

# CGF POINT OF LAW

## SPECIAL BULLETIN



## BARBADOS REGULATORY UPDATE

### INTRODUCTION

In December 2019, health officials in Wuhan, China informed the World Health Organization ("WHO") of a strain of "pneumonia" affecting members of its population.<sup>1</sup> This "pneumonia" was later identified as a severe acute respiratory syndrome coronavirus 2 ("COVID-19"). On March 11, 2020, the WHO declared COVID-19 a pandemic.

Approximately one week after COVID-19 was declared a pandemic, Barbados recorded its first two cases of COVID-19 and on March 26, 2020 the Government of Barbados implemented Stage 3 of the National Preparedness Plans when a public health emergency was declared. The Emergency Management Act, Cap. 160A of the Laws of Barbados (the "EMA") was amended to make provision for the declaration and management of a public health emergency. Under the EMA, "public health emergency" is defined to mean an emergency declared under the EMA "as a result of a person or an animal having a communicable disease or a notifiable disease."

On March 26, 2020, the Government of Barbados also imposed a curfew for the period March 28 to April 14, 2020, between the hours of 8:00 p.m. to 6:00 a.m. confining persons to their places of residence during curfew hours. The curfew was later amended for the period April 3, 2020 to April 14, 2020 to occur between 6:00 p.m. to 6:00 a.m. and subsequently from April 15, 2020 to May 3, 2020 between the hours of 6:00 p.m. to 6:00 a.m. Today, Barbados remains under a public health emergency and a national curfew. The remainder of this article provides a general regulatory update.

### The EMA Order

The Emergency Management (COVID-19) Order (the "EMA Order") sets out, inter alia, certain matters in relation to the detention, quarantine and isolation of persons where a public health officer so determines. Pursuant to paragraph 8 of the EMA Order, an

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<sup>1</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen> accessed on 16 April 2020.

authorised person<sup>2</sup> may, by notice in writing in the form set out in the *First Schedule*, requisition<sup>3</sup> any lands or buildings to be used for such purposes and in such manner as the person thinks fit. An authorized person may also do or authorise to be done, anything that a person having an interest in the lands or buildings would be entitled to do by virtue of that interest.

An authorised person may by notice in writing, set out in the *Second Schedule*, also requisition any form of transport, if in his opinion, it is necessary or expedient for the safety of the public or for the maintenance of supplies and essential services<sup>4</sup>. In this regard, an authorised person may also requisition such quantities of petrol, diesel or lubricating oil as he considers necessary for use in any form of transport from the owner of the transport; from the owner of any garage; from the owner of any petrol pump; or from any company owning bulk stores of petrol or oil. The EMA Order provides the general framework for the management of the pandemic and grants an authorized person the power to take certain actions and obtain private property if it is necessary to do so.

### The Directives

Pursuant to paragraph 15 of the EMA Order, the Prime Minister, on the advice of the Chief Medical Officer, has issued directives significantly restricting the movement of persons within Barbados (the "**Directives**").<sup>5</sup> The most recent directive, the Emergency Management (COVID-19) Curfew (No.3), 2020 Directive ("**Directive No. 3**") imposes the existing curfew and requires non-essential services which are not specified in this Directive to remain closed until the expiration of the curfew. Some of the non-essential services which are permitted to open during the limited hours specified in Directive No. 3 are:

- (a) banks, credit unions;
- (b) fuel manufacturers, fuel storage facilities and fuel distributors;
- (c) hotels, villas and other rental accommodation (with limitations);
- (d) manufacturing companies for the production of goods for export for the entire day; and

- (e) pharmaceutical manufacturers, manufacturers of juices, soft drinks and dairy products, food processors and food distributors.

The public service sector, including statutory corporations, is functioning as and when required at the direction of the head of the public service. Private businesses and offices may only continue their operations where the employees can work exclusively from their homes.

Directive No. 3 provides for a number of restrictions including:

- (i) the prohibition on the sale of intoxicating liquor; and
- (ii) persons are only permitted to leave their homes:
  - (a) to purchase medical and pharmaceutical supplies and to have a prescription filled;
  - (b) to seek medical, dental or ophthalmic attention; or

<sup>2</sup>. "authorised person" means "the Prime Minister or the Minister with responsibility for the Police on the advice of the Chief Fire Officer, Chief Medical Officer, any Gazetted Police Officer or any Officer of the Barbados Defence Force".

<sup>3</sup>. "requisition" means, "in respect of any form of transport, to take possession of the form of transport to be placed at the disposal of the authorised person requisitioning it".

