

IPBA

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Journal

The Constructive Role and Challenges of Litigators in the New Landscape



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BAR ASSOCIATION



IPBA 2027
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The President's Message

Dear Members,

Time is racing, and we are already nearly halfway between our Annual Meetings in Delhi and Sydney. I do not envy President-Elect James Jung as he travels from city to city promoting Sydney 2027. Delivering an outstanding conference is no small task, and I wish him every success.

As summer turns to fall, travel connected with my presidential duties is already underway. Earlier this year, I attended the American Bar Association's Annual Meeting in Chicago. The gathering underscored the breadth of issues facing lawyers today. Among its many highlights was a roundtable discussion with international bar leaders on artificial intelligence in legal practice, its governance and the wider challenges confronting a rapidly changing profession in an increasingly digital age. My participation also gave me an opportunity to highlight IPBA's initiatives and explore avenues for collaboration with one of the world's largest and most influential legal associations.

Another memorable event was an interview conducted by outgoing ABA President Michelle Behnke with Justice Rosalie Abella of Supreme Court of Canada. Her story was deeply inspiring. Born in Nazi Germany, she emigrated to Canada with her family when she was about four years old. Her father, himself a trained lawyer in Poland, was barred from practising law in Canada because he was not a citizen, and this became the seed of her determination to pursue law. The conversation traced her journey into law, appointment to the judiciary at a remarkably young age, and her eventual elevation to the Supreme Court. As the first refugee Jewish woman appointed to the highest court, her pioneering work on employment equity reshaped workplace law and influenced

reforms in countries like South Africa and New Zealand. Her remarkable path is a reminder of how resilience and vision can transform both personal destiny and the broader landscape of justice. The 250th anniversary plenary and gala dinner were magnificent. And, of course, no trip to Chicago would be complete without dinner with Immediate Past President Michael Chu and his lovely wife, Stephanie, in their leafy neighborhood on a beautiful summer evening.

Next, I attended the AIJA Congress in Vienna. AIJA's focus on young lawyers and its theme, "Lawyers in Concert", resonate strongly with the IPBA's mission to foster inclusivity and global engagement. I had the pleasure of addressing its members, sharing the IPBA's priorities, and participating in leadership discussions that will help shape future collaboration. These opportunities are not merely ceremonial but are vital platforms for building bridges between associations, exchanging ideas, and ensuring our members benefit from a truly global perspective.

Beyond these, I will participate in other international gatherings before our Mid-Year Meeting in Ho Chi Minh. Each engagement is an opportunity to strengthen IPBA's visibility, foster relationships with peer associations, and ensure that our voice is heard in shaping the future of the profession.

This September issue of the Journal addresses a highly relevant subject. In today's legal landscape, litigators remain indispensable, although the exacting role now demands far more than a strong voice. Technology is transforming litigation; globalization is multiplying cross-border disputes while rising costs and delays threaten access to justice.

At the same time, ethical dilemmas are intensifying and regulation continues to expand. These are not abstract concerns; they are realities that litigators confront every day. Among other things, the modern litigator must manage the expectation that counsel should be at once strategist, technologist, diplomat, and miracle worker. In that sense, today's litigator is not merely a courtroom combatant, but a professional problem solver. Their constructive role in safeguarding justice is undeniable, yet the modern challenges demand new skills and fresh thinking. This issue of the Journal rightly focuses on these dynamics, and I look forward to reading how litigators adapt and innovate in this new order.

The challenges of the new legal landscape are real, but so are the opportunities. As I have seen in my engagements with colleagues around the world, litigators are rising to the occasion. They are embracing alternative dispute resolution, leveraging digital tools, and redefining what it means to practice as a litigator in the twenty-first century.

For the IPBA, it is important to provide a platform where these issues can be discussed, debated, and addressed collectively. The constructive role of litigators is amplified when international bar associations come together and commit to shaping legal systems that are fair, efficient, and inclusive. As I continue to represent the IPBA at international forums, I am reminded that our strength lies in collaboration.

I look forward to seeing many of you in Ho Chi Minh at the end of September.

Warm regards,

Priti Suri
IPBA President



The Secretary-General's Message

Dear IPBA Friends,

Having wrapped up my summer holidays and recharged my batteries (notwithstanding the extreme heat in Europe), it is my pleasure to address you once again as Secretary-General. I trust you have equally enjoyed, or will shortly be enjoying, some holidays with friends and family.

The IPBA officers have been working hard over the past few months to ensure that the IPBA is up for any challenge (although I know at least some of them occasionally interrupted work or left an event earlier to be able to watch the World Cup). Our President-Elect James Jung has been traveling the world to promote the April 2027 Sydney Conference with visits to Seoul, London, Beijing, Shanghai, Kuala Lumpur, and Singapore. He and President Priti Suri will also be attending the IBA conference in Copenhagen and we would love to see you for drinks at the Pulp Bar if you are there on 6 October 2026. Our Program Coordinator Robert Rhoda and Deputy Charandeep Kaur are actively chasing the committees to submit proposals for the Sydney sessions. Based on e-mails from the committees, it looks like they will be able to provide James with a fully developed program for Sydney by the time we get to Ho Chi Minh in September for our Mid-Year Council Meeting and Regional Conference. Our Committee Coordinator Shigehiko Ishimoto and Deputy Mirella Lechna are in parallel chasing those same committee Chairs to ensure that they are actively looking for new leadership. The Nominating Committee has, in the meantime, met twice already, and by the time you read this they will have met a third time to go over the candidates for

vacant officers' and council members' positions. Where term renewals are being considered, active contribution to the IPBA, including attending the Mid-Year and Annual Conference and actively promoting the IPBA in their respective jurisdictions through events and other activities, will be assessed. On top of that, Angela Lin and Manjula Chawla have been nudging the JCMs, ALCMs, and RCs to chase their local members to keep their memberships up to date (we are slightly behind in terms of renewal rate). Our CTO Catrina Luchsinger, with the help of her Deputy CTO Doil Son, have continued working on analyzing how to integrate our various systems (website, app) while at the same time transferring our data to proprietary systems in order to keep our operations smooth. This will require heavy investments on which we will report to Council during the Mid-Year in Ho Chi Minh. Last, but not least, our Publications Committee is going strong in holding up to the publication rhythm of this Journal. Many thanks go to Scott Li and Frédéric Dal Vecchio.

It is good to see that in between our Mid-Year and Annual Conferences, other events are now being held on a more regular basis, including "Enhancing the Rule of Law for the Business Environment" in Shanghai, "ESG in a Disrupted World" roundtable held on 4 August 2026 in Kuala Lumpur, and the flagship IPBA Arbitration Day to be held in Manila on 18 September 2026. Feel free to propose other live or online events to our Program Coordinators, who with the help of the Secretariat will be happy to assist you in any possible way. All of us would be helpless indeed without the continuing support of our secretariat team in Japan. Many thanks Randa Morioka

and Yukiko Okazaki for all your support. We wouldn't be able to exist as an organization without your knowledge of its history and hands-on approach. My deputy Shin Jae Kim will happily concur. We are both impressed by how you manage to manage us.

The theme of the current issue is "The Constructive Role and Challenges of Litigators in the New Landscape". Having trained as a litigator, I still want to have my day in court once a year to experience the difference between the work of a transactional lawyer and that of a "real" lawyer. Over the years, I have seen a shift in approach both by the legal profession and the courts in terms of the desire to resolve a case through mediation instead of a judge's decision, including where the parties have not themselves taken the initiative to provide special court chambers that act as mediation chambers. I am sure you will find the contributions interesting reads.

See you shortly in Ho Chi Minh for our Mid-Year Council Meeting and Regional Conference from 26–28 September 2027.

Jan Peeters

Secretary-General



Publications Committee Chair's Message

It is my distinct privilege to welcome you to the September issue of our Journal. As we navigate an era of profound transformation in the legal profession, the role of the litigator has never been more dynamic—or more scrutinized. This issue, we have dedicated our pages to a theme that resonates with practitioners across every jurisdiction: the Constructive Role and Challenges of Litigators in the New Landscape. The global legal ecosystem is shifting beneath our feet—driven by the rise of alternative dispute resolution, AI, and other factors. In this new landscape, the litigator's role is redefined.

I am profoundly grateful that ten distinguished members from different jurisdictions have generously shared their unique perspectives on these very issues. Their articles offer a rich tapestry of insights—from “Advocate” an Officer of the Court: Litigator's Responsibility in the Indian Law

Context to Litigation Risk in Poland: A Judge's Status Has Become a Key Factor in the Validity of Judgments in Poland. Each contribution is a testament to the intellectual vibrancy of our IPBA community. I extend my deepest thanks to each author for their time, expertise, and willingness to spark what I am certain will be a new round of fresh, invigorating discussion across our legal industry. It is through such diverse voices that we truly understand the global nature of our practice.

Looking ahead, I am delighted to give you advance notice of the theme for our next issue. We will be turning our focus to the bench and the tribunal, exploring the evolving role of arbitrators in international dispute resolution. Arbitration remains one of the most important and preferred methods for resolving cross-border commercial conflicts. As the line between litigation and arbitration blurs in certain areas, and as the arbitration

community grapples with issues of transparency, diversity, and emergency relief, we believe this is a timely and essential topic for our members. We encourage you to consider submitting your thoughts and experiences on this subject.

I encourage you to delve into the pages that follow with the same enthusiasm that our authors have shown in writing them. Engage with the ideas, challenge the premises, and please feel free to share your feedback with the Committee. Our goal remains to make the IPBA's publications a true mirror of our collective expertise and a beacon for the future of our profession.

Thank you for your continued support and readership.

Yours sincerely,

Scott Li

Chair, Publications Committee





UK

IPBA UK Event in London

IPBA members in the UK organized a drinks reception in London on the evening of 23 June. Despite scorching weather, and an important World Cup Football match later that evening, we were delighted to have over 30 people in attendance—including current and former office holders, current and former members, and also a few potential new members interested in the IPBA.

Thanks to the warm generosity of our hosts and sponsors Lewis Silkin, guests were met with a thirst-quenching cold drink upon arrival with tasty canapes also served throughout the evening.

After a welcome address by Benjamin Smith of Lewis Silkin, and a short address by me in my capacity as JCM for the UK, President-Elect James Jung updated us on the exciting plans for our annual conference in



Sydney in April 2027. We played the welcome video for Sydney 2027, which clearly piqued the interest of attendees and went on to spark several conversations during the networking which continued after those formalities. Several potential new members approached me

during or after the event asking me the same question: "Why have I not heard of the IPBA before?", which I take as a sign of a successful and enjoyable event!

Ravi Aswani KC

Barrister, 36 Stone, London

China

Artificial Intelligence and Corporate Green Development from a Multi-Jurisdictional Perspective

On the afternoon of 12 June, this seminar organized by the IPBA Environmental Law Committee and the IPBA AI (Ad Hoc) Committee, was successfully held at QZ&WD (Jiangxi) Law Firm. The seminar was co-organized by QZ&WD (Jiangxi) Law Firm and supported by the School of Foreign Studies, Nanchang University. Dozens of legal professionals and entrepreneurs from the Chinese Mainland, Hong Kong, Singapore, Vietnam, and online from India, Sri Lanka, Indonesia, and Nigeria gathered for a four-hour seminar focused on artificial intelligence and green development.

This seminar marked the first international exchange event organized by the IPBA in Nanchang, Jiangxi Province. The opening ceremony was moderated by Romanee (Mengni) Luo, Chair of the IPBA Environmental Law Committee, Partner of QZ&WD Law Firm. IPBA Vice-President Olivia Kung (online), IPBA JCM for China Jason Lu (online), and Yeyu Chen, Dean of the School of Foreign Studies of Nanchang University, delivered opening addresses. The guests all agreed that, against the backdrop of rapid advances in artificial intelligence and the accelerating global green transition, strengthening legal exchanges and cooperation across different jurisdictions is of great significance for promoting sustainable corporate development, improving environmental governance systems, and enhancing cross-border compliance capabilities.



During the presentation, a number of domestic and international experts engaged in in-depth discussions on hot topics such as artificial intelligence, green development, and corporate compliance. Jack Li, the 30th President of the IPBA and Chair of the AI (Ad Hoc) Committee, gave a presentation entitled “Legal Analysis of Artificial Intelligence and Corporate Green Development”, sharing insights on new legal issues and governance challenges facing enterprises in the context of AI development. Hongsheng Wu, Head of Legal Affairs and Contracts Department, Jiangxi Geo-Engineering Investment Group Ltd., delivered a speech on “ESG Compliance Risks and Responses for Overseas Construction Enterprises”, analyzing ESG management and risk prevention in overseas projects based on the company's international business practices. Diep Hoang, IPBA JCM for Vietnam, shared experiences and observations on AI from the perspective of Vietnamese lawyers, drawing on her country's legal practice. Romanee (Mengni) Luo and Yuqing Zhao, a lecturer at the School of Foreign Studies of Nanchang University, discussed

corporate compliance issues in the era of the Ecological Environment Code, offering new reflections on corporate environmental compliance governance against the backdrop of the forthcoming implementation of the Ecological and Environmental Code of the People's Republic of China, from the perspectives of international trade and the extraterritorial effect of the Code.

In the roundtable discussion session, moderated by Li Jian, Chair of the IPBA Publications Committee, and Ou Long, member of the IPBA AI (Ad Hoc), the panelists included Denia Isetianti (Indonesia, online), Vice-Chair of the IPBA Environmental Law Committee; Daniel Liang (Singapore), Vice-Chair of the IPBA APEC Committee; Dushyantha Perera (Sri Lanka, online), member of the IPBA Cross-Border Investment Committee; Hao Wu (Hong Kong), member of the IPBA Environmental Law Committee; Vanita Bhargava (India, online), Vice-Chair of the IPBA Environmental Law Committee; and Taye Amofiranye (Nigeria, online), member of the IPBA Environmental Law Committee. The discussion focused on two

main themes: “Environmental Legal Regulation of Foreign Investment under Multiple Jurisdictions” and “Environmental Legal Regulation of Import and Export Enterprises under Multiple Jurisdictions”. The panelists, drawing on the legal systems and practical experience of their respective countries and regions, engaged in multi-dimensional discussions on issues such as environmental regulation of foreign investment, corporate environmental responsibility, green compliance in import and export trade, and environmental legal risks in cross-border operations.

The event was concluded by Longjiang Xu, Executive Vice-President of Jiangxi Lawyers Association, President of Nanchang Lawyers Association, and Director of QZ&WD Law Firm. He noted that artificial intelligence, green development, and corporate internationalization are profoundly reshaping the global business landscape and legal service models. In the face of constantly evolving international rules and compliance requirements, strengthening international legal exchanges and practical cooperation has important practical significance.

Looking ahead, the Environmental Law Committee and the AI (Ad Hoc) Committee recognize that the shared future lies in bridging our respective expertise. The seminar does not end here; it is only the beginning of a sustained, synergistic effort.

Romane (Mengni) Luo

*Partner, QZ&WD (Jiangxi) Law Firm,
Nanchang*

China

Deepening International Cooperation, Optimizing the Business Environment: A Remarkable Journey of Legal Culture

On 14 July 2026, the “Seminar on Enhancing the Rule of Law for the Business Environment: No Best, Only Better” was successfully held in Shanghai.

Entrepreneurs, experts, scholars, lawyers, arbitrators, mediators, bankruptcy administrators, and World Bank business environment assessment experts from business associations, international legal organizations, and universities across China, the United States, Australia, Japan, Malaysia, Singapore, Vietnam, and other countries and regions, attended the seminar.

On the eve of the 2026 World Artificial Intelligence Conference and High-Level Meeting on Global AI Governance in Shanghai, the AI (Ad Hoc) Committee of the Inter-Pacific Bar Association assembled an impressive lineup of international legal luminaries in the city, including nine council members and experts from seven jurisdictions. They engaged in lively exchanges, shared

insightful perspectives, and fostered a warm and collegial atmosphere.

The Rule of Law is the Best Business Environment

At the opening ceremony, Chen Sanlian, Chair of the Zhejiang Business Foreign-Related Legal Service Center, and Jack Li (Li Zhiqiang), the 30th President of IPBA and Chair of its AI (Ad Hoc) Committee, delivered addresses. The ceremony was moderated by Jason Lu, IPBA JCM for China and a Standing Committee Member of the Shanghai Municipal Committee of the Chinese People’s Political Consultative Conference (CPPCC). The seminar featured a keynote speech by James Jung, President-Elect of the IPBA. The keynote session was moderated by IPBA Committee Coordinator Shigehiko Ishimoto.

Experts at the seminar noted that compliance with the rule of law is the best business environment. In recent years, China has continuously improved its market-oriented, law-based, and internationalized business environment, steadily enhancing the legal framework for Sino-foreign economic and trade cooperation, and achieving fruitful results in emerging





fields such as artificial intelligence and the digital economy.

Exploring Diverse Pathways for Commercial Dispute Resolution

During the first roundtable forum, Raphael Choon Tien Tay, IPBA JCM for Malaysia, and Peng Bo, Founding Partner of PW & Partners Law Firm, served as speakers, with international law professor Li Ben from Shanghai University Law School acting as discussant. The session was moderated by Keanu Ou, a member of the IPBA AI (Ad Hoc) Committee.

Experts pointed out that diversified dispute resolution mechanisms—including commercial mediation, commercial arbitration, and civil and commercial litigation—are

the inevitable choice for resolving commercial disputes. Sharing approaches and successful cases from different jurisdictions provided a “golden key” to resolving disputes and improvement of the business environment.

Exploring Cross-Border Restructuring and Reorganization

During the second roundtable forum, Yu Wakae, Chief Representative of the Nagashima Ohno & Tsunematsu Shanghai Office, and Lydia Pan, Deputy Director of the Cross-Border Bankruptcy Research Committee of the Shanghai Association of Bankruptcy Administrators, served as speakers, with Sara Zhang, Director of Jiangsu Y & T (Shanghai) Lawyers, acting as discussant. The session was moderated

by Jiang Hai, Deputy Director of the Huangpu District Lawyers Working Committee of Shanghai.

The experts noted that in the face of global economic uncertainties and multiple other factors, cross-border restructuring and reorganization of enterprises have become imperative. Drawing on legal systems from different jurisdictions, optimizing the legal ecosystem for restructuring and reorganization, and leveraging the professional role of bankruptcy administrators are among the best choices for improving the quality and efficiency of bankruptcy reorganization and the broader business environment.

At the closing ceremony, moderated by IPBA Publications Committee Chair

Scott Li, Michael Chu, the Immediate Past President of the IPBA and an American lawyer, delivered the closing address.

Zhou Tingjing, Secretary-General of the Shanghai International Service Trade Association, and Diep Hoang, IPBA JCM for Vietnam, together with others, presented the speakers and moderators with "Certificates of Speech" signed by the Trade Association's President Hua Wei.

The seminar was hosted by the IPBA AI (Ad Hoc) Committee, and organized by the Shanghai International Service Trade Association. The entrepreneurs, legal scholars, and legal practitioners in attendance spoke highly of the successful convening of the 30th IPBA Annual Meeting and Conference in Shanghai five years ago. The first official theme song, "We Are Together",

originally composed by Chinese musicians, resounded from the banks of the Huangpu River and spread to every corner of the globe. The participants showcased the endearing, approachable, and admirable image of legal professionals, and gave rise to the spirit of the IPBA Shanghai Annual Meeting and Conference—a spirit of seeking mutual learning, cooperation, and development through the rule of law. This spirit carries profound significance for promoting the common values of humanity, building a community with a shared future for mankind, and implementing the Global Development Initiative, the Global Security Initiative, the Global Civilization Initiative, and the Global Governance Initiative.

The participating experts and scholars from various countries welcomed the ongoing development of the

Shanghai International Legal Service Center and expressed a strong desire to further deepen communication and cooperation among major international legal organizations, commercial and legal institutions, legal service providers, and university think tanks. They also look forward to enhancing the exchange and mutual learning of rule-of-law civilizations across multiple jurisdictions, and to integrating the collective wisdom and insights for the continuous optimization of the business environment.

The participating experts generally concurred that this seminar was a truly remarkable and meaningful journey of legal culture and rule-of-law exchange.

