The Requirements on Documents in Foreign-related Civil Cases in China

Description

When disputes occur, foreigners and oversea Chinese may be involved in civil and commercial litigations in China, either as plaintiffs or defendants. As a cross-border legal service provider at Shanghai Landing Law Offices, we have been helping foreign clients in their legal battles in China courts for more than a decade.

Compared with domestic cases, foreign party to a court case in China shall comply with additional requirements on their identity certificates, the power of attorney, civil complaints and evidential materials, namely, notarization and authentication formalities. Notarization refers to the certification/verification by local notary office (notary public) in the foreign country, and authentication or legalization refers to certification at Chinese consulates in that foreign country.

For those who are not familiar with the China civil procedure law, the requirements are difficult to understand. Here we summarize some main points as follows, to give you some guides.

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1. The Identity Certificate

In accordance with the Article 523 of *Interpretation of the Supreme People's Court concerning the application of the Civil Procedure Law of the People's Republic of China (hereinafter as* ***Interpretation****):*

(1) A foreigner shall submit to the China court his passport or other official document to prove his identity. Such personal identity documents like passports are not required to be notarized and/or legalized.

(2) A foreign corporation or organization shall submit both the certificate of the corporation and the identity document of the corporate representative to the China court. In addition, the above certificates shall be notarized by the notary office in the country where the corporation is located[1] and then authenticated by the Chinese embassy or consulate in that country.[2]

2. Power of Attorney

A power of attorney is a must-have legal document issued by the foreign parties to their China lawyers in order to enable the latter to represent the former in court proceedings.

2.1 Foreign Individuals or Foreign Corporations

In accordance with Article 264 of *Civil Procedure Law of the People's Republic of China (hereinafter as* ***Civil Procedure Law****)* and Article 524, 525 and 526 of the Interpretation, when a foreigner, a stateless person, a foreign corporation or organization without a domicile within the territory of China appoints a lawyer or other Chinese people as his or its agent *ad litem*:

(1) A power of attorney signed in the presence of a judge of China court is valid and legal without any

further requirement.[3] So presumably, the foreign individual party is physically in China and can appear in person before the judges.

(2) A power of attorney signed in the territory of the People's Republic of China without the presence of a Chinese judge should be notarized by Chinese Notary Offices.[4]

(3) A power of attorney signed outside the territory of China, shall go through one of the following certification procedures:[5]

(a) If there is diplomatic relation between two countries, it shall be notarized by the notary office of that country and then authenticated by the embassy or a consulate of China in that country.

(b) If there is no embassy or consulate of the People's Republic of China in that country, the power of attorney shall be authenticated by an embassy or a consulate in that country of a third country that has diplomatic relations with the People's Republic of China, and then transferred for authentication to the embassy or a consulate of the People's Republic of China in that third country, or by a local patriotic overseas Chinese organization.

In practice, in some countries, after notarization, the POA is submitted to the foreign ministry for apostil before being presented to Chinese consulate for authentication/legalization.

(c) Any other forms of documents agreed in relevant bilateral treaties. [6]

(d) It shall be noted that China Civil Procedure Law has made it crystal clear that such POA from foreign party is invalid if not properly processed as required above.

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2. 2 Chinese Citizen Residing Abroad

In accordance with Article 59 of Civil Procedure Law, when a citizen of the People's Republic of China who is residing in a foreign country mails or delivers a power of attorney to China:

(1) The power of attorney shall be authenticated by the embassy or consulate of the People's Republic of China in that country.

(2) If there is no embassy or consulate in that country, the power of attorney shall be first authenticated by an embassy or consulate of a third country which has a diplomatic relationship with the People's Republic of China in that country and then be authenticated by the embassy or consulate of the People's Republic of China in the third country or be authenticated by the local patriotic overseas Chinese organization.

As compared to requirements of foreign citizens participating in China legal actions, Chinese citizens habitually residing abroad may directly complete the certification of their identity at Chinese consulates in their residing countries without going through the two-step "notarization and authentication" formalities.

3. The Civil Complaint and Application for Enforcements

Given that there is no requirement in any specific provision in Civil Procedure Law or its Interpretation,

in practice, the China courts generally require the civil complaints to be notarized and authenticated just the same as the power of attorney, provided that such complaints are signed and delivered from outside China.

