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Recognition and Enforcement of Foreign Arbitral Awards in China Between 2012-2022: Review and Remarks (Part II)

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This post provides an analysis of 203 cases concerning the recognition and enforcement of foreign arbitral awards in Mainland China between 2012 and 2022. [Part I](#) presented statistics on recognition and enforcement rates, the geographical distribution of applicants, the amount claimed, the time taken for rulings, respondents' participation, and the sources of arbitral awards. It revealed that, in the last 11 years, the courts of the People's Republic of China ("PRC") fully recognized and enforced over 90% of the foreign awards submitted, and they rendered rulings on nearly half of the applications within six months. Part II reviews the grounds for the refusal of recognition and enforcement by PRC courts and evaluates the PRC judicial practice.

The Report and Verification Mechanism for Non-Recognition and Enforcement

Since 1995, PRC courts have established and continually improved its report and verification mechanism for the non-recognition and enforcement of foreign arbitral awards.¹⁾ Under this mechanism, if a lower court (which, in respect of the recognition and enforcement of foreign arbitral awards, should be an intermediate people's court or a specialized people's court) intended not to recognize or enforce a foreign arbitral award, it is required to report the case and its proposed grounds for non-enforcement to the high people's court of its jurisdiction for review and approval. If the high people's court agrees to the proposed non-enforcement, it must report the case to the Supreme People's Court for further review and approval. The Supreme People's Court generally renders opinions regarding the proposed non-enforcement in the form of a letter of reply. The final decision of the lower court shall align with the opinions provided by the Supreme People's Court.

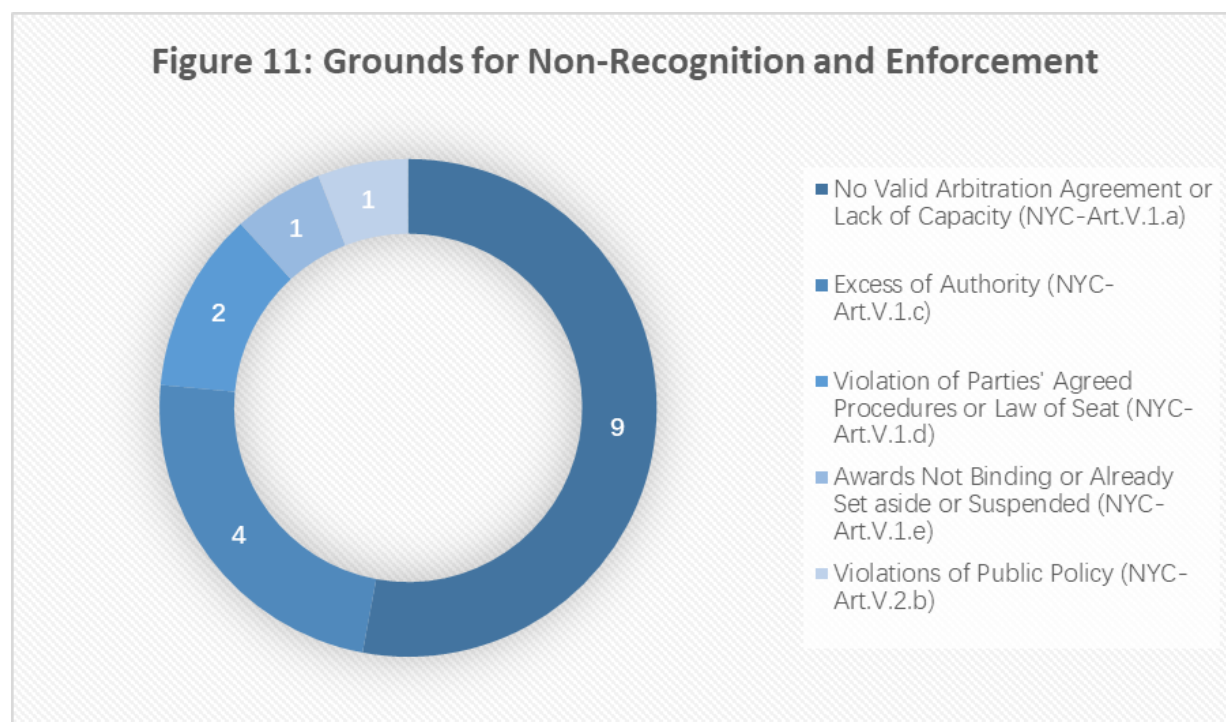
The case study reveals that out of the 17 decisions where applications for recognition and enforcement were fully (14 cases) or partially (3 cases) denied, the Supreme People's Court issued public opinions for 12. For the remaining five decisions, no publicly available opinions from the Supreme People's Court were found, possibly because they were communicated internally between courts.

In general, the report and verification mechanism allows the higher courts, especially the Supreme People's Court, to guide the lower courts to properly apply the grounds for non-recognition and

enforcement. It ensures consistent judicial practices that uphold the New York Convention and foster a more arbitration-friendly judicial environment for recognizing and enforcing foreign arbitral awards in China.