Scott Li

*Jin Mao Partners (Lin Gang),
Person-in-Charge, Shanghai*

IPBA Upcoming Events

Event	Location	Date
IPBA Annual Meeting and Conferences		
32nd Annual Meeting and Conference	Sydney, Australia	7-10 April 2027
Local and Regional Events		
IPBA Arbitration Day 2026	Manila, Philippines	18 September 2026
IPBA Drinks Reception in Copenhagen	Copenhagen, Denmark	6 October 2026
Mid-Year Council Meeting and Regional Conference		
Mid-Year Council Meetings (for Council members only)	Ho Chi Minh, Vietnam	26-27 September 2026
Regional Conference "Doing Business in Asia: Opportunities Amid Uncertainty" (open to all)	Ho Chi Minh, Vietnam	28 September 2026
Mid-Year Council Meetings (for Council members only)	Paris, France	18-19 September 2027
Regional Conference (open to all)	Paris, France	20 September 2027

The above schedule is subject to change.

Something *New*



International Applicants Under China's Amended Trademark Law: Treaty Eligibility, Priority Rights

On 26 June 2026, China promulgated the newly Amended Trademark Law of the People's Republic of China (PRC Trademark Law)—the first full-scale revision since 1983. While headline changes such as the recognition of motion marks and enhanced well-known trademark protection have drawn attention, this article focuses on three less-discussed but critical procedural provisions—Articles 11, 29, and 30—that international applicants must navigate to secure trademark rights in China.

Introduction

On 26 June 2026, China promulgated the newly amended PRC Trademark Law—the first full-scale revision since 1983. The amended law expands from 73 to 87 articles and introduces a new chapter on “Conditions for Trademark Registration”. The PRC Trademark Law has evolved through five amendments (1993, 2001, 2013, 2019 and 2026). The amended PRC Trademark Law shall come into force on 1 January 2027.

For international practitioners, headline changes—such as the recognition of motion marks, expanded well-known trademark protection, and stricter penalties for malicious filings—are significant. But beneath these lie three procedural provisions that have been reaffirmed,

clarified, and tightened. These provisions do not make headlines, but they make or break international filings every day.

Have you ever filed a trademark application in China only to discover that your client's priority claim was never valid because the declaration was missing from the initial filing? Or that the application was refused because the client's country of origin did not qualify under the reciprocity principle? The Chinese trademark system presents a peculiar challenge: the substantive examination rules are broadly predictable, but the procedural requirements at the outset are deceptively strict. A single missed deadline or a forgotten declaration can derail an entire registration strategy.

The answer lies in three provisions: Articles 11, 29, and 30. These provisions have not fundamentally changed in the 2026 revision, but their importance has been underscored by the broader overhaul. Compliance with these procedural gateways will only become more critical.

Does Your Client Have Qualification for Filing? (Article 11)

Before you think about filing dates or priority claims, ask: does the law recognize your client's right to apply in China?

Defining “International Applicants”

For the purposes of this article, “international applicants” are defined as entities or individuals that are not domiciled in China and do not have a place of business in China. This corresponds to the group referred to in Article 11 as “foreigners, foreign enterprises, or other foreign organizations”—applicants whose country of origin is not China and who lack a habitual residence or place of business in China. This article uses “international” to reflect the cross-border nature of these filings and to align with the readership of an international legal journal; the statutory term in Chinese law is “foreign”.

International Legislative Origins

The principle underlying Article 11—that international applicants may seek trademark protection in a country only on the basis of treaty, agreement, or reciprocity—has deep roots in international law. Its foundational source is the Paris Convention for the Protection of Industrial Property, concluded on 20 March 1883 and one of the earliest and most significant international intellectual property treaties.

The Paris Convention established three core principles that have shaped national trademark laws worldwide, including China's Article 11:

- **National Treatment (Article 2):** Each Contracting State must grant the same protection to nationals of other member states as it grants to its own nationals. Non-Convention nationals who have a domicile or a real and effective industrial or commercial establishment in a member state are also entitled to this treatment. This principle ensures that once an applicant qualifies, they are placed on equal footing with domestic applicants—a structure mirrored in Article 11's relationship to National Treatment.
- **Priority Right (Article 4):** An applicant who has filed a regular national application in one member state may, within six months for trademarks, file in other member states and claim the first filing date as the effective date. This principle forms the basis of China's Article 29.
- **Independence of Trademarks (Article 6):** The registration of a trademark in one member state is independent of registrations in other member states, including the country of origin. A refusal or cancellation in one country does not affect registrations elsewhere.

The Paris Convention has been amended multiple times—Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958), and Stockholm (1967)—and amended in 1979. By 2002, it had grown from 11 original signatories to 164 members, including China.

WTO/TRIPS Framework: With the establishment of the WTO and the adoption of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement in 1994, the Paris

Convention's substantive provisions were incorporated into the WTO framework. TRIPS Article 2 provides that, in respect of Parts II, III and IV of the TRIPS Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967). TRIPS also reinforced the National Treatment principle (Article 3) and introduced Most-Favored Nation (MFN) treatment (Article 4), further internationalizing the eligibility framework for international applicants. This is why, today, membership in either the Paris Convention or the WTO (through TRIPS) generally satisfies the eligibility requirement for most countries.

China's Accession and Implementation

China acceded to the Paris Convention on 19 March 1985. On the same day, the State Council promulgated the Interim Provisions on Claiming Priority for Trademark Registration Applications, bringing the Convention's priority provisions into domestic effect. China subsequently joined the WTO on 11 December 2001, thereby committing to the TRIPS Agreement. The 2001 amendment to the PRC Trademark Law was a comprehensive effort to bring Chinese law into TRIPS compliance, and it formally incorporated the priority mechanism into the statutory framework.

The Three-Tiered Framework

Building on these international foundations, Article 11 establishes a three-tiered framework for determining whether an international applicant has qualification for filing in China:

- **First Tier:** International treaties. The Paris Convention is the most common route. China's accession in 1985 means

that applicants from nearly all Convention member states automatically satisfy the eligibility requirement. The WTO's TRIPS Agreement, which incorporates the Paris Convention's substantive provisions, provides an additional basis.

- **Second Tier:** Bilateral agreements. Where no common treaty exists, bilateral agreements between China and the applicant's country of origin may serve as the basis. These can provide specific procedural accommodations not covered by multilateral treaties.
- **Third Tier:** Reciprocity. Where neither a treaty nor a bilateral agreement exists, the principle of reciprocity steps in as a fallback. Under this principle, China examines whether the applicant's country of origin grants equivalent treatment to Chinese applicants and extends the same treatment in return.

What "Reciprocity" Really Means

Reciprocity under this provision is not confined to procedural or substantive aspects—its scope depends on the context. It often involves procedural matters, such as notarization or recognition of priority rights. If a country does not require Chinese applicants to notarize their filings, China may waive the same requirement. Conversely, if a country imposes discriminatory burdens, China may impose reciprocal restrictions. In certain cases, reciprocity may also extend to substantive aspects, such as examination standards or recognition of registration validity. The precise scope is not rigidly defined by law and may vary in practice depending on bilateral relations and administrative practices.

National Treatment Versus Eligibility

Article 11 is not itself the grant of National Treatment. Rather, it is the eligibility test an applicant must pass before National Treatment applies. Only once the eligibility threshold is satisfied does the applicant gain the right to enjoy the same treatment as domestic applicants. This two-step structure reflects the Paris Convention's architecture: first, determine if the applicant is entitled to benefit; second, apply National Treatment.

The Mandatory Agency Requirement

A fundamental requirement that international applicants must be aware of from the outset: if the applicant has no habitual residence or business operations in China, they must engage a local, lawfully established trademark agency to handle all matters. This is a legal requirement, not a recommendation. It applies even if the applicant has a subsidiary or distributor in China that is not the trademark owner itself.

Practical Guidance

Before filing a trademark application: (1) verify your client's country of origin is a party to the Paris Convention or the WTO's TRIPS Agreement; (2) for the rare non-Convention country, secure official documentation evidencing reciprocal policies; and (3) ensure a proper Power of Attorney has been executed in favor of a qualified Chinese trademark agency.

When Does the Clock Start Ticking? (Article 29)

Assuming your client has qualification, the next question is timing. In a first-to-file jurisdiction like China, the filing date is everything. For international applicants who have already filed outside China, Article 29 offers a way



to preserve that earlier date—provided you follow the rules to the letter.

Origins and Legislative Evolution

This is the classic Paris Convention priority provision, originating from Article 4, which grants a six-month priority period for trademark applications. China's implementation dates back to 1985, when the State Council promulgated the Interim Provisions on Claiming Priority for Trademark Registration Applications, effective 19 March 1985—the very day China acceded to the Paris Convention. The 2001 amendment incorporated this mechanism into the statutory framework, and the 2026 revision maintains the requirements unchanged.

The Value of Priority: Locking in the Filing Date

Priority does not speed up examination. What it does is far more valuable: it locks in the filing date. If valid, the China National Intellectual Property Administration (CNIPA) will treat the priority date—the date of the first filing outside China—as the effective filing date in China. In a system where registration goes to the first filer, that can be the difference between securing the mark and losing it to a competitor.

The Rules Are Unforgiving

To claim priority, the applicant must make a written declaration at the time of filing the Chinese application—it cannot be added later. Within three months of the Chinese filing date, the applicant must submit a certified copy of the first application filed outside China. Miss either deadline and the priority claim is gone—no grace period, no extension, no remedy.

A Note on the Underlying Application

If the underlying application filed outside China is withdrawn, abandoned, or rejected, this does not affect its validity as a basis for claiming priority. However, practitioners should be aware that if a subsequent application is filed in the same country to replace the first application under Article 4C(4) of the Paris Convention, the original application may no longer serve as a priority basis.

Practical Guidance

For any client who has already filed outside China: (1) declare priority in the Chinese application form itself, with the country of origin, application number, and filing date clearly stated; (2) file within six months of the first filing date; (3) submit the certified copy within three months of the Chinese

filing date; and (4) verify that the goods/services claimed in China do not exceed the scope of the application filed outside China.

What If Your Client Hasn't Filed Outside China Yet? (Article 30)

Now consider a different scenario. Your client has not yet filed a trademark application outside China. Perhaps they are still observing the market. But they have just exhibited their products at an international trade fair in China—and the response has been overwhelming. Can they still secure an early filing date?

Article 30 says yes—but only if they act quickly and meet very specific conditions.

Origins and Legislative History

This provision offers a priority mechanism based on first use at a qualifying exhibition, rather than on a prior application filed outside China. Its roots lie in Article 11 of the Paris Convention, which provides for temporary protection of goods exhibited at international exhibitions. China has incorporated this as a full priority right. The exhibition priority provision has been present since the early versions of the PRC Trademark Law, and the 2026 revision retains it unchanged.

Value and Conditions

This is a valuable option—particularly when time is short or when the client wishes to delay filing outside China while securing an early date in China. But the conditions are narrow.

First, the exhibition must be “sponsored or recognised by the Chinese government”. Not every international exhibition qualifies. Second, the use must genuinely be the first use of that

trademark anywhere. If the mark was used in any jurisdiction before the exhibition, the right to claim exhibition priority is lost. Third, the mark applied for in China must be identical to the mark used at the exhibition, and the designated goods must not exceed the scope of those exhibited.

Procedural Deadlines

The deadlines are as strict as under Article 29. The applicant must declare the exhibition priority claim at the time of filing, specifying the exhibition name and date. Within three months, the applicant must submit supporting documents. Miss either, and the priority claim is gone for good.

Practical Guidance

For clients participating in qualifying exhibitions in China: (1) verify the exhibition's qualification status with the CNIPA before the event; (2) ensure your client keeps clear, dated evidence of the goods displayed and the trademark as used; (3) file within six months of the exhibition date; and (4) do not forget the declaration and supporting documents—they are as important as the application itself.

Conclusion

Let us return to the questions we started with. Does your client have qualification for filing? When does the clock start ticking? And if they have not filed outside China, is there another way to secure an early date?

The answers lie in Articles 11, 29, and 30. These three provisions are not the flashiest parts of the statute, but for international practitioners, they are among the most important. Together, they establish the jurisdictional gateway, the priority timeline, and the alternative route that every international applicant must navigate.

The 2026 revision has brought significant changes—from the codification of motion marks to the strengthening of penalties for malicious filings. Yet the procedural fundamentals remain as critical as ever. In China, success in trademark registration is determined not at the examination stage, but at the filing stage. A distinctive and available mark can still fail if the procedural requirements are not met from the very beginning.

So, whether this is your first filing or your hundredth, remember: verify your client's qualification, choose the right priority route, and docket every deadline as if it were absolute—because under Chinese law, it is.

Disclaimer: This article is for informational purposes only and does not constitute legal advice. Practitioners should consult qualified local counsel for specific guidance.

Anita Yu

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The Jurisprudential Divide Between Domestic and Cross-Border Patent Infringement Litigation

The intersection of intellectual property rights, sovereign jurisdiction, and the globalized digital economy present one of the most commercially significant challenges in modern litigation.

Patent law has historically been anchored to the principle of territoriality, meaning exclusionary rights are strictly confined to geographic borders. While this doctrine functioned efficiently during the industrial era—when infringement primarily involved the localized physical manufacturing and sale of tangible goods—the advent of distributed networks, cloud computing, and borderless digital architecture has fundamentally destabilized traditional domestic litigation.



The Foundation—Territoriality in Domestic Litigation

In traditional domestic litigation, all elements of an infringing act are completed entirely within a single sovereign territory. Historically, both Japanese and United States courts strictly interpreted territoriality, often resulting in harsh outcomes for patent holders when any infringing activity crossed nationally jurisdictional lines.

For example, the United States Supreme Court, in *Deepsouth Packing Co. v Laitram Corp.* (1972), established a strict geographical limitation, holding that the manufacture of components within the US for final assembly abroad did not constitute direct domestic infringement.¹ Similarly, the Supreme Court of Japan explicitly reinforced strict geographic limitations in the *Card Reader Case* (2002).² The court refused to apply US patent law to domestic activities, maintaining that the effects of a patent are governed exclusively by the registering country.

Cross-Border Litigating System and Method Patent Claims

When system architectures are intentionally designed to be borderless—such as a central server in one country and end-user terminals in another—determining the governing law becomes highly contested.

In the United States, the litigation of system patent claims relies heavily on the “control and benefit” standard established by the Federal Circuit in *NTP, Inc. v Research in Motion, Ltd.* (2005). This standard allows domestic litigation against foreign networks if the system as a whole is controlled, and its beneficial use is obtained, within the United States. If an end-user initiates a distributed system domestically, they may be found to directly use the system, irrespective of the physical location of remote back-end servers.³

However, US litigation involving method patent claims operates under a distinctly different set of rules. The Federal Circuit maintains strict territoriality for method claims, mandating that every single step of the claimed method must be performed entirely within US borders. In cases of divided domestic infringement involving multiple actors, US litigation relies on principles of vicarious liability. Direct infringement is only found if one entity “directs or controls” the other’s performance, or if the actors form a “joint enterprise”.⁴

The Japanese Paradigm Shift in Cross-Border Litigation

While the US maintains rigid, bifurcated rules for different claim types, Japan has recently executed a dramatic paradigm shift in cross-border litigation through the *Dwango v FC2* rulings. Initially, traditional strict territoriality prevailed as the Tokyo District Court dismissed Dwango’s infringement claims against FC2 because the critical server was physically located in the United States.⁵ However, the Supreme Court of Japan reversed this, abandoning rigid geographic formalism.

The Supreme Court of Japan ruled that building a network system containing an overseas server can constitute “producing a product” within Japan, provided that the network is substantially implemented domestically. The Court found that the physical location of the server held “no special significance” because the system was newly created within the user’s terminal upon domestic access.⁶

The Japanese Four-Factor Substantive Test

To evaluate whether a cross-border network invention is substantially worked within Japan, courts now apply a functional balancing test⁷ analyzing:

- **Specific Mode of the Act:** Whether the transmission of files from a foreign server and receipt by domestic terminals are technologically integral.
- **Functions and Roles:** The technological weight and principal functions performed by components located in Japan.
- **Place of Effect:** Whether the ultimate technological and utilitarian benefits of the invention are manifested exclusively within Japanese territory.
- **Economic Impact:** Whether the foreign provision of services negatively impacts the domestic market share and economic benefits of the Japanese patent holder.

Procedural Hurdles—Jurisdiction and Choice of Law

Beyond substantive patent law, cross-border litigation introduces complex procedural mechanics governed by private international law. Consolidating claims against both domestic end users and foreign server operators into a single judicial venue remains a central procedural hurdle. While European courts have rejected expansive consolidation theories like the “Spider in the Web” doctrine,⁸

Japan's Code of Civil Procedure has evolved. Reforms made in 2012 allow for subjective joinder when claims against multiple parties are based on the same factual and legal grounds.

Choice of law also dictates parallel litigation strategy. Under the Japanese Act on General Rules for Application of Laws (*tsūsoku-ho*), claims for monetary damages arising from torts—including patent infringement—are generally governed by the law of the place where the results of the infringing act occur (*lex loci delicti*).⁹ If the economic harm and technological effects materialize entirely within Japan, Japanese law applies. However, for claims seeking an injunction, courts typically apply the law of the registering country, respecting the sovereign act of patent issuance.

Strategic Implications and Global Forum Shopping

The jurisprudential divergence between the United States and Japan heavily impacts global litigation strategies and forum shopping. By permanently closing the “server loophole”, Japan ensures that foreign software and cloud providers intentionally targeting Japanese consumers can face strict domestic liability, regardless of server location.

As a result, patentees holding global portfolios may prioritize litigating network-related patents in Tokyo rather than traditional US venues, anticipating a highly favorable, functional extraterritorial application of domestic law. Conversely, litigating cross-border method claims in the US remains a formidable challenge, requiring meticulous patent prosecution and an architecture designed to capture divided, multi-actor infringement. Ultimately, these disparate litigation landscapes underscore an urgent need for legislative action and international harmonization.

Notes

¹ Stephen P Cole, *NTP v RIM: The Diverging Law Between System and Method Claim Infringement* (January 2007), *University of New Hampshire Law Review*, Vol 5, UNH Scholars Repository; available at https://scholars.unh.edu/cgi/viewcontent.cgi?article=1100&context=unh_lr (last accessed 11 August 2026).

² *Card Reader Case*, Supreme Court Decision (Heisei 14 September 2026) Minshu Vol 56 No 7, p 1551 ff; available at www.jpaa.or.jp/old/english/court_decisions/Card_Reader_Case_Clean.pdf (last accessed 11 August 2026).

(“applicable law governing an action for injunction based on patent right be the law of the country where the said patent right was registered”).

³ *NTP v RIM: The Diverging Law Between System and Method Claim Infringement*, note 1 above.

⁴ *Akamai Technologies, Inc. v Limelight Networks, Inc.*

⁵ Hogan Lovells Cadwalader, *Japan: Supreme Court Decision—Closing a loophole for Patent Infringements in Cross-Border Network Systems*, 11 March 2025; available at www.hoganlovells.com/en/publications/japan-supreme-court-decision-closing-a-loophole-for-patent-infringements (last accessed 11 August 2026).

⁶ Taiyo, Nakajuma & Kato – 太陽国際特許事務所, *Supreme Court Ruling in Dwango v FC2: Do Japanese Patent Rights. Extend to Cross-Border Implementation of Network Related Inventions?*, 11 April 2025; available at www.taiyo-nk.co.jp/en/news/japan/news/20250411.html (last accessed 11 August 2026).

⁷ Ryuta Mitsusue, *Impact of the Supreme Court Decision on Cross-Border Patent Infringement*, SHIGA International Patent Office (2025); available at <https://shigapatent.com/en/topics/supreme-court-cross-border-patent-infringement/> (last accessed 11 August 2026).

⁸ *Spider in the Web Doctrine*, WIKIPEDIA; available at https://en.wikipedia.org/wiki/Spider_in_the_web_doctrine#:~:text=The%20spider%20in%20the%20web,which%20the%20patent%20was%20granted (last accessed 11 August 2026).

⁹ Dai Yokomizo, *Patent Infringement by Multiple Parties and Conflict of Laws*, 法政論集 250 号 (2013), (foot note: “if the occurrence of the results in that place could not normally be predicted, the applicable law will be that of the place where the tortious act took place. Article of *Tsūsoku-hō*.”).



