No. S249923

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

Changzhou Sinotype Technology Co., Ltd.,

Appellant/Defendant,

vs.

Rockefeller Technology Investments (Asia),

Respondent/Plaintiff.

Second Appellate District Court of Appeal
Civil No.: B272170

Los Angeles Superior Court
Case No.: BS149995

Judicial Officer Information:
The Honorable Randolph Hammock,
Presiding in Dept. 47 [(213) 633-0647]

MOTION TO TAKE JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MICHELLE ZHANG; DECLARATION OF STEVEN L. SUGARS IN SUPPORT THEREOF

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MOTION TO TAKE JUDICIAL NOTICE

Appellant, Changzhou Sinotype Technology Co., Ltd., hereby moves, pursuant to California Rules of Court, Rule 8.252, and Evidence Code Section 459, to take judicial notice of the following matters:

1. **Exhibit 1**, a true and correct copy of the Chinese text of the Civil Procedure Law of the People's Republic of China, **Article 260** and **Article 261**, in effect prior to August 31, 2012 and the English translation in Exhibit 1, an accurate translation of said Articles 260 and 261. (See Declaration of Michelle Zhang, below.)

2. **Exhibit 3**, a true and correct copy of an online printout from the People's Republic of China's Supreme Court's website (http://www.npc.gov.cn/npc/xinwen/2017-06/29/content_2024892.htm) containing the text of **Article 276** (formerly Article 260) and **Article 277** (formerly 261) of the Civil Procedure Law of the People's Republic of China, which became effective August 31, 2012, which are highlighted in yellow, and, also, the English translation of Articles 276 and 277 with a Certificate of translation signed by attorney/translator Michelle Zhang, confirming that the English translation of Articles 276 and 277 is accurate, and is identical to the English translation of Articles 260 and 261, and the related fact, not reasonably subject to dispute, that the Chinese text of former Articles 260 and 261 is identical to the Chinese text of the current Articles 276 and 277, i.e. they are identical; only the Article numbers have changed. (See Declaration of Michelle Zhang, below.)

3. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, more commonly called and hereinafter referred to as either the "Hague Convention" or the "Hague Service Convention," in its entirety.

4. **Exhibit 4**, a true and correct copy of Articles 1, 5, 8, 10, 15, and 16 of

the Hague Convention, excerpted and provided here for ease of reference.

5. **Exhibit 5**, a true and correct copy of Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") - also re-published via a list of hyperlinks at http://www.courts.ca.gov/partners/documents/ea_HagueService.

6. **Exhibit 6**, a true and correct copy of The Written Response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf .

8. **Exhibit 7**, which are true and correct copies of excerpts from the Bureau of Consular Affairs, U.S. Dep't of State, China Judicial Assistance, https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html, which are published by the Department of State of the United States.

It appears that the trial court took judicial notice of the Hague Service Convention and the fact that the People's Republic of China did not consent to permit its citzens to be served by mail with legal papers under the Hague Convention, but declined to take judicial notice that China refuses to allow its citizens to waive its treaty rights to formal service of papers through the Central Authority or consular channels, informally under Article 5, despite the fact that the trial court apparently believed that it was a matter of first impression. See Order Denying Motion to Quash and to Set Aside at CT 817-823.

It appears that the trial court did not take judicial notice of Article 5 of the Convention and, in particular, the People's Republic of China's position concerning Article 5, as reflected in the People's Republic of China's written

response to the questionnaire, at pages 19 and 21 thereof, as cited in Appellant's Opening Brief in this case, which is as follows:

"c. Informal delivery (Art. 5(2))

[question] (i) Does the law of your State provide for informal delivery of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?

. . . .

[answer] [X] NO";

and

"C. Translation requirements (Art. 5(3))

30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):

. . . .

[X] YES - please indicate what these requirements are, in each of the following set of circumstances:

a. Formal service (Art. 5(1) a)):

In circumstances where the/ a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) a), that the document be translated into another language (i.e., one of the official languages of your State)?

[X] YES - please indicate why:

According to the domestic law, the documents to be served must be

in Chinese language."

Appellant requested the Court to take judicial notice of the underlying position of the People's Republic of China concerning Article 5, as shown in the Clerk's Transcript, at pages 674 through 690, the Request for Judicial Notice (contained in Volume 4 of the Clerk's Transcript) and Appellant's Suppemental Brief filed on March 9, 2016, at pages 691 through 698 (contained in Volume 4 of the Clerk's Transcript). This particular reference to the written response to the questionnaire in 2008, which clarifies China's position regarding **voluntary waiver of formal service requirements by a party not being permissible** under the Hague Convention, appears to have been not included in the formal request for judicial notice in the trial court. It is, nevertheless, a matter that this Court should take judicial notice of because Evidence Code section 459 grants appellate courts the same right and power to take judicial notice as the trial court. (Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345, 359; People v. Connor (2004, Sixth District) 115 Cal.App.4th 669, 681, fn.3) Rule 8.252, California Rules of Court provides that "To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order." Moreover, it also appears that published information such as that herein brought to this Court's attention is automatically something this Court should consider, given that several recent decisions of the California Supreme Court find judicial notice is unnecessary as to documents reflecting legislative intent; a simple citation to "published" legislative documents is sufficient to bring the legislative history to a court's attention. (Sharon S. v. Superior Court (Annette F) (2003) 31 Cal.4th 417, 440, fn.18; Quelimane Company Inc. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 46, fn.9) "Published" legislative history documents appear to be legislative bills, committee and floor analyses or any other documents published in book format, or on the web by the Legislature. (Id.)

In support of this motion, Appellant offers the Memorandum of Points and

Authorities attached hereto, the Declaration of Michelle Zhang, acting as an interpreter of certain foreign language statutes which are laws of the People's Republic of China, and the declaration of Steven L. Sugars, counsel for appellant, as well as the exhibits attached thereto and incorporated herein by this reference. This motion is made identical to the renewed motion for judicial notice that was granted by the Court of Appeal in the underlying appeal (essentially verbatim).

Dated: May 22, 2019

LAW OFFICES OF STEVEN L. SUGARS

By: _____

Steven L. Sugars
Attorneys for Appellant:
Changzhou Sinotype Technology Co., Ltd.

DECLARATION OF MICHELLE ZHANG

I, Michelle Zhang, declare as follows:

1. I am an attorney admitted to practice in the State of New York since 2015. I am an associate at the Law Offices of Steve Qi & Associates. In 2011, I obtained a law degree from China from Donghua University. I am fluent in both English and Mandarin Chinese, and can read, write, and speak both languages. I have personal knowledge of the facts stated herein except for those based on information and belief, and if necessary, I could and would competently testify thereto.

2. Attached as **Exhibit 1** is a printout of the current Civil Procedure Law of the People's Republic of China, which contains Articles 276 and 277 regarding service of process, obtained from China's Supreme Court's website: http://www.npc.gov.cn/npc/xinwen/2017-06/29/content_2024892.htm. (See Articles 276 and 277 on p. 36 in **Exhibit 1**.)

3. Prior to August 31, 2012, the current Articles 276 and 277 were numbered as Articles 260 and 261, respectively, but the law remains the same. I have compared the Chinese text of Articles 260 and 261 with the current Articles 276 and 277. It is the same. Attached as **Exhibit 2** is a printout of the Civil Procedure Law prior to August 31, 2012, showing Article 260 (now Article 276) and Article 261 (now Article 277), obtained

from a non-governmental website:

http://www.china.com.cn/policy/txt/2007-10/29/content_9139262_8.htm.

(See Articles 260 (now 276) and 261 (now 277) on the second to the last page of **Exhibit 2**.)

4. Attached as **Exhibit 3** is an English translation of Article 260 (now 276) and Article 261 (now 277). I have reviewed the English translation of Articles 260 and 261 in Exhibit 3, and the translation is accurate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on August 17, 2017 at Alhambra, California.

Michelle Zhang, Declarant

MEMORANDUM OF POINTS AND AUTHORITIES

A reviewing court's authority to take judicial notice is prescribed by Evidence Code § 459(a). Upon a party's request, appellate courts have the option to take judicial notice of any matter subject to discretionary judicial notice by the trial court under Evidence Code § 452. Evidence Code § 459(a); Larson v. State Personnel Bd. (1994) 28 Cal.App.4th 265, 270, 33 Cal.Rptr.2d 412, 415, fn. 2; California Rules of Court, Rule 8.252. Evidence Code section 459 grants appellate courts the same right and power to take judicial notice as the trial court. (Smith v. Rae-Venter Law Group (2002) 29 Cal.4th 345, 359; People v. Connor (2004, Sixth District) 115 Cal.App.4th 669, 681, fn.3) Rule 8.252, California Rules of Court provides that "To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order." Several recent decisions of the California Supreme Court find judicial notice is unnecessary as to documents reflecting legislative intent; a simple citation to "published" legislative documents is sufficient to bring the legislative history to a court's attention. (Sharon S. v. Superior Court (Annette F) (2003) 31 Cal.4th 417, 440, fn.18; Quelimane Company Inc. v. Stewart Title Guaranty Co. (1998) 19 Cal.4th 26, 46, fn.9) "Published" legislative history documents appear to be legislative bills, committee and floor analyses or any other documents published in book format, or on the web by the Legislature. (Id.)

Discretionary judicial notice is commonly taken of official acts of state legislative, executive and judicial departments. Evidence Code § 452(c).

Whether or not it is deemed absolutely necessary to ask this Court to take judicial notice of these matters, Appellant hereby does so.

(A) excerpts of the Hague Service Convention (b) The Written Response of the People's Republic of China to the Hague Service Convention Questionnaire,

Questions for Contracting States (2008), at, (b) the blank Hague Service Convention Questionnaire, Questions for Contracting States (2008) to which Exhibit 7 is the written response, and (d) excerpts from the Bureau of Consular Affairs, U.S. Dep't of State, China Judicial Assistance, https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html,

which are published by the Department of State of the United States, **are all appropriate subjects for judicial notice** since Judicial notice may be taken under Evidence Code section 452(c) of "Official acts of the legislative, executive and judicial departments of the United States, or any state of the United States." (People v. Snyder (2000) 22 Cal.4th 304, 315 fn.5; Delaney v. Baker (1999) 20 Cal.4th 23, 30; Post v. Prati (1979) 90 Cal.App.3d 626, 634). The United States Constitution distributes the authority of dealing with foreign nations among the three branches of government and establishes that ratified treaties are a source of binding law for our Nation. In this regard, the Supremacy Clause states that "all Treaties . . . which shall be made . . . under the Authority of the United States, shall be the supreme law of the Land; and Judges in every State shall be bound thereby." U.S. CONST. art. VI, cl. 2. This Clause means that a fully implemented treaty is equivalent to an act of the legislature. Medellin v. Texas, (2008) 552 U.S. 491, 538 (Breyer, J., concurring, joined by Souter and Ginsburg, JJ.). The Treaty Clause states that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur[.]" U.S. CONST. art. II, § 2, cl. 2. This Clause means that the President has the sole power to negotiate a treaty and that the Senate may ratify a treaty but only after it has first been negotiated by the President. Zivotofsky v. Zivotofsky, (2015) 135 S. Ct. 2076, 2086. Treaties are the law of the land and, under the Supremacy Clause of the United States Constitution, this Court should take judical notice of all matters pertaining to those treaties, whether published by

the Executive Branch directly, or by the international treaty organization themselves.

In the present case, the matters sought to be judicially noticed are extremely relevant to the issues before this Court and, indeed, they present the ultimate issue, whether the Hague Service Convention requirement that legal papers served upon persons and entities in the People's Republic of China cannot be served by mail, but must be served through the Central Authority there, **can be disregarded and used to support a $414 million default judgment in California** where all Plaintiff and Respondent in this appeal has is a vague, ambiguous, incomplete English only "Memorandum of Understanding" signed by a Chinese citizen without specialized legal knowledge, which document is without any clear explanation of the rights of the parties, without any opportunity for independent legal review or analysis, signed after looking it over for about 10 minutes, and after years of essentially ignoring the document and not treating it as binding, despite the clear and unambiguous position taken by the People's Republic of China that private persons cannot waive the treaty rights of that foreign sovereign state, and that all papers served on its citizens must go through official channels.

Hence, it logically follows that the default must be set aside if this Court accepts the fact that China has objected to Article 10 of the Hague Convention, as it has, and that China has stated, unequivocally, that it does not consent to waiver of formal service under Article 5, as it has. Therefore, Appellant contends in its Opening Brief that the Default entered against it is void.

It appears that legal scholars who have looked at this issue consistently agree that that China views strict compliance with formal service requirements to be a question of respect for its national sovereignty and, thus, not something waivable by a private party. See Exhibit 8, a true and correct copy of a Declaration filed in the United States District Court for the District of Columbia

lawsuit entitled U.S. SECURITIES AND EXCHANGE COMMISSION vs. DELOITTE TOUCHE TOHMATSU CPA LTD., case Number 1:11-mc-00512-GK by Expert Witness James V. Feinerman on April 11, 2012.

This motion was originally made in the Court of Appeal and was granted there, forming part of the bases for the Court of Appeal's opinion. For the foregoing reasons, Appellant respectfully makes its request that this court take judicial notice of the matters set forth above in its motion as they are equally relevant to the reply brief submitted concurrently.

Dated: May 22, 2019

Respectfully submitted,
LAW OFFICES OF STEVEN L. SUGARS

By: _____

Steven L. Sugars
Attorneys for Appellant:
Changzhou Sinotype Technology Co., Ltd.

DECLARATION OF STEVEN L. SUGARS IN SUPPORT OF MOTION

I declare:

1. I am over eighteen years of age, I am an attorney at law licensed to practice before all the courts of this state and I am attorney of record for Appellant in this appeal.

2. I have personal knowledge of the following facts, unless the matter is stated on information and belief, and then the undersigned' basis for the undersigned's belief is also indicated.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Chinese text of the Civil Procedure Law of the People's Republic of China, **Article 260** and **Article 261**, in effect prior to August 31, 2012, and the English translation in Exhibit 1 thereof, which I am informed is an accurate translation of said Articles 260 and 261. (See Declaration of Michelle Zhang, below.)

4. Attached hereto as **Exhibit 2** is a true and correct copy of an online printout from a non-governmental Chinese website (http://www.china.com.cn/policy/txt/2007-10/29/content_9139262_8.htm) containing the text of Articles 260 and 261. Translator Michelle Zhang has compared the Chinese text of Articles 260 and 261 in Exhibit 1 with Exhibit 2, and they are identical.

5. Attached hereto as **Exhibit 3** is a true and correct copy of an online printout from the People's Republic of China's Supreme Court's website (http://www.npc.gov.cn/npc/xinwen/2017-06/29/content_2024892.htm) containing the text of **Article 276** (formerly Article 260) and **Article 277** (formerly 261) of the Civil Procedure Law of the People's Republic of China, which became effective August 31, 2012, which are highlighted in yellow, and, also, the English translation of Articles 276 and 277 with a Certificate of translation signed by attorney/translator Michelle Zhang, confirming that the English translation of Articles 276 and 277 is accurate, and is identical to the

English translation of Articles 260 and 261, and the related fact, not reasonably subject to dispute, that the Chinese text of former Articles 260 and 261 is identical to the Chinese text of the current Articles 276 and 277, i.e. they are identical; only the Article numbers have changed. (See Declaration of Michelle Zhang, above.)

6. Attached hereto as **Exhibit 4** is a true and correct copy of Articles 1, 5, 8, 10, 15, and 16 of the Hague Convention, excerpted and provided here for ease of reference.

7. Attached hereto as **Exhibit 5** is a true and correct copy of Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") - also re-published via a list of hyperlinks at http://www.courts.ca.gov/partners/documents/ea_HagueService.

8. Attached hereto as **Exhibit 6** is a true and correct copy of The Written Response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf .

9. Attached hereto as **Exhibit 7** are true and correct copies of excerpts from the Bureau of Consular Affairs, U.S. Dep't of State, China Judicial Assistance, https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html, which are published by the Department of State of the United States.

10. Attached hereto as **Exhibit 8** is a true and correct copy of a Declaration filed in the United States District Court for the District of Columbia lawsuit entitled U.S. SECURITIES AND EXCHANGE COMMISSION vs. DELOITTE TOUCHE TOHMATSU CPA LTD., case Number 1:11-mc-00512-GK by Expert Witness James V. Feinerman, who was, apparently, on April 12,

2012, the James M. Morita Professor of Asian Legal Studies at Georgetown University Law Center, and a professed expert in the field of the Chinese legal system. In particular, I respectfully draw this Court's attention to the observations made by Professor Feinerman in paragraphs 49-60 of his declaration filed in that case, and most significantly, his observations:

- - - "Both the People's Republic of China and the United States have signed the Hague Service Convention, and the Hague Service Convention entered into force between the U.S. and China in 1991.[footnote omitted] Therefore, service on a Chinese company must fully comply with this Convention. Service under the Hague Service Convention is effected through the designated Chinese Central Authority in Beijing, which is the Bureau of International Judicial Assistance, Ministry of Justice of the People's Republic of China." See Exhibit 9 at its paragraph 50, its page 18.

- - - "The People's Republic of China in Articles 260 and 261 of its Civil Procedure Law has detailed the sole means for foreign litigants to obtain international judicial assistance in China.[Footnote omitted] Article 261 states that any request for judicial assistance "shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China" or through diplomatic channels. The Hague Service Convention is precisely the international treaty contemplated by Article 261 to which China has acceded with the intention of channeling all requests for judicial assistance through the mechanism provided by the treaty and China's implementing legislation in compliance with the Hague Service Convention." See Exhibit 9 at its paragraph 52, its page 19.

- - - "Service beyond simple notice by mail is an essential component to China's willingness to countenance foreign access to its domestic civil process which would otherwise be regarded as an affront to Chinese sovereignty." See Exhibit 9

at its paragraph 53, its page 19.

11. As to the laws of the People's Republic of China, those are available online and were downloaded and attested to by translator Michelle Zhang, who is competent to interpret English into Mandarin and Mandarin into English, and who has studied law in China and the United States, being a licensed attorney in the State of New York.

12. I, myself, downloaded these foregoing excerpts from the official website of the Hague Convention's governing body and from the official website of the United States Department of State.

13. As to the Declaration of "JAMES V. FEINERMAN," I downloaded this from the website of the United States District Court for the District of Columbia, and it is a true and correct copy of that declaration, apparently reflecting Professor Feinerman's expert opinion, as a legal scholar and professor, as of April 11, 2012. There is no reason to think that this state of the law is different today than it was in 2012.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 22, 2019

Steven L. Sugars,
Declarant

Exhibit 1

EXHIBIT 1

中华人民共和国民事诉讼法

（1991年4月9日第七届全国人民代表大会第四次会议通过 根据2007年10月28日第十届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第一次修正 根据2012年8月31日第十一届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》第二次修正 根据2017年6月27日第十二届全国人民代表大会常务委员会第二十八次会议《关于修改〈中华人民共和国民事诉讼法〉和〈中华人民共和国行政诉讼法〉的决定》第三次修正）

来源： 中国人大网 2017年6月29日 10:11:15

目 录

第一编 总 则

第一章 任务、适用范围和基本原则

第一条 中华人民共和国民事诉讼法以宪法为根据，结合我国民事审判工作的经验和实际情况制定。

第二条 中华人民共和国民事诉讼法的任务，是保护当事人行使诉讼权利，保证人民法院查明事实，分清是非，正确适用法律，及时审理民事案件，确认民事权利义务关系，制裁民事违法行为，保护当事人的合法权益，教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进行。

第三条 人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

第四条 凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

第五条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

第六条 民事案件的审判权由人民法院行使。

人民法院依照法律规定对民事案件独立进行审判，不受行政机关、社会团体和个人的干涉。

第七条 人民法院审理民事案件，必须以事实为根据，以法律为准绳。

第八条 民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

第九条 人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

第十条 人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

第十一条 各民族公民都有用本民族语言、文字进行民事诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

第十二条 人民法院审理民事案件时，当事人有权进行辩论。

第十三条 民事诉讼应当遵循诚实信用原则。

当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

第十四条 人民检察院有权对民事诉讼实行法律监督。

第十五条 机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

第十六条 民族自治地方的人民代表大会根据宪法和本法的原则，结合当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

第二章 管 辖

第一节 级别管辖

第十七条 基层人民法院管辖第一审民事案件，但本法另有规定的除外。

第十八条 中级人民法院管辖下列第一审民事案件：

（一）重大涉外案件；

（二）在本辖区有重大影响的案件；

（三）最高人民法院确定由中级人民法院管辖的案件。

第十九条 高级人民法院管辖在本辖区有重大影响的第一审民事案件。

第二十条 最高人民法院管辖下列第一审民事案件：

（一）在全国有重大影响的案件；

（二）认为应当由本院审理的案件。

第二节 地域管辖

第二十一条 对公民提起的民事诉讼，由被告住所地人民法院管辖；被告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管辖。

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

第二十二条 下列民事诉讼，由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

（一）对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；

（二）对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

（三）对被采取强制性教育措施的人提起的诉讼；

（四）对被监禁的人提起的诉讼。

第二十三条 因合同纠纷提起的诉讼，由被告住所地或者合同履行地人民法院管辖。

第二十四条 因保险合同纠纷提起的诉讼，由被告住所地或者保险标的物所在地人民法院管辖。

第二十五条 因票据纠纷提起的诉讼，由票据支付地或者被告住所地人民法院管辖。

第二十六条 因公司设立、确认股东资格、分配利润、解散等纠纷提起的诉讼，由公司住所地人民法院管辖。

第二十七条 因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼，由运输始发地、目的地或者被告住所地人民法院管辖。

第二十八条 因侵权行为提起的诉讼，由侵权行为地或者被告住所地人民法院管辖。

第二十九条 因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼，由事故发生地或者车辆、船舶最先到达地、航空器最先降落地或者被告住所地人民法院管辖。

第三十条 因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼，由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

第三十一条 因海难救助费用提起的诉讼，由救助地或者被救助船舶最先到达地人民法院管辖。

第三十二条 因共同海损提起的诉讼，由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

第三十三条 下列案件，由本条规定的人民法院专属管辖：

（一）因不动产纠纷提起的诉讼，由不动产所在地人民法院管辖；

（二）因港口作业中发生纠纷提起的诉讼，由港口所在地人民法院管辖；

（三）因继承遗产纠纷提起的诉讼，由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

第三十四条 合同或者其他财产权益纠纷的当事人可以书面协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地等与争议有实际联系的地点的人民法院管辖，但不得违反本法对级别管辖和专属管辖的规定。

第三十五条 两个以上人民法院都有管辖权的诉讼，原告可以向其中一个人民法院起诉；原告向两个以上有管辖权的人民法院起诉的，由最先立案的人民法院管辖。

第三节 移送管辖和指定管辖

第三十六条 人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定

不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移送。

第三十七条 有管辖权的人民法院由于特殊原因，不能行使管辖权的，由上级人民法院指定管辖。

人民法院之间因管辖权发生争议，由争议双方协商解决；协商解决不了的，报请它们的共同上级人民法院指定管辖。

第三十八条 上级人民法院有权审理下级人民法院管辖的第一审民事案件；确有必要将本院管辖的第一审民事案件交下级人民法院审理的，应当报请其上级人民法院批准。

下级人民法院对它所管辖的第一审民事案件，认为需要由上级人民法院审理的，可以报请上级人民法院审理。

第三章 审判组织

第三十九条 人民法院审理第一审民事案件，由审判员、陪审员共同组成合议庭或者由审判员组成合议庭。合议庭的成员人数，必须是单数。

适用简易程序审理的民事案件，由审判员一人独任审理。

陪审员在执行陪审职务时，与审判员有同等的权利义务。

第四十条 人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。

发回重审的案件，原审人民法院应当按照第一审程序另行组成合议庭。

审理再审案件，原来是第一审的，按照第一审程序另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

第四十一条 合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

第四十二条 合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

第四十三条 审判人员应当依法秉公办案。

审判人员不得接受当事人及其诉讼代理人请客送礼。

审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

第四章 回 避

第四十四条 审判人员有下列情形之一的，应当自行回避，当事人有权用口头或者书面方式申请他们回避：

（一）是本案当事人或者当事人、诉讼代理人近亲属的；

（二）与本案有利害关系的；

（三）与本案当事人、诉讼代理人有其他关系，可能影响对案件公正审理的。

审判人员接受当事人、诉讼代理人请客送礼，或者违反规定会见当事人、诉讼代理人的，当事人有权要求他们回避。

审判人员有前款规定的行为的，应当依法追究法律责任。

前三款规定，适用于书记员、翻译人员、鉴定人、勘验人。

第四十五条 当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。

被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

第四十六条 院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。

第四十七条 人民法院对当事人提出的回避申请，应当在申请提出的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

第五章 诉讼参加人

第一节 当事人

第四十八条 公民、法人和其他组织可以作为民事诉讼的当事人。

法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。

第四十九条 当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。

当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料的范围和办法由最高人民法院规定。

当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。

第五十条 双方当事人可以自行和解。

第五十一条 原告可以放弃或者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。

第五十二条 当事人一方或者双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼人发生效力；对诉讼标的没有共同权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生效力。

第五十三条 当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

第五十四条 诉讼标的是同一种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。

代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

人民法院作出的判决、裁定，对参加登记的全体权利人发生效力。未参加登记的权利人在诉讼时效期间提起诉讼的，适用该判决、裁定。

第五十五条 对污染环境、侵害众多消费者合法权益等损害社会公共利益的行为，法律规定的机关和有关组织可以向人民法院提起诉讼。

人民检察院在履行职责中发现破坏生态环境和资源保护、食品药品安全领域侵害众多消费者合法权益等损害社会公共利益的行为，在没有前款规定的机关和组织或者前款规定的机关和组织不提起诉讼的情况下，可以向人民法院提起诉讼。前款规定的机关或者组织提起诉讼的，人民检察院可以支持起诉。

第五十六条 对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。

前两款规定的第三人，因不能归责于本人的事由未参加诉讼，但有证据证明发生法律效力的判决、裁定、调解书的部分或者全部内容错误，损害其民事权益的，可以自知道或者应当知道其民事权益受到损害之日起六个月内，向作出该判决、裁定、调解书的人民法院提起诉讼。人民法院经审理，诉讼请求成立的，应当改变或者撤销原判决、裁定、调解书；诉讼请求不成立的，驳回诉讼请求。

第二节 诉讼代理人

第五十七条 无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

第五十八条 当事人、法定代理人可以委托一至二人作为诉讼代理人。

下列人员可以被委托为诉讼代理人：

（一）律师、基层法律服务工作者；

（二）当事人的近亲属或者工作人员；

（三）当事人所在社区、单位以及有关社会团体推荐的公民。

第五十九条 委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉，必须有委托人的特别授权。

侨居在国外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

第六十条 诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

第六十一条 代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和办法由最高人民法院规定。

第六十二条 离婚案件有诉讼代理人的，本人除不能表达意思的以外，仍应出庭；确因特殊情况无法出庭的，必须向人民法院提交书面意见。

第六章 证 据

第六十三条 证据包括：

（一）当事人的陈述；

（二）书证；

（三）物证；

（四）视听资料；

（五）电子数据；

（六）证人证言；

（七）鉴定意见；

（八）勘验笔录。

证据必须查证属实，才能作为认定事实的根据。

第六十四条 当事人对自己提出的主张，有责任提供证据。

当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。

人民法院应当按照法定程序，全面地、客观地审查核实证据。

第六十五条 当事人对自己提出的主张应当及时提供证据。

人民法院根据当事人的主张和案件审理情况，确定当事人应当提供的证据及其期限。当事人在该期限内提供证据确有困难的，可以向人民法院申请延长期限，人民法

院根据当事人的申请适当延长。当事人逾期提供证据的，人民法院应当责令其说明理由；拒不说明理由或者理由不成立的，人民法院根据不同情形可以不予采纳该证据，或者采纳该证据但予以训诫、罚款。

第六十六条 人民法院收到当事人提交的证据材料，应当出具收据，写明证据名称、页数、份数、原件或者复印件以及收到时间等，并由经办人员签名或者盖章。

第六十七条 人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

第六十八条 证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

第六十九条 经过法定程序公证证明的法律事实和文书，人民法院应当作为认定事实的根据，但有相反证据足以推翻公证证明的除外。

第七十条 书证应当提交原件。物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录本。

提交外文书证，必须附有中文译本。

第七十一条 人民法院对视听资料，应当辨别真伪，并结合本案的其他证据，审查确定能否作为认定事实的根据。

第七十二条 凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。

不能正确表达意思的人，不能作证。

第七十三条 经人民法院通知，证人应当出庭作证。有下列情形之一的，经人民法院许可，可以通过书面证言、视听传输技术或者视听资料等方式作证：

（一）因健康原因不能出庭的；

（二）因路途遥远，交通不便不能出庭的；

（三）因自然灾害等不可抗力不能出庭的；

（四）其他有正当理由不能出庭的。

第七十四条 证人因履行出庭作证义务而支出的交通、住宿、就餐等必要费用以及误工损失，由败诉一方当事人负担。当事人申请证人作证的，由该当事人先行垫付；当事人没有申请，人民法院通知证人作证的，由人民法院先行垫付。

第七十五条 人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。

当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

第七十六条 当事人可以就查明事实的专门性问题向人民法院申请鉴定。当事人申请鉴定的，由双方当事人协商确定具备资格的鉴定人；协商不成的，由人民法院指定。

当事人未申请鉴定，人民法院对专门性问题认为需要鉴定的，应当委托具备资格的鉴定人进行鉴定。

第七十七条 鉴定人有权了解进行鉴定所需要的案件材料，必要时可以询问当事人、证人。

鉴定人应当提出书面鉴定意见，在鉴定书上签名或者盖章。

第七十八条 当事人对鉴定意见有异议或者人民法院认为鉴定人有必要出庭的，鉴定人应当出庭作证。经人民法院通知，鉴定人拒不出庭作证的，鉴定意见不得作为认定事实的根据；支付鉴定费用的当事人可以要求返还鉴定费用。

第七十九条 当事人可以申请人民法院通知有专门知识的人出庭，就鉴定人作出的鉴定意见或者专业问题提出意见。

第八十条 勘验物证或者现场，勘验人必须出示人民法院的证件，并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场，拒不到场的，不影响勘验的进行。

有关单位和个人根据人民法院的通知，有义务保护现场，协助勘验工作。

勘验人应当将勘验情况和结果制作笔录，由勘验人、当事人和被邀参加人签名或者盖章。

第八十一条 在证据可能灭失或者以后难以取得的情况下，当事人可以在诉讼过程中向人民法院申请保全证据，人民法院也可以主动采取保全措施。

因情况紧急，在证据可能灭失或者以后难以取得的情况下，利害关系人可以在提起诉讼或者申请仲裁前向证据所在地、被申请人住所地或者对案件有管辖权的人民法院申请保全证据。

证据保全的其他程序，参照适用本法第九章保全的有关规定。

第七章 期间、送达

第一节 期间

第八十二条 期间包括法定期间和人民法院指定的期间。

期间以时、日、月、年计算。期间开始的时和日，不计算在期间内。

期间届满的最后一日是节假日的，以节假日后的第一日为期间届满的日期。

期间不包括在途时间，诉讼文书在期满前交邮的，不算过期。

第八十三条 当事人因不可抗拒的事由或者其他正当理由耽误期限的，在障碍消除后的十日内，可以申请顺延期限，是否准许，由人民法院决定。

第二节 送达

第八十四条 送达诉讼文书必须有送达回证，由受送达人在送达回证上记明收到日期，签名或者盖章。

受送达人在送达回证上的签收日期为送达日期。

第八十五条 送达诉讼文书，应当直接送交受送达人。受送达人是公民的，本人不在交他的同住成年家属签收；受送达人是法人或者其他组织的，应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收；受送达人有诉讼代理人的，可以送交其代理人签收；受送达人已向人民法院指定代收人的，送交代收人签收。

受送达人的同住成年家属，法人或者其他组织的负责收件的人，诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

第八十六条 受送达人或者他的同住成年家属拒绝接收诉讼文书的，送达人可以邀请有关基层组织或者所在单位的代表到场，说明情况，在送达回证上记明拒收事由和日期，由送达人、见证人签名或者盖章，把诉讼文书留在受送达人的住所；也可以把诉讼文书留在受送达人的住所，并采用拍照、录像等方式记录送达过程，即视为送达。

