

# FAQs on the Impact of COVID-19 on Nigerian Laws

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Contains answers to some of the most Frequently Asked Questions from our Clients on different topics and sectors in relation to the COVID-19 pandemic. For other ALN countries please click [here](#)

**A. EMPLOYMENT**

	Question	Answer
1.	<b>Can an employer be legally compelled to notify the local health ministry, either proactively or in response to a request from the ministry or other government agency in case an employee is infected with the COVID-19 virus?</b>	Yes, an employer can be legally compelled to report a case of Covid-19. An employer (and indeed any member of the public) is required by the directives of the Federal Government of Nigeria (issued through the Presidential Task Force for the Coronavirus and the Federal Minister of Health) to report any suspected case of the COVID-19 virus (“the Virus”) to the National Centre for Disease Control (NCDC). This directive is issued pursuant to the powers of the President under the Quarantine Act 1926. Similarly, the Public Health Law of Lagos State, 2015 (“PHL”) obligates the occupier or owner of any building or structure to notify orally and in writing the medical officer of health of any occupant suspected of suffering from an infectious disease. (Lagos is the commercial capital of Nigeria but is only one of 36 states.) Failure to report a case of an infectious disease under the PHL is an offence punishable with a fine of ₦1,000,000 (approx. US\$2,778) or any non-custodial sentence. Furthermore, the Infectious Diseases (Emergency Prevention) Regulations, 2020 of Lagos State defines a “Potentially Infectious Person” as “a person who is or may be potentially infected with Covid-19”. An employer thus has an obligation to report any case of COVID-19.
2.	<b>Is an employer legally obligated to notify employees if any of their employees is infected with the COVID-19 virus?</b>	Not automatically. An employer is not legally obligated to notify other employees whenever another employee is infected with the Virus. This is because disclosure of an employee’s health status to other employees can be a breach of such employee’s right to privacy under the Constitution of the Federal Republic of Nigeria 1999 (As amended). However, in line with the obligation of the employer (A) under the Common Law to ensure the safety of its employees and (B) to comply with the above directives of the Nigerian Government on social distancing, isolation and quarantining of Virus cases, the employer is required to report such case to the NCDC. As a precautionary measure, the employer should direct employees to immediately self-quarantine and seek medical advice if they have any symptoms of infection by the Virus.

3.	<b>Is there an obligation to close a place of work if an employee is infected? At what stage can the employer reopen the place of work?</b>	Yes, an employer has an obligation to close its place of work where that is necessary for the safety of the employees. This includes cases where an employee is infected with the Virus. The employer will be required to take appropriate measures to ensure that the workplace is safe before reopening it.
4.	<b>Are there any issues with forcing employees to work from home?</b>	No, there are no issues with employees having to work from home. The issue of “force” does not truly arise, provided the employee would be doing the same kind of work (from home) that the employee is engaged to do. In any event, it is usual for employment contracts in Nigeria to provide the place of work of the employee and in addition provide that the employee will work in such other place as the employer may specify. In such case, an employer may require its employees to work from anywhere including working from home. Even without such a provision, parties may agree to have the employee work from home under special circumstances <i>e.g.</i> for reasons of health and safety as with the case of the Virus.
<b>Question</b>		<b>Answer</b>
5.	<b>How can employers cut wages for employees? For example, can employees be asked to stay away from work in exchange for reduced pay without triggering redundancies?</b>	The Labour Act 1971, (a statute applicable only to workers providing manual and unskilled labour) stipulates that where an employer is unable to provide work for an employee owing to temporary emergency or other circumstances beyond the employer’s control, the employee would only be entitled to a day’s wages. (Labour Act, s. 17(1)(a).). For other categories of employees, whether employees can be asked by employers to take a reduction in wages turns on the terms of their contracts of employment or agreements subsequently reached between the employer and the employees in the light of the prevailing circumstances. Where no agreement is reached, the options open to both the employer and the employees are either termination of the contracts of employment or the declaration of redundancy.
6.	<b>Can an employer force employee to take outstanding leave days?</b>	This is largely dependent on the terms of the employment contract between the employer and the employee. In the absence of such provision in the employment contract, the employer cannot compel the employee to take the outstanding leave, but it can negotiate with the employee to take it.

7.	<b>Can employers force employees to go on forced paid leave or unpaid leave during this time?</b>	No, an employer cannot force employees to go on forced leave. However, this may be possible where the contract of employment allows for same. In the absence of any contractual terms, the employer and the employee would have to agree on the conditions for any leave during this time.
<b>Question</b>		<b>Answer</b>
8.	<b>Can the quarantine period be deducted from an employee’s annual leave or sick leave? What if the period exceeds the employee’s sick leave entitlement?</b>	This would depend on whether the employee is available to work during the quarantine period. Except the contract of employment provides otherwise, where the employee is required to work (or is available to work but no work is provided) during the quarantine period, the period would not be deducted from the employee’s annual leave or sick leave period. However, where the employee is unable to work during the quarantine period due to ill-health, the quarantine period can be deducted from the employee’s sick leave. Where the period of the sick leave exceeds the employee’s sick leave entitlements, the provisions of the employment contract would apply. In the absence of such provision in the employment contract, in principle the extra days away from work are for the employee’s account. The usual practice is to deduct the extended sick leave period from the employee’s annual leave where the sick leave exceeds the employee’s sick leave entitlements.
9.	<b>Can terms of employment be renegotiated during this period of the pandemic?</b>	An employer has no right unilaterally to re-write the employment contract. The employer can with the consent of the employee amend or vary the terms of employment.
10.	<b>Can employees be asked to reduce the number of hours they work so that they are paid based on the number of hours worked (salary is reduced accordingly)?</b>	In strict law, no, although typically, working hours are mutually agreed in the employment contract. An employer can request that working hours be reduced with reduced pay contrary to what was earlier agreed upon. The consent of the employee is required for such reduction to be effective. Otherwise, the same will be treated as redundancy.
<b>Question</b>		<b>Answer</b>
11.	<b>What duty of care does an employer owe to their employees during this time? Accordingly,</b>	Employers have obligations to (a) provide a safe work environment; (b) observe health and safety measures; and (c) ensure the safety of the employees. The liability of an employer for breaches of these duties would depend of the losses

	<b>what liabilities arise on an employer if an employee is infected at the place of work?</b>	sustained by the employee as a result of such breach. For persons working in factories (mainly those involved in manufacturing), the Factories Act 1987 mandates the occupiers and owners of factories to provide a safe work environment and observe health and safety measures in relation to persons who work in their factories. (Factories Act, s. 45.) Contravention of the Factories Act attracts penalties ranging from ₦500 (less than US\$2) to ₦5,000 (approx. US\$14) or imprisonment.
12.	<b>Do employers still need to pay full salaries to employees if the nature of their job is that they are unable to work remotely but need to stay home to be safe from the virus?</b>	This would depend on the contract of employment. Generally, employers still have the obligation to pay full salaries to employees even where the nature of their job is such that they are unable to work remotely but need to stay at home to be safe from the virus. However, where the contract of employment provides otherwise, the parties would resort to such provisions.
13.	<b>Can employees who cannot work remotely be forced to take annual leave during this period?</b>	No, employees who cannot work remotely cannot be forced to take their annual leave during this period, except the contract of employment provides otherwise. However, the parties can agree to have the affected employees take their leave during this period.
14.	<b>Can employers make employees redundant merely due to the fact that a pandemic exists?</b>	Employers can only make employees providing manual and clerical labour, for example, redundant if the pandemic results in “excess of manpower”. In such a situation, the applicable statutory provisions regarding “redundancy” as set out in the Labour Act, 1971 would ordinarily have to be complied with. (We say “ordinarily” because arguably there is true redundancy only to the extent that there is no work for employees, not simply because the employer is having financial difficulties or there is a pandemic. The statute is silent on how long the lack of work needs to have lasted or be likely to last. It is also silent on the minimum number of employees that has to be let go for the default rules on the termination of a single employee with notice to be displaced.)  These include the employer (A) engaging the trade union (for unionized employees only) or the workers’ representatives (for unskilled and manual workers only); (B) adopting the “last in, first out” principle in disengaging the

		employees; and (C) negotiating and paying the termination and redundancy benefits agreed with the union or representatives as the case may be. For other categories of employees, the provisions of their contracts of employment as to termination with notice or payment of salary in lieu of notice will apply. Where the contracts are silent, termination with one month’s notice or salary in lieu of notice is the default rule for employees earning monthly salaries.
	<b>Question</b>	<b>Answer</b>
15.	<b>What is the legal position on sick leave? Is it 30 days or 7 days with full pay and 7 days with half pay? Has the amendment to 30 days come into effect?</b>	Under the Nigerian Labour Act 1971, workers (comprising manual and unskilled employees) are entitled to be paid wages up to 12 working days in any one calendar year during absence from work caused by temporary illness certified by a registered medical practitioner. (Labour Act, s. 16). Sick leave entitlement for other classes of employees would depend on the terms of the contract of employment.
16.	<b>What is an employee entitled to when they are working remotely? What are the benefits an employee is entitled to when working remotely?</b>	Employees are entitled to their usual employment benefits as stipulated under their employment contracts (such as salaries and leave entitlements) when they work remotely. They would not, however, be entitled to reimbursements of expenses that are required for their physical presence at the workplace (such as transport costs and lunch, where applicable.) We note, however, that in most cases, allowances relating to these additional benefits (transport and lunch costs) are integrated into salaries and are not true reimbursements, and therefore remain payable to employees whether the employees go to work or not.
17.	<b>Should an employer have a written COVID-19 policy?</b>	Yes, for “best practice” employers are advised to have a written COVID-19 policy as a measure to help protect workers from infection and protect employers from liability.
	<b>Question</b>	<b>Answer</b>
18.	<b>Would directors and officers be held liable for not doing enough if someone caught the virus and spread to other staff members?</b>	Directors and officers of an employer may under statute be held liable for failure to provide a safe working environment if an employee caught the Virus and infected other employees in the workplace. <i>E.g.</i> under section 69 of the Factories Act.

19.	<b>Can an employer make an employee perform other jobs when their core functions are down (for examples, if sales are down)?</b>	Yes, where the scope of activities indicated in the contract of employment allows, an employer may make an employee perform other jobs when their core functions are down. Otherwise, the employee’s consent must be obtained prior to making any amendments to the employee’s scope of activities.
20.	<b>What should an employer do if an employee doesn't want to come at work because he/she is afraid of being infected at the workplace?</b>	Employees are not allowed to be away from the workplace without reasonable cause. Where the employee has no reasonable basis for the fear, any absence from work would attract sanctions in accordance with the employment contract. The usual practices are to deduct the day(s) of absence from their leave days or to prorate the salary for the day(s) of absence and deduct the same from the salary. In extreme cases, absence from work without reasonable cause may be a ground for termination of the employment contract.

