Coronavirus Outbreak:
How to Address
Key HR & Commercial Issues

February 19, 2020
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Section 1

Introduction
Coronavirus Outbreak Cases in China – By Province

NOTE: 25 other countries have reported coronavirus cases, with cases reported being in the 1-9 or 10-99 range for each country.

Source: South China Morning Post
Coronavirus Outbreak

Cases in thousands

Day 1 96

DAILY CASES

DAILY DEATHS

2019-nCov

Sars

70,000+ Cases
2.2% Fatality Rate

8,437 Cases
10% Fatality Rate

2,494 Cases
34.4% Fatality Rate

34,453 Cases
43.9% Fatality Rate

Source: South China Morning Post
Official Response

- **Jan. 23**: Wuhan quarantine
- **Jan. 30**: WHO declares PHEIC
- **Feb. 8**: Xi Jinping visits Beijing hospitals / treatment centers
- **Feb. 13**: Top party officials in Hubei dismissed

**Chinese New Year**
*Jan. 24-30*

**Extended**
*Jan. 31-Feb. 2*

**Work limitations**
**Local Government Policy**

**Limited work resumption**

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**Week 1**
*Jan. 20-26*

**Week 2**
*Jan. 27-Feb. 2*

**Week 3**
*Feb. 3-10*

**Week 4**
*Feb. 10-16*

**Week 5**
*Feb. 17-21*

**Other economic policies introduced at national and local-level**

- **Jan. 24**: MOHRSS and NDRC announce economic policies
- **Feb. 6**: MOF announces “Phase 1 Trade Deal” tariff cuts
- **Feb. 10**: PBOC announces RMB 300 billion re-lending program

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**Feb. 9 – Death toll surpasses SARS**

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Other details:
- **Jan. 23**: Wuhan quarantine
- **Jan. 30**: WHO declares PHEIC
- **Feb. 8**: Xi Jinping visits Beijing hospitals / treatment centers
- **Feb. 13**: Top party officials in Hubei dismissed
- **Chinese New Year**: Jan. 24-30
- **Extended**: Jan. 31-Feb. 2
- **Work limitations**
- **Local Government Policy**
- **Limited work resumption**
- **Feb. 9 – Death toll surpasses SARS**
Impact on Businesses

Source: British Chamber of Commerce; Business Sweden
Impact on Businesses

**Human Resources**
- Mandatory or self-imposed company closure
- Reduced staff
- Remote working conditions

**Travel**
- Domestic travel concerns
- Cross-border travel restrictions

**Economic**
- Difficulties in meeting contractual obligations
- Reduced sales and/or production

**Supply Chain & Logistics**
- Capacity
- Pricing
Impact on Businesses

- **Human Resources**
  - Staffing shortages: 23%
  - IT challenges from working remotely: 25%
  - Shortage of necessary medical supplies: 28%
  - Costs of HR compliance: 29%
  - Global travel disruptions: 38%
  - Inability to meet contractual delivery deadlines: 20%
  - Financial challenges: 36%
  - Uncertainty / inability to make business decisions: 39%

- **Economic**
  - Decreased demand for products / services: 56%
  - Increased demand for products / services: 4%

- **Supply Chain & Logistics**
  - Global supply chain disruptions: 10%
  - Local China supply chain disruptions: 22%
  - Other: 16%

Source: British Chamber of Commerce
Section 2
Human Resources
Mandatory Closures & Re-openings By Province

Most Common
- Feb. 3
- Feb. 10

Special Policies
- Feb. 14
  official date in Hubei, many cities still Quarantined – marked in red
- Feb. 15
- Feb. 17
- To be notified
- Enterprises adopt flexible work mechanism
Work Arrangements

**Expected Re-Opening of Offices**  
*(during week of)*

- Don’t know: 17%
- Offices not closed: 13%
- Feb. 3: 5%
- Feb. 10: 37%
- Feb. 17: 15%

**Expected Return to Normal Operations**  
*(within month of)*

- Don’t know: 27%
- Feb. 23: 23%
- Mar.: 31%
- Apr.: 11%
- May: 8%
Work Arrangements

