

China Legal Headline

The 5th Amendment of Civil Procedure Law of P.R.C will be Effective on January 1, 2024, Manly Focusing on the Foreign-related Civil Litigation Procedure

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On September 1, 2023, the Fifth Session of the Standing Committee of the Fourteenth National People's Congress deliberated and passed the Decision of the Standing Committee of the National People's Congress on Amending the Civil Procedure Law of the People's Republic of China, which will come into effect on January 1, 2024.



5th session of the 14th NPC Standing Committee of China

I. Background

The current Civil Procedure Law was issued in 1991, and had undergone four amendments in 2007, 2012, 2017, and 2021. However, none of which is relevant to the foreign related civil procedures.

With the continuous development of the economy and society and the continuous promotion of high-level opening-up to the outside world, the number of foreign-related civil disputes heard by the people's courts has

rapidly increased in recent years, covering more than 100 countries and regions around the world. The number of cases in which foreign parties proactively choose Chinese courts to exercise jurisdiction is increasing, and the civil and commercial judgments made by Chinese courts are increasingly recognized and enforced by more countries. The current functional positioning and institutional rules of the foreign-related civil litigation procedures can no longer fully meet the needs of just, efficient, and convenient resolution of foreign-related civil disputes. Therefore, it is necessary to make modifications and improvements.

The fifth Amendment in 2023 is focusing on improving the system of foreign-related civil litigation procedures, to further enhancing the quality and efficiency of the trial of foreign-related civil cases and better safeguarding the litigation rights and legitimate interests of the parties.

II. Modifications and Improvements to the Foreign-related Civil Litigation Procedures

The 5th amendment of the Civil Procedure Law has made many modifications and improvements to the special provisions of foreign-related civil litigation procedures, including:

- (1) The relevant provisions of jurisdiction have been modified to further expand the jurisdiction of Chinese courts over foreign-related civil cases.
- (2) In line with international trends, general provisions on parallel litigation, the principle of forum non convenient, and other related provisions have been added.
- (3) The relevant provisions on foreign-related service of process have been further modified to focus on solving the problem of "difficult service of process" in foreign-related cases, improving the efficiency of service of process, and effectively safeguarding the legitimate rights and interests of the parties in foreign-related cases.
- (4) The system of judicial assistance in foreign-related civil cases has been improved, and provisions related to extraterritorial investigation and evidence collection have been added.
- (5) The basic rules for recognizing and enforcing foreign court judgments and decisions have been improved.

III. Impact on Future Foreign-related Civil Litigation Cases

1. Jurisdiction

The jurisdiction of foreign-related civil litigation cases has been substantially expanded in the 5th amendment, which makes it convenient for the foreign-related parties to be involved in a civil lawsuit (as plaintiff or defendant) in China. According to Articles 276, 277, 278, 279, 280, and 281, the following foreign related civil disputes can be filed before People's Court:

- (1) If the contract was signed, performed, the subject matter of the litigation is located, the property subject to attachment is located, the tort occurred, or the representative office is located within the territory of the P.R.C.
- (2) If the parties agree in writing to choose a People's Court to exercise jurisdiction, the People's Court designated in the agreement may exercise jurisdiction.
- (3) If a party does not raise an objection to jurisdiction and responds to the lawsuit or raises a counterclaim, it shall be deemed that the People's Court has jurisdiction.
- (4) Lawsuits arising from disputes over the establishment, dissolution, liquidation, and effectiveness of resolutions made by legal persons or other organizations established within the territory of the P.R.C, or arising from disputes related to the validity of intellectual property rights granted through examination and approval within the territory of the P.R.C. shall under the exclusive jurisdiction of the People's Court.
- (5) If one party to a dispute files a lawsuit in a foreign court and the other party files a lawsuit in a People's Court, or if one party files lawsuits in both a foreign court and a People's Court, and the People's Court has jurisdiction according to this Law, it may accept the case.
- (6) After accepting a case, if a party applies in writing to the People's Court to suspend the proceedings on the grounds that a foreign court has already accepted the case earlier than the People's Court, the People's Court may rule to suspend the proceedings, except in the following circumstances:
 - a. The parties have agreed to choose a People's Court to exercise jurisdiction, or the dispute falls under the exclusive jurisdiction of a People's Court;
 - b. It is obviously more convenient for the People's Court to hear the case.

