



BACK TO BUSINESS GUIDE – CHINA

COVID-19 | DLA Piper Legal Task Force

10 April 2020



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Summary

On April 8, China lifted its two-and-half months' lock-down of Wuhan, the last city in China to do so. As the country emerges from its self-imposed isolation, it faces an economy that is profoundly damaged. Meanwhile, COVID-19 is continuing to spread globally, infecting millions and sending billions into lockdown. China is now returning to business, but restoring life before COVID-19 will require a period of adjustment. In this Guide, we discuss the key challenges and legal hurdles which businesses face as they resume operations and adapt to an economic and regulatory environment overshadowed by the impact of COVID-19.

Our Guide outlines issues around employees going back to work, health and safety, data privacy, performance and termination of commercial contracts, and government relief programs in a frequently asked questions (FAQ) format. We also will feature sector specific FAQs, such as hospitality and retail, which are most impacted by COVID-19.

Hopefully, this Guide will serve as a starting point for businesses as they commence their journeys in this new and challenging environment.

For further information, please feel free to contact our subject matter experts listed below:

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Disclaimer

COVID-19 crisis has no close precedent in recent times. The Chinese authorities are doing their best to approve new laws and regulations addressing the challenges created by the crisis. The legal framework and its implementation changes every hour. This summary does not intend to, and does not cover, all the measures adopted, nor all the potential factual scenarios. It should not be taken as legal advice, but only as an informative document. Check the date of the document specified in the cover page.

Additional measures can be adopted over the course of the coming days/weeks/months. Stay attentive to new updates.

Employment

Back to business FAQs

1. Are there any legal requirements that employers must comply with before they send their people back to work and reopen physical premises?

The requirements to reopen physical premises vary among different locations and may change over time. Some of the cities that have stricter requirements need approval from the disease control authorities while other locations may only require notification or filing with building management. Employers may need to ask employees to fill-in certain forms to self-declare health status and contact/travel history. In Beijing and Shanghai, for example, the self-declaration is done through an app in individuals' mobile phones, which needs to be scanned when entering buildings/office premises.

2. As we reopen post-COVID-19 lockdown, what are the health and safety obligations employers need to pay attention to around the physical premises?

The detailed requirements are changing over time. Some locations are stricter than others, e.g. generally speaking Beijing is stricter than Shanghai. Within a city, even different buildings may enforce the requirements differently. At the time of publication, in general, employers are required to: (1) check the employee's temperature daily; (2) set an isolation area in the work place; (3) if the employee has suspected symptoms, the company shall require him/her to be isolated in the isolation area; (4) report to the department of disease control; (5) assist the employee with symptoms to go to the nearest infectious disease hospital; (6) close and sterilize related areas; (7) prohibit other people from entering infected areas; and (8) cooperate with the government's disease control work, including assistance on tracking close contacts amid the outbreak of COVID-19.

Some locations still require employees to wear face masks while working in the office. In addition, employers may be required to provide education/communication to its employees. For example, sending disease control materials, distributing booklets, reminding employees to cooperate with the company's management plan against coronavirus, providing online training to its employees on control of COVID-19.

3. Can employers ask employees to take medical tests or show test results or medical certificates before returning to work?

Companies are allowed to collect information about their employees' travel history, travel plans, health conditions and close contacts of suspected patients during the outbreak period with the consent of the employee. But the company should keep the information confidential and not use them for other purposes. Employers should follow the principles of necessity and minimization when collecting and processing personal data. Avoid disclosing the personal information without the consent of the employees. Moreover, employers need to implement strict technical and management measures to prevent privacy breaches or misuse of personal information, ensuring the personal data collected for the purpose of controlling the disease and will not be used for any other purpose.

4. What if employees refuse to take the requested medical tests or provide the requested medical test results or certificates before returning to work?

The company may refuse to allow the employee back to the physical premises. Depending on the circumstances, the company may be permitted to impose disciplinary action.

5. Should we divide people in groups and stagger their return to work?

Depending on the location, social distancing requirements may still be in place. For example, up to a certain number of people per square meter in office buildings. If the company is over this limit, it will need to stagger the presence of its employees. The company may first send a skeleton team of people who can help with tasks in the office that cannot be done from home, e.g. helping with printing/mailing. Nevertheless, even in locations where the employer can fully resume physical premises, the government encourages people to avoid start and finish during peak hours.

6. If there are employees who still need to stay at home due to school closures or to look after sick relatives, is the employer obliged to pay them?

Generally, no. In Beijing, if an employee would like to take care of his/her children at home, he/she shall apply for leave from the company. The company is entitled to arrange the employee to work from home, or arrange the employee to work flexibly during this period, or arrange the employee to use his/her annual leave or rest days (Sunday and Saturday) in this calendar year.

7. If there are employees who still fear contracting COVID-19, can he/she refuse to show up to work in the office?

If an employer requires the employee to come to office to work, the employee is not entitled to refuse, unless he/she is isolated according to the local quarantine requirements. If the employee refuses to come to work without a sufficient reason but a personal concern, the employer needs to communicate with the employee on his/her concern and choose alternative approaches. It may impose disciplinary action depending on the circumstances.

8. Can an employee refuse to attend a business meeting with someone from out of town or overseas?

It needs to be discussed on a case by case basis. If the person from out of town or overseas has completed his quarantine period according to local rules or there is no reasonable suspicion that this person is a COVID-19 patient, suspected patient or close contact thereof, the employee could not refuse to attend the business meeting.

If the employee's personal concern does make sense like the person from out of town presents symptoms, the company shall cancel the business meeting and report the suspected case to local disease prevention and control department.

9. As business resumes, what are the things to pay attention to when asking people to travel for business?

Many overseas locations are high risk. In terms of domestic travel, there are almost zero new infected cases except imported ones. Various cities no longer require people from low risk areas inside China to be on quarantine. However, cities like Beijing still require people who return after travelling out of town to go into quarantine. The company will need to pay normal wages if it asks employees to travel and they need to quarantine as a result.

