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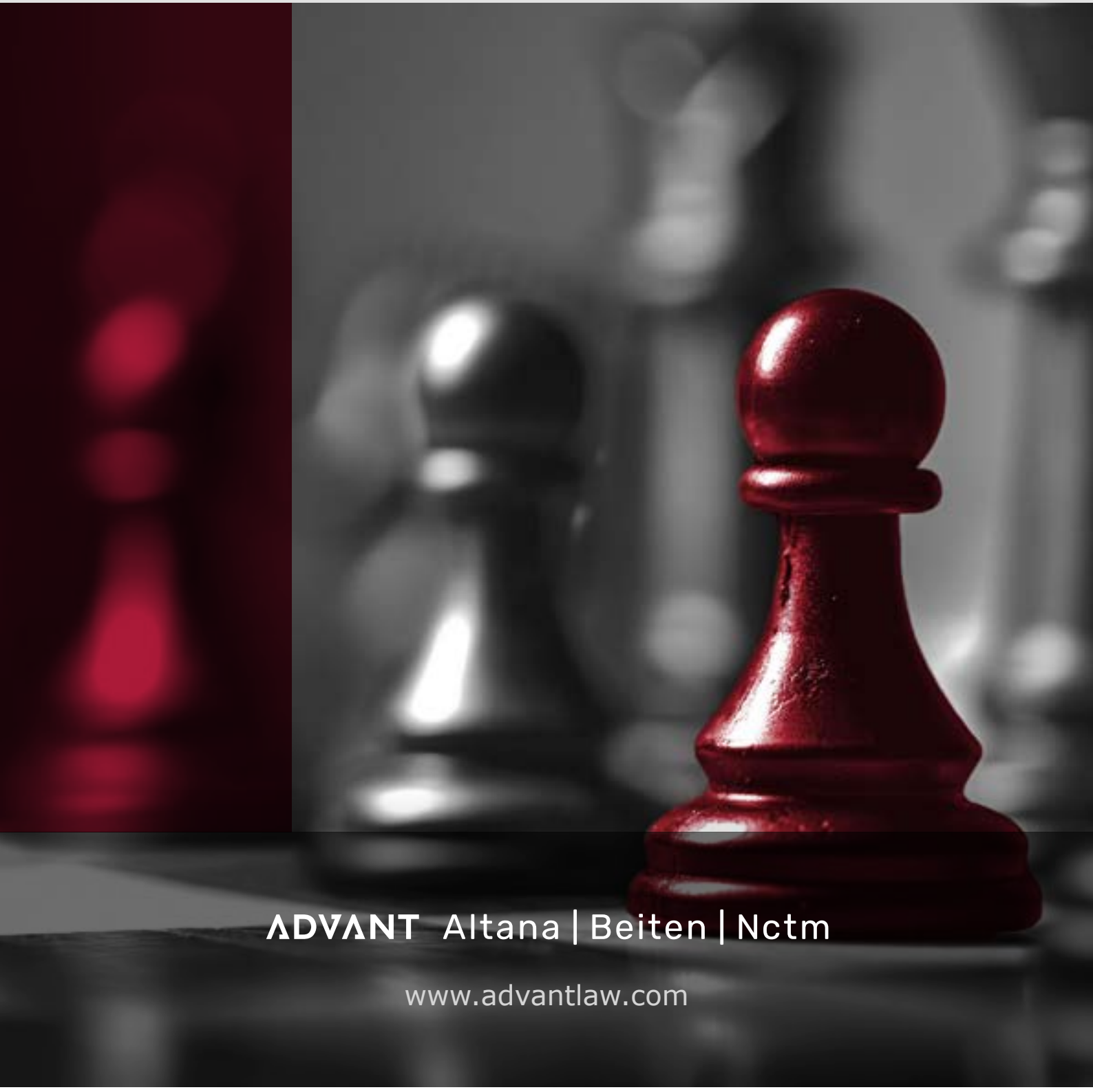
Litigation and Disputes in China and Russia

An Overview Q&A



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INTRODUCTION

The purpose of this Q&A is to provide an easy-to-read and high-level overview of some of the key issues any party involved in litigation (either as claimant or defendant) in China and Russia, is likely to face and should therefore be aware of.

