

# Coronavirus Outbreak

## HR and Commercial Perspectives to Challenges for Business

Presented by

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# Impact on Employers

## Obligations in the prevention and control of virus

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

- Follow the quarantine measures which can be different at different locations
- Take other measures as required by government
  - ✓ Supervise the employees' daily self-check on body temperatures and their health situation
  - ✓ Keep the work environment clean, ventilated and have the work place sterilized

### ✦ **Make report if a virus patient or suspected patient is found**

### ✦ **Cooperate with the competent authority in investigations**

### **! Legal liabilities**

- Administrative liability
- Civil liability
- Criminal liability

# Impact on Employees

## Protective measures, salary treatment and work arrangement

People	Period of Stop of Work	Salary Treatment	Whether can do Work from Home	Whether can Take Leave
Coronavirus patients/suspected patients	To be decided depending on the result of medical examination	Normal salary during the quarantined medical treatment period Sick leave salary during the normal medical treatment period	No	No
Close contacts (people having close contact to the patients or suspected patients or being back from locations other than work places)	Staying at home or a quarantined area for 14 days after the last contact	Normal salary	Yes. No overtime work benefits shall be provided, except if local regulations provide differently for the period of 3 to 7 February such as Shanghai.	Possible to arrange employees in Beijing to take annual leave.  In other locations, companies can do so upon consulting with the employees.  Possible to arrange employees to take rest days first and then work later.
Employees locked out by the quarantine or other emergency measures taken by the government ("locked-out employees")	Until the quarantine or other emergency measures have been removed by the government	Normal salary		
Other employees (including the close contacts or locked-out employees' whose restrictions have been removed)	Until the resumption of operation has been approved by government	Normal salary		
	Until the resumption of operation by the company	Normal salary Living allowance if the work is stopped for more than one month	No if the business has been suspended.	No if the business has been suspended.

# Employer-What they can do

## Actions in HR management

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 **Properly handle the employment relationships with the employees affected by coronavirus**

 **Flexibility in work**

- Arrange employees to work in a flexible way
- Arrange the flexible working hours for employees
- Work from home
- Take annual leave/rest day

 **Suspension of work/business**

- Suspension of business
- Suspension of work of individual employee

 **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

# 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
  - 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?

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### ✦ 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
  - 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

# Q&A

**Thank You!**