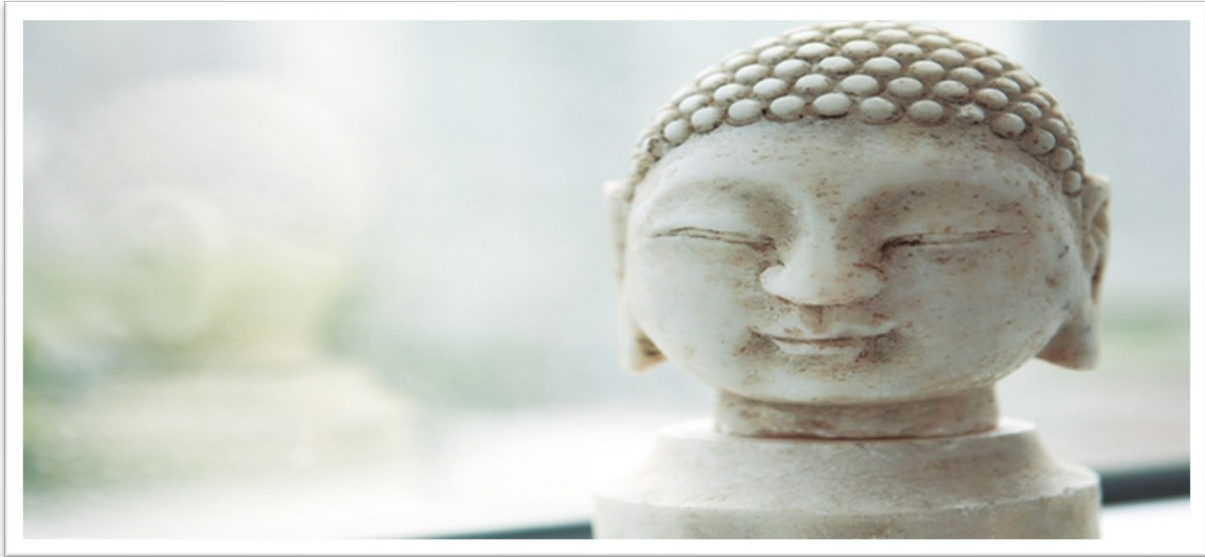


# China Legal Report

## December 2023



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# China's Amended Civil Procedure Law

## I. Introduction

The Standing Committee of the National People's Congress ("**NPC**"), China's legislature, has recently passed an additional amendment to the Civil Procedure Law of the People's Republic of China ("**Amended CPL**"). The Amended CPL is scheduled to come into effect from January 1, 2024.

The Civil Procedure Law ("**CPL**") was last amended in 2021 and provides guidelines for civil litigation procedures in the country, with the aim of guaranteeing just and efficient adjudication of civil cases by the People's Courts of China ("**People's Court**" or "**Chinese courts**"). The CPL regulates the litigation process for both domestic and foreign legal entities.

The latest amendment primarily concentrates on provisions concerning civil litigation with foreign entities in order to address unfair treatment of Chinese companies abroad, especially in matters related to foreign trade and investment. However, the new Amendment Law is likely to have a noteworthy influence on Chinese companies running business abroad.

## II. Court jurisdiction in foreign-related civil cases

According to Article 276 of the current CPL, where a foreign defendant is not domiciled in China, the case shall be deemed to fall under Chinese jurisdiction if any of the following are located within the territory of China:

- The place where the contract is signed;
- The place where the contract is performed;
- The location of the subject matter of the lawsuit;
- The location of the property available for seizure;
- The place where the infringement is committed; or
- The domicile of the representative office.

The aforementioned conditions remain unaltered in the recent Amended CPL. Nevertheless, an additional clause has been included, which declares that:

"With the exception of the preceding paragraph, civil disputes linked to foreign affairs that bear other suitable connections with the People's Republic of China may fall under the jurisdiction of the People's Court."

It is unclear what constitutes "suitable connections," but this amendment creates room for interpretation. Consequently, Chinese courts may rule a case falls under Chinese jurisdiction in scenarios not listed amongst the six factors. This can be helpful for Chinese companies with global operations to persuade the Chinese courts that a foreign case falls within the jurisdiction of the Chinese courts.

#### **a) People's Courts' jurisdiction**

According to the newly proposed Articles 277 and 278 of the Amended CPL, the parties involved in a foreign-related dispute may agree in writing on the jurisdiction of a People's Court. In the event that the relevant party responds with statements of defense or raises a counterclaim and fails to refute the jurisdiction, a People's Court shall be regarded as having jurisdiction. The Amended CPL appears to expand the ambit of Chinese courts to hear cases outside their jurisdictional scope as defined by the CPL. However, such cases may only be heard in China with the consent of all relevant parties or if they are deemed to have implicitly consented in the case of a defense or counterclaim.

The cases in which the People's Court has exclusive jurisdiction were already specified in Article 273 of the current CPL. However, the scope of cases that fall under the "exclusive jurisdiction of the People's Court" has been expanded from one type of relationship to three types under Article 279 of the Amended CPL:

- Litigation can be initiated in the event of disputes surrounding the formation, disbanding, or liquidation of a legal entity or organization established within the territory of the People's Republic of China, as well as the authenticity of resolutions made by the said entity or organization.

- Litigation can be initiated due to disputes arising from the evaluation of the validity of intellectual property rights that have been granted within the territory of the People's Republic of China.
- Litigation can be filed over disputes regarding the performance of Sino-foreign joint ventures, cooperative joint venture contracts, and cooperative contracts for exploring and developing natural resources in the territory of the People's Republic of China.

