Dispute Resolution
Around the World

China
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### Table of Contents

1. Legal System ........................................................................................................... 1  
2. Courts ..................................................................................................................... 2  
3. Legal Profession ..................................................................................................... 7  
4. Procedures for Claims ........................................................................................... 8  
5. Interim Measures .................................................................................................. 16  
6. Appeals .................................................................................................................. 17  
7. Enforcement of Judgments ................................................................................... 18  
8. Recognition and Enforcement of Foreign Court Judgments ................................ 19  
9. Arbitration .............................................................................................................. 22  
10. Role of the Courts in Arbitration: Interim Measures ........................................ 26  
11. Institutional and Ad Hoc Arbitration .................................................................. 27  
12. Enforcement of Arbitration Awards .................................................................. 29  
13. Power to Review – Setting Aside and Refusing Enforcement .............................. 31  

Key Contacts ............................................................................................................. 34
1. **Legal System**

The legal system of the People’s Republic of China is based on the civil law system, with similarities to the German and French systems. It is mainly codified law and is not derived from a historically developing body of judicial decisions. China lacks a formal system of judicial precedent, although the Supreme People’s Court and the Supreme People’s Procuratorate are authorized to make binding interpretations of laws.

The Constitution is the principal law. The highest lawmaking authority resides with the National People’s Congress (NPC), which is China’s national legislature, and its permanent body, the Standing Committee of the NPC. The Standing Committee of the NPC is also empowered to interpret statutes. The State Council, China’s cabinet, and its subordinate ministries and administrative departments, are authorized to issue more detailed administrative regulations and measures as well as adopt regulations required for the implementation of laws passed by the NPC. The People’s Governments at local levels are also allowed to issue regulations suitable to local conditions. Local regulations are not supposed to conflict with national legislation, although they often do. The NPC and the State Council have a role in resolving conflicts between different levels of law.

A characteristic of Chinese governance is the prevailing culture of secrecy, reflected in the circulation of so-called neibu or “internal” regulations. The content of these internal regulations may not be directly disclosed to foreign parties, but is often referred to during negotiations by Chinese officials, departments and units, for whom these internal rules operate as prescriptive guidelines. Foreign parties often learn of these regulations through a summary supplied by their business parties, or the legal opinion of a Chinese lawyer.

Such treaties have force of law in China, except for those provisions to which the Chinese government has made explicit reservations when ratifying the relevant treaty.

2. Courts

The courts are generally divided into courts of general jurisdiction and courts of special jurisdiction. The trial work of these courts is under the supervision of the Supreme People’s Court. Courts of special jurisdiction include military courts, railway transport courts and maritime courts.

The courts of general jurisdiction include the Supreme People’s Court at the national level and the basic-level People’s Courts, the intermediate People’s Courts and the higher People’s Courts at local and provincial levels.

The Supreme People’s Court

The Supreme People’s Court is the highest judicial body in China. The president of the Supreme People’s Court is appointed by the NPC, and the Supreme Court justices are appointed by the Standing Committee of the NPC. The Supreme People’s Court is, under the Constitution of the People’s Republic of China, required to report to the NPC and its Standing Committee. Consequently, the president of the Supreme People’s Court delivers a work report to the NPC at its annual session.

The Supreme People’s Court is empowered to supervise the administration of justice by the lower courts. The Supreme People’s Court may, if it finds mistakes in the judgments or rulings of the lower courts, decide to try the matter itself or order the local trial court to conduct a retrial. In practice, this power is often triggered by appeals from the lower courts’ judgments or rulings. The Supreme People’s Court also gives interpretations on questions concerning specific application of laws and decrees arising in judicial proceedings. These interpretations are generally binding on the lower courts.
Higher People’s Courts

Higher People’s Courts are established at the provincial level for provinces, autonomous regions and municipalities, directly under the central government. These courts can hear appeals from the intermediate People’s Courts located in the provinces and have jurisdiction as courts of first instance over civil cases with significant impact within the geographical areas over which they exercise jurisdiction.

Intermediate People’s Courts

Intermediate People’s Courts are established at the prefectural level, in municipalities directly under the provincial government and in municipalities directly under the central government. Intermediate People’s Courts can hear appeals from the basic-level People’s Courts and can also exercise jurisdiction as courts of first instance over major cases involving foreign parties and cases with significant impact within the geographical areas over which they exercise jurisdiction.

Basic-level People’s Courts

The basic-level People’s Courts are established at the county level or district level of large municipalities. Where necessary, the basic-level People’s Court is allowed to set up People’s Tribunals at the village level in the countryside or the street community level in cities. The basic-level People’s Tribunals are component parts of the basic-level People’s Courts. Judgments and orders issued by the People’s Tribunals are considered to be those of the basic-level People’s Courts. The basic-level People’s Courts have general jurisdiction as courts of first instance over civil and criminal cases, except as otherwise specifically provided by law.

Tribunals

The People’s Courts at each level normally maintain a criminal tribunal, two to four civil tribunals and an administrative tribunal. The civil tribunals handle actions relating to civil aspects such as property
and personal relations between citizens, legal persons and other organizations which are of equal status, including debt recovery and actions in tort; contractual disputes; and certain tort claims involving legal persons. Each People’s Court comprises a president, several vice presidents and judges. Each tribunal has a chairman, one or two deputy chairmen and a number of trial judges.

Language and the Courts

Mandarin Chinese is the official language written and spoken in China (except in regions of minority nationalities), and foreign nationals must secure the services of interpreters at their own expense. There are no rules concerning the qualifications and appointment of court interpreters. In practice, a foreign party will often use its own interpreters for the purpose of attending a trial in China.

Judges, Collegiate Benches and Adjudication Committees

China has taken steps to reform the judiciary in recent years. A Code of Judicial Ethics was introduced by the Supreme People’s Court in 2001, which was followed by Several Regulations on Strictly Implementing the Relevant Punishment Systems of the Law of the PRC on Judges issued by the Supreme People’s Court in 2003 and Several Regulations on Regulating the Relationship between Judges and Lawyers to Safeguard Judicial Impartiality issued by the Supreme People’s Court and the Ministry of Justice in 2004. There are hopes that with greater emphasis on judicial ethics and competency, China will move closer to becoming a country based on the rule of law.

