

## Brief Note

### Legal Implication of COVID-19 in Industries & Commerce in Nepal

#### Brief Scope of Discussion for the Resource Persons

1. **General Instruction:** Resource Persons are requested to analyze the legal implication of the effect of COVID 19 pandemic. Specially, following aspects to be looked into:

- What legal measures, instruments are affected?
- What legal measures/policy reform recommended?
- What practical action to be taken?
- Any Case Laws ? National/International?

2. **Model of Discussion (Agenda):** 90 Mins

- Introduction of the Topic by the Moderator: 5 Mins
- Objective Highlights: **Advocate Sunil Kumar Pokharel:** 5 Mins
- Resource Person's Sharing: 3 X 15 Mins= 45 Mins
  - **Advocate Megaraj Pokharel: Commerce and Industry**
  - **Advocate Sharad Koirala: Public Procurement**
  - **Senior Advocate Madhab Bhattarai: Labor and Employment**
- Keynote Speaker:
  - **Mr. Chandra Prasad Dhakal, Vice President, FNCCI 10 Mins**
- Questions and Answers: 25 Mins: 2 Mins Maximum for a person
- Wrap-up by Moderator
- Total= 90 Mins.

3. **Impact on Industry and Commerce**

a. **Trade and Commerce:** The pandemic caused by COVID-19 [Corona Virus Disease-2019) has huge impact in the economy. Actually, this has effect in the all aspect of the human behaviors and the global trend of locking down the country and shutting down the economic activity has caused serious impact in the business who may not revive at all. The Contract is the principle rule of business. Each business stands on contract between the parties whether it be small of multinationals; whether it be a sale of goods, or agency or any service.

This pandemic has squeezed the capability of performance of the contractual party. So, many of these contrasts are about to terminate by the parties. But, can they do so? If they can what are the liability of such termination of the contract? These are major issue of concern of the parties. One of major clause of the contract gives remedy during the situation that we are facing now is Force Majeure. Force majeure refers to events such as wars, fires, typhoons, floods, earthquakes, or other events that are regarded by both parties to be force majeure factors. This clause is for the protection of both the parties during such situation. As principle, if there is a situation of the FM, the party has to notify the situation to another party. In such situation, party in the FM situation can suspend or postpone the contract performance. After a force majeure event ends or is eliminated, the affected party should notify the other party in writing as soon as possible that the force majeure event is ended or eliminated. Some of the area of discussion under the topic could be as follows:

- Does the consequences of COVID-19 may fall under a force majeure (FM) clause?
- Does the consequences of Lockdown may fall under a force majeure clause?
- If any contract lack FN clause, what will be the alternative ? Any local law can help on this ?
- What is the difference of COVID19 Effect and Lockdown Effect ? Can both be used to invoke FM clause ?
- Is the Lockdown effect is change of law ? Or, is this mere economic impairment?
- Is this required to send the notice of FM to another party or it is sue motto could be used ?
- Am I liable or can I hold my supplier or service provider liable for non-performance or late performance?
- What if the date is the principal matter for the execution of the contract?

**b. Public Procurement:** Procurement is one of the area that severely impacted by the COVID-19 pandemic. The procurement, whether it be supply of goods, services or Infrastructure constructions, the pandemic has serious effect. Some of issue for the discussions could be as follows:

1. Whether the procurement contract could be amended, differed or terminated because of COVID 19 pandemic, considering this as unforeseeable circumstances? Or Act of God ? Or ?
2. Is the COVID19 effect is considered only during the Lockdown or period around this? If yes, what extent?
3. What if the public procurement is awarded and the final contract has not been signed?
4. What if the procurement notice and its documents does not include the FM clause?
5. Any fine or penalty for non-performance of the procurement contract during COVID19 effect period?
6. Can the service provider claim variation of time and the cost ? or termination of contract ?
7. Do I need to give Notice of impediment to another party ?
8. How can the extension of execution deadlines in the event of force majeure works ? What could be the rational of the time frame ?
9. Is there any Price revision (Variation) formulas?

**c. Labor and Employment:** COVID-19 has caused devastating losses in working hours and employment across the world. Some of industries like aviation, trekking and hotels have very severe impact. Not only these formal sectors, it has serious impact on domestic workers functions. If this is not properly addressed, this may create a huge impact in the economy. Some of major are of discussion could be as follows:

1. May an employer lawfully prohibit employees from traveling to locations where the government has restricted nonessential travel?
2. Can an employer lawfully prohibit an employee from returning to work until 14 days has passed since the employee was exposed to the virus, provided the employee remains symptom free?
3. Can an employer require an employee to submit a doctor's note upon the employee's return to work after exhibiting symptoms of the coronavirus?
4. Is an employer required to pay wages to an employee who has *not* been diagnosed with the coronavirus and who is not coming to work (*e.g.*,

