



源泰律師事務所
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Litigation in China – An Unavoidable but Manageable Risk

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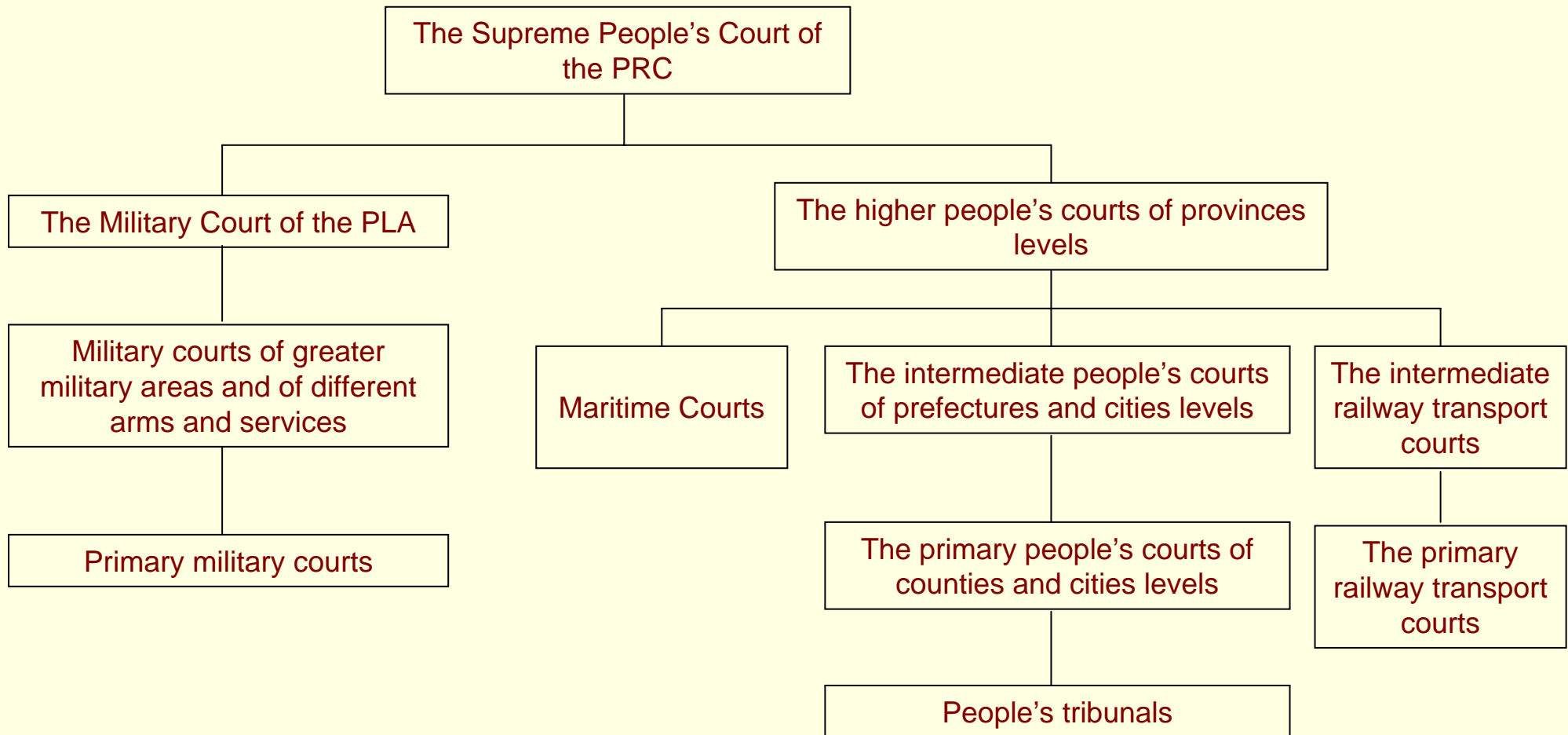


