



2022 BREAKTHROUGH FOR COLLECTING JUDGMENTS IN CHINA

China clears final hurdle for recognition and enforcement of foreign judgments in 2022 on the Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide, which is a landmark judicial policy issued by China's Supreme People's Court.



2022 BREAKTHROUGH FOR COLLECTING JUDGMENTS IN CHINA

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PART I INTRODUCTION

China clears final hurdle for recognition and enforcement of foreign judgments in 2022.

Theoretically, from January 2022, the judgments rendered in most of China's major trading partners, including almost all common law countries and many civil law countries, can be enforceable in China.

The "Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide" (hereinafter the "2021 Conference Summary", 全国法院涉外商事海事审判工作座谈会会议纪要), a landmark judicial policy issued by China's Supreme People's Court (SPC), has been implemented since January 2022.¹

The 2021 Conference Summary makes it clear for the first time that applications for enforcing foreign judgments will be examined subject to a much more lenient standard.

Since 2015, the SPC has consistently disclosed in its policy that it wishes to be more open to the application for recognition and enforcement of foreign judgments, and encourages local courts to take a more amicable approach to foreign

judgments within the scope of established judicial practice.

We have noticed the SPC's changing attitude and have been tracking the latest cases in this field since 2018 so as to make systematic observations, analyses and predictions.

Admittedly, the threshold for enforcing foreign judgments was set too high in the judicial practice, and Chinese courts have never elaborated on how to enforce foreign judgments in a systematic manner.

As a result, despite the SPC's enthusiasm, it is still not attractive enough for more applicants to file an application for recognition and enforcement of foreign judgments with Chinese courts.

However, such situation is now changed.

In January 2022, the SPC published the 2021 Conference Summary with regard to cross-border civil and commercial litigation, which addresses a number of core issues concerning the recognition and enforcement of foreign judgments in China. The 2021 Conference Summary manifests the consensus reached by representatives of Chinese judges nationwide at the symposium on how to adjudicate cases,

¹ What's the conference summary in Chinese court system? To start with, one needs to understand what is a 'conference summary' in China and its implication on adjudicative work for Chinese local courts. The Chinese courts issue conference summaries from time to time, which can serve as guidance to the judges in their trials. However, the conference summary is not a legally binding normative document as the judicial interpretation, but only represents the consensus among the majority of judges, which is similar to the prevailing opinion. According to the previous explanation by a judge of the SPC, a conference summary is not a judicial interpretation, and therefore the court, on the one hand, cannot invoke it as the legal basis for judgment, but on the other hand, can make the reasoning on the application of law according to the conference summary in the "Court Opinion" part.

which will be followed by all judges.

The 2021 Conference Summary makes substantial improvements in two aspects, the “threshold” and “criteria”.

The “threshold” refers to the first obstacle you will face when applying for recognition and enforcement of a foreign judgment in China, that is, whether foreign judgments from certain jurisdictions are enforceable.

The countries reaching the threshold now include most of China’s major trading partners, which is huge progress compared with the prior 40 countries or so.

If a judgment from a foreign country reaches the threshold, a criterion will then be met, with which the Chinese judges will measure whether the specific judgment in the application can be enforced in China.

Now a clearer threshold and criterion enable us to make more reasonable expectations about the likelihood of foreign judgments to be enforced in China.

1. Threshold: The Threshold for Enforcing Judgments of Most Foreign Countries in China Has Been Significantly Lowered.

The 2021 Conference Summary significantly lowers the threshold for the recognition and enforcement of foreign judgments in China, making a breakthrough in existing practice.

According to the 2021 Conference Summary, the judgments of most of China’s major trading partners, including almost all common law countries as well as

most civil law countries, can be enforceable in China.

Specifically, the 2021 Conference Summary states that the judgment can be enforced in China if the country where the judgment is rendered satisfies the following circumstances:

1.1 The country has concluded an international or bilateral treaty with China in respect of recognition and enforcement of foreign judgments.

To date, China and 39 States have concluded bilateral judicial assistance treaties, among which 35 bilateral treaties, include the judgment enforcement clauses. For the judgments of these countries, China will examine their applications for recognition and enforcement in accordance with these bilateral treaties.

France, Italy, Spain, Belgium, Brazil, and Russia are among these 35 countries.

For more about bilateral judicial assistance treaties that China and 39 States have concluded, please read ‘List of China’s Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters (Enforcement of Foreign Judgments Included)’.²

1.2 The country has a *de jure* reciprocal relationship with China.

It means that where a civil or commercial judgment rendered by a Chinese court can be recognized and enforced by the court of the foreign country according to the law of the said country, a judgment of the said country may, under the same circumstances, be recognized and

² Meng Yu, ‘List of China’s Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters (Enforcement of Foreign Judgments Included)’, available at <https://www.chinajusticeobserver.com/a/list-of-chinas-bilateral-treaties-on-judicial-assistance-in-civil-and-commercial-matters>.

enforced by the Chinese court.

In accordance with the criteria of *de jure* reciprocity, the judgments of many countries can be included in the scope of enforceable foreign judgments in China.

For common law countries, such as the United States, the United Kingdom, Canada, Australia, and New Zealand, their attitude towards applications for recognition and enforcement of foreign judgments is open, and in general, such applications meet this criterion.

For civil law countries, such as Germany, Japan, and South Korea, many of them also adopt a similar attitude to the above-mentioned *de jure* reciprocity, so such applications also meet this criterion to a great extent.

1.3 The country and China have promised each other reciprocity in diplomacy or reached a consensus at the judicial level.

The SPC has been exploring cooperation in mutual recognition and enforcement of judgments with other countries in a lower-cost way in addition to signing treaties, such as a diplomatic commitment or a consensus reached by the judiciaries.

It can achieve functions similar to that of treaties but without being involved in the lengthy process of treaty negotiation, signing, and ratification.

China has started similar cooperation with Singapore. A good example is the Memorandum of Guidance Between the Supreme People's Court of the People's Republic of China and the Supreme Court of Singapore on Recognition and Enforcement of Money Judgments In Commercial Cases.

It is thus fair to say that the 2021 Conference Summary has substantially lowered the threshold by liberalizing the reciprocity test.

2. Criterion: Clearer Standard for Chinese Judges to Examine Each Application for Recognition and Enforcement of Foreign Judgments

The 2021 Conference Summary makes it clear under what circumstances Chinese courts may refuse to recognize and enforce a foreign judgment and how the applicants may submit the applications, which undoubtedly enhances the feasibility and predictability.

Pursuant to the 2021 Conference Summary, a foreign judgment can be recognized and enforced in China if there are no following circumstances where:

- (1) the foreign judgment violates China's public policy;
- (2) the court rendering the judgment has no jurisdiction under Chinese law;
- (3) the procedural rights of the Respondent are not fully guaranteed;
- (4) the judgment is obtained by fraud;
- (5) parallel proceedings exist, and
- (6) punitive damages are involved.

Compared with most countries with liberal rules in recognition and enforcement of foreign judgments, the above requirements of Chinese courts are not unusual. For example:

The above items (1) (2) (3) and (5), are also requirements under the German Code of Civil Procedure (Zivilprozessordnung).

Item (4) is consistent with the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

Item (6) reflects the legal cultural tradition on the issue of compensation in China.

In addition, the 2021 Conference Summary also specifies what kind of application documents should be submitted to the court, what the application should contain, and how parties can apply to the Chinese court for interim measures when applying for enforcing foreign judgments.

In short, we have observed a gradual relaxation of Chinese courts' attitude towards the application for recognition and enforcement of foreign judgments since 2018. Recently the 2021 Conference Summary has finally made a substantial leap forward.

3. What Does the Conference Summary Say About the Recognition and Enforcement of Foreign Judgments?

The Conference Summary describes Chinese courts' views on this issue in 17 articles, including:

- (1) How Chinese courts review applications for enforcement of foreign judgments;
- (2) How Chinese courts determine reciprocity in foreign judgment

enforcement;

- (3) What is a judgment or ruling;
- (4) What is a binding judgment or ruling;
- (5) What happens if the judgment has not come into effect or its authenticity cannot be determined;
- (6) What documents to prepare for enforcing foreign judgment in China;
- (7) How to write an application for enforcing foreign judgment in China;
- (8) What is the conditions for enforcement of foreign judgments in China;
- (9) Where to file application for enforcing foreign judgments in China;
- (10) Can applicant seek interim measures from Chinese courts;
- (11) How to challenge the jurisdiction of the Chinese court;
- (12) How do Chinese courts examine cases at case filing;
- (13) How service on the respondent works;
- (14) How withdrawal of application works;
- (15) How Chinese courts ensure impartiality in enforcing foreign judgments: ex ante internal approval and ex post filing.

We will provide a more detailed discussion on these said points in 'PART III - KEY TAKEAWAYS' and PART IV - INTERPRETATIONS OF THE 2021 CONFERENCE SUMMARY'.

PART II TEXTS OF THE 2021 CONFERENCE SUMMARY

The original Chinese version of the 2021 Conference Summary was published on the website of China International Commercial Court of the Supreme People's Court.³ Below is our translation of the selected articles (Articles 33-49), that are related to the recognition and enforcement of foreign judgments. For the original Chinese version, please read 'PART V - TEXTS OF THE 2021 CONFERENCE SUMMARY (CHINESE VERSION)'.

Article 33 [Examination Criteria and Scope of Application]

When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people's court shall, in accordance with Article 289 of the Civil Procedure Law and Paragraph 1 of Article 544 of the Judicial Interpretation of the Civil Procedure Law, first examine whether the country where the judgment is rendered and China have concluded or acceded to international treaties. If yes, the pertinent international treaty shall prevail; if no, or if yes but in the absence of relevant provisions in the international treaty, the specific examination criteria of the 2021 Conference Summary may be applicable.

The 2021 Conference Summary will not be applicable to the recognition and enforcement of relevant judgments of bankruptcy, intellectual property, unfair competition, and anti-monopoly cases due to the geographical attributes and particularity thereof.

Article 34 [Supplementary Jurisdiction Rule -the Court at the Place of the Applicant's Domicile]

Where an applicant applies for recognizing a judgment or ruling of a foreign court, but the respondent has no domicile within the territory of China, and its property is not within the territory of China, the application may come under the jurisdiction of the intermediate people's court of the place where the applicant has his domicile.

Article 35 [Application Documents]

An applicant to apply for recognition and enforcement of a judgment or ruling of a foreign court shall submit a written application accompanied by the following documents:

- (1) the original or certified true copy of the judgment;
- (2) documents proving that the judgment has come into effect;
- (3) documents proving that the foreign court has legitimately summoned the absentee if the judgment is made in

³ China International Commercial Court, 'Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide' [Quanguo Fayuan Shewai Shangshi Haishi Shenpan Gongzuo Zuotanhui Huiyi Jiyao], available at <https://cicc.court.gov.cn/html/1/218/62/409/2172.html>.

absentia.

If the judgment or ruling has already stated the circumstances under Items (2) and (3) of the preceding paragraph, other supporting documents are not necessarily required to be submitted anymore.

