstances. Daily ATM withdrawal limit for individuals is now EGP 20 k. There is no restrictions on cash deposits, electronic transfers, and cheque payments.
BoD meetings for banks	The CBE has temporarily lifted the annual limit on the number of meetings that can be attended remotely. Regulations have also been eased so as not to require the presence of the majority of board members in person, given that the CBE's approval on these facilitated measures must be obtained.

Taxes

Issue	Points for consideration
Will the capital gains tax on sales of listed securities be making a comeback?	The government recently announced the exemption of non-residents from capital gains tax on sales of securities. For resident taxpayers, capital gains tax payments due on sales of EGX-listed shares is suspended until Jan. 2022.
Real estate tax in specific sectors	The government announced a deferral of real estate tax on industrial plants and tourist facilities for three months. These establishments are also allowed to pay existing real estate tax liabilities in instalments over six months.
Stamp duty tax on trading securities	The government announced reductions in stamp duty rates for trading securities. Amendments to legislation are expected to determine application to resident and non-resident traders.
Withholding tax on dividends	With the aim of encouraging companies to list on the EGX and boost trading, changes are expected to be made to the conditions required to benefit from a reduced WHT on dividends.
Out-of-court settlement of tax-related disputes	Taxpayers interested in submitting requests under a newly extended law must file their requests within a tight deadline: prior to 30 Jun. 2020.
When must individuals (and professional service providers) submit annual income tax?	The Tax Authority has extended the deadline for submitting and paying individual income tax declarations from 31 Mar. 2020 to 16 Apr. 2020.
Tax measures for companies	<p>On 23 Apr, parliament approved a financial relief package allowing the cabinet to adopt the following measures in collaboration with the Ministry of Finance:</p> <ul style="list-style-type: none"> <li>- three-month postponement for the payment of tax on properties in use;</li> <li>- three-month extension of the deadline for the submission and payment of corporate income tax and VAT; and</li> <li>- suspension/non-application of penalties and delay fines in the three-month period.</li> </ul> <p>Implementation of these measures requires prime-ministerial decrees, and they are expected to apply retroactively from 31 Mar 2020. The measures will not apply to companies that have laid off workers as a result of the Covid-19 pandemic.</p> <p>At the time of writing, the parliament-approved law/decrees is yet to be signed and published in the Official Gazette.</p>

## Dispute Resolution

Issue	Points for consideration
How have cases before the Egyptian courts been affected by Covid-19 and related measures?	<p>The Minister of Justice declared that cases before all levels and types of courts (inc. civil, administrative and cassation) are be postponed until 30 Mar. 2020, without the need for parties to appear before the court. The Court of Cassation has already announced that proceedings are postponed to 15 Apr. 2020, and other courts are expected to follow suit. Administrative work in the courts continues uninterrupted and, thus, new claims are still being received. As to criminal cases, proceedings will continue for matters that are subject to statutory time frames (e.g., renewal of detention).</p>
If a claimant fails to file his/her claim with the court in a timely manner under the current circumstances, will this affect their right to do so in future?	<p>Art. 382(1) of the Civil Code stipulates that the statute of limitations does not apply if there is a valid reason that prevents the creditor from pursuing its claims. It is thus arguable that the current situation may justify stopping the clock on the statute of limitations. Notably, the administrative and case management departments of the judicial system are still functioning. The Supreme Judicial Council has not issued an order suspending all court-related proceedings; and as claims may still be filed, it is uncertain whether the statute of limitations is suspended in this period.</p> <p>By way of comparison, the Ministry of Justice has concluded that the events of the period between 26 Jan.–7 Feb. 2011 constitute a force majeure event, which effectively suspends the statute of limitations.</p>
Have arbitration proceedings in Egypt been affected by Covid-19 and related measures?	<p>Egypt's most prominent arbitral institution, The Cairo Regional Centre for International Commercial Arbitration (CRCICA), is still working. Filing cases with CRCICA and conducting CRCICA arbitrations is thus still possible. CRCICA has adopted various measures to allow arbitrations to be held while minimising physical interaction, in line with measures adopted by other international arbitration centres. For instance, CRCICA has closed its offices premises for the time being; its personnel will follow existing and new cases remotely. CRCICA strongly urges all parties and potential parties to arbitration to submit their documents electronically. The centre also urges parties and arbitral tribunals to conduct proceedings remotely.</p> <p>The difficulties caused by Covid-19 and the lockdown measures around the world may entail extending previously-agreed arbitration timetables and replacing in-person hearings with videoconferencing.</p>
What should businesses do in the until the exceptional measures are lifted?	<p>Given the continuing uncertainty as to how the force majeure doctrine will be interpreted, normal judicial procedures should, to the extent practicable, be taken in due time and comply with the periods dictated by law. With respect to arbitration, parties to an arbitration may agree on the effect of the current situation on their procedural timetable, or, in the absence of agreement, may request the panel to decide. Parties should also be aware of the measures adopted by their particular arbitral institutions.</p>

## Suez Transit and Port Infrastructure

Issue	Points for consideration
<p>How have Egyptian ports been affected by Covid-19 and related measures?</p>	<p>Egyptian ports are open; currently no national restrictions on the international carriage of goods.</p> <p>All vessels entering Egyptian waters must provide the following documents, together with the entrance application, before the vessel's entry/berthing at port:</p> <ul style="list-style-type: none"> <li>- crew list;</li> <li>- passenger list (if any);</li> <li>- list of last 10 ports of call;</li> <li>- Maritime Declaration of Health; and</li> <li>- vaccination list.</li> </ul> <p>This enables the quarantine authority to track crew, passengers and the vessel's last ports of call to assess health risk factors; all agencies must comply: berthing will be permitted only if all required documentation is provided timely.</p> <p>Vessels whose previous port of call was from a Covid-19 high-risk country and are due to call at the ports of Alexandria and Damietta are checked by a quarantine officer at off-shore anchorage.</p> <p>Special attention is paid to vessels from Chinese ports and other hot spots. If any crew members are suspected of being infected or any infection is detected, the vessel is prohibited from transiting the Suez Canal and from entering the ports.</p>
<p>Has Suez Canal transit been affected by Covid-19 and related measures?</p>	<p>The Suez Canal is fully operational; however, in addition to general health measures (e.g., wearing facemasks, gloves and full-isolation suits, and using disinfectants), other precautionary and preventive measures have been introduced to ensure the continuity of navigation in the canal while guaranteeing the safety of those who come into close contact with the transiting vessels (i.e.: flu and pneumonia vaccinations, regular medical check-ups on the captains, surveyors and mooring personnel when embarking and disembarking, by a fully-equipped and qualified medical team stationed at the pilotage marinas in the three canal cities).</p>
<p>Have crew changes and shore leave been affected by Covid-19 and related measures?</p>	<p>Yes, crew changes are currently prohibited, as is shore leave for Asian crews; shore leave for other nationals is permitted subject to the quarantine official's approval following the required inspection.</p>

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