PROCESS

1. How long does it typically take from commencing state court proceedings to get a judgment?

In **China**, civil proceedings not involving foreign parties have specific time limits. The first instance proceedings are usually completed within three-six months depending on the amount involved, complexity of the case and the court's workload, while second instance proceedings are expected to be completed within three months according to the law. However, in practice, there can be delays of one to three months due to the transfer of case materials from the first instance court to the second instance court. Certain factors like failed summons delivery or the need for appraisal can influence the timing and will not be included in above time limits. In addition, the judge will not proceed with the case, but will still need to respect the statutory time limit, if the parties are negotiating a settlement. The statutory time limits do not apply if one of the parties is a foreign party. Cases involving foreign parties tend to be in average longer but, unless they are of exceptional complexity, will seldom exceed one year to 18 months.

In **Russia**, as a general rule, in a commercial court of first instance it will take up to six months to consider a dispute within the framework of action proceedings. In simplified proceedings it will take no more than two months to consider the dispute, as a rule the indicated timeframe should not be extended. As a general rule, a court of general jurisdiction considers cases within two months of the date of the court's receipt of the statement of claim. If foreign party participates in a case, this could result in an increase in the timeframe for considering the dispute in connection with the special rules for notifying parties. The duration of court proceedings depends on a number of factors, of which the key ones are:

1. Type of state court – commercial court or court of general jurisdiction (justice of the peace);
2. Type of the proceedings - action, simplified or summary proceedings;
3. Category of the dispute and facts to be proved – in certain categories shortened timeframes apply (on the demolition of an unauthorised structure, etc.), and the facts to be proved may imply the submission of a significant amount of evidence, in which case the state court will need additional time to assess the evidence;
4. Complexity of the case and the number of participants – the indicated circumstances may serve as the grounds for extending the timeframe for considering the case.

2. Are there mandatory pre-action proceedings to be complied with?

In **China**, judges are required to inquire about the parties' willingness to engage in pre-action negotiations or mediation before the hearing, but the parties have the right to decline. In certain courts, before officially filing a case, the court clerk will transfer the case to a mediation centre for mediation, regardless of the parties' intention for mediation. The case will only be filed if the mediation attempts are unsuccessful. The power of attorney issued by a foreign party, and sometimes also the statement of claims, will need to be notarised and legalised. The Hague Convention on Apostille will be in effect for China after 7 November 2023. In principle, therefore, an apostille will be sufficient thereafter. The Convention may, however, require some time to be put into practice.

As a general rule regarding disputes on the recovery of funds arising from contracts in **Russia**, the creditor must comply with a mandatory pre-trial procedure. He must send a claim to the debtor in writing to a legal address (as well as the address agreed in the contract). Unless otherwise agreed by the parties, the timeframe for responding to a claim equals 30 calendar days. Only once this period has expired, the creditor is entitled to file a statement of claim with the court. If the mandatory claims procedure is not observed, the statement of claim will be dismissed without prejudice. Besides the statutory regime parties may agree on their own procedure, inter alia, the deadline for responding to a claim, the procedure for sending a claim, the procedure for responding to a claim, etc. In addition, Russian legislation stipulates pre-trial procedure for resolving economic disputes arising from administrative, other public law, for example, for an appeal against the decisions of the Russian tax authorities.

COSTS

3. What are the costs of civil court proceedings?

The costs associated with civil proceedings in **China** depend on the amount and type of the case and include court fees and lawyers' fees. In general, for monetary disputes, the court fees are determined using a percentage-based pricing system provided in a guideline issued by the State Council. However, certain cases, such as labour disputes, infringement of rights to personality, and administrative cases, have fixed rates for the civil proceedings. Court fees need to be settled in advance. As for lawyer's fees, they are usually charged as a one-time fee for each proceeding. The amount of the lawyers' fee is based on the amount involved in the dispute, considering the price guidance issued by the local government and the complexity of the case.

