

**Manual for Foreign-related
Civil and Commercial Cases
In the People's Republic of
China 2019**



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Part I Legal System

1. Overview

The Chinese legal system is in form much closer to the legal systems of continental Europe than to common law, but is increasingly containing more and more elements from common law. Although heavily criticized by many western scholars for its lack of transparency, China's legal system has been separated from the legislative and administrative branches for more than three decades and has continued to improve.

1) People's Congress

In accordance with the Constitution Law of the People's Republic of China that was adopted in 1982, the National People's Congress (NPC) is deemed to be the "highest organ of state power", which has the authority to enact laws binding over all of China. Similarly, each Provincial People's Congress has the authority to issue provincial regulations and rules applicable for its own jurisdiction.

2) Government

China has both a central government and local governments. As the central government, the State Council carries out the national governmental work under the Premier. The State Council is divided into various functional ministries and commissions. The local governments include provincial government, municipal government, county government and basic government.

3) Court

There are four levels of courts in China: the Supreme People's Court at the highest level, the Higher Level People's Courts at the provincial level, and the Intermediate Level and Basic Level People's Courts at the local level.

In 2015, the Supreme People's Court set up six circuit courts in Shenzhen, Shenyang, Nanjing, Zhengzhou,

Chongqing and Xi'an to try cases across China while cases occurred in Beijing, Tianjin, Hebei, Shandong and Inner-Mongolia remain within the jurisdiction by the Supreme People's Court.

In 2018, the Supreme People's Court set up two China International Commercial Court in Shenzhen and Xi'an.

2. Resources of law

1) The Constitution Law of the People's Republic of China

The Constitution Law is deemed as the highest source of law in China. As noted above, the Constitution Law establishes the structure of the government, in addition to codifying the general principles of the government and society and listing the fundamental rights and duties of the people of China.

2) Statutory Laws

Generally speaking, the Statutory Laws constitute the most substantial part of PRC law. According to the PRC Legislation Law, all the Statutory Laws shall be enacted by the National People's Congress or its Standing Committee. In addition, the Standing Committee enacts regulations, decisions and resolutions.

3) Administrative regulations

Administrative regulations are one type of legislative enactment by the State Council. The State Council and its ministries or commissions can also create rules. In accordance with the PRC Legislation Law, the State Council's administrative regulations are lower in authority than the statutory laws but higher than local regulations and rules issued by any provincial people's congress.

4) Local Regulations and Rules

The PRC Legislation Law specifies local people's congresses can enact local regulations and local

governments can make local administrative rules. With regards to the national autonomous regions, they are permitted to enact autonomous and independent regulations.

5) International Treaties

In practice, international treaties cannot automatically be incorporated as part of PRC law unless they have been approved by the NPC Standing Committee. If the PRC has made a reservation to a provision of a treaty, this aspect or provision of the treaty is not implemented in PRC law.

6) Judicial Interpretation

Unlike common law jurisdictions such as England and the United States, the law cannot be made by judges in China. However, the judicial interpretations issued by the Supreme People's Court are deemed as an important resource because such interpretations specify or even patch unclear laws and regulations and are applicable for all courts in China.

3. Public Law and Private Law

In theory, the PRC law can be divided into public law, which governs the relationship between individual citizens and the state, and private law, which governs relationships between individuals and private organizations. For practical purposes, the most significant distinction is between civil law and criminal law.

Civil law is deemed as private law, which covers broad areas such as property, contracts, company, torts, family matters and employment law. Disputes between individuals or private organizations can be resolved through three approaches, i.e. litigation, arbitration and alternative dispute resolution (ADR).

Criminal law, which is a branch of public law, defines the boundaries of acceptable conduct. A person who breaks the criminal law is held to threaten, harm or endanger the safety and welfare of the whole society and therefore require confinement and/or punishment.

Part II Foreign-related Civil and Commercial Cases

1. Definition

Under the PRC law, the foreign-related civil and commercial cases refer to any cases involving foreign elements relating to the party, the legal fact or the subject-matter if:

- any litigation party is a foreign individual, a non-state individual, a foreign legal entity or a foreign organization; or
- any litigation party's domicile place is in a foreign jurisdiction; or
- any subject matter is located in a foreign jurisdiction; or
- any legal fact that brings forth, changes or terminates certain legal relationships that take place in a foreign jurisdiction; or
- other circumstances that can be identified as the foreign-related civil case.

If the litigation party, legal fact, or subject matter of a civil and commercial case bears any elements from Hong Kong, Macau or Taiwan, the case shall be deemed as a civil and commercial case relating to Hong Kong, Marco and Taiwan and shall be treated as a foreign-related one.

2. Level Jurisdiction

In December 2017, the Supreme People's Court issued the *Notice on the Clarification of Relevant Issues and Jurisdiction Standards on Foreign-related First Instance Civil and Commercial Cases* (the "Notice on Foreign-related Cases"). In accordance with this Notice, the first-instance jurisdiction of foreign-related civil and commercial cases shall be governed by the following people's courts:

Province	High Court	Intermediate Court located in the (1) municipalities directly under the Central Government; (2) provincial capital municipalities, (3) special economic zones and (4) municipalities directly under state planning	Other Intermediate Court
Beijing, Shanghai, Jiangsu, Zhejiang, Guangdong	If the disputed amount exceeds RMB 200 Million	If the disputed amount exceeds RMB 20 Million	If the disputed amount exceeds RMB 10 Million
Tianjin, Hebei, Shanxi, Inner-Mongolia, Liaoning, Anhui, Fujian, Shandong, Henan, Hubei, Hunan, Guangxi, Hainan, Sichuan, Chongqing	If the disputed amount exceeds RMB 80 Million	If the disputed amount exceeds RMB 10 Million	If the disputed amount exceeds RMB 5 Million

Jilin, Heilongjiang, Jiangxi, Yunnan, Shanxi, Xinjiang	If the disputed amount exceeds RMB 40 Million	If the disputed amount exceeds RMB 5 Million	If the disputed amount exceeds RMB 2 Million
Guizhou, Xizang, Gansu, Qinghai, Ningxia	If the disputed amount exceeds RMB 20 Million	If the disputed amount exceeds RMB 2 Million	If the disputed amount exceeds RMB 1 Million

It should be noted that the Supreme People's Court designated some basic level courts to handle first instance foreign-related civil cases with lower disputed amount while in some provinces the lowest level of jurisdiction is intermediate court.

It should be noted that the Notice on Foreign-related Cases mentioned above is not applicable to the following cases:

- marriage and family disputes;
- inheritance disputes;
- labor disputes;
- environmental pollution infringement disputes;
- environmental public interest litigation;
- maritime disputes;

- intellectual property disputes.

