



Latest Law & Practice of China's State Immunity Doctrine

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INTRODUCTION

State immunity is a fundamental principle in international law that has significant implications for the resolution of disputes involving foreign states. Traditionally, China adhered to the doctrine of absolute immunity, granting foreign states and their property complete immunity from the jurisdiction of Chinese courts. However, with the increasing complexity of international economic and diplomatic relations, China has gradually shifted towards restrictive immunity. This more nuanced approach is reflected in the enactment of the Foreign State Immunity Law (FSIL) in 2024 and the issuance of the “Notice on Procedural Matters for Civil Cases Involving Foreign State Immunity” by the Supreme People's Court (SPC) in March 2025. This article will explore the key provisions of the newly released SPC Notice, its significance in the context of China's evolving state immunity doctrine and examine the doctrine in application through two cases handled by Duan & Duan law firm.¹

THE SPC NOTICE ON PROCEDURAL MATTERS

SPC Notices play a critical role in judicial practice in China, linking closely to laws by providing detailed guidance on the implementation of specific laws. SPC Notices often

provide interpretation of generic laws and elaborate to help courts apply the laws in a consistent manner. The SPC Notice, issued in 2025, is the latest official document providing detailed procedural guidance for handling civil cases involving foreign state immunity.

1. Case Acceptance and Initial Review:

The Notice mandates that when a foreign state is named as a defendant or third party in a civil lawsuit, the complaint must explicitly cite the specific provisions of the FSIL and explain which exceptions to immunity apply. If the plaintiff fails to provide the necessary legal basis after clarification, the case will not be accepted.

2. Centralized Jurisdiction:

To ensure consistency and expertise in handling these complex cases, the Notice centralizes jurisdiction in specific intermediate people's courts as well as specialized courts. This approach aims to ensure certainty in jurisdiction.²

3. Service of Process:

The Notice outlines the procedures for serving legal documents on foreign states. It emphasizes the importance of adhering to ways as stipulated in mutual or international agreements or any other way accepted by the foreign country, and using

diplomatic channels through the Ministry of Foreign Affairs as a secondary option.³

4. Review of Jurisdictional Immunity Claims:

The Notice requires courts to conduct an ex officio review of the foreign state's immunity claims, even if the foreign state does not raise the issue. This hybrid model combines elements of civil law inquisitorial traditions with common law judicial autonomy. The Notice also clarifies that a foreign state's participation in jurisdictional challenge proceedings does not constitute consent to jurisdiction.⁴

5. Coordination with the Ministry of Foreign Affairs:

Where a court requires the Ministry of Foreign Affairs to issue evidentiary certifications concerning facts, the court shall submit a request through hierarchical reporting to the Supreme People's Court for coordination with the Ministry.

CASE STUDY #1: APPLYING THE IMMUNITY DOCTRINE IN ACTIONS EXECUTED BY INTERNATIONAL ORGANIZATIONS

Issue: Whether actions by agencies of international organizations are protected under immunity.

Background: The client, the International Bank for Reconstruction and Development (“IBRD”), is a specialized agency of the United Nations (“UN”). Both the IBRD and the UN are identified as international organizations by the State Council and the SPC. It is worth pointing out, however, that the immunity laws in China address primarily civil cases involving foreign states; the policies for international organizations like the UN and its agencies are rather indirect. However, the approach to international organizations can still be inferred from China’s general approach to the immunity doctrine and the various international treaties the Chinese government has concluded or acceded to. In the context of the present case, such relevant treaties are the Agreement between the Government of the People’s Republic of China and the International Bank for Reconstruction and Development on the Establishment of a Permanent Representation in China (the “Agreement”), the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations (the “Convention”) and the Articles of Agreement of the IBRD (the “Articles”).

Under Annex VI of the Convention and Annex VII of the Articles, IBRD gets to enjoy judicial immunity in China, immune from seizure, attachment or execution in the jurisdiction.⁵ As a result of the relevant provisions the IBRD has signed and ratified, the IBRD is immune from any legal process as a general rule, unless it expressly waives its immunity.