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*T*he Present and the Future of Product Liability Litigation in Japan



Product liability litigation, although relatively uncommon in Japan, can have a significant impact on business, including mass tort litigation that attracts public attention. In light of the recent revision of the EU Product Liability Directive, product liability law in Japan is currently under review and discussion. A key question is whether Japan should retain its current approach to the scope of liability and burden of proof in product liability litigation, or move towards a broader framework. In this context, this article provides an overview of the current status, features, and trends of product liability litigation in Japan.

Introduction

The relative importance of different areas of practice may vary across jurisdictions and among legal practitioners. However, product liability litigation remains one of the most significant fields of practice, especially in today's world of remarkable scientific and technological growth.

In the United States, the concept of product liability was adopted in the Restatement (Second) of Torts in 1964. In Europe, the Product Liability Directive was adopted in 1985. In Japan, the Product Liability Act came into effect in 1995, a decade behind the EU. Since then, for approximately 30 years, the Product Liability Act in Japan has remained unchanged, with the sole exception of amendments to the statute of limitations.

In December 2024, the Product Liability Directive in Europe underwent its first comprehensive revision in approximately 40 years. This revision is tailored to today's digital society and circular economy. In recent years, the Consumer Affairs Agency (CAA) in Japan has also conducted research and hearings concerning the revised Product Liability Directive.

Current Status of Product Liability Litigation in Japan

According to judicial statistics published by the Supreme Court of Japan, the number of new civil lawsuits filed in district courts is approximately 120,000 to 140,000 per year. The average period from filing to judgment is about 10 months. There are approximately 10,000 to 12,000 cases that take more than two years.

With respect to product liability litigation, the CAA has published on its website a list of product liability lawsuits of which it is aware. According to the list, there are approximately 500 judgments and 100 settlements rendered or reached over the last 30 years. Even considering that the list does not cover all cases, it is safe to say that product liability litigation is quite rare in Japan. However, product liability litigation remains a significant

concern for manufacturers, partly because losing a case often has a significant economic and social impact. This is also partly because product liability litigation is burdensome due to its complexity and can take a long time to resolve. In product liability litigation, it often takes more than three years to reach a district court judgment. In some cases, it may take 5 to 10 years or even longer.

Furthermore, while product liability is generally considered to be a type of consumer protection law, the Product Liability Act in Japan in fact applies not only to business-to-consumer cases but also to business-to-business cases. Interestingly, one of the most well-known judicial precedents regarding product liability is a claim for damages brought by the Japanese government against a helicopter manufacturer. There are also numerous business-to-business cases. For example, a retailer that has compensated a customer for losses may seek recovery from the manufacturer under the Product Liability Act, not only for the compensation paid to the customer, but also for related losses incurred by the retailer.

Procedures of Product Liability Litigation in Japan

In Japan, litigation begins with the filing of a lawsuit by the plaintiff. After the defendant files an answer, oral arguments will be held in court, and, in most cases, the lawsuit will move to closed-door preparatory proceedings. The parties will file briefs along with supporting evidence, in many cases taking turns. In Japan, judges tend to place great importance on the contents of written documents, including briefs and documentary evidence, submitted in preparatory proceedings. Upon clarification of the issues and evidence, the examinations of witnesses and the parties are held in open court to the minimum extent necessary.

Product liability litigation basically follows the same procedures of general civil litigation; however, there are some unique features in product liability litigation, such as:

- the courts often request the parties to make presentations on technical issues and knowledge;
- a large amount of evidence, including expert opinions, are often submitted by both parties and multiple examinations of expert witnesses are often conducted; and
- in addition to expert opinions and witness examinations, the courts sometimes appoint expert advisors to support the judges' understanding and evaluation of the technical issues and knowledge.

Another important aspect of the procedures of product liability litigation is digitalization. The digitalization of civil litigation, including product liability litigation, has been progressing since 2020 in Japan. Before digitalization, at least one of the parties had to appear in court in oral arguments and even preparatory proceedings; the courts changed the operation of the preparatory proceedings in 2020 so that both parties can attend preparatory proceedings via the web, through means such as Microsoft Teams. For example, in a mass tort case, preparatory proceedings were held via Microsoft Teams, with judges and parties joining from 10 different locations across Japan. In 2022, the Code of Civil Procedure was amended, enabling both parties to attend even oral arguments via Microsoft Teams. Moreover, some courts have experimentally started to operate an online submission system for briefs and evidence. On 21 May 2026, the final phase of the digitalization reforms under the amended Code of Civil Procedure came into force and measures such as the following took effect:

- online filing of a lawsuit,
- online examination of parties and online examination of witnesses, and
- online inspection of case records.

Burden of Proof in Product Liability Litigation in Japan

It is understood under Japanese law that the burden of proof for defect, damage, and the causation between defect and damage, lies with the plaintiff. Although the necessary evidence varies depending on the case, the following evidence is often submitted by parties in many cases: evidence regarding, among other things, the products

(for example, photos, catalogs, instruction manuals), the use and management of the products before and at the time of the accident (for example, construction drawings, maintenance records, on-site investigation reports), post-accident response (for example, the information on improvements, recall reports, emails and minutes between parties), and similar accidents involving the products, if any.

One of the issues related to the burden of proof in product liability litigation is that obtaining these kinds of evidence is often challenging, especially for plaintiffs. In Japan, although differentiated from the disclosure of evidence under the revised Product Liability Directive, there have been multiple methods of obtaining evidence, such as Inquiry by a Party, Authority to Ask for an Explanation, Commissioning the Sending of a Document, and an Order to Submit Documents. While plaintiffs can obtain a considerable amount of important evidence by utilizing these methods effectively, it is still argued that there is a significant information gap between companies and consumers. To improve this current situation, enhancement of these methods of obtaining evidence has recently been discussed by a study group of the Commercial Law Center, Inc. In response to the report published by the Commercial Law Center in February of this year, this issue is expected to be addressed by the Legislative Council of the Ministry of Justice in the near future.

Another issue is the presumption of a defect and causation. No legal presumption is recognized for product liability, unlike the revised Product Liability Directive in Europe. However, in practice, the courts have substantially reduced the burden on plaintiffs in many cases by applying “factual presumption” for a defect or causation, or both. Factual presumption is a judicial presumption based on the principle of the free evaluation of evidence. For instance, if a product accident occurred while a victim used the product in an ordinary manner, the court often presumes that the product is defective, whether or not the plaintiff has proved, among other things, the specific details of the defect or mechanism of the product accident. In this case, the defendant is required to present facts to rebut the presumption, such as another cause of the accident, which is by no means an easy task. Therefore, in most product liability litigation, the plaintiff (that is, the victim of the accident) will argue and prove that the product was used and managed appropriately, while the defendant (that is, the manufacturer) refutes this by presenting counterevidence such as circumstances suggesting that the product was

used in a manner different from the intended use. In Japan, disputes concerning factual presumptions often play a more important role than abstract discussions concerning the allocation of the burden of proof.

Class Actions and Mass Tort Litigation in Japan

In 2016, the Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Damage Incurred by Consumers was enacted. This Act permits designated qualified consumer organizations, certified by the Prime Minister of Japan, to seek collective compensation for damages on behalf of consumers. This system is often referred to as the “Japanese-style class action”; however, this Japanese-style class action is quite different from that in the United States. The Japanese-style class action adopts an opt-in system, that is, a designated qualified consumer organization files a lawsuit to confirm a common obligation, and if the common obligation is established, then the claims of each consumer, who files a claim through the designated qualified consumer organization, are determined. Only designated qualified consumer organizations, of which there are currently four, can be the plaintiffs of such litigation. Applicable causes of action are strictly limited.

As this Japanese-style class action has rarely been used, the Act on the Japanese-style class action was amended, and the scope of application was expanded in 2022. However, the Japanese-style class action still basically cannot be used for product liability litigation for several reasons. The Japanese-style class action applies only to litigation between parties to consumer contracts; it does not apply to litigation between consumers and manufacturers unless the consumers have made consumer contracts with the manufacturers. It does not apply to litigation based on the Product Liability Act or litigation regarding consequential damages, either.

Instead, in Japan, mass tort litigation has traditionally taken the form of cases involving large numbers of victims. In the past, several mass tort litigation cases attracted significant public attention, for example: litigation regarding adverse reactions by a lung cancer drug, choking accidents by konjac jelly, allergic reactions by wheat soap, etc. These days, mass tort litigation regarding HPV vaccines and COVID-19 vaccines has been ongoing.

In this type of mass tort litigation, plaintiffs' lawyer groups often try to establish frameworks similar to a class action by requesting courts and defendants to enter into



settlements in which the defendants compensate for the damages of the plaintiffs as well as all other victims. For example, in the lung cancer drug case, filed by around 10 plaintiffs, the plaintiffs requested a framework where the defendants promise to compensate for the damages of more than 800 victims. In this case, the defendants rejected the plaintiffs' request and eventually the plaintiffs' claims were dismissed by the Supreme Court; however, there is a likelihood of similar requests in future mass tort litigation regarding product liability.

Trends and Future Challenges of Product Liability Litigation in Japan

The revised Product Liability Directive in Europe has expanded the scope of product liability in several respects, including economic operators (for example, online platform operators), products (for example, software), and the point in time (for example, post-market). None of these changes has been adopted under the Product Liability Act in Japan; however, these issues have been addressed in other ways.

There have already been several cases in Japan in which the plaintiffs claimed damages against online platform operators in relation to the problems with products sold through their online platforms. In a recent case, the



court ruled that an online platform operator was liable for damages, not based on product liability, but on a breach of contractual duty of care for failing to take any measure to remove counterfeit goods from its platform.

There have also been several cases in Japan in which plaintiffs claimed damages for software malfunctions, not against the manufacturers of the software itself, but against the manufacturers of products incorporating the software. For example, with respect to autonomous driving, there was a case involving an aircraft accident during autonomous flight where the plaintiff claimed damages against the manufacturer of the aircraft based on product liability. The court ruled in the case that the accident was caused by the captain's negligence and the aircraft was not defective. With respect to assistive AI, there was also a case where a driver, who entered a narrow road following route guidance by a car navigation system and sustained damage to the vehicle body, claimed damages against the manufacturer of the navigation system. In this case as well, the court eventually denied product liability, holding that it was necessary for the driver to operate the vehicle on the basis of their own judgment. However, these cases are relatively dated having been rendered in 2004 and 2018 respectively. While courts have tended to emphasize the user's own judgment and duty of care in these earlier cases, it cannot necessarily be assumed that this approach will be maintained in the future in light of the recent significant advances in AI technology.

There have been several cases in Japan as well in which the plaintiffs claimed damages against manufacturers regarding post-market responsibility. In fact, this issue of post-market responsibility, not based on product liability but

on negligence, has been discussed in Japan for a long time, especially in the wake of instantaneous gas water heater accidents in 2005.

As explained in the Introduction, the CAA is currently taking the lead in reviewing developments in product liability law outside Japan, including the revised Product Liability Directive in Europe. The CAA is studying all of the principal amendments introduced by the revised Product Liability Directive. Whether Japan's existing framework, shaped by decades of judicial development, will continue to be sufficient to address new challenges, or whether legislative reform will become necessary in the age of AI and digital products, remains to be seen. All eyes are on the CAA's next move.



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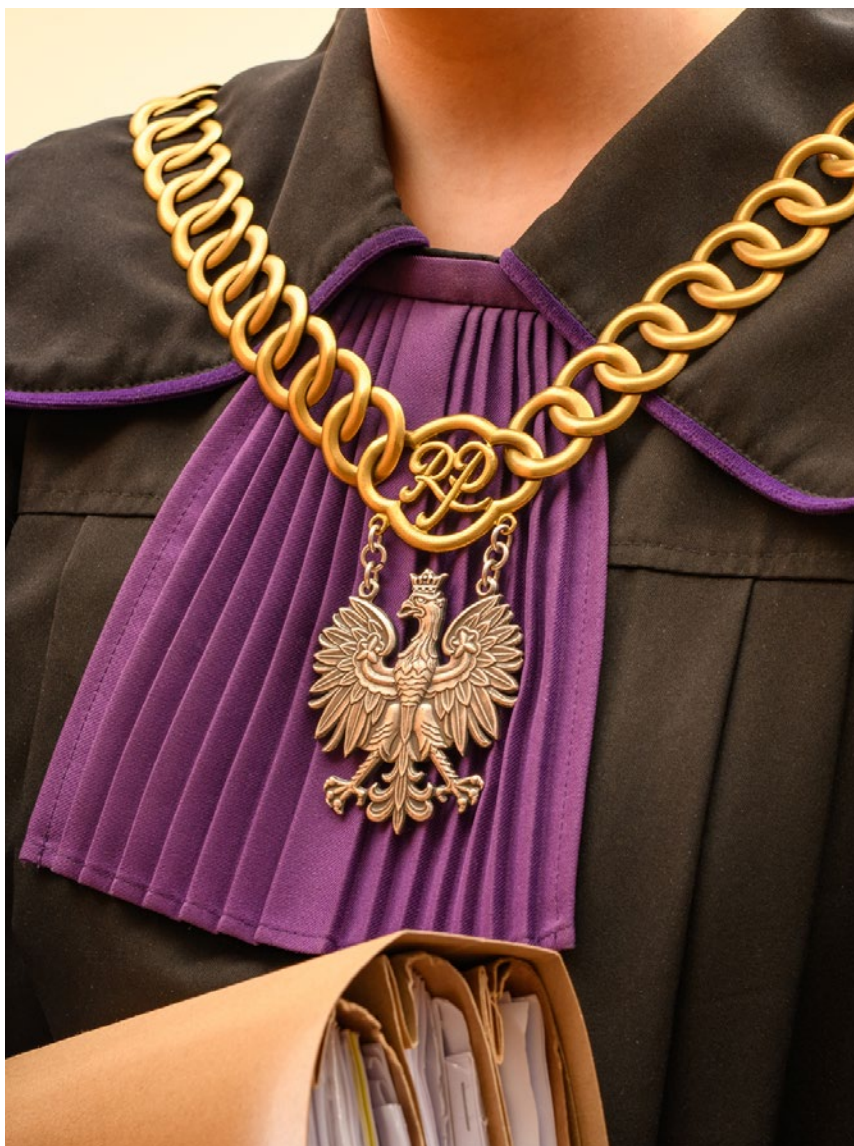
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Litigation Risk in Poland: A Judge's Status Has Become a Key Factor in the Validity of Judgments in Poland

A judge's status has become a key factor in determining the validity of judgments in Poland.

The ongoing dispute over the legality of appointments since 2018 has caused unprecedented systemic chaos, resulting in judgments being undermined by the common courts and the Constitutional Tribunal becoming paralyzed.

This article examines this multifaceted crisis, demonstrating why conducting litigation in Poland today requires exceptional caution and appropriate procedural tactics in many cases.



The turmoil within the Polish judiciary can affect every court judgment and every civil, criminal or constitutional proceeding.

Since 2018, the then opposition, together with a significant section of the judicial community, has argued that judges appointed under the new procedure are “neo-judges” and that their judgments should be deemed invalid or ineffective. Currently, around 30 per cent of Poland’s approximately 10,000 judges are neo-judges.

Objections to the reform stemmed from the change in the method of selecting members of the body responsible for appointing judges in Poland. Previously, 15 members of this body were elected by judges from within the judiciary. However, following the amendment of December 2017, which came into effect in 2018, they began to be selected by politicians. Some legal scholars and case law have argued that this arrangement undermines the body’s independence and may infringe the principle of the separation of powers.

The legal status of neo-judges has been examined numerous times by both the Court of Justice of the European Union and the Polish Supreme Court, the latter of which includes such judges among its members. For this reason, the rules governing the challenge to their judgments have undergone repeated changes over the years. This has led to situations that astonished public opinion.

For example, in a marital property division case, a judge appointed under the old rules (a so-called “paleo-judge”) refused to adjudicate because the couple’s previous divorce judgment had been handed down by a neo-judge. The paleo-judge deemed the divorce non-existent, meaning that, legally, the couple were still married and could not divide their assets. Another high-profile case involved the trial of a triple murderer who was initially sentenced to life imprisonment by a neo-judge. However, the Court of Appeal, composed of judges appointed under the old, uncontested rules, quashed this sentence. The sole reason for this decision was the flawed status of the judge who had delivered the initial sentence. Consequently, the entire murder trial had to start again from the beginning.

Fears regarding rulings handed down by neo-judges are prompting parties to file motions to have a judge recused on the ground that their appointment was flawed. In practice, these motions are often ineffective, as they are considered by other neo-judges, who generally dismiss



them. There have also been instances in which the president of one of the Supreme Court’s chambers (a neo-judge) has ordered that motions to recuse neo-judges on the grounds of the irregularity of their appointment should not be registered at all.

A landmark ruling in this regard was the Supreme Court’s 2020 resolution (BSA I-4110-1/20), which found that judges appointed under the new procedure do not guarantee independence. It was also found that the participation of such a judge in an adjudicating panel could result in the court being improperly constituted. However, it should be noted that in common courts, an individual test of independence and impartiality is required; that is to say, an examination of whether the defect in the appointment procedure leads to a breach of the standard of an independent court in the specific circumstances of a given case. Some members of the judicial community did not recognise this, however, which led to an erratic line of jurisprudence developing further.

More recently, on 16 July 2026, the CJEU confirmed this ruling in principle in its judgment (C-96/24, C-103/24 and C-112/24), while also holding that the conduct of the aforementioned independence test cannot be entrusted to a panel comprising even a single judge in an identical situation to that of the judge under examination.

The issue of judicial appointments concerns not only the common courts. A similar situation exists in the case of the Constitutional Tribunal, which is Poland’s sole constitutional



court. In view of other personnel changes made in the same spirit as the 2018 changes discussed earlier, the opposition party at the time, together with a large section of the judicial and academic communities, deemed the Constitutional Tribunal's rulings to be null and void. In their view, the issue was the unlawful appointment of some Constitutional Tribunal judges.

Despite these controversies, the rulings of the Constitutional Tribunal were generally respected and had full legal force until the end of 2023 (that is, until the change of government in Poland). However, the situation changed in early 2024 when the new government suspended the publication of the Tribunal's rulings in the official gazette.

This caused enormous confusion. The Tribunal continues to issue rulings on matters of crucial importance to citizens, but due to the lack of publication, their status remains unclear. This shifts the burden of the problem onto the common courts. For example, when a party requests a retrial on the grounds that the Tribunal has ruled a particular provision unconstitutional, but the ruling has not been published, the common courts take two different approaches to this issue.

Some panels of judges, comprising mainly neo-judges, hold that a judgment of the Constitutional Tribunal is binding from the moment it is announced. They argue that blocking its publication by an executive authority, such as the Prime Minister, constitutes an impermissible act. Conversely, panels comprising mainly paleo-judges reject applications

to reopen proceedings on the grounds of their prematurity due to the non-publication of the ruling.

Currently, there is no prospect of resolving the issues surrounding neo-judges in the common courts or the Constitutional Tribunal. Although the latter formally exists, it is effectively paralysed, meaning there is no mechanism to review the constitutionality of newly enacted laws. Even though the new government (which is calling for judicial reform) currently holds a majority in Parliament, parliamentary approval alone is not sufficient for new legislation to come into force. This is because the Constitution also requires the signature of the President of the Republic of Poland, who belongs to the opposing political camp. Consequently, the President vetoes every government proposal to amend the law, while the government blocks the passing through Parliament of any amendments proposed by the President or the current opposition aimed at resolving this crisis.

Therefore, the handling any kind of legal dispute in Poland today requires an in-depth analysis of current case law and a thorough understanding of existing legal practices. Such an approach is essential to minimise the negative effects of what is arguably the most astounding judicial system in the world. For lawyers handling court cases in Poland, this crisis is not merely a matter of constitutional debate; it has become a daily challenge, as the validity of every court judgment may depend on which judge is assigned to a particular case.



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New Challenges and Opportunities for Russian Litigators in Cross-Border Disputes

The introduction of sanctions and countersanctions, the exit of foreign business from the Russian market and other related challenges inevitably changed the framework within which Russian litigators operate. The author of this article analyzes how these and other fundamental changes have impacted the current role and functions of Russian litigators to answer the question of what constitutes the ideal Russian litigator today.



