

Finder on the Supreme People's Court's Notice on Foreign State Immunity Procedures



The news about the Supreme People's Court of the People's Republic of China issuing the Notice on Procedural Matters Related to Civil Cases Involving Foreign State Immunity has been previously reported on this blog.

Following this significant development, Professor Susan Finder, a distinguished Scholar in Residence at Peking University School of Transnational Law, has kindly shared her insights on the matter. Her post was originally published on the Supreme People's Court Monitor. Given its valuable contribution, we decided to repost it here.

Our sincerest thanks to Professor Susan Finder for her thoughtful analysis and generosity in sharing her thoughts.

At the end of March, the Supreme People's Court (SPC) issued procedures to implement China's Foreign State Immunity Law (the Law) in the form of a "Notice on Procedural Matters in Civil Cases Involving Foreign State Immunity" (

关于涉外外国国家豁免民事案件相关程序事项的通知

- *Guanyu she waiguo guojia huomian minshi anjian xiangguan chengxu shixiang de tongzhi*) (Notice). That law has been in force since the beginning of 2024. Consistent with its practice, the SPC published a press release along with the text of the notice. The press release, in the form of the head of the SPC's #4 Civil Division's answers to reporters' questions, provides useful background. *I surmise that the press release is an edited version of materials submitted to SPC leadership for approval (as described in my 2024 article).* I had anticipated that the SPC would do so, after additional research and soliciting comments *from both inside and outside the court system* but had guessed that a notice would be issued in 2024. Although the notice does not so state, I surmise that foreign state immunity cases will be considered "important and difficult" and therefore subject to special internal procedures. See Professor William Dodge's article for comparisons to US law and comments on the Law. Professor Huo Zhengxin provides another perspective. This post summarizes the major points of the notice, *with my comments.*

1. The general rule is that foreign governments and their property have immunity, with exceptions as set out in the Foreign State Immunity Law. The press release usefully makes clear that Article 1 of the Notice requires that a plaintiff filing a civil lawsuits against a foreign state as a defendant or third party, must list in the complaint the specific provisions of the Law the lawsuit is based on, and explain which exception it falls into for the court to review. The court also has the responsibility to clarify (释明 - *Shiming*) the complaint in the process of receiving the complaint. "*Clarify/clarification*" here is a term in Chinese Civil Procedure Law, analogous to a judge's right in other civil legal systems-the "right to ask, suggest to or require the parties to clarify or supplement their ambiguous, insufficient or improper claims, submissions or evidence." If the plaintiff still fails to set out the legal basis after the court's clarifications, the plaintiff should be deemed to not have met the court's requirements, and the court should reject the case.
2. For those first instance civil cases that fall into the exceptions to the Foreign State Immunity Law, certain intermediate courts in provincial

capitals (or their equivalent in directly administered cities, etc) have jurisdiction, as well as financial and intellectual property courts. The notice limits the number of courts that can hear foreign state immunity cases (*as I had surmised*), through centralizing jurisdiction (集中管辖 – *Jizhong guanxia*), but permits financial courts and intellectual courts to hear them and requires other courts to transfer cases that they have accepted to ones with jurisdiction.

3. Article 3 concerns service of process, which must be according to relevant treaties or conventions, or other means not prohibited by the law of the foreign country, or alternatively by diplomatic note (via the Ministry of Foreign Affairs) (Article 17 of the Law). Service by announcement is prohibited.
4. The court must serve the complaint and other documents with a translation accompanying the original Chinese. The foreign government has three months to file a defense. The court has the discretion to permit an extension of time.
5. If the foreign state objects to the jurisdiction of the Chinese court, the court shall engage in a comprehensive review *ex officio* and may hear the views of the parties. Participation in an objection procedure is not deemed acceptance of Chinese jurisdiction (also Article 6 of the Law). If the foreign state does not respond or participate in the Chinese proceedings, the Chinese court must proactively review whether the foreign state has immunity and can hear the views of the parties. (Article 18 of the Law). *The press release provides guidance to lower courts on the review: first, the people's court should examine whether the reasons put forward by the foreign country for enjoying jurisdictional immunity are valid; second, if the reasons put forward by the foreign country are not valid, the people's court should also conduct a comprehensive review on its own initiative, that is, in addition to the reasons, examine whether the foreign country really enjoys jurisdictional immunity and does not fall into the exception to jurisdictional immunity.*
6. If a court requires a certificate on factual issues of state behavior from the Ministry of Foreign Affairs (further to Article 19 of the Law), it shall report to the Supreme People's Court level by level (逐级报 – *Zhuji bao*) to consult and request (商请 – *Shangqing*) the Ministry of Foreign

Affairs to issue a certificate. *This one sentence conveys the bureaucratic operation of the Chinese court system and the nuances of inter-bureaucracy relations.*

An attachment to the notice lists the authorized courts. The SPC has approved some of these courts to establish international commercial tribunals (courts). It is likely that those tribunals will hear sovereign immunity cases:

1. Beijing Fourth Intermediate People's Court (with an international commercial tribunal)
2. Tianjin No.3 Intermediate People's Court
3. Shijiazhuang Intermediate People's Court of Hebei Province
4. Taiyuan Intermediate People's Court of Shanxi Province
5. Hohhot Intermediate People's Court of Inner Mongolia Autonomous Region
6. Shenyang Intermediate People's Court, Liaoning Province
7. Changchun Intermediate People's Court of Jilin Province
8. Harbin Intermediate People's Court of Heilongjiang Province
9. Shanghai No.1 Intermediate People's Court (with an international commercial tribunal)
10. Nanjing Intermediate People's Court of Jiangsu Province (with an international commercial tribunal)
11. Hangzhou Intermediate People's Court, Zhejiang Province (with an international commercial tribunal)
12. Hefei Intermediate People's Court, Anhui Province
13. Fuzhou Intermediate People's Court of Fujian Province
14. Nanchang Intermediate People's Court of Jiangxi Province
15. Jinan Intermediate People's Court, Shandong Province
16. Zhengzhou Intermediate People's Court of Henan Province
17. Wuhan Intermediate People's Court, Hubei Province
18. Changsha Intermediate People's Court of Hunan Province
19. Guangzhou Intermediate People's Court, Guangdong Province
20. Guangxi Zhuang Autonomous Region Nanning Intermediate People's Court
21. Hainan Provincial First Intermediate People's Court
22. Chongqing First Intermediate People's Court
23. Chengdu Intermediate People's Court of Sichuan Province

24. Guiyang Intermediate People's Court, Guizhou Province
25. Kunming Intermediate People's Court, Yunnan Province
26. Lhasa Intermediate People's Court of Tibet Autonomous Region
27. Xi'an Intermediate People's Court of Shaanxi Province
28. Lanzhou Intermediate People's Court of Gansu Province
29. Xining Intermediate People's Court of Qinghai Province
30. Yinchuan Intermediate People's Court of Ningxia Hui Autonomous Region
31. Urumqi Intermediate People's Court, Xinjiang Uygur Autonomous Region