



# International Trade and Transportation Dispute Resolution under the COVID-19

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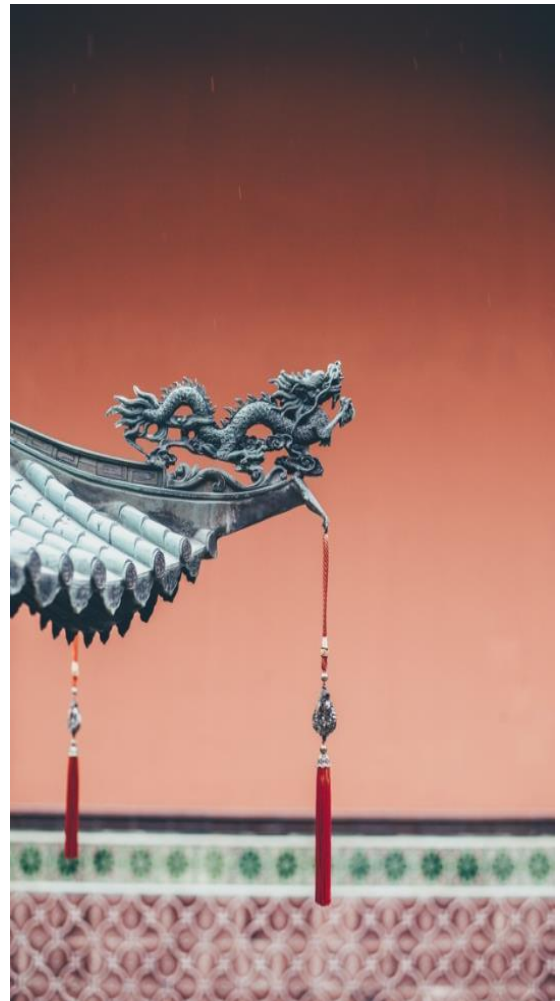


The COVID-19 outbreak has a wide impact on almost all walks of life especially on international freight. On January 30th, 2020, the World Health Organization (WHO) announced that the COVID-19 is listed as a Public Health Emergency of International Concern (PHEIC).

## CCPIT's Certificate

CCPIT (China Council for the Promotion of International Trade) has announced that its Commercial Certification Center can issue a Force Majeure Certificate and companies may apply for a factual proof related to Force Majeure Such a certificate can be issued in one business day.

Under *Contract Law of People's Republic of China*, a party to a contract that is not able to perform the contract due to the Force Majeure event shall give timely notice to the other party. A Force Majeure Certificate may be used as supporting





materials when disputes arise. However, an affected party cannot solely rely on a Force Majeure Certificate to avoid contractual obligations. Under Article 117, 118 of the *Contract Law of People's Republic of China*, as well as guidance documents issued by the local provincial courts, four factors will be jointly considered by the courts to decide whether the Force Majeure provision is applicable:

- (1) The period during which the epidemic occurred;
- (2) The causal relationship between the frustration of the contract and the Force Majeure event;
- (3) The extent to which the contract performance was affected;
- (4) Whether the affected party has performed the notification obligation promptly.

Even if the Force Majeure provision is applied, the affected party may still not be able to be exempted from the liability completely, the degree of which shall depend on the impact of the Force Majeure event on the performance of the contract.



### **Principle of Change of Circumstances**

Besides the Force Majeure provision, the affected party can argue for the exemption or





mitigation of the contractual liabilities under the epidemic by applying the principle of Change of Circumstances. Under the *Interpretation of the Supreme Court on Certain Issues Concerning the Application of the PRC Contract Law (II)* and the guidance documents issued by the local higher people's courts, the principle of Change of Circumstances shall be applied when the continuous performance of the contract is unfair to the party due to occurrence of a change of circumstances. The decision of whether such a provision can be applied must be made prudently and be approved by the higher people's courts.

### **Epidemic Prevention and Control of Crews**

For the purpose of the prevention and control of the epidemic situation of crew members on international voyages and to protect the lawful rights and interests of crew members in accordance with law, A notice called *Notice on the accurate prevention and control of the epidemic situation of crew members on international voyages* has been issued. The notice provides as follows:

- (1) When the ship sails or is in the harbor, it is necessary to carry out epidemic prevention and control under *Guidelines for Prevention and Control of COVID-19 of Crew*, and implement closed management on board;
- (2) After a ship reaches a port, except for normal shifts of Chinese crews, bailouts of injured crews, etc., crews will not be allowed to go ashore. It is strictly forbidden for irrelevant persons to go onboard or off.



### **Impact on International Freight**

The COVID-19 also has an increasing impact on international freight. Goods, after arriving at the port of discharge, are not being delivered due to the COVID-19. Both merchants and shipping lines are concerned with the current situation. Disputes might arise in the international sales contract. The payment of cargo price might be stopped. Letter of Credit being canceled or become unenforceable due to the COVID-19. The storage costs, demurrage, unpaid customs duty are all factors further complicating the situation.

For more information on the “Guidelines on Several Issues concerning the Trial of Commercial Cases under COVID-19” issued by Higher People’s Court of Guangdong Province, or for laws and policies that might impact your business especially business concerning international freight in China, please contact Wang Jing & GH Law Firm. ( The official website is being updated. )



A team led by Mr. Wang Jing, which has rich experience in foreign-related legal issues, have joined and started a strategy reconstruction with Grand & Holder Law Firm. The name of the new firm is Wang Jing & GH Law Firm, which is a full-service firm with more than 70 experienced practicing lawyers. Wang Jing and GH Law Firm now covers such practice areas as commercial litigation and dispute resolution, admiralty and maritime, cross-border investment and M&A, international trade, real estate development and construction, corporate governance, banking and finance, urban renewal, TMT, commercial crimes, intellectual property and taxation.

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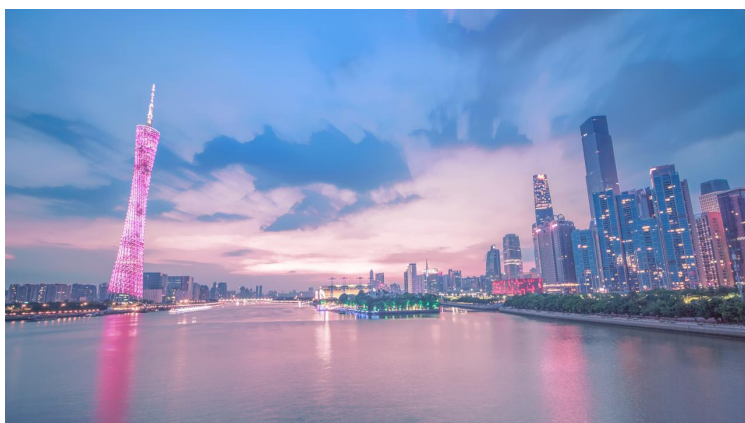
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*Adhering to values as “Professional & Efficient”, “Teamwork” and “Win-win Cooperation” and to the service philosophy “Abiding by commitments, treating people honestly”, Wang Jing & GH provides comprehensive and high-quality legal services to clients.*

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