

Recognition and Enforcement of Judgments in Civil and Commercial Matters

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Conclusion: Towards an Asia of Judgments without Borders

ANSELMO REYES

The Introduction set out a no-frills framework for the recognition and enforcement of civil and commercial judgments. That framework will be referred to here as the ‘rudimentary system’. Fifteen Asian jurisdictions having been surveyed, this Conclusion will now test out the extent to which a money judgment in a commercial matter can be enforced throughout the 15 jurisdictions. This chapter will evaluate the test results to assess the degree to which something like a rudimentary system for recognition and enforcement is already in place among the 15 jurisdictions. In light of the test, can it be claimed that general civil and commercial judgments are readily portable throughout Asia, conceived as a region of which the 15 jurisdictions are representative? The chapter will end by suggesting how national systems for recognition and enforcement within Asia might be improved to transform the region into one of judgments without borders. On which components of the rudimentary system should efforts at improvement be directed?

I. A Practical Test

A. The Parameters of the Test

This section will test the robustness of the recognition and enforcement regimes within the 15 jurisdictions as a whole by examining the extent to which a judgment of the Singapore International Commercial Court (the SICC) will be enforceable in each of them.¹

¹ In Anselmo Reyes, ‘Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court’ (2015) 2(2) *Journal of International and Comparative Law* 337, the author attempted to map the extent to which SICC judgments would be recognised and enforced around the world. But the approach was embarrassingly crude, amounting to little more than totting up the states with which Singapore had bilateral arrangements (for example, other Commonwealth countries and Hong Kong) and the Contracting States to the 2005 Hague Convention on Choice of Court Agreements (2005 Hague Convention). In the course of the author’s seminars on the 2005 Hague Convention and the recognition and enforcement of judgments at Doshisha University’s Law Faculty in December 2015, Dr Bélgih Elbalti (now Associate Professor in the Graduate School of Law and Politics at Osaka University) pointed out that the author’s method was outmoded and insufficiently rigorous. He observed that it was necessary to consider each jurisdiction on a case-by-case basis to understand whether the domestic law of a given state allowed foreign judgments to be recognised and enforced and (if so)

Recent years have seen the rise of the international commercial courts.² Within the Asian region, there are at least three: the SICC established in Singapore in January 2015,³ the Astana International Financial Centre Court (the AIFC Court) established in Kazakhstan in December 2017,⁴ and the China International Centre Court (the CICC) established in China in June 2018 and currently situated in Xi'an and Shenzhen.⁵ The SICC derives its principal jurisdiction from choice of court agreements designating the SICC as the forum in which disputes arising in relation to an international commercial contract are to be resolved.⁶ The most frequently asked question of the SICC (and no doubt the same is true of the AIFC Court and CICC) is whether its judgments can be enforced elsewhere. If recourse to international commercial courts such as the SICC is to be perceived by businesses as a viable alternative to international commercial arbitration, it will be necessary to have a degree of reassurance that their judgments will be recognised and enforced in key jurisdictions. Presently, because of the 1958 New York Convention's success internationally, an arbitral award issued in a Contracting State in connection with a commercial dispute should, at any rate theoretically,⁷ be readily recognised and enforced in the other 158 jurisdictions that are currently party to the 1958 New York Convention. While no one is saying that judgments should be enforceable in a like number of jurisdictions, the public may understandably be reluctant to enter into choice of court agreements designating the SICC, unless they have some confidence that the SICC's judgments will be enforceable in places where the counterparties to their commercial transactions are likely to have assets. Thus, the question being explored here has practical utility: to what extent are judgments of the SICC in cross-border commercial disputes enforceable in the jurisdictions surveyed in this book.

At the outset of this test exercise, it should be noted that the SICC is a division of the Singapore High Court. An SICC judgment is therefore to be treated as equivalent to a judgment rendered in Singapore as originating state. For the purposes of the discussion here, it will be assumed that the judgment to be enforced has arisen because the parties designated the SICC under an exclusive choice of court agreement as the forum to resolve their disputes in relation to a particular transaction. Thus, the operative ground of indirect jurisdiction under the rudimentary system in the Introduction would be submission

on what conditions. At the time, Dr Elbalti kindly provided the author with a copy of his article on 'Spontaneous Harmonization and the Liberalization of the Recognition and Enforcement of Foreign Judgments' (2014) 16 *Japanese Yearbook of Private International Law* 264. The author would like to acknowledge his indebtedness to Dr Elbalti's scholarship on recognition and enforcement as that has profoundly influenced the author's thinking on the subject.

²On the rise of international commercial courts and the rationale underlying their establishment, see the discussion in Marta Requejo Isidro, 'International Commercial Courts in the Litigation Market' (2019) MPILux Research Paper Series 2019 (2), available online: www.mpi.lu/research/woking-paper-series/2019/wp-2019-2/. See also Janet Walker, 'Specialised International Courts: Keeping Arbitration on Top of Its Game' (2019) 85(1) *Arbitration* 2.

³For general information on the SICC, see www.sicc.gov.sg.

⁴For general information on the AIFC Court, see aifc-court.kz.

⁵For general information on the CICC, see cicc.court.gov.cn/html/1/219/193/195/index.html.

⁶See Singapore Rules of Court (Cap 322, s 80, 2014 rev ed) Ord 110 r 7.

⁷In practice, it may not be so easy to enforce foreign arbitral awards in numerous countries, even though they are parties to the 1958 New York Convention. In respect of enforcement of arbitral awards in a number of Asian jurisdictions and efforts in those states to reform their arbitration regimes to facilitate the enforcement of arbitral awards, see Anselmo Reyes and Weixia Gu (eds), *The Developing World of Arbitration: A Comparative Study of Arbitration Reform in the Asia Pacific* (Oxford, Hart Publishing, 2018).

to the SICC's jurisdiction by way of an express choice of court agreement. It will be further assumed that: (1) the SICC decision to be recognised and enforced is a final and conclusive money judgment reached following trial on the merits wherein a plaintiff proved its case and (2) being commercial in nature and not relating to land situate in an enforcing state, intellectual property rights (IPRs) or antitrust (competition), the judgment does not contravene the public policy of a relevant state. It should be borne in mind that, while Singapore is a party to the 2005 Hague Convention, the other Asian jurisdictions in this study are not. China has signed the 2005 Hague Convention, but has yet to ratify it. Given the foregoing assumptions, in terms of the rudimentary system, the key elements to check would be whether the SICC's judgment meets the criteria of indirect jurisdiction and reciprocity in a particular jurisdiction.