The judiciary in China comprises the presidents and deputy presidents of the People’s Courts; members of the adjudication committee of the courts; chairmen and deputy chairmen of the various tribunals of the courts; and trial judges and assistant judges.

The presidents of the local People’s Courts are selected and dismissed by the local People’s Congresses at various levels. The deputy president, members of the adjudication committee, chairmen and
deputy chairmen of the various tribunals and the trial judges of a particular court are nominated by the president of the court and appointed and dismissed by the standing committee of the local People’s Congress at the same level as the court. Assistant judges are appointed and dismissed by the president of the court.

Although some cases may be dealt with by a summary procedure, as described below, most cases are heard by a collegiate bench. The economic tribunal usually appoints a collegiate bench of three members. The bench is formed after the suit is accepted by the People’s Court. At the first-instance trial, the bench can consist of three trial judges or one or two trial judges with one or two People’s jurors. On appeal, a new collegiate bench consisting solely of trial judges will be formed. Members of the collegiate bench are usually appointed by the president of the court or the chair of the tribunal. The collegiate bench is headed by a presiding judge, together with judges or jurors, as the case may be. Simple civil matters that can be dealt with through a summary or special procedure may, however, be handled by a single judge.

People’s jurors are lay people (in the sense that they have no legal training) selected from the local community. Jurors can be appointed in certain cases involving technical issues, such as patent disputes, environmental claims or product liability cases. Legally, the court has the power to invite local people to sit as People’s jurors. In practice, jurors are not often used. In most cases there will be three trial judges on the bench. In any event, in cases where technical issues need to be addressed, the Court can appoint an expert at the cost of the parties.

The number of members on the bench must be an odd number. The majority view will prevail in the adjudication process. Dissenting opinions, if any, can be recorded in the file, which is numbered and kept by the trial Court. In practice, one member of the collegiate bench will be appointed as the leading trial judge. This person can be the chair or another member of the bench. The role of the leading trial judge is, in practice, to take primary control of the hearing process; to
question the parties or their witnesses at the hearing; to organize the investigation and collection of evidence (where necessary); and to prepare a draft judgment.

In each case there will be a clerk who is responsible for administering the file, taking minutes of the hearing and drafting legal documents in the process, including the judgment. The minutes of the hearing will be included in the file kept by the court. Generally, the file of the case will be available only to counsel representing the parties. The court will usually allow the lawyer to review the file and take notes regarding the information in the file.

Each court has an adjudication committee. Members of the adjudication committee of the local courts are, as discussed above, appointed and dismissed by the standing committee of the local People’s Congress at the equivalent local level, and members of the adjudication committee of the Supreme People’s Court are appointed and dismissed by the Standing Committee of the NPC. Meetings of the adjudication committee are chaired by the presidents of each court.

The role of the adjudication committee of each court is to summarize trial experience and discuss major or complicated legal issues arising from the cases pending before the court. In practice, it is the de facto internal decision-making body in each court. Although the collegiate bench has the power to decide a case on a collegiate basis, in practice, where the members of the collegiate bench cannot agree on certain issues involved in the case the chair of the bench will refer these issues to the adjudication committee. The adjudication committee will meet to discuss these issues until a majority opinion is formed. For this reason, cases involving complicated legal or factual issues will often take a long time before a decision can be taken by the collegiate bench.

**Territorial and Subject Matter Jurisdiction**

The division of jurisdiction between the basic-level People’s Court, the intermediate People’s Court, the higher People’s Court and the
Supreme People’s Court has been described above. With respect to territorial jurisdiction and subject matter jurisdiction, unless the legislation provides otherwise, generally for contract disputes:

(a) the action falls under the jurisdiction of the People’s Court at the location where the defendant is domiciled or where the contract is performed; and

(b) when two or more People’s Courts have jurisdiction over an action, the plaintiff may institute his action in either of those People’s Courts. However, if the plaintiff institutes the action in two or more competent People’s Courts, the People’s Court that first puts the case on its trial docket will have jurisdiction.

The plaintiff has the right to file a suit in any court having jurisdiction over the matter. The defendant has the right to object to the jurisdiction of the court before which the action has been brought. The objection must be raised in writing and before the prescribed time for filing the reply is due. The court will examine the grounds of the objection and decide on the jurisdictional issue before investigating the substantive issues. If it finds that it has no jurisdiction, it will transfer the case to the court that has jurisdiction over the matter; if it does not, it will dismiss the objection.

3. Legal Profession

In general, a foreign national or entity suing or being sued in a People’s Court has to appoint a PRC-qualified lawyer to appear in court on his or its behalf if he, or it, decides to engage a lawyer to represent him or it in the proceedings. A foreign lawyer may assist a Chinese lawyer and attend hearings. However, generally a foreign lawyer is not permitted to speak at such hearings in a lawyer’s capacity. If the foreign party does not reside in China, the foreign party may appoint a Chinese lawyer by mailing a power of attorney to the Chinese lawyer with instructions to act on the foreign party’s behalf. This power of attorney must be notarized in the appointing
party’s country and authenticated or legalized by the PRC embassy or consulate in that country.

4. Procedures for Claims

Pleadings

Filing of the Complaint

A plaintiff institutes a suit by filing a complaint with the relevant People’s Court. The complaint is a statement of claim which will usually include a brief description of the facts of the case, the causes of action, the particulars of the legal claims and the legal and factual grounds in support of the claims. The complaint will also state clearly the evidence relied upon by the plaintiff in the action, the source of evidence and the names of witnesses for the plaintiff.

The complaint should state clearly the name, age, nationality, employment unit and domicile of the plaintiff if it is an individual; or the name, place of business and legal representative or principally responsible person of the entity if it is a corporate party or other organization.

The court will examine the complaint and decide within seven days whether it satisfies the relevant criteria for a civil action. For example, there must be a specific defendant, a specific claim, a specific factual basis and legal grounds. In addition the suit must fall within the range of civil actions accepted by the People’s Courts, and within the jurisdiction of the People’s Court with which it is filed. The examination is conducted by the case acceptance office of the relevant court. If the court determines that the complaint fails to conform to any of the above criteria, it will rule not to accept the case.