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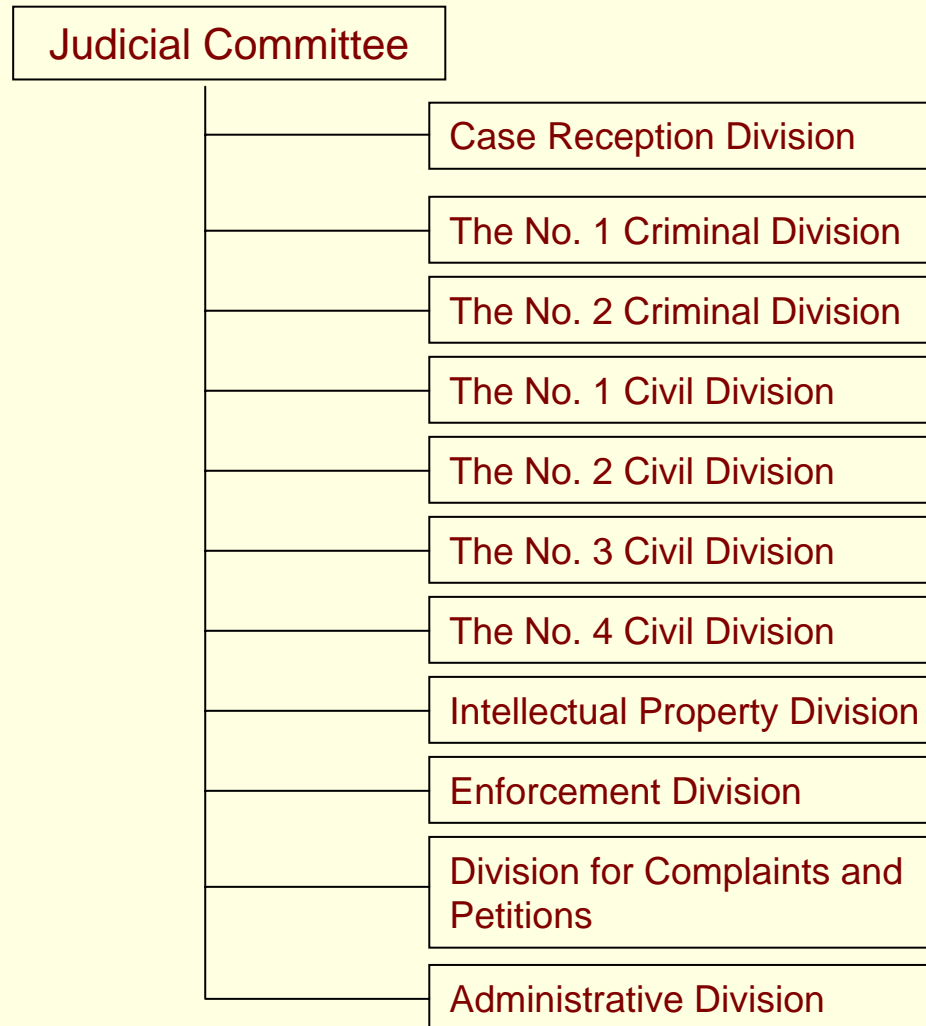


Structure of the Chinese Courts





Structure of an Intermediate People's Court





Jurisdiction of Chinese Courts

1. Does the People's Court have the jurisdiction?

- Is there any arbitration clause?
- If yes, is the arbitration clause is valid?
- If yes, the People's Court has no jurisdiction.

If there is no arbitration clause or arbitration clause is invalid, a People's court may have the jurisdiction.



Which Court has the Jurisdiction?

1. Is there any clause of the contract providing the choice of the court?

The parties of a contract may select as having jurisdiction over a case the People's court in:

- the defendant's place of domicile;
- the place of performance of the contract;
- the place of signing of the contract;
- the plaintiff's place of domicile; or
- the location of the subject of the contract.

provided that the provisions on jurisdiction by instances and exclusive jurisdiction are not violated.



Which Court has the Jurisdiction?

2. Domestic contract or a foreign related contract?

2.1 Domestic Contract

Jurisdiction over a lawsuit arising out of a contractual dispute shall be exercised by the people's court in the defendant's place of domicile or in the place where the contract is being performed.