## B. REAL ESTATE AND CONSTRUCTION

	Question	Answer
1.	<b>What are the obligations of landlords and tenants in relation to minimising the spread of the COVID-19 virus at the building or the leased premises?</b>	<p>Section 20 of the <i>Public Health Law of Lagos State, 2015 (“PHL”)</i> places an obligation on the landlord as the owner of a building to inform the medical officer of health as soon as he is aware of a person suffering from an infectious disease. In this instance, the landlord should report any case of COVID-19 to the Nigeria Centre for Disease Control (“NCDC”). Tenants as occupiers in a building also have the same obligation as a landlord.</p> <p>In addition, by section 30 of PHL, any landlord who knowingly lets out a house that has been occupied by a person with an infectious disease commits an offence and is liable to a non-custodial sentence or fine of ₦200,000 (Approx. USD556).</p> <p>Please note that our response here is confined to the laws applicable in Lagos State, Nigeria, one of 36 states.</p>

2.	<b>Can the Government order the closure of the whole or a part of a building?</b>	<p>Yes. Pursuant to sections 3 and 8 of the Quarantine Act, CAP Q2 Laws of the Federation of Nigeria, 2004. The President or State Governor may declare any place within Nigeria to be an infected local area.</p> <p>Also, by the Infectious Diseases (Emergency Prevention) Regulations, 2020 (the “<b>Regulations</b>”), the Governor has the power to order the temporary closure of event centres, bars, educational institutions and other public places where gathering of persons occur within the “Local Area”. (See section 8(1)(c) of the Regulations.) Local Area within the context of the Regulations refers to all of the 21 local government areas in Lagos State and roads, bridges, pathways surrounding the Murtala Muhammed Airport Complex.</p> <p>Furthermore, the Commissioner for Health may by virtue of the PHL order the evacuation of the infected area. Section 21 PHL.</p>
3.	<b>Can a landlord unilaterally decide to close the whole or a part of a building to help stop the spread of the COVID-19 virus?</b>	<p>Yes, if the part of the building is not leased, the landlord can unilaterally close the unoccupied part of the building.</p> <p>However, if the part of the building is leased, the landlord cannot unilaterally close that part of the building. This will be a breach of the landlord’s statutory implied covenant of quiet enjoyment. (See section 8(i) and 9(a) of the Tenancy Law of Lagos State 2011.)</p>
<b>Question</b>		<b>Answer</b>
4.	<b>Can a tenant unilaterally decide to shut its premises to help stop the spread of the COVID-19 virus</b>	<p>Except where agreed otherwise by the landlord and the tenant, the tenant by law enjoys the right of exclusive possession during the lease term and by virtue of this right may decide to shut the premises to the exclusion of others, including the landlord. However, a tenant is required by Section 7(4) Tenancy</p>

		Law of Lagos State 2011 to permit the landlord at all reasonable times during daytime after written notice to view the condition of the premises.
5.	<b>What is the effect on co-tenancy clauses where the Government directs the closure of the whole or part of a building or where the other tenants in the building unilaterally decide to close their leased premises and cease trade?</b>	This issue does not arise in the real world. In the Nigerian market, co-tenancy clauses are rarely, if ever, used.
<b>Question</b>		<b>Answer</b>
6.	<b>Can a tenant suspend the payment of rent claiming that the Covid-19 gives rise to a force majeure event?</b>	In the absence of a <i>force majeure</i> clause which covers inability to perform by reason of the current pandemic, the tenant cannot suspend the payment of rent on the basis of the Virus.
7.	<b>What happens if there is failure to provide building services, including maintenance, cleaning, sanitation, and security due to COVID-19?</b>	Subject to the provisions of the lease agreement, it is the duty of the landlord to “effect repairs and maintain the external and common parts of the premises”. See section 8(vi) of the Tenancy Law of Lagos State, 2011.  If the lease agreement provides for a <i>force majeure</i> clause which covers inability to perform by reason of the Virus, the landlord may rely on the same to avoid liability.
<b>Question</b>		<b>Answer</b>
8.	<b>If an individual tenant or an employee of the tenant contracts COVID-19, can a landlord prohibit the tenant or its employee from accessing the building/premises?</b>	The Tenancy Law of Lagos State, 2011 forbids a landlord to disturb the “quiet and peaceable enjoyment of the premises by the tenant.” (See section 8(i) of the Tenancy Law of Lagos State, 2011.)  Furthermore, where a landlord inhibits the access of the tenant to the premises, the landlord is liable to pay to the tenant such compensation as shall be determined by the court. (See section 9 of the Tenancy Law of Lagos State 2011.) Therefore, in order not to expose itself to legal liability, the landlord

		should have recourse to the relevant provisions of the Public Health Law of Lagos State, for example, which mandates an owner of a property to bring to the attention of a government medical officer of health any occupant of property suspected to be suffering from an infectious disease.
9.	<b>What alternative remedies can I consider if my contract/lease does not entitle me to suspend my obligations on account of force majeure?</b>	If COVID-19 is not recognized by the <i>force majeure</i> clause or a similar clause as one of those that can effectively suspend or terminate obligations, then the tenant should, as a commercial solution, engage the landlord in discussion about varying the terms of the lease with a view to suspending the concerned obligations. Where such discussions fail, the party may seek redress from courts with a view to buying time or forcing a settlement even where the law strictly speaking is not favourable.
	<b>Question</b>	<b>Answer</b>
10.	<b>What should real estate developers with development loans do in view of the looming slowdown in house purchase uptake?</b>	Real estate developers should explore the usual commercial mechanisms to reduce their risk exposure (including negotiating with lenders for the payment of principal/interest on the loan to be deferred or waived or for a reduction of the interest rate on the loan).
	<b>Question</b>	<b>Answer</b>
11.	<b>How are payments under the sale agreement affected if the completion date falls during a period when the lands registries are closed?</b>	Due to the advances in technology, the impact on payment obligations should be minor as most ministries, departments and agencies have centralized electronic payment platforms (especially the Government-backed Remita one) which in spite of the “lockdown” are still working.  Where payment is to be made to a private sector counterparty, such payment can be made through online banking.

		Where the aforementioned options are not sufficient to fulfil the payment obligations parties may in writing amend their agreement to reflect an alternative date.
	<b>Question</b>	<b>Answer</b>
12.	<b>How does the current closure of the lands registries and various governmental offices affect completion in various sale and purchase transactions?</b>	<p>Closure of the Lands Registry and various government offices does not technically affect completion of a sale and purchase transaction if we understand completion to occur when payment of the price is made rather than when the change of title is fully perfected.</p> <p>However, such closure affects post-completion regulatory payment and other obligations as outlined below.</p> <ul style="list-style-type: none"> <li>(a) Upon the execution of the agreement at completion, stamping must be done within 40 days. See section 23(1) of the Stamp Duties Act;</li> <li>(b) The agreement must be registered at the land’s registry within 60 days from the date of endorsement of the Governor’s consent. See Section 26 of the Land Registration Law of Lagos State, 2015; and</li> <li>(c) The consent of the Governor must also be obtained. See section 21 and 22 of the Land Use Act, 1978.</li> </ul> <p>As the law literally stands, the pandemic is not an excuse for failure to comply with these obligations.</p>
	<b>Question</b>	<b>Answer</b>

13.	<b>How does closure of registries affect the handover of possession of the property on a sale transaction?</b>	In practice, possession, old title documents and registration application papers are transferred to the purchaser as soon as the purchase price is paid and long before the new title is perfected. Thus, the closure of the Lands Registry does not affect the delivery of old title and registration documents or the transfer of possession. (However, the purchaser merely acquires only an equitable interest until the new title document is perfected. Thus, the closure of the Lands Registry at least leaves a bona fide purchase of the property with an equitable interest.)
<b>Question</b>		<b>Answer</b>
14.	<b>What steps if any is the Ministry of Lands taking to help with the registration of documents that may have statutory or contractual timelines?</b>	The Ministry has not taken any step as yet and is not likely to take steps. This is because registration of title documents requires the review of the application papers by several units of the Government and typically takes at least six (6) months in Lagos State. In these relatively early weeks of Covid-19 in Nigeria, the Ministry is for now not under pressure to take any radical new steps.
15.	<b>Is COVID-19 covered by business interruption insurance and what is the threshold for recovery?</b>	<p><b>Designated Peril:</b></p> <p>Commercial property or comprehensive package insurance policies typically require a designated peril or cause of loss (for example, a fire or earthquake) in order for the insurance cover to apply. If the business interruption cover forms part of such a policy and the cause of the loss does not qualify as one of the designated perils, then coverage for business interruption will not apply.</p> <p><b>Direct physical loss:</b></p> <p>Commercial property or comprehensive insurance package policies also typically require direct physical loss to the property as well as proof of</p>

		<p>causation. Generally, direct physical loss would not include consequential or resulting economic losses to the business.</p> <p><b>COVID-19 related claims:</b></p> <p>In the event of a claim for Virus-related business interruption, questions may arise as to whether the designated peril and direct physical loss requirements have been met.</p> <p>For example, in circumstances where business premises or manufacturing facilities have been closed as part of a mandatory governmental order or voluntarily closed by the business owner as part of Covid-19 containment measures or out of fear of contamination, but the physical facilities are otherwise still habitable and uncontaminated, it is possible that a generic business interruption cover will not apply since there will have been no property damage or direct physical loss.</p> <p>Prof. Gbolahan Elias SAN Fred Onuobia</p> <p>According to the World Health Organisation, depending on the type of surface, temperature or humidity of the environment, the Virus may persist on surfaces for a few hours or up to several days. Also, measures like cleaning the facilities with disinfectant can kill the Virus. Considering that it is unlikely that the Virus will permanently subsist on a surface as to cause the facilities to be permanently uninhabitable, business interruption cover may not extend to interruptions caused by the Virus.</p>
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		<p><b>Exclusions:</b></p> <p>Business owners considering Covid-19 related insurance claims will also need to bear in mind the specific exclusions in their insurance policies which may preclude coverage. Generic commercial property insurance and business interruption policies will typically exclude damage arising from epidemics or pandemics.</p> <p><b>Bespoke business interruption coverage:</b></p> <p>While generic policies may not cover economic losses arising from the suspension or closure of operations due to Covid-19 control measures, bespoke insurance policies may respond to such losses. However, business owners should bear in mind that bespoke insurance comes with high premiums.</p>
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**C. CORPORATE**

	Question	Answer
1.	<p><b>Is the COVID- 19 pandemic an event which is a force majeure or is it an Act of God?</b></p>	<p>COVID-19 is at best a <i>force majeure</i> event and not an Act of God. This is because Acts of God are comparable to natural disasters (e.g. flood, earthquake, explosions) and cannot be stretched to include pandemic and epidemic.</p> <p>Where the outbreak of pandemic/epidemic is not specifically set out as a <i>force majeure</i> event, COVID-19 will still fall within generic <i>force majeure</i> clauses provided it affects the ability of either of the parties to perform the obligations set out in the specific contract. A pandemic/epidemic is typically caught by generic definitions of <i>force majeure</i> events but not always listed as one of the specific events.</p>