3. Principles of Jurisdiction

According to the *Civil Procedure Law of the People's Republic of China* and the juridical interpretations issued by the Supreme People's Court, foreign-related civil and commercial cases shall be governed by people's courts as follows:

Jurisdiction	Governing Courts
General territorial Jurisdiction	<ul style="list-style-type: none"> • A foreign-related case is governed by the people's court located in the defendant's domicile place or habitual place of residence. • If the defendant in a foreign-related action does not object to the jurisdiction of a people's court and replies the claims, the defendant shall be deemed to have recognized the jurisdiction of such people's court.
Special territorial jurisdiction	<p>Where an action concerning a dispute over a contract or rights and interests in property is brought against a defendant without a domicile within the PRC, the action may be governed by the people's court of</p> <p>the place where the contract was executed or performed,</p> <p>the place where the subject matter is located, the place where the distrainable property is located,</p>

	the place where the tort was committed.
Exclusive jurisdiction	<ul style="list-style-type: none"> • A dispute arising from the performance of a Sino-foreign equity joint venture contract, a Sino-foreign cooperative joint venture contract or a contract for Sino-foreign cooperative exploration and development of natural resources shall be governed by the PRC people's courts located in the registration places of the Sino-foreign equity joint venture or the Sino-foreign cooperative joint venture. • A dispute in relation to real estate shall be governed by the people's court with jurisdiction over the real estate's location. • A dispute in relation to port construction shall be governed by the people's court with jurisdiction over the port's location. • A dispute in relation to heritage shall be governed by the people's court where the decedent's domicile is located or where the main heritage property is located.
Choice of Foreign Jurisdiction	<ul style="list-style-type: none"> • The legal parties concerning a contract or rights and interests in property may choose in writing the jurisdiction of a foreign court if a real connection exists between their dispute and the foreign location. Such choice shall not violate the provisions concerning exclusive jurisdiction under the Civil Procedure Law.

<p>Choice of PRC Jurisdiction</p>	<ul style="list-style-type: none"> • The legal parties concerning a contract or rights and interests in property may choose in writing the jurisdiction of a PRC court if a real connection exists between their dispute and the location where the court is located. Such choice shall not violate the provisions concerning level jurisdiction or exclusive jurisdiction under the Civil Procedure Law.
<p>Jurisdiction in relation to the enforcement of an arbitration award concerning a foreign related case made by a PRC arbitration institution</p>	<ul style="list-style-type: none"> • An application for the recognition and enforcement of an arbitration award shall be governed by the people's court in the place where the applicant resides or the place where the property is situated. • An application for the revocation of a foreign-related arbitration award made by a PRC arbitration body shall be governed by the people's court in the place where the arbitration body is located. • A dispute in relation to the validity of an arbitration clause or arbitration agreement may be governed by the immediate people's court in the place where the arbitration organization is located, the arbitration agreement is executed or where the applicant or the defendant resides.

Part III Basic Procedure

1. Acceptance of Actions

In accordance with the *Civil Procedure Law* a foreign-related action shall be brought to the people's court with proper jurisdiction with the following materials for acceptance:

- civil complaint (original and duplicate);
- evidence in support of the legal facts and allegations;

In practice, the plaintiff files an evidence list with a brief statement on the name, content and purpose of the evidence. The evidence list is signed or chopped by the plaintiff and duplicates are submitted in line with the number of the legal parties in this action;

- duplicates of legal parties' identification documents such as ID card, passport or business license,
- power of attorney; and
- court fee paid by the plaintiff in advance.

2. Pretrial Procedure

The people's court shall issue the Notice of Response to the Action and the Notice of Producing Evidence, which requests that the defendant reply to the claims with relevant evidences within the limitation period. The defendant is also requested to file an evidence list with a brief statement on the name, content and purpose of the evidence. The evidence list must be signed or chopped by the defendant and the duplicates submitted in line with the number of the legal parties in this action. In some cases, the people's court may arrange a pretrial conference for the exchange of evidences if the people's court feels it necessary or the parties apply.

3. Trial Procedure

Typically, a dispute is heard publicly by a people's court. The common trial procedure is as below:

- The presiding judge shall check the parties present, announce the cause of action, the names of the adjudication personnel and the name of the court clerk, advise the parties of their procedural rights and obligations and inquire whether the parties wish to challenge any adjudication personnel.
- The complaint is stated by the plaintiff and the reply is stated by the defendant.
- The evidences are cross examined by the plaintiff and the defendant.
- The presiding judge asks the plaintiff and the defendant to answer a few questions related to the fact of the case.
- The court debates are conducted by the plaintiff and the defendant and the final comments are made by the plaintiff and the defendant in turn.
- The mediation may be presided by the judges.

4. Judgment, Appeal and Retrial

Judgement: After deliberating over a case, the court shall make a judgment, and the written decision shall be produced and be served to both parties. Normally, a first instance case shall be concluded within six months from the acceptance date of the case. Where there are special circumstances, the time limit may be extended for another six months subject to approval by the president of the court. If any further extension is required, approval shall be requested from the immediate superior people's court.

Appeal: If the decision cannot satisfy either party, the case may be appealed and the appeal procedure, which is similar with the first instance one, will commence. In accordance with the Civil Procedure Law,

an appeal case against a judgment shall be concluded within three months from the acceptance date of second instance. Any extension of the time limit necessitated by special circumstances shall be subject to approval by the president of the court. And an appeal case against a ruling shall be made within 30 days from the acceptance date of second instance.

Retrial: In addition to the juridical reliefs of first instance and appeal, the retrial procedure will be initiated to relieve a party if such party's retrial application satisfies any of the following requirements:

- there is new evidence that is sufficient to overturn the original judgment or ruling;
- the evidence used as a basis for ascertaining the essential facts in the original judgment or ruling was insufficient;
- the main evidence used as a basis for ascertaining the facts in the original judgment or ruling was falsified;
- the main evidence used as a basis for ascertaining the facts in the original judgment or ruling was not cross examined;
- with regard to the main evidence required in the case, the party was unable to collect the evidence himself or herself for objective reasons, and the people's court failed to investigate or collect such evidence after the party submitted a written application to the people's court for the investigation and collection of evidence;
- the law was improperly applied in the original judgment or ruling;
- the original judicial bench was not composed in accordance with the law or any member of the original judicial bench who shall withdraw in accordance with the law did not do so;

- in the event that the statutory agent of a party with no capacity to bring a case failed to act as the litigation agent in the relevant case or where a party required to participate in the case failed to do so for reasons beyond the control of such party or its litigation agent;
- where the party was illegally deprived of the right to debate;
- where a default decision was made without serving a summons;
- where the original judgment or ruling omitted or exceeded the claims in the case; or
- where the judge conducted corruption, bribery, favoritism, fraud or perverting the law.

