

Chinese Supreme People's Court Issued New Judicial Interpretation on Hierarchical Jurisdiction on Foreign-Related Disputes

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1. Background

The Chinese Supreme People's Court (hereinafter "**SPC**") issued "SPC's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Disputes" (hereinafter "**Regulation 2022**"),^[1] which will enter into force on 1st January 2023. The Regulation focuses on hierarchical jurisdiction in cross-border litigation, although its title does not explicitly say so. According to SPC, the Regulation responds to the new circumstance of open-up after the 18th National Congress of the Communist Party of China. It has great value in protecting the right of parties, both foreign and domestic, making litigation more convenient and improving the quality and efficiency of the trial of foreign-related civil and commercial disputes.

2. Main Content

The Content can be divided into different categories according to the goals of Regulation 2022.

1. Convenience and Efficiency

One of the most important goals of Regulation 2022 is to improve the efficiency of trial and bring convenience to the parties. To achieve this goal, Regulation 2022 has rearranged the hierarchical jurisdiction. Regulation 2022 generally authorises all the grass-roots courts to hear foreign-related disputes (Art. 1) and limits the jurisdiction of intermediate and higher courts (Art. 2 & Art. 3).

Initially, the hierarchical jurisdiction of foreign-related disputes was regulated by the 2002 SPC's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Litigations (hereinafter "**Regulation 2002**").^[2] Under

Regulation 2002, only a few intermediate courts and grass-root courts were authorised to hear foreign-related disputes. In the past 20 years, the SPC has authorised more and more intermediate courts to hear foreign-related disputes according to the applications of higher courts. Nowadays, most intermediate courts have the jurisdiction to hear foreign-related disputes. But still, only a few grass-roots courts have such jurisdiction.

Such an arrangement has some adverse impacts. Firstly, the parties would have to sue in intermediate courts. Ordinarily, there is only one intermediate court in one city. Such an arrangement means that all the citizens would have to sue in one court instead of suing in their local grass-roots courts. This would inevitably bring inconvenience to the parties. Secondly, the intermediate courts may also overload by a large number of cases, which would decrease the efficiency of trials. In the past 20 years, the number of foreign-related cases has significantly increased. In 2022, the number of cases seized by courts of the first instance has exceeded 17 thousand. Such a circumstance not only increases the pressure on the judges but also decreases the efficiency of trials. It should also be noted that according to Art. 277 of the PRC Civil Procedure Law, different from domestic trials, foreign-related trials would not be subject to the statutory time limit. Thus, parties in foreign-related disputes may have to wait longer to receive judgments.

The Regulation 2022 enables nearly all grass-root courts to hear cross-border disputes, which brings convenience to the parties and reduces the burden of intermediate courts.

Quality and Professionalism

Regulation 2022 also takes measures to ensure and improve the quality and professionalism of foreign-related trials. These efforts stem from the achievement of the judicial system reform, especially the establishment of the judge quota system. The judge quota system re-selects competent judges from the existing judges. Only limited judges who passed the re-selection would be authorised to hear the trial based on their qualification, professionalism, specialisation, and experience. The reform enhanced the overall ability of the judges and increased the percentage of judges with the knowledge base and competence to hear foreign-related disputes.

The efforts to improve the quality and professionalism in Regulation 2022 could

be divided into two perspectives. On the one hand, Regulation 2022 reserves the centralised jurisdiction, which originated from Regulation 2002, with some adjustments (Art. 4). On the other hand, Regulation 2022 makes clear that foreign-related disputes should be heard in a specialised tribunal or collegial panel (Art. 5).

a. Centralised Jurisdiction

The centralised jurisdiction centralises jurisdiction of foreign-related disputes in intermediate courts. Traditionally, centralised jurisdiction would have impact in both hierarchical and territorial aspects. From the hierarchical aspect, the centralised jurisdiction could deprive the grass-roots courts of jurisdiction to hear foreign-related disputes. From the territorial aspect, the centralised jurisdiction allows the appointed intermediate court to hear the dispute across its administrative division. Assume that Province A consists of five cities: City A, B, C, D, and E. If courts in City A were to be appointed to exercise the centralised jurisdiction, then the courts in City A would have jurisdiction over all foreign-related disputes, including those cases which courts in City B, C, D and E should hear.

The centralised jurisdiction could improve the quality of the trials. Firstly, the centralised jurisdiction could ensure that some experienced and better-trained judges would hear the cases. In general, foreign-related disputes are more complex than domestic disputes and thus would pose more challenges to the judges. The courts appointed to exercise centralised jurisdiction usually have better-trained judges and, therefore, would be more competent to hear foreign-related disputes. Furthermore, there may be a huge gap in the quantities of foreign-related disputes among different courts. The centralised jurisdiction would also let those experienced courts hear the disputes and improve the quality of trials. Secondly, the centralised jurisdiction would increase the consistency of the judgements. Courts in PRC are not bound by precedents. The centralised jurisdiction allows the same courts or tribunal to hear similar cases in one region to achieve the consistency of judgements. Thirdly, the centralised jurisdiction would reduce local protectionism. The centralised jurisdiction may prevent local government's intervention in trial and create a relatively neutral place for the parties by moving the local party out from their home court.

