China

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LITIGATION

Court system

1 | What is the structure of the civil court system?

In China, the people's courts are judicial organs exercising judicial power on behalf of the state. The civil court system is, in general, comprised of the Supreme People's Court, local people's courts and specialised people's courts at various levels. The local people's courts are divided into three levels, namely the Primary People's Court, the Intermediate People's Court and the Higher People's Court. In parallel with the local people's courts system, there are specialised people's courts set up for the trial of specialised cases, which currently include military courts, railway courts, maritime courts, forestry courts, agricultural reclamation courts, financial courts, intellectual property courts and internet courts.

China practises a system of courts characterised by 'four levels and two instances of trials'. 'Four levels' refers to the four levels of courts in the hierarchy introduced above, and 'two instances of trial' means that a civil case should be finally decided after two trials, which, however, is subject to retrial if there is an error in the judgment.

The subject matter, nature or size of the claim will decide which level of court such claim shall be brought to for the first instance trial. For example, an Intermediate People's Court shall have jurisdiction as a court of first instance over the following types of civil cases:

- major cases involving foreign parties;
- cases with significant impact in the areas over which the courts exercise jurisdiction; and
- cases determined by the Supreme People's Court to come under the jurisdiction of the Intermediate People's Courts.

A Higher People's Court shall have jurisdiction as a court of the first instance over civil cases with significant impact in the areas over which they exercise jurisdiction.

The Supreme People's Court shall have jurisdiction as the court of first instance over the following types of civil cases:

- cases with significant impact on the whole country; and
- cases that the Supreme People's Court deems it should try by itself.

Judges and juries

2 | What is the role of the judge and the jury in civil proceedings?

In China, an inquisitorial system is adopted in the judicial system whereby the judges take dominant roles in the trial and are actively involved in fact-finding by questioning the parties, advocates of the parties and witnesses. This is opposed to the adversarial system adopted by most common law countries where the fact-finding process is controlled by the parties and the judge or jury remains neutral and passive throughout the proceeding.

A jury is not provided under the judicial system of China, and the bench of a case plays the roles of both fact-finding and law application. Generally, if a collegiate bench is established to adjudicate a civil claim, it consists of purely professional judges. However, people's jurors may be appointed to the collegiate bench to participate in the hearing of cases:

- involving group interest;
- involving public interest;
- concerning the general public; and
- having other major potential social impact.

Similar to the jury, a people's juror's main responsibility on the bench is to conduct fact-finding in the trial. What is different is that the people's jurors enjoy the same rights as regular judges after assuming their posts and sit on the bench with the regular judges. People's jurors are selected from citizens who are non-legal professionals with certain requirements for age, education and historical record of conduct. Because there is a list of eligible people's jurors already in place in every people's court, the selection process for each case is made by computer on a random basis. Further, for special cases for which people's jurors with specific professional knowledge are required, the people's court may randomly select the jurors from people's jurors with the required professional knowledge.

Limitation issues

3 | What are the time limits for bringing civil claims?

According to the Civil Code, effective as of 1 January 2021, the ordinary limitation period for civil claims is three years; although special rules, either shorter or longer than three years, will apply to certain types of disputes.

The limitation periods for some specific types of cases are set out by other laws as follows:

- claims for product liability: two years; and
- claims for disputes arising from an international contract for the sales of goods or a contract for the import and export of technology: four years.

The above limitation periods start from when the claimant knows or should have known the facts giving rise to his or her claim and who the accused is. In any event, if more than 20 years have passed since the date of the occurrence of facts giving rise to the claim, the court shall not offer any protection. However, there is an exception for product liability claims. The right to claim compensation for damage caused by defective products shall be void 10 years after the products are delivered to the first consumers, unless the product's expressly stated warranty is longer.

The law provides rules to suspend the limitation period if, within the final six months of the limitation period, the rights to 'demand' cannot be exercised because of any of the following statutory obstacles:

- force majeure;
- the person who has no or limited capacity for civil conduct has no statutory agent, or his or her statutory agent dies or loses the capacity for civil conduct or the power of agency;
- neither a successor nor a legacy caretaker has been determined after the commencement of succession;
- the obligee is controlled by the obligor or other persons; and
- other obstacles resulting in the failure of the obligee to exercise the right of claim.

The limitation period will be resumed after the causes of such suspension are eliminated.

In addition to suspension, the limitation period can be interrupted according to law. The limitation period is interrupted if legal proceedings are instituted or if a party demands or agrees to the fulfilment of its obligations. The limitation period commences anew from the time of interruption and the limitation period can be interrupted repeatedly.

Article 197 of the Civil Code further regulates that the periods, calculation methods and reasons for a suspension or interruption in respect of the limitation of action shall be prescribed by law and those agreed by and between the parties shall be null and void. A party's prior waiver of the benefit of the limitation of action shall be null and void.

Pre-action behaviour

4 | Are there any pre-action considerations the parties should take into account?

By law, generally, there are no mandatory pre-action requirements imposed before the civil proceeding can be issued, except for the following cases:

- shareholder derivative lawsuit: the shareholder must first request the (board of) supervisors or the board of directors (executive director) to initiate the proceeding unless in case of emergency; and
- labour disputes: a labour dispute shall be first brought before the labour dispute arbitration committee for arbitration before proceeding to the court.

However, there are some pre-action measures available to the party to assist in bringing an action. For example, for the purpose of a smooth investigation during the proceeding, the enforceability of the judgment and the suspension of damages caused to the party, such party can apply for preservation of evidence, preservation of property and relevant injunctions to the court before the action is initiated, depending on the circumstances and in the event of emergency.

