

Overview of the 2023 Amendments to Chinese Civil Procedure Law

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1. Background

China's Civil Procedure Law was enacted in April 1991 by the Fourth Session of the Seventh National People's Congress. Since then, it had undergone four revisions in 2007, 2012, 2017, and 2021. However, no substantial revisions were made to the provisions concerning foreign-related civil litigation. The latest amendments to the Civil Procedure Law in 2023, referred to as the new CPL, involve 26 amendments, including 14 modified articles and 15 new additions. Notably, 19 changes deal with the special provisions on cross-border procedures.

2. Jurisdiction

2.1 Jurisdiction grounds

Special jurisdiction: The new CPL expands the scope of jurisdiction by introducing additional connecting factors and fall-back provisions. The new law widens the category of disputes previously covered from “contractual disputes or other property rights disputes” to “litigation other than disputes involving personal relationships” (Art. 276, para. 1). Compared to the previous CPL, this expansion encompasses non-property rights disputes involving personal relationships, such as foreign-related marriage, adoption, maintenance, and guardianship disputes, thereby addressing the previous omission of non-property rights disputes. Further, the new CPL introduces “the place of torts committed within the territory of China” as a new connecting factor for jurisdiction. Additionally, a new fall-back provision of “other appropriate connections” is included, granting Chinese courts greater flexibility over foreign-related cases. Article 276 stipulates that the Chinese court may have jurisdiction if the dispute is of other appropriate connections with China (Art. 276, para. 2).

It is worth noting that the “other appropriate connections” provision has a certain

degree of openness. What constitutes an appropriate connection is ambiguous. Previously, the Supreme People's Court established judicial guidance on this issue regarding standard-essential patents cases. For instance, in *Godo Kaisha IP Bridge 1 v. Huawei*, the Supreme People's Court found an appropriate connection between the city of Dongguan and the dispute, citing evidence that Huawei Terminal Co., Ltd. – being primarily responsible for manufacturing and selling Huawei's smart terminal products – was domiciled there. Dongguan would also be a key location for implementing the essential patents at issue following any agreement between the parties. On this basis, the Supreme People's Court deemed Dongguan to have an appropriate connection to the case. By incorporating the principle of appropriate connection into the new CPL, its application scope expands beyond intellectual property cases to other foreign-related cases. However, determining the standards for appropriate connection in practice will undoubtedly pose a significant challenge going forward.

To some extent, this provision allows Chinese courts the flexibility to exercise jurisdiction in appropriate circumstances, providing a channel for Chinese enterprises and citizens to seek remedies from domestic courts when their interests are harmed abroad. In practice, courts should take caution when assessing jurisdiction based on the appropriate connection. From a systematic perspective, the appropriate connection should bear some resemblance to the jurisdictional connecting factors listed in this article, such as the place of contract, place of performance, location of the subject matter of the litigation, location of attachable assets, place of the tort, and the domicile of the defendant's representative. In addition, China could consider deriving insights from the indirect jurisdiction grounds established in the Hague Judgement Convention 2019. These grounds represent a consensus and are accepted by the majority of countries. If China were to refer to the Convention's standards when considering appropriate connection, it would gain greater predictability and reciprocity. This could facilitate the recognition and enforcement of Chinese judgments abroad, especially among Convention contracting states.

Choice of court agreement: Prior to this amendment, except for disputes related to foreign maritime matters, choice of court agreements designating Chinese court were subject to the prerequisite that the case has a practical connection with China. While China established two international commercial courts to specially hear international commercial cases, the cases they can accept are still limited by the requirement of actual connection under the legal framework of

previous CPL. This overly conservative jurisdiction regime hampered the international commercial courts from taking jurisdiction over offshore cases without connection to China.

