

People's Republic of China (excluding Hong Kong SAR, Macau SAR and Taiwan Region, "PRC")

Yanli Zheng
JunHe, Beijing
zhengyl@junhe.com

1. What are the basic criteria for courts in your jurisdiction to allow enforcement of a foreign judgment?

Under the Laws of the PRC ("**the PRC Laws**"), a foreign judgment shall be firstly recognized by a PRC court before an enforcement procedure. Article 544 of the 'Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Amended in 2022)' stipulates *'Where a legally effective judgment or ruling rendered by a foreign court or a foreign arbitral award needs to be enforced by a court in the People's Republic of China, one party shall firstly apply to the people's court for the recognition of the judgment, ruling or arbitral award. After the people's court recognizes the same after review, the enforcement shall be carried out in accordance with the provisions in Division Three of the Civil Procedure Law.'*

Article 289 of the 'Civil Procedure Law of the People's Republic of China (Amended in 2021)' establishes the fundamental basis for a PRC court to enforce a foreign judgment. According to this article, *'For a judgment or ruling made by a foreign court which has come into legal effect for which recognition and enforcement is applied or requested, where a People's Court concludes, upon examination pursuant to the international treaty concluded or participated by the People's Republic of China or in accordance with the principle of reciprocity, that the basic principle of the laws of the People's Republic of China or the sovereignty, security or public interest of the State is not violated, the People's Court shall rule on recognizing its validity; where there is a need for enforcement, an enforcement order shall be issued and enforced pursuant to the relevant provisions hereof. Where the People's Court deem that the basic principles of the laws of the People's Republic of China or the sovereignty, security or public interest of the State is violated, the judgment or ruling made by the foreign court shall not be recognized and enforced.'*

Article 542 of the 'Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Amended in 2022)' also rules that *'Where a party 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.'*

Pursuant to the abovementioned legal basis, the enforcement of a foreign judgment in the PRC relies on two bases: either pursuant to international treaties concluded by the PRC, or pursuant to the application of the principle of reciprocity between the PRC and the foreign state (in the absence of applicable international treaties).

Enforcement of a foreign judgment through international treaties

Currently, the PRC has ratified and concluded over 30 bilateral treaties of judicial assistance, which regulate mutual recognitions of court decisions between the PRC and foreign states. Although the PRC does not use any ‘model treaty’ for the texts of these bilateral treaties, the PRC does adopt certain criteria in the recognition and enforcement of foreign judgments, which have been generally incorporated in most of these bilateral treaties. These criteria include:

- i. The court judgment is real, final and enforceable;
- ii. The judgment has been duly served on the defeated party;
- iii. The party who lacks legal capacity in litigation has been duly represented;
- iv. The defaulting party has been duly summoned in the case of a default decision;
- v. The court rendering the decision has jurisdiction in accordance with the Laws of the PRC (**‘the PRC Laws’**);
- vi. The same subject matters are not pending before a PRC court, nor were the PRC court proceedings the first to be instituted;
- vii. The court decision is not inconsistent with a decision rendered by PRC courts, or a decision rendered by a third State court recognized by PRC courts.

Enforcement of a foreign judgment through an application of the principle of reciprocity

In the absence of a bilateral treaty concluded between the PRC and the foreign state where the court judgment is rendered, the PRC court shall investigate if a ‘reciprocity in the enforcement of foreign judgments’ between the PRC and the foreign state exists. According to the interpretation of the Supreme People’s Court in Article 44 of the ‘Minutes of the National Symposium on Foreign-related Commercial and Maritime Trial Work of Court’ (**‘the Minutes’**), ‘a PRC court may determine the existence of reciprocity under any of the following circumstances:

- i. *A civil or commercial judgment made by a PRC court can be recognized and enforced by a court in that country in accordance with the laws of the country where the court is located;*
- ii. *The PRC reached an understanding or consensus of reciprocity with the country where the court is located; and*
- iii. *The country where the court is located has made reciprocity commitments to the PRC through diplomatic channels, or the PRC has made reciprocity commitments to the country where the court is located through diplomatic channels, and there is no evidence to prove that the country where the court is located has refused to recognize and enforce the judgment or ruling made by a PRC court on the grounds that there is no reciprocity.’*

(However, according to Article 33 of the Minutes, the Minutes are ‘*not applicable to the recognition and enforcement of relevant judgments in bankruptcy cases, intellectual property cases, unfair competition cases and monopoly cases due to their regional characteristics and particularity*’.)

In addition to the abovementioned standards of reciprocity, the PRC court will also evaluate other criteria of the foreign judgment (as requested by Article 46 of the Minutes), including:

- i. Whether the foreign court has jurisdiction;
- ii. Whether the respondent was lawfully summoned and duly represented;
- iii. Whether the judgment was obtained by fraud and whether the same dispute has been judged by other PRC courts or by other foreign judgments recognized by the PRC; and
- iv. Whether the judgment violates the basic principles of the laws of the People's Republic of China or violates State sovereignty, security and public interest.

With regard to the court’s review, Article 49 of the Minutes requests a ‘filing and reporting mechanism for the recognition and enforcement of a judgment rendered by a foreign court’: ‘*When a people's court at any level concludes a case involving the application for the recognition and enforcement of a judgment rendered by a foreign court, it shall file the case level by level with the Supreme People's Court for the record within 15 days after rendering the ruling. The filing materials shall include the written application submitted by the applicant, the judgment rendered by the foreign court and its Chinese translation, and the ruling rendered by the people's court. Prior to rendering a ruling, the people's court that examines a case in accordance with the principle of reciprocity shall report the proposed handling opinions to the competent high people's court under the jurisdiction for review; if the high people's court agrees with the proposed handling opinions, it shall report its review opinions to the Supreme People's Court for review. A ruling may be made only after the Supreme People's Court gives a reply.*’

In summary, the Minutes of the meeting further relax the identification of ‘reciprocity’. In principle, it is not necessary to wait for a foreign court’s advance enforcement of a PRC court judgment before identifying the existence of reciprocity. Still, the identification of reciprocity requires a case-by-case review by a PRC court, and particular types of cases and judgments are excluded, which leaves uncertainty in practice. As the Minutes are relatively new rules with few practical cases, the identification of reciprocity by a PRC court still needs further observation.

