

A blurred background image showing a beach scene with waves crashing onto the shore. The colors are soft and out of focus, with shades of blue, green, and yellow.

GETTING YOUR AWARD ENFORCED IN CHINA

UNDERSTANDING YOUR NEEDS,
MEETING YOUR EXPECTATIONS,
MATCHING LOCAL CONSTRAINS...

DOS & DON'TS

Enforcing your award against a Chinese party is often a daunting task.

Currently, it takes an average of 21 months to get a foreign award recognized by the Chinese courts, and this timeline might be further prolonged in view of recent judicial reforms aiming at extending the workload of judges to review all arbitral awards, not just foreign-related awards.

In addition, recognition is only the first step.

Effectively enforcing the award is then yet another beast: Pursuant to the Supreme People's Court's own Report on Enforcement Work of 2016, enforcement fails in 40-50% of the cases due to a lack of assets. And there are other practical hurdles, such as local protectionism, procedural technicalities, etc.

In summary, so as not to create additional legal risks to the enforcement of your arbitral awards, and to remain dependent to vagaries, hazards or the only chance, we invite you to seriously prepare the recognition and execution of the said sentences. We believe it is a matter of extreme preparation and commitment:

“The harder I work, the more luck I seem to have”

Thomas Jefferson



THE FIRST STEP IN PREPARING FOR ENFORCEMENT IS TO AVOID COMMON MISTAKES

Mistake 1: Thinking about enforcement once the award is issued

Too often, parties think of enforcement only after having the award in hand. However, to maximize chances of enforcement, it is crucial to take into account the specificities of the Chinese enforcement framework from the get-go, i.e. when drafting the contract and when conducting the arbitration.

For example:

- ▶ Instead of inserting standard dispute resolution clauses into your contract, you should determine the most appropriate dispute resolution method for your specific contractual relationship, in view of the scope and value of the project, the identity and characteristics of your counterparty, the existence and location of enforceable assets, etc. Indeed, arbitration may not be the only or even the best way to tackle your dispute.
- ▶ When starting an arbitration, it is necessary to give due care to certain procedural technicalities, which are often disregarded by western practitioners and which may kill the chances of getting your award enforced in China, such as the use of an inaccurate name of the Chinese counterparty, the filing of requests for reliefs which are not be enforceable under Chinese procedural law, etc.

Mistake 2: Rushing to initiate recognition and enforcement proceedings in China

After winning arbitrations against Chinese parties, winning parties often leap to directly initiate enforcement proceedings at the place where debtors are located, i.e. in China. However, as Chinese companies expand, this may not be the best way to proceed and often results in lengthy yet fruitless proceedings.

First, you need to carefully consider where to seek enforcement, as chances of success largely depend on the professionalism and independence of the court hearing the case as well as on the procedural tools available to the court to ensure effective enforcement (such as preservation measures).

Second, to be successful, enforcement proceedings must be part of a comprehensive enforcement strategy seeking to gather sufficient commercial, political and legal leverage so that the Chinese counterparty has no other choice but to comply with the award.

Relying on the Chinese judicial system as unique leverage to enforce your award might be not enough.

Mistake 3: Failing to comply with technical enforcement requirements

If it comes to enforcing your award in China, it will require compliance with various procedural technicalities, including rigid translation and legalization processes. For example, Chinese courts will only accept translations from pre-designated translation companies, which vary from region to region and which may or may not be proficient at translating foreign arbitral awards. In addition, both the award and the translation need to be notarized, legalized and/or apostilled by relevant Chinese authorities. Determining the specific process to follow and identifying the relevant Chinese authorities is not an easy task and requires a certain know-how and experience. Since they are lengthy and complex, if not done properly, they can jeopardize your chances of properly filing your application within the 2-years' time limitation applicable under Chinese law.

OUR EXPERTISE

Over 20 Years' Experience

We have been working in the field of enforcement for the last 20 years gathering experience with awards from various countries issued under diverse legal regimes and against Chinese defendants from various regions in China. We have gathered a wealth of theoretical and practical know-how that will maximize the chances of getting your award enforced.

