

ENFORCING FOREIGN MONETARY JUDGMENTS IN CHINA: BREAKTHROUGHS, CHALLENGES, AND SOLUTIONS IN THE CONTEXT OF “ONE BELT ONE ROAD”

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ABSTRACT

Some critics argue that China has adopted one of the most restrictive reciprocity systems with respect to judgment recognition and enforcement (JRE) in the world. However, in 2016 and 2017, Chinese courts, in two unprecedented moves, recognized and enforced commercial monetary judgments rendered in Singapore and the United States, based on the principle of reciprocity. This Article scrutinizes this promising development with a comparative study of the laws concerning JRE in the United States, European Union, United Kingdom, Australia and Hong Kong. More importantly, it analyzes prospective challenges and proposes four solutions: (i) reconciling JRE under a treaty and JRE according to reciprocity; (ii) transitioning from de facto reciprocity to de jure reciprocity; (iii) determining requirements for JRE according to reciprocity; and (iv) adding defenses against JRE according to reciprocity. This is a timely effort to help develop the Chinese JRE system in the context of the “One Belt One Road” initiative. Additionally, this Article also has broad international implications for other jurisdictions contemplating JRE, as it discusses the controversial values, contents, and practical regime required to realize JRE according to reciprocity.

I. INTRODUCTION

Some critics argue that China has adopted one of the most restrictive reciprocity systems for recognizing and enforcing foreign judgments in the world.¹ Although Chinese Civil Procedure Law (CPL) provides that foreign judgments can be recognized and enforced according to reciprocity if no treaty is applicable,² Chi-

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1. Bligh Elbalti, *Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark but Not Much Bite*, 13 J. PRIV. INT'L. L. 184, 201 (2017).

2. Zhonghua Renmin Gongheguo Minshi Susongfa (中华人民共和国民事诉讼法) [Chinese Civil Procedure Law (CPL)] (promulgated by the Seventh Nat'l People's Cong., Apr. 9, 1991, amended June 27, 2017), art. 282; *see also* Satoshi Watanabe, *A Study of a Series of Cases Called Non-Recognition of a Judicial Judgment Between Japan and Mainland China – A*

nese courts tend to reject judgment recognition and enforcement (JRE) for lack of reciprocity.³ However, 2016 and 2017 delivered unprecedented development for reciprocal JRE in China: two commercial monetary judgments, rendered in Singapore and the United States, respectively, were recognized and enforced according to reciprocity.⁴ Nevertheless, this development should not be overestimated because of its prospective institutional, doctrinal, and practical challenges. The main institutional challenge is that the Chinese courts responsible for administering JRE are Intermediate People's Courts, which are lower-level courts in China's judicial system.⁵ Current CPL and Supreme People's Court (SPC) judicial interpretations fail to provide sufficient guidance for them.⁶ Doctrinal challenges arise out of the controversial values and ambiguous contents that characterize reciprocity, which heighten the practical challenges of putting JRE according to reciprocity into practice.⁷

This Article scrutinizes the recent promising development of JRE according to reciprocity in China through a comparative study of

Cross-border Garnishment Order of the Japanese Court Issued to a Chinese Company as a Third-Party Debtor, 57 JAPANESE Y.B. INT'L L. 287, 291 (2014) (The Supreme People's Court of China (SPC) 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.").

3. 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 CHINA J. INT'L L. 143, 152 (2013); ZHENG SOPHIA TANG ET AL., CONFLICT OF LAWS IN THE PEOPLE'S REPUBLIC OF CHINA 161 (2016); GUANGJIAN TU, PRIVATE INTERNATIONAL LAW IN CHINA 170 (2016).

4. Kolmar Grp. AG v. Jiangsu Textile Industry (Group) Import & Export Co, Su-01 Xie Wai Ren No. 3 Civil Judgment (Jiangsu Interm. People's Ct. 2016); Liu Li v. Tao Li et al., Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026 (Hubei Interm. People's Ct. 2015).

5. Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (promulgated by the Judicial Comm. of the Sup. People's Ct., Dec. 18, 2014, effective Feb. 4, 2015) art. 544, Zhu Shi [2015] No. 5 [hereinafter SPC Judicial Interpretation on CPL].

6. Tu, *supra* note 3, at 172.

7. In the United States, the American Law Institute drafted and disseminated Foreign Judgments Recognition and Enforcement Act (ALI Proposed Federal Statute) in 2005, a statute which incorporates the reciprocity requirement to judgment recognition and enforcement (JRE). A.L.I, RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS: ANALYSIS AND PROPOSED FEDERAL STATUTE (2006) [hereinafter ALI Proposed Federal Statute]. However, the ALI Proposed Federal Statute has not yet been enacted in the United States, demonstrating the controversial nature of reciprocity. John B. III Bellinger & R. Reeves Anderson, *Tort Tourism: The Case for a Federal Law on Foreign Judgment Recognition*, 54 VA. J. INT. L. 501, 541-42 (2013).

the laws of the United States, European Union, United Kingdom, Australia, and Hong Kong. More importantly, it analyzes prospective challenges and proposes four solutions: (i) reconciling treaty-based JRE and JRE according to reciprocity; (ii) transitioning from *de facto* reciprocity to *de jure* reciprocity; (iii) determining requirements for JRE according to reciprocity; and (iv) adding defenses against JRE according to reciprocity. This is a timely effort to help develop the Chinese JRE system⁸ and also offers broad international implications. First, commentators worldwide have debated the values, contents, and practical regime required to realize JRE based upon reciprocity; indeed, JRE based upon reciprocity is not a unique issue for China.⁹ Second, studies have shown that JRE between civil law and common law systems is more difficult than between countries with the same legal tradition.¹⁰ Although China has concluded thirty-two effective bilateral JRE treaties, all of these treaties represent agreements with civil law countries.¹¹ The recent

8. The Chinese SPC is drafting a judicial interpretation about JRE based upon reciprocity in order to guide lower courts. See Lou Shuzen, *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 Form*, PEOPLE’S CT. NEWS MEDIA CORP. (Sept. 26, 2017, 3:41 PM), <http://www.court.gov.cn/fabu-xiangqing-61912.html> [<https://perma.cc/JT6H-HWFQ>].

9. See Linda J. Silberman, *Some Judgments on Judgments: A View from American*, 19 KINGS L.J. 235, 259 (2008); Elbalti, *supra* note 1.

10. See generally Peter Trooboff, *Ten (and Probably More) Difficulties in Negotiating a Worldwide Convention on International Jurisdiction and Enforcement of Judgments: Some Initial Lessons*, in A GLOBAL LAW OF JURISDICTION AND JUDGMENTS: LESSONS FROM THE HAGUE 263 (John J. Barcelo III & Kevin M. Clermont eds. 2002) (analyzing the difficulties coming from conflicts between different legal traditions when negotiating a broad scope JRE convention at the Hague); ARTHUR T. VON MEHREN, *ADJUDICATORY AUTHORITY IN PRIVATE INTERNATIONAL LAW: A COMPARATIVE STUDY* 57–75 (2007) (comparing different designs of jurisdiction rules and norms in the United States and Germany); see also Jie Huang, *Conflicts between Civil Law and Common Law in Judgment Recognition and Enforcement: When is the Finality Dispute Final?*, 29 WIS. INT’L L. J. 70, 72 (2011) (demonstrating the sharply different understanding of finality between Mainland China, with a civil law tradition, and Hong Kong, with a common law tradition).

11. 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 *Mutual Legal Assistance Treaty* (司法协助条约), CHINESE MINISTRY FOREIGN AFF., <http://www.mfa.gov.cn/chn/gxh/zlb/tyfg/t4984.htm> [<https://perma.cc/2TPG-5WF6>]; *China’s Foreign Judicial Assistance Treaty* (司法协助), CHINESE SUPREME PEOPLE’S COURT, <http://www.court.gov/shenpan-gengduo-73.html> [<https://perma.cc/6FFS-MNB4>]. Among the effective treaties, thirty-two have JRE clauses; this Article calls these treaties “Chinese JRE treaties.” See TANG ET AL., *supra* note 3, at 150–51. Other than bilateral treaties, China signed the Hague Convention on Choice of Court Agreements of June 30, 2005, 44 I.L.M. 1294, <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>, on September 12, 2017 [<https://perma.cc/3T82-FLGT>]. However, China has not yet ratified the Convention. See *Status Table: Convention of 30 June 2005 on Choice of Courts Agreements*, HCCH, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (providing Convention

breakthroughs in the area of JRE based on reciprocity relate to JRE between China and countries boasting common law traditions.¹² Reciprocity may open a door for recognizing and enforcing judgments issued in common law countries in China.

Following the Introduction, this Article has three Sections. Section II analyzes the cases of *Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export Co., Ltd.* and *Liu Li v. Tao Li and Tong Wu*.¹³ It argues that the unprecedented turnaround of Chinese courts should be understood in the context of China's "One Belt One Road" initiative (OBOR).¹⁴ These two cases may encourage other Chinese courts to recognize and enforce judgments issued in Singapore and the United States. However, the cases do not address the institutional design of JRE according to reciprocity as they fail to clarify basic doctrinal and practical issues with which Chinese courts may be confronted.

Section III examines the four challenges to JRE according to reciprocity in China and advances proposed solutions. First among these challenges pertains to current Chinese law that requires a "treaty first" approach, even though a judgment debtor is afforded fewer defenses to JRE according to reciprocity compared with the treaties that China has concluded. However, it is hard to justify why a judgment creditor cannot opt out of a JRE treaty if JRE according to reciprocity provides more favorable conditions than a

status table) [<https://perma.cc/R6SD-8NAW>]; see generally Guangjian Tu, *The Hague Choice of Court Convention - A Chinese Perspective Comment*, 55 AM. J. COMP. L. 347, 347-65 (2007) (providing comments). China is a member state to International Convention on Civil Liability for Oil Pollution Damage (Oil Pollution Convention), adopted on November 29, 1969 and entered into force on June 19, 1975, which was replaced by the 1992 Protocol, adopted on November 27, 1992 and entered into force on May 30, 1996. The only common law jurisdiction that has an effective bilateral JRE arrangement with mainland China is Hong Kong, but this is an example of interregional JRE under the constitutional framework known as "One Country, Two Systems." This Article focuses on international JRE, which is significantly different from interregional JRE. See 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 (promulgated by the Sup. People's Ct., July 14, 2006, effective Aug. 1, 2008), Legal Interpretation [2008] No. 9.

12. See *infra* Section II.

13. See Elbalti *supra* note 1 at 203.

14. See *China Unveils Action Plan on Belt and Road Initiative*, CHINA DAILY (Mar. 28, 2015), http://www.chinadaily.com.cn/business/2015-03/28/content_19938124.htm (providing the chronology of China's One Belt One Road Initiative (OBOR)) [<https://perma.cc/U29P-BCF8>]. The importance of JRE according to reciprocity to the success of OBOR is discussed in *infra* Section III(2).

particular treaty.¹⁵ Therefore, the relationship between JRE treaties and JRE according to reciprocity should be reconciled.

Second, Intermediate People's Courts, as JRE courts in China, may not have sufficient experience and expertise in adjudging reciprocity, which is a complicated legal determination with broad implications in international diplomacy.¹⁶ Accordingly, the SPC should compile a list of countries for which JRE reciprocity applies. This would help smooth the transition from *de facto* reciprocity to *de jure* reciprocity.

Third, the *de facto* reciprocity between China and Germany established by *German Züblin International Co., Ltd. v Wuxi Walker General Engineering Rubber Co., Ltd.*¹⁷ and *Sascha Rudolf Seehaus*¹⁸ should be scrutinized.¹⁹ This sub-Section clarifies three issues: (i) which judgments can be recognized and enforced according to reciprocity; (ii) what law should be applied to determine the finality of a foreign judgment; and (iii) the statute of limitations for JRE according to reciprocity.

Finally, the current Chinese law providing for defenses against JRE according to reciprocity is incomplete.²⁰ The corresponding sub-Section proposes detailed rules for the defenses of lack of jurisdiction and undue service. Following this discussion of the challenges presented by the current approach to JRE according to reciprocity, Section IV concludes the Article.

II. PROMISING DEVELOPMENTS

A. *China-Singapore*

In *Giant Light Metal Technology (Kunshan) Co., Ltd. v Aksa Far East Pte Ltd.*, the High Court of Singapore recognized and enforced a Chinese commercial monetary judgment under common law on January 28, 2014.²¹ The Chinese judgment was rendered by the Intermediate People's Court of Suzhou City in Jiangsu Province

15. *Id.*

16. *See infra* Section III(2).

