

IN-DEPTH

Dispute Resolution

CHINA



LEXOLOGY

Dispute Resolution

EDITION 17

Contributing Editor

Damian Taylor

Slaughter and May

In-Depth: Dispute Resolution (formerly The Dispute Resolution Review) provides an indispensable overview of the civil court systems in major jurisdictions worldwide. It examines the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is also forward-looking, with astute analysis of likely future trends and developments.

Generated: February 20, 2025

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[Xiuqi Wang](#), [Ying Zeng](#) and [Qian Cao](#)

[Han Kun Law Offices](#)

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Introduction

The legal system of the People's Republic of China (the PRC) is primarily based on statutes, comprising the PRC Constitution, national laws, administrative regulations and local regulations. The Constitution serves as the foundation of the legal framework, with national laws forming the basis of various legal branches, including civil, commercial, administrative, criminal and procedural law. Administrative regulations are designed to implement the national laws and must not contradict them. Local regulations may be enacted to the extent not conflicting with national laws and administrative regulations, while special economic zones and ethnic autonomous regions are permitted to adapt certain provisions of national laws to suit their specific circumstances. Judicial interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate, though not considered as statutes, are binding authority in judicial practice.

Court litigation is the most common dispute resolution mechanism in the PRC. The court system is structured into four tiers: from the highest to the lowest, these are the Supreme People's Court, higher people's courts, intermediate people's courts and primary people's courts. Civil cases are subject to the jurisdiction of different levels of courts primarily based on the value of the disputed amount. In addition to this general structure, specialised courts have been established to address specific types of cases, including railway courts, maritime courts, intellectual property courts, financial courts and internet courts. Specialised courts are generally at the same level as intermediate people's courts.

In addition to court litigation, arbitration and mediation are the primary mechanisms for alternative dispute resolution in the PRC. These processes operate largely independent of the courts, with judicial intervention generally limited to reviewing the validity of arbitration agreements, and the enforcement of arbitral awards and certain mediation agreements.

Year in review

The past year has witnessed significant legislative development, which further provides regulatory guidance for cross-border dispute resolution.

The Civil Procedure Law of the PRC was amended in 2023 (the Civil Procedure Law). The amended law expands the jurisdiction of PRC courts, allowing them to hear cases that have a reasonable jurisdiction with the PRC subject to the court's own discretion.^[1] In addition, it permits the PRC courts to accept cases that have no connection with the PRC if the parties have chosen a PRC court as their forum of choice.^[2] The amended law also broadens PRC courts' exclusive jurisdiction to disputes relating to the establishment, dissolution, liquidation of companies registered in the PRC, as well as the validity of resolutions passed by such companies. The exclusive jurisdiction further extends to disputes relating to the validity of intellectual property rights granted in the PRC.^[3] However, the Civil Procedure Law respects parties' agreements to submit cases to the exclusive jurisdiction of foreign courts, provided that such agreements do not infringe upon the exclusive jurisdiction of PRC courts or violate public interests.^[4]

The amendments also clarify procedures for serving litigation documents to parties not domiciled in the PRC and for gathering evidence located outside the PRC.^[5] Further, the law explicitly provides that parties to an arbitration award rendered in the PRC may apply for recognition and enforcement of the award in a foreign court with jurisdiction,^[6] which aligns with Article I(3) of the New York Convention. For judgments rendered by foreign courts, the amended Civil Procedure Law clearly outlines the grounds on which PRC courts may refuse recognition and enforcement, including the foreign court's lack of jurisdiction (e.g., if it infringes upon the exclusive jurisdiction of PRC courts), the respondents not being properly served or not being given a fair opportunity to present their defence, and the judgment being obtained through fraudulent means, etc.^[7]

The Law of the PRC on Foreign State Immunity, which came into effect in January 2024 (the Foreign State Immunity Law) grants PRC courts the authority to supervise and review international investment arbitration in matters such as the validity of arbitration agreements, recognition and enforcement of arbitral awards, setting aside of awards and other issues as prescribed by law.^[8] This aligns with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the ICSID Convention).

