

Webinar: COVID-19 Outbreak

Legal and Commercial Risks for Your Global Business to Consider

11 March 2020



Today's Presenters



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As at 11 March, 09.30 GMT

Country, Other	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Serious, Critical
Total:	119,389	466	4,300	26	66,583	48,506	5,7

Top 10 Countries of total cases

Country, Other	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Serious, Critical
China	80,785	+31	3,158	+22	61,503	16,124	4,4
Italy	10,149		631		1,004	8,514	8
Iran	8,042		291		2,731	5,020	
S. Korea	7,755	+242	61	+1	288	7,406	
France	1,784		33		12	1,739	
Spain	1,695		36		135	1,524	1
Germany	1,565		2		18	1,545	
USA	1,010	+16	31	+1	15	964	
Diamond Princess	696		7		325	364	
Japan	587		12		102	473	
Switzerland	508	+11	3		3	502	

UK (12th place)

Country, Other	Total Cases	New Cases	Total Deaths	New Deaths	Total Recovered	Active Cases	Serious, Critical
UK	383		6		18	359	

Lessons from China

Dan Roules

- COVID-19 in context
- Current situation in China
 - Actions taken to date
 - The positive
 - Number of new cases is trending down
 - National Government has encouraged all outside Hubei Province to return to work
 - President Xi Jin Ping went to Wuhan on Tuesday
 - The less positive
 - Most supply chains are broken
 - Disputes are likely for years

- PRC authorities want to ensure social stability
- January Notice of the Ministry of Human Resources provides that unless a business is shutdown due to COVID-19 for more than one salary payment period, all salaries must continue to be paid at the normal level regardless of whether the business was operating or the employees were working
- If a business shutdown exceeds one salary payment period, the statutory minimum salary must be paid to those who work and a subsidy paid to those who do not
- Employers are encouraged to engage with workers to agree on acceptable arrangements for work and compensation
- In practice, most FIEs continue to pay full salary and press for a return to normal working conditions ASAP

- PRC law defines a force majeure as an unforeseeable, unavoidable, and irresistible objective condition, but there is no clear guidance under the laws what specific events will be accepted by the courts as a force majeure
- Shanghai Superior Court: If a contract cannot be performed due to government action taken to prevent the spread of the COVID-19 virus, those circumstances **may** constitute a force majeure
- In lawsuits filed with respect to the SARS period, PRC courts have shown reluctance to conclude that the circumstances arising in connection with an epidemic itself constitute a force majeure
- In practice:
 - A CCPIT certification does not prove a force majeure
 - Often best to talk

- Most companies are collecting travel and health information on employees
- Best practices:
 - Do not compel employees to provide any personal information
 - Do not collect any personal information that is not relevant to the prevention and control of the COVID-19
 - Do not collect or use any such personal information for other purposes
 - Do not disclose any personal information to third parties other than the institutions authorized to collect such information
 - Use secured technology to store the personal information

- Most supply chains are currently broken
- But the situation is improving
 - Governments are now urging companies to resume operations
 - People are eager for normality
- Most of the world will not have the ability or the desire to respond as China has

COVID-19: Contract and Supply Chain Risk Management

Simon Garbett

COVID-19: Contract and Supply Chain Risk Management – A UK Perspective

- COVID-19 will likely impact your ability to perform your contractual obligations and/or you may be faced with suppliers claiming an inability to perform
- Prepare: Review and evaluate contracts to see what protections (if any) they offer and risks they expose you to
- Force majeure?: Assess whether the circumstances and applicable law permit any party to assert a basis for avoiding or pausing performance under the contract? Be aware of the consequences before invoking
- Notification: If looking to claim available contractual protections, it is vital to follow any contractually prescribed process for doing so

COVID-19: Contract and Supply Chain Risk Management II

- Frustration: Has the contract become impossible or illegal to perform?
- Communicate: Formulate and implement a plan for managing communications with counterparties. Strategic considerations may be involved with certain steps
- Scope for compromise?: If you are agreeable to cutting deals with your suppliers be careful about what you agree to
- Maintain records/evidence: Establish a good audit trail

COVID-19: Contract and Supply Chain Risk Management III

- Review supply chains for insolvency and other key supplier risks (e.g. substitute materials not in spec/quality tested)
- Contingency planning:
 - Alternative sources of supply? Dual sourcing?
 - Product/component switches?
 - Provision of financial assistance to key suppliers?
- Seek non-contamination assurances? Auditing of suppliers?
- Consider whether insurance may cover any losses suffered, and discuss with brokers any need for cover on specific new exposures

GLOBAL SUPPLY CHAIN LAW BLOG

www.globalsupplychainlawblog.com

Coronavirus: Advisory Regarding Supply Chain Issues in China Arising from COVID-19

By [Jordan E. O'Connell](#) on March 10, 2020

POSTED IN [INTERNATIONAL](#)

In a [prior client advisory](#) on the legal implications of coronavirus disease 2019 ("COVID-19") in China, we explored employment, force majeure, data privacy, tax and other issues. Our colleagues in our Shanghai office, [Daniel F. Roules](#) and [Yi \(Nic\) Wan](#), have prepared a supplemental client advisory, identifying specific supply chain issues that are arising from COVID-19. As China is the manufacturing hub of the world, supply chain issues there are generating global consequences. Click below to read more:

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Client Advisory Supply Chain Issues Arising From COVID-19 – China

In a [prior client advisory](#) on the legal implications of coronavirus disease 2019 ("COVID-19") in China, we explored employment, force majeure, data privacy, tax and other issues. This client advisory supplements that by identifying some specific supply chain issues that we are seeing. China is the manufacturing hub of the world, and supply chain issues there are generating global consequences.

