Belt & Road Typical Case 13: Towards a Liberal Interpretation of the Reciprocity Principle for Recognition and Enforcement of Foreign Judgments

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The Takeaway

In Belt & Road Typical Case 13, the Supreme People’s Court (the “SPC”) endorsed the liberal approach that the Intermediate People’s Court of Nanjing Municipality, Jiangsu Province, adopted to determine the existence of a relationship of reciprocity to recognize and enforce a commercial judgment of a Singaporean court. The Typical Case demonstrates the SPC’s keen interest in fueling the development of the Belt and Road Initiative by offering cross-border judicial assistance, especially for commercial transactions. The case indicates specific factors and strategies which practitioners should consider in evaluating their chances of success applying for the recognition and enforcement of foreign commercial judgments.

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The Rundown

In 2014, Kolmar Group AG (“Kolmar Group”), a Swiss company, entered into a settlement agreement with Jiangsu Textile Industry (Group) Import & Export Co., Ltd. (“Sutex”), whose principal office was located in Jiangsu Province, China, concerning a dispute over a sales contract. Later, claiming Sutex was in default of its obligation to pay USD 350,000 under the settlement agreement, Kolmar Group sued Sutex in the High Court of Singapore, in accordance with the jurisdiction clause in the settlement agreement. Sutex was summoned in accordance with law but did not appear in court. On October 22, 2015, the High Court of Singapore rendered a judgment ordering Sutex to pay Kolmar Group USD 350,000 plus interest as well as fees. As Sutex did not respond to the judgment, Kolmar Group applied to the Intermediate People’s Court of Nanjing Municipality, Jiangsu Province (the “Nanjing IPC”), requesting that the court recognize and enforce the Singaporean judgment against Sutex.

Article 282 of the Civil Procedure Law of the People’s Republic of China, provides the requirements for a court in mainland China (a “people’s court”) to recognize and enforce a foreign judgment: a court should assess an application “in accordance with the international treaties concluded or acceded to by the People’s Republic of China or based on the
principle of reciprocity”. The court can recognize and enforce the foreign judgment if it does not violate the basic principles of law, the state sovereignty and security, or the public interests of the People’s Republic of China (the “PRC”). Article 544 of the Interpretation of the Supreme People’s Court Concerning the Application of the “Civil Procedure Law of the People’s Republic of China” further affirms that the court shall rule to reject the application for the recognition and enforcement of a foreign judgment in the absence of an effective treaty or reciprocal relationship between the PRC and the foreign country. Treaties and reciprocity, therefore, are considered to be the two, exhaustive bases for a successful recognition and enforcement application.

In Kolmar Group AG and Jiangsu Textile Industry (Group) Import & Export Co., Ltd. (“Kolmar”), which is the judgment that was re-released as Belt & Road (“B&R”) Typical Case 13 (“TC13”), Sutex used Article 282 to challenge Kolmar Group’s application for recognition and enforcement of the Singaporean judgment. (The Kolmar judgment, like most judgments of this type, does not specify the legal grounds for the application; it records the legal grounds upon which the respondent challenged the application, followed by the court’s findings, reasoning, and decision.) Sutex argued that although the PRC concluded a bilateral treaty with Singapore regarding judicial assistance matters in 1997, the treaty did not extend to the recognition and enforcement of judgments, and therefore, the Nanjing IPC should reject Kolmar Group’s application.

