

# China's New Civil Procedure Law On Foreign-Related Cases Comes Into Force

4 January 2024

---

## Introduction

On January 1, 2024, the Amendment to the Civil Procedure Law of China (the "Amendment") came into force. The Amendment significantly alters civil procedure in foreign-related litigation in the People's Republic of China ("PRC"). The Amendment contains 26 revisions, 19 of which address foreign-related matters. This represents the first substantive modification of the provisions in the Civil Procedure Law concerning foreign-related civil cases since 1991.

We highlight below the major changes following the Amendment. This includes the potential impact on civil and commercial litigation for both Chinese and foreign entities. These changes are relevant both to multinationals doing business in China and Chinese enterprises operating internationally.

---

## Expansion of PRC Court Jurisdiction and Clarification of Exclusive Jurisdiction

The Amendment has broadened the jurisdiction of Chinese courts over foreign-related civil and commercial litigation. Chinese enterprises are now permitted to file lawsuits in respect of disputes that have "appropriate connections" with the PRC.

Under the old law, Chinese courts could exercise jurisdiction over foreign-related cases when the case was connected to China in one of six specified ways. These were where China was the place of contractual signing; the place of contractual performance; the location of the subject matter of the dispute; the location of attachable property; the venue of the tort; or the residence of the representative office of the foreign party. If Chinese enterprises suffered damages abroad but none of these six factors were met, Chinese courts faced challenges in exercising jurisdiction.

Article 276 of the amended Civil Procedure Law governs civil cases against defendants without domicile in China. Previously, Chinese courts had jurisdiction over “contract disputes or other property rights disputes”. The Amendment extends the jurisdiction of Chinese courts over “foreign-related civil disputes excluding identity-related disputes”. This expands Chinese courts’ jurisdiction from a narrow focus on contractual matters to most civil matters, including tort and labor disputes.

The new Article 276 also introduces a test based on “appropriate connections” for Chinese courts to determine their jurisdiction. This is a catch-all provision, conferring discretionary power on Chinese courts to determine whether there are relevant connections between foreign-related civil and commercial cases and China. If there are, Chinese courts may now determine they have jurisdiction. The Amendment does not prescribe specific criteria for determining “appropriate connections”. Although unlikely to be given as expansive a jurisdictional reach as the concept of “minimum contacts” in the United States, companies interacting internationally with PRC companies should monitor how the concept is applied in practice to assess the risk that they may face litigation in Chinese courts when doing business outside China with Chinese companies.

The Amendment also contains provisions concerning jurisdiction agreements. The new Article 277 stipulates that parties involved in foreign-related civil cases can agree mutually in writing to submit to the jurisdiction of Chinese courts. The intention is to encourage parties to enter into jurisdiction agreements that select Chinese courts as a forum for foreign-related disputes and for such agreements to be enforced.

The Amendment stipulates two categories of cases over which Chinese courts have exclusive jurisdiction. The first category is disputes relating to the establishment, dissolution or liquidation of legal entities or other organizations established within the territory of the PRC, including the validity of resolutions made by such entities or organizations. The second category is disputes relating to the validity of intellectual property rights granted within (but not outside) PRC territory. If parties obtain judgments from other forums in disputes falling within either category, these judgments cannot be recognized and enforced in China. Importantly, the carve-out of intellectual property rights granted outside China means that parties can still opt for foreign court litigation or arbitration in disputes concerning such rights. Additionally, jurisdiction agreements related to the ownership of intellectual property are not affected by this provision. If parties stipulate in a contract that disputes over the ownership of certain intellectual property are to be resolved by foreign arbitration or in a foreign court, such agreements remain valid under the new law.

---

## Updated Provisions on Parallel Proceedings and *Forum Non Conveniens*

Prior to the Amendment, the Chinese Civil Procedure Law did not formally address the mechanisms for coordinating parallel proceedings or determining when it would be appropriate for Chinese courts to exercise jurisdiction under the doctrine of *forum non conveniens*, although various judicial interpretations provided guidance to lower courts. The Amendment codifies and refines those judicial interpretations, providing clearer and more authoritative guidance for the coordinated resolution of jurisdictional conflicts in foreign-related civil and commercial cases.

The Amendment permits parallel litigation, meaning that a Chinese court may hear a case regardless of whether a party is pursuing proceedings in a foreign court, so long as the Chinese court has jurisdiction pursuant to the Civil Procedure Law. However, the Amendment requires Chinese courts to respect parties' exclusive jurisdiction agreements in favor of a foreign court, provided that such agreements do not conflict with Chinese courts' exclusive jurisdiction or China's sovereignty, security or public interests.

