

# Soundings

## Litigating in China: a change to civil evidence rules

**On 1st May, 2020, the Supreme People's Court's revised Provisions on Evidence in Civil Procedures (the "2020 Rules") came into effect. Members who engage in litigation in China will be affected by the Rules, which will have a significant impact on the way in which litigation is conducted in China.**

While the selection of China as a forum for dispute resolution may be less common than other jurisdictions, given the vast amount of trade in the region, the 2020 Rules will be of significance to many Members.

The 2020 Rules have significantly changed the existing evidentiary framework. There are 89 amended or new articles and only 11 old articles survive. Some of the key changes are summarised here. The 2020 Rules do not apply retrospectively so will only govern cases that are undetermined as at the date of their implementation.

### Electronic Data

Electronic data has become increasingly relevant in litigation, especially in casualty cases where records of a ship's movements and bridge communications are necessary. The 2020 Rules crystallise and expand the categories of electronic data that can be submitted as evidence, which now include webpages, blogs,

microblogs, text messages, emails, instant communication, group communication, log-in information and electronic trading records. The 2020 Rules specify how electronic data can be adduced as evidence and the standards the court should employ for the acceptance and treatment of such data.

It is now easier for parties to submit electronic data evidence. A printout or copy saved in electronic media (such as a CD or memory stick) can be regarded as original and, therefore, admissible - without the need for notarisation, as was required under the old regime.

Given the increasingly important role played by electronic data in business and trade, the preservation of all exchanges via email as well as platforms such as Wechat, QQ, Whatsapp, Skype and Zoom is recommended, so that they can be presented should a dispute arise over their authenticity. The court may establish that printouts or copies are authentic by examining the phone

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or device on which the data was generated. Particular attention should be paid to the identity of the sender and receiver of any message, for if these are not shown, the message may not be used as evidence.

### Disclosure

Whilst English procedure requires a party to disclose any relevant documents, whether favourable or not, Chinese civil procedure applies the principle of “they who allege must prove”. This places on a party the burden of gathering evidence itself, without relying on any document or material in the possession of the other side.

The previous regime allowed a party to apply to the court to request the other party to disclose documentary evidence under his control, but it lacked meaningful enforcement provisions and, for this reason, was seldom used. The 2020 Rules improve this regime and describe the documents and information a party must disclose. The court will make a disclosure order upon application and if a party refuses to disclose the materials requested, the court can draw adverse inferences against the refusing party. Whilst this is still not equivalent to the English disclosure rules, we can see an evolution in Chinese procedure.

### Statement of truth

A party to proceedings has always been required to make a true and complete statement in respect of the facts of the case. The 2020 Rules place greater emphasis on an affirmation of truth. The court now “should”, as opposed to “may”, request the parties not only to sign a statement but also to read out its contents. The court is required to draw adverse inferences against a party who fails to do so, unless there is evidence to the contrary.

### Self-admission

Self-admission allows facts to be admitted as true which are alleged by the other party. Evidence is no longer required to establish such facts. Under the old rules, any admission of such

facts by a legal representative required special authorisation from their principal. This meant that an acceptance made by the party's legal representative could be reversed if special authorisation had not been given.

This need for special authorisation is now dispensed with and the 2020 Rules treat an authorised legal representative's admission as binding. Further, if a legal representative or litigant fails to confirm or deny an unfavourable fact put to them by a judge, the court will treat that fact as admitted.

It should be remembered that Chinese law does not recognise the concept of “without prejudice” exchanges between parties reflecting an intention to negotiate a settlement of the dispute. Therefore, even if a message is marked “without prejudice”, it will still be admissible evidence. There is no change to this position under the 2020 Rules.

### Proof of facts in arbitration awards and court judgments

The previous rules allowed a court to accept, as established, facts found in a Chinese arbitration award or a Chinese court judgment. The 2020 Rules retain this regime but it is now easier to challenge such findings in an award. Now, the facts can be “rebutted” rather than “overturned”, indicating a lower evidentiary threshold for a successful exclusion of the arbitration tribunal's assessment of the facts.

Similarly, the scope of findings in a court judgment that can be admitted as evidence has been narrowed. A distinction is drawn between “basic facts” that do not require further proof, and “other facts” which must be re-established.

**If Members have any questions in relation to the above issues, they are invited to contact the Club for further information.**

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