

COVID-19: LXP Insights

A collection of articles on Covid-19 related legal issues

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The rapid spread of COVID-19 has presented unprecedented challenges to all business sectors around the globe.

This newsletter highlights the key legal developments in The Bahamas so far, and aims to provide insight from our lawyers on potential impacts of the virus on various areas of law.

LITIGATION

AT A GLANCE: THE BAHAMAS' COVID-19 COURT PROTOCOLS

Written by Al-Leecia Delancy

COVID-19 has forced society to embrace all things technological as well as forcing us individually to adapt to working remotely. After all, life must go on – and so must access to the judicial system.

As it stands, court operations before the Magistrates Court and the Supreme Court are restricted to essential services until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020, which may be extended by amendments. On 17 March 2020 Chief Justice Brian Moree implemented the judiciary's first set of mitigation protocols, which were drafted in line with the Emergency Powers (COVID-19) (No 2) Order 2020 and demonstrate its 'twin priorities' of:

- protecting the health and safety of judicial officers and staff, law enforcement personnel, members of the Bar and public users of the courts; and
- ensuring that the judiciary can effectively provide continued access to justice.

The social distancing policies implemented to minimise in-person hearings can take any of the following forms:

- teleconference calls;
- videoconferencing;
- web conferencing applications; and
- disposition of applications on written submissions.

The manner in which a hearing will proceed will be determined by the presiding judge. However, when in-person hearings are unavoidable:

- attendance in courtrooms will be limited and inclusive of press representatives;
- attendees must maintain a distance of at least three feet;
- face masks must be worn; and
- the hearing's duration will be limited by the presiding judicial officer.

The remainder of this article sets out what is permitted according to the judiciary's latest Mitigation Protocols (Notice 4 dated 31 March 2020 and Notice 5 dated 14 April 2020) concerning civil and commercial matters.

Magistrates Court

Civil trials are suspended until two working days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020. Part-heard matters are adjourned to a date to be fixed by the presiding magistrate.

Supreme Court

New trials are suspended until five working days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Part-heard trials are adjourned to a date to be fixed by the presiding judge. However, matters considered urgent can, upon application, be heard at an earlier date.

Urgent interlocutory matters will be heard electronically whenever possible. These include:

- injunctions;
- domestic violence protection orders;
- child protection orders;
- orders under the Mental Health Act;
- orders under an international treaty;
- writs of habeas corpus; and
- any other order deemed by the judge to be fit for hearing on an urgent basis.

All other interlocutory matters are adjourned to a date fixed by the presiding judge. Applications for all other matters claimed to be urgent must be made to the specified judge.

Registrar, deputy registrar and assistant registrar court hearings are adjourned to a date fixed by the presiding registrar, deputy registrar or assistant registrar.

The Family Registry, Probate Registry and Appeals Registry are all closed until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Both the Civil and Criminal Registries are operating from a satellite office between the hours of 1:00pm and 4:00pm until the first working day after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020. The same applies to Cause List searches.

In addition, the Supreme Court (Covid 19) Rules 2020 provide for an extension of the time limits fixed by the Rules of the Supreme Court or any practice direction, court order or direction for filing any pleading or

document or taking an action (procedural or otherwise) for 14 days after the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

The judiciary's COVID-19 Mitigation Protocols are subject to change in accordance with any amendments that the government makes to the Emergency Powers (COVID-19) (No 2) Order 2020.

Court of Appeal

As of 4 May 2020, urgent civil appeals will resume before the Court of Appeal in accordance with Practice Direction 1/2020 (Operation of the Court of Appeal During the COVID-19 Pandemic), which remains in force until the expiry of the Emergency Powers (COVID-19) (No 2) Order 2020.

Although it was not stated what is considered an 'urgent civil appeal', the Court of Appeal has provided guidance on how these limited operations are to resume. For instance, hearings of appeals, case management, summons to settle the record and all other applications may occur at Cloughton House or by remote access using videoconferencing as the president or presiding justices may direct.

Where videoconferencing has been directed, the Zoom platform will be used; an invitation will be emailed to the parties within 24 hours of the date of the hearing.

