

**TIRUCHELVAM ASSOCIATES**  
**COLOMBO, SRI LANKA**

**LABOUR DIVISION UPDATE IN THE CONTEXT OF THE COVID-19 CRISIS**

In battling a pandemic of the nature of COVID-19 (“C-19”), we note employers are experiencing and will continue to experience in the next few weeks and months to follow, many operational and financial obstacles. We note that many employers would look for ways to minimize negative impacts of this crisis and in doing so, would also consider restructuring.

In light of this, we understand that many clients may have various queries on managing employees and other employment related matters. With the ongoing curfew and work from home directives issued, Clients also have concerns on how to manage labour related regulatory matters.

Our Labour Division has prepared a note that may be of assistance to our Clients. This includes the current status on government offices, an outline of the current regulatory framework in Sri Lanka that would have an impact on employees and some key legal concerns.

We have also listed a few points to consider regarding labour in an attempt to survive this crisis with the least impact.

## **1. CURRENT LEGAL SITUATION IN SRI LANKA**

Sri Lanka has not enacted any new labour laws specifically to address the impact of the C-19 and as such, there are no updates to the laws as a result of the current situation. However, a number of general directives have been issued by the Government of Sri Lanka (“GOSL”), which may have a bearing on Labour relations:

- 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> of March, 2020 were declared Public Holidays.<sup>1</sup>

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<sup>1</sup> Extraordinary Gazette No.2167/7 dated 17<sup>th</sup> March 2020

- 20<sup>th</sup> to 27<sup>th</sup> of March 2020 were declared as days to “work from home” for public sector (excluding essential services<sup>2</sup>).<sup>3</sup> Official duties to be remotely implemented. Chambers of Commerce have been advised that **the private sector also conduct their business in keeping with the aforesaid directives.**
- Island Wide curfew has been declared since 20<sup>th</sup> March 2020 and since then has only been lifted intermittently for the general public to purchase essential items.<sup>4</sup> Currently, curfew in the Districts of Colombo (the commercial capital of the country), Gampaha, Puttalam, Kandy, Kalutara, Kegalle and Ampara Districts (except some police areas within these districts) is to be lifted on 5am from 22<sup>nd</sup> April 2020 onwards and re-imposed at 8pm, whilst curfew in other districts will be lifted on 5am from 20<sup>th</sup> April onwards and re-imposed at 8pm.<sup>5</sup>
- Paddy farming and plantation including work on tea small holdings and fishing activities are permitted in any district. Airports and Ports will continue their regular operations.<sup>6</sup>
- 30<sup>th</sup> March to 03<sup>rd</sup> April were declared as a period to “Work from Home” (“WFH”). This will apply to all State, semi-government and private sector entities except those which are categorized as essential services.<sup>7</sup> This has now been further extended till 20<sup>th</sup> April 2020.<sup>8</sup>
- Reliefs will be provided for the private businesses that are not in a position to pay employees’ wages due to the prevailing economic hardships.<sup>9</sup>
- Health related guidelines<sup>10</sup>.
- For employers who engage in essential services, a new circular<sup>11</sup> has been issued in relation to issuing curfew passes. The circular states that this will be handled at 04 levels of Police administration. It specifies who is authorized to issue curfew passes to –

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<sup>2</sup> Essential services including health, public administration, transportation, banking, food, water, electricity, and distribution of fertilizer and the purchase of paddy. Further, the Central Bank of Sri Lanka, commercial banks, insurances services, the Treasury, Health and security services, Police, distribution of goods, customs, and fuel supply were also declared as essential services.

<sup>3</sup> PS/CSA/Circular/14/2020 dated 19<sup>th</sup> March 2020 issued by the Presidential Secretariat

<sup>4</sup> Islandwide curfew was imposed by way of a Press Releases dated 20<sup>th</sup>, 21<sup>st</sup>, 23<sup>rd</sup> March 2020 and 26<sup>th</sup> March 2020 issued by the President’s Media Division.

<sup>5</sup> Press Release dated 18<sup>th</sup> April 2020 issued by the President’s Media Division

<sup>6</sup> Press Releases dated 25<sup>th</sup> March 2020 and 27<sup>th</sup> March 2020 issued by the President’s Media Division

<sup>7</sup> Press Release dated 26<sup>th</sup> March 2020 issued by the President’s Media Division

<sup>8</sup> Press Release dated 13<sup>th</sup> April 2020 issued by the President’s Media Division

<sup>9</sup> Press Release dated 30<sup>th</sup> March 2020 issued by the President’s Media Division

<sup>10</sup> Guidelines on ‘COVID - 19 preparedness for workplaces’ issued by the Directorate of Environmental Health, Occupational Health and Food Safety, Ministry of Health and Indigenous Medical Services.