第八十七条 经受送达人同意，人民法院可以采用传真、电子邮件等能够确认其收悉的方式送达诉讼文书，但判决书、裁定书、调解书除外。

采用前款方式送达的，以传真、电子邮件等到达受送达人特定系统的日期为送达日期。

第八十八条 直接送达诉讼文书有困难的，可以委托其他人民法院代为送达，或者邮寄送达。邮寄送达的，以回执上注明的收件日期为送达日期。

第八十九条 受送达人是军人的，通过其所在部队团以上单位的政治机关转交。

第九十条 受送达人被监禁的，通过其所在监所转交。

受送达人被采取强制性教育措施的，通过其所在强制性教育机构转交。

第九十一条 代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

第九十二条 受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过六十日，即视为送达。

公告送达，应当在案卷中记明原因和经过。

第八章 调 解

第九十三条 人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

第九十四条 人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进行。

人民法院进行调解，可以用简便方式通知当事人、证人到庭。

第九十五条 人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

第九十六条 调解达成协议，必须双方自愿，不得强迫。调解协议的内容不得违反法律规定。

第九十七条 调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。

调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。

调解书经双方当事人签收后，即具有法律效力。

第九十八条 下列案件调解达成协议，人民法院可以不制作调解书：

（一）调解和好的离婚案件；

（二）调解维持收养关系的案件；

（三）能够即时履行的案件；

（四）其他不需要制作调解书的案件。

对不需要制作调解书的协议，应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，即具有法律效力。

第九十九条 调解未达成协议或者调解书送达前一方反悔的，人民法院应当及时判决。

第九章 保全和先予执行

第一百条 人民法院对于可能因当事人一方的行为或者其他原因，使判决难以执行或者造成当事人其他损害的案件，根据对方当事人的申请，可以裁定对其财产进行保全、责令其作出一定行为或者禁止其作出一定行为；当事人没有提出申请的，人民法院在必要时也可以裁定采取保全措施。

人民法院采取保全措施，可以责令申请人提供担保，申请人不提供担保的，裁定驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。

第一百零一条 利害关系人因情况紧急，不立即申请保全将会使其合法权益受到难以弥补的损害的，可以在提起诉讼或者申请仲裁前向被保全财产所在地、被申请人住所地或者对案件有管辖权的人民法院申请采取保全措施。申请人应当提供担保，不提供担保的，裁定驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取保全措施的，应当立即开始执行。

申请人在人民法院采取保全措施后三十日内不依法提起诉讼或者申请仲裁的，人民法院应当解除保全。

第一百零二条 保全限于请求的范围，或者与本案有关的财物。

第一百零三条 财产保全采取查封、扣押、冻结或者法律规定的其他方法。人民法院保全财产后，应当立即通知被保全财产的人。

财产已被查封、冻结的，不得重复查封、冻结。

第一百零四条 财产纠纷案件，被申请人提供担保的，人民法院应当裁定解除保全。

第一百零五条 申请有错误的，申请人应当赔偿被申请人因保全所遭受的损失。

第一百零六条 人民法院对下列案件，根据当事人的申请，可以裁定先予执行：

（一）追索赡养费、扶养费、抚育费、抚恤金、医疗费用的；

（二）追索劳动报酬的；

（三）因情况紧急需要先予执行的。

第一百零七条 人民法院裁定先予执行的，应当符合下列条件：

（一）当事人之间权利义务关系明确，不先予执行将严重影响申请人的生活或者生产经营的；

（二）被申请人有履行能力。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。申请人败诉的，应当赔偿被申请人因先予执行遭受的财产损失。

第一百零八条 当事人对保全或者先予执行的裁定不服的，可以申请复议一次。复议期间不停止裁定的执行。

第十章 对妨害民事诉讼的强制措施

第一百零九条 人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

第一百一十条 诉讼参与人和其他人应当遵守法庭规则。

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

人民法院对哄闹、冲击法庭，侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

第一百一十一条 诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

（一）伪造、毁灭重要证据，妨碍人民法院审理案件的；

（二）以暴力、威胁、贿买方法阻止证人作证或者指使、贿买、胁迫他人作伪证的；

（三）隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；

（四）对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；

（五）以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；

（六）拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百一十二条 当事人之间恶意串通，企图通过诉讼、调解等方式侵害他人合法权益的，人民法院应当驳回其请求，并根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百一十三条 被执行人与他人恶意串通，通过诉讼、仲裁、调解等方式逃避履行法律文书确定的义务的，人民法院应当根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百一十四条 有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，并可以予以罚款：

（一）有关单位拒绝或者妨碍人民法院调查取证的；

（二）有关单位接到人民法院协助执行通知书后，拒不协助查询、扣押、冻结、划拨、变价财产的；

（三）有关单位接到人民法院协助执行通知书后，拒不协助扣留被执行人的收入、办理有关财产权证照转移手续、转交有关票证、证照或者其他财产的；

（四）其他拒绝协助执行的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款；对仍不履行协助义务的，可以予以拘留；并可以向监察机关或者有关机关提出予以纪律处分的司法建议。

第一百一十五条 对个人的罚款金额，为人民币十万元以下。对单位的罚款金额，为人民币五万元以上一百万元以下。

拘留的期限，为十五日以下。

被拘留的人，由人民法院交公安机关看管。在拘留期间，被拘留人承认并改正错误的，人民法院可以决定提前解除拘留。

第一百一十六条 拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

第一百一十七条 采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的，应当依法追究刑事责任，或者予以拘留、罚款。

第十一章 诉讼费用

第一百一十八条 当事人进行民事诉讼，应当按照规定交纳案件受理费。财产案件除交纳案件受理费外，并按照规定交纳其他诉讼费用。

当事人交纳诉讼费用确有困难的，可以按照规定向人民法院申请缓交、减交或者免交。

收取诉讼费用的办法另行制定。

第二编 审判程序

第十二章 第一审普通程序

第一节 起诉和受理

第一百一十九条 起诉必须符合下列条件：

（一）原告是与本案有直接利害关系的公民、法人和其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实、理由；

（四）属于人民法院受理民事诉讼的范围和受诉人民法院管辖。

第一百二十条 起诉应当向人民法院递交起诉状，并按照被告人数提出副本。

书写起诉状确有困难的，可以口头起诉，由人民法院记入笔录，并告知对方当事人。

第一百二十一条 起诉状应当记明下列事项：

（一）原告的姓名、性别、年龄、民族、职业、工作单位、住所、联系方式，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务、联系方式；

（二）被告的姓名、性别、工作单位、住所等信息，法人或者其他组织的名称、住所等信息；

（三）诉讼请求和所根据的事实与理由；

（四）证据和证据来源，证人姓名和住所。

第一百二十二条 当事人起诉到人民法院的民事纠纷，适宜调解的，先行调解，但当事人拒绝调解的除外。

第一百二十三条 人民法院应当保障当事人依照法律规定享有的起诉权利。对符合本法第一百一十九条的起诉，必须受理。符合起诉条件的，应当在七日内立案，并通

知当事人；不符合起诉条件的，应当在七日内作出裁定书，不予受理；原告对裁定不服的，可以提起上诉。

第一百二十四条 人民法院对下列起诉，分别情形，予以处理：

（一）依照行政诉讼法的规定，属于行政诉讼受案范围的，告知原告提起行政诉讼；

（二）依照法律规定，双方当事人达成书面仲裁协议申请仲裁、不得向人民法院起诉的，告知原告向仲裁机构申请仲裁；

（三）依照法律规定，应当由其他机关处理的争议，告知原告向有关机关申请解决；

（四）对不属于本院管辖的案件，告知原告向有管辖权的人民法院起诉；

（五）对判决、裁定、调解书已经发生法律效力的案件，当事人又起诉的，告知原告申请再审，但人民法院准许撤诉的裁定除外；

（六）依照法律规定，在一定期限内不得起诉的案件，在不得起诉的期限内起诉的，不予受理；

（七）判决不准离婚和调解和好的离婚案件，判决、调解维持收养关系的案件，没有新情况、新理由，原告在六个月内又起诉的，不予受理。

第二节 审理前的准备

第一百二十五条 人民法院应当在立案之日起五日内将起诉状副本发送被告，被告应当在收到之日起十五日内提出答辩状。答辩状应当记明被告的姓名、性别、年龄、民族、职业、工作单位、住所、联系方式；法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务、联系方式。人民法院应当在收到答辩状之日起五日内将答辩状副本发送原告。

被告不提出答辩状的，不影响人民法院审理。

第一百二十六条 人民法院对决定受理的案件，应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务，或者口头告知。

第一百二十七条 人民法院受理案件后，当事人对管辖权有异议的，应当在提交答辩状期间提出。人民法院对当事人提出的异议，应当审查。异议成立的，裁定将案件移送有管辖权的人民法院；异议不成立的，裁定驳回。

当事人未提出管辖异议，并应诉答辩的，视为受诉人民法院有管辖权，但违反级别管辖和专属管辖规定的除外。

第一百二十八条 合议庭组成人员确定后，应当在三日内告知当事人。

第一百二十九条 审判人员必须认真审核诉讼材料，调查收集必要的证据。

第一百三十条 人民法院派出人员进行调查时，应当向被调查人出示证件。

调查笔录经被调查人校阅后，由被调查人、调查人签名或者盖章。

第一百三十一条 人民法院在必要时可以委托外地人民法院调查。

委托调查，必须提出明确的项目和要求。受委托人民法院可以主动补充调查。

受委托人民法院收到委托书后，应当在三十日内完成调查。因故不能完成的，应当在上述期限内函告委托人民法院。

第一百三十二条 必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当通知其参加诉讼。

第一百三十三条 人民法院对受理的案件，分别情形，予以处理：

（一）当事人没有争议，符合督促程序规定条件的，可以转入督促程序；

（二）开庭前可以调解的，采取调解方式及时解决纠纷；

（三）根据案件情况，确定适用简易程序或者普通程序；

（四）需要开庭审理的，通过要求当事人交换证据等方式，明确争议焦点。

第三节 开庭审理

第一百三十四条 人民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。

离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

第一百三十五条 人民法院审理民事案件，根据需要进行巡回审理，就地办案。

第一百三十六条 人民法院审理民事案件，应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的，应当公告当事人姓名、案由和开庭的时间、地点。

第一百三十七条 开庭审理前，书记员应当查明当事人和其他诉讼参与人是否到庭，宣布法庭纪律。

开庭审理时，由审判长核对当事人，宣布案由，宣布审判人员、书记员名单，告知当事人有关的诉讼权利义务，询问当事人是否提出回避申请。

第一百三十八条 法庭调查按照下列顺序进行：

（一）当事人陈述；

（二）告知证人的权利义务，证人作证，宣读未到庭的证人证言；

（三）出示书证、物证、视听资料和电子数据；

（四）宣读鉴定意见；

（五）宣读勘验笔录。

第一百三十九条 当事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

第一百四十条 原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

第一百四十一条 法庭辩论按照下列顺序进行：

（一）原告及其诉讼代理人发言；

（二）被告及其诉讼代理人答辩；

（三）第三人及其诉讼代理人发言或者答辩；

（四）互相辩论。

法庭辩论终结，由审判长按照原告、被告、第三人的先后顺序征询各方最后意见。

第一百四十二条 法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

第一百四十三条 原告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

第一百四十四条 被告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

第一百四十五条 宣判前，原告申请撤诉的，是否准许，由人民法院裁定。

人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

第一百四十六条 有下列情形之一的，可以延期开庭审理：

（一）必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；

（二）当事人临时提出回避申请的；

（三）需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；

（四）其他应当延期的情形。

第一百四十七条 书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

第一百四十八条 人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。

宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。

第一百四十九条 人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民法院批准。

第四节 诉讼中止和终结

第一百五十条 有下列情形之一的，中止诉讼：

（一）一方当事人死亡，需要等待继承人表明是否参加诉讼的；

（二）一方当事人丧失诉讼行为能力，尚未确定法定代理人的；

（三）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（四）一方当事人因不可抗拒的事由，不能参加诉讼的；

（五）本案必须以另一案的审理结果为依据，而另一案尚未审结的；

（六）其他应当中止诉讼的情形。

中止诉讼的原因消除后，恢复诉讼。

第一百五十一条 有下列情形之一的，终结诉讼：

（一）原告死亡，没有继承人，或者继承人放弃诉讼权利的；

（二）被告死亡，没有遗产，也没有应当承担义务的人的；

（三）离婚案件一方当事人死亡的；

（四）追索赡养费、扶养费、抚育费以及解除收养关系案件的一方当事人死亡的。

第五节 判决和裁定

第一百五十二条 判决书应当写明判决结果和作出该判决的理由。判决书内容包括：

（一）案由、诉讼请求、争议的事实和理由；

（二）判决认定的事实和理由、适用的法律和理由；

（三）判决结果和诉讼费用的负担；

（四）上诉期间和上诉的法院。

判决书由审判人员、书记员署名，加盖人民法院印章。

第一百五十三条 人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。

第一百五十四条 裁定适用于下列范围：

（一）不予受理；

（二）对管辖权有异议的；

（三）驳回起诉；

（四）保全和先予执行；

（五）准许或者不准许撤诉；

（六）中止或者终结诉讼；

（七）补正判决书中的笔误；

（八）中止或者终结执行；

（九）撤销或者不予执行仲裁裁决；

（十）不予执行公证机关赋予强制执行效力的债权文书；

（十一）其他需要裁定解决的事项。

对前款第一项至第三项裁定，可以上诉。

裁定书应当写明裁定结果和作出该裁定的理由。裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。

第一百五十五条 最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。

第一百五十六条 公众可以查阅发生法律效力的判决书、裁定书，但涉及国家秘密、商业秘密和个人隐私的内容除外。

第十三章 简易程序

第一百五十七条 基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

基层人民法院和它派出的法庭审理前款规定以外的民事案件，当事人双方也可以约定适用简易程序。

第一百五十八条 对简单的民事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百五十九条 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式传唤当事人和证人、送达诉讼文书、审理案件，但应当保障当事人陈述意见的权利。

第一百六十条 简单的民事案件由审判员一人独任审理，并不受本法第一百三十六条、第一百三十八条、第一百四十一条规定的限制。

第一百六十一条 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

第一百六十二条 基层人民法院和它派出的法庭审理符合本法第一百五十七条第一款规定的简单的民事案件，标的额为各省、自治区、直辖市上年度就业人员年平均工资百分之三十以下的，实行一审终审。

第一百六十三条 人民法院在审理过程中，发现案件不宜适用简易程序的，裁定转为普通程序。

第十四章 第二审程序

第一百六十四条 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

第一百六十五条 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人的姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

第一百六十六条 上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

第一百六十七 条原审人民法院收到上诉状，应当在五日内将上诉状副本送达对方当事人，对方当事人在收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百六十八条 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百六十九条 第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷、调查和询问当事人，对没有提出新的事实、证据或者理由，合议庭认为不需要开庭审理的，可以不开庭审理。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百七十条 第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决、裁定认定事实清楚，适用法律正确的，以判决、裁定方式驳回上诉，维持原判决、裁定；

（二）原判决、裁定认定事实错误或者适用法律错误的，以判决、裁定方式依法改判、撤销或者变更；

（三）原判决认定基本事实不清的，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

（四）原判决遗漏当事人或者违法缺席判决等严重违反法定程序的，裁定撤销原判决，发回原审人民法院重审。

原审人民法院对发回重审的案件作出判决后，当事人提起上诉的，第二审人民法院不得再次发回重审。

第一百七十一条 第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使用裁定。

第一百七十二条 第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

第一百七十三条 第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。

第一百七十四条 第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。

第一百七十五条 第二审人民法院的判决、裁定，是终审的判决、裁定。

第一百七十六条 人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。

人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

第十五章 特别程序

第一节 一般规定

第一百七十七条 人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件、认定财产无主案件、确认调解协议案件和实现担保物权案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

第一百七十八条 依照本章程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

第一百七十九条 人民法院在依照本章程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

第一百八十条 人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

第二节 选民资格案件

第一百八十一条 公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

第一百八十二条 人民法院受理选民资格案件后，必须在选举日前审结。

审理时，起诉人、选举委员会的代表和有关公民必须参加。

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

第三节 宣告失踪、宣告死亡案件

第一百八十三条 公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百八十四条 公民下落不明满四年，或者因意外事故下落不明满二年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百八十五条 人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

第一百八十六条 被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

第四节 认定公民无民事行为能力、限制民事行为能力案件

第一百八十七条 申请认定公民无民事行为能力或者限制民事行为能力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

第一百八十八条 人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定意见的，应当对鉴定意见进行审查。

第一百八十九条 人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康情况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

第一百九十条 人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请，证实该公民无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

第五节 认定财产无主案件

第一百九十一条 申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

第一百九十二条 人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

第一百九十三条 判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

第六节 确认调解协议案件

第一百九十四条 申请司法确认调解协议，由双方当事人依照人民调解法等法律，自调解协议生效之日起三十日内，共同向调解组织所在地基层人民法院提出。

第一百九十五条 人民法院受理申请后，经审查，符合法律规定的，裁定调解协议有效，一方当事人拒绝履行或者未全部履行的，对方当事人可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以通过调解方式变更原调解协议或者达成新的调解协议，也可以向人民法院提起诉讼。

第七节 实现担保物权案件

第一百九十六条 申请实现担保物权，由担保物权人以及其他有权请求实现担保物权的人依照物权法等法律，向担保财产所在地或者担保物权登记地基层人民法院提出。

第一百九十七条 人民法院受理申请后，经审查，符合法律规定的，裁定拍卖、变卖担保财产，当事人依据该裁定可以向人民法院申请执行；不符合法律规定的，裁定驳回申请，当事人可以向人民法院提起诉讼。

第十六章 审判监督程序

第一百九十八条 各级人民法院院长对本院已经发生法律效力的判决、裁定、调解书，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定、调解书，上级人民法院对下级人民法院已经发生法律效力的判决、裁定、调解书，发现确有错误的，有权提审或者指令下级人民法院再审。

第一百九十九条 当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审；当事人一方人数众多或者当事人双方为公民的案件，也可以向原审人民法院申请再审。当事人申请再审的，不停止判决、裁定的执行。

第二百条 当事人的申请符合下列情形之一的，人民法院应当再审：

（一）有新的证据，足以推翻原判决、裁定的；

（二）原判决、裁定认定的基本事实缺乏证据证明的；

（三）原判决、裁定认定事实的主要证据是伪造的；

（四）原判决、裁定认定事实的主要证据未经质证的；

（五）对审理案件需要的主要证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

（六）原判决、裁定适用法律确有错误的；

（七）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

（八）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

（九）违反法律规定，剥夺当事人辩论权利的；

（十）未经传票传唤，缺席判决的；

（十一）原判决、裁定遗漏或者超出诉讼请求的；

（十二）据以作出原判决、裁定的法律文书被撤销或者变更的；

（十三）审判人员审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的。

第二百零一条 当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

第二百零二条 当事人对已经发生法律效力的解除婚姻关系的判决、调解书，不得申请再审。

第二百零三条 当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

第二百零四条 人民法院应当自收到再审申请书之日起三个月内审查，符合本法规定的，裁定再审；不符合本法规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理，但当事人依照本法第一百九十九条的规定选择向基层人民法院申请再审的除外。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第二百零五条 当事人申请再审，应当在判决、裁定发生法律效力后六个月内提出；有本法第二百条第一项、第三项、第十二项、第十三项规定情形的，自知道或者应当知道之日起六个月内提出。

第二百零六条 按照审判监督程序决定再审的案件，裁定中止原判决、裁定、调解书的执行，但追索赡养费、扶养费、抚育费、抚恤金、医疗费用、劳动报酬等案件，可以不中止执行。

第二百零七条 人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力的判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力的判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。

人民法院审理再审案件，应当另行组成合议庭。

第二百零八条 最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第二百条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第二百条规定情形之一的，或者发现调解书损害国家利益、社会公共利益的，可以向同级人民法院提出检察建议，并报上级人民检察院备案；也可以提请上级人民检察院向同级人民法院提出抗诉。

各级人民检察院对审判监督程序以外的其他审判程序中审判人员的违法行为，有权向同级人民法院提出检察建议。

第二百零九条 有下列情形之一的，当事人可以向人民检察院申请检察建议或者抗诉：

（一）人民法院驳回再审申请的；

（二）人民法院逾期未对再审申请作出裁定的；

（三）再审判决、裁定有明显错误的。

人民检察院对当事人的申请应当在三个月内进行审查，作出提出或者不予提出检察建议或者抗诉的决定。当事人不得再次向人民检察院申请检察建议或者抗诉。

第二百一十条 人民检察院因履行法律监督职责提出检察建议或者抗诉的需要，可以向当事人或者案外人调查核实有关情况。

第二百一十一条 人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第二百条第一项至第五项规定情形之一的，可以交下一级人民法院再审，但经该下一级人民法院再审的除外。

第二百一十二条 人民检察院决定对人民法院的判决、裁定、调解书提出抗诉的，应当制作抗诉书。

第二百一十三条 人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

第十七章 督促程序

第二百一十四条 债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有管辖权的基层人民法院申请支付令：

（一）债权人与债务人没有其他债务纠纷的；

（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

第二百一十五条 债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

第二百一十六条 人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

第二百一十七条 人民法院收到债务人提出的书面异议后，经审查，异议成立的，应当裁定终结督促程序，支付令自行失效。

支付令失效的，转入诉讼程序，但申请支付令的一方当事人不同意提起诉讼的除外。

第十八章 公示催告程序

第二百一十八条 按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

第二百一十九条 人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

第二百二十条 支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

第二百二十一条 利害关系人应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

第二百二十二条 没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

第二百二十三条 利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

第三编 执行程序

第十九章 一般规定

第二百二十四条 发生法律效力的民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。

法律规定由人民法院执行的其他法律文书，由被执行人住所地或者被执行的财产所在地人民法院执行。

第二百二十五条 当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

第二百二十六条 人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。

第二百二十七条 执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不服，认为原判决、裁定错误的，依照审判监督程序办理；与原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

第二百二十八条 执行工作由执行员进行。

采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。

人民法院根据需要可以设立执行机构。

第二百二十九条 被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

第二百三十条 在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

申请执行人因受欺诈、胁迫与被执行人达成和解协议，或者当事人不履行和解协议的，人民法院可以根据当事人的申请，恢复对原生效法律文书的执行。

第二百三十一条 在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

第二百三十二条 作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

第二百三十三条 执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

第二百三十四条 人民法院制作的调解书的执行，适用本编的规定。

第二百三十五条 人民检察院有权对民事执行活动实行法律监督。

第二十章 执行的申请和移送

第二百三十六条 发生法律效力的民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。

调解书和其他应当由人民法院执行的法律文书，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行。

第二百三十七条 对依法设立的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）裁决所根据的证据是伪造的；

（五）对方当事人向仲裁机构隐瞒了足以影响公正裁决的证据的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二百三十八条 对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

第二百三十九条 申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

第二百四十条 执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，并可以立即采取强制执行措施。

第二十一章 执行措施

第二百四十一条 被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

第二百四十二条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权向有关单位查询被执行人的存款、债券、股票、基金份额等财产情况。人民法院有权根据不同情形扣押、冻结、划拨、变价被执行人的财产。人民法院查询、扣押、冻结、划拨、变价的财产不得超出被执行人应当履行义务的范围。

人民法院决定扣押、冻结、划拨、变价财产，应当作出裁定，并发出协助执行通知书，有关单位必须办理。

第二百四十三条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。

人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

第二百四十四条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。

采取前款措施，人民法院应当作出裁定。

第二百四十五条 人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

第二百四十六条 被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

第二百四十七条 财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文书确定的义务。被执行人逾期不履行的，人民法院应当拍卖被查封、扣押的财产；不适于拍卖或者当事人双方同意不进行拍卖的，人民法院可以委托有关单位变卖或者自行变卖。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。

第二百四十八条 被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。

采取前款措施，由院长签发搜查令。

第二百四十九条 法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者由执行员转交，并由被交付人签收。

有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。

有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

第二百五十条 强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。

强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。

第二百五十一条 在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

第二百五十二条 对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人完成，费用由被执行人承担。

第二百五十三条 被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

第二百五十四条 人民法院采取本法第二百四十二条、第二百四十三条、第二百四十四条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

第二百五十五条 被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

第二十二章 执行中止和终结

第二百五十六条 有下列情形之一的，人民法院应当裁定中止执行：

（一）申请人表示可以延期执行的；

（二）案外人对执行标的提出确有理由的异议的；

（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；

（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（五）人民法院认为应当中止执行的其他情形。

中止的情形消失后，恢复执行。

第二百五十七条 有下列情形之一的，人民法院裁定终结执行：

（一）申请人撤销申请的；

（二）据以执行的法律文书被撤销的；

（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；

（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；

（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；

（六）人民法院认为应当终结执行的其他情形。

第二百五十八条 中止和终结执行的裁定，送达当事人后立即生效。

第四编 涉外民事诉讼程序的特别规定

第二十三章 一般原则

第二百五十九条 在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

第二百六十条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

第二百六十一条 对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际条约的规定办理。

第二百六十二条 人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

第二百六十三条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

第二百六十四条 在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他人代理诉讼，从中华人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

第二十四章 管 辖

第二百六十五条 因合同纠纷或者其他财产权益纠纷，对在中华人民共和国领域内没有住所的被告提起的诉讼，如果合同在中华人民共和国领域内签订或者履行，或者诉讼标的物在中华人民共和国领域内，或者被告在中华人民共和国领域内有可供扣押的财产，或者被告在中华人民共和国领域内设有代表机构，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地或者代表机构住所地人民法院管辖。

第二百六十六条 因在中华人民共和国履行中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同发生纠纷提起的诉讼，由中华人民共和国人民法院管辖。

第二十五章 送达、期间

第二百六十七条 人民法院对在中华人民共和国领域内没有住所的当事人送达诉讼文书，可以采用下列方式：

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

（二）通过外交途径送达；

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

（四）向受送达人委托的有权代其接受送达的诉讼代理人送达；

（五）向受送达人在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；

（六）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满三个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

（七）采用传真、电子邮件等能够确认受送达人收悉的方式送达；

（八）不能用上述方式送达的，公告送达，自公告之日起满三个月，即视为送达。

第二百六十八条 被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

第二百六十九条 在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

第二百七十条 人民法院审理涉外民事案件的期间，不受本法第一百四十九条、第一百七十六条规定的限制。

第二十六章 仲 裁

第二百七十一条 涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。

当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

第二百七十二条 当事人申请采取保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

第二百七十三条 经中华人民共和国涉外仲裁机构裁决的，当事人不得向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

第二百七十四条 对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

第二百七十五条 仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二十七章 司法协助

第二百七十六条 根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百七十七条 请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

第二百七十八条 外国法院请求人民法院提供司法协助的请求书及其所附文件，应当附有中文译本或者国际条约规定的其他文字文本。

人民法院请求外国法院提供司法协助的请求书及其所附文件，应当附有该国文字译本或者国际条约规定的其他文字文本。

第二百七十九条 人民法院提供司法协助，依照中华人民共和国法律规定的程序进行。外国法院请求采用特殊方式的，也可以按照其请求的特殊方式进行，但请求采用的特殊方式不得违反中华人民共和国法律。

第二百八十条 人民法院作出的发生法律效力的判决、裁定，如果被执行人或者其财产不在中华人民共和国领域内，当事人请求执行的，可以由当事人直接向有管辖权的外国法院申请承认和执行，也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求外国法院承认和执行。

中华人民共和国涉外仲裁机构作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，应当由当事人直接向有管辖权的外国法院申请承认和执行。

第二百八十一条 外国法院作出的发生法律效力的判决、裁定，需要中华人民共和国人民法院承认和执行的，可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行，也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求人民法院承认和执行。

第二百八十二条 人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会

公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

第二百八十三条 国外仲裁机构的裁决，需要中华人民共和国人民法院承认和执行的，应当由当事人直接向被执行人住所地或者其财产所在地的中级人民法院申请，人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

第二百八十四条 本法自公布之日起施行。《中华人民共和国民事诉讼法（试行）》同时废止。

责任编辑：王伟

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EXHIBIT 2

中华人民共和国民事诉讼法（全文）

中国网 china.com.cn 时间： 2007-10-29 发表评论>>

中华人民共和国主席令

第 七十五 号

《全国人民代表大会常务委员会关于修改〈中华人民共和国民事诉讼法〉的决定》已由中华人民共和国第十届全国人民代表大会常务委员会第三十次会议于2007年10月28日通过，现予公布，自2008年4月1日起施行。

中华人民共和国主席 胡锦涛

2007年10月28日

全国人民代表大会常务委员会关于修改《中华人民共和国民事诉讼法》的决定

（2007年10月28日第十届全国人民代表大会常务委员会第三十次会议通过）

第十届全国人民代表大会常务委员会第三十次会议决定对《中华人民共和国民事诉讼法》作如下修改：

一、第一百零三条第二款修改为：“人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款；对仍不履行协助义务的，可以予以拘留；并可以向监察机关或者有关机关提出予以纪律处分的司法建议。”

二、第一百零四条第一款修改为：“对个人的罚款金额，为人民币一万元以下。对单位的罚款金额，为人民币一万元以上三十万元以下。”

三、第一百七十八条修改为：“当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审，但不停止判决、裁定的执行。”

四、第一百七十九条第一款改为第一百七十九条，修改为：“当事人的申请符合下列情形之一的，人民法院应当再审：

“（一）有新的证据，足以推翻原判决、裁定的；

“（二）原判决、裁定认定的基本事实缺乏证据证明的；

“（三）原判决、裁定认定事实的主要证据是伪造的；

“（四）原判决、裁定认定事实的主要证据未经质证的；

“（五）对审理案件需要的证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

“（六）原判决、裁定适用法律确有错误的；

“（七）违反法律规定，管辖错误的；

“（八）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

“（九）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

“（十）违反法律规定，剥夺当事人辩论权利的；

“（十一）未经传票传唤，缺席判决的；

“（十二）原判决、裁定遗漏或者超出诉讼请求的；

“（十三）据以作出原判决、裁定的法律文书被撤销或者变更的。

“对违反法定程序可能影响案件正确判决、裁定的情形，或者审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，人民法院应当再审。”

五、增加一条，作为第一百八十条：“当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。”

六、第一百七十九条第二款改为第一百八十一条，修改为：“人民法院应当自收到再审申请书之日起三个月内审查，符合本法第一百七十九条规定情形之一的，裁定再审；不符合本法第一百七十九条规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

“因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。”

七、第一百八十二条改为第一百八十四条，修改为：“当事人申请再审，应当在判决、裁定发生法律效力后二年内提出；二年后据以作出原判决、裁定的法律文书被撤销或者变更，以及发现审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，自知道或者应当知道之日起三个月内提出。”

八、第一百八十五条改为第一百八十七条，修改为：“最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提出抗诉。

“地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提请上级人民检察院向同级人民法院提出抗诉。”

九、第一百八十六条改为第一百八十八条，修改为：“人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第一百七十九条第一款第（一）项至第（五）项规定情形之一的，可以交下一级人民法院再审。”

十、第二百零七条改为第二百零一条，第一款修改为：“发生法律效力的民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。”

十一、增加一条，作为第二百零二条：“当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。”

十二、增加一条，作为第二百零三条：“人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。”

十三、第二百零八条改为第二百零四条，修改为：“执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不

服，认为原判决、裁定错误的，依照审判监督程序办理；与原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。”

十四、第二百零九条改为第二百零五条，第三款修改为：“人民法院根据需要可以设立执行机构。”

十五、第二百一十九条改为第二百一十五条，修改为：“申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

“前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。”

十六、第二百二十条改为第二百一十六条，增加一款，作为第二款：“被执行人不履行法律文书确定的义务，并有可能隐匿、转移财产的，执行员可以立即采取强制执行措施。”

十七、增加一条，作为第二百一十七条：“被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。”

十八、增加一条，作为第二百三十一条：“被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。”

十九、删去第十九章“企业法人破产还债程序”。

本决定自2008年4月1日起施行。

《中华人民共和国民事诉讼法》根据本决定作修改并对章节条款顺序作调整后，重新公布。

中华人民共和国民事诉讼法

（1991年4月9日第七届全国人民代表大会第四次会议通过　根据2007年10月28日第十届全国人民代表大会常务委员会第三十次会议《关于修改〈中华人民共和国民事诉讼法〉的决定》修正）

目　录

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1 2 3 4 5 下一页

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中华人民共和国民事诉讼法（全文）

中国网 china.com.cn 时间：2007-10-29 发表评论>>

第一编 总 则

第一章 任务、适用范围和基本原则

第一条 中华人民共和国民事诉讼法以宪法为根据，结合我国民事审判工作的经验和实际情况制定。

第二条 中华人民共和国民事诉讼法的任务，是保护当事人行使诉讼权利，保证人民法院查明事实，分清是非，正确适用法律，及时审理民事案件，确认民事权利义务关系，制裁民事违法行为，保护当事人的合法权益，教育公民自觉遵守法律，维护社会秩序、经济秩序，保障社会主义建设事业顺利进行。

第三条 人民法院受理公民之间、法人之间、其他组织之间以及他们相互之间因财产关系和人身关系提起的民事诉讼，适用本法的规定。

第四条 凡在中华人民共和国领域内进行民事诉讼，必须遵守本法。

第五条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，同中华人民共和国公民、法人和其他组织有同等的诉讼权利义务。

