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# The Legal 500 Country Comparative Guides

## China

# ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

### Contributor

Global Law Office



#### Wang Heng

Partner | [wangh@glo.com.cn](mailto:wangh@glo.com.cn)

#### Chen Huahua

Associate | [chenhuahua@glo.com.cn](mailto:chenhuahua@glo.com.cn)

#### Xu Jiaying

Associate | [xujiaying@glo.com.cn](mailto:xujiaying@glo.com.cn)

This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in China.

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# CHINA

## ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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### 1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

#### International conventions

China has signed but not yet ratified the Hague Convention on Choice of Court Agreements (the Hague Choice of Courts Convention 2005). China has participated in the preparation of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the Hague Judgments Convention 2019), but has not yet signed it.

As of August 28, 2022, China is not a party to any international conventions or multilateral treaties on foreign judgment enforcement.

#### Bilateral Treaties

According to database of the Ministry of Foreign Affairs [1], there are currently 38 bilateral judicial assistance treaties in effect that China has concluded with other states. Among them, 35 treaties contain provisions regarding enforcement of foreign judgment for civil and commercial matters (The treaties concluded with South Korea, Thailand and Singapore do not contain judgment enforcement provisions). The chart below sets out the information of the 35 treaties:

Country	Treaty Effective Date
France	1988/02/08
Poland	1988/02/13
Mongolia	1990/10/29
Romania	1993/01/22
Russia	1993/11/14
Byelorussia	1993/11/29
Spain	1994/01/01
Ukraine	1994/01/19
Cuba	1994/03/26
Italy	1995/01/01
Egypt	1995/05/31
Bulgaria	1995/06/30
Kazakhstan	1995/07/11
Turkey	1995/10/26
Cyprus	1996/01/11
Greece	1996/06/29
Hungary	1997/03/21
Kirghizia	1997/09/26
Uzbekistan	1998/08/29
Tadzhikistan	1998/09/02
Morocco	1999/11/26
Vietnam	1999/12/25
Tunisia	2000/07/20
Laos	2001/12/15
Lithuania	2002/01/19
United Arab Emirates	2005/04/12
Korea DPR	2006/01/21
Argentina	2011/10/09
Peru	2012/05/25
Algeria	2012/06/16
Kuwait	2013/06/06
Brazil	2014/08/16
Bosnia and Herzegovina	2014/10/12
Ethiopia	2018/01/03
Iran	2021/07/13

For those judgments rendered by courts from the countries listed above, the respective treaties will apply in terms of their enforcement in China.

**Other Arrangements**

**MoG between China and Singapore**

Although the Sino-Singaporean bilateral treaty does not cover matters regarding enforcement of judgments, the PRC Supreme People’s Court and the Supreme Court of Singapore signed a Memorandum of Guidance (“MoG”) [2] on the recognition and enforcement of money judgments in commercial cases at the Second Singapore-China Legal and Judicial Roundtable on August 31, 2018, [3] which provides guidance “for litigants on the applicable laws and regulations that govern the enforcement of foreign judgments in Singapore and China.” [4]

The MoG is not a treaty per se and is not legally binding, but it is the first and so far the only memorandum providing detailed guidance for the enforcement of foreign commercial and civil judgment between China and a foreign state. In practice, when considering the recognition and enforcement of Singaporean judgment in China, Chinese courts may refer to the MoG for guidance [5], though without binding force.

**Hong Kong, Macau and Taiwan**

Due to the special political and legal status of Hong Kong, Macau and Taiwan and their separate legal systems from mainland China, enforcement of judgments made by courts in these three regions are subject to special arrangements (“Special Arrangements”) similar to the legal framework applicable to foreign judgments under PRC Law, including:

- Arrangement between the Mainland and the Macao Special Administrative Region on the Mutual Recognition and Enforcement of Civil and Commercial Judgments (effective from April 1, 2006);
- Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned (effective from August 1, 2008) [6];
- Provisions of the Supreme People’s Court on the Recognition and Enforcement of Civil Judgments Made by Courts of Taiwan Region (effective from July 1, 2015);
- Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region (effective from February 15, 2022).

