



Title	New Developments in Chinese International Civil Procedure Law : A Perspective from the Fourth Restatement of the Foreign Relations Law of the United States
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Citation	Osaka University Law Review. 2025, 72, p. 57-78
Version Type	VoR
URL	<a href="https://hdl.handle.net/11094/100521">https://hdl.handle.net/11094/100521</a>
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## **New Developments in Chinese International Civil Procedure Law: A Perspective from *the Fourth Restatement of the Foreign Relations Law of the United States*\***

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### **Abstract**

This paper explores and compares the 2023 amendments to *the Civil Procedure Law of the People's Republic of China* with the corresponding rules in *the Fourth Restatement of the Foreign Relations Law of the United States*. It finds that China's new rules on international civil jurisdiction, the doctrine of *forum non conveniens*, service and evidence-taking abroad, and the structured mechanisms for recognizing and enforcing foreign judgments are clearer and more detailed for respecting other countries' sovereignty and facilitating the participation of Chinese and foreign parties in litigation before Chinese courts. These updates reflect China's efforts to modernize its legal framework, enhance judicial efficiency, align with international norms, promote cross-border legal cooperation, and ensure the protection of national interests while facilitating cross-border legal interactions.

### **Introduction**

The continuous evolution of international Civil Procedure Laws reflects the need for a perfect legal system that can adapt to globalized interactions and the complexities of cross-border disputes. On September 1, 2023, the Fifth Session of the Standing Committee of the 14th National People's Congress of the People's

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\* This paper includes insights from a lecture titled "New Developments in Foreign Relations Law in China," held at the Osaka University Graduate School of Law and Politics on March 29, 2024. This lecture was part of the research outcomes supported by the Japan Society for the Promotion of Science (JSPS) Grant-in-Aid for Scientific Research, specifically within the project titled "Multilateral Studies on the Fourth Restatement of Foreign Relations Law of the United States."

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Republic of China adopted *the Decision on Amending the Civil Procedure Law (hereinafter referred to as the “CPL”) of the People’s Republic of China*. The newly revised Civil Procedure Law (hereinafter referred to as the “2024 CPL”) entered into effect on January 1, 2024, focusing on revising the “Special Provisions on Foreign-related Civil Procedures” in Part Four. The revision aims to promote the concept of a community with a shared future for mankind; strengthen the rule of law both domestically and internationally; ensure equal protection of the legitimate rights and interests of Chinese and foreign parties; foster a market-oriented, rule-based, and internationalized business environment; support high-level openness; and safeguard national sovereignty, security, and developmental interests.<sup>4)</sup> The changes to foreign-related provisions of the *CPL* reflect both China’s extensive judicial experience and its forward-looking approach, in line with international trends.

This study explores these changes from the perspective of *the Fourth Restatement of the Foreign Relations Law of the United States* by comparing the approaches of both jurisdictions to identify areas of convergence and divergence. The key aspects under review include the expansion of jurisdictional bases, incorporation of the principle of *forum non conveniens*, enhancements in service and evidence collection procedures, and structured criteria for recognizing and enforcing foreign judgments. By analyzing these elements, this study seeks to assess the effectiveness of China’s new provisions in achieving judicial predictability, procedural fairness, and international collaboration.

## I. Systematic Improvements in International Civil Jurisdiction Rules

*The 2024 CPL* introduces significant amendments concerning special territorial, consensual, and exclusive jurisdiction in foreign-related civil cases, which serve to expand and refine the jurisdictional framework consistent with national priorities and international practices.

### 1. Expanding Jurisdictional Grounds and Introducing “Appropriate Connection”

Article 272 of the former *CPL*<sup>5)</sup> permitted jurisdiction over defendants without

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4) See H. Y. Shen, Z. Y. Guo: "Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law," *China Law Review*, No. 6, 2023, p.70.

5) Article 272 of *the 2022 CPL* provides: “Where an action is instituted against a defendant without a domicile within the territory of the People’s Republic of China concerning a dispute over a contract or rights and interests in property, if the contract was executed or

a domicile in China if the dispute involved a contract or property rights, if the contract was executed or performed in China, or if the object of action, distrainable property, or a representative office of the defendant was located in China. This jurisdiction was thus limited to specific ties, such as where the contract was signed or performed or where the defendant's property or representative office was situated. Recognizing the limitations of "contract disputes or other property rights disputes" and the inadequacy of only six grounds for jurisdiction, Article 276 of the new *CPL*<sup>6)</sup> broadened the scope to include any foreign-related civil dispute, except those involving personal status, against defendants without a Chinese domicile. This expansion strengthened the jurisdictional framework to encompass a wider range of cases.

Article 276 of the new *CPL*<sup>7)</sup> expands China's international civil jurisdiction by introducing the concept of "appropriate connection." According to Paragraph 2, concerning foreign-related civil disputes involving defendants without a domicile in China, if a case has other appropriate connections to China, it may fall under the jurisdiction of the People's Court. This provision establishes a flexible "protective jurisdiction" model, emphasizing the necessity, proportionality, and reasonableness of exercising jurisdiction. This reflects significant progress in the refinement of China's foreign-related civil litigation legal framework.<sup>8)</sup> Unlike the

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*performed within the territory of the People's Republic of China, or the object of action is located within the territory of the People's Republic of China, or the defendant has distrainable property within the territory of the People's Republic of China, or the defendant maintains a representative office within the territory of the People's Republic of China, the action may come under the jurisdiction of the people's court of the place where the contract was executed, the place where the contract was performed, the place where the object of action is located, the place where the distrainable property is located, the place where the tort was committed or the place where the representative office is domiciled."*

