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China

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in China.

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CHINA

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

As of 22 August 2023, China is not a party to any binding multilateral conventions/treaties on foreign judgment enforcement. China is a party to *HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* 1965 (Hague Service Convention), with a reservation on Articles 8, 10, 15 and 16.

As of 22 August 2023, China has concluded bilateral treaties with 38 foreign jurisdictions on the provision of judicial assistance in civil/commercial matters. Some of these treaties include provisions on the recognition and enforcement of judgments (e.g. the treaties with Spain, Italy, France, Peru, Brazil, etc.). Details about these treaties can be found in the Ministry of Foreign Affairs' public database by searching for "judicial assistance" bilateral treaties (<http://treaty.mfa.gov.cn/web/index.jsp>).

Judgments made by courts in Hong Kong, Macau or Taiwan cannot be directly enforced by Chinese courts as domestic judgments like foreign judgments, but they are not "foreign" judgments either (for the purpose of this article, though, they are referred to as foreign judgments). Their enforcement is subject to the following judicial interpretations promulgated by the Supreme People's Court (SPC):

- *SPC Arrangement in respect of Mutual Acknowledgement and Enforcement of Civil and Commercial Judgments under Consensual Jurisdiction by the Courts in the Mainland and the Hong Kong Special Administrative Region* effective on 1 August 2008 (Mainland-Hong Kong Arrangement). On 18 January 2019,

Mainland China and Hong Kong signed the *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*, which has not become effective pending completion of the necessary procedures to enable implementation.

- *SPC Arrangement between the Mainland and the Macau Special Administrative Region in respect of the Mutual Acknowledgement and Enforcement of Civil and Commercial Judgments* effective on 1 April 2006 (Mainland-Macau Arrangement).
- *SPC Directives in respect of the Acknowledgment and Enforcement of the Civil Judgments Rendered by Courts in Taiwan Region* effective on 1 July 2015 (Mainland-Taiwan Directive), which replaced the old SPC directives on the same subject that came into effect in 1998 and 2009 respectively.

2. What, if any, reservations has your jurisdiction made to such treaties?

China is not a party to any binding multilateral conventions/treaties on foreign judgment enforcement. China is a party to the Hague Service Convention, with a reservation on Articles 8, 10, 15 and 16.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

In the absence of a convention, treaty or other arrangement, foreign judgments may be recognised and enforced in China on the basis of reciprocity under Article 289 of the *Civil Procedure Law* (CPL).

As illustrated by Article 44 of SPC's *Meeting Minutes on the Trial of Foreign-Related Maritime and Commercial Cases* promulgated in 2021 (2021 SPC Meeting Minutes, which is not a binding law in itself but represents SPC's interpretations of the law and guides the lower courts' law application in practice), reciprocity should be established between China and a foreign country if any of the following conditions is met:

- A civil or commercial Chinese judgment can be recognised and enforced in that foreign country according to the law thereof;
- China and that foreign country have reached mutual understanding on reciprocity; or
- That foreign country has made a commitment on reciprocity to China through diplomatic means or China has made a commitment on reciprocity to that foreign country through diplomatic means, and there is no evidence suggesting that foreign country has refused to recognise and enforce a Chinese judgment due to lack of reciprocity.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

In general, enforceable foreign judgments are not limited to money judgments. According to Article 41 of the 2021 SPC Meeting Minutes, "judgments, rulings, decisions, orders and other legal documents made by foreign courts on substantive disputes in civil and commercial cases and legal documents on compensation for civil damages in criminal cases" are enforceable "judgments" (all referred to in this article as "judgments"), but not "preservation rulings and other provisional or procedural decisions".

The recognition and enforcement of a foreign judgment is subject to various conditions as discussed below. The basic criteria for a Chinese court to accept the application for recognition and enforcement include:

- The foreign judgment shall be authentic. (Article 43 of the 2021 SPC Meeting Minutes)
- The foreign judgment shall be final and effective, not subject to appeal, under the law of the country where the judgment was rendered. Foreign decisions on procedural matters or granting provisional measures such as pre-judgment attachment orders are not judgments that can be recognised and enforced in China. (Articles 41 and 42 of the

2021 SPC Meeting Minutes)

- The 2-year limitation period for applying for enforcement has not expired. (Article 246 of the CPL)

If the court cannot confirm the authenticity and finality/effectiveness of the judgment or the application is time-barred, the application will be rejected without further review.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

The foreign judgments need to be "recognised" (or, for Hong Kong, Macau and Taiwan judgments, the equivalent term is "acknowledged") first and then be enforced. The recognition gives the foreign judgment a status of a domestic judgment. Parties may choose only to apply for recognition of the foreign judgment, or they may choose to apply for both recognition and enforcement of the foreign judgment at once.