Reasons for Non-Recognition and Enforcement

Figure 11 below presents the grounds for non-recognition and enforcement in the 17 cases where recognition and enforcement were wholly or partially refused.



Out of the 14 decisions where the application for recognition and enforcement was denied in its entirety, nine were based on Article V(1)(a) of the New York Convention. The circumstances identified by PRC courts included (1) the incapacity of the parties to the arbitration agreement, (2) the lack of an arbitration agreement between the parties, and (3) the invalidity of an executed arbitration agreement. There are eight cases concerning the absence of an arbitration agreement due to parties' incapacities or other scenarios, including that (1) a signatory of the arbitration agreement lacked the power to represent the party, (2) a party did not sign the version of the contract that contained the arbitration agreement, (3) the parties' agreement on arbitration was later replaced by a different agreement on dispute resolution, (4) the applicant failed to prove the existence of an arbitration agreement (despite the contrary determination of the arbitral tribunal), and (5) the applicant failed to prove that the respondent was the same party as the signatory of the arbitration agreement. In the one case where the arbitration agreement was declared invalid by the court, the dispute was between two domestic parties concerning a matter without any foreign connection, but the parties had submitted the dispute to foreign arbitration. The PRC court ruled that the arbitration agreement referring a purely domestic dispute to foreign arbitration should be deemed invalid.

Article V(1)(c) ranks as the second most common ground for non-recognition and enforcement. The specific circumstance was that the awards contained decisions beyond the matters submitted to arbitration. It was the basis for PRC courts' denial of the recognition and enforcement for three

awards in part and of one award in whole in view that the matters decided were inseparable.

The other grounds for non-recognition and enforcement included the composition of the tribunal or the arbitral procedures violating the parties' agreement or the law of the seat (Article V(1)(d)), the awards being not binding or already annulled or suspended (Article V(1)(e)), and a violation of public policy (Article V(2)(b)).

In respect of enforcing foreign arbitral awards, courts in each jurisdiction are generally cautious about applying the public policy exception so as to avoid potential abuse through extensive interpretation of public policy. In the 203 cases analyzed, only one award was denied recognition and enforcement based on public policy, accounting for less than 1% of all applications. This reflects the cautious approach of PRC courts in applying the public policy ground in these 11 years. In that particular case, the contents of the award conflicted with the findings of a PRC court decision that had already taken effect. The court decided that the recognition and enforcement of the award would lead to contradictory judicial judgments based on the same legal facts, which would violate the public policy of maintaining the consistency and unification of national legal concepts and judicial judgments.

Concluding Remarks

Based on the case study, the number of foreign awards not recognized and enforced in China is quite low. The primary ground for non-recognition and enforcement is a lack of a valid arbitration agreement, accounting for more than half of all non-enforcement decisions. Non-enforcement on the other grounds set out in Article V of the New York Convention is rare. Overall, the results reflect the fundamental judicial idea of PRC courts of supporting arbitration and actively enforcing foreign arbitral awards.

With the opening-up of the arbitration industry in China accelerating in recent years, more efforts have been focused on building an arbitration-friendly judicial environment. From the perspective of the recognition and enforcement of foreign arbitral awards, the statistics demonstrate progress in that regard. In addition to the low rate of non-recognition and enforcement, other results of the case study also indicate the improvement of the judicial environment. Here are two features presented in [Part I](#) of the article that are worth mentioning again.

First, approximately half (46%) of the recognition and enforcement cases were concluded within 180 days and only a small number (8%) exceeded 720 days, which indicates conscious efforts made by PRC courts to guarantee and improve the efficiency of recognition and enforcement. Second, PRC courts with experience in recognizing and enforcing foreign arbitral awards are becoming geographically diverse. While the courts in the eastern coastal area (such as Shandong, Jiangsu and Shanghai) and Guangdong-Hong Kong-Macau Greater Bay Area have recognized and enforced a larger number of foreign arbitral awards, the courts in inland middle and northeastern China have also begun to accumulate relevant experience. The geographical diversity signifies PRC courts' growing awareness of the New York Convention and the readiness for the recognition and enforcement of foreign arbitration awards.

In general, the statistics reflect the effective implementation of the New York Convention by PRC courts and demonstrate China's efforts in building an arbitration-friendly judicial environment.²⁾

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References

See *Notice of the Supreme People's Court on Relevant Issues concerning Foreign-Related and Foreign Arbitration Addressed by the People's Courts* (1995), *Relevant Provisions of the Supreme People's Court on Issues concerning Report and Verification of Arbitration Cases under Judicial Review* (2017), and *Decision of the Supreme People's Court to Amend the Relevant Provisions of the Supreme People's Court on Issues Concerning Report and Verification of Arbitration Cases under Judicial Review* (2021).

With special thanks to Kurtis Lee for assistance in preparing the initial English version of this article. A similar version of this article in Chinese was published on the official website of Zhong Lun Law Firm, see <<https://www.zhonglun.com/Content/2023/05-29/1412503823.html>>.

This entry was posted on Tuesday, September 12th, 2023 at 8:43 am and is filed under [Arbitral Award, China, Enforcement, New York Convention](#)

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