17. *German Züblin International Co., Ltd. v Wuxi Walker General Eng'g Rubber Co., Ltd.*, Judgment, Ct. App. Berlin, 18 May 2006, Doc. No. 20 S ch 13/ 04. This case has been widely covered by scholarship. *See, e.g.*, Wenliang Zhang, *Sino-Foreign Recognition and Enforcement of Judgments: A Promising "Follow-Suit" Model?*, 16 *CHINA J. INT'L. L.* 515, 523 (2017); *see also* Elbalti, *supra* note 1 at 194–95.

18. *Sascha Rudolf Seehaus*, E Wuhan Zhong Minshang Wai Chuzi No. 16 (2012).

19. *See infra* section III(3).

20. *See infra* section III(4).

21. *Giant Light Metal Tech. (Kunshan) Co., Ltd. v Aksa Far East Pte Ltd.*, [2014] SGHC 16 (Sing. High Ct. 2014).

(Suzhou Court) on December 16, 2010 in a contractual dispute brought by Giant Light Metal Technology (Kunshan) Co., Ltd. (Giant Light), a Chinese company, against Aksa Far East Pte Ltd. (Aksa), a Singaporean company. In 2003, Giant Light and Aksa concluded a sales contract, whereby the former agreed to purchase two new generator sets from the latter.²² After Giant Light received the generator sets, the company complained about the quality of the sets. Consequently, Giant Light brought a civil action in China against Aksa and its guarantor for breach of contract in 2005 (2005 Proceedings). Aksa defended the underlying case at the Suzhou Court and sent its representative to attend court hearings. Nevertheless, the 2005 Proceedings were discontinued in 2007 because the parties agreed to initiate efforts aimed at an out-of-court settlement. Ultimately, no settlement was reached and Giant Light recommenced proceedings at Suzhou Court in 2008 (2008 Proceedings). The relevant court documents were served on Aksa in Singapore via diplomatic channels. Aksa did not dispute service but chose to ignore the 2008 Proceedings. Suzhou Court rendered a favorable monetary judgment to Giant Light in 2010. The judgment was served on Aksa in Singapore in March 2011 through diplomatic channels and because Aksa did not appeal the judgment in China, the judgment became legally effective. Because of Aksa's non-compliance with the Chinese judgment, Giant Light commenced an action in Singapore to recognize and enforce the Chinese judgment at Singaporean common law. Singaporean common law does not require reciprocity as a precondition for the recognition and enforcement of a foreign judgment. The High Court of Singapore referred to Rules 42 and 43 of *Dicey, Morris, and Collins on The Conflict of Laws*, which provide that a foreign judgment may be recognized and enforced in Singapore if: (i) the judgment rendering court has international jurisdiction according to English private international law; (ii) the judgment is for a debt or a definite sum of money; and (iii) the judgment is final and conclusive on the merits.²³

Aksa did not dispute that the Chinese judgment was final and conclusive on its merits.²⁴ According to the High Court of Singapore, the key issue for JRE was whether the Suzhou Court had

22. The sales contract was guaranteed by Shanghai Yates Genset Co., Ltd., a Chinese company, for Aksa. *Id.*

23. DICEY, MORRIS & COLLINS ON THE CONFLICT OF LAWS (Sweet & Maxwell ed., 2012), vol. 1, ¶¶ 14R-020, 14R-054.

24. Giant Light Metal Tech. (Kunshan) Co., Ltd. v. Aksa Far East Pte Ltd.

international jurisdiction over Aksa under Singapore's private international law. The High Court of Singapore held that the 2005 and 2008 Proceedings should be seen as one unit of litigation or a contiguous whole because both proceedings involved the same plaintiff, defendant, claim, and court, and they were separated "only because of a technicality."²⁵ Because Aksa voluntarily submitted to the 2005 Proceedings, its submission to the 2008 Proceedings was imputed.²⁶ Therefore, the Suzhou Court had international jurisdiction over Aksa under Singaporean private international law.²⁷ The High Court of Singapore also held that the Chinese judgment was for a definite sum of money, although it entailed other obligations.²⁸ Ultimately, the Court recognized and enforced the Chinese judgment.

Two years after the High Court of Singapore recognized and enforced the Chinese judgment, on December 9, 2016, the Intermediate People's Court of Nanjing City in Jiangsu Province (Nanjing Court) reciprocated, recognizing and enforcing a commercial monetary judgment issued by the High Court of Singapore.²⁹ This case was *Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export Co., Ltd.* Kolmar Group AG (Kolmar) is a company registered in Switzerland while the Jiangsu Textile Industry (Group) Import & Export Co., Ltd. (SUTEX Group) is a Chinese company. The parties experienced a dispute arising out of a sales contract and reached a settlement, which SUTEX Group subsequently 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.³⁰ SUTEX Group argued that because there is 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

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Kolmar Grp. AG v. Jiangsu Textile Industry (Group) Import & Export Co, Su-01 Xie Wai Ren No. 3 Civil Judgment (Jiangsu Intern. People's Ct. 2016).

30. *Id.*

served but did not appear in the Singaporean proceedings.³¹ SUTEX Group accepted 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.³² Eventually, the Nanjing Court held that although there is no effective JRE treaty between China and Singapore, the Singaporean judgment should be recognized and enforced in China on the basis of reciprocity because: (i) the High Court of Singapore has recognized and enforced a Chinese judgment and (ii) 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.³³ *Kolmar* has garnered very positive reception in China and it was published by the SPC as a case example in the Second Series of Typical Cases concerning OBOR on May 15, 2017.³⁴

B. *China-United States*

On July 22, 2009, in *Hubei Gezhouba Sanlian Industrial Co., Ltd. et al v. Robinson Helicopter Company, Inc.*, the U.S. District Court for the Central District of California recognized and enforced a Chinese monetary judgment.³⁵ Hubei Gezhouba Sanlian Industrial Co., Ltd. (Sanlian) filed the underlying action in 1995 in the Los Angeles Superior Court against Robinson Helicopter Company (RHC). Specifically, Sanlian accused RHC of negligence and breach of implied warranty because a helicopter designed by RHC had crashed into the Yangtze River in China in 1994. RHC successfully persuaded the Los Angeles Superior Court to stay the action on the ground of *forum non conveniens*. RHC agreed to submit to the jurisdiction of the appropriate court in China, toll the statute of limitations, and abide by any final judgment rendered in China.

Consequently, in 2001, Sanlian brought a case against RHC in the Higher People's Court of Hubei Province in China (Chinese

31. *Id.*

32. *Id.*

33. *Id.*

34. Zhang Ni, *The Supreme Law Issued the Second Batch of Typical Cases Involving the Construction of the "Belt and Road"*, CHINA NEWS NETWORK (May 15, 2017, 5:09 PM) <http://www.chinanews.com/gn/2017/05-15/8224293.shtml> [<https://perma.cc/QBA2-552G>].

35. *Hubei Gezhouba Sanlian Industrial Co., Ltd., et. al. v. Robinson Helicopter Co. Inc.*, 2009 WL 2190187 (C.D. Cal. July 22, 2009).

Action).³⁶ RHC was properly served for the Chinese Action under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention). However, RHC chose to ignore the Chinese Action. In 2004, the Chinese court issued a monetary judgment in favor of Sanlian. RHC was properly served with the Chinese judgment and it filed no appeal, at which point the Chinese judgment became final. In 2006, Sanlian sought enforcement of the Chinese judgment at the U.S. District Court for the Central District of California pursuant to the Uniform Foreign Money-Judgments Recognition Act (UFMJRA).³⁷ The UFMJRA does not impose reciprocity as a precondition to JRE. The District Court held that the Chinese judgment was final, conclusive, and enforceable under Chinese law, and it granted Sanlian monetary damages against RHC. The Court also held that service was proper under U.S. law and the Hague Service Convention. None of the stated exceptions to JRE in the UFMJRA were applicable in this case. Therefore, the Court concluded that the Chinese judgment could be recognized and enforced in the United States.

Hubei Gezhouba Sanlian attracted the attention of private international law scholars around the world.³⁸ Some commentators argued that it is a unique case without much significance because RHC had agreed to submit to the jurisdiction of the Chinese court in the *forum non conveniens* proceedings, and is thereby not surprising for the U.S. court to eventually have decided to recognize and enforce the Chinese judgment.³⁹ However, this case raises more important questions about whether *Hubei Gezhouba Sanlian* satisfies the requirement of reciprocity under the CPL and whether Chi-

36. Hubei Gezhouba Sanlian Indus. Co., Ltd., et al. v. Robinson Helicopter Co., Inc., Yue Min Shen Zi [2001] No. 1.

37. Effective January 1, 2008, California's statute following the Uniform Foreign Money-Judgments Recognition Act (UFMJRA), Section 1713 *et seq.*, was repealed and replaced with a new version, the Uniform Foreign-Country Money-Judgments Recognition Act, Section 1724 *et seq.* Thus, the former UFMJRA applies to all actions commenced prior to January 1, 2008.

38. See Trey Childress, *Chinese Judgments Enforced in the United States*, CONFLICTOFLAWS.NET (Aug. 24, 2009), <http://conflictoflaws.net/2009/chinese-judgment-enforced-in-the-united-states/> [<https://perma.cc/X2XY-ASTW>].

39. See Michael Traynor, *The Corruption Defense to Recognition of a Foreign Judgment: A Cautionary Note*, 34 UNIV. PA. J. INT'L. LAW 755, 759 (2012). However, *Hubei Gezhouba Sanlian* is not the only case in which a court in the United States enforced a Chinese monetary judgment. In *Qiu v. Zhang*, Case No. 2:17CV05446 (C.D. Cal. 2017), a monetary judgment issued by the Suzhou Industrial Park People's Court was recognized and enforced in the United States.

nese courts could consequently recognize and enforce U.S. judgments.⁴⁰

Eight years after *Hubei Gezhouba Sanlian*, a Chinese court, for the first time in its history, recognized and enforced a U.S. commercial monetary judgment based upon reciprocity. This case was *Liu Li v. Tao Li and Tong Wu*,⁴¹ decided by the Intermediate People's Court of Wuhan City (Wuhan Court) on June 30, 2017.

In this case, Liu Li (Liu) concluded a Share Transfer Agreement with Tao Li (Tao) on September 22, 2013 in the United States, 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, 2013.⁴² Tao is the wife of Tong Wu (Tong). Liu produced evidence to show that USD 125,000 was transferred to Tong's bank account between September 14 and October 16, 2013.⁴³ After receiving the money, Tao and Tong disappeared. Liu reported this to the local police in the United States to no avail. On July 17, 2014, Liu brought an action against Tao and Tong at the Los Angeles Superior Court, alleging that Tao and Tong had fabricated the Share Transfer Agreement and defrauded him.⁴⁴

On October 7, 2014, U.S. Rolan Service Company issued an investigation report containing Tao and Tong's personal information and contact addresses.⁴⁵ Liu authorized his U.S. lawyer to serve Tao and Tong relevant litigation documents by post according to the investigation report, but service was unsuccessful. On January 8, 2015, Judge William D. Stewart of the Los Angeles Superior Court ordered the subpoena and notices of this case be published as public announcements in the *San Gabriel Valley Tribune*.⁴⁶ The announcements were published four times, on January 15, 22, 29, and February 5, respectively. On July 24, 2015, Judge Stewart issued a default judgment (No. EC062608), holding that Tao and Tong had been properly summoned. They did not appear in the court, so default judgment was appropriately rendered. Judge Stewart ordered Tao and Tong to return to Liu USD 125,000 and pre-judgment interest of USD 20,818 (calculated from September

40. Wenliang, *supra* note 3, at 171–72.

41. *Liu Li v. Tao Li et al.*, Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026 (Hubei Interm. People's Ct. 2015).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

25, 2013 to May 25, 2015 at the daily interest rate USD 34.24), in addition to court fees in the amount of USD 1,674. The total judgment amounted to USD 147,492.⁴⁷

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.⁴⁸ Tao and Tong argued: (i) the U.S. judgment was not enforceable in China because they did not receive due notice of the U.S. court proceedings; and (ii) the Share Transfer Agreement concluded between Liu and Tao was still real, legal and effective, so Tao and Tong should not return the money to Liu.⁴⁹

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 Civil Procedure Law. Because the United States 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 provided a verified authentic copy of the U.S. judgment and a Chinese translation, in order to meet the formality requirement of JRE. Liu relied on the judgment of *Hubei Gezhouba Sanlian*. Therefore, reciprocity was established between the two countries. Moreover, the U.S. judgment addressed the Share Transfer Agreement between Liu, Tao, and Tong. 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 U.S. judgment explicitly indicated that it was a default judgment, and Liu had submitted evidence such as the investigation report, the U.S. court order of service by public announcements, and newspaper announcements themselves. Therefore, the Wuhan Court held that the Los Angeles Superior Court had properly summoned Tao and Tong in the United States. Tao and Tong's undue service argument failed.

