

Chinese Court Enforces Singaporean Judgment based on De Jure Reciprocity

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Chinese courts recognize and enforce foreign civil and commercial judgments under two circumstances: the existence of treaty obligations and the existence of reciprocity. In the past, Chinese courts relied solely on de facto reciprocity to enforce foreign judgments, which requires evidence to prove the courts in the foreign country enforced Chinese judgments in previous cases. Some courts have adopted an even tougher approach and rejected enforcing foreign judgments even though one positive precedent exists in the foreign country, arguing one case is not enough to prove reciprocity. The application of de facto reciprocity causes difficulty to enforce foreign judgments in Chinese courts. It makes enforcement impossible if no application was made to the foreign court to enforce Chinese judgment in the past, and if the other country also adopts the de facto reciprocity. It also makes proving reciprocity difficult, especially if the foreign country has no comprehensive case report system.

After China commenced the One-Belt-One-Road initiative, efforts were made to relax the threshold to prove reciprocity. The Supreme Court has proposed, in two OBOR opinions, that China should adopt a presumed reciprocity approach, which presumes reciprocity exists if the other country demonstrates intention to establish judicial cooperation with China and no negative precedence exists.[1] However, since these opinions are not legally binding, they are not enough to reverse court practice. Although more Chinese courts enforce foreign judgments after 2013, they still need the proof of one positive case in the foreign country.

20 July, 2021, Shanghai No 1 Intermediate Court decided to recognize and enforce the Singaporean monetary judgment.[2] Although de facto reciprocity already exists between China and Singapore and Chinese courts enforced Singaporean judgments based on de facto reciprocity in the past,[3] this case

justifies the decision based on de jure reciprocity. The judgment states: "The reciprocal relationship exists between China and Singapore, because Chinese judgments can be recognized and enforced in Singapore under the same conditions. On the other hand, Singaporean High Court recognized and enforced Chinese judgments in the past, and precedents to recognize and enforce Singaporean judgments also exist in Chinese courts. It shows de facto reciprocal relationship also exists between China and Singapore."

It is clear that this judgment discusses both de facto and de jure reciprocity. The court considers whether Chinese judgments may be recognized and enforced in Singapore as a matter of law. However, proving de jure reciprocity is not easy. Unless the foreign law completely prohibits enforcing foreign judgments in the absence of treaty obligations, most law will provide conditions for foreign judgments enforcement. The conditions would allow foreign judgments enforced in certain circumstances and not others. In other words, no law would say foreign judgments can be recognized in all circumstances. How to assess if these conditions are enough to make enforcement possible in law? What if the foreign law provides different conditions to enforce foreign judgments from Chinese law? What if the foreign law require de facto reciprocity and China has not yet enforced judgments from this country, rendering enforcement of Chinese judgments practically impossible in the foreign court?

The Shanghai court adopts the equivalent condition test. It takes the seat of Singaporean court and imagine what may happen if this application is a Chinese judgment seeking Singaporean enforcement. It concludes that as far as Singaporean court can enforce Chinese judgments under the same condition, de jure reciprocity exists. In other words, it applies the Singaporean standard to assess enforceability of this judgment. The problem is it may lead to the result that between two countries de jure reciprocity exists in some cases but not others. As reciprocity refers to the relationship between two countries, it should be a systematic status, and not variable according to the different fact of a case.

Another difficulty is that it is usually hard for Chinese courts to know exactly how judicial decision of a foreign court may be made, especially how judicial discretion is going to be exercised in a foreign country. The assessment of the potential enforceability of Chinese judgments in the foreign court in the same condition can only be based on black-letter law which may not be so precise to test de jure reciprocity. Of course, it is arguable that de jure reciprocity only needs a general

possibility for a foreign court to enforce Chinese judgments, but not specific Chinese judgments are definitely enforceable in the foreign country. If so, the equivalent condition test is not appropriate to assess de jure reciprocity.

One may suggest the legal comparability test. It argues that de jure reciprocity depends on whether the foreign law provide legally comparable conditions for FJR as Chinese law. This suggestion is also problematic, because many countries' law provide much lower threshold to enforce foreign law than Chinese law. For example, they do not require reciprocity as a pre-condition. These laws are not comparable to Chinese law, but it is hard to argue that Chinese judgments cannot be enforced in those countries as a matter of law.

The third suggestion is the no higher threshold test. It suggests that if the foreign law does not make it more difficult to enforce Chinese judgments, de jure reciprocity exists. However, what if the foreign law adopts de facto reciprocity like most Chinese courts do in practice? Can we argue the foreign law provide higher threshold because one Chinese court uses de jure reciprocity? Or we consider these two laws provide simialr threshold and treat de jure reciprocity exists, even though the foreign court actually cannot enforce Chinese judgments because Chinese courts did not enforce judgments from this country before?

Anyway, although the test for de jure reciprocity is not settled, the Shanghai judgment shows a laudable progress. This is the first case that de jure reciprocity has been applied in a Chinese court. It shows a serious attempt to deviate from de facto reciprocity. Of course, since de facto reciprocity also exists between China and Singapore, this judgment does not bring significant difference in result. It is curious to see whether the Chinese court will apply de jure reciprocity alone to enforce foreign judgments in the future, and whether any new tests for de jure reciprocity may be proposed in the future judgments.

[1] Several Opinions of the Supreme People's Court Concerning Judicial Services and Protection Provided by People's Courts for the Belt and Road Initiative], [2015] Fa Fa No. 9, para 6; The Opinions of the SPC Regarding the People's Court's Further Provision of Judicial Services and Guarantees for the Construction of the Belt and Road, Fa Fa [2019] 29, para 24.

[2] (2019) Hu 01 Xie Wai Ren No 22.

[3] Singaporean case, Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte ltd [2014] 2 SLR 545; Chinese case, Kolmar Group AG v. Jiangsu Textile Industry Import and Export Corporation, (2016) Su 01 Xie Wai Ren No 3.