

The Belt and Road Initiative: Conflict of laws and dispute resolution

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Abstract:

Purpose

This paper aims to determine the adaptability of China's legal system in recognizing and enforcing foreign judgements in China.

Design/methodology/approach

Academic articles, case law and books are examined as are relevant reports by various regulatory authorities and organizations.

Findings

Historically, Chinese courts have strictly adhered to "de facto reciprocity", which made it difficult for foreign judgements to be recognized and enforced in China. Fortunately, Chinese courts have since abandoned their rigid adherence to de facto reciprocity, and have instead, used flexible tests of reciprocity such as de jure reciprocity, reciprocal commitment and reciprocal understand/consensus. Accordingly, this would facilitate the recovery of stolen assets, as there is a lower threshold for the recognition and enforcement of a foreign judgement.

Research limitations/implications

There are limited data available in relation to the recognition and enforcement of foreign judgements pertaining to the recovery of stolen assets. Any discussions within this paper are based on the impressionistic observations of this author, which may not reflect the true state of affairs within the Belt and Road Initiative.

Practical implications

Those who are interested in examining the viability in recognizing and enforcing foreign judgements relating to stolen assets will have an interest in this topic.

Originality/value

The value of the paper is to demonstrate the difficulties in recognizing and enforcing foreign judgements in China in relation to stolen assets.

Keywords:

Belt and Road Initiative, China, Corruption, Civil recovery, stolen assets, recognition and enforcement, foreign judgements

1. Introduction

President Xi Jinping established the Belt and Road Initiative (BRI) to promote economic prosperity between China and euro-Asia (Gu, 2019). Unfortunately, the extent and scope of infrastructure projects along the BRI may potentially provide a catalyst for corrupt officials to carry out illicit activities, which may in turn potentially lead to assets being stolen by such officials (Russel and Berger, 2019).

To recover stolen assets, authorities may make use of civil lawsuits and remedies – and the last step in civil proceedings is the recognition and enforcement of a judgement (World Bank, 2015). However, the extensive geographical and legal diversity amongst BRI

participants may give rise to conflict of laws (COLs) at a national, transnational and international level.

For many years, Chinese law has been questioned for its inability to eliminate local protectionism in the adjudication of COLs (Tang *et al.*, 2016); the tendency for local courts to apply Chinese law, coupled with the courts' rigidity in recognizing and enforcing foreign judgements based on *de facto reciprocity* (i.e. Chinese courts would only recognize and enforce a foreign judgement *only if* the country which rendered the judgement had previously recognized and enforced a Chinese judgement) (Asian Business Law Institute, 2021), may result in authorities facing an uphill battle in recognizing and enforcing foreign judgements within China to recover stolen assets.

Fortunately, China's approach to international disputes has seemingly been liberalized through various factors, including but not limited to the:

- *complete abandonment* of “*de facto reciprocity*”; and
- recognition and enforcement of foreign judgements from Singapore (December 2016), California (June 2017) and England (March 2022).

2. Thesis

This article serves to examine *the methods* to which China recognizes and enforces foreign judgements. Following which, this article will examine whether:

- there are any potential challenges that authorities may face (including but not limited to issues relating to the concept of reciprocity and the difficulties in tracing enforceable properties); and
- there are potential factors that may extinguish the challenges in recognizing and enforcing foreign judgements in China.

Before examining these issues, this article will briefly establish the following conceptual background, namely, the:

- civil recovery of stolen assets along the BRI;
- importance of recognizing and enforcing foreign judgements in China; and
- history relating to COLs in China.

3. Brief background

3.1 Civil recovery of stolen assets along the Belt and Road Initiative

To recover stolen assets along the BRI, authorities may commence civil proceedings against corrupt officials (World Bank, 2015). Where authorities succeed in their civil action, the court would issue a judgement in their favour. To make use of a judgement to recover stolen assets, the judgement must be recognized and enforced in the country where the stolen assets are located (World Bank, 2015). This is because a judgement will only have practical value if it can prevent further actions from being brought in the same matter and can be enforced (Tang *et al.*, 2016, p. 140).

However, stolen assets are often not located within the country where the judgement was rendered. This gives rise to COLs issues pertaining to the “recognition” and “enforcement” of “foreign judgements”. Before addressing these issues, it is essential to provide definitional guidelines in relation to the following terminologies:

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- *Judgement*: A judgement refers to all decisions on the merits of the dispute between litigants. They are not limited to the adjudicated documents expressly named as “judgements”, but include all rulings, orders, decrees and decisions which decide the substantive rights and obligations of litigants (Tang *et al.*, 2016, p. 141).
 - *Foreign*: Foreign refers not only to foreign countries or nations from the political perspective but also separate legal regions, such as Hong Kong, Scotland or California, from the legal perspective, as well as international organizations in the global community, such as the European Court of Justice (Tang *et al.*, 2016).
 - *Recognition*: Recognition of a foreign judgement takes place only when the recognizing court accepts as binding the determination of the rights and duties of the parties contained in the judgement (Zhang, 2014). In other words, “recognition” involves a decision not to permit litigation of a specific issue or factual dispute that was previously decided in another court; it grants the foreign judgement the same *res judicata* effect (i.e. parties cannot relitigate the same matter anywhere, either domestically or internationally) that it has in its country of origin (Tang *et al.*, 2016, pp. 141 and 146).
 - *Enforcement*: Enforcement of a judgement refers to the act of the court to force the party subject to enforcement to perform the obligations under judgement by means of state coercion (Zhang, 2023). It is to note that “recognition” is a prerequisite for “enforcement”; a foreign judgement must be recognized before it can be enforced (Tang *et al.*, 2016, p. 141).

