CHINA DISPUTE RESOLUTION

NEWS LETTER



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JT&N 金诚同达

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NEWS ALERT

1. China's Revised Arbitration Law Came into Force on 1 March 2026

China's revised Arbitration Law came into force on 1 March 2026. Key changes include, but are not limited to: (1) the formal recognition of the legal concept of the "seat of arbitration" and clarification of its legal significance; (2) the introduction of ad hoc arbitration on a limited basis (currently confined to foreign-related maritime disputes and certain foreign-related commercial disputes between enterprises registered in designated areas); and (3) the harmonization of the grounds for setting aside and refusing enforcement of foreign-related arbitral awards with the standards under the New York Convention. Overall, the revisions reflect China's continued efforts to modernize its arbitration framework and enhance its attractiveness as a venue for international dispute resolution.

2. The Supreme People's Court of China Issued its Work Report in 2025

On 9 March 2026, the Supreme People's Court of China delivered its Work Report at the Fourth Session of the National People's Congress, highlighting a continued rise in foreign-related cases. Key figures include: (1) 159,000 foreign-related cases concluded between 2021–2025, a 66% increase from 2016–2020; (2) 23 cases in 2025 where Chinese courts accepted jurisdiction despite no actual connection to China; (3) 155 foreign-related disputes mediated via the one-stop international commercial dispute resolution platform in 2025; (4) the recognition and enforcement of 108 foreign arbitral awards and 972 foreign judgments in 2025; (5) 6,061 international judicial assistance cases handled in 2025; and (6) an average 12-day reduction in cross-border service time in 2025. These data underscore China's growing caseload and increasing efficiency in cross-border dispute resolution.

3. Hong Kong and Mainland China signed the Arrangement on Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and the Hong Kong Special Administrative Region

On 20 April 2026, Hong Kong and Mainland China signed the Arrangement on Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and the Hong Kong Special Administrative Region (the "New Arrangement"), marking the first update in the past 27 years to the existing Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts (the "Existing Arrangement"). In addition to the traditional mutual entrustment mechanism between courts, the New Arrangement introduces several new methods, including: (1) electronic service; (2) service by law firms on intended recipients; and (3) service by public announcement. The New Arrangement is expected to enhance the efficiency and flexibility of cross-border service between the two jurisdictions. The New Arrangement will come into effect only after the completion of relevant legislative procedures in Hong Kong and the issuance of corresponding judicial interpretations in the Mainland.

4. Shanghai High People's Court released the bilingual (Chinese–English) Typical Commercial and Maritime Cases of Shanghai Courts Involving Foreign, Hong Kong, Macao and Taiwan Elements (2023–2025)

In March 2026, the Shanghai High People's Court released the bilingual (Chinese–English) *Typical Commercial and Maritime Cases of Shanghai Courts Involving Foreign, Hong Kong, Macao and Taiwan Elements (2023–2025)*. The publication includes 15 representative cases covering key cross-border scenarios such as international trade, shipping and logistics, air transport, and corporate operations. The cases are organized into five categories: (1) cases regarding accurately applying international conventions and practices; (2) cases regarding accurately ascertaining and applying foreign laws; (3) cases regarding lawfully exercising foreign-related commercial and maritime jurisdiction; (4) cases regarding actively carrying out bilateral judicial assistance; and (5) cases regarding resolving foreign-related disputes through Eastern Experience. The release provides practical guidance on Chinese courts' approach to complex cross-border disputes.

5. English High Court Recognizes Five Nanjing Commercial Judgments as Enforceable Judgment Debts

The High Court of England and Wales has recently recognized five civil and commercial judgments issued by two Chinese district courts. The judgments, with an aggregate value exceeding RMB 245 million, were held enforceable in England under common law as judgment debts.

The disputes arose from lending and investment cooperation arrangements involving a company operated by two individuals. After the company encountered financial difficulties, five plaintiffs brought lawsuits against the individual defendants and the company, seeking repayment of principal, interest and litigation costs. The Nanjing courts accepted the cases. As the individual defendants could not be located, the cases proceeded through service by public notice and default hearings.