<sup>11</sup> Circular dated 7<sup>th</sup> April 2020 issued by the Acting Inspector General of Police

- employers with 50 or more employees located in the district of Colombo, Western Province;
- employers with 50 or more employees located in other Provinces;
- employers that have 10 or more but less than 50 employees; and
- Employers with less than 10 employees.

## **2. GOVERNMENT OFFICES**

Currently there is no mechanism to facilitate “work from home” for non-essential services. Thus most Government bodies ceased to operate.

### **Department of Labour – Head Offices and Zonal Offices**

Issuing a communiqué on 18<sup>th</sup> March 2020 the Commissioner General of Labour had stated that the Department of Labour has temporarily suspended its services till 31<sup>st</sup> March 2020.<sup>12</sup>

No further updates to the above notices have been issued yet, however, given that curfew has currently been imposed until further notice, it is likely that the services of the Department of Labour continues to remain suspended for this duration.

Having stated the above, a circular has been issued by the Presidential Secretariat<sup>13</sup> regarding delivering government services via WFH arrangements, in an attempt to ensure smooth functioning of government services.

It is our understanding that the acceptance of all applications have been suspended, except that of EPF (Employee Provident Fund) claims which could be submitted online for processing. Employees of the Department of Labour are working remotely to only attend to any work they were previously handling and no new matters are currently being dealt with.

We will keep you updated as and when we receive updates in this regard.

### **EPF Department – Central Bank of Sri Lanka**

It is our understanding that the EPF Department functions with limited staff in accordance with the relevant directives issued for the Central Bank of Sri Lanka to remain operating.

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<sup>12</sup> <http://www.sundayobserver.lk/2020/03/18/news/labour-dept-services-temporarily-suspended>

<sup>13</sup> Circular No.PS/CSA/Circular/18/2020 dated 30<sup>th</sup> March 2020 by the Secretary to the President

#### EPF Payments

Employers are able to submit e>Returns and EPF payments online. However, for those employers who have not registered to submit such returns and payments online, it is our understanding that no decisions have been taken to relieve such employers from the payment of any penalty which will accrue as a result of the non-submission. It is our understanding that if and when a company applies to the Commissioner General, if it can justify the delay in making the payments and prove that it was for reasons beyond its control, relief will be considered. So, employers are advised to make a written request once the situation settles to consider waiving off of the penalty.

#### ETF payments

ETF Board has introduced a mechanism to collect contributions as follows:

- i. **Collection of cheques: (ETF Head Office - Labour Secretariat, Narahenpita, Colombo 05):**  
Employers are requested to put the contributions cheques and duly filled relevant remittance form (R1 /R4) into the envelope and insert into the box (kept in the Security Office at the main gate of the entrance).
- ii. **Fund transfer through Bank of Ceylon (For Employers who use R1 Remittance Forms)**  
Refer [http://www.etfb.lk/pdf/special\\_notice\\_20200331.pdf](http://www.etfb.lk/pdf/special_notice_20200331.pdf) for details of the process.

### **3. KEY LEGAL CONCERNS**

A few of the key concerns clients may presently have are briefly addressed below in the context of the existing Labour Laws of the country:

#### **1. Will there be a penalty imposed on late EPF/ETF payments?**

Refer above.

#### **2. Are there any reliefs provided by the Government which are available to employers to cope with the burden of paying salaries and benefits?**

As stated above, a Press Release issued by the President's Media Division states that reliefs will be provided for the private businesses that are not in a position to pay employees' wages due to the prevailing economic hardships.

Accordingly, on 31<sup>st</sup> March 2020, CBSL announced the decision to set up a re-financing facility to implement the decisions taken by the Cabinet of Ministers on 20<sup>th</sup> March 2020 to introduce a range of concessions including a debt moratorium and encouraged banks to issue working capital loans for C-19 hit businesses and individuals.

### 3. Option of continuing with business

We note many clients have the dilemma of whether to continue normal business in order to be able to cater to customer requirements timely or whether to forego business in an attempt to contribute towards preventing the spread of the virus.

The key question is whether a business that cannot be maintained remotely, such as factories, can compel employees to attend work:

- a. **During the curfew:** No, unless it is an essential service as declared by the GOSL.
- b. **During public holidays:** No.<sup>14</sup>
- c. **During “work from home” period:**

#### Questions to be addressed:

- o Can the establishment maintain the Health Ministry recommendations? For instance, on the 18<sup>th</sup> of March certain establishments were directed by Public Health Inspectors to shut down and direct their employees to work from home.
- o Would compelling employees to attend work violate the ban on gatherings?

#### Other issues:

- **TORT:** liability that may accrue to the employer where an employee contracts the virus, after having been made to report to work during this period (where no curfew is in place).
- **LABOUR LAW:** Employee deciding to resign based on compulsion to work may have a case for constructive termination on the basis the employer is held liable for creating circumstances where an employee cannot work in and thus compelling such employee to resign.