The Wuhan Court also rejected Tao and Tong's second argument. The Court indicated that, in the JRE proceedings, it would not consider the merits of the U.S. judgment. Therefore, the U.S. judgment was recognized and enforced according to Article 282 of the CPL.

47. *Id.*

48. *Id.*

49. *Id.*

C. *Significance of Kolmar and Liu Li*

Chinese domestic law for recognition and enforcement of foreign judgments comprises of Articles 280 to 282 of the CPL and Chapter 22 of the SPC Judicial Interpretation of the CPL. These laws provide that recognition and enforcement of foreign judgments should be conducted according to treaties ratified by China or the principle of reciprocity.⁵⁰ For judgments beyond the scope of treaties, reciprocity is the only available legal basis.⁵¹

Chinese courts often cite a lack of reciprocity in denying applications for the recognition and enforcement of foreign judgments.⁵² A typical example is *Japanese Citizen Gomi Akira Applied for Chinese Courts to Recognize and Enforce a Japanese Judgment* (Japanese Citizen Gomi Akira Reply).⁵³ In 1994, Gomi Akira, a Japanese citizen, applied for Dalian Intermediate Court (Dalian Court) regarding the recognition and enforcement of a Japanese money judgment concerning a loan dispute with a Japanese-Chinese joint venture.⁵⁴ The Dalian Court held that neither a bilateral judgment recognition and enforcement treaty nor reciprocity existed between mainland China and Japan; consequently, the Japanese judgment could not be recognized and enforced.⁵⁵

Although Chinese judgments have been recognized and enforced in foreign countries by reciprocity⁵⁶ historically, Chinese courts have frequently rejected JRE for lack of reciprocity.⁵⁷ The

50. CPL, *supra* note 2, arts. 280–82.

51. *Id.* art. 281.

52. TANG ET AL., *supra* note 3, at 164.

53. 申请中国法院承认和执行日本法院判决案 [Reply of the Supreme People's Court on whether the People's Courts of the PRC should Recognize and Enforce Japanese Judgments Concerning Claims and Obligations], [1995] Min Tazi No. 17, <https://www.chinacourt.org/article/detail/2002/11/id/17936.shtml> [<https://perma.cc/2EUB-RUPD>]. See Watanabe, *supra* note 2, at 287–304.

54. *Id.*

55. *Id.*

56. Outside of Singapore and the United States, courts in South Korea, Israel, New Zealand, Germany and the United Kingdom have recognized or enforced Chinese commercial judgments. See Huafang Zhu, *Most Recent Case: Chinese Courts Unprecedented Recognized and Enforced a Judgment Rendered in Singapore*, CHUAN SONG (Jan. 19, 2017), <http://chuansong.me/n/1498096641835> (South Korean case) [<https://perma.cc/NV3K-MMFU>]; Am. Soc'y of Int'l Law, *Commentaries on Private International Law*, PILIG NEWSLETTER, Vol. 2, Issue 2, Mar. 2016, at 9–10, <https://www.asil.org/sites/default/files/documents/Commentaries%20on%20Private%20International%20Law%2C%20Vol%202%2C%20Issue%202%2C%20March%202016.pdf> [<https://perma.cc/L8PL-7BBK>]; *Yang Chen v. Jinzhu Lin*, [2016] NZCA 113 (New Zealand case); see *infra* Section III(3) (German and British cases).

57. JIE HUANG, INTERREGIONAL RECOGNITION AND ENFORCEMENT OF CIVIL AND COMMERCIAL JUDGMENTS 59 (2014).

recent unprecedented turnaround of Chinese courts should be understood in the context of China's grand OBOR initiative. The Vision and Action Plan on the OBOR Initiative was unveiled to the world in March 2015.⁵⁸ The OBOR initiative is comprised of the "Silk Road Economic Belt"⁵⁹ and the "21st Century Maritime Silk Road."⁶⁰ The Initiative covers sixty-four countries and aims to enhance connections between the Asian, European, and African continents as well as their adjacent seas to promote the free flow of economic inputs.⁶¹ Ultimately, OBOR initiative is intended to make China a global hub, connecting vibrant East Asian and developed European economies.⁶² The Initiative has become the focal point of China's national strategy.⁶³ In order to facilitate the implementation of the OBOR initiative, SPC, in July 2015, issued Several Opinions to Provide Judicial Service and Safeguards for OBOR initiative (SPC Several Opinions). Article 6 of the SPC Several Opinions indicates that Chinese courts should enhance international judicial assistance and promote JRE with other countries alongside the OBOR. Singapore is a constituent economy of the OBOR initiative. Although China has never explicitly included the United States in the Initiative, *Liu Li* benefits from and reflects this pro-JRE momentum.

Unlike common law countries, China has no formal system of judicial precedent. However, the SPC has established a guiding case system to which the lower courts may refer in adjudicating

58. Vision and Actions on Jointly Building Silk Road Economic Belt and 21st Century Maritime Silk Road (promulgated by the Nat'l Dev. & Reform Comm'n, Ministry of Foreign Aff., and Ministry of Commerce of China with St. Council authorization, Mar. 28, 2015), <http://www.mofcom.gov.cn/article/i/dxfw/jlyd/2d601/20160101243342.shtml> [<https://perma.cc/93LA-2F87>].

59. Chinese President Xi Jinping proposed the Silk Road Economic Belt Initiative during a visit to Kazakhstan in September 2013. *President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries*, MINISTRY OF FOREIGN AFF. OF THE PEOPLE'S REPUBLIC OF CHINA (Sept. 7, 2013), https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml [<https://perma.cc/EKF2-2T44>].

60. In October 2013, President Xi Jinping proposed the 21st Century Marine Silk Road Initiative in an address to the Indonesian Parliament, delivered while President Xi attended an informal meeting of APEC leaders. *Chronology of China's Belt and Road Initiative*, PEOPLE ON (Aug. 20, 2018), <http://world.people.cn/n1/2018/0820/c1002-30237407.html> [<https://perma.cc/WU2F-DVNQ>].

61. See NAT'L DEV. & REFORM COMM'N ET AL., VISION AND ACTIONS ON JOINTLY BUILDING SILK ROAD ECONOMIC BELT AND 21ST CENTURY MARITIME SILK ROAD 1 (Tian Shaohui ed., 2015).

62. See *id.*

63. The OBOR initiative was written into the decision of the 3rd plenary session of CPC's 18th Central Committee and became a national strategy and priority since 2014.

their own cases.⁶⁴ This system can be considered a quasi-case law regime.⁶⁵ The SPC has strongly endorsed *Kolmar* and the Chinese media has favorably reported on the case as a positive breakthrough in JRE to facilitate the OBOR initiative.⁶⁶ Therefore, *Kolmar* and *Liu Li Wu* may encourage other Chinese courts to recognize and enforce judgments issued in Singapore and the United States.

Chinese courts and legislators have never defined reciprocity. Scholars generally believe *de facto* reciprocity, namely “reciprocity in practice,” is China’s official view of reciprocity.⁶⁷ This view is very restrictive because it limits reciprocity to when a foreign court has recognized and enforced a Chinese judgment in practice.⁶⁸ Both *Kolmar* and *Liu Li* were based upon *de facto* JRE reciprocity, as demonstrated by the following table.

TABLE 1: CHINA-SINGAPORE *DE FACTO* RECIPROCITY

Case	Judgment Rendering Court	Cause of Action at the Judgment Rendering Court	JRE Court	Applicable Law in the JRE Proceedings
<i>Giant Light Metal Technology (Kunshan) Co., Ltd. v. Aksa Far East Pte Ltd.</i>	Intermediate People’s Court, Suzhou City, Jiangsu Province, China, issued in 2010	Contract	High Court of Singapore, Case No. [2014] SGHC 16, issued in 2014	Common Law (no requirement of reciprocity)
<i>Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export Co., Ltd.</i>	Higher Court of Singapore, Case No. 013 Civil Judgment, issued in 2015	Contract	Intermediate People’s Court, Nanjing City, Jiangsu Province China, Case No. (2016) Su-01 Xie Wai Ren 3 Civil Judgment, issued in 2016	Article 282 of the CPL

64. Provisions of the Supreme People’s Court Concerning Work on Case Guidance (promulgated by the Adj. Comm. of the Sup. People’s Ct., Nov. 26, 2010, effective Nov. 26, 2010), art. 7.

65. Qingkun Xu, *The Codification of Conflicts Law in China: A Long Way to Go*, 65 AM. J. COMP. LAW 919, 962 (2017).

66. See, e.g., *Nanjing Intermediate People’s Court Case Income CCTV Special Report “The Power of Fairness and Justice”* (南京中院案例收入央视特别报道《公平正义的力量》), TOUTIAO (July 18, 2017, 8:47 AM), <http://www.toutiao.com/i6443906375398457870/> [<https://perma.cc/TP3N-GLLY>].

67. Tao Du, *The Principle of Reciprocity and Recognition and Enforcement of Foreign Judgments*, 1 GLOBAL L. REV. 110, 116–18 (2007).

68. *Id.*

TABLE 2: CHINA-U.S. *DE FACTO* RECIPROCITY

Case	Judgment Rendering Court	Cause of Action at the Judgment Rendering Court	JRE Court	Applicable Law in the JRE Proceedings
<i>Hubei Gezhouba Sanlian Industrial Co., Ltd. et. al. v. Robinson Helicopter Co., Inc.</i>	Higher People's Court of Hubei Province China, Case No. (2001) E-Min-Si-Chu-1, issued in 2004	Product liability, tort	U.S. District Court Central District of California, Case 2:06-cv-01798-FMC-SS, issued in 2009	UFMJRA (no requirement of reciprocity)
<i>Liu Li v. Tao Li and Dong Wu</i>	Los Angeles Superior Court in California, issued in 2015	Contract	Intermediate People's Court, Wuhan City, Hubei Province China, issued in 2017	Article 282 of the CPL

The above tables show that *Liu Li* goes beyond *Kolmar* in two aspects. In the *de facto* JRE reciprocity between China and Singapore, the two judgments were both contract disputes and the relevant court was the High Court of Singapore. By contrast, in the *de facto* JRE reciprocity between China and the United States, the two judgments concerned different doctrinal subjects—torts versus contracts—and they were issued by courts of different levels—federal versus state. This development was significant because it clarified how Chinese courts should interpret *de facto* reciprocity. Even after *Kolmar*, it was unclear if Chinese courts required the same cause of action and how *de facto* reciprocity applied if the requested foreign judgment was rendered by a country with a federal structure. *Liu Li* demonstrated that *de facto* reciprocity did not require the same cause of action and that Chinese courts need not distinguish between federal and state courts in JRE proceedings.

In both *Kolmar* and *Liu Li*, the Chinese courts were in the same province (see Tables 1 and 2). This is because it is prudent for Chinese courts to “test the waters” with these pioneering cases. The question is whether other Chinese courts would recognize and enforce Singaporean or U.S. judgments in the future.⁶⁹ This is

69. *Hubei Gezhouba Sanlian* has encouraged other U.S. judgment creditors to apply to Chinese courts to recognize and enforce U.S. money judgments. For example, in *Matthew Yangli v. Hukan Lei*, Matthew Yangli, a U.S. citizen, applied to the Intermediate People's Court of Xinyan City Henan Province to recognize and enforce a U.S. money judgment issued by the California Superior Court against Hukan Lei, a Chinese citizen. Matthew

possible because China is a unified country with a centralized judicial system. If courts in the Hubei province were to recognize and enforce a U.S. judgment, no law would explicitly prohibit courts in the nearby Hunan province from doing so as well. Moreover, both *Kolmar* and *Liu Li* held that reciprocity has been established between *two countries* rather than between *Singapore and the United States with certain Chinese provinces*. Especially considering the pro-JRE momentum under OBOR, the SPC will likely not impose internal barriers within China's court system to prevent cross-province JRE.

