

# Collective and Representative Actions in China

Michael Palmer\* and Chao Xi\*\*

1. **As background for consideration of the context within which your country's group litigation operates, please briefly describe your civil litigation system (e.g. common law, civil law)**

The People's Republic of China (China or PRC) is a centralized unitary state.

The National People's Congress (NPC) is China's highest legislative body. The NPC and its Standing Committee are vested with the authority to enact, amend and interpret the Constitution and national laws.<sup>1</sup>

There are four levels of court in China: the Supreme People's Court (SPC) at the central level, the Higher People's Courts at the provincial level, and the Intermediate People's Courts and the Basic People's Courts at the local level. The SPC from time to time issues "judicial interpretations" of national laws, and other kinds of normative guidance, and these explanations are binding on all courts. Higher People's Courts and, sometimes, Intermediate People's Courts also issue various forms of guidance which – though not legally binding – are generally followed by the lower level courts below them in the judicial hierarchy.

The legal system of the PRC, broadly speaking, has been influenced by a number of legal traditions: China's own indigenous legal culture, the Soviet Union style of socialist law, the civil law tradition and, increasingly, the common law system.<sup>2</sup> Much of the post-Mao project of legal reform may be seen as a process in which China has selectively adapted foreign legal institutions, norms, principles, rules and practice to local conditions.

The development of China's civil litigation system has followed such a pattern. While Chinese civil procedure law has its deepest roots in the civil law tradition, influences of socialist ideals of access to justice and, increasingly, common law influences are also evident. In terms of forms of collective litigation, China has borrowed from both the Japanese type of representative action and the US model of class action. This report examines the law and practice of various forms of collective litigation in the PRC.

2. **What formal rules for representative or non-representative group litigation have been adopted in your country? Please include both statutory rules and rules adopted by the judiciary, and include both private law and public law mechanisms**

---

\* Professor of Law, SOAS, University of London.

\*\* Assistant Professor, School of Law, the Chinese University of Hong Kong. Email: chaoxi@cuhk.edu.hk.

<sup>1</sup> For an insightful introduction to the PRC's legal system, see Albert Hung-yeek Chen, *An Introduction to the Legal System of the People's Republic of China (Third Edition)* (Hong Kong, Singapore and Malaysia: LexisNexis, 2004).

<sup>2</sup> See, e.g., Albert H. Y. Chen, "Socialist Law, Civil Law, Common Law, and the Classification of Contemporary Chinese Law," in Jan Michiel Otto *et al.* (eds.), *Law-Making in the People's Republic of China* (The Hague, London, Boston: Kluwer Law International, 2000), 55.

*(e.g. partie civile). Describe briefly the policy debate and political context for the consideration and adoption of different forms of group litigation, including if relevant the decision to adopt a non-representative form of group litigation and/or a limited form of representative litigation, as alternative(s) to a broadly available representative litigation procedures, along the US model. For each litigation mechanism, please describe what types of claims the mechanism pertains to (for example, all multi-party claims or only some specific type of claims, such as antitrust, consumer protection, investor/shareholder protection, environmental, etc.) and when the rules were adopted. If there have been important amendments to the governing statutes or rules since their adoption, please identify these, describe them briefly and if possible describe why amendments were adopted. Please attach copies of the statutory provisions and/or rules, and an English translation, if possible.*

The PRC promulgated in 1982 its first national code on civil justice – the Civil Procedure Law (For Trial Implementation) (1982 CPL) – which was repealed and replaced in 1991 by a new Civil Procedure Law (1991 CPL). The 1991 CPL has been in force since April 1991, and recent amendments, introduced in October 2007, do not affect the provisions governing group litigation. In addition, the SPC issued in July 1992 a judicial interpretation of the 1991 CPL, *Opinion on Several Issues Regarding the Implementation of the Civil Procedure Law of the People’s Republic of China* (1992 SPC Opinion), and this too contains relevant provisions.

Under the 1991 CPL, there are broadly three types of “collective suits”. These are: “non-representative group litigation” (*gongtong susong*) (dealt with in 2.1 below), “representative group litigation in which the number of litigants is fixed” at the time the case is filed (*renshu queding de daibiaoren susong*) (dealt with in 2.3 below), and “representative group litigation in which the number of litigants is not fixed” at the time the case is filed (*renshu bu queding de daibiaoren susong*) (dealt with in 2.4 below).

These three forms of collective litigation are now considered in the text which follows:

## **2.1 General rules on group litigation under Art 53, 1991 CPL**

Art 53 of the 1991 CPL contains general rules that apply to all three forms of collective litigation.

Many Chinese scholars, however, tend to regard Art 53 as the one that specifically governs non-representative group litigation, perhaps for two reasons. First, Art 53 originates from Art 47 of the 1982 CPL, which governed the non-representative form of collection action prior to 1991 (see 2.2 below). Secondly, special rules about the two forms of representative action are spelled out elsewhere in the 1991 CPL (see 2.3 & 2.4 below).

Four conditions need to be satisfied in order to initiate a collective litigation case of any one of the three kinds identified above. First, there are two or more claimants or defendants. Secondly, the participating parties have the same interest or similar claims. Thirdly, the court considers that the multi-party claims may be dealt with collectively. Lastly, parties with the same interest or similar claims consent to the use of group litigation.

The SPC has further divided collective suits into “essential joint litigation” (*biyao gongtong susong*) and “ordinary joint litigation” (*putong gongtong susong*),<sup>3</sup> but it did not, in its 1992 Opinion (nor elsewhere), define these phrases.

According to the judicial annotations published in 1991,<sup>4</sup> essential joint litigation suits are those in which the claims of the participating parties concern the same disputed matter and thus may not be separated.<sup>5</sup> Those suits generally fall into six categories: (1) litigation arising from common property disputes, (2) litigation arising from joint credit or joint liability, (3) litigation arising from joint tortious liability, (4) litigation involving partnership firms, (5) litigation arising from joint maintenance, raising and fostering relations, and (6) litigation arising from joint succession property.<sup>6</sup> Notwithstanding the clear wording of Art 53 of the 1991 CPL, many Chinese scholars argue that, because of the nature of multi-party claims in essential joint litigation suits, the court must handle the claims collectively and that the parties’ consent for such an approach is not required.<sup>7</sup>

By contrast, parties in the ordinary joint litigation suits have claims that relate to disputed matters of the same kind. The court has the discretion to resolve these disputes individually or collectively. In the latter case, the consent of the parties is required.<sup>8</sup>

## 2.2 Context for the consideration and adoption of representative collective litigation

The non-representative form of collective litigation under 1991 CPL Art 53 was first provided for in the 1982 CPL. However, this mechanism was soon found to be inadequate in the face of a significant intensification in the nature, number and importance of multiparty disputes arising, primarily as a result of China’s post-Mao economic reforms.<sup>9</sup>

The lack of alternative formal procedures in the 1982 CPL posed a challenge to Chinese courts, as they were faced with a steady increase in multi-plaintiff civil disputes in the 1980s. In practice, some courts used procedures akin to representative action to handle some of the more complex disputes that came before them prior to 1991. The first reported case in which the Chinese court used representative procedures to solve a multiparty dispute took place in 1985. In that case, 1,569 Sichuan farmers brought an action before a Basic People’s court in order to enforce a seed contract. The court permitted them to select eight representatives to carry out the litigation.<sup>10</sup> Since then, many other Chinese courts have handled cases in a similar fashion.

