

CHINA

# Global litigation guide



# About

Welcome to The Global Litigation Guide (the **“Guide”**) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

## About DLA Piper

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For further information visit [www.dlapiper.com](http://www.dlapiper.com).

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# China

*Last modified 30 October 2023*

## Overview of court system

The People's Republic of China (PRC) is a civil law jurisdiction and the judicial system is organized into four levels:

- the Basic People's Courts;
- the Intermediate People's Courts;
- the High People's Courts; and
- the Supreme People's Court.

Usually, major foreign-related cases fall within the jurisdiction of the Intermediate People's Court. A major foreign-related case is a case: (i) in which either the claimant or defendant is a foreign party from outside of Mainland China; and (ii) which involves a large claim, has complex merits, or involves a large number of parties. In practice, different courts apply different standards for determining what constitutes a large claim.

The litigation in PRC is generally all in the official language of PRC, which is Chinese Mandarin. However, in areas which are predominantly populated by ethnic minorities court proceedings can be conducted in the language commonly used by the ethnic minority in that area.

Mainland China is not a common law jurisdiction, therefore previous court judgments have no binding force in subsequent cases. This means that when considering regulations, lower courts are not bound by higher courts' decisions. However, lower courts do give weight to the judgments and reasoning of higher courts.

## Limitation

In the PRC, the general limitation period for civil claims is three years. Special limitation periods apply to certain causes of action. The period starts from the day when the claimant knows or should have known that his or her right has been infringed upon and who the defendant is.

## Procedural steps and timing

In the PRC, parties do not have to be represented by a lawyer in order to commence civil proceedings. Generally, a civil lawsuit is commenced by filing a statement of claim. The statement of claim must set out the cause(s) of action and claim(s), and needs to be supported by documentary evidence. The court has seven days to review the statement of claim and its supporting evidence and to decide whether or not to accept the case. Where the case is accepted, the court will serve a copy of the statement of claim on the defendant within five days of accepting and this will constitute giving notice of the claim to the defendant. Generally, where they are domiciled in the PRC, the defendant must file its statement of defense with the court within 15 days of receipt of the notice of the claim. A defendant who has no domicile in the PRC has 30 days to file its statement of defense. Once the defendant has filed their statement of defense, the court will send a copy to the claimant within five days of receiving it.

The court will also set a period for the submission of evidence. During this period:

- all evidence should be submitted;
- the defendant is entitled to file any counterclaim(s) they may have against the claimant, before the end of oral hearing(s); and
- both parties are entitled to submit a written application for an extension of time, provided they do so before the relevant period expires.

After the period for submission of evidence has concluded, an oral court hearing (i.e. a trial) will be scheduled. The timing of the hearing will depend on the court's workload, and the parties will be given three days' notice of the hearing. The court hearing usually consists of two parts which are: (i) the investigation of the facts; and (ii) the presentation of arguments. During the investigation of the facts, the parties present their own case and present evidence, including oral evidence given by factual witnesses. The evidence is then cross-examined by the other party and is also examined by the court. The presiding judge will then summarize the issues in dispute and the parties will put forward their respective further arguments on those issues. The law clerk will prepare a transcript of the hearing.

A judgment must be given within six months of the court's acceptance of the case and can be given at the end of the oral hearing. The time limit to issue the judgment can be extended for six months with the approval of the court's president, and the court may seek further extensions from a higher court. A simple civil claim to which ordinary procedure applies and in respect of which no extensions are sought is generally resolved within six months of the court's acceptance of the case.

## Disclosure and discovery

In the PRC, although parties must substantiate their cases with evidence, in principle they are free to determine what evidence they want to use. A court may, however, order a party to submit certain additional evidence if it considers it necessary. Failure to comply with the court's order may cause the court to draw adverse inferences. Further, whilst there is no concept of legal privilege in the PRC, any evidence containing state secrets, personal information or business secrets will not be publicly presented during an open hearing.

Under the PRC Civil Procedure Law, a party may request the court to investigate and collect evidence on its behalf if the party and its representatives are unable to collect it for objective reasons, including because: (i) it is archived by state authorities and the party has no right of access to it; or (ii) it contains national secrets, trade secrets or personal information. The court is also authorized to investigate and collect evidence which the court deems necessary. Procedurally, if a party requests the court to investigate and collect evidence on its behalf, the requesting party should submit a written application stating:

- basic information of the person or entity to be investigated (name, address, workplace, etc.);
- the evidence to be investigated and collected;
- the reasons for making the request;
- the facts to be proved by the evidence; and
- the definite clues.