Introduction

Over the past few years, the legal profession and, in particular, the litigation sphere in Russia have undergone significant changes. In 2022, many international law firms that had been working in the Russian market for years decided to leave it. The growth of the sanctions and countersanctions agenda have had a great influence on how the role of litigators in Russia is viewed overall as well.

New Challenges

Strengthening Domestic Expertise While Preserving International Ties

On a general note, after the exit of international law firms from the Russian market, domestic firms were faced with a dual challenge. On the one hand, they had to maintain a level of service quality despite the significantly increased workload. On the other hand, the long-standing goal was to avoid professional isolation and preserve international networks.

Meeting these demands has taken consistent effort and eventually reshaped the litigation market in Russia.

Many Russian firms focused on the expansion of their teams, especially international arbitration, sanctions law, and cross-border disputes practices. At the same time, they did their best to preserve professional relationships with international partners they had before, while simultaneously building new connections with firms in Asia and the Middle East.

Rise of Advisory Work

As for the transformation of the litigation function itself, one of the main changes has been the increased demand for non-contentious work and increased involvement in contract drafting. What even some seasoned litigators once considered their worst nightmare before is becoming a common task for younger litigators. In the author's opinion, this trend is driven by three main factors.

First of all, as already mentioned above, the period after 2022 was marked by a wave of companies exiting the Russian market. Many foreign businesses chose to wind down their operations in Russia, which



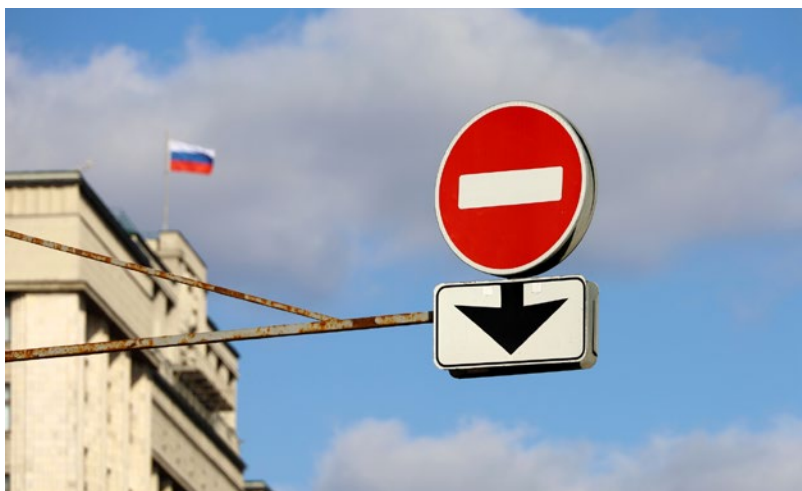
created an entirely new category of legal advisory work for Russian litigators. In particular, experts in litigation began to consult corporations on the risks related to the operation of dormant legal entities, including those connected with hostile takeovers, civil liability before unpaid creditors, and possible bankruptcy-related claims.

Advising clients on these risks requires litigators to act as *ex ante* consultants rather than *ex post* specialists that step in only after disputes or other kinds of issues have arisen. Their work now involves identifying potential exposure and designing risk mitigation plans before any controversy materializes, helping with structuring transactions, and not only in the part relating to dispute resolution clauses. In many ways this has shifted the litigator's role to a more versatile one.

Further, in 2025–2026, more foreign companies have started looking into the possibility of a return to the Russian market or reconsidering how they engage with it under the changed circumstances. This trend has entailed a fresh wave of advisory demand, distinct from, but closely related to, the exit consulting work described above.

In order to consult on market re-entry strategies, one needs to carefully assess the current regulatory framework and the risks tied to resuming business operations. In this context, Russian litigators are now expected to do a wide range of analytical tasks: for instance, they work on drafting legal opinions, evaluating regulatory risk and advising on the structuring of transactions that comply with applicable requirements across different jurisdictions. As a result, Russian litigators are now seen not only as professionals who can only argue in courts, but also as legal analysts and business strategists.

To sum up, the most striking professional shift of the last few years is the fact that the boundary between litigation and transactional practices has been slowly but surely blurring. Russian litigators are now often engaged in work that several years ago would be performed exclusively by corporate or finance lawyers: drafting and reviewing commercial contracts, structuring payment arrangements and designing transaction frameworks that address both commercial goals and legal risk in the current environment. What makes the litigator's input here especially valuable is their perspective, as litigators understand how courts interpret contract terms, how enforcement works across different jurisdictions, and where risks are most likely to



surface once there is no longer understanding between the parties. These qualities and skills have made litigators' expertise an integral part of the transactional process.

Sanctions and Countersanctions Impact

Today it is no longer enough to focus only on the legal merits of a case as one of the most pressing issues in almost any international dispute is sanctions. The litigator examining the prospects of enforceability now needs to take into account a range of factors: in particular, the risk that due to sanctions-related concerns a chosen forum will not recognize its jurisdiction or an award enforcement in third countries will be problematic, if, for example, the relevant assets are subject to freezing orders or other restrictions. In view of this, Russian litigators nowadays should always take into account the issue of actual enforceability at the very beginning of developing the dispute strategy.

Furthermore, a large share of commercial disputes now arises directly from the practical consequences of cross-border restrictions. Cases linked to the inability to perform delivery obligations, the interruption of payment flows, and the termination of long-term supply arrangements have become a substantial part of a Russian litigator's case portfolio.

These cases are not straightforward as each of them requires careful analysis of whether certain regulatory barriers may excuse a party's failure to fulfil a contract. Given that Russian court practice in this area is still evolving and this process is not always consistent, understanding and sometimes even predicting how courts are likely to approach novel factual circumstances has become the most valuable skill for litigators.

The Ideal Russian Litigator Today

All of these changes could only influence the profile of litigators and the expectations of them. As the work has become more complex and specialized, the question is what qualities and skills are litigators now expected to have and cultivate? In the author's opinion, at least four key features, described below, stand out.

Multi-Jurisdictional and Sanctions Law Expertise

A modern Russian litigator must be comfortable working not only on the issues related to purely domestic law and judicial practice, but also the substantive and procedural law of key jurisdictions of the European and Asia-Pacific regions, including their sanctions regimes or approaches to foreign sanctions regimes. It is now essential to understand how different legal systems interact in our rapidly changing world, and to anticipate how courts may approach complex sanctions-related issues across jurisdictions.

Contract Drafting Skills

Besides that, as was noted above, effective representation now begins at the contract drafting stage. Litigators are increasingly involved in advising clients on the wording of contracts, restructuring payment schemes and contingency planning for asset exposure in different jurisdictions. This kind of analytical work, that is sometimes described as "legal engineering" of business processes, until recently has been associated with the competence of transactional lawyers in the first instance, but now it demands well-developed contract drafting skills from litigators as well (whether some of them like it or not).

Strategic Enforcement Intelligence

Since enforcement through established frameworks has become far less predictable, litigators must now be capable of mapping realistic enforcement strategies from the outset. This being so, an ideal Russian lawyer must understand how to structure proceedings in a way that maximizes enforcement options in third countries. As a result, enforcement strategy has become a key area of expertise on its own.

Adaptability Through Uncertainty

Perhaps the most important quality for a Russian litigator at the moment is the ability to work effectively in an environment where legal certainty is often limited, to say the least. Considering the volume of unconventional legal disputes, litigators now cannot rely only on existing regulations or court practice due to their insufficiency,

irrelevance, ambiguity or even total absence. Under such circumstances litigators have to build arguments based on fundamental legal principles and concepts, use analogies where necessary, and anticipate how courts might approach entirely new situations. To be able to do all the above, one needs not only to stay up to date with constant changes but rather develop a broader set of skills, including spotting non-obvious issues and predicting law-enforcement approaches.

Conclusion

Based on the above, in 2026, Russian litigators operate in a fundamentally different environment than existed just several years ago. Litigation function by now has transformed itself from simply handling disputes and therefore dealing with purely legal issues in most cases, as opposed to transactional lawyers, to providing more versatile legal support for business. In this regard, the Russian litigator today combines several roles at once: a strategic risk advisor, a sanctions compliance specialist, a multi-jurisdictional analyst, and (who would have thought) a careful drafter of contracts. And all of that, of course, does not take away from the responsibilities connected with court representation.

It seems reasonable to assume that these skills will remain essential within the next few years, and their importance will only grow. Therefore, working on them may be the key self-development vector for Russian litigators for the years to come.



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Judgment, Strategy, and Trust: The Core Value of Chinese Litigation Lawyers in the Age of AI



Artificial intelligence (AI) is changing the way legal services are delivered. However, it has not eliminated the core value of litigation lawyers. Instead, it has made the boundaries of that value clearer. In Chinese civil and commercial litigation, the real difficulty of litigation work lies not in obtaining information or generating text, but in making reliable judgments amid complex facts, uncertain legal application, limited evidentiary mechanisms, and multiple commercial objectives. This article focuses on three key words: “judgment”, “strategy”, and “trust”. Litigation lawyers must identify the issues that truly matter, design workable paths for dispute resolution, and, through their professional reputation and responsibility, sustain the trust that clients and courts place in their judgment. AI can improve efficiency, but it cannot replace lawyers as professional decision makers, strategy designers, and bearers of responsibility.

Introduction: Artificial Intelligence Does Not Eliminate the Professional Value of Litigation Lawyers

Generative AI and other legal technology tools can already assist with legal research, the compilation of laws and regulations, organization of similar cases, preliminary review of evidence, litigation visualization, and document drafting. At the same time, Chinese courts continue to digitalize their procedures. Online case filing, online mediation, online exchange of evidence, online hearings, electronic service, and similar-case retrieval have become important parts of the litigation environment.¹ For Chinese litigation lawyers, AI is no longer a matter of future speculation. It has already entered the workflow of case handling.

Yet, if the issue is reduced to whether AI will replace lawyers, the nature of the technological change is easily misunderstood. What AI is changing is the division of labor in litigation legal services. Repetitive and standardized work involving little judgment will be compressed by technology. But the central challenge of litigation has never been simply whether more information can be obtained. It is whether a reliable judgment can be made amid complex facts, uncertain legal application, and multiple commercial objectives.

This is especially clear in Chinese civil and commercial litigation. When clients retain lawyers, they usually do not merely seek a court judgment. They may also hope to recover payment, control losses, preserve assets, create leverage for negotiation, respond to audit or compliance requirements, or prepare for later enforcement, arbitration, or transaction arrangements. The questions lawyers must answer therefore often go beyond whether the case can be won. They extend to how proceedings should be

commenced, how evidence should be organized, whether litigation should be used to advance negotiation, and whether a favorable judgment can in fact be enforced.

At a deeper level, the professional value of litigation lawyers is not derived solely from access to information. Although traditional Chinese society did not have a modern lawyers' system, private actors such as *songshi* and document drafters long played roles in drafting pleadings, organizing facts, and articulating disputes. The governance ideas of avoiding litigation, “no litigation”, and mediation first also meant that litigation was long connected with maintaining order, repairing relationships, and social governance.²

AI therefore has not weakened the professional value of litigation lawyers. It has brought that value into sharper focus. When research and text generation become easier, what truly distinguishes professional ability is the judgment that follows the information, the strategy within the procedure, and the assumption of responsibility in an uncertain environment. International discussions within the legal profession have likewise begun to emphasize that lawyers who use AI tools remain responsible for verifying accuracy, protecting client confidentiality, maintaining professional competence, and supervising the use of such tools.³ This article therefore examines, through the three dimensions of judgment, strategy, and trust, the core value of Chinese litigation lawyers that remains irreplaceable in the age of AI.

Judgment: From Information Processors to Professional Decision Makers

The area most readily changed by AI is the way that lawyers process information. Research, organization,

and preliminary drafting, which once required substantial time, can increasingly be assisted by tools. This improves efficiency and will also lead to a reevaluation of some traditional working methods. But the real difficulty of litigation usually does not lie in whether information is sufficient. It lies in whether lawyers can determine which information truly matters in a particular case.

In Chinese litigation, this first appears as legal judgment. China is a statute-law system. Laws, judicial interpretations, and normative documents are important bases for adjudication. In recent years, similar-case retrieval mechanisms have continued to develop, enabling lawyers to understand more systematically how courts reason in similar cases. But similar cases cannot simply be applied mechanically. Even where two cases share a similar factual structure or legal issue, the outcome may differ because of the contract wording, performance history, evidentiary posture, procedural stage, or the court's focus. A lawyer's value therefore lies less in listing similar cases than in assessing their comparability and the transferability of their adjudicative logic.

This judgment also includes assessing whether a legal position is acceptable in litigation. An argument may be theoretically tenable, but that does not mean it should become the principal argument in a case. Some defenses may have room for interpretation but conflict with commercial common sense or the parties' performance conduct. Some procedural objections may be available but may be viewed by the court as lacking substantive necessity, thereby affecting the party's overall credibility. Lawyers must choose among the text of the rules, judicial practice, and the facts of the case: which arguments have factual support, which should remain auxiliary, and which are favorable but should not be overdeveloped. These are not questions that search results themselves can answer.

Evidentiary judgment is similar. Unlike many common-law jurisdictions, Chinese civil and commercial litigation does not have broad discovery in the Anglo-American sense. The presentation of case facts depends more on evidence collected and submitted by the parties themselves. Chinese civil procedure does include mechanisms such as exchange of evidence, court investigation and collection of evidence, adverse inferences from obstruction of proof, and orders to produce documentary evidence. Their scope of application, conditions for initiation, and practical effects, however, differ from systematic discovery.

As a result, Chinese litigation lawyers cannot expect the procedure automatically to produce large quantities of internal materials held by the opposing party. They must assess the evidentiary situation at an early stage. Lawyers need to determine which facts must be proved by their own side, which facts may be inferred from the other party's statements, trade practice, performance conduct, or indirect evidence, which documents are held by the opposing party but may be subject to an application for production or court collection, and which facts, even if true, should not become the core of the claim because the evidence is insufficient. In an environment without broad discovery, evidentiary strategy is itself an important part of case strategy.

AI can help organize documents, extract keywords, and generate timelines. It cannot replace lawyers in judging the weight, position, and use of evidence. In complex civil and commercial cases, it is critical that the evidence form a structure of proof acceptable to the court. If submitted materials are merely a pile of information, they may increase, rather than reduce, the court's burden in understanding the case. Effective litigation presentation requires lawyers to organize complex facts into a clear structure of dispute and to place evidence where it can support that structure.

Strategy: From Professional Judgment to Dispute Resolution Solutions

If judgment answers which issues truly matter, strategy answers how those judgments can produce results. In civil and commercial disputes, legal positions can become meaningful for clients only when they are placed at the right procedural points, in the right sequence, and within the relevant commercial context. AI may help lawyers generate preliminary options more quickly. It is far less able to assess the actual impact of a particular option in a specific case, and it cannot bear responsibility for strategic choices.

The strategic value of Chinese litigation lawyers first appears in the overall design of a litigation plan. Whether a case should be filed immediately, whether preservation measures should first be taken, whether room for negotiation remains, and whether enforcement risks should be considered at the same time usually require a comprehensive assessment of the facts, the opposing party's assets, the client's litigation objectives, and the procedural environment. Procedural tools such as property preservation and conduct preservation should not be treated as merely technical appendages to litigation. In many civil and commercial cases, they directly affect the

balance of power between the parties, their negotiating positions, and the pace of the case.

The key to litigation strategy is not to use every available tool. It is to judge when to use a tool, how to use it, and to what extent. Property preservation is a useful example. Timely preservation may secure assets for the client, facilitate negotiation, or improve the prospects of later enforcement. However, if preparation is insufficient, it may increase the cost of security, trigger countermeasures by the opposing party, or push the case into a highly confrontational posture too early. Conversely, excessive reliance on negotiation and delayed commencement of proceedings may allow the opposing party to transfer assets and weaken later remedies. Strategic judgment lies precisely in finding the balance among these interests and risks.

A construction project payment dispute handled by the author illustrates how litigation strategy can create new space as the procedure develops. The case was initially brought by the contractor against the employer for payment of project funds. Because the parties had not completed final settlement, a project cost appraisal became almost the central issue determining the direction of the case. The amount in the first court-commissioned appraisal exceeded approximately USD\$7.3 million, materially higher than the employer's internal review. If that appraisal opinion had been adopted by the court, it would not only have directly affected the court's determination of the project price, but also significantly narrowed the room for later defenses and negotiation.

In construction project payment cases, appraisal opinions often exert strong influence over factfinding. Courts are not necessarily bound by appraisal opinions, but in highly technical matters such as quantities, costs, signed confirmations, variations, and settlement, appraisal opinions often become important bases for adjudication. Therefore, objections based only on the appraisal amount being too high, or inconsistent with one's own review, are often insufficient to undermine its probative force. The team therefore judged that the real breakthrough did not lie in a general rebuttal of the appraisal result; it lay in returning to the appraisal procedure itself and examining the appraisal basis, appraisal method, appraisers' qualifications, and procedural foundation of the appraisal conclusion.

Upon further review, the case team discovered a defect in the qualifications of one appraiser and raised targeted

objections to the procedural legality and probative force of the appraisal opinion. The original appraisal conclusion was ultimately revoked, and the court appointed a new appraisal. After the second appraisal institution issued a draft for comments, the appraised amount fell to slightly more than USD\$4.4 million and was generally close to the employer's internal review. After learning of that result, the contractor withdrew its claim.

For the employer, however, the opposing party's withdrawal did not mean that the dispute had been substantively resolved. Whether payments already made exceeded the amount payable for the project, how the overpayment should be calculated, how the probative force of the second appraisal materials should be assessed in subsequent proceedings, and how a restitution claim should be organized all required renewed analysis. The case team did not stop at the staged success of defensive litigation. Based on the second appraisal opinion, relevant project materials and payment records, it assisted the employer in shifting its litigation role, bringing a separate claim against the contractor for return of overpaid project funds, and obtaining a favorable staged result.

The significance of this case lies not only in the favorable progress achieved. It lies in the three transformations reflected in the litigation strategy: from a dispute over the amount of the appraisal to an examination of the procedural legality and evidentiary foundation of the appraisal; from a passive response to the contractor's claim for project funds to active reconstruction of the issues in dispute; and from defensive litigation in a single case to a subsequent recovery plan designed around the client's overall interests. The strategic value of litigation lawyers is therefore not merely "how to defend". It is whether they can identify breakthroughs at key procedural points and adjust their role, direction, and objectives as the case develops.

For corporate clients, litigation is usually not an isolated legal event. It may involve payment recovery, asset security, commercial cooperation, internal audit, compliance accountability, or reputation management. A solution that is legally feasible is not necessarily commercially optimal. Lawyers must understand what result the client truly seeks and connect the legal path with the commercial objective. AI can generate options, but it cannot rank them. It can flag risks, but it cannot judge what risks a client is willing to bear in a specific situation. It can simulate arguments, but it cannot understand the dynamics among the negotiating

counterparty, the adjudicator, and the client's internal decision-making.

Trust: From Technological Assistance to the Assumption of Professional Responsibility

If judgment concerns how lawyers identify key issues, and strategy concerns how lawyers advance dispute resolution, trust concerns why clients, courts, and other participants in a dispute are willing to rely on lawyers' professional judgment. Litigation always involves uncertainty, risk assumption, and allocation of responsibility. AI can participate in some parts of legal services, but it cannot replace the professional trust that litigation lawyers bear between clients and the judicial process.

This trust first exists between lawyers and clients. Major disputes are often accompanied by commercial pressure, internal accountability, financial risk, and reputational concerns. Clients need lawyers to explain the risks behind different choices and to assume professional responsibility for final recommendations. Sometimes lawyers need to tell clients that a seemingly favorable argument lacks sufficient evidentiary support, that a procedural move is lawful but may bring additional costs, or that a settlement proposal is imperfect but closer to the client's actual objective. Such judgments can be accepted by clients not only because of legal knowledge, but also because of the professional credibility lawyers have built over time.

The Chinese lawyers' system itself institutionalizes this relationship of responsibility. The Lawyers Law of the People's Republic of China requires lawyers to safeguard clients' lawful rights and interests within the scope of authorization, and to keep confidential state secrets, commercial secrets, and parties' privacy learned in the course of practice.⁴ The lawyer-client relationship is therefore a professional relationship based on entrustment, loyalty, confidentiality, and responsibility. AI may participate in the workflow, but it cannot become the responsible subject in that legal relationship.