2.	<b>What if my contract does not have a force majeure clause?</b>	<p>Where a contract does not have a <i>force majeure</i> clause, in principle the affected party(ies) can resort to the common law doctrine of frustration. The doctrine applies where an unforeseen event beyond the control of the parties renders a contract substantially impossible to perform or makes the outcome of the performance fundamentally different from what was agreed by the parties at the time of contract.</p> <p>Also, it is worthy to state that whether the doctrine of frustration can be used as a defence will largely depend on the nature of the obligation to be performed under the contract. If the obligation is not such that its performance is rendered impossible by the COVID-19 outbreak (<i>e.g.</i> a contract to finish writing a work of fiction), then the doctrine will not avail the party seeking to rely on it.</p>
3.	<b>Can a contract be set aside if a party cannot deliver goods or services on time because of the pandemic?</b>	<p>Whether or not a contract may be set aside on this ground is dependent on the terms of the contract and the consequences of a <i>force majeure</i> event on the performance of the contract.</p>
4.	<b>Can a party suspend its non-monetary obligations under a contract in light of COVID-19?</b>	<p>A party can suspend its non-monetary contractual obligations on COVID-19 grounds where the contract defines <i>force majeure</i> to cover COVID-19 and lists the suspension of non-monetary obligations as one of the consequences when a <i>force majeure</i> event occurs.</p>
5.	<b>Can a party suspend its monetary obligations under a contract in light of COVID-19?</b>	<p>The occurrence of <i>force majeure</i> events is not a ground for the suspension of monetary obligations unless the contract so stipulates.</p>
6.	<b>In what circumstances can a party rely on force majeure in order to suspend its obligations under a contract? What conditions need to be fulfilled?</b>	<p><i>Force majeure</i> can be relied upon by a party to suspend its obligations under a contract where: (a) <i>force majeure</i> provisions are expressly included in the contract; (b) COVID-19 falls within the scope of the <i>force majeure</i> clause; and (c) one of the consequences provided for in the contract is the suspension of obligations.</p>

7.	<p><b>Would COVID-19 constitute force majeure? What are the thresholds for force majeure?</b></p>	<p>Events that will constitute <i>force majeure</i> events may be defined generically and/or listed specifically in the contract. Thus, a party who wants to rely on COVID-19 as a defence to claims for the non-performance of its obligations under the contract should:</p> <ul style="list-style-type: none"> <li>(i) confirm that the pandemic or government actions borne out of the pandemic fall within the categories of <i>force majeure</i> events under the contract and be such as to render the performance of the contract impossible on an extensive scale or radically different from what the parties contracted before entering into the contract;</li> <li>(ii) notify the other party(ies) upon the occurrence of the event; and</li> <li>(iii) take the measures prescribed under the contract – suspension, remediation or termination.</li> </ul>
<b>Question</b>		<b>Answer</b>
8.	<p><b>In what circumstances can a party rely on the principle of frustration of a contract with respect to COVID-19 and if so on what basis?</b></p>	<p>A party can rely on the doctrine of frustration where an unforeseen event renders the performance of the contract substantially impossible or makes the performance of the contract radically different from what the parties agreed upon at the time of the contract.</p> <p>A party seeking to rely on the principle of frustration in respect of COVID-19 (especially where there is no valid <i>force majeure</i> defence) must prove that:</p> <ul style="list-style-type: none"> <li>(a) COVID-19 occurred after the contract had been formed and was not foreseeable by the party;</li> <li>(b) In view of the Virus performance of the contract is impossible, illegal or radically different from what was envisaged;</li> </ul>

		(c) the non-performance of the contract is not due to the fault of the party.
9.	<b>If a counterparty to a contract refuses to meet its obligations under the contract because of COVID-19, what recourse does the other party have?</b>	<p>The other party may:</p> <ul style="list-style-type: none"> <li>(a) terminate the agreement; and/or</li> <li>(b) sue the other party for breach of contract and claim damages, specific performance (depending on the nature of the contract) or exercise any other remedies available under the contract or under law.</li> </ul>
10.	<p><b>With respect to registration of documents under the Companies Act:</b></p> <ul style="list-style-type: none"> <li>i. <b>What happens to the requirement to register documents under the Companies Registry (where the registries are closed);</b></li> </ul>	<p>Currently, companies are incorporated for the first time based on electronic submissions made on the online portal of the Corporate Affairs Commission (the “CAC”). Where, as now, the CAC closes in the event of a lockdown, applications may still be submitted online. However, even where this is done, there is still a human presence required at the CAC to review the submitted documents and authorize the issuance of a certificate of incorporation. With COVID-19, the usual response times will be extended.</p> <p>For other filing obligations other than the incorporation of a company such as annual returns and post-incorporation filings, the documents are required to be filed at the CAC physically. Such filings cannot be done until the CAC is open to the public.</p>
	<ul style="list-style-type: none"> <li>ii. <b>Are penalties applicable for late payment of stamp duty during the period of COVID-19 and can one get a waiver of penalties under the Stamp Duty Act?</b></li> </ul>	<p>Generally, any unstamped or insufficiently stamped instruments may be stamped within 40 days from its first execution and 30 days after its first execution for instruments chargeable with <i>ad valorem</i> duty. However, non-compliance with the statutory timelines for stamping documents attracts penalties. (Section 23 of Stamp Duties Act, CAP S8, LFN 2004 (as amended).)</p> <p>The Federal Inland Revenue Service (FIRS), in response to COVID-19, has announced that its e-platforms should be used for payment of taxes which</p>

		includes stamp duties. FIRS has yet not issued any guidelines regarding waiver of penalties for late payment of stamp duties. It is far from clear that the FIRS can grant such waivers. Fresh legislation would appear to be needed for the purpose.
	<b>Question</b>	<b>Answer</b>
	<p>iii. <b>If one has entered into a commercial contract (e.g. a Share Purchase Agreement) that is pending completion, would the outbreak of COVID-19 be deemed to constitute a material adverse change (MAC) entitling a party to terminate the agreement/ delay completion? What other recourse would you have?</b></p>	<p>Whether COVID-19 will be deemed to constitute a MAC depends on the terms of the MAC provision under the contract. Usually, occurrences that constitute MAC will be provided for in commercial agreements. In the event that the COVID-19 does not fall within the MAC events, then the party that intends to rely on COVID-19 may rely on the defence of frustration to discharge the contract where the conditions for that doctrine to apply are satisfied.</p>
	<p>iv. <b>What are the effects of COVID-19 on delays to obtain regulatory approvals that are condition precedent (CP) to completion?</b></p>	<p>Obtaining regulatory approvals that are conditions precedent to completion have become practically impossible as a result of COVID-19 and the lockdown emanating therefrom. The parties may either elect to extend the time for obtaining these regulatory approvals or terminate the contract where that is an option under the contract.</p>
	<p>v. <b>If the parties have a statutory timeline to hold an AGM to get approvals for a transaction, what happens if you are unable to hold the AGM due to shut downs/ Government directives to avoid public gatherings?</b></p>	<p>The statutory timeline to hold an AGM and to get approvals for transactions will have to be substantially extended by administrative action or legislation as a result of a shutdown or government directives. Some regulators such as the Nigerian Stock Exchange and the Federal Inland Revenue Service have extended the timeline for filing required returns.</p> <p>Also, companies have long adopted the approach of holding AGMs largely through proxies as allowed under the Companies and Allied Matters Act 1990.</p>

		<p>To address this, the Corporate Affairs Commission recently issued Guidelines on the holding of AGMs of public companies using proxies as a result of the COVID-19 pandemic. The extent to which these Guidelines have legal force still remains somewhat unclear. The Guidelines provide as follows:</p> <ol style="list-style-type: none"> <li>1. The approval of the Corporate Affairs Commission (CAC) shall be obtained before such a meeting is held. The application can be submitted to the CAC Head Office in Abuja or any of the branch offices in any of the States.</li> <li>2. CAC shall send representative(s) as observer(s) to the meeting.</li> <li>3. The meeting shall only discuss the Ordinary Business of an AGM as provided in s. 214 Companies and Allied Matters Act, 1990 (“<b>CAMA</b>”) (appointment of the members of the audit committee, remuneration of auditors, declaration of dividends, presentation of financial statements and the reports of directors and auditors, and the election of directors in the place of those retiring).</li> <li>4. Notice of meeting and proxy form shall be sent to every member in accordance with the requirements of CAMA. Companies will be required to provide the CAC with the evidence of postage or delivery of such notices after the meeting.</li> <li>5. All the members shall be advised in the notice that in view of the Covid-19 pandemic, attendance shall only be by proxy with names and particulars of the proposed proxies listed for them to select therefrom. The invitation shall be issued at the company’s expense and the stamp duties shall be prepaid by the company. The proxies need not be members of the company.</li> </ol>
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		6. The company shall be guided by the provisions of its Articles or CAMA as regards to a quorum. However, for the purpose of determining quorum, each duly completed proxy form shall be counted as one.
vi.	<b>For purposes of interpreting a <i>force majeure</i> clause that includes an “epidemic” as an event, can it be argued that there is currently an “epidemic” in Nigeria?</b>	Yes, there is an epidemic in Nigeria. The declarations of Virus tests results and deaths for Nigeria are relatively low but rising, and it cannot seriously be suggested that testing is anywhere near adequate. Extrapolation from World Health Organization statistics and the declaration by the President of Nigeria on March 30, 2020 pursuant to his powers granted under the Quarantine Act, Chapter Q2, Laws of the Federation of Nigeria 2004 and the Constitution of the Federal Republic of Nigeria 1999 (as amended) lend credence to us affirming the existence of an epidemic in Nigeria today.

