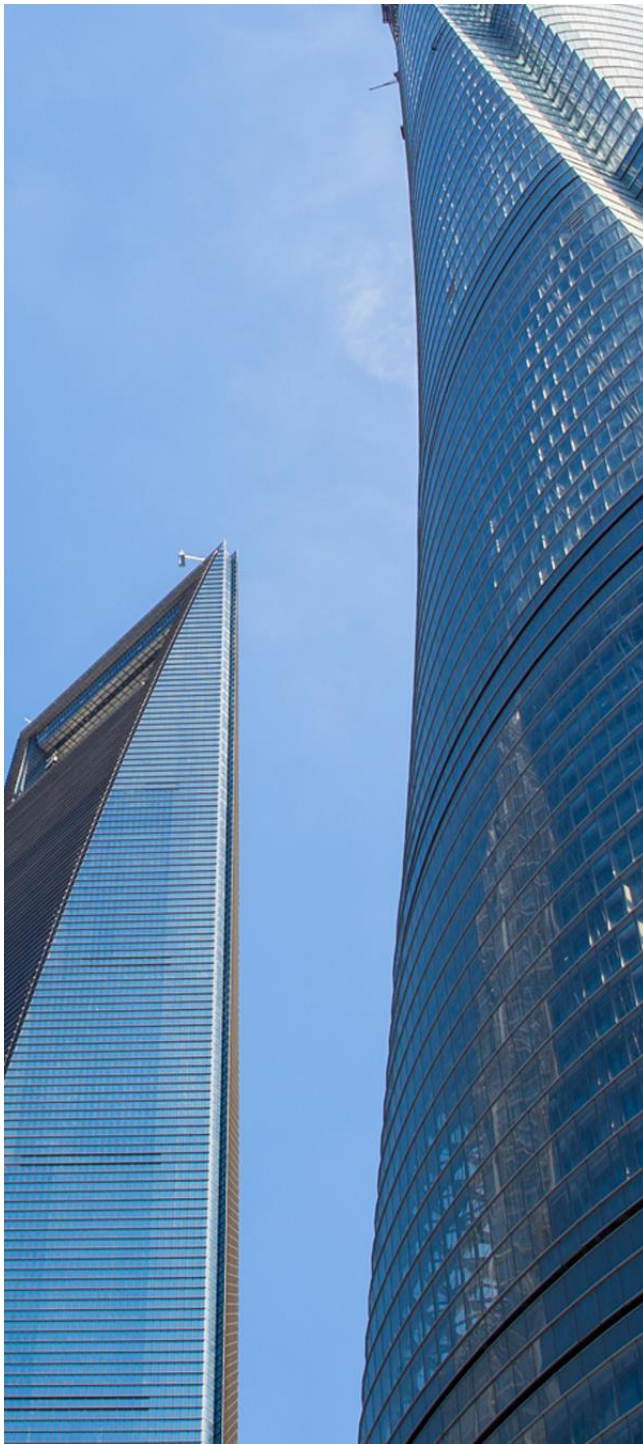


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# Supreme People's Court's Guiding Opinions on Trial of Civil Cases concerning COVID-19

Corporate legal flash

June 2020



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## Summary

Since the outbreak of Coronavirus disease 2019 (“COVID-19”), disputes have arisen due to the pandemic and the prevention and control measures taken to combat it. In these circumstances, for a proper trial of cases, the Supreme People's Court of the People's Republic of China has published two guiding opinions regarding the trial of civil cases relating to COVID-19.

Understanding these guiding opinions, as well as laws and judicial interpretations, is crucial, as they are significant references for settling disputes concerning COVID-19.



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## Supreme People's Court's Guiding Opinions on Trial of Civil Cases concerning COVID-19

In April and May 2020, the Supreme People's Court of the People's Republic of China released Guiding Opinions (I) and (II) on Several Issues regarding the Proper Trial of Civil Cases related to the COVID-2019 pandemic according to the Law (the "Guiding Opinions"). The Guiding Opinions introduce brief instructions on 10 aspects, including the appliance of *force majeure*, the trial of contractual disputes, the settlement of labor disputes and the appliance of punitive compensation, etc. The Guiding Opinions also provide guidance on the trial of cases, particularly for contractual, financial and bankruptcy disputes.