10. Can employers adopt flexible work options such as imposing part time or shorter hours?

Revised working options, i.e., imposing part time or shorter working hours, are not permissible without the employee's written consent, if this is followed by a corresponding decrease in payments. Legally, as long as the company can obtain the individual consent, there are no restrictions/limits on the payment and length of the time periods during which the employees can be under this type of arrangements.

11. Can a company require employees to notify the company in the event that they test positive for COVID-19 or have symptoms of COVID-19?

Yes. The employer is obligated to promptly report the infected cases / or individual with symptoms to the nearby disease prevention and control institution or medical agency. However, without the person's consent, the employer shall not publish the person's name, age, ID number, phone number, address and other personal information to public. The disclosure shall only be limited to the necessary details. Employees who have to go through quarantine, medical treatment or medical observation due to being COVID-19 patients, suspected patients, close contacts with a confirmed case or due to travel history are entitled to normal wages.

12. Is it possible to reduce the salary of the employees to offset the lost profitability due to effects of COVID-19?

This is not permissible without the individual employee's consent. The company needs to have statutory grounds to unilaterally reduce the employee's salary, like position adjustments due to legal reasons, suspension of production or business due to difficulties, etc.. Otherwise, we would suggest employers obtain the employee's written consent before salary reduction.

13. Is it possible to temporarily suspend work for employees due to the business downturn as a result of COVID-19?

The employer may temporarily suspend all of its operations due to operational difficulties incurred by COVID-19 according to local rules and judicial practice. The interpretation of this rule is not consistent across different locations. That said, for those who are eligible, if the business suspension lasts for longer than a payroll cycle, after the first month, the employer can pay those employees who continue not to work only the living allowances. This shall be equal to the local minimum wages or a certain percentage of the local minimum wages, subject to local wages regulations.

14. Can employers request employees to take annual leave due to the business downturn as a result of COVID-19?

An employer is entitled to require employees to take unused annual leave in this calendar year, but it is recommended to consult with employees beforehand.

15. Can employers ask employee to take unpaid leave?

This is not permissible without an individual's consent. However, the company may pay significantly reduced salary while the employees are not required to work during the so-called "suspension of production or business" periods.

16. In terms of employee payroll costs, are there any government assistance program / relief measures to assist employers that continue to do business?

For small and medium-sized enterprises with few or zero layoffs, the maximum return of unemployment insurance premiums could be 100% of the amount paid in the previous year. In addition, there are other assistance measures imposed by the government. For instance, social insurance concessions - medium, small and micro-enterprises outside Hubei are exempt from making the employer's portion of contributions to pension insurance, unemployment insurance and work-related injury insurance from February to June 2020, while large enterprises outside Hubei need to pay only half of their normal contributions from February to April 2020; for enterprises inside Hubei the amount of three social insurances payable by the employer may be exempted for no more than 5 months starting from February 2020; the amount of medical insurance payable by employer is reduced to half for no more than 5 months starting from February 2020; deferring the adjustment of the social insurance contribution base for the year of 2020; and extend the validity period of the existing reduced rate of contributions for certain

types of social insurance schemes. There might be potential reliefs at city level and local rules and practice shall be checked.

New Legislation

Publication Date	Name	Source
24/01/2020	Notice by the General Office of the Ministry of Human Resources and Social Security of Issues Concerning Properly Handling Labor Relations during the Prevention and Control of the Outbreak of Novel Coronavirus Pneumonia (COVID-19)	http://www.gov.cn/zhengce/zhengceku/2020-01/27/content_5472508.htm
04/02/2020	Notice by the Office of the Central Cyberspace Affairs Commission of Effectively Protecting Personal Information and Using Big Data to Support Joint Prevention and Control	http://www.gov.cn/xinwen/2020-02/10/content_5476711.htm
05/02/2020	Notice of General Office of the Ministry of Human Resources and Social Security, Education, Finance and Transportation and National Health Commission on Employment to Manage Employment During the Coronavirus Prevention and Control Period	http://www.gov.cn/zhengce/zhengceku/2020-02/06/content_5475179.htm
07/02/2020	Opinion on Stabilising Labor Relationships and Supporting Enterprises to Resume Operation During the Period of Preventing and Controlling of Pneumonia Caused by Novel Coronavirus Infection	http://www.gov.cn/zhengce/zhengceku/2020-02/08/content_5476137.htm
20/02/2020	Notice by the Ministry of Human Resources and Social Security, the Ministry of Finance and the State Taxation Administration of the Temporary Reduction and Exemption of Social Insurance Premiums Payable by Enterprises	http://www.gov.cn/zhengce/zhengceku/2020-02/21/content_5481861.htm
20/02/2020	Announcement on Phased Reduction and Exemption of Social Insurance, the Ministry of Human Resources and Social Security [2020] No. 11.	http://www.chinatax.gov.cn/chinatax/n810346/n810825/c101434/c5144706/content.html
21/02/2020	Circular of the Joint Prevention and Control Mechanism of the State Council for COVID-19 on Issuing the Guidelines for Epidemic Prevention and Control Measures during the Resumption of Work and Production at Enterprises and Public Institutions	http://www.gov.cn/zhengce/content/2020-02/22/content_5482025.htm
21/02/2020	Announcement on Phased Reduction of Medical Insurance, the National Healthcare Security Administration [2020] No. 6.	http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5144759/content.html

24/02/2020

Circular on ensuring the lawful, scientific and accurate prevention and control of new coronavirus.

[http://www.gov.cn/xinwen/20-02/25/content_5483024.htm](http://www.gov.cn/xinwen/2020-02/25/content_5483024.htm)

Commercial contracts/disputes

Back to business FAQs

1. Vendors are chasing debts aggressively, can I rely upon economic hardship as a basis for delay or terminating commercial contracts?