A Strong Network

Thanks to our strong network in China and Europe, we are able to take care of every aspect of your enforcement case, from identifying and engaging strong local lawyers and liaising with the competent courts to finding and using political, commercial or media leverage. We even assist in finding third parties to fund your enforcement proceedings.

Powered by AI

We are among the first to combine our legal expertise with the help of cutting-edge computer programming allowing us to conduct a thorough assessment of all grounds that may be invoked by the opposing party to oppose enforcement and to analyse all enforcement decisions rendered by a specific Chinese court, thereby assessing its professionalism and its tendency towards local-protectionism. With the help of our tool, we are able to know how the judge will rule even before she or he has decided.



OUR SERVICE OFFER

In order to help you avoid these common mistakes and maximize your chances of seeing your award complied with, we have developed the following service offer:

1. Improving your Contracts with Chinese Counterparties

Some, if not many of you, have experienced the frustration of winning an arbitration and not being able to enforce the award. The reason for failing may lie in the way you structured your contracts, in particular the consequences for breach, the collaterals and the dispute resolution mechanism.

We review your contracts to assess how effective your contractual remedies and dispute resolution mechanisms are – not just in theory – but also in practice. In doing so, we take into account all relevant circumstances, including the nature and scope of your project, your commercial leverage, the identity of the Chinese counterparty (including its structure, assets, and its economic, financial and political influence) and potential collateral and/or insurance available in your industry, etc.

2. Designing an Effective and Global Enforcement Strategy

Once you have an award in hand and before rushing into enforcement proceedings, we conduct a full-scale assessment of your chances of enforcing this award against your Chinese counterparty and design a comprehensive enforcement strategy.

Risk Assessment

We perform a detailed review of your chances of getting the award successfully enforced in China based on all relevant circumstances. Among other things:

- ▶ We conduct – as the opposing party would – a **detailed legal assessment** of any potential ground for non-enforcement under the relevant legal framework, e.g. New York Convention, PRC Arbitration Law, the PRC Civil Procedural Law, etc.
- ▶ We carry out **due diligence** on the Chinese counterparty, including its economic and financial situation, its commercial activities, its ties with local or central government, and the value and location of assets in China and abroad.
- ▶ We **identify the various courts** which would be competent to hear the case and determine the one providing the best chances of enforcement, taking into account the court's (and the relevant judges') general professionalism, its independence from local and central government, its case law on enforcement in the past 5 years, etc.
- ▶ We examine **alternative ways of creating leverage** over the Chinese counterparty, such as commercial, political, diplomatic or media leverage.

In doing so, we work together with various actors, such as investigators, local lawyers, embassies and consulates, chambers of commerce, PR agencies, etc. We may also assist you in finding a Third Party Funder, willing to fund the enforcement proceedings.

Designing the Strategy

Based on the risk assessment, we design a **comprehensive strategy**, including where and when to file for enforcement (in and/or outside of China), how to do it, and whether and how to use alternative leverage, such as political support, media campaigns, commercial leverage, etc.

This strategy is then broken down into a **step-by-step Action Plan** with clear targets and deadlines.



3. Getting your Money

The last step consists in implementing the designed strategy by following each step listed in the Action Plan and persevering until you get your money.

OUR PRICING

To help you limit and manage the costs of your enforcement efforts, we provide all the above services on a **tailor-made budget** with appropriate hourly rates, and/or **flat** or **cap** fee basis, to be determined based on the overall circumstances of your specific case.

In addition, when it comes to enforcement, we may apply an additional **contingency fee** in case of successful enforcement.

OUR TEAM



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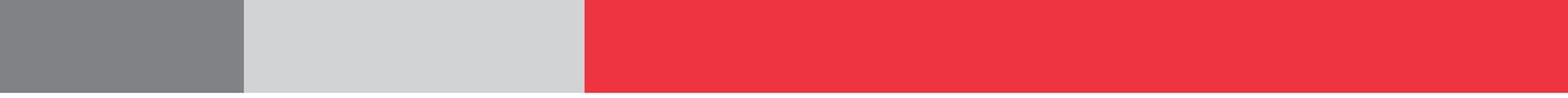
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