

BENCHAM COVID-19 SURVEY

IMPACT ON BUSINESS

PART II



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

PRD / GBA

Introduction and update



While the deadly outbreak is now raging across the globe, the Chinese city of Wuhan, after a 76 days lockdown, officially reopened on April 8.

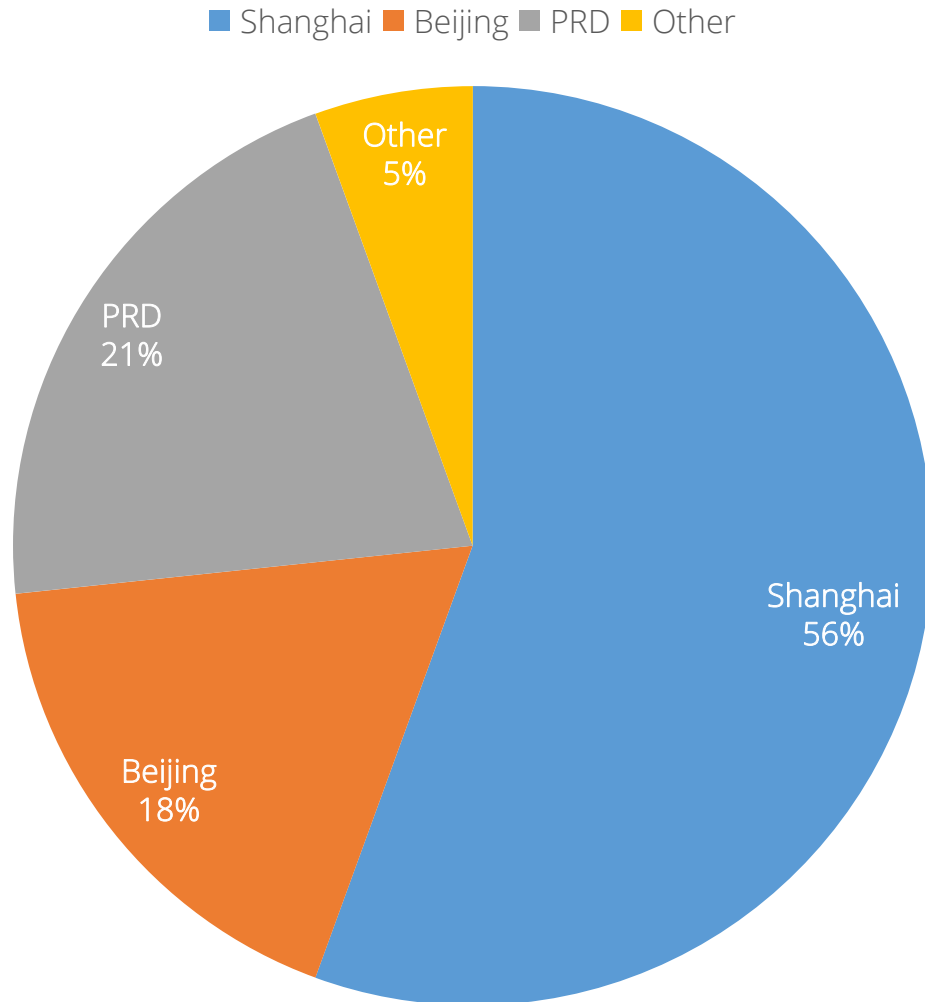
At the beginning of February this year, BenCham China joined hands by conducting a China wide Business Survey and establishing regional expert panels to assist our members and the Benelux community with their concerns during the COVID-19 outbreak.

How did BenCham members and the Benelux community experience the past months and how are they looking to the future? How did the outbreak impacted our members' operations so far? What has been the efficiency rate of the home working system compared to normal business operations? What is our members prime focus now and what kind of support are they looking for from their regional Chamber? These are some of the questions that were asked during our second survey, for which we now provide the results including advice from our "PRD Expert Panel".



