

Coronavirus Outbreak: How to Address Key HR & Commercial Issues

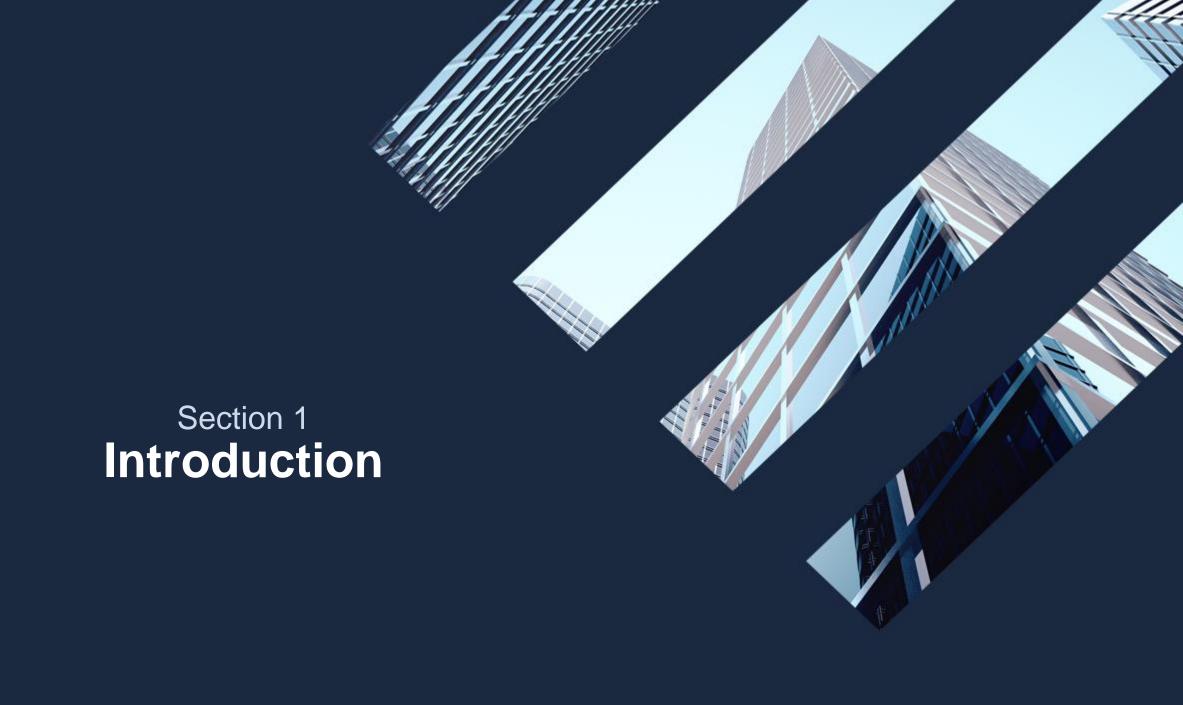
February 19, 2020



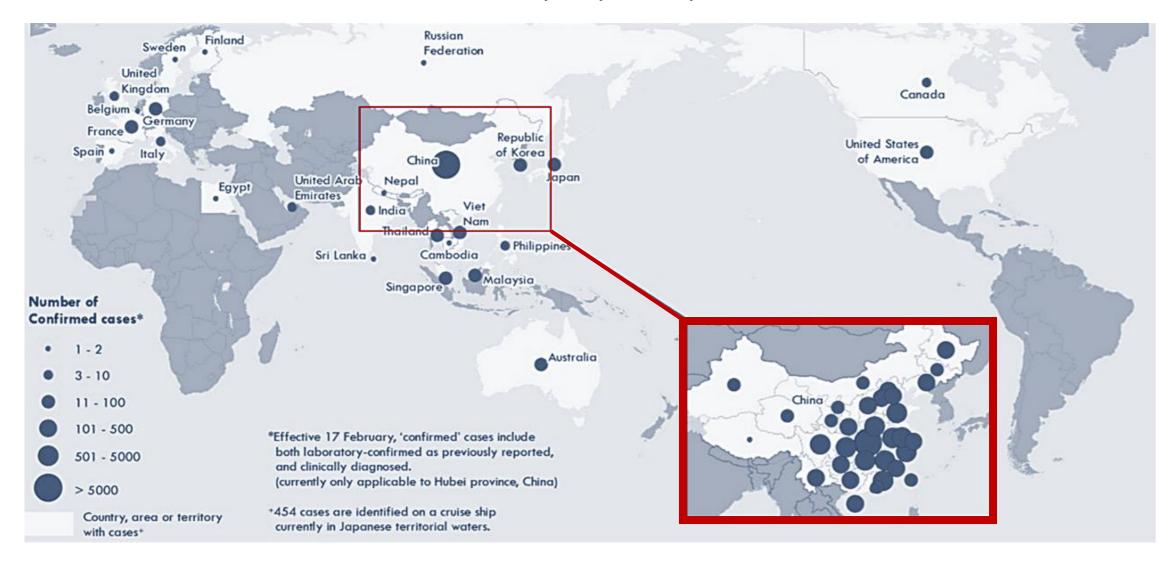


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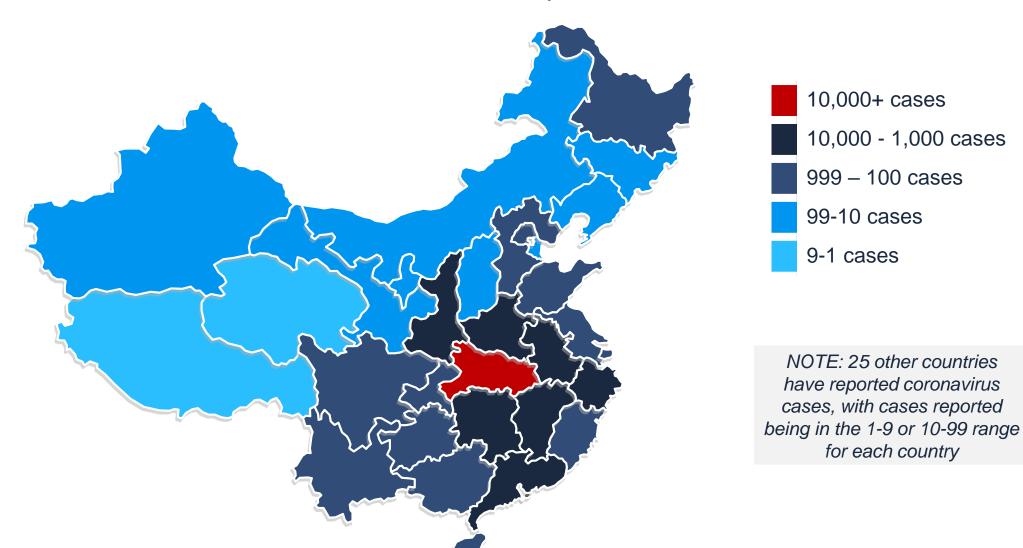
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Coronavirus Outbreak Cases Globally – By Country

