

# Reflections on the Recognition and Enforcement System of Foreign-related Civil and Commercial Judgments in China under the “the Belt and Road” Initiative

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**Abstract:** Under the “the belt and road” initiative, China is required to establish a community of interests, destiny and responsibilities with countries along the route. In order to ensure the effective promotion and implementation of the “the belt and road initiative” strategy and achieve good results, it is required to create a good environment and conditions for it and continuously improve and optimize relevant systems and legal norms. At present, the principle of reciprocity has gradually become an important basis for judicial assistance. Foreign-related reconciliation and inconvenient recognition and implementation of mediation agreements have had some impacts on the promotion of the “the belt and road initiative” strategy and put forward higher requirements for the development and improvement of China’s foreign-related judicial assistance system. This thesis briefly analyzes the recognition and enforcement of foreign-related civil and commercial judgments in China under the “the belt and road” initiative, and puts forward some suggestions on further improving the recognition and enforcement system of foreign-related civil and commercial judgments in China.

**Keywords:** The belt and road initiative; Foreign-related civil and commercial judgments; Recognition and enforcement

## 1. Introduction

The proposal of “the belt and road initiative” strategy is of great significance to the development of China and countries along the route. While promoting the high-quality development of China’s and society, it also requires relying on the existing cooperation platform between China and relevant countries to develop economic partnership with countries along the route and jointly build a community of interests, destiny and responsibilities. The “the belt and road initiative” strategy has greatly the development of China’s open economy. The trade between China and countries along the route is closer, the cooperation is deeper and the level of cooperation is higher. In this process, the factors affecting cooperation and economic development are more diversified, and it is also necessary to focus on solving and handling various contradictions and disputes in the process of foreign economic development. In order to effectively promote the implementation of the “the belt and road initiative” strategy, create a more favorable environment and conditions, and better meet various challenges, it is necessary to continuously improve and perfect relevant institutional mechanisms and legal norms. Among them, it is necessary to improve the recognition and enforcement system of foreign-related civil and commercial judgments in China under the “the belt and road initiative”.

## 2. Background Information

The proposal of “the belt and road initiative” strategy has promoted the development of China’s foreign economy and deepened the economic cooperation between China and countries along the route. In this process, the trade cooperation between China and countries along the route has deepened, and scope of transnational civil and commercial relations has been continuously expanded, which has also promoted the demand for recognition and enforcement of foreign-related civil and commercial judgments in China to some extent. In order to effectively promote the “the belt and road initiative” strategy, it is necessary to focus on solving and dealing with issues such as foreign-related inconvenient recognition and enforcement of mediation agreements, etc. In order to properly solve foreign-related litigation, how to effectively recognize and enforce foreign-related judgments in other

countries is crucial in this process <sup>[1]</sup>. For a long time, China's trade and cooperation with other countries have been established on a voluntary basis. Under the background of "the belt and road initiative" strategy, it is required to rely on the existing bilateral or multilateral investment agreements and judicial assistance agreements between China and countries along the route to scientifically and effectively solve and deal with the recognition and enforcement of foreign-related civil and commercial judgments in China. Moreover, under the background of "the belt and road initiative" strategy, China and countries along the route are striving to establish a community of interests, destiny and responsibilities, and the principle of reciprocity has gradually become an important basis for judicial assistance. However, there are some shortcomings in the actual work. For example, the bilateral agreements signed between China and some countries along the route do not stipulate the content of judicial assistance, or the relevant matters are not clear enough and comprehensive enough, and are only limited to the delivery of documents, investigation and evidence collection, which has a certain impact on the recognition and enforcement of foreign-related civil and commercial judgments in China under the "the belt and road initiative" <sup>[2]</sup>. Therefore, based on the reality of "the belt and road initiative", it is of great significance to continuously improve and optimize the recognition and enforcement system of foreign-related civil and commercial judgments in China, formulate a unified and definite agreement system for recognition and enforcement of foreign-related civil and commercial documents, and supervise its implementation and enforcement. In addition, in July 2019, the appropriate Convention on the Recognition and Enforcement of Foreign Civil and Commercial Judgments (hereinafter referred to as the Convention) was promulgated, which also had a certain impact on the foreign-related judicial assistance system of countries along the "the belt and road initiative". China should deeply interpret the rules of judicial assistance and its development, and respond to them, so as to provide an important guarantee for the effective development of China's foreign investment and trade development and other civil and commercial activities under the background of the "the belt and road initiative" strategy <sup>[3]</sup>.

