First Thai Monetary Judgment Enforced in China, Highlighting Presumptive Reciprocity in China-ASEAN Region

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Key Takeaways:

- In June 2024, the China-ASEAN Free Trade Area Nanning International Commercial Tribunal under the Nanning Railway Transportation Intermediate Court in Guangxi ruled to recognize and enforce a Thai monetary judgment (*Guangxi Nanning China Travel Service, Ltd. v. Orient Thai Airlines Co., Ltd.* (2023) Gui 71 Xie Wai Ren No. 1).
- Apart from being the first case of enforcing Thai monetary judgments in China, it is also the first publicly reported case confirming a reciprocal relationship based on "presumptive reciprocity".
- The Chinese court's confirmation that "presumptive reciprocity", as outlined in the Nanning Statement, is a form of mutual consensus between China and ASEAN countries helps to promote the circulation of judgments within the China-ASEAN region.

On 18 June 2024, the China-ASEAN Free Trade Area Nanning International Commercial Tribunal under the Nanning Railway Transportation Intermediate Court, Guangxi (hereafter the "Nanning Court"), ruled to recognize and enforce a Thai monetary judgment.

This case marks the first time that a Chinese court has recognized and enforced a Thai monetary judgment. It is also the first publicly reported case to confirm a reciprocal relationship based on "presumptive reciprocity". The "presumptive reciprocity" test, outlined in the Nanning Statement of the 2nd China-ASEAN Justice Forum in 2017, has now been confirmed by the Nanning Court as a form of reciprocal consensus [1] between China and ASEAN countries. This explains

the use of the term “presumptive reciprocity consensus” in the Chinese news report (cf. Guangxi High People’s Court’s news).

Although the full text of the judgment has not yet been made publicly available, the Chinese news report and related court announcements provide valuable details about the case. This case marks the latest application of the new reciprocity requirement by Chinese courts and actively promotes the circulation of judgments within the China-ASEAN region.

I. Case background

In July 2015, Guangxi Nanning China Travel Service Co., Ltd. (“Nanning China Travel”), a Chinese company, and Orient Thai Airlines Co., Ltd. (“Orient Thai Airlines”), a Thai company, entered into an airline ticket sales contract based on their long-term cooperation in charter flights. The contract was signed in Nanning and stipulated that disputes would be settled by the court where the Orient Thai Airlines was located. Subsequently, disputes arose between the parties, and Nanning China Travel filed a lawsuit against Orient Thai Airlines in the Central Intellectual Property and International Trade Court of Thailand (“Thai Court”).

On 16 September 2019, the Thai Court issued a civil judgment No. GorKor 166/2562 (the “Thai Judgment”), ordering Orient Thai Airlines to pay CNY 18,002,676 (approx. USD 2,476,330) plus interest to Nanning China Travel.

In February 2023, in order to enforce the rights confirmed by the Thai Judgment, and considering that Orient Thai Airlines has multiple branches in China that may have executable assets, Nanning China Travel applied to the Nanning Court for recognition and enforcement of the Thai Judgment.

On 18 June 2024, the Nanning Court rendered the civil ruling (2023) Gui 71 Xie Wai Ren No. 1 to recognize and enforce the Thai Judgment.

II. Court’s views

Although China and Thailand have signed the “Treaty on Judicial Assistance in Civil and Commercial Matters and on Cooperation in Arbitration”, the treaty does

not contain provisions on judgment recognition and enforcement. In the absence of a treaty, as this is the case with Thailand, recognition and enforcement can be pursued on the basis of the principle of reciprocity (New Art. 299 of the PRC Civil Procedure Law [former article 288 of the 2021 Amendment of the PRC Civil Procedure Law]).[2]

Determining whether reciprocity exists between China and Thailand is, therefore, a crucial first step.

As Judge Huayan Wang of the Nanning Court explained, "We (the court) examined two issues: the time limit of the application for recognition and enforcement, and the existence of reciprocity. The key to this case is the determination of reciprocal consensus, in the absence of *de jure* reciprocity and *de facto* reciprocity".

In doing so, the Nanning Court referred to the presumptive reciprocity test proposed in the Nanning Statement as a form of reciprocal consensus, and ultimately determined that reciprocity existed between China and Thailand.

III. Comments

1. "Presumptive reciprocity" in this case

Interestingly, the Nanning Statement was adopted in Nanning in June 2017, and seven years later, in a striking coincidence, a local intermediate court in the same city confirmed the reciprocity between China and Thailand, relying on presumptive reciprocity proposed the Nanning Statement.

