

Jurisdiction over disputes involving the multimodal transport of goods: Chinese law approach¹

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Abstract

In China, the development of multimodal transport shows a significant upward trend, which is resulting in an increase in disputes. Given the fact that the legal framework regulating the resolution of disputes arising from transport contracts that constitute a part of civil and commercial law in China is fragmented, it is necessary to conduct a holistic study of the rules for solving jurisdictional issues arising from a multimodal transport of goods contract. This paper thus undertakes a thorough examination of the jurisdiction rules that apply to disputes arising from the multimodal transport of goods under Chinese law. It concludes that greater clarity and assuredness are needed for dispute resolution in multimodal transport cases, and hopes the paper will provide a reference for addressing complex jurisdiction issues over multimodal transport disputes in Chinese legal practice.

I. Introduction

Multimodal transport of goods means the carriage of goods by at least two different modes of transport on the basis of one contract.⁴ In China, the development of multimodal transport shows a significant upward trend.⁵ The volume of multimodal transport was 1.368 billion tons in 2017, and it is estimated that the volume will reach 3.02 billion tons in 2020.⁶ In particular, taking sea-rail combined transport as an example, the container volume carried by sea-rail combined transport that passed through Chinese ports in 2017 was 3.8 million TEU, and the growth rate is currently more than 17% year-on-year.⁷

Multimodal transport aims to be of optimum benefit to the carriage of goods; in addition, it also to some extent enables goods to be transported in a much safer way. However, with more and more goods being transported by multiple means, the possible increase in disputes has to be recognized. According to the available publicized cases disseminated by China's Supreme People's Court ("SPC"), the number of judicial judgments countrywide involving multimodal transport operation and its contracts has increased from 6 in 2012 to 50 in 2017.⁸

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⁴ The UN Convention on International Multimodal Transport of Goods, 1980, Article 1(1).

⁵ Zhu, Ling, and Ding, Lianzhi. "The Laws Applicable to Multimodal Transport Contracts in China". *Journal of Business Law* (2014), p.541.

⁶ See the speech given by SU Quanli in the 6th China Multimodal Transportation Conference held on 9th, 10th October 2018. SU Quanli is deputy director of the State Railway Administration: <http://www.chinaports.org/info/2018/201251.htm> (last visited 15 January 2019).

⁷ See the speech given by WANG Xiuchun in the 6th China Multimodal Transportation Conference held on 9th, 10th October 2018. WANG Xiuchun is Deputy Director, Transportation Services Department, Ministry of Transport: <http://www.chinaports.org/info/2018/201251.htm> (last visited 15 January 2019).

⁸ The cases are reported online: "China judgements online" at <https://wenshu.court.gov.cn/>.

Multimodal transport may be operated both domestically and internationally; it also frequently involves an international dimension, either because the parties are resident in different countries, or because performance of the contract takes place in a country other than that in which the contract was concluded. This means it is likely that the goods are carried through several different jurisdictions before reaching their final place of destination. If a dispute arises in such a situation, it is vital for the claimant to commence court proceedings in the right jurisdiction.⁹ The legal complexities and various levels of courts in China may however cause uncertainties for parties needing to decide on the jurisdiction. Accordingly, there is an urgent and practical need to make a thorough examination of the jurisdictional rules applying to disputes arising from the multimodal transport of goods under Chinese law.

Following this introduction, the paper begins in Section II by introducing the rules of jurisdiction relating to multimodal transport operation and its contracts. In Section III, it examines the court system in China; either the local people's court or the specialized court may have jurisdiction, though in some cases the jurisdiction at different levels and the territorial jurisdiction may also have to be ascertained. Sections IV and V of this paper examine legal provisions and practical cases under both domestic and international multimodal transport of goods. The paper then briefly studies the possible conflicts between arbitration and litigation, if there is any under a multimodal transport of goods contract. Finally, the paper concludes with the viewpoint that greater clarity and assuredness are needed for dispute resolution in multimodal transport cases, and hopes that a reference can be provided for addressing complex jurisdiction issues over multimodal transport disputes in legal practice.

II. Rules of jurisdiction relating to multimodal transport operation and its contracts in general

The legal framework regulating dispute resolution arising from transport contracts that constitute a part of civil and commercial law in China is fragmented.¹⁰ In particular, there are no specific laws and regulations governing multimodal transport contracts in China.¹¹ Not only that, but jurisdictional rules relevant to multimodal transport and its contracts are also scattered throughout several laws, judicial interpretations and legal provisions.

A. Rules of jurisdiction under domestic law

With respect to jurisdictional issues associated with multimodal transport and its contracts, the rules can be found in the "Civil Procedural Law of the PRC" (hereafter referred to as "CPL"), the "Special Maritime Procedure Law of the PRC" (hereafter referred to as "MPL") and other legal interpretations or provisions. The CPL and MPL are laws formulated by the National People's Congress (herein referred as 'NPC') and its Standing Committee, and

⁹ Zhu, Ling, Guner-Ozbek, M. Deniz and Yan, Hong. "A Study of Liabilities of Multimodal Transport Operators in China." *Research in Transportation Economics* 35, no. 1 (2012), pp. 58-65, at 60.

¹⁰ Zhu, Ling, and Ding, Lianzhi. "The Laws Applicable to Multimodal Transport Contracts in China". *Journal of business law* (n5), p.542.

¹¹ *Ibid*, 542

they thus maintain the highest ranking after the Constitution Law of the PRC.¹² Under some circumstances, conflicts may occur when several of the above-mentioned domestic legislations apply simultaneously to the same dispute,¹³ in which case specific legislations shall take priority over general ones enacted by an organ of equivalent status.¹⁴ In addition, legal documents such as a “reply” or “notice” may be issued where the SPC gives instructions to lower courts on how to handle specific cases and apply the laws properly; these play a significant role in Chinese legal practice.¹⁵ At the same time, judicial interpretations such as authentic interpretations of laws also have the force of law as long as they do not conflict in any way with actual laws.¹⁶

The CPL

The CPL was provisionally promulgated in 1982 and formally adopted by the NPC in 1991; the latest amendment was adopted in 2017. Unless otherwise specified, the discussion in this paper refers to the legal provisions in the CPL 2017. The current version contains 27 chapters and 284 articles. Since the provisions in the CPL apply to all civil litigations,¹⁷ they thus include disputes arising from multimodal transport and its contracts. Specifically, Chapters 2 and 24 are formulated for regulating jurisdiction matters relating to both domestic and international actions.

The CPL establishes a “dual-track” framework in certain aspects, namely, civil proceedings with foreign elements, and pure national or domestic civil proceedings. Therefore, if no appropriate rule is provided for a civil action matter involving foreign elements, then the rules for domestic civil actions prescribed in other parts of the CPL shall be referred to.¹⁸ This means that specific foreign-related civil procedural rules shall be given priority in a case involving foreign elements, but domestic procedural rules may supplement them when necessary.¹⁹ Multimodal transport contracts for the carriage of goods almost always include international factors,²⁰ thus, if there is any dispute concerning the international multimodal transport of goods, Article 265 of Chapter 24 in part IV, “Special Provisions on Civil Actions Involving Foreign Elements”, is the most relevant legal provision for the parties to follow in deciding on court jurisdiction.²¹ In addition, a claimant may apply Article 27

¹² The Legislation Law of the People's Republic of China, article 88.