[1] See <http://treaty.mfa.gov.cn/web/index.jsp>, last accessed on August 27, 2022.

[2] Full text in English available at <https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/spc-mog-english-version—signed.pdf>.

[3] <https://www.judiciary.gov.sg/news-and-resources/news/news-details/singapore-hosts-the-second-singapore-china-legal-and-judicial-roundtable>.

[4] Ibid.

[5] On July 29, 2021, the Shanghai No. 1 Intermediate People's Court, in judgment (2019) Hu 01 Xie Wai Ren No. 22□2019□01□□□22□□ recognised a monetary judgment made by the Singapore High Court, citing the MOG as a proof that there exists reciprocity between China and Singapore.

[6] This Arrangement will be terminated and superseded by the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region after the latter comes into effect (According to Article 29 of the latter Arrangement, following the promulgation of a judicial interpretation by the Supreme People's Court and the completion of the relevant procedures in the HKSAR, both sides shall announce date on which this Arrangement shall commence.).

## 2. What, if any, reservations has your jurisdiction made to such treaties?

Not Applicable. China is not a party to any international conventions or multilateral treaties on enforcement of foreign judgments yet.

## 3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Under PRC law, a foreign judgment can be recognized and enforced either relying on bilateral treaties, or, in the absence of a treaty, based on reciprocity between China and the foreign state. [1] For civil and commercial judgments rendered in those jurisdictions which have not concluded a bilateral treaty with China, one must invoke the principle of reciprocity as the legal ground (Foreign divorce judgment is an exception. According to the Supreme People's Court's judicial interpretation, the recognition and enforcement of such judgment requires no reciprocity). [2]

There is no statutory definition of "reciprocity" under

PRC law. It is often believed that de facto reciprocity (cases in which a foreign state has previously recognized or enforced judgments by PRC courts) is solid proof of the existence of reciprocity between China and the foreign jurisdiction. However, opinions are split on whether de jure reciprocity (cases in which a foreign jurisdiction has not recognized or enforced judgments by PRC courts, but according to the laws of such jurisdiction, PRC judgments could be enforced in that jurisdiction) could also be recognized under PRC law as well.

The Summary of Panel Discussion on Foreign-related Commercial and Maritime Trial Work of Courts Nationwide (hereinafter referred to as "Summary of Panel Discussion") [3] published by the Supreme People's Court on December 31, 2021, provides specific guidance on this issue and positively admits de jure reciprocity as a standard for the determination of reciprocal relation by the courts. According to its Article 44 (Determination of a Reciprocal Relation):

"Under any of the following circumstances, the People's Court may determine that there is a reciprocal relation when hearing a case concerning the application for recognition and enforcement of a judgment or ruling rendered by a foreign court:

1. subject to the laws of the country where the court is located, the civil and commercial judgments made by the People's Court is recognized and enforced by the court of that country;
2. China has reached a reciprocal understanding or consensus with the country where the court is located; or
3. the country where the court is located has made a reciprocal commitment to China through diplomatic channels or China has made a reciprocal commitment to that country through diplomatic channels, and no evidence shows that the country where the court is located has refused to recognize or enforce the judgments or rulings made by the People's Court on the grounds that there is no reciprocal relation."

The provision above shows that PRC/the Supreme People's Court has been taking a more liberal approach towards the interpretation and understanding of reciprocity. If any of the conditions above is met, the reciprocal relation could be considered as established, which renders the foreign judgment recognizable and enforceable under PRC law subject to the fulfilment of mandatory legal requirements.

[1] Article 287 of the Civil Procedure Law (as amended in

2021) : “a people’s court shall review such judgment or ruling pursuant to international treaties concluded or acceded to by the People’s Republic of China or in accordance with the principle of reciprocity.”