The application for retrial shall be applied to the immediate superior people's court of the original trial. The superior court shall review the application and decide whether to approve the retrial within three months from the acceptance date of the retrial application. Any extension of the time limit necessitated by special circumstances shall be subject to the approval of the president of the superior court.

Practically, to keep the stability of the original judgement, the application for retrial is very difficult to be approved by the superior court. Besides, the review of the application does not prevent the execution of the original judgement.

Part IV Burden of Proof and Providing Evidence

Any party to a civil and commercial case shall be responsible for producing evidence in support of the facts on which its own claim(s) or the facts on which its defense to the claim(s) of the other party are based. Where no evidence is produced or the evidence is insufficient to support the claim or defense alleged, the party that bears the burden of proof shall be liable to the risk of losing the lawsuit.

The parties to a case shall submit evidence to the people's court within the allotted time period for producing evidence. The time period for producing evidence may be agreed upon by the parties and confirmed by the people's court, or a time period of 30 days for producing evidence be directly set by the people's court. An application for evidence preservation or obtaining evidence shall be filed no less than seven days before the expiry of the time period. Any party who seeks to file an additional claim, amend a claim, lodge a counterclaim or apply for the authentication shall do so prior to the expiration of the time period for producing evidence.

In accordance with the PRC laws, qualified evidence collected outside of China shall be subject to relevant notarization procedure by a notary organ in the country where the evidence is developed and authenticated by the Chinese embassy or consulate in such country or subject to the certification procedure prescribed in relevant treaties signed between China and such country.

Qualified evidence collected in the Hong Kong/Macao Special Administrative Region shall be subject to relevant notarization procedure by a notary entrusted by the Chinese Ministry of Justice, and affixed with a Special Seal of the China Law Service (Hong Kong/Macao) Co., Ltd. Similarly, qualified evidence collected in Taiwan Region shall be subject to the relevant notarization procedure by a notary of Taiwan Region, and affixed with a Special Seal of Straits Exchange Foundation.

In cases where persons concerned submit documentary evidence or detailed files in foreign languages to the people's court, the parties shall provide corresponding Chinese version. If the other party challenges the

translation, the parties shall jointly appoint a translation institution. If the parties cannot reach an agreement on the translation institution, the court shall decide.

Part V Service of Judicial Documents

Provided that the service of judicial documents in foreign-related cases, through bilateral judicial assistance or the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention on Service) is time-consuming, the necessary and reasonable time will be reserved in advance of trial for such purposes.

By reason of the specialty of the service of judicial documents in foreign-related and Hong Kong\Macao\Taiwan cases, parties shall have an obligation to assist the court by:

- Providing the foreign and Hong Kong\Macao\Taiwan party's specific and detailed address, to help courts serve documents via mail, diplomatic channels or judicial assistance.
- Providing the foreign and Hong Kong\Macao\Taiwan individual's or enterprise's legal representative's address and contact information within China.
- Providing the name and contact information of agent entrusted by the foreign and Hong Kong\Macao\Taiwan parties, representative offices or authorized branches and business agent.
- Provide the exact fax number or E-mail of the recipient, when his host country allows service documents via fax and/or E-mail.
- Because the court may use a variety of ways to serve documents to parties, parties should provide all the information in relation to service of the case.

In accordance with the Civil Procedure Law, people's court may serve the judicial documents on a party without a domicile within the territory of China in the following ways:

- service in the way specified in an international treaty concluded between or acceded to by the country of the party to be served and China;

- service through diplomatic channels;
- if the party to be served is a PRC citizen, entrustment of the PRC embassy or a consulate in the state where such party is located with service on its behalf;
- service on the agent appointed by the party to be served and authorized to accept service on his/her behalf;
- service on the representative office, or the branch or business agent authorized to accept service, established within the territory of China by the party to be served;
- service by post if permitted by the law of the state of the party to be served. If the deliver receipt is not returned within six months from the post date, the documents shall be deemed to have been served on the date of expiry of the time limit if the assumption of the documents having been served is justified; or
- if the documents cannot be served by any of the above methods, service may be effected by public announcement. The documents shall be deemed to have been served after six months have elapsed since the date of the public announcement.

Part VI Litigation Preservation

For fear that a judgment might be impossible or difficult to enforce or for other reasons, a people's court may, at the request of the plaintiff make a ruling for preservation of property carried out by sealing up, distraining, freezing or other methods as provided by law.

As a general rule, applications for the preservation of property must meet the following conditions:

- Guarantee provided by the applicant shall be proportionate with the estimated price of the property subjected to preservation;
- Provide the information and price foundation of the defendant's property subjected to preservation;
- Pay the application fee under regulations.

If an application is made wrongfully, the applicant shall compensate the respondent for any loss incurred as a result of the preservation of property. If the respondent provides security, the people's court shall cancel the property preservation order. If a party is dissatisfied with a ruling for preservation of property, it may apply once for a review. Execution of the ruling shall not be suspended during the period of review.

Part VII Regulations on Application of Law

The parties to a foreign-related commercial contract may explicitly agree on the law governing the settlement of disputes arising out of the contract at the time of or following the conclusion of the contract. Disputes arising out of the contract include disputes concerning date of effectiveness, validity, interpretation, performance or liability for breach of the contract, as well as disputes concerning cancellation, modification, suspension, assignment and termination of the contract. Provided that the lawful interests of third parties are not prejudiced, the parties to a foreign-related commercial contract may, based on their mutual consensus, change the applicable law of the contract at any time from the conclusion of the contract to the end of the court debate in the first instance.

The law chosen by the parties through consensus means the substantive law of the relevant country or region, excluding its conflict of law rules and procedural law. However, the application of a foreign law shall not evade any compulsory and prohibitive provisions of the laws or regulations of the People's Republic of China, which include laws in the following areas:

- labor right protection;
- food or public health security;
- environment security;
- foreign exchange control and finance security;
- antitrust and antidumping;
- other circumstances that should be identified as compulsory rules.

The parties can choose the applicable law in the following cases:

- agency relationship;
- trust relationship;
- arbitration agreement;
- marriage property relationship;
- divorce agreement;
- moveable property;
- normal contract;
- torts;
- unjust enrichment and causeless management;
- transfer and license of intellectual property.

Besides the above, the parties cannot choose the applicable law in other cases.