Implications of the Latest SPC Notice

Though not directly applicable to international organizations, reading in from the Notice, it is reaffirmed that foreign states and their property generally enjoy immunity from the jurisdiction of Chinese courts.

Further, some specific policies include centralized jurisdiction, service of process, and *ex officio* reviews. These policies re-emphasize respect for legal principles, consistency, and expertise in handling civil cases involving foreign actors, which aligns with the broader goals of protecting the privi-

leges and immunities of international organizations under international law.

CASE STUDY #2: APPLYING THE IMMUNITY DOCTRINE IN ACTIONS EXECUTED BY STATE-AUTHORIZED PRIVATE COMPANIES

Issue: Whether the state immunity doctrine applies to companies authorized by the state government to perform its sovereign obligation.

Background: The client, an anonymous ship and corporate registry based in the United States, is authorized by the government of a Middle American state to perform the sovereign obligation of ship inspection and certification. Based on this authorization of power, the client has signed written agreements with major classification societies around the world, which clearly stipulate that the client acts as the representative of the state to fulfill various rights and obligations under the powers of the flag state government.

Under the FSIL, foreign states and their property generally enjoy jurisdictional immunity in Chinese courts, subject to specific exceptions – primarily in the event of commercial activities. As provided for by the law, private companies authorized by foreign governments to perform sovereign obligations may be recognized as extensions of the foreign state for certain purposes – thus applying to the client company acting as the agent of the African state.⁶ In addition, the FSIL defines a “foreign state” to include not only foreign sovereign states but also their state organs, components, and organizations or individuals authorized by the state to exercise sovereign authority or conduct authorized activities.⁷

Though, Article 22 of the FSIL must be highlighted, stating that “[w]here the provisions of an international treaty concluded or acceded to by the People’s Republic of China are different from those hereof, the provisions of the international treaty shall prevail, except for those on which the People’s Republic of China has announced reservations.” This means that if an international treaty signed by China specifies

that a foreign state must perform certain obligations and does not grant immunity for failing to perform those obligations, the treaty provisions will prevail over the FSIL. Likewise, the Vienna Convention on the Law of Treaties, which China has ratified, articulates the duty of a state to perform its obligations under international treaties it signed.⁸

Implications of the Latest SPC Notice

As explained in the first case study, the key changes in the March SPC Notice that are critical to foreign actors in China are centralized jurisdiction, service of process, and *ex officio* review. These changes ensure consistency and expertise in jurisdiction, respect for sovereign dignity, and minimization of erroneous judgment. Different from international organizations, the client in the present case falls directly within the scope of applicability of the Notice as a foreign government representative.

CONCLUSION

For Chinese companies looking to enter into commercial contracts or transactions with foreign states or their authorized entities, greater protection is offered through codifying exceptions to immunity and putting closer scrutiny on the applicability of immunity.

The shift towards restrictive immunity demonstrates China’s commitment to aligning its legal practices with international standards while safeguarding its sovereignty and the rights of private parties. As illustrated by the two case studies, the practical application of these principles requires careful navigation of the procedural requirements on a case-by-case basis. The experience gained from such cases not only contributes to the development of jurisprudence in this area but also reinforces the importance of a balanced approach to state immunity in the context of China’s growing international engagements.



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¹ Article 1, “Notice on Procedural Matters for Civil Cases Involving Foreign State Immunity”

² Article 2, “Notice on Procedural Matters for Civil Cases Involving Foreign State Immunity”

³ Articles 3 and 4, “Notice on Procedural Matters for Civil Cases Involving Foreign State Immunity”

⁴ Articles 5 and 6, “Notice on Procedural Matters for Civil Cases Involving Foreign State Immunity”

⁵ Both articles stipulate that actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

⁶ Section 3, Article 2, “Foreign State Immunity Law of the People’s Republic of China”

⁷ Article 2, “Foreign State Immunity Law of the People’s Republic of China”

⁸ Article 18, “Vienna Convention on the Law of Treaties”