- Implemented work from home: 87%
- Implemented flexible working hours: 37%
- Temporarily suspended operations in China: 17%
- Sent foreign nationals overseas to work from outside China: 6%

Source: British Chamber of Commerce
Work Arrangements In Practice

- Work From Home
- Flexible Working Hours
- Suspension of Operations
- Annual Leave
Work Arrangements Government Regulations

National-Level Regulations

PRC Labor Law
Notice on Properly Handling Labor Relationships during the Prevention and Control of Pneumonia Epidemic of New Coronavirus Infection

Local-Level Regulations

(local interpretation)
Safeguarding the Stabilization of Employment Relationships during the Period of Prevention and Control of Coronavirus (Beijing)
Work From Home

**Defined (PRC Labor Law)**

- *PRC Labor Law* does not cover “work from home” as a mode of work
- In practice many companies already adopted “work from home” as a mode of work

**Regulations During Epidemic (Local – Beijing)**

- Specifically notes work from home by means of telephone and Internet as **encouraged** during epidemic
- Deemed as employee doing full time work and company **MUST** pay normal salary under such arrangement, except if employee agrees otherwise
Flexible Working Hours

**Defined** (PRC Labor Law)

- Employees can constantly work for a certain and rest for another certain period
  - Average working hours during a certain period (i.e. one month, one quarter or one year) cannot surpass 8 hours per day
- Company does **NOT need to pay overtime** payments to the employees
- Only applicable to **certain industries** that require employees to work constantly or can be impacted by seasons
- Subject to the **approval** of competent labor administration authority

**Regulations During Epidemic** (Local – Beijing)

- Companies **CAN** adopt the comprehensively calculated working time system for employees during epidemic period
- In certain cases **DOES require approval** of competent labor administration authority during epidemic period
Suspension of Operations

Suspension of Business

V

Suspension of Individual Employee(s)
Suspension of Operations Business

**Defined**  (special case not addressed in PRC Labor Law)

➢ After expiration of government-mandated temporary work stoppage, companies **CAN decide (at their own discretion)** whether to resume or suspend business operations depending on status of prevention and control of coronavirus and / or economic feasibility

**Regulations During Epidemic**  (National-Level)

➢ Companies **MUST compensate employees** and employee compensation will depend on when company resumes operations:

<table>
<thead>
<tr>
<th>Resumes operations within 1 month or suspends operations for no more than 1 month</th>
<th>Does not resume operations within one month or suspends operations for more than one month</th>
</tr>
</thead>
</table>
| Normal salaries  
*all employees* | Living allowances  
*employees who do not work* |
Suspension of Operations Living Allowance

Living allowance will be **set by specific locations** and different locations may adopt different standards of such living allowances:

<table>
<thead>
<tr>
<th>Location</th>
<th>Living Allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shanghai</td>
<td>No less than the minimum wage in Shanghai</td>
</tr>
<tr>
<td>Beijing</td>
<td>No less than 70% of applicable minimum wage in Beijing</td>
</tr>
<tr>
<td>Jiangsu</td>
<td>No less than 80% of applicable minimum wage at the location</td>
</tr>
<tr>
<td>Zhejiang</td>
<td>No less than 80% of applicable minimum wage at the location</td>
</tr>
<tr>
<td>Guangdong</td>
<td>No less than 80% of applicable minimum wage at the location</td>
</tr>
</tbody>
</table>
Suspension of Operations Individual Employee(s)

Defined (Local – Beijing)

➢ If an employee is unable to come back to work for an extended period, company **CAN suspend work of employee**
➢ **Requires consultation** with employee prior to suspending work

Regulations During Epidemic (Local – Beijing)

➢ If work of employee is suspended because employee is unable to return to work for an extended period, company **MUST pay living allowance** of no less than 70% of the Beijing minimum wage during suspension period
➢ May be difficult to implement because consultation with employee is required prior to suspension of work
Annual Leave