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<sup>14</sup> Holidays Act 29 of 1971 (as amended)

**4. Due to the impact of the C-19 on businesses, whether termination of employees is possible?**Permanent employees

Sri Lanka does not have a hire and fire policy. Sri Lanka's general termination laws continue to apply in relation to employees impacted by C-19. Termination on non-disciplinary grounds is usually only permitted with either the employee's written consent or the Labour Commissioner's sanction.<sup>15</sup> Termination is sanctioned by the Commissioner upon payment of compensation according to the prescribed formula<sup>16</sup>.

However, one option that employers do have is to offer employees a Voluntary Resignation Scheme with an attractive compensation package.

Consultants and employees on a Fixed Term contract

The termination is governed by their respective contracts.

**5. What is the law applicable to Leave entitlements?**

Normal leave application processes in the workplace apply. There have been no changes to the law applicable to leave of employees in light of the present situation in Sri Lanka.

If it is not a declared public holiday and if the employer requires employees to be present at work but an employee does not want to attend work as he/she is concerned of the risk of being infected by the virus, unless the employee has entered into a specific arrangement with their employer or use paid leave which they are normally entitled to, they are not entitled to payment in these circumstances.

**6. Can work hours and wages/salaries be reduced to manage the costs of a business?**

Any change to employment conditions, including reducing pay, requires either the employee's consent or the Commissioner's sanction.

An employer must also be mindful that in terms of the Employees' Provident Fund Act<sup>17</sup> an employer is not permitted to reduce the earnings of an employee that would in turn reduce the contributions payable by the Employer to the Provident Fund. If earnings are reduced and as a result the contribution to the Provident Fund is reduced, the

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<sup>15</sup> Section 2(1) of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (as amended)

<sup>16</sup> Gazette Extraordinary No.1384/07 dated 15 th March 2005

<sup>17</sup> No.15 of 1958 (as amended)

Commissioner can issue a notice, directing the employer to pay the difference, in respect of the entire period during which such employee receives the reduced earnings.

Employers must be mindful of the following laws on work hours and wages/salaries which apply. In general, under the relevant laws<sup>18</sup> in Sri Lanka the maximum number of hours of work permissible is specified. Further, in relation to wages/salaries, there is a minimum wage for employees and a national daily wage.<sup>19</sup> Additionally, regulations under the Wages Board Ordinance<sup>20</sup> also regulate the minimum wage of employees under each trade and employees earning under a certain threshold<sup>21</sup> are also eligible for a budgetary allowance under the Budgetary Relief Allowance Act<sup>22</sup>.

7. **Are there any risks involved in offering Voluntary Resignation Schemes or reducing wages/salaries?**

No alternative is without risk. This may include in some cases, the employees asserting claims for wrongful/constructive termination and/or failure to provide certain termination entitlements and, in some instances, request for reinstatement if business conditions change.

#### **4. KEY POINTS TO CONSIDER REGARDING LABOUR IN AN ATTEMPT TO SURVIVE THIS CRISIS WITH THE LEAST IMPACT**

- Whether any specific notifications/circulars etc have been issued by government or government authorities, and if so implement same if the same is applicable;
- Ensure arrangements to work from home have been put in place for employees, where possible;
- Ensure that all employees are aware of how to maintain a healthy and clean working environment both at home (in general and when working from home) and whenever employees are called to office;
- In the event the business is an essential service and curfew passes are required for employees to travel to work, assist to obtain the same;

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<sup>18</sup> primarily the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954 (as amended) and the Factories Ordinance No.45 of 1945 (as amended)

<sup>19</sup> Section 3 of the National Minimum Wage of Workers Act No. 03 of 2016

<sup>20</sup> No.27 of 1941 (as amended)

<sup>21</sup> LKR 40,000 or less

<sup>22</sup> No. 04 of 2016

- Ensure all employees are aware of leave entitlements from work for sickness or otherwise;
- Ensure that employees remain motivated throughout this period and that the mental health of employees during these difficult times are looked into as this could affect productivity;
- Whether any relief mechanisms offered by the Government/Central Bank etc may be availed of to help with financial obstacles;
- In the event employee benefits including salaries/wages have to be reduced, that proper discussions are conducted with employees and their consent is obtained for same;
- Ensure EPF/ETF filings and payments have been made timely or appropriate other action has been taken to deal with the same;
- Maximize on any benefits the business is entitled to from the government (for example, as of now GOSL has implemented certain benefits including debt moratoriums for existing performing loans as at 25<sup>th</sup> March 2020) and strive to not cut down on employee benefits etc. *Refer our note on Banking and Finance for more details.*

**NOTE:**

1. *Any reference to any laws and regulations/directives/circulars/government press releases etc are as at the date of the issue of this document.*
2. *Only references to any directives/circulars/government press releases etc which may have a bearing on strictly labour related matters have been referred to herein.*
3. *The contents of this document should not be considered as legal advice and is provided for information purposes only. If you require legal advice on any specific matter for purposes of decision making, do feel free to contact us.*

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