

CLIENT ALERT

ALGERIA

23 March 2020

COVID-19: Algerian Government response and Guidance on key business issues

Appeared at the end of 2019 in the city of Wuhan, China, the coronavirus (COVID-19) has so far contaminated more than 220,000 people worldwide and is responsible for more than 10,000 deaths.

The COVID-19 pandemic has been declared by the World Health Organization as a "*public health emergency of international concern*", and Algeria is not spared.

From a health point of view, the country has just entered phase 3 of the spread of the coronavirus outbreak and to date, 201 people are contaminated for a total of 17 deaths.

As for the economy, the COVID-19 crisis has caused the price of a barrel of Brent to fall to \$20, about half the reference price used in the preparation of the 2020 finance law.

In this context, after recalling the main measures adopted by the Government in response to COVID-19, we will consider the options available to companies to manage the impact of this crisis on their staff and the performance of their contracts.

1. MESURES TAKEN BY THE ALGERIAN GOVERNMENT

In order to contain the COVID-19 outbreak, the President of the Republic has adopted several measures over the past week¹, and yesterday, the Prime Minister has adopted an executive decree No. 20-69 of 21 March 2020 (the "Decree 20-69") to strengthen social distancing measures.

These measures have entered into force since **Sunday 22 March 2020 at 1:00 am for a period of 14 days renewable.**

¹ <http://www.aps.dz/algerie/103169-le-president-tebboune-annonce-une-serie-de-decisions-pour-endiguer-la-ropagation-du-coronavirus-en-algerie>;
<http://www.aps.dz/algerie/103248-covid-19-le-president-tebboune-prend-une-serie-de-mesures-complementaires>;
<http://www.aps.dz/economie/103192-coronavirus-air-algerie-suspend-tous-ses-vols-de-et-vers-l-international-jusqu-a-nouvel-ordre>

1.1. Restrictions on the freedom of movement

- » Suspension of all flights from and to international destinations until further notice of the national airline Air Algérie;
- » Temporary suspension of air and sea services to/from Europe;
- » Suspension of air services to and from six Arab countries: Morocco, Tunisia, Egypt, Unites Arab Emirates, Qatar and Jordan;
- » Suspension of air services to and from several African countries: Mauritania, Mali, Niger, Senegal, Ivory Coast and Burkina Faso;
- » Closure of all land borders with neighbouring countries;

- » Suspension of all means of passenger transport: air services on the domestic network, taxis, road transport, rail or guided transport (trams, metros, cable cars), except for the transport of essential employees.

1.2. Demobilisation of half of the civil service and other employees

- » Placing 50% of the staff of public administrations and institutions whose presence is not considered indispensable on exceptional paid leave;
- » This measure does not apply to employees of the necessary vital services (health, national security, civil defence, customs, prison administration, national transmissions, quality control and fraud prevention, veterinary and phytosanitary authorities, hygiene and cleaning services, surveillance and guarding);
- » Exceptional paid leave for pregnant women and women raising young children;
- » Measures in the energy sector with strict application of health and safety rules through the reinforcement of preventive measures as well as the use of teleworking in this sector.

1.3. Limited activities of the Courts and Parliament

- » Suspension of criminal and correctional trial and appeal court hearings²;

² <http://www.aps.dz/algerie/103199-coronavirus-le-conseil-d-etat-decide-la-mise-en-application-d-une-serie-de-dispositions>; <http://www.aps.dz/algerie/103127-coronavirus-suspension-des-audiences-des-tribunaux-criminels-et-correctionnels>

- » Continuation of hearings of summary proceedings and administrative tribunals in the exclusive presence of lawyers and in the absence of the parties and suspension of public reception except in cases of extreme necessity.

- » Suspension of the activities of the Council of the Nation (upper chamber of the Algerian Parliament)³.

1.4. Extended powers of the walis

The walis are entitled to take any measures to prevent and control the spread of COVID-19, such as requisitioning:

- » medical personnel or any other person with regard to his or her function or professional competence;
- » any hotel infrastructure or any other public or private infrastructure;
- » any necessary means of passenger transport, public or private, whatever its nature, which may be used for medical transport or fitted out for this purpose; and
- » in general, any public or private structure intended to provide a minimum service for the benefit of the population.

1.5. Closure of schools and universities

- » Closure of schools and educational institutions, including universities.

1.6. Suspension of religious, cultural and sport events and closure of places of entertainment

- » Closing of pubs, leisure, entertainment and restaurant and recreational areas in large towns and cities;

³ <http://www.aps.dz/algerie/103102-coronavirus-suspension-des-activites-du-conseil-de-la-nation-jusqu-a-nouvel-ordre>

- » Closure of mosques until the pandemic is under control;
- » Suspension of all activities, meetings and cultural and sport events;
- » Closing of several shopping centres in Algiers and Oran (except food shops).

1.7. Deferral of tax payments

- » Payment of duties and taxes are postponed exceptionally according to a set schedule and without application of penalties (except for companies falling within the scope of the Large Business Directorate).

1.8. Mobile reporting application

- » Implementation by the Ministry of Health of a mobile application: https://play.google.com/store/apps/details?id=com.covid19_algeria in order to alert local authorities in the event that a person presents symptoms of coronavirus, and to carry out an online screening.