Notice of Acceptance

If it finds that the complaint conforms to the applicable criteria, the court will place the action on the trial docket within seven days and issue to the plaintiff a notice of acceptance, which usually states that
the case has been accepted and the plaintiff is required to pay, in advance, a case acceptance fee within a specified time. Following receipt of the case acceptance fee, the court will proceed to serve the complaint on the defendant.

Case Acceptance Fee

Several different types of costs may be payable by litigants. The most important of these is the case acceptance fee, which is levied on a sliding scale based on the value of the claim (the aggregate amount of damages sought by the plaintiff). The general rule on costs is that the losing party will pay the case acceptance fee. If both parties are held liable, the case acceptance fee may be shared. In normal circumstances, the costs incurred by the parties in engaging Counsel to conduct the case on their behalf are not recoverable except where the relevant legislation or regulations applicable to the claim in question specify otherwise.

Defendant's Reply

The defendant responds to the claims set out in the complaint by a reply. Similar to the complaint, the reply will also need to specify the particulars of the parties, an outline of defenses asserted and evidence in support. The reply may also include a statement of counterclaim, if desired by the defendant.

In a domestic action, the defendant must file its reply within 15 days of receipt of the complaint. In a foreign-related action, the time limit for submission of the reply is 30 days. These time limits may be extended subject to approval of the court. Failure to submit the reply in time will not prevent the case from proceeding.

In practice, the lawyers will often prepare a legal submission called a “statement of representation” summarizing the points of contention and legal arguments on behalf of their clients. This document will focus on the line of legal arguments of the party and can be dispensed with if such arguments have already been included in the complaint or
the reply. If this document is to be submitted, it is usually presented at the hearing or submitted to the court after the hearing.

Supplementary Documents

There are no rules for closure of pleadings under Chinese law, but the court imposes time limits within which evidence has to be submitted. Usually the initial period is 30 days from the defendant receiving the claim. However, the parties may apply to the court to extend the time for filing evidence or supplementary documents or evidence, and such extension will generally be granted if valid reasons are given to and accepted by the court.

Service of Process

The court is responsible for the service of process in civil actions. The plaintiff has no duty to complete or submit proof of service. The responsibility of the court to effect service applies to all legal documents required to be served in the civil procedure. Within five days of the acceptance of a case, the court must effect service. Service of process must be evidenced by an acknowledgment of receipt.

There are several methods to effect service of process, including direct service, deemed service, service through entrustment, service by mail, forwarding service, service by public notice and service by diplomatic channels (in a foreign-related action).

Direct Service

The most common method of service is direct service, whereby the process papers are delivered by court officials (usually court bailiffs or clerks) to the person to whom the service is directed.

If the recipient of service is a natural person, service can be acknowledged by the recipient himself or any adult member of his family living together. If the recipient of service is a legal person, service must be acknowledged by its legal representative or the person in charge of receiving documents. If the recipient is an organization
other than a legal person, service must be acknowledged by the head of such organization or the person in charge of receiving documents.

If the defendant is a foreign company, direct service can be effected by delivering the documents to any agent authorized by the foreign company to receive process in China, or to the foreign company’s representative office or branch established in China, or its business agent in China if it is authorized by the foreign company to accept service.

Deemed Service

Where a defendant refuses to accept direct service of process, the court bailiff may ask representatives from the local community or the work unit of the recipient to be present to attest to the delivery of process and sign the acknowledgment of receipt. The documents will then be left at the domicile of the defendant and service will be deemed to be completed.

Service through Entrustment

When it is difficult to effect direct service, the court may serve process through entrustment or by mail. For service through entrustment, the court serving the process may entrust another court or tribunal to effect service on its behalf. If the defendant is a PRC national located outside China, the court may entrust the Chinese consulate abroad to effect service. If the defendant is located outside China and is a foreign national, service by entrustment is not available.

Service by Mail

Service can be made by the court by way of registered mail if the recipient is not located in the same place as the court. For service by mail, the date on the return receipt will be deemed to be the date of service. Where the defendant is not domiciled in China, service by mail may be used if the law of the state of the person to be served permits service by mail. In such a case, service is effected on the date
of acknowledgment by the defendant. If the acknowledgment of service is not received by the court within six months from the date of posting, but circumstances justify an assumption that the documents have been served, the documents will be deemed to be served on the date of expiry of the six month period.

Service by Public Notice

When the court fails to effect service directly through entrustment or by mail, it may authorize it by public announcement. Service is deemed completed 60 days from the date of the public notice in a domestic case. Such public notice can be published in a national newspaper. When the recipient of service is not domiciled in China, service is also deemed completed six months from the date of the notice.

Service by Electronic Method

The new Amendment to the PRC Civil Procedure Law (“2012 Civil Procedure Amendment”), which came into effect on 1 January 2013, permits service by modern electronic methods. Court documents (excluding judgments, orders and mediation letters) can now be served electronically, including by email and fax, as long as the party to be served agrees beforehand.

Other Methods of Service

In a foreign-related action where the defendant is not domiciled in China, service may also be undertaken through diplomatic channels or in accordance with an international treaty concluded between or acceded to by the state of the person to be served and China. It may be noted in this regard that China has acceded to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters.
Pre-Trial Procedure

Composition of the Collegiate Bench

The court will usually determine the composition of the collegiate bench following acceptance of the case. Within three days after this determination, the court is obliged to notify the parties of the names of the members of the bench. The parties may challenge a judge sitting on the collegiate bench and request his or her withdrawal in certain circumstances, such as where he or she is a party or a close relative of a party or has an interest in the case.

Evidence

The general rule on presentation of evidence is that the party asserting an allegation bears the burden of proof. The concept of burden of proof was further defined by a Supreme People’s Court interpretation in April 2002. Under this interpretation, the burden of proof is reversed in certain kinds of cases. For example, in patent infringement cases the burden of proof rests with the defendant to prove that the infringing product was produced in a different way than the product produced by the patent holder. The interpretation provides for a more nuanced system of burden of proof. The interpretation also operates to liberalize the discovery process. For example, parties may now be threatened with “unfavorable consequences” should they fail to provide the opposite party with evidence that has been requested. Under the interpretation, a party who withholds evidence risks that the court will draw a negative inference from the uncooperative behavior.

