

争议解决法律热点问题

南京中院首次裁定承认执行新加坡法院判决

2016年12月9日，南京市中级人民法院作出（2016）苏01协外认3号民事裁定，依据申请人高尔集团股份有限公司（Kolmar Group AG）的申请，裁定承认和执行新加坡高等法院于2015年10月22日作出的O13号民事判决。这是我国法院首次裁定承认和执行新加坡法院的判决，在中新司法合作实践中具有里程碑的意义。

我国《民事诉讼法》第二百八十二条规定，“人民法院对申请或者请求承认和执行的外国法院作出的发生法律效力的判决、裁定，依照中华人民共和国缔结或者参加的国际条约，或者按照互惠原则进行审查后，认为不违反中华人民共和国法律的基本原则或者国家主权、安全、社会公共利益的，裁定承认其效力，需要执行的，发出执行令，依照本法的有关规定执行...”。在我国司法实践中，对于外国法院判决的承认和执行，一般需要依据该国与中国缔结的国际条约来进行。而如果双方之间不存在任何国际条约，则原则上我国法院只能依据互惠原则进行承认和执行。而对于新加坡而言，其虽然于1997年与我国签订了《中华人民共和国和新加坡共和国关于民事和商事司法协助的条约》，但其中并没有承认和执行法院判决的相关规定。因此，对新加坡法院判决的承认和执行，依然只能依据互惠原则进行。

长期以来，在司法实践中，我国法院依据互惠原则承认和执行外国法院判决的案例十分少见。多

数案件中，法院均以中国和外国之间不存在有关承认和执行法院判决的国际条约，也无互惠根据为由，驳回申请人的请求。例如，在1994年大连市中级人民法院审理的关于日本五味晃申请承认和执行日本法院判决一案中，法院以中国与日本之间没有两国共同参加的有关相互承认和执行法院判决的国际条约，亦无互惠根据等为由，拒绝了对日本法院判决的承认和执行。此后，我国法院大多遵循大连中院在日本五味晃案件中的裁判方式，在外国和中国之间无相关条约，也无互惠根据的情况下对该国判决予以拒绝承认和执行。而对何谓“互惠根据”，司法实践中却没有形成统一和明确的标准。

此次南京市中级人民法院裁定承认和执行新加坡法院的判决，是我国法院为数不多的依据互惠原则承认和执行外国法院判决的案例之一，也是中国法院对新加坡法院判决的首次承认和执行。该案中，法院以新加坡高等法院曾于2014年1月对我国江苏省苏州市中级人民法院的民事判决进行执行为由，认定中国和新加坡之间存在互惠根据，从而承认和执行了新加坡高等法院的判决。

值得注意的是，本案中，南京中院与此前新加坡法院承认和执行我国判决的做出机关苏州中院虽属不同的法院，但同时位于江苏省境内。而对于跨省法院之间，此种互惠原则是否同样可以适用，则依然需要司法实践来进一步予以明确。

近年来，随着国际贸易的不断增多，当事人约定或根据国际私法冲突规则由外国法院进行管辖的案件并不少见。而目前多数国家依然尚未与我国签订有关相互承认和执行法院判决的国际条约。在此情况下，如果这些外国法院的判决无法在中国得到承认和执行，对当事人而言无疑是巨大的障碍。而与此同时，外国法院普遍存在承认和执行我国法院判决的先例，例如在2006年，德国柏林高等法院就曾经对江苏省无锡中院就某个仲裁协议效力的裁定予以了承认；在2009年，美国加州联邦法院在湖北三联公司诉美国罗宾逊直升飞机公司一案中，也对我国湖北省高院所做的判决予以了承认和执

行。在此情况下，我国法院是否可以借鉴南京中院的裁判思路，以这些外国法院已经承认和执行我国法院判决为由，认定两国之间存在互惠关系，从而裁定承认和执行该外国法院的判决？对此，我们拭目以待。但无论如何，此次南京中院执行新加坡高等法院的判决，是我国法院通过互惠原则承认和执行外国法院判决的一个很好的先例，我们期待在未来有更多中国法院可以打破地域限制，以互惠原则为依据，对外国法院判决予以承认和执行，进一步促进国际法院之间的互通合作关系，推进国际间交流的发展。

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Dispute Resolution

Nanjing Intermediate People's Court Recognizes and Enforces a Singaporean Court Judgment for the First Time

On December 9, 2016, the Nanjing Intermediate People's Court issued Case No. (2016) Su-01 Xie-Wai-Ren-3 Civil Judgment, pursuant to the application by Kolmar Group AG, the applicant, for the recognition and enforcement of a judgment by the High Court of Singapore, Case No. O13 Civil Judgment, dated October 22, 2015. This was the first instance where a Chinese court ruled for the recognition and enforcement of a Singaporean court judgment, and the new judicial cooperative practice possesses the significance of a milestone.