After the judgments became effective in China, the plaintiffs found that the individual defendants had relocated to the United Kingdom and applied to the English High Court for recognition and enforcement. The English court confirmed the Chinese courts' jurisdiction, recognized the procedural propriety of the public notice service in the PRC proceedings, and held the judgments delivered by the two Chinese district courts enforceable.

6. U.S. Court Enforces CIETAC Awards and Confirms Attachment over High-Value Artworks

In late March 2026, the U.S. District Court for the Southern District of New York ruled in favor of CIETAC award creditors. The court confirmed the CIETAC awards against an individual respondent and upheld attachment of two high-value artworks at Christie's in New York, including Andy Warhol's Little Electric Chair and an untitled self-portrait by Martin Kippenberger.

The dispute arose from the 2013 acquisition of South Beauty's restaurant business. In 2019, China International Economic and Trade Arbitration Commission ("CIETAC") ordered the respondent to pay approximately USD142.4 million plus costs in two awards, which were later upheld by the

Second International Commercial Court of the Supreme People's Court of China.

In the U.S. confirmation proceeding, the court rejected the respondent's objections under the New York Convention, including procedural challenges and public policy arguments. It endorsed the Chinese court's prior procedural review and restated the narrow scope of the public policy exception.

In the parallel attachment proceeding, the court found that the respondent retained the ownership of the artworks and the purported transfer to an offshore company constituted a fraudulent conveyance. The attachment was therefore confirmed.

The rulings illustrate how Chinese awards recognition, asset preservation and enforcement operate in U.S. courts. They also highlight the value of early asset tracing, timely interim measures and beneficial ownership proof in cross-border enforcement.

7. Taiwan Court Recognizes SHIAC Award despite Objections to Technical Appraisal and a Single Hearing

On 11 March 2026, the Qiaotou District Court in Taiwan recognized an arbitral award rendered by the Shanghai International Economic and Trade Arbitration Commission ("SHIAC"). The award arose from a software development dispute between a Jiangsu company and a Taiwanese company.

The Taiwanese company opposed recognition by challenging the tribunal's failure to order an independent technical appraisal and the holding of only one hearing, claiming it was denied a reasonable opportunity to present its case. The court rejected all objections. It clarified that cross-strait award recognition adopts a limited review mechanism, excluding any rehearing of the case merits. This ruling confirms the narrow scope of review in cross-strait arbitral award recognition and refuses to second-guess a tribunal's procedural and evidentiary decisions.

The Boundaries of AI in Judicial Proceedings: From Parties to Lawyers

Ping Zhao, Stella Lu, Liz Lin, Zhuangyi Li, Ice Zhang

Abstract

With the increasing integration of AI into the legal field, the boundaries governing the use of AI tools by both parties and legal counsel have become increasingly prominent. From the perspective of parties, this article takes *United States of America v. Bradley Heppner* as a point of departure and examines the position that where a party, without the direction of counsel, uses consumer-grade AI platforms to process confidential information, communications between the party and the AI platform are not protected by the attorney-client privilege or the work product doctrine. From the perspective of lawyers, professional guidelines issued in jurisdictions such as Shanghai and Singapore, as well as existing cases, emphasize that lawyers bear an independent duty to review AI-generated content. The submission of false or inaccurate materials may violate duties of candor in litigation and may result in sanctions, including monetary penalties. Against this backdrop, parties can more reliably ensure the protection of case-related information only by obtaining legal advice through qualified counsel.

Main Text

In common law litigation, including in the United States and the United Kingdom, parties in civil proceedings are generally required to disclose materials relevant to the case through the discovery process[1]. In criminal proceedings, prosecuting authorities may also require defendants to disclose documents or information[2]. However, such disclosure obligations are not absolute. In certain circumstances, the law affords protection to particular communications or materials through privilege doctrines. In U.S. law, two principal doctrines serve to protect communications and materials between attorneys and their clients: the attorney-client privilege and the work product doctrine. The attorney-client privilege protects confidential communications between a client and counsel made for the purpose of obtaining or providing legal advice, while the work product doctrine protects materials prepared in anticipation of litigation[3]. These doctrines are rooted in the common law and have been developed through judicial decisions based on "reason and experience", while also being subject to regulation under state law[4]. Within this framework, communications and materials that fall within the scope of these protections are generally exempt from disclosure in litigation. For example, the *New York Civil Practice Law and Rules* expressly provides that privileged matter and attorney's work product are not subject to disclosure[5], and similar provisions exist under Texas law[6]. In the United Kingdom, legal professional privilege likewise affords comparable protection to legal advice communications between lawyers and their clients, as well as to documents prepared for litigation[7]. It is precisely because of the existence of these privilege doctrines that parties are able to disclose case-related facts to their counsel without reservation during litigation.

