

# COVID-19: Government's interventions

## Key highlights that impact business in Botswana



### Employee and employer matters

On 21<sup>st</sup> March 2020, a Tripartite agreement was entered between the Government of Botswana, Business Botswana and Trade Unions, subsequent to which a public statement was released. This public statement is available on Business Botswana's website - <http://bb.org.bw/index.php/business-download-details/did/75/statement-from-els/>. A summary of the points of this public statement are as given below:

1. Corona Virus and its effects on employer and employee relationship is not as a result of any fault by either of the parties.
2. Reference be given to the provision of section 16 (1) of the Employment Act which states that "Every employer shall, unless the employee has broken his contract of employment or the contract of employment becomes, without default on the part of the employer, impossible of performance, provide his employee with work in accordance with the contract of employment during the period for which the contract is binding on a number of days equal to the number of working days provided for, either expressly or by implication, in the contract of employment". In the above context and in dealing with the current situation of the Corona Virus, and where practical, the HLCC's Labour Sector supports the position that:
  - Employers and Employees consider agreeing for employees to work from home, where possible.
  - A reconfiguration of hours of work, for example, shift work in order to allow space to be considered together with reduced hours of work. **This situation has since changed with the complete lockdown, where only organisations falling within the prescribed essential services category are allowed to operate.**
  - In the event where quarantine or closure is unavoidable, organizations could consider a staggered way of paying wages, depending on the circumstances of the company. This could entail facilitating agreements on a defined period of full pay, half pay, quarter pay or in extreme situations, suspension of operations without pay. It is to be noted that the Government has come up with an intervention in this regard, by way of COVID-19 wage subsidy for affected organisations for a period of 3 months with 50% of wage subsidy and a maximum amount of P 2,500 per month per employee. Refer to Business Botswana's website: <http://bb.org.bw/index.php/business-news-details/nid/138/wage-subsidy-guidelines/> for more details on wage subsidy and basis of claim. Our publication provides 3 simple steps to apply for Wage Subsidy on BURS's website: <https://bit.ly/GT-BW-3stepsWageSubsidy>.
  - Employers and Employees continuously dialogue in good faith on the matter to deal with emerging issues. In so considering, and bearing in mind that the objective has to be the minimization of adversity to both the employers and employees, emphasis should be made on a combination of both the job security of employees and the maintenance of the business during this time.
  - It may be noted that no employees will be terminated during the period of state of emergency, which is extended for 6 months as of now (from 01 April 2020). Any termination or retrenchment of staff during this period, would be considered against the law.
3. It is also recognised that, any action by the employer or the employee resulting in the unavoidable non-performance of an employment contract as a result of the effects of the COVID-19, should be considered just and reasonable.
4. It is also emphasized to guard against any acts of discrimination, victimization and harassment of suspected cases.
5. The Ministry of Employment, Labour Productivity and Skills Development issued an update on 15 April 2020 on the implications of COVID-19 in the world of work, as a follow-up, and update to the public on the briefing of 5 April 2020. The complete text of this update can be accessed here: [https://www.facebook.com/permalink.php?story\\_fbid=3009481015771327&id=1328564953862950](https://www.facebook.com/permalink.php?story_fbid=3009481015771327&id=1328564953862950). Emphasis was placed on the following points:
  - Firstly, His Excellency the President (HE) has emphasised that GoB priorities are to support workers, stabilise businesses and to promote opportunities for economic diversification, while preserving lives.
  - Secondly, as a labour tripartite, the Ministry has agreed not only to support HE's call, but to realise and accept that the adversity caused by the corona virus pandemic is

not only new to all of us - as a risk to lives and economies, but cannot be blamed on either the employers or the employees.

- Thirdly, and as a consequence of the facts stated above, it was important that good-faith-based give and take be our modus operandi (way of doing things), when we navigate through our common challenges, during the State of Emergency.
- Fourthly, the Ministry has agreed that in executing the give and take process, the Ministry must continually engage, explain and invoke enforcement only when nothing reasonable can work.