Where the judgment and other documents submitted by the applicant are in a foreign language, they shall be accompanied by a Chinese version stamped with the official seal of the translation institution.

Where the documents submitted by an applicant are made outside the territory of China, the applicant shall go through the procedures of notarization and authentication, or go through the certification procedures as required by relevant international treaties signed between China and the said country.

Article 36 [The Application]

The application shall specify:

1. The applicant and the respondent. If the applicant or respondent is a natural person, the application shall specify his/her name, gender, date of birth, nationality, domicile and ID number; if it is a legal person or an unincorporated organization, it shall indicate its name, domicile, and the name and position of its legal representative or representative;
2. The name of the judgment-making foreign court, the case number of the judgment, the commencement date of the proceedings and the date of judgment;
3. Specific request and grounds;
4. The status and location of the respondent's property as well as the status of the enforcement of the judgment outside China; and

5. Other matters needed clarification.

Article 37 [Service on the Respondent]

Where a party applies for recognition and enforcement of a foreign judgment or ruling, the people's court shall list the other party as the respondent in the judgment. If both parties apply so, they shall be both listed as the applicant.

The people's court shall serve a copy of the application on the respondent. The respondent shall submit its opinions within 15 days after the date of receipt of a copy thereof; if the respondent has no domicile within the territory of the People's Republic of China, it shall submit its opinions within 30 days after the date of receipt of a copy thereof. The respondent's failure to submit its opinions within the above-mentioned time limit shall not affect the examination by the people's court.

Article 38 [Jurisdictional Challenge]

After the people's court has accepted an application for recognition and enforcement of a judgment or ruling of a foreign court, if the respondent challenges the jurisdiction, the respondent shall file the challenge within 15 days upon the date of receiving the application copy; where the respondent has no domicile within the territory of China, the challenge shall be filed within 30 days upon the date of receipt of the application copy.

The people's court shall examine and render a ruling on the jurisdictional challenge filed by the respondent. If the party is not satisfied with the ruling on the jurisdictional challenge, he may file an appeal.

Article 39 [Conservatory Measures]

Where a party applies to the people's court for recognition and enforcement of a foreign judgment or ruling, after the people's court accepts the application, if the party applies for property preservation, the people's court may implement the property preservation with reference to the provisions of the Civil Procedure Law and relevant judicial interpretations. The applicant shall provide a guarantee for the property preservation, otherwise the people's court shall rule to dismiss the application.

Article 40 [Case Filing Examination]

If the applicant's application does not meet the case filing conditions, the people's court shall rule not to accept the case and explain the reasons for non-acceptance. If the case has been accepted, the people's court shall rule to dismiss the application. If the party refuses to accept the dismissal, it may appeal. If, after the people's court rules not to accept the case or to dismiss the application, the applicant applies again and meets the case filing conditions, the people's court shall accept the case.

Article 41 [Standards for Determining the Foreign Court Judgment or Ruling]

The people's court shall, subject to the substance of a judgment or ruling of a foreign court, review and identify whether such judgment or ruling is a 'judgment or ruling' as provided in Article 289 of the PRC Civil Procedure Law (CPL).

Judgments, rulings, decisions, orders and other legal instruments made by foreign courts on substantive disputes in civil and commercial cases, as well as legal instruments made in criminal cases on civil damages, shall be identified as 'judgments and rulings' as specified in Article 289 of the CPL, but excluding preservation orders and other procedural legal documents made by foreign courts.

Article 42 [Determination of the Binding Judgment or Ruling]

The people's court shall examine whether a judgment or ruling has come into legal effect pursuant to the laws of the country where the judgment is made. A judgment or ruling pending appeal or in the process of appeal shall not fall within the scope of 'judgment or rulings which have come into legal effect' as stipulated in Article 289 of the CPL.

Article 43 [Situations where authenticity and finality of judgment cannot be confirmed]

When the people's court reviews the application for recognition and enforcement of a foreign court judgment or ruling, in case it cannot confirm the authenticity of the foreign court judgment or ruling upon examination or the judgment or ruling has not come into legal effect, the people's court shall render a ruling to dismiss the application. After the application is dismissed, if the applicant re-applies and the application satisfies the requirements for acceptance, the people's court shall accept such application.

Article 44 [Recognition of Reciprocity]

“When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people’s court may recognize the existence of reciprocity under any of the following circumstances:

(1) Where the civil and commercial judgments made by Chinese courts can be recognized and enforced by the judgment-making foreign court according to the law of the country where the foreign court is located;

(2) Where China has reached a reciprocal understanding or consensus with the country where the judgment-making court is located; or

(3) Where the country where the judgment-making court is located has made reciprocal commitments to China through diplomatic channels or China has made reciprocal commitments to the country where the judgment-making court is located through diplomatic channels, and there is no evidence that the country where the judgment-making court is located has refused to recognize and enforce a Chinese judgment or ruling on the ground of lack of reciprocity.

The Chinese court shall examine and determine the existence of reciprocity on a case-by-case basis.”

Paragraph 2 of Article 49 of the 2021 Conference Summary [Filing and Notification Mechanism for Recognition and Enforcement of Foreign Judgments]:

“The people’s court shall, before making a ruling on a case examined based on the principle of reciprocity, submit the

proposed handling opinions to a high people’s court of its jurisdiction for examination; if the high people’s court agrees to the proposed handling opinions, it shall submit its examination opinions to the SPC for examination. The aforesaid ruling can be made only after a reply by the SPC.”

Article 45 [Judgment concerning Punitive Damages]

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

Article 46 [Grounds for the Refusal of Recognition and Enforcement]

A people’s court shall refuse to recognize and enforce the legally effective judgment or order made by a foreign court if, after examining it in accordance with the principle of reciprocity, it finds that any of the following circumstances exists:

(1) in accordance with Chinese law, the court in the country where the judgment is rendered has no jurisdiction over the case;

(2) the Respondent has not been lawfully summoned, or has not been given a reasonable opportunity to be heard and defended despite having been lawfully summoned, or the party without legal capacity has not been properly represented;

(3) the judgment was obtained by fraud; or

(4) the people’s court has rendered a judgment on the same dispute, or has recognized and enforced a judgment or

arbitral award made by a third country on the same dispute.

Where a legally effective judgment or ruling made by a foreign court violates the basic principles of the Chinese law or violates state sovereignty, security, and public interest, such judgment or ruling shall not be recognized or enforced.

Article 47 [Recognition of Foreign Judgments in Violation of the Arbitration Agreement]

Where a party concerned applies to a people's court for recognition and enforcement of a default judgment rendered by a foreign court, and the people's court finds upon examination that the parties to the dispute have a valid arbitration agreement and that the absent party does not expressly waive to apply the arbitration agreement, the people's court shall refuse to recognize and enforce the foreign judgment.

Article 48 [Handling of Withdrawal of Application]

The people's court shall rule to allow the applicant's request to withdraw the application after the people's court has accepted the application for recognition and enforcement of a foreign judgment or ruling but not yet made a ruling.

Although the people's court has ruled to allow the withdrawal of the application, the

people's court shall still accept the case if the applicant applies again and meets the case filing conditions.

If the applicant refuses to participate in the inquiry procedure without justified reasons, it shall be deemed as an automatic withdrawal of the application by the applicant.

Article 49 [Ex Ante Internal Approval and Ex Post Filing Mechanism]

People's courts at all levels that close cases of recognition and enforcement of foreign judgments shall, within 15 days after making the ruling, report the cases level by level to the Supreme People's Court for filing. The filing materials include the application submitted by the applicant, the foreign judgment and its Chinese translation, and the ruling made by the people's court.

The people's court shall, before making a ruling on a case examined in accordance with the principle of reciprocity, submit its proposed handling opinions to the high people's court of the same jurisdiction for examination; if the high people's court agrees with the proposed handling opinions, it shall submit its examination opinions to the SPC for examination and approval. No ruling shall be made until the SPC gives a reply.

PART III KEY TAKEAWAYS

1. Despite that the elaboration of a judicial interpretation appeared to have been put on hold, China's Supreme People's Court has now resorted to conference summaries, which are not legally binding but have a practical impact, to express its views in recognition and enforcement of foreign judgments.
2. The landmark 2021 Conference Summary addresses, among others, how Chinese courts would handle cases of applications for recognizing and enforcing foreign judgments, embarking on a new era for judgment collection in China.
3. A total of 17 articles in the 2021 Conference Summary provide a detailed guideline for Chinese courts to review foreign judgment-related applications, including examination criteria, refusal grounds, and ex ante internal approval mechanism.
4. The 2021 Conference Summary will not be applicable to the recognition and enforcement of relevant judgments of bankruptcy, intellectual property, unfair competition, and anti-monopoly cases.
5. In the absence of pertinent international or bilateral treaties, the examination criteria of the 2021 Conference Summary, including reciprocity as a prerequisite for filing an application, would apply. In other words, the existence of 'treaty or reciprocity' remains to be the precondition for Chinese courts to review applications for recognition and enforcement of foreign judgments.
6. Although there are no explicit provisions on the principle of reciprocity in Chinese law, different variants of reciprocity - de facto reciprocity, de jure reciprocity, and presumptive reciprocity - had been tested in judicial practices or seen in judicial documents. The 2021 Conference Summary clarified, for the first time, the criteria for determining reciprocity.
7. The 2021 Conference Summary introduced new criteria for determining reciprocity, which replaces the previous *de facto* reciprocity test and presumptive reciprocity.
8. The new reciprocity criteria include three tests, namely, *de jure* reciprocity, reciprocal understanding or consensus, and reciprocal commitment without exception, which also coincide with possible outreaches of legislative, judicial, and administrative branches.
9. Chinese courts need to examine, on a case-by-case basis, the existence of reciprocity, on which the Supreme People's Court has the final say.
10. The 2021 Conference Summary clarifies the scope of 'foreign judgments', which includes those foreign judgments/rulings/decisions/orders on substantive disputes in civil and

commercial cases, as well as those made in criminal cases on civil damages, while excludes foreign interim measures.

11. Chinese courts need to examine the validity and finality of a foreign judgment in accordance with the laws of the country where the judgment is rendered.
12. If a foreign judgment is found not final or inconclusive, Chinese courts would render a ruling to dismiss the application. After the dismissal, the applicant may choose to re-apply when the application satisfies the requirements for acceptance later on.
13. The 2021 Conference Summary provides the documents checklist one needs to prepare for enforcing a foreign judgment in China. Application documents include the original or certified true copy of the foreign judgment, and evidence proving that the judgment is final and conclusive and that the foreign court has legitimately summoned the absentee if the judgment is made in absentia.
14. For documents formulated overseas, it is required to have them notarized in the country where the judgment is rendered and authenticated by the relevant Chinese Embassy or consulate in that country.
15. The 2021 Conference Summary outlines what to include in an application for enforcing a foreign judgment in China. Apart from the basic information about the litigants and the foreign judgment, the application should also specify the status and location of the respondent's property, and the status of enforcement of the foreign judgment outside China.
16. The 2021 Conference Summary sets out the grounds on which recognition and enforcement of foreign judgments may be refused. For instance, if the foreign judgment is found to be contrary to the public policy, the Chinese court shall refuse to recognize and enforce such judgment.
17. When examining a foreign judgment on the basis of reciprocity, the Chinese court shall rule against recognition and enforcement if, under the Chinese law, the judgment-making foreign court has no jurisdiction over the case.
18. 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.
19. The 2021 Conference Summary provides the supplementary rules on jurisdiction in cases of the recognition and enforcement of foreign judgments in China. As the general rule of jurisdiction, the Chinese court of the place where the respondent is domiciled or where the enforceable property is located has the jurisdiction. As a supplementary jurisdiction rule, the Chinese court at the place of the applicant's domicile is the competent court. This rule applies only for applications for recognition (rather than enforcement or recognition and enforcement concurrently) of foreign judgments in China.
20. The time limit for filing a jurisdictional

challenge is 15 days for respondents domiciled in China, and 30 days for those not domiciled in China.

