



2023 GUIDE TO ENFORCE US JUDGMENTS IN CHINA

**Enforcing Judgments in China While
Litigation in the United States**

Second Edition

CJO GLOBAL
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2023 Guide to Enforce US Judgments in China

Introduction

Can I sue Chinese companies in the United States and then enforce a US judgment in China?

You probably don't want to travel so far away as to file a lawsuit in China. You may just want to take your case to the court on your doorstep because you are more familiar with your home country.

However, you are also aware that most, if not all, of the Chinese debtor's assets are located in China. As a result, even if you win the case in your home country, you will still need to have your judgment enforced in China.

Under Chinese law, you cannot enforce a judgment in China on your own or through another agency. You will need to apply to the Chinese courts for recognition and enforcement of your judgment.

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

Since 2015, China has adopted a more friendly attitude towards the recognition and enforcement of foreign judgments. A number of judicial policies, such as two BRI-related judicial documents, and judicial outreach, such as the Nanning Statement, have shown that Chinese courts are more open and willing to recognize and enforce foreign judgments than ever before.

Even more promising, China's Supreme People's Court (SPC) began applying new rules in 2022, and China's top legislature passed the Fifth Amendment to the PRC Civil Procedure Law in 2023, all of which aim to ensure transparent and fair procedures and practices, thereby improving predictability for all judgment creditors.

In summary, now is the time to consider the enforcement of your judgments in China.

2023 Guide to Enforce US Judgments in China

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

Yes.

US judgments can be recognized and enforced in China.

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

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

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

The United States falls under 'Circumstance II' because:

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

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

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

(3) In practice, the Chinese courts have already recognized and enforced U.S. judgments based on the principle of reciprocity.

2. Have China and the United States recognized and enforced each other's judgments?

Yes.

The United States has recognized and enforced Chinese judgments, and likewise, China has recognized and enforced the US judgments.

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

America (USA) - China

List of Cases on Recognition of Foreign Judgments

No.	Result	Grounds	Data	State of Origin	Requested State	Cause of Action	Court Addressed	Decisions of the Court Addressed
1	No	Lack of Reciprocity	2009-04-15	USA	China	Divorce-Property Division (real estate)	长沙市中级人民法院Changsha Intermediate People's Court	Bauer Douglas Hermansson [transliteration] v. Long Xia, (2009) Chang Zhong Min Ta Zi No. 0104 ((2009)长中民他字第0104号)
2	No	Lack of Reciprocity, exclusive jurisdiction	2010-07-28	USA	China	Divorce-Property Division (real estate)	杭州中级人民法院Hangzhou Intermediate People's Court	Lin Hong v. Wang Lei, (2010) Zhe Hang Min Que Zi No. 4 ((2010)浙杭民确字第4号)
3	No	Lack of Reciprocity	2017-04-20	USA	China	Personal Injury Compensation	南昌中级人民法院Nanchang Intermediate People's Court	Herbert Truhe et al. vs. Jianxi Province Lidu Fireworks Co. Ltd., (2016) Gan 01 Min Chu No. 354 ((2016)赣01民初354号)
4	Withdrawal	/	2017-05-10	USA	China	Contract	西安中级人民法院Xi'an Intermediate People's Court	Senah, Inc. v. AVIC Forstar S&T Co., Ltd., (2017) Shan 01 Min Te 059 ((2017)陕01民特059号)
5	Yes	/	2017-06-30	USA	China	Contract	武汉中级人民法院Wuhan Intermediate People's Court	Liu Li v. Taoli & Tongwu, (2015) E Wu Han Zhong Min Shang Wai Chu Zi No. 00026 ((2015)鄂武汉中民商外初字第00026号)
6	Transfer of Jurisdiction	Lack of jurisdiction	2017-08-07	USA	China	Contract	信阳中级人民法院Xinyang Intermediate People's Court	Matthew Yangli v. Lei Fukang, (2016) Yu 15 Xie Wai Shen No. 3 ((2016)豫15协外认3号)
7	Yes	/	2018-09-17	USA	China	Contract	上海第一中级人民法院Shanghai First Intermediate People's Court	Nalco Co. v. Chen, (2017) Shang Hai 01 Xie Wai Ren No. 16 ((2017)沪01协外认16号)
8	No	Lack of finality	2020-11-05	USA	China	Shareholder	无锡市中级人民法院Wuxi Intermediate People's Court	Wuxi Luoshe Printing & Dyeing Co. Ltd. v. Anshan Li et al. (2017) Su 02 Xie Wai Ren No. 1-2 ((2017)苏02协外认1号之二)
9	Yes	/	2020-09-23	USA	China	Contract	宁波市中级人民法院Ningbo Intermediate People's Court	Wen v. Huang et al. (2018) Zhe 02 Xie Wai Ren No.6((2018)浙02协外认6号)

