



Manual For Civil and Commercial Litigation 2015

CHANCE BRIDGE

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INDEX

Part I Legal System	2
1. Overview	2
2. Sources of law.....	2
3. Public Law and Private Law	4
Part II Foreign-related Civil and Commercial Cases	5
1. Definition	5
2. Designated Jurisdiction System	5
3. Jurisdiction	6
4. Scope	8
Part III Basic Procedure	9
1. Acceptance of Actions.....	9
2. Pretrial Procedure	9
3. Trial Procedure.....	10
4. Judgment, Appeal and Retrial.....	11
Part IV Burden of Proof and Providing Evidence	13
Part V Service of Judicial Documents	15
Part VI Preservation	17
Part VII Regulations on Application of Law	18
Part VIII Recognition and Enforcement of Foreign Judgments	19
1. Recognition and Enforcement of Foreign Judgments.....	19
2. Recognition and Enforcement of Judgments of HKSAR courts.....	20
3. Recognition and Enforcement of Judgments of MCSAR courts	21
4. Recognition and Enforcement of Judgments of Taiwan courts.....	22
Part IX Recognition and Enforcement of Foreign Arbitration Awards	23
1. Recognition and Enforcement of Foreign Arbitration Awards	23
2. Recognition and Enforcement of Arbitration Awards made in HKSAR	23
3. Recognition and Enforcement of Arbitration Award made in MCSAR	24
Part X Court Fees	25
Part XI Special Risk Indication in Foreign-related Civil and Commercial Cases	27

Part I Legal System

1. Overview

The Chinese legal system is, in form, much more similar to the legal systems of continental Europe than to common law systems but increasingly incorporates more and more elements borrowed 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 made great strides in its development.

1) People's Congress

In accordance with the Constitution 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" and has the authority to enact laws binding over the entirety of China. Similarly, each Provincial People's Congress has the authority to issue provincial regulations and rules applicable to 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. Sources of law

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

The Constitution is deemed as the highest source of law in China. As noted above, the Constitution establishes the structure of the government. In addition it codifies the general principles of the government and of society and lists the fundamental rights and duties of the people of China.

2) Statutory Laws

Generally speaking, Statutory Laws constitute the most substantial part of the PRC law. As per 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 of the National People's Congress enacts regulations, decisions and resolutions. In 1991, the National People's Congress enacted the *Civil Procedure Law of the People's Republic of China* (the "Civil Procedure Law"), which was amended by the Standing Committee of the National People's Congress in 2007 and in 2012. The *Civil Procedure Law 2012* is the

most important statutory law governing the judicial procedure for a foreign-related civil and commercial case in China.

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, international treaties are not automatically incorporated into PRC law; they must be approved by the NPC Standing Committee. However, treaties can affect the interpretation of laws and regulations. If the PRC has made a reservation to a provision of a treaty, this aspect or provision of the treaty will not be implemented in PRC law.

6) Judicial Interpretations

Unlike common law jurisdictions such as England and the United States, law cannot be made by judges in China. However, the judicial interpretations issued by the Supreme People's Court are considered important resources because such interpretations can clarify or even fix unclear laws and regulations and are applicable to all courts in China. The Supreme People's Court has issued numerous judicial interpretations which govern the procedure for a foreign-related civil and commercial case in China. For example the Supreme People's Court issued the *Certain Provisions on Evidence in Civil Proceedings* and the *Certain Provisions Concerning the Service of Judicial Documents in Foreign-Related Civil or Commercial Cases*. In 2015, the Supreme People's Court issued the *Interpretation on the Application of the Civil Procedure Law of the People's Republic of China* (the "*Interpretation on the Application of the Civil Procedure Law 2015*"). Accompanied with the *Civil Procedure Law 2012*, the *Interpretation on the Application of the Civil Procedure Law 2015* creates the legal framework in relation to the judicial procedure foreign-related civil and commercial cases.

In addition to judicial interpretations, legal professionals have come to realize that judicial cases play a vital role in their practice. As a judicial reform measure, the Supreme People's Court consequently issued the *Provisions on Case Guidance* in 2010. In accordance with these Provisions, the Supreme People's Court aims to establish a legal framework in which certain judgments from Chinese courts would be selected and published as Guiding Cases, which, though not explicitly binding, are to guide the adjudication of subsequent similar cases and to ensure the uniform application of law in China. Since

then, the Supreme People's Court has periodically published guiding cases. Since 2011, the Supreme People's Court has published fifty two guiding cases.

