



Kobre & Kim's Claim Monetization Contacts



John Han
Hong Kong
john.han@kobrekim.com



Jason J. Kang
Shanghai / Hong Kong
jason.kang@kobrekim.com



Andrew Stafford KC
London
andrew.stafford@kobrekim.co.uk



Peter Tyers-Smith
Cayman Islands
peter.tyers-smith@kobrekim.ky

PRC Continues to Open Up in Recognizing Foreign Claims

Chinese courts have recently shown encouraging signs of increased openness to recognizing and enforcing foreign judgments and awards. Our Claim Monetization team analyzes the implications these developments may have for foreign judgment and award creditors in a historically tricky jurisdiction.

Two recent developments show Mainland Chinese courts' increased openness towards recognizing foreign judgments and awards. For non-Chinese claimants, these developments signal a new window for enforcement in a historically tricky jurisdiction.

Background

The Shanghai Maritime Court recently applied the principle of reciprocity for the first time in a milestone decision with the approval of the PRC (People's Republic of China) Supreme People's Court. This decision recognized a commercial judgment issued by English High Court in favor of a Norwegian creditor against a Chinese debtor and creates a non-binding example for a developing reciprocal relationship between China and England & Wales related to judgment recognition and enforcement, making it easier for PRC courts to recognize other English judgments and possibly judgments of other common law jurisdictions outside of the PRC.

Implications

The Decision showed a progressive approach toward foreign judgment recognition and enforcement in PRC.

1. A closer reading of the decision reveals that it may set down broader principles that can lay the foundation for future recognitions of judgments from other jurisdictions beyond England & Wales. The decision was not narrowly interpreted as limited to this specific case. The court broadly ruled that a reciprocal relationship could be presumed if the civil and commercial judgments made by PRC courts could be recognized and enforced by a foreign jurisdiction according to the laws of that jurisdiction—as opposed to requiring an actual instance of recognition of a PRC judgment by the foreign court.
2. The decision suggests that when reviewing foreign judgment recognition cases, PRC courts would focus on the procedural issues and would not conduct a substantive review of the foreign judgments. According to the decision, “even if the question of wrong application of law in the British court judgment raised by the respondent is true, it will not constitute a ground for refusal of recognition and enforcement.” The People's Court would reject recognition and enforcement of a foreign judgment only if it violates the basic principles of the laws of China or China's sovereignty, security or public interests.
3. In addition to the disputed amount determined in the foreign judgments, the court decided that the relevant interests, fees, fines or other amounts incurred due to the debtor's failure to comply with payment obligations are also recognizable and enforceable, expanding the rights of foreign creditors.

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4. It is worth noting that this important decision may not be the last word on the recognition and enforcement of common law judgments in China, but it serves as a potent precedent that other judgment creditors can seize to enforce against PRC entities and assets.

Arbitral Award Creditors Not Left Behind

Further developments have signaled that China's openness to foreign claims is expanding beyond the recognition of foreign court judgments as well, with the PRC strengthening its support for the recognition and enforcement of overseas arbitration awards. As a signatory to the New York Convention, China recognized and enforced only 24 foreign arbitral awards in 2021. However, on June 28, 2022, China added HKIAC to the China International Commercial Court's "One-Stop" Platform for Diversified International Commercial Dispute Resolution, making the HKIAC the first arbitral institution outside the mainland to be included. This new development will allow Hong Kong arbitrations to be recognized and enforced in China more quickly, and will also open the doors to interim measures such as property preservation and evidence preservation. In short, foreign creditors have yet another path to seek recognition and enforcement of their claims in the PRC.

In the past, foreign judgment and award creditors have faced hurdles when trying to get their claims recognized and enforced in the PRC. However, China seems to be widening the crack in the door, and as part of a sophisticated cross-border enforcement strategy, foreign creditors should make sure they don't miss the opportunities China presents.

About Kobre & Kim's Claim Monetization Team

Kobre & Kim is a global Am Law 200 law firm that focuses on cross-border disputes and investigations, often involving fraud and misconduct.

Our global Claim Monetization team helps clients realize value from their claims, developing investigative, enforcement and asset tracing/recovery plans in the pre-dispute stage, to maximize future monetization. Our integrated team, of former U.S. government lawyers, Hong Kong solicitors, UK solicitors and barristers (including King's Counsel) and offshore lawyers, uniquely positions us to drive cross-border proceedings — advocating directly for our clients or closely leading local counsel in jurisdictions around the world.

With lawyers admitted across the U.S., UK, Asia, the Middle East, Latin America and key offshore financial centers, our team offers deep experience coordinating investment monetization and judgment enforcement strategies across multiple jurisdictions.