Chinese courts permit the introduction of various kinds of evidence. Permissible evidence that litigants may present to the court includes documentary evidence, real evidence, audio-visual materials, live testimony of witnesses, statements by interested parties, expert conclusions and notes of inquest. The 2012 Civil Procedure Amendment also adds electronic evidence as a typical kind of evidence. Nevertheless, as a general rule, all types of evidence must be verified by the court as to their authenticity before being allowed to
be used as a basis for determining facts. The court has the right to
obtain evidence, on its own initiative, from relevant units or
individuals, and these units or individuals cannot refuse to provide
such evidence.

Trial Procedure

Notification

In civil actions, the rules require the court to notify the parties of the
trial hearing three days before it commences. As Chinese courts are
empowered to obtain evidence on their own initiative, the court will
review the evidence and documents submitted by the parties, and prior
to the trial collect evidence on its own initiative if necessary. The
court is required to follow certain prescribed legal procedures when
collecting evidence. For public trials, the court publicly announces the
names of the parties; the subject matter of the action; and the time,
date, and place of the trial.

Opening

Before the trial session opens, the presiding judge of the collegiate
bench or the sole judge, as the case may be, checks that the parties or
their duly authorized representatives are present and informs them of
their rights and obligations at the hearing. The judge will then declare
the opening of the hearing.

A trial hearing in China is quite different from a trial in a common law
jurisdiction. The hearing is usually very short. Some trials before the
courts will not last longer than half a day. If more hearings are
required, the court can call the parties to have a second or third
hearing. The presiding judge will usually make clear whether he is
opening a first hearing or second hearing for the case.

Presentation of Evidence

At the trial hearing, the plaintiff will open its case first by briefly
stating the claims as stated in the complaint. The plaintiff will then
present its case on the facts. The defendant will then briefly state its defense and the facts of the defense case.

Evidence will then be presented at the trial in the following order: presentation of statements by the parties; informing the witnesses of their rights and obligations; questioning the witnesses, and reading out written depositions of witnesses not present; presentation of documentary evidence, physical evidence, and audio-visual materials; reading of expert conclusions; and reading out any record of inquest.

Reply, Rebuttal and Debate

At the trial the plaintiff and his attorney make statements first, followed by the response by the defendant and his attorney. After the debate, the plaintiff and defendant are asked to make their final statements. Upon the conclusion of the exchanges between the parties, the judge may encourage the parties to attempt mediation. If mediation fails to lead to settlement, the court will close the hearing. A court judgment will then be issued if the court finds that the facts are clear and there is no need for another hearing.

Judge’s Role at Hearing

Chinese civil procedure generally follows the inquisitorial system. Judges take an active role in enquiring into the facts of the case. They are free to ask questions of the parties or their witnesses directly. The exchange by and between the parties is controlled by the presiding judge. It is at the presiding judge’s discretion to determine who should be allowed to speak.

Judgment

The judgment must be announced by the court in public. Where the court announces the judgment in court session, a written judgment must be issued within 10 days unless a specific date has been set for announcement of the judgment, in which case the written judgment must be issued immediately after the announcement.
The court also informs the parties of their right to appeal, the period within which the appeal must be filed and the proper court in which it should be lodged. The clerk of the court records the proceedings and the judges and parties sign the record to certify its accuracy.

A judgment must contain the subject matter of the action, the claims of the parties, the facts in dispute, the findings of fact and reasons upon which the judgment rests, the assessment of court costs, and the time limit and appropriate court for appeals. The court may issue rulings on dismissals of complaints, prejudgment security remedies or payments, applications for withdrawal, staying or terminating proceedings, amending or correcting errors in judgments, and other unspecified matters.

Default Judgment

The plaintiff may be granted a default judgment in circumstances where a defendant served with a summons refuses to appear before the court without proper cause, or where a defendant leaves the courtroom during a trial without permission of the court.

Summary Procedure

A summary procedure is available for simple claims where the facts are clear; the rights and obligations of the parties are clear and the nature of the dispute between the parties is not significant. These simple civil matters are handled by a single judge of the People’s Court, within three months.

5. Interim Measures

In a civil action in China, the People’s Court may order preservation measures such as attaching, sealing, seizing or freezing property. Relevant legislation provides that if a judgment may be impossible or difficult to execute due to an act of a party or for other reasons, a People’s Court may, at the request of the other party, make a ruling for preservation of property. The People’s Court may, when necessary, also decide on its own initiative to adopt measures for the
preservation of property. The party applying for an order of preservation will usually be required to provide security. This will often be in the form of a cash deposit or a bank guarantee.

A major development in 2012 is the extension of interim measures by the 2012 Civil Procedure Amendment to include the power to compel or restrain certain acts. Interim injunctions were previously limited to trademark, patent and copyright cases, and only granted to the plaintiff. Parties in all other civil cases are now able to use this mechanism to restrain or compel certain activities. The People’s Court, upon the application of a party, will order a party to take or cease an action if the corresponding judgment may be difficult to enforce or the other party may suffer damages due to that party’s action or for other reasons. The court may also initiate such procedure on its own. In addition, the 2012 Civil Procedure Amendment also grants the court the power to preserve evidence before the commencement of court proceedings. Previously, this was only allowed during the court proceedings.

6. Appeals

Appellate Jurisdiction

The People’s Courts at or above the intermediate level have appellate jurisdiction. These courts can exercise jurisdiction as second instance courts. The appellate jurisdiction of the courts of second instance is extremely broad. The appellate court is free to thoroughly review both the lower courts’ legal conclusions and their findings of fact, and its review is not restricted by the issues on appeal. Appellate court procedure is consistent with this wide-ranging appellate jurisdiction. Upon notice of appeal, the court of first instance compiles a complete file of the case and evidence, including the appeal and response, and submits it to a court of second instance.

The court of second instance forms a collegiate bench to consider the appeal. It may, upon a determination that no hearing needs to be conducted, render an immediate judgment without a hearing.
Conversely, the court may conduct a hearing to question the parties and clarify evidence. This hearing may take place at the courtroom of the court of second instance, at the place in which the cause of action arose, or in the place of the court of first instance that heard the case.

