

## INTERNATIONAL

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### IN THIS ISSUE

*The first case of a PRC court recognizing an English commercial judgment in 2022 appears to convey a positive message that there is a higher likelihood and lower threshold for foreign commercial judgments to get enforcement in mainland China.*

## The First PRC Court Case Recognizing an English Commercial Judgment

### ABOUT THE AUTHOR



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On March 17, 2022, Shanghai Maritime Court (“SHMC”) issued an Order to recognize the English Court judgments on a maritime case.<sup>1</sup> This is so far the first known case that a PRC court recognized an English commercial judgment. The Order reflects the PRC court’s more open attitude regarding recognition of foreign courts’ civil and commercial judgments.

### The Background

Norwegian shipowner Spar Shipping AS (“Spar”) entered time charters with Grand China Shipping (Hong Kong) Co., Ltd (“GCS”), a subsidiary of Grand China Logistics Holding (Group) Co., Ltd. (“GCL”). GCL provided letters of guarantee to secure the GCS’s performance. All the guarantees agreed on the governance of English law and the jurisdiction of the High Court of Justice in London (“HCJ”). As GCS was in arrears with payments of hire and went into liquidation, Spar brought claim against GCL to the HCJ under the guarantees.

On March 18, 2015, The HCJ held GCL liable for Spar’s damages. GCL appealed but was then dismissed by the Court of Appeal (together the “English Spar Case Judgments”<sup>11</sup>). As GCL was incorporated in Shanghai, Spar applied to SHMC in March 2018 for enforcing the English Spar Case Judgments.

### Key Issue and Court Reasoning

Under Article 289 of the PRC Civil Procedure Law, upon application for recognition and enforcement of an effective foreign judgment, a People’s Court shall order to recognize the judgment’s validity subject to examination in accordance with (1) the international treaty concluded or acceded by the PRC or (2) the principle of reciprocity, and finding that the judgment does not violate the basic principles of PRC laws or the sovereignty, security and public interests of the PRC.

Since the PRC and the UK have not entered any such international treaty with each other, the principle of reciprocity is the only path for English judgments to be recognized by PRC courts. Therefore, the key issue of this case is whether there is a reciprocal relation between the PRC and the UK, based upon which SHMC may examine and decide whether to recognize the English Spar Case Judgment (“SHMC Spar Case”).

For a long period, except for a few exceptions, the common practice of PRC courts is that where there is a precedent of a foreign court recognizing PRC court judgments, reciprocity could be established, and PRC court would accordingly recognize and enforce judgments issued by courts in

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<sup>1</sup> See (2018) Hu 72 XWR No.1. / (2018)沪72协外认1号

<sup>11</sup> See [2015] EWHC 718 (Comm) and [2016] EWCA Civ 982.

this country.<sup>III</sup> This is the so-called “*reciprocity in fact*” approach.

In the present case before SHMC, Spar submitted the *Spliethoff’s Bevrachtingskantor BV v Bank of China Ltd* case<sup>IV</sup> (“**Spliethoff Case**”) to prove that an English court has recognized PRC court judgments and thus judicial reciprocity exists between the PRC and the UK, but SHMC rejected this argument. Relevant information of the Spliethoff Case is summarized as follows:

The Dutch ship operating company Spliethoff’s Bevrachtingskantor BV (“**SBV**”) entered two shipbuilding contracts with Rongcheng Xixiakou Shipyard Co Ltd (“**XXK**”) and China National Electronics Import and Export Shandong Company (“**Electronics**”, together with XXK, the “**Sellers**”). Bank of China Ltd (“**BOC**”) provided guarantees to secure the Sellers’ obligation to refund if the shipbuilding contracts are cancelled.

Later, SBV commenced arbitration against the Sellers under the shipbuilding contracts. The tribunal determined that the shipbuilding contracts were cancelled, and the Sellers were obliged to refund. SBV then filed a lawsuit against BOC to HCJ, claiming for payment under the guarantees.

In the meantime, XXK commenced a separate tortious lawsuit against SBV relating to the shipbuilding contracts in Qingdao Maritime Court (“**XXK Proceedings**”), where XXK obtained winning judgment, together with an interim order prohibiting BOC from making any payment anywhere under the guarantees to SBV (“**XXK Order**”).

The HCJ ruled that both the judgments of XXK Proceedings and XXK Orders “fall to be recognized by this court”, but dismissed BOC’s application for a stay on the ground that English court enforcing the BOC’s payment obligation is not in conflict with the XXK Order.