All parties (counsel and clients) must be properly attired and set a plain background for the duration of a hearing taking place via videoconferencing. Parties are also prohibited from recording any part of the proceedings as all hearings will be conducted in the same manner as if they were being held in person.

Matters scheduled to be heard before the Court of Appeal will continue to be posted on its website.

Hearings will be heard promptly at either 10:00am or 2:00pm. All parties must be in place no later than 10 minutes before the scheduled time.

The Court of Appeal Registry will operate from Monday to Friday between the hours of 9:30am and 1:00pm.

Parties must file their paper documents and email an electronic copy on the same day of filing to the Court of Appeal at 'info@courtofappeal.org.bs'. These documents must be paginated and in PDF format. The email must also include a phone number and any other email addresses by which the parties wish to be contacted.

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LITIGATION

THE POTENTIAL IMPACT OF COVID-19 ON LEASES IN THE BAHAMAS

Written by Ramonne Gardiner

Former United States Supreme Court Justice Thurgood Marshall once said, "History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."^[1]

Recently, the Government of The Bahamas announced an ambitious rental assistance programme to assist tenants who have been economically affected by COVID-19 and are unable to satisfy their contractual obligation to pay rent. According to the Prime Minister of The Bahamas, tenants who qualify for the programme would have the following benefits during the months of April, May and June 2020 ^[2]:

- 40% of rental payment postponed
- tenants would have 12 months to pay back the 40% of postponed rent; and
- landlords would be barred from evicting tenants or disconnecting electricity or water supplies during such period.

In order to qualify for the programme, tenants must ^[3]:

- be a citizen or legal resident of The Bahamas;
- be renting a residential property and paying a monthly rent of \$2,000.00 or less;
- provide proof that their employment or income stream has been impacted by the COVID-19 pandemic; and
- not have rental arrears prior to April 2020.

It should be noted that such programme has no impact on commercial leases or residential rentals over \$2,000.00 per month.

Thus, landlords in such circumstances could distrain for rent or proceed to have tenants evicted [4].

EMERGENCY POWERS

As governments around the world grapple with the impact of COVID-19 and its legal implications, some legal pundits have questioned the legality/constitutionality of rental assistance programmes which abrogate contractual rights. The impact of states of emergency on lease agreements is well documented. In the United Kingdom, during World Wars I and II, legislation was enacted which essentially modified obligations arising under lease agreements. In 1916, the (Emergency Powers) (Amendment) Act, 1916 was enacted, which allowed tenants to apply to the court for leave to have their tenancies terminated. The court had an absolute discretion to terminate a lease notwithstanding any provisions within the lease dealing with termination. Further, termination of the lease could take place on such notice or terms that the court deemed fit [5]. See *Revill v. Bethel* [1918] 1 K.B. 638.

Similarly, according to the Courts (Emergency Powers) Act, 1939, also enacted in The United Kingdom, landlords were barred from taking possession of property or recovering rent during a state of emergency without leave of the court [6]. In the English Court of Appeal decision of *Re Affairs of Kirby* [1944] K.B. 2139, Scott LJ said the following in interpreting the Act [7]:

"....both legal proceedings and measures of self-help available to landlords for recovery of rent or of possession of land for non-payment of rent are forbidden without leave of the court, and the effect of that Act was to create in the tenant a quasi-right to possession and to immunity from rent or mesne profits which continued so long as the court did not give the landlord leave to proceed by either road - courts or self-help."

See also the Court of Appeal decision in *Humberston Estates Limited v Allen et al* [1941] 2 K.B. 317.

In 1941, the United Kingdom enacted the Liabilities (War-Time Adjustment) Act, 1941 which had the effect of suspending the execution of a landlord's judgment for possession. The purpose of the Act was intended to be a middle course for debtors who were indebted to creditors as a result of World War II, without imposing the harsh stigma of having such persons adjudged bankrupt [8].

In many constitutional democracies, such as The Bahamas, the state has powers to authorise measures which are reasonably justified during the subsistence of a state of emergency [9]. Given the broad scope of Article 29(2) of the Bahamian Constitution, these measures could include the implementation of a rental assistance programme.