B. China

There is no bilateral treaty for the mutual recognition and enforcement of judgments between Singapore and China.⁸ But on 31 August 2018 the Chief Justices of the Supreme Court of Singapore and the Supreme People's Court of China signed a Memorandum of Guidance on Recognition and Enforcement of Money Judgments in Commercial Cases.⁹ The document describes the criteria to be applied by the Chinese and Singapore courts when considering whether to recognise and enforce each other's judgments. According to the Memorandum, where there is an application to enforce a Singapore judgment (including one from the SICC), the Chinese court will essentially consider whether finality and indirect jurisdiction have been met. The Memorandum also sets out non-exhaustive grounds of refusal of recognition and enforcement. The criteria and grounds for refusal are similar to those in the no-frills regime.

The Memorandum has no binding legal effect. Nonetheless, insofar as it has been signed by the Chief Justices of the respective countries and authoritatively sets out the procedures for recognising enforcing money judgments in each jurisdiction, it can be regarded as compelling evidence of reciprocity.¹⁰ Given that in the normal course of events SICC judgments will be money judgments in commercial matters, it follows from the foregoing that the courts in China will generally recognise SICC money judgments.

On indirect jurisdiction there may be situations requiring clarification. Article 9 of the Memorandum states that 'the courts of Singapore must have had jurisdiction to determine the subject matter of the dispute, as determined by the courts of the People's Republic of China, in accordance with Chinese law'. It would consequently appear that, with Singapore judgments, China applies a mirror principle in determining indirect jurisdiction. Where the Singapore court has founded jurisdiction on a basis analogous to a ground of direct jurisdiction that the Chinese court would apply, the Chinese court will treat

⁸ See in this book, Weixia Gu, ch 2, s III.A.

⁹ For the text, see www.supremecourt.gov.sg/docs/default-source/default-document-library/spc-mog-english-version--signed.pdf.

¹⁰ Independently of the Memorandum, the Nanjing Intermediate People's Court had accepted that there was reciprocity between China and Singapore: *Kolma Group AG v Jiangsu Textile Industry (Group) Import and Export Co Ltd* (2016) Su-01 Xie Wai Ren No 3 Civil Judgment.

the Singapore court as having indirect jurisdiction. Once the 2005 Hague Convention is ratified by China, jurisdiction founded on an exclusive choice of court agreement designating the SICC will plainly be an accepted ground of indirect jurisdiction under Chinese law, as both Singapore and China would then be parties to the Convention.¹¹ But, for the moment, what is the position? Article 25 of China's Civil Procedure Law stipulates that parties:

may agree to choose in their written contract the People's Court of the place where the defendant has his domicile, where the contract is performed, where the contract is signed, where the plaintiff has his domicile or where the object of the action is located to exercise jurisdiction over the case, provided that the provisions of this Law regarding jurisdiction by forum level and exclusive jurisdiction are not violated.¹²

This suggests that, if (1) a plaintiff or a defendant has a domicile in Singapore; (2) the relevant contract was performed or signed in Singapore; or (3) the subject matter of the originating action was located in Singapore, China will accept jurisdiction based on an exclusive choice of court agreement designating the SICC as a valid ground of indirect jurisdiction. What is unclear is whether a choice of court agreement designating the SICC will be regarded as a legitimate basis for indirect jurisdiction in a case where, apart from the choice of court agreement, there is no connection with Singapore.

C. Hong Kong

Singapore judgments are enforceable in Hong Kong under the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) (FJREO).¹³ A Singapore judgment (including that of the SICC) qualifies for registration pursuant to FJREO. To be registered, a judgment must be for a money payment and meet certain conditions (including falling within specified bases of indirect jurisdiction). FJREO also lists grounds for refusal of recognition. The condition for registration and the grounds for refusal of recognition are similar to those in the rudimentary system. There would be indirect jurisdiction in the Hong Kong court's view where a defendant has agreed to submit to the SICC by an exclusive choice of court agreement.¹⁴

¹¹ Attention, however, is drawn to Art 20 of the 2005 Hague Convention which states:

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the chosen court, were connected only with the requested State.

When China signed the 2005 Hague Convention, it did not make a declaration in terms of Art 20. Nevertheless, the author understands that there is an ongoing debate in China as to whether a foreign judgment in the situation posited by Art 20 should or should not be recognised. Thus, it is conceivable that China may at the time of ratification also make a declaration in terms of Art 20.

¹² The provisions on jurisdiction at forum level and exclusive jurisdiction are respectively to be found in the Civil Procedure Law, Arts 19–21, 34. The provisions on forum level specify when a case is to come before the Basic People's Court, the Intermediate People's Court, the High People's Court and the Supreme People's Court. For the three grounds of exclusive jurisdiction in Art 34, see this book, Weixia Gu, ch 2, s III.A.i.a.

¹³ See this book, James YP Wong, ch 3, s III.C.

¹⁴ FJREO, s 6(2)(a)(iii).

D. Taiwan

Taiwan operates criteria along the lines of the rudimentary system. On indirect jurisdiction, the Taiwan chapter in this book indicates that the courts will apply a mirror principle.¹⁵ If the Taiwan court would have direct jurisdiction under the Code of Civil Procedure in an analogous case, the rendering court will be treated as having indirect jurisdiction. Article 24 of the Code of Civil Procedure states:

Parties may, by agreement, designate a court of first instance to exercise jurisdiction, provided that such agreement relates to a particular legal relation.

The agreement provided in the preceding paragraph shall be evidenced in writing.

It follows that, in our example, the SICC would have indirect jurisdiction by analogy in light of the parties' choice of court agreement.

There is also a requirement of reciprocity.¹⁶ However, just as any other foreign judgment, a money judgment in a commercial matter can be recognised and enforced in Singapore at common law. In other words, the plaintiff to the Taiwan judgment can sue the defendant in Singapore on the basis of the judgment debt and apply for summary judgment.¹⁷ Having satisfied itself that (1) the Taiwan court delivering the judgment has indirect jurisdiction; (2) the Taiwan judgment is final and conclusive; (3) the Taiwan judgment was obtained through due process; and (4) the Taiwan judgment does not contravene Singapore public policy, the Singapore court will recognise the Taiwan judgment as giving rise to a debt and enforce the judgment. There will be no review of the merits of the original judgment. It will instead be treated as giving rise to a *res judicata* binding on the defendant. Accordingly, there should be no difficulty in establishing that in practical terms there is reciprocity between Singapore and Taiwan in relation to the recognition and enforcement of money judgments in commercial matters.

