

Legal 500 Country Comparative Guides 2024

China Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in China.

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China: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

Litigation: Litigation is the most common method of dispute resolution. When other non-litigation based methods fail to resolve disputes, parties may seek legal relief by filing a lawsuit in the people's court.

Mediation: People's mediation is a unique non-litigation dispute resolution method in China, where the people's mediation committee persuades and guides parties to voluntarily reach a mediation agreement through equal consultation, effectively resolving civil disputes. Many civil and administrative cases accepted by the people's courts are resolved, either through court mediation or people's mediation after being filed. When parties reach a mediation agreement, they may request the court (or arbitral tribunal) to issue a mediation statement, which has the same enforceability as a judgment. In recent years, the Supreme People's Court and the Ministry of Justice have both been emphasising the foundational role of people's mediation in dispute prevention, promoting the control of litigation sources and the application of diverse methods for resolving disputes.

Arbitration: Arbitration, as an efficient dispute resolution method, plays a significant role in commercial disputes. China supports and incentivises the use of arbitration through legislation and judicial practice.

2. What are the main procedural rules governing litigation in your jurisdiction?

Civil Procedure Law of the People's Republic of China (Amended in 2023), Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Amended in 2022), and Several Provisions of the Supreme People's Court on Evidence for Civil Actions (Amended in 2019) are the primary procedural laws and regulations governing civil litigation in China.

The Civil Procedure Law has been continuously amended, with the 2023 revision focusing on aspects such as the extension of the court's jurisdiction over foreign-related litigation, the adoption of the forum non-convenience doctrine and flexible ways of service on foreign parties, the clearer standard for refusing to recognise and enforce

foreign judgments, the appointment of estate administrators and measures against false litigation.

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Court system structure: China's court system comprises the Supreme People's Court, local people's courts at various levels, and specialised people's courts. Local people's courts, based on administrative divisions, include primary people's courts, intermediate people's courts and higher people's courts. Primary people's courts handle most first-instance cases, while intermediate and higher people's courts handle more complex or significant first-instance and second-instance cases, typically involving greater economic interests or social impact.

Specialised people's courts, established based on specific organisational needs or particular types of cases, include intellectual property courts, financial courts, internet courts, etc.

China's civil litigation follows a two-instance trial system, but certain cases can conclude after the first instance (such as small claims cases, cases confirming mediation agreements and cases realising security rights). In general, parties dissatisfied with a first-instance judgment (or certain first-instance rulings) may exercise their right to appeal to a higher court. The Supreme People's Court, as the highest judicial authority, formulates judicial interpretations and supervises lower courts. However, due to the existence of the trial supervision regime, judgments issued by the Supreme People's Court, albeit final, can be overturned through retrial procedures in exceptional circumstances.

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

The duration from commencing civil litigation to trial typically ranges from one to three months, depending on the case specifics, court caseload, service efficiency and whether the case involves jurisdictional objections or pre-litigation mediation procedures.

According to the Civil Procedure Law, first-instance cases under ordinary procedures shall be concluded within six months from the date of placing the case on file, and second-instance cases shall be concluded within three months. However, based on case complexity and court scheduling, extensions may be necessary with approval from the court president. There are no trial time limits for foreign-related cases, and first and second-instance proceedings can often take two to three years in practice.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Civil cases should be conducted openly, with hearings and judgments generally accessible to the public. However, the documents submitted by parties during litigation are not available for public viewing. Over 22 million court sessions have been live-streamed on the China Court Trial Online since its establishment, with exceptions for cases involving state secrets, personal privacy, commercial secrets, divorce, etc.

Courts are required to publish judgments online in a comprehensive, timely and standardised manner, with the China Judgments Online serving as the unified platform. Representative judgments are also made public through the Supreme People's Court's case database. Judgments involving state secrets, juvenile crimes, divorce, mediation settlements, etc., are excluded from online publication. Judgments published on the internet should redact personal information, such as residential addresses, contact details, ID numbers, property information, bank accounts, commercial secrets and personal privacy.

6. What, if any, are the relevant limitation periods in your jurisdiction?

The statute of limitations of action for civil cases is generally three years, starting from when the right holder knows or should reasonably have known that his or her rights have been infringed upon and who the obligor is. Claims are not protected if more than twenty years have passed since the infringement, although courts may extend this period under exceptional circumstances. The time frame for application for enforcement is two years (the draft Civil Compulsory Enforcement Law of the People's Republic of China, which is currently under review, proposes to incorporate the concept of the statute of limitation, rendering the prescriptive period for applying for enforcement to three years).

