

## CHECKLIST OF LEGAL ISSUES ARISING OUT OF COVID-19 (CORONAVIRUS)

The rapid spread of pandemic COVID-19 has undoubtedly created uncertainty in all business sectors as it surfaced several unprecedented legal issues that businesses must consider and respond to.

Below, we outline a non-exhaustive checklist of such legal issues:

### Employment issues

- Under tort law, employers have a duty of care to take all necessary precautions to ensure the physical and mental wellbeing of their employees. Are there company policies to observe the existing duty care to safeguard the health and safety of employees?
  - Are they sufficient in terms of a pandemic such as COVID-19?
  - Is there liability in tort if, despite the company taking all the necessary precautions, an employee is infected with COVID-19 by a co-worker or a customer in the workplace?
- Does the same duty of care apply to customers? Are there any policies to be observed by the employees to protect themselves, their co-workers and customers?
- Can employees with symptoms resembling COVID-19 symptoms be requested to stay at home even if they are not confirmed carriers of the virus?
- Can stricter travel bans be imposed for employees compared to governmental-issued travel bans? What applies to employees who travelled before any governmental instructions had been issued?
- If some or all employees are working from home (WFH), are there any WFH procedures/policies?
- Are there any rules on how employees WFH or who are required to stay at home for other reasons related to COVID-19 will be remunerated and to what extent?

### Corporate governance issues

- Companies may need to hold annual meetings or extraordinary meetings for shareholders or directors' meetings. Are virtual meetings an option? If not, can this be resolved? Will they be as effective as face-to-face meetings?
- How can a company minimise the effect of possible decrease in turnover? Shall remuneration/bonus of a company's executive personnel be reconsidered?
- The board of directors shall always be informed for any administrative decisions regarding COVID-19. Is the Board of Directors sufficiently informed and engaged in risk management decisions by the management?

### Data Protection issues

- If WFH has only now become a necessity, what privacy and security measures shall be taken? Is there a need to amend the company's privacy policies or create a data protection policy addressed to employees WFH?

- Under GDPR, personal data can be collected and processed provided that there is a legal basis for a company to do so. The companies shall consider whether there is a legal basis upon which they may:
  - Request from employees to disclose any recent trips abroad
  - Check employees' temperature
  - Disclose any symptoms they have resembling to COVID-19 symptoms
  - Disclose any pre-existing health conditions which will categorise them as high-risk individuals
- Personal data under b, c and d above are sensitive personal data which under the GDPR cannot be processed except in very limited cases.
- May companies rely to the legal grounds of necessity to carry obligations under employment law or public interest on the basis of Union or Member State law in order to process such sensitive personal data?
- Even if processing is for the public interest, it must be proportionate to the aim pursued and appropriate safeguard measures must be taken. Is the recording of health data of employees for the prevention of spreading of COVID-19 proportionate under the circumstances? What measures are considered to be appropriate to safeguard such personal data?
- The basic principles of GDPR must be followed and therefore companies must determine the employee's personal data related to COVID-19 that will be collected and for how long they will be kept.
- Employee's health data may be disclosed to authorities, if this is required by law or a decree. Is the company obliged or allowed to disclose such health data to co-workers as well?
- Is there a need to conduct any risk assessment before applying a WFH policy or before collecting and storing any sensitive personal data of employees?

### **Contractual issues**

- Has COVID-19 affected the company to such extent rendering the performance of a contract impossible or radically different? Does the contract law doctrine of frustration apply? In order to consider whether the doctrine applies, the following shall be examined:
  - Have the parties contractually allocated the risk of the particular event occurring
  - Has there been a radical change in obligations
  - Was the radical change due to the fault of one of the parties?
- The doctrine of frustration renders the contract void which means that both parties are discharged from their obligations.
- Does the spread of COVID-19 constitute an event of force majeure? A force majeure event is when something happens outside the control of the contractual parties which makes them unable to perform their obligations under a contract. Is the extent of the spreading in a specific country compared to another relevant?
- Where there is a force majeure clause in a contract, the affected party's obligation will be suspended whilst the event is ongoing and it will resume to apply when the event is over. If COVID-19 is a force majeure event, when obligations of a party will presumably resume to apply?
- What happens if there is no force majeure in an agreement?
- Is suspension of business due to government orders sufficient reason justifying non-payment of rent of premises?
- In case where events organised by the company are cancelled due to COVID-19 (e.g. theatre, cinemas, concerts) or the company is no longer able to provide already paid services (e.g.

gym/dance club membership fee), shall a full refund be offered or is it possible to offer partial refund (e.g. retain an amount as booking fee/administration fee/postage )?

#### **Loan transactions**

- Loan obligations of numerous companies will undoubtedly be affected by COVID-19 as a result of decrease in turnover. Can a company request rescheduling of the repayment plan?
- Are loan interest rates affected in any way?
- Is financial support due to COVID-19 available to companies in terms of loans?

#### **Regulated entities**

- Many companies are regulated companies and have to follow the rules of their regulatory body (e.g. CySec, Cyprus Bar Association, ICPAC etc). Has the relevant regulatory body issued any rules that must be followed in response of the COVID-19?
- Is there an opportunity for all entities of the same industry to respond in the same way thus eliminating any adverse effects to specific companies?

The above are only a number of legal issues that may arise as a result of the worldwide COVID-19 outbreak. Our firm is fully committed to support and offer legal advice on all the above and any other issues that may arise as a result of COVID-19 outbreak in Cyprus or abroad.

**Author:** I.FRANGOS & ASSOCIATES LLC

#### **Contact persons:**

Maria Raphael: [maria@frangoslaw.com](mailto:maria@frangoslaw.com)

Georgia Thoma: [georgia@frangoslaw.com](mailto:georgia@frangoslaw.com)