- pending test results, during a quarantine) and who cannot perform all or most of his/her job duties remotely because of the nature of the work?
5. What are an employer's obligations if the building in which its office is located is closed or a quarantine is in effect?
  6. What obligations does an employer have if it decides to shut down its facility (even temporarily)?
  7. What should an employer consider if employees refuse to come to work because of fear of exposure to the coronavirus?
  8. What considerations should an employer take into account if employees report the need to be absent from work either because they tested positive for the coronavirus or because they have to care for a family member with the coronavirus?
  9. What can employers disclose about an employee's health condition?
  10. May an employer ask an employee if the employee is experiencing symptoms of the coronavirus or require an employee to get tested for the coronavirus?
  11. Are there other discrimination or harassment issues employers should consider?
  12. Are employees trade union rights are respected during the lockdown or COVID 19 Pandemic?
  13. What are the obligations of the informal sector employer during the government lockdown?
  14. What would be the responsibility of the employer in seasonal business like trekking, tea estate etc

## **Speakers/Panelist's/Moderators Brief Profile**

### **Keynote Speaker: Mr. Chandra Prasad Dhakal, Vice President, FNCCI**

Mr. Chandra Prasad Dhakal is the Vice President of FNCCI and the Chair of the Employer's Council under the FNCCI. He is a leading entrepreneurs who has established himself as dynamic leader in diverse sector including banking, money service, IT, trading, hydro-energy, travel and tourism, cable car and infrastructures through his flagship company IME Group. He is the Executive Chairman of IME Group of Companies.

### **Panelists:**

#### **Senior Advocate Madhav Bhattarai, Chairman, Bhattarai Law Associates**

Mr. Bhattarai has been practicing law since three decade with significant engagement on labor and industrial relations. He has also significant contribution on advising to hospitality industry along with related business associations. Some of major industries he has been advising are Golchha Organizations, Jagadamba Group, Barun Beverage, Soltie Hotel Limited, Hotel Annapurna and Hotel Association of Nepal. He is the Chairman of Bhattarai and Associates.

#### **Advocate Meghraj Pokharel, Director, Legal Research Associates**

Mr. Pokharel, Delhi University post graduate in Comparative Business Law, started his carrier as an attorney with Dhurba Bar Shigh Thapa & Associates. He started his own law

practice in 1991 with a group of energetic attorneys under the umbrella of Legal Research Associates. Mr. Pokharel went to IDLO, Rome Italy for a professional courses on Technology Transfer to Developing Countries and further he sharpen his skills through various professional trainings on contract negotiation, Due Diligence Checks, intellectual property, corporate governance, etc. Mr. Pokharel has been serving as Legal Consultants in various business and development organizations in matters of corporate, joint venture, insurance, revenue, banking, business, contract, intellectual property, industrial enterprises, human resource, trade, manufacture, foreign investment, negotiable instruments, sale of goods, agency, bailment, guarantee, tender, construction and hydro related laws including FIDIC.

#### **Advocate Sharad Prasad Koirala, Associate, Learned and Lawyers**

Mr. Koirala has nearly 30 years of practice in law. He specializes on Public Procurement, Tax and Financial law issues. He is an Associate at Learned and Lawyers, a Kathandu based law firm.

#### **Moderators:**

#### **Advocate Babu Ram Aryal, Managing Partner, Delta Law**

Mr. Aryal has extensive experience and knowledge on International Business Law, Cyber law, Intellectual Property Law, Media Law and Telecommunication Law. Mr. Aryal has significant intervention at national and international level research on cyber law and policy. He was the principal drafting consultant for the proposed IT Bill 2019 and has led many policy research and survey initiatives. He led the international research team for Affordability Index, conducted by A4AI, a Web Foundation initiative, for 10 South and South East Asian Economies for several years. His peer reviewed Article "Privacy in Digital Age: Judicial Approach in South Asia" was published on SSRN, a major social science research network in the world.

Mr. Aryal holds Masters Degree in Law (LLM) from Pune University, India and went to Oxford-Annenberg Summer Institute, Oxford, UK and US Telecommunication Training Institute (USTTI), Washington DC where he was trained on Media Policy, Cybersecurity and ICT Policy. He is the Managing Partner of the Delta Law and has advised some of top national and international multinational companies for Nepal affairs, including Facebook, Google, Samsung, CNN at various capacities.

#### **Conference Advisors:**

#### **Senior Advocate Upendra Keshari Neupane, Founder, Delta Law**

Mr. Neupane, a former member of Judicial Council, is one of visionary jurist having wide experience in litigation, policy advisory as well as consulting service. He brings more than 35 years of experience of practice in constitutional, corporate, banking and insurance, securities markets, infrastructure, media and development issues in the Delta Law. He has advised range of government agencies, public sector enterprise, international development institutions and private sectors.

#### **Advocate Sunil Kumar Pokharel, Founder, Innovative Legal Service**

Mr. Pokharel, a former Secretary General of Nepal Bar Association, is well-known for his knowledge on constitutional law, transitional justice, human rights, criminal law and

foreign direct investment. He has advised range of government and non-government agencies, international development institutions and diplomatic agencies and private sectors. He is the founder of Innovative Legal Service, a well known legal firm on criminal, constitutional and international business law. He has been actively contributing on public interest litigation and pro-bono service for marginalized communities.