Respondent's Profile

TOTAL RESPONDENTS FROM CHINA AND GEOGRAPHICAL SPREAD



- A total of 90 respondents participated in the Survey
- 19 companies from the PRD Region participated in the Survey, 21% of all participants
- PRD Respondents were mainly from the Manufacturing- , Trade & Logistics- and Professional Services Industries, over 80%
- Most of the respondents were SME companies, over 70%
- About 30% of the respondents had suppliers or major customers in quarantined areas

1. Results and Expert Analysis



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

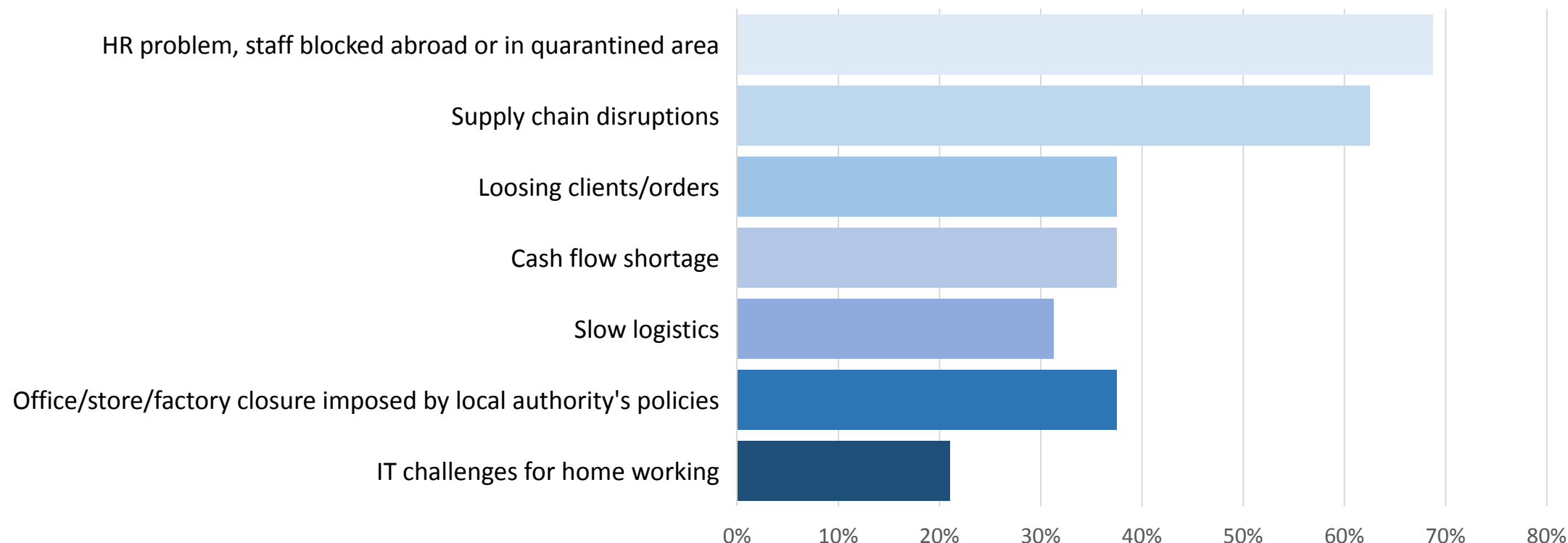
PRD / GBA

Key Findings

- COVID19 HAD A GREAT IMPACT ON “SUPPLY CHAINS AND HR”
- WORKING FROM HOME IS CONSIDERED NOT EFFICIENT
- A HEALTHY AND SANITARY CLEAN ENVIRONMENT IS PRIORITY
- LOCAL POLICIES ARE NOT THAT EFFECTIVE TO HELP COMPANIES
- BUSINESS SENTIMENT REMAINED OPTIMISTIC

COVID19 HAD A GREAT IMPACT ON “SUPPLY CHAINS AND HR”.

How has the the coronavirus outbreak impacted your company's operations so far?



The survey results show that the impact of the Corona Virus had a major impact on Human Resources as well as the Supply Chain.

Many of our members are active in the manufacturing industry and, as the survey is showing, Benelux companies had major issues getting their workers back after the extended holiday to start up production. We heard several stories of members that were not able to operate in full and had to accept a limited production capacity. The survey also showed that these challenges with the Supply Chain and Human Resources were experienced stronger in the PRD region compared to the rest of China.

Highlights of the results and expert analysis

Input from BenCham PRD Expert

Jack O'Dwyer

from 1421 Consulting Group



The main issues at that time was due to HR problems within China, with only 37% of companies responding that they are losing clients/orders. I think what we can reasonably expect that we are seeing the end of the domestic (in China) related issues and now we will see a large increase of virus related issues from abroad. About 58% of the PRD respondents are in Industry& Manufacturing and Trade & Logistics, both outward facing industries. These industries will face a difficult 2020.

