

IMPACT OF COVID-19 ON BUSINESSES

A GUIDE ON EMPLOYMENT ISSUES

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INTRODUCTION

The World Health Organization has declared the COVID-19 a pandemic on 11th March 2020. The Maldives Minister of Health has declared a State of Public Health Emergency in the Maldives for a period of 30 days from 12th March 2020.

Businesses worldwide and in the Maldives are facing an unparalleled challenge from the pandemic.

This memorandum provides an insight for businesses on employment austerity measures and redundancies to develop an effective crisis management plan.

PART 1: ADMINISTRATIVE STEPS BEFORE IMPLEMENTING AUSTERITY MEASURES

An employer may first deploy all measures necessary in order to maintain the workforce, including administrative steps prior to enacting ‘austerity measures’ outlined in Part 2 of this memorandum. The following are some examples of administrative steps that may be adopted by employers in this regard.

<p>New hires</p>	<ul style="list-style-type: none"> • Employers may adopt internal policy decisions to ‘freeze’ hiring new employees for the business. • Employers may withdraw any non-binding offers of employment submitted to potential candidates. Employers may, in such withdrawal letters, provide those candidates with assurance that they will be treated with priority when the business stabilizes and resumes hiring.
<p>Leave entitlements</p>	<ul style="list-style-type: none"> • Employers may request employees to take all accrued annual leave entitlement / accumulated day-offs and other types of leave they may be entitled to under their contract of employment. • Employers may also introduce a simple policy/ mechanism where any employee may apply for a ‘sabbatical’. If the employer’s company is part of a group of businesses, the employer may consider seconding the employee to another related group business.
<p>Benefits and allowances</p>	<ul style="list-style-type: none"> • Employers may introduce measures to control or to restrict their employees from working overtime hours. • Where the employer has negotiated a salary increase for a particular employee or group of employees, the employer may negotiate with that employee or group of employees to suspend and delay such salary increase until the company’s financial situation has stabilized. • Employers may also reduce the working hours of employees. • For all non-cash benefits that are not provided for in the contract of employment, the employee may notify of the suspension of the same. • Employers may also suspend the provision of any discretionary performance-related or other type of bonus that are not required to be paid under the contract of employment.
<p>Re-training and re-assignment</p>	<ul style="list-style-type: none"> • Employers may also retrain employees in order to re-assign them to other unaffected or less affected areas of the company. • Employees may also ask their employees to voluntarily join any ‘taskforces’ being deployed to assist with other workloads of the company as required, which may be outside of their stipulated scope of work.

PART 2: AUSTERITY MEASURES FOR BUSINESS SUSTENANCE

Maldives Law on Austerity Measures

- Maldives Employment Act and subordinated legislation are silent on austerity measures that may be taken by a business in *force majeure* circumstances.
- Maldives case law recognises that employers can rightfully take austerity measures in *force majeure* circumstances.¹
- Employers may accordingly choose to take austerity measures required to reduce operational costs.

Legal Risk and Reduced Risk Strategy

- A number of austerity measures may be contrary to the Maldives Employment Act or the employment agreement with the employee, as these may involve reduction on employee pay and benefits.
- Any such action does therefore pose legal risk of Maldives Government action or claims at Employment Tribunal or Maldives Courts, unless taken carefully.
- We reiterate that austerity measures can be taken legally and legitimately with reduced risk of Maldives Government action or claims at Employment Tribunal or Maldives Courts.
- Employers must communicate clearly, establish fairness and ensure transparency, and seek the voluntary and express consent of employees prior to implementing such measures.
- The process of taking austerity measures can be straightforward. Please reach out to us for further assistance.

Austerity Measures: Examples

Please see below some examples of austerity measures an employer may take in these circumstances. [These are subject to the notes above on 'Legal Risk and Reduced Risk Strategy'](#).

Voluntary special leave	<ul style="list-style-type: none">• Employer may grant special leave to employees for a specific period.• Employer may provide a special allowance to employees during the leave period.• Employer may allow employees to take up additional employment during the leave period.• Employer may require employees to return upon expiry of leave period, or when required by the employer.
No pay leave	<ul style="list-style-type: none">• Employer may grant no pay leave to employees for a specific period.• Employer may allow employees to take up additional employment during the leave period.• Employer may require employees to return upon expiry of leave period, or when required by the employer.

