

RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRATION AWARD IN CHINA

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Legal basis for recognition and enforcement of foreign arbitration award in China

- ⦿ The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”)
- ⦿ The PRC Arbitration Law
- ⦿ The PRC Civil Procedure Law
- ⦿ Judicial interpretations promulgated by the PRC Supreme People’s Court relating to implementation of the New York Convention

Chinese courts

- County-level local people's courts
- Intermediate level people's courts
- High people's courts
- The PRC Supreme People's Court
- 10 specialist maritime courts
- Each maritime court has several circuit tribunals at the ports under its jurisdiction

Jurisdiction

- The intermediate level people's court at the place where the party subject to enforcement has its domicile or where its assets are located
- Maritime-related: the competent maritime court at the place where the party to be enforced is domiciled or has its assets
- No local maritime court: the intermediate level people's court nearby
- If the asset to be enforced is a vessel: the local maritime court

Documents required

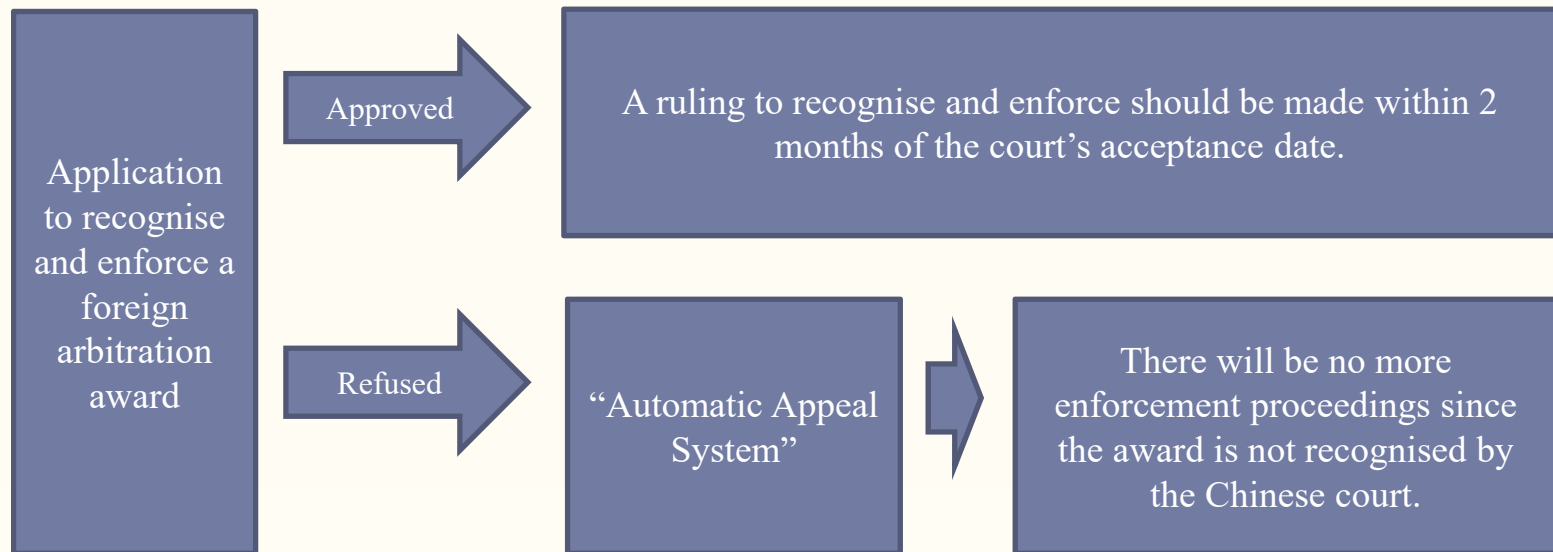
- ⦿ The original or formal copy of the arbitration award;
- ⦿ The original or formal copy of the arbitration agreement or the contract containing the arbitration clause;
- ⦿ If the above documents are not in Chinese, then certified translation is required;
- ⦿ The identity certificate of the applicant such as its Business License or Certificate of Incorporation;
- ⦿ Authorisation documents to the PRC lawyers appointed;
- ⦿ Application for Recognition and Enforcement; and
- ⦿ Other documents as required by the Chinese court (e.g. certificate of the award's entry into force, the arbitrator's identity and/or qualification and affidavit on the arbitration proceedings, etc.).

* Documents originating from outside of the PRC

- ⦿ Notarised by a local notary public officer and legalised by the Chinese Embassy or Consulate in the country or the documents' origin

Recognition

- Time limit for recognition and enforcement of a foreign arbitration award by a Chinese court is 2 years counting from the due date set forth in the arbitration award.



