

INTRODUCTORY NOTE TO THE CONFERENCE SUMMARY OF THE SYMPOSIUM ON  
FOREIGN-RELATED COMMERCIAL AND MARITIME TRIALS OF COURTS  
NATIONWIDE (SUP. PEOPLE'S CT. CHINA)

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## Introduction

China's foreign judgment recognition and enforcement regime has been the least developed part of its private international law, as opposed to jurisdiction and choice of law. The regime remained almost immutable over three decades from the 1980s, even though the civil procedure law that established it went through several revisions.<sup>1</sup> Under the present Civil Procedure Law (CPL), the regime consists of rules regarding qualified applicants, legal bases, and refusal grounds for recognition and enforcement. According to these rules, the creditor of an effective foreign judgment or the foreign court rendering it may seek its recognition and enforcement before a Chinese court.<sup>2</sup> The Chinese court shall review the application based on international treaties China has concluded or acceded to, or the principle of reciprocity. If the effective foreign judgment has not proven to contravene the fundamental principles of Chinese laws and the sovereignty, security, and public social interests of the state, it will be recognized and enforced; otherwise, it will not receive recognition and enforcement.<sup>3</sup>

The two avenues the CPL provides for recognition and enforcement are through international treaties and the principle of reciprocity. However, the avenues are only threshold requirements, the fulfilment of which does not immediately warrant recognition and enforcement. Additional conditions apply. For example, China has concluded with 39 countries bilateral judicial assistance treaties, which provide for, among others, reciprocal recognition and enforcement of judgments from respective courts. In light of these treaty provisions, Chinese courts can recognize or enforce their counterparts' court judgments when the rendering courts possess proper jurisdiction, the defendant has had the opportunity to present their case in the proceedings, and the judgment was not secured through fraud.

However, the CPL left several issues unaddressed where courts relied on reciprocity for recognition and enforcement—for instance, the meaning of reciprocity or whether foreign judgments should be subject to other conditions if reciprocity exists. The Supreme People's Court (SPC) initially defined “reciprocity” as *de facto* reciprocity. That is to say, only when the foreign country whose judgments' recognition and enforcement are sought in Chinese courts has recognized and enforced a Chinese court judgment can such a country be regarded to have reciprocal relations with China. Accordingly, the Chinese court can recognize and enforce such a country's judgments. The SPC established this rigid interpretation in a 1994 case where a Japanese citizen sought to enforce a Japanese court judgment in a Chinese court.<sup>4</sup> The Chinese court denied enforcement according to the SPC's instruction, which the SPC based on the fact that, until then, Japanese courts had never enforced a Chinese court judgment. This interpretation had far-reaching consequences. Since then, Chinese courts have denied enforcement, based on the want of reciprocity, to foreign judgments originating from Japan, Germany, the United Kingdom, Australia, the United States, Chad, South Korea, and Israel.<sup>5</sup> Therefore, the rigid construction of reciprocity by the SPC has become a significant obstacle to developing foreign judgment recognition and an enforcement regime.

The underlying reasons for the regime's slow progress in this period are multiple. First, an ideological barrier contributed significantly to Chinese courts' reluctance to enforce foreign judgments. State sovereignty has been regarded as a dominant legal principle governing Chinese private international law, and a liberal approach to foreign judgment enforcement would risk contradicting China's judicial sovereignty.

Economic development also played a role. Before China acceded to the World Trade Organization, the Chinese economy had yet to be as fully integrated into the world economy as it was after accession. As a result, the level of economic integration substantially affected the cases implicating foreign judgment recognition and enforcement.

Furthermore, the lack of international consensus on foreign judgment recognition and enforcement rules affected Chinese courts' readiness to engage in foreign judgment and enforcement. Ten years of failed negotiations in The Hague to conclude a double convention on jurisdiction and judgments evinced great divergence among countries

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and generated only a much scaled-down convention in 2005, covering only choice of court agreements. It took almost another decade to reach a single convention on judgments in 2019. China had avowed to orient itself toward, and align with, international customs since its adoption of the opening-up policy, but the lack of internationally accepted rules on foreign judgment recognition and enforcement baffled Chinese courts.

Finally, compared with the study directed to jurisdiction and choice of law, the relative scarcity of scholarly research on foreign judgment enforcement also dampened Chinese judges' willingness to assist.

