

Analysis of the Recognition and Enforcement of Foreign Judgments by Chinese Courts: Under the Belt and Road Initiative

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Abstract: *According to the principle of territorial sovereignty in international law, a country's judgment typically only takes effect within its own territory. For a domestic judgment to be effective in a foreign country, it must undergo the recognition and enforcement process of the foreign court. Each country has its own legal framework and procedures for dealing with foreign judgments, often influenced by international treaties, bilateral agreements, and domestic legislation. Currently, as China has not ratified relevant international treaties and has few bilateral judicial assistance treaties, the reciprocity principle plays an important role for courts to recognize and enforce foreign judgments. However, legislative deficiencies in China's legal system narrow the application of the reciprocity principle, hindering effective reciprocal results. Meanwhile, the Belt and Road Initiative demands higher standards for regional civil and commercial exchanges. Therefore, efforts should focus on establishing a broader Belt and Road judicial cooperation system. This includes actively negotiating with Belt and Road countries that have not signed civil judicial assistance agreements with China and increasing the numbers of bilateral judicial assistance agreements. Meanwhile, the reciprocity principle should be enhanced in legislation by focusing on detailed provisions, creating a comprehensive and efficient framework, and the standards and procedures for recognizing reciprocal relationships should be clearly defined. This will offer robust legal assurances for the seamless recognition of foreign judgments in Belt and Road countries, thereby boosting China's international judicial credibility.*

Keywords: *Recognition and enforcement, foreign judgement, Belt and Road Initiative, Reciprocity Principle*

1. Introduction

In today's globalized world, countries are increasingly interconnected and interdependent politically, economically and culturally. Frequent international business and trade demand greater cooperation and high-level efficiency between countries.

The Belt and Road Initiative is a top-level national cooperation plan of China. "Belt and Road" refers to the "Silk Road Economic Belt" and "The 21st Century Maritime Silk Road". This initiative seeks to utilize the regional cooperation framework between China and other Belt and Road countries, leveraging existing multilateral or bilateral mechanisms to foster a community founded on political trust and economic collaboration. However, this Initiative has raised the standards for international civil and commercial exchanges among Belt and Road countries. Cross-border transactions and investments in the region require a more effective mechanism of mutually recognizing and enforcing appropriate judgments as judicial guarantees.

The extent to which one country recognizes another's court judgments is a complex issue in private international law. According to the principle of territorial sovereignty under international law, one country's judgments are generally effective only within its own territory. For a judgment to be effective in other foreign countries, it must be recognized and enforced by those countries.

As the final step in resolving international civil and commercial disputes, whether a court's judgment could be recognized and enforced by other countries directly affects whether and where parties will start the litigation when faced with legal disputes. Often, a defendant's assets in the forum where the action is initiated may be inadequate to satisfy a judgment. Therefore, the judgment creditor would have to seek to enforce the ruling against the assets of the judgment debtor in a foreign state if the judgement debtor has assets there. ^[1] If a judgment cannot be recognized and enforced in that particular country, the involved parties may not achieve their expected judicial outcomes.

However, the methods and scope of recognizing and enforcing foreign judgments vary between countries. In the United States, recognition and enforcement of foreign judgments are handled on a state-by-state basis, governed by state statutes or common law. [2] As a civil law country, in China, the legal provisions for the recognition and enforcement of foreign court judgments by the People's Court are mainly found in Articles 298 and 299 of the Civil Procedure and Article 5 of the Enterprise Bankruptcy Law of the People's Republic of China.

2. Methods to Recognize and Enforce Foreign Judgments in Chinese courts

Article 299 of the Civil Procedure Law stipulates that a judgment may be recognized or enforced by the people's court if it does not violate the fundamental principles of Chinese law or threaten national sovereignty, security, or public interests. The people's court may recognize or enforce the judgment in accordance with international treaties concluded or participated in by the People's Republic of China, or based on the principle of reciprocity. Article 5 of the Enterprise Bankruptcy Law also addresses reciprocity, stating that cross-border bankruptcy cases ruled by foreign courts will be reviewed by Chinese courts based on international treaties or the principle of reciprocity.