Possible challenges to recognition

- ⦿ Article V (1) (a) of the New York Convention - the validity of the arbitration clause/agreement
- ⦿ Article V (1) (b) and (d) of the New York Convention - improper service of the process and procedural non-compliance
- ⦿ Article V (1) (e) of the New York Convention - no binding award
- ⦿ Article V (2) (b) of the New York Convention - contrary to the public policy
- ⦿ Some other issues that may cause the foreign arbitration award challengeable – for example, the form of the documents - Article IV of the New York Convention

Enforcement

- No “special circumstances” - within 6 months of the ruling’s date
- Order the party subject to enforcement to provide its asset information
- Compulsory enforcement measures:
 - * freeze the other party’s bank accounts
 - * seize, detain and sell its assets such as real property, share equity, vehicles and ships
 - * capture the funds payable by a third party to the party subject to enforcement
 - * the assets - under ownership of the party to be enforced
 - * for maritime-related cases - enforcement against the ships, bunkers or cargo onboard the ships belonging to the party subject to enforcement
 - * auction or sell off and distribute the proceeds

Special measures for enforcement purposes

- List of Bad Faith Entities Subject To Enforcement
- Order to Restrict High Consumption
 - * natural person
 - * an entity - its legal representative, principal, persons directly responsible for debt performance or actual controller
- Automatic telephone/mobile phone answerback alert
- In serious circumstances – criminal liability
 - * whoever has the ability to execute the judgment or ruling made by a people’s court but refuses to do so
 - * whoever conceals, transfers, sells or intentionally destroys or damages the property sealed up, distrained or frozen by judicial organs

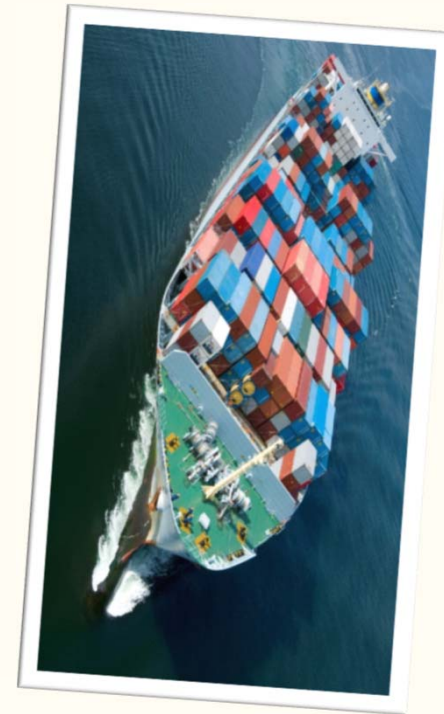
Obstacles in enforcement

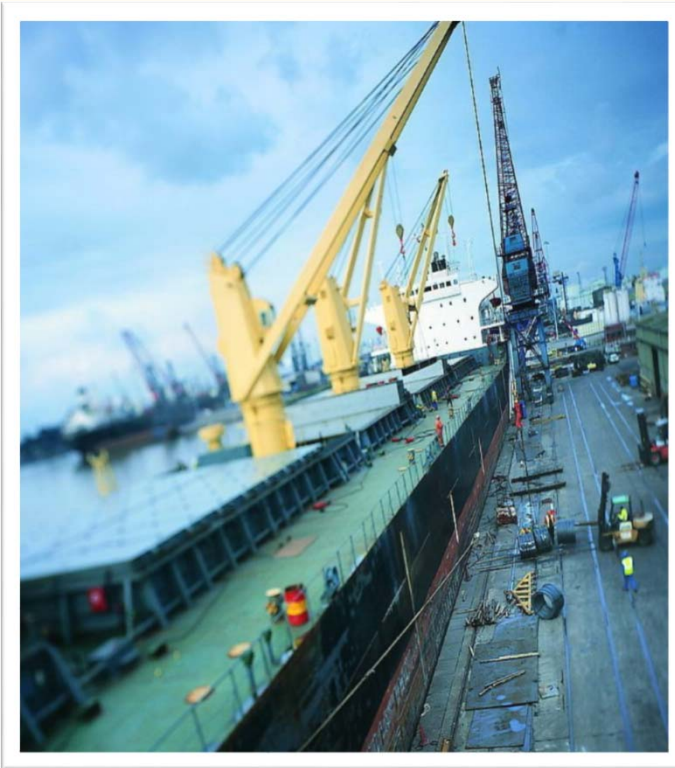
- Difficult to obtain information and carry out investigations on a party's assets and properties
- Local factors



Conclusion

- Get ready in all aspects
- Familiarise yourself with the local laws
- Confident with the Chinese judicial system
- Fight for the best but prepare for the worst
- Manage to settle the dispute and look ahead





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