

A woman with dark hair, wearing a light blue t-shirt and black pants, is riding a yellow bicycle on a city street at night. She is wearing a black backpack and has a white earphone cord visible. The bicycle has 'ofo' written on the frame. In the background, a Watsons store is brightly lit, with shelves of products visible through the glass. A sign above the entrance says 'watsons.com.cn'. There are also various posters and advertisements on the building facade. The overall scene is a typical urban street at night.

# A GUIDE TO DEBT COLLECTION IN CHINA

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## Introduction

Debt collection cases are among the most common types of litigation and play a key role in the Chinese judicial system. Generally there are two scenarios:

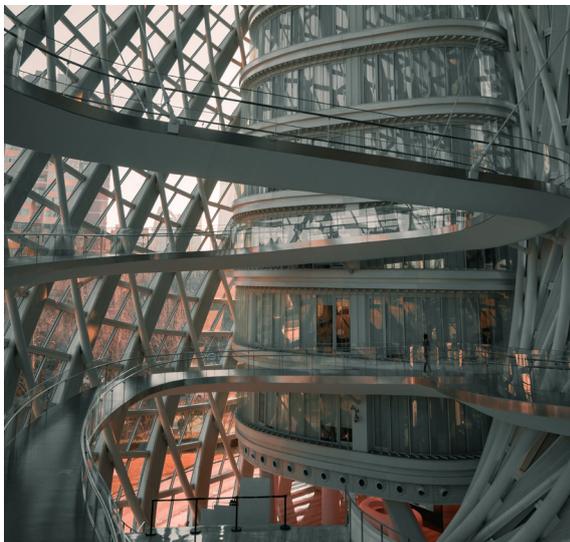
- The legal action of collecting payments from those who have received goods or services but failed to pay;
- The legal action of obtaining a refund from those who received payments but failed to fulfill one or more of its obligations.

From preliminary due diligence to the enforcement of the court's orders, this article provides the basic information necessary to confidently approach debt collection disputes in China.

## The preliminary phase: due diligence checks

When it comes to publicly available and digitalized information, Chinese courts have made noticeable improvements in recent years. The following databases incorporate critical financial and legal information that can be consulted and retrieved easily: the National Enterprise Credit Information Publicity System, the Supreme Court Database, the National Court Information Database, and the Database of Dishonest Persons. These platforms contain data on:

- Business registration and business scope;
- Bank information and other assets;



- Ongoing and past legal actions/civil suits/insolvency;
- Records of administrative penalties;
- Business structure and partnerships.

This information will help you determine whether or not you are dealing with a reliable business partner.

## Before resolving to litigation

Given the time-consuming and often costly nature of litigation procedures, it is advisable to carefully evaluate the potential effectiveness and profitability of a debt collection procedure. This includes: comparing the size of the debt with the litigation costs, verifying the availability and accuracy of documentation, and checking the temporal requirements of Chinese courts. Please also note that for litigation cases involving a foreign party, there is no time limit by which the court must give judgment. Therefore, these kinds of cases usually take up to 6 months to 1 year in the first instance.

## Litigating in the competent court

After deciding to take legal steps to collect a debt, the first step is the filing of a lawyer's letter to notify the non-performing party of the situation. The letter should include at least: the business details of the parties, the facts of the case, the calculation of the claimed amount, relevant supporting documentation, a request to take action and a response deadline.

If case proceedings are initiated, it is usually for the Intermediate Courts to deal with first instance cases involving a foreign party. Jurisdiction agreement clauses included in the contract should be carefully evaluated. It is not advisable to choose a foreign court as a ruling court in case of a civil dispute, because rulings of a foreign court can in general not be enforced in China, or only with difficulty. For example, if an Italian seller and a Chinese buyer agree to bring any future disputes before an Italian court, the ruling of that court cannot be enforced in China. Other than a Chinese court's decisions, basically, only international and national arbitration awards can be enforced in China.



### Once in court: the actions to take and the documents to submit

According to Chinese law, a seizure of another party's assets can only be obtained if a security deposit is provided. The reason behind demanding this security deposit is that, in case of undue seizure, the losses caused to the defendant need to be covered by the plaintiff. It is worth noting that there are service companies that could provide these security deposits for payment of losses following an undue seizure. These companies will require a proportionate service fee, which is usually very reasonable. These kinds of deposits are accepted by the Chinese courts in most cases. Some courts will even recommend certain service providers with whom they are accustomed to work.

With regards to outstanding debt, the court can award its return with the addition of (i) an interest rate which, in absence of a specific prior agreement between parties, which is equal to the loan rate set by the People's Bank of China (4.35 – 4.90%), and of (ii) a penalty.

### Documentary evidence is key for success

Chinese courts' proceedings for debt collection cases rely heavily on documentary evidence and rules on their submission can be strict. The generally applied strategy is that in legal proceedings the Chinese counterpart will deny or misrepresent all facts and documents which are not supported by original documentary evidence.

In general, judges mistrust lawyer's statements and rely on original documentary evidence.

Following are a few of the requirements and guidelines for submission of evidence:

- Documentary evidence shall be presented in its original form. Any photocopy or reproduction that cannot be verified against an original document or item shall not be used independently as a basis for confirming the facts in any case (articles 69-70 Civil Procedure Law).
- All foreign documents such as IP registrations, share certificates, company registrations, contracts, etc. shall be certified by a notary's office of the country of origin, legalized by the Chinese embassy and accompanied by a Chinese translation. If a translation is disputed, a registered Chinese translation company is to be appointed by the parties or the Chinese court.
- E-mail, Skype, WeChat and other IT correspondence shall be notarized by a public notary office or shown directly on a computer screen.
- All documentation should be signed and stamped the appropriate company seal, although options are available if these requirements are not met (see table below).

<b>Problem</b>	<b>Consequence</b>
No written contract or contract not stamped and signed	Each specific contract term needs to be proven with documentary evidence
Contract only stamped but not signed	The contract is considered to be properly executed
Contract not stamped and Chinese signatory signed with unofficial English name	Additional authentication is required
No original copy available	Authenticity of the contract to be proven by chain of custody (paper trail)
Contract signed by a Chinese person using an English name	Identity and signing authority needs to be proven
Contract signed by sales person not being legal representative	Principle needs to confirm the contract within one month after request claimant. Absence of confirmation gives claimant right to rescind the contract.
Contract not stamped	If signatory not legal representative, his authorization needs to be proven by the debtor.

Chinese judges will provide parties with their personal mobile phone number. This allows parties to personally verify with the judges the relevance and suitability of the submitted documentation.

### The enforcement of court orders

Enforcement of debt collection cases' awards in the EU is carried out by a bailiff. In China each local court has a special division that is granted access to bank funds and that can seize assets. To facilitate the special divisions' tasks and obtain a more expedite refund, information regarding the defendants' assets are ideally provided by the plaintiffs.



### Conclusion

When it comes to debt collection in China several key points should be considered. A careful legal evaluation of the specific circumstances of each case will be essential in determining the feasibility of a debt collection case. Fortunately, local interests play an ever less important role in straight forward commercial disputes, especially in first and second tier cities. An important factor of success in civil litigation, which is often overlooked by foreign parties, is the (procedural rules regarding) documentary evidence. In practice, preparation of this part of the debt collection often means the difference between winning or losing the case.

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