Starting proceedings

5 | How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement? Do the courts have the capacity to handle their caseload?

As of 1 May 2015, the case acceptance system is reformed from a case-filing review system into a case-filing registration system. Under the case-filing registration system, the proceeding will commence when the People's Court registers and files the complaint by the claimant. The court decides whether to file and register the complaint by the claimant on the spot or within seven days at the latest. If the complaint is dismissed by the court, the claimant is entitled to appeal against the court's decision to the higher court within 10 days.

If the court decides to register and file the complaint by the claimant, a notice letter of case acceptance will be served to the claimant. Within five days from the acceptance of the case, the defendant will be given notice of the claim served with a copy of the statement of claim of the claimant.

Huge caseloads have been an issue for judges, especially those in the courts of big cities. However, capacity issues do not prevent the courts from listing disputes in a timely manner, but exert great pressures on the judges, who have to work overtime to schedule hearings and render decisions. Therefore, relieving the pressure on judges is one of the important topics of judicial reform. Specifically, to ease the capacity issues, it is proposed that the percentages of judges be increased in the courts with greater caseloads, more supporting staff be hired in the courts to assist the judges, the use of diversified dispute resolutions other than civil litigation by parties be improved and encouraged, and full use be made of the petty lawsuits procedures, summary procedures available for simple cases to improve the judicial efficiency, etc.

Timetable

6 | What is the typical procedure and timetable for a civil claim?

A general procedure for a civil claim at first instance is concluded within six months from the commencement of the proceeding, which includes the following stages:

- starting proceeding: the civil proceeding starts when the complaint by the claimant is registered and filed by the court;
- notice to the defendant and defence: within five days from the acceptance of the case, the defendant will be given notice of the claim and served with a copy of the statement of claim of the claimant; the defendant must file a statement of defence within 15 days from receipt of notice of the claim; and the court shall deliver a copy of the statement of defence to the claimant within five days from the date when it receives the same;
- evidence submission: the period for evidence submission can either be decided by the parties, subject to court approval, or determined by the court (15 days minimum);
- counterclaims (if any): the defendant can file a counterclaim before the end of the period for evidence submission;
- hearing: the court shall notify the parties and other participants in the action three days prior to the hearing. During the court hearing, the procedure is generally divided into the investigation of the facts and the presentation of arguments; and
- issuing judgment: if a judgment is delivered immediately after the hearing, the written judgment shall be served to the parties within 10 days. If a judgment is delivered on a fixed date, the written judgment shall be served to the parties immediately after the delivery.

If there is a need for an extension under special circumstances, an extension of six months may be granted, subject to the approval of the president of the court. If there is a need for a further extension, the approval of the Higher-Level Court is required.

However, the period for trial of foreign-related civil cases by courts shall not be subject to the abovementioned time limits and restrictions.

If a party refuses to perform an effective judgment, the other party can apply to the court for enforcement. The time limit to apply for enforcement of a judgment is two years commencing from the last day of the time limit for execution of the judgment specified in the written judgment. The provisions of the applicable laws on suspension and termination of limitation of action shall also apply to suspension and termination of limitation period for application for enforcement.

Case management

7 | Can the parties control the procedure and the timetable?

The case management structure in the Chinese court system is established from top to bottom. Inquisitorial procedure is adopted in the Chinese judicial system in which the parties play a relatively minor role.

Evidence – documents

8 | Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

There is no compulsory or statutory duty for both parties to preserve evidence pending trial, nor will they be required to share relevant documents. Strategically, in civil litigation, one would benefit immensely from preserving evidence in a comprehensive manner.

Under the PRC Civil Procedure Law, if evidence may be lost or it may be difficult to obtain evidence in future, a litigant may apply to the People's Court for the preservation of evidence during the proceedings. The People's Court may also voluntarily adopt preservation measures. In urgent circumstances, an interested party may also file the application. If the preservation measures might cause losses or restrictions of use and circulation to the evidence holder, the party applying for such evidence preservation shall be required by the People's Court to provide an appropriate guarantee.

Regarding whether parties shall share relevant documents, this largely depends on and is influenced through the allocation of the burden of proof, which often varies from case to case.

Furthermore, in the Several Provisions on Evidence for Civil Actions effective from 1 May 2020, an arrangement regarding documentary evidence (which includes audiovisual materials and electronic data) was introduced. A litigant is allowed to apply to the People's Court requiring another party in the litigation to provide documentary evidence. That application will be approved if the party controls the documentary evidence and one of the following circumstances exists:

- documentary evidence that has been cited by the party controlling the documentary evidence in the litigation;
- documentary evidence prepared for the interests of the applicant;
- documentary evidence that the applicant is entitled to consult or obtain in accordance with the law;
- account books and original vouchers for bookkeeping; or
- other circumstances under which the People's Court deems that documentary evidence shall be submitted.

Evidence – privilege

9 | Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The concept of 'privilege' does not exist under the law of China, be it of advice from client-counsel relations in private practice or from in-house lawyers.

The PRC Civil Procedure Law protects public secrets, commercial secrets and privacy by providing that such evidence shall be kept confidential, and shall not be presented at open hearings when there is a need to present such evidence in the courtroom. Instead of invoking the privileged evidence arrangement, the party would have to bear harmful results if the party refuses to provide evidence owing to public secrets, commercial secrets and privacy.

Evidence – pretrial

10 | Do parties exchange written evidence from witnesses and experts prior to trial?