A complaint usually refers to the brief written document setting out the plaintiff's claims, alleged facts and legal grounds for such claims. In practice, when a foreign party needs to enforce a winning court judgment, the application for enforcing court judgment is required to be processed in the same way as a complaint.

Our experience indicates that courts may not strictly insist on notarization and authentication of complaints. If the foreign parties authorize their China lawyers to sign such complaints or enforcement applications, then courts may accept such complaints or applications signed by the foreign parties without notarization and authentication.

4. The Requirement of Translation

In accordance with Article 527 of the Interpretation, the written material in foreign language (including the identity certificate, the power of attorney and the civil complaint) shall be submitted to the China court together with its Chinese translation copy. Although it is allowed for the parties to make an agreement on the choice of the translation agency, practically the court will nominate several local qualified agencies.

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5. Evidential Materials

The most onerous requirement concerning a foreign-related civil case is the notarization and authentication on admitted evidences originating outside China. This rule first appeared in an evidentiary judicial interpretation by China Supreme Court. However, in May of this year, in response to calls to relax such rules, China Supreme Court has revised the rule.

5.1 The Regulations

In accordance with Article 16 and 17 of *the Provisions of the Supreme People's Court on Evidence in Civil Proceedings,2020* (hereinafter as **Provisions on Evidence**):

1. The official documentary evidence[7] formed outside the territory of People's Republic of China shall be notarized by the notary office of that country or go through the notarization procedure stipulated in the relevant bilateral treaties.
2. The evidence of personal relationship[8] formed outside the territory of People's Republic of China shall be notarized by the notary office of the country where the party is located and authenticated by the embassy or consulate of China in that country or go through the authentication procedures stipulated in the relevant bilateral treaties.
3. The evidence submitted to the China court which is formed in Hong Kong, Macau or Taiwan shall go through relevant procedures.[9]
4. The documentary evidence or explanatory material in foreign language shall be submitted together with a Chinese translation copy issued by a qualified translation agency.[10]

5. 2 The Controversy in Practice

The vague scope of “official documentary evidence” and “personal relationship” invites lots of uncertainty and controversy in practice. For example, some judges regard documents issued by private entities as “official documentary evidence” and apply Article 16 of the Provisions on Evidence to require the notarization.[11] Meanwhile, some judges include the shareholder identification into “the evidence of personal relationship” and require both notarization and authentication. [12]

Although the Provisions of Evidence simplifies the requirements for a lot of evidences at the legislative level, it is still possible for the courts to require notarization and authentication of other foreign issued documentary evidence in a specific case. Just to be on the safe side, lawyers usually advise their clients to notarize and authenticate the documentary evidence before submitting unless there is exceptional circumstance.

6. What We Propose

It should be noted that various problems may arise from the implementation of the above provisions in practice. Failure to comply with the court’s requirement for foreign documents may result in adverse consequence including termination of proceedings. In order to lower the risks and win the case, it is essential to consult an experienced Chinese lawyer before the proceeding.

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[1] It refers to the country where the corporation is established and registered, or the third country where the corporation has completed the registration procedure.

[2] If there is no embassy or consulate of the People’s Republic of China in that country, the identity certificate shall be authenticated by an embassy or a consulate in that country of a third country that has diplomatic relations with the People’s Republic of China, and then transferred for authentication to the embassy or a consulate of the People’s Republic of China in that third country, or by a local patriotic overseas Chinese organization.

[3] Article 525 of the Interpretation

[4] Article 526 of the Interpretation

[5] Article 264 of Civil Procedure Law

[6] Article 523 of the Interpretation

[7] There is no explicit definition or scope of “official documentary evidence” in law. Practically, it refers to official documents issued by foreign government departments.

Article 91 of Provisions on Evidence stipulates that a copy containing part or all of the contents from the original document issued by the same department shall have the same probative force as the original.

[8] There is no certain definition or scope of “personal relationship” in law. It usually refers to the relationship in marriage, adoption and other family settings. It is not clear whether shareholdership or

directorship will fall within the ambits of such concept.

[9] Article 16 of the Provisions on Evidence

[10] Article 17 of the Provisions on Evidence

[11] Hubei Civil Final Judgement of No. (01) 1575, 2020

[12] Liaoning Civil Final Judgment of No. (02) 7627,2020

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