I think it is more difficult to draw conclusions with the full list survey results, because of the large influx of professional services in Shanghai. I believe that the professional services will still take a hit from a general global recession, but will not be as much affected as manufacturing and trade.

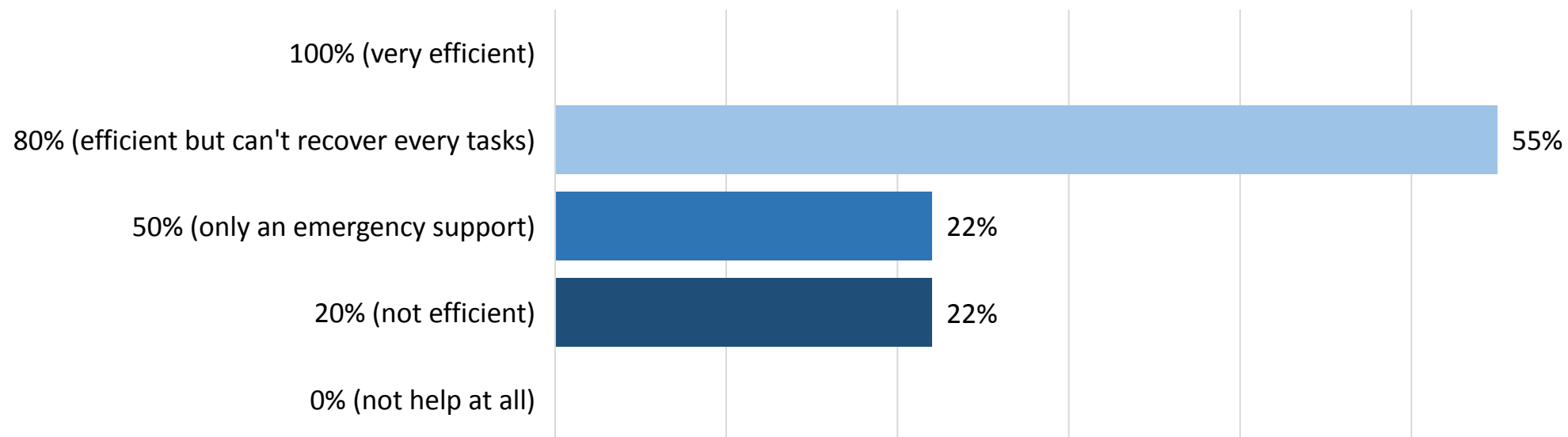
As far as the company I work for, we have not had serious issues ourselves, but some of our clients that are in the manufacturing of finished goods sector are having some serious issues with fulfilling orders and are scaling back their employment.



WORKING FROM HOME IS CONSIDERED NOT EFFICIENT

What's the efficiency rate of the home working system compare to your company's normal business operations?

