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Reciprocal Recognition and Enforcement of Foreign Judgments in China: Promising Developments, Prospective Challenges and Proposed Solutions

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Reciprocal Recognition and Enforcement of Foreign Judgments in China: Promising Developments, Prospective Challenges and Proposed Solutions

Jie (Jeanne) Huang*

Abstract:

Consistent developments since 2016 demonstrate that China is determined to depart from its traditional practice – rejecting reciprocity-based JRE. This is strongly endorsed by China’s ‘One Belt, One Road’ Initiative. To develop the Chinese system of reciprocity-based JRE, China will make two efforts. First, it is likely to propose unbinding memos, like the China-Singapore Memo, to the supreme courts in countries alongside the OBOR. Second, Chinese Supreme People’s Court will issue a judicial interpretation to clarify the scope, requirements of, and defences against reciprocity-based JRE.

Key Words:

China, Reciprocity, Judgment Recognition and Enforcement, ‘One Belt, One Road’ Initiative, Private International Law

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Chinese¹ Civil Procedure Law (hereinafter ‘CPL’) provides that foreign judgments can be recognized and enforced according to reciprocity if no treaty is applicable.² However, although Chinese judgments had been recognized and enforced in many countries without a treaty, China had never reciprocated before 2016.³ It was widely recognized that Chinese courts tended to reject judgment recognition and enforcement (hereinafter ‘JRE’) proceedings for lack of reciprocity.⁴ Therefore, for years, treaties were the only available mechanism to recognize and enforce foreign judgments in China.⁵ However, in 2016, Chinese courts unprecedentedly began to recognize and enforce foreign monetary judgments based on *de facto* reciprocity.⁶ This has spurred rich literature with mixed views about the future direction of reciprocity-based JRE in China. Some argue that it would not be in China’s national interests to establish reciprocity-based JRE.⁷ Some doubt that China is turning towards more favourable JRE, believing that these cases are fortuitous and will not reverse China’s long-term practice of adopting one of the most restrictive reciprocity systems in the world.⁸ Others praise the recent developments in judicial practice and put forward solutions to fill the

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¹ In this article, ‘China’ refers to ‘Mainland China’ excluding Hong Kong and Macao Special Administrative Regions.

² Article 282 of the Chinese CPL, adopted at the 4th Session of the Seventh National People’s Congress on April 9, 1991 and amended on June 27, 2017. The Supreme Court of China requires that, a Chinese court,

should first of all examine the existence of any international agreement or the existence of factual reciprocal relationship between China and the foreign country of which the court rendered the judgment. Only when the court has determined the existence of such international agreement or factual reciprocity, may it proceed to examination of the other requirements [...].

The Selection of the Precedent Cases of the People’s Court – the Part of the Civil, Economic, Intellectual Property, Marine and Civil Procedural Cases: 1992 – 1996 (1997), pp 2170–2173, Case No 427.

³ For Singapore and the US cases, see *infra* Part One. For German case, see *infra* Part Two. Courts in Australia, South Korea, Israel, New Zealand, Germany and the United Kingdom have recognized or enforced Chinese commercial judgments. See *Liu v Ma* [2017] VSC 810 (Australian case); Kwang Hyun Suk, ‘Recognition and Enforcement of Judgments Between China, Japan and South Korea in the New Era: South Korean Law Perspective’ 13 *Frontiers of Law in China* (2018) p. 195 (South Korean case); High Court of Justice in Israel Rendered the Final Judgment and Unprecedentedly Recognized and Enforced a Chinese Judgment, *People’s Court Daily* (August 16, 2017), <rmf.yb.chinacourt.org/paper/html/2017-08/16/content_129031.htm?div=-1> visited on 29 December 2018 (Israeli case); *Yang Chen v Jinzhu Lin*, The Court of Appeal of New Zealand, CA334/2015, [2016] NZCA 113 (New Zealand case); *Spliethoff’s Bevrachtungskantoor Bv v. Bank of China Limited* [2015] EWHC 999 (Comm) (UK case).

⁴ Zhang Wenliang, ‘Recognition and Enforcement of Foreign Judgment in China: A Call for Special Attention to Both the “Due Service Requirement” and the “Principle of Reciprocity”’ 12 *Chinese J. Int’l L.* (2013) p.152. Zheng Sophia Tang, Yongping Xiao & Zhengxin Huo, *Conflict of Laws in the People’s Republic of China* (Edward Elgar, UK 2016) p. 161; Guangjian Tu, *Private International Law in China* (Springer 2016) pp. 170–74.

⁵ Bélig Elbalti, ‘Reciprocity and the Recognition and Enforcement of Foreign Judgments: a Lot of Bark but Not Much Bite’, 13 *J. Priv. Int. Law* (2017) pp. 184–218.

⁶ *Kolmar v. Jiangsu Textile Industry (Group) Import & Export Co (SUTEX) Group*, Case No. (2016) Su-01 Xie Wai Ren 3 Civil Judgment, Intermediate People’s Court, Nanjing City, Jiangsu Province China. *Liu Li v. Tao Li and Tong Wu*, (2015) Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026, the Intermediate People’s Court of Wuhan City, Hubei Province.

⁷ King Fung Tsang, ‘Enforcement of Foreign Commercial Judgments in China’ 14 *Journal of Private International Law* (2018) p. 287.

⁸ Dan Harris, China Enforces United States Judgment: This Changes Petty Much Nothing, <www.chinalawblog.com/2017/09/china-enforces-united-states-judgment-this-changes-petty-much-nothing.html>, visited on 12 December 2018.

legislative gap.⁹ This paper adds to the current debate in two ways. First, it attempts to answer the doubts in contemporary literature over whether the two foreign judgments recognized and enforced in 2016 and 2017 are simply fortuitous and outline the developmental trend of the Chinese reciprocity-based JRE law. Second, this paper highlights three areas that are not well covered in the contemporary literature but are critical for China to smoothly transition from *de facto* reciprocity to *de jure* reciprocity: (1) the scope of reciprocity-based JRE, (2) the concept of finality, and (3) two important grounds for indirect jurisdiction.

1. Promising Developments

Singapore is the only common-law country with a bilateral judicial assistance treaty with China.¹⁰ However, the Treaty on Judicial Assistance in Civil and Commercial Matters between China and Singapore (hereinafter ‘China-Singapore Judicial Assistance Treaty’) does not cover JRE. Therefore, before 2016, Singaporean judgments could not be recognized and enforced in China. In contrast, Singapore common law does not require reciprocity, so Chinese judgments are recognizable and enforceable in Singapore. For example, in 2014, the High Court of Singapore recognized and enforced a Chinese commercial monetary judgment under common law, *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd*.¹¹ The breakthrough on the Chinese side came in 2016. In *Kolmar v. SUTEX Group*, the Intermediate People’s Court of Nanjing City in Jiangsu Province China recognized and enforced a commercial monetary judgment issued by the High Court of Singapore.¹² Unprecedentedly, the Court of Nanjing City held that *Giant Light Metal* established the

⁹ E.g. Bin Sun, ‘The Future of Cross-Border Litigation in China: Enforcement of Foreign Commercial Judgments Based on Reciprocity’ 50 *New York University Journal of International Law and Politics* (2018) pp. 1135–1147; Zhu Lei, ‘The *Kolmar v. SUTEX* Case on Reciprocity in Foreign Judgments Enforcement in China: A Welcome Development or Still on the Wrong Track?’ 13 *Frontiers of Law in China* (2018) pp. 202–217.

¹⁰ The Treaty on Judicial Assistance in Civil and Commercial Matters between China and Singapore, concluded on 28 April 1997, <www.npc.gov.cn/wxzl/gongbao/2001-01/03/content_5007108.htm>, visited on 12 December 2018. The only common law jurisdiction that has an effective bilateral JRE agreement with China is Hong Kong, but this is an interregional arrangement under the constitutional framework known as “One Country, Two Systems.” See the Arrangement between the Mainland and the Hong Kong Special Administrative Region on Reciprocal Recognition and Enforcement of the Decisions of Civil and Commercial Cases under Consensual Jurisdiction signed on July 14, 2006 (hereinafter ‘the Mainland China-Hong Kong JRE Arrangement’).

¹¹ *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd*, Case No. [2014] SGHC 16.

¹² *Kolmar v. SUTEX Group*, Case No. (2016) Su-01 Xie Wai Ren 3 Civil Judgment, Intermediate People’s Court, Nanjing City, Jiangsu Province China. Kolmar is a company registered in Switzerland, while SUTEX is a Chinese company. They had a sales contractual dispute and reached a settlement, which SUTEX Group refused to carry out. Kolmar brought a case according to the choice of forum clause in the settlement agreement at the High Court of Singapore and obtained a favorable judgment. Because SUTEX Group had property in Nanjing City, Jiangsu Province, Kolmar applied to the Nanjing Court to recognize and enforce the Singaporean judgment. SUTEX Group argued that as there was no JRE provision in the Treaty for Judicial Assistance in Civil and Commercial Affairs between China and Singapore, the action should be dismissed. The Nanjing Court found that the High Court of Singapore rendered a default monetary judgment on October 22, 2015 because SUTEX Group had been properly served but did not appear in the Singaporean proceedings. SUTEX Group received this judgment. Importantly, the Nanjing Court considered *Giant Light*, in which the High Court of Singapore recognized and enforced a Chinese judgment issued by the Suzhou Court. Eventually, the Nanjing Court held that although no JRE treaty exists between China and Singapore, the Singaporean judgment should be recognized and enforced in China on the basis of reciprocity because: (1) the High Court of Singapore has recognized and enforced a Chinese judgment; and (2) the Singaporean judgment against SUTEX Group does not contradict the basic legal principles of China or harm China’s sovereignty, national security, and social public interests according to Article 282 of the CPL.

reciprocity between China and Singapore for recognition and enforcement of foreign judgments.