E. Japan

Japan has a sophisticated and liberal system for the recognition and enforcement of foreign judgments. The kernel of the Japanese system may be something along the lines of the rudimentary system. But the Japanese Code of Civil Procedure constitutes a much more developed version of that simple regime. Reciprocity is a requirement for the initial recognition and subsequent enforcement of a foreign judgment. As noted in the Japan chapter, a Japanese court has found that there is reciprocity between Singapore and Japan.¹⁸ The Japan chapter suggests, although it is by no means absolutely clear, that the Japanese courts will apply a mirror-image approach when determining indirect jurisdiction. On that basis, since a Japanese court will have direct jurisdiction on the basis of a party's submission,¹⁹ it should by analogy find indirect jurisdiction where there has been a submission to the SICC as a result of a choice of court agreement.

¹⁵ See this book, Fuldien Li and Yen-Te Wu, ch 4, s III.A.

¹⁶ *ibid*, s III.D.

¹⁷ For the summary judgment procedure, see Singapore Rules of Court (Cap 322, s 80, 2014 rev ed), Ord 14.

¹⁸ See this book, Kazuaki Nishioka, ch 5, s IV.A.iii, fn 56.

¹⁹ *ibid*, s IV.A.ii, fn 40.

F. South Korea

Like Japan, South Korea's law on recognition and enforcement is highly developed. At heart it follows principles similar to those underlying the rudimentary system. But it has gone further and, with the recent Private International Law Act Amendment Proposal, additional reforms are in store. Article 8 of the Amendment Proposal provides that there will be indirect jurisdiction where parties have entered into a choice of court agreement.²⁰ In the absence of indication to the contrary, the choice of court agreement will be presumed to be an exclusive jurisdiction clause. Reciprocity will similarly be assumed provided it can be shown that there is a likelihood that South Korean judgments of the same type will be recognised by an originating state or that there is no significant difference between the laws of the originating state and South Korea in respect of the recognition of judgments. In terms of the practical test here, there would accordingly be indirect jurisdiction, the SICC having been designated by the parties' agreement. There would also be reciprocity, as South Korean judgments can be recognised and enforced in Singapore at common law using the summary procedure outlined above.

G. Singapore

Obviously, an SICC judgment will be enforceable in Singapore. Suppose, however, that what is sought to be enforced in Singapore is a money judgment of the CICC or the AIFC Court in a commercial matter. In either case, the judgments can be recognised and enforced in Singapore at common law through the summary procedure described above. CICC judgments have the benefit that the procedure for the enforcement of Chinese judgments has been set out in the Memorandum signed by the Chief Justices of Singapore and China. The Memorandum gives transparency to the requirements for the recognition and enforcement of Chinese judgments in Singapore. There is no bilateral treaty between Kazakhstan and Singapore for the mutual recognition and enforcement of judgments. Nor is there a Memorandum of Guidance between the courts of Kazakhstan and Singapore. But, as pointed out in the Singapore chapter, where foreign judgments are being enforced in Singapore under the common law, reciprocity is not a condition for recognition. Instead, recognition and enforcement under the common law of Singapore is founded on obligation theory, namely, the notion that 'where a judgment is issued by a court of competent jurisdiction over the parties, that judgment creates an obligation on the parties to abide by it which the courts of other countries ought to recognise and enforce'.²¹ Thus, the absence of a treaty or a Memorandum of Guidance is not an impediment to the recognition of judgments of the AIFC Court as a matter of common law.

H. Malaysia

The enforcement of Singapore judgments in Malaysia is covered by the Reciprocal Enforcement of Judgments Act 1958 (REJA). Singapore appears in the First Schedule to REJA as

²⁰ See this book, Unho Lee, ch 6, s IV.B.

²¹ See this book, Kenny Chng, ch 7, s III.B.

a jurisdiction which accords reciprocity of treatment to Malaysian judgments.²² It is clear that, in the eyes of the Malaysian court, a choice of court agreement designating the SICC will amount to a submission to the SICC and so would meet the requirement of indirect jurisdiction in REJA. Accordingly, an SICC judgment will be recognised and enforced in Malaysia. It should be noted in this connection that the requirements in REJA very much reflect the principles underlying the rudimentary system.

I. Vietnam

Although both are members of the Association of Southeast Asian Nations (ASEAN),²³ there is no treaty for the mutual recognition and enforcement of judgments between Singapore and Vietnam. Nor is there any multilateral convention for the recognition and enforcement of judgments among ASEAN states.²⁴ This is despite the fact that on 31 December 2015 ASEAN inaugurated the ASEAN Economic Community (AEC) with the goal of promoting freedom of movement of trade and services among ASEAN states. The AEC can be expected to generate an increased number of cross-border disputes, leading to an urgent need for transparent mechanisms to ensure the speedy and cost-effective enforcement of judgments in commercial matters within ASEAN.

For the moment, SICC judgments will have to be enforced pursuant to Vietnam's Civil Procedure Code of 2015 (CPC). Reciprocity is a requirement under the CPC.²⁵ But the Vietnam chapter observes that it is unclear how reciprocity will be ascertained by the Vietnamese court in the absence of a bilateral agreement with the originating state.²⁶ In 2017 the Ministry of Justice proposed, albeit unofficially, that reciprocity might be determined on the basis of four factors: (1) diplomatic and economic relations between Vietnam and the originating country; (2) the sovereignty and interests of Vietnam; (3) the particular relations of each case; and (4) the rights and interests of the relevant parties, especially any Vietnamese parties.²⁷ While it is unclear how such factors are to be applied in practical terms, it is submitted that, given that Singapore and Vietnam are part of ASEAN and given their common interest as such Member States in developing the AEC, an application of factors (1), (3) and (4) identified by the Ministry of Justice should strongly point to a presumption of reciprocity between Singapore and Vietnam in the absence of evidence to the contrary. Certainly, Vietnamese money judgments in commercial matters can be recognised and enforced in Singapore at common law through the summary procedure described above. It should also be noted that the Deputy Chief Justice of the Supreme People's Court of Vietnam and a Justice of Appeal of the Singapore Supreme Court were among the attendees

²² See this book, Stipah Selvaratnam, ch 8, s III.A. It should be noted that the judgments of the State Court (formerly called 'the Subordinate Court') of Singapore will not be recognised in Malaysia under REJA, because such decisions are not regarded in Malaysia as the judgments of a 'Superior Court' within the terms of REJA. The SICC is, in contrast, a division of the Supreme Court of Singapore, which is a 'Superior Court' within REJA. There is accordingly no corresponding problem in relation to SICC judgments.

