Law of the People’s Republic of China on Foreign State Immunity

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Jurisdictional Immunity of Foreign States 2

Chapter III — Exceptions to Jurisdictional Immunity 2

Chapter IV — Immunity from Preservation Measures and Enforcement 3

Chapter V — Special Procedural Provisions 4

Chapter VI — Supplementary Provisions 5

Table of Contents

- Chapter I — General Provisions
- Chapter II — Jurisdictional Immunity of Foreign States
- Chapter III — Exceptions to Jurisdictional Immunity
- Chapter IV — Immunity from Preservation Measures and Enforcement
- Chapter V — Special Procedural Provisions
- Chapter VI — Supplementary Provisions

Chapter I — General Provisions

Article 1 This Law is enacted in accordance with the Constitution of the People’s Republic of China to improve the legal system concerning foreign state immunity, to specify the rules on the jurisdiction of the courts of the People’s Republic of China over civil cases involving foreign states and their property, to protect the lawful rights and interests of the parties concerned, to safeguard the equal application of law, and to promote friendly exchanges with foreign states.

Article 2 For the purposes of this Law, “foreign state” means:

(a) the state sovereignty of a foreign country;

(b) the government or any government department or organ of a foreign state;

(c) any organ, agency, or entity of a foreign state that exercises sovereign authority;

(d) a representative of a foreign state acting in that capacity; or

(e) any other entity or individual that, in accordance with the law of the foreign state concerned, may engage in acts on behalf of the state, insofar as they act in that capacity.

Source: https://www.danyoungcpa.com/foreign-state-immunity-law-prc-2023-english-translation/

Article 3 For the purposes of this Law, “civil case” means a case involving civil and commercial matters, including but not limited to contractual disputes, tort claims, property disputes, intellectual property disputes, and any other civil and commercial disputes.

Article 4 A foreign state, its property, and any person or entity falling within the scope of Article 2 of this Law shall enjoy immunity from the jurisdiction of the courts of the People’s Republic of China, except as otherwise provided by this Law.

Article 5 The courts of the People’s Republic of China shall, in accordance with the provisions of this Law, exercise jurisdiction over civil cases involving foreign states and their property, and shall treat foreign states equally before the law.

Article 6 Where an international treaty to which the People’s Republic of China is a party provides otherwise in respect of foreign state immunity, the provisions of the international treaty shall prevail, unless the People’s Republic of China has made reservations to the relevant provisions.

Article 7 Where the conduct of a foreign state gives rise to a civil case, for the purpose of determining whether the foreign state enjoys jurisdictional immunity, the court shall determine the nature of the act based on its content and substance rather than its purpose.

Chapter II — Jurisdictional Immunity of Foreign States

Article 8 A foreign state and its property shall enjoy immunity from the jurisdiction of the courts of the People’s Republic of China. Unless the foreign state expressly consents to the exercise of jurisdiction by the court or submits to the jurisdiction of the court, the court shall not accept or hear a civil case against a foreign state.

Article 9 A foreign state shall be deemed to have consented to the jurisdiction of the courts of the People’s Republic of China under any of the following circumstances:

(a) the foreign state has expressly consented by international agreement, written contract, or written statement to submit the dispute to the jurisdiction of the courts of the People’s Republic of China;

(b) the foreign state has filed a lawsuit as a plaintiff in the courts of the People’s Republic of China, or has voluntarily intervened as a third party in proceedings and made claims;

(c) the foreign state has filed a counterclaim as a defendant in the courts of the People’s Republic of China;

(d) the foreign state, as a defendant, responds to the merits of the case or files a defense on the merits without raising a plea of immunity.

Article 10 The consent of a foreign state to apply the law of the People’s Republic of China shall not, by itself, be construed as consent to the jurisdiction of the courts of the People’s Republic of China.