A second breakthrough in reciprocity-based JRE quickly followed *Kolmar*, this time between China and the US. Although JRE law in the US varies between states, most US states, like Singapore, impose no reciprocity in JRE.¹³ Accordingly, Chinese judgments can be recognized and enforced in the US. The typical example is the 2009 case, *Hubei Gezhouba Sanlian Industrial Co., Ltd et al v. Robinson Helicopter Company, Inc.*, where the US District Court for the Central District of California recognized and enforced a Chinese monetary judgment.¹⁴ However, US monetary judgments had never been recognized and enforced in China before 2017. The breakthrough case was *Liu Li v. Tao Li and Tong Wu*, in which the Intermediate People's Court of Wuhan City in China recognized and enforced a US commercial monetary judgment based upon reciprocity.¹⁵

Liu Li had a wider impact than *Kolmar* for two reasons. First, China's trade volume with the US is much larger than with Singapore. Therefore, presumably there are more disputes between parties from China and the US and it is practically more important to achieve mutual JRE between these two countries. Second, unlike Singapore, the US is a federal country. After *Hubei Gezhouba Sanlian*, it was unclear whether *de facto* reciprocity required each US state to establish reciprocity with China until *Liu Li* confirmed that *Hubei Gezhouba Sanlian* did in fact establish *de facto* reciprocity between the US and China, and not just between the state of California and China. This ruling was exceptionally pro-JRE.

On June 8, 2017, the second China-ASEAN Justice Forum pronounced the Nanning Statement.¹⁶ The Statement provides that in the circumstance where two states have not

¹³ JB Bellinger and RR Anderson, 'Tort Tourism: The Case for a Federal Law on Foreign Judgment Recognition' 54 *Virginia Journal of International Law* (2013) p. 542.

¹⁴ *Hubei Gezhouba Sanlian Industrial Co., Ltd et. al. v. Robinson Helicopter Co., Inc.*, U.S. District Court Central District of California, 2009 WL 2190187 (C. D. Cal).

¹⁵ *Liu Li v. Tao Li and Tong Wu*, (2015) Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026, the Intermediate People's Court of Wuhan City, Hubei Province. In this case, Liu Li (Liu) concluded a Share Transfer Agreement with Tao Li (Tao) on September 22, 2013 in the US, under which Tao was to transfer 50% of the shares of Jia Jia Management Inc., a company registered in California, to Liu in return for USD 125,000, which Liu paid on September 22 and 25, 2013. Tao is Tong Wu's (Tong) wife. After receiving the money, Tao and Tong disappeared. On July 17, 2014, Liu brought an action against Tao and Tong at the Los Angeles Superior Court in California, alleging that Tao and Tong had fabricated the Share Transfer Agreement and defrauded him. The judge made a judgment for Liu. On October 19, 2015, Liu applied to the Intermediate People's Court of Wuhan City to recognize and enforce the U.S. judgment against Tao and Tong. The Wuhan court found that Tao and Tong owned real estate in Wuhan and their habitual residence was also in Wuhan, so it had jurisdiction according to Article 281 of the Chinese CPL. Because the US and China had not concluded or jointly participated in any JRE international agreements, the doctrine of reciprocity was applied to Liu's JRE application. Liu relied on *Hubei Gezhouba Sanlian* to establish *de facto* reciprocity between China and the US. The court agreed and held that reciprocity was established between the two countries. Recognition and enforcement of the U.S. judgment did not harm the fundamental legal principles of sovereignty, security, and social public interest in China. The court concluded that the US judgment was recognized and enforced according to Article 282 of the Chinese CPL.

¹⁶ Nanning Statement represented the consensus researched among the attendees at the second China-ASEAN Justice Forum, <www.court.gov.cn/zixun-xiangqing-47372.html>, visited on 29 December 2018, arts 2 and 7. The attendees included the chief justices from China, Cambodia, Indonesia, Laos, Malaysia, Burma, the Philippines, Singapore, Thailand, Vietnam, Afghanistan, Bangladesh, Nepal, Pakistan, Sri Lanka.

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.¹⁷

More encouraging developments came in 2018. A second U.S. monetary judgment was recognized and enforced in China based on reciprocity.¹⁸ The debt enforced was more than 230,000,000 RMB (33,571,950.00 USD), which is much larger than that in *Kolmar* and *Liu Li*. The JRE court is the No.1 Intermediate People's Court in Shanghai and the U.S. judgment was issued by the United States District Court for the Northern District of Illinois.

Furthermore, on 31 August 2018, the Supreme People's Court of China (hereinafter 'SPC') and the Supreme Court of Singapore concluded the Memorandum of Guidance on Recognition and Enforcement of Money Judgments in Commercial Cases (hereinafter 'China-Singapore Memo').¹⁹ The significance of the Memo lies in its Article 6, which confirms that, on the basis of reciprocity, a judgment of the courts of Singapore may be recognized and enforced in China according to Chinese CPL upon application by the claimant. Because of the Memo, Singaporean judgment creditors need not prove reciprocity in Chinese JRE proceedings. The Memo represents positive movement following the *Kolmar* decision. It helps to create certainty that Singaporean judgments can, in practice, be recognized and enforced in China. It clarifies that no review of merits is allowed.²⁰ The Memo also gives Singapore leverage in its competition with Hong Kong to become an international dispute resolution center. While the Mainland China-Hong Kong JRE Arrangement requires an exclusive choice of court agreement,²¹ the China-Singapore Memo does not, meaning the latter has a much broader scope than the former. This advantage has the potential to encourage business persons to resolve their disputes in Singapore, rather than Hong Kong, before enforcing their judgments in China.

A twofold trend can be ascertained from the above developments. 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).²² Second, Supreme People's Court ('SPC') may actively conclude unbinding memos like the China-Singapore Memo with supreme courts in other countries to establish reciprocity.

¹⁷ *Ibid.*

¹⁸ This judgement has been issued to the parties but has not been made publicly available on 31 December 2018 when this paper was finalized. The Chinese law firm that represented the judgement creditor wrote a report titled 'Fangda Helps its Agent to Recognize a US Commercial Judgments in China'. This report was published by the law firm's official Wechat account. It is in file with the author.

¹⁹ The Supreme People's Court and the Supreme Court of Singapore concluded the Memorandum of Guidance on Recognition and Enforcement of Money Judgments in Commercial Cases, <www.chinajusticeobserver.com/memorandum-of-guidance-between-china-supremecourt-and-singapore-supremecourt-on-recognition-and-enforcement-of-money-judgments>, visited on 29 December 2018. Arts 6-16 of the China-Singapore Memo set out provisions for recognition and enforcement of Singaporean judgments in China. Arts. 17-30 of the Memo provide for recognition and enforcement of Chinese judgments in Singapore.

²⁰ JRE cannot be refused because it contains an error of law or fact. Arts. 11 and 23 of the China-Singapore Memo.

²¹ Art. 3 of the Mainland China-Hong Kong Judgment Arrangement.

²² The history and development of OBOR Initiative can be found in Chinese government's official OBOR website at <<https://eng.yidaiyilu.gov.cn>>, visited on 29 December 2018.

1.1 Reciprocity-based JRE and China's OBOR Initiative

The OBOR Initiative is a strong driving force for reciprocity-based JRE in China. The Initiative was proposed by Chinese President Xi Jinping in 2015.²³ Shortly after that in the same year, the SPC published Opinions to Provide Judicial Service and Safeguard for OBOR.²⁴ The document provides that people's courts should enhance international judicial assistance with countries alongside the OBOR.²⁵ 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.²⁶ The SPC strongly endorsed *Kolmar* by listing it as a typical case concerning OBOR and encouraging lower courts to follow this example.²⁷ The lower courts also acknowledged the relationship between *Kolmar* and the OBOR Initiative. For example, in *Li Qiang v. Ding Fengjing*, the Intermediate People's Court in Dezhou City Shandong Province explicitly indicates that *Kolmar* aims to facilitate trade and investment in the contexts of OBOR between China and Singapore.²⁸ Moreover, the Nanning Statement is also closely related to OBOR. Article 2 states that, with the implementation of the OBOR Initiative, closer economic exchanges and human interaction between China and ASEAN countries will require closer judicial cooperation. 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 January 23, 2018 the second meeting of the Leading Group for Deepening Overall Reform, chaired by President Xi, approved the Guidelines for Establishing Mechanisms and Organizations to Resolve Disputes related to the OBOR. The Guidelines aim to lawfully settle commercial, trade and investment disputes related to OBOR, provide equal protection to Chinese and foreign parties, and create a stable, fair and transparent business environment with the rule of law.²⁹ Following the Guidelines, the SPC established Chinese International Commercial Courts in Beijing, Shenzhen and Xi'an.³⁰ Establishing a mutual JRE mechanism between China and countries alongside the OBOR is important for the Chinese Commercial Courts to play a full role in resolving OBOR-related disputes. If the judgments issued by the Chinese Commercial Courts cannot be recognized and enforced in OBOR countries, it is hard for this court to play an active role in resolving disputes related to OBOR projects. Furthermore, the conclusion of the China-Singapore Memo also aims to facilitate the OBOR, which is explicitly acknowledged by the SPC in its announcement.³¹ Therefore, it is clear that the recent unprecedented breakthrough in reciprocity-based JRE has largely resulted from the OBOR Initiative. Since

²³ 'Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road', issued jointly by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce with State Council authorisation in March 2015, <en.ndrc.gov.cn/newsrelease/201503/t20150330_669367.html>, visited on 29 December 2018.

