

Novel Coronavirus fallout: Implications for businesses and operations

11 February 2020 | **Kareena Teh, Philip Kwok, Catherine Wong**

Novel Coronavirus - what you can do to proactively manage the fallout?



The World Health Organization has recently declared a global health emergency over a novel coronavirus that has killed hundreds in mainland China since December 2019, and is continuing to infect many others across the globe. As the disease continues to spread, governments and organizations have rolled out measures such as closure of borders, factories, offices, shops and theme parks as well as suspension of flights to curb its spread.

Over the last few days, media, such as the BBC, Bloomberg, CNBC and The Times have started to report and warn of adverse economic consequences in mainland China and globally, mainly due to mainland China's essential role in the global supply chain. These consequences include:

- Suspension of production, with a knock-on effect on manufacturing companies, including in Bangladesh, Malaysia, South Korea, and the United States, that either supply or buy from mainland Chinese factories;
- Suspension and/or cancellation of contracts for raw materials, from energy products to industrial metals etc.;

- Cancellation of travel arrangements, impacting the tourist and hospitality industry;
- Cancellation of concerts, and sports and other organized events;
- Closure of restaurants, cinemas, theme parks and hotels;
- Closure of luxury brand and other retail shops; and
- Cash flow issues and staff layoffs.

Based on our experience, various disputes and regulatory issues are likely to arise out of these unfortunate circumstances. These include:

- Disputes relating to the failure and/or delay in supplying goods and/or component parts;
- Disputes relating to the failure to perform services due to restrictions in travel;
- Disputes relating to cancellation of travel arrangements / tours / cruises / concerts / events;

- Disputes relating to closure of business, including laying off of staff and breaking of leases;
- Disputes relating to defaults in repaying loans and calls on guarantees;
- Disputes relating to insurance coverage for business interruption; and
- Non-timely and/or inaccurate disclosure by listed companies of inside information (e.g. profit warnings due to business disruption caused by the virus outbreak and/or containment measures).

As of 6 February 2020, there are 436 and 27 mainland Chinese companies listed on the Main Board and the GEM Board of the Stock Exchange of Hong Kong Limited (the “**Hong Kong Stock Exchange**”) respectively. Those whose business operations and financial performance have been or are impacted by the virus outbreak and/or containment measures will need to make accurate and timely disclosures of inside information (e.g., profit warnings) under the Securities and Futures Ordinance (**SFO**). Failure to do so could result in investigations and enforcement action being taken by the Securities and Futures Commission.

Key steps for management to consider if business and operations have been or could be adversely impacted by the outbreak of the novel coronavirus and/or the measures implemented to contain its outbreak:

- Understand the impact of the novel coronavirus on the business and operations, including on cash flow and financial performance.
- Consider whether there is cover under insurance policies, including for interruption to business, and take steps to provide prompt notification.
- Communicate in a timely way with stakeholders (including investors, financiers, employees, and regulatory authorities) on difficulties that have arisen and/or may arise to ensure ongoing support.
- For those that are listed and/or regulated, consider whether there are any disclosure requirements that have to be made, and take steps to provide timely disclosures.
- Understand the nature of contractual rights and obligations, including the governing law, whether there are provisions allowing for non-performance, suspension and/or deferment of performance that may apply, and the dispute resolution mechanism. Note that the legal position under different governing laws may be different and most laws are unlikely to allow cancellation, suspension and/or deferment of contractual rights and obligations just because they are more difficult or expensive to perform.
- For those facing difficulties and/or an inability to perform:
 - Consider whether these difficulties and/or inability to perform are caused by the outbreak of the virus and/or the measures to contain it, and document evidence of the difficulties and/or inability to perform.
 - Consider whether there are any steps that can be taken to perform the contract and/or mitigate loss, and if so, take those steps and document evidence of the steps taken.
 - Where performance is not possible, document evidence of the inability.
 - Communicate in a timely manner with counter-parties to notify that there are difficulties and/or an inability to perform.

How can **LC Lawyers LLP** help - our service offerings

Our team of dispute resolution and regulatory compliance and investigations lawyers **represent clients in cross-border complex disputes**, including complex commercial litigation and international arbitrations cases, and **advise on regulatory matters**. We have a **deep understanding of business practices and regulatory systems, particularly in Hong Kong and Mainland China**, where we represent companies and executives in various industries, including financial services, commodity trading, manufacturing and retail, in relation to a myriad of disputes and regulatory matters, such as those described above.

We can assist management **assess the impact of the novel coronavirus outbreak and the measures to contain them** on businesses and operations. We can also assist management to **devise a plan for dealing with the adverse consequences, provide practical guidance**, including on the key steps summarised above.

We work closely with other law firm members in the global EY network, including Mainland Chinese lawyers, to provide our clients with jurisdictionally relevant legal advice and assistance.

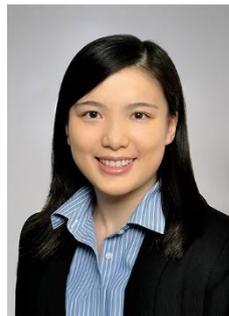
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