Reciprocal Recognition and Enforcement of Foreign Judgments in China: Breakthrough and Trend – Associate Professor Jeanne Huang

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[Chinese Civil Procedure Law](#) (CPL) provides that foreign judgments can be recognised and enforced according to reciprocity if no treaty is applicable. However, although Chinese judgments have been recognised and enforced in many countries without a treaty, China had never reciprocated before 2016.^[1] Since 2016, Chinese courts unprecedentedly recognised and enforced foreign monetary judgments based on *de facto* reciprocity. This spurs rich literature with mixed views about the future direction of reciprocity-based judicial recognition and enforcement (JRE) in China.^[2] This post aims to add to the current debate from two aspects. First, it tries to answer the doubts in contemporary literature about whether the two foreign judgments recognised and enforced in 2016 and 2017 are fortuitous. Second, it addresses the question of what the trend of the Chinese reciprocity-based JRE law might be.

1. Breakthrough

Singapore is the only common-law country that has concluded a bilateral judicial assistance treaty with China. However, this treaty does not cover JRE. Therefore, before 2016, Singaporean judgments could not be recognised and enforced in China. In contrast, Singapore common law does not require reciprocity, so Chinese judgments are recognisable and enforceable in Singapore. For example, in 2014, the High Court of Singapore recognised and enforced a Chinese commercial monetary judgment under common law in [Giant Light Metal Technology \(Kunshan\) Co Ltd v Aksa Far East Pte Ltd](#). The breakthrough on the Chinese side came in 2016. In [Kolmar v. SUTEX Group Case No. \(2016\) Su-01 Xie Wai Ren 3 Civil](#), the Intermediate People's Court of Nanjing City in Jiangsu Province China recognised and enforced a commercial monetary judgment issued by the High Court of Singapore. Unprecedentedly, the Court of Nanjing City held that *Giant Light Metal* established reciprocity between China and Singapore in terms of recognition and enforcement of foreign judgments.

A second breakthrough in reciprocity-based JRE quickly followed *Kolmar*, this time between China and the United States. Although JRE in the US is regulated by state law, most US states are like Singapore and impose no reciprocity requirement for JRE. Accordingly, Chinese judgments can be recognised and enforced in the US. The typical example is the 2009 case, [Hubei Gezhouba Sanlian Industrial Co Ltd v Robinson Helicopter Company Inc](#), where the US District Court for the Central District of California recognised and enforced a Chinese monetary judgment. However, US monetary judgments had never been recognised and enforced in China before 2017. The breakthrough case is [Liu Li v Tao Li and Tong Wu](#), where the Intermediate People's Court of Wuhan City in China reciprocated by recognising and enforcing an US commercial monetary judgment based upon reciprocity.

On 8 June 2017, the second China-ASEAN Justice Forum pronounced the [Nanning Statement](#). The Statement provides that in the circumstance where two states have not concluded a JRE treaty and neither state has rejected JRE due to a lack of reciprocity, there should be a presumption of reciprocity within the limits of the countries' domestic laws. However, the legal status of Nanning Statement is unclear.

More encouraging developments came in 2018 when a second US monetary judgment was recognized and enforced in China based on reciprocity. The debt enforced is more than 230,000,000 RMB (47, 236, 973 AUD), which is much bigger than that in *Kolmar* and *Liu Li*.

Furthermore, on 31 August 2018, the Supreme People's Court (SPC) and the Supreme Court of Singapore concluded [the Memorandum of Guidance on Recognition and Enforcement of Money Judgments in Commercial Cases](#) (China-Singapore Memo). The significance of the Memo is its

article 6, which provides that, on the basis of reciprocity, a judgment of the courts of Singapore may be recognised and enforced in China according to Chinese CPL upon the application submitted by the claimant. Thanks to the Memo, the Singaporean judgment creditors need not prove reciprocity in the Chinese JRE proceedings.

2. Possible Future Trend

A twofold trend can be ascertained from the above breakthrough. First, China is determined to depart from its traditional practice—rejecting reciprocity-based JRE. This is supported by the Chinese grand ‘One Belt, One Road’ Initiative ([‘OBOR’ Initiative](#)). Second, the SPC may actively conclude unbinding memorandums like the China-Singapore Memo with supreme courts in other countries to establish reciprocity.