Pursuant to Article 95 of Interpretation of the Supreme People's Court on Application of the PRC Civil Procedure Law (the SPC Interpretation on Civil Procedure), the request for collection of evidence should be rejected if the evidence requested is unrelated to the facts to be proven, is meaningless for proving the facts or if the court considers that it is unnecessary to investigate it.

It should be noted that, in practice, courts rarely grant requests for the collection of evidence. This is partly due to the vaguely defined concept of "objective reasons", which leaves the discretion to the court, and partly due to the fact that such requests will place additional burdens on the courts, which already struggle with heavy caseloads.

Under the law of the PRC, interim relief for evidence preservation is available both during and prior to the commencement of legal proceedings if evidence is at risk of being destroyed or may become difficult to obtain at a later date. A party can apply to the competent court for evidence preservation, and the court can also take preservation measures on its own initiative. The party requesting the evidence preservation will usually be required by the court to provide security in case such evidence preservation causes losses to other related parties.

Theoretically, the plaintiff can apply to the court for the court's investigation and collection of evidence before the commencement of proceedings. However, the court rarely grants such applications before the commencement of proceeding.

## Default judgment



Pursuant to Articles 146, 147 and 148 of the PRC Civil Procedure Law, the court may grant default judgment when:

- a defendant refuses to appear in court without justifiable reasons after being summoned, or the defendant leaves the courtroom during the oral hearing without permission from the court;
- if the defendant has filed a counterclaim, the claimant refuses to appear in court without justifiable reasons after being summoned or leaves the courtroom during the oral hearing without permission from the court; and/or
- the claimant requests withdrawal of the action before a judgment is made, but the court decides not to grant the withdrawal and the claimant refuses to appear in court without justifiable reasons after being summoned.

If the default judgment is issued by the first instance court, the party against whom the default judgment is imposed may appeal. As the judgments issued by second instance courts are generally final, a default judgment issued during an appeal process will not usually be subject to challenge. That said, if there is a material procedural defect with a default judgment (for example, the party has not been served with a summons), the party may challenge the default judgment by applying for a retrial.

When considering an application for default judgment, the court will examine the merits of the claim. For parties who are domiciled in Mainland China, the period for appealing against a default judgment (appeal period) is the same as the period for appealing against normal judgments, which is 15 days. For parties who have no domicile in Mainland China, the appeal period is 30 days.

## Appeals

Judgments and orders made by the courts below the Supreme People's Court can be appealed once to the higher court, but as noted above, judgments and orders of second instance courts are generally final and binding upon the parties. After a second instance judgment, the parties may only apply to the higher court for a retrial in exceptional circumstances. The case will need to have material defects in the previous proceedings or be of significant interest from a policy, legal or social justice perspective before a retrial can be granted.

An application to appeal a judgment should be filed within six months from either: (i) the effective date of the judgment or ruling; or (ii) the date when the party seeking to appeal knows or should have known the particular circumstances in which retrial should be granted.

Appeal proceedings take place in two stages. Firstly, the higher court will examine whether there are sufficient reasons and/or evidence to initiate the retrial process. During this phase of proceedings, if the party applies for retrial on the basis that *"[t]he basic facts found in the original judgment or ruling are not evidenced"*, the court will need to examine the facts, evidence, and the merits in order to determine whether this allegation is true. If the party applies for retrial on the basis that *"[t]he formation of the tribunal is illegal or any judge who shall be disqualified in accordance with law fails to be disqualified"*, then the court will not need to examine the merits and/or facts of the case but only review the procedural defect.

Secondly, once the higher court grants the initiation of the retrial, the case is completely reconsidered. The new trial proceedings start from the very beginning – a new tribunal will be formed, the parties may submit their statements and evidence again, and hearings on the merits will be arranged. The higher court may, at its discretion, conduct retrial of the case by itself or may designate another court, including the first-instance court, to hear the case. The judgment which is handed down at the conclusion of the retrial is deemed to be a first instance judgment which is appealable.