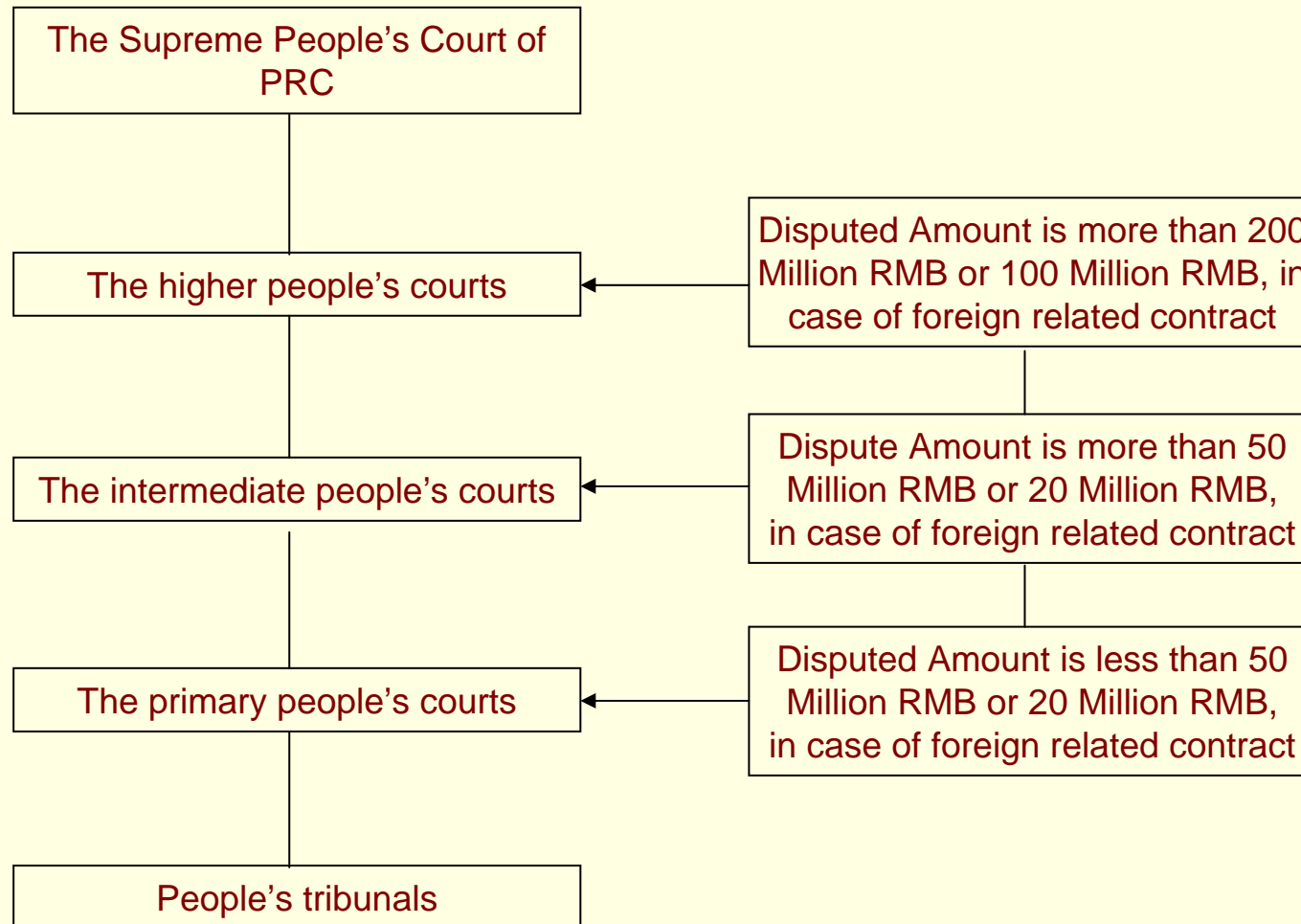
2.2 Foreign Related Contract

A lawsuit resulting against a defendant not domiciled within the PRC may be under the jurisdiction of the people's court in the place:

- a) where the contract was signed or
- b) where the contract was performed, or
- c) where the subject of the contract is located, or
- d) where the distrainable property is located, or
- e) where the infringing act took place, or
- f) where the representative office is located.



Jurisdiction of the First Instance





Procedure at Second Instance

- If a party disagrees with a judgment made by a local People's Court of first instance, he/she/it shall have the right to lodge an appeal with the upper level People's Court within 15 days from the date on which the written judgment was served.
- A People's Court of second instance may:
 - If, the determination of the facts and the law applied are correct, dismiss the appeal and uphold the original judgment;
 - If, the law was applied incorrectly, amend the original judgment;
 - If, statutory procedure was violated and the correctness of the judgment in the case may have been influenced by such violation, quash the original judgment and remand the case to the People's Court that originally tried it for retrial.
 - If, the facts were ascertained incorrectly or unclearly or the evidence was insufficient, quash the original judgment and remand the case to the People's Court that originally tried it for retrial; or after the facts have been clarified, amend the original judgment; and