- 6) Paragraph 1 of Article 276 of the 2024 *CPL* provides: "*In the case of a foreign-related civil action not about the personal relationships brought against a defendant who has no domicile in China, if, in China, the contract is signed or performed, the subject matter of the action is located, the defendant has distrainable property, the place that a tort is conducted, the defendant has its representative office, the people's court of the place where the contract is signed or performed, or where the subject matter of the action is, or where the defendant's distrainable property is located, or where the tort is conducted, or where the defendant's representative office is located, has jurisdiction.*"
- 7) Paragraph 2 of Article 276 of the 2024 *CPL* provides: "*In addition to the provisions of the preceding paragraph, if a foreign-related civil dispute has other appropriate connections with the People's Republic of China, it may fall under the jurisdiction of the people's court.*"
- 8) See Z. H. Huang, "A Study on 'Appropriate Connection' in International Civil Jurisdiction from the Perspective of Foreign-Related Rule of Law", *Law Science*, No.12, 2023, pp.176-

“minimum contacts” standard in U.S. law, this approach is more inclusive, allowing courts to consider both subjective and objective factors to determine an “appropriate connection.” This clause accommodates not only factual ties to China but also takes into account concerns related to national sovereignty, security, and developmental interests, thereby enhancing the flexibility and applicability of jurisdictional rules.

## 2. Respecting Party Autonomy through New Foreign-related Jurisdiction Mechanisms

Agreement-based jurisdiction, also known as consensual or negotiated jurisdiction, is an extension of the principles of contractual freedom and autonomy of will in international civil and commercial law, wherein both parties mutually agree to select a court with jurisdiction provided that it does not violate the exclusive jurisdiction of their home country.<sup>9)</sup> Significant revisions were made to the 2012 amendment to the CPL to uphold party autonomy and establish a new mechanism for foreign-related jurisdiction. Notably, the provision distinguishing jurisdictions based on choice-of-court agreements in cases involving foreign elements was removed. Consequently, the revised framework does not differentiate domestic and foreign cases regarding jurisdiction through agreement.<sup>10)</sup> Article 35<sup>11)</sup> of the former *CPL* mandates that an actual connection must exist between the dispute and the court selected by the agreement. Article 130<sup>12)</sup> provides for implied consent to jurisdiction, also known as jurisdiction based on the defendant’s

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9) See H. Y. Shen, “The Construction of China’s Extraterritorial Application Legal System and the Reform of the Jurisdiction System in Foreign-Related Civil and Commercial Litigation—With a Discussion on the Principle of Inconvenient Forum and the Establishment of the Anti-Suit Injunction Mechanism”, *China Review of Administration of Justice*, No.5, 2020, p.118.

10) See H. Y. Shen, Z. Y. Guo: “Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law,” *China Law Review*, No. 6, 2023, p.74.

11) Article 35 of the 2022 *CPL* provides: “The parties involved in a contract or other property rights dispute may, through a written agreement, choose the jurisdiction of the people’s court located in a place with a substantial connection to the dispute, such as the defendant’s domicile, the place of contract performance, the place of contract signing, the plaintiff’s domicile, or the location of the subject matter. However, this choice must not violate the provisions of this law regarding hierarchical jurisdiction and exclusive jurisdiction.”

12) Article 130 of the 2022 *CPL* provides: “After a people’s court accepts a case, if a party raises an objection to jurisdiction, the objection must be raised during the period for submitting a defense. The people’s court shall examine the objection raised by the party. If the objection is valid, the court shall issue a ruling to transfer the case to the people’s court

response.

Article 277 of the 2024 CPL introduces provisions on jurisdiction based on international agreements, whereas Article 288 adds provisions on international jurisdiction. The specific details and analyses are as follows:

First, it added a provision stating: “Where the parties to a foreign-related civil dispute, by a written agreement, choose a people’s court to exercise jurisdiction, the chosen people’s court may have jurisdiction.”<sup>13)</sup> In practice, if the foreign-related jurisdiction agreement designates a specific people’s court but the exercise of jurisdiction violates rules concerning hierarchical, exclusive, special, or centralized jurisdiction—as stipulated in the CPL—the agreement on the choice of court is not necessarily invalid. Instead, jurisdiction should be determined following the relevant provisions of the CPL and accompanying judicial interpretations.

Second, it recognizes tacit submission to jurisdiction, which provides that “Where a party raises no objection to jurisdiction and responds to the action by submitting a written statement of defense or files a counterclaim, the people’s court shall be deemed to have jurisdiction.”<sup>14)</sup> This provision reinforces the principle that active participation by a party without contesting jurisdiction implies acceptance of the court’s authority, thereby upholding procedural efficiency and legal certainty.

The two amendments collectively emphasize party autonomy while ensuring that jurisdictional determinations adhere to established procedural safeguards, thereby enhancing the predictability and stability of the judicial process in foreign-related cases.

### 3. Expanding Exclusive Jurisdiction Based on International Standards

The expansion of exclusive jurisdictional grounds broadens the jurisdiction of the people’s courts.<sup>15)</sup> To incorporate the basis for exclusive jurisdiction by

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*with jurisdiction; if the objection is invalid, the court shall issue a ruling to reject the objection.*

*If a party fails to raise an objection to jurisdiction and submits a defense, it is deemed that the accepting people’s court has jurisdiction, except where the provisions on hierarchical jurisdiction and exclusive jurisdiction are violated.”*

13) Article 277 of the 2024 CPL.