3. Public Law and Private Law

In theory, 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/or 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 both litigation and alternative dispute resolution (ADR) including arbitration, mediation, etc..

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 PRC law, foreign-related civil and commercial cases are any cases involving foreign elements with respect to the party, the legal facts, or the subject-matter i.e. a case where:

- any party is a foreign individual, a non-state individual, a foreign legal entity or a foreign organization; or
- any legal fact that creates, modifies, or terminates a legal relationship took place in a foreign jurisdiction; or
- any of the subject matter located in a foreign jurisdiction.

The *Interpretation on the Application of the Civil Procedure Law 2015* further explicitly provides that a case shall be deemed a foreign-related civil case in the event of following circumstances:

- either or both parties involved in the case are foreigner individuals, non-state individuals, foreign enterprises, or foreign organizations;
- either or both parties involved in the case have their habitual residence outside the territory of the People's Republic of China;
- the subject matter involved is outside the territory of the People's Republic of China;
- the legal fact that creates, modifies, or terminates the civil relation take place outside the territory of the People's Republic of China; or
- any other circumstances in which a case may be deemed a foreign-related civil case

For the purposes of the above, Hong Kong, Macau, and Taiwan are considered foreign and/or outside the territory of the PRC.

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 designate what courts have jurisdiction in special foreign-related cases in China. In accordance with these *Rules*, the first-instance jurisdiction for foreign-related civil and commercial cases shall be governed by the following people's courts:

- People's courts located in economic and technological development areas approved by the State Council;
- Intermediate people's courts located in 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 *Rules*, the Supreme People’s Court has from time to time designated some intermediate and basic people’s courts as having the first-instance jurisdiction in foreign-related civil and commercial cases.

3. Jurisdiction

According to the *Civil Procedure Law 2012* 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 or habitual place of residence. • If the defendant in a foreign-related action replies to the claims filed but does not object to the jurisdiction of a people’s court, 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 a place where property that may be seized is located, • the place where the tort was committed, • a place with significant connection to the dispute, or • a place where the defendant maintains a representative office within the PRC.
Exclusive jurisdiction	<ul style="list-style-type: none"> • A dispute arising out of 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 people’s courts located in the place where the Sino-foreign equity joint venture or the Sino-foreign cooperative joint venture was registered • A dispute in relation to real estate shall be governed by the people’s court with territorial jurisdiction over the real estate. • A dispute in relation to port construction shall be governed by the people’s court with territorial jurisdiction over the port. • An inheritance dispute shall be governed by the people's court with territorial jurisdiction over the domicile of the deceased or where the majority of the estate is located.

Choice of jurisdiction	<ul style="list-style-type: none"> • The parties to a contract or a property transaction may designate, in writing, the place with jurisdiction if there is a significant connection between their dispute and the location. • If they choose to utilize the jurisdiction of people's court in the PRC, such choice shall not violate the provisions concerning which level of courts have jurisdiction 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 handled 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 handled 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 was 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 handled by the people's court in the place where the applicant resides or the place where the property is situated. • If the defendant in a foreign-related action replies to the claims filed but does not object to the jurisdiction of a people's court, the defendant shall be deemed to have recognized the jurisdiction of such people's court.

It should be noted that *forum non conveniens* rules are set forth by the *Interpretation on the Application of the Civil Procedure Law 2015*, by which states that a people's court may decline a foreign-related civil case and instruct parties to file it with a foreign court which is more convenient where the case satisfies all the following requirements:

- the defendant raises a request that the case shall be under the jurisdiction of a foreign court which is more convenient or raises an objection to the jurisdiction;
- there is no agreement on the choice of jurisdiction of a court of the People's Republic of China between the parties to the dispute;
- the case is not under the exclusive jurisdiction of a court of the People's Republic of China;
- the case does not involve the interests of the State, citizens, legal persons or other organizations of the People's Republic of China;
- the major facts over which the case has disputes did not occur within the territory of the People's Republic of China, the laws of the People's Republic of China are not applicable to the case, and there will be significant difficulties in the determination of facts and application of law; and
- a foreign court has jurisdiction of the case, and it is more convenient for the foreign court to hear the case

4. Scope

The *Rules on Certain Issues Relating to Jurisdiction over Proceedings of Foreign-related Civil and Commercial Cases* are only applicable to foreign-related civil and commercial cases rather than any foreign-related disputes of marriage, family and/or employment.. The *Rules* are also 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 refers 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 refers 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 2012* when a foreign-related action is filed with the people's court with proper jurisdiction, the following materials must be included:

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

In practice, the plaintiff files an exhibit 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 the 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.