系列1



Input from BenCham PRD Expert

Jackie Wong

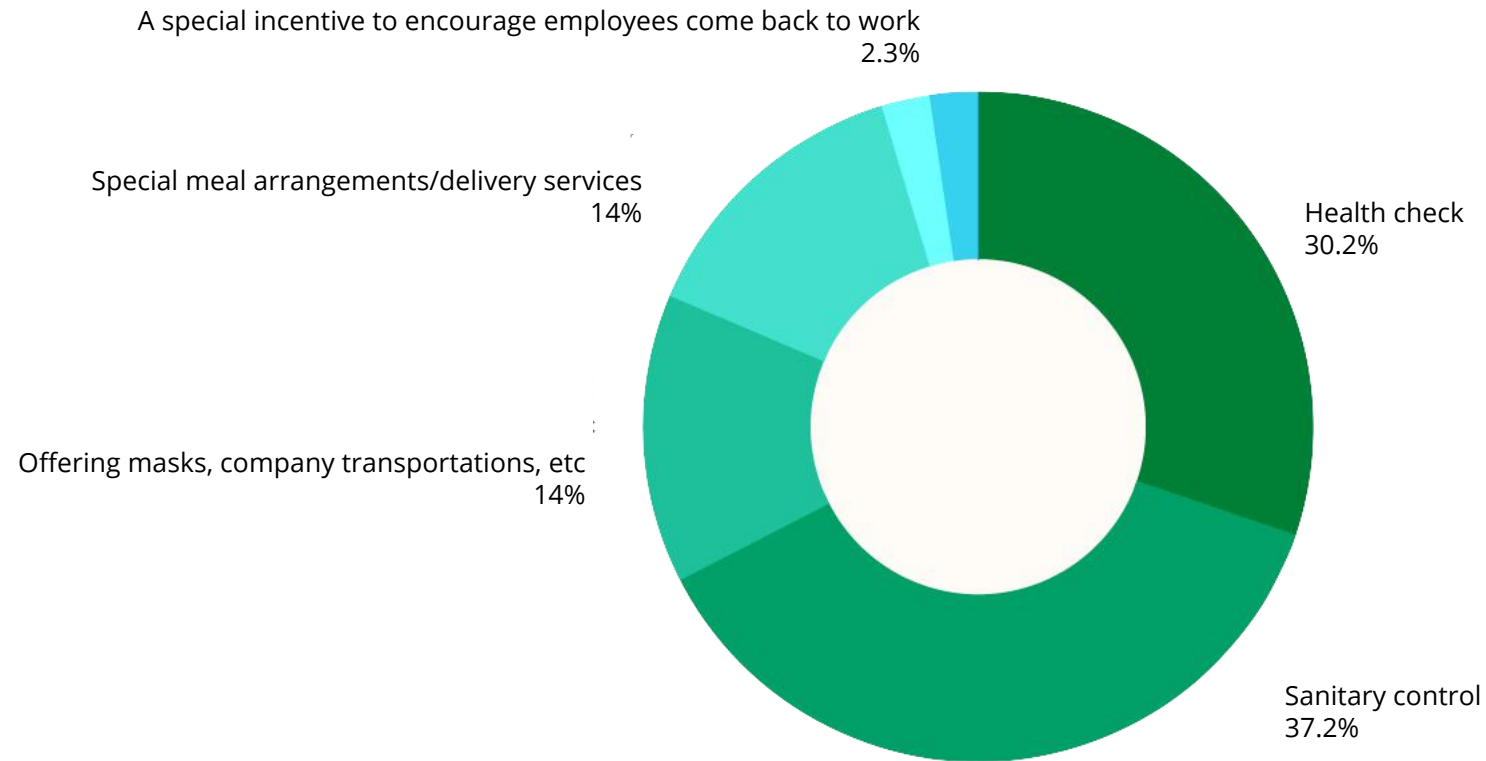
from JW Grace Consulting



The results show us that working from home is not considered to be 100% efficient. The main challenges with working from home have been sustainability, guaranteeing workplace safety, controlling overtime and properly handling confidentiality. But I also believe we have to take into account the sudden shock and on-the-spot implementation of this policy. When you look at it from this angle I believe many organizations actually have reacted quite well. You have to give credit that businesses did not have time to plan for this, and also note that working from home is still quite a new concept in China. So even though “working from is no considered efficient”, I believe in general we can be satisfied that at least some of the activities have been done from home, making use of modern technologies.

A HEALTHY AND SANITARY CLEAN ENVIRONMENT IS PRIORITY

What measures your company will adopt/has adopted in order to reopen the office?