¹³ Zhu, Ling, and Ding, Lianzhi. “The Laws Applicable to Multimodal Transport Contracts in China (n5), p.552.

¹⁴ The Legislation Law of the People's Republic of China, article 92.

¹⁵ Zhao, Liang, and Li, Lianjun. “Incorporation of Arbitration Clauses into Bills of Lading under The PRC Law and Its Practical Implications”, *Arbitration International* 33, no. 4 (2016), pp. 647-661, at 652.

¹⁶ Hu, Zhengliang, *Transport Law in China*, (Kluwer Law International 2015), p.70.

¹⁷ CPL, article 4.

¹⁸ See Article 259 of Civil Procedure Law, which says: ‘Provisions in this Title [Special Provisions for Civil Procedure of Cases Involving Foreign Element] shall apply to foreign-related civil actions within the territory of the People’s Republic of China. Where this Title is silent, other relevant provisions of this Law shall apply’.

¹⁹ Tu, Guangjian, *Private International Law in China*. (Springer 2016), p.116.

²⁰ Gebreyesus, Abegaz Yimer. “Adjudicatory Jurisdiction in International Carriage of Goods by Sea: Would the Rotterdam Rules Settle the Controversy?” *African Journal of International and Comparative Law* 21, no. 3 (2013), pp 467-488, at.467.

²¹ Chapter 24 in part IV: “Special Provisions for Civil Procedure of Cases Involving Foreign Element” of CPL.

in Chapter II, which in general provides various jurisdiction options for disputes arising from railway, road, water, air or multimodal transport contracts.²²

The MPL

The MPL, which comprehensively covers procedural issues of maritime litigation internationally or domestically in China,²³ is relevant when deciding jurisdictional issues arising from multimodal transport with a sea leg.

For a long time China did not have a comprehensive law on maritime procedures.²⁴ Therefore, the main source of law in this respect was the CPL, together with some relevant judicial interpretations pronounced by the SPC. On 25 December 1999, the MPL was enacted by the NPC.²⁵ The legislation is based on experience obtained from the adjudication of maritime cases after the establishment of maritime courts in China, and on international practice, and has filled the gaps in the legal regime relating to special procedures arising from maritime disputes. The MPL contains 12 chapters and 127 articles, and Chapter 2 addresses the jurisdiction issues.

The MPL is classed as a special law compared to the CPL, and therefore has priority over the CPL in the matters of maritime litigation. It can, however, be supplemented by the latter on many occasions, although the special rules in the former for maritime litigations shall prevail if there are any conflicts.²⁶

The Interpretation of MPL

As regards disputes over multimodal transport of goods, it is necessary to mention “the SPC’s Interpretation on the Application of the Special Maritime Procedure Law of the People’s Republic of China” (hereinafter referred to as the “Interpretation of MPL”), which was promulgated by the SPC in 2002 and came into force one year later. The most relevant part is Article 2 of the “Interpretation of MPL”, which states that:

“The jurisdiction over ... disputed maritime carriage contract cases shall be governed by Chapter 25 of the Civil Procedure Law; where there is no corresponding provision in Chapter 25 of the Civil Procedural Law, items 1) and 2) of paragraph 2 of Article 6 of the Special Maritime Procedure Law and other relevant provisions of the Civil Procedure Law shall apply.”

In the latest CPL 2017, Chapter 24, rather than Chapter 25 of the then CPL, is dedicated to regulating jurisdiction.

²² A similar rule was already adopted as early as in the CPL 1991, and it remains unchanged. This means that although there lacks a separate multimodal transport law, attention has already been given to the procedural matters involved in the event of a dispute.

²³ Chapter 2 of MPL.

²⁴ Zhao, Liang and Li, Lianjun, *Maritime Law and Practice in China* (Informa Law from Routledge 2017), p.216.

²⁵ *Ibid.*, p216.

²⁶ Article 2 of the MPL: “The Civil Procedure Law of the People’s Republic of China and this Law shall be applicable to maritime actions brought in the People’s Republic of China. Where the provisions of this Law are applicable, they shall prevail.” Article 97 of the Interpretation of MPL has a similar provision.

Provisions of the SPC on the Scope of Cases to be Accepted by Maritime Courts

The “*Provisions of the Supreme People's Court on the Scope of Cases to Be Accepted by Maritime Courts*” (hereinafter known as “the Provisions”) was promulgated by the SPC in 2016 and contains 114 articles, all of them being focused on the scope of cases to be accepted by maritime courts.

Article 25 in particular states that maritime courts shall have jurisdiction over cases concerning disputes over contracts for the carriage of goods by sea or in water areas leading to the sea, including cases concerning disputes over contracts of international multimodal transport containing shipping sections, as well as water-land transshipment and other waterway freight transport contracts.

Several Provisions of the Supreme People's on the Jurisdiction of Railway Transport Courts over Cases 2012

Railways play an irreplaceable role in the development of multimodal transport, being a prime form of transport for the carriage of goods over land.²⁷ The “Several Provisions of the Supreme People's on the Jurisdiction of Railway Transport Courts over Cases 2012” is the first document issued by the SPC that regulates jurisdiction issues of railway transport courts over cases after the administrative mechanism reform. It contains 7 articles, and article 3 concerns the multimodal carriage of goods including rail carriage.

B. Jurisdictional rules in the international conventions

China has not ratified the United Nations Convention on International Multimodal Transport of Goods 1980, and it is unlikely that it ever will.²⁸ Nevertheless, there is a series of international conventions on particular forms of unimodal transport that can be relevant to a multimodal transport contract in certain circumstances where, for example, damage or loss can be localized to a specific mode of transport used within the contract. China has ratified a number of such unimodal transport conventions (see Table1).

Table 1: International transportation conventions adopted by China

Law or Regulation	Year of Ratification
Agreement Concerning International Carriage of Goods by Rail	1953 ²⁹
Warsaw Convention on the Unification of Certain Rules Relating to International Carriage by Air (“Warsaw Convention”)	1958
Hague Protocol to the Warsaw Convention (“Hague Protocol”)	1978

²⁷ Zhu, Ling, and Ding, Lianzhi. “The Laws Applicable to Multimodal Transport Contracts in China”, *Journal of business law* (n5), p.545

²⁸ United Nations Convention on International Multimodal Transport of Goods, signed in Geneva on 24 May 1980, which is not yet force yet; Hu, Zhengliang, *Transport Law in China*, (n16) p. 69.

²⁹ The current version was approved by the International Railway Cooperation Organization in October 2014 and took effect from July 1, 2015. See: http://www.nra.gov.cn/xwzx/gjjl/gjty/201504/t20150430_13348.shtml (last visited 15 January 2019).