Adjudication Supervision Procedure

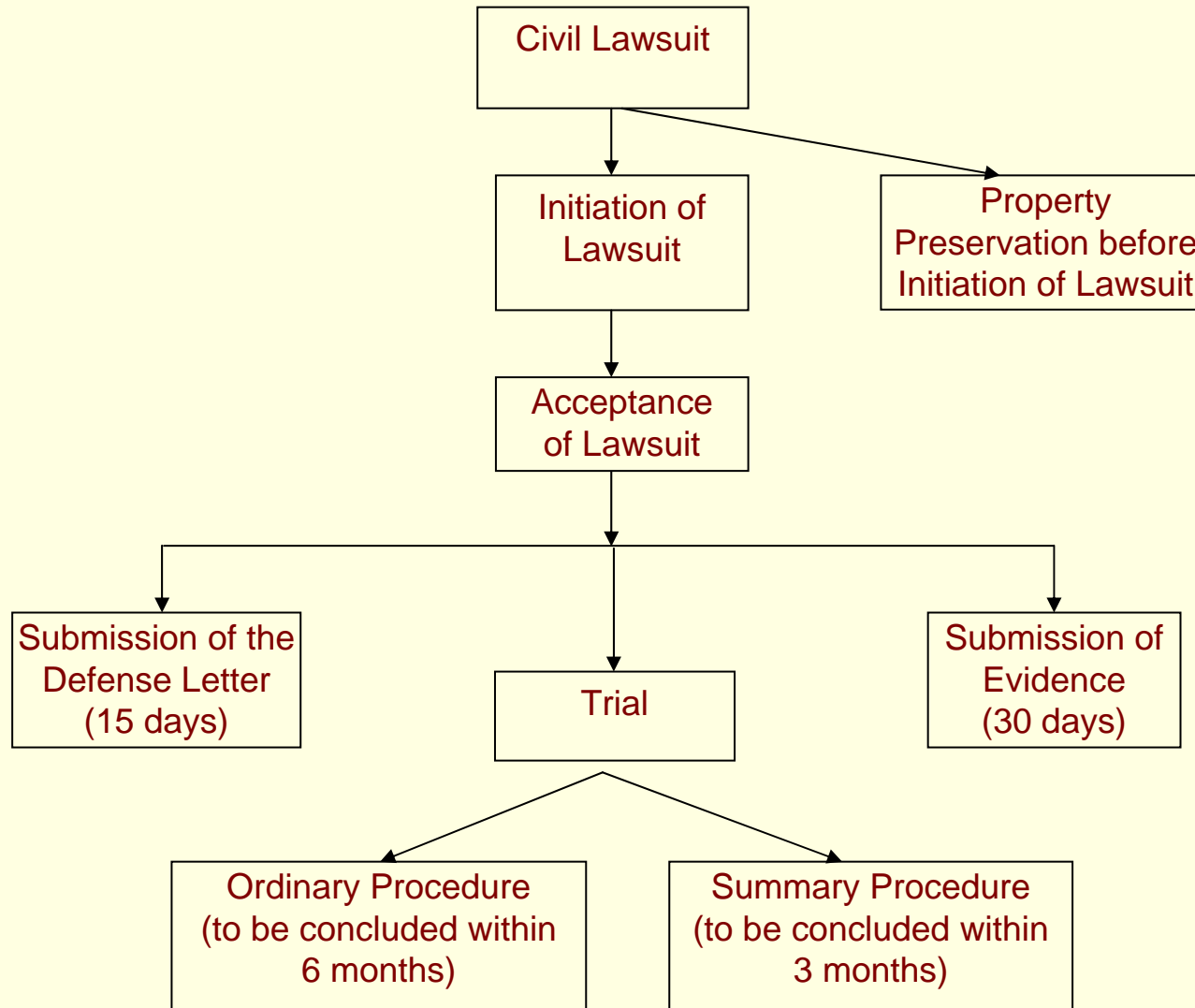
- If the president of a People's Court at any level finds an error in a legally effective judgment or ruling of this court and deems it necessary to have the case retried, he/she shall refer it to the judicial committee for discussion and decision.