PUBLIC SAFETY AND HEALTH IMPLICATIONS

The rental assistance programme foreshadowed by the Government of The Bahamas is clearly important to the public health and safety of the community and reasonably justified during the COVID-19 pandemic. If landlords can evict tenants with no or limited income, jurisdictions like The Bahamas would likely see a sharp increase in homelessness. As a result, governments would have to open shelters to accommodate such persons where social distancing would be impractical.

If an outbreak were to occur at a shelter the public health impact could be cataclysmic, leading to a surge in COVID-19 cases and creating broader challenges. In fact, governments like The Bahamas may be forced to take the draconian step of compulsorily acquiring properties to house homeless persons [10].

Notwithstanding the emergency powers available to states, jurisdictions like The Bahamas must ensure that they do not act capriciously. It is incumbent on The Bahamas and other jurisdictions to enact legislation giving effect to rental assistance. Any abrogation of rights under a lease should be done through the enactment of robust legislation and not a policy.

In the absence of legislation, any attempt by the Government to implement and enforce such programme would be illegal. Presently, no legislation has been enacted in The Bahamas giving effect to the rental assistance programme.

FUTURE CONSIDERATIONS

In the wake of COVID-19, jurisdictions globally will have to re-evaluate laws relating to landlords and tenants. Nations should consider enacting legislation similar to those previously mentioned in this article in order to protect the interests of both landlords and tenants. Lastly, landlords should consider including terms within lease agreements specifically relating to states of emergency.

CONCLUSION

During a state of emergency, governments can implement rental assistance measures which allows for statutory modification of rights under a lease. However, such actions must not be undertaken in a cavalier manner and well considered legislation ought to be enacted in support of the same.

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References

- [1] *Skinner v. Ry. Labor Executives Ass'n*, 489 U.S. 602, 635 (1989) (Marshall, J., dissenting)
- [2] House of Assembly Communication: COVID-19 Response by The Most Hon. Dr. Hubert Minnis dated 27th April 2020 (p37-44)
- [3] *ibid*
- [4] Pursuant to paragraph 24 of Notice 4 Re Extension of the Emergency Powers (COVID-19) (No.2) Order dated 31st March 2020, all civil trials in the Magistrate Court are suspended until 2 working dates after the state of emergency is lifted.
- [5] s.2
- [6] S.1(2)
- [7] Page 217
- [8] *ibid*
- [9] Article 29(2) of The Bahamian Constitution
- [10] Article 27(1a) of The Bahamian Constitution

REAL ESTATE

HAS COVID-19 AFFECTED REAL ESTATE TRANSACTIONS IN THE BAHAMAS?

Written by Nateisha Anderson-Bain and Kharin Sears

On 11th March 2020, The World Health Organization declared COVID-19 a pandemic. On 15th March, The Government of The Bahamas confirmed the first COVID-19 case in the country and four days later implemented the Emergency Powers (COVID-19) Regulations, 2020 (Chapter 34) among other emergency orders ("Emergency Orders") which mandated that all non-essential businesses nation-wide suspend operations to the general public commencing on 20th March 2020 until further order.

Additionally, restrictions on both domestic and international travel, lockdowns and curfews have been imposed in The Bahamas to restrict movement in an attempt to reduce the spread of the virus. While law firms were required to close their physical doors to the general public, the attorneys at Lennox Paton continue to operate via remote access, which allows attorneys to manage ongoing matters and onboard new clients. Our real estate and resort development attorneys are well versed in the drafting and execution of real estate contracts and have embraced new and efficient procedures for closing transactions.

AGREEMENTS FOR SALE

Once you have found a property that you wish to purchase in The Bahamas or a purchaser for the property you wish to sell, you will sign an offer letter. The offer letter may be signed by both parties and scanned to the real estate agent and your attorney. Once your attorney has received the signed offer letter, the attorney for the vendor will draft the Agreement for Sale in accordance with the terms of the offer letter and the purchaser's attorney

will review, amend and approve as required. Once the terms are agreed to, both sides will have a final review of the Agreement for Sale and will proceed to sign the Agreement.

