China’s 2022 Landmark Judicial Policy Clears Final Hurdle for Enforcement of Foreign Judgments

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Key takeaways:

- Despite the fact that the elaboration of a judicial interpretation appears 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.
- As a landmark judicial policy issued by China’s Supreme People’s Court, the 2021 Conference Summary provides a detailed guideline for Chinese courts to review foreign judgment-related applications, including examination criteria, refusal grounds, and an ex ante internal approval mechanism.
- The 2021 Conference Summary enables an ever greater number of foreign judgments to be enforced in China, by making substantial improvements on both the issues of “threshold” and “criteria”. The threshold addresses whether foreign judgments from certain jurisdictions are enforceable, whereas the criteria deal with whether the specific judgment in an application before Chinese courts can be enforced.
- The 2021 Conference Summary significantly lowers the threshold by liberalizing the reciprocity test, while providing a much clearer standard for Chinese judges to examine applications for recognition and enforcement of foreign judgments.
- The existence of a “treaty or reciprocity” remains to be the threshold (precondition) for Chinese courts to review applications.
- In terms of reciprocity, new reciprocity tests are introduced to replace 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.

China has 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") issued by the China's Supreme People's Court (SPC) on 31 Dec. 2021. 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 applications for the 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.

Admittedly, the threshold for enforcing foreign judgments was set too high in 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 appealing enough for more judgment creditors to apply for recognition and enforcement of foreign judgments with Chinese courts. However, this 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. Just to be clear, in the Chinese legal system, the conference summary is not a legally binding normative document as the judicial interpretation, but only represents the consensus reached by Chinese judges nationwide, similar to the "prevailing opinion" (herrschende Meinung) in Germany, which will be followed by all judges in future trials. In other words, conference summaries serve as guidance for adjudication. On one hand, as a conference summary is not legally

binding, the courts cannot invoke it as the legal basis in judgments, but on the other hand, the courts can make the reasoning on the application of law according to the conference summary in the “Court Opinion” part.

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

The threshold aspect refers to the first obstacle applicants will face when applying for recognition and enforcement of a foreign judgment in China, that is, whether foreign judgments from certain countries are enforceable. 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 the country where the judgment is rendered reaches the threshold, criteria will then be used by the Chinese courts in reviewing whether the specific judgment in the application can be enforced in China. Now a clearer threshold and criteria enable applicants to have more reasonable expectations about the likelihood of a foreign judgment being 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 one of the following circumstances:

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

Currently, 35 countries meet this requirement, including France, Italy, Spain, Belgium, Brazil, and Russia.

The List of China’s Bilateral Treaties on Judicial Assistance in Civil and

Commercial Matters (Enforcement of Foreign Judgments Included) is available here. Authoritative texts in Chinese and other languages are now available.

(b) The foreign country has a de jure reciprocal relationship with China.

This 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 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.

It is noteworthy that in March 2022, Shanghai Maritime Court ruled to recognize and enforce an English judgment in *Spar Shipping v Grand China Logistics* (2018) Hu 72 Xie Wai Ren No.1, marking the first time that an English monetary judgment has been enforced in China based on reciprocity. This decision has previously been highlighted here. One key to ensuring the enforcement of English judgments is the reciprocal relationship between China and England (or the UK, if in a wider context), which, under the de jure reciprocity test (one of the new three tests), was confirmed in this case.

(c) The foreign country and China have promised each other reciprocity in diplomatic efforts 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. This can achieve functions similar to that of treaties without being involved in the lengthy process of treaty negotiation, signing, and ratification.

China has started similar cooperation with Singapore. A good example of judicial

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

2. **Criteria: 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 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:

(a) the foreign judgment violates China's public policy;

(b) the court rendering the judgment has no jurisdiction under Chinese law;

(c) the procedural rights of the Respondent are not fully guaranteed;

(d) the judgment is obtained by fraud;

(e) parallel proceedings exist, and

(f) punitive damages are involved (specifically, where the amount of damages award significantly exceeds the actual loss, a Chinese court may refuse to recognize and enforce the excess).

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, a gradual relaxation of Chinese courts' attitude can be seen towards applications for recognition and enforcement of foreign judgments since 2018. Recently the 2021 Conference Summary has finally made a substantial leap forward.

We hope to see such breakthroughs in rules be witnessed and developed by one case after another in the near future.

For a more detailed interpretation, together with the original Chinese version of the 2021 Conference Summary and its English translation, please read 'Breakthrough for Collecting Judgments in China Series' (available here).

For the PDF version of 'Breakthrough for Collecting Judgments in China Series', please click here.