外国法院对中华人民共和国公民、法人和其他组织的民事诉讼权利加以限制的，中华人民共和国人民法院对该国公民、企业和组织的民事诉讼权利，实行对等原则。

第六条 民事案件的审判权由人民法院行使。

人民法院依照法律规定对民事案件独立进行审判，不受行政机关、社会团体和个人的干涉。

第七条 人民法院审理民事案件，必须以事实为根据，以法律为准绳。

第八条 民事诉讼当事人有平等的诉讼权利。人民法院审理民事案件，应当保障和便利当事人行使诉讼权利，对当事人在适用法律上一律平等。

第九条 人民法院审理民事案件，应当根据自愿和合法的原则进行调解；调解不成的，应当及时判决。

第十条 人民法院审理民事案件，依照法律规定实行合议、回避、公开审判和两审终审制度。

第十一条 各民族公民都有用本民族语言、文字进行民事诉讼的权利。

在少数民族聚居或者多民族共同居住的地区，人民法院应当用当地民族通用的语言、文字进行审理和发布法律文书。

人民法院应当对不通晓当地民族通用的语言、文字的诉讼参与人提供翻译。

第十二条 人民法院审理民事案件时，当事人有权进行辩论。

第十三条 当事人有权在法律规定的范围内处分自己的民事权利和诉讼权利。

第十四条 人民检察院有权对民事审判活动实行法律监督。

第十五条 机关、社会团体、企业事业单位对损害国家、集体或者个人民事权益的行为，可以支持受损害的单位或者个人向人民法院起诉。

第十六条　人民调解委员会是在基层人民政府和基层人民法院指导下，调解民间纠纷的群众性组织。

人民调解委员会依照法律规定，根据自愿原则进行调解。当事人对调解达成的协议应当履行；不愿调解、调解不成或者反悔的，可以向人民法院起诉。

人民调解委员会调解民间纠纷，如有违背法律的，人民法院应当予以纠正。

第十七条　民族自治地方的人民代表大会根据宪法和本法的原则，结合当地民族的具体情况，可以制定变通或者补充的规定。自治区的规定，报全国人民代表大会常务委员会批准。自治州、自治县的规定，报省或者自治区的人民代表大会常务委员会批准，并报全国人民代表大会常务委员会备案。

第二章　管　　辖

第一节　级别管辖

第十八条　基层人民法院管辖第一审民事案件，但本法另有规定的除外。

第十九条　中级人民法院管辖下列第一审民事案件：

（一）重大涉外案件；

（二）在本辖区有重大影响的案件；

（三）最高人民法院确定由中级人民法院管辖的案件。

第二十条　高级人民法院管辖在本辖区有重大影响的第一审民事案件。

第二十一条　最高人民法院管辖下列第一审民事案件：

（一）在全国有重大影响的案件；

（二）认为应当由本院审理的案件。

第二节　地域管辖

第二十二条　对公民提起的民事诉讼，由被告住所地人民法院管辖；被告住所地与经常居住地不一致的，由经常居住地人民法院管辖。

对法人或者其他组织提起的民事诉讼，由被告住所地人民法院管辖。

同一诉讼的几个被告住所地、经常居住地在两个以上人民法院辖区的，各该人民法院都有管辖权。

第二十三条　下列民事诉讼，由原告住所地人民法院管辖；原告住所地与经常居住地不一致的，由原告经常居住地人民法院管辖：

（一）对不在中华人民共和国领域内居住的人提起的有关身份关系的诉讼；

（二）对下落不明或者宣告失踪的人提起的有关身份关系的诉讼；

（三）对被劳动教养的人提起的诉讼；

（四）对被监禁的人提起的诉讼。

第二十四条　因合同纠纷提起的诉讼，由被告住所地或者合同履行地人民法院管辖。

第二十五条　合同的双方当事人可以在书面合同中协议选择被告住所地、合同履行地、合同签订地、原告住所地、标的物所在地人民法院管辖，但不得违反本法对级别管辖和专属管辖的规定。

第二十六条　因保险合同纠纷提起的诉讼，由被告住所地或者保险标的物所在地人民法院管辖。

第二十七条　因票据纠纷提起的诉讼，由票据支付地或者被告住所地人民法院管辖。

第二十八条　因铁路、公路、水上、航空运输和联合运输合同纠纷提起的诉讼，由运输始发地、目的地或者被告住所地人民法院管辖。

第二十九条　因侵权行为提起的诉讼，由侵权行为地或者被告住所地人民法院管辖。

第三十条　因铁路、公路、水上和航空事故请求损害赔偿提起的诉讼，由事故发生地或者车辆、船舶最先到达地、航空器最先降落地或者被告住所地人民法院管辖。

第三十一条　因船舶碰撞或者其他海事损害事故请求损害赔偿提起的诉讼，由碰撞发生地、碰撞船舶最先到达地、加害船舶被扣留地或者被告住所地人民法院管辖。

第三十二条　因海难救助费用提起的诉讼，由救助地或者被救助船舶最先到达地人民法院管辖。

第三十三条　因共同海损提起的诉讼，由船舶最先到达地、共同海损理算地或者航程终止地的人民法院管辖。

第三十四条　下列案件，由本条规定的人民法院专属管辖：

（一）因不动产纠纷提起的诉讼，由不动产所在地人民法院管辖；

（二）因港口作业中发生纠纷提起的诉讼，由港口所在地人民法院管辖；

（三）因继承遗产纠纷提起的诉讼，由被继承人死亡时住所地或者主要遗产所在地人民法院管辖。

第三十五条　两个以上人民法院都有管辖权的诉讼，原告可以向其中一个人民法院起诉；原告向两个以上有管辖权的人民法院起诉的，由最先立案的人民法院管辖。

第三节　移送管辖和指定管辖

第三十六条　人民法院发现受理的案件不属于本院管辖的，应当移送有管辖权的人民法院，受移送的人民法院应当受理。受移送的人民法院认为受移送的案件依照规定不属于本院管辖的，应当报请上级人民法院指定管辖，不得再自行移送。

第三十七条　有管辖权的人民法院由于特殊原因，不能行使管辖权的，由上级人民法院指定管辖。

人民法院之间因管辖权发生争议，由争议双方协商解决；协商解决不了的，报请它们的共同上级人民法院指定管辖。

第三十八条　人民法院受理案件后，当事人对管辖权有异议的，应当在提交答辩状期间提出。人民法院对当事人提出的异议，应当审查。异议成立的，裁定将案件移送有管辖权的人民法院；异议不成立的，裁定驳回。

第三十九条　上级人民法院有权审理下级人民法院管辖的第一审民事案件，也可以把本院管辖的第一审民事案件交下级人民法院审理。

下级人民法院对它所管辖的第一审民事案件，认为需要由上级人民法院审理的，可以报请上级人民法院审理。

文章来源：新华社　　责任编辑：钮东昊

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中华人民共和国民事诉讼法（全文）

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第三章 审判组织

第四十条 人民法院审理第一审民事案件，由审判员、陪审员共同组成合议庭或者由审判员组成合议庭。合议庭的成员人数，必须是单数。

适用简易程序审理的民事案件，由审判员一人独任审理。

陪审员在执行陪审职务时，与审判员有同等的权利义务。

第四十一条 人民法院审理第二审民事案件，由审判员组成合议庭。合议庭的成员人数，必须是单数。

发回重审的案件，原审人民法院应当按照第一审程序另行组成合议庭。

审理再审案件，原来是第一审的，按照第一审程序另行组成合议庭；原来是第二审的或者是上级人民法院提审的，按照第二审程序另行组成合议庭。

第四十二条 合议庭的审判长由院长或者庭长指定审判员一人担任；院长或者庭长参加审判的，由院长或者庭长担任。

第四十三条 合议庭评议案件，实行少数服从多数的原则。评议应当制作笔录，由合议庭成员签名。评议中的不同意见，必须如实记入笔录。

第四十四条 审判人员应当依法秉公办案。

审判人员不得接受当事人及其诉讼代理人请客送礼。

审判人员有贪污受贿，徇私舞弊，枉法裁判行为的，应当追究法律责任；构成犯罪的，依法追究刑事责任。

第四章 回 避

第四十五条 审判人员有下列情形之一的，必须回避，当事人有权用口头或者书面方式申请他们回避：

（一）是本案当事人或者当事人、诉讼代理人的近亲属；

（二）与本案有利害关系；

（三）与本案当事人有其他关系，可能影响对案件公正审理的。

前款规定，适用于书记员、翻译人员、鉴定人、勘验人。

第四十六条 当事人提出回避申请，应当说明理由，在案件开始审理时提出；回避事由在案件开始审理后知道的，也可以在法庭辩论终结前提出。

被申请回避的人员在人民法院作出是否回避的决定前，应当暂停参与本案的工作，但案件需要采取紧急措施的除外。

第四十七条 院长担任审判长时的回避，由审判委员会决定；审判人员的回避，由院长决定；其他人员的回避，由审判长决定。

第四十八条 人民法院对当事人提出的回避申请，应当在申请提出的三日内，以口头或者书面形式作出决定。申请人对决定不服的，可以在接到决定时申请复议一

次。复议期间，被申请回避的人员，不停止参与本案的工作。人民法院对复议申请，应当在三日内作出复议决定，并通知复议申请人。

第五章 诉讼参加人

第一节 当事人

第四十九条 公民、法人和其他组织可以作为民事诉讼的当事人。

法人由其法定代表人进行诉讼。其他组织由其主要负责人进行诉讼。

第五十条 当事人有权委托代理人，提出回避申请，收集、提供证据，进行辩论，请求调解，提起上诉，申请执行。

当事人可以查阅本案有关材料，并可以复制本案有关材料和法律文书。查阅、复制本案有关材料的范围和办法由最高人民法院规定。

当事人必须依法行使诉讼权利，遵守诉讼秩序，履行发生法律效力的判决书、裁定书和调解书。

第五十一条 双方当事人可以自行和解。

第五十二条 原告可以放弃或者变更诉讼请求。被告可以承认或者反驳诉讼请求，有权提起反诉。

第五十三条 当事人一方或者双方为二人以上，其诉讼标的是共同的，或者诉讼标的是同一种类、人民法院认为可以合并审理并经当事人同意的，为共同诉讼。

共同诉讼的一方当事人对诉讼标的有共同权利义务的，其中一人的诉讼行为经其他共同诉讼人承认，对其他共同诉讼人发生效力；对诉讼标的没有共同权利义务的，其中一人的诉讼行为对其他共同诉讼人不发生效力。

第五十四条 当事人一方人数众多的共同诉讼，可以由当事人推选代表人进行诉讼。代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

第五十五条 诉讼标的是同一种类、当事人一方人数众多在起诉时人数尚未确定的，人民法院可以发出公告，说明案件情况和诉讼请求，通知权利人在一定期间向人民法院登记。

向人民法院登记的权利人可以推选代表人进行诉讼；推选不出代表人的，人民法院可以与参加登记的权利人商定代表人。

代表人的诉讼行为对其所代表的当事人发生效力，但代表人变更、放弃诉讼请求或者承认对方当事人的诉讼请求，进行和解，必须经被代表的当事人同意。

人民法院作出的判决、裁定，对参加登记的全体权利人发生效力。未参加登记的权利人在诉讼时效期间提起诉讼的，适用该判决、裁定。

第五十六条 对当事人双方的诉讼标的，第三人认为有独立请求权的，有权提起诉讼。

对当事人双方的诉讼标的，第三人虽然没有独立请求权，但案件处理结果同他有法律上的利害关系的，可以申请参加诉讼，或者由人民法院通知他参加诉讼。人民法院判决承担民事责任的第三人，有当事人的诉讼权利义务。

第二节 诉讼代理人

第五十七条 无诉讼行为能力人由他的监护人作为法定代理人代为诉讼。法定代理人之间互相推诿代理责任的，由人民法院指定其中一人代为诉讼。

第五十八条　当事人、法定代理人可以委托一至二人作为诉讼代理人。

律师、当事人的近亲属、有关的社会团体或者所在单位推荐的人、经人民法院许可的其他公民，都可以被委托为诉讼代理人。

第五十九条　委托他人代为诉讼，必须向人民法院提交由委托人签名或者盖章的授权委托书。

授权委托书必须记明委托事项和权限。诉讼代理人代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉，必须有委托人的特别授权。

侨居在国外的中华人民共和国公民从国外寄交或者托交的授权委托书，必须经中华人民共和国驻该国的使领馆证明；没有使领馆的，由与中华人民共和国有外交关系的第三国驻该国的使领馆证明，再转由中华人民共和国驻该第三国使领馆证明，或者由当地的爱国华侨团体证明。

第六十条　诉讼代理人的权限如果变更或者解除，当事人应当书面告知人民法院，并由人民法院通知对方当事人。

第六十一条　代理诉讼的律师和其他诉讼代理人有权调查收集证据，可以查阅本案有关材料。查阅本案有关材料的范围和办法由最高人民法院规定。

第六十二条　离婚案件有诉讼代理人的，本人除不能表达意志的以外，仍应出庭；确因特殊情况无法出庭的，必须向人民法院提交书面意见。

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上一页 1 2 3 4 5 6 7 下一页

中华人民共和国民事诉讼法（全文）

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第六章 证 据

第六十三条 证据有下列几种：

（一）书证；

（二）物证；

（三）视听资料；

（四）证人证言；

（五）当事人的陈述；

（六）鉴定结论；

（七）勘验笔录。

以上证据必须查证属实，才能作为认定事实的根据。

第六十四条 当事人对自己提出的主张，有责任提供证据。

当事人及其诉讼代理人因客观原因不能自行收集的证据，或者人民法院认为审理案件需要的证据，人民法院应当调查收集。

人民法院应当按照法定程序，全面地、客观地审查核实证据。

第六十五条 人民法院有权向有关单位和个人调查取证，有关单位和个人不得拒绝。

人民法院对有关单位和个人提出的证明文书，应当辨别真伪，审查确定其效力。

第六十六条 证据应当在法庭上出示，并由当事人互相质证。对涉及国家秘密、商业秘密和个人隐私的证据应当保密，需要在法庭出示的，不得在公开开庭时出示。

第六十七条 经过法定程序公证证明的法律行为、法律事实和文书，人民法院应当作为认定事实的根据。但有相反证据足以推翻公证证明的除外。

第六十八条 书证应当提交原件。物证应当提交原物。提交原件或者原物确有困难的，可以提交复制品、照片、副本、节录本。

提交外文书证，必须附有中文译本。

第六十九条 人民法院对视听资料，应当辨别真伪，并结合本案的其他证据，审查确定能否作为认定事实的根据。

第七十条 凡是知道案件情况的单位和个人，都有义务出庭作证。有关单位的负责人应当支持证人作证。证人确有困难不能出庭的，经人民法院许可，可以提交书面证言。

不能正确表达意志的人，不能作证。

第七十一条 人民法院对当事人的陈述，应当结合本案的其他证据，审查确定能否作为认定事实的根据。

当事人拒绝陈述的，不影响人民法院根据证据认定案件事实。

第七十二条　人民法院对专门性问题认为需要鉴定的，应当交由法定鉴定部门鉴定；没有法定鉴定部门的，由人民法院指定的鉴定部门鉴定。

鉴定部门及其指定的鉴定人有权了解进行鉴定所需要的案件材料，必要时可以询问当事人、证人。

鉴定部门和鉴定人应当提出书面鉴定结论，在鉴定书上签名或者盖章。鉴定人鉴定的，应当由鉴定人所在单位加盖印章，证明鉴定人身份。

第七十三条　勘验物证或者现场，勘验人必须出示人民法院的证件，并邀请当地基层组织或者当事人所在单位派人参加。当事人或者当事人的成年家属应当到场，拒不到场的，不影响勘验的进行。

有关单位和个人根据人民法院的通知，有义务保护现场，协助勘验工作。

勘验人应当将勘验情况和结果制作笔录，由勘验人、当事人和被邀参加人签名或者盖章。

第七十四条　在证据可能灭失或者以后难以取得的情况下，诉讼参加人可以向人民法院申请保全证据，人民法院也可以主动采取保全措施。

第七章　期间、送达

第一节　期　　间

第七十五条　期间包括法定期间和人民法院指定的期间。

期间以时、日、月、年计算。期间开始的时和日，不计算在期间内。

期间届满的最后一日是节假日的，以节假日后的第一日为期间届满的日期。

期间不包括在途时间，诉讼文书在期满前交邮的，不算过期。

第七十六条　当事人因不可抗拒的事由或者其他正当理由耽误期限的，在障碍消除后的十日内，可以申请顺延期限，是否准许，由人民法院决定。

第二节　送　　达

第七十七条　送达诉讼文书必须有送达回证，由受送达人在送达回证上记明收到日期，签名或者盖章。

受送达人在送达回证上的签收日期为送达日期。

第七十八条　送达诉讼文书，应当直接送交受送达人。受送达人是公民的，本人不在交他的同住成年家属签收；受送达人是法人或者其他组织的，应当由法人的法定代表人、其他组织的主要负责人或者该法人、组织负责收件的人签收；受送达人有诉讼代理人的，可以送交其代理人签收；受送达人已向人民法院指定代收人的，送交代收人签收。

受送达人的同住成年家属，法人或者其他组织的负责收件的人，诉讼代理人或者代收人在送达回证上签收的日期为送达日期。

第七十九条　受送达人或者他的同住成年家属拒绝接收诉讼文书的，送达人应当邀请有关基层组织或者所在单位的代表到场，说明情况，在送达回证上记明拒收事由和日期，由送达人、见证人签名或者盖章，把诉讼文书留在受送达人的住所，即视为送达。

第八十条　直接送达诉讼文书有困难的，可以委托其他人民法院代为送达，或者邮寄送达。邮寄送达的，以回执上注明的收件日期为送达日期。

第八十一条　受送达人是军人的，通过其所在部队团以上单位的政治机关转交。

第八十二条　受送达人是被监禁的，通过其所在监所或者劳动改造单位转交。

受送达人是被劳动教养的，通过其所在劳动教养单位转交。

第八十三条　代为转交的机关、单位收到诉讼文书后，必须立即交受送达人签收，以在送达回证上的签收日期，为送达日期。

第八十四条　受送达人下落不明，或者用本节规定的其他方式无法送达的，公告送达。自发出公告之日起，经过六十日，即视为送达。

公告送达，应当在案卷中记明原因和经过。

第八章　调　　解

第八十五条　人民法院审理民事案件，根据当事人自愿的原则，在事实清楚的基础上，分清是非，进行调解。

第八十六条　人民法院进行调解，可以由审判员一人主持，也可以由合议庭主持，并尽可能就地进行。

人民法院进行调解，可以用简便方式通知当事人、证人到庭。

第八十七条　人民法院进行调解，可以邀请有关单位和个人协助。被邀请的单位和个人，应当协助人民法院进行调解。

第八十八条　调解达成协议，必须双方自愿，不得强迫。调解协议的内容不得违反法律规定。

第八十九条　调解达成协议，人民法院应当制作调解书。调解书应当写明诉讼请求、案件的事实和调解结果。

调解书由审判人员、书记员署名，加盖人民法院印章，送达双方当事人。

调解书经双方当事人签收后，即具有法律效力。

第九十条　下列案件调解达成协议，人民法院可以不制作调解书：

（一）调解和好的离婚案件；

（二）调解维持收养关系的案件；

（三）能够即时履行的案件；

（四）其他不需要制作调解书的案件。

对不需要制作调解书的协议，应当记入笔录，由双方当事人、审判人员、书记员签名或者盖章后，即具有法律效力。

第九十一条　调解未达成协议或者调解书送达前一方反悔的，人民法院应当及时判决。

第九章　财产保全和先予执行

第九十二条　人民法院对于可能因当事人一方的行为或者其他原因，使判决不能执行或者难以执行的案件，可以根据对方当事人的申请，作出财产保全的裁定；当事人没有提出申请的，人民法院在必要时也可以裁定采取财产保全措施。

人民法院采取财产保全措施，可以责令申请人提供担保；申请人不提供担保的，驳回申请。

人民法院接受申请后，对情况紧急的，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当立即开始执行。

第九十三条　利害关系人因情况紧急，不立即申请财产保全将会使其合法权益受到难以弥补的损害的，可以在起诉前向人民法院申请采取财产保全措施。申请人应当提供担保，不提供担保的，驳回申请。

人民法院接受申请后，必须在四十八小时内作出裁定；裁定采取财产保全措施的，应当立即开始执行。

申请人在人民法院采取保全措施后十五日内不起诉的，人民法院应当解除财产保全。

第九十四条　财产保全限于请求的范围，或者与本案有关的财物。

财产保全采取查封、扣押、冻结或者法律规定的其他方法。

人民法院冻结财产后，应当立即通知被冻结财产的人。

财产已被查封、冻结的，不得重复查封、冻结。

第九十五条　被申请人提供担保的，人民法院应当解除财产保全。

第九十六条　申请有错误的，申请人应当赔偿被申请人因财产保全所遭受的损失。

第九十七条　人民法院对下列案件，根据当事人的申请，可以裁定先予执行：

（一）追索赡养费、扶养费、抚育费、抚恤金、医疗费用的；

（二）追索劳动报酬的；

（三）因情况紧急需要先予执行的。

第九十八条　人民法院裁定先予执行的，应当符合下列条件：

（一）当事人之间权利义务关系明确，不先予执行将严重影响申请人的生活或者生产经营的；

（二）被申请人有履行能力。

人民法院可以责令申请人提供担保，申请人不提供担保的，驳回申请。申请人败诉的，应当赔偿被申请人因先予执行遭受的财产损失。

第九十九条　当事人对财产保全或者先予执行的裁定不服的，可以申请复议一次。复议期间不停止裁定的执行。

第十章　对妨害民事诉讼的强制措施

第一百条　人民法院对必须到庭的被告，经两次传票传唤，无正当理由拒不到庭的，可以拘传。

第一百零一条　诉讼参与人和其他人应当遵守法庭规则。

人民法院对违反法庭规则的人，可以予以训诫，责令退出法庭或者予以罚款、拘留。

人民法院对哄闹、冲击法庭，侮辱、诽谤、威胁、殴打审判人员，严重扰乱法庭秩序的人，依法追究刑事责任；情节较轻的，予以罚款、拘留。

第一百零二条　诉讼参与人或者其他人有下列行为之一的，人民法院可以根据情节轻重予以罚款、拘留；构成犯罪的，依法追究刑事责任：

（一）伪造、毁灭重要证据，妨碍人民法院审理案件的；

（二）以暴力、威胁、贿买方法阻止证人作证或者指使、贿买、胁迫他人作伪证的；

（三）隐藏、转移、变卖、毁损已被查封、扣押的财产，或者已被清点并责令其保管的财产，转移已被冻结的财产的；

（四）对司法工作人员、诉讼参加人、证人、翻译人员、鉴定人、勘验人、协助执行的人，进行侮辱、诽谤、诬陷、殴打或者打击报复的；

（五）以暴力、威胁或者其他方法阻碍司法工作人员执行职务的；

（六）拒不履行人民法院已经发生法律效力的判决、裁定的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款、拘留；构成犯罪的，依法追究刑事责任。

第一百零三条　有义务协助调查、执行的单位有下列行为之一的，人民法院除责令其履行协助义务外，并可以予以罚款：

（一）有关单位拒绝或者妨碍人民法院调查取证的；

（二）银行、信用合作社和其他有储蓄业务的单位接到人民法院协助执行通知书后，拒不协助查询、冻结或者划拨存款的；

（三）有关单位接到人民法院协助执行通知书后，拒不协助扣留被执行人的收入、办理有关财产权证照转移手续、转交有关票证、证照或者其他财产的；

（四）其他拒绝协助执行的。

人民法院对有前款规定的行为之一的单位，可以对其主要负责人或者直接责任人员予以罚款；对仍不履行协助义务的，可以予以拘留；并可以向监察机关或者有关机关提出予以纪律处分的司法建议。

第一百零四条　对个人的罚款金额，为人民币一万元以下。对单位的罚款金额，为人民币一万元以上三十万元以下。

拘留的期限，为十五日以下。

被拘留的人，由人民法院交公安机关看管。在拘留期间，被拘留人承认并改正错误的，人民法院可以决定提前解除拘留。

第一百零五条　拘传、罚款、拘留必须经院长批准。

拘传应当发拘传票。

罚款、拘留应当用决定书。对决定不服的，可以向上一级人民法院申请复议一次。复议期间不停止执行。

第一百零六条　采取对妨害民事诉讼的强制措施必须由人民法院决定。任何单位和个人采取非法拘禁他人或者非法私自扣押他人财产追索债务的，应当依法追究刑事责任，或者予以拘留、罚款。

第十一章　诉讼费用

第一百零七条　当事人进行民事诉讼，应当按照规定交纳案件受理费。财产案件除交纳案件受理费外，并按照规定交纳其他诉讼费用。

当事人交纳诉讼费用确有困难的，可以按照规定向人民法院申请缓交、减交或者免交。

收取诉讼费用的办法另行制定。

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中华人民共和国民事诉讼法（全文）

中国网 china.com.cn 时间：2007-10-29 发表评论>

第二编 审判程序

第十二章 第一审普通程序

第一节 起诉和受理

第一百零八条 起诉必须符合下列条件：

（一）原告是与本案有直接利害关系的公民、法人和其他组织；

（二）有明确的被告；

（三）有具体的诉讼请求和事实、理由；

（四）属于人民法院受理民事诉讼的范围和受诉人民法院管辖。

第一百零九条 起诉应当向人民法院递交起诉状，并按照被告人数提出副本。

书写起诉状确有困难的，可以口头起诉，由人民法院记入笔录，并告知对方当事人。

第一百一十条 起诉状应当记明下列事项：

（一）当事人的姓名、性别、年龄、民族、职业、工作单位和住所，法人或者其他组织的名称、住所和法定代表人或者主要负责人的姓名、职务；

（二）诉讼请求和所根据的事实与理由；

（三）证据和证据来源，证人姓名和住所。

第一百一十一条 人民法院对符合本法第一百零八条的起诉，必须受理；对下列起诉，分别情形，予以处理：

（一）依照行政诉讼法的规定，属于行政诉讼受案范围的，告知原告提起行政诉讼；

（二）依照法律规定，双方当事人对合同纠纷自愿达成书面仲裁协议向仲裁机构申请仲裁、不得向人民法院起诉的，告知原告向仲裁机构申请仲裁；

（三）依照法律规定，应当由其他机关处理的争议，告知原告向有关机关申请解决；

（四）对不属于本院管辖的案件，告知原告向有管辖权的人民法院起诉；

（五）对判决、裁定已经发生法律效力的案件，当事人又起诉的，告知原告按照申诉处理，但人民法院准许撤诉的裁定除外；

（六）依照法律规定，在一定期限内不得起诉的案件，在不得起诉的期限内起诉的，不予受理；

（七）判决不准离婚和调解和好的离婚案件，判决、调解维持收养关系的案件，没有新情况、新理由，原告在六个月内又起诉的，不予受理。

第一百一十二条 人民法院收到起诉状或者口头起诉，经审查，认为符合起诉条件的，应当在七日内立案，并通知当事人；认为不符合起诉条件的，应当在七日内裁

定不予受理；原告对裁定不服的，可以提起上诉。

第二节 审理前的准备

第一百一十三条 人民法院应当在立案之日起五日内将起诉状副本发送被告，被告在收到之日起十五日内提出答辩状。

被告提出答辩状的，人民法院应当在收到之日起五日内将答辩状副本发送原告。被告不提出答辩状的，不影响人民法院审理。

第一百一十四条 人民法院对决定受理的案件，应当在受理案件通知书和应诉通知书中向当事人告知有关的诉讼权利义务，或者口头告知。

第一百一十五条 合议庭组成人员确定后，应当在三日内告知当事人。

第一百一十六条 审判人员必须认真审核诉讼材料，调查收集必要的证据。

第一百一十七条 人民法院派出人员进行调查时，应当向被调查人出示证件。

调查笔录经被调查人校阅后，由被调查人、调查人签名或者盖章。

第一百一十八条 人民法院在必要时可以委托外地人民法院调查。

委托调查，必须提出明确的项目和要求。受委托人民法院可以主动补充调查。

受委托人民法院收到委托书后，应当在三十日内完成调查。因故不能完成的，应当在上述期限内函告委托人民法院。

第一百一十九条 必须共同进行诉讼的当事人没有参加诉讼的，人民法院应当通知其参加诉讼。

第三节 开庭审理

第一百二十条 人民法院审理民事案件，除涉及国家秘密、个人隐私或者法律另有规定的以外，应当公开进行。

离婚案件，涉及商业秘密的案件，当事人申请不公开审理的，可以不公开审理。

第一百二十一条 人民法院审理民事案件，根据需要进行巡回审理，就地办案。

第一百二十二条 人民法院审理民事案件，应当在开庭三日前通知当事人和其他诉讼参与人。公开审理的，应当公告当事人姓名、案由和开庭的时间、地点。

第一百二十三条 开庭审理前，书记员应当查明当事人和其他诉讼参与人是否到庭，宣布法庭纪律。

开庭审理时，由审判长核对当事人，宣布案由，宣布审判人员、书记员名单，告知当事人有关的诉讼权利义务，询问当事人是否提出回避申请。

第一百二十四条 法庭调查按照下列顺序进行：

（一）当事人陈述；

（二）告知证人的权利义务，证人作证，宣读未到庭的证人证言；

（三）出示书证、物证和视听资料；

（四）宣读鉴定结论；

（五）宣读勘验笔录。

第一百二十五条 当事人在法庭上可以提出新的证据。

当事人经法庭许可，可以向证人、鉴定人、勘验人发问。

当事人要求重新进行调查、鉴定或者勘验的，是否准许，由人民法院决定。

第一百二十六条　原告增加诉讼请求，被告提出反诉，第三人提出与本案有关的诉讼请求，可以合并审理。

第一百二十七条　法庭辩论按照下列顺序进行：

（一）原告及其诉讼代理人发言；

（二）被告及其诉讼代理人答辩；

（三）第三人及其诉讼代理人发言或者答辩；

（四）互相辩论。

法庭辩论终结，由审判长按照原告、被告、第三人的先后顺序征询各方最后意见。

第一百二十八条　法庭辩论终结，应当依法作出判决。判决前能够调解的，还可以进行调解，调解不成的，应当及时判决。

第一百二十九条　原告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以按撤诉处理；被告反诉的，可以缺席判决。

第一百三十条　被告经传票传唤，无正当理由拒不到庭的，或者未经法庭许可中途退庭的，可以缺席判决。

第一百三十一条　宣判前，原告申请撤诉的，是否准许，由人民法院裁定。

人民法院裁定不准许撤诉的，原告经传票传唤，无正当理由拒不到庭的，可以缺席判决。

第一百三十二条　有下列情形之一的，可以延期开庭审理：

（一）必须到庭的当事人和其他诉讼参与人有正当理由没有到庭的；

（二）当事人临时提出回避申请的；

（三）需要通知新的证人到庭，调取新的证据，重新鉴定、勘验，或者需要补充调查的；

（四）其他应当延期的情形。

第一百三十三条　书记员应当将法庭审理的全部活动记入笔录，由审判人员和书记员签名。

法庭笔录应当当庭宣读，也可以告知当事人和其他诉讼参与人当庭或者在五日内阅读。当事人和其他诉讼参与人认为对自己的陈述记录有遗漏或者差错的，有权申请补正。如果不予补正，应当将申请记录在案。

法庭笔录由当事人和其他诉讼参与人签名或者盖章。拒绝签名盖章的，记明情况附卷。

第一百三十四条　人民法院对公开审理或者不公开审理的案件，一律公开宣告判决。

当庭宣判的，应当在十日内发送判决书；定期宣判的，宣判后立即发给判决书。

宣告判决时，必须告知当事人上诉权利、上诉期限和上诉的法院。

宣告离婚判决，必须告知当事人在判决发生法律效力前不得另行结婚。

第一百三十五条　人民法院适用普通程序审理的案件，应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民法院批准。

第四节　诉讼中止和终结

第一百三十六条　有下列情形之一的，中止诉讼：

（一）一方当事人死亡，需要等待继承人表明是否参加诉讼的；

（二）一方当事人丧失诉讼行为能力，尚未确定法定代理人的；

（三）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（四）一方当事人因不可抗拒的事由，不能参加诉讼的；

（五）本案必须以另一案的审理结果为依据，而另一案尚未审结的；

（六）其他应当中止诉讼的情形。

中止诉讼的原因消除后，恢复诉讼。

第一百三十七条　有下列情形之一的，终结诉讼：

（一）原告死亡，没有继承人，或者继承人放弃诉讼权利的；

（二）被告死亡，没有遗产，也没有应当承担义务的人的；

（三）离婚案件一方当事人死亡的；

（四）追索赡养费、扶养费、抚育费以及解除收养关系案件的一方当事人死亡的。

第五节　判决和裁定

第一百三十八条　判决书应当写明：

（一）案由、诉讼请求、争议的事实和理由；

（二）判决认定的事实、理由和适用的法律依据；

（三）判决结果和诉讼费用的负担；

（四）上诉期间和上诉的法院。

判决书由审判人员、书记员署名，加盖人民法院印章。

第一百三十九条　人民法院审理案件，其中一部分事实已经清楚，可以就该部分先行判决。

第一百四十条　裁定适用于下列范围：

（一）不予受理；

（二）对管辖权有异议的；

（三）驳回起诉；

（四）财产保全和先予执行；

（五）准许或者不准许撤诉；

（六）中止或者终结诉讼；

（七）补正判决书中的笔误；

（八）中止或者终结执行；

（九）不予执行仲裁裁决；

（十）不予执行公证机关赋予强制执行效力的债权文书；

（十一）其他需要裁定解决的事项。

对前款第（一）、（二）、（三）项裁定，可以上诉。

裁定书由审判人员、书记员署名，加盖人民法院印章。口头裁定的，记入笔录。

第一百四十一条 最高人民法院的判决、裁定，以及依法不准上诉或者超过上诉期没有上诉的判决、裁定，是发生法律效力的判决、裁定。

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上一页 1 2 3 4 5 6 7 8 下一页

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中华人民共和国民事诉讼法（全文）

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第十三章 简易程序

第一百四十二条 基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

第一百四十三条 对简单的民事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百四十四条 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式随时传唤当事人、证人。