**Defined (PRC Labor Law)**

- 5-15 days annual leave based accumulative working period with all employers
  - In most of the foreign invested companies, employees enjoy more annual leave than the statutory minimum
- Companies **CAN arrange employees to take annual leave** in consideration of operational needs and willingness of employees
- Law does not address situation where employees are not able to go to work during quarantine or lock out period as required by the government, company can arrange such employees to take annual leave or not

**Regulations During Epidemic (Local – Beijing)**

- Companies **CAN** arrange annual leave for employees who are **not able to duly come back to work due to coronavirus**
Section 3
Commercial Issues
Economic Impact SARS – 2003

Real GDP Growth Rate (China)

GDP growth dropped 2% during SARS

Post SARS Recovery

Q1 2002: 8.9%
Q2 2002: 8.8%
Q3 2002: 9.5%
Q4 2002: 9.1%
Q1 2003: 11.1%
Q2 2003: 9.1%
Q3 2003: 10.0%
Q4 2003: 10.0%
Q1 2004: 10.5%
Q2 2004: 11.5%
Economic Impact SARS - 2003

Transportion: -5.4
Financial: -3.6
Food & beverage: -3.6
Industrial: -2
Construction: -1.7
Agriculture: -1.1

Decrease in Real GDP Growth Rate (China)

Source: National Bureau of Statistics; Bain & Company
Estimated Economic Impact Coronavirus

“This is scarier than the epidemic itself”

Huang Qifan
Vice Chairman of the National People’s Congress Financial and Economic Affairs Committee

Source: Bain & Company
Estimated Economic Impact Coronavirus – On Sales & Production

Sales

Short-term impact

Mid-term impact
(3-6 months, projected)

Production

Short-term impact

Mid-term impact
(3-6 months, projected)

Source: Business Sweden
Estimated Economic Impact Coronavirus – By Industry

Long Term Impact Still Unknown

Source: Business Sweden
Contractual Fulfillment
**Force Majeure** Definition

**Principles of International Commercial Contracts** (Article 7.1.7)

- Non-performance by a party is excused if that party proves **non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken impediment into account at time of conclusion of contract or to have avoided or overcome it or its consequences**

- When impediment is only temporary, excuse shall have effect for such period as is reasonable having regard to effect of impediment on performance of contract

- Party who fails to perform **MUST give notice to other party** of impediment and its effect on its ability to perform – if notice is not received by other party within a reasonable time after the party who fails to perform knew or ought to have known of impediment, it is liable for damages resulting from such non receipt

- A party from exercising a right to terminate the contract or to withhold performance or request interest on money due

*NOTE: Based on international practice, force majeure usually includes natural disasters (fire, earthquake, flood, hurricane, drought) and contrived events (wars, terrorism, strikes, riots, government orders) - contracting parties can agree on and detail the situations and events of force majeure in the contracts*
**Force Majeure** China Law

**PRC General Principles of Civil Law**

*Article 153*

- Parties **MAY terminate contract** if force majeure has frustrated the purpose of the contract
- **Civil liability shall NOT be borne** for failure to perform contract or damage to a third party if it is caused by force majeure, except as otherwise provided by law

**PRC Contract Law**

*Article 117*

- Depending on extent of force majeure, performing party shall be **partially or wholly excused from liability**, except where laws provide otherwise
- Where force majeure occurs after a party has already been late in performing an obligation, said party will not be excused from liability
- Party shall immediately **notify other party** in order to reduce potential losses sustained by other party, and said party shall also provide evidence of force majeure **within a reasonable time**
**Force Majeure Extent of Liability**

Force majeure events do not necessarily exempt whole liabilities for breach of contract. Liability exemption should be dealt with differently depending on the extent of force majeure.

