

Turning Point: China First Recognizes Japanese Bankruptcy Decision

This post is written by Guodong Du and Meng Yu and published at China Justice Observer. It is reproduced here by kind permission of the authors.

Key takeaways:

- In September 2023, the Shanghai Third Intermediate People's Court ruled to recognize the Tokyo District Court's decision to commence civil rehabilitation proceedings and the order appointing the supervisor ((2021) Hu 03 Xie Wai Ren No.1).
- This marks not only the first time that China has recognized a Japanese court's decision in a bankruptcy procedure, but also the first time that China has recognized a Japanese judgment.
- The case establishes a legal precedent for cross-border bankruptcy decisions, demonstrating that prior non-recognition patterns between China and Japan in civil and commercial judgments may not apply in such cross-border scenarios.
- While not resolving the broader recognition challenges between the two nations, this acknowledgment sends a positive signal from the Chinese court, hinting at potential future breakthroughs and fostering hope for improved legal cooperation.

This marks not only the first time that China has recognized a Japanese court's decision in a bankruptcy procedure, but also the first time that China has recognized a Japanese judgment (See the Chinese Court Ruling (2021) Hu 03 Xie Wai Ren No.1 ((2021)03???1)).

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The Japanese law firm Nagashima Ohno & Tsunematsu, representing a Japanese company, applied to the Tokyo District Court to initiate civil rehabilitation proceedings (a type of restructuring-type bankruptcy procedure under Japanese bankruptcy law). According to the application, the Tokyo District Court decided to commence civil rehabilitation proceedings and appointed a supervisor to monitor the debtor's activities.

As the Japanese company had certain assets in Shanghai, to facilitate the smooth progress of the civil rehabilitation proceedings in Japan, the company filed an application with the Shanghai Third Intermediate People's Court (the "Shanghai Court"), requesting recognition of the Tokyo District Court's to commence civil rehabilitation proceedings and the order appointing the supervisor. Nagashima Ohno & Tsunematsu provided legal opinions on relevant Japanese laws during the recognition process.

On 6 Sept. 2023, the Shanghai Court made a ruling recognizing the Japanese company's civil rehabilitation proceedings and the identity of the supervisor, and allowing the supervisor to monitor the company's self-management of property and business affairs within China under certain conditions.

In reviewing whether there was a reciprocal relationship between China and Japan in recognizing bankruptcy decisions, the Shanghai Court found that:

(1) Both sides have precedents of refusing to recognize each other's civil and commercial judgments, but these precedents do not necessarily apply to cross-border bankruptcy cases;

(2) According to Japanese laws, there are no legal obstacles to the recognition of Chinese bankruptcy decisions by Japanese courts, which confirms the existence of a reciprocal relationship between China and Japan in the recognition of cross-border bankruptcy cases.

This is the first time that China has recognized a decision made by a Japanese court in bankruptcy proceedings.

China and Japan have been at an impasse regarding the mutual recognition and

enforcement of judgments. For more details, please read our earlier post *How to Start the Recognition and Enforcement of Court Judgments between China and Japan?*.

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According to the Shanghai Court's statement, this case does not mean that the impasse between China and Japan has been broken, but it does send a positive signal from the Chinese court regarding Japanese judgments. We look forward to further breakthroughs between the two sides.

We have not yet obtained the original text of the judgment made by the Shanghai Court in this case. The above case information is from the website of Fangda Partners, the Chinese law firm representing the Japanese company in this case.

Another case commentary can be found here on the website of the Asian Business Law Institute (ABLI).