第一百四十五条 简单的民事案件由审判员一人独任审理，并不受本法第一百二十二条、第一百二十四条、第一百二十七条规定的限制。

第一百四十六条 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

第十四章 第二审程序

第一百四十七条 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

第一百四十八条 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人的姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

第一百四十九条 上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

第一百五十条 原审人民法院收到上诉状，应当在五日内将上诉状副本送达对方当事人，对方当事人在收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百五十一条 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百五十二条 第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷和调查，询问当事人，在事实核对清楚后，合议庭认为不需要开庭审理的，也可以径行判决、裁定。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百五十三条　第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决认定事实清楚，适用法律正确的，判决驳回上诉，维持原判决；

（二）原判决适用法律错误的，依法改判；

（三）原判决认定事实错误，或者原判决认定事实不清，证据不足，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

（四）原判决违反法定程序，可能影响案件正确判决的，裁定撤销原判决，发回原审人民法院重审。

当事人对重审案件的判决、裁定，可以上诉。

第一百五十四条　第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使用裁定。

第一百五十五条　第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

第一百五十六条　第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。

第一百五十七条　第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。

第一百五十八条　第二审人民法院的判决、裁定，是终审的判决、裁定。

第一百五十九条　人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。

人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

第十五章　特别程序

第一节　一般规定

第一百六十条　人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件和认定财产无主案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

第一百六十一条　依照本章程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

第一百六十二条　人民法院在依照本章程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

第一百六十三条　人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

第二节　选民资格案件

第一百六十四条　公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

第一百六十五条　人民法院受理选民资格案件后，必须在选举日前审结。

审理时，起诉人、选举委员会的代表和有关公民必须参加。

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

第三节　宣告失踪、宣告死亡案件

第一百六十六条　公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十七条　公民下落不明满四年，或者因意外事故下落不明满二年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十八条　人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

第一百六十九条　被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

第四节　认定公民无民事行为能力、限制民事行为能力案件

第一百七十条　申请认定公民无民事行为能力或者限制民事行为能力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

第一百七十一条　人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定结论的，应当对鉴定结论进行审查。

第一百七十二条　人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康情况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

第一百七十三条　人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请，证实该公民无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

第五节　认定财产无主案件

第一百七十四条　申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

第一百七十五条　人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

第一百七十六条　判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

第十六章　审判监督程序

第一百七十七条　各级人民法院院长对本院已经发生法律效力的判决、裁定，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定，上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现确有错误的，有权提审或者指令下级人民法院再审。

第一百七十八条　当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审，但不停止判决、裁定的执行。

第一百七十九条　当事人的申请符合下列情形之一的，人民法院应当再审：

（一）有新的证据，足以推翻原判决、裁定的；

（二）原判决、裁定认定的基本事实缺乏证据证明的；

（三）原判决、裁定认定事实的主要证据是伪造的；

（四）原判决、裁定认定事实的主要证据未经质证的；

（五）对审理案件需要的证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

（六）原判决、裁定适用法律确有错误的；

（七）违反法律规定，管辖错误的；

（八）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

（九）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

（十）违反法律规定，剥夺当事人辩论权利的；

（十一）未经传票传唤，缺席判决的；

（十二）原判决、裁定遗漏或者超出诉讼请求的；

（十三）据以作出原判决、裁定的法律文书被撤销或者变更的。

对违反法定程序可能影响案件正确判决、裁定的情形，或者审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，人民法院应当再审。

第一百八十条　当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

第一百八十一条　人民法院应当自收到再审申请书之日起三个月内审查，符合本法第一百七十九条规定情形之一的，裁定再审；不符合本法第一百七十九条规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第一百八十二条　当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

第一百八十三条　当事人对已经发生法律效力的解除婚姻关系的判决，不得申请再审。

第一百八十四条　当事人申请再审，应当在判决、裁定发生法律效力后二年内提出；二年后据以作出原判决、裁定的法律文书被撤销或者变更，以及发现审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，自知道或者应当知道之日起三个月内提出。

第一百八十五条　按照审判监督程序决定再审的案件，裁定中止原判决的执行。裁定由院长署名，加盖人民法院印章。

第一百八十六条　人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力的判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力的判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。

人民法院审理再审案件，应当另行组成合议庭。

第一百八十七条　最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提请上级人民检察院向同级人民法院提出抗诉。

第一百八十八条　人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第一百七十九条第一款第（一）项至第（五）项规定情形之一的，可以交下一级人民法院再审。

第一百八十九条　人民检察院决定对人民法院的判决、裁定提出抗诉的，应当制作抗诉书。

第一百九十条　人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

第十七章　督促程序

第一百九十一条　债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有管辖权的基层人民法院申请支付令：

（一）债权人与债务人没有其他债务纠纷的；

（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

第一百九十二条　债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

第一百九十二条　人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

第一百九十四条　人民法院收到债务人提出的书面异议后，应当裁定终结督促程序，支付令自行失效，债权人可以起诉。

第十八章　公示催告程序

第一百九十五条　按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

第一百九十六条　人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

第一百九十七条　支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

第一百九十八条　利害关系人应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

第一百九十九条　没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

第二百条　利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

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上一页　1　2　3　4　5　6　7　8　下一页

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中华人民共和国民事诉讼法（全文）

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第十三章 简易程序

第一百四十二条 基层人民法院和它派出的法庭审理事实清楚、权利义务关系明确、争议不大的简单的民事案件，适用本章规定。

第一百四十三条 对简单的民事案件，原告可以口头起诉。

当事人双方可以同时到基层人民法院或者它派出的法庭，请求解决纠纷。基层人民法院或者它派出的法庭可以当即审理，也可以另定日期审理。

第一百四十四条 基层人民法院和它派出的法庭审理简单的民事案件，可以用简便方式随时传唤当事人、证人。

第一百四十五条 简单的民事案件由审判员一人独任审理，并不受本法第一百二十二条、第一百二十四条、第一百二十七条规定的限制。

第一百四十六条 人民法院适用简易程序审理案件，应当在立案之日起三个月内审结。

第十四章 第二审程序

第一百四十七条 当事人不服地方人民法院第一审判决的，有权在判决书送达之日起十五日内向上一级人民法院提起上诉。

当事人不服地方人民法院第一审裁定的，有权在裁定书送达之日起十日内向上一级人民法院提起上诉。

第一百四十八条 上诉应当递交上诉状。上诉状的内容，应当包括当事人的姓名，法人的名称及其法定代表人的姓名或者其他组织的名称及其主要负责人的姓名；原审人民法院名称、案件的编号和案由；上诉的请求和理由。

第一百四十九条 上诉状应当通过原审人民法院提出，并按照对方当事人或者代表人的人数提出副本。

当事人直接向第二审人民法院上诉的，第二审人民法院应当在五日内将上诉状移交原审人民法院。

第一百五十条 原审人民法院收到上诉状，应当在五日内将上诉状副本送达对方当事人，对方当事人在收到之日起十五日内提出答辩状。人民法院应当在收到答辩状之日起五日内将副本送达上诉人。对方当事人不提出答辩状的，不影响人民法院审理。

原审人民法院收到上诉状、答辩状，应当在五日内连同全部案卷和证据，报送第二审人民法院。

第一百五十一条 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

第一百五十二条 第二审人民法院对上诉案件，应当组成合议庭，开庭审理。经过阅卷和调查，询问当事人，在事实核对清楚后，合议庭认为不需要开庭审理的，也可以径行判决、裁定。

第二审人民法院审理上诉案件，可以在本院进行，也可以到案件发生地或者原审人民法院所在地进行。

第一百五十三条　第二审人民法院对上诉案件，经过审理，按照下列情形，分别处理：

（一）原判决认定事实清楚，适用法律正确的，判决驳回上诉，维持原判决；

（二）原判决适用法律错误的，依法改判；

（三）原判决认定事实错误，或者原判决认定事实不清，证据不足，裁定撤销原判决，发回原审人民法院重审，或者查清事实后改判；

（四）原判决违反法定程序，可能影响案件正确判决的，裁定撤销原判决，发回原审人民法院重审。

当事人对重审案件的判决、裁定，可以上诉。

第一百五十四条　第二审人民法院对不服第一审人民法院裁定的上诉案件的处理，一律使用裁定。

第一百五十五条　第二审人民法院审理上诉案件，可以进行调解。调解达成协议，应当制作调解书，由审判人员、书记员署名，加盖人民法院印章。调解书送达后，原审人民法院的判决即视为撤销。

第一百五十六条　第二审人民法院判决宣告前，上诉人申请撤回上诉的，是否准许，由第二审人民法院裁定。

第一百五十七条　第二审人民法院审理上诉案件，除依照本章规定外，适用第一审普通程序。

第一百五十八条　第二审人民法院的判决、裁定，是终审的判决、裁定。

第一百五十九条　人民法院审理对判决的上诉案件，应当在第二审立案之日起三个月内审结。有特殊情况需要延长的，由本院院长批准。

人民法院审理对裁定的上诉案件，应当在第二审立案之日起三十日内作出终审裁定。

第十五章　特别程序

第一节　一般规定

第一百六十条　人民法院审理选民资格案件、宣告失踪或者宣告死亡案件、认定公民无民事行为能力或者限制民事行为能力案件和认定财产无主案件，适用本章规定。本章没有规定的，适用本法和其他法律的有关规定。

第一百六十一条　依照本章程序审理的案件，实行一审终审。选民资格案件或者重大、疑难的案件，由审判员组成合议庭审理；其他案件由审判员一人独任审理。

第一百六十二条　人民法院在依照本章程序审理案件的过程中，发现本案属于民事权益争议的，应当裁定终结特别程序，并告知利害关系人可以另行起诉。

第一百六十三条　人民法院适用特别程序审理的案件，应当在立案之日起三十日内或者公告期满后三十日内审结。有特殊情况需要延长的，由本院院长批准。但审理选民资格的案件除外。

第二节　选民资格案件

第一百六十四条　公民不服选举委员会对选民资格的申诉所作的处理决定，可以在选举日的五日以前向选区所在地基层人民法院起诉。

第一百六十五条　人民法院受理选民资格案件后，必须在选举日前审结。

审理时，起诉人、选举委员会的代表和有关公民必须参加。

人民法院的判决书，应当在选举日前送达选举委员会和起诉人，并通知有关公民。

第三节　宣告失踪、宣告死亡案件

第一百六十六条　公民下落不明满二年，利害关系人申请宣告其失踪的，向下落不明人住所地基层人民法院提出。

申请书应当写明失踪的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十七条　公民下落不明满四年，或者因意外事故下落不明满二年，或者因意外事故下落不明，经有关机关证明该公民不可能生存，利害关系人申请宣告其死亡的，向下落不明人住所地基层人民法院提出。

申请书应当写明下落不明的事实、时间和请求，并附有公安机关或者其他有关机关关于该公民下落不明的书面证明。

第一百六十八条　人民法院受理宣告失踪、宣告死亡案件后，应当发出寻找下落不明人的公告。宣告失踪的公告期间为三个月，宣告死亡的公告期间为一年。因意外事故下落不明，经有关机关证明该公民不可能生存的，宣告死亡的公告期间为三个月。

公告期间届满，人民法院应当根据被宣告失踪、宣告死亡的事实是否得到确认，作出宣告失踪、宣告死亡的判决或者驳回申请的判决。

第一百六十九条　被宣告失踪、宣告死亡的公民重新出现，经本人或者利害关系人申请，人民法院应当作出新判决，撤销原判决。

第四节　认定公民无民事行为能力、限制民事行为能力案件

第一百七十条　申请认定公民无民事行为能力或者限制民事行为能力，由其近亲属或者其他利害关系人向该公民住所地基层人民法院提出。

申请书应当写明该公民无民事行为能力或者限制民事行为能力的事实和根据。

第一百七十一条　人民法院受理申请后，必要时应当对被请求认定为无民事行为能力或者限制民事行为能力的公民进行鉴定。申请人已提供鉴定结论的，应当对鉴定结论进行审查。

第一百七十二条　人民法院审理认定公民无民事行为能力或者限制民事行为能力的案件，应当由该公民的近亲属为代理人，但申请人除外。近亲属互相推诿的，由人民法院指定其中一人为代理人。该公民健康情况许可的，还应当询问本人的意见。

人民法院经审理认定申请有事实根据的，判决该公民为无民事行为能力或者限制民事行为能力人；认定申请没有事实根据的，应当判决予以驳回。

第一百七十三条　人民法院根据被认定为无民事行为能力人、限制民事行为能力人或者他的监护人的申请，证实该公民无民事行为能力或者限制民事行为能力的原因已经消除的，应当作出新判决，撤销原判决。

第五节　认定财产无主案件

第一百七十四条　申请认定财产无主，由公民、法人或者其他组织向财产所在地基层人民法院提出。

申请书应当写明财产的种类、数量以及要求认定财产无主的根据。

第一百七十五条　人民法院受理申请后，经审查核实，应当发出财产认领公告。公告满一年无人认领的，判决认定财产无主，收归国家或者集体所有。

第一百七十六条　判决认定财产无主后，原财产所有人或者继承人出现，在民法通则规定的诉讼时效期间可以对财产提出请求，人民法院审查属实后，应当作出新判决，撤销原判决。

第十六章　审判监督程序

第一百七十七条　各级人民法院院长对本院已经发生法律效力的判决、裁定，发现确有错误，认为需要再审的，应当提交审判委员会讨论决定。

最高人民法院对地方各级人民法院已经发生法律效力的判决、裁定，上级人民法院对下级人民法院已经发生法律效力的判决、裁定，发现确有错误的，有权提审或者指令下级人民法院再审。

第一百七十八条　当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审，但不停止判决、裁定的执行。

第一百七十九条　当事人的申请符合下列情形之一的，人民法院应当再审：

（一）有新的证据，足以推翻原判决、裁定的；

（二）原判决、裁定认定的基本事实缺乏证据证明的；

（三）原判决、裁定认定事实的主要证据是伪造的；

（四）原判决、裁定认定事实的主要证据未经质证的；

（五）对审理案件需要的证据，当事人因客观原因不能自行收集，书面申请人民法院调查收集，人民法院未调查收集的；

（六）原判决、裁定适用法律确有错误的；

（七）违反法律规定，管辖错误的；

（八）审判组织的组成不合法或者依法应当回避的审判人员没有回避的；

（九）无诉讼行为能力人未经法定代理人代为诉讼或者应当参加诉讼的当事人，因不能归责于本人或者其诉讼代理人的事由，未参加诉讼的；

（十）违反法律规定，剥夺当事人辩论权利的；

（十一）未经传票传唤，缺席判决的；

（十二）原判决、裁定遗漏或者超出诉讼请求的；

（十三）据以作出原判决、裁定的法律文书被撤销或者变更的。

对违反法定程序可能影响案件正确判决、裁定的情形，或者审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，人民法院应当再审。

第一百八十条　当事人申请再审的，应当提交再审申请书等材料。人民法院应当自收到再审申请书之日起五日内将再审申请书副本发送对方当事人。对方当事人应当自收到再审申请书副本之日起十五日内提交书面意见；不提交书面意见的，不影响人民法院审查。人民法院可以要求申请人和对方当事人补充有关材料，询问有关事项。

第一百八十一条　人民法院应当自收到再审申请书之日起三个月内审查，符合本法第一百七十九条规定情形之一的，裁定再审；不符合本法第一百七十九条规定的，裁定驳回申请。有特殊情况需要延长的，由本院院长批准。

因当事人申请裁定再审的案件由中级人民法院以上的人民法院审理。最高人民法院、高级人民法院裁定再审的案件，由本院再审或者交其他人民法院再审，也可以交原审人民法院再审。

第一百八十二条　当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。经人民法院审查属实的，应当再审。

第一百八十三条　当事人对已经发生法律效力的解除婚姻关系的判决，不得申请再审。

第一百八十四条　当事人申请再审，应当在判决、裁定发生法律效力后二年内提出；二年后据以作出原判决、裁定的法律文书被撤销或者变更，以及发现审判人员在审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的，自知道或者应当知道之日起三个月内提出。

第一百八十五条　按照审判监督程序决定再审的案件，裁定中止原判决的执行。裁定由院长署名，加盖人民法院印章。

第一百八十六条　人民法院按照审判监督程序再审的案件，发生法律效力的判决、裁定是由第一审法院作出的，按照第一审程序审理，所作的判决、裁定，当事人可以上诉；发生法律效力的判决、裁定是由第二审法院作出的，按照第二审程序审理，所作的判决、裁定，是发生法律效力的判决、裁定；上级人民法院按照审判监督程序提审的，按照第二审程序审理，所作的判决、裁定是发生法律效力的判决、裁定。

人民法院审理再审案件，应当另行组成合议庭。

第一百八十七条　最高人民检察院对各级人民法院已经发生法律效力的判决、裁定，上级人民检察院对下级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提出抗诉。

地方各级人民检察院对同级人民法院已经发生法律效力的判决、裁定，发现有本法第一百七十九条规定情形之一的，应当提请上级人民检察院向同级人民法院提出抗诉。

第一百八十八条　人民检察院提出抗诉的案件，接受抗诉的人民法院应当自收到抗诉书之日起三十日内作出再审的裁定；有本法第一百七十九条第一款第（一）项至第（五）项规定情形之一的，可以交下一级人民法院再审。

第一百八十九条　人民检察院决定对人民法院的判决、裁定提出抗诉的，应当制作抗诉书。

第一百九十条　人民检察院提出抗诉的案件，人民法院再审时，应当通知人民检察院派员出席法庭。

第十七章　督促程序

第一百九十一条　债权人请求债务人给付金钱、有价证券，符合下列条件的，可以向有管辖权的基层人民法院申请支付令：

（一）债权人与债务人没有其他债务纠纷的；

（二）支付令能够送达债务人的。

申请书应当写明请求给付金钱或者有价证券的数量和所根据的事实、证据。

第一百九十二条　债权人提出申请后，人民法院应当在五日内通知债权人是否受理。

第一百九十二条　人民法院受理申请后，经审查债权人提供的事实、证据，对债权债务关系明确、合法的，应当在受理之日起十五日内向债务人发出支付令；申请不成立的，裁定予以驳回。

债务人应当自收到支付令之日起十五日内清偿债务，或者向人民法院提出书面异议。

债务人在前款规定的期间不提出异议又不履行支付令的，债权人可以向人民法院申请执行。

第一百九十四条　人民法院收到债务人提出的书面异议后，应当裁定终结督促程序，支付令自行失效，债权人可以起诉。

第十八章　公示催告程序

第一百九十五条　按照规定可以背书转让的票据持有人，因票据被盗、遗失或者灭失，可以向票据支付地的基层人民法院申请公示催告。依照法律规定可以申请公示催告的其他事项，适用本章规定。

申请人应当向人民法院递交申请书，写明票面金额、发票人、持票人、背书人等票据主要内容和申请的理由、事实。

第一百九十六条　人民法院决定受理申请，应当同时通知支付人停止支付，并在三日内发出公告，催促利害关系人申报权利。公示催告的期间，由人民法院根据情况决定，但不得少于六十日。

第一百九十七条　支付人收到人民法院停止支付的通知，应当停止支付，至公示催告程序终结。

公示催告期间，转让票据权利的行为无效。

第一百九十八条　利害关系人应当在公示催告期间向人民法院申报。

人民法院收到利害关系人的申报后，应当裁定终结公示催告程序，并通知申请人和支付人。

申请人或者申报人可以向人民法院起诉。

第一百九十九条　没有人申报的，人民法院应当根据申请人的申请，作出判决，宣告票据无效。判决应当公告，并通知支付人。自判决公告之日起，申请人有权向支付人请求支付。

第二百条　利害关系人因正当理由不能在判决前向人民法院申报的，自知道或者应当知道判决公告之日起一年内，可以向作出判决的人民法院起诉。

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上一页　1　2　3　4　5　6　7　8　下一页

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留言须知 法律与免责申明

中华人民共和国民事诉讼法（全文）

中国网 china.com.cn 时间：2007-10-29 发表评论>>

第三编 执行程序

第十九章 一般规定

第二百零一条 发生法律效力的民事判决、裁定，以及刑事判决、裁定中的财产部分，由第一审人民法院或者与第一审人民法院同级的被执行的财产所在地人民法院执行。

法律规定由人民法院执行的其他法律文书，由被执行人住所地或者被执行的财产所在地人民法院执行。

第二百零二条 当事人、利害关系人认为执行行为违反法律规定的，可以向负责执行的人民法院提出书面异议。当事人、利害关系人提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定撤销或者改正；理由不成立的，裁定驳回。当事人、利害关系人对裁定不服的，可以自裁定送达之日起十日内向上一级人民法院申请复议。

第二百零三条 人民法院自收到申请执行书之日起超过六个月未执行的，申请执行人可以向上一级人民法院申请执行。上一级人民法院经审查，可以责令原人民法院在一定期限内执行，也可以决定由本院执行或者指令其他人民法院执行。

第二百零四条 执行过程中，案外人对执行标的提出书面异议的，人民法院应当自收到书面异议之日起十五日内审查，理由成立的，裁定中止对该标的的执行；理由不成立的，裁定驳回。案外人、当事人对裁定不服，认为原判决、裁定错误的，依照审判监督程序办理；与原判决、裁定无关的，可以自裁定送达之日起十五日内向人民法院提起诉讼。

第二百零五条 执行工作由执行员进行。

采取强制执行措施时，执行员应当出示证件。执行完毕后，应当将执行情况制作笔录，由在场的有关人员签名或者盖章。

人民法院根据需要可以设立执行机构。

第二百零六条 被执行人或者被执行的财产在外地的，可以委托当地人民法院代为执行。受委托人民法院收到委托函件后，必须在十五日内开始执行，不得拒绝。执行完毕后，应当将执行结果及时函复委托人民法院；在三十日内如果还未执行完毕，也应当将执行情况函告委托人民法院。

受委托人民法院自收到委托函件之日起十五日内不执行的，委托人民法院可以请求受委托人民法院的上级人民法院指令受委托人民法院执行。

第二百零七条 在执行中，双方当事人自行和解达成协议的，执行员应当将协议内容记入笔录，由双方当事人签名或者盖章。

一方当事人不履行和解协议的，人民法院可以根据对方当事人的申请，恢复对原生效法律文书的执行。

第二百零八条 在执行中，被执行人向人民法院提供担保，并经申请执行人同意的，人民法院可以决定暂缓执行及暂缓执行的期限。被执行人逾期仍不履行的，人民法院有权执行被执行人的担保财产或者担保人的财产。

第二百零九条　作为被执行人的公民死亡的，以其遗产偿还债务。作为被执行人的法人或者其他组织终止的，由其权利义务承受人履行义务。

第二百一十条　执行完毕后，据以执行的判决、裁定和其他法律文书确有错误，被人民法院撤销的，对已被执行的财产，人民法院应当作出裁定，责令取得财产的人返还；拒不返还的，强制执行。

第二百一十一条　人民法院制作的调解书的执行，适用本编的规定。

第二十章　执行的申请和移送

第二百一十二条　发生法律效力的民事判决、裁定，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行，也可以由审判员移送执行员执行。

调解书和其他应当由人民法院执行的法律文书，当事人必须履行。一方拒绝履行的，对方当事人可以向人民法院申请执行。

第二百一十三条　对依法设立的仲裁机构的裁决，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行。受申请的人民法院应当执行。

被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的；

（三）仲裁庭的组成或者仲裁的程序违反法定程序的；

（四）认定事实的主要证据不足的；

（五）适用法律确有错误的；

（六）仲裁员在仲裁该案时有贪污受贿，徇私舞弊，枉法裁决行为的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

裁定书应当送达双方当事人和仲裁机构。

仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二百一十四条　对公证机关依法赋予强制执行效力的债权文书，一方当事人不履行的，对方当事人可以向有管辖权的人民法院申请执行，受申请的人民法院应当执行。

公证债权文书确有错误的，人民法院裁定不予执行，并将裁定书送达双方当事人和公证机关。

第二百一十五条　申请执行的期间为二年。申请执行时效的中止、中断，适用法律有关诉讼时效中止、中断的规定。

前款规定的期间，从法律文书规定履行期间的最后一日起计算；法律文书规定分期履行的，从规定的每次履行期间的最后一日起计算；法律文书未规定履行期间的，从法律文书生效之日起计算。

第二百一十六条　执行员接到申请执行书或者移交执行书，应当向被执行人发出执行通知，责令其在指定的期间履行，逾期不履行的，强制执行。

被执行人不履行法律文书确定的义务，并有可能隐匿、转移财产的，执行员可以立即采取强制执行措施。

第二十一章 执行措施

第二百一十七条 被执行人未按执行通知履行法律文书确定的义务，应当报告当前以及收到执行通知之日前一年的财产情况。被执行人拒绝报告或者虚假报告的，人民法院可以根据情节轻重对被执行人或者其法定代理人、有关单位的主要负责人或者直接责任人员予以罚款、拘留。

第二百一十八条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权向银行、信用合作社和其他有储蓄业务的单位查询被执行人的存款情况，有权冻结、划拨被执行人的存款，但查询、冻结、划拨存款不得超出被执行人应当履行义务的范围。

人民法院决定冻结、划拨存款，应当作出裁定，并发出协助执行通知书，银行、信用合作社和其他有储蓄业务的单位必须办理。

第二百一十九条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权扣留、提取被执行人应当履行义务部分的收入。但应当保留被执行人及其所扶养家属的生活必需费用。

人民法院扣留、提取收入时，应当作出裁定，并发出协助执行通知书，被执行人所在单位、银行、信用合作社和其他有储蓄业务的单位必须办理。

第二百二十条 被执行人未按执行通知履行法律文书确定的义务，人民法院有权查封、扣押、冻结、拍卖、变卖被执行人应当履行义务部分的财产。但应当保留被执行人及其所扶养家属的生活必需品。

采取前款措施，人民法院应当作出裁定。

第二百二十一条 人民法院查封、扣押财产时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者财产所在地的基层组织应当派人参加。

对被查封、扣押的财产，执行员必须造具清单，由在场人签名或者盖章后，交被执行人一份。被执行人是公民的，也可以交他的成年家属一份。

第二百二十二条 被查封的财产，执行员可以指定被执行人负责保管。因被执行人的过错造成的损失，由被执行人承担。

第二百二十三条 财产被查封、扣押后，执行员应当责令被执行人在指定期间履行法律文书确定的义务。被执行人逾期不履行的，人民法院可以按照规定交有关单位拍卖或者变卖被查封、扣押的财产。国家禁止自由买卖的物品，交有关单位按照国家规定的价格收购。

第二百二十四条 被执行人不履行法律文书确定的义务，并隐匿财产的，人民法院有权发出搜查令，对被执行人及其住所或者财产隐匿地进行搜查。

采取前款措施，由院长签发搜查令。

第二百二十五条 法律文书指定交付的财物或者票证，由执行员传唤双方当事人当面交付，或者由执行员转交，并由被交付人签收。

有关单位持有该项财物或者票证的，应当根据人民法院的协助执行通知书转交，并由被交付人签收。

有关公民持有该项财物或者票证的，人民法院通知其交出。拒不交出的，强制执行。

第二百二十六条　强制迁出房屋或者强制退出土地，由院长签发公告，责令被执行人在指定期间履行。被执行人逾期不履行的，由执行员强制执行。

强制执行时，被执行人是公民的，应当通知被执行人或者他的成年家属到场；被执行人是法人或者其他组织的，应当通知其法定代表人或者主要负责人到场。拒不到场的，不影响执行。被执行人是公民的，其工作单位或者房屋、土地所在地的基层组织应当派人参加。执行员应当将强制执行情况记入笔录，由在场人签名或者盖章。

强制迁出房屋被搬出的财物，由人民法院派人运至指定处所，交给被执行人。被执行人是公民的，也可以交给他的成年家属。因拒绝接收而造成的损失，由被执行人承担。

第二百二十七条　在执行中，需要办理有关财产权证照转移手续的，人民法院可以向有关单位发出协助执行通知书，有关单位必须办理。

第二百二十八条　对判决、裁定和其他法律文书指定的行为，被执行人未按执行通知履行的，人民法院可以强制执行或者委托有关单位或者其他人完成，费用由被执行人承担。

第二百二十九条　被执行人未按判决、裁定和其他法律文书指定的期间履行给付金钱义务的，应当加倍支付迟延履行期间的债务利息。被执行人未按判决、裁定和其他法律文书指定的期间履行其他义务的，应当支付迟延履行金。

第二百三十条　人民法院采取本法第二百一十八条、第二百一十九条、第二百二十条规定的执行措施后，被执行人仍不能偿还债务的，应当继续履行义务。债权人发现被执行人有其他财产的，可以随时请求人民法院执行。

第二百三十一条　被执行人不履行法律文书确定的义务的，人民法院可以对其采取或者通知有关单位协助采取限制出境，在征信系统记录、通过媒体公布不履行义务信息以及法律规定的其他措施。

第二十二章　执行中止和终结

第二百三十二条　有下列情形之一的，人民法院应当裁定中止执行：

（一）申请人表示可以延期执行的；

（二）案外人对执行标的提出确有理由的异议的；

（三）作为一方当事人的公民死亡，需要等待继承人继承权利或者承担义务的；

（四）作为一方当事人的法人或者其他组织终止，尚未确定权利义务承受人的；

（五）人民法院认为应当中止执行的其他情形。

中止的情形消失后，恢复执行。

第二百三十三条　有下列情形之一的，人民法院裁定终结执行：

（一）申请人撤销申请的；

（二）据以执行的法律文书被撤销的；

（三）作为被执行人的公民死亡，无遗产可供执行，又无义务承担人的；

（四）追索赡养费、扶养费、抚育费案件的权利人死亡的；

（五）作为被执行人的公民因生活困难无力偿还借款，无收入来源，又丧失劳动能力的；

（六）人民法院认为应当终结执行的其他情形。

第二百三十四条　中止和终结执行的裁定，送达当事人后立即生效。

第四编　涉外民事诉讼程序的特别规定

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上一页　2　3　4　5　6　7　8　下一页

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中华人民共和国民事诉讼法（全文）

中国网 china.com.cn 时间：2007-10-29 发表评论>

第二十三章 一般原则

第二百三十五条 在中华人民共和国领域内进行涉外民事诉讼，适用本编规定。本编没有规定的，适用本法其他有关规定。

第二百三十六条 中华人民共和国缔结或者参加的国际条约同本法有不同规定的，适用该国际条约的规定，但中华人民共和国声明保留的条款除外。

第二百三十七条 对享有外交特权与豁免的外国人、外国组织或者国际组织提起的民事诉讼，应当依照中华人民共和国有关法律和中华人民共和国缔结或者参加的国际条约的规定办理。

第二百三十八条 人民法院审理涉外民事案件，应当使用中华人民共和国通用的语言、文字。当事人要求提供翻译的，可以提供，费用由当事人承担。

第二百三十九条 外国人、无国籍人、外国企业和组织在人民法院起诉、应诉，需要委托律师代理诉讼的，必须委托中华人民共和国的律师。

第二百四十条 在中华人民共和国领域内没有住所的外国人、无国籍人、外国企业和组织委托中华人民共和国律师或者其他人代理诉讼，从中华人民共和国领域外寄交或者托交的授权委托书，应当经所在国公证机关证明，并经中华人民共和国驻该国使领馆认证，或者履行中华人民共和国与该所在国订立的有关条约中规定的证明手续后，才具有效力。

第二十四章 管 辖

第二百四十一条 因合同纠纷或者其他财产权益纠纷，对在中华人民共和国领域内没有住所的被告提起的诉讼，如果合同在中华人民共和国领域内签订或者履行，或者诉讼标的物在中华人民共和国领域内，或者被告在中华人民共和国领域内有可供扣押的财产，或者被告在中华人民共和国领域内设有代表机构，可以由合同签订地、合同履行地、诉讼标的物所在地、可供扣押财产所在地、侵权行为地或者代表机构住所地人民法院管辖。

第二百四十二条 涉外合同或者涉外财产权益纠纷的当事人，可以用书面协议选择与争议有实际联系的地点的法院管辖。选择中华人民共和国人民法院管辖的，不得违反本法关于级别管辖和专属管辖的规定。

第二百四十三条 涉外民事诉讼的被告对人民法院管辖不提出异议，并应诉答辩的，视为承认该人民法院为有管辖权的法院。

第二百四十四条 因在中华人民共和国履行中外合资经营企业合同、中外合作经营企业合同、中外合作勘探开发自然资源合同发生纠纷提起的诉讼，由中华人民共和国人民法院管辖。

第二十五章 送达、期间

第二百四十五条 人民法院对在中华人民共和国领域内没有住所的当事人送达诉讼文书，可以采用下列方式：

（一）依照受送达人所在国与中华人民共和国缔结或者共同参加的国际条约中规定的方式送达；

（二）通过外交途径送达；

（三）对具有中华人民共和国国籍的受送达人，可以委托中华人民共和国驻受送达人所在国的使领馆代为送达；

（四）向受送达人委托的有权代其接受送达的诉讼代理人送达；

（五）向受送达人在中华人民共和国领域内设立的代表机构或者有权接受送达的分支机构、业务代办人送达；

（六）受送达人所在国的法律允许邮寄送达的，可以邮寄送达，自邮寄之日起满六个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