I. The Boundaries of Parties' Use of AI Tools in Judicial Proceedings

However, with the increasing use of generative AI platforms, parties confronted with legal issues often turn to AI tools for legal research or case preparation on their own initiative. This gives rise to a critical question: when a party discusses legal issues with an AI platform or inputs case-related information onto such a platform, can those communications still be protected by privilege?

On February 17, 2026, the United States District Court for the Southern District of New York, in *United States of America v. Bradley Heppner*[8], examined the boundaries of a party's use of AI tools in judicial proceedings. At a time when AI technologies are increasingly permeating all sectors, this case provides important guidance for clarifying the appropriate limits of AI involvement in judicial processes. The court held that written communications between a party and a generative AI platform are not protected by either the attorney-client privilege or the work product doctrine.

In November 2025, Bradley Heppner was arrested on charges including securities fraud and wire fraud. The Federal Bureau of Investigation (FBI) executed a search warrant at his residence and seized numerous documents and electronic devices. Among the seized materials were 31 reports generated by Heppner using Anthropic's AI tool, Claude, which were created after he had received a subpoena but prior to his arrest, and without any direction from counsel. These reports contained detailed analyses of potential defense strategies and legal arguments.

The prosecuting authority sought to introduce these materials as evidence. Counsel for Heppner, however, argued that the documents were prepared for the purpose of facilitating communication with counsel and were subsequently provided to his attorney, and therefore should be protected by the attorney-client privilege and the work product doctrine. Ultimately, the court rejected the arguments advanced by counsel for Bradley Heppner and held that the AI-generated reports, which contain factual information, are admissible as evidence. The court's reasoning is set out below.

To begin with, communications between a party and an AI platform are not protected by the attorney-client privilege. First, an AI platform is not a licensed attorney and therefore does not fall within the scope of the privilege. Second, the AI-generated reports at issue lack the requisite confidentiality. A fundamental requirement of the attorney-client privilege is that the communication be made in confidence between privileged parties. The defendant used a consumer-grade AI tool whose privacy policy expressly provides that user inputs may be used for model training and that the service provider reserves the right to disclose such data to regulatory authorities. Accordingly, such voluntary disclosure to a third party is generally treated as a waiver of any reasonable expectation of confidentiality. Third, communications between the defendant and the AI tool were not made for the purpose of obtaining legal advice. Claude expressly disclaims providing legal advice, and the defendant did not communicate with the AI tool at the direction of counsel. Accordingly, in the absence of instruction from counsel, communications between the defendant and the AI tool are not protected by the attorney-client privilege. This conclusion is not altered by the fact that the defendant subsequently shared the AI-generated reports with counsel.

Separately, communications between a party and an AI platform are not protected under the work product doctrine. The doctrine generally applies to materials prepared by an attorney or at the direction of counsel in anticipation of litigation. In this case, Bradley Heppner used the AI platform on his own initiative, without any direction from counsel. The court reasoned that the AI platform is

neither an attorney nor an agent of counsel, and the materials it generated therefore cannot be treated as attorney work product.

United States of America v. Bradley Heppner marks an effort by the U.S. judiciary to draw a clear line regarding parties' use of AI. Where parties process confidential information on consumer-grade AI platforms lacking data protection safeguards, they face a significant risk that their communications with such platforms may be used against them as evidence.

