

APAC COVID-19 FAQ

EDITION III – 17 APRIL 2020



Employment Law Expertise Provided by
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INTRODUCTION

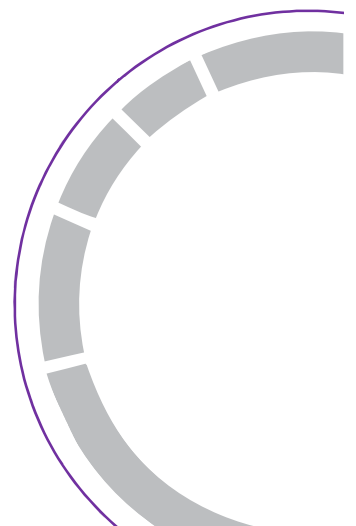
In the recent weeks, the Covid-19 situation has brought about great uncertainty for the world. Employers have not been spared. It can be challenging to wade through the ever changing myriad of notices, advisories and guidelines issued by the different governments.

To assist our clients, the Employment Law Alliance's APAC member firms have put together a set of FAQs to deal with some of the more common questions we have been asked relating to the new policies / advisories which have been issued in our respective jurisdictions as well as cost cutting measures which can be implemented to manage the cost of doing business.

The second edition of this paper was published on 14 April 2020 and can be found [here](#). As the situation is constantly evolving, we are providing weekly updates to our readers. This is the second edition and includes updates from Hong Kong, Japan and Taiwan.

Readers should take note that this information is accurate as at 16 April 2020. We encourage readers to keep abreast of developments in the countries of concern to them on a daily basis. Should you have any queries, please feel free to reach out to the contributors individually.

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HONG KONG

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”)?

A:

1. To enhance Hong Kong’s ongoing work in the fight against the novel coronavirus infection and to provide support and assistance to industries and members of the public affected by the epidemic, the Government has set up a HK\$30 billion Anti-epidemic Fund (the “Fund”). The Fund will provide additional resources to strengthen the territorial-wide anti-epidemic work and will render support to the affected industries and employees. The Hong Kong Government announced a second round of the Fund on 8 April 2020.

The first round of the Fund covers the following sectors: property management, construction, retail, food and catering, transport, convention & exhibition, fisheries, arts and culture, licensed guesthouses and travel agents. Not all of the subsidy schemes under the first round of the Fund are directed at employment-related issues, but some do, for example, the Anti-epidemic Support Scheme for Property Management Sector aims to provide an “Anti-epidemic Cleansing Subsidy” to property management companies and owners’ organizations in private residential and composite buildings, and subsidises them to provide the “Anti-epidemic Hardship Allowance” to front-line property management workers (i.e. cleaning and security workers). Each worker will be given a monthly allowance of HK\$1,000 for four months, subject to a cap of six headcounts per building block.

On 8 April 2020, the Hong Kong Government announced a second round of the Fund in light of COVID-19. One of the measures include introducing a HK\$80 billion Employment Support Scheme (“ESS”).

In relation to the ESS:

- The subsidy to be offered under the ESS is calculated based on 50% of the monthly salary of a specified month (any one month from January to March 2020 to be nominated by the employer), which is capped at HK\$18,000 (i.e. the maximum subsidy amount will be HK\$9,000), for a period of six months.

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- In terms of eligibility, all employers who have been making Mandatory Provident Fund (MPF) contributions or who have set up Occupational Retirement Schemes (ORSO schemes) for their employees for employees are eligible.
- As condition to application for the ESS, employers have to undertake that they cannot implement redundancy during the subsidy period and that they will spend all the government wage subsidies in paying wages to their employees. The employees may be engaged in full-time or part-time work as each enterprise's circumstances differ. Should there be any reduction in the number of employees on the payroll within the MPF and the ORSO framework during the period, the ESS subsidy will be adjusted with claw back and other penalty.
- Payment will be made in two tranches. Applications for the first tranche will start before the end of May 2020 till the first week of June 2020, with the aim of making the first payout to employers within June to help them pay the wages for June to August 2020. Application dates for the second tranche will be announced in due course, with payment to be made in September 2020 for paying the wages of September to November 2020. The detailed application and payment mechanisms are being worked out in consultation with stakeholders including the MPF trustees.

