Public Policy and Partial Recognition of Judgments: Perspectives from Mainland China, Hong Kong and Macao

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Abstract

The public policy reservation allows courts to refuse to give effect to judgments from other jurisdictions that are manifestly incompatible with local fundamental values. Its application also raises questions about the scope of refusal and whether the remaining parts can be preserved. Using doctrinal and comparative methods, this article examines the relationship between public policy intervention and partial recognition through relevant rules and judgments from Mainland China, Hong Kong and Macao. The article proposes an analytical sequence covering the threshold for intervention, the scope of refusal, and the limits of severability. It argues that refusal should be confined to the content affected by the specific incompatibility. The original judgment's rights and obligations should be preserved by examining the relationships between the obligations and respecting the prohibition on reviewing the merits. This approach helps reconcile the protection of fundamental legal principles, the continuity of existing relationships and the circulation of judgments.

Keywords: public policy reservation; partial recognition; recognition and enforcement of judgments; severability; interregional judicial assistance

1. Introduction

In 2006, the Macao Court of Second Instance examined a Hong Kong adoption order. The order allowed a married couple to jointly adopt the wife's biological daughter. The Macao court granted partial recognition to the order. It recognized the husband's adoption of the child and the change of her name, while refusing on public policy grounds to recognize the biological mother's status as the child's adoptive mother (Macao Court of Second Instance, 2006, pp. 3, 5–7). In his dissenting opinion, Judge José Maria Dias Azedo argued for full recognition. He emphasized that differences between legal systems were not sufficient to show that recognition would be manifestly contrary to public policy, and considered the interest in family stability arising from the long-standing adoption relationship (Macao Court of Second Instance, 2006, pp. 10, 15–17). The case concerns both whether public policy justified refusal of recognition and how the court should treat the remaining parts of the same judgment.

In judicial cooperation between Mainland China, Hong Kong and Macao, the public policy reservation safeguards the fundamental legal principles of each jurisdiction and helps support broader mutual recognition of judgments. The scope of the reservation also affects the parties' expectations about

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the effects of judgments from other jurisdictions and judicial trust between those jurisdictions (Huang, 2014, pp. 253–255). Partial recognition offers a concrete way to reconcile these concerns. Where an obstacle to recognition affects particular parts of a judgment, the remaining parts may still retain legal effect. This approach depends on which parts of the judgment the grounds for refusing recognition affect and on the legal relationships between its different parts. Excluding an effect of status, a party's obligation to pay damages, or a category of damages, requires different grounds for review and different conditions for severability.

This article uses doctrinal and comparative methods to examine relevant recognition rules in the three jurisdictions, together with judicial materials concerning status recognition and monetary judgments. It considers, in sequence, the threshold for public policy intervention, the scope of refusal and the limits of severability. It argues that public policy review should identify which specific effect of recognition would harm which fundamental value, and that the scope of refusal should correspond to the content affected by that harm. When retaining the remaining parts, courts should also examine whether severance changes the interdependent rights and obligations established by the original judgment and avoid reviewing its merits. This analysis moves beyond whether a judgment should retain legal effect to consider which effects should be preserved, under which rules, and subject to which limits.

2. Public Policy and the Circulation of Judgments across Different Legal Systems

2.1. Safeguarding Fundamental Principles and Preserving the Effects of Judgments

Interregional recognition of judgments rests on accepting judicial outcomes produced by different legal systems. Expanding mutual recognition requires courts in one jurisdiction to accept judgments based on different substantive rules and procedures. The public policy reservation allows each jurisdiction to protect its fundamental legal principles while participating in judicial cooperation. This safeguard can reduce institutional concerns about expanding mutual recognition and create conditions for the broader circulation of judgments (Huang, 2014, pp. 253–255).

The scope of the public policy reservation also affects the stability of this cooperation. If judgments from other jurisdictions remain subject to broad public policy review, parties will find it difficult to predict their effects, and judicial trust between jurisdictions will suffer. Focusing review on the specific effects of recognition helps protect fundamental principles while maintaining openness between different legal systems (Huang, 2014, p. 255).

Partial recognition gives this requirement a concrete application within a judgment. Article 11 of the Mainland – Macao Arrangement on Mutual Recognition and Enforcement of Civil and Commercial Judgments sets out grounds for refusal, while Article 14 allows recognition and enforcement of some claims where not all claims can be recognized and enforced. Article 12 of the Mainland–Hong Kong Arrangement on Mutual Recognition and Enforcement of Civil and Commercial Judgments provides for public policy and other grounds for refusal, while Article 19 allows recognition and enforcement of individual orders within a judgment (Supreme People's Court, 2006, arts. 11, 14; 2024, arts. 12, 19). Within

their respective scopes, both Arrangements provide an express basis for preserving the parts of a judgment that meet the relevant conditions.