Convention for the Unification of Certain Rules for International Carriage by Air (“Montreal Convention”)	2005
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All these conventions provide a similar approach to regulating the jurisdiction under which a plaintiff is entitled to bring a claim within the jurisdictions, including: 1) the carrier’s ordinary residence; 2) the carrier’s principal place of business; 3) the establishment of the carrier where the contract has been made; or 4) the place of destination.

As a contracting party to the 1969 Vienna Convention on the Law of the Treaties,³⁰ China should in good faith comply with its obligations under international conventions to which it has acceded, and should not use its domestic law as a justification for avoiding its treaty obligations.³¹ This same obligation is further confirmed in Chinese national law.³² Accordingly, a three-step method is usually applied in applying international conventions in Chinese courts: First, the court must decide on the applicable law according to the Chinese choice of law rules.³³ If, according to the relevant Chinese rules, the governing law is a foreign law, that law should apply. If, on the other hand, Chinese law is applied as the governing law, the court should adopt the second step and consider whether the Chinese law is different from the provisions in international conventions ratified or acceded to by China. Thirdly, if the Chinese law and the international conventions provide differently, the international convention shall be applied; otherwise, the Chinese national law is applicable.³⁴ This means that the jurisdictional provisions contained in the above-mentioned unimodal transport conventions can be applied in Chinese courts if they differ from the provisions in the laws, including those above in the CPL, MPL and others.³⁵

III. The court system and jurisdiction

A. The court system in China

The people’s court

The judicial system in China is described as having “four levels and two instances of the hearing”. “Four levels” means that the court system in China consists of four levels of local people’s courts. These are the SPC, High People’s Court, Intermediate People’s Court, and Primary People’s Court. In principle, cases are assigned to different levels’ forums according to their “territorial impact”.³⁶ However, determining the “impact” is not always clear-cut, and a court of higher level may decide to attract into its jurisdiction and entertain a case already pending before a lower court.³⁷ The “two instances of the hearing” means that a case has two instances if it is not initiated in the SPC.³⁸ A claimant may bring an

³⁰ The Convention came into force in 1980.

³¹ Xue, Hanqin, and Jin, Qian. “International Treaties in the Chinese Domestic Legal System.” *Chinese Journal of International Law* 8, no. 2 (2009), pp299-322, at 305; and Article 27 of 1969 Vienna Convention.

³² For example: The CPL 1982, Article 189 and the CPL 2017, Article 260.

³³ China also firmly insists on the principle of *lex fori* as in many other countries, i.e. all civil proceedings that take place within the territory of China shall be conducted according to Chinese law.

³⁴ Tang, Zheng Sophia, “International Treaties in Chinese Private International Law.” *Hong Kong LJ* 42 (2012): 311, p.318.

³⁵ Zhao, Liang, and Li, Lianjun. *Maritime Law and Practice in China*. (n24), p.327.

³⁶ Articles 18-21 of CPL and Article 39 of CPL.

³⁷ Article 39 of CPL.

³⁸ Article 164 of CPL.

appeal only once to the people's court at a higher level, and decisions and orders of the court of second instance are final.³⁹

There are also specialized courts which include the maritime courts and railway transportation courts. If the disputes belong to the jurisdiction of a specialized court, then its jurisdiction is exclusive.⁴⁰

Maritime courts

At this time there are ten maritime courts, all of which have been gradually established since 1984 with the development of the shipping industry in China. Each maritime court has its statutory jurisdiction area, which means every maritime court shall have jurisdiction as court of first instance over maritime cases occurring in a specific territorial area.⁴¹ The High People's Court at the place of the maritime court therefore has jurisdiction over maritime appeal cases, or over first-instance maritime cases having great significance.⁴²

Railway transportation courts

Another type of specialized court in China which may come into play in a dispute arising from a multimodal transport contract is the railway transportation courts. Historically, railway transportation issues were supervised by the Ministry of Railways. However, with the institution reform in 2013,⁴³ the administrative function of the Ministry of Railways has been absorbed into the Ministry of Transport.⁴⁴ Nevertheless, the railway transportation court continues to enjoy its special jurisdiction.

The railway transport court shall entertain its jurisdiction over cases in which the railway transportation enterprises work as the multimodal transportation operator.⁴⁵ However, conflicts over jurisdictional issues may occur between general people's courts and the specialized court, and these will be discussed elsewhere in the paper.

B. Jurisdiction by forum level

As mentioned previously, the court system in China consists of four levels of local people's courts. According to Articles 18 to 21 of the CPL, as well as some relevant judicial interpretations,⁴⁶ the first instance over civil litigation in the jurisdiction system in China

³⁹ Article 175 of CPL.

⁴⁰ Guo, Ping, Zheng, Zhili, "Study on Jurisdiction over Contract for Multimodal Transport of Goods", (2009) *Journal of Dalian Maritime University* 8(4), pp.11-15, at 13.

⁴¹ For the territorial area of the maritime courts, See Article 3 of the "Decision of the Standing Committee of the National People's Congress on the Establishment of Maritime Courts in Coastal Port Cities"; part 1 of "Provisions of the Supreme People's Court on the Jurisdiction of Maritime Litigation"; and other Notices to adjust territorial jurisdiction of maritime court announced by SPC.

⁴² Article 20 of CPL.

⁴³ Zhu, Ling, and Ding, Lianzhi. "The Laws Applicable to Multimodal Transport Contracts in China", (n5) p.545.

⁴⁴ *Ibid.* p.545.

⁴⁵ Article 3 of Several Provisions of the Supreme People's on the Jurisdiction of Railway Transport Courts over Cases 2012.

⁴⁶ See the Regulations on Jurisdiction over Civil and Commercial Cases of the First Instance of the High People's Courts and Intermediate People's Courts of Various Provinces, Autonomous Regions and Municipalities of the People's Republic of China, promulgated by SPC in 2008.

adopts multiple standards, mainly taking into account the complexity of the case, the scope of influence, and the monetary value of subject-matter in the case.

The court at primary level, as the lowest level, shall have the general jurisdiction, except over those cases that shall be exercised by higher courts as otherwise stipulated by Chinese law.⁴⁷ Basically, therefore, civil cases of first instance are normally under the jurisdiction of the primary people's courts in China.⁴⁸ There are three circumstances where an intermediate people's court shall have jurisdiction as the court of first instance according to Article 18 of the CPL, these being: (1) Major foreign-related cases; (2) cases which have a major impact within their respective territories; and (3) cases which are under the jurisdiction of the intermediate people's courts as determined by the SPC.⁴⁹ The definition of "major foreign-related case" is explained by the SPC as being a case in which the value of the subject-matter is large, factual elements are sophisticated, or there are a few parties living outside the territory of China.⁵⁰ Clearly, then, a minor or simple case with foreign elements is subject to the jurisdiction of a primary court of first instance.