14) Article 278 of the 2024 CPL.

15) See J. Huang, “Developing Chinese Private International Law for Transnational Civil and Commercial Litigation: The 2024 New Chinese Civil Procedure Law”, *Netherlands International Law Review*, Vol. 70, 2023, p.209.

drawing on international practices, the recent revision to the *CPL* introduces two new categories of exclusive jurisdiction under Article 279. These changes addressed the limitations of prior conservative provisions and enhanced the jurisdictional framework.

Paragraph 1 of Article 279 of the 2024 *CPL* states: “An action instituted for a dispute arising from the formation, dissolution, or liquidation of a legal person or any other organization formed within the territory of the People’s Republic of China, or the validity of a resolution made by such a legal person or other organization.” This addition establishes an exclusive jurisdictional basis for disputes involving legal persons and organizations in China.

Paragraph 2 provides “An action instituted for a dispute over the validity of intellectual property rights that have been examined and granted within the territory of the People’s Republic of China.” This provision underscores the exclusive jurisdiction of cases related to the validity of intellectual property rights within China.

In comparison, the *Fourth Restatement of Foreign Relations Law of the United States*, particularly Articles 401-427 and 431<sup>16)</sup>-432, offers a comprehensive and systematic overview of jurisdiction, covering legislative, judicial, and enforcement jurisdictions in both public and private law. Chinese law, including *The Foreign Relations Law of the People's Republic of China*<sup>17)</sup>, has not comprehensively addressed these critical issues. The above-mentioned Civil Procedure Law (the 2024 *CPL*) only improves foreign-related civil judicial jurisdiction. However, it still has significant room for further development.

*The Fourth Restatement of the Foreign Relations Law of the United States* is worth learning. Notably, Article 422<sup>18)</sup> of the Restatement stipulates that U.S.

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16) Article 432 of the *Fourth Restatement of Foreign Relations Law of the United States*

*International Law Governing Jurisdiction to Enforce*

*Under customary international law:*

(a) a state may exercise jurisdiction to enforce in its own territory; and

(b) a state may not exercise jurisdiction to enforce in the territory of another state without the consent of the other state.

17) *The Foreign Relations Law of the People's Republic of China*, Passed by the Third Session of the Standing Committee of the 14th National People's Congress on June 28, 2023.

18) Article 422 of the *Fourth Restatement of Foreign Relations Law of the United States*  
Personal Jurisdiction

(1) Courts in the United States exercise jurisdiction to adjudicate only if they have personal jurisdiction.

(2) The Due Process Clauses of the Constitution require sufficient contacts with the forum and that the exercise of jurisdiction be reasonable.

courts may exercise personal jurisdiction over foreign parties based on Long-Arm Statutes. To align with principles of reasonableness, proportionality, and international comity, it is recommended that the U.S. concept of “minimum contacts” be adapted to “appropriate connection.” This better reflects international standards and practices.

## II. Addressing Parallel Litigation, Suspension Mechanisms, and *Forum Non Conveniens*

To enhance the coordination of international jurisdictional conflicts, recent reforms to China’s *CPL* aim to address key challenges through refined rules and strategic mechanisms.

### 1. Clarification of China’s Position on Parallel Litigation

Parallel proceedings, in which both Chinese and foreign courts have jurisdiction over the same dispute, were previously addressed under Articles 530 and 531 of the 2022 *Judicial Interpretations of the CPL* before the enactment of the 2024 *CPL*.<sup>19)</sup>

Article 280 was newly introduced in the 2024 *CPL* and provides that: “Where the parties are involved in the same dispute, and one party initiates proceedings in a foreign court while the other party initiates proceedings in a people’s court, or one party initiates proceedings in both, the people’s court with jurisdiction in accordance with this Law may accept the case. If the parties have entered into an exclusive jurisdiction agreement selecting a foreign court, provided that such agreement does not contravene the exclusive jurisdiction provisions of this Law and does not implicate the sovereignty, security, or public interest of the People’s Republic of China, the People’s Court may rule to not accept or may dismiss the case if already accepted.” This provision clarifies China’s stance on parallel litigation, emphasizing the importance of respecting exclusive jurisdictional agreements while safeguarding national interests. It aims to balance the recognition of party autonomy in selecting jurisdictions with the protection of China’s legal

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(3) Subject to the limitations noted in subsection (2):

(a) State law authorizes the exercise of personal jurisdiction by State courts; and

(b) the Federal Rules of Civil Procedure provide that proper service, or waiver of service, establishes personal jurisdiction in federal courts.

19) See J. Huang, “Developing Chinese Private International Law for Transnational Civil and Commercial Litigation: The 2024 New Chinese Civil Procedure Law”, *Netherlands International Law Review*, Vol. 70, 2023, p.216.



interests and sovereignty, thereby ensuring that foreign-related disputes do not undermine China's jurisdictional authority.

In practice, if the parties have explicitly designated a specific court as the sole forum, this should be presumed to constitute an exclusive jurisdictional agreement, thereby minimizing concurrent jurisdictional conflicts and enhancing legal predictability. To further address the challenges posed by parallel litigation, the principle of *forum non conveniens* has been introduced in the 2024 CPL, offering an alternative mechanism to manage jurisdictional conflicts effectively.