The court of second instance may dispose of an appeal by determining that the lower court’s decision was correct and hence dismiss the appeal, or amend the original judgment where it determines that the lower court’s application of the law was incorrect, or remand the case to the lower court for a retrial.

Under the PRC court system, the decision of the court of second instance is final. Thus, all judgments, decisions or rulings issued in the second instance by the Intermediate People’s Courts, the Higher People’s Courts or the Supreme People’s Court, and those issued in the first instance by the Supreme People’s Court, are final and legally binding judgments, decisions or rulings.

**Appeal Period**

If the parties are not satisfied with the first-instance judgment or ruling, they may, as of right, appeal to the next higher level court, within the specified period. An appeal of a judgment must be filed within 15 days from the date of service of the judgment. An appeal against an adverse ruling must be lodged within 10 days from the date of service. In a foreign-related action, the appeal period is 30 days in relation to both a judgment and a ruling.

**7. Enforcement of Judgments**

As of 1 April 2008, the amended Civil Procedure Law grants a judgment creditor up to two years to apply for enforcement of the judgment. Previously, this time limit was one year for natural persons and six months for legal entities. The original court of first instance has the responsibility to enforce the judgments it has issued. Upon the prevailing party applying for an execution of judgment, the execution officer of the court will notify the party against whom enforcement is
to be made to perform within a stipulated time limit. Failure to perform within this time limit draws measures for compulsory execution.

If the person or property against which execution is enforced is located in an area beyond the territorial jurisdiction of the court that issued the execution order, a local court in that area that is of the same level as the court of first instance may be entrusted to enforce the judgment. The entrusted court must commence execution within 15 days after receipt of the written request of another court.

A court may grant a stay of execution of the judgment where the prevailing party seeks a postponement of the execution; a non-party presents a reasonable objection to the execution; one of the parties ceases to exist or dies and the other parties must await the appointment of a successor; or in other circumstances which the court deems to call for a stay.

A court may also terminate the execution of the judgment. Such a ruling may ensue when the prevailing party withdraws the application for execution; a higher court cancels the legal document upon which the execution is based; the losing party dies and leaves no estate or persons to assume obligations; the losing party, being a citizen, is unable to make repayment due to poor financial circumstances; or in other situations the court deems appropriate. A ruling by a court to stay or terminate execution will take effect immediately.

8. Recognition and Enforcement of Foreign Court Judgments

PRC law provides for the enforcement of foreign court judgments in accordance with international treaties concluded or acceded to by China or the principle of reciprocity, provided they do not violate basic principles of Chinese law, state sovereignty and security or public interest. Reciprocity is interpreted as willingness by a foreign court to enforce a judgment issued by a Chinese People’s Court. This may be difficult to establish.
Enforcement between the PRC and Hong Kong

On 14 July 2006, the Hong Kong SAR and the PRC signed an Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Arrangements between Parties Concerned (“the Arrangement”). Judgments which do not fall within the Arrangement will have to be enforced at common law; this usually means relitigating the issue in the place where enforcement is intended.

Although Hong Kong and the PRC are one country, they operate two legal systems. Prior to the Arrangement, there was no mechanism for the mutual and recognition or enforcement of judgments. The Arrangement became effective on 1 August 2008 when enabling legislation in Hong Kong and the PRC simultaneously took effect. In Hong Kong, the regime is contained in the Mainland Judgments (Reciprocal Enforcement) Ordinance (“Ordinance”). In the PRC, the procedures are contained in the Judicial Interpretation of the Supreme People’s Court dated 3 July 2008.

The Arrangement covers final judgments in civil and commercial matters (excluding employment, family and contracts for personal – not business– arrangements). Only money judgments will be recognized and enforceable. Recognition extends to the interest on judgments, as well as costs judgments. Non-monetary judgments, such as injunctions, will not come within the mutual recognition regime.

“Final judgments” are those from the Court of Final Appeal, Court of Appeal, Court of First Instance or District Court in Hong Kong. In the PRC, judgments from the Supreme People’s Court, the Higher People’s Court, the Intermediate People’s Court and some Basic People’s Courts (which are listed in the Arrangement) are potentially enforceable.
A number of preconditions apply before the Arrangement can be utilized. In particular:

(a) the contract to which the money judgment relates must contain a submission to the exclusive jurisdiction of one court, either in the PRC or Hong Kong;  

(b) the contract must have been entered into after the Arrangement has come into effect; and  

(c) an application for registration of the judgment must be made within two years of the effective date of that judgment.

Upon registration, judgments recognized under the Arrangement will have the same force and effect as a judgment of the enforcing court. There are, however, a number of bases on which an objection to enforcement might be made, including:

(a) that the exclusive choice of jurisdiction is invalid;  

(b) that the judgment is vitiated by fraud or a breach of natural justice;  

(c) that a separate judgment or arbitration award has been issued in relation to the same judgment; and  

(d) that enforcement is against the public interest in the PRC/against public policy in Hong Kong.

If the judgment is the subject of an appeal, enforcement will be suspended and may be reactivated if the appeal is dismissed. Decisions made by the enforcing court are also the subject of appellate procedures in that court.

The mutual recognition of judgments between Hong Kong and PRC was an important development. The Arrangement applies only to contracts which contain an exclusive choice of jurisdiction in Hong Kong or China and which are entered into after 1 August 2008. The Arrangement has significant implications for contracting parties when
considering choice of jurisdiction provisions and was a welcome addition to the choice of enforcement options in Hong Kong and China.

**Enforcement between the PRC and Macau**

A similar recognition regime has been entered into by the Mainland with Macao – the Arrangement between the Mainland and Macao Special Administrative Region on the Mutual Recognition and Enforcement of Civil and Commercial Judgments. This Arrangement is in force and has been effective from 1 April 2006. It differs in some ways from the Hong Kong Arrangement. For example, it does not require an exclusive choice of jurisdiction. Unlike the Hong Kong Arrangement, it applies to judgments in labor disputes as well as judgments for civil damages resulting from criminal proceedings.

The Arrangement between the Mainland and Macao applies retrospectively, to any judgment issued after 20 December 1999. At present, there are no arrangements between Hong Kong and Macao for the mutual recognition of judgments.