“Economic hardship” is not a basis for termination of contracts under the PRC law. That said, there is a doctrine called “change of circumstances” under the PRC law. A party invoking this doctrine needs to prove that:-

- a material change in circumstances has occurred after the formation of the contract;
- such material change was unforeseeable when concluding the contract and out of the usual scope of commercial risks; and
- the party’s obligation to perform would be dramatically unfair or the purpose of the contract has been frustrated due to such material change.

If a “change of circumstances” can be established, the affected party can request the competent court to either vary or terminate the contract at the court’s discretion based on the principle of fairness. In the absence of any contractual or statutory right of termination, the affected party is not entitled to unilaterally terminate the contract based on “change of circumstances”.

2. Our customer wants to terminate our contract due to force majeure. What are some of the relevant considerations?

Parties affected by the outbreak should first check the contractual force majeure clause, if any, to confirm if there is a contractual right to terminate in a force majeure event. If so, the contractual requirements as agreed between the parties and any other statutory requirements under the governing law of the relevant contract shall be followed.

Alternatively, Article 180 of the PRC General Provisions of the Civil Law and Articles 117 and 118 of the PRC Contract Law set out statutory provisions relating to force majeure, which is defined as any objective circumstances that are unforeseeable, unavoidable and insurmountable.

If the purpose of the contract cannot be realized because of the force majeure event, the affected party is entitled to terminate the contract pursuant to Article 94(1) of the PRC Contract Law.

Therefore, the affected party seeking to be exempted from its contractual liabilities needs to prove that: (i) the outbreak of COVID-19/the relevant government measure was unforeseeable, unavoidable and insurmountable and thus constitutes a force majeure event; and (ii) such force majeure event prevents the performance of the particular obligation.

Further, the affected party also has an obligation to give a timely notice of the force majeure event and provide evidence within a reasonable time limit. It is suggested that such notice and evidence shall be provided as soon as practicably possible.

3. We were preparing to initiate a lawsuit but this was delayed by COVID-19. Can we still sue? What is the impact of COVID-19 on the statute of limitations?

If the statute of limitations does not expire, you can still sue.

The general statute of limitations under the PRC law is three years from the date on which a party knows or should have known of the facts giving rise to its claim. During the last 6 months of the limitation period, the statute of limitations can be suspended if there is a force majeure event which prevents the party from commencing a claim. The limitation period resumes after the causes of the suspension no longer exists, and the limitation of action shall expire after six months from the date when the obstacles causing the suspension are eliminated.

Whether COVID-19 and/or the relevant government measures can be viewed as a force majeure event will need to be examined on a case-by-case basis. Therefore, the parties shall either commence a legal proceeding before the expiry of the statute of limitations or make a written demand/request to the counterparty so that the limitation period will be interrupted and a new limitation period starts running from the date of the demand/request.

4. Courts and major arbitral institutions have resumed operating, but are they operating as usual, and if not what alternative procedures are in place?

Courts

Courts at different levels in different provinces in China have adopted different measures to cope with COVID-19.

In February, the Supreme People's Court of China (the “**SPC**”) issued a notice which required that *“courts at all levels to guide litigants to file cases or mediate disputes online, encouraging judges to make full use of online systems for litigation, including those for case filing and ruling delivery, to ensure litigants and their lawyers get better legal services and protection”*. The SPC has also promoted the use of a ‘mobile micro court’ (“移动微法院”) on the social media platform, WeChat, in 12 provinces and cities to conduct trials on the Internet.

Arbitral institutions

China International Economic and Trade Arbitration Commission (“**CIETAC**”), one of the leading arbitral institution in China, issued a notice on 28 January 2020, encouraging parties to submit the filings through the online system (<http://online.cietac.org/>) and by courier. The hearings scheduled to take place prior to 15 February 2020 were postponed until further notice from the tribunals.

Shanghai International Arbitration Centre (“**SHIAC**”) has also adopted similar measures with the hearings scheduled to take place between 31 January and 9 February being postponed. SHIAC encourages parties to submit the filings through courier.

Appointments must be made before visiting CIETAC and SHIAC.

5. Am I required to attend a hearing in person at this time in China?

Courts in different places may have different practices/rules. As stated above, courts in China have taken the initiative to conduct hearings on the Internet.

Further, parties can try to reach an agreement to conduct the hearing through video-link, failing which, an application to conduct the hearing on the Internet or postpone the hearing can be made by each party to the relevant court.

6. Amid the outbreak of COVID-19, how are decision-makers (e.g. courts, arbitral institutions etc.) approaching requests for extensions of time and hearings?

Based on our experience and understanding, courts/tribunals in China are generally sympathetic and agreeable to a time extension for submission of documents and hearings in these extraordinary times, but the length of such extensions will be decided on a case-by-case basis.

7. Given there are still significant local movement restrictions, are there any new or alternate procedures in place for the purpose of serving documents on the other party?

Service of documents in China is made through the competent court. Under the PRC Civil Procedural Law, service by leaving documents at a premises can only be made if the recipient refuses to accept the service and certain additional steps must be followed.

To minimize the risk of being served by public announcement by the competent court, if possible, a notice with the mobile number (or telephone number) of the person in charge can be posted on the front door of the office, so that if service is made when the office is closed, the person in charge can be reached by telephone call or SMS.

New legislation

Publication Date	Name	Source
31/01/2020	Notice by the Supreme People's Court of Matters concerning Effectively Conducting the Enforcement Work during the Period of Prevention and Control of the Outbreak of Novel Coronavirus Pneumonia	http://jszx.court.gov.cn/main/SupremeCourt/258999.jhtml
06/02/2020	Circular of the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice on Issuing the Opinions on Legally Punishing Illegal and Criminal Acts Interfering with Prevention and Control of the Novel Coronavirus Pneumonia Epidemic	http://www.court.gov.cn/fabu-xiangqing-219321.html
14/02/2020	Notice by the Supreme People's Court of Strengthening and Regulating the Online Litigation Work during the Period of Prevention and Control of the COVID-19 Outbreak	http://www.court.gov.cn/fabu-xiangqing-220071.html

Privacy

Back to business FAQs

1. Do the Cybersecurity Law, and related guidelines, including Personal Information Security Specification remain applicable during the business resumption period?