[2] Article 542 of Interpretation of the Supreme People’s Court on the Application of the Civil Procedure Law of the People’s Republic of China (Revised in 2022): “Where a party concerned applies to a competent intermediate people’s court in the People’s Republic of China for recognition and enforcement of a judgment or ruling which is rendered by a foreign court and is legally effective, and the country where the court is located does not conclude or participate in any international treaty or has reciprocal relations with the People’s Republic of China, the intermediate people’s court shall reject such application, unless the party applies to the people’s court for enforcement of a divorce judgment which is rendered by a foreign court and is legally effective.”

[3] The Summary of Panel Discussion is neither law nor judicial interpretation. But in practice, it is a critical guidance document for the People’s Courts to follow.

#### **4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?**

As discussed in more details in Section 11, recognition and enforcement of foreign judgments can be challenged on various legal and factual grounds. As a preliminary requirement, a foreign judgment sought to be recognized and enforced in China must meet the following basic criteria:

- It is legally effective in the originating jurisdiction;
- It must be final and conclusive, not subject to appeal;
- The application for recognition and enforcement is filed within the time limit imposed by the Civil Procedure Law, which currently is two years.

Enforceable foreign judgments are not limited to monetary judgments and extend to other forms of relief as well. Broadly, “Judgments, rulings, decisions, orders and other legal documents made by foreign courts on substantive disputes in civil and commercial cases and legal documents on compensation for civil damages in criminal cases” [1] are all treated as foreign “judgments and rulings” for the purpose of recognition and

enforcement proceedings under PRC law (except preservation rulings and other provisional or procedural decisions).

[1] Article 41, Summary of Panel Discussion.

#### **5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?**

- **Filing of an application for recognition and enforcement of foreign judgments (the “Application”).**

The Application should specify the following particulars:

1. the detailed information of the applicant and the respondent;
2. the name of the foreign court that made the judgment, the case number of the judgment, the commencement date of the proceedings and the judgment date;
3. the specific reliefs and grounds;
4. the status and location of the respondent’s property; and
5. status of enforcement proceedings outside of China.

- **Acceptance of the Application.**

If the Application meets the conditions for filing a case, the People’s Court will make a decision on accepting the application and explain the reason therein.

- **Service on the respondent and the respondent’s defence.**

The Application will be served on the respondent. The respondent is required to file a defense within a time limit, which is 15 days if the respondent is domiciled or resided in China, or 30 days if the respondent has no domicile or residency in China.

- **Inquiry by the court.**

Inquiry is conducted by the court either by a formal hearing or by informal sessions which provides the parties with opportunities to present their cases.

- **Ruling on recognition.**

A ruling for recognition and enforcement of foreign judgments rendered by the Intermediate People’s Court is final and not appealable. Under certain limited conditions, a re-trial may be granted. If a foreign judgment is refused recognition and enforcement in

China, the applicant can start proceedings before the PRC courts on the merits of the claims.

- **Application for execution.**

After obtaining a favourable ruling on recognition and enforcement, the applicant can further apply for execution of the foreign judgment.

## 6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The procedure for recognition and enforcement of foreign judgment under the general law of China is the same as the procedure for recognition and enforcement under treaty as described in the previous section 5. The only difference is, if the Application is based on a bilateral treaty concluded by China, the enforcing court may render a final ruling to grant or refuse the Application. If the Application is based on reciprocity, the Intermediate People's Court should report its findings to the Supreme People's Court through the Higher People's Court before a judgment can be rendered. [1]

[1] Summary of Panel Discussion:

Article 49 [Reporting and Notification Mechanism for the Recognition and Enforcement of Judgments Rendered by Foreign Courts]

The people's courts at all levels, upon conclusion of cases concerning the application of the parties for recognition and enforcement of the judgments rendered by foreign courts, should report to the Supreme People's Court for filing level by level within 15 days of making the rulings. The filing materials include an application submitted by the applicant, a judgment rendered by a foreign court and Chinese translation thereof, and a ruling made by the people's court.