It is necessary to mention that the forum level of the maritime court is the same as an intermediate people's court. In addition, both a high court at provincial level and the SPC, which is the highest judicial institution, can also hear a case as the court of first instance if the case has a far-reaching impact within its territory.⁵¹ Then again, the SPC can decide to hear any case which it thinks it is suitable to hear as the court of first instance.⁵²

If the dispute arises from a multimodal transport contract without a sea part then it falls within the scope of the jurisdiction of the local people's court, so the first instance shall usually be held by the primary people's court. However, if the multimodal transport has a sea segment, then the maritime court shall exercise jurisdiction.⁵³ More analysis of this will be provided elsewhere in the paper.

C. Territorial jurisdiction

Section 2 of Chapter 2 of CPL is entitled "Territorial Jurisdiction", which includes four categories: general territorial jurisdiction, special territorial jurisdiction, jurisdiction agreement and exclusive jurisdiction.⁵⁴

The term "general jurisdiction" means that disputes shall be under the jurisdiction of the people's court of the place where the defendant has his domicile or habitual residence.⁵⁵ The term "special territorial jurisdiction" is based on the standard that the disputes shall be

⁴⁷ Article 17 of CPL.

⁴⁸ Ibid.

⁴⁹ Article 18 of CPL.

⁵⁰ Article 1 of Interpretation of CPL.

⁵¹ Article 19 and 20 of CPL.

⁵² Article 20 of CPL.

⁵³ Article 25 of the Provisions.

⁵⁴ Articles 21-34 of CPL.

⁵⁵ Article 21 of CPL.

under the jurisdiction of the place of subject-matter or the seat of facts.⁵⁶ If the law regulates that the disputes can be addressed under general territorial jurisdiction but also a special one, then the plaintiff can have the option to choose.⁵⁷ The provisions of exclusive jurisdiction⁵⁸ apply to: 1) An action involving a dispute over immovable property; 2) an action involving a dispute arising from port operations; and 3) an action involving a dispute over an inheritance. Therefore, those provisions do not apply to multimodal transport contract cases. Jurisdiction agreement will be discussed separately.

D. The conflict between the maritime courts and the people's courts

There have been continuing debates about jurisdiction conflicts over certain cases between the maritime courts and the people's courts. For instance, in *China State Shipping Cooperation v. CNBMIT Co. Ltd.*,⁵⁹ the appellant China State Shipping Cooperation raised an objection to forum level and said that the subject-matter in the carriage contract exceeded 100 million RMB, which is large enough to be heard by Guangdong High People's Court or Shenzhen Intermediate People's Court, rather than Guangzhou Maritime Court. Guangdong High Court rejected this according to the "Notice of the Supreme People's Court on Adjusting the Standards for the Jurisdiction of the High People's Courts and Intermediate People's Courts over Civil and Commercial Cases of the First Instance",⁶⁰ Article 6 of which states that the adjustment of the standards for subject-matter in this Notice does not cover maritime cases. In addition, based on article 25 of the Provisions, maritime courts shall have exclusive jurisdiction over contracts for the carriage of goods by sea. In this case, the place of domicile of the defendant, China State Shipping Cooperation, is in Guangdong Province. Hence, the case should be heard in Guangzhou Maritime Court.

The SPC has issued orders clarifying that the local people's courts will not hear maritime cases, over which the maritime courts should exclusively have jurisdiction.⁶¹ However, in practice the local people's courts may still hear and determine maritime cases. In some cases, the jurisdiction agreement may be so ambiguous that it would perhaps be reasonable for both local people's courts and maritime courts to hear the case, for instance in cases which involve a sea port.⁶² However, in cases where a clear indication can be found, the party may choose to file an objection to the jurisdiction of a certain court, if that court's jurisdiction is doubtful. Article 10 of the MPL provides the solution that, in case of conflict, "...it shall be resolved by the disputing parties through consultation; if the dispute cannot be so resolved, it shall be reported to their common superior people's court for the

⁵⁶ Article 27 and 265 of the Civil Procedure Law.

⁵⁷ Li, Hao. "Research on the Exclusive Jurisdiction System of Civil Litigations", *Studies in Law and Business* 2009(2), pp.94-101, at 98.

⁵⁸ Article 33 of CPL.

⁵⁹ (2017) Yue Min Xia Zhong No.219.

⁶⁰ The Notice was promulgated by the SPC in May 2015.

⁶¹ See Article 2 of the SPC's Interpretation on the Application of the CPL of the People's Republic of China.

⁶² Article 12 of Organic Law of the People's Court of PRC clarified that people's court include local people's court and the special ones. This law was issued by standing committee of the NPC on October 2018. See also Zhang, Li-Ying. "Conflict of Jurisdictions of Maritime Disputes in China" (2005), *China Oceans Law Review* 2, pp.190-200, p.192.

designation of jurisdiction.”⁶³

IV. Applicable jurisdiction rules under domestic multimodal transport of goods

Imagine a case where a multimodal transport operator (MTO) signs a multimodal transport of goods contract with a shipper and agrees to transport the goods from Guangzhou to Jinhua, both of which are located inside China. The MTO in this case transports the goods from Guangzhou to Ningbo by ship; and then from Ningbo to Hangzhou by truck; and finally, the goods are carried by railway wagon to Jinhua. The whole journey is conducted and completed by three different means of transport on the basis of one contract, and the MTO takes responsibility for the entire transport process. This is a typical example of domestic multimodal transport of goods. China is a country with a vast land area, so when goods are transported from the hinterland to a port city or vice versa, they are often carried using several means of transport without being unpacked for sorting out or for verification when being transferred from one mode of transport to another.⁶⁴ In addition, a well-developed road network and numerous sea ports in China constitute favourable conditions for multimodal transport operations. Nevertheless, the more complex the transport is, the more disputes may arise. How can claimants determine jurisdiction if a dispute arises from this kind of domestic multimodal transport of goods under Chinese law?

A. Where there is no choice of forum clause

Disputes over the unimodal transport of goods may be under the jurisdiction of local people’s courts or the specialized courts. Therefore, if there is no dispute resolution clause already agreed by the parties to solve such disputes arising from the multimodal transport of goods, it is necessary to consider both forum level jurisdiction and territorial jurisdiction.

Specific jurisdictional rules in the legislations

As mentioned, specific jurisdiction rules in relation to multimodal transport operation and its contracts can be identified in the CPL, MPL and several documents issued by the SPC.

To detail these, according to Article 27 of the CPL, if there is any dispute arising from a multimodal transport contract, the people’s court that will have jurisdiction may include: (1) the court at the place of departure of transportation; (2) the court at the place of destination of transportation; or (3) the court at the place of domicile of the defendant.⁶⁵

The Interpretation of the MPL clarifies whether or not this is applicable to the multimodal transport of goods. Its article 2 provides that: “...the jurisdiction over maritime tort dispute cases and maritime carriage contract dispute cases shall be governed by Chapter 24 of the CPL; where there is no corresponding provision in Chapter 24 of the CPL, Items 1) and 2) of Paragraph 2 of Article 6 of MPL and other relevant provisions of the CPL shall apply.” Since the MPL is relevant to maritime carriage contract disputes, and multimodal transport with a sea leg can actually fall within the definition of a maritime carriage contract

⁶³ Article 10 of MPL.

