

The PRC's New Provisions on Recognition and Enforcement of Taiwan's Civil Judgments and Arbitral Awards

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Taiwan is not a signatory to the New York Convention owing to its subtle status. To enforce a mainland China's award or civil judgment in Taiwan, a party has to refer to Article 74 of the "Act Governing Relations between the People of the Taiwan Area and the Mainland Area" promulgated by the Taiwan government, which provides that a final civil ruling or judgment, or an arbitral award rendered in mainland China which is not contrary to the public order or good morals of the Taiwan region can be recognized by a Taiwan court.

On the contrary, to enforce a Taiwan's award or civil judgment in the mainland China, a party has to refer to PRC's regulations, which were released by the Supreme People's Court ("SPC") and have recently been amended. The new SPC's "Provisions on Recognition and Enforcement of Taiwan Courts' Civil Judgments" and "Provisions on Recognition and Enforcement of Arbitral Awards made in the Taiwan Region" (together hereinafter referred to as the "New Provisions") became effective on July 1, 2015, when the obsolete "Provisions on the People's Court's Recognition of Taiwan Courts' Civil Judgments" ("the Old Provisions") and their relevant regulations issued to explain or facilitate their application (i.e., the "Supplementary Provisions of the SPC on the People's Courts' Recognition of Civil Judgments of the Relevant Courts of the Taiwan Region", the "Reply on Whether the People's Court Shall Accept an Application for the Recognition of a Mediated Settlement Agreement Issued by a Taiwan Court" and the "Reply on Whether the People's Court Shall Accept an Application for the Recognition of a Ruling of Payment Issued by a Taiwan Court") were repealed. The New Provisions vastly improve the relevant laws regarding recognition and enforcement of Taiwan courts' civil judgments and arbitral awards rendered in Taiwan. This note offers an introductory comparison of the key differences between the New Provisions and the Old Provisions.

1. Recognition and Enforcement of Civil Judgments and Arbitral Awards Stipulated in Separate Provisions

Article 19 of the Old Provisions merely stipulates that: the set of regulations (on the recognition of Taiwan courts' civil judgments) also applies to the application for recognition of "arbitral awards made by arbitration institutions in the Taiwan region". However, some of the conditions that would cause a civil judgment to be refused recognition do not apply to the application for recognition of an arbitral

award. This issue is resolved now that the recognition and enforcement of Taiwan courts' civil judgments and arbitral awards are regulated in separate provisions. Under the New Provisions, the conditions where an arbitral award is refused recognition are mostly consistent with those set forth in the New York Convention.

2. Clearer Scope of Application

The New Provisions explicitly state that *"Taiwan courts' civil judgments shall include effective civil judgments, rulings, settlement agreements or mediated settlement agreements recorded in the court records and payment orders"*. Furthermore, judgments, rulings and settlement agreements recorded in the court records resulting from supplementary civil actions in criminal proceedings, initiated to request compensation from the defendant and others who may be liable under the Taiwan Civil Code, can be brought to the People's Court for recognition and enforcement. Mediated settlement agreements issued by township or county mediation committees in Taiwan that have the same effect as a final civil judgment after being examined and ratified by a Taiwan court also qualify for recognition and enforcement.

The New Provisions stipulate that *"arbitral awards made in the Taiwan region refer to arbitral awards that involve commercial or civil disputes and that are made by arbitration institutions or ad hoc arbitral tribunals in Taiwan in accordance with Taiwan's arbitration laws. These include arbitral awards, settlement agreements and mediated settlement agreements reached during arbitration proceedings"*. The New Provisions also address controversial issues arising from the wording of the Old Provisions (quoted above), which led to uncertainties as to whether awards made by an ad hoc arbitral tribunal in Taiwan would be recognized by the PRC courts or not.

3. Application for the Recognition of Relationship Status Judgments not Bound by the Statutory Period

The New Provisions state that Article 239 of PRC's Civil Procedure Law regarding the two-year statutory period does not apply to the applications for the recognition of relationship status judgments.

4. Differentiating Between an Application for Recognition and an Application for Enforcement

According to the New Provisions, applicants can apply for recognition and enforcement concurrently; or they can first apply for recognition, and then apply for enforcement after they have obtained the court's ruling on the recognition. If an applicant only applies for recognition, the statutory period for the application for enforcement starts over when the ruling for recognition becomes effective.

