

上海金融法院

金融民商事纠纷申请再审指南

一、当事人对已经发生法律效力的判决、裁定，认为有错误的，可以向上一级人民法院申请再审；当事人一方人数众多或者当事人双方均为公民的案件，也可以向原审人民法院申请再审。当事人申请再审的，不停止判决、裁定的执行。

人数众多的一方当事人，包括公民、法人和其他组织。当事人双方为公民的案件，是指原告和被告均为公民的案件。

当事人申请再审，应当在判决、裁定发生法律效力后六个月内提出。有下列情形之一的，自知道或者应当知道之日起六个月内提出：（一）有新的证据，足以推翻原判决、裁定的；（二）原判决、裁定认定事实的主要证据是伪造的；（三）据以作出原判决、裁定的法律文书被撤销或者变更的；（四）审判人员审理该案件时有贪污受贿，徇私舞弊，枉法裁判行为的。

二、当事人对已经发生法律效力的调解书，提出证据证明调解违反自愿原则或者调解协议的内容违反法律的，可以申请再审。

当事人对已经发生法律效力的调解书申请再审，应当在调解书发生法律效力后六个月内提出。

三、当事人死亡或者终止的，其权利义务承继者可以依法申请再审。

判决、调解书生效后，当事人将判决、调解书确认的债权转让，债权受让人对该判决、调解书不服申请再审的，人民法院不予受理。

四、必须共同进行诉讼的当事人因不能归责于本人或者其诉讼代理人未参加诉讼的，可以依法自知道或者应当知道之

日起六个月内申请再审，但符合第五项案外人申请再审规定情形的除外。

五、执行过程中，案外人对执行标的提出书面异议，人民法院裁定驳回后，案外人对驳回其执行异议的裁定不服，认为原判决、裁定、调解书内容错误损害其民事权益的，可以自执行异议裁定送达之日起六个月内，向作出原判决、裁定、调解书的人民法院申请再审。

六、适用特别程序、督促程序、公示催告程序、破产程序等非讼程序审理的案件，当事人不得申请再审。

七、对人民法院裁定撤销仲裁裁决、驳回申请撤销仲裁裁决和裁定不予执行仲裁裁决的民事案件的再审申请，人民法院不予受理。

八、当事人申请再审，有下列情形之一的，人民法院不予受理：

（一）再审申请被驳回后再次提出申请的；

（二）对再审判决、裁定提出申请的；

（三）在人民检察院对当事人的申请作出不予提出再审检察建议或者抗诉决定后又提出申请的。

前款第（一）项、第（二）项规定情形，当事人可以向人民检察院申请再审检察建议或者抗诉，但因人民检察院提出再审检察建议或者抗诉而再审作出的判决、裁定除外。

九、当事人申请再审，应当提交下列材料：

（一）再审申请书，并按照被申请人和原审其他当事人的人数提交副本；

（二）再审申请人是自然人的，应当提交身份证明；再审申

请人是法人或者其他组织的，应当提交营业执照、组织机构代码证书、法定代表人或者主要负责人身份证明书。委托他人代为申请的，应当提交授权委托书和代理人身份证明；

(三) 原审判决书、裁定书、调解书；

(四) 反映案件基本事实的主要证据及其他材料。

前款第(二)项、第(三)项、第(四)项规定的材料可以是与原件核对无异的复印件。

十、再审申请书应当记明下列事项：

(一) 再审申请人与被申请人及原审其他当事人的基本信息；

(二) 原审人民法院的名称，原审裁判文书案号；

(三) 具体的再审请求；

(四) 申请再审的法定情形及具体事实、理由。

再审申请书应当明确申请再审的人民法院，并由再审申请人签名、捺印或者盖章。

申请再审的法定情形是指《中华人民共和国民事诉讼法》等规定的人民法院应当再审的具体情形。

Guidelines for Retrial Application in Financial Civil and Commercial Disputes

I. A party dissatisfied with a legally effective judgment or ruling may apply for a retrial to the People's Court at the next higher level. In cases where a large number of plaintiffs or defendants are involved or both parties are citizens, the application may also be submitted to the original trial court. Filing a retrial application does not suspend the enforcement of the judgment or ruling.