**D. INSURANCE**

	<b>Question</b>	<b>Answer</b>
1.	<b>Is business interruption covered in insurance policies in Nigeria?</b>	Although rarely, if ever, offered as a standalone product in Nigeria, the form of ‘business interruption’ cover businesses take in the Nigerian market is usually included as part of a commercial property insurance or comprehensive insurance coverage. Business interruption recoveries will only be paid out if the cause of the ‘business interruption’ loss is specifically covered by the insurance policy. While ‘business interruption’ is not specifically provided for in Nigeria as a standalone product, with the prior approval of the National Insurance Commission (NAICOM) new products may be introduced into the Nigerian market by insurance companies apart from those provided for under the law. Section 16 of the Insurance Act, 2003.
2.	<b>Would the cover extend to interruption caused by the COVID-19 pandemic?</b>	<b>Designated Peril:</b> Commercial property or comprehensive insurance policies typically require a designated peril or cause of loss (for example a fire or earthquake) in order for

		<p>the insurance cover to apply. If the business interruption cover forms part of such a policy and the cause of the loss does not qualify as one of the designated perils, then coverage for business interruption will not apply.</p> <p><b>Direct physical loss:</b> Commercial property or comprehensive insurance policies also typically require direct physical loss to the property as well as proof of causation. Generally, direct physical loss would not include consequential or resulting economic losses to the business.</p> <p><b>COVID-19 related claims:</b> In the event of a claim for Virus-related business interruption, questions may arise as to whether the designated peril and direct physical loss requirements have been met.</p> <p>For example, in circumstances where business premises or manufacturing facilities have been closed as part of a mandatory governmental order or voluntarily closed by the business owner as part of COVID-19 containment measures or out of fear of contamination, but the physical facilities are otherwise still habitable and uncontaminated, it would appear that a generic business interruption cover will not apply since there will have been no property damage or direct physical loss.</p> <p>Where the physical facilities become contaminated, this may not be a basis for business owners to claim that property damage or direct physical loss has occurred as such contamination will not necessarily result in damage to or long-term inability to use or inhabit the physical facilities. According to the World Health Organization, depending on the type of surface, temperature or humidity of the environment, the Virus may persist on surfaces for a few hours or up to several days. Also, measures like cleaning the facilities with disinfectant</p>
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		<p>can kill the Virus. Considering that it is unlikely that the Virus will survive indefinitely on a surface as to cause facilities to be permanently uninhabitable, business interruption cover may not extend to interruptions caused by the pandemic.</p> <p><b>Exclusions:</b> Business owners considering COVID-19 related insurance claims will also need to bear in mind the specific exclusions in their insurance policies which may preclude making a successful claim under the policy. Generic commercial property insurance and business interruption policies will typically exclude damage arising from epidemics or pandemics.</p> <p><b>Bespoke business interruption coverage:</b> While generic policies may not cover economic losses arising from the suspension or closure of operations due to COVID-19 control measures, bespoke insurance policies may cover such losses. However, business owners should bear in mind that bespoke insurance typically comes at a high rate of premium.</p>
<p>3.</p>	<p><b>What should businesses do/consider in relation to their insurance policies in light of the COVID-19 pandemic?</b></p>	<p>Businesses should do the following:</p> <ol style="list-style-type: none"> <li>a. Carefully review along with their advisers of the terms of their existing coverage to establish whether business interruption relating to the epidemic would be covered or excluded from cover and whether, even if there may be no exclusion from cover, proof or otherwise of physical loss may affect the ability to recover from insurance.</li> <li>b. Going forward, businesses should carefully think through the practical risks and losses they are likely to face in an environment where such epidemics and disease outbreaks are no longer ‘black swan’ events and structure their insurance coverage to cover these risks.</li> </ol>

		<p>c. Insurers, insureds and brokers should work together to evaluate whether the present industry standard forms of commercial property and business interruption cover are ‘fit for purpose’ and should consider developing products that address the practical risks that businesses are facing at present and may well face in the future.</p> <p>d. For instance, consideration could be given to cover policies that extend cover to a contingent business interruption, for example a business where its key suppliers (rather than the business itself) suffer physical losses to their property that impairs the supplier’s ability to deliver contracted goods or materials.</p> <p>e. Consideration could also be given to extension of cover to situations where although there has been no physical damage, governmental action such as a lockdown ordered as part of epidemic containment measures affects access to or use of the insured’s business premises.</p>
4.	<b>In the case of Insurance Premium Financing Arrangements, if the client does not meet his monthly payments, would the insurers be called upon to cancel the policies and refund the premium due?</b>	<p>Payment of premium on a monthly basis is not the practice in Nigeria, premiums are paid once yearly in Nigeria. Irrespective of what may be obtainable in practice, Nigerian law envisages full payment of the premium as a condition precedent to there being a valid contract of insurance at all and stipulates that in law there shall be no cover in respect of an insurance risk unless the premium is paid in advance. Hence, where there has been no full payment of the premium, there will be no insurance cover in place and whatever may have been agreed by the parties and the payments made thereunder shall be null and void and not recognized by the law. Section 50(1) of the Insurance Act, 2003.</p>

**E. COMPETITION**

Question	Answer
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<p>1.</p>	<p><b>What happens to mergers being evaluated by the Federal Competition and Consumer Protection Commission (the FCCPC) in the event of a lock down/ closure of the FCCPC?</b></p>	<p>All merger notifications and requests for approval of mergers are to be filed at the FCCPC office in Abuja or at the Securities and Exchange Commission’s Interim joint merger review desk in Abuja or Lagos. (These two Commissions currently do merger control review work together, for a transitional period, with the FCCPC to do the work solely once it is fully staffed for the purpose.) Both Abuja and Lagos are currently locked down.</p> <p>Parties should expect delays in merger evaluations by the FCCPC as a result of the ongoing pandemic given the directive of the Federal Government of Nigeria dated March 24 2020, that all public servants should work remotely. Further to that directive, governmental institutions have already adopted the remote working practice. The lockdown will result in significantly delayed timelines for regulatory approvals and therefore impact completion timelines of transactions.</p> <p>As at March 31, 2020, the FCCPC has not issued any statement providing guidance on how merger assessments will be conducted in the current lockdown situation. However, parties can file applications and notifications through the FCCP’s online platform and designated e-mails. Also, the Securities and Exchange Commission (SEC) in its circular dated March 24, 2020 stated that filings for mergers and acquisitions applications should be made electronically to <a href="mailto:offerapplications@sec.gov.ng">offerapplications@sec.gov.ng</a>. The requirement for filing with the SEC is only applicable to public companies.</p> <p>Parties are therefore advised to file their merger notifications using the electronic option. Since the FCCPC officials are working from home (with the attendant uncertainties and difficulties this may warrant), it is expected that merger approvals would still be obtained eventually. In any event, it is important for parties to await the FCCPC’s approval prior to completing any proposed merger or acquisition transaction, notwithstanding any delays that</p>
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		may be occasioned by COVID-19 pandemic. For really urgent transactions, parties could explore further available means to directly engage with the FCCPC and SEC officials so as to chart possible ways to expedite the obtention of the requisite approvals.
2.	<b>How will merger applications be submitted to the FCCPC in the event of a lock down/ closure of the FCCPC?</b>	The FCCPC is yet to issue a statement providing guidance on how merger notifications will be submitted and prosecuted in this event of a lockdown. Companies can, however, submit the merger applications online through the FCCPC online platform and designated emails. The Securities and Exchange Commission (SEC) in a circular dated March 24, 2020 stated that filings of mergers and acquisition applications should be made electronically at <a href="mailto:offerapplications@sec.gov.ng">offerapplications@sec.gov.ng</a> . For now, the SEC is authorized to act as the agent of the FCCPC on most aspects of merger control matters.
3.	<b>What kind of conduct is business is prohibited and is likely to attract investigations or imposition of sanctions by the FCCPC during this period of COVID-19?</b>	Below is a summary of the kinds of business conduct that may attract an investigation from the FCCPC during this period of COVID-19:  <b>(a) Restrictive Trade Practices</b> - The Act prohibits agreements among actors (whether companies, individuals, partnerships lacking juristic personality or otherwise) that have the actual or likely effect of preventing, restricting, or distorting competition ( <b>Restrictive Trade Practices/Agreements</b> ). These prohibited practices include: (i) directly or indirectly fixing a purchase or selling price for goods and services; (ii) dividing markets by allocating customers, suppliers, areas or specific types of goods or services; (iii) limiting or controlling the production or distribution of any goods and services, markets, technical development or investment; (iv) engaging in collusive tendering; (v) making the conclusion of an agreement subject to an acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreement; and (vi) any other conduct that would otherwise prevent, distort or restrict competition. Restrictive trade agreements could also include agreements with exorbitant increases in prices, particularly for essential goods, for the hoarding of products,

		<p>for minimum retail price maintenance and for the withholding of products by a dealer from a supplier.</p> <p><b>(b) Abuse of Dominance</b> - An actor is considered to be in a dominant position if it (i) is able to act without taking account of the reaction of its customers or competitors; or (ii) enjoys a position of economic strength enabling it to prevent effective competition being maintained and having the power to behave, to an appreciable extent, independently of its competitors and consumers. Such acts include - (a) charging an excessive price to the detriment of customers; (b) refusing to give a competitor access to an essential facility when it is economically feasible to do so; (c) engaging in an exclusionary act like refusing to supply scarce goods to a competitor when supplying those goods is economically feasible or buying up a scarce supply of intermediate goods or resources required by a competitor; (d) unreasonably lessening competition in the market and (e) impeding the transfer of technology.</p> <p><b>(c) Monopoly</b> – This may also occur in situations of import and export of goods and services of any description from Nigeria, to the extent that it affects competition in the Nigerian market, as may be prescribed in regulations made by the FCCPC.</p> <p>If the FCCP finds that an actor is abusing its dominant position in the market, the FCCPC is required to prepare a report indicating the practices that constitute the abuse and notifying the actor of its findings as well as making any other orders that it considers appropriate to get the actor immediately cease the abusive practice.</p> <p>An actor that abuses its dominant position in the market commits an offence and is liable on conviction to a fine of not less than ten percent (10%) of its turnover in the business year preceding the date of the commission of the</p>
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		<p>offence or such other percentage as the court may determine under the circumstances of the particular case.</p> <p>An actor who after receiving the order of the commission, fails to cease the abusive practice, commits an offence and is liable on conviction to a fine of not less than ten per cent (10%) of its turnover in the business year preceding the date of the commission of the offence or such other percentage as the court may determine under the circumstances of the particular case.</p> <p>Also, any director of the actor that fails to cease an abusive practice under the Act is liable on conviction to imprisonment for a term not exceeding three (3) years or to the payment of a fine of not exceeding ₦50,000,000.00 or to both the fine and imprisonment.</p>
<p>4.</p>	<p><b>Will coordinated or even unilateral efforts by entities to mitigate and suppress the COVID-19 pandemic prompt competition law scrutiny? e.g. information sharing of competition sensitive information such as future prices, volume of stock available, co-operation in delivery of supplies to remote areas if shops are closed down etc.</b></p>	<p>Yes. Coordinated or unilateral efforts by entities to mitigate or suppress the Covid-19 pandemic may raise competition law scrutiny where the acts violate the provisions of the competition law such as where the entities engage in restrictive trade practices or enter into contracts to do so.</p> <p>However, Section 60 of the Act provides for situations where the FCCPC may grant an exemption and approve of a restrictive trade practice agreement among actors. This may be done where the FCCPC is satisfied that the agreement will contribute to the improvement of production or distribution of goods, services or the promotion of technical or economic progress. The FCCPC has so far not exercised this power in respect of any efforts to address the pandemic. However, any party seeking exemptions under s. 60 of the Act may apply to the FCCPC for it to exercise the powers.</p>
<p>5.</p>	<p><b>Can undertakings unilaterally refuse to deal with a firm that fails to adopt adequate measures to protect workers and customers, or a firm that promotes misinformation that may exacerbate the public health risks?</b></p>	<p>No. An actor cannot in itself and without more have a defence to a competition law claim for unilaterally refusing to deal with a firm that fails to adopt adequate measures to protect workers and customers, or a firm that promotes misinformation that may exacerbate the public health risks especially where there exist contracts or contractual obligations between the parties. If the</p>