Article 282 of *The Civil Procedure Law of the People's Republic of China* stipulates that, "where an application or a request is made for the recognition and enforcement of an effective judgment or ruling issued by a foreign court, the People's Court will, after conducting a review in accordance with international treaties the

People's Republic of China is a party to, or in accordance with the principle of reciprocity, decide on recognizing the effectiveness of the ruling and the necessity of enforcement according to its conclusion where believed that the judgment or ruling does not violate basic principles of Chinese law or Chinese national sovereignty, security, and the social public interest, and thereby issue an judicial order in accordance with the relevant provisions of this law ... " . In China's judicial practice, the recognition and enforcement of foreign court judgments generally needs to be carried out in accordance with the international treaties concluded between the foreign country and China. And if there is no international treaty between the two countries, in principle, Chinese courts can only recognize and enforce foreign judgments according to the principle of reciprocity. And in the case of Singapore, although Singapore and China signed *The*

People's Republic of China and the Republic of Singapore Treaty on Civil and Commercial Judicial Assistance in 1997, such Treaty, however, does not contain relevant provisions on the recognition and enforcement of foreign court judgments. Therefore, the recognition and enforcement of the Singaporean court judgment can only be based on the principle of reciprocity.

For a long time in judicial practice, only in rare instances have Chinese courts recognized and enforced foreign court judgments in accordance with the reciprocity principle. In most cases, Chinese courts have rejected applicant requests on the grounds that no international treaty for the recognition and enforcement of court judgments existed between China and the foreign country, or there being no basis for reciprocity. For example, in the Dalian Intermediate People's Court hearing of the 1994 case regarding Gomi Akira's application for recognition and enforcement of a Japanese court ruling, given that China and Japan did not have an international treaty for the mutual recognition and enforcement of court judgments, and given that there was no basis for reciprocity, the Dalian Court refused to recognize and enforce the Japanese court judgment. Since then, most Chinese courts have following suits conforming to the reasoning of the Dalian Intermediate People's Court in the case of Gomi Akira, and where there has been no corresponding treaty between China and the particular foreign

country, as well as no basis for reciprocity, Chinese courts accordingly have refused to recognize and enforce such foreign judgments. And on the issue of what is a "reciprocal basis," judicial practice has not yet formed a unified and clear standard.

The Nanjing Intermediate People's Court ruling for the recognition and enforcement of a Singaporean court judgment in this instance was one of the few cases where the court recognized and enforced the judgment of a foreign court on the basis of the principle of reciprocity, and was also a first instance of a Chinese court recognizing and enforcing a Singaporean court judgment in general. In that case, the Nanjing Court relied on a January 2014 judgment of the High Court of Singapore regarding the latter's recognition of a Chinese court civil judgment from Jiangsu Province for determining that a reciprocal relationship existed between China and Singapore and recognizing and enforcing the judgment of the High Court of Singapore.

It is worth noting that, although in the present case the Nanjing Intermediate People's Court recognized and enforced the Singaporean court judgment involving a different Chinese court (the Suzhou Intermediate People's Court), the Suzhou Court and the Nanjing Court were still both located in the jurisdiction of Jiangsu Province. And on the issue of inter-provincial courts, it remains to be seen whether the reciprocity principle will equally apply and it will

be necessary for judicial practice to further clarify such standard.

In recent years, with the continuous increase of international trade, it has not been uncommon for foreign courts to conduct jurisdictional analysis based on agreements by parties or conflict of law principles of private international law. And at present, most countries still have not signed international treaties with China for the mutual recognition and enforcement of court decisions. In this case, if foreign court judgments cannot obtain recognition and enforcement in China, parties will undoubtedly find that to be a large obstacle. And furthermore, foreign courts already have wide precedent for the recognition and enforcement of Chinese court decisions; for example, a 2006 Berlin, Germany High Court judgment recognized a Wuxi Intermediate People's Court judgment regarding the effectiveness of an arbitration agreement; and in the 2009 case of Hubei Gezhouba Sanlian Industrial Co., Ltd. et. al. v. Robinson Helicopter Co., Inc., the California US federal district court case recognized and

enforced a judgment by China's Hubei Provincial High Court. In this situation, one must ask: Can Chinese courts reference the thinking of the Nanjing Intermediate People's Court and the foreign courts which have already recognized and enforced Chinese court judgments, and maintain a relationship of reciprocity between such countries in ruling for the recognition and enforcement of judgments of these foreign courts? In this regard, we must wait and see. In any event, the Nanjing Intermediate People's Court's enforcement of the Singapore High Court judgment is an excellent precedent of a Chinese court acknowledging recognition and enforcement of a foreign court judgment on the basis of the reciprocity principle; we can hope that, in the future, there will be more Chinese courts that can overcome geographical restrictions, and according to evidence of reciprocity, decide to recognize and enforce foreign judgments in such a way to further promote the inter-cooperation of international courts and the development of international exchange.

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