The newly introduced Article 277 of the CPL breaks this constraint. It allows the parties to choose Chinese courts by writing even if Chinese courts do not have any connection with the dispute. This legislative change provides a clear legal basis for Chinese courts to exercise jurisdiction over offshore cases, expands both the types of cases they can accept and their geographical reach. Moving forward, this change will benefit Chinese courts by enabling them to actively exercise jurisdiction and provide judicial support for the Belt and Road Initiative, positioning China as a preferred location for international litigation. Ultimately, it will enhance the international competitiveness and influence of Chinese judiciary. However, the amendment does not specify whether parties can choose foreign courts without any connections with the dispute. To align with international common practice and promote reciprocity, it is recommended to clearly state that parties have the freedom to choose any courts, Chinese or foreign, to hear cross-border disputes even if the courts lack practical connections with the dispute.

The amendment does not address some matters that remain unclear in Chinese law. For example, which law applies to determine the substantive validity of jurisdiction agreements? In practice, courts may apply either the law of the forum or the law governing the main contract to this matter, leading to uncertainty.

Responding jurisdiction: Article 278 of the new CPL introduces the rule of responding jurisdiction. It stipulates that if a party does not raise an objection to the jurisdiction and participates in the proceedings by submitting a defence or filing a counterclaim, the Chinese court shall be deemed to have jurisdiction (Art. 278). Further, in contrast to the previous draft amendment, the new CPL expands the scope of jurisdiction by appearance from the defendant to all parties involved.

Exclusive jurisdiction: Under the previous CPL, exclusive jurisdiction covered 1 disputes related to immovable property, port operations, succession, and contracts involving Sino-foreign joint ventures, Sino-foreign cooperative business enterprises, and Sino-foreign cooperative exploration and development of natural resources. The new CPL adds two additional categories of cases under exclusive jurisdiction: disputes arising from the establishment, dissolution, liquidation of legal persons or other organizations established within China's territory, and disputes related to the validity of intellectual property rights granted through

examination within China's territory (Art. 279). These amendments are consistent with international common practice.

2.2 Conflict of jurisdiction, Lis pendens and Forum Non Conveniens

Parallel proceedings: The new CPL formally adopts the rule for parallel proceedings. First of all, the law accepts parallel proceedings. Article 280 explicitly provides that: "For the same dispute arises between the parties involved, if one party initiates a lawsuit in a foreign court and the other party initiates a lawsuit in a Chinese court, or if one party files lawsuits in both a foreign court and a Chinese court, the Chinese court may accept the case if it has jurisdiction according to this law." However, if the parties have entered into an exclusive jurisdiction agreement selecting a foreign court, provided it does not violate the provisions of the CPL regarding exclusive jurisdiction and does not involve China's sovereignty, security, or public interests, the Chinese court may decide not to accept the case; if the case has already been accepted, the court shall dismiss the lawsuit (Art. 280). This amendment reflects the respect for the parties' autonomy in cases where it does not violate the principle of exclusive jurisdiction and demonstrates China's active implementation of international judicial cooperation through legislation.

First-in-time rule: Article 281 of the new CPL adopts the first-in-time rule to address jurisdictional conflicts arising from international parallel litigation. After a Chinese court accepts a case under Article 280, Article 281 then permits the Chinese court to suspend its proceedings if a party applies in writing on the grounds that proceedings involving the same parties and subject matter have already commenced earlier before a foreign court. However, if the first-seized court fails to exercise jurisdiction, the Chinese court may resume the proceedings to protect the parties' legitimate right to litigation. According to this provision, the parties have significant discretion in requesting the suspension or resumption of litigation.

The first-in-time rule includes two exceptions: (1) when the parties agree to the jurisdiction of the Chinese courts, or the dispute falls under the exclusive jurisdiction of the Chinese courts, and (2) when it is clearly more convenient for the case to be heard by the Chinese courts. The issue here is that it is not clear whether the choice of Chinese courts by the parties includes non-exclusive selection. In addition, the determination of whether the Chinese courts are clearly more convenient requires the court to exercise discretionary judgment, which

introduces uncertainty.

