

# **Legal and Liability Issues Caused by the COVID-19 Outbreak**

## **– What to Know and What to Do**

Presented by

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# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

### ✦ What constitutes Force Majeure?

- Generally:
  - Force Majeure is, generally, understood as an “event or effect that can neither be anticipated nor controlled”
  - Includes:
    - Acts of nature (e.g. floods and hurricanes)
    - Acts of people (e.g. wars, riots and strikes).
  - Many contracts and jurisdictions contain stipulations on Force Majeure. Often the parties’ liabilities or obligations are exempted, if Force Majeure prevents one or both parties from fulfilling their contractual obligations. Typically, the parties’ non-performance is not exempted entirely, but only suspended for the duration of the Force Majeure event.

# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

### ✦ What constitutes Force Majeure?

- Which law applies when claiming Force Majeure in a contract?
  - Applicable law, generally, depends on the respectively applicable international private law and the provisions of the respective contract
- Common Law
  - No definition of Force Majeure. Force Majeure shall be defined and provided for under the respective contract
  - If a contract does not contain relevant stipulations on Force Majeure, a party may consider whether the contract can be terminated on another legal basis, such as acceptance of a renunciation or by applying the narrow common law concept of “frustration”.
  - In practice, the concept of “frustration” is often very difficult to prove, and it, generally, does not apply in circumstances where performance is simply more difficult or delayed or less profitable
- Civil Law
  - In civil law systems, statutory law (often) provides for stipulations on Force Majeure.
  - I.e., even if the respective contract lacks stipulations on Force Majeure, the concerned party may still be able to refer to relevant stipulations of the statutory law.

# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

### ✦ What constitutes Force Majeure?

- Decisive: check contractual clause
  - How is Force Majeure is defined?
    - Does it expressly cover “epidemics”, “health emergencies”, “governmental actions” or similar occurrences?
  - What are the consequences of Force Majeure under the contract?
  - Are there special requirements (e.g. notices, certificates proving the occurrence of Force Majeure, etc.) and timelines for relying to Force Majeure?
- If no contractual clause – PRC statutory law:
  - Force Majeure are “*objective circumstances which are unforeseeable, unavoidable and unsurmountable*”
  - Notice of PRC Supreme People's Court and court precedents on SARS: SARS and administrative measures to prevent SARS were recognized as Force Majeure
  - Reply from the Legal Working Committee of the Standing Committee of People's Congress on 10 February 2020: “COVID-19 constitutes Force Majeure under the *PRC Contract Law*”
  - However, decisive are the specific details of the situation, of the specific contract and of specific contractual obligations

# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

### ✦ Consequences of Force Majeure

- Statutory PRC law provides for the following consequences in case of Force Majeure:
  - Liabilities shall be exempted in part or in whole in light of the effects of the Force Majeure event, except as otherwise provided by law
  - Contract may be terminated if the purpose of the contract is rendered impossible to achieve due to Force Majeure
  - Limitation of action is suspended if the right of claim cannot be exercised in the last six months of the limitation period due to Force Majeure
  - A party which is not able to perform the contract due to Force Majeure shall give notice to the other party in due time so as to reduce the losses that may be caused to the other party and provide evidence within a reasonable time limit

# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

### ✦ If the threshold for Force Majeure is not triggered

- Unpredictable change of circumstances:

Request the competent court or arbitration institution to modify or terminate the contract, if

- the concerned party suffers from an unpredictable change of circumstances;
- which could not have been foreseen by the parties at the time of the conclusion of the contract
- which is not caused by Force Majeure
- which does not constitute commercial risks and
- if the continuous performance would be obviously unfair to the concerned party

Since under such exceptional circumstances, likely also the threshold for Force Majeure should be triggered, in our view, the above likely will not play a very decisive role regarding the COVID-19 outbreak

# Impact on Contracts

## Does COVID-19 constitute Force Majeure?

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### ✦ What should companies do?

- Evaluate the impact of COVID-19 on your business and contractual obligations
- Inform your contract partners as soon as possible and in writing
- Adopt reasonable measures to mitigate losses
- Collect evidence on the occurrence of the Force Majeure event, adopted mitigation measures, incurred own losses, etc.
- Evaluate possible consequences of the Force Majeure event and what is intended, e.g. termination of the contract, change of the contract with regard to deadlines and delivery dates, etc.
- Discuss and negotiate with your contract partner on how to proceed

### ✦ Get evidence!

- CCPIT issues Force Majeure certificates for international contracts



# Impact on Employers

## Obligations in the prevention and control of virus

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✦ **Adopt protective measures as required by government**

### **! Legal liabilities**

✦ **Pay full salary to employees subject to quarantine measures**

What the employer can ask the employee to do

- Work from home
- Take leave

✦ **Whether the employer will take work-related injury liabilities**

- Is it a work-related injury if an employee is infected with virus during the work?
- Is it a work-related injury if an employee is infected with virus on the way to work?

