

New Amendments to PRC Civil Procedure Law Aimed at Increasing Efficiency, Transparency and Parties' Autonomy

The newly revised Civil Procedure Law of the People's Republic of China (Revised CPL) came into effect on 1 January 2013. Approximately 60 amendments made to the existing CPL, amended in April 2008, will bring about further changes and developments over civil litigations in China. The Revised CPL adopts some provisions from the current judicial interpretation issued by Supreme People's Court of the People's Republic of China (SPC) and also borrow new rules from other common law jurisdictions, to meet the rapid social development, striving to increase efficiency, transparency and parties' autonomy in civil litigation. This Legal Update highlights some of those significant amendments as well as their practical implications.

Jurisdiction

(1) JURISDICTION BY AGREEMENT (ARTICLE 34)

Before the amendments, parties to a contract can choose in writing one of the courts located in the five specific related places to hear their caseⁱ. Article 34 now expands the scope also to cover parties to other property related disputes, who can choose one of those courts located in the said five specific related places which has an "actual connection" with the dispute in question.

It is unclear, however, as to what "actual connection" means and this may be the subject of future judicial interpretation by the SPC.

(2) JURISDICTION OVER COMPANY RELATED DISPUTES (ARTICLE 26)

Article 26 now makes it clear that for disputes concerning the establishment, confirmation of

shareholders' qualification, profit distribution, dissolution or any other matter of a company, they shall be under the jurisdiction of the court of the place of domicile of the company. According to the existing SPC interpretations, the place of domicile of a company is its principal place of business or the place where it has its main office.

Public interest litigation (Article 55)

Article 55 grants the right to the authorities and relevant organisations prescribed by the law to bring lawsuits against acts which give rise to environmental pollution as well as acts harmful to the consumer's legitimate interests.

This is the first time PRC law explicitly recognises public interest litigation. At present, there are already environmental protection laws which provide certain government authorities with the necessary standings to commence public interest litigation e.g. the Marine Environment Supervision and Management Department under *PRC Marine Environment Protection Law*. It remains to be seen what other authorities and organisations are allowed to commence public interest litigation under this new provision.

Protection of Third Parties' Rights (Article 56(3))

To protect the legitimate rights and interests of a third party, Article 56(3) allows a third party to apply to court to modify or set aside a judgment, order and/or conciliation statement in question, within six months from the date on which he or she knows or should have known that their civil rights and interests have been infringed.

ⁱ The place of domicile of the defendant, the place where the contract was performed, the place where the contract was signed, the place of domicile of the plaintiff and the place of the subject matter of the property in dispute.

This is an additional right given to a third party under Article 56 in cases where his or her interests are being affected when due to no fault of their own the third party has not been able to participate in the proceedings.

Interim measures

(1) MANDATORY AND PROHIBITORY INJUNCTIONS (ARTICLE 100)

Article 100 now provides that a party may apply to court at an interim stage for an order to freeze the assets of another party or an order requiring another party to perform or be prohibited from performing certain acts etc pending trial. It is worth noting that the latter form of interim relief was not available before.

(2) PRE-LITIGATION AND PRE-ARBITRATION INTERIM MEASURES (ARTICLE 81 AND ARTICLE 101)

Article 81 and Article 101 provide that a party may apply to the court for property as well as evidence preservation before the commencement of the legal or arbitration proceedings. It is again worth noting that the said rights to make application before commencement of arbitration were not available before.

There is this requirement, however, that the applicant for the above interim measures shall institute civil proceedings or apply for arbitration within 30 days after the court takes the preservation measures, otherwise the said measures would be automatically rescinded.

Service (Article 86 and Article 87)

Article 86 and Article 87 now provide an easier way for a party to effect and prove service of court proceedings. Article 86 allows photograph, video or other means to be used as evidence to prove service of process whilst before the amendments the requirements were more cumbersome. Article 87 effectively allows service by agreement in that where it can be shown that the person to be served agrees or consents, it is possible for the court to serve litigation documents (apart from judgments, orders or conciliation statements) through fax and email or other manners as long as the receipt of such documents can be confirmed by the person to be served.

Evidence

(1) TIME LIMIT FOR FILING EVIDENCE (ARTICLE 65)

Before the amendments where a party is late in filing evidence such evidence could only be admitted to be considered by the court if there is no objection from the other side. Article 65 now gives the court express discretion to admit or exclude such evidence filed late and the power to impose a fine or an admonition to the party who is guilty for the late filing.