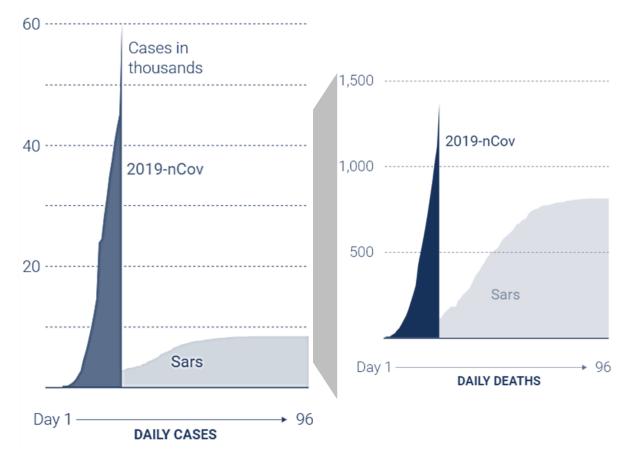


Coronavirus Outbreak Cases in China – By Province





Coronavirus Outbreak



2019-nCov Identified: 2020



70,000+ Cases2.2% Fatality Rate

Mers Identified: 2012



2,494 Cases34.4% Fatality Rate

Sars Identified: 2003



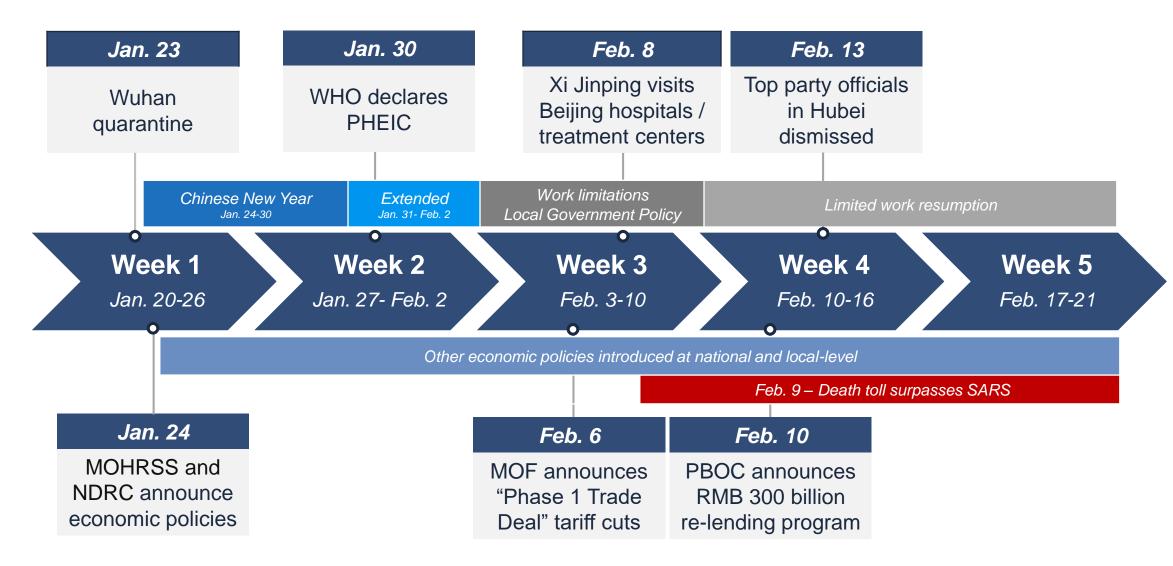
8,437 Cases10% Fatality Rate

Ebola Identified: 1976

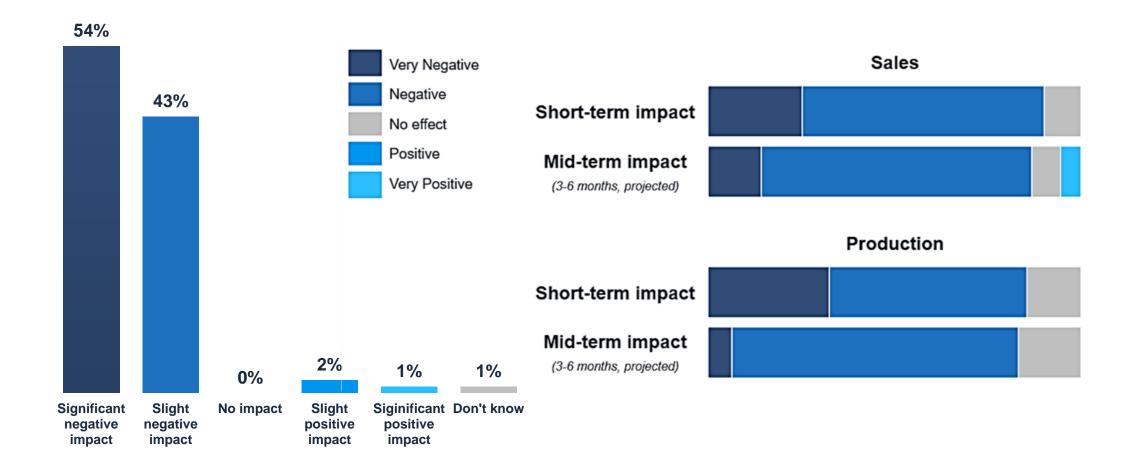


34,453 Cases