The Nanjing IPC addressed the central issue in three steps. First, it considered whether the application could be granted on the basis of any treaty. The court agreed with Sutex that the cited bilateral judicial assistance treaty did not apply. It concluded that the PRC and Singapore have neither concluded between themselves nor jointly acceded to any international treaty on mutual recognition and enforcement of effective judgments or rulings in civil or commercial matters. Second, given the absence of applicable treaties, it considered whether the Singaporean judgment could be recognized based on the principle of reciprocity. The court found that, in 2014, the High Court of Singapore enforced a civil judgment rendered by the Intermediate People’s Court of Suzhou Municipality, Jiangsu Province. Because of this case of a Singaporean judgment enforcing a people’s court civil judgment (a “cross-border enforcement precedent”), the Nanjing IPC concluded there was a reciprocal relationship between the PRC and Singapore. Third, the court considered whether granting the application on the judgment sought to be recognized and enforced would violate the basic principles of law, the sovereignty and security, or the public interests of the PRC. It answered the third inquiry in the negative and decided to recognize and enforce the judgment against the Chinese company.
TC13 noted that this was the first time a Singaporean commercial judgment was recognized and enforced in mainland China. The case is significant in at least three specific respects. First, it represents a liberal approach in the determination of the existence of a relationship of reciprocity, an approach which significantly departs from the restrictive approach to which the PRC courts, including the Supreme People’s Court (“SPC”), had been inclined. Second, it connects with the SPC’s zealous interest in taking measures to fuel the development of the Belt and Road Initiative. Third, it sheds light on specific factors and strategies which practitioners should consider in evaluating their chances of success in applying for the recognition and enforcement of foreign commercial judgments.

**Kolmar marks a reboot, with a new approach adopted by the Nanjing IPC in favor of the affirmative use of reciprocity.**

**Before Kolmar: The Restrictive Approach**

Before Kolmar, the principle of reciprocity was invoked only negatively by the courts, as a ground to refuse to recognize or enforce a foreign judgment, although legislation gave it as a ground for recognition and enforcement. The reason behind this lies in the restrictive approach adopted to ascertain the existence of a reciprocal relationship. If a judgment of a people’s court had been refused recognition and enforcement in the relevant country, it certainly makes sense for a court to consider the refusal as strong evidence that no reciprocity relationship exists. However, even in the absence of any such refusal, people’s courts never found a relationship of reciprocity. *Gomi Akira v. Dalian Fari Seafood Co., Ltd.* ("Gomi Akira") is a representative case: a Japanese citizen applied to the Intermediate People’s Court of Dalian Municipality, Liaoning Province, to recognize and enforce a Japanese judgment involving a payment of debts. The court rejected the application, concluding that there was neither a relevant treaty nor a relevant reciprocal relationship between the PRC and Japan, but the court made no mention of the recognition or enforcement of people’s court judgments by Japanese courts. Notably, the High People’s Court of Liaoning Province, perhaps upon the request of the Intermediate People’s Court, sought opinions from the SPC before the judgment was handed down, so the approach in this case contained an element of the SPC’s thinking at the time, and it is no surprise to see a similar approach used in other cases since Gomi Akira.

In practice, it was not possible to apply to a people’s court for recognition and enforcement of commercial judgments from countries with which the PRC had no relevant treaty.

**A New Approach: The Kolmar Case**

Kolmar marks a reboot, with a new approach adopted by the Nanjing IPC in favor of the affirmative use of reciprocity. The main message sent by Kolmar is that a people’s court can find a relationship of reciprocity between the PRC and a foreign country upon proof that the foreign country previously enforced a people’s court civil judgment, i.e., proof of a cross-border enforcement precedent. Certain subsequent cases illustrating Kolmar’s approach suggest there may also be a regional factor affecting courts’ consideration of reciprocity.

In Kolmar, the Nanjing IPC did not specify
any conditions for the cross-border enforcement precedent, except that it should be of a civil nature. For finding reciprocity, therefore, all that needs to be proved is that the relevant foreign country enforced a civil judgment of a people’s court. Importantly, the foreign court’s grounds for the enforcement are irrelevant, e.g., it is not necessary for the relevant country to have incorporated a reciprocity principle in its domestic law. Thus, litigants may seek cross-border recognition and enforcement even of judgments rendered in countries whose civil procedure rules are substantially different from those of mainland China, e.g., common law jurisdictions. Furthermore, there is strong evidence that the relevant cross-border enforcement precedent was not submitted by the applicant, but rather was found by the court. This shows that the Nanjing IPC was acting very proactively to challenge the traditional approach. Moreover, if a people’s court may exercise ex officio the power to find relevant cross-border enforcement precedents, applicants will have even more chances of success on their applications.

