

Civil & Commercial Litigation Practice In China





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The Content of Presentation

- Overview of the China civil (commercial) litigation law;
- Limitation of actions;
- File a lawsuit to the China court;
- Producing evidence;
- Attachment (Property Frozen);
- Sentence;
- Guanxi (Relationship) in civil (commercial) litigation.



Overview of China Civil Litigation Law

- China has four level courts.
- China has the law named *Civil Litigation Law of the PRC*. But in practice, this law is not specific enough.
- The PRC Supreme Court has issued and will issue numerous judicial interpretations which are also the civil (commercial) litigation laws and very specific.
- The civil (commercial) litigation law-on-paper is different from the law-in-practice. So, how to use and operate the law in practice? Only the experienced lawyer or judge can tell you exactly.



Overview of China Civil Litigation Law

What scope do the China civil litigation laws cover?



Civil Dispute

Marriage dispute, property dispute, inheritance dispute and so on. Where one person's injury is criminal, the injured party can file a civil lawsuit to claim indemnification in the process of criminal litigation.

Commercial Dispute

Contract dispute, investment dispute, corporate dispute and so on can be handled according to the civil litigation laws. The commercial dispute should be governed by civil litigation law. China hasn't another litigation law for commercial dispute.

Labor Dispute etc.

A labor dispute must be handled first by the labor arbitration commission. If failure, the plaintiff can fill a lawsuit to the court.



What is limitation of actions

- The plaintiff should file a lawsuit to the court no later than the legal deadline. If later than the legal deadline, the plaintiff will lose the lawsuit. The legal deadline here is defined as *limitation of actions*.
- Certainly, China has the laws and regulations about limitation of actions.



Period of Limitation of Actions (期间)

Generally, the period of limitation of action is 2 years.

The period of limitation of actions for international goods trading contract dispute is 4 years

The period of limitation of actions for the technology import & export contract dispute is 4 years.

However anyway, the period of limitation of actions should not be longer than 20 years.

Beginning of Limitation of Actions (起算点)

A limitation of action should begin when the entitled person knows or should know that his/her/its right have been infringed.



Interruption of Limitation (中断)

When and if the limitation of actions is interrupted, the period of limitation of actions prior to interruption should become invalid and the limitation of actions should be started all over again. So, interruption of limitation of actions is a necessary way to protect the client's right and interest.



Lawyer's Work for Limitation of Actions

- The lawyer should use any legal way to interrupt the limitation of actions.
- The ways to interrupt limitation of actions.
- The lawyer should collect and keep the relevant evidence very well about interrupting limitation of actions.



Dispute on Real Actions

The limitation of actions should not apply to the dispute on real actions.



Dispute on Validity of Contract

The limitation of actions should not apply to the dispute on contract validity.

Documents necessary for a foreign individual to file a lawsuit

- The individual plaintiff should submit the pleadings, the duplicate of passport translation, the necessary evidence and POA when and if hiring a China lawyer. Any and all signature on the documents should be written by a black ink pen, but not other color ink pen.
- The signature on all the documents should be notarized and then attested.
- All the evidence produced outside of China should be notarized and attested.
- Any and all the documents in foreign language must be translated into Chinese.



Hire a lawyer to deal with the lawsuit in China

- If the plaintiff or the defendant wants to hire a lawyer, a Chinese lawyer must be hired because the foreign lawyer can't practice litigation in China.
- If the POA is signed outside of China, the signature on the POA should be notarized in the foreign country and then attested by China's embassy in the foreign country.
- If the POA is signed in China but not before the judge, the signature on the POA should be notarized in China.
- If the plaintiff or the defendant signs the POA in person before the judge, neither notarization nor attestation is needed.

Documents necessary for a foreign organization to file a lawsuit

- If the plaintiff is a foreign organization, such as an enterprise or a NGO, the plaintiff should submit the pleadings, the certificate of incorporation, the necessary evidence and the POA when and if hiring a China lawyer.
- Because all the documents must be signed by the representative of the organization, so the organization should make a decision to appoint one person as the representative to sign any and all the documents necessary for filing a lawsuit to the China court. The decision paper should be notarized in the foreign country and then attested by the China's embassy in the foreign country.
- Other requirements for the documents are same as that for individual's actions.



Hire a lawyer to deal with the lawsuit in China

- If the plaintiff or the defendant wants to hire a lawyer, a Chinese lawyer must be hired because the foreign lawyer can't practice litigation in China.
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- If the POA is signed in China but not before the judge, the signature on the POA should be notarized in China.
- If the plaintiff or the defendant signs the POA in person before the judge, neither notarization nor attestation is needed.



Evidence in Civil (commercial) Litigation

Evidence is the basis and the first important part of a civil (commercial) litigation. As a result, investigating, collecting, analyzing and assembling the evidence is the first important work for a civil (commercial) litigation case.



