

On April 20, 2020, the Supreme Court of People's Republic of China (PRC) has published the "Guiding Opinion on the Proper Handling of Civil Cases Involving the Novel Coronavirus Outbreak in Accordance With the Laws" (1) (关于依法妥善审理涉新冠肺炎疫情民事案件若干问题的指导意见 (一)) (the "Guiding Opinion") in response to the common issues and questions about cases arising out of the coronavirus disease 2019 (COVID-19) outbreak, which serves almost as a judicial interpretation that is expected to be followed by all local courts. The highlights of the Guiding Opinion are as follows:

- **Application of *force majeure* principle** – The Guiding Opinion suggests courts should take a prudential stand in applying a *force majeure* principle to contract disputes that are impacted by the COVID-19 pandemic, subject to the provisions in the General Rules of Civil Law of PRC and the Contract Law of PRC, and has set forth the following principles:
 - If a party is unable to perform the contract because of the pandemic, the *force majeure* principle could apply; and the party's liabilities should be exempted in accordance with the degree of influence.
 - If a party has difficulty in performing a contract, the parties should re-negotiate the contract, while the court should actively step in to mediate and guide the parties to continue the performance. The Guiding Opinion emphasizes that a party's claim to terminate the contract solely based on difficulty in performance should not be supported. Nevertheless, "failure to achieve the purpose of the contract" may still be used as a legal ground of contract termination.
 - In considering whether a contract can continue to be performed, courts may take into account government subsidies, tax relief or other types of funding received by the parties relating to the outbreak.

In general, the Guiding Opinion aims to encourage performance of a contract that is impacted by the pandemic and to avoid a simple termination or exemption of obligations. It is only when "failure to achieve the purpose of the contract" occurs would a court support a party's claim of contract termination. If a party is unable to perform the contract, its liabilities may be exempted only to the extent impacted by the epidemic.

- **Labor and employment** – Employers are encouraged to adopt flexible working arrangements under the influence of COVID-19. On the other hand, an employer's claim of unilateral termination will be subject to strict review by the court. The Guiding Opinion reinforces that courts should not support any claim of employer to terminate an employment contract solely based on the reason that the employee is infected or suspected to be infected by COVID-19 (including infected without symptoms), subject to mandatory quarantine, or comes from epidemic-hit areas.

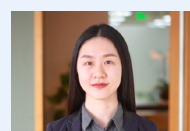
The Guiding Opinion corresponds the relevant notice issued by the Ministry of Human Resources and Social Security back in January, which encourages flexibilities in an employer's work arrangement, including salary adjustment, shift rotation, job rotation and reduction of working hours, for the purpose of maintaining headcounts and minimizing redundancies. In light of that, it is likely that unilateral termination solely relies on the epidemic outbreak or change of circumstances is exposed to risks, and might be ruled as wrongful termination by a court or an arbitral tribunal, especially for a massive lay-off. Should an employer intend to terminate an employee, his/her overall work performance should be taken into account. Otherwise, an employer may consider mutual separation to avoid the risk.

- **Statute of limitations and litigation period** – If the pandemic or the measures taken by the government to control the pandemic (including lockdown, mandatory quarantine, etc.) have influenced a party's ability to exercise rights in litigation, a party may apply to courts for:
 - Suspension of statute of limitations. Under the PRC law, from 2017, the general statute of limitations is three years, starting from the date when a party knew or should have known the detriments to his/her rights. During the last six months of the statute of limitations, if the epidemic impacts have resulted in a party's failure to file a lawsuit, such party may claim for suspension of statute of limitations to the court; once approved, the statute of limitations will expire in six months after the elimination of the epidemic impact.
 - Extension of the time limits of litigation actions, including the period of appeal or retrial. A party may apply to the court within 10 days after the termination of the hindrance, supported by the relevant evidences. The court will review and determine on whether the extension should be granted. The extension is likely to be granted especially in regions with worse situations, unless the evidences indicate that the delay is caused by the party's negligence.

Contacts



Lindsay Zhu
Partner, Shanghai
T +86 21 6103 6303
E lindsay.zhu@squirepb.com



Katherine Fan
Consultant, Shanghai
T +86 21 6103 6323
E katherine.fan@squirepb.com