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ARTICLE

Developing Chinese Private International Law for Transnational Civil and Commercial Litigation: The 2024 New Chinese Civil Procedure Law

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Abstract
On 1 September 2023, the Standing Committee of the National People's Congress amended the Chinese Civil Procedure Law which will come into effect on 1 January 2024 ('the 2024 CPL'). The 2024 CPL brings significant changes to the entire procedure of transnational civil and commercial litigation in China covering jurisdiction, service of process, the taking of evidence abroad, and the recognition and enforcement of foreign judgments. It is critical for foreign states, courts, and parties which conduct business in China to understand this new legal development and to prepare for the changes. Adopting comparative-law and empirical research methods, this commentary aims to explain the new provisions for transnational civil litigation in the 2024 CPL and how they may be implemented in practice.

Keywords Jurisdiction · Service of process · Taking of evidence abroad · Foreign judgment recognition and enforcement · China · Sovereign immunity · Civil procedure

1 Introduction

On 1 September 2023, the Standing Committee of the National People's Congress, the paramount legislative body in China, amended the Chinese Civil Procedure Law which will come into effect on 1 January 2024 (hereinafter 'the 2024 CPL').[1] The

[1] Civil Procedure Law, promulgated by the Standing Committee of the National People's Congress, 9 April 1991, most recently amended on 1 September 2023, effective 1 January 2024. There is no official English translation of the CPL so the translation in this paper is based on the translation at the PKULaw.com and revised by the author. This paper focuses on transnational litigation in Mainland China; therefore, 'Chinese courts' and 'people's courts' are interchangeable.

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2024 CPL brings significant changes to the entire procedure of transnational civil and commercial litigation in China covering jurisdiction, service of process, the taking of evidence abroad, and the recognition and enforcement of foreign judgments. On the same date, the Standing Committee of the National People's Congress also enacted the Foreign State Immunity Law (hereinafter 'FSI Law') which unprecedentedly adopts restrictive foreign state sovereign immunity.[2] The 2024 CPL as *lex generalis* will apply to lawsuits against a foreign state where *lex specialis*, the FSI Law, does not provide a provision thereon.[3] It is therefore critical for foreign states, courts, and parties which conduct business in China to understand the new legal development and to prepare for the changes.

This paper will compare the 2024 CPL with the conventions administered by the Hague Conference on Private International Law (hereinafter 'HCCH') such as the Choice of Court Convention,[4] the Judgments Convention,[5] the Service Convention,[6] and the Evidence Convention.[7] It has also conducted extensive empirical research into the enforcement status of all foreign monetary and bankruptcy judgments that the Chinese courts have decided to recognize and enforce. It aims to explain the new provisions for transnational civil litigation in China and how they may be implemented in practice.

It has five parts. Section 2 answers why and how the 2024 CPL and the FSI Law expand the jurisdiction of the Chinese courts. It covers the basic jurisdiction rule, choice of court agreements, exclusive jurisdiction, and jurisdiction concerning foreign sovereignty. Section 3 analyses the use of *lis alibi pendens* and *forum non conveniens* to fine tune parallel proceedings between a Chinese court and a foreign court. Section 4 is devoted to the service of process and the taking of evidence abroad. It suggests that Chinese courts should liberalize restrictions on foreign parties conducting service and the taking of evidence in China. Section 5 focuses on the recognition and enforcement of foreign judgments in China and presents the results of the empirical research. Section 6 concludes the paper.

[2] China Foreign State Immunity Law, promulgated by the Standing Committee of the National People's Congress, 1 September 2023, and effective 1 January 2024.

[3] Art. 305 of the 2024 CPL.

[4] The Hague Convention of 30 June 2005 on Choice of Court Agreements (hereinafter 'the Choice of Court Convention'). For its text, see https://www.hcch.net/en/instruments/conventions/full-text/?cid=98 (accessed 11 September 2023). For China's perspective, see Tu (2007), p. 347.

[5] The Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (hereinafter 'the Judgments Convention'). For its text, see https://www.hcch.net/en/instruments/conventions/full-text/?cid=137 (accessed 11 September 2023). For China's perspective, see Sun and Wu (2020), p. 481.

[6] The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (hereinafter 'the Hague Service Convention'). For its text, see https://www.hcch.net/en/instruments/conventions/full-text/?cid=17 (accessed 11 September 2023). For China's perspective, see He (2009), p. 62.

[7] The Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (hereinafter 'the Hague Evidence Convention'). For its text, see https://www.hcch.net/en/instruments/conventions/full-text/?cid=82 (accessed 11 September 2023). For China's perspective, see Qiao (2010), p. 205.

2 Expanding the Jurisdiction of Chinese Courts

2.1 Basic Jurisdiction Rule

Article 276 of the 2024 CPL provides a basic jurisdiction rule for foreign-related civil disputes except for those relating to personal status.[8] Compared with its predecessor (Art. 272 of the 2022 CPL),[9] it expands the people's court's jurisdiction with regard to two aspects.

Firstly, Article 272 of the 2022 CPL is limited to 'contract and other disputes over property rights and interests', which improperly excludes non-property-related cases such as personality rights and the right to personal data. Therefore, Article 276 of the 2024 CPL removes the limitations and applies to all foreign-related civil disputes except for those on personal status. Personal status cases refer to divorce, adoption, maintenance, inheritance, and other cases concerning personal relationships and status. These cases are neither contract, tort, nor property; none of the connecting factors in Article 276 of the 2024 CPL is applicable.

Secondly, under Article 272 of the 2022 CPL, a court at the place where the consequence of the tort occurs may not have jurisdiction if it is not in the location of the subject matter of the action, the defendant's distrainable property, or the defendant's representative. This creates challenges for the Chinese courts in exercising jurisdiction in internet tort or pollution cases where the activity of the tort may take place abroad but its consequence occurs in China. This is also inconsistent with the jurisdiction provision for non-foreign-related cases where the courts in either the place where the tort occurred or its consequence have jurisdiction over the tort in question.[10] Filling the gap, the 2024 CPL authorizes a people's court to exercise jurisdiction when there is an appropriate connection between the foreign-related dispute and China.[11] An 'appropriate connection' also appears in Article 301 of the 2024 CPL to determine whether a foreign court has indirect jurisdiction in the proceedings on the recognition and enforcement of foreign judgments.[12] The 2024 CPL does not define the meaning of 'an appropriate connection'. An appropriate connection should have a broader scope than 'an actual connection', which is a term used in Article 529

[8] Art. 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. Except for the above provision, the people's court has jurisdiction over a foreign-related civil dispute that has other appropriate connection with China.

[9] Civil Procedure Law, promulgated by the Standing Committee of the National People's Congress, 9 April 1991, amended on 24 December 2021, effective 1 January 2022 (hereinafter '2022 CPL').

[10] Art. 24 of the Judicial Interpretations of the Civil Procedure Law, promulgated by the Judicial Committee of the Supreme People's Court, 18 December 2014, most recently amended and adopted on 22 March 2022, effective on 10 April 2022 (hereinafter 'CPL 2022 Judicial Interpretations').

[11] Para. 2, Art. 276 of the 2024 CPL.

[12] See *infra* Sect. 5.2.1.

of the CPL 2022 Judicial Interpretations to limit party autonomy in making choice of court agreements.[13] It also goes beyond 'the closest connection' provided by the Chinese Law on the Application of the Law on Foreign-Related Civil Relations.[14]

The term 'appropriate connection' was adopted by the Supreme People's Court to determine the Chinese courts' jurisdiction in a series of recent patent disputes.[15] In *Conversant v. ZTE*, the Court held that an appropriate connection should include the location of the subject matter, the implementation of the patent, and the place where the contract was concluded and performed.[16] In *Oppo v. Sharp*, the Court expanded the scope of an 'appropriate connection' to the place where the patent was granted and implemented, the place where the patent was concluded and negotiated, the place where the patent licensing contract was performed, and the place of distrainable or other enforceable property, etc.[17] If any of these places is located in China, an appropriate connection is established.[18] In *Nokia v. Oppo*, the Court further extended the list by including the place of the reasonably expected location of the performance of the contract and the main place where the patent was granted and implemented.[19]

An appropriate connection may also include the place where the tort occurred and its consequence, the place of the defendant's representative office, and choice of court agreements. For example, a lawsuit on a bill of exchange issued abroad may be heard in a people's court if the place where the bill is to be paid is in China. An appropriate connection may cover the place where a vehicle, ship, or aircraft first arrives after an accident or the place at the end of a voyage. Examples are a tort action on the railway, road, water, or air transport accident that occurred abroad but after the accident where the vehicle or ship first arrived or landed is in China; claims for damages caused by a collision at sea or by any other maritime accident which occurred abroad if the vessel first docks in China after the accident; a lawsuit instituted for the expenses of maritime salvage which occurred abroad when the salvaged ship first docked after the disaster at a Chinese port and a general average claim where the ship first docked or the voyage ends in China.

[13] An actual connection includes the defendant's domicile, the place where the contract was conclude and performed, the plaintiff's domicile, the location of the subject matter, the place where the torts took place, etc. Art. 529 of the 2022 Judicial Interpretations.

[14] E.g. Art. 2 of the Law on the Application of the Law on Foreign-Related Civil Relations, adopted on 28 October 2010 and effective as of 1 April 2011.

[15] Yuxin Nie, 'Overview of the 2023 Amendments to Chinese Civil Procedure Law', https://conflictoflaws.net/2023/overview-of-the-2023-amendments-to-chinese-civil-procedure-law/ (accessed 1 October 2023).

[16] (2019) Zuigao Fa Zhi Min Xia Zhong 157 Hao.

[17] Ibid.

[18] Ibid.

[19] (2022) Zuigao Fa Zhi Min Xia Zhong 167 Hao.

2.2 Choice of Court Agreement

The pertinent question is whether the court chosen by the parties must have an actual connection to the dispute in question.[20] Neither the Choice of Court Convention nor the Judgments Convention imposes such a requirement.[21] However, Articles 35 and 272 of the 2022 CPL require that the chosen people's court shall have an actual connection with the dispute. Article 272 of the 2022 CPL has been amended by the 2024 CPL, allowing the parties to make use of a written choice of court agreement to choose a Chinese court that has no connection with the dispute.[22] This unprecedented amendment lays down a critical foundation for China to ratify the Choice of Court Convention. Nevertheless, the 2024 CPL does not allow the parties to choose a foreign court without having a connection with the dispute.

Moreover, Article 35 of the 2024 CPL has not been amended; it states that the people's court chosen by the parties in non-foreign-related disputes shall have an actual connection with the disputes. Consequently, the parties in foreign-related cases can enjoy more party autonomy than those in domestic cases. This imbalance should be resolved in the next CPL amendment.

2.3 Exclusive Jurisdiction

The increase in exclusive jurisdiction grounds also extends the jurisdiction of the peoples' courts. Article 273 of the 2022 CPL provides that actions brought for disputes arising from the performance of contracts in China for Sino-foreign equity joint ventures, Sino-foreign contractual joint ventures, or Chinese-foreign cooperative exploration and development of natural resources shall fall under the exclusive jurisdiction of the Chinese courts. This exclusive jurisdiction ground is intact in the 2024 CPL. Notably, the China Foreign Investment Law, effective on 1 January 2020, repealed the Chinese Law on Sino-Foreign Equity Joint Ventures and the Law on Sino-Foreign Contractual Joint Ventures.[23] The China Foreign Investment Law does not distinguish between Sino-foreign equity joint ventures and contractual joint ventures.[24] Enterprises established under the Law on Sino-Foreign Equity Joint Ventures and Sino-Foreign Contractual Joint Ventures can continue to operate within five years of the effective date of the China Foreign Investment Law.[25] If

[20] Art. 531 of the CPL 2022 Judicial Interpretations. The actual connection requirement can also be found in Art. 17(e) of the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region, Mainland China-Hong Kong SAR (hereinafter 'Mainland-Hong Kong Arrangement'), signed on 18 January 2019.

[21] The Judgments Convention, Art. 5(1)(m); Convention on Choice of Court Agreements, Art. 3.

[22] Art. 277 of the 2024 CPL.

[23] Art. 42 of the China Foreign Investment Law, adopted at the 2nd session of the 13th National People's Congress on 15 March 2019, and effective on 1 January 2020.

[24] Ibid., Art. 2.

[25] Ibid., Art. 42. Arts. 44 and 45 of the Implementation Rules of the China Foreign Investment Law were adopted at the 74th Executive Meeting of the State Council on 12 December 2019, and effective on 1 January 2020.

they do not change their organizational structure according to the Chinese Company Law and the Chinese Partnership Enterprise Law during this period, they will not be registered from 1 January 2025 onwards.[26] Therefore, from 2020 onwards, Sino-foreign equity joint ventures and Sino-foreign contractual joint ventures have started to phase out in China. Notably, the China Foreign Investment Law and the China Partnership Enterprise Law allow for the establishment of Sino-foreign partnership enterprises.[27] If the Chinese courts have exclusive jurisdiction concerning contracts for Sino-foreign equity joint ventures and Sino-foreign contractual joint ventures, it is unclear why they do not have exclusive jurisdiction for contracts concerning Sino-foreign partnership enterprises in China. Around the year 2025, the CPL is likely to be amended once again in order to delete the exclusive jurisdiction ground of performing contracts for Sino-foreign equity joint ventures and Sino-foreign contractual joint ventures in China.

The 2024 CPL adds two additional grounds of exclusive jurisdiction. Both are often related to Chinese administrative proceedings and implicate China's national interest in strategic industries.[28]

The first ground is litigation due to the establishment, dissolution, and liquidation of legal persons or non-incorporated organizations established in China, and the validity of resolutions made by such organizations.[29] This ground is limited to organizations only established (*sheli*, 设立) in China.[30] The term 'establish' should be understood as either 'establish a principal office', or if not, 'register' in China by referring to the term 'domicile' under Article 3 of the 2022 CPL Judicial Interpretations. This interpretation is also based on the UNCITRAL Model Law on Cross-Border Insolvency.[31] The Model Law divides insolvency proceedings into main and non-main proceedings.[32] The former refers to proceedings 'taking place in the State where the debtor has the center of its main interests'.[33] Without contradictory evidence, the centre of the debtor's main interests is presumed to be 'the debtor's registered office, or habitual residence in the case of an individual'.[34] A foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a state 'where the debtor carries out a non-transitory economic

[26] Art. 42 of the China Foreign Investment Law. Arts. 44 and 45 of the Implementation Rules of the China Foreign Investment Law.