However, it appears that courts may consider a condition or at least a factor for finding a reciprocity relationship: whether the judgment enforced by the foreign court was rendered by a people’s court residing in the same province as the court to which the recognition and enforcement application is brought. This regional factor was implicitly satisfied in Kolmar, but the Nanjing IPC’s judgment did not explicitly refer to such a condition. However, in two later cases, there are indications that the courts examined the existence of reciprocity at only the provincial level. One case is Liu Li v. Tao Li & Tong Wu (“Liu Li”, discussed in more detail below), where the Intermediate People’s Court of Wuhan Municipality, Hubei Province, found a reciprocal relationship on the basis of a foreign judgment enforcing a people’s court judgment rendered by a court in the same province. The other is S.L. Jonas Ltd. and Ping Yang (“S.L. Jonas”), where the Intermediate People’s Court of Fuzhou Municipality, Fujian Province, refused to recognize and enforce an Israeli judgment despite the fact that, in 2015, the Tel Aviv-Jaffa District Court of Israel enforced a civil judgment rendered by a people’s court, but in a different province. Since the S.L. Jonas judgment made no reference to this cross-border enforcement precedent, it is not clear whether the Fuzhou court was aware of it at the time. Thus, the result, i.e., finding no reciprocity relationship, may reflect an oversight (by a party and/or the court) or it may indicate that the court implicitly considered the regional factor as a condition—and courts may be justified in doing so. People’s courts probably find it too ambitious a task to determine whether the PRC, as a country, has established a relationship of reciprocity with another country. Therefore, it is more practical for a court to carry out an examination at the provincial level, unless the court concerned is the SPC. Given the early stage of the new approach to finding a reciprocal relationship, it is understandable that the nature and applicability of a regional factor remains unclear.

**The SPC’s Endorsement of the New Approach: Typical Case 13**

The Nanjing IPC’s judgment might have ultimately remained a legal outlier, with little effect on future recognition and enforcement of foreign judgments, had not the SPC endorsed the case by releasing it as a Typical Case, TC13, greatly increasing its impact. However, TC13 highlights the commercial nature of the enforced Singaporean judgment in Kolmar. This reflects the SPC’s current emphasis on providing judicial assistance for cross-border commercial transactions. Indeed, whether a country has an effective mechanism for
recognition and enforcement of foreign judgments is crucial for conducting cross-border trade. TC13, by endorsing a liberal approach to construing reciprocity, sends a message to the international trade community that the judicial environment of mainland China is heading towards a high level of openness and inclusiveness, elevating the reputation of people’s courts worldwide.

However, TC13 does not go into the details of the legal reasoning in Kolmar, prompting the question: does TC13 impose any conditions for the cross-border enforcement precedent or will any civil—or only any commercial—judgment from the relevant foreign country enforcing any people’s court judgment suffice for finding a reciprocal relationship? Two cases, mentioned above, illustrate this problem and the approach that other people’s courts may take in the absence of further guidance from the SPC.

Liu Li was handed down by the Intermediate People’s Court of Wuhan Municipality, Hubei Province, on June 30, 2017, one month after TC13 was published. The court recognized and enforced, based on the principle of reciprocity, a U.S. commercial judgment rendered by the Superior Court of Los Angeles County, reportedly the first instance of a U.S. commercial judgment recognized in mainland China. The judgment did not refer to Kolmar or TC13, but the cross-border enforcement precedent used to find reciprocity fit Kolmar’s framework. First, the court did not consider the basis of the U.S. judgment. In contrast to Kolmar, however, in Liu Li, it was the applicant, instead of the judges, who submitted the U.S. judgment as proof of a cross-border enforcement precedent. Second, the cross-border enforcement precedent concerned a judgment rendered by the High People’s Court of Hubei Province, where the court that considered the recognition and enforcement application sits: the regional factor described above was thus satisfied. However, Liu Li raises another question concerning the regional factor: how would it apply to a foreign country which has more than one jurisdictional region and/or level? The U.S. cross-border enforcement precedent on which reciprocity was found in Liu Li was a judgment of a California federal court, the U.S. judgment sought to be enforced was of a California state court, and the Liu Li judgment only stated that the application was granted on the ground of a reciprocity relationship existing between the PRC and the United States. It is not clear whether the Liu Li court considered a relationship of reciprocity between Hubei Province and California, Hubei Province and the United States, or the PRC and the United States. The uncertainty concerning the nature and application of the regional factor is accentuated by the other post-TC13 case mentioned above, S.L. Jonas, in which a court in Fujian Province rejected an application to recognize and enforce an Israeli judgment even though a court in