---

<sup>3</sup> 1992 SPC Opinions, Arts 60 & 177.

<sup>4</sup> Tang Dehua (ed.), *Xin Minshi Susong Fa Tiaowen Shiyi* [Annotations to the Provisions in the New Civil Procedure Law] (Beijing: People’s Court Press, 1991). Hereinafter, 1991 Judicial Annotations. Authors of the Annotations include senior members of the SPC, and the Annotations was intended to help lower courts “grasp and understand” the legislative intentions and key principles of the 1991 CPL, so as to ensure a “correct implementation” of the Law. See “Preface”, 1991 Judicial Annotations.

<sup>5</sup> 1991 Judicial Annotations, 101.

<sup>6</sup> *Ibid*, 101-2.

<sup>7</sup> See, e.g., Jiang Wei (ed.), *Zhonghua Renmin Gongheguo Minshi Susong Fa: Shiyi, Xinjiu Fatiao Duibi, Shiyong* [Civil Procedure Law of the People’s Republic of China: Annotations, Comparison Between New and Old Provisions, and Application] (Beijing: Huaxia Press, 1991), 82.

<sup>8</sup> 1991 Judicial Annotations, 102-3.

<sup>9</sup> See Jiang Wei & Jia Changchun, “Lun Jituan Susong (Xia)” [On Class Action (Part II)], *Zhongguo Faxue* [China Legal Science] (1999: No. 1) 103, 110.

<sup>10</sup> “Anyue Xian Yuanbao Xiang, Nuli Xiang 1569 hu Daozhong Jingying Hu yu Anyue Xian Zhongzi Gongsu Shuidao Zhizhong Gouxiao Hetong Jiufen An” [1569 Rice-Seed Farmers in Yuanbao and

The growth in number and scale of multiparty disputes in China and, as a result, the perceived need for a more efficient mechanism than non-representative litigation encouraged Chinese legislators to consider adopting some forms of representative litigation.<sup>11</sup> Building on the local courts' innovative and, in the eyes of some leading commentators, successful experience of representative suits, the NPC borrowed representative procedures from foreign legal systems when amending the 1982 CPL. Art 54 of the 1991 CPL (see 2.3 below) apparently models on representative action under Japanese law, while Art 55 (see 2.4 below) has drawn heavily upon the US model of class actions.<sup>12</sup>

The NPC's decision in 1991 to introduce representative forms of group litigation came, however, as a surprise even to many Chinese scholars.<sup>13</sup> Unlike in many continental European countries, there was not much debate in China on the wisdom and feasibility of reforming pre-1991 Chinese group litigation procedures along US lines. Some believe that Chinese legislators acted in haste, with very limited knowledge of possible problems with using such collective forms of litigation.<sup>14</sup>

### 2.3 Representative group litigation under Art 54, 1991 CPL

Art 54 of the 1991 CPL governs group litigation suits in which the number of litigants on either side of the litigation is "large" and fixed at the time the suit is filed. The litigants on each side may select a certain number of representatives to engage in the litigation.<sup>15</sup> The SPC defines "large" generally to be ten or more persons.<sup>16</sup> Between two and five representatives may be selected.<sup>17</sup>

Representatives selected under Art 54 fall into two categories: "common representatives" (*gongtong de daibiaoren*) who are selected by all of the participants on one side of the group litigation and representatives chosen by only some of them (*ziji de daibiaoren*).<sup>18</sup> Representatives are normally selected from among the litigants.<sup>19</sup>

There may well be litigants who fail to select a representative. These litigants are permitted to join the litigation on their own name in the case of essential joint litigation

---

Nuli Towns of Anyue County v Seed Company of Anyue County], *Zuigao Renmin Fayuan Gongbao* [Gazette of the Supreme People's Court] (1986: No. 3), available at <http://www.court.gov.cn/popular/200303260084.htm>.

<sup>11</sup> Jiang Wei (ed.), *Minshi Susong Faxue Yuanli* [Principles of Civil Procedure Law] (Beijing: China Renmin University Press, 1999), 443. Hereinafter, Jiang Wei, *Principles of CPL*.

<sup>12</sup> Benjamin Liebman, "Class Action Litigation in China," 111 *Harvard Law Review* (1998) 1523, 1525 (hereinafter, Liebman, *Class Action in China*); Fan Yu, *Jituan Susong Wenti Yanjiu* [Group Litigation: About Its Problems of System and Practice] (Beijing: Beijing University Press, 2000), 275 (hereinafter, Fan Yu, *Group Litigation*).

<sup>13</sup> Zhang Weiping, *Susong Goujia yu Chengshi: Minshi Susong de Fali Fenxi* [Structure and Procedure of Litigation: A Jurisprudential Analysis of Civil Litigation] (Beijing: Tsinghua University Press, 2000), 362-3. Hereinafter, Zhang Weiping, *Structure of Litigation*.

<sup>14</sup> Fan Yu, *Group Litigation*, 5-6, 25-6.

<sup>15</sup> Art 54, 1991 CPL.

<sup>16</sup> Art 59, 1992 SPC Opinion.

<sup>17</sup> Art 62, 1992 SPC Opinion.

<sup>18</sup> Art 60, 1992 Opinion.

<sup>19</sup> 1991 Judicial Annotations, 105.

