

2. The State Council, i.e., the Central People's Government, of the PRC is the executive body of the highest organ of state power and is the highest organ of state administration. The current Prime Minister is Mr Keqiang Li, who was appointed in 2013 according to the nomination of the Chairman of the PRC. In accordance with the Constitution, the State Council shall have the legislative power to enact administrative regulations that are a part of the Chinese law and are only subject to the Constitution and the laws enacted by the NPC and its Standing Committee. However, it is only the Organic Regulation of the People's Conciliation Committee, which will be mentioned below, that may have something to do with civil procedure.

The State Council is a huge government bureaucracy. There are many reforms in it. It has twenty-five ministries and committees by now and numerous agencies, committees and offices. They shall constitutionally have power to enact rules and regulations. However, only the Handling Methods on Disputes of the People enacted by the Ministry of Justice, which will be mentioned below, may have somewhat of influence upon civil procedure.

3. The administrative division of the PRC is as follows:

- (1) The country is divided into provinces, autonomous regions, municipalities directly under the Central Government, and special administrative region. By the end of 1999, the PRC has twenty-three provinces, including Taiwan which is an integral part of China, five autonomous regions, four municipalities directly under the Central Government, and two special administrative regions. However, the special administrative regions, Hong Kong and Macao, enjoy their high degree of autonomy according to the Basic Law of Hong Kong Special Administrative Region and the Basic Law of Macao Special Administrative Region. The legislative councils of Hong Kong and Macao have the power to enact laws in force in that respective region. The governor of Macao has the power to enact administrative regulations and enforces them.
- (2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties, and cities.
- (3) Counties and autonomous counties are divided into townships, nationality townships, and towns.
- (4) Municipalities directly under the Central Government and other large cities are divided into districts and counties.
- (5) According to Article 68 of Organic Law of the Local People's Congresses and Local People's Governments of the PRC, amended on 28 February 1995, the people's government of a province or autonomous region may establish special administrative offices as their agencies, when necessary and with the approval of the State Council. At present time, the provinces and autonomous regions of the PRC establish prefectures as their agencies. However, only the autonomous prefectures can organize people's congresses. There is no change in the amendment of 27 October 2004 of that Law.

Although the people's congresses and their standing committees and the people's government at all these local levels mentioned above have certain legislative power,

all of these legislative powers have no right in the aspect of enacting rules or regulations affecting civil procedure in the PRC.

4. The people's courts of the PRC are the judicial organs of the state. The PRC establishes the Supreme People's Court and people's courts at various local levels, military courts and other special people's court.

The Supreme People's Court is the highest judicial organ. The Supreme People's Court supervises the administration of justice by the people's court at various local levels and by the special people's courts. People's courts at higher levels supervise the administration of justice by those at lower levels. The Supreme People's Court is responsible to the NPC and its Standing Committee. Local people's courts at various levels are responsible to the organs of state power which created them.

According to the respective Basic Laws, however, Hong Kong and Macao have their own independent judicial systems and the highest courts of Hong Kong and Macao Special Administrative Regions have the power of final adjudication. In the Annex III 'National Law to Be Applied in the Hong Kong Special Administrative Region', the Civil Procedure Law of the PRC is not listed. Therefore, the Civil Procedure Law of the PRC cannot be applied in these two Special Administrative Regions.

The people's procuratorates of the People's Republic of China are state organs for legal supervision. The PRC establishes the Supreme People's Procuratorate and the people's procuratorates at various local levels, military procuratorates and other special people's procuratorates.

The Supreme People's Procuratorate is the highest procuratorial organ. The Supreme People's Procuratorate directs the work of the people's procuratorates at various local levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work of those at lower levels. The Supreme People's Procuratorate is responsible to the NPC and its Standing Committee.

People's procuratorates at various local levels are divided into three levels: (1) people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government; (2) branches of the people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government, and people's procuratorates of autonomous prefectures and cities directly under the provincial governments; (3) people's procuratorates of counties, cities, autonomous counties and municipal districts. The people's procuratorates at various local levels shall be responsible and report on their works to the people's congresses and their standing committee at corresponding levels.

Besides its traditional functions in prosecuting crimes, the Chinese people's procuratorates shall have right to exercise legal supervision over civil proceedings (Article 14 of CCPL).

In accordance with a law stipulated by the NPC in 1981, the Supreme People's Court and the Supreme People's Procuratorate have the authority to issue judicial explanations, which, especially the judicial explanations given by the Supreme People's Court, shall have important impact upon the implementation of the Civil Procedure Law of the PRC. By now, the judicial explanation given by the Supreme People's Procuratorate plays only very limited, if not at all, impact upon Chinese civil procedure.

§2. GENERAL INTRODUCTION OF CHINESE CIVIL PROCEDURE SYSTEM AND DISTINCTION WITH OTHER TYPES OF PROCEDURE

I. Concept of Civil Procedure

5. Civil procedure is a general legal term in the PRC which refers to the judicial activities of people's courts, in which the people's courts exercise their judicial authority over the civil cases to be judged or settled by them with the participation of both parties and other participants, and the various relations forming due to these activities.

Civil procedure in the PRC has the meaning of two respects. First, it refers to the litigant activities, e.g., the actions of a party to institute a lawsuit or to participate in the proceedings, the action of a witness to provide evidence, and the action of an expert to make an expert evaluation as well as the activities of the people's court to try the case. Second, it refers to the legal relations, e.g., the relations among the people's court, the plaintiff and the defendant, and the relations between the people's court and other litigant participants.

II. Distinction with Criminal Procedure

6. Chinese civil procedure like most of the countries in this world is different from criminal procedure which has its own procedure law.

Traditionally and practically, people's courts shall follow the principle of 'criminal case first and civil case second', i.e., if a criminal case is found in trying a civil case, the criminal part shall be given to a trial following the criminal procedure, and the civil procedure shall suspend until the criminal judgment is given if it cannot be separately and independently carried out.

In Chinese criminal procedure, however, there is a special procedure of incidental civil action, in which a victim or the people's procuratorate on behalf of the state and a collective property shall have the right to claim their damages caused by the criminal conducts of the criminal defendant during the course of the criminal proceeding. In the incidental civil action, the provisions of CCPL shall apply, but the criminal defendant cannot be against the provisions of criminal procedure limiting the personal freedom of the criminal defendant. An incidental civil action shall be heard together with the criminal case. Only for the purpose of preventing excessive delay in a trial of the criminal case may the same judicial organization, after completion of the trial of the criminal case, continue to hear the incidental civil action.

By the way, the Tort Law of the PRC, which was promulgated on 26 December 2009, stipulates in Article 4 that where an infringer shall assume administrative liability or criminal liability for the same conduct, it shall not affect him to undertake the tort liability according to the Law. However, where his assets are not enough to undertake his tort liability, administrative liability and/or criminal liability for the same conduct, the tort liability shall be first assumed.

III. Distinction with Administrative Procedure

7. Unlike civil procedure dealing with the litigation between the equal subjects, the Chinese administrative procedure is a kind of procedure dealing with the litigation that a citizen, a legal person or any other organization considers that his or its lawful rights, and interests have been infringed upon by a special administrative act of an administrative organ or its personnel. Compared with civil procedure, the Chinese administrative procedure is distinct in many ways, e.g., its object is always the specific administrative act; the defendant can only be the administrative organ; a people's court shall not apply conciliation in handling an administrative case; and the defendant shall not collect evidences during the proceedings.

IV. Distinction with Arbitration

8. Arbitration in PRC has its own laws and rules (see below paragraphs 450 ff.), though there are close links with civil procedure. All Chinese arbitration commissions are the members of the China Arbitration Association, which shall formulate arbitration rules according to the Arbitration Law and the Civil Procedure Law (Article 15 of the Arbitration Law). The Validity of an agreement for arbitration and the lawfulness of an arbitration award might be decided by the people's court according to the CCPL. The PRC adopted its Arbitration Law in August 1994, which are only formally adjusted in 2009 to make the number of some provisions identical with those in CCPL. Before that Law, China divided arbitration into two types: domestic and foreign-related arbitration. Domestic arbitration carried out the system of arbitration and judicial judgment, i.e., any party who refused to accept the award of arbitration might bring a lawsuit for the same dispute in a competent people's court. Foreign-related arbitration carried out the system that the award is final, i.e., any party of the arbitration should be bound by the award and could not bring a lawsuit for the dispute in a people's court any more. After that Law, arbitration in China was unified to be the system that the award was final one.

Now, a system of a single and final award shall be practised for arbitration (Article 9 of the Arbitration Law). If the parties have concluded an arbitration agreement and one party institutes an action in a people's court, the people's court shall not accept the case (Article 5 of the Arbitration Law). If a party applies for arbitration to an arbitration commission or institutes an action in a people's court regarding the same dispute after an arbitration award has been made, the arbitration commission or the people's court shall not accept the case.

In China, there are two foreign-related arbitration commissions now. One is China International Economic and Trade Arbitration Commission (CIETAC) and the other is the Maritime Arbitration Commission, both of which have their own arbitration regulations respectively and have gained their world-wide reputation. Besides that, there are many arbitration commissions established in the PRC since 1994, which have their own regulations following the regulations of the Arbitration Law. Since the Arbitration Law does not prohibit other arbitration commissions to rule the foreign-related cases, many of the former domestic arbitration commissions

began this practice, though the CIETAC is still the most well-known arbitration commission in China.