21. The 2021 Conference Summary provides the rules on whether and how applicants may seek interim measures (conservatory measures) in cases of the recognition and enforcement of foreign judgments in China.
22. A party may seek property reservation directly from Chinese courts, after (or even before) filing an application for recognition and enforcement of foreign judgments.
23. The applicant shall provide a guarantee for the property preservation, otherwise the people's court shall rule to dismiss the application.
24. If the court finds that the application does not meet the case filing conditions, it will rule not to accept the case. If the court finds the situation after case acceptance, it will rule to dismiss the application. Both types of rulings may be subject to appeal.
25. If the law of the respondent's country does not prohibit electronic service, the Chinese court may serve the process by electronic means, unless otherwise prohibited by the international treaties concluded or acceded to by China.
26. If the respondent's country is a contracting state of the Hague Service Convention and declares its objection to service by mail thereunder, it shall be presumed that electronic service is not allowed. At this point, Chinese courts cannot serve the process by electronic means.
27. The time limit for submitting its opinions

is 15 days for respondents domiciled in China, and 30 days for those not domiciled in China.

28. The applicant may request to withdraw the application after the Chinese court has accepted the application for recognition and enforcement of a foreign judgment but not yet made a ruling.
29. The withdrawal of an application shall not affect a re-application. If the applicant applies again and meets the case filing conditions, the Chinese court shall accept the case.
30. The 2021 Conference Summary provides the rules on ex ante internal approval and ex post filings – a mechanism designed by China's Supreme People's Court (SPC) to ensure impartiality in enforcing foreign judgments.
31. The adoption of ex ante approval depends on whether the court examines the application based on treaty or reciprocity. Ex ante approval is a must for those based on reciprocity. By contrast, such approval is not required for those based on a pertinent treaty.
32. In ex ante approval mechanism, the local court shall, before making a ruling, report its handling opinions level by level for approval, and the SPC shall have a final say on the handling opinions.
33. Ex ante approval is believed to lead to an increase in the success rate of recognition and enforcement of foreign judgments.

PART IV INTERPRETATIONS OF THE 2021 CONFERENCE

SUMMARY

China published a landmark judicial policy on the enforcement of foreign judgments in 2022, embarking on a new era for judgment collection in China.

The judicial policy is the “Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide” (hereinafter the “2021 Conference Summary”, 全国法院涉外商事海事审判工作座谈会会议纪要) issued by the China’s Supreme People’s Court (SPC) on 31 Dec. 2021.

1. How Chinese Courts Review Applications for Enforcement of Foreign Judgments: Criteria and Scope of Application

Key takeaways:

✧ In the absence of pertinent international or bilateral treaties, the examination criteria of the 2021 Conference Summary, including reciprocity as a prerequisite for filing an application, would apply. In other words, the existence of ‘treaty or reciprocity’ remains to be the precondition for Chinese courts to review applications for recognition and enforcement of foreign judgments.

✧ Although there are no explicit provisions on the principle of reciprocity in Chinese law, different variants of reciprocity — de facto reciprocity, de jure reciprocity, and presumptive reciprocity — had been tested in judicial practices or seen in judicial documents. The 2021

Conference Summary clarified, for the first time, the criteria for determining reciprocity.

✧ The 2021 Conference Summary will not be applicable to the recognition and enforcement of relevant judgments of bankruptcy, intellectual property, unfair competition, and anti-monopoly cases.

Article 33 of the 2021 Conference Summary [Examination Criteria and Scope of Application]:

When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people’s court shall, in accordance with Article 289 of the Civil Procedure Law and Paragraph 1 of Article 544 of the Judicial Interpretation of the Civil Procedure Law, first examine whether the country where the judgment is rendered and China have concluded or acceded to international treaties. If yes, the pertinent international treaty shall prevail; if no, or if yes but in the absence of relevant provisions in the international treaty, the specific examination criteria of the 2021 Conference Summary may be applicable.

The 2021 Conference Summary will not be applicable to the recognition and enforcement of relevant judgments of bankruptcy, intellectual property, unfair competition, and anti-monopoly cases due to the geographical attributes and particularity thereof.

INTERPRETATIONS:

1.1 On what basis do Chinese courts examine applications for recognition and enforcement of foreign judgments?

(1) If the country where the judgment is rendered has concluded an international or bilateral treaty on the recognition and enforcement of judgments with China, the Chinese court shall examine the application for recognition and enforcement of foreign judgments in accordance with such international or bilateral treaty.

(2) In the absence of a pertinent treaty, the Chinese court will examine these applications in accordance with the principle of reciprocity. Although there are no explicit provisions on the principle of reciprocity in Chinese law, different variants of reciprocity — *de facto* reciprocity, *de jure* reciprocity, and presumptive reciprocity — had been tested in judicial practices or seen in judicial documents. The 2021 Conference Summary clarified the criteria for determining reciprocity for the first time (see Part III of this Series). It can be said that the 2021 Conference Summary, as the consensus of Chinese courts, has provided a basis for Chinese judges to determine reciprocity for the first time and to examine such applications accordingly.

(3) In the absence of relevant provisions in

international or bilateral treaties, the 2021 Conference Summary can fill the loopholes to come extent. Chinese courts will examine these matters involved in foreign judgments according to the 2021 Conference Summary.

1.2 With which countries has China concluded pertinent international and bilateral treaties?

(1) International treaties

China has signed, but not yet ratified, the Convention on Choice of Court Agreements (2005 Choice of Court Convention). China has not yet acceded to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “Hague Judgments Convention”). Therefore, these two treaties cannot, at least at the current stage, be applied as the basis for the Chinese court to examine applications for recognition and enforcement of judgments of relevant contracting states.

(2) Bilateral treaties

To date, China and 39 States have concluded bilateral judicial assistance treaties, among which 35 bilateral treaties, include the judgment enforcement clauses. For the judgments of these countries, China will examine their applications for recognition and enforcement in accordance with these bilateral treaties.

France, Spain, Italy and Russia are among these 35 countries.

For more about bilateral judicial assistance treaties that China and 39 States have concluded, please read ‘List of China’s Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters (Enforcement of Foreign Judgments

Included)⁴.

1.3 For the judgments of most countries, Chinese courts will examine their applications for recognition and enforcement according to the 2021 Conference Summary

In addition to the above-mentioned 35 countries, the Chinese courts will examine applications for recognition and enforcement of judgments of other countries in China based on the 2021 Conference Summary.

Some common major trading partners of China, such as the US, the UK, Germany, Japan, South Korea, Australia, Canada, and New Zealand, fall into this scope.

1.4 Exclusion of bankruptcy cases

The recognition and enforcement of bankruptcy judgments will be governed by the PRC Bankruptcy Law. The provisions of the Bankruptcy Law are similar to Part I above.

China has already recognized some foreign bankruptcy judgments. We believe that Chinese courts will keep opening the door to such judgments in the future.

It is very likely that China may formulate special rules, such as another conference summary or a more formal and legally binding document (say, judicial interpretation), for cross-border bankruptcy cases.

1.5 Exclusion of intellectual property, unfair competition and anti-monopoly cases

These cases may not be recognized and

enforced in China. This is similar to the exclusion of such cases in the Hague Judgments Convention.

2. How Chinese Courts Determine Reciprocity in Foreign Judgment Enforcement

Key takeaways:

✧ The 2021 Conference Summary introduced new criteria for determining reciprocity, which replaces the previous de facto reciprocity test and presumptive reciprocity.

✧ The new reciprocity criteria include three tests, namely, de jure reciprocity, reciprocal understanding or consensus, and reciprocal commitment without exception, which also coincide with possible outreaches of legislative, judicial, and administrative branches.

✧ Chinese courts need to examine, on a case-by-case basis, the existence of reciprocity, on which the Supreme People's Court has the final say.

Article 44 of the 2021 Conference Summary [Recognition of Reciprocity]:

When trying a case applying for recognition and enforcement of a foreign judgment or ruling, the people's court may recognize the existence of reciprocity under any of the following circumstances:

(1) Where the civil and commercial judgments made by Chinese courts can be recognized and enforced by the judgment-

⁴ Meng Yu, 'List of China's Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters (Enforcement of Foreign Judgments Included)',

available at <https://www.chinajusticeobserver.com/a/list-of-chinas-bilateral-treaties-on-judicial-assistance-in-civil-and-commercial-matters>.

making foreign court according to the law of the country where the foreign court is located;

(2) Where China has reached a reciprocal understanding or consensus with the country where the judgment-making court is located; or

(3) Where the country where the judgment-making court is located has made reciprocal commitments to China through diplomatic channels or China has made reciprocal commitments to the country where the judgment-making court is located through diplomatic channels, and there is no evidence that the country where the judgment-making court is located has refused to recognize and enforce a Chinese judgment or ruling on the ground of lack of reciprocity.

The Chinese court shall examine and determine the existence of reciprocity on a case-by-case basis.

Note: Paragraph 2 of Article 49 of the 2021 Conference Summary [Filing and Notification Mechanism for Recognition and Enforcement of Foreign Judgments]:

The people's court shall, before making a ruling on a case examined based on the principle of reciprocity, submit the proposed handling opinions to a high people's court of its jurisdiction for examination; if the high people's court agrees to the proposed handling opinions, it shall submit its examination opinions to the SPC for examination. The aforesaid ruling can be made only after a reply by the SPC.

INTERPRETATIONS:

2.1 Under what circumstances do Chinese courts need to examine the reciprocity?

The quick answer is for the judgments made in 'non-treaty jurisdictions'.

If the foreign judgment is rendered in a country that has not signed relevant international or bilateral treaties with China, also known as 'non-treaty jurisdictions', the Chinese court must first determine the existence of reciprocity between that country and China. If reciprocity exists, the Chinese court will then further examine the application for recognition and enforcement of the judgment.

Therefore, for other countries that are not among the 35 countries that have signed relevant international or bilateral treaties with China, the top priority of Chinese courts is to determine the existence of reciprocity between the country where the judgment is rendered and China.

For more about 35 bilateral judicial assistance treaties that include foreign judgments enforcement clauses, please read '[List of China's Bilateral Treaties on Judicial Assistance in Civil and Commercial Matters \(Enforcement of Foreign Judgments Included\)](#)'.

