

## 本期目录

### Content of the Current Issue

- **律所动态** *Our Firm's Activities*

涉疫情用工政策、不可抗力法律问题咨询

Consultation on employment policies and events of force majeure in connection with COVID-19 lockdown

- **近期热点** *Latest Issues of General Concern*

2022年版《鼓励外商投资产业目录》修订中

The "Catalogue of Encouraged Industries for Foreign Investment", 2022 Edition is being revised

- **新法速递** *New Law Express*

上海公证协会公布《关于为企业出具与“新型冠状病毒肺炎”疫情相关的不可抗力事实性公证及相关涉复工复产公证的通知》

The Shanghai Notary Association announced the "Notification on Issuing Event of Force Majeure Factual Notarization for Enterprises Related to " Corona Virus Disease 2019 " and the Resumption of Work and Production Notarization"

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### 【律所动态】

#### 【Our Firm's Activities】

**涉疫情用工政策、不可抗力法律问题咨询**

**Consultation on employment policies and event of force majeure in connection with COVID-19 lockdown**

受新冠肺炎疫情的影响,上海市许多企业的生产经营活动和个人的日常学习生活受到波及。上海市理德律师事务所针对疫情中集中出现的法律问题进行了研究,对疫情下企业和个人的困难与危机进行了总结与分析,并为相关的法律问题提供了咨询服务。

As we are all aware that COVID-19 has been affecting not only the production and business activities of many enterprises but also the daily livings of individuals in Shanghai. On the legal issues caused by or in connection with the prevailing pandemic, a series of related research have been conducted by us, which summarize and analyze the difficulties and crises encountered by enterprises and individuals, as well as providing consulting services relevant to these legal issues.

## 一、 用工政策相关

### As Regards Employment policies

上海市高级人民法院根据上海市疫情防控情况及劳动关系特点,联合上海市人力资源和社会保障局制定《关于处理涉疫情劳动争议纠纷若干问题的解答》,明确了平衡稳定的处理原则和具体规定,理德为客户作咨询解答如下:

In light of the pandemic prevention and control situation in Shanghai and the specific characteristics relevant to labor relations, the Shanghai High People's Court and the Shanghai Human Resources and Social Security Bureau jointly formulated the "Answer to Various Questions on the Handling of Labor Disputes Related to Pandemic", which clarifies the principles and specific provisions on the handling of labour disputes in a balanced and stable manner. Our advice for our clients in this regards is as follows:

受疫情影响,劳动人事争议的仲裁时效或起诉期间如何认定?当事人无法正常参加相关仲裁活动或诉讼活动的,应如何处理?

Q: In view of the pandemic, how could the limitation period of arbitration or prosecution of labor and employment disputes be determined? What should the parties do if they could not normally participate in relevant arbitration or litigation proceedings?

答:根据《中华人民共和国劳动争议调解仲裁法》《中华人民共和国民事诉讼法》《中华人民共和国突发事件应对法》的相关规定,因受疫情影响,当事人无法在法定期间申请劳动人事争议仲裁或提起诉讼的,可依法适用有关仲裁时效中止、受影响的期限不计算在起诉期限内的规定;因受疫情影响,当事人不能正常参加仲裁或诉讼活动的,可依法适用仲裁、诉讼程序中止的规定,但法律另有规定的除外。

A: According to the relevant provisions of the "Labor Dispute Mediation and Arbitration Law of the People's Republic of China", the "Civil Procedure Law of the People's Republic of China", and the "Emergency Response Law of the People's Republic of China", if the parties failed to apply for labor and employment dispute arbitration or filed a lawsuit within the limitation period due to the impact of the pandemic, the parties may invoke the relevant provision in the Law to the effect that the limitation period for arbitration would suspend to run and that the time during the affected period would not be counted towards the limitation period for prosecution and arbitration. If the parties failed to participate in arbitration or

litigation proceedings due to the pandemic, the provisions on the suspension of arbitration or litigation procedures may be applied in accordance with the law, except as otherwise provided in other regulation.

简评: 当事人能够证明在申请仲裁期间内因不可抗力或者其他客观原因无法申请仲裁的, 人民法院认定申请仲裁期间中止的, 从中止的原因消灭之次日起, 申请仲裁期间连续计算, 当事人应当注意及时主张权利。

Brief Comment: A party which demonstrates that its failure to apply for arbitration due to an event of force majeure or other objective reasons during the limitation period for arbitration application, and that the people's court consequentially determined that the period for arbitration application be suspended, the subject limitation period for arbitration application shall resume to run on the day in which the reason for the suspension extinguished. Accordingly, it is advisable for parties to pay due attention to claiming their rights in a timely manner.

疫情防控期间, 劳动者因不配合政府部门疫情防控措施被追究刑事责任或受到治安拘留等行政处罚的, 用人单位可否解除劳动合同?