[27] Art. 31 of the China Foreign Investment Law.

[28] E.g. the resolution of financial institutions and a change to the registration of a patent may implicate China's national interest in strategic industries. For a succinct review of the anti-suit injunction saga implicating China's national interest, see Ken Korea, 'Anti-Suit Injunctions – a New Global Trade War with China?' (*MIP*, 3 August 2022), https://www.managingip.com/article/2afz8grsj5i3uyxp19ji8/anti-suit-injunctions-a-new-global-trade-war-with-china (accessed 19 November 2022). See also Wu and Weng (2021), p. 295.

[29] Art. 279.1 of the 2024 CPL.

[30] Ibid.

[31] For the status table, see https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status (accessed 11 September 2023). China has not adopted the Model Law.

[32] Art. 17.2 of the UNCITRAL Model Law on Cross-Border Insolvency.

[33] Ibid., Art. 2(b).

[34] Ibid., Art. 16.3.

activity with human means and goods or services'.[35] In cases where determining the principal office is difficult, China's exclusive jurisdiction should preferably be limited to legal persons or non-incorporated organizations registered in China. This can facilitate the recognition and enforcement of foreign judgments in China and avoid extending exclusive jurisdiction to non-main proceedings. For example, in January 2023, the No. 1 Intermediate People's Court in Beijing recognized a German judgment appointing a bankruptcy administrator to dispose of an insolvent German company's assets in China.[36] In 2013, the Wuhan Intermediate People's Court recognized another German judgment appointing a bankruptcy administrator for assets owned by a German company in China.[37]

The second newly added exclusive jurisdiction ground is litigation on the validity of intellectual property rights granted in China.[38] Disputes on other aspects of intellectual property rights are not subject to the exclusive jurisdiction of the Chinese courts.

The exclusive jurisdiction based on these two newly added grounds should be limited to cases where the subject matter of the proceedings is based on laws that specifically relate to these grounds. If the object of the proceedings does not concern these grounds, the Chinese courts should exercise caution when claiming exclusive jurisdiction over the proceedings.[39]

Admittedly, there will be difficult or borderline cases. An example would be proceedings on royalties in an intellectual property licensing agreement. Whether the Chinese courts have exclusive jurisdiction over the proceedings would depend on whether the validity of the patent is the object of the proceedings. A further example is a proceeding based on general contract law with the issue concerning intellectual property therein being incidental, where it is debatable whether the Chinese courts can exercise exclusive jurisdiction over the case as a whole.[40]

[35] Ibid., Art. 2(c) and (f). UNCITRAL Model Law on Cross-Border Insolvency Law with Guide to Enactment and Interpretation, paras. 88–90.

[36] The first case in China: *The No. 1 Intermediate Court in Beijing Applied de jure Reciprocity to Recognize a German Insolvency Proceeding*, https://bjgy.bjcourt.gov.cn/article/detail/2023/01/id/7119227.shtml (accessed 11 September 2023).

[37] Huang (2019a), p. 131.

[38] Art. 279 of the 2024 CPL.

[39] The object of a proceeding is the principal issue of the proceeding and should be distinguished from an incidental issue or a preliminary question. 'Object' means 'the matter with which the proceedings are directly concerned, and which is mainly determined by the plaintiff's claim'. Francisco Garcimartín and Geneviève Saumier, *Explanatory Report of Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* (2020) (hereinafter 'Garcimartin/Saumier Report'), at paras. 75–77. See Trevor Hartley and Masato Dogauchi, *Explanatory Report of Convention of 30 June 2005 on Choice of Court Agreements* (2006) (hereinafter 'Hartley/Dogauchi Report'), paras. 77, 194; Peter Nygh and Fausto Pocar, *Report of Preliminary Draft Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters* (1999) (hereinafter 'Nygh/Pocar' Report), para. 177.

[40] Art. 9(f) of the Mainland-Hong Kong Arrangement provides that if the validity of intellectual property is only an incidental question, the judgment, if it otherwise fulfils other conditions of the judgment recognition and enforcement, will fall within the scope of the Arrangement.

2.4 Jurisdiction on Foreign Sovereignty

The FSI Law symbolizes that China has made a historic decision to abolish the absolute state immunity theory and to adopt the restrictive state immunity theory. The former means that a state enjoys complete immunity from being sued or having its assets seized or enforced by a foreign court.[41] China had consistently applied the absolute sovereign immunity theory in litigation in China and abroad.[42] Under the FSI Law, restrictive state immunity means that foreign states and their assets should enjoy immunity from the jurisdiction of the Chinese courts, except as otherwise provided by this law. The FSI Law applies to foreign states, government agencies, and organizations or individuals that are authorized by foreign states to conduct activities based on this authorization.[43]

This crucial reform reflects China's transformed ideology concerning sovereignty and security. China was a strong follower of absolute state immunity because of its humiliating history of being a semi-colonial society before the establishment of the People's Republic of China. Therefore, China strongly supported the view of sovereign equality, whereby states should not exercise jurisdiction over each other. However, China gradually realizes that sovereign equality should not equalize with absolute state immunity.[44] In 2005, it signed the United Nations Convention on Jurisdictional Immunities of States and Their Property which adheres to the restrictive sovereign immunity theory and makes distinctions 'between acts performed in the exercise of sovereign power or *acta de jure imperii* (immune) and acts of a commercial or private law nature or *acta de jure gestionis* (non-immune)'.[45] Today, China is the second-largest economy in the world based on GDP.[46] With the expansion of the Belt and Road Initiative, Chinese multinational companies have increasingly encountered disputes with host states.[47] Although investor-state disputes can

[41] Bankas (2022), p. 33.

[42] *Democratic Republic of the Congo & Others v. FG Hemisphere Associates LLC*, (2011) 14 HKCFAR 96, (2011) 14 HKCFAR 395.

[43] Art. 2 of the FSI Law.

[44] Similarly, Russia also abandoned the absolute sovereign immunity theory to embraces the restrictive sovereign immunity theory in 2016. Russian Federation, the Federal Law on Jurisdictional Immunities of Foreign States and the Property of Foreign States in the Russian Federation, adopted by the State Duma on 23 October 2015 and approved by the Federation Council on 28 October 2015. The English translation of the Russian Law can be found at https://tlblog.org/wp-content/uploads/2023/04/Russia-Federal-Law-%E2%84%96-297-FZ-On-jurisdictional-immunities-of-foreign-states.docx (accessed 1 October 2023). See William S. Dodge, 'China's Draft Law on Foreign State Immunity Would Adopt Restrictive Theory', https://tlblog.org/chinas-draft-law-on-foreign-state-immunity-would-adopt-restrictive-theory/ (accessed 1 October 2023).

[45] United Nations Convention on Jurisdictional Immunities of States and Their Property, New York, 2 December 2004, https://legal.un.org/avl/ha/cjistp/cjistp.html (accessed 1 October 2023). China has not ratified the Convention.

[46] Unpacking China's GDP, https://chinapower.csis.org/tracker/china-gdp/ (accessed 21 September 2023).

[47] The Belt and Road Initiative was initiated by Chinese President XI Jinping in 2013 to promote policy coordination, the connectivity of facilities, unimpeded trade, financial integration, and people-to-people bonds between China and countries in Asia, Europe and Africa. Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st Century Maritime Silk Road, https://www.fmprc.gov.cn/eng/topics_665678/2015zt/xjpcxbayzlt2015nnh/201503/t20150328_705553.html (accessed 20 Sep-

often be resolved by investor-state arbitration, the FSI Law opens up the possibility for Chinese companies to bring litigation in China against a foreign investment host state when investment arbitration is not available.

The main circumstances where a foreign state may lose sovereign immunity at the people's courts include an explicit or implied submission or conducting commercial activities in China.

2.4.1 Explicit Submission

Article 4 of the FSI Law provides that if a foreign state explicitly accepts the jurisdiction of the people's courts in respect of a particular matter or case by any of the following means, that foreign State shall not enjoy immunity from the jurisdiction of the people's courts in respect of an action brought in respect of that matter or case:

(1) International treaties;
(2) A written agreement;
(3) When written documents are submitted to the people's court hearing the case;
(4) When written documents are submitted to China through diplomatic channels or other means;
(5) Other means of the explicit acceptance of the jurisdiction of the people's courts.

Currently, there are no international treaties or diplomatic documents concluded by China where a state explicitly accepts the jurisdiction of the Chinese courts. However, this situation may change with more international organizations having their headquarters in China.

The author is not aware of any written agreement concluded by a state which has explicitly accepted the jurisdiction of the Chinese courts. Notably, Article 277 of the 2024 CPL allows the parties to choose the people's courts to resolve their civil and commercial disputes. Therefore, in the Belt and Road Initiative, Chinese companies and a foreign state (or an organization or individual representing this state) can conclude a choice of court agreement favouring a people's court. If the agreement has been validly concluded, the foreign state would be considered to have explicitly submitted to the people's court.

Footnote 47 (continued)
tember 2023) (stating that '[t]he Silk Road Economic Belt focuses on bringing together China, Central Asia, Russia and Europe (the Baltic); linking China with the Persian Gulf and the Mediterranean Sea through Central Asia and West Asia; and connecting China with Southeast Asia, South Asia and the Indian Ocean. The 21st-Century Maritime Silk Road is designed to extend from China's coast to Europe through the South China Sea and the Indian Ocean in one route, and from China's coast through the South China Sea to the South Pacific in the other'). The year 2023 is the tenth anniversary of the Belt and Road Initiative, and the Chinese government has published the achievements of this Initiative, http://tradeinservices.mofcom.gov.cn/article/yanjiu/pinglun/202303/147377.html (accessed 20 September 2023) (indicating 'the Belt and Road Initiative has helped participating countries to increase trade volume by 4.1% and foreign investment by 5% and it has also enabled low-income countries to realize a 3.45 increase in their GDP'). For anxieties and controversies surrounding the Belt and Road Initiative, see Schneider (2021), pp. 14–17. For the increase in investment disputes between Chinese multinational companies and host states, see generally Vaccaro-Incisa (2021).

'To submit written documents to the people's court hearing the case' under Article 3 of the FSI Law should be read in conjunction with Articles 5 and 6. The written documents include a plaintiff's or a third party's pleading, a defendant's response to substantive issues in the case, or the defendant's cross-claim.[48]

2.4.2 Submission by Procedural Conduct

According to Article 5 of the FSI, a foreign state shall be deemed to accept the jurisdiction of the people's courts in respect of a particular matter or case under any of the following circumstances:

(1) When a lawsuit is filed before a people's court as a plaintiff;
(2) When participating as a defendant in a lawsuit accepted by a people's court by responding on the merits of the case or filing a counterclaim;
(3) When participating as a third party in a lawsuit accepted by a people's court;
(4) When a lawsuit is filed before a people's court as a plaintiff (or as a third party) and it is counterclaimed based on the same legal relationship or facts of the original lawsuit or claim.

If a foreign state can prove that it could not have known the facts according to which immunity could be asserted before entering into the above-mentioned forms of procedural conduct, it may request immunity within a reasonable time after it becomes aware or should have become aware of the facts in question.[49] The FSI Law is silent on how to determine a reasonable time and whether a foreign state becomes aware or should have become aware that immunity could be asserted.

Article 6 excludes three procedural forms of conduct from an implied submission to the people's courts. The first is to submit defences on jurisdiction.[50] Such defences are not on the merits, so they should not be considered as an implied submission. The second exception is when a representative of a foreign state agrees to appear in court as a witness.[51] Appearing as a witness does not necessarily mean that the foreign state is involved as a party to the proceedings. The final exception is when a foreign state agrees to apply Chinese law in a specific matter or a lawsuit.[52] This is because a choice of law does not determine jurisdiction.

2.4.3 Commercial Activities

When a foreign state conducts commercial activities with organizations, individuals, or other countries, and when activities take place in China, the state shall not enjoy

[48] Arts. 5 and 6 of the FSI Law.
[49] Ibid., Art. 5.
[50] Ibid., Art. 6(1).
[51] Ibid., Art. 6(2).
[52] Ibid., Art. 6(3).

sovereign immunity in disputes arising from this commercial activity.[53] Moreover, even if this commercial activity takes place outside of China, as long as it has a direct impact on China, this foreign state shall lose sovereign immunity in disputes arising from this commercial activity.[54] It is unclear how the people's court would determine a direct impact. A broad interpretation would expand the Chinese courts' jurisdiction to commercial activities remotely related to China.

Commercial activities refer to acts of a commercial nature that do not involve the exercise of sovereign power, such as transactions concerning goods or services, investments, and loans.[55] In determining whether an act is a commercial activity, the people's courts shall take into account the nature and purpose of the act in question.[56]

Adopting the restrictive sovereign immunity theory is a double-edged sword. Although the FSI Law enables people's courts to exercise jurisdiction over a foreign state when the requirements under the Law have been fulfilled, this will also mean that China cannot defend itself by resorting to absolute sovereign immunity before foreign courts. Therefore, we must wait and see how people's courts will implement the FSI Law and how the Law may protect China's sovereignty and security in foreign courts.

3 Fine Tune Parallel Proceedings Between a Chinese Court and a Foreign Court

Parallel proceedings may occur when a Chinese court and a foreign court both have jurisdiction over a dispute. Before the enactment of the 2024 CPL, parallel proceedings were addressed by Articles 530 and 531 of the CPL 2022 Judicial Interpretations in China. In the context of the recognition and enforcement of foreign judgments, they are regulated by Article 6 of the Choice of Court Convention and Article 7.2 of the Judgments Convention. Article 6 of the Choice of Court Convention requires a non-chosen court to suspend or dismiss proceedings when an effective exclusive choice of court agreement favouring another court exists. Article 7.2 of the Judgments Convention provides that the recognition and enforcement of a foreign judgment may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested state which was seised earlier in time than the court of origin, and a close connection exists between the dispute and the requested state.[57] In contrast, Article 531 of the CPL Judicial Interpretations does not consider whether an exclusive choice of foreign court agreement exists, whether the Chinese court has accepted the case before the

[53] Ibid., Art. 7.

[54] Ibid.

[55] Ibid.