3.2 Importance of recognizing and enforcing foreign judgements to recover stolen assets

Civil proceedings do not end with the obtaining of a paper judgement (Ho, 1997). Indeed, because of the existence of territorial sovereignty, judgements from one country are *not* directly operational in another country (Zhang, 2014, p. 10). As such, judgements have no fruition unless they get recognized or enforced in other countries if they cannot be (or fully) realized in the countries where they are handed down (Zhang, 2014, p. 5).

In China, the enforcement power lies exclusively with the court (Zhang, 2023, p. 150). In determining whether to allow an application for the recognition and enforcement of a foreign judgement, a Chinese court would examine whether:

- the foreign judgement is a “judgement” under the Civil Procedure Law of China based on the substance of the judgement (i.e. judgements, rulings, decisions, orders and other legal instruments issued by foreign courts in civil and commercial cases regarding substantive disputes shall be deemed as “judgements” under the Civil Procedure Law of China; preservation rules and other procedural legal instruments issued by foreign courts would not be deemed a “judgements” under the same) (Zhang, 2006); and
- the foreign judgement has become legally binding according to the law of the country where the judgment was rendered (i.e. a judgement that is subject to appeal or is in the process of appeal would not be treated as legally binding) (Zhang, 2006).

Accordingly, in the context of recovering stolen assets from China, authorities cannot seize such assets on their own and must apply to the Chinese court for the recognition and enforcement of the foreign judgement. As such, any refusal on part of a Chinese court to recognize and enforce a foreign judgement would inevitably lead to authorities:

- being unable to recover stolen assets; and

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- having to re-litigate the relevant matter which has already been adjudicated in another country – leading to increased public and private costs (Tang *et al.*, 2016, p. 147).

In this regard, it becomes pertinent to examine the adaptability of Chinese courts in recognizing and enforcing foreign judgements (including the history of COLs in China) in the context of asset recovery. This is because no authorities would want to end up with a *paper judgement* after spending significant amounts of time and monies obtaining judgement against a corrupt official. Indeed, as rightly pointed out by the Supreme Court in *Stoll v Gottlieb* (1938): “[i]t is just as important that there should be a place to end as that there should be a place to begin litigation”.

3.3 History relating to conflict of laws in China

The premise of modern COLs is that “domestic law and foreign law are equal in multi-state civil and commercial disputes”, and that “judges may choose one from the relevant competing rules, domestic or foreign, which should apply” (Tang *et al.*, 2016, p. 20). Issues relating to COLs therefore become prevalent in the context of asset recovery – in particular: whether a foreign judgement would be recognized and enforced in China given that it has no direct effect in China (i.e. foreign judges have no authority in China) (Briggs, 2013).

Historically, Chinese law has been questioned for its inability to eliminate local protectionism in the adjudication of COL issues; the Chinese courts’ tendency to apply Chinese law coupled with their readiness to apply over-restrictive rules against foreign claimants have led to difficulties in the recognition and enforcement of foreign judgements (Tang *et al.*, 2016, p. 404). Indeed, for a period of time after 1949, no foreign law was applied in the People’s Court of China on the basis that “judicial sovereignty is absolute and should not yield to any foreign jurisdiction” (Zhang, 2006, p. 300).

This author forms the view that China’s overly rigid approach towards the recognition and enforcement of foreign judgements would be detrimental towards the economic integration that the BRI seeks to establish between China and euro-Asia. In other words, to attain economic prosperity within the BRI, China must ensure the smooth functioning of international trade and development, including its ability to deal with foreign judgements (Gu, 2019, p. 32). This is especially so in the context of asset recovery; if authorities have difficulties in recognizing and enforcing foreign judgements within China to recover stolen assets, this would disincentivize foreign countries from wanting to be part of the BRI, which in turn, extinguishes the economic integration that the BRI seeks to attain.

It is against this background that it becomes essential to examine the:

- methods to which China recognizes and enforces foreign judgements;
- potential challenges that authorities may face in doing so; and
- potential factors that may eliminate such challenges.

4. Methods to recognize and enforce foreign judgements in China

4.1 Introduction

In China, the relevant law concerning the recognition and enforcement of foreign judgements is Article 282 of the Chinese Code of Civil Procedure (CCP), which stipulates the following (Zhang, 2014, p. 34):

*“After a people’s court of the PRC reviews, **according to the international treaties concluded or acceded to by the PRC or based on the principle of reciprocity**, an application or request for recognition and enforcement of a legally effective judgement or ruling delivered by a foreign court, **if [the people’s court] considers that such a judgement or ruling neither contradicts the basic principles of the laws of the PRC nor violates the national sovereignty, security, social and public interests of the PRC**, the people’s court shall **make a ruling to recognize its effects**. Where the enforcement is necessary, [the people’s court] shall issue an order to enforce the foreign judgment according to the relevant provisions of the present law. **If a legally effective judgment or ruling delivered by a foreign court contradicts the basic principles of the law of the PRC or the national sovereignty, security, social and public interests of China**, the people’s court shall **refuse to grant recognition and enforcement**.”* [Emphasis added in bold and italics]

Accordingly, Chinese courts are only allowed to recognize and enforce a foreign judgement based on either:

- an international convention;
- a bilateral treaty; or
- the principle of reciprocity; and

where the enforcement of the foreign judgement will not violate the basic principles of law, sovereignty, security or public interest of the People’s Republic of China (PRC).