There are some possible exceptions to an arbitration agreement. And an arbitration agreement shall be null and void under one of the following circumstances:

- (1) The agreed matters for arbitration exceed the range of arbitrable matters as specified by law.
- (2) One party that concluded the arbitration agreement has no capacity for civil conducts or has limited capacity for civil conducts.
- (3) One party coerced the other party into concluding the arbitration agreement (Article 17 of the Arbitration Law).

According to Article 58 of the Arbitration Law, if a party concerned has evidences to prove one of the following circumstances, he may apply for the cancellation of arbitral award with the intermediate people's court at the place where the arbitration commission resides:

- (1) There is no agreement for arbitration.
- (2) The matters ruled are out of the scope of the agreement for arbitration or the limits of authority of an arbitration commission.
- (3) The composition of the arbitration tribunal or the arbitration proceedings violate the legal proceedings.
- (4) The evidences on which the ruling is based are forged.
- (5) Things that have an impact on the impartiality of ruling have been discovered concealed by the opposite party.
- (6) Arbitrators have accepted bribes, resorted to deception for personal gains or perverted the law in the ruling.

When the people's court verifies one of the aforesaid circumstances after examination by a collegial panel, the arbitral award should be ordered to be cancelled by the court. In addition, the people's court shall cancel the arbitral award if it holds that the award goes against the public interests.

The CCPL provides different conditions for a people's court to reject enforcing the arbitral award in domestic cases and foreign-related cases.

Commonly in Articles 237 and 274 of the CCPL, the people's court shall, after examination and verification by a collegial panel, make a ruling not to allow the enforcement of the award rendered by an arbitral organ of the PRC, if the party against whom the application for enforcement is made furnishes proof that:

- (1) the parties have not had an arbitration clause in the contract or have not subsequently reached a written arbitration agreement;
- (2) the composition of the arbitration tribunal or the procedure for arbitration was not in conformity with the statutory procedure (in domestic cases) or the rules of arbitration (in foreign-related cases); or
- (3) the matters dealt with by the award fall outside the scope of the arbitration agreement or which the arbitral organ was not empowered to arbitrate.

Besides these provision, the CCPL provides one additional condition for not enforcing the arbitral award of a foreign-related case in Article 274: The respondent is not notified to appoint an arbitrator or of the conduct of arbitration procedure or fails to present its case, which is not attributable to the fault of the respondent. Meanwhile, Article 237 provides the following conditions as the statutory circumstance of not enforcing the arbitral award for the domestic cases:

- (1) The evidence for rendering the award is forged.
- (2) The opposing party withholds any evidence to the arbitral institution, which suffices to affect an impartial award.
- (3) When arbitrating the case, any arbitrator commits embezzlement, accepts bribes, practises favouritism for personal gains, or renders the award by bending the law. If the people's court determines that the enforcement of the award goes against the social and public interest of the country, the people's court shall make a ruling not to allow the enforcement of the arbitral award (Articles 237 and 274 of the CCPL).

If the enforcement of an arbitral award is disallowed by a ruling of a people's court, the parties may, in accordance with a written arbitration agreement reached between them, apply for arbitration again; they may also bring an action in a people's court (Articles 237 and 275 of the CCPL).

There are special arbitration in terms of labour disputes and rural land contract disputes. In accordance with the Labor Dispute Mediation and Arbitration Law (the LDMAL) of 29 December 2007 and the Law on the Mediation and Arbitration of Rural Land Contract Disputes (the LMARLCD) of 27 June 2009, these two types of arbitration shall carry out different principle other than the Arbitration Law that the arbitration award is final.

According to Article 47 of the LDMAL, an arbitral award shall be final only for the cases where: (1) a dispute over the recovery of labour remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, in an amount not exceeding the twelve-month local monthly minimum wage level, and (2) A dispute over the working hours, breaks and vacations, social insurance, etc., arising from the execution of state labour standards. Besides these cases, an employee, who disagrees to an arbitral award as provided for in Article 47 of the LDMAL, may bring an action in the people's court within fifteen days after receiving an arbitral award (Article 48 of the LDMAL).

According to Article 2 of the LMARLCD, the disputes over the contracted management of rural land include disputes arising from the conclusion, fulfilment, modification, cancellation and termination of rural land contracts; disputes arising from the sub-contract, lease, interchange, transfer, holding of shares and other means of turnover of contracted management rights to rural land; disputes arising from the withdrawal and adjustment of the contracted land; disputes arising from the confirmation of contracted management rights to rural land; disputes arising from impairment to the contracted management rights to rural land; and other disputes over contracted management of rural land as prescribed in law and regulations. However, the disputes arising from requisition of collectively owned land and the compensations therefore do not fall within the scope of acceptance by the rural

land contract arbitration commission; they may be settled by means of administrative reconsideration or lawsuits. The arbitration over the cases of rural land contract disputes does not need an arbitration clause. Article 48 of the LMARLCD stipulates that where a party is dissatisfied with the arbitral award, he may lodge a lawsuit in the people's court within thirty days from the date on which he receives the arbitral award. If he does not lodge a lawsuit within the time limit, the arbitral award shall become legally effective thereupon.

V. Civil Procedure and Conciliation

9. It is a distinct characteristic of Chinese civil procedure to stress that the people's courts shall conduct conciliation (mediation) for the parties on a voluntary and lawful basis in trying civil cases (Article 9 of CCPL). However, there are two types of conciliation in China. The conciliation in the people's court is different from that of the people's conciliation. The people's conciliation is a special system outside the people's court and litigation to resolve disputes and shall be carried out under direction of the people's conciliation committees.

According to Article 16 of the CCPL of 2007, the people's conciliation committees are mass organization to conduct conciliation of civil disputes under the guidance of the grass-roots level people's governments and the basis level people's courts. The people's conciliation committee shall conduct conciliation for the parties according to the law and on a voluntary basis. The parties concerned shall carry out the settlement agreement reached through conciliation; those who decline conciliation or those for whom conciliation has failed or those who have backed out of the settlement agreement may institute legal proceedings in a people's court. If a people's conciliation committee, in conducting conciliation of civil disputes, acts contrary to the law, rectification shall be made by the people's court. All these principles remain and got detailed regulations in the People's Mediation Law as effective of 1 January 2011.

In 2012, the people's conciliation was strengthened in the new CCPL. In the end of the People's Mediation Law, Article 33 stipulates that after a mediation agreement is reached upon mediation by a people's mediation commission, when necessary, the parties concerned may jointly apply to the people's court for judicial confirmation within thirty days after the mediation agreement becomes effective, and the people's court shall examine the agreement and confirm its effect in a timely manner. Subsequently, the CCPL of 2012 set up a section of Cases of Confirming Mediation Agreement in Chapter 15 of Special Procedure. Article 194 stipulates that, to apply for judicial confirmation of a mediation agreement, both parties to the mediation agreement shall, in accordance with the People's Mediation Law and other laws, jointly file an application with the basic people's court of the place where the mediation organization is located within thirty days from the effective date of the mediation agreement. In addition, Article 195 stipulates that, after accepting an application, if the application complies with legal provisions upon examination, the people's court shall issue a ruling to affirm the validity of the mediation agreement, and if one party refuses to perform or fails to fully perform

the mediation agreement, the opposing party may apply for enforcement to the people's court; or if the application does not comply with legal provisions upon examination, the people's court shall issue a ruling to dismiss the application, and the parties may, through mediation, modify the mediation agreement or reach a new mediation agreement and may also institute an action in a people's court.

However, the conciliation in the people's court was also strengthened in the CCPL of 2012. Although it has been the practice in China, there is not an article so clear as Article 122 to stipulate that where conciliation is appropriate for the civil dispute involved in an action instituted by a party in a people's court, conciliation shall be conducted first, unless the parties refuse to participate in it. It is also important to read this Article under the principle of voluntary and lawful conciliation stipulated in Article 9 of the CCPL.

The same principle shall also be carried out in the Enforcement Procedure of the CCPL. Article 230 stipulates that where, during enforcement, both sides reach a settlement agreement, the enforcement personnel shall record the provisions of the settlement agreement in the enforcement transcripts, to which both sides shall affix their signatures or seals. It is clear that this kind of settlement agreement shall not be the result of a fraud or under duress. In that case, the people's court may, upon application of a party, resume the enforcement of the original effective legal document.

10. The Handling Methods on Disputes of the People is enacted by the Ministry of Justice and aimed at dealing with disputes occurring in the daily life and concerning personal relations and property interests between citizen. After a conciliation coordinated by the grass-roots level people's government, a settlement agreement through conciliation shall be drawn up. If no agreement can be reached through conciliation, the grass-roots level people's government may make a handling decision. If any party disagrees with this decision, he may bring a lawsuit against the original dispute in a people's court. Now, the Handling Methods on Disputes of the People is practically losing its significance because the People's Mediation Law was promulgated, but it has not yet been abolished.

