

# *Research on the System of Foreign Law Identification and Judicial Cooperation in the Chinese Style Foreign Legal System*

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**Abstract:** This article takes the foreign-related legal appraisal system and the judicial cooperation in the Chinese style foreign-related legal system as the research objects, exploring the connection and difference between the two. The overview section introduces the concept, characteristics, and significance of foreign legal appraisal systems. The overview section elaborates on the concept, characteristics, and importance of judicial cooperation in the Chinese style foreign-related legal system. Subsequently, the connection and difference between the two were analyzed, and suggestions were put forward to strengthen their cooperation, as well as the application of foreign legal identification system in international private law. Finally, in the conclusion section, a summary of the entire article was provided, highlighting the focus and prospects of the research. This article aims to provide theoretical reference and practical guidance for judicial cooperation in the foreign-related legal appraisal system and the Chinese style foreign-related legal system.

## 1. Introduction

In the context of globalization today, international exchanges and cooperation are becoming increasingly frequent, and foreign-related legal affairs are also increasing. However, there are differences in legal systems and cultures among different countries and regions, which poses challenges to the resolution of cross-border legal disputes. In order to solve this problem, countries have established foreign law identification systems and foreign-related rule of law systems, and improved the efficiency and fairness of international legal affairs through judicial cooperation. In the system of identifying foreign laws, courts and legal institutions of various countries solve legal application issues in foreign-related disputes by investigating, collecting, and verifying relevant information on foreign laws. The characteristic of the foreign law identification system is that it is an independent and specialized procedure aimed at introducing foreign law into the domestic legal system, interpreting and applying it. The significance of the system of identifying foreign laws lies in its ability to protect the rights and interests of parties, maintain the consistency and impartiality of international law, and promote smooth cross-border exchanges and cooperation. In the Chinese style foreign legal system, judicial cooperation is an important component. The Chinese style foreign-

related legal system is established within the legal framework of China, with the protection of national interests as the core. Through the integration and coordination of domestic and foreign legal systems, it achieves the standardization and orderliness of foreign-related legal affairs. The importance of judicial cooperation in the foreign-related rule of law system lies in its promotion of cross-border legal dispute resolution and cross-border judicial assistance, providing parties with a more just and efficient judicial environment.

## **2. Overview of the system for identifying foreign laws**

### **2.1. Concept of foreign law identification system**

The system of identifying foreign laws refers to a system in which courts and legal institutions of various countries determine the content, scope, and effectiveness of foreign laws through a series of procedures and methods in cases involving the application of foreign laws, and introduce them into the domestic legal system for interpretation and application. It is established to resolve cross-border legal disputes and promote the normal conduct of international legal affairs. The basic purpose of the foreign law investigation system is to ensure the correct application of foreign law in foreign-related cases, in order to protect the legitimate rights and interests of the parties involved. Due to differences in legal systems and cultures among different countries and regions, it is necessary to determine which country's law is applicable and provide a reasonable interpretation and application of its content when involving multiple countries' laws. The system of identifying foreign laws provides a standardized mechanism for courts and legal institutions in various countries to accurately obtain and understand foreign laws, and incorporate them into the domestic legal system to ensure the consistency and fairness of the law.

### **2.2 Characteristics of Foreign Law Identification System**

#### **2.2.1. Independence and specialization**

The foreign law discovery system is a system independent of the domestic legal system. It is specifically designed for cases involving the application of foreign laws, and through a set of independent procedures and methods, it identifies and applies foreign laws. This enables the system of identifying foreign laws to be independent of the constraints and influences of domestic laws, ensuring the correct application of foreign laws.

#### **2.2.2. Legal investigation and collection**

The core link of the foreign law investigation system is the investigation and collection of foreign laws. Courts and legal institutions collect foreign legal information related to cases through methods such as searching legal documents, consulting foreign courts, and consulting experts. This requires judges and relevant personnel to have certain legal research and information collection capabilities to ensure the accuracy and completeness of foreign laws.

#### **2.2.3. Legal interpretation and application**

The system of identifying foreign laws is not only about identifying foreign laws, but also involves the interpretation and application of foreign laws. On the basis of identifying foreign laws, courts and legal institutions also need to analyze and study their content, determine their scope of application and effectiveness, and incorporate them into the domestic legal system for interpretation and application. This requires judges and relevant personnel to have a deep understanding and flexible

application of foreign laws.