However, *Kolmar* and *Liu Li* did not resolve prospective challenges to recognition and enforcement of foreign judgments based upon reciprocity in China. First, they do not reconcile the relationship between JRE based on treaties and JRE based on reciprocity. The CPL explicitly indicates that JRE should be conducted according to treaties to which China is a party; if no treaty exists, JRE should be carried out according to reciprocity.⁷⁰ However, the current rules of reciprocity in the CPL are too relaxed in that they provide fewer defenses to JRE after reciprocity has been established than China's JRE treaties.⁷¹ Consequently, JRE according to reciprocity is easier than that under treaties, but judgment creditors cannot opt out of treaties. It is important to balance defenses to JRE under reciprocity and according to treaties, especially considering that China has ratified thirty-two JRE treaties,⁷² concluded the Hague Choice of Court

alleged that in 2007 he lent Hukan USD 179,174.35, but Hukan did not return the money to him on time. Accordingly, in 2010, Matthew brought an action against Hukan at the California Superior Court for repayment and Hukan counter-claimed that Matthew should return him USD 590,000. In 2014, the California Superior Court rendered a judgment in Matthew's favor, ordering Hukan to return Matthew USD 129,174.35 plus 10% in annual interest. The court dismissed all of Hukan's counterclaims. Hukan failed to satisfy the U.S. judgment, prompting Matthew to request the Intermediate People's Court of Xinyan City to recognize and enforce the U.S. judgment based on reciprocity of *Hubei Gezhouba Sanlian*. On August 7, 2017, the Intermediate People's Court of Xinyan City *ex officio* decided to move the venue to the Intermediate People's Court of Luohe City Henan Province, because it does not have jurisdiction to hear foreign-related cases according to the Notice to Adjust Jurisdiction of Foreign-related Cases in Henan Province issued by the Higher People's Court of Henan Province. It remains to be seen how the Intermediate People's Court of Luohe City will decide the case. Matthew Yangli v. Hukan Lei, Civil Decision, [2016] Yu 15 Xie Wai Ren No. 3. (Henan Inter. People's Ct.).

70. CPL, *supra* note 2, art. 260.

71. *See infra* Table 3.

72. *See* TANG ET AL., *supra* note 3, at 150–51.

Convention,⁷³ and actively participated in the Hague Judgments Project.⁷⁴

Second, OBOR requires that China move from *de facto* reciprocity to *de jure* reciprocity. The guiding questions for such a transition are: How would Chinese courts determine *de jure* reciprocity? What types of judgments can be recognized and enforced according to reciprocity? Which level of courts should determine that reciprocity exists? Should the SPC establish a reporting system similar to the one for non-recognizing-and-enforcing foreign arbitral awards under the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)?⁷⁵

The third challenge is a set of practical issues with JRE according to reciprocity with which Chinese courts may be confronted. For example, what are defenses to JRE once reciprocity is established? Further, how should Chinese courts examine the jurisdiction and service of the judgment-rendering court?

III. PROSPECTIVE CHALLENGES AND PROPOSED SOLUTIONS

A. *Reconciling JRE under a Treaty and JRE According to Reciprocity*

Although Article 282 of the CPL allows JRE according to treaties or the principle of reciprocity, Chinese scholars generally hold that where no bilateral or multilateral treaties exist, JRE cannot be conducted under the principle of reciprocity.⁷⁶ This reflects the so-called “treaty first” principle, which holds that treaties concluded by China prevail over conflicting domestic laws, with the exception of clauses to which China has made reservations.⁷⁷ However, this principle will probably be severely challenged when China loosens the requirement of *de facto* reciprocity. This is because under the current Chinese law, a judgment debtor has many fewer defenses to JRE under the principle of reciprocity compared with JRE treaties that China has concluded.

73. See Hague Convention on Choice of Court Agreements, *supra* note 11, art. 3.

74. For Hague Judgments Project, see HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, CONCLUSIONS AND RECOMMENDATIONS ADOPTED BY THE COUNCIL § 6 (Council on Gen. Affairs & Policy 2014).

75. 最高人民法院关于人民法院处理与涉外仲裁及外国仲裁事项有关问题的通知 [Notice of the Supreme People’s Court’s Handling of Several Issues Concerning the Foreign-related Arbitration and Foreign Awards] (promulgated by the Sup. People’s Ct., Aug. 29, 1995, effective Aug. 29, 1995).

76. Yujun Guo, *Country Report the People’s Republic of China*, in RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN ASIA 55 (Adeline Chong ed., 2017).

77. CPL, *supra* note 2, art. 260.

TABLE 3: COMPARISON OF DEFENSES TO JRE UNDER RECIPROCITY AND CHINESE TREATIES

Defenses to JRE	JRE Based on Reciprocity	Bilateral JRE Treaties Concluded by China	Multilateral JRE Treaties Concluded by China: Hague Choice of Court Convention	Multilateral JRE Treaties Concluded by China: Oil Pollution Convention
No Jurisdiction	Not explicitly provided.	1. The jurisdiction of the judgment-rendering court shall not impinge on the exclusive jurisdiction of Chinese courts. ⁷⁸ 2. Eleven JRE treaties provide indirect jurisdiction rules. ⁷⁹ 3. Six JRE treaties provide that, if according to the law of the JRE state, the judgment-rendering court has no jurisdiction, then JRE shall be rejected. ⁸⁰	A valid choice of court agreement. ⁸¹	Where an incident has caused pollution damage in the territorial sea of one or more contracting states, or preventive measures have been taken to prevent or minimize pollution damage, action for compensation may only be brought in the courts of any such contracting state(s). ⁸²

78. See, e.g., Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Ukr., art. 21.2, Jan. 19, 1994; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Uzb., art. 21.2, Aug. 29, 1998.

79. See, e.g., Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Laos, art. 22, Dec. 15, 2001; Treaty for Judicial Assistance in Civil and Commercial Affairs, China-Spain, art. 21, Jan. 1, 1994; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Viet., art. 18, Dec. 25, 1999; Agreement Between the People's Republic of China and the Arab Republic of Egypt on Civil, Commercial and Criminal Judicial Assistance, China-Egypt, art. 22, May 31, 1995. These eleven JRE treaties comprise 34% of effective JRE treaties concluded by China. The list of treaties is on file with the author.

80. See, e.g., Treaty for Judicial Assistance in Civil, Commercial and Criminal Affairs, China-Turk., art. 23.2, Oct. 26, 1995; Treaty for Judicial Assistance in Civil Affairs, China-Bulg., art. 21, June 30, 1995; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Cuba, art. 25.2, Mar. 26, 1994.

81. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 3.

82. International Convention on Civil Liability for Oil Pollution Damage art. 2, *approved* Nov. 29, 1969 (entered into force on June 19, 1975), 26 U.S.T. 765, 973 U.N.T.S. 3 [hereinafter Oil Pollution Convention]. This Convention is not applicable to general commercial disputes.

Undue Service	For default judgment, the judgment creditor needs to produce documents in response to the legal summons from the foreign court. ⁸³	In case of default judgment, the defendant, being the judgment debtor, was not properly summoned according to the law of the judgment-rendering court. ⁸⁴	1. The defendant was not notified of the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defense; or 2. Service was conducted in a manner incompatible with fundamental principles concerning service of documents of the JRE state. ⁸⁵	The defendant was not given reasonable notice or a fair opportunity to present his case. ⁸⁶
Public Policy Exception	Yes ⁸⁷	Yes ⁸⁸	Yes ⁸⁹	No ⁹⁰
Review of Merits	No review of merits ⁹¹	No review of merits ⁹²	No review of merits ⁹³	No review of merits ⁹⁴

83. SPC Judicial Interpretation on CPL, *supra* note 5, art. 543.

84. *See, e.g.*, Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Kyrg., art. 20.3, Sept. 26, 1997.

85. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 9(c).

86. *See* Oil Pollution Convention, *supra* note 82, arts. 8–10.

87. CPL, *supra* note 2, art. 284.

88. *See, e.g.*, Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Braz., art. 7, Nov. 30, 2009.

89. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 9(e).

90. *See* Oil Pollution Convention, *supra* note 82, arts. 8–10.

91. Liu Li v. Tao Li et al., Yue Wuhan Zhong Min Shang Wai Chu Zi No. 00026 (Hubei Interm. People's Ct. 2015).

92. *See* Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Lith., art. 19.2, Jan. 19, 2002 [hereinafter China-Lith. Treaty]; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Mong., art. 19.2, Oct. 29, 1990.

93. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 8.

94. *See* Oil Pollution Convention, *supra* note 82.

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Other Defenses	The JRE state has rendered an effective judgment between the same parties on the same cause of action. ⁹⁵	<p>1. The defendant had no litigation capacity and did not get a proper legal agent in the judgment-rendering court;⁹⁶</p> <p>2. The defendant has no right to self-defense in the judgment-rendering proceedings;⁹⁷</p> <p>3. A court in the JRE state has rendered an effective judgment or is hearing a case between the same parties on the same cause of action;⁹⁸ or</p> <p>4. A court in the JRE state has recognized a judgment issued by another state between the same parties on the same cause of action, or has started the JRE proceeding for such judgment.⁹⁹</p>	<p>1. Procedural fraud;</p> <p>2. The judgment is inconsistent with a judgment given in the JRE state in a dispute between the same parties; or</p> <p>3. The judgment is inconsistent with an earlier judgment given in another state between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for recognition in the requested state.¹⁰⁰</p>	Fraud ¹⁰¹
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Table 3 demonstrates that JRE based on reciprocity is more pro-creditor than JRE under the treaties, especially with regard to the defenses of no jurisdiction and undue service. It is hard to justify the “treaty first” principle when JRE under reciprocity is easier. For example, creditors of judgments issued in the U.S. and

95. SPC Judicial Interpretation on CPL, *supra* note 5, art. 533.

96. *See* Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Greece, art. 23.3, June 26, 1996 [hereinafter China-Greece Treaty]; Treaty for Judicial Assistance in Civil and Commercial Affairs, China-Morocco, art. 22.3, Nov. 26, 1999.

97. *See* China-Greece Treaty, *supra* note 96.

98. *See* Treaty for Judicial Assistance in Civil and Criminal Affairs, China-N. Kor., art. 21.4, Jan. 21, 2006; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Belarus, art. 21.4, Nov. 29, 1994.

99. *See* China-Lith. Treaty, *supra* note 92, art. 18.4; Treaty for Judicial Assistance in Civil and Criminal Affairs, China-Rom., art. 22.4, Jan. 22, 1993.

100. Hague Convention on Choice of Court Agreements, *supra* note 11, arts. 9(d), (f), (g).

101. *See* Oil Pollution Convention, *supra* note 82.

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Singaporean courts may possibly want to opt into JRE under the principle of reciprocity rather than the Hague Choice of Court Convention even if all three countries become member states and parties to a choice of court agreement that has been concluded. This is because, as Table 3 shows, there are fewer defenses to JRE according to reciprocity than the Hague Choice of Court Convention. China should abandon the “treaty first” principle in JRE and allow judgment creditors to opt out of treaties if opting into JRE under the principle of reciprocity provides more favorable conditions. This is essentially an issue the relationship between domestic law and the treaties that China has ratified. A comparable situation can be found in the World Trade Organization (WTO) law and investment law. To a certain extent, Chinese domestic law has gone beyond its WTO commitments and offer better protections to foreign traders.¹⁰² China has never adopted the “treaty first” in practice and refused to apply more favorable domestic laws to foreign traders.¹⁰³ In the field of international investment law, a large portion of Chinese bilateral investment treaties (BITs) were concluded before 2000s.¹⁰⁴ The current Chinese domestic laws have led to a broader scope of investment, better treatment of foreign investors, and greater investment compared with old treaties.¹⁰⁵ The Chinese government has never refused to apply these domestic laws to foreign investors from the countries that concluded old BITs with China.¹⁰⁶ The same logic should apply to JRE—if Chinese domestic law provides more favorable conditions to JRE than treaties that China has concluded, the parties should be allowed to opt out of treaties. It is unreasonable to require a judgment creditor follow a restrictive treaty when domestic law provides more liberal JRE conditions.

The current JRE system might be justified by Article 142.2 of the General Principles of the Chinese Civil Law, which states that international treaties that China has ratified prevail over

102. Minyou Yu & Heng Liu, *China's Ten Years in the WTO: Its Performance and New Challenges*, 7 FRONTIERS L. CHINA 329, 329–76 (2012).

