



SARS-COV-2 Legal Consequences for Chinese-invested Businesses

Introduction. Due to the occurrence and spread of the new corona virus, which has meanwhile been scientifically labelled "SARS-COV-2", and the related global preventive steps, Chinese-invested businesses are already experiencing the economic repercussions. Only some two months after its discovery, the virus is already impeding international trade and causing uncertainty amongst the affected business community. Far beyond the confines of Hubei province or China itself, regulatory response measures are disrupting supply chains and jeopardizing contractual relationships in many countries and across all industries. China's entanglement in the global trade matrix, oftentimes providing key components or assembling products to satisfy global demand, has already had a significant impact on the businesses of some of our China Clients. With regard to, for example, the extension of the Spring Festival holidays until 9 February 2020, the entire PRC economy has been alloyed, already in the first quarter of the year. Currently, experts are expecting a drop in GDP growth for 2020 by 1-2 % for the PRC, with plenty of room for an aggravation of circumstances. With new developments arising every day, this newsletter outlines the major consequences of SARS-COV-2 from a legal point of view and offers our Clients a vantage point to gage their own exposure to impending legal risks.

Labour Law. Alongside the questions pertaining to supply chains and contractual obligations, another cornerstone in the legal dimension of the SARS-COV-2 outbreak is labour law. As regards the Chinese perspective, there have been a number of immediate consequences of SARS-COV-2, put forward by provincial, regional and state departments of the Chinese government, oftentimes applying in parallel. These authoritative directives immediately impact the operation of businesses and the relationships between employers and workers in affected areas. The longer administrative closures of factories and similar directives prevail, the more significant this impact will be. In the current situation, what needs to be considered from the perspective of labour law is twofold:

- (1) the protection of the workforce from health hazards related to SARS-COV-2 and
- (2) the consequential business disruptions caused by the imposed preventive measures.

The Ministry of Human Resources and Social Security ("*MOHRSS*") is the responsible authority for the surveillance of the developments on a national level in China. It also governs the implementation with regard to national immediate response measures, such as business shutdowns, due to SARS-COV-2. Regulations vary from province to province, depending on their respective exposure and additional local regulatory measures. Currently, most provinces have decided to subject the re-opening of businesses after 9 February 2020 to the application

of a respective permit from the provincial administrative bodies. A “*White List*” with exceptions to the imposed suspension of operation only comprises businesses, which are vital for the population or involved in the prevention of the spread of SARS-COV-2.

Businesses who wish to re-open will, depending on the region, have to comply with a number of requirements (e.g. submit detailed plan of resumption of work, risk plans, commitment letters, etc.), which are all aimed at preventing further spread of SARS-COV-2, raising awareness and distributing responsibilities and liabilities amongst the parties. For this reason, it is important to understand that the Chinese authorities consider the combat of SARS-COV-2 a top priority, the responsibility for which lies with the executive arm of every operative business in China. For companies situated in China, It is therefore recommended to create an “*emergency task group*” at management level, which oversees the implementation of the ordained preventive measures and ascertains compliance with any current or upcoming authoritative requirements.

Constant surveillance of the health status of employees/workers is a standard requirement, which in some provinces is even monitored via a mobile App particularly created for this purpose. These obligatory preventive measures also include the provision of protective gear (surgical gloves, facemasks, bodysuits, etc.) to staff, regular temperature scans and immediate reporting of any suspected or confirmed infections to the authorities.

Where PRC law is applicable to a labour contract, if an employee/worker was unable to work as a consequence of the SARS-COV-2 counter-measures (e.g. the extension of holidays until 9 February 2020), the individual must be compensated according to PRC labour laws. This also includes individuals who were unable to work because of being personally affected by the virus. These employees/workers will be entitled to continued remuneration for sick leave. Individuals who have worked during the (additional) “days of rest”, as administered until 9 February 2020, will be entitled to the compensation regime for public holidays provided by law (i.e. 200 % salary, compensatory time off, etc.). Employees/workers who did not return to their workplace after 9 February 2020 for reasons in connection with SARS-COV-2 (e.g. travel restrictions, responsibility for children, quarantine, curfews) will be eligible for continued remuneration during these times. Particularities might occur, if PRC labour law is not applicable to a certain labour agreement, as might be the case with foreign workers posted in China. We therefore recommend to examine each case individually, in light of the applicable laws and jurisdictions in order to ascertain compliance with labour law.

Supply Chain and Contractual Obligations. Directly related to the disruptions of business and production caused by SARS-COV-2 is the rupture of supply chains, especially in tightly knit trading branches. Industries like the automotive or electronics industry in particular are experiencing severe difficulties in maintaining smooth operations as a consequence of a shortage in supplies. Here, even a single day of delay can have severe, sometimes dramatic consequences for the prosperity of a business. In these scenarios, with potentially high commercial damages looming, it is important to evaluate current obligations carefully from a legal point of view, in order to decide on the right course of action. It is equally vital to suspend or reconsider the formation of new contracts (with new obligations) until the global situation with regard to the spread and consequences of SARS-COV-2 has become more predictable.

Force Majeure. If an obligation can no longer be fulfilled by a contractual partner due to SARS-COV-2 consequences, the question arises, who bears the commercial risk and the legal liability for such events. Most commercial agreements will contain a “*force majeure*” clause that provides guidance on the mutual rights and obligation in case of a global crisis or other unforeseen events beyond the control of either party. A *force majeure* clause is thus a provision in a contract that excuses a party from not performing a contractual obligations that has become impossible or impracticable, due to an event or effect that the parties could not have anticipated or controlled. Normally, *force majeure* clauses will suspend obligations during the time of the *force majeure* event and exclude any liabilities for damages in connection with the inability to perform an obligation. It usually also includes the right to terminate the contract, if the event persists beyond a certain time frame (e.g. one year). Whether or not such clauses exist in your agreements, if they can be applied to the SARS-COV-2 situation and what its exact legal consequences are will also have to be examined on a case-by-case basis.

Improper Performance of an Obligation. Whenever a *force majeure* clause does not exist or not contain any applicable provision with regard to the outbreak of SARS-COV-2, the question remains, which party will have to “*take the hit*”, from a commercial and legal point of view. On the supply chain, there is a high potential for (consequential) damages in all directions: Suppliers, who cannot be paid, because the own production has been suspended and revenues dwindle. Buyers, who are waiting for their merchandise or product components in order to uphold their own production or sell to retailers and consumers cannot maintain their operation. The ripple effect of these disruptions in supply chains can potentially have an enormous and long-ranging effect on the global community. Examining and consolidating the supply chains should therefore be a core priority of all impacted industries, particularly the ones in which Chinese suppliers or buyers play a vital role for the sustenance of the business. The legal implications of improper performances of contractual obligations due to the SARS-COV-2 outbreak thus pose a big risk to affected companies in and outside of China with potentially severe repercussions. Business owners and managers should thus review their contracts with affected suppliers and customers in detail and prepare a legal strategy to deal with any arising commercial risks.

If you wish to discuss your personal exposure to legal risks in connection with the global SARS-COV-2 crisis, we invite you to reach out to us at snb@snblaw.com for an assessment of your situation.