No.	Result	Grounds	Data	State of Origin	Requested State	Cause of Action	Court Addressed	Decisions of the Court Addressed
10	Yes	/	2022-03-04	USA	China	Contractual Fraud (Visa fraud)	广州中级人民法院Guangzhou Intermediate People's Court	Anqin Wang v. Fang Zeng (2019) Yue 01 Xie Wai Ren No. 3 ((2019)粤01协外认3号)
11	Yes	/	2022-03-04	USA	China	Contractual Fraud (Visa fraud)	广州中级人民法院Guangzhou Intermediate People's Court	Hui Jiang, Jun Huang, et al. v. Fang Zeng (2018) Yue 01 Xie Wai Ren No. 21, No. 26, No. 27, No. 28, No. 32, ((2018)粤01协外认21 26、27、28、32号), (2019) Yue 01 Xie Wai Ren No. 58 ((2019)粤01协外认58号)
12	Yes	/	2022-03-07	USA	China	Contractual Fraud (Visa fraud)	广州中级人民法院Guangzhou Intermediate People's Court	Yeqing Xia v. Fang Zeng (2019) Yue 01 Xie Wai Ren No. 22 ((2019)粤01协外认22号)
13	No	Lack of authenticated copy of the foreign judgment	2008-07-18	China	USA	International collection	US District Court for the Western District of Texas	Ningbo FTZ Sanbang Industry Co. v. Frost National Bank, No. 5:08-CV-585 (W.D. Tex. July 18, 2008), aff'd, 338 Fed. Appx. 415 (5th Cir. 2009)
14	Yes	/	2009-06-03	China	USA	/	US District Court, S.D. Indiana, Indianapolis Division	KiC Suzhou Automotive Products Ltd. v. Xia Xuguo, 2009 WL 10687812 (S.D. Ind. 2009)
15	Yes	/	2009-07-22	China	USA	Product Liability	US District Court for the Central District of California	Hubei Gezhouba Sanlian Indus. Co. v. Robinson Helicopter Co., No. 2:06-CV-01798-FMCSX, 2009 WL 2190187 (C.D. Cal. July 22, 2009), aff'd, 425 F. App'x 580 (9th Cir. 2011).
16	No	Lack of jurisdiction	2015-03-24	China	USA	Contract	US District Court for the Central District of California	Folex Golf Industries, Inc. v. O-Ta Precision Industries Co., Ltd., No. 2:09-cv-02248-R-CW (C.D. Cal.), 603 Fed. App'x 576 (9th Cir. 2015) (unpublished)
17	Yes	/	2015-05-01	China	USA	Contract	US District Court for the Northern District of Illinois	Glob. Material Techs., Inc. v. Dazheng Metal Fibre Co., No. 12 CV 1851 (N.D. Ill. May. 1, 2015)

No.	Result	Grounds	Data	State of Origin	Requested State	Cause of Action	Court Addressed	Decisions of the Court Addressed
18	Dismissal	Lack of jurisdiction	2016-01-21	China	USA	/	US District Court for the Southern District of New York	Chen v. Sun, 1:13-cv-00280 (ALC) (KNF) (S.D.N.Y. Jan. 21, 2016)
19	Yes	/	2017-10-27	China	USA	Contract	US District Court for the Central District of California	Qinrong Qiu v. Hongying Zhang et al. Case No: CV 17-05446-JFW(JEM) (US District Court for the Central District of California, October 27, 2017)
20	Yes	/	2020-01-06	China	USA	Contract	New York Supreme Court Queens County	Huizhi Liu v. Guoqing Guan et al, 713741/2019 in New York State, Queens County, Supreme Court (January 6, 2020)
21	Yes	/	2021-12-22	China	USA	Contract	Superior Court of Washington for King County	Yun Zhang v. Rainbow USA Investments LLC, Zhiwen Yang et al., Case No. 20-2-14429-1 SEA, in Superior Court of Washington for King County (22 Dec. 2021)
22	Refusal to Enforcement (first instance)- Trial ruling reversed (second instance)	/	2022-03-10	China	USA	Contract	Appellate Division of the New York Supreme Court	Shanghai Yongrun Inv. Mgmt. Co. v. Xu, et al., 203 A.D.3d 495, 160 N.Y.S.3d 874 (N.Y. App. Div. 2022)

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

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

The relevant judgments of unfair competition and anti-monopoly cases are unlikely to be recognized and enforced in China due to the geographical characteristics and peculiarities thereof.

