



**COUNTRY
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China

LITIGATION

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

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CHINA LITIGATION



1. What are the main methods of resolving disputes in your jurisdiction?

There are four methods of commercial dispute resolution in China: litigation, arbitration, civil mediation, mediation conducted by other institutions (such as arbitration institutions). Parties at dispute usually prefer to negotiate first when dispute rises. The court or arbitral tribunal would normally adopt a mediation process before issuing the judgment/award as well.

Such preference of mediation roots in oriental culture. China's tradition of dispute resolution encourages the settlement of disputes through amicable negotiations. Mediation is more economical and convenient in China than that in western countries. Since the judge or arbitrator can serve as mediator, which is different from the practice in most other jurisdictions, no further expenses are incurred.

If the parties enter into a mediation agreement in litigation/arbitration, subject to the parties' request a written mediation statement could be rendered by the court or the arbitral tribunal. Since the mediation statement is final and is rendered by the court or the arbitral tribunal, it has the same enforceability effect that the final judgement/award would have.

If such negotiation fails to realize a satisfactory result, the parties might request the court or the arbitral tribunal to render a judgment or an award. In such circumstances the mediator would revert his/her role back into a judge or arbitrator and continue to serve on the case. Of course, the parties at dispute will not be bound by the facts which they revealed or acknowledged during the mediation process. All experienced legal practitioners and businesspeople on the Chinese market are familiar with this tradition. While they have the right to refuse mediation conducted by the judge or arbitrator, in most cases they prefer to accept such an arrangement.

2. What are the main procedural rules governing litigation in your jurisdiction?

The Civil Procedure Law of the People's Republic of China, which was revised in 2021, is the main procedural law governing litigation in China.

Besides, the Supreme People's Court also issued several judicial interpretations which stipulate detail rules in compliance with the Civil Procedure Law, aiming at further and better implementing the civil procedure, such as the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised in 2020), Several Provisions of the Supreme People's Court on Evidence in Civil Proceedings (Revised in 2019), etc.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

From the perspective of organization, the courts in China are classified into three types: the Supreme People's Court; people's courts at various local levels; and special people's courts. From the perspective of function, the courts in China are classified into four levels: the primary people's court, the intermediate people's court, the high people's court, and the Supreme People's Court.

For domestic litigations, generally, the first instance civil cases with the amount of subject matter reaching 5 billion RMB and above shall be under the jurisdiction of the high people's court, which is at provincial level. If the domiciles of both parties are or are not within the provincial-level jurisdiction where the accepting court is located, the intermediate people's court will have jurisdiction over the first-instance civil cases with the amount of subject matter reaching 500 million RMB and above. If the domicile of either of the parties is not within the provincial-level jurisdiction where the accepting court is located, the intermediate people's court will have jurisdiction over the first-instance civil

cases with the amount of subject matter reaching 100 million RMB and above. The rest of the first instance civil cases are governed by the primary people's court. The thresholds of the first instance civil cases under the jurisdiction of the high people's court and the intermediate people's court were raised significantly in recent years, which meant the majority of first instance cases now go to the primary people's court.

For foreign related litigations, generally, the first instance civil cases with the amount of subject matter reaching 5 billion RMB and above also shall be under the jurisdiction of the high people's court. And if the amount in dispute reaches a certain standard, which is much lower than the amount in dispute for domestic litigations, the intermediate people's court will have the jurisdiction of the first instance procedure. However, the standard of the amount in dispute varies in different provinces.

Specialized courts are set up in major cities for disputes in certain fields, such as finance, intellectual property, bankruptcy and maritime. In 2022, Chengdu-Chongqing Financial Court will be set up as the third financial court in China, following the Beijing Financial Court set up in 2021 and the Shanghai Financial Court set up in 2018. The financial courts are the same level as the intermediate people's court.