²⁴ Fa Fa [2015] No. 9.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ The SPC published the Second Series of Typical Cases concerning 'One Belt One Road' in 2017: <www.chinanews.com/gn/2017/05-15/8224293.shtml>, visited on 29 December 2018.

²⁸ The Singaporean judgment divides matrimonial property located in Singapore. It also holds that each party should retain the individual ownership of the properties under each of their name.

²⁹ See *Process eyed to solve Belt, Road disputes*, China Daily, January 24, 2018.

³⁰ The SPC Regulation on Establishing International Commercial Courts, effective on July 1, 2018, Fa Shi [2018] No. 11.

³¹ The 2nd China-Singapore Law and Judicial Round-table Discussion was Successfully Organized in Singapore: Chief Justice Qian Zhou Attended and Spoke. <<http://cicc.court.gov.cn/html/1/218/149/156/1057.html>>, visited on 29 December 2011.

the OBOR Initiative is China's national strategy, China will develop laws for reciprocity-based JRE to facilitate this Initiative.

1.2. 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. For example, in the case where the second US monetary judgment was recognized and enforced in China, the materials that the judgment creditor provided to the Shanghai court to establish reciprocity existing between China and the US include:

- The judgment of *Liu Li*;
- The US Uniform Foreign Money-Judgments Recognition Act to demonstrate that there is no legal barrier for a US court to recognize and enforce Chinese judgment;
- A case where the United States District Court for the Northern District of Illinois recognized and enforced a Chinese judgment issued by the Intermediate People's Court in Zhuhai City in China;
- The judgment of *Hubei Gezhouba Sanlian Industrial Co., Ltd*; and
- Two US law expert reports on US law for recognition and enforcement of foreign judgments.

Deliberating all these materials, the Shanghai court held that reciprocity has existed between China and the U.S. so the judgment should be recognized and enforced. Currently, the existence of reciprocity depends on parties' plea and proof in each case, this has resulted in inconsistent decisions about whether reciprocity exists between China and a certain country.³²

It is necessary to establish an official mechanism to ascertain the existence of reciprocity. This is because in China, the JRE court is the intermediate people's court, which is a relatively low-level court in China.³³ The decision of the court in a JRE proceeding cannot be appealed.³⁴ China does not have a precedent system. This will become a more significant issue when China moves from *de facto* reciprocity to *de jure* reciprocity because ascertaining the existence of *de jure* reciprocity between China and foreign countries is more complex and better suited to the SPC rather than an intermediate people's court.³⁵ The

³² E.g. In 2016, the Nanchang Intermediate People's Court, Jiangxi Province, China, held that the judgment creditor failed to prove reciprocity based on *Hubei Gezhouba Sanlian Industrial Co., Ltd*. The case is *Civil Ruling of Hebert Truhe et al.'s Application of Recognition and Enforcement of a foreign Judgment* [Hebote Chuxi, Mali Ailun Chuxi Shenqing Chengren He Zhixing Waiguo Minshi Panjue, Caiding Yishen Minshi Caiding Shu], Can 01 Min Chu No. 354.

³³ For the court system in China, see *infra* note 81.

³⁴ Arts 548 of the SPC Judicial Interpretation of the CPL. If Chinese courts reject JRE, parties can bring an action on the substantive dispute of the case in China. *Ibid*, art 544.

³⁵ For example, the complexity of proving reciprocity in Japan where courts issued conflicting judgments, Yasuhiro Okuda, 'Unconstitutionality of Reciprocity Requirement for Recognition and Enforcement of Foreign Judgments in Japan' 13 *Frontiers of Law in China* (2018) p. 168. See Suni Gong, 'The Chinese Court's Enforcement of a U.S. Civil Judgment', <<https://blogs.law.nyu.edu/transnational/2018/04/the-chinese-courts-enforcement-of-a-u-s-civil-judgement/>>, visited on 12 December 2018; R Brand, 'Enforcement of Foreign Money-Judgments in the United States: in Search of Uniformity and International Acceptance' 67 *Notre Dame*

China-Singapore Memo may serve as a good model for the SPC to conclude with other countries for the purpose of establishing reciprocity

Although the Memo has no binding legal effect on the parties of a proceeding and does not supersede any existing or future laws, judicial decisions or court rules,³⁶ it nevertheless has important legislative implications.

The Memo is likely to be used as reference for similar memos that China may conclude with other common-law countries to establish reciprocity in Chinese JRE proceedings. Although China has concluded thirty-three effective bilateral JRE treaties, all have been with civil law countries.³⁷ This is because the stark differences between Chinese civil-law tradition and common-law countries in jurisdiction and legal systems increase the difficulty of concluding JRE treaties. The form of an unbinding memo may open the door for reciprocity-based JRE between China and common-law countries. The major common-law countries in the world include the US, UK, Australia and New Zealand. The JRE law in Singapore draws from UK law and is similar to other English Commonwealth countries such as Australia and New Zealand.³⁸ These countries not only offer *de jure* reciprocity to Chinese judgments but all have recognized and enforced Chinese monetary judgments in practice. Considering the similarity between JRE law and practice in these countries, China may use the China-Singapore Memo as reference when proposing a JRE memo or treaty to these countries.

The model of the China-Singapore Memo may apply to civil law countries as well. Germany, Israel, and South Korea have recognized and enforced Chinese judgments.³⁹ SPC may conclude similar memos with them or other civil-law countries so that judgments rendered in these countries can benefit from reciprocity-based JRE in China.

L. Rev. (1991) p. 282 (indicating the complexities where a foreign JRE court needs to determine whether a U.S. court offers reciprocity to foreign judgments); RW Hulbert, 'Symposium Articles, 'Some Thoughts on Judgments, Reciprocity, and the Seeming Paradox of International Commercial Arbitration' 29 *U. Pa. J. Int'l L.* (2008) p. 651 (discussing the uncertainty in determining the existence of reciprocity).

³⁶ Art. 2 of the China-Singapore Memo. Therefore, the Memo should not be considered as an amendment to the China-Singapore Judicial Assistance Treaty.

³⁷ China has concluded thirty-six bilateral judicial assistance treaties in civil, commercial, or criminal affairs. For a list of China's judicial assistance treaties, see <www.mfa.gov.cn/chn/gxh/zlb/tyfg/t4984.htm> and <www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/wgdwdjdsfhzty_674917/t1215630.shtml>, visited on 15 October 2018. Among the effective treaties, thirty-two have JRE clauses; this Article calls these treaties "Chinese JRE treaties." Other than bilateral treaties, China has signed the *Hague Conference on Private International Law, Convention of 30 June 2005 on Choice of Court Agreements* (hereinafter 'Hague 2005 Choice of Court Convention') on September 12, 2017; however, China has not yet ratified the Convention. See Status Table, Convention of 30 June 2005 on Choice of Courts Agreements, <www.hcch.net/en/instruments/conventions/status-table/?cid=98>, visited on 15 October 2018) (providing Convention status table). China is a member state to International Convention on Civil Liability for Oil Pollution Damage (Oil Pollution Convention), adopted on 29 November 1969 and entered into force on 19 June 1975, which was replaced by the 1992 Protocol, adopted on 27 November 1992 and entered into force on 30 May 1996.

³⁸ See Art. 18 of the China-Singapore Memo (stating "[t]he approach of the courts of Singapore is similar to the position found in the English common law"). The UK Foreign Judgments (Reciprocal Enforcement) Act 1933 and its progeny are not based on the reciprocity JRE theory where UK courts are urged to recognise a foreign judgment rendered in a situation in which they would *mutatis mutandis* have exercised jurisdiction themselves. They are based upon substantially reciprocal JRE arrangements between the JRE state and the judgment-rendering states. See also the Australian Foreign Judgments Act 1991 (Cth) s 5(1), (3), (6).

³⁹ See *supra* note 3.