Our Chief Executive has said that 100 per cent of the wage subsidies provided by the Government have to be spent on wages. The employer cannot not deploy the money for other purposes and the Government will put in place very robust auditing after the event because they don't want to have detailed vetting before paying out.

It is otherwise hoped that more details and clarity regarding the application and eligibility criteria for ESS will be provided in the near future, especially after the Legislative Council meets to discuss, amongst other matters, the ESS on 17 April 2020.

HONG KONG

Separately, the deadline for payment of tax for year of assessment 2018/19 that will be falling due will be automatically extended for three months, with details to be announced by the Inland Revenue Department.

2. Separately, the Hong Kong Commerce & Economic Development Bureau's SME Financing Guarantee Scheme (the "Scheme") is planned to be rolled out sometime in April. The Scheme aims to alleviate the burden of paying employee wages and rents by small and medium-sized enterprises which are suffering from reduced income, thereby help minimise enterprise shutting down and layoffs. The Hong Kong Government will provide a 100% guarantee for approved loans taken out by eligible enterprises, in hopes that this will greatly enhance the chances for businesses in securing loans. The maximum amount of loan per enterprise is up to the total amount of employee wages and rents for six months per enterprise, or HK\$2 million, whichever is the lower. Further details are expected to be announced nearer the time of the commencement of the Scheme.

In terms of eligibility, it is said that all Hong Kong enterprises who have been operating and holding a valid Business Registration Certificate for at least three months by the end of December 2019 can apply to the Scheme. The loan applicant needs to provide proofs that they have suffered at least a 30 per cent decline in sales turnover in any month since February 2020 compared with the monthly average of any quarter in 2019. The current definition of "small-medium enterprises" used by the Hong Kong SAR Government is any manufacturing business which employs fewer than 100 persons in Hong Kong, or any non-manufacturing business which employs fewer than 50 persons in Hong Kong. It is at present unclear whether the definition of SMEs for eligibility to apply for the Scheme will follow the aforementioned definition.

The maximum repayment period is three years from the first drawdown of the facility. To lessen the immediate repayment burden of enterprises, an option for principal moratorium will be provided under which loan applicants will only be required to pay interest in the first six months. Separately, an interest rate of the Hong Kong Prime Rate minus 2.5 per cent per annum (or equivalent). The guarantee fee will be waived.

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3. Although not a subsidy scheme, pre-dating the COVID-19 outbreak, the Hong Kong Monetary Authority established the “Banking Sector SME Lending Coordination Mechanism” in October 2019 to provide a common platform for the banking industry to formulate solutions to support SMEs, including relieving SMEs’ cash-flow pressure via lending solutions. Since its establishment, Hong Kong’s banking sector has introduced several rounds of measures to help corporate and retail customers. Nearly 9 000 applications from SMEs involving principal repayment holidays, loan extensions and relief loans have been approved thus far, involving over HK\$57 billion. This has helped reduce the cash-flow pressure on customers and lessen the impact of the outbreak of COVID-19 on the local economy
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JAPAN

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: The Tokyo governor requested the closure of designated businesses such as entertainment facilities, universities, athletic facilities, theaters, public halls and exhibition halls, and commercial establishments, and large-scale retail facilities selling non-essential goods, though it is not enforceable.

In Tokyo, companies that comply with the business closure request are entitled to subsidies up to JPY 1 million. Some other local governments, including Osaka and Kanagawa, are also expected to provide respective economic assistance measures.



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TAIWAN

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”)?

A: Yes.

Recent orders from the Central Epidemic Command Center:

1. From March 17 until the end of this semester (i.e. July 15, 2020), no students and teachers of high school level and below may leave the country
2. From midnight March 19: All inbound non-Taiwanese individual is prohibited from entering the country, except those holding permanent residence, diplomat, business and other special permits. All inbound travelers, including Taiwanese citizens, shall submit to home quarantine for 14 days.
3. From midnight March 21: Travel advisory for every country in the world has been raised to a Level 3 Warning – meaning avoid unnecessary travel. All inbound citizens shall submit to home quarantine for 14 days.
4. From midnight March 24 to April 30: No more transit flights through Taiwan.
5. From April 18 midnight: Inbound travelers who have visited Europe or Americas in the last 14 days (starting from April 4 midnight, Taipei time) should voluntarily provide a declaration regarding home quarantine before boarding. For those travelers who live with seniors (65 year-old or older), children (6 year-old or younger), or person with chronic diseases (such as cardiovascular diseases, diabetes or lung disease), or the dwelling of such travelers does not have a separate bedroom and bathroom, then he/she shall undergo the 14-day isolation at an quarantine hotel designated by the government.