Input from BenCham PRD Expert

Benoit Stos

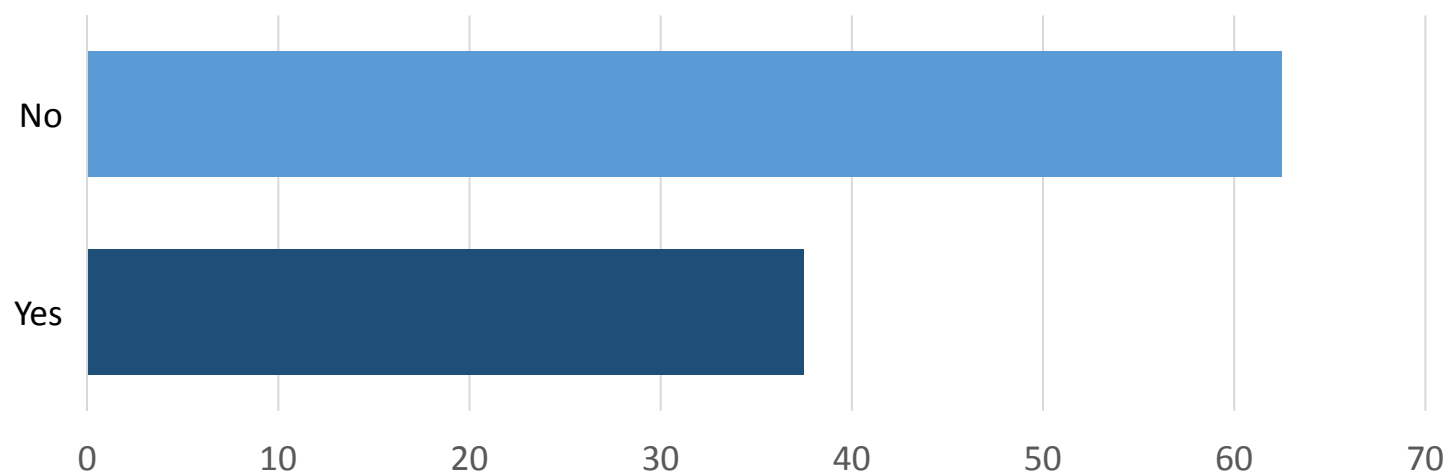
from Stos Advisory



The members have adapted quickly to all sanitary and prevention measures, only 5% of the respondents indicating that these measures are hard to comply with. However this change of organization has led to a lower efficiency as teleworking cannot cover all tasks, notably for manufacturing entities that represent one third of the members.

LOCAL POLICIES ARE NOT THAT EFFECTIVE TO HELP COMPANIES

Do local government's business supporting policies help your company



Interestingly, survey participants from the PRD experienced less effective government assistance compared to participants in Beijing and Shanghai.

For the PRD region 63% of the respondents indicated that "local government's business supporting policies **did not** help their company", compared to only 48% of respondents for all of China.

Highlights of the results and expert analysis

Input from BenCham PRD Expert

Benoit Stos

from Stos Advisory



More than half of the companies consider that the local administration is not supporting their business despite the cuts of tax and social contributions already implemented since the beginning of the crisis. This may be explained by the fact that these cost savings are relatively low versus the impact of the external factors hitting the business: final clients canceling or delaying orders, suppliers with staff shortage that face difficulties to relaunch operations, and between logistics slowed down by the lockdown and sanitary policies. This has led to cash flow shortage for one third of the members and we can expect an increase of this figure in the coming weeks with the current situation in Europe. Companies can consult their banks locally for some support as well as some business support organizations in Europe, which helps SMEs with some loans guarantees.



Highlights of the results and expert analysis



Business Sentiment:

At the time of closing the survey business sentiment remained optimistic despite the severe impact. However in recent weeks we have seen the global spread of the virus with multiple ongoing outbreaks across the globe. Business sentiment has also been impacted and many of our members are experiencing a more challenging business environment. Revenues and profits have been negatively impacted and forecasts for this year have been adjusted downwards.



2. Interview with BenCham PRD Experts



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

PRD / GBA

Interview with Arthur Tideman from Orange Creatives

- ***Question: What has been the impact of the Coronavirus on your company and business?***

The impact so far has been quite severe because we have almost made no revenue during the first quarter of the year. Our forecast for the second and third quarter looks bad for our customers and to be quite frank for some of our customers the future is looking very bad.

- ***Question: What kind of government regulations did you have to implement? How has the communication been with institutions?***

One of the government regulations was that we needed to screen our staff as well as our suppliers and their staff. Another regulation was that we had to mandatory quarantine our staff that had been traveling back to Guangzhou. We had to implement a strict hygiene protocol in our office and when visiting factories.

- ***Question: How did you start-up your business again and on what capacity have you been operating?***

We started operating with a limited amount of our work force and we alternated shifts per day on half/half basis. Currently we are operating back to normal, but we have implemented an office structure and lay-out with more space between desks and a strict hygiene protocol.



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

Interview with Arthur Tideman from Orange Creatives

- **Question: What kind of business activities can and can you not do at the moment?**

Our design services are not so much affected because this is being done from the office. Most of the factories we work with have recently gone back to at least 70% of normal output, but we are quite worried about the international spread of the virus and the impact this will have on demand from China.

Also airfreight remains a big issue with limited capacity and prices jumping constantly. You have probably heard that the Canton Fair has been canceled (or changed to an on-line edition) which is one of the major fairs we always have a stand. We were planning to participate in some fairs overseas but now most of these have also been canceled and we have to see how this situation will develop. Visits from overseas and receiving clients have all been postponed.