（七）不能用上述方式送达的，公告送达，自公告之日起满六个月，即视为送达。

第二百四十六条　被告在中华人民共和国领域内没有住所的，人民法院应当将起诉状副本送达被告，并通知被告在收到起诉状副本后三十日内提出答辩状。被告申请延期的，是否准许，由人民法院决定。

第二百四十七条　在中华人民共和国领域内没有住所的当事人，不服第一审人民法院判决、裁定的，有权在判决书、裁定书送达之日起三十日内提起上诉。被上诉人在收到上诉状副本后，应当在三十日内提出答辩状。当事人不能在法定期间提起上诉或者提出答辩状，申请延期的，是否准许，由人民法院决定。

第二百四十八条　人民法院审理涉外民事案件的期间，不受本法第一百三十五条、第一百五十九条规定的限制。

第二十六章　财产保全

第二百四十九条　当事人依照本法第九十二条的规定可以向人民法院申请财产保全。

利害关系人依照本法第九十三条的规定可以在起诉前向人民法院申请财产保全。

第二百五十条　人民法院裁定准许诉前财产保全后，申请人应当在三十日内提起诉讼。逾期不起诉的，人民法院应当解除财产保全。

第二百五十一条　人民法院裁定准许财产保全后，被申请人提供担保的，人民法院应当解除财产保全。

第二百五十二条　申请有错误的，申请人应当赔偿被申请人因财产保全所遭受的损失。

第二百五十三条　人民法院决定保全的财产需要监督的，应当通知有关单位负责监督，费用由被申请人承担。

第二百五十四条　人民法院解除保全的命令由执行员执行。

第二十七章　仲　　裁

第二百五十五条　涉外经济贸易、运输和海事中发生的纠纷，当事人在合同中订有仲裁条款或者事后达成书面仲裁协议，提交中华人民共和国涉外仲裁机构或者其他仲裁机构仲裁的，当事人不得向人民法院起诉。

当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的，可以向人民法院起诉。

第二百五十六条　当事人申请采取财产保全的，中华人民共和国的涉外仲裁机构应当将当事人的申请，提交被申请人住所地或者财产所在地的中级人民法院裁定。

第二百五十七条　经中华人民共和国涉外仲裁机构裁决的，当事人不得向人民法院起诉。一方当事人不履行仲裁裁决的，对方当事人可以向被申请人住所地或者财产所在地的中级人民法院申请执行。

第二百五十八条　对中华人民共和国涉外仲裁机构作出的裁决，被申请人提出证据证明仲裁裁决有下列情形之一的，经人民法院组成合议庭审查核实，裁定不予执行：

（一）当事人在合同中没有订有仲裁条款或者事后没有达成书面仲裁协议的；

（二）被申请人没有得到指定仲裁员或者进行仲裁程序的通知，或者由于其他不属于被申请人负责的原因未能陈述意见的；

（三）仲裁庭的组成或者仲裁的程序与仲裁规则不符的；

（四）裁决的事项不属于仲裁协议的范围或者仲裁机构无权仲裁的。

人民法院认定执行该裁决违背社会公共利益的，裁定不予执行。

第二百五十九条　仲裁裁决被人民法院裁定不予执行的，当事人可以根据双方达成的书面仲裁协议重新申请仲裁，也可以向人民法院起诉。

第二十八章　司法协助

第二百六十条　根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百六十一条　请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

第二百六十二条　外国法院请求人民法院提供司法协助的请求书及其所附文件，应当附有中文译本或者国际条约规定的其他文字文本。

人民法院请求外国法院提供司法协助的请求书及其所附文件，应当附有该国文字译本或者国际条约规定的其他文字文本。

第二百六十三条　人民法院提供司法协助，依照中华人民共和国法律规定的程序进行。外国法院请求采用特殊方式的，也可以按照其请求的特殊方式进行，但请求采用的特殊方式不得违反中华人民共和国法律。

第二百六十四条　人民法院作出的发生法律效力的判决、裁定，如果被执行人或者其财产不在中华人民共和国领域内，当事人请求执行的，可以由当事人直接向有管辖权的外国法院申请承认和执行，也可以由人民法院依照中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求外国法院承认和执行。

中华人民共和国涉外仲裁机构作出的发生法律效力的仲裁裁决，当事人请求执行的，如果被执行人或者其财产不在中华人民共和国领域内，应当由当事人直接向有管辖权的外国法院申请承认和执行。

第二百六十五条　外国法院作出的发生法律效力的判决、裁定，需要中华人民共和国人民法院承认和执行的，可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行，也可以由外国法院依照该国与中华人民共和国缔结或者参加的国际条约的规定，或者按照互惠原则，请求人民法院承认和执行。

第二百六十六条　人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

第二百六十七条　国外仲裁机构的裁决，需要中华人民共和国人民法院承认和执行的，应当由当事人直接向被执行人住所地或者其财产所在地的中级人民法院申请，人民法院应当依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则办理。

第二百六十八条　本法自公布之日起施行，《中华人民共和国民事诉讼法（试行）》同时废止。

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上一页　3　4　5　6　7　8

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EXHIBIT 3

Civil Procedure Law of the People's Republic of China

Article 260 A people's court and a foreign court may mutually request each other for service of documents, investigation, evidence collection and other litigation acts on their respective behalf in accordance with the international treaties concluded or acceded to by the People's Republic of China or according to the principle of reciprocity.

If any matter for which a foreign court requests assistance harms the sovereignty, security or social public interest of the People's Republic of China, a people's court shall *refuse to enforce the matter.*

Article 261 A request for and the provision of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China, and in the absence of treaty relations, shall be conducted through diplomatic channels.

An embassy or consulate of a foreign country in the People's Republic of China may serve documents on, investigate, or collect evidence from the citizens of that country, provided, however, that the laws of the People's Republic of China are not violated and that no compulsory measures are adopted.

Except for the circumstances specified in the preceding paragraph, no foreign agency or individual may serve documents, conduct investigations or collect evidence within the territory of the People's Republic of China without the consent of the in-charge authorities of the People's Republic of China.

中华人民共和国民事诉讼法

第二百六十条 根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百六十一条 请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

EXHIBIT 4

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

14. CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS[1]

(Concluded 15 November 1965)

The States signatory to the present Convention,
Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,
Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.
This Convention shall not apply where the address of the person to be served with the document is not known.

CHAPTER I – JUDICIAL DOCUMENTS

Article 2

Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.
Each State shall organise the Central Authority in conformity with its own law.

Article 3

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.
The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4

If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

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[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions" or under the "Service Section". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Dixième session (1964)*, Tome III, *Notification* (391 pp.).

Article 5

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or

b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph *(b)* of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.

Article 7

The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.

The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.

Article 8

Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.

Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.

Article 9

Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.

Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.

Article 10

Provided the State of destination does not object, the present Convention shall not interfere with –

a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,

c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Article 11

The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12

The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.

The applicant shall pay or reimburse the costs occasioned by —

a) the employment of a judicial officer or of a person competent under the law of the State of destination,

b) the use of a particular method of service.

Article 13

Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security. It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.

The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14

Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that –

a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

a) the document was transmitted by one of the methods provided for in this Convention,

b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,

c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and

b) the defendant has disclosed a *prima facie* defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

CHAPTER II – EXTRAJUDICIAL DOCUMENTS

Article 17

Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

CHAPTER III – GENERAL CLAUSES

Article 18

Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.

The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.

Federal States shall be free to designate more than one Central Authority.

Article 19

To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20

The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with –

a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,

b) the language requirements of the third paragraph of Article 5 and Article 7,

c) the provisions of the fourth paragraph of Article 5,

d) the provisions of the second paragraph of Article 12.

Article 21

Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following –

a) the designation of authorities, pursuant to Articles 2 and 18,

b) the designation of the authority competent to complete the certificate pursuant to Article 6,

c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of –

a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,

b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,

c) all modifications of the above designations, oppositions and declarations.

Article 22

Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23

The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.
These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24

Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25

Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.
It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.
The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.
The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.
In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.
At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.
The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.
If there has been no denunciation, it shall be renewed tacitly every five years.
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.
It may be limited to certain of the territories to which the Convention applies.
The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

a) the signatures and ratifications referred to in Article 26;
b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
c) the accessions referred to in Article 28 and the dates on which they take effect;
d) the extensions referred to in Article 29 and the dates on which they take effect;
e) the designations, oppositions and declarations referred to in Article 21;
f) the denunciations referred to in the third paragraph of Article 30.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the 15th day of November, 1965, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

Exhibit 5

EXHIBIT 5

DECLARATION/RESERVATION/NOTIFICATION

Declarations
Notifications

Articles: 5,8,10,15,16

(Click here for the Authorities designated for the People's Republic of China and the Special Administrative Regions of Hong Kong and Macao, and other practical information)

Text of the declarations:

People's Republic of China

(Courtesy translation)
"(...) 2. to declare according to the second paragraph of Article 8 that the means of service stipulated in the first paragraph of that Article may be used within the territory of the People's Republic of China only when the document is to be served upon a national of the State in which the documents originate.
3. to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention.
4. to declare in accordance with the second paragraph of Article 15 of the Convention that if all the conditions provided in that paragraph are fulfilled, the judge, notwithstanding the provisions of the first paragraph of that Article, may give judgment even if no certificate of service or delivery has been received.
5. to declare in accordance with the third paragraph of Article 16 of the Convention that the application for relief from the effects of the expiration of the time for appeal shall not be entertained except that it is filed within one year following the date of the judgment."

Special Administrative Region of Hong Kong (entry into force: 19 July 1970)

The Convention had been extended to Hong Kong by the United Kingdom by Note dated 20 May 1970 (entry into force for Hong Kong: 19 July 1970), with the following declarations: "*(a)* In accordance with Article 18 of the Convention the Colonial Secretary of Hong Kong* is designated as the Authority competent to receive requests for service in accordance with Article 2 of the Convention.
* "The Colonial Secretary of Hong Kong" has been re-designated as "the Chief Secretary of Hong Kong" (May 1984).

(b) The authority competent under Article 6 of the Convention to complete the Certificate of Service is the Registrar of the Supreme Court of Hong Kong.

(c) In accordance with the provisions of Article 9 of the Convention the Registrar of the Supreme Court of Hong Kong is designated as the receiver of process sent through consular channels.

(d) With reference to the provisions of paragraphs *(b)* and *(c)* of Article 10 of the Convention, documents sent for service through official channels will be accepted in Hong Kong only by the central or additional authority and only from judicial, consular or diplomatic officers of other Contracting States.

(e) The acceptance by the United Kingdom of the provisions of the second paragraph of Article 15 of the Convention shall equally apply to Hong Kong.

The authorities designated above will require all documents forwarded to them for service under the provisions of the Convention to be in duplicate and, pursuant to the third paragraph of Article 5 of the Convention, will require the documents to be written in, or translated into, the English language."

The Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention, gave notice that on 16 June 1997 the Minister for Foreign Affairs of the Kingdom of the Netherlands received a Note dated 11 June 1997 from the Ambassador of the United Kingdom of Great Britain and Northern Ireland at The Hague and a Note dated 10 June 1997 from the Ambassador of the People's Republic of China at The Hague concerning Hong Kong.

The Note from the Ambassador of the United Kingdom of Great Britain and Northern Ireland reads as follows:

"Your Excellency,
I am instructed by Her Britannic Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs to refer to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at The Hague on 15 November 1965 (hereinafter referred to as the Convention) which applies to Hong Kong at present.
I am also instructed to state that, in accordance with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong signed on 19 December 1984, the Government of the United Kingdom will restore Hong Kong to the People's Republic of China with effect from 1 July 1997. The Government of the United Kingdom will continue to have international responsibility for Hong Kong until that date. Therefore, from that date the Government of the United Kingdom will cease to be responsible for the international rights and obligations arising from the application of the Convention to Hong Kong.
I should be grateful if the contents of this Note could be placed formally on record and brought to the attention of the other Parties to the Convention. (...)
(signed Rosemary Spencer)

The Note from the Ambassador of the People's Republic of China reads as follows:

(Translation)
"Your Excellency,
In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong signed on 19 December 1984, the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.
In this connection, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to make the following notification:
The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done on 15 November 1965 (hereinafter referred to as the "Convention"), by which the Government of the Kingdom of the Netherlands is designated as the depositary, to which the Government of the People's Republic of China deposited its instrument of accession on 3 May 1991, will apply to the Hong Kong Special Administrative Region with effect from 1 July 1997.
(...)
The Government of the People's Republic of China will assume responsibility for the international rights and obligations arising from the application of the Convention to the Hong Kong Special Administrative Region.
It would be appreciated if the contents of this Note could be placed formally on record and brought to the attention of the other Parties to the Convention. (...)
(signed Zhu Manli, Ambassador Extraordinary and Plenipotentiary of the People's Republic of China to the Kingdom of the Netherlands)".

Declarations (articles 8 and 10):

1. In accordance with paragraph 2 of Article 8 of the Convention, it declares that the means of service referred to in paragraph 1 of this article may be used within the Hong Kong Special Administrative Region only when the document is to be served upon a national of the State in which the document originates.
2. (...)
3. (...)
4. With reference to the provisions of sub-paragraphs b and c of Article 10 of the Convention, documents for service through official channels will be accepted in the Hong Kong Special Administrative Region only by the Central Authority or other authority designated, and only from judicial, consular or diplomatic officers of other Contracting States.

Special Administrative Region of Macao (entry into force: 12 April 1999)

By a Note dated 9 February 1999, Portugal had extended the Convention to *Macao*.

On 7 October 1999, Portugal communicated the following to the depositary:
"1. In accordance with Article 18 of the Convention, the Ministério Público de Macao is designated as the competent authority in Macao to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6.

The address of the Ministério Público de Macao is as follows:

Ministério Público de Macao
Praceta 25 de Abril
Macao
Phone: 326736
Fax: 326747
2. Court clerks (escrivães de direito) and deputy court clerks (escrivães adjuntos) from the Supreme Court of Justice (Tribunal Superior de Justiça) of Macao are entitled to complete in Macao the certificate provided for [in] Articles 6 and 9 of the Convention.

3. In accordance with the provisions of the second paragraph of Article 8 of the Convention, Portugal reiterates that it recognizes to the diplomatic or consular agents the right to forward documents, for the purpose of service, exclusively to the nationals of the State in which the documents originate.

4. The Ministério Público de Macao is also designated as the competent authority in Macao to receive documents forwarded through consular channels, in accordance with Article 9 of the Convention.

5. Portugal declares that the judges of the courts of Macao, notwithstanding the provisions of the first paragraph of Article 15 of the Convention, may give judgment on whether the conditions referred to in the second paragraph of the same article are fulfilled.

6. In accordance with the third paragraph of Article 16 of the Convention, Portugal declares that the applications referred to in the second paragraph of Article 16 will not be entertained if they are filed after the expiration of one year following the date of the judgment."

The Ambassador of Portugal at The Hague informed the Minister for Foreign Affairs of the Kingdom of the Netherlands by letter of 26 November 1999 of the following:

"Upon instructions from my Government and referring to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters concluded at The Hague on 15 November 1965 (hereinafter referred to as the Convention) which currently applies to Macao, I have the honour to inform Your Excellency of the following:
In accordance with the Joint Declaration of the Government of the Portuguese Republic and of the Government of the People's Republic of China on the question of Macao, signed in Beijing on 13 April 1987, the Government of the Portuguese Republic will remain internationally responsible for Macao until 19 December 1999, the People's Republic of China resuming from that date the exercise of sovereignty over Macao, with effect from 20 December 1999.
From 20 December 1999 the Portuguese Republic will cease to be responsible for the international rights and obligations arising from the application of the Convention in Macao. (...)"

The Ambassador of the People's Republic of China at The Hague informed the Minister for Foreign Affairs by letter of 10 December 1999 of the following:

(Translation)
" In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987, the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999. Macao will from that date become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.
In this connection, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to inform Your Excellency of the following:
The Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, concluded at The Hague on 15 November 1965 (hereinafter referred to as the Convention), to which the Government of the People's Republic of China deposited the instrument of accession on 3 May 1991, shall apply to the Macao Special Administrative Region with effect from 20 December 1999.
(...)
The Government of the People's Republic of China shall assume the responsibility for the international rights and obligations arising from the application of the Convention to the Macao Special Administrative Region. (...)".

Declarations (Articles 5, 8, 15 and 16)

1. (...)
2. In accordance with the second paragraph of Article 8 of the Convention, it declares that the means of service stipulated in the first paragraph of that article may be used within the Macao Special Administrative Region only when the document is to be served upon a national of the State in which the document originates.
3. In accordance with the second paragraph of Article 15 of the Convention, it declares that if all the conditions provided in that paragraph are fulfilled, the judge of the Macao Special Administrative Region, notwithstanding the provisions of the first paragraph of that article, may give judgment even if no certificate of service or delivery has been received.
4. In accordance with the third paragraph of Article 16 of the Convention, it declares that in the Macao Special Administrative Region, the application for relief from the effects of the expiration of the time for appeal shall not be entertained except that it is filed within one year following the date of the judgment.

Furthermore, the Government of the People's Republic of China made the following supplementary declaration:

"In accordance with paragraph 3 of Article 5 of the Convention, it declares that documents to be served in the Macao Special Administrative Region under the first paragraph of Article 5 shall be written in either Chinese or Portuguese, or be accompanied by a translation in either Chinese or Portuguese".

EXHIBIT 6

II. Questions for Contracting States

A. "Service Section" of the HCCH website

4) On the "Service Section" of the HCCH website, the Permanent Bureau currently provides practical information for each Contracting State that was mainly obtained from the responses to the 2003 Questionnaire accompanying the provisional version of the new edition of the Practical Handbook on the operation of the Service Convention (2003 Service Questionnaire). This practical information, which is presented in form of a chart, consists of the following:

1) Contact details of each of the Central Authorities (Arts 2 and 18)
2) Forwarding authorities (Art. 3(1))
3) Methods of service (Art. 5(1) and (2))
4) Translation requirements (Art. 5(3))
5) Costs relating to the execution of the request for service (Art. 12)
6) Time for the execution of a request
7) Judicial officers, officials and other competent persons (Art. 10 *b)* and *c)*)
8) Oppositions and declarations (Art. 21(2), in particular with respect to Arts 8(2), 10 *a)*, *b)* and *c)*, 15(2) and 16(3))
9) Derogatory channels (bilateral or multilateral agreements or domestic law permitting other transmission channels (Arts 11, 19, 24 and 25)
10) Useful links

The Permanent Bureau invites your State to peruse the "Service Section" and to verify if all the information contained in the practical information chart for your State is (still) correct or if it needs to be updated, amended or supplemented. **The States that currently do not have a chart of practical information on the "Service Section" are kindly invited to submit this information to the Permanent Bureau.**

5) Would your State consider that the information provided on the "Service Section" of the HCCH website is:

[X] Very useful
[ ] Useful – would you have any suggestions for improvement?

[ ] Not useful – would you have any suggestions for improvement?

B. Contact details for designated Authorities

6) Please check the contact information as contained on the HCCH website with regards to the ***Central Authority(ies)*** designated by your State (Arts 2 and 18(3)). If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

If your State is a federal State that has designated several Central Authorities under Article 18(3) and one of the above categories is missing for more than one Central Authority designated, please provide separate details for each of those Central Authorities (copy and paste if necessary – also, please provide both a postal address and a street address, if these are not identical):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

7) Please also verify the contact information as contained on the HCCH website with regards to the following authorities in your State, *if applicable*. If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

a. ***Other Authorities*** that may have been designated in addition to the Central Authority (Art. 18(1)):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

b. An ***Authority*** that may have been designated instead of the Central Authority to complete the Certificate in the form of the model annexed to the Service Convention (Art. 6(1)):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

c. The ***Competent Authority*** that receives documents transmitted by indirect diplomatic or consular channels (Art. 9(1)):

Name of Authority:
Address:
Telephone:
Fax:
E-mail:
Website:
Language(s) of communication:
Name of contact person:

8) In Conclusion and Recommendation No 48, the 2003 Special Commission invited all States to provide information on the forwarding authorities (the authority or judicial officer competent under the law of the requesting State to forward to the Central Authority of the requested State the request for service) and their competences for

this information to be posted on the HCCH website. If your State has not yet done so, please provide comprehensive information to this effect below (obviously, the Permanent Bureau is not asking for a comprehensive list of individuals who may be forwarding authorities, but rather for a reference to all the categories of authorities, officials or professionals that may be forwarding authorities, for example "the courts", "bailiffs", "(professional) process servers", etc.):

The court

C. Statistics

Main Channel of Transmission (Art. 3)

Requests for Service – Incoming

9) The following questions relate to the number of requests for service *addressed to your State* under the Service Convention.

a. Please complete the following table to indicate how many *incoming* requests for service the Central Authority(ies) of your State received in each of the past five years under the main channel of transmission. Please also note, if possible for each year, the country(ies) from which your State received the most requests for service.

2003	2004	2005	2006	2007
Number: 794 State(s): *24*	Number: 1068 State(s): *29*	Number: 1424 State(s): *30*	Number: 2070 State(s): *32*	Number: 2209 State(s): *31*

b. Of the total amount of requests for service received in 2007, please divide these depending on the method of service that was used by your State and complete the following table with respect to the time that lapsed between the Central Authority(ies) of your State receiving a request for service and the relevant authority of your State forwarding the Certificate of service to the applicant in the requesting State.

For example, if your State executed 12 requests for service using personal service and the entire process took less than two months in each case, please write the number "12" in the relevant box. The total amount of incoming requests for service that your State received in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) *a)*)	4%	15%	55%	13%	3%	Only 1	220
Service by a particular method (Art. 5(1) *b)*)[4]							
Informal delivery (Art. 5(2))							
Sub-totals:							

Requests for Service – Outgoing

10) The following questions relate to the number of requests for service *sent by the forwarding authorities of your State* under the Service Convention. These questions are likely to require some consultation with the (main) forwarding authorities in your State that (may) have previously forwarded requests for service:

a. Please complete the following table to indicate how many *outgoing* requests for service the forwarding authorities of your State have forwarded to Central Authorities of other States Parties in the past five years. If possible, please also note the country(ies) to which your State sent the most requests for service for each year listed below.

2003	2004	2005	2006	2007
Number: 407 State(s): *20*	Number: 261 State(s): *23*	Number: 330 State(s): *22*	Number: 426 State(s):27	Number: 427 State(s): *21*

b. Of the total amount of requests for service sent in 2007, please complete the following table with respect to the *time that lapsed* between the forwarding authority of your State sending a request for service and the applicant receiving the Certificate of Service from the requested State. Please also divide these depending on the method of service that was used in the requested State.

For example, if your State is made aware that six requests for service were sent from your State and the entire process took less than two months in each case, please write the number "6" in the relevant box. The total amount of outgoing requests for service that your State is aware were sent in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

[4] See Question 29) b. for an explanation as to the meaning of Art. 5(1) *b)* – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) *a)*)	5%	15%	55%	15%	3%	0	27
Service by a particular method (Art. 5(1) *b)*)[5]							
Informal delivery (Art. 5(2))							
Sub-totals:							

D. General appreciation of the Service Convention

11) Please indicate below how your State rates the general operation of the Service Convention:

[ ] Excellent
[X] Good
[ ] Satisfactory
[ ] Unsatisfactory

If your State considers that the general operation of the Service Convention is good, satisfactory or unsatisfactory, please indicate what particular aspects of the Convention your State considers require improvement or where your State has encountered difficulties. For any areas that require improvement, please also indicate whether your State considers that solutions could be developed in specific *Conclusions and Recommendations* to be adopted by the next Special Commission or by specific comments in a new edition of the *Service Handbook* or if a *Protocol* to the Convention is needed.

The efficiency of the operation need to be improved.

E. Case law and reference work

12) The Permanent Bureau invites States Parties to provide copies of any guides, desk instructions or any other practical information that may have been produced for the assistance of their judicial authorities or other authorities when sending or executing requests for service under the Service Convention.

13) The Permanent Bureau invites States Parties to provide copies of decisions rendered after the publication of the Service Handbook (or from before this time if these have not already been provided to the Permanent Bureau) that apply or relate to the Service Convention. If the decision is in a language other than English or French, a summary into either of these languages would be appreciated.

[5] See Question 29) b. for an explanation as to the meaning of Art. 5(1) *b)* – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).

14) The Permanent Bureau invites States Parties to forward a list of references of articles or books in connection with the Service Convention that do not already appear on the bibliography tab of the HCCH website or in the Service Handbook.

15) The Permanent Bureau invites States Parties to forward a citation for and / or a copy of the domestic legislation which implemented the Service Convention in their territory(ies), as well as any citations for and / or copies of any domestic laws which provide for the service of documents abroad.

The Article 247 of The Civil Proceeding Law of the P.R.C. provide as following:

A people's court may serve litigation documents on a party who has no domicile within the territory of the People's Republic of China in the following ways:

(1) in the way specified in the international treaties concluded or acceded to by both the People's Republic of China and the country where the person on whom service is to be made resides;

(2) by making the service through diplomatic channels;

(3) with respect to the person on whom the service is to be made and who is of the nationality of the People's Republic of China, service may be entrusted to the embassy or consulate of the People's Republic of China accredited to the country where the person resides;

(4) by making the service on the agent ad litem who is authorized to receive the documents served;

(5) by serving the documents on the representative office established in the People's Republic of China by the person on whom the service is to be made or on his branch office or business agents there who have the right to receive the documents;

(6) by making service by mail if the law of the country where the person on whom the service is to be made resides so permits; in the event that the receipt of delivery is not returned six months after the date on which the documents were mailed, and that circumstances justify the assumption that service has been made, the service shall be deemed completed upon the expiration of the said time period; and

(7) by making service by public notice, if none of the above-mentioned methods can be employed. The service shall be deemed completed six months after the date on which the public notice was issued.

16) The Permanent Bureau invites States Parties to forward a list of any other bilateral treaties and / or international instruments to which they are a party and that provide rules for the service of documents abroad. In particular, States Parties are invited to identify those treaties that allow for direct judicial communication (see Art. 11 *in fine* of the Service Convention).

The following countries have dealt Treaties with China and Foreign Countries on Judicial Assistance in Civil and Commercial/Criminal Matters:

France, Italy, Spain, Bulgaria, Thailand, Hungary, Morocco, Singapore, Tunis, Republic of Korea, United Arab Emirates, Poland, Mongolia, Rumania, Russia, turkey, Ukraine, Cuba, White Russia, Republic of Kazakstan, Egypt, Greece, Cyprus, Kirghizia, Republic of Tajikistan, Republic of Uzbekistan, Vietnam, Laos, Lithuanian, the Democratic People's Republic of Korea.

F. Service Handbook

17) In 2006 during the Special Commission on General Affairs and Policy of the HCCH (now referred to as the "Council on General Affairs and Policy"), the Permanent Bureau distributed free copies of the Service Handbook to the heads of all delegations in attendance. Subsequently, the Permanent Bureau also sent free copies of the Service Handbook to the National Organs of Member States of the HCCH (in most instances for them to be passed on to the Central Authorities designated by their States), and the Central Authorities of non-Member Contracting States to the Service Convention. Additional copies of the Service Handbook may be ordered via the "Service Section" of the HCCH website (< www.hcch.net >). Do(es) the Central Authority(ies) of your State have copies of the Service Handbook at their / its disposal?

[ ] NO – why not?

[X] YES

a. Do(es) the Central Authority(ies) of your State regularly consult the Service Handbook when confronted with issues regarding the operation of the Service Convention?

[X] YES

[ ] NO – why not?

b. Do(es) the Central Authority(ies) of your State find the Service Handbook to be:

[X] Very useful
[ ] Useful
[ ] Not useful

Please indicate what particular aspects of the Service Handbook could be improved:

18) Do practitioners (attorneys, process servers, etc.) in your State also consult and rely on the Service Handbook?

[X] YES

[ ] NO

[ ] No information available for possible comment

19) Has the Service Handbook been quoted or referred to in judicial proceedings and / or court decisions in your State (please provide precise references and copies of the relevant decisions)? If a decision is in a language other than English or French, a summary into either of these languages would be appreciated.

[ ] YES – references / comments:

[X] NO

PART TWO – SUBSTANTIVE ISSUES

I. Non-mandatory but exclusive character of the Service Convention

20) In Conclusion and Recommendation No 73, the 2003 Special Commission unanimously confirmed the view that the Service Convention is non-mandatory but exclusive (see also Service Handbook, paras 24-45).

a. Has the non-mandatory but exclusive character of the Service Convention led to any questions or difficulties in your State since the 2003 Special Commission?

[ ] NO

[ ] YES – please explain what these questions or difficulties were and how they were addressed and solved:

b. Have any judicial proceeding and / or court decisions addressed this particular matter of the non-mandatory but exclusive character of the Service Convention?

[X] NO

[ ] YES – please explain how the court(s) addressed and / or decided the matter (please provide precise references and copies of the relevant decisions; if a decision is in a language other than English or French, a summary into either of these languages would be appreciated):

II. Scope of the Service Convention

A. Interpretation of the phrase "civil or commercial matters"

21) In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged for a broad and liberal interpretation of the phrase "civil or commercial matters" (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Service Convention.

a. Has the interpretation of the phrase "civil or commercial matters" given rise to specific issues in your State (either as a requested or a requesting State) since 2003?

[ ] YES

(i) What were they and how have they been solved?

(ii) Have the authorities of your State followed the Conclusions and Recommendations of the 2003 Special Commission?

[ ] YES

[ ] NO – why not?

(iii) Please provide details and / or a copy of any relevant decision(s) (if these decisions are in a language other than English or French, a brief summary into either of these languages would be appreciated):

[X] NO

b. Has (any of) the Central Authority(ies) of your State been in direct contact with an authority of another Contracting State to discuss the interpretation of this phrase (so as to decide whether or not to execute a request for service)?

[X] YES – please briefly explain the circumstances and modalities of any exchange:

We have discussed with the MOJ OF RUSSIAN FEDERATION concerning the nature of the arbitrational documents.

[ ] NO – please explain why there was no communication on this issue:

22) Regardless of whether a matter has actually arisen, please indicate (by placing a "YES" or a "NO" in the relevant box) which of the following types of matters the authorities of your State consider as falling within the scope of the phrase "civil or commercial matters":

[ ] Bankruptcy or insolvency in general
[ ] Reorganisation under bankruptcy laws
[ ] Insurance
[ ] Social security
[ ] Employment
[ ] Taxation
[ ] Anti-trust and competition
[ ] Consumer protection
[ ] Regulation and oversight of financial markets and stock exchange (*e.g.*, in matters possibly involving insider trading)
[ ] Proceeds of crime
[ ] Other matters (please specify):

23) *This question is addressed to States that are also States Parties to the Evidence Convention*: Does your State interpret the expression "civil or commercial matters" in the same way under both the Service Convention and the Evidence Convention (see also Questions 17) and 18) in the Evidence Questionnaire, Prel. Doc. No 1 of May 2008 for the attention of the Special Commission on the practical operation of the Hague Evidence, Service, Apostille and Access to Justice Conventions)?

[X] YES

[ ] NO – please explain the difference(s):

B. Interpretation of "judicial and extrajudicial documents"

24) The Service Convention applies to both judicial and extrajudicial documents (Art. 1(1) – see paras 65 to 70 of the Service Handbook).

a. Is the concept of extrajudicial documents, which may have to be served on an addressee, known in the domestic law of your State?

[X] NO

[ ] YES

(i) What are the most important examples of extrajudicial documents generated in your State and which, under the domestic law of your State, may have to be served (*e.g.*, consents for adoption, notarial documents)?

(ii) Please explain in what circumstances these extrajudicial documents may have to be served abroad:

(iii) Who may serve these extrajudicial documents? Please specify in particular whether or not private persons may serve extrajudicial documents (see para. 70 of the Service Handbook).

(iv) How many extrajudicial documents has your State, as a requesting State, forwarded in 2007 to another State Party for service?

[X] 0
[ ] 1-10
[ ] 11-20
[ ] more than 20

b. In 2007, how many extrajudicial documents has(have) the Central Authority(ies) or other relevant authorities and officials of your State received under the Service Convention, as the requested State, for service in your State?

[X] 0
[ ] 1-10
[ ] 11-20
[ ] more than 20

(i) Please specify from which States these requests for service of extrajudicial documents emanated:

(ii) Were all these requests executed?

[ ] YES
[ ] NO – why not?

C. Service on States and State Officials

25) Have the forwarding authorities of your State, as a State of origin, used any channel(s) of transmission available under the Service Convention when service has had to be effected upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see also Question 39))?

[ ] YES – please indicate:

a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context:

b. those State(s), or agents representing such State(s), for which / whom such requests for service have been forwarded:

c. whether service was eventually effected, and if so, by what method:

d. any difficulties that were encountered in any of these cases:

[X] NO – if applicable, please indicate the method(s) of transmission that was (were) used, not under the Service Convention, to transmit requests for service upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

26) Has(have) the Central Authority(ies) or other authorities and officials in your State, as a State of destination, received requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company?

[X] YES – please indicate:

a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context?

