

## Intellectual Property

### China Supreme Court Adopts Process for Taiwan Civil Judgments to Be Recognized and Enforced

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The Agreement for Cross-Strait Judicial Mutual Assistance between China and Taiwan marked its sixth anniversary recently on June 30, 2015. On the same day, China's Supreme People's Court convened a press conference to report on the judicial mutual assistance program under the agreement which has been in development with Taiwan since 2014. A total of 15 Taiwan-related judicial mutual assistance cases were cited. China's Supreme Court also issued two judicial interpretations with respect to the recognition and enforcement of civil judgments in Taiwan, namely:

- (i) "Rules of the Supreme People's Court on Recognition and Enforcement of Civil Judgments in the Taiwan Area" (Judicial Interpretation [2015] No. 13);
- (ii) "Rules of the Supreme People's Court on Recognition and Enforcement of Arbitration Rulings in the Taiwan Area" (Judicial Interpretation [2015] No. 14).

These judicial interpretations both took effect on July 1, 2015.

With respect to recognition and enforcement of Taiwanese civil judgments in China, the Supreme Court had issued 4 judicial interpretations since 1998. These were:

- "Rules of the Supreme People's Court on Recognition and Enforcement of Civil Judgments in the Taiwan Area" (Judicial Interpretation [1998] No. 11);
- "Reply of the Supreme People's Court on Whether People's Court Should Accept Application of Litigants Holding Mediation Order of the Court in the Taiwan Area or Mediation Agreement Issued or Confirmed by the Relevant Authority in the Taiwan Area for Recognition of Such Mediation Order or Agreement" (Judicial Interpretation [1999] No. 10);
- "Reply of the Supreme People's Court on Whether the People's Court Should Accept Application of Litigants Holding Order of Payment by Courts in the Taiwan Area for Recognition of Such Orders" (Judicial Interpretation [2001] No. 13);
- "Supplemental Regulations of the Supreme People's Court on Recognition by the People's Court of Civil Judgments of Taiwanese Courts" (Judicial Interpretation [2009] No. 4).

The latest judicial interpretation on recognition and enforcement of civil judgments however, signifies that these previous judicial interpretations have been superseded and are no longer enforceable.

In general, both of the judicial interpretations issued on June 30, 2015 involve expansion of case jurisdiction points, appropriate liberalization of conditions for acceptance of cases, and the addition of remedies. A summary of their provisions is given below.

#### I. Expansion of Case Jurisdiction Points

According to the Supreme Court press conference, previous judicial interpretations required that the court which had jurisdiction to be that at the applicant's place of residence or regular residence of the location of the property of the enforced party. In practice, there are individuals domiciled in Taiwan who

do not have a residence or place of regular residence in China. If their application to the court for confirmation of special legal residence were refused (let alone their application to the court for recognition and enforcement of judgment), they would have no recourse based on previous judicial interpretations. In contrast, the latest judicial interpretation allows for acceptance by the local Intermediate People's Court or designated People's Court of applications to recognize civil judgments (and arbitration rulings) of Taiwanese courts based on the applicant's residence, place of regular residence, or the residence of the party against whom the application is made (see Article 4 of Judicial Interpretation [2015] No. 13 and No. 14).

## **II. Relaxation of Conditions for Accepting Cases**

According to He Zhonglin, director of the Supreme People's Court Hong Kong, Macau, and Taiwan Task Force, in the past, legal documents originating from Taiwan were required to be notarized by a notary public in Taiwan and certified by the relevant notary public association in China before they could be accepted by the People's Court. According to the latest judicial interpretations, however, an applicant now only needs to provide the original copy of a civil judgment of a Taiwanese court together with an application form for the People's Court to accept the application.

Article 7 of the "Rules of the Supreme People's Court on Recognition and Enforcement of Civil Judgments in the Taiwan Area" provides that an applicant should submit an application form for recognition of a civil judgment of a Taiwanese court together with the original copy of the said court's civil judgment and certificate of civil judgment (or a duplicate copy which has been certified to not contain any errors). If such a civil judgment is made against the defendant in absentia, the applicant should also, at the time of its application, provide documentary proof with respect to the Taiwanese court having lawfully summoned the litigants. However, this requirement is not applicable if the fact of judgment in absentia is already stated in the civil judgment.