Given the current Emergency Orders, Agreements for Sale should be drafted to provide that the parties agree for the scanned and electronic versions of the signed Agreement for Sale are binding on both parties and shall be taken as an original. This ensures that there is a binding Agreement in place for the duration of the transaction. Therefore, there is no need for clients to physically attend offices to enter into Agreements and there is no need for original Agreements to be delivered. It is important to engage a competent attorney who is able to aptly draft (or amend) Agreements for Sale and advise on these matters to ensure that all eventualities are covered therein to ensure you are protected.

TITLE AND CAUSE LIST REVIEW

Given that The Bahamas has an unregistered land system, when acting for a purchaser or lender with respect to the acquisition of, or security over real property, an attorney must investigate the title to the property. This is to ensure that the title is free and clear from all encumbrances. This investigation requires that the attorney searches the Registry of Deeds and Documents, the Supreme Court Civil Registry and the Companies Registry among other registries, if necessary, to confirm that title to the property is good and marketable. Due to the Emergency Orders and the COVID-19 Mitigation Protocols issued by the Office of the Chief Justice of The Bahamas, the Supreme Court Registry among other public registries are currently closed to the general public and are operating in very limited capacities.

Technologically advanced title agencies have the capacity to conduct electronic searches of the Registry of Deeds and Documents for any title documents relating to the subject property. Therefore, the attorney is able to review title to confirm that there is a good root and chain of title. However, at this present time, the Supreme Court Registry and other

registries are not accessible electronically and therefore an investigation of title requires that a physical search is carried out by a clerk at the appropriate registries.

The Government of The Bahamas has recently granted a relaxation on restrictions and has allowed the opening of certain businesses, therefore, we anticipate that the relevant Registries will soon be open to allow attorneys to carry out a complete investigation of the cause list to ensure that there are no pending judgment debts or Orders which may create an equitable charge against the property as per Section 63 of the Supreme Court Act.

Lennox Paton's real estate attorneys have adopted contract language which allows for extensions of the normal period for title investigation to allow for the searches to be finalized when the Registries re-open.

REGULATORY APPROVALS

Generally, in order for non-Bahamians to acquire property in The Bahamas, it may be necessary to have certain regulatory approvals from the Investments Board and the Exchange Control Department of the Central Bank of the Bahamas in place. During the Emergency Orders, the Investments Board and Central Bank are accepting applications electronically and are processing them efficiently, therefore, there would be no delay in obtaining the relevant regulatory approvals for the transaction. It is extremely important to engage a competent attorney who is well versed in handling regulatory approvals as this is essential to ensure the valid completion of your transaction.

CLOSING THE TRANSACTION

Transactions that have completed the title review stage are still able to close. Reputable courier companies are operational (having received exemptions pursuant to the Emergency Orders) and therefore, our firm is able to have deeds printed and couriered to clients outside of The Bahamas for the

clients' execution. Once documents have been duly executed, notarized and apostilled (if necessary), the original deeds can be couriered back to our firm in order to effectuate the closing of the transaction.

We are also able to receive and send funds by wire transfer therefore, deposits, the balance of the purchase price and closing costs may be wired to our firm and the proceeds of sale can be wired to the seller in order to complete the transaction. It is vital to engage a competent attorney to ensure that the required documents are duly executed. This is important to ensure title legally passes from the seller to the purchaser. Additionally, a reputable firm should be used to ensure that funds by wire transfers are received and sent in a timely manner in order to efficiently close transactions.

POST-CLOSING

At this time, the Department of Inland Revenue, which is responsible for accepting the payment of Value Added Taxes on the transfer of real property and for real property taxes and the Registrar General's Office, which is responsible for accepting the lodging of documents for recording in the Registry of Records are currently operating on a limited basis. However, due to the ongoing relaxation of the Emergency Orders, these government offices may soon be allowed to return to full operation.

In the interim, closing deeds will be held in our firm's fireproof safe and the funds for the payment of these fees will be held in our firm's accounts until we are able to complete these post-closing items.