#### **2.2.4. Judicial independence and authority**

The operation of foreign legal identification systems depends on the independence and authority of judicial institutions. Only with an independent judicial institution and a court with legal authority can foreign law be effectively investigated and the fair application of the law be ensured. The role of judicial institutions in the investigation of foreign laws is not only to investigate foreign laws, but also to provide appropriate interpretations and rulings on cases, ensuring a fair trial.<sup>[1]</sup>

#### **2.2.5. International cooperation and exchange**

The system of identifying foreign laws emphasizes international cooperation and exchange. Due to the involvement of foreign laws, judicial and legal institutions in various countries usually need to cooperate with foreign courts, lawyers, and experts to jointly carry out the collection and research of legal information. In addition, countries also need to establish cooperation mechanisms to improve the efficiency and quality of foreign legal identification through information sharing, experience exchange, and other means.

### **2.3. The significance of the foreign law identification system**

**Protecting the rights and interests of parties involved:** Cases involving foreign laws involve legal systems in different countries and regions. Due to differences in legal systems and cultures, parties may not be able to accurately understand and apply foreign laws. The establishment of a system for identifying foreign laws can be achieved through specialized procedures and methods to identify and interpret the content and scope of application of foreign laws, safeguard the legitimate rights and interests of parties, and ensure that they receive fair trials and legal protection in cross-border legal disputes.

**Maintaining the consistency and impartiality of international law:** The legal systems of different countries and regions may sometimes conflict, and cases involving multiple laws can easily lead to issues of legal application. The operation of the system of identifying foreign laws can enable courts and legal institutions of various countries to accurately obtain and understand foreign laws, and incorporate them into judgments or rulings, in order to maintain the consistency and impartiality of international law. It can ensure that the judgment results of different countries are legally consistent, avoiding unfairness and inconsistency caused by differences in legal systems.

**Promoting cross-border exchanges and cooperation:** With the acceleration of globalization, cross-border exchanges and cooperation are becoming increasingly frequent. The establishment and operation of the foreign law identification system provide reliable legal protection and norms for international trade, investment, personnel mobility, and other fields, promoting smooth cross-border exchanges and cooperation. It provides a stable and predictable legal environment for parties and enterprises in various countries, and provides institutional guarantees for international exchanges and cooperation.

**Promoting the further development of international law:** The establishment and operation of the foreign law identification system provide useful experience and examples for the development of international law. Through cooperation and exchange among countries, we can jointly study and explore the advantages and disadvantages of foreign legal identification systems, further improve and develop relevant systems and mechanisms of international law, and enhance the adaptability and operability of international law.

### **3. Overview of judicial cooperation in the Chinese style foreign-related legal system**

#### **3.1. The connotation and characteristics of the Chinese style foreign-related legal system**

The Chinese style foreign-related legal system refers to a set of foreign-related legal models formed by China based on its national conditions and practical experience. It is centered on protecting national interests, based on the law, and guaranteed by the judiciary. Through the integration and coordination of domestic and foreign legal systems, it achieves the standardization and orderliness of foreign-related legal affairs. The Chinese style foreign-related legal system advocates the principle of lawful administration, emphasizing that the government should exercise its powers in foreign-related affairs in accordance with the law, ensuring fairness and impartiality. Emphasis is placed on the application of the law and the principles of the rule of law, emphasizing that the law should play a unified and standardized role in foreign-related affairs, ensuring the legitimate rights and interests of the parties involved. The government should emphasize the independence and authority of the judiciary and ensure that judicial organs independently exercise their powers in foreign-related legal affairs to ensure the fair application of the law. It should also emphasize international cooperation and exchange, encourage the establishment of friendly cooperative relationships with countries, and jointly address cross-border legal disputes and challenges. The Chinese style foreign-related legal system emphasizes the protection of national interests, with the maintenance of national sovereignty and security as the starting point, ensuring that foreign-related legal affairs are in line with national interests and strategic requirements. The government should emphasize the dominant position of the law, based on the law, and adjust and regulate foreign-related affairs through legal norms and legal mechanisms. It should pay attention to the role of the judiciary, with the judiciary as the guarantee, and resolve and adjudicate foreign-related legal disputes through independent and authoritative judicial institutions. Additionally, the government should emphasize cooperation and exchange, based on international cooperation, and jointly address cross-border legal issues and challenges by establishing cooperation mechanisms and communication channels.<sup>[2]</sup>