2. What other considerations may apply for enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?

The PRC adheres to the principle and policy of ‘absolute immunity’ with regard to the doctrine of state immunity. PRC courts do not accept pleadings or applications for lawsuits against foreign states or foreign state properties, nor does the PRC recognize the jurisdiction and admissibility of foreign state courts in lawsuits against the PRC. This position has been reiterated by the PRC on various occasions through governmental declarations or legislative/judicial interpretations.

The principle of ‘absolute immunity’ also applies in enforcement of foreign judgments and PRC courts have never enforced a foreign judgment against a state.

It is worth noting that in December 2022, the National People's Congress of the PRC published the ‘Draft Foreign State Immunity Law’ (**‘the Draft’**) for public comments and appraisal. The Draft for the first time stipulated certain exceptions to foreign state immunities under PRC court jurisdictions, which reflected the PRC’s position of transforming from a doctrine of ‘absolute immunity’ to one of ‘restrictive immunity’.

As ruled by Article 7 of the Draft, ‘If a foreign country engages in commercial activities with natural persons, legal persons or unincorporated organizations of other countries, including the People's Republic of China, which take place within the territory of the People's Republic of China, or has a direct impact within the territory of the People's Republic of China although it takes place outside the territory of the People's Republic of China, the foreign country shall not enjoy immunity from jurisdiction in the courts of the People's Republic of China in respect to the litigation resulting from such commercial activities. Commercial activities referred to in this Law refer to any transaction, investment or other commercial behavior of goods and services without exercising sovereign power. The courts of the People's Republic of China should comprehensively consider the nature and purpose of an act when determining whether it is a commercial activity.’

The Draft has not yet come into effect, nor has its final version been determined. Therefore, the principle of ‘absolute immunity’ is still applicable in PRC courts and leaves no room for the enforcement of a foreign judgment against a state. The future practice of immunity in PRC courts requires further observation.

3. What special considerations apply when the defendant/debtor in enforcement proceedings is a state, e.g. the doctrine of sovereign immunity?

As briefed under Question No. 2, the PRC court holds the principle of ‘absolute immunity’ and does not accept lawsuits against foreign states. This principle also applies to enforcement proceedings of foreign judgments against a state.

The PRC Laws have no rules on defenses regarding sovereign immunity, nor have PRC courts accepted any cases concerning the enforcement of a foreign judgment against a state. Therefore, the burden of advocating state immunity in a PRC court remains to be determined. However, Article 17 of the ‘Draft Foreign State Immunity Law’ rules *‘if a foreign country fails to appear in court within the time limit specified by the court of the People's Republic of China, the court shall take the initiative to find out whether the foreign country enjoys jurisdictional immunity’*. It is speculated that a defense of state immunity under future hypothetical PRC court proceedings might be relied on by the courts ex officio.

4.	What exceptions apply where a claim results from the improper actions of the defendant state, e.g. wars of aggression?
	This question does not apply to PRC Laws. As briefed under Question No. 2, PRC courts hold the principle of ‘absolute immunity’ and leave no exception for state immunity, even if the defendant state conducts improper actions such as wars of aggression.
5.	What due process standards and exceptions may apply in proceedings for enforcement of a judgment against a state?
	This question does not apply to PRC Laws. As PRC courts do not accept applications for enforcement of foreign judgments against a state, any discussions regarding due process standards and exceptions are not applicable.
a.	<i>What standards will the court apply in enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i>
	This question does not apply to PRC Laws. As PRC courts do not accept applications for enforcement of foreign judgments against a state, any discussions regarding service requirements are not applicable.
b.	<i>What exceptions may apply when conventional forms of service against a state are impossible, e.g. due to the absence of diplomatic relations?</i>
	This question does not apply to PRC Laws. As PRC courts do not accept applications for enforcement of foreign judgments against a state, any discussions regarding forms of service are not applicable.
c.	<i>What standards will the court apply in enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i>
	This question does not apply to PRC Laws. As PRC courts do not accept applications for enforcement of foreign judgments against a state, any discussions regarding the right to representation in the original proceedings are not applicable.
d.	<i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i>
	This question does not apply to the PRC Laws. As PRC courts do not accept applications for enforcement of foreign judgments against a state, any discussions regarding the right to representation are not applicable.

6.	What assets may be subject to enforcement if a claim is against a state and what are the requirements, e.g. enforcement against the assets of state-owned entities?
	<p>This question does not apply to PRC Laws. As briefed under Question No. 2, PRC courts hold the principle of ‘absolute immunity’, and foreign states and state-owned properties are immune from PRC court jurisdiction. PRC courts do not enforce a foreign judgment against a foreign state or foreign state-owned properties.</p> <p>Although foreign state immunity under PRC law (which also applies to foreign diplomacy, consulates, heads of state, etc.) does not apply to foreign SOEs, enforcement against assets of a foreign SOE is only applicable under PRC Law when the foreign judgment is against the foreign SOE itself, instead of the state. When it comes to the enforcement of foreign judgment against a state, the ‘enforcement against assets of state-owned entities’ referred in this question is not applicable, as such judgment is not enforceable by PRC courts.</p>