RELAXATION OF RULES

Many financial institutions and businesses have adapted their procedures due to the Emergency Orders to make it easier to do business. As such, during the Emergency Orders some financial institutions are allowing clients to complete due diligence documents electronically and are accepting

copies of documents in the interim, with the originals to be delivered to the bank once the Emergency Orders allow. Therefore, it is still possible to arrange financing through financial institutions, if necessary.

IMPACT ON THE FUTURE OF REAL ESTATE TRANSACTIONS

Given the worldwide impact of COVID-19, we acknowledge that purchasers and vendors may be hesitant to engage in real estate transactions and investors may initially be reluctant to invest in property which they are unlikely to have access to until the Bahamian borders re-open for international travel. However, we are confident that our thriving market for second homeowners will resume its predominant place in the Caribbean market. Fortunately, the Emergency Orders have caused businesses and firms to adapt and become more innovative in the way transactions are handled, which will greatly improve the ease of doing business in The Bahamas in the future.

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CORPORATE & COMMERCIAL

COVID-19: LAY-OFFS, SHORT TIME AND REDUNDANCIES – WHAT YOU NEED TO KNOW

Written by Dwayne Whyly

This article aims to provide an understanding of employers' and employees' rights and obligations under Chapter 321A of the Employment Act of The Bahamas (as amended) in times such as the current COVID-19 pandemic.

MINIMUM ENTITLEMENTS

The Employment Act stipulates certain entitlements for employees in relation to matters such as:

- standard hours;
- entitlements to leave (legitimate time spent away from work);
- wages (although provisions for minimum wages are dealt with under a separate act);
- termination, including notice and pay;
- lay-offs and short time; and
- the employment of children and young persons.

This article focuses on the provisions of the Employment Act as they relate to lay-offs, short time and termination due to redundancy.

LAY-OFFS AND SHORT TIME

Under the Employment Act, an employer may lay off an employee or place an employee on short time if:

- a provision in the employment contract between the employer and the employee permits it;
- the employer has temporarily ceased, or intends temporarily to cease, to carry on the business for which the employee was employed;
- the employer has temporarily ceased, or intends temporarily to cease, to carry on business for which the employee was employed in the place where the employee was so employed;
- work of the particular kind for which the employee was hired is temporarily not required or is expected to temporarily not be required; or
- work of the particular kind for which the employee was hired is temporarily not required, or is expected to temporarily not be required, in the place where the employee was so employed.

With the implementation of the Emergency Powers (COVID 19) (2) Order 2020 (the Second COVID-19 Order) pursuant to the Emergency Powers (COVID 19) Regulations 2020 – which came into force on 24 March 2020, initially expired on 31 March, 2020 and was extended until 30 May 2020 (the relevant period) – with the exception of businesses deemed essential under Order 5 of the Second COVID-19 Order, every business whose employees cannot work remotely were ordered to cease their operations during the relevant period, or until further Orders were implemented.

As a result of the Second COVID-19 Order, many of the businesses operating in The Bahamas are legally obligated to cease operations temporarily. The temporary cessation of operations of non-essential businesses permit such employers to either lay off employees or place employees on short time.

Before an employer can lay off an employee or place an employee on short time, the employer must supply the employee, the trade union recognised for purposes of bargaining on behalf of the employee (if there is one) and the minister of labour (the relevant persons) with a written statement of the facts that require the employer to lay off the employee or place the employee on short time.

Information to be included in such notices includes:

- the number of employees affected;
- the category of employees affected; and
- the period during which the lay-off or short-time action is to be carried out.

Such notices should be given to the relevant persons for the purpose of consultation in respect of the proposed method of selecting employees to be laid off or placed on short time, the proposed method of carrying out the lay-off or short-time action and mitigating measures considered or taken in respect of those affected:

- at least one week prior to the lay-off or short-time action if 20 employees or fewer will be affected; and
- at least two weeks prior to the lay-off or short-time action where more than 20 employees will be affected.

Employees are considered to continue to be employed by the employer during the time that they are temporarily laid off or placed on short time. Where an employee has been laid off for a continuous period of at least 12 weeks, such lay-off will be deemed a termination of employment due to redundancy.

REDUNDANCIES

Where an employee is made redundant, the employer must pay them a redundancy payment calculated in accordance with the following table.