#### **3.2. Historical evolution of the Chinese style foreign-related legal system**

The historical evolution of the Chinese style foreign-related legal system can be traced back to the period after China's reform and opening up. Before the reform and opening up, due to the long-term implementation of a closed policy, China was relatively lagging behind in the field of foreign-related rule of law. However, after the reform and opening up, with the increasing exchanges and cooperation between China and countries around the world, China began to strive to establish a foreign-related rule of law system that adapts to international development. In the 1980s, China began to formulate and revise relevant foreign-related laws and regulations to meet the needs of international economic exchange and cooperation. The Foreign Investment Law of the People's Republic of China, promulgated in 1986, is China's first foreign-related regulation, providing legal protection and norms for foreign investment in China. Since then, China has successively introduced a series of foreign-related laws and regulations, such as the Contract Law of the People's Republic of China and the International Civil Procedure Law of the People's Republic of China, constantly improving and regulating the handling of foreign-related legal affairs.<sup>[3]</sup> With the continuous improvement of China's opening-up to the outside world, the Chinese style rule of law system for foreign affairs has gradually formed and is constantly developing and improving in practice. In terms of research and construction of the foreign-related legal system, China has strengthened foreign-related legal research and talent cultivation, and established a number of foreign-related legal research institutions and platforms, such as the China International Economic and Trade Arbitration Commission, the China International Chamber of Commerce, and the International Law Research Association of the China Law Society.

These institutions provide intellectual support and academic exchange platforms for the construction and development of a Chinese style foreign-related legal system. China also actively participates in the formulation of rules and the establishment of cooperation mechanisms for international rule of law. China has participated in and signed a large number of international legal contracts and agreements, such as the Model Law of the United Nations Commission on International Trade Law and the United Nations Convention on International Commercial Mediation. The participation of these international cooperation and rules provides important opportunities and platforms for the development of the Chinese style foreign-related rule of law system.

### **3.3. Legal framework of the Chinese style foreign-related legal system**

#### **3.3.1. Application of International Law**

As a member of the United Nations, China recognizes and respects the basic principles and rules of international law. According to the Chinese Constitution, international law has priority in China's legal system, and in the event of a conflict between domestic law and international law, international law shall prevail.

#### **3.3.2. Bilateral and multilateral treaties**

China actively participates in and signs a large number of bilateral and multilateral treaties, which provide specific legal basis and norms for foreign affairs between China and other countries and international organizations.<sup>[4]</sup>

#### **3.3.3. Formulation and revision of domestic laws**

China formulates and revises a series of laws through its legislative organs to ensure consistency and effectiveness between domestic laws and international law. For example, the National People's Congress of China has formulated relevant laws such as the Law of the People's Republic of China on Foreign Civil Relations and the Maritime Law of the People's Republic of China, providing specific legal norms for the rule of law in foreign affairs.

#### **3.3.4. Unification of domestic and foreign economic and trade rules**

China has established unified domestic and foreign economic and trade rules, including the formulation and implementation of a series of laws and regulations to protect the legitimate rights and interests of domestic and foreign investors, and promote the facilitation and development of domestic and foreign economic and trade.

#### **3.3.5. Establishment of Judicial Protection Mechanism:**

China has established foreign-related courts and arbitration institutions, and formulated and implemented a series of laws and regulations related to foreign-related judicial protection. These institutions and laws provide legal protection and judicial remedies for Chinese citizens and enterprises in resolving foreign-related disputes.

## **4. The connection and differences between the foreign legal identification system and judicial cooperation in the Chinese style foreign-related rule of law system**

### **4.1. The connection between the system of identifying foreign laws and judicial cooperation in the Chinese style foreign-related legal system**

The system of identifying foreign laws is closely related to judicial cooperation in the Chinese style foreign-related legal system. The system of identifying foreign laws refers to the court's need to identify and apply foreign laws to resolve disputes in cross-border litigation when it comes to the application of foreign laws. Judicial cooperation refers to the cooperation between judicial organs of different countries in foreign-related cases, in order to achieve goals such as mutual recognition and enforcement of judgments.<sup>[5]</sup> In the Chinese style system of foreign-related rule of law, the system of identifying foreign laws and judicial cooperation complement each other. Due to cross-border disputes, the laws involved in the case may involve different legal systems in different countries. At this point, Chinese courts need to investigate and apply foreign laws in order to fairly resolve disputes. The system of identifying foreign laws provides specific procedures and methods for identifying foreign laws, helping Chinese courts effectively apply foreign laws. Judicial cooperation is an important way to achieve the system of identifying foreign laws. By cooperating with judicial authorities of other countries, Chinese courts can obtain information and documents related to foreign laws, including legal documents, legal interpretations, judicial judgments, etc. Judicial cooperation can also ensure the effective resolution and enforcement of foreign-related cases through mutual recognition and enforcement of judgments. This judicial cooperation not only helps Chinese courts to identify foreign laws, but also helps maintain the normal operation of the foreign-related rule of law system.