### **3. Recognition and Enforcement of foreign-related civil and commercial judgments in China under the "the belt and road initiative"**

#### ***3.1 The principle of reciprocity has gradually become an important basis for judicial assistance***

China's relevant laws and regulations clearly stipulate that the relevant contents of bilateral and multilateral judicial assistance agreements between China and relevant countries, or some specific mutually beneficial relations between the two countries, should be comprehensively considered and analyzed in the review of foreign-related effective judgments and rulings, whether Chinese courts apply for recognition and enforcement by foreign courts or foreign courts apply for recognition and enforcement by Chinese courts. However, judging from the current situation of China's foreign economic development, the contents of foreign-related judicial assistance signed by China and many countries have certain limitations. In many bilateral agreements and multilateral agreements, the contents of judicial assistance are not clearly stipulated, or the relevant contents are not complete and clear, and the specialized conventions related to judicial assistance have not yet been ratified. Under the "the belt and road initiative", some changes have taken place in the development of relevant work. In the practice of international judicial assistance, the principle of mutual benefit is gradually taken as an important basis. However, in the specific implementation process, there are some differences in the domestic judicial practice of the principle of reciprocity among different countries. At present, there is no clear legal norm to accurately determine whether there is a "reciprocal relationship" between countries, which affects the applicability of the principle of reciprocity and its role in judicial assistance to a certain extent <sup>[4]</sup>.

#### ***3.2 Foreign-related reconciliation and mediation agreements are inconvenient to recognize and implement***

Under the background of "the belt and road initiative", China's foreign trade, international trade and investment are deepening. In this process, there is a greater demand for the recognition and enforcement of foreign-related civil and commercial judgments. By establishing a sound legal mechanism, we can properly and effectively handle and solve various foreign-related civil and commercial cases and problems, and avoid a series of disputes and losses caused by them. The ways and purposes of solving foreign-related civil and commercial cases and disputes are different from those of domestic civil and commercial disputes and cases, so it is necessary to fully consider the

maintenance of the cooperative relationship between the two sides, which is often more important than winning or losing many cases. When the court solves and handles many disputes, reconciliation and mediation play an important role in maintaining the cooperative relationship between the two parties, which is an important way to solve disputes. This process requires continuous expansion of the scope of documents covered by judicial assistance and provides basic support for the efficient implementation of relevant work norms<sup>[5]</sup>. Due to the existence of some foreign-related factors, after reaching a settlement agreement through litigation settlement and judicial confirmation procedures, it may be necessary to face the recognition and implementation of foreign judicial settlement agreements. In China, the people's courts' effective reconciliation can be used as an important basis for judicial enforcement, but it is essentially different from the court's judgment and ruling, and cannot be used as the basis or premise of other court judgments. In many cases, it cannot completely protect the procedural rights of the parties, and has not yet been included in the scope of China's foreign-related judicial assistance documents. In many litigation cases, different countries have different regulations on settlement agreements reached in and out of litigation, and the identification of the nature and effectiveness of the agreement is not uniform, which has a negative impact on the implementation of settlement agreements in the recognition and enforcement of foreign-related civil and commercial judgments to some extent<sup>[6]</sup>.

#### **4. The Influence of the Convention on the Recognition and Enforcement of Foreign-related Civil and Commercial Judgments in China**

##### ***4.1 Expand the scope of China's foreign-related judicial assistance contracting parties***

Judging from the current situation, there are still many countries and regions along the "the belt and road initiative" that have not yet concluded bilateral civil and commercial judicial assistance contracts with China, which cannot meet the needs of China's foreign economic development under the "the belt and road initiative", and has a certain impact on China's foreign-related civil and commercial judgments' national recognition and legal rights protection. Moreover, in the settlement and handling of some cases, in most cases, only those countries that have concluded bilateral judicial assistance agreements with China regard reciprocity as an important basis, and other countries will not take the initiative to recognize and enforce foreign judgments based on reciprocity. The promulgation of the Convention made up the legal defects in the field of judicial assistance in China to a certain extent. With the continuous promotion of the "the belt and road initiative" strategy and the continuous improvement of relevant legal systems, the scope of China's foreign-related judicial assistance has been expanded to a certain extent, which is more conducive to promoting the recognition and enforcement of China's foreign-related civil and commercial judgments and rulings, and can also create favorable environment and conditions for the continuous promotion of the "the belt and road initiative" strategy and China's international exchanges and cooperation<sup>[7]</sup>.