Three (3) key areas were explained. These are:

- i. The effect of the Emergency Powers (COVID-19) (Amendment) (No2) Regulations, 2020 — through Statutory Instrument (S.I) No. 63 of 2020: because of the State of Emergency this has, by the insertions of Regulations 30D and 30E suspended Part VI of the Trade Disputes Act, and pronounced that businesses will not be able to retrench or dismiss workers during the COVID-19 State of Emergency.
- ii. The reality that, except for suspension of industrial action and the prohibition of dismissals and retrenchments during the state of emergency, as alluded to above, labour laws of Botswana remain in force and effect.
- iii. The need to review labour laws (the Workers Compensation Act and the Factories Act), in order to account for COVID-19 emerging issues

Within the spirit espoused by HE and the labour tripartite, and on the basis that none of the two contracting parties can alter the terms and conditions of the employment contract without mutual consent, give and take conversations are encouraged as a means of harmonious industrial relations. What ultimately gets agreed - whether it is full-pay, half-pay, quarter-pay, taking paid leave, taking unpaid leave - has to be something, which is agreed upon, or consented to on the basis of the facts available. These facts may include, but not be limited to the financial status of the business, and the packages on offer by the Botswana Government.

In the second or related instance, which may come up, or have to be considered as a cure, which can come about through consultation, or by mutual consent, is for the parties to both accept that the COVID-19 circumstances are not a fault of either, and that because they are lawfully engaged they have to explore the reality of the concept of force majeure. The effect of this would be for both parties to agree to suspend their employment contract on account that their contractual obligations are frustrated by temporary circumstances, which neither of them could foresee, and cannot control. Under the circumstances they could mutually agree to suspend their relationship, until things return to normal. At that stage they would resume on the same terms as existed before. Putting workers on unpaid leave, immediate suspensions without pay, and retrenchment as the first course of action has no place in the spirit of how we are to collectively manage our businesses and social security considerations.

### Travel permit during lockdown period

Government issued new travel permit requirements on 05 April 2020 and these permits are valid for a period of 5 days. All essential service employees / authorised persons should apply for this new permit, which can be now be applied online. More details on the permit and its procedures can be assessed from Business Botswana's website: <http://bb.org.bw/index.php/business-news-details/nid/132/government-issues-new-travel-permits/>.

### Residence and work permit

There is no official communication in this regard, however based on the informal information we have received, acceptance of work and residence permit for new permit as well as for renewal of existing permits are suspended till further notice as the immigration board dealing with the permits are currently not meeting during the period of extreme social distancing. We believe this will be effective at least until the country recovers from the current COVID-19 challenges. We've also been made to understand that all those who are affected by this decision should approach immigration officers immediately upon completion of extreme social distancing, which as of now is upto 28 April 2020. We will monitor further information and updates from the concerned Ministry in due course.

For any queries, please contact Dinesh Mallan on [dinesh.mallan@bw.gt.com](mailto:dinesh.mallan@bw.gt.com), or Seeletso Makwinja on (+267) 71 298 384 / [seeletso.makwinja@bw.gt.com](mailto:seeletso.makwinja@bw.gt.com).

Visit the COVID-19 page on our website for insight on how to manage the impact of COVID-19 on your business: <https://www.grantthornton.co.bw/campaign/manage-the-impact-of-COVID-19/>

<p><b>1 2 3</b></p> <p>3 easy steps to apply for COVID-19 Wage Subsidy via the BURS website</p> <p>View our guide: <a href="https://bit.ly/GT-BW-3stepsWageSubsidy">bit.ly/GT-BW-3stepsWageSubsidy</a></p>	<p>As the COVID-19 crisis continues, businesses in Botswana need to be agile in managing tax effects. While tax filings and payments may already be a priority, other tax areas require consideration.</p>	<p>We can support your business to activate interventions introduced by the Government of Botswana, to mitigate the economic impact of COVID-19.</p>	<p>Together we are stronger</p> <p>"I want to assure our valued clients and stakeholders that we are ready to face the ongoing measures put forth by the Government to combat COVID-19. During this tough time, we will continue to provide the high-quality result-oriented service that clients have come to expect from our firm. Collectively, we are a team of great resilience and care deeply for one another. These are the attributes of our culture I see most clearly as we work through the pandemic together."</p> <p>Kalyanaraman Vijay Managing Director, Grant Thornton Botswana</p>	<p>"The COVID-19 outbreak will impact primarily all entities. Businesses in Botswana will be required to consider the financial impact and challenges that will require immediate decisions."</p> <p>Ashish Venkatesh Head of Business April 16, 2020</p>	<p>Re a lebogaa</p> <p>Our sincere gratitude to Botswana's front line workers who risk their own lives to make sure that our needs are met. We salute their resilience that will help our country overcome the challenging time and emerge stronger as a nation.</p> <p>DOCTORS • NURSES • POLICE • PUBLIC OFFICERS • SECURITY GUARDS • FIRE FIGHTERS • POLICE • ALL OTHER ESSENTIAL SERVICE STAFF</p> <p>We appreciate you!</p>
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