Preserving part of a judgment's effects also has an independent procedural value. Total refusal may require claims already decided to be litigated again, increasing time and costs and creating a risk of inconsistent judgments. Recognizing the parts that meet the relevant conditions preserves the outcome of earlier proceedings, reduces repeated litigation and allows parties to make practical use of the relief they have obtained (Lian, 2016). Partial recognition thus connects the protection of fundamental principles with the preservation of judicial outcomes. Its application requires compliance with both the relevant conditions for recognition and the requirements of severability.

2.2. General Severability Provisions and Specific Exclusion Rules

The legal basis for partial recognition affects the scope and depth of the court's review. General severability provisions allow courts to recognize parts of a judgment separately. Courts must still assess whether a particular part qualifies for recognition under the applicable requirements. Article 9 of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters reflects this structure. Where an application concerns only a severable part, or only part of a judgment can be recognized or enforced under the Convention, that part shall be recognized or enforced. Obstacles may arise from different conditions, including the scope of the Convention, public policy or enforceability in the state of origin (Garcimartín & Saumier, 2020, para. 289).

Specific exclusion rules directly govern the treatment of particular types of content. For example, Article 10 of the Convention permits refusal of recognition or enforcement to the extent that damages do not compensate for actual loss or harm suffered. It also requires courts to consider whether the damages cover costs and expenses relating to the proceedings. As the Convention specifically addresses this issue, objections based on the non-compensatory nature of damages should be examined under that provision (Garcimartín & Saumier, 2020, paras. 265, 291–294).

Applying this rule requires the court to identify the loss covered by the damages and the purposes they serve. Future losses, harm that is difficult to quantify and amounts covering litigation expenses may all be compensatory. Damages exceeding the amount normally granted in the requested state do not, by themselves, establish that the excess should be refused recognition. Under Article 10, the court must identify the non-compensatory part and confine any refusal to that part (Garcimartín & Saumier, 2020, para. 293).

The Mainland–Hong Kong Arrangement adopts more specific rules on punitive damages by case category. Article 16 generally excludes punitive damages, while Article 17 brings punitive damages into the scope of mutual recognition in certain intellectual property infringement and related unfair competition cases (Supreme People's Court, 2024, arts. 16–17). When applying these provisions, courts must first identify the category of case and the relevant order. The eligibility of damages

covered by a specific provision should be determined under that provision. Their punitive nature alone cannot establish a violation of public policy.

3. The Threshold for Public Policy Intervention and the Scope of Refusal

3.1. Fundamental Values and the Seriousness of the Breach

Public policy review first requires the court to identify the value protected by the relevant legal rule and how recognition would affect that value. A rule's mandatory character in the requested state shows that local law has expressly regulated the matter. Refusal of recognition on that basis requires proof that the rule reflects a fundamental value and that recognition would cause a manifest breach of that value (Garcimartín & Saumier, 2020, paras. 259–263).

This assessment can draw on the relativity of the norm, the connection between the dispute and the forum, and the seriousness of the breach. Rules reflecting local institutional choices and norms protecting widely shared fundamental values carry different weight in justifying exclusion. A minor departure from a norm and a serious breach of the same norm may also have different public policy consequences (Mills, 2008, §§3.2–3.4). Courts therefore need to explain why the local rule protects a fundamental value and why the judgment's specific effects exceed the limits of tolerable difference.

The degree of connection can further explain why intervention by the requested state is justified. In judgment recognition, courts should examine the effects sought in that jurisdiction and the persons or interests affected. Judgments concerning status may involve the registration and continuity of family relationships, while monetary judgments may involve enforcement against a particular debtor's assets. The connection with the requested state when the dispute arose helps assess the justification for intervention. The local consequences of recognition or enforcement determine whether the protected value is actually affected. Considering both aspects grounds public policy review in specific legal relationships.

3.2. The Macao Adoption Case: Classification of Status and the Continuity of Existing Relationships

The dispute in the Macao adoption case centered on whether the biological mother's acquisition of adoptive status was sufficient to trigger the public policy reservation. The majority placed weight on the distinction between biological and adoptive motherhood and was concerned with the termination of ties with biological relatives resulting from adoption. The dissent considered the social function of adoption and the protection of family stability under family law, questioning whether biological ties were so absolute as to justify refusing recognition (Macao Court of Second Instance, 2006, pp. 5–6, 13–16).

Creating rights in the forum and recognizing existing rights established elsewhere affect the parties' reasonable expectations differently. The latter requires consideration of the interest in preserving the existing relationship (Tu, 2013, pp. 150–151). Differences between Macao's conditions for adoption and the Hong Kong system should therefore lead to an examination of the consequences of recognition. Whether ties with biological relatives would end, and how the related family rights and obligations would change, are the specific matters relevant to assessing public policy harm.