The Amendment also formally incorporates the doctrine of *forum non conveniens*. This doctrine is applied in many jurisdictions and permits courts to decline to hear cases where it would be more appropriate for another court to hear the case. A party may challenge a Chinese court's jurisdiction based on the doctrine of *forum non conveniens* if all the following requirements are satisfied: (1) the main disputed facts occurred outside of the territory of the PRC, and it is manifestly inconvenient for the Chinese courts to hear the case and for the parties to participate in the litigation; (2) there is no agreement between the parties selecting a Chinese court's jurisdiction; (3) the case does not fall under the exclusive jurisdiction of a Chinese court; (4) the case does not involve China's sovereignty, security or public interests; and (5) it would be more convenient for a foreign court to hear the case.

---

## Accelerated Service on Foreign Parties

The new Article 283 introduces more flexible provisions for service on foreign parties, intended to facilitate the smooth progress of legal proceedings. The changes primarily make it easier to serve foreign parties through their PRC subsidiaries, branches and agents. Specifically, the Amendment includes the following:

- **Service on PRC counsel:** The previous requirement that PRC counsel must "have the authority to accept service on behalf of the party" has been removed. Previously, some PRC counsels strategically included such exclusions to avoid service on foreign

clients. It is now explicitly stated that any PRC counsel who has been appointed to represent the party in the PRC court proceeding is considered authorized to accept judicial documents on behalf of the foreign client for the same court proceeding.

- Service on PRC Branches and PRC WFOEs: PRC branches of foreign parties no longer need to be expressly authorized to accept service of judicial documents on behalf of their foreign headquarters. The Amendment also allows service on foreign parties' wholly owned subsidiaries (WFOEs) in the PRC.
- Service on PRC legal persons or organizations: Foreign persons may be served judicial documents by delivery to PRC entities for which the person acts as legal representative or a person in charge, on the condition that the foreign persons and the PRC entities are co-defendants.
- Service on the legal representative or persons in charge of the foreign parties: Service can now be made to the legal representatives or primary responsible persons of foreign legal persons or organizations if such individuals are within the territory of the PRC.
- Electronic Service: The Amendment explicitly recognizes the validity of electronic service, which is not limited to fax or email, as long as the destination country does not prohibit such method of service. The Amendment also allows service through other methods agreed upon by the recipient, giving parties the freedom to choose a method that best serves their interests.
- Service by publication: When all other methods of service fail, a foreign party may be served by publication. The period for publication service has been reduced from three months to 60 days.

---

## Improvements to Overseas Evidence Collection

In the past, when dealing with the collection of evidence abroad, Chinese courts generally resorted to the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"), bilateral judicial assistance treaties or the principle of reciprocity. In practice, litigants often faced long delays and multiple challenges when collecting evidence through these channels. The Amendment greatly expands the ability of parties to streamline this process through mutual agreement.

The revised Article 284 of the Civil Procedure Law maintains the option for Chinese courts to collect evidence abroad in accordance with international treaties or diplomatic

channels. However, it also stipulates that Chinese courts can employ alternative methods for overseas evidence collection provided the alternative methods are not prohibited by the foreign jurisdiction. These alternative methods include (1) entrusting the Chinese embassy or consulate in the relevant country to collect evidence from the parties or witnesses who are PRC nationals; (2) utilizing instant message tools agreed upon by both parties; and (3) implementing any other methods agreed upon by both parties.

In accordance with China's reservation made under the Hague Convention, foreign courts and other authorities are still not permitted to directly collect any evidence (including by deposing a party or witness) within the territory of the PRC. The Amendment continues the express prohibition on any organization or individual from directly collecting evidence within the territory of the PRC for use in a foreign proceeding without going through international treaty processes, unless this has been approved by the relevant PRC authorities.

---

## Enhancements to Rules Governing Recognition and Enforcement of Foreign Judgments and Arbitral Awards

Articles 300-304 of the Amendment contain new provisions addressing the recognition and enforcement of foreign court judgments. Although Chinese courts will continue to recognize foreign judgments only on the basis of international treaties or reciprocity, the Amendment formalizes the grounds on which Chinese courts may refuse to recognize foreign judgments.