YEARS OF WORK/POSITION	NOTICE/NOTICE PAY	ADDITIONAL BASIC PAY
12+ months (Non-Managerial Position)	2 weeks' notice or 2 weeks' basic pay instead of notice	2 weeks' pay (or prorated amount) for each year worked, capped off at 24 weeks
Managerial or Supervisory Position (regardless of years worked)	1 month's notice or 1 month's basic pay instead of notice	1 month's pay (or prorated amount) for each year worked, but no more than 48 weeks

In addition to the redundancy payment calculated as set out above, the employer must also distribute to the employee any vacation pay due to them under the Employment Act and their employment contract.

Where the employer has provided and fully paid a gratuity or pension for the employee, the employee must choose whether they wish to receive their redundancy pay or their gratuity or pension payment. The employee is not entitled to both. The manner in which redundancy selections are made can, in certain circumstances, be challenged. To avoid this, employers should evenly apply reasonable criteria for redundancy to the pool of employees and judiciously weigh each situation before the selection is made.

OTHER CONSIDERATIONS

Unemployment benefits

Under the National Insurance (Benefits and Assistance) Regulations (as amended), a person employed in The Bahamas who is younger than 65 years, is unemployed and has an interruption of earnings from their employment or is laid off and has suspension of earnings from their employment will be entitled to unemployment benefits at a rate of 50% of the sum of the weekly insurable wage or income on which contributions have been paid in respect of that employee divided by the number of weeks to which the paid contributions correspond (unemployment benefits).

In order for an employee to receive unemployment benefits, they must:

- submit a B.82 Claim for Unemployment Benefit Form to the National Insurance Board;
- be capable of work (including being legally able to work in The Bahamas);
- be available to work;
- have paid at least 52 contributions; and
- have been credited with at least 13 contributions in the 26, and seven contributions in the 13, contribution weeks immediately proceeding the first day of the employee's unemployment.

The employer must complete a Termination of Service/Lay-off Certificate (Form B.80) and provide it directly to the National Insurance Board or to the employee to submit with their Claim for Unemployment Benefit Form. The relevant forms can be found on the National Insurance Board's website under the 'Library' tab. It should be noted that during the relevant period, the National Insurance Board has suspended all face-to-face transactions. The relevant forms must be submitted to the National Insurance Board via email at 'customerservice@nib-bahamas.com'.

Holiday leave

As an alternative to lay-offs, it may be beneficial to both employers and employees for employees to take time off during the relevant period in the form of accrued holiday leave.

Other arrangements

In certain circumstances, it may be possible to alter the conditions of employment of certain employees during the relevant period in a manner that enables the employee to not be laid off but also not receive full pay. In these circumstances, employers and employees should work together to find amicable solutions that prove beneficial to both parties. It is advisable that the terms of any temporary arrangement between an employer and an employee are documented.

Comment

In these unprecedented times, employers and employees alike need to be aware of their rights and obligations.

- Employers should ensure that lay-off or short-time actions are taken with due consideration and in accordance with the Employment Act.
- Employees should be prepared for the possibility of being laid off or put on short time and, understanding their options under the Employment Act and the National Insurance (Benefits and Assistance) Regulations, work with their employer to produce the best outcome for both parties.

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SUMMARY OF LEGISLATION

COVID-19: A SUMMARY OF LEGISLATION ENACTED IN RELATION TO CORPORATE REGULATIONS AND BUSINESSES

Written by McFalloughn Bowleg and Lenthala Culmer

On 11 March 2020, the World Health Organization (“WHO”) classified the global spread of COVID-19 as a pandemic. Shortly thereafter, on the 13 March 2020, The Bahamas recorded its first case of COVID-19. In response, the Governor General declared a public state of emergency and implemented the Emergency Powers (Covid-19) Regulations, 2020 (“The Regulations”) on 17 March 2020 in an effort to combat the spread of the virus.

