

Recognition and Enforcement of Foreign Judgment on Family Matters in China (summary)

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This article introduces rules and practices of recognition and enforcement of foreign judgment on family matters in China, and discusses some ambiguous problems. In China, provisions and requirements of recognition and enforcement of foreign judgment can be classified into the following two categories. Category 1: For recognition and enforcement of foreign judgment in general (judgment on property matters and family matters other than divorce), three requirements ruled by art. 282 of Civil Procedure Law of China should be satisfied, including a requirement that reciprocity between China and the rendering state should exist. (We can call it “reciprocity-need approach”.) Category 2: For recognition and enforcement of foreign divorce judgment, by contrast, five requirements ruled by “The 1991 Supreme Court Regulation on Procedure of Application for Recognition of Foreign Divorce Judgment by Chinese Citizen”, art. 12 should be satisfied, without reciprocity requirement. (We can call it “reciprocity-needless approach”.) However, by the above classification, we can’t identify recognition and enforcement requirements of all the categories of foreign judgments on family matters. Especially, under provisions, the answer to what requirement should be satisfied is ambiguous, when recognition and enforcement of judgment on “following divorce matters” (matters of marital property, maintenance, and custody, etc. in divorce case) is applied for.

With this consideration in mind, main content of this article can be divided into three parts. The first part has a short view of provisions of recognition and enforcement of foreign judgment in China. The second part is about practices of recognition and enforcement of foreign judgment on family matters. In this part, practices related to judgment on family matters other than divorce, divorce judgment, and marriage dissolution or annulment judgment are discussed. The third part addresses problems in recognition and enforcement of judgment on following divorce matters, which consist of the problem related to application for recognition and enforcement of foreign couple’s divorce judgment, and the problem of recognition and enforcement requirements. In conclusion, the following tendencies in practice can be seen: (i) In recognition and enforcement of judgment on family matters other than divorce, for satisfying reciprocity requirement, a precedent that

a Chinese judgment has been recognized by court of the rendering state is required. (ii) In recognition and enforcement of judgment on dissolution or annulment of marriage, “reciprocity-need approach” is applied. (iii) In recognition and enforcement of judgment on martial relation matter in divorce case, “reciprocity-needless approach” is applied. (iv) In recognition and enforcement of judgment on following divorce matters, by contrast, applying of “reciprocity-need approach” can be seen in majority of precedents. Ambiguity of provisions would cause chaos in practice, in light of which, it is necessary to make unified interpretation through legislation or supreme court regulation.