

## China Insight



# PRC Supreme People's Court Announces Guiding Opinions (III) on Trial of Civil Cases Concerning COVID-19

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Dear Sir or Madam,

On 08 June 2020, the PRC Supreme People's Court promulgated the *Guiding Opinions (III) on Several Issues Concerning the Lawful and Proper Trial of Civil Cases Related to the Novel Coronavirus Pneumonia (COVID-19) Epidemic*. They provide guidance to the People's Courts on how to deal with certain aspects of COVID-19 related civil cases, including civil procedure related time limits, application of law, foreign-related commercial cases, transportation contracts related cases, admiralty and maritime disputes. Please find below an overview of the key content.

Kind regards,  
**CMS, China**

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On 08 June 2020, the Supreme People's Court ("**SPC**") of the People's Republic of China ("**PRC**") promulgated the *Guiding Opinions (III) on Several Issues Concerning Lawful and Proper Trial of Civil Cases Related to the Novel Coronavirus Pneumonia Epidemic* ("**Opinions**").

SPC guiding opinions are important judicial ruling criteria which normally have binding effect in practice for all levels of the People's Courts in the PRC ("**People's Courts**") although such opinions are not law in a technical sense.

The *Opinions* contain 9 articles and 19 items directed to the People's Courts on how to deal with certain aspects of civil cases concerning the COVID-19 epidemic ("**Epidemic**"). These articles and items cover roughly 5 aspects including civil procedure related time limits, application of law, foreign-related commercial cases, transportation contracts related cases, admiralty and maritime disputes. The purpose of the *Opinions* is to equally protect the legitimate rights and interests of Chinese and foreign parties and to create a more stable, fair, transparent, predictable and legalized business environment so that foreign-related commercial and maritime cases can be heard properly and lawfully.

## 1. Civil Procedure Related Time Limits

The SPC guides the People's Court to support applications for extension or suspension of certain civil procedure related time limits if the concerned parties have been unable to meet such time limits due to the impact of the Epidemic and related prevention and control measures ("**Epidemic Situation**"). Such cases of extension and suspension of procedural time limits are partly already regulated in existing PRC law, now they have been clarified for the Epidemic Situation. Therefore, they are helpful and practicable for the People's Courts to react on the respective applications and come to a decision more efficiently and accurately, and the relevant guidance is certainly beneficial for foreign parties and litigants.

The People's Courts shall, upon a respective application by the applicant and according to the individual circumstances, grant a reasonable time extension for:

- Notarization, legalization or related formalities for ID documents, certificates of litigation representatives to be submitted by foreign enterprises or organizations to the People's Court which cannot be completed due to the Epidemic Situation;
- Notarization, legalization or related formalities for powers of attorneys to be delivered or sent from outside the PRC by foreigners or stateless persons which cannot be completed due to the Epidemic Situation;
- Providing evidence formed outside the PRC which cannot be provided within the originally stipulated time period due to the Epidemic Situation. The People's Court shall request the concerned party to explain basic information such as collection, form, content, proving object of the evidence;
- Filing an appeal or a statement of defense which the concerned party not having a domicile within the PRC has failed to complete within the originally stipulated term period due to the Epidemic Situation, unless such party is proved to maliciously delay the process.

Further, the SPC regards the Epidemic Situation as Force Majeure with the consequence that the applicant may claim suspension of the 2-years statute of limitation for applying for acknowledgement and enforcement of a judgement, ruling or arbitration award rendered by a foreign court or arbitral tribunal, if it has been prevented from making such an application due to the Epidemic Situation within the last 6 months of the mentioned statute of limitation. (According to Article 547 of the *SPC Interpretation on the Application of the PRC Civil Procedural Law* (promulgated by the SPC on 30 January 2015) in conjunction with Article 239 of the *PRC Civil Procedural Law* (last amended by the Standing Committee of the PRC National People's Congress ("**SCNPC**") on 31 August 2012), the statute of limitation for applying for enforcement of a People's Court's judgement or ruling is 2 years. This also applies for a party's application for acknowledgement and enforcement of a judgement, ruling or arbitration award rendered by a foreign court or arbitral tribunal. Further, according to Article 239 of the *PRC Civil Procedural Law* in conjunction of Article 194 of the *PRC General Rules of Civil Law* (promulgated by the PRC National People's Congress ("**NPC**") on 15 March 2017 ), the statute of limitation for applying for enforcement shall be suspended, if the applicant fails to make the application due to Force Majeure with the last 6 months of the statute of limitation.)