Although the Guiding Opinions are confirmations and explanations of statutory provisions, they provide specific guidance on the trial of important cases to people's courts of all levels, contributing to legal certainty and consistency. Companies can also use the Guiding Opinions as a reference in several aspects, such as contract performance, dispute settlement, etc.

This legal flash summarizes the most important issues, such as the appliance of *force majeure* and the guidance on trials relating to contractual and financial disputes.

### 1. Appliance of *force majeure* rule under law

The Guiding Opinions confirm that the COVID-19 pandemic or the pandemic prevention and control measures may constitute a *force majeure* event, which is in line with our previous analysis in the *China Offices Legal Flash Special Edition – Contract Performance during Coronavirus Outbreak*. More specifically, the Guiding Opinions state that, when there is a trial regarding pandemic-related civil cases, the people's court will apply properly the specific provisions on *force majeure* and strictly evaluate the conditions for the application. For civil disputes arising from the direct impact of the pandemic or the pandemic prevention and control measures that meet the statutory requirements of *force majeure*, statutory provisions, such as article 180<sup>1</sup> of the General Rules of the Civil

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<sup>1</sup> Under article 180 of the General Rules of the Civil Law of the People's Republic of China, if the failure to fulfil civil obligations is caused by *force majeure*, no civil liability will be borne; if the law stipulates other provisions, those provisions will apply; *force majeure* refers to any objective circumstance that is unforeseeable, unavoidable and insurmountable.



Law of the People's Republic of China and articles 117<sup>2</sup> and 118<sup>3</sup> of the Contract Law of the People's Republic of China (the “Contract Law”), will apply, unless otherwise stated in other laws or administrative regulations.

The Guiding Opinions also state that, if a party claims to be fully or partially exempt from its liabilities due to *force majeure*, the party must bear the burden of proof for facts that the failure to fulfil its civil obligations (fully or partially) was directly caused by *force majeure*. This is also in line with general legal principles.

## 2. Trial of cases regarding contract disputes under law

The Guiding Opinions also confirm that whether the pandemic or pandemic prevention and control measures constitute a *force majeure* event or whether the liabilities can be exempted under the *force majeure* rule will depend on the specific situation, which must be analyzed on a case-by-case basis. This is what we stated in the *China Offices Legal Flash Special Edition – Contract Performance during Coronavirus Outbreak*.

The Guiding Opinions highlight that, in a trial for cases regarding contract disputes arising from the direct impact of the pandemic or the pandemic prevention and control measures, unless the parties agree otherwise, when applying the law, the impact of the pandemic on different regions, industries and cases must be comprehensively considered. Whether there is a causal relationship between the pandemic or the pandemic prevention and control measures and the party's failure to perform the contract must also be determined. The Guiding Opinions also state that the following rules must be complied with:

- (1) If the failure to perform the contract is directly caused by the pandemic or the pandemic prevention and control measures, the provisions on *force majeure* must be applied according to the law, and liabilities must be fully or partially exempted, depending on the impact of the pandemic or the pandemic prevention and control measures. The party that is attributable for the failure to perform the contract or further losses must bear the corresponding liabilities according to the law.

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<sup>2</sup> Under article 117 of the Contract Law, where a contract cannot be performed due to *force majeure*, liabilities will be exempted fully or partially in light of the effects of the *force majeure* event, unless otherwise provided by law; if the event occurs after one party has already delayed its performance, that party will not be exempted from its liabilities; for the purpose of the law, *force majeure* refers to objective circumstances that are unforeseeable, unavoidable and insurmountable.

<sup>3</sup> Under article 118 of the Contract Law, if either party to a contract is not able to perform it due to *force majeure*, that party must give notice to the other party in due time to reduce the losses that may be caused to the other party and provide evidence within a reasonable time limit.



If a party fails to perform its contractual obligations because of the pandemic or the pandemic prevention and control measures, and that party claims to have fulfilled its obligation of notifying the other party in a timely manner, it must prove that this is the case.

- (2) If the pandemic or the pandemic prevention and control measures lead to difficulties in performing the contract, the parties can renegotiate; if the contract can continue to be performed, the people's court will strengthen mediation and actively help the parties to continue performing the contract.

