

The Duty of Uniform Interpretation of the New York Convention in Mainland China

Gao Xiaoli

Presiding Judge of the Supreme Court of P.R. China

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Part I: Introduction of the New York Convention in China

- * On Dec. 2nd, 1986, the Standing Committee of the National People's Congress of China ratified the New York Convention
- * On Apr. 22nd, 1987, the New York Convention entered into force in Mainland China
- * On Apr. 10th, 1987, No. 5, Notice of the Supreme Court of P.R. China on the application of the New York Convention

Declarations and Notifications pursuant to Article I(3) and Article X(1)

- * 1) China will apply the Convention only to recognition and enforcement of awards in the territory of another contract state.
- * 2) China will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that were considered commercial under national law.
- * 3) Upon resumption of sovereignty over Hong Kong on 1 July 1997, the Government of China extended the territorial application of the Convention to Hong Kong Special Administrative Region, subject to the reservation made by China upon accession to the Convention.

On 19 July 2005, China declared that the Convention shall apply to the Macao Special Administrative Region, subject to the reservation originally made by China upon accession to the Convention.

Part II: Recognition and Enforcement of Foreign Arbitral Awards in China

- * **Civil Procedure Law of the People's Republic of China**

- * **Article 283**

If an award made by a foreign arbitral organ requires the recognition and execution by a people's court of the People's Republic of China, the party concerned shall directly apply to **the intermediate people's court of the place where the party subjected to execution has his domicile or where his property is located**. The people's court shall deal with the matter in accordance **with the international treaties** concluded or acceded to by the People's Republic of China or with **the principle of reciprocity**.

- * 1. Treaty: the New York Convention (156 parties)

 bilateral treaties on civil and commercial judicial assistance

- * 2. Reciprocity

Procedure Issues

- * **1. Jurisdiction**

- a) the intermediate people's court of the place where the party subjected to execution has his domicile
- b) the intermediate people's court of the place where the property of the party subjected to execution is located

- * **2. Time limitation of application**

- * **Article 239 of the Civil Procedure Law of China**

The time limit for submission of an application for execution shall be two years from the date the award became effective.



- * **3. Documents to be Presented with the Application**

- * Article IV of the New York Convention

- a) the duly authenticated original award or a duly certified copy

- b) the original agreement or a duly certified copy

- c) translation of documents into Chinese and the translation shall be certified by an official or sworn translator or by a diplomatic or consular agent



- * **4. Division of Recognition and Enforcement**

- * **5. Collegiate Bench Trial**

Article 548 of the Judicial Interpretation of the Civil Procedure Law of China

- * **6. Ruling**

the ruling of the court is final and appeal is not allowed

Review Criteria

* **Article V of the Convention**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected to or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Part III: Approach to Uniform Interpretation of the New York Convention

* 1. Issue Judicial Interpretations

- * **Fashi(2015)No.5** the Judicial Interpretation of the Civil Procedure Law of China by the Supreme People's Court of China
- * Art. 545: The party could apply for recognition and reinforcement of the awards made by arbitrators appointed for each case outside the territory of China in Chinese courts according to Art. 283 of the Civil Procedure Law of China.

- * **2. The Report System**

- * **[1995] No. 18 Notice of the Supreme People's Court on the Handling of Issues Concerning Foreign-related Arbitration and Foreign Arbitration by People's Courts**

Where a party applies to a people's court for the execution of an arbitration award made by a domestic foreign-related arbitration institution, or for the acknowledgement and execution of an arbitral award made by a foreign arbitration institution, if the people's court considers that the arbitral award made by the arbitration institution in China falls under any case described in Article 260 of the Civil Procedures Law, or if the foreign arbitration award in question fails to conform to the international conventions China has entered into, or fails to comply with the principle of mutual benefit, the people's court must report to the higher people's court of the jurisdiction concerned for examination before making a ruling of non-execution or refusal of recognition and execution. If the higher people's court agrees to non-execution or refusal of recognition and execution, it shall report its examination opinions to the Supreme People's Court. Only after the Supreme People's Court gives its reply can the ruling of non-execution or refusal of recognition and execution be made.



- * **3. Publish Leading Cases**

- * Guidebook on Foreign-related Commercial and Maritime Trial, edited by No. 4 Civil Trial Division of the Supreme People's Court of China, published by People's Court Press, 2 volumes per year

- * 30 volumes

Part VI: Conclusion

- * 1. Pro-enforcement: More than 80% awards under New York Convention were recognized and enforced by the Chinese courts in the past years.
- * 2. Chinese courts have only refused to recognize or enforce awards based on the grounds set forth under Article 5 of the Convention and have adopted narrow interpretation of the grounds for non-enforcement.
- * 3. The respondent has the burden of proof and can only resist the recognition and enforcement of the award on the basis of the grounds set forth in Article V1. The courts can refuse recognition and enforcement on its own motion based on the two grounds under Article V2.
- * 4. Public policy has been interpreted and elaborated on a case-by-case basis by the SPC. Generally speaking, Chinese courts interpret public policy in a very narrow way and has not categorized it. It is triggered only if the award is manifestly contrary to the principle of the law, fundamental interests of the society, safety of the county, sovereignty, or good social customs.