Filing a lawsuit or arbitration interrupts the statute of limitations, and it shall recommence from the time when the interruption or relevant procedure is terminated. The statute of limitations is suspended during the last six months due to the inability to exercise rights resulting from force majeure or the lack of statutory agents for persons with no or limited civil capacity, etc.

Specific claims, such as for maintenance, alimony, removal of obstacles and infringement cessation, are exempt from the statute of limitations.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

In China, initiating civil litigation does not require any pre-action conducts; parties can directly file a lawsuit in the people's court. Some courts may initiate mediation before formally filing a case, but refusal to mediate does not affect subsequent litigation procedures.

For certain types of litigation, Chinese law sets preconditions, such as in shareholder derivative actions, where a shareholder must first request the board of supervisors/directors to sue on behalf of the company, and only upon their refusal can the shareholder proceed. However, such preconditions are exceptional.

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

The filing of a lawsuit shall satisfy the following criteria: (1) the plaintiff is a citizen, legal person or any other organisation that has a direct stake in the case; (2) there is/are specific defendant(s); (3) there are specific claim(s) and facts and reasons; and (4) the lawsuit falls under the scope of acceptance of civil lawsuits by the people's courts and the jurisdiction of the people's court which accepts the lawsuit. Parties meeting these criteria may submit a complaint and identification documents to the competent people's court to initiate litigation. The court adopts a case docketing registration system, mandating the filing of all cases that meet the requisite conditions.

Upon accepting a case, the court serves a copy of the complaint to the defendant. The parties only need to provide the contact information of the opposing party. Subsequent service of process is also handled by the court, which may use direct service, postal service, public announcement, or, for parties without domicile in China,

service via international treaties or diplomatic channels, etc.

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

First, the hierarchical jurisdiction rules. The court of first instance for civil cases is generally determined by the amount of the claim. Cases involving claims of over 5 billion RMB fall under the jurisdiction of the higher people's courts. For cases where only one party's domicile is outside the jurisdiction of the court accepting the case, the claims between 100 million RMB and 5 billion RMB shall be handled by the intermediate people's courts and claims under 100 million RMB shall be handled by the primary people's courts. For cases where both parties' domiciles are within or outside the jurisdiction of the accepting court, the claims between 500 million RMB and 5 billion RMB shall be handled by the intermediate people's courts and claims under 500 million RMB shall be handled by the primary people's courts. For foreign-related cases, different standards may apply.

Additionally:

- Intermediate people's courts have jurisdiction over major foreign-related cases, cases with significant impact within their jurisdiction and other cases designated by the Supreme People's Court.
- Higher people's courts have jurisdiction over first-instance civil cases with significant impact within their jurisdiction.
- The Supreme People's Court has jurisdiction over cases with significant nationwide impact and cases for which the Supreme People's Court deems that it should be tried by itself.

Secondly, exclusive jurisdiction rules, if any. For example, real estate disputes are under the jurisdiction of the court where the real estate is located. Parties can agree in writing on jurisdiction, provided it does not violate the hierarchical jurisdiction or exclusive jurisdiction rules.

Third, the territorial jurisdiction rules. In the absence of an agreement, the court at the defendant's domicile or habitual residence generally has jurisdiction. For contract disputes, the people's courts where the defendant is domiciled or where the contract is performed shall have jurisdiction. For foreign-related civil disputes, Chinese courts shall have jurisdiction if the place of signing the contract, the place of performance of the contract, the location of the subject matter of litigation, the location of the properties available for seizure, the place of

infringement act or the domicile of the representative office is located within the territory of China.

It is also necessary to determine if the case falls under the jurisdiction of specialised people's courts, such as maritime, railway transport and financial courts.

10. How does the court determine which law governs the claims in your jurisdiction?

Domestic cases are governed by Chinese law.

For foreign-related civil matters, the applicable law is determined according to the Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships. Parties can choose the applicable law by agreement, but mandatory provisions of Chinese law apply directly. Absent an agreement, the core principle is to determine the applicable law based on the closest relation doctrine; for disputes over debt claims, for example, the laws at the habitual residence of the party whose fulfilment of obligations can best satisfy the contract features, or other laws which have the closest relationship to the contract shall apply.

