



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **China**

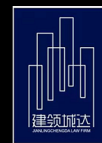
# **CONSTRUCTION**

### **Contributor**

JianLingChengDa Law Firm

### **Jigao Zhou**

Chief Partner | [zhoujigao@jlcldlaw.com](mailto:zhoujigao@jlcldlaw.com)



This country-specific Q&A provides an overview of construction laws and regulations applicable in China.

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## CHINA CONSTRUCTION



### 1. Is your jurisdiction a common law or civil law jurisdiction?

Shanghai JianLingChengDa Law Firm is registered in Shanghai, China. My jurisdiction is a civil law jurisdiction.

### 2. What are the key statutory/legislative obligations relevant to construction and engineering projects?

The key legislative documents relevant to the field of construction works are as follows:

1. The Civil Code: the full text of a total of 1260 of which, and the field of construction projects is directly related to the contract Part II, Chapter 18 "Construction Project Contract."
2. New Judicial Interpretation of the Supreme People's Court on Construction Contracts (I): On 29 December 2020, the Supreme People's Court issued the Decision on the Abolition of Some Judicial Interpretations and Related Normative Documents (Fa Shi [2020] No. 16), deciding to abolish the "Reply of the Supreme People's Court on the Issue of the Priority of Reimbursement of the Price of Construction Works" (Fa Shi [2002] No. 16) and the former "Judicial Interpretation of Construction Contracts" (Fa Shi [2002] No. 16) with effect from 1 January 2021. 2002] No. 16), the former Judicial Interpretation of Construction Contracts (I) and the former Judicial Interpretation of Construction Contracts (II), and other documents. On the same day, the new Judicial Interpretation of Construction Contracts (I) was officially promulgated and came into effect on 1 January 2021.
3. The Guidance Opinions of the Supreme People's Court on Several Issues Concerning the Proper Trial of Civil Cases Involving the New Coronary Pneumonia Epidemic According to Law (I) (II) (III)
4. Construction Law (amended in 2019)
5. Regulations on Quality Management of Construction Projects
6. Town and Country Planning Law
7. Land Administration Law
8. Various special industry norms.

### 3. Are there any specific requirements that parties should be aware of in relation to: (a) Health and safety; (b) Environmental; (c) Planning; (d) Employment; and (e) Anti-corruption and bribery.

- a. Health and Safety: The Construction Law, the Work Safety Law, the Regulations on the Administration of Work Safety in Construction Projects and other regulations specify that all parties to construction projects are required to ensure construction safety and assume responsibility for construction safety in accordance with the law.
- b. Environmental Issues: The Law of the People's Republic of China on Environmental Protection, the Law on Prevention and Control of Air Pollution and the Law on Prevention and Control of Water Pollution, as well as the corresponding implementation rules, have clear provisions on the pollution standards arising from construction projects.
- c. Planning: The Urban and Rural Planning Law specifies that if construction works are to be carried out within a planning area, the construction unit shall apply to the competent authorities for a planning permit for construction works. To apply for a construction project planning permit, relevant supporting documents for the use of land and design plans for construction works should be submitted. Construction projects that require the construction unit to prepare a detailed construction plan shall also submit a detailed construction plan.
- d. Employment: The Regulations on Safeguarding the Payment of Wages to

Migrant Workers came into effect on May 1, 2020. This is the first special regulation to safeguard the rights and interests of migrant workers' wages in China. The regulation, which makes specific provisions on the implementation of the main responsibility, regulation of wage payment, clarification of responsibility for settlement and governance of key areas, is an administrative regulation formulated to eradicate the phenomenon of defaulted migrant workers' wages.

- e. Anti-corruption and Bribery: The Criminal Law criminalises the collection of bribes from state employees as well as non-state employees, and the offering of bribes to the aforementioned subjects. In addition, the Civil Service Law and the Supervision Law also contain provisions on anti-corruption and bribery.

#### **4. What permits/licences and other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?**

Before commencement of construction: Construction Land Planning Permit and Construction Engineering Planning Permit issued by the Planning Department and State Land Use Certificate issued by the Land Department;

During construction: none.

After completion of construction: planning acceptance permit, environmental assessment acceptance, acceptance registration and inspection.

Penalties for non-compliance generally include fines, orders to suspend construction, orders to restore the status quo ante and non-acceptance and inspection registration.

#### **5. Is tort law or a law of extra contractual obligations recognised in your jurisdiction?**

Yes, the Tort Liability Part of the Civil Code clearly stipulates the constitutive requirements and consequences of all kinds of torts, and the Contract Part of the Civil Code also establishes the liability for contracting negligence.