Pursuant to the Regulations, The Emergency Powers (Covid-19) (No.2) Order, 2020 and the Emergency Powers (Covid-19) (Special Provisions) Order, 2020 (“the Orders”) were made by the Competent Authority (“Prime Minister of The Bahamas”) on 23 March and 30 March, 2020, respectively. These Orders relate to the operation of businesses, restriction of movement and other relevant information. As of 27 April 2020, it was affirmed in Parliament that the Regulations and the Orders would continue to be in effect until the 30 May 2020.

Below is a summary of the provisions contained in the various Orders.

A. SUSPENSION OF REQUIREMENTS TO PERFORM CERTAIN OBLIGATIONS

Suspension of obligations under certain legislations to file a document, pay fees or renew a license, visa or permit

The requirement under any enactment:

- i) to file a document with;
- ii) pay a fee to; or

iii) to renew a license, visa, or permit issued by, any government entity, statutory body or regulator has been suspended for the duration of the state of emergency and for an additional thirty (30) days thereafter.

The suspension of certain obligations under this heading does not apply to obligations that may arise under:

- i) The Customs Management Act 2011;
- ii) The Value Added Tax Act 2014;
- iii) The Real Property Tax Act;
- iv) The National Insurance Act;
- v) an obligation to make a payment into the court for child support and maintenance; or
- vi) any other civil payment ordered to be paid into court.

Suspension of obligations under certain legislations to file a document, pay fees or renew a license, visa or permit

Any limitation period under the Limitation Act, 1995, has been suspended from 17 March 2020, through the duration of the state of emergency and for an additional thirty (30) days thereafter.

Suspension of obligations under the Register of Beneficial Ownership Act

The duty for:

- i) a legal entity incorporated or registered before 20 December 2018; and
- ii) a registered agent,

to comply with the provisions of the Register of Beneficial Ownership Act 2018, has been suspended for the duration of the state of emergency and for an additional sixty (60) days thereafter.

Suspension of requirements under the Companies Act and International Business Companies Act

Any requirement to pay any fee, make any payment instalment in an arrangement, or file any declaration or document under the Companies

Act has been suspended from 17 March 2020, through the duration of the state of emergency and for an additional fourteen (14) days thereafter.

Any requirements to pay any fee or file any declaration or document under the International Business Companies Act has been suspended from 17 March 2020, through the duration of the state of public emergency and for an additional fourteen (14) days thereafter.

Suspension of Sealing Requirements for Deeds and Documents

- i) The requirement to seal a document purporting on its face to be a deed has been suspended. Such documents shall be conclusively deemed to be a deed notwithstanding that no seal is impressed or affixed; and
- ii) The requirement of any company incorporated under the Companies Act or International Business Companies Act to have its common seal affixed to a document has been suspended, provided that the intention to affix the seal is declared in the document.

These requirements have been suspended from 17 March 2020, through the duration of the state of emergency and for an additional fourteen (14) days thereafter.

Suspension of payments for Health, Medical and Insurance Premiums

Obligations for persons to pay their insurance premiums have not been waived or suspended. However, the payment of group, general, medical and life insurance policies have been deferred from March 17, 2020, through the duration of the state of emergency and for an additional sixty days (60) thereafter.

Insurers are obligated to honor any claim arising during the deferral period and may only subtract renewal fees and deductibles from an insurance claim.

B. ECONOMIC RELIEF PROVISIONS FOR BUSINESSES

The Bahamian Government has implemented a number of financial relief assistance programs to assist Business Owners impacted by the COVID-19, as outlined below:

LARGE BUSINESSES

Businesses with an annual turnover of \$3 million or more and have an overall staff complement of 25 or more (total employees)

The Government has implemented a **Tax Credit and Tax Deferral Employment Retention Program** which applies to large businesses. In summary, this program allows businesses which meet the requirements to withhold outstanding business license fees or VAT receipts up to the maximum of \$200,000 per month for up to three months.

