

Improving Rules on Recognition and Enforcement of Cross-Border Civil and Commercial Judgments from a Private International Law Perspective

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Abstract: Cross-border transactions and the mobility of people have accelerated the circulation of civil and commercial disputes across different jurisdictions, making the recognition and enforcement of judgments a key institutional nexus in private international law that bridges substantive justice and procedural justice. Grounded in the methodology of private international law, this paper examines the generative logic and limiting boundaries of the extraterritorial effect of judgments, surveys the converging trends reflected in multilateral conventions and regional instruments, and further proposes an improvement pathway driven by convention-based and systematized rule-making, anchored in minimum due process and limited review, and facilitated by procedural convenience and digital support, with a view to achieving a more balanced and stable institutional arrangement between respect for judicial sovereignty and the promotion of judgment circulation.

1. Introduction

The recognition and enforcement regime for cross-border civil and commercial judgments is not a mere transplantation of procedural techniques; rather, it constitutes an institutional articulation through which private international law coordinates adjudicatory authority and substantive interests across different legal systems[1]. With the standardization and digitalization of international economic and trade activities, enterprises place greater emphasis on the time value of contract performance and dispute resolution, while judicial cooperation increasingly prioritizes transparency of rules and controllable costs[2].

2. The Private International Law Positioning of Recognition and Enforcement of Cross-Border Civil and Commercial Judgments

Private international law treats the recognition and enforcement of judgments as the reception of the legal effects of an extraterritorial judicial act into the legal order of the requested state. At its core, this reception rests on specific connecting factors and requires verification of three aspects: the jurisdictional legitimacy of the court of origin, the minimum guarantees of procedural fairness, and the tolerability of the judgment's content within the requested state's legal order. Unlike choice of law, which focuses on determining the applicable substantive law for an underlying relationship, this

regime emphasizes recognition of the adjudicatory outcome rather than the substantive relationship itself, and thus carries a stronger procedural character and a more pronounced public policy dimension. At the same time, the circulation of judgments serves the realization of substantive rights and the security of transactions, giving the regime a dual structure in which procedural and substantive considerations are intertwined. In practice, it is often underpinned by background principles such as international comity, mutual trust, and limited reciprocity; however, these principles require clear and operational rules to prevent uncertainty caused by overly generalized invocation[3]. From the perspective of private international law, reform should adopt a functionalist orientation, treat predictability, efficiency, and due process as shared objectives, reduce cross-border enforcement uncertainty through rule harmonization and cooperation mechanisms, and maintain a relative balance between the allocation of adjudicatory authority and party autonomy[4].

3. Structural Dilemmas Confronting the Existing Rules

3.1 Insufficient Predictability of Jurisdictional Standards and Connecting Factors

The first threshold in any recognition and enforcement regime is whether the court of origin exercised jurisdiction in a legitimate manner. Yet jurisdictions diverge markedly in both the enumeration and evaluation of acceptable connecting factors. Common bases such as domicile, place of business, place of contractual performance, place of the tort, and choice-of-court agreements vary across legal systems in terms of scope and evidentiary standards. In some regimes, the validity and reach of consent are defined at an overly abstract level, blurring the boundary between consensual jurisdiction and exclusive jurisdiction and potentially generating normative tension between the protection of weaker parties and commercial autonomy. Absent a relatively stable whitelist of acceptable jurisdictional bases and clearly articulated negative exclusions, jurisdictional review at the recognition stage may oscillate between formal and substantive scrutiny, thereby increasing the institutional transaction costs borne by litigants. Moreover, if jurisdictional filtering overemphasizes connecting factors favored by the requested state, it may trigger duplicative reassessment of the court of origin's adjudicatory authority and, in turn, weaken the cross-border reception of the judgment's finality[5].

3.2 A Fragmented System of Refusal Grounds and an Unstable Intensity of Review

Grounds for refusing recognition and enforcement represent a concentrated expression of sovereignty reservation and the protection of the requested state's legal order. However, if such grounds are drafted too broadly or interpreted with excessive elasticity, the recognition proceeding risks being transformed into a disguised appeal. In existing frameworks, grounds such as the public policy exception, due process safeguards, fraud, and conflicting judgments are often listed side by side without a hierarchical structure or clear boundaries of application, resulting in fluctuating intensities of review across different categories of disputes. Where the public policy exception is not confined to situations of manifest injustice or impairment of fundamental principles, it tends to expand into value-laden reassessment[6]. Where due process review fails to focus on minimum requirements such as effective service, meaningful opportunities for statement and defense, conflicts of interest, and basic reasoning, it may become overly formalistic. Where the treatment of conflicting judgments does not distinguish between earlier and later judgments or align with rules governing parallel proceedings, it may encourage procedural races and repetitive litigation burdens. At the same time, the lack of unified arrangements for burdens of proof and standards of review may lead to a tendency to require applicants to prove, in an exhaustive manner, procedural details of foreign proceedings, making the operation of refusal grounds unpredictably variable.