The model of the China-Singapore Memo may also be used to implement the Nanning Statement that encourages member states to adopt *de jure* reciprocity.⁴⁰ The legal status of the Nanning Statement is unclear. Is it a binding agreement like a treaty between states or just a declaration showing the intentions and good will of its member states? Does it immediately become effective after publication? Does it apply to all kinds of judgments? How is it to be implemented and what are the legal consequences of violating the Statement? As Singapore is an ASEAN country, the China-Singapore Memo may have a representative effect for other ASEAN countries. The SPC may consider concluding Memos with other ASEAN countries like it has done with Singapore, if negotiating a JRE treaty proves difficult.

1.3. Remaining Challenges for Reciprocity-based JRE

Kolmar, Liu Li, the Nanning Statement and the China-Singapore Memo are laudable, but they have not resolved all challenges concerning reciprocity-based JRE. Chinese SPC will issue a judicial interpretation to clarify the scope, requirements of, and defences against reciprocity-based JRE.⁴¹ For successful JRE, three issues are critically important. First, which judgments are included? For example, should reciprocity-based JRE be applied to all civil and commercial judgments? Second, finality has been an issue for courts in Hong Kong in recognizing and enforcing Mainland China judgments. Hong Kong experience is valuable for other common-law jurisdiction looking to recognize and enforce Chinese judgments. How should the reciprocity-based JRE system approach finality? Third, the China-Singapore Memo does not have indirect jurisdiction laws on the China side. Would Chinese courts review the jurisdiction of the foreign judgment-rendering court in the JRE proceedings and according to which jurisdiction's law? Clarifying these issues are valuable for the SPC to enact a judicial interpretation for reciprocity-based JRE and to conclude other memos with foreign supreme courts.

2. The Scope of Reciprocity-based JRE

Reciprocity-based JRE should apply to all general civil or commercial judgments, with a few exceptions. A different regime may be developed for reciprocity-based JRE in family law cases.

2.1. General Commercial Judgments

Chinese JRE law does not define 'commercial'. Generally speaking, 'commercial' has a broad scope. For example, the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985) interprets the term 'commercial' as matters arising from 'all relationships of a commercial nature, whether contractual or not.'⁴² Both *Kolmar* and *Liu Li* concern monetary judgments in contractual disputes. In

⁴⁰ Articles 2 and 7 of the Nanning Statement issued by the second China-ASEAN Justice Forum, <www.court.gov.cn/zixun-xiangqing-47372.html>, visited on 15 October 2018.

⁴¹ Chinese SPC is drafting a judicial interpretation about reciprocity-based JRE in order to guide lower courts. See Guixiang Liu Indicated to Establish a Just, Efficient and Convenient Transnational Dispute Resolution Mechanism for the "One Belt One Road" Initiative at the Silk Road Judicial Assistance International Forum, <www.court.gov.cn/fabu-xiangqing-61912.html>, visited on 15 October 2018.

⁴² Footnote 2 of United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985), <www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf>, visited on 15 October 2018. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement;

practice, Chinese courts have applied reciprocity-based JRE to foreign insolvency judgments. For example, in 2006 the Court of Appeal of Berlin recognized a Chinese judgment on the validity of an arbitration agreement.⁴³ In 2012, Sascha Rudolf Seehaus applied for the Wuhan Intermediate People's Court to recognize a German insolvency judgment issued by the Montabaur Regional Court (hereinafter 'the case of *Sascha Rudolf Seehaus*').⁴⁴ The German judgment nominated Sascha Rudolf Seehaus as the trustee of the bankrupt SP Management GmbH.⁴⁵ The Wuhan Intermediate People's Court recognized the German judgment.⁴⁶ It held that, considering the 2006 Berlin case, reciprocity existed between Germany and China, and recognizing the German judgment would not infringe on the basic principles of Chinese law: state sovereignty, security, and social and public interest.⁴⁷

General commercial disputes are included in reciprocity-based JRE in China, with two notable exceptions.⁴⁸ China will not recognize and enforce foreign judgments which authorise the direct or indirect enforcement of any foreign penal, revenue or public law.⁴⁹ This exception is especially relevant for foreign judgments awarding punitive damages. For example, how is it determined whether a US judgment that awards punitive damages will amount to the direct or indirect enforcement of US penal, revenue or public law? There is much foreign jurisprudence which provide good references for Chinese courts. For example, in *Schnabel v. Lui*, the plaintiff sought to recognize and enforce a Californian judgment that granted punitive damages in the state of New South Wales in Australia.⁵⁰ The US judgment stated that the purpose of the punitive damages was to 'penalise' the first defendant and to deter others from failing to comply with the court's orders. The Australian court found that although the plaintiffs were placed in a situation of detriment by the failure of the first defendant to comply with the Court's orders, the damages were not compensation for that detriment, even though the damages were payable to the opposing party. Accordingly, the Australian court enforced the US judgment excluding the punitive damages. *Schnabel* and other cases concerning US punitive damages show that whether a foreign law, or a claim based on foreign law, is characterized as penal, revenue or public law should depend on the law of the JRE state not the judgment-rendering state.⁵¹ Moreover, the mere fact that a penalty has been imposed by a foreign court to discourage what is socially undesirable conduct is not enough.⁵² The JRE court should ask what in essence the penalty is for and

commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

⁴³ For an English-language summary of the decision, see P Beckers, German Court Takes First Step on Road to Mutual Recognition with China, *International Law Office Newsletter*, 31 May 2007.

⁴⁴ (2012) E Wuhan Zhong Minshang Wai Chuzi No. 16.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Scholars have argued that China should create a separate JRE regime for insolvency judgments, but the China-Singapore Memo apply reciprocity-based JRE to insolvency judgments. See Wenliang Zhang, 'Recognition and Enforcement of Foreign Non-Monetary Judgments in China' 13 *Frontiers of Law in China* (2018) pp. 229–234.

⁴⁹ E.g. Art. 8 of the China-Singapore Memo. This except has also been adopted by other countries, see Dicey, Morris & Collins on the Conflict of Laws, 15th ed, Thomson Sweet & Maxwell, London, 2012, para [5R-019].

⁵⁰ *Schnabel v Lui* [2002] NSWSC 15.

⁵¹ E.g. Government of India v Taylor [1995] AC 491; *Doe v Howard* [2015] VSC 75.

⁵² *Doe v Howard* [2015] VSC 75.

what the true nature of the right being enforced is. If it is to compensate the plaintiff's loss, it is not penal or public in nature. If it is to deter the general public at large or even if it is paid to a private party, it should be considered penal or public and not recognised or enforced.

Second, the China-Singapore Memo demonstrates that reciprocity-based JRE does not apply to any intellectual property rights cases, unfair competition or monopoly cases.⁵³ Registration and validity of intellectual property rights is territorial, and generally not automatically recognizable and enforceable in foreign states.⁵⁴ However, not every intellectual property rights case involves validity and/or registration. A foreign judgment on the performance of a contract that franchises a trademark may have nothing to do with the validity and/or registration of the trademark. Whether intellectual property-related judgments should be included into the new draft Hague Convention⁵⁵ has been well debated. Even if the new draft Convention excludes intellectual property-related judgments from its scope, like the 2005 Hague Choice of Court Convention, it will still apply to "contracts dealing with intellectual property rights such as licensing agreements, distribution agreements, joint venture agreements or agreements for the development of an intellectual property right".⁵⁶ Therefore, it appears too sweeping to exclude all intellectual property judgments from the scope of reciprocity-based JRE.

2.2. Civil Judgments

The concept of 'civil' and 'commercial' overlap to a large extent in Chinese law. Reciprocity-based JRE should apply to civil judgments with few exceptions such as judgments on a contract of employment or a contract to which a natural person is involved as a party for purposes of personal consumption, family affairs or other non-commercial purposes. These judgments are civil but not commercial. The Mainland China-Hong Kong JRE Arrangement is based on an exclusive choice of court agreement.⁵⁷ It follows the Hague 2005 Choice of Court Convention and excludes these judgments.⁵⁸ The China-Singapore Memo applies to commercial judgments so it may also exclude these judgments. The argument to exclude these judgments from reciprocity-based JRE is that jurisdiction law for employment and personal consumption contracts may vary in each country. Different countries may have distinct policies and interest in protecting employees and consumers.

2.3. Family Law Judgments

Foreign judgments granting divorce can be recognized in China according to the Provisions of the SPC on Issues Concerning Acceptance by People's Courts of Applications for Recognising Divorce Judgments of Foreign Courts (hereinafter 'SPC Provisions on

⁵³ Art. 8 of the China-Singapore Memo.

⁵⁴ See paras 33-39, Trevor Hartley and Masato Dogauchi, 'Convention of 30 June 2005 on Choice of Court Agreements Explanatory Report' (2004) <www.hcch.net/en/news-archive/details/?varevent=334>, visited on 31 December 2018.

⁵⁵ Draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, <assets.hcch.net/docs/9faf15e1-9c36-4e57-8d56-12a7d895faac.pdf>, visited on 31 December 2018..

⁵⁶ Paras 56-57, Francisco Garcimartin and Genevieve Saumier, 'Preliminary Document No 10 of May 2018 Judgments Convention/ Revised Preliminary Explanatory Report' (2018) 15 <<https://assets.hcch.net/docs/7d2ae3f7-e8c6-4ef3-807c-15f112aa483d.pdf>>, visited on 31 December 2018.