[56] Ibid. For a comparative-law discussion of the 'nature' and 'purpose', see William S. Dodge, 'China Adopts Restrictive Theory of Foreign State Immunity', https://conflictoflaws.net/2023/china-adopts-restrictive-theory-of-foreign-state-immunity/ (accessed 1 October 2023).

[57] The Judgments Convention, Art. 7.2. 'The court of origin' refers to the court that rendered a judgment; 'the requested court' means the court that is requested to recognize and enforce a foreign monetary judgment.

foreign court, or whether a close connection exists between the dispute and the Chinese court. It rather focuses on safeguarding the jurisdiction of the Chinese courts: as long as a Chinese court has jurisdiction to hear the case under Chinese law, the Chinese proceedings should proceed even if the same dispute has been accepted by a foreign court earlier in time. Compared with Article 531 of the CPL 2022 Judicial Interpretations, a more nuanced approach to fine tune parallel proceedings between a Chinese court and another court is desirable. This is because parallel proceedings will increase the costs of litigation and lead to inconsistency and uncertainty in dispute resolution. Moreover, treating foreign courts with comity in parallel litigations may also assist in the ultimate recognition and enforcement of Chinese judgments abroad.

The 2024 CPL adds three provisions to address the insufficiency of Article 533 of the CPL 2022 Judicial Interpretations and narrows the differences between the Choice of Court Convention and the Judgments Conventions, on the one hand, and Chinese law, on the other. These provisions are: Articles 280 and 281 which address *lis alibi pendens* and *res judicata*; and Article 282 which regulates *forum non conveniens*.[58]

3.1 *Lis Alibi Pendens*

The *lis alibi pendens* rule contains two parts: case acceptance (*shouli*, 受理) under Article 280 and trial suspension (the staying of proceedings) under Article 281 of the 2024 CPL. Firstly, when a party files a lawsuit before a foreign court, and the other party brings the same dispute to a Chinese court, or when a party files a lawsuit on the same dispute before both Chinese and foreign courts, the general principle is that the Chinese court can accept the case if it has jurisdiction concerning the dispute according to the 2024 CPL.[59] However, if the parties have concluded an effective exclusive choice of court agreement favouring a foreign court without violating the exclusive jurisdiction of the Chinese courts, China's sovereignty, security, or social public interest, the Chinese court may not accept the case.[60] If the court has already accepted the case, it should then dismiss it.[61] The rule on case acceptance applies regardless of whether the Chinese or foreign court has accepted the case earlier in time.

The second part is a trial suspension rule. After a Chinese court has accepted the case according to the case acceptance rule, if a party files a written application arguing that a foreign court has accepted the case earlier in time than the Chinese court,

[58] Arts. 280–282 of the 2024 CPL.
[59] Ibid.
[60] Ibid., Art. 280.
[61] Ibid.

the Chinese court may stay the proceedings on the same dispute in China.[62] If the foreign court does not take the necessary measures to try the case or cannot render a decision within a reasonable period of time, the Chinese court may resume proceedings upon a party's written application.[63] Therefore, the trial suspension rule rightly addresses the so-called 'Italian Torpedo' problem. The term 'Italian Torpedo' refers to the strategy of bringing a case before a court in a country (e.g. Italy) that suffers from long delays in judicial proceedings as an attempt to hinder the resolution of the dispute in potential parallel proceedings in other countries.[64] Compared with Article 533 of the CPL 2022 Judicial Interpretations, the 2024 CPL adopts a more balanced approach by acknowledging the proceedings before a foreign court that accepts the case earlier in time and allowing a Chinese court to try the case if the foreign court does not proceed within a reasonable period of time.

Nevertheless, the Chinese court shall not stay the proceedings even if a foreign court has accepted the case earlier in time when either of the following two exceptions exists: (1) the parties have concluded a choice of court agreement favouring the Chinese courts or the case belongs to the exclusive jurisdiction of the Chinese courts; (2) it is more convenient for the Chinese courts to hear the case.[65] Notably, the first exception does not require the parties to conclude an exclusive choice of court agreement favouring the Chinese courts. The 2024 CPL does not provide any criteria to determine whether it is 'more convenient for the Chinese courts to hear the case'. The Chinese Supreme People's Court should publish judicial interpretations for clarification. The potential criteria may include access to evidence; the applicable law; and the involvement of Chinese state interests such as sovereignty, security, and the social public interest.

Moreover, China distinguishes between the *lis alibi pendens* rule in transnational litigation and that in a domestic trial. The latter is provided by Article 36 of the 2024 CPL: when two or more people's courts have jurisdiction over a lawsuit, the plaintiff may proceed with the lawsuit before one of these people's courts; if the plaintiff files the lawsuit at two or more people's courts that have jurisdiction thereover, the people's court that has first admitted the case on the docket (*li'an*, 立案') shall have jurisdiction.[66] Two important differences exist. Firstly, the critical point in time for the *lis alibi pendens* rule in the domestic trial is which court has first admitted the case on the docket, while the time of the case's acceptance is the critical point in time for transnational litigation. The Chinese litigation stage can be divided into a party initiating a case by suing (*qishu*, 起诉), the case filing division at a Chinese court which accepts the case (*shouli*, 受理), after which the case filing division will decide whether to admit the case on the docket (*li'an*, 立案), and then the trial

[62] Ibid., Art. 281.

[63] Ibid.

[64] Decision of the Supreme Court (Grand Chamber) 10 June 2013. 'Italian Torpedo' Brussels Regulation, Art. 5(3) – *The General Hospital Corporation and Palomar Medical Technologies Inc. v. Asclepion Laser Technologies GmbH*. *IIC* 45, 822–824 (2014).

[65] Art. 281 of the 2024 CPL.

[66] Ibid., Art. 36.

division will start with the service of process subsequently followed by the trial.[67] Secondly, in transnational litigation, the Chinese court that accepts the case later in time may still move to trial regardless of whether a party has proved the existence of an exclusive choice of court clause favouring a foreign court.[68] However, this discretionary authority does not exist in non-foreign-related cases. The domestic *lis alibi pendens* rule provides that if a people's court finds that a case has already been admitted on the docket by another people's court earlier in time, it should not admit the case; if it has already admitted the case, it shall then transfer the case to the court that has admitted it earlier in time.[69]

3.2 *Forum Non Conveniens*

After a people's court accepts a case, a defendant may challenge the court's jurisdiction based on *forum non conveniens*. The *forum non conveniens* test under the 2024 CPL contains five factors with important differences compared with its predecessor in the 2022 CPL Judicial Interpretations.[70]

(1) The basic facts of the dispute have not occurred in China and it is obviously inconvenient for the Chinese courts to try the case and for the parties to participate in the proceedings.[71] Compared with its predecessor in the 2022 CPL Judicial Interpretations, the 2024 CPL lowers the threshold of the *forum non conveniens* test in two respects.[72] Firstly, it only requires the basic facts of the dispute, instead of the major facts, to have taken place in China. Secondly, besides considering the inconvenience for the court to try the case as under the 2022 CPL Judicial Interpretations, it also takes into account the inconvenience for the parties participating in the proceedings. The parties' difficulties may include difficulties in accessing legal aid in a foreign country and obtaining a visa to travel abroad. Referring to the CPL 2022 Judicial Interpretations, an obvious inconvenience for the Chinese courts to try a case may include the difficulty of proving foreign law and accessing evidence and witnesses, etc.

Factors (2) and (3) requires the case having no choice of court agreement favouring a Chinese court and no violation of the exclusive jurisdiction of the Chinese courts. Both factors are contained in the 2022 CPL Judicial Interpretations.

(4) The case does not involve the sovereignty, security, or the social public interest of China. This factor is limited to the interests of China rather than including those of Chinese organizations or individuals as was the case under the CPL 2022

[67] See Liu and Liu (2011), p. 283. Acceptance (受理, *shouli*) is not entirely the same as the concept of 'seise' in the HCCH Conventions. 'Seise' is more akin to the concept of 'admission on the docket' under Chinese law.

[68] Art. 280 of the 2024 CPL.

[69] Art. 36 of the CPL 2022 Judicial Interpretations.

[70] Art. 530 of the CPL 2022 Judicial Interpretations. Art. 282 of the 2024 CPL.

[71] Art. 282 of the 2024 CPL.

[72] Art. 530(5) of the CPL 2022 Judicial Interpretations provides that the major facts of the case have not occurred in China, the case is not subject to Chinese law, and the people's courts have significant difficulties in determining facts and applying the law in trying the cases.

Judicial Interpretations.[73] In *forum non conveniens* cases, the plaintiffs are often Chinese parties. Therefore, these cases would inherently involve the interests of Chinese organizations or individuals. By not allowing the courts to consider the interests of Chinese organizations or individuals, the 2024 CPL further lowers the threshold of the *forum non conveniens* test.

(5) It is more convenient for a foreign court to hear the case. Different from the CPL 2022 Judicial Interpretations, the 2024 CPL does not indicate that the Chinese court should determine whether a foreign court has jurisdiction over the case.[74] This may involve two interpretations. Firstly, whether a foreign court has jurisdiction is already included in the determination of whether the foreign court's adjudication is more convenient. Therefore, it is redundant to repeat this condition. Secondly, it is unnecessary for the Chinese court to determine whether a foreign court would have jurisdiction under the first paragraph of Article 282 of the 2024 CPL. The second interpretation should be preferred because the consequence of the Chinese *forum non conveniens* proceedings should not depend on whether the foreign court will exercise jurisdiction.

The second interpretation is further substantiated by the second paragraph of Article 282 of the 2024 CPL, which stipulates that if a foreign court declines to exercise jurisdiction, fails to take the necessary steps to hear the case, or cannot conclude the trial within a reasonable period of time following a Chinese court's dismissal, the Chinese court shall accept the case if the party decides to bring it once again.[75] This provision serves as a remedy for plaintiffs who do not succeed in *forum non conveniens* proceedings within China. Notably, in China, an action instituted in a people's court for the protection of civil rights is generally three years from the day when the obligee knows or should have known that his or her right has been infringed.[76] This statute of limitations will start to run from the date when a foreign court declines to exercise jurisdiction or when the plaintiff has become aware or should have become aware of the undue delay in the foreign court.

However, it is crucial to acknowledge that this remedy may prove to be too belated and financially burdensome for the plaintiff, particularly if the plaintiff can prove the foreign court's consistent delay in concluding a trial. Hence, the Chinese courts may assess a plaintiff's undue delay argument when determining the convenience of foreign adjudication under the first paragraph of Article 282 in the 2024 CPL.

[73] Art. 530(4) of the 2022 CPL Judicial Interpretations provides that the case does not involve China's national interest and the interests of Chinese citizens, legal persons, and other organizations.

[74] Notably, Art. 530(6) of the 2022 CPL Judicial Interpretations require the Chinese court to determine the foreign court has jurisdiction over the case and its adjudication is more convenient.

[75] The second paragraph of Art. 282 of the 2024 CPL.

[76] Art. 188 of the Chinese Civil Code.

4 Service of Process and the Taking of Evidence Abroad

Service of process is a critical procedural step in initiating litigation.[77] It aims to transmit judicial or extrajudicial documents to inform a party, often a defendant, that litigation is pending within a reasonable period of time so as to give that party the opportunity to choose for itself 'whether to appear or default, acquiesce or contest'.[78] Service of process safeguards a party's right to be heard, which is '[t]he fundamental requisite of due process of law'.[79] Service of process against a foreign defendant who has no domicile in China may be conducted in China or abroad.[80] The 2024 CPL significantly extends the circumstances for service of process in China against a foreign defendant.[81]

Transnational litigation may also involve the taking of documentary, witness, or other evidence abroad. Although the taking of evidence abroad does not necessarily occur in every transnational litigation, just like service of process it also requires strict compliance with the procedural due process of law to afford a defendant's right to a fair trial, a plaintiff's right to justice, and comity towards the country where a witness or other evidence is located.[82]

4.1 Service of Process

Similar to the 2022 CPL, the 2024 CPL allows for the service of process to a defendant who does not have a domicile in China through conventions, diplomatic channels, Chinese embassies or consulates, and by postal means.[83] However, it introduces important amendments in five key aspects.[84]

Firstly, the 2024 CPL significantly expands the group of local agents.

One controversial amendment in the 2024 CPL pertains to the service of process on the agent *ad litem* of a party, irrespective of whether this agent is authorized to accept such service.[85] Conversely, the 2022 CPL only mandated service on the agent *ad litem* when this agent was authorized by the party to accept the service of process. After the 2024 CPL enters into force, when a foreign party designates an agent *ad litem* in a case, this agent is deemed to be eligible to receive service on behalf of

[77] Martiny (2009).

[78] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Art. 1 of the Hague Service Convention.

[79] *Grannis v. Ordean*, 234 U.S. 385, 394 (1914).

[80] Art. 283 of the 2024 CPL.

[81] See *infra* Sect. 4.1.

[82] *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n. 28 (1987). See Hague Conference on Private International Law, *Practical Handbook on the Operation of the Evidence Convention* (The Hague Conference on Private International Law Permanent Bureau 2016), p. 3.

[83] Art. 283 of the 2024 CPL. Service conducted by Chinese embassies or consulates is only for recipients with Chinese citizenship.

[84] Ibid.

[85] Art. 283(4) of the 2024 CPL.

its principal. The sole limitation lies in the fact that the agent *ad litem* cannot accept service of process beyond the specific case for which it has been entrusted.

Another debatable amendment concerning the local agent is that service of process can now be carried out on a foreign defendant's (1) wholly-owned enterprise, (2) representative office, (3) branch, or (4) other business agents authorized to receive service of process in China.[86] It is important to note that a foreign defendant's wholly-owned enterprise, representative office, and branch in China are considered to be agents to receive service of process even for disputes that are not related to their business activities, without the need for specific authorization. This is a departure from the 2022 CPL, where a foreign defendant's wholly-owned enterprises and branches were not eligible to receive service on behalf of the defendant without specific authorization.

Secondly, service of process on a foreign defendant can also be effectuated by serving its co-defendant, provided that the co-defendant is a Chinese legal entity or organization established by the defendant which also serves as its legal representative or the primary person in charge.[87] This provision does not exist in the 2022 CPL. It is based on the presumption that effective service on the defendant's legal entity or organization can inform the defendant of pending litigation. This can simplify the service of process and enhance its efficiency.