Additionally, in January 2024, the Hong Kong Special Administrative Region enacted legislation to implement the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters of the Mainland and of the Hong Kong SAR signed in 2019 (the Arrangement). The new Arrangement broadens the scope of judgments that can be mutually recognised and enforced between Mainland and Hong Kong SAR courts. It now encompasses judgments of a 'civil and commercial' nature, covering both monetary and non-monetary relief, marking a substantial expansion beyond the previous system, which was limited to monetary relief judgments arising from civil and commercial contracts.

Court procedure

Overview of court procedure

Civil litigation follows a structured procedure outlined in the Civil Procedure Law. Each level of the PRC local courts follows a two-instance trial model. If a litigating party is unsatisfied with the judgment or ruling of the first instance, it has the right to appeal to a higher court; the judgment or ruling of the second instance is final. The two-instance trial model allows litigants to have their cases tried by two different courts and provides the courts with opportunities to correct potential errors in judicial judgments. This model applies to civil, criminal and administrative cases in general, while specific procedures may slightly differ.

Generally speaking, the court procedure in China could be divided into the following phases:

1. Case filing and the court's acceptance of the case. The plaintiff submits a written complaint to the court, which includes basic facts, evidence and legal basis. The court reviews the complaint to determine if it meets the requirements for acceptance. The court accepts the case by placing it on the docket.

2. Pretrial matters. After accepting the case, the court serves the defendant with a copy of the complaint. The defendant may submit a written defence to the complaint within the time limit prescribed by the court. The defendant may also challenge the jurisdiction of the court at this stage. Before trial, the court may collect evidence to facilitate fact investigation, instruct the parties to exchange evidence, outline the focus of the dispute, make mediation attempts and the like.
3. Trial of the first instance. A hearing is conducted by the court where the parties present their arguments, evidence and witness testimonies. The court later issues a judgment or decree based on the findings and legal analysis of the case. If the case is not appealed, the judgment or decree shall be final and binding to the parties.
4. Appeal. The parties have the right to appeal the judgment or decree to a higher court for review. The judgment or decree issued by the higher court shall be final and binding to the parties.
5. Enforcement. The court has the power to enforce the final judgment or decree if the parties do not voluntarily comply with it.

Procedures and time frames

Prior to trial, the court may adopt different case management measures based on the amount of the subject matter and the complexity of the case. The court typically applies an ordinary procedure outlined above, where, in accordance with the Civil Procedure Law, the court should conclude the case within six months after accepting the case. In the event of an appeal, the second instance shall be concluded within three months.

For cases with clear facts, well-defined contractual obligations and minimal disputes, the court may apply a summary procedure. Under a summary procedure, the case is tried by a single judge with a more flexible procedure, and the case is concluded within three months after the court accepts the case. Specifically for cases where the plaintiff seeks monetary relief with a relatively small amount, the court may apply a small claim procedure and conclude the trial within two months; however, foreign-related cases are not eligible to be conducted under a small claim procedure.

A case that qualifies for a summary procedure may be converted to an ordinary procedure if the court finds the case to be complex. However, once the ordinary procedure applies, the case cannot be converted back to a summary procedure.

During litigation and before the final ruling, a party may apply for interim measures to safeguard its legitimate rights. The available measures include asset preservation, prohibitory injunctions, mandatory injunctions and evidence preservation. The court may order the applicant to provide undertakings to cover potential losses incurred to the opposing party if the interim measures are later found to be unwarranted. In urgent events, the court is required to decide on whether to grant interim measures within 48 hours; upon granting the application, the court will execute its decision immediately.

Class actions

Representative action is a legal mechanism that allows a group of individuals with common interests to collectively file a lawsuit through selected representatives in China. Representative action is applicable to almost all types of civil and commercial cases, while it is most commonly seen in securities litigation based on securities fraud or misrepresentation, market manipulation or insider trading.

