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How China and the world navigate business during the pandemic

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The China Council for the Promotion of International Trade (CCPIT) began issuing “force majeure certificates” to Chinese domestic companies in February.^[1] Since then, the CCPIT has issued more than 5,500 certificates worth at least USD 70 billion in contracts.^[2] The certificates have been described as ““getting the umbrella ready before it rains,”” not an automatic release from contractual obligations.^[3]

Force majeure situations in China are governed primarily by the contracts. During the 2003 SARS epidemic, the Supreme Court of China specified that, “in case that a contract could not be performed due to the SARS outbreak or any administrative measures adopted against SARS, such a situation was to be considered a force majeure event.”^[4] So far, it has not issued a similar interpretation for COVID-19. Instead, the CCPIT has issued certificates to help companies prove to their partners, as well as any legal entity they may have business contracts with, that the COVID-19 outbreak made it impossible to fulfill the contract.

The certificates prove, with CCPIT’s backing, that the pandemic affected the contractual obligations—not to be used to claim a force majeure event. According to a CCPIT news release,^[5] the certificates can “partially or completely absolve parties of liability for non-performance, defective performance and late performance of contracts,” and they “have been recognized by governments, customs, chambers of commerce and enterprises in more than 200 countries and regions around the world, and [they are] widely accepted overseas.” But that is not what international law firms and their global clients outside of China believe.^[6]

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