Thirdly, different from the 2022 CPL, the 2024 CPL allows for service of process on a foreign legal entity or organization by serving its legal representative or primary person in charge in China.[88] In China, service of process does not establish the jurisdiction of a court; therefore, this provision is distinguishable from tag jurisdiction under US jurisprudence.[89] However, the 2024 CPL does not define the scope of the primary person in charge. It is also unclear whether this individual needs to be present in China for a certain duration, whether his or her presence is related to the dispute, and whether he or she should establish a domicile in China. The Chinese courts should be cautious in allowing service on a foreign individual who is merely in transit in China for purposes unrelated to the dispute and who has not established a legal domicile in China.

Fourthly, the service of process in a foreign country must adhere to the law of that country. Similar to the 2022 CPL, the 2024 CPL continues to uphold this principle concerning service by post.[90] Moreover, the 2024 CPL goes further by mandating that digital service needs to comply with the law of the jurisdiction where

[86] Ibid., Art. 283(5).

[87] Ibid., Art. 283(6).

[88] Ibid., Art. 283(7).

[89] Tag jurisdiction is a jurisdictional ground based on territorial sovereignty which permits the exercise of jurisdiction by service of process on a defendant present in the state regardless of how transient the presence may be and how unrelated the cause of action may also be. Silberman (1978), p. 75. *Grace v. MacArthur*, 170 F. Supp. 442, 443 (E.D. Ark. 1959) (jurisdiction is established by serving the defendant flying over the forum state on a commercial aircraft). For tag jurisdiction on corporates, see Borchers (2021).

[90] Art. 274(6) of the 2022 CPL and Art. 283(8) of the 2024 CPL.

the recipient is located.[91] Digital service must be delivered in such a way that can confirm the recipient's receipt thereof.[92] Furthermore, in contrast to the 2022 CPL, the 2024 CPL permits alternative methods of service based on agreements between the parties, unless this is against the law of the jurisdiction where the recipient is located.[93]

Last but not least, the 2024 CPL has reduced the period for a public announcement, which serves as the last resort for service when other methods have failed to reach the intended recipient.[94] Service is considered successful upon the conclusion of the public announcement period.[95] Notably, the revised timeframe for a public announcement is now 60 days, as opposed to the three-month period stipulated in the 2022 CPL.[96]

4.2 The Taking of Evidence Abroad

A general principle for the taking of evidence abroad is laid down in the 2022 CPL, which provides that the taking of evidence abroad can be conducted between people's courts and foreign courts according to conventions ratified by China, diplomatic channels, or based on the principle of reciprocity.[97] Article 284 of the 2024 CPL further provides three methods for the taking of evidence abroad in addition to conventions and diplomatic channels provided that the law of the country where the evidence is located does not prohibit these methods.[98] For a party or witness having Chinese nationality, the 2024 CPL permits the Chinese embassy or consulate in the country where the party or witness resides to collect the evidence on the parties' behalf.[99] Moreover, the process of obtaining evidence abroad may also employ methods agreed upon by the parties, such as using instant messenger tools, thereby offering greater flexibility in the collection of evidence.[100] These methods also apply to cross-examining a party or a witness by another party, its lawyer, or the Chinese court subject to the condition that the law of the country where the party or the witness is located allows for this.

[91] Art. 274(7) of the 2022 CPL and Art. 283(9) of the 2024 CPL.
[92] Art. 274(7) of the 2022 CPL and Art. 283(9) of the 2024 CPL.
[93] Art. 283(10) of the 2024 CPL.
[94] Art. 274(8) of the 2022 CPL and Art. 283 of the 2024 CPL.
[95] Art. 274(8) of the 2022 CPL and Art. 283 of the 2024 CPL.
[96] Art. 274(8) of the 2022 CPL and Art. 283 of the 2024 CPL.
[97] Art. 283 of the 2022 CPL and Art. 293 of the 2024 CPL.
[98] Art. 284 of the 2024 CPL.
[99] Ibid., Art. 284(1).
[100] Ibid., Art. 284(2) and (3).

4.3 Restrictions on Service and the Taking of Evidence in China for Foreign Proceedings

With the instigation of new methods for service of process and the taking of evidence abroad, the 2024 CPL can better facilitate litigation brought in China against a foreign defendant. To a significant extent, the new methods will likely decrease the need to resort to the Hague Service Convention and the Hague Evidence Convention. This is because, with the wider group of local agents determined by law, a large part of service of process on a foreign defendant can be conducted on their agents in China. When service of process needs to be conducted abroad, the parties may enter into agreements on the methods of service. In these circumstances, the parties do not need to abide by the Hague Service Convention. Similarly, under the 2024 CPL, in practice the taking of evidence abroad via the Evidence Convention only applies to cases where the foreign defendants or witnesses do not voluntarily collaborate with the Chinese court's proceedings.

In contrast to the liberalized methods for service of process and the taking of evidence abroad, the 2024 CPL does not make it easier for foreign courts to conduct service of process and the taking of evidence in China. Article 294 of the 2024 CPL is identical to Article 284 of the 2022 CPL and they expressly prohibit conducting service or collecting evidence within China for foreign proceedings unless the competent Chinese authorities consent to this—either pursuant to an official request from a foreign Central Authority under an international treaty or an application from a party to a dispute.[101]

For example, in terms of collecting evidence in China for foreign proceedings, Article 294 of the 2024 CPL only provides three avenues and all are much more restrictive than those for the taking of evidence abroad.

The first paragraph of Article 294 provides that a foreign judicial authority can obtain evidence within China through the Hague Evidence Convention or other international judicial assistance treaties that China has ratified. China made a reservation when signing the Hague Convention that it would not be bound by Articles 16–22, portions of which would grant consular officials the right to oversee the taking of evidence.[102] This only leaves the Letter of Request procedure in Articles 1–14 of the Hague Evidence Convention for the taking of evidence from Chinese nationals in China (Article 15 only deals with foreign nationals located in

[101] Art. 294 of the 2024 CPL and Art. 284 of the 2022 CPL provide that: 'The request for the provision of judicial assistance shall be effected through channels provided in the international treaties concluded or acceded to by the People's Republic of China; in the absence of such treaties, they shall be effected through diplomatic channels.

A foreign embassy or consulate accredited to the People's Republic of China may serve documents on its citizens and make investigations and collect evidence among them, provided that the laws of the People's Republic of China are not violated and no compulsory measures are taken.

Except for the conditions provided in the preceding paragraph, no foreign organization or individual shall, without permission from the competent authorities of the People's Republic of China, within the territory of the People's Republic of China, serve process or investigate and collect evidence'.

[102] China Status Table, https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=493&disp=resdn (accessed 11 September 2023).

China). A Letter of Request must be submitted by the Central Authority of a contracting state (e.g., the Australian Commonwealth Attorney-General's Department to the Ministry of Justice of China in Beijing).[103] It is unclear whether China would allow the presence of the parties and their representatives by video link while the Chinese witness is giving evidence in China. The Letter of Request process usually takes 6–12 months.[104] Article 8 of the Hague Evidence Convention provides that '[a] Contracting State may declare that members of the judicial personnel of the requesting authority of another contracting state may be present at the execution of a Letter of Request'. This means that judicial personnel from the requesting state may be present by video link when a witness in another contracting state is giving evidence. However, China has not made a declaration under Article 8, which means that China has no obligation to allow a foreign judge to be present by video link during the execution of the Letter of Request in China, even if permission has been given to execute the Letter of Request. Similarly, the service of foreign proceedings in China also needs to comply with the Hague Service Convention or other bilateral treaties that China has ratified or by diplomatic channels. China has made a reservation opposing service by means of postal channels,[105] as well as service by judicial officers or other competent persons of the state of destination either entrusted by judicial officers of the state of origin or by other competent persons of the state of destination.[106] Consequently, the Central Authority of the Hague Service Convention is often the only channel for the service of foreign process to a party in China, which is a lengthy process.[107]

The taking of evidence and the service of foreign proceedings in China can also be conducted by a foreign embassy or consulate accredited to China, but this is only permitted if the witness or party is a foreign national located in China.[108] This is consistent with the reservation made by China to the Hague Evidence Convention that it will not be bound by Articles 16–22, portions of which would grant consular officials the right to oversee the taking of evidence.[109]

[103] E.g. Australian Central Authority, https://www.hcch.net/en/states/authorities/details3/?aid=485 (accessed 11 September 2023), Chinese Central Authority, https://www.hcch.net/en/states/authorities/details3/?aid=490.

[104] Chinese Central Authority, https://www.hcch.net/en/states/authorities/details3/?aid=490 (accessed 11 September 2023).

[105] Hague Service Convention, Art. 10(a). The Special Commission held in 2003 reaffirmed that 'send' in Art. 10(a) (English version) means 'service' through postal channels, although disputes remain in the United States, see Hague Conference on Private International Law, *Practical Handbook on the Operation of the Service Convention* (4th edn. 2016), pp. 79–93.

[106] Hague Service Convention, Arts. 10(b)-(c). HCCH, *Declaration/Reservation/Notification*—China, HCCH available at https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn (accessed on 11 September 2023).

[107] E.g. in *Teetex LLC v. Zeetex,* LLC (ND Cal Sept 7, 2022) 2022 U.S. Dist LEXIS 161443, at 3, the plaintiff first attempted to serve the defendant in China via the Chinese Central Authority. During a period of more than six months, the plaintiff inquired with the Chinese Central Authority on three occasions and received no response. See Porterfield (2014), p. 331.

[108] Para. 2 of Art. 294 of the 2024 CPL and para. 2 of Art. 284 of the 2022 CPL.

[109] https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=493&disp=resdn (accessed 11 September 2023).

The last method for the taking of evidence and the service of foreign proceedings in China is to seek approval from the competent Chinese authorities (i.e. the Supreme People's Court or the Ministry of Justice of China). The 2024 CPL does not provide any penalties for violating Article 294. However, penalties may be derived from Article 81 of the Chinese Exit and Entry Administration Law, which applies to foreigners who engage in activities such as service of process and taking of evidence not corresponding to purposes of their visa permission in China.

Three reasons may help to understand why China has liberalized the service of process and the taking of evidence abroad concerning foreign parties while maintaining the Chinese restrictions on service and the taking of evidence for foreign proceedings. Firstly, under the 2024 CPL, service and the taking of evidence by digital means or according to the parties' agreements in a foreign country must comply with the law of that country. Therefore, the Chinese legislator may be of the opinion that allowing these methods does not harm the interests of the foreign country where the foreign party is located. Secondly, by extending the group of local agents, allowing service by a foreign defendant on its co-defendant, or in the case that the foreign defendant is an organization, service can take place on the legal representative or the primary person in charge in China, so that in each case service will take place in China. These methods decrease the need for service abroad. Thirdly, service of process and the taking of evidence in China are considered to be part of judicial sovereignty and must be conducted by the state.[110] However, allowing service to be made upon local agents who are not authorized by the party to receive service for an issue unrelated to the agents' business is rather dubious. Service of process concerns the due process right of the party who is to be served.[111] The party who conducts such service should be required to prove that the service can be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action'.[112] Service on the legal representative or the primary person in charge who is present in China should not violate the due process right of the individual to be served. For example, if this individual is fraudulently induced to enter China for the sole purpose of being served, such service should be declared null and void.

Moreover, the imbalance between the facilitation of Chinese proceedings against foreign defendants and the restrictions on foreign proceedings against Chinese defendants also leads to the question of reciprocity. Article 293 of the 2024 CPL provides that service of process and the taking of evidence can also be conducted according to reciprocity. If a foreign country allows the Chinese courts to serve a defendant in that country using postal channels, digital methods, or methods agreed upon by the parties, this would constitute *de jure* reciprocity for China. The 2024 CPL has shifted from *de facto* to *de jure* reciprocity in the recognition and enforcement of foreign judgments[113]; arguably, *de jure* reciprocity should also apply to

[110] See Dicey et al. (2012), p. 278.
[111] McClean (2022), p. 163.
[112] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).
[113] See *infra* Sect. 5.1.

other judicial assistance methods such as service of process and the taking of evidence abroad.

5 Recognition and Enforcement of Foreign Judgments

Similar to the 2022 CPL, the 2024 CPL provides that a creditor of an effective foreign judgment can directly apply to an intermediate people's court to recognize and enforce this judgment according to treaties ratified by China or according to the principle of reciprocity.[114] The intermediate people's court then refers to the court located in the judgment debtor's domicile or in the place where the debtor's assets are located.[115]

5.1 *De jure* Reciprocity: From Resistance to Acceptance

The 2024 CPL does not define what is meant by reciprocity. Before the enactment of the 2024 CPL, in January 2022, the Minutes of the National Court's Symposium on Foreign-related Commercial and Maritime Trials (hereinafter 'Minutes') formally permitted the recognition and enforcement of foreign judgments according to *de jure* reciprocity.[116] Judicial practice in China before the issuance of the Minutes demonstrated that reciprocity, as referred to in the pre-2024 CPL, was limited to *de facto* reciprocity.[117]

De facto reciprocity is established when a foreign country recognizes or enforces Chinese judgments in practice.[118] It requires 'actual precedents' demonstrating that Chinese judgments have been recognized and enforced in the foreign country in the past.[119] *De facto* reciprocity was formally adopted by the Supreme People's Court in *Gomi Akira v. Dalian Fari Seafood Ltd.*[120] The recognition and enforcement of a Japanese judgment in this case was rejected by the Court because neither a treaty nor reciprocity existed between China and Japan. The Court understood reciprocity as requiring actual precedents that Chinese judgments were recognized and enforced by the Japanese courts.[121]

Determining *de facto* reciprocity may be controversial. In *Spliethoff's Bevrachtingskantoor BV v. Bank of China Limited*, Carr J of the Commercial Court of England and Wales held that 'judgments in China […] fall to be recognized by

[114] Art. 298 of the 2024 CPL.

[115] Art. 34 of the Minutes (*infra* n. 116). Art. 304 of the 2024 CPL.

[116] Minutes of the National Court's Symposium on Foreign-related Commercial and Maritime Trials, (promulgated by the Supreme People's Court, 24 January 2022, effective on the same date), http://cicc.court.gov.cn/html/1/218/62/409/2172.html (China) (hereinafter 'Minutes').

[117] Huang (2019b), p. 250.

[118] Sun (2018), p. 1141.

[119] Tang et al. (2016), p. 162.

