

Dear China Committee Members:

Lily Chan, Seattle University law student, has kindly prepared the below summary of the exchanges recently posted to our Committee's list serve. She's done a fine job of synthesizing a variety of comments in an organized fashion. This summary will be posted to our Committee webpage for your future reference.

Also, Lily, together with a number of her classmates from Seattle University plan to attend the Spring Meeting later this month, their first Section meeting, and so we can look forward to meeting in person.

Kind regards,
China Committee, Co-Chair
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Enforcing U.S. Court Judgments in China

This summary is intended to capture the valuable comments posted to the listserv by members of the China Committee on the topic of enforcing foreign judgments in Chinese court. Original postings, circulated on the listserv February 24-28, 2005, were contributed by Mr. Yuming Bao, Professor Donald Clarke, and Mr. Robert Mark Field.

Summary of Discussions

1. *The Setting:* In a trade dispute, a client in the U.S. has obtained a final judgment from a U.S. court against a Chinese entity. Query whether the client may ask a Chinese court to enforce the U.S. judgment in China.

2. *Possible Alternative*: Usually seeking to enforce a U.S. judgment in China is an alternative to initiating a section 337 action with the ITC under the Tariff Act of 1930.

3. *Applicable PRC Law*: PRC Civil Procedure Law **Articles 267 and 268** describe the process by which a foreign entity may petition the Chinese court to recognize (承认) and enforce (执行) foreign judgments, such as one entered by a U.S. court.

4. *Venue*: PRC intermediate court having jurisdiction over the defendant or subject matter (中华人民共和国有管辖权的中级人民法院).

5. *Requirements – Article 267*:

- (a) By petitioner directly to the Chinese intermediate court; OR
- (b) By foreign court in accordance with international treaty; OR
- (c) In reference to the principle of reciprocity (按照互惠原则).

Comment by listserv member: Existence of a treaty is not prerequisite to enforcing a foreign judgment if the principle of reciprocity is satisfied. **Currently no international treaty exists between the U.S. and China to enforce each other's court judgments.**

Editor's note: A subsequent string on the listserv entitled “Contractual Choice of Law and Dispute Resolution Provisions” points out that China is a party to the Convention on the Recognition and Enforcement of Arbitral Awards, which may relate to the “international treaty” requirement here with respect to enforcing **arbitration awards**.

Original text of Article 267:

第二百六十七条:外国法院作出的发生法律效力判决、裁定,需要中华人民共和国人民法院承认和执

行的,可以由当事人直接向中华人民共和国有管辖权的中级人民法院申请承认和执行,也可以由外国法

院依照该国与中华人民共和国缔结或者参加的国际条约的规定,或者按照互惠原则,请求人民法院承认和执行。

6. *Standard of Evaluation – Article 268*:

The Chinese court evaluates a petition for a enforcing foreign judgment according to international treaties into which China has entered, or by the principle of reciprocity. If the court determines (认为) that the foreign judgment does not violate (不违反) fundamental principles of Chinese law, or sovereignty, national security, and public policies, then the court may rule on (裁定) the recognition of the foreign judgment; and if enforcement is required, the court may issue a court order.

Original text of Article 268:

第二百六十八条:人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定,

依照中华人民共和国缔结或者参加的国际条约,或者按照互惠原则进行审查后,认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的,裁定承认其效力,需要执行的,发出执行

令,依照本法的有关规定执行。违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的,不予承认和执行。

6. *Effect of default judgment status:* No special rule applies to default judgments under the letter of the PRC law, but a Chinese court may consider the default nature of a judgment a factor in its decision.

7. *Points of consideration:*

- Chinese courts have wide discretion in evaluating whether to enforce foreign judgments;
- Retaining local PRC counsel may help alleviate pressure from “local protection” on the case;
- Case law has a less significant role in the Chinese legal system than in the American system;
- In situations where the defendant has no assets in the U.S., a better option may be to file a suit directly in China, instead of first filing in the U.S. and then try to enforce the judgment in China. **Reasons:** potential savings in legal fees, and the increased likelihood of having to start a new proceeding in China, especially when the U.S. judgment is a default judgment;
- *Going forward:* Judge Li Xiao Yong of the Beijing No.2 Intermediate Court has noted an increased number of requests in the past two years for his court to recognize and enforce foreign judgments. Judge Li expects more requests following China’s entry into the WTO. Judge Tang De Hua, Vice Chief Justice of the China Supreme Court, also mentioned at a national conference that enforcing foreign judgments in accordance with international convention is a part of providing a good legal environment for foreign investors in China.

8. *Sample cases involving enforcement of foreign judgments in China:*

EM Groups v. Jili Chinaware, 2002, Guangzhou

Chinese court recognized an Italian court judgment in a bankruptcy case, where the plaintiff sought title to security interests transferred by a bankrupt

Italian entity to a Chinese entity. Italy and China have an existing treaty on resolving civil disputes.

M.S.K. v. China Machine, 2001, Beijing

Beijing No.2 Intermediate Court recognized a Russian court judgment in a breach of contract case, where the Russian court had petitioned in writing to the Chinese court for enforcement of the Russian judgment. Russia and China have an existing treaty on mutual assistance in civil disputes. The Chinese court held that if the Russian judgment “*does not violate fundamental principles of Chinese law, or sovereignty, national security, and public policies,*” it will recognize the judgment and designate personnel to enforce it. Amounts collected from contract damages will then be forwarded to the Russian court.

The PRC Supreme Court subsequently overruled the Beijing No.2 Intermediate Court’s decision on procedural grounds – citing improper notice where the Russian court directly sent court documents to the Chinese respondents by mail, instead of through a central governmental agency. The PRC Supreme Court held that a condition precedent (前提条件) to recognizing and enforcing foreign judgments is that foreign court documents have been legally served to the respondents.