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Coronavirus Outbreak – Impact on Businesses

I. Introduction

Having emerged as a public health threat, the new coronavirus increasingly poses a threat to business operations as well. The numerous precautionary measures taken by many countries around the world will hopefully help to contain the spread of the virus. Unfortunately, as a side effect, the measures are also increasingly restricting the free movement of people and goods. This has an increasing impact on work processes, supply chains and, not least, on compliance with contractual obligations. Recently, we received several enquiries from clients on how to deal with those effects of the coronavirus in a legally compliant manner. The aim of this newsletter is to provide an overview of the most pressing issues.

Singapore's Ministry of Health (MOH) and Ministry of Manpower (MOM) have issued advice to employers and implemented several precautionary measures with regards to employees with recent travel history to mainland China.

II. Actions to be taken by Employers

MOM has advised all employers to obtain a health and travel declaration from their employees, including whether they have travelled to mainland China recently, or if they have any upcoming travel plans to mainland China. For foreign employees with recent travel history to China employers have to inform them that they will be on a 14-day leave of absence (see III.2), get their written acknowledgement and declare to MOM immediately that they have informed the affected foreign employees accordingly. Before those foreign employees with recent travel history to China can return to Singapore, employers have to request for MOM's approval.

Particularly for businesses which have frontline customer-facing workers, employers are advised to:

- Step up cleaning of workplaces and general public areas, especially areas with high human contact;
- Adopt the sanitation and hygiene advisories disseminated by the National Environmental Agency (NEA);
- Establish clear guidance to frontline staff on how to handle customers who are unwell. For example, customers who are visibly unwell, could be asked to go see a doctor

or could also be asked to reschedule their appointments, or be served via alternate means.

III. Restrictions with regards to Employees

As of now, the following restrictions with regards to employees with recent travel history to mainland China have been implemented. However, if further community spread occurs, leaves of absence and quarantine measures will likely affect the general workforce as well, including those without recent travel history to mainland China.

1. Suspension of Work Pass and Visa Applications for PRC passport holders

From 31 Jan 2020, MOM will no longer approve new work pass applications for foreign workers from mainland China until further notice. Renewal applications for existing work pass holders will not be affected. In the same context, the Immigration and Checkpoints Authority (ICA) will suspend the issuance of all forms of new visas to those with PRC passports.

2. Leave of Absence

All employees with travel history to mainland China (excluding Hubei province) within 14 days before arriving in Singapore from 31 Jan 2020 6pm onwards will be required to go on a leave of absence (LOA) for 14 days from the day of arrival in Singapore. Persons who have been put on a leave of absence are allowed to leave their place of residence "to attend to urgent matters", however they are strongly advised to minimise their time spent in public spaces and to avoid social contact.

During the LOA period, employers must ensure that employees stay away from the workplace but employers may adopt flexible work arrangements, such as telecommuting and teleconferencing, to allow the employees to work from home.

If remote working is not possible, MOM encourages employers to provide paid LOA over and above employees' annual leave entitlements. If that is not feasible, employers can consider the following options, or a combination of the options, for the employees on LOA:

- Treat employees' LOA as paid hospitalisation leave or paid outpatient sick leave;
- Allow employees to apply for annual leave;
- Allow employees to use advanced paid leave or apply for no pay leave, for employees who have used up their leave entitlements; or
- Other mutually agreed arrangements between the employers and employees / unions.

Employers and employees have a joint duty to ensure that the employee behaves responsibly during the leave of absence. MOM reserves the right to take action against the employer or employee, if they fail to discharge their duty.

3. Quarantine Order

All returning employees with travel history to or from Hubei within 14 days prior to arrival in Singapore will be quarantined at home or other suitable facilities. Those who were already in Singapore before 28 Jan 2020 will be assessed by MOH and those at higher risk will be quarantined.

A Quarantine Order (QO) is a directive issued to individuals under the Infectious Diseases Act and thus have legal force with severe penalties for non-compliance. Hence, a QO is far more stringent than a LOA.