2.2 Under what circumstances will Chinese courts recognize the existence of reciprocity between the country where the judgment is rendered and China?

The 2021 Conference Summary introduced new criteria for determining reciprocity, which replaces the previous de facto reciprocity test and presumptive reciprocity.

The new criteria include three reciprocity

tests, namely, *de jure* reciprocity, reciprocal understanding or consensus, and reciprocal commitment without exception, which also coincide with possible outreaches of legislative, judicial, and administrative branches.

(1) *De jure* reciprocity

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 its judgments.

This is the first time that Chinese courts have accepted *de jure* reciprocity, which is similar to the existing practice in many other countries, such as Germany, Japan, and South Korea.

Before that, Chinese courts seldom mentioned *de jure* reciprocity. At present, the one and only case where *de jure* reciprocity, for the first time, was mentioned in the court ruling is [Power Solar System Co., Ltd. v. Suntech Power Investment Pte. Ltd. \(2019\) Hu 01 Xie Wai Ren No. 22 \(\(2019\) 沪01 协外认 22 号\)](#).

(2) Reciprocal understanding or consensus

If there is a reciprocal understanding or consensus between China and the country where the judgment is rendered, then China can recognize and enforce the judgment of that country.

The SPC and the Supreme Court of Singapore signed a [Memorandum of Guidance on Recognition and Enforcement of Money Judgments in Commercial Cases](#) (the MOG) in 2018, confirming that Chinese courts can recognize and enforce Singapore

judgments on the basis of reciprocity.

The MOG is probably the first (and only so far) attempt by Chinese courts on “reciprocal understanding or consensus”.

The MOG was first invoked by a Chinese court in [Power Solar System Co., Ltd. v. Suntech Power Investment Pte. Ltd. \(2019\)](#), a case where a Singapore judgment was recognized and enforced in China.

Under this model, only by signing similar memoranda between the SPC and the supreme courts of other countries, the two sides can open the door to mutual recognition of judgments, saving the trouble of signing bilateral treaties. This has greatly lowered the threshold for Chinese courts to facilitate cross-border ‘movement’ of judgments.

(3) Reciprocal commitment without exception

If either China or the country where the judgment is rendered has made a reciprocal commitment through diplomatic channels, and the country where the judgment is rendered has not refused to recognize the Chinese judgment on the ground of lack of reciprocity, then the Chinese court can recognize and enforce the judgment of that country.

“Reciprocal commitment” is the cooperation between two countries through diplomatic channels. In contrast, “reciprocal understanding or consensus” is the cooperation between the judicial branches of the two countries. This allows the diplomatic service to contribute to promoting the portability of judgments.

The SPC has made reciprocal commitments in its judicial policy, i.e., the

Several Opinions on the People's Court Providing Judicial Services and Guarantee to the Belt and Road Initiative Construction (Fa Fa (2015) No. 9) (关于人民法院为“一带一路”建设提供司法服务和保障的若干意见). But so far, we haven't found any country that has such a commitment to China.

2.3 Where will the former reciprocity standards go?

The 2021 Conference Summary completely abandoned the previous practice of Chinese courts in reciprocity – de facto reciprocity and presumptive reciprocity. Will the former reciprocity standards still affect the recognition of reciprocity by Chinese courts?

(1) De facto reciprocity

Before the 2021 Conference Summary, Chinese courts adopted de facto reciprocity, that is, only when a foreign court has previously recognized and enforced a Chinese judgment, will Chinese courts recognize the existence of reciprocity between the two countries, and further recognize and enforce the judgments of that foreign country.

Under what circumstances do Chinese courts deny the de facto reciprocity? In some cases, Chinese courts hold that there is no reciprocity between the two countries under the following two circumstances:

- i. Where the foreign court refuses to recognize and enforce Chinese judgments on the ground of lack of reciprocity;
- ii. Where the foreign court has no opportunity to recognize and enforce Chinese judgments because it has not accepted such applications;

Up to now, Chinese courts have recognized foreign judgments all on the ground of de facto reciprocity.

(2) Presumptive reciprocity

The SPC once put forward the presumptive reciprocity in its judicial policy – Nanning Declaration – if there is no precedent for the judgment-making foreign court to refuse to recognize and enforce Chinese civil and commercial judgments on the ground of reciprocity, then there is reciprocity between the two countries.

The presumptive reciprocity in fact overturns Circumstance B above of denial of de facto reciprocity by Chinese courts, thus liberalizing the standards of de facto reciprocity to a certain extent.

However, up to now, Chinese courts have not recognized foreign judgments on the ground of presumptive reciprocity.

2.4 Chinese courts will examine the existence of reciprocity on a case-by-case basis, which will then eventually be decided by the SPC?

In terms of the reciprocal relationship between China and other countries in the recognition and enforcement of judgments, the existence of reciprocity cannot be recognized by a once-for-all effort. Chinese courts need to examine the existence of reciprocity on a case-by-case basis.

If the local court accepting the application considers that there is a reciprocal relationship between China and the country where the judgment is rendered, it needs to report to its superior court, that is, the high people's court of the place where the local court is located, for confirmation before it formally makes a ruling based on

this view.

If the high people's court agrees to the proposed handling opinions, it needs to further report to the SPC for confirmation, and the SPC will have the final say in this issue.

In other words, the SPC has the final say in recognizing the existence of reciprocity.

3. What Is a Judgment or Ruling

Key takeaways:

✧ The 2021 Conference Summary clarifies the scope of 'foreign judgments', which includes those foreign judgments/rulings/decisions/orders on substantive disputes in civil and commercial cases, as well as those made in criminal cases on civil damages, while excludes foreign interim measures.

Article 41 of the 2021 Conference Summary [Standards for Determining the Foreign Court Judgment or Ruling]:

"The people's court shall, subject to the substance of a judgment or ruling of a foreign court, review and identify whether such judgment or ruling is a 'judgment or ruling' as provided in Article 289 of the PRC Civil Procedure Law (CPL).

Judgments, rulings, decisions, orders and other legal instruments made by foreign courts on substantive disputes in civil and commercial cases, as well as legal instruments made in criminal cases on civil damages, shall be identified as 'judgments and rulings' as specified in Article 289 of the CPL, but excluding preservation orders and other procedural legal documents

made by foreign courts."

INTERPRETATIONS:

1. Such legal instruments as judgments, rulings, decisions and orders made by foreign courts on substantive disputes in civil and commercial cases and on civil damages in criminal cases may be recognized and enforced by the Chinese courts.

2. According to our experience, generally, legal instruments issued by foreign courts for the payment of court fees and lawyer's fees in civil and commercial cases may also be recognized and enforced by Chinese courts.

3. Interim measures (also known as 'preservation measures/orders' in China) or other procedural legal documents issued by foreign courts cannot be recognized and enforced by a Chinese court. This is also consistent with the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

4. What Is a Binding Judgment or Ruling

Key takeaways:

✧ Chinese courts need to examine the validity and finality of a foreign judgment in accordance with the laws of the country where the judgment is rendered.

Article 42 of the 2021 Conference Summary [Determination of the Binding Judgment or Ruling]:

The people's court shall examine whether a judgment or ruling has come into legal

effect pursuant to the laws of the country where the judgment is made. A judgment or ruling pending appeal or in the process of appeal shall not fall within the scope of 'judgment or rulings which have come into legal effect' as stipulated in Article 289 of the CPL.

INTERPRETATIONS:

4.1 Chinese courts will need to ascertain foreign laws

The Chinese courts will examine whether the foreign judgment or ruling has legal effect in accordance with the laws of the country where the judgment is rendered, and confirm whether it is a judgment pending appeal or still in the process of appeal.

As a result, the Chinese court needs to first ascertain the laws of the country where the judgment is rendered.

4.2 You need to help the Chinese court to ascertain foreign laws

More often than not, you may find some Chinese local courts are not very good at ascertaining foreign laws. In this case, if the applicant wants to win the case, he/she needs to provide some help to the Chinese court in determining the legal effect of the foreign judgment or ruling.

For instance, applicants may choose to provide the texts of the foreign laws, together with official inquiry channels to facilitate the verification by Chinese courts.

For another example, where the authorities in the country where the judgment is rendered can issue documents to evidence that the judgment or ruling has come into effect, it is advisable for the applicant to have such

documents prepared.

5. What Happens if the Judgment Has Not Come into Effect or Its Authenticity Cannot Be Determined

Key takeaways:

✧ If a foreign judgment is found not final or inconclusive, Chinese courts would render a ruling to dismiss the application. After the dismissal, the applicant may choose to re-apply when the application satisfies the requirements for acceptance later on.

Article 43 of the Summary [Situations where authenticity and finality of judgment cannot be confirmed]:

When the people's court reviews the application for recognition and enforcement of a foreign court judgment or ruling, in case it cannot confirm the authenticity of the foreign court judgment or ruling upon examination or the judgment or ruling has not come into legal effect, the people's court shall render a ruling to dismiss the application. After the application is dismissed, if the applicant re-applies and the application satisfies the requirements for acceptance, the people's court shall accept such application.

INTERPRETATIONS:

5.1 You need to prove the authenticity of the foreign judgment or ruling

It is advisable for the applicant to provide some instruments endorsed by competent authorities for the Chinese court to determine whether the foreign judgment or

ruling is authentic or not.

For example, if the competent authority in the country where the judgment is rendered can prove that the judgment is authentic, the applicant had better prepare such documents. It is advisable to have such documents, as well as to have the original of the judgment notarized in the country where the judgment is rendered and authenticated by China's Embassy and consulate in the said country.

5.2 You need to prove that the foreign judgment or ruling has come into effect

The best way is to have the relevant supporting documents issued by the competent authority in the country where the judgment is rendered, or to have the judgment or ruling on which the finality is clearly stated.

If the above method is inapplicable, you need to assist the Chinese court to make the determination in accordance with the law of the country where the judgment is rendered.

For example, if the law provides that the judgment becomes effective in case the parties do not appeal within 10 days upon the service of the judgment, then you will need to:

- (1) provide the law to the Chinese court;
- (2) remind the Chinese court of the date rendering the judgment or ruling;
- (3) prove that the judgment or ruling has been legally served to the parties; and
- (4) ensure that the respondent has no evidence to prove that he/she has appealed and that the case is under appeal.

3. If it is difficult to determine the authenticity of the judgment or the judgment has not come into effect, the Chinese court will dismiss the application.

Such dismissal is simply made under such situation at that time.

If you have enough evidence to prove that the judgment is authentic or legally binding, or you have obtained the final and effective judgment afterwards, you may apply to the Chinese court for recognition and enforcement of the foreign court judgment or ruling again.

6. What Documents to Prepare for Enforcing Foreign Judgment in China

Key takeaways:

- ✧ The 2021 Conference Summary provides the documents checklist one needs to prepare for enforcing a foreign judgment in China.
- ✧ Application documents include the original or certified true copy of the foreign judgment, and evidence proving that the judgment is final and conclusive and that the foreign court has legitimately summoned the absentee if the judgment is made in absentia.
- ✧ For documents formulated overseas, it is required to have them notarized in the country where the judgment is rendered and authenticated by the relevant Chinese Embassy or consulate in that country.