If a foreign court fails to take necessary measures to hear the case or fails to conclude the case within a reasonable period of time, the People's Court shall, upon the written application of the parties, resume the proceedings.

2. Service of process

In the practice of foreign-related civil cases, service of process has always been a key factor that restricts the improvement of trial efficiency. This amendment of the Civil Procedure Law focuses on solving the pain points and difficulties in the trial of foreign-related civil cases. The following modifications and improvements have been made to the foreign-related service of process:

- (1) The limitation that the legal representative must have the authority to accept service of process for the litigation agent has been removed. It is now clear that as long as the litigation agent is appointed by the person to be served in the case, they should accept service of process.
- (2) Provisions have been added for service of process to be made to wholly-owned enterprises established by the person to be served within the territory of the P.R.C. At the same time, the limitation that branch offices must have the authority to accept service of process has been removed.
- (3) Provisions have been added for service of process to be made to the legal representative or principal responsible person of a foreign person or stateless person who serves as the legal representative or principal responsible person of a legal person or other organization established within the territory of the People's Republic of China and is a co-defendant with the legal person or other organization.
- (4) Provisions have been added for service of process to be made to the legal representative or principal responsible person of a foreign legal person or other organization who is within the territory of the People's Republic of China.
- (5) Provisions have been added for service of process to be made in other ways with the consent of the person to be served, except where prohibited by the laws of the country where the person to be served is located.

3. Investigation and Evidence Collection

Provisions has been added regarding the People's Court to investigate and collect evidence (under request of a party) which is located outside the territory of the P.R.C. This fills a legislative gap and facilitates the parties' applications to the court to obtain evidence from overseas, and granted the power to the court to

investigate and collect evidence outside the territory of the P.R.C, and helpful for the court to find the facts of foreign-related cases.

According to Article 284, the People's Court may investigate and collect the evidence in accordance with the methods provided in international treaties concluded or jointly participated in by the country where the evidence is located and the P.R.C, or through diplomatic channels. If not prohibited by the laws of the country where the evidence is located, the People's Court may investigate and collect evidence in the following ways: (1) Entrusting the embassy or consulate of the P.R.C. in the country where the party or witness with Chinese nationality is located to collect evidence; (2) With the consent of both parties, collecting evidence through instant messaging tools; (3) Collecting evidence in other ways agreed upon by both parties.

4. Recognize and Enforce the Effective Foreign Court Judgment/ Decision

This amendment added two Articles (302, 303) to stipulate the procedure of the concerned party applies to the People's Court for recognizing and enforcing the effective foreign judgment or decision issued by a court. This is the first time that the Civil Procedure Law grants the People's Court the power to recognize and enforce the effective foreign court judgment or decision and clearly stipulates the principles and procedures in this regard.

- (1) If a party applies to a People's Court to recognize and enforce a foreign court judgment or decision that has legal effect, and the dispute involved in the judgment or decision is the same as the one being heard by the People's Court, the People's Court may rule to suspend the proceedings.
- (2) If a foreign court judgment or decision that has legal effect does not meet the recognition conditions provided in this Law, the People's Court shall rule not to recognize or enforce it and resume the suspended proceedings; if the judgment or decision meets the recognition conditions provided in this Law, the People's Court shall rule to recognize its legal effect; if enforcement is necessary, an enforcement order shall be issued and enforced in accordance with the relevant provisions of this Law; for the suspended proceedings, the lawsuit shall be dismissed.
- (3) If a party is dissatisfied with the ruling on recognition and enforcement or the ruling on non-recognition and non-enforcement, they may apply for a review to the higher People's Court within ten days from the date of service of the ruling.

5. Recognize and Enforce the Effective Foreign Arbitration Decision

This amendment expanded the scope of jurisdiction court to handle the cases of recognizing and enforcing the effective foreign arbitration decision, which makes it convenient for the winning party of the arbitration to recognize and enforce the effective arbitration decision.

According to Article 304, in addition to file the case of recognizing the effective foreign arbitration decision before the intermediate People's Court located in the place where the obligor's domicile or property is located for enforcement, if the obligor's domicile or property is not within the territory of the People's Republic of China, the parties may apply to the intermediate People's Court located in the place where the applicant's domicile is located or in a place with appropriate connection to the dispute that was the subject of the ruling.