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

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

(1) Refusal of recognition and enforcement

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

i. In accordance with the law of the People's Republic of China, the foreign court has no jurisdiction over the case;

To be more specific, pursuant to Article 301 of China's Civil Procedure Law (2023), the

US court will be seen lack of jurisdiction if:

a) The US court has no jurisdiction over the case according to its own law, or the US court has jurisdiction over the case according to its own law but has no appropriate connection with the dispute involved in the case;

b) The provisions of China's Civil Procedure Law relating to exclusive jurisdiction are violated; or

c) The agreement by which the parties exclusively choose the court to exercise jurisdiction is violated.

ii. The respondent has not been lawfully summoned, or has not been given a reasonable opportunity to be heard and to defend despite having been lawfully summoned, or the party without legal capacity has not been properly represented;

iii. The judgment was obtained by fraud;

iv. The court of the People's Republic of China has rendered a judgment on the same dispute, or has recognized and enforced a judgment or an order made by a third country on the same dispute; or

v. Where a legally effective judgment or ruling made by a foreign court violates the basic principles of the Chinese law or is detrimental to the state sovereignty, security and public interest.

If a Chinese court refuses to recognize a foreign judgment on the above grounds, it shall make a ruling on non-recognition and/or non-enforcement of the foreign judgment. Such a decision is not subject to

appeal, but is subject to review.

Under Chinese law, a party may, within ten days of the notification of a decision on recognition and enforcement or non-recognition and non-enforcement, file an application for review with the Chinese court at the next higher level.

(2) Dismissal of the application

If the foreign judgment does not meet the preconditions for recognition and enforcement, the Chinese court will render a ruling to dismiss the application, which is equivalent to a dismissal without prejudice. For example:

- i. There are no relevant international treaties or reciprocal relations between China and the country where the judgment was given;
- ii. the foreign judgment has not yet become final and conclusive; or
- iii. the application documents submitted by the applicant have not yet met the formal requirements.

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

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

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

situations:

(1) Where your judgment provides for the period of debt performance, it shall be counted from the last day of that period;

(2) Where your judgment provides for the debt performance by stages, it shall be counted from the last day of each performance period as stipulated;

(3) Where your judgment does not provide for a period of performance, it shall be counted from the date when the judgment takes effect.

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

6. Which court in China should I apply to for recognition and enforcement of my judgment?

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

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

Yes.

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

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

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

8. Can I seek interim measures against the respondent?

Yes.

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

In terms of recognition and enforcement of judgments, conservatory measures refer to certain measures taken by the court against the respondent, upon application by the applicant, in cases where it may be difficult to enforce the future judgment for reasons attributable to the respondent.

Conservatory measures are critical in cases of judgment enforcement.

In China, it is not rare that the judgment debtor evades its judgment debt. Many judgment debtors will quickly transfer, hide, sell or damage their assets once they find

that they may lose the case or be subject to property execution. This greatly reduces the reimbursement rate after the judgment creditor wins the case.

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

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

You need to submit the following materials:

- (1) The Application Form;
- (2) The applicant's identity certificate or business registration certificate (if the applicant is a corporate body, the identity certificate of the authorized representative or the person in charge of the applicant must also be provided);
- (3) The Power of Attorney (authorizing lawyers to act as agents ad litem);
- (4) The original judgment and a certified copy thereof;
- (5) Documents proving that the judgment has become legally effective, unless otherwise stated in the judgment;
- (6) Documents proving that the defaulting party has been duly summoned in case of

a default judgment, unless otherwise stated in the judgment; and

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

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

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

10. What should be included in the Application Form?

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

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

the proceeding, and the date of the judgment;

(2) Issues to be enforced by Chinese courts;

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

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

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

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

(7) Proving that the court that rendered the judgment has jurisdiction over the case, and that Chinese courts have no compulsory jurisdiction over the case under Chinese law;

(8) Proving that the original court has reasonably summoned the respondent;

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

CJO GLOBAL

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

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

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

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