²³ The 10 states comprising ASEAN are Singapore, Malaysia, Brunei, Vietnam, Cambodia, Laos, Thailand, Myanmar, Indonesia and the Philippines.

²⁴ There is the ASEAN Comprehensive Investment Agreement (ACIA) of 26 February 2009. But that merely establishes a mechanism for dealing with disputes between investors and ASEAN member states. See ACIA, s B.

²⁵ See this book, Nguyen Ngoc Minh, Tran Ha Han and Nguyen Thi Thu Trang, ch 9, s IV.A.i.

²⁶ *ibid.*

²⁷ *ibid.*, fn 28.

endorsing the liberal approach to reciprocity set out in Article VII of the Nanning Statement of June 2017.²⁸ Thus, taken in the round, it is suggested that reciprocity between Singapore and Vietnam should at least be presumed by the Vietnamese courts, there being no evidence to the contrary.

As for indirect jurisdiction, it is likewise unclear what criteria will be applied to determine the same in the absence of a treaty.²⁹ CPC Article 440 stipulates that a foreign court will have jurisdiction in a civil case when two requirements are met. First, there is the negative requirement in Article 440(1) that a case not fall within the exclusive jurisdiction of the Vietnamese courts as provided in CPC Article 470.³⁰ Second, there is the positive requirement in Article 440(2) that a case fall among the situations having foreign elements in which the Vietnamese court would have ‘common jurisdiction’ pursuant to CPC Article 469.³¹ But the requirement in Article 440(2) is then subject to three provisos, namely that: (a) the defendant has participated in oral argument before the foreign court without appealing against its jurisdiction; (b) there is no judgment in the same matter by the court of a third country that has been recognised and enforced by the Vietnamese court; and (c) the case was accepted by the foreign court before being accepted by the Vietnamese court.³² Where does that leave our hypothetical SICC judgment? On the assumption that Article 440(2) provides for a mirror approach to indirect jurisdiction, it will be noted that an agreement to confer jurisdiction on a Vietnamese court is not one of the grounds of common jurisdiction listed in Article 469. Thus, on one reading, unless a defendant has not only submitted to the jurisdiction of the SICC by a choice of court agreement but has also appeared before it to argue the merits of a case, the requirement in Article 440(2) will not be met. A mere choice of court agreement would not be enough to confer indirect jurisdiction on the SICC under Article 440. Nonetheless, this result is far from certain,

²⁸ See this book, Anselmo Reyes, ch 1, fn 28.

²⁹ See this book, Nguyen Ngoc Minh, Tran Ha Han and Nguyen Thi Thu Trang, ch 9, ss III, IV.A.

³⁰ CPC Art 470(1) lists the civil lawsuits involving foreign elements which fall under the exclusive jurisdiction of the Vietnamese courts. Those lawsuits are:

- (a) Civil lawsuits involving rights to properties being immovables in the Vietnamese territory; (b) Divorce case between a Vietnamese citizen and a foreign citizen or a stateless person if both spouses reside, work or live permanently in Vietnam; (c) Other civil lawsuits where parties are allowed to choose Vietnamese Courts to settle according to Vietnamese law or International treaties to which the Socialist Republic of Vietnam is a signatory and parties agreed to choose Vietnamese Courts.

Art 470(2) lists the civil cases involving foreign elements that fall under the exclusive jurisdiction of the Vietnamese courts. Those civil cases are:

- (a) Claims without dispute arising from civil legal relationships specified in clause 1 of this Article;
- (b) Claims for determination of a legal events occurring in Vietnam; (c) Declaration of a Vietnamese citizen or a foreigner residing in Vietnam missing or death if such declaration is related to the establishment of their rights and obligations in Vietnam, except for cases where International treaties to which the Socialist Republic of Vietnam is a signatory otherwise prescribe; (d) Declaration of foreigner residing in Vietnam having limited civil act capacity or lacking legal capacity if such declaration is related to the establishment of their rights and obligations in Vietnam; (dd) Recognition of a property in Vietnam to be derelict, recognition of the right to ownership of the current manager over derelict immovables in Vietnam.

³¹ CPC Art 469 sets out the situations when a Vietnamese court has ‘common jurisdiction’ to resolve civil cases involving foreign elements.

³² It is unclear whether the three conditions in CPC Art 440(2)(a)–(c) are meant to apply cumulatively or in the alternative. The text reads: ‘The civil case falls in a case specified in Article 469 of this Code *but has one of the following conditions: ...*’ (emphasis added). The highlighted words literally mean that it is enough if one of the conditions in sub-paragraphs (a), (b) or (c) is met. But the sense of the three conditions suggest that they are meant to apply cumulatively.

because Article 440(1) refers to the exclusive jurisdiction of the Vietnamese court under Article 470. One of such grounds of exclusive jurisdiction is that in Article 470(1)(c) wherein the parties have chosen the Vietnamese court for the resolution of their disputes in a civil lawsuit. If the Vietnamese court can assert direct jurisdiction where it has been designated by the parties as the forum for the resolution of their disputes, then it should find that there is indirect jurisdiction in an analogous situation before a foreign court. Accordingly, if Vietnam essentially adopts a mirror approach to indirect jurisdiction, it is not apparent why it should not also accept a foreign court such as the SICC claiming jurisdiction in a commercial matter on the basis of a choice of court agreement.

It is accepted that the law in Vietnam on recognition of foreign judgments is still in a state of flux. According to the Vietnam chapter, guidance from the Supreme People's Court is awaited on questions such as indirect jurisdiction, reciprocity and public policy.³³ In this context, it is submitted that the development of a regime for recognition and enforcement along the lines of the rudimentary system would be of benefit to Vietnam, especially as a means of attracting more FDI and building on the significant gains achieved since 1986 through *Đổi Mới* (economic renovation).