Requirements/terms:

- The deferred taxes or tax credits must be used to assist with covering non-executive payroll expenses
- Eligible businesses must agree to retain 80% of their employees through to 31st October, 2020
- The payment of taxes will be deferred until January 2021, to be repaid in twelve (12) monthly installments

This concession is not available to businesses in the following sectors:

1. Hotel & Resorts (which are closed during this phase)
2. Retail or Wholesale grocery food establishments

3. Regulated Telecommunications Sector
4. Regulated Financial & Insurance business
5. Gaming

For eligibility requirements and full details of the program visit:
<https://inlandrevenue.finance.gov.bs/covid-19-tax-credit-deferral/>

MICRO, SMALL AND MEDIUM ENTERPRISES (MSMES)

Businesses with an annual turnover below \$3 million

The Government has implemented the **Business Continuity Loan Program**. This program provides loans ranging from \$5,000 to \$300,000 to MSMEs, to assist with ongoing operating costs (ie salaries, rent, insurance, utilities and inventory/supplies).

Requirements/terms:

- Eligible businesses must retain 51% of their staff
- Repayment of the loan will be deferred for four (4) months


SELF-EMPLOYED

A **temporary relief program** has been implemented by the Government to assist self-employed individuals affected by COVID-19. Normally, self-employed individuals are not eligible to receive unemployment benefits from National Insurance. Under this temporary program, self-employed individuals (upon submitting the relevant application) can receive \$200 a week for a period up to eight (8) weeks.

C. RE-OPENING OF THE ECONOMY

The Prime Minister has issued a “Measured Plan for Re-Opening the Economy”. This plan is comprised of five (5)

phases and is set out in the table below:

 A Measured Plan for Re-Opening Economy Contingent on advice of Health Officials 27 April 2020					
Phase 1a	Phase 1b	Phase 2	Phase 3	Phase 4	Phase 5
ESSENTIAL SERVICES & HURRICANE PREPAREDNESS Economic Essential businesses. NGOs & churches providing food to the needy by permission. Home & Hardware, nurseries and auto parts stores permitted 2 days in store. Property management, and landscaping, Monday - Friday. Manufacturing of PPE and sanitizers, Monday - Friday. Social 24-hour curfew, Monday 5 AM - Friday 9 PM. Exercise 90 minutes in neighborhood, Monday - Friday. Lockdown Friday 9 PM - Monday 5 AM. Exercise on own property.	DELIVERY & CURBSIDE SERVICE & CONSTRUCTION Economic Businesses that can provide goods and services through delivery and curbside pick-up, Monday - Friday. Home & Hardware, nurseries and auto parts stores can expand to 5 day online delivery and curbside services. Permit construction in Nassau with Industry Protocols, Monday - Friday. Social Relax restrictions on exercise.	EXPANDING OPERATIONS Economic Resume business operations in Family Islands with no presence of COVID-19. Increase businesses that can scale up to operate via delivery and curbside. Add service, healthcare and manufacturing industries that can develop industry protocols to maintain social distancing and safety precautions. Social Worship services with strict social distancing and masks. Relax restrictions on exercising even further.	BEGINNING THE NEW NORMAL Economic Introduce non-essential storefront business operations with essential staff required to allow the business to function. Must have posted protocols and train staff. Number of customers limited based on store square footage. Manage lines in store and outside with markers and security staff. Social Limited educational operations (including national examinations based on appropriate social distancing and masks). Relax restrictions on weddings, funerals and social gatherings. Re-open beaches and public parks with social distancing.	MOVING FORWARD Economic Introduce restaurants, cultural facilities, gyms, movie theaters and entertainment facilities to operate with social distancing protocols inclusive of masks. Resume office operations with strict social distancing. Personal services such as hair care and nails with PPE. Social Expanding educational operations with social distancing protocols. Domestic travel to commence with strict screening and protocols. Group exercise or recreation with social distancing.	RE-STARTING TOURISM & OPENING THE BORDERS Currently working with industry and regional partners to ensure a strong rebound that will meet global health standards and protocols. Economic International travel resumes with strict safety protocols to ensure The Bahamas is a safe destination. Hotels in full operation with appropriate safety protocols. Tourism and transportation related businesses resume with safety protocols. Social Public transportation resumes with safety protocols. Restrictions lifted on movement.

For further information on measures implemented by the Government of The Bahamas please contact McFalloughn Bowleg or Lenthala Culmer by telephone (+1 242 502 5000) or email (MBowleg@lennoxpaton.com or lculmer@lennoxpaton.com).

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