To initiate an ordinary representative action requires a minimum number of ten plaintiffs (the 'ordinary representative action'). After an ordinary representative action is filed, other similarly situated victims who suffered similar harm from the same illegal conduct may join the litigation if they register with the court (i.e., to 'opt in').

In securities litigation, the China Securities Investor Services Center (CSISC) can bring a representative action to the court, after obtaining more than 50 investors' authorisation (the 'special representative action'). In contrast to ordinary representative action, special representative action adopts an opt-out model that investors who do not want to participate in the action must expressly notify the court, otherwise the investors would be deemed to join the special representative proceeding.

In April 2023, the Shanghai financial court accepted a special representative case initiated by CSISC on behalf of investors against a technology company listed in the STAR-market. In December 2023, the parties reached a settlement during the litigation process. This case is outstanding for it marks the first special representative securities litigation that ends in the parties' settlement agreement.

Representation in proceedings

Natural persons can represent themselves in civil litigation, unless they lack the capacity to litigate, such as being underage or suffering from severe mental illness. Legal entities can also represent themselves in civil litigation, but their legal representatives must participate in the legal proceedings. Other entities such as registered sole proprietorship can make self-representation as well, with their principal participating in the legal proceedings.

Service out of the jurisdiction

For legal proceedings initiated in a PRC court, the Civil Procedure Law provides that the court can serve documents on party not domiciled in the PRC. The documents may be served by way of judicial assistance in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention) or bilateral treaties to which China is a contracting party. The court may also serve the documents through diplomatic channels, by embassies and consulates, by the served party's agent, by postal channels, by electronic means, by other methods that the served party agreed, or public announcement etc. The rules do not differ whether or not the documents are initiating proceedings.

The Civil Procedure Law amended in 2023 has introduced the following new methods for service on foreign entities outside the jurisdiction. For service on foreign individuals, if the individual is the legal representative or principal of a company registered in China that is also a co-defendant, the court may serve documents on that company. For service on any foreign company, the court may serve the documents on its legal representatives who are inside Chinese jurisdiction. In addition, to accelerate service on foreign parties, the Civil

Procedure Law also shortens the period of public announcement from three months to 60 days, meaning that the service is deemed to take effect after the expiry of 60 days from the date of public announcement.

Enforcement of foreign judgments

The Civil Procedure Law provides that Chinese courts can enforce a foreign judgment. A party may directly apply to the Chinese court with jurisdiction for recognition and enforcement of a foreign judgment either in accordance with the applicable bilateral treaty or international convention or based on the principle of reciprocity. In practice, a foreign judgment may be recognised and enforced in a single proceeding.

Assistance to foreign courts

Pursuant to the Civil Procedure Law, Chinese courts may provide judicial assistance to foreign courts in accordance with bilateral treaties or international conventions, including the Hague Service Convention and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention). Moreover, the Chinese courts' judicial assistance can also be provided through diplomatic channels or based on the principle of reciprocity. In any event, should such assistance undermine Chinese sovereignty, national security or public interests, the Chinese courts shall not provide such assistance to foreign courts.

Chinese courts may assist foreign courts in serving documents, collecting evidence or performing other judicial acts in aid of foreign court proceedings. Any foreign court requesting judicial assistance should send a letter of request to the Chinese court, specifying the judicial assistance requested. The letter of request and documents attached should be accompanied by translation in a Chinese or other language designated by applicable international treaties. In response to the request, the PRC court may either execute the request by means the foreign court specified or methods prescribed under applicable laws in the PRC.

Access to court files

The court usually publishes the final judgments or rulings on the internet. The documents published are available for public access, unless the case involves sensitive issues such as national secrets and personal privacy. However, the public cannot access the court files of ongoing proceedings.

Litigation funding

Third-party funding is sprouting in the field of civil and commercial dispute resolution in China, giving rise to numerous professional third-party funding institutions. However, the current regulations and judicial practices in China have not formed a consistent opinion on the validity of third-party funding agreements. The focus of disputes mainly centres on whether it is legally permissible for a third-party funder to intervene in the court proceeding or arbitration procedure through a funded party, and to what extent. Consequently, it is

controversial whether third-party funding is detrimental to judicial integrity or in violation of public order and good morals.