(see 2.1 above), or file another suit in the case of ordinary joint litigation (see 2.1 above).<sup>20</sup>

Representatives carry out group litigation on behalf of those who select them, and their acts are generally binding on those they represent.<sup>21</sup> Apparently, the delegation of decision making to the representatives under Art 54 is broad. However, some major decisions on the disposal of litigants' rights are subject to the *ex post* approval by the represented parties. These decisions include the change in representatives, abandoning the litigation, acceptance of the claims of the opposing side, and settlement.<sup>22</sup>

#### **2.4 Representative group litigation under Art 55, 1991 CPL**

Art 55 of the 1991 CPL governs representative action suits in which the number of claimants or defendants with similar claims is "large"<sup>23</sup> but *not* fixed at the time the case is filed. The court handling the suit may issue a notice, specifying the circumstances of the suit and instructing all persons whose interests are similarly affected to come forward and register with the court within a specific period.<sup>24</sup> The SPC leaves the length of the period to the discretion of local courts, though it may not be less than 30 days.<sup>25</sup>

Potential participants who seek to register with the court will have to demonstrate to the court that their interests are similarly affected and they have suffered damage as a result. Those failing to do so will not be permitted to join the suit, but they are not prevented from bringing an independent suit.<sup>26</sup>

Those who have already registered with the court may select representatives to carry out the litigation.<sup>27</sup> If they fail to appoint any representatives, the court may nominate, and consult the registered participants on, persons who might serve as representatives. If the court and the registered litigants do not agree on who to select, the court may choose to appoint the representatives as it sees fit.<sup>28</sup>

Likewise, actions of the representatives are generally binding on those they represent.<sup>29</sup> However, a change in the identity of the representatives, abandonment of the litigation, acceptance of the claims of the opposing side, and settlement require the approval of registered litigants.<sup>30</sup>

The court's decision is binding on all those who register with the court, and on those who do not register with court but bring similar claims within "the limitation of the action" (generally two years under Chinese law).<sup>31</sup>

---

<sup>20</sup> Ibid.

<sup>21</sup> Art 54, 1991 CPL.

<sup>22</sup> Ibid.

<sup>23</sup> Again, it refers to ten or more persons. Art 59, 1992 SPC Opinion.

<sup>24</sup> Art 55, 1991 CPL.

<sup>25</sup> Art 63, 1992 SPC Opinion.

<sup>26</sup> Art 64, 1992 SPC Opinion.

<sup>27</sup> Art 55, 1991 CPL.

<sup>28</sup> Art 61, 1992 SPC Opinion.

<sup>29</sup> Art 55, 1991 CPL.

<sup>30</sup> Ibid.

<sup>31</sup> Art 55, 1991 CPL; Art 64, 1992 SPC Opinion.

## 2.5 Special rules for non-representative group litigation arising from securities fraud

The SPC has developed a set of rules governing private securities litigation arising from false statements on China's securities market. For heuristic purposes, we start with a brief description of the development of these rules,<sup>32</sup> followed by an account of the procedures that courts would follow in handling private securities suits.

On 20 September 2001, 363 aggrieved investors in the Yorkpoint Science & Technology Co, a Chinese listed company notorious for its large-scale market manipulation, simultaneously filed lawsuits with Intermediate People's Courts in Beijing, Shanghai and Guangzhou. The next day the SPC issued a Notice,<sup>33</sup> instructing lower courts temporarily not to accept private securities lawsuits. Justice Li Guoguang, then a Vice President of the SPC, tried to justify the manoeuvre on the grounds that China's judges lacked the judicial resources and experience to adjudicate such cases. However, the Notice attracted severe criticism from academics, practitioners and investors.

Facing mounting pressure, on 15 January 2002 the SPC partially lifted the temporary ban. It issued a second Notice (2002 SPC Notice),<sup>34</sup> allowing lower courts to accept private securities suits in which the cause of the complaint was that false statements had been made. Three days later, shareholders in the Daqing Lianyi Co, a listed company involved in fraudulent disclosure scandals, took the lead in a race triggered by the second Notice to sue listed companies. The Harbin Intermediate People's Court accepted the Daqing Lianyi case on 24 January, and by 28 March over 700 investors had filed suit. Within a year, Chinese courts had accepted nearly 900 cases in which investors sought damages from listed companies that had allegedly made false disclosures.

Although the 2002 SPC Notice lifted the litigation floodgates, it did not provide operable rules for lower courts, litigants and their lawyers. Almost one year after the Notice, the SPC eventually on December 26, 2002 issued its long-awaited judicial interpretation on the matter (2002 SPC Interpretation),<sup>35</sup> providing specific parameters for the handling of private securities litigation based on false disclosure.

The 2002 SPC Notice ruled out the use of "group action" (*jituan susong*) – presumably this refers to the CPL Art 55 type of group litigation – as a litigation mechanism for mass securities fraud suits arising from false disclosures.<sup>36</sup> This is also the position in the 2002 SPC Interpretation, which provides that the number of claimants must be ascertained before the trial commences.<sup>37</sup>

---

<sup>32</sup> See, Chao Xi, "Private Enforcement of Securities Law in China: *Daqing Lianyi Co v ZHONG Weida and Others* (2004) Heilongjiang High Court", 1 *Journal of Comparative Law* (2006) 492.

<sup>33</sup> *Guanyu She Zhengquan Minshi Peichang Anjian Zan Buyu Shouli de Tongzhi* [The Notice on Temporarily Not to Accept Securities Related Civil Compensation Cases], issued by the SPC on September 21, 2001.

<sup>34</sup> *Guanyu Shouli Zhengquan Shichang yin Xujia Chenshu Yinfa de Minshi Qinquan Jiufen Anjian Youguan Wenti de Tongzhi* [The Notice on Relevant Issues Concerning Accepting Civil Tort Dispute Cases Caused by False Statement on the Securities Market], issued by the SPC on January 15, 2002.

<sup>35</sup> *Guanyu Shenli Zhengquan Shichang yin Xujia Chenshu Yinfa de Minshi Peichang Anjian de Ruogan Guiding* [Several Provisions on Hearing Civil Compensation Cases Caused by False Statements on the Securities Market], issued by the SPC on December 26, 2002.

<sup>36</sup> Art 4.

<sup>37</sup> Art 14.

Injured investors are permitted to bring an action either individually or in a group.<sup>38</sup> However, the SPC expresses a strong preference for CPL Art 54 style of group litigation when multiple suits are brought by investors who have suffered losses from the same false statements. The court may require individual claimants to join other victimized investors who choose to sue collectively; the court may also order a merger of several collective suits arising from the same false disclosure, but brought by different groups of aggrieved investors, into a single collective suit.<sup>39</sup> To put it in simple terms: for one set of false statements, only a single collective suit is allowed, irrespective of the number of victims who sue.

This approach to handling multiparty securities actions seems to run counter to the provision in Art 53 that consent of the litigants is prerequisite to collective litigation (see 2.1 above). It might be argued that this is but one of the many manifestations of the SPC's willingness to break with existing civil procedure laws, in an attempt to improve judicial efficiency in mass securities' litigation.