In **Russia**, when filing a claim with a state court, the claimant must pay state duty, the amount of which depends on the nature of the filed claim. If one property claim is filed with a state court, the maximum amount of the state duty will not exceed RUB 200,000 (approximately EUR 2,500), but if it is filed with a court of general jurisdiction, the maximum amount of the state duty will not exceed RUB 60,000 (approximately EUR 750). Legislation does not stipulate minimum fees and rates of lawyers. The cost of legal services is determined by the agreement between client and lawyer. The parties also must pay the court's expenses like the translation costs, costs for the legalization of foreign official documents, transport expenses, expenses on securing evidence, etc.

4. Who bears these costs? 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?

Similarly, in **China**, the losing party must bear the court fee. In situations where there is a partial win or loss for either party, the court will determine the appropriate allocation of court fee for each party. The costs of experts and other professionals will always be borne by the party who requests their involvement in the case. The reimbursement and bearing proportion of lawyer's fees will depend on whether there is prior agreement or not and at the judge's sole discretion.

In **Russia** the "costs follow the event" rule applies, i.e., the losing party must reimburse the winning party. If the parties win only in part the costs are allocated between the parties pro rata to the size of the satisfied claims. In certain instances, expenses may be recovered from or reimbursed to a third party that participated in a case.
If a commercial court establishes an abuse of procedural law during the consideration of the case, then all costs may be charged to the party that committed the abuse, regardless of the outcome of the case.

5. What types of evidence are admissible, and which ones are not?

The types of evidence in civil proceedings in **China** generally include statements of litigants, documentary evidence, physical evidence, audio-visual materials, electronic data, witness testimony, expert opinions and inquest records. The law does not impose specific limitations on the admissibility of evidence. However, there are certain restrictions, such as prohibiting witnesses who refuse to sign a sworn letter or who are unable to effectively express their meaning from giving testimony. Evidence originating outside the mainland of the PRC should in principle be notarised and legalised (or apostilled after the implementation of the Hague Convention on Apostille). In recent years this rule has not, however always been observed. In practice, also due to the relative speed of Chinese civil proceedings, it is advisable to prepare all evidence in full, including any translation etc. before commencing proceeding.

State courts accept as evidence written, material evidence, witness testimony, expert opinions, oral statements by specialists, clarifications by the parties and other evidence. Evidence obtained through a violation of the law, which is at variance with the requirements imposed on a specific type of evidence, may not be used. The same is true for the use of unreliable evidence. For example, a written document in a foreign language without a proper translation into Russian, witness testimony as confirmation of the actual conclusion of a contract, in the event of the violation of the written form of the contract, will constitute inadmissible evidence.
When a dispute is being considered between entrepreneurs and legal entities, commercial courts are guided first and foremost by written evidence. As a rule, witness testimony is not admissible.

6. Is discovery or disclosure or something similar available?

In **China**, the parties have the burden of proof for their claims, and they are not obliged to disclose any evidence. However, if it is proven that one party possesses relevant evidence but refuses to present it, the court may presume that the opposing party's statement regarding the evidence is true. It is worth noting that the law permits the court to conduct its own investigation and gather evidence, in which case the involved parties cannot refuse. However, it is uncommon for the court to exercise this right.

Parties in **Russia** are not required to disclose all the evidence and information in the case. They decide independently whether to attach specific evidence to the case materials. At the same time, each party in the case is required to prove the facts that the party cites in the court proceedings. If evidence is submitted late to the other parties in the proceedings, the party may not refer to such evidence. All the risks that evidence confirming the facts cited by a party is not submitted to the court are assumed by this party. The failure to submit to the court the evidence required for the resolution of the dispute will result in the adoption of a court decision that does not favour this party. As a general rule, a demand for the disclosure of evidence by a party in the dispute is ruled out.

7. What kind of interim measures are available? *Ex parte?* What is the timeframe?

In **China**, parties involved in a legal case have the option to seek interim measures against the other party's property, evidence, or to request the court to order or prevent certain behaviours by the other party. The other party is not allowed to oppose these measures. When applying for property preservation, the party seeking it should provide sufficient guarantee, which in principle means a cash deposit equal to the amount of the property preservation applied for, but in practice it can often be replaced by an insurance. The other party may ask the court to cancel the property preservation by offering a replacement for the preserved property, unless the preserved property itself is the subject of the dispute. The court is required to decide on whether to grant property preservation within five days and proceed with the decision within five days. In urgent cases, the court must decide within 48 hours and proceed immediately.