Subject to any specific requirement under the applicable treaty or SPC interpretation, in general, the main procedure proceeds as follows:

- The party seeking for recognition and enforcement should file an application to the competent court for recognition and enforcement of the foreign judgments. The competent court is subject to the applicable SPC interpretations or treaties, if any. For example, under the Mainland-Hong Kong Arrangement, the relevant court is the one sitting at the domicile or habitual residence of the judgment debtor, or where its assets are located.
- Subject to the applicable SPC interpretations or treaties, according to Article 36 of the 2021 SPC Meeting Minutes, the application should specify the applicant and the respondent, the name of the court rendering the judgment, the reference number of the judgment, the starting date of the litigation proceedings and the date of the judgment, the specific requests and reasons, the status of the respondent's assets and their locations as well as the status of enforcement of the judgment overseas, and any other information the applicant deems necessary to clarify.
- According to Article 37 of the 2021 SPC Meeting Minutes, the application shall be served on the respondent by courts, and the

respondent should file a response within 15 days of receipt (or within 30 days of receipt if it has no domicile in China), although if the respondent does not file a response the proceedings will move on without being affected.

- Courts are not required to hold a hearing (although they do in many cases). If they hold an oral hearing, both the applicant and the respondent will be summoned to present their cases. The enforcing court's ruling on the recognition and enforcement application is not appealable, unless otherwise provided by the applicable treaty or SPC interpretation. For example, under the Mainland-Hong Kong Arrangement and Mainland-Macau Arrangement, the parties can request a higher court to review the enforcing court's ruling.

Once the court grants the recognition and enforcement of the foreign judgment, the foreign judgment can be enforced like a domestic judgment. According to Article 247 of the CPL, the enforcing court must notify the judgment debtor of the enforcement proceeding. If deemed necessary, the court can impose enforcement measures on the judgment debtor before giving notice. A judgment debtor may challenge any unlawful enforcement measure taken by the court.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

As discussed under Question 3, absent applicable treaty or SPC interpretation, the recognition and enforcement of foreign judgments shall be based on reciprocity. Similar to the situation in Question 5, a foreign judgment needs to be first recognised. Once recognition is granted, the enforcement procedures are largely the same as those for domestic judgments.

There is a report system for the recognition and enforcement of a foreign judgment based on reciprocity. According to Article 49 of the 2021 SPC Meeting Minutes, before the enforcing court renders the ruling, it shall report its opinions to the high people's court; if the high people's court agrees with the opinions, the high people's court shall report its opinions to the SPC; and the enforcing court shall render the ruling upon the reply of the SPC.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon

foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Subject to any applicable treaty or SPC interpretation, such formal requirements include:

- According to Article 35.a.(1) of the 2021 SPC Meeting Minutes, an original copy of the foreign judgment or its certified duplicate should be submitted. According to Article 35.d of the 2021 SPC Meeting Minutes, the foreign judgment must be notarised by a local notary in the country where the judgment was made and certified by a Chinese consulate or the Chinese embassy in that country in accordance with CPL. Notably, on 8 March 2023, China officially deposited the instrument of accession to the Apostille Convention, which will come into effect in China on 7 November 2023. Afterwards, the notarization & certification requirements for foreign judgments might be amended.
- According to Article 35.a.(2) of the 2021 SPC Meeting Minutes, a document proving that the foreign judgment has become effective should be submitted. But this is not necessary if the foreign judgment has specified this point therein according to Article 35.b of the 2021 SPC Meeting Minutes.
- For a default judgment, according to Article 35.a.(3) of the 2021 SPC Meeting Minutes, a certificate that the party absent from the hearing was legally summoned should be submitted. But this is not necessary if the foreign judgment has specified this point therein according to Article 35.b of the 2021 SPC Meeting Minutes.
- A translation into Chinese of the foreign judgment by a certified translator should be submitted according to Article 35.c of the 2021 SPC Meeting Minutes.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

There is no separate summary procedure available, though recognition/acknowledgment of foreign judgments is already a simplified procedure in China as courts are not required to hold a full oral hearing session for ruling on this matter. There is generally no statutory time limit within which the court must make its decision, subject to any applicable treaty or SPC interpretation.

For example, for Taiwan judgments, the court must conclude the acknowledgment proceeding within six months of accepting the application, and such time limit can be extended for cause on approval by a higher court.

In practice, the schedule for recognition or acknowledgment of foreign judgments varies from case to case. A ballpark estimate is 6-12 months.

