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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 also is increasingly containing more and more elements borrowed from common law. Although heavily criticized by many western scholars for lack of transparency, China's legal system has been separated from the legislative and administrative branches for more than three decades and has made great strides in its development.

1) People's Congress

In accordance with the Constitution Law of the People's Republic of China 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 further down at the local level.

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 above noted, 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 the 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 regulations and independent regulations.

5) International Treaties

In practice, the international treaties cannot automatically incorporate as part of the 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 the 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 organisations. 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 legal fact that brings forth, changes or terminates certain legal relationship that take place in a foreign jurisdiction; or
- any subject matter located in a foreign jurisdiction.

If the litigation party, legal fact, or subject matter of a civil and commercial case bears any elements from Hong Kong, Marco 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. Designated Jurisdiction System

In February 2002, the Supreme People's Court issued the *Rules on Certain Issues Relating to Jurisdiction over Proceedings of Foreign-related Civil and Commercial Cases* in order to implement designated jurisdiction over special foreign-related cases in China. In accordance with these *Rules*, the first-instance jurisdiction of foreign-related civil and commercial cases shall be governed by the following people's courts:

- People's courts located in the economic and technological development areas approved by the State Council;
- Intermediate people's courts located in the provincial capital municipalities, the capital municipalities of autonomous regions and municipalities directly under the Central Government;
- Intermediate people's courts located in the special economic zones and municipalities directly under state planning;
- Other intermediate people's courts designated by the Supreme People's Court; and
- Higher people's courts.

Following these above *Rules*, the Supreme People's Court successively designated some intermediate and basic people's courts to govern the first-instance jurisdiction over foreign-related civil and commercial cases.

3. 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> <ul style="list-style-type: none"> • the place where the contract was executed or performed, • the place where the subject matter is located, the place where the distrainable property is located, • the place where the tort was committed, • the place where the representative office is domiciled if the contract was executed or performed within the PRC, • the place where the subject matter is located within the PRC, • the place where the defendant has distrainable property within the PRC, or • the place where the defendant maintains a representative office within the PRC.
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.
Choice of 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 place if a real connection between their dispute and the location exists. • If they choose to come under the jurisdiction of the PRC people's court, such choice shall not violate the provisions concerning level or exclusive jurisdiction under the Civil Procedure Law.
Jurisdiction in Relation to arbitration	<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.
Jurisdiction in relation to the recognition and enforcement of civil and commercial decisions made by foreign courts	<ul style="list-style-type: none"> • The dispute shall be governed by the people's court in the place where the applicant resides or the place where the property is situated. • If a defendant does not object to the jurisdiction of a people's court and replies to the claims, the defendant shall be deemed to have recognized the jurisdiction of such people's court.

4. Scope

The *Rules* mentioned above are only applicable to foreign-related civil and commercial cases rather than any foreign-related disputes of marriage, family and/or employment. Clearly, the *Rules* are not applicable to any cross-border trade disputes taking place in provinces that border the country with which trade is taking place, foreign-related real estate disputes and foreign-related intellectual property disputes. The *Rules on Certain Issues Relating to Jurisdiction over Proceedings of Foreign-related Civil and Commercial Cases* are applicable to foreign-related civil and commercial suits as follows:

- Foreign-related contractual disputes, which refer to any foreign-related commercial disputes in relation to international sales of goods, services, investments, loans, insurance, negotiable instruments, securities, leases, security, futures, trusts, joint-ventures and company operations, etc;
- Foreign-related tort disputes, which refer to any compensation claimed by an individual, legal entity or other organization for the interest in property damaged in the course of foreign-related business;
- Letter of credit disputes, which refer to any disputes regarding the opening and performance of letters of credit among parties in the course of international trade;
- Application for the cancellation, recognition or enforcement of international arbitral decisions;
- Application for verifying the binding force of foreign-related civil and commercial arbitration clauses; and
- Application for the recognition or enforcement of civil and commercial decisions made by foreign courts.

