

China's Amended Civil Procedure Law Expands Jurisdiction Over Foreign Disputes



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In early September 2023, the Standing Committee of the National People's Congress adopted an amendment to China's Civil Procedure Law (the Amendment). The Amendment will go into effect on January 1, 2024. The Amendment provides clarity and legal justification for Chinese courts to assert jurisdiction over foreign-related cases that involve Chinese individuals or specific subject matter.

It has become increasingly common for Chinese courts to assert jurisdiction over matters involving a Chinese party or subject matter, even where (i) there is an agreement to submit disputes in another forum under different law; (ii) the relationships or conduct occurred outside of China; and/or (iii) there are parallel cases ongoing in another location. In such circumstances, objecting to the court's jurisdiction has rarely been effective at obtaining an early dismissal. The Amendment provides the courts with a legal basis for their jurisdictional analysis.

JURISDICTION OVER FOREIGN-RELATED CASES

Under Chapter 24 of the Amendment, Chinese courts may assert jurisdiction over civil cases where the foreign defendant has no domicile in China depending on (i) where the contract is signed; (ii) where the contract is performed; (iii) location of subject matter of the contract; (iv) location of property; (v) place where the infringing conduct occurred; (vi) if defendant has a representative office within China; or (vii) other appropriate connections to China. See Amendment Article 276.

While not often effective, if a party does not raise a jurisdictional objection, and answer or file a counterclaim, the court will have jurisdiction. See Amendment Article 278.

The objection to jurisdiction will need to show that (i) the key facts of the dispute did not occur within China and it is inconvenient to litigate in China; (ii) the parties did not agree to jurisdiction in China; (iii) the case does not involve the sovereignty, security, or public interests of China; and (iv) it is more convenient for foreign courts to hear the case. See Amendment Article 284.

EXCLUSIVE JURISDICTION

Under the Amendment, Chinese courts assert exclusive jurisdiction over litigation that involves (i) disputes over the establishment, dissolution, resolutions, or liquidation of organizations in China and the validity of resolutions made

by such organizations; (ii) disputes related to the examination of the validity of intellectual property rights in China; and (iii) disputes over the performance of Sino-foreign joint venture contracts, Sino-foreign cooperative joint venture contracts, and Sino-foreign cooperative exploration and development of natural resources contracts within China. See Amendment Article 279.

PARALLEL CASES OUTSIDE OF CHINA

The Amendment makes clear that Chinese courts may have jurisdiction, based on an analysis under the Civil Procedure Law, where there is a parallel suit in another country. See Amendment Article 282. Likewise, the court will only honor a contractual provision providing exclusive jurisdiction of a foreign court and may reject a case if (i) the matter does not involve China's exclusive jurisdiction; and (ii) it does not involve the sovereignty, security, or social public interests of China. See Amendment Article 282.

TAKEAWAYS

For some time there has been a growing trend for Chinese individual and entities to seek to have their disputes with foreign companies resolved in Chinese courts. In turn, Chinese courts have been receptive to accepting these cases. The Amendment solidifies the legal basis for Chinese courts to assert jurisdiction, sometimes in the face of exclusive jurisdiction provisions and parallel litigation.

Following the effective date of the Amendment and possibly before, we would expect an uptick in cases filed in Chinese courts against foreign parties. Plaintiffs will be more comfortable in the Chinese forum and be amendable to the types of fee arrangements (and magnitude of fees) that local counsel would be willing to offer. For the foreign company, the approach to a suit in Chinese court will be different than in other forums. In that circumstance, the company should reach out early to put together a defense team and strategy to match the circumstances, subject matter, and location.

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