Parties can file an appeal against a first instance judgment for alleged fact-finding errors or errors in the application of the law or procedure within 15 days of notification of the judgment. The appeal period would be 30 days for parties who have no domicile in Mainland China. In these circumstances, the higher court would review both the facts and the application of the laws and, if necessary, hold an oral hearing. Generally speaking, an appeal case is completed within three months of the court's acceptance of the appeal. If an extension is needed, approval from the court's president is required. An appeal suspends the effect of the appealed judgment, meaning that the judgment of the first instance would not become effective/enforceable directly if the case was appealed.

## Interim relief proceedings

Under the law of the PRC, interim relief is mainly granted for evidence preservation, asset preservation, specific performance or advance execution. However, specific laws also provide for other special types of interim relief. For example, the PRC Special Maritime Procedure Law provides certain types of interim relief applicable to maritime claims.

Interim relief can be granted *ex parte* (i.e. without notice and not in the presence of the parties) before or during a litigation or arbitration. The applicant will usually be required to file a written application with supporting documents to the competent court, but the specific procedure depends on the type of interim relief that a party is seeking to obtain. For instance, a detailed outline of the procedure for an application for an asset preservation order is provided in prejudgment attachments and freezing orders.

Interim relief is generally only granted before the commencement of court proceedings or an arbitration in circumstances where the evidence or property at stake would be irreparably damaged without the interim relief being granted. Before interim relief is granted by the court, the applicant is usually required to provide security. Generally, the court shall make a decision about whether or not to grant interim relief within five days of accepting the application or after security has been provided. In urgent circumstances, the court must make the decision within 48 hours. Once pre-action interim relief is granted, the applicant is required to commence arbitration or court proceedings within 30 days from the date of enforcement of the interim relief order. If this deadline is not complied with, the court may revoke the pre-action interim relief. Representation by a lawyer is not mandatory for interim relief applications.

Should any party in the proceedings wish to challenge the interim relief order, they can apply to the court for reconsideration within five days of receipt of the ruling, and the court must then review and decide the reconsideration application within ten days of receiving it. Enforcement of the interim relief order is not suspended during the reconsideration process.

It is worth noting that on 1 October 2019, the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings between Hong Kong and Mainland China (Arrangement) came into force, pursuant to which parties to certain institutional arbitrations seated in Hong Kong are entitled to apply through those institutions for interim relief from the People's Courts in Mainland China. The Arrangement makes Hong Kong the first and only seat of arbitration outside of Mainland China to have access to interim relief from the People's Courts in Mainland China.

## Prejudgment attachments and freezing orders

In China, prejudgment attachments and freezing orders are referred to as asset preservation orders. Asset preservation is an important category of interim relief under PRC law. In the PRC, asset preservation is equivalent to freezing orders. It consists of an *ex parte* procedure which (as prescribed in various laws) allows applicants to, among other things, seal, seize and freeze assets. Like other types of interim relief, a party can apply for asset preservation both during and prior to the commencement of legal proceedings on the basis that *"a party's conduct or other reasons will make enforcement of the arbitration award/judgment difficult or cause other loss and damages to the applicant."* When necessary, the court is also empowered to make asset preservation orders at its own discretion.

Applications for asset preservation must be made to a court: (i) located in the same place as the properties which are to be preserved; (ii) located where the respondent is domiciled; or (iii) which has jurisdiction over the case. To apply for asset preservation, the party must submit a written application and provide relevant supporting documents. The written application should detail:

- information relating to the applicant and the counterparty;
- the request for asset preservation;
- the facts and reasons on which the asset preservation application is based;
- the requested value of the asset to be preserved;
- clear information on, or specific features of, the asset to be preserved; and
- the need to provide security.

The court may demand the requesting party to provide security if it deems this necessary. The amount to be provided as security will usually be limited to no more than 30% of the requested value of the asset to be preserved.

Asset preservation is limited to the assets referred to in the written application or assets related to the case. The types of assets that can be subject to asset preservation include:

- immovable property, such as land or buildings; and
- movable property, such as funds in a bank account, vehicles or other objects owned by the party against whom the asset preservation application is being made.

When the asset preservation order has been granted pre-action, the claimant must file the relevant claim subsequently. As with any other interim relief measure granted pre-action, if the claimant fails to commence a court proceeding or arbitration within 30 days of the court's asset preservation order, the court shall lift the order.

