

The Legal Risk for Entry Personnel during the Coronavirus Outbreak

Minli Tand (Mitchell) Attorney Grandall Law Firm (ShangHai)

With the outbreak of COVID-19 gradually improved in China, the confirmed cases outside China has outnumbered the inside ones. Moreover, the number of imported cases in China exceeded that of new infection for several consecutive days. It is reported that some people have been placed on criminal investigation for violating China's laws on epidemic prevention and control.

On 13 March, the Guideline on Further Tightening Frontier Health and Quarantine Measures and Imposing Law-based Punishments for Illegal and Criminal Acts of Obstructing Frontier Health and Quarantine Measures (the "Guideline") was released by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice and the General Administration of Customs jointly, specifying the punishment against the acts of obstructing Frontier health and quarantine as well as the approaches to deal with the illegal and criminal issues involving the entry personnel.

The Guideline has clarified the following six circumstances which are required to assume legal liabilities:

- (i) people with quarantinable infectious diseases or suspected epidemic victims refuse to carry out the health declaration, temperature check, medical inspection, epidemiological investigation, medical screening, sampling and other health quarantine measures specified by the Customs in accordance with the Frontier Health and Quarantine Law and other laws and regulations, or health treatment measures such as isolation, check-up detention, on-site clinical check-up and transfer of patients, etc.;
- (ii) people with quarantinable infectious diseases or suspected epidemic victims hides epidemic information or falsify quarantine forms;
- (iii) whoever knows or should know that microbes, human tissues, biological products, blood and blood products and other special articles subject to the administration of examination and approval may cause the spread of a quarantinable infectious disease, transport or post special articles that may cause spread of quarantinable infectious diseases without examination and approval;
- (iv) the person in charge of the public transport refuses to accept health quarantine or sanitary treatment in case of discovery of quarantinable epidemic victims or suspects on the public transport;
- (v) people who intentionally hide non-accidental deaths on the public transport that is under their charge and from a region or country where an infectious disease is rampant;
- (vi) other acts of refusing to execute the quarantine measures proposed by the Customs in accordance with the Frontier Health and Quarantine Law and other laws and regulations.

During the coronavirus outbreak, any entry personnel violating the Guideline may be subject to administrative penalties, or even be prosecuted for criminal liability for severe cases or major risk of virus transmission or spread thus incurred. The three major crimes concerned include, crime of obstructing frontier health and quarantine, crime of obstructing the prevention and treatment of infectious diseases and crime of endangering public security by dangerous means.

1. Crime of Obstructing Frontier Health and Quarantine

Article 4 of the Frontier Health and Quarantine Law provides for that, “All persons, vehicles and transport equipment, as well as other articles such as baggage, goods, and postal parcels that may transmit quarantinable infectious diseases, shall be subject to quarantine inspection upon entering or exiting the country. Entry or exit out of the country by said persons and others shall not be allowed without express permission from a frontier health and quarantine office.. The transport vehicles and individuals shall be subject to quarantine inspection at the designated venue of their first arrival border port. No person shall board or alight from the transport vehicle, load or unload luggage, cargo, postal articles, etc., without the consent of the border health and quarantine authority.” Any entry personnel who violates Frontier Health and Quarantine Law by refusing to accept quarantine inspection or concealing the truth in the report, which causes the spread or the serious risk of transmission of the coronavirus, may constitute a crime of obstructing the frontier health and quarantine.

An entity which commits any of the aforesaid acts and causes the spread or serious risk of transmission of the coronavirus, or any other quarantinable infectious disease as determined and announced by the State Council shall be fined, and the person in charge as well as other responsible persons thereof shall be punished according to the crime of obstructing frontier health and quarantine.

Since the crime of obstructing frontier health and quarantine is a consequential offence, the outcome of such crime, i.e., the aforesaid acts of obstructing frontier health and quarantine as well as the spread of and or serious risk of transmission of the coronavirus, for example, causing a number of person infected or as suspected, is taken as the established conditions of the crime. If the offender only conducts the aforesaid acts without causing the aforesaid serious consequences, he/she shall be subject to a warning or fine pursuant to Article 20 of the Frontier Health and Quarantine Law.

Article 20 of the Frontier Health and Quarantine Law provides for that, the competent frontier health and quarantine authority may, based on the extent of the circumstances, issue a warning to or impose a fine on the organization or individual that has conducts any of the following acts:

- (i) evading quarantine inspection or concealing true information against the frontier health and quarantine authority; or
- (ii) boarding or alighting from a transport vehicle, loading or unloading luggage, cargo, postal articles, etc., without the consent of the frontier health and quarantine authority, and refusing to heed dissuasion.

2. Crime of Obstructing the Prevention and Treatment of Infectious Diseases

Currently, policies have been released in many cities of China requiring measures of prevention, control and isolation of entry personnel. For example, Beijing requires that all passengers arriving Beijing from overseas shall be put on 14-day quarantine at

designated facilities from March 16. Shanghai specified on March 17 that passengers with a travel and residence history to or in 16 countries (including without limitation, South Korea, Italy, Iran, Japan, France, Germany and the United States.) 14 days prior to their entries must be isolated. Other cities and provinces, such as Tianjin and Shaanxi, require entry personnel to be isolated for 14 days. Wuhan also requires that, from March 17, any and all entry personnel shall be isolated at designated facilities for 14 days.