##### ***4.2 Expand the types of legal documents recognized and implemented by the States parties***

Nowadays, China's relevant legal norms clearly stipulate the types of judicial documents that are recognized and enforced by foreign courts, but there are also some limitations, mainly the legally effective judgments and rulings made by the courts. Although there are also judicial interpretations involving conciliation statements made by foreign courts, they are not complete and comprehensive, and they are a very small part of China's foreign-related civil and commercial affairs. The promulgation of the Convention has, to a certain extent, expanded the types of legal documents recognized and enforced by the States parties, and listed judicial settlement agreements as an important type of documents, which provided effective support and judicial guarantee for judicial settlement, foreign-related civil and commercial judgments and the settlement and handling of contradictions and disputes, and the settlement and handling of civil and commercial disputes in international investment and trade. There are also more ways to choose from when solving and handling disputes, so as to promote the better realization of the purpose of dispute settlement. In the Convention, the "judgment" is defined more clearly, and it is emphasized that when the court makes a judgment, the documents made mainly on substantive issues can be recognized and enforced in accordance with the relevant contents and matters of the Convention, so as to standardize and improve China's foreign-related civil and commercial litigation under the "the belt and road initiative" to better meet the actual needs<sup>[8]</sup>.

#### ***4.3 Broaden the application types of the principle of reciprocity in foreign-related judicial assistance in China***

In the process of continuous development, the principle of reciprocity has gradually become an important basis for judicial assistance. In many cases and contradictions and disputes, the reciprocal relationship between the two sides has been taken into account. In particular, under the “the belt and road initiative”, while promoting China’s foreign economic development, it is required to strengthen the establishment of a community with countries along the route. When solving cases and contradictions and disputes, it is even more necessary to consider the cooperative relationship and reciprocal relationship. It is clearly stated in the relevant laws of our country that China should take the lead in considering the exchange intention of international judicial cooperation and the commitment of the other country. The promulgation of the Convention has broadened the application types of the principle of reciprocity in foreign-related judicial assistance in China to a certain extent, so as to better serve the promotion and implementation of the “the belt and road initiative” strategy and meet the needs of China’s opening up and foreign economic development under the background of “the belt and road initiative”<sup>[9]</sup>.

### **5. Improvement of China’s foreign-related civil and commercial judgment recognition and enforcement system under the “the belt and road initiative”**

#### ***5.1 Formulate corresponding regulatory measures to evade recognition and enforcement***

Although the promulgation of the Convention has promoted the recognition and enforcement of foreign-related civil and commercial judgments in China, there are still some limitations in the relevant contents and matters, which has a certain impact on the efficient resolution of international civil and commercial disputes and contradictions and disputes. For example, in the Convention, there is a lack of corresponding regulations and clear provisions for those that the requested country has no reason to evade, which cannot provide effective judicial protection against shirking recognition and enforcement, and to some extent, it has adversely affected the role of the Convention. In order to better serve the promotion and implementation of the “the belt and road initiative” strategy and meet the diversified needs, China is required to continuously improve and perfect the relevant legal regulations, and formulate specific and appropriate punitive regulations, such as damages, in the relevant legal norms, in order to provide effective judicial protection<sup>[10]</sup>.

#### ***5.2 Refine the principle of reciprocity of foreign-related judicial assistance in China***

When dealing with foreign-related civil and commercial disputes, we should adopt appropriate methods to safeguard and protect the legitimate rights and interests of both parties and promote the formation of mutually beneficial relations. When perfecting the relevant legal systems and norms, it is necessary to effectively recognize and enforce the recognition and enforcement of foreign-related civil and commercial judgments. This process should formulate specific, objective and enforceable standards for the relevant matters, and constantly refine the relevant standards of the principle of reciprocity of foreign-related judicial assistance in China, so as to maximize its role in judicial assistance. With the continuous improvement of the legal system, there are more bases for the recognition and enforcement of foreign-related civil and commercial judgments in China, including the principle of reciprocity, bilateral or multilateral judicial assistance agreements, etc. In order to better meet the needs under the “the belt and road initiative”, it is also necessary to clarify the priority application and prescription of each basis and make it a unified provision.

### **6. Conclusion**

The “the belt and road initiative” strategy is an important strategic decision for China’s opening to the outside world, foreign economic development, regional economic cooperation and community building in the new era. Under the “the belt and road initiative”, China’s trade with countries along the route is closer, cooperation is deeper and cooperation level is higher. To promote the effective implementation of the “the belt and road initiative” strategy, it is also necessary to scientifically solve various problems affecting cooperative relations and economic development and solve foreign-related civil and commercial disputes. The promulgation of the Convention has provided some support for the recognition and enforcement of foreign-related civil and commercial judgments and foreign-related

judicial assistance in China under the “the belt and road initiative”. China needs to make a profound interpretation of the Convention around its own reality and continue to strengthen judicial cooperation with countries along the route under its support. However, there are still some limitations in the actual promotion of the Convention, and it is still necessary to further improve the recognition and enforcement system of foreign-related civil and commercial judgments in China, so as to provide an important guarantee for China’s foreign investment, trade development and foreign trade cooperation under the strategic background of “the belt and road initiative” and create favorable environment and conditions.

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