43.9% Fatality Rate

Official Response



Impact on Businesses



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

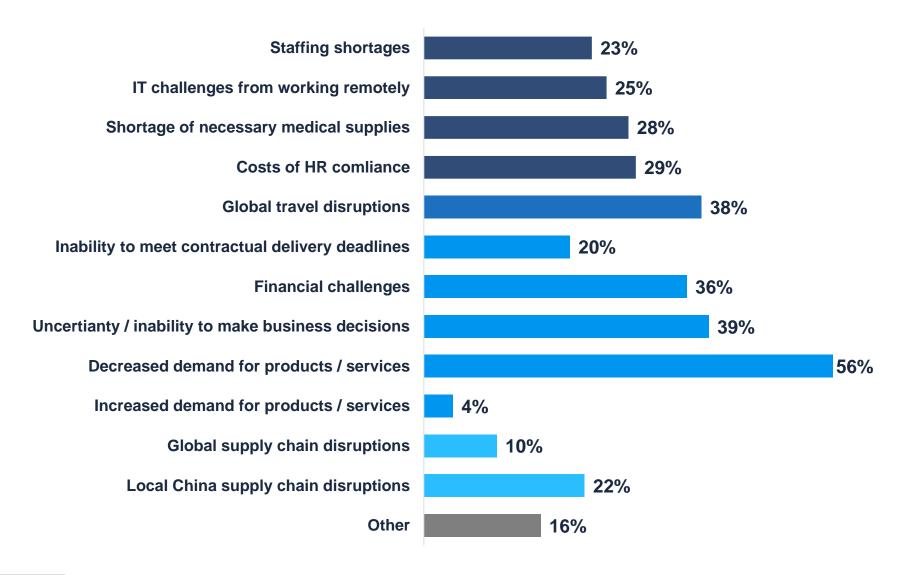
Impact on Businesses

Human Resources

Travel

Economic

Supply Chain & Logistics





Mandatory Closures & Re-openings By Province

Most Common

Feb. 3

Feb. 10

Special Policies

Feb. 14

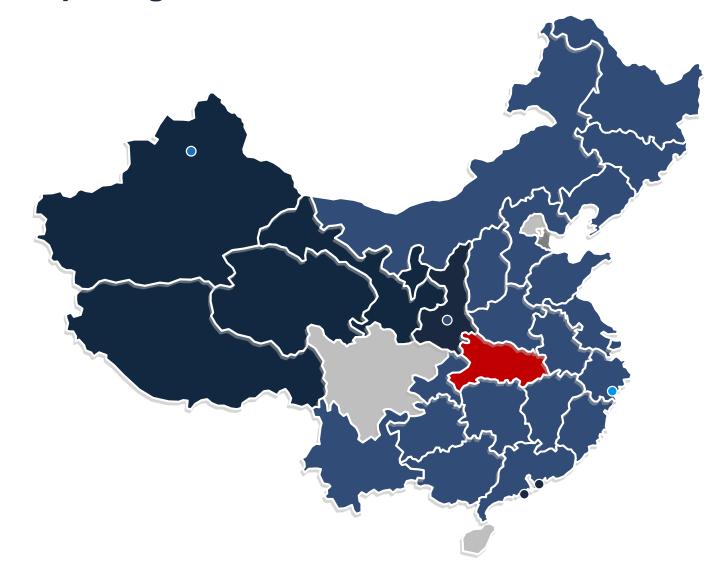