SHMC considers that, pursuant to English procedural rules, for PRC court judgments to be recognized and enforced, the creditor shall commence a new proceeding in an English court, the English court would then, upon examination, issue a judgment basically identical to the original judgment for enforcement under English laws. The Spliethoff Case, however, was not commenced in this way for seeking recognition of the XXK Proceedings judgments. It was filed by SBV who was not the creditor in the XXK Proceedings, and it only aimed at claiming for BOC’s payment under the guarantees. Therefore, the term “recognize” is not used in the sense of

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<sup>III</sup> For foreign judgments recognition practice in the PRC, see e.g., Bélih Elbalti (2017) *Reciprocity and the recognition and enforcement of foreign judgments: a lot of bark but not much bite*, Journal of Private International Law, 13:1,

184, 201-205, DOI: 10.1080/17441048.2017.1304546

<sup>IV</sup> See [2015]EWHC 999(Comm).

recognition and enforcement of foreign judgments.

Despite no precedent proved, SHMC moves to give breakthrough reasoning by adopting a “*reciprocity in law*” approach. It points out that PRC Civil Procedure Law does not limit the principle of reciprocity to be applicable only in circumstances where foreign courts antecedently recognize and enforce PRC court’s civil and commercial judgments. In the first place, under the English law, PRC court’s judgments could be recognized and enforced even without any treaty on recognition of foreign judgment. Further, no evidence shows an English court has ever refused to recognize and enforce any PRC court judgment due to lack of reciprocal relation. Therefore, SHMC finds that there is judicial reciprocity between the PRC and the UK, and finally recognizes the English Spar Case Judgments after holding that the judgments also do not violate any basic principles of PRC laws or the sovereignty, security or public interests of the PRC.

### Observation

Treaties (both bilateral and multilateral) and reciprocal relations are two bases for PRC court to recognize a foreign court judgment. The PRC makes efforts on both sides to promote mutual recognition. To our knowledges, PRC has entered bilateral treaties with 35 countries on reciprocal enforcement of judgments. China has also signed the Final Act of Convention on the

Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“**2019 Hague Convention**”).

In the absence of treaty arrangements, PRC court must identify the reciprocal relation before recognizing a foreign court judgment. In 2005, the Second Intermediate People’s Court of Beijing Municipality refused to recognize two judgments made by HCJ.<sup>v</sup> It took a cautious “*reciprocity in fact*” (事实互惠) view to identify that the PRC and the UK had not formed any reciprocal relation, and thus concluded the condition for recognition is not satisfied.

In 2015, the Supreme People’s Court issued Several Opinions on Providing Judicial Services and Safeguards for the Construction of the “Belt and Road” by People’s Courts (“**The 2015 Opinions**”). The 2015 Opinions pioneeringly initiated an “*antecedent reciprocity*” (先行互惠) approach by pointing out that PRC courts could consider providing judicial assistance antecedently to procure formation of reciprocal relation, considering the intention of international judicial cooperation and foreign country’s commitment on judicial reciprocity to the PRC.

In 2017, the Nanning Declaration at the Second PRC-ASEAN Justice Forum (“The 2017 Declaration”) took one step further by reaching the consensus of “*presumed reciprocity*” (推定互惠). According to its Article 7, for any ASEAN country that has not

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<sup>v</sup> See (2004) EZMTZ No.928.

yet concluded mutual recognition treaties with the PRC, if there is no precedent in that country for refusing to recognize and enforce PRC civil commercial judgments, it can be presumed that there is a reciprocal relation between the PRC and that country. In 2019, the Opinions of the Supreme People's Court Regarding Further Providing Judicial Services and Guarantees by the People's Courts for the Belt and Road Initiative ("**The 2019 Opinions**") again stressed the "*presumed reciprocity*".

Ultimately, at the end of 2021, the Supreme People's Court issued the Minutes of Meeting of the Trial Work of the National Courts on Foreign-related Commercial and Maritime Matters ("**the 2021 Minutes**"). Pursuant to Section One of Article 44, in circumstances where subject to the laws of the country where the court is located, the civil and commercial judgments made by a PRC court could be recognized and enforced by the court of that country, the people's court may determine that there is a reciprocal relation when recognition and enforcement of a judgment or ruling rendered by the court of that country is sought. Obviously, the reasoning of SHMC refers to this new "*reciprocity in law*" (法律互惠) approach.

This SHMC Spar Case appears to convey positive message that there is a higher likelihood and lower threshold for foreign commercial judgments to get enforcement in mainland China.

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