**9. Arbitration**

Arbitration is a popular alternative to litigation, and China has a well-established structure for resolution of disputes by arbitration. Arbitration in China can be divided into domestic arbitration and foreign or foreign-related arbitration. The rules applicable to them are in some circumstances different, such as in the context of setting aside or refusing enforcement of arbitral awards.

Arbitrations in China are conducted by arbitration commissions (“Chinese arbitration commissions”) established pursuant to the Arbitration Law of the People’s Republic of China (the “Arbitration Law”). More than 180 arbitration commissions have been set up in China, and they are located in various provincial capitals and certain other cities.
The China International Economic and Trade Arbitration Commission (CIETAC) and the China Maritime Arbitration Commission (CMAC) are best known internationally because of their historic exclusive license to handle foreign related disputes. Nowadays, CIETAC deals with both domestic and international commercial disputes, whereas CMAC deals primarily with maritime disputes.

Other Chinese arbitration commissions are legally permitted to handle foreign-related or international disputes as well as domestic disputes, although they may of their own choice restrict the types of disputes which they accept, and these are specified in their own arbitration rules.

Each arbitration commission has its own arbitration rules and panel of arbitrators. However, many of them do not have or only have a few foreigners appointed to their panels, making them unsuitable for use in an international context.

Legislation

Arbitration in China is governed by the Arbitration Law that came into effect on 1 September 1995. The Arbitration Law reflects a number of internationally well-recognized arbitration principles. For instance, arbitration depends on a valid arbitration agreement between the parties; a valid arbitration agreement can exclude the jurisdiction of the courts; and a Chinese arbitral award is final and binding on the parties to the arbitration.

Foreign Lawyers

Foreign lawyers not qualified to practice Chinese law in the PRC are permitted to be engaged as counsel for the parties in arbitration activities conducted in China, but with some restrictions. Where the arbitration case involves the application of Chinese law, foreign lawyers are not allowed to express specific opinions or conclusions on Chinese law as counsel in arbitration activities, and they are required to cooperate with Chinese lawyers on issue of Chinese law.
CIETAC Arbitration

CIETAC is China’s principal international arbitration body. It is often the preferred choice of the parties to a contract that involves Chinese elements, partly because of implicit requirements under Chinese law which oblige the parties to designate a Chinese arbitration commission in their arbitration agreement in certain circumstances and Chinese parties’ preference for arbitrations in China. CIETAC has its headquarters in Beijing and branch offices in Tianjin, Chongqing, Shenzhen and Shanghai. Each of them maintains a secretariat that handles applications for arbitration and provides administrative services.

CIETAC Arbitration Rules

The current CIETAC Arbitration Rules came into force on 1 May 2012. CIETAC’s previous 2005 rules were amended quite substantially, bringing the procedures closer to international best practice.

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1 In 2012, some developments within CIETAC caused uncertainty regarding arbitrations taking place in Shanghai and Shenzhen. When CIETAC revised its rules in May 2012, both the Shanghai and Shenzhen sub-commissions refused to adopt CIETAC’s new Rules of 1 May 2012 and adopted their own rules. By an announcement dated 31 December 2012 (“Announcement”), CIETAC terminated its Shanghai and Shenzhen sub-commissions’ authority to conduct and administer CIETAC arbitrations. The Announcement confirmed that where parties have agreed to arbitration of their disputes by the CIETAC Shanghai Sub-Commission or CIETAC South China Sub-Commission, the parties shall submit their requests for arbitration to CIETAC. Upon acceptance by the CIETAC Secretariat, unless otherwise agreed by the parties, the place of arbitration and oral hearing shall be in Shanghai (for those cases agreed to be arbitrated by the CIETAC Shanghai Sub-Commission) or Shenzhen (for those cases agreed to be arbitrated by the CIETAC South China Sub-Commission).

2 CIETAC’s former sub-commission in Shenzhen has renamed itself the South China International Economic and Trade Arbitration Commission and is concurrently using the name of “Shenzhen Court of International Arbitration”. CIETAC considers that this change of name is unlawful.

3 CIETAC’s former sub-commission in Shanghai has announced that it is an independent arbitration commission named “CIETAC Shanghai Commission”. CIETAC has announced that the Shanghai sub-commission is prohibited from conducting any arbitration using the CIETAC name.
Under CIETAC’s Rules, CIETAC has jurisdiction over:

(a) international or foreign-related disputes;
(b) disputes related to Hong Kong Special Administrative Region or the Macao Special Administrative Region or the Taiwan region; and
(c) domestic disputes.

Certain categories of dispute are not arbitrable according to the Arbitration Law, which means that they cannot be referred to resolution by arbitration. They include marital, adoption, guardianship, support and succession disputes; administrative disputes required by law to be handled by administrative authorities; labor disputes; and disputes over contract management arrangement in agriculture, which are governed by different regulations. Insofar as Chinese law is concerned, these disputes are outside the jurisdiction of CIETAC as well as other domestic Chinese arbitration commissions.

**Arbitration Agreement**

Under the Arbitration Law, an arbitration agreement may take the form of an arbitration clause contained in a contract, or a separate agreement in writing. It may be entered into before or after a dispute has arisen between the parties. However, a valid arbitration agreement must contain an expression of the parties’ intent to submit to arbitration, describe the matters to be referred to arbitration, and designate an arbitration commission; the dispute submitted to arbitration must be arbitrable; the parties to the arbitration agreement must possess the requisite legal capacity; and the agreement must have been entered into free of coercion.

CIETAC’s Rules empower CIETAC to determine the existence or validity of an arbitration agreement and the scope of its jurisdiction over an arbitration case. Where necessary, it can delegate this power to the arbitral tribunal. Any objection to the validity of an arbitration agreement or to the jurisdiction of CIETAC over a specific case must
be raised in writing before the first oral hearing is held by the arbitral tribunal. If the case is handled on a “documents-only” basis, the objection must be raised no later than the time of submission of the first substantive defense. Under the Arbitration Law, the People’s Court also has jurisdiction to determine the existence or validity of an arbitration agreement. Where one party requests CIETAC to make a ruling on the issue of the validity of an arbitration agreement, but the other makes a parallel application to the People’s Court for a ruling on the same issue, the People’s Court will have jurisdiction to make a final decision in this competing situation if, at the time it accepts the application, CIETAC has not yet made a decision.