<table>
<thead>
<tr>
<th><strong>Impossible to perform contract</strong></th>
<th><strong>Can partially perform contract</strong></th>
<th><strong>Temporarily prevents performing contract</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Contract should be <strong>terminated</strong> and liabilities for breach of contract should be exempted</td>
<td>➢ Parties can <strong>amend</strong> contract terms and partially exempt liabilities for breach of contract</td>
<td>➢ Parties can plan for <strong>delayed</strong> fulfillment and performing parties should be excused from liabilities for overdue fulfillment</td>
</tr>
<tr>
<td>➢ If delayed performance has already occurred before force majeure event, above liability exemption will not apply</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Force Majeure** Enforcement During SARS – 2003

Chinese courts and arbitration bodies judged this kind of epidemic as force majeure in many cases. Supreme People’s Court issued a notification – in event that the non-fulfillment of contract results from SARS or prevention measures taken by government, the related contract disputes should be dealt with according to provisions of force majeure.

In some cases, certain courts did not support application of force majeure because government’s actions were deemed to have only partially affected business activities of breaching parties and did not directly or radically trigger non-fulfillment.
<table>
<thead>
<tr>
<th><strong>Actions To Be Taken By Seller</strong></th>
<th><strong>Actions To Be Taken By Purchaser</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Assess impact on contract performance</td>
<td>➢ Check with suppliers whether their production and operation have been affected by coronavirus outbreak and whether the contract performance will be affected – be prepared in case that buyers need to purchase from other channels or slow down their own production and operation accordingly</td>
</tr>
<tr>
<td>➢ Determine whether provisions in terms of force majeure are applicable and whether to terminate or change contracts</td>
<td>➢ In event that buyers / service receivers have foreseen that it is impossible to fulfill the contracts due to the coronavirus outbreak, buyers / service receivers can also take initiative to send notices on contract termination to suppliers</td>
</tr>
<tr>
<td>➢ Take immediate and effective measures to prevent increase in losses</td>
<td>➢ If the situation results in buyers / service receivers’ failure in receiving goods or services, or making payment, buyers / service receivers should send notices to suppliers as soon as possible</td>
</tr>
<tr>
<td>➢ Obtain <strong>Certificate of Force Majeure</strong></td>
<td></td>
</tr>
<tr>
<td>➢ Send written <strong>notices</strong> to buyers / service receivers as soon as possible to confirm facts and propose appropriate solutions</td>
<td></td>
</tr>
<tr>
<td>➢ Proactively negotiate with buyers / service receivers and prepare for potential litigation</td>
<td></td>
</tr>
</tbody>
</table>
Force Majeure Certification

**Certification Body** (in China)

- China Council for the Promotion of International Trade (CCPIT)
- As of January 30, CCPIT created an [online certification platform](https://example.com) (here) for proof of facts related to force majeure

**Required Application Materials**

- Certificates / announcements issued by local governments or institutions
- Notices / certificates on delay or cancellation of sea, land or air transportation
- Export sales contracts, cargo booking agreements, freight forwarding agreements, customs declarations, etc.
- Other related materials
Government Support
Government Support Programs

- National Level Regulations
- Local-Level Regulations
# Government Support Programs

**Social insurance premium calculation shifted**
- Annual adjustment of social security payment postponed from April to July

**Increase in losses carry over period**
- Longest carry-over period for FY2020 losses incurred by companies in difficult industries affected by coronavirus extended from 5 to 8 years

**Financial support**
- PBOC arranged special loan of RMB 300 billion to support financial institutions in providing preferential interest rate loans to key enterprises for epidemic prevention and control
- Local governments and financial institutions should support SMEs with emergency financing
- Government has made available funds to local governments and financial institutions to provide loans to businesses
- Corporate financing and guarantee fee rates decreased
**Government Support Programs National-Level**

### Tax filing deadline extension

- Tax filing deadline for month of January **extended from February 17 to February 28**

### VAT exemption

- Taxpayers that are providing **certain services** may be exempt from VAT starting Jan. 1, 2020:
  - Public transport
  - Living services
  - Express delivery services

  **NOTE:** Living services include cultural and sports services, education and medical services, tourism and entertainment services, and catering and accommodation services

- Applying for VAT exemption is dependent on company’s clients and certain requirements stipulated by tax authorities:
  - No VAT special fapiao shall be issued, **only VAT general fapiao**
  - When issuing a VAT invoice, select **“tax exemption” as tax rate**
  - In case fapiaos were issued in January, this income can be exempted from VAT if:
    - If issued VAT special fapiaos by the taxpayer can be changed to a VAT general fapiao
    - It can be exempted from VAT
### Government Support Programs: Local-Level – Beijing