#### **6. Who are the typical parties to a**

#### **construction and engineering project?**

1. Developer (Owner)
2. Survey units
3. Design units
4. Builders (including general contractors and specialised subcontractors)
5. Supervisory units

In addition to the above-mentioned entities, in order to ensure the smooth operation of construction projects, there may be project management companies, price review agencies and other market entities.

#### **7. What are the most popular methods of procurement?**

1. Traditional model: The owner commissions architects and consulting engineers to carry out the preliminary work, and then carries out the design after the project has been evaluated and established, and at the same time prepares the construction tender documents during the design stage and then carries out the tender process to select the contractor.
2. CM model: a variation of the traditional model, in which a CM unit with construction experience is engaged from the start of the project to provide construction advice to the designers and subsequently manage the construction process to enhance the 'constructability' of the project.
3. Design-Build Model (BD Model): A specialist organisation is selected by the owner as the contractor to be responsible for the whole process of design, construction and installation of the project.
4. Project Management Contracting Model (PMC Model): A project management contractor acts as the owner's agent for the whole process and all-round project management of the project.
5. EPC mode: The owner organises the design, procurement and construction of the project as a whole under the management of one management body.

#### **8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?**

On November 25, 2020, the Ministry of Housing and Urban-Rural Development and the State Administration for Market Regulation announced the General

Contracting Contract for Construction Projects (Model Text).

On September 22, 2017, the Ministry of Housing and Urban-Rural Development and the State Administration for Market Regulation announced the Construction Contract for Construction Projects (Model Text).

In China, the owner is in an advantageous position in the legal relationship of construction projects, so the owner will make its own adjustments to the provisions of the standard contract on the distribution of benefits and liability for breach of contract.

### 9. Are there any restrictions or legislative regimes affecting procurement?

According to the provisions of the Bidding and Tendering Law and the State Planning Commission's Regulations on Engineering Projects that Must Be Tendered: projects related to social public interest and public safety, such as large-scale infrastructure and public utilities.

Projects wholly or partially invested with state-owned funds or financed by the state; projects using loans or aid funds from international organizations or foreign governments.

The above three types of projects include the survey, design, construction, supervision of the project and the procurement of important equipment and materials related to the construction of the project, which must be tendered if they meet one of the following criteria.

- a. the estimated value of a single contract for construction is above RMB 4 million
- b. the procurement of important equipment, materials and other goods, where the estimated value of a single contract is more than RMB 2 million
- c. the procurement of services such as survey, design and supervision, where the estimated value of a single contract is more than RMB 1 million.

### 10. Do parties typically engage consultants? What forms are used?

For projects that require supervision and management by law, the builder is required to employ a works supervisor to manage the quality and safety of the project, in addition to a cost consultant to provide services for the cost of the project. For owners who lack experience in construction work, a project manager may be engaged to provide management and consultancy

services.

### 11. Is subcontracting permitted?

Chinese law does not prohibit subcontracting, but there are four types of subcontracting acts that are prohibited by law according to the Regulations on Quality Management of Construction Works.

- a. Where a general contractor subcontracts construction works to units that do not possess the corresponding qualifications.
- b. Where the general contract for construction works has not been agreed in the contract and where the contractor has handed over part of its contracted construction works to other units for completion without the approval of the construction unit.
- c. The main contractor of the construction works subcontracts the construction of the main structure of the construction works to other units
- d. the subcontracting unit subcontracts the construction works contracted by it.

### 12. How are projects typically financed?

At present, the main types of project financing in the construction engineering industry are as follows.

- a. Debt-based financing (bank credit)
- b. Equity-based financing (equity investment funds)
- c. Mezzanine financing (REITs)
- d. PPP structures (TOT BOT)

### 13. What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?

Guarantees that can be obtained by the employer include, but are not limited to, performance bonds, advance payment guarantees and parent company guarantees. Typically, performance bonds and parent company guarantees expire on the date of completion and acceptance of the project and the issuance of a certificate of completion. Prepayment guarantees expire when all prepayments have been paid.

### 14. Is there any specific legislation relating

### to payment in the industry?

There is no special legislation on the payment of the construction industry, and the parties to the construction project market usually make the payment as agreed in the contract.

### 15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

The use of pay-when-paid clauses in payment for construction projects is not prohibited by our law and is more common in construction projects, especially in construction subcontracts.

### 16. Do your contracts contain retention provisions and, if so, how do they operate?

The warranty clause is more common in China's construction contracts and mainly contains the following but parts.

- a. Total amount: the total amount of the warranty is generally 3%-5% of the total contract price.
- b. form: the warranty is usually reserved directly from the contract price.
- c. Period: usually agreed to be returned within two years after the settlement of the project.