Yes, organizations should continue, as far as possible, to comply with relevant data protection laws. This said, there are circumstances in which, given the current situation, entities (in particular government and healthcare bodies) may not need to full comply with all privacy obligations in the context of COVID-19 prevention and control.

2. Is consent still required to collect personal information in the context of COVID-19 prevention and control?

Yes, however organizations should first check to see whether they have already obtained sufficient consent from their employees at onboarding (for example, many organizations set out in their standard employee privacy notices/ contracts that personal information may be collected for health control reasons). As noted above, certain organizations (such as government entities or healthcare bodies) may be permitted to collect and process personal information without consent in the context of COVID-19 prevention and control.

3. Are organizations allowed to disclose to colleagues and third parties (customers / suppliers particularly), the identity of the employees that have tested positive for COVID-19 for the purpose of prevent further infection?

Organisations should not disclose the identity of the underlying individual, however, from a practical perspective, organisations are able to notify colleagues and third parties that there has been a positive case and that appropriate remediation measures are being taken.

4. Are security measures necessary in processing the personal information?

Yes, organisations should continue to adopt appropriate technical and organisational measures, such as encryption, access control, ID verification, etc., to protect the security, integrity and confidentiality of any personal information, and to safeguard personal information from any unauthorized use, breach, or disclosure.

5. What privacy issues may arise by allowing our personnel to work from home? How can we manage these?

Working from home arrangements may increase the risks in privacy and cyber related incidents. It is therefore important that organisations ensure that there is proper communication and reminders to employees around maintaining compliance with internal protocols and procedures. Organisations should also ensure that its IT software and security systems are up-to-date and proper technical measures are adopted to minimise the occurrence and impact of any incident.

New notices

Publication Date	Name	Source
30/01/2020	Urgent Notice on Co-ordinating the Work of Epidemic Prevention and Control and Transportation Security.	http://xxgk.mot.gov.cn/jigou/ysfws/202001/t20200130_3328400.html
02/02/2020	Circular on Personal Information Protection while Using Big Data to Support Joint Prevention and Control	http://www.gov.cn/xinwen/2020-02/10/content_5476711.htm
14/02/2020	Notice on Protecting Network Security in the Information and Communication Industry During Epidemic Prevention and Control.	http://www.miit.gov.cn/n1146295/n1652858/n1652930/n4509650/c7681741/content.html

Government relief

Back to business FAQs

1. What are the tax relief policies businesses can take advantage of as they try to resume business in terms of VAT?

Companies engaged in the production of key supplies for epidemic prevention and control can apply for full refund of incremental retained VAT on a monthly basis.

Income derived from the following activities are exempted from VAT:

- transporting key supplies for epidemic prevention and control is exempted from VAT;
- providing public transportation services, life services and express delivery services to deliver daily necessities to residents.

Exemption of VAT, consumption tax, urban maintenance fee, education surcharges relation to materials donated for fighting COVID-19.

Exemption or reduction of VAT payable by small scale VAT payers.

2. What are the tax relief policies businesses can take advantage of in terms of Individual Income Tax?

Subsidies and bonuses received by individuals participating in the epidemic control and prevention are exempted from individual income tax.

Employees receiving COVID-19 protection materials from employers can exclude such in-kind benefits from taxable income for individual income tax purposes.

Individuals are allowed to claim full tax deduction for donation (whether cash or supplies) made through charity organisations or governments, or directly to hospitals responsible for epidemic control.

3. What are the tax relief policies businesses can take advantage of in terms of Business Tax?

There will be looser control on bank loans. Deferral and renewal options are available if the enterprises cannot repay at maturity due to the outbreak of COVID-19. Financial institutions are also asked to appropriately lower loan interest rates and increase credit loans (for both medium-and long-term loans).

Governments at local levels have also adopted policies to support enterprises. For example, the Suzhou Municipal Government has issued policies to coordinate the local banks to issue special loans, reduce the interest rate, and ensure that the loan interest rate is lower than the interest rate in the loan market during the same period.

For losses incurred in year 2020 by companies in the industries significantly impacted (including transportation, catering, accommodation and tourism) during the epidemic period, the carried forward years can be extended from 5 to 8 years if 50% of the company's total revenue is from principal activities in the industry.

4. What are the customs related relief or incentive?

Importation of supplies for the purpose of prevention or control of COVID-19 is exempted from customs duties including supplies originally manufactured in the US. Tax refunds can be obtained for previously imposed increased tariff due to the China-US trade war.

There are adjustments to retaliatory tariff for US products where customs tariff increment is reduced from 10% to 5% for products originally manufactured in the US in section 1 and 2 of the attachment of CTC Announcement [2019] No.4, and from 5% to 2.5% for products originally manufactured in the US in section 3 and 4 of the attachment of CTC Announcement [2019] No.4.

5. Has the government made it easier for non-residents?

Yes. Non-resident individuals and enterprises may enjoy tax incentive policies issued by MOF and SAT. Overseas investors who reinvest its profits from resident enterprises in the production of epidemic supplies in China may enjoy withholding tax exemption on the profit repatriation. Non-resident enterprises and withholding agents may use e-filings for tax matters. Labor income for the non-resident foreign individual from the overseas purchase of epidemic supplies for domestic enterprises shall not be subject to withholding individual tax.

6. Has the government made it easier to obtain credit, financial support and foreign exchange?

Yes. The People's Bank of China ("PBOC"), Ministry of Finance ("MOF"), China Banking and Insurance Regulatory Commission ("CBIRC"), China Securities Regulatory Commission ("CSRC") and State Administration of Foreign Exchange ("SAFE") jointly set out 30 financial measures to support the prevention and control of the coronavirus outbreak, covering credit and financial support, security of financial infrastructure, foreign exchange, and cross-border RMB business.