Russian legislation stipulates the possible adoption of interim measures both during ongoing court proceedings and preliminary interim measures prior to the filing of a statement of claim with the court. A commercial court considers a motion for interim measures without notifying the respective parties at the latest on the day after the receipt of the motion. A court of general jurisdiction considers the motion on the day on which it is received without notifying the parties. The most popular interim measures are the attachment of funds, property and the prohibition or suspension of certain actions.

8. Can a third party be joined into ongoing proceedings? If so, under which circumstances?

In civil proceedings in **China**, where a third party deemed that it has independent right of claim to a subject matter of an ongoing proceeding, it may file a separate case; if a third party does not possess an independent right but has a legal interest in the outcome of the case, it may apply to participate in the proceedings by its own or upon being notified by the court. If the concerned third party is unable to participate in the proceedings due to reasons beyond their control, but there is evidence proving that the judgment that has legally taken effect contains incorrect information and has caused harm to their civil rights and interests, they may file a lawsuit with the court for changing or revoking the judgement.

Third parties in **Russia** may be brought into the proceedings. Third parties may assert independent claims in relation to the subject matter of the dispute. A third party with independent claims enjoys all the rights and obligations of the claimant, except for the obligation to comply with the pre-trial claims procedure. An intervenor joins a court case on the side of the claimant or the respondent, on their own initiative, further to the motion of one of the parties or upon the initiative of the court. The ability of the court order on the case to affect the rights and obligations of the third party in respect of one of the parties serves as the grounds for joining the case.

9. Can decisions/judgments be immediately enforced? In the affirmative, can enforceability be suspended and, in case, on which grounds?

In **China**, judgments become effective for the parties involved if no appeal is filed within 15 days from the date of service. For decisions, the time limit for appeal is ten days. Once the period for fulfilling the obligations stated in the order or judgment has expire, the order or judgment becomes enforceable. However, there are circumstances under which the enforcement procedure can be suspended. These include:

1. If the applicant indicates that the enforcement can be postponed.
2. If a third party raises a valid objection to the subject matter of enforcement.
3. If a citizen who is a party to the case passes away, and it is necessary to wait for their heir to take over their rights or obligations.
4. If a legal person or organization involved in the case has ceased operations and the person responsible for carrying out their rights and obligations has not been determined.

As a general rule, a court decision in **Russia** enters into legal force one month after the date of issue of the reasoned decision or, if one of the parties filed an appeal, from the date of the issuance of a judgment of an appellate instance, unless the judgement has been revoked. In Russia, the Federal Court Bailiff Service is authorised to enforce court orders. It is also possible to enforce mone-tary claims by applying to the banks where the debtor's accounts are opened. Depending on the type of a state court, certain court orders may be enforced immediately. For example, the de-cisions of commercial courts to challenge the non-regulatory acts of state authorities, the decisions of commercial courts in simplified proceedings and the decisions of courts of general jurisdiction on the recovery of alimony, the reinstatement of an employee at work. In the case of an appeal or cassation appeal, the relevant court may, further to the petition of the parties in the case, suspend the enforcement of the court orders issued by the court of first instance. In this case, the petitioner must justify the impossibility or difficulty of reversing the enforcement or provide security for the possible losses of the other party in the amount of the disputed amount.

10. Can decisions/judgments be appealed? In the affirmative, on which grounds?

If either party is unsatisfied with a decision or judgement issued by a court in **China**, the party may file an appeal within the time limit provided by law. However, certain decisions or judgments fall under specific circumstances where an appeal is not allowed by law. Examples of such cases include declarations of disappearance or death, certain decisions on civil capacity and others. Additionally, decisions or judgements of the Supreme Court or decisions or judgements for which an appeal is not filed within the appeal period are considered legally binding and have come into effect.

