

The Inquisitor

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YEAR IN REVIEW:
BUSINESS RESILIENCE
IN UNCERTAIN TIMES



How International law firms are handling the pandemic

**JEROME I. LEE
SENIOR PARTNER**

Lawyers and law firms are often times seen as enduring fixtures in our community whether their services are frequently used or not and they are expected to be there when needed as, for example, wills, title deeds, agreements and other important papers are left with them and to be on call to offer solutions to difficult and intractable problems.

So even as all local businesses including lawyers face challenges posed by the COVID-19 pandemic it may be useful to see how some lawyers and international law firms in our wealthier North Atlantic neighbour as well as in Britain have reacted in these unprecedented and unpredictable times.

To be sure, many have and are taking action in response and much can be learnt. But as the law firms that are many times larger and wealthier than our local ones and operate across many different state and national jurisdictions any lessons gleaned are to be taken as indicative rather than prescriptive and to be adopted/adapted only after careful consideration and compliance with local law. These are some of the measures taken by a few American and British law firms.

Difficult but necessary

All describe the actions taken as being difficult and painful but necessary to weather the crisis so as to maintain financial stability in the face of expected reduced revenue while continuing to effectively serve clients. They have moved decisively and quickly so as not to be overwhelmed by the disruption in workflows and fall in demand for services.

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Capital calls, pay cuts

Some firms have made capital calls on equity partners requiring that they bring in cash contributions to strengthen the firm's balance sheet while others have deferred, reduced or frozen equity partners distribution. Pay cuts have been instituted for income partners, associates and general staff. These pay cuts are usually tiered with percentage reduction increasing from general staff upwards to associates and then income partners. Where pay has not been cut, it has been frozen and salary increases and promotions deferred. The resulting impact is an overall reduction in compensation across all categories of stakeholders.



Personnel reduction, freeze, deferral

Some firms have had to reduce staff and paid off such affected members with full entitlement. Others have frozen hiring or deferred any intake of new staff until after the crisis is over. Hiring of associates has been deferred - some until the end of 2020 or into 2021. The number of summer interns being hired has been reduced and sometimes the number of weeks of employment also reduced.

Lay-offs, furloughs

Some firms have temporarily laid-off or furloughed staff especially where local lock-down orders do not permit firms to be open. Often the lawyers can work remotely where they are sufficiently tech-savvy and are not directly affected by lay-offs but it is usually more difficult for administrative personnel and other support staff to work other than in-office. Other firms have opted for flexible arrangements which involve adjusted hours, reduced hours and/or encouraging staff to take accrued vacation leave. One firm offered attorneys a programme of voluntary leave/sabbatical of up to three and six months off work at 30% pay.

Reduction in discretionary spending

Most firms have taken the decision to freeze or reduce discretionary spending and/or undertaken a revision of the firm's budget including a review of certain benefits. Some firm events have been cancelled and non-business-critical projects put on hold so as to lower firm expenditure. Interestingly, medical insurance is one of the items which have been generally retained even for those on temporary lay-off.

Incentives

With an eye to motivating enhanced performance, some firms have retained an incentive programme which offers bonus rewards for exceptional contributions based on individual performance and economic and firm conditions. This encourages personal effort and productivity even in challenging times and helps maintain the corporate message that business continues and helps position the firm for take-off.

These are but some of the austerity measures which different large international law firms have taken in response to the economic slowdown resulting from the coronavirus pandemic. These cost control actions are taken with a view to putting the firm on a better footing until the economy improves. Building financial resilience seems to be an important strategy for firms, including the world's most established and trusted names in the legal industry to use for continuity of services now, and into the other side of the crisis. In the end, each enterprise will have to decide which actions may suit it and in keeping the firm culture and philosophy and in compliance with the law.

This article is intended to provide general information only and is not to be relied on in place of legal advice.