J. Cambodia

The law on recognition and enforcement in Cambodia is likewise uncertain, being still in the process of development. The Cambodia chapter observes that, in the absence of a binding treaty or convention regulating the recognition and enforcement of judgments, the Civil Procedure Code will regulate the subject. There being no treaty between Cambodia and Singapore, one must therefore look to the provisions of the Civil Procedure Code. The latter requires evidence of reciprocity and indirect jurisdiction. On reciprocity,³⁴ Cambodian judgments in commercial matters may be enforced in Singapore at common law using the summary judgment procedure mentioned earlier. Further the approach of presuming reciprocity suggested by Article VII of the Nanning Statement should normally be applicable, the Vice-President of the Supreme Court of Cambodia and a Judge of the Singapore Court of Appeal having been part of the consensus embodied by the Nanning Statement. As for indirect jurisdiction,³⁵ the Cambodia chapter points out that the principles of freedom of contract and party autonomy are familiar to Cambodia judges. They are likely to regard the SICC as having jurisdiction on the basis of a choice of court agreement. Indeed, according to the Cambodia chapter, where a foreign judgment is obtained from a court other than the one designated by the parties' contract for the resolution of disputes, the Cambodian court will probably refuse recognition on the ground that the same would be contrary to the public order of Cambodia. Thus, it would seem that the Cambodia court will accept the SICC as having indirect jurisdiction in a matter where jurisdiction is based on a choice of court agreement.

In short, given reciprocity and indirect jurisdiction, the SICC's judgment should be recognised and enforced.

³³ See this book, Nguyen Ngoc Minh, Tran Ha Han and Nguyen Thi Thu Trang, ch 9, ss III, IV.A.i, IV.A.iii, VII.

³⁴ See this book, Alex Larkin and Potim Yun, ch 10, s IV.B.

³⁵ *ibid.*

K. Myanmar

The law on recognition and enforcement in Myanmar is still developing and so the fate of any foreign judgment (let alone those of the SICC) before the Myanmar court today would still be a matter of conjecture. However, the Myanmar chapter demonstrates that there is a solid foundation of case law from the colonial period to the early 1960s upon which the current law (still based on the Civil Procedure Code of 1908 (CPC)) can build and which, if followed as precedent, would imbue Myanmar law on recognition and enforcement with a reasonable degree of transparency and certainty.

From CPC sections 13 and 14 it is apparent that the courts in Myanmar must be satisfied that a rendering court had competent jurisdiction.³⁶ On this, case law suggests that, in our hypothetical situation, the Myanmar court will find indirect jurisdiction, the Myanmar court having stated in *Steel Brothers & Co Ltd v Y A Ganny Sons*:

The consensus of opinion of the Courts in Burma as well as in India is that when two Courts have jurisdiction to try a suit the parties by agreement can choose the forum. The choice of a forum in such a case is left open to the parties by agreement which is not considered illegal.³⁷

Further, in contrast to the procedure under CPC section 44A (which currently only applies to certain courts in the UK),³⁸ the CPC First Schedule Order XV summary procedure for the recognition of a foreign judgment does not require that the originating state be a 'reciprocating territory'. Accordingly, if the Order XV procedure³⁹ is used for the recognition of an SICC judgment, it should not be necessary for the SICC judgment to meet a condition of reciprocity. Nevertheless, if it were somehow necessary by analogy with section 44A or otherwise for reciprocity to be established, the reality is that Singapore courts will recognise and enforce Myanmar commercial judgments at common law through the Singapore summary judgment procedure already mentioned. There is in addition the presumed reciprocity approach advocated by the Nanning Statement to which Singapore and Myanmar were party. It follows that reciprocity should not be a problem and SICC money judgments in commercial matters stand a good chance of being recognised and enforced in Myanmar through the CPC Order XV procedure.⁴⁰

It should be noted that the system for recognition and enforcement posited in the Myanmar chapter is essentially the rudimentary system.

L. The Philippines

The Philippines is unique among the jurisdictions surveyed here, because its case law emphasises 'comity', rather than 'reciprocity', as the basis for recognition and enforcement

³⁶ See this book, Zaw Thura, ch 11, s II.A.i.

³⁷ [1965] *Burma Law Reports* 449 (CC) (U Kyaw Zan U J), 456.

³⁸ See this book, Zaw Thura, ch 11, s II.B.i.

³⁹ *ibid*, s II.A.i.

⁴⁰ CPC Ord XV in Myanmar is in fact analogous to Singapore's Ord 14 summary judgment procedure. This is hardly surprising, both being common law jurisdictions and the summary judgment procedure being one of the ways in which common law countries typically recognise and enforce foreign judgments.

of judgments.⁴¹ Further, it does not seem to apply any test of indirect jurisdiction to foreign judgments. This may be because a foreign decision that is final and conclusive is simply presumed by the Philippine court to be valid and binding on a defendant in the absence of proof to the contrary.⁴²

The Philippines is also unique in that it permits its courts to review of the merits of a foreign judgment when a defendant alleges that the judgment should not be recognised due to 'clear mistake' of law or fact.⁴³ The Philippines chapter has argued that any merits review should be regarded as functionally equivalent (and thus limited) to assessing whether a foreign judgment should be refused recognition as being contrary to 'public order, public policy and good customs'.⁴⁴ But it is unclear whether this latter argument will be accepted by the Philippine courts.

Given comity, the Philippine court will therefore likely recognise an SICC money judgment in a commercial matter as valid, binding and enforceable. There may be a review of the merits in some cases where a defendant alleges that there is 'clear mistake' of law or fact. But it is submitted that any such review should be brief. It should be confined to ascertaining whether there is an obvious mistake on the face of a judgment. The review should not be a pretext for prolonged scrutiny of a judgment, potentially including a hearing of oral evidence and cross-examination on the same. That sort of examination would undermine the principle of comity which the Philippine courts have repeatedly upheld. In the guise of looking for 'clear mistake', a detailed and protracted review of the merits would actually be re-opening substantive matters already decided by the rendering court. It would be a second bite at the cherry for a defendant and contrary to the doctrine of *res judicata*. From an economic standpoint, foreign investors will be reluctant to deal with Philippine parties, if there is a prospect that foreign judgments against the latter will be routinely re-opened by the Philippine court and effectively re-litigated because an obstructive and tactically astute defendant has pleaded 'clear mistake' at the recognition and enforcement stage.⁴⁵

M. Indonesia

It does not seem that the posited SICC judgment will be recognised and enforced in Indonesia. By Article 436 of the *Reglement op de Burgerlijke Rechtsvordering* (Rv), with the exception of matters relating to maritime general average, all foreign judgments are unenforceable in the absence of a bilateral treaty.⁴⁶ There is no treaty between Singapore and Indonesia for the mutual recognition and enforcement of judgments.