# Employers-What they can do

## Actions in HR management



### Work from home

- Completion of work
- Confidentiality risks
- Work-related injury risks



### Short-time- work

- Arrange employee to work and rest with rotation
- Shorten the working hours
- Reduce salary
- Collective consultation



### Suspension of work/business

- Suspension of business
- Suspension of work of individual employee



### Arrange flexible working hours for employees

- Take annual leave/rest day
- Adopt comprehensively calculated working time system

# Employers-What they can do

## Actions in HR management

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### Termination of employees

- Mass lay-off
- Termination of employment contract due to change of objective circumstances
- Other statutory termination reasons



### Restrictions on termination of employees

- Employees subject to quarantine measures
- Employees under Article 42 of the PRC Employment Contract Law



### Getting support from government

- Apply for government subsidies for stabilizing employment relations
- Apply for training subsidies
- Apply for delaying payment of contributions for social insurance and housing funds

# Financial and Tax

## Support by the Central Government

### ✦ Import tax exemption for donated supplies

- Foreign-donated supplies for preventing and controlling the COVID-2019 pneumonia (“**Key Supplies**”):

*exempt from import taxes during the period from 1 January 2020 to 31 March 2020*

### ✦ Policies in respect of key protective supplies

- Enterprises producing Key Supplies which acquire new equipment in order to enhance the production capacity:

*cost of equipment deductible in a one-off manner for PRC Corporate Income Tax (“CIT”) purposes*

- Revenues obtained by taxpayers for transporting Key Supplies:

*exempt from VAT*

# Financial and Tax

## Support by the Central Government

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### ✦ Policies supporting adversely affected industries

- Enterprises of such industries as transportation, food serving, catering and tourism:  
carry the tax loss of 2020 forward to the following 8 years, compared with 5 years under the CIT Law, for credit
- Revenues obtained by taxpayers from providing public transportation services, lifestyle services and courier services delivering life necessities:  
exempt from VAT.

### ✦ Policies for donations for preventing and controlling the COVID-2019

- Donating cash and supplies through social welfare organizations, governments at county level or above and other government bodies for preventing and controlling COVID-2019:  
cost fully deductible for CIT or Individual Income Tax ("IIT") purposes
- Directly donating supplies to hospitals which prevent and treat the COVID-2019:  
cost fully deductible for CIT or IIT purposes

# Financial and Tax

## Support by the Central Government

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### ✈ Relevant IIT policies

- Medicines, healthcare supplies and protection supplies offered by employers to employees for prevention of the COVID-2019:

exempt from IIT

### ✈ VAT rate reduction for small-scale enterprise

- Starting from March 1<sup>st</sup> to May 31<sup>st</sup> 2020, VAT of small-scale enterprises in Hubei Province can be exempted
- In other provinces of China, the VAT rate of small-scale enterprise will be reduced from 3% to 1%.

# Financial and Tax

## Support in Shanghai

### ✈ Reduction of financing cost

- Provide preferential interest for key enterprises supporting the prevention of the COVID-2019 :

*Government offers more discounts to ensure corporate loan interest rates lower than 1.6%*

### ✈ Policies in respect of key suppliers to expand production and increase imports

- *50% to 100% of the total project investment as financial subsidies*

### ✈ Support on social security contribution

- Social security contributions can be *delayed for three months after the COVID-2019 epidemic ends with no late payment fee*

### ✈ Postponement of tax declaration

- Postponing tax declarations is permitted in accordance with law, *for a maximum postponing period of no more than 3 months with no late payment fee*

# Financial and Tax

## Support in Shanghai – cont'd

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### ✦ Potential exemption of real property taxes

- Enterprises whose real estate was expropriated by the government and have difficulties in paying the real estate tax and urban land use tax can apply for exemption of the real estate tax and urban land use tax

### ✦ Policies in respect of labor stabilization

- For insured companies which do not lay off staff or reduce layoffs, 50% of the actual unemployment insurance contributed last year can be refunded