The Amendment stipulates the following grounds for Chinese courts to decline to recognize and enforce foreign judgments:

- the foreign court lacks jurisdiction to rule over the dispute under its own law, the mandatory provisions of the PRC Civil Procedure Law or based on the parties' exclusive jurisdiction agreement;
- the defendant was not duly summoned or lacked a reasonable opportunity to defend itself in the proceedings;
- a party lacking capacity was not duly represented;
- the foreign judgment was obtained through fraud;

- a Chinese court has already rendered a judgment on the same dispute, or recognized a judgment from another country on the same dispute; or
- recognition and enforcement would be contrary to basic principles of PRC law or harm national sovereignty, security, social or public interests.

The Amendment also addresses the issue of potential parallel proceedings at the enforcement stage. A Chinese court may stay litigation if a party has applied for recognition and enforcement of a foreign judgment in the same dispute. Thereafter, the Chinese court may refuse to recognize the foreign judgment and resume the PRC litigation or recognize the foreign judgment and dismiss the claims in the PRC litigation.

The Amendment clarifies several issues regarding the recognition and enforcement of arbitral awards. The PRC is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). PRC law already implements the narrow defenses against recognition and enforcement of the arbitral awards contained in the New York Convention.

When it comes to the recognition and enforcement of arbitral awards, an important issue is whether an award is issued in a New York Convention jurisdiction (in which case the Convention applies), or elsewhere (in which case it does not). In most jurisdictions, arbitral awards are deemed to have been issued in the seat of arbitration. Previously, Chinese courts determined that arbitral awards were issued in the jurisdiction in which the relevant arbitral institute was located (which may differ from the seat of arbitration). Article 304 now changes the definition of foreign arbitral award for the purposes of recognition and enforcement from “arbitral award rendered by the foreign arbitration institution” to “arbitral award which takes effect outside China”. This means that China will now follow international practice and view arbitral awards as having been issued in the seat of arbitration. This modification is consistent with the proposed provisions in the draft 2021 Arbitration Law that introduced the concept of “seat of arbitration”.

In addition, the Amendment provides additional flexibility to those enforcing foreign arbitration awards in China, allowing them to do so at a wider range of PRC courts than was previously the case. Under the old law, parties were confined to applying for recognition and enforcement of a foreign arbitral award in the Intermediate People’s Court where the award debtor was domiciled or its assets located. Following the Amendment, recognition and enforcement may now be sought in any Intermediate People’s Court that is deemed to have “an appropriate connection with the dispute”, not limited to the award debtor’s domicile or location of its assets.

---

## Takeaways

The Amendment represents the first substantive modification to foreign-related civil litigation procedures since the introduction of the Civil Procedure Law. This revision is poised to enhance the appeal of China's foreign-related adjudication system to both domestic and international parties. It aims to ensure equal protection of litigation rights for parties from both within and outside the country and is intended to enhance the international credibility and influence of China's judiciary.

Foreign parties doing business either in China or with Chinese parties abroad should consider the impact of the Amendment on their litigation risks. To the extent they may wish to avoid litigation in China, they should consider including in their commercial agreements exclusive jurisdiction agreements for foreign courts or arbitration agreements for foreign-seated arbitration. If they consider it is likely they may need to enforce foreign judgments or arbitral awards in China, they should ensure that they proceed before a court whose judgments are recognized by the PRC or in a seat of arbitration located in a New York Convention jurisdiction.

\* \* \*

*Debevoise & Plimpton LLP, like other international firms in China, is not admitted to practice PRC law. Our views are based on our general experience in dealing with similar matters and consultation of published compilations of Chinese law. We would be pleased to arrange for assistance from licensed Chinese counsel should you require a formal opinion as to any of the matters set forth in this update.*

Please do not hesitate to contact us with any questions.



**Gareth Hughes**  
Partner, Hong Kong  
+852 2160 9808  
ghughes@debevoise.com



**Philip Rohlik**  
Counsel, Shanghai  
+86 21 5047 1800 x218  
+86 21 5047 0788  
prohlik@debevoise.com



**Cameron Sim**  
International Counsel, Hong Kong  
+852 2160 9807  
csim@debevoise.com



**Tingting Wu**  
International Counsel,  
Shanghai  
+86 21 5047 1800 x202  
+86 21 5047 0785  
twu@debevoise.com



**Eva Y. Niu**  
Legal Consultant, Shanghai  
+86 21 5047 1800 x223  
+86 21 5047 0783  
eniu@debevoise.com