Legal practice

Conflicts of interest and Chinese walls

Conflicts of interest are generally managed internally by law firms. The Law of the People's Republic of China on Lawyers (the Law of Lawyers) and the Code of Conduct issued by the All China Lawyers Association (the Code of Conduct on Lawyers) provide several situations that may constitute a conflict of interest. Law firms are required to establish a system to review potential conflict of interest prior to any engagement. Where conflict of interest is identified, the law firm must recuse itself and refrain from taking on the case.

In practice, law firms typically avoid taking on cases that present conflicts of interest to ensure compliance with relevant laws and regulations. However, some firms may implement information barriers (firewalls) to manage and mitigate specific conflicts of interest.

Money laundering, proceeds of crime and funds related to terrorism

Under Chinese law, there is no express provision governing the PRC lawyers' responsibilities in relation to money laundering or protecting against dealing in the proceeds of crime or funds related to terrorism.

In general, Chinese lawyers shall keep confidential any circumstances and information acquired during their practice, which the client or others are unwilling to disclose. However, if the client's intended or ongoing activities are related to money laundering or terrorism and constitute crimes, the lawyer may not uphold confidentiality anymore and may have to report to the judiciary concerned.

Data protection

The protection of personal information in China is mainly regulated by the Personal Information Protection Law of the People's Republic of China and Data Security Law of the People's Republic of China. Cross-border data transfer is specifically addressed by regulations such as the Guidance on the Security Assessment of Outbound Data Transfers, Standard Contract for the Cross-border Transfer of Personal Information. The rules not only apply to personal information processing activities within the PRC, but also have an extraterritorial reach if entities outside the PRC process personal information of individuals in China.

Legal service usually involves processing personal information. In accordance with the above rules, law firms need to expressly indicate the purpose, manner and scope of processing and obtain the client's consent. If the law firm is to process sensitive personal information or forward the client's information to a third party, the law firm shall obtain the client's written or separate consent specifically for that processing activity in advance.

It is usual practice that the engagement letter signed by the law firm and its client will include a clause where the client consents to have their personal information processed by the law firm. To further delineate the scope of personal information to be processed or disclosed to a third party, the law firm and the client may further enter into a confidentiality agreement or non-disclosure agreement.

In terms of cross-border data transfer, information concerning national security or personal sensitive information may have to undergo assessment or record-keeping procedure before it can be shared with foreign entities such as law firms and legal processing outsourcers.

Documents and the protection of privilege

Privilege

Under Chinese law, there is no concept precisely analogous to 'attorney-client privilege' as in common law jurisdictions. The Law of Lawyers and the Code of Conduct on lawyers issued by the All China Lawyers Association do specifically provide for the lawyers' confidentiality obligation. It is stipulated that lawyers shall maintain the confidentiality of state secrets, trade secrets and the client's privacy acquired during the legal practice. Lawyers should also keep confidential any information and facts that the client does not wish to be disclosed, including the communication and documents arising and occurring between lawyers and their client.

Chinese lawyers' confidentiality obligation does not apply to facts and information indicating the client or others are preparing or committing crimes that threaten national security, public safety or seriously endanger others' personal safety. Should any of the above information surface, lawyers must report such information to the judiciary concerned.

Nonetheless, the aforementioned rules of privilege only apply to facts and information acquired by qualified Chinese lawyers during their legal practice. Accordingly, in-house lawyers not admitted to the Chinese bar do not fall within the scope of the rules, but foreign lawyers from law firms duly registered in China are also subject to the confidentiality obligation.

Production of documents

Civil litigation in China has no equivalent practice to document production or discovery as in common law jurisdictions. Instead, there is a process called evidence exchange governed by the Civil Procedure Law and the Provisions by the Supreme People's Court on Evidence in Civil Procedures (the Evidence Rules).