Practice of Evidence Producing

- According to the Chinese litigation law, the principle of producing evidence is that either party is obliged to provide evidence to support his/her/its claim.
- The Chinese lawyer's right to investigate evidence is low. For some evidence, the Chinese lawyer doesn't have right to investigate, for example the file material of an individual's house and an individual's bank account information. The China lawyer has to apply to the court to investigate these evidence.
- The Beijing court can issue an investigation order to a lawyer and the lawyer can take it to carry out investigation. However, this way is not applicable around all China for the moment.
- The application of evidence investigation must be submitted to the court no later than 7 days before expiration of time limit of producing evidence.
- When submitting evidence to the court, we must submit an evidence list that states evidence name and the problem evidence can prove.
- Any and all evidence coming from outside of China must be notarized and then attested by in the foreign country.



Time Limit of Producing Evidence

In most cases, the court doesn't specify the time limit of producing evidence in advance, but sometimes does. Anyway, the time limit of producing evidence must be in the trial for the first instance.

After expiration of the time limit of producing evidence, the plaintiff or the defendant hasn't right to submit evidence unless the evidence is new evidence.

The new evidences include:

- The evidence is found after expiration of time limit of producing evidence.
- The evidence can't be obtained during time limit of producing evidence and still can't be obtained even in the extend period approved by the court.
- The evidence is found after termination of trial for the first instance.





Suggestion for Producing Evidence

【By Qi Lianfeng】

- The lawyer must be very careful to check whether the court specifies the time limit of producing evidence at the beginning of the litigation. Otherwise, it is possible to cause the client to miss the opportunity of producing evidence because of lawyer's negligence. In case of negligence, the lawyer will be blamed by the client because the client's right is probably damaged. It is really big risk for the client and the lawyer.
- The plaintiff or the defendant must submit the evidence to the court in the time limit of producing evidence and should never have the idea of using new evidence to attack other side suddenly.



Preservation of Property

- In order to make sure the decree can be enforced actually, one side of a lawsuit can apply to froze the other side's property in the process of trial.
- For one side's application of property preservation, the court will definitely demand the applicant to provide same value property as guarantee of property preservation.
- The property as guarantee of preservation can be cash, real estate and other type of property. Some courts demand the applicant to provide a percentage of cash and some real property as the guarantee of preservation and some courts can only accept cash as the guarantee of preservation. That is, the demand for guarantee of preservation by different courts is different.
- In the process of enforcing the decree, the court doesn't demand the applicant to provide some property as the guarantee of preservation.



Sentence Made By The Court

In order to make a proper litigation plan & strategy for a case, it is very important to know the court's thought and altitude for a civil (commercial) case.

Sentence of Second Instance

Generally speaking, the appeals court tries its best to maintain the sentence of first instance if possible.

Therefore, the trial for the first instance is very important for any lawsuit. The lawyer must contribute any and all strength on the trial for the first instance.

Case of Appeal

The case of appeal means a case the sentence of which has become effective but the plaintiff or the defendant thereof is applying to hear once again.

Generally, the court would not make a decision ruling that the case can be heard once again. It is very difficult!





Public Relationship

For the high-profile litigation case, we must handle very well the relationship with the public. Make a proper PR plan & strategy, consider what information we should tell the public and how to answer the public's questions.



Government Relationship

- The government relationship to be mentioned here means the relationship between the party and the court. How to handle very well relationship with court? We should: (1) respect the judge; (2) never make trouble to the judge; (3) follow the judge's command in the process of litigation.
- Please don't think illegal guanxi can change the result of a litigation case. A lot of facts have proved it is not true that the illegal guanxi does work for a case.



Personal Relationship

Guanxi is very complex problem in China. As a lawyer, we need to foresee what direction the litigation will go and therefore make a proper strategy and further help the client handle personal relationship correctly.



Qi Lianfeng & Minghang Law Firm

Qi Lianfeng's Title

- The founder of Beijing Ming Hang Law Firm;
- Guest of CCTV *Economy & Law* Program;
- The Legal Review Expert for Numerous International Medias.

A lot of Chinese and international media interviewed Qi Lianfeng, such as:

- CCTV;
- Phoenix TV;
- China People's Daily;
- News.cn;
- China Daily;
- Global Times;
- Washington Post;
- New York Times;
- CNN;
- Sina.com.

Minghang Law Firm

- An international law firm connecting China with the whole world.
- Help clients dig into solutions to complex & knotty legal issues.
- Provide legal services to the clients coming from China and the world.
- Experienced in international communication and good at dealing with conflicts caused by culture differences and law differences.
- Familiar with the practical details in the process of litigation.
- We have very strong and very deep strategic thought on the entire situation of a litigation case.
- We can foresee what direction the litigation will go and therefore help the client make a correct decision.



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Thank You

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