



2022 GUIDE TO ENFORCE AUSTRALIAN JUDGMENTS IN CHINA

**Enforcing Judgments in China While
Litigation in Australia**

First Edition

CJO GLOBAL
www.cjoglobal.com



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2022 Guide to Enforce Australian Judgments in China

Introduction

Can I sue Chinese companies in Australia and then enforce an Australian court judgment in China?

Most likely, you don't want to have to go so far away as to sue a Chinese company. You may just want to take your case to the court on your doorstep because you are more familiar with your home state.

However, you are also aware that most, if not all, assets of the Chinese company are located in China. As a result, even if you have won the lawsuit at home, you still need to have your judgment enforced in China.

Under Chinese law, you cannot enforce a judgment in China on your own initiative or through another agency. You will need to appoint a Chinese lawyer to assist you in applying to the Chinese courts for recognition of your judgment, and then for the Chinese courts to enforce your judgment.

This concerns the recognition and enforcement of foreign judgments in China.

China has adopted a more friendly attitude towards the enforcement of foreign judgments in China since 2015. A series of judicial policies like two BRI-related judicial documents, and judicial outreaches like the Nanning Statement, have shown that Chinese courts are more open and more willing to recognize and enforce foreign judgments than ever.

On this basis, China's Supreme People's Court (SPC) started applying new rules in 2022, which ensure transparent and fair practices and procedures, thus enhancing predictability for creditors.

Therefore, you can feel more confident to consider enforcing your judgments in China after 2022.

2022 Guide to Enforce Australian Judgments in China

1. Can Australian judgments be recognized and enforced in China?

Yes.

Australian judgments can be recognized and enforced in China.

In accordance with China's Civil Procedure Law, foreign judgments can be recognized and enforced in China, if the case falls under any of the following circumstances:

I. The country where the judgment is rendered and China have concluded or acceded to pertinent international treaties, or

II. The country where the judgment is rendered and China have established a reciprocal relationship.

Australia falls under 'Circumstance II' because:

(1) As one of the current criteria for determining reciprocity, the de jure reciprocity test allows the Chinese courts to determine the existence of reciprocity based on the law of the country where the foreign judgment is rendered. In other words, if, according to the law of the country where the judgment is rendered,

the Chinese civil and commercial judgments can be recognized and enforced by the court of that country, then the Chinese court will also recognize the judgments rendered in this country.

(2) Chinese judgments were previously recognized and enforced by Australian courts. This may help Chinese courts conclude that there is a reciprocal relationship between Australia and China.

2. Have China and Australia recognized and enforced each other's judgments?

Yes.

Australia has recognized and enforced Chinese judgments.

The recognition of Australian judgments in China remains to be seen.

Below is the list of cases concerning the recognition and enforcement of judgments between China and Australia.

Australia-China

List of Cases on Recognition of Foreign Judgments

No.	Result	Grounds	Date	State of Origin	Requested State	Cause of Action	Court Addressed	Decisions of the Court Addressed
1	No	Lack of Reciprocity	2007-03-01	Australia	China	Contract	深圳市中级人民法院Shenzhen Intermediate People's Court	DNT France Power Engine Co Ltd v. Zheng Xiyong, (2006) Min Si Ta Zi No. 45 ((2006)民四他字第45号) (Response of China's Supreme People's Court, Mar. 1, 2007)
2	Yes	/	2017-12-19	China	Australia	Contract	Supreme Court of Victoria	Liu v Ma & Anor [2017] VSC 810
3	Yes	/	2019-02-27	China	Australia	Contract	Supreme Court of Victoria	Suzhou Haishun Investment Management Co Ltd v Zhao & Ors [2019] VSC 110
4	No	Due Process	2019-04-30	China	Australia	Contract	Supreme Court of Victoria	Xu v Wang [2019] VSC 269
5	Yes	/	2020-05-19	China	Australia	Contract (Loan)	Supreme Court of New South Wales	Bao v Qu; Tian (No 2) [2020] NSWSC 588
6	Yes	/	2022-06-07	China	Australia	Contract	Supreme Court of New South Wales	Bank of China Limited v Chen [2022] NSWSC 749

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3. Which Australian judgments can be recognized and enforced in China?