Q: During the pandemic prevention and control period, can an employer terminate the labor contract in the event that its employee is being pursued for criminal liability or is subject to administrative punishment such as public security detention for failing to cooperate with the government's pandemic prevention and control measures?

答: 疫情防控期间, 劳动者因不配合政府部门疫情防控措施被追究刑事责任的, 用人单位可依据《中华人民共和国劳动合同法》第三十九条第(六)项的规定, 依法解除劳动合同; 劳动者因不配合政府部门疫情防控措施而受到治安拘留等行政处罚, 用人单位依法制定的规章制度对此情形是否可解除劳动合同有规定的, 可按其规定处理。

A: During the pandemic prevention and control period, if an employee is pursued for criminal liability for reason of not cooperating with the pandemic prevention and control measures imposed by government, his/her employer may terminate the labor contract pursuant to Article 39(6) of the "Labor Contract Law of the People's Republic of China". If an employee is subject to administrative punishment such as public security detention due to his/her failure to cooperate with the prevention and control measures of the government department, the employer may terminate the labor contract in accordance with the provisions of the rules and regulations formulated according to law.

简评: 为有效依据劳动合同法内容与因不配合政府部门疫情防控措施被追究刑事责任的劳动者解除劳动合同关系, 用人单位宜制定相关的管理制度, 规定因不配合政府部门疫情防控措施被追究刑事责任可构成雇主终止合同的理由。

Brief comment: in order to terminate the labor contract relationship effectively based on the provisions of the Labor Contract Law for reason that the subject employee is being held criminally responsible for not cooperating with the government's pandemic prevention and control measures, it is advisable for an employer to formulate a relevant management system stipulating specifically that such reason would constitute a cause for termination.

## 二、 不可抗力应用相关

### Applicability of an Event of Force Majeure

通过援引不可抗力条款，可以部分或者全部免除当事人一方的法律责任，根据《中华人民共和国民法典》第一百八十条和第五百九十条的规定，为准确援引不可抗力条款，应当注意如下几点：首先，不可抗力应符合不能预见、不能避免且不能克服的特征。其次，一方当事人因不可抗力不能履行合同的，应当及时通知对方，积极采取减轻对方损失的行动，并且应当在合理期限内提供相关的证明。最后，不可抗力的责任减免应当符合公平原则的宗旨，需要当事双方充分沟通协商，争取顺利履行原约定，在无法达成上述情形的情况下，公平分担责任。

By invoking a contractual force majeure provision, an affected party could be relieved of its legal liability in part or in whole, in accordance with Articles 180 and 590 of the Civil Code of the People's Republic of China. In order to successfully invoke a contractual force majeure provision, an affected party should pay attention to the following points. First, an event of force majeure should satisfy the elements of unforeseeably, unavoidably and insurmountably. Second, if either party is unable to perform the contract due to an event force majeure, it shall timely notify the unaffected party, actively take actions to mitigate the loss of the unaffected party, and to provide relevant evidence within a reasonable period of time. Third, the liability so relieved for cause of an event of force majeure shall be in line with the principle of fairness, and both parties shall fully communicate and negotiate to smoothly perform the original agreement, and to apportion the responsibility equally if an agreement could not be reached.

此外，理德还在涉疫情的物业纠纷中为客户提供法律咨询与诉讼支持服务，保障个人客户生活品质，助力企业客户平稳复产复工。

In addition, we also provide legal advice and litigation supporting services to our clients in relation to property disputes due to pandemic effect. We will do our utmost best to preserve the quality of living of our individual clients and to assist our corporate clients to smoothly resume their production and operation.

### **【近期热点】**

### **【Latest Issues of General Concern】**

#### **2022年版《鼓励外商投资产业目录》修订中**

#### **The “Catalogue of Encouraged Industries for Foreign Investment”, 2022 Edition is being revised**

根据《外商投资法》《外商投资法实施条例》，国家根据国民经济和社会发展需要，制定鼓励外商投资产业目录，列明鼓励和引导外国投资者投资的特定行业、领域、地区。现行《鼓励外商投资产业目录》是2020年版。

Pursuant to the Foreign Investment Law and the Regulations on the Implementation of the Foreign Investment Law, China has formulated a catalogue of encouraged industries for foreign investment with an objective of meeting national economic and social development need. The catalogue, purports to list out and guide foreign investors to invest on specific industries, fields and regions that are encouraged by the State for foreign investment. The current Catalogue is the 2020 edition.