In terms of employment, the Occupational Safety Guidelines state that employees may refuse to be dispatched to outbreak areas if the employer is unable to provide protective equipment or measures. If the employer continues to insist on making the trip, the employee may terminate the employment and seek severance pay.

Q: Please state what implications such Shut Down directives have in managing employees

A: Employers are advised to establish in place means to allow employees to work remotely from home, or other measures to keep the business running to the extent possible during such shutdown.

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THAILAND

A. Governmental advisories, such as Travel Restrictions / Country Lock Down / Distancing Policies

Q: Are there government directions restricting travel out of or into your jurisdiction (“Travel Restrictions”)?

A: The Thai government declared a state of emergency effective 26 March 2020, followed by the following travel advisory from the Civil Aviation Authority of Thailand to inbound travelers to Thailand:

1. An individual entering, transiting or transferring in Thailand through an international airport must fall under one of the following categories:
 - (a) persons exempted by the Prime Minister or Permanent Secretary of Ministry of Foreign Affairs, subject to certain conditions and prescribed time periods;
 - (b) carriers of necessary cargo, provided they leave Thailand promptly after delivery of such cargo;
 - (c) pilots and crew members of a flight entering Thailand with a clear departure schedule;
 - (d) persons on diplomatic or consular missions or under certain international organizations, government representatives performing duties in Thailand, or other persons belonging to international agencies that the Ministry of Foreign Affairs gives permission. Family members of the above are also included. Persons under this category must present a certificate of entry to Thailand issued by the Ministry of Foreign Affairs;
 - (e) Non-Thai nationals with work permits or who have been issued a Smart Visa; and
 - (f) Thai nationals with a certificate of entry to Thailand issued by Royal Thai Embassy or Royal Thai Consulate in their country of origin certifying that they are Thais returning to Thailand.
2. Persons under categories (d), (e) and (f) above must have a “Fit to Fly” Health Certificate issued no more than 72 hours before boarding.
3. Persons permitted to enter Thailand are required to strictly comply with disease prevention measures imposed by the government.

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4. Immigration officers have the power to deny the entry of Non-Thai nationals who have been tested positive for COVID- 19, who are under suspicion of being infected or who refuse to undergo such test.

The Civil Aviation Authority of Thailand published an order temporarily banning all inbound passenger flights from 7 April 2020 through 18 April 2020. The ban has not been extended, however, meaning passenger flights are expected to be permitted to land as of 19 April. The Thai government has not banned any outbound travelling, but strongly discourages all non-essential travel outside of Thailand.

Q: Please state what implications such Travel Restrictions have in managing employees

A: Both Thai and non-Thai nationals have encountered difficulties in arranging the health certifications and insurance now required to enter Thailand. This has deterred travel by Thai residents to any place outside of Thailand, resulting in a trend of cancelling business trips. Further, as employers have a statutory duty to ensure that the workplace, so far as reasonably practicable, is safe and without risks to health, employers may consider implementing policies whereby employees who live with or are in close contact of persons who are under compulsory quarantine (especially if they have been to countries/areas which have particularly high numbers of cases) should work from home.

For employees who are currently abroad and unable to return to Thailand or who are subject to compulsory quarantine, employers may (i) allow such employees to work remotely, (ii) require the employees to take part of their annual leave, (iii) request that the employees take leave without pay.

If the affected employees are key to the operation of the employer's business and cannot feasibly work from abroad or under quarantine, the employer could consider more drastic action such as (i) temporarily suspending business operations and paying all employees 75% of their wages during the suspension, or (ii) temporarily suspending business operations by declaring a 'force majeure' and not paying the employees any wages during the suspension. These two options are considered extreme and should be carefully reviewed with counsel before implementation. In particular, there is little precedent on how an employer may suspend employees without pay on a 'force majeure' basis. (Please see more

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detail in our answer to “Please state what implications such Shut Down directives have in managing employees”).