Upon courts' acceptance of cases, both parties will be required to produce evidence prior to trial in support of their claims or defence, including written evidence from witnesses. This would be achieved by serving a court notice to each party, within which a statutory period for submitting evidence would be contained. However, this period could be extended by submitting an application in due course.

If the People's Court finds that a hearing is required, the litigants may be required to define the focus of the dispute through exchange of evidence. The date of exchange of evidence shall be the date on which the duration for presentation of evidence expires. The timing of evidence exchange may be agreed upon by the parties through negotiation, subject to the approval of the People's Court, or may be determined by the People's Court. After the receipt of the evidence submitted by the other party, if there is any rebuttal evidence to be submitted, the People's Court shall arrange for another exchange of evidence. According to article 225 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law, the pretrial evidence exchange can take the form of a pretrial meeting, which also includes other procedures, such as claims clarification and pretrial mediation.

Evidence – trial

11 | How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence should be presented at the stage of 'investigation', which is conducted by the People's Court. In principle, an original copy of every piece of evidence should be presented and cross-examined, unless original copies are unavailable for objective reasons, in which case a verified copy may be presented in lieu of the original ones. For each piece of evidence, cross-examination should be directed to and centred around three main aspects (ie, authenticity, legality and relevance).

It is compulsory for witnesses to testify and be cross-examined at trial unless exceptions can be applied. If a pretrial meeting of evidence exchange is set up, witnesses may also testify at the meeting. By contrast, an expert witness must testify in court only if the parties have objections or the court deems it necessary. If experts are unable to attend the trial for legitimate reasons, a written reply should be submitted instead.

Interim remedies

12 | What interim remedies are available?

The main interim remedies available for both parties in civil litigation proceedings would be preservation of property, behaviour, evidence and an order of preliminary enforcement.

Preservation of property, once initiated successfully, will often take the form of sealing up, distaining or freezing, whereby any future transfer, removal or alteration of such assets without courts' prior approval will be restrained. This preservation applies to both pre-action and post-action proceedings, which means a party may submit an application before or after a claim is officially brought to court. In this regard, preservation of property features similar characteristics and functions to those of freezing injunctions.

The aim of preservation of behaviour is to order one party to act or not to act in a particular way. Preservation of behaviour would be available before or after the commencement of the proceeding. However, currently, preservation of behaviour (injunction) before the commencement of the proceeding would only be possible in intellectual property disputes.

In addition, a court order may also be obtained for preserving relevant evidence if there is a high likelihood that the evidence would be destroyed or it would become difficult to locate its whereabouts. This could be achieved by sealing, detaining, taking photographs, making sound recordings or visual recordings, making reproductions, conducting authentication, forensic inspection or drawing up written statements.

A court adopting preservation measures may order the applicant to provide a guarantee, and where the applicant does not provide

a guarantee, the court will rule that the application be thrown out. Preservation security includes real estate mortgage, deposit, property preservation liability insurance, etc.

Such remedies are also available in support of foreign proceedings. Considering that overseas creditors usually have no real estate in China, and the payment process of overseas funds to China is complicated, the overseas entities can also use property preservation liability insurance as a security method, which is convenient and efficient to operate.

For claims where overdue alimony, maintenance, child support pensions, medical expenses or employee payments are involved, or in other urgent matters, courts may issue a preliminary enforcement order. This means that a preliminary payment would be made from one party to the other before the merit of the case is officially adjudged. Conditions should be met before an order can be granted, considering both the applicants' dependence on life or impacts on business operation and the financial capacity of the party against whom the application is made.

Remedies

13 | What substantive remedies are available?

Depending on the nature of disputes, common substantive remedies include damages, declarations, permanent injunctions and specific performance.

In civil litigation, remedies are mostly compensatory, with punitive damages as an exception. However, according to the opinions of the Supreme People's Court on strengthening the punishment of intellectual property infringement, in the field of intellectual property, if the circumstances are serious, the right holder's claims of punitive damages shall be supported according to law, and the deterrent effect of punitive damages on intentional infringement shall be fully exerted.

Interest is commonly payable, particularly when the outcome of the judgment is of a monetary nature. According to different legal bases from substantive law and procedural law, interest can be divided into general debt interest and delayed performance interest. The former refers to the interest determined in the effective judgments in accordance with the substantive law (such as the Civil Code), and the latter refers to the interest that the enforced person needs to pay due to the delay in performance in the enforcement procedure according to article 253 of the Civil Procedure Law.

Enforcement

14 | What means of enforcement are available?

There are a wide variety of measures to enforce a judgment, including:

- to distrain, freeze, transfer or sell judgment debtors' property;
- to withhold judgment debtors' lawful income in a proportionate manner;
- to evict judgment debtors from the house or land so occupied or used; or
- to compel performance or arrange third parties to perform at the expense of the judgment debtors, etc.

When court orders or judgments are disobeyed, courts have the power to order:

- punitive interests or penalty;
- restraining of judgment debtors from crossing the borders of the country;
- limiting of high consumption;
- blacklisting on the public credit record; and
- circulating the facts of debt evasion in the media.

Public access

15 | Are court hearings held in public? Are court documents available to the public?

Hearings in civil litigation proceedings are accessible to the general public, except for cases where state secrets or issues of privacy are involved, or otherwise stipulated under the law.

For divorce cases and cases concerning trade secrets, hearings may not be held in public if a prior application is filed by a party.

Court documents such as judgments and orders are available to the public via an official website. There are also other websites or databases from which judgments and orders can be downloaded.

