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Subject: Supreme Court of P.R. China issues guiding opinions on trial of civil cases related to COVID-19 epidemic

On June 16th, the Supreme Court of China published “Guiding Opinions of the Supreme People’s Court on Several Issues Concerning the Proper Handling of Civil Cases Related to COVID-19 Epidemic in Accordance with the Law (III) “ (hereinafter “Guiding Opinions III”), being the third one in a series of guiding opinions since April 2020.

Guiding Opinions III consists of nine parts, covering both substantial matters as well as procedural matters, among which some issues about handling of disputes over transportation contract and maritime cases are included. The following is our summary of the points that are related to the maritime industry.

Handling of transportation contract cases

According to Article 291 of Contract Law of P.R. China, the carrier shall deliver the cargo to the designated location in line with agreed or usual route. If the carrier provides evidence to prove that during transportation, medical assistance or quarantine measures are needed due to an epidemic situation on board the means of transport so that the route has to be altered, and that the carrier has informed the shipper of such alteration timely, the court shall not support the shipper’s allegation that the carrier is in breach of its obligations specified in the aforementioned article.

If the carrier provides evidence to prove that at the starting and ending place of the carriage, because of the epidemic situation or the related preventive and control measures, prohibition or restriction measures were taken so that the route of carriage was altered or loading or discharging operation were restricted, which caused delay in delivery, and that the carrier has informed such delay to the shipper timely, the court shall support the carrier's assertion of liability exemption.

Handling of maritime cases

1. The carrier shall, before and at the beginning of the voyage, exercise due diligence to make the ship seaworthy. If the carrier fails to exercise due diligence so that the ship is not fit for carriage of a particular kind of cargo because of epidemic control measures such as disinfection, fumigation, or the ship is not properly manned because of insufficient number of certified and healthy crewmembers, the court shall support the shipper's assertion about unseaworthiness of the ship.

If the shipper argues that the ship is not seaworthy solely because she has called places affected by the epidemics and any crewmember on board has contracted COVID-19 virus, the court shall not support such assertion.

2. Before the beginning of the voyage, the carrier or shipper can request cancellation of the contract in accordance with Article 90 of the Maritime Code when the carriage contract cannot be performed because of the following situations caused by the epidemic or its related preventive measures:
 - (1) It is impossible to provide necessary manning or supply for the ship within a reasonable period;
 - (2) The ship cannot reach the loading port or destination port;
 - (3) Once the ship enters into the loading port or destination port, she cannot resume her normal sailing or berthing;
 - (4) The cargo is listed as temporarily banned for export or import by the government of the loading port or destination port.
 - (5) The shipper cannot deliver the cargo to the terminal of the loading port within a reasonable period of time due to obstruction of land transportation;
 - (6) Other circumstances not attributable to the fault of the carrier or the shipper.
3. If there is berthing or discharging restriction due to the epidemic or its related preventive measures so that the carrier has to discharge the cargo at a safe port or place nearby the destination port, unless otherwise agreed in the contract, the court

shall not support the shipper or the receiver's request to hold the carrier liable for breach of contract.

After discharging the cargo, if the carrier fails to make proper arrangement for care of the cargo or inform the shipper or receiver timely, the shipper or receiver's request to hold the carrier liable for the corresponding damages shall be supported by the court.

4. In case the epidemic or its related preventive measures have caused overdue of the container usage, if the receiver or the shipper request reducing the overdue charge, the court shall try to guide the parties to reach amicable settlement, failing which the court can reduce the overdue charge taking into consideration of the actual circumstances of the case, usually to the extent that the overdue charge amount shall not exceed the replacement cost of a container of the same sort.
5. If the cargo forwarder has booked cargo space in the name of the shipper, and the carrier cancels the voyage or changes the date of the voyage because of the epidemic or its related preventive measures, the court shall not support the shipper's request to hold the cargo forwarder liable for relevant losses. However, if the cargo forwarder fails to perform its duty of diligence and prudence to inform the shipper of such cancellation of the voyage or change of date of the voyage in a timely manner, or has fault in cooperating with the shipper during the subsequent handling of the related matters, the court shall support the shipper's request to hold the cargo forwarder liable.
6. Unless otherwise agreed in the contract, if a ship repairer or builder requests to extend the deadline of ship delivery on basis that it couldn't resume operation timely because of lack of labor or delayed delivery of equipment or supply caused by the epidemic or its related preventive measures, the court can examine merits of each case and decide whether to support such request taking into consideration of the extent of impact of the epidemic and its related preventive measures on the progress of ship's repair or building.
7. In "Urgent Notice on Guaranteeing Epidemic Prevention and Safeguarding Water Transportation" issued by the Ministry of Transportation on 29 Jan 2020, terminal operators are strictly forbidden to exercise restrictive measures arbitrarily such as forbidding cargo ships' berthing or ordering 14-day quarantine in anchorage, etc. in the name of epidemic control. Unless clearly required by the local maritime authorities or port management authorities at the location of the terminal operator, if the terminal operator restricts berthing period of the ship in the name of quarantine requirement,

the ship owner or operator's request to hold it liable for relevant losses shall be supported by the court.

Procedural matters

Among others, Opinions III provides the followings in respect of litigation procedures at this special time:

1. In case a foreign company cannot provide notarized and legalized Power of Attorney or Certificate of Identification in time due to the epidemic or its related preventive measures, the court shall grant an extension upon request and determine a reasonable time limit depending on the actual situations.
2. For the evidences generated outside Chinese territory, if the litigant requests to extend the time limit of adducing evidence on basis that the evidence cannot be provided within the original time limit because of the epidemic or its related preventive measures, the court shall require the litigant to provide basic information of the evidence to be collected and provided, such as form, content and purpose of proof, etc.. Upon examination if the court consider the argument is well justified, approval of extension shall be granted.
3. Litigants who don't have domicile within China and cannot submit the defense or bring up an appeal within the time limit prescribed by the laws due to the epidemic or its related preventive measures, can request for an extension of the time limit. The court shall then consider the actual situation and grant approval accordingly, unless there is evidence showing that the litigant is maliciously delaying the proceedings.
4. According to relevant laws, the time limit for applying to acknowledge and enforce an effective ruling of a foreign court or an arbitration award of a foreign arbitration tribunal is two years. In the last 6 months of this time limit, if the litigant cannot submit such application due to the epidemic or its related preventive measures and thus assert suspension of the time limit, the court shall support such assertion.

We hope the above is of assistance. Should you have any query, please feel free to contact us at any time.

Best regards,

Oasis P&I Services Company Limited