Q: Are there any government directions to shut down business (“Shut Down directives”)?

A: The authority to shut down business is generally reserved for the provincial governments, and so there is no uniform, nationwide standard, except for a nationwide curfew from 10pm until 4am which has been in effect since 3 April 2020.

For Bangkok, the following businesses have been ordered to be closed from 22 March 2020 through 30 April 2020:

1. dine-in restaurants (exceptions exist for delivery, takeaway and restaurants in hotels catering to hotel guests, and hospital restaurants)
2. All state and private parks
3. shopping malls/department stores/other retail outlets (exceptions exist for food markets, drug stores and other shops essential for daily living)
4. cafes inside convenience stores
5. non-food retail/markets
6. beauty salons, barber shops
7. tattoo shops
8. skating places, rollerblade places or similar
9. bowling places, amusement parks or game arcades
10. gaming centers and internet cafe like places
11. golf clubs and driving ranges
12. swimming pools or similar
13. cock fighting places or places to prepare for fighting
14. amulet shops
15. exhibition or meeting halls or the like
16. educational places (e.g., schools or tutoring centers of any kind)

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17. weight control centers, beauty clinics and other beauty service centers
18. health care places (spas, health massage places, beauty massage places)
19. pet care places and pet day care centers
20. traditional massage places
21. bath houses, Japanese onsen places and sauna places
22. theaters (including movie cinemas and other places like concert or show places)
23. gyms and fitness centers (health clubs)
24. entertainment places and similar places (possibly referring to entertainment places defined under Thailand's Entertainment Places Law)
25. boxing stadiums and boxing schools
26. sports stadiums
27. horseracing stadiums
28. sports arenas
29. playgrounds
30. places of entertainment, public places for performance
31. museums
32. libraries
33. all kinds of meeting rooms, function rooms
34. snooker clubs
35. nurseries, except those operated in hospitals

Certain types of liquor cannot be sold from 10 April through 20 April, and so businesses whose only business is to sell liquor may effectively be shut down during this period.

Business operators who fail to comply with this closure order face penalties ranging from imprisonment of up to one year, a fine of up to Baht100, 000, or a combination thereof.

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As for other businesses not required to close, employers in the private sector are encouraged to allow their employees to work from home if possible, and government agencies are encouraged to reduce the working days or hours of their employees.

Q: Please state what implications such Shut Down directives have in managing employees

A: Employers in businesses affected by the aforementioned shut down have a variety of options to consider, with the Thai government offering a growing list of relief measures to both employers and employees. Employers may also look to implement different leave arrangements (which can be coupled with salary reduction) depending on business needs.

1. Annual Leave. Employers may require employees to take accrued annual leave as well as a portion of future unaccrued annual leave as long as the employee has the minimum six days annual leave. For example, employee with 15 days annual leave may take 9 days of annual leave from 2021 and use it in 2020 if agreed to with employer. An employer cannot deduct any used and unaccrued annual leave from final salary if employee is terminated or resigns, unless employee provides written consent.
2. Temporary Suspension of Operations with Salary Reduced to 75%. Employers may elect to temporarily suspend the employees during the shutdown period and pay them 75% of their regular wages by giving at least three days advance notice to the employees and the labour officials. It must be considered necessary for the employer to suspend operations due to a significant cause which affects the business operation of the employer in such a way that it is unable to carry on business as usual and that cause is beyond its control. Employee consent is not required, and the affected employees are not entitled to any additional social security relief currently provided in response to COVID-19.

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3. No Work/No Pay. Employers and employees may agree to a temporary suspension without pay. Unlike with the option set out immediately above, however, employee consent is required. Employers may want to consider offering a sweetener/bonus once business resumes in exchange for consent. Employees may still be entitled to social security benefits based on recent relief measures approved by the Thai Cabinet.