Forum Non Conveniens: The 2023 amendments formally accept forum non conveniens and relaxed the conditions for its application in compared to previous judicial interpretation. In order to apply forum non conveniens the defendant must raise an objection to jurisdiction, and the court will not assess forum non conveniens by its own motion. Article 282 listed five factors for the court to exercise discretion: (1) The underlying facts of the dispute did not occur within China’s territory, and it is significantly inconvenient for the Chinese court to hear the case and for the parties to participate in the proceedings; (2) There is no agreement between the parties to submit to the jurisdiction of the Chinese court; (3) The case does not fall under the exclusive jurisdiction of the Chinese court; (4) The case does not involve China’s sovereignty, security, or public interests; (5) It is more convenient for a foreign court to hear the case. The standard to apply forum non conveniens is thus more relaxed than China’s previous practice. The difference between the CPL 2023 and the Judicial Interpretation of CPL 2022 can be found in this table.

Article 530 of the Judicial Interpretation of CPL 2022	Article 282(1) of the CPL 2023
When a foreign-related civil case meets the following conditions simultaneously, the Chinese court may render a ruling to dismiss the plaintiff’s lawsuit and inform them to file a lawsuit with a more convenient foreign court:	For foreign-related civil case accepted by the Chinese court, where the defendant raises an objection to jurisdiction , and simultaneously meets the following conditions, the court may render a ruling to dismiss the lawsuit and inform the plaintiff to file a lawsuit with a more convenient foreign court:

	(1) The underlying facts of the dispute did not occur within China's territory, and it is significantly inconvenient for the Chinese court to hear the case and for the parties to participate in the proceedings; <i>("added")</i>
(1) The defendant requests that a more convenient foreign court has jurisdiction over the case or raises an objection to jurisdiction;	<i>"deleted"</i>
(2) There is no agreement between the parties to submit to the jurisdiction of the Chinese court;	(2) There is no agreement between the parties to submit to the jurisdiction of the Chinese court;
(3) The case does not fall under the exclusive jurisdiction of the Chinese court;	(3) The case does not fall under the exclusive jurisdiction of the Chinese court;
(4) The case does not involve the interests of China, its citizens, legal persons or other organizations;	(4) The case does not involve China's sovereignty, security, or public interests;
(5) The main facts in dispute did not occur within China's territory and Chinese law does not apply to the case, creating significant difficulties for the Chinese court in ascertaining facts and applying the law;	<i>"deleted"</i>
(6) The foreign court has jurisdiction over the case and it is more convenient for it to hear the case.	(5) It is more convenient for a foreign court to hear the case.

In practice, Chinese courts often refuse to apply the doctrine of forum non conveniens due to the criterion that the case does not involve the interests of China, its citizens, legal persons, or other organizations. Courts often assess whether a case involves Chinese interests or parties based on nationality or habitual residence. The removal of this criterion reduces the obstacles to the judicial application of the forum non conveniens doctrine.

Finally, to better safeguard parties' interests, Art. 282 (2) provides: if the foreign court refuses jurisdiction after the plaintiff's claim is dismissed, or fails to take necessary actions or render judgement within a reasonable period, and the plaintiff sues again in China, the Chinese court shall accept it. It aims to protect the claimant's effective access to justice.

3. Judicial assistance

Service of process abroad: Compared to domestic service of process, the process of serving documents in cross-border cases involves more complex procedures, longer duration and lower efficiency. This significantly affects the progress of cross-border judicial procedures. The new CPL enriches the means of cross-border service of process. While retaining the existing methods of service through treaties, diplomatic channels, and embassy channels, the CPL 2023 improves other methods of services and add additional modes of services. See the table below.