[120] *Gomi Akira v. Dalian Fari Seafood Ltd. (Application of Gomi Akira (a Japanese Citizen) to Chinese Court for Recognition and Enforcement of Japanese Judicial Decision)*, (1996) 1 SPC Gazette 29.

[121] E.g. Zhang (2013), p. 155.

this court'.[122] This case was considered by many commentators to be the first case where a UK court had recognized Chinese judgments so that *de facto* reciprocity should be considered as being offered by the United Kingdom to China.[123] However, in *Spar Shipping v. Grand China Logistic*, the Shanghai Maritime Court held that *Spliethoff's Bevrachtingskantoor BV* was not a case where Chinese judgments were recognized in the sense of judgment recognition and enforcement, so *de facto* reciprocity was not established between the United Kingdom and China.[124] The Court stated three reasons for this. Firstly, *Spliethoff's Bevrachtingskantoor BV* did not involve proceedings to recognize and enforce a foreign judgment. It was a proceeding brought by Spliethoff's Bevrachtingskantoor BV (hereinafter 'SBV') against the Bank of China Limited (hereinafter 'BOC') to enforce refund guarantees issued by BOC. The guarantees were provided in support of two shipbuilding contracts between SBV as the buyer and Rongcheng Xixiakou Shipyard Co. Ltd. and another Chinese company as the sellers of the two ships. The UK proceedings in *Spliethoff's Bevrachtingskantoor BV* had not been brought by the sellers (the victorious parties in the Chinese proceedings) in order to recognize Chinese judgments in the United Kingdom, which meant that recognition had not occurred. Secondly, if *Spliethoff's Bevrachtingskantoor BV* is considered to be a case where Chinese judgments were recognized, the sellers' right to litigation would be deprived because they did not participate in the English proceedings. Thirdly, the Shanghai Maritime Court held that English law was unclear as to whether recognizing a foreign judgment when it was used as a defence (which was what BOC did in the UK proceedings) should be distinguished from recognition made in proceedings initiated only for recognition of foreign judgments. Therefore, *Spliethoff's Bevrachtingskantoor BV* was not a case where an English court had recognized Chinese judgments, and it did not establish *de facto* reciprocity between the United Kingdom and China. The Shanghai Maritime Court's view is questionable. This is because Carr J relied on section 32 of the Civil Jurisdiction and Judgments Act 1982[125] and rule 51 of Dicey & Morris,[126] both of which support the view that the recognition of a foreign judgment can take place when the judgment is used as a defence in the United Kingdom. Moreover, it is doubtful whether the buyers' right to litigation would be deprived simply because they were not parties to the English proceedings. The Shanghai Maritime Court

[122] *Spliethoff's Bevrachtingskantoor BV v. Bank of China Limited*, [2015] EWHC 999 (Comm), para. 139.

[123] E.g. Guodong Du and Meng Yu, *List of China's Cases on Recognition of Foreign Judgments*, China Justice Observer, https://www.chinajusticeobserver.com/a/list-of-chinas-cases-on-recognition-of-foreign-judgments (accessed 11 September 2023).

[124] *Spar Shipping v. Grand China Logistic*, 2018 Hu 72 Xie Wai Ren No. 1 (Shanghai Maritime Ct., 17 March 2022). Notably, after Spar was decided, on December 19, 2022, in Hangzhou J Asset Management Co Ltd & Anor v Kei [2022] EWHC 3265 (Comm), the High Court of England and Wales recognized and decided to enforce two Chinese judgments.

[125] Civil Jurisdiction and Judgments Act 1982, § 32 (Eng.) provides that '[o]verseas judgments given in proceedings brought in breach of agreement for settlement of disputes. (1) Subject to the following provisions of this section, a judgment given by a court of an overseas country in any proceedings shall not be recognized or enforced in the United Kingdom if […]'.

[126] Dicey et al. (2012), para. 130, rule 51 provides that '[a] foreign judgment is impeachable on the ground that its enforcement or, as the case may be, recognition, would be contrary to public policy'.

seemed to require that the parties to the proceedings to recognize a foreign judgment must be the same as those in the judgment-rendering proceeding. This ignores the fact that other parties (e.g. a judgment creditor's guarantor) may have an interest in seeking the recognition, although not the enforcement, of the judgment.

The Minutes resolve controversies surrounding *de facto* reciprocity by shifting to *de jure* reciprocity. In contrast to *de facto* reciprocity, *de jure* reciprocity does not require 'actual precedents' where Chinese judgments have been recognized and enforced in a foreign country.[127] *De jure* reciprocity exists when one of the following circumstances occurs:

Firstly, *de jure* reciprocity can be established according to foreign law.[128] In *Spar Shipping*, the Shanghai Maritime Court held that, although *de facto* reciprocity was not established, *de jure* reciprocity was constituted between China and the United Kingdom as three elements had been satisfied: (1) the existence of a treaty is not a precondition for recognition and enforcement of foreign judgments in the United Kingdom, (2) there is no legal or factual barrier in English law for the recognition and enforcement of Chinese judgments, and (3) there is no indication that English courts have ever refused to recognize and enforce Chinese judgments due to the lack of reciprocity.[129] Consequently, the Shanghai Maritime Court recognized and enforced the relevant English judgments. Different from the United Kingdom, whose common law for recognition and enforcement of foreign judgments does not require reciprocity, the German Code of Civil Procedure does require reciprocity—namely, the recognition and enforcement of a German judgment in another state do not encounter significantly greater difficulties than the recognition and enforcement of a comparable foreign judgment in Germany.[130] Accordingly, in 2021, the Saarbrücken Regional Court refused to recognize a Chinese judgment because recognition and enforcement reciprocity for German judgments in China was not guaranteed.[131] Despite this individual case, the German Code of Civil Procedure should be considered as offering *de jure* reciprocity for Chinese judgments. This is because in early 2006 the Berlin Court of Appeal recognized and enforced a Chinese judgment.[132] The slow development of reciprocal treatment for foreign judgments from the Chinese side was the reason why the Saarbrücken Regional Court held that China did not guarantee reciprocity for German judgments.

Secondly, *de jure* reciprocity can be established where there is a mutually beneficial understanding or consensus between China and a foreign country.[133] This has

[127] Tang et al. (2016), p. 162.
[128] Minutes, Art. 44.1.
[129] *Spar Shipping*, *supra* n. 124.
[130] § 328 Abs. 1 Nr. 5 *Zivilprocessordnung* (ZPO).
[131] LG Saarbrücken, Urteil vom 16.04.2021 - 5 O 249/19, paras. 35–37, https://openjur.de/u/2343582.html.
[132] For an English-language summary of the decision, see Beckers (2007). For comments, see Huang (2019a), p. 131.
[133] Minutes, Art. 44.2.

already occurred with Singapore through the China-Singapore Memo[134] and with the ASEAN countries through the Nanning Consensus.[135]

Thirdly, *de jure* reciprocity can be established if a foreign country has made a reciprocal commitment to China through diplomatic channels or vice versa, and there is no evidence to suggest that the foreign country has refused to recognize and enforce a Chinese judgment on the ground that there is no reciprocity.[136] Making a reciprocity commitment by diplomatic channels differs from establishing reciprocity through consensus because the former can be unilateral whereas the latter is always bilateral or multilateral. Establishing *de jure* reciprocity through diplomatic channels has not occurred so far.

Notably, the Minutes establish a court review mechanism for the existence of reciprocity between China and a certain foreign country. An intermediate people's court should submit its opinion to the higher people's court in the same jurisdiction for review before making a ruling on the existence of reciprocity; the higher people's court, if it agrees with the lower court's opinion, should submit its opinion to the Supreme People's Court for review.[137] The intermediate people's court can only make a ruling after the Supreme People's Court has responded.[138] Switching from *de facto* to *de jure* reciprocity will significantly facilitate the recognition and enforcement of foreign judgments in China.

5.2 Defences Against Recognition and Enforcement of Foreign Judgments

According to Article 300 of the 2024 CPL, people's courts should reject the recognition and enforcement of a foreign judgment when any of the following five circumstances exist: (1) the foreign court that rendered the judgment had no jurisdiction to hear the case; (2) the judgment debtor had not been lawfully summoned, or even if he or she was lawfully summoned, he or she had not been given a reasonable opportunity to present his or her case and exchange arguments, or parties without legal capacity had not been properly represented; (3) the foreign judgment was obtained by fraudulent means; (4) a Chinese court has rendered a judgment on the same dispute, or a Chinese court has recognized a third-state judgment on the same dispute;

[134] Memorandum of Guidance between the Supreme People's Court of the People's Republic of China and the Supreme Court of Singapore on Recognition and Enforcement of Money Judgments in Commercial Cases, China-Singapore, 31 August 2018 ('China-Singapore Judgment Memo').

[135] The Nanning Statement represented the consensus reached among the attendees at the second China-ASEAN Justice Forum, see Nanning Statement of the 2nd China-ASEAN Justice Forum, published by Supreme People's Court, www.court.gov.cn/zixun-xiangqing-47372.ht.ml, (accessed 12 September 2022), Arts. 2 and 7. The attendees at the Forum included the Chief Justices from China, Cambodia, Indonesia, Laos, Malaysia, Burma, the Philippines, Singapore, Thailand, Vietnam, Afghanistan, Bangladesh, Nepal, Pakistan, and Sri Lanka.

[136] Minutes, Art. 44.3.

[137] Ibid., Art. 49.

[138] Ibid.

or (5) the foreign judgment violates the fundamental principles of Chinese laws or national sovereignty, security, and social and public interests.[139]

This section will focus on the defences of jurisdiction and competing judgments because the 2024 CPL explains their meanings.[140] Other defences (e.g. proper service, fraud, and the public policy exception) are certainly very serious defences against the recognition and enforcement of foreign judgments. Three reasons may explain why they are mentioned in the general framework of defences against the recognition and enforcement of foreign judgments (i.e. Article 300 of the 2024 CPL) but without further explanation. Firstly, the 2024 CPL has made important amendments to the service of process on foreign defendants.[141] The remaining key issue for judgment recognition and enforcement proceedings is which law—the law of the judgment-rendering foreign court or the law of the Chinese requested court—should be applied to determine whether the service of process leading to the judgment has been made according to due process of law. This is an applicable law issue and may not need to be specified in the civil procedure law. Secondly, public policy is considered to be an unruly horse.[142] It is a deliberate decision by the Chinese legislators not to define it in the civil procedure law. The contours of the public policy exception should be left to the judiciary. Thirdly, different from due process and the public policy exception, fraud is a new concept that is not yet ripe for a definition in the 2024 CPL. Internationally, the definition of fraud under the Hague Judgments Convention is inconsistent with that of the Choice of Court Convention.[143] Among the common law countries, there are also hot debates as to whether fraud litigated in a judgment-rendering court can be relitigated and used as a defence in the requested court.[144] The meaning of fraud should be clarified by a judicial interpretation issued by the Supreme People's Court based on the problems encountered when implementing the 2024 CPL.

5.2.1 Jurisdiction of the Foreign Judgment-Rendering Court

The Chinese courts need to identify the connections with the foreign judgment-rendering court that are sufficient for the judgment to be recognized and enforced in China.[145] These connections are the so-called indirect jurisdiction filters.[146] Typical examples of these filters are Articles 5 and 6 of the Judgments Convention. Indirect

[139] Minutes, Art. 46.4; Art. 300 of the 2024 CPL.

[140] Arts. 301 and 302 of the 2024 CPL.

[141] See *supra* Sect. 4.1.

[142] Shand (1972).

[143] Unlike the Judgments Convention, the Choice of Court Convention limits fraud to procedural issues. Garcimartin/Saumier Report, p. 118.

[144] E.g. *Keele v. Findley* (1990) 21 NSWLR 444; *Yoon v. Song* (2000) 15 FLR 295; *Quarter Enterprises Pty Ltd. v. Allardyce Lumber Company Ltd.* [2014] NSWCA 3; *Doe v. Howard* [2015] VSC 75; *First Property Holding Pte Ltd. v. Nyunt* [2019] NSWSC 249; *Jacobs v. Beaver* (1908) 17 OLR 496.

[145] See Garcimartín/Saumier Report, p. 88. Michaels (2007), pp. 35–36.

[146] Garcimartín/Saumier Report, p. 88.

jurisdiction is different from direct jurisdiction which determines the jurisdiction of the foreign court under the foreign law.[147]

Article 301 of the 2024 CPL addresses the indirect jurisdiction of the foreign judgment-rendering court. It provides that the people's court shall determine that the foreign judgment-rendering court has no jurisdiction when that foreign court has no jurisdiction according to the foreign law or, although it has jurisdiction according to the foreign law, it has no appropriate connection with the case.[148] The foreign judgment-rendering court will also have no jurisdiction if it violates the exclusive jurisdiction of the Chinese courts or an exclusive choice of court agreement concluded by the parties.[149]

Notably, the 2024 CPL applies both foreign law and Chinese law to determine whether the foreign judgment-rendering court has jurisdiction over the case. The law of the foreign judgment-rendering court will be applied to determine its jurisdiction in the first place. However, whether the foreign court has a appropriate connection with the case and whether an exclusive choice of court agreement exists should be determined by the 2024 CPL. Moreover, the exclusive jurisdiction of the people's courts should also be determined according to the 2024 CPL.[150] This departs from the choice of law rule adopted by the Minutes providing that the lack of jurisdiction of the foreign judgment-rendering court should be determined exclusively according to Chinese law.[151] This is also different from the draft CPL Amendment for public consultations, which allows a Chinese court to apply the law of the foreign judgment-rendering court to determine whether the latter has jurisdiction.[152] Both approaches are problematic because they would give too much deference to the foreign court or they would disregard the foreign law that the foreign court relied upon when exercising jurisdiction.

Referring to Article 5 of the Hague Judgments Convention, China should consider further developing its indirect jurisdiction rules based on Article 301 of the 2024 CPL. China may replicate direct jurisdiction rules as its indirect jurisdiction rules as was done by the United States, Germany, Brazil, etc.[153] This is because, among the 33 bilateral treaties containing judgment recognition and enforcement provisions concluded by China so far, 13 provide for indirect jurisdiction rules, which are largely similar to the direct jurisdiction rules in China.[154] The remainder

[147] Ibid. In some common law countries, indirect jurisdiction may be termed as 'jurisdiction in the international sense', see e.g. *Adams v. Cape Industries* [1990] Ch 433, 505–531, 549–557; *Lucasfilm Limited v. Ainsworth* [2010] Ch 503, paras. 191–194.

