

Update

The recently amended PRC Civil Procedure Law

Further information

If you would like further information on any issue raised in this update please contact:

Ik Wei Chong

E: ikwei.chong@clydeco.com

Jamie Cao

E: jamie.cao@clydeco.com

Samuel Yang

E: samuel.yang@clydeco.com

Clyde & Co
Level 23
Shanghai Two IFC
8 Century Avenue
Shanghai, 200120
PR China

T: +86 21 6035 6188
F: +86 21 6035 6199

Further advice should be taken before relying on the contents of this summary.

Clyde & Co accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary.

No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co.

© Clyde & Co 2013

Background

The PRC Civil Procedure Law (the "CPL") was recently amended during the 28th Session of the Standing Committee of the 11th National People's Congress on 31 August 2012 and the amendments came into effect on 1 January 2013. The CPL is arguably China's most significant piece of legislation governing civil procedure. Since the CPL came into effect on a trial basis in 1982, it has undergone two subsequent amendments in 1991 and 2007 respectively. This is the third major amendment to the CPL since its enactment.

The new amendments are aimed at offering better protection of the litigants' rights, simplifying the litigation process and addressing difficulties in enforcement in order to ensure accessibility to justice, fairness and efficiency.

1. Application of summary procedure to small claims

Before 2007, all litigants were entitled to appeal as of right. The right was, however, frequently abused by losing parties to delay enforcement even when their appeal applications were entirely devoid of merits. To address the problem, the CPL was first amended in 2007 and then again recently such that for straightforward claims in which the claim amount is less than 30% of the average annual wage of an employed person in the province where the court is located, the first instance decision shall be final and be subject to no further appeal. Such an amendment

will no doubt assist claimants in straightforward small claim cases and expedite the course of justice.

2. Flexibility when commencing action

Before the present amendments, parties were free to commence action before any of the following courts: (a) the court at the place where the defendant is domiciled; (b) the court at the place where the contract is performed; (c) the court at the place where the contract is formed; (d) the court at the place where the plaintiff is domiciled; or (e) the court at the place of the subject matter in dispute. The new amendments now give parties the additional flexibility to commence action, in addition to the existing five options set out above, before any court which has an actual connection with the dispute in question.

3. New means of service of process

Service of process can now be effected through fax and e-mail in addition to the existing modes of service. This could address concerns such as the deliberate rejection of court process which often required service through public notifications which increased costs and delayed the litigation process. It must be noted, however, that certain documents such as judgments, court rulings or written mediation statements still cannot be served through fax or email.

4. Time limit for rendering ruling when court rejects case

Under the new amendments, if the court before which an action is instituted refuses to accept the case, it must issue a ruling within seven days against which an appeal may be lodged by the dissatisfied claimant. This amendment is arguably aimed at addressing the persistent problem of certain courts refusing to give an explanation as to why they are rejecting a particular claim, often when the dispute in question is politically sensitive.

5. Protecting the rights of third parties

Before the present amendments, where the rights of a third party were prejudiced in an action between the plaintiff and the defendant, that third party had no right of recourse. With the new amendments, the third party can now apply for an alteration or cancellation of the judgment or ruling where evidence can show that part of the judgment or ruling is incorrect. Such an application should be made within six months from the date when the third party knew or ought to have known that its rights and interests were harmed or prejudiced.

6. Pre-action or pre-arbitration injunctions & asset preservation orders

Before the present amendments, after a court action has been instituted, the court may, on the application of the parties or pursuant to its own initiatives, make an order for injunction or asset preservation (such as the seizure of property and freezing of bank accounts). With the new amendments, it is now possible to obtain pre-action or pre-arbitration injunctions or preservation orders from the courts. This would be useful for parties whose rights may be prejudiced if such injunctive relief is not given, especially in intellectual property disputes or where the personal rights of the applicant are threatened.

An interesting question remains whether the Chinese courts will now grant asset preservation orders in aid of foreign non-maritime arbitrations. The CPL is still silent on the issue. The prevailing view among practitioners in China is, however, that it is unlikely that asset preservation orders will be granted in aid of foreign arbitrations but the position remains to be tested.

7. Abuse of process

The 2007 amendments did not provide for malicious prosecution. This was changed with the recent amendments which set out clearly what claims would be considered malicious prosecution and therefore barred before the Chinese Courts. This amendment, together with the protection of third parties as discussed above, is aimed at better protecting the rights of parties to the litigation process and preventing abuse of the same.

8. Actio popularis - public interest lawsuits

Despite being a well-established practice in many jurisdictions, this is the first time the concept of *actio popularis* has been introduced into Chinese civil procedure. However, the application is rather limited in that the relevant provision only provides for two specific causes of action, namely, in respect of environmental pollution and infringement of consumer rights. Further, only the authorities and organisations as specified in the relevant provision have the locus standi to commence legal action and hence its application may be rather limited.