- **Question: What are your expectations for the coming months and this year?**

Some of our services like our design services can continue and industries like healthcare will have demand, but our trade services will be heavily impacted.



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

3. Legal advice from our BenCham PRD Expert



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

PRD / GBA

COVID-19 impact on business

How to deal with performance of a contract?

Due to the outbreak of Covid-19 in China, many companies' business operation is affected, in some cases very seriously. Such as the contract already made could not be fulfilled timely, or the price increases substantially, which was not expected when the contract was made. A frequently asked question is can a company ask for termination or revision of the original contract? Under the PRC law, the answer is affirmative by reference to "force majeure" or "principle of changed circumstances".

According to Article 180 of the General Rules of the Civil Law of the PRC, "If the failure to fulfill civil obligations is caused by force majeure, no civil liability shall be borne. Where there are other provisions in the law, such provisions shall apply. Force majeure refers to any objective circumstance that is unforeseeable, unavoidable and insurmountable."

The Contract Law of the PRC has similar provisions, but it further provides in Article 117, "If the force majeure occurs after one party has delayed its performance, the liabilities of the party shall not be exempted." "Either party to a contract that is not able to perform the contract due to force majeure shall give a notice to the other party in time so as to reduce the losses that may be caused to the other party and provide evidence within a reasonable time limit (Article 118) ."

Mr. SHEN, Xiangman
Partner of Jingtian & Gongcheng



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

COVID-19 impact on business

How to deal with performance of a contract?

On February 10, 2020, a spokesman of the Legal Affairs Committee of the Standing Committee of the National People's Congress (the highest legislation authority of the PRC) pointed out, the government has taken corresponding prevention and control measures for the current outbreak in China, such as postponement of resumption of work, personnel isolation, traffic control and other measures. If a contract cannot be performed as a result, it shall be treated as an event of force majeure as prescribed by law.

In short, according to the PRC law, a force majeure event is unforeseeable, unavoidable and insurmountable, it requires a notice to the other party, it also requires a party claiming force majeure to mitigate loss if any. Different from common law system, a party can still rely upon statutory provisions to terminate a contract or to delay its performance to exempt all liabilities or part of the liabilities even if a contract is silent on it. If there are some clear clauses of force majeure, then the contractual clauses shall prevail.

It should also be noted that as a paying party, it is difficult to claim exemption of its paying obligation, although a paying party could be able to ask for later payment by reliance upon force majeure.

In addition to force majeure, a party can also argue for termination or revision of a contract by reliance upon the "principle of changed circumstances" ("frustration of contract" under the common law) as a result of the outbreak of virus in China. Such a principle is attempt to change the content of a contract or terminate it with the help from the courts, so as to balance the interests of both parties caused by some abnormal changes resulted from the outbreak if the contract is

Mr. SHEN, Xiangman
Partner of Jingtian & Gongcheng



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会

COVID-19 impact on business

How to deal with performance of a contract?

performed in the original way as provided by the contract. The key word related to changed circumstance is “unfairness”, i.e., unfairness will be caused to one party if the contract is performed, which was not expected by the party when the contract was firstly made, such as a sharp increase of raw materials caused by the outbreak(not by ordinary market change). There is no specific legal provision on “changed circumstances” under the PRC law. Although there are some judicial interpretation on “changed circumstances”, and there are some precedents, the PRC courts have been very cautious in triggering application of such a principle.

In order to address various issues including unexpected difficulty in performing original contracts, provincial level courts of different provinces in China issued guidelines in dealing with such cases, for example Guangdong Higher People's Court(being a court only one level lower than the Supreme Court of the PRC) made Guidelines on Handling Novel Coronavirus Pneumonia Related Cases on the 5th March, 2020. The approaches taken by different courts seem very similar, as explained in the above.

To sum up, if a contract cannot be performed due to the impact of outbreak of Covid-19 situation or epidemic prevention and control measures taken by the government, and the parties claim force majeure and request partial or full exemption from liability, the epidemic situation, the prevention and control measures taken by the government, the degree of impact on performance of the contract, and whether the parties perform in time shall all be taken into consideration. In addition, due to the same reason, if one party ask the other party to continue to perform the original contract, if it causes an obviously unfair situation to the other party, the party can request to change or terminate the contract.

Mr. SHEN, Xiangman
Partner of Jingtian & Gongcheng



BENCHAM
BENELUX CHAMBER OF
COMMERCE IN CHINA
荷比卢工商协会