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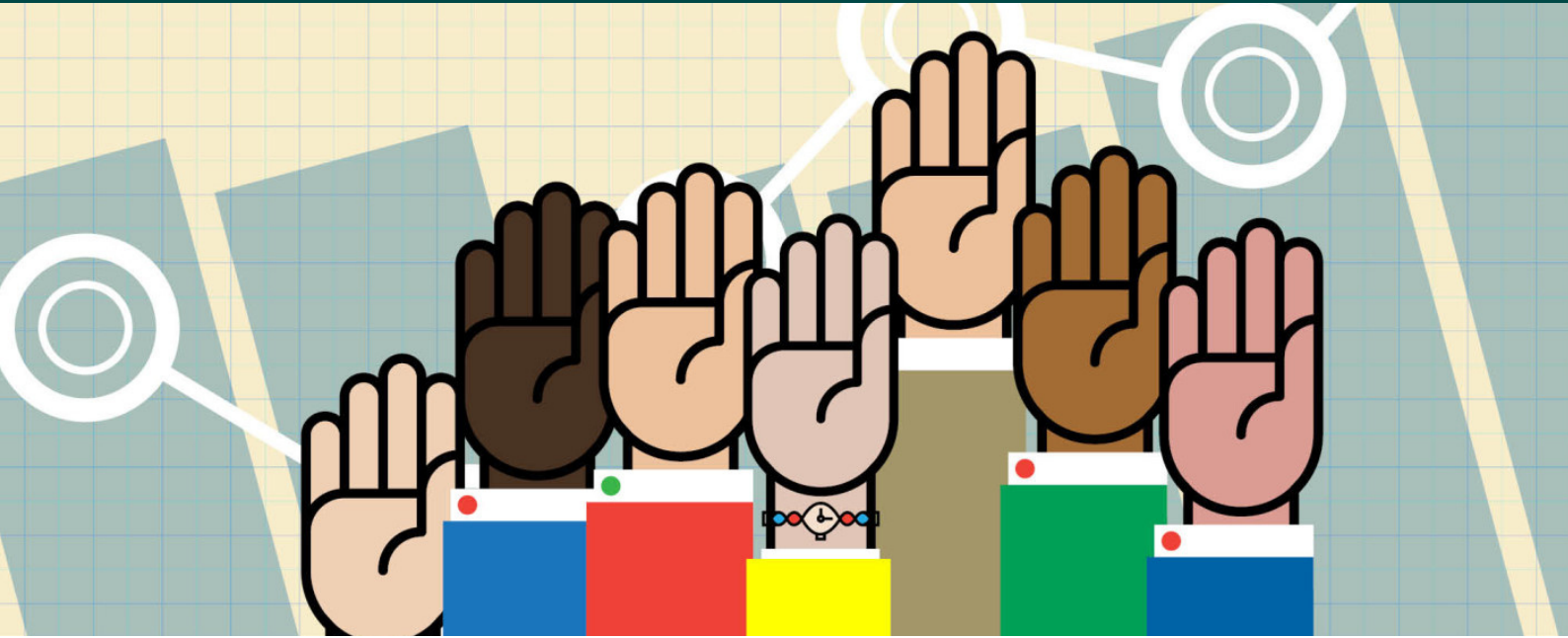
THE LEGAL LANDSCAPE

PODCAST

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Shareholder Rights: A Key Corporate Asset

Contributed by:
Joanne Wood Rattray,
Partner



THE INQUISITOR

Starting a business is a scary prospect. Too often, images of sleepless nights and cliff-hanger financial scenarios, not to mention the difficulty of raising capital, hold back many from taking the plunge. Investing in someone else's business is the more common pathway for satisfying entrepreneurial drive, especially where that business has a proven track record and a multitude of sanguine shareholders.

However, the ins and outs of being a shareholder remain obscure even for many with healthy stock portfolios. Shares represent a slice of the company. A person purchasing shares seeks financial returns (dividends, increasing share prices) on the investment, anticipating that the company will perform well.

However, many shareholders do not view themselves as business owners in the classic sense. Shareholders typically do not participate in management since the law separates ownership and control. Yet, though divorced from a company's day to day management, shareholders have important rights when it comes to corporate decision-making which personify their role as company owners.

Right to access financial records: As owners, shareholders have the right to inspect a company's books and records, and in this way ascertain how well the company is doing.