In principle, each party must provide evidence in its possession to support their own claims or defences. The evidence submitted to the court may take the form of documentary evidence, physical evidence, audio-visual evidence, electronic evidence, witness statement, expert opinion and inspection record. The evidence should be

submitted in its original forms, while copies or reproduced versions are allowed if the originals are hard to provide.

However, if certain evidence is inaccessible to the party who bears the burden of proof, the court may order the holder to provide evidence in its possession. A party may apply for the court's assistance in collecting evidence from the other party. The court may exercise its discretion over such application, but it inclines not to grant the application if any of the following conditions is satisfied: (1) the evidence to be provided is not clearly identified; (2) the fact is not relevant or necessary for proving the fact; (3) the fact to be determined has no substantial impact on the outcome of the case; or (4) the evidence is not in the other party's possession.

Generally, the parties can only petition the court to collect evidence controlled by the other party rather than a third party outside the litigation. To decide whether the evidence is under the other party's control, the court will make a comprehensive assessment based on detailed case facts and trade customs. In practice, the court may order the other party's subsidiary to provide evidence relevant to the case facts, provided that the subsidiary is under actual control of the other party.

For evidence stored overseas, the court can collect evidence through diplomatic channels or in accordance with the bilateral treaties or international conventions between China and the country where the evidence is located. If not prohibited by the country where the evidence is located, the court may also collect evidence through Chinese embassies or consulates in that country, or through instant communication tools and other methods agreed by the parties.

Alternatives to litigation

Overview of alternatives to litigation

Arbitration and mediation are the two primary alternatives to litigation, offering flexible solutions tailored to the parties' needs in dispute resolution. Arbitration, in particular, is widely favoured for commercial disputes due to its efficiency, flexibility and confidentiality. Both arbitral awards and mediation agreements are binding on the parties involved, and arbitral awards and court-confirmed mediation agreements are enforceable.

Arbitration

According to a report issued by the Supreme People's Court in 2023, arbitral institutions in China have handled over 5 million cases, involving parties from more than 100 countries and regions worldwide, covering a wide range of disputes such as international trade, construction and intellectual property.^[9]

Arbitration in China is governed by the Arbitration Law of the People's Republic of China, amended in 2018 (the Arbitration Law). Under the framework of Arbitration Law, both domestic and foreign-related arbitration must be conducted under the administration of a registered arbitral institution. Major arbitral institutions in China include the China International Economic and Trade Arbitration Commission (CIETAC), Beijing Arbitration

Commission (BAC), Shanghai International Economic and Trade Arbitration Commission (SHIAC) and Shenzhen Court of International Arbitration (SCIA), all of which are capable of handling domestic as well as foreign-related arbitration.

Arbitral awards are final and binding and are not subject to appeal. However, a party to the arbitration may still challenge an award by requesting the court with jurisdiction to set it aside or refuse enforcement. The grounds for challenging an award are limited, including the absence of an arbitration agreement, arbitration beyond the scope of the arbitration agreement, improper constitution of the arbitral tribunal, violation of due process, corruption or misconduct, concealment of evidence and violation of public interests.

As a signatory party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), foreign arbitral awards may be enforced in China. Upon application by a requesting party, the court with jurisdiction will review the award. Generally, courts are inclined to recognise and enforce foreign arbitral awards, unless any of the circumstances outlined in Article V of the New York Convention are present.

Overall, arbitration is growing in the PRC, supported by a judiciary that takes a positive stance towards arbitration. Courts tend to uphold the validity and enforceability of arbitral awards and provide adequate assistance in asset preservation to facilitate enforcement. The Arbitration Law is also undergoing revision to better address practical needs.

Mediation

As an alternative to litigation and arbitration, parties may resort to mediation in order to resolve their disputes amicably. Mediation can take place both during and independently of litigation or arbitration.

When conducted during litigation or arbitration, mediation is administered by the court or arbitral tribunal, in accordance with the Civil Procedure Law and the Arbitration Law. In practice, parties are always encouraged to settle their disputes through mediation, as it often leads to a more amicable resolution of the case. Mediation verdicts and arbitration awards based on settlement agreements are equally enforceable as court judgments.