Because of space constraints, this article will not be examining the principles of law, sovereignty, security or public interest of the PRC – it will instead focus on the *methods* to which authorities can use to recognize and enforce foreign judgements in China.

4.2 Method (1) – international conventions

The two key international conventions that are relevant to the recognition and enforcement of foreign judgements in China are:

- (1) the “Hague Convention on Choice of Court Agreements” (“Hague Choice Convention”); and
- (2) the “Convention on the Recognition and Enforcement of Foreign Judgements in Civil or Criminal Matters” (“REF Hague Convention”).

Briefly, the effectiveness of the Hague Choice Convention and the REF Hague Convention (Yu and Du, 2022; Tjon and Lanzkron, 2023) is as illustrated in Table 1 below.

4.3 Mechanism (2) – bilateral treaties

For a foreign judgement to be recognized and enforced via bilateral treaties, the following three conditions must be satisfied (Tang *et al.*, 2016, p. 154), as illustrated in Figure 1 below.

As of 24 November 2023, China *has signed* bilateral judicial assistance treaties with 86 countries; this has led to the annual processing of over 3,000 civil and commercial judicial

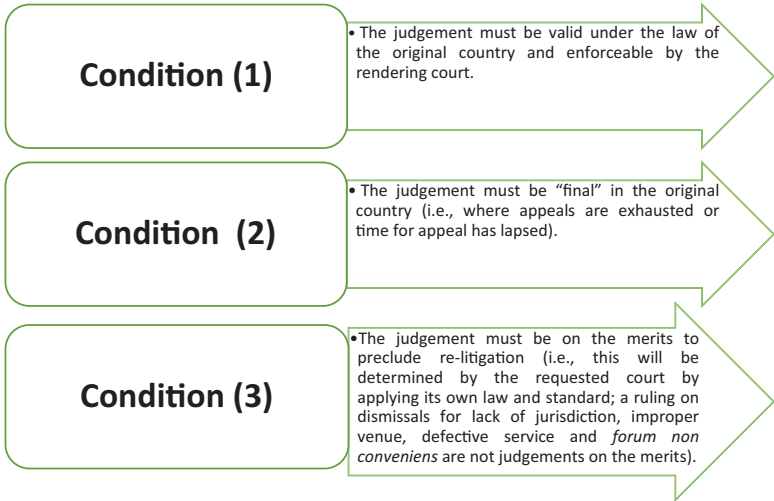
assistance requests (Ministry of Justice of the People’s Republic of China, 2023). Even so, there is currently limited data in relation to the recognition and enforcement of foreign judgements in China via bilateral treaties. Based on published Chinese judgements, it appears that where a bilateral treaty exists, Chinese courts would generally recognize and enforce a foreign judgement (if there are no grounds for refusal) (Tang et al., 2016, p. 159). For example, in *Re Petition of B&T Ceramic Group SRL for Recognition and Enforcement of the Judgement on Bankruptcy Rendered by the Italian Court* (2001), the Guangdong Province Foshan IPC applied the “China-Italy Treaty” to recognize a bankruptcy judgement and ordered the transfer of property pursuant to the Italian ruling (Tang et al., 2016, p. 159).

Table 1.
Tabulation of the effectiveness of the Hague Choice Convention and REF Hague Convention in the recognition and enforcement of foreign judgements in China

Convention	Effectiveness in the recognition and enforcement of foreign judgements in China
<i>Hague Choice Convention</i>	Provides a mechanism for the mutual enforcement of exclusive jurisdiction agreements in the enforcement of foreign judgements. In other words, the Hague Choice Convention only comes into play where there is an “exclusive jurisdiction clause” in favour of the foreign court in the agreement that gave rise to the dispute and the foreign judgement
<i>REF Hague Convention</i>	The main purpose of the REF Hague Convention is to ensure that judgements rendered by one signatory state are recognized and enforced by the courts of another signatory state. For example, suppose State A and State B are signatories to the REF Hague Convention. If authorities in State A successfully obtained judgement against a corrupt official who had dissipated stolen assets to State B, then State B would have to recognize and enforce the judgement to allow authorities to seize the assets that have dissipated into State B

Source: Created by author

Figure 1.
Illustrating the three conditions that must be satisfied to recognize and enforce foreign judgements via bilateral treaties



Source: Created by author

Accordingly, this means that foreign judgements that are recognized and enforced by Chinese courts pursuant to a bilateral treaty would have the *same effect* as Chinese judgements (i.e. foreign judgement treated the same way as a judgement rendered by a Chinese court) (Zhang, 2014, p. 35). For example, suppose State A and China have a bilateral treaty. If authorities of State A successfully obtain judgement against a corrupt official (who has dissipated assets into China), the Chinese court would apply the relevant bilateral treaty to recognize the foreign judgement and order the return of stolen assets pursuant to the foreign judgement (unless there are grounds for refusal such as the foreign judgement contravening public policy).