### ✦ Policies in respect of training fee allowance

- Subsidy at 95% of the training cost incurred by affected enterprises which organize online training during the epidemic period



# Financial and Tax

## Support in Beijing

### ✈ Reduction of financing cost

- Small-scale enterprises' corporate loan rate reduced by 0.5%
- Guarantee rate for loans granted to small-scale enterprises reduced by 0.5%; to other affected enterprises reduced to lower than 1.5% during the epidemic period

### ✈ Postponement of tax declaration

- Postponing tax declarations is permitted in accordance with law, for a maximum postponing period of no more than 3 months with no late payment fee

### ✈ Support on social security contribution

- Extend the payment period of social security contributions in January and February to the end of March
- For industries in the sectors of tourism, accommodation, catering, exhibitions, trade and distribution, transportation, etc., extended to the end of July with no late payment fees

# Financial and Tax

## Support in Beijing – cont'd

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### ✦ Miscellaneous subsidies

- R&D subsidies for small-scale scientific enterprises in Zhong Guan Village: up to RMB 200,000 per enterprise
- Rental cost allowance up to 70% for key life-style projects
- Social security contribution subsidies up to 50% for 3 months for key medium and small scale enterprises
- Medium and small-scale enterprises purchasing designated online or remote office services: subsidies up to 50% of the contract value and up to RMB 200,000 per enterprise

# Financial and Tax

## Support in Suzhou, Jiangsu

### ✦ Policies in respect of labor stabilization

- For companies that do not lay off staff or reduce layoffs, 50% of the actual unemployment insurance contributed last year can be refunded

### ✦ Support on social security contribution

- The social security contribution period can be extended for maximum 6 months

### ✦ Reduction of financing cost

- Key small-scale enterprises' corporate loan rate reduced by more than 10% of the original rate
- Interest rate of special project loans granted to key enterprises reduced by more than 30% of the original rate

### ✦ Potential financial and tax support for affected small-scale enterprises

- For small-scale VAT payers with monthly sales of less than RMB 100,000 or quarterly sales of less than RMB 300,000, VAT can be exempted
- 50% reduction on resource tax, urban maintenance and construction tax, real estate tax, urban land use tax, stamp tax, cultivated land occupation tax, education surcharge, and local education surcharge
- Enterprises which have difficulties in paying real estate tax and urban land use tax, can apply for exemption of the real estate tax and urban land use tax
- Rental exempted for 1 month and half-reduced for 2 months for leasing state-operated real estate
- Extension of tax filing period of no more than 3 months

# Financial and Tax

## Support in Kunshan, Suzhou, Jiangsu

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### ✦ Supporting policies granted by Suzhou government

- All supporting policies granted by Suzhou government are applicable

### ✦ Specific policies encouraging foreign trade enterprises

- For enterprises that have been affected by the epidemic and received the foreign trade awards of 2020 “Kunshan City's Open Economy High Quality Development Policy Measures”, the original grants awarded will be increased by 20%.

# Financial and Tax

## Support in Taicang, Suzhou of Jiangsu

### ✦ Supporting policies granted by Suzhou government

- All supporting policies granted by Suzhou government are applicable

### ✦ Reduction of port fees

- For heavy containers that entered the port from 00:00 on January 24 to 24:00 on February 9, the free-live period was extended by 20 days

### ✦ Extension of loan credit period for adversely affected medium and small-scale enterprise

- No corporate application is required, banks proactively extend credit period to small and medium-sized enterprises for 3 months

# Financial and Tax

## Support of Zhejiang

### 📌 Policies supporting adversely affected medium and small-scale enterprise

- Real estate tax, urban land use tax can be applied for tax reduction or exemption
- Asset losses of affected small-scale enterprises can be tax deductible
- Postponing tax declarations is permitted in accordance with law, for a maximum postponing period of no more than 3 months with no late payment fee
- Rental exempted for 1 month and half-reduced for 2 months for leasing state-operated real estate
- Loan financing cost reduced on a case-by-case basis

### 📌 Policies in respect of labor stabilization

- For companies that do not lay off staff or reduce layoffs, 50% of the actual unemployment insurance contributed last year can be refunded

### 📌 Support on social security contribution

- The social security contribution can be delayed for three months after the COVID-2019 epidemic ends with no late payment fee

### 📌 Reduction of energy costs

- Electricity, gas and water prices adjusted downwards by 10% for three months

# Thank You!