The above-mentioned opinion of the SPC is in line with the *Guiding Opinions (I) on Several Issues Concerning the Lawful and Proper Trial of Civil Cases Related to the Novel Coronavirus Pneumonia (COVID-19) Epidemic* promulgated by the SPC on 16 April 2020 ("**SPC Opinions (I)**"), where the SPC has already confirmed that, in general, both the Epidemic and respective prevention and control measures may constitute Force Majeure.

For more details on the *SPC Opinions (I)*, please refer to our previous newsletter "[PRC Supreme People's Court Announces Guiding Opinions on Trial of Civil Cases concerning COVID-19](#)".

## 2. Application of Law

The *Opinions* further touch upon the rules of applicable law as different jurisdictions and international treaties may stipulate a different definition for Force Majeure. However, for this topic the SPC basically restates and summarizes existing PRC law on application of law and does not introduce any new or specific items in relation to the Epidemic Situation.

In principle, the SPC requires that the People's Courts shall follow the *PRC Law on Application of Laws for Foreign-related Civil Relations* ("**Foreign-related Civil Relations Law**", promulgated by the SCNPC on 28 October 2010) and related laws and judicial interpretations to determine whether PRC law or foreign law applies. If PRC law applies, the rules on Force Majeure in the *SPC Opinions (I)* shall be followed. In case of application of foreign law, the People's Courts shall precisely understand and correctly apply the written rules or case laws on Force Majeure or similar scenarios in the relevant foreign jurisdiction, they shall not instead apply the relevant rules under PRC law.

For international treaties which the PRC has acceded to, the *Opinions* give an example of the *United Nations Convention on Contracts for the International Sale of Goods* ("**CISG**") and specify that the People's Courts shall examine the claim of the party to be partially or entirely exempted from its contractual liability due to the Epidemic Situation strictly according to Article 79 of the *CISG*. This article regulates the cases where a party is prevented from performing its contractual liability by an impediment which was not foreseeable at the time of the contract conclusion and is not controllable or surmountable.

## 3. Foreign-related Commercial Cases

On this topic the *Opinions* basically mention 2 scenarios in the international trading business: Letter of Credit ("LC") and Independent Letter of Guarantee ("ILG"). Since the guidance of the SPC under this article appears unclear, parties to LC/ILG are recommended to reach detailed individual agreements to avoid legal uncertainty.

The SPC requires that the People's Courts shall decide according to law (unless the parties have reached a relevant agreement on Force Majeure) whether a Force Majeure event exists respectively according to the Article 36 of the *Uniform Customs and Practice for Documentary Credits* (UCP600) and Article 26 of the *Uniform Rules for Demand Guarantees* (URDG758), if a bank, guarantor or counter-guarantor claims that its business operation has been interrupted by the Epidemic Situation. According to the above-mentioned articles, the bank, guarantor or counter-guarantor will not be liable for failure in performing a respective obligation of payment or document delivery, if its business operation has been interrupted by Force Majeure. Force Majeure is defined under *UCP600* and *URDG758* as "natural disasters, riots, disturbances, rebellions, wars, acts of terrorism, strikes, lockouts or other uncontrollable reasons".

The SPC does not require that the People's Courts shall support the claim by the bank, guarantor or counter-guarantor of business interruption due to the Epidemic Situation. Neither does the SPC state that "the *SPC Opinions* (I) shall be followed" as it does so under the above article "Application of Law". Instead, the SPC requires that the People's Courts shall "decide according to law" in such cases. Therefore, it will remain to be decided by the People's Courts according to the individual circumstances whether the concerned party whose business operation has been interrupted by the Epidemic Situation can rely on Article 36 of the *UCP600* or Article 26 of the *URDG758*. The safer approach for the parties of LC or ILG would be to explicitly include the Epidemic Situation into the definition of Force Majeure in their contract to ensure that in case an Epidemic Situation takes place, their liability can be exempted accordingly due to Force Majeure.

#### 4. Transportation Contract Related Cases

According to the *Opinions*, a carrier shall not be held liable if it, due to the Epidemic Situation, has violated Article 291 of the *PRC Contract Law* by changing the agreed or usual transportation route to transfer goods to the agreed place. The prerequisites for such change of route without being liable are:

- occurrence of the Epidemic Situation on the means of transport and during the transportation, which requires timely diagnose and quarantine measures
- which the carrier is able to prove, and
- a timely notification of the consignor by the carrier.

Besides, in case the change of route or limited operation of loading/unloading has caused delay in delivery, the claim of the carrier to be exempted accordingly from its liability shall be supported by the People's Court, if the carrier is able to prove that the change of route and limited operation of loading/unloading was caused by the Epidemic Situation in the starting or destination place of carriage.