## Reforms

Despite Chinese courts' conservative attitude toward foreign judgment enforcement, the global expansion of the Chinese economy in the second decade of the twenty-first century, and the ideological shift that it generated, fomented and galvanized reforms to the foreign judgment enforcement regime.

As China grew into the second largest economy globally and became a worldwide manufacturing hub, in 2013 President Xi proposed the Belt-and-Road initiative (BRI) as a national economic boost strategy. Strengthening the connectivity between China and Eurasia through infrastructure construction, the policy instigated a robust economic expansion, which led to a more internationally oriented approach to foreign-related adjudication in China. Legal cooperation, including judicial assistance among the countries that were part of the Belt-and-Road, was underscored. As a result, the conventional notion of judicial sovereignty began to decline. At the same time, popular opinion shifted toward the notion that foreign-related adjudication is a legal service and that the free circulation of judgments benefits businesses by facilitating dispute resolution.

The SPC began to reform the foreign judgment enforcement institution to establish a judicial environment conducive to implementing the Belt-and-Road initiative. One significant measure was to relax the stringent interpretation of reciprocity. In a policy statement implementing the BRI, issued in 2015, the SPC declared that Chinese courts would take the initiative in enforcing judgments from countries that were part of the Belt-and-Road in order to establish reciprocal relations with these countries.<sup>6</sup> In 2017, the SPC pronounced a new interpretation of reciprocity in the Nanning Declaration, a policy statement issued after the Second China ASEAN Justice Forum held in the Southern Chinese City of Nanning.<sup>7</sup> This novel interpretation holds that if one country's courts have not denied recognition and enforcement to other countries' judgments on the grounds of reciprocity, a reciprocal relationship is presumed to exist between these countries. This construction is dubbed "presumed reciprocity." In addition, Chinese lower courts followed the trend by taking the initiative in enforcing foreign judgments. As a result, they have created reciprocal relations with foreign countries, including Germany, the United States, Singapore, New Zealand, Australia, the United Kingdom, Canada, South Korea, and China's major trading partners worldwide.

International legislation also influenced China's interregional conflict-of-laws practice. For example, China has transposed the contents of international conventions into two interregional legal documents regulating inter-jurisdictional judgment recognition and enforcement.<sup>8</sup> As a result, the contents of the Hague Choice of Court Agreement Convention of 2005 and the Hague Judgment Convention of 2019 became part of China's domestic law. Accordingly, it will undoubtedly affect China's international judgment enforcement practice. At the same time, through its Fourth Civil Division, the SPC launched a project to reformulate rules regarding enforcing and recognizing foreign judgments. After several revisions, that work found appeal among academics.

Against these backdrops came the Conference Summary, which integrated the above reforms on foreign judgment enforcement that had accumulated over the years. The Conference Summary rules, however, possess both merits and defects.

On the positive side, the Conference Summary codifies the SPC reforms, solidifies the good practice accrued by lower courts, and assimilates the contents of international conventions. It integrates *de jure* reciprocity, presumed reciprocity, and reciprocity achieved by mutual declarations (Article 44). In addition, it establishes substantive conditions and procedures similar to those provided for in international conventions (Article 46).

However, the Conference Summary rules are defective in at least two respects. First, as it explicitly excludes foreign judgments deriving from bankruptcy, intellectual property, and anti-competition cases (Article 33), it creates a clear gap regarding what rules should apply when the excluded judgments are requested for recognition and enforcement.

Moreover, intractable issues regarding foreign judgment recognition go unaddressed except for prescribing “courts of jurisdiction” for it (Article 34). The recognition issue relates to the doctrine of *res judicata*, which addresses the binding force of foreign judgments in domestic proceedings. Since, in China’s domestic litigation, the *res judicata* of a judgment is still an ill-defined and debatable issue, whether and to what extent a Chinese court should grant foreign judgment-preclusive effects remained undecided.

### Conclusion

Over four decades of evolution, under the galvanization of economic development and ideological shift, the Chinese foreign judgment recognition and enforcement regime, despite its slow advancement, has achieved some progress in the Conference Summary. It does, however, remain to be tested by the practice before more durable rules take shape.