As a general rule, the decisions of state courts in **Russia** may be appealed with judicial instances in the following order:

- appellate instance (appeal against a decision of the court of first instance that has not entered into legal force);
- first cassation instance (appeal against a decision of the court of first instance that has entered into force, a judgment of an appellate instance to a court of cassation of general jurisdiction or a commercial court of the relevant district);
- second cassation instance (appeal against a decision of the court of first instance that has entered into legal force, a judgment of the appellate instance to the relevant judicial panel of the Supreme Court of the Russian Federation);
- supervisory instance (appeal against the acts of lower-instance courts to the Presidium of the Supreme Court of the Russian Federation).

11. Is foreign language evidence (documents, witness testimony, expert opinions, etc.) allowed?

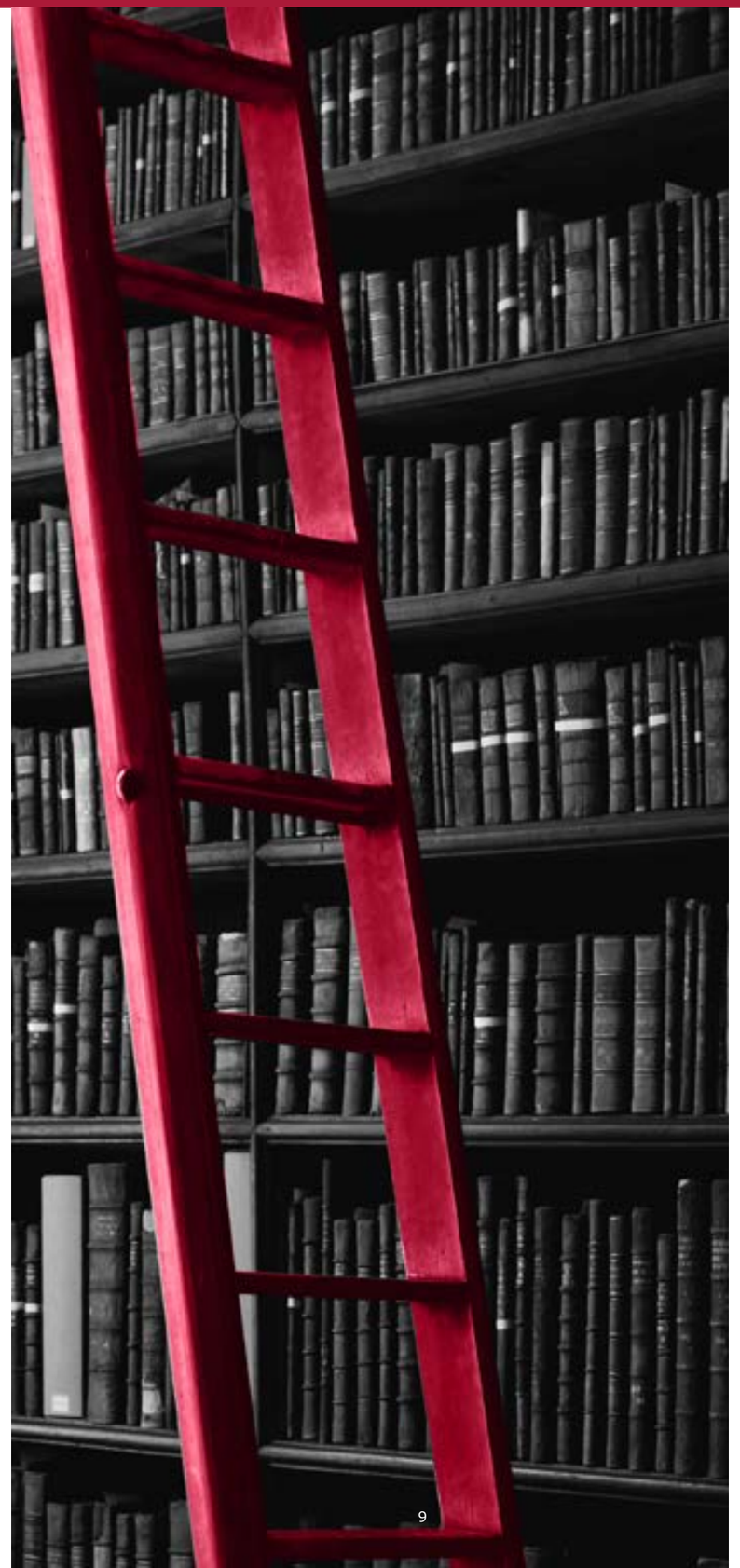
Foreign language evidence can be used in civil proceedings in **China**, but it must be accompanied by a Chinese translation. Translation issued by professional translating agency is only required in case the other party raises objection to the translation provided by the party. If the evidence is originated and produced outside of China, it needs to be notarised by an official notary in the country where it originated. For evidence related to identity from outside China, it must be notarised by an official notary in the country of origin and authenticated by the Chinese embassy or consulate in that country, unless relevant treaty between China and the country provides otherwise.