If the Supreme People's Court finds an error in a legally effective judgment or ruling of a local People's Court at any level, or if a People's Court at a higher level finds an error in a legally effective judgment or ruling of a People's Court at a lower level, it shall have the power to review the case itself or instruct a People's Court at a lower level to conduct a retrial.

- If a party considers that a legally effective judgment or ruling is faulty, he/she/it may apply to the higher level People's Court for retrial, however, execution of the judgment or ruling shall not be suspended.

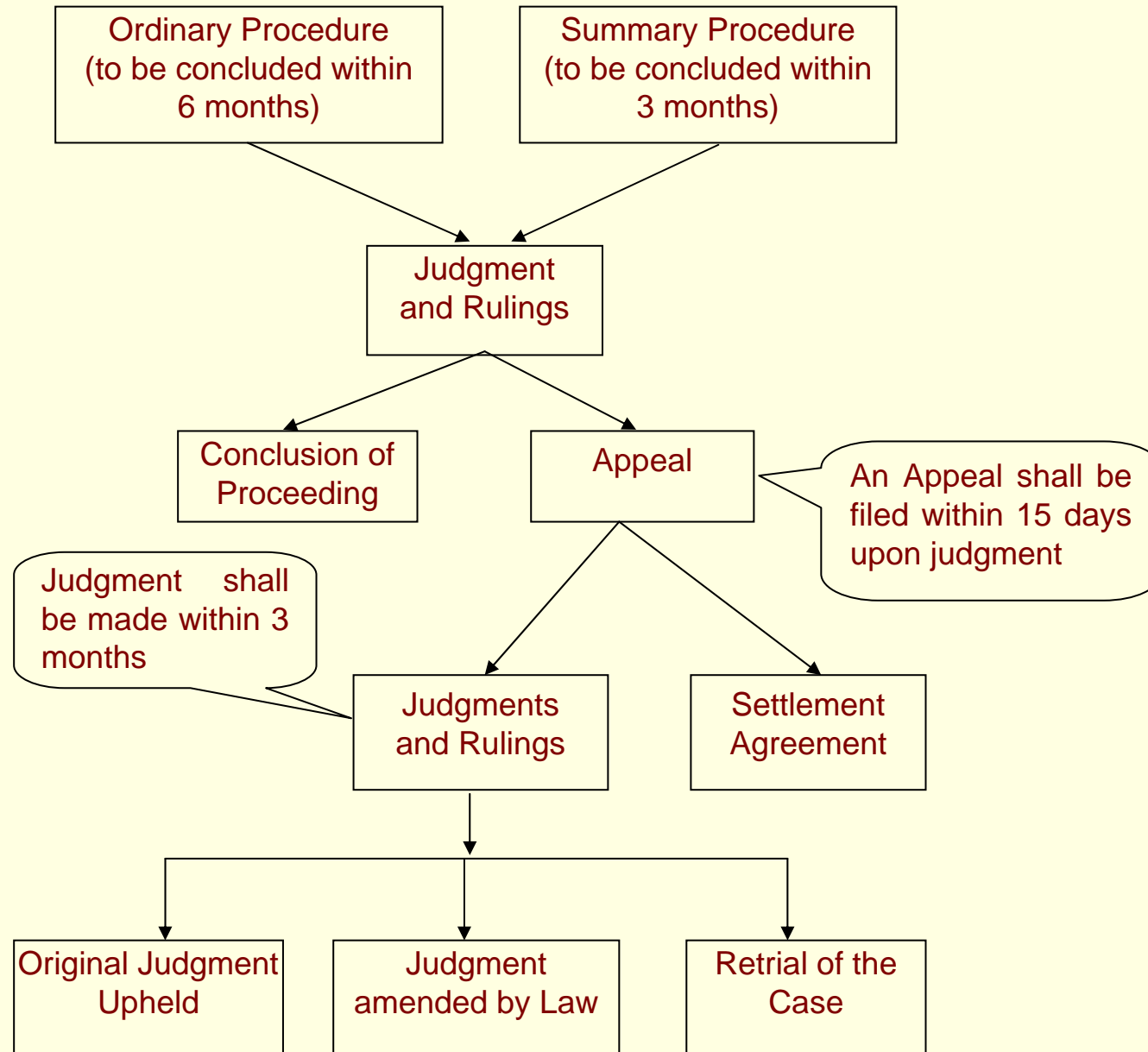


Timeframe of a Lawsuit





Timeframe of a Lawsuit





What are Differences of Arbitration and Litigation

	Arbitration	Litigation
Party Autonomy	Yes	Partly
Instance	1 Instance	2.5 Instances
International Recognition	Yes	Partly
Transparent	Yes	No
Cost	High	Lower
Conclusion: Arbitration is generally favorable to a foreign invested enterprise.		



