

Amendment of Chinese Civil Procedure Law Concerning Foreign Affairs

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On September 1, 2023, the fifth session of the Standing Committee of the 14th National People's Congress deliberated and adopted the Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China, which will come into force on January 1, 2024. This amendment to the Civil Litigation Law implements the Party Central Committee's decision and deployment on coordinating domestic rule of law and foreign-related rule of law, strengthening foreign-related rule of law construction, and among the 26 amendments involved, the fourth part of the Special Provisions on Foreign-related civil Procedure is exclusive to 19, which is the first substantive amendment to the foreign-related civil procedure since 1991.

Expand the jurisdiction of Chinese courts over foreign-related civil cases

The type of cases the court has jurisdiction over has been revised from "disputes due to contract or other property rights" to "foreign-related civil disputes other than personal status." Besides, other appropriate connections have been added as the basis of jurisdiction, from the original enumeration to the combination of enumeration and generalization. In addition to providing jurisdiction based on choice-of-court agreements, this revision also adds two categories of exclusive jurisdiction which are the establishment, dissolution, and liquidation of legal persons or other organizations established in the territory of the People's Republic of China and proceedings brought in connection with disputes relating to the examination of the validity of intellectual property rights granted in the territory of the People's Republic of China.

The above amendments have further expanded the jurisdiction of Chinese courts over foreign-related civil litigation cases, which makes it more convenient for Chinese citizens to sue and respond to lawsuits in Chinese courts and better safeguard the legitimate rights and interests of Chinese citizens and enterprises.

Add provisions on parallel litigation

First, this revision adds a general provision for parallel litigation and a mechanism for coordinating jurisdictional conflicts. Where the parties are involved in the same dispute, one party institutes an action in a foreign court, while the other party institutes an action in a people's court, or one party institutes an action in both a foreign court and a people's court, the people's court which has jurisdiction in accordance with this law may accept the action. If the parties enter into an exclusive jurisdiction agreement and choose a foreign court to exercise jurisdiction, which does not violate the provisions of this law on exclusive jurisdiction and does not involve the sovereignty, security, or public interest of the People's Republic of China, the people's court may rule not to accept.

Second, this revision adds a new suspension and restoration mechanism for civil and commercial cases accepted by foreign courts after being accepted by Chinese courts. After a people's court accepts a case in accordance with the provisions of the preceding article, if a party applies to the people's court in writing for suspending the proceedings on the ground that the foreign court has accepted the case before the people's court, the people's court may render a ruling to suspend the proceedings, except under any of the following circumstances: (1) The parties, by an agreement, choose a people's court to exercise jurisdiction, or the dispute is subject to the exclusive jurisdiction of a people's court. (2) It is evidently more convenient for a people's court to try the case. If a foreign court fails to take necessary measures to try the case or fails to conclude the case within a reasonable time limit, the people's court shall resume proceedings upon the written application of the party. If an effective judgment or ruling rendered by a foreign court has been recognized, in whole or in part, by a people's court, and

the party institutes an action against the recognized part in the people's court, the people's court shall rule not to accept the action, or render a ruling to dismiss the action if the action has been accepted.

Third, this revision adds a new jurisdiction objection mechanism in the principle of inconvenient court. Where the defendant raises any objection to jurisdiction concerning a foreign-related civil case accepted by a people's court under all the following circumstances, the people's court may rule to dismiss the action and inform the plaintiff to institute an action in a more convenient foreign court: (1) It is evidently inconvenient for a people's court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People's Republic of China. (2) The parties do not have an agreement choosing a people's court to exercise jurisdiction. (3) The case does not fall under the exclusive jurisdiction of a people's court. (4) The case does not involve the sovereignty, security, or public interest of the People's Republic of China. (5) It is more convenient for a foreign court to try the case. If a party institutes a new action in a people's court since the foreign court refuses to exercise jurisdiction over the dispute, fails to take necessary measures to try the case, or fails to conclude the case within a reasonable period after a people's court renders a ruling to dismiss the action, the people's court shall accept the action.

The amendments above conform to the international trend, integrate and optimize and further improve the mechanism for handling jurisdictional conflicts, and provide a clearer and more authoritative normative guidance for the people's courts to coordinate handling jurisdictional conflicts in foreign-related civil and commercial cases in the future.