7. What has the government done to make tax filings easier for businesses?

As mentioned above, non-resident enterprises and withholding agents may use e-filings for tax matters. Physical submission requirement for outbound payment tax recordal is cancelled since 1 January 2020.

8. What incentives have been provided by utility companies to encourage the resumption of business activities?

In order to encourage a company's resumption, the government requires gas companies to decrease their price if they are following the government price guidance; if the companies are not following the government price guidance, they are encouraged to decrease prices. The electronic power price was decreased by the government. The toll fee is exempted and the port charges have been decreased amid the outbreak of COVID-19.

New legislation

1. China COVID-19 tax policies

Publication Date	Name	Source
31/01/2020	Notice on Financial Support for Prevention and Control of COVID-19 Outbreak, PBOC [2020] No. 29.	http://www.gov.cn/zhengce/zhe ngceku/2020-02/01/content_5473639.htm
01/02/2020	Announcement on Tax Exemption for Imported Supplies to Support Prevention and Control of COVID-19 Outbreak, MOF, Customs, and State Administration of Taxation (“SAT”) [2020] No. 6.	http://www.gov.cn/zhengce/zhe ngceku/2020-02/01/content_5473748.htm
06/02/2020	Announcement on Tax Policies to Support Prevention and Control of COVID-19 Outbreak, MOF and SAT [2020] No. 8.	http://www.gov.cn/zhengce/zhe ngceku/2020-02/07/content_5475528.htm
06/02/2020	Announcement on Tax Policies of Donation to Support Prevention and Control of COVID-19 Outbreak, MOF and SAT [2020] No. 9.	http://www.chinatax.gov.cn/chin atax/n810341/n810755/c5143464/content.html
06/02/2020	Announcement on Tax Policies on Individual Income Tax to Support Prevention and Control of COVID-19 Outbreak, MOF and SAT [2020] No. 10.	http://www.gov.cn/zhengce/zhe ngceku/2020-02/07/content_5475535.htm
20/02/2020	Announcement on Phased Reduction and Exemption of Social Insurance, the Ministry of Human Resources and Social Security [2020] No. 11.	http://www.chinatax.gov.cn/chin atax/n810346/n810825/c101434/c5144706/content.html
21/02/2020	Announcement on Phased Reduction of Medical Insurance, the National Healthcare Security Administration [2020] No. 6.	http://www.chinatax.gov.cn/chin atax/n810341/n810755/c5144759/content.html
28/02/2020	Announcement of VAT Policy to Support Work Resumption for Individual Business, MOF and SAT [2020] No. 13.	http://www.chinatax.gov.cn/chin atax/n359/c5145324/content.html

2. Tax filing during the pandemic

Publication Date	Name	Source
10/02/2020	Announcement on Tax Collection Measures During the Period of COVID-19 Prevention and Control, SAT [2020] No. 4.	http://www.chinatax.gov.cn/chinatax/n810346/n810825/c101434/c5143590/content.html
17/02/2020	Announcement on Extension of Tax Filing Deadline, SAT [2020] No. 27.	http://www.gov.cn/zhengce/zhengceku/2020-02/18/content_5480267.htm
03/03/2020	Announcement on Extension of Tax Filing Deadline, SAT [2020] No. 37.	http://hubei.chinatax.gov.cn/hbsw/xiaogan/tzgg/sjtzgg/169813.html
30/03/2020	Announcement on Extension of Tax Filing Deadline, SAT [2020] No. 55.	http://tax.sh.gov.cn/zcfw/zcfwk/s wzsgl/202003/t453047.html

3. Tax policy and issues for non-residents

Publication Date	Name	Source
26/03/2020	Q&A on Non-Residents' Tax During the Period of Epidemic Prevention and Control, SAT.	http://www.chinatax.gov.cn/chinatax/n810219/n810744/c101510/c101520/c5147380/content.html

Hospitality sector

Back to business FAQs

1. How do we deal with customers that cancelled reservations during the COVID-19 outbreak period?

Firstly, the COVID-19 outbreak can be defined as a “force majeure event” under Chinese laws. In this context, whether a reservation can be cancelled free of penalty as provided in the reservation terms would be dependent on whether the customer had become unable to take the reserved room due to COVID-19.

We have observed that major hotel chains have introduced widely applicable waivers for cancellation fees, and have offered more flexible rebooking policies. For example, Wyndham Hotels and Resorts announced that guests who have booked directly via Wyndham’s channels and have travelled to or from Greater China, South Korea or Italy may cancel and/or change their reservations without any penalty through March 31, 2020. Even though it’s not required by law, hotels may want to consider this for wider business reasons.

2. As travel restrictions continues globally, how should loyalty programs be handled?

As travel restrictions seem to continue indefinitely, customers that have enrolled in hotel loyal programs have an arguable case that their “performance” under the loyalty customer agreement will have been significantly affected, and it is justifiable to extend their current membership status.

Many international hotel groups have voluntarily offered preferential status and benefit extensions to their loyalty program members in selected regions, including in particular the Greater China region. Likewise, from both legal and business perspectives, hotels may also consider extending the membership status to help retain customers in the long term.

3. Can the hotel operators claim that the decline of revenue is due to a force majeure incurred by COVID-19 and then ask for a release of their performance obligations?

For hotel groups, the most immediate effect of COVID-19 will be a decline in revenues, which could cause some hotel operators to fail their performance obligations – thus giving the owners the right to terminate the management agreement. On the other hand, hotel operators are likely to claim that the impact of COVID-19 constitutes a force majeure event. However, a claim of force majeure is not always appropriate in this circumstance and it cannot be used mechanically to escape the relevant liabilities, because such a claim will be subject to careful analysis on the relevant facts, such as the level of difficulty encountered in performing the contract, and the causation between the facts and the inability to perform a contract.