根据习近平主席在第四届中国国际进口博览会开幕式上的重要讲话精神和国务院部署, 2021年11月以来, 国家发展改革委会同商务部在广泛征求各地方、各有关部门、商协会、企业意见基础上, 形成了《鼓励外商投资产业目录(2022年版)(征求意见稿)》。

In accordance with the spirit of President Xi Jinping's speech at the opening ceremony of the Fourth China International Import Expo and the deployment of the State Council, the National Development and Reform Commission and the Ministry of Commerce have, since November 2021, been widely soliciting opinions from local governments, relevant departments, business associations and enterprises, and on the basis of these opinions formulated the Catalogue of Encouraged Industries for Foreign Investment (2022 Edition)(Solicitation of Comments).

本次修订总体考虑是条目上“总量增加、结构优化”。《鼓励外商投资产业目录(2022年版)(征求意见稿)》与2020年版相比, 增加了238条, 修改了114条(主要是扩展原条目涵盖领域), 删除了38条。其中, 全国鼓励外商投资产业目录(以下简称全国目录)增加了50条, 修改了62条, 删除了14条; 中西部地区外商投资优势产业目录(以下简称中西部目录)增加了188条, 修改了52条, 删除了24条。

The overall consideration on the current revisions is to make a "total increase of encouraged items, and structural optimization." Compared to the 2020 edition, the Catalogue of Encouraged Industries for Foreign Investment (2022 Edition) (Solicitation of Comment) increased 238 more items, with 114 amendments (mainly to expand the areas covered by the original items) and the deletion of 38 items. Amongst which, 50 items were added to the National Catalogue of Encouraged Industries for Foreign Investment (the "National Catalogue"), 62 items had been revised and 14 items deleted; The Catalogue of Foreign-invested Industries Having Competitive Advantage in the Central and Western Regions (the "Catalogue of Central and Western Regions) added 188 items, revised 52 items and deleted 24 items.

主要修订内容: 一是持续鼓励外资投向制造业。全国目录新增或扩展元器件、零部件、装备制造等条目。二是持续鼓励外资投向生产性服务业。全国目录新增或扩展专业设计、技术服务与开发等条目。三是持续鼓励外资投向中西部和东北地区。中西部目录根据各地劳动力、特色资源等优势 and 招商引资需要, 新增或扩展了有关条目。

Major revisions: First, it is necessary to continue to encourage foreign investment in manufacturing industry. New or expanded items of original components, parts and components, equipment manufacturing and other items are added on the National Catalogue.

Second, it is essential to continue to encourage foreign investment in production industry. New or expanded items of professional design, technical services and development are added on the National Catalogue. Third, to continue to encourage foreign investment in the Central, Western and Northeast Regions. The Catalogue of Central and Western China has added or expanded related items according to the competitive advantages of local labor forces and resources having special characteristics as well as the needs for attracting investment.

[https://xmu.yecgaa.top/https/77726476706e69737468656265737421f8f30f9223226b1e79079fe29b5b/yjzx/yjzx\\_add.jsp?SiteId=380](https://xmu.yecgaa.top/https/77726476706e69737468656265737421f8f30f9223226b1e79079fe29b5b/yjzx/yjzx_add.jsp?SiteId=380)

## 【新法速递】

### 【New Law Express】

## 上海公证协会公布《关于为企业出具与“新型冠状病毒肺炎”疫情相关的不可抗力事实性 公证及相关涉复工复产公证的通知》

**The Shanghai Notary Association announced the "Notification on Issuing Event of Force Majeure Factual Notarization for Enterprises Related to " Corona Virus Disease 2019 " and the Resumption of Work and Production Notarization"**

近日，受新冠肺炎疫情影响，上海企业特别是进出口企业无法如期履行或不能履行包括贸易合同在内的合同。为助力企业复工复产，维护合法权益，助力企业依法减免违约责任，上海公证行业可为企业提供与“新型冠状病毒肺炎”疫情相关的不可抗力事实性公证以及相关涉复工复产公证服务。

Due to the recent adverse effect of COVID-19, enterprises in Shanghai, especially import and export enterprises, have not been able to perform their contracts, including trading contracts, at all or on time. In order to assist these affected enterprises to resume work and production, safeguarding their legitimate rights and interests, and reducing the risk for breach of contract in accordance with the law, the Shanghai's notary profession provides enterprises with event of force majeure factual notarization related to the COVID-19 pandemic and notary services related to resumption of work and production.

各公证机构在出具与“新型冠状病毒肺炎”疫情相关的事实性公证时，需要结合不同地区政府发布的疫情防控通知和规定，具体分析当地防控措施给合同履行带来的实际影响来判断，企业需提供佐证材料。

When issuing factual notarizations related to the COVID-19 pandemic, it is necessary for a notary institution to take the pandemic prevention and control notices and regulations issued by different regional governments into consideration, and to analyze the actual impact of local prevention and control measures on subject contractual performance. Affected enterprises are required to submit supporting materials in their request for notarization services.