2. IMPACT OF COVID-19 ON EMPLOYEES

To date, the Algerian Government has issued in Decree 20-69 clear guidelines concerning the civil service, demobilizing 50% of the workforce and encouraging remote work.

On the other hand, in the private sector, it will be up to the employer, within the framework of its power to define the work organisation framework, to adopt measures to adapt to the new context by reconciling two imperatives: the protection of employees' health and the continuation of the company's activity.

Within this framework, and depending on the specificities of the company's activity, the nature of the positions and the individual situation of the employees, the employer would have the right to ask certain employees to work in the company's premises while allowing others to work remotely.

Remote work is not the only option to manage the risk of spreading COVID-19.

The employer could also consider splitting the staff into several teams, which would not meet each other but would alternate with different work schedules.

If the health crisis were to continue over time resulting in economic difficulties for the company, the employer could also resort to short-time working.

A consultation of the staff representative bodies could be necessary before the implementation of the measures described above, which could have a deep impact on employees' working conditions.

There is currently no specific legislation in Algeria concerning remote working or other possible measures.

Thus, it will be up to the employer to organise their implementation internally through internal regulations, internal notes, etc.

To be noted: according to the CNAS, remote work does not exempt the employer from paying social security contributions on salaries.

3. THE IMPACT OF COVID-19 ON THE CONTRACTUAL ENVIRONMENT

The current COVID-19 outbreak and the measures implemented to halt its spread have resulted in the non-performance of contractual obligations by many companies.

In this regard, it might be worth for the affected companies to obtain a suspension of their obligations by invoking force majeure.

Hardship could also be invoked in order to revise the conditions of performance of the contract in light of the occurrence of an unforeseen event, COVID-19.

Unlike the force majeure clause, only a few international commercial contracts contain hardship clauses (which does not, however, preclude invoking hardship).

They are mainly found in long-term contracts - such as oil exploration and production contracts - where it is not easy to foresee at the time of conclusion of the contract all the circumstances likely to affect the contract in the long term.

The following discussion will therefore focus on force majeure, which is the ground most frequently invoked in circumstances similar to COVID-19.

3.1. Definition of force majeure

The Algerian Civil Code does not define force majeure as such.

However, the Algerian Civil Code regards force majeure as a cause exonerating from contractual liability.

In the absence of a legal definition of force majeure, the parties must refer to the contractual definition of force majeure.

Failing this, and unless otherwise agreed, the parties may rely on force majeure, based on the traditional criteria of force majeure as they emerge from international legal doctrine and contractual practice, namely:

- » an unforeseeable event: the impossibility of reasonably foreseeing the occurrence of such an event at the time of signing the contract;
- » an irresistible event: the total and absolute impossibility of performing the obligation even though such performance would be more onerous;
- » an external event: the impossibility of performance must not be attributable to the defaulting party.

3.2. Can the Covid-19 outbreak be qualified as force majeure?

The unprecedented scale of the COVID-19 outbreak, and the strict and significant measures ordered by the various authorities in Algeria, Europe and other continents could lead to COVID-19 being considered an event of force majeure:

- » The criterion of unpredictability: the strict measures taken by many governments to halt the spread of the outbreak are undoubtedly unprecedented, thereby crippling the global economy, should allow the COVID-19 pandemic to be considered unpredictable.
- » The criterion of irresistibility: a case-by-case assessment will have to be made in order to determine, depending on the nature of the obligations provided for in the contract, whether their performance has become absolutely impossible due, in particular, to the measures applied locally to fight against the outbreak.

- » The criterion of externality: there is no doubt about the externality of COVID-19 to the defaulting party.

Thus, the global COVID-19 pandemic should be considered as a case of force majeure.

It is interesting to note that an Algerian administration, the Directorate General of Customs, has for the first time, qualified the coronavirus as "force majeure", in a note dated 19 March 2020 relating to the customs clearance of vehicles.

3.3. The effects of force majeure

The defaulting party willing to invoke a case of force majeure must refer to the procedure provided for in the contract.

Even if the contract is silent, it is advisable that the defaulting party should, within a reasonable period of time, give written notice to the other party indicating the nature of the force majeure event and its effects on the performance of the contract.

Moreover, it is advisable to reach an agreement with the contractual partner as to the existence of a case of force majeure in order to avoid recourse to a judge, whose activity is significantly reduced in order to stem the spread of COVID-19.

If the qualification of force majeure were to be retained, the main consequences would be to:

- » Suspend performance of the contract in case of temporary impediment (unless the delay resulting from such suspension justifies a termination of the contract); and
- » Exempt the defaulting party from any damages for non-performance.

CONTACT :



Rym Loucif

PARTNER
LPA-CGR avocats

T : Algiers / +213 (0)5 52 58 28 93

T : Paris / +33 (0)6 19 87 17 92

Mail : rloucif@lpalaw.com

You can also find this legal update on our website in the News & Insights section: www.lpalaw.com. This newsletter is a free, periodical electronic publication edited by the law firm LPA-CGR (the "Law Firm"), and published for LPA-CGR's clients and business associates. The newsletter is strictly limited to personal use by its addressees and is intended to provide non-exhaustive, general legal information. The newsletter is not intended to be and should not be construed as providing legal advice. The addressee is solely liable for any use of the information contained herein and the Law Firm shall not be held responsible for any damages, direct, indirect or otherwise, arising from the use of the information by the addressee.

To unsubscribe, please send an email to desabonnement@lpalaw.com.