Under CIETAC’s Rules, the parties are given the freedom to select their own arbitration rules, but the rules agreed have to be operative and do not contravene the mandatory provisions of the place of arbitration. Subject to this requirement, the parties may adopt a modification of the CIETAC Rules to provide for matters not covered by the Rules, or they may use other arbitration rules. The Rules also give the parties the autonomy to choose the place of arbitration, which can be outside China. This is, however, not applicable to domestic arbitrations according to Chinese law.

10. Role of the Courts in Arbitration: Interim Measures

In arbitration, interim measures from the arbitral tribunal or the court may be necessary to preserve evidence for the purposes of the proceedings, or to maintain the status quo of the parties, or to prevent the other party from removing from the jurisdiction assets which may be attached for later enforcement of an award.

In China, arbitration commissions including CIETAC have no power to grant any interim measures to preserve property and evidence. Such power rests with the People’s Courts. Parties wishing to apply for interim measures have to make an application to the arbitration commission that conducts the arbitration, which will in turn submit
the application to the appropriate People’s Court for processing. As described above, the granting of the application is conditional upon the applicant furnishing appropriate security as a means to compensate the other party if it subsequently transpires that the application is wrongful or ought not to have been granted.

Under CIETAC’s Rules, where a procedural law other than PRC law applies in a CIETAC arbitration, the arbitral tribunal has the power to grant interim measures in the form of a procedural order or an interlocutory award in accordance with the applicable law. In such circumstances, the scope of “interim measures” will depend on the types of interim measures available under the law of the seat.

As mentioned in Part 5 above, the 2012 Civil Procedure Amendment has enlarged the scope of interim measures to include the power to compel or restrain certain acts. This remedy is now available to parties in both litigation and arbitration proceedings. In addition to preservation of assets and evidence, the People’s Court may (upon the application of one party) order a party to take certain actions or cease its conduct if the arbitration award may be difficult to enforce or the other party may suffer damage due to the actions of that party or for other reasons.

The 2012 Civil Procedural Amendment also allows a party to apply for interim measures in advance of filing for arbitration if its lawful rights and interests would suffer irretrievable damage without immediate application of the interim measures. The court is required to determine whether to grant the interim measures within 48 hours after receiving the application. The applying party is required to file for arbitration within 30 days after the court has adopted the interim measures. Otherwise, the court may cancel the preservation measure.

11. Institutional and Ad Hoc Arbitration

There is a continuing issue as to whether, under Chinese law, ad hoc arbitration or arbitration pursuant to institutional rules other than those of a recognized Chinese arbitration commission is permitted within
China. Whilst the Arbitration Law does not expressly prohibit ad hoc arbitration, it nevertheless appears to impose a mandatory requirement for institutional arbitration by requiring a valid arbitration agreement to contain, among other things, the “arbitration commission chosen by the parties”. The Arbitration Law also provides that if an arbitration agreement contains no (or unclear) provisions regarding arbitral matters or “the arbitration commission to hear the matter”, the parties may reach a supplementary agreement, failing which the arbitration agreement will be void. Some commentators regard this as a reference to one of the recognized Chinese arbitration commissions. Others take the view that institutional arbitration other than under a recognized Chinese arbitration commission is not expressly prohibited, and is therefore permissible provided the arbitration proceedings do not otherwise contravene the provisions of the Arbitration Law. The former view is the prevailing view. In practice, many contracts governed by Chinese law frequently contain ad hoc arbitration clauses, even contracts drafted by state-owned Chinese bodies. However, the seat of such arbitrations is generally outside China.

In the case of an arbitration between two foreign parties conducted by an institution other than a Chinese arbitration commission that is held within China (be it on an ad hoc basis or otherwise), the resulting award made in China will not be regarded as a “Convention award” for the purposes of enforcement within China, pursuant to the New York Convention. Rather, it will be regarded as a foreign-related or domestic award (depending on whether a foreign element is involved), and the rules concerning setting aside and enforcement of arbitral awards that are applicable to foreign-related or domestic awards respectively will apply. If the award is to be enforced abroad in another contracting state pursuant to the Convention, one ground for refusal of enforcement under the Convention is a failure to comply with the arbitral law of the place where the arbitration is held. An ad hoc or institutional arbitration award properly obtained outside China in a Convention state is enforceable under the Convention within China, in accordance with the terms of the Convention.
12. **Enforcement of Arbitration Awards**

Arbitral awards can be divided into four categories for the purpose of enforcement in China:

(a) awards made in foreign countries which are enforceable pursuant to the New York Convention;

(b) awards made in foreign countries which are not enforceable pursuant to the New York Convention;

(c) awards made by PRC arbitration commissions that involve a foreign element (“foreign-related awards”); and

(d) awards made by PRC arbitration commissions that do not involve any foreign element (“domestic awards”).

Awards made by foreign arbitration institutions that require recognition and enforcement in China will be dealt with in accordance with the international treaties concluded or acceded to by China or on the principle of reciprocity. These awards are usually enforced in China pursuant to the New York Convention, which has been ratified by more than 135 countries, including China. The Convention applies to recognition and enforcement of arbitral awards made in one contracting state, in another contracting state. An award made abroad in another contracting state will in principle be recognized and enforced in China.

The court having jurisdiction over the enforcement of domestic awards will generally be the basic-level People’s Court at the place where the person subject to enforcement (“paying party”) is domiciled (and if the paying party’s domicile is different from his place of residence, the basic-level People’s Court in the latter place will have jurisdiction) or where the paying party’s assets to be enforced are located. This is subject to different stipulation by the relevant higher People’s Court. In respect of foreign awards and foreign-related awards, the court having jurisdiction will be the intermediate People’s Court rather than the basic-level People’s Court.
An award made in Hong Kong is enforceable in China pursuant to the Memorandum of Understanding Concerning the Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong (“MOU”) issued by the Supreme People’s Court on 24 January 2000.