VI. Civil Procedure and Notary Law

11. The Chinese Notary Law is related to the CCPL in three aspects. The first is to prove certain fact of a case. According to the CCPL, the people's court shall take the acts, facts and documents legalized by notarization according to legal proceedings as the basis for ascertaining facts, unless there is evidence to the contrary sufficient to invalidate the notarization (Article 69). The second is to preserve evidence before a trial. The Chinese notary may preserve certain evidence upon the request of a party before a trial and transfer the preserved evidence to the people's court for examination after the lawsuit is instituted. This is particularly important in the foreign-related cases. Article 264 of the CCPL requires that where a foreign national, a stateless person or a foreign enterprise or organization without a domicile within the territory of the People's Republic of China needs to be represented by a lawyer or any other person of the People's Republic of China in an action, the

power of attorney posted or forwarded from outside the territory of the People's Republic of China is valid only after it has been legalized by a notary office in the home country and authenticated by the Chinese embassy or consulate stationed in that country or has undergone the legalization formalities prescribed in the relevant treaty concluded by the People's Republic of China and that country. The third is to provide the document evidencing the creditor's rights for a people's court as the basis of execution. Article 238 stipulates that where a party fails to comply with a debt instrument with enforceability legally granted by a notary office, the opposing party may apply to the people's court having jurisdiction for enforcement, and the people's court accepting the application shall conduct enforcement. But the notary's power is subject to the supervision of the people's court. If the notarized debt instrument is erroneous, the people's court shall issue a ruling not to enforce the debt instrument and serve a written ruling on both sides and the notary office (Article 238 of the CCPL).

§3. SOURCES OF CIVIL PROCEDURE LAW

12. Although there are some academic debates in the PRC on how far the extension of the civil procedure law shall be, it is generally agreed that the civil procedure law in China refers to the norms regulating activities of civil litigation and legal relations of litigation. According to the sense of generally-accepted theory and practice, the civil procedure law in China mainly refers to the Civil Procedure Law and the relevant judicial explanations given by the Supreme People's Court, in addition to the Special Procedure of Maritime Litigation of the PRC (the SPML), newly promulgated on 25 December 1999.

There are other laws and regulations relating to the civil procedure law, which are mentioned above; however, it is generally agreed by Chinese scholars and practitioners that these laws and regulations do not directly regulate the civil litigation within the people's court and they are not within the scope of civil procedure law in this narrow sense.

13. The current Chinese Civil Procedure Law was promulgated by the NPC in 2012. This is the fourth version of the law, which revised and supplemented its trial version of 1982, formal version of 1991 and revised version of 2007.

Although the PRC did not promulgate its civil procedure law until 1982, the efforts to make the law could be traced back to the early time when the People's Republic was just founded. In December of 1950, the Legal Affairs Committee of the Central People's Government formulated the Draft of the General Principles on Procedures for Litigation in the PRC based upon many experiences gained from the adjudicative practices in the time of the liberated areas. In 1954, the first Constitution, the Organic Law of the People's Court, the Organic Law of the People's Procuratorate of the PRC were promulgated, in which the basic principles and norms for civil procedure were enacted. In the previous time of the Civil Procedure Law of 1982, the Summa of the Adjudicative Procedure for Civil Cases in the People's Court at Various Levels enacted by the Supreme People's Court in December of 1956 played a very important role. This Summa was not yet a law; however, it

provided a generally unified litigation procedure and adjudicative procedure for civil cases.

The Civil Procedure Law of 1982 summarized the experiences since the founding of the PRC, the Chinese legislators still named this Law as 'for trial implementation', mainly because of the lack of the civil substantial law, which was not promulgated until 1986. The Civil Procedure Law was formally completed on 9 April 1991 with fresh experiences gained from the opened and reformed China. After that, the Law was revised in 2007, mainly focusing on the part of supervision procedure and enforcement procedure. The Civil Procedure Law of 2012 was a rather complete revision, but there are still some issues not settled due to the disagreement, such as the procedure for the lawsuits to protect public interests.

14. Judicial explanations are not law in Chinese legal system. Chinese legal tradition does not adopt the idea of precedent laws which are enacted by courts and judges. However, many of the judicial explanation given by the Supreme People's Court before the CCPL are still playing their roles with binding power in today's legal practice, including those for civil procedure.

Judicial explanations, especially those given by the Supreme People's Court, are of great importance in implementing laws. The people's courts at various levels shall also follow the judicial explanation in their adjudicative activities, including civil procedure.

It is true that many provisions in a law and even the law itself in the PRC largely come originally from judicial explanations. A very good example of this practice is the Special Procedure of Maritime Litigation of the PRC promulgated on 25 December 1999. This law was made upon the experiences gained from a series of judicial explanations for maritime litigations since 1986.

§4. FUNDAMENTAL PRINCIPLES OF THE CCPL

15. The characteristics and fundamental guarantees of the administration of justice in civil matters can be seen in the fundamental principles of the CCPL.

Generally speaking, the fundamental principles of the CCPL can be divided into two categories: the principles reflecting the fundamental guarantees based upon the Constitution and the Organic Law of the People's Court (OLPC) and the principles directing the characteristics of civil procedure. For foreign parties, there are two particularly important principles: the principles of equality and the principle of reciprocity.

I. The Principles Reflecting the Fundamental Guarantees

16. The principles reflecting the fundamental guarantees contains the principle that the adjudicative power over civil cases can only be exercised by people's courts, the principle that people's courts shall try civil cases independently according to law, the principle taking facts as basis and laws as criteria, the principle that all litigants are equal in implementation of law, the principle of native spoken and

written languages, and the principle that the people's congresses of the national autonomous regions may formulate adaptive and supplementary provisions. In addition, the system of public trial is also to aim at providing fundamental guarantee, though Chinese scholars generally do not name it as a principle.

17. The principle that the adjudicative power over civil cases can only be exercised by people's courts is provided by the Constitution as well as the CCPL. In the PRC, the people's courts are the judicial organs of the state, the people's courts shall exercise judicial powers with respect to civil cases (Article 6 of CCPL) and whoever engages in civil litigation within the territory of the PRC must abide by the CCPL (Article 4 of CCPL). Although civil disputes can be handled by people's government and people's conciliation committees, the settlements cannot prevent the people's court from jurisdiction. In the case of arbitration, any awards of arbitration cannot be deemed as a result of adjudicative authority. The people's court shall have power to cancel the award based upon the circumstances expressly stipulated in the CCPL and upon the request of a party. In case that any party fails to perform the award of an arbitration, the other party may apply the people's court to enforce it according to the CCPL.

18. The principle that people's courts shall try civil cases independently according to law is guaranteed by the Constitution. The people's courts exercise judicial power independently, in accordance with the provision of the law, and are not subject to interference by any administrative organ, public organization or individual. According to the Constitution and the CCPL, it is indeed that the people's courts shall be responsible and report to the legislative authorities which created them (Article 128 of the Constitution), and that the people's procuratorates shall have the right to exercise legal supervision over civil proceedings (Article 14 of the CCPL), the adjudicative activities of people's courts cannot be interfered by either of them, as long as they are carried out according to law.

Unlike other western countries, the independent adjudication of people's courts means the independence of a people's court at large and not that of a judge personally. It is the people's court at large that can enjoy the independence of adjudicative power. Within a people's court, there are certain organs where a judge shall work in and whose decision he might have to obey, as are mentioned below in detailed. However, a judicial reform has been carried out in China, in which judge shall take more personal responsibility for his judgments. The new tendency is taking place in China and moving towards an exciting direction.

19. The principle taking facts as basis and law as criterion is a famous legal dictum in Chinese legal vocabulary and is expressly provided in CCPL for trying civil cases (Article 7). According to the request of taking facts as basis in trying civil cases, the people's court shall avoid being subjective, lopsided and outwardly in ascertaining the fact of a civil case. Taking the law as criterion requires the people's court to distinguish right from wrong, to affirm civil rights and obligations and to impose sanctions for civil wrongs only according to the law enacted by the state.

20. The principle that all litigants are equal in implementation of law is guaranteed by the Constitution as well as the CCPL. All citizens of the PRC are equal before the law (Article 33 of the Constitution). According to this principle, the people's court shall not be partial to or discriminate against any party because of its ethnic status, race, sex, occupation, social background, religious belief, education, property status, or ownership. It is also the requirement of this principle that the people's court shall equally apply the law for the litigants of aliens and stateless person and shall not discriminate against them because of their nationalities.

21. The principle of native spoken and written languages is particularly important for the litigants of the minority nationalities. The PRC is a unitary multinational state. There are fifty-six minority nationalities living together in this country, of whom the nationality of Han consisting of more than 90% of the population. All nationalities have the freedom to use and develop their own spoken and written languages (Article 4 of the Constitution). Citizens of all nationalities shall also have the right to use their native spoken and written languages in civil proceedings (Article 11 of the CCPL). In order to guarantee this right, the CCPL further stipulates that where minority nationalities live together in one area, the people's courts shall conduct hearings and issue legal documents in the spoken and written languages commonly used by the local nationalities, and that the people's courts shall provide translations for any participant in the proceedings who is not familiar with the spoken or written languages commonly used by the local nationalities.

22. The principle that the people's congresses of the national autonomous regions may formulate adaptive and supplementary provisions is aimed to give consideration to the characteristics of a minority nationality and the special requirements of the political and economic developments of national autonomous regions. According to this principle, the people's congresses of the national autonomous regions may formulate, in accordance with the Constitution and the principles of the CCPL, and in conjunction with the specific circumstances of the local nationalities, adaptive and supplementary provisions. Such provisions made by an autonomous region shall be submitted to the Standing Committee of the NPC for approval. Those made by an autonomous prefecture or autonomous county shall be submitted to the standing committee of the people's congress of the relevant province or autonomous region for approval and to the Standing Committee of the NPC for the record.

23. The public trial is a basic system in the CCPL. In the people's court, civil cases shall be tried in public, except for those that involve state secrets or personal privacy or are to be tried otherwise as provided by the law. The case of divorce or the case involving trade secrets may not be heard in public if a party so requests. The public trial means that a trial shall be opened to the public and shall allow people to be the auditor and public medium to report it. This system may provide people with an opportunity to supervise adjudicative activities and to have a lesson how the law to be implemented.