[148] Art. 301(1) of the 2024 CPL.

[149] Ibid., Art. 301(2) and (3).

[150] See *infra* Sect. 2.3.

[151] Art. 46.1 of the Minutes.

[152] Art. 25 of the Civil Procedure Law (Amendment Draft for Public Consultation) (published by the Thirty-eighth Session of the Thirteenth National People's Congress Standing Committee, 30 December 2022), https://www.zhichanli.com/p/1932531026 (accessed 3 January 2023).

[153] Brand (2015), pp. 890–891.

[154] The indirect jurisdiction rules under these 13 treaties resemble the following:
(1) At the time the action was brought, the defendant had a domicile or residence in the state of origin;
(2) At the time of filing the lawsuit, the defendant had a representative office in the territory of the state of origin;

contain no provision on indirect jurisdiction.[155] The China-Singapore Memo, which is the most recently concluded international judicial assistance instrument other than treaties by China, lists indirect jurisdiction grounds for Singapore but not for China.[156]

The majority of the indirect jurisdiction grounds contained in Article 5 of the Judgments Convention correspond to relevant Chinese direct jurisdiction rules.[157] A typical example is that a defendant is subject to the jurisdiction of a court where he or she habitually resided or it was his or her principal place of business when becoming a defendant in the proceedings in question.[158] Nevertheless, serious discrepancies exist between Article 5 of the Judgments Convention and the 2024 CPL, which can be grouped into three categories.

The first category is where the Chinese direct jurisdiction rules are narrower than the indirect jurisdiction rules under the Convention. For example, according to Article 5.1(a) of the Judgments Convention, if the person against whom recognition or enforcement is sought habitually resided in the state of origin at the time when the person became a party to the proceedings in the court of origin, the judgment is eligible for recognition and enforcement. This applies to both defendants and third parties to the proceedings.[159] However, under the Chinese CPL, a third party's habitual residence does not give a court jurisdiction.[160]

Footnote 154 (continued)

(3) The defendant has expressly accepted the jurisdiction of the court of origin in writing;

(4) The defendant raised a defence on the substance of the dispute and did not raise any objection to the issue of jurisdiction;

(5) In a contract dispute, the contract was signed, or has been or should be performed, or the subject matter of the lawsuit was in the territory of the state of origin;

(6) In a tort case, the tortious act or the result thereof occurred within the territory of the state of origin;

(7) In an identity relationship case, the litigant has a domicile or residence within the territory of that party;

(8) In the case of maintenance obligations, the debtor has a domicile or residence in the territory of the state of origin;

(9) In a succession case, when the deceased dies, his or her domicile or main estate is within the territory of the state of origin;

(10) The subject matter of the lawsuit is immovable property located in the territory of the state of origin.

E.g. Art. 24 of the Treaty between China and Bosnia and Herzegovina on Judicial Assistance in Civil and Commercial Matters; Art. 18 of the Treaty between China and the Socialist Republic of Vietnam on Civil and Criminal Judicial Assistance; Art. 22 of the Treaty between China and Italy on Judicial Assistance in Civil Matters; and Art. 22 of the Treaty between China and the Arab Republic of Egypt on Legal Assistance in Civil, Commercial and Criminal Matters.

[155] I.e. Huang (2019b), p. 273.

[156] Art. 21 of the China-Singapore Judgment Memo provides for indirect jurisdiction rules for Singapore; the China-Singapore Judgment Memo, Art. 9 is for China, which is identical to the Minutes, Art. 46.1.

[157] The Judgments Convention, Arts. 5.1(c), 5.1(d), 5.1(e), 5.1(h), 5.1(i), 5.1(l), 5.3, 6. Most of these grounds are for situations where parties submit to the jurisdiction of the court of origin by their procedural conduct.

[158] Ibid., Arts. 5.1(a), 5.1(b); Art. 22 of the 2024 CPL.

[159] Garcimartin/Saumier Report, para. 139.

[160] Art. 22 of the 2024 CPL; Art. 531 of the CPL 2022 Judicial Interpretations.

The second category is where the Chinese direct jurisdiction rules are broader than the indirect jurisdiction rules of the Judgments Convention. For example, Article 272 of the Chinese CPL provides that in an action concerning contract or property, the action may be brought if the defendant has distrainable property within the territory of China, regardless of any connection between the property and the dispute. If this ground can be applied as an indirect jurisdiction ground, it means that the Chinese requested court would consider a foreign judgment-rendering court to have jurisdiction if distrainable property can be found within the jurisdiction of that court.

The third category is where Chinese law provides specific direct jurisdiction bases while the Judgments Convention offers general indirect jurisdiction bases. For example, Article 5.1(g) of the Judgments Convention provides that the judgment concerning contractual obligations should be delivered by a court 'in which performance of that obligation took place, or should have taken place, in accordance with (i) the agreement of the parties, or (ii) the law applicable to the contract, in the absence of an agreed place of performance […]'. The direct jurisdiction ground under Article 24 of the Chinese CPL is equivalent to the indirect jurisdiction ground in Article 5.1(g) of the Judgments Convention. However, the CPL also provides for specific direct jurisdiction grounds for certain types of contracts: for example, besides the domicile of the defendant, disputes involving negotiable instruments will fall within the jurisdiction of the court of the place of payment.[161] Accordingly, although the place where a negotiable instrument is issued constitutes a place of performance, it does not constitute a jurisdictional basis for disputes involving negotiable instruments. This is different from the general rule provided by Article 5.1(g) of the Judgments Convention.

Overall, the above differences give rise to the possibility that a foreign judgment may be entitled to be recognized and enforced under Chinese law but not under the Judgments Convention, and vice versa. We will have to wait and see whether the Chinese legislators will adopt the same indirect jurisdiction rules as the Judgments Convention, which would lead to another amendment of the CPL.

5.2.2 Competing Judgments

Competing judgments may occur in three circumstances.

The first case of competing judgments is between a judgment rendered by a people's court and that rendered by a foreign court. The 2024 CPL does not require that the two judgments should involve the same parties, although they should concern the same dispute.[162] The term 'same dispute' is also used in the Mainland China-Hong Kong Judgment Arrangement[163] and is considered 'not [to] be very different

[161] Art. 26 of the 2024 CPL.

[162] Minutes, Art. 46.4; Art. 300 of the 2024 CPL.

[163] Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region, Mainland China-Hong Kong SAR, signed on 18 January 2019 (not effective yet) (hereinafter 'the Mainland China-Hong Kong Judgment Arrangement'), Art. 12.5. The Arrangement is implemented in Hong Kong by the

from the *same* "subject matter" in the Judgments Convention', focusing on the 'central or essential issue' of the two judgments.[164] In contrast, the Judgments Convention requires that the two judgments should involve the same parties but should not necessarily concern the same cause of action.[165] Moreover, Chinese law does not consider whether the contents of the foreign judgment contradict the contents of the Chinese judgment, while the Judgments Convention does consider this aspect.[166] That said, neither require the judgment of the requested court (i.e. the Chinese court) to be rendered earlier in time in order to obtain priority.[167] Therefore, in practice, it may be more likely for recognition and enforcement to be refused under Chinese law than under Article 7(e) of the Judgments Convention.

The second case of competing judgments is between a judgment rendered in a foreign state (i.e. the court of origin) and another judgment in a third foreign state. The Judgments Convention requires three conditions for priority to be given to an inconsistent judgment rendered in a third state.[168] Firstly, the third-state judgment should have been rendered earlier in time compared to the judgment of the court of origin. It does not consider which court was first seised. Secondly, both judgments must involve the same parties and the same subject matter. The term 'same subject matter' is considered to be less restrictive than the 'same cause of action' as contained in Article 9(g) of the Choice of Court Convention.[169] Thirdly, the earlier judgment must be eligible for recognition and enforcement in China, irrespective of whether or not the recognition and enforcement proceedings have been commenced. In contrast, Chinese law adopts different requirements: both judgments must concern the same dispute but may not necessarily be between the same parties, and the third-state judgment must already be recognized and enforced by a people's court.[170] Therefore, the Judgments Convention gives priority to judgments rendered earlier in time, while Chinese law gives priority to judgments recognized and enforced earlier in time.

Thirdly, competition may also occur between a foreign judgment and a forthcoming Chinese judgment. The 2024 CPL has two provisions to address the *res judicata* of the foreign judgment. Article 281 of the 2024 CPL addresses the situation where a foreign judgment has been fully or partially recognized by a people's court, and a party brings a lawsuit on the recognized part of the foreign judgment. In this situation, the people's court shall not accept the lawsuit.[171] If the lawsuit has been accepted, the people's court shall dismiss it.[172]

Footnote 163 (continued)
Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance, which has not come into operation. For contents, *see* https://www.gld.gov.hk/egazette/pdf/20222644/es12022264411.pdf (assessed 1 October 2023).

164 Garcimartin/Saumier Report, para. 272.

165 The Judgments Convention, Art. 7.1(e). Garcimartin/Saumier Report, para. 271.

166 Minutes, Art. 46.4; the Judgments Convention, Art. 7.1(e).

167 Jang (2020), p. 106.

168 The Judgments Convention, Art. 7.1.(f).

169 Garcimartin/Saumier Report, para. 272. Hartley/Dogauchi Report, para. 193.

170 Minutes, Art. 46.4; Art. 300 of the 2024 CPL.

171 Art. 281 of the 2024 CPL.

172 Ibid.

Article 302 of the 2024 CPL regulates a different situation where a party applies to a Chinese court to recognize and enforce a foreign judgment, but a case concerning the same dispute is still ongoing (*shenli*, 审理) in China (the proceedings may be in a second Chinese court). The proceedings should then be stayed pending the proceedings to recognize and enforce the foreign judgment.[173] If the foreign judgment is held to be recognizable and enforceable in China, the proceedings on the same dispute should be dismissed.[174] If the foreign judgment is not recognizable and enforceable in China, the proceedings on the same dispute should be resumed.[175] This provision addresses the situation where a foreign court has rendered a judgment earlier in time than a Chinese court. It is distinct from the Judgments Convention because it does not consider which court is first seised. Moreover, the 2024 CPL gives priority to the judgment recognition and enforcement proceedings rather than the trial proceedings which were commenced first. This is distinct from Article 533 of the CPL Judicial Interpretations. For example, in *Americhip, Inc. v. Dean et al.,* the recognition and enforcement of a New Zealand judgment was rejected because the same dispute was already being heard in proceedings before another Chinese court according to Article 533 of the CPL Judicial Interpretations.[176] Notably, in *Americhip, Inc.*, the proceedings on the recognition and enforcement of the judgment and the trial proceedings were initiated by the same party.[177] The application of Article 533 of the CPL Judicial Interpretations improperly disregards the *res judicata* created by the foreign judgment and may lead to inconsistency between the existing foreign judgment and a forthcoming Chinese judgment on the same dispute.

5.3 Compulsory Enforcement

According to the respected treatise, Conflict of Laws in the People's Republic of China, '"recognition" involves a decision not to permit litigation of a specific issue or factual dispute that was previously decided in another court […]. "[e]nforcement" involves the jurisdiction's exercise of its judicial powers to compel compliance with a judgment rendered in another jurisdiction'.[178] 'Enforcement' can be further divided into two stages: voluntary enforcement and compulsory enforcement. The proceedings to seek compulsory enforcement are separated from the proceedings to recognize and enforce a foreign judgment. After a people's court has issued a decision to recognize and enforce a foreign judgment, the parties concerned must

[173] Art. 302 of the 2024 CPL.
[174] Ibid.
[175] Ibid.
[176] *Americhip, Inc. v. Dean et al.*, 2018 Yue 03 Min Chu No. 420 (Shenzhen Interm. People's Ct, 2019).
[177] The plaintiff in the New Zealand proceedings, after winning the New Zealand case, brought a case on the merits at the first Chinese court, and then brought a case to recognize and enforce the New Zealand judgment in the second Chinese court. Some of the submissions argued by the plaintiff in the New Zealand proceedings were not argued at the first Chinese court, because the plaintiff considered that these submissions would not be supported under Chinese law.
[178] Tang et al. (2016), p 141.

comply with that decision.[179] When a judgment debtor fails to voluntarily carry out its obligations according to the judgment, a judgment creditor can apply for compulsory enforcement.[180]

5.3.1 Empirical Study

Up to 10 September 2023, there had been 63 cases in total concerning the recognition and enforcement of foreign judgments on the grounds of reciprocity or judicial assistance treaties ratified by China in civil or commercial matters.[181] Of these, 26 were successful cases where the Chinese courts decided to recognize and enforce foreign judgments while 3 were partially successful cases (the Chinese courts recognized compensatory damages but rejected punitive damages); the recognition and enforcement of foreign judgments were rejected in the remaining 34 cases.[182] The findings of extensive research on whether the 29 judgments were actually enforced are shown in Table 1.

The (partially) successful enforcement group includes both voluntary and compulsory enforcement cases. Among the 9 judgments, 3 were to appoint insolvency administrators and with no or limited enforcement contents. For example, in the case of *In re DAR*, real property owned by the German insolvent company had already been fully paid for and been occupied by the company associated with the creditor before the German insolvency judgment was recognized in China.[183] As this real property was the only property owned by the insolvent company in China, there was no other property to be collected or debt to be paid by the insolvency administrator.[184] Another 3 judgments in this group were rendered against the same party.[185] The plaintiffs, when applying for US judgments to be recognized and enforced in China, successfully requested the Guangzhou Intermediate People's Court to

[179] Art. 247 of the 2024 CPL.

[180] The time limit for a judgment creditor to apply for compulsory enforcement is within two years calculated from the last day of the period specified in the Chinese decision to recognize and enforce the foreign judgment. If the Chinese decision specifies performance in stages, the time limit shall be calculated from the date of the expiry of the last performance period. If no period of performance is specified in the Chinese decision, the time limit shall be calculated from the date when the legal document takes effect. Art. 250 of the 2024 CPL.

[181] The statistics have been obtained from the Chinese official judgment website https://wenshu.court.gov.cn and the China Justice Observer website https://www.chinajusticeobserver.com/a/list-of-chinas-cases-on-recognition-of-foreign-judgments. The statistics do not include the recognition of foreign divorce decrees.

[182] For a list of these cases, see the Appendix.

[183] (2022) Jing 01 Po Shen No. 786.

