The Latest Development on the Principle of Reciprocity in the Recognition and Enforcement of Foreign Judgments in China

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Outline

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1. Introduction

1.1 The Legal Framework

In the case of an application for recognition and execution of a legally effective judgment of a foreign court, the people’s court shall examine it in accordance with the international treaties concluded or acceded to by China or with the principle of reciprocity.

--- Article 282 Civil Procedure Law of China
1.2 Route No 1: international treaties

- 36 bilateral treaties on judicial assistance.
- **34** include a regime on judgment recognition
- Exceptions: Singapore and South Korea
- **24** from OBOR countries
- Chinese Practice:
  - Belarus, Russia, Italy, France(2), Poland, Turkey
1.2 Route No 2: the principle of reciprocity

(1) The scope of application: the majority of cases

- 161 out of 195 countries: 83%
- most important trading partners:
  - the US, the UK, Germany, Australia,
  - South Korea, Singapore and Japan.
● (2) The Significance: Precondition

- no treaty or reciprocal relationship

- application being dismissed
2. The Definition of Reciprocity

2.1 the *Gomiakira* case from the Supreme People’s Court (“SPC”)

- reciprocity = *de facto* reciprocity:

  a court of the originating state must has once recognized and enforced a Chinese judgment before.
2.2 Cases from local courts

 Countries with reciprocal status:

 Germany; the US; Singapore

A German court Enforced a Chinese Judgment in 2006


Wuhan Intermediate Court in 2013: German -Reciprocal Status

A Singapore court recognized a Chinese Judgment in 2014


Nanjing Intermediate Court in Dec 2016: Singapore- Reciprocal Status

Kolmar Group AG v. Sutex Group Ltd
A US court recognized a Chinese judgment in 2009


Wuhan Intermediate Court in June 2017: US- Reciprocal Status

Countries without reciprocity:

England, Australia, South Korea and Japan.
3. Changes on the horizon

- (1) SPC on One Belt One Road
  “Chinese courts may take the initiative to provide judicial assistance to individuals from these countries first in cases where no treaty existed between the two countries.”

- (2) MOU between SPC and Singapore Supreme Court
(3) Nanning Declaration, China-ASEAN Justice Forum (June 2017)

“Reciprocity is assumed to exist if there is no case of refusal of enforcement in the originating state because of the lack of reciprocity.”

(4) The SPC is drafting its Judicial Interpretation
4. Concluding Remarks

- when no treaty exists, reciprocity applies
- reciprocity is the precondition.
- reciprocity = *de facto* reciprocity
- changes on the horizon
China Signed the Hague Choice of Court Convention

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Many Thanks

Q & A