Article 35 of the 2021 Conference Summary [Application Documents]:

An applicant to apply for recognition and enforcement of a judgment or ruling of a foreign court shall submit a written application accompanied by the following documents:

- (1) the original or certified true copy of the judgment;
- (2) documents proving that the judgment has come into effect;
- (3) documents proving that the foreign court has legitimately summoned the absentee if the judgment is made in absentia.

If the judgment or ruling has already stated the circumstances under Items (2) and (3) of the preceding paragraph, other supporting documents are not necessarily required to be submitted anymore.

Where the judgment and other documents submitted by the applicant are in a foreign language, they shall be accompanied by a Chinese version stamped with the official seal of the translation institution.

Where the documents submitted by an applicant are made outside the territory of China, the applicant shall go through the procedures of notarization and authentication, or go through the certification procedures as required by relevant international treaties signed between China and the said country.

INTERPRETATIONS:

6.1 You need to file the original or a certified true copy.

It means that you cannot simply file a duplicate of the judgment. In fact, as we

have noticed, in some cases like [Tan Junping et al v. Liu Zuosheng et al \(2020\)](#), the Chinese court dismisses the application on the grounds that the applicant only submits a duplicate of the judgment.

You need to provide an original of the foreign judgment or a certified true copy thereof. Therefore, you'd better ask the court rendering the judgment in advance for a sufficient number of originals or copies.

6.2 You need to provide documents certifying the judgment has come into effect

You will need to prove to the Chinese court that the judgment is conclusive and final. Please refer to our interpretation of Article 43 of the Summary [Situations where authenticity and finality of judgment cannot be confirmed].

6.3 Where the judgment is made in absentia, you will need to prove that the foreign court has legitimately summoned the absentee.

You will need to prove that the party who didn't appear in the court had been subpoenaed by the foreign court and that a writ of summon had been served properly on the said party.

If the absentee is domiciled in the country where the judgment is rendered, you will need to prove that the court rendering the judgment has served the court papers according to the law of the country where the court is located.

If the absentee is domiciled in China, you will need to prove that the court rendering the judgment has served the court papers pursuant to the treaty concluded between

China and the said country, such as the Hague Service Convention or a judicial assistance treaty between China and the said country.

If serving the court papers to China, please do not send it by post. In accordance with the reservation China made upon accession to the Hague Service Convention, as well as the provisions in most of the mutual legal assistance agreements to which China is a party, China does not accept service by post.

6.4 The best way: to write it clearly in the judgment

It is best if the judgment states whether it has become effective, and whether the party who didn't appear in the court had been lawfully summoned.

Because it is sufficient for the court, as the competent authority, to prove the above two factors, which you don't have to prove again.

6.5 The Chinese translation

Under Chinese laws, if any document in a litigation is written in a foreign language, it must be translated into Chinese.

We recommend that you look for an agency in China which specializes in the translation of legal documents. We have found in many cases that Chinese judges often have difficulties in understanding the Chinese translations issued by the translation agencies engaged by the parties outside of China.

6.6 Notarization and Authentication

It is not easy for courts to determine the authenticity of documents formulated overseas. China is not an exception. Chinese courts, therefore, rely on

notarization and authentication to assist in their determination.

Consequently, the above documents are better to be notarized in the country where the judgment is rendered and authenticated by the relevant Chinese Embassy or consulate in that country.

7. How to Write an Application for Enforcing Foreign Judgment in China

Key takeaways:

- ✧ The 2021 Conference Summary outlines what to include in an application for enforcing a foreign judgment in China.
- ✧ Apart from the basic information about the litigants and the foreign judgment, the application should also specify the status and location of the respondent's property, and the status of enforcement of the foreign judgment outside China.

Article 36 of the 2021 Conference Summary [The Application]:

The application shall specify:

1. The applicant and the respondent. If the applicant or respondent is a natural person, the application shall specify his/her name, gender, date of birth, nationality, domicile and ID number; if it is a legal person or an unincorporated organization, it shall indicate its name, domicile, and the name and position of its legal representative or representative;
2. The name of the judgment-making foreign court, the case number of the judgment, the commencement date of the

proceedings and the date of judgment;

3. Specific request and grounds;

4. The status and location of the respondent's property as well as the status of the enforcement of the judgment outside China; and

5. Other matters needed clarification.

INTERPRETATIONS

7.1 The identity information of the litigants

In addition, Chinese courts will usually request the applicant to provide the identity certificate thereof, which shall be notarized in the country where the identity certificate is issued and authenticated by the relevant Chinese Embassy or consulate in that country.

7.2 Information of the foreign judgment

The application should include the name of the judgment-making foreign court, the case number of the judgment, the commencement date of the proceedings and the date of judgment.

In addition, the applicant had better make special clarification of the following two matters:

(1) Whether the judgment is made in absentia; and

(2) Whether the judgment has come into effect.

For details on how the applicant can prove these two matters, see our post 'What Documents to Prepare for Enforcing Foreign Judgment in China'.

7.3 Request and grounds for the application

In respect of the request, the application

shall specify which part of the foreign judgment the applicant wants the Chinese court to recognize and enforce. If the application is for both recognition and enforcement, the applicant shall specify the specific the amount of the monetary obligation it seeks to enforce.

In terms of grounds, the application should indicate why the Chinese court should recognize and enforce the foreign judgment. For example, it is better to include the following grounds,

(1) Whether there are relevant international treaties or bilateral agreements between China and the country where the judgment is rendered, or whether reciprocity exists between China and the said country;

(2) The foreign judgment does not fall under any of the circumstances specified in these treaties or bilateral agreements that will justify the refusal of recognition and enforcement of the judgment, if there are the foregoing international treaties or bilateral agreements;

(3) The foreign judgment does not fall under any of the circumstances specified in the conference summary that will justify the refusal of recognition and enforcement of the judgment, if there is reciprocity; and

(4) The foreign judgment does not violate the basic principles of Chinese law and the public interest of China.

For a detailed discussion of the said matters, see our other related posts.

7.4 Status of enforcement of the foreign judgment

(1) No duplication of enforcement

The applicant also needs to state whether

the foreign judgment has already been enforced, in full or in part, to show that the application will not bring duplication of enforcement. Duplication of enforcement means re-recognition and re-enforcement by the Chinese court of any part of the foreign judgment that has been enforced.

(2) No violation of the settlement agreement during the enforcement procedure

If the applicant has reached a settlement agreement with the respondent on enforcement of the foreign judgment, the applicant's application for recognition and enforcement of the foreign judgment to the Chinese court should not conflict with such settlement agreement.

For instance, if the applicant has agreed to waive part of the respondent's debt in the settlement agreement, the applicant shall not apply again to the Chinese court to enforce the debt.

7.5 Status and location of the respondent's property

(1) Availability of the property

The application shall generally state whether the respondent has any property and what kind of property it is. This is because the availability of the property determines the prospect of enforcement proceedings.

Under Chinese law, if the court finds that the respondent has no executable property after the enforcement is initiated, the enforcement will be terminated. Of course, if the applicant finds that the respondent has executable property thereafter, the applicant may apply for enforcement again.

The applicant is allowed to roughly outline the possible status of the respondent's property and, after the enforcement is initiated, request the court to conduct a more specific investigation of the respondent's property. The court can take extensive means to obtain more accurate information about the property.

(2) Location of the property

The location of the property determines whether the Chinese court accepting the application has jurisdiction over it.

According to the jurisdiction rules, if you apply for recognition and enforcement of a foreign judgment in China, you should submit the application to the court at the place where the respondent is domiciled or the place where the respondent's property is located.

If the respondent is domiciled outside the jurisdiction of that court, the Chinese court will only determine the relevant jurisdiction based on the location of the respondent's property. In this case, you will need to prove that the property is located somewhere in China.

8. What is the Conditions for Enforcement of Foreign Judgments in China

Key takeaways:

✧ The 2021 Conference Summary sets out the grounds on which recognition and enforcement of foreign judgments may be refused. For instance, if the foreign judgment is found to be contrary to the public policy, the Chinese court shall

refuse to recognize and enforce such judgment.

✧ When examining a foreign judgment on the basis of reciprocity, the Chinese court shall rule against recognition and enforcement if, under the Chinese law, the judgment-making foreign court has no jurisdiction over the case.

✧ 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.

Article 45 of the 2021 Conference Summary [Judgment concerning Punitive Damages]:

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

Article 46 of the 2021 Conference Summary [Grounds for the Refusal of Recognition and Enforcement]:

A people's court shall refuse to recognize and enforce the legally effective judgment or order made by a foreign court if, after examining it in accordance with the principle of reciprocity, it finds that any of the following circumstances exists:

- (1) in accordance with Chinese law, the court in the country where the judgment is rendered has no jurisdiction over the case;
- (2) the Respondent has not been lawfully summoned, or has not been given a reasonable opportunity to be heard and defended despite having been lawfully summoned, or the party without legal

capacity has not been properly represented;

(3) the judgment was obtained by fraud; or

(4) the people's court has rendered a judgment on the same dispute, or has recognized and enforced a judgment or arbitral award made by a third country on the same dispute.

Where a legally effective judgment or ruling made by a foreign court violates the basic principles of the Chinese law or violates state sovereignty, security, and public interest, such judgment or ruling shall not be recognized or enforced.

Article 47 of the 2021 Conference Summary [Recognition of Foreign Judgments in Violation of the Arbitration Agreement]:

Where a party concerned applies to a people's court for recognition and enforcement of a default judgment rendered by a foreign court, and the people's court finds upon examination that the parties to the dispute have a valid arbitration agreement and that the absent party does not expressly waive to apply the arbitration agreement, the people's court shall refuse to recognize and enforce the foreign judgment.

INTERPRETATIONS:

You need to distinguish between "refusal of recognition and enforcement" (不予承认和执行) and "dismissal of the application" (驳回申请).

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

(1) 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;

(2) the foreign judgment has not yet entered into force;

(3) the application documents submitted by the applicant have not yet met the requirements of Chinese courts.

Under the above circumstances, once the requirements are met, the applicant can file the application to the Chinese court again.

However, if the foreign judgment, in essence, cannot be recognized and enforced in China, the Chinese court will render a ruling not to recognize and enforce the judgment. The ruling is final and cannot be appealed.

We list the following circumstances that will lead to the refusal of recognition and enforcement.

8.1 The foreign judgment is contrary to China's public policy

Chinese courts will not recognize and enforce a foreign judgment if it is found that the foreign judgment violates basic principles of Chinese law or violates the public interest of China, no matter whether it reviews the application in accordance with the conditions set by the international or bilateral treaties, or on the basis of reciprocity.

However, very few cases have occurred in China where courts have ruled not to recognize or enforce foreign arbitral awards or judgments on the grounds of public policy. Applicants should not worry

too much about it.

As far as we know, there are only five cases with such circumstances, among which:

(1) Two cases for recognition and enforcement of foreign arbitral awards

In the case of Palmer Maritime Inc (2018), the parties concerned applied for arbitration in a foreign country even when the Chinese court had already affirmed the invalidity of the arbitration agreement. The Chinese court held accordingly that the arbitral award had violated China's public policy.