103. *Id.*

104. Jie (Jeanne) Huang, *Silk Road Economic Belt: Can Old BITs Fulfill China's New Initiative?*, 50 J. WORLD TRADE 734, 737–39 (2016).

105. Guiguo Wang, *Essay in Honor of W. Michael Reisman: Trade, Investment and Dispute Settlement: China's Practice in International Investment Law: From Participation to Leadership in the World Economy*, 34 YALE J. INT'L. L. 575, 576–84 (2009).

106. Martin Endicott, *China and International Investment Law: An Evolving Relationship*, in CHINA AND INTERNATIONAL INVESTMENT LAW: TWENTY YEARS OF ICSID MEMBERSHIP 221–27 (Shanwen Hua & Jinyuan Su ed., 2014).

conflicting Chinese domestic laws, except where China has specifically entered a reservation under the relevant treaty.¹⁰⁷ However, the *Min Fa Zong Ze* (Civil Law General Provisions), enacted in 2017, removes Article 142.2.¹⁰⁸ Although the Civil Law General Provisions will not immediately replace the General Principle of Civil Law, it will do so in the future.¹⁰⁹ This means China will deviate from the “treaty first” practice.¹¹⁰ Therefore, the future JRE system should move in this direction.

Moreover, China should improve the JRE according to reciprocity by, at a minimum, adding indirect jurisdiction rules and clarifying due service requirements. This does not necessarily mean that defenses to JRE according to reciprocity must be more than those under a treaty. It actually suggests that the current CPL is incomplete regarding defenses against JRE according to reciprocity, which will be further discussed in Section III(3).

B. *Transitioning from De Facto Reciprocity to De Jure Reciprocity*

Compared with *de facto* reciprocity, *de jure* reciprocity reflects a more liberal view of reciprocity.¹¹¹ If a Chinese judgment might theoretically be recognized and enforced according to the laws of another country, *de jure* reciprocity can be established between China and that country.¹¹² Indeed, many scholars argue that Chinese courts and legislators should abandon *de facto* reciprocity in favor of *de jure* reciprocity.¹¹³ The prominent Chinese Professor Haopei Li criticized *de facto* reciprocity for two reasons. First, *de facto* reciprocity essentially amounts to revenge on a judgment-rendering country which denies the recognition and enforcement of

107. General Principles of Civil Law of the People's Republic of China (adopted by the Sixth Nat'l People's Cong., Apr. 12, 1986, effective Jan. 1, 1987) (Gray & Zheng trans. 1989).

108. General Rules of the Civil Law of the People's Republic of China (adopted by the Twelfth Nat'l People's Cong., Mar. 15, 2017, effective Oct. 1, 2017).

109. *Explanation of the Draft of Civil Law General Provisions of China* (关于《中华人民共和国民法总则(草案)》的说明), NAT'L PEOPLE'S CONG., http://www.npc.gov.cn/npc/xinwen/2017-03/09/content_2013899.htm (last visited Feb. 18, 2018) [<https://perma.cc/DSU4-UJYU>].

110. For Chinese conflicts system post-civil law general provisions, see Jie Huang, *The Partially Modernized Chinese Conflicts System: Achievements and Challenges*, 13 J. PRIV. INT'L. L. 633, 650–53 (2017).

111. TANG ET AL., *supra* note 3, at 166.

112. *Id.*

113. E.g., Jiwen Wang, *Defects of the Reciprocal Principle in Recognition and Enforcement of Judgments*, 21 YUNNAN DAXUE XUEBAO FAXUE BAN [J. YUNNAN UNIV. L. ED.] 166, 169–70 (2008); Lin Ma, *Analysis of the First Case that German Court Recognized a Chinese Civil and Commercial Judgments*, 120 FA SHANG YANJIU [STUD. L. BUS.] 150, 154 (2007).

foreign judgments.¹¹⁴ However, the requested country exacts revenge not on the judgment-rendering country itself but on the private party.¹¹⁵ Therefore, *de facto* reciprocity harms an unintended target, especially when the successful party of a foreign judgment is a citizen of the country in which JRE is requested.¹¹⁶ Second, *de facto* reciprocity seldom encourages a judgment-rendering country to recognize and enforce a judgment.¹¹⁷ This is because denying the recognition and enforcement of foreign judgments does no serious harm to the judgment-rendering country.¹¹⁸ For example, as a response to the SPC Japanese Citizen Gomi Akira Reply, on November 25, 2015, the Tokyo High Court confirmed a decision rendered by the Tokyo District Court to refuse enforcement of a Chinese judgment.¹¹⁹ In reaching this decision, both Japanese courts referred to the fact that no foreign judgments had been recognized by Chinese courts in the absence of a treaty and *de facto* reciprocity.¹²⁰ Consequently, JRE between China and Japan has fallen subject to a vicious cycle of mutual refusal.¹²¹

In the context of OBOR, the SPC appears to be shifting from *de facto* to *de jure* reciprocity. Article 6 of the SPC Several Opinions indicates that, for states involved in OBOR that have promised to provide reciprocity but do not have a concluded treaty, China may offer judicial assistance—including JRE. The reason for this shift is that OBOR changes the political and economic contexts of JRE significantly. China actively seeks to promote and build support for the OBOR initiative from relevant states. *De jure* reciprocity is a more active JRE strategy than *de facto*; indeed, *de jure* reciprocity is in line with China's overall OBOR strategy and position, which contemplates China as carrying the largest economic weight and hegemonic responsibility among relevant states.¹²² Therefore,

114. Haopei Li, *General Introduction to International Civil Procedural Law* (Law Press, China, 1996) 140–41. Similar criticism can be found in Katherine R. Miller, Note, *Playground Politics: Assessing the Wisdom of Writing a Reciprocity Requirement into U.S. International Recognition and Enforcement Law*, 35 GEO. J. INT'L L. 239, 300 (2004).

115. Miller, *supra* note 114, at 300.

116. *Id.*

117. *Id.*

118. *Id.*

119. Tokyo Koutou Saibansho [Tokyo High Ct.] Nov. 25, 2015, Hei 27 (ne) no. 2461, <http://tendensha.co.jp/saiban/271125hanketsu.pdf> (Japan) [<https://perma.cc/APE6-C545>].

120. *Id.*

121. COMMENTARIES ON PRIVATE INTERNATIONAL LAW, (Am. Soc'y. of Int'l. L.), Spring 2016, at 9.

122. In the OBOR context, *de jure* reciprocity can promote trade and JRE is not only a matter of private justice but also a trade issue. See Vaughan Black, *Canada and the US Con-*

unsurprisingly, on June 8, 2017, the Nanning Statement issued by the second China-ASEAN Justice Forum indicated that, to assist in promoting OBOR, 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.¹²³ Moreover, with Chinese parties investing more heavily in states that have borders alongside OBOR, there is a risk of increased business costs resulting from a faulty JRE system.¹²⁴ It is in China's interests to realize mutual JRE. Most of the states that have borders alongside the OBOR initiative have no effective JRE treaties with China.¹²⁵ It would be infeasible and time-ineffective for China to conclude JRE treaties with the remaining states or to expect all those states to ratify the Hague Choice of Court Convention. Therefore, *de jure* reciprocity appears to be the most feasible solution for China to realize mutual JRE with states that have borders alongside the OBOR initiative.

Nonetheless, *de facto* reciprocity has been adopted by Chinese courts since the establishment of the People's Republic of China in 1949 and the SPC needs to carefully design a plan to achieve a smooth transition. In this process, it will be important to consider the judicial level at which determinations should be made regarding the existence of reciprocity between China and a foreign country.

Under current CPL, the judgment creditor must apply to the Intermediate People's Court where the debtor's assets are located.¹²⁶ The JRE decision rendered by this Intermediate People's Court will be legally effective once it is served upon the parties.¹²⁷ The decision of the Intermediate People's Court as to JRE is not subject to appeal.¹²⁸ The Chinese court system consists of

template Changes to Foreign-Judgment Enforcement, 3 J. PRIV. INT'L. L. 1, 27 (2007) (discussing in the Canadian context, JRE is more of simple private justice rather than trade issue).

123. Nanning Statement, The Second China-ASEAN Justices Forum, June 9, 2017, <http://www.court.gov.cn/zixun-xiangqing-47372.html> [<https://perma.cc/H43X-FN87>].

124. For JRE and business cost, see S.I. Strong, *Recognition and Enforcement of Foreign Judgments in U.S. Courts: Problems and Possibilities*, 33 REV. LITIG. 45, 50–51 (2014); Xin He, *Enforcing Commercial Judgments in the Pearl River Delta of China*, 57 AM. J. COMP. L. 419–56, 453 (2009).

125. See *supra* note 11.

126. SPC Judicial Interpretation of the CPL, *supra* note 5, art. 544.

127. *Id.* art. 548.

128. Although parties to a foreign judgment cannot appeal decisions in the JRE proceedings, parties can bring an action on the substantive dispute of the case to Chinese courts. *Id.* art. 544.

four levels: (i) Basic People's Courts at the level of autonomous counties, towns, and municipal districts; (ii) Intermediate People's Courts at the level of prefectures, autonomous prefectures, and municipalities; (iii) Higher People's Courts at the level of the provinces, autonomous regions, and special municipalities; and (iv) the SPC, which is the court of last resort for China, excluding the Macao and Hong Kong Special Administrative Regions.¹²⁹ Therefore, the Intermediate People's Courts are comparatively low in level. Deciding which countries offer reciprocity to Chinese judgments not only involves complex legal issues, but also has diplomatic implications on international judicial assistance.¹³⁰ Leaving the decision to Intermediate People's Courts may create inconsistent judicial practices in different regions. China is still in the preliminary stage of developing laws and policies as to the reciprocity of JRE, so it may not be appropriate for the Intermediate People's Courts to determine whether reciprocity exists.

A proposal has been made to remedy the inexperience of the Intermediate People's Courts, which entails designing a reporting system for JRE like the one used for refusing the recognition and enforcement of arbitral awards under the 1958 New York Convention.¹³¹ In terms of arbitration, when a party applies to an Intermediate People's Court for recognition and enforcement of a foreign arbitral award, the Intermediate People's Court that decides to refuse the application reports its decision to the Higher People's Court in its jurisdictional area; if the Higher People's Court also decides to refuse the application, the Court reports to the SPC and receive approval.¹³² The proposed reporting system for JRE is similar and incorporates the following steps: if an Intermediate People's Court decides to recognize and enforce a foreign judgment according to reciprocity, the Court should report its decision to the Higher People's Court in its jurisdictional area; if the Higher People's Court also decides to approve the application, the Court

129. CPL, *supra* note 2, arts. 17–20.

130. See, e.g., Ronald Brand, *Enforcement of Foreign Money-Judgments in the United States: in Search of Uniformity and International Acceptance*, 67 NOTRE DAME L. REV. 253, 282 (1991) (reviewing the complex factors that a foreign JRE court must consider in determining whether a U.S. court offers reciprocity to foreign judgments); Richard W. Hulbert, *Symposium Articles, Some Thoughts on Judgments, Reciprocity, and the Seeming Paradox of International Commercial Arbitration*, 29 U. PA. J. INT'L. L. 641, 651 (2008) (discussing the uncertainty in determining the existence of reciprocity).

131. 最高人民法院关于承认和执行外国法院 民商事判决若干问题的规定 [Sixth Draft of SPC Judicial Interpretation on Several Questions of Recognition and Enforcement of Foreign Civil and Commercial Judgments] art. 25, June 2017 (on file with author).

132. See *supra* note 75.

should report to the SPC and receive approval.¹³³ Notably, even a decade after the reporting system for arbitration was established, during which time it has been consistently improved, the system is still criticized for being opaque and time-consuming.¹³⁴ The reporting system for JRE will likely suffer from similar defects. Moreover, the reporting system for arbitration is to report refusal of recognition and enforcement¹³⁵ to suppress local protectionism manifested in the often arbitrary and dogmatic refusal decisions in the lower courts. On the other hand, the proposed reporting system for JRE is to report acceptance of recognition and enforcement, which means that reporting refusal is unnecessary. In contrast, the reporting system for arbitration is to report refusal. Therefore, it is doubtful that the proposed reporting system for JRE could effectively avoid local protectionism because the refusal of JRE would not be reported.

C. *Clarifying the Scope of Judgments for Recognition and Enforcement According to Reciprocity*

1. Züblin and Sascha Rudolf Seehaus

Besides *Kolmer* and *Liu Li*, in 2006 a German court recognized a Chinese judgment invalidating an arbitration clause, and in 2015, a Chinese court reciprocated by recognizing a German cross-border bankruptcy judgment.