(2) WITNESS TESTIMONY (ARTICLE 73)

Where a witness is not able to give oral testimony in court, in addition to testifying by way of submission of written statement, Article 73 now enables the witness to testify by way of audio visual transmission, audio visual recording or any other means as permitted by the court.

(3) EXPERT OPINION (ARTICLE 63, ARTICLE 78 AND ARTICLE 79)

The term “expert conclusion” previously used in Civil Procedure Law has now been amended to “expert opinion” in Article 63. Article 78 and Article 79 further provide that a party can apply to the court for permission to call an expert witness to give evidence on certain technical or specialised issues. And where an expert witness giving evidence for one party is being challenged by the other party the challenging party may call their own expert to give evidence on the same issues and for the court to decide by considering the expert opinion given by both parties as a basis for ascertaining the facts on such issues. It is worth noting that this system of admitting expert evidence is more akin to that in the common law system and is new in the PRC system.

(4) COST AND EXPENSES INCURRED BY WITNESSES (ARTICLE 74)

Article 74 now provides that witnesses’ expenses (including loss of income, etc.) by reason of their being required to attend court to give evidence shall be borne by the losing party in the proceedings.

Summary and Special procedure

Article 157 now enables the parties to adopt the summary procedure by way of agreement without the need of satisfying the conventional criteria i.e. that the case is a simple civil case and the rights and

obligations are clear and the disputes are trivial in character etc. This effectively enables parties to adopt the summary procedure to resolve their dispute in a quicker and cheaper way if the parties agree to do so. Under the said summary procedure mechanism the court is to deliver judgment within 3 months.

Article 162 also provides in cases where the amount in dispute is less than 30 percent of the annual average salary of employees in the relevant province, autonomous region or municipality the judgment delivered shall be final and not subject to appeal provided those cases satisfy the conventional criteria applicable to summary procedure.

In addition to the existing four types of special procedure casesⁱⁱ the amendments introduce two more categories of cases for special procedure to apply.

I) Special Procedure for Confirmation of settlement agreement through mediation (Article 194 and Article 195)

To encourage the mediation and coordinate with Article 33 of the *PRC Mediation Law*, the parties may now apply for judicial confirmation of a settlement agreement through mediation within 30 days from its effective date. As long as the agreement is in conformity with the law, the court shall issue an order to affirm its validity. Thereafter, the agreement would become a judgment from the court and can be enforced by the court directly.

II) Special Procedure for Enforcement of security (Article 196 and Article 197)

To facilitate realisation of security interests and to confirm with Article 195(2) of *PRC Property Law*, the Revised CPL provides that if there is no substantive dispute, but the parties only fail to agree on the means of enforcing the security interest, the party holding the security interest may apply to the court for auction or sale of the property posted as security. The court would only review the formality of the security and make an order within 30 days. If the application is allowed, the party can enforce the security directly without any trials.

Judgments and Orders (Article 152, Article 154(3) and Article 156)

Article 152 and Article 154 now provide that in a judgment or order made by a court the court needs to set out clearly (i) the result of its decision as well as (ii) the reasons for coming to that decision. Article 156 further provides that all legally effective judgments and orders shall be available for public inspection apart from those that concern state secrets, business secrets and privacy.

Enforcement of domestic arbitral awards (Article 237)

Under Article 237 it is no longer grounds for use to oppose enforcement of a domestic arbitral award where there is insufficient evidence to support a finding of fact and/or where there is a mistake in the application of the law.

Instead, the substituted grounds which would enable a party to resist enforcement of a domestic arbitral award are:

- a) where the evidence based on which the award was made is forged; and
- b) there was evidence concealed from the arbitral tribunal which evidence is conclusive for determining the award.

Conclusion

It can be seen from these latest amendments of the CPL that the intention is to modernise the civil litigation regime and improve the dispute resolution landscape in China. The Revised CPL is aimed at enhancing the efficiency and transparency of the civil procedure as well as at increasing the parties' autonomy when they are involved in a civil litigation. As highlighted above there are still a number of areas which would require further clarifications and some would need to be tested in practice to see if they could provide what they are aimed to achieve.

ii Four types of special procedure cases are cases concerning the qualification of voters; cases concerning the proclamation of a person as missing or dead; cases concerning the determination of legal incapacity or restricted legal capacity of citizens and cases concerning the determination of a property as ownerless.

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