4. Force Majeure – Temporary Suspension of Operations with no Salary. Employers may elect to temporarily suspend the employees during the shutdown period without pay by declaring a 'force majeure'. The basic elements of 'force majeure' in Thailand are similar to those found in other jurisdictions, namely, an unforeseeable event not caused by the affected party which renders performance impossible and is not preventable by the affected party. Employers will need to consider this option with particular care, as the scope of a permitted 'force majeure' declaration has not been reviewed by Thai Supreme Court in labour context, and Thai courts in other commercial contexts have tended to read force majeure narrowly. For example, seasonal flooding in an area where there is regular, annual high tide was not considered a force majeure, as were general economic downturns and the 1997 Asian Financial Crisis. On the other hand, a government directive making performance impossible was ruled force majeure.

The Director-General of the Department of Labour Protection and Welfare gave a brief opinion during a media interview in March 2020 that a government directive on mandatory closure should be considered as 'force majeure' event. Such opinions are not legally binding, however, and so employers are not advised to rely on such opinions alone in deciding whether to declare a 'force majeure.' There should be a causal link between the 'force majeure' event and the employers' temporary closure or suspension of business. Employer may be required to show that they made reasonable efforts to mitigate against the effects of the 'force majeure' event, and notwithstanding the mitigation, operation of the business became impossible.

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There are plans to provide temporary relief to employees who are suspended due to a “force majeure” event. For those who have contributed to the social security fund for a minimum of six months during the past 15 months, they may receive up to 62% of their first 15,000 THB in monthly wages for up to 90 days.

5. Termination. Employers may elect to terminate some employees ‘without cause’, in which case normal severance would apply. Employers will need to be mindful of potential ‘unfair termination’ claims.

There are plans to temporarily increase unemployment benefits for terminated employees. For those who have contributed to the social security fund for a minimum of six months during the past 15 months, they may receive up to 70% of their first 15,000 THB in monthly wages for up to 200 days. For Thai nationals who are terminated but do not meet the above conditions, they may still be entitled to unemployment benefits up to 5,000 THB per month through June 2020.

Q: Are there any government directions on policies employers must adopt to ensure no close physical interaction between persons at the work place (“Distancing Policies”)?

A: The Thai government has not issued any directions that employers must follow to ensure social distancing. However, it has appealed to employers to be flexible in working arrangements, such as allowing employees to work from home, avoiding large scale meetings, reducing face-to-face contact with co-workers, and arranging flexible meal hours.

In practice, business establishments are increasingly requiring visitors to wear face masks and undergo thermal screening.

Q: Please state what implications such Distancing Policies have in managing employees

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A: Many employers in Thailand, in response to COVID-19, have been allowing their employees to work from home where their job nature allows it. In order to ensure that employees continue to carry out their duties while working outside of the office, instead of using such time for their personal or leisure purposes, there should be clear policies in place setting out employer's expectations from employees when they are working from home. The policies should also be clear as to an employer's right to act and what actions (such as dishonesty) are deemed inappropriate from a legal perspective.

B. Managing Employment Costs

Q: What cost-cutting measures can employers employ in light of the Covid-19 situation?

A: Please see our responses to the question above on *"Please state what implications such Shut Down directives have in managing employees."*

Q: How should employers implement the cost cutting measures?

A: Please see our responses to the question above on *"Please state what implications such Shut Down directives have in managing employees."*

Q: Are there any schemes to help businesses cope with the additional staff related costs resulting from the Covid-19 situation?

A: Certain employers are entitled to a 300% corporate income tax deduction for the salaries of qualifying employees if the following conditions are met:

- the employee earns no more than 15,000 THB per month
- the employer does not employ more than 200 employees
- the employer's income is not more than 500 million THB over a 12-month accounting period that ends on or before 30 September 2019
- the employee is enrolled in social security
- the employer does not employ fewer employees than it did in December 2019

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Furthermore, employer Social Security contributions have been reduced from 5% to 4% of employee salary for March, April and May with a three-month grace period for payment into the Social Security Fund. Furthermore, Social Security contributions for most employees have been reduced from 5% to 1% of employee salary for March, April and May with a three-month grace period for payment into the Social Security Fund.

Withholding taxes have been temporarily reduced from 3% to 1.5% from April through September 2020, interest expenses are entitled to an increased deduction for tax purposes, the due dates for filing corporate and personal income tax returns have been extended, and customs duties have been waived for goods that could be used to developing a COVID-19, however these benefits to businesses do not directly help them cope with additional staff related costs.



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