

Dispute Resolution Law

Court and Arbitration Adjustments During the COVID-19 Epidemic

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The novel coronavirus (“**COVID-19**”) epidemic has spread across the country since December 2019. So far, 31 provinces, municipalities and autonomous regions have launched Class A major public health emergency responses. In order to better prevent and control the epidemic, to reduce the gatherings and mobility of people, and to protect the life and health of the public, to safeguard the litigation rights and interests of the parties, the courts and the arbitration commissions across the country have made adjustments for litigation and arbitration activities during the epidemic control and prevention period.

We have compiled in this issue the notices and announcements issued by courts and arbitration commissions across the country on adjustments for litigation and arbitration activities, and provide brief analysis and recommendations as to the impact on litigation rights and interests brought by these adjustments.

Summary of notices and announcements on adjustments for litigation and arbitration activities by courts and arbitration commissions

Courts and arbitration commissions across the country have issued notices and announcements on adjustments for litigation and arbitration activities to prevent the spread of the epidemic and protect the litigation rights and interests of the parties. In general, adjustments are made with respect to the following three aspects:

1. On-site case-filings, litigation services, and receipt of documents are suspended. Parties are encouraged to submit case documents via the internet or courier and to complete case filings online.

If submission of arbitration and litigation materials is necessary, the parties can submit the electronic version of such materials through an online service platform designated by the court or arbitration

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commission. Where online case-filing is unavailable, the case materials can be submitted via courier.

2. On-site hearings and inquiry sessions are suspended. Parties can apply to postpone evidence submission or hearings if they cannot acquire evidence or participate in hearings due to the epidemic.

During the period of epidemic prevention and control, courts and arbitration commissions are to take measures on postponing hearings and inquiries and notify the parties of new schedules according to the changing epidemic situation. The parties can apply to the court or arbitration commission to postpone evidence submission or hearings, if the parties and the agents are being treated for COVID-19 or are under quarantine, or are in the traffic-controlled regions due to the impact of the epidemic and thus cannot timely acquire evidence or participate in hearings and mediations.

3. On-site enforcements are to be suspended, and off-site enforcements are to be strictly controlled. Property preservation and enforcement monitoring are to be completed online by enhancing online monitoring.

Courts will fully use the online enforcement monitoring system to carry out preservation and enforcement monitoring. Online enforcement monitoring will be enhanced while offline monitoring will be reduced. Enterprises and persons that are involved in the epidemic control and prevention can apply to the court to postpone taking enforcement and preservation measures such as asset monitoring. For cases that require cross-region enforcement, local courts should in principle be commissioned to undertake enforcement measures.

The relevant notices and announcements on such adjustments issued by the arbitration commissions are summarized as follows:

No.	Region	Date	Issuer	Name of Notice / Announcement
1.	National	2020.01.28	China International Economic and Trade Arbitration Commission	<i>Urgent Notice of the China International Economic and Trade Arbitration Commission on Work Arrangements During the COVID-19 Epidemic Prevention and Control Period</i>
2.	Beijing	2020.01.28	Beijing Arbitration Commission / Beijing International Arbitration Center	<i>Notice of the Beijing Arbitration Commission / Beijing International Arbitration Center on Work Arrangements during the Epidemic Prevention and Control Period</i>
		2020.02.01	BAC / BIAC	<i>Supplemental Notice I of the Beijing Arbitration Commission / Beijing International Arbitration Center on Work Arrangements during the Epidemic Prevention and Control Period</i>
3.	Shanghai	2020.01.28	Shanghai	<i>Notice of SIETAC / SIAC on Arbitration Work</i>

No.	Region	Date	Issuer	Name of Notice / Announcement
			International Economic and Trade Arbitration Commission / Shanghai International Arbitration Center (“SIETAC / SIAC”)	<i>Arrangement during the Epidemic Prevention and Control Period</i>
		2020.01.28	Shanghai Arbitration Commission	<i>Alert of the Shanghai Arbitration Commission on Arbitration Work Commission During the Epidemic</i>
		2020.01.31	Shanghai Arbitration Commission	<i>Supplemental Alert I of the Shanghai Arbitration Commission on Arbitration Work During the Epidemic</i>
4.	Shenzhen	2020.01.29	Shenzhen Court of International Arbitration	<i>Alert of the Shenzhen Court of International Arbitration on Arbitration Work and Relevant Matters During the Epidemic Prevention and Control Period</i>
5.	Guangzhou	2020.02.03	Guangzhou Arbitration Commission	<i>Announcement of the Guangzhou Arbitration Commission on Work Arrangements during the COVID-19 Epidemic Prevention and Control Period</i>

