

Law on Foreign State Immunity of the People's Republic of China (Draft)

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Article 1 This Law is formulated in accordance with the Constitution in order to ensure the correct application of the law by the courts of the People's Republic of China in the adjudication of civil cases involving foreign states and their property, to protect the legitimate rights and interests of the parties concerned, to safeguard national sovereignty and to promote friendly relations with other states.

Article 2 The foreign states referred to in this Law include:

- (1) sovereign states other than the People's Republic of China;
- (2) institutions or components of the sovereign states referred to in subparagraph (1);
- (3) natural persons, legal persons and unincorporated organisations authorised by the sovereign states referred to in the first subparagraph to exercise sovereign powers on their behalf and carry out activities based on such authorisation.

Article 3 Unless otherwise provided for by this law, foreign states and their property shall be immune from the jurisdiction of the courts of the People's Republic of China.

Article 4 Where a foreign state expressly submits to the jurisdiction of the courts of the People's Republic of China in respect of a particular matter or case in any following manner, that foreign state shall not be immune from the jurisdiction of the court of the People's Republic of China in respect of proceedings relating to that matter or case:

- (1) international treaties;
- (2) written contracts;
- (3) in a particular case, a written document indicating submission to the jurisdiction of

the court of the People's Republic of China dealing with the case;

(4) submitting a written instrument of submission to the jurisdiction to the People's Republic of China, including through diplomatic channels;

(5) other means of express submission to the jurisdiction of the courts of the People's Republic of China.

Article 5 A foreign state shall be deemed to have submitted to the jurisdiction of the courts of the People's Republic of China under any of the following circumstances:

(1) the foreign state institutes the proceedings as the plaintiff before the courts of the People's Republic of China;

(2) the foreign state participates as a defendant in the proceedings before the courts of the People's Republic of China and makes a defence or submits a counterclaim on the substantive issues of the case. However, if the foreign state can prove that it could not have known the fact that immunity could be claimed before making the aforesaid defence, it may claim immunity from jurisdiction on the basis of that fact within a reasonable time after it knew or should have known that fact;

(3) the foreign state participates as a third party in proceedings before a court of the People's Republic of China;

(4) in case the foreign state claims before the court of the People's Republic of China as a plaintiff or as a third party, a counterclaim arising out of the same legal relationship or facts as the claim is brought against the foreign state.

Article 6 A foreign state shall not be deemed to have submitted to the jurisdiction of the courts of the People's Republic of China under any of the following circumstances:

(1) it merely makes a response to claim immunity;

(2) its representatives testify before the courts of the People's Republic of China;

(3) it agrees to apply the laws of the People's Republic of China in specific matters or cases.

Article 7 Where the commercial activities conducted by a foreign state with natural persons, legal persons or unincorporated organisations of other states, including the People's Republic of China, take place in the territory of the People's Republic of China or take place outside the territory of the People's Republic of China but have a direct impact in the territory of the People's Republic of China, that foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China in respect of proceedings arising from such commercial activities.

Commercial activity under this Law means any transaction of goods, services, investment or other acts of a commercial nature otherwise than the exercise of sovereign authority. In determining whether an act is a commercial activity, the courts of the People's Republic of China shall consider the nature and purpose of the act.

Article 8 Where a contract concluded between a foreign state and an individual for the purpose of obtaining labour or services from the individual is wholly or partly performed within the territory of the People's Republic of China, the foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China in respect of any proceedings arising out of the contract, except in the following cases:

(1) the labour or services provided by the individual are obtained for the performance of a specific function in relation to the sovereign authority of the foreign state;

(2) the individual is a diplomatic representative, consular official, staff member of the representative office of an international organisation immune in China or other people immune in respect thereof;

(3) the individual is a national of the foreign state concerned at the time of the institution

of the proceedings and does not habitually reside in the territory of the People's Republic of China;

(4) the foreign state concerned has agreed otherwise with the People's Republic of China.

Article 9 A foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China regarding proceedings of compensation for personal injury or death, or for damage to movable or immovable property, caused by that foreign state within the territory of the People's Republic of China.

Article 10 A foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China in respect of proceedings relating to the following property matters:

(1) any interest or obligation of the foreign state in immovable property situated within the territory of the People's Republic of China;

(2) any interest or obligation of the foreign state in movable or immovable property arising from gifts, bequests, inheritance or bona vacantia;

(3) any interest or obligation of the foreign state in the management of trust property, insolvency estate or company liquidation.

Article 11 A foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China in respect of proceedings relating to the following intellectual property matters:

(1) determination of the ownership of intellectual property rights and related interests of the foreign state protected by the laws of the People's Republic of China;

(2) infringement by the foreign state on intellectual property rights and related interests protected by the laws of the People's Republic of China in the territory of the People's

Republic of China.

Article 12 Where a dispute arising out of commercial activities between a foreign state and a natural person, legal person or unincorporated organisation of other states, including the People's Republic of China, is submitted to arbitration pursuant to a written agreement, or where a foreign state agrees in writing, such as through an international investment treaty, to submit the investment dispute arising between it and a natural person, legal person or unincorporated organisation of other states, including the People's Republic of China to arbitration, the foreign state shall not be immune from the jurisdiction of the courts of the People's Republic of China in respect of proceedings relating to the following matters:

- (1) the effect and interpretation of the arbitration agreement;
- (2) the recognition or annulment of arbitral awards;
- (3) other matters provided for by law for judicial review of arbitration.