		<p>refusal in itself has no anti-competitive impact because the other actor can readily find other counterparties on similar terms, there is clearly no issue here. Where for instance the contract between actors involves the purchase and/or delivery of goods by one from the other, the goods to be delivered by the actor who has refused or failed to adopt measures to protect its workers or customers may be rejected by the other actor. This is not because there is a competition law defence but because there is an implied condition as to fitness for purpose or use statutorily-imposed on a seller or supplier of goods which the rejecting actor can argue has not been met by an actor which has refused or failed to adopt measures to protect its workers or customers (Sale of Goods Act (s. 14)).</p>
<p>6.</p>	<p><b>Would hoarding of products with the subsequent intention of increasing prices and/or collusive increase of prices in light of increased demand (commonly known as price gouging) during the COVID-19 crisis be permissible?</b></p>	<p>No. Hoarding of products with the aim of increasing prices during the COVID-19 pandemic is not permissible. Hoarding of products and collusive increases in prices constitute violations of sections 108(1)(b)(c) and 115(3) and 124(1) of the Act.</p> <p>The FCCPC issued a Caution on February 28, 2020, advising actors to desist from price-gouging and similar obnoxious trade practices. Precisely, the caution warned against the arbitrary, unreasonable, excessive and irrational pricing of critical hygiene products such as hand sanitizers. The FCCPC urged pharmacies and department stores to desist from such acts and informed the actors that it will enforce the provisions of the Act against any conspiracy, combination or arrangement that intends to distort the market during the COVID-19 pandemic. Pursuant to the Caution, the FCCPC is already set to prosecute four (4) major grocery stores in Lagos and Abuja, Nigeria, for arbitrary increases in the prices of hygiene products.</p> <p>The Lagos State Infectious Diseases (Emergency Prevention) Regulation 2020 (“the Regulations”) further empowers the Governor of the State to direct that no person may hoard foods, drugs and other essential goods and services within any given area or refuse to provide food, drugs or essential goods and services</p>

		<p>within such an area. We are not aware that the Governor has exercised this power.</p> <p>Furthermore, it is an offence under the Regulations to (i) artificially inflate the prices of food, drugs and other essential goods and services within a local area; and (ii) hoard foods, drugs and other essential goods and services or refuse to provide food, drugs or essential goods and services within the area.</p> <p>Where a person breaches the directives under the Regulations, the Governor may (i) direct the seizure and forfeiture of the food, drugs or essential goods and services and (ii) direct that the forfeited goods be used to alleviate the needs in the area.</p>
<p>7.</p>	<p><b>Will the FCCPC hold meetings and carry out site visits during this period?</b></p>	<p>At this time, the FCCPC is yet to issue a statement providing guidance on how the current COVID-19 pandemic will impact on its capacity or ability to hold meetings or carry out site visits during this period. However, parties should envisage the possibility of the ongoing COVID-19 pandemic disrupting the normal day-to-day functioning of the FCCPC.</p> <p>There is in force the general “work from home” order dated March 24, 2020, saying that all public servants should work remotely. Further to that directive, governmental institutions including the FCCPC have already adopted the remote working practice.</p> <p>Before the order was made, the FCCPC has during this COVID-19 pandemic carried out investigations into alleged breaches of the competition law, such as excessive and irrational pricing of critical hygiene products laws. Recently also, following the warning issued by FCCPC to sellers engaged in arbitrary increases in prices of protective and hygiene products in the wake of this recent outbreak of COVID-19 virus, a major E-Commerce platform in Nigeria delisted 390 products belonging to 168 sellers of hand sanitizers and face masks from its platform.</p>

8.	<b>How does COVID-19 impact investigations where the FCCPC requires responses to queries to be provided within a certain period?</b>	During this COVID-19 pandemic, it is expected that there will be considerable delays where the FCCPC has requested for timely answers to questions raised during an investigation because businesses are not operating optimally. It is therefore expected that where the FCCPC has requested for answers to queries from an actor, and the actor is unable to provide the answers within the period stipulated, such an actor should take steps to request for an extension of time from the FCCPC to answer the queries, otherwise the actor will be in breach of the Act.
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## F. GENERAL QUERIES

	Question	Answer
1.	<b>What is the extent of the President’s powers to declare a State of Emergency in Nigeria and what this means?</b>	<p>Section 305 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) (the “CFRN”) empowers the President to impose a state of emergency in the country or any part of it by issuing a declaration through publication made in the official gazette. However, a two-thirds majority of the National Assembly (<i>i.e.</i> the Senate and the House of Representatives) must ratify/approve such a proclamation for it to be effective.</p> <p>The conditions under which the President can declare a state of emergency are when “<i>actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security; there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger; there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation</i>”.</p> <p>To the extent that the COVID-19 pandemic had led to a breakdown of public safety, it falls under the circumstances under which the President can declare a state of emergency. Although, the President has not formally declared a state</p>

		<p>of emergency anywhere in Nigeria, there are currently several Federal executive “lockdown” and “stay-at-home” orders in place in Nigeria to ensure the safety of Nigerians. These orders are entrenched in COVID-19 Regulations 2020 made by the President on March 30, 2020 pursuant to the Quarantine Act, Chapter Q2 Laws of the Federation of Nigeria. 2004.</p> <p>In addition, the Lagos State Government has promulgated the Lagos State Infectious Diseases (Emergency Prevention) Regulations 2020 (“the Regulations”). The Regulations was made pursuant to the Lagos State Public Health Law and the Quarantine Act. It empowered the Governor of Lagos State to (i) restrict the movement of persons and vehicles, (ii) restrict gatherings of persons for events, meetings, conferences, religious activities and festivals and (iii) close public, educational and vocational institutions within the State.</p>
<p>2.</p>	<p><b>Will I have to refund registration fees for conferences that are postponed rather than cancelled?</b></p>	<p>Under the law of contract, impossibility of performance triggers the doctrine of frustration which can discharge a contract and the doctrine of total failure of consideration may entitle the party who is not in breach to recover its money. Thus, where a person registers for a conference and, due to the outbreak of COVID-19, the conference could not hold, the “intending conferee” is entitled to recover his money unless the contract stipulates otherwise.</p> <p>Conveners of conferences sometimes make specific provisions in their registration forms to the effect that where the conference does not proceed as planned for certain reasons, the registration fees shall be refunded to the intending conferee; or the conferee may attend the same conference or a different conference organised by the convener on a later date in order to utilize the registration fees paid. Where there are such provisions, then the parties may resort to the terms of the registration form. Otherwise, a compromise may be reached between the convener and the intending conferee for any of the following: (a) a total refund of the registration fees; (b)</p>

		<p>partial refund of the fees (half refund); and (c) utilization by the intending conferee of the fees on a later date for the same conference or a different conference.</p>
<p>3.</p>	<p><b>What does the gatherings prohibition mean for companies and shareholder meetings?</b></p>	<p>The prohibition of public gatherings means that companies in the States affected by the President’s lockdown orders (Lagos, Ogun and Abuja, FCT), and more particularly public listed companies in the States above, will not be able to convene physical Annual General Meetings (<b>AGM</b>) as is required under section 213 of the Companies and Allied Matters Act, 1990 (the “CAMA”) during this pandemic period. As such, companies will need to postpone such general meetings or explore alternative ways of convening the meeting. Several public, quoted companies and institutions in Nigeria had notified the Nigerian Stock Exchange Market about the postponement of their AGMs due to the outbreak of COVID-19. Under CAMA, a company has 18 months from its last AGM to call another AGM. In practice, most companies, private or public, will not need to call an AGM before the last quarter of 2020.</p> <p>The Corporate Affairs Commission (the “<b>CAC</b>”) on March 27, 2020 released Guidelines for the holding of AGMs of Public Companies by proxies in view of the COVID-19 pandemic (the “CAC Guidelines”). The CAC noted in it that companies can hold their AGMs by taking advantage of s. 230 CAMA on the use of proxies.</p> <p>It further noted that the following should guide the companies on the procedure and conduct of the AGM:</p> <ol style="list-style-type: none"> <li>2. The approval of the Corporate Affairs Commission (CAC) shall be obtained before such a meeting is held. The application can be submitted to the CAC Head Office in Abuja or any of the branch offices in any of the States.</li> <li>3. CAC shall send representative(s) as observer(s) to the meeting.</li> </ol>

		<ol style="list-style-type: none"> <li>4. The meeting shall only discuss the Ordinary Business of an AGM as provided in s. 214 CAMA.</li> <li>5. Notice of meeting and proxy forms shall be sent to EVERY member in accordance with the requirements of CAMA. Companies will be required to provide the CAC with the evidence of postage or delivery of such notices after the meeting.</li> <li>6. All the members shall be advised in the notice that in view of the Covid-19 pandemic, attendance shall only be by proxy with names and particulars of the proposed proxies listed for them to select therefrom. The invitation shall be issued at the companies' expense and the stamp duties shall be prepaid by the company. The proxies need not be members of the company.</li> <li>7. The company shall be guided by the provisions of its Articles or CAMA as regards to a quorum. However, for the purpose of determining quorum, each duly completed proxy form shall be counted as one.</li> </ol> <p>However, in complying with the Guidelines, public companies must bear the following in mind:</p> <p>First, the choice of appointed proxies is restricted to <i>“names and particulars of the proposed proxies listed for them to select therefrom”</i>. The legality of this restriction is in doubt. CAMA s. 230 allows shareholders to appoint <i>another person (whether or not a member)</i>. Hence, the restriction of the appointed proxies under the Guidelines to selected persons contravenes CAMA. s. 230.</p> <p>Second, the restriction of the businesses to be conducted at the AGM to ordinary business contravenes CAMA s. 214. Other than ordinary business, companies are allowed to conduct special business at AGMs. The CAC has no power to restrict the business to be conducted at an AGM to ordinary business.</p>
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		<p>Thus, in complying with the Guidelines, public companies should ensure that ss. 214 and 230 of CAMA are adhered to. Where these sections are contravened, unhappy/dissenting shareholders appear to have a legal basis to challenge the validity of decisions reached at such AGMs. See question 13, section C (Corporate) above.</p> <p>For companies other than public companies, alternative ways of convening an AGM could be considered (for example, video-conferencing or telephone conferencing). However, these alternatives would need to take into account whether the articles of association of the company allow for such alternatives and whether the number of shareholders who could attend can meaningfully participate in the meeting.</p> <p>In addition, the CAMA s. 234 allows resolutions by a private company which would have been passed at a general meeting to be passed by way of written resolutions signed by all the members entitled to attend and vote at the general meeting.</p> <p>While appreciating that controlling the spread of COVID-19 is critical, companies should comply with their continuing obligations in so far as it is practicable.</p>
<p>4.</p>	<p><b>What are the legal implications on booking repayments?</b></p>	<p>This largely depends on the contractual terms between parties. Parties are bound by the terms of their Agreement. It is not in doubt that in view of the outbreak of COVID-19, the mandatory lockdown placed on major cities across the globe, travel bans placed by the government of many nations including Nigeria and the social distancing directives by the World Health Organisation, many arrangements have been frustrated and rendered incapable of performance.</p>

