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Articles

In 2020, Covid-19 and related prevention and control measures brought significant disruptions to commercial transactions globally, which have seen the force majeure doctrine invoked in many resultant contractual disputes. In China, the tumultuous year of 2020 also saw the enactment of the long-awaited Civil Code, a historical milestone in its legal system. This paper analyses how the Civil Code and recent guiding opinions of the Chinese Supreme People's Court address key issues of contract law concerning force majeure and the related doctrine of change of circumstances as applicable to Covid-19 related contractual disputes. We conclude that force majeure provisions will be cautiously applied by Chinese courts in this context, while change of circumstances is likely to be apply in more cases as it provides courts with the flexibility to modify the parties' contractual obligations.

The dynamics between Chinese contract law and regulatory legislation have most prominently played out in the past four decades in respect of the question of what counts as an illegal contract or a contract that is contrary to public policy. This article depicts the unique evolutionary trajectory of the Chinese law on illegality and public policy as applied to financial contracts and transactions. It demonstrates that until recently Chinese law had generally evolved towards insulating contractual freedom and uncertainty from the intrusion of financial regulation in particular and regulatory legislation in general. The recent elevation of financial regulation to become China's foremost policy priority, however, has resulted in a reassessment of this approach. Financial regulatory rules have been recharacterised as embodiments of public policy. Consequently, Chinese contract law seems to have been mobilised as a tool to achieve national policy objectives. Notable though it is, this reassessment does not seem penetrating and all-encompassing.