### ENDNOTES

- 1 Minshi susong fa (Shixing) [Civil Procedure Law (Trial Version)](promulgated on Mar. 8, 1982, effective Oct. 1, 1982 and repealed April 1991), art. 204; Minshi susong fa [Civil Procedure Law] (passed by the 4<sup>th</sup> Session of the 7<sup>th</sup> Nat'l People's Cong., Apr. 9, 1991, amended on, Oct. 28, 2007, Aug. 31, 2012; June 27, 2017 and Oct. 24, 2021), arts 288, 289. [hereinafter CPL]
- 2 CPL art. 288.
- 3 *Id.* art. 289.
- 4 Zhonghua Renmin Gongheguo Zui gao ren min fa yuan gong bao (Gazette of the Supreme People's Court of the People's Republic of China), vol. 45, No. 1, 1996.
- 5 See, e.g., Awabiya Ltd.'s Application for Japanese Judgment Recognition and Enforcement, (2001) Hu Yi Zhong Jing Chu Zi, No. 267 (Shanghai First Interm. People's Ct.); Russian National Orchestra & Art Mont Co.'s Application for Foreign Judgment Recognition and Enforcement, (2004) Er Zhong Min Te Zi, No. 928 (Beijing Second Interm. People's Ct. Dec.19, 2005); SPC's Reply Regarding the Applicant Power Engine Flush's Application for Recognition and Enforcement of An Australian Court Judgment, (2006) Min Si Ta Zi, No. 45, (Sup. People's Ct., Mar. 1, 2007 ); Dongbin's Application for Foreign Judgment Recognition and Enforcement, (2014) Tan Zhong Min San Chu Zi, No. 181, (Xiangtan Interm. People's Ct., Apr. 22, 2015); Zhang Xiaoxi's Application for Foreign Judgment Recognition and Enforcement, (2015) Shen Zhong Min Si Te Zi, No. 2 (Shenyang Interm. People's Ct. Apr. 8, 2015); S. L. Jonas Ltd.'s Application for An Israel Judgment Recognition and Enforcement, (2017) Min 01 Xie Wai Ren No. 4 (Fuzhou Interm. People's Ct., Nov. 16, 2017).
- 6 Zuigao Renmin Fayuan Guan yu ren min fa yuan wei yi dai yi lu jian she ti gong si fa fu wu he bao zhang de ruo gan yi jian [Several Opinions of the Supreme People's Court Regarding the Provision by People's Courts of Judicial Service and Protection for the Construction of One-belt-one-road], fa [2015] No.9., art. 6.
- 7 Di er jie Zhongguo- Dongmeng da fa guan lun tan Nanning sheng ming [Nanning Declaration for the Second China-ASEAN Justice Forum], art. 7, <https://www.chinacourt.org/article/detail/2017/06/id/2891257.shtml>.
- 8 Arrangement on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned, July 2006; Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region, January 2019.

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**Article 33 [Examination Criteria and Scope of Application]**

When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people's court shall, in accordance with Article 289 of the Civil Procedure Law and Paragraph 1 of Article 544 of the Judicial Interpretation of the Civil Procedure Law, first examine whether the country where the judgment is rendered and China have concluded or acceded to international treaties. If yes, the pertinent international treaty shall prevail; if no, or if yes but in the absence of relevant provisions in the international treaty, the specific examination criteria of the 2021 Conference Summary may be applicable.

The 2021 Conference Summary will not be applicable to the recognition and enforcement of relevant judgments of bankruptcy, intellectual property, unfair competition, and anti-monopoly cases due to the geographical attributes and particularity thereof.

**Article 34 [Supplementary Jurisdiction Rule-the Court at the Place of the Applicant's Domicile]**

Where an applicant applies for recognizing a judgment or ruling of a foreign court, but the respondent has no domicile within the territory of China, and its property is not within the territory of China, the application may come under the jurisdiction of the intermediate people's court of the place where the applicant has his domicile.

**Article 35 [Application Documents]**

An applicant to apply for recognition and enforcement of a judgment or ruling of a foreign court shall submit a written application accompanied by the following documents:

1. the original or certified true copy of the judgment;
2. documents proving that the judgment has come into effect;
3. documents proving that the foreign court has legitimately summoned the absentee if the judgment is made in absentia.

If the judgment or ruling has already stated the circumstances under Items (2) and (3) of the preceding paragraph, other supporting documents are not necessarily required to be submitted anymore.