4.4 Mechanism (3) – principle of reciprocity

If there are no relevant international conventions or bilateral treaties, Article 282 of the CCP expressly states that the “principle of reciprocity” should be strictly applied by the Chinese courts (Tang *et al.*, 2016, p. 145):

“After a people’s court of the PRC reviews, according to the international treaties concluded or acceded to by the PRC or based on the principle of reciprocity, an application or request for recognition and enforcement of a legally effective judgement or ruling delivered by a foreign court, if [the people’s court] considers that such a judgement or ruling neither contradicts the basic principles of the laws of the PRC nor violates the national sovereignty, security, social and public interests of the PRC, the people’s court shall make a ruling to recognize its effects. Where the enforcement is necessary, [the people’s court] shall issue an order to enforce the foreign judgment according to the relevant provisions of the present law. If a legally effective judgment or ruling delivered by a foreign court contradicts the basic principles of the law of the PRC or the national sovereignty, security, social and public interests of China, the people’s court shall refuse to grant recognition and enforcement.” [Emphasis added in bold and italics]

In the context of enforcing foreign judgements, the term “reciprocity” requires that “the judgement rendered in a foreign country is allowed the same effect only as the courts of that country allow to the judgement of the country in which the judgement in question is sought to be executed” (Tang *et al.*, 2016, p. 143). To put it simply, this means that, for a judgement rendered in State A to be recognized and enforced in State B, State A *must have previously* recognized and enforced a judgement rendered in State B.

In general, there are two main types of reciprocity (Tang *et al.*, 2016, p. 162), as illustrated in Table 2 below.

Notwithstanding the two types of reciprocity, historically, Chinese courts have taken a *strict approach* to reciprocity such that only *de facto reciprocity* is relevant in the recognition and enforcement of foreign judgements (Asian Business Law Institute, 2021). Unfortunately, the stringent approach taken by the Chinese courts coupled with the ineffectiveness of international conventions and the difficulties in tracing enforceable properties may potentially impede the recovery of stolen assets.

Table 2.
Tabulation of the two
main types of
reciprocity

S/no.	Type of reciprocity	Description
1	<i>De facto</i> reciprocity	This requires <i>actual precedents</i> demonstrating that the foreign country recognized and enforced Chinese judgements in the past For example, for a judgement rendered by State A to be enforced and recognized by a Chinese court, it must be shown that the courts in State A have <i>previously</i> recognized and enforced Chinese judgements
2	<i>De jure</i> reciprocity	A “reciprocal relationship” is established where, upon examining State A’s law, there is a <i>possibility</i> that State B’s judgements may, in principle, be recognized and enforced in State A’s court; there is <i>no need</i> to show actual precedents demonstrating that the foreign court had previously recognized and enforced Chinese judgements. For example, in the context of enforcing a foreign judgement in China, a reciprocal relationship would be established where, upon examining the foreign law, there is a <i>possibility</i> that Chinese judgements may, in principle, be recognized and enforced in the foreign court

Source: Created by author

5. Potential challenges in recognizing and enforcing foreign judgements in China

5.1 Introduction

There may be challenges in using the abovementioned methods to recognize and enforce foreign judgements in China – including but not limited to the following:

- ineffectiveness of international conventions in the recovery of stolen assets;
- issues with *de facto reciprocity*; and
- difficulties in tracing enforceable properties (e.g. stolen assets).

This article will address each challenge in turn.

5.2 Potential challenge (1) – ineffectiveness of international conventions in the recovery of stolen assets

At the time of writing, China has *signed* but not ratified the Hague Choice Convention, and China *has not acceded* to the REF Hague Convention (Yu and Du, 2022). The implications in relation to the recovery of stolen assets are as illustrated in Table 3 below.

Accordingly, it appears that authorities have *little* chance in seeking to recognize and enforce foreign judgements via the Hague Choice Convention and the REF Hague Convention given that:

- the Hague Choice Convention has little to no impact on the recovery of stolen assets; and
- China has not acceded to the Hague REF Convention.

5.3 Potential challenge (2) – issues with *de facto reciprocity*

Historically, Chinese courts have *strictly* adhered to *de facto reciprocity* when determining whether to recognize and enforce a foreign judgement (e.g. where State A wishes to enforce its judgement in China, it must be shown that State A had previously recognized and enforced a Chinese judgement) (Asian Business Law Institute, 2021).

