

China Legal Briefing*289

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I Cash Pooling Pilot Program

II Interpretation of the Supreme People's Court on Several Issues concerning the Application of Prescriptive Period in the Trial of Judicial Compensation Cases

III The Provisions of the Supreme People's Court on Several Issues Relating to the Jurisdiction over Foreign-related Civil and Commercial Cases

I. Cash pooling pilot program

According to a joint announcement of the People's Bank of China, China's central bank, and the State Administration for Foreign Exchange ("**SAFE**") released on May 19, 2023, the upgraded pilot program will allow multinational corporations to determine the collection ratio of foreign debts and overseas loans by themselves, among other changes. Multinational corporations ("**MNC**") are companies that have business operations in at least one country other than their home country.

The China cash pooling pilot program ("**Program**") was first launched in March 2021, announcing that certain MNCs in Beijing and Shenzhen would be permitted to integrate RMB and foreign currency cash pools to facilitate the use of cross-border funds. Under the 2021 pilot Program:

- The cap on foreign debt for MNCs is set at 2 times the accrued owner's equity of the cash pool, whereas the cap on overseas lending is set at 0.8 times;
- The foreign exchange settlement funds in the domestic capital account are allowed to be directly transferred to the domestic RMB capital account;
- Domestic foreign exchange derivatives can be used to hedge against foreign exchange fluctuation risks;
- A certain quota of foreign currency under the capital account can be purchased without seeking approval from SAFE every time;
- Funds raised from the purchase of foreign currencies can be deposited into the domestic account for overseas payments.

The local branch of the SAFE in each jurisdiction, where the Program is running, is responsible for the applications and decides which MNCs will participate. Under the 2021 Program, only large MNCs with high credit ratings are allowed to participate.

In July 2022, the Program itself was expanded and extended to additional cities and provinces. The expanded scope of the Program included allows MNCs to handle domestic and foreign currency centralised receipt and payment of their overseas companies in China.

The upgraded Program from May 2023, allows MNCs to determine the collection ratio of foreign debt and overseas according to the macroprudential principle, thus increasing the freedom of cross-border capital operations. However, this upgraded Program is currently only being implemented in Beijing ,Guangdong and Shenzhen.

The main advantages and improvements of the 2023 Program are:

- Efficiency of cross-border capital coordination and utilisation for MNCs. It enables them to effectively manage funds in both local and foreign currencies, resulting in reduced currency exchange risks and financial costs;
- Increasing the freedom to operate cross-border funds by allowing MNCs to decide on their own the proportion of foreign debt and offshore lending to be pooled in accordance with macroprudential principles;
- Supporting MNCs to carry out cross-border capital centralisation operations in RMB;
- Simplifying the filing process and the examination of materials related to the use of funds.

The Program is expected to be optimised further in the future and it is likely that the authorities will lower the requirements and allow for more companies to participate in this Program.

II. Interpretation of the Supreme People's Court on Several Issues concerning the Application of Prescriptive Period in the Trial of Judicial Compensation Cases

On May 23, 2023, the Supreme People's Court of PRC released the *Interpretation of the Supreme People's Court on Several Issues concerning the Application of Prescriptive Period in the Trial of Judicial Compensation Case* (the “**Interpretation**”), which takes effect on June 1, 2023.

The Interpretation clarifies issues of the application of relevant laws concerning the petition for prescription. It consists of 13 articles, covering the rules for the commencement of the limitation period of claims for criminal compensation and non-criminal judicial compensation, as well as deduction rules for special limitation periods for requests, etc.

In addition, it is worth noting that the Interpretation specifically stipulates that the organs liable for compensation have the right to make a defence on the prescription of claims, i.e., “*when the prescription of claims expires, the organs liable for compensation may make a defence on no compensation*”. However, if the organ liable for compensation, after the expiration of the limitation of application, expresses its agreement to make compensation or has made compensation, but raises defence on the ground of the expiration of the limitation of application or requires the compensation claimant to return the compensation, the compensation committee of the people's court will not support such a defence.

The State Compensation Law of the PRC issued in 1995, which sets rules on limitation of action request are more principled and vaguer. Therefore, there are different opinions and legal practices on the nature,

commencement, and citation of limitation of action request around the nation. Now, the implementation of the Interpretation attempts to settle these differences and aim to give a unified answer to various legal practices nationwide.

III. The Provisions of the Supreme People's Court on Several Issues Relating to the Jurisdiction over Foreign-related Civil and Commercial Cases

On 15 November, 2022, the Supreme People's Court issued a Judicial interpretation, *the Provisions of the Supreme People's Court on Several Issues Concerning the Jurisdiction of Foreign-Related Civil and Commercial Cases*, which came into effect on 1 January, 2023.

The most significant and relevant rules of the Provisions are:

- The intermediate people's courts shall have jurisdiction over foreign-related civil and commercial cases of the first instance in:
 - Foreign-related civil and commercial cases with a large amount. Depending on the province such a large amount is RMB 40 million Yuan or RMB 20 million Yuan or higher.
 - Foreign-related civil and commercial cases where the circumstances of the case are complex or where there are a large number of parties.
 - Other foreign-related civil and commercial cases with significant impact in the jurisdiction.
- The High People's Court shall have jurisdiction over foreign-related civil and commercial cases of the first instance with a litigation value of RMB 5 billion Yuan or any other cases with a significant impact within its jurisdiction.
- Foreign-related civil and commercial cases shall be heard by special trial courts or collegial panels.

- The Provisions shall not apply to cases involving foreign maritime and maritime disputes, foreign intellectual property disputes, foreign ecological and environmental damage disputes, and foreign civil public interest litigation cases involving the environment.

The Provisions aim to protect the rights of parties involved in litigation, both domestically and internationally, and therefore facilitate the procedure and can potentially improve standards and efficiency. Furthermore, the Provisions also promote some rules that establish compatibility between other different applicable rules, especially in cases with a foreign element.

In recent years, and especially since the outbreak of the COVID 19 pandemic, there has been an increase in foreign-related disputes. A good knowledge of these provisions can be beneficial for individuals and companies that may become involved in such foreign-related cases.

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