⁴¹ See this book, Arvin A Jo and Jocelyn P Cruz, ch 12, s IV.

⁴² *ibid*, fn 22. But it does not logically follow from the principle of comity that there is no need to check for indirect jurisdiction. There should at least be some link between the rendering court and one or other or both of the parties or the subject matter of an action. Otherwise, the plaintiff could simply find some advantageous jurisdiction, convenient for the plaintiff but not to the defendant, where the plaintiff can easily obtain judgment.

⁴³ *ibid*, s IV.D.

⁴⁴ *ibid*.

⁴⁵ It is submitted that the Philippine system requires further development along the lines of the rudimentary system. While the emphasis on comity is laudable, it is insufficient without indirect jurisdiction to support an effective and fair system. It may be possible to have a workable system by treating adherence to due process as a matter of public policy and good order. But the scope of the merits review for 'clear mistake' needs to be more precisely circumscribed.

⁴⁶ See this book, Afifah Kusumadara, ch 13, s I.

The Indonesia chapter has argued that foreign judgments can be treated as authentic deeds and, as such, they may be accepted as unimpeachable evidence of a claim.⁴⁷ The chapter has also suggested that the Indonesian courts can follow the approach taken by the Dutch courts to Article 431 of the Dutch Code of Civil Procedure (which is similar terms to Rv Article 436).⁴⁸ The Dutch courts have held that, provided criteria similar to those of the rudimentary system are met, then a foreign judgment can be de facto ‘recognised’ by recourse to a summary procedure without need for further trial. The summary procedure would result in the grant of a domestic decree of execution which would be enforceable just like any other decree of the enforcing court. This summary procedure would thus be similar to the summary procedures under Order 14 in Singapore and Order XV in Myanmar. The Indonesian chapter nonetheless acknowledges that it is unknown whether the Indonesian court will accept any of these proposed methods of circumventing the apparently blanket prohibition against the enforcement of foreign judgments in Rv Article 436.

N. Thailand

Like Indonesia, Thailand also has a reputation of not enforcing foreign judgments. Despite this, the Thailand chapter is optimistic that changes will be forthcoming as younger judges succeed the older generation.⁴⁹ On the basis of the single case on the matter (SCJ 585/2461, decided in 1908), the Thailand chapter posits that indirect jurisdiction, due process and finality are the minimum criteria that the Thai court will apply when considering whether or not to recognise a judgment.⁵⁰ There may be other requirements, although (if so) these have yet to be articulated in cases. In terms of indirect jurisdiction, it is unknown whether the Thai court takes a mirror approach or one predicated on the existence of a ‘characteristic link’ between an action and the rendering court. As for reciprocity, the Thai courts have barely mentioned it in the few decided cases on recognition and enforcement. The Thailand chapter argues that a requirement of reciprocity would be out of sync with modern trends in private international law.⁵¹ The upshot of all this is that it is unknown whether the Thai court will recognise an SICC money judgment in a commercial matter.

O. Sri Lanka

As Sri Lanka and Singapore both belong to the Commonwealth, Singapore money judgments (including those of the SICC) may be recognised and enforced in Sri Lanka by registration pursuant to the Reciprocal Enforcement of Judgments Ordinance (No 41 of 1921).⁵² To be registered, it must be shown that the rendering court was one of competent

⁴⁷ibid.

⁴⁸ibid, s V.A and fn 31.

⁴⁹See this book, Akawwat Laowonsiri, ch 14, s I.

⁵⁰ibid, s III.B.

⁵¹ibid, s III.B.iv.

⁵²See this book, Kankani Tantri Chitrasiri, Sajini Fernando and Asiesha Weerasekara, ch 15, ss I, III.

jurisdiction.⁵³ That requirement of indirect jurisdiction will be met by an SICC judgment arising out of the parties choice of court agreement.⁵⁴

P. India

Singapore has been gazetted in India as a reciprocating territory.⁵⁵ Thus, SICC judgments are enforceable by filing an execution petition.⁵⁶ It appears that, under this procedure, the competency of the rendering court will still have to be assessed by the Indian court. Submission by reason of a choice of court agreement is regarded as sufficient to bestow indirect jurisdiction on the rendering court. Accordingly, where the SICC has asserted jurisdiction pursuant to the parties' choice of court agreement, there would be indirect jurisdiction.

Consider now the situation envisaged in Article 20 of the 2005 Hague Convention. The author is aware⁵⁷ that there is uncertainty among Indian lawyers as to what will happen where (say) two Indian parties agree to confer exclusive jurisdiction on the SICC on a matter that the SICC would consider as 'international' in nature.⁵⁸ Will the Indian courts recognise the exclusive jurisdiction clause as conferring indirect jurisdiction on the SICC or will the Indian courts refuse to recognise any SICC decision in such case on (say) the public policy ground? In other words, would the exclusive jurisdiction clause be treated as invalid in India on the basis, for example, that it seeks to evade the jurisdiction of Indian courts. According to the India chapter, the Indian parties will normally be bound by an exclusive or non-exclusive jurisdiction clause in favour of a foreign court. Exceptionally, an jurisdiction clause will not be binding where rare and extraordinary circumstances justify relieving a party from its obligations under the clause.⁵⁹ It would seem then that, in the situation

⁵³ *ibid*, s III.B.i.a. The requirements for registration are in fact similar to those for recognition and enforcement in the rudimentary system.

⁵⁴ *ibid*, s III.B.i.a, relying on the 'frequently cited' judgment of Buckley LJ in *Emanuel v Symon* [1908] 1 KB 302.

⁵⁵ See this book, Sai Ramani Garimella, ch 16, s III, fn 16.

⁵⁶ *ibid*, s III.

⁵⁷ It seems that the standard advice given by Indian lawyers in the situation posited is for the Indian plaintiff suing the Indian defendant abroad pursuant to an exclusive jurisdiction clause, to join a foreign party (preferably one resident in the same territory as the court having exclusive jurisdiction) as a 'necessary or proper party' to the legal proceedings in order to justify resort to a court outside India.