The requests were sent to the Chinese Central Authority by the Forwarding Authority of the Requesting Countries.

b. from which State(s), or which agents representing that State, such requests for service were received:

Germany;U.S.A.;Turkey;

c. if service was eventually effected after such requests for service were received, and if so, by what method:

d. any difficulties that were encountered in any of these cases:

[ ] NO – if applicable, please indicate the method(s) of transmission that was(were) used, not under the Service Convention, by other States to transmit requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

III. The main channel of transmission

A. Forwarding Authority (Art. 3)

27) In Conclusion and Recommendation No 49, the 2003 Special Commission advised that in case of doubt as to the competence of the forwarding authority, rather than rejecting the request for service, the authorities in the requested State should seek to confirm that competence by either consulting the HCCH website or by making informal enquiries, including by way of e-mail.

Has your State, as a requested State, experienced any difficulties in determining whether a specific forwarding authority was in fact a legitimate forwarding authority under the law of the requesting State?

[ ] NO

[ ] YES – please specify whether or not the authorities of your State followed Conclusion and Recommendation No 49 of the 2003 Special Commission:

[X] YES

[ ] NO – why not?

28) The Service Convention does not specify how requests for service should be sent by the forwarding authority of the requesting State to the relevant Central Authority of the requested State.

a. Do the forwarding authorities of your State use the official postal mail service of your State to send most of their requests for service abroad?

[X] YES

[ ] NO

b. Do the forwarding authorities of your State also use *private* courier services to send requests for service abroad?

[ ] YES – please explain in what circumstances they use private courier services:

[X] NO – please explain why:

The Official Postal Organ is a contracted partner of the Chinese Central Authority.

c. Do(es) the Central Authority(ies) of your State, as a requested State, accept requests for service when they are sent via a private courier service?

[ ] YES

[ ] NO – why not?

See also Question 33) regarding the use of modern technologies, in particular sub-questions b. and c.

B. Methods of service (Art. 5)

29) Please complete:

a. Formal service (Art. 5(1) *a)*)

(i) Please describe the methods of service prescribed by the domestic law of your State to effect formal service of documents upon persons who are within the territory of your State (Art. 5(1) *a)*):

Personal Service/Service by leaving the documents a the domicile with certain conditions/service by post

(ii) Please indicate the method(s) generally used by your State when service is requested under Article 5(1) *a)* and no preference has been indicated as to the manner in which service should be effected (*e.g.*, personal service, by post, etc. See also below Question 29) c. (ii) and (iii)). Please also indicate your State's reasons behind any such default choice:

Personal Service

b. Service by a particular method (Art. 5(1) *b)*)

Pursuant to Article 5(1) *b)*, service may be effected by a particular method requested by the applicant unless such a method is incompatible with the law

of the requested State (requests for the use of a particular method are fairly rare in practice, see para. 132 of the Service Handbook). The purpose of this provision is to enable requests for a particular method of service *contemplated by the law of the requesting State* to be applied in the requested State so that the validity requirements for service in the requesting State are met. However, it appears that some forwarding authorities are systematically requesting that their request for service be executed under Article 5(1) *b)* even in circumstances where they intend to have service effected by a method that is recognised under the laws of the *requested* State (such as personal service). The Permanent Bureau believes that this practice is erroneous and that such a request should instead be made and specified under Article 5(1) *a)*.

(i) Does your State agree with the position of the Permanent Bureau that a request for a method of service that is recognised by the law of the requested State (such as personal service) may be specified and effected under Article 5(1) *a)* and that Article 5(1) *b)* serves a separate purpose?

[X] YES

[ ] NO – please explain why:

(ii) If relevant, please describe the particular methods of service which your forwarding authorities have requested other States to use under Article 5(1) *b)* and whether these particular methods have in fact been used to effect service:

(iii) If relevant, please describe the particular methods of service by which your State has been requested to effect service under Article 5(1) *b)* and whether these particular methods have in fact been used to effect service:

Personal service which in fact comply with the Chinese Law required by some States. The requirements was met in execution.

c. Informal delivery (Art. 5(2))

(i) Does the law of your State provide for *informal delivery* of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?

[ ] YES – please describe how service of documents via informal delivery is made in your State (Art. 5(2)):

[X] NO

(ii) As a matter of practice, does your State systematically attempt service of process by informal delivery if and when no particular method of service has been requested under Article 5(1) *a)* or *b)*?

[X] YES

[ ] NO

(iii) As a matter of practice, does your State systematically attempt service of documents via a *formal* method of service when informal delivery has proven to be unsuccessful?

[ ] YES – please specify if your State imposes any additional requirements before such formal service will be attempted (*e.g.*, a translation):

[X] NO

C. Translation requirements (Art. 5(3))

30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):

[ ] NO requirements

[X] YES – please indicate what these requirements are, in each of the following set of circumstances:

a. Formal service (Art. 5(1) *a)*):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) *a)*, that the document be translated into another language (*i.e.*, one of the official languages of your State)?

[X] YES – please indicate why:

According to the domestic law, the documents to be served must be in Chinese language.

[ ] NO

b. Particular method requested by the applicant (Art. 5(1) *b)*):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) *b)* that the document be translated into another language (*i.e.*, one of the official languages of your State)?

[ ] YES – please indicate why:

[X] NO

c. Informal delivery (Art. 5(2)):

[X] NO translation requirement for informal delivery

31) The Service Convention does not state how any translation of the documents to be served under Article 5(1) should be prepared or who should prepare it. According to your State, which law determines these issues?

[X] The domestic law of the requesting State

[ ] The domestic law of the requested State

[ ] Both laws

Please specify / comment if needed:

D. Costs (Art. 12)

32) Please indicate the costs incurred (if any) for each of the following methods of service under the law of your State (as a requested State) in accordance with Articles 5 and 12:

a. Formal service (Art. 5(1) *a)*):

(i) Who bears these costs?

[X] Your State (requested State)

[ ] The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

But Chinese side will charge for the service on the reciprocity base when the Chinese applicant is charged for the service by the other States.

b. Particular method requested by the applicant (Art. 5(1) *b)*):

(i) Who bears these costs?

[ ] Your State (requested State)

[X] The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

c. Informal delivery (Art. 5(2)):

(i) Who bears these costs?

[X] Your State (requested State)

[ ] The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

E. Modern Technologies

33) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving the operation of the

Convention and that States Parties should explore all ways in which they can use modern technology. In Conclusion and Recommendation No 63, a variety of steps were identified for the exploration and use of modern technologies: in communications between a requesting party and a forwarding authority, in communications between a forwarding authority and a Central Authority of a requested State, and in the retransmission of the certificate of execution by the Central Authority or the designated authority (Art. 6). In light of these Conclusions, and in the context of the main channel of transmission, please comment on the following (see also below Part Three, Section II. C.):

a. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a requesting party to a forwarding authority* by fax, e-mail or a similar technology?

[ ] YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc.):

[X] NO – please explain / specify:

Domestic law does not provide for this issue.

b. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a forwarding authority to a Central Authority of a requested State* by fax, e-mail or a similar technology?

[ ] YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, confirming any requirements and / or capabilities of the Central Authority of the requested State in this regard, etc.).

[X] NO – please explain / specify:

The reason is same as the above.

c. Does the law of your State, as a requested State, allow for documents to be *received by your (one of your) Central Authority(ies) from a forwarding authority abroad* by fax, e-mail or a similar technology?

[ ] YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to accept such documents for service).

[X] NO – please explain / specify:

The reason is same as the above.

d. Does the law of your State, as a requested State, allow for *the certificate of execution to be transmitted* from the relevant Central Authority of your State or the authority designated under Article 6 to the applicant by fax, e-mail or a similar technology?

[ ] YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to transmit the certificate of execution):

[X] NO – please explain / specify:

The reason is same as the above.

e. Does the law of your State, as a requesting State, allow for the certificate of execution to be received from the requested State by fax, e-mail or a similar technology?

[ ] YES – please specify what modern technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to receive the certificate of execution):

[X] NO – please explain / specify:

The reason is same as the above.

IV. Alternative Channels of Transmission (Arts 8, 9, 10)

A. Translation requirements

34) In Conclusion and Recommendation No 65, the 2003 Special Commission recognised that whilst no translation is required under the Service Convention for documents transmitted under the alternative channels of transmission, in isolated cases, translations are sometimes required in these circumstances by the domestic law of States. Does the domestic law of your State impose translation requirements on documents that are transmitted for service through an alternative channel of transmission?

[X] NO

[ ] YES – please provide to the Permanent Bureau all relevant information pertaining to these internal legal requirements and to which alternative channel they relate. If this information is not in either French or English then a translation into one of these languages would be appreciated:

B. Model Form

35) The Fourteenth Session of the HCCH (held in 1980) recommended that the part of the Model Form that contains the "Summary", accompanied by the "Warning", not only be used under the main channel of transmission but also under the alternative channels of transmission of the Service Convention (the Recommendation and the accompanying Report established by Gustaf Möller are available on the "Service Section" of the HCCH website (< www.hcch.net >). Please indicate whether the forwarding authorities in your State systematically send the "Summary" accompanied by the "Warning" when requests for service are sent abroad using an alternative channel of transmission.

[ ] YES

[X] NO – why not?

36) The Permanent Bureau approves and encourages the practice of certain States to return the Certificate to the applicant even if transmission of the request for service occurred via an alternative channel of transmission provided for in Article 10 *b)* and *c)* (see para. 119 of the Service Handbook). This practice may even be extended to Article 10 *a)*, depending on the postal mail service used in the State of destination. Is it a practice within your State, as a State of destination, to use the

"Certificate" part of the Model Form and to transmit this to the applicant in the

State of origin when the transmission of the request for service occurred under one of the alternative channels of transmission contained within Article 10 *a)*, *b)* and *c)*?

[ ] YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *a)* – please provide further details:

[ ] YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *b)* and / or *c)* – please provide further details, *i.e.*, what category of or which judicial officers, officials or competent persons exercise this practice:

[ ] NO

N/A. China has declared to oppose the service by the methods provided by Article 10.

C. Diplomatic and Consular Channels

Article 8 – Direct Channels

37) Have the diplomatic and consular agents of your State been used to directly effect service of judicial documents upon persons abroad in accordance with Article 8(1) in the past five years?

[ ] NO – why not?

[X] Yes – please specify:

a. on how many occasions your diplomatic and consular agents abroad have been used to effect service in accordance with Article 8(1):

When the addressees in foreign contries are Chinese citizens.

b. in which States these diplomatic and consular agents were based:

Those contries in which china has posted diplomatic and consular agents.

c. the average time taken between the transmission of the documents for service and the execution of service:

3-6 months

d. whether your State considers this channel to be efficient and effective:

[X] YES

[ ] NO – why not?

e. whether there have been situations whereby the diplomatic and consular agents of your State have attempted to directly effect service of judicial documents upon persons abroad but were unable to as a result of the addressee not voluntarily accepting delivery of the document:

[X] YES – please indicate how this matter was dealt with:

We just returned the documents unserved to the Chinese Court who issued the judicial documents.

[ ] NO

f. whether the transmission of judicial documents to the diplomatic agents or consular officers of your State posted abroad, or the actual service of these judicial documents upon an addressee, have been executed by using electronic means (*e.g.*, by fax or e-mail):

[ ] YES

[X] NO – why not?

Domestic law does not provide for this issue.

Article 9 – Indirect Channels

38) In the past five years, has your State used consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which were designated by the latter for this purpose in accordance with Article 9(1)?

[X] NO – why not?

The main channel is effective enough.

[ ] YES – please specify:

a. on how many occasions this channel has been used in the past five years:

b. in which States these diplomatic and consular agents were based:

c. the average time taken between the first transmission of the documents to be served and the execution of service:

d. whether your State considers this channel to be efficient and effective?

[ ] YES

[ ] NO – why not?

39) In the past, have there been "exceptional circumstances" in accordance with Article 9(2) that required your State to use diplomatic channels to forward documents to another State Party for the purpose of service?

[X] NO

[ ] YES – please describe what these exceptional circumstances were that warranted the use of diplomatic channels to forward documents for the purpose of service in another State Party. In particular, did any exceptional circumstances relate to the service of a claim on a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see para. 193 of the Service Handbook):

40) Has the transmissions of documents to either diplomatic agents or consular officers of your State located abroad for the purpose of service in the State in which they are based, or the actual service on these documents upon the addressee, occurred via electronic means (*e.g.*, by fax or e-mail)?

[ ] YES

[X] NO – why not?

Domestic law does not provide for this issue.

D. Article 10 *a)* – Postal Channel N/A

41) If your State has opposed "the freedom to send judicial documents, by postal channels, directly to persons abroad" (Art. 10 *a)*), please indicate:

a. the reason(s) that motivated this opposition:

b. whether your State uses this channel of transmission to send judicial documents abroad for service by mail despite having filed an opposition under Article 10 *a)* (see paras 206-210 of the Service Handbook):

[ ] NO

[ ] YES – please explain:

Please go to Question 45).

42) Has the interpretation and application of Article 10 *a)* given rise to any difficulties in your State?

[ ] YES – please specify / comment:

[ ] NO

43) If possible, please comment upon how frequently judicial documents are sent for service upon persons abroad, by parties in your State, via postal channels:

44) In Conclusion and Recommendation No 56, the 2003 Special Commission concluded that for the purposes of Article 10 *a)*, the use of a private courier was the equivalent of using the postal channel under the Service Convention.

a. Does the law of your State, as a State of origin, allow for private courier services to be used under Article 10 *a)*, *i.e.*, are judicial documents sent from your State for service abroad via private courier services:

[ ] YES

[ ] NO – why not?

b. Does the law of your State, as a State of destination, allow for private courier services to be used under Article 10 *a)*, *i.e.*, are judicial documents received from abroad and served within your State by private courier services:

[ ] YES

[ ] NO – why not?

E. Article 10 *b)* – Judicial Officers, Officials or Other Competent Persons

45) If your State has opposed "the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination" (Art. 10 *b)*), please indicate the reason(s) that motivated this opposition:

If your State does hold an opposition, please go to Question 47).

46) Provided the application of Article 10 *b)* has not been objected to by your State and that the law of your State presumably allows for service to be effected by "judicial officers, officials or other competent persons", please answer the following:

a. Which of the following would be considered to be "judicial officers, officials or other competent persons" under the law of your State (please tick all relevant boxes)? Please also note whether these categories differ depending on whether your State is a State of origin or a State of destination:

[ ] Attorneys or solicitors
[ ] Bailiffs
[ ] *Huissiers*
[ ] Process servers
[ ] Court officials
[ ] Notaries
[ ] Officials of the executive branch
[ ] Other – please specify

b. How does this channel of transmission operate in practice – in particular, do (any of) the judicial officers, officials or other competent persons mentioned above send (or receive) the judicial documents *directly* to (or from) their counterparts abroad, or do they have to use some other channel? Please also indicate whether these channels differ depending on whether your State is a State of origin or a State of destination.

c. Are there any costs associated with the use of this alternative channel of transmission in your State, either in terms of sending or receiving judicial documents?

d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?

e. May any transmission between the judicial officers, officials or other competent persons be done via electronic means (*e.g.*, by fax or e-mail)?

[ ] YES
[ ] NO – why not?

F. Article 10 *c)* – Interested Persons

47) If your State has opposed "the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination" (Art. 10 *c)*), please indicate the reason(s) that motivated this opposition:

If your State does hold an opposition, please go to Question 49).

48) Provided the application of Article 10 *c)* has not been objected to by your State, please answer the following:

a. Which of the following would be considered to be "any person interested in a judicial proceeding" under the law of your State (please tick all relevant boxes):

[ ] Attorneys or solicitors
[ ] Bailiffs
[ ] *Huissiers*
[ ] Process servers
[ ] Court officials
[ ] Notaries
[ ] Officials of the executive branch
[ ] Other – please specify

b. How does this channel of transmission operate in practice – in particular is any person interested in a judicial proceedings able to send the judicial documents *directly* to the judicial officers, officials or other competent persons of the State of destination or does another channel have to be used?

c. Are there any costs associated with the use of this channel of transmission in your State, either in terms of sending or receiving judicial documents?

d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?

e. May any transmission between a person interested in a judicial proceeding and the judicial officer, official or other competent person be done via electronic means (*e.g.*, by fax or e-mail):

[ ] YES
[ ] NO – why not?

V. Final refusal to execute the request (Art. 13)

49) According to Article 13 of the Service Convention a requested State may refuse to execute a request for service when this would infringe the "sovereignty or security" of the requested State.

a. In the past five years, has your State, as a requested State, rejected the execution of any request for service under Article 13?

[X] YES – please specify the grounds upon which your State rejected the execution. Please specify whether there is case law in your State that relates to this issue:

The service would infringe the sovereignty or security of China.

[ ] NO

b. In the past five years, is your State aware of whether a(ny) request(s) for service forwarded by your State has(have) been refused by a requested State under Article 13?

[ ] YES – please specify the precise grounds upon which the(se) request(s) for service were rejected:

[X] NO

VI. Protection of the interests of the Plaintiff and Defendant (Arts 15 and 16)

50) When a writ of summons or an equivalent document has been transmitted abroad for the purpose of service under the Service Convention, and the defendant has not appeared, Article 15(1) requires States not to give judgment unless certain requirements have been met. Nonetheless, and subject to States' declarations on this matter, a judge may give judgment if the conditions specified in Article 15(2) are fulfilled. One of these conditions is Article 15(2) *c)* which states that "no certificate *of any kind* has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed" [emphasis added]. Please comment on the interpretation in your State of the expression "no certificate *of any kind*". In particular, would your State, as a requesting State, consider that the receipt of a certificate that stated that *no service* has occurred could nevertheless trigger the application of Article 15(2)?

[ ] YES, the receipt of a certificate that states that no service has occurred may trigger the application of Article 15(2) (if all the other conditions are fulfilled).

[ ] NO, the receipt of a certificate that states that no service has occurred may not trigger the application of Article 15(2) – please explain why:

51) If a requesting State has made a declaration in accordance with Article 15(2) and considers that all conditions of Article 15(2) have been fulfilled and accordingly enters a default judgment, would your State, as a requested State, recognise and enforce the resulting judgment in these circumstances (assuming that all other conditions for the recognition and enforcement of the judgment are fulfilled)?

[ ] YES

[ ] NO – please indicate the grounds upon which your State would refuse to enforce a judgment in these circumstances:

52) If your State has not made a declaration under Article 15(2), please explain:

a. why your State has not made such a declaration:

b. whether or not your State is assessing the possibility of making such a declaration:

53) If your State has *not* made a declaration under Article 15(2), what actions would a judge in your State take (as a requesting State) if your State has not received a certificate of service and the defendant has not appeared? For example, would the

law of your State enable a judge to enter a default judgment, despite the absence of a declaration under Article 15(2)? Upon what grounds would such a judgment be made? If there were some evidence that service had actually been effected, would this change the options that may be available to a judge?

[ ] Not applicable (my State made a declaration under Art. 15(2))

54) If your State has not made a declaration under Article 16(3), please explain:

a. why your State has not made a declaration:

b. whether or not your State is assessing the possibility of making a declaration:

VII. Date of service

55) The Service Convention does not include a provision that determines the date of service (*i.e.*, the precise moment when the documents have actually been or are deemed to have been served). As a result, it is for the domestic law of the State(s) involved to determine the date of service.

a. How is the date of service of documents determined in your State:

(i) in relation with the execution of a request for service forwarded under the main channel of transmission (please also specify whether your State relies on the date mentioned under point 1 of the Certificate to determine the actual date of service)?

We consider the date mentioned on the Certificate(Part 1) as the date of Service.

(ii) when one of the alternative channels of transmission has been used?

b. When the law of your State requires that documents be served within a specific period, does the law of your State also provide effective means to protect the interests of the applicant when the documents have to be served abroad and are thus subject to the effective operation of authorities or professionals abroad (*e.g.*, does the law of your State provide for extended periods of service or for fictitious dates of service based on the date when the documents are sent or ready to be sent abroad, etc.; see Conclusion and Recommendation No 75 of the 2003 Special Commission)?

[ ] YES – please specify:

[ ] NO

N/A

c. Has the absence of an explicit rule on the date of service in the Convention caused any practical difficulties in your State?

[ ] YES – please specify:

[X] NO

PART THREE – OTHER OPERATIONAL ISSUES

I. Model Form annexed to the Service Convention

A. Fillable PDF versions of the Model Form

56) The Permanent Bureau has made the Model Form annexed to the Convention available as a fillable PDF document on the HCCH website. This fillable version of the Model Form is currently available in English, French and in two trilingual versions (English / French / Ukrainian and English / French / Russian). These fillable forms have proven to be very useful. The Permanent Bureau would be pleased to make available other trilingual Model Forms in the same format (English / French / one of the official languages of a State Party). States that are interested in producing a Model Form with (one of) their official language(s) available as fillable PDF documents are invited to send to the Permanent Bureau a document in MS-Word with the text of the Model Form in the relevant official language. The Permanent Bureau will then create the fillable version and upload it onto the HCCH website.

Please feel free to comment further on the above:

That will be very useful.

B. Request Form (Art. 3)

57) The first box on the Model Form asks for the "[i]dentity and address of the *applicant*" [emphasis added]. The Permanent Bureau's interpretation of the word "applicant" is that it refers to the *forwarding authority* referred to in Article 3(1) (see Service Handbook, paras 112-114). Does your State agree with this interpretation?

[X] YES

[ ] NO – what then is the interpretation of this word in your State?

- [ ] The plaintiff in the proceedings
- [ ] Counsel representing the plaintiff (if different from the forwarding authority)
- [ ] The court where the proceeding is taking place in the requesting State
- [ ] Other – please specify:

58) In Conclusion and Recommendation No 48, the 2003 Special Commission unanimously approved the suggestion that the information regarding the forwarding authorities and their competences be included in the Model Form. Does your State systematically follow this Conclusion and Recommendation when sending a request for service?

[X] YES

[ ] NO – why not?

C. Certificate (Art. 6)

59) Article 6(4) indicates that the Certificate shall be "forwarded directly to the *applicant*" [emphasis added]. The Permanent Bureau's interpretation of the word "applicant" is again that it refers to the *forwarding authority* referred to in Article 3(1). Does your State agree with this interpretation?

[X] YES

[ ] NO – to whom then do(es) the Central Authority(ies) of your State or the authority designated for this purpose forward the Certificate:

- [ ] The plaintiff in the proceedings
- [ ] Counsel representing the plaintiff (if different from the forwarding authority)
- [ ] The court where the proceedings are taking place in the requesting State
- [ ] The nearest Embassy representing the requesting State
- [ ] Other – please specify:

II. E-service

A. In strictly domestic situations

60) Does the law of your State, in strictly domestic situations, allow for documents to be served by fax, e-mail, SMS, the posting of a message on a website, or by a similar modern technology?

[ ] NO – are there plans to introduce service by using such technologies?

- [ ] YES – please specify:

- [ ] NO

[ ] YES – please specify:

a. the legal framework and practical circumstances in which such technologies may be used (please describe for each if necessary):

b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:

c. if and how service upon the addressee is acknowledged or proven in such circumstances:

B. In cross-border situations outside of the Service Convention

61) Have the relevant authorities of your State served documents by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology in cross-border situations that did not fall within the scope of the Service Convention?

[ ] YES – please specify:

a. the legal framework and practical circumstances in which this occurred – in particular, whether the terms of a regional or bilateral instrument

provided for or otherwise allowed this (please describe for each if necessary):

b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:

c. if and how service upon the addressee was acknowledged or proven in such circumstances:

[ ] NO

C. E-service and the main channel of transmission under the Service Convention

62) Has the / a Central Authority of your State received requests for service that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology?

[ ] NO – please indicate how the Central Authority would respond if it were to receive such requests:

[ ] YES

a. From which State(s) did these requests emanate?

b. Did the requests for service provide any particular circumstances or explanations as to why the execution of using such technologies was requested?

[ ] YES – what were these circumstances or explanations? (please tick all relevant boxes)

[ ] Urgency

[ ] Failure of previous attempts to serve process by traditional means

[ ] Use of such technologies approved by judicial authority of the forum or the domestic law of the forum

[ ] All parties involved gave their (prior or subsequent) consent

[ ] Other – please specify:

[ ] NO

c. Did your State in fact execute any of these requests for service by using any of these modern technologies?

[ ] NO – why not?

[ ] YES – please specify:

(i) the legal basis upon which these requests for service were executed:

(ii) whether a secured transmission was used or required or requested to be used, and if so, which kind:

(iii) if and how service upon the addressee was acknowledged or proven in such circumstances:

63) Has your State, as a requesting State under the Service Convention, sent requests for service abroad that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?

[ ] NO

[ ] YES

a. To which State(s) were these requests sent?

b. Did the requests for service provide any particular circumstances or otherwise provide explanations as to why the execution of service using such technologies was requested?

[ ] YES – what were these circumstances or explanations? (please tick all relevant boxes)

[ ] Urgency

[ ] Failure of previous attempts to serve process by traditional means

[ ] Use of such technologies approved by the relevant judicial authority or the domestic law of your State

[ ] All parties involved gave their (prior or subsequent) consent

[ ] Others – please specify:

[ ] NO

c. Were these requests for service in fact executed by using any of these modern technologies?

[ ] YES

[ ] NO – please provide any information you may have as to why these requests were not executed:

64) How likely is it that your State would recognise and execute a foreign judgment if the related writ of summons was served abroad by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (all other conditions for recognition being of course fulfilled)?

[ ] Very likely

[ ] Likely

[ ] Very unlikely

[ ] It depends on the technology used – please indicate which modern technology method of service your State would accept:

65) How likely is it that your State would recognise and enforce an agreement made by parties to a contract to the effect that they agree in advance to serve documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?

[ ] Very likely
[ ] Likely
[ ] Very unlikely
Please explain / comment:

D. E-service and the alternative channels of transmission under the Service Convention

66) Does your State interpret the expression "postal channels" in Article 10 *a)* as including transmissions by:

a. Fax
[ ] YES
[ ] NO
Comments:

b. E-mail
[ ] YES
[ ] NO
Comments:

c. SMS
[ ] YES
[ ] NO
Comments:

d. The posting of a message on a website
[ ] YES
[ ] NO
Comments:

E. Miscellaneous

67) Have there been any other recent developments in your State in relation to the service of documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (including in situations involving one of the alternative channels of transmission under the Service Convention where applicable)? Please describe below and provide the citations for and / or a copy of any relevant decision or article in this regard (if this information is not in English or French, a summary into one of these languages would be appreciated):

68) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted, amongst other matters, that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving

its operation and that States Parties to the Service Convention should explore all ways in which they could use modern technology. Does your State think that the use of modern technologies under the Service Convention should be further encouraged by the adoption of:

a. Specific Conclusions and Recommendations to that effect by the 2009 Special Commission

[ ] YES

[ ] NO

Comments:

b. A Protocol to the Service Convention:

[ ] YES

[ ] NO

Comments:

Thank you!

* * *

EXHIBIT 7

According to the U.S. State Department's website, service of process by mail should NOT be used in China. Bureau of Consular Affairs, U.S. Dep't of State, China Judicial Assistance, provides, in pertinent part

https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html :

"China . . .
Party to Hague Service Convention? Yes
Party to Hague Evidence Convention? Yes
Party to Hague Apostille Convention? Yes
Party to Inter-American Convention? No
Service of Process by Mail? No"

The U.S. State Department's website provides, as follows

Bureau of Consular Affairs, U.S. Dep't of State, China

Judicial Assistance,

https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html :

"China is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters. Complete information on the operation of the Convention, including an interactive online request form are available on the Hague Conference website. Requests should be completed in duplicate and submitted with two sets of the documents to be served, and translations, directly to China's Central Authority for the Hague Service Convention. The person in the United States executing the request form should be either an attorney or clerk of court. The applicant should include the titles

attorney at law or clerk of court on the identity and address of applicant and signature/stamp fields. In its Declarations and Reservations on the Hague Service Convention, China formally objected to service under Article 10, and does not permit service via postal channels. For additional information see the Hague Conference Service Convention website and the Hague Conference Practical Handbook on the Operation of the Hague Service Convention. See also China's response to the 2008 Hague Conference questionnaire on the practical operation of the Service Convention."

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. SECURITIES AND EXCHANGE COMMISSION,	)	
Petitioner,	)	Miscellaneous Action No. 11-0512 GK/DAR
-v.-	)	
DELOITTE TOUCHE TOHMATSU CPA LTD.,	)	
Respondent.	)	

DECLARATION OF JAMES V. FEINERMAN

JAMES M. MORITA PROFESSOR OF ASIAN LEGAL STUDIES

GEORGETOWN UNIVERSITY LAW CENTER

I, James V. Feinerman, declare as follows:

1. I am the James M. Morita Professor of Asian Legal Studies at Georgetown University Law Center and have been admitted as an attorney to practice before the courts of New York. I have been retained by counsel for Deloitte Touche Tohmatsu Certified Public Accountants, Ltd. ("DTTC") in the above-captioned action. I submit this affidavit in support of Respondent DTTC's Statement of Points and Authorities Opposing The Securities and Exchange Commission's ("SEC") Application for Order to Show Cause and Order Requiring Compliance with a Subpoena.

Qualifications

2. I briefly summarize below my education, training and relevant experience. Following my receiving a B.A. in Chinese Studies at Yale College, I spent two years teaching and studying in Hong Kong at the Chinese University of Hong Kong, 1971-73. In the ensuing years, I earned a Ph.D. in East Asian Languages and Literature at Yale University and a J.D. from the Harvard Law School, where I specialized in East Asian Legal Studies. During 1979-80, I was a participant in the national student exchange program sponsored by the Committee on Scholarly Communication with the People's Republic of China ("CSCPRC", renamed "Committee on Scholarly Communication with China" – "CSCC"). For one year, I studied

at Peking University and received a post-graduate certificate; in the fall of 1980, I spent an additional four months as a Visiting Scholar at the Institute of Law of the Chinese Academy of Social Sciences. I speak Mandarin and Cantonese dialects of Chinese and can also read Chinese.

3. I have taught at Georgetown, and also as a visiting professor at Harvard and Yale Law Schools, for over twenty-five years. Among other courses, I teach a course in Chinese Law at Georgetown, along with a seminar in Asian Law and Policy Studies. At Harvard, I have taught courses in Chinese Law and Pacific Community Legal Relations; at Yale, I taught both Chinese Law and Asian Legal Studies courses.

4. In addition to my work as a professor of law, I served as Editor-in-Chief of the China Law Reporter, a publication of the American Bar Association's Section of International Law and Practice, from 1986-1998; as Chair of the Committee on Legal Education Exchange with China, from 1993-1997; as Chair of the Asia Law Forum of the Association for Asian Studies, from 1991-1996; and have been a Trustee of the Yale-China Association and the Lingnan Foundation.

5. From 1993-1995, I served as Director of the Committee on Scholarly Communication with China, Washington, D.C., the national organization sponsoring official academic exchange between the United States and China, sponsored by the National Academy of Sciences, the American Council of Learned Societies, and the Social Science Research Council. In 1982-83, I taught as a Fulbright Lecturer on Law at the Peking University Law Department, Peking, People' s Republic of China. From 1983-1985, I served as Administrative Director and Fellow of the East Asian Legal Studies Program at Harvard Law School, Cambridge, Massachusetts. In 2006, I taught as Fulbright Distinguished Senior Lecturer on Law at the Law School of Tsinghua University, Beijing, People's Republic of China. I have attached my curriculum vitae as Exhibit A to this affidavit.

Summary of Opinions

6. I summarize my opinions as follows:

- Although the modern legal system of the People's Republic of China ("PRC") has only been evolving for the past three decades, and has yet to achieve the same level of development of the legal orders of other advanced economies, it does follow a general civil law model and is not an outlier among civil law jurisdictions.

- The PRC has made enormous strides in the following areas: With respect to the enhancement of the legislative process, the implementation of legislation via the

interpretive practices of courts and administrative agencies, as well as through the enforcement of civil judgments, the personnel staffing the system in the role of legal advisers, criminal law and human rights, the key area of foreign trade and investment law, and finally China's place and role in the international legal order. This can clearly be counted as a major success story in the annals of legal modernization. Similar advances took decades longer in Japan, Korea, and Thailand.

- The United States and other market democracies have been encouraging and assisting the PRC for decades to develop and to improve the rule of law in China.

- The gathering of evidence created and located within a sovereign territory by a foreign government would be viewed by any sovereign as intrusive. But this is even more the case in a civil law country like China. Under a civil law approach, the collection of evidence is viewed as an act requiring significant government involvement, which cannot be undertaken solely by individual litigants. The China Securities Regulatory Commission's ("CSRC") requirement that information requests by foreign regulators be directed to the China government, rather than to individual citizens or companies, is consistent with this civil law tradition.

- China's securities regulatory regime is also relatively new, but has begun to employ a rule-of-law modality to the tasks of establishing a transparent, well-regulated financial market in China and building the capacity of necessary gatekeepers to meet high global standards for performance. The World Bank and the International Monetary Fund ("IMF") have applauded the PRC for its impressive progress in putting in place an institutional framework for accounting, auditing, and corporate financial reporting, with a high level commitment on the part of China's Ministry of Finance.