The rule in the 2002 SPC Interpretation on the authority of representatives is another example. Under Art 54, 1991 CPL, decision making power of the litigants has been delegated to representatives only to a limited extent (see 2.3 above). The 2002 SPC Interpretation significantly expands the authority of representatives, by requiring the represented parties to authorize *ex ante* their representatives to, inter alia, amend or abandon claims, and to reach an out-of-court settlement with the defendant.<sup>40</sup>

- 3. For each litigation mechanism identified above, please provide a general description of the process contemplated by the formal rules.** *In most legal systems, there are significant differences between “the law on the books” and “the law in practice.” For this item, we are interested in “the law on the books”; later we will ask about actual practice, and about specific issues, such as standing, appointment of legal counsel, and who is bound by outcomes of the litigation.*

Collective actions follow the general principles and rules of the 1991 CPL that apply to ordinary civil proceedings.

- 4. In representative litigation, who may come forward to represent groups of claimants, in what circumstances?** *Must class members all come forward individually (“opt in”) to join the litigation, in some or all circumstances? What interests and organizations have availed themselves of the procedure? What roles have public justice officials and private lawyers played in prosecuting cases? What are the barriers to individuals and groups using the representative mechanism (e.g. funding problems, difficulty communicating with potential class/group members, lack of independence of officially appointed representatives, judicial attitudes)? Are there features of your country's civil litigation system that either facilitate or deter representative litigation?*

---

<sup>38</sup> Art 12, 2002 SPC Interpretation.

<sup>39</sup> Art 13, 2002 SPC Interpretation.

<sup>40</sup> Art 15, 2002 SPC Interpretation.

Under Arts 54 and 55, 1991 CPL, representatives are themselves claimants – claimants who are selected by a group of other claimants and represent their interests in representative litigation. In other words, representatives wear two hats: they are both claimants and authorized agents of the claimants they represent.<sup>41</sup>

The 1991 CPL requires all those who wish to join a representative action suit and be bound by the outcome of the suit to declare explicitly that they have opted in. Under Art 54, participants opt in when they initially file the case with court. Under Art 55, litigants may opt in by two means: first by filing and initiating the suit, and secondly by registering their claims with the court before the deadline for opting in specified in the court's notice. The court's decisions bind only those who have opted in.

**5. In non-representative group litigation, who may initiate group litigation, and in what circumstances? In what types of cases have parties/lawyers attempted to use the group litigation process? What role have judges played in conferring group litigation status on cases? What are the barriers to parties/lawyers using the group litigation mechanism (e.g. funding problems, difficulty determining whether group litigation would be efficient & effective, judicial attitudes)? Are there features of your country's civil litigation system that either facilitate or deter group litigation (presence or absence of contingency/speculative fee system, limits on lawyer advertising, etc.)?**

The court plays a decisive role in the decision to proceed by way of collective litigation. The proceedings may not commence without the court decision that multiple claims can be handled collectively in one single trial (Art 53, 1991 CPL; see 2.1 above). On the face of it, the legal basis for the decision of the court seems to be whether or not the participating parties have the same interest or similar claims (Art 53, 1991 CPL; see 2.1 above).

Reported cases suggest that similarity of claims, alone, will not guarantee conferment of collective litigation status. For example, in 2004, a number of consumers, acting as representatives of 1354 users of “height increase” products selling under the same brand name, attempted to sue the producer and distributors of the products, and relevant advertising agencies, for damages. Despite the similar nature of the litigants' claims, the local court ruled that representative action “was not suitable for” such claims and did not permit a collective litigation suit to be filed.<sup>42</sup>

It is argued that in practice the similarity of claims is but one of many factors that Chinese courts take into account when considering whether to allow representative action. Practical issues, such as residence of the litigants, the local court's ability to handle group litigation, and the enforceability of the likely lawsuit outcomes, are among the main factors in the court's decision-making.<sup>43</sup>

Political ramifications of the lawsuit also weigh heavily on the courts' mind. Some Chinese courts are strongly averse to politically sensitive or difficult collective suits. For

---

<sup>41</sup> 1991 Judicial Annotations, 105.

<sup>42</sup> Dai Dunfeng, “Gao'erbao Shijian Shouhaizhe Weiquan Jiannan” [Victims of the “Gao'erbao” Incident Found it Difficult to Defend Their Rights], *Nanfang Zhoumo* [Southern Weekend], June 10, 2004.

<sup>43</sup> Fan Yu, *Group Litigation*, 375.

example, in a widely publicized Circular, the Higher People's Court of Guangxi Autonomous Region instructed all courts within its jurisdiction temporarily not to accept cases that fall into 13 designated areas.<sup>44</sup> Among these, five were types of civil actions in which collective suits are likely to arise:

- “Fund-raising” cases.<sup>45</sup> These include cases in which local government agencies or enterprises collect funds from their employees for the purposes of, for example, building employee houses, and then do not use the money for the purposes for which it was donated, and cases that involve illegally raising funds from the general public.
- Civil disputes arising from illegal direct sales.<sup>46</sup>
- Civil disputes arising from large-scale delay in paying salaries by underperforming enterprises or enterprises undergoing “structural transformation” (*gai zhi*), or disputes arising from large-scale shedding of labor.<sup>47</sup>
- Civil disputes between rural households and rural cooperative financial institutions.<sup>48</sup>
- Disputes arising from market manipulation and insider dealing on the securities market.<sup>49</sup>

The Guangxi Higher People's Court explained, in a media interview, the rationale behind the Circular: These disputes involve a large number of emotional litigants and tend to be politically sensitive. It is asserted that the civil court is not the proper forum for resolving such multi-party disputes.<sup>50</sup>

Additionally, the court's performance assessment system has a bearing on the court's decision. In many Chinese courts, judges are evaluated partly on the number of cases they process, and this sometimes encourages judges to hold multiple trials for similar claims, rather than grouping such claims together into one single trial.<sup>51</sup>

The Chinese government has maintained tight control over the lawyers participating in multiparty cases. In April 2006, the All China Lawyers' Association, a government-backed regulatory body of Chinese lawyers, promulgated guidelines instructing lawyers on how to handle “mass suits” (*quntixing anjian*).<sup>52</sup> In principle, lawyers are subject to the “supervision and guidance” (*jiandu yu zhidao*) of the administrative authorities when representing group actions.<sup>53</sup> Lawyers are required to report it to the responsible

---

<sup>44</sup> *Guangxi Zhuangzu Zizhiqu Gaoji Renmin Fayuan Guanyu 13 Lei Zanbu Shouli Anjian de Tongzhi* [Guangxi Autonomous Region Higher People's Court Circular Regarding Temporarily Not Accepting Thirteen Categories of Cases], 2003

<sup>45</sup> Art 1, *ibid.*

<sup>46</sup> Art 2, *ibid.*

<sup>47</sup> Art 4, *ibid.*

<sup>48</sup> Art 10, *ibid.*

<sup>49</sup> Art 12, *ibid.*

<sup>50</sup> Gan Bing, “Guangxi Gaoyuan Weihe Zanbu Shouli ‘13 Lei Anjian’” [Why Guangxi Higher People's Court Would Temporarily Not to Accept “13 Types of Cases”], *Zhongguo Qingnian Bao* [China Youth Daily], August 24, 2004.