⁵⁸ By Singapore's Supreme Court of Judicature Act (Cap 322, 2007 rev ed) s 18D(1)(a), the SICC has jurisdiction to try cases that are international and commercial in nature. See Singapore Rules of Court (Cap 322, s 80, 2014 rev ed), Ord 110, r 7(1)(a) to similar effect. 'International' and 'commercial' are defined in Ord 110, rr 1(2)(a) and (b) respectively. However, under Ord 110, r 8(2) the SICC 'must not decline to assume jurisdiction in an action solely on the ground that the dispute between the parties is connected to a jurisdiction other than Singapore, if there is a written jurisdiction agreement between the parties'. Consequently, where two Indian parties to a commercial transaction confer jurisdiction on the SICC by a choice of court agreement, the SICC must accept jurisdiction in the absence of some other ground for refusing to hear the case.

⁵⁹ See this book, Sai Ramani Garimella, ch 16, s IVD, citing *Modi Entertainment Network v WSG Cricket Pte Ltd* [2003] AIR SCW 733, *Bharat Heavy Electricals v Electricity Generation Incorporations* [2017] CS (Comm) 190/2017 (Delhi High Court). *Modi* involved a contract whereby the respondent granted to the appellant the right to broadcast an International Cricket Conference tournament taking place in Kenya on Doordarshan (an Indian broadcasting service). The contract contained a non-exclusive jurisdiction clause in favour of the English court. The appellant commenced proceedings before the Bombay High Court. The respondent started proceedings in England. The appellant applied for an anti-suit injunction from the Bombay High Court. An injunction was initially granted by a single judge, but was overturned by the Division Bench of the Bombay High Court.

posited, the Indian courts would as a general rule regard the SICC as having indirect jurisdiction and an SICC money judgment in such matter would be recognised and enforced by the Indian court.

II. The Test Results

The practical test suggests that there is a likelihood that the SICC's judgment will be recognised in all but two of the 15 Asian jurisdictions. The two exceptions are Indonesia and Thailand. Even then, the position with Thailand is not wholly clear. Ignoring Singapore, among the remaining 12 Asian jurisdictions, one finds a spectrum. In China, Hong Kong, Taiwan, Japan, South Korea, Malaysia, the Philippines, Sri Lanka and India, SICC judgments will generally be recognised and enforced, either pursuant to a bilateral arrangement, a Memorandum of Guidance, principles in a code of civil procedure, the common law, or international comity. In Vietnam, Cambodia and Myanmar there is a good chance that SICC money judgments in commercial matters will be recognised and enforced, but there is uncertainty because the relevant law in those jurisdictions is still in the process of articulation and development by the legislature and the courts.

Overall, the test indicates that there is a nascent regime of recognition and enforcement in Asia, to the extent that the 15 jurisdictions may be said to represent the region. That regime is along the lines of the rudimentary system, with a number of states (China, Hong Kong, Taiwan, Japan, South Korea, Singapore, Malaysia, Sri Lanka and India) having more or less fully-developed laws (albeit in the case of China requiring clarification in some instances), while others (Vietnam, Cambodia, Myanmar and the Philippines) are in the process of developing their laws to the level of the rudimentary system, and yet others (Thailand and Indonesia) have still some distance to go to bring their laws up to the level of the rudimentary system.

On appeal, the Supreme Court (Syed Shah Quadri and Arijit Pasayat JJ), holding that the injunction had rightly been discharged, stated:

In regard to jurisdiction of courts under the Code of Civil Procedure (CPC) over a subject matter one or more courts may have jurisdiction to deal with it having regard to the location of immovable property, place of residence or work of a defendant or place where cause of action has arisen. Where only one Court has jurisdiction it is said to have exclusive jurisdiction; where more courts than one have jurisdiction over a subject matter, they are called courts of available or natural jurisdiction. The growing global commercial activities gave rise to the practice of the parties to a contract agreeing beforehand to approach for resolution of their disputes thereunder, to either any of the available courts of natural jurisdiction and thereby create an exclusive or non-exclusive jurisdiction in one of the available forums or to have the disputes resolved by a foreign court of their choice as a neutral forum according to the law applicable to that court. It is a well-settled principle that by agreement the parties cannot confer jurisdiction, where none exists, on a court to which CPC applies, but this principle does not apply when the parties agree to submit to the exclusive or non-exclusive jurisdiction of a foreign court; indeed in such cases the English Courts do permit invoking their jurisdiction. Thus, it is clear that the parties to a contract may agree to have their disputes resolved by a Foreign Court termed as a 'neutral court' or 'court of choice' creating exclusive or non-exclusive jurisdiction in it.

One might ask what would be an exceptional circumstance justifying the grant of relief from the consequences of an exclusive jurisdiction clause. It is submitted that one example might be where an overriding statute or mandatory law confers exclusive jurisdiction in a matter to an Indian court. It may be contrary to Indian public policy to allow Indian parties to avoid the Indian court's exclusive jurisdiction by a choice of court agreement designating a foreign court as the forum in which their disputes should be brought.

The test was run on certain assumptions (for example, a money judgment in a commercial matter obtained through due process in the rendering court (the SICC) pursuant to a choice of court agreement). Similar tests can be run on other assumptions (for instance, assuming habitual residence of a defendant as the basis upon which a rendering court has accepted jurisdiction). It is submitted that the results thrown up by different scenarios will not be too different overall from those obtained here.⁶⁰

III. An Agenda for the Future

The test results suggest that efforts at improving the nascent system of recognition and enforcement in the Asian jurisdictions might usefully be directed in a number of areas.