- The financial regulators in China, as well as other senior economic officials and top Party and government leaders are committed to the creation of an effective enforcement regime and are actively working to improve the existing regime to that end. The CSRC has overseen regulatory reforms to support a more market-based financial system and to facilitate Chinese companies' ability to attract foreign investment and to obtain access to foreign capital markets. These efforts have included improving ongoing regulatory systems and cross-border regulatory cooperation mechanisms, and Chinese regulatory authorities have adopted a wide range of statutes and regulations that comport with international best practices in most areas related to oversight of corporate entities, banks, and similar financial institutions.

- China recognizes protection of economic and commercial information as an element of its national security. Although there is some trend toward privitization, many large China companies are state-owned enterprises.

- Chinese criminal and civil laws, including laws protecting "State secrets" and "archives," impose legal requirements on China accounting firms to maintain the confidentiality of information obtained during audits, including economic and commercial information. These Chinese laws have serious binding force, and serious penalties may be imposed on firms which violate Chinese laws and regulations.

- The October 11, 2011 letter from the CSRC replying to DTTC's letter of October 8, 2011 requesting directions about how to respond to requests of a United States regulatory agency confirms that direct production of audit workpapers to foreign governments without approval of the China government would be a violation of China laws imposing a duty of confidentiality on China accounting firms.

  I have examined the statutes, regulations, and cases Professor Tang cites in his declaration and have reviewed the opinions he has presented about them with respect to their content and their interpretation as a matter of Chinese law. Based on that review and my own prior knowledge of the Chinese legal system, I agree with the conclusions he has drawn and believe both his analysis and conclusions are accurate.

  China provides, through its accession to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents ("Hague Service Convention"), the exclusive method under Chinese domestic law for foreign litigants to serve litigation documents on entities located in China. As the record demonstrates, China has a well-documented system for considering requests for service through the Hague Service Convention and regularly processes these requests.

- In my opinion, the Chinese Central Authority would honor a properly tailored request for service through the Hague Service Convention.

7. I have reviewed relevant portions of the following documents, in addition to the other documents referenced in this declaration: the PRC Law on Guarding State Secrets, the PRC Law on Guarding State Secrets Implementation Rules, the PRC Criminal Law, the PRC Archives Law, the PRC Archives Law Implementation Rules, the PRC Securities Law, the Regulations on Strengthening the Protection of Secrets and Archive Management Related to the Issuance and Listing of Securities Overseas, the PRC Certified Public Accountants Law,

the Accounting Firm Quality Control Principles, the Chinese Certified Public Accountants Ethics Regulation Guiding Opinion, the Measures for the Spot Inspection of Listed Companies, and the Practising Quality Inspection Rules for Accounting Firms.

8. My opinions are based on my experience with and study of Chinese law and the PRC government, my examination of relevant statutes, and cases and interactions with Chinese and foreign experts in Chinese law. These include the Constitution of the People's Republic of China, national laws issued by the National People's Congress, and administrative regulations issued by the State Council.

Recent Development of a Modern Legal System in the People's Republic of China

9. The development of a modern legal system in China began in earnest in 1978, following the Third Plenum of the 11th Communist Party Central Committee. Over the past three decades, despite occasional setbacks and difficulties, the construction of a complex legal system and the training of human resources to staff it have proceeded apace. Among the notable developments and specific successes of China's legal modernization are the volume of formal legislation: many new commercial laws governing corporate behavior, bankruptcy, behavior of banks, and other financial institutions have been enacted by the National People's Congress. Furthermore, the Chinese judicial system for law enforcement has been modernized and improved. The practice of litigation is now more widespread and the number of lawyers has dramatically increased. The number of legal personnel increased several hundred thousand between 1979 and 2012; in addition to support staff, legal clerks, and other related personnel in the courts and legislative bodies at various levels, this included over 100,000 judges and 175,000 lawyers. By way of comparison, there was no functioning judiciary in 1978 and only 300-400 lawyers, most of them trained before 1949.

10. Moreover, in its legal development, the PRC has carefully studied the models provided by countries with longer histories and more effective realization of the rule of law in creating its own new system. China has employed many of the legal regimes originating in the United States and other common law countries in areas such as competition law, banking and securities regulation, and administrative law in key aspects of its legal modernization. Like many other nations adapting traditional legal systems to modern circumstances, China has determined through trial and experimentation to adopt the civil law model. China, in an effort to modernize its legal system, borrowed heavily from the Japanese system, which in turn borrowed heavily from the German system. It also modernized its civil code during that era by examining the Swiss Civil Code. In the middle of the last century, after the creation of the People's Republic under the Communist Party of China, China borrowed from the former socialist countries in Eastern Europe, all of which followed a modified form of the civil law. The civil law model adopted by China was previously adopted by other Asian nations, such

as Japan, Korea, and Thailand, in the modernization of their legal systems—a modernization that took far longer than China's.

The "Rule of Law" in China

11. Ever since the PRC embraced the modernizing of its legal system in the late 1970s, foreign governments and non-governmental organizations have been involved in efforts to promote the "rule of law" in China. National governments, foundations, university law faculties, private law firms, and individuals have endeavored for more than three decades to assist in the PRC's program of legal development while at the same time encouraging the adoption of statutes, regulations, institutions, and standards that are in line with those of other global legal systems. They also seek to integrate the PRC into international rule-based organizations and to align the domestic law and practice of Chinese actors with their foreign counterparts.

12. In the United States, as part of the approval by Congress of PRC accession to the WTO, the Congressional-Executive Commission on China was created by Congress in October 2000 with the legislative mandate to monitor human rights and the development of the rule of law in China, and to submit an annual report to the President and the Congress detailing PRC progress in those areas. The Commission consists of nine Senators, nine Members of the House of Representatives, and five senior Administration officials appointed by the President.

13. Other nations have also committed resources to these endeavors. For example, the German government established a Sino-German Institute for Legal Studies at Nanjing University. Speaking at a ceremony there in August 2007, German Chancellor Angela Merkel praised the institute for promoting cooperation in the area of law studies between Germany and China, as well as dialogues between the two countries. She pointed out that a country needs "a good legal system, the observance of the law by most of its people, and a good administrative system that ensures the effective implementation of the law." [1]

14. Over the past three decades, the United States, the European Union, and various countries, as well as the Ford Foundation, other civil society organizations, and – most importantly – the Chinese government and its judicial, other governmental and educational institutions have devoted considerable human and financial resources to building a modern rule of law system in the PRC. Internally, this was viewed as an essential feature of economic reform and

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[1] German Chancellor Visits NJU [Nanjing University], http://www.nju.edu.cn/cps/site/njueweb/fg/index.php?id=31.

opening to the outside world as part of China's development; externally, other nations desired to integrate China into a peaceful global community bound by a shared system of uniform rules governing their international relations.[2]

Sensitivity to Collecting Evidence in Civil Law Country

15. While all nations have an interest in protecting their nationals from the imposition of unreasonable burdens by a foreign sovereign, this interest is especially strong in civil law jurisdictions. Understanding this sensitivity is instructive in understanding China's response to administrative subpoenas, such as in this case. The U.S. approach to the extraterritorial collection of evidence differs from that of many foreign nations. In many civil law jurisdictions, such as China, the collection of evidence is regarded as a "judicial" or "public" act that may not be performed by anyone but a properly authorized governmental authority in an officially sanctioned proceeding.

16. The gathering of evidence created and located within a sovereign territory by a foreign government would be viewed by any sovereign as intrusive. But this is even more the case in a civil law country like China. Civil law takes a very different view of foreign discovery orders because the investigation of legal claims and defenses is a public, not private, function in the civil-law system. In these countries, only local governmental officials as part of their authorized public functions are allowed to undertake quasi-judicial actions such as serving process, acquiring evidence, recording testimony, or other matters whether or not in the presence of a judge or in a formal courtroom setting. There is an additional desire in many civil law countries to protect, as a matter of both national and judicial sovereignty, the privacy of citizens.[3] This leads to cautious consideration of discovery orders from foreign

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[2] Jamie P. Horsley, The Rule of Law in China: Incremental Progress (March 2006). http://csis.org/files/media/csis/pubs/0604_cbs_papers.pdf.

[3] For example, the European Union established an Article 29 Data Protection Working Party under the Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Working Party, established as an independent advisory board, has observed that"[t]here is tension between the disclosure obligations under US litigation or regulatory rules and the application of the data protection requirements of the EU." Art. 29 Data Protection Working Party, *Working Doc. 1/2009 on Pre-trial Discovery for Cross Border Civil Litigation* 4-5, Doc. No. 00339/09/EN WP 158 (Feb. 11, 2009). *See, e.g.*, Alan Charles Raul et al., *Reconciling European Data Privacy Concerns with US Discovery Rules: Conflict and Comity,* 2009 Global Competition L. Rev. V. 119-20 ("Whereas EU law identifies privacy as a fundamental human right, US law conceives of privacy as one interest among others.").

jurisdictions, especially those, like the U.S., that are perceived to have fewer privacy protections.

17. Many foreign nations, particularly civil law states, object to orders from foreign authorities to take evidence within national territory from local nationals, except where local officials are involved in the taking of such evidence. Attempting to acquire evidence without following the requirements of the foreign country may result in arrest, detention, deportation, or imprisonment of participants, including American counsel.[4]

18. Dozens of countries, from Albania and Argentina to Venezuela, including Germany, Italy, Poland, Portugal, and Switzerland, take this position in the civil litigation context, a far less intrusive discovery scheme than that, as here, of foreign governmental administrative action.[5] China's position that documents cannot be produced without authorization from Chinese regulators is thus neither unique nor even unusual. These objections arise from legitimate and important concerns regarding a territorial conception of national sovereignty.

19. In addition, some civil law nations base their objections on the view that extraterritorial extension of judicial power could lead in particular cases to violations of national public policy in other areas. In all these respects, PRC practice is well within that of most civil law countries. In civil law countries the court conducts evidence gathering, rather than the parties. The purpose of judicial control is to safeguard individuals from undue coercion and ensure that privileges are respected. In civil law systems, the parties can typically only obtain material that is admissible at trial.

20. Taken together, these features of Chinese procedural rules, in common with those of other civil law jurisdictions, have created a highly regulated regime for data and documents located within or created within its sovereign territory. In keeping with its sovereign concerns in respect of these matters, the Chinese government has enacted laws that give the government

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[4] *See* http://travel.state.gov/law/info/judicial/judicial_688.html, as cited in http://www.hep.uiuc.edu/home/g-gollin/pigeons/exhibit_24.pdf." (The same language is found in travel.state.gov/law/judicial/judicial_684.html and travel.state.gov/law/judicial/judicial_661.html).

[5] Article 23 of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters permits states signatory to take an exception stating that they will not execute Letter of Request issued for the purpose of obtaining "what is known as pretrial discovery in Common Law countries" (every signatory with the exception of Czechoslovakia, the United States, and Israel has registered some exception). *See* 1 Bruno A. Ristau and Michael Abbell, International Judicial Assistance (Civil and Commercial) A-95A-161 (1984).

the sole authority to decide whether data and documents may be transmitted both within China and without or subject to discovery abroad, and the China government enforces those laws vigorously. These include, among others, Law of the People's Republic of China on Guarding State Secrets ("State Secrets Law"), the Implementing Measures of the Law of the People's Republic of China on Guarding State Secrets ("Implementing Measures of the State Secrets Law"), Archives Law of the People's Republic of China ("Archives Law"), the Criminal Law of the People's Republic of China ("Criminal Law"), and the Supreme People's Court's Interpretation on Certain Issues Regarding Application of Law in Deciding Cases Involving Stealing, Spying into, Buying or Unlawfully Providing State Secrets or Intelligence Overseas ("Criminal Law Interpretation"). *See* Tang Decl. at ¶¶16 -22.

21. In addition, China has detailed procedures for Chinese companies, such as accounting firms, to provide audit workpapers and other documents to foreign regulators, such as the SEC. This is set forth in the Provisions on Strengthening Confidentiality and Archives Administration of Overseas Issuance and Listing of Securities ("Regulation 29"). *See* Tang Decl. at ¶20.

China's Evolving Securities Regulatory Regime

22. The quick rise and robust growth of China's securities market leads many foreign observers to forget the developing nature of the Chinese market and the regulatory regime that governs it. As the recent Financial Sector Assessment of the World Bank and IMF has noted:

> China's progress in reforming and developing its financial system has been considerable... This development has been supported by key banking sector reforms, creation of capital markets, introduction of a prudential regulatory regime, bank recapitalizations, and a broad-based opening of the financial system following accession to the WTO and reforms since 2003.[6]

23. To understand this development, it is important to look at the history of China securities industry. Although there were a few wildcat exchanges set up in the 1980s in several Chinese cities, the Shanghai and Shenzhen stock exchanges were launched as the first officially approved exchanges in 1990 and 1991 respectively. At this stage, no national supervisory body existed.

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[6] World Bank and IMF, China: Financial Sector Assessment, SecM2011-0492 (November 2011), p. 3.

24. In 1992, the CSRC was created to address perceived failings in supervision. In 1998 the supervision was fully centralized in the CSRC as part of securities reform that led to the promulgation of China's first Securities Law in 1999.

25. In two decades, the CSRC has overseen the passage of basic statutes (a Company Law in 1994 and a Securities Law five years later), as well as dozens of regulations. It today has 21 departments, four affiliated institutions, and four special committees. The senior management includes a Chairman, five Vice Chairmen, and three Assistant Chairmen. Many of the departments are headed or staffed by personnel with overseas educations in law and business faculties of the United States, United Kingdom, and other developed countries. The CSRC has 36 regional offices located around the country and two securities supervision offices located at the Shanghai and Shenzhen Stock Exchanges.[7] What this short outline of the history of China's securities market should demonstrate is substantial development has occurred since 1992, and undoubtedly will continue. China has, through the CSRC, implemented the requisite laws and regulations in order to modernize its securities market.

CSRC Commitment to Enforcement of Securities Regulations

26. The CSRC oversees China's nationwide centralized securities supervisory system, with the power to regulate and supervise securities issuers, as well as to investigate, and impose penalties for illegal activities related to securities and futures. The CSRC is empowered to issue Opinions or Guideline Opinions, non-binding guidance for publicly traded corporations. Regulations enacted and issued under the authorization of the State Council are "hard law"; other enactments of the CSRC are "soft law."[8] The CSRC's soft law is nevertheless also enforceable in practice, since the CSRC may take actions against companies – such as preventing them from listing – if they fail to follow soft law directives.

27. The desire to improve Chinese companies' access to foreign capital markets has driven the CSRC to improve regulation of the securities markets and to develop cross-border regulatory cooperation mechanisms. As the CSRC stated in its 2010 Annual Report, "Overseas listing provides an important channel for China to attract foreign investment. The CSRC will continue to encourage qualified domestic companies to go public abroad through the implementation of *Several Opinions of the State Council on Further Utilizing Foreign Capital*. The CSRC urges the revision of laws and regulations relevant to overseas listing to

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[7] China Securities Regulatory Commission Annual Report (2010), at 3.

[8] Li Xiaoning, A Comparative Study of Shareholders' Derivative Actions: England, the United States, Germany and China 251 (2007).

improve the ongoing regulatory systems and cross-border regulatory cooperation mechanisms for domestic companies listed overseas, and encourages those companies to build platforms for going global and conduct cross-border investment, mergers and acquisitions so as to optimize resource allocation for better international competitiveness." CSRC 2010 Annual Report at 53-54.

28. In 2002 the CSRC announced a program to allow foreign institutional investors to deal in all categories of PRC shares; the CSRC announced a further revision of these rules with the aim being to encourage "foreign institutions to make medium- and long-term investments in China's capital markets." In 2005, China made significant reforms to its Company Law and Securities Law. The 2005 amendments made substantial changes to China's securities law. Subsequent developments, have also contributed to an improved securities environment, although some problems continue to persist.

29. In attempting to enhance its capacity to perform its enforcement role, the CSRC has sought international linkages for more than a decade in order to learn from more experienced regulators and to share information about developments in global efforts to increase the reach of new regimes for financial controls. As early as January 2002, the CSRC signed a Memorandum of Cooperation with the United States Commodity Futures Trading Commission ("CFTC"), which among other things provided for the CSRC to get technical assistance from the CFTC about enforcement.[9] Subsequently, there have been exchanges of delegations, training missions, additional agreements, and discussions about regulatory coordination.[10]

30. Similarly, the SEC signed a cooperation agreement with the CSRC in 1994. Over the almost two decades since then, there have been regular exchanges, additional agreements, and further regulatory cooperation. These include:

    - Memorandum of Understanding Regarding Cooperation, Consultation and the Provision of Technical Assistance, April 28,1994 (Beijing);

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[9] Memorandum of Understanding between the United States Commodity Futures Trading Commission and the China Securities Regulatory Commission regarding Futures Regulatory Cooperation, http://www.cftc.gov/ucm/groups/public/@internationalaffairs/documents/file/ccsrc02.pdf.

[10] As of March 15, 2012, the CSRC website lists 51 cooperative agreements with foreign regulatory authorities: http://www.csrc.gov.cn/pub/csrc_en/affairs/Cooperation/201203/t20120315_207208.htm.

- Terms of Reference for Cooperation and Collaboration. May 2, 2006 (Washington, D.C.);
- Sino-U.S. Symposium on Audit Oversight, Beijing, July 11-12, 2011 (In attendance were officials from the SEC; Public Company Accounting Oversight Board ("PCAOB"); CSRC, and Chinese Ministry of Finance ("MOF")).

31. As then SEC Chairman Christopher Cox noted in May 2006, upon the signing of the Terms of Reference, "We are also mindful that regulatory progress must be coupled with strong, consistent enforcement and channels for international cooperation. I am pleased that today we are memorializing the strengthening of cooperation and collaboration between the SEC and the CSRC through the formalization of a dialogue between our Commissions."[11]

32. The new dialogue, which continues to this day, has three primary objectives:
    a. to identify and discuss securities markets regulatory developments of common interest, particularly those relevant to reporting requirements for public companies listed in one another's markets;
    b. *to improve cooperation and the exchange of information in cross-border securities enforcement matters;* and
    c. to continue and expand upon the existing program of training and technical assistance provided by the SEC to the CSRC. (emphasis supplied)[12]

33. The CSRC has continued to enhance communication and cooperation with its overseas counterparts and other international organizations such as the International Organization of Securities Commissions ("IOSCO"). By mid-2011, the CSRC had signed 51 bilateral Memoranda of Understanding ("MOUs") with securities and futures regulatory authorities in various countries and regions.[13] These MOUs contribute to the sharing of supervisory information, provide assistance on cross border investigations, and facilitate staff exchanges and cooperation on research. In June 2006, Mr. Shang Fulin, Chairman of the CSRC, was elected as the vice-chairman of the Executive Committee of IOSCO) an association of organizations that regulate the world's securities and futures markets. Its members are typically the Securities Commission or the main financial regulator from each country. Mr.

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[11] http://www.sec.gov/news/press/2006/2006-63.htm.

[12] *Id.*

[13] *See* List of Bilateral MOUs signed between CSRC and its overseas Counterparts (As of the end of February 2012) March, 15, 2012, *supra* note 8.

Shang was re-elected in 2011 – a recognition of the high regard in which he was held – and served until being transferred later that year to head China's Banking Regulatory Commission.

34. And more generally, China has been committed to efforts to expand regulatory cooperation, especially with the U.S. For example, the Joint U.S.-China Fact Sheet from the Fourth U.S.-China Strategic Economic Dialogue, held at the U.S. Naval Academy in Annapolis, Maryland on June 17 and 18, 2008, included the following agenda items:

    - The United States has proposed new regulations that are consistent with the International Organization of Securities Commissions revised Code of Conduct for Credit Rating Agencies, to strengthen their procedures to protect the integrity of the ratings process, help ensure that investors and issuers are treated fairly, and safeguard confidential material information provided;
    - China will allow existing credit rating agency ("CRA") joint ventures to apply to qualify for a securities-related credit rating business without a reduction in their existing percentage foreign equity stake, following entry into force of new U.S. CRA regulations, at which time registered CRAs must comply fully. CSRC will consider these applications in accordance with its prudential regulations.[14]

35. When a newly-created U.S.-China Strategic and Economic Dialogue was established by President Obama and Chinese President Hu in 2009, it emphasized high-level sovereign-to-sovereign contacts and exchanges in the development of relations between the two countries. Both nations announced they would "welcome continued dialogue between the bilateral competent authorities on the oversight of accounting firms providing audit services for public companies in the two countries based on mutual respect for sovereignty and laws."[15]

36. In 2011, U.S. Treasury Department and Chinese regulators "welcome[d] continued dialogue between the bilateral competent authorities on the oversight of accounting firms providing audit services for public companies in the two countries."[16]

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[14] http://www.treasury.gov/initiatives/Documents/sedjointfactsheet.pdf.

[15] U.S. Dep't of Treasury, Joint Strategic and Economic Dialogue Fact Sheet (Jul. 28, 2009), http://www.treasury.gov/press-center/press-releases/pages/tg240.aspx.

[16] Joint Press Release, Third Meeting of the U.S.-China Strategic & Economic Dialogue (May 10, 2011), http://www.treasury.gov/press-center/press-releases/Pages/tg1170.aspx.

PRC Sensitivity about Release of Information

37. The PRC has had a longstanding interest in protecting sensitive information. The Provisional Regulation on Protecting State Secrets was one of the first pieces of legislation issued in the PRC after its formation. In the PRC, there is a huge body of what are classified as "state secrets." Under Chinese law, these are rather loosely defined as matters concerning "national economic and social development." Article 9 of the State Secrets Law; *see also* Tang Decl. at ¶¶16 & 33. These matters relating to "national economic and social development" are apart from and in addition to the usual inclusion of political, military and diplomatic matters and decisions.

38. According to both the letter and spirit of this legislation, matters relating to the PRC economy, including such matters as filings with regulatory agencies, commercial records, and even normal social and economic statistics are routinely labeled as "state secrets." *See* Tang Decl. at ¶16 & 33. China's treatment of economic and commercial information as an element of its national security is, in part, a reflection of the fact that many large China companies are state-owned enterprises. With such a high level of State involvement in industry, it is only reasonable that far more information is deemed to be sensitive to the State.

39. Moreover, in the PRC, the determination of what constitutes a state secret is a governmental function. The State Secrets Bureau is empowered to determine what constitutes a state secret and may make broad determinations. *See* State Secrets Law at Art. 11. This determination is not the purview of citizens or companies.

PRC Concerns about Sovereignty

40. The "Hundred Years of Humiliation" ushered in by the Opium Wars and Western exploitation of Chinese military weakness in the 19th century, as well as civil war, Japanese occupation and atrocities, and the subsequent revolutions during the 20th century, have engendered an extreme sensitivity toward any foreign intrusion in modern China. Such events as the acquisition of Hong Kong by Western powers and the loss of three eastern provinces of Manchuria (known as "Manchukuo") to Japan deepened this sensitivity. Defending China by controlling foreign access to Chinese territory is a remnant of China's perceptions of its own comparative weakness and inability to rebuff foreign incursions not only before 1949, but throughout the Cold War and various confrontations before China's more recent rise. For this reason, along with the historical reasons set forth above, unilateral demands by foreign governments are viewed as an affront to China sovereignty.

41. The PRC prefers settlement of international issues with foreign governments through negotiation, mediation, and conciliation because it maintains respect for the PRC as a

sovereign nation. Respect for the PRC as a sovereign government, particularly by other sovereign powers, is an important value of the China government because of the historical challenges to China's sovereignty. Due to the size of the Chinese government, the various governmental offices that may be involved, and the importance China attaches to issues of sovereignty, negotiations can be time-intensive endeavors.

42. China aspires to increase its standing in the international community and continues to seek opportunities to work cooperatively with other countries, to create effective cross-border enforcement, and to take part in and strengthen the global marketplace.

The CSRC's Position on Providing Information to Foreign Regulators

43. In light of China's history and prior experience with international and foreign law, and maintaining the strong commitment to governmental control of official information, the CSRC has developed a regulatory regime which reflects those important national priorities. For example, in the context of PCAOB inspections, the CSRC has conditioned inspection of firms in China on general principles of successful cross-border cooperation, including, but not limited to:
    a. Equality and reciprocity;
    b. Observing laws in both jurisdictions, and being to the common interests [sic];
    c. Facilitating cross-border financial activities rather than creating obstacles;
    d. respecting the consensus already reached between regulators instead of resorting to a unilateral departure from existing cooperative framework.[17]

44. As a result, the CSRC's rules and practices are designed to require the transmission of any information between PRC companies or individuals involved in them and foreign regulators solely through governmental channels. Going outside of those channels not only violates a panoply of Chinese legal and regulatory enactments, *see, e.g.*, Regulation 29, the State Secret Law, the Criminal Law, the Securities Law, the CPA Law, the Archives Law, and the China Certified Public Accountants Audit Rules No. 5101 on Service Quality Control; *see also* Tang Declaration at ¶¶19-50, but it also breaches longstanding political and cultural norms which may operate even more powerfully to constrain the behavior of Chinese persons.

45. In connection with this case, the CSRC sent a letter to DTTC, "Concerning Providing Audit Archives Overseas of Certain CPA Firms," dated October 11, 2011. The text of this letter reiterated the long-held position of the CSRC with respect to these issues:

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[17] *See* Letter of CSRC to PCAOB, dated January 22, 2009, RE: PCAOB Rulemaking Docket Matter No. 027.

> In reply to a letter dated October 8, 2011 regarding Longtop Group, the CSRC – after deliberating and discussing with the Ministry of Finance – ordered:
>
> In providing audit working paper and other archive materials overseas, CPA firms shall comply with the Securities Law of the PRC, the Law of the PRC on Certified Public Accountants, the Law of the PRC on Guarding State Secrets, the Archives Law of the PRC and other relevant laws, regulations and related provisions, and shall follow the applicable legal procedures; otherwise they shall assume legal liabilities according to law.
>
> Overseas securities regulatory agency [sic] who seeks the relevant audit archives and other documents in fulfilling its legal responsibilities shall work together and consult [with the Chinese regulatory agency] to find a solution through the co-operative regulation mechanism with the Chinese regulatory agency.
>
> CPA firms must comply with the relevant Chinese laws regulations and related provisions and properly deal with the relevant issues; those who provide audit archives and other documents overseas without authorization and in violation of the law shall be subject to legal liabilities.

From the foregoing, it should be abundantly clear that the Chinese government and securities regulatory authorities have taken the position that direct production of audit workpapers to foreign governments without approval of the China government would be a violation of Chinese laws.

46. While the PRC government has begun to increase the transparency of its regulatory system, partly in response to requirements of China's accession to the WTO, the vast majority of administrative guidance provided by Chinese regulators to regulated entities is still largely unwritten or "internal" (in Chinese "neibu"), unlike in the U.S. The use of "neibu" guidance in no way undermines the authoritative nature of the guidance, and Chinese citizens and companies must follow "neibu" guidance just as with written law. This practice is employed for several reasons – it preserves the flexibility of administrative action, it avoids possible embarrassment should higher-level officials disapprove of the guidance or should the official line change, and it allows disparate treatment of similarly situated entities. The decision to commit this guidance not only to a written document but also to a letter which must have been expected to be transmitted overseas bespeaks the policy importance the CSRC attaches

to this issue. Moreover, having taken such a step, the CSRC clearly intends to make it very clear to the regulated entity that it intends this policy to be legally binding.[18]

The Declaration of Professor Tang Xin

47. I am personally well acquainted with Professor Tang Xin. We were colleagues in the Law Faculty at Tsinghua University during the Spring Term, 2006, while I taught there as Fulbright Distinguished Senior Lecturer on Law. We subsequently joined a panel at Oxford University on "Recent Developments in Chinese Law" in 2007, where I presented a paper on corporate governance in China and Professor Tang commented on my paper. The panel presentations were later edited for a special issue of the *China Quarterly* and also published as a book. We share interests in corporate law, securities regulation, corporate finance, and corporate governance – subjects which both of us regularly teach and research. I believe that Professor Tang, as a member of a leading Chinese university law faculty and a respected scholar and author, is an expert with respect to the matter upon which he has rendered his opinions in this case.

48. I have examined the statutes, regulations and cases Professor Tang cites in his declaration and have reviewed the opinions he has presented about them with respect to their content and their interpretation as a matter of Chinese law. Based on that review and my own prior knowledge of the Chinese legal system, I agree with the conclusions he has drawn and the opinions he has rendered.

China and The Hague Service Convention

49. As discussed above, China has made great strides in building a modern legal system over the past three decades. Among those accomplishments is the creation of a system of civil process to accommodate China's increasing global influence, including the collection of evidence in China relating to foreign proceedings.

50. Both the People's Republic of China and the United States have signed the Hague Service Convention, and the Hague Service Convention entered into force between the U.S. and

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[18] *See* 1 James M. Zimmerman, China Law Deskbook: A Legal Guide for Foreign-invested Enterprises, 67 (3d ed. 2010).

China in 1991.[19] Therefore, service on a Chinese company must fully comply with this Convention. Service under the Hague Service Convention is effected through the designated Chinese Central Authority in Beijing, which is the Bureau of International Judicial Assistance, Ministry of Justice of the People's Republic of China.

51. In 1992, to help promote effective implementation of the Convention by the judiciary, and by Chinese diplomatic and consular missions abroad, the Supreme People's Court, Ministry of Foreign Affairs and Ministry of Justice jointly issued two documents: (i) the Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters;[20] and (ii) the Measures on the Implementation of the Hague Service Convention.[21] The Circular specified the competent authorities and the procedures for the service of documents through diplomatic channels and judicial channels, respectively. The Measures contained specifications, in particular, on the time limitation for service, as well as rules for translations and communication of documents. Since Chinese national laws do not contain any special procedural rules for international judicial assistance, the above-mentioned notices issued by the Supreme People's Court help the courts to obtain proper information on the status of treaties that China has concluded with foreign countries. The notices also give binding legal guidance for the uniform implementation of the Hague Service Convention by domestic courts.[22]

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[19] *See* Status Table: Convention of November 15, 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Hague Conference on Private International Law (Hague Service Convention), available at http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=41 (last visited Feb. 12, 2012).

On March 2, 1991, at the Seventh National People's Congress Standing Committee meeting, the People's Republic of China decided to approve China's accession to the Hague Service Convention. 20 U.S.T. 361, T.I.A.S. 6638; 28 U.S.C.A. (Appendix following Rule 4 Fed. R. Civ. P.); 16 I.L.M. 1339 (1977).

[20] Ministry of Justice, Supreme People's Court, Ministry of Foreign Affairs, Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters, promulgated March 4, 1992. (Exhibit B).

[21] Ministry of Justice, Supreme People's Court, Ministry of Foreign Affairs, Measures on the Implementation of the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters, promulgated September 19, 1992. (Exhibit C).

[22] H. Xue and Q. Jin, *International Treaties in the Chinese Domestic Legal System*, Chinese J. Int'l L, Vol. 8 (2): 299-322 (2009).

52. The People's Republic of China in Articles 260 and 261 of its Civil Procedure Law has detailed the sole means for foreign litigants to obtain international judicial assistance in China.[23] Article 261 states that any request for judicial assistance "shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China" or through diplomatic channels. The Hague Service Convention is precisely the international treaty contemplated by Article 261 to which China has acceded with the intention of channeling all requests for judicial assistance through the mechanism provided by the treaty and China's implementing legislation in compliance with the Hague Service Convention.

53. In acceding to the Hague Service Convention, China took a limited reservation with regard to service of process by mail, further indicating its determination to control the intrusion of foreign legal process on Chinese judicial sovereignty. Indeed, according to the U.S. State Department's website, "service of process by mail should NOT be used in China." *See* ¶56 *infra*. Service beyond simple notice by mail is an essential component to China's willingness to countenance foreign access to its domestic civil process which would otherwise be regarded as an affront to Chinese sovereignty. As noted above, China is not alone among civil law jurisdictions in imposing such requirements.

54. The U.S. approach to the extraterritorial service of process in civil litigation differs from that of many foreign nations. In many civil law jurisdictions, such as China, the service of process is regarded as a "judicial" or "public" act that may not be performed by private persons.[24] To that end, civil law jurisdictions generally regard service of process in litigation as a sovereign act that may be performed in their territory only by the state's own officials and in accordance with its own laws. In many civil law countries, service of process must be effected by an official of the local court, or by a specially designated official subject to the court's control.[25]

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[23] PRC Civil Procedure Law, arts. 260 & 261 (Exhibit D).

[24] For example, in Switzerland, Swiss government officials must serve judicial documents on persons residing in Switzerland. The Swiss Criminal Code, § 271, forbids the service of process within Switzerland by anyone other than Swiss government officials. G. Born, International Civil Litigation in United States Courts: Commentary & Materials, 775-776 (3d ed. 1996).

