

Enforcement of Foreign Judgments

Fundamental Principles [China]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes.

The *PRC Civil Procedure Law* provides for the process to enforce judgments granted by a non-PRC court in PRC. A foreign judgment holder may file a petition directly with the competent court in PRC for recognition and enforcement of the foreign judgment, or the court that granted the foreign judgment may make a judgment recognition and enforcement request to the competent court in PRC, requesting that the foreign judgment be recognized and enforced, upon the basis of bi-lateral treaties, multi-lateral treaties or reciprocity.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: The law that is applicable to the recognition and enforcement of a foreign court judgment is the *PRC Civil Procedure Law* (Articles 281 and 282) and the *Interpretations of the Supreme People's Court on Application of the PRC Civil Procedure Law* (Articles 543, 544, 546, 547 and 548).

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: N/A

- 2. Does the European Union have a special procedure to enforce court judgments coming its member states?**

Answer: N/A

D. Average Duration of Enforcement Procedure

- 1. What is the average length of time for this kind of procedure?**

Answer: Generally, the enforcement shall be concluded within six months upon acceptance of the case. However, the court has the right to extend such time limit due to any specific reasons affecting the enforcement.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes.

PRC courts are required to take a two-step approach in deciding the recognition and enforcement of a foreign judgement.

First, PRC courts would look into the basis of recognition and enforcement, examining whether there exists bi-lateral treaty, multi-lateral treaty¹ or reciprocity between the country where the judgment was rendered and China.

1. If no such treaty or reciprocity was found, the court would deny the enforcement application².
2. If such treaty was found, the court would further look into the details of the treaty. Typically, a treaty provides for certain circumstances under which courts may refuse to recognize and enforce the foreign judgment. If a judgment falls within any of these circumstances, the court would deny the enforcement application.

Second, in case a foreign judgment satisfies the above requirements (either via a treaty or reciprocity), a PRC court may refuse to recognize and enforce the judgment if it fails any of the following requirements:

1. The foreign judgment has taken legal effect in the jurisdiction in which it was rendered;
2. The foreign judgment does not violate any basic principles of Chinese law, national sovereignty, security, or social public interest;
3. In case of a default judgment, the defendant was served with proper notice of the proceedings;
4. There does not exist any conflicting domestic or foreign judgment; and
5. The foreign court has jurisdiction over the case.

¹ Please note that China has not entered into any multi-lateral treaty on the recognition and enforcement of foreign court judgment.

² The only exception is divorce judgment. PRC courts are required to recognize and enforce a foreign divorce judgment even if there exists no treaty or reciprocity between the country where the judgment is rendered and China.

B. Costs and Expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: Generally speaking, claimants are required to pre-pay the application fee to the court for the procedure though the party subject to the enforcement will be ordered to bear the fee upon the completion of the procedure if the relevant recognition and enforcement request is granted. The lawsuit may also incur other expenses, such as notarization and legalization fee, translation fee and attorney fee.

III. FORMAL REQUIREMENTS

A. Time Limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: In accordance with the Article 239 of the *PRC Civil Procedure Law*, the time limit for submission of an application for enforcement shall be two years.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfil to be recognized and enforced?

Answer: The necessary requirements to enforce a foreign judgment are the same as what has been listed in Part IIA, including:

1. The foreign judgment has taken legal effect in the jurisdiction in which it was rendered;
2. The foreign judgment does not violate any basic principles of Chinese law, national sovereignty, security, or social public interest;
3. In case of a default judgment, the defendant were served with proper notice of the proceedings;

4. There does not exist any conflicting domestic or foreign judgment;
and

5. The foreign court has jurisdiction over the case.

D. Other Formal Requirements: Court Fees

1. **Is it mandatory to pay Court Fees for this kind of application?**

Answer: Yes.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: Not applicable

IV. PROCEDURE

A. Competent Court

1. **Which Court or courts are competent to decide an enforcement application?**

Answer: The intermediate court where the respondent is domiciled or the property is located is competent to decide an enforcement application.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. **What information must be contained in the enforcement application of a foreign court judgment?**