It should be noted that the performance of any of the following contracts within the territory of China shall be subject to the PRC law:

- sino-foreign equity joint venture contract;
- sino-foreign cooperative joint venture contract;
- sino-foreign cooperative contract in relation to the exploration or exploitation of natural resources;

- contribution purchase agreement related to sino-foreign equity joint ventures, sino-foreign cooperative joint ventures, or wholly foreign-funded enterprises;
- operation and management contract by a foreign individual or legal entity for operating sino-foreign equity joint ventures or sino-foreign operative joint ventures established within the territory of China;
- share purchase agreement by a foreign individual or legal entity for acquiring the share held by a Chinese shareholder of domestic company;
- contribution agreement by a foreign individual or legal entity for the increase of registered capital of a domestic company;
- asset purchase agreement by a foreign individual or legal entity for purchasing assets of a domestic company; and
- any contract subject to the PRC law as prescribed by the PRC laws or regulations.

When a case shall be judged in accordance with the foreign law under the parties' agreement or the conflict rules, the parties have the obligation to provide related foreign laws, including foreign statutory laws, legal precedents, and provide the related legal literature, legal introductory information and expertise opinion as far as possible. The parties may submit the above materials through the legal experts, legal service agency and self-regulatory organizations, international organizations, Internet, etc. Provided the above legal material is obtained outside China, parties must go through notarization, authentication or other certification procedures. The materials submitted shall be accompanied by a Chinese translation if they are written in a foreign language.

Part VIII Recognition and Enforcement of Judgments from HK, MC and TW

1. Recognition and Enforcement of Judgments of HKSAR courts

On 18 January 2019, the Supreme People's Court and the Government of the Hong Kong Special Administrative Region issued the *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* (the "Arrangement"). This arrangement will be effective and will replace the *Arrangement between the Courts of Mainland and HKSAR on Mutual Recognition and Enforcement of Judgments of Civil and Commercial Cases under the Jurisdiction as Agreed to by the Parties Concerned* issued by the Supreme People's Court in 2008 upon the internal approval by the Supreme People's Court and Department of Justice in HK.

1) Scope of Judgment

A "judgment" referred to in this Arrangement includes any judgment, order, decree and allocator, but does not include an anti-suit injunction or an order for interim relief issued from a court of HKSAR.

"Civil and commercial matter" referred to in this Arrangement means a matter which is considered to be civil and commercial in nature under both Mainland law and Hong Kong law. It does not include judicial review cases and any other cases heard by the courts of the HKSAR arising directly out of the exercise of administrative powers.

A "legally effective judgment" referred to in this Arrangement in the case of the HKSAR, means a legally effective judgment given by the Court of Final Appeal, the Court of Appeal and the Court of First Instance of the High Court, the District Court, the Labour Tribunal, the Lands Tribunal, the Small Claims Tribunal or the Competition Tribunal.

This Arrangement does not apply to judgments in the following civil and commercial matters:

- cases heard by a people's court of the Mainland on maintenance of parent(s) or grandparent(s), maintenance between siblings, dissolution of adoptive relationship, guardianship of adults, disputes after divorce on liability for damages, or division of property arising from a co-habitation relationship; or cases heard by a court of the HKSAR on whether a decree of judicial separation should be granted;
- cases on succession, administration or distribution of estate;
- cases on the tortious infringement of standard patents (including "original grant" patents) and short-term patents heard by a court of the HKSAR; cases on the confirmation of the licence fee rate of a standard-essential patent heard by a court of the Mainland or a court of the HKSAR; and cases concerning intellectual property rights not covered under Article 5 of this Arrangement;
- cases on marine pollution, limitation of liability for maritime claims, general average, emergency towage and salvage, maritime liens, and carriage of passengers by sea;
- bankruptcy (insolvency) cases;
- cases on the determination of a natural person's qualification as a voter, declaration of disappearance or death of a natural person, or the determination of limited or lack of legal capacity of a natural person for civil acts;
- cases on the confirmation of the validity of an arbitration agreement or the setting aside of an arbitral award;
- cases on the recognition and enforcement of judgments or arbitral awards of other countries or regions.

In July 2017, the Supreme People's Court and Department of Justice in HK jointly issued *Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region* (the "HK Family Judgement Arrangement"). The judgement of the following matrimonial and family cases can be recognized and enforced under this arrangement:

In the case of the HKSAR,

- Decrees absolute of divorce made under Part III of the Matrimonial Causes Ordinance (Cap. 179);
- Decrees absolute of nullity made under Part IV of the Matrimonial Causes Ordinance (Cap. 179);
- Orders for maintenance pending suit made under the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- Maintenance orders made under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), and Parts II and IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- Orders for transfer of property and sale of property in matrimonial proceedings made under the Guardianship of Minors Ordinance (Cap. 13), and Parts II and IIA of the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- Orders as to property made under the Married Persons Status Ordinance (Cap. 182);
- Orders made during the lives of parties for alteration of maintenance agreements made under the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- Adoption orders made under the Adoption Ordinance (Cap. 290);

- Declarations of parentage, legitimacy or legitimation made under the Marriage Causes Ordinance (Cap. 179) and the Parent and Child Ordinance (Cap. 429);
- Custody orders made under the Guardianship of Minors Ordinance (Cap. 13), the Separation and Maintenance Orders Ordinance (Cap. 16), and the Matrimonial Proceedings and Property Ordinance (Cap. 192);
- Custody orders made with respect to a minor child who has been made a ward of a HK court; and
- Non-molestation orders, ouster orders, re-entry orders and variation or suspension of custody orders and access orders made under the Domestic and Cohabitation Relationships Violence Ordinance (Cap. 189).

The HK Family Judgement Arrangement will be effective upon the internal approval by the Supreme People's Court and Department of Justice in HK.

2) Time Limit and Jurisdiction

The time limit for a party to apply for the recognition and enforcement of a judgment of a HKSAR court shall be two years from the time the judgment becomes enforceable.

An application for recognition and enforcement of a judgment should be filed with an Intermediate People's Court of the place of residence of the applicant or the respondent, or the place where the property of the respondent is located. If an application is made to two or more people's courts having jurisdiction, the people's court which accepts the case first shall exercise jurisdiction.

Where the place of domicile, the place of habitual residence and the locality of the property of the respondent concerned under the jurisdiction of different intermediate people's courts, the party concerned may choose any of them to file an application, and shall not file an application with two or more people's courts at the same time. When property of the respondent concerned is under the jurisdiction of both the

mainland and the HKSAR, the applicant concerned may file the application with the competent courts of both places simultaneously.