¹ Maldives High Court Case No.: 2015/HC-A-02/03 [Crown Company Pvt Ltd v Abdulla Shazmeel]

Salary and allowances deferment	<ul style="list-style-type: none">• The salary and allowances (in part or in whole) may be deferred to a future period, for example, to the last quarter of 2020.• Employees may be provided a special allowance or part of the salary and allowances during the austerity period.
Salary and allowances reduction	<ul style="list-style-type: none">• The salary and allowances (in part or in whole) of employees may be reduced.• Employers may opt for a progressive salary reduction model: higher paid staff forego a larger percentage of their salaries in relation to lower pay staff.• Some employers may choose to avoid salary reductions for the lowest paid staff.
Deferment of entitled annual leave	<ul style="list-style-type: none">• Under Maldives law, employees may cash-out unused annual leave at the end of the year.• Employees may defer accrued and unused public holidays and annual leave days.
Termination of employees on probation	<ul style="list-style-type: none">• Employees on probation may be terminated on grounds that employer will not be able to grant permanent employment to any new staff due to business circumstances.
Redundancy	<ul style="list-style-type: none">• As a final step, some job positions may be made redundant.• Please see below Part 3 of this Bulletin on redundancies.

PART 3: REDUNDANCY

Maldives Law on Redundancy

- 'Redundancy' means termination of a contract of employment due to the function being performed by the employee becoming obsolete, due to restructuring caused by changes in business requirements or financial and economic hardship and due to no fault of the employee.
- Maldives Employment Act 2008 (as amended) allows termination of a contract of employment only in limited instances only with reasonable or appropriate cause².
- Maldives laws are however silent on matters related to redundancy.
- Maldives Courts have however recognized that employers may make certain positions redundant and terminate employment, where employers have a genuine business or economic need to do so³.

What Constitutes a Genuine Redundancy?

- Despite best efforts, there may be the circumstance where the employer is not able to sustain its business with 100% of their work force. Due to the overall reduction of operations, there may be a surplus of manpower and positions may naturally become obsolete.
- The COVID-19 pandemic which has genuinely stifled many businesses can be considered as a genuine catalyst to the redundancy situation. Accordingly, businesses affected in this regard may restructure the business, make certain positions redundant, and terminate employment of persons employed in those positions.

What Processes Apply in the Event of a Redundancy?

- In an event of redundancy, employers must carry out redundancies with utmost care and due process. In particular, employers must see that rules of fairness and due course (i.e. *substantive fairness* and *procedural fairness*) are applied in carrying out redundancies.
- We have outlined below the broad steps that will apply in undertaking any redundancy exercise.

Step 1

- Conducting a company-wide analysis of business operation to identify the human resource requirements for reduced business operations.
- In carrying out this exercise, the business may identify the functions, roles and positions essential and to be retained, those positions that have ceased, diminished or changed significantly under the current operational requirements of the business.
- Employees must be communicated of the change in the circumstances and impact on the business, preferably in writing.
- We recommend that a redundancy policy be prepared to outline the procedures to be followed and to ensure transparency fairness among the employee.

² Section 21 and 22 of the Employment Act 2008 (as amended)

³ Maldives High Court Case number: 89/HC-A/2011 [Maldives Airports Company PLC v Ali Adam Manik]

Step 2	<ul style="list-style-type: none">• Based on the analysis and recommendations and decision made, the company may provide alternatives to affected employees such as unpaid or partially paid leave options which must contractually agree in the interest of guaranteed a job once the business is up and running, etc.• Employees must be given the option to resign should they not accept alternatives offered.
Step 3	<ul style="list-style-type: none">• Once a position is made redundant, and where there are no alternatives to termination, the business shall proceed with termination of their employment due to redundancy of the position.• The Company will notify the affected staff in writing detailing the terms of separation and advising on entitlements.

Notice Periods and Entitlements

- Any employee dismissed pursuant to a redundancy will be entitled to:
 - Salary and remuneration up to the date of termination.
 - Salary and remuneration during the applicable notice periods stipulated in Maldives law⁴.
 - Accrued entitlements such as annual leave.
- The employer may pay the salary and remuneration for the notice period and release the employees from their obligation to work during the entirety of the notice period⁵.
- Any additional compensation is entirely at the discretion of the employer in accordance with internal policies as a gesture of good faith and recognition of services.

⁴ Section 22 of the Employment Act 2008 (as amended)

⁵ Section 25 of the Employment Act 2008 (as amended)

You may contact the authors of this paper for more information.

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