Civil proceedings in commercial courts and courts of general jurisdiction are conducted in **Russian**. The law stipulates procedural guarantees for persons who do not speak Russian, for example, to study the materials of the case, to speak in their native language and to use the services of an interpreter. Written evidence in a foreign language must be accompanied by a duly certified Russian translation. In the case of an official foreign document, legalisation is required to confirm the source of the evidence.

12. How are foreign law issues treated before state courts?

In **China**, if the parties involved in a foreign civil relationship agree to apply foreign law, the court will consider applying it, as long as it doesn't violate any mandatory rules provided by the law. However, there are some exceptional circumstances where foreign law may not be applied (e.g., matters involving labour, food or public health safety, etc.). When the parties involved choose to apply foreign laws, they are required to provide these laws to the court. The court is obligated to consider the opinions of all parties regarding the content, interpretation, and application of the chosen foreign law.

Russian state courts determine applicable law based on the norms of private international law if the legal relationship of the parties is complicated by any other foreign element. The courts determine the substance of the norms of the foreign law by applying specifically the texts of foreign legal acts, as well as expert opinions on the substance of the norms of the foreign law provided by the parties in the case.



13. What are the rules governing enforcement of foreign judgments?

In order for foreign judgments to be enforced in China, they must first be ratified by the court first. The applicant can either directly apply to an intermediate court in China with jurisdiction for ratification and enforcement, or the foreign court, based on the provisions of an international treaty between the country and China or in accordance with the principle of reciprocity, can request ratification and enforcement by a court with jurisdiction in China. China has signed civil legal assistance treaties with Italy and France as of the date of this Article.
The Civil Procedure Code has been subject to a recent reform, taking effect in 2024, under which there are some circumstances under which foreign judgements cannot be ratified and enforced by the Chinese court. These include:

- If the foreign court had no jurisdiction over the case;
- If the respondent has not been lawfully summoned or has not been given a reasonable opportunity to make a statement, although lawfully summoned, or the party without legal capacity has not been properly represented;
- If the judgement is obtained by fraud;
- If the court has made a judgment or ruling on the same dispute or has recognised a judgment or ruling made by a court of a third country on the same dispute. A jurisdiction ruling may be appeale within ten days from the date of service

A state court recognises and enforces a foreign judgment further to the petition of a party if there is an international treaty or if the principles of international comity or reciprocity are applied. In order to recognise and enforce foreign judgments based on the principle of reciprocity, the petitioner must provide the court with references to Russian and foreign procedural law, as well as positive judicial practice in this foreign state which attests to the recognition of Russian court judgments in this foreign state.

14. What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

In general, the limitation period in **China** is three years, beginning from the date when a party becomes aware or should have become aware of the infringement of their rights and the identity of the party responsible, the maximum period is 20 years starting from the date of infringement. This limitation period may be suspended under speci ic circumstances stipulated by the law. There are exceptions provided by the law where longer, shorter, or no limitation period may apply, depending on the speci ic circumstances. Limitation periods apply to the claim but not to the underlying substantive right, i.e., the court may not take the initiative to apply the provisions on the limitation period.

The provisions on limitation periods are established by substantive law and **Russian** civil law. The general limitation period is three years and in general starts to run from the date when a person that is the proper respondent in the claim became aware of the infringement of their right. The limitation period may not exceed ten years from the date of the infringement of the right which is protected by this limitation period. In the case of certain categories of cases, special limitation periods were established, for example, the limitation period in a petition for the invalidation of a transaction equals one year.

