Enforcement of arbitral awards in China: overview

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ENFORCEMENT OF ARBITRAL AWARDS
Definitions and preliminary proceedings

1. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

The Chinese Arbitration Law does not provide a specific definition of an arbitral award. For the purpose of this chapter, arbitral award refers to a final decision made by an arbitral tribunal on the substantive issues of a case and carrying the tribunal's adjudication of the claims brought to the arbitration. This section focuses on arbitral awards for commercial matters, excluding international investment arbitration awards for which there is currently no basis for recognition and enforcement under Chinese law.

For the purpose of recognition and enforcement, Chinese law divides arbitral awards into the following four mainstream types, depending on a number of factors, including the place of the arbitration institution, the place of arbitration, and/or the presence/absence of foreign elements in the dispute:

- Local awards, which are rendered in mainland China by Chinese arbitration institutions over disputes without a foreign element.
- Foreign-related awards, which are rendered in mainland China by Chinese arbitration institutions over disputes with foreign element(s).
- Hong Kong, Macau and Taiwan awards, which are rendered in Hong Kong, Macau (by arbitration institutions and arbitrators in Macau), or in Taiwan (by arbitration institutions and ad hoc arbitral tribunals in Taiwan).
- Foreign awards, which are rendered in jurisdictions other than mainland China, Hong Kong, Macau and Taiwan. Depending on whether a foreign award is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), foreign awards are further divided into New York Convention awards and non-New York Convention awards. This section focuses on New York Convention awards as they are the most common pattern when recognition and enforcement of foreign awards is sought in China.

Different types of awards can be subject to different rules for recognition and enforcement in China.

In this chapter, the term "domestic awards" includes both "non-foreign-related awards" and "foreign-related awards"; the term "international awards" includes both "Hong Kong, Macau and Taiwan awards" and "foreign awards".

2. Are decisions in preliminary/provisional proceedings recognised and enforceable?

The prevailing view is that decisions in preliminary/provisional proceedings (such as decisions by emergency arbitrators) are not enforceable as they are not final and conclusive. However, to date there is no case that has been tested before the Supreme People's Court. Partial or interim awards that dispose of some (but not all) of the issues in the arbitration are amenable for recognition and enforcement. Notably, interim measures issued in arbitral proceedings outside China are not enforceable in China.

Applicable conventions

3. What conventions is your jurisdiction a contracting party to?

China is a contracting party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). However, it made both commercial and reciprocity reservations when ratifying the convention. Only awards that are made in the territory of another contracting state and result from contractual or non-contractual legal relationships that are considered commercial under Chinese law can be enforced in China in accordance with the New York Convention.

China has also concluded a number of bilateral treaties on provision of judicial assistance with some of its major trading and investment partners. Where the counterparties to such treaties are also signatories of the New York Convention, most such treaties simply refer to the New York Convention with regard to the recognition and enforcement of arbitral awards.

Acknowledgement and enforcement of Hong Kong, Macau and Taiwan awards are subject to separate regimes, as set out in the following respective Supreme People's Court (SPC) interpretations:

- SPC Arrangement in respect of Mutual Enforcement of Arbitral Awards by the Mainland and the Hong Kong Special Administrative Region effective on 1 February 2000.
- SPC Arrangement in respect of Mutual Acknowledgement and Enforcement of Arbitral Awards by the Mainland and the Macau Special Administrative Region effective on 1 January 2008.
- SPC Directives in respect of Acknowledgement and Enforcement of Arbitral Awards Rendered in Taiwan Region effective on 1 July 2015, which replaced the old SPC directives on the same subject matter that came into effect in 1996 and 2009 respectively.

Enforcing awards

4. What is the applicable statutory framework for enforcement of awards?

Relevant provisions in the following statutes and Supreme People's Court (SPC) interpretations form the legal framework for recognising and enforcing arbitral awards in China:

- Arbitration Law.
- Civil Procedure Law (CPL).
• SPC interpretations on and related to the Arbitration Law.
• SPC interpretations on and related to the CPL.
• SPC interpretations in respect of Hong Kong, Macau or Taiwan awards (see Question 3).
• SPC Notice on Implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Acceded to by China (SPC rules for implementing the New York Convention).

