



China: Judicial Guidelines for Trials Concerning COVID-19 Epidemic-Related Civil Cases

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On 20 April 2020, the Supreme People's Court (SPC) released guidelines² setting forth measures for civil case trials involving the COVID-19 epidemic.³ The guidelines mainly clarified the SPC opinions on the following:

- ✓ **ADR Mechanism.** All courts at different levels shall primarily adopt the alternative dispute resolution mechanism and prioritize the mediation process in order to lead the parties to settle the disputes at an early stage.
- ✓ **Force Majeure.** The courts shall accurately and strictly apply the rules of force majeure in hearing contract disputes arising from direct impacts of the epidemic and the party who claims partial or total exemption due to force majeure shall bear the burden of proof for the fact that force majeure directly resulted in partial or total failure to perform the obligations.
- ✓ **Contract Disputes.** The courts shall hear contract dispute cases properly with comprehensive consideration of the impact of the epidemic in different areas, industries and cases. The courts shall consider the causation and causal force between the epidemic (and related control measures; collectively "epidemic issues") and the failure to perform the contract based on the following rules:
 - (i) In the event that epidemic issues directly cause the contract performance failure, the rules of force majeure shall apply and the liability shall be exempted based on the extent of the impact. Meanwhile, if one party has contributed to the non-performance or aggravation of the loss, such party shall bear the corresponding liability.
 - (ii) In the event that epidemic issues only cause a performance "difficulty", the parties may renegotiate the contract. If contract performance can continue uninterrupted, the courts shall actively work on the mediation and encourage the parties to continue the performance.
 - (iii) The courts shall not support parties who seek termination of the contract only on the grounds of difficulty in performance. However, when continuation of performance is obviously unfair to one party, the court can decide whether to support

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² The guidelines/guiding opinions published by the Supreme People's Court are not judicial interpretations, but binding documents for all the courts regarding hearing cases.

³ Supreme People's Court, *Notice of the Supreme People's Court on Promulgation of the Guiding Opinions on Several Issues Concerning the Proper Hearing of Civil Cases Involving the COVID-19 Epidemic (I)*, available at: <https://www.chinacourt.org/law/detail/2020/04/id/150152.shtml>. For avoidance of doubt, this guideline is effective from April 16, 2020.

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such party's claim seeking to change the performance period, method, payment amount, etc., on a case-by-case basis, taking into account the entire situation (inclusive of the epidemic issues). After the contract has been changed, the court shall not support the party's claim of partial or full exemption of contractual obligations.

- (iv) In the event that the purpose of the contract cannot be fulfilled as a result of epidemic issues, the court shall support a party's claim for termination of the contract.
 - (v) The courts can consider any government allowance, tax reduction/relief, third party's funding, or debt relief in deciding whether a contract can be performed continuously.
- ✓ Labor Disputes. The courts shall coordinate with government authorities to support the employers to adopt flexible employment methods during the epidemic control period. The courts shall not support employers seeking to terminate labor contracts of employees who are confirmed/suspected/symptomatic COVID-19 patients, legally quarantined, or from areas with relatively severe epidemic situations.
 - ✓ Punitive Damages. The courts shall support consumer punitive damages claims against business operators who commit fraud or are who have business that deal in noncompliant epidemic prevention products (masks, protective goggles, protective coveralls, disinfectant, etc.), food, or medicine according to the relevant laws and regulations.
 - ✓ Suspension of Limitation of Action. The courts shall support suspension claims concerning the limitation of actions when the right to claim cannot be exercised during the last six months of such limitation due to the epidemic issues.
 - ✓ Time Extensions of Litigation Period. The courts shall approve applications for the extension of litigation time limits according to Article 83 of the Civil Procedure Law when the relevant parties are confirmed/suspected/symptomatic COVID-19 patients or close contacts of those having COVID-19 and the time limits for litigation expire during the legal quarantine.
 - ✓ Judicial Aid. The courts shall make corresponding decisions concerning applications of exemption, reduction, or delay of payment of litigation costs by parties who have financial difficulties due to the epidemic, and provide judicial aid to the parties who are in need of such aid upon application.
 - ✓ Flexible Preservation Measures. The courts shall take flexible property preservation measures and provide assurances to small/medium/micro-sized enterprises and self-employed persons who have financial difficulties due to the epidemic.
 - ✓ Uniform Application of the Law. The higher courts shall strengthen guidance to the lower courts by deciding upon some typical cases in order to ensure a uniform standard of judgment.



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