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The First Hurdle for Overseas-Focused Enterprises "Litigating at Home": A Tentative Discussion on Standing of Overseas Branches in Litigation and Arbitration

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Legal Academic Article, consistent with prior maritime litigation terminology; court official wording adopted for statutory provisions

Chinese enterprises going global generally adopt only two organizational forms: subsidiaries or branches. In consideration of setup costs, tax planning and local market access, engineering contracting and trading enterprises often opt to set up overseas branches. This structure delivers commercial agility yet creates an easily overlooked procedural risk in dispute resolution: when an overseas branch initiates litigation before a domestic Chinese court or asserts rights under an arbitration clause in a contract, its standing as a party will almost always be the first point of attack. Jurisdictional objections, standing reviews, coordination of enforcement procedures… virtually all delay tactics start right at this threshold.

I. Root Cause: A Procedural Rule Rooted in a Domestic Statutory Perspective

Article 51 of the *Civil Procedure Law of the People's Republic of China* stipulates that citizens, legal persons and **other organizations** may be parties to civil litigationThe Suprem.... Article 52 of the Judicial Interpretation of the Civil Procedure Law further defines such "other organizations" as entities legally established with a fixed organizational structure and independent property. Subparagraph (5) explicitly includes "branches of legal persons duly incorporated and holding business licenses" within this category中华人民共....

The crux lies in the phrase "holding a business license". A business license is a concept under China's domestic market regulation system. Literally interpreted, obtaining a Chinese business license upon establishment within China appears to be a prerequisite for a branch

to acquire party standing. Following this logic, an overseas branch established lawfully by a Chinese legal person can never obtain a Chinese business license, and accordingly cannot file or defend lawsuits in Chinese courts in its own name—only the parent company may bring claims.

This conclusion is commercially absurd. Overseas branches are the most active contracting parties in cross-border transactions and the most frequent claimants seeking redress back in China. Confining all litigation rights exclusively to parent companies would create unnecessary inconvenience and contradict legislative intent. The core dispute thus arises: can Article 52 be interpreted to cover overseas branches?

The answer is affirmative, and the key lies in the legislative purpose of the term "other organizations". The Research Office of the Supreme People's Court clarified in selected Q&As on the Legal Answers Network (Batch 10): the substantive criteria under Article 52 are that the entity is **established in accordance with legal procedures and requirements** and possesses a fixed organizational structure and property. The listed scenarios are illustrative rather than exhaustive.

In other words, a Chinese business license is merely typical documentary proof that domestic branches satisfy the substantive conditions, not a condition itself. For overseas branches, we should adopt a purposive interpretation and treat official registration documents issued by the competent authority of the place of incorporation as equivalent proof. Whether it is a certificate of incorporation, an excerpt from the commercial register or a unified registration certificate, any document proving lawful establishment, organizational setup and available property shall suffice to recognize its party capacity.

It is worth noting that "other organizations" is a broader category than "unincorporated organizations" under the *Civil Code*. The legislative design deliberately reserves space for legal person branches, owners' committees and other entities. The procedural law's test of party capacity aims to resolve disputes in a single proceeding, rather than to determine ultimate substantive liability. Even if liability for a branch as a defendant ultimately falls on its parent legal person, this does not negate the branch's independent party status. This separation of procedural standing and substantive liability constitutes the systemic foundation for purposive interpretation.

II. Judicial Reasoning in Practice: Substantive Review, Not Territorial Limitation

Case searches reveal that courts consistently apply a substantive review standard; the place of registration is never a determining factor. In *(2018) Supreme People's Court Civil Retrial No. 2897*, the Supreme People's Court denied standing to a resident representative office of a foreign enterprise on the ground that it lacked valid registration, a business license and independent property. The court strictly examined the three substantive prerequisites: **registration, organizational structure and independent property**.

This case is frequently cited to deny branch standing, yet it actually proves the opposite: any entity meeting the three prerequisites shall be recognized as a party, regardless of whether it is registered domestically or overseas. Conversely, entities without formal registration—such as unregistered offices, liaison offices or project teams—lack party capacity even if they operate under the name of a "branch".

This delivers a critical risk warning: many enterprises conduct overseas business through informal offices, liaison offices or project departments without completing local registration. Such entities face an extremely high risk of being ruled to lack standing when commencing litigation in China. The parent company would then have to step in to exercise the claim right, while the contract was signed in the name of the unregistered office, triggering further chain disputes over privity of contract. The procedural value of formal registration for overseas branches cannot be overemphasized.