The Supreme People's Court issued the *Opinions on Carrying out Reform concerning the Case Filing Registration System in People's Courts* in 2015. In accordance with the *Opinions* a civil and commercial case shall be accepted where there are definite defendants and specific claims and facts, when case is initiated by any individual, legal person and other organization who has a direct interest in the case, when the case falls within the governance of the people's courts and when the case falls under the jurisdiction of the people's courts accepting the same. However, a case shall not be acceptable in any of the following circumstances:

- the case is launched illegally or fails to satisfy the conditions for initiation of a case;
- the proceedings have been concluded;
- involving harming to national sovereignty and territorial integrity, endangering national security, undermining national unification and ethnic unity, and undermining national religious policy; and
- the dispute cannot be governed by the people's court.

2. Pretrial Procedure

The people's court shall issue the Notice in Response to the Action and the Notice for the Production of Evidence, which requests that the defendant reply to the claims with relevant evidence within a fixed period of time. The defendant is also requested to file an exhibit 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 the action. In some cases, the people's court may arrange a pretrial conference for the exchange of evidence if the people's court feels it necessary or the parties apply for one.

PRC law allow a foreign party in a foreign-related civil and commercial case to either entrust a PRC lawyer or his home country lawyer in the proceedings. Furthermore, PRC law allow the foreign party to entrust its national or an officer of embassies or consulates in China to serve as the agent *ad litem*. However if they choose to do so, the foreign party is not entitled to any diplomatic or consular privileges and immunity in the proceedings.

A foreign individual shall submit his/her passport and other credentials proving his/her identity to a people's court in order to participate in the proceedings. Identity certificates submitted by a foreign enterprise or organization participating in the proceedings shall be notarized by a notary organ in the country where the enterprise or organization is located and authenticated by the embassy or consulate of the People's Republic of China in the country, or the enterprise or organization shall go through the identity certification formalities as stipulated in the relevant treaty concluded by and between the People's Republic of China and the country.

The agent *ad litem* of a foreign enterprise or organization shall submit a power of attorney indicating that he/she has the right to serve as the representative of the foreign enterprise or organization to participate in the lawsuit. The power of attorney must specify the subject matter and limits of authority granted. An authorized by the power of attorney, can grant the agent *ad litem* the authority to admit, waive or modify claims, to compromise, to file a counterclaim, or to lodge an appeal on behalf of his or her principal. The power of attorney shall either be notarized by a notary organ in the country where the foreign enterprise or organization is located and authenticated by the embassy or consulate of the People's Republic of China in the country, or the person shall go through the identity certification formalities as stipulated in the relevant treaty concluded by and between the People's Republic of China and the country. Alternatively, the power of attorney shall be signed by a representative of the foreign party involved in a lawsuit and witnessed by a judge of a people's court.

3. Trial Procedure

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

- The presiding judge shall check that the parties are 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 evidence is 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 a written decision shall be issued to both parties. Normally, a first instance case shall be concluded within six months of accepting 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 does not satisfy either party, the case may be appealed and the appeals procedure, which is similar to the first instance procedure, shall govern. In accordance with the *Civil Procedure Law 2012*, 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. In addition an appeal case against a ruling shall be made within 30 days from the acceptance date of second instance.

In addition to the procedures for first instance and appeal described above, the *Civil Procedure Law 2012* also allows for a party to file for a retrial in any of the following circumstances:

- 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 should have recused himself or herself 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 a 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

A 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 defence to the claim(s) of the counterparty are based except for the facts as below:

- laws, natural laws, and theorems;
- facts that are known to all people;
- facts that are induced as per legal provisions;
- other facts that are induced as per known facts and routine experience and principles;
- facts that have been ascertained in a judgment of a people's court that has taken effect;
- facts that have been affirmed in the award of an arbitration institution that has taken effect; and
- facts that have been proved in valid notarial documents.