Parties choosing to apply foreign law must provide the relevant foreign legal provisions. If the foreign law cannot be ascertained or if it lacks relevant provisions, Chinese law applies.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Civil cases should generally be subject to a full trial in court, with exceptions occurring such as in the following:

- Reconciliation and settlement through a mediation statement issued by the court.
- Cases where the court lacks jurisdiction, cases where the acceptance conditions have not been fulfilled, repeated claims or Chinese courts being deemed forum non-convenience, resulting in a ruling of refusing to accept the action or dismissing the action.
- Withdrawal of the lawsuit by the plaintiff or dismissal due to the plaintiff's unjustified refusal to be present in court hearings.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

The applicable interim measures include:

- Property preservation: Measures such as sealing up real estate, seizing movable property, freezing bank accounts or equity to prevent asset transfers that could impede future judgment enforcement.
- Evidence preservation: Measures to protect evidence to ensure it is not lost or destroyed during litigation.
- Conduct preservation: Orders to take or refrain from specific actions to protect the legal rights of the other party.
- Interim payment: Grants for claims involving alimony, maintenance, pension, medical expenses, labour remuneration or other urgent situations.

Applicants for asset preservation are normally required to provide security to the court (which could be furnished through property preservation liability insurance).

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

The plaintiff should submit a complaint or application, and the defendant should submit a defence. Both parties must provide evidence, power of attorney, identification documents (ID for individuals, business licenses, and legal representative certificates for organisations) and confirmation of service addresses.

The people's court should serve a copy of the complaint to the defendant within five days of filing, and the defendant must submit a defence within fifteen days of receipt (thirty days for parties without a domicile in China). Jurisdictional objections must be raised within the defence period. The evidence submission period is determined by the court and is usually not less than fifteen days. Late submissions can be refused by the court, though it is normally the case that they are still admitted.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Chinese civil procedure laws do not explicitly provide direction for the disclosure of documents. Disclosure of relevant documents takes place through party applications or court orders.

The party with the burden of proof may timely apply to the people's court in writing for adducing evidence which is under control of the other party. Under the following

circumstances, any party who controls documentary evidence shall submit the requested documentary evidence:

- Documentary evidence which has been cited by the party controlling the documentary evidence in the litigation;
- Documentary evidence prepared for the interests of the other party;
- Documentary evidence which the other party is entitled to consult or obtain in accordance with the law;
- Account books and original vouchers for bookkeeping; or
- Other circumstances under which the people's court deems that documentary evidence shall be submitted.

If the opposing party unjustifiably refuses, the court may deem the applicant's claims about the document's content as true.

Documents involving state secrets, trade secrets, personal privacy or other legally confidential information must not be publicly disclosed for examination.

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

According to the Civil Procedure Law, all organisations and individuals with knowledge of the case facts must testify in court, subject to examination by the court and parties. In special circumstances, written testimony or remote testimony is allowed. Unjustified non-appearance by witnesses results in their testimony being inadmissible for factual determination.

Parties can request the court to summon witnesses. The court can also summon witnesses on its own initiative where appropriate.

There is no standard cross-examination or deposition procedure in China, and witnesses are subject to questioning by the court and parties. In general, tangible documentary evidence is given more weight than witness testimony.

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or

the parties, and what duties do they owe)?

Expert opinions may be provided by appraisal institutions and individuals with special expertise.

Parties may apply to the people's court for examination in respect of specialised issues pertaining to the ascertainment of facts. Where a party applies for examination, both parties to the action shall discuss and appoint a qualified expert witness. In the event that the discussion is unsuccessful, the people's court shall appoint an expert witness.

Parties may also apply for one or two experts with special expertise to appear in court to provide opinions on specialised issues or appraisal reports, subject to questioning by judges and parties. The experts may confront the relevant issues in the lawsuit. Experts shall not participate in court trials other than those for examination of expert opinions or expressing opinions on professional issues.

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

First-instance judgments can be appealed to a court at the next higher level within fifteen days of service, and first-instance rulings can be appealed within ten days (extended to thirty days for parties without a domicile in China).

Parties can apply for retrial to the court that originally heard the case (in the event that both parties involved are citizens, or one party comprises multiple persons) or a court at the next higher level within six months if they believe a judgment or ruling is erroneous.

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

In trying a case regarding the application for the recognition and enforcement of a judgment or ruling rendered by a foreign court, the people's court shall, in accordance with the Civil Procedure Law and its judicial interpretation, first review whether the foreign country and China have concluded or jointly acceded to an international treaty. Where there is an international treaty, the international treaty shall prevail. In the absence of an international treaty, or where there is an international treaty that does not address the relevant matters, recognition is mainly based on reciprocity, taking state sovereignty and public interest into consideration.