Where the judgment and other documents submitted by the applicant are in a foreign language, they shall be accompanied by a Chinese version stamped with the official seal of the translation institution.

Where the documents submitted by an applicant are made outside the territory of China, the applicant shall go through the procedures of notarization and authentication, or go through the certification procedures as required by relevant international treaties signed between China and the said country.

**Article 36 [The Application]**

The application shall specify:

1. The applicant and the respondent. If the applicant or respondent is a natural person, the application shall specify his/her name, gender, date of birth, nationality, domicile and ID number; if it is a legal person or an unincorporated organization, it shall indicate its name, domicile, and the name and position of its legal representative or representative;

\*The original version of the Conference Summary is available on the website of the China International Commercial Court (visited December 13, 2022), <https://cicc.court.gov.cn/html/1/218/62/409/2172.html>. The current translation was done by Meng Yu and Guodong Du for CJO Global and is available at <https://www.cjoglobal.com/wp-content/uploads/2022/06/2022-BREAKTHROUGH-FOR-COLLECTING-JUDGMENTS-IN-CHINA-CJO-GLOBAL.pdf>.

2. The name of the judgment-making foreign court, the case number of the judgment, the commencement date of the proceedings and the date of judgment;
3. Specific request and grounds;
4. The status and location of the respondent's property as well as the status of the enforcement of the judgment outside China; and
5. Other matters needed clarification.

### **Article 37 [Service on the Respondent]**

Where a party applies for recognition and enforcement of a foreign judgment or ruling, the people's court shall list the other party as the respondent in the judgment. If both parties apply so, they shall be both listed as the applicant.

The people's court shall serve a copy of the application on the respondent. The respondent shall submit its opinions within 15 days after the date of receipt of a copy thereof; if the respondent has no domicile within the territory of the People's Republic of China, it shall submit its opinions within 30 days after the date of receipt of a copy thereof. The respondent's failure to submit its opinions within the above-mentioned time limit shall not affect the examination by the people's court.

### **Article 38 [Jurisdictional Challenge]**

After the people's court has accepted an application for recognition and enforcement of a judgment or ruling of a foreign court, if the respondent challenges the jurisdiction, the respondent shall file the challenge within 15 days upon the date of receiving the application copy; where the respondent has no domicile within the territory of China, the challenge shall be filed within 30 days upon the date of receipt of the application copy.

The people's court shall examine and render a ruling on the jurisdictional challenge filed by the respondent. If the party is not satisfied with the ruling on the jurisdictional challenge, he may file an appeal.

### **Article 39 [Conservatory Measures]**

Where a party applies to the people's court for recognition and enforcement of a foreign judgment or ruling, after the people's court accepts the application, if the party applies for property preservation, the people's court may implement the property preservation with reference to the provisions of the Civil Procedure Law and relevant judicial interpretations. The applicant shall provide a guarantee for the property preservation, otherwise the people's court shall rule to dismiss the application.

### **Article 40 [Case Filing Examination]**

If the applicant's application does not meet the case filing conditions, the people's court shall rule not to accept the case and explain the reasons for non-acceptance. If the case has been accepted, the people's court shall rule to dismiss the application. If the party refuses to accept the dismissal, it may appeal. If, after the people's court rules not to accept the case or to dismiss the application, the applicant applies again and meets the case filing conditions, the people's court shall accept the case.

### **Article 41 [Standards for Determining the Foreign Court Judgment or Ruling]**

The people's court shall, subject to the substance of a judgment or ruling of a foreign court, review and identify whether such judgment or ruling is a 'judgment or ruling' as provided in Article 289 of the PRC Civil Procedure Law (CPL).

Judgments, rulings, decisions, orders and other legal instruments made by foreign courts on substantive disputes in civil and commercial cases, as well as legal instruments made in criminal cases on civil damages, shall be identified as 'judgments and rulings' as specified in Article 289 of the CPL, but excluding preservation orders and other procedural legal documents made by foreign courts.



**Article 42 [Determination of the Binding Judgment or Ruling]**

The people's court shall examine whether a judgment or ruling has come into legal effect pursuant to the laws of the country where the judgment is made. A judgment or ruling pending appeal or in the process of appeal shall not fall within the scope of 'judgment or rulings which have come into legal effect' as stipulated in Article 289 of the CPL.