Notably, some Chinese hotel groups have announced measures to help their hotels by offering loans and introducing reductions in franchise fees. For example, Jin Jiang Group, the world’s third-largest hotel group, has raised a total of CNY 3.5 billion special loans to support hotels with cash flow shortages and have also provided such hotels with special low-interest loans.

4. Can hotels that do not own the leasehold apply rent reduction due to the outbreak of COVID-19?

Force majeure clauses may not inevitably support any requests for rent reductions or payment exemptions because this particular outbreak has not prevented hotel operators from managing such hotels (*i.e.*, the purpose of the lease can still be achieved, albeit at a lesser volume of business).

Specifically, temporary closures or decreases in revenues are not legal grounds to reduce or exempt rent unless such is specified in the contract.

However, hotels may request that landlords partially relieve the rent under the principle of fairness if such hotels are closed or requisitioned due to mandatory administrative orders to prevent and control the outbreak.

5. What if a hotel is requisitioned to prevent and control the outbreak of COVID-19?

At this stage, it is uncertain what are the standards of compensations for requisitioned hotels.

6. Do hotels need to make contingency plans?

Yes, this is required. A good contingency plan should take into account below:

- **Stay Informed:** Identify authoritative sources on the pandemic prevention and development, and stay up to date.
- **Cleaning and Sterilization:** Upgrade cleaning methods, ensuring that employees and guests have easy access to handwashing facilities and/or hand sanitizers and that public surfaces such as counters, doorknobs, and elevator buttons are regularly disinfected.
- **Epidemic Hotel Management:** Take hotel staffs' temperature and conduct other necessary health checks regularly in addition to setting up a temporary quarantine area that is separated from restaurants, kitchens, and other public areas.
- **Information Registration:** Information of guests staying at the hotel during the COVID-19 should be collected in a proper and timely manner.
- **Emergency Plans:** Create protocol and guidelines for reporting, quarantining, and transportation of suspected cases and appoint at least one emergency liaison person.

It is also worth noting that the Ministry of Commerce released 16 guidelines to the service industry for COVID-19 prevention and control. Hotels can refer to these guidelines when making contingency plans.

7. What government policies were issued to help hotels to recover from impacts of the outbreak?

The policies specifically designed for the hospitality industry can be categorized as follows:

On the central level, income from public transportation services, life services (including accommodation and catering) and express delivery services to deliver daily necessities to residents during the outbreak period shall be exempted from VAT. For companies in the industries significantly affected by COVID-19, such as the hotel industry, the maximum carry-forward period for losses incurred in 2020 will be extended from 5 years to 8 years. Extension of tax filing deadlines is also now available.

On the local level, exemptions from real estate tax and city and townland use tax have been introduced in certain provinces/cities; social insurance payment can now be extended to end of July in certain cities for industries affected by COVID-19; refund of unemployment insurance subsidy for accommodation companies are also applied to encourage no or minimum lay-offs in certain cities for industries affected by COVID-19.

8. How should hotels prepare for the rebound?

Before a rebound occurs, hotels still need to adhere to the COVID-19 prevention policies, such as by cleaning and disinfecting public areas and guest room areas of the hotel on a regular basis, and

monitoring the health status of the employees on duty to ensure safe and healthy conditions of the hotel. More importantly, hotels should plan ahead, secure cash flow, such as by taking pricing strategies and cost control measures, and invest in future opportunities through staff training and possible property upgrades, to gain a competitive advantage when the market has made a full recovery.

New legislation

Publication Date	Name	Source
24/01/2020	Notice on Prevention and Control of COVID-19, issued by the Ministry of Culture and Tourism	https://www.mct.gov.cn/whzx/ggtz/202001/t20200126_850571.htm
06/02/2020	Announcement on Tax Policies to Support Prevention and Control of COVID-19 Outbreak, issued by the Ministry of Finance	http://szs.mof.gov.cn/zhengcefabu/202002/t20200207_3466788.htm
06/02/2020	Guidelines on COVID-19 Prevention and Control for Retail and Catering Enterprises during the COVID-19 Period, jointly issued by the Ministry of Commerce and the National Health Committee	http://www.mofcom.gov.cn/article/jiquanzx/202002/20200202935770.shtml
07/02/2020	Circular on COVID-19 Prevention and Control For Life Services Enterprises, issued by the Ministry of Commerce	http://www.mofcom.gov.cn/article/h/redht/202002/20200202934342.shtml
20/02/2020	Announcement on Phased Reduction and Exemption of Social Insurance, issued by the Ministry of Human Resources and Social Security [2020] No. 11.	http://www.chinatax.gov.cn/chinatax/n810346/n810825/c101434/c5144706/content.html
03/03/2020	Announcement on Extension of Tax Filing Deadlines, issued by the State Administration of Taxation.	http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5145504/content.html

Retail sector

Back to business FAQs

1. Are there any policies specifically applicable to the retail industry in the context of COVID-19?

Yes, the Ministry of Commerce offers various support to retail businesses (especially those in commercial streets) in regard to the obstacles encountered by the companies. Firstly, for stores in key industries and stores stuck with difficulties, individualized solutions may be implemented. Moreover, the Ministry of Commerce will provide joint assistance together with financial authorities to alleviate financial burdens on small and microbusiness. Companies are encouraged to report practical problems and obstacles to the Ministry of Commerce.

In addition, companies may anticipate a series of active promotional campaigns (both online and offline) organized by the government when appropriate. The proposed promotions are aimed at reversing the decrease in consumer demands. Some local governments are also preparing for food festivals where restaurants may take advantage to increase publicity and revenues.

2. What safety measures retail companies should take in order to resume business?

There are various guidelines on what precautions retail companies, including restaurants, shopping malls and supermarkets, shall take in order to resume business while controlling and preventing the COVID-19.