**Timeline**

- **June 6, 2015**: the release of the SPC Judicial Opinions on the Belt and Road Initiative.
- **June 7, 2016**: the Kolmar case first accepted by the Nanjing IPC.
- **Dec. 9, 2016**: the Kolmar judgment was handed down.
- **May 15, 2017**: the SPC re-released the Kolmar judgment as Typical Case 13.
- **May 18, 2017**: the Nanjing IPC explained its new approach to the public.
- **June 30, 2017**: the Liu Li case was decided, applying the new approach.
Israel had enforced a judgment from a court in Jiangsu Province.

In short, while the SPC’s re-release of the Kolmar judgment as TC13 reinforces the new, more liberal approach recognizing and enforcing foreign judgments on the basis of a reciprocal relationship, the brevity of TC13 itself leaves much to be desired. In particular, the SPC could expand on the conditions, if any, for the cross-border enforcement precedent as well as whether and how reciprocity findings made by different courts in China are to be harmonized.

*Why the Endorsement? The Belt and Road Initiative*

Typical Case 13 highlights the SPC’s keen interest in advancing the Belt and Road Initiative (the “BRI”). One fact that may have influenced Kolmar’s selection as TC13 is that the foreign judgment was rendered in Singapore, a country participating in the BRI. As the PRC and Singapore have not concluded any binding treaty regarding the recognition and enforcement of foreign judgments, an application such as Kolmar Group’s would have been refused if the restrictive approach towards construing the relationship of reciprocity had been followed. The SPC’s endorsement of Kolmar, in which a B&R country’s judgment was recognized and enforced by a people’s court, sets a good example for other B&R countries which do not have relevant treaties with China. Furthermore, the SPC’s preferred approach for construing the existence of reciprocity may already go a step further than the approach in Kolmar.

In Kolmar, the determination of reciprocity was based on the fact the foreign country had taken the first step to recognize and enforce a people’s court judgment. However, as early as 2015, the SPC issued the *Several Opinions of the Supreme People’s Court Concerning Judicial Services and Safeguards Provided by the People’s Courts for the “Belt and Road” Construction* (the “SPC Opinions”), offering guidance on the roles courts have in the development of the BRI. Paragraph No. 6 of the “Opinions” suggests that a people’s court has the option of initiating the circle of reciprocity, being the one first to offer cross-border judicial assistance relating to B&R countries. It implies that even in the absence of any cross-border enforcement precedent from the relevant foreign country, the people’s court to which a recognition and enforcement application is made can still consider granting the application if it relates to a B&R country.

Given the restrictive approach courts kept to before Kolmar, it may have been too progressive and “risky” for them to leap to the approach suggested in the SPC Opinions. Kolmar, in this regard, may help to encourage courts in recognizing and enforcing foreign judgments, ultimately perhaps to the point of implementing Paragraph No. 6 of the SPC Opinions to take the initiative in such recognition and enforcement. This would be in line with the aim, of the SPC as well as the PRC government more broadly, of supporting the BRI.

*Practice Points*

Typical Case 13 gives rise to several pointers for a practitioner seeking to apply for the recognition and enforcement of a foreign commercial judgment in a people’s court when the PRC does not have a governing treaty with the country from which the judgment comes. First, finding a judgment (from the relevant country) which recognizes and enforces a people’s court civil
judgment will greatly, if not critically, support your application for recognition and enforcement—directing the court’s attention to TC13. Your chances are increased even more if the foreign judgment enforced a judgment from the Chinese province in which you make your application. Second, if attempting to recognize and enforce a judgment from a B&R country, you have good chances of success even if a cross-border enforcement precedent cannot be identified as long as there is no case in which a judgment of a people’s court has been refused recognition in the relevant country—directing the court’s attention also to the SPC Opinions. Third, it is uncertain what a court would decide if judgments have been both refused and recognized in the relevant country; however, given the flexible approach suggested in the SPC Opinions, the applicant may still have a chance if the foreign judgment recognizing and enforcing the people’s court judgment is the more recent one and the party can argue that it should represent the status quo of the reciprocity relationship between the countries.