Article 13 The property of a foreign state shall be immune from judicial compulsory measures, except under one of the following circumstances: (1) the foreign state expressly waives immunity from judicial compulsory measures by means of an international treaty, arbitration agreement, written contract or written document submitted to a court of the People's Republic of China;

(2) the foreign state has allocated or specifically designated property for the enforcement of judicial compulsory measures;

(3) the property of the foreign state is used for enforcing a judgment in force of a court of the People's Republic of China and the property is used for commercial activities, relates to the proceedings and is located in the territory of the People's Republic of China.

A foreign state's submission to the jurisdiction of the courts of the People's Republic of China shall not be deemed a waiver of immunity from judicial compulsory measures.

Article 14 The property of a foreign state shall not be regarded as property used in commercial activities as provided for by paragraph 1 subparagraph (3) of the preceding Article:

(1) property, including funds in bank accounts, used or intended to be used for official purposes by diplomatic representations, consular authorities, special missions, delegations to international organisations or delegations to international conferences;

(2) property of a military character or property used or intended for use in military matters;

(3) property of the central bank or a financial management body performing the functions of a central bank of a foreign state or regional economic integration organisation, including cash, notes, bank deposits, securities, foreign exchange reserves, gold reserves, immovable property and other property of the central bank or the financial management body performing the functions of a central bank;

(4) property that forms part of the cultural heritage or archives of the state and which is not offered or intended to be offered for sale;

(5) property of scientific, cultural or historical value used for exhibition and which is not offered or intended to be offered for sale;

(6) other property which, in the opinion of the courts of the People's Republic of China, should not be regarded as being used for commercial activities.

Article 15 The courts of the People's Republic of China shall apply the provisions of the civil procedure laws of the People's Republic of China and other relevant laws to the trial and enforcement procedures of foreign states and their property, if not provided

for by this Law.

Article 16 Service of summons or other litigation documents on a foreign state shall be made in the following manner:

(1) in accordance with the manner stipulated in the international treaties concluded between the foreign state and the People's Republic of China or to which both the foreign state and the People's Republic of China are contracting parties;

(2) by other means acceptable to the foreign state and not prohibited by the laws of the People's Republic of China;

(3) by sending a diplomatic note to the diplomatic department of the foreign state, if service cannot be made by the means provided for by the preceding two subparagraphs. The service shall be deemed to have been effected on the day when the diplomatic note is sent.

Service of process in the above manners shall be accompanied by a translation into the relevant language in accordance with the provisions of the international treaty concluded between the foreign state and the People's Republic of China or to which both the foreign state and the People's Republic of China are contracting parties. In the absence of a relevant international treaty, a translation into the official language of the foreign state shall be attached.

When serving a copy of the indictment on a foreign state, the foreign state shall be notified to file a statement of defence within three months from the receipt of the copy of the indictment.

No foreign state may object to the manner of service of process after it has pleaded on the substantive issues in the proceedings instituted against it.

Article 17 If a foreign state fails to appear before a court of the People's Republic of

China within the period designated by the court after service has been effected, the court shall take the initiative to ascertain whether the foreign state is immune from the jurisdiction. In cases where the foreign state is not immune from the jurisdiction of the courts of the People's Republic of China, the court may render a default judgment. The court shall decide the time for rendering a default judgment based on the specific circumstances of the case, while it shall not be earlier than six months after the service of the litigation documents.

Any default judgment rendered by a court of the People's Republic of China against a foreign state shall be served in accordance with the provisions of paragraphs 1 and 2 of Article 16 of this Law.

The time limit for a foreign state to appeal against a default judgment of a court of the People's Republic of China shall be six months from the date of service of the judgment.

Article 18 The courts of the People's Republic of China shall accept the documents issued by the Ministry of Foreign Affairs of the People's Republic of China on the following questions of fact relating to the conduct of the state:

(1) whether the state concerned in the case constitutes a foreign state for the purposes of Article 2 subparagraph (1) of this Law;

(2) whether and when the diplomatic note provided for by Article 16 of this Law is served;

(3) other questions of fact relating to the conduct of the state.

Regarding other issues of vital national interest, such as foreign affairs, the Ministry of Foreign Affairs of the People's Republic of China may issue an opinion to the courts of the People's Republic of China.

Article 19 The provisions of this Law shall not affect the privileges and immunities of

diplomatic representations, consular authorities, special missions, delegations to international organisations, delegations to international conferences and the relevant personnel of the above-mentioned bodies of foreign states in accordance with the laws and regulations of the People's Republic of China and the international treaties concluded by or to which the People's Republic of China is a party.

The provisions of this Law shall not affect the privileges and immunities of foreign heads of state, heads of government, ministers for foreign affairs and other officials of equivalent status in accordance with the laws and regulations of the People's Republic of China and the international treaties concluded by or to which the People's Republic of China is a party.

Article 20 Where the immunity granted by a foreign court to the People's Republic of China and its property is inferior to that provided for by this Law, the courts of the People's Republic of China may apply the principle of reciprocity.

Article 21 Where any provisions in an international treaty to which the People's Republic of China is a party is different from this Law, the provisions of that international treaty shall apply, except for those provisions to which the People's Republic of China has made a reservation.

Article 22 This Law shall come into force on .