<sup>51</sup> Liebman, *Class Action in China*, 1533; 1991 Judicial Annotation, 103.

<sup>52</sup> *Zhonghua Quanguo Lüshi Xiehui Guanyu Lüshi Banli Quntixing Anjian Zhidao Yijian* [All China Lawyers' Association Guiding Opinions on Lawyers Handling Mass Suits], promulgated on April 27, 2004. “Mass suits” refer to representative or collective suits in which either side consists of more than 10 persons, and there are questions of law or fact common to the participating parties.

<sup>53</sup> Art 1(3), *ibid.*

government agencies, should they find that the clients they represented are likely to take a course of action threatening “social stability”.<sup>54</sup> They are also cautioned to have only arm’s length contact with “overseas organizations and foreign media”.<sup>55</sup> There are other procedural burdens that participating lawyers and their firms must follow, but the above are the most important.<sup>56</sup>

6. **How many lawsuits have proceeded in each litigation form over the past 5 years?** *If representative or group litigation requires judicial approval, please indicate the number of representative or group actions that have been attempted and the number in which approval was granted. Please indicate the source of any numbers you provide. If no “hard” numbers are available, please provide estimates.*

Official statistics are available only for 2004. The 2005 Law Yearbook of China shows that in 2004, Chinese courts handled together 538,941 “group litigation and mass litigation” civil suits, representing a 9.5% increase from 2003.<sup>57</sup>

The 2006 Yearbook of China does not provide the number of all collective suits handled by Chinese courts in 2005. It, however, reports that, in 2005, Chinese courts adjudicated 1,571 collective labor contract cases (52.23% higher than 2004)<sup>58</sup> and 104,841 collective suits arising from urban demolition and relocation, land requisition, and enterprise bankruptcy (only 1.4% higher than 2004).<sup>59</sup>

There are two reservations here. First, the 2007 Law Yearbook of China has recently been published, but it has yet to become available in the library collection at the authors’ institutions, and therefore have not yet been consulted. Secondly, and more importantly, key concepts such as “collective litigation” and “mass litigation” are not defined in the Law Yearbooks. We are thus unable to ascertain the exact number of suits that fall into the statutory definitions provided by the 1991 CPL.

7. **In representative litigation, must possible class members be informed of the initiation of the litigation and, if so, how?** *Do courts have oversight authority for the notification process? Please provide any information you have about the types of notification used, their scale, and costs. If parties are required to opt-in, what has been the experience with regard to that? What are the barriers to participation in representative suits? How are class members kept informed of developments, and to what extent can they exercise control over decisions, or take part in the process if they wish?*

In the CPL Art 55 type of representative actions, the court issues a notice to the general public (see 2.4 above). Those who wish to opt in are required to register with the court.

---

<sup>54</sup> Art 2, *ibid.*

<sup>55</sup> Art 2, *ibid.*

<sup>56</sup> Art 3, *ibid.*

<sup>57</sup> 2005 *Zhongguo Falü Nianjian* [2005 Law Yearbook of China] (Beijing: Law Yearbook of China Press, 2005) 157.

<sup>58</sup> 2006 *Zhongguo Falü Nianjian* [2006 Law Yearbook of China] (Beijing: Law Yearbook of China Press, 2005) 114.

<sup>59</sup> 2006 *Zhongguo Falü Nianjian* [2006 Law Yearbook of China] (Beijing: Law Yearbook of China Press, 2005) 119.

There are no specific legal rules governing whether and how participating parties are informed of developments. Presumably the court is not under any obligation to keep all parties informed. To extent to which, and the ways in which, representatives inform the litigants whom they represent seem to be subject to private ordering. The default rule is that representatives are authorized *ex ante* to make most of the decisions, and the *ex post* consent of the represented litigants is required only in a limited range of circumstances, as described above in 2.3 and 2.4.

8. **In non-representative group litigation, must the named parties be informed that the litigation is proceeding in group form?** Can parties/lawyers whose cases are similar to others that are proceeding in group litigation form exclude themselves from the group litigation and proceed independently, and if so how? Are group members kept informed of developments, and to what extent can they exercise control over decisions?

Under Art 53, 1991 CPL, initiation of the non-representative group litigation is subject to the parties' consent (see 2.1). In other words, the court may not involve a person into the collective action unless he or she gives express consent to the court.

The statutory procedure seems not have been followed by Chinese courts in at least two circumstances: First, in the so-called "essential joint litigation" (see 2.1 above for definition) proceedings, the parties who have the same interests may not opt out.<sup>60</sup> Secondly, in mass securities litigation arising from fraud disclosure, the court may on its own initiative merge similar claims into one collective suit, disregarding of the consent of the parties (see 2.5).

9. **In group litigation, are there special case management procedures (e.g. case pleadings, scheduling, development of evidence, motion practice, test cases, preliminary issues)?** *Are there features of your country's civil litigation system that either facilitate or hinder the development of cases that proceed in representative or non-representative group form?*

N/A.

10. **In group litigation, what proportion of cases is resolved through party/attorney negotiation and settlement, and what proportion is resolved through judicial or jury decision?** *If cases are settled, who participates in negotiating settlements? Does the court or do other public officials have responsibility for assuring fairness of any negotiated outcomes, and if so what procedures exist to address the fairness issue? What has the experience of oversight been? Have there been controversies over the fairness or reasonableness of settlements? If cases are tried, how is evidence presented on behalf of the class or grouped claimants?*

---

<sup>60</sup> Jiang Wei, *Principles of CPL*, 421-2.

There has been a significantly increased emphasis on using judicial mediation to resolve multiple party disputes in recent years.<sup>61</sup> A culmination of the development is the promulgation of an SPC normative document in March 2007 – Several Opinions Regarding Further Improving the Positive Roles Judicial Mediation Plays in the Construction of Socialist Harmonious Society.<sup>62</sup> Art 5 of the document instructs local courts to focus on, among other things, mediating joint litigation and group litigation suits.