[184] Ibid.

[185] *Anqin Wang v. Fang Zeng* (2019) Yue 01 Xie Wai Ren No. 3; *Hui Jiang, Jun Huang, et al. v. Fang Zeng* (2018) Yue 01 Xie Wai Ren No. 21, No. 26, No. 27, No. 28, No. 32, (2019) Yue 01 Xie Wai Ren No. 58; and *Yeging Xia v. Fang Zeng* (2019) Yue 01 Xie Wai Ren No. 22.

Table 1 Enforcement status of foreign judgments in China

(Partially) successful enforcement	Unsuccessful compulsory enforcement	Compulsory enforcement proceedings have commenced but the result is unknown	Enforcement Status unknown	Total number of cases
9	7	2	11	29

The comprehensive search result can be found in the Appendix. The data is up to 10 September 2023. Research was conducted on https://www.pkulaw.com (one of the best commercial databases for Chinese judgments); https://wenshu.court.gov.cn (the Chinese courts' official website for publishing judgments); and http://zxgk.court.gov.cn/ (the Chinese courts' official website for compulsory enforcement information)

preserve a significant amount of the defendant's assets in China in order to pay the judgment debts.[186]

Importantly, the cases in this group do not necessarily mean that the judgment creditors will have their foreign judgment completely satisfied. For example, *Establissements A. Chollet & Test Rite International Co., Ltd. v. Daoming Optics & Chemical Co., Ltd.* involved three companies: A in France, B in Taiwan, and C in Mainland China.[187] B bought products from C and sold them to A. Due to the products being defective, A initiated a lawsuit in France against B, where B brought a claim against C as a guarantor. The French court terminated the sales contract between A and B. Consequently, B was ordered to return 200,000 USD to A and took the products back from A; and C was ordered to carry out both obligations on behalf of B. Additionally, B was ordered to compensate A by paying 3,000 Euros and C was ordered to compensate B by paying 4,000 Euros. Upon A's and B's application, the Jinhua Intermediate People's Court (hereinafter 'Jinhua Court') decided to recognize and enforce the French judgment.[188] After compensating B by paying 4,000 Euros, C brought a compulsory enforcement proceeding against both A and B, requesting the court to order A to return the products to C and that B should be jointly liable for their return.[189] The Jinhua Court dismissed the proceedings because it had no jurisdiction concerning compulsory enforcement against A and B who were both not registered in China and the products were located in France.[190] Thereafter, the second compulsory enforcement proceeding was brought by A and B against C.[191] A and B requested C to directly return 200,000 USD to B because A and B had settled their dispute. The Jinhua Court dismissed the second proceeding for two reasons. Firstly, the French judgment required C to compensate A rather than B. Therefore, B had no right to request C for compensation. Secondly, since A and B had settled their dispute, A had lost its creditor's right against C.

Establissements raises intriguing enforcement questions. Firstly, A and B had submitted to the jurisdiction of the Jinhua Court when they applied for the recognition and enforcement of the French judgment. The pertinent question was whether the jurisdiction of the Jinhua Court also covered compulsory enforcement measures concerning *all* obligations in the judgment. This question is critical considering that the parties involved in international commercial transactions often simultaneously have the roles of rights holders and obligors. If the Jinhua Court had jurisdiction to enforce all obligations in the judgment, it could administer the settlement between A and B, which would pave the way for A to transfer the creditor's right against C to B

[186] *Anqin Wang v. Fang Zeng* (2019) Yue 01 Xie Wai Ren No. 3; *Hui Jiang, Jun Huang, et al. v. Fang Zeng* (2018) Yue 01 Xie Wai Ren No. 21, No. 26, No. 27, No. 28, No. 32, (2019) Yue 01 Xie Wai Ren No. 58; and *Yeging Xia v. Fang Zeng* (2019) Yue 01 Xie Wai Ren No. 22.
[187] (2016) Zhe 07 Xie Wai Ren No. 1.
[188] Ibid.
[189] (2018) Zhe 07 Zhi 136 Hao.
[190] Ibid.
[191] (2019) Zhe Zhi Fu 2 Hao.

in the second compulsory enforcement proceeding.[192] Consequently, B would have legal standing under Chinese law to apply for compulsory enforcement measures against C. Article 235 of the 2024 CPL gives compulsory enforcement jurisdiction to the court of first instance in the trial proceedings or the court located in the place of the obligator's assets. 'The court of first instance in the trial proceedings' should be extended to cover the court which renders a decision to recognize a foreign judgment. Although the trial procedure is not the same as the procedure for the recognition and enforcement of the judgment, their differences do not change the fact that after recognition, a foreign judgment essentially becomes a Chinese judgment and can be enforced accordingly. If jurisdiction to recognize a foreign judgment is separated from the jurisdiction for its compulsory enforcement, a party would be allowed to pick and choose its rights of enforcement under the judgment and to shield itself from its obligations. Secondly, the Jinhua Court is not located in France where the products are held by A and to be collected by C; however, it is located in the domicile of C which bears the obligation to compensate A. The problem is that the French judgment did not explicitly make collecting the products a condition for advancing the compensation, so the Jinhua Court could not therefore link the two obligations and order simultaneous performance. Since C was legitimately concerned that it might lose the products while being ordered to compensate A and B, it should have applied to the French court to clarify the relationship between making compensation and collecting the products in the judgment. C could also request enforcement against A to facilitate it to collect products in France.[193]

In the group of unsuccessful compulsory enforcement of Table 1, all of the compulsory enforcement proceedings had been closed due to the debtors having no assets for enforcement. *Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export Co., Ltd.* is a very famous case in China because it is the first case in China where a foreign monetary judgment has been recognised based on the principle of *de facto* reciprocity.[194] Although the Chinese court decided to recognize and enforce the Singaporean judgment, the debtor did not voluntarily fulfil the obligations under the judgment. Consequently, the creditor applied to the Chinese court for compulsory enforcement, and the court docketed the case on 21 December 2016. On 24 January 2017, the same court made a civil ruling[195] and accepted another Chinese company's application to reorganize the debtor due to the latter's insolvency. On 8 December 2017, the court made a series of civil rulings[196] approving the merger and reorganization plan of the debtor and terminating the

[192] Art. 241 of the 2024 CPL provides that if in the course of compulsory enforcement, the two parties become reconciled and reach a settlement agreement on their own initiative, the execution office shall make a record of the contents of the agreement, and both parties shall affix their signatures or seals to the record.

[193] In the first Chinese compulsory enforcement proceedings, A and B argued that collecting the products from A was an obligation rather than a right, so C could not enforce it because it was an obligator rather than a rights holder. See (2018) Zhe 07 Zhi 136 Hao. This is debatable because A and B may be considered to bear an obligation to facilitate C to collect the goods.

[194] (2016) Su 01 Xie Wai Ren No. 3.

[195] (2017) Su 01 Po No. 1.

[196] (2017) Su 01 Po No. 1, 6, 7, 8, 9, 10.

insolvency proceedings. On 28 December 2017, the creditor withdrew its application for the compulsory enforcement of the judgment.[197] From the publicly available documents, the relationship between the judgment creditor and the Chinese company which merged with the judgment debtor is unknown. However, if the judgment creditor had received the payment from the insolvency reorganization proceedings, the Chinese Judgment Enforcement Decision would have contained this information.[198] Similarly, in *B&T Ceramic Group s.r.l's application for recognition of a bankruptcy judgment regarding E.N.Group s.p.a*, the French judgment debtor's share had been transferred to a third Chinese company. The Chinese court held that a compulsory enforcement order could not be made and suggested that the judgment creditor should bring a case against the Chinese company that received the share.[199] Therefore, foreign judgment creditors should consider applying for interim measures to preserve the judgment debtors' assets including account receivables before the proceedings to recognize and enforce the judgment are commenced.[200] After the foreign judgment is recognized but before the commencement of the compulsory enforcement proceedings, if the judgment creditors discover that urgent situations such as the transfer of assets by the debtors may render the recognized judgment unenforceable or difficult to enforce, they may also apply to the enforcement court for interim measures to preserve the assets.[201]

The group containing an unknown enforcement status in Table 1 includes three circumstances. (1) The foreign judgments have been voluntarily enforced by judgment debtors so compulsory enforcement decisions are not necessary.[202] (2) The judgment creditors have not applied for compulsory enforcement and the foreign judgments remain outstanding.[203] (3) The judgment creditors have applied for compulsory enforcement, but the relevant compulsory enforcement decisions are not available to the public, so the status of the enforcement remains unknown.[204]

As a conclusion, although the empirical study only covered 29 foreign judgments, which is a relatively small number, it exhausts all foreign judgments that the Chinese courts have decided to recognize and enforce so far. It reflects the fact that a substantial percentage of foreign judgments that the Chinese courts have decided to recognize and enforce may not have been enforced in China. 'Effectively resolving

[197] (2016) Su 01 Zhi 827 Hao Zhi Yi.

[198] Ibid.

[199] Zhang (2013), p. 161.

[200] Arts. 152–162 of the CPL 2022 Judicial Interpretations.

[201] Arts. 163–173 of the CPL 2022 Judicial Interpretations.

[202] The statistics were based on http://zxgk.court.gov.cn/ which records the status of the compulsory enforcement of judgments.

[203] This may be because of the recency of the recognition and enforcement decisions. For example, *Spar Shipping AS v. Grand China Logistics Holding (Group) Co., Ltd.* (2018) Hu 72 Xie Wai Ren No. 1 was rendered in 2022, and the judgment creditor has two years from the date of recognition to decide whether to seek compulsory enforcement measures. Art. 250 of the 2024 CPL.

[204] An example is the first US monetary judgment that China decided to recognize and enforce under the principle of reciprocity: *Liu Li v. Taoli & Tongwu* (2015) E Wu Han Zhong Min Shang Wai Chu Zi No. 00026. The Chinese decision to recognize and enforce *Liu Li* was widely covered by the media and legal literature; however, whether it has been enforced in practice is unknown to the public.

enforcement difficulties' and 'legally ensuring that parties who have won their cases promptly realize their rights' have been recognized as difficult challenges and urgent issues at the Fourth Plenary Session of the 18th Central Committee of the Communist Party of China.[205] Against this background, in 2022 a draft Civil Compulsory Enforcement Act was published for public consultations.[206] This draft contains 17 chapters including 207 articles covering monetary and non-monetary claims as well as protective measures.[207] Hopefully, this draft, when enacted into law, can enhance the compulsory enforcement system in China.

5.3.2 Compulsory Enforcement Against Foreign Sovereignty

Losing sovereign immunity to the jurisdiction of a Chinese court in litigation does not mean that the foreign state also surrenders its assets in China as a result of the compulsory enforcement by the Chinese court after the recognition and enforcement proceedings have come to an end.[208]

However, a foreign state will lose immunity if it has explicitly waived its immunity against these compulsory enforcement measures by a convention or written agreement, has identified assets for enforcement, or the assets are for commercial purposes and are related to the litigation.[209] The following assets are not for commercial purposes: (1) assets for diplomatic missions, (2) assets for military use, (3) assets managed by central banks, (4) not-for-sale cultural heritage or archives, (5) not-for-sale scientific, cultural, and historical exhibitions, or (6) other assets determined by the Chinese courts.[210]

6 Conclusion and Prospects

The 2024 CPL has made laudable progress in harmonizing Chinese law with the Choice of Court Convention and the Judgments Convention. Typical examples are the abolishment of the actual connection requirement in choice of Chinese court agreements made by the parties[211] and shifting from *de facto* reciprocity to *de jure* reciprocity in the recognition and enforcement of foreign judgments.[212] The new *lis alibi pendens* and *forum non conveniens* rules in the 2024 CPL also treat foreign courts with more comity compared with the existing Chinese law.[213]

[205] Qian Zhou, 'Explanations of the China Civil Compulsory Enforcement Act (draft)', https://www.court.gov.cn/zixun-xiangqing-363381.html and https://www.court.gov.cn/zixun-xiangqing-363051.html. (accessed 12 September 2023).

[206] Draft Civil Compulsory Enforcement Act for public comments, https://npcobserver.com/wp-content/uploads/2022/06/Civil-Compulsory-Enforcement-Law-Draft.pdf (accessed 12 September 2023).

[207] Ibid.

[208] Art. 13 of the FSI Law.

[209] Ibid., Art. 14.

[210] Ibid., Art. 15.

[211] See *supra* Sect. 2.1.

[212] See *supra* Sect. 5.1.

[213] See *supra* Sect. 3.

However, ratifying international conventions may not be the key driving force for the 2024 CPL amendment. According to the Chinese Ministry of Justice, the 2024 CPL aims to improve the efficiency of foreign-related civil and commercial proceedings in China, and to 'better protect legitimate rights of litigants and strongly safeguard China's sovereignty, security, and development interests'.[214] The expansion of the people's courts' jurisdiction[215] and broadening the scope of local agents for service of process on foreign defendants[216] both provide evidence of the pro-plaintiffs (who are often Chinese parties) trend in the 2024 CPL. Maintaining the restriction on service and the taking of evidence in China for foreign proceedings[217] can also be explained by this trend. Although private international law may reflect 'potentially foreign affairs in a private-law key',[218] the development of Chinese civil procedure law should equally protect a Chinese plaintiff's right to justice and a foreign defendant's right to the due process of law.

Appendix

See Table 2.

[214] 'Amendments to Civil Procedure Law come into effect on Jan 1', http://en.moj.gov.cn/2023-09/01/c_915604.htm (accessed 11 September 2023).
[215] See *supra* Sect. 2.2.
[216] See *supra* Sect. 4.1.
[217] See *supra* Sect. 4.3.
[218] Knop and Riles (2017), p. 914.