Product Quality – Due to the nationwide shutdown of factories and businesses, many companies now confront a shortage of raw materials and components. There is also growing concern among some manufacturers that suppliers that are struggling to meet demand in this challenging market may substitute materials that have not been quality-tested or are not in-spec. A second issue we are seeing is demands from customers for assurances that products and raw materials/components have not been contaminated by the virus. We are also seeing customers asking their suppliers for contingency plans with respect to that supplier's own supply chain to ensure that there is a backup if its sources of raw materials are disrupted.

Shipping – Many shipping and logistics companies in China stopped operations for a time, and road, rail and sea deliveries have all been affected. Some companies have resumed to shipping by air in order to maintain their customer relations and to avoid a breach for late delivery, but we have seen air and some other freight rates increase considerably over pre-virus levels. Moreover, many airlines have stopped some of their flights to/from China.

Insurance – Companies should review any applicable insurance policies to determine if there is coverage for economic losses arising during this virus period. Many insurance policies exclude losses arising from force majeure, but others may be more inclusive.

Financial Stress and Bankruptcy – Traditionally, small and medium-size suppliers in China operate on very low margins. Many of them are struggling from the prolonged shutdown and related adverse effects of COVID-19. Upstream customers should review their supply chains for such risks and seek to identify alternative sources of supply. In some situations, we are seeing that customers are providing limited financial assistance to selected suppliers to keep them afloat and functioning during this period if banks are not willing to finance them.

Force Majeure – Some companies have received from suppliers so-called "force majeure certification" from the China Council for the Promotion of International Trade ("CCPIT"). Companies should realize these certifications only indicate that the stated conditions have occurred; they do not constitute a binding determination on the legal issue of whether a force majeure has occurred. Please refer to our prior client advisory for an analysis of the force majeure issues from a legal perspective.

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Business Contingency Planning

[Business Name] (“Company”)
Coronavirus (COVID-19) Contingency Plan



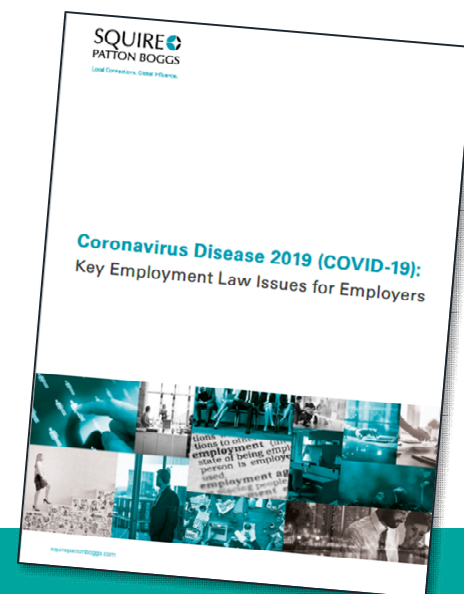
Labour and Employment

Matthew Lewis

- Employment considerations – key issue for all businesses
- Position in the UK
 - Most businesses have restricted non-essential international (and in some cases national) business travel
 - Employees who are self-isolating – key issue is what they get paid
 - Employers are facilitating working from home, where practicable – likely to be more relevant as situation develops
 - Need to be prepared for worst case scenarios – can you facilitate large-scale homeworking?/how would you deal with temporary closures, etc.
 - Situation is changing rapidly - continue to monitor latest guidance, e.g. government, NHS, Acas, etc.

Position outside the UK

- Employers are facing similar questions and arriving at similar conclusions where they are based
- Background law is similar across Europe
- Some key difference around employee rights across Europe, including involvement of works councils, rights to state compensation, etc.
- See our Coronavirus Guide



Health and Safety

Rob Biddlecombe

- Assess the risk to employees and non-employees from coronavirus
- Based on the level of risk, put in place appropriate arrangements
- Examples of arrangements:
 - Make individuals aware of the latest governmental advice
 - Provide adequate handwashing facilities, tissues, etc. (to own staff and visitors)
 - Clean communal areas – especially frequently touched surfaces
 - Issue reminders of good hygiene practices (to own staff and visitors)
 - Reporting mechanisms
 - For people displaying symptoms
 - For people who have returned from higher risk areas
 - Travel advice
 - Follow UK FCO advice as a minimum baseline
 - Refer to official government advice in the destination country – apply the stricter standard

- “Can we require employees to get themselves tested?”
 - Cannot *force* them
 - Explain your duties to safeguard health and safety of workforce
 - Explain their duties to take reasonable care of the health and safety of themselves and other workers and their duty to co-operate with you on health and safety matters
 - If they still refuse, may be grounds for disciplinary action
- “Can we get employees to sign a waiver?”
 - Will not exclude liability under health and safety regulations
 - Cannot contractually exclude civil liability for death or personal injury
 - But may encourage people to take more personal responsibility and/or deter claims

- Visitors to your premises
- Other places of work that your employees visit – is there a process to control risk at those sites?
- Goods imported from high risk countries/areas
- Cannot remove *all* risk
- Ensure your measures are proportionate to the level of risk (whether high or low)
- Keep an audit trail of steps taken/not taken and the reasons why
- Record what measures worked and what did not work for the next time...

View from the US

Sarah Rathke

Similarities and Differences

- Protection of workforces
- Supply chain disputes
- Force majeure declarations
- Logistics issues
- Getting into and/or out of US courts



Questions?

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Concluding thoughts

How we can help support you

We have set up a dedicated [resource centre](#) for businesses on the legal, regulatory and commercial implications of coronavirus COVID-19, includes links to related insights and blogs

Subscribe to our blogs or follow us!



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www.employmentlawworldview.com



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