The claimant may be liable for any losses caused to the defendant arising from the preservation of the defendant's assets if the asset preservation order was imposed in error.

## Costs

Pursuant to Article 13 of the Measure on the Payment of Litigation Costs, the claimant must pay fees known as "case acceptance fees" to the court at the time of filing the claim and it must do so within seven days of the court's notification of payment. The acceptance fees are calculated by reference to the sum in dispute (or pursuant to the relevant laws if it is a non-property case). For example, for a monetary case where the sum in dispute is CNY1 million, the case acceptance fee would amount to CNY13,800 and would be calculated by adding together the costs under each of the staggered tiers, as set out below:

| THE AMOUNT CLAIMED  | APPLICABLE RATE | FEES                         |
|---|-----------------|------------------------------|
| For any amount no more than CNY10,000                         | A fixed fee     | CNY50                        |
| For any amount above CNY10,000 but no more than CNY100,000    | 2.5%            | CNY2,250<br>(90,000 x 2.5%)  |
| For any amount above CNY100,000 but no more than CNY200,000   | 2%              | CNY2,000<br>(100,000 x 2%)   |
| For any amount above CNY200,000 but no more than CNY500,000   | 1.5%            | CNY4,500<br>(300,000 x 1.5%) |
| For any amount above CNY500,000 but no more than CNY1 million | 1%              | CNY5,000<br>(500,000 x 1%)   |
| <b>Total case acceptance fees:</b>                            |                 | <b>CNY13,800</b>             |

Additional costs might be incurred if evidence is obtained outside of the PRC, where translation, notarization and legalization of the evidence is required. The court acceptance fees and other such out-of-pocket expenses would be paid by the unsuccessful party.

A court will also charge when a party requests it to enforce a judgment, an interim relief order or an arbitral award. Such fees are also calculated by reference to the sum in dispute.

Similar to the principle of "costs follow the event" in common law jurisdictions, as a general principle, the costs of an action are usually awarded to the successful party. However, lawyers' fees fall entirely within the discretion of the court. The court may wish to follow the recommended fee scale issued by the government, which might be significantly lower than the actual lawyers' fees. If the scale is used, the successful party may only be able to recover part of its lawyer's fees.

## Class actions

In the PRC, a civil action involving two or more claimants and/or defendants is referred to as a collective action rather than a class action.

Amendments made to the 1991 Civil Procedure Law, effective from 1 January 2013 (2012 Amendments), introduced a provision regarding public interest collective actions, under which an authority or organization prescribed by law may institute a collective action for conduct that pollutes the environment, infringes upon the lawful rights and interests of a large group of consumers or otherwise damages public interest.

More recently, by virtue of the amended Civil Procedure Law, effective from 1 July 2017 (2017 Amendments), the organizations that are entitled to bring public interest collective actions are no longer restricted to those prescribed by the law. The new provision allows the people's procuratorates (which are the PRC's prosecution organs) to file a collective action where there is no such organization authorized by law to bring the action or such organization fails to do so.

To initiate a collective action, the following four conditions need to be satisfied:

- there are two or more claimants or defendants;
- the subject of the cause of action for each party is the same, or is of the same kind;
- the court considers that such multi-party claims may be dealt with collectively; and
- the parties involved consent to such collective action.

If the number of litigants on one side of a collective action is large, these litigants may be represented by two or no more than five representatives. Pursuant to the SPC Interpretation on Civil Procedure:

- if there are more than ten litigants, that is considered large;
- if the litigants fail to select any representatives, the court may nominate representatives for the litigants or designate representatives at its discretion; and
- each of the representatives may be represented by one or two attorneys.

If the claimants or defendants under a collective action cannot be fixed at the time the case is filed, potential participants may join the action by registration as follows:

- the court may issue a public notice, specifying the circumstances of the case and notifying others with similar interests to register with the court;
- the People's Court has discretion to determine the term of public notice on a case-by-case basis, although this term must not be less than 30 days;
- potential participants who seek to register with the court should demonstrate their legal relationship with the opposing party and the damages they have suffered. Those failing to do so would not be registered but could still file a separate lawsuit; and
- the court's decision on the collective action will bind those who have registered with the court. Subject to the court's interpretation, such decision may also apply to those litigants who do not register with the court but who bring similar claims within the statutory limitation period.

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