While the first two scenarios are new, the third scenario is already present in the current version of the CPL. The Amended CPL further broadens the scope of scenarios wherein a Chinese enterprise operating inside or outside China can file litigation against a foreign entity in a Chinese court.

#### **b) Conflict of court jurisdiction**

Article 280 to 282 of the Amended CPL introduces provisions to resolve jurisdictional conflicts between the People's Courts and foreign courts. The most relevant are the following:

- (1) If a legal case is filed at both a People's Court and a foreign court at the same time, the People's Court may take on the case if it has the legal authority under the Amended CPL.
- (2) The court may refuse to accept the case if the parties have agreed to the exclusive jurisdiction of a foreign court, provided that such agreement does not violate the provisions of the CPL relating to the exclusive jurisdiction of the People's Courts.
- (3) The People's Court may decide to suspend an accepted lawsuit if the party concerned applies in writing for the suspension on the ground that a foreign court has accepted the lawsuit before the People's Court, unless one of the following conditions is met:
  - a. The parties have agreed on the People's Court's jurisdiction or the dispute is subject to the exclusive jurisdiction of the People's Court;
  - or
  - b. It is obviously more convenient for the People's Court to hear the lawsuit.
- (4) The People's Court may reject a lawsuit and inform the plaintiff to raise the lawsuit to a more convenient foreign court, if the defendant has filed a jurisdiction objection and

- a. The basic facts of the dispute did not take place within the territory of the PRC, and it is obviously inconvenient for the People's Court to hear the case and for the parties to participate in the litigation;
- b. The parties have not concluded an agreement on choosing the People's Court's jurisdiction;
- c. The case is not subject to the exclusive jurisdiction of a People's Court;
- d. The case does not involve the sovereignty, security or public interests of the PRC;
- e. It is more convenient for a foreign court to hear the case.

If the People's Court has previously dismissed a lawsuit and the appropriate foreign court has either declined to hear the case or has failed to take necessary measures to resolve the case within a reasonable timeframe, a relevant party may re-initiate the same lawsuit in the People's Court, which will then be required to accept it.

### **III. Service of foreign-related documents and collection of evidence**

The methods that Chinese courts can use to serve documents on entities located outside of China have undergone several changes under the Amended CPL in Article 283. The Chinese courts may utilise novel techniques such as diplomatic channels, embassy assistance, or a litigation agent appointed by the recipient to serve court papers to defendants who lack a domicile in China.

The Amended CPL adds a new provision on the collection of evidence located outside China by Chinese courts, and outlines the mechanisms that Chinese courts can use to collect the evidence. Article 284 permits a Chinese court to gather evidence utilizing means set out in international agreements, or through diplomatic channels, if said evidence is located outside of China's borders and is required by the plaintiff. Chinese courts have specific methods for gathering evidence, such as obtaining evidence through instant messaging tools. Additionally, the Chinese embassy or consulate in the country where the party or witness is located may be entrusted to collect evidence on behalf of the court for parties and witnesses who are Chinese nationals.

### **IV. Recognition and enforcement of court judgements**

The Amended CPL details situations where a Chinese court may decline to enforce a verdict from a foreign court upon request.

Article 300 of the Amended CPL states that Chinese courts may refuse a foreign court's request to legally recognize or enforce a valid and effective judgment or verdict issued against a Chinese entity on certain occasions. These occasions may include instances where the Chinese court determines that the foreign court lacks jurisdiction over the case, or where the defendant was not legally summoned or was not given a fair opportunity to provide their statement or defence, or if they lacked litigation capacity and proper representation.

Meanwhile, under the new Article 301, foreign courts are deemed not to have jurisdiction if, for example, they do not have jurisdiction under the law of the country concerned. Noteworthy is that even if foreign courts would have jurisdiction under their own law, they would be deemed not to have jurisdiction if such applicable law is not related to the dispute in question.

Furthermore, under the new Articles 302 and 303 of the Amended CPL, a People's Court has the power to suspend a lawsuit if it pertains to the same dispute as decided under an effective judgement or ruling of a foreign court. This is only applicable if a party has applied to the People's Court for recognition and enforcement of the said foreign judgement or ruling. Nevertheless, the People's Court is obliged to resume the lawsuit if the judgement or ruling of the foreign court does not satisfy the recognition conditions under the CPL. If the People's Court recognises and enforces the foreign court's judgement or ruling according to the Amended CPL, the suspended lawsuit will ultimately be rejected. If a party disagrees with the ruling of the People's Court, whether for recognition and enforcement or for the contrary, it may apply for reconsideration within ten days of receiving the ruling to the next higher level of People's Court.

The final notable change in the Amended CPL is Article 305. This particular article stipulates that legal proceedings related to civil litigation with foreign states will be subjected to China's legal regulations related to foreign state immunity. This pertains to the newly enacted Foreign State Immunity Law of the People's Republic of China, which authorises Chinese enterprises or citizens

to initiate legal proceedings against foreign states or their representatives. Where there are no relevant laws regarding civil litigation involving foreign states, the CPL will be applied.

## V. Summary

The amendments to the China Civil Procedure Law, the Amended CPL, will broaden the jurisdiction of Chinese courts in foreign-related civil cases and simplify the process for Chinese companies to initiate lawsuits against foreign entities within China. This is especially significant for matters that fall under the "exclusive jurisdiction" of Chinese courts under the CPL. Traditionally, arbitration has always been a qualified alternative for cases under "exclusive jurisdiction". It remains not entirely clear whether under the Amended CPL with a clearly wider range of cases covered by "exclusive jurisdiction", arbitration would continue to be a qualified alternative for the added range. We will keep monitoring the latest developments and keep our subscribers updated.

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