		<p>Now, arising from the frustration of plans/arrangements made by parties especially in relation to booking arrangements, there are various implications: (a) a refund of total payment made (this will depend on the terms contained in the ticket, receipts or oral agreement of the parties and, in the absence of same, a refund will be based on the common law of contract, wherein a party is entitled to recover for total failure of consideration); or (b) a non-refund of payment made (again, this would depend on the terms); or (c) an extension of the validity of the booking ticket or receipt on the agreement of the parties in order to allow the party who paid utilise the payment; and (d) a possible refund of the booking sum less (under certain states statutes granting relief in respect of frustrated contracts) expenses already incurred by the non-performing party in relation to the agreement before the outspread of COVID-19.</p>
5.	Can a customer who looks sick be refused entry?	<p>In the light of this pandemic and for the safety of the larger society, a customer may be declined access/entry into business premises. However, declining a person access to a building must be based on reasonable grounds. Common good practice is for every establishment to have an electronic temperature detector tool for detecting at least a fever. A detection of illness can then form a justifiable basis for refusing such a person access in this period of COVID-19. Currently, most companies, malls, outlets, and businesses have adopted this measure.</p>
6.	What is the effect of the Department of Petroleum Resources (“DPR”) Circular declaring the Covid-19 pandemic a <i>force majeure</i> on contracts in the Nigerian oil and gas sector?	<p>By the principles of privity of contract and the freedom of parties to contract, the government and/or regulatory authorities (including the DPR) would typically not intervene in private commercial transactions. Similarly, provisions not expressly covered in an agreement cannot be implied into the agreement. However, legislation (including subsidiary legislation) can and does rewrite contracts.</p> <p>It is not entirely clear whether the DPR Circular will suffice as subsidiary legislation. Although the DPR Circular is intended to be legally binding, the Circular on its face did not emanate from the Minister of Petroleum Resources</p>

		<p>(nor pursuant to any of the powers of the Minister of Petroleum Resources) under the Petroleum Act (1969). It is, therefore, arguable on this basis that the DPR Circular is not a subsidiary legislation able to vary the terms of contracts entered by actors in the oil and gas industry. To the extent that the DPR Circular is effective as secondary legislation, an actor in the Nigeria oil and gas industry has an obligation to comply and so can rely on the DPR Circular to vary the provisions of a contract between it and a third party. For more on this issue please click this link for our article titled <a href="#">“Can the DPR Rightly declare the Covid-19 Outbreak a Force Majeure event?”</a></p>
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## G. DATA PROTECTION

	Question	Answer
1.	<p><b>Do companies need to consider privacy and security laws when collecting data from employees as part of an effort to monitor and prevent the spread of COVID-19?</b></p>	<p>Yes. Many of the steps to monitor and prevent the spread of the Virus will involve the processing of “personal data” (such as a data subject’s name) and “sensitive data” (which would include the health status of a data subject) and therefore companies will need to consider privacy and data protection laws and their implications.</p> <p>In the light of COVID-19, the following should be taken into consideration:</p> <ul style="list-style-type: none"> <li>a) companies have a legal obligation to protect their employees under occupational health and safety laws (duty of care) and maintain a safe workplace;</li> <li>b) companies should only process data relating to the health status of a data subject within the ambits of lawfulness established under the Nigeria Data Protection Regulation, 2019 (the <b>NDPR</b>) which includes processing for the (aa) protection of the vital interests of the data subject or any other natural person and (bb) protection of public interest or in the exercise of an official public mandate vested in the company.;</li> </ul>

		<ul style="list-style-type: none"> <li>c) companies should request employees and/or visitors to inform them if they have visited an affected area, if they are experiencing symptoms, or have tested positive in order to allow the employer to take any necessary steps in the workplace that are required;</li> <li>d) companies should not name or disclose the identity of an affected individual in order to maintain confidentiality; and</li> <li>e) companies should ensure that any sensitive personal data that is processed is adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed and that the data is retained for the shortest time possible.</li> </ul> <p>The National Information Technology Development Agency, the data protection authority in Nigeria, has not issued a statement specifically targeted at the workplace but it has reiterated that it is working to ensure that the various data collection and processing activities by public health officials and relevant stakeholders to curb the spread of cases of COVID-19 comply with the provisions of the NDPR. In a notice to all Data Protection Compliance Organisations (<b>DPCO</b>) in Nigeria, NITDA has advised DPCOs to suspend visits to client sites and NITDA offices as part of the precautionary measures in tackling the Virus. Consequently, NITDA has extended the deadline for the submission of Data Protection Audit Report by data controllers to May 15, 2020.</p>
2.	<p><b>Are there any local employment or privacy laws relating to employer disclosure (internal or external), on handling or storage of the affected employee’s medical data?</b></p>	<p>Yes, the Constitution of the Federal Republic, 1999 (as amended) and the Nigeria Data Protection Regulations, 2019 contain provisions relating to employer disclosure (internal or external) in their capacity as data controllers on handling or storage of the affected employee’s medical data.</p>

**H. LITIGATION**

	Question	Answer
1.	<b>Can I obtain interim reliefs from the courts during this period in light of the closure of the courts and registries in the event I have an urgent matter?</b>	By the directives issued by some heads of courts, it is possible to approach courts for interim relief in matters: (a) that are urgent; (b) that are time-bound under the laws ( <i>e.g.</i> elections-related cases); and (c) relating to violations of citizens’ rights ( <i>e.g.</i> applications for bail). (See Lagos State Judiciary Guidelines dated March 20, 2020 and Letter dated March 23, 2020 written by the Chief Justice of Nigeria to all “Heads of Courts”.) However, following the lockdown in the Federal Capital Territory, Lagos and Ogun States, it is not possible to obtain interim relief from courts in those States and other States of the Federation that may be locked down as the courts and the registries of courts in those States have been closed.
	<b>Question</b>	<b>Answer</b>
2.	<b>Will you be able to file or serve documents/pleadings following the closure of courts, registries and most offices?</b>	No. Documents/pleadings cannot at this moment be filed and served as the Courts and Registries and offices have been closed, especially those in the Federal Capital Territory, Lagos and Ogun States. However, documents/pleadings can be filed and served in places where Courts/Registries have not been closed and movement is not restricted.
	<b>If not, will I be penalised for failing to do so?</b>	Yes. The Rules of Courts prescribe penalty payable for late filing and/or service of court processes. Courts do not exercise jurisdiction in a matter (a) where court documents have not been properly filed and (b) except in <i>ex parte</i> applications, where service has not been effected on the other party. The failure to file and/or serve court documents within the prescribed period owing to the closure of Courts and offices in Nigeria are genuine reasons for Courts, upon application and after formal hearings on the matter, to regularize the late filing and service of those court processes.
3.	<b>Can I execute a court order during this period of suspension of court activities?</b>	No, execution of court orders is practically impossible in view of the movement restriction imposed by the President and Governors in some States of the Federation including Lagos and Ogun States and Federal Capital Territory. Court enforcement officials are neither available nor authorized to enforce court orders during this time.

	Question	Answer
4.	<b>How will new dates be obtained for the matters that were to be heard or mentioned during the suspension period?</b>	When the courts resume work fully, the courts themselves will fix new dates and communicate the same to parties/counsel <i>via</i> hearing notices. Where the courts on their own do not appoint new dates or do not communicate the new dates to the parties/counsel, the parties/counsel will apply for new dates or visit/contact the courts to obtain the new dates. New dates may also be arranged <i>via</i> telephone calls to the courts registrars. These are all usual steps taken whenever the usual work of the courts is disrupted.
5.	<b>What will happen to interim orders that were set to lapse during the suspension period?</b>	Those interim orders will lapse. However, the parties may approach the courts for extensions of the lifespan of such interim orders.
6.	<b>What is the status of operations at the Court of Appeal and the Magistrates Court during this period?</b>	The operations of the Court of Appeal sitting in Lagos and Ogun States and Federal Capital Territory are suspended for an initial period of two (2) weeks commencing on March 24, 2020, following the directives of the Chief Justice of Nigeria and the Acting President of the Court of Appeal. The Courts of Appeal sitting in Lagos, Ogun and the Federal Capital Territory will not be able to operate following the Presidential restriction of all movements in those places. However, some courts are still operating regardless of the President’s directive. The above restriction of movement will also affect the Magistrate Courts in those places and in other places where movement has been restricted. Further, the Hon. Chief Justice of Lagos State has directed that all Magistrates within main Magisterial Districts should handle only criminal overnight cases relating to detention and custody. Proceedings in Magistrate Courts in other districts and mobile courts have been suspended.
7.	<b>Can a witness be excused from attending court if their date falls outside the period when court activities have been suspended but the witness is reluctant to travel owing to COVID-19?</b>	A witness who is reluctant to travel owing to genuine COVID-19 concerns can be excused from attending court even if the date falls outside the period when court activities are suspended. The party/lawyer presenting such a witness will inform the Court and seek other dates for such witness to appear in Court. However, where there are no genuine Covid-19 concerns, such witness will not be excused by the Court.
	Question	Answer

8.	<b>Will I be able to obtain an early date for my matter, in light of the backlog of cases that will arise owing to matters that were taken out during the suspension period being prioritised?</b>	An early date may be obtained depending on the Court’s docket. Dates are given considering the urgency of the cases and the convenience of the Courts.
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**I. BANKING & FINANCE**