Additionally, foreign divorce judgements, as exceptions, are not subject to the restrictions of bilateral judicial assistance treaties or reciprocal relations as stated in the Supreme People's Court Judicial Interpretations.

Therefore, it can be seen that the recognition and enforcement of foreign civil and commercial judgments in China currently relies on two bases: one is based on international treaties concluded or participated in by China, and the other is based on the principle of reciprocity. However, with the continuous deepening of the Belt and Road Initiative, both of these bases have shown certain limitations.

3. Current Practice of Recognizing and Enforcing Foreign Judgments in China

3.1 Limited Number of Treaties and Restricted Covered Countries

Based on concluded treaties, the courts of the member states can address the recognition and enforcement of judgments issue in their country based on the reciprocity clauses stipulated in the treaties reached between the contracting member states. This method conserves judicial resources for both the country that originally rendered the judgment and the requested country, thereby reducing unnecessary parallel litigation, enhancing judicial efficiency, and ensuring predictability and anticipated benefits for the parties involved.

However, the number of treaties currently concluded in China is very limited. As of now, countries with close economic and trade relations with China, such as the United States, Japan and South Korea, have not signed such treaties with China. For the Belt and Road countries, there are 64 countries along the Belt and Road route except China, and China has treaties with only 24 of these countries that include the content of mutual recognition and enforcement of court judgments, less than 50%.

In summary, although there are some existing treaties that address the recognition and enforcement of judgments between China and other countries, these treaties alone are not sufficient in practical judicial operations involving numerous civil and commercial interactions. On July 2, 2019, the Hague Conference on Private International Law adopted the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters to promote mutual recognition and enforcement of judgments between countries, but China has not signed or ratified it.

3.2 The Unclearness of The Standards for the Application of the Reciprocity Principle in Statutes

Article 299 of the Civil Procedure outlines the application of the reciprocity principle. It stipulates that legally effective foreign judgments and rulings may be recognized and enforced by the people's court under the reciprocity principle, as long as they do not contravene the fundamental principles of Chinese law or endanger national sovereignty, security, or public interest.

From this, we can see that the Civil Procedure only provides a general provision for the reciprocity principle but does not specify detailed application conditions. It merely states that the reciprocity principle can be applied in the absence of applicable international treaties but without mentioning the specific requirements or standards for reciprocity.

In practice, reciprocity can be determined through various approaches, including but not limited to de facto reciprocity and de jure reciprocity. De facto reciprocity examines whether the country of the court making the judgment has previously recognized and enforced judgments of Chinese courts, if such cases exist, it is determined that there is a reciprocal relationship between the two countries. De jure reciprocity assesses whether the legal provisions of the court's country on recognizing and enforcing foreign judgments are equivalent to or more lenient and favorable than our country's provisions; if so, it can be confirmed that there is a legal reciprocal relationship between the two countries.^[3]

The lack of clarity in codified law leads to the people's courts only being able to rely on varied court practices when applying the reciprocity principle. In practice, people's courts tend to use the de facto reciprocity standard, passively checking if foreign courts have previously recognized and enforced Chinese judgments.^[4] This standard is relatively narrow and tedious, reflecting a conservative attitude towards judgment recognition and enforcement, and becomes a longstanding key barrier for judgment recognition and enforcement in China.^[5]

At the same time, this tendency hinders the promotion of foreign judgment recognition and enforcement, especially from countries whose judgments have never been recognized and enforced by Chinese courts. Over time, it will not only undermine the international credibility of the Chinese judicial system but also lead other countries to refuse recognition and enforcement of Chinese judgments based on reciprocity. For instance, Japan's Civil Procedure mandates "mutual guarantee" for recognizing and enforcing foreign judgments.