Mediation can also take place outside the context of litigation or arbitration. The Mediation Law of the PRC (the Mediation Law) governs mediation of civil disputes conducted by people's mediation committees and administrative departments. A mediation agreement is binding on the parties involved, similar to a contract. However, if the parties wish to enforce the mediation agreement, they must first obtain judicial confirmation of the agreement from the courts.

There are also several commercial mediation institutions in China, with prominent ones including the China Council for the Promotion of International Trade (CCPIT) and the China Chamber of International Commerce (CCOIC). In July 2024, the CCOIC released its institutional rules on mediation. The rules introduce the concept of commercial mediation as outlined in the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention) and explicitly recognise the Singapore Convention as the basis for seeking enforcement and relief, highlighting their alignment with and consistency with the provisions of the Singapore Convention.

Special considerations

In November 2024, Shanghai Financial Court recognised a judgment from the Delaware Court of Chancery involving securities fraud, of which the damages granted exceed US\$44 million.^[10]

The Shareholder and investor (the Investor) of a previously NASDAQ-listed Chinese company (the Company) filed a lawsuit against the Company in the Delaware Court of Chancery, alleging the Company conducted fraudulent securities activities. Subsequently, the Investor also sought to hold the Company's chairman, who violated fiduciary duties, severally and jointly liable with the Company. The Delaware Court of Chancery rendered a default judgment in favour of all claims made by the Investor. In 2019, the Investor applied to Shanghai Financial Court for recognition of the judgment.

In this case, Shanghai Financial Court held that, although no judicial treaty exists between China and the United States, China's courts' civil and commercial judgments may be recognised and enforced under Delaware legislation; furthermore, no Delaware court has refused to recognise or enforce China's courts' judgment. Shanghai Financial Court therefore concluded that China and the United States share a reciprocal relationship in law, and accordingly, recognised the judgment rendered by the Delaware Court of Chancery.

This case marks the first instance in which PRC courts recognise foreign judgments regarding disputes in finance, securities and capital markets. Shanghai Financial Court's ruling not only reflects PRC courts' tendency to recognise and enforce foreign judgments, but also demonstrates PRC courts' firm stance against securities fraud and commitment to protecting both international and domestic securities investors.

Outlook and conclusions

The future development of dispute resolution in China is bound to be shaped by legal reforms aimed to improve efficiency and align with international practices.

The Civil Procedure Law has been refined to address issues in foreign-related civil litigation, including jurisdiction, evidence collection and the enforcement of foreign court judgments. Meanwhile, a draft amendment to the Arbitration Law is under review, reflecting a growing trend towards further integration with international practice. The amendment aims to introduce the concept of arbitration seats and recognise the arbitral tribunal's authority to issue interim measures.

Overall, dispute resolution in China is evolving into a more diversified, specialised and internationally oriented system. The regulatory framework is also improving to better address the increasingly complex business environment and commercial disputes.

Endnotes

- 1 Article 276, Civil Procedure Law. [^ Back to section](#)
- 2 Article 277, Civil Procedure Law. [^ Back to section](#)
- 3 Article 279, Civil Procedure Law. [^ Back to section](#)
- 4 Article 280, Civil Procedure Law. [^ Back to section](#)
- 5 Articles 283 and 284, Civil Procedure Law. [^ Back to section](#)
- 6 Article 297, Civil Procedure Law. [^ Back to section](#)
- 7 Article 300, Civil Procedure Law. [^ Back to section](#)
- 8 Article 12, Foreign State Immunity Law. [^ Back to section](#)
- 9 Annual Report on Judicial Review of Commercial Arbitration by the Supreme People's Court (2023), <https://www.bjac.org.cn/news/view?id=4939>. [^ Back to section](#)
- 10 Han Kun Law Offices represents the plaintiff in this case. [^ Back to section](#)



Xiuqi Wang
Ying Zeng
Qian Cao

xiuqi.wang@hankunlaw.com
ying.zeng@hankunlaw.com
qian.cao@hankunlaw.com

[Han Kun Law Offices](#)

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