企业办理与“新型冠状病毒肺炎”疫情相关的事实性证明的公证需要提交的相关佐证材料：

The relevant supporting materials that enterprises are required to submit for notarization of factual certificates related to the COVID-19 pandemic are as follows:

1、申请人的主体资格证明材料，如企业的营业执照复印件、法定代表人的身份证件复印件或相关授权证明文件；

1. The applicant's main qualification certification materials, such as a copy of the enterprise's business license, a copy of the legal representative's ID card or relevant authorization documents

2、企业无法如期履行或者不能履行的，如贸易合同、货物订舱协议、货运代理协议、报关单等；

2. Materials supporting that the enterprises are unable to perform as scheduled or at all, such as trade contracts, cargo booking agreements, freight forwarding agreements, customs declarations, etc.

3、相关政府、机构出具、发布的疫情防控通知和规定；

3. Pandemic prevention and control notices and regulations issued by relevant governments and institutions.

4、清楚表述合同无法履行与相关疫情防控要求之间逻辑关系并加盖公章的情况说明；

4. A statement bearing the official seal of the affected enterprise clearly setting out the logical relationship between the inability to perform the contract and the relevant pandemic prevention and control requirements; and.

5、与出具“新型冠状病毒肺炎”疫情相关的事实性证明所需的其他佐证材料。

5. Such other supporting materials as required for the issuance of factual certificates related to the COVID-19 pandemic.

对于申请办理“新型冠状病毒肺炎”疫情相关的不可抗力事实性公证以及其他相关涉复工复产公证，企业可通过上海各公证机构咨询电话、微信公众号、公证机构线上办证小程序以及其他公示的线上方式咨询了解相关情况。

For an application for force majeure factual notarization related to the COVID-19 pandemic and other related work and production resumption notarization, enterprises may utilize different means of contact such as Shanghai's notary public consultation hotline, WeChat public account, notary agency online certificate application applet, and other public announcements online consultation to learn more about related matters.

目前，上海市大部分的公证机构处于封控管理的状态，如企业有申办与“新型冠状病毒肺炎”疫情相关不可抗力事实性公证以及相关复工复产证明公证的需求，公证机构将根据不同企业需求，可结合实际情况出具电子版公证书，并且待公证机构恢复窗口服务后，联系企业前来领取公证书正本；如无法出具电子版公证书的，企业可先提供有关材料，在公证机构恢复对外服务后，第一时间联系企业前往公证机构领取公证书正本。

At the present moment, most of the notary institutions in Shanghai are still under lockdown. In case an enterprise wishing to apply for notarization of an event of force majeure related to the COVID-19 pandemic and notarization of work and production resumption certificates, the notary institution would, according to the requirements and the actual circumstances of the subject enterprise, issued an electronic version of the notarial certificate, and upon the notary office resuming normal service, informs the subject enterprise to come to collect the original notarization certificate. In the event that an electronic version of the notarization certificate can not be issued, the enterprise may submit the relevant materials first, to be processed by the notary office once it resumes external services. The subject enterprise will be notified to collect the original notary certificate as soon as the notary office resumes normal services.

### **关于理德 *About Veritas***

上海理德律师事务所是一家成立于 2007 年为国内外客户，提供一站式法律和企业服务的专业化精品中国律师事务所。理德尤其以提供跨境交易法律服务著称，包括外商在国内投资及中国企业海外投资。在过去近十五年的时间里，理德以良好的信誉和无可挑剔的专业精神赢得了客户。

Founded in 2007, Shanghai Veritas Law Corporation is a professional boutique Chinese law firm providing one-stop legal and corporate services to domestic and international clients. Veritas is particularly known for providing legal services on cross-border transactions, including foreign investment in China and overseas investment by Chinese enterprises. For nearly 15 years, Veritas has won customers with its excellent reputation and impeccable professionalism.

理德超过 80% 的客户，是来自世界各地的外国投资人及外商投资企业。他们主要是通过与管理理德合作的国际平台及合作的律师事务所、会计师及税务师事务所、评估公司和行业调查公司推荐的。理德拥有经验丰富的团队，可以在不同的法律领域内为国内外客户提供优质高效的专业服务，以满足他们在境内外直接投资、并购、首次公开募股、跨国诉讼/仲裁、处理合同和其他各种法律事务方面的需求。

More than 80% of Veritas's customers are foreign investors and foreign-invested enterprises from all over the world. They are recommended by law firms, accountants and tax agents, appraisal firms and industry research firms through the international platform that Veritas works with. The experienced team enables us to provide high quality and efficient professional services to our domestic and international clients in different areas of law to meet



their requirements in direct investment, mergers and acquisitions, initial public offerings, international litigation/arbitration, contract processing and other legal matters.

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