## 2. Suspension Mechanism for Parallel Litigation

The previous *CPL* of China did not establish a specific system for anti-suit injunctions in foreign-related civil cases. Some scholars believe that the preservation of the behavior system stipulated in Article 103 of the 2022 *CPL* can serve as a legal basis for Chinese courts to issue anti-suit injunctions.<sup>20)</sup> The addition of Article 281 establishes a suspension mechanism, stating: *"After a people's court accepts a case in accordance with the preceding article, if a party submits a written request to suspend proceedings on the grounds that a foreign court has already accepted the case, the people's court may rule to suspend the proceedings, except in the following circumstances: (1) The parties have agreed to choose a people's court for jurisdiction, or the case falls under the exclusive jurisdiction of a people's court; (2) It is evidently more convenient for the people's court to hear the case."*<sup>21)</sup>

If the foreign court fails to take the necessary action or does not conclude the case within a reasonable period, the People's Court shall resume the proceedings upon the written application of a party. Additionally, if a valid foreign judgment or ruling has been recognized, in whole or in part, by a people's court and a party seeks to relitigate the recognized part, the People's Court shall either refuse to accept or dismiss the case if it is already accepted.

When a party applies for suspension of litigation, the People's Court shall exercise judicial discretion in determining whether to suspend the proceedings. The court must evaluate factors such as whether the foreign court accepted the case first, whether the foreign court's trial process is more expedient than that of the People's Republic of China court, and whether the foreign court is nearing a

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20) See Z. H. Huang, "The Jurisprudential Interpretation and Rule Application of Anti-Suit Injunctions in China's Foreign-Related Civil Litigation", *Science of Law*, No.5, 2022, p.184.

21) Article 281 of the 2024 *CPL*.

judgment. This approach is designed to prevent parallel litigation, optimize judicial efficiency, and reduce litigation expenses for the parties, adopting a flexible and pragmatic perspective.

Conversely, if there is an agreement selecting the People's Court for jurisdiction, the dispute falls under the exclusive jurisdiction of the People's Republic of China, or the dispute has a significant connection to the People's Republic of China, making it more convenient for the People's Court to hear the case, the court shall not suspend the proceedings.<sup>22)</sup> Article 281 further states that if, after suspending litigation, the foreign court fails to take the necessary measures to hear the case or fails to conclude it within a reasonable time frame, the People's Court shall, upon a party's application, promptly resume proceedings to prevent undue delays.

### 3. Introduction of the Principle of *Forum Non Conveniens*

Parallel litigation raises litigation costs, wastes judicial resources, and leads to conflicting judgments, driving the international community and national practices to adopt mechanisms like *forum non conveniens* to manage jurisdictional conflicts more effectively.<sup>23)</sup> Following a court's acceptance of a case, the defendant may invoke the principle of *forum non conveniens* to challenge its jurisdiction. Compared to the 2022 *Judicial Interpretations of the CPL*,<sup>24)</sup> the new amendments to the *CPL* include significant changes regarding the provisions on *forum non*

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22) See H. Y. Shen, Z. Y. Guo: "Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law," *China Law Review*, No. 6, 2023, p.75.

23) See H. Y. Shen, "The Construction of China's Extraterritorial Application Legal System and the Reform of the Jurisdiction System in Foreign-Related Civil and Commercial Litigation—With a Discussion on the Principle of Inconvenient Forum and the Establishment of the Anti-Suit Injunction Mechanism", *China Review of Administration of Justice*, No.5, 2020, pp.121-122.

24) Article 530 of the *CPL 2022 Judicial Interpretations*

*In foreign-related civil cases, if all of the following conditions are met, the people's court may rule to dismiss the plaintiff's lawsuit and inform them to file the action in a more convenient foreign court:*

- (1) The defendant requests that the case be under the jurisdiction of a more convenient foreign court or raises an objection to jurisdiction;*
- (2) There is no agreement between the parties to choose the jurisdiction of a court of the People's Republic of China;*
- (3) The case does not fall under the exclusive jurisdiction of a court of the People's Republic of China;*

*conveniens*.

Article 282 states: “Where the defendant objects to jurisdiction in a foreign-related civil case accepted by a people’s court, the court may rule to dismiss the case and inform the plaintiff to file the action in a more suitable foreign court, if all the following conditions are met: (1) It is evidently inconvenient for a people’s court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People’s Republic of China. (2) The parties do not have an agreement choosing a people’s court to exercise jurisdiction. (3) The case does not fall under the exclusive jurisdiction of a people’s court. (4) The case does not involve the sovereignty, security, or public interest of the People’s Republic of China. (5) It is more convenient for a foreign court to try the case.”<sup>25)</sup>

If, following dismissal by the People’s Court, a foreign court declines to exercise jurisdiction, fails to take appropriate measures to hear the case, or does not conclude the case within a reasonable timeframe, the People’s Court must accept the refiled case.

Compared with Article 530 of the *Judicial Interpretation of the 2022 CPL*, the 2024 CPL has changes in the following four aspects: (1) the wording “the defendant petitions that the case shall be subject to the jurisdiction of a foreign court which is more convenient for the defendant” is deleted; (2) the provisions of the *Judicial Interpretation* “the case shall not involve the interests of Chinese citizens, legal persons or other organizations, and only the social and public interests of the People’s Republic of China” is deleted; (3) the provisions of the *Judicial Interpretation* “the case shall not be subject to People’s Republic of China laws and there are major difficulties in the application of law by the People’s Court” are revised as “it is evidently inconvenient for a people’s court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People’s Republic of China”; (4) the application procedure of the principle of *forum non conveniens* is further

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(4) The case does not involve the interests of the state, citizens, legal persons, or other organizations of the People’s Republic of China;

(5) The main facts of the dispute did not occur within the territory of the People’s Republic of China, and the case does not apply the laws of the People’s Republic of China, resulting in significant difficulties for the people’s court in ascertaining facts and applying the law;

(6) The foreign court has jurisdiction over the case, and it is more convenient for the case to be heard by that court.

