

A quick guide for staying in business during the coronavirus outbreak

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In brief

In this news flash, we highlight the issues in the following four areas that businesses should consider during the coronavirus outbreak, and our recommended actions:

- (1) legal and business considerations,
- (2) corporate and individual tax issues,
- (3) workforce management, and
- (4) information technology (IT) infrastructure and network security.



In detail

Businesses in Hong Kong should pay attention to the following areas and consider taking the actions recommended below as appropriate to their specific situations.

1. Legal and business considerations

Management of regulatory compliance

- Keep track of the special work arrangements of regulatory agencies (e.g. Hong Kong Companies Registry (HKCR), Securities and Futures Commission (SFC) and Hong Kong Stock Exchange (HKSE)). Limited service hours of these agencies may impose restrictions on how milestone dates, regulatory consents and approvals related conditions and contractual obligations should be set and agreed upon.
- Be aware of the legal limitations in leveraging technology in regulatory compliance. For example, some documents (including deeds, statutory declarations and any instrument that needs to be stamped by the Stamp Office) must be physically signed instead of using e-signature in order to take legal effect. Further, certain HKCR, SFC and HKSE prescribed forms must be executed with handwritten signatures and be submitted in original form. Sufficient buffer time should be allowed for the preparation, signing and collection of inked originals to ensure statutory filing and submission deadlines can be met.

Business contract management

On the business side, parties should also be aware of the legal limitations when leveraging technology in negotiating and concluding agreements, including the acceptable and reliable method of using e-signature.

Furthermore, existing contracts which are material to core business units should be reviewed focusing on amendment, renewal and termination rights. In particular:

- To the extent practicable, consider the effects of “force majeure” clauses and the doctrine frustration if the implementation of underlying transactions are likely to be affected by the novel coronavirus outbreak (e.g. if performance is reliant on an action that is no longer possible due to a complete shutdown triggered by the novel coronavirus), and seek professional advice if in doubt.
- If banks or foreign exchange markets close unexpectedly, consider how this may affect the concept of “business days” and performance timelines in contracts or financial instruments by revisiting the relevant defined terms.

Compliance with employment law

Keep abreast and adhere to employers’ obligations under the Employment Ordinance (including timely payment of salaries and wages despite challenging business environment) and Occupational Safety and Health Ordinance (for the protection of health and safety of all employees in general).

2. Corporate and individual tax issues

Managing tax and stamp duty compliance risks

- As the Inland Revenue Department (IRD) is currently providing limited services, it has announced that the block extension due date of filing the 2018/19 profits tax return for M-code loss cases is extended to 28 February 2020¹ and that deadlines for tax payments, lodgement of objections and holdover applications and submission of tax returns and information that fall between 29 January and 16 February 2020 are automatically extended to 17 February 2020².
- Given the limited services of the IRD, there could be delay in processing taxpayers’ applications for holding over tax payments. Affected taxpayers should pay attention to the tax payment deadlines and consider requesting for an extension of tax payment if the amount involved is substantial and cash flow is an issue.
- Currently, the IRD is still providing tax clearance services for taxpayers leaving Hong Kong but at a much reduced scale. Employees who are to depart Hong Kong permanently need to allow for sufficient buffer time for performing tax clearance before their departure dates.
- The Stamp Office is also providing services at a much reduced scale currently so sufficient time needs to be allowed for presenting documents for stamping or adjudication to avoid any late stamping penalty.

Potential tax implications of unexpected stay of employees

Employees and/or their families may need (or opt) to extend the stay in the current location or on the contrary move to another location. Corporations should be mindful of the potential corporate and individual tax implications of such ad hoc arrangements. For example, tax protection under tax treaties or local rules may be jeopardised due to an extended stay.

Deduction of charitable donations

Corporations making donations to support those affected by the outbreak should take note of the following issues: (1) cash donations (which may be deductible up to 35% of the assessable profits) vs donations in kind (which are not deductible under the tax law) and (2) whether the donations are made to tax-exempt charities³ so that they are approved charitable donations eligible for tax deduction.

Tax exemption status of charities

Charities channelling monies and/or anti-epidemic materials to the affected areas (e.g. cities in the Mainland China) may need to assess whether such act will affect their tax exemption status. One issue for consideration is whether the requirement of “to be of benefit to the Hong Kong community” applies in this special situation.

3. Workforce management

Payroll issues

The statutory deadline for making the MPF contribution is the 10th calendar day of each month. Following the special arrangement for postal services announced by Hong Kong Post on 1 February 2020, employers need to ensure the remittance statement, paper cheques, enrolment forms and / or notice of termination are delivered to the MPF trustee timely to avoid any penalty.

Emergencies management and policies review

Corporations may need to form a cross-functional team to implement an emergency action plan and revisit employee mobility policies to minimise disturbance to business. Assignment policies may need to be updated to cater for employees who are currently on assignment but opt to return to home locations or move to other locations. Employers may also want to review their travel policies and consider adopting a temporary travel opt-out policy for employees.

Immigration and work visa requirements

- Employers are recommended to determine whether any employees are currently travelling outside their work base and assess the impact on their immigration status in both the visiting locations and work base due to unexpected and extended stay in the visiting locations.
- The Hong Kong Immigration Department currently provides limited services. Applications for extension of stay are handled as a priority. New work visa applications can be accepted but may not be processed for the time being. Accordingly, there will be a delay for foreign individuals who are to commence work in Hong Kong. Employers should discuss with affected employees and make alternative deployment/work arrangements during this period.

4. IT infrastructure and network security

In light of the recent coronavirus outbreak, working remotely is no longer a privilege, but a necessity. An unexpected surge in demand of Virtual Private Network (VPN) and general network capacity resulting from a flexible work arrangement may put unprecedented pressure on an organisation’s IT infrastructure and network. Companies need to work with their in-house IT specialists or external hardware and software vendors to achieve stable network connectivity and performance.

Having the right technologies in place is also critical to a sustainable business model and supporting the workforce remotely by staying connected. These technologies include the use of robots and automation tools that can assist with routine tasks. With the ability to access real time data, documents and reminders remotely, communications are not compromised and business operations can be run smoothly.

On the other hand, increased reliance on technologies and digital tools in daily business operations will make data privacy, network security, and incident and threat management more important than ever.

The takeaway

With the outbreak of the novel coronavirus, it is advisable for all Hong Kong businesses to react swiftly and come up with an emergency action plan to address the potential issues in relation to legal, corporate and individual taxation, workforce management and IT infrastructure.

Endnotes

1. Please refer to this link for more details: https://www.ird.gov.hk/eng/tax/taxrep_ext.htm
2. Please refer to this link for more details: <https://www.ird.gov.hk/eng/ppr/archives/20020801.htm>
3. A list of charitable institutions and trusts of a public character which are exempt from tax is available on the IRD's website and can be accessed via this link: https://www.ird.gov.hk/eng/pdf/s88list_emb.pdf

Let's talk

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