



2023 GUIDE TO ENFORCE NEW ZEALAND JUDGMENTS IN CHINA

**Enforcing Judgments in China While
Litigation in New Zealand**

Second Edition

CJO GLOBAL
www.cjoglobal.com



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2023 Guide to Enforce New Zealand Judgments in China

Introduction

Can I sue Chinese companies in New Zealand and then enforce a New Zealand 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 New Zealand Judgments in China

1. Can New Zealand judgments be recognized and enforced in China?

Yes.

New Zealand 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.

New Zealand 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 New Zealand courts. This may help Chinese courts conclude that there is a reciprocal relationship between New Zealand and China.

2. Have China and New Zealand recognized and enforced each other’s judgments?

New Zealand has recognized and enforced Chinese judgments, but no cases have yet been found where China has recognized and enforced New Zealand judgments.

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

New Zealand - China

List of Cases on Recognition of Foreign Judgments

No.	Result	Grounds	Date	State of Origin	Requested State	Cause of Action	Court Addressed	Decisions of the Court Addressed
1	Yes	/	2016-04-11	China	New Zealand	Contract	Court of Appeal of New Zealand	Yang Chen v. Jinzhu Lin, CA334/2015, [2016] NZCA 113
2	Yes	/	2023-03-08	China	New Zealand	Contract	High Court of New Zealand	BIN v SUN [2023] NZHC 436
3	No	Parallel proceedings	2019-11-12	New Zealand	China	Deceit, breach of fiduciary duty, etc.	深圳市中级人民法院 Shenzhen Intermediate People's Court	Americhip, Inc. v. Dean et al. (2018) Yue 03 Min Chu No. 420 ((2018) 粤03民初420号)

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

New Zealand 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 New Zealand court will be seen lack of jurisdiction if:

a) The New Zealand court has no jurisdiction over the case according to its own law, or the New Zealand 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 the foreign judgment 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

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

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

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

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

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