### 17. Do contracts commonly contain delay liquidated damages provisions and are these upheld by the courts?

The setting of liquidated delay damages clauses is common for construction contracts in China. In principle, as long as the contract is valid, the court will support the claim for liquidated delay damages, but the court will also determine the specific amount of liquidated delay damages based on the actual performance of the contract, the degree of fault of the parties and other circumstances, and there may be discretionary adjustments.

### 18. Are the parties able to exclude or limit liability?

Yes, the parties can. Usually, judicial practice will usually uphold the validity of a clause as long as it is based on

the true intention of the parties to the contract and there are no circumstances in which it is invalid under the law.

In addition, if one party takes advantage of its own advantage or the other party's lack of experience, resulting in a clear inequality of rights and obligations between the parties as set out in the contract, in which case the contract may be considered manifestly unfair, a party may seek to rescind the contract.

### 19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

Chinese law does not give the parties to a construction contract the right to terminate it at will, but the parties may stipulate terms in the contract which are contractual. Under our law, the parties are entitled to terminate the contract if the purpose of the contract cannot be achieved due to a force majeure event.

### 20. What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?

In order to protect the rights and interests of third parties, especially many investors, it is often stipulated in the contract that the third party has the right to review the payment schedule and supporting documents, review or approve drawings or specifications, and the right to set up a fund co-management account with the third party.

### 21. Do contracts typically contain strict provisions governing notices of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?

Typically, the contract will stipulate that a notice of intent to claim and a claim report will be submitted in accordance with a specific procedure and at a specified time, otherwise there may be a risk of loss of rights. The Model Text of Construction Contracts for Construction Projects issued by the Ministry of Housing and Urban-Rural Development and the State Administration for Industry and Commerce has designed special clauses.

### 22. What insurances are the parties required to hold? And how long for?

1. All risks of construction works and all risks of installation works shall be insured by the contractor according to law.
2. Construction of accident insurance, generally insured by the contractor. The insurance period of the above two types of insurance is as follows. The insurance period is from the date of commencement of the construction project to the date of completion and acceptance.
3. Accidental death insurance benefits are generally insured by the contractor
4. Accidental disability insurance benefits are generally insured by the contractor. The insurance period of the above two types of insurance is a certain period of time (generally 180 days) from the date of occurrence of accidental injury of the insured.

### **23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?**

The main mechanisms for resolving construction and engineering disputes are litigation and arbitration. The use of alternative dispute resolution is extremely rare in China.

### **24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?**

The courts in China have always been highly supportive of domestic arbitral awards, providing further comprehensive and systematic safeguards and support for the enforcement of domestic arbitral awards through the Arbitration Law, the Provisions of the Supreme People's Court on Several Issues Relating to the Enforcement of Domestic Arbitral Awards and the Provisions of the Supreme People's Court on Several Issues Relating to the Handling of Cases of Enforcement of Arbitral Awards by the People's Courts.

With regard to international arbitration, Chinese courts are making efforts to enhance their support for international arbitration, and judicial practice shows that Chinese courts are increasingly recognising and enforcing awards under the New York Convention, and the Supreme People's Court has established a "reporting system" in judicial practice: in the event of refusal to recognise and enforce an award under the New York

Convention, the refusal is reported to the Supreme Court at various levels. In the case of refusal to recognise and enforce an award under the New York Convention, the case is reported to the Supreme People's Court at each level for approval before a final decision can be made.

Under the Civil Procedure Law, the deadline for enforcement is six months after the receipt of the application for enforcement of the arbitration. However, as the respondent may file an application for non-enforcement or setting aside of the arbitral award, the court needs to make a determination on the aforementioned application, so the period of time for the actual enforcement of the arbitral award is not certain.

### **25. Are there any limitation periods for commencing disputes in your jurisdiction?**

The statute of limitation periods for construction cases is three years. According to Chinese law, the limitation period for requesting protection of civil rights from the people's court is three years. The limitation period is calculated from the date when the right holder knows or should know that the right has been damaged and the obligor. However, the People's Court shall not protect any rights that have been damaged for more than twenty years from the date of damage; in special circumstances, the People's Court may decide to extend the period upon the application of the right holder.

### **26. How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a "fair and reasonable" proportion of the innocent party's losses), and are these commonly used?**

Multi-party disputes are very common, especially when there are situations such as subcontracting, re-contracting and dependency.

In principle, the court will apportion the liability for breach of contract according to the degree of fault of each party, the breach of contract, the actual performance of the contract and the terms of the contract. However, in judicial practice, there may be a tendency to protect the interests of migrant workers by having other subjects pay first when one subject is unable to settle. In addition, if the liquidated damages agreed in the contract are excessively higher than the actual loss, the court will also make adjustments at its discretion.



