

**Mechanism and Legal Practice of Cross-border Dispute Resolution
Involving Mainland China and Hong Kong**

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Chapter 4-Notarization and Legalization

With the progress of China's Belt & Road Initiative, we have seen more and more foreign companies investing in China on the one hand, and more and more Chinese companies expediting their outbound investment on the other hand, which inevitably has led to increase in cross-border litigations. As notarization and legalization is an important issue that the parties in a foreign-related litigation in Mainland China have to deal with, in this chapter we will briefly introduce the notarization and legalization system in China, including notarization and legalization of litigants' identification documents, power of attorney and evidence.

1. Identification

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Pursuant to Articles 523 and 524 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as "Supreme Court Interpretation on Civil Procedure Law") and other pertinent provisions, identification documents and materials the parties to foreign-related civil actions shall submit include the following:

1.1 Natural person

If a foreign party to a foreign-related civil action is a natural person, it will be enough for he or she to present his or her passport or other identification documents, with no need for the same to be notarized and legalized.

1.2 Foreign enterprise or organization

Should a foreign party to a foreign-related civil action be a foreign enterprise or organization, it shall submit its identity certification documents as well. If the country in which such foreign party is incorporated has diplomatic relation with China, the said identification documents shall have been notarized by a notary office in the home country and authenticated by the Chinese embassy or consulate in that country or has undergone the legalization formalities prescribed in the relevant treaty concluded by China and that country. If there is no diplomatic relation between China and the country in which the foreign party is incorporated, its identification documents can be notarized by the notary office of that foreign country, then authenticated by the embassy or consulate accredited to that country by a third country which has diplomatic relation with both China and the said foreign country, and then further authenticated by the Chinese embassy or consulate in the said third country.

1.3 Representative

If a person participates in an action on behalf of a foreign enterprise or organization, his/her identification documents shall be notarized by a notary office in the home country and authenticated by the Chinese embassy or consulate in that country or undergo the legalization formalities prescribed in the relevant treaty concluded by China and that country.

On the other hand, where the representative of a foreign national, enterprise or organization signs a power of attorney which authorizes an agent to act on the principal's behalf in litigation under the witness of Mainland court judges, the power of attorney so executed will be admissible by Mainland courts without the need to be notarized and legalized.

2. Power of attorney

According to the provisions of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the "Civil Procedure Law"), and the Supreme Court Interpretation on Civil Procedure Law, a foreign party without domicile within the territory of China may authorize Chinese lawyers or any other person of China to act as its litigation agent, and to this end sign a power of attorney. If the country in which such foreign party is domiciled has diplomatic relation with China, the said identification documents shall be notarized by a notary office in the home country and authenticated by the Chinese embassy or consulate in that country or undergo the legalization formalities prescribed in the relevant treaty concluded by China and that country. If there is no diplomatic relation between China and the country in which the foreign party is domiciled, its identification documents can be notarized by the notary office of that foreign country, then authenticated by

the embassy or consulate accredited to that country by a third country which has diplomatic relation with both China and the said foreign country, and then further authenticated by the Chinese embassy or consulate in the said third country.

3. Evidence

Some Provisions of the Supreme People's Court on Evidence in Civil Proceedings (amended in 2019) (hereinafter referred to as "Provisions on Evidence") categorize evidence provided by parties to foreign-related civil actions with different requirements for difference evidence categories, and identify the scope of evidence formed overseas that shall be notarized and legalized.

Where the parties concerned provide as evidence public documentary evidence formed outside the territory of China, it shall be notarized by a notary office of the country of formation, or authenticated in accordance with the authentication formalities prescribed in the relevant treaty concluded by China and that country.

Where the parties concerned provide as evidence documents and materials relating to their identity as formed outside the territory of China, it shall be notarized by a notary office in the home country and authenticated by the Chinese embassy or consulate in that country or undergo the legalization formalities prescribed in the relevant treaty concluded by China and that country.

Currently, for general evidence formed in a foreign country, there is no compulsory requirement for notarization and legalization under the prevailing Mainland laws and regulations. But evidence formed in Hong Kong, Macao

and Taiwan shall still go through required authentication formalities.

In summary, although evidence of different types is placed into several categories under the Provisions on Evidence, considering that Mainland courts of different places and levels may have different understandings of this, we would suggest that parties involved in foreign-related proceedings shall go through the whole notarization and legalization formalities for documents related to their identities, power of attorney and evidence in order to ensure they are admissible by Mainland courts.