



ARTICLE

# The Impact of COVID-19 on the Construction Industry in China

The COVID-19 epidemic emerged prior to the start of Chinese Lunar New Year, the most celebrated time of the year in the People's Republic of China ("PRC"), during which millions travel across the country to their hometowns.<sup>1</sup>

Officials reported the first case of COVID-19 in Wuhan City in Hubei Province and the city was placed under lockdown by the Chinese Government on 23 January 2020, with other provinces following within days. The seven-day long Lunar New Year holiday was extended to 9 February 2020 in an attempt to contain the outbreak. There were 66 cities in China which were placed into lockdown for a period ranging from 50 to 76 days. Wuhan City, the epicenter of the pandemic, was the longest to be in lockdown.

## How will construction projects be impacted?

The most reported impact arising from COVID-19 is the acute shortage of labour. China's construction industry is heavily dependent on rural migrant workers, and according to the National Bureau of Statistics of China<sup>2</sup>, 54 million rural migrant workers are working in the construction industry. Migrant workers who had returned to their hometowns for the Lunar New Year holiday were unable to return to worksites after the lockdown.

In a survey conducted by the China Construction Industry Association<sup>3</sup> published on 15 April 2020, which 804 enterprises took part in, 90.55 percent of respondents said progress was negatively affected and 66.04 percent reported a shortage of labour.

<sup>1</sup>Ministry of Transport of the People's Republic of China. 9 January 2020. "大数据！2020年春运客流预测分析在这里" (In Chinese Language). [http://www.mot.gov.cn/fenxigongbao/yunlifanxi/202001/t20200109\\_3323840.html](http://www.mot.gov.cn/fenxigongbao/yunlifanxi/202001/t20200109_3323840.html)

<sup>2</sup>National Bureau of Statistics. 30 April 2020. "2019年农民工监测调查报告" (In Chinese Language). [http://www.stats.gov.cn/tjsj/zxfb/202004/t20200430\\_1742724.html](http://www.stats.gov.cn/tjsj/zxfb/202004/t20200430_1742724.html)

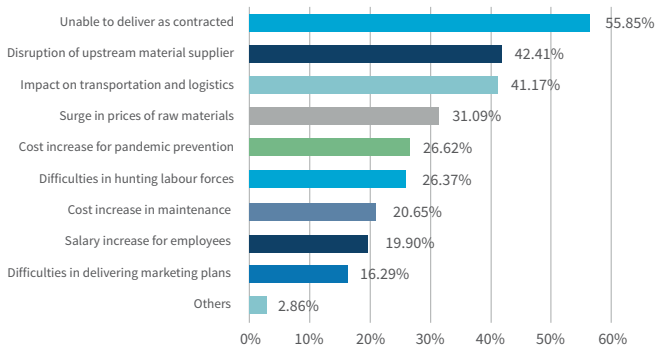
<sup>3</sup>China Construction Industry Association. 15 April 2020. "Investigation Report on How Covid-19 Impacted the Chinese Construction Enterprises" (in English and Chinese Language). <http://www.zgjzy.org.cn/menu20/newsDetail/8428.html>

### Can the effects of COVID-19 be deemed to be force majeure? What are the cost and time consequences?

The PRC is a civil law jurisdiction where the National People’s Congress has the power to revise the Constitution and create major legal codes.

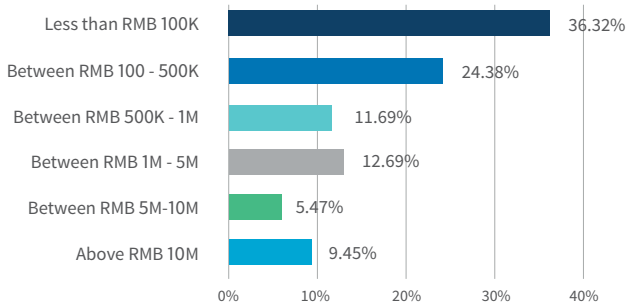
On 20 February 2020, the Commission of Legislative Affairs of the National People’s Congress Standing Committee’s indication confirmed that COVID-19 is indeed an “unforeseeable, unavoidable and insurmountable” event that could exempt parties from performing contracts.<sup>4</sup>