No official statistics are available as to the exact proportion of multiparty disputes resolved through mediation by the courts across the country. We do, however, have empirical evidence indicative of a high percentage of mediation when local courts handle multiparty disputes. In Chongwen District Basic People’s Court, Beijing, for example, the proportion of multiparty cases resolved by mediation has increased from 64% in 2003 to a claimed 92.4% in 2005 (see Table A). Table B illustrates the percentage of mediation in different types of multiparty civil suits

Table A: Concluded Multiparty Civil Suits in Chongwen District People’s Court, Beijing: Mediation v. Judicial Decision

Year	Concluded Multiparty Litigation Cases	Cases Resolved by Mediation	Cases Withdrawn Following Mediation	Percentage of Mediated Cases	Cases Resolved by Adjudication	Percentage
2003	643	238	174	64	231	36%
2004	679	213	229	65	237	35%
2005	3705	472	2952	92.4	281	7.6%

Table B: Percentage of Mediation in Different Types of Multiparty Civil Suits

Type	Number of Multiparty Suits	Mediated Suits	Percentage Mediated
Heating Supply Disputes	395	355	90%
Labor Disputes	41	31	76%
Rental Disputes	64	42	65.6%
Real Estate Contract Disputes	146	6	4%
Reputation Disputes	8	8	100%
Property Disputes	52	28	54%
Loan Contract Disputes	2689	2618	97%
Demolition Disputes	13	8	62%
Sales Contract Disputes	191	160	84%
Insurance Contract Disputes	327	17	5%
Processing Contract Disputes	5	5	100%

Source: Beijing Chongwen District People’s Court, “Guangyu Quntixing Jiufen Susong Anjian Tiaojie Gongzuo de Diaoyan Baogao” [Survey Report on the Mediation Work of Multiparty Litigation Suits], in Beijing Higher People’s Court (ed.) *Shenpan Gongzuo Redian Wenti ji Duice Silu* [Hot Issues in Adjudication Work, Countermeasures, and Way Forward] (Beijing: China Law Press, 2006), 320, 320-2.

<sup>61</sup> Michael Palmer, "Controlling the State?: Mediation in Administrative Litigation in the People's Republic of China," 16 *Transnational Law & Contemporary Problems* (2006) 165.

<sup>62</sup> *Guanyu Jinyibu Fahui Susong Tiaojie zai Goujian Shehui Zhuyi Hexie Shehui zhong Jiji Zuoyong de Ruogan Yijian*, promulgated on March 1, 2007.

Note: The Survey Report defines the “multiparty suits” to include both joint litigation suits in which either side has more than five participants and non-joint litigation suits in which five or more claims arise from the same fact and relate to the same party.

**11. What remedies are available in representative and non-representative group litigation?** *When group litigation is resolved with the payment of monetary damages, how are damages allocated among claimants? Do judges exercise oversight of fairness or process of allocation? Please provide data on outcomes of representative and non-representative group litigation over the past five years. Please indicate the source of any outcome data you provide. If no “hard” data are available, please describe the diversity or range of outcomes to the best of your ability.*

The court decides the allocation of monetary damages as between claimants. The 2002 SPC Interpretation requires the court, when deciding mass securities suits arising from fraud disclosure, to specify the damages recovered that each participant is entitled to, in breakdown form, in a schedule of the judgment.<sup>63</sup> This has indeed been the court’s practice since the mid-1990s in many other circumstances that involve multiple parties seeking damages.<sup>64</sup>

**12. Who funds group litigation: the state, legal services organizations, NGOs, private lawyers, or the claimants themselves?** *Is funding perceived to be a problem, and if so, is the problem perceived as too much funding or too little? What problems have those who wish to proceed in representative or non-representative group litigation encountered in obtaining funding?*

See the Question 13.

**13. Costs and benefits. How are attorneys in group litigation paid?** *Please indicate whether there are special rules for paying attorneys in representative and non-representative group litigation that do not pertain in ordinary civil litigation. Do courts have responsibility for determining or approving fees in these cases? How do the private costs of group litigation compare to the costs of ordinary civil litigation, or any other available methods for resolving such situations? Do attorneys make more, the same, or less, in proportion to their time, effort and risk, by comparison to ordinary civil litigation? How do costs compare with the outcomes achieved? Please provide any quantitative data available on litigation costs over the past five years, and any available data comparing costs to outcomes. Please indicate the source of any cost and outcome data you provide. If no “hard” data are available, please describe the range of costs to the best of your ability, and share your perceptions of the relationship between costs and outcomes.*

---

<sup>63</sup> Art 16, 2002 SPC Interpretation.

<sup>64</sup> SPC Civil Division (ed.), *Gaijin Minshi Shenpan Fangshi Shiyu yu Yanjiu* [Improving Civil Adjudication: Practice and Theoretical Studies] (Beijing: People’s Court Press, 1995), 121.

### 13.1 Court Fees

Court fees include: (a) case acceptance fees, and (b) fees for making applications.<sup>65</sup> Table C shows the rates for the case acceptance fees.

Generally, court fees are paid into court in advance, and it is the claimants, appellants or applicants who make the initial payment.<sup>66</sup> After judgment, the court will usually recover the fees from the losing party in their entirety if the claimants win their lawsuit (in which case, the initial payments will be returned to the other party).<sup>67</sup> If, however, the claimants win only a limited victory then the court has discretion to determine the allocation of court fees as between the winning and losing parties.<sup>68</sup>

Table C: Rates for Case Acceptance Fees

From (RMB)	To (RMB)	Rate
0	10,000	Fixed fee of RMB 50
10,000	100,000	2.5
100,000	200,000	2
200,000	500,000	1.5
500,000	1,000,000	1
1,000,000	2,000,000	0.9
2,000,000	5,000,000	0.8
5,000,000	10,000,000	0.7
10,000,000	20,000,000	0.6
20,000,000	---	0.5

Source: Art 13(1), 2006 Measures on Litigation Fees

### 13.2 Lawyer's Fees

Generally there are four different bases on which Chinese lawyers charge fees: first, a fixed fee; secondly, an hourly rate; thirdly, the value of the claims;<sup>69</sup> and lastly, on a contingency basis, subject to the various limitations discussed below in 13.3.<sup>70</sup>

Lawyers participating in civil litigation must work at fee rates that fall within the range set by provincial governments,. These rates vary greatly from one province to another. In Guangdong Province, an economically developed area, for example, the hourly rate ranges from RMB200 (USD26) to RMB3000 (USD395), and the rates based upon the

<sup>65</sup> Art 6, *Susong Feiyong Jiaona Banfa* [Measures on the Payment of Litigation Fees] (promulgated by the State Council on December 19, 2006, and in effect on April 1, 2007). Hereinafter, 2006 Measures on Litigation Fees.

<sup>66</sup> Art 20, *ibid.*

<sup>67</sup> *Guanyu Shiyong Susong Feiyong Jiaona Banfa de Tongzhi* [Notice on Implementing the Measure on the Payment of Litigation Fees], issued by

<sup>68</sup> Art 29, 2006 Measures on Litigation Fees.