Article 11 A foreign state that has consented to arbitration shall not enjoy jurisdictional immunity before the courts of the People’s Republic of China in respect of the following matters relating to the arbitration:

(a) the validity or interpretation of the arbitration agreement;

(b) the constitution of the arbitral tribunal;

(c) the arbitral proceedings; or

(d) the setting aside, recognition, or enforcement of the arbitral award, unless otherwise provided in the arbitration agreement.

Chapter III — Exceptions to Jurisdictional Immunity

Article 12 A foreign state shall not enjoy jurisdictional immunity in civil cases arising from commercial activities conducted by the foreign state with an organization or individual of the People's Republic of China or conducted within the territory of the People's Republic of China.

For the purposes of this Law, "commercial activity" means any act relating to the transaction of goods, provision of services, lending or borrowing of funds, or any other act of a commercial, industrial, or professional nature, but does not include acts performed in the exercise of sovereign authority.

In determining whether an act is a commercial activity, regard shall be had to the nature of the act rather than its purpose.

Article 13 A foreign state shall not enjoy jurisdictional immunity in civil cases arising from the following matters:

(a) contracts of employment between the foreign state and natural persons for work performed wholly or partly within the territory of the People's Republic of China;

(b) personal injury or death caused by an act or omission of the foreign state that occurred wholly or partly within the territory of the People's Republic of China, or damage to tangible property caused by such act or omission;

(c) disputes concerning the ownership, possession, or use of immovable property situated within the territory of the People's Republic of China, or any right, interest, or obligation relating to such property;

(d) disputes concerning the ownership, possession, or use of movable or immovable property arising from succession, gift, or escheat;

(e) disputes concerning intellectual property rights determined, protected, or conferred under the law of the People's Republic of China, including patents, trademarks, copyright, and related rights;

(f) disputes concerning the participation of a foreign state in a company, partnership, or other collective investment organization as a member or shareholder, provided that the entity has participants that are not states or state entities and the dispute does not involve sovereign acts of the foreign state;

(g) disputes concerning the operation of a ship used by a foreign state for a commercial purpose, or the carriage of cargo on such a ship by a commercial carrier, provided that the ship is not a warship, naval auxiliary, or other vessel used for government non-commercial service at the time the cause of action arose;

(h) disputes concerning the effect or validity of an arbitration agreement, or proceedings relating to arbitration.

Article 14 Where a foreign state has expressly agreed in writing with an organization or individual of the People's Republic of China that the courts of the People's Republic of China shall have jurisdiction over a specific civil dispute, the foreign state shall not enjoy jurisdictional immunity in respect of that dispute.

Article 15 Where a foreign state itself has filed a lawsuit in the courts of the People's Republic of China, the foreign state shall not enjoy jurisdictional immunity in respect of any counterclaim arising out of the same legal relationship or facts as the principal claim.

Article 16 The exceptions to jurisdictional immunity under this Chapter shall apply regardless of whether the foreign state concerned maintains diplomatic relations with the People's Republic of China.

Chapter IV — Immunity from Preservation Measures and Enforcement

Article 17 The property of a foreign state shall enjoy immunity from preservation measures and enforcement in the People's Republic of China, except as otherwise provided in this Law.

Article 18 Preservation measures against the property of a foreign state, including seizure, freezing, attachment, or any other interim measures, shall not be taken unless:

(a) the foreign state has expressly consented in writing to such measures;

(b) the foreign state has allocated or earmarked property for the satisfaction of the claim that is the subject of the proceeding; or

(c) the property is used for a commercial purpose within the territory of the People's Republic of China and is connected with the claim.

Article 19 Enforcement measures may be taken against the property of a foreign state only if:

(a) the foreign state has expressly consented in writing to enforcement;

(b) the foreign state has allocated or earmarked property for the satisfaction of the relevant claim; or

(c) the property is in use for a commercial purpose within the territory of the People's Republic of China, the property is connected with the subject matter of the proceedings or with the entity against which enforcement is sought, and the enforcement does not contravene the foreign state's diplomatic or consular immunities.