official date in Hubei, many cities still Quarantined – marked in **red**

Feb. 15

Feb. 17

To be notified

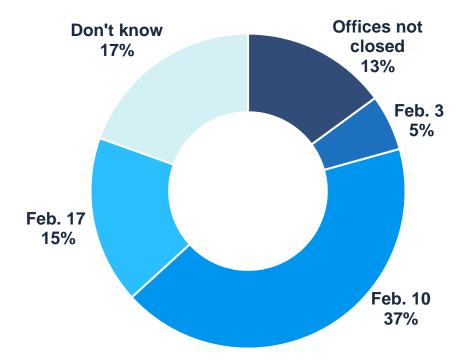
Enterprises adopt flexible work mechanism



Work Arrangements

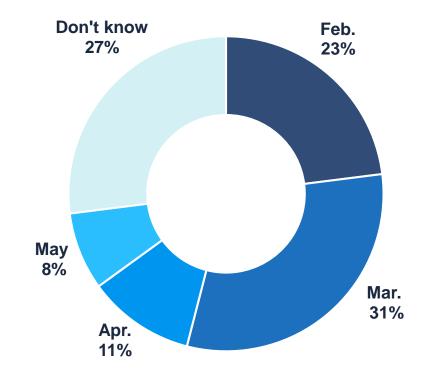
Expected Re-Opening of Offices

(during week of)

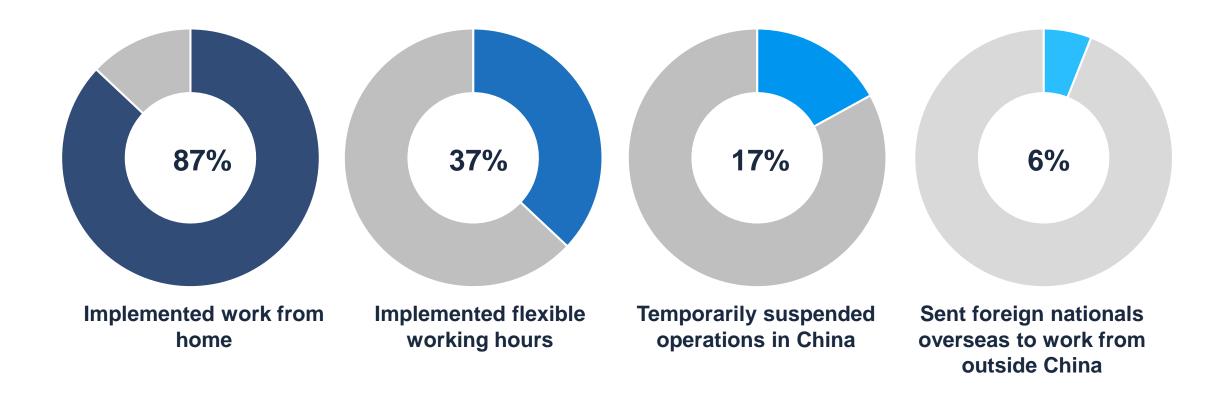


Expected Return to Normal Operations

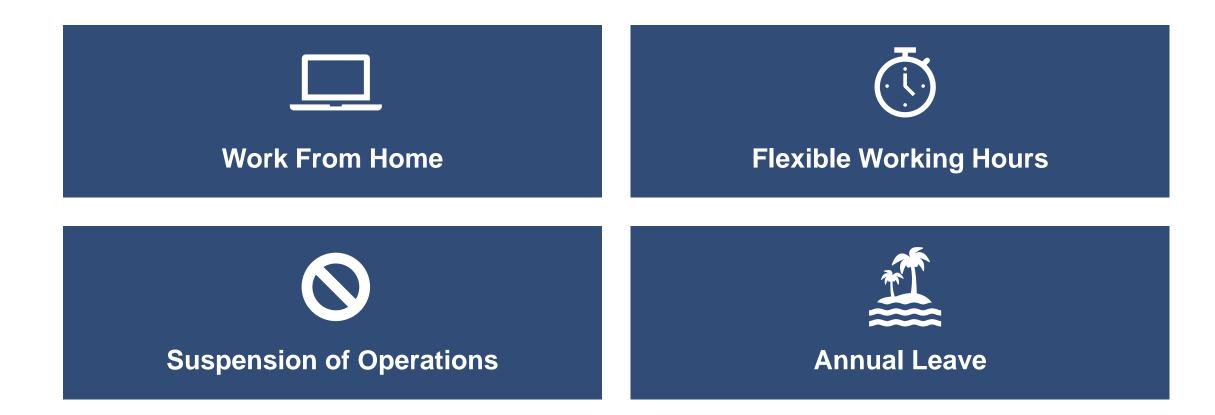
(within month of)