A large number of plaintiffs or defendants may include citizens, legal persons, and other organizations. Cases where both parties are citizens refers to disputes where both the plaintiff and defendant are citizens.

The retrial application must be filed within six months after the judgment or ruling becomes legally effective. However, the application can be filed within six months from the date the party knew or should have known the existence of any of the following circumstances:

- (1) New evidence sufficient to overturn the original judgment or ruling is discovered;
- (2) Key evidence in the original judgment or ruling is proven to be forged;
- (3) The legal document underlying the original judgment or ruling is revoked or modified;
- (4) Judicial personnel involved in the original case committed acts of

corruption, bribery, favoritism, or perversion of justice.

II.A party may apply for a retrial of a legally effective mediation agreement if evidence is provided proving that the mediation violated the principle of free will or that the content of the mediation agreement contravenes the law.

Such applications must be filed within six months after the mediation agreement becomes legally effective.

III. If a party dies or ceases to exist, the successor in rights and obligations may apply for a retrial in accordance with the law. If a party transfers a creditor's right confirmed by a judgment or mediation agreement after it takes effect, the transferee is not permitted to apply for a retrial against the judgment or mediation agreement.

IV.A necessary co-litigant who did not participate in the original proceedings due to reasons not attributable to themselves or their litigation agents may apply for a retrial within six months from the date they knew or should have known the circumstances, unless the case falls under the provisions listed in Section V for third-party retrial applications.

V. During enforcement proceedings, if a third party submits a written objection to the subject of enforcement and the People's

Court dismisses the objection, the third party may apply for a retrial to the People's Court that issued the original judgment, ruling, or mediation agreement within six months from receiving the dismissal ruling, provided they believe the original decision harmed their civil rights.

VI. Retrial applications are not permitted for cases adjudicated under non-contentious procedures, including special procedures, payment order procedures, public notice procedures, and bankruptcy procedures.

VII. The People's Court will not accept retrial applications for civil rulings relating to setting aside an arbitral award dismissing an application for setting aside an arbitral award, or refusing enforcement of an arbitral award.

VIII. The People's Court will not accept retrial applications in the following circumstances:

- (1) The application is resubmitted after being dismissed;
- (2) The application challenges a retrial judgment or ruling;
- (3) The application is filed after the People's Procuratorate has decided not to issue a retrial prosecutorial recommendation or protest.

For circumstances (1) and (2), the party may instead apply to the People's Procuratorate for a retrial prosecutorial recommendation or

protest, except where the retrial resulted from such a recommendation or protest.

IX. Applicants shall submit the following materials:

- (1) A retrial application with copies corresponding to the number of respondents and other original parties;
- (2) For natural persons: identity documents; for legal persons or other organizations: business license, organization code certificate, and identity proof of the legal representative or principal officer. If represented by an agent, a power of attorney and the agent's identity proof shall be provided;
- (3) Copies of the original judgment, ruling, or mediation agreement;
- (4) Main evidence and other materials reflecting the basic facts of the case.

Note: Materials under Items (2), (3) and (4) may be copies verified against the originals.

X. The retrial application shall include:

- (1) Basic information of the applicant, respondents, and other original parties;
- (2) The name of the original court and the case number of the original judgment;
- (3) Specific retrial claims;
- (4) The legal grounds for retrial and the factual basis and reasoning.

The application must clearly list the name of the People's Court to

which it is submitted and bear the signature, fingerprint, or seal of the applicant.

Legal grounds for retrial refer to the specific circumstances stipulated under the Civil Procedure Law of the People's Republic of China and other relevant laws that require the People's Court to conduct a retrial.