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Dispute Resolution Mechanism under COVID-19

The COVID-19 outbreak has a wide impact on almost all walks of life. 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).

On the same day, 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. The CCPIT's Commercial Certification Center has developed an online platform (<http://www.rzccpit.com/>) for the application. Such a certificate can be issued in one business day. The factual proof mainly involves the government decisions during the epidemic with regards to (1) the extension of the Spring Festival holiday; (2) the work resumption and school opening time; (3) the postponed travel to certain cities; (4) recent control measures taken by certain countries; (5) the suspension on team tourism; (6) the condition of recovery of production and work resumption includes but not limited to checks conducted upon arrival time, the mandatory quarantine for 14 days, and the closed management.



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.

“An affected party cannot solely rely on a Force Majeure Certificate to avoid contractual obligations”



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.

With the increasing demands of legal service on the dispute resolution concerning the epidemic, Wang Jing & GH Law Firm invited Ms. Wang Heng, the former head of the Environmental Resources Trial Division, the Senior Judge with the third rank of the Guangdong Higher People's Court, to hold a webinar with the topic "Dispute Resolution Mechanism under the Epidemic".

Ms. Wang shared with us her understanding of the "Guidelines on Several Issues concerning the Trial of Commercial Cases under COVID-19" issued by Higher People's Court of Guangdong Province, among which, she summarized the judicial principle of regarding the right to rescind a contract, the trial tendency upon handling the disputes in the particular industry such as finance, insurance, credit, securities, etc. and the difference between the application of Force Majeure and the Change of Circumstances, etc. In conclusion, Ms. Wang emphasized the application of the Force Majeure provision shall be analyzed on a case-by-case basis. Also, mediation is highly recommended for solving disputes in relation to the epidemic.



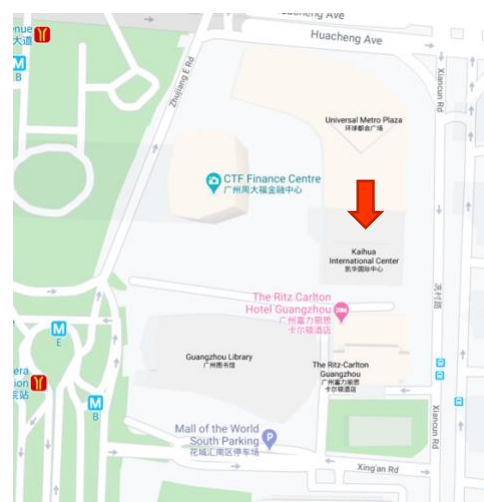
“Mediation is highly recommended for solving disputes in relation to the epidemic”



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 in China, please contact Wang Jing & GH Law Firm. (The official website is being updated.)

Wang Jing and GH Law Firm is one of the partnership law firms approved by China’s ministry of Justice, covering 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.

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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