⁵⁷ Art. 2 of the Mainland China-Hong Kong JRE Arrangement.

⁵⁸ *Ibid.*, art. 3.

Foreign Divorce Judgments’).⁵⁹ However, SPC Provisions on Foreign Divorce Judgments do not apply to foreign judgments on property division and assumption of living expenses.⁶⁰ Recognition and enforcement of these judgments should be conducted according to Articles 281 and 282 of the Chinese CPL, which require either a treaty⁶¹ or reciprocity between China and the judgment-rendering foreign country.⁶² The recent development in reciprocity-based JRE does not cover matrimonial property division and assumption of living expenses. In *Li Qiang v. Ding Fengjing*, relying on *Kolmar*, Li applied to the Intermediate People’s Court in Dezhou City, Shandong Province to recognize and enforce a Singaporean judgment that granted divorce and divided matrimonial properties based on reciprocity.⁶³ The court held that, although *Kolmar* established reciprocity-based JRE between China and Singapore in commercial disputes, it did not demonstrate reciprocity in civil disputes related to personal status.⁶⁴ Therefore, the recent breakthrough in reciprocity-based JRE does not cover family law disputes.

Reciprocity-based JRE in commercial cases should not be extended to family law cases because these two types of cases are significantly different. The Hague Conference of International Law has developed separated regimes to recognize and enforce judgments in these two types of cases. For example, the 2018 Draft Judgment Convention,⁶⁵ the 2005 Choice of Court Convention⁶⁶ and the 1971 Judgment Convention⁶⁷ all exclude family law matters. Family law cases are covered by the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (hereinafter ‘2007 Maintenance

⁵⁹ The Provisions of the SPC on Issues Concerning Acceptance by People's Courts of Applications for Recognizing Divorce Judgments of Foreign Courts, promulgated on 29 February 2000 and effective on 1 March 2000, Fa Shi [2000] No. 6. The Provisions of the SPC on Procedural Issues Concerning Chinese Citizens' Application for Recognition of Divorce Judgments of Foreign Courts (hereinafter “Provisions on Procedural Issues Concerning Recognition of Foreign Divorce Judgments”), promulgated and effective on 13 August 1992, Fa (Min) Fa [1991] No. 21.

⁶⁰ Art. 2 of the Provisions on Procedural Issues Concerning Recognition of Foreign Divorce Judgments.

⁶¹ Many Chinese JRE treaties can be applied to all civil judgments including family disputes. A typical example is the Treaty on Judicial Assistance in Civil and Commercial Affairs between China and Bosnia and Herzegovina (‘China-Bosnia and Herzegovina JRE Treaty’), concluded on 28 December 2012 and effective on 12 October 2014, <www.court.gov.cn/shenpan-xiangqing-14231.html>, visited on 31 December 2018. Among all Chinese JRE treaties, this Treaty is the one most recently coming into effect. Its Article 20 indicates the scope of the treaty include civil and commercial judgments. Article 24 provides indirect jurisdiction rules for maintenance, inheritance, and personal status. If no treaty exists, China applies different laws to (1) recognising foreign divorce judgments that grant a divorce between the parties; (2) recognising and enforcing foreign judgments that divide marital property or estate, award maintenance fee, or decide custody of children between the parties.

⁶² Arts. 281 and 282 of the Chinese CPL.

⁶³ The Singaporean judgment divides matrimonial property located in Singapore. It also holds that each party should retain the individual ownership of the properties under each of their name.

⁶⁴ *Li Qiang, Ding Fengjing Shenqin Chengren he Zhixing Waiguo Fayuan Minshi Panjue, Caiding Caiding Shu*, Intermediate People’s Court in Dezhou City, Shandong Province (2018) Lu 14 Xie Wai Ren No. 1.

⁶⁵ Art. 2 of 2018 DRAFT Convention from the Special Commission on the Recognition and Enforcement of Foreign Judgments (24-29 May 2018).

⁶⁶ Art. 2.2 of the Hague 2015 Choice of Court Convention. Page 801 of Explanatory Report by Trevor Hartley & Masato Doguchi.

⁶⁷ Art. 1 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters concluded February 1, 1971 provides that “[i]t shall not apply to decisions the main object of which is to determine (1) the status or capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses...(3) maintenance obligations, so far as not included in sub-paragraph (1) of this Article...”

Convention'),⁶⁸ its protocol,⁶⁹ earlier treaties on maintenance,⁷⁰ and other family law related conventions.⁷¹

Nevertheless, the separation of regimes to recognize and enforce commercial and family cases does not mean that China should not consider recognizing and enforcing foreign family law judgments according to reciprocity. This is for two reasons.

First, it is unrealistic to restrict the impact of the OBOR Initiative in trade and investment, while ignoring the fact that the OBOR Initiative requires human exchanges between China and OBOR-involved countries. Closer economic ties and human interactions promote each other. Chinese CPL also permits recognition and enforcement of foreign judgments in family law cases according to reciprocity.⁷² Therefore, it is necessary to develop reciprocity-based JRE in family law cases.

Second, because of lack of reciprocity in China, foreign judgments on matrimonial property division, maintenance and child custody are not recognizable and enforceable outside of treaties.⁷³ Among the types of judgments, recognition and enforcement of foreign judgments on matrimonial property division is the most controversial. This is because, traditionally, matrimonial property division regarding foreign real estate was considered to be infringing on foreign judicial sovereignty, so the consequent judgment would not be recognizable and enforceable. However, the modern view considers matrimonial property division to be *in personam* cases. Therefore, as long as the judgment-rendering court can establish personal jurisdiction on the defendant, it can adjust the foreign property owned by this defendant. This modern view has been adopted by some Chinese courts. For example, in *Fu v. Toni*,⁷⁴ the husband (Italian) and wife (Chinese) agreed that the husband should sell his Italian real estate and compensate the wife 2.5 million RMB. The Pudong New District Court granted the divorce and issued a judgment on property division according to the parties' agreement.⁷⁵ Even when a couple does not make a property division agreement, Chinese courts may still divide their property abroad upon a party's request. *Wang v. Tong* is one such

⁶⁸ Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, effective on January 1, 2013. For the text of the Convention, see <www.hcch.net/en/instruments/conventions/full-text/?cid=131>. For Status Table, see <www.hcch.net/en/instruments/conventions/status-table/?cid=131>, visited on 29 December 2018.

⁶⁹ Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, <www.hcch.net/en/instruments/conventions/full-text/?cid=133>, visited on 29 December 2018.

⁷⁰ The New York Maintenance Convention, New York, 20 June 1956. Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children, effective on January 1, 1962. For the text of the Convention, see <www.hcch.net/en/instruments/conventions/full-text/?cid=38>. For Status Table, see <www.hcch.net/en/instruments/conventions/status-table/?cid=38>, visited on 29 December 2018.

Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, effective on August 1, 1976. For the text of the Convention, see <www.hcch.net/en/instruments/conventions/full-text/?cid=85>. For the Status Table, see <www.hcch.net/en/instruments/conventions/status-table/?cid=85>, visited on 29 December 2018.

⁷¹ For other conventions, see <www.hcch.net/en/instruments/conventions>, visited on 29 December 2018.

⁷² Art. 282 of the CPL.

⁷³ Wenliang Zhang, 'Recognition and Enforcement of Foreign Non-Monetary Judgments in China' (2018) 13 *Frontiers of Law in China* 218, 221–229.

⁷⁴ *Fu v Toni*, Pudong New District Court Shanghai 2015.

⁷⁵ The court held that: the real estate was located outside of China and could not be determined in this case, but the husband agreed to compensate the Wife 2.5 M, and this is not against Chinese law and should be supported by the court.

example.⁷⁶ Separated for about 20 years, the husband lived in Beijing and owned an apartment. The wife resided in the US and also owned real estate there. The wife applied to the No. 1 Intermediate People's Court in Beijing for divorce, and she also requested the court to divide the husband's apartment in Beijing as matrimonial property. The husband requested the court divide the wife's apartment in the US. The court held that Chinese law applied because the proceedings were brought in China. Since both properties were obtained during marriage, both were considered the couple's joint property. The court ordered the wife to provide detailed information about the value of the property in the US but the wife failed to meet her burden of proof. The court dissolved the marriage. Regarding the property division, the court considered the status quo of each party's residence and decided that the matrimonial property should be divided for the convenience of their lives. Consequently, it held that the property in China should belong to the husband and the property in the US should belong to the wife. *Fu* and *Wang* demonstrate that Chinese courts may decide the ownership of matrimonial properties located abroad. Therefore, in JRE proceedings, Chinese courts should also consider whether foreign laws recognize and enforce Chinese judgments on property division, maintenance and child custody without a treaty. If foreign laws offer reciprocity to Chinese judgments, Chinese courts should also reciprocate. Otherwise, parties would have to litigate the same case again in China. This would be costly in terms of time and money, judicial resources in both countries and increase uncertainty about parties' rights and obligations, and may cause inconsistent judgments.