3.3 High Procedural Interface Costs and Insufficient Cooperation Mechanisms

Procedural design directly determines the accessibility of the recognition and enforcement regime. In practice, however, procedural pathways often involve burdensome documentation requirements, layered authentication formalities, uncontrollable timelines, and weak coordination between recognition decisions and enforcement measures. For urgent needs such as asset preservation and evidence preservation, the absence of a smooth channel between recognition proceedings and enforcement proceedings may cause substantial time-related losses in the realization of rights. Meanwhile, cross-border judicial assistance in service, evidence taking, and access to asset information remains constrained by information barriers. Courts frequently lack stable communication channels and standardized forms, leading to repeated verification of the same types of matters[7]. Digital tools have not been sufficiently integrated into procedural rules, which in turn prevents electronic evidence, online authentication, and cross-border identity verification from delivering their full potential in reducing costs and improving efficiency.

4. Pathways in Private International Law for Improving the Rules

4.1 Systematic Arrangements for Promoting Convention-Based Development and Coordinated Rule Interface

Multilateral conventions can provide a unified framework for recognition and enforcement across a wider range of jurisdictions and reduce outcome divergence through shared interpretive approaches. Accordingly, improvement should be driven by a dual-track strategy that combines participation in convention-based regimes with supporting domestic implementing measures. On the one hand, domestic implementation rules aligned with widely accepted international standards should be developed around core provisions such as the scope of judgments, excluded matters, jurisdictional filtering, and grounds for refusal, while clarifying the priority of the convention and the order of supplementary application[8]. On the other hand, insofar as bilateral arrangements and regional instruments remain practically significant, a unified conflict-of-rules approach should be used to determine the hierarchy among norms from different sources, thereby avoiding application conflicts arising from the coexistence of multiple treaty and non-treaty regimes. Systematic coordination should also include the standardization of formal requirements for foreign judicial documents, such as uniform formats for judgment certificates, finality certificates, and proofs of service, so as to reduce uncertainty in formal review[9].

4.2 Establishing a Limited-Review Model Centered on Minimum Due Process

Limited review is a precondition for the circulation of judgments, and its core lies in distinguishing the bottom line of procedural justice from the space for substantive re-evaluation. Rule improvement should refine due process guarantees into operational minimum standards, including effective service, adequate opportunities to present statements and defenses, the independence and impartiality of the adjudicatory body, equality of the parties' procedural status, and a basic explanation of reasons in the judgment. At the same time, the allocation of the burden of proof should incorporate reasonable presumptions so as to prevent applicants from bearing an excessive evidentiary burden[10]. The public policy exception should be construed narrowly and confined to situations in which a judgment manifests an obvious conflict with fundamental legal principles of the requested state and reaches an intolerable threshold, with interpretive guidance used to reduce elasticity. As to fraud, review should focus on serious procedural fraud and the decisive impact of falsified evidence on the outcome, thereby preventing overexpansion. Rules on conflicting judgments should be coordinated with the

management of parallel proceedings, clarifying the conditions under which priority is given to the first-seised court and to final judgments, so as to reduce procedural races. Limited review should also expressly prohibit re-evaluation of factual findings and the application of law, unless minimum due process guarantees or the public policy bottom line is implicated, thereby institutionally excluding value-based reassessment of the judgment's reasoning.

4.3 Strengthening an Efficiency-Oriented Recognition and Enforcement Procedure and Cooperative Tools

Enhancing procedural efficiency should primarily rely on simplifying documentation and compressing procedural stages, while retaining necessary channels for remedies. Rule design may establish a convertible mechanism between recognition and enforcement, allowing a case to enter enforcement review directly once basic formal requirements are met, and leaving supplementary issues related to enforcement measures to be handled at the enforcement stage. Documentation authentication and translation requirements should follow a risk-tiered approach, applying simplified authentication or an undertaking-based model to low-dispute matters and adopting enhanced verification only for higher-risk cases. To reduce cross-border costs, procedural rules should recognize the legal effect of electronic documents and digital signatures where verifiable conditions are satisfied, and should establish a unified mechanism for online filing and progress tracking. Inter-court cooperation may be realized through standardized forms, designated liaison points, and secure communication channels, particularly by developing operational assistance workflows for service and asset-information inquiries, thereby improving the interface efficiency between recognition rulings and compulsory enforcement[11].