Other court documents, such as witness statements and pleadings, are usually not open to the public. Upon due authorisation, qualified Chinese lawyers may have access to these documents following relevant procedural steps. Taking notes or making photocopies of these documents is allowed.

Costs

16 | Does the court have power to order costs?

According to article 6 of the Measures for Paying Litigation Fees, the litigation fees that the parties should pay to the people's court include: case acceptance fees, application fees (the fees that the parties pay when applying for special litigation procedures, such as applying for enforcement of judgment or preservation measures), as well as transportation expenses, accommodation expenses, living expenses and lost time subsidies incurred by witnesses, appraisers, translators and adjusters appearing in court on the date specified by the people's court. These litigation costs shall be borne by the losing party, except those voluntarily borne by the winning party. The amount of expenses shall be determined by the court according to the unified national standards.

The court has no power to order lawyer fees except for the following two situations: when the parties have agreed in a contract that the lawyer fees generated for the winning party shall be borne by the losing party if any disputes related to the contract occur, the court may order the lawyer fees as such agreed; or when the law explicitly prescribes that the losing party shall bear (reasonable parts, but not all, of) the lawyer fees of the winning party. According to the laws and relevant judicial interpretation, among others, the following circumstances or types of cases belong to this situation: personal injury compensation cases, copyright infringement cases, trademark infringement cases, patent infringement cases, unfair competition cases, contract disputes in which the creditor exercises the right of revocation, and legal aid cases.

In China, there is no such rule requiring a claimant to provide security for the defendant's costs in litigation but if the claimant applies to the court for preservation of the defendant's properties before or during the litigation, the court may order the claimant to provide certain security in accordance with the law.

Funding arrangements

17 | Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In China, there is a risk agency charging method that can be chosen by and between lawyers and clients. The risk agency charging method means: no win, no fee; and lawyers charge a relatively high proportion of the amount awarded when they win a case, but the ceiling amount shall be no more than 30 per cent of the subject amount involved in a case, as

specified in the risk agency contract. The risk agency charging method shall not apply to the following:

- cases of marriage or inheritance;
- cases regarding asking for social insurance treatment or minimum living treatment;
- cases regarding asking for payments for supporting parents or children, alimonies, pensions for the disabled or families of the deceased, welfare payments, or compensations for work-related injuries; or
- cases regarding asking for payments for employment remunerations, etc.

China's legal system does not have any system or rules similar to the common law principles of prohibiting maintenance and champerty. Although there is no inherent legal obstacle to the development of third-party funding, presently the legitimacy of third-party funding has not been clarified in law, and no regulatory measures have been taken in this regard.

In practice, a number of institutions have provided third-party litigation support services, which include formulating litigation plans through case background investigation and risk assessment, bearing various expenses of cases, obtaining corresponding benefits according to the results of cases and providing lawyers with litigation support services for case resources. Bangying litigation investment, established in 2015, and the Dingsong commercial dispute resolution platform, established in 2016, are such institutions.

Insurance

18 | Is insurance available to cover all or part of a party's legal costs?

Legal cost insurance in China is not as well developed as in some Western countries and is seldom adopted in litigation.

However, the mechanism of liability insurance for litigation property preservation is developing rapidly and is adopted more and more frequently in litigation. In liability insurance for property preservation, the applicant for property preservation purchases liability insurance products from an insurance company whose qualification is recognised by the court, and the insurance company issues a guarantee letter to the court to undertake the liability for the loss caused by the property preservation to the defendant if the preservation proves to be wrong.

Class action

19 | May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under Civil Procedure Law, there is a concept of 'joint action' and of 'representative action'.

If one or both parties consist of two or more persons, the object of the action is the same or of the same category and the court considers that the case can be tried as a joint action, the case shall be tried as a joint action, subject to the consent of the parties.

A representative action is a kind of joint action. In representative action, one party consists of numerous persons and the action may be brought by a representative elected by such persons. The procedural acts of this representative shall be binding on all members of the party that he or she represents. However, the representative's modification or relinquishment of claims, or recognition of the other party's claims or involvement in mediation, shall be subject to the consents of the parties that he or she represents.

In China, collective actions mostly occur in labour disputes, especially in cases of equal pay for equal work.

A recent steady development of class actions has occurred in the securities industry. Article 95 of the new Securities Law, promulgated on 28 December 2019 basically follows the provisions above on joint action and representative action. When an investor files a securities civil compensation lawsuit pertaining to misrepresentation etc, if the litigation subject matter is of the same type and there are multiple persons in one party, a representative may be appointed for the lawsuit pursuant to the law. It further stipulates the mechanism of a special representative lawsuit. An investor protection institution may be appointed by more than 50 investors to participate in the action as a representative and to register with the people's court for the right holders confirmed by the securities registration and clearing institution, unless the investors explicitly express their unwillingness to participate in the lawsuit. The 'Special Representative Action', which is characterised by 'implied participation and express withdrawal', introduces the concept of 'withdrawal of class action' for the first time in the Chinese legal system. On 31 July 2020, the Supreme People's Court issued the *Provisions on Several Issues Concerning Representative Actions Arising from Securities Disputes*, which further refined this mechanism.

Appeal

20 | On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

In general, Chinese courts follow the two instances of trial system, as prescribed by law. Normally, the first instance judgment or ruling shall not be final. If a party disagrees with a first instance judgment or ruling made by a local people's court, the party shall have the right to lodge an appeal to the immediate superior People's Court within a certain period specified by law (15 days for judgment and 10 days for ruling, but 30 days for parties without apresence in China) from the date on which the written judgment or ruling was served.