II. The Principle Directing the Characteristics of Civil Procedure

24. The principles reflecting the fundamental guarantees are not the unique principles of civil procedure. They are also some similar principles for administrative procedure or criminal procedure, though there are some wordings different respectively. For the civil procedure itself, there are some principles of its own, i.e., the principles directing the characteristics of civil procedure.

25. The principles directing the characteristics of civil procedure contains the principle of equal litigation rights, the principle of conciliation, the principle of arguing for a party himself, the principle of dealing with one's own rights, the principle of procuratorate supervision, the principle of supporting the injured party to bring an action in a people's court and the principle of people's conciliation (see 9 above).

26. The principle of equal litigation is expressly stipulated in the CCPL. The parties in civil litigation shall have equal litigation rights. The people's courts shall, in conducting the trials, safeguard their rights, facilitate their exercising the rights, and apply the law equally to them (Article 8 of CCPL).

The principle of equal litigation is not the same as the principle that all litigants are equal before implementation of law (see 20 above). The former means that the parties in a civil procedure equally enjoy and exercise litigation rights, and the latter means that the people's court shall equally apply the law to the parties in a civil case.

The principle of equal litigation requires that the parties of both sides shall have equal litigation status in the civil proceeding. Any party cannot enjoy more right than the other party does in civil procedure, no matter whether he is on behalf of a kind of special rights such as the state-owned interests or not. Correspondingly, both parties shall also bear equal litigation obligations. The people's court shall initiate to inform the litigants what kinds of litigation right they can have in trying a civil case. It is particularly important for the litigants who are short of legal knowledge.

27. The principle of conciliation refers to the conciliation in the people's court. According to the CCPL, the people's courts shall conduct conciliation for the parties on a voluntary and lawful basis in trying civil cases. However, judgments shall be rendered without delay if a conciliation fails (Article 9). Conciliation can be exercised in all kinds of civil cases and all kinds of procedures, except for the cases which shall adopt special procedure, summary procedure for hastening recovery of a debt, procedure for publicizing public notice for assertion of claims, for the case of affirming a contract invalid as well.

Conciliation in the people's court is aimed to simplify and fasten civil proceedings and to help both parties avoid hurting their feelings after litigation. Both conciliation and judgment are the methods for the people's court to resolve a civil dispute and judgment is the backing of conciliation. If no agreement is reached through conciliation or if either party backs out of the settlement agreement before the conciliation statement is served, the people's court shall render a judgment without delay.

28. The principle of arguing for a party himself means that parties to civil actions are entitled in the trials by the people's courts to argue for themselves. It is because of this principle that the civil procedure in the PRC is inclined towards the adversary procedure.

This principle shall run through the whole proceedings of a civil litigation procedure, not only in the phase of court debate. Both parties shall be allowed to argue not only in the procedure of first instance, but also in second instance and the procedure for trial supervision as well.

The form of the debate is mainly oral, but the written one is also possible. The topic of the debate is primarily the civil dispute itself. In addition, the issues in the procedural aspect can be also argued.

29. The principle of dealing with one's own rights means that the parties are free to deal with their own civil rights and litigation rights in the way they prefer within the scope provided by the law (Article 13 of the CCPL). In 2012, the CCPL adds the principle of good faith to Article 13 as the first paragraph, which means that the principle of good faith will govern the whole area of civil proceedings and any activities of all parties and even the court itself!

Like the principle of arguing, this principle shall also run through the whole proceedings. The principal expression of this principle can be seen in the following circumstances: the party can decide at his own discretion on whether to bring a lawsuit in a people's court, when his civil interests were violated or disputed; after a proceeding begins, a plaintiff may abandon his claim or a defendant may acknowledge or reject the claim or both parties may become reconciled by themselves; a litigant may decide at his own discretion on whether to file an appeal against a judgment or a ruling of first instance of a local people's court and to apply to a people's court for executing the legally effective judgment or ruling. It is obvious that the litigant's dealing activities as such are of great impact to occurrence, change or termination of a civil proceeding.

However, the party's dealing rights are limited 'within the scope provided by the law' according to the CCPL. This limitation means that the party's dealing rights are not absolute and might be subject to the interference of the state, if any litigation activities are against law or violate the civil interests of the state or others. For example, the people's court shall not approve the settlement agreement of both parties for reconciliation, and the trial shall continue, if the agreement is against law. It is also due to this reason that the people's court shall not be interfered by the litigation conduct of either party during the course of trying the civil case. Although a party may apply for withdrawing a lawsuit after bringing a suit but before pronouncing the judgment, for example, it shall still depend upon the order of the people's court whether the application shall be permitted.

30. That the people's procuratorates shall have the right to exercise legal supervision over civil procedures is stipulated in Article 14 of the CCPL. Here, the civil procedure refers to the whole civil procedure including the activities of enforcement and is no longer limited only in proceedings. This is an expansion of the procuratorate supervision.

According to the principle of procuratorate supervision, the people's procuratorate shall have the right to supervise civil proceedings. The traditional supervisory right is to lodge a protest in the people's court which made the judgment the people's procuratorate believes wrong. However, the legal effect of a protest is to trigger the retrial procedure in the people's court. A successful protest will not give the people's procuratorate the right to bring a civil lawsuit or participate in a civil proceeding directly.

In 2012 CCPL, the method of the procuratorate supervision has expanded from the protest to the procuratorate recommendation. The procuratorate recommendation can refer to the one for retrial or the one for any violation of law by judges in any trial procedure other than the trial supervision procedure. However, the procuratorate recommendation for retrial is not like the protest in three aspects: First, it will not definitely trigger the retrial procedure while the protest will. Second, it is filed by a people's procuratorate to the people's court at the same level while the protest can only be filed against the erroneous decision made by the people's court at the lower level. Third, the procuratorate recommendation for retrial against an effective legal decision can only be filed by the local people's procuratorate while the protest can be filed by the Supreme People's Procuratorate, too!

In order to strengthen the power of the people's procuratorate, Article 210 of the CCPL stipulates that a people's procuratorate may, as necessary for offering procuratorial recommendations or filing a protest to perform its duty of legal supervision, investigate and verify relevant information from the parties or those who are not parties to a case. The Supreme People's Procuratorate issued the Provisional Regulations on Supervision of Civil Proceedings on 18 November 2013 to regulate the activities of protest and recommendation.

31. Article 15 of the CCPL stipulates that where an act has infringed upon the civil rights and interests of the state, a collective organization or an individual, any state organ, public organization, enterprise or institution may support the injured unit or individual to bring an action in a people's court. The principle of supporting the injured party to bring an action in a people's court provides therefore various units, who does not have any direct interests in the case, with the right to support the injured unit or individual.

III. The Principles Particularly Applicable to Foreign Litigants

32. In addition to the principles reflecting the fundamental guarantees and the principles directing the characteristics of civil procedure, there are two principles particularly important to foreign litigants: the principle of equality and the principle of reciprocity.

Article 5 of the CCPL stipulates that aliens, stateless persons, foreign enterprises and organizations that bring suits or enter appearance in the people's courts shall have the same litigation rights and obligations as citizens, legal persons and other organizations of the PRC. If the courts of a foreign country impose restrictions on the civil litigation rights of the citizens, legal persons and other organizations of the

PRC, the people's courts of the PRC shall follow the principle of reciprocity regarding the civil litigation rights of the citizens, enterprises and organizations of that foreign country.

It is generally agreed that the principle of reciprocity applies not only to the restrictions due to the provisions of the civil procedure law, but also to the judicial immunity due to a diplomatic agreement, an international custom or an international agreement.

II. Jurisdiction in General

85. The jurisdiction means the division of the civil matters, for which the people's courts have competency, among the people's court at the same level or at various levels and the determination of the task and authority to entertain the civil cases as the case of first instance among various people's courts.

In determining jurisdiction, the Chinese civil procedure follows some basic principles:

- (1) it shall convenience the parties to carry out the proceedings;
- (2) it shall convenience the people's court to make the judgment;
- (3) it shall be of help to guarantee that the civil case be fairly tried;
- (4) it shall bring the division of the functions of the people's court at various levels into full play;
- (5) it shall correctly define the scope of international jurisdiction and realize the sovereignty.

86. In accordance with the CCPL, the jurisdiction shall according to respective standard be divided into three categories:

- (1) jurisdiction by level of court;
- (2) territorial jurisdiction;
- (3) transfer and designation of jurisdiction.

The subject matter jurisdiction applies only to the special people's courts, i.e., the military courts, the maritime courts and railway courts.

§2. SUBJECT MATTER JURISDICTION

87. There is not law in the current legal system of the PRC that the military courts may try a civil case. However, the Supreme People's Court provided the Provisions of on Several Issues Concerning the Jurisdiction of Military Courts in Civil Cases in 2012. Accordingly, the Chinese military courts shall have jurisdiction over the following civil cases:

- (1) the cases in which both parties concerned are military personnel or military entities unless otherwise provided by law;
- (2) the cases involving military secrets above the secret level;
- (3) the cases over eligibility of voters for the electoral commission established by the military; and
- (4) the cases over the identification of unclaimed property within camps.

88. In accordance with the Special Procedure for the Maritime litigation (the SPML), the maritime courts shall have jurisdiction over the cases involving maritime torts disputes, maritime contractual disputes and other maritime disputes specified by the laws (Article 4 of the SPML).