Details	Hague Choice Convention	REF Hague Convention
<i>Signed?</i>	X	X
<i>Ratified?</i>	X	X
<i>Implications?</i> (Author's own views)	The Hague Choice Convention seems to lean towards international commercial transactions wherein “exclusive jurisdiction agreements” are entered into to facilitate the recognition and enforcement of a foreign judgement should there be any disputes in relation to a specific commercial transaction (somewhat <i>akin</i> to a dispute resolution clause within commercial contracts). As such, the failure on part of China to ratify the Hague Choice Convention seems to have <i>minimal</i> impact on the recovery of stolen assets given that it is <i>highly unlikely</i> that there would have been any sort of “exclusive jurisdiction agreements” entered into between authorities and China prior to the discovery of a corrupt act (which led to stolen assets)	The REF Hague Convention essentially provides an <i>easy route</i> for authorities to recognize and enforce foreign judgements (rendered by a signatory state) in another signatory state. By not acceding to the REF Hague Convention, authorities would have to undertake the cumbersome route of <i>establishing a reciprocal relationship</i> between the relevant states via the principle of reciprocity (when there is no bilateral treaty)

Table 3.
Tabulation of the implications of the Hague Choice Convention and REF Hague Convention in relation to the recovery of stolen assets

Source: Created by author

However, such a rigid approach may hamper any attempts on part of authorities to recognize and enforce foreign judgments in China – which in turn, impinges on the recovery of stolen assets. This is because of the following reasons:

- First, it has *traditionally* been difficult for Chinese courts to find that a reciprocal relationship exists between China and a foreign jurisdiction. This has led to Chinese courts refusing to recognize and enforce judgements from Australia, Germany, Japan, South Korea, the UK and the USA (Wang and Lin, 2020).
- Second, the concept of “reciprocity” is vague. In other words, there is a *lack of clarity* as to *what is required* in terms of reciprocity. For example, would factors such as geographical limits and the level of a foreign court play a part in determining whether a Chinese court would recognize and enforce the foreign judgement?
- Third, the inclination towards reciprocity may *delay* the process of recovering stolen assets, as Chinese courts would *first* have to determine whether a reciprocal relationship exists (Hulbert, 2008; Tang *et al.*, 2016, p. 143). Such delays could potentially provide an opportunity for corrupt officials to *swiftly divert* assets out of China before a Chinese court enforces the foreign judgement.

Accordingly, the strict adherence to the concept of reciprocity could potentially *punish* authorities seeking to recover stolen assets, as it could disallow the recognition and enforcement of a foreign judgement based *simply* on the *lack of a reciprocal relationship* between two relevant states (Hulbert, 2008; Tang *et al.*, 2016).

5.4 Potential challenge (3) – difficulties in tracing properties subject to enforcement

Even if authorities successfully recognize and enforce a foreign judgement in China, there is still the obstacle of *tracing* the “enforceable property” (i.e. where a foreign judgement states

that a corrupt official had diverted stolen assets in China, and authorities successfully enforced the foreign judgement in China, the “stolen assets” linked to the foreign judgement would be known as “enforceable property”).

Indeed, there has been an array of enforcement issues within China because of difficulties in tracing enforceable properties (Zhang, 2023, p. 151). This is because, to trace an enforceable property, Chinese courts would issue a “notice of enforcement” and a “property reporting order” to the party subject to enforcement, requiring the party to *take the initiative* to report its own properties (Zhang, 2023, pp. 151–152).

However, it is rare for a party to voluntarily report its property information – which results in Chinese courts having to go through several organizations (such as banks, government departments and property registrations) to obtain a party’s property information (Zhang, 2023, pp. 151–152).

In the context of asset recovery, this author is of the view that it is highly *unlikely* that corrupt officials would voluntarily provide information on assets that they have stolen; it would also be highly unlikely that the Chinese courts would obtain any property information from various organizations given that such corrupt officials would have *concealed* and *disguised* the beneficial ownership of assets (which they have stolen) through the use of sham corporate vehicles and trusts (Financial Action Task Force, 2010); in any case, the fact that assets could be stolen from *another jurisdiction* into China arguably means that there was *already* a layer of concealment towards the true ownership of each stolen assets. The difficulties in tracing may therefore lead to corrupt officials *surreptitiously dissipating stolen assets* out of China *even after* authorities have successfully recognized and enforced a foreign judgement in China.

6. Potential factors that may extinguish the challenges in recognizing and enforcing foreign judgements in China

6.1 Introduction

Notwithstanding the potential challenges that authorities may face in recognizing and enforcing foreign judgements in China, this author is of the view that such challenges may potentially be *extinguished* because of factors such as the:

- abandonment of *de facto* reciprocity;
- liberalization of China’s approach to international disputes; and
- improvement in China’s efficiency to track down enforceable property.

Each of the above factors will be dealt with in turn.

6.2 Potential factor (1) – liberalization of china’s approach to international disputes

For the past three decades, China has seemingly liberalized its approach towards the application of foreign law; it has moved from a “sovereignty-sensitive exclusion to foreign law” to “reform-served openness” to apply foreign law (Tang *et al.*, 2016, p. 21; Zhang, 2006, p. 304).

The modernization of China’s approach towards international disputes has led to the recognition and enforcement of foreign judgements from Singapore (2016) and California (2017), as illustrated in Table 4 below.

The decisions in *Jiangsu* and *Liu Li* seem to affirm the fact that – so long as a foreign court has recognized and enforced a Chinese judgement *prior* to its application to recognize and enforce its judgement in China – it is highly likely that, based on the principle of *de facto* reciprocity, the Chinese court would recognize and enforce the foreign judgement.