⁶⁴ Zhu, Ling, Guner-Ozbek, M. Deniz, and Hong Yan. “A Study of Liabilities of Multimodal Transport Operators in China”. (n9), p.58.

⁶⁵ CPL 2017, article 27.

according to Article 25 of the Provisions, as seen above,⁶⁶ this may thus prove that a multimodal transport contract involving a sea leg can be governed by the provisions of the MPL under some circumstances. According to Article 6 of the MPL, the maritime court at the place of the port of transshipment may also have jurisdiction over multimodal transport cases with a sea leg.

In addition, it is expressly stated in Article 3(3) of the “Several Provisions of the Supreme People's on the Jurisdiction of Railway Transport Courts over Cases 2012” that: “...disputes over international through railway transport contracts and multimodal transport contracts with railway transport enterprises as operators” shall be under the jurisdiction of railway transport courts.⁶⁷

The jurisdiction of the maritime courts

As for the jurisdiction of the maritime courts over disputes that may arise from domestic multimodal transport operations and their contracts, reference can be made mainly to Article 25 of the Provisions, as mentioned above. Under its Article 25, maritime courts have jurisdiction over: (1) international multimodal transport containing shipping sections, and (2) water-land combined transport. It is not difficult to infer that the latter may include domestic multimodal transport.

It is widely recognized that international multimodal transport means the carriage of goods by at least two different modes of transport on the basis of one multimodal transport contract, whereby the goods are taken charge of by the multimodal transport operator at a place in one country and moved to a place designated for delivery that is situated in a different country. The meaning of “international multimodal transport” has been explained and clarified in a number of legal cases. For example, in *Wenzhou Wuji Medical Foreign Trade Co. Ltd. v. Huang Hongde, Guangzhou Sanmusen Clothing Co. Ltd.*,⁶⁸ Huang Hongde and Wuji company entered into an agreement that Wuji company was entrusted to take charge of transporting goods from Shenzhen to Moscow using more than two different modes of transport. Zhejiang High Court, as an appeal court, accepted it was an international multimodal transport, because Wuji Company needed to organize transportation from Shenzhen to Moscow and to be responsible for customs clearance at the destination port. A similar situation occurred in *Qinghai Minhe Economic and Trade Limited Company v. China Foreign Transport Tianjin Group Co. Ltd.*,⁶⁹ where the goods had to be transported from Tianjin to North Korea and the sea carriage segment was from Tianjin to Dalian. The SPC, as the appeal court, decided that the contract between the two parties was an international transport because the loading port was Tianjin and the delivery place was Sinuiju, North Korea. In addition, the courts of first instance in these two cases were maritime courts, which indicates, therefore, that an international multimodal transport dispute can be heard by a maritime court as long as it includes “shipping sections”; and that maritime courts may have jurisdiction over international multimodal transport cases

⁶⁶ Article 25 of the Provisions.

⁶⁷ Article 3 of Several Provisions of the Supreme People's on the Jurisdiction of Railway Transport Courts over Cases 2012.

⁶⁸ (2013) Zhe Hai Zhong Zi no.61.

⁶⁹ (2002) Min Si Ti Zi no.9.

that includes a sea carriage between two Chinese ports.

The water-land combined transport includes domestic multimodal transport with a sea/water transport leg. Under Article 2 of the “Regulation on the Administration of Domestic Water Transport”,⁷⁰ domestic water transport is defined as being the commercial transport of cargos in navigable waters, where the departure port, the calling port, and the destination port are all within China’s jurisdiction. Water-land transport may include, for instance, a domestic water carriage and a railway transport. In *Yingkou Yixin Logistics Co. Ltd v. Shanghai Pan-Asian Shipping Co. Ltd, Dalian COSCO International Freight Co. Ltd Jinzhou Branch*,⁷¹ Yixin Logistics signed a “Letter of Entrustment” for domestic container transport with Jinzhou branch (the defendant) and transferred goods to the consignee under the mode of “CY to door”. The SPC confirmed that it was a domestic multimodal transport involving domestic water carriage and road carriage, and that it was appropriate for Dalian Maritime Court to hear the first instance. Hence, it is possible for the maritime courts to have jurisdiction over water-land combined transport.

In summary, with respect to disputes over the multimodal transport of goods, maritime courts, as specialized courts, may have jurisdiction over multimodal transportation with a sea leg, and this sea part may involve carriage between Chinese ports, such as from Tianjin to Dalian ports.

B. Where there is a jurisdiction agreement

Jurisdiction agreement is frequently used in both domestic and international trades to ensure certainty and predictability and to reduce risk.⁷² It is thus not uncommon to find such a jurisdiction agreement in a transport document.

Jurisdiction agreement for civil litigation originated from *forum protogatum* in Roman law, which means that parties stipulate a court by themselves to solve their disputes.⁷³ Initially, it was not recognized by many countries. The breakthrough from the historic prohibition against choice-of-forum clauses in common law countries came in *Wm H Muller & Co v. Swedish American Line Ltd*⁷⁴ in the US.⁷⁵ In China, the CPL 1991 was the first law that confirmed the effect of jurisdiction agreements in China. It provided that the parties in domestic and international contracts could have the rights to choose a Chinese forum to have the jurisdiction.⁷⁶ Article 25 of the CPL 1991 stipulated the jurisdiction agreement system for domestic civil cases, and Article 244 provided the jurisdiction agreement system for foreign-related civil cases. As mentioned, the CPL 1991 was amended in 2007, 2012

⁷⁰ This Regulation was promulgated by the State Council and was issued in March 2017.

⁷¹ (2016) Zui Gao Fa Min Shen no.3550.

⁷² Tang, Zheng Sophia. *Jurisdiction and Arbitration Agreements in International Commercial Law*. (Routledge, 2014), p.1.

⁷³ Koh, Harold Hongju. *International Business Transactions in United States Courts*. (Martinus Nijhoff, 1996), p.159.

⁷⁴ (1955) 224 F 2d 806; 1955 AMC 1687 (2d Cir).

⁷⁵ Davies, Martin. “Forum Selection, Choice of Law and Mandatory Rules.” *Lloyd's Maritime and Commercial Law Quarterly* 2 (2011), pp.237-248, p.244.