In accordance with the Decision of the Standing Committee of the National People's Congress on the Establishment of Maritime Courts in Coastal Port Cities (DEMCCPC), as of effective on 14 November 1984, the Supreme People's Court shall be responsible for the establishment, alteration and abolition of the maritime court (Article 1 of DEMCCPC). Up to now, the Supreme People's Court has established ten maritime courts. They are Maritime Courts in Tianjin, Dalian, Shanghai, Lingbo, Xiamen, Qingdao, Wuhan, Beihai, Guang-zhou and Haikou.

In accordance with the Decision, the maritime courts enjoy the status of the intermediate people's court (paragraph 92 below), the maritime courts shall have jurisdiction over maritime cases of first instance, and the high people's court in the locality where a maritime court is located shall have jurisdiction over appeals against the judgments and rulings of the maritime court (Article 3 of DEMCCPC).

89. In accordance with the judicial explanation issued by the Supreme People's Court on 16 June 1990 and 14 July 1992, the railway court shall have jurisdiction over the disputes of railway transport contract and the torts involving railway transport, as well the criminal cases involving railway transport. In the past years, all of the railway courts were completely separated from the department of railway administration and integrated into the judicial administration. According to Several Provisions of the Supreme People's Court on the Jurisdiction of Railway Transport Court of 17 July 2012, the following civil actions shall fall into the jurisdiction of the railway courts: (1) disputes over contracts on transport of railway passengers, baggage and packages; (2) disputes over railway cargo transport contracts and railway cargo transport insurance contracts; (3) disputes over international contracts through railway transport and multimodal transport contracts with railway transport enterprises as operators; (4) disputes over contracts on railway transport extended services such as commissioned consignment, packaging finishing, storage, receipt and service; (5) disputes over contracts on outsourcing services and contracting of railway transport enterprises in terms of loading and unloading, line maintenance and so on; (6) disputes over contracts relevant to the construction of railways and ancillary facilities; (7) disputes over contracts on the purchase, installation, processing contracting, maintenance and service of railway equipment and facilities; (8) disputes over compensation for personal injuries or property damages incurred from railway traffic accidents and other railway operation accidents; (9) tort disputes over damages to railway lines, locomotives, safety facilities and other properties incurred from violations of laws or regulations on railway safety protection; (10) tort disputes over environmental pollution due to railway construction and railway transport; and (11) disputes over property ownership of railway transport enterprises.

§3. JURISDICTION BY LEVEL OF COURT

90. Jurisdiction by level of court refers to the jurisdiction based upon the division of the tasks and authority to entertain civil cases of the first instance according to the levels of the people's court. This is a kind of statutory jurisdiction dividing the tasks and authority among the people's court at various levels.

The civil legislation of the PRC takes the factors into account in determining the jurisdiction: the level of the case's difficulty, which is the basis of the consideration, the characteristics, the complexity and the influential scope of the case. The people's court at various levels has therefore certain jurisdiction as the Court of First Instance over certain kinds of civil case according to the law.

In legal practice, the recent judicial explanation on this matter is Notice of the Supreme People's Court on Adjusting the Standards of Jurisdiction of the Higher People's Courts and the Intermediate People's Court over the Civil and Commercial Cases of First Instance of 3 February 2008. The factors to be considered in determining the jurisdiction among the people's courts at various levels are as follows:

- (1) *The value of the claim.* This is the most often used factor in determining the jurisdiction between the high people's court and the intermediate people's court, and between the intermediate people's court and the basic people's court. However, the values of the claim to determine the jurisdictions varies from provinces to provinces and from districts to districts, because China is a large country and its social and economic development is quite different from area to area. Accordingly, for instance, the higher people's court of Beijing, Shanghai, Guangdong, Jiangsu, or Zhejiang may have jurisdiction over a civil or commercial case of first instance with the subject matter of action at a value of more than RMB 200 million. But the limit value for the higher people's courts of Qinghai, Ningxia and Tibet are RMB 20 million. The intermediate people's courts within the territorial jurisdictions of Beijing and Shanghai, and the intermediate people's courts in provincial capital cities, cities under separate state planning and more developed cities within the territorial jurisdictions of Guangdong, Jiangsu and Zhejiang may have jurisdiction over a civil or commercial case of first instance with the subject matter of action at a value of not less than RMB 50 million. But the limit value for the intermediate people's courts within the territorial jurisdiction of Qinghai, Ningxia and Tibet are RMB 1 million.
- (2) *The types of the case.* Usually, the cases involving foreign element or Hong Kong, Macao and Taiwan shall be entertained by the people's court at higher level with less amount requirement for the value of the claim than the normal cases. In Beijing, Shanghai, Guangdong, Jiangsu, or Zhejiang, for example, a civil or commercial case of first instance where a foreign element or Hong Kong, Macao and Taiwan element is involved with the subject matter of action at a value of more than RMB 100 million shall be in the jurisdiction of the higher people's court. But now, the types of the cases used as the factors in determining jurisdiction include also the cases with property as their contents, the cases of economic disputes, the cases involving joint venture enterprises, the

cases of the property of building and land, the cases of disputes in future commodities, and more. The People's Supreme Court shall give its instructions from time to time on detailed divisions.

- (3) *The limited amount of the entertained cases.* This is a quite new factor used by the Supreme People's Court in determining the jurisdiction between the high people's court and the intermediate people's court. For example, the Supreme People's Court used to require that the high people's courts of Shanghai shall receive the cases involving foreign element or Hong Kong, Macao and Taiwan not less than ten annually.

The Supreme People's Court specially requires that the higher people's court shall ask for approval if the higher people's court deems a case as the case with major impact upon its jurisdiction which, however, exceeds the value of the claim or the limited amount of entertained case specified by the Supreme People's Court.

91. In accordance with the CCPL, the basic people's courts shall have jurisdiction as Courts of First Instance over civil cases, except the law stipulates otherwise (Article 17).

92. The intermediate people's courts shall have jurisdiction as Courts of First Instance over the following types of civil cases:

- (1) major cases involving foreign element;
- (2) cases that have major impact on the area under the jurisdiction;
- (3) cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts (Article 18).

According to the relevant regulations of the Supreme People's Court, those cases as determined by the Supreme People's Court to be under the jurisdiction of the intermediate people's courts are the following two major types:

- (1) Patent dispute cases shall be under the jurisdiction of designated intermediate court as the Court of First Instance. According to the Provisions of the Supreme People's Court on the Division of Work in the Trial of Administrative Intellectual Property Cases Involving the Authorization and Determination of Rights over Patent, Trademark, etc. of 22 June 2009, the power to hear the following cases in the first or second instance shall remain with the intellectual property divisions of the relevant intermediate people's court of Beijing, the Higher People's Court of Beijing and the Supreme People's Court:
 - (a) cases on refusing to accept the patent reexamination decisions or nullification decisions made by the patent reexamination board of the patent administration under the State Council;
 - (b) cases on refusing to accept the decisions on the compulsory license for patent usage or the royalties payable for compulsorily licensed patent usage as made by the patent administration under the State Council;

- (c) cases on refusing to accept the trademark reexamination decisions or judgments made by the trademark review and adjudication board of the industry and commerce administration under the State Council;
 - (d) cases on refusing to accept the reexamination or cancellation decisions of the layout design of integrated circuits as made by the intellectual property administration under the State Council;
 - (e) cases on refusing to accept the decisions on the involuntarily licensed use of layout designs of integrated circuits or judgments on the payments for the involuntarily licensed use of layout designs of integrated circuits as made by the intellectual property administration under the State Council;
 - (f) cases on refusing to accept the reexamination decisions, nullification decisions or decisions on the change of name of new plant varieties as made by the new plant variety reexamination board of the agriculture or forestry administration under the State Council; or
 - (g) cases on refusing to accept the compulsory license decisions on the use of new plant varieties or judgments on the royalties payable for compulsorily licensed use of new plant varieties as made by the agriculture or forestry administration under the State Council.
- (2) The major civil cases involving an element of Hong Kong, Macao and Taiwan. These cases are not the foreign-related cases; however, they are of distinct characteristics and have distinct social impact.

93. The higher people's courts shall have jurisdiction as Courts of First Instance over civil cases that have major impact on the area under the jurisdiction (Article 19).

94. The Supreme People's Court shall have jurisdiction as the Court of First Instance over the following civil cases:

- (1) cases that have major impact on the whole country; and
- (2) cases that the Supreme People's Court deems that should be tried by itself (Article 20).

§4. TERRITORIAL JURISDICTION (VENUE)

95. Territorial jurisdiction refers to jurisdiction based upon the division of the tasks and authority to entertain civil cases of the first instance according to certain area. This kind of jurisdiction aims at dividing the tasks and authority among the people's court at the same level.

There are two types of territorial jurisdiction according to the CCPL: the general territorial jurisdiction and the specific territorial jurisdiction.

I. General Territorial Jurisdiction

96. The general territorial jurisdiction is determined by the relation between the place where the parties are located and the people's court in that place. This kind of jurisdiction does not require any specificity of litigation and shall apply to all civil cases except for the specific litigations.

97. In accordance with the CCPL, a civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court in the place of the defendant's domicile (Article 21). This principle that the plaintiff comes to the defendant is the basic principle of the general territorial jurisdiction. If the place of the defendant's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court of the place of his habitual residence. The habitual residence is the place where a citizen consecutively lives for more than one year after he left his domicile.

A civil lawsuit brought against a legal person or any other organization shall be under the jurisdiction of the people's court in the place where the defendant has his domicile. Where the domiciles or habitual residences of several defendants in the same lawsuit are in the areas under the jurisdiction of two or more people's courts, all of those people's courts shall have jurisdiction over the lawsuit (Article 21).