Answer: The enforcement application should include the following information:

1. Information about the applicant: name, its legal representative (if any), address;
2. Information about the party against whom the application is made: name, its legal representative (if any), address.
3. Request: the foreign court judgment is applied to be recognized and enforced;
4. Facts and grounds: the country of the court that renders the judgment, the result and time of the judgment; specific contents which are applied to be recognized and enforced; the grounds for recognition and enforcement;

5. Other information if necessary.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: The party making a request for acceptance or enforcement of judgments shall submit the following documents:

1. The original copy or the certified error-free duplicate copy of the foreign judgment and its translation; and
2. In case of a default judgment, the documents proving that the foreign court has legally serve summons against the respondent, unless the judgment or verdict has expressly mentioned that.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: As general rules, there are three phases of procedure to enforce a foreign court judgment:

1. Upon receipt of the application and attached documents, the court shall, after a *prima facie* review, accept the case provided the application complies with the requirements for acceptance. Otherwise, it shall notify the applicant of its refusal of acceptance and state the reasons for such refusal.
2. After examining whether this judgment is enforceable on the basis of requirement provided by laws and bilateral treaties, the court shall render a decision on whether recognize and enforce this judgment.
3. Once the decision is rendered, the enforcement officer shall send an enforcement order to the person subject to enforcement, instructing him to comply within the specified time, failing which a compulsory enforcement will be carried out.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: The defendant may raise objection during the enforcement application.

2. **Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

Answer: Yes, please refer to Part IIA. These grounds can be used by the defendant to challenge the enforcement. Generally speaking, with few exceptions, the defendant can only challenge the enforcement based on procedural defects of the case.

F. Appeal and its Consequences in this Procedure

1. **Is it possible to appeal a court decision to recognize and enforce a foreign court decision?**

Answer: No.

2. **Can this appeal suspend the enforcement?**

Answer: Not applicable

G. Recovery of Judicial Costs and Expenses

1. **Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer: Yes.

Notice of the Supreme People's Court on the Application of the Measures for Paying Litigation Costs stipulates that, the litigation costs shall be paid by the losing party unless the winning party is willing to make a payment. If the plaintiff wins the case, the litigation costs shall be paid by the defendant. The court shall refund the plaintiff the litigation costs which it charges in advance, and then directly charge the defendant for the litigation costs unless the plaintiff is willing to bear the litigation costs or agrees that the defendant makes the payment to it directly.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. **What types of assets are subject to enforcement of the court's judgment?**

Answer: Generally, the following assets are subject to enforcement:

1. Income, bank deposit, cash, negotiable securities;
2. Land use right, housing, and other real property;

3. Transportation vehicle, equipment, products, raw material, and other movable property;
4. Creditor's right, equity right, investment rights and interests, funds, intellectual property, and other property right;
5. Other property

The assets such as living necessities, laid-off pension and social insurance fund of the defendant are usually not subject to enforcement as per PRC laws.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any Other Issues of Interest in your Jurisdiction

Answer: Recent years have witnessed a growing trend in recognition and enforcement of foreign judgment on the basis of reciprocity. Prior to 2016, very few foreign judgments had been found to be recognized and enforced based on reciprocity because there was no clear rule defining reciprocity. As a result, PRC courts tended to interpret reciprocity in a narrow way.

The breakthrough was made in 2016 when a Chinese court recognized and enforced a Singaporean judgment. The judge hearing the case held there existed reciprocity between Singapore and China due to the fact that Singapore used to recognize and enforce a Chinese judgment several years ago. This case was later selected by the Supreme People's Court (SPC) as one of the Model Cases for Belt and Road Initiative in 2017. Meanwhile, SPC judge also endorsed the case, calling for a more open-minded and flexible interpretation of reciprocity.

In the wake of the official endorsement, more foreign judgments have been recognized and enforced on the basis of reciprocity in the last two years, including two US judgments and one Korean judgment. Despite the trend is still subject to uncertainty, we believe it affords foreign parties more options in making litigation strategy in case of any dispute with Chinese parties.

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