German Züblin International Co., Ltd. v Wuxi Walker General Engineering Rubber Co., Ltd. involved a dispute over an arbitration clause in a contract concluded between German Züblin International Co., Ltd. (Züblin) and Wuxi Walker General Engineering Rubber Co., Ltd. (Walker).¹³⁶ An arbitration tribunal was constituted in China and issued a favorable award for Züblin. Walker challenged the validity of the clause. Züblin applied to the Intermediate People's Court in Wuxi City to confirm the validity of the clause. Eventually, the SPC issued a reply holding that the arbitration clause was invalid and that the tribunal had no jurisdiction. Accordingly, the Intermediate People's Court in Wuxi City refused to enforce the arbitral award in September 2004 (Wuxi Court Judgment). Züblin applied to the Berlin Court of Appeal to get the arbitral award rec-

133. See *supra* note 131.

134. Alyssa S. King, *Procedural Perils: China's Supreme People's Court on the Enforcement of Awards in International Arbitration*, 17 *ASIAN-PAC. L. POL'Y. J.* 1, 5–7 (2015).

135. See *supra* note 131.

136. *German Züblin International Co., Ltd. v. Wuxi Walker General Eng'g Rubber Co., Ltd.*, Judgment, Ct. App. Berlin, 18 May 2006, Doc. No. 20 S ch 13/ 04.

ognized and enforced in Germany. Walker argued that the Wuxi Court Judgment had invalidated the arbitration clause. The Berlin Court of Appeal recognized the Wuxi Court Judgment on the principle of reciprocity and it therefore refused to recognize and enforce the arbitral award in 2006.¹³⁷

In 2012, Sascha Rudolf Seehaus applied for the Wuhan Intermediate People's Court to get a Germany bankruptcy judgment issued by the Montabaur Regional Court in 2009 (*Sascha Rudolf Seehaus*) recognized.¹³⁸ The German judgment nominated Sascha Rudolf Seehaus as the trustee of the bankrupt SP Management GmbH.¹³⁹ The Wuhan Intermediate People's Court decided to recognize the German judgment.¹⁴⁰ It held that reciprocity existed between Germany and China considering *Züblin* and recognized that the German judgment did not infringe the basic principles of Chinese law, state sovereignty, security, and social and public interests.¹⁴¹

TABLE 4: CHINA-GERMANY *DE FACTO* RECIPROCITY

Case	Judgment Rendering Court	Cause of Action at the Judgment Rendering Court	JRE Court	Applicable Law in the JRE Proceedings
<i>German Züblin International Co., Ltd. v Wuxi Walker General Engineering Rubber Co., Ltd.</i>	Wuxi Intermediate People's Court in Jiangsu Province in 2004	Validity of an arbitration clause and an arbitral award	Berlin Court of Appeal in 2006	Article 382 of the German Code of Civil Procedure (reciprocity as a defense to JRE)
<i>Sascha Rudolf Seehaus</i>	Montabaur Regional Court in 2009	Cross-border bankruptcy	Wuhan Intermediate People's Court in Hubei Province in 2012	Article 282 of the CPL

Comparing Table 4 with Tables 1 and 2, the China-Germany *de facto* reciprocity is surprisingly liberal compared to that between China and either Singapore or the United States. Both *Kolmer* and *Liu Li* involve monetary judgments. In *Züblin*, the cause of action

137. For an English-language summary of the decision, see P. Beckers, *German Court Takes First Step on Road to Mutual Recognition with China*, INT'L. L. OFFICE NEWSLETTER (May 31, 2007). This case has been widely covered by scholarship, see, e.g., Zhang, *supra* note 18 at 523; Elbalti, *supra* note 1 at 194–95.

138. Sascha Rudolf Seehaus, E Wuhan Zhong Minshang Wai Chuizi No. 16 (2012).

139. *Id.*

140. *Id.*

141. *Id.*

was the validity of an arbitration clause and the consequent award. Likewise, in *Sascha Rudolf Seehaus*, where the Chinese court reciprocated, the cause of action was cross-border bankruptcy. The former judgment is non-monetary and the latter is monetary. Judgments involving arbitration and bankruptcy cannot be considered as the same or equivalent type. *Züblin* and *Sascha Rudolf Seehaus* raise questions concerning which judgments are eligible for JRE according to reciprocity in China. The CPL does not provide an answer. The following Section will address this question.

2. Monetary and Award Judgments

a. Monetary Judgments

According to reciprocity, JRE should cover monetary judgments—namely judgments that order a debtor to pay a fixed or readily calculable sum of money to the creditor. The judgments should result from commercial proceedings. Judgments for the recovery of taxes, fines or penalties, bankruptcy and insolvency, and family matters (e.g., judgments for divorce, support, maintenance, and custody) should be excluded. Taxes, fines or penalties are disputes involving public laws and should not be enforced in private civil proceedings.¹⁴²

There are two issues deserving of special attention in recognizing and enforcing foreign monetary judgments according to reciprocity. The first relates to whether bankruptcy judgments, such as the judgment in *Sascha Rudolf Seehaus*, should be distinguished from typical commercial judgments. Establishing a different JRE regime for bankruptcy is a widely-acknowledged international practice.¹⁴³ For example, in the European Union, bankruptcy is not regulated by Brussels I Regulation (recast)¹⁴⁴ but by Council Regulation (EC) No 1346/2000 of May 29 2000 on Insolvency Proceedings.¹⁴⁵ In Switzerland, although the 1987 Swiss Federal Code on

142. Ronald A. Brand, *Federal Judicial Center International Litigation Guide Recognition and Enforcement of Foreign Judgments*, 74 U. PITT. L. REV. 491, 508 (2012).

143. Sandeep Gopalan & Michael Guihot, *Recognition and Enforcement in Cross-Border Insolvency Law: A Proposal for Judicial Gap-Filling*, 48 VAND. J. TRANSNAT'L. L. 1225, 1234–63 (2015).

144. Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), art. 1(2)(b), 2012 O.J. (L 351) 1, 6 [hereinafter Brussels I Regulation (recast)].

145. Council Regulation 1346/2000 of May 29, 2000 on Insolvency Proceedings, 2000 O.J. (L 160) 1.

Private International Law has removed the proof of reciprocity requirement from JRE for general commercial judgments, it maintains a special regime for recognizing and enforcing foreign bankruptcy decrees where reciprocity is required.¹⁴⁶ The Hague Choice of Court Convention and the most recent draft of an international JRE convention in the Hague Judgments Project also exclude bankruptcy judgments from their scope.¹⁴⁷ This is because the recognition of the cross-border bankruptcy involves many issues that are not present in typical commercial judgments.¹⁴⁸ For example, provisional liquidator, personal insolvency, and personal discharge provisions are not inherent in Chinese law, but are allowed in many foreign countries.¹⁴⁹ Before *Sascha Rudolf Seehaus*, China had recognized bankruptcy judgments issued in Italy and France, but both instances of JRE were conducted according to JRE treaties.¹⁵⁰ China should develop Article 5 of its Enterprise Bankruptcy Law into a special JRE regime,¹⁵¹ rather than apply general JRE law of the CPL according to reciprocity to foreign bankruptcy judgments.

Second, foreign monetary judgments for *non-compensatory damages*, such as exemplary or punitive damages, should also be

146. Bundesgesetz über das Internationale Privatrecht [Federal Code on Private International Law] Dec. 18, 1987, art. 166-1(c) (Switz.); Yves P. Piantino, *Recognition and Enforcement of Money Judgments between the United States and Switzerland—An Analysis of the Legal Requirements and Case Law*, 17 N.Y.L. SCH. J. INT'L & COMP. L. 91, 112 (1997).

147. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 2.1; Trevor Hartley & Masato Dogauchi, Convention of 30 June 2005 on Choice of Court Agreements, *Explanatory Report* 41–42, <https://assets.hcch.net/upload/expl37final.pdf> [https://perma.cc/ZHM4-HBJY]. See also Special Comm'n on the Recognition & Enf't of Foreign Judgments, November 2017 Draft Convention art. 2.1 (Nov. 17, 2017), <https://assets.hcch.net/docs/2f0e08f1-c498-4d15-9dd4-b902ec3902fc.pdf> [https://perma.cc/SHR7-A2F6].

148. Xinyi Gong, *When Hong Kong Becomes SAR, is the Mainland Ready? Problems of Judgments Recognition in Cross-border Insolvency Matters*, 20 INT'L. INSOLVENCY REV. 57, 69 (2011).

149. *Id.* at 70. There are additional issues unique to cross-border bankruptcy proceedings, such as “(1) the propriety of transferring local assets to a foreign bankruptcy forum for administration, (2) the recognition of foreign representatives of an estate in a local bankruptcy forum and the rights given to the foreign representative, and (3) the significance given to a foreign proceeding in the administration of a bankruptcy case in the local forum.” Kevin J. Beckering, *United States Cross-Border Corporate Insolvency: The Impact of Chapter 15 on Comity and the New Legal Environment*, 14 L. BUS. REV. AM. 281, 292 (2008).

150. See generally *B&T Ceramic Group S.R.L. v. Nanhai Nasseti Pioneer Ceramic Machine Co., Ltd.*, [2000] Fo Zhong Fa Jing Chuzi No. 633 (Fushan Interm. People's Ct. 2000); *Antoine MONTIER Case*, [2005] Sui Zhong Fa Minsan Chuzi No. 146 (Guangdong Interm. People's Ct. 2005).

151. Chinese Enterprise Bankruptcy Law provides that recognition and enforcement of foreign bankruptcy judgments can be conducted according to either treaties or reciprocity in China. See *Zhonghua Renmin Gongheguo QiyePochan Fa* (中华人民共和国企业破产法) [Enterprise Bankruptcy Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 27, 2006, effective June 1, 2007) art. 5.

excluded from JRE based on reciprocity.¹⁵² Similar approaches have been adopted by the Hague Choice of Court Convention,¹⁵³ ALI Proposed Federal Statute,¹⁵⁴ and the Uniform Law Conference of Canada in its Uniform Enforcement of Foreign Judgments Act (Canada UEFJA).¹⁵⁵ This approach has also been accepted in Germany¹⁵⁶ and Italy.¹⁵⁷ In addition, Chinese JRE courts should be allowed to trim the enforceable amount of *compensatory damages*—consistent with Chinese standards—awarded in foreign judgments, such as damages for pain and suffering in the United States.¹⁵⁸

b. Award Judgments

The Wuxi judgment in *Züblin* is on the validity of an arbitral agreement and the enforceability of a consequent award issued at the seat of arbitration in China. In addition to judgments concerning the validity of arbitration clauses, judgments setting aside, confirming, recognizing or enforcing an arbitral award are so-called “award judgments.”¹⁵⁹ Award judgments are ancillary judgments, because they are related to a prior adjudication—i.e., the arbitration.¹⁶⁰ Whether an award judgment issued at the seat of arbitration can be recognized and enforced according to general JRE laws in another country is a controversial issue.¹⁶¹ Certain countries,

152. See Richard W Hulbert, *Some Thoughts on Judgments, Reciprocity, and the Seeming Paradox of International Commercial Arbitration*, 29 UNIV. PA. J. INT'L. L. 641, 648 (2008).

153. Hague Choice of Court Convention, *supra* note 7, at art. 11.

154. A.L.I. Proposed Federal Statute, *supra* note 7, § 7(d) (providing that “[d]enial by courts of the state of origin of enforcement of judgments for punitive, exemplary or multiple damages shall not be regarded as denial of reciprocal enforcement of judgments . . .”).

155. Uniform Enforcement of Foreign Judgments Act § 6(1) (2003) (Can.) [hereinafter Canada UEFJA].

156. See Federal Court of Justice [BGHZ] Decision Concerning the Recognition and Enforcement of U.S. Judgments Awarding Punitive Damages, June 4, 1992, *translated in* 32 I.L.M. 3120 (1993) (Ger.).

157. See Parrott v. Fimez S.p.A., App. sez. trez, 15 Jan. 1995, n.0319, Giur. it. 1995 I.1,132 (It.), *translated in* Lucia Ostoni, Italian Rejection of Punitive Damages in a U.S. Judgment, 24 J.L. & COMM. 245, 251-62 (2005).

158. A similar approach has been adopted by Canada UEFJA, *supra* note 155, § 6(2). For comments, see Black, *supra* note 122, at 25.