Impacts and recommendations—litigation and arbitration activity adjustments and the rights and interests of parties

1. The suspension of on-site case-filing activities due to the epidemic will delay the initiation of court or arbitration proceedings by some parties, which may lead to some parties being unable to file cases before the expiry of the statute of limitations.

As stated above, due to the need for epidemic prevention and control, most courts and arbitration commissions have suspended on-site case filing services. Thus, parties intending to initiate arbitration or litigation proceedings cannot complete case filings by submitting case documents on site and receiving responses to case-filing inquiries. As for disputes subject to statute of limitations expiry, some parties may not be able to complete the case-filing before the expiry of statute of limitation.

Recommendation:

In order to initiate arbitration or court proceedings the earliest possible and to make clear the rights and interests of the parties, we recommend that, where permissible, a party intending to initiate an arbitration or court proceeding complete the case filing by both courier and online submission. When submitting the arbitration or litigation materials by mail, the waybill should be clearly indicated “case filing by courier” and should be retained. At the same time, after the online submission and courier, the parties should promptly contact the secretary of the arbitration commission or the case-filing chamber of the court by phone, in order to ensure that the documents have been accepted.

As for disputes subject to a statute of limitations expiry, we recommend that the parties submit the arbitration or litigation materials by courier and retain the waybills in order to meet the statute of limitations. According to Article 194 of the *General Provisions of the Civil Law of the People’s Republic of China*, the statute of limitations shall be suspended during the last six months of the period if the right of claim cannot be exercised due to obstacles such as force majeure. The statute of limitations will expire six months from the date when the obstacle causing the suspension is eliminated. Currently, whether the epidemic constitutes a force majeure event that can hinder the parties from exercising their rights in each case may be subject to debate. If it does constitute force majeure, the start and end of the force majeure event may also be subject to dispute. Therefore, to ensure the right to litigate, we recommend that plaintiffs or claimants avoid claiming that the epidemic constitutes a force majeure event during the proceedings, and instead initiate proceedings to meet the statute of limitations.

2. Off-line asset monitoring and enforcement measures undertaken by the courts will be impacted to some extent due to the epidemic for assets that require on-site preservation and enforcement.

Recommendation:

In order to assist the court in online monitoring for a respondent’s assets, we recommend that the plaintiff or applicant collect and provide information on assets such as bank accounts or equity investments. Meanwhile, if the preservation period is about to expire during the period of epidemic prevention and control, we recommend that the parties promptly contact the judge and apply in writing for preservation measures such as continued court custody of the assets.

3. The suspension of litigation and arbitration activities such as hearings can, to a degree, delay the time of rulings confirming the parties’ rights and obligations. The defendant or the respondent may well purposefully seek to delay the litigation or arbitration proceedings.

Due to the impact of the epidemic, the courts and arbitration commissions will suspend on-site hearings or mediations, which will delay adjudication of the parties’ rights and obligations. Accordingly, the scope of losses due to breach of contract or tort suffered by a plaintiff or applicant may also increase. Meanwhile, the defendant or respondent may take advantage of the epidemic and purposefully request suspension of the hearings in order to delay the progress of the litigation or arbitration proceedings, and to avoid the legal responsibilities.

Recommendation:

To ensure the progress of the arbitration and litigation proceedings, we recommend that the court or arbitration commission arrange for the parties complete the exchange of evidence by providing cross-examination opinions in written form, in cases where the parties do not have material disputes on the authenticity of evidence. Where permissible, the parties can recommend the court or arbitration commission to conduct online activities such as hearings and mediations. For the cases with clear facts and simple legal relationships, the parties can also apply to the court or arbitration commission to try the case in written form. In addition, the parties should be prepared to collect supplemental evidence of the increased losses or damages incurred during the postponement period.

Important Announcement

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