5. What are the grounds for refusing enforcement?

Domestic awards

Under the Civil Procedure Law (CPL), a court can refuse to enforce a non-foreign-related award on any of the following grounds (Article 237, CPL):
• Lack of a valid arbitration agreement.
• The matter dealt with by the arbitration is not arbitrable or is outside the scope of the arbitration agreement.
• The composition of the arbitral tribunal or the conduct of the arbitral procedure is unlawful.
• The evidence relied on by the tribunal to render the award is forged.
• The opposing party withholds evidence from the arbitral institution, which may cause the award to be unjust.
• During the arbitration proceedings the arbitrator commits embezzlement, takes bribes, acts partially for personal gains or blatantly disregards the law.
• Enforcement of the arbitration award is contrary to social and public interests.

A court can refuse to enforce a foreign-related award on any of the following grounds (Article 274, CPL):
• Lack of a valid arbitration agreement.
• The respondent is not served with the arbitral proceeding or given notice of the opportunity to appoint an arbitrator, or does not have the opportunity to present his case for reasons not attributable to the respondent.
• The composition of the arbitral tribunal or the conduct of the arbitral procedure is not in line with the arbitration rules.
• The material dealt with by the arbitration is not arbitrable or is outside the scope of the arbitration agreement.
• Enforcement of an arbitration award is contrary to social and public interests.

International awards

For awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), the refusal grounds are set out under Article V of the New York Convention. Similar refusal grounds for Hong Kong, Macau and Taiwan awards can also be found in the relevant Supreme People’s Court interpretations.

6. Is the enforcing court required to examine the refusal grounds during the enforcement proceedings ex officio?

For awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) awards, the party against whom the enforcement is sought bears the burden to prove that one or more grounds for refusal exist (Article V.1, New York Convention). However, the enforcing court must examine ex officio the arbitrability and public policy grounds. Similar rules apply to the enforcement of Hong Kong, Macau, and Taiwan awards.

7. What is the effect of pending challenge proceedings in the foreign state where the decision is granted?

For domestic awards, if one party applies for enforcement and the other party applies for setting aside the award, the enforcing court must suspend the enforcement proceeding.

For Macau and Taiwan awards, the court must suspend the enforcement proceeding in China at the request of the award debtor if the award is being challenged before a court in Macau or Taiwan, provided that the debtor provides sufficient security to the enforcing court.

For other international awards, the court can, at its discretion, suspend the enforcement proceeding (Article 256, Civil Procedure Law).

8. What types of arbitral awards are enforceable?

Money awards
Generally, these are enforceable in China.

Awards containing injunctions ordering or prohibiting the doing of acts
Generally, these are enforceable in China.

Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures
See Question 2.

Declaratory awards
Declaratory judgments normally contain no contents for enforcement. However, they can be recognised so as to have preclusive effect in China.

Other awards
None.

9. Can parties seek to enforce only part of the award?

Parties can seek to enforce only part of the award, as a matter of principle.

10. Are any class of awards excluded from recognition and enforcement? If so, what types of awards?

Other than the applicable grounds for refusal, the law does not specify any class of arbitral awards that categorically must be refused recognition and enforcement.

11. Will service that does not conform to the requirements of international treaties/regulations in force automatically result in a denial of the enforcement of a judgment/award/deed?

The court can refuse to recognise and enforce an award under Article V.1(b) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, if the service does not conform to the lex arbitri, applicable arbitration rules or the arbitration agreement, and the award debtor is deprived of proper notice of the appointment of the arbitrator or the arbitration proceedings, or of the opportunity to present his case.

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12. What methods of service are not acceptable against defendants domiciled in the state where enforcement is sought?

Generally, courts consider a given method of service as proper if it conforms with the lex arbitri, applicable arbitration rules, and the arbitration agreement.

Public policy

13. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or international award?

Domestic awards
China's public policy applies.

International awards
China's public policy applies.