<sup>4</sup>. "essential services" are defined in the EMA Order to mean medical professionals, paramedical professionals, nurses, staff of pharmaceutical agencies, staff of hospitals, clinics and pharmacies, persons employed or engaged as care-givers, veterinary services, law enforcement officers, defence force officers, customs officers, prison services, security services, disaster management services and firefighting services; the provision of electricity, telecommunications, media and broadcasting services; the provision of transport services whether by aircraft, ship, motor vehicle or public service vehicle; the operation of an airport or seaport; the collection, storage, purification or distribution of water for use by the public or any section of the public; the collection, storage, treatment and disposal of sewage, garbage or refuse; the removal, handling or burial of deceased persons or disposal of dead animals.

<sup>5</sup>. Emergency Management (COVID-19) Curfew Directive, 2020 Directive, Emergency Management (COVID-19) Curfew (No.2) Directive, 2020 and Emergency Management (COVID-19) Curfew (No.3) Directive 2020.

- (c) to work in, or transact business with, an essential service or a business that is exempt from No. Directive 3.

The following public offices have issued advisories or provided information on their reduced operations:

#### **The Central Bank of Barbados**

The Central Bank of Barbados ("**the Central Bank**") has advised that during the curfew, it will continue to provide services to enable the national payments system to function and urgent international payments to be made. In this regard, the Central Bank has indicated that it will continue to:

- deliver currency notes to the banking system to support the operations of automatic banking machines;
- provide access to the Real Time Gross Settlement system for banks to facilitate domestic transfers;
- process electronic transactions through the Automated Clearing House;
- participate in and facilitate cheque clearing and settlement as required by and in a collaboration with the banking system; and
- approve exchange control transactions to facilitate urgent international payments.

The Central Bank continues to process exchange control permissions and is doing so electronically.

#### **Financial Services Commission**

The Financial Services Commission (the "**Commission**") issued an industry advisory ("**Industry Advisory**") outlining its COVID-19 response. The Commission extended the deadline for a regulated entity to complete its audit and file its audited financial statements for its latest financial year as a result of being negatively impacted by COVID-19. This extension period runs for three (3) months after the original filing date. During this period, the fees associated with such late filings will not be applied for the relevant period. A similar extension applies to regulated entities required to distribute or publish audited financial statements within a specified period of the financial year end.

This extension applies to regulated entities with a financial year ending prior to September 30, 2020.

Entities are encouraged to file unaudited financial statements or financial returns including quarterly and annual financial statements in accordance with the requisite deadlines. Entities that are unable to file the unaudited March 2020 quarterly financial statements or returns by the deadline April 30, 2020 as a result of the COVID-19 disruption, may complete their filings on or before May 30, 2020 without regulatory action. An entity seeking: (i) a further period of time for the filing of the March 2020 statements or returns; or (ii) an extension in respect of other unaudited financial statements or returns, is required to submit an application outlining the reasons for the extension request and include supporting information.

The Commission expects that reporting issuers and mutual funds will provide material change disclosures to the public, fund-holders and the Commission in a timely manner and in keeping with regulatory deadlines. The Commission has indicated that it will continue to consider requests for extensions of time for requirements and circumstances not specified in the Industry Advisory on a case by case basis. Any entity which is unsure as to how to satisfy the requirements outlined in the Industry Advisory should approach the Commission for further guidance and clarification.

Face to face prudential examinations, Anti-Money Laundering/ Combating the Financing of Terrorism (AML/CFT) and on-site examinations are suspended and these will be facilitated through electronic and conferencing facilities, if possible. The Commission requires applicants to submit all applications and submissions by email. Hard copies of documents are not required. The appropriate filing fee must be submitted either by wire transfer or by deposit to the Commission's account.



### **Corporate Affairs and Intellectual Property Office**

The Corporate Affairs and Intellectual Property Office "CAIPO", which is closed, is providing limited services with regard to urgent applications which are submitted electronically. Documents such as company charges with statements of charge, bills of sale, instruments of share transfer, applications for the renewal of registration of trademarks and the payment of prescribed fees for patents and patent applications, which are required to be filed within the timelines stipulated by legislation, are required to be scanned and emailed to the CAIPO. CAIPO has indicated that it will recognise the date of receipt of the emailed documents pending submission of the physical documents, provided that sufficient funds are available to meet the filing cost. Hard copies of the original charges, however, will be required to be filed at CAIPO within the time frame which will be announced by the Registrar of Companies, upon the physical re-opening of CAIPO.