25) Article 282 of the 2024 CPL.

improved.<sup>26)</sup> Where, after a people's court has ruled to dismiss the action of a party, a foreign court refuses to exercise jurisdiction over the dispute, fails to take necessary measures to hear the case, or fails to conclude the case within a reasonable period, and the party concerned files an action with a people's court again, the People's Court shall accept the case to prevent the Chinese and foreign parties from having their rights damaged due to a lack of remedy.

Comparatively, the provision of Article 424 of *the Restatement of Foreign Relations Law of the United States* on *forum non conveniens* is much more concise. It only states:

(1) Under the federal doctrine of *forum non conveniens*, a federal court may dismiss a case if (a) there is an available and adequate alternative forum and (b) despite the deference owed to the plaintiff's choice of forum, the balance of private and public interests favors dismissal.

(2) A federal court may impose certain conditions to protect the party opposing dismissal.

Accordingly, U.S. courts enjoy greater discretion in the application of *forum non conveniens*. Both the determination of "available and adequate alternative forum" and deference to the plaintiff's choice of forum, as well as the balance of public and private interests, are quite flexible and there is no single determining factor. A federal district court's ruling on a motion of *forum non conveniens* may be subject to an appellate review as an abuse of discretion. China's updated regulations incorporate flexibility measures.

In summary, enhancements to China's *CPL* through clarifications on parallel litigation, the establishment of a suspension mechanism, and the introduction of *forum non conveniens* signify an effort to align domestic practices with international norms. These reforms aim to reduce procedural inefficiencies, strengthen party autonomy, and provide a flexible framework that balances the interests of domestic and foreign parties.

### III. Reforming and Improving the Rules on Service and Evidence-taking Abroad

To address the challenges of service and evidence-taking in foreign-related cases, significant reforms have been implemented in the new *CPL*.

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26) See H. Y. Shen, Z. Y. Guo: "Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law," *China Law Review*, No. 6, 2023, pp.76-77.

### 1. Reforms in the Foreign-related Litigation Service Mechanism

The revised Article 283<sup>27)</sup> of the 2024 CPL refines the foreign-related service system through eight major improvements:<sup>28)</sup>

(1) Deletion of *Agent ad Litem* provisions. The requirement that an *agent ad litem* must be “entitled to receive judicial documents on its behalf” has been removed. This change was prompted by judicial practices wherein *agents ad litem* submitted powers of attorney to intentionally evade service or delay litigation, necessitating the removal of such restrictions.

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27) Article 283 of the 2024 CPL stipulates: “When serving litigation documents to parties who do not have a domicile within the territory of the People’s Republic of China, the people’s court may use the following methods:

(1) Serve in accordance with the method stipulated in an international treaty concluded or jointly participated in by the country where the recipient resides and the People’s Republic of China;

(2) Serve through diplomatic channels;

(3) For recipients who are Chinese nationals, service may be entrusted to the embassy or consulate of the People’s Republic of China in the recipient’s country;

(4) Serve to the litigation agent entrusted by the recipient in the current case;

(5) Serve to the sole proprietorship, representative office, branch, or business agent authorized to accept service, established by the recipient within the territory of the People’s Republic of China;

(6) If the recipient is a foreigner or a stateless person and is 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 that entity, service may be made to that legal person or organization;

(7) If the recipient is a foreign legal person or other organization, and its legal representative or principal responsible person is within the territory of the People’s Republic of China, service may be made to the legal representative or principal responsible person;

(8) If the law of the recipient’s country allows service by mail, service may be conducted by mail. If the acknowledgment of receipt is not returned within three months from the date of mailing, but various circumstances indicate that service has been completed, service shall be deemed to be complete on the date the period expires;

(9) Serve through an electronic method that can confirm receipt by the recipient, unless prohibited by the law of the recipient’s country;

(10) Serve using any other method agreed upon by the recipient, unless prohibited by the law of the recipient’s country.

If none of the above methods can be used, service by public announcement shall be employed. Service shall be deemed complete after 60 days from the date of the announcement.”

28) The content of the following eight sections mainly refers to H. Y. Shen, Z. Y. Guo: “Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law,” China Law Review, No. 6, 2023, pp.76-77.

(2) Removal of branch office entitlement. The provision that allows a branch of a legal person to receive judicial documents on its behalf has been deleted. According to Article 74 of the Civil Code of the People's Republic of China, a branch lacks an independent legal personality and is an internal entity of the principal legal person. Thus, the branch's role is to convey documents to the principal entity without independent entitlement to receive them.

(3) Services to wholly foreign-owned enterprises. The new provision includes services for wholly foreign-owned enterprises established by the addressees within China. Given that foreign shareholders typically appoint management personnel and that service issues do not impact the interests of other shareholders, there is no need for separate authorization for such services.

(4) The addition of services to foreign or stateless persons. The revised rules include services for the legal representative or principal responsible person of a legal person or organization established by a foreign or stateless person within China. This aims to prevent foreign or stateless individuals from avoiding litigation in personal matters while co-defending themselves with related legal entities.

(5) Services for legal representatives of foreign entities. When the addressee is a foreign legal person or organization, and its legal representative resides in China, the service is directed toward that representative.

(6) Electronic services. Item 9 of Article 283 introduces electronic services that can confirm receipt, provided that they are not prohibited by the recipient's country. This flexible and open-ended provision paves the way for the future use of diverse technological methods in legal services.

