

Recognition and Enforcement of Foreign Judgments in China

Rules, Practice and Strategies

WENLIANG ZHANG



Wolters Kluwer

Law & Business

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Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

Printed on acid-free paper.

ISBN 978-90-411-5227-5

© 2014 Kluwer Law International BV, The Netherlands

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Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

Preface

We are in the era of globalization. Burgeoning transnational civil and commercial communications promote the overall world welfare, but meanwhile a great number of troubles ensue. It is thus hard to deny that benefits and problems often go hand in hand. It is in the nature of human beings to seek benefits on the one hand and on the other, to avoid or resolve problems. In such a context, a lot of mechanisms have been designed for the resolution of disputes. Among such mechanisms, litigation is, and will remain, a popular, if not always dominating, mechanism in almost every country.

Against the tide of globalization, the character of litigation that it is deeply imbedded in the forum country becomes an obstacle to the resolution of international disputes. There is no single international court that can deliver civil and commercial decisions binding whole nations; judgments are strictly territorial. However, like contemporary global circulation of goods, services or capitals, cross-border movement of judgments is equally of absolute necessity, and trans-boundary movement of judgments increasingly gains prominence in theory and practice.

China becomes the world's second largest economy, and it is playing a more and more significant role on the world stage. Ever since its adoption of the open-door policy in the late 1970s, China has been more receptive to the outside world, but not in all fields. Despite important developments such as establishment of the principle of role of law and promotion of Sino-foreign judicial cooperation, recognition and enforcement of foreign judgments (REJ) in China has not yet gained much solid ground: above all, hardly any foreign pecuniary judgments have been recognized in China. To most of us, this may come as an unsatisfactory revelation. However, it is not the reason for us to just point the finger. Instead, the harsh reality can be a strong incentive to fully investigate the status quo of the relevant Chinese legal environment concerning REJ, based on which an appropriate evaluation of legal remedies, including REJ, in China is made possible, and for international players, strategic arrangement of disputes resolution containing Chinese elements, especially through international litigation, can be well anticipated.

This book is fully set to expound on the various issues with regard to REJ in China. For REJ in China, it is an important preliminary issue to assess in general what

effects foreign judgments may produce in China (Chapter 1). As regards the legal regime on REJ in China, there are three different but also interrelated legal channels that can be referred to: the “Chinese national laws-based REJ”, the “Sino-foreign bilateral treaties-based REJ” and the “multilateral conventions-based REJ” (Chapter 2). Coupled with these three legal channels, three corresponding sets of judicial proceedings exist (Chapter 3). I argue through the book that for REJ in China strict compliance with the Chinese legal channels and judicial proceedings is the first and foremost step, but it is insufficient *per se*. Although the Chinese legal and judicial systems are the two main factors influencing the consideration on REJ in China, it is not enough to just confine one’s understanding of REJ in China to such two basic elements. In contrast, other latent factors may play so important a role that the values of the legal and judicial systems can be dwarfed to a substantial extent. These factors include, but are not limited to, the Chinese legal culture, and the contemporary economic and political atmosphere (Chapter 4). To put it another way, REJ in China calls for a broader systematic understanding of the legal environment. As the title of the book suggests, consideration of Chinese judicial practice is a significant part of the research. In the book, courts’ cases are widely cited, and moreover, a bird’s-eye view of a selected Chinese court’s practice is furnished in an independent chapter (Chapter 5). From a broader perspective, this book is also set to uncover the litigation strategies surrounding REJ in China, which is of particular significance to international players in arranging international disputes resolution.

The author hopes that the book can shed some light on the status quo on REJ in China, a topic increasingly drawing attention and importance. Based on an all-around investigation into REJ in China, the author also hopes that the book may furnish international players with assistance in terms of arranging disputes resolution when Chinese elements are involved, and to those interested with updated information on REJ in China.

Acknowledgments

The book is based on my doctoral thesis finalized in Ghent University under Prof. Johan Erauw's supervision. Without him, the work would not have been completed. I owe him a great debt of gratitude. I also want to sincerely thank Prof. Huang Jin; he has been very encouraging in my early academic career, and has been giving me great support from the very beginning. What's more, the completion of my doctoral thesis and the publication of book would not have been possible without the generous support and understanding from my wife Zhu Lin and my parents. Their love is always around me, and I owe them so much.

During my research stay in Ghent, I enjoyed a rich and happy life. My colleagues, Prof. Piet Taelman, Prof. Maud Piers, Prof. Karen Broeckx, Prof. Sabien Lust and Jinske, Jan, Weinian, Cedric, Erinda, Conny, Carla, Valerie, Kim, Stefaan, Claudia and so on, all gave me a very helpful hand, and I express my appreciation to them all. Furthermore, so many friends made my stay in Ghent a nice memory; thus, I must thank Dirk, Joke, Jan (Victor), Huaquan, Shengrun, Wanzhao, Chunliang, Wen, Qin, Miao and so on. Last but not least, special thanks must go to Ms. Eleanor Taylor, Ms. Christine Robben, and Ms. Gwen de Vries at Kluwer Law International for their remarkable work and help in preparing for the publication of the book.

Wenliang Zhang
Peking University
June 2014

List of Abbreviations

<i>1965 Hague Service Convention</i>	<i>Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters</i>
1991 Regulation on Foreign Divorce Judgments	Regulation of the Supreme People's Court of Procedural Issues on Chinese Citizens' Applications for the Recognition of Foreign Divorce Judgments 1991
1993 Adoption Convention	Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
1999 Regulation on Foreign Divorce Judgments	Regulation of the Supreme People's Court on Relevant Questions Concerning the Handling of Applications for the Recognition of Foreign Court Divorce Judgments by the People's Courts 1999
2006 Litigation Costs Measures	Measures to the Payment of Litigation Costs 2006
Bankruptcy Act	Enterprise Bankruptcy Act of the PRC 2006
CCP 1982	Civil Procedure Law of the PRC (trial implementation) 1982
CCP	Code of civil procedure
Chinese Model Law of PIL	Model Law of Private International Law of the PRC
CLC 1969	International Convention on Civil Liability for Oil Pollution Damage 1969
Mainland China-Hong Kong Arrangement	Arrangement on Reciprocal Recognition and Enforcement of the Judgments in Civil and Commercial Matters by the Courts of Mainland China and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned

Mainland China-Macao Arrangement	Arrangement on Mutual Recognition and Enforcement of the Civil and Commercial Judgments
Opinion on the CCP	Opinions of the Supreme People’s Court on Some Issues Concerning the Application of the CCP 1992
REJ in China	Recognition and enforcement of foreign judgments in China
REJ	Recognition and enforcement of foreign judgments
Taiwan Judgments Regulation 1998	Regulation of the Supreme People’s Court on the Recognition of Civil Judgments Rendered in Taiwan 1998

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