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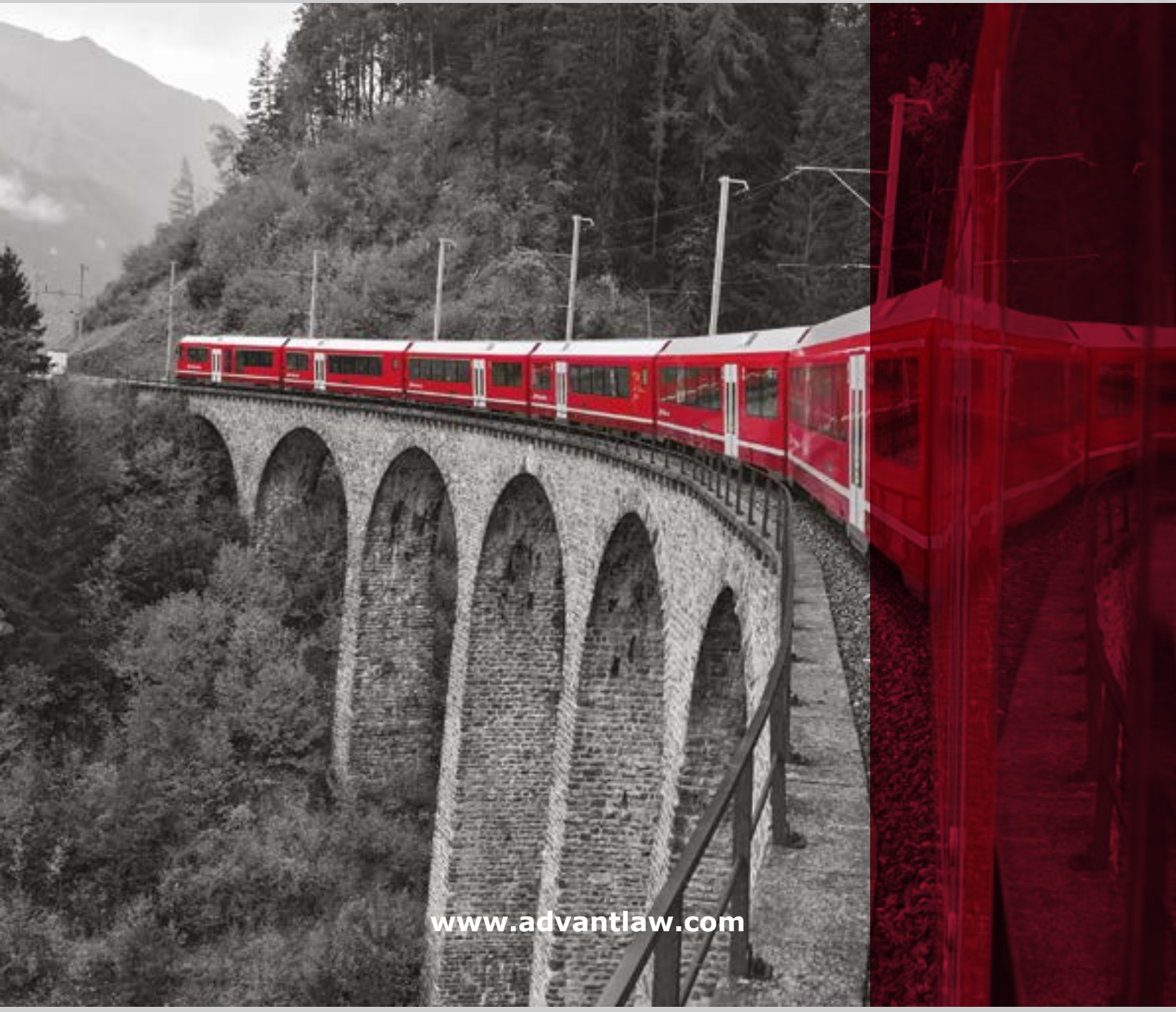

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