159. Besides judgments about the validity of arbitration clauses, judgments setting aside, confirming, recognizing or enforcing an arbitral award are the so called “award judgments” in scholarship. See Maxi Scherer, *Effects of Foreign Judgments Relating to International Arbitral Awards: Is the ‘Judgment Route’ the Wrong Road?*, 4 J. INT'L. DISP. SETTLEMENT 587, 590 (2013).

160. JRE law should not be applied to ancillary judgments. *Id.* at 605–07.

161. Burton S. Dewitt, *A Judgment Without Merits: The Recognition and Enforcement of Foreign Judgments Confirming, Recognizing, or Enforcing Arbitral Awards*, 50 TEX. INT'L. L.J. 495, 496 (2015); Jonathan Hill, *The Significance of Foreign Judgments Relating to an Arbitral Award*

such as China, do not differentiate between monetary and non-monetary judgments, imposing the same sets of requirements on all kinds of foreign judgments. For example, in the United States, the 1962 Uniform Foreign Money Judgments Recognition Act applies to “*any foreign judgment that is final and conclusive and enforceable*” at the rendering state.¹⁶² “[A]ny foreign judgments,” implicitly includes award judgments. The 2005 Uniform Foreign-Country Money Judgments Recognition Act covers a final, conclusive, and enforceable foreign judgment “grant[ing] or den[ying] recovery of a sum of money,” which may include award judgments.¹⁶³ In *Seetransport Wiking Trader v. Navimpex Centrala Navala*, the U.S. Court of Appeals for the Second Circuit held that a French decree conferring exequatur on an arbitral award “was the functional equivalent of a French judgment awarding the sums specified in the award” under New York law.¹⁶⁴ English courts have also regularly granted preclusive effects to award judgments.¹⁶⁵ In contrast, the Brussels I Regulation (recast) provides that its JRE regime should not be applied to court rulings as to “whether or not an arbitration agreement is null and void, inoperative or incapable or being performed”; the Hague Choice of Court convention also explicitly excludes courts’ decisions on the validity of an arbitration agreement and other arbitration-related issues.¹⁶⁶ In Hong Kong, foreign award judgments do not have preclusive effects.¹⁶⁷ Indeed,

in the Context of an Application to Enforce the Award in England, 8 J. PRIV. INT. L. 159 (2009); Talia Einhorn, *The Recognition and Enforcement of Foreign Judgments on International Commercial Arbitral Awards*, 12 Y.B. PRIV. INT’L L. 43, 43 (2010).

162. UNIF. FOREIGN MONEY JUDGMENTS RECOGNITION ACT § 3 (UNIF. LAW. COMM’N 1962) (emphasis added).

163. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT § 2 cmt. 1 (UNIF. LAW. COMM’N 2005).

164. *Seetransport Wiking Trader Schiffahrtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala* (Seetransport I), 989 F.2d 572, 583 (2d Cir. 1993). The statute of limitations for the enforcement of arbitral awards under the New York Convention is three years from the date on which the award becomes final. 9 U.S.C. § 207 (2012). But the statute of limitations for the enforcement of foreign judgments on arbitral awards is fifteen years from the effective date of the foreign judgment. UNIF. FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT §§ 1–13 (UNIF. LAW. COMM’N 2005).

165. *Chantiers de l’Atlantique SA v. Gaztransport & Technigaz SAS*, [2011] EWHC (Comm) 3383 [315]–[15] (Eng.); *Yukos Capital S.a.r.l. v. OJSC Rosneft Oil Co.*, [2012] EWCA (Civ) 855 (Eng.).

166. Brussels I Regulation (recast), *supra* note 144, ¶ 12, pmb., art. 1.2. But this should not exclude that court’s rulings on the substance of the matter from being recognized or enforced under the Brussels I Regulation (recast). Hague Convention on Choice of Court Agreements, *supra* note 11, art. 2.4; Hartley & Dogauchi, *supra* note 147, at 47.

167. *See, e.g., Astro Nusantara Int’l v. PT Ayunda Prima Mitra*, [2015] H.C.C.T. 45/2010 [28] (C.F.I.).

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there are advantages and disadvantages associated with both approaches. One argument suggests that it might be advisable for Chinese courts to admit the existence of a reciprocal relationship with respect to award judgments, especially in the long-lasting hostile atmosphere for reciprocity. However, this author disagrees. For the reasons discussed below, the SPC should be very cautious to apply reciprocity of JRE to award judgments before clarifying the relationship between JRE and arbitration jurisprudence. The regime for recognizing and enforcing award judgments should be distinguished from the regime for typical commercial monetary judgments.

First, recognition and enforcement of foreign arbitral awards is based upon the New York Convention. Including award judgments in China's JRE regime may complicate the implementation of the New York Convention in China. It is not uncommon for Chinese courts to reach a different conclusion on the validity of an arbitration clause than foreign courts at the seat of arbitration. However, thanks to the New York Convention, even if an arbitration clause has been invalidated by a Chinese court, the foreign arbitral award based on this clause may still be recognized and enforced in China. For example, in *Castel Electronics Pty Ltd. v TCL Air Conditioner (Zhongshan) Co., Ltd.*, Australia was the seat of arbitration.¹⁶⁸ The Supreme Court of Victoria at Melbourne held that the relevant arbitration agreement was valid according to Australian law.¹⁶⁹ However, Chinese courts found that the seat was unclear and the agreement was invalid under Chinese law.¹⁷⁰ Article 5.1(a) of the 1958 New York Convention provides that the validity of an arbitral agreement is determined according to the law selected by the parties. The Australian and Chinese courts reached different decisions on which law the parties selected. However, the SPC still decided to recognize and enforce the arbitral award. It held that, because the arbitral award was rendered before the Chinese courts that found the arbitration agreement to be invalid, recognizing

168. *TCL Air Conditioner (Zhongshan) Co., Ltd. v Castel Electronics Pty Ltd.*, [2009] VSC 553, (Austl.) ¶ 9.

169. *Castel Electronics Pty Ltd. v. TCL Air Conditioner (Zhongshan) Co., Ltd.*, [2013] VSC 092, (Austl.) ¶¶ 23–24. The decision is affirmed by the High Court of Australia in [2013] HCA 5.

170. Guangdong High People's Court, Request for Opinion on the Application of Castel Electronics Pty Ltd. for the Recognition and Enforcement of Foreign Arbitral Awards, July 10, 2013 (attached to the SPC's Reply on said Application, Oct.10, 2013).

and enforcing it did not offend public policy in China.¹⁷¹ In a later case, the SPC refused to recognize and enforce an ICC arbitral award for public policy reasons because it was rendered after Chinese courts that found the relevant arbitration agreement to be invalid.¹⁷² However, for JRE, the timing issue is different—as long as a foreign award judgment conflicts with an existing Chinese judgment, it cannot be recognized and enforced, regardless of whether it is issued before or after the Chinese judgment is made.

Second, Chinese JRE law should be forward-looking. The territorialist thesis of international arbitration has become outdated.¹⁷³ The legality of an arbitration award does not solely come from the legal order of the seat of arbitration.¹⁷⁴ *Züblin* embodies the territorialism thesis whereby a judgment on the validity of an arbitration clause and the enforceability of an arbitral award issued at the seat of arbitration should be recognized and enforced in other states. Under the autonomous arbitration legal order that Professor Emmanuel Gaillard advocates, a judgment that refuses to recognize and enforce a foreign arbitral award at the seat of arbitration should not necessarily be recognized and enforced in other states.¹⁷⁵ This is because international rules of arbitration are transnational; although based on the seat's normative activity, they do not belong exclusively to the seat.¹⁷⁶ The state of recognition and enforcement should independently determine the enforceability of a foreign arbitral award.¹⁷⁷ The three-dimensional form of pluralism proposed by Professor Jan Paulsson also supports judgments on the validity of an arbitration clause and an arbitral award issued at the seat of arbitration should not necessarily be recognized and enforced internationally.¹⁷⁸ Arguably, *Züblin* should not be considered as establishing reciprocity of

171. *Id.*; see also Yang Fan, "How Long Have You Got?" Towards a More Streamlined System for Enforcing Foreign Arbitral Awards in China, 34 J. INT'L ARB. 489, 495–96 (2017) (commenting on the SPC's Reply).

172. *Wicor Holdings AG v. Taizhou Haopu Investment Co., Ltd.*, [2015] Tai Zhong Shang Zhong Shen Zi No.00004 (Taizhou Interim. People's Ct. 2016).

173. See EMMANUEL GAILLARD, *LEGAL THEORY OF INTERNATIONAL ARBITRATION* 13–14 (2010); Jan Paulsson, *Arbitration in Three Dimensions*, 60 INT'L & COMP. L.Q. 291, 292 (2011).

174. See Paulsson, *supra* note 173, at 292.

175. GAILLARD, *supra* note 173, at 36–37.

176. *Id.* at 59.

177. *Id.*

178. JAN PAULSSON, *THE IDEA OF ARBITRATION* 30 (2013); Paulsson, *supra* note 173, at 301–02.

recognition and enforcement of award judgments between China and Germany.

Third, including award judgments in JRE reciprocity may encourage forum shopping. If the award judgment issued at the seat of arbitration had preclusive effect on the outcome of the enforcement elsewhere, “this would have put a lot of weight on the procedural timetable, and thus opened the door for unwanted strategic positioning or forum-shopping.”¹⁷⁹

For the reasons outlined above, award judgments should not be included in JRE based on reciprocity.

D. *Adding Defenses Against JRE According to Reciprocity*

Table 3 shows that current Chinese law concerning defenses against JRE according to reciprocity is incomplete. This is especially true so long as it has no indirect jurisdiction rules and contains only one requirement for service of process in judgment-rendering proceedings. This Section will propose indirect jurisdiction rules and requirements for service of process with the aim of facilitating JRE according to reciprocity in China.

1. Jurisdiction of the Judgment-Rendering Court

“A basic rule of judgments recognition in nearly all legal systems is that a court will not recognize a judgment from a court that did not have jurisdiction to hear the case.”¹⁸⁰ However, current Chinese law does not explicitly indicate whether and how Chinese JRE courts should examine the jurisdiction of judgment-rendering courts in cases in which JRE reciprocity has been established. In *Kolmar* and *Liu Li*, Chinese JRE courts did not review the jurisdiction of the judgment-rendering courts. The benefit of the current Chinese approach is generosity. As long as *de facto* reciprocity is established, courts do not review the jurisdiction of the judgment-rendering court. This approach is usually adopted in two scenarios. First is the circumstance in which a double JRE convention exists between the judgment-rendering state and the JRE state. For example, the 1968 Brussels Convention on Jurisdiction and Enforcement is a double convention that regulates both direct

179. Maxi Scherer, *Effects of International Judgments Relating to Awards*, 43 PEPP. L. REV. 637, 646 (2016).

180. Ronald A. Brand, *Understanding Judgments Recognition*, 40 N.C. J. INT'L L. & COM. REG. 877, 885 (2015).

jurisdiction and JRE.¹⁸¹ As long as a judgment-rendering court decides a case according to the direct jurisdiction rule of the Convention and the 2012 Brussels I Regulation (recast),¹⁸² its member states cannot apply their indirect jurisdiction rules to review the jurisdiction of the judgment-rendering court in the JRE proceedings.¹⁸³ Second is the circumstance in which the JRE state decides to adopt pro-JRE policies towards the judgment-rendering jurisdiction to encourage benefits such as national integration.¹⁸⁴ For example, Articles 15 and 16 of the SPC Regulation on Recognition and Enforcement of Civil Judgments issued in Taiwan does not allow mainland Chinese JRE courts to examine the jurisdiction of the Taiwanese courts, unless the jurisdiction conflicts with the exclusive jurisdiction of mainland courts or parties have concluded a valid arbitration clause. The same approach is used in mainland China for recognizing and enforcing judgments issued in the Macao Special Administrative Region.¹⁸⁵ However, JRE between mainland China, Taiwan, and Macao is interregional and the legal, political, and economic contexts differ significantly from international JRE.¹⁸⁶ Therefore, the Chinese approach of not reviewing jurisdiction once JRE reciprocity has been established does not fit into either of the scenarios outlined above.

Even if reciprocity is established, JRE should be rejected if the judgment-rendering court has no jurisdiction according to the law of the JRE state. In private international law, jurisdiction can be divided into two categories. First, direct jurisdiction determines when a court can seize a case in the judgment-rendering proceedings; direct jurisdiction is prescribed by the law of the judgment-

181. See Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1972 O.J. (L 299) 32.

182. See Samuel P. Baumgartner, *Recent Reforms in EU Law Recognition and Enforcement of Foreign Judgments* 97 JUDICATURE 188 (2013) (commenting on the differences between Brussels I Regulation and its Recast).