<sup>69</sup> Art 10, *Lüshi Fuwu Shoufei Guanli Banfa* [Measures on the Administration of Lawyer Service Fees], issued by the National Development and Reform Commission and the Ministry of Justice on April 13, 2006 and in effect on December 1, 2006. Hereinafter, 2006 Measures on Lawyer's Fees.

<sup>70</sup> Arts 10-11, *ibid.*

value of the claims are as shown in Table D.<sup>71</sup> A flexibility of up to twenty percent in the below rates is allowed.<sup>72</sup>

Table D: Rates Based on the Value of the Claims in Guangdong Province, China

From (RMB)	To (RMB)	Rate
0	50,000	Fixed fee of RMB 1,000-8,000
50,000	100,000	8
100,000	500,000	5
500,000	1,000,000	4
1,000,000	5,000,000	3
5,000,000	10,000,000	2
10,000,000	50,000,000	1
50,000,000	---	0.5

### 13.3 Sources of funding for group litigation

There are various possible sources of funding for group civil litigation in China:

#### 13.3.1 The claimants themselves

Subject to some exceptions (see 13.3.2-4 below), collective claimants pay the court fees and the lawyer's fees out of their own pockets.

*Court Fees:* The claimants who win the lawsuit will have the court fees they pay in advance returned in whole or in part (see 13.1 above). They are to bear the cost of the court fees should they lose, and in these circumstances, the court has discretion to decide the manner in which court fees will be shared among the various members of a collective suit.<sup>73</sup>

*Lawyer's Fees:* The "loser-pays" costs system that makes the losing party in the litigation pay some or all of the winning party's legal expenses does not exist in China. Chinese courts, generally, leave each side responsible for its own lawyers' fees, regardless of who wins. In Daqing Lianyi case (see 2.5 above), claimants sought to recover all their attorneys' fees from the losing defendant company. The court rejected the claim, suggesting that it was "groundless in law".<sup>74</sup>

<sup>71</sup> Appendix, *Lüshi Fuwu Shoufei Guanli Shishi Banfa* [Implementing Measures on the Administration of Lawyer Service Fees], issued by the Bureau of Pricing and the Bureau of Justice of Guangdong Province on December 25, 2006, and in effect on January 10, 2007.

<sup>72</sup> Ibid.

<sup>73</sup> Art 29, 2006 Measures on Litigation Fees.

<sup>74</sup> "Chen Lihua Deng 23 Ming Touziren Su Daqing Lianyi Gongsì, Shenyin Zhengquan Gongsì Xujia Chenshu Qinquan Peichang Jiufen An" [Chen Lihua and Others v Daqing Lianyi Co and Shenqing Securities Company for Damages Arising from False Statements], in *Zuigao Renmin Fayuan Gonggao* [Gazette of the Supreme People's Court] (2005: No. 11) 30.

### 13.3.2 Legal Aid

China has developed a nationwide formal legal aid system, providing free legal assistance to economically disadvantaged citizens who would otherwise have no access to legal service.<sup>75</sup> Most legal aid programs have been established by the Ministry of Justice and local justice bureaus, and are funded mainly by the government. Some legal aid centers are based at government-funded universities and sponsored by, in a few cases, the Ford Foundation. These centers consider themselves to be non-government legal aid providers.

Under the 2003 Regulations on Legal Aid,<sup>76</sup> those on low or modest incomes may apply for legal aid under six circumstances.<sup>77</sup> Of these, one is likely to give rise to multiparty suits, and that is employees seeking payment of remuneration.<sup>78</sup> It may seem that claimants in collective actions have only limited access to legal aid.

However, the 2003 Regulations on Legal Aid authorizes provincial governments to make local rules expanding the circumstances under which litigants may apply for legal aid.<sup>79</sup> Liaoning Province, for example, permits those who have a right to claim damages arising from environmental pollution, public health, and production incidents – incidents which are likely to give rise to collective suits – to apply for legal aid.<sup>80</sup> Rules on legal aid in Guangdong Province place so few restrictions on the standing of individuals to apply for legal aid that virtually anyone who is unable to afford a lawyer is entitled to make an application.<sup>81</sup>

Despite the growth of legal aid programs in China, there are barriers to a greater use of legal aid in multiparty actions. For one thing, many provinces set a very low maximum income eligibility level for legal aid, and only a small fraction of the population living in extreme poverty is eligible for legal aid. This creates a serious impediment to access to justice for a large number of people who are not eligible for legal aid but also cannot afford to pay for their own lawyer.

In addition, legal aid providers tend to lack independence. The decisions on whether to provide legal aid are made by government-funded aid centers and subject merely to administrative review by local justice bureaus.<sup>82</sup> In collective actions which involve, for example, a powerful local state-owned enterprise, intervention from the local government may result in a decision that favors the defendant.

---

<sup>75</sup> See generally Benjamin L. Liebman, "Legal Aid and Public Interest Law in China," 34 *Texas International Law Journal* (1999) 211.

<sup>76</sup> *Falü Yunzhu Tiaoli*, issued by the State Council on July 21, 2003, and in effect on September 1, 2003.

<sup>77</sup> Art 10, *ibid.*

<sup>78</sup> Art 10(5), *ibid.*

<sup>79</sup> Art 10, *ibid.*

<sup>80</sup> Art 7(8), *Liaoning Sheng Falü Yuanzhu Shishi Banfa* [Liaoning Provincial Implementing Rules on Legal Aid], issued by the Liaoning Provincial People's Government on November 4, 2004, and in effect on December 1, 2004.

<sup>81</sup> *Guangdong Sheng Falü Yuanzhu Tiaoli* [Guangdong Provincial Rules on Legal Aid], issued by the Guangdong Provincial People's Government on September 29, 2006, and in effect on January 1, 2007.

<sup>82</sup> *Guanyu Minshi Susong Falü Yuanzhu Gongzuo de Guiding* [Rules on Legal Aid Work in Civil Litigation], issued by the SPC and the Ministry of Justice on September 22, 2005, and in effect on December 1, 2005. Hereinafter, 2005 Legal Aid Rules.