### **4.2. Differences between the Foreign Law Identification System and the Judicial Cooperation in the Chinese Style Foreign Legal System**

Differences in legal systems: There may be differences in foreign legal identification systems and judicial cooperation methods among different countries, which are determined by factors such as their legal systems, legal procedures, and legal cultures. Therefore, when conducting cross-border judicial cooperation, it may be necessary to address the differences and mutual trust issues between different legal systems.

Legal cultural differences: The legal cultures of different countries can also have an impact on foreign legal identification systems and judicial cooperation. Legal culture includes differences in legal concepts, legal religious culture, legal traditions, and other aspects. These differences may have an impact on the application of foreign legal identification systems and the implementation of judicial cooperation.<sup>[6]</sup>

Differences in legal implementation mechanisms: There may also be differences in the legal implementation mechanisms and judicial cooperation mechanisms of different countries. This includes differences in court jurisdiction for foreign-related cases, enforcement of judicial judgments, and use of evidence. Therefore, when conducting foreign law identification and judicial cooperation, it is necessary to fully understand and adapt to the legal implementation mechanisms of each country.

### **4.3. Strengthening the system of foreign law investigation and judicial cooperation in the Chinese style foreign-related legal system**

Strengthening international exchange and cooperation: The government should promote exchange and cooperation between judicial organs by organizing international seminars, training programs, and

exchange projects. These initiatives will enhance the understanding of legal systems and cultures of various countries, fostering mutual trust and willingness to cooperate among judicial officials. Establish an information sharing mechanism: The government should establish a foreign-related legal information sharing platform, including a cooperation mechanism and a shared database, to enable judicial authorities to timely access foreign laws, legal documents, and precedents. This initiative will provide strong support and convenience in handling foreign-related legal affairs. Promote legal translation and interpretation work: The government should strengthen the translation of foreign laws to provide accurate and reliable legal materials. This will facilitate judges and lawyers in identifying foreign laws in foreign-related cases. Additionally, efforts should be made to strengthen the interpretation and comparative research of foreign laws, providing reference and guidance for relevant judicial decisions. Enhance the professional abilities of judges and lawyers: Judicial institutions and legal professional organizations should take measures to strengthen the training of judges and lawyers in foreign-related laws. They can design specialized training programs and workshops specifically focused on foreign legal systems and practices. This will help improve their understanding and application ability of foreign laws.<sup>[7]</sup>

Strengthening the construction of international dispute resolution mechanisms: To actively participate in dispute resolution mechanisms of international institutions and organizations, judicial institutions and legal professional organizations should collaborate with relevant stakeholders to enhance judicial cooperation and mutual trust with other countries. This can be achieved through regular participation in international arbitration proceedings and the International Court of Justice, where judges and lawyers can gain practical experience in resolving foreign-related legal disputes.

## **5. The application of foreign law identification system in international private law**

### **5.1. Application of foreign law investigation in foreign-related civil litigation**

The application of the foreign law discovery system in foreign-related civil litigation is to solve cross-border civil disputes. When it comes to the application of foreign laws, the court needs to identify and apply foreign laws to resolve disputes. This is an important aspect of private international law aimed at ensuring fair and reasonable judgments and safeguarding the legitimate rights and interests of the parties involved. When it comes to cross-border civil disputes, it may involve legal systems from different countries or regions.<sup>[8]</sup> At this point, the court needs to identify and apply foreign-related laws to resolve disputes. According to the requirements of the foreign law identification system, the court will take corresponding measures to identify the applicable foreign legal content and standards. In order to determine the applicable foreign laws, the court will take a series of evidence collection and appraisal measures. This includes seeking expert opinions, requesting parties to provide evidence related to foreign laws, reviewing legal documents and precedents, etc. By collecting and identifying evidence, courts can obtain accurate and credible information about foreign laws. In foreign-related civil litigation, the ability of judges to understand and apply foreign laws is crucial. Therefore, the court will strengthen the training of judges in foreign-related laws, improve their professional knowledge and ability in foreign law. This helps judges to better understand and apply foreign laws, improve the quality and rationality of judgments in foreign-related civil disputes. On the basis of identifying foreign laws, the court will resolve disputes based on the applicable foreign laws. When applying foreign law, courts will follow the principles of international private law, such as civil law, international public order, and approximate law. This helps to ensure the fairness and legality of foreign-related disputes.

## 5.2. Application of foreign law investigation in foreign-related commercial litigation

The application of the foreign law discovery system in foreign-related commercial litigation is to resolve cross-border commercial disputes. When it comes to the application of foreign laws, the court needs to identify and apply foreign laws to resolve disputes. This is an important aspect of international commercial law aimed at ensuring the fair outcome of commercial disputes and protecting the rights and interests of the parties involved. In foreign-related commercial disputes involving different legal systems of countries or regions, the court needs to identify and apply the applicable foreign laws. Through the system of identifying foreign laws, the court will take corresponding measures to collect evidence and determine the applicable foreign legal content and standards. In order to determine the applicable foreign laws, the court will conduct evidence collection and appraisal work. This may involve seeking expert opinions, requesting parties to provide evidence related to foreign laws, reviewing legal documents and precedents, etc. By collecting and evaluating evidence, courts can obtain accurate and credible information about foreign laws. In foreign-related commercial litigation, the judge's ability to understand and apply foreign laws is crucial. Therefore, the court will strengthen the training of judges in foreign-related laws, improve their professional knowledge and ability in foreign law. This helps judges to better understand and apply foreign laws, ensuring the fairness and legality of commercial disputes. On the basis of identifying foreign laws, the court will resolve commercial disputes based on the applicable foreign laws. When applying foreign law, courts will follow the applicable principles of international commercial law, such as the principle of freedom of contract, trade customs, and international commercial practices. This helps to ensure a fair and reasonable resolution of commercial disputes.<sup>[9]</sup>

## 5.3. Application of foreign law determination in foreign-related arbitration

The application of the foreign law discovery system in foreign-related arbitration is to resolve cross-border arbitration disputes. When it comes to the application of foreign law, the arbitral tribunal needs to identify and apply foreign law to resolve the dispute. This is an important aspect of international arbitration aimed at ensuring the fairness and reasonableness of the arbitration results and safeguarding the legitimate rights and interests of the parties.

**Determine applicable foreign laws:** In foreign-related arbitration disputes, different legal systems of countries or regions may be involved. The arbitral tribunal needs to determine and apply applicable foreign laws to resolve disputes. By establishing a foreign legal system, the arbitral tribunal will take corresponding measures to collect evidence and determine the applicable foreign legal content and standards.

**Expert opinions and professional evidence:** In order to determine the applicable foreign law, the arbitral tribunal may hire experts to provide opinions and collect professional evidence related to foreign law. These expert opinions and professional evidence help the arbitral tribunal understand and interpret foreign laws, providing accurate and credible legal basis for arbitration awards.

**Cross border cooperation and exchange:** In order to strengthen the application of foreign law identification, cross-border cooperation and exchange are needed in foreign-related arbitration. The arbitral tribunal may cooperate with foreign courts, legal experts, academic institutions, etc. to share information and exchange opinions, in order to obtain accurate and authoritative information about foreign laws.

**Principles of Application and Interpretation of Foreign Law:** On the basis of identifying the applicable foreign law, the arbitral tribunal will resolve disputes based on its application and interpretation principles. These principles may include the applicable principles of international private law, such as the principle of party autonomy, the most relevant principle, as well as the principles of international commercial practices and international public order.<sup>[10]</sup>



## 6. Conclusion

In the study of judicial cooperation between the foreign legal identification system and the Chinese style foreign-related rule of law system, we have delved into the connections and differences between the two. The system of foreign law investigation is an important means to ensure the fair resolution of foreign-related cases, and judicial cooperation is a key way to achieve foreign law investigation. Strengthening international exchanges, information sharing, and improving the professional abilities of judges and lawyers can all promote effective integration between the two. Studying the system of identifying foreign laws and the judicial cooperation in the Chinese style foreign-related legal system will help promote the development of the foreign-related legal field and deepen international judicial cooperation.

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