4. Measures Taken in Response to the Belt and Road Initiative

4.1 "Opinions on Providing Judicial Services and Guarantees for the Construction of the 'Belt and Road'"

In June 2015, the Supreme People's Court of China issued the "Opinions on Providing Judicial Services and Guarantees for the Construction of the Belt and Road," which allows Chinese courts to offer judicial assistance to parties from countries along the route that have not signed judicial assistance agreements with China, provided these countries show a commitment to reciprocal judicial guarantees.

This approach actively promotes the establishment of reciprocal relationships and gradually expands the scope of international judicial assistance. It fosters judicial trust and cooperation among countries along the route, creating a fair and efficient legal environment for the Belt and Road Initiative. This approach promotes mutual recognition and enforcement of judgments, aids in the unification of legal rules, and enhances the international credibility of China's judiciary.

4.2 "Nanning Declaration"

In June 2017, the Second China-ASEAN Chief Justices Forum adopted the "Nanning Declaration," which introduced the concept of presumed reciprocity and reached a consensus.

For countries that have not yet concluded international treaties of recognizing and enforcing foreign civil and commercial judgments, the Declaration states that, within the scope permitted by the law in China, if there is no precedent of refusal, it can be presumed that there is a reciprocal relationship between each other.

The "Nanning Declaration" provided additional guidance for judicial cooperation among Belt and Road countries, further advancing the reciprocity principle in China. Presumed reciprocity reduces the burden of proof required by the requesting party to prove the reciprocal relationship, enhances the possibility of determining the existence of reciprocal relationship, and is conducive to improving the mutual recognition and enforcement of civil and commercial judgments. China's long-term judicial practice has long been inclined to factual reciprocity, and the "Nanning Statement" for the first time put forward the consensus of presumed reciprocity, which is a major advance.

Unfortunately, although the "Nanning Statement" offers a valuable framework and guidance for regional judicial cooperation, it lacks legal binding force. Thus, while the statement outlines a series of goals and recommendations, they are not directly enforceable as legal grounds.

4.3 “Minutes of the National Court's Symposium on Foreign-Related Commercial and Maritime Trials”

In January 2022, the Supreme People's Court of China issued the Minutes of the National Court's Symposium on Foreign-Related Commercial and Maritime Trials. The Minutes provides rules for judgment recognition and enforcement in China when no treaty exists with the state of origin or the treaty does not address this issue. Article 44 of the Minutes states that a people's court may determine the existence of reciprocity between China and a foreign country under the following circumstances:

A. According to the foreign country's laws, civil and commercial judgments by people's courts can be recognized and enforced by that foreign country's courts;

B. China has reached a mutually beneficial understanding or consensus with the foreign country; or

C. The foreign country has made a reciprocal commitment to China through diplomatic channels, or China has made a reciprocal commitment to the foreign country through diplomatic channels, and there is no evidence that the foreign country has refused to recognize and enforce judgments issued by people's courts due to lack of reciprocity.

Even though the Minutes is not legally binding in Chinese courts, it still offers guidance to Chinese courts on recognizing and enforcing foreign judgments, and more importantly, it clarifies the determination of *de jure* reciprocity as set out in subsection A.

4.4 “Arrangement on Mutual Recognition and Enforcement of Civil and Commercial Judgments between Mainland and Hong Kong Special Administrative Region Courts”

The “Arrangement on Mutual Recognition and Enforcement of Civil and Commercial Judgments between Mainland and Hong Kong Special Administrative Region Courts,” which takes effect in January 2024, also provides some insights for formulating rules on recognizing and enforcing foreign court judgments.

For instance, Article 3 of the "Arrangement" specifies the civil and commercial judgments that are ineligible for recognition or enforcement, such as those concerning identity, inheritance, and bankruptcy. Article 4 sets the criteria for what constitutes an "effective" judgment. Article 7 designates the appropriate courts for applications seeking recognition and enforcement.