However, the centralised jurisdiction may negatively affect efficiency. Thus,

Regulation 2022 tries to strike a balance between professionalism and efficiency. Firstly, centralised jurisdiction is an exception that applies in limited situations instead of being a general rule. Centralised jurisdiction may only be granted if higher courts consider it necessary and acquire SPC's approval. Secondly, the impact of centralised jurisdiction is limited to the territorial aspect and would no longer prejudice the hierarchical jurisdiction. According to the SPC, there would be only two categories of centralised jurisdiction: the centralised jurisdiction of grass-roots courts and the centralised jurisdiction of intermediate courts. The centralised jurisdiction of grass-roots courts means that one authorised grass-roots court would have jurisdiction over all the first instance foreign-related cases in the region subject to its prior intermediate court's jurisdiction. The other type of centralised jurisdiction is the centralised jurisdiction of intermediate courts. An authorised intermediate court could hear all the cases in the region subject to its prior high court's jurisdiction, including trial of first instance and appeal from grass-roots courts.

b. Specialised Tribunal

Regulation 2022 makes clear that the foreign-related dispute should be heard in a specialised tribunal or collegial panel (Art. 5). This provision tries to improve the professionalism of the trial by centralising all the cases into a tribunal or collegial consisting of experienced and specialised judges in the court. In practice, several courts have already established such a tribunal. However, since Regulation 2022 authorises all the grass-roots courts to hear foreign-related disputes, it is necessary to ensure that each court is properly staffed to establish an appropriate division of responsibility of the tribunals.

Such a requirement was also prescribed in previous judicial interpretations. However, those interpretations were not as definite and broad as the present one. For instance, the SPC's Notice of 2017 on the Clarification of the Hierarchical Jurisdiction of the First Trial of the Foreign-Related Disputes and Several Issues concerning Belongings of Cases has listed several cases be heard by a specialised tribunal or collegial panel.[3] The SPC's Notice of 2017 on Several Issues concerning Belongings of Judicial Review of Arbitration also prescribed that the judicial review of arbitration should be subject to a specialised tribunal or collegial panel that takes charge of trials of foreign-related disputes.[4] Compared with these previous regulations, the provision in Regulation 2022 is more general and has a broader coverage.

3?Compatibility between Regulations

Regulation 2022 also establishes some rules to achieve compatibility between different regulations.

Firstly, Regulation 2022 reforms the correspondent rules in foreign-related disputes to be compatible with the newly reformed hierarchical jurisdiction of domestic disputes. The standard of high courts' jurisdiction to hear the first trial of foreign-related disputes is now the same as their jurisdiction to hear domestic cases. The Regulation also raises the standard of intermediate courts' jurisdiction to hear the first trial of foreign-related disputes and reduces the difference in this aspect with domestic cases. These would prevent the situation that most domestic cases would be heard in grass-roots courts while foreign-related cases would be heard in intermediate courts, even though the latter's value is lower.

Secondly, Regulation 2022 has a clear scope of applications. In the past, the scope of application of Regulation 2002 is vague. Regulation 2002 applies to several listed types of foreign-related cases but keeps silent on its application to the other types of foreign-related cases. Regulation 2002 also excludes its application to "trade disputes occurred in border provinces and foreign-related real estate disputes". However, there was not a uniform understanding of the scope of these two types of cases. In contrast, Regulation 2022 generally applies to all foreign-related disputes with some explicit exclusions, including maritime disputes, foreign-related IP disputes, foreign-related environmental damages disputes and foreign-related environmental public litigation (Art. 6). The maritime disputes would be subject to Maritime Court as a specialised court in China, and its hierarchical jurisdiction would be governed by Maritime Litigation Procedure Law. The hierarchical jurisdiction of the other three types of disputes is subject to their respective judicial interpretation of SPC.

4?Predictability

Regulation 2022 enhances the predictability of the hierarchical jurisdiction. Before the new Regulation, SPC has made many individual authorisations for centralised jurisdiction of intermediate or grass-roots courts. However, due to the differences in the levels of economic development, the authorisations vary between regions. In some regions, all grass-roots courts maybe competent to hear foreign-related disputes; in other regions, only a few intermediate courts would

have jurisdiction. It causes confusion in practice and the parties have to do research on hierarchical jurisdiction in each specific region to ensure they bring the case to the right court.

After the release of Regulation 2022, all the grass-roots courts would generally have jurisdiction to hear foreign-related disputes. The centralised jurisdiction would be limited in territorial aspect and would be publicized in advance, according to paragraph 2, Art. 4 of Regulation 2022. Regulation 2022 will abolish previous regulations and serve as a comprehensive guideline on hierarchical jurisdiction of foreign-related disputes (Art. 9). Regulation 2022 will enhance the predictability of the parties.

3. Conclusion

Chinese hierarchical jurisdiction in foreign-related disputes has been one of the most unclear and confusing matters in practice. Regulation 2022 has made significant progress in hierarchical jurisdiction. It improves the convenience and easy access to justice in foreign-related disputes, and balances other interests including professionalism and predictability. It manifests China's determination to continue opening up in the current era by providing a more user-friendly judicial environment to parties in the international trade and commerce.

[1] Supreme People's Court's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Disputes, [2022] Fa Shi No. 18.

[2] Supreme People's Court's Regulation on Several Matters Concerning the Jurisdiction of Foreign-Related Litigations, [2002] Fa Shi No. 5.

[3] Supreme People's Court's Notice of 2017 on the Clarification of the Hierarchical Jurisdiction of the First Trial of the Foreign-Related Disputes and Several Issues concerning Belongings of Cases, [2017] Fa No. 359, para. 2.

[4] Supreme People's Court's Notice of 2017 on Several Issues concerning Belongings of Judicial Review of Arbitration, [2017] Fa No. 152, para. 2.