#### 5. Maritime Disputes

Corresponding to the above-mentioned purpose of the *Opinions*, several clauses are dedicated to handling admiralty and maritime disputes caused by the Epidemic Situation. The respective guidelines of the SPC are rather straightforward and practice-related, so that more legal certainty and fair resolution of Epidemic-related disputes may well be expected.

The cases addressed can be divided into 2 groups.

##### a) Liability for breach of contract

- (1) A consignor's claim of the unseaworthiness of the ship shall be supported, if the unseaworthiness is caused by the carrier's failure to fulfill its due diligence before and at the beginning of the voyage and, therefore, the ship has become unsuitable for carrying special goods due to any Epidemic-prevention measures such as sterilization and fumigation. However, the consignor cannot claim the unseaworthiness solely for the reason that the ship has berthed at regions affected by the Epidemic or any crew member has been infected.
- (2) A carrier shall be exempted from liability for breach of contract (towards the consignor), if the port of destination has adopted restrictions on berthing or unloading due the Epidemic Situation so that the carrier had to unload at a safe port or place adjoining to the port of destination.
- (3) A freight forwarder shall be exempted from compensation liability (towards the consignor), if the carrier

has cancelled the voyage/flight or altered the schedule due to the Epidemic Situation, unless the freight forwarder has failed to timely notify the consignor of the cancellation or alteration or committed any fault in assisting the consignor in handling related follow-up matters.

- (4) The People's Courts shall use discretion according to the circumstances to support a shipbuilding company's claim for term extension for ship delivery caused by understaffing or for sharing additional costs caused by new shipbuilding standards released during the extended delivery time, both as a result of the Epidemic Situation.
- (5) A port business operator shall be liable for compensation (towards the shipowner or ship operator), if it restricts the berthing period of time for the reason of quarantine without specific orders of the maritime or port administration at the place of the port business operation.

#### b) Termination of contract

The SPC regards the following specific circumstances as "Force Majeure" or "other reasons not attributable to the carrier or consignor" in the sense of Article 90 of the *PRC Maritime Law* (promulgated by the SCNPC on 07 November 1992). If such circumstances have caused that a (sea) transportation contract cannot be performed before voyage, both the carrier and the consignor are entitled to terminate the contract without being liable.

- (1) The ship cannot be equipped with necessary crew or materials within a reasonable time period;
- (2) The ship cannot reach the port of loading or destination;
- (3) The ship cannot continue sailing or berthing normally once it has entered the port of loading or destination;
- (4) The import and export of the goods are temporarily prohibited by the country or region where the port of loading or destination is located;
- (5) The consignor is unable to transport the goods to the port of loading within a reasonable period of time because the land transport is obstructed.

## 6. Conclusion

The *Opinions* follow the previous *SPC Guiding Opinions (I) and (II) on Several Issues Concerning the Lawful and Proper Trial of Civil Cases Related to the Novel Coronavirus Pneumonia (COVID-19) Epidemic* and focus on the above-mentioned topics. It may well be possible that the SPC will release further guiding opinions for other legal areas and industrial sectors.

The guidelines contained in the *Opinions* mostly are very practice related and in favor of the concerned parties which have been / are affected by the Epidemic Situation. They will normally be able to be exempted from their liability for breach of contract relying on the occurrence of a Force Majeure. Nevertheless, the parties should still bear in mind to continue to perform any of their remaining contractual and statutory obligations unaffected by Force Majeure, such as the obligation of timely notification of the other party of the Epidemic Situation, the obligation to minimize the damages of the other party, etc. As regards the detailed requirements of the SPC on supporting the occurrence of Force Majeure events in the Epidemic Situation, please refer to the *SPC Opinions (I) ("PRC Supreme People's Court Announces Guiding Opinions on Trial of Civil Cases concerning COVID-19")*.

For parties currently under disputes caused by the Epidemic Situation, it is advisable that they consult their legal advisor to check whether any guidelines in the *SPC Opinions (I) – (III)* may apply so that the dispute could be resolved to their advantage and more efficiently. For parties of on-going transactions without any dispute (yet), the potential harm of the Epidemic Situation globally should not be underestimated. They should review their existing contractual documentation to make sure that their legal and economic interests are protected by valid, clear and precise contractual terms such as a sustainable Force Majeure clause. In case of doubt, a supplementary agreement should be concluded to address any unclear or unregulated issues.

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# About CMS, China

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