Article 20 The following categories of property of a foreign state shall not be treated as property in use for a commercial purpose:

(a) property, including bank accounts, used or intended for use in the performance of the functions of the diplomatic mission or consular post of the foreign state, or of its special missions, missions to international organizations, or delegations to international conferences;

(b) property of a military character, or property used or intended for use in the performance of military functions;

(c) property of the central bank or other monetary authority of the foreign state, unless the central bank or monetary authority itself has expressly agreed otherwise;

(d) property forming part of the cultural heritage of the foreign state or part of its archives;

(e) property forming part of an exhibition of objects of scientific, cultural, or historical interest and not placed or intended to be placed on sale;

(f) property of a type that the foreign state and the People's Republic of China have agreed in writing shall not be subject to enforcement.

Chapter V — Special Procedural Provisions

Article 21 In civil cases brought against a foreign state, service of process shall be effected through diplomatic channels in accordance with the international treaties to which the People's Republic of China is a party or with the law of the foreign state concerned.

Where service of process through diplomatic channels is not feasible or is ineffective, service may be effected by any other means accepted by international law and not prohibited by the law of the foreign state concerned, including service by postal mail, by electronic means, or by delivery to the foreign state's representative in the People's Republic of China.

Article 22 Where a civil case is brought against a foreign state, the foreign state shall be given a reasonable period of time to file a defense, which shall not be less than 90 days from the date of service of process.

Article 23 Where a foreign state fails to appear or to file a defense within the time specified, the court shall, before rendering a default judgment, satisfy itself that:

(a) service of process has been properly effected in accordance with Article 21 of this Law;

(b) the foreign state has been given the time specified in Article 22 to file a defense or otherwise respond; and

(c) the claim is well-founded in fact and in law.

A default judgment rendered against a foreign state shall be served on the foreign state in accordance with Article 21 of this Law. The time limit for a foreign state to appeal against a default judgment shall be six months from the date of service of the default judgment.

Article 24 Where a foreign state is a defendant in a civil case and fails to appear in court, the court shall on its own motion examine whether the foreign state enjoys jurisdictional immunity under this Law.

Article 25 In civil proceedings to which a foreign state is a party, the court of the People's Republic of China shall respect the diplomatic and consular immunities of the foreign state, its representatives, and its property in accordance with the international treaties to which the People's Republic of China is a party and with relevant provisions of Chinese law.

Article 26 The Ministry of Foreign Affairs of the People's Republic of China may, at the request of the court or on its own initiative, issue a statement or certificate on any question of fact relating to foreign state immunity, including whether an entity is a foreign state organ or entity exercising sovereign authority, whether a person is a representative of a foreign state, and whether service of process has been properly effected. The court shall accept such statement or certificate as conclusive evidence of the matters stated therein.

Chapter VI — Supplementary Provisions

Article 27 The principle of reciprocity shall apply to matters concerning foreign state immunity. Where a foreign state accords narrower immunity to the People's Republic of China, its government, its government departments or organs, its organs or entities exercising sovereign authority, or its representatives than that provided for in this Law, the People's Republic of China may accord the same treatment to that foreign state.

Article 28 The provisions of this Law relating to civil proceedings shall not affect any diplomatic or consular privileges and immunities enjoyed by a foreign state, its diplomatic missions or consular posts, or members of such missions or posts under international law.

Article 29 The provisions of this Law shall not affect the immunity from criminal jurisdiction enjoyed by a foreign state, its head of state, head of government, or minister for foreign affairs under international law.

Article 30 This Law shall apply to civil cases filed on or after the date of its entry into force. For civil cases filed before the entry into force of this Law, the laws and judicial interpretations in effect at the time of filing shall apply.

Article 31 This Law shall enter into force on January 1, 2024.

Source: https://www.danyoungcpa.com/foreign-state-immunity-law-prc-2023-english-translation/