Generally, China has a two-tier trial system. The judgment of the second instance court will be final and binding. The party that disagrees with a first instance judgment can lodge an appeal with the immediate superior court, which technically shall be the final court of appeal. But there is an exception. According to Article 165 of the Civil Procedure Law, when a case is defined as a simply monetary payment case in which the facts are clear, the relationship of rights and obligations is evident and the disputes are minor (decided by specified standard), the primary people's court or the tribunal dispatched by it may apply small claim procedure, under which the ruling in the first instance shall be final.

However, China adopts a trial supervision system for legally effective judgment, by which the final judgement may be overruled through the acceptance of retrial (retrial system). The retrial system is widely criticized. Some argues that it costs excessive time and money while severely compromises the stability and reliability for judgments. This means no final court of appeal can render a binding judgment that will not be challenged.

4. How long does it typically take from commencing proceedings to get to trial in

your jurisdiction?

There is no statutory time limit from commencing proceedings to trial. Generally, it takes 1-2 months for Chinese courts to complete the service of litigation documents, organizing evidence exchange, arrange hearings and other proceedings in order to get ready for the trial.

Such time is shorter than many other jurisdictions, because it usually takes less time for Chinese courts to hear a case. Typically, the hearing proceeding only takes half a day or a day for one case. In contrast, in some jurisdictions, the hearing proceeding can take 3 days or more, since proceedings such as cross examination might be arranged together with the hearing. Therefore, it is a lot easier for Chinese judges to arrange the time slot, which significantly reduces the time it takes from commencing proceedings to get to trial.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

According to Article 137 of the Civil Procedure Law, civil cases shall be tried in public, except for those involving state secrets or private matters of individuals or otherwise stipulated in the law. Subject to the party's request, divorce cases and cases that involve trade secrets may also be tried in camera. Courts in major cities are now equipped with live stream devices for trial. The public can hear the trial online and the stream record can be accessed later as well.

According to Article 151 of the Civil Procedure Law, the courts shall publicly pronounce their judgments in all cases, whether tried in public or in camera. Since 2016, China establishes an online issuance of judgment documents. All judgments and rulings shall be published on China's Judgment Documents Website, which is the official unified platform for releasing judgment documents. There are some exceptions for online publishment, including cases involving state secrets or minor crime, cases closed by mediation, divorce cases or cases involving custody of minor children, etc. In addition, when issuing judgment documents on the Internet, People's courts shall delete the following information, including any personal information on any natural person; bank account number, license plate number and ownership certificate numbers of movable or immovable property of any legal person or other organizations; information regarding business secrets; information about personal privacy in disputes involving family affairs, personal rights and interests, etc;

information regarding measures of technical investigation; etc. Other case documents cannot be accessed by public.

6. What, if any, are the relevant limitation periods in your jurisdiction?

According to Article 188 of the Civil Code, the limitation of action for a person to apply to a people's court for the protection of civil rights shall be three years. Where there are other provisions in the law, such provisions shall apply. A limitation of action shall run from the date on which a party knows or should have known that his or her rights have been infringed and who the obligor is. And the limitation period will be suspended or interrupted under certain circumstances. Such right will not be protected if 20 years (except that the people's court may, upon request of the right holder, extend the limitation period under special circumstances) have passed since the infringement.

The limitation period in China is shorter than some western jurisdictions, where the limitation of action can be 5 years or even longer. On one hand, it is to encourage parties at dispute to actively protect their lawful right in time. On the other hand, considering a short limitation period might compromise substantial justice, Chinese courts also give leniency by not applying the rule of limitation period on its own initiative, which means that the limitation period can only be applied at the request of the parties.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

There are no statutory pre-action conduct requirements in China. However, the parties may adopt certain pre-action procedure in the contract, such as a 30-day negotiation period before initiating the litigation/arbitration. Such an agreement is generally respected by Chinese courts and arbitral tribunals. It is seen that some courts or arbitration institutions may require the plaintiff/claimant to provide evidence or a statement letter confirming that the pre-action condition adopted by parties at dispute has been met before accepting the case.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its

agent) or by the parties?

If the statutory conditions stipulated by Article 122 of the Civil Procedure Law are satisfied, the court shall accept the action initiated by the plaintiff and place the action on its trial docket within seven days and notify the parties.