3) Application Materials

To apply to a competent court for the recognition and enforcement of a judgment of a HKSAR court, a party shall submit the following documents:

- an application form, including: (a) particulars of the parties: where the party is a natural person, his/her name, address, particulars of identity documents, means of contact, etc.; where the party is a legal person or other organisation, its name, address as well as the name, position, address, particulars of identity documents, means of contact, etc. of its legal representative or principal responsible person; (b) details of the request and justifications for the application, and in the case of an application for enforcement, also the status and location of the property of the respondent; (c) whether an application has been made for the enforcement of the judgment in any other court, and the status of its enforcement;
- a copy of the legally effective judgment affixed with the seal of the court which gave the judgment;
- a certificate issued by the court which gave the legally effective judgment certifying the judgment to be a legally effective judgment and, if the judgment has content which requires enforcement, certifying the judgment to be enforceable in the requesting place;
- where the judgment is a default judgment, a document certifying that the party concerned has been legally summoned, unless the judgment expressly states the same, or the absent party is the party applying for recognition and enforcement;
- documents of identity: a. where the applicant is a natural person, a copy of the identity card shall be submitted; b. where the applicant is a legal person or other organisation, copies of the certificate

of incorporation or registration and of the identity card of the legal representative or the principal responsible person shall be submitted;

The above identity documents, if issued in a place outside the requested place, shall be certified in accordance with the law of the requested place. Where a document submitted to a people's court of the Mainland is not in the Chinese language, the applicant shall submit an accurate Chinese translation.

4) Review of the Jurisdiction of the Original Court

- The court of the requested place shall consider the original court to have jurisdiction over the relevant action if one of the following conditions is satisfied and if, according to the law of the requested place, the courts of the requested place do not have exclusive jurisdiction over the action:
- at the time the original court accepted the case, the place of residence of the defendant is within the requesting place;
- at the time the original court accepted the case, the defendant maintained in that place a representative office, branch, office, place of business or such other establishment without separate legal personality, and the action arose out of the activities of that establishment;
- the action was brought on a contractual dispute and the place of performance of the contract is in the requesting place;
- the action was brought on a tortious dispute and the infringing act was committed in the requesting place;
- the parties to a contractual dispute or other dispute concerning interests in property had expressly agreed in writing that the courts of the requesting place shall have jurisdiction over the relevant proceeding, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or

where the subject matter was situated etc., being a place which has an actual connection with the dispute;

- the parties did not raise objection to the jurisdiction of the original court and appeared before and defended in the proceedings, but where the place of residence of all the parties to the judgment was in the requested place, the requesting place should be the place where the contract was performed or signed, or where the subject matter was situated etc., being a place which has an actual connection with the dispute.

5) Grounds for Rejection

A court of the requested place shall refuse to recognise and enforce a judgment if, having examined the evidence adduced by the respondent to show any of the following, it is satisfied that:

- the exercise of jurisdiction by the original court over the action does not meet the requirements stipulated in Article 11 of this Arrangement;
- the respondent was not legally summoned in accordance with the law of the place of the original court; or although the respondent was legally summoned, the respondent was not given a reasonable opportunity to make representations or defend the respondent's case;
- the judgment was obtained by fraud;
- the judgment was rendered in an action which was accepted by the original court after a court of the requested place has already accepted an action on the same dispute;
- a court of the requested place has rendered a judgment on the same dispute, or has recognised a judgment on the same dispute given by another country or place;

- the requested place has made an arbitral award on the same dispute or has recognised an arbitral award on the same dispute made in another country or place;
- Where a people's court of the Mainland considers that the recognition and enforcement of a judgment given by a court of the HKSAR is manifestly contrary to the basic principles of the law of the Mainland or the social and public interests of the Mainland;
- upon examination of the evidence adduced by the respondent, the requested court is satisfied that the action in the original court was contrary to a valid arbitration agreement or a valid jurisdiction agreement entered into by parties on the same dispute;
- rulings by the original court on the validity of an intellectual property right or whether an intellectual property right is established or subsists.

6) Content of Judgment that Can be Recognised and Enforced

Reciprocal recognition and enforcement of judgments includes both monetary and nonmonetary rulings.

Where the judgment provides for punitive or exemplary damages, the punitive or exemplary part of the damages would not be recognised and enforced except for tortious claims for infringement of intellectual property rights, disputes over passing off heard by a court of the HKSAR and disputes over the infringement of trade secrets.

In respect of judgments for the award of property, the scope of recognition and enforcement by the courts of the Mainland and of the HKSAR shall include the property awarded, the corresponding interest, costs, payment for late compliance, or interest for late compliance awarded in the judgment, but shall not include taxes and penalties. "Costs" referred to in the preceding paragraph, in the case of the HKSAR, means the costs taxed in an allocator or the costs awarded under an order.

7) Relief

Where any party is aggrieved by a decision or an order made by a court of the requested place on an application for recognition and enforcement of a judgment, the party may, in the case of the Mainland, apply to a people's court at the next higher level for review within 10 days from the date of service of the decision.

2. Recognition and Enforcement of Judgments of MCSAR courts

1) Scope of Judgement

The Arrangement for Mutual Recognition and Enforcement of Civil and Commercial Judgments between Mainland and MCSAR was adopted by the Supreme People's Court in 2006. For the purposes of this Arrangement, "judgments" include judgments, verdicts, reconciliation rulings, and the decisions or instructions of judges in Macao, which shall take effect after April 1, 2006. "Judgments" shall also include judgments and verdicts regarding civil damages awarded in criminal cases.

2) Freezing of Property

Where the party against whom the petition is filed has property in both the mainland China and in Macao on which execution of the judgment may be carried out, the petitioner may file a petition for seizure, impounding, or freezing of the property of the person subject to the enforcement with the court of the other location.

3) Time Limit and Jurisdiction

The time limit for an applicant to apply for the recognition and enforcement of a judgment of a MCSAR court shall be two years. Where the place of domicile, the place of habitual residence and the locality of the property of the respondent concerned under the jurisdiction of different intermediate people's courts, the applicant concerned may choose any of them to file an application.

4) Application Materials

The petition documents shall include a copy of the valid judgment or a stamped certification from the court that handed down the judgment as well as the relevant documents issued by said court or competent legal institution that can demonstrate the following:

- Summons were lawfully delivered, unless it is demonstrated in the judgment.
- Persons legally incapable of participating in legal proceedings had an agent, unless it is demonstrated in the judgment.
- Pursuant to the law of the locality where the judgment was rendered, the parties involved were formally notified of the judgment, and the judgment is in force.
- A copy of the business license or corporate registration certificate has been supplied if the petitioner is a legal entity.
- The certification of execution of the judgment issued by the court that rendered the judgment has been provided.

Petitions shall be written in Chinese. In the case where attached court documents or relevant documentation are not written in Chinese, a Chinese translation shall be provided. If the judgment handed down by the court was not written in Chinese, a Chinese translation, issued by the court, shall be provided.

3. Recognition and Enforcement of Judgments of Taiwan courts

1) Scope of Judgement

In June 2015, the Supreme People's Court issued *Provisions of the Supreme People's Court on Recognition and Enforcement of Civil Judgments Issued by Courts in Taiwan* (the "Taiwan Judgement Provisions").