Revise relevant regulations on service of foreign-related documents

First, the limitation that an agent ad litem must have the right to accept service on his behalf in the original Civil Procedure Law is deleted, and it is clear that as long as the agent ad litem entrusted by the person served in this case, they should

accept service, so as to curb the phenomenon of parties evading service.

Second, this revision adds the provision of “Documents are served on a wholly-owned enterprise, a representative office, or a branch office formed by the recipient within the territory of the People’s Republic of China or a business agent authorized to receive the service of documents”.

Third, this revision adds the provision of “[i]f the recipient who is a foreign natural person or a stateless person serves as the legal representative or principal person in charge of a legal person or any other organization formed within the territory of the People’s Republic of China and is a co-defendant with such a legal person or other organization, documents are served on the legal person or other organization”.

Fourthly, this revision adds the provision of “[i]f the recipient is a foreign legal person or any other organization, and its legal representative or principal person in charge is within the territory of the People’s Republic of China, documents are served on its legal representative or principal person in charge”.

Fifthly, this revision adds the provision of “documents are served in any other manner agreed upon by the recipient unless it is prohibited by the law of the country where the recipient is located”.

Last but not least, the time for the completion of service of a foreign-related announcement is shortened from three months after the date of announcement in the original Civil Procedure Law to 60 days after the date of issuance of the announcement, so that the starting point of service of a foreign-related announcement is more clear and the period of the announcement is shorter.

The above amendments moderately penetrate the veil of a legal person or an unincorporated organization and provide for alternative service between the relevant natural person and the legal person or unincorporated organization, helping enhance the possibility of successful service and the coping of difficult service in foreign-related cases.

Add provisions on extraterritorial investigation and evidence collection

On one hand, amended China's Civil Procedure Law continues the requirement that Chinese courts conduct extraterritorial investigation and evidence collection in accordance with international treaties or diplomatic channels. On the other hand, it adds other alternative ways for Chinese courts to conduct extraterritorial investigation and evidence collection, that is, if the laws of the host country do not prohibit it, Chinese courts can adopt the following methods for investigation and evidence collection: (1) If a party or witness has the nationality of the People's Republic of China, the diplomatic or consular missions of the People's Republic of China in the country where the party or witness is located may be entrusted to take evidence on his behalf; (2) Obtaining evidence through instant messaging tools with the consent of both parties; (3) Obtaining evidence in other ways agreed by both parties.

This revision enriches the methods of extraterritorial investigation and evidence collection of Chinese courts and brings more convenience to the judicial practice of extraterritorial evidence collection in foreign-related civil litigation, thus raising the enthusiasm of judicial personnel for extraterritorial evidence collection and improving the trial efficiency and quality of foreign-related civil cases.

Improve the basic rules on the recognition and enforcement of extraterritorial judgments, rulings, and arbitral awards

Amended Chinese Civil Procedure Law provides the circumstances under which a judgment or order with extraterritorial effect is not recognized or enforced and the suspension and restoration mechanism of litigation involving disputes of foreign effective judgments and rulings applied for recognition and enforcement that have been accepted by Chinese courts. Furthermore, it revises the expression of extraterritorial arbitration award determination and expands the scope of Chinese courts to apply for recognition and enforcement of extraterritorial effective arbitration award.

Conclusion

This revision of China's Civil Procedure Law focuses on improving the foreign-related civil procedure system. On one hand, the mature provisions in previous judicial interpretations, court meeting minutes, and other documents have been elevated to law, providing a more solid legal basis for the court's jurisdiction and service of foreign-related cases. On the other hand, it gives a positive response to conflicts in judicial practice and differences in interpretation of existing rules, introduces consensus in practice into legislation, reduces various obstacles for courts to exercise jurisdiction over foreign-related cases, conforms to the trend of international treaties and practices, and clarifies the specific scope of application of various rules. It will better protect the litigation rights and legitimate rights and interests of Chinese parties, better safeguard China's national sovereignty, security and development interests, and better create a market-oriented, law-based, and internationalized first-class business environment.

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