Under the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and Hong Kong Special Administrative Region, effective in 2024, the people's courts of the Mainland recognise and enforce Hong Kong judgments of a civil and commercial nature comprehensively.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

If a contract stipulates the losing party shall bear litigation costs, the court generally honours such agreement. If not, only case filing fees are generally borne by the losing party. However, in special cases such as intellectual property, unfair competition, public interest litigation or misuse of litigation rights causing delays, courts may order the losing party (or party at fault) to compensate reasonable attorney fees.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The Civil Procedure Law stipulates representative litigation where one or both parties have numerous members. Representatives may be elected by the numerous party members to represent the entire party in litigation, protecting their collective interests. The actions of the representatives are binding on the entire party. This representative litigation system is mainly applied in labour disputes and securities disputes. The Supreme People's Court has specifically formulated provisions for representative litigation in securities disputes.

The Civil Procedure Law also allows for public interest litigation. For acts that pollute the environment or infringe on the lawful rights and interests of numerous consumers, authorised agencies and organisations may file lawsuits in the people's courts. The people's procuratorates may also initiate litigation for acts that harm the public interest.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

The third-party participation regime in civil litigation is

divided into two categories. First, those with an independent claim to the subject matter of the litigation may join the ongoing litigation to protect their interests. Second, those without an independent claim but with a legal interest in the outcome of the case may apply to join the litigation or be notified by the court to participate.

According to relevant provisions of the Civil Procedure Law, for disputes arising from the same facts where parties file separate lawsuits in the same court, the court may consolidate the cases. If one or both parties consist of multiple persons with a common subject matter or of the same type, and the court deems it suitable for consolidation with the parties' consent, it may be consolidated. Even when not consolidated, related cases involving the same facts are often handled by the same panel.

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

While China does not explicitly prohibit third-party litigation funding and many third-party litigation funding organisations have emerged in recent years, most domestic people's courts adopt conservative views towards third-party litigation funding. However, the recently released arbitration rules of certain domestic arbitration institutions incorporate third-party litigation funding related articles, suggesting that the third-party litigation funding is gradually accepted in foreign-related arbitration, while domestic litigation remains cautious about it.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

During the COVID-19 pandemic, the Supreme People's Court issued guidance on the application of force majeure rules, rent reduction policies, adjustments to litigation and enforcement procedures, etc., to mitigate the pandemic's impact on litigation and promote procedural and substantive justice. The courts extensively promoted online hearing systems to ensure normal judicial operations continued smoothly throughout the pandemic.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

Advantages:

- China has actively cultivated international legal talents and attached importance to foreign-related adjudication. The Supreme People's Court established the China International Commercial Court to build a one-stop diversified dispute resolution mechanism, aligning with international judicial standards for judges' backgrounds, trial systems, evidence examination and document preparation, subsequently enhancing its international credibility and influence.
- Litigation costs in China are relatively low compared to arbitration and foreign litigation, reducing the burden on both parties.

Disadvantages:

- When applying foreign substantive law or international treaties, Chinese courts may encounter challenges in ascertaining and applying the law.
- China's process for international judicial assistance is complex and slow, and the number of judicial assistance treaties China has signed is limited. Consequently, the prospect of recognition and enforcement of Chinese court judgments in other jurisdictions is uncertain.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

Currently, domestic investment institutions are experiencing a peak in project exits, leading to an increase in equity repurchasing, debt restructuring, and bankruptcy/ liquidation cases, a trend expected to continue in the coming years.

The new Company Law of the People's Republic of China, effective from July 1, 2024, among other amendments, requires shareholders of limited liability companies to fully pay their capital contributions within five years of establishment and strengthens the duties and legal responsibilities of directors, supervisors, and members of senior management. These changes may lead to more related corporate litigation in the future.

Additionally, the Chinese government has been vigorously promoting commercial mediation as a diversified dispute resolution mechanism to alleviate court caseloads, especially in commercial disputes. Thus, commercial mediation, particularly third-party mediation, is expected to become a significant focus in the industry.

26. What, if any, will be the impact of technology

on commercial litigation in your jurisdiction in the next 5 years?

We hold the view that technological development will further reshape commercial litigation in China. The current application of virtual hearings and speech recognition in transcript recording has greatly facilitated the arrangement of court hearings. AI tools will, in the future, provide solid support in legal research, translation of documents and even drafting of instruments. This will significantly improve general case efficiency, help lawyers and judges to quickly access relevant legal

information and reduce the risk of error associated with manual operation. In addition, the application of AI will help to unify the judicial yardstick, improve the predictability of trial results and enhance judicial justice.

However, the wide application of AI will also introduce a series of new legal and ethical issues. For example, the issue of copyright ownership and the liability of AI works may become more complex, the issue of algorithmic bias and discrimination may affect judicial decision-making, and the legislative and judicial authorities may also need to enact changes and regulations to appropriately address the technology's reach.

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