⁷⁶ Before that, Civil Procedure Law 1982 mentioned nothing about party autonomy, either in domestic or in transnational cases.

and 2017 respectively but, nevertheless, similar provisions remain. In addition, the effect of jurisdiction agreements has also been interpreted in some legal documents issued by the SPC, including the “Opinions on Several Issues on the Application of the Civil Procedure Law of the People’s Republic of China”, and in the “Notice of The Second National Conference on the Adjudication of Commercial and Maritime Cases With Foreign Elements published in 2005”.⁷⁷

In general, the relevant legislations contain specific prerequisites for the formation, incorporation and validity of jurisdiction agreements; in addition, the agreements have the prorogation effect of making the agreed forum competent and have the derogation power to deprive any otherwise competent court of their jurisdiction. About the parties’ choice of court, the CPL 2007 contained separate provisions for domestic lawsuits⁷⁸ and disputes over a contract “concluded with a foreign element”.⁷⁹ By way of contrast, the CPL 2012 does not contain separate provisions for “domestic” and “foreign-related” disputes. Instead, Article 34 provides that:

“Parties to a dispute over a contract or any other right or interest in a property may, without violating rules concerning jurisdiction by forum level and exclusive jurisdiction, choose the court for the place where the defendant is domiciled, or where the contract is performed or signed, or where the plaintiff is domiciled, or where the subject matter is located or any other place that *has actual connection* with the dispute as the court having jurisdiction over their dispute by a written agreement.”⁸⁰

The SPC once elaborated on the definition of “actual connection” in international civil and commercial litigations as follows:

‘... understand “actual connection with the controversy” need comprehensively examine the place of residence of the parties, the place of registration, the principal place of business or place of business, and the place where the contract is signed, the place where the contract is performed, the location of the subject matter, and many other factors.’⁸¹

Accordingly, the rules applicable to domestic and foreign-related agreements are unified. The changes brought about by Article 34 of the CPL 2012 include two aspects: firstly, for parties engaged in domestic lawsuits, the scope of cases for which they are allowed to choose a court to solve their disputes is now extended from purely contractual disputes to contractual disputes and others where property interests are included; and secondly, for the parties of foreign-related actions, the change is that the specified places where the location of the forums are supposedly allowed to be chosen and that are actually connected to the disputes have now been enumerated. Thus, it seems that if the chosen forum is located in

⁷⁷ Tang, Zheng Sophia. *Jurisdiction and Arbitration Agreements in International Commercial Law*. (n72), p.15.

⁷⁸ Article 25, CPL 2007.

⁷⁹ Article 242, CPL 2007.

⁸⁰ Article 34 of CPL 2012

⁸¹ See “Supreme People’s Court answers for trial practices on foreign- related commercial and maritime cases(1)”, published by the fourth civil division of the Supreme People's Court of the P.R.C.

one of the above-enumerated places, there is no need to prove that their chosen court is actually connected to the dispute. However, the parties can also choose a forum at a place connected to the dispute other than those that are explicitly listed. Therefore, Article 34 of CPL 2012, which remains exactly the same in the latest 2017 amendment, confirms the validity of a written jurisdiction agreement, as long as the rules regarding jurisdiction by forum level and exclusive jurisdiction are not violated.

In addition, the jurisdiction formerly based on submission by the defendant was only expressly accepted for actions with foreign elements, and there was doubt whether this jurisdictional ground was available for domestic lawsuits. To clarify the situation, this jurisdictional ground is now re-arranged in Article 127, which has extended its applicability to include both foreign-related and domestic proceedings.⁸²

Chinese legislation provides restrictive requirements to determine the validity of a jurisdiction agreement. It emphasizes that the chosen forum should have actual connections with the dispute.⁸³ In addition, any agreement which violates the rules on jurisdiction by forum level and on exclusive jurisdiction will be regarded as void. It has been observed that a party who wants to avoid a jurisdiction agreement in the contract may bring his proceedings in China, since it is relatively easier to get the agreement to be deemed invalid by a Chinese court.⁸⁴ Therefore, if the parties in a multimodal transport dispute want to themselves choose a forum to hear the case by including a jurisdiction agreement, it is necessary for the agreed forum to have an actual connection with the dispute, and for the rules concerning jurisdiction by forum level and exclusive jurisdiction to be adhered to.

V. Applicable jurisdiction rules under international multimodal transport of goods

A. Legal rules where there is no choice of court clause

When there is no choice of court agreement, or the choice is invalid, the rules contained in the CPL and/or the MPL shall be applied. Concerning a contractual dispute or other disputes over property rights and interests, Article 265 in chapter 24 of the CPL provides that if the contract is signed or performed within the territory of the PRC, or the object of the action is within the territory of the PRC, or the defendant has detainable property within the territory of the PRC, or the defendant has its representative agency, branch, or business agent within the territory of the PRC, a lawsuit brought against a defendant may be under the jurisdiction of the people's court located in the place where the contract is signed or performed, where the subject of the action is located, where the defendant's detainable property is located, where the infringing act takes place, or where the representative agency, branch or business agent is located. Apparently, this article provides the claimant with several options of territory jurisdiction.

In addition, due to the “dual-track” framework in this respect in the CPL, as mentioned above, specific foreign-related civil procedural rules should be given priority in cases of

⁸² Tu, Guangjian. *Private International Law in China*. (n19).p.132.

⁸³ Tang, Zheng Sophia. *Jurisdiction and Arbitration Agreements in International Commercial Law*, (n72), p.27

⁸⁴ *Ibid*, 27.

international multimodal transport of goods, with domestic procedural rules being applied only where necessary.⁸⁵ Hence, the disputing parties under an international multimodal transport contract without a sea leg may choose jurisdiction according to Article 265 of Chapter 24; and where chapter 24 is silent, they may decide on a forum according to Article 27 of Chapter 2.

When a dispute concerns international multimodal transport with a sea leg, then the determination of jurisdiction shall be according to the MPL, and the Interpretation of MPL shall also play a role in relevant matters. There is no regulation in the MPL that distinguishes jurisdiction rules applicable to an international transport contract from a domestic one. Based upon Article 6 of the MPL and other provisions in the CPL,⁸⁶ the people's court either at the place of departure, or at the destination, or where the defendant is domiciled, shall have jurisdiction; in addition, the maritime court at the place of the port of transshipment may also have the jurisdiction.

B. Legal rules where there is a forum clause

The parties to a multimodal transport dispute with foreign elements can conclude a jurisdiction agreement by referring to article 34 of the CPL, because Article 259 provides that the provisions of Part IV shall apply to foreign-related civil actions within the territory of the PRC; where this Part is silent, other relevant provisions of the Law shall apply. Since Part IV does not mention the provision of jurisdiction agreement, article 34 for the regulation of jurisdiction agreement can thus be used both domestically and internationally, as seen in the discussion above.

In this respect, article 8 in the MPL needs to be additionally referred to. The “actual connection” in international civil litigations is not required in article 8, since it indicates that the jurisdiction agreement is valid if the two parties to an international maritime dispute choose a maritime court, even if there is no connection between the maritime court and the dispute.⁸⁷ However, there is no detailed rule in the MPL that discusses the validity of the agreement if a foreign forum that has no actual connection with the maritime dispute has been chosen. Therefore, one may conclude that for an international multimodal transport contract that has a sea segment, and where the parties are foreign nationals, stateless persons, or foreign enterprises or organizations, the chosen maritime forum does not have to have an actual connection with the dispute.⁸⁸ Thus, the jurisdiction agreement over Chinese maritime litigations has made a huge breakthrough compared to the jurisdiction agreement over general civil litigations, since it has removed the requirement for an actual connection between the case and the court. Academically, this is not only the beginning of further development and improvement of civil litigations in China but also

⁸⁵ See Article 259 of CPL, which says: “Provisions in this Title [Special Provisions for Civil Procedure of Cases Involving Foreign Element] shall apply to foreign-related civil actions within the territory of the People's Republic of China. Where this Title is silent, other relevant provisions of this Law shall apply.” Also, see Tu, Guangjian. *Private International Law in China* (n19), p.116.