5. Institutional Construction and Implementation Safeguards for Rule Improvement

5.1 Enhancing Predictability through Unified Rule Texts and Interpretive Guidance

At the level of normative texts, a unified set of rules on recognition and enforcement should be formed, clarifying the scope of application, excluded matters, and key definitions to prevent conceptual drift across different instruments. Jurisdictional filtering may adopt a structure combining positive enumeration with negative exclusion, setting acceptable standards for bases such as domicile or principal place of business, a clearly identified place of performance, a substantial place of the tort, and a valid choice-of-court agreement, while excluding exorbitant jurisdiction premised solely on temporary presence or a place of attachment lacking any substantial connection to the dispute[12]. Grounds for refusal should be organized hierarchically into categories such as procedural minimum standards, order-maintenance considerations, and conflicts of judgments, and should be accompanied by interpretive guidance in the form of review checklists and element-based criteria, so that courts maintain a stable intensity of review across different types of disputes and parties can assess litigation and enforcement risks accordingly. To strengthen transparency, the rules may incorporate rebuttable presumptions, for example by providing verifiable evidentiary pathways for finality, effective service, and the parties' opportunity to appear, thereby creating an operational mapping between formal requirements and substantive bottom lines.

5.2 Reducing Institutional Costs by Improving Procedural Pathways and Remedial Structures

Procedural design should be organized around one-stop filing and deadline management, specifying key nodes such as acceptance of applications, formal review, objection periods, decision time limits, and the commencement of enforcement, so as to avoid procedural delay. In terms of

remedies, a structure of single-round objections and limited appeal should be maintained, emphasizing concentrated review of procedural defects and grounds for refusal and reducing enforcement delay caused by repetitive challenges. To ensure efficiency, burdens of pleading and proof for refusal grounds should be allocated reasonably, with a summary dismissal mechanism available for objections that are manifestly unfounded, while preserving full review for significant procedural issues[13]. For the interface with enforcement measures, the rules should clarify the enforceable scope of recognition decisions and the conditions for linkage with asset preservation, enabling rights holders to move promptly into asset tracing and control, preservation, and disposition procedures after obtaining recognition. Procedural rules should also lower formal back-and-forth through standardized material lists and model templates, thereby reducing repeated supplementation that lengthens the overall timeline.

5.3 Building Specialized Capacity and Cross-Border Cooperation Infrastructure

Recognition and enforcement of cross-border civil and commercial judgments requires a higher degree of specialization and standardization in fact verification and procedural screening. Accordingly, adjudicatory mechanisms should reduce the impact of case-by-case variation on outcome stability through role differentiation, process solidification, and knowledge accumulation. On the capacity-building side, reliance on specialized foreign-related adjudication teams or relatively centralized jurisdictional arrangements can facilitate the formation of working protocols that cover the identification of foreign judicial documents, determinations of finality, review of the effectiveness of service, and element-based application of refusal grounds, while unified training and compilations of adjudicatory guidance can promote convergence in review intensity. On the infrastructure side, liaison chains between courts and judicial assistance bodies should be strengthened, with standardized material lists, authentication and verification pathways, and bilingual element-mapping tables developed to reduce duplicated costs in translation and formal review, while secure and reliable electronic filing and receipt management should be advanced to support authenticity verification and version tracking for judgment texts, proofs of service, and procedural documents. To improve the interface with enforcement, cross-agency information coordination should be established around the verification of asset leads, the linkage of preservation measures, and feedback on enforcement progress, creating a traceable closed loop and replacing ad hoc communication with institutionalized cooperation, so that recognition and enforcement can achieve a more stable balance between procedural propriety and efficiency[14].

5.4 Establishing a Continuous Improvement Mechanism through Risk Control and Dynamic Evaluation

Because recognition and enforcement of cross-border civil and commercial judgments serves both the promotion of judgment circulation and the protection of the requested state's judicial order, system operation should treat risk control as a boundary condition and dynamic evaluation as an improvement lever, so as to prevent imbalanced review or procedural abuse as the regime expands in application. On the risk-control side, procedural design may embed duties of good faith and anti-abuse constraints, clarify the identification criteria and procedural consequences for repeated applications, falsified materials, malicious delay, and attempts to use recognition proceedings as a disguised route to substantive retrial, and refine the allocation of burdens of proof and standards of proof to channel disputes toward element facts relating to finality, due process, and refusal grounds, thereby reducing resource waste caused by irrelevant controversies. On the evaluation side, a monitoring system should be established to track indicators such as caseload volume, average time limits, numbers of supplementation requests, frequencies of refusal-ground application, objection

success rates, enforcement realization rates, and reversal rates in remedies. Periodic causal analysis of differences in review intensity and outcomes across case types should provide traceable grounds for iterative rule adjustment. In addition, element-based tagging of judgments and internal retrieval mechanisms can continuously calibrate the boundaries of application for the public policy exception and procedural-defect review, and evaluation results can be fed back into review checklists, model templates, and training content, thereby enabling mutual reinforcement between rule stability and adaptive updating[15].

6. Conclusion

Improving the rules on recognition and enforcement of cross-border civil and commercial judgments is, in essence, a recalibration within the global transactional order of private international law regarding the allocation of adjudicatory authority and the mechanisms for realizing rights. Future institutional development should continue to adhere to the bottom-line approach of limited review and minimum due process guarantees, and should build a sustainable operational mechanism through unified interpretation, capacity building, and dynamic evaluation, so that cross-border judgments can achieve a smoother and more controllable reception of effects across different legal systems.

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