Work Arrangements



Work Arrangements In Practice



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 <u>MUST</u> 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 <u>approval</u> of competent labor administration authority

Regulations During Epidemic (Local – Beijing)

- Companies <u>CAN</u> adopt the comprehensively calculated working time system for employees during epidemic period
- ➤ In certain cases does **NOT require approval** of competent labor administration authority during epidemic period

Suspension of Operations





Suspension of Operations Business

Defined (special case not addressed in PRC Labor Law)

After expiration of government-mandated temporary work stoppage, companies <u>CAN decide (at their own discretion)</u> 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 <u>MUST compensate employees</u> and employee compensation will depend on when company resumes operations:

Resumes operations within 1 month or suspends operations for no more than 1 month

Does not resume operations within one month or suspends operations for more than one month

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:

Location	Living Allowance
Shanghai	No less than the minimum wage in Shanghai
Beijing	No less than 70% of applicable minimum wage in Beijing
Jiangsu	No less than 80% of applicable minimum wage at the location
Zhejiang	No less than 80% of applicable minimum wage at the location
Guangdong	No less than 80% of applicable minimum wage at the location

Suspension of Operations Individual Employee(s)

Defined (Local – Beijing)

- ➢ If an employee is unable to come back to work for an extended period, company <u>CAN suspend work of employee</u>
- > 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 <u>MUST pay living allowance</u> 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

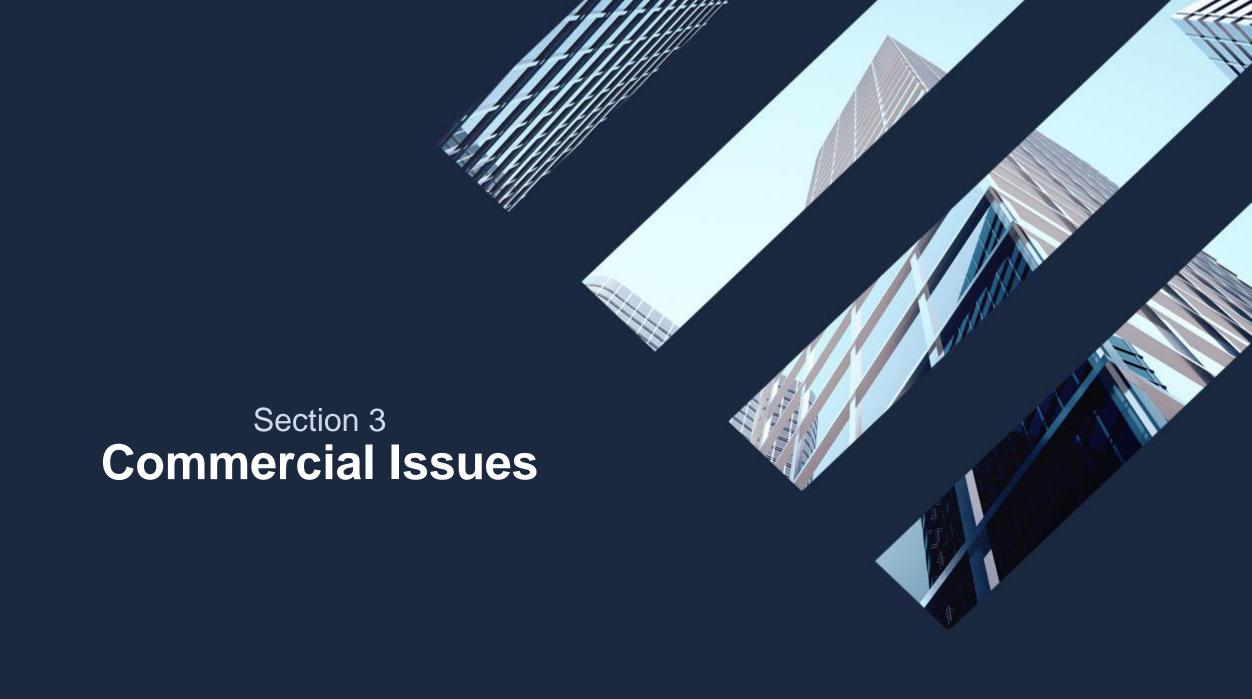
Annual Leave

Defined (PRC Labor Law)