Article 274 of the CPL 2022	Article 283 of the CPL 2023
A court may serve process on a party which has no domicile within China's territory in the following manners:	A court may serve process on a party which has no domicile within China's territory in the following manners:
(1) in accordance with the provisions of an international treaty concluded or acceded to by the home country of the party to be served and China;	(1) in accordance with the provisions of an international treaty concluded or acceded to by the home country of the party to be served and China;

(2) through diplomatic channels;	(2) through diplomatic channels;
(3) by entrusting the service to Chinese embassy or consulate in the country where the party is domiciled, if the party is a Chinese national;	(3) by entrusting the service to Chinese embassy or consulate in the country where the party is domiciled, if the party is a Chinese national;
(4) by entrusting the service to the litigation agent authorized by the party to be served to receive service of process;	(4) by entrusting the service to the litigation agent appointed by the party in this case;
(5) by delivering the document to the representative office or a branch office or business agent authorized to receive service of process established by the party to be served within China's territory;	(5) by delivering the documents to the solely funded enterprise , representative office, branch office or authorized business agent established by the party to be served within China's territory;
	(6) where the party is a foreigner or stateless person who acts as the legal representative or main person in charge of a legal person or any other organization established within China's territory, and is a co-defendant with such legal person or other organization, by delivering the documents to such legal person or other organization; (" <i>added</i> ")

	<p>(7) where the legal representative or main person in charge of a foreign legal person or any other organization is within China's territory, by delivering the documents to such legal representative or main person in charge; (<i>"added"</i>)</p>
<p>(6) by mail, if the law of the country where the party is domiciled permits service of process by mail and a receipt showing the date of delivery has not been returned within three months after the date of mailing, provided that other circumstances sufficiently show the document has been served;</p>	<p>(8) by mail, if the law of the country where the party is domiciled permits service of process by mail and a receipt showing the date of delivery has not been returned within three months after the date of mailing, provided that other circumstances sufficiently show the document has been served;</p>
<p>(7) by fax, email or any other means capable of confirming receipt by the party to be served;</p>	<p>(9) by electronic means capable of confirming the receipt of the documents by the recipient, unless prohibited by the law of the country where the party is domiciled;</p>
	<p>(10) by any other means agreed by the party, unless prohibited by the law of the country where the party is domiciled. (<i>"added"</i>)</p>

<p>(8) by public announcement if none of the above means is feasible, in which case the document shall be deemed to have been served after six months from the date of the public announcement.</p>	<p>If none of the above means is feasible, public announcement shall be made, and the documents shall be deemed to have been served after 60 days from the date of announcement.</p>
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Obtaining evidence abroad: Article 284 of the new CPL introduces provisions for obtaining evidence from abroad. In addition to the traditional methods of obtaining evidence through treaties or bilateral agreements with the country where the evidence is located, as well as through diplomatic channels, the new provision authorises other means to take evidence abroad, including entrusting Chinese embassy or consulate in the country where the party or witness is located to obtain evidence, obtaining evidence through real-time communication tools with the consent of both parties, and by other means agreed upon by both parties.

4. Recognition and enforcement of foreign judgments and arbitral awards

Requirement for the recognition and enforcement of foreign judgments: Articles 297 and 298 of the new CPL retain the principle of reciprocity as a prerequisite of recognition and enforcement of foreign judgement. They state that foreign judgments should be recognized and enforced in accordance with international treaties that China has concluded or based on the principle of reciprocity. However, the reciprocity principle raises the following issues.

Firstly, the term “reciprocity” is ambiguous, and China’s judicial practice of using the de facto reciprocity has made it difficult for many foreign court judgments to be recognized and enforced in Chinese courts. Secondly, although the “presumed reciprocity” standard has been suggested in the “Opinions of the Supreme People’s Court on Providing Judicial Services and Safeguards for the Belt and Road Initiative” and the “Nanning Declaration” adopted at the Second China-ASEAN Chief Justices’ Roundtable, these documents are not binding and this new standard has limited impact on judicial practice. Further, even if presumed reciprocity is adopted, there may still be arbitrary situations. For example, a foreign court may refuse to recognize a Chinese judgment because that the domestic judgment has already become res judicata, but this does not mean that