2.1 Reciprocity-based JRE and China’s OBOR Initiative

The OBOR Initiative is a strong driving force for reciprocity-based JRE in China. Early in 2015, the SPC published [Opinions to Provide Judicial Service and Safeguard for OBOR \(Fa Fa \[2015\] No 9\)](#). The Opinions provide that, for countries that have not concluded judicial assistance treaties with China, Chinese courts should consider offering judicial assistance to parties from these countries so as to actively establish reciprocity. The SPC [strongly endorsed](#) *Kolmarby* listing it as a typical case concerning OBOR. The [lower courts](#) also acknowledged the relationship between reciprocity-based JRE with the OBOR Initiative. Moreover, the Nanning Statement also embodies the OBOR Initiative. Article 7 provides that mutual JRE can serve as a safeguard for cross-border trade and investment between China and ASEAN countries. Here ‘cross-border trade and investment’ refers to the OBOR Initiative. More recently, on 23 January 2018, the second meeting of the Leading Group for Deepening Overall Reform, chaired by Chinese President Xi, approved [‘Guidelines](#) for Establishing Mechanisms and Organizations to Resolve Disputes’ related to the OBOR. Following the Guidelines, the SPC [established](#) Chinese International Commercial Courts. If the judgments issued by the Chinese Commercial Courts cannot be recognised and enforced in OBOR countries, it is hard for them to play an active role in resolving disputes related to OBOR projects. Therefore, since the OBOR Initiative is China’s national strategy, China is likely to welcome reciprocity-based JRE to facilitate this Initiative.

2.2 How to Establish Reciprocity?

For reciprocity-based JRE, the most important is to establish reciprocity. Currently, the existence of reciprocity depends on parties’ plea and proof in each case, and this has led to inconsistent decisions about whether reciprocity exists between China and a certain country. It is necessary to establish an official mechanism to ascertain the existence of reciprocity. This is because in China, the JRE courts are intermediate peoples’ courts, which is a relatively lower level court (see Articles 17–20 of the CPL). The decision of the court in a JRE proceeding cannot be appealed (see Articles 548 of the [SPC Judicial Interpretation of the CPL](#)). When China moves from *de facto* reciprocity to *de jure* reciprocity, ascertaining the existence of *de jure* reciprocity between China and foreign countries is more complex so it is better for this exercise to be conducted by SPC. The China-Singapore Memo may become a good model for agreements the SPC may conclude with other countries for the purpose of establishing reciprocity.

Although China has concluded [thirty-three effective bilateral JRE treaties](#), all have been with civil law countries. This is because the sharp differences between Chinese civil-law tradition, and common-law countries, in jurisdiction and legal systems increases the difficulties in concluding JRE treaties. The format of unbinding memo may open a door for reciprocity-based JRE between China and common-law countries. The major common-law countries in the world include the US, the UK, Australia and New Zealand. The JRE law in Singapore is inherited from the UK and is similar to other English commonwealth countries like Australia and New Zealand. These countries not only offer *de jure* reciprocity to Chinese judgments but also have all recognised and enforced Chinese monetary judgments in practice. Considering the similarities of JRE law and practice in these countries, it is possible that the China-Singapore Memo can provide useful guidance if China would like to conclude a JRE memo or treaty with these countries including Australia.

The model of the China-Singapore Memo may also be used to implement the Nanning Statement. Singapore is an ASEAN country. The China-Singapore Memo may have a representative effect for other ASEAN countries.

3. Conclusion and Prospect

Kolmar, Liu Li, the Nanning Statement, and the China-Singapore Memo are encouraging. The consistent developments in the past three years demonstrate that China is determined to depart from its traditional practice – rejecting reciprocity-based JRE. This is strongly endorsed by OBOR. Australia, the UK, New Zealand, Germany, Israel, and South Korea have all recognized and enforced Chinese commercial monetary judgments. Chinese SPC will likely propose unbinding memorandums to supreme courts in other countries in order to establish reciprocity. Chinese SPC will also need to issue a judicial interpretation to clarify the scope, requirements of, and defences against reciprocity-based JRE.

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