The second instance judgment or ruling becomes legally effective immediately and shall be final. However, any party that considers a legally effective judgment or ruling to be wrong may apply to the immediate superior court or the original court for retrial. Nevertheless, the application for retrial does not mean that the enforcement of the judgment or ruling is suspended. The court shall conduct a retrial only when the application for retrial by a party falls under any of the circumstances explicitly by law, for instance: there is new evidence that is sufficient to overturn the original judgment or ruling; an error was found in the application of the law in the original judgment or ruling; or the original judgment or ruling is not formed on the basis of due process, etc.

Foreign judgments

21 | What procedures exist for recognition and enforcement of foreign judgments?

It is not easy to enforce a foreign court judgment in China. A foreign judgment holder can file a petition and demand a competent Chinese court to enforce and recognise his or her foreign judgment, but the Chinese court can only recognise and enforce the foreign judgment if a bilateral enforcement treaty or arrangement exists between China and the country or region where the judgment was made; a multilateral convention exists that was signed by China (on 12 September 2017, China signed the Hague Convention on Choice of Court Agreements pending approval by the National People's Congress); or the country where the foreign judgment was given had enforced judgments of Chinese courts previously, which is the principle of reciprocity. On 2 July 2019, Chinese delegates, together with delegates from 80 other countries, signed the Final Act of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

Foreign proceedings

22 | Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Obtaining evidence in China for use in foreign proceedings falls under judicial assistance as prescribed by Civil Procedural Law. It must be conducted through the channels stipulated in the international treaties concluded or acceded to by China. If no treaty relations exist, it must be conducted through diplomatic channels. The diplomatic channel means that the foreign court concerned can submit a power of attorney to a Chinese court through the embassy of that country in China to request the Chinese court to assist with the investigation and collection of evidence in China. Except for the embassy or a consulate in China of a foreign state, no foreign agency or individual may carry out an investigation or collect evidence within the territory of China.

ARBITRATION

UNCITRAL Model Law

23 | Is the arbitration law based on the UNCITRAL Model Law?

China's Arbitration Law is not enacted based on the UNCITRAL Model Law, but the latter does have a great influence on the enactment of the former.

China's Arbitration Law deviates from the UNCITRAL Model Law in the following aspects, among others:

- Both the court and the arbitration are entitled to rule on the validity of an arbitration agreement, and the ruling by the court is prioritised under China's Arbitration Law.
- An ad hoc arbitration is generally not permitted and recognised under China's Arbitration Law. An exception to this is that, on 9 January 2017, the Supreme People's Court issued the Opinion on the Provision of Judicial Protection to the Development of the Free Trade Zone, article 9, which allows two parties registered in free trade zones to resolve their disputes through ad hoc arbitration, provided that the dispute be resolved in a specific place, under specific arbitration rules and by specific people.
- The arbitral tribunal or arbitration institution has no power to grant the interim measures, the application of which by a party must be forwarded to a competent court through the arbitration institution for determination under China's Arbitration Law.
- The scope of arbitrability is narrower under China's Arbitration Law.
- Under China's Arbitration Law, both procedural irregularities and limited substantive reasons are grounds based on which a domestic arbitral award may be set aside or refused for enforcement, while only serious procedural irregularities are listed as grounds under the UNCITRAL Model Law in the same regard.

Arbitration agreements

24 | What are the formal requirements for an enforceable arbitration agreement?

An effective arbitration agreement must include the following elements:

- in writing, no matter if stipulated in a contract or provided in a separate agreement;
- the expression of the parties' intention to submit for arbitration;
- the matters to be arbitrated; and
- the arbitration commission selected by the parties.

In addition, an arbitration agreement shall be invalid if any of the following circumstances occur:

- matters agreed upon for arbitration are beyond the scope of arbitration prescribed by law;
- an arbitration agreement concluded by persons without or with limited capacity for civil acts; and
- one party forces the other party to sign an arbitration agreement by means of duress.

Choice of arbitrator

25 | If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Under Chinese Arbitration Law, an arbitral tribunal may comprise three arbitrators or a sole arbitrator. In practice, unless otherwise stipulated by arbitration rules or agreed by the parties, three arbitrators will in general be appointed.

For the arbitral tribunal comprising three arbitrators, each party shall select or authorise the chairman of the arbitration institution to appoint one arbitrator. The third arbitrator (ie, the presiding arbitrator) shall be selected jointly by the parties or be nominated by the chairperson of the arbitration institution in accordance with a joint mandate given by the parties.

If the parties fail to appoint an arbitrator within the time limit set under the arbitration rules, the arbitrators will be appointed by the chairman of the arbitration institution.

The parties to the arbitration can apply for the withdrawal of the arbitrator after the appointment if the arbitrator is found to be improper or impartial in accordance with article 34 of the Arbitration Law. However, an application for withdrawal shall be submitted prior to the first hearing with the statement of reasons. In the event that reasons for the withdrawal only became known after the commencement of the first hearing, an application for withdrawal may also be submitted before the conclusion of the last hearing.

Arbitrator options

26 | What are the options when choosing an arbitrator or arbitrators?

The pool of candidates of each arbitration institution is composed of Chinese and foreign arbitrators.

For Chinese residents who are eligible to be appointed as an arbitrator, they must be fair and honest persons who should satisfy one of the following conditions as stipulated by law:

- have passed the Chinese bar exam and obtained the legal professional qualification, and have engaged in arbitration work for eight years;
- have worked as a lawyer for eight full years;
- have worked as judges for eight years;
- are engaged in legal research or legal teaching with a senior academic title; or
- have legal knowledge and are engaged in professional work relating to economics and trade with a senior academic title or at the equivalent professional level.