According to the Provisions, "civil judgments issued by courts in Taiwan" include civil judgments, ruling,

compromise records, mediation records, payment orders, etc. that are issued by courts in Taiwan and have come into force.

2) Application Materials

To apply for the recognition of a civil judgment issued by a court in Taiwan, the applicant shall file the following materials:

- an application;
- the original copy of the civil judgment document;
- civil judgment confirmation certificate issued by the court concerned in Taiwan or the duplicate thereof that is certified correct;
- In the event that the civil judgment is made by default, the applicant shall also provide the document that the court concerned in Taiwan has legally summoned the party thereto, with the exception that such matter has been clearly stated in the judgment.

The application shall indicate the following particulars:

- Name, gender, age, job, ID number and address of the applicant and the respondent (in the case of the applicant or the respondent is a legal person or other organization, the name, address and legal representative of the legal person or other organization, as well as the name and title of the principal person in charge) and communication mode;
- Request and reasons;
- Information about the execution of the judgment under the application for enforcement; and
- Other information that should be provided as required.

3) Jurisdiction

Similarly, where the place of domicile, the place of habitual residence and the locality of the property of the respondent concerned are under the jurisdiction of different intermediate people's courts, the applicant concerned may choose any of them to file an application.

Where the applicants apply for recognition to the intermediate people's courts at the place where the properties to be enforced are located, they shall provide the relevant evidences to prove the existence of the properties to be enforced. Applications for recognition of civil judgments made by the courts of Taiwan Region shall be raised within 2 years as of the confirmation of the effectiveness of the judgments.

4) Prohibitions

A civil judgment rendered by a court in Taiwan shall not be recognized in any of the following circumstances:

- The effectiveness of the civil judgment in the application for recognition is not determined;
- The civil judgment in the application for recognition is rendered in the absence of the defendant who has not been lawfully summoned or who has no capacity of legal acts while failing to obtain a proper agent;
- The case is under the exclusive jurisdiction of the people's court;
- The parties concerned in the civil case have previously entered into an arbitration agreement;
- The case has had a ruling rendered by a relevant people's court, or a judgment rendered by a foreign or overseas court or an arbitration award rendered by an overseas arbitration institution which has been recognized by a relevant people's court;

- A court in Hong Kong, Macau or a foreign country has given a judgment on the same dispute and such judgment has been recognized or accepted by a people's court;
- An arbitral tribunal in Taiwan, Hong Kong, Macau or a foreign country has made an arbitration award on the same dispute and such award has been recognized or accepted by a people's court;
- The civil judgment in the application for recognition violates the basic principles of the national laws and regulations, or harms the social public interest.

Part IV Recognition and Enforcement of Judgments of Foreign Courts

1. Jurisdiction

The party shall apply to the intermediate court at the place of domicile, or the locality of the property of the party against whom the application for enforcement is filed for recognition and enforcement of judgement of foreign courts.

2. Scope of Judgement and Time Limit

Normally the judgement that can be recognized and enforced is limited to money judgement.

The time limit applicable to applications to execute a judgement is two years, and shall commence from the last day of the time limit for satisfaction of the decision specified in the judgement; where the judgement provides for satisfaction of the decision in stages, the time limit shall commence from the last day of the period for satisfaction of the decision at each stage; where the judgement does not provide a time limit for satisfaction of the decision, the time limit shall commence from the date of receipt of the original document or the certified copy of the judgement.

3. Principle

According to the *Civil Procedure Law of the People's Republic of China*, a judgement of a foreign court can be recognized and enforced by a PRC court in two ways: (1) treaty between PRC and the foreign country; or (2) principle of reciprocity.

1) Treaty between PRC and the Foreign Country

As of December 2018, there are 39 countries¹ who executed the treaty on civil and commercial judicial assistance with China.

In these treaties, the judicial assistance includes (a) serving summons and other judicial documents; (b) collecting evidence and investigating upon request; (c) recognizing and enforcing court decisions and conciliation letters.

To apply for the recognition and enforcement of a foreign court according to the treaty, the party should provide the following materials:

- A certified copy of the ruling;
- Documents proving that the award is final, and documents proving that the award is enforceable at the time of application for enforcement, unless embodied in the award;
- Documents certifying that the party who has served the award to the losing party and has no capacity for litigation has been appropriately represented;
- Documents certifying that the absent party has been legally summoned to appear in court if the decision is made by default.

2) Principle of Reciprocity

(a) Introduction of the Principle

¹ Bosnia, Herzegovina, Algeria, Brazil, Peru, Kuwait, Tunisia, Korea, United Arab Emirates, Argentina, Lithuania, Singapore, Korea, Mongolia, Russia, Kazakhstan, Belarus, Ukraine, Uzbekistan, Tajikistan, Bulgaria, Kyrgyzstan, Morocco, Cyprus, Hungary, Hizbekistan La, Turkey, Arab Egypt, Cuba, Romania, Belgium, Spain, Italy, France, Poland, Vietnam, Laos, Thailand, Ethiopia

Principle of reciprocity means that if a judgement issued by a court in a country who hasn't executed a treaty on judicial assistance with China needs to be recognized and enforced by a PRC court, the applicant must prove that there is precedent that a court in that country has recognized and enforced a judgement issued by a PRC court. Since most developed countries (e.g., US, Japan, Canada, Germany, Australia, etc.) haven't executed treaties on judicial assistance with China while there are many cases related to these countries that need to be enforced in China, principle of reciprocity is very important practically.

(b) Development of Judicial Practice

Traditionally, it is very difficult to achieve a recognition and enforcement from a PRC court. In 1995, a judgement from a Japanese court was rejected. In 2001, a judgement from a German court was rejected. In 2004, a judgement from an UK court was rejected. In 2006, a judgement from an Australian court was rejected. In 2011, a judgement from a Korean court was rejected.

Recently, following the development of the "Belt and Road Initiative", in June 2015 the Supreme People's Court issued *Several Opinions of the Supreme People's Court Concerning Judicial Services and Protection Provided by People's Courts for the Belt and Road Initiative*. Article 6 of the above opinions prescribes that: "If the countries along the "Belt and Road" have not yet concluded any agreement on mutual judicial assistance with China, people's courts may, in accordance with the intent of international judicial cooperation and exchange as well as the promise by the other countries to provide judicial reciprocity to China, carry out the pilot practice that the people's courts in China provide judicial assistance to the parties in other countries in advance, actively promote the formation of reciprocity relations and actively promote and gradually expand the scope of international judicial assistance. It is imperative to actively handle the requests for judicial assistance such as delivery of judicial documents, investigation and evidence collection, recognition and enforcement of foreign court decisions."