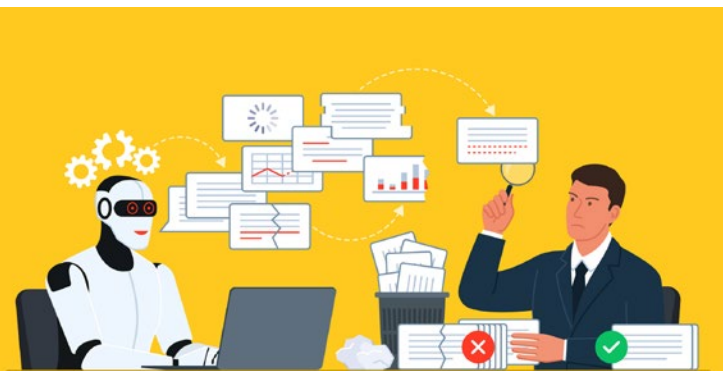
Trust also exists between lawyers and courts. Courts face large volumes of case materials and conflicting factual narratives. The professional value of lawyers lies not only in advancing favorable positions, but also in helping courts understand the issues in dispute, the evidentiary structure, and the application of law. If a litigation lawyer exaggerates facts, avoids weaknesses, or submits unverified materials, even formally complete submissions will weaken the

persuasiveness of the lawyer's opinion. By contrast, lawyers who accurately present the issues, reasonably acknowledge the limits of the case, and clearly organize the relationship between facts and evidence are more likely to build professional credibility.

The use of AI imposes higher requirements on lawyers precisely in this respect. Technological tools can generate texts that are fluent, complete, and even seemingly professional. But fluency is not accuracy, and completeness is not reliability. Once litigation materials enter the judicial process as a lawyer's opinion, an explanation of evidence, or a similar-case retrieval report, they are no longer merely technological outputs. They are litigation expressions made by lawyers in their professional capacity. Courts will not require AI to bear responsibility for erroneous content, and clients will not treat technological tools as the final subject of professional responsibility. The person who truly bears the consequences remains the lawyer who submits the materials.

Public reports have already provided warnings of this risk. In a commercial dispute arising from an equity holding arrangement, the Tongzhou District People's Court of Beijing reportedly found that two reference cases cited by the plaintiff's counsel in post-hearing written submissions were inconsistent with the real content of those cases. Counsel later admitted that the cases had been generated through repeated prompts to an AI large model based on the facts of the case, and had been submitted to the court without further verification. The court ultimately did not accept that part of the opinion, criticized the conduct in its judgment, and required counsel to verify reference cases and legal provisions before submission to ensure their truth and accuracy.⁵

This incident shows that once erroneous AI-generated content enters the judicial process in the form of a lawyer's opinion, its impact no longer remains technical. For courts, such materials increase the burden of review and may even interfere with adjudicative judgment. For clients, imprudent use by lawyers may harm their case interests. For the legal profession, the most direct harm is to credibility. Technology can improve efficiency, but it cannot replace responsibility. It can generate expression, but it cannot build reputation. It can provide suggestions, but it cannot assume the duties of loyalty and confidentiality in the entrustment relationship or the duty of candor toward courts.



Conclusion: The More Convenient Technology Becomes, the More Lawyers' Professional Value Should Return to the Profession Itself

AI is changing the way litigation lawyers work in China and around the world. It improves the efficiency of information processing and is reshaping clients' expectations regarding the speed, cost, and delivery of legal services. In the future, competitive advantages based purely on research, organization, and preliminary drafting will inevitably be further compressed. The real challenge for litigation lawyers is not whether to use AI, but how to prove their professional value anew while using it.

From the perspective of Chinese litigation practice, excellent litigation lawyers have always performed roles beyond technical work. Lawyers must make judgments between complex facts and legal rules, design strategies between procedural tools and commercial objectives, and establish trustworthy professional relationships among clients, courts, and other participants in disputes. AI can help lawyers access information more quickly, but it cannot judge the meaning of that information for them. It can help form texts, but it cannot bear responsibility after those texts enter the judicial process. It can provide several possible options, but it cannot truly understand the choices clients make in specific commercial circumstances.

The more convenient technology becomes, the more lawyers need to distinguish clearly between auxiliary tools and professional judgment. Otherwise, improved efficiency may bring loosened judgment, diluted responsibility, and depleted trust. The age of AI will not deprive Chinese litigation lawyers of value, but it will reselect litigation lawyers. The lawyers who will truly be competitive in the future are those who can identify key issues amid

information overload, grasp the direction of a case when making procedural choices, remain prudent in the face of technological convenience, and assume the consequences of judgment through their own professional reputation.

Judgment, strategy, and trust constitute the core value of Chinese litigation lawyers that remains worthy of recognition in the age of AI.

Notes

¹ Supreme People's Court, Online Litigation Rules of the People's Courts; Supreme People's Court, Guiding Opinions on Unifying the Application of Law and Strengthening Similar-Case Retrieval (Trial).

² On traditional Chinese songshi, litigation culture and mediation traditions, see Qu Tongzu, *Chinese Law and Chinese Society*; Philip CC Huang, *Civil Justice in China: Representation and Practice in the Qing*.

³ American Bar Association, Formal Opinion 512: Generative Artificial Intelligence Tools (2024).

⁴ Lawyers Law of the People's Republic of China, Articles 30 and 38.

⁵ See Xu Weilun and Yang Zhe, 'The "Perfect" Case Cited by Plaintiff's Counsel Turned Out to Be Fabricated by AI', Legal Daily, 12 November 2025, Legal Daily electronic edition, available at <https://epaper.legaldaily.com.cn/fzrb/content/20251112/Article06002GN.htm> (last accessed 5 May 2026).



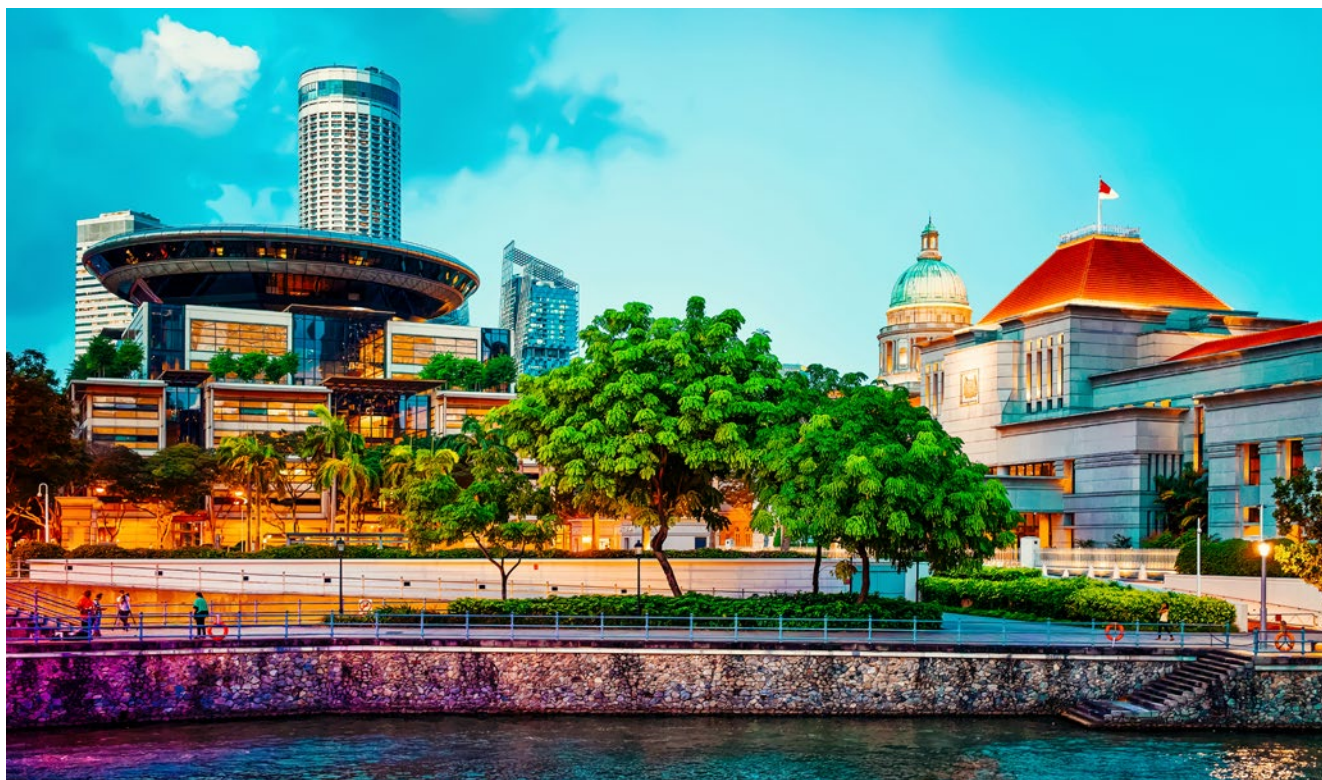
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The Constructive Role and Challenges of Litigators in the New Landscape: Achieving Justice and Sensible Outcomes in the Face of Multiple and Parallel Proceedings

This article considers the issue of multiple litigation proceedings in different jurisdictions. This is not uncommon in today's multifaceted commercial world, but can create unique problems for legal practitioners if they are not alive to potential complications, brought about by multiple and parallel proceedings.



Introduction

In the complex environment of transnational business, it is not uncommon to encounter a single project or investment which involves a web of different contracts and is subject to different governing laws and different dispute resolution provisions.

This article thus considers, with a particular reference to the intersection between court litigation and arbitration and jurisprudence from Singapore, three areas where multiplicity of proceedings is relevant, and highlights some risks and considerations that counsel should be alive to. Despite the challenges posed, there are opportunities for counsel to strategically manage proceedings in a way that helps achieve the most advantageous outcome for their clients.

Res Judicata and Issue Estoppel

As a starting point, multiplicity of proceedings potentially creates complications as a decision in one jurisdiction may potentially give rise to a *res judicata* or an issue estoppel, that may in turn affect other proceedings.

In *CIX v DGN*,¹ the appellant seller had brought multiple arbitration and court proceedings in relation to a dispute concerning the issuance of certain pricing and compensation data reports. Proceedings were commenced variously against the buyer relying on the reports as well as the issuer of the reports.² The Singapore Court of Appeal held that the extended doctrine of *res judicata* applied, and accordingly the proceedings commenced by the appellant were an abuse of process. This doctrine could apply even if the claims in the proceedings in question were not exactly the same. Rather, the test that the Court of Appeal adopted was to first put the burden on the party relying on the extended doctrine to show that the claims could have been brought in the earlier proceedings; where the earlier proceedings were arbitral proceedings, the party had to show that the claims came within the scope of the arbitration agreement. Thereafter, the burden then shifted to the other party (in that case the appellant) to explain why the claims were not brought earlier. In the case of arbitration, the other party had to explain why the claims were either outside the scope of the arbitration agreement or there was a good reason for not pursuing them earlier.³

This decision demonstrates that respondents in proceedings, if alive to the extended doctrine of *res judicata*, can use it to great efficacy to undermine the frivolous

actions of a vexatious claimant. As the Court of Appeal explained, the extended doctrine is driven by the rationale “that a party should not be twice vexed over essentially the same claim and the public interest requires finality in litigation”. Of course, whether the extended doctrine of *res judicata* can be successfully relied on will ultimately depend on the facts of each case.

In the context of cross-border disputes, the issue of transnational issue estoppel has similar effect and potential impact. One such context is in the enforcement of international arbitration awards, where a single arbitration award can spawn enforcement litigation in a multiplicity of jurisdictions.

In *DLV & Anor v DLX & Ors*,⁴ the Singapore High Court rejected an application to set aside an arbitration award brought by two respondents to an arbitration against the successful claimants in the arbitration. Broadly, the applicants argued that the award ought to be set aside for a breach of natural justice as the tribunal had failed to consider: (1) a waiver defense, which was an argument that the claimants were waived or estopped from pursuing certain rights; and (2) a buy-back defense, which was an argument in relation to clause 19.1 of the agreement in dispute. The Singapore High Court rejected the applicants’ arguments and upheld the award.

Subsequently, when the award was sought to be enforced in India, both the Madras High Court and the Supreme Court of India⁵ on appeal dismissed the challenges to the award. The Supreme Court, in particular, considered various academic authorities and previous decisions and held that as the Singapore High Court had already dismissed the challenges to the seat, and the seat court had to assume primacy on a challenge to an award, the subsequent enforcing courts in India ought not to consider the same issues that had already been decided.⁶

The Supreme Court remarked:⁷

The application of the doctrine of “transnational issue estoppel” would effectively curb the propensity of parties to relitigate settled factual issues taking advantage of the fact that they are before a different court in a different jurisdiction, viz., the enforcement court in a country other than the situs of the seat court. This would invariably narrow the scope of interference by the

enforcement court with an arbitral award that has already passed muster with the seat court. This would add value and augment the efficiency of arbitration as a dispute resolution mechanism to settle trans-border commercial disputes.

The decision of the Supreme Court of India demonstrates the recognition of courts across the world of the importance of avoiding repeated litigation of the same or similar issues across different jurisdictions. Beyond only benefiting the international system of arbitration as a single system of alternative dispute resolution, a doctrine such as transnational issue estoppel protects the reputation of law as a whole. Ultimately, law fails to benefit human society if it is unable to fully and finally resolve disputes.

Sequencing Multiple and Parallel Proceedings

In light of the potential effects of *res judicata* or issue estoppel, the sequencing of proceedings becomes crucial. If there is a risk that a holding in one jurisdiction may bind another court to make a less favourable holding than otherwise, then this leads the question of whether the proceedings in that first jurisdiction can be brought later, or should be brought at all. Counsel faced with a multiplicity of potential causes of action therefore ought to carefully consider and advise clients on the appropriate sequence in which to bring actions. If commencing litigation in court, counsel ought to consider the potential of certain causes of actions being stayed in favour of arbitration. Even for matters not to be decided in arbitration, these may potentially be stayed pending the conclusion of arbitration.

In *Tomolugen Holdings Ltd & Anor v Silica Investors Ltd and other appeals*,⁸ the plaintiff brought an action in minority oppression. The Singapore Court of Appeal held that one of the four matters in the court proceedings, a matter referred to as the “Management Participation Allegation”, *prima facie* fell within the scope of an arbitration agreement between the plaintiff and the second defendant,⁹ and was arbitrable.¹⁰ However, three other matters, which were interrelated to the Management Participation Allegation nonetheless were properly to be decided by the courts. There was also no equivalent arbitration agreement between the plaintiff and the other defendants. Accordingly, the Court held that:¹¹

1. The Management Participation Allegation was stayed in favour of arbitration as between the plaintiff and the second defendant.

2. The other court proceedings between the plaintiff and the second defendant on other issues, and also the plaintiff and other defendants, were then stayed by the court’s inherent powers of case management.
3. The plaintiff was also directed to consider whether it was prepared to arbitrate the Management Participation Allegation with the other defendant who were to consider such an offer, if made by the plaintiff.
4. It was also open to the plaintiff to decide not to rely on the Management Participation Allegation entirely. If so, then there would be no need to stay any court proceedings and the plaintiff would be free to proceed against all the defendants.

The decision in *Tomolugen* demonstrates that courts potentially have broad powers to deal with overlapping and interrelated proceedings, including where these are variously subject to different jurisdiction clauses. This also gives rise to certain important points that litigation counsel must bear in mind. First, parties must know which claims are most important to them, as this may factor into decisions of whether to proceed with arbitration in situations such as that in *Tomolugen*, where the majority of claims and causes of action have been stayed in favour of arbitration of a minority of claims. Conceivably, if a party is concerned about minimising the costs incurred in the legal proceedings, it may choose to forego arbitration.

Mediation as a Mode of Alternative Dispute Resolution

Before concluding, it is worthwhile to make a few observations about mediation as a potential mode of resolving disputes. When multiple proceedings or disputes in several jurisdictions exist, mediation has the potential to cut through the web of intertwined issues if parties are able to reach an overall commercial settlement.

That said, a potential downside of mediation is that it is sometimes perceived as not providing a conclusive resolution to disputes as it simply replaces a dispute with a new contract, that is, a settlement agreement, which could be breached again. In this light, the Singapore Convention on Mediation¹² is of particular relevance, as it allows settlement agreements that arise out of international¹³ mediations in states party to the Singapore Convention to be directly enforced in other party states. The Singapore Convention specifically covers commercial disputes.¹⁴ A state party is

required to enforce a settlement agreement that satisfies the conditions in the Singapore Convention.¹⁵ Crucially, if there is a dispute that a party claims has already been resolved by a settlement agreement, that party may invoke the settlement agreement in the territory of a state party in order to prove that the matter has already been resolved.¹⁶

In this way, the Singapore Convention confers on settlement agreements a quality of enforceability that such agreements typically lack. Instead of having to commence fresh legal proceedings or the breach of a settlement agreement, a party faced with breach of an agreement now has the option of enforcing it directly in the same manner as an arbitration award. Albeit, the number of states that are currently party to the Singapore Convention is relatively small,¹⁷ but as this number grows the ambit of the Singapore Convention's relevance and effectiveness will grow.

Conclusion

In conclusion, it is crucial that dispute resolution lawyers focus on achieving commercially oriented results, which may require utilizing other tools in the litigator's toolbox, including mediation. When things go awry and disputes arise, commencing claims ought to be done in a strategic and commercially sensitive manner, by identifying the most viable claims and the ones with the highest likelihood of recovery for the client. An approach of throwing in the kitchen sink and commencing proceedings on multiple fronts and in multiple fora is unlikely to be attractive for any clients, save for those with the deepest pockets. Even assuming a client has unlimited resources, a multi-barrelled approach of starting different parallel proceedings may be counterproductive, as issues of *res judicata* or issue estoppel may hamstring subsequent courses of action, in addition to diluting the counsel team's focus from the most important actions.

In this connection, it is useful to pay attention to the jurisprudence of the Singapore courts. The increasing number of arbitration awards seated in Singapore covering disputes of diverse areas and natures has given the Singapore courts more opportunity to consider difficult and novel questions that impact transnational litigation, both in court and arbitration.

The legal profession must do what it can to remain relevant and constructive, in supporting business in today's challenging and globalised business environment. Starting multiple proceedings in several fora and driving up costs for clients, while ostensibly beneficial to a law firm's bottom-

line in the short term, ultimately brings the legal profession into disrepute. Lawyers therefore ought to manage multiple proceedings astutely, to ensure that they do not harm their and their client's interests in the long run.

Notes

¹ CIX v DGN [2025] 1 SLR 272, CA.

² *Ibid*, paras 6–35.

³ *Ibid*, paras 63–64.

⁴ DLV & Anor v DLX & Ors [2025] SGHC 29.

⁵ Nagaraj V Mylandla v PI Opportunities Fund-I & Ors etc. [2026] INSC 298, SC.

⁶ See also Susannah Moody, "Indian Supreme Court Recognises Transnational Issue Estoppel", Global Arbitration Review, 10 April 2026; available at <https://globalarbitrationreview.com/article/indian-supreme-court-recognises-transnational-issue-estoppel> (last accessed 15 August 2026).

⁷ Nagaraj V Mylandla v PI Opportunities Fund-I & Ors [2026] INSC 298 at para [76].

⁸ Tomolugen Holdings Ltd & Anor v Silica Investors Ltd and other appeals [2016] 1 SLR 373, CA ("Tomolugen").

⁹ *Ibid*, para 137.

¹⁰ *Ibid*, paras 84, 88.

¹¹ *Ibid*, para 191.

¹² United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation" or "Singapore Convention").

¹³ *Ibid*, Article 1(1).

¹⁴ *Ibid*, Article 1(2).

¹⁵ *Ibid*, Article 3(1).

¹⁶ *Ibid*, Article 3(2).

