

## People's Republic of China Legal Liability Alert on COVID-19

The coronavirus outbreak (COVID-19) has prompted China's central and local governments to undertake special management measures. These include daily reporting of the national epidemic statistics, extending the Spring Festival holiday, restricting traffic in and out of many cities in Hubei Province, and strictly screening and closely monitoring high-risk population groups in various regions.

Recent statistics reflect a sharp increase in the number of convicted criminal offences related to the virus, including disrupting epidemic prevention order and social stability. As of February 25, 2020, the nationwide procuratorial agencies have been engaged in the investigation, guidance, and evidence collection of more than 6,000 epidemic-related crimes and infractions involving more than 8,200 individuals.

The following update outlines the legal liability for violations of COVID-19 control measures based on recent cases released by the Supreme People's Procuratorate and its local counterparts. It further provides a list of best practices for international companies that have resumed work and operations to ensure full compliance with People's Republic of China (PRC) laws.

### COVID-19 Judicial Opinions

Though PRC's National Health Commission, with the approval from the State Council, classified COVID-19 as a B Class infectious disease, it is subject to the prevention and control measures of A Class infectious diseases, which are the most serious.

On February 6, 2020, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the [Opinions on Legally Punishing Illegal and Criminal Acts Interfering with Prevention and Control of the Novel Coronavirus Pneumonia Epidemic](#) (*COVID-19 Judicial Opinions*). See the unofficial English translations [here](#).

The goal of the *COVID-19 Judicial Opinions* is to clarify the standards in the application of the [PRC Criminal Law](#) provisions. These include crimes such as resistance to epidemic prevention and control measures, violent assaults on medical professionals, production and sale of counterfeits, price gouging, fraud, mass panic buying, and damage to wild animal resources.

As outlined in the *COVID-19 Judicial Opinions*, the commission of these crimes during the period of epidemic prevention and control is considered serious and may subject the culpable party to heavier punishment. For minor offenses that do not constitute crimes, such as refusing to execute decisions and orders under the state of emergency, as well as crossing warning lines or zones, administrative penalties may be applied by the Public Security Bureau based on Article 2(10) of the *COVID-19 Judicial Opinions*.<sup>[1]</sup>

### Administrative Penalties

Article 50(1)<sup>[2]</sup> of the *Law of the People's Republic of China on Penalties for the Violation of Public Security Administration* establishes monetary penalties and administrative detention of 5 to 10 days for "refusing to carry

out the decisions or order in accordance with law by the people's government in a state of emergency." It also applies to participation in any obstruction during a state of emergency. Administrative detention can be imposed without any procedural rights or right to legal counsel.

In February 2020, Wuhan Public Security Bureau released the following information on a typical case that had been processed on the basis of Article 2(10) of the *COVID-19 Judicial Opinions*(Section C).

Qingshan District anti-epidemic control staff reported that a man attempted to enter the local post office without wearing a face mask. Despite repeated police requests for the man to put on his face mask, he refused to cooperate and was subsequently arrested. Pursuant to Article 2(10) of the *COVID-19 Judicial Opinions*, the police believed that the man "refused to implement the decision and order under the state of emergency and obstructed the execution of the police's duties." However, because his activities did not constitute a crime, he was detained by the Public Security Bureau for just five days.

### **Criminal Liability**

In addition to administrative detention, under the *PRC Criminal Law* an individual may also be subject to criminal penalties of a 1 to 7-year prison term for the crime of interference with the prevention and treatment of infectious diseases.[\[3\]](#)

The following is information released by the Supreme People's Procuratorate regarding a Hubei Province driver who faced criminal charges in response to coronavirus laws.

The defendant, who is from Hubei Province, is engaged in private passenger transport business. Despite closure of roads by Wuhan COVID-19 Epidemic Prevention Command Headquarters, the defendant made two trips with passengers between Wuhan and Jiayu and a short time later was diagnosed with COVID-19. Within 3 days, 20 people who were in close contact with the defendant had been isolated.

The defendant's actions were investigated and an expedited hearing was held at which he was sentenced to one year's imprisonment.[\[4\]](#)

### **Looking Ahead**

The central government and its local counterparts, particularly the Hubei/Wuhan governments, are adopting and updating their regulations and policies on COVID-19 control on a very frequent basis. Companies that have restarted operations in China are strongly encouraged to monitor any new notices and rules to which they are subject.