Right to sue for wrongful acts: Shareholders have the right to sue directors and officers of the company for their misdeeds.

Right to vote: This most important right enables shareholders to participate in corporate decision-making, including the right to appoint directors, make proposals and vote for structural changes such as mergers, acquisitions or liquidation.



Right to attend the Annual General Meeting: The AGM is an annual gathering of a company's shareholders where the directors present the company's annual report and comment on its performance over the year. During the AGM, shareholders may elect new directors, discuss directors' remuneration, and ask questions regarding the company's way forward. The Articles of incorporation usually reserve certain powers to the shareholders to be exercised in general meeting.

Right to transfer ownership: The potential liquidity of shares is a valuable asset. Particularly in publicly listed companies on the Jamaica Stock Exchange, shareholders are able to quickly liquidate their shares into cash.

The directors' overarching duty to act honestly and in good faith is owed to the company. However, the exercise of that duty requires directors to have regard to the interests of the shareholders when determining the best interests of the company, further exemplifying the shareholders role as owners.

Share ownership diverges from the classic business ownership model when it comes to debts and liabilities. Shareholders are not responsible for the company's debts and liabilities since the company is a separate legal entity. By the same token, the company's assets do not belong to the shareholders. Shareholders are not entitled to anything except for the ownership interest signified by their shares. Bear in mind however, if a company is liquidated, creditors are first in line to have their debts paid, then bondholders, and then shareholders.





Investing by purchasing shares is baffling in other ways. Writing recently in the Washington Post, Christopher Marquis noted that though in theory, the stock market reflects rational calculations as shareholders seek financial returns in companies that perform well, bubbles occur that overestimate company values and sudden corrections may jolt the market. Even more perplexing, factors beyond economic fundamentals, like holidays and weekends, weather, and even lunar phases can affect stock market performance. Stocks may surge while the economy flounders, as happens even now during the Covid-19 pandemic.

All of this complicates the outlook for shareholders. Too often, investment for the ordinary purchaser of shares feels like a shot in the dark. Market swings negate any sense of control over their investment save for having the option to sell. In this schematic, the exercise of shareholder rights may feel counter-intuitive. However, as Marquis points out, it is a myth that shareholders cannot make big changes in a company. Significant action, such as by the anti-plastics group that led Starbucks to consider plans to abandon plastic straws, no doubt requires a depth of collective organization. Even minority positions can use their ownership as a platform for changing corporate behavior, especially along environmental, social and governance lines. However, one should not gainsay the potency of individual shareholders to influence outcomes through faithful attendance and voting, well-placed questioning and voicing of views. Fundamentally, shareholders should adjust how they view themselves, shifting from being mere siphons of financial support to seeing their role as integral players in the company's decision-making.

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Webinar Recap

DunnCox in partnership with the Montego Bay Chamber of Commerce and Industry (MBCI) and The University of the West Indies (UWI) Mona Western Jamaica Campus orchestrated a webinar series that was staged once per week for three weeks in July, 2020.

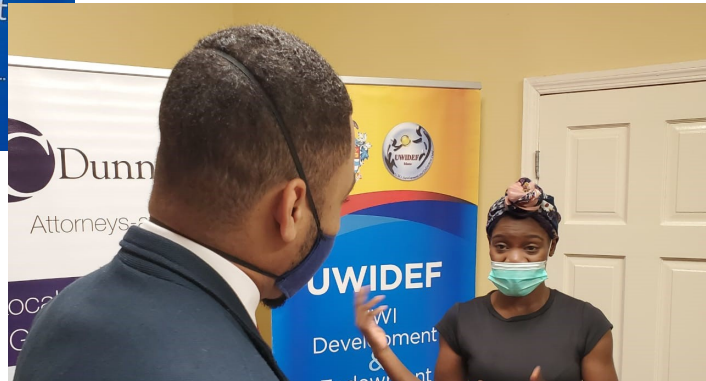
The first session held on July 2, 2020 covered the topical subject of "Managing Occupational Health and Safety Risks amidst the reopening of the Jamaican economy". This webinar was presented by Attorney-at-Law Khadrea Folkes and moderated by MBCI President Janet Silvera.