II. The Boundaries of Lawyers' Use of AI Tools in Judicial Proceedings

Against the backdrop that parties' use of AI in judicial proceedings typically requires the direction of counsel, the question arises as to how the boundaries of lawyers' own use of AI tools should be defined. In recent years, various jurisdictions have begun to issue guidance on the use of AI by lawyers. For example, in late 2025, the Shanghai Bar Association released the *Guidelines on the Use of AI Tools in Providing Community Legal Advisory Services (2025) (Trial)*, aimed at enhancing lawyers' competence in using AI tools and preventing significant risks. In March 2026, Singapore issued the *Guide for Using Generative AI in the Legal Sector*[9]. These guidelines consistently emphasize that lawyers must ensure data security when using AI tools, remain responsible for the final work product, and exercise caution regarding the risks of so-called "AI hallucinations".

AI hallucinations have become a major source of risk, and may even give rise to litigation, in connection with lawyers' use of AI tools in recent years. In *Mata v. Avianca*[10], counsel submitted six fictitious cases generated by ChatGPT. The court found that, after the opposing party raised challenges, counsel not only failed to withdraw the submissions but continued to rely on AI-generated false explanations, thereby acting in subjective bad faith. The court ultimately imposed a sanction of USD 5,000. This case illustrates that the use of AI tools itself does not constitute misconduct; however, submitting unverified false information and attempting to conceal it may amount to an abuse of the judicial process.

Similar issues have also arisen in Chinese judicial practice. In April 2025, the People's Court of Tongzhou District of Beijing adjudicated a dispute involving Ren against Cao and a Beijing International Travel Agency Co., Ltd., which was subsequently included in the national case database of the People's Courts of Tongzhou District of Beijing[11]. In that case, the cases cited in counsel's submissions were not genuine judicial precedents, but were instead generated through repeated prompting of an AI language model using keywords and disputed issues derived from the facts of the case.

In this case, the People's Court of Tongzhou District of Beijing noted that Article 114(1) of the *PRC Civil Procedure Law* provides: "Where a litigation participant or any other person commits any of the following conduct, the people's court may impose a fine or detention on the litigation participant or person according to the severity of the circumstances; and if suspected of any crime, the litigation participant or person shall be subject to criminal liability in accordance with law. (1) Forging or destroying any material evidence, which obstructs the trial of the case by the people's court." The court further clarified that the "evidence" referred to in this provision should be understood as evidence material to the determination of the facts of the case. Cases submitted by litigation participants for reference purposes fall within the scope of legal arguments rather than evidence. Accordingly, the submission of unverified false cases does not constitute "forging or destroying any

material evidence" within the meaning of this provision. However, the submission of false cases violates the principle of good faith in litigation and disrupts the order of civil proceedings, and the responsible party may bear corresponding legal consequences depending on the circumstances. In practice, the people's courts may, in light of factors such as the degree of subjective fault, the harmful consequences, and the extent of disruption to the proceedings, impose sanctions by reference to Article 114(1) of the *PRC Civil Procedure Law*.

Therefore, existing guidelines and cases indicate that the boundaries governing lawyers' use of AI tools in judicial proceedings include, but are not limited to, the following: First, when using AI tools, lawyers remain subject to confidentiality obligations consistent with professional conduct rules and must not disclose client information. Second, while AI tools may be used as auxiliary tools, lawyers bear an independent duty to review and verify the final work product they submit and may not rely on AI-generated content to discharge their own duty of care. Third, the submission of false or fabricated materials constitutes a violation of the duty of candor in litigation. Depending on the circumstances, such conduct may result in consequences ranging from judicial admonishment to findings of abuse of the judicial process and the imposition of sanctions, including monetary penalties.

III. Practical Implications

The use of AI has the potential both to assist parties in addressing legal issues, thereby lowering barriers to legal services and reducing information asymmetries, and to enhance lawyers' efficiency in handling cases. It is therefore foreseeable that, as AI technologies become more widely adopted in legal practice, procedural disputes and disciplinary actions arising from the use of AI will continue to increase. In response, judicial authorities and professional regulators are likely to move from case-by-case exploration toward the development of clearer and more comprehensive rules governing the boundaries of AI use.

Against this backdrop, while lawyers may use AI tools subject to professional duties and regulatory constraints, parties acting without legal guidance lack such safeguards, thereby facing significantly greater risks.