3. Finality as a Requirement for Reciprocity-based JRE

Like treaty-based JRE, reciprocity-based JRE requires that foreign judgments be final. A crucial issue is which law should be applied to determine the finality of a foreign judgment. All Chinese bilateral JRE treaties require that the foreign judgment has become legally effective under the law of the judgment-rendering court.⁷⁷ In contrast, a distinct feature of the China-Singapore Memo is that the finality of a Chinese judgment in the Singaporean JRE proceeding should be determined by Chinese law and vice versa. Finality is a thorny issue for JRE between China and common-law countries.⁷⁸

Under English common law, 'final and conclusive' means an end to the proceedings pending between the parties ('conclusively, finally, and for ever') and settling the controversy that led to the proceedings (*res judicata*) in the judgment-rendering court.⁷⁹ Therefore, a judgment that is subject to appeal is considered final, since the judgment-rendering court has no power to reopen the case. This concept is based on *Nouvion v. Freeman*, where a Spanish court made a judgment in summary proceedings that allowed the party aggrieved to have their matter re-litigated in plenary proceedings before the same court.⁸⁰ An English court found the judgment was not final and conclusive, so it could not be recognized and enforced in the UK. *Nouvion* has been followed by courts in Singapore, Australia, Hong Kong, and many others.

⁷⁶ *Wang v Tong*, No. 1 Intermediate People's Court Beijing 2015.

⁷⁷ The treaties with Laos and Cyprus require that foreign judgment should be enforceable under the laws of both the judgment-rendering state and the JRE state.

⁷⁸ All the bilateral JRE treaties concluded by China are with civil-law countries.

⁷⁹ Martin Davies, Andrew Bell and Paul Le Gay Brereton, *Nygh's Conflict of Laws in Australia* (9th edn, LexisNexis Butterworths, Australia, 2014) p. 907.

⁸⁰ *Nouvion v Freeman* (1889) 15 App Cas 1, 9.

The differences between Chinese and English common-law concepts of finality are two-fold. First, according to Chinese law, a judgment that is subject to appeal is not final. China's court system is characterised by 'four levels and two instances of trials.'⁸¹ The four-level system consists of: (1) basic people's courts at the level of autonomous counties, towns, and municipal districts; (2) intermediate people's courts at the level of prefectures, autonomous prefectures, and municipalities; (3) higher people's courts at the level of the provinces, autonomous regions, and special municipalities; and (4) the SPC, which is the court of last resort for the whole of China, other than the Macao and Hong Kong Special Administrative Regions.⁸² In the people's courts, a case is decided after two instances of trials at most. A party may bring an appeal against a judgment of first instance only once to the people's court at the next higher level. The judgment of the first instance becomes legally effective or 'final' if, within the prescribed period for appeal, no party makes an appeal.⁸³ Judgments and orders of the court of second instance and any judgments rendered by the SPC as the court of first instance are immediately final. Therefore, except for the SPC, if the time for appeal has not expired, judgments rendered in the first-instance court lack of finality in China. In contrast, in English common-law countries, a judgment or order takes effect as of the date on which it is given or made, although it can be appealed to a higher court.⁸⁴ In contrast, a Chinese judgment issued by a first-instance court does not become effective until the 15 days to appeal expires. Consequently, Chinese courts have difficulty in recognizing and enforcing a foreign judgment that is subject to appeal, because according to Chinese law, such a judgment is not final. Therefore, the SPC insists that Chinese courts apply Chinese law to determine the finality of Singaporean judgments, and a judgment subject to appeal is not final and conclusive according to the China-Singapore Memo.⁸⁵

Second, under the Chinese procedure for trial supervision, a judgment rendering court retains the power to reopen the case.⁸⁶ The leading case in Hong Kong regarding how the Mainland trial supervision system may impact on the finality of Mainland judgments is *Chiyu Banking Corporation Limited v. Chan Tin Kwun*.⁸⁷ The Plaintiff commenced an action in the Fujian Intermediate People's Court in Mainland China against the defendant as the guarantor of the debt of one of its customers in 1994. The defendant was a Hong Kong resident. A judgment was obtained against the defendant in January 1995 in the Fujian Intermediate People's Court. The defendant appealed to the Fujian High People's Court but the appeal was dismissed in July 1995 and the Intermediate Court judgment was affirmed. In October 1995, the Defendant presented a petition to the Fujian People's Procuratorate for a retrial of the action conducted by the Fujian Intermediate People's Court. In March 1996, the Fujian People's Procuratorate presented a report to the Supreme People's Procuratorate requesting it to lodge a protest. According to Chinese CPL, the judgment is still final because the Supreme People's Procuratorate had not lodged a protest, and Fujian Intermediate People's Court and other higher courts had not decided to retry the case. In July 1996, the Plaintiff applied to the

⁸¹ Art. 175 of the CPL.

⁸² Arts. 17-20 of the CPL.

⁸³ Art. 164 of the CPL.

⁸⁴ For example, in the State of New South Wales Australia, a judgment issued by the Supreme Court of NSW take effect as of the date on which it is given and it can be appealed within 28 days after this date. Reg 36.4 and Reg 50.3 of the Uniform Civil Procedure Rules (2005) in the state of New South Wales Australia.

⁸⁵ Art. 7 of the China-Singapore Memo.

⁸⁶ Art 198 of the CPL.

⁸⁷ [1996] 2 H.K.L.R. 395 (H.C.).

Supreme Court of Hong Kong to recognize and enforce the Intermediate Court judgment against the defendant. The Hong Kong court held that

“[t]he Intermediate Court Judgment is final in the sense that it is not appealable and it is enforceable in China, but it is not final and conclusive for the purpose of recognition and enforcement by the Hong Kong Courts because in the words of Lord Watson, it “is not final and unalterable in the court which pronounced it”. It is liable to be altered by the Intermediate Court on a retrial if the Supreme People’s Procuratorate lodge a protest in accordance with the *Civil Procedure Law*. If upon protest being made, rare the circumstances may be, a Chinese Court has to retry the case, then, clearly it retains the power to alter its own decision.”⁸⁸

Therefore, the Hong Kong Court stayed the enforcement proceedings pending the outcome of the decision of the Supreme People’s Procuratorate. It gave leave to the Plaintiff to, firstly, apply to remove the stay if the defendant’s application to retrial is rejected by the Supreme People’s Procuratorate and secondly, to obtain further directions if the decision of the Supreme People’s Procuratorate was still not reached within six months.

Chiyu has been followed by subsequent cases.⁸⁹ In Taiwan, the finality of Mainland judgments has also been challenged.⁹⁰ Because JRE law in Singapore is similar to that of Hong Kong, in order to avoid *Chiyu* from being followed by Singaporean courts, the China-Singapore Memo provides that Singaporean courts should decide whether a Chinese judgment is final based on certification from the Chinese judgment-rendering court.⁹¹ If the Chinese SPC concludes a JRE memo with supreme courts in other common-law jurisdictions, the SPC may adopt the same approach.

Notably, the non-mutuality between China and Singapore regarding finality does not mean Singapore has given concessions to China in reciprocity-based JRE. The reality is that Singapore does not require reciprocity to recognize and enforce Chinese judgments. Without the China-Singapore Memo, Chinese judgments can be recognized and enforced in Singapore according to common law. However, China requires reciprocity for JRE, and *Kolmar* and Chinese law do not provide clear and detailed rules to recognize and enforce Singaporean judgments. Concluding a Memo increases the certainty and predictability of recognizing and enforcing Singaporean judgments in China. This benefit holds true for other English common law countries which adopt a liberal view of reciprocity.⁹² If China approaches these countries

⁸⁸ *Ibid*, page 7.

⁸⁹ E.g. *Wuhan Zhong Shuo Hong Real Estate Co. Ltd v. Kwong Sang Hong Int’l. Ltd* [2000] 10 H.K.C. 711 (C.F.I.); *Tan Tay Cuan v Ng Chi Hung*, [2001] 10 H.K.C. 164 (C.F.I.).

⁹⁰ Taiwan courts hold Mainland judgments are enforceable but cannot create res judicata effect, and the Taiwan courts can review the merits of Mainland judgments. Liu R, ‘Recognition and Enforcement of Civil and Commercial Judgments between Mainland China and Taiwan: Status Quo, Questions and Thoughts [Woguo Dalu Yu Taiwan Diqu Minshangshi Panjue Xianghu Chengren Yu Zhixing Zhi Xianzhuang, Wenti Ji Shikao]’ 62 *Wuhan University Journal (Philosophy & Social Sciences)* (2009) pp. 737-738.

⁹¹ Art. 19 of the China-Singapore Memo.

⁹² E.g. Israeli courts hold a liberal view of reciprocity. For example, in 2015, Tel Aviv District Court in Israel recognized and enforced a monetary judgment issued by the Nantong Intermediate People’s Court in China. The Court held that the Nantong Judgment should be recognized and enforced for four reasons. First, there existed a ‘reasonable potential’ for an Israeli judgment to be enforced in China. Such potential satisfied the condition of ‘reciprocity of enforcement’ required by Israeli legislation, which aims to promote judicial cooperation between Israel and other countries. Second, cooperation between China and Israel was a new frontier because neither country had enforced or refused to enforce the other’s judgments and no JRE treaty existed. Third, Chinese law recognized JRE based on reciprocity. If a country limits recognition and enforcement of foreign judgments to

to conclude a JRE memo or a treaty with a similar non-mutuality finality clause, there is a decent chance that these countries may accept.