For a foreign resident appointed as an arbitrator in the domestic arbitration institutions, the law does not specify the conditions and requirements. However, they must be equipped with comparable qualifications as required for Chinese arbitrators.

In addition, the arbitration institution prepares the panel lists of arbitrators according to their different specialities, which ensures the needs of complex arbitration.

Arbitral procedure

27 | Does the domestic law contain substantive requirements for the procedure to be followed?

Under the Arbitration Law of China, Chapter IV, titled Arbitration Procedure, provides the rules on the following procedural matters:

- application and acceptance (conditions should be met by the parties applying for arbitration, documents to be submitted, etc);
- composition of the arbitral tribunal (number of arbitrators, appointment and removal of arbitrators, etc); and
- hearing and arbitral awards (evidence rules, experts, evidence preservation, conciliation).

Court intervention

28 | On what grounds can the court intervene during an arbitration?

The court may intervene during arbitration under the following circumstances and grounds:

- Ruling on the validity of the arbitration agreement: at the request of a party, the court may rule on the validity of the arbitration agreement; if both the arbitration institution and the court are requested by the parties to rule on the validity of the arbitration agreement, the court shall give the ruling (article 20 of the Arbitration Law).
- The issuance and enforcement of interim measures: when interim measures such as an interim injunction, evidence preservation and property preservation are applied during the arbitration, such application shall be forwarded to the competent courts through the arbitration institution for issuance and later enforcement (articles 28 and 46 of the Arbitration Law; articles 81 and 100 of the Civil Procedure Law).
- Setting aside an arbitral award: a party to the arbitration may request the competent intermediate people's court to set aside an arbitration award within six months after receipt of the award if such party can furnish evidence to prove the existence of any of the circumstances listed in article 58 of the Arbitration Law (for domestic arbitral awards without foreign-related elements) or in article 274 of the Civil Procedure Law (for domestic arbitral awards with foreign-related elements).
- Enforcement of an arbitral award: if one party fails to execute the arbitral award, the other party may apply to a competent court for enforcement (article 62 of Arbitration Law).
- Refusing enforcement of an arbitral award: at the enforcement stage of an arbitral award, a party against whom the enforcement is sought can request the court to refuse the enforcement of an arbitral award, if such party can furnish evidence to prove the existence of any of the circumstances listed in article 237 of the Civil Procedure Law (for domestic arbitral awards without foreign-related elements) or in article 274 of the Civil Procedure Law (for domestic arbitral awards with foreign-related elements), or in article 5 of the 1958 New York Convention (for foreign arbitral awards excluding those that are seated in Hong Kong, Macao and Taiwan, which are subject to different arrangements given or concluded).

Interim relief

29 | Do arbitrators have powers to grant interim relief?

Interim measures, such as an interim injunction, evidence preservation and property preservation, are allowed before and during the arbitration proceedings. However, the arbitrators or the arbitration institution have no powers to issue or enforce evidence preservation and property preservation (articles 26, 46 and 48 of the Arbitration Law). Before commencing arbitration proceedings, the application for these interim measures must be directly requested by the parties from the court, where the respondent resides, or where the property or evidence in question is located. However, during those arbitration proceedings, the application for these interim measures may only be made through the arbitration institution, and parties to an arbitration may not directly request those interim measures from the courts except in limited circumstances; for example, in arbitrations administered by the China International Economic and Trade Arbitration Commission, the Shanghai International Economic and Trade Arbitration Commission, the Shenzhen Court of International Arbitration, the Beijing Arbitration Commission or the China Maritime Arbitration Commission, parties may apply for interim measures directly to the International Commercial Court under the Supreme People's Court during the arbitration proceedings.

For other interim measures that are not specified, the process generally follows the specific rules of the arbitration institution and can be decided by the arbitration tribunal.

Award

30 | When and in what form must the award be delivered?

The Arbitration Law does not mandatorily set forth a time limit within which the award must be rendered. It leaves the relevant arbitration rules formulated by the arbitration institutions to deal with this matter.

According to article 54 of the Arbitration Law, an award shall be delivered in writing with the following information set forth therein:

- the claims for arbitration;
- the facts of the disputes;
- the grounds upon which an award is given;
- the results of the judgment;
- the allocation of the arbitration fees; and
- the date of the award.

If the parties agree not to include in the award the facts of the dispute and the grounds on which the award is based, such matters may be omitted in the award. In addition, the award shall be signed by the arbitrators and sealed by the arbitration institution. The arbitrator who disagrees with the award has the choice of whether or not to sign.

Appeal

31 | On what grounds can an award be appealed to the court?

An award is final and binding once it is rendered, and cannot be appealed. However, a party may request the Intermediate People's Court where the arbitration institution is domiciled to set aside an award under the grounds set forth by law.

Depending on the nature of the award, the grounds upon which the award is set aside or refused for enforcement vary.

For a domestic arbitral award without foreign-related elements, a court may rule to set aside or to refuse to enforce it if a party can furnish evidence to prove that there exists any of the following circumstances:

- there is no arbitration agreement between the parties;
- matters decided in the award exceed the scope of the arbitration agreement or are not under the jurisdiction of the arbitration institution;
- the composition of the arbitral tribunal or the arbitration procedure is contrary to the legal procedure;
- the evidence on which the award is based is falsified;
- the other party has concealed evidence that is sufficient to affect the impartiality of the award; or
- the arbitrators have demanded or accepted bribes, commit illegalities for personal gains or perverted the law in making the arbitral award.