The court's ruling in Heppner demonstrates that when a party independently engages with a generative AI platform to discuss legal issues, the resulting communications will generally not be protected by either the attorney-client privilege or the work product doctrine, and may therefore be obtained and reviewed by the government, regulatory authorities, or courts as evidence.

By contrast, confidential communications between a party and counsel made for the purpose of obtaining legal advice are typically protected by the attorney-client privilege. Likewise, legal analyses, litigation strategies, and other materials prepared by counsel in connection with a case are protected under the work product doctrine, and thus are generally exempt from disclosure.

Beyond the applicability of privilege and related protection doctrines, courts may also directly restrict the use of AI platforms in handling case-related information. In *Sohyon Warner v. Gilbarco, Inc.*[12], during the discovery phase, the defendant expressed concerns about producing certain documents out of fear that such materials might be uploaded to AI platforms. In response, the United States District Court for the Eastern District of Michigan, Southern Division, modified the existing

protective order to expressly provide that "any document marked confidential shall not be uploaded onto any AI platform."[13] This ruling indicates that, in the context of discovery, courts may, through protective orders or other mandatory directives, expressly prohibit parties from uploading confidential materials obtained through the discovery process to AI platforms, thereby restricting the use of such platforms for processing or analyzing case-related information.

In light of the foregoing, parties handling litigation matters in common law jurisdictions should refrain from independently using generative AI platforms to discuss case-related issues, and in particular should avoid inputting core facts, legal analyses, or potential litigation strategies. To maximize the client's interests in litigation, it is advisable that litigation matters be handled comprehensively by qualified counsel.

1 Federal Rules of Civil Procedure
Rule 26. Duty to Disclose; General Provisions Governing Discovery
(b) Discovery Scope and Limits.
(1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.
2 Federal Rules of Criminal Procedure
Rule 16. Discovery and Inspection
(b) Defendant's Disclosure.
(1) Information Subject to Disclosure.
(A) Documents and Objects. If a defendant requests disclosure under Rule 16(a)(1)(E) and the government complies, then the defendant must permit the government, upon request, to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:
(i) the item is within the defendant's possession, custody, or control; and
(ii) the defendant intends to use the item in the defendant's case-in-chief at trial.
3 Federal Rules of Evidence
Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver
(g) Definitions. In this rule:
(1) "attorney-client privilege" means the protection that applicable law provides for confidential attorney-client communications; and
(2) "work-product protection" means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.
4 Federal Rules of Evidence
Rule 501. Privilege in General
The common law — as interpreted by United States courts in the light of reason and experience — governs a claim of privilege unless any of the following provides otherwise:
·the United States Constitution;
·a federal statute; or
·rules prescribed by the Supreme Court.
But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.
5 Consolidated Laws of New York
Civil Practice Law & Rules
ARTICLE 31 Disclosure
§ 3101. Scope of disclosure.
(b) Privileged matter. Upon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable.
(c) Attorney's work product. The work product of an attorney shall not be obtainable.
6 Texas Rules of Evidence

Rule 503. Lawyer–Client Privilege

(b) Rules of Privilege.

(1) General Rule. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

TEXAS RULES OF CIVIL PROCEDURE

RULE 192. PERMISSIBLE DISCOVERY: FORMS AND SCOPE; WORK PRODUCT; PROTECTIVE ORDERS; DEFINITIONS

192.5 Work Product.

(b) Protection of work product.

(1) Protection of core work product--attorney mental processes. Core work product - the work product of an attorney or an attorney's representative that contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions, or legal theories - is not discoverable.

7 HM Revenue & Customs. ECSH110250 - Legal Professional Privilege. Economic Crime Supervision Handbook. GOV·UK<https://www.gov.uk/hmrc-internal-manuals/economic-crime-supervision-handbook/ecsh110250>

8 UNITED STATES OF AMERICA v BRADLEY HEPPNER, 25 Cr. 503 (JSR), MEMORANDUM, Dkt. 27 (S.D.N.Y. Feb. 17, 2026)

9 Guide for Using Generative AI in the Legal Sector, published on 6 March 2026, via: https://www.mlaw.gov.sg/files/Guide_for_using_Generative_AI_in_the_Legal_Sector__Published_on_6_Mar_2026_.pdf

10 Mata v. Avianca, Inc., No. 1:22-cv-01461, (S.D.N.Y.)

11 The case is docketed as (2024) Jing 0112 Min Chu No. 19067, and its reference number in the People's Court Case Database is 2025-18-2-494-001.