The Arrangement clarifies when parties can seek recognition and enforcement of judgments and details the necessary materials and procedures. It reduces risk and uncertainty of the litigation, offering more convenient and efficient judicial services for both parties. The Arrangement offers clear guidelines for recognizing and enforcing foreign judgments between Chinese Mainland and Hong Kong Special Administrative Region of China and is anticipated to provide valuable practical experience for future legislation in this area.

5. Improvement Pathways for Recognizing and Enforcing Foreign Judgments

5.1 Construct a Broader Belt and Road Judicial Cooperation System

In the realm of international civil and commercial judicial assistance, where the circulation of judgments is hindered by limited treaties, China, as the initiator of the Belt and Road Initiative, should adopt a more proactive approach. For Belt and Road countries that have not yet signed civil judicial assistance agreements with China, China should take the initiative to negotiate and promote the signing of bilateral judicial assistance agreements. Such bilateral cooperation can effectively address the challenges in judicial assistance arising from the absence of treaty frameworks.

Simultaneously, for countries along the Belt and Road that have already signed bilateral legal assistance agreements, maintaining active communication and consultation with them still remains crucial. As the Belt and Road Initiative evolves, some existing legal assistance agreements may contain provisions that are inconsistent with the current goals of the Initiative, potentially impacting its effective implementation. Therefore, timely evaluation and revision of these agreements are essential to ensure they align with and support the objectives of the Belt and Road Initiative.

Furthermore, to enhance judicial cooperation among Belt and Road countries, China should not only focus on signing and revising bilateral agreements but also need to actively develop a more systematic

and comprehensive judicial cooperation mechanism. This mechanism should encompass, but not be limited to, information sharing, case coordination, and legal training, aiming to provide a stable and efficient platform for judicial cooperation among Belt and Road countries.

These measures will offer robust legal support and protection for the Belt and Road Initiative, facilitating its comprehensive advancement. They will not only safeguard the legitimate rights and interests of Chinese enterprises and citizens but also enhance China's influence and presence in the international legal arena. Ultimately, by constructing a fair, efficient, and transparent Belt and Road judicial cooperation system, the rule of law construction and the economic and social development of countries along the Belt and Road will be effectively promoted, achieving the goal of mutual benefit and win-win results.

5.2 Formulating Diverse Criteria for Reciprocity Recognition and Its Flexible Application

As previously mentioned, China tends to adopt de facto reciprocity in recognizing and enforcing foreign judgments. However, de facto reciprocity has limitations, as it considers less the overall interests between countries and the needs for international cooperation. In Belt and Road international cooperation, a single de facto reciprocity model may not effectively address diversified and complex international relations. Furthermore, the de facto reciprocity standard generally applies only to countries with existing reciprocity precedents or where there is no precedent of refusal to recognize and enforce Chinese judgments. This limitation restricts the scope and depth of judicial cooperation between China and other countries.

Currently, China has not joined the "Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters" and lacks sufficient bilateral judicial assistance treaties with other countries. Therefore, the reciprocity principle still needs to be retained and further improved in legislation. Legislators should detail relevant provisions, create a comprehensive and optimized rule system, and clearly stipulate the standards and procedures for identifying reciprocity relationships.

Meanwhile, in handling international legal affairs, when Chinese courts receive requests from foreign countries or their parties to recognize and enforce judgments of their courts, they should adopt a flexible and cautious attitude in applying the reciprocity principle. However, this flexibility should consider the protection of China's sovereignty, security, and development interests, taking into account the international legal environment, bilateral relations, and the nature and impact of specific cases.

5.3 Integrating Foreign Judgment Recognition and Enforcement into Separate Domestic Legislation

The recognition and enforcement of foreign judgments, particularly with countries with close trade relations such as the Belt and Road countries, can be effectively integrated into domestic legislation, therefore providing a streamlined legal framework that promotes judicial cooperation and economic interaction.

