

The Supreme People's Court of the People's Republic of China issued the Notice on Procedural Matters Related to Civil Cases Involving Foreign State Immunity

(This is written by Xiaoxuan Gu, a PhD student in School of Law, University of Macau)

The Foreign State Immunity Law of the People's Republic of China (CFSIL) took effect on January 1, 2024.^[i] To ensure its proper implementation and guide courts nationwide in lawfully and efficiently adjudicating civil cases involving foreign state immunity, the Supreme People's Court (SPC) formulated supporting procedural rules. On March 26, 2025, the SPC issued the Notice on Procedural Matters Related to Civil Cases Involving Foreign State Immunity (hereinafter the "Notice"), which provides definitive guidance to courts at all levels in handling such novel foreign-related cases.

The Notice stipulates provisions on key procedural matters, including case acceptance criteria, centralized jurisdiction mechanisms, service of process rules, jurisdictional immunity review procedures, and protocols for obtaining evidentiary certifications from the Ministry of Foreign Affairs.

Article 3 of the FSIL explicitly stipulates that foreign states and their property enjoy jurisdictional immunity in Chinese courts unless otherwise provided by the Law.^[ii] Therefore, Article 1 of the Notice stipulates that when a plaintiff initiates a civil lawsuit naming a foreign state as a defendant or third party, the plaintiff shall explicitly cite specific provisions of the CFSIL and precisely articulate applicable exceptions to immunity in the petition for judicial review. Petitions that fail to specify the legal basis and remain unclear after judicial clarification by the court shall not be accepted.

At the jurisdictional level, given that civil cases involving foreign state immunity constitute significant new-type foreign-related cases, it is necessary to implement

a centralized jurisdiction mechanism to enhance the professional adjudication of such cases. Therefore, Article 2 of the Notice establishes a dual-track system combining centralized jurisdiction and specialized adjudication, which is that the first-instance civil cases involving foreign states as defendants or third parties shall fall under the jurisdiction of intermediate people's courts with foreign-related civil and commercial jurisdiction at the seats of provincial-level governments (autonomous regions, municipalities directly under the central government) while cases statutorily assigned to specialized courts (maritime, financial, or intellectual property courts) shall remain with such courts due to their domain-specific expertise, notwithstanding foreign state involvement. Where multiple intermediate courts exist in municipalities such as Beijing and Shanghai, the Annex to the Notice explicitly enumerates intermediate courts with centralized jurisdiction. Any other court that has accepted such cases shall issue rulings to transfer them to designated centralized jurisdiction courts in accordance with the Notice.

Articles 3 and 4 of the Notice establish special rules for the service of judicial documents in foreign state immunity cases. Courts shall not employ service by public notice when serving summons or other litigation documents to foreign states, but shall use methods prescribed by international treaties concluded or jointly acceded to by China and the relevant state, or other methods accepted by that state and not prohibited under Chinese law (with no prescribed order of application). Where such methods prove ineffective, courts may effectuate service through diplomatic channels via the Ministry of Foreign Affairs upon approval by the SPC through reporting. Documents requiring service shall include copies of translation in languages specified by applicable international treaties between China and the relevant state; in the absence of such treaties, translations shall be provided in the official language of the foreign state. When serving copies of petitions to foreign states, courts shall concurrently deliver notices of response and notices of evidence submission, informing the recipient to file a statement of defense within three months from the date of receipt. If a foreign country applies for an extension, it shall be examined by the court accepting the case.

Articles 5 and 6 of the Notice prescribe the procedures for courts to review whether foreign states are entitled to jurisdictional immunity. Where a foreign state raises a jurisdictional objection asserting immunity during the jurisdictional period, the court shall conduct a comprehensive review of the immunity claim in

accordance with the CFSIL. Even if a foreign state fails to raise such objection or appear in proceedings during the defense period, the court shall conduct active review *sua sponte* under the aforesaid provisions. The Notice further clarifies that a foreign state's participation in jurisdictional objection proceedings and presentation of arguments shall not constitute acceptance of jurisdiction. This provision aligns with the legislative intent of CFSIL Article 6(1), which stipulates that a foreign state's response "solely to assert immunity" shall not be deemed jurisdictional acceptance, while establishing institutional safeguards for foreign states to actively participate in inquiries and evidentiary submissions during objection proceedings, thereby ensuring their procedural rights.[iii]

Article 7 of the Notice stipulates that where a people's court requires the Ministry of Foreign Affairs to issue evidentiary certifications concerning factual matters related to acts of state in the course of adjudicating civil cases involving foreign state immunity, the court shall, pursuant to Article 19 of the CFSIL submit a request through hierarchical reporting system to the Supreme People's Court for coordination with the Ministry to obtain such certifications.[iv]

Article 8 of the Notice, as the final provision, specifies that foreign states becoming defendants or third parties through procedural amendments such as party joinder or counterclaims shall be subject to this Notice, while specifically establishing a supplementary mechanism that requires courts at all levels to promptly report issues identified during implementation to the SPC.

[i] See the Law of the People's Republic of China on Foreign State Immunity at http://en.moj.gov.cn/2023-12/15/c_948359.htm (last visit on March 29, 2025) [hereinafter CFSIL].

[ii] CFSIL Art.3, "Unless otherwise provided by this Law, a foreign State and its property enjoy immunity from the jurisdiction of the courts of the People's Republic of China."

[iii] CFSIL Art.6(1)," A foreign State shall not be considered as having submitted to the jurisdiction of the courts of the People's Republic of China if: 1. it makes a defense for the sole purpose of claiming immunity..."

[iv] CFSIL Art.19, "The courts of the People's Republic of China shall accept the certifying documents issued by the Ministry of Foreign Affairs of the People's Republic of China on the following questions of fact concerning acts of State: 1.

whether the State involved in a case constitutes a foreign sovereign State as defined in sub-paragraph 1 of Article 2 of this Law; 2. whether and when the service of the diplomatic note specified in Article 17 of this Law is effected; and 3. other questions of fact concerning acts of State.

The Ministry of Foreign Affairs of the People's Republic of China may provide an opinion to the courts of the People's Republic of China on issues concerning major national interests such as foreign affairs other than those mentioned in the preceding paragraph."