

## COVID-19 Lockdown: Implications for Employers and Relief from Government



On 11 March India invoked the Disaster Management Act, 2005 (“DMA”) and the Epidemic Act, 1897 (“EA”) giving authority to the Central Government to take necessary measures to prevent the spread or mitigate the consequences of Corona virus.

On 25 March the Government, Ministry of Home Affairs (“MHA”) issued an Order (the “Order”) and Guidelines, announcing one of the most comprehensive Lockdown measures worldwide for more than 1,3 billion Indian people for at least 21 days until 15 April 2020.

Under the Order, it is prohibited to continue working in office premises except for those involved in essential services (e.g. water, power generation, sanitation, energy, telecommunications, oil, gas fuel, telecommunications, print media, insurance and banking, health care facilities and pharmacies, fire prevention, prisons, ports, airports, security, defense, shops and e-commerce, transport dealing with essential goods). Manufacturing is prohibited except for essential goods and the packaging thereof. Further raw material suppliers for essential goods and intermediaries in the supply chain can continue operations.

Production units, which require continuous process, can also continue operations, but only after obtaining required permission from the State Government. All other establishments may work from home only.

## A. Employment

### 1. Legal Issues and Regulations during the Coronavirus Outbreak

#### 1. Termination, Wages

On 20 March, the Ministry of Labour & Employment of India issued an Advisory and on 29 March the MHA an Order under Section 10 (2) DMA to all employers, be it in industrial or shop and commercial establishments, to make payments of wages on due date without any deductions for the duration of the lockdown period. The Advisory further prohibited the termination of employees, particularly casual or contractual workers. The Order on the other hand does not mention termination.

#### 2. Leave

Further according to the Advisory if an employee takes leave, he/she should be deemed to be on duty without any consequential deduction in wages for this period. The Advisory does not differentiate between sick leave, casual leave, or annual leave. The Order on the other side does not include any imperatives related to leave, only that no salary deductions during the duration of the lockdown should be made.

**Note:** While initially it has been argued that the advisories might not be binding because of lack of reference to the legal grounds or to the laws which they are amending, the Government of India has clarified that the advisories are binding and should be treated as directives under the DMA and Article 256 of the Constitution of India. To avoid any doubt of the imperative nature and its intentions, it has moved to issuing orders. There have been no court proceeding challenging the orders or the advisories so far.

**Recommendation:** Keeping in mind the substantial legal uncertainty, we recommend you to make a risk/benefit assessment and follow the advisories and orders as far as possible. Companies which business operations are severally affected by the lockdown should consider reaching an agreement with the workforce how to mitigate the financial impact during and after the lockdown in order to prevent long term consequences.

## B. General Labour Regulations

While current orders under the DMA might be necessary to protect the most vulnerable part of the population in India and avoid humanitarian crisis, safeguarding the Companies are able to provide continuing employment after the end of the lockdown is also essential. Employers are well advised to consider appropriate measures to minimise the negative financial impact as far as possible.

### 1. Agreement with Employees, Waiver

The recommended approach for both employees and employers is a mutual agreement or a partial waiver. The amendments to the contract should be carefully drafted and the employee should not be pressured to sign the contract.

### 2. Lay-off

Under the Industrial Disputes Act, 1947 ("IDA") an employer having more than 50 employees can lay off employees for up to 45 days with payment of 50% of the salary in case of natural calamity. Prior permission of the respective government is required in case the inability to provide employment is due to shortage of coal, power, raw materials, the accumulation of stocks or the break-down of machinery.

In all other cases, in which there is no explicit statutory right for lay-off or a contractual right to do so, the operational risk is



to be borne by the employer. After the end of the epidemic (“natural calamity”) in India, companies with more than 50 employees will be required to obtain permission if they wish to lay-off employees.

**Note:** For the duration of the lockdown, the provisions are suspended and overruled by the current orders of the Government.

### 3. Termination/Retrenchment

The labour law in India is partially regulated on state level and partially on central level.

Different regulations are applicable to industrial establishments (IDA) and other establishments (state wise Shop and Establishment Acts). The number of employees (<10, >50, >100) and the function of employees (workmen, managerial etc.) is another criteria for identifying the relevant provisions.

In some cases termination is permissible simply in accordance with the employment contract, in others a notification to the competent authority is required and in case of companies with more than 100 employees prior permission is necessary. Trade union agreements can impose further terms on termination/retrenchment.

**Recommendation:** Review of employment contracts and identify applicable provisions prior to taking decision for termination to minimise litigation risks. Termination/retrenchment are prohibited for the duration of the Order.

## C. Measures to Support Companies

The below list is not exhaustive and new measures are announced on a daily basis to ensure the adverse impact on companies is minimised as far as possible.

### 1. Corporate Compliance

- No additional fees shall be charged for late filing during a moratorium period from 1 April to 30 September 2020, which will not only reduce the compliance and financial burden at large, but also enable long-standing non-compliant companies/LLPs to make a “fresh start”.
- The requirement of holding meetings of the Board of Directors within 120-days, has been extended by a period of



60 days for the next two quarters and can be held through video conferencing or other audio visual means.

- The requirement for compliance with the Companies (Auditor’s Report) Order, 2020 is postponed to financial year 2020/21 instead of 2019/20.
- Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, shall not be treated as a violation.
- The requirement for filing a declaration for commencement of business within six months of incorporation can now be extended with six months.

### 2. Tax Compliance

- Suspension of statutes of limitations and due dates under Income Tax Act, 1961 and various other laws where the time limit is expiring between 20 March to 29 June 2020.
- Reduced interest rate from 12 %/18 % to 9% per annum will be charged for delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between 20 March and 30 June 2020. No late fee/penalty shall be charged for delay.
- All Companies can file GST returns due in March, April and May by the last week of June 2020 and no late fee and penalty will be charged. Companies with aggregate annual turnover less than INR 5 Crore will also not be charged

interest. For other companies interest rate has been reduced from 18 % to 9 %.

- Time limit for any compliance under the GST laws where the time limit is expiring between 20 March to 29 June 2020 shall be extended to 30 June 2020.
- Deadline for opting for composition scheme has also been extended until end of June 2020.

### 3. Relief under the Insolvency and Bankruptcy Code, 2016 (“IBC”)

The Government has recognized the financial burden on companies and has raised the threshold of default for initiating insolvency proceedings from INR 100.000 to 10 million (USD~133k) in order to prevent triggering of insolvency proceedings against micro, small and medium enterprises (MSME).

If the current situation continues beyond 30 April 2020, the Government is considering suspending section 7, 9 and 10 of the IBC for a period of six months in order to avoid companies at large from being forced into insolvency proceedings in such force majeure cases.

## D. How We Can Help

Our team in India is monitoring and assessing the daily changes in the regulatory framework and can help you to identify the applicable measures introduced by the Government. With our expertise and recommendations, we can also support you to take actions for sustaining your business operations or to bring them in line with statutory compliance requirement. If you wish a Compliance Health Check or need any other support, please reach out to us.

## Your Contact



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