China’s New Civil Procedure Law and the Hague Choice of Court Convention: One Step Forward, Two Steps Back?

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China’s New Civil Procedure Law adopted in 2023 and taking effect from 1 Jan 2024 introduces significant changes to the previous civil procedure law regarding cross-border litigation. One of the key changes pertains to choice of court agreements. In the past, Chinese law on choice of court agreements has been criticized for being outdated and inconsistent with international common practice, particularly because it requires choice of court clauses to be in writing and mandates that the chosen court must have “practical connections” with the dispute. After China signed the Hague Choice of Court Convention, there was hope that China might reform its domestic law to align with the Hague Convention’s terms and eventually ratify the Convention.

The New Civil Procedure Law retains the old provision on choice of court agreements, stating that parties can choose a court with practical connections to the dispute in writing (Article 35). This provision is included in the chapter dealing with jurisdiction in domestic cases, but traditionally, Chinese courts have applied the same requirements to choice of court clauses in cross-border cases.

The 2023 Amendment to the Civil Procedure Law introduces Article 277 as a new provision specifically addressing choice of court agreements in cross-border cases. It states that if parties in cross-border civil disputes choose Chinese courts in writing, Chinese courts will have jurisdiction. Notably, this provision does not require that the chosen Chinese courts have practical connections with the dispute. In other words, it may imply that when parties in cross-border disputes

choose Chinese courts, Chinese courts will accept jurisdiction regardless of whether they have any connection to the dispute. The removal of the practical connection requirement is intended to encourage overseas parties to choose Chinese courts as a neutral forum for resolving disputes. This is a crucial step in enhancing the international reception of the Chinese International Commercial Court (CICC) and advancing China's goal of becoming a dispute resolution hub for Belt and Road initiatives.

This change aligns with the Hague Choice of Court Convention, which respects party autonomy and reduces the requirements for making parties' consent to the competent court effective. Additionally, the New Civil Procedure Law prevents Chinese courts from declining jurisdiction based on *forum non conveniens* (Art 282(2)) or *lis pendens* (Art 281(1)) when a choice of Chinese court clause exists, consistent with the duty of the chosen state under Article 5(2) of the Hague Choice of Court Convention.

However, controversy remains. Since Article 277 explicitly applies to situations where Chinese courts are chosen, it does not address the choice of foreign courts. The New Civil Procedure Law does not include a specific provision addressing the prerequisites for choosing foreign courts. It is likely that the prerequisites for choosing foreign courts will follow the general rule on prorogation jurisdiction in Article 35. Pursuant to this interpretation, if parties choose a foreign court, the choice is valid only if it is made in writing and the chosen court has practical connections with the dispute. This creates an asymmetric system in international jurisdiction, making it easier for parties to choose Chinese courts than foreign courts. It leaves room for Chinese court to compete with a chosen foreign court, which may demonstrate China's policy to promote the international influence of Chinese courts and to protect the jurisdiction of Chinese courts in China-related disputes.

This asymmetric system is barely compatible with the Hague Choice of Court Convention, which is based on reciprocity. If China ratifies the Hague Convention, the asymmetric system cannot function effectively. Under Article 6 of the

Convention, a non-chosen court of a Contracting State must suspend or dismiss proceedings. Even if a choice of foreign court clause is invalid under Chinese law, it would not meet any of the exceptional grounds listed in Article 6. The lack of a practical connection with the chosen court cannot be interpreted as leading to a "manifest injustice" or being "manifestly contrary to the public policy" of China.

Of course, because the New Civil Procedure Law does not clarify the prerequisites for choosing foreign courts, alternative interpretations are possible. Article 280 provides that if parties conclude an exclusive choice of court clause selecting a foreign court, and this choice does not violate Chinese exclusive jurisdiction or affect China's sovereignty, security, and public interest, Chinese courts may decline jurisdiction if the same dispute has been brought before them. This suggests that China does not intend to create a significant difference between the choice of foreign and Chinese courts. If this is indeed the legislative intention, one alternative interpretation is that Article 35 should apply exclusively to choice of court clauses in domestic proceedings. In the absence of clear rules governing choice of foreign court clauses in cross-border proceedings, this situation can be analogized to the choice of Chinese courts in such proceedings. Consequently, the same conditions outlined in Article 277 should apply equally to the choice of foreign courts. This interpretation would enhance the law's compatibility with the Hague Choice of Court Convention.

It is not yet clear which interpretation will ultimately be accepted. The Supreme People's Court (SPC) should provide judicial guidance on this matter. Hopefully, bearing in mind the possibility of ratifying the Hague Choice of Court Convention, the SPC will adopt the second interpretation to pave the way for China's ratification of the Convention