(7) Service by Agreement. The revised law includes "service in any other manner agreed upon by the recipient," potentially allowing delivery through relatives or friends with the recipient's consent and adherence to local laws.

(8) Improvement of services through public announcements. The timeframe for public announcement services for parties without residences in China has been reduced from three months to 60 days, reflecting an effort to streamline procedures in foreign-related cases.

In comparison, service mechanisms abroad in China are primarily technical regulations. Since U.S. courts may exercise personal jurisdiction over a defendant when service is properly affected or the defendant has waived service, service in state courts is governed by state rules, service in federal courts is governed by federal rules, and service against a foreign government is governed by the *Foreign Sovereign Immunities Act* in both state and federal courts, but all must be consistent with the due process clause in the Constitution. The service must also

provide reasonable notice of the filing and the opportunity to present its case.<sup>29)</sup> In conclusion, the normative objects are quite different between the People's Republic of China and the US.

## 2. Improvements in Cross-border Evidence Collection Procedures

The amended *CPL* introduces significant advancements in the methods of extraterritorial investigation and evidence collection aimed at enhancing the efficiency and quality of foreign-related civil litigation. Article 284 of the 2024 *CPL* provides detailed provisions for these changes, supplementing and expanding the traditional legal framework.

Previously, Article 283.1 of the *CPL* stated: “*Pursuant to international treaties concluded or acceded to by the People's Republic of China or in accordance with the principle of reciprocity, people's courts and foreign courts may request mutual assistance in the service of legal documents, investigation, evidence collection, and other acts in connection with litigation.*” Although this provision offers general guidance for the collection of extraterritorial evidence from a legal assistance perspective, it does not establish a comprehensive institutional framework.

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29) Article 423 of the *Fourth Restatement of Foreign Relations Law of the United States Service of Process*

(1) A court in the United States may exercise in personam jurisdiction over a defendant only if the defendant has been properly served or has waived service. Service in State court is governed by State rules. Service in federal court is governed by federal rules.

Service upon a foreign state is governed by the Foreign Sovereign Immunities Act in both State and federal courts.

(2) Under the Due Process Clauses of the Constitution, service must provide notice reasonably calculated to apprise an interested party of the pendency of the action and afford it an opportunity to present its case.

(3) Whether service may be made in the United States, eliminating the need for service abroad, is determined by the internal law of the forum.

(4) Service in a foreign country may be made:

(a) in a country that is party to the Hague Service Convention, only by a means consistent with the Convention;

(b) in a country that is not party to the Hague Service Convention, by any means authorized by State law if the proceeding is in State court and by any means authorized by the Federal Rules of Civil Procedure if the proceeding is in federal court.

(5) Service in connection with a proceeding in a foreign court may be made in the United States in any manner permitted by the law of the state of origin or pursuant to the order of a United States district court in the district where the person to be served resides or is found.



Article 284 of the 2024 CPL expounds on this by introducing three additional methods for evidence collection abroad, provided that the laws of the country where the evidence is located do not prohibit these methods. This enhancement broadens the range of practical options available for cross-border evidence collection and contributes to more flexible and efficient judicial practices.<sup>30)</sup> The main additions are as follows.

(1) It clarifies that a people's court may, at the request of the parties concerned, investigate and collect evidence outside the territory of the People's Republic of China through international conventions or bilateral treaties that China has acceded to or concluded, or through diplomatic channels. Taking the *Hague Convention on Obtaining Evidence* as an example, the methods for evidence collection stipulated therein include letters of request and diplomatic and consular missions. A request letter was the primary method used for evidence collection. The judicial authority of the requesting country shall, by sending a letter of request to the country where the evidence is located, request that the judicial authority of the requesting country investigate and collect evidence on behalf of the requesting country.

The requested country generally collects evidence according to the methods and procedures prescribed by its domestic law. Evidence collection may also be conducted according to a specific method or procedure requested by the requesting country unless this request conflicts with the domestic law of the requested country. When China decided to accede to the *Hague Convention on Obtaining Evidence* in 1997, it made a reservation to the diplomatic and consular personnel and commissioners, in which it would only implement the provisions of Article 15, i.e. only diplomatic and consular personnel of foreign countries are allowed to obtain evidence from their own citizens without coercive measures, the evidence collection from Chinese citizens or citizens of a third country by diplomatic and consular personnel shall not be accepted, and the evidence collection by commissioners shall not be accepted.

(2) To the extent that the laws of the host countries do not prohibit it, the following new methods for extra-territorial evidence collection have been added. First, entrusting Chinese embassies and consulates to the host countries of the parties or witnesses to collect evidence from the parties or witnesses who are of

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30) See J. Huang, "Developing Chinese Private International Law for Transnational Civil and Commercial Litigation: The 2024 New Chinese Civil Procedure Law", *Netherlands International Law Review*, Vol. 70, 2023, p.222.



Chinese nationality. Second, with the consent of both parties, using instant messaging tools or other means to collect evidence.

These revisions provide practical solutions to the complexities of cross-border litigation. They expand the means available to Chinese courts to conduct extraterritorial investigations, streamline judicial practices, and increase the initiative and efficiency of judicial personnel. These reforms aim to enhance the quality of trials in foreign-related civil cases, aligning with international standards while meeting the needs of modern procedural practices.<sup>31)</sup>

As summarized in Article 426<sup>32)</sup> of the *Fourth Restatement of Foreign Relations Law of the United States*, the extraterritorial evidence system of the U.S. is highly mandatory and does not comply with the rule of reason in international law. U.S. courts may order persons subject to their jurisdiction to produce documents or other forms of evidence, submit a confession relevant to administrative, legislative, or judicial action or investigation, and submit to other forms of compelled interviews, even if the evidence, the person controlling the

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31) See T. Du, K. S. Xie, "Amendment of Chinese Civil Procedure Law Concerning Foreign Affairs", <https://conflictoflaws.net/2023/amendment-of-chinese-civil-procedure-law-concerning-foreign-affairs/>.