Any entry personnel refusing to observe isolation regulations during the period of self-isolation or concentrated isolation, and thus causing the spread or a grave danger of the spread of the A-class infectious disease shall be deemed to have committed the crime of obstructing the prevention and treatment of infectious diseases and shall be punished in accordance with Article 330 of the Criminal Law.

Article 330 of the Criminal Law provides for that, “whoever, in violation of the provisions of the Law on Prevention and Treatment of Infectious Diseases, commits any of the following acts and thus causes the spread or a grave danger of the spread of an A-class infectious disease shall be sentenced to fixed-term imprisonment of no more than three years or criminal detention; if the consequences are especially serious, the person shall be sentenced to fixed-term imprisonment of no less than three years but no more than seven years: ... (4) refusal to execute the preventive and control measures proposed by the health and anti-epidemic agencies according to the Law on Prevention and Treatment of Infectious Diseases.”

Those persons who refuse isolated treatment or, before the expiration of the period of isolation, break away from the treatment without approval, not causing the spread or a grave danger of the spread of the coronavirus, may be subject to compulsory isolated treatment by the public security organ and relevant medical agencies in accordance with Article 39 of the Law on Prevention and Treatment of Infectious Diseases.

3. Crime of Endangering Public Security by Dangerous Means

Article 12 of the Frontier Health and Quarantine Law provides for that, “A person having a quarantinable infectious disease shall be placed in isolation by the frontier health and quarantine office for a period determined by the result of the medical examination, while a person suspected of having a quarantinable infectious disease shall be kept for inspection for a period determined by the incubation period of such disease.” It is noteworthy that this Article applies to both the confirmed cases and the suspected ones, who should be isolated as required. Any of those confirmed or suspected patients who refuses to follow the said measures, causing others being infected or having serious risk of being infected may constitute a crime of endangering public security by dangerous means.

On 6 February, the Opinions on Legally Punishing Illegal and Criminal Acts Interfering with Prevention and Control of the Novel Coronavirus Pneumonia Epidemic issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and the Ministry of Justice provides for that, “Those who deliberately spread COVID-19 pathogens and fall any of the following circumstances and endanger public safety shall be convicted and punished, in accordance with the provisions of Article 114 and Paragraph 1 of Article 115 of the Criminal law, for the crime of endangering public safety by dangerous means:

(1) Those patients confirmed with the novel coronavirus and carriers of novel coronavirus pathogens refuse treatment in isolation, or leave isolation and treatment

premises without approval prior to the expiry of the isolation period and enter public venues or public transport vehicles; or

(ii) Those patients suspected of the novel coronavirus refuse treatment in isolation, or leave isolation and treatment premises without approval prior to the expiry of the isolation period and enter public venues or public transport vehicles, causing the spread of the novel coronavirus.

Those who refuse to execute the preventive and control measures proposed by competent health and anti-epidemic agencies in accordance with the Law on the Prevention and Control of Infectious Diseases, causing the spread of the novel coronavirus or have a grave danger of spreading the novel coronavirus, shall be convicted and punished, in accordance with the provisions of Article 330 of the Criminal Law, for the crime of obstructing the prevention and treatment of infectious diseases.

The outcomes of crime of obstructing the prevention and treatment of infectious diseases and crime of endangering public security by dangerous means are the same, as both of them require a consequence of the spread of or having a grave danger of spreading the novel coronavirus, however, the difference is that, the former requires the person is aware that he/she is a confirmed or a suspected case, while the latter does not know this, nor does he have symptoms or reasons to infer that he is a suspected case or a close contact person. The person committing the latter crime has negligence in terms of the consequence, and thus his punishment is lighter than the former crime. This also conforms to the principle of adaptability of punishment to crimes under the Criminal Law.

In addition, those who obstruct, by means of violence or threat, the performance of epidemic prevention by functionaries of State organs shall constitute the crime of interference with public service; those who obstruct the performance of public service by functionaries of State organs in other measures shall constitute illegal administrative act, and shall be given a warning or be fined no more than RMB 200, or be detained for no less than five days but no more than 10 days, and be fined no more than RMB 500 additionally if the circumstances are serious, according to Article 50 of the Administrative Penalties for Public Security. The difference between criminal responsibility and administrative responsibility lies in the difference in obstruction methods.

In conclusion, during the epidemic period, the entry personnel shall follow the below instructions:

(i) Faithfully declaring health conditions, itinerary records and other personal information;

(ii) Actively assisting the frontier authority in the quarantine inspection;

(iii) complying with the local quarantine measures.

Jurisdiction

It is provided in relevant Chinese law that, anyone who commits a crime within the territory of, on board a ship or aircraft of the People's Republic of China shall be governed by the laws of the People's of Republic of China.