**Article 43 [Situations where authenticity and finality of judgment cannot be confirmed]**

When the people's court reviews the application for recognition and enforcement of a foreign court judgment or ruling, in case it cannot confirm the authenticity of the foreign court judgment or ruling upon examination or the judgment or ruling has not come into legal effect, the people's court shall render a ruling to dismiss the application. After the application is dismissed, if the applicant re-applies and the application satisfies the requirements for acceptance, the people's court shall accept such application.

**Article 44 [Recognition of Reciprocity]**

When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people's court may recognize the existence of reciprocity under any of the following circumstances:

- (1) Where the civil and commercial judgments made by Chinese courts can be recognized and enforced by the judgment-making foreign court according to the law of the country where the foreign court is located;
- (2) Where China has reached a reciprocal understanding or consensus with the country where the judgment-making court is located; or
- (3) Where the country where the judgment-making court is located has made reciprocal commitments to China through diplomatic channels or China has made reciprocal commitments to the country where the judgment-making court is located through diplomatic channels, and there is no evidence that the country where the judgment-making court is located has refused to recognize and enforce a Chinese judgment or ruling on the ground of lack of reciprocity.

The Chinese court shall examine and determine the existence of reciprocity on a case-by-case basis.

Paragraph 2 of Article 49 of the 2021 Conference Summary [Filing and Notification Mechanism for Recognition and Enforcement of Foreign Judgments]:

The people's court shall, before making a ruling on a case examined based on the principle of reciprocity, submit the proposed handling opinions to a high people's court of its jurisdiction for examination; if the high people's court agrees to the proposed handling opinions, it shall submit its examination opinions to the SPC for examination. The aforesaid ruling can be made only after a reply by the SPC.

**Article 45 [Judgment concerning Punitive Damages]**

Where a judgment rendered by a foreign court awards damages, the amount of which significantly exceeds the actual loss, a people's court may refuse to recognize and enforce the excess.

**Article 46 [Grounds for the Refusal of Recognition and Enforcement]**

A people's court shall refuse to recognize and enforce the legally effective judgment or order made by a foreign court if, after examining it in accordance with the principle of reciprocity, it finds that any of the following circumstances exists:

1. in accordance with Chinese law, the court in the country where the judgment is rendered has no jurisdiction over the case;
2. the Respondent has not been lawfully summoned, or has not been given a reasonable opportunity to be heard and defended despite having been lawfully summoned, or the party without legal capacity has not been properly represented;

3. the judgment was obtained by fraud; or
4. the people's court has rendered a judgment on the same dispute, or has recognized and enforced a judgment or arbitral award made by a third country on the same dispute.

Where a legally effective judgment or ruling made by a foreign court violates the basic principles of the Chinese law or violates state sovereignty, security, and public interest, such judgment or ruling shall not be recognized or enforced.

#### **Article 47 [Recognition of Foreign Judgments in Violation of the Arbitration Agreement]**

Where a party concerned applies to a people's court for recognition and enforcement of a default judgment rendered by a foreign court, and the people's court finds upon examination that the parties to the dispute have a valid arbitration agreement and that the absent party does not expressly waive to apply the arbitration agreement, the people's court shall refuse to recognize and enforce the foreign judgment.

#### **Article 48 [Handling of Withdrawal of Application]**

The people's court shall rule to allow the applicant's request to withdraw the application after the people's court has accepted the application for recognition and enforcement of a foreign judgment or ruling but not yet made a ruling.

Although the people's court has ruled to allow the withdrawal of the application, the people's court shall still accept the case if the applicant applies again and meets the case filing conditions.

If the applicant refuses to participate in the inquiry procedure without justified reasons, it shall be deemed as an automatic withdrawal of the application by the applicant.

#### **Article 49 [Ex Ante Internal Approval and Ex Post Filing Mechanism]**

People's courts at all levels that close cases of recognition and enforcement of foreign judgments shall, within 15 days after making the ruling, report the cases level by level to the Supreme People's Court for filing. The filing materials include the application submitted by the applicant, the foreign judgment and its Chinese translation, and the ruling made by the people's court.

The people's court shall, before making a ruling on a case examined in accordance with the principle of reciprocity, submit its proposed handling opinions to the high people's court of the same jurisdiction for examination; if the high people's court agrees with the proposed handling opinions, it shall submit its examination opinions to the SPC for examination and approval. No ruling shall be made until the SPC gives a reply.