Table 2 Enforcement status of foreign civil and commercial judgments that Chinese courts decided to recognize and enforce

Judgment-rendering country	Cause of action	Chinese requested court	English name of the judgment	Enforcement status
(Partially) successful enforcement				
France	Contract	Jinhua Intermediate People's Court	Establissements A. Chollet & Test Rite International Co., Ltd. v. Daoming Optics & Chemical Co., Ltd., (2016) Zhe 07 Xie Wai Ren No. 1 ((2016)浙07协外认1号)	The Chinese judgment debtor paid 4,000 Euro and rest of the judgment was not fulfilled. (2019) Zhe Zhi Fu No. 2. ((2019)浙执复2号)
Germany	Bankruptcy	Wuhan Intermediate People's Court	Sascha Rudolf Seehaus's application for recognition of a bankruptcy judgment regarding SP Management GmbH, (2012) E Zhong Min Shang Wai Chu Zi No. 00016 ((2012)鄂武汉中民商外初字第00016号)	Recognize the appointment of a bankruptcy administrator
Germany	Bankruptcy	Beijing First Intermediate People's Court	In re DAR, (2022) Jing 01 Po Shen No. 786 ((2022)京01破申786号)	Recognize the appointment of a bankruptcy administrator. A real property owned by the insolvent company was already paid and given to the creditor or its associated company before the recognition case
Singapore	Equity transfer	Wenzhou Intermediate People's Court	Oceanside Development Group Ltd. v. Chen Tongkao & Chen Xiudan, (2017) Zhe 03 Xie Wai Ren No. 7 ((2017)浙03协外认7号)	The compulsory enforcement proceeding transferred 1087.58 rmb from the debtor to the creditor, the proceeding was then closed because the debtor had no other assets for enforcement. (2019) Zhe 03 Zhi No. 2126 ((2019) 浙03执2126号案)
Singapore	Bankruptcy (Insolvency)	Xiamen Maritime Court	In re Xihe Holdings Pte. Ltd. et al., (2020) Min 72 Min Chu No. 334 ((2020) 闽72民初334号)	Recognize the appointment of a bankruptcy administrator
South Korea	Contract (IP licensing agreement)	Shanghai First Intermediate People's Court	Pektor Art Co., Ltd. v. Shanghai Chuangyi Baby Education Management Consulting Co., Ltd., (2019) Hu 01 Xie Wai Ren No. 17 ((2019)沪01协外认17号)	The court transferred 39,638.91 rmb of bank deposit from the debtor to pay the execution fee of the case. The compulsory enforcement proceeding has been closed because the debtor has no other assets for enforcement. (2020) Hu 01 Zhi No. 1342 ((2020)沪01执1342号)
USA	Contractual Fraud (Visa fraud)	Guangzhou Intermediate People's Court	Anqin Wang v. Fang Zeng, (2019) Yue 01 Xie Wai Ren No. 3 ((2019)粤01协外认3号)	Debtor's 12,312,000 rmb was frozen by the the court. Due to the recency of the judgment, further enforcement data cannot be found

Table 2 (continued)

Judgment-rendering country	Cause of action	Chinese requested court	English name of the judgment	Enforcement status
USA	Contractual Fraud (Visa fraud)	Guangzhou Intermediate People's Court	Hui Jiang, Jun Huang, et al. v. Fang Zeng, (2018) Yue 01 Xie Wai Ren No. 21, No. 26, No. 27, No. 28, No. 32 ((2018)粤01协外认21、26、27、28、32号), (2019) Yue 01 Xie Wai Ren No. 58 ((2019)粤01协外认58号)	Debtor's 12,312,000 rmb was frozen by the the court. Due to the recency of the judgment, further enforcement data cannot be found
USA	Contractual Fraud (Visa fraud)	Guangzhou Intermediate People's Court	Yeging Xia v. Fang Zeng, (2019) Yue 01 Xie Wai Ren No. 22 ((2019)粤01协外认22号)	Debtor's 12,312,000 rmb was frozen by the the court. Due to the recency of the judgment, further enforcement data cannot be found
Unsuccessful enforcement				
France	Contract	Beijing Fourth Intermediate People's Court	X v. Wu (Unknown Case No.)	Since the Respondent, Wu, failed to comply with the ruling rendered by the Beijing Court, the Beijing Court took measures to restrict high-level consumption against the Respondent and enforce his equity interest in a company in Fujian Province, China. However, due to the unsuccessful price valuation of such equity interest, the enforcement failed. Finally, Beijing Court only enforced the insurance policy in the name of the Respondent with a value of CNY 190,000 (approx. USD 27,144)
Italy	Bankruptcy	Foshan Intermediate People's Court	B&T Ceramic Group s.r.l's application for recognition of a bankruptcy judgment regarding E.N.Group s.p.a	The debtor's share has been transferred to a third company, so a compulsory enforcement order cannot be made
Poland	Damages awarded by a criminal judgment	Xiangyang Intermediate People's Court	Santint Poland Sp. zo.o.v. Zhang pawuleikedan, (2018) E 06 Xie Wai Ren No. 01 ((2018)(鄂06协外认1号)	The compulsory enforcement proceeding has been closed because the debtor has no assets for enforcement. (2019) E 06 Zhi No. 293) ((2019)鄂06执293号)
UAE	Contract	Yinchuan Intermediate People's Court	Li Xianming v. Tian Fei, (2017) Ning 01 XieWai Ren No. 1 ((2017)宁01协外认1号)	The compulsory enforcement proceeding has been closed because the debtor has no assets for enforcement. (2018) Ning 01 Zhi No. 210 ((2018)宁01执210号)

Table 2 (continued)

Judgment-rendering country	Cause of action	Chinese requested court	English name of the judgment	Enforcement status
USA	Contract	Shanghai First Intermediate People's Court	Nalco Co. v. Chen, (2017) Shang Hai 01 Xie Wai Ren No. 16 ((2017)沪01协外认16号)	The compulsory enforcement proceeding has been closed because the debtor has no assets for enforcement. (2018) Fu 01 Zhi No. 1307 ((2018)沪01执1307号)
Singapore	Contract	Nanjing Intermediate People's Court	Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export Co., Ltd., (2016) Su 01 Xie Wai Ren No. 3 ((2016)苏01协外认3号)	Because the debtor did not fulfill the obligations determined by the effective legal document, the creditor applied to the court for compulsory enforcement, and docketed the case on 21 December 2016. The court made a civil ruling ((2017) Su 01 Po No. 1) on 24 January 2017, and accepted the application for insolvency reorganization of the debtor by Zhenjiang Fuyuan Textile Technology Co., LTD. On 8 December 2017, the court made a civil ruling ((2017) Su 01 P No. 1, 6, 7, 8, 9, 10), approving the merger and reorganization plan of the debtor and terminating the insolvency proceeding of the debtor. On 28 December 2017, the creditor withdrew its application for compulsory enforcement of the judgment. (2016) Su 01 Zhi No. 827 Zhi Yi ((2016)苏01执827号之一)
South Korea	Contract	Qingdao Intermediate People's Court	Cui v. Yin, (2018) Lu 02 Xie Wai Ren No. 6 ((2018)鲁02协外认6号)	The compulsory enforcement proceeding has been closed because the debtor has no assets for enforcement. (2019) Lu 02 Zhi No. 535 ((2019)鲁02执535号)
The proceeding for compulsory enforcement has commenced				
Belarus	Alimony and child maintenance allowance	Shanghai Second Intermediate People's Court	Mou Ni Mou v. Duo Mou Mie Mou (Dogancay Irina v. Dogancay Metin), (2020) Hu 02 Xie Wai Ren No. 4 ((2020)沪02协外认4号)	No voluntary enforcement. Upon the judgment creditor's application, a compulsory enforcement decision was rendered in 2020
Singapore	Contract (Loan)	Shanghai First Intermediate People's Court	Power Solar System Co.Ltd. v. Suntech Power Investment Pte. Ltd., (2019) Hu 01 Xie Wai Ren No. 22 ((2019)沪01协外认22号)	No voluntary enforcement. Upon the judgment creditor's application, a compulsory enforcement decision was rendered in 2021. (2021) Fu 01 Zhi No. 1540 ((2021) 沪01执1540号)

Table 2 (continued)

Judgment-rendering country	Cause of action	Chinese requested court	English name of the judgment	Enforcement status
Enforcement status unknown				
USA	Contract	Wuhan Intermediate People's Court	Liu Li v. Taoli & Tongwu, (2015) E Wu Han Zhong Min Shang Wai Chu Zi No. 00026 ((2015)鄂武汉中民商外初字第00026号)	–
USA	Contract	Ningbo Intermediate People's Court	Wen v. Huang et al., (2018) Zhe 02 Xie Wai Ren No. 6 ((2018)浙02协外认6号)	–
France	Contract	Fushun Intermediate People's Court	Zhu Jing, Ding Changhong, Zhu Guofeng v. Pei Yanju, (2016)辽04协外认6号	–
Italy	Contract	Wenzhou Intermediate People's Court	Ye Aiwen v. Chen Tihu, (2019)浙03协外认18号	–
Poland	Contract	Ningbo Intermediate People's Court	Przedsiebiorstwo Przemyslu Chlodniczego Fritar S.A., Poland v. Ningbo Yongchang Gongmao Shiye Gongsi., ((2013) 浙甬民确字第1号)	–
Russia	Contract	Chifeng Intermediate People's Court	Haweisitayimu Co., Ltd. [transliteration] v. Inner Mongolia Daqiaofang Food Co. Ltd., (2018) Nei 04 Xie Wai Ren No. 1 ((2018)内04协外认1号)	–
UK	Maritime	Shanghai Maritime Court	Spar Shipping AS v. Grand China Logistics Holding (Group) Co., Ltd., (2018) Hu 72 Xie Wai Ren No. 1 ((2018)沪72协外认1号)	–
France	Bankruptcy	Guangzhou Intermediate People's Court	Antoine Montier's application for recognition of a bankrupty judgment regarding Pellis Intermediate People's Court Corium 'P.E.L.C.O.R', (2005) Sui Zhong FaMin San Chu Zi No. 146 ((2005)穗中法民三初字第146号)	–

Table 2 (continued)

Judgment-rendering country	Cause of action	Chinese requested court	English name of the judgment	Enforcement status
Turkey	Unknown	Jining Intermediate People's Court	Unknown	–
UAE	Equity transfer	Shanghai First Intermediate People's Court	Gao Xingda v. He Jianhua, (2018) Hu 01 Xie Wai Ren No. 15 ((2018)沪01协外认15号)	–
South Korea	Intellectual Property (Trademark)	Beijing Fourth Intermediate People's Court	SD Biotechnologies Co. Ltd. v. 99 Trade Co. Ltd., (2019) Jing 04 Xie Wai Ren No. 3 ((2019)京04协外认3号)	–

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References

Bankas EK (2022) The origins of absolute immunity of states. In: Bankas EK (ed) The state immunity controversy in international law: private suits against sovereign states in domestic courts. Springer, Berlin, pp 33–51

Beckers P (2007) German Court takes first step on road to mutual recognition with China. Int Law Office Newsletter, 31 May 2007

Borchers PJ (2021) Ford Motor Co. v. Montana Eighth Judicial District Court and 'corporate tag jurisdiction' in the Pennoyer era. Case West Reserve Law Rev 72:45–90

Brand RA (2015) Understanding judgments recognition. N C J Int Law Commer Regul 40:877–907

Dicey AV, Morris JHC, Collins L (2012) Dicey, Morris and Collins on the conflict of laws, 15th edn. Sweet & Maxwell, London

He Q (2009) Hiaya Quzheng Gongyue Zai Zhongguo Dalu de Shixing (《海牙取证公约》在中国大陆的施行) [The implementation of the Hague Service Abroad Convention in the Mainland China]. Wuda Guojifa Pinglun (武大国际法评论) [Wuhan Univ Int Law Rev] 2:62–80

Huang J (2019a) Enforcing foreign monetary judgments in China: breakthroughs, challenges, and solutions in the context of 'One Belt One Road'. George Wash Int Law Rev 51:105–144

Huang J (2019b) Reciprocal recognition and enforcement of foreign judgments in China: promising developments, prospective challenges and proposed solutions. Nordic J Int Law 88:250–279

Jang J (2020) The public policy exception under the new 2019 HCCH Judgments Convention. Neth Int Law Rev 67:97–111

Knop K, Riles A (2017) Space, time, and historical injustice: a feminist conflict-of-laws approach to the Comfort Women Agreement. Cornell Law Rev 102:853–928

Liu N, Liu M (2011) Justice without judges: the case filing division in the People's Republic of China. Univ Calif Davis J Int Law Policy 17:283–343

Martiny D (2009) Mutual legal assistance in civil and commercial matters. Max Planck encyclopedias of international law. Oxford University Press, Oxford

McClean D (2022) Service of process. In: Beaumont P, Holliday J (eds) A guide to global private international law. Hart Publishing, Oxford, pp 161–174

Michaels R (2007) Some fundamental jurisdictional conceptions as applied in judgment conventions. In: Gottschalk E et al (eds) Conflict of laws in a globalizing world. Cambridge University Press, Cambridge, pp 29–62

Porterfield E (2014) Too much process, not enough service: international service of process under the Hague Service Convention. Temple Law Rev 86:331–368

Qiao X (2010) Haiya Quzheng Gongyue Zai Woguo de Shizheng Fenxi (海牙取证公约在我国的实施分析) [Analysis on Implementation of the Hague Evidence Convention in China]. Zhengfa Luncong (政法论丛) [J Polit Sci Law] 4:81–89
Schneider F (2021) Actors and agency in China's Belt and Road Initiative: an introduction. In: Schneider F (ed) Global perspectives on China's Belt and Road Initiative. Amsterdam University Press, Amsterdam, pp 11–32
Shand J (1972) Unblinkering the unruly horse: public policy in the law of contract. Camb Law J 30:144–167
Silberman LJ (1978) Commentaries on Shaffer v. Heitner: Shaffer v. Heitner: the end of an era. NY Univ Law Rev 53:33–101
Sun B (2018) The future of cross-border litigation in China: enforcement of foreign commercial judgments based on reciprocity. NY Univ J Int Law Polit 50:1135–1149
Sun J, Wu Q (2020) The Hague Judgments Convention and how we negotiated it. Chin J Int Law 19:481–508
Tang ZT, Xiao Y, Huo Z (2016) Conflict of laws in the People's Republic of China. Edward Elgar, Cheltenham
Tu G (2007) Hague Choice of Court Convention—a Chinese perspective. Am J Comp Law 55:347–365
Vaccaro-Incisa GM (2021) China's treaty policy and practice in international investment law and arbitration: a comparative and analytical study. Brill Nijhoff, Leiden
Wu P, Weng X-CW (2021) Old wine in a new bottle? Assessing the injunction remedy for intellectual property disputes in China. Queen Mary J Intellect Prop 11:295–313
Zhang W (2013) Recognition and enforcement of foreign judgments in China. Chin J Int Law 12:143–174