	<b>Question</b>	<b>Answer</b>
1.	<b>Are there any statutory protections available to a borrower in the face of a pandemic?</b>	<p>Currently, there are none. However, the Central Bank of Nigeria (“CBN”) has published a circular “CBN Policy Measures in Response to COVID-19 Outbreak and Spill overs” dated March 16, 2020 (the “<b>CBN Circular</b>”). The effective, retroactive date of the CBN Circular is March 1, 2020 and it applies only in relation to CBN intervention facilities. In relation to all CBN intervention facilities, the CBN Circular (i) grants a further moratorium of one year on all principal repayments to all CBN intervention facilities and (ii) reduces the interest rates from 9 to 5 percent per annum for 1 year. With respect to other facilities, the CBN Circular enjoins parties to negotiate for the payment of principal/interest on the loan to be deferred.</p> <p>In addition, the President of the Federal Republic of Nigeria, while addressing the nation on March 29, 2020, directed that (a) a three-month repayment moratorium for all TraderMoni, MarketMoni and FarmerMoni loans (these are all social welfare schemes involving the distribution of cash by the Federal Executive) be implemented with immediate effect; (b) a three-month repayment moratorium be given to all Federal Government funded loans issued by the Bank of Industry, Bank of Agriculture and Nigeria Export Import Bank (all public sector financial institutions); and (c) for on-lending facilities using capital from international and multilateral development partners, the Federal Government’s development financial institutions should engage these</p>

		development partners and negotiate concessions to ease the pains of the borrowers.
2.	<b>What are the permissible default charges under the Consumer Protection Act (2012) including interest in the event that the lender declares a default?</b>	The Federal Competition and Consumer Protection Act, 2018 does not make provision for the applicable charges in the event that a lender declares a default. Such charges are governed by the terms of the loan agreement between the borrower and the lender.
3.	<b>How do the current circumstances surrounding COVID-19 affect perfection of securities?</b>	<p><b>Stamping and registration of securities</b></p> <p>Several state governments have issued notices to the public directing the temporary closure of governmental agencies. For example, on March 22, 2020, the Lagos State government issued a notice ordering civil servants from Grade 1 to Grade 12 to stay at home for a period of 14 days. In addition, President Buhari has ordered for the cessation of all movements in Lagos State, Ogun State and Abuja for an initial period of 14 days with effect from 11pm on Monday, 30<sup>th</sup> March 2020.</p> <p>This significantly impacts the day-to-day stamping and registration processes and may cause considerable delays to perfecting secured credit transactions. It is likely that the affected parties will have to seek for court-ordered or other extensions in relation to the registration of certain registrable security interests that have statutory timelines under the relevant statutes or pay the applicable default charges in relation to such registrations. For example, s. 197 of the Companies and Allied Matters Act 1990 provides for the registration of every security interest within 90 days after the date of its creation.</p>
<b>Question</b>		<b>Answer</b>
4.	<b>Does the impact of COVID-19 affect the enforcement of securities?</b>	The COVID-19 pandemic has a direct bearing on enforcement of securities. In the event that COVID-19 does not constitute a force majeure event as defined under the terms of a financing arrangement and the borrower defaults under the terms of the agreement, the lender can proceed to enforcement as provided in the relevant security document.

		<p>On March 23, 2020, the Chief Justice of Nigeria, Justice Tanko Muhammad, issued a directive on the temporary closure of the courts for 14 days in a bid to mitigate the spread of COVID-19. Therefore, lenders that elect to sue for the repayment of their loans may not be able to get timely relief as suits will not be entertained unless they are urgent, essential or time-bound in accordance with Nigeria’s extant laws. Although the directive does not define “urgent matters”, it is likely that such matters relate to bail applications and fundamental human rights matters. The Chief Judges of some of the other states <i>e.g.</i> Lagos State, have done likewise.</p> <p>Lenders may be forced to resort to other enforcement mechanisms that do not involve courts, government agencies and offices or auctioneers, such as private sales.</p>
<b>Question</b>		<b>Answer</b>
5.	<p><b>Can COVID-19 constitute a <i>force majeure</i> event under a loan agreement?</b></p>	<p>A typical loan agreement is unlikely to have a <i>force majeure</i> clause. <i>Force majeure</i> clauses may comprise either (a) a closed list of triggering events including epidemics or (b) in addition or as an alternative to the closed list, an open-ended “catch all” category to cover any unexpected events outside of a party’s control. It is important to note that a <i>force majeure</i> clause cannot be implied into an agreement and parties can rely on a <i>force majeure</i> event only if it is expressly covered in the agreement.</p> <p>The Loan Market Association Standard, however, provides for a “Disruption Event” which is defined to include the occurrence of an event which results in a disruption of the payment operations of a party, preventing that party from performing its payment obligations under the loan agreement.</p> <p>In the event that the loan agreement contains a <i>force majeure</i>/disruption event clause, parties would look to the <i>force majeure</i>/disruption event provisions of the agreement to ascertain their respective rights and obligations. Typically,</p>

		<p>declaration of a <i>force majeure</i>/disruption event would mean that there has been no breach or, where there has been a breach, the lender must excuse the acceleration of the affected party’s payment obligations and not enforce the security.</p> <p>In the case where there is no <i>force majeure</i>/disruption event clause, a borrower seeking to terminate the loan agreement and obtain a release from its payment obligations thereunder may conceivably seek to invoke the doctrine of frustration. The doctrine may arguably be applied where the performance of a contract is rendered impossible due to the occurrence of events beyond the control of the parties to the contract. The law here is at best unclear. There are authorities indicating that the doctrine does not apply to loan agreements.</p>
	<b>Question</b>	<b>Answer</b>
6.	<b>Can COVID-19 constitute a material adverse effect (MAE) under a loan agreement?</b>	This depends on the precise phrasing of the MAE provision and the specific circumstances. When invoking a MAE clause, materiality will need to be demonstrated clearly and objectively. Given that MAE clauses tend to lack language that identifies a particular event or loss as a MAE, determination of a claim for MAE relief often requires a detailed factual inquiry with an uncertain outcome.
7.	<b>I sold one of my properties and I wanted to use the purchase price to settle a bank loan I had taken. In the event the land registry is shut down, meaning registration cannot occur, will interest continue to accrue on my loan?</b>	Yes. Interest on the loan will continue to accrue on the bank loan. It may be possible to, from the bank, request for a deferral of any payments that would be due during the period of closure of the registry. However, such deferral would be at the discretion of the bank and the bank would have to confirm if any interest will accrue on the deferred payments.
	<b>Question</b>	<b>Answer</b>

<p>8.</p>	<p><b>Is it possible to have governmental/regulatory intervention in private commercial transactions? For example, can the government require lenders to take certain action or inaction in light of the pandemic?</b></p>	<p>As a general rule of the principle of privity of contract and the freedom of parties to contract, the government and/or regulatory authorities would typically not intervene in private commercial transactions.</p> <p>The Central Bank of Nigeria (“<b>CBN</b>”) may intervene in private sector loans where the lender is an entity licensed and regulated by the CBN. The CBN can issue directives to banks to take certain actions or inactions with respect to their lending transactions in the light of the pandemic. The CBN has as yet not given any such directives. The CBN Circular only applies to CBN intervention facilities to financial institutions. In relation to all CBN intervention facilities, the CBN Circular (i) grants a further moratorium of one year on all principal repayments to all CBN intervention facilities and (ii) reduces the interest rates from 9 to 5 percent per annum for 1 year. The CBN Circular also grants leave to commercial banks to consider temporary and time-limited restructuring of the tenor and loan terms for businesses and households most affected by the outbreak of COVID-19 (particularly oil and gas, agriculture and manufacturing businesses).</p>
<p>9.</p>	<p><b>What are the consequences of declaring a <i>force majeure</i> event under a finance transaction?</b></p>	<p>The consequences for the parties where an applicable <i>force majeure</i> event has occurred will depend on the nature of the affected party’s obligations under the agreement, as well as the consequences and remedies expressly provided for in the contract. Typically, declaration of a <i>force majeure</i> event would mean that there has been no breach or, where there has been a breach, the lender may be willing to excuse the acceleration of the affected party’s payment obligations. The contractual consequences of <i>force majeure</i> applying typically include an extension of time to perform those obligations or suspension of contractual performance for the duration of the <i>force majeure</i> event. If the <i>force majeure</i> event extends over a longer period (the period is typically specified), such clauses usually permit either party to terminate the agreement. Termination will result in the commitments made under the agreement being cancelled and perhaps all amounts becoming immediately due and payable.</p>
<p><b>Question</b></p>		<p><b>Answer</b></p>

<p>10.</p>	<p><b>In the event of a <i>force majeure</i> event, what would be the pertinent clauses that would need to be reviewed in the loan agreement?</b></p> <p>a. <b>Financial covenants;</b>  b. <b>EODs;</b>  c. <b>Material adverse effect; and</b>  d. <b>Notices (remedy periods, triggers?)</b></p>	<p><b>(a) Financial covenants</b>  If a borrower anticipates breaches of its financial covenants, it may have contractual rights to cure the same by pre-emptive equity injections or be able to raise subordinated group debt to apply in partial prepayment. In addition, borrowers and lenders will need to scrutinize certain financial covenant-related definitions to determine if any available add-backs could be utilized to limit the covenant impact resulting from decreased revenue.</p> <p><b>(b) EODs</b>  Some finance documents allow a cure or grace period for EODs. Borrowers may wish to look out for such provisions and even if not available, agreements may be reached between parties to waive breaches for a short period of time. Borrowers can also attempt to negotiate for applicable remedy periods for such events of default.</p> <p><b>(c) Material adverse effect (MAE)</b>  It is not possible to say at this stage how long the Virus and its consequences will last. Therefore, claiming an event of default by virtue of the application of an MAE clause will require careful consideration of the precise wording of the clause and the surrounding circumstances. This is especially because invoking an MAE clause will usually require material evidence, which may be unavailable at this stage.</p> <p><b>(d) Notices (remedy periods, triggers?)</b>  Borrowers should review their loan documentation and, where events of default have been triggered or are likely to be triggered, they should approach their lenders to renegotiate or restructure their loans.</p> <p>Lenders should, however, take cognizance of the CBN Circular (available <a href="#">here</a>).</p>
<p><b>Question</b></p>		<p><b>Answer</b></p>

11.	<p><b>Is it possible to have governmental/regulatory intervention in private commercial transactions? For example, can the government require lenders to take certain action or inaction in light of the pandemic?</b></p>	<p>As a general rule of the principle of privity of contract and the freedom of parties to contract, the government and/or regulatory authorities would typically not intervene in private commercial transactions.</p> <p>The CBN has the power to intervene in private sector loans where the lender is an entity licensed and regulated by the CBN. The CBN can issue directives to banks to take certain actions or inactions with respect to their commercial transactions in light of the pandemic. The CBN has as yet not given any such directives. The CBN Circular only applies to CBN intervention facilities to financial institutions. In relation to all CBN intervention facilities, the CBN Circular (i) grants a further moratorium of one year on all principal repayments to all CBN intervention facilities and (ii) reduces the interest rates from 9 to 5 per cent per annum for 1 year. The CBN Circular also grants leave to commercial banks to consider temporary and time-limited restructuring of the tenor and loan terms for businesses and households most affected by the outbreak of COVID-19 (particularly oil and gas, agriculture and manufacturing businesses). See question 8 above.</p>
<b>Question</b>		<b>Answer</b>
12.	<p><b>Can a borrower request a moratorium on repayments?</b></p>	<p>There is no statutory right to a debt moratorium in Nigeria outside of the terms of a contract between parties. Borrowers should proactively enter into negotiations with lenders to manage potential loan defaults.</p>
13.	<p><b>Does a lender have an obligation to accommodate a borrower’s requests in the face of a pandemic and what would be the legal consequences of a refusal?</b></p>	<p>Unless otherwise provided in the loan agreement between a borrower and lender, lenders have no legal obligation to accommodate a borrower’s request for a moratorium on debt repayments.</p>
<b>Question</b>		<b>Answer</b>
14.	<p><b>Can the Chartered Institute of Bankers of Nigeria (CIBN) engage CBN on possible</b></p>	<p>The CIBN can and should consider engaging with the CBN to exempt banks from the requirement of setting aside capital to match the non-performing loans arising during this period. The CBN Circular reiterates the CBN’s readiness to</p>