98. This principle that the plaintiff comes to the defendant has the following four kinds of exceptions where the defendant shall come to the plaintiff:

- (1) the cases concerning personal status brought against persons not residing within the territory of the PRC;
- (2) the cases concerning the personal status of persons whose whereabouts are unknown or who have been declared as missing;
- (3) the cases brought against persons who are subject to any compulsory correctional measure; or
- (4) the cases brought against persons who are in imprisonment.

These four kinds of cases shall be under the jurisdiction of the people's court in the place where the plaintiff has his domicile. If the place of the plaintiff's domicile is different from that of his habitual residence, the lawsuit shall be under the jurisdiction of the people's court in the place of the plaintiff's habitual residence (Article 22).

In the legal practice, there are some other exceptions according to the relevant judicial explanations which shall be under the jurisdiction of the people's court in the place of the plaintiff's domicile. For example, the lawsuit of divorce brought by a non-serviceman against a serviceman; the lawsuit brought by a person in imprisonment against another person who is also in imprisonment, but the lawsuit shall be under the jurisdiction of the people's court in the place where the defendant is in imprisonment if he has been in imprisonment for more than one year; the lawsuit involving claims for alimony, support for children or elders in which there are more than one defendants whose domiciles are not under the same area of a jurisdiction.

Besides that, the lawsuit of divorce brought by the oversea Chinese who was married in the PRC but settled in a foreign country shall be under the jurisdiction of the people's court in the place where the marriage was made or where the last domestic residence of one party was, if the court of the country where he is settled refused to entertain the case by the reason that the lawsuit of divorce must be under the jurisdiction of the court in the place where the marriage was made; the lawsuit of divorce brought by the oversea Chinese who was married outside the PRC and settled in a foreign country shall be under the jurisdiction of the people's court in the place where the original residence is or where the last domestic residence of one party was, if the court of the country where he is settled refused to entertain the case by the reason that the lawsuit of divorce must be under the jurisdiction of the court with the nationality of the party; the lawsuit of divorce brought by the Chinese citizen who is living outside the PRC but not settled in a foreign country shall be under the jurisdiction of the people's court in the place of the original residence of the plaintiff or the defendant.

II. Special Territorial Jurisdiction

99. The specific territorial jurisdiction is determined by the specificity of the litigation, which is explicitly stipulated by the law, and the necessity of the special jurisdiction.

100. In accordance with the CCPL and the Chinese theory of the civil procedure, the specific territorial jurisdiction applies to the following cases:

- (1) a lawsuit brought on a contract dispute shall be under the jurisdiction of the people's court in the place where the defendant has his domicile or where the contract is performed (Article 23);
- (2) a lawsuit brought on an insurance contract dispute shall be under the jurisdiction of the people's court in the place where the defendant has his domicile or where the insured object is located (Article 24);
- (3) a lawsuit brought on a bill dispute shall be under the jurisdiction of the people's court in the place where the bill is to be paid or where the defendant has his domicile (Article 25). According to the judicial explanation issued by the Supreme People's Court on 14 July 1992, the place where the bill is to be paid means the place which is indicated in the bill as the place where the payment is made;
- (4) a lawsuit brought for a dispute arising from formation, shareholder eligibility confirmation, profit distribution, dissolution or any other matter of a company shall be under the jurisdiction of the people's court at the place of domicile of the company (Article 26);
- (5) a lawsuit arising from a dispute over a railway, road, water, or air transport contract or over a combined transport contract shall be under the jurisdiction of the people's court in the place of original departure or the place of destination or where the defendant has his domicile (Article 27);

- (6) a lawsuit brought on a tortious act shall be under the jurisdiction of the people's court in the place where the tort is committed or where the defendant has his domicile (Article 28). According to the judicial explanation of 14 July 1992, the place where the tort is committed includes the place where the tort is carried out and where the result of the tort takes place;
- (7) a lawsuit brought on claims for damages caused by a railway, road, water transport or air accident shall be under the jurisdiction of the people's court in the place where the accident occurred or where the vehicle or ship first arrived after the accident or where the aircraft first landed after the accident, or where the defendant has his domicile (Article 29);
- (8) a lawsuit brought on claims for damages caused by a collision at sea or by any other maritime accident shall be under the jurisdiction of the people's court in the place where the collision occurred or where the ship in collision first docked after the accident or where the ship at fault was detained, or where the defendant has his domicile (Article 30);
- (9) a lawsuit instituted for expenses of maritime salvage shall be under the jurisdiction of the people's court in the place where the salvage took place or where the salvaged ship first docked after the disaster (Article 31);
- (10) a lawsuit brought for general average shall be under the jurisdiction of the people's court in the place where the ship first docked or where the adjustment of general average was conducted or where the voyage ended (Article 32).

101. In accordance with the Special Procedure of Maritime Litigation of the PRC, the territorial jurisdiction of maritime cases shall be decided according to the CCPL. However, the Special Procedure also makes the following additional provisions for the maritime courts:

- (1) a lawsuit brought on a maritime tortious act may be under the jurisdiction of the maritime court in the place where the ship's register port is located, in addition to the regulations of Article 28 through Article 30 of the CCPL;
- (2) a lawsuit brought on a dispute of the maritime transport contract may be under the jurisdiction of the maritime court in the place where the transfer port is located, in addition to the regulations of Article 27 of the CCPL;
- (3) a lawsuit brought on a contract dispute of renting a sea-going ship shall be under the jurisdiction of the maritime court in the place where the port delivering or returning the ship, the ship's register port is located or where the defendant has his domicile;
- (4) a lawsuit brought on a maritime insurance contract dispute shall be under the jurisdiction of the Maritime court in the place where the insured object is located, the accident occurs, and the defendant has his domicile;
- (5) a lawsuit brought on a dispute of the crew member's labour contract shall be under the jurisdiction of the maritime court in the place where the plaintiff has his domicile, the contract is concluded, it is the port the crew member goes aboard or leaves board, the defendant has its domicile;
- (6) a lawsuit brought on a maritime guaranty dispute shall be under the jurisdiction of the maritime court in the place where the guaranteed property is located and

the defendant has his domicile; a lawsuit brought on a ship of a mortgaged ship may also be under the jurisdiction of the maritime court in the place where the ship's register port is located;

- (7) a lawsuit brought on a dispute over the right of ownership, possession, use or priority of a sea-going ship shall be under the jurisdiction of the maritime court in the place where the ship is located or the ship's register port is located, and the defendant has his domicile (Article 6 of the SPML).

III. Exclusive Jurisdiction and Jurisdiction Based upon an Agreement

102. In addition to the general and specific territorial jurisdictions, there are still two types of jurisdiction under the topic of territorial jurisdiction in the CCPL: the exclusive jurisdiction and the jurisdiction based upon an agreement.

103. The following cases shall be under the exclusive jurisdiction of the people's courts specified in the CCPL:

- (1) a lawsuit brought on a dispute over real estate shall be under the jurisdiction of the people's court in the place where the estate is located;
- (2) a lawsuit brought on a dispute over harbour operations shall be under the jurisdiction of the people's court in the place where the harbour is located; and
- (3) a lawsuit brought on a dispute over succession shall be under the jurisdiction of the people's court in the place where the decedent had his domicile upon his death, or where the principal part of his estate is located (Article 33).

According to the judicial explanation, any party shall not make written agreement to choose the jurisdiction of other country for these lawsuits. However, the parties can choose arbitration for the disputes arising from these cases.

104. In the Special Procedure of Maritime Litigation of the PRC, there are the following additional provisions to the exclusive jurisdiction:

- (1) a lawsuit brought on a dispute over harbour operation shall be under the jurisdiction of the maritime court in the place where the harbour is located;
- (2) a lawsuit brought on claims for damages caused by the pollution at sea because the ship drained, leaked, or dumped oils or other harmful substances, or because of the maritime production or operation or the operation of disassembling, repairing a ship shall be under the jurisdiction of the maritime court in the place where the pollution occurred or where the result of the damages is or where the measures of preventing the pollution is carried out;
- (3) a lawsuit brought on a dispute arising from the performance of contracts for maritime exploration and development within the territory of the PRC and at sea where the PRC has jurisdiction shall be under the jurisdiction of the maritime court where the contract is performed (Article 7 of the SPML).

It is noticeable that these additional provisions are applicable for the exclusive jurisdiction of maritime court and not generally for the people's courts at large.

In addition, the application for determining a property at sea as ownerless shall be filed by the party with the maritime court where the property is located; the application for declaring dead in an accident at sea shall be filed with the maritime court where the authority for the maritime accident is located or the maritime court entertaining the relevant maritime cases (Article 9 of the SPML).

105. The jurisdiction based upon an agreement refers to the cases in which the parties to a contract or any other right or interest in property may agree to choose in their written contract the people's court in the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile, where the object of the action is located, or at any other place actually connected to the dispute to exercise jurisdiction over the case; however, the legal provisions regarding jurisdiction by level of court and exclusive jurisdiction shall not be violated (Article 34 of the CCPL).

§5. TRANSFER AND DESIGNATION OF JURISDICTION

106. Transfer of jurisdiction means that a people's court transfers the case, which it has entertained but found that it has no jurisdiction over it, to another people's court that has jurisdiction.

According to the CCPL, however, the people's court to which a case has been referred shall entertain the case. If it considers that, according to the relevant regulations, the case referred to it is not under its jurisdiction, it shall report to a superior people's court for the designation of jurisdiction and shall not independently refer the case again to another people's court (Article 36).

