

Now You Can Enforce Foreign Judgments in China

Description

China is poised to further integrate with the rest of the world in international judicial cooperation, as reflected in the latest overhaul of the sections about foreign-related civil procedures in China Civil Procedures Law which will take effect on January 1, 2024.



China Law on Enforcement of Foreign Judgements

I. What Changes Made?

Well, yes, China has adopted the basic legal framework for enforcing foreign judgments long time ago as early as back in 2007 in its Civil Procedures Law. The main amendments are the addition of three new clauses to the older China Civil Procedures Law, which are briefly explicated below:

1. Defined Scope of Foreign Judgments That Won't Be Recognized and Enforced

Article 300 is newly added to specify what foreign judgments shall not be recognized and enforced by China courts, including:

- (i) pursuant to Article 301 of this China Civil Procedures Law, the foreign court doesn't have jurisdiction over the case;
- (ii) the respondent (the person against which the foreign judgment is issued) was not properly subpoenaed or, was subpoenaed but denied reasonable opportunities to represent or defend himself, or he or she was incapacitated for purpose of litigation but not duly represented;
- (iii) the judgment or decision was obtained by fraud;
- (iv) China court has already adjudicated the same dispute, or has recognized a foreign judgement made by a third country on the same dispute;
- (v) the foreign judgments or decisions are in violation of the basic principles of China law or otherwise in infringement on China sovereignty, security, public policies.

Some comments on this newly added provision exclaimed that this change meant that cases other than those provided in this Article 301 should be recognized and enforced by China courts. But I am much reserved about this over-optimism because Article 299 (which has been in operation for many years) has not changed and still mandates China courts to review applications and requests for recognizing and enforcing foreign court judgments in accordance with bilateral- or multilateral treaties and conventions or based on reciprocity and shall only give consent thereto upon ruling out any violation of basic principles of China laws and any infringement on China state sovereignty, security or public policies.

2. China Courts Determining Foreign Courts' Jurisdiction over Cases

To elaborate on the criteria for determining foreign courts' jurisdiction over the dispute, Article 301 of this Civil Procedures Law provides for the following circumstances where foreign courts shall be decided as having no jurisdiction over the case:

- (i) the foreign court has no jurisdiction over the dispute as per its national laws, or it does have jurisdiction over the case as per its national law but does not have appropriate connection with the dispute in question;
- (ii) the foreign court's jurisdiction runs against rules of exclusive jurisdictions under China laws;
- (iii) in breach of the agreement on exclusive jurisdiction over the dispute between the parties.

3. Impact of the Proceedings of Recognizing and Enforcing Foreign Court Judgements

For the first time, it is made clear in Article 302 of China Civil Procedures Law that the proceedings filed with China courts for recognizing and enforcing foreign court judgments have a direct impact on ongoing lawsuits at China courts involving the same disputes which have been decided in such foreign court judgments. **The impact is that China courts MAY suspend the running of the ongoing proceedings involving the same disputes.** Though it is "may" not "shall", for ordinary cases with no sensitive issues, Chinese judges will be more than happy to suspend proceedings of those cases on their hands. THEY ARE REALLY VERY BUSY.

In past, China courts will simply ignore foreign court judgements and proceed with cases over the same disputes that have been decided by foreign courts. Now if there is a good reason for them to suspend a case in their hands, they may be well ready to accord such a

II. Your Takeaways

Despite several foreign countries concluding bilateral treaties with China on recognizing and enforcing court judgments, China is at large isolated in terms of judicial cooperation and assistance on the globe.

With the new law coming into force, China may be ready to embrace the world by opening up its judicial system. I am prudentially optimistic about a foreign court judgments (esp those of monetary or pecuniary nature) being recognized and enforced in China.

Also the new provision of Article 302 may in some cases serve a good purpose of preventing the counterparty to file a separate legal action in China that may result in contradictory decisions by China courts.

Date Created

December 2023

Author

admin

Shanghai Landing Law Offices