	<p><b>exemption from certain reporting requirements?</b></p>	<p>support the capacity of commercial banks to direct credit to individuals, households and businesses, as well as provide liquidity backstops as and when required. CIBN should also engage the CBN and explore the possibility of the CBN providing a rescue line of credit to the banks to cushion the banks from the expected financial downturn the banks will incur from the restructuring of loans.</p> <p>However, the Bankers’ Committee, which is an umbrella body of managing directors of deposit money banks and directors of various departments of the CBN, meets with the CBN periodically (at least once every month) and may be in a better position to engage the CBN timeously on this issue. It has more clout than the CIBN.</p>
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**J. TAX**

	Question	Answer
1.	<p><b>Instalment taxes – My first instalment tax for 2020. What should I do?</b></p>	<p>Tax payments in Nigeria, except for pay-as-you-earn, withholding tax deductions, Value Added Tax (on all three of which see below) and the Petroleum Profit Tax (PPT), are made once a year and not monthly or in instalments. PPT is paid on a monthly instalment basis for a period of 12 months with a final 13th instalment (if there is an underpayment). The 13th monthly payment is due by March 31. There is no penalty for underpayment except where the 13<sup>th</sup> month instalment is not paid within the statutorily-prescribed time.</p>
	Question	Answer
2.	<p><b>My tax return is due soon. What should I do?</b></p>	<p>Tax returns in Lagos and Abuja can be filed electronically and therefore may not be affected by the restrictions of movement in Abuja, Lagos and Ogun State announced by the President pursuant to the Covid-19 Regulation, 2020. Where the taxpayer is unable to file the returns electronically, the taxpayer can approach the tax authority for an extension of time within which to file her tax return, before the tax return becomes due for filing. The law</p>

		<p>empowers the tax authority to grant such an extension where reasonable cause is shown. Covid-19 should qualify as a reasonable cause. The law does not specify how long the extension may last, thus leaving the tax authority with some discretion.</p> <p>In the case of tax payable to the Federal Government and the Lagos State Government, the need to apply for a formal extension may not arise. This is because the Federal Inland Revenue Service (FIRS) has issued directives extending time for filing Value Added Tax (VAT) and WHT from the 21<sup>st</sup> day to the last working day of the month following the month of deduction. Also, the FIRS has extended the due date of filing for Companies Income Tax (CIT) by 30 days. The FIRS also intends to publish on its website information requests for desk reviews and tax audits and create a portal where such information can be uploaded to its database for online access review.</p> <p>Similarly, the Lagos State Internal Revenue Service (LIRS) has extended the deadline for filing annual tax returns for employees (but not for pay-as-you-earn deductions) and self-employed persons by two months from March 31, 2020. Consequently, the new filing deadline for the returns is May 31, 2020.</p> <p>For the other tax authorities in the remaining 35 states, a formal application for extension of time will need to be made as earlier indicated.</p>
<p>3.</p>	<p><b>Due to absence of key staff in our accounting department, we have just realised that we missed the deadline for filing an objection to a tax assessment– what should we do?</b></p>	<p>Nigerian law makes provisions for the extension of time where a taxpayer is unable to file an objection to administrative assessments by the tax authority within the 30 days provided by law. However, the ground assumed in law is that such a person must be outside Nigeria at the time the assessment was served and was therefore unaware of the tax assessment. Where the taxpayer is in Nigeria and aware of the tax assessment, but due to the COVID-19 lockdown or restrictions was unable to object, an application should be made to the tax authority setting out the circumstances. The tax authority in</p>

		such a situation has the discretion to consider the application, reject it or issue a new assessment.
	<b>Question</b>	<b>Answer</b>
4.	<b>I have an on-going case at the Tax Appeals Tribunal (TAT) which is due for hearing or mention. What will happen?</b>	<p>The President in the exercise of his powers under the Quarantine Act, has issued the Covid-19 Regulations, 2020 which provides that all citizens and residents of Lagos, Abuja and Ogun State are to remain in their homes, and all businesses and offices in the affected areas are to be fully closed, until an initial period of 14 days has expired. Although an exemption has been granted to court matters that are urgent, essential or time-bound in line with the directives of the Chief Justice of Nigeria, it is not clear to what extent this exemption will impact on the Tax Appeal Tribunal (TAT) because the TAT is strictly speaking not a court of law.</p> <p>With respect to the remaining 34 states, proceedings at the TAT in the other 6 TAT Zones (each Zone covers several States) of the country can proceed only where the Governor of the State where the TAT is located has not imposed a curfew or lockdown in that State. To the extent that a lockdown or curfew has been imposed, in practical terms no proceedings will be held at the TAT.</p>
5.	<b>How will I file an appeal during this period?</b>	As noted under (4) above, the President has issued a lockdown in respect of Lagos, Abuja and Ogun State. In practical terms, it will not be possible to file an appeal at the TAT in these areas during this period of lockdown. Appeals can be filed at the TAT in other Zones only with respect to matters in which those Zones enjoy territorial jurisdiction. However, this will only be possible if the state where the TAT is located in that Zone has not imposed a lockdown or curfew.
	<b>Question</b>	<b>Answer</b>
6.	<b>What happens when a tax authority has issued an assessment or request for documents?</b>	Tax authorities have deployed e-filing systems both before and following the outbreak of COVID-19. In addition, the Finance Act 2019, has now statutorily

		endorsed the filing of objection to an assessment through e-mails or online portals. Therefore, notices received from tax authorities should be responded to and, if there is any need to object, objections should be made timeously. Detailed objections and supporting documents may be sent later where the affected taxpayer was unable to forward the same at the time of submitting the objection online.
7.	<b>How will judgments be delivered by the Tax Appeals Tribunal during this period?</b>	The TAT can still deliver judgments during this period at the Zones where there is no movement restriction. This will not apply to Lagos and Abuja Zones where the President has given directives restricting the movement of persons and closure of government offices. To do so, the TAT would send notices to counsel but will necessarily limit the number of those who can be present at the delivery of the judgments to just the counsel and representatives of parties. However, there will be difficulties for clients and lawyers travelling from the restricted States to the TAT Zones in the States where no movement restriction is in force.

**K. CYBER SECURITY**

	<b>Question</b>	<b>Answer</b>
1.	<b>During the COVID-19 pandemic, is there an increased cyber security risk? Why?</b>	<p>Yes, and for a number of reasons. First, the COVID-19 pandemic has provided additional cover for bad actors to perpetrate malicious activities using various e-channels as they pretend to offer solutions, financial or otherwise, and information on the COVID-19 pandemic to unsuspecting users. Second, as the social isolation policy has compelled organizations to have their employees work from home, many more employees now use digital tools that may not be as robust as the ones they use at their workplaces, and may leave them susceptible to cyber risks.</p> <p>Third, the security agencies are currently distracted by the sudden focus on measures being implemented by government both at the federal and state levels. Time and resources that would have otherwise been available to</p>

		combat cybercrimes are now diverted to enforcing stay at home orders and the implementation of regulations to prevent the spread of COVID-19 both at the Federal and State levels. Further, the lockdown has greatly limited the effectiveness of government agencies responsible for enforcing laws against cybercrimes.
2.	<b>What is social engineering?</b>	<p>It refers to a broad spectrum of malicious activities that rely on human interaction to achieve their ends. This could be a call from your “internet service provider” to check on the quality of your internet at home or from your “Bank”, to talk about using the new online banking platform.</p> <p>The realism associated with the increased sophistication of social engineering attacks can mislead employees into divulging sensitive information that may make an organization vulnerable to hackers.</p>
3.	<b>What is phishing?</b>	<p>It is a commonly used social engineering tactic. It is a cyber-attack that uses emails that appear to be originating from a trusted source to obtain personal information that can then be used maliciously against an individual or organization.</p> <p>The intention is to trick the email recipient into clicking on a malicious link, or download an attachment, which installs malware on the email recipient’s device, and enables the scammer to access critical information, such as passwords. This provides a pathway through which the individual’s and/or organization’s cyber defences are overcome and information is accessed by the cyber actor(s).</p> <p>The current anxiety about COVID-19 has triggered many emails from “experts or state agencies” containing links to information on the pandemic. While some of these emails are genuine, cyber actors are exploiting the situation by:</p> <ol style="list-style-type: none"> <li>a) launching phishing attacks using attachments that have data on COVID-19;</li> </ol>

		<p>b) sending e-mails containing false information about financial aid or relief package from government agencies and requesting some form of action from the email recipient; and</p> <p>c) sending emails from fake Government institutions or companies.</p> <p>Owing to the fact that more people will be working from home or remotely, cyber criminals will continue to look for ways of exploiting this, therefore employees need to be sensitized in order to avoid disguised threats.</p>
	<b>Question</b>	<b>Answer</b>
4.	<b>What prescriptive measures should your organization consider in dealing with phishing?</b>	<p>You should consider the following:</p> <ul style="list-style-type: none"> <li>a) Does your organization have in place reminders on phishing including what a phishing email looks like?</li> <li>b) Do you have a way for concerned people to report such attacks so that the attacks can be reported and investigated and originating senders/domains can be blocked?</li> <li>c) Have employees been cautioned against clicking on links or opening emails from suspicious sources?</li> <li>d) Does your anti-virus scan identify suspicious links?</li> <li>e) Has the business developed an information technology (“IT”)/cyber security incident response plan in readiness for any threats?</li> <li>f) Does your organization have quick access channels to IT personnel for guidance?</li> </ul> <p>To the extent that the organization lacks any of the above, please address the inadequacy immediately.</p>
5.	<b>What do insider threats entail?</b>	<p>These are malicious threats originating from people within an organization who have knowledge of the organization's systems, data and security procedures. Insider threats are also a reality for organizations during this health crisis.</p>

		<p>Such people include employees and some business associates, contractors. With employees working from home, under less stringent supervision than is usual, exploiting systems via the office becomes easier.</p> <p>Further, because of the emphasis on social distancing, even in situations where skeletal office services continue security officers are unlikely to go through laptops and bags for fear of getting infected, and this provides a major opportunity to exploit the measures.</p>
	<b>Question</b>	<b>Answer</b>
6.	<p><b>What prescriptive measures should your organization consider in dealing with insider threats?</b></p>	<p>The organization should consider the following:</p> <ul style="list-style-type: none"> <li>a) What security measures do you have in place to safeguard against insider threats: do you have host-based firewalls, security event management tools and so forth?</li> <li>b) Has your organization carried out an internal/external vulnerability assessment in the last 12 months to check for loopholes that can be exploited by malicious cyber actors?</li> <li>c) Has your organization conducted a general IT audit within the last 12 months?</li> <li>d) Has your organization installed the latest software (especially security software) updates and patches on its systems?</li> <li>e) Do you have secure access such as Virtual Private Network (VPN) tunnels to cloud-hosted files?</li> </ul> <p>To the extent that your organization lacks any of the above, please address the shortage immediately.</p>