

Recognition & Enforcement of International Awards &

Judgments in China

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The recognition and enforcement of awards and judgments have drawn many international traders' attention. Many western media also publish articles stating that judgments made outside of China cannot be recognized and enforced in China, which is bias and untrue. The followings illustrate some misunderstandings and have listed/analyzed real life cases to give you a clearer picture about the reality.

I The difference between Arbitration awards and Judgments

When disputes arise, there are two kinds of methods to resolve them: through arbitration or litigation by court. As such, there are two kinds of results: arbitration awards or court judgments. For contractual disputes, and other property rights disputes arising out of equal civilians, legal entities, and other organizations, could be resolved by arbitration as long as both parties agreed so. In other words, arbitration must be agreed by both parties, while judgments are made by courts, regulated by laws. Usually, arbitral awards are final and binding, while judgments can be appealed/reviewed.

II The recognition and enforcement of **Arbitral Awards**

According to United Nation' s Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as 1958 New York Convention), unless there are situations according to Article V of the convention that may lead to refusal of Recognition and enforcement of the award, arbitral awards made in the territory of a Member State will be recognized and enforced by other Member State. Up until 2021, there are 59 countries and territories members.

(https://newyorkconvention1958.org/index.php?vl=cmspage&pageid=4&menu=671&opac_view=-1)

From real cases' perspective, from 2008 to 2021, there are 152 cases about recognition and enforcement of arbitration awards according to 1958 New York Convention published by Chinese courts.

(<https://wenshu.court.gov.cn/website/wenshu/181217BMTKHNT2W0/index.html?pageld=03d5e17c0e01fc83e6ae881b27ff7bba&s21=纽约公约>) Some of the cases are listed below as an example:

(a) Recognition and enforcement of Singapore International Arbitration Centre ("SIAC") ' s Award by Inner Mongolia Huhehaote City Intermediate people' s Court

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=6c2e4c74907149a98c87ad8200ea24f0>) ;

(b) Recognition and enforcement of London Maritime Arbitrators Association

(LMAA)' s Award by Shanghai Maritime Court

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=6fd76158d5da40c6bec8ad2800af41d3>) ;

- (c) Recognition and enforcement of Canadian British Columbia International Commercial Arbitration Centre' s Award by Zhejiang Province Huzhou Intermediate People' s Court
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=406ab578ccde430c9487ac87009fcff3>) 。
- (d) On the other hand, some of the awards could not been recognized and enforced according to laws. For example, American Independent Film and Television Alliance (IFTA)' s award made on the date of 27th April, 2017 has been refused to be recognized and enforced by Tianjin 1st Intermediate People' s Court.
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=f88c23c088f048468de3abea0150d69b>). The reason is because the application has not been made in the place where assets or person subject to enforcement locate(s) . (Note: according to **Article 283 of Civil Procedure Law of People' s Republic of China**, "Awards made by foreign arbitration institution, need to be recognized and enforced in China, shall be applied by the applicant to Intermediate People' s court where person subject to the enforcement locates or assets locate, and the court shall deal it according to international treaties which the country has participated or reciprocal principle.")

III The recognition and enforcement of **Court Judgments**

- (i) Whether two countries have **international treaties**.
In order to determine whether to recognize and enforce the other country' s court judgment, the first step is to search for international treaties. Up until 2021, in civil and commercial area, China has signed bilateral treaties regarding international judicial assistance with 37 countries including Poland, France, Mongolia, Romania, Italy, Turkey, Ukraine, Spain, Russia, Cuba, Kazakhstan, Belarus, Bulgaria, Thailand, Egypt, Greece, Cyprus, Hungary, Kyrgyzstan, Tajikistan, Morocco, Uzbekistan, Singapore, Vietnam, Laos, Tunisia, Lithuania, Argentina, North Korea, South Korea, UAE, Peru, Ethiopia, Brazil, Algeria, Kuwait, Bosnia and Herzegovina. Generally speaking, judgments made by these countries' courts could be recognized and enforced in China as long as they conform to laws and treaties.

For instance, the following judgments are recognized and enforced by Chinese courts according to bilateral treaties:

- (a) Contract dispute: NO. 7343/08 Judgment made by Italian Brescia Court was recognized and enforced by Zhejiang Province Wenzhou Intermediate People' s court according to bilateral treaty.
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/in>

[dex.html?docId=e8e44a10f9754d7ca5b9ad0500a81403](https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=e8e44a10f9754d7ca5b9ad0500a81403)) ;

- (b) Contract dispute: No. 417/2016 Judgment made by UAE Dubai County Court was recognized and enforced by Ningjia Province Yinchuan Intermediate People' s Court.

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=05ddebb55ab34c74aaefa8c00095fb38>) ;

- (c) Contract dispute: No. 2015/802 Judgment made on the date of 26th Dec, 2016 by UAE Fujairah County Court and No. 2017/49 Judgment made on the date of 25th Mar, 2018 by UAE Fujairah federal appellate court were recognized and enforced by Shanghai No. 1 Intermediate People' s Court.

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=3744095a24c94561a710a9f500eaa673>) ;

- (d) No. 5002/2017 Judgment made on the date of 16th Nov, 2017 by Greek Piraeus Court was recognized and enforced by Wuhai Maritime Court.