14. In which cases and against which awards has the principle of public policy generally been applied?

The major case where the Supreme People's Court refused to enforce a foreign award on public policy ground was decided in 2008 in the Supreme People’s Court reply on the recognition and enforcement of an International Chamber of Commerce award in Hemofarm et al v Yongning (Supreme People's Court case number: 2008 Min Si Ta Zi Di Ti). This case related to a joint venture set up by a Chinese company and three foreign companies in 1995. The joint venture contract provided for International Chamber of Commerce (ICC) arbitration in Paris. Following the set-up of the joint venture, in a leasing dispute between the Chinese company and the joint venture, a Chinese court asserted jurisdiction and issued an asset preservation order against the joint venture as defendant. Afterwards, the three foreign parties commenced ICC arbitration against the Chinese company under the joint venture contract. The ICC tribunal ruled that, among others, the Chinese company had breached the joint venture contract by seeking the asset preservation order against the joint venture before a Chinese court, and eventually awarded damages to the foreign parties. When the foreign parties sought recognition and enforcement of the ICC award in China, the court took the view that the leasing dispute was outside the scope of the arbitration clause and the ICC decision concerning the asset preservation order was an interference with Chinese judicial sovereignty. Therefore, the court refused to recognise and enforce the ICC award on the ground of public policy as well as in accordance with Article V.1(c) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

ENFORCEMENT PROCEEDINGS

Procedure

15. What is the procedure for enforcing arbitral awards?

Domestic awards
Generally, the procedure for enforcing arbitral awards (whether domestic or foreign) is similar to the enforcement of foreign judgments (see Enforcement of judgments in China, Question 23).

Ex parte or on notice. See Enforcement of judgments in China, Question 22.

Applicable court. See Enforcement of judgments, Enforcement of judgments in China, Question 22.

Limitation period. The limitation period is two years (Article 239, Civil Procedure Law (CPL)).

Timing. See Enforcement of judgments in China, Question 22.

Court fees. An application fee, calculated as a proportion of the award amount in accordance with the applicable progressive fee schedule, is levied by the court for recognition and enforcement of domestic awards, and is borne by the award debtor (Articles 20 and 38, Measures on the Payment of Litigation Costs promulgated by the State Council effective as of 1 April 2007).

Recourse. There is no appeal on a court's decision to grant or deny recognition and enforcement.

International awards

See Enforcement of judgments in China, Question 22.

Ex parte or on notice. See Enforcement of judgments in China, Question 22.

Applicable court. See Enforcement of judgments in China, Question 22.

Limitation period. The limitation period for commencing enforcement proceedings is two years under the CPL. However, the limitation period is one year for Taiwan awards.

Timing. For foreign-related awards and international awards, the court must reach a decision within two months of accepting the application to either recognise or refuse recognition of the award. If the court decides to refuse recognition or enforcement, it must internally refer the case and its intended decision to a higher level court within the two-month period. If the higher court concurs with the lower court's decision to refuse, it must refer the case to a still higher level. This process must keep going until the case reaches the Supreme People’s Court (SPC) while the enforcing court waits for the SPC’s final decision. There is no statutory time limit for the SPC to make the final decision.

Court fees. See Enforcement of judgments in China, Question 22.

Recourse. Once a court issues its decision on recognition and enforcement, there is no appeal proceeding.

16. Can the enforcing court review the foreign award if all formalities were complied with and if the award meets all requirements?

The enforcing court cannot review a foreign award unless the applicable treaty, convention or principle of reciprocity requires otherwise. Similar to the enforcement of judgments, Chinese courts are not allowed to revisit the merits of the underlying dispute in the recognition and enforcement proceeding of a foreign award. See Enforcement of judgments in China, Question 22.

Formalities

17. What are the documentary requirements for enforcement?

Documentary requirements

For enforcement of domestic awards, the documentary requirements are similar to those for the enforcement of judgments (see Enforcement of judgments in China, Question 24).

For Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) awards, the applicant must submit to the court (Article IV, New York Convention):

- A written application.

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• The duly authenticated original award or a duly certified copy of it.
• The original agreement which contains the underlying arbitration agreement or a duly certified copy of it.
• Translations of the above documents if made in a foreign language.

**Authentication**

See Enforcement of Judgments in China, Question 24.

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18. **Is it required to translate the award into the language of the state where enforcement is requested?**

**Translations**

Translations are required unless otherwise provided by the applicable treaty or convention.

**Other languages**

None.