1) Customer protection

- implementing temperature checking at the entrance and only allow entry of customers with normal temperature, properly recording the health status of the staff preparing for food and providing delivery services;
- adopting social distancing measures, such as limiting the maximum number of customers during peak hours, recommending self-checkout to customers, etc.. For restaurants providing dine-in services, some local guidelines suggested that restaurant operators shall limit the dining time, and ensure intervals and sterilization before providing services to the next customers.

2) Environment safety

- ensuring routine and regular cleaning and sterilization before, during and after business hours, especially for places frequently contacted by customers, such as elevator, handrail, toilet, etc.;
- keeping appropriate ventilation to let in fresh air;
- where possible, using automatic induction water tap instead of traditional water taps;
- maintaining adequate personal protection items such as masks, hand sanitizers, thermometer, etc.;
- disposing garbage in proper classification and in a timely manner.

3) Emergency response mechanism

- carving out an emergency area from the premise for temporary isolation of suspected cases;

- monitoring the health status of employees, arranging for medical treatment if any of the employees develop symptoms like fever, fatigue, dry cough, etc.
- reporting to applicable regulatory departments in a timely manner, tracing close contacts and implementing isolation of such close contacts.

3. What are the potential opportunities retail companies may anticipate?

Despite the negative impact exerted by COVID-19, potential opportunities do emerge from the punch, including:

- 1) Developing online ordering and delivery services: contemplate extending services from physical stores to major E-commerce platforms, including Dazhongdianping.com, Eleme.com, Taobao.com, JD.com, etc. These online platforms respond rapidly to the epidemic and facilitated “no-contact” delivery service. During the epidemic, unique business models such as group purchase and distribution may play an important role in generating future profits.
- 2) Focusing more on social media: Consumers are growing increasingly dependent on social media channels, such as livestreaming media and short-video platform. Operators may consider migrating their marketing resources to social media, and optimizing their strategies for better engagement and communication with consumers.
- 3) Alleviating cash flow shortage: Some restaurants invited their loyal diners to support the restaurant industry by purchasing gift cards now to be used later, so that restaurants with cash flow can survive the difficult times.
- 4) Adopting frontier technologies to upgrade supply chains and logistics: The COVID-19 outbreak may also function as a reminder for some companies to revisit its supply chains and logistics system. Specifically, the following issues might need further consideration: flexible production, direct procurement, front-end warehouses, temperature controlled supply chains, no-contact delivery and direct-to-home services. Implementation of advanced technologies such as block chain and 5G may further accelerated the desired improvement.

These improvements will help suppliers explore new segments with new consumer groups. On the other hand, manufacturers will be pushed to perfect their production plans to improve cost efficiency and provide more customized products for increasingly diversified demands of Chinese consumers.

New legislation

Publication Date	Name	Source
06/02/2020	Guidelines on COVID-19 Prevention and Control for Retail and Catering Enterprises during COVID-19 Period, jointly issued by the Ministry of Commerce and the National Health Committee	http://www.mofcom.gov.cn/article/jiguanzx/202002/20200202935770.shtml
07/02/2020	Circular on COVID-19 Prevention and Control For Life Services Enterprises, issued by the Ministry of Commerce	http://www.mofcom.gov.cn/article/h/redht/202002/20200202934342.shtml
14/02/2020	Guidelines on the Health Protection for Shopping Centers and Supermarkets during COVID-19 Period, issued by the Joint Prevention and Control Mechanism of the State Council	http://www.gov.cn/xinwen/2020-02/15/content_5479246.htm
24/02/2020	Circular on Scientific and Accurate Prevention and Control of the COVID-19, issued by the Joint Prevention and Control Mechanism of the State Council	http://www.gov.cn/xinwen/2020-02/25/content_5483024.htm
20/03/2020	Opinions on Implementation of Measures to Strengthen Employment Stability under the Impact of the COVID-19, issued by the General Office of the State Council	http://www.gov.cn/zhengce/content/2020-03/20/content_5493574.htm
26/03/2020	Circular of Accelerating Commercial Streets to Restore Normal Business Order, issued by the Ministry of Commerce	http://www.gov.cn/zhengce/zhengceku/2020-03/28/content_5496519.htm

Life sciences sector

Back to business FAQs

1. China being the primary provider of COVID-19 related medical supplies and services

Q1: What are the regulatory and technical requirements for COVID-19 related medical supplies?

Under the PRC's medical device regulation, COVID-19 related medical supplies are divided into three categories based on their different risk levels to users, with Class I representing the lowest risk level and Class III representing the highest risk level.

COVID-19 related tests kits need to be reviewed and approved by the National Medical Products Administration (“**NMPA**”) prior to commercialization in China. The manufacturer needs to possess the relevant manufacturing license for Class III medical devices.

Face masks for medical use and medical protective clothing should be reviewed and approved by provincial Medical Products Administration (“**MPA**”) prior to commercialization. The manufacturer needs to possess the relevant manufacturing license for Class II medical device.

Protective goggles and face masks for non-medical use only needs to be recorded at municipal MPAs prior to commercialization. The manufacturer only needs to obtain a recordal at municipal MPAs for manufacturing.

COVID-19 related medical products also need to comply with the applicable technical standards for quality control and product liability considerations. These include, for medical protective clothing: “GB 19082-2009 Technical Requirements for Single-use Protective Clothing for Medical Use”; and for medical protective face masks: “GB 19083-2010 Technical Requirements for Protective Face Masks for Medical Use”. Where there is no national standard, industrial standards such as “YY/T0969-2013 Single-Use Medical Face Mask” and “YY0469-2011 Medical Surgical Mask” will apply for the other types of face masks for medical use.

Q2. Are there any expedited regulatory approval processes for COVID-19 related medical products in China, U.S. and E.U.?

Yes. For example, in China, NMPA and local MPAs adopted emergency measures to fast-track the review and approval process for test kits, face masks for medical use, protective clothing and ventilator. As of March 30, 2020, NMPA has granted emergency approvals to 23 COVID-19 test kits. 15 of them are nucleic acid test kits, and 8 of them are antibody test kits. All registrants of these products are Chinese companies.