## 27. What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?

Challenges: The domestic and international economies continue to be affected by the New Crown epidemic, which has affected a wide variety of industries and a wide range of sectors. The construction market in particular has been severely affected, with the overall performance ability of contractors significantly reduced, construction companies facing increased risks and legal matters.

Based on: China is expected to gradually shake off the impact of the epidemic and economic activity will largely return to normal, with the construction industry, a pillar industry and traditional sector of the national economy, also set to recover. We predict that in the future, the construction industry will enter a new historical stage of development, with challenges and opportunities.

### 1. **National urban cluster construction and regional coordinated development strategies will inject strong potential momentum into the development of the construction industry**

In recent years, driven by a series of supporting policies, the overall scale of fixed asset investment in core regions has been increasing year on year, and the level of urbanisation in China has continued to rise, driving the rapid growth in the scale of construction projects in the corresponding regions, injecting strong potential momentum for the development of the architectural design industry.

### 2. **Green building technology innovation, bringing new business growth for the industry**

“In July 2020, the Ministry of Housing and Construction, the Development and Reform Commission and other departments issued the Green Building Creation Action Plan”, which aims to achieve a 70% share of green floor space in new urban buildings by 2022. In this context, the development of green buildings will further increase, thus bringing new business development opportunities to the construction industry.

## 28. What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?

As the real estate market has continued to decline in

recent years, the proportion of investment in traditional real estate projects to fixed asset investment has also been declining. However, with the burgeoning demand for “new infrastructure”, the sector has provided new momentum for the development of the engineering industry and has attracted a large amount of investment. New infrastructure construction, represented by 5G networks, big data centres, industrial internet, extra high voltage, intercity high speed rail, etc., will become a key area of investment for the state and other institutions. Comprehensive provinces and cities have disclosed their investment plans, the scale of investment in “new infrastructure” has exceeded more than 30 trillion yuan, of which, it is expected that the scale of investment in “new infrastructure” in 2022 will exceed 25 trillion yuan. On the one hand, it will directly drive the development of the engineering industry; on the other hand, it will help promote the transformation and upgrading of the industry and create more space for development.

## 29. How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?

With the continuous development of science and technology, the technical level of building construction has also been developed accordingly, and new construction techniques have emerged, resulting in unprecedented improvements in construction efficiency, reducing project costs and shortening construction time, while enhancing the safety and reliability of construction, and injecting new momentum into the development of the entire project.

In addition, with the in-depth application of information technology in the field of construction engineering, an innovative approach to building design, construction and management (BIM) provides an open platform for information exchange and knowledge sharing throughout the project lifecycle for construction project organisations, prompting the reorganisation of the construction project innovation network and corresponding changes to the working patterns between the participants in the network organisation.

## 30. What do you anticipate to be the impact from the COVID-19 pandemic over the coming year?

In the short term, the impact of the epidemic on China’s construction industry will continue, with delays in the arrival of workers, contradictions in the supply and

demand of raw materials and the cost of the resumption system being unfavourable factors for the rapid resumption of work and production in the engineering industry. Due to the recurrence of the epidemic many cities will have “city closure”, “road closure”, “delay in resumption of work” and other strict preventive and control measures against the epidemic, the poor flow of construction workers, delayed return to work, short-term This may lead to a shortage of workers for the construction of projects. During the epidemic period, the shortage of raw material production capacity and reserves due to the suspension of work, and the rush of infrastructure projects after the resumption of work, will lead to a significant increase in short-term demand for raw materials, which will lead to an oversupply in the market and pressure for price increases, and may further delay the project schedule due to the shortage of raw materials. The system of approval for resumption of work, epidemic safety inspection, closed management of construction sites and isolation of employees returning

to work in epidemic areas implemented in various regions due to the need for epidemic prevention and control may continue for some time, increasing the economic and time costs of resumption of work and production.

In the long run, the epidemic will not change the long-term trend of China’s construction industry for the better. With the government’s counter-cyclical policy regulation, the engineering industry will usher in a favourable window period. As an important tool for counter-cyclical adjustment, investment in infrastructure construction has been an important grip for “stable growth”. The epidemic has increased the downward pressure on China’s economy, and infrastructure investment will play an important role in the economic recovery after the epidemic. In addition, many provinces and cities trillion scale infrastructure construction investment plan, for the development of the engineering industry has created an important opportunity.

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## Contributors

**Jigao Zhou**  
Chief Partner

[zhoujigao@jlcldlaw.com](mailto:zhoujigao@jlcldlaw.com)