In the case of Hemofarm DD (2008), the Chinese court held that the arbitral award contained decisions on matters not submitted to arbitration and violated China's public policy at the same time.

For a detailed discussion, please read our earlier post "[China Refuses to Recognize a Foreign Arbitral Award on the Grounds of Public Policy for the 2nd Time in 10 Years](#)".

(2) Three cases for recognition and enforcement of foreign judgments

The Chinese court held that the use of facsimile or mail by the foreign court to serve court summons and judgment does not comply with the service methods as stipulated in relevant bilateral treaties, and undermines China's judicial sovereignty.

For a detailed discussion, please read our earlier post, "[China Refuses to Enforce Uzbekistan Judgments Twice, Due to Improper Service of Process](#)".

The above five cases show that Chinese courts limit the interpretation of public interest to very narrow scope and do not extend its interpretation. Therefore, we

believe that in most cases applicants should not be overly concerned.

8.2 The court rendering the judgment has no jurisdiction over the case.

(1) Pursuant to Chinese law, the judgment-making foreign court has no jurisdiction over the case.

The key to determining whether the judgment-making foreign court has jurisdiction (also known as ‘indirect jurisdiction’) over a case lies in the standard, i.e. based on which country’s law, the law of China (the requested state) or the law of the country where the judgment is rendered (the requesting state), the competence of the foreign court is determined?

Nevertheless, it is noted that there is no uniform rule on indirect jurisdiction among the pertinent bilateral agreements — one can find Chinese law as the basis in some agreements, and the law of requesting state, or a list of jurisdictional grounds, in other agreements.

For countries that have concluded international or bilateral treaties with China, Chinese courts shall determine the indirect jurisdiction in accordance with the treaties. Nevertheless, it is noted that there is no uniform rule on indirect jurisdiction among the pertinent bilateral agreements — one can find Chinese law as the basis in some agreements, and the law of requesting state, or a list of jurisdictional grounds, in other agreements.

For countries with a reciprocal relationship with China, the 2021 Conference Summary clarifies in a uniform manner that Chinese courts need to determine whether the foreign court has jurisdiction

over the case in accordance with Chinese law.

(2) There is a valid arbitration agreement between the parties

If the parties have an existing valid arbitration agreement, the foreign court apparently has no jurisdiction over the case.

In addition, if a party responds to the litigation, it is deemed that the party has waived to apply the arbitration agreement, and been subject to the court’s jurisdiction. But what if the judgment is rendered by default?

If the judgment is rendered by default and the absent party does not respond to the case nor expressly waives the right to apply the arbitration agreement, the Chinese court may hold that the arbitration agreement is still valid and has not been waived. Under this situation, foreign courts have no jurisdiction over the case.

8.3 The Respondent’s litigation rights are not fully guaranteed. (Due process requirement)

It mainly refers to the following circumstances where:

(1) the respondent has not been lawfully summoned;

(2) the respondent has not been given a reasonable opportunity to be heard and defended despite having been lawfully summoned; or

(3) the party with no legal capacity is not properly represented.

In this area, Chinese courts pay extra attention to the way in which the notice of court hearings or the written statement of

defense is served. If the ways of service are inappropriate, Chinese courts will consider that the respondent's litigation rights are not fully guaranteed.

Specifically, if the Respondent is in China, the writ of summons must be served in a manner accepted by China, i.e, under the treaties (if there are any applicable international and bilateral treaties) or by diplomatic means.

8.4 The judgment was obtained by fraud

This requirement is consistent with the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

8.5 Conflicting judgments

The Chinese court will consider that conflicting judgments exist in China and refuse to recognize and enforce the judgment accordingly under the following circumstances where :

- (1) the Chinese court has rendered a judgment on the same dispute; or
- (2) China has recognized and enforced a judgment or arbitral award rendered by a third country in respect of the same dispute.

However, if a Chinese court is in the process of hearing the same dispute but has not yet made a binding judgment, how will the Chinese court handle the application for recognition and enforcement of a foreign judgment? Chinese law does not clearly stipulate how to handle such a case potentially leading to conflicting judgments.

“Dismissal of the application” is the solution we find Chinese courts adopt in a recent case. However, the Chinese court in this case does not give any reasons in

its judgment.

We surmise that the court seems to believe that there are two prospects:

- (1) No conflicting judgment appears after the dismissal of the application

If the plaintiff in the future withdraws its lawsuit in the same dispute currently heard in the Chinese court, the conflicting judgment would not appear. In such a case, the creditor may re-apply to the Chinese court for recognition and enforcement of the foreign judgment.

- (2) Conflicting judgment appears after the dismissal of the application

If the Chinese court finally rendered a judgment on the dispute which later comes into effect, the conflicting judgment appears now. Creditors can no longer apply for recognition and enforcement of foreign judgments.

Nevertheless, at this time, the creditor has already obtained the favorable judgment rendered by the Chinese court and remedies arising therefrom, and it does not need to apply for recognition and enforcement of the foreign judgment again.

8.6 Punitive damages

If the amount of damages awarded by the foreign judgment significantly exceeds the applicant's actual loss, the Chinese court may not recognize and enforce the excess.

In some countries, courts may grant a large sum of punitive damages. However, in China, on the one hand, the basic principle of civil compensation is the “principle of full compensation”, which means compensation shall not exceed the losses incurred; on the other hand, a huge amount of punitive damages are not widely

acceptable in China's social and business practice for the time being.

That being said, China's recent legislation moves gingerly beyond the "principle of full compensation", i.e., punitive damages are recognized in specific areas and are required not to exceed a specific capped amount.

For example, China's Civil Code, enacted in 2020, allows punitive damages in three areas, namely, intellectual property infringement, product liability and environmental pollution.

For the time being, it seems that Chinese courts are not prepared to get such a breakthrough on punitive damages in the recognition and enforcement of foreign judgments.

9. Where to File Application for Enforcing Foreign Judgments in China

Key takeaways:

- ✧ The 2021 Conference Summary provides the supplementary rules on jurisdiction in cases of the recognition and enforcement of foreign judgments in China.
- ✧ As the general rule of jurisdiction, the Chinese court of the place where the respondent is domiciled or where the enforceable property is located has the jurisdiction.
- ✧ As a supplementary jurisdiction rule, the Chinese court at the place of the applicant's domicile is the competent court. This rule applies only for applications for recognition (rather than enforcement or

recognition and enforcement concurrently) of foreign judgments in China.

- ✧ The time limit for filing a jurisdictional challenge is 15 days for respondents domiciled in China, and 30 days for those not domiciled in China.

Article 34 of the 2021 Conference Summary [Supplementary Jurisdiction Rule -the Court at the Place of the Applicant's Domicile]:

Where an applicant applies for recognizing a judgment or ruling of a foreign court, but the respondent has no domicile within the territory of China, and its property is not within the territory of China, the application may come under the jurisdiction of the intermediate people's court of the place where the applicant has his domicile.

INTERPRETATIONS:

9.1 General jurisdiction rule

The 2021 Conference Summary provides a supplementary rule on jurisdiction of Chinese courts in cases of recognition and enforcement of foreign judgments.

The general jurisdiction rule is that the court of the place where the respondent is domiciled or where the enforceable property is located has the jurisdiction.

As the general rule on jurisdiction, the applicant shall apply for recognition and enforcement of the foreign judgment to the court in the place where the respondent is domiciled or where the enforceable property is located.

To be more specific, under this rule, in cases where the applicant wishes to apply for recognition and enforcement of foreign judgments concurrently:

(1) where the respondent has a domicile in China, the intermediate court in the place where the Respondent is domiciled may have jurisdiction over the case; or

(2) where the enforceable property of the respondent is located in China, the intermediate court in the place where the property is located may also have jurisdiction over the case.

If the respondent and his/her property are not in China, the Chinese court cannot take actual enforcement actions and thus will not admit cases involving enforcement.

9.2 Supplementary jurisdiction rule: the court at the place of the applicant's domicile

If the applicant only wishes to apply for recognition of a foreign judgment – such as a divorce judgment – and does not involve the enforcement of that judgment, such case will not involve actual enforcement by the Chinese court. In such cases, the supplementary jurisdictional rule can apply, which grants jurisdiction to the court at the place of the applicant's domicile.

In other words, if the applicant applies for recognition of foreign judgment only, but the respondent has no domicile in China, and his/her property is not in China either, it can be under the jurisdiction of the intermediate people's court in the place where the applicant is domiciled.

10. Can Applicant Seek Interim Measures from Chinese Courts

Key takeaways:

✧ The 2021 Conference Summary

provides the rules on whether and how applicants may seek interim measures (conservatory measures) in cases of the recognition and enforcement of foreign judgments in China.

✧ Yes, a party may seek property reservation directly from Chinese courts, after (or even before) filing an application for recognition and enforcement of foreign judgments.

Article 39 of the 2021 Conference Summary [Conservatory Measures]

Where a party applies to the people's court for recognition and enforcement of a foreign judgment or ruling, after the people's court accepts the application, if the party applies for property preservation, the people's court may implement the property preservation with reference to the provisions of the Civil Procedure Law and relevant judicial interpretations. The applicant shall provide a guarantee for the property preservation, otherwise the people's court shall rule to dismiss the application.

INTERPRETATIONS:

10.1 The applicant may request the Chinese court to take interim measures (conservatory measures)

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.

In such cases, conservatory measures can

be roughly divided into two categories:

(1) Property preservation, which refers to the preservation of the property of the respondent;

(2) Conduct preservation, which refers to ordering the respondent to do certain acts or prohibiting it from doing certain acts.

Given that the major claim of the applicant is to use the executable property of the respondent to pay off the judgment debt, property preservation is the most commonly used conservatory measure in cases of recognition and enforcement of judgments.

10.2 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.

Previously, there was no explicit legal basis on whether the applicant can apply for conservatory measures in cases of recognition and enforcement of foreign judgments, and views of Chinese courts on this issue varied from one to another. This has deprived the applicant of reasonable expectation on whether it can

resort to such a mechanism.

Now, the 2021 Conference Summary officially recognizes this mechanism to protect the interests of the applicant.

10.3 What specific measures can Chinese courts take

In terms of property preservation, the applicant may request the court to sequester, seize, freeze or otherwise dispose of (if legally feasible) the executable property of the respondent.

Once the property is subject to such measures, the respondent is often unable to transfer, sell, control or use the property until the court uses the property to pay off the judgment debt.

10.4 What price does the applicant need to pay for this

The court may, upon application by the applicant for conservatory measures, require the applicant to provide a guarantee to avoid the abuse of such measures by the applicant.

The applicant may provide a guarantee to the court with its own property or request a financial institution to do so on its behalf. At present, many financial institutions (including banks, insurance companies, guarantee companies, etc.) in China can provide such services.

11. How to Challenge the Jurisdiction of the Chinese Court

Key takeaways:

✧ The applicant shall provide a guarantee for the property preservation,

otherwise the people's court shall rule to dismiss the application.