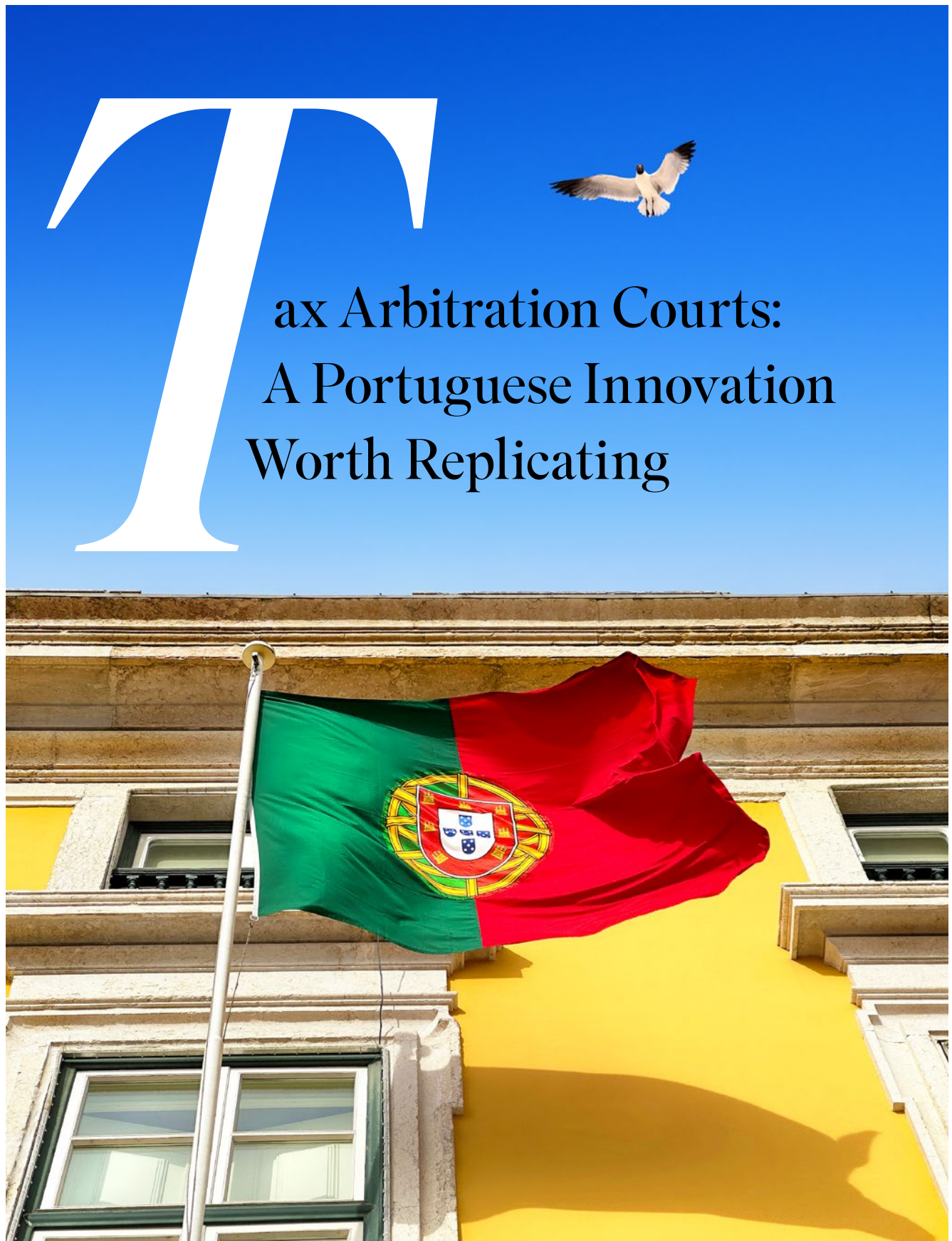
¹⁷ As of 20 July 2026, there are 21 states party to the Singapore Convention.



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Tax Arbitration Courts: A Portuguese Innovation Worth Replicating

Introduction

Tax arbitration has been steadily gaining prominence within Portuguese tax litigation, playing a decisive role in consolidating interpretive standards and in the speed of dispute resolution between taxpayers and the tax authorities.

This article aims to provide an overview of the evolution of the tax arbitration regime in Portugal, offering an integrated perspective on its genesis and main developments over the past 15 years. It does not aim to be exhaustive, but rather to analyze the most significant milestones that have marked its trajectory.

The Genesis of Tax Arbitration

Tax arbitration was introduced in the Portuguese legal system in January 2011 by Decree-Law No 10/2011 of 20 January 2011 (the “Legal Framework for Arbitration in Tax Matters” or LFTAM). At that time, it was a genuinely unprecedented and pioneering innovation in the European context. Portugal was the first Member State of the European Union to establish an arbitration regime as an alternative jurisdictional mechanism for tax disputes, conferring arbitral decisions the same legal force as judgments of the administrative and tax courts.

The primary objectives of the new regime were identified as procedural efficiency and more effective protection of the legitimate rights and interests of taxpayers. The legislator promised to achieve these objectives by adopting a procedure free from excessive formalities, guided by the principle of arbitrators’ autonomy in conducting proceedings and imposing a strict six-month time limit for rendering the arbitral decision (albeit extendable for a further six months). The aim was, at the same time, to help relieve the burden on the tax courts and reduce the backlog of administrative and tax proceedings.

Despite the relatively broad scope of application provided in abstract by the LFTAM—including the declaration of the illegality of tax assessments, withholding tax, payments on account, and acts determining the taxable base and asset values—Ministerial Order No 112-A/2011 introduced significant limitations on the tax authorities’ obligation to comply with the arbitration procedure. Several matters were excluded from the jurisdiction of arbitral tribunals, namely acts determining the taxable base and taxable amount using indirect methods; matters relating to customs duties and indirect taxes on goods subject to import duties; and issues of tariff classification, origin and customs value.

Furthermore, a significant quantitative restriction was established: the tax authorities would not be bound by the arbitration proceedings in disputes involving sums exceeding €10 million. While this approach was understandable during the initial phase of the system’s implementation, it also reflected a degree of caution on the part of the legislator in entrusting cases of greater economic significance to the arbitral tribunals.

Composition of Arbitral Tribunals and Status of Arbitrators

The model for the composition of arbitral tribunals adopted in 2011 was characterized by its flexibility, depending primarily on whether the taxpayer chooses to appoint an arbitrator and, secondly, on the value of the dispute. When the taxpayer chose to nominate an arbitrator, the tribunal would work in collegiate formation (three arbitrators), each party appointing one arbitrator and the two appointed designating a third to serve as presiding arbitrator. When the taxpayer chose not to nominate an arbitrator and the value of the dispute was below twice the jurisdictional threshold of the Central Administrative Court (€60,000), the tribunal would work as a sole arbitrator designated by the Ethics Council of the Centre for Administrative Arbitration (CAAD). In cases exceeding €60,000 but without an arbitrator designated by the taxpayer, the tribunal would work in a collegiate formation of three, all designated by the CAAD.

As regards the requirements for arbitrators, the regime required individuals of “proven technical ability, moral integrity and sense of public interest”, being legal practitioners with at least ten years of professional experience. Innovatively, provision was also made for the appointment of arbitrators holding degrees in Economics or Management in cases requiring specialized knowledge in those fields, although such arbitrators could not serve as presiding arbitrators.

The Non-Appealability of Arbitral Decisions

One of the most distinctive features of the 2011 regime lay in the principle of non-appealability of arbitral decisions, designed to ensure the procedural speed that is one of the essential objectives of the system.

This tendency towards non-appealability was mitigated by limited exceptional means of appeal: (1) appeal to the Constitutional Court, when a norm was refused application on grounds of unconstitutionality or when the constitutionality of an applied norm had been raised; (2) appeal to the Supreme Administrative Court, when

judicial decisions were in conflict on the same fundamental question of law; and (3) challenge to the arbitral decision before the Central Administrative Courts, on grounds of lack of reasoning, contradiction between reasoning and decision, omission or excess in the ruling, or violation of the right to be heard or the equality of the parties.

Provision was also made—albeit not explicitly¹—for the possibility of a preliminary ruling from the Court of Justice of the European Union whenever a question arose concerning the interpretation of the Treaties or the validity and interpretation of Acts of the European institutions.

The Regime on Arbitration Fees

Attention was paid to the system governing the fees of arbitral proceedings—designated as “arbitration fees”—which was structured based on two fundamental criteria: the value of the dispute and the manner of appointment of the arbitrator. The fees comprised an initial arbitration fee, payable upon the “initiation of proceedings”, and the costs of the arbitral proceedings, which covered the expenses incurred from their conduct (namely, arbitrators’ fees and costs of obtaining evidence).

In cases where arbitrators were designated by the CAAD (a sole arbitrator or a panel arbitrator not appointed by the parties), the initial arbitration fee corresponded to 50 per cent of the total fee, payable prior to the request for the constitution of the tribunal. The remaining 50 per cent was due at the end, upon the fixing of the final costs by the arbitral court, with the tribunal empowered to decide on their allocation between the parties.

In cases where the arbitrator was designated by the taxpayer (panel with arbitrators appointed by the parties), the payment was borne entirely by the taxpayer and had to be made prior to the filing of the request for the constitution of the tribunal.

The Transitional Regime for Pending Cases

The LFTAM established a transitional regime which allowed taxpayers with proceedings pending before the tax courts for more than two years the option of submitting those matters to the tax arbitration tribunals, without having to pay additional fees.

This provision sought, from the outset, to contribute to the desired decongestion of the “traditional” tax justice system—an objective that ultimately could not be achieved,

for two fundamental reasons: on one hand, the novelty of the regime did not encourage taxpayers to make the bold move from the tax courts to the arbitral tribunals; on the other hand, the entry into force of this provision was made conditional upon the entry into force of the LFTAM itself, which occurred only following the publication of the Ministerial Order No 112-A/2011, of 22 March.²

The First Normative Developments

Still, during the first year of effective operation, practical experience began to reveal issues that the initial legal framework had not fully anticipated. The Legislature made significant amendments to the regime, focusing on three key areas: procedural time limits, joinder of claims, and joinder of claimants.

Time Limits

Tax arbitration was conceived as a genuine alternative to judicial challenge. The Legislature established, as a rule, time limits identical to those in judicial tax proceedings—notably the 90-day period for filing the arbitral claim.

However, several exceptions were introduced, notably for cases of rejection of a prior administrative claim and for self-assessment, withholding at source, and payments on account preceded by an administrative stage. With the introduction of Article 3-A into the LFTAM, it was established that the Code of Administrative Procedure would apply during the arbitral procedure, while the Code of Civil Procedure would apply during the arbitral process proper—a dual framework that raised significant interpretive uncertainty, particularly regarding the suspension of time limits on weekends and public holidays.

Joinder of Claims

If there was one area where tax arbitration proved truly disruptive, it was in the flexibility of joinder of claims. The arbitration regime proved substantially more flexible, allowing the joinder of arbitral claims even in relation to different acts and different taxes (for example, corporate income tax and VAT simultaneously), provided the same factual circumstances and the interpretation and application of the same legal principles or rules were at issue. Even more remarkable was the possibility of joining a judicial challenge and an arbitral claim in respect of the same act, provided that they were based on different facts or grounds—enabling taxpayers to adopt a broader procedural strategy and combine the advantages of both forms of jurisdictional protection.



Joinder of Claimants

The joinder of claimants followed broadly the same principles and raised similar issues to those of the joinder of claims. Under the LFTAM, joinder was permitted even without identity in the nature of the taxes involved, provided the same factual circumstances and the same legal principles or rules were at stake. Practical examples included situations where the taxpayer and the person on whom the tax was passed on acted jointly, or cases of company directors challenging corporate income tax and VAT assessments together as subsidiary taxpayers. This flexibility represented a significant competitive advantage of arbitration over the traditional judicial route. Arbitral case law progressively built its own concepts in this area: the principle of rationality of means, the logic of procedural economy, and the *pro actione* principle as a corollary of the right to effective jurisdictional protection.

The Expansion of Grounds of Appeal

One of the most significant developments in the more recent period of Portuguese tax arbitration occurred in 2019 with the expansion of the grounds of appeal from arbitral decisions to the Supreme Administrative Court. The regime in force until that point provided that an arbitral decision could be appealed only where it was in conflict, on the same fundamental question of law, with a decision of the Central Administrative Court or the Supreme Administrative

Court itself. Law No 119/2019 allowed an arbitral decision to be reviewed not only where it conflicted with a judicial decision of the higher courts, but also where it conflicted with another arbitral decision that had become final. The amendment prompted an ambivalent assessment. On one hand, the new appeal possibility could negatively impact the procedural speed that had always characterized tax arbitration. On the other hand, it reinforced arbitration as an alternative to judicial challenge by affording taxpayers an additional guarantee of jurisprudential harmonization, and it corrected an asymmetry that had become evident with the system's maturation: arbitral decisions, by virtue of their equivalence to judicial decisions and their finality, were now fully integrated into the system of control of jurisprudential harmonization.

The Migration of Pending Cases to Arbitration

In a particularly significant legislative development, the State Budget Law for 2024 introduced an exceptional measure designed, once again, to decongest the administrative and tax courts by allowing pending judicial proceedings to be transferred to arbitral jurisdiction. The measure established that taxpayers could transfer to the arbitral tribunals any pending judicial challenge proceedings whose decision was awaited in a first instance tax court, provided those proceedings had been filed on or before 31 December 2021.

The most notable feature of this measure was that the transfer was permitted regardless of the value of the claim—meaning that, exceptionally and under this transitional regime, proceedings exceeding the €10 million ceiling could be transferred to arbitration, a limit which had been one of the fundamental restrictions on the tax authority's commitment to the arbitral procedure since the outset of the system.

The measure carried dual significance. First, it constituted an implicit recognition of the success of tax arbitration as a dispute resolution mechanism: by again resorting to arbitration as a release valve for case backlog, the legislature demonstrated confidence in the capacity of the arbitral system to process, with quality and speed, an additional volume of cases, including high-value cases normally excluded from its jurisdiction. Second, the measure highlighted the persistent problem of delays in traditional tax justice: the need to create, 14 years after the introduction of tax arbitration, a new transitional regime for the transfer of pending cases revealed that the initial objective of decongesting the judicial courts had not been fully achieved. In practice, the measure produced limited results—only 147 cases migrated from the judicial tax courts to CAAD, representing 1.8 per cent of new case filings at the institution.

Concluding Remarks

Fifteen years after the introduction of tax arbitration in Portugal, it is fair to say that the institution has established itself as an essential pillar of the taxpayer protection system. What began as a pioneering experiment within the European Union has evolved into a mature alternative mechanism, with its own body of case law and several clear advantages over the traditional judicial route.

Practice has confirmed the principal virtues of the regime: procedural speed, flexibility in the joinder of claims and claimants, and the technical specialization of the arbitral tribunals have proved to be effective instruments for the protection of taxpayers' rights. CAAD's case law has developed its own interpretive criteria, elaborating concepts such as "same factual circumstances" and affirming the *pro actione* principle as a corollary of effective jurisdictional protection.

Notwithstanding these achievements, structural challenges remain. The sluggishness of traditional tax justice persists, as evidenced by the need to create in 2023 a new

transitional regime for the transfer of pending cases. The quantitative limit of €10 million, the material exclusions (indirect assessment methods, customs matters, etc.), and the restriction of bound authorities (limited to the tax authority, excluding local authorities and Social Security) reveal a potential not yet fully exploited.

The path traveled over these 15 years demonstrates that tax arbitration is neither a transitional solution nor merely an alternative to the problems of tax justice, but a solid, technically demanding and specialized, and functionally effective model—capable of rising to some of the challenges of effective jurisdictional protection of taxpayers in the twenty-first century.

Portugal's experience, unique among EU Member States, offers a blueprint for countries seeking to modernize their tax dispute resolution systems. The combination of jurisdictional equivalence with judicial decisions, structural flexibility, and the progressive refinement of the system through legislative adjustment and jurisprudential elaboration provides a model that—15 years on—is ready to be studied and, where appropriate, replicated.

Notes

¹ See Article 267(3) of the Treaty on the Functioning of the European Union and the preamble to Decree-Law No 10/2011 of 20 January 2011 ("Legal Framework for Arbitration in Tax Matters").

² See Article 30 of Decree-Law No 10/2011 of 20 January 2011 ("Legal Framework for Tax Arbitration").



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“Advocate”

An Officer of the Court: The Litigator’s Responsibility in the Indian Law Context

The Indian legal profession holds a unique position under the Constitution and statutes. An advocate registered under the Advocates Act, 1961 is not just a representative for a client’s interests but is effectively an officer of the court. They have responsibilities to the client, the court, the opposing party, and the justice system as a whole. This multifaceted role has always created a productive tension in India’s litigation practice. This article explores that tension through connected lenses. It starts by outlining the types of legal practitioners under Indian law. This includes advocates, *vakils*, and solicitors, and focuses on how the modern advocate has become the dominant form. Understanding this history helps clarify what is expected of today’s practitioners. It proceeds to touch upon the professional conduct rules set by the Bar Council of India and related aspects. The article specifically dwells upon an advocate’s duty to the court, which includes honesty, respect, and a responsibility not to mislead. It discusses how this duty interacts with the strong pursuit of a client’s instructions. With this context, the article argues that while the traditional adversarial model may still exist in Indian court proceedings, a more collaborative view of the litigator’s role is emerging.

Introduction

The Indian legal framework places an Advocate in two connected roles, viz. officer of the court and representative of the client. The Advocates Act, 1961 and the Bar Council of India Rules (BCI Rules) provide that the Advocate's role is not confined to advancing the case of the client, but also carries equal, if not greater, responsibility towards the administration of justice and the legal system at large.¹ The dual responsibility assumes particular importance in the evolving dispute resolution landscape. However, litigation remains indispensable as parties still require authoritative adjudication, clarification of law, interim protection and the setting up of judicial precedent. At the same time, parties are increasingly leaning towards alternate mechanisms offering timely, commercially workable and relationship-conscious outcomes.

Piecing Together the Profession: From Fragments to a Unified Advocate

Given the diverse history of India, the professional we have come to know as an "Advocate" was earlier a fragmented affair. Historically, the profession was fragmented into advocates, *vakils*, pleaders, *mukhtars* and revenue agents. The enactment of the Legal Practitioners Act, 1846, although maintaining a distinction between the class of legal practitioners, ended the racial barriers by allowing Indians to practice in the courts of the East India Company.² Thereafter, the Indian Bar Councils Act, 1926 established Bar Councils for High Courts and provided for enrollment of Advocates on High Court rolls. The transitional provision therein expressly provided entitlement to advocates, *vakils* and pleaders to practice before the High Courts.³ The critique towards the fragmentation was first raised in the All India Bar Committee Report of 1951 which proposed the idea of a unified class of legal practitioners and a unified Bar.⁴ The gradual developments ultimately culminated in the Advocates Act, 1961, which unified the profession by recognizing Advocates as the single class of persons entitled to practise the legal profession. It also provided for creation of State Bar Councils, the Bar Council of India, and also established a common roll of Advocates, entitling appearance before any court in India.⁵

The foregoing is worth remembering because the profession continues to evolve. The Advocates Act, 1961 preserved the central role of advocacy by placing Advocates under a common statutory structure and professional standards. Present day litigators therefore must consider not only how to argue a case effectively, but

also other ways of achieving a lawful and commercially meaningful outcome for the client.

Professional Conduct

The BCI Rules, and more specifically Chapter II, Part VI thereof, prescribe the standards of professional conduct and etiquette for Advocates, including (1) duty to the court; (2) duty to the client; (3) duty to the opponent; and (4) duty to colleagues.⁶ Under the BCI Rules, "An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman".⁷ The Preamble further recognizes that what may be lawful and moral for a person outside the profession may nevertheless be improper for an Advocate. The above, in substance, reinforces the principle that an Advocate's role is not limited to representing the client before the court but also entails responsibility towards the legal institution. Any breach of such rules may amount to professional misconduct, and an Advocate may be reprimanded, suspended from practice or removed from the State roll.⁸ Therefore, the rules do not act as mere guiding principles but rather constitute enforceable rules of conduct befitting the legal profession.

Duty to Court

The characterization of the Advocate as an officer of the court is not merely rhetorical but is accompanied by obligations towards the administration of justice. The BCI Rules require an advocate to conduct themselves with dignity and self respect. It also requires refraining from attempting to influence a court by illegal or improper means and also to restrain the client from resorting to unfair practices and to refuse to represent a client who persists in such conduct.⁹

The Supreme Court of India has explained this responsibility in *State of UP v. UP State State Law Officers' Assn. (State of UP)*.¹⁰

The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be ... Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side.