The people's court should, before making a ruling on the case that it reviews based on the principle of reciprocity, report the opinion to be issued to the high people's court within its jurisdiction for review; if the high people's court consents the opinion to be issued, it should submit the review opinion to the Supreme People's Court for review. A ruling may not be made before the Supreme People's Court gives a reply.

## 7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be

### enforced? For example, must the judgment be apostilled?

The foreign judgments should be notarized by a notary public and authenticated by the Chinese embassy or consulate in the foreign country, or otherwise certified according to the applicable treaties.

If the judgment is in a foreign language, a Chinese translation certified by a court approved translation agency should be attached.

In addition, documents showing

1. the judgment is final and conclusive according to the law of the originating jurisdiction; and
2. in case of a default judgment, the defendant was properly summoned in the proceedings, are also required,

unless such information is already contained in the judgment. [1]

[1] Summary of Panel Discussion, Article 35 [Application Materials]:

An applicant applying for recognition and enforcement of a judgment or ruling rendered by a foreign court should submit an application, attached with the following documents:

1. the original or certified true copies of the judgment;
2. documents proving that the judgment has taken legal effect; and
3. documents proving that the foreign court has legally summoned the absent party in case of a default judgment.

Where a judgment or ruling has already explained the circumstances in Items 2. and 3. of the preceding paragraph, no other supporting document needs to be submitted.

If the judgment and other documents submitted by an applicant are in a foreign language, a Chinese translation affixed with the seal of a translation agency should be attached.

If the documents submitted by an applicant are produced outside the territory of China, the applicant should go through the notarization or authentication formalities, or go through the certification formalities as stipulated in the relevant international treaties concluded by and between the People's Republic of China and the country of the applicant.

**8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?**

It depends on various factors, such as whether the Application is based on bilateral treaty or reciprocity, whether the judgment is a default judgment, and which court is hearing the Application. Generally, if the Application is based on bilateral treaty, it takes less time than where the Application is based on reciprocity, since proof of reciprocity will involve complicated enquiries. In the case of default judgment, additional proof will be required to establish that the defendant was properly summoned in the original court proceedings. Some courts are more experienced in handling applications for the recognition and enforcement of foreign judgments, and can be more time efficient than other courts.

In practice, it may take a few months in simple and uncontested matters such as a divorce judgment rendered by consent, or several years in complicated commercial disputes involving challenges to jurisdiction and procedural issues.

No summary procedure is available for recognition and enforcement of foreign judgments.

**9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?**

The Applicant may apply for property preservative measures, including injunctions to restrain disposal of assets, according to provisions of the Civil Procedure Law and judicial interpretations. For such application, security will be required. Such security is ordinarily provided in the form of an insurance policy issued by insurance companies located in China. [1]

[1] Summary of Panel Discussion, Article 39 [Preservation Measures]:

After a people's court accepts an application of a party for the recognition and enforcement of a judgment or ruling rendered by a foreign court, if the party applies for property preservation, the people's court may handle such application with reference to the Civil Procedure Law and relevant judicial interpretations. The applicant should provide a guarantee; if the applicant fails to do so, the application will be rejected.

**10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?**

According to Article 246 of Civil Procedure Law and Article 545 of Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law, the time limit applicable to applications for recognition and enforcement of foreign judgments is 2 years. [1] The 2-year time limit starts to run from the date judgment debt is due, and if the judgment debt is by instalments, from the due date of the last instalment.

[1] Civil Procedure Law of the People's Republic of China (Amended in 2021)

Article 246 The time limit applicable to applications to execute a judgment is two years. The provisions relating to the suspension or discontinuance of the litigation limitation period shall be applicable to the suspension or discontinuance of the limitation period for applications to execute a judgment.

The time limit referred to in the preceding paragraph shall commence from the last day of the time limit for satisfaction of the judgment specified in the legal documentation; where the legal documentation provides for satisfaction of the judgment in stages, the time limit shall commence from the date of expiration of the last period for satisfaction of the judgment; where the legal documentation does not provide a time limit for satisfaction of the judgment, the time limit shall commence from the effective date of the legal documentation.

Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised in 2022)

Article 545 The provisions of Article 246 of the Civil Procedure Law shall be applicable to the time limit for a party concerned to apply for recognition and enforcement of legally effective judgments or rulings rendered by foreign courts or foreign arbitral awards.

Where a party concerned only applies for recognition without applying for enforcement at the same time, the time limit for the enforcement application shall be re-calculated from the date when the ruling rendered by a people's court on the recognition application takes effect.

**11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?**



## jurisdiction?

The recognition and enforcement of foreign judgments can be challenged on any of the following grounds:

- There is no bilateral treaty between China and the foreign state on enforcement of judgment and no reciprocity exists.
- The foreign court which renders the judgment has no jurisdiction over the case according to PRC law;
- The defendant in the case was not legally summoned, or has been legally summoned but not been given a reasonable opportunity to present and debate, or the party with no litigation capacity has not been properly represented;
- The judgment has not taken legal effect or is not final;
- The judgment is obtained through fraud;
- A People's Court of China has made a judgment on the same dispute or has recognized or enforced foreign arbitral award/judgments on the same dispute;
- Making of the foreign judgment is in violation of the valid arbitration agreement between the parties in dispute;
- The statutory time limitation for recognition or enforcement of the judgment under PRC law has expired;
- The judgment is against basic principles under PRC law, state sovereignty, security or public interest;
- Other circumstances that may be specified in bilateral treaties or Special Arrangements that are applicable to China.

## 12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The PRC courts adopt a formalist approach towards the recognition and enforcement of foreign civil and commercial judgment, *"that is, the People's Court judges according to the recognition requirements stipulated by law, and does not substantially review whether the judgment of the court of the requesting country determines the facts and whether the law is wrong or not."* [1]

[1] Shen Hongyu: A Study on Several Issues in Recognition and Enforcement of Foreign Civil and Commercial Judgments, available at <https://cicc.court.gov.cn/html/1/218/62/164/567.html>, last accessed on August 27, 2022.

## 13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

When reviewing applications for recognition and enforcement of foreign judgments, PRC courts will consider whether the foreign court has jurisdiction over the case. The criteria of such examination is PRC law.

Under PRC law, certain disputes are subject to the exclusive jurisdiction of PRC courts. For instance, according to Article 273 of the Civil Procedure Law as amended in 2021, "An action instituted for a dispute arising from the performance in the People's Republic of China of a Sino-foreign equity joint venture contract, a Sino-foreign contractual joint venture contract or a contract for Sino-foreign cooperative exploration and development of natural resources shall come under the jurisdiction of the people's courts of the People's Republic of China."

As previously mentioned, according to Article 46 of the Summary of Panel Discussion, the People's Court would refuse to recognize or enforce the foreign judgment if the foreign court has no jurisdiction over the case according to PRC law. For example, if a foreign court assumes jurisdiction over a case concerning Sino-foreign joint development of natural resources, such judgment may not be enforceable in China as it does not conform with Chinese courts' exclusive jurisdiction over such cases under the Civil Procedure Law.

## 14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

For a foreign judgment to be enforceable in China, the defendant in the case must be properly served. If the defendant has not been legally served with proper notice, or though it has been served, but was "not given a reasonable opportunity to present and debate its case" [1], the PRC court may refuse to enforce the judgment.

A default judgment is enforceable, subject to the submission of "documents proving that the foreign court has legally summoned the absent party" [2]. Such proof is not necessary where the judgment itself can show that the absent party has already been legally summoned.

In Liu Li v. Tao Li and Tong Wu [3], the Wuhan Intermediate People's Court recognized the default civil judgment rendered by the Los Angeles Superior Court



[4], and ruled that “As for the arguments made by the two defendants for not receiving the notice of joining the lawsuit from the American court, upon examination, it has been clearly recorded in the above judgment that the case was decided by default, and the applicant has submitted to this court with the investigation notice of the respondent, the court order approving the service of public announcement, the public announcement published in the newspaper and other supporting documents. It can be determined that the Superior Court of Los Angeles County, California, has lawfully summoned the two defendants and therefore the argument of the two defendants shall not be supported.”