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 basis of evidence, proof objects and evidence contents. The evidence list is signed or chopped by the plaintiff and the 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 basis of the evidence, proof objects and evidence contents. 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 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

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.

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.

In addition to the juridical reliefs of first instance and appeal, the retrial procedure specified by the amended Civil Procedure Law in 2007 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 evidence required to try 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 jurisdiction was in breach of the law;
- 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 argue the case;
- 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 legal documentation relating to the original judgment or order has been cancelled or amended.

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 the retrial to be approved 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.

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.

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 ad litem appointed by the party to be served and authorized to accept service on his 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 when 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 respondent'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, he 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.

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 Foreign Judgments

1. Recognition and Enforcement of Judgments of HKSAR courts

In accordance with 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, the term "judgments" to be recognized and enforced herein includes judgments, orders and legal cost appraisal certificates in the HKSAR, and must satisfy the following requirements:

- The judgments are effective and enforceable, which are made by the Court of Final Appeal or the Court of Appeal of the High Court, the Court of First Instance of the High Court or the District Court;
- The judgments are made by the District Court in accordance with a jurisdiction agreement between the parties; "jurisdiction agreement" as used herein refers to an agreement concluded after August 1, 2008 by the parties concerned which expressly stipulates in writing that a HKSAR court has exclusive jurisdiction over any dispute related to a civil or commercial contract between the parties concerned that occurred or may occur.
- The judgments shall be made after August 1, 2008.

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. 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.

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;
- A counterpart of the final judgment affixed with the seal of the court which made the final judgment;
- A supporting document issued by the court which made the final judgment, proving that the said judgment is a final judgment and it can be enforced at the place where it is made;
- Identity documentation:(1) In the case of an individual, the identity card or a notarized photocopy thereof shall be submitted; (2) In the case of a legal entity, a notarized photocopy of its registration certificate shall be submitted; and(3) In the case of a foreign legal entity, appropriate notarization and authentication materials shall be submitted.

2. Recognition and Enforcement of Judgments of MCSAR courts

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 effective since April 1, 2006. "Judgments" shall also include judgments and verdicts regarding civil damages awarded in criminal cases.

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.

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.

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 was been lawfully delivered, unless it is demonstrated in the judgment.
- Persons legally incapable of participating in legal proceedings had an agent ad litem, 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

Generally speaking, the civil judgments made by courts of Taiwan Region to be recognized by the people's courts shall include the judgments for civil disputes concerning business, intellectual property, admiralty, etc.

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.

An applicant shall submit a written application together with the original copy or a verified duplicate of the civil judgments that are rendered by courts in Taiwan and other supporting documents that do not violate the one-China principle.

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 ad litem;
- 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;
- 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 IX Recognition and Enforcement of Foreign Arbitration Awards

1. Recognition and Enforcement of Arbitration Award made in HKSAR

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 than two 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.

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

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.

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

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.

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.

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 the locality of the property of the party against whom the application for admission and enforcement is filed.

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.

The application shall be refused if the recognition or enforcement of foreign arbitration award is contrary to the public policy of China.

Part X 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, perseveration 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)		
<p>Property-related Actions <i>The fee is calculated on a scale according to the value of the disputed property</i></p>	below 10,000	50
	between 10,000–100,000	equivalent to 2.5% property value
	between 100,000 – 200,000	equivalent to 2.0% property value
	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)

Acceptance fees (RMB)		
Labour 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 Recognize the effectiveness of an arbitration agreement	400	

Part XI 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 common litigation typically, and there are many uncertainties in the service of overseas documents, China has no restriction on trial length;

- **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 has not had any domestic property which can be carried out by distraining and executing, the judgment cannot be executed in China. If a party wants to realize the suit purpose, he may apply to a foreign court for enforcement. Hence, the costs should be seriously considered by parties when considering litigation.