the foreign court will not recognize the Chinese judgment. Nevertheless, the existence of negative precedence may be enough to deny presumed reciprocity. Notably, Article 49 of the Minutes of the National Symposium on the Foreign-related Commercial and Maritime Trials 2021 establishes a reporting and notification mechanism for recognizing and enforcing foreign court judgments. It requires that in cases where the court needs to examine the application of the reciprocity principle, it should submit the proposed decision to the higher court in its jurisdiction for review. If the higher court agrees with the proposed handling, it should submit its review opinion to the Supreme People's Court for verification. Only after receiving a response from the Supreme People's Court can a ruling be made. In March 2022, the Shanghai Maritime Court, after seeking instructions from the Supreme People's Court, applied the standard of *de jure* reciprocity to determine the existence of reciprocity between China and the United Kingdom in the recognition and enforcement of civil and commercial judgments in the case of SPAR Shipping Co., Ltd. v. Dalian Xin Hua Logistics Holdings (Group) Co., Ltd. (2018) Hu 72 Xie Wai Ren 1. This was the first precedent case of reciprocity recognition by Chinese courts. Subsequently, on December 19, 2022, the High Court of England and Wales issued a summary judgment in the case of Hangzhou J Asset Management Co Ltd & Anor v Kei [2022] EWHC 3265 (Comm), recognizing and enforcing two Chinese judgments. This was the first time that Chinese court judgments were recognized and enforced in the UK. It opens up new possibilities for mutual recognition and enforcement of civil and commercial judgments between China and the UK.

Grounds for refusing to recognize and enforce foreign court judgments: Article 300 of the new CPL stipulates five grounds for refusing to recognize and enforce foreign court judgments. These include: (1) When the foreign court lacks jurisdiction over the case pursuant to Article 301 of the CPL; (2) When the defendant has not been properly served or, even if properly served, has not had a reasonable opportunity to present its case, or when a party lacking litigation capacity has not been adequately represented; (3) When the judgment or ruling was obtained through fraudulent means; (4) When a Chinese court has already rendered a judgment or ruling on the same dispute, or has recognized a judgment or ruling on the same dispute rendered by a court of a third country; (5) When it violates the basic principles of Chinese laws or undermines China's national sovereignty, security, or public interests. The prerequisite for recognizing and enforcing foreign court judgments is that the court rendering the judgment must

have jurisdiction over the case.

Article 301 clarifies the three circumstances for determining foreign courts' lack of jurisdiction over a case, namely: (1) the foreign court has no jurisdiction over the case according to its laws, or has jurisdiction according to its laws but lacks an appropriate connection to the dispute; (2) violation of the provisions of the CPL on exclusive jurisdiction; (3) violation of the parties' exclusive choice of court agreement. Among them, the "appropriate connection" requirement in the first provision also echoes the rules for determining special jurisdiction over foreign-related cases under Article 276. Determining appropriate connection will likely be a focus in future foreign civil and commercial litigation disputes.

Article 302 further elucidates the fourth ground for refusing to recognize and enforce judgments. This ground mainly applies to parallel proceedings. According to this provision, the court should review the previously rendered effective foreign court judgment and suspend domestic proceedings. If the foreign judgment meets the requirements for recognition and enforcement, it should be recognized and enforced, and the domestic proceedings should be dismissed. If it does not meet the requirements for recognition and enforcement, the domestic proceedings should resume. This provision aligns with Article 7(1)(5) and (6) of the HCCH Judgment Convention 2019, which China signed and joined on 2019, but has not yet ratified.

Recognition and enforcement of foreign arbitral awards: A significant change pertaining to arbitration decisions in the new law is that it clearly establishes the "place of arbitration" as the standard for determining the nationality of an arbitration decision. See the table below.