THE IMPACT OF COVID-19 ON CHINESE CONSTRUCTION ENTERPRISES



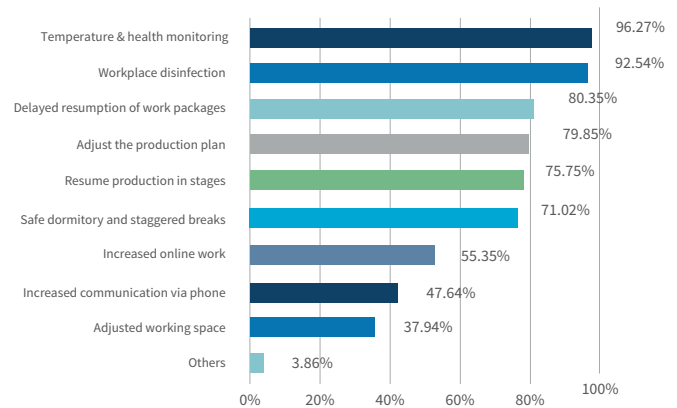
With regards to the increase in wastages and costs arising from the suspension of works, 36.32 percent of respondents reported that the daily loss was less than RMB 100,000, while 9.45 percent of respondents reported that losses per day exceeded RMB 10 million.

DAILY LOSS INCURRED BY CONSTRUCTION ENTERPRISES SURVEYED



On the preventive measures implemented at the construction sites, 96.27 percent of respondents have implemented temperature and health monitoring checks for staff working onsite, and 80.35 percent of respondents chose to resume works later on a number of work packages.

COVID-19 PREVENTION MEASURES



The Supreme People’s Court of the PRC<sup>5</sup> published its first guiding principles on several issues concerning the proper trial of civil cases on 20 April relating to the COVID-19 pandemic, with the latest update on 16 June 2020.<sup>6</sup> It stresses that when applying force majeure to relieve contracting parties from contract performance, the affected party must demonstrate causation between the pandemic and the party’s failure to perform contractual obligations and provide timely notice to other parties.<sup>7</sup>

With regards to the time and cost consequences arising from COVID-19, the Jiangsu Province branch of the Ministry of Housing and Urban-Rural Development (MOHURD)<sup>8</sup>, stated the following guiding principles:

- Extension of time should be allowed when the project is delayed or suspended due to COVID-19;
- The contractor bears the cost of machinery (idling and wear and tear), recurring materials, the increase in cost of temporary facilities required during the suspension and resumption periods; the employer bears the cost of site management and security teams which must remain on site;

<sup>4</sup> Hong Kong Lawyers. 21 February 2020. “COVID-19 and the Operation of Force Majeure in Hong Kong”. <http://www.hk-lawyer.org/content/covid-19-and-operation-force-majeure-hong-kong>

<sup>5</sup> The Supreme People’s Court of The People’s Republic of China. 20 April 2020. “关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见（一）”的通知 (in Chinese Language). <http://www.court.gov.cn/zixun-xiangqing-226241.html>

<sup>6</sup> The Supreme People’s Court of The People’s Republic of China. 16 June 2020. 法发〔2020〕20号. 《关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见(三)》的通知 (in Chinese Language). <http://www.court.gov.cn/zixun-xiangqing-236501.html>

<sup>7</sup> Morrison & Foerster. 22 April 2020. “China’s Supreme People’s Court Issues Long-awaited Guidance on COVID-19 Related Civil Disputes”. <https://www.mofo.com/resources/insights/200422-china-supreme-court-guidance-covid-19-civil-disputes.html>

<sup>8</sup> Ministry of Housing and Urban-Rural Development (Jiangsu Province Branch). 14 February 2020. “省住房城乡建设厅关于新冠肺炎疫情影响下房屋建筑与市政基础设施工程施工合同履行及工程价款调整的指导意见” (in Chinese Language).