[5]

[1] Article 46, Summary of Panel Discussion.

[2] Article 35, Summary of Panel Discussion.

[3]

<http://en.pkulaw.cn/display.aspx?id=80a75a51a4b1d5e1bdfb&lib=case>, last accessed on August 27, 2022.

[4]

<https://lawforbusiness.usc.edu/new-chinese-court-decision-recognizing-american-judgements-will-have-limited-precedential-effect/>, last accessed on August 27, 2022.

[5] <http://www.bjac.org.cn/news/view?id=3059>, last accessed on August 27, 2022.

### **15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?**

The PRC courts have a discretion over whether to recognise foreign judgments. This is particularly true under Article 289 of the Civil Procedure Law regarding the application of basic principles of PRC law, sovereignty and security and public interests which grants the PRC courts significant discretionary power to decide such issues.

### **16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?**

According to Article 289 of the Civil Procedure Law, a foreign judgment that is in violation of PRC’s basic principles of law, sovereignty, security and public interests will not be recognized or enforced in China. The concept of “basic principles of law, sovereignty, security

and public interests” is equivalent of the “public policy” doctrine in many other jurisdictions. Particular examples of such judgments in violation of “basic principles of law, sovereignty, security and public interests” include judgments obtained through fraud, granting recovery of gambling debts, granting remedies in violation of China’s usury law, and punitive damages. Punitive damages are explicitly highlighted by the Supreme People’s Court as unenforceable. [1]

[1] Article 45, Panel of Discussion.

### **17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?**

Only final and conclusive judgments can be recognized and enforced in China. Foreign judgments subject to pending or potential appeal are not final and conclusive, and therefore, cannot be the subject of recognition and enforcement proceedings in China.

### **18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?**

The court’s ruling on the recognition and enforcement of a foreign judgment is not appealable. Where an application for recognition and enforcement is rejected, the judgment creditor can file court proceedings in China against the judgment debtor for a decision by a Chinese court on the merits of the claim.

### **19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?**

Pursuant to the Interpretation of the Supreme People’s Court on Several Issues concerning the Application of Law in the Calculation of Interest on Debts during the Delay in the Performance of Execution Procedures, for a domestic judgment, the interest during the delay in the performance include judgment interest on debts plus default interest on debts. The default interest rate is 0.175%/day. According to decisions of various People’s Courts, for foreign judgments, only judgment interest is applicable and default interest is usually not applicable. The rationale for these decisions is that a foreign judgment creditor is not entitled to more in China than it is in the originating jurisdiction.

**20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?**

It is not required that a foreign judgment to be converted into local currency for the purpose of enforcement. However, as a practical matter, if a foreign judgment is converted into local currency, it may facilitate and expedite the enforcement proceedings.

**21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?**

All court costs for the enforcement are recoverable and shall be paid out of the proceeds of the enforcement proceedings. [1] Expenses incurred by third parties instructed by the court, such as costs for evaluation of assets subject to enforcement, translation, notarization and publication of documents are recoverable and paid out of the proceeds of the enforcement proceedings. Legal costs of applicant are generally not recoverable.

[1] Measures for the Payment of Litigation Fees:

Article 10 A party filing an application with the people's court pursuant to the law for the following matters shall pay an application fee: (8) Applying for acknowledgement and enforcement of the decision or ruling of a foreign court or the award of a foreign arbitration institution.

Article 38 The application fees prescribed in Items (1) and (8) of Article 10 hereof shall be borne by the party subject to the enforcement. Where the parties concerned reach a reconciliation agreement in the process of the enforcement, the application fees shall be settled through negotiation; if the negotiation fails, the bearing of such fees shall be decided by the people's court. The application fees prescribed in Item (2) of Article 10 hereof shall be borne by the applicant, and may, if the applicant files an action, be included in the claim. The bearing of application fees prescribed in Item (5) of Article 10 hereof shall be decided by the people's court in accordance with Article 29 hereof.