Following the above opinions, the judicial authority's attitude towards judgements from foreign courts started to change:

In December 2016, the Jiangsu Province Nanjing Intermediate People's Court issued an influential ruling. In the case of Kolmar Group AG vs Jiangsu Textile Industry (Group) Import and Export Co., Ltd. applying for recognition and enforcement of civil judgments from foreign courts, the ruling prescribed that: "Because the High Court of the Republic of Singapore enforced a judgement issued by Jiangsu Province Suzhou Intermediate People's Court in January 2014, according to the principle of reciprocity, our courts can recognize and enforce the qualified civil judgments from Singapore courts." Finally the ruling decide to recognize and enforce the civil judgments from the Singapore court. This case is the first case in China to recognize and enforce civil judgments from a foreign court based on the principle of reciprocity.

In June 2017, the Wuhan Intermediate People's Court's issued Civil Decision No. 00026 (2015), which recognized and enforced the Judgment No. EC062608 of Los Angeles County High Court of California. The ruling prescribed that "when Liu Li submitted his application for recognition and enforcement to the court, he submitted a certified copy of Judgment No. EC062608 issued by Los Angeles County High Court of California, USA, and a Chinese translation, which meets the formal requirements for the application for recognition and enforcement of foreign court judgments. Since the United States and China have not concluded or jointly participated in international treaties on mutual recognition and enforcement of civil judgments, the applicant's application should be examined on the basis of the principle of reciprocal relations. After examination, the evidence submitted by the applicant has confirmed that there are precedents in the United States for recognizing and enforcing the civil judgments of our courts. It can be concluded that there is a reciprocal relationship between the two countries in recognizing and enforcing the civil judgments. At the same time, the above-mentioned judgment of Los Angeles County High Court of California is made on the contractual relationship between the applicant and the respondent concerning the transfer of equity. This civil judgment does not violate the basic principles of our law or the national sovereignty, security, social and public interests. Therefore, the court supports the application of the applicant for recognition and enforcement of the judgment of the United States Court."

(c) Key Issues in the Application

After examining the cases where the PRC courts successfully granted the recognition and enforcement to a judgement from a foreign court based on principle of reciprocity, we set out the following requirements that should be satisfied:

- The applicant must prove that there are precedents that courts in the corresponding foreign country recognized and enforced judgements issued by PRC courts.
- A judgment applying for recognition shall be a final and effective judgment or ruling made by a foreign court.
- According to applicable foreign law, the court that made the judgment or ruling has jurisdiction over the case.
- According to the applicable foreign law, the proceedings conducted in foreign courts are fair and legitimate, e.g., the court has conducted effective service for the defendant and provided hearing opportunity for the defendant.
- There are no conflicting judgments; the requested court has not tried or rendered an effective judgment on the same subject matter between the same parties; nor has it recognized the judgment of a third country in respect of the case;
- Recognition and enforcement of the judgment shall not violate the basic principles of the laws of the PRC or the sovereignty, security and public interests of the PRC.

4. New Development

In September 2017, China signed the Hague Convention on Choice of Court Agreements. An important clause of this convention is that: “Any judgment rendered by the chosen court must be recognised and enforced in other Contracting States, except where a ground for refusal applies”. Up to now, the contracting states of this convention include Singapore, Mexico, United States, Ukraine, China and all European

countries except Denmark. Although China has not ratified this convention yet, we can foresee that the recognition and enforcement of the judgements from the courts in the contracting states will be more promising than before.

Part X Recognition and Enforcement of Arbitration Awards made in HK, Macau and Taiwan.

1. Recognition and Enforcement of Arbitration Award made in HKSAR

1) Jurisdiction

For an arbitration award made in the HKSAR in accordance with Arbitration Ordinance, if one party concerned refuses to comply with it, the other party can apply to the competent court at the place of domicile, or the locality of the property of the party against whom the application for enforcement is filed.

If the place of domicile or the locality of the property of the party against whom an application is filed is within the jurisdiction of different intermediate people's courts in the mainland, the applicant can choose one intermediate people's court to apply for enforcement, but shall not file application respectively at two or more intermediate people's courts.

If the place of domicile or the locality of the property of the party against whom an application is filed is both in the mainland and the HKSAR, the applicant shall not file applications at the competent courts of the two places at the same time. Where enforcement of the court at one place is inadequate to pay up the debts, application for enforcement of the difference can only be filed at the competent court at another place. The total amount of the arbitration award enforced by the courts at the both places in succession may not exceed the amount prescribed in the award.

2) Application Materials

To apply for enforcement of an arbitration award made in HKSAR from the competent court, an applicant shall submit the following documents:

- Application for Enforcement Form;

- Arbitral Award; and
- Arbitration Agreement.

The application for enforcement shall be filed in Chinese. If the arbitral award or the arbitration agreement has no Chinese version, the applicant shall submit a formal Chinese version for reference.

2. Recognition and Enforcement of Arbitration Award made in MCSAR

1) Jurisdiction

For an arbitration award made in the Macau Special Administrative Region, where one party refuses to comply with it, the other party may apply to the intermediate people's court at the place of domicile, the place of residence or the locality of the property of the party against whom the application for admission and enforcement is filed.

Where the place of domicile, the place of residence or the locality of the property of the party against whom an application is filed are at both the mainland and the Macau Special Administrative Region, the applicant may file the application for admission and enforcement with the competent court in one place or the competent courts in both places.

2) Application Materials

Where an applicant applies to the competent court for admitting and enforcing an arbitration award, the applicant shall submit the following documents or the notarized duplicates of the following documents:

- Application form;
- Identity certificate of the applicant;
- Arbitration agreement; and

- Arbitration award or written arbitration meditation.

Where any of the above-mentioned documents is not prepared in Chinese, a translated version in Chinese, which has been officially notarized, must be submitted by the applicant.

3. Recognition and Enforcement of Foreign Arbitration Award made in Taiwan

On 29 June 2015, the Supreme People's Court issued *the Provisions of the Supreme People's Court on Recognition and Enforcement of Arbitration Awards Issued in Taiwan*.

1) Jurisdiction

An application for the recognition of an arbitration award issued in Taiwan is subject to the acceptance by the intermediate people's court at the place of the applicant's domicile or habitual domicile, or the respondent's domicile, habitual domicile or property location or by a special people's court. If an applicant applies for recognition to two or more people's courts with jurisdiction, the people's court that files the case first will have the jurisdiction over the case. If an applicant applies for recognition to the people's court at the place of the respondent's property location, it shall provide relevant evidence on the property's existence.

2) Application Materials

To apply for the recognition of an arbitration award issued in Taiwan, the applicant shall submit the following documents or certified correct duplicate thereof:

- Written application;
- The arbitration agreement; and
- The arbitration award, arbitration compromise agreement or arbitration mediation agreement.