32) Article 426 of the *Fourth Restatement of Foreign Relations Law of the United States Obtaining Evidence in Civil Proceedings*

(1) A court in the United States, when authorized by law, may order a person subject to its jurisdiction to produce documents or other forms of evidence and to submit to depositions and other forms of compulsory interviews relevant to an action or investigation, whether administrative, legislative, or judicial, even if the evidence, the person who controls access to the evidence, or the person subject to the compulsory interview is outside the United States.

(2) When authorized to do so by law, a court in the United States may order persons subject to its jurisdiction to produce documents or other forms of evidence and to submit to depositions and other forms of compulsory interviews for use in a foreign or international tribunal.

(3) A court in the United States may impose sanctions on a person who fails to comply with an order to produce evidence or to submit to a compulsory interview, even if complying with the order would violate foreign law. In deciding what sanctions to apply to enforce its order, a court, if the applicable statute or rule permits, takes into account the likelihood of severe sanctions for failing to comply with foreign law and the good-faith efforts of the person to comply with the order in light of obstacles imposed by foreign law.

(4) A court in the United States may use procedures established by treaties to obtain evidence:

(a) from a person not subject to its jurisdiction; or

(b) from a person subject to its jurisdiction as an alternative to ordering production of the evidence under other law.

obtaining of the evidence, or the person subject to compelled interview are located outside the U.S.; U.S. courts may impose sanctions on persons who do not comply with an order to produce evidence or submit to any compelled interview, even if compliance violates foreign law; and U.S. courts may obtain evidence from persons not subject to their jurisdiction according to procedures established by treaty, but there is no obligation to pre-empt the treaty. China's legislation, based on the principle of sovereign equality, demonstrates greater respect for international treaties and enriches the technical methods for extra-territorial evidence collection, which is far more reasonable.

#### **IV. Promoting Cross-border Circulation of Civil and Commercial Judgments**

The cross-border circulation of civil and commercial judgments is a cornerstone in fostering international legal cooperation and economic interaction. As globalization accelerates, ensuring efficient recognition and enforcement of foreign judgments becomes essential for supporting cross-border transactions and reducing potential conflicts. The recent amendments to China's *CPL* have introduced structured mechanisms that align with international norms while upholding national interests. These measures reflect China's commitment to enhancing procedural clarity and promoting judicial reciprocity, facilitating smoother legal exchange between jurisdictions.

##### **1. Systematic Grounds for Reviewing Foreign Judgments**

The 2024 *CPL* introduced a comprehensive framework for reviewing the recognition and enforcement of foreign court judgments. According to Article 300 of the 2024 *CPL*, people's courts should reject the recognition and enforcement of a foreign judgment if any of the following five circumstances exist: (1) The foreign court lacks jurisdiction over the case according to Article 301 of this law. (2) The respondent was not lawfully summoned or, although summoned, was not given a reasonable opportunity to present statements or arguments, or the party without the capacity to act was not properly represented. (3) The judgment or ruling was obtained fraudulently. (4) A People's Court has already rendered a judgment or ruling on the same dispute or recognized a judgment or ruling from a third-country court on the same matter. (5) The judgment violates the basic principles of the laws of the People's Republic of China or compromises the sovereignty, security, or public interests of the state.<sup>33)</sup> These five conditions provide specific grounds for non-recognition and non-enforcement, aligning with

international standards for judicial review. Mutual legal assistance treaties concluded between China and other nations and the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters are referenced as frameworks for non-recognition and enforcement protocols.<sup>34)</sup>

Furthermore, similar to the provisions in the 2022 CPL, the 2024 CPL<sup>35)</sup> allows a creditor holding a valid foreign judgment to directly apply to an intermediate People's Court for recognition and enforcement. This process can be based on treaties ratified by China, or the principle of reciprocity. The intermediate people's court will then direct the case to the court in the judgment debtor's domicile or where the debtor's assets are located. This enhancement streamlines the procedure, providing greater clarity and efficiency for creditors seeking recognition and enforcement of foreign judgments.

## 2. Clarified Criteria for Indirect Jurisdiction

Article 301 of the 2024 CPL specifically addresses the indirect jurisdiction of foreign judgment-rendering courts. It stipulates that a people's court shall find that a foreign court lacks jurisdiction if it either does not have jurisdiction under its laws or, though having jurisdiction under its laws, lacks an appropriate connection to the case. Additionally, the foreign court is deemed to lack jurisdiction if it infringes on the exclusive jurisdiction of Chinese courts or contradicts an exclusive choice of court agreement made by the parties.<sup>36)</sup>

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33) Article 300 of the 2024 CPL.

34) See H. Y. Shen, Z. Y. Guo: "Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law," China Law Review, No. 6, 2023, p.79.

35) Article 298 of the 2024 CPL stipulates: "A legally effective judgment or ruling issued by a foreign court that requires recognition and enforcement by a people's court may be directly applied for recognition and enforcement by the party concerned to the intermediate people's court with jurisdiction. Alternatively, a foreign court may request recognition and enforcement from the people's court in accordance with an international treaty concluded or joined by that country and the People's Republic of China, or based on the principle of reciprocity."