Article 287(2) of the CPL 2022	Article 297(2) of the CPL 2023
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<p>Where a party applies for enforcement of an effective arbitration award of an international arbitral institution of China, if the party against whom enforcement is sought or the property thereof is not within China's territory, the applicant shall apply directly to the foreign court having jurisdiction for recognition and enforcement.</p>	<p>Where a party applies for enforcement of an effective arbitration award which is made within China's territory, if the party against whom enforcement is requested or its property is not within China's territory, the applicant may apply directly to the foreign court having jurisdiction for recognition and enforcement.</p>
<p>Article 290 of the CPL 2022</p>	<p>Article 304 of the CPL 2023</p>
<p>Where an arbitration award of a foreign arbitral institution requires recognition and enforcement by a Chinese court, a party shall apply directly to China's intermediate court at the place of domicile of the party against whom enforcement is sought or at the place where the property thereof is located, and the Chinese court shall process the application in accordance with an international treaty concluded or acceded to by China or under the principle of reciprocity.</p>	<p>Where a legally effective arbitral award which is made outside China's territory requires recognition and enforcement by a Chinese court, a party may apply directly to China's intermediate court at the place of domicile of the party against whom enforcement is sought or at the place where the property thereof is located.</p>

	<p>If the domicile of the party against whom the application is made or its property is not within China's territory, the party may apply to the intermediate court of the place where the applicant is domiciled or that has appropriate connection with the dispute adjudicated in the award. (<i>“added”</i>)</p>
	<p>The Chinese court shall process the application in accordance with an international treaty concluded or acceded to by China or under the principle of reciprocity.</p>

Chinese judicial practice on the nationality of arbitral awards has shifted from the “the location of the arbitral institution” standard to the “place of arbitration” standard. Several landmark cases reflect this change. The new CPL further cements the seat of arbitration standard, aligning with international practices. When parties apply to Chinese courts for recognition and enforcement of arbitration rulings made by foreign arbitration institutions within China, it facilitates their recognition and enforcement. This change not only encourages foreign arbitration institutions to conduct arbitration within China, but is also better enables Chinese courts to exercise judicial supervision.

5. Foreign immunity

In this revision of the CPL, a specific provision is added to clarify that in civil litigation involving foreign states, the relevant laws on immunity of foreign states in China shall apply; if no provisions are specified, the CPL shall apply (Art. 305). It is worth noting that the Law on Immunity of Foreign States was promulgated

on September 1, 2023, and will be implemented from January 1, 2024. The Law on Immunity of Foreign States primarily stipulates the conditions under which a foreign state can become a defendant in a legal proceeding in China, hence providing a legal basis for when a foreign state cannot claim immunity from the jurisdiction of Chinese courts. On the other hand, the CPL provides the general procedural framework for all civil cases, and determines jurisdictional rules. This includes when and which court in China has the power to hear a case. So, essentially, the CPL determines which specific court has jurisdiction over the case, while the Law on Immunity of Foreign States regulates the separate substantive issue of whether the foreign state defendant is immune from such jurisdiction.

6. Conclusion

The 2023 amendments to the CPL have brought about significant improvements to the special provisions governing procedures for foreign-related civil litigation. The new amendment not only takes into account China's domestic situations but also keeps up with the latest international legislative developments in the field, drawing on the latest achievements in international legislation. Some provisions have learnt from the latest international framework, such as the HCCH Choice of Court Convention 2005 and HCCH Judgment Convention 2019.

Of course, some new challenges emerge. First, how to define the concept of appropriate connection as a new jurisdiction ground. Second, the asymmetric approach that allows the parties to choose unrelated Chinese courts but requires the chosen foreign court to have practical connection is controversial. Thirdly, the principle of reciprocity as a prerequisite remains a barrier to enforce foreign judgments in China. When the refusal grounds are adopted, which are enough to protect Chinese interests, the requirement of reciprocity becomes unnecessary and redundant. Nonetheless, more clarification will be introduced in practice which hopefully will address some of the above problems.