

INTERNATIONAL BUSINESS ALERT

JULY 14, 2020

YUANYOU (SUNNY) YANG

412.235.1484

yyang@porterwright.com

Information about COVID-19 and its impact on local, state and federal levels is changing rapidly. This article may not reflect updates to news, executive orders, legislation and regulations made after its publication date. Visit our [COVID-19 resource page](#) to find the most current information.

This law alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. It does not necessarily reflect the views of the firm as to any particular matter or those of its clients. Please consult an attorney for specific advice regarding your particular situation.

Please see our other publications at www.porterwright.com/media.

© 2020 Porter Wright Morris & Arthur LLP

China's Supreme People's Court provides further guidance on the proper hearing of COVID-19 related civil disputes

As the COVID-19 pandemic continues to spread across the globe, supply chains continue to be severely interrupted. COVID-19-related disputes are inevitable, including between U.S. and Chinese companies. When such disputes are governed by Chinese law, affected companies must consider the guidance provided by the Supreme People's Court for the People's Republic of China (Supreme Court of China).

We previously summarized guidance from that court in Porter Wright Law Alerts available [here](#) and [here](#). Recently, the Supreme Court of China issued further guidance, including the [Guiding Opinion on Several Issues Concerning Proper Trial of Civil Cases Involving COVID-19 Pandemic \(Two\)](#) (Guiding Opinion Two" on May 19, 2020 and the [Guiding Opinion on Several Issues Concerning Proper Trial of Civil Cases Involving COVID-19 Pandemic \(Three\)](#) (Guiding Opinion Three) on June 16, 2020.

Guiding Opinion Two sets forth detailed guidelines on the proper trial of contract disputes, finance disputes and bankruptcy disputes. Guiding Opinion Three provides detailed guidelines on various procedural issues, including parties, evidence, statute of limitation, tolling, and choice of law, as well as guidelines on the trial of certain cross-border commercial disputes related to letters of credit, certain transportation contract disputes and certain maritime law disputes.

We summarize aspects of Guiding Opinion Two and the Guiding Opinion Three that may be applicable for cross-border disputes with companies in China below.

Choice of law

Pursuant to Section 6 of Guiding Opinion Three, in determining the choice of law for any COVID-19-related, foreign-related commercial and maritime dispute, the People's Court shall determine the applicable laws in accordance with the Laws of the People's Republic of China on the Application of Law on Foreign-related Civil Relations Law and relevant judicial interpretations. "Foreign-related disputes" are defined by Chinese law as: (i) disputes with foreign individuals or companies; (ii) disputes involving facts that occurred outside the Chinese border; and (iii) disputes involving subject matters located outside the Chinese border.

Pursuant to Section 7 of the Guiding Opinion Three, in deciding the application of any international treaties, the People's Court shall make the decision in accordance with Article 4 of the "Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law of the People's Republic of China on the Application of Laws Concerning Foreign-Related Civil Relations (I)." For matters that are not regulated by the treaty, the People's Court shall determine the applicable laws based on the conflict laws under the Chinese law.

When applying the "United Nations Convention on Contracts for the International Sale of Goods" (CISG), the Supreme Court reiterated that the People's Court should note that China withdrew its declaration from Article 11 of the CISG in 2013, and is no longer being bound by that article. However, China has retained the declaration to be bound by Article 1, paragraph 1 (b) of the CISG, and is thus still bound by such section. In addition, the Supreme Court further reiterated that the CISG does not regulate the validity of the contract and the possible impact of the contract on the ownership of the goods sold under Article 4 of the CISG. Therefore, for these issues, the People's Court shall determine the applicable laws based on the conflict of law doctrine in China and make determinations based on the applicable laws.

Force majeure doctrine

Pursuant to Section 6 of Guiding Opinion Three, in deciding the application of the force majeure doctrine, the People's Court shall follow the [Guiding Opinion on Several Issues Concerning Proper Trial of Civil Cases Involving COVID-19 Pandemic \(One\)](#) (Guiding Opinion One). We analyzed the application of the force majeure doctrine under Guiding Opinion One in a previous Law Alert available [here](#).

Pursuant to Section 7 of Guiding Opinion Three, if the parties to a contract claim that they are exempted from contract liability on the grounds of being affected by COVID-19 or the COVID-19 prevention and control measures under the CISG, the People's Court shall conduct a review in accordance with the relevant provisions of Article 79 of the CISG and strictly adhere to the applicable conditions stipulated in that article. The interpretation of the provisions of the CISG shall be made in good faith in accordance with its terminology, its context and the usual meaning of

the object and purpose of the convention. At the same time, the Supreme Court cautioned the People's Court that the "Summary of Case Law of the United Nations Convention on Contracts for the International Sale of Goods," published by the United Nations Commission on International Trade Law to provide guidance on the implementation of the CISG, is not an integral part of the CISG. While the People's Court may use such summary as a guidance document, such summary is not binding on the People's Court in China.