For instance, Australia, known for its robust trade relations with key international partners, has enacted the Foreign Judgments Act 1991, providing a mechanism for the recognition and enforcement of foreign judgments. The Act aims to establish a nationwide cooperative scheme among Commonwealth states, where each jurisdiction is regarded as identical to the others, achieving results similar to a unified Commonwealth scheme. (Davies, M, 2019) Before its commencement on June 27, 1991, each state and territory had provisions for enforcing foreign judgments based on reciprocity. This statutory regime is based on reciprocity of treatment of Australian judgments in the foreign jurisdiction and only applies to judgments from superior or specified inferior courts of specific countries as set out in the Foreign Judgement Regulations. However, significant trading partners of Australia, such as China and the United States, are not included in the statutory regime.

By doing this, the domestic legislation can facilitate smoother judicial processes and enhance legal predictability for businesses and individuals. Such legislative measures would not only reinforce the mutual trust between trading nations but also reduce the legal uncertainties and costs associated with cross-border litigation. In doing so, Australia exemplifies how tailored domestic laws can adapt to the evolving landscape of international trade and judicial cooperation, ensuring that foreign judgments are respected and enforced in a manner that supports economic stability and growth.

Meanwhile, the Trans-Tasman Proceedings Act 2010 (Cth) streamlines judicial processes between Australia and New Zealand, reflecting their close economic and legal integration. Under Part 7 of the Act, not only are New Zealand money judgement able to be enforced through a system of registration,

but also non-money judgements given by New Zealand courts. This includes criminal judgments requiring payment to an injured party as compensation, damages, or reparation, regulatory fines meeting prescribed conditions, judgments in New Zealand market proceedings, and etc. ^[6] By incorporating similar provisions, Australia and New Zealand have introduced a regime to streamline civil and criminal proceedings, enhancing judicial cooperation and ensuring that judgments from significant trade partners are respected and enforced efficiently.

This legislative approach not only strengthens economic ties and fosters mutual trust but also provides a clearer and more predictable legal environment that benefits international businesses and individuals engaged in cross-border activities than treaties do.

6. Conclusions

In the context of the Belt and Road Initiative, China should not only expand the judicial cooperation system but also re-examine and clarify the principle of reciprocity, which is crucial for recognizing and enforcing foreign judgments. Additionally, China could follow Australia's approach by incorporating the recognition and enforcement of foreign judgments with specific countries with close ties into separate domestic legislation so that to provide clearer legal guidance.

References

- [1] Arzandeh, Ardavan. *Reformulating the Common Law Rules on the Recognition and Enforcement of Foreign Judgments* [J]. *Legal Studies* 39, no. 1 (2019): 56–74.
- [2] Susan L. Stevens. *Commanding International Judicial Respect: Reciprocity and the Recognition and Enforcement of Foreign Judgments* [J]. *26 Hastings Int'l & Comp. L. Rev.* 115 (2002): 115.
- [3] Li Wang. *The Principle of Reciprocity in the Recognition of Foreign Court Judgments* [J]. *Nanjing University Law Journal*, 2022(1): 1-17. (in Chinese) DOI: 10.13519/b.cnki.nulr.2022.01.001
- [4] Ma Mingfei, Cai Siyang. *The principle of reciprocity in the Recognition and Enforcement of Foreign judgments in our country: Dilemma and cracking* [J]. *Political Science and Law*, 2019(2):126. (in Chinese) DOI: 10.15984/j.cnki.1005-9512.2019.03.011
- [5] Jie (Jeanne) Huang. *Enforcing Foreign Monetary Judgments in China: Breakthroughs, Challenges, and Solutions in the Context of "One Belt One Road,"* [J]. *51 Geo. Wash. Int'l L. Rev.* 105(2019): 109–132.
- [6] Davies, M, Bell, A, Le Gay Brereton, P & Douglas, Nygh's *Conflict of Laws in Australia*. 10 edn [M]. LexisNexis Butterworths, Australia, 2019.