Employees who are served a Quarantine Order (QO) will be deemed to be on paid sick leave. The period of absence from work would be treated as paid hospitalisation leave, as part of the employees' hospitalisation leave eligibility under their employment contracts or agreements.

MOH has set up a Quarantine Order Allowance Scheme to mitigate financial impact for those who have been served a QO. Under the scheme, claims of SGD 100 per day can be made by employers, who have employees issued with a QO and by self-employed persons. At the moment, a similar support is discussed for employees on LOA.

IV. Impact on Contractual Obligations

Another problem that employers in Singapore have started to notice in connection with the above mentioned absence and quarantine measures as well as visa restrictions is: a shortage of manpower. This is especially acute in the building and construction industry where concerns have been raised over potential project delays arising from worker absences.

While government procurement entities and contract superintending officers have been told by the Building and Construction Authority to prepare to evaluate claims of public-sector project contractors for more time, there are no general guidelines for such requests outside the sphere of public-sector contracts. Hence, parties will have to carefully examine their contractual rights and obligations in cases of business interruption due to "force majeure".

1. Does the contract provide for a force majeure clause?

The first step to consider would be to check whether the contract provides for a force majeure clause and provisions regarding business continuity and disaster recovery obligations. While most supply contracts usually contain some form of a force majeure clause, independently of the governing law of the specific contract, in many jurisdictions the usage of the term requires careful consideration and interpretation of the specific circumstances.

In China for instance, the international trade promotion agency began issuing force majeure certificates to Chinese businesses that could not fulfil contractual obligations to overseas partners. However, for contracts that are not governed by Chinese law the question whether the disruptions caused by the coronavirus outbreak and the resulting government precautionary measures are covered by the force majeure clause will first and foremost be determined by the wording of the specific contract.

2. What to look out for in a force majeure clause?

In order to establish whether a party will be able to benefit from a force majeure clause, the following questions need to be considered:

- Is the type of interruption covered, i.e. does the clause cover cases of delay or only cases where performance is impossible in its entirety?
- Are there provisions in place that deal with business continuity and disaster recovery and could the impact of the interruption be mitigated by implementing the agreed measures?
- Are there any notification requirements/procedures in place?
- What rights are provided for the parties under the relevant clause? Is the affected party required to suspend their obligations and allowed to avoid liability for any failure or delay in performing those obligations? Is there a right to

termination for the affected or unaffected party or either party?

3. What to do if there is no force majeure clause in place?

If the contract in question does not provide for a force majeure clause or the scope of the clause does not cover the specific reason for delay or non-performance, the affected party may still be able to rely on general principles of law. While in some legal systems there might be the option to rely on a general legal doctrine of force majeure, in most jurisdictions, another doctrine worth considering would be the concept of “frustration of contract”.

Generally speaking, frustration occurs when, without the default of either party, a contractual obligation has become physically or commercially incapable of being performed because the circumstances in which the performance is called for would render it radically different from that which was undertaken by the contract. The threshold for the contract to be considered to be frustrated is usually very high. Not every event which prevents the performance of a contract will constitute frustration. The event must be fundamentally different from one originally contemplated by the parties.

However, where frustration applies, the contract is automatically discharged, meaning neither party has to comply with future obligations.

V. Conclusion

Employers and employees should carefully consider the general advice on workplace health and safety and should familiarise themselves with the duties and obligations in connection with the regimes of leave absence and quarantine. It is equally important to stay updated on the constantly evolving government measures. Businesses impacted by the ongoing restrictions should carefully consider their legal options with regards to their contractual obligations.

For more information on this and other employment and contract related issues, please do not hesitate to contact us. Our team of international and locally qualified lawyers will be happy to assist.

Contact



Dr. Maximilian Kressner, M.Jur. (Oxford)

Rechtsanwalt / Attorney-at-Law (Germany)

Registered Foreign Lawyer (Singapore)

Commercial Mediator (MuCDR)

Luther LLP

4 Battery Road, Bank of China Building #25-01, Singapore 049908

Phone: +65 6408 8200

DID: +65 6408 8104

maximilian.kressner@luther-lawfirm.com

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