The people's court will not support a party's request to terminate the contract because of difficulties in performing its contractual obligations. If continuing to perform the contract is clearly unfair to one party, which requests to change the contract performance period, the performance method or the price, the people's court will consider the situation and decide whether to support the party's request.

After the contract has been modified according to the law, the people's court will not accept a party's further request to be exempt from its liabilities (fully or partially).

The Guiding Opinions also explain that, if the purpose of the contract cannot be realized due to the pandemic or the pandemic prevention and control measures and the party requests to terminate the contract, the people's court will support the party's request. This is consistent with article 94.(1) of the Contract Law.<sup>4</sup>

- (3) If a party has received a subsidy, funds, or a tax reduction from the government, or funding or debt relief from others due to the pandemic or the pandemic prevention and control measures, the people's court can consider it as the factual reference for determining whether the contract can continue to be performed.

### 3. Trial of contractual cases

#### Purchase and sale contracts

Under article 94 of the Contract Law, the parties to a contract may terminate it if the purpose of the contract can no longer be achieved because of *force majeure*. Therefore, a contract can be terminated due to *force majeure* only if the *force majeure* event makes it

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<sup>4</sup>Under article 94 of the Contract Law, the parties to a contract may terminate it if the purpose of the contract is made unachievable because of *force majeure*.



impossible to fulfil the purpose of the contract, in which case liabilities may be exempted. The Guiding Opinions follow the provision and specify the following in the trial of the purchase and sales contract as:

- (1) The people's court will not support a party's request to terminate a purchase and sale contract if (i) that party can still fulfil the contractual purpose by continuing to perform the contract, and (ii) the pandemic or the pandemic prevention and control measures only cause the party not to perform the contract within the agreed time limit or cause an increase in the performance cost.
- (2) The people's court will support a buyer's requests to terminate a contract and refund the prepayment or deposit that has been paid if (i) the pandemic or the pandemic prevention and control measures cause the seller to fail to complete an order or deliver goods within an agreed time limit, and (ii) continuing to perform the contract cannot fulfil the buyer's contractual purpose. However, if the buyer requests the seller to bear the liability for breaching the contract, the people's court will not support its request.

We explained in the *China Offices Legal Flash Special Edition – Contract Performance during Coronavirus Outbreak* that under the *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Contract Law of the People's Republic of China (II)*, if the situation does not qualify as *force majeure* under a particular contractual relationship, the defaulting party may still consider the rule of changed circumstances and request the court to modify or terminate the contract. The Guiding Opinions also state the following:

- (1) If the purchase and sale contract can continue to be performed but the pandemic or the pandemic prevention and control measures result in a significant increase in the performance costs (e.g., labor, raw materials and logistics, etc.) or a significant decrease in the product price and continuing the performance of the contract is clearly unfair to a party, which requests that the price be adjusted, the people's court will consider the situation and adjust the price according to the principle of fairness.
- (2) If the pandemic or the pandemic prevention and control measures cause the seller to fail to deliver goods within the agreed time limit or cause the buyer to fail to make payments within the agreed time limit, if the party requests to change the time limit for performance, the people's court will consider the situation and change the time limit of performance according to the principle of fairness.

There are no clear statutory exemptions from liability by applying the changed circumstance rule. However, the Guiding Opinions state that, if a contract has been



modified (e.g., by adjusting the price or changing the time limit of performance, etc.), and if the party requests that the other party bear the liability for breaching a contract, the people's court will not support its request. In other words, under those circumstances, liabilities may be exempted.

Regarding purchase and sale contracts relating to pandemic prevention goods, which are frequently entered into between parties during the pandemic period, and the corresponding disputes, the Guiding Opinions state the following:

- (1) If a seller, after entering into a purchase and sale contract for pandemic prevention goods with a buyer, resells those goods at high prices to others, resulting in the failure to perform the contract, and if the buyer claims for an amount of the seller's profits as compensation for losses, the people's court will support its claim.
- (2) If the seller's failure to perform the contract is caused by the government's legal allocation or temporary requisition of pandemic prevention goods, and if the buyer requests the seller to bear the liability for breaching the contract, the people's court will not support its request.