⁸⁶ Article 2 of Interpretation of MPL.

⁸⁷ See MPL, Article 8. Liu, Xiaohong and Zhou, Qi. “Principles of Actual Connection and Forum Non Conveniens---Review of Jurisdiction Agreement System in China”, *Legal Science* 2014(12), pp.43-50, at 46.

⁸⁸ Du, Huanfang, “A Review of The Provisions of Jurisdiction Agreement in Foreign-Related Civil Litigations”, *Legal Forum* 4 (2014), pp. 93-100, p.96.

makes it convenient for foreign parties to choose a Chinese maritime court to hear the case.⁸⁹

C. Party autonomy and doctrine of *forum non conveniens*

In the past, according to chapter IV of the CPL, there were four jurisdiction grounds for foreign-related cases, namely, jurisdiction by actual connection, party autonomy, jurisdiction by submission and exclusive jurisdiction.⁹⁰ By way of contrast, in both the CPL 2012 and 2017 only two grounds are retained in Chapter IV, i.e. jurisdiction by actual connection and by exclusive jurisdiction;⁹¹ and the other two, i.e. party autonomy and jurisdiction by submission, are now extended to be applied also in domestic claims.⁹² Thus, the rules relating to party autonomy now apply in both domestic and international claims.

The doctrine of party autonomy is deeply rooted in freedom of contract and can bring about certainty and efficiency. Chinese law admits the parties' right under the principle of freedom of contract, though there are restrictions on the validity of jurisdiction agreement. In actual practice, issues often arise relating to the agreed court, such as inconvenience in hearing the case. Therefore, scholars suggested applying a rule similar to the common law principle of *forum non conveniens*.⁹³ The SPC eventually accepted the idea in its "Notice on the Dissemination of the Minutes of the Second Countrywide Trial Work Conference for Foreign-related Commercial and Maritime Cases" (2005 Notice). According to the 2005 Notice, if a Chinese court, when dealing with a foreign-related commercial case, finds it is not convenient for it to exercise jurisdiction, then it can dismiss the case by following the doctrine of *forum non conveniens*.⁹⁴

Nevertheless, the doctrine of *forum non conveniens* under Chinese law will only be applied when the conditions are met. The conditions include: (1) the defendant requests the application of this doctrine or challenges the jurisdiction of the Chinese court, and the court filed with the case believes the doctrine could possibly be applicable; (2) the Chinese court filed with the case has jurisdiction over the case; (3) the parties do not have an agreement conferring jurisdiction on the Chinese court; (4) the case does not fall under the exclusive jurisdiction of Chinese courts; (5) the case is not concerned with the interests of Chinese nationals, corporates or other organizations; (6) the main legal facts of the dispute do not occur within the Chinese territory and Chinese law is not the governing law for the case; and if the case is tried in China, there will be great difficulty in ascertaining the facts of the case and applying the governing law; and (7) there is a foreign court that has jurisdiction over the case and is more convenient for trying the case.⁹⁵

⁸⁹ Li, Shuangyuan and Ou Yongfu. *Private International Law*, (Peking University Press, 2006), p.340.

⁹⁰ For example, Article 241-244 of CPL 2007.

⁹¹ Article 265-266 of CPL 2012 and 2017.

⁹² Articles 34 and 127 of the CPL 2012. Tu, Guangjian. *Private International Law in China*, (n19), p.124.

⁹³ See debates in the papers, for example in Zhang, Mao, "Forum Non Conveniens in International Civil Litigation", *Law and Society Development* 5 (1996), p. 008, in which the author mentioned that it is necessary to pay more attention to this doctrine. Later, Liu, Weixiang and Zheng, Ziwen, "Forum Non Conveniens in International Civil Litigation", *Law Review* 4 (1997), pp. 46-50 and others. It has been gradually recognized that there is a necessity to establish this principle in law in China.

⁹⁴ The 2005 Notice, Article 11.

⁹⁵ *Ibid*.

Undoubtedly, the 2005 Notice provides useful guidance; however, the application of this doctrine is often restricted. For instance, in the case of *CP World Pte Ltd (CP Company) and Mitsui O. S. K. Lines Ltd (Mit Company) v. Ping An Property & Casualty Insurance Company of China Ltd, Shenzhen Branch (Ping An Company)*⁹⁶, the plaintiff wanted to exercise the subrogation right to gain compensation from the defendant. CP Company was located in Singapore and Mit Company was domiciled in Japan. A Guangdong company called “Zhongji” authorized CP Company to transport goods to Netherlands, while the actual carrier was Mit Company. The hull of the ship was broken when she was navigating in the Indian Ocean. The defendant confirmed that there was a total loss. The plaintiff Company made a compensation claim against the shipper “Zhongji”, and brought an action in Guangzhou Maritime Court. The two defendants challenged the jurisdiction by utilizing the doctrine of *forum non conveniens*; they claimed that Jiangmen was the place of receipt written on the bill of lading, but the actual place where the cargo was loaded was Hong Kong. Accordingly, the loading place, destination, and domicile of the defendants were not within the territory of China; the bill of lading also provided that the trade should be governed by Singapore law and be heard by a Singapore court. In addition, the domicile of CP Company is Singapore, so the Singapore court had actual connection with the dispute; it was also inconvenient for a Chinese court to hear. Despite all the allegations, Guangdong High People’s Court still upheld the jurisdiction of the Guangzhou Maritime Court, since it considered that Jiangmen was the place of receipt as recorded on the bill of lading. CP Company should have accepted its obligation to receive the goods in Jiangmen. According to this case, it can be understood that it may not be easy for a Chinese Court to decline jurisdiction when there is an element relating to China.⁹⁷

In actual fact, the main factors under consideration in the Chinese version of *Forum non conveniens* often includes the actual connections between the court and the dispute, the location of the witness and evidence, the location of the disposal of assets of the defendant, and the potential enforcement of the judgments.⁹⁸ Thus, Chinese judges may stay its jurisdiction by applying *Forum non conveniens* only when it seems inconvenient for the court to try the case.

VI. Conflicts between arbitration and court jurisdiction

There are an increasing number of cases discussing the possible conflicts between court jurisdiction and arbitral tribunals in China. It is not surprising that parties may choose arbitration rather than litigation as the means to solve their dispute arising from a multimodal transport contract,⁹⁹ since arbitration is also regarded as an effective way to address contractual disputes.