The service is arranged by the court/arbitration institution. For litigation procedure, the court can adopt direct service, electronic service, mail service, etc. If a document cannot be served by any other method provided by law, the document will be served by public announcement and will be deemed as served after 30 days. To emphasize, if the parties agree to specify the address and contact with respect of litigation service in the contract in dispute, any method of service to that address and contact shall be deemed as served even if the service is rejected or failed. For arbitration procedure, the methods of service are stipulated by the arbitration rules of individual arbitration institutions.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

For most contractual disputes and other disputes arising from property rights and interests, a forum selection clause or arbitration agreement is adopted in the agreement. First of all, the court will examine if there is a valid forum selection clause that excludes its jurisdiction, or if there is a valid arbitration agreement.

If neither were the case, the jurisdiction leaves to the court and the court in China will then examine whether the court in specified has the jurisdiction by factors such as the territory of the party, the amount of dispute, and the field of the dispute. The territorial jurisdiction and court-level jurisdiction are stipulated by Article 18-39 of the Civil Procedure Law and other rules scattered in other laws. And the jurisdiction with respect to certain fields of disputes, it is stipulated in special regulations such as Provisions of the Supreme People's Court on the Jurisdiction of the Beijing Financial Court in the Hearing of Cases, Provisions of the Supreme People's Court on the Case Jurisdiction of the Shanghai Financial Court, etc.

10. How does the court determine which law governs the claims in your jurisdiction?

For domestic cases, the claims will be governed by the Chinese Law. For foreign related civil cases, the court will determine the law governs the claims in according with the Law of the People's Republic of China on the

Application of Laws to Foreign-related Civil Relations. If there are no regulations related to the application of civil relations involving foreigners in this Law and other laws, the laws that are most closely related to civil relations involving foreigners shall be applied.

Other than conditions where the applicable law is stipulated by the law, parties can explicitly choose the applicable law. If the parties concerned choose to use the applicable foreign laws, they shall provide the laws of those countries to the court. Otherwise, the parties that failed to provide the foreign laws will bear the negative consequence in which the laws of China shall apply.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

The courts can dispose a case without a full trial under the following circumstances:

1. Where the case falls under the scope of acceptance of an administrative lawsuit;
2. Where both parties to a lawsuit have entered into a written arbitration agreement and are not allowed to file a lawsuit with a court;
3. Where a dispute should be handled by other authorities;
4. Where the case does not fall under the jurisdiction of the court;
5. In the event of a case for which the judgment, ruling or mediation letter has come into legal effect, and that the litigant files a lawsuit again;
6. Where the lawsuit cannot be filed within a stipulated period;
7. In the case of divorce cases for which the judgment does not permit a divorce, divorce cases for which both parties are reconciled after mediation, and cases for which adoptive relations are maintained by the judgment or upon mediation, where there are no new circumstances or a new reason and the plaintiff files a lawsuit again within six months.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

For litigation procedure, there are two types of interim measures: preservation, and preliminary execution.

As for preservation, the court may rule on preservation

of a party's property or order the party to undertake certain acts or prohibit the party to undertake certain acts. The court will order the applicant to provide guarantee which is equal to the amount of value to be preserved, otherwise the application will be thrown out. In early years, the applicant needed to deposit cash in amount of 30% to 40% of the guarantee to the court's bank account, and provide other guarantee such as real estate. In recent years, courts will accept the letter of guarantee issued by insurance companies, which levitated the burden of the applicant.

As for preliminary execution, it applies upon the request of a party in the following cases: those involving claims for overdue alimony, maintenance, child support, pensions for the disabled or the family of the deceased, or medical expenses; those involving claims for remuneration for labour; and those involving urgent circumstances that require preliminary execution. And it should meet certain conditions stipulated in article 110 of the Civil Procedure Law.

