The recent epidemic of a novel Coronavirus (COVID-19) in China has not only caused threats to life and safety of people globally but is also increasingly impacting the business environment worldwide. The United Arab Emirates (“UAE”) has also been affected by the outbreak and there is an increasing risk that it will have far-reaching effects on the UAE’s business environment. This Legal Briefing will analyze some legal implications in connection with the outbreak of COVID-19 in the UAE.

1. Introduction

On 29 January 2020, the UAE became the first country in the Middle East to confirm a case of COVID-19 in the region. Since then the total number of cases has increased to 29 as per media reports. In addition to creating a sense of fear for their health amongst UAE residents, the rise of this pandemic has also led to a sense of uncertainty among businesses.

The gravity of the situation can be ascertained by the fact that the UAE government has been actively taking measures to limit the spread of the virus. These measures, among others, range from shutting down of nurseries, cancellation of events, issuing travel advisories, requiring travel declarations, quarantine and port checks as well as closure of flight routes.

All of this has led to a decline in the stock markets and in the overall economic activity. In addition to bracing themselves for the economic impact of COVID-19, companies should consider its effect on contractual obligations (existing and new ones) as well as health and safety of employees at the workplace. Furthermore, businesses need to assess options to reduce operating costs and availability of authorized signatories.

2. Effects of the virus outbreak on contractual obligations

The strained economic activity, potential and existing travel bans, and closure of flight routes have forced businesses to assess whether they can fulfil their contractual obligations. Facing the above restrictions, businesses might consider whether or not they will be able to invoke force majeure clauses in case of their failure to meet with their contractual obligations due to a pandemic caused by the Coronavirus COVID-19.

Force majeure events are unexpected circumstances outside of a contracting party’s reasonable control that prevent the contracting parties from performing their obligations undertaken by them pursuant to the contract. The question that needs to be addressed in the current situation is the following: Will force majeure clauses in contracts cover the pandemic brought on by COVID-19?

The answer to this question is dependent on the actual wording of a particular force
majeure clause that a party to a contract wishes to invoke:

a. Well-worded clauses that include references to quarantine restrictions, entry/exits restrictions and epidemics as force majeure events may be applicable in case of the COVID-19 pandemic.

b. However, contracts that do not specifically include such wording or do not include any force majeure clause at all may not offer the desired protection.

Companies should carefully assess whether their contracts include provision for force majeure and whether these clauses cover the current situation. As the spread of the virus is on the rise with no timeline of it subsiding in the sights, businesses which are currently negotiating new contracts should pay great attention to the wording of their force majeure clauses to cover the present scenario. In this regard, it might also be advisable to insert a BIMCO Infectious or Contagious Disease Clause into the contract (this clause was released in 2015 in response to the Ebola virus outbreak in West Africa). In case force majeure clauses are not incorporated in contracts, businesses can rely on Articles 249 and 893 of the UAE’s Civil Code to safeguard their interests in the current scenario.

3. The challenges faced by the Employers in the UAE due to the outbreak of the virus

The outbreak of COVID-19 presents number of challenges for UAE employers. Employers are both legally and morally obliged to protect the health and safety of their employees and to provide a safe place to work. Accordingly, UAE employers are advised to devise effective work health and safety systems. In addition, employers are advised to provide proper training and education on the virus to their employees, including how the virus spreads and how it can be prevented.

Moreover, there are general guidelines with regard to people returning from countries that are at the center of the pandemic (e.g. China, Iran, South Korea) to be quarantined upon their return or at least stay home for 14 days of their return so the spread of disease can be monitored. Applying such guidelines and/or other precautionary measures can raise number of legal implications:

a. Where an employee is required to go into quarantine, will his/her days off from the work be counted towards sick leave (Article 83 of UAE Labor Law). Generally, under UAE law, employees are entitled to 90 days of sick leave in total out of which 15 days are at full pay, 30 days at half pay and rest are unpaid.

b. Employers may also consider initiatives such as reducing working hours, ordering employees to take paid leave (especially for such employees with large numbers of accumulated leave days), offer employees to take unpaid leave and having employees work from home.

Whatever the measure that a UAE employer chose to take, it should be ensured that the measure in question is in line with the UAE Labor Law and does not infringe on the rights of employees.

4. Considerations regarding the availability of authorized signatories

Many companies in the UAE, especially large corporations, are dependent on the actions of managers, legal representatives or authorized signatories that act on the
companies’ behalf. The availability of an authorized signatory can be crucial for the smooth operation of business, be it related to signing of bank cheques or other banking instruments, the conclusion of important contracts or other documents that require certain persons within an organization to sign for and on behalf of the company.

If one or more signatories are unavailable, for example, due to travel restrictions or quarantines as a consequence of COVID-19, this can severely affect a company’s business. Therefore, organizations are advised to check their existing authorizations / powers of attorney and, potentially, to activate or prepare a potential delegation of powers to additional persons.

5. Conclusion

COVID-19 has certainly created an unprecedented situation, wherein, businesses are faced with different challenges that can result in significant losses, if not addressed properly. UAE businesses are advised to do the following:

- Checking the terms of existing contracts for protection, including force majeure clauses.
- Inserting express infection disease/epidemic wording into new contracts (and amending existing contracts if possible).
- Conducting risk assessments, considering applying specific measures for their employees.

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