A. Arbitration and arbitration law

In China, arbitration is mainly regulated by the CPL and Arbitration Law of the People's Republic of China (AL); in addition, the “*Opinions on Certain Matters Regarding the Application of The Civil Procedure Law of The People’s Republic of China*” and

⁹⁶ (2015) Yue Gao fa Li Min Zhong Zi No.602.

⁹⁷ (2015) Yue Gaofa Li Min Zhong Zi No. 602

⁹⁸ Article 11 of SPC’s 2005 Notice.

⁹⁹ See, e.g., Combiconbill 2016 and Multidoc 2016 developed by BIMCO.

“*Interpretations on Certain Issues Regarding Application of Arbitration Law*” (interpretation of arbitration law) can also apply. The AL came into force in September 1995, and applies to all kinds of arbitration. After the promulgation of the AL, several arbitration committees have been established in each capital city of each province in China. Both local arbitration committees and the China Maritime Arbitration Commission (CMAC), which were established for maritime arbitrations, can deal with multimodal transport cases. Meanwhile, though, China does not recognize ad hoc arbitration.¹⁰⁰ The only form of arbitration in China is institutional arbitration.¹⁰¹

The AL contains a special chapter (VII) entitled “Special Provisions concerning Foreign-Related Arbitration”, which is applicable to international arbitration. In addition, the provisions in other chapters may also apply to international arbitration where there is no relevant provision available in Chapter VII.¹⁰² Chapter VII was drafted with reference to international practice, especially the 1985 UNCITRAL Model Law and 1958 New York Convention. Although there are still differences between the 1985 UNCITRAL Model Law and the AL, the general legal framework and basic ideas in the former have been accepted by the AL.¹⁰³

B. Arbitration agreement and its possible conflict with court jurisdiction

If parties want to choose arbitration to deal with the controversy, according to article 16 of the AL they can make a valid arbitration agreement as the prerequisite procedure toward solving the dispute under a multimodal transport contract. According to Article 16, the following contents shall be included in an arbitration agreement:¹⁰⁴ (1) the expression of the intention to apply for arbitration; (2) the matters for arbitration; and (3) the Arbitration Commission designated by the parties. Accordingly, an arbitration clause contained in a charter-party stating “any dispute arising from this charter shall be referred to arbitration in China” is invalid, because it does not contain the chosen arbitration commission. Even if the clause states “arbitration in Shanghai”, such a clause is also invalid, because there are two arbitration commissions in Shanghai that are qualified for maritime arbitration.¹⁰⁵ However, an arbitration agreement can be regarded valid on certain occasions even if there is no designated commission; for instance, where parties to a dispute reached a supplementary agreement, or an arbitration commission can be identified through said arbitration rules.¹⁰⁶ Besides this, where parties have agreed in an arbitration agreement that the dispute will be conducted in an arbitration commission at a specific place, and there is only one institution at that place, even though the name of the commission is not identified, such arbitration commission can be regarded as the agreed-upon arbitration commission.¹⁰⁷ On the other hand, article 17 states three occasions where an arbitration agreement will be invalid, these being: Firstly, where the agreed matters for arbitration exceed the range of

¹⁰⁰ Hu, Zhengljian James. *Transport Law in China* (n16), p.70.

¹⁰¹ Zhao, Liang, and Li, Lianjun. *Maritime Law and Practice in China*, (n24), p.331.

¹⁰² Article 11 of AL.

¹⁰³ Tu, Guangjian. *Private International Law in China*, (n19), p.178.

¹⁰⁴ Article 16 of AL.

¹⁰⁵ (2015) Xia Hai Fa Shang Chu Zi no.711.

¹⁰⁶ Article 4 of Interpretation of AL.

¹⁰⁷ Article 6 of Interpretation of AL.

arbitration matters as specified by law; secondly, where one of the parties concluding the arbitration agreement has no capacity for civil conduct, or has limited capacity; and thirdly, where one party has coerced the other party into concluding the agreement.¹⁰⁸ In addition, an arbitration agreement must be in writing.¹⁰⁹

For ascertaining the effectiveness of an arbitration agreement involving foreign elements, it shall be regulated by the laws agreed upon between the parties concerned. If the parties did not conclude an applicable law but agreed upon the place of arbitration, the law at the place of arbitration shall apply; if they neither agreed upon the applicable law nor the place of arbitration or the place of arbitration is not clearly agreed upon, the law at the locality of the court shall apply.¹¹⁰

In the AL, articles 5, 124 and 271 aim to harmonize the conflict between arbitration and court jurisdiction. Article 5 stipulates: "...if the parties have concluded an arbitration agreement and one party institutes an action in a people's court, the people's court shall not accept the case, unless the arbitration agreement is null and void." Article 124 emphasizes that if both parties have entered into an arbitration agreement in writing, the claimant should not bring the action in court.¹¹¹ Article 271 provides the rules for dealing with international arbitration, which may be more relevant to multimodal transport contract disputes. It says that the parties can bring their dispute to the people's court only if there is no arbitration clause in their contract or no arbitration agreement is concluded in written form after the contract has been concluded. Where a valid arbitration agreement exists, neither party can file a lawsuit in the people's court.¹¹²

Although the court is compelled to object to jurisdiction when there is a valid arbitration agreement, a Chinese court is not obliged to find out whether or not there exists a valid arbitration agreement. If the parties do not disclose the existence of the arbitration agreement, the defendant needs to challenge the court's jurisdiction by proving the validity of the arbitration agreement which actually covers the dispute in question.¹¹³ The reason is that two parties have the contractual freedom to forfeit the rights under that arbitration agreement at any time. If the claimant brings an action in the people's court and the defendant simply attends the hearing, this would mean that the defendant has submitted to the court's jurisdiction.¹¹⁴ If the defendant wants to challenge such jurisdiction by using the arbitration agreement, the defendant must make its plea prior to commencement of the trial.¹¹⁵ Otherwise, the arbitration agreement is deemed to be repudiated.

VII. Conclusion

¹⁰⁸ Article 17 of AL.

¹⁰⁹ Article 16 of AL.

¹¹⁰ Article 16 of Interpretation of AL.

¹¹¹ The AL, article 124 (2) and (3).

¹¹² Tang, Zheng Sophia. *Jurisdiction and Arbitration Agreements in International Commercial Law*, (n72), p.112.

¹¹³ *Ibid*, p.112.

¹¹⁴ Article 127 of the CPL; Article 26 of the AL.

¹¹⁵ Article 26 of AL.

With the accelerated development of China's foreign trade and maritime activities, multimodal transport disputes in China are expected to be on the rise. However, as far as the rules of jurisdiction over disputes arising from the multimodal transport of goods is concerned, the Chinese law approach is far from satisfactory. As analysed in this paper, due to the complexities and uncertainties in several aspects, Chinese courts may tend to insist on their own jurisdiction, their aim being to protect the interests of Chinese parties. As a result, this may lead to conflicts over jurisdiction, which in the long run will have an adverse effect on China's trade and investment environment.