



Debt Collection in China

A brief introduction to collecting debts in China through litigation.

Introduction

Debt collection broadly refers to the collecting of payments from a contractual counterpart, such as a customer or client. In China the only formal ways to force a debtor to pay are litigation through the courts, or arbitration (if the parties agreed to an arbitration clause). While never easy, debt collection disputes in China are much more manageable with the right approach.

Prevention

Before signing a contract or doing business in China, it is important to investigate whether or not you are dealing with a reliable partner. For general and financial information of the company, the National Enterprise Credit Information Publicity System Database can be consulted. Other databases contain information on whether a company has been involved in any lawsuits. For very large deals, a more in-depth due diligence is recommended.

Preparation for litigation

Litigation can be costly and time consuming. Therefore the profitability of the case needs to be evaluated by comparing the size of the debt with the litigation costs, and the opportunity of winning the case and enforcing the judgment.

The role of evidence is crucial – what evidence is available, and in what form (e.g. does it need to be notarized and/or legalized)? A professional lawyer should be able to help.

Competent Court

Most debt collection cases will be filed at the district-level court. There is no set time limit for a Chinese court to deal with cases involving a foreign party, but it usually takes 6-12 months to get a first instance judgment. Either party then has 30 days (from the day it receives the first instance judgment) to appeal the decision in the competent court at one level higher.

Rulings from a foreign court are rarely enforced in China, and offering jurisdiction to a European or American court is generally not such a good idea. Increasingly, foreign parties prefer to litigate in the courts of China's big cities, though selecting domestic or international arbitration is an alternative.

Litigation procedure

1. Lawyer's Demand Letter

Dispute resolution often starts with a letter from the claiming party's lawyer to the defendant, detailing the debt and demanding immediate payment and threatening litigation if the debt is not paid. In China such a demand letter is not mandatory, and the biggest drawback is that the defendant will be aware of the upcoming claim. On the other hand, demand letters are a relatively inexpensive tool to try get the parties together, and success rates are not low. Typical demand letters include:

- ◆ Details of the parties
- ◆ Case facts
- ◆ Calculation of claims
- ◆ Repayment demand
- ◆ Deadline for response

2. Seizure assets

When (or after) filing of the lawsuit, the claimant can apply to freeze assets of the defendant, to the amount of the claim. This can include the freezing of an amount on the defendant's bank account (or the whole bank account, if it has less funds than the claim amount) or the preservation of assets (e.g. a car, machinery) or real property. Chinese courts are very open to asset freezing applications, as long as the following conditions are met:

- ◆ A lawsuit has been filed;
- ◆ The claimant provides the court with information on the assets to be frozen;
- ◆ The claimant provides a security deposit, which is usually between 30% and 100% of the amount to be frozen. In practice however, professional guarantee companies can stand-in for the guarantee, and the cost is quite reasonable.

3. Hearing(s)

The court will often organize 1 or 2 court hearings, though in some cases more are necessary. During these hearings, the focus is usually on clarifying and specifying the agreements between the parties. This is why it is so important to have evidence that is very difficult to refute.

4. Enforcement of Judgment

Once a judgment is issued and effective (a judgment can be appealed once), if the defendant refuses to enforce the judgment voluntarily then the claimant has the right to apply to the court for enforcement. If assets have been frozen, then the judgment can be directly enforced against those assets. Otherwise, the claimant will likely have to provide the court with further information on the assets that can be seized.

Evidence

Debt collection cases rely heavily on documentary evidence. Having the right documents in the right forms is therefore crucial. However, the rules on the format of evidences that can be accepted, are very strict – especially for foreign parties.

Photocopies, reproductions and simple print-outs of documents can be easily falsified and so by themselves have very little evidentiary value in Chinese court of law. So for example, parties should ideally keep the original contract (i.e. with the original stamp of the Chinese customer or supplier). Moreover:

- ◆ E-mail, WeChat or other IT correspondence must be shown directly from the computer or mobile phone; and if not possible, these must be notarized by a public notary – and if the notary is abroad, the notarization must be authenticated by the Chinese Embassy in that country.
- ◆ All documents created abroad (incl. the Power of Attorney appointing your Chinese lawyer) must be certified in the country of origin and then legalized by the Chinese embassy.
- ◆ Chinese judges do not work in English, and so foreign-language documents must always be translated. Some courts allow this to be done only by court-appointed translation companies.