THE CONCLUSION

At the very least, B&R Typical Case 13 provides explicit, authoritative support for a people’s court to find a relationship of reciprocity between the PRC and a foreign country for the purpose of recognizing and enforcing a judgment from that country. More than that, however, the approach of the court in the underlying case, Kolmar, was applicant-friendly in several respects, compared with the previous practice of people’s courts, and the endorsement of the SPC as well as subsequent developments have given new promise worth exploring. Representing itself as a facilitator under the BRI, the SPC is providing effective mechanisms enabling cross-border litigants to put their trust in China’s judicial system, either by choosing to litigate in it or by having foreign judgments recognized and enforced by it. TC13 showcases an appealing promise for countries joining the BRI.

Endnotes

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1《高尔集团股份有限公司申请承认和执行新加坡高等法院民事判决案》(Kolmar Group AG, A Case of an Application for the Recognition and Enforcement of a Civil Judgment of the High Court of Singapore), Stanford Law
2 See The Supreme People’s Court’s Interpretation of the “Civil Procedure Law of the People’s Republic of China”), passed by the Adjudication Committee of the Supreme People’s Court on Dec. 18, 2014, issued on Jan. 30, 2015, effective as of Feb. 4, 2015, http://www.chinacourt.org/law/detail/2015/01/id/148091.shtml. Pursuant to Article 544, the only exception is an application for recognizing a foreign divorce judgment, in which case it is not necessary for the applicant to base the application on either treaty or reciprocity.


Zhong Min Si Te Zi No. 2 Civil Ruling), rendered by the Intermediate People’s Court of Shenyang Municipality, Liaoning Province, on Apr. 8, 2015, http://wenshu.court.gov.cn/content/content?DocID=e5e14a41-022f-4717-bb35-57c4eea65cdd.

10 In the cross-border enforcement precedent referred to in Kolmar, the High Court of Singapore enforced a people’s court judgment on the ground of common law conflict of law rules.

11 Giant Light, supra note 6.

12 In the Nanjing IPC’s judgment, the Singaporean judgment is mentioned only after the summary of the applicant’s and respondent’s arguments. It appears under the section where courts usually begin with approved findings which lead to the adjudication. Further evidence comes from a recently-released documentary, “The Power of Equity and Justice”, co-produced by the SPC and China Central Television. In the episode “Can Court Judgments Have the Principle of Reciprocity?”, Kolmar’s presiding judges were interviewed on its adjudication. One presiding judge, Justice JIANG Xin, said that she found the cross-border enforcement precedent from earlier case reports. See SPC & CCTV, 《公平正义的力量》(The Power of Equity and Justice), CCTV (July 3-7, 2017), http://jingji.cctv.com/special/justice/index.shtml.

13 In Kolmar, the cross-border enforcement precedent concerned a case of the Intermediate People’s Court of Suzhou Municipality, Jiangsu Province, the province in which the Nanjing IPC sits.


16 Jiangsu Overseas Group Co. Ltd. v. Isaac Reitmann, Tel Aviv-Jaffa District Court, Civil File 48946-11-12.


18 In explaining the typical significance of TC13, the SPC several times referred to the Singaporean judgment as a “commercial judgment”, while the Nanjing IPC’s judgment referred to it only as a “civil judgment”. TC13, supra note 1, and Kolmar, supra note 4.


20 In September 2017, China signed The Hague Convention on Choice of Court Agreements, to which Singapore is also a contracting country, so treaty-based recognition may become available for Singaporean judgments once the convention is ratified by the PRC National People’s Congress.
More than half of the estimated 71 countries participating in the BRI cannot use any treaty as the basis for the recognition and enforcement of commercial judgments in China.

《关于人民法院为“一带一路”建设提供司法服务和保障的若干意见》(Several Opinions of the Supreme People’s Court Concerning Judicial Services and Safeguards Provided by the People’s Courts for the “Belt and Road” Construction), issued by the Supreme People’s Court on June 16, 2015, http://gongbao.court.gov.cn/Details/b10a1d30141be4a4c7886b00d759c3.html.

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