107. Designation of jurisdiction means that the people's court at higher levels may design a concrete case to a people's court at lower levels for trial.

Designation of jurisdiction usually takes place in the following situations:

- (1) a people's court which has jurisdiction over a case is unable to exercise the jurisdiction for special reasons, a superior people's court shall designate another court to exercise jurisdiction;
- (2) in the event of a jurisdictional dispute between two or more people's courts, it shall be resolved by the disputing parties through consultation, and if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the designation of jurisdiction (Article 37).

According to the Special Procedure of Maritime Litigation of the PRC, the jurisdiction dispute between a maritime court and a people's court at local level shall be resolved by the disputing parties through consultation, and if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the designation of jurisdiction (Article 10).

108. The party to an action must raise the objection within the period prescribed for the submission of defence, if it objects to the jurisdiction of a people's court after the court has entertained the case. The people's court shall examine the objection. If the objection is established, the people's court shall order the case to be transferred to the people's court that has jurisdiction over it, and if not, the people's court shall reject it. If a party raises no objection to jurisdiction and responds to the action by submitting a written statement of defence, the people's court accepting the action shall be deemed to have jurisdiction, unless the provisions regarding hierarchical jurisdiction and exclusive jurisdiction in Articles 17, 18, 20 and 33 are violated (Article 127 of the CCPL).

109. The people's court at higher levels shall have the power to try civil cases over which the people's courts at lower levels have jurisdiction as Courts of First Instance. If it is necessary to transfer civil cases over which they themselves have jurisdiction as Courts of First Instance to people's courts at lower levels for trial, the people's court at higher level shall file a report with its superior for approval of the transfer.

If a people's court at a lower level that has jurisdiction over a civil case as Court of First Instance deems it necessary to have the case to be tried by a people's court at a higher level, it may submit it to and request the people's court at a higher level to try the case (Article 38 of the CCPL).

In theory, it is noticeable that the transfer of jurisdiction is designed to affirm the norm that the people's court having no jurisdiction over a case cannot try it without authorization, while the designation of jurisdiction is designed to resolve the problem of jurisdiction conflicts.

Chapter 2. International Jurisdiction

§1. RULES APPLICABLE IN THE ABSENCE OF A TREATY

I. Introduction to the Applicable Principles

110. International jurisdiction has a common term in the PRC, i.e., the jurisdiction involving foreign element. It applies to the civil cases involving foreign element.

In accordance with the judicial explanation of the Supreme People's Court on 14 July 1992, the civil case involving foreign element refers to any civil case of which a party or both parties are foreign nationals, stateless persons, or foreign enterprises and organizations, or of which the legal facts occurred outside China that established, changed or terminated the civil legal relations between the parties, or of which the litigant object of the case is outside China.

111. It is true that there is a special part in the CCPL providing the Special Provisions for Civil Procedure of Cases Involving Foreign Element, in which it stipulates that 'the provisions of this Part shall be applicable to civil proceedings within the territory of the PRC in regard to cases involving foreign element', however, it stipulates also that 'where it is not covered by the provisions of this Part, other relevant provisions of this Law shall apply'. Accordingly, the domestic jurisdiction mentioned above shall apply if the rules discussed in this chapter do not cover the case.

Briefly speaking, the international jurisdiction jointly carries out the following principles: the principle of territorial jurisdiction, the principle of nationality jurisdiction and the principle of actual control jurisdiction.

II. The Principle of Territorial Jurisdiction

112. The principle of territorial jurisdiction means that it shall take the facts of the residence or domicile of the party, the place where the object of the litigation is located or where the relevant legal relations and legal facts are located as the linking factors to determine the jurisdiction.

In addition to the provisions of the domestic jurisdiction (paragraphs 95 ff.) and the general provision of the international jurisdiction (paragraph 111), where provides that the territorial jurisdiction is applicable to the civil cases involving foreign elements, the CCPL provides a supplementary article for the territorial jurisdiction in the international jurisdiction as follows.

In the case of a lawsuit arising from a contract dispute or other disputes over property rights and interests, brought against a defendant who has no domicile within the territory of the PRC, if the contract is signed or performed within the territory of the PRC, or if the object of the lawsuit is located within the territory of the PRC, or if the defendant has distrainable property within the territory of the PRC, or if the defendant has its representative office within the territory of the PRC, the people's court in the place where the contract is signed or performed, or where the

object of the lawsuit is, or where the defendant's distrainable property is located, or where the torts are done, or where the defendant's representative office is located, shall have jurisdiction (Article 265).

III. Other Principles

113. The principle of nationality jurisdiction and the principle of actual control jurisdiction are also reasonably reflected in the Chinese international jurisdiction. The principle that the plaintiff comes to the defendant is a typical example of the principle of nationality jurisdiction, when the defendant is a Chinese. The provisions take the reasonable factors from the principle of actual control, according to which the Chinese people's courts shall have jurisdiction over a case where an object of the lawsuit or the defendant's distrainable property is located within the territory of the PRC.

IV. Jurisdiction Based upon Agreement

114. According to the CCPL of 2012, parties to a dispute over a contract concluded with foreign element or over property rights and interests involving foreign element shall take the same principle as that for domestic cases. So, the parties may, through written agreement, choose the people's court at the place of domicile of the defendant, at the place where the contract is performed or signed, at the place of domicile of the plaintiff, at the place where the subject matter is located or at any other place actually connected to the dispute to have jurisdiction over the dispute, but the provisions of this Law regarding hierarchical jurisdiction and exclusive jurisdiction shall not be violated. (Article 34).

115. According to the Special Procedure of Maritime Litigation of the PRC, the maritime court of the PRC shall also have jurisdiction over the disputes, if the parties of the maritime dispute are all foreign persons, stateless persons, foreign enterprises or organizations and make the written agreement that chooses the jurisdiction of the maritime court of the PRC, even the place having actual relations with the dispute is not within the territory of the PRC (Article 8 of the SPML).

V. Jurisdiction Based upon Recognition

116. If the defendant raises no objection to the jurisdiction of a people's court and responds to the litigation by making his defence in a civil litigation involving foreign element, he shall be deemed to have accepted that this people's court has jurisdiction over the case. This principle is by now the same as that for domestic cases (Article 127, see also above paragraph 108).

VI. Exclusive Jurisdiction

117. The lawsuit brought on disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, or Chinese-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of the natural resources in the PRC shall fall under the jurisdiction of the people's courts of the PRC (Article 266).

Like the exclusive jurisdiction in the domestic jurisdiction (paragraph 103), any party shall not make written agreement to choose the jurisdiction of other country for these lawsuits, except that they can choose arbitration for the disputes arising from these cases.

§2. INTERNATIONAL TREATIES

118. In the CCPL, there are two provisions in the General Principles of Special Provisions for Civil Procedure of Cases Involving Foreign Element in the CCPL, which may be used in determining the jurisdiction under international treaties.

119. Except those on which China has made reservation, the provisions of an international treaty shall apply, if the international treaty concluded or acceded to by the PRC contains provisions differing from provisions of the Law (Article 260).

The lawsuit brought against a foreign national, a foreign organization or an international organization that enjoys diplomatic privileges and immunities shall be dealt with in accordance with the relevant law of the PRC and the provisions of the international treaties concluded or acceded to by the PRC (Article 261).

Part III. Actions and Claims

Chapter 1. Actions

§1. DEFINITION

120. There is not a legal definition of 'action' in the CCPL. It is the task of the theory of civil procedure to define what an action is.

121. Generally, the Chinese theory of civil procedure define an action as follows.

It is a litigant conduct of a citizen, a legal person or other organization, who requests a people's court to provide legal protection by a judgment, when he or it deems that his or its own civil right or interests or the right and interests legally under his or its control or management has been violated or become a disputed one with others.

122. Action is an important procedural right of a party. It shall be notified that the right of action is distinguished from the substantive right, though the latter is the basis of the former. So, the right of action does not necessarily mean the right to win a lawsuit.

123. Generally, a civil proceeding can only be triggered by an action. However, an action brought by a party shall not necessarily start a proceeding, because it shall be examined by the people's court. Only when the action meets the legal requirements can it be entertained.

§2. ADMISSIBILITY OF THE ACTION

124. In accordance with the CCPL, the following conditions must be fulfilled when a lawsuit is brought:

- (1) the plaintiff must be a citizen, legal person or any other organization that has a direct relation of interest in the case;
- (2) there must be a definite defendant;
- (3) there must be a special claim or claims, facts, and reasons for the suit; and

- (4) the suit must be within the scope of acceptance for civil actions by the people's courts and under the jurisdiction of the people's court where the suit is entertained (Article 119).

I. Plaintiff

125. It is true that any citizen, legal person and any other organization may become a party to a civil action (Article 48). However, a party to a civil action can only become a plaintiff when he or it has a direct relation of interest in the case.

There is not a legal definition of interest in the law, neither in the judicial explanation. But the theory of civil procedure generally holds that the direct relation of interest means what a plaintiff claims at the court for protection and judgment must be the civil interest of his own or under his legal control or management according to law.

126. That the plaintiff must have direct interest to the case does not mean that the plaintiff must personally go to the court and present the statement of complaint.

In accordance with the CCPL, legal persons shall be represented by their legal representatives in the litigation. Other organizations shall be represented by their principal heads in the proceedings (Article 48).

Any person with no legal capacity to engage in litigation shall have his guardian or guardians as statutory agents to act for him in a lawsuit. If the statutory agents try to shift responsibility as agents *ad litem* upon one another, the people's court shall appoint one of them to represent the person in litigation (Article 57).

