

Case 1886: CISG 11; 79

People's Republic of China: Supreme People's Court

No. 20 [2020] of the Supreme People's Court

Guiding Opinions on several issues concerning proper adjudication of civil cases involving the COVID-19 pandemic (part III): Opinion 4 on applicable law

8 June 2020

Original: Chinese

Available at: www.court.gov.cn/fabu-xiangqing-236501.html

Opinion 4, point 7:

When applying the United Nations Convention on Contracts for the International Sale of Goods, the people's courts should bear in mind that China withdrew in 2013 its declaration that it was not bound by article 11 of the Convention or by the provisions of the Convention relating to the content of article 11, while maintaining its declaration that it was not bound by article 1, paragraph 1 (b). Whether a country is a Contracting State to the Convention or not and whether it has made any corresponding reservations can be determined by referring to the status of Contracting States to the Convention as published on the UNCITRAL website. In addition, according to article 4 of the Convention, the Convention is not concerned with the validity of a contract or any effect which the contract may have on the property in the goods sold. For these two matters, the applicable law is to be determined by referring to the conflict-of-law norms contained in Chinese law, and it is to be applied accordingly in any relevant rulings.

If a party claims partial or full exemption from contractual liability on the grounds that it has been impacted by the epidemic or by measures to prevent or control the epidemic, the people's court shall examine the claim in accordance with the relevant provisions of article 79 of the Convention and shall assess, in a rigorous manner, the applicable conditions stipulated in that article. The provisions of the Convention should be interpreted bona fide based on the usual meaning of their terms in the context of the Convention and with reference to its objectives and purposes. At the same time, it should be noted that the digest of case law on the United Nations Convention on Contracts for the International Sale of Goods does not constitute an integral part of the Convention; it may be used as a reference in the hearing of cases but not as a legal basis.