The Australian civil and commercial judgments, civil compensation in criminal judgments, and bankruptcy judgments may be recognized and enforced in China.

The relevant judgments of intellectual property cases, unfair competition cases and anti-monopoly cases can not be recognized and enforced in China due to the geographical attributes and particularity thereof.

4. If Chinese courts can recognize and enforce my judgments, how will the Chinese court review the judgment concerned?

Chinese courts usually do not conduct a substantive review on foreign judgments. In other words, Chinese courts would not examine whether foreign judgments make mistakes in fact-finding and application of law.

(1) Refusal of recognition and

enforcement

Chinese courts will refuse to recognize the applicant's foreign judgment under the following circumstances, specifically as follows:

- i. In accordance with the law of the People's Republic of China, the court that rendered the judgment has no jurisdiction over the case;
- ii. The defendant did not receive proper notice of the judicial proceedings or have a reasonable opportunity to argue, or the incapacitated defendant did not receive appropriate representation in accordance with the law of the place where the judgment was rendered;
- iii. The judgment is obtained by fraud or bribery;
- iv. The court of the People's Republic of China has rendered a judgment on the same dispute between the same parties, or has recognized the judgment of a third country in this regard;
- v. Recognition and enforcement of the

judgment concerned will violate the basic principles of the laws of the People's Republic of China or the sovereignty, security, and public interests of the state.

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

If a Chinese court refuses to recognize a foreign judgment on the grounds of the above, it will make a ruling refusing to recognize and enforce the foreign judgment. The ruling so made shall not be appealed.

(2) Dismissal of the application

If the foreign judgment temporarily does not meet the following requirements for recognition and enforcement, the Chinese court will render a ruling to dismiss the application. For example:

- i. China has not entered into relevant international or bilateral treaties with the country where the judgment is rendered, and there is no reciprocal relationship between them;
- ii. the foreign judgment has not yet entered into force; or
- iii. the application documents submitted by the applicant have not yet met the requirements of Chinese courts.

If the aforesaid circumstances are not found in your judgment, the Chinese courts will recognize and enforce the judgment.

5. When should I apply to China for recognition and enforcement of my judgments?

If you apply to Chinese courts for recognition of foreign judgments or for recognition and enforcement at the same time, you should apply to Chinese courts within two years.

The commencement of the two-year period can be divided into the following three situations:

- (1) Where your judgment provides for the period of debt performance, it shall be counted from the last day of that period;
- (2) Where your judgment provides for the debt performance by stages, it shall be counted from the last day of each performance period as stipulated;
- (3) Where your judgment does not provide for a period of performance, it shall be counted from the date when the judgment takes effect.

If you apply to a Chinese court only for recognition of your judgment, the Chinese court will make a ruling recognizing this judgment. Thereafter, if you wish to apply to a Chinese court for enforcement of this judgment, you should apply to the Chinese court within two years. The two-year period shall be counted from the effective date of the ruling of the Chinese Court on recognition of this judgment.

6. Which court in China should I apply to for recognition and

enforcement of my judgment?

You may apply to a Chinese intermediate court of the place where the respondent is located or where the property subject to execution is located for recognition and enforcement.

7. To apply to Chinese courts for recognition and enforcement of my judgment, do I have to pay the court fees?

Yes.

For the recognition or enforcement of foreign judgments in China, the average length of proceedings is 584 days, the court costs are no more than 1.35% of the amount in controversy or 500 CNY, and the attorney's fees are, on average, 7.6% of the amount in controversy.

CJO GLOBAL's co-founders, Mr. Guodong Du and Ms. Meng Yu analyzed the time and cost of the recognition and enforcement of foreign judgments in China based on the cases they collected.