### 13.3.3 Judicial Aid

China has developed a so-called “judicial aid” (*sifa jiuzhu*) system alongside the legal aid system. Under the judicial aid system, Chinese courts provide financial aid – in form of full or partial remission of court fees – to those who cannot afford to undertake litigation.<sup>83</sup>

Thus, Arts 45 and 46 of the 2006 Measures on Litigation Fees specify the kinds of situation in which the court should remit fees in whole or in part, respectively. These specific situations are generally ones that are unlikely to give rise to collective suits. Arts 45 and 46 contain, however, catch-all provisions<sup>84</sup> that in effect give the court the discretion to determine the remission of court fees as it sees fit. There are reported collective suits in which Chinese local courts exercised the discretion and exempted, for example, a group of 73 claimants who were victims in a chemical explosion incident from paying the court fees.<sup>85</sup>

### 13.3.4 Contingency Fees

Contingency fee arrangements have operated unofficially in China for many years. Chinese lawyers charge clients on a “speculative” basis in a growing variety of cases, ranging from industrial injury compensation to recovery of non-performing bank loans. The range of the contingency fee percentage is reportedly from 10% to 40% of the recovery.<sup>86</sup> Lawyers, when facing substantial risk of non-recovery, would quote a fee that involves a percentage as high as 50%.<sup>87</sup> Some lawyers may take a smaller fee than what they could have taken under the terms of the retainer agreement.<sup>88</sup>

Entrepreneurial Chinese lawyers have prosecuted securities collective actions on a contingency fee basis. In Daqing Lianyi case (see 2.5 above), for example, a group of lawyers headed by a prominent shareholder activist, Professor Guo Feng, represented a large number of injured investors on a “no win, no pay” basis. The lawyers eventually walked away with a contingency fee of 20% of the net recovery, that is, the awarded damages less: (a) case acceptance fees, (b) court enforcement fees and (c) other costs (including lawyers’ expenses).<sup>89</sup>

Unfortunately, this option of using contingency fee arrangements to fund collective actions is no longer available under Chinese Law. The 2006 Measures on Lawyers’ Fees now expressly prohibits contingency fees in collective actions.<sup>90</sup>

\*\*\*

---

<sup>83</sup> Art 4, 2006 Measures on Litigation Fees.

<sup>84</sup> Arts 45(5) and 46(4).

<sup>85</sup> See Chen Anqun et al., “Huangling Baojian Renshen Sunhai Jituan Susong Chenggong Tiaojie” [Collective Action Arising from the Incident of Explosion of Yellow Phosphorus Successfully Mediated], *Zhongguo Fayuan Wang* [China Court Net], available at <http://www.chinacourt.org/public/detail.php?id=194236>.

<sup>86</sup> Yao Ying, “Legal ‘Savior’ Fighting for His Fees”, *China Daily*, July 5, 2004. Hereinafter, Legal Savior.

<sup>87</sup> Interview with Ms. Liao Maoping, a partner of King & Wood (December 2007).

<sup>88</sup> Legal Savior.

<sup>89</sup> Announcement available at <http://feng-guo.blog.sohu.com/28354620.html>.

<sup>90</sup> Art 12.

The above analysis suggests that the current legal aid and judicial aid schemes are not sufficient to guarantee access to justice for most litigants, while contingency fee arrangements have been barred in collective actions. Claimants in a collective suit now have few options but to finance the suit from of their own pockets. Potential litigants who have limited financial resources available may be deterred because of the level of fees. This may seriously restrict access to justice for those on low or modest incomes who do not qualify for judicial aid or legal aid.

**14. Is the burden that group litigation places on the court more, the same, or less, than in comparable non-representative, non-group litigation?** *What is the average time to dispose of a group case, and how does this compare to comparable non-representative non-group litigation? Please provide any quantitative data available on court costs and time to disposition over the past five years. Please indicate the source of any data you provide. If no "hard" data are available, please describe the range of outcomes to the best of your ability.*

It is believed that collective litigation generally helps to achieve a more efficient use of judicial resources, reduces costs and delay to the parties, and promotes uniformity and consistency of court decisions.

However, such litigation tends to place significant pressures on Chinese courts. The latter have generally found it difficult to establish autonomy and authority in the shadow of the Party-state. Collective actions are sometimes especially problematic because they may carry significant political overtones – for example, a suit may involve, on the one hand, a politically well-connected local enterprise, and on the other hand, hundreds of distressed and aggrieved claimants who are prepared to protest on the street if the court hands down a judgment in favor of the defendant.

Indeed, Chinese claimants sometimes bring collective actions in the hope that this course of action itself will attract attention of the media, and ideally, result in intervention from higher-level authorities in their favor. Collective action has indeed become a very potent weapon for otherwise powerless individual litigants to improve their welfare.<sup>91</sup>

Faced with these difficulties, many Chinese courts have either declined to handle such politically sensitive cases (see 5 above) or forced the parties into mediation (see 10 above). The judicial process tends to be prolonged and, in some extreme cases, proceedings have lasted several years.

**15. What are the current debates in your jurisdiction over the application of collective litigation rules and their consequences?** *How intense are the debates, how pressing is any need for reform? Have there been important evolutionary steps or trends? What major developments might follow?*

---

<sup>91</sup> Michael Palmer, "The Emergence of Consumer Rights: Legal Protection of the Consumer in the PRC," in Kevin Latham *et al.* (eds.), *Consuming China: Approaches to Cultural Change in Contemporary China* (London and New York: Routledge, 2006), 56, 76.

Prior to the recent amendments (October 2007) to the 1991 Civil Procedure Law, whether or not to move further towards the US-style class action had been the subject of intense debate. A group of law professors at the highly prestigious Renmin University School of Law have suggested that Art 55 of the 1991 CPL should be amended, replacing the current “opt-in” rule with an “opt-out” rule.<sup>92</sup> On the other hand, many scholars point to problems with class actions the US<sup>93</sup> and argue that the adoption of the US model of class actions in China would be counterproductive, if not dangerous, in the absence of a capable judiciary and mechanisms constraining abusive use of class actions.<sup>94</sup>

The 2007 amendments to the 1991 CPL do not affect Arts 53-55 of the Law, the key provisions governing collective and representative actions in China. This seems to have brought an end – at least for the moment – to the debate on reforming the existing collective action rules along the US model.

**16. Overall, how would you evaluate the mechanism(s) success in achieving major changes in behavior, activities or policy, relative to the costs incurred by public and private actors?**

Mixed. Collective actions are having a positive effect on popular attitudes to litigation and access to justice through the courts, but many practical obstacles persist, and it is not yet clear what effects the new policies of the leadership designed to “create a harmonious society” (*jianli hexie shehui*) will have on collective actions of the various kinds outlined above.

---

<sup>92</sup> Renmin University School of Law Team on “Amendments and Improvements of the Civil Procedure Code”, *Zhonghua Renmin Gongheguo Minshi Susong Fa Xiugai Jianyigao (Di Sangao) ji Lifa Liyou* [Legislative Proposals for Amendments (Third Draft) to the Civil Procedure Law of the People’s Republic of China and the Reasons for the Proposals] (Beijing: People’s Court Press, 2005).

<sup>93</sup> Deborah R. Hensler *et al.*, *Class Action Dilemmas: Pursuing Public Goals for Private Gain* (Santa Monica: RAND, 2000).

<sup>94</sup> See, e.g., Fan Yu, *Group Litigation*, 427-8.