III. Beyond Litigation: More Lenient Arbitration Rules and Dual Preparedness

Issues of party standing play out differently in litigation and arbitration. Civil litigation is governed by statutory party capacity rules, whereas arbitration is founded on party autonomy. The mainstream judicial view holds that arbitral institutions adopt a less stringent standard for applicant standing than civil courts. Where an overseas branch signs a contract containing an arbitration clause in its own name, arbitral tribunals generally recognize its eligibility to file arbitration claims, with the ultimate allocation of rights and liabilities determined in substantive hearings.

Accordingly, prioritizing arbitration clauses in cross-border contracts performed by overseas branches is an effective pre-emptive measure against standing risks.

Nevertheless, attention must be paid to the interface between arbitration and court proceedings. After winning an arbitral award, when the case enters court enforcement

proceedings or when subsequent claims for shareholder liability or tort damages are filed domestically, the claimant's standing will still be tested under civil procedural rules. Our case-handling experience shows that if the arbitral award firmly confirms the overseas branch as the contracting party and award creditor, the chance of standing being successfully challenged in subsequent litigation will drop sharply. Consistency across judicial instruments provides the strongest evidentiary backing for party status. By contrast, if the branch's identity is concealed during arbitration, restoring its party standing in later court proceedings will prove extremely difficult.

IV. Five-Point Checklist for Chinese Outbound Enterprises and Counsel

1. **File and archive registration documents upon establishment**. Keep notarized and legalized copies of overseas branch registration papers and principal representative identity documents from the date of incorporation. Business registration records can often be retrieved online in many jurisdictions, but courts always require formally notarized and legalized originals. Last-minute supplementary authentication often takes months.

   术语：notarization and legalization 公证认证中华人民共...

1. **Align the contracting party with the dispute resolution claimant**. The party executing the contract must be the same entity entitled to pursue remedies under the dispute resolution clause. Avoid multi-layered misalignment: actual performance by a branch, contract sealed by the parent company, and business conducted by an unregistered office. Each inconsistency creates grounds for jurisdictional objections.

2. **Leverage foreign-related procedural rules to structure jurisdiction**. Article 520 of the Judicial Interpretation of the Civil Procedure Law adopts a mixed structure of enumerated scenarios plus a catch-all clause based on three elements: subject, object and cause of action. A case qualifies as foreign-related if: one party is a foreign enterprise or organization; a party's habitual residence is overseas; the subject matter is located abroad; or the legal facts giving rise to, modifying or terminating the civil relationship occur outside China. An overseas branch as a party alone may render the case foreign-related, bringing it under the jurisdiction of intermediate people's courts (above a certain monetary threshold), with foreign-related service and extended trial periods applying. Jurisdictional planning should be completed before filing, rather than

reacting passively to objections raised by the opposing party.

3. **Prefer arbitration clauses over court jurisdiction agreements**. As noted above, arbitral tribunals apply more relaxed standing requirements, and enforcement of foreign-related arbitral awards in China follows a mature regime. For cross-border procurement and EPC subcontracts led by overseas branches, agreeing on arbitration before a domestic arbitral institution is a prudent arrangement.

4. **Recognize the tactical value of avoiding procedural delay**. Challenges to standing and jurisdictional objections are the lowest-cost delay tools available to defendants. Claimants should pre-plant supporting evidence: duly notarized and legalized registration papers, arbitral awards confirming creditor status, and evidence proving foreign-related contract performance, so that all objections can be dismissed immediately. For defendants, repeatedly challenging the standing of an entity that clearly satisfies the three substantive prerequisites will almost certainly fail and may even run afoul of the principle of good faith.

V. Conclusion

The standing dilemma for outbound enterprises "litigating at home" appears to be a technical issue of statutory interpretation. Fundamentally, it reflects how procedural law keeps pace with new cross-border organizational forms. Prior to legislative revision, three pillars sustain the party capacity of overseas branches: purposive interpretation, the three-pronged test of **registration + organizational structure + independent property**, and the separation of procedural standing from substantive liability.

For enterprises, post-hoc litigation disputes are far less desirable than proactive front-end planning: complete formal registration upon incorporation, properly archive all certified documents, and select the dispute resolution forum at the contracting stage. After all, victory in dispute resolution is determined from the very first threshold: party standing.

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