For a domestic arbitral award with foreign-related elements, a court may set aside or refuse to enforce it if a party can furnish evidence to prove that any of the following circumstances exist:

- the parties have neither stipulated an arbitration clause in their contract nor subsequently reached a written arbitration agreement;
- the party against whom the application of setting aside or enforcement is sought was not requested to appoint an arbitrator or take part in the arbitration proceedings or the person was unable to state his or her opinions for reasons for which he or she is not responsible;
- the composition of the arbitration tribunal or the arbitration procedure was not in conformity with the rules of arbitration;
- matters decided in the award exceed the scope of the arbitration agreement or are beyond the jurisdiction of the arbitration institution; or
- if the people's court determines that the enforcement of the award would be against the public interest.

A court cannot set aside a foreign arbitration award but may refuse to enforce it under the grounds set out in article V of the New York Convention.

In addition, there are circumstances that result in the failure of enforcement and the court may make a ruling rejecting the application for enforcement:

- the subject of the rights and obligations is not clear;
- the specific amount of payment is not clear or the calculation method is not clear, resulting in the specific amount not being figured out;
- the particular thing to be delivered is not clear or cannot be determined; or
- the standard, target and scope of performance of action are not clear.

If the arbitration award determines a continuation of the performance of the contract, but does not specify such specific contents as the rights and obligations that are to be continued to be performed, the specific method of performance and the deadline, etc, resulting in the failure of enforcement, the court may also make a ruling of rejecting the application for enforcement.

Enforcement

32 | What procedures exist for enforcement of foreign and domestic awards?

Domestic awards

If an award is not complied with, the applicant may apply to the Intermediate People's Court where the respondent is domiciled or where the respondent's property is located (or the basic-level people's court appointed) to enforce it.

If the respondent applies to the competent court to set aside the arbitral award at the same time that the applicant has applied for enforcement, the enforcement proceedings will be suspended. If the court rules to vacate the arbitral award, the enforcement proceedings will be terminated. If the court rejects the application to set aside the award, the enforcement will resume.

The time limit to apply for enforcement is two years from:

- the last day of the performance period specified in the arbitral award;
- the last day of each performance period if the arbitral award requests performance in instalments; or
- the effective date of the arbitral award if the award does not specify a period for performance.

In the last six months of the time period available to apply for enforcement, if an application for enforcement cannot be filed because of a force majeure event or other obstacles, the calculation of the time limit will be suspended and will resume after the suspension causes are eliminated.

If the parties reach a settlement, or one party requests the performance of the award or agrees to perform the award, the time limit for applying for enforcement will be started again.

The proposed ruling of any Intermediate People's Court or any specialised people's court after review not to enforce or set aside the domestic arbitral award shall be reported to the Higher People's Court within its jurisdiction for review; the final ruling shall be made based on the opinions given by the Higher People's Court after it has reviewed the proposed ruling.

Foreign awards (including awards made in Hong Kong, Macau and Taiwan)

China is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the 1958 New York Convention).

Separate arrangements with Hong Kong and Macao (which is treated as a different jurisdiction for the purposes of arbitration) were entered into in 2000 and 2007 respectively, which both adopt the same general principles as the New York Convention (ie, Arrangement Concerning Reciprocal Recognition Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region, and Arrangement Concerning Reciprocal Recognition Enforcement of Arbitral Awards between the Mainland and the Macau Special Administrative Region).

The Supreme Court has issued a judicial interpretation about the recognition and enforcement of arbitral awards made in Taiwan.

The non-enforcement of foreign arbitral awards and the setting aside or non-enforcement of domestic arbitral awards with foreign-related elements are both subject to a reporting mechanism established by the Supreme People's Court (SPC) in 1995. According to the reporting mechanism, if there is a proposed ruling by any intermediate people's court or any specialised people's court not to recognise and enforce a foreign arbitral award or setting aside or not to enforce a domestic award with foreign-related elements, that proposed ruling shall be reported to the Higher People's Court within its jurisdiction for review; if the Higher People's Court intends to agree with the proposed ruling after review, it must report the ruling to the SPC for final review. The final ruling must be made based on and following the review opinion given by the SPC. As of December 2017, the SPC has unified and applied the same reporting mechanism to domestic arbitral awards without foreign-related elements, which means that setting aside or non-enforcement of a purely domestic award must be finally decided by the SPC.

Costs

33 | Can a successful party recover its costs?

According to article 9 of the Arbitration Fee Collection Measures of Arbitration Institutions, fees paid to the arbitration institution must, in principle, be borne by the losing party. However, if a party only partially wins, the arbitration tribunal shall determine the allocation of fees based on the parties' liabilities and the percentage of the party's success.

The arbitration rules of an arbitration institution also involve the recovery of costs by a successful party. For example, article 52(2) of the 2015 Arbitration Rules of China International Economic and Trade Arbitration Commission provides that the arbitral tribunal has the power to decide in the arbitral award that the losing party shall compensate the winning party for the expenses reasonably incurred by it in pursuing the case.

ALTERNATIVE DISPUTE RESOLUTION

Types of ADR

34 What types of ADR process are commonly used? Is a particular ADR process popular?

The main ADR alternatives to civil litigation in China include negotiation, mediation and conciliation. Mediation is a signature element in China's amicable dispute resolution system, which has been a preferred dispute resolution throughout Chinese history and remains widely used today.