The second event was entitled 'Managing Visitor-Safety and your workforce' presented by DunnCox Partner Emile Leiba and Associate Paulette Neil. The webinar session was moderated by the 3rd Vice President of the Montego Bay Chamber of Commerce Damia Dawes-Monthrope.

The last webinar event entitled 'Understanding the Modern Data Protection Act (Data Protection Standards, Rights & Obligations)' was presented by Managing Partner Courtney Bailey and Associate Kelly Akin. Both presenters were hosted at the UWI Mona Kingston Campus and the event moderated by Janet Silvera. The event was coordinated by Partner Mr. Jonathan Morgan (Bottom Right), and the firm's marketing officer, Roxann Lewis.

[Click to view recordings of the webinar series](#)





The 2019/2020 DunnCox Law Scholarship was awarded to Ms. Jillanna Blackstock for her outstanding academic performance. The presentation was made by DunnCox Partner, Mr. Jonathan Morgan.

DunnCox Scholarship & Prizes

We are proud of our association with education in the region. DunnCox has over the years supported academic excellence by awarding scholarships, bursaries and prizes to students pursuing Bachelor of Laws degrees at the University of the West Indies and Legal Education Certificates at the Norman Manley Law School.

The DunnCox Law Scholarship is tenable at the University of the West Indies, Faculty of Law, Mona Campus, for a period of two years.

The Scholarship is awarded to an applicant of high academic achievement; good character and excellent leadership qualities. DunnCox has also been a contributor to the U.W.I. Endowment Fund from its inception in 1998. The DunnCox award is presented bi-annually to a Jamaican national who has successfully completed the first year of study leading to the LL.B. degree at the University of the West Indies.

The firm also awards the Michael March Memorial Prize and the H.H. Dunn Prize to Norman Manley Law School students who, in their first year, obtained the best performances in Remedies and Legal Drafting and Interpretation respectively.



The 2019/2020 H.H. Dunn Prize was awarded to Giselle Campbell (left) and the Michael March Memorial Prize recipient Richard Goulbourne (right). The presentation of awards was conducted by DunnCox Associate, Danielle Reid (center).



UNDERSTANDING DATA PROTECTION STANDARDS - PART 1

CONTRIBUTED BY COURTNEY BAILEY | MANAGING PARTNER

The Data Protection Act, 2020 (the DPA) was recently passed by Jamaica's Parliament. After it receives the Royal Assent, it will come into operation on a day to be appointed by the Minister of Science, Energy and Technology by notice published in the Gazette.

The Act's primary obligations are imposed on data controllers. A data controller (as defined in the DPA) is any person or public authority who, either alone or with others, determines the purposes for and manner of processing personal data. In the DPA, personal data means information relating to individuals who are either alive or have died less than thirty years earlier, and who can be identified solely from the personal data in question, or in combination with other information in the data controller's present or likely future possession. Process in relation to personal data is defined in the DPA as obtaining, recording or storing the information or personal data, or carrying out any operation or set of operations on the information or data.

Given the scope of these definitions, many business operators and public authorities will be considered data controllers and therefore will be subject to the obligations imposed by the DPA. Such persons should therefore begin familiarizing themselves with the provisions of the DPA.

In fact, the Act requires data controllers to take all necessary measures to ensure full compliance with its provisions, especially the data protections standards, within two years from when it comes into operation. Additionally, the DPA imposes a duty on data controllers to comply with the Act's data protection standards in relation to all personal data for which they are data controllers. Contravention of any of the data protection standards will be an offence punishable by significant fines or imprisonment.

Given these provisions, data controllers may wish to begin familiarizing themselves with their obligations under the DPA by understanding the data protection standards. This article is the first in a series which seek to provide a rudimentary explanation of the 8 data protection standards established by the DPA and begins by considering the first standard.



The first data protection standard is that personal data must be processed fairly and lawfully.