Accordingly, advocacy does not mean advancing every proposition that the client wishes to pursue, but rather to

formulate the strongest lawful case while avoiding acts which may obstruct the court's determination of the dispute.

Duty to Client

The duty towards the client is often the most popular conception of a lawyer's role. An advocate-client share a fiduciary and privileged relationship, protected under law.¹¹ The BCI Rules require an Advocate to uphold the client's interest by all fair and honorable means. It also requires full and fair disclosure of conflicts of interest which may compromise the client's position.¹² The lawyer is expected to step into the shoes of the client while defending the case. In fact, the Supreme Court of India in *Summoning Advocates Who Give Legal Opinion or Represent Parties During Investigation of Cases and Related Issues, In re*,¹³ while faced with a situation where an investigating agency summoned an Advocate seeking "true details of the facts and circumstances" of the case, held that such summonses are illegal and that an Advocate cannot be coerced into disclosing privileged client communication, unless the case falls within a statutory exception to client consent, furtherance of an illegal purpose, or observation of a crime or fraud.

Duty to Court and Duty to Client: Balancing the Scales and Practical Tension

The Advocate's duties to the court and client may not always align, and the tension between the two is a routine occurrence in litigation practice. It may arise in relation to how an adverse fact should be addressed, whether to press an argument which may not be persuasive but is insisted upon by the client, and how to advise a client who wishes to pursue a course of action which is lawful but, in the Advocate's assessment, not in the client's genuine interests. The Supreme Court of India in *State of UP* recognized this tension as inherent in the Advocate's role, characterizing the lawyer as the client's dignified, responsible spokesman, rather than an agent, retaining discretion over which facts and arguments to advance, while remaining bound by duties of fairness to the court and the opposing side as a responsible officer of the court and an important adjunct of the administration of justice.¹⁴

Considering the above and the BCI Rules, this tension is resolved by treating the duty to the court as a non-negotiable baseline, while otherwise preserving enough latitude to the Advocate to further the client's cause within the baseline. An Advocate is expected to present the client's case persuasively within the baseline that the law permits.

A constructive approach does not mean diluting the client's case or encouraging settlement in every dispute. It requires identification of the client's real objective at an early stage and accordingly advising on the procedural and strategic route most likely to achieve those objectives. The balance between commitment to the client's cause and responsibility towards the institution is a defining feature of a legal professional in India, which is being tested in a changing dispute resolution landscape.

Adversarial Versus Constructive: New Roles, Change in Approach, and Evolving Skillsets

One of the prime examples of a constructive approach to dispute resolution is Mahatma Gandhi who, before he emerged as a freedom fighter was a lawyer, and in his autobiography, *The Story of My Experiments with Truth*, wrote that the true function of a lawyer was to "unite parties riven asunder, rather than to widen the breach between them", and that he had, through his own experience, learned the value of bringing about private compromises.¹⁵

The above observation, although made about a century ago, remains relevant today. The adversarial model of litigation—limiting the legal professional's task to simply advancing the client's case by any means possible—is progressively becoming ill-suited to the demands placed on legal professionals.

The efforts toward promoting a constructive approach in the Indian legal framework are evident from the inclusion of a mechanism providing mandatory pre-litigation mediation in commercial disputes.¹⁶ This approach is supplemented by the enactment of the Mediation Act, 2023, which provides a comprehensive framework for mediation in India, including pre-litigation mediation under section 5 and the enforceability of mediated settlement agreements under section 27. For legal professionals, the enactment of this Act expands the horizon in the sense of having liberty to have lawfully enforceable agreements¹⁷ between the parties without ever approaching the court and without ever reaching the stage of making zealous efforts to prove the other side wrong in court, thereby promoting cordial resolution of disputes and reducing the already overburdened judicial system. The above mindset was already put into practice by Gandhi in a South African courtroom well before it found statutory expression in India.

The second development concerns the use of Artificial Intelligence within the Indian judicial system. On 3 June 2026,

the Supreme Court of India published the Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026. The Draft Regulations propose a framework for AI use in courts, founded on human primacy, transparency, accountability, data protection and judicial independence.

Among other things, from a legal practitioner's perspective, the proposed framework offers opportunities for efficiency but also reinforces an existing obligation to ensure the accuracy of material placed before a court. An Advocate who relies on AI-generated research or drafting without independently verifying authorities, legal propositions and factual assertions risks placing incorrect material before the court, which is a dereliction of duty towards both the court and client. The use of AI tools cannot replace professional judgment or transfer responsibility for inaccurate submissions.

These new developments, that is, the Mediation Act and the emerging AI framework, point towards an evolving skillset for the Indian litigator. It calls for institutions to teach ADR mechanisms alongside, rather than instead of, courtroom advocacy. They also require litigators to use AI tools productively while independently verifying outputs, protecting confidentiality and retaining professional judgment.

Conclusion

The legal profession in India is about maintaining a balance between the responsibility owed to the client and to the court whose authority Advocates are privileged to invoke. Although the dual foundation remains unchanged, the range of contexts in which that responsibility must be exercised is developing. The present landscape calls for a more constructive and outcome-oriented approach to disputes. This does not require the Advocate to abandon adversarial advocacy, but it requires the Advocate to bring a wider range of legal, procedural and strategic options to bear on the client's cause. The Advocate remains, as before, an officer of the court. What is asked of that officer today is simply a broader and more constructive exercise of a role that has always demanded both loyalty to the client and to the justice system.

Notes

¹ Advocates Act, 1961, ss 6,7, 29, 30, 35 and 49; Bar Council of India Rules, Pt VI, Ch II.

² Legal Practitioners Act, 1846, Ch IV.

³ Section 3, 4, 8 and 15 of the India Bar Councils Act, 1926.

⁴ All India Bar Committee Report of 1951.

⁵ Advocates Act, 1961, ss 3, 4, 29 and 30.

⁶ *Ibid*, s 49(1)(c); Bar Council of India Rules, Pt VI, Ch II.

⁷ Bar Council of India Rules, Preamble and Pt VI, Ch II.

⁸ Advocates Act, 1961, s 35(3).

⁹ Bar Council of India Rules, Pt VI, Ch II, Section I, Rules 1–4.

¹⁰ *State of UP v. UP State Law Officers' Assn.* (1994) 2 SCC 204, para 15.

¹¹ Confidentiality is a key component of the Advocate's duty and is reflected in Rule 17, which prohibits breach of attorney client privilege imposed on an Advocate under the Bharatiya Sakshya Adhinyam, 2023, s 132.

¹² Bar Council of India Rules, Pt VI, Ch II, Section II, Rules 14 and 15.

¹³ *Suo Motu Writ Petition (Cri) No 2 of 2025.*

¹⁴ *State of UP v. UP State Law Officers' Assn.* (1994) 2 SCC 204, para 15.

¹⁵ M K Gandhi, *An Autobiography: The Story of My Experiments with Truth*, Ch 38, 'A Difficult Client'.

¹⁶ Commercial Courts Act, 2015, s 12A.

¹⁷ Mediation Act, 2023, ss 19, 27 and 28.



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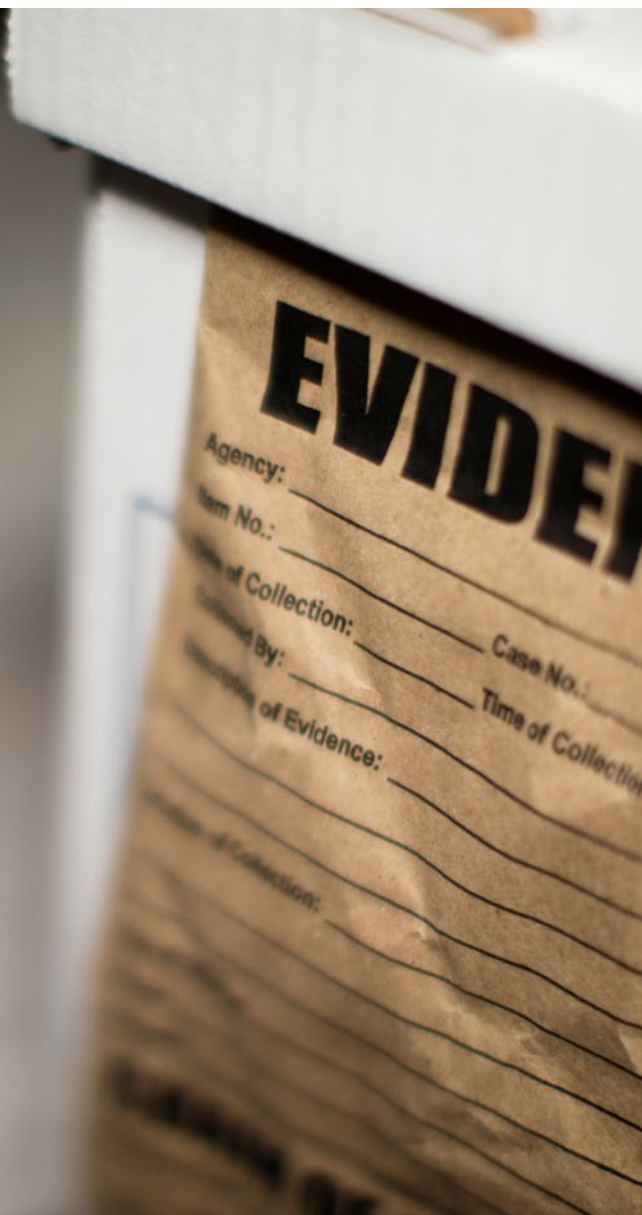
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B uilding a Strong Defense Requires Building a Better Process

The Constructive Role of the Indian Litigator

In a corporate crisis, the strength of the eventual defense is often shaped well before formal proceedings begin. This article examines why the earliest hours of a crisis can be decisive in determining whether an organization's response and, ultimately, its legal defense will withstand scrutiny in India. As the enforcement landscape becomes increasingly complex, regulators may look beyond the conclusions of an internal investigation to the integrity of the process that produced them: how evidence was preserved, privilege was protected, governance and reporting lines were established, and critical decisions were documented.

Set against India's evolving evidentiary framework under the Bharatiya Sakshya Adhiniyam, 2023, the unsettled contours of cross-border privilege, and a landscape of parallel, multi-regulator scrutiny under SEBI, the Companies Act, 2013 and enforcement statutes such as the PMLA, this article makes a single argument: A defense is not built in response to enforcement; it is built from the outset through a disciplined, credible, and legally sustainable investigative process. The article closes with a practical seven-question framework for boards and general counsel navigating the first 72 hours of a corporate crisis.



The First 72 Hours Build the Defense

Corporate crises no longer unfold at a pace that allows organizations to pause, assess the facts and formulate a legal strategy. A regulatory search, allegations of financial misconduct, a cyber incident, an industrial accident, a data breach or an adverse media report can, within hours, evolve into a legal, commercial and reputational crisis spanning multiple jurisdictions. By the time the organization has assembled its leadership team, markets have reacted, counterparties have begun asking questions, and regulators may already be assessing their next steps.

For listed companies, the challenge is even more acute. Share prices respond to headlines rather than findings, investors demand certainty where little exists, and global headquarters expects answers before the local management team has established the facts. These commercial pressures are often accompanied by immediate legal considerations, particularly under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations), where the trigger for disclosure to the stock exchanges is not the emergence of complete facts but SEBI's materiality thresholds under Regulation 30, meaning a disclosure obligation can arise well before an organization has established what actually happened.

The paradox is straightforward. The decisions with the greatest legal consequences are often taken at the precise moment when the organization knows the least.

The first instinct is usually to manage the crisis. Statements are drafted, employees are suspended, regulators are anticipated, and external advisers are mobilized. Yet the more significant question is often overlooked: has the organization established a process capable of withstanding legal scrutiny?

The earliest decisions rarely determine liability. They determine whether the investigation itself will be regarded as credible.

One of the first questions defense counsel should therefore address is not what happened, but how the facts will be established. Will the matter remain a management-led fact-finding exercise, or should it be overseen by the Board or the Audit Committee? Who will direct the investigation? Who will preserve evidence? How will decisions be documented? How will information be shared



with overseas advisers? These questions establish the procedural framework within which every subsequent legal decision will be taken.

Where the facts touch key managerial personnel (KMP) or senior management personnel (SMP), this list should also include a harder question: What interim measures, including suspension, are being considered, and on what basis? Suspending a KMP or SMP is rarely a neutral holding action; it can itself become a market signal, a disclosable event, or a fact that regulators later scrutinize, and it can generate consequences independent of, and at times disproportionate to, the underlying allegations.

This distinction has become increasingly significant in India. Regulators are no longer concerned solely with the conclusions reached by an internal investigation. They also examine the integrity of the process that produced those conclusions. Whether evidence was preserved appropriately, relevant individuals were interviewed, governance mechanisms functioned effectively, and decision making remained independent may all become relevant to a regulator's assessment. For listed entities, these considerations frequently intersect with the oversight responsibilities of the Board and Audit Committee under the Companies Act, 2013 and the corporate governance framework prescribed by the SEBI LODR Regulations.

By the time formal proceedings commence, the legal strategy is rarely being developed for the first time. It is being assessed against the quality of the decisions taken during those first 72 hours. The role of defense counsel has therefore evolved beyond defending proceedings once they begin. Increasingly, it is to help organizations build a process that is procedurally sound, legally sustainable, and capable of withstanding scrutiny long before the first regulator, tribunal, or court examines the matter.

Evidence and Privilege are Built in Real Time

The instinct during a corporate crisis is often to identify the “right” documents as quickly as possible. That instinct is misplaced. The role of defense counsel is not to preserve favorable evidence; it is to preserve all relevant evidence.

At the outset of an investigation, no one knows where the facts will ultimately lead. Material that appears adverse in isolation may later demonstrate that the company maintained appropriate controls, escalated concerns internally, or acted promptly once issues came to light. Equally, documents that appear insignificant at first may become central to the investigation. The credibility of any subsequent defense depends as much on the integrity of the evidentiary record as it does on the merits of the allegations themselves.

Once evidence is lost, the legal landscape changes. Whether through routine deletion policies, replacement of devices, or well-intentioned attempts to organize records, the destruction of potentially relevant material creates questions that are often more difficult to answer than the underlying allegations themselves.

The priority, therefore, is not collection; it is preservation. That requires identifying the relevant custodians, securing devices and communication platforms, suspending routine deletion protocols where appropriate, and implementing legal hold measures before routine business practices alter the evidentiary record. This has assumed even greater significance following India’s recent overhaul of its criminal procedure and evidentiary framework through the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023,¹ which place increased emphasis on the treatment and admissibility of electronic evidence. The focus is no longer limited to what evidence is ultimately produced; organizations should also be able to demonstrate how that evidence

was identified, preserved, and handled from the outset. Increasingly, the credibility of an investigation may be judged as much by the integrity of its preservation process as by its eventual findings.

The same discipline extends to privilege, and here the position has recently sharpened rather than remaining an open question. Indian law does not recognize a work-product doctrine in the form familiar to US practice where privilege typically extends to in-house counsel with force comparable to that afforded to external advisers. In India, the Supreme Court held in October 2023 that in-house counsel do not enjoy the privilege available to advocates under Section 132 of the Bharatiya Sakshya Adhiniyam, 2023, since they are not practicing advocates appearing before courts, though they may retain a narrower protection over specific communications under Section 134. The ruling followed a wider controversy over the summoning of advocates in connection with legal opinions given to clients, a reminder that the boundaries of privilege in India are being tested and drawn in real time, not settled once and left alone. The practical consequence is direct: organizations should decide, at the outset, who directs the investigation and authors its work product, and whether investigation-critical legal advice should be authored or channeled through externally retained counsel rather than in-house counsel alone.

This uncertainty compounds once material crosses jurisdictions. Decisions on how legal advice is recorded, how investigation material is circulated, and how information is shared between Indian and overseas advisers should be deliberate rather than reactive. A privilege position that holds in New York or London does not automatically travel with the document into an Indian regulatory or judicial proceeding, and Indian law offers limited clarity on whether privilege recognized abroad will be honored domestically. Those issues are rarely resolved during the first week of an investigation; they often emerge months later, when the process itself comes under scrutiny.

There is No Such Thing as a Standard Investigation

Every multinational company has an investigation protocol. Some are developed internally. Others borrow from global best practices refined over decades in New York, London or Singapore. They set out escalation matrices, reporting lines, interview protocols and decision trees designed to bring order to a crisis.

Playbooks are Immensely Useful—Until They Reach India

The challenge is not that these playbooks are legally incorrect; it is that they assume a legal and regulatory environment that may not exist everywhere. An interview strategy that works in one jurisdiction, an information-sharing protocol that is routine in another, or a reporting framework designed around a single regulator may require a very different approach when the facts have a nexus with India.

That is because corporate crises today rarely remain confined to one jurisdiction. An investigation involving an Indian business may simultaneously engage domestic regulators, overseas enforcement agencies, global headquarters, external auditors, insurers and lenders. Each stakeholder has a legitimate interest in the outcome, but each operates within a different legal framework and often on a different timeline.

The role of defense counsel is therefore not to choose between a “global” strategy and an “Indian” one. It is to reconcile both.

That often requires difficult conversations. Global headquarters may seek immediate access to investigation

material, while local legal considerations call for a more measured approach. Overseas counsel may expect interviews to proceed in a particular sequence, while the realities on the ground demand something different. Regulators in different jurisdictions may ask similar questions but expect very different forms of engagement.

There is rarely a standard answer, and there should not be. Every crisis develops its own facts, regulatory sensitivities and commercial pressures. The investigation must be built around those realities, not around a template.

One Crisis. Many Regulators. One Strategy.

One of the defining features of the Indian enforcement landscape is that investigations rarely remain confined to the authority that first identifies the issue. Regulatory scrutiny is often cumulative rather than isolated. A matter that originates in India may simultaneously attract scrutiny from multiple domestic authorities, while also requiring engagement with overseas regulators, foreign counsel and global headquarters.

For example, an investigation initiated by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002, may also give rise to proceedings before the Serious Fraud Investigation Office under the

	Question	Why it matters
1	What exactly are we dealing with?	Correctly characterizing the event determines the legal obligations, reporting requirements, and investigation strategy that follow.
2	Who owns the investigation?	Clear ownership, reporting lines and governance are essential to preserving the independence and credibility of the investigation.
3	Have we preserved the factual record before trying to explain it?	Preserve first, assess later. Missing evidence is invariably more difficult to defend than adverse evidence.
4	Who else is likely to become involved?	A single event may attract multiple domestic and overseas regulators, auditors, lenders or contractual counterparties, requiring a coordinated response.
5	Have the company's legal and regulatory obligations been mapped?	Consider disclosure obligations, sector-specific requirements, and the possibility of parallel proceedings before domestic and overseas regulators.
6	Is information being shared on a controlled basis?	Investigation material, legal advice, and interview records should move only through a structured process, particularly where cross-border teams are involved.
7	Will today's decisions withstand scrutiny a year from now?	Every significant decision should be documented on the assumption that it may later be examined by a regulator, a court or an independent reviewer.

Companies Act, 2013, or investigations by the Central Bureau of Investigation, depending on the nature of the allegations. Where the company is listed, the same facts may independently trigger disclosure obligations or governance-related enquiries by the Securities and Exchange Board of India. Tax authorities, sectoral regulators and overseas enforcement agencies may all examine the same underlying conduct through different statutory frameworks.

This presents a challenge that extends beyond responding to individual regulatory requests. Decisions taken at the outset of an investigation often have consequences across multiple proceedings. Information shared with one authority may become relevant to another. A position adopted in one jurisdiction may need to be explained or defended in another. What appears to be an isolated procedural decision can therefore have broader strategic implications.

The role of defense counsel is to ensure that these engagements are not managed in isolation. A coordinated strategy requires a clear understanding of the regulatory landscape, the sequence in which issues should be addressed and the impact that each engagement may have on the others. This is particularly important where domestic investigations run parallel to enquiries by foreign regulators or where the global headquarters is coordinating the company's overall response.

In practice, this requires close coordination between local counsel, in-house legal teams, and overseas advisers. It also requires recognizing that not every regulator expects the same level of disclosure, follows the same investigative process, or applies the same legal standards. A strategy that is appropriate in one jurisdiction may not necessarily be appropriate in another.

The objective is not to achieve uniformity for its own sake. It is to ensure that the company adopts a consistent and legally sustainable approach across all proceedings, while remaining responsive to the requirements of each regulator. Increasingly, that coordination has become as important as the substantive legal advice itself.