4. Indirect Jurisdiction as a Defence for Reciprocity-based JRE

The China-Singapore Memo lists indirect jurisdiction grounds for Singapore but for China.⁹³ Chinese statutes including CPL and its judicial interpretations do not contain indirect jurisdiction rules. It is also unclear whether Chinese courts would apply Chinese direct jurisdiction grounds in the JRE proceedings to determine whether a foreign judgment-rendering court has jurisdiction. Neither Chinese law nor judicial practice clarifies how Chinese courts may determine whether a foreign judgment-rendering court has indirect jurisdiction. Will the Chinese JRE court review the jurisdiction of the foreign judgment-rendering court? A survey of Chinese JRE treaties may provide reflections for reciprocity-based JRE.⁹⁴

The above chart demonstrates that Chinese JRE courts will review the jurisdiction of the judgment-rendering court if it is challenged by the judgment debtor in the JRE proceedings. Chinese courts will at least consider whether the judgment-rendering court

countries which have previously recognized and enforced its own judgments, reciprocity will be inhibited. Fourth, with the development of economic cooperation between China and Israel, judicial assistance could promote business certainty. Therefore, courts should encourage judicial assistance for the benefit of public interest. See High Court of Justice in Israel Rendered the Final Judgment and Unprecedentedly Recognized and Enforced a Chinese Judgment, People's Court Daily (August 16, 2017), <http://rmfyb.chinacourt.org/paper/html/2017-08/16/content_129031.htm?div=-1>, visited on 29 December 2018. The Nantong Judgment is (2009) Tong Zong Min Shan Chu Zi No. 0010 Civil Judgment.

⁹³ Arts. 9 and 21 of the China-Singapore Memo. Article 21 of the Memo lists the Singaporean indirect jurisdiction rules that the courts of Singapore would apply to determine whether a Chinese court has international jurisdiction in the JRE proceedings. Article 9 of the Memo provides that Chinese JRE courts will apply Chinese law to determine whether the courts of Singapore have had jurisdiction to determine the subject matter of the dispute, it does not clarify the contents of Chinese law.

⁹⁴ The Survey is on file with the author.

impinges on the exclusive jurisdiction of Chinese courts.⁹⁵ It is beyond the length of this article to discuss every possible jurisdiction ground as defense in the JRE proceedings.⁹⁶ This part will focus on two jurisdiction grounds where Chinese domestic law is starkly different from international practice. The first is whether the chosen court in a jurisdiction clause needs an ‘actual connection’ [shiji lianxi, also translated as ‘substantial’ connection] with the dispute. Second, if litigation between the same litigants on the same subject is pending in China, would Chinese courts recognize and enforce a foreign judgment?

4.1. Actual Connection between the Chosen Court and the Dispute?

Chinese CPL requires that the chosen court under a jurisdiction clause should have actual connection with the disputes.⁹⁷ The actual connection can be established by the defendant’s domicile, the location where a contract was performed or signed, the plaintiff’s domicile, the location of the subject matter, the place of infringement, etc.⁹⁸ The ‘actual connection’ test, as a direct jurisdiction rule, has been widely criticized by scholars inside China and abroad.⁹⁹ However, few researchers have discussed whether China should apply this test in the JRE proceedings. China should not adopt this test in reciprocity-based JRE.

If China imposes the ‘actual connection’ test for Singaporean judgments under the China-Singapore Memo, it may, to some extent, frustrate the purpose of the Memo. In international business transactions, a foreign court may be chosen because of its neutrality and expertise, rather than an actual connection with the dispute. In Asia, Singapore is a leading neutral forum for international litigation. As mentioned above, one of the purposes of the Memo was to enhance Singapore’s position as an international dispute resolution center. If China imposes the ‘actual connection’ test in JRE proceedings, all parties that select Singapore for its neutrality may not have their judgments recognized and enforced in China.

Moreover, the reciprocity-based JRE may draw insights from treaty-based JRE. The ‘actual connection’ test is not consistent with Chinese commitments in the China-Hong Kong JRE Arrangement, because, for the purposes of JRE, the Arrangement does not require the chosen court to have an ‘actual connection’ with the dispute. Many bilateral JRE treaties concluded with China do not adopt the ‘actual connection’ test. For example, Article 24.1(3) of the China-Bosnia and Herzegovina JRE Treaty provides that a judgment-rendering court should have jurisdiction if the defendant has explicitly accepted the jurisdiction of said court. The ‘actual connection’ test is not mentioned. Article 24.2 of the Treaty states that Article 24.1 should not be prejudiced to the exclusive jurisdiction rules under the domestic law of each party. The ‘actual connection’ test is not an exclusive jurisdiction rule under Chinese

⁹⁵ According to Chinese CPL, the exclusive jurisdiction of Chinese courts include the following cases: (1) an action instituted for a dispute over real estate located in China; (2) an action instituted for a dispute arising from harbour operations in China;⁹⁵ and (3) actions instituted for disputes arising from the performance of contracts for Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures or Chinese-foreign co-operative exploration and exploitation of natural resources in China. Arts 33 and 266 of the CPL.

⁹⁶ For a detailed survey of jurisdiction grounds in Chinese JRE treaties, see King Fung Tsang, ‘Chinese Bilateral Judgment Enforcement Treaties’ (2017) 40 *Loy. L. A. Int’l & Comp. L. Rev* 1, 19–21.

⁹⁷ Arts 34 and 259 of the CPL. Article 531 of the 2015 SPC Interpretation on CPL.

⁹⁸ *Ibid.*

⁹⁹ E.g. Huanfang Du, ‘Choice of Court Agreement with Foreign Elements in China: *Shandong Junfeng v South Korea MGAME*’ 13 *Frontiers of Law in China* (2018) pp. 242–258; Guangjian Tu, ‘The Hague Choice of Court Convention - A Chinese Perspective Comment’ 55 *American Journal of Comparative Law* (2007) pp. 359–365.

CPL. Therefore, in the JRE proceedings, Chinese courts should not reject JRE simply because the location of the chosen court has no actual connection with the dispute.

Furthermore, China has signed but not ratified the 2005 Hague Choice of Court Convention. The Convention does not require a connection between the chosen court and the dispute,¹⁰⁰ however, it permits member states to declare that “its courts may refuse to determine disputes to which an exclusive choice of court agreement applies if, except for the location of the chosen court, there is no connection between that state and the parties or the dispute.”¹⁰¹ Although many commentators have suggested China should do so,¹⁰² China has not made a declaration imposing the ‘actual connection’ test under the 2005 Hague Choice of Court Convention.

4.2. *Res Judicata in Reciprocity-based JRE*

In Chinese reciprocity-based JRE, if litigation between the same litigants on the same subject is pending in China, there is a question as to whether Chinese courts would recognize and enforce a foreign judgment. Namely, would the foreign judgment create *res judicata* in Chinese courts? The answer is likely no. This is for two reasons.

First, 85% of Chinese bilateral JRE treaties provide that JRE should be rejected if the JRE court has already accepted litigation between the same litigants on the same subject.¹⁰³ 67% of treaties do not require the JRE court seises the case before the foreign forum. The China-Singapore Memo also follows this rule.¹⁰⁴ Therefore, if the SPC issues a judicial interpretation on reciprocity-based JRE or concludes other Memo or treaties, the SPC may follow the same practice.

The second reason is Article 533 of the SPC Judicial Interpretation on CPL, which provides that for a case over which both a people’s court and a foreign court have jurisdiction and one party has instituted an action in the foreign court while the other party instituted in the people’s court, the people’s court may accept the case. Although the law specifies ‘may’, in practice, Chinese courts will generally accept such a case, because the Chinese version of *forum non conveniens* is very restrictive.¹⁰⁵ Article 533 further provides that if, *after a judgment is rendered*, a party requests the people’s court to recognize and enforce the judgment or ruling rendered by the foreign court concerning this case, the people’s court shall reject the JRE, unless it is otherwise prescribed by an international treaty concluded or acceded to by both countries.¹⁰⁶ Article 533 is the same as Article 306 of the 1992 SPC Judicial Interpretation on CPL. The phrase ‘after a judgment is rendered’ is unclear as

¹⁰⁰ Art. 5 of the 2005 Hague Choice of Court Convention. *Forum non conveniens* is forbidden.

¹⁰¹ Art. 19 of the Hague Choice of Court Convention. Sun, *supra* note 9, pp. 1135-1147.

¹⁰² See Yong Gan, ‘Jurisdiction Agreements in Chinese Conflict of Laws: Searching for Ways to Implement the Hague Convention on Choice of Court Agreements in China’ 14 *Journal of Private International Law* (2018) 295–318.

¹⁰³ E.g. art 23.4 of the China-Bosnia and Herzegovina JRE Treaty’.

¹⁰⁴ Art. 10(f) of the China-Singapore Memo.

¹⁰⁵ Bath Vivienne, ‘Overlapping Jurisdictions and the Resolution of Disputes Before Chinese and Foreign Courts’ *Yearbook of Private International Law* (2015) pp. 111-150.