12 SOHYON WARNER v. GILBARCO, INC., GILBARCO, INC. (d/b/a GILBARCO VEEDER-ROOT) and VONTIER CORPORATION, Case No. 2:24-cv-12333

13 SOHYON WARNER v. GILBARCO, INC., GILBARCO, INC. (d/b/a GILBARCO VEEDER-ROOT) and VONTIER CORPORATION, Case No. 2:24-cv-12333, ECF No. 66 (E.D. Mich. S. Div. Oct. 30, 2025), at 3

Preliminary Study on Shareholder Status Determination and Equity Transfers in Foreign-Invested Enterprises

Cai Shuo, Xing Jingyu

Abstract

The implementation of the Foreign Investment Law has triggered a wave of corporate restructuring among foreign-invested enterprises, while disputes between Chinese and foreign shareholders have become increasingly prominent. This article focuses on two practical issues arising after the implementation of the Foreign Investment Law: the determination of shareholder status for Chinese shareholders whose equity interests were historically registered as zero, and the approval and filing requirements for equity transfers in foreign-invested enterprises. By reference to current PRC judicial practice, this article also offers practical suggestions for risk prevention.

I. Introduction

The Foreign Investment Law of the People's Republic of China (the "**Foreign Investment Law**"), which came into effect in 2020, replaced the previous "Three Foreign Investment Laws", namely the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, and the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures.

This article discusses two common practical issues arising after the implementation of the Foreign Investment Law: first, the determination of shareholder status for Chinese shareholders whose equity interests were historically registered as zero; and second, the approval and filing requirements applicable to equity transfers by shareholders of foreign-invested enterprises. On this basis, the article provides practical suggestions for risk prevention.

II. Determination of Shareholder Status for Chinese Shareholders Whose Equity Interests Were Historically Registered as Zero

In the early stages of China's reform and opening-up, Chinese parties often cooperated with foreign investors to establish Sino-foreign cooperative joint ventures by contributing land use rights, real property or other forms of cooperation conditions. In some cases, however, the cooperation conditions provided by the Chinese party were not valued or appraised, resulting in registration records showing the foreign party as holding 100% of the equity interests, while the Chinese party's equity interest was registered as 0%. Following the implementation of the Foreign Investment Law, the confirmation of shareholder status for such historically zero-registered Chinese partners has become a key issue in the restructuring of foreign-invested enterprises.

According to current PRC judicial practice, courts will consider both formal and substantive elements when determining the shareholder status of a Chinese party. Where there are defects in the formal elements, courts tend to place greater emphasis on the substantive elements.

In the case of (2023) Yue 0308 Xing Chu No. 3067, the court held that:

"*The articles of association filed in the plaintiff's industrial and commercial registration records since its establishment all contained provisions on the contribution methods of the Chinese investor and the foreign investor. The minutes of board meetings bore the signature of the vice chairman appointed by the Chinese investor. The plaintiff also confirmed at trial that the Chinese investor had exercised shareholder rights during the plaintiff's operation, and that an equity dispute existed between the plaintiff and that company. Against this background, the plaintiff's direct application to remove the Chinese investor's 0% equity interest and shareholder status through an industrial and commercial registration change lacked factual and legal basis. Accordingly, the court did not accept the plaintiff's claim.*"

A shareholder should ordinarily be expressly recorded in documents, including the cooperation agreement, articles of association, industrial and commercial registration records, and capital verification reports. These documents not only establish shareholder status, but also constitute critical evidence for the protection of shareholder rights and legitimate interests.