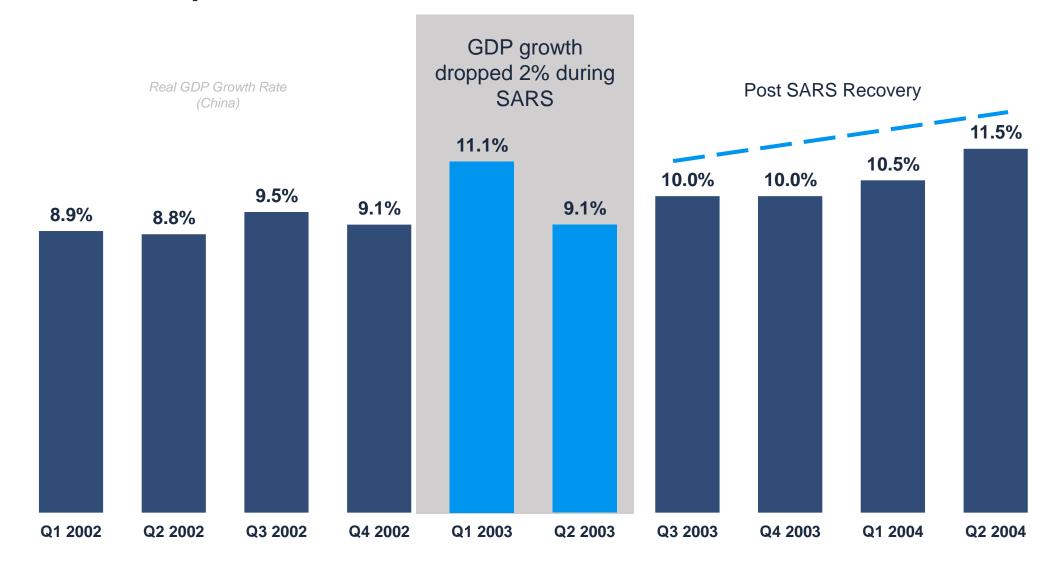
- > 5-15 days annual leave based accumulative working period with all employers
 - In most of the foreign invested companies, employees enjoy more annual leave than the statutory minimum
- Companies <u>CAN arrange employees to take annual leave</u> in consideration of operational needs and willingness 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)

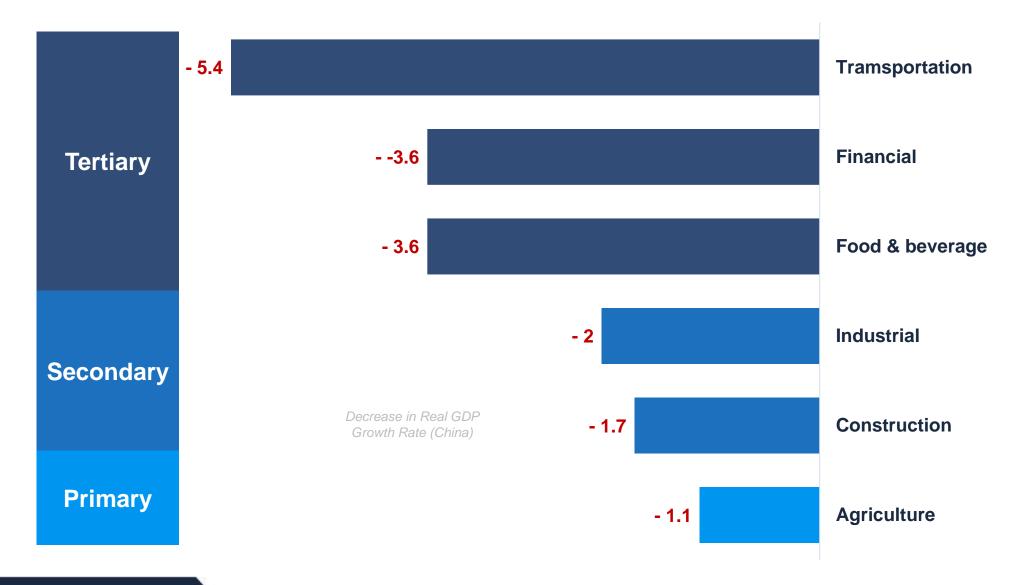
Companies <u>CAN</u> arrange annual leave for employees who are <u>not able to duly come back to work due to coronavirus</u>



Economic Impact SARS – 2003



Economic Impact SARS - 2003



Estimated Economic Impact Coronavirus



"This is scarier than the epidemic itself"

> -100 RIMB billion

-70

RMB billion

SARS 2003

Vice Chairman of the National People's Congress Financial and Economic Affairs Committee