First, indirect jurisdiction needs to be clarified. At a minimum it is suggested that states adopt the grounds of indirect jurisdiction put forward in the rudimentary system. Insofar as submission by a choice of agreement designating a court is accepted as a ground of indirect jurisdiction by a state, the latter should make clear how it will deal with the situation envisaged in Article 20 of the 2005 Hague Convention. In other words what will be the outcome where two parties resident in the enforcing state have designated a foreign court as the forum for the resolution of a dispute, but the relationship of the parties and all other elements relevant to the dispute, other than the location of the chosen court, are only connected with the enforcing state? In such case, will the enforcing court recognise the designated rendering court as not having indirect jurisdiction at all or only in limited circumstances and (if so) in what circumstances? Further, it appears from the practical test that many countries follow something like a mirror approach to indirect jurisdiction, but the extent to which they do so is not made explicit in their codes of civil procedure or case law. Consideration should be given to clarifying the position by adopting a mirror approach such as that proposed by Professor Brand and discussed in the Introduction.⁶¹

Second, reciprocity needs to be thought through. It will probably take too long if a country wishes to establish reciprocity by negotiating bilateral treaties or entering into multilateral conventions such as the forthcoming Hague Convention. If it is deemed urgent for the purposes of attracting FDI and spurring economic growth, countries might consider simply entering into Memorandums of Guidance on a judiciary-to-judiciary basis as evidence of reciprocity. Consideration might be given to whether reciprocity remains meaningful as a requirement in this day and age or whether it should be replaced by a general principle of international comity. If reciprocity is retained, then a liberal approach to that concept, along the lines of the Nanning Statement of June 2017, may be advisable. From the practical test conducted here, it is obvious that, although non-binding, the Nanning Statement of 2017 is

⁶⁰ There is an interesting scenario that readers may additionally want to consider. Suppose that there is a bilateral treaty between States X and Y providing for the mutual recognition and enforcement of their respective judgments in commercial matters. Suppose further that an SICC judgment will be recognised and enforced under the law of State X, but it is uncertain whether an SICC judgment will be recognised and enforced under the law of State Y. Will it be possible indirectly to enforce an SICC judgment in State Y by first having the SICC judgment recognised in State X and converted into a judgment of State X, and then enforcing the resulting State X judgment in State Y?

⁶¹ See this book, Anselmo Reyes, ch 1, ss III.C and fn 20.

important not just as a mere statement of aspiration, but as hard evidence of the approach that Asian judiciaries should and will be taking in the future on reciprocity.

Third, it was assumed in the practical test that the hypothetical SICC judgment sought to be enforced did not breach due process and was not contrary to public policy. This does not mean that due process and public policy can be ignored. States need to focus on reaching a consensus on just what adherence to 'due process' involves. It is acknowledged that this may not be an easy task. Due process has many angles and queries over the propriety of procedures may arise in myriad ways. Nonetheless, experience in the field of international commercial arbitration and arbitral awards indicates that many Asian states are prone to take far too narrow a view of due process (that is, one that stresses strict adherence to the letter of a procedural requirement), rather than considering a matter overall and asking whether a defendant was substantially afforded a reasonable opportunity to present a case and defend itself before the rendering court. A narrow approach has led in international arbitration to so-called 'due process paranoia' among arbitrators. If the fairness of the procedure in the rendering court is merely one over which different judges properly advised might reasonably differ, then it is submitted that enforcing courts should not refuse recognition by reason of a failure to follow due process. The lack of due process should be blatant or egregious (for example, fraud in the obtaining of a judgment or the failure to give any or any sufficient notice of proceedings before the rendering court) before it would merit the refusal of recognition to a judgment. Similarly, it should not be every mistake in the application by a foreign court of the law of the enforcing state that will automatically mean that a judgment is contrary to public policy or the fundamental norms or laws of a given Asian state. It is submitted that it is only where recognition would be wholly repugnant to the public order or the legal, social, cultural or religious norms of a state that refusal would be justified. The test for public policy in the recognition and enforcement of foreign judgments should be assimilated with and made identical to the test for public policy in the recognition and enforcement of foreign arbitral awards. Countries should be astute to ensure that challenges based on the due process (especially allegations of fraud) and public policy grounds do not become pretexts for essentially relitigating the substantive merits of foreign judgments. Consideration should be given to enforcing parts of judgments, where judgments are severable and some but not all parts are contrary to a state's public policy or fundamental norms.

Fourth, procedures for enforcement within a state should be streamlined. It is disheartening for litigants when, having won a legal battle in one state, they effectively have to start all over again in another state with the prospect of being tied up there for years in seeking to enforce their judgments. It is suggested that states institute simple processes of registration or summary adjudication as means for converting foreign judgments into domestic decrees capable of ready execution against a defendant's assets within the enforcing state.

Fifth, once an efficient and cost-effective rudimentary regime for recognition and enforcement is in place, a country might consider refinements. For instance, to what extent should foreign judgments relating to IPRs, competition law, immovables or environmental wrongs be enforceable? Should a country countenance the possibility of enforcing judgments where such matters merely arise as preliminary or incidental questions and the rendering court's principal decision essentially deals with the substantive rights of the parties as among themselves? A current hot topic in the Hague Conference's Judgments Project is the extent

to which the judgments of ‘common courts’ (that is, the regional court of an association of countries such as the European Court of the European Union) should be recognised.⁶² How should requirements such as reciprocity be applied (if at all) to the recognition and enforcement of the judgments of common courts, where (say) some but not all countries within the relevant association have reciprocal arrangements with the enforcing state?

Sixth, consideration should be given to joining the 2005 Hague Convention and the forthcoming Hague Convention. Although it will take time for these instruments to have a membership that even approaches that of the 1958 New York Convention, in due course a large number of Contracting States for each would greatly assist towards rationalising the system for recognition and enforcement not just in Asia, but all over the world.

This book has advocated implementation and development of a rudimentary system for the recognition and enforcement of judgments throughout Asia. It has attempted to do so in a practical, as opposed to a theoretical, manner. The issue boils down to an economic question. If a state is persuaded that a liberal regime of recognition and enforcement will help to attract FDI and assist in improving the welfare of its citizens, then a rudimentary system at least should be implemented sooner rather than later. One cannot and should not delay.

Currently, as a result of the 1958 New York Convention’s success, international commercial arbitration is perceived as more reliable insofar as enforcement is concerned. There is a belief that it will be significantly easier to enforce foreign arbitral awards in (say) Asian countries than to enforce foreign judgments. The nascent system that has become apparent as a result of running the practical test in this chapter, suggests that the belief is unjustified. The reality is that in many Asian countries, even when they are parties to the 1958 New York Convention, there are problems in enforcing arbitral awards that are similar to those encountered in enforcing foreign judgments. One may not have to contend with indirect jurisdiction in the case of arbitral awards, but one has to deal instead with challenges to the validity of an arbitration agreement and an arbitral tribunal’s jurisdiction. One also has to contend with questions of due process and public policy. These last two matters in international commercial arbitration are not much different from their counterparts in cross-border commