

Faculti Summary

<https://faculti.net/chinas-foreign-state-immunity-law-a-view-from-the-united-states/>

This video discusses the recent shift in China's foreign state immunity law, with a focus on its transition from the absolute theory of sovereign immunity to a restrictive theory. Traditionally, countries had absolute immunity from lawsuits in foreign courts, but the restrictive theory allows lawsuits against foreign states based on their non-governmental acts, particularly in commercial transactions.

China officially adopted the restrictive theory with its Foreign State Immunity Law (FSIL), which was enacted on September 1, 2023, and will take effect on January 1, 2024. This video change allows foreign states to be sued in Chinese courts for commercial activities, leveling the playing field for Chinese parties who were previously disadvantaged under the absolute theory.

The FSIL aims to enhance China's commitment to international law and its rule of law by aligning more closely with international norms, though it integrates unique provisions such as a reciprocity clause. This video clause allows China to reduce immunity for states that offer less immunity to China, which has particular implications for countries like the United States.

The document analyzes how the FSIL aligns with the UN's convention on foreign state immunity, noting similarities and differences. It highlights various exceptions under the law, including for commercial activities and territorial torts, as well as the Chinese Ministry of Foreign Affairs' role in certifying certain legal facts related to immunity cases in courts.

Overall, the FSIL is seen as a significant step in China's broader initiative to develop a robust legal framework for foreign interactions and reflects a completed transition to the restrictive theory of foreign state immunity, joining other nations that have moved in this direction.