Article 10 A party filing an application with the people's court pursuant to the law for the following matters shall pay an application fee: (1) Applying for the enforcement of a legally effective decision, ruling or letter of mediation made by the people's court, the award or letter of mediation made by the arbitration institution

pursuant to the law, or the creditor's right document with the enforceability legally granted by a public notarial organ.

Article 20 The case acceptance fees shall be prepaid by the plaintiff, the third party with an independent claim, or the appellant. Where the defendant files a counterclaim, and the case acceptance fee is required to be paid by these Measures, the fee shall be prepaid by the defendant. For the cases for recourse of labor remuneration, the case acceptance fee may not be prepaid. The application fee shall be prepaid by the applicant. However, the application fees prescribed in Items (1) and (6) of Article 10 hereof shall not be prepaid by the applicant. The enforcement application fee shall be paid after the enforcement, and the bankruptcy application fee shall be paid after the liquidation.

**22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Chinese law does not recognize the concept of "champerty" and does not prohibit third-party funding in court proceedings, including enforcement proceedings. If the terms of the third-party funding are not in violation of mandatory laws and regulations, third-party funding is allowed in enforcement proceedings. Absent an express guaranty, a third-party funder is not liable for the costs incurred in the enforcement by the other side.

**23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?**

Bilateral treaty on judicial assistance is obviously the most straightforward and efficient way to promote, facilitate, and ensure mutual recognition and enforcement of judgments in different jurisdictions. However, concluding treaties between states is a process involving multiple political parties and subject to everchanging political situations between the relevant states, in the relevant region, or in the whole world. Therefore, it is unrealistic to expect many more bilateral treaties to be concluded between China and other states in the coming 5 years. In this respect, we fortunately note that the Supreme People's Court of China is actively promoting the application of reciprocity by introducing the memorandum of guidance for mutual recognition and enforcement of judgments between China and foreign states. Apparently, this is inspired by the

example of the Sino-Singaporean MoG concluded in 2018. In particular, Mr. Tao Hongyuan, Vice President of the Supreme People's Court, recently proposed in an international conference of judges to "expand the scope of application of the reciprocity principle, encourage more courts of participating countries to negotiate and sign memoranda on reciprocity, and encouraging the making of reciprocal commitments through diplomatic channels, promote the reciprocity consensus to more countries participating in the Belt and Road Initiative, and vigorously facilitate the mutual recognition and enforcement of judgments between states." [1]

[1]  
<https://www.chinacourt.org/article/detail/2021/10/id/6331809.shtml>, last accessed on August 27, 2022.

#### 24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

China has signed, but not yet ratified the Hague Choice of Courts Convention 2005. We anticipate that China will eventually ratify the Convention, but it is difficult to

estimate when China will do so.

#### 25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

China actively participated in the preparation process of the Hague Judgments Convention 2019 but has not signed it. We anticipate that China will become a party to the Convention in the near future, taking into account:

- corresponding to the development of China's Belt & Road Initiative, mutual recognition and enforcement of foreign judgments will promote international business and enhance the flow of capital and commodity, which is in the interest of China.
- the content of the Convention is in general not in conflict with China's domestic law. There is no major obstacle for China to become a party to the Convention.
- the Summary of Panel Discussion, which is so far the most detailed legal document for foreign judgments recognition and enforcement, has mirrored provisions of the Convention.

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## Contributors

**Wang Heng**  
Partner

[wangh@glo.com.cn](mailto:wangh@glo.com.cn)



**Chen Huahua**  
Associate

[chenhuahua@glo.com.cn](mailto:chenhuahua@glo.com.cn)



**Xu Jiaying**  
Associate

[xujiaying@glo.com.cn](mailto:xujiaying@glo.com.cn)