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=e1f98be9a7c14310803baa230144251b>)

- (e) However on the other hand, if any procedure could not abide by the laws, the judgment may not be recognized and enforced. For example, No. RG2013F00048 Judgment made by France Compiègne Commercial Court was not recognized and enforced by Hunan Province Binzhou Intermediate People' s Court because the judgment was not delivered/served legally according to the procedure.

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=13f062199d694aea8b73a7a60119af55>) 。

(ii) **Reciprocal** relationship or Judicial comity principle.

According to Article 282 of Civil Procedural Law of People' s Republic of China, "People' s court will recognize any legally effective judgment, decision made by foreign court after the application of such according to international treaties that People' s Republic of China has participated, or reciprocal principle, under the condition that (such judgment/decision) does not violate People' s Republic of China' s basic principles, or national sovereign, safety, social public interest. After ruling its effectiveness, courts will issue writ of execution and enforce according to relevant laws in case the judgment needs to be enforced. (Any judgment/decision) that violates People' s Republic of China' s basic principles, or national sovereign, safety, social public interest will not be recognized or enforced." In practice, situations are more complicated and diversified for countries that do not have bilateral treaties. Generally speaking, it can be categorized as follows:

(a) Family Law

For recognition of divorce judgment, generally, as long as it is abide by "Decision on procedural issues of Supreme People' s Court to recognize foreign court' s divorce judgment applied by Chinese

civilians” , all the judgments could be recognized. Some of the cases are listed below:

- (1) No. 291/2016-E Judgment made by Spanish Haulotte County Court on the date of 16th Mar, 2018, divorce part of Jin Yanzhen and Zheng Zhongjie was recognized by Zhejiang Province Wenzhou Intermediate People’ s Court
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=4c0b67f356cf4107a47bacfa00eeb64b>) ;
- (2) No. ×××54 Divorce Judgment made by United States New York Supreme Court was recognized by Zhejiang Province Hangzhou Intermediate People’ s Court.
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=ea8dbda2d4a64baebd83acf000b6e388>)

(b) Contract Law

According reciprocal principle, the People’ s court can recognize and enforce foreign judgment as long as the applicant submit such evidence to proof that there are cases made by Chinese court be recognized by foreign courts (reciprocal principle), and the judgment does not violate Chinese regulations. Some of the cases are listed as below:

- (1) Because Singapore High Court of Justice has recognized and enforced Jiangsu Province Suzhou Intermediate People’ s Court’ s Civil Judgment, Jiangsu Province Nanjing Intermediate People’ s Court has also recognized and enforced Singapore High Court of Justice’ s Civil Judgment No. O13 made on the date of 22nd Oct, 2015 according to reciprocal principle. ***[Note: China and Singapore had not signed bilateral treaty regarding recognition and enforcement of effective judgment by then (2016) yet.]***
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=325f81d1b1c047689ac3a48488d5b4bc>)
- (2) Zhejiang Province Ningbo Intermediate People’ s Court recognized and enforced No. 2018177 Judgment made by US California Stanislaus High Court according to reciprocal principle (applicant has submitted evidence to support that US has recognized and enforced Chinese Court’ s civil judgment before.)
(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=a1022277b1bd4273a21bacae00a08423>)
- (3) On the other hand however, there are cases that were not recognized and enforced. For instance, Hunan Province Xiangtan Intermediate People’ s Court refused to recognize and enforce Judgment No. 038 / 2014 made on the date of 23rd Apr, 2014 by Chad Republic Ndjamen Commercial Court because no evidence shows that Chad’ s court has recognized and enforce Chinese Court’ s judgment before.

(<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=872f719383ce4b779bd58bf9469b6f54>)

(c) Tort

On the contrary, Chinese Courts take a rather conservative attitude towards tort cases made by foreign courts, especially US and/or European Courts' judgment with huge amount of compensation. Although US may recognize and enforce Chinese court' s judgment according to "Uniform Foreign Money Judgment s Recognition Act" (e.g. US federal court in California district has recognized and enforced judgment made by Hubei Province High Court regarding personal injuries compensation case of Hubei Gezhou Dam SanLian Industrial Co., etc. v. American Robinson Helicopter Co., Ltd in 2011), most Chinese courts do not recognize and enforce tort judgments made by American Courts according to reciprocal principle because in most case, it violates Chinese laws' basic principle: that compensation on tort/infringement is only to compensate the actual losses, not for penalties. As such, Chinese courts will not support huge amount of penalty compensation for the victims. For example, in the case of Mr. Herbert Truhe, Maryellen Truhe applied for recognizing and enforcing the judgment made on the date of 8th Jul, 2014 by Pennsylvania first district court Philadelphia County intermediate court regarding product liability personal injuries compensation (Case No. 4826), Chinese court refused to recognize and enforce the judgment to award 67,860,444.27 RMB (About 10,771,500 USD) compensation to the victims, which is unimaginable if the case happened in China. (<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=edfc0de2ad914dd1b8e8a7af0021740c>)

Another example is The Supreme People' s Court refused to enforce German Court' s judgment on patent infringement dispute between Corvinson Wireless License Co., Ltd and Huawei technology. (<https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXSK4/index.html?docId=49b02129f8e14ae9b4a9acda0122c1cf>)

IV Future Development

On 12th Sep 2017, China signed the "2005 Choice of Court Convention" . On 2nd Jul 2019, China signed "Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters" in Hague, Netherland. Although the abovementioned two treaties have not been approved and effective yet, it is foreseeable that in the long run, recognition and enforcement of a judgment made by a foreign court will become more easier and common.