In China, judicial mediation is quite common and is frequently adopted by the courts in the case management system.

Requirements for ADR

35 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Parties to litigation or arbitration are not required by law to consider ADR before or during proceedings.

The court or tribunal cannot compel the parties to participate in an ADR process.

MISCELLANEOUS

Interesting features

36 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

Judicial mediation

When a claim is filed to the court, rather than bringing it to a full trial of civil proceeding, the parties concerned can ask the judges for judicial mediation, provided that it is requested under the free will and voluntarily of the parties and the facts concerned are clear. Complex civil procedures are lessened if the dispute is solved through judicial mediation, which is more effective. If a mediation agreement is reached by the parties, the court shall prepare a written mediation statement confirming the mediation agreement, which has the same effect and enforceability as a judgment.

UPDATE AND TRENDS

Recent developments

37 Are there any proposals for dispute resolution reform? When will any reforms take effect?

Enhanced judicial cooperation between Hong Kong and mainland China

On 18 January 2019, Hong Kong and mainland China reached a milestone by signing the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Courts of the Mainland and of the Hong Kong Special Administrative Region, which seeks to establish a bilateral legal mechanism with greater clarity and certainty for recognition and enforcement of judgments in civil and commercial matters between the two places, and therefore reduces the need for re-litigation of the same disputes in both places and offers better protection to the parties' interests.

On 2 April 2019, the Supreme People's Court and the Department of Justice of Government of Hong Kong signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region, which provides a means for parties to a Hong Kong-seated arbitration to seek interim measures from the mainland Chinese courts, an option that was previously only available for arbitrations seated in mainland China.

One-stop dispute resolution under the Belt and Road Initiative

Following the Belt and Road Initiative, and to solve the rising international commercial disputes, the SPC established two China International Commercial Courts (CICC) on 29 June 2018, located in Shenzhen and XiAn respectively. By setting up the International Commercial Expert Committee and selecting certain international mediation and arbitration institutions to work alongside the CICC, the CICC promotes connectivity of litigation, mediation and arbitration, and will provide parties with a choice for dispute resolution methods within the CICC.

Several Provisions on Evidence for Civil Actions (the Civil Evidence Provisions)

The Civil Evidence Provisions, which were amended and made public on 25 December 2019

These came into effect on 1 May 2020. There are four major amendments to the Civil Evidence Provisions:

- The scope of self-admission has been more explicitly defined. The Civil Evidence Provisions provide several rules about self-admissions; for example, self-admission by an attorney ad litem shall be deemed as an acknowledgement by the litigant unless excluded in the power of attorney; and if the litigant fails to explicitly express confirmation or denial to one fact in the litigation, it is deemed to have admitted the fact. Self-admission in joint litigation is further stipulated.
- The criteria to examine the evidence of electronic data is established. Article 93 of the Civil Evidence Provisions provides the criteria for the judge to make a comprehensive judgment on the authenticity of the electronic data.
- The judge can make an order to obtain documentary evidence. According to the Civil Evidence Provisions, one litigant is allowed to apply to the people's court to obtain documentary evidence from the party who controls such documentary evidence under certain circumstances.
- The requirements for witness and judicial appraise have been clarified. For example, under the Civil Evidence Provisions, the judge can suggest the relevant competent department or organisation to punish the examiner who refuses to testify in court.

The Measures for the Implementation of the Pilot Program of the Reform of Separation between Complicated Cases and Simple Ones in Civil Procedure (the Measures)

These measures were issued on 15 January 2020. They provided comprehensive regulations on the system of simplification and diversion of civil procedure, and carried out pilot promotion in the intermediate people's courts in 20 cities, including Beijing, Shanghai, Wuhan, Shenzhen, Guangzhou and Hangzhou, and the grass-roots people's courts in their jurisdictions. On 22 January 2020, the Supreme People's Court also issued Guiding Opinions on Further Improving the Mechanism of Designated Mediation, giving further guidance to the appointed mediation mechanism. China's diversified dispute resolution mechanism has entered a new stage of rapid development and improvement.

The Opinions of the Supreme People's Court on Comprehensively Strengthening Judicial Protection of Intellectual Property (the Opinions)

These Opinions were issued on 15 April 2020. The Supreme People's Court put forward a series of measures in cases related to intellectual property, focusing on reducing the cost of litigation, shortening

the litigation period, increasing the compensation for damages and resolving the difficulties of the parties in giving evidence, so as to effectively enhance the effect of judicial protection.

Coronavirus

38 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programs, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In the field of Dispute Resolution, the online dispute settlement service develops has developed rapidly. Before the pandemic, local courts explored the establishment of online litigation service mechanisms in different procedures. Among them, three Internet courts in Hangzhou, Beijing and Guangzhou are the most innovative, exploring and realising the networking of the whole process of litigation service. Following the covid-19 outbreak, the Supreme People's Court issued the *Notice of Strengthening and Regulating the Online Litigation Work during the Period of Prevention and Control of the COVID-19 Outbreak*. Online filing, online court trial and electronic delivery, which were commonly implemented in Internet courts, have also become the mainstream case-handling methods for a large number of ordinary courts and arbitration institutions (including the China International Economic and Trade Arbitration Commission, the Beijing International Arbitration Centre and the China Maritime Arbitration Commission), to alleviate the covid-19 epidemic and its corresponding restrictions (such as travel bans and quarantine policy).

Therefore, clients can try to use such alternative methods of online litigation or arbitration if necessary.

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