Article 38 of the 2021 Conference Summary [Jurisdictional Challenge]:

After the people's court has accepted an application for recognition and enforcement of a judgment or ruling of a foreign court, if the respondent challenges the jurisdiction, the respondent shall file the challenge within 15 days upon the date of receiving the application copy; where the respondent has no domicile within the territory of China, the challenge shall be filed within 30 days upon the date of receipt of the application copy.

The people's court shall examine and render a ruling on the jurisdictional challenge filed by the respondent. If the party is not satisfied with the ruling on the jurisdictional challenge, he may file an appeal.

INTERPRETATIONS:

11.1 Time limit for filing a jurisdictional challenge

If the respondent considers that the Chinese court has no jurisdiction over the application for recognition and enforcement of the foreign judgment, he/she should file the challenge within a specified time limit. Specifically:

(1) where the respondent has domicile within the territory of China, he/she shall file such challenge within 15 days upon the date of receipt of the application copy;

(2) where the respondent has no domicile within the territory of China, the challenge shall be filed within 30 days from the date of receipt of the application copy.

The 15-day period is in line with the time

limit for filing a jurisdictional challenge in other civil litigation cases in China. The 30-day period, however, is an exception provided for the respondents who are not domiciled in China, so that they can have enough time to deal with cross-border affairs.

11.2 Examination of a jurisdictional challenge

The Chinese court shall render a ruling after examining the jurisdictional challenge filed by the respondent. The ruling is subject to appeal.

In China, challenging the court's jurisdiction and appealing its ruling are common strategies used by the defendants/respondents to delay the proceedings. Chinese courts are not happy with this and attempt to restrict those jurisdictional challenges in which the litigation is clearly delayed in bad faith. Nevertheless, such strategies are still common in practice.

Therefore, the applicant needs to be aware that the respondent may also adopt similar strategies in cases of recognition and enforcement of foreign judgments.

12. How Do Chinese Courts Examine Cases at Case Filing

Key takeaways:

✧ The 2021 Conference Summary provides the rules on case filing, service of process and withdrawal of application in cases of the recognition and enforcement of foreign judgments in China.

✧ If the court finds that the application

does not meet the case filing conditions, it will rule not to accept the case. If the court finds the situation after case acceptance, it will rule to dismiss the application. Both types of ruling may be subject to appeal.

Article 40 of the 2021 Conference Summary [Case Filing Examination]:

If the applicant's application does not meet the case filing conditions, the people's court shall rule not to accept the case and explain the reasons for non-acceptance. If the case has been accepted, the people's court shall rule to dismiss the application. If the party refuses to accept the dismissal, it may appeal. If, after the people's court rules not to accept the case or to dismiss the application, the applicant applies again and meets the case filing conditions, the people's court shall accept the case.

INTERPRETATIONS:

12.1 What is the case filing examination

The Chinese court will, upon receiving the application filed by the applicant, first conduct a formality examination to determine the satisfaction of the case filing conditions.

12.2 What case filing conditions should be met

The Supreme People's Court (SPC) has stipulated the case filing conditions of applying for judgment enforcement in the "Provisions on Several Issues Concerning the Enforcement of Judgments by People's Courts (For Trial Implementation) (2020)" (Fa Shi [2020] No. 21) (hereinafter the "Provisions", 《关于人民法院执行工作若干问题的规定(试行)(2020)》(法释(2020)21号)). Although the Provisions is aimed at the enforcement of effective judgments, including domestic judgments and foreign

judgments whose effectiveness has been recognized by Chinese courts, it is also of reference significance for determining the case filing conditions of applying for recognition and enforcement of foreign judgments.

Accordingly, the case filing conditions for an application for recognition and enforcement of a foreign judgment are as follows:

- (1) The application form is in a standardized format with complete information. The foreign judgment is a legal document enforceable by Chinese courts enumerated in the 2021 Conference Summary;
- (2) The foreign judgment has entered into force;
- (3) If both the recognition and the enforcement of a foreign judgment are proposed at the same time, the foreign judgment shall contain the obligation to pay and to perform (for application for recognition of a foreign judgment only, such condition is not required);
- (4) The applicant is the judgment creditor determined by the foreign judgment or its inheritor or successor to the rights thereof;
- (5) The identity of the respondent is known and the respondent is the judgment debtor determined by the foreign judgment;
- (6) The executable property of the respondent is known;
- (7) The applicant applies within the statutory time limit;
- (8) The respondent fails to perform its obligations within the time limit determined by the foreign judgment;

(9) The case falls under the jurisdiction of the receiving court; and

(10) The applicant submits the required application materials.

12.3 What will the court do if the case filing conditions are not met

If the court finds that the application does not meet the case filing conditions, it will rule not to accept the case. If the court finds the situation after case acceptance, it will rule to dismiss the application. Both types of rulings may be subject to appeal.

If, after the Chinese court rules not to accept the case or to dismiss the application, the applicant meets the case filing conditions, it may apply again. The court will accept the application and examine its satisfaction with the case filing conditions.

13. How Service on the Respondent Works

Key takeaways:

✧ If the law of the respondent's country does not prohibit electronic service, the Chinese court may serve the process by electronic means, unless otherwise prohibited by the international treaties concluded or acceded to by China.

✧ If the respondent's country is a contracting state of the Hague Service Convention and declares its objection to service by mail thereunder, it shall be presumed that electronic service is not allowed. At this point, Chinese courts cannot serve the process by electronic means.

✧ The time limit for submitting its opinions is 15 days for respondents domiciled in China, and 30 days for those not domiciled in China.

Article 37 of the 2021 Conference Summary [Service on the Respondent]:

Where a party applies for recognition and enforcement of a foreign judgment or ruling, the people's court shall list the other party as the respondent in the judgment. If both parties apply so, they shall be both listed as the applicant.

The people's court shall serve a copy of the application on the respondent. The respondent shall submit its opinions within 15 days after the date of receipt of a copy thereof; if the respondent has no domicile within the territory of the People's Republic of China, it shall submit its opinions within 30 days after the date of receipt of a copy thereof. The respondent's failure to submit its opinions within the above-mentioned time limit shall not affect the examination by the people's court.

INTERPRETATIONS:

13.1 Who is the respondent

In a foreign judgment, the opposite party of the applicant is the respondent. If both parties apply for recognition, they shall be both listed as applicants.

13.2 How does the applicant serve the process on the respondent

The court will serve a copy of the application to the respondent at the address provided by the applicant. Therefore, it is advised that the applicant provide accurate contact information of the respondent.

If the respondent has no domicile in China,

the Chinese court will serve the process in accordance with the pertinent bilateral treaty or the Hague Service Convention.

Chinese courts can also serve the process by electronic means, as long as the following requirements are met (Art. 11 of the 2021 Conference Summary):

(1) If the law of the respondent's country does not prohibit electronic service, the Chinese court may serve the process by electronic means, unless otherwise prohibited by the international treaties concluded or acceded to by China.

(2) If the respondent's country is a contracting state of the Hague Service Convention and declares its objection to service by mail thereunder, it shall be presumed that electronic service is not allowed. At this point, Chinese courts cannot serve the process by electronic means.

13.3 The respondent may submit its opinions within a prescribed time limit

The respondent shall submit its opinions within 15 days as of the date of receiving a copy of the application; if the respondent has no domicile in China, it shall submit its opinions within 30 days as of the date of receiving a copy thereof. The respondent's failure to submit opinions within the above-mentioned time limit shall not affect the examination by the Chinese court.

14. How Withdrawal of Application Works

Key takeaways:

- The applicant may request to withdraw

the application after the Chinese court has accepted the application for recognition and enforcement of a foreign judgment but not yet made a ruling.

- The withdrawal of an application shall not affect a re-application. If the applicant applies again and meets the case filing conditions, the Chinese court shall accept the case.

Article 48 of the 2021 Conference Summary [Handling of Withdrawal of Application]:

The people's court shall rule to allow the applicant's request to withdraw the application after the people's court has accepted the application for recognition and enforcement of a foreign judgment or ruling but not yet made a ruling.

Although the people's court has ruled to allow the withdrawal of the application, the people's court shall still accept the case if the applicant applies again and meets the case filing conditions.

If the applicant refuses to participate in the inquiry procedure without justified reasons, it shall be deemed as an automatic withdrawal of the application by the applicant.

INTERPRETATIONS:

14.1 The applicant may withdraw its application

After the Chinese court has accepted the application for recognition and enforcement of a foreign judgment but not yet made a ruling, the applicant may request to withdraw the application, and the Chinese court may rule to allow the application accordingly.

14.2 Withdrawal of application shall not affect a re-application

Although the Chinese court has ruled to allow the withdrawal of the application, if the applicant applies again and meets the case filing conditions, the Chinese court shall accept the case.

14.3 The default of the applicant will be deemed as a withdrawal of application

If the applicant refuses to participate in the inquiry procedure organized by the Chinese court without justified reasons, the Chinese court may deem such default as an automatic withdrawal of the application by the applicant.

15. How Chinese Courts Ensure Impartiality in Enforcing Foreign Judgments: Ex Ante Internal Approval and Ex Post Filing

Key takeaways:

✧ The 2021 Conference Summary provides the rules on ex ante internal approval and ex post filings – a mechanism designed by China’s Supreme People’s Court (SPC) to ensure impartiality in enforcing foreign judgments.

✧ The adoption of ex ante approval depends on whether the court examines the application based on treaty or reciprocity. Ex ante approval is a must for those based on reciprocity. By contrast, such approval is not required for those based on a pertinent treaty.

✧ In ex ante approval mechanism, the local court shall, before making a ruling, report its handling opinions level by level

for approval, and the SPC shall have a final say on the handling opinions.

✧ Ex ante approval is believed to lead to an increase in the success rate of recognition and enforcement of foreign judgments.

Article 49 of the 2021 Conference Summary [Ex Ante Internal Approval and Ex Post Filing Mechanism]:

People’s courts at all levels that close cases of recognition and enforcement of foreign judgments shall, within 15 days after making the ruling, report the cases level by level to the Supreme People’s Court for filing. The filing materials include the application submitted by the applicant, the foreign judgment and its Chinese translation, and the ruling made by the people’s court.

The people’s court shall, before making a ruling on a case examined in accordance with the principle of reciprocity, submit its proposed handling opinions to the high people’s court of the same jurisdiction for examination; if the high people’s court agrees with the proposed handling opinions, it shall submit its examination opinions to the SPC for examination and approval. No ruling shall be made until the SPC gives a reply.

INTERPRETATIONS:

15.1 Ex ante internal approval mechanism

It is through the ex ante internal approval mechanism that the SPC limits the discretion of local courts in cases of recognition and enforcement of foreign judgments. Although this mechanism impairs, to some extent, the independence of local courts, it will in practice greatly

improve the success rate of recognition and enforcement of foreign judgments.

(1) The adoption of ex ante approval depends on whether the court examines the application based on treaty or reciprocity

i. No ex ante approval required for applications based on pertinent treaties

If the country where the judgment is rendered has concluded relevant international and bilateral treaties with China, the local court accepting the application can examine the case directly based on such treaties.