When you win the case, the court fee shall be borne by the respondent.

8. Can I seek interim measures against the respondent?

Yes.

Interim measures are commonly referred to as "conservatory measures" in China.

In terms of recognition and enforcement of judgments, conservatory measures refer to

certain measures taken by the court against the respondent, upon application by the applicant, in cases where it may be difficult to enforce the future judgment for reasons attributable to the respondent.

Conservatory measures are critical in cases of judgment enforcement.

In China, it is not rare that the judgment debtor evades its judgment debt. Many judgment debtors will quickly transfer, hide, sell or damage their assets once they find that they may lose the case or be subject to property execution. This greatly reduces the reimbursement rate after the judgment creditor wins the case.

Therefore, in China's civil litigation, many plaintiffs will immediately apply to the court for conservatory measures after (or even before) filing an action, and so is the case when they apply to the court for judgment enforcement, with an aim to control the property of the judgment debtor as soon as possible.

9. When I apply to Chinese courts for recognition and enforcement of my judgment, what materials should I submit?

You need to submit the following materials:

(1) The Application Form;

(2) The applicant's identity certificate or business registration certificate (if the

applicant is a corporate body, the identity certificate of the authorized representative or

the person in charge of the applicant must also be provided);

(3) The Power of Attorney (authorizing lawyers to act as agents ad litem);

(4) The original judgment and a certified copy thereof;

(5) Documents proving that the judgment has become legally effective, unless otherwise stated in the judgment;

(6) Documents proving that the defaulting party has been duly summoned in case of a default judgment, unless otherwise stated in the judgment; and

(7) Documents proving that an incapacitated person has been properly represented, unless otherwise stated in the judgment.

If the aforementioned materials are not in Chinese, then you also need to provide the Chinese translation of these materials. The official seal of the translation agency shall be affixed to the Chinese version. In China, some courts only accept Chinese translations provided by agencies listed in their lists of translation agencies, while others do not.

Documents from outside China must be notarized by local notaries in the country where such documents are located and certified by local Chinese consulates or Chinese embassies.

10. What should be included in the Application Form?

In the Application Form, you need to give a brief description of the matter you are

applying for. In addition, you can also discuss the main points in which Chinese courts are interested during examining the recognition and enforcement of foreign judgments. Generally speaking, the contents of the Application Form may include:

(1) A brief statement of the judgment, including the name of the foreign court, the case number, the commencement date of the proceeding, and the date of the judgment;

(2) Issues to be enforced by Chinese courts;

(3) The performance of the respondent and the enforcement thereto outside China;

(4) The specific property of the respondent to be enforced by Chinese courts (which can facilitate Chinese courts to identify the property of the respondent available for enforcement);

(5) Proving that your country and China have concluded international treaties on recognition and enforcement of foreign judgments, or have formed a reciprocal relationship;

(6) Proving that the judgment concerned falls into the type of foreign judgments recognizable and enforceable by Chinese courts;

(7) Proving that the court that rendered the

judgment has jurisdiction over the case, and that Chinese courts have no compulsory jurisdiction over the case under Chinese law;

(8) Proving that the original court has

reasonably summoned the respondent;

(9) Proving that the original judgment or ruling is final, including its reasonable service to the respondent.

CJO GLOBAL

CJO Global is committed to providing China-related cross-border trade risk management and debt collection services.

CJO Global is a brand under Yu Du Consulting based in Beijing, China.

Judgments Collection Service refers to the services where we help you enforce foreign court judgments or arbitral awards in China. If you obtain a foreign court judgment or arbitral award while the debtor resides or its property is located in China, we can enforce the judgment or award for you in China.

Foreign Court Judgments refer to the civil and commercial judgments, especially the monetary judgments, made by the court of any country or region other than China. Thanks to China's friendly attitude towards foreign court judgments in recent years, court judgments of most of China's major trading partners can now be recognized and enforced in China.

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