## **III. Convenience to Litigants**

Pursuant to the new judicial interpretations, if the applicant engages an agent to apply for recognition of a civil judgment (or arbitration ruling) in Taiwan on its behalf, it should submit to the People's Court a letter of authorization that has been duly signed or stamped by it. A letter of authorization that is signed or stamped by a litigant in Taiwan, Hong Kong, and Macau SARs, or other foreign countries should be duly notarized and certified. The aforesaid requirement would not apply, however, if such a letter of authorization is signed in the presence of a judge of the People's Court or if it is certified by a notary public in China to have been signed in China (see Article 6 of Judicial Interpretation [2015] No. 13 and No. 14).

The Supreme People's Court's He said that the above provision is intended to ensure the authenticity of the litigants' identity, as well as to provide greater convenience.

## **IV. Regularity of Procedure**

For an application which meets the conditions set out in Articles 4 and 7 of Judicial Interpretation [2015] No. 13 and No. 14, the People's Court should establish files within 7 days of receiving the application and notify the applicant and the respondent. It should at the same time also deliver the application form to the respondent. In the case of an application which does not meet these conditions, the People's Court should issue its rejection order within 7 days of such application and give its reasoning for the rejection. Thereafter, the applicant is entitled to appeal such an order.

Director He said that the above new provisions allow respondents to know that the recognition procedure is being carried out and provide them with a further opportunity to make an opinion thereon. Before the new judicial interpretations were issued, it was quite difficult for an applicant to follow the progress of a judicial recognition. There was no mutual judicial assistance between China and Taiwan, and it was difficult for a party to understand the requirements for delivery to the opposing party. Under the new judicial interpretations, each party is required to comply with the relevant procedures; the parties are also required to deliver the documents to each other.

## **V. Application for Non-Recognition and Dismissal of Judgment**

Director He pointed out that in the past, judicial interpretations merely stipulated the manner of refusals to recognize judgments. Non-recognition of a judgment had the same power as a court judgment — there was recognition of a substantive issue — and an applicant would be unable to re-apply for recognition and enforcement of the same judgment in a Taiwanese court. Furthermore, there were no other legal remedies.

According to the new judicial interpretations, the applicant only needs to submit a civil judgment of a Taiwanese court which has been certified as true and valid for review by the Chinese courts. The People's Court can only reject an application if the judgment's veracity and validity cannot be determined. After such an application has been rejected, the applicant can supply the relevant information and make a new application (see Article 16 of Judicial Interpretation [2015] No. 13 and Article 15 of Judicial Interpretation [2015] No. 14).

## **VI. Additional Remedies**

The "Rules of the Supreme People's Court on Recognition and Enforcement of Civil Judgments in the Taiwan Area" introduced a new remedial procedure. According to Article 18, if a litigant objects to the original judgment (e.g. on a finding that the validity or authenticity of the document could not be confirmed), the litigant may apply to the next higher level of People's Court for review within 10 days of delivery of the order of the lower court. In other words, a party that is not satisfied with a Chinese court ruling may apply for a one-time review of such a ruling by a higher court.

## **VII. Period of Application for Recognition and Enforcement of Taiwan Judgments**

The new judicial interpretations also specifically provide for the duration for application for recognition and enforcement of a judgment. The duration will be pursuant to Article 239 of the Code of Civil Procedure of China (see Article 20 of Judicial Interpretation [2015] No. 13, and Article 19 of Judicial Interpretation [2015] No. 14). Under these provisions, an applicant may apply to a Chinese court for recognition and enforcement of a judgment made in Taiwan that is not more than 2 years old.

It remains to be seen how the introduction of the "Rules of the Supreme People's Court on Recognition and Enforcement of Civil Judgments in the Taiwan Area" and the "Rules of the Supreme People's Court on Recognition and Enforcement of Arbitration Rulings in the Taiwan Area" will impact intellectual property rights cases. According to publicly available data, no intellectual property cases have been handled to date under the existing mutual judicial assistance framework. As a result, the rules for application for recognition and enforcement of this type of cases remain unclear. Nevertheless, it is certain that the announcement of the new judicial interpretations for recognition of qualified Taiwan judgments and arbitration rulings has considerably simplified the procedure for acceptance of such cases. Indeed, this represents the first major step forward in mutual support of cross-strait judicial systems.