In a divorce case in which the parties to the action have been represented by their agents *ad litem*, however, the parties themselves shall still appear in court in person, unless they are incapable of expressing their own will. A party who is truly unable to appear in court due to a special reason shall submit his opinions in writing to the people's court.

Besides the traditional types of action such as collective actions and the third-party action discussed below immediately, the CCPL of 2012 creates a new type of action: action for the public interests. Article 55 stipulates that for conduct that pollutes environment, infringes upon the lawful rights and interests of vast consumers or otherwise damages the public interest, an authority or relevant organization as prescribed by law may institute an action in a people's court. In this type of action, the plaintiff shall be the governmental organs with legal provision, such as the Supervision Authority proscribed in the Marine Environmental Protection Law, or the organizations which shall be relevant to the rights and interests they protect and might have legal provision, for instance, the Consumer Organizations in the Law on the Protection Consumer Rights and Interests, or need verifying by the people's court, as still need specifying in legal practice.

II. Collective Actions

127. Collective actions, or joint actions, refer to the actions in which a party or both parties consist of two or more than two persons. There are two types of collective actions stipulated in the CCPL:

- (1) the object of the action is the same to the parties;
- (2) the object of the action is of the same category and people's court considers that, with the consent of the parties, the action can be tried combined (Article 53).

The former is also named 'the necessary joint action' and the latter 'the common joint action'.

128. In the necessary joint action where a party of two or more persons to a joint action have common rights and obligations with respect to the object of action and the act of any one of them is recognized by the others of the party, such an act shall be valid for all the rest of the party (Article 54).

If a party who must participate in a joint action fails to participate in the proceedings, the people's court shall add him to participate (Article 132). However, if the party to be participated in the proceedings is a plaintiff and has explicitly stated to abandon his substantial right, the people's court may notify him to participate. Those who do not want to participate in the proceedings and neither abandon their substantial rights shall be still added as one of the joint plaintiffs. The fact that they do not participate in the proceedings shall not affect the trial and judgment made by the people's court according to law.

129. In the common joint action where a party of two or more persons have no common rights and obligations with respect to the object of action, the act of any one of them shall not be valid for the rest.

130. If the persons comprising a party to a joint action are large in number, the party may elect representatives from among themselves to act for them in the litigation according to the CCPL. The acts of such representatives in the litigation shall be valid for the party they represent. However, modification or waiver of claims or admission of the claims of the other party or pursuing a compromise with the other party by the representatives shall be subject to the consent of the party they represent (Article 54).

This kind of representative can be elected by all of the persons comprising a party. Part of the persons may elect a representative of their own. The persons who do not have their representative may participate in the proceeding personally in the necessary joint action or bring a separate lawsuit in the common joint action.

131. Where the object of action is of the same category and the persons comprising one of the parties is large but uncertain in number at the commencement of the action, the people's court may issue a public notice, stating the particulars and claims of the case and informing those entitled to participate in the action to register their rights with the people's court within a fixed period of time.

Those who have registered their rights with the people's court may elect representatives from among themselves to proceed with the litigation; if the election fails its purpose, such representatives may be determined by the people's court through consultation with those who have registered their rights with the court.

The acts of such representatives in the litigation shall be valid for the party they represent; however, modification or waiver of claims or admission of the claims of the other party or pursuing a compromise with the other party by the representatives shall be subject to the consent of the party they represent.

The judgments or rulings rendered by the people's court shall be valid for all those who have registered their rights with the court. Such judgments or rulings shall apply to those who have not registered their rights but have instituted legal proceedings during period of limitation of the action (Article 54).

132. The persons who go to register their rights with the people's court according to the provision of the CCPL shall prove their legal relations with the party at the other side and the damages suffered. Those who cannot prove shall not be registered and they can bring a separate lawsuit.

The judgment of the people's court shall be executed within the scope of the registration. However, the people's court shall make a ruling to apply the judgment and the ruling, which have been made by the people's court, for the lawsuit which is brought by those who did not register their rights within the limit of the litigation and which is held by the people's court as sound claims.

III. The Third-Party Action

133. If a third party considers that he has an independent claim to the object of action of both parties, he shall have the right to bring an action.

Where the outcome of the case will affect a third party's legal interest, such a party, though having no independent claim to the object of action of both parties, may file a request to participate in the proceedings or the people's court shall notify the third party to participate. A third party that is to bear civil liability in accordance with the judgment of the people's court shall be entitled to the rights and obligations of a party in litigation (Article 56).

Therefore, there might be two types of third-party action: the third-party action having an independent claim and the third-party action having no independent claim.

134. The third party having an independent claim has the status of plaintiff in the proceedings. To participate in the proceeding, he shall bring a lawsuit against both the parties of the action which is going on in the people's court and can enjoy the independent substantial right of claims to the object of the action under dispute.

Actually, the people's court has merged two actions into one in the case of a third-party action: one is the action between the original parties, the other is the action between the third party and both of the original parties.

135. The third party having no independent claim is neither plaintiff nor defendant in the proceedings. Although he shall usually participate in one party and argue for this party and against the other party, his real position is actually to safeguard his own civil rights and interests.

Unlike the third party having an independent claim, the third party having no independent claim can enjoy only limited procedural rights, e.g., he has no right to raise objection to the jurisdiction of a people's court, to admit, waive or modify claims, or apply for withdrawal of the case.

If a third party fails to participate in an action because of the fault which is not attributable to the third party and there is evidence that an effective judgment, ruling or consent judgment is entirely or partially erroneous and causes damage to his civil rights and interests, he may institute an action in the people's court which entered the judgment, ruling or consent judgment within six months from the day when he knows or should have known that his civil rights and interests have been damaged. If, after trial, the third party's claims are supported, the people's court shall modify or revoke the original judgment, ruling or consent judgment. If the third party's claims are not supported, the claims shall be dismissed. (Article 56)

IV. Defendant

136. The CCPL requires 'definite' for the defendant as a condition of the admissibility of the action.

137. Like plaintiff, a defendant may entrust his representative in the proceedings (see paragraph 126). The defendant may consist of more than two persons (see paragraphs 127 ff.). And the defendant may be a third party in an action, but only being the third party having no independent claim.

V. The Formal Requirements

138. In accordance with the CCPL, when a lawsuit is brought, a statement of complaint shall be submitted to the people's court, and copies of the statement shall be provided according to the number of defendants. However, he may state his complaint orally, if the plaintiff has genuine difficulty in presenting the statement of complaint in writing. The people's court shall then transcribe the complaint and inform the other party of it accordingly (Article 120).

139. The statement of complaint shall clearly set forth the following:

- (1) for the plaintiff: the name, gender, age, ethnic status, occupation, work unit and home address, contact methods, or the name and address of a legal person or any other organization and the name, title and contact methods of the legal representative or the principal head of that legal person or organization;
- (2) for the defendant: information including but not limited to the name, gender, work unit and address, or the name and address of the legal person or any other

organization (Article 121); however, when the defendant submits his written statement after receiving the complaint, his statement shall provide his name, gender, age, ethnic status, occupation, work unit, address and contact methods, or the name and address of a legal person or any other organization and the name, title and contact methods of the legal representative or primary person of that legal person or organization (Article 125);

- (3) the claim of the suit, the facts and reasons upon which the suit is brought; and
- (4) the evidence and its source, as well as the name and home address of the witness (Article 121).

VI. The Inadmissible Situations

140. The people's court must entertain the lawsuit filed in conformity with the provisions of Article 119 of the CCPL (see paragraph 124). With respect to lawsuit described in the following, the people's court shall deal with them in the light of their specific circumstances:

- (1) for a lawsuit within the scope of administrative actions in accordance with the provisions of the Administrative Procedure Law, the people's court shall advise the plaintiff to institute administrative proceedings;
- (2) if, according to the law, both parties have on a voluntary basis reached a written agreement to submit their dispute to an arbitral organ for arbitration, they may not institute legal proceedings in a people's court. The people's court shall advise the plaintiff to apply to the arbitral organ for arbitration;
- (3) in case of disputes which, according to the law, shall be dealt with by other organs, the people's court shall advise the plaintiff to apply to the relevant organ for settlement;
- (4) with respect to cases that are not under its jurisdiction, the people's court shall advise the plaintiff to bring a lawsuit in the competent people's court;
- (5) with respect to cases in which a judgment or ruling or consent judgment has already taken legal effect, but either party brings a suit again, the people's court shall advise that party to file a petition for retrial instead, except when the ruling of the people's court is one that permits the withdrawal of a suit;
- (6) with respect to an action that may not be filed within a specified period according to the law, it shall not be entertained, if it is filed during that period;
- (7) in a divorce case in which a judgment has been made disallowing the divorce, or in which both parties have become reconciled after conciliation, or in a case concerning adoptive relationship in which a judgment has been made or conciliation has been successfully conducted to maintain the adoptive relationship, if the plaintiff files a suit again within six months in the absence of any new developments or new reasons, it shall not be entertained (Article 124). However, the defendant may not be subject to this restriction.

§3. VEXATIOUS LITIGATION

141. In order to prevent a vexatious use of the right of action, the CCPL creates a procedure for the people's court to examine the statement of complaint.

When a people's court receives a statement of complaint or an oral complaint and finds after examination that it meets the requirements for acceptance, the court shall place the case on the docket within seven days and notify the parties concerned. If it does not meet the requirements for acceptance, the court shall make a ruling within seven days to reject it. The plaintiff, if not satisfied with the order, may file an appeal (Article 123).