Huang Qifan

-170 RMB billion Swine flu 2010

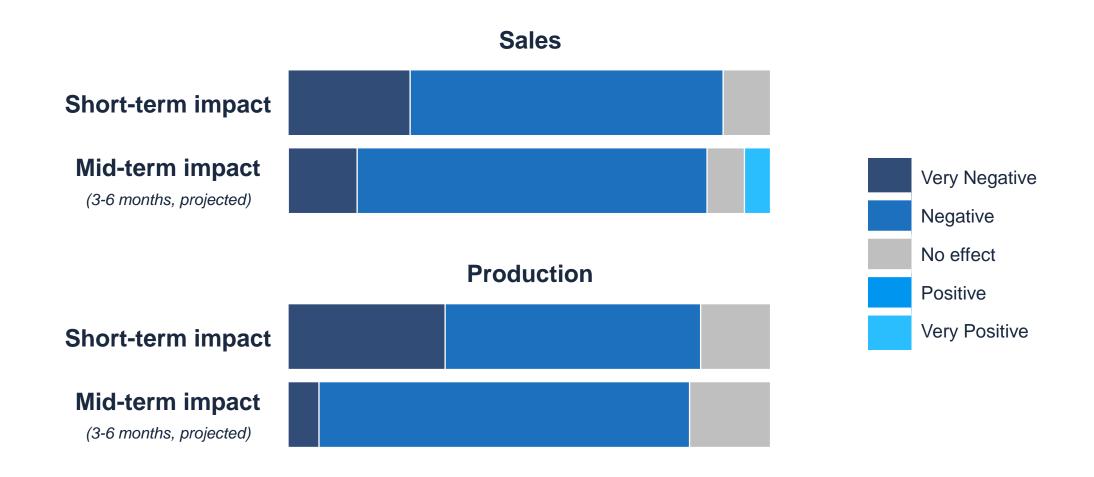
Bird flu 2014-2017

-500RMB billion

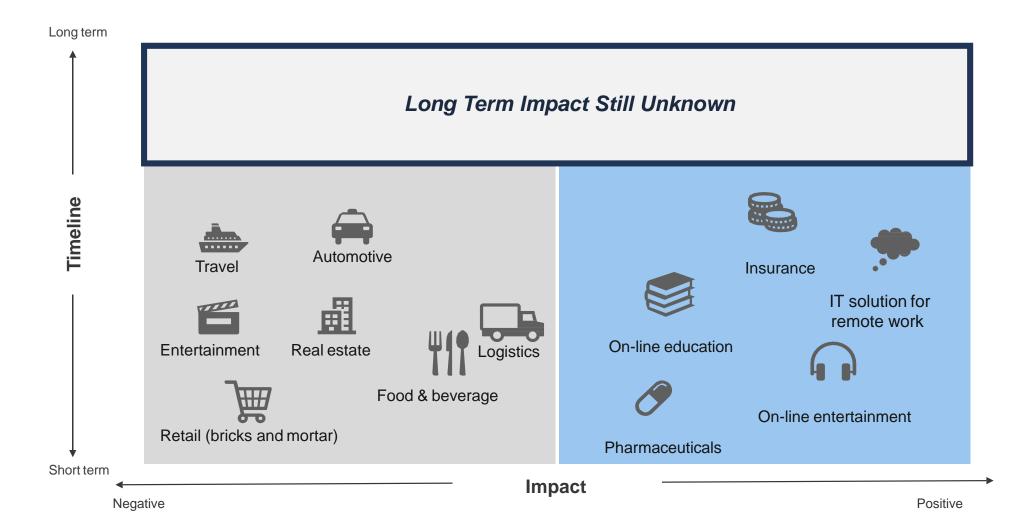
Estimated

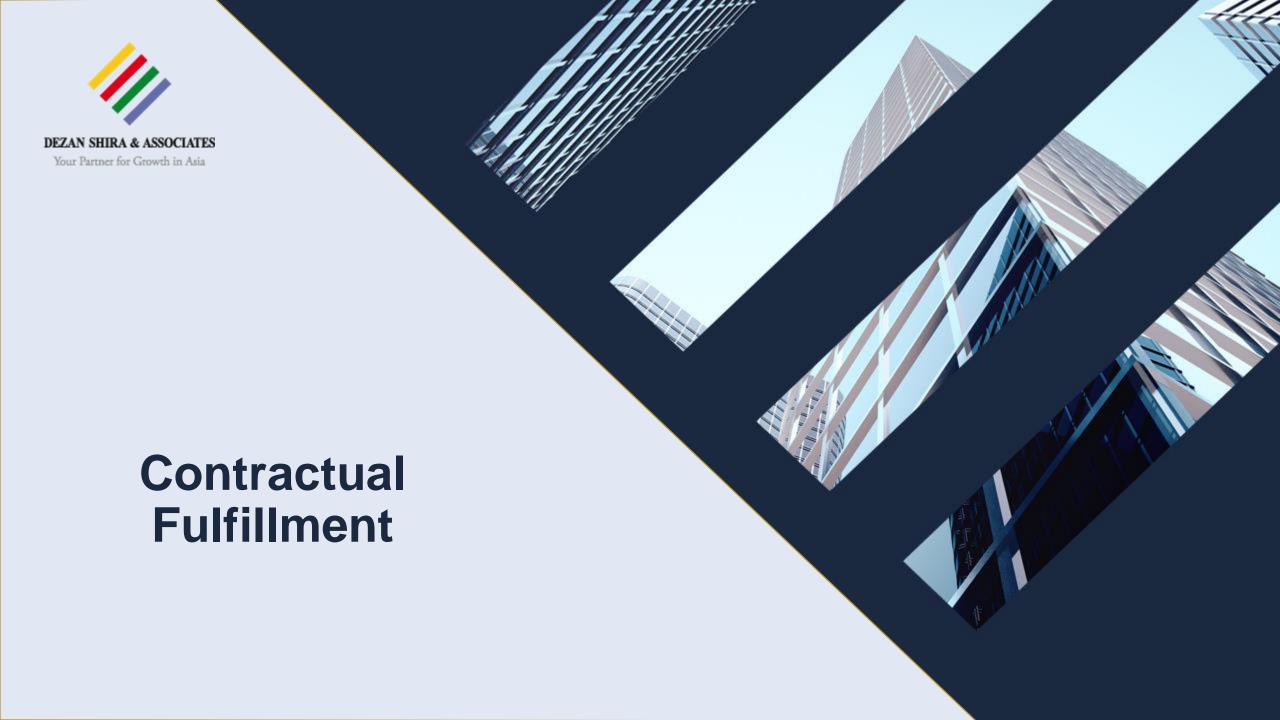
Coronavirus 2020

Estimated Economic Impact Coronavirus – On Sales & Production



Estimated Economic Impact Coronavirus – By Industry





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 <u>MUST give notice to other party</u> 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 <u>partially or wholly</u> <u>excused from liability</u>, 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 <u>notify other party</u> in order to reduce potential losses sustained by other party, and said party shall also provide evidence of force majeure <u>within a reasonable</u> <u>time</u>

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 extent of force majeure

Impossible to perform contract

Contract should be <u>terminated</u> and liabilities for breach of contract should be exempted

Can partially perform contract

Parties can <u>amend</u> contract terms and partially exempt liabilities for breach of contract

Temporarily prevents performing contract

- Parties can plan for <u>delayed</u> fulfillment and performing parties should be excused from liabilities for overdue fulfillment
- If delayed performance has already occurred before force majeure event, above liability exemption will not apply

Force Majeure Enforcement During SARS – 2003



Approved

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



Rejected

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

Force Majeure Actions To Be Taken

Actions To Be Taken By Seller

- Assess impact on contract performance
- Determine whether provisions in terms of force majeure are applicable and whether to terminate or change contracts
- Take immediate and effective measures to prevent increase in losses
- Obtain <u>Certificate of Force Majeure</u>
- Send written <u>notices</u> to buyers / service receivers as soon as possible to confirm facts and propose appropriate solutions
- Proactively negotiate with buyers / service receivers and prepare for potential litigation

Actions To Be Taken By Purchaser

- 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
- 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
- ➢ 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

Force Majeure Certification

Certification Body (in China)

- China Council for the Promotion of International Trade (CCPIT)
- As of January 30, CCPIT created an <u>online certification platform</u> (<u>here</u>) 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