¹⁰⁶ Art. 533 of the 2015 SPC Judicial Interpretation on CPL. This article is the same as Art. 306 of the 1992 SPC Judicial Interpretation on CPL.

whether ‘a judgment’ refers to the judgment rendered by a Chinese court or foreign court.¹⁰⁷ If Chinese court renders a judgment before foreign court, Chinese court will not recognize and enforce foreign judgment. But how about the situation where foreign court issues a judgment before Chinese court? Article 533 provides no answer. It is unclear whether Chinese court should stay the proceeding and decide whether the foreign judgment should be recognized. In *Dongbu HITEK Co., Ltd v. Nanjing Yangyang Huagong Co., Ltd*, parties litigated the case in South Korea and after the South Korean court issued a judgment, the losing party brought a case on the same subject in China.¹⁰⁸ The Chinese court exercised jurisdiction based on Article 306 of the 1992 SPC Judicial Interpretation on CPL. Although the South Korean judgment was pleaded, Chinese court held that the judgment had not been recognized in China so it had no *res judicata* effect. Ultimately, the Chinese court held against the winning party of the Korean judgment. *Dongbu HITEK Co., Ltd* appears to suggest that Chinese court may not stay the parallel proceeding even if a foreign court has rendered a judgment.

Article 533 of the SPC Judicial Interpretation on CPL clearly may lead to inconsistent judgments, waste judicial resources, and allow the losing party of the foreign proceeding to bite the same apple twice. More importantly, it may encourage tactical litigators to bring cases in China for the purpose of as blocking the recognition and enforcement of foreign judgments. In order to avoid these issues, the 2018 Draft Judgment Convention provides that, if the court of the requested state was not seized before the judgment-rendering foreign court, the foreign judgment would be eligible for recognition and enforcement and the domestic litigation should be precluded.¹⁰⁹ This means that the JRE court needs to consider which court seizes the case first before it denies the *res judicata* effects. A similar approach is adopted by the Brussels I Regulation (recast). Its Article 29 provides that in proceedings involving the same cause of action between the same parties but brought in different member states, courts that do not first seize shall of their own motion stay proceedings until the jurisdiction of the court first seized is established. This *lis pendens* rule helps to avoid inconsistent judgments.

English common-law countries also acknowledge that where a foreign action has been brought and judgment entered, no domestic proceedings can thereafter be maintained on the same cause of action.¹¹⁰ They do not consider whether the foreign court seizes the case first.¹¹¹ Instead, the focus is on whether the cause of action in the domestic proceedings is in substance the same as that litigated to judgment in the foreign court.¹¹² For example, in *Telesto Investments Limited v. UBS AG*, parties concluded an exclusive jurisdiction clause favoring Singaporean courts.¹¹³ After the dispute occurred, UBS initiated a case against Telesto and its CEO in Singapore. Shortly later, Telesto, its CEO and others brought a case

¹⁰⁷ Cf. for an opinion different from me, see King Fung Tsang, ‘Chinese Bilateral Judgment Enforcement Treaties’ 40 *Loy. L. A. Int’l & Comp. L. Rev* (2017) p. 24.

¹⁰⁸ *Dongbu HITEK Co., Ltd v Nanjing Yangyang Huagong Co., Ltd* [Dongbu HITECK Co., Ltd Deng yu Nanjing Yangyang Huagong Yun Mao Youxian Gongsi Haishi Baohan Jiufen Shangsu An], the High People’s Court of Hubei Province (2012) Yue Min Si Zhong Zi No. 00130.

¹⁰⁹ Art. 7.2 of the 2018 DRAFT Judgment Convention. The Convention also requires that a close connection exists between the dispute and the requested State.

¹¹⁰ Martin Davies, Andrew Bell and Paul Le Gay Brereton, *Nygh’s Conflict of Laws in Australia* (9th edn, LexisNexis Butterworths 2014) 915.

¹¹¹ *SK Foods LP v SK Foods Australia Pty Ltd (in liq) (No.3)* [2013] FCA 526.

¹¹² *Black-Clawson International Ltd v Papierwerke AG* [1975] AC 591.

¹¹³ *Telesto Investments Limited v UBS AG* [2013] NSWSC 503.

against UBS in Australia. The Singaporean court issued a judgment first. UBS claimed the *res judicata* effect of the Singaporean judgment in the Australian court. The court held that the Singaporean judgment was expressed to be based on the merits of UBS's case, not on Telesto's failure to appear, and the Singaporean judgment covered the same cause or causes of action brought by Telesto in the NSW proceedings.¹¹⁴ Therefore, the *res judicata* effect was established.¹¹⁵ The court held that the domestic proceeding should be permanently stayed.¹¹⁶

Another example is *ML v. YJ*.¹¹⁷ This case involves parallel litigation between Mainland China and Hong Kong. In May 2006, the wife filed a petition for divorce in Hong Kong relying on misconduct on the part of the Husband and sought custody of the children and ancillary relief for maintenance (hereinafter 'the Hong Kong proceedings'). The total property disclosed in the Hong Kong proceedings amounted to more than HK\$72 million. In October 2006, the husband instituted the Mainland divorce proceedings (hereinafter 'the Mainland proceedings'). He also sought custody of the children and financial relief regarding the parties' joint assets consisting only of eight Mainland properties and two Hong Kong properties amounting approximately to RMB 14.66 million. The two Hong Kong properties were already included in the Hong Kong proceedings. In March 2007, the wife applied for a stay of proceedings in the Shenzhen court but her application was denied. Then the wife defended her case on the merits. In the Hong Kong proceedings, on 23 May 2007, the wife was granted custody of both children. In November 2007, the Mainland court dissolved the marriage and distributed the matrimonial properties (including the two Hong Kong properties), and the husband was ordered to pay to the Wife RMB 8.8 million. The Mainland court rejected the husband's claim for custody of the two children. Later, in the Hong Kong proceeding, the primary judge distributed the family assets not addressed by the Mainland court and ordered that the husband pay the wife a lump sum of approximately HK\$378 million.¹¹⁸ The remaining issue for the Hong Kong court was whether the court should recognize the Mainland judgment and permanently stay the Hong Kong proceedings for ancillary relief. The Hong Kong Court of Final Appeal, with a two to three vote, held that recognizing the Mainland judgment would not manifestly violate public policy. Considering the parties' long connections to Mainland China, the Court found that the Mainland court was the natural forum for the divorce proceedings.¹¹⁹ The wife participated in the Mainland China proceedings and reserved her right to re-open the issues of financial provision before the Mainland court.¹²⁰ The husband gave an undertaking allowing the Mainland Court to dissolve other matrimonial assets.¹²¹ The wife would not be deprived of her substantial legal rights if the Mainland judgment was recognized.¹²² Since the Mainland judgment should be recognized by the Hong Kong Court, the Hong Kong Court decided to permanently stay the

¹¹⁴ *Telesto Investments Limited v UBS AG* [2013] NSWSC 503, para 196.

¹¹⁵ *Ibid*, para 201.

¹¹⁶ *Ibid*, para 286.

¹¹⁷ *ML v YJ*, FACV 20/2009, CACV 89/2008, HMC 13/2006. The primary judge rejected JRE because the two proceedings dealt with different parts of the family assets and also the Husband's forensic tactics was against the fundamental notions of justice in Hong Kong. Upon the Husband's appeal, the majority of the Court of Appeal reversed the primary judge's decision and stayed the Wife's ancillary relief proceedings.

¹¹⁸ *ML v YJ*, FACV 20/2009, para 33.

¹¹⁹ *Ibid*, para 136.

¹²⁰ *Ibid*, para 142.

¹²¹ *Ibid*, para 143.

¹²² *Ibid*, para 157.

proceedings to make ancillary orders for financial relief because the marriage between the parties had been dissolved.¹²³ Different from *Telesto, ML* focuses on whether the foreign forum was a natural forum.

These foreign practices provide rich references for China to develop its *res judicata* rule in reciprocity-based JRE. It may adopt the first-seize approach as per the Hague Conventions or the Brussels I Regulation (recast). Or it may consider the more flexible approach adopted by English common-law countries, for example whether the foreign court is a natural forum or whether litigating in the domestic forum can provide a legitimate judicial advantage which is not available in the foreign forum.

5. Conclusions

Kolmar, Liu Li, the Nanning Statement, and the China-Singapore Memo are encouraging. The developments in the past three years are consistent. They 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.¹²⁴ Chinese SPC will likely propose unbinding memos, like the China-Singapore Memo, to the supreme courts in these countries. China may also use the format of memo to implement the Nanning Statement with ASEAN countries. This is because the memos can establish JRE reciprocity and they are much easier to conclude than binding treaties.

Chinese SPC will issue judicial interpretations to clarify the scope, requirements of, and defences against reciprocity-based JRE. The reciprocity-based JRE should cover civil and commercial judgments with few exceptions. China may persuade other English common law countries that would like to conclude a memo with to accept applying Chinese law to determine finality of judgments in JRE proceedings. China should make laws to guide its courts about how to review the jurisdiction of the judgment-rendering courts in the JRE proceedings.

¹²³ *Ibid*, paras 137-141.

¹²⁴ See *supra* note 3.