We are aware that CAIPO is also currently facilitating limited electronic requests for the issuance of Registrar's Certificates i.e. certificates of good standing. For such a request to be facilitated, the matter must be urgent with payment made through the EZPay+ Portal for Registered Agents of CAIPO. The entity's files at CAIPO must also be in a state which will permit the Registrar of Companies to issue the certificate and which the Registrar of Companies is able to verify remotely, given the closure of CAIPO's physical office. Limited online searches are currently available of a company's records at CAIPO for its Registered Agents. Our firm is one such registered agent. We are not aware, however, of an electronic manner in which searches may be conducted against the Register of Mortgages and Charges maintained by the Registrar of Companies. The electronic records of a company's file may not be complete or up-to-date and, consequently, may not identify charges registered against a company.

With regard to other activities, such as the filing of annual returns by external companies and the filing of

notices of change of directors which attract penalties for failure to file within the stipulated timelines, CAIPO has indicated that these matters will be addressed legislatively.

Persons are asked to scan and email the annual returns and notices of change to CAIPO until further notice. The Registrar of Companies has advised that certificates of clearance which are issued by the Barbados Revenue Authority and the National Insurance Department respectively, in support of company dissolutions will be recognised by CAIPO in circumstances where the certificates have expired during this period of time.

### **Supervisor of Insolvency**

Based on our discussions with the Office of the Supervisor of Insolvency, we understand that they may facilitate the issuance of certificates once the Office of the Supervisor of Insolvency has established an online payment facility.

### **International Business -Economic Substance**

The Ministry of International Business (the "MIB") has recognized that during the period of the pandemic, it may be difficult for resident companies to meet the economic substance test pursuant to the Economic Substance Act 2019-43 of the Laws of Barbados. The International Business Unit of the MIB (the "IBU") has indicated that where resident companies' operating practices have to be adjusted in these circumstances, for example, directors who would normally travel to Barbados to be physically present at board meetings, but are now avoiding travel, self-isolating or holding meetings virtually (or via telephone), the Director of International Business would not automatically regard this activity as failing to meet the economic substance test. Resident companies that have adjusted their operating procedures as a result of COVID-19 should clearly record in their books and records, and particularly in board minutes for meetings, when directors have not been physically present due to implementation of such measures. Resident companies are however required to notify the Director of International Business in writing whenever such circumstances arise.

Applications for foreign currency permits are being processed electronically by the IBU at this time and electronic copies of temporary foreign currency permits will only be issued pending proof of payment via the EzPay+ Portal for registered agents of the Companies Registry.

Since no other application fee payments to the IBU are facilitated by the EzPay+ Portal, no final licences or certificates for any applications other than foreign currency permits are being issued electronically by the IBU at this time.

### **Barbados Revenue Authority**

The Barbados Revenue Authority ("BRA") has advised that the deadlines for Pay as You Earn ("PAYE") and Value Added Tax ("VAT") filing dates have been extended to April 30, 2020. Further, that taxpayers should also note that the tax payment deadlines currently due on April 15 and 21 have been extended to April 30, 2020, without penalties and interest being incurred.

The BRA has also advised that tax filing and payment relief will be done automatically in TAMIS, therefore taxpayers do not need to make an application to qualify. Payments during the curfew period may be made by cheque or online banking. Cheques may be submitted in a sealed envelope (enclosing the Electronic Payment Advice (EPA) or a note detailing the TIN or Map Reference Number, tax type and tax period or tax year) and placed in a drop box at the entrance of the BRA's Weymouth Corporate Centre in Roebuck Street. Online payments may be wired to the BRA's account number.

### **The Judiciary and Judgment Searches**

The Chief Justice and the Registrar of the Supreme Court, in collaboration with the Barbados Bar Association, has issued draft Supreme Court (Business Continuity Guidelines) 2020 -1 for the conduct of the Court's business during the curfew period (the "Guidelines"). The Guidelines include facilitating virtual hearings. The Guidelines are subject to review by the judiciary and the Registry Department and may therefore be amended.

We are not aware that it is possible at this time for judgment searches to be conducted at the Supreme Court Registry.

### **Barbados Stock Exchange**

The Barbados Stock Exchange Inc. has issued an advisory indicating that in response to the Directives issued by the Government of Barbados, the operations of the Barbados Stock Exchange Inc. were suspended from April 3, 2020 to April 14, 2020. Operations resumed on April 15, 2020 and trading re-commenced on April 16, 2020.

### **Land Registry**

The Land Registry is currently closed and has no online payment capacity. The records are not accessible online and therefore searches cannot be carried out online.