### Lease contracts

Apart from the provision on the termination of contracts due to *force majeure* that makes the purpose of contracts unachievable as stipulated in article 94. (1) of the Contract Law, item (3) and (4) of the same article also stipulate that the parties to a contract may terminate the contract if any party to the contract (i) delays in performing its main obligations and fails to perform them within a reasonable time period after being urged to do so; or (ii) delays in performing the obligations or commits other acts in breach of the contract, making it impossible to achieve the purpose of the contract.

Under article 97 of the Contract Law, after the termination of the contract, for the part of the contract that has not yet been performed, the performance will be terminated; and for the part that has been performed, based on the status of the performance and the nature of the contract, a party to the contract is entitled to (i) request that the original position be restored or other remedial measures be taken, and (ii) claim compensation for losses.

Regarding lease contracts and their related disputes, and more specifically regarding whether the lessee's failure to pay rent within the agreed time limit because of the pandemic or the pandemic prevention and control measures entitles the lessor to statutorily terminate the lease contract and request the lessee to bear the liability for breaching the contract, the Guiding Opinions state the following:



“If the house is leased for operation and the pandemic or the pandemic prevention and control measures negatively affect the lessee’s capital turnover or result in a significant decrease in operational income, if the lessor requests that the lease contract be terminated because the lessee has not paid the rent within the agreed time limit and requests that the lessee bear the liability for breaching the contract, the people’s court will not support the lessor’s request.”

In other words, for houses leased for operation, if the lessee has not paid the rent within the agreed time limit because of a circumstance caused by the pandemic or the pandemic prevention and control measures, the Guiding Opinions confirm that item (3) and (4) of the Contract Law, as well as article 97 of the Contract Law, will not be applicable.

The Guiding Opinions also state the following:

“For a lease contract of a temporary venture reserved for specific purposes (e.g., exhibitions, conferences or temple fairs, etc.), if the pandemic or the pandemic prevention and control measures result in the activity being canceled, and if the lessee requests to terminate the lease contract and be refunded prepayments or deposits, the people’s court will support its request.”

Therefore, the Guiding Opinions confirm that, if the purpose of lease contracts for temporary ventures (e.g., in exhibitions, conferences or temple fairs, etc.) is made unachievable because the activity is canceled because of the pandemic or the pandemic prevention and control measures, article 94.(1) of the Contract Law is triggered, as these lease contracts can be statutorily terminated and liabilities can be exempted under the *force majeure* rule.

As the state and local governments have stipulated rent relief policies under certain conditions, the Guiding Opinions instruct the following:

- (1) In case of leasing state-owned houses or houses owned by administrative institutions (e.g., government departments, higher education institutions or research institutions, etc.) for operation, if the lessee such as the small or micro companies that are engaged in the service sector or individual businesses, are struggling to carry out their operations because of the pandemic or the pandemic prevention and control measures, and they ask the lessor to be exempt from rent for a certain period according to the state’s policies, the people’s court will support the request.



- (2) For leasing non-state-owned houses for operation, in case the lessees that do not have operational income or their operational income is significantly reduced because of the pandemic or the pandemic prevention and control measures, and paying the rent according to the original lease contract is clearly unfair, if the lessee requests rent relief, an extension of the lease term, or the delay of rent payment, the people's court can instruct the parties to carry out mediation by referring to the applicable rent relief policy; if this mediation fails, the people's court will consider the situation and modify the contract according to the principle of fairness.

#### 4. Trial of financial cases

In response to the state policy regarding financial support, the Guiding Opinions stress that, for disputes regarding financial loans in industries significantly affected by the pandemic or the pandemic prevention and control measures, as well as companies that are promising but are facing temporary difficulties because of the pandemic or the pandemic prevention and control measures, especially medium, small and micro companies, the people's court will fully consider the financial support policies, such as the Circular on Further Solidifying Financial Support for Prevention and Control of the Pandemic caused by COVID-19, which was issued by five departments, including the People's Bank of China during the trial:

- (1) The people's court will not support requests for litigation (e.g., early maturity of the loan or unilateral termination of the contract, etc.) that violate financial institutions' financial support policies.
- (2) Regarding interest or disguised interest that financial institutions charge in the name of other fees (e.g., consulting or guarantee fees, etc.), the people's court will strictly comply with state policies on special credit preferential interest rates for re-lending and rediscounting, and it will not support the excessive portion.





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