<table>
<thead>
<tr>
<th>Tax payment deferral</th>
<th>SMEs that have difficulty in tax filing and payment due to coronavirus can apply for <strong>deferred tax payment for up to 3 months</strong></th>
</tr>
</thead>
</table>
| Reduced rent         | SMEs that lease the state-owned assets in Beijing can be:  
  ▪ **Exempted from February rent** on assets  
  ▪ Reduce February **rental fee by 50%** for office  
  Qualifying SMEs must:  
  ▪ Resume or stop their production and operation activities in accordance with government requirements or epidemic prevention regulations and do  
  ▪ **Not lay off employees** or have few layoffs |
| Financial support    | **Increase inclusive loans** for small and micro enterprises,  
  **Extend repayment period** of loans for SMEs in difficulty  
  **Reduce financing costs** for SMEs by:  
  ▪ Introducing Loan Prime Rate (LPR) pricing benchmarks  
  ▪ Expanding direct financing channels for SMEs  
  ▪ Other programs |
Government Support Programs  Local-Level – Beijing

**Unemployment insurance refund**
- Insured companies that are found in temporary difficulty and do not lay off employees or minimize the layoffs can get a refund of unemployment insurance premiums

**Social insurance subsidy**
- As of April end – if the average number of employees in a Beijing enterprise has increased by up to 20 percent (excluding 20 percent) from the previous year
  - Company can get a one-time subsidy of 30 percent of 3 months’ social insurance premiums
- As of the end of April – if the average number of employees in the enterprise has increased by 20 percent or more compared with the previous year
  - Company will be given a one-time subsidy of 50% of social insurance premiums of 3 months

**Training subsidy**
- Provide SMEs other subsidies for employee training and purchasing of teleworking service products
Section 3

Key Considerations
Key Considerations

- Human Resources
- Supply Chain & Logistics
- Market Conditions
- Financial Management
Key Considerations

<table>
<thead>
<tr>
<th>Human Resources</th>
<th>Supply Chain &amp; Logistics</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Invest in staff and talent</td>
<td>➢ Monitor your supply chain closely</td>
</tr>
<tr>
<td>▪ Make safety and well-being of staff a priority</td>
<td>▪ End-to-end supply chain review and alternative sourcing options</td>
</tr>
<tr>
<td>▪ Invest in and retain key staff</td>
<td>▪ Supplier shutdowns</td>
</tr>
<tr>
<td>➢ Ensure any changes in staff policy are compliant (e.g. suspension of operations, etc.)</td>
<td>▪ Traffic / logistics delays and suspensions</td>
</tr>
<tr>
<td>▪ Labor Law and local regulations</td>
<td>▪ Delivery challenges</td>
</tr>
<tr>
<td>▪ Payroll</td>
<td></td>
</tr>
<tr>
<td>▪ Social insurance and special programs</td>
<td></td>
</tr>
<tr>
<td>➢ Prepare for future HR needs</td>
<td>➢ Create sufficient buffer where possible</td>
</tr>
<tr>
<td>▪ Difficult times can cause talent to become available – plan now and look to acquire new talent as becomes available</td>
<td>▪ Raw materials</td>
</tr>
<tr>
<td></td>
<td>▪ Inventory</td>
</tr>
</tbody>
</table>
## Key Considerations

### Market Conditions

- Realign business operations, as needed, to respond to changing conditions
  - Product offerings
  - Commercial organization and structure
  - Partners
  - Marketing

- Proactively update M&A and partnership plans and carefully consider valuations / due diligence in a changing market
  - Acquisitions
  - Divestitures
  - Partnerships

### Financial Management

- Incorporate changes in market conditions into 2020 budget
  - Revise revenue forecasts
  - Rebalance or cut costs (e.g. procurement or HR cost savings, etc.)
Resources for the Asia Investor

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