For arbitration procedure, in accordance with the arbitration rules of some institutions, there are other types of interim measures, such as emergency arbitrator system and partial award system.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

It is not a statutory obligation for parties to submit certain written documents after a claim has been commenced. Although the Civil Procedure Law instructs the defendant to submit the pleadings in 15 days from receiving the statement of claim, not doing so usually does not influence the litigation procedure or the defendant's right to submit other documents. However, upon acceptance of a case, where a litigant objects to the jurisdiction, the objection shall be raised during the timeframe for submission of pleadings. Such time limit is usually strictly applied by the court.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

The evidence disclosure system is not adopted by the civil procedural laws in China. Article 67 of the Civil Procedure Law provides that where a litigant is unable to gather evidence on its own due to objective reason, or in

the case of evidence deemed by the court to be necessary for trial of case, the court has the right to investigate and gather the evidence.

However, there is a similar rule regarding documentary evidence. According to article 112 of Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, where the documentary evidence is under the control of the other party, the party concerned with the burden of proof may apply to a people's court in writing before the expiration of the period for adducing evidence to order the other party to submit such documentary evidence. Where the application reason is tenable, the people's court shall order the other party to submit the documentary evidence, with the expenses arising from submission of the documentary evidence to be borne by the applicant. Where the other party refuses to submit the documentary evidence for no proper reason, the people's court may affirm that the content of the documentary evidence claimed by the applicant is true.

Evidence which involves state secrets, commercial secrets and personal privacy shall be kept confidential, and shall not be presented at open hearings.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witness testimony is a statutory form of evidence in China. Upon notification by the court, a witness shall testify in court. When a witness is unable to be present in court due to health reason, long journey and inaccessibility, force majeure or other proper reason, he may testify by way of written testimony, via audio-visual transmission technology or by audio-visual testimony.

The testimony provided in writing or otherwise by a witness who fails to appear in court without justified reasons will not be taken as the basis for ascertaining the facts in a case. The requirement of neutrality of a witness is somewhat high in China. Normally a testimony made by a third party unrelated to either litigant is more likely to be accepted by the court.

The witnesses will testify and answer questions raised by judges and parties to an action. There are no specific rules on cross-examination or deposition.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

A litigant may apply to the court to notify a person with special expertise to be present in court to give opinions on the examination opinion or a specialised issue of the examiner. Judges may question persons with expertise. Upon approval by the court, litigants may question the persons with expertise, and the persons with expertise applied by the respective litigants may confront the relevant issues in the lawsuit. Persons with expertise shall not participate in court trials other than those for cross-examination of expert opinions or expressing of opinions on professional issues.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

The party can file an appeal for the judgment made by the first instance court. The appeal can be filed to the immediate higher-level court within 15 days from the date of service of the judgment letter.

For rulings of non-acceptance of lawsuit, objection to jurisdiction and rejection of lawsuit, an appeal may be filed. Other types of rulings are not appealable. The litigant can file an appeal with the immediate higher-level court within 10 days from the date of service of the ruling letter.

Where a litigant does not have a residence in China, he can file an appeal within 30 days from the date of service of the judgment letter or ruling letter.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

If a country and China have entered into a bilateral treaty for recognition and enforcement of judgments, then the foreign judgment rendered by the court of that country can be enforced in China.

For judgments rendered by countries with which there is no bilateral treaty, the court of China can also consider recognize or enforce the foreign judgment based on the reciprocal doctrine.

In 2019, Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial

Matters was negotiated and signed in Hague by delegates from multiple countries including China. However, the Convention is not yet officially acceded and effective in China.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The courts in China usually rule in the judgments that the litigation expenses be borne by the losing party. Specific guidance on the ratio to allocate the expenses is absent.

For the winning party, in order to persuade the court to rule that the attorney's fees be compensated by the opposing party, usually there needs to be a prior agreement in the contract, and the winning party needs to submit evidence of engaging the attorney and paying the amount. Otherwise, some courts are reluctant to support such a claim.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

If the subject matter of litigation is common, or the subject matters of litigation are the same type, the lawsuit may be tried as a joint action upon consent by the litigants. In the case where there are multiple persons comprising one party to the lawsuit, the litigants may elect a representative to participate in the proceedings.