Government Support Programs National-Level

Social insurance premium calculation shifted

Annual adjustment of social security payment <u>postponed from April to</u> <u>July</u>

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 <u>RMB 300 billion</u> 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 <u>certain services</u> 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 fapiaos
 - When issuing a VAT invoice, select <u>"tax exemption" as tax rate</u>
 - 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
 - o it can be exempted from VAT

Government Support Programs Local-Level – Beijing

Tax payment deferral Reduced rent

- ➤ SMEs that have difficulty in tax filing and payment due to coronavirus can apply for <u>deferred tax payment for up to 3 months</u>
- > SMEs that lease the state-owned assets in Beijing can be:
 - Exempted from February rent on assets
 - Reduce February <u>rental fee by 50%</u> 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 <u>do not lay off</u> <u>employees</u> or minimize the layoffs can get a <u>refund of unemployment</u> <u>insurance premiums</u>

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 <u>one-time subsidy of 30 percent of 3 months'</u> <u>social insurance premiums</u>
- ➤ 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 <u>subsidy of 50 % of social</u> <u>insurance premiums of 3 months</u>

Training subsidy

Provide SMEs other <u>subsidies for employee training and purchasing of teleworking service products</u>



Key Considerations









Key Considerations

Human Resources

- Invest in staff and talent
 - Make safety and well-being of staff a priority
 - Invest in and retain key staff
- Ensure any changes in staff policy are compliant (e.g. suspension of operations, etc.)
 - Labor Law and local regulations
 - Payroll
 - Social insurance and special programs
- > Prepare for future HR needs
 - Difficult times can cause talent to become available – plan now and look to acquire new talent as becomes available

Supply Chain & Logistics

- Monitor your supply chain closely
 - End-to-end supply chain review and alternative sourcing options
 - Supplier shutdowns
 - Traffic / logistics delays and suspensions
 - Delivery challenges
- Create sufficient buffer where possible
 - Raw materials
 - Inventory

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.)

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Asiapedia is a collection of these resources based on the experiences we made on the ground.





















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