[25] *See* Tatyana Gidirimski, "Service of United States Process in Russia Under Rule 4(f) of the Federal Rules of Civil Procedure," 10 Pac. Rim L. & Pol'y J. 691, 695 (2001):

55. Many foreign nations, particularly civil law states, object to orders from foreign courts to serve process within national territory upon local nationals, except where local officials have been involved.[26] These objections arise from several concerns. Originally, it stems from the territorial conception of national sovereignty; other sovereigns and their judicial institutions have no right to intrude on the territory of another sovereign. In addition, some civil law nations base their objections on the view that extraterritorial extension of judicial power could lead in particular cases to violations of national public policy in other areas.[27]

56. Service by mail, thus, is an unacceptable method by which to serve process on a defendant in the People's Republic of China, whose accession to the Hague Convention contains an express objection to mailed service. *See* U.S. Dep't of State, Country Specific U.S. State Department Circulars, Judicial Assistance - China, in International Business Litigation & Arbitration 2005, Litigation and Administrative Practice Course Handbook Series, PLI Order No. 5929, 721 PLI/Lit 1311, 1311, 1313 (Practising Law Institute ed., March 2005) ("DOS Circular") ("Service by registered mail should not be used in China, which notified the Hague Conference on Private International Law and the Government of the Netherlands (the depository) on accession, ratification or subsequently that it objects to service in accordance with Article 10, sub-paragraph (a) of the Convention, via postal channels.").[28]

> Compliance with foreign law, however, is often easier said than done. Difficulties arise because U.S. litigants are generally unaccustomed to the view held by civil law countries that service of process is a sovereign act that must be carried out by state officials according to state law.

[26] Switzerland, which criminalizes unauthorized service of foreign process, is an example of "an extreme view on the nature of sovereignty, whereby any act touching Switzerland, including mailing of service *into* Switzerland from the United States, is viewed by Switzerland as a judicial act of the United States *within* Switzerland, thereby invading Swiss sovereignty." Gary N. Horlick, "A Practical Guide to Service of United States Process Abroad," 14 Int'l Law. 637, at 641 (1980).

[27] *See e.g.*, Minehan, "The Public Policy Exception to the Enforcement of Foreign Judgments: Necessary or Nemesis?" 18 *Loy. L.A. Int'l & Comp. L.J.* 795 (1996).

[28] Service on a Chinese company by mail is not effective, as U.S. courts have held that formal objections to service by mail under Article 10(a) of the Convention are valid. *See DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280 (3d Cir. 1981) (recognizing in a case involving a Japanese defendant that "[b]y virtue of the supremacy clause, the [Hague Service Convention] overrides state methods of serving process abroad that are objectionable to the nation in which the process is served"), *cert. denied*, 454 U.S. 1085 (1981); *Dr. Ing H.C. F. Porsche A.G. v.*

57. With its reservation, China has indicated the circumstances under which it will permit access by foreign litigants to its judicial system to serve process in China. It should not be construed as a prohibition of service of process upon litigants located in China; rather, it indicates that any requests should be properly tailored.

58. According to the Hague Service Convention and the relevant PRC laws and regulations, service of litigation documents upon Chinese entities should follow the procedures below:
    a. The documents should be transmitted to the Department of Judicial Assistance and Foreign Affairs of the PRC Ministry of Justice ("MOJ"); the MOJ will forward them to the PRC Supreme People's Court ("Supreme Court").
    b. The Supreme Court will forward the documents to the competent Higher People's court, which will then forward the documents to the competent Intermediate People's Court.
    c. The intermediate court finishes the service of process upon receipt of the documents. It then delivers proof of service to the Higher Court, which will forward the proof of service to the Supreme Court, and then the Supreme Court will forward it to the MOJ. The MOJ completes a certificate based on the proof of service and sends it to the applicant for the service according to the Hague Service Convention, stating that the documents have been served and specifying the method, place, and date of service and the person to whom the Documents were delivered.

    China regularly cooperates in accommodating foreign judicial assistance requests that are forwarded through the process it has established for implementing and complying with the Hague Service Convention domestically. Indeed, in its 2008 response to the Hague Service Convention's questionnaire to contracting states which are parties to the Hague Service Convention, China noted that in 2007 it had received 2,209 incoming requests for judicial assistance from 31 countries and had effected 74 percent of them within six months.[29]

59. China takes its treaty commitments seriously, and I believe China, especially now given its economic and legal progress in the last few years, would honor a properly tailored request for service of process through the Hague Service Convention, especially if the parties in the

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Superior Court, 123 Cal. App. 3d 755, 761 (1981) (rejecting attempt to serve a German defendant by mail where Germany had objected to Article 10(a) of the Convention).

[29] Hague Service Convention Questionnaire, Questions for Contracting States (2008), http://www.hcch.net/upload/wop/2008china14.pdf

relevant litigation worked together to ensure that the request moves through the pertinent process.

60. The progress which China has made in implementing the Hague Service Convention is an example of China's embrace of the Rule of Law.

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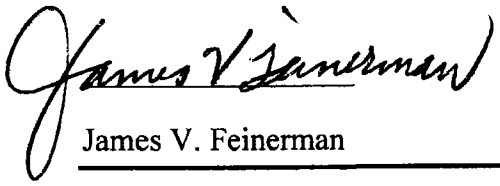
I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 11, 2012 in Washington, D.C.



James V. Feinerman

EXHIBITS

Exhibits to Declaration of James V. Feinerman

Exhibit A: Curriculum Vitae of James V. Feinerman.

Exhibit B: Ministry of Justice, Supreme People's Court, Ministry of Foreign Affairs, Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters, promulgated March 4, 1992.

Exhibit C: Ministry of Justice, Supreme People's Court, Ministry of Foreign Affairs, Measures on the Implementation of the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters, promulgated September 19, 1992.

Exhibit D: People's Republic of China Civil Procedure Law, arts. 260 and 261.

EXHIBIT A

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Education:

Preparatory: Loyola Academy, Wilmette, Illinois
Graduated 1968

College: Yale, B.A., 1971
Course: Chinese Studies
Honors: B.A. with honors
Three NDFL/Ford Foundation Summer Fellowships
(for Chinese Language Study: 1968, 1969 and 1970)
Yale-in-China Fellowship, Hong Kong, 1971-1973

Graduate: Yale University, 1973-1975; 1976-1977
Department: East Asian Languages and Literatures
Degrees: M.A., 1974; M. Phil., 1975; Ph.D., 1979
Dissertation Title: *The Poetry of Wang Wei*

Legal: Harvard Law School, J.D., 1979
Honors and Activities: Board of Student Advisers
Editor, Harvard International Law Journal
Teaching Fellow, Prof. Fried (First Year Contracts)
Robert A. Taft Scholarship
CSCPRC Fellowship for Study in the
People's Republic of China

Employment Experience:

1971-1973 Tutor, Department of English
The Chinese University of Hong Kong
1973-1975 Assistant to the Committee,
1976-1977 Yale College Undergraduate Admissions Office

1976 Summer Associate, Mayer, Brown & Platt
Chicago, Illinois

Employment Experience (continued):

1976-1977 Research Assistant, Prof. Jerome A. Cohen
Harvard Law School

1977 Summer Associate, Orrick, Herrington, Rowley & Sutcliffe
San Francisco, California

1978 Summer Associate, Davis Polk & Wardwell
New York, New York

1978-1979 Teaching Fellow, Contracts I, Prof. Charles Fried
Harvard Law School

1979-1983 Associate, Davis Polk & Wardwell
New York, New York
(on leave while studying in China)

1982-1983 Lecturer on Law, Peking University Law Department
Peking, People's Republic of China

1983-1985 Administrative Director and Fellow
East Asian Legal Studies Program
Harvard Law School, Cambridge, Massachusetts

1985-1986 Visiting Professor, Georgetown University Law Center

1986 Fulbright Visiting Researcher, Faculty of Law
Kyoto University, Kyoto, Japan
(Fulbright Research Award, Japan-U.S. Educational Commission)

1986-1992 Associate Professor, Georgetown University Law Center

1992-1997 Professor of Law, Georgetown University Law Center
[on leave of absence, July 1, 1993 - June 30, 1995]

1993-1995 Director, Committee on Scholarly Communication with China
Washington, DC

1997-present James M. Morita Professor of Asian Legal Studies

2001-2005 Associate Dean, International and Graduate Programs

Honors, Awards and Activities:

1979-1980 CSCPRC Postgraduate Fellowships, Peking University and Institute of Law, Chinese Academy of Social Sciences Peking, People's Republic of China

1982-1983 Fulbright Lecturer on Law, Peking University Law Department

1986 Fulbright Visiting Researcher, Faculty of Law Kyoto University, Kyoto, Japan (Fulbright Research Award, Japan-U.S. Educational Commission)

1986-1998 Editor-in-Chief, *China Law Reporter* [publication of the ABA's Section of International Law and Practice]

1987-1998 Member, Committee on Legal Educational Exchange with China Chair, 1993-1998

1987-1990 Member, Northeast Asia Advisory Committee, Council on International Exchange of Scholars (Fulbright Program)

1989 Recipient, John D. and Catherine T. MacArthur Foundation Award for Research and Writing in Peace and International Cooperation Project: "Post-Mao China and International Law"

1991-1995 Chair, Asian Law Forum, Association for Asian Studies

1991-1996; 1997-present Trustee, Yale-China Association, New Haven, Connecticut

1991-present Board of Governors, Washington Foreign Law Society Chair, Jackson Award Committee [for Best Student

1992-1993 Fellow, Woodrow Wilson International Center for Scholars

1994-present Trustee, Lingnan Foundation, New York, New York

1997-present James M. Morita Professor of Asian Legal Studies (First incumbent of newly established chair)

2005-2006 Fulbright Distinguished Senior Lecturer on Law, Tsinghua University Law School
Peking, People's Republic of China

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3. Ph.D. Dissertation, Yale University, *The Poetry of Wang Wei*, May 1979.

4. Co-translator, "Lectures on the Criminal Law," in *Chinese Law and Government*, Vol. XIII, No. 2, Summer 1980.

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13. Chapter, "Law and Legal Professionalism in the People's Republic of China," in M. Goldman, ed., *Chinese Intellectuals and the State: the Search for a New Relationship*, Harvard University Press (1987).

14. Co-author, Article, "The Role of Law in Economic Development: Lessons of the Recent Agrarian Reform in the PRC," 23 *Stanford International Law Journal* 319 (1987).

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16. Article, "The Evolving Chinese Enterprise," 15 *Syracuse Journal of International Law and Commerce* 203 (1988).

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18. Article, "Backwards into the Future" (Securities Law in the People's Republic of China) 52 *Law and Contemporary Problems* 169 (Summer 1989).

19. Article, "Human Rights in China," *Current History*, September, 1989, at 273.

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22. Article, "Prospects for Democracy in the People's Republic of China," in *Update on Law-Related Education*, Vol. 14, No. 3 (Fall 1990), pp. 13-15, 46-48.

23. Chapter, "Chinese Law Relating to Foreign Investment and Trade: the Decade of Reform in Retrospect," in 1991 Joint Economic Committee, Congress of the United States, *China's Economic Dilemmas in the 1990s: The Problems of Reforms, Modernization, and Interdependence*, pp. 828-840.

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55. Article, "Odious Debt, Old and New: The Legal Intellectual History of an

Idea," Vol. 70, Number 4, *Law and Contemporary Problems*, pp. 193-220 (2007).

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57. Chapter, "Sovereignty Old and New: Another Look at Taiwan's International Legal Status," in Lung-chu Chen, ed., *Membership for Taiwan in the United Nations* (2007).

58. Chapter, "Legal Aspects of Hong Kong SAR's First Ten Years: What Went Wrong, What Went Right and What We Expected," in Carola McGiffert and James Tang, eds., *Hong Kong on the Move: 10 Years as the HKSAR* (edited by CSIS 2008).

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60. Testimony, *The UN Human Rights Council's Review of China's Record: Process and Challenges*, Roundtable Before the Congressional-Executive Commission on China, 111th Congress, 1st Session, Jan. 16, 2009

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63. Forthcoming, "The Death Penalty in China," Chapter from Catholic University, Columbus School of Law, Conference on the Death Penalty.

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EXHIBIT B

Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters

(March 4, 1992 Wai Fa (1992) No.8)

Each People's Court concerned and each embassy and consulate stationed abroad:

On March 2, 1991, the eighteenth meeting of the Standing Committee of the seventh National People's Congress decided to approve China's accession to the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters (hereinafter "Convention") that was concluded on November 15, 1965, and designated the Ministry of Justice as the central authority and the authority competent to receive documents transmitted via the channel of consular by foreign states. The Convention has come into force for China since January 1, 1992. The relevant procedures for implementing the Convention are hereby announced and circulated as follows:

1. All the judicial documents in civil or commercial matters of the courts or other authorities of the state parties to the Convention requesting service by China, which are transmitted by the embassy or consulate of such state party in China, shall be directly delivered to the Ministry of Justice. The Ministry of Justice shall forward the documents to the Supreme People's Court, and the Supreme People's Court shall forward the documents to the relevant People's Courts which shall serve the documents to the parties. The relevant People's Court shall return the acknowledgement of service to the Ministry of Justice via the Supreme People's Court. The Ministry of Justice shall then deliver the acknowledgment of service to the embassy and consulate of the requesting state in China.

2. The Ministry of Justice shall forward to the Supreme People's Court all the Judicial documents in civil or commercial matters directly delivered to it by the authority or judicial officer of a state party to the Convention competent to deliver documents requesting service by China. The Supreme People's Court shall forward the documents to the relevant People's Court which shall serve the parties. The relevant People's Court shall return the acknowledgment of service to the Ministry of Justice via the Supreme People's Court. The Ministry of Justice shall then deliver the acknowledgment of service to the authority or judicial officer of the requesting state.

3. It may be acceptable for the embassy or consulate of the state parties in China to serve judicial documents in civil or commercial matters directly to their nationals in China, provided that such practice does not violate the laws of the People's Republic of China.

4. When a People's Court makes request to a state party for service of judicial documents in civil or commercial matters to the national of that state party, or a national of a third-party state, or a stateless person, the relevant Intermediate People's Court or specialized People's Court shall deliver the request for service and the judicial documents to be served to the Supreme People's Court via the relevant Higher People's Court. The Supreme People's

Court shall forward the request for service and the judicial documents to be served to the Ministry of Justice, which shall transmit the above documents to the delegated central authority of the state being requested. If necessary, the Supreme People's Court may transmit the above documents to the designated authority of the state being requested through the Chinese embassy in that state.

5. If a People's Court intends to serve the judicial documents in civil or commercial matters to the Chinese nationals in a state party to the Convention, the People's Court may entrust the Chinese embassy or consulate in that state to serve on its behalf. The relevant Intermediate People's Court or specialized People's Court shall deliver the entrusting letter and the judicial documents to be served to the Supreme People's Court via the relevant Higher People's Court. The Supreme People's Court shall transmit the entrusting letter and the judicial documents to be served directly, or via the Ministry of Justice, to the Chinese embassy or consulate in that state which shall serve the above documents to the parties. The acknowledgment of service shall be returned to the relevant People's Court via the same channel through which the request is made.

6. Judicial documents that non-party states to the Convention entrust a People's Court to serve through diplomatic channel shall be accommodated pursuant to the Circulate on Certain Issues Regarding the People's Court and Foreign Court Entrusting Each Other to Serve Judicial Documents through Diplomatic Channel, Wai Fa (1986) No. 47 jointly promulgated by the Supreme People's Court, the Ministry of Foreign Affairs and the Ministry of Justice on June 14, 1986. Judicial Documents that state parties request the People's Court to serve through diplomatic channel under exceptional circumstances shall also be accommodated pursuant to the same Circulate mentioned in this paragraph.

7. Request by state parties to the Convention with which China has judicial assistance agreement shall be accommodated pursuant to the provisions in such agreement.

8. Any matters in implementation of the Convention that involves negotiation with the state parties shall be addressed by the Ministry of Foreign Affairs.

9. Other matters in implementation of the Convention shall be addressed by the Ministry of Justice in consultation with other relevant departments.
Note: as of December 1991, the following states have approved or acceded to the Convention: "China, Belgium, Canada, Cyprus, Czechoslovakia, Denmark, Egypt, Finland, France, Germany, Greece, Israel , Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Turkey, The United Kingdom, The United States, Antigua and Barbuda , Barbados, Botswana, Pakistan, Malawi, Seychelles; The following countries have signed the Treaty: Ireland, Switzerland."

最高人民法院　外交部　司法部关于执行《关于向国外送达民事或商事司法文书和司法外文书公约》有关程序的通知
（１９９２年３月４日　外发（１９９２）８号）

全国各有关法院、各驻外使领馆：

１９９１年３月２日，第七届全国人民代表大会常务委员会第十八次会议决定批准我国加入１９６５年１１月１５日订于海牙的《关于向国外送达民事或商事司法文书和司法外文书公约》（以下简称《公约》），并指定司法部为中央机关和有权接收外国通过领事途径转递的文书的机关。该公约已自１９９２年１月１日起对我国生效。现就执行该公约的有关程序通知如下：

一、凡公约成员国驻华使、领馆转送该国法院或其他机关请求我国送达的民事或商事司法文书，应直接送交司法部，由司法部转递给最高人民法院，再由最高人民法院交有关人民法院送达给当事人。送达证明由有关人民法院交最高人民法院退司法部，再由司法部送交该国驻华使、领馆。

二、凡公约成员国有权送交文书的主管当局或司法助理人员直接送交司法部请求我国送达的民事或商事司法文书，由司法部转递给最高人民法院，再由最高人民法院交有关人民法院送达给当事人。送达证明由有关人民法院交最高人民法院退司法部，再由司法部送交该国主管当局或司法助理人员。

三、对公约成员国驻华使、领馆直接向其在华的本国公民送达民事或商事司法文书，如不违反我国法律，可不表示异议。

四、我国法院若请求公约成员国向该国公民或第三国公民或无国籍人送达民事或商事司法文书，有关中级人民法院或专门人民法院将请求书和所送达司法文书送有关高级人民法院转最高人民法院，由最高人民法院送司法部转送给该国指定的中央机关；必要时，也可由最高人民法院送我国驻该国使馆转送给该国指定的中央机关。

五、我国法院欲向在公约成员国的中国公民送达民事或商事司法文书，可委托我国驻该国的使、领馆代为送达。委托书和所送司法文书应由有关中级人民法院或专门人民法院送有关高级人民法院转最高人民法院，由最高人民法院径送或经司法部转送我国驻该国使、领馆送达给当事人。送达证明按原途径退有关法院。

六、非公约成员国通过外交途径委托我国法院送达的司法文书按最高人民法院、外交部、司法部１９８６年６月１４日联名颁发的外发（１９８６）４７号《关于我国法院和外国法院通过外交途径相互委托送达法律文书若干问题的通知》办理。公约成员国在特殊情况下通过外交途径请求我国法院送达的司法文书，也按上述文件办理。

七、我国与公约成员国签订有司法协助协定的，按协定的规定办理。

八、执行公约中需同公约成员国交涉的事项由外交部办理。

九、执行公约的其他事项由司法部商有关部门办理。

注：截至１９９１年１２月，下列国家批准或加入了该公约：中国、比利时、加拿大、塞浦路斯、捷克和斯洛伐克、丹麦、埃及、芬兰、法国、德国、希腊、以色列、意大利、日本、卢森堡、荷兰、挪威、葡萄牙、西班牙、瑞典、土耳其、英国、美国、安提瓜与巴布达、巴巴多斯、博茨瓦纳、巴基斯坦、马拉维、塞舌尔；下列国家签署了该公约：爱尔兰、瑞士。

EXHIBIT C

Circular on the Measures on Implementation of the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters by the Ministry of Justice, the Supreme People's Court and the Ministry of Foreign Affairs

(September 19, 1992 Si Fa Tong (1992) No. 093)

People's courts concerned, Chinese embassies and consulates stationed abroad, departments (bureaus) of justice:

On March 4, 1992, we issued the "Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters". Pursuant to this Circular, we issue and circulate the "Measures on Implementation of the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters" to you, and please implement accordingly.

Annex:

Measures on Implementation of the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters

In order to serve documents pursuant to the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters (hereinafter "the Convention") to parties of the State Parties to the Convention and execute requests of service by State Parties to the Convention in an accurate, timely and effective manner, these Measures are formulated pursuant to the "Circular on the Relevant Procedures to Implement the Convention on Service Abroad of Judicial and Extra-judicial Documents in Civil or Commercial Matters" issued by the Supreme People's Court, the Ministry of Foreign Affairs and the Ministry of Justice (Wai Fa 1992 No.8) (hereinafter "the Circular").

1. Upon receiving the request for service from abroad, the Ministry of Justice shall forward the documents within 5 days to the Supreme People's Court provided that the documents are accompanied by Chinese translations; documents written in English or in French, or documents with English or French translation, shall be forwarded to the Supreme People's Court within 7 days; the Ministry of Justice shall return the documents that fail to meet the requirements set by the Convention, or require the requesting entity to supplement or revise the materials.

2. The Supreme People's Court shall forward the documents to the Higher People's Court of where the service is to be executed within 5 days. The Higher People's Court shall forward the documents to the relevant Intermediate People's Court or the Specialized People's Court within 3 days; the Intermediate People's Court or the specialized People's Court shall complete the service within 10 days upon receipt of the documents and shall, at the earliest opportunity, submit the acknowledgement of service to the Supreme People's Court that shall forward the acknowledgement of service to the Ministry of Justice.

3. Courts executing the service shall serve the documents regardless whether the hearing date or time limit has expired or not. Refusal by the recipient of service to accept the documents shall be recorded on the acknowledgement of service.

4. Courts shall serve the documents submitted from abroad that are with English or French translation and without Chinese translation. The recipient of service is entitled to refuse acceptance on the ground that Chinese translation is not provided, unless it is provided in bilateral treaties that English and French translations are acceptable. Refusal by parties to accept the documents shall be recorded on the acknowledgement of service by the courts executing the service.

5. The Ministry of Justice shall complete a certificate pursuant to the requirements set by the Convention after it receives the acknowledgement of service, and shall return the certificate to the overseas requesting entity.

6. The Ministry of Justice shall, when forwarding documents from abroad, specify the date of receiving the request for service, whether the documents served have Chinese translation or not, and whether the hearing date has expired or not, etc.

7. When a People's Court needs to serve documents to a national of a state party to the Convention, or a national of a third-party state or a stateless person, who is residing in that state party, the People's Court shall, pursuant to the channels prescribed in the Circular, submit three copies of both the documents to be served and the translation of them in the relevant language (no need for the entrusting letter for service that is submitted to foreign courts and the blank acknowledgment of service) to the Supreme People's Court, which shall forward the above documents to the Ministry of Justice. The translation shall be signed by the translator or stamped by the translation agency to certify the translation is correct.

8. Upon receipt of the documents to be served abroad that are forwarded by the Supreme People's Court, the Ministry of Justice shall make the request of service, summary of the documents to be served and a blank certificate in accordance with the format specified in the annex to the Convention, and shall submit them together with the documents to the central authority of the state being requested; If necessary, the Supreme People's Court may forward the documents to the designated authority of the state being requested through the Chinese embassy in that state.

9. If a People's Court needs to serve the documents to the Chinese nationals residing in a state party to the Convention through the Chinese embassy or consulate in that state, the People's Court shall forward the documents to be served, the entrusting letter to the Chinese embassy or consulate, and a blank acknowledgement of service to the Supreme People's Court pursuant to the channels prescribed in the Circular. The Supreme People's Court shall forward the above documents directly, or via the Ministry of Justice, to the Chinese embassy or consulate in that state which shall serve the above documents to the parties.

10. The Ministry of Justice shall urge the execution of service by issuing a letter in the circumstance that a certificate has not been received after two and a half months since the Ministry of Justice transmitted the documents from China to the central authority of a state party to the Convention; if the People's Court requesting service receives the certificate directly from abroad, it shall report to the Supreme People's Court to notify the Ministry of Justice at the earliest opportunity.

11. "Documents" in these Measures refers to both judicial documents and extra-judicial documents.

12. These Measures shall become effective as of the date of circulation.

Note:

(1) As of September 1992, translation of the documents to be served can be made in a third language in the following circumstances as provided by the relevant bilateral judicial assistance treaties (agreements) between China and foreign states:

State	The Third Language	State	The Third Language
1. In Effect			
Poland	English	Mongolia	English
2. Executed			
Italy	English, French	Russia	English
Spain	English, French	Romania	English
3. Initialed			
Turkey	English	Cuba	English
Thailand	English	Bulgaria	English

(2) These Measures shall apply to Hong Kong.

司法部　最高人民法院　外交部关于印发《关于执行海牙送达公约的实施办法》的通知

（１９９２年９月１９日司发通〔１９９２〕０９３号）

有关人民法院、驻外使领馆、司法厅（局）：

１９９２年３月４日，我们发出了《关于执行〈关于向国外送达民事或商事司法文书和司法外文书公约〉有关程序的通知》。现将根据该通知制定的《关于执行海牙送达公约的实施办法》印发给你们，请遵照执行。

附：关于执行海牙送达公约的实施办法

为了正确、及时、有效地按照《关于向国外送达民事或商事司法文书和司法外文书公约》（下称《公约》）向在《公约》成员国的当事人送达文书和执行成员国提出的送达请求，根据最高人民法院、外交部和司法部“外发〔１９９２〕８号”《关于执行〈关于向国外送达民事或商事司法文书和司法外文书公约〉有关程序的通知》（下称《通知》），制定本实施办法。

一、司法部收到国外的请求书后，对于有中文译本的文书，应于五日内转给最高人民法院；对于用英文或法文写成，或者附有英文或法文译本的文书，应于七日内转给最高人民法院；对于不符合《公约》规定的文书，司法部将予以退回或要求请求方补充、修正材料。

二、最高人民法院应于五日内将文书转给送达执行地高级人民法院；高级人民法院收文后，应于三日内转有关的中级人民法院或者专门人民法院；中级人民法院或者专门人民法院收文后，应于十日内完成送达，并将送达回证尽快交最高人民法院转司法部。

三、执行送达的法院不管文书中确定的出庭日期或期限是否已过，均应送达。如受送达人拒收，应在送达回证上注明。

四、对于国外按《公约》提交的未附中文译本而附英、法文译本的文书，法院仍应予以送达。除双边条约中规定英、法文译本为可接受文字者外，受送达人有权以未附中文译本为由拒收。凡当事人拒收的，送达法院应在送达回证上注明。

五、司法部接到送达回证后，按《公约》的要求填写证明书，并将其转回国外请求方。

六、司法部在转递国外文书时，应说明收到请求书的日期、被送达的文书是否附有中文译本、出庭日期是否已过等情况。

七、我国法院需要向在公约成员国居住的该国公民、第三国公民、无国籍人送达文书时，应将文书及相应文字的译本各一式三份（无需致外国法院的送达委托书及空白送

达回证）按《通知》规定的途径送最高人民法院转司法部。译文应由译者签名或翻译单位盖章证明无误。

八、司法部收到最高人民法院转来向国外送达的文书后，应按《公约》附录中的格式制作请求书、被送达文书概要和空白证明书，与文书一并送交被请求国的中央机关；必要时，也可由最高人民法院将文书通过我国驻该国的使馆转交该国指定的机关。

九、我国法院如果需要通过我驻公约成员国的使领馆向居住在该国的中国公民送达文书，应将被送达的文书、致使领馆的送达委托书及空白送达回证按《通知》规定的途径转最高人民法院，由最高人民法院径送或经司法部转送我驻该国使领馆送达当事人。

十、司法部将国内文书转往公约成员国中央机关两个半月后，如果未收到证明书，将发函催办；请求法院如果直接收到国外寄回的证明书，应尽快通报最高人民法院告知司法部。

十一、本办法中的“文书”兼指司法文书和司法外文书。

十二、本办法自下发之日起施行。

注：

（1）截至1992年9月，我国与外国签订的双边司法协助条约（协定）中允许被送达文书附第三种文字译本的情况：

国家名称	第三语种	国家名称	第三语种
一、已生效的			
波兰	英文	蒙古	英文
二、已签署的			
意大利	英文、法文	俄罗斯	英文
西班牙	英文、法文	罗马尼亚	英文
三、已草签的			
土耳其	英文	古巴	英文
泰国	英文	保加利亚	英文

（2）本《实施办法》适用于香港地区。

EXHIBIT D

Civil Procedure Law of the People's Republic of China

Article 260 A people's court and a foreign court may mutually request each other for service of documents, investigation, evidence collection and other litigation acts on their respective behalf in accordance with the international treaties concluded or acceded to by the People's Republic of China or according to the principle of reciprocity.

If any matter for which a foreign court requests assistance harms the sovereignty, security or social public interest of the People's Republic of China, a people's court shall refuse to enforce the matter.

Article 261 A request for and the provision of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China, and in the absence of treaty relations, shall be conducted through diplomatic channels.

An embassy or consulate of a foreign country in the People's Republic of China may serve documents on, investigate, or collect evidence from the citizens of that country, provided, however, that the laws of the People's Republic of China are not violated and that no compulsory measures are adopted.

Except for the circumstances specified in the preceding paragraph, no foreign agency or individual may serve documents, conduct investigations or collect evidence within the territory of the People's Republic of China without the consent of the in-charge authorities of the People's Republic of China.

中华人民共和国民事诉讼法

第二百六十条 根据中华人民共和国缔结或者参加的国际条约，或者按照互惠原则，人民法院和外国法院可以相互请求，代为送达文书、调查取证以及进行其他诉讼行为。

外国法院请求协助的事项有损于中华人民共和国的主权、安全或者社会公共利益的，人民法院不予执行。

第二百六十一条 请求和提供司法协助，应当依照中华人民共和国缔结或者参加的国际条约所规定的途径进行；没有条约关系的，通过外交途径进行。

外国驻中华人民共和国的使领馆可以向该国公民送达文书和调查取证，但不得违反中华人民共和国的法律，并不得采取强制措施。

除前款规定的情况外，未经中华人民共和国主管机关准许，任何外国机关或者个人不得在中华人民共和国领域内送达文书、调查取证。

No. S249923

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

Changzhou Sinotype Technology Co., Ltd.,

Appellant/Defendant,

vs.

Rockefeller Technology Investments (Asia),

Respondent/Plaintiff.

Second Appellate District Court of Appeal
Civil No.: B272170

Los Angeles Superior Court
Case No.: BS149995

Judicial Officer Information:
The Honorable Randolph Hammock,
Presiding in Dept. 47 [(213) 633-0647]

ORDER GRANTING MOTION TO TAKE JUDICIAL NOTICE

[Proposed]

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Changzhou Sinotype Technology Co., Ltd.

IT IS HEREBY ORDERED that the motion of Appellant, Changzhou Sinotype Technology Co., Ltd., pursuant to California Rules of Court, Rule 8.252, and Evidence Code Section 459, to take judicial notice of the following matters is hereby granted:

1. **Exhibit 1 to the Motion**, a true and correct copy of the Chinese text of the Civil Procedure Law of the People's Republic of China, **Article 260** and **Article 261**, in effect prior to August 31, 2012 and the English translation in Exhibit 1, an accurate translation of said Articles 260 and 261.

2. **Exhibit 3 to the Motion**, a true and correct copy of an online printout from the People's Republic of China's Supreme Court's website (http://www.npc.gov.cn/npc/xinwen/2017-06/29/content_2024892.htm) containing the text of **Article 276** (formerly Article 260) and **Article 277** (formerly 261) of the Civil Procedure Law of the People's Republic of China, which became effective August 31, 2012, which are highlighted in yellow, and, also, the English translation of Articles 276 and 277, confirming that the English translation of Articles 276 and 277 is accurate, and is identical to the English translation of Articles 260 and 261, and the related fact, not reasonably subject to dispute, that the Chinese text of former Articles 260 and 261 is identical to the Chinese text of the current Articles 276 and 277, i.e. they are identical; only the Article numbers have changed.

3. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163, more commonly called and hereinafter referred to as either the "Hague Convention" or the "Hague Service Convention," in its entirety.

4. **Exhibit 4 to the Motion**, a true and correct copy of Articles 1, 5, 8, 10, 15, and 16 of the Hague Convention, excerpted (i.e. highlighted).

5. **Exhibit 5 to the Motion**, a true and correct copy of Hague

Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") - also re-published via a list of hyperlinks at http://www.courts.ca.gov/partners/documents/ea_HagueService.

6. **Exhibit 6 to the Motion**, a true and correct copy of The Written Response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf .

8. **Exhibit 7 to the Motion**, which are true and correct copies of excerpts from the Bureau of Consular Affairs, U.S. Dep't of State, China Judicial Assistance, https://travel.state.gov/content/travel/en/legalconsiderations/judicial/country/china.html, which are published by the Department of State of the United States.

Dated: _____

_____

Presiding Justice

PROOF OF SERVICE BY MAIL

COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

I am an attorney licensed to practice in this state and I am attorney of record for Appellant Changzhou Sinotype Technology Co., Ltd.; my business address is 388 E. Valley Blvd., # 200, Alhambra, CA 91108.

On May 22, 2019, I served the foregoing document described as **MOTION TO TAKE JUDICIAL NOTICE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF MICHELLE ZHANG; DECLARATION OF STEVEN L. SUGARS IN SUPPORT THEREOF; proposed order** on the interested parties in this action by placing true copies thereof in sealed envelopes in the U.S. mail at San Francisco, California, first class* postage fully prepaid, addressed as follows:

Steven A. Blum, Esq.
Gary Ho, Esq.
707 Wilshire Boulevard, Suite 4880
Los Angeles, California 90017

1 copy *This envelope was sent via Express mail for next day delivery.

Civil Filing Clerk, for delivery to Judge Randolph Hammock
Los Angeles County Superior Court,
111 N. Hill Street
Los Angeles, CA 90012

1 copy

Second District Court of Appeal Clerk
Division 3
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

1 copy

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 22, 2019 at Pasadena, California.

Steven L. Sugars, Declarant