At this point, the local court does not need to report to its next higher level court for approval before making a ruling.

ii. Ex ante approval required for applications based on reciprocity

If the country where the judgment is rendered has not concluded relevant international and bilateral treaties with China, the local court accepting the application will examine the case based on reciprocity.

At this point, the local court shall, before making a ruling, report its handling opinions level by level for approval, and the SPC shall have a final say on the handling opinions.

(2) How is ex ante approval carried out

Specifically:

Step 1: the local court accepting the application shall, after deciding to make a ruling, request its next higher level court, i.e., the high people's court of the same jurisdiction, to conduct a preliminary examination of its proposal. If the high

people's court disagrees with the proposal, it will require the local court to make revisions.

Step 2: if the proposal of the local court accepting the application is approved by the high people's court, the proposal will be further reported to the next higher level court, i.e., the SPC. Therefore, the SPC has a final say to the proposal.

(3) Why does the approval procedure vary depending on the examination basis

In our view, the core reason is that the SPC is not fully confident in the ability of local courts to handle such cases, and is worried that some may unreasonably refuse to recognize and enforce foreign judgments.

i. Case examination based on treaties

Since the examination requirements are detailed in the treaties, local courts only need to conduct the examination according to such explicit requirements. In this situation, the SPC is relatively less worried about local courts making mistakes in such cases.

ii. Case examination based on reciprocity

The SPC is not fully confident in the ability of local courts in determining the reciprocal relationship between China and the country where the judgment is rendered. Well, we have to admit that this worry is reasonable to some extent.

Because if local courts want to make such a determination, they need the ability to ascertain and fully understand the law of the country where the judgment is rendered; which, however, is something that some local courts are not very capable of. As a result, they may not be able to fully

understand the situation and make reasonable judgments accordingly.

(4) What does ex ante approval mean

This, in most situations, means an increase in the success rate of recognition and enforcement of foreign judgments.

If the local courts need the approval of the SPC before making a ruling, this means that the view of the SPC will directly affect the outcome of each case.

So, what is the view of the SPC?

Judging from the judicial policies of the SPC since 2015 and the outcome of local courts hearing such cases under the guidance of these judicial policies, the SPC hopes that more foreign judgments can be recognized and enforced in China.

The latest evidence of this judgment is that the 2021 Conference Summary has further relaxed the criteria on reciprocity, so as to avoid foreign judgments being refused for recognition and enforcement in China due to the previous strict reciprocity criteria.

Therefore, we believe that the SPC's ex ante approval intends to improve the success rate in recognition and enforcement of foreign judgments.

In fact, the SPC has also designed an internal report and review mechanism to ensure that foreign arbitral awards are treated reasonably by local Chinese courts. Although the said mechanism is slightly different from the ex ante approval, their purposes are basically the same.

15.2 Ex post filing

For any case of recognition and enforcement of foreign judgments, whether it is examined in accordance with international and bilateral treaties or based on reciprocity, the local court shall, after making a ruling on recognition or non-recognition, report to the SPC for filing.

For cases examined based on international and bilateral treaties, local courts are not subject to the SPC's ex ante approval mechanism, but they still need to report to the SPC for filing afterwards. This means that the SPC hopes to have a timely knowledge of local courts' handling of such cases.

Why is the ex post filing required? We believe that:

From a macro perspective, the SPC hopes to have a comprehensive knowledge of the recognition and enforcement of foreign judgments in China, so as to facilitate itself to adjust China's overall policy in this field.

From a micro perspective, the SPC also hopes to understand the problems encountered and solutions adopted by local courts in each case. If the SPC believes that the practices of the local courts are inappropriate, it may, through relevant mechanisms, make the local courts adopt more reasonable practices on these issues in the future.

PART V TEXTS OF THE 2021 CONFERENCE SUMMARY (CHINESE VERSION)

Below is the original Chinese version of the 2021 Conference Summary published on the website of China International Commercial Court of the Supreme People's Court.

33. 【审查标准及适用范围】

人民法院在审理申请承认和执行外国法院判决、裁定案件时，应当根据民事诉讼法第二百八十九条以及民事诉讼法司法解释第五百四十四条第一款的规定，首先审查该国与我国是否缔结或者共同参加了国际条约。有国际条约的，依照国际条约办理；没有国际条约，或者虽然有国际条约但国际条约对相关事项未作规定的，具体审查标准可以适用本纪要。

破产案件、知识产权案件、不正当竞争案件以及垄断案件因具有较强的地域性、特殊性，相关判决的承认和执行不适用本纪要。

34. 【申请人住所地法院管辖的情形】

申请人申请承认外国法院判决、裁定，但被申请人在我国境内没有住所地，且其财产也不在我国境内的，可以由申请人住所地的中级人民法院管辖。

35. 【申请材料】

申请人申请承认和执行外国法院判决、裁定，应当提交申请书并附下列文件：

- (1) 判决书正本或者经证明无误的副本；
- (2) 证明判决已经发生法律效力的文件；
- (3) 缺席判决的，证明外国法院合法传唤缺席方的文件。

判决、裁定对前款第2项、第3项的情形已经予以说明的，无需提交其他证明文件。

申请人提交的判决及其他文件为外文的，应当附有加盖翻译机构印章的中文译本。

申请人提交的文件如果是在我国领域外形成的，应当办理公证认证手续，或者履行中华人民共和国与该所在国订立的有关国际条约规定的证明手续。

36. 【申请书】

申请书应当载明下列事项：

(1) 申请人、被申请人。申请人或者被申请人为自然人的，应当载明其姓名、性别、出生年月、国籍、住所及身份证件号码；为法人或者非法人组织的，应当载明其名称、住所地，以及法定代表人或者代表人的姓名和职务；

(2) 作出判决的外国法院名称、裁判文书案号、诉讼程序开始日期和判决日期；

(3) 具体的请求和理由；

(4) 申请执行判决的，应当提供被申请人的财产状况和财产所在地，并说明该判决在我国领域外的执行情况；

(5) 其他需要说明的情况。

37. 【送达被申请人】

当事人申请承认和执行外国法院判决、裁定，人民法院应当在裁判文书中将对方当事人列为被申请人。双方当事人提出申请的，均列为申请人。

人民法院应当将申请书副本送达被申请人。被申请人应当在收到申请书副本之日起十五日内提交意见；被申请人在中华人民共和国领域内没有住所的，应当在收到申请书副本之日起三十日内提交意见。被申请人在上述期限内不提交意见的，不影响人民法院审

查。

38.【管辖权异议的处理】

人民法院受理申请承认和执行外国法院判决、裁定案件后，被申请人对管辖权有异议的，应当自收到申请书副本之日起十五日内提出；被申请人在中华人民共和国领域内没有住所的，应当自收到申请书副本之日起三十日内提出。

人民法院对被申请人提出的管辖权异议，应当审查并作出裁定。当事人对管辖权异议裁定不服的，可以提起上诉。

39.【保全措施】

当事人向人民法院申请承认和执行外国法院判决、裁定，人民法院受理后，当事人申请财产保全的，人民法院可以参照民事诉讼法及相关司法解释的规定执行。申请人应当提供担保，不提供担保的，裁定驳回申请。

40.【立案审查】

申请人的申请不符合立案条件的，人民法院应当裁定不予受理，同时说明不予受理的理由。已经受理的，裁定驳回申请。当事人不服的，可以提起上诉。人民法院裁定不予受理或者驳回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。

41.【外国法院判决的认定标准】

人民法院应当根据外国法院判决、裁定的实质内容，审查认定该判决、裁定是否属于民事诉讼法第二百八十九条规定的“判决、裁定”。

外国法院对民商事案件实体争议作出的判决、裁定、决定、命令等法律文书，以及在刑事案件中就民事损害赔偿作出的法律文书，应认定属于民事诉讼法第二百八十九条规定的“判决、裁定”，但不包括外国法院作出的保全裁定以及其他程序性法律文书。

42.【判决生效的认定】

人民法院应当根据判决作出国的法律审查该判决、裁定是否已经发生法律效力。有待上诉或者处于上诉过程中的判决、裁定不属于民事诉讼法第二百八十九条规定的“发生法律效力”的判决、裁定”。

43.【不能确认判决真实性和终局性的情形】

人民法院在审理申请承认和执行外国法院判决、裁定案件时，经审查，不能够确认外国法院判决、裁定的真实性，或者该判决、裁定尚未发生法律效力的，应当裁定驳回申请。驳回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。

44.【互惠关系的认定】

人民法院在审理申请承认和执行外国法院判决、裁定案件时，有下列情形之一的，可以认定存在互惠关系：

(1) 根据该法院所在国的法律，人民法院作出的民商事判决可以得到该国法院的承认和执行；

(2) 我国与该法院所在国达成了互惠的谅解或者共识；

(3) 该法院所在国通过外交途径对我国作出互惠承诺或者我国通过外交途径对该法院所在国作出互惠承诺，且没有证据证明该法院所在国曾以不存在互惠关系为由拒绝承认和执行人民法院作出的判决、裁定。

人民法院对于是否存在互惠关系应当逐案审查确定。

45.【惩罚性赔偿判决】

外国法院判决的判项为损害赔偿金且明显超出实际损失的，人民法院可以对超出部分裁定不予承认和执行。

46.【不予承认和执行的事由】

对外国法院作出的发生法律效力

定，人民法院按照互惠原则进行审查后，认定有下列情形之一的，裁定不予承认和执行：

（一）根据中华人民共和国法律，判决作出国法院对案件无管辖权；

（二）被申请人未得到合法传唤或者虽经合法传唤但未获得合理的陈述、辩论机会，或者无诉讼能力的当事人未得到适当代理；

（三）判决通过欺诈方式取得；

（四）人民法院已对同一纠纷作出判决，或者已经承认和执行第三国就同一纠纷做出的判决或者仲裁裁决。

外国法院作出的发生法律效力判决、裁定违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，不予承认和执行。

47.【违反仲裁协议作出的外国判决的承认】

外国法院作出缺席判决后，当事人向人民法院申请承认和执行该判决，人民法院经审查发现纠纷当事人存在有效仲裁协议，且缺席当事人未明示放弃仲裁协议的，应当裁定不予承认和执行该外国法院判决。

48.【对申请人撤回申请的处理】

人民法院受理申请承认和执行外国法院判决、裁定案件后，作出裁定前，申请人请求撤回申请的，可以裁定准许。

人民法院裁定准许撤回申请后，申请人再次申请且符合受理条件的，人民法院应予受理。申请人无正当理由拒不参加询问程序的，按申请人自动撤回申请处理。

49.【承认和执行外国法院判决的报备及通报机制】

各级人民法院审结当事人申请承认和执行外国法院判决案件的，应当在作出裁定后十五日内逐级报至最高人民法院备案。备案材料包括申请人提交的申请书、外国法院判决及其中文译本、人民法院作出的裁定。

人民法院根据互惠原则进行审查的案件，在作出裁定前，应当将拟处理意见报本辖区所属高级人民法院进行审查；高级人民法院同意拟处理意见的，应将其审查意见报最高人民法院审核。待最高人民法院答复后，方可作出裁定。

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