36) Article 301 the 2024 CPL provides that "A people's court shall determine that a foreign court has no jurisdiction over a case under any of the following circumstances: (1) The foreign court has no jurisdiction over the case according to the governing law or has jurisdiction over the case according to the governing law but has no appropriate connection with the dispute involved in the case. (2) The provisions of this Law on exclusive jurisdiction are violated. (3) The agreement by which the parties exclusively choose the court to exercise jurisdiction is violated."

It is different from simply adopting the legal mode of the country in which the judgment is made, nor is it adopting the “mirror image” mode of the laws of the foreign country.<sup>37)</sup> Instead, it adopts a “two-way combination” comprehensive judgment mode, which can be summarized as following steps:

First, the court in the country in which the judgment is made must have jurisdiction according to the laws of the foreign country.

Second, even if the foreign court has jurisdiction according to the laws of the foreign country, if the basis of the jurisdiction is too weak and has no proper connection with the dispute, or if the jurisdiction is abused, the judgment or ruling cannot be recognized and enforced.

Third, if China’s provisions on exclusive jurisdiction are violated, the foreign court should be deemed as having no jurisdiction over the case.

Finally, if the jurisdictional agreement of the parties is violated, the foreign court should also be deemed as having no jurisdiction over the case.

### 3. Introduction of a Reconsideration Mechanism

A new Article 303 is added, which provides that “A party may apply for reconsideration against a ruling on recognition and enforcement or non-recognition and non-enforcement to the people’s court at the next higher level within ten days after the ruling is served.”

Since a People’s Court’s ruling on whether to recognize and enforce a judgment or a ruling made by a foreign court has a significant impact on the substantive rights and obligations of the parties, the reconsideration procedure demonstrates the importance that China attaches to procedural justice and the safeguards it provides to ensure fairness and transparency in cross-border judicial matters.

Comparatively, the grounds for refusing to recognize and enforce a foreign court judgment, as summarized in Articles 483<sup>38)</sup> and 484 of *the Fourth*

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37) See H. Y. Shen, Z. Y. Guo: “Review and Interpretation of the Amendments to the Foreign-related Provisions of the Civil Procedure Law,” *China Law Review*, No. 6, 2023, p.80.

38) Article 483 of *the Fourth Restatement of Foreign Relations Law of the United States*  
*Mandatory Grounds for Nonrecognition*

*A court in the United States will not recognize a judgment of a court of a foreign state if:*

*(a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with fundamental principles of fairness;*

*(b) the court that rendered the judgment did not have personal or subjectmatter jurisdiction;*  
*or*

*Restatement of Foreign Relations Law of the United States* have the following features:

First, there is a separate list of mandatory grounds for non-recognition, but the terms “impartial tribunals” and “fundamental principles of fairness” are too vague and susceptible to political influence; only using U.S. law to determine whether the court in which the judgment was rendered has jurisdiction in personam or *ratione materiae* is not as inclusive as Chinese law; and mandatorily applying the Speech Act to prohibit recognition or enforcement of the relevant defamation judgment, while generally denying recognition and enforcement of defamation judgments rendered in jurisdictions with less protection for freedom of speech and of the press than those rendered in the U.S. is too arbitrary.

Second, the discretionary grounds for non-recognition are much broader than those of China, including: (a) *the party resisting recognition did not receive adequate notice of the proceeding in the foreign court in sufficient time to enable it to defend*; (b) *the judgment was obtained by fraud that deprived the party resisting recognition of an adequate opportunity to present its case*; (c) *the judgment or the claim on which the judgment is based is repugnant to the public policy of the State in which recognition is sought or of the United States*; (d) *the judgment conflicts with another final and conclusive judgment*; (e) *the proceeding in the foreign court was contrary to an agreement between the parties to commit resolution of the dispute in question exclusively to another forum*; (f) *in cases in which the foreign court’s jurisdiction rested only on personal service, the foreign court was a seriously inconvenient forum for resolution of the dispute*; (g) *the judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court*; (h) *the specific proceeding in the foreign court was not compatible with fundamental principles of fairness*; or (i) *the courts of the state of origin would not recognize a comparable U.S. judgment*.<sup>39)</sup> Terms like “seriously inconvenient,” “integrity of the rendering court,” and “fundamental principles of fairness” allow significant discretion and the reciprocity requirement diverges from current international trends, presenting a more conservative approach than China’s new legislation.

China’s new legal provisions reflect a more structured and predictable framework that fosters international judicial cooperation and reduces uncertainty in

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(c) *the judgment rested on a claim of defamation and the SPEECH Act forbids its recognition or enforcement.*

39) Article 484 of the *Fourth Restatement of Foreign Relations Law of the United States*.

the recognition and enforcement of foreign judgments.

## Conclusion

The recent amendments to China's CPL mark a substantial step forward in aligning its international civil procedure framework with global practices. The incorporation of new jurisdictional rules, the principle of *forum non conveniens*, and enhanced procedures for service and evidence-taking abroad indicate a commitment to improving cross-border judicial cooperation. The systematic approach to recognizing and enforcing foreign judgments with clarified criteria for indirect jurisdiction and the introduction of a reconsideration mechanism further underscores China's dedication to procedural clarity and fairness. Although significant progress has been made, further refinement could be beneficial, particularly in adapting concepts such as minimum contact and ensuring the consistent application of new rules. These legislative updates collectively underscore China's strategic approach to foster a modern, predictable, and cooperative international legal environment that enhances both domestic and global legal practices.