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. In accordance with the *Civil Procedure Law 2012* the following categories of evidences may be utilized:

- documentary evidence;
- physical evidence;
- audio-visual materials;
- electronic data;
- testimony of witnesses;
- expert opinions; and
- written records of inspections and examinations

Any of the above-mentioned evidence must be verified before it can be taken as a basis for ascertaining facts.

The parties to a case shall submit evidence to the people's court within the allotted time period for producing evidence. In accordance with the previous *Certain Provisions on Evidence in Civil Proceedings* 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 shall be 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.

However, the 30-day period for producing evidence is shortened by the *Interpretation on the Application of the Civil Procedure Law 2015*. In accordance with the *Interpretation on the Application of*

the Civil Procedure Law 2015 the period for adducing evidence determined by a people's court for a case of ordinary procedure at first instance shall not be less than 15 days, whereas in the case of appeals, the period shall be not less than ten days. After the expiration of the period for adducing evidence, where a party concerned applies for the provision of rebuttal evidence or correction of defects regarding a source of evidence, form, or other action regarding evidence previously provided, a people's court may determine the period for adducing evidence again at its discretion (not subject to the restrictions set out above).

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 the 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 or translation.

Part V Service of Judicial Documents

Because the service of judicial documents in foreign-related cases, through bilateral judicial assistance or the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention on Service) is time-consuming, what constitutes necessary and reasonable time will be determined 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, if 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 as much of the above information as possible.

In accordance with the *Civil Procedure Law 2012*, a people's court may serve the judicial documents on a party without a domicile within the territory of China in the following ways:

- service as per a treaty concluded between or acceded to by the state of the person to be served and the People's Republic of 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 a delivery receipt is not returned within three 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;
- service by facsimile, e-mail and any other means through which the receipt of the document may be acknowledged; 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 three months have elapsed since the date of the public announcement

The Interpretation on the Application of the Civil Procedure Law 2015 further sets forth where a foreign individual, an executive of a foreign enterprise or organization is within the territory of China, a people's court may serve the litigation documents on such foreign individual or the executive of the foreign enterprise or organization. In this context, executive refers to a director, supervisor or senior manager of the enterprise or organization.

Part VI Preservation

Due to the possibility 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 to be carried out by sealing up, seizing, freezing or other methods as provided by law.

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

- A guarantee shall be provided by the applicant that is 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;
- The applicant shall pay the appropriate fee as set out by the regulations.

After ruling to take the preservation measure, a people's court shall make a preservation removal ruling in the event of any following circumstances:

- the preservation is wrong;
- the applicant revokes the application for preservation;
- the lawsuit or claim of the applicant is overruled by a valid judgment; and
- other circumstances under which the people's court deems that the preservation shall be removed.

To remove a preservation measure implemented by way of registration, a notice requesting assistance with execution shall be issued to the relevant registration authority.

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 trial. If the law of a foreign jurisdiction is chosen by the parties through consensus the substantive law of the relevant country or region, excluding its conflict of law rules and procedural law, shall apply. 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 contracts;
- sino-foreign cooperative joint venture contracts;
- sino-foreign cooperative contracts 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 contracts 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 agreements by a foreign individual or legal entity for acquiring the shares 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 agreements by a foreign individual or legal entity for purchasing assets of a domestic company; and
- any contract mandatorily 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, as much as possible, provide related foreign laws, including foreign statutory laws, legal precedents, and provide the related legal literature, legal introductory information and expert opinions. The parties may submit the above materials through the legal experts, legal service agency and self-regulatory organizations, international organizations, the internet, etc. If 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 Foreign Judgments

A foreign investment between China and other countries grows, the issue of recognition and enforcement of foreign judgments has, in recent years, become a very important and is prominent and is a prominent topic in Chinese legislation and practice.

The *Civil Procedure Law 2012* provides that if a legally effective judgment or ruling made by a foreign court requires recognition and execution by a people's court, the party concerned may directly apply for recognition and execution to the intermediate people's court of the People's Republic of China which has jurisdiction. Alternatively, the foreign court may, pursuant to the provisions of an international treaties concluded between or acceded to by the foreign states and the People's Republic of China, or in accordance with the principle of reciprocity, request that the people's court recognize and execute the judgment or ruling. Having received an application or a request for recognition and execution of a legally effective judgment or ruling of a foreign court, a people's court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity. If, upon such review, the people's court considers that such judgment or ruling neither contradicts the basic principles of the law of the People's Republic of China nor violates State sovereignty, security or the public interest, it shall rule to recognize the judgement's effectiveness. If execution is necessary, it shall issue an order of execution, which shall be implemented in accordance with the relevant provisions of law. If such judgment or ruling contradicts the basic principles of the law of the People's Republic of China or violates State sovereignty, security or the public interest, the people's court shall refuse to recognize and execute the judgment or ruling.