The written application shall indicate the following particulars:

- Name, gender, age, job, ID number and address of the applicant and the respondent (in the case of the applicant or the respondent is a legal person or other organization, the name, address and legal representative of the legal person or other organization, as well as the name and title of the principal person in charge) and communication mode;
- The case number or identification data and effective date of the arbitration award, arbitration compromise agreement or arbitration mediation agreement;
- Request and reasons thereon;
- Information about the location of the property of the respondent, the status of the property and the execution of the arbitration award under the application for recognition; and
- Other information that should be stated as required.

Part XI Recognition and Enforcement of Foreign Arbitration Award

1. Scope of Award

Parties may, in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the 1958 New York Convention), apply for the recognition of a foreign arbitration award. This Convention shall only apply to the disputes arising from contractual and non-contractual commercial legal relationship. "Contractual and non-contractual commercial legal relationship" specifically refers to the economic rights and obligations resulted from contract, infringement or arising according to law, such as sale of goods, lease of property, project contracting, processing, technology assignment, equity joint venture, cooperative joint venture, exploration and development of natural resources, insurance, credit, labor service, agent, consultation service, marine/civil aviation/railway/road passenger and cargo transportation, product liability, environment pollution, marine accident, dispute over ownership, etc., and it does not include the dispute between foreign investors and the host government.

2. Time Limit

The time limit applicable to applications to execute a decision is two years, and shall commence from the last day of the time limit for satisfaction of the decision specified in the arbitration award; where the arbitration award provides for satisfaction of the decision in stages, the time limit shall commence from the last day of the period for satisfaction of the decision at each stage; where the arbitration award does not provide a time limit for satisfaction of the decision, the time limit shall commence from the date of receipt of the original document or the certified copy of the arbitration award.

3. Jurisdiction

The party may apply to the intermediate people's court at the place of domicile, the place of residence, the place where its main administrative office is located or the locality of the property of the party against whom the application for admission and enforcement is filed.

4. Application Materials

To obtain the recognition and enforcement, the party shall, at the time of the application, supply:

- The duly authenticated original award or a duly certified copy thereof;
- The original agreement or a duly certified copy thereof.
- If the said award or agreement is not made in Chinese, the party shall produce a translation of these documents into Chinese. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

5. Procedures

Where a party concerned applies for recognition and enforcement of a foreign arbitration award in accordance with Article 4 of the New York Convention, the court that accepts the application shall render a decision within two months of accepting the application. Where no special circumstances occur, the enforcement shall be accomplished within six months of the decision being rendered. Where the court decides to refuse the recognition and enforcement, it shall report to the Supreme People's Court within two months of acceptance of the application.

6. Grounds of Refusal

The Supreme People's Court prescribed that as long as there is no fact in the case that matches circumstance in Article 5 of the 1958 New York Convention, the court should recognize and enforce such arbitration award.

According to Article 5 of the 1958 New York Convention, recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article 2 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

7. Statistics

As of 31 December 2018, according to the judgements published on China Judgement Online (the official website publishing court judgements) on the recognition and enforcement of foreign arbitral award, there are 95 cases where the court issued a decision. Among these cases, 88 foreign arbitral awards were recognized and enforced while 7 were refused based on Article 5 of the 1958 New York Convention.

Among the 7 cases that was refused by the courts:

- 2 cases involve circumstances where “the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties”;
- 2 cases involve circumstances where “the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration”;
- 2 cases involve circumstances where “the arbitration agreement is not valid under the law to which the parties have subjected it”;
- 1 case involve circumstances where “the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case”.

Part XII Court Fees

Although litigation in China is relatively cheap and fast by international standards, various costs associated with legal proceedings become an important consideration for a party to raise an action. Costs of foreign-related litigation proceedings may mainly include the following:

- court fees including acceptance fee, perseverance fee, and application fee for recognition and enforcement, etc;
- legal fees plus any disbursements payable to legal counsel;
- costs associated with preparing evidence, including those required for translating and notarizing any non-PRC documents

The court fee shall be paid by the plaintiff in advance, which will heavily depend upon whether the action relates to property. The court fee will be calculated on a scale according to the value of the disputed property for a property-related case or the fixed fee will be charged for non-property case. The table below summarizes the current fees relevant to foreign-related civil and commercial cases:

Acceptance fees (RMB)		
Property-related actions	below 10,000	50
<i>The fee is calculated on a scale according to the value of the disputed</i>	between 10,000–100,000	equivalent to 2.5% property value
	between 100,000 – 200,000	equivalent to 2.0% property value

<i>property</i>	between 200,000–500,000	equivalent to 1.5% property value
	between 500,000–1,000,000	equivalent to 1.0% property value
	between 1,000,000–2,000,000	equivalent to 0.9% property value
	between 2,000,000–5,000,000	equivalent to 0.8% property value
	between 5,000,000–10,000,000	equivalent to 0.7% property value
	between 10,000,000–20,000,000	equivalent to 0.6% property value
	above 20,000,000	equivalent to 0.5% property value
Non-property actions		50-100
Intellectual property actions		500-1,000 if there is no disputed value of the property (otherwise, the rules on property-related actions apply)

Labor actions		10
Administration actions		50 (100 if case involves trademarks or patents)
Application fees (RMB)		
Enforcement/ Recognition and Enforcement	without property value	50-500
	below 10,000	50
	between 10,000-500,000	equivalent to 1.5% property value
	between 500,000-5,000,000	equivalent to 1.0% property value
	between 5,000,000-10,000,000	equivalent to 0.5% property value
	above 10,000,000	equivalent to 0.1% property value
Failed objections to jurisdiction		50-100

Preservation	below 1,000	30
	between 1,000-100,000	equivalent to 1.0% property value
	above 100,000	equivalent to 0.5% property value
	The total fee shall not be beyond 5,000.	
Court order to annul or recognise the effectiveness of an arbitration agreement	400	

Part XIII Special Risk Indication in Foreign-related Civil and Commercial Cases

By reason of foreign elements, foreign-related civil and commercial litigation has many special risks other than common civil litigation as follows:

- The long period of litigation

Because the legal time limit of each stage of the proceedings of foreign-related civil and commercial litigation is longer than domestic litigation typically, and there are many uncertainties in the service of overseas documents, the actual time for foreign-related civil and commercial litigation might be much longer than domestic litigation;

- Difficulties in overseas service

Effective service is deemed as the precondition of initiating a lawsuit. Parties shall consider the possibility hereof when they file a suit.

- The enforcement of judgments may be difficult

If a foreign defendant does not have any domestic property which can be carried out by distraining and executing, the judgment cannot be executed in China.

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