**Certification**

See Enforcement of Judgments in China, Question 25.

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19. **What is the format of the application for a declaration of enforceability?**

There is no standard format under Chinese laws for applications for recognition and enforcement of foreign awards.

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20. **What information must be included in the application regarding the award, the claim as awarded in the award, the facts and legal grounds of the case, and that the judgment is no longer appealable?**

**Award**

Information on an award, such as the arbitration institution that renders the award, the reference number and the date of issuance, is usually included in the application.

**Claim as awarded**

The claim as awarded, especially the subject to be enforced, must be included in the application.

**Facts and legal grounds**

Generally, it is not necessary to include information on the substantive facts and legal grounds of the case in the application.

**Appeals**

Not applicable.

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21. **Is it possible to request the enforcing court for provisional measures pending the enforcement proceedings?**

**Domestic awards**

There is no requirement for recognition or acknowledgment of domestic awards and award creditors can apply to enforce awards without delay. Once an enforcement proceeding is opened, the enforcing court takes enforcement measures including attaching or freezing the award debtor's assets.

**International awards**

International awards must first be recognised or acknowledged by a Chinese court and can then be enforced. The prevailing view is that the court cannot grant provisional measures in recognition or acknowledgment of international awards unless specifically authorised to do so under the applicable rules, such as the respective Supreme People's Court interpretations related to Taiwan and Macao awards (see Question 3). Once the award is recognised or acknowledged, an enforcement proceeding can be commenced whereby the court takes enforcement measures including attaching or freezing the award debtor's assets.

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22. **Is it required to convert the value of the award into the local currency?**

See Enforcement of Judgments in China, Question 28.

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23. **Can the enforcing court stay the enforcement proceedings pending the outcome of proceedings to set aside the award at the seat of arbitration? If so, will the court order the party seeking the stay to provide security?**

See Question 7.

**ACTUAL ENFORCEMENT**

24. **What is the enforcement procedure when a declaration of enforceability is granted?**

**Domestic awards**

There is no recognition or acknowledgement requirement for domestic awards. Award creditors can apply for enforcement directly.

**International awards**

For international awards (except Hong Kong awards, which can be enforced without being first acknowledged), award creditors can seek recognition or acknowledgment and enforcement in the same application; however, procedurally these two requests are dealt with in two stages. The court first decides whether to recognise or acknowledge the award, and if so, then moves on to the enforcement stage.

See Question 16 for the enforcement procedure of both domestic awards and international awards.

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25. **Can defendants oppose the actual enforcement procedure, and if so, on what grounds/defences?**

Debtors in enforcement proceedings can object to unlawful acts or measures taken by enforcing courts. Objections must be made in writing.

**PROPOSALS FOR REFORM**

26. **Are any changes to the law currently under consideration or being proposed?**

The current Arbitration Law came into effect in 1995 and was amended in 2009. The Supreme People’s Court (SPC) Interpretation on Arbitration Law was promulgated in 2006.

The SPC published a set of draft rules concerning domestic arbitration with foreign elements (foreign-related arbitration) as
well as foreign arbitration (SPC Proposal). Three legislative bills were introduced in 2013 as amendments to the Arbitration Law (2013 Bills).

Both the SPC Proposal and the 2013 Bills raised notable points of reform. For example, the SPC Proposal included a conditional permission of ad hoc foreign-related arbitration in China and a mechanism for joining third parties. The 2013 Bills also considered the joining of third parties and proposed to reduce the limitation period for setting aside from the current six months to three months. To date, the SPC Proposal has not been finalised and the 2013 Bills are reported to be under consideration by the national congress.

**ONLINE RESOURCES**

- **Legal Affairs Office of the State Council PR China**
  - Website: www.chinalaw.gov.cn
  - Description: Official website maintained by the Chinese government, containing regularly updated legislation.

- **Supreme People's Court**
  - Website: www.court.gov.cn
  - Description: Official website maintained by the SPC containing regularly updated SPC interpretations.

- **Judicial Opinions of China**
  - Website: www.court.gov.cn/zgcpwsw
  - Description: Official website maintained by the SPC containing regularly updated judgments and rulings.

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**Practical Law Contributor profiles**

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