In the context of the DPA, “fairly” means that the personal data is legitimately obtained, and the individual who is the subject of the personal data (the “data subject”) is informed about the processing. In determining whether personal data are processed fairly the method by which the data are obtained must be considered, including whether the person from which the data are obtained is deceived or misled as to the purpose for processing.

The Act also provides that personal data are not to be treated as processed fairly unless obtained from the data subject directly or from a person authorized in writing to provide it, and the data controller ensures the data subject is provided with specific information. This information includes the identity of the data controller, the purpose of the processing, the expected period of retention of the personal data and the identity of any third party that the data controller contemplates disclosing the data to. This information must be provided at the time when the data controller first processes or seeks the personal data (whichever is first), and in any case before making disclosure to a third party.



“Personal data are not to be treated as processed fairly unless obtained from the data subject directly... and the data controller ensures the data subject is provided with specific information.”



The second element of the first data protection standard, “lawfully”, means that there must be a legal basis for the processing. Section 23(1) of the DPA sets out the different legal bases on which personal data may be processed. Any processing of personal data must satisfy at least one of the following 7 conditions to be lawful:

- the data subject consents to the processing;
- the processing is necessary:
 - for the performance of a contract to which the data subject is a party or for taking of steps with a view to entering into a contract;
 - for compliance with any legal obligation to which the data controller is subject;
 - in order to protect the vital interests of the data subject;



- for the administration of justice, the exercise of any functions conferred by or under any enactment, or for the exercise of any other functions of a public nature exercised in the public interest;
- for the purposes of legitimate interests pursued by the data controller or by any third party to whom the personal data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interest of the data subject;
- the data subject has published the personal data concerned.

Section 22(1)(a) of the DPA provides that personal data shall not be processed unless one of the 7 conditions listed above is met. Accordingly, if a data controller is unable to identify a lawful basis for the processing of personal data from the list above, the processing would be illegal.

It should also be noted that at least one of a different list of conditions must be met for the lawful processing of sensitive personal data, which include information about the data subject's race, political opinions, religious beliefs, health and sex life, and their biometric and genetic data.

Business operators who are data controllers under the DPA, should seek legal advice as to the lawful basis on which they are processing personal data in order to avoid contravention.

This article is intended to provide general information only and is not to be relied on in place of legal advice.

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[Click HERE to read Part 2 & 3 of Understanding Data Protection Standards.](#)

WELCOME TO THE TEAM

DunnCox is pleased to announce that Nickardo M. Lawson (Left), Chantal S. Bennett (Middle) and Danielle A. Reid (Right) have joined the Firm.

Nickardo Lawson joined the firm as the Senior Associate in the firm's Litigation Department. He has local and international experience acting for and advising clients on general civil and commercial litigation matters, with emphasis on corporate governance, contract law, employment law, land law and maritime disputes. Nickardo was called to the bar in Trinidad and Tobago in 2013.

Chantal Bennett also joined the firm as an Associate in its Litigation Department. Chantal has worked in local and international legal spaces, gaining invaluable international law experience, dealing with special economic zones, arbitration, maritime and trade issues and handling areas of corporate governance and commercial law. Chantal was called to the bar in Jamaica in 2015.

Danielle Reid has also been welcomed, as an Associate in the firm's Litigation Department. Danielle practices in a wide range of areas including civil litigation, family law, personal injury and debt recovery matters. Danielle was called to the bar in Jamaica in 2018.



TIS' THE SEASON OF GIVING BACK

The firm has over the years, partnered with the Child Protection & Family Services Agency (CPFSA) as part of its outreach arm, to help meet the recreational needs of the children who reside in the immediate environs of the Kingston office by staging a Christmas Treat.

In light of the Orders under the Disaster Risk Management Act which were passed by the Government of Jamaica and the health concerns surrounding the spread of Covid-19, the format of the treat was modified. The traditional treat would have seen a plethora of entertainment activities, catering and the distribution of gifts. This year, the DunnCox and CPFSA team tailored the event to only issue gifts to the various communities within specified time slots. The event was held over a two day period, December 15 & December 16, 2020. It was met with warm reception and executed successfully.

*Happy Holidays and best wishes
for the new year!*