Relatedly, US Food and Drug Administration (“**US FDA**”) granted emergency use authorizations (“**EUA**”) for several diagnostic products, personal protective equipment, therapeutics products and other medical device. As of March 31, US FDA granted EUAs to 22 diagnostic products and 5

ventilators. Only one Chinese supplier of test kit obtained EUA for its product while two Chinese companies obtained EUA for their ventilators.

In E.U., at least 14 test kits products and 8 invasive ventilators manufactured by Chinese companies have obtained CE certifications. It is also worth noting that EU issued a recommendation stating that as long as market surveillance authorities find that the personal protection equipment and other medical device ensure an adequate level of health and safety in accordance with the relevant laws and regulations, before the CE markings are finalized, the products could be made available in the EU market for a limited period of time and while the necessary procedures for CE marking are being carried out.

To minimize the potential risk resulting from expedited review process, NMPA requested local MPAs to strengthen the post-market surveillance on the medical products approved under emergency protocols. Specifically, Chinese companies are expected to strictly follow the technical requirements during the manufacturing process, ensure the effective operation of the quality control system, report any adverse event and follow up on the feedbacks of the products in a timely manner.

Q3. What are the regulatory requirements for Chinese companies to export COVID-19 related medical products abroad?

Under a new notice effective from April 1, 2020, companies declare to export COVID-19 test kits, face masks for medical use, medical protective clothing, ventilators and infrared thermometers, should submit the following undertakings:

- 1) the subject product has obtained a valid Medical Device Product Registration Certificate; and
- 2) the product complies with the destination country's quality standards.

The local Customs will examine the product registration certificate issued by the NMPA or local MPAs before releasing the goods.

Q4: What are the commercial risks when exporting COVID-19 related medical products abroad?

Yes, a disregard for the foreign regulations and standards may result in unnecessary legal risks and claims, including product liability issues.

We recommend Chinese suppliers of COVID-19 related medical products carefully review the commercial contracts before execution of the contracts. Specifically, it is advisable to specify the model number and technical specifications of the exported devices, set clear delivery and payment conditions, devise robust product liability clause, assign a proper quality appraisal institute for potential disputes, and set a limitation of the liabilities.

Additionally, it is also advisable for Chinese suppliers to purchase appropriate commercial insurance, e.g. product liabilities insurance or transportation insurance, to protect against risks related to exporting medical products.

Q5. What are the regulatory risks when providing COVID-19 related medical services abroad?

Since China is one of the first countries that contained the COVID-19 outbreak, we have observed an increased demands for Chinese institutions or companies to provide COVID-19 related medical services abroad, including diagnostic tools and treatment protocols. However, we advise Chinese companies to be wary of the recently promulgated regulation governing export of Chinese human genetic resources. Violations may result in administrative penalties or even criminal liabilities.

During the process of providing diagnostic or treatment related services, we advise Chinese service providers or the foreign recipients of services to be wary of the recently promulgated regulation governing export of Chinese human genetic resources. There are serious consequences for violating the regulations, including administrative penalties and even criminal liabilities.

Under the regulation, Chinese human genetic resources are broadly defined to include any information or data generated from human genetic resources. As such CT diagrams of COVID-19 patients or COVID-19 diagnostic test results could be considered as human genetic resources . Sharing of those information with any companies with foreign element or foreign citizens, even if they are located in China, would require at least a recordal with the PRC Ministry of Science and Technology. Further, publication of academic papers involving Chinese patients' data, could be also considered as export of human genetic resources and subject to the regulation by PRC Ministry of Science and Technology.

2. The resumption of clinical trials

Q1. Has there been any guidance/direction issued by the authorities in China relating to management of clinical trials in the context of COVID-19 crisis? Which measures have the research institutions in China taken to cope with the disruption?

Neither NMPA nor PRC Ministry of Health issued any guidance or directives with regard to the management of clinical trials in the context of COVID-19 crisis. Tianjin MPA is one of the few authorities that has issued an official notice to guide the conduct of clinical trials during the epidemic season. Additionally, many clinical institutions and pharmaceutical industry associations have issued their own detailed GCP guidance.

The contents of Tianjin MPA's notice and the GCP guidance issued by the individual players and associations are coincidentally consistent. Specifically, they all covered that

- 1) the clinical trials that have a direct impact on epidemic prevention and control are recommended to suspend, including clinical trials that require collective screening and group enrolment, and delay the screening of patients;
- 2) the clinical trials on subjects who have already participated in the study shall continue unless there is circumstance requiring cessation;
- 3) information technology can be deployed to reduce the flow of personnel in clinical trials and the risk of epidemic spread.

Q2. What are currently the key challenges in China relating to the conduct of clinical trials in the context of COVID-19 crisis?

It is said that more than 70% of clinical trials have been impacted and the approval process of most originator drugs will be delayed. The key challenges faced by most clinical trials include:

- 1) difficulty to recruit new patients;
- 2) subjects falling off;
- 3) subject follow-ups; and
- 4) data losses.

Since the situation in China is relatively under control, we expect the China focused clinical trials may experience a gradual shift to normalization, while the international multi-centre clinical trials could still be affected.

Appendix: recent publications by DLA Piper Greater China lawyers

Date	Topic
10/02/2020	Novel coronavirus (2019-nCoV) – potential effects on international arbitration, sale of goods, shipping and shipbuilding Click here
11/02/2020	How to resume business amid the coronavirus outbreak Click here
24/02/2020	Balancing disease control and economic performance amid the coronavirus outbreak Click here
24/02/2020	China offers tax and financial incentives over coronavirus (China) Click here
05/03/2020	SEC Provides Conditional Regulatory Relief and Assistance for Companies Affected by the Coronavirus Disease 2019 (COVID-19)” Click here
23/03/2020	Reviving the economy amid the global coronavirus pandemic Click here

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