- The employer bears the increased cost of cleaning and repairs/reinstatement and/or maintenance arising from the suspension and resumption of works;
  - If acceleration is approved by the experts to mitigate delays arising from COVID-19, the employer is responsible for the cost of acceleration if the number of accelerated days exceeds 10 percent of the remaining/unfulfilled contract period;
  - The contractor is to submit a pandemic control plan and obtain approval from the employer. Upon approval, the employer bears the cost of pandemic prevention, which includes the wages payable to workers during the quarantine period; and
  - The parties are to administer the increased costs of labour, materials, plant and equipment arising from COVID-19 based on the provisions in the contract. If the terms in the contract are unclear, the parties are to agree on a reasonable price adjustment based on actual circumstances supplemented with a formal agreement.
- The Guangzhou City branch of MOHURD states that the Employer bears the extra over cost if the increase in materials prices exceeds 5 percent;
  - The Shenzhen City branch of MOHURD states that when projects have been delayed by COVID-19, an extension of time is to be granted from the date of when the first-level public health emergency response was activated (i.e. 26 January 2020) to the date of resumption of works<sup>11</sup>; and
  - The Shanxi province branch of MOHURD states that an item named “COVID-19 pandemic prevention measures” should be included in the Preliminaries cost section. The cost of pandemic prevention for levels 1 and 2 workers is at RMB 40 per day, and levels 3 and 4 workers at RMB 15 per day. The pandemic prevention measures include testing, quarantine costs, point-to-point workers transportation, pandemic prevention promotion and education, temperature monitoring, workplace disinfection, temperature monitoring equipment, face masks, goggles, disinfectants, pandemic monitoring and reporting and staggered breaks and dining arrangement.<sup>12</sup>

Other branches in the MOHURD also issued guidance notes on the administration of claims arising from COVID-19. Some of the guiding principles are as follows:

- The Beijing City branch of MOHURD states that if a contract does not contain a force majeure clause, the parties may refer to section 9.10 “Force Majeure” of GB50500-2013. “Code of bills of quantities and valuation for construction works.” The contractor is entitled to the actual cost incurred on the preventive measures stipulated by the Government and authorities.<sup>9</sup>

As can be seen from the above, China has taken proactive measures and given guidelines on cost and time entitlements, with a focus on mitigation of the adverse impacts on construction projects and potential disputes between the parties. The guiding principles are diverse and stipulated to suit the needs of the provinces in China.

<sup>9</sup> Ministry of Housing and Urban-Rural Development (Beijing City Branch). 6 March 2020. “关于受新冠肺炎疫情影响工程造价和工期调整的指导意见”(in Chinese Language).

<http://zjw.beijing.gov.cn/bjjs/gcjs/zczjxx/tzgg/1793554/index.shtml>

<sup>10</sup> Ministry of Housing and Urban-Rural Development (Guangzhou City Branch). 16 April 2020. “广州市建设工程造价管理站关于防控新型冠状病毒肺炎疫情期间建设工程计价有关事项的指引”(in Chinese Language).

[http://zfcj.gz.gov.cn/zwgk/zsdwxxgkzl/jsgczjglz/zjxx/content/post\\_5793786.html](http://zfcj.gz.gov.cn/zwgk/zsdwxxgkzl/jsgczjglz/zjxx/content/post_5793786.html)

<sup>11</sup> Ministry of Housing and Urban-Rural Development (Shenzhen City Branch). 9 March 2020. “深圳市新型冠状病毒肺炎疫情防控期间建设工程项目计价调整工作指引”(in Chinese Language).

[http://zjj.sz.gov.cn/gkmlpt/content/7/7763/post\\_7763829.html#2037](http://zjj.sz.gov.cn/gkmlpt/content/7/7763/post_7763829.html#2037)

<sup>12</sup> Ministry of Housing and Urban-Rural Development (Shaanxi Province Branch). 31 March 2020. “关于新型冠状病毒肺炎防疫期间复工复产建设项目费用计价的通知”(in Chinese Language).

<http://js.shaanxi.gov.cn/zcfagui/2020/3/109836.shtml?t=2031>

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