The adoption relationship had existed for many years since its establishment in 1995. Its continuity was an important ground for the dissent's support for full recognition (Macao Court of Second Instance, 2006, p. 17). The family life and reasonable expectations formed over that period required the court to provide fuller reasons for public policy intervention. The majority stated that the mother could still claim her status as the biological mother in Macao and act on her daughter's behalf, thereby preserving their legal relationship (Macao Court of Second Instance, 2006, p. 6).

In this article's view, although partial recognition preserved certain legal effects, refusing recognition of the biological mother's adoptive status still required an independent and sufficient public policy basis. Macao family law also protects stable family relationships, and the value served by the status classification should be assessed alongside that protection. The majority's concern about the termination of ties with biological relatives raised a substantive issue, but it did not adequately explain which fundamental family interests would suffer intolerable harm if this adoption were recognized. Given the long-standing relationship and the family-stability interests identified in the dissent, full recognition appears better justified.

4. The Scope of Refusal and the Limits of Severability

4.1. Confining Refusal to the Affected Parts of a Judgment

Once a public policy ground is established, the court needs to identify which parties, claims, and legal effects it concerns. A single judgment may impose several liabilities, and enforcement may affect each party differently. Confining refusal to the affected parts aligns the scope of intervention with the identified harm to fundamental values.

The Real Madrid v Le Monde case provides a concrete example. It concerned the enforcement in France of Spanish judgments, with damages payable by both a publishing company and a journalist. The Court of Justice of the European Union stated that a manifest breach of the freedom of the press might arise only in relation to damages payable to one claimant or enforcement against one judgment debtor (Court of Justice of the European Union, 2024, paras. 72–73). This approach requires separate consideration of different parties and damages awards. The public policy concern may therefore affect less than the whole judgment (Massa, 2026, pp. 692–693).

4.2. Interrelated Rights and Obligations in the Original Judgment

After identifying the content to be refused recognition, the court must determine whether the remaining parts can take effect independently. Severability requires examination of the legal links between different parts of the judgment and whether severance would significantly change the parties' rights and obligations (Garcimartín & Saumier, 2020, para. 290).

For interrelated obligations, the court should follow the terms of performance established by the original judgment. For example, where the original judgment expressly requires a refund and the return of goods to take place simultaneously, retaining only the refund obligation and excluding the obligation to return the goods would change the original arrangement. If the judgment makes one obligation conditional

on another, partial recognition should preserve that condition. A severability assessment must therefore identify any sequence of performance, conditions precedent or related obligations of restitution established by the original judgment, so that the retained parts preserve their original content.

4.3. Necessary Examination and the Prohibition on Review of the Merits

Identifying the links between obligations requires courts to read the reasons for the judgment, understand its content and, where necessary, examine relevant facts. The prohibition on review of the merits shall not affect this necessary examination, but its scope must remain limited by the specific conditions for recognition (Garcimartín & Saumier, 2020, paras. 119–123, 290). The key distinction is between determining whether the original judgment may take effect and making a fresh determination of liability in the original dispute.

The Hong Kong case of Foshan Nanhai illustrates this boundary. It applied the registration mechanism under the applicable Mainland Judgments (Reciprocal Enforcement) Ordinance and concerned the guarantors' liability for debt remaining unpaid after realization of the mortgaged assets. The court required the amount to be registered to be certain, or at least calculable under a clear formula. It also emphasized that registration proceedings should not involve re-examining material from the original proceedings to conduct a mini trial on the amount payable (Hong Kong Court of First Instance, 2019, paras. 28, 34–40).

5. Conclusion

The relevant rules and judicial materials from Mainland China, Hong Kong and Macao show that different legal routes exist for preserving some effects of judgments from other jurisdictions. Courts must consider partial recognition within the applicable recognition regime, distinguishing public policy, specific exclusion rules, and other conditions for recognition.

Courts applying the public policy reservation should explain, in sequence, the grounds for intervention, the content to be refused recognition and the independence of the parts retained. Judgments concerning status require assessment of the specific consequences of recognition and the interests in stability arising from long-standing relationships. Monetary judgments require identifying the parties, claims, and damages affected. Where a ground for refusal concerns only particular effects, extending refusal requires a corresponding basis. For the remaining parts, the court must also examine whether severance changes conditions of performance or interdependent obligations established by the original judgment.

The value of partial recognition lies in reconciling the protection of fundamental principles with the preservation of existing judicial effects in concrete cases. The sequence of analysis covering the threshold for intervention, the scope of refusal and the limits of severability gives practical effect to restraint in the use of public policy through judicial reasons that can be explained and scrutinized.

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