Substantively, a shareholder shall exercise core shareholder rights, such as participating in major corporate decision-making and receiving profit distribution. Such participation is generally evidenced by signatures or seals affixed to formal instruments such as board resolutions and articles of association, which confirm that the shareholder or its duly appointed representative has effectively participated in the company's daily operation and corporate governance.

Under current Chinese judicial practice, courts examine both formal and substantive criteria when assessing shareholders' qualifications. As reflected in the aforesaid case, courts prioritize substantive review where procedural formalities contain defects.

III. Approval and Filing Requirements for Equity Transfers by Shareholders of Foreign-Invested Enterprises

Under the old "Three Foreign Investment Laws", a full approval regime governed foreign-invested enterprises. Any equity transfer agreement for such enterprises took effect only after approval was obtained from the competent authority. Without such approval, PRC courts would rule the contract ineffective, which could further bar the transferee from claiming shareholder status under the agreement.

Since 1 October 2016, China's foreign investment administration system has shifted from a comprehensive approval system to a standard filing system, with approval required only for industries on the negative list. For foreign-invested enterprise equity transfers outside the negative list, only filing is needed. This filing is purely informational and no longer a validity prerequisite. These transfer agreements are therefore fully binding even without completed filing. Likewise, contract clauses tying contractual effectiveness to governmental approval are no longer enforceable.

In (2021) Zui Gao Fa Min Shen No. 1074, the Supreme People's Court held that, after the Foreign Investment Law and its implementing regulations came into force, the Three Foreign Investment Laws and their respective implementing regulations and detailed rules were repealed. The approval administration systems under those repealed laws and administrative regulations are no longer applicable.

As illustrated by the aforesaid Supreme People's Court case, shareholders conducting equity

transfers shall first confirm whether the enterprise's business scope falls within the negative list under the Foreign Investment Law. Where the business falls within a negative list sector, the equity transfer shall be subject to review and approval by the competent foreign investment authority, so as to eliminate substantive validity defects upon the transferee's acquisition of shareholder qualifications.

IV. Practical Suggestions for Risk Prevention

1. Confirm shareholder status in writing and complete industrial and commercial registration changes in a timely manner

In the course of foreign-invested enterprise restructuring, internal shareholder disputes may arise, and the original shareholder may refuse to recognize the shareholder status of the new investor. It is therefore advisable to initiate communication and negotiation as early as possible, and, where necessary, to assert rights through legal proceedings to ensure the smooth progress of the restructuring.

Shareholders may formalize their status and agreed contribution methods by way of written agreements during restructuring. Following internal confirmation of shareholding qualifications and amendment of the company's articles of association, the enterprise shall promptly submit applications to market regulatory authorities for industrial and commercial registration changes, updating registered particulars including shareholder information, contribution methods and equity ratios. Though subject to formal review only, industrial and commercial registration carries strong legal effect for public disclosure, protects shareholders' lawful rights and interests, and upholds third parties' reasonable reliance on the company's equity structure.

2. Review whether the equity transfer is subject to approval, filing or information reporting requirements

Where an equity transfer does not cover industries prohibited under the foreign investment negative list, or where access conditions for restricted sectors are duly met, the equity transfer agreement shall take effect accordingly. Traditional contractual clauses that designate governmental approval as a precondition for contractual validity are no longer enforceable in the same way. Accordingly, shareholders must confirm whether the target enterprise falls within the scope of the negative list before conducting any equity transfer.

AUTHORS



Ping Zhao (Shanghai)
+86 21 3886 2218
zhaoping@jtn.com



Stella Lu (Shanghai)
+86 21 3886 2246
lvsiqiong@jtn.com



Liz Lin (Shanghai)
+86 21 3886 2367
linmujuan@jtn.com



Cai Shuo (Beijing)
+86 10 5706 8270
caishuo@jtn.com



Li Zhuangyi (Beijing)
+86 10 5706 8542
lizhuangyi@jtn.com



Ice Zhang (Shanghai)
+86 21 3886 2288
jiaminzhang@jtn.com



Xing Jingyu (Beijing)
+86 10 5706 8390
xingjingyu@jtn.com



Bian Tong (Shanghai)
+86 21 3886 2123
biantong@jtn.com


JT&N 金诚同达