5. Preservation of Property Before the Application for Recognition

The Old Provisions only state that *"an applicant may apply for the preservation of property when applying for the recognition of a civil judgment or after an application is registered with a People's Court but before the People's Court makes a ruling"*; however, the New Provisions state that the People's Court can issue a preservation ruling in accordance with the PRC's Civil Procedure Law before or after an application for recognition is registered with the People's Court.

6. Increasing Court Options

Aside from the *"Intermediate People's Courts located at the domicile, habitual residence of the applicant or the involved properties"*, the New Provisions expanded the scope to allow the Intermediate People's Court located at the domicile or habitual residence of the respondent to accept an application.

7. Relaxing Requirements on Filing a Case

In past judicial practice, apart from providing civil judgments or arbitral awards, applicants were required to have the judgments or awards notarized in Taiwan and further authenticated by notary associations in PRC before submitting the application to the People's Court. The New Provisions, however, state that applications need only include an original copy (or a certified true copy) of the concerned arbitral award or the concerned civil judgment together with a certificate attesting that the judgment has become final and binding. The notary and authentication procedures stated above are no longer required under the New Provisions.

8. Power of Attorney

According to the Old Provisions, if the applicant entrusts his agent *ad litem* (i.e., an agent appointed by the principal to represent the principal's interest in a lawsuit) to submit the application for the recognition of a civil judgment or an award, that agent *ad litem* should submit a power of attorney signed by the applicant and notarized by a local notary to the People's Court. The New Provisions provide an exception to this requirement: If a party from Taiwan, Hong Kong, Macao or a foreign country signs the power of attorney before the People's Court or submits a power of attorney notarized in mainland China proving that it was signed in China, then the notary and authentication procedures are not required.

9. Due Process Requirements

The New Provisions state that after the People's Court receives an application which meets all requirements, it shall register the application within seven days, notify both the applicant and respondent, and forward the application to the respondent to ensure that their due process rights are protected. The Old Provisions, however, did not have such provisions.

10. Ruling to Dismiss an Application

The Old Provisions only stipulated two examination results, namely "ruling to recognize" or "ruling to refuse recognition". The New Provisions further stipulate that the People's Court can "rule to dismiss" if it is unable to confirm that the civil judgment or arbitral award is genuine and effective. In this case, the applicant may reapply if he can submit sufficient proof that the civil judgment or arbitral award is genuine and effective (i.e., final) within the statutory period.

11. Providing Additional Relief Avenues

In the past, there were no relief channels for parties who disagreed with the People's Court's ruling on the recognition of a Taiwan court's civil judgment (whether the ruling is to recognize or to refuse recognition). The New Provisions, however, provide an avenue for relief, stating that regardless of whether the ruling is to recognize, to refuse recognition or to dismiss, parties who disagree with the People's Court's ruling can file a motion for reconsideration within ten days of service of such ruling.

As for the application for the recognition of an arbitral award made in Taiwan, according to the existing "Reporting System" (created under the SPC's *Notice on Issues Regarding the Processing of Foreign-Related Arbitration or Foreign Arbitration by People's Courts*, Fa Fa No. 18 [1995]), before the Intermediate People's Court handling the application holds that the recognition shall be refused, it must first report to the Higher People's Court in the same jurisdiction for examination. If the Higher People's Court agrees to refuse recognition, it shall further report to the SPC. Only after the SPC also agrees to refuse recognition, can the Intermediate People's Court rule to refuse recognition. The Reporting System is still in effect after the New Provisions became effective.

12. The Examination Period

The New Provisions explicitly set an examination period for the People's Court. After the People's Court accepts an application for the recognition of a Taiwan court's civil judgment, it shall conclude the case within six months. In special circumstances, the court may ask for an extension from the higher court. The People's Court shall examine the application for the recognition of an arbitral award made in Taiwan as quickly as possible. If the court decides to recognize the arbitral award, it shall render a ruling within two months from the date the application was registered. If the court refuses recognition of the arbitral award, before it renders the ruling, it shall report to the SPC within two months from the date the application was registered with the court.