Beyond the Courtroom

Corporate crises will continue to become faster, more complex and increasingly cross-border. That trajectory is unlikely to change. What can change is how organizations respond to them.

No single 72-hour window determines the outcome of an investigation on its own. What it determines is whether the organization enters that investigation with a process that is credible, defensible, and capable of withstanding scrutiny.

For the litigator, the first 72 hours are no longer about preparing for litigation. They are about establishing the legal and procedural foundations upon which every subsequent defense will rest. Decisions relating to governance, evidence preservation, privilege, regulatory engagement, and cross-border coordination are not merely operational choices; they become part of the factual record against which the company's conduct will ultimately be assessed.

A Practical Framework for the 72 Hours

These are not questions for later. They are what the organization should be able to answer before legal strategy is debated or regulatory engagement begins.

Notes

¹The BNSS governs procedure, replacing the Code of Criminal Procedure, 1973, while the BSA governs the admissibility and treatment of evidence, replacing the Indian Evidence Act, 1872, distinct from the Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code, 1860 and deals with substantive offences.



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R

egulating the Robot in the Robe: India's Draft AI Court Regulations, 2026



Artificial intelligence (AI) is steadily entering courtrooms, but one question remains non-negotiable: can it ever participate in judging? India's Draft Regulations for Use of AI in Courts, 2026, offers one of the most comprehensive attempts yet to answer that question, not with broad principles, but with a binding rulebook.

Introduction

Not long ago, the idea of a judge consulting an algorithm before passing an order belonged more to speculative fiction than to serious legal debate. That is no longer true. From legal research and document management to transcription, translation, and analytics, courts have begun weaving artificial intelligence into their daily functioning. The promise is real: faster case management, better translation across a multilingual bench, and relief for dockets under strain, with the Supreme Court's own pendency having climbed past 93,000 matters by March 2026.¹ But the risk is just as real, and it cuts to the heart of what adjudication is meant to be: can a judicial system embrace efficiency without quietly outsourcing judgment itself?

India has entered this conversation with unusual force. On 3 June 2026, the Supreme Court's Artificial Intelligence Committee released the Draft Regulations for Use of Artificial Intelligence in Courts, 2026 ("Draft Regulations" or "Draft"), inviting public and stakeholder comment until 15 July 2026.² Where many judicial AI frameworks read as high-level ethical aspirations, India's Draft reads like a rulebook, with binding categories of permitted and prohibited use, a standing institutional architecture, mandatory audits, registers, and a grievance mechanism. Its ambition is not simply to make courts faster; it is to ensure that, however fast they get, a human being remains responsible for every judgment handed down.

The Context Behind the Draft

The move was triggered by a run of unwelcome experiences. Over the past year, Indian courts have repeatedly encountered AI hallucinations: confident, plausible-sounding citations to cases that simply do not exist. The clearest illustration is *Gummadi Usha Rani v Sure Mallikarjuna Rao*.³ The dispute in that case began as a property matter in Andhra Pradesh, where a trial court dismissed objections to an advocate-commissioner's report in 2025 by relying on four judgments that turned out to be entirely fabricated. The Andhra Pradesh High Court acknowledged that the citations were AI-generated but declined to set the order aside, recording only "a word of caution". The Supreme Court took a far harder line: the Bench of Justices PS Narasimha and Alok Aradhe held that a decision built on fabricated AI-generated material was not a mere error but institutional misconduct with legal consequences, and issued notice to the Attorney General, the Solicitor General, and the Bar Council of India, appointing Senior Advocate Shyam Divan as *amicus curiae*.⁴

That case, and others like it, made clear that AI hallucination in Indian courts was not a hypothetical risk but a recurring one, risking public trust in the authenticity of judgments. The Draft Regulations are best read as a deliberate attempt to build guardrails before AI missteps become a systemic threat to fairness, rather than legislating only after a major institutional failure.

The Line Between Assistance and Adjudication

The centerpiece of the Draft is a firm line between assistance and adjudication. Subject to prior written approval of the "Appropriate Authority" and to human verification, AI may support judges and court staff with tasks such as:⁵

- legal research, precedent retrieval, and citation verification;
- translation of judgments and pleadings, and automated transcription of proceedings;
- summarization of submissions and document management;
- case scheduling, cause-list preparation, and docket management.

What it may not do is discharge an "adjudicatory function", defined as any function involving the application of law to facts to determine the rights, liabilities, or obligations of a party. The ultimate authority over law, fact, and justice is reserved exclusively to judicial officers.⁶

Rather than stopping at broad principle, the Draft sets out an explicit list of absolute, non-derogable prohibitions in Regulation 20. Courts and their AI systems are barred from:⁷

- reaching a judicial outcome through algorithmic decision-making alone;
- performing adjudication or sentencing without mandatory human-in-the-loop review;
- risk-scoring for bail eligibility, flight risk, or recidivism;
- assessing the credibility of witnesses or parties;
- profiling or predicting the future conduct of parties, the accused, witnesses, or lawyers;

- surveilling or continuously monitoring judicial officers, advocates, or litigants;
- relying on undisclosed or unexplainable black-box systems in matters affecting personal liberty or legal rights.

These prohibitions cannot be relaxed even by the Apex Body or the Chief Justice under the Draft's general modification power.⁸ The justification is explicitly rights-based: decisions touching life, liberty, and constitutional rights cannot be delegated to a system that cannot be made to answer for its own reasoning.⁹

An Accountability Infrastructure

Where comparable frameworks rely largely on guidelines and professional ethics, India's Draft builds an entire institutional apparatus:

Apex Body: A permanent body at the Supreme Court, chaired by a Supreme Court judge, with two Chief Justices of High Courts, two further High Court judges, a member from an institution of national importance, a Joint Secretary from the Ministry of Electronics and Information Technology, and experts in cybersecurity, data privacy, finance, and technology law.¹⁰

AI Committees and Secretariats: An AI Committee in every High Court, each supported by a dedicated AI Secretariat, with a Centre of Research and Excellence on Artificial Intelligence providing technical and legal support.¹¹

Oversight then runs through several mandatory mechanisms:

- a Technical and Ethical Impact Assessment before any tool is deployed, an AI Register of approved tools, and an AI Incident Database logging failures;¹²
- periodic technical, legal, and ethical audits at intervals not exceeding a year, conducted in-house, with source code, algorithms, and datasets never shared with third parties for audit outside court premises;¹³
- mandatory disclosure by any party relying on AI to prepare pleadings, submissions, or evidentiary material, with courts empowered to probe which tool was used and how its output was verified.¹⁴

- Crucially, responsibility for an AI-generated error cannot be shifted onto the technology; it stays with the lawyer or judge who relied on it.¹⁵

Building on an Unstructured Landscape, and Its Blind Spots

The Draft does not arrive on a blank slate. Through 2025, several High Courts issued their own AI circulars or practice directions, though none amounted to a comprehensive policy¹⁶:

- **Kerala** took the most conservative line, prohibiting generative AI in judgment drafting and mandating human countersignature and data residency;
- **Bombay** institutionalized AI transcription of hearings and a litigant-facing chatbot;
- **Gujarat** leaned into efficiency, deploying predictive docket management.

The Draft's ambition is to replace this patchwork with a uniform national framework. Two features stand out:

- **Digital divide:** The Draft cautions that AI-enabled services be deployed with care where rural, economically disadvantaged, or digitally illiterate litigants are involved, so that modernization does not erect new barriers to justice.¹⁷
- **Bias:** It prohibits deployment of systems trained on unlawfully collected or demonstrably biased datasets, a real concern since any system trained on historical Indian judicial data risks inheriting systemic disadvantages faced by women, Scheduled Castes and Tribes, persons with disabilities, and non-English or non-Hindi speakers.¹⁸

The Wider Field

India is one of several jurisdictions now regulating judicial AI. Each keeps final decisions with human judges and rejects fully automated adjudication, while differing in method and instrument.¹⁹

- **Canada:** The Canadian Judicial Council's Guidelines for the Use of Artificial Intelligence in Canadian Courts (2024) provide advisory guidance for judges.
- **United Kingdom:** The Artificial Intelligence (AI) Guidance for Judicial Office Holders (2025) provides that judges and

lawyers remain responsible for all content produced under their name, whether or not AI was used.

- **Australia:** Individual courts issue their own practice notes, such as the Federal Court's Generative Artificial Intelligence (GPN-AI) Practice Note and the Supreme Court of Victoria's Practice Note on the use of AI.
- **European Union:** The EU AI Act, Annex III (point 8), classifies AI used in the administration of justice as high-risk, triggering oversight obligations under the Act.
- **Singapore:** The Guide on the Use of Generative Artificial Intelligence Tools by Court Users (Registrar's Circular No. 1 of 2024) adopts a task-based model, asking users to identify and explain AI-generated content if the court requests, rather than a blanket declaration.
- **China:** The Supreme People's Court's "smart courts" program, rooted in a 2017 national plan, integrates AI widely across judicial processes while retaining human responsibility for final determinations.

India's distinguishing feature is the centralized, institution-based structure it builds around this shared principle.

Conclusion

One message runs through the Draft: AI may assist justice, but it cannot become the judge. Rather than relying on ethical commitments alone, India proposes to enforce that principle through institutions: an Apex Body, mandatory disclosures, annual audits, a register, and an incident database. The idea is simple but powerful, ensuring that "assistive" technology never quietly evolves into a decision maker. The final text will surely absorb stakeholder feedback, but the direction is set. If the wager succeeds, India's framework could become a reference point for how the law lets AI enter the courtroom without ever taking the bench.

Notes

¹ Namrata Banerjee, "The Master and the Machine", *Supreme Court Observer* (16 April 2026); available at www.scobserver.in/journal/the-master-and-the-machine/ (last accessed 19 August 2026).

² Supreme Court of India, Notice regarding the Draft "Regulations for Use of Artificial Intelligence (AI) in Courts, 2026" (3 June 2026); comments invited by 20 June 2026.

³ *Gummadi Usha Rani & Anor v Sure Mallikarjuna Rao & Anor*, SLP (C) No. 7575 of 2026.

⁴ Order in *ibid*.

⁵ Draft Regulations for Use of Artificial Intelligence (AI) in Courts, 2026, reg 19(1).

⁶ *Ibid*, regs 4 and 3(1)(a) (the Draft uses the term "adjudicatory function").

⁷ *Ibid*, reg 20(1)(b)–(g); see also reg 20(1)(a) and (e).

⁸ *Ibid*, regs 20(2) and 56(1) (prohibitions absolute and non-derogable).

⁹ *Ibid*, reg 12(2) (heightened safeguards where personal liberty or lawful rights are affected).

¹⁰ *Ibid*, reg 22(2).

¹¹ *Ibid*, regs 33 (AI Committees), 34 (AI Secretariat) and 32 (CoRE-AI).

¹² *Ibid*, regs 35 (Technical and Ethical Impact Assessment), 37 (AI Register) and 39 (AI Incident Database).

¹³ *Ibid*, reg 38, including reg 38(2).

¹⁴ *Ibid*, reg 43(3)–(4).

¹⁵ *Ibid*, regs 8(1) and 43(6).

¹⁶ Kerala High Court AI Guidelines (2025); Gujarat High Court Policy on the Use of Artificial Intelligence in Judicial and Court Administration (2025); Bombay High Court directions on AI transcription (2025).

¹⁷ Draft Regulations, regs 13(2) and 6(2).

¹⁸ *Ibid*, reg 14(2); see also reg 6(2).

¹⁹ Canadian Judicial Council, Guidelines for the Use of Artificial Intelligence in Canadian Courts (2024); Courts and Tribunals Judiciary (UK), Artificial Intelligence (AI) Guidance for Judicial Office Holders (31 October 2025); Federal Court of Australia, Generative Artificial Intelligence (GPN-AI) Practice Note, and Supreme Court of Victoria, Practice Note on the Use of Artificial Intelligence; EU AI Act, Annex III, point 8; Registrar's Circular No. 1 of 2024, Guide on the Use of Generative Artificial Intelligence Tools by Court Users (Singapore Courts); Supreme People's Court of China, Smart Courts programme.



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Did You Know?

Interesting Laws Around the World



From Centralisation to Re-Embedding: China's Environmental Vertical Management Reform and Its Hidden Tensions

Since the 18th National Congress of the Communist Party of China, significant progress has been made in Chinese environmental governance. In 2013, an official publication of the Asian Development Bank (ADB) noted that seven of the world's ten most polluted cities were located in China.

According to the 2014 Report on the State of the Environment in China, among the 161 cities at or above the prefectural level that adopted the new ambient air quality standard for monitoring in 2013, 145 cities failed to meet the standard, yielding an exceedance rate as high as 90.1 per cent. Meanwhile, among the state-monitored sections of China's ten major river basins, 9.0 per cent registered water quality below Grade V (the worst grade).

However, by 2025, among the 339 prefectural-level and above cities monitored, only 93 cities failed to meet the standard, reducing the exceedance rate to 27.4 per cent. The number of cities attaining the standard rose from 16 (9.9 per cent) to 246 (72.6 per cent), and the proportion of state-monitored

surface water sections with water quality below Grade V fell to merely 0.6 per cent.

These environmental achievements are not solely attributable to stricter standards, advancing technology, more robust pollution control policies, or intensified enforcement. Rather, they also reflect a fundamental restructuring of the environmental governance system itself.

Strong Incentives for Local Governments to Pursue Economic Growth

Under the previous administrative system, environmental protection departments at the district and county levels operated as constituent bodies of their respective local governments, with their personnel, finances, and assets funded entirely by local budgets. Since economic growth served as a key performance metric for local government officials, the tension between environmental protection and economic development was particularly acute. As a subordinate organ of the district government, the environmental protection department frequently encountered obstruction in its enforcement efforts, and sometimes even direct intervention from district leaders who insisted that economic development take priority. The

environmental protection department thus occupied a deeply awkward position.

For instance, in 2002, the Standing Committee of the Tuanfeng County Party Committee in Hubei Province resolved, on the grounds of "improving the economic development environment and curbing arbitrary fees", to abolish the county-level environmental protection bureau outright. This decision triggered a severe resurgence of polluting enterprises: heavily polluting industries that had been mandated for elimination at the national level reemerged.

In 2010, the environmental protection bureau of Guzhen County, Bengbu City, Anhui Province inspected an enterprise three times within 20 days. The county government concluded that these inspections had undermined investment promotion efforts, and the Standing Committee of the County Party Committee decided to suspend six officials of the county environmental protection bureau from their posts.

The Vertical Reform to Break Local Protectionism

Against the above backdrop, the vertical reform of the environmental protection bureau was introduced. The basic logic of the reform was to reduce local protectionism and strengthen the independence, consistency, and authority of environmental monitoring, supervision, and enforcement. Under the reform, county-level ecological environment authorities were transformed into branches of prefectural-level ecological environment authorities, making local environmental enforcement less dependent on county-level governments. This institutional design

helps reduce the influence of local economic development pressures—such as investment attraction, fiscal revenue, industrial protection, and employment stability—on environmental enforcement.

After the reform, county- and district-level ecological environment branches, although vertically managed as units of the prefectural-level authority, remain functionally embedded in district-level governance. In practice, the downward extension of certain enforcement responsibilities to towns and sub-districts means that these branches shoulder multiple tasks: daily supervision, pollution source management, complaint handling, environmental impact assessment, enterprise services, enforcement inspection, monitoring support, and environmental risk response.

The Core Tension: Independence Versus Coordination

The core issue is therefore no longer simply how to maintain enforcement independence through centralization, but how to re-embed vertical ecological environment agencies into local governance while preserving such independence. Environmental governance often requires coordination across a wide range of local governmental sectors: housing and construction authorities, urban management departments, water authorities, agricultural and rural affairs departments, emergency management authorities, market regulation departments, natural resources departments, and township and sub-district offices. Without stable procedural coordination between ecological environment branches and district-level governments, greater enforcement independence may paradoxically be accompanied

by weaker local environmental engagement.

Evidence From the Field

For example, after the vertical reform, the most prominent problem in law enforcement is the lawful authority of county-level ecological environment agencies to impose administrative penalties. Under the vertical reform, county-level agencies were converted into dispatched branches of the prefectural-level ecological environment bureau. In areas where no law or regulation explicitly authorizes such authority, a dispatched branch cannot impose penalties in its own name (penalties must be issued by the prefectural-level bureau). This has caused considerable difficulties for ecological environment law enforcement and has undermined the daily supervision work of county-level branch offices. It was not until March 2026, when Article 53 of the Ecological Environment Code of the People's Republic of China was adopted, that dispatched branches were finally granted independent law enforcement authority at the legislative level.

In 2024, the Jiangsu Provincial Department of Ecology and Environment formally acknowledged the structural contradictions arising from the vertical reform in its reply to a provincial-level proposal: as dispatched offices of the prefectural-level ecological environment bureau, the local branches could not delegate administrative penalty authority to district-level environmental safety bureaus; some local governments and their relevant departments mistakenly assumed that environmental supervision and enforcement were solely the responsibility of the ecological environment agency, thereby failing to fulfill their territorial

grid-based supervision duties; and in matters requiring multi-agency joint enforcement, communication and coordination between ecological environment departments and their local counterparts remained insufficient, with unclear delineations of responsibilities.

Conclusion

The tensions between prefectural-level and county-level governments remain pronounced in the wake of the reform. The next challenge, therefore, is not about reversing centralization, but about re-embedding vertical agencies into local governance while preserving enforcement independence.

One practical step would be a consultation mechanism that requires prefectural-level ecological environment authorities to solicit the views of district-level Party committees and governments before appointing principal officials of county- or district-level branches, without transferring appointment authority itself. This would not give district governments veto power, but it would anchor staffing decisions in local realities: industrial structures, pollution source distribution, township and sub-district governance networks, industrial park management, and cross-departmental coordination needs.

China's environmental vertical management reform thus offers a useful case for understanding how centralized enforcement can strengthen regulatory independence while simultaneously creating new coordination challenges.

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celebrations

Swanti and Mha Puja

The month of October through November is the festive period for Nepal. Among many important festivals of Nepal at this time, Swanti is a five-day festival celebrated by the Newar community and is held according to the lunar calendar. Swanti coincides with Tihar, which is why it is also known as the Newari version of Tihar, the festival of lights.

Having been married into a Newar family, I got to observe and participate in Swanti last year. While both Tihar and Swanti share the celebration and worshipping of similar deities and animals, Mha Puja—celebrated on the fourth day—stands out as a unique festival as it involves the worshipping of the self. Mha Puja also marks the beginning of the New Year of the Nepal Sambat calendar, which is the year 1146.

“*Mha*” means oneself or body in Newari language, and “*puja*” means worshipping. As such, “*Mha Puja*” literally translates to worshipping of oneself or one’s own body. The idea seems to tell us that our ancestors wanted to make sure that amidst all worships one should look to the self for righteous god.

The rite involves the gathering of the family members together and sitting in a row based on seniority. The ritual is led by a female member (usually the mothers) of the family. A mandala (*mandap*) is drawn using rice flour and decorated with a series of grains like rice, black soyabeans, paddy and barley. Marigold and chrysanthemum petals are then placed within the mandala and a traditional oil lamp (*tuwarwa*) is then lit. Various seasonal fruits, nuts (especially walnuts) and flower garlands are mandatory and are placed besides the mandala. Along with the mandaps

for each family member, three small mandaps are allocated for symbolizing deities like Ganesh (*Sukunda*), Bramah (*Kalash*), and Bishnu (*Broom*). At the end, two additional mandaps are kept which symbolizes the God of Death (Yama or Dharmaraj).

The eldest female member of the family then offers Sagun, a sacred food offering signifying the end of the ritual. Sagun consists of boiled and fried egg, yoghurt, dried fish, and *aila* (a local distilled alcohol made from rice, barley or millet). A sacred thread is then tied around the neck after the rituals and the festival ends with the traditional feasts

consisting of *woh* (a flatbread made of lentils), black eyed peas, *chhoila*, beaten rice, pickled ginger, etc.

What is unique about Mha Puja is that it signifies self-reflection and purity. While within the Newar community the practice of both Hinduism and Buddhism is prevalent, this is more often a common ritual that, above everything, one must investigate the self for the truth, and purity that one seeks from the gods and goddesses.

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