The class actions are commonly seen in securities disputes. Other than the ordinary representative litigation system introduced above, there is also a special representative litigation system, where an investor protection organisation can be entrusted by more than 50 investors to participate in the lawsuit as a representative. For special representative litigations, securities holders who are confirmed by a securities registration are automatically registered as plaintiffs for the lawsuit, except where the investors clearly present that they are unwilling to participate in the lawsuit.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets

of proceedings in your jurisdiction?

Where a third party deemed that it has independent right of claim to a subject matter of litigation between two parties concerned, the third party shall have the right to participate in a lawsuit. Where a third party does not have independent right of claim to a subject matter of litigation, but it has legal stake in the handling outcome of the case, it may apply to participate in the proceedings. The court can also notify the third party to participate in the proceedings.

Courts in China generally do not consolidate multiple cases into one case. However, in order to promote the procedural efficiency and the consistency of judgments for multiple related cases, the collegiate of the related cases can be comprised with the same judges. If the parties to the related cases are the same, the hearing procedure might be consolidated. But the court will still render the judgments of the cases separately.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

China has not yet made any rules allowing or prohibiting third party funders to fund litigations. Some funds that specialize in funding litigations began to emerge in China in recent years. However, since the business is relatively new, it is not yet clear where the funds can be held liable for the costs incurred by the other party.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

The COVID-19 pandemic was generally under control in China since June 2020. There have been sporadic cases since, but the litigation activities have not been severely affected. The courts adopted remote hearing system at very early stage of the pandemic. Except when parties explicitly disagree with online hearing with fair reason, such as the examination of the original copies of the evidence might be affected, or the complicated nature of the case, the courts will arrange online hearing. Because courts have been using the online hearing system for over a year, fewer and fewer technical issues were encountered during the hearing.

24. What is the main advantage and the

main disadvantage of litigating international commercial disputes in your jurisdiction?

The Chinese judicial system is more efficient than those of many jurisdictions meanwhile justice is not compromised. Parties to a dispute is likely to obtain a final judgment in 1-2 years, where in some jurisdictions it might take a year for the substantial trial to commence. For most business parties, time is of essence. Chinese judicial system can be an ideal solution for international commercial disputes that seek a fair and just judgment in a short time.

Also, it is cheaper to bring a litigation in China than many jurisdictions. For example, for monetary disputes, a preservation application costs 5,000 RMB at most, no matter how big the amount at dispute is. Litigation in China is an economical choice for international business entities.

However, due to the existence of the retrial system in China, one can never say that a judgment is "final and binding". The retrial system can compromise the stability and reliability of the final judgment. This might hinder the business parties to choose Chinese courts for international commercial disputes.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

It is expected to see more bankruptcy disputes in the future years. Since China promulgated the Company Law in 1993, it has been almost forty years. The average life span of a company is thirty to fifty years, and the first generation of enterprises are now entering the final stage of their lives. For companies that could not peacefully dissolve, they are likely to go bankruptcy. Increasing number of bankruptcy cases is observed

recently, and it is likely to continue for the next few years.

Disputes involving intellectual property rights are also likely to grow in number. Together with Chinese economy growth, the intellectual property rights are more well-regulated. Business entities are aware of the importance to protect their technologies and products more than ever. The establishment of specialized courts of intellectual property right also provides professional and efficient solution for such disputes.

Disputes involving securities are as well likely to grow in number. The securities market is expanding in China and the Supreme People's Court, in 2022, promulgate the new judicial interpretation, Several Provisions of the Supreme People's Court on the Trial of Civil Compensation Cases for Infringement of Misrepresentation in the Securities Market, which abolished the pre-procedure required while initiating a litigation of misrepresentation in the securities market. Together with China's goal to extinguish the misrepresentation in the securities market, cases involving securities disputes will continue to increase predictably.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

New technologies are being used in litigation which provide the litigants with various choices to protect their lawful rights. For example, there are several companies that use block-chain technology to provide notary service. Before, in order to preserve evidence for litigation, parties need to go to the notary office, which was time consuming and relatively expensive. With the service provided by the block-chain notary companies, parties can use their laptop or mobile device to preserve an image, a footage or screenshots of websites.

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