

Client Alert

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New Supreme People's Court Opinion Simplifies the Service of Process in China

Recent development

On 12 September 2016, the Supreme People's Court of China ("**SPC**") issued the *Several Opinions on Further Promoting the Separation of Complicated Cases from Simple Ones and Optimizing the Allocation of Judicial Resources* ("**Opinion**"), which aims to, among other things, streamline and promote efficiency in the service of process in Chinese civil litigation proceedings. An important point in the Opinion is that any address agreed upon by parties in an agreement will be treated by Chinese courts as a valid address for service.

Our alert discusses the developments and implications to parties seeking to litigate in China.

Major implications

The effect of the Opinion is that when parties agree upon an address for notices to be sent and provides for this in an agreement, that address would be identified by Chinese courts as a valid address for service in civil proceedings. This means that claimants will now find Chinese court proceedings less onerous as a result of the simplified service process. Service upon the agreed address will be deemed effective if the Chinese court sends the judicial documents to the valid address, irrespective of whether the delivery is successful.

The simplified process also confirms that even if the mail does not reach the intended recipient for whatever reason, the Chinese court will still consider the service as completed and can proceed to hear the case in the absence of the recipient. This can include circumstances where the recipient refuses to accept the mail or the recipient is no longer at that address. As a result, a respondent to court proceedings, especially a foreign party, faces increased risk of becoming exposed to a default judgment.

Changes brought by the development

Prior to the release of the Opinion, the requirements for an effective service of process were quite rigid. In summary, these requirements were as follows:

- When serving judicial documents for the first time, the Chinese court has to locate the whereabouts of the defendant.
- Steps should be taken to ensure that the defendant has received the court papers. For example, the defendant has to sign the return receipt for the mail and return this to the court, otherwise service will be deemed to have failed.

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- The defendant has to complete a written form in order to provide an address for receiving future documents ("Service Address Confirmation Form"). The address in the Service Address Confirmation Form will be considered by the Chinese court as the valid address for service.
- If the defendant cannot be located, the Chinese court has no other choice but to publish an announcement in the public media such as a newspaper. The documents will be deemed to have been served when 60 days have elapsed since the date of the public announcement. This process has to be repeated each time the court tries to serve a document on the defendant.
- If a party is of a foreign nationality, the service process becomes more complicated because service may need to be carried out under the Hague Convention. It can therefore take a long time for the Chinese court to serve on a foreign party.

The Opinion, however, saves the court from spending time and effort in locating the defendants, by presuming the address previously agreed upon between the parties in an agreement to be the valid service address.

The development also removes unnecessary delay caused by failed service attempts, especially in cases involving foreign parties. Article 7 of the *Several Provisions of the Supreme People's Court Concerning the Service of Judicial Documents in Foreign-Related Civil or Commercial Cases* provides that service upon a foreign party can be effected through mail, provided that the destination country allows for such method. Many countries, including the U.S. and Hong Kong, allow foreign courts to serve its residents or citizens by post in accordance with the relevant local rules. Therefore, under the Opinion, once the Chinese court mails the judicial documents to a foreign party at the previously agreed address, service is deemed to be effective.

Actions to consider

Parties to a transaction should consider the pros and cons offered by this recent development on service of proceedings. At the same time, parties need to take appropriate action to mitigate any potential risk of a default judgment.

We recommend that companies doing business in China consider the following actions:

- If companies doing business in China wish to follow the new development, they should expressly specify in the contract that the address for notices also applies to court proceedings.
- If parties wish to mitigate the potential risk of any default judgment, they should expressly state in the contract that the address for notices cannot be used for court service purposes.
- Parties should avoid any reference or stipulation that the external counsel's address be used as the address for notice under a contract.
- Parties should keep counterparties informed of any changes to the address agreed in the contract.

Conclusions

The service process of civil proceedings has long been criticized for its rigid requirements and inefficiency. If implemented effectively, the mechanism provided in the Opinion will have a significant impact on promoting the efficiency and effectiveness of Chinese civil procedure.

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