Simply put, the so-called "presumptive reciprocity" means that, unless proven otherwise, reciprocity is presumed to exist between the requested State and the State of origin, to the extent permitted by domestic law of the requested State.[3] Here, "proven otherwise" refers to any existing case where the judgments from the requested State have been refused enforcement in the State of origin on the ground of the lack of reciprocity. Since no such cases were found by the Nanning Court, reciprocity is presumed to exist between Thailand and China.

It is, however, still unclear how Thai courts would react to the "first move" from Chinese courts: will they follow suit or not? Given that it is unlikely, if not

impossible, to have any foreign judgment recognized and enforced in Thailand, as discussed in an post provided by Asian Business Law Institute (ABLI), should a Thai court refuse to recognize and enforce a Chinese judgment on the ground of lack of reciprocity one day, the presumed reciprocity might have to be reviewed, or even revoked. By then, will there be any other way out? More issues need to be clarified and settled in future cases.

2. Wider Implication: reciprocal understanding or consensus in China-ASEAN region

What is more noteworthy is that the reciprocity consensus applied by Nanning court is considered to be a subcategory of "reciprocal understanding or consensus", which is one of the three new reciprocity tests in addition to de jure reciprocity and reciprocal commitment.



Chart – Reciprocity tests in China

Compared to the other two current reciprocity tests—de jure reciprocity and reciprocal commitment—reciprocal understanding or consensus is a more easily overlooked test, because it is neither as well-known as *de jure* reciprocity nor as novel as the reciprocal commitment (cf. other related posts including: (i) De jure reciprocity – The First Time China Recognizes English Judgment, Implementing 2022 Judicial Policy in Full; (ii) Reciprocal commitment – First Case of Reciprocal Commitment: China Requests Azerbaijan to Enforce its Judgment Based on Reciprocity; (iii) How Chinese Courts Determine Reciprocity in Foreign Judgment Enforcement – Breakthrough for Collecting Judgments in China Series (III); (iv)

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

Although the presumptive reciprocity proposed in the Nanning Statement is considered the best example of reciprocal consensus, from the time the Nanning Statement was adopted in 2017 until June 2024, the “presumptive reciprocity” remained largely theoretical. Prior to this case, there were no publicly reported cases indicating whether, and if so, how, Chinese courts applied “presumptive reciprocity” when dealing with cases involving the recognition and enforcement of judgments from ASEAN countries.

This case changed this situation.

The “presumptive reciprocity” outlined in the Nanning Statement, as a form of reciprocal consensus between China and ASEAN countries, has been confirmed by the Chinese court in this case. This means that for the ten ASEAN countries, apart from Laos and Vietnam, which already have applicable bilateral treaties with China, the remaining eight countries—Brunei Darussalam, Burma, Cambodia, Indonesia, Malaysia, the Philippines, Singapore, and Thailand—can have their civil and commercial judgments recognized and enforced in China based on the presumptive reciprocity.

In addition, for monetary judgments from Singapore, there is also the China-Singapore Memorandum of Guidance (MOG), which can be considered another example of “reciprocal understanding or consensus”. This MOG serves as a practical guideline for Chinese courts on how to recognize and enforce Singaporean monetary judgments. (Cf. other related posts including: (i) Series – Singapore-China Judgments Recognition and Enforcement; (ii) Chinese Court Recognizes Singaporean Judgment Again: No Bilateral Treaty But Only Memorandum?).

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[1] Since the 2000s, the standards to establish reciprocity have evolved significantly, reflecting China’s efforts to liberalize its rules on the recognition and enforcement of foreign judgments. The 2021 “Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts

Nationwide" issued by China's Supreme People's Court introduces new standards for determining reciprocity that replace the previous de facto reciprocity test. The new reciprocity standards include de jure reciprocity, reciprocal understanding or consensus, and reciprocal commitment. These standards coincide with possible outreaches of legislative, judicial, and administrative branches.

[2] Art. 299: "After examining an application or request for recognition and enforcement of a legally effective judgment or ruling of a foreign court *in accordance with an international treaty concluded or acceded to by the People's Republic of China or under the principle of reciprocity*, a people's court shall render a ruling to recognise the legal force of the judgment or ruling and issue an order for enforcement, as needed, to enforce the judgment or ruling in accordance with the relevant provisions of this Law, if the people's court deems that the judgment or ruling neither violates the basic principles of the laws of the People's Republic of China nor damages the sovereignty, security, and public interest of the State" (emphasis added).

[3] Below is the original statement from the Nanning Statement:"If two countries have not been bound by any international treaty on mutual recognition and enforcement of foreign civil or commercial judgments, both countries may, subject to their domestic laws, *presume the existence of their reciprocal relationship*, when it comes to the judicial procedure of recognizing or enforcing such judgments made by courts of the other country, provided that the courts of the other country had not refused to recognize or enforce such judgments on the ground of lack of reciprocity."(emphasis added)