183. Brussels I Regulation (recast), *supra* note 144, arts. 45, 46; Marek Zilinsky, *Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?*, 64 NETH. INT'L L. REV. 115, 118 (2017).

184. See Katherine R. Miller, *Playground Politics: Assessing the Wisdom of Writing a Reciprocity Requirement into U.S. International Recognition and Enforcement Law*, 35 GEO. J. INTL. L. 239, 242–43 (2004).

185. Arrangement Between the Mainland and the Macao Special Administrative Region on the Mutual Recognition and Enforcement of Civil and Commercial Judgments (promulgated by the Sup. People's Ct., Mar. 21, 2006, effective Apr. 1, 2006), art. 11, <http://www.asianlii.org/cn/legis/cen/laws/abtmatsarotmraeocacj1257/> [<https://perma.cc/GQ5M-287P>].

186. HUANG, *supra* note 57, at 1–29.

rendering country.¹⁸⁷ The other category is indirect jurisdiction, which is used by the JRE court to decide whether the judgment-rendering court can seize the case and it is determined by the law where the judgment is sought to be recognized or enforced.¹⁸⁸ There are two approaches to designing indirect jurisdiction. The first is to replicate the direct jurisdiction rules. For example, in the United States, Germany, and Brazil, indirect jurisdiction rules are identical to direct jurisdiction rules.¹⁸⁹ The second approach is to design special rules for indirect jurisdiction. Where this has occurred, the rules are generally more restrictive than direct jurisdiction rules.¹⁹⁰ For example, the UK Foreign Judgments (Reciprocal Enforcement) Act 1933 and its progeny such as the Australia Foreign Judgments Act and the Hong Kong Foreign Judgments (Reciprocal Enforcement) Ordinance list indirect jurisdiction rules for JRE purposes.¹⁹¹

The CPL provides only direct jurisdiction rules and it is silent on indirect jurisdiction rules. However, Table 3 shows that eleven out of thirty-two effective bilateral JRE treaties concluded by China provide indirect jurisdictional rules. Therefore, the second approach may better embody China's international JRE practice. The SPC should design indirect jurisdiction rules to facilitate JRE based on reciprocity.

2. Undue Service

Table 3 shows that Chinese law concerning JRE based on reciprocity has only one requirement for service of process in judgment-rendering proceedings.¹⁹² Under current law, if a default judgment is rendered by a foreign court, the judgment creditor must submit the certification documents on a legal summons from the foreign court, unless the judgment has expressly stated the fact of the summons. This law is insufficient in three aspects.

First, where the judgment creditor has submitted the certification documents or the foreign judgment has expressly stated the fact of service, the law does not specify whether Chinese JRE courts

187. See Ralf Michaels, *Some Fundamental Jurisdictional Conceptions as Applied in Judgment Conventions*, in CONFLICT OF LAWS IN A GLOBALIZING WORLD 35–36 (Eckart Gottschalk et al. eds., 2007).

188. *Id.*

189. Brand, *supra* note 180, at 890–91.

190. *Id.* at 891.

191. See, e.g., *Foreign Judgments Act 1991*, §§ 7(3)–(4) (Austl.); *Foreign Judgments (Reciprocal Enforcement) Ordinance*, (1997) Cap. 319 § 6(2) (H.K.).

192. See SPC Judicial Interpretation of the CPL, *supra* note 5, art. 543.

should examine the service conducted by the judgment-rendering court or simply accept the judgment-rendering court's decision regarding the properness of service. The first and third sentences of Article 543 of the SPC Judicial Interpretation of the CPL stipulate which documents should be produced for JRE proceedings. Presumably, the second sentence also addresses the document production requirement. It would appear that current Chinese law does not require Chinese JRE courts to examine the properness of service in the judgment-rendering proceedings. Instead, the Chinese JRE courts should defer to the decision of the judgment-rendering court regarding service of process. This approach is adopted by *Liu Li*. In this case, the Chinese JRE court dismissed Tao and Tong's undue service argument because "the U.S. judgment explicitly indicates it is a default judgment, and Liu has submitted evidence such as the investigation report, the U.S. court order of service by public announcements, and announcements published on the U.S. newspaper."

Liu Li does not specify whether Tao and Tong were Chinese citizens. The Chinese judgment only indicates that they habitually resided in China at the time of JRE. Suppose that Tao and Tong were Chinese citizens and habitually resided in China during the U.S. proceedings, and the U.S. court served them by public announcement rather than through the Hague Service Convention. If Tao and Tong pleaded that the U.S. court should have served them according to the Hague Service Convention, should the Chinese JRE court go beyond the document production requirement of Article 543 and consider their plea? Which law should the Chinese court apply to determine the propriety of the service in the judgment-rendering proceedings?

Chinese JRE courts should consider this type of plea by applying the relevant U.S. law for service of process. Many JRE treaties concluded by China specify that the law of the judgment-rendering court should be applied to determine the propriety of service.¹⁹³ A similar approach has also been adopted by Australia; indeed, Section 7(2)(a)(v) of the Australia Foreign Judgments Act 1991 provides that the determination as to whether process had been duly served on the judgment debtor should be made according to the law of the judgment-rendering court.¹⁹⁴

193. See, e.g., Treaty for Judicial Assistance in Civil, Commercial and Criminal Affairs, China-Cyprus, art. 25.1(3), Jan. 11, 1996.

194. *Foreign Judgments Act 1991*, §§ 7(2)(a)(v) (Austl.).

Notably, even applying the same U.S. law, it is possible that a Chinese JRE court would reach a decision different from the U.S. judgment-rendering court regarding the properness of service. It is not unusual for the JRE court to decide an issue differently from the judgment-rendering court. For example, in *Boele v Norsemeter Holding AS*, the plaintiff sought to enforce a Norwegian judgment against an Australian defendant.¹⁹⁵ The defendant prevailed in the first instance court in Norway, subsequently terminating his Norwegian lawyers' retainer. However, when the plaintiff appealed, the defendant's original Norwegian lawyers cross-appealed on his behalf and represented him in the appeal proceedings without informing him either of the appeal or the cross-appeal. The Borgarting Court of Appeal in Norway allowed the appeal and rendered a judgment in the plaintiff's favor. The New South Wales Court of Appeal refused to recognize and enforce this Norwegian judgment. The Court held that proper notice should be determined according to the Norwegian law, but there was not enough evidence to establish that notice to a lawyer constituted due notice after the lawyers' retainer had been terminated by the client, without the court or plaintiff's notice.¹⁹⁶

However, if the service of process carried out at the judgment-rendering court is incompatible with fundamental principles of Chinese law, Chinese courts may apply their own law or invoke a public policy exception to reject JRE. The Hague Choice of Court Convention supports this practice.¹⁹⁷ In *Liu Li*, if Tao and Tong were Chinese citizens residing in China during the judgment-rendering proceedings, the service of process should have been conducted according to the Hague Service Convention rather than by public announcements in the United States. This undue service was incompatible with fundamental principles of Chinese law. The Hague Choice of Court Convention also provides that JRE may be rejected if the judgment was tainted by procedural fraud or the judgment-rendering proceedings were incompatible with fundamental principles of procedural fairness of the JRE state.¹⁹⁸ This further opens an opportunity for the JRE court to apply its own laws for determining the propriety of the service of process conducted by the judgment-rendering court. However, if foreign judg-

195. *Boele v Norsemeter Holding AS*, [2002] NSWCA 363 (Austl.).

196. For comments, see MARTIN DAVIES, ANDREW BELL & PAUL LE GAY BRERETON, *NYGH'S CONFLICT OF LAWS IN AUSTRALIA* 929–30 (9th ed. 2014).

197. Hague Convention on Choice of Court Agreements, *supra* note 11, art. 9(c)(ii).

198. *Id.* arts. 9(d), (e).

ment-rendering proceedings contravene no fundamental principles of Chinese law, Chinese JRE courts should be careful not to impose Chinese laws for service of process on the the foreign judgment-rendering proceedings.

If Tao and Tong did not plead the application of the Hague Service Convention in the Chinese JRE proceeding, should the Chinese court consider this issue *sua sponte*? This should be answered in the negative. Although service of process may involve state interests regarding judicial sovereignty, JRE proceedings are essentially civil in nature. If parties abandon their rights by not pleading a certain issue, courts have no obligation to raise the issue of their own accord.¹⁹⁹

Second, Article 543 only regulates summons conducted by judgment-rendering courts. The *Liu Li* court appears to have strictly followed Article 543, focusing on the service of summons and not considering whether Tao and Tong duly received the U.S. judgment. In contrast, the *Kolmar* court examined whether both the summons and foreign judgment were properly served on the SUTEX Group. The *Kolmar* court should be praised because service of process is more than serving a legal summons. The foreign judgment should also be properly served on the judgment debtor. Due service requires that the defendant receive actual notice of the proceedings and be given sufficient time to mount a defense and appeal.

In conclusion, the undue service defense may be formulated as follows: JRE should be rejected if a judgment debtor, being the defendant in the judgment-rendering court, can prove that the service of process in that court did not afford him or her sufficient time to arrange for a defense. Likewise, JRE should be rejected if the debtor did not appear or she appeared solely to contest service of process in the judgment-rendering court. Finally, if the defendant substantively defended the case without contesting notification in the judgment-rendering court, the defendant should not be permitted to raise the defense of notification at the JRE proceedings.²⁰⁰

199. This approach has also been adopted by Brussels I Regulation (Recast). See Thomas Pfeiffer, *The Abolition of Exequatur and the Free Circulation of Judgments*, in FRANCO FERRARI & FRANCESCA RAGNO, CROSS-BORDER LITIGATION IN EUROPE: THE BRUSSELS I RECAST REGULATION AS A *Panacea?* 187–194 (2015).

200. See Hartley & Dogauchi, *supra* note 147, at 69.

IV. CONCLUSION

Since China began opening itself to the world in 1979, the country has advanced a long way in modernizing its private international law system. The climax of its modernization came in the 2010s with the enactment of the Law of the Application of Law for Foreign-related Civil Relations²⁰¹ and the amendment of the CPL.²⁰² The former was the first Chinese statute dedicated to choice of law principles. Commentators widely tout these developments as milestones in the development of Chinese private international law.²⁰³ The latter removed the differences between prorogation jurisdiction in foreign-related and domestic disputes,²⁰⁴ and allowed service abroad by electronic means following the global trend of modern technology.²⁰⁵ Accordingly, JRE is the final frontier for modernization.

The OBOR initiative is pushing Chinese courts to explore this frontier by liberating JRE based on reciprocity. This Article analyzes the current promising development of JRE according to reciprocity, identifies four major prospective challenges, and proposes solutions, which can be summarized as follows: (i) reconciling JRE under a treaty and JRE according to reciprocity; (ii) transitioning from *de facto* reciprocity to *de jure* reciprocity; (iii) clarifying requirements for JRE according to reciprocity; and (iv) adding defenses against JRE according to reciprocity. As a Chinese saying goes: throw away a brick in order to get a gem. Hopefully, this Article succeeds in throwing away a brick in order to get a gem, and ultimately contributes to the modernization of Chinese law for JRE according to reciprocity.

201. 中华人民共和国涉外民事关系法律适用法 [Law of the Application of Law for Foreign-Related Civil Relations of the People's Republic of China] (adopted by the Standing Comm. Nat'l. People's Cong., Oct. 28, 2010, effective Apr. 1, 2011) (describing the advancements in Chinese law with the addition of choice of law principles).

202. The second amendment of the CPL was adopted on August 31, 2012 and entered into force on January 1, 2013. CPL, *supra* note 2.

203. Zhengxin Huo, *An Imperfect Improvement: The New Conflict of Laws Act of the People's Republic of China Current Developments: Private International Law*, 60 INT. COMP. LAW Q. 1065, 1065 (2011); Jieying Liang, *Statutory Restrictions on Party Autonomy in China's Private International Law of Contract: How Far Does the 2010 Codification Go?*, 8 J. PRIV. INT. LAW 77, 77-78 (2012).

204. CPL, *supra* note 2, art. 34.

205. *Id.* art. 267.7; Guangjian Tu, *Service of Process (Documents) in International Civil and Commercial Proceedings: A Critical Review of the Chinese Approach*, 13 CHINA J. INT'L. L. 577, 600-01 (2014).