Parties

To participate in litigation in China, foreign parties are generally required to provide certain notarized and certified documents to verify their home country legal status. Article 1 of Guiding Opinion Three provides that, if a party cannot obtain such documents due to COVID-19, and seeks an extension of time to submit those documents, the People's Court shall grant such requests.

Evidence

Article 2 of Guiding Opinion Three provides that if a party cannot obtain certain evidence within the allowed time period due to COVID-19, and seeks an extension of time to seek evidence, the People's Court shall grant such requests.

In addition, Chinese law generally requires certain evidence formed outside the territory to be notarized by the local notary agency and certified by the Consulate of China located in that jurisdiction to be used as evidence in Chinese courts. Article 3 of Guiding Opinion Three provides that if a party cannot obtain such notarization or certification within the allowed time period due to COVID-19, the People's Court shall permit the use of such documents as evidence, subject to the parties' cross-examination, with reservation for the other party to file objections.

Statute of limitations

Article 4 of Guiding Opinion Three provides that if a foreign party not domiciled in China is unable to file a statement of defense or appeal within the statutory period due to the COVID-19 situation or prevention and control measures, and requests an extension of time to file a statement of defense or appeal, the People's Court shall grant such request unless the People's Court finds the party has maliciously prolonged the lawsuit.

Additionally, Chinese law provides that a petition to enforce any foreign judgment or foreign arbitration award in China must be submitted to the Chinese People's Court within two years of such foreign judgment or award being made. However, the COVID-19 pandemic may create practical difficulties in petitioning timely. Therefore, pursuant to Article 5 of Guiding Opinion Three, the People's Court shall grant an extension request if: a party is unable to file the petition due to the COVID-19 situation or prevention and control measures; the occurrence of a COVID-19 situation or prevention and control measures happened within the last six months

of the allowed two-year statutory time limit; and the party who is unable to file the petition seeks an extension of time to enforce the judgment or award.

Disputes related to letter of credit

Pursuant to Article 8 of Guiding Opinion Three, when hearing disputes related to letters of credit, the People's Court shall distinguish between the malicious non-delivery of goods and the situation where the goods cannot be delivered due to the COVID-19 situation or the prevention and control measures. The People's Court should strictly follow the provisions of Article 11 of the "Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Letters of Credit Disputes," in deciding whether the claim for the application of suspension of payment under the letter of credit be supported.

If the International Chamber of Commerce's Uniform Customs & Practice for Documentary Credits (UCP600) is the governing law, the People's Court shall correctly apply the specific rules related to banks' failure to honor or negotiate as set forth in Article 36 of UCP600. If the parties claim that the bank's business was interrupted due to the COVID-19 situation or the prevention and control measures, the People's Court shall make a determination as to whether it constitutes a force majeure event under the UCP600, unless the parties have agreed otherwise on force majeure and their responsibilities.

Contract Disputes

Articles 1 thru 9 of Guiding Opinion Two set forth detailed guidance on the hearing of various types of contract disputes, including the application of the force majeure doctrine related to contract disputes, purchase and sales agreements, real property agreements, lease agreements, construction contracts, education contracts and other contracts. Article 10 of Guiding Opinion Three provides additional guidelines on the hearing of transportation contracts. Parties with contract disputes governed under Chinese law should review those provisions.

Maritime Disputes

Articles 11 thru 17 of Guiding Opinion Two set forth detailed guidance on the hearing of maritime disputes. Parties with disputes governed by Chinese maritime law should review those provisions.

Finance-related disputes

Articles 10 thru 16 of Guiding Opinion Two set forth detailed guidance on the hearing of various types of finance-related disputes, including any mortgage and loan disputes, security rights, stock pledge and margin financing disputes, civil lawsuits against publically traded companies for false information, Bet-on Agreement/VAM Agreement, medical insurance disputes, and medical equipment financial leasing disputes. Parties with finance-related disputes governed by Chinese law should review those

provisions.

Bankruptcy disputes

Articles 17 thru 23 of Guiding Opinion Two set forth detailed guidance on the hearing of bankruptcy cases. If your contracting party or trade partner has filed for bankruptcy in China, you should review those provisions.

Take away

The Supreme Court of China continues to issue guiding opinions in response to the COVID-19 pandemic, and companies with disputes governed by Chinese law must be alert to this rapidly developing guidance.

For more information please contact [Yuanyou Yang](#) or any member of Porter Wright's [International Business & Trade Practice Group](#).