Pursuant to the State Council's February 2020 *Guidelines for Epidemic Prevention and Control Measures during the Resumption of Work and Production at Enterprises and Public Institutions*, we recommend international companies with operations in China observe the following best practices to minimize any potential legal exposures.

#### **Strengthen Employee Health Monitoring**

- Develop employee health management protocols
- Implement daily health status reporting

#### **Enhance Workplace Prevention and Control**

- Maintain registration records for personnel entering and leaving the workplace
- Maintain a well-ventilated workplace
- Ensure the normal operation of hand-washing and other facilities
- Frequently clean and disinfect the workplace
- Reduce or eliminate unnecessary staff gatherings and group activities
- Discourage group gatherings for employee meals
- Provide medical assistance to employees such as relieving psychological pressure
- Establish protocols for safe garbage collection and treatment

### **Provide Guidance on Personal Protection for Employees**

- Provide training on COVID-19 prevention and control
- Supervise and ensure implementation of personal protection equipment requirements

### **Prepare for Emergencies**

- Clarify and document the prevention and control responsibilities within the company
- Set up an isolated observation area
- Close the area and disinfect in case of suspicious symptoms from employee
- Address workplace issues in event of confirmed cases through, for example, temporarily closing and deep cleaning the workplace

### **Endnotes**

[1] "Article 2(10). Severely punishing in accordance with the law illegal acts interfering with epidemic prevention and control. For those who commit acts specified in (I) to (IX) above but which do not constitute a crime, public security organs shall mete out public security administrative punishments in accordance with the provisions of the Public Security Administrative Punishment Law on falsifying facts and disrupting public order, disrupting the order of entities and the order of public places and picking quarrels and provoking troubles, refusing to execute decisions and orders under the state of emergency, obstructing the performance of duties, breaking into warning lines or warning zones, beating up others, deliberately injuring and insulting others, defrauding, illegally digging pits and quarrying along railway lines, stealing and damaging public facilities on roads, damaging railway facilities and equipment, intentionally damaging property, looting public and private property, etc., or relevant departments shall mete out other administrative punishments. Those who commit relevant illegal or criminal acts during the period of epidemic prevention and control shall be considered for a heavier circumstance, so as to reflect the strict policy requirements in accordance with the law, effectively punish and deter illegal and criminal acts, uphold the authority of law, maintain social order, and safeguard the safety and health of the people."

[2] "Article 50. A person who commits any of the following acts shall be given a warning or be fined not more than CNY200; and if the circumstances are serious, he shall be detained for not less than five days but not more than 10 days, and may, in addition, be fined not more than CNY500:

- Refusing to carry out the decision or order issued in accordance with law by the people's government in a state of emergency;
- Obstructing the staff member of a government department from performing his duties in accordance with law;
- Obstructing the passage of such vehicles as fire engines, ambulances, engineering emergency trucks and patrol wagons on emergency duties; or
- Forcibly breaking through a warning belt or area set up by a public security organ.

A person who obstructs the people's police from performing their duties in accordance with law shall be given a heavier penalty."

[3] The legal basis is Article 330(4) of the PRC Criminal Law which provides that: "Whoever, in violation of the provisions of the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases, commits any of the following acts and thus causes the spread or a grave danger of the spread of an A Class infectious disease shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years: (4) refusal to execute the preventive and control measures proposed by the health and anti-epidemic agencies according to the Law on Prevention and Treatment of Infectious Diseases." [Note: The novel coronavirus outbreak is deemed to be a Class A infectious disease by the National Health Commission.]

[4] "Article 2(10). Severely punishing in accordance with the law illegal acts interfering with epidemic prevention and control. For those who commit acts specified in (I) to (IX) above but which do not constitute a crime, public security organs shall mete out public security administrative punishments in accordance with the provisions of the Public Security Administrative Punishment Law on falsifying facts and disrupting public order, disrupting the order of entities and the order of public places and picking quarrels and provoking troubles, refusing to execute decisions and orders under the state of emergency, obstructing the performance of duties, breaking into warning lines or warning zones, beating up others, deliberately injuring and insulting others, defrauding, illegally digging pits and quarrying along railway lines, stealing and damaging public facilities on roads, damaging railway facilities and equipment, intentionally damaging property, looting public and private property, etc., or relevant departments shall mete out other administrative punishments. Those who commit relevant illegal or criminal acts during the period of epidemic prevention and control shall be considered for a heavier circumstance, so as to reflect the strict policy requirements in accordance with the law, effectively punish and deter illegal and criminal acts, uphold the authority of law, maintain social order, and safeguard the safety and health of the people."

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