As to the procedure for recognition and enforcement of foreign judgments and rulings, the *Interpretation on the Application of the Civil Procedure Law 2015* further specifies that an applicant who applies to a people's court for recognition and enforcement of a legally effective foreign judgment or ruling shall submit an application with the original legally effective judgment or ruling or its authenticated counterpart and its Chinese translation attached thereto. Where the foreign judgment or ruling is a default judgment, the applicant shall, at the same time, submit proof evidencing that the foreign court has legally summoned the parties concerned to be present in court, unless it has already been explicitly explained in the judgment or ruling. Where an international treaty concluded or participated in by the People's Republic of China contains provisions on the submission of such documents, such provisions shall apply.

Under the *Interpretation on the Application of the Civil Procedure Law 2015* a people's court shall form a bench to review the application of recognition and enforcement of a foreign judgment or ruling. The people's court shall serve an application duplicate on the party against whom the application is filed and the party against whom the application is filed may state his opinions. For a ruling rendered by a people's court after review, once it is served on the party concerned, it shall be legally effective immediately.

In accordance with the *Interpretation on the Application of the Civil Procedure Law 2015*, where a party concerned applies to a competent intermediate people's court for recognition and enforcement of a legally effective foreign judgment or ruling court and the country where the court is located has not concluded a relevant treaty and does not have reciprocal relations with the People's Republic of China, the intermediate people's court shall reject such application, unless the party applies to the people's court for enforcement of a divorce judgment which is rendered by a foreign court and is legally effective. However, a concerned party may file a lawsuit with a people's court where an application for recognition and enforcement is rejected,

2. 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) includes judgments, orders and legal cost appraisal certificates from the HKSAR. They must satisfy the following requirements:

- The judgment must be effective and enforceable from 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;
- 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 must have been rendered after August 1, 2008.

The time limit for a party to apply for the recognition and enforcement of a judgment of a HKSAR court is 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 concerned party may file an application with any of them but should file an application with more than one of them. 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.

3. 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 took effective after 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 is 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 with.

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.

4. 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 with.

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 evidence 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 submitted 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 has not been determined;
- The civil judgment in the application for recognition is rendered in the absence of the defendant who has not been lawfully summoned or those agents without legal capacity did not have an agent at litem.
- The case is under the exclusive jurisdiction of the people's courts;
- 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 Foreign Arbitration Awards

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 resulting from contract infringement or arising from the law, such as for transactions regarding the 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 is 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.

A 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 recognition or enforcement of foreign arbitration award is contrary to the public policy of China.

2. Recognition and Enforcement of Arbitration Awards 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 may choose to file at any of those people's courts but may not file in more than one of them.

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:

- An application for enforcement form;
- The arbitral award; and
- The arbitration agreement.

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

3. 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 either 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:

- An Application form;
- The identity certificate of the applicant;
- The arbitration agreement; and
- The 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.

Part X Court Fees

Although litigation in China is relatively cheap and fast by international standards, there are various costs associated with legal proceedings that should be considered. Costs of foreign-related litigation proceedings primarily 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 fees that the plaintiff needs to pay depend heavily on if the action related to property. For property cases, the fee is a percent of the value of the property in dispute, the rate of which decreases in a progressive manner; for non-property cases the fee is fixed. The table below summarizes the current fees relevant to foreign-related civil and commercial cases:

Acceptance fees (RMB)		
Property-related Actions <i>The fee is calculated on a scale according to the value of the disputed property</i>	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

The foreign elements involved in foreign-related civil and commercial cases lead to a number of risks unique to such cases. Some of these are:

- A long period of litigation

The time period for litigation is longer because the time limits of each stage of the proceedings are extended, there are many uncertainties in the service of overseas service, and because China has not limit on the length of a trial.

- Difficulties in overseas service

Effective service is deemed a precondition for initiating a lawsuit. Parties should consider the difficulties involved when considering filing 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. If a party wants to realize the purpose of the lawsuit, he may apply to a foreign court for enforcement. These costs should be seriously considered by parties when considering litigation.