As for the time line of the actual enforcement stage, it varies from case to case and depends on the quantity, type and location of the judgment debtor's enforceable assets. However, if the court fails to take any enforcement measure within six months of receiving a written application, the applicant can apply for enforcement to a higher court according to Article 233 of the CPL.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes. As confirmed by Article 39 of the 2021 SPC Meeting Minutes, an applicant can apply for asset preservation after the court accepts the application for recognition and enforcement of foreign judgments. The applicant shall provide security for this purpose.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

According to Article 246 of the CPL and Article 545 of the SPC's *Interpretations on the Application of the Civil Procedure Law* (Interpretations on CPL), the limitation period for applying for enforcement is two years, starting from the last day of the performance period specified by the judgment or if no such period is set, the effective date of the judgment. If the applicant only applies for recognition of the foreign judgment without applying for enforcement at the same time, the limitation period starts from the date the Chinese court rules on the recognition.

According to Article 246 of the CPL and Articles 194-195 of the Civil Code, this two-year limitation period can be reset when the judgment creditor demands performance against the judgment debtor, the judgment debtor makes a payment or agrees to perform the debt. In addition, the limitation period can be tolled if there is a justifiable obstacle for the judgment creditor to apply for enforcement within the last six months of the limitation

period such as force majeure events.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

To the extent that there is a treaty/interregional arrangement basis or reciprocity basis for the recognition and enforcement of the foreign judgment and subject to any provision in the applicable treaty or SPC interpretation, according to Articles 46 and 47 of the 2021 SPC Meeting Minutes, the judgment cannot be recognised or enforced even with the basic criteria mentioned under Question 4 satisfied, if:

- The foreign judgment violates the fundamental principles of Chinese law, or the sovereignty, national security or social and public interests of China.
- Based on the Chinese law, the foreign court that rendered the judgment has no jurisdiction over the dispute.
- The defendant was not duly summoned, was duly summoned but was not given a reasonable opportunity to be heard, or was not duly represented (if the defendant had no capacity for litigation).
- The judgment was obtained by fraud.
- A Chinese court has rendered a judgment on the same subject matter or recognised and enforced another foreign judgment or arbitral award on the same subject matter.
- If the enforcing court finds that there is an arbitration agreement between the parties, and the foreign court rendered a default judgment while the absent party did not expressly waive the arbitration agreement.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The Chinese courts will generally not review the merits of the underlying dispute in recognition and enforcement proceedings of a foreign judgment, unless otherwise required by the applicable treaty, SPC interpretation, or principle of reciprocity.

According to Article 46 of the 2021 SPC Meeting Minutes, courts can refuse to recognise/acknowledge and enforce a judgment where the judgment was obtained by fraud or violates the fundamental principles of Chinese law, or the sovereignty, national security or social and public interests of China, under which circumstances the merits

of the underlying dispute might be reviewed.

Moreover, according to Article 45 of the 2021 SPC Meeting Minutes, if the foreign judgment orders compensation that obviously exceeds the actual loss (i.e., punitive damages), the enforcing court may refuse to recognise and enforce the excess part.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Yes. Under Article 46 of the 2021 SPC Meeting Minutes, if the court that rendered the judgment had no jurisdiction over the case according to the Chinese law, the enforcing court should not recognise and enforce the judgment. For instance, under the CPL, Chinese courts have exclusive jurisdiction over certain types of cases, including disputes relating to Sino-foreign joint venture contracts and contracts for Sino-foreign cooperative exploration and development of natural resources. If the assumption of jurisdiction by a foreign court is in conflict with such exclusive jurisdiction, Chinese courts will refuse to recognise or enforce the foreign judgment.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

The courts require the defendant be properly served for the foreign judgment to be enforceable. Under Article 46 of the 2021 SPC Meeting Minutes, if the defendant was not duly summoned, or was duly summoned but was not given a reasonable opportunity to be heard, then the Chinese court will not recognise or enforce the judgment.

Foreign judgments in default can be enforced. In this case, a certificate that the party absent from the hearing was duly summoned should be submitted (but if the foreign judgment has specified this point, a spate certificate is not necessary) according to Article 35.a.(3) and Article 35.b of the 2021 SPC Meeting Minutes.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

Yes. The Chinese courts have discretion over whether or not to recognise foreign judgments, including whether

the conditions for recognising foreign judgments are met and whether the grounds for refusing to recognise exist (see answers to Question 4 and Question 11). However, such discretion shall be exercised in accordance with the applicable law, treaty or SPC interpretation and shall be subject to the internal reporting system: for the recognition and enforcement of a foreign judgment based on reciprocity, the court shall issue its ruling upon the reply of the SPC and the high people's court (see answers to Question 6).

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

The Chinese law does not specify what types of foreign judgments cannot be enforced. On the contrary, Article 41 of the 2021 SPC Meeting Minutes provide that the following types of foreign judgments can be enforced: (i) judgments, rulings, decisions, orders and other legal instruments in respect of the substantive disputes in civil or commercial cases; and (ii) legal instruments on civil damages in criminal cases.