The Land Registry has however advised that the validity of land tax certificates for the 2019-2020 year has been extended for 6 months from 31st March 2020, which means that on eventual re-opening of the Land Registry conveyances may be stamped and recorded using land tax certificate valid to 31 March 2020 up to 30th September 2020, without the need to wait for 2020-2021 tax demand notice to be issued or the necessity for the vendor to pay an additional year's land tax up front.

### **Barbados Port**

The country's seaport, Bridgetown Port Inc., continues to facilitate entry of cargo into the island while implementing social distancing measures in keeping with the Directives issued from time to time. Customers are being encouraged to make electronic payments by either direct deposit or creating a pre-payment account with the Port. In person payments at the cashier are also facilitated although strict social distancing rules are maintained and enforced. The delivery of essential cargo deliveries are being done through an email appointment system at the Bridgetown Port, between 7:00 a.m. and 4:00 p.m.

### **Banks and Credit Unions**

Banks and credit unions are opened within restricted hours for the purpose of (i) supporting automatic teller machines and card collection; (ii) facilitating internet banking, mobile banking and point of sale transactions; (iii) facilitating electronic payroll;

(iv) facilitating wire transfers for essential services and international payments and clearings; (v) facilitating local payment, clearing and other operations as required for the banking system; (vi) contact centres that facilitate payments; (vii) retail banking limited to cash and cheque transactions; (viii) persons signing up for internet and mobile banking; and (ix) persons signing up for night deposits and collection services.

#### **Barbados Postal Service**

The Barbados Postal Service is operating during limited hours to facilitate the collection of pension payments only. Both local and incoming international mail are being delivered.

#### **Grantley Adams International Airport ("GAIA")**

A number of commercial flight operators have suspended commercial flights into and out of Barbados during this heightened period. We understand that the Barbados airspace is currently closed to arriving international commercial passenger flights until May 4, 2020. Further, that GAIA remains open to cargo flights, medevac flights, technical stops for fuel and special authorised flights e.g. humanitarian aid.

#### **Economic Stabilisation Measures**

Earlier this month, the Government of Barbados announced that it was introducing certain proposals to help address the economic challenges in Barbados caused by the response to the spread of COVID-19. As it relates to employees, the Government has indicated that it will provide supplemental support to the National Insurance Scheme Unemployment Fund as needed within the context of available fiscal space, that those who are laid off fully will receive unemployment benefits for six months and those on short weeks will receive 60 percent for the days they are not working; and that commercial banks have agreed to a six-month payment moratorium on existing loans and mortgages for persons and businesses directly impacted by COVID-19.

As it relates to employers, employers who are retaining more than a certain percentage of their staff complement (which we understand to be three quarters/two-thirds) will be able to defer the

employer's contributions to the NIS for the next three months in the first instance, with another three months if necessary.

The Central Bank announced a series of measures (effective April 1, 2020) to help support commercial banks and other deposit-taking institution manage the economic fallout from the coronavirus shock. Specifically: i) the Central Bank's discount rate at which it provides overnight lending to banks and deposit-taking non-banks licensed under the Financial Institutions Act, Cap. 324A of the Laws of Barbados was reduced from 7 percent to 2 percent; ii) the securities ratio for banks was lowered from 17.5 percent to 5 percent; iii) the 1.5 percent securities ratio for non-bank deposit taking licensees was eliminated; and, iv) the Central Bank indicated it stands ready to make collateralized loans for up to six months as liquidity support for licensees<sup>6</sup>.

The International Monetary Fund ("**IMF**") has noted the spillovers from the global pandemic to the critical tourism sector and that it has been significant in terms of a reduction in commercial airlift capacity and forward bookings, and that it has culminated in labor furloughs and temporary hotel closures.<sup>6</sup> There is an expectation that additional stabilization measures will be announced shortly by the Government.

#### **Legislative Amendments**

The regulatory framework in Barbados has sought to adapt to the changing and fluid context of the Covid-19 public health emergency. A number of lessons are being learnt from the revised regulatory processes which either have been put or not been put in place. We expect that legislative amendments will be required to address certain areas of non-compliance, for example, where requirements under the Companies Act, Cap. 308 of the Laws of Barbados, are not being complied with at this time. The COVID-19 pandemic will also provide an opportunity to do business differently once the public health emergency has abated and legislative changes will be necessary to support this.

<sup>6</sup> <https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#B>

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#### **BRA:**

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#### **World Health Organisation (WHO):**

<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

#### **International Monetary Fund (IMF):**

<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#B>

# CGF POINT OF LAW

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