To apply for enforcement of an arbitral award, a written application has to be submitted. It should state the name and addresses of the parties; the matters that require enforcement and the reasons in support thereof; facts and evidence that show the paying party’s refusal to perform the award; and information as to the financial status of the paying party and its assets available for enforcement. The application must be accompanied by the original arbitral award, the original arbitration agreement or the contract containing the arbitration agreement, and appropriate fees. Certified copies are acceptable where the original documents cannot be provided, and Chinese translations have to be provided where the documents submitted are in language other than Chinese.

An application for enforcement must be submitted to the relevant People’s Court within one year from the last day of the time limit for performing under the award if one of the parties is a natural person, and within six months if both parties are legal persons or other organizations.

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4 Until early 2013, there was no arrangement for the recognition of awards between China’s two special administrative regions, namely Hong Kong and Macau. On 7 January 2013, Hong Kong and Macau entered into the “Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards between the Hong Kong Special Administrative Region and the Macao Special Administrative Region”. Under the Arrangement, the courts of Hong Kong must recognize and enforce arbitral awards made in Macao pursuant to the laws of arbitration of Macao, and the courts of Macao must recognize and enforce arbitral awards made in Hong Kong pursuant to the Arbitration Ordinance of Hong Kong. The Arrangement will take effect on a date to be designated by both governments.
Obstacles to Enforcement

The potential problems faced in the enforcement of arbitral awards in China include lack of co-operation among courts of different localities and local administrative intervention.

13. Power to Review – Setting Aside and Refusing Enforcement

An arbitration award is final and binding on the parties and may be set aside or refused enforcement in limited circumstances. The Arbitration Law stipulates different grounds for setting aside and refusing enforcement of domestic and foreign-related arbitral awards. Concerning foreign-related awards, the People’s Court upon an application by a party to set aside or enforce an award may review the award, and this will be of a procedural nature. This means that the People’s Court will not examine the merits of the arbitral award. Generally, the grounds for setting aside or refusing enforcement of foreign-related awards are where:

(a) the parties had neither included an arbitration clause in their contract nor subsequently concluded a written arbitration agreement;

(b) the party against whom enforcement is sought was not requested to appoint an arbitrator or to take part in the arbitration proceedings, or was unable to present its case for reasons for which they were not responsible;

(c) the formation of the arbitration tribunal or the arbitration procedure did not conform to the applicable rules of arbitration;

(d) the matters decided in the award exceed the scope of the arbitration agreement or are beyond the authority of the arbitration institution; or

(e) the award violates public interest.
There are also a number of other circumstances in which domestic awards may be set aside. They include circumstances where the main evidence for ascertaining the facts was insufficient, where the law was applied incorrectly, and where one or several arbitrators concerned committed embezzlement, accepted bribes or committed other forms of malpractice.

If a People’s Court intends to set aside or not to enforce a foreign or foreign-related arbitral award, it is required to go through an internal reporting procedure that is generally perceived to be a pro-enforcement mechanism. It has to first refer the matter for review to the appropriate Higher People’s Court. If the Higher People’s Court rules in favor of dismissing the application to set aside or not enforcing the award, the matter will be remitted back to the People’s Court, which must dismiss the application to set aside or enforce the award accordingly. On the other hand, if the Higher People’s Court agrees that the award should be set aside or refused enforcement, it must report its opinions up to the Supreme People’s Court for comment, and it will not make a formal ruling until a reply from the Supreme People’s Court is received. The process can be lengthy. In general, People’s Courts are inclined to uphold enforcement, particularly in the major commercial centers. Regional enforcement can be more difficult.

**Conciliation and other Remedies**

A characteristic of arbitration in the PRC is that conciliation and arbitration play close and sometimes interchangeable roles in the dispute resolution process. CIETAC Rules provide that where both parties have the desire for conciliation, the arbitral tribunal may conciliate the case during the course of the arbitration proceedings. If one party so desires, the arbitral tribunal may upon request approach the other party to see if it is agreeable to conciliation. With that agreement, the arbitral tribunal will proceed to conduct conciliation. If conciliation does not result in an agreement, the arbitral tribunal will continue with the arbitration and render an award. The parties are
prohibited from using any statements made by the parties during the conciliation as grounds for any claim, defense or counterclaim in later arbitral or judicial proceedings. However, the interchanging role of the arbitrator in the conciliation and arbitration processes means that he will be privy to the confidential or without-prejudice information or documents produced for the conciliation process. This may have a certain psychological impact on the arbitrator’s perception of the case. CIETAC Rules provide that where the parties have reached a settlement through conciliation with or without the involvement of CIETAC, the parties may make use of the arbitration procedure and request the arbitral tribunal to render an arbitral award in accordance with the terms of the settlement agreement. The award, once rendered, will have the same effect as an ordinary arbitral award and may be enforced accordingly.

Administrative Remedies

Administrative remedies can also often provide an efficient and effective means of resolving disputes in China. Depending on the type of dispute in question, there are a number of government departments and organizations that can provide assistance. Primary among these is the State Administration for Industry and Commerce (SAIC) and its local offices, which are empowered to investigate and impose sanctions in a number of areas, including cases of trademark infringement and unfair competition.

Arbitration of Investment Disputes

China has entered into a number of bilateral treaties that are designed to encourage and protect foreign investment. Many of these treaties provide for the resolution of investment disputes by arbitration. In addition, China is a party to the Washington Convention, the 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.
Other Key Developments

Key reforms took place between the years 2008 and 2011.

On 1 April 2008, an amended Civil Procedure Law came into force. The amended Civil Procedure Law improved re-trial and enforcement procedures. Judgment creditors now have two years to enforce judgments, while judgment debtors face tougher penalties for their failure to comply with enforcement measures.

On 1 August 2008, China’s long-awaited Anti-Monopoly Law took effect, paving the way for potential anti-monopoly-related civil actions.

On 25 February 2011, the PRC National Congress passed the 8th Amendment of Criminal Law. The revision of article 164 of the Criminal Law is the most significant. The revised article 164 is the first provision of Chinese law to combat the bribery of officials of a foreign country or international organization officials. Accordingly, the revised article 164 is recognized as China’s “Foreign Corrupt Practice Act” and will bring long-term impact to Chinese companies’ increasing overseas investment around the world.

On 1 April 2011, the Application of Law for Foreign-related Civil Relations of took effect. This law for the first time provides clear guidance for Chinese courts and arbitration tribunals in the area of conflicts of law

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