As mentioned in Question 4, if the court cannot confirm the authenticity and finality/effectiveness of the judgment, the application will be rejected without further review. Besides, if the damages awarded by the foreign courts clearly exceed the actual losses, the Chinese courts may refuse to recognise and enforce the excessive part.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

No. See Question 4.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

No. The court's ruling recognising or enforcing a foreign judgment is not appealable, as it does not fall within the category of appealable rulings as provided by Article 157 of the CPL. However, the applicable treaty, convention or SPC interpretation may provide other mechanism for review of the ruling. For example, under the Mainland-Hong Kong and Mainland-Macau Arrangements, the parties can request a higher court to review the court's ruling.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

There is no specific provision on the payment of interest for foreign judgments. In principle, once the foreign judgment is recognised and enforced in China, the judgment creditor is entitled to the same default interest as for domestic judgments. The default interest for domestic judgments is calculated at a daily rate of 0.0175% of the unpaid debt amount in accordance with Article 260 of the CPL and Article 1 of the *SPC Interpretation on Certain Issues Concerning the Application of Law to the Calculation of the Interest Accrued on Debts for the Period of Delay in Performance during Enforcement Proceedings* (SPC Interpretation on Interest during Enforcement Proceedings).

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

There are no specific rules requiring that payments to be enforced in China under a foreign judgment must be converted into renminbi, which is the only official currency in China. In accordance with Article 5 of the SPC Interpretation on Interest during Enforcement Proceedings, if the legal instrument provides that the debt shall be made in a foreign currency, the daily rate of 0.0175% shall also be applicable to such foreign currency.

The above being said, given that the enforcement proceeding is to be conducted in China and the assets to be enforced are located in China, the proceeds collected from the enforcement proceeding by the court would generally be in the form of renminbi, unless the judgment debtor has any deposit in foreign currency in China. Thereafter, the proceeds collected by the court may be converted into the foreign currency specified in the foreign judgment and transferred to the judgment creditor. However, some courts in China may not have foreign exchange account or does not provide assistance on foreign exchange or cross-border remittance, which would make it difficult for the judgment creditor to receive the foreign currency, especially for a foreign judgment creditor which would like to receive the enforcement proceeds offshore.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of

instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

For the costs incurred in the foreign proceeding, they can be recovered from the judgment debtor if such recovery is specified in the foreign judgment.

For the costs incurred in the recognition and enforcement proceeding:

- the application fee levied by the court for recognition and enforcement of foreign judgments can be recovered from the court or the judgment debtor, subject to the specific situation, provided that the application is supported by the court.
- parties' costs of instructing lawyers and other professionals (including translation fees, notarization fees) for the enforcement could generally be difficult to recover, given that the court's ruling on recognition and enforcement is generally confined to the scope of the foreign judgment and such costs incurred for the enforcement are unlikely to have been specified in the foreign judgment.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Third party funding is a relatively new concept in China not only in the enforcement of foreign judgment but also in other types of civil litigation and arbitration. There are no rules prohibiting or restricting third-party funding in China. Neither is there any rule requiring third-party funders to be liable for the costs incurred by the other side.

Chinese courts do not require the party to litigation to disclose its third-party funder. Only the party to litigation may be held liable for the costs of the case (including the costs incurred by the other side), and a third-party funder would not be held liable for such costs.

As to the arrangement between the party to the litigation and the third-party funder, the Chinese courts have adopted different views in the validity thereof. We have seen some cases where the courts confirmed the validity of such arrangements in different contexts, such as when considering whether to set aside or enforce an arbitral award. However, it is noteworthy that the Shanghai Second Intermediate People's Court recently

held in Case (2021) Hu 02 Min Zhong No. 10224 that the funding arrangement agreement at issue is invalid for violating of public policy in various aspects, including the failure for the law firm to act in the party's best interest, the excessive restriction on the party's litigation rights, the undue incentives to institute litigation, etc. As this is reported to be the first case in the Chinese courts to strike down the funding arrangement agreement, its impact remains to be seen.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

The *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* signed in 2019 may come into effect soon. Once effective, the new arrangement would largely expand the scope of judgments that can be enforced, which currently limited

to monetary judgments are made pursuant to an exclusive choice-of-court clause.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

China has signed the *Hague Choice of Courts Convention 2005* in 2017 but has not ratified it yet. It is hard to predict when China would ratify it.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

China is an active party in the drafting of the *Hague Judgments Convention 2019*, but it has not signed the convention yet. Given that the 2021 SPC Meeting Minutes are similar to the Hague Judgments Convention 2019 in many significant aspects, there is a possibility that China accedes to it in the future.

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