Court Fee (RMB)

	Amount of Claim (RMB)	Court Fee (RMB)
Non-Property Cases	-	10 – 400 Yuan per case
Property Cases (According to Amount of Claim)	< 10,000	50 Yuan
	10,000 – 100,000	2.5%
	100,000 – 200,000	2%
	200,000 – 500,000	1.5%
	500,000 – 1,000,000	1%
	1,000,000 – 2,000,000	0.9%
	2,000,000 – 5,000,000	0.8%
	5,000,000 – 10,000,000	0.7%
	10,000,000 – 20,000,000	0.6%
	> 20,000,000	0.5%



Three Rules for Minimizing the Chance (or Risk) of Litigation in China

RULE NO. 1

Incorporation of a valid arbitration clause; or

RULE NO. 2

Incorporation of a choice of jurisdiction clause, e.g.:

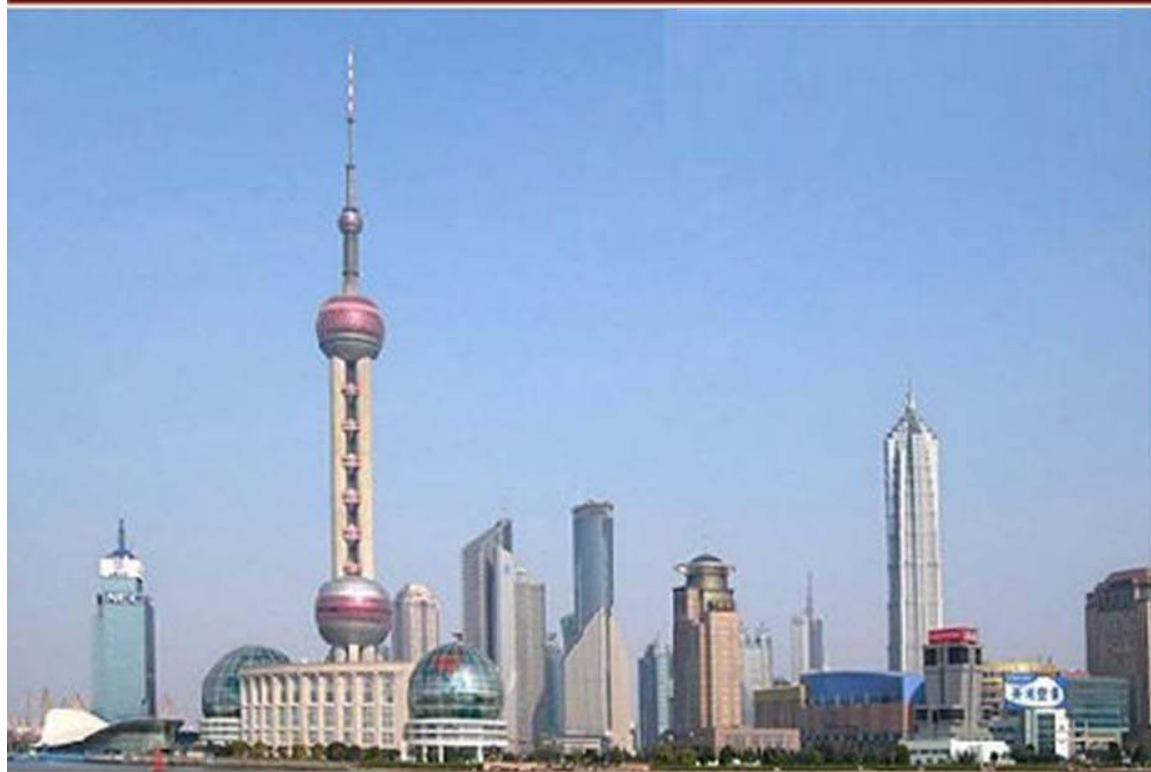
“The People’s court at [Shenzhen] where Party A is located shall have exclusive jurisdiction over the dispute arising from or in connection with this agreement.”

RULE NO. 3

Remember Rules No. 1 & 2.



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