Foreign State Immunity Law of the PRC

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Chapter I — General Provisions

Article 1 — This Law is enacted in accordance with the Constitution to improve the system of foreign State immunity, define the immunity from jurisdiction and immunity from execution enjoyed by a foreign State and its property within the territory of the People's Republic of China, safeguard the sovereignty and rights and interests of the People's Republic of China, and protect the lawful rights and interests of natural persons, legal persons, and other organizations.

Article 2 — A foreign State and its property shall enjoy immunity from the jurisdiction of the courts of the People's Republic of China, except as otherwise provided in this Law.

For the purposes of this Law, "foreign State" includes: (1) a foreign sovereign State; (2) a State organ of a foreign sovereign State or any other institution that exercises State power; (3) an organization established under the law of a foreign sovereign State that exercises State power on behalf of that State; and (4) an organization or individual authorized by a foreign sovereign State to exercise State power on its behalf, whose conduct is attributable to that foreign sovereign State in accordance with international law.

Chapter II — Immunity from Jurisdiction

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Article 3 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning a dispute arising from its commercial activities with a natural person, legal person, or other organization within the territory of the People's Republic of China, where the commercial activities are conducted wholly or partly within the territory of the People's Republic of China.

For the purposes of this Law, "commercial activities" means activities of a commercial, trade, industrial, investment, lending, or any other economic nature, but does not include activities performed in the exercise of State power. In determining whether an activity constitutes a commercial activity, the nature of the activity shall prevail over its purpose.

Article 4 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China if it has expressly consented to such jurisdiction. The consent may be given in writing, including in an international treaty, a contract, or any other written form, before or after a dispute arises.

Article 5 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning a labor contract concluded between the foreign State and a natural person, where the place of performance of the labor contract is located wholly or partly within the territory of the People's Republic of China, or, although the place of performance is not located within the territory of the People's Republic of China, the labor relationship has a substantial connection with the People's Republic of China.

Article 6 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings for compensation for the death of a natural person, personal injury, or damage to or loss of property, where the act or omission causing the damage occurred wholly or partly within the territory of the People's Republic of China.

Article 7 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning immovable property situated within the territory of the People's Republic of China.

Article 8 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning intellectual property rights within the territory of the People's Republic of China, or concerning an act of infringement of intellectual property rights committed by the foreign State within the territory of the People's Republic of China.

Article 9 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning its participation, as a shareholder, investor, or in any other capacity, in the business operations of a company, enterprise, or other organization within the territory of the People's Republic of China.

Article 10 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning a ship or aircraft owned or operated by the foreign State and used for commercial purposes, where the dispute arises within the territory of the People's Republic of China.

Article 11 — A foreign State shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in proceedings concerning an arbitration agreement or an arbitral award, where the place of arbitration, the law applicable to the arbitration agreement, or any other relevant factor has a substantial connection with the People's Republic of China.

Article 12 — A foreign State that institutes a proceeding before the courts of the People's Republic of China, applies for arbitration, or intervenes in a proceeding shall not enjoy immunity from the jurisdiction of the courts of the People's Republic of China in respect of a counterclaim arising out of the same legal relationship or facts as the claim that it has instituted, applied for, or intervened in.

Article 13 — A foreign State that appears before the courts of the People's Republic of China and takes a step in the proceedings for the sole purpose of claiming immunity shall not be deemed to have consented to the jurisdiction of the courts of the People's Republic of China. Consent by a foreign State to the jurisdiction of the courts of the People's Republic of China in a proceeding shall not be deemed to constitute consent to the immunity from judicial compulsory measures under Chapter III of this Law.

Chapter III — Immunity from Judicial Compulsory Measures

Article 14 — The property of a foreign State shall enjoy immunity from judicial compulsory measures, including preservation, attachment, seizure, and enforcement measures, before the courts of the People's Republic of China, except as otherwise provided in this Law.

Article 15 — The property of a foreign State shall not enjoy immunity from judicial compulsory measures in any of the following circumstances: (1) the foreign State has expressly consented to the adoption of the judicial compulsory measures; or (2) the property is used or intended to be used by the foreign State for commercial activities.

Article 16 — The following property of a foreign State shall enjoy immunity from judicial compulsory measures unless the foreign State has expressly consented: (1) property of the central bank of the foreign State, including cash reserves, banknotes, and securities; (2) property used or intended to be used for diplomatic or consular purposes; (3) military property, or property used or intended to be used for military purposes; (4) property forming part of the cultural heritage or archives of the foreign State that is not placed or intended to be placed on sale; and (5) property forming part of an exhibition of objects of scientific, cultural, or historical interest that is not placed or intended to be placed on sale.

Article 17 — For the purposes of this Law, "property of a foreign State" includes property owned, possessed, or controlled by the foreign State.

Article 18 — In determining whether property of a foreign State is used for commercial activities, the purpose of use declared by the foreign State may be taken into account where it is relevant.

Article 19 — A foreign State shall not invoke immunity from judicial compulsory measures with respect to property against which it has expressly waived immunity.

Chapter IV — Special Procedures

Article 20 — Service of process on a foreign State in proceedings before the courts of the People's Republic of China shall be effected through diplomatic channels in accordance with the relevant provisions of law, unless an international treaty concluded or acceded to by the People's Republic of China provides otherwise or the foreign State has expressly consented to another method of service.

Article 21 — Where a foreign State, after having been duly served with process, fails to appear before the court or to submit a statement of defense within the prescribed time limit, the court shall not enter a default judgment against the foreign State unless the court is satisfied that it has jurisdiction over the foreign State and that the claim is supported by evidence.

Chapter V — Supplementary Provisions

Article 22 — Where an international treaty concluded or acceded to by the People's Republic of China contains provisions different from those of this Law, the provisions of the international treaty shall prevail, except for the provisions on which the People's Republic of China has made reservations.

Where a foreign State adopts discriminatory measures restricting the immunity of the People's Republic of China, its State organs, or State property, the People's Republic of China may, in accordance with the principle of reciprocity, adopt corresponding measures with respect to that foreign State.

Source: https://www.danyoungcpa.com/foreign-state-immunity-law/

Article 23 — This Law shall apply to civil and commercial proceedings.

This Law shall come into force on January 1, 2024.

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