
**CHINA: COVID-19 OUTBREAK IN CHINA:
THE PRC SUPREME PEOPLE'S COURT
ISSUED A "GUIDING OPINION ON
PROPER HANDLING OF CIVIL CASES
INVOLVING THE COVID-19 OUTBREAK
ACCORDING TO LAW" ON 16 APRIL 2020**



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The PRC Supreme People's Court issued a "Guiding Opinion on Proper Handling of Civil Cases Involving the COVID-19 Outbreak According to Law" on 16 April 2020 and we summarise the ten topics governed therein below:

Safeguarding Judicial Services: People's courts (courts) shall understand the Outbreak's impact on the economy and society, fulfil the function of judicial regulation of social relations in consideration of the overall goal of epidemic prevention & control and economic & social development; courts shall manage litigation and focus on ADR/mediation and actively guide settlement negotiations, allocate risks and resolve disputes at their earliest stage. Civil cases involving Outbreak-related situations and measures shall apply the law accurately according to actual circumstances, protect legitimate rights and interests, serve economic & social development and achieve unified legal and social results.

Accurate Force Majeure (FM) Application: Civil cases directly affected by Outbreak-related situations or measures that meet statutory FM conditions are governed by Art. 180 PRC General Rules of Civil Law (GRCL), Art. 117, 118 PRC Contract Law and other applicable regulations. Parties claiming FM bear the burden of proof for such claims (FM events must directly cause non-performance of their contractual obligations in whole or in part).

Contract Disputes: In general, courts shall thoroughly consider the impact of Outbreak-related situations depending on the affected geographic region, industry sector and actual case in order to properly understand the causality and severity of the impact between the Outbreak-related situation and measures on the one side and the failure of contract performance on the other side. For such cases, the following rules shall apply:

(1) If Outbreak-related situations or measures directly result in a party's failure to perform a contract, FM provisions shall apply according to law. Liability of the FM-affected party shall be exempted partially or in full and according to the degree of the Outbreak-related impact. Parties shall assume corresponding liabilities under law if the failure of contract performance or of non-mitigation of losses is attributable to the parties. If contractual obligations cannot be fulfilled because of Outbreak-related situations or measures and parties claim to have fulfilled their obligation of timely FM notification, they shall bear the burden of proof for such claim.

(2) If Outbreak-related situations or measures only cause difficulties in performing the contract, parties may renegotiate the contract. If parties are able to continue performance, courts shall strengthen their mediation work and actively guide parties to continue to perform the contracts. If parties request contract termination because of difficulties of performance, courts shall not support such claims. If continued performance of contracts is obviously unfair to one party and such party requests changes of performance periods or methods, prices, etc., courts shall issue their rulings in consideration of actual circumstances of the case. If, after a legal contract modification parties still claim exemption from liability (in part or

in full) because of non-performance, courts shall not support such claims. If the contractual purpose cannot be achieved because of Outbreak-related situations or measures and parties request contract termination, courts shall support such a request.

(3) If parties received government subsidies, tax relieves or other support related to the Outbreak, courts may consider this in their determination of the factual situation of whether contracts can continue to be performed.

Labour Disputes: Labour Arbitration Committees and courts shall strengthen the coordination with government departments and support employers in adopting flexible work methods during Outbreak prevention & control periods. Labour disputes involving Outbreak-related situations or measures shall follow Art. 26 PRC Labour Law and Art. 40 PRC Labour Contract Law. Employers may not unilaterally terminate labour contracts because employees are diagnosed, suspected, asymptomatic infected or have been in close contact with COVID-19 patients, because they were quarantined according to law, or hail from areas relatively severely affected by the Outbreak. Policy documents issued by the competent State Council administrative departments and local governments regarding the handling of labour relations epidemic prevention & control period shall be considered.

Punitive Damages: Courts shall uphold consumer claims for punitive damages according to law in the following cases: Traders of masks, goggles, protective gear, disinfectant, other anti-epidemic items, foods and medicines are found in situations covered by Art. 55 PRC Consumer Protection Law, Art. 148(2) PRC Food Safety Law, Art. 144(3) PRC Drug Administration Law, Art. 15 SPC Provisions on Several Issues Concerning the Application of Laws over Food and Drug Disputes.

Statute of Limitations: If due to Outbreak-related prevention & control measures parties request suspension of limitation periods during the last 6 months of such periods in accordance with Art. 194(1) GRCL, courts shall support such requests.

Extension of Litigation Periods: Applications for extension under Art. 83 PRC Civil Procedure Law citing that Outbreak-related measures delayed the specified litigation period shall be thoroughly examined by the courts who shall then decide whether or not to grant the extension. If the parties concerned are diagnosed, suspected, asymptomatic infected or have been in close contact with COVID-19 patients, courts shall grant an extension according to such Art. 83 upon expiry of the said period.

Strengthening of Judicial Assistance: If parties experience financial distress due to Outbreak-related situations and thus apply for exemption, reduction or suspension of litigation costs, courts shall timely review such requests and decide according to law; relief shall be provided timely if approved.

Flexible Protective Measures in Litigation: For enterprises affected by the Outbreak, in particular SMEs and individual industrial and commercial households, courts may adopt flexible measures of property preservation or property value preservation in litigation to effectively reduce the burden on such entities and to assist them in resuming their work and production.

Uniform Law Application: Courts shall strengthen guidance & supervision of civil case works involving the Outbreak and submit questions relating to major, difficult, and complex cases to trial committees for decision, and higher level courts shall issue information on typical cases to lower level courts to ensure uniform ruling standards.



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