Foreign judgement jurisdiction	Case citation	Elaboration	Applicable principle
Singapore	<i>Jiangsu Province in Kolmar Group A.G. v Jiangsu Textile Industry (Group) Import and Export Co., Ltd.</i> (2016) Su01 Xie Wai Ren No. 3 (“Jiangsu”)	In December 2016, the Nanjing Intermediate People’s Court recognized and enforced a default judgement issued by the Singapore High Court on the basis that, in the case of <i>Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd</i> [2014] SGHC 16 (“Light Metal”), the Singapore High Court had recognized and enforced a judgement issued by the Suzhou Intermediate People’s Court in Jiangsu Province	<i>De facto reciprocity</i>
California	<i>Liu Li v Tao Li and Tong Wu</i> (2015) Yue Wuhan Zhong Min Shang Wai Chu Zi No. 26 (“Liu Li”)	In June 2017, the Wuhan Intermediate People’s Court recognized and enforced a default judgement issued by the Los Angeles Superior Court (California) on the basis that, in <i>Hubei Gezhouba Sanlian Industrial Co., Ltd et Al. v Robinson Helicopter Co., Inc.</i> (C.D. Cal 2009) (“Hubei”), the District Court of the Central District of California had recognized and enforced a judgment issued by the Higher People’s Court of Hubei Province	<i>De facto reciprocity</i>

Table 4.
Tabulation of foreign judgements that have been recognized and enforced in China via *de facto* reciprocity

Source: Created by author

On the one hand, this brings added comfort to authorities seeking to recognize and enforce foreign judgements in China given that, prior to *Jiangsu* and *Liu Li*, no other foreign judgements were recognized and enforced based on *de facto* reciprocity (arguably because of China’s *strict* approach towards reciprocity). On the other hand, there are *doubts* as to the *exact geographical limits* of *de facto* reciprocity given that:

- *In Jiangsu*: The Nanjing Intermediate People’s Court (2016) had recognized and enforced the judgement rendered by the Singapore High Court because previously, the Singapore High Court in *Light Metal* (2014) recognized and enforced a judgement rendered by Suzhou Intermediate People’s Court in Jiangsu Province (which is the *same province* as Nanjing Intermediate People’s Court).
- *In Liu Li*: The Wuhan Intermediate People’s Court (2017) had recognized and enforced the judgement rendered by the Los Angeles Superior Court (California) because previously, the District Court of the Central District of California in *Hubei* (2009) recognized and enforced a judgement rendered by the Higher People’s Court of Hubei Province (*where “Wuhan” is the capital*).

The above raises questions as to whether the Nanjing Intermediate People’s Court and the Wuhan Intermediate People’s Court would have recognized and enforced the default judgements *if* the previous judgements (which were recognized and enforced in Singapore

and California respectively) were *rendered by another* Chinese province. Fortunately, such an issue would soon be rendered obsolete given the recent attempt by China to abandon the principle of *de facto* reciprocity.

6.3 Potential factor (2) – abandonment of *de facto* reciprocity

On 31 December 2021, the Supreme People's Court of China (SPC) issued a judicial policy titled “Conference Summary of the Symposium on Foreign-related Commercial and Maritime Trials of Courts Nationwide” (Conference Summary) under which the SPC identified *three* new tests for reciprocity – replacing the rigid standard of reciprocity (i.e. *de facto reciprocity*) in the recognition and enforcement of foreign judgements in China (Chong, 2022).

The three new tests for reciprocity effectively *lower* the threshold for the recognition and enforcement of foreign judgements in China (Chong, 2022; Yu, 2022), as illustrated in Table 5 below.

Prior to the issuance of the Conference Summary (31 December 2021), it appears that the People's Court of China had already recognized and enforced a Singapore judgement (26 July 2021) based on the principle of *de jure reciprocity* as well as *reciprocal understanding or consensus*. Subsequently, in March 2022, an English judgement was also recognized and enforced based on the principle of *de jure reciprocity*, as illustrated in Table 6 below.

Accordingly, the abandonment of *de facto reciprocity* and the emphasis on *de jure reciprocity* (as seen in the Conference Summary as well as in *Judgement 2019* and *Judgement 2022*) arguably facilitates the recovery of stolen assets, as there is *less rigidity* towards the recognition and enforcement of foreign judgements (i.e. where State A seeks to recognize and enforce its judgement in China, there is *no need* to show actual precedents that Chinese judgements have been recognized and enforced in State A; all that is needed is to show that Chinese judgement would be recognized and enforced under the *laws of State A*). This is a welcomed move given that authorities – who are already struggling to trace and identify corrupt officials and stolen assets – *should not* be further encumbered by the peculiarities of procedural stringencies.

6.4 Potential factor (3) – improvement in china's efficiency in tracing enforceable property

On 24 December 2014, the SPC collaborated with various organizations (such as the People's Bank of China and the State Administration for Industry and Commerce) to launch the “Online Enforcement Query and Control System” (“System”) so as to improve the efficiency of tracing enforceable properties (Zhang, 2023, p. 152).

As of October 2018, the System has connected with 16 organizations (including the Ministry of Public Security, the Ministry of Civil Affairs and the China Banking and Insurance Regulatory) as well as more than 3,900 financial institutions; this means that Chinese courts can now make use of the System to gather information including but not limited to an individual's real estate, deposits, as well as financial and wealth management products (Zhang, 2023, p. 152).

In relation to the System, there are two schools of thoughts:

- (1) On the one hand, as indicated above, corrupt officials would typically use various layers (such as sham corporations and trusts) to conceal the *true beneficial owner* of various properties (including real estate and deposits). On this basis, it is unlikely that the System would be able to comprehensively list out property information of corrupt officials.

S/no.	New tests	Effect
1.	<i>De jure</i> reciprocity	As a recap, <i>de facto reciprocity</i> dictates that the judgement of State A should only be recognized and enforced by State B <i>if</i> (and only if) there is <i>actual precedent</i> to show that State A had previously recognized and enforced the judgement of State B In contrast, <i>for de jure reciprocity</i> to be satisfied, State A only needs to show that the judgement rendered by State B <i>can be</i> recognized and enforced in accordance with the laws of State A In the context of recognizing and enforcing foreign judgements in China via <i>de jure reciprocity</i> , it is highly likely that Chinese courts would recognize and enforce judgements rendered by the USA, Canada, Australia, UK, Germany, Japan and South Korea given that the laws of these countries <i>are flexible</i> in the application of reciprocity
2.	Reciprocal commitment without exception	Where a reciprocal commitment between State A and State B is made through diplomatic channels, State A will recognize and enforce the judgement of State B if State B <i>has not previously</i> refused to recognize State A's judgement (and vice versa). The SPC has made several reciprocal commitments in its judicial policies such as the "Several Opinions on the People's Court Providing Judicial Services and Guarantee to the Belt and Road Initiative Construction" [Fa Fa (2015) No. 9]. However, there is currently no data to show that China has made such a commitment with another country
3.	Reciprocal understanding or consensus	Where State A renders a judgement, and there is reciprocal understanding or consensus between State A and State B, then State B will recognize and enforce State A's judgement. For example, in 2018, the SPC and the Supreme Court of Singapore signed a " <i>Memorandum of Guidance on Recognition and Enforcement of Money Judgements in Commercial Cases</i> " ("MOG") which confirmed that Chinese courts can recognize and enforce Singapore judgements on the basis of reciprocity. At the time of writing, it appears that the MOG is the first (and only) attempt by Chinese courts to establish reciprocal understanding or consensus

Source: Created by author

Table 5.
Tabulation of the new tests for reciprocity in China in relation to the recognition and enforcement of foreign judgements

- (2) On the other hand, it is noteworthy that in September 2018, Chinese courts have utilized the System to successfully trace information pertaining to 5.46 million of real estate and 108.5 billion worth of shares, amongst others. Furthermore, many Chinese courts have established "regional query and control systems" ("Regional System") with government agencies (within the same jurisdiction) to obtain *more detailed* information. For example, through the use of the Regional System, a Chinese court can sequester a *specific* property within a specific region (such as Shanghai) so that a party subject to enforcement cannot attempt to change the ownership of the said property (Zhang, 2023, p. 153).

Given the recency of the System as well as the Regional System, it remains to be seen how these systems would operate to increase the efficiency of tracing enforceable properties. Even so, it is commendable that Chinese courts are collaborating with various organizations to ram up the flow of property information – which arguably *could* assist authorities with the recovery of stolen assets.

Table 6.
Tabulation of foreign
judgements
recognized and
enforced in China
based on *de jure*
reciprocity and/or
reciprocal
understanding or
consensus

Foreign judgement jurisdiction	Case citation	Elaboration	Applicable principle
Singapore	Judgement (2019) Hu 01 Xie Wai Ren No. 22 (“Judgement 2019”)	On 29 July 2021, the Shanghai No. 1 Intermediate People’s Court recognized and enforced a monetary judgement rendered by the Singapore High Court (HC/S 059/2014) on the ground that based on the MOG (i.e. Memorandum of Guidance between China and Singapore), there exists “ <i>de jure reciprocity between China and Singapore and that Chinese civil and commercial judgements rendered under equivalent conditions can be recognized and enforced in Singapore</i> ”	- <i>De jure</i> reciprocity - Reciprocal understanding or consensus
England	Judgement (2018) Hu 72 Xie Wai Ren No. 1 (“Judgement 2022”)	On 17 March 2022, the Shanghai Maritime Court had, <i>for the first time</i> , recognized and enforced an English judgement on the basis that there is a reciprocal relationship between Chinese courts and English courts, and <i>there is no need</i> to identify any previous instance where English courts have recognized and enforced a Chinese judgement	<i>De jure</i> reciprocity

Source: Created by author

7. Conclusion

Historically, in the absence of international conventions and bilateral treaties, Chinese courts have gravitated towards the strict application of *de facto reciprocity* when determining whether to recognize and enforce a foreign judgement. Such an overly rigid approach would undermine any attempts on part of authorities to recover stolen assets within China – which in turn – may *disincentivize* foreign countries from wanting to be part of the BRI.

Fortunately, the arguably rigid approach has since been replaced by the *flexible* tests of reciprocity (including but not limited to *de jure* reciprocity, reciprocal commitment and reciprocal understanding or consensus). This has led to *several* foreign judgements [including from Singapore (2016), CA (2017) and England (2022)] being recognized and enforced within China – providing the much-needed comfort for authorities to proceed with civil actions against corrupt officials (i.e. *without* having to worry about ending up with a *paper judgement*).

All in all, it is commendable that the Chinese courts have sent a positive signal towards the liberalization of its approach in tackling foreign judgements; the intention to recognize and enforce more foreign judgements within China would *greatly facilitate* the recovery of stolen assets within China. Even so, given the recency of these new tests, it remains to be seen whether Chinese courts would continue the *upward* trend towards the recognition and enforcement of foreign judgements.

References

Articles:

- Ho, H.L. (1997), "Policies underlying the enforcement of foreign commercial judgements", *International and Comparative Law Quarterly*, Vol. 46 No. 2, pp. 443-462.
- Hulbert, R.W. (2008), "Some thoughts on judgements, reciprocity, and the seeming paradox of international commercial arbitration", *University of Pennsylvania Journal of International Law*, Vol. 29 No. 3, p. 652.
- Zhang, M. (2006), "Choice of law in contracts: a Chinese approach", *Northwestern Journal of International Law and Business*, Vol. 26 No. 2, pp. 289-333.

Cases

- Re Petition of B&T Ceramic Group SRL for Recognition and Enforcement of the Judgement on Bankruptcy Rendered by the Italian Court (2001), "Guangdong province Foushan IPC", CLI.C 829134, available at: www.pkulaw.cn
- Stoll v Gottlieb (1938), 305, U.S. 165, 172.

Books

- Briggs, A. (2013), *The Conflict of Laws*, 3rd ed., Clarendon Law Series, Oxford University Press, Oxford, p. 140.
- Gu, W. (2019), *Recognition and Enforcement of Judgements in Civil and Commercial Matters*, 1st ed., Hart Publishing, UK.
- Tang, Z.S., Xiao, Y. and Huo, Z. (2016), *Conflict of Laws in the People's Republic of China*, 1st ed., Edward Elgar Publishing, UK, pp. 20-21, 140-141, 143, 145-147, 154, 159, 162, 404.
- Zhang, W. (2014), *Recognition and Enforcement of Foreign Judgements in China: Rules, Practice and Strategies*, 1st ed., Kluwer Law International, Netherlands, pp. 5, 10, 17, 34, 35.
- Zhang, C. (2023), *Win in Chinese Courts – Practice Guide to Civil Litigation in China*, 1st ed., Springer, Singapore, pp. 150-153.

Reports

- Financial Action Task Force (2010), "Money laundering using trust and company service providers", available at: www.fatgafi.org/en/publications/Methodsandtrends/Moneylaunderingusingtrustandcompanyserviceproviders.html (accessed 31 October 2023).
- Russel, D. and Berger, B. (2019), "Navigating the Belt and Road Initiative", available at: https://asiasociety.org/sites/default/files/2019-06/Navigating%20the%20Belt%20and%20Road%20Initiative_0.pdf (accessed 2 January 2023).
- World Bank (2015), "Public wrongs, private actions – civil lawsuits to recover stolen assets", available at: www.worldbank.org/en/topic/financialsector/publication/public-wrongs-private-actions-civil-lawsuits-to-recover-stolen-assets-study#:~:text=The%20%E2%80%9CPublic%20Wrongs%2C%20Private%20Actions,for%20damages%20caused%20by%20corruption (accessed 9 November 2023).
- Yu, M. and Du, G. (2022), Guide to enforce foreign judgements in China – enforcing judgements in China while litigation in another country/region, available at: www.cjoglobal.com/wp-content/uploads/2022/06/2022-Guide-to-Enforce-Foreign-Judgments-in-China.pdf (accessed 22 November 2023).

Websites

- Asian Business Law Institute (2021), “[judgement] *De jure* reciprocity in judgements recognition and enforcement between Singapore and China?”, available at: <https://abli.asia/judgment-de-jure-reciprocity-in-judgments-recognition-and-enforcement-between-china-and-singapore/> (accessed 22 November 2023).
- Chong, A. (2022), “China’s 2022 landmark judicial policy clears final hurdle for enforcement of foreign judgements”, available at: <https://conflictoflaws.net/2022/chinas-2022-landmark-judicial-policy-clears-final-hurdle-for-enforcement-of-foreign-judgments/> (accessed 9 December 2023).
- Tjon, E. and Lanzkron, L. (2023), “The Hague judgements convention entered into force between EU member states and Ukraine”, available at: www.twobirds.com/en/insights/2023/global/the-hague-judgments-convention-has-entered-into-force-between-eu-member-states-and-ukraine
- Wang, M. and Lin, B. (2020), “China’s growing acceptance towards the recognition and enforcement of foreign judgements: an exercise in reciprocity – CWG”, available at: www.ibanet.org/article/4C7FB31F-CE23-40B7-87B2-ECFDCAD2FAF (accessed 9 December 2023).
- Yu, M. (2022), “China introduces new reciprocity rules for enforcing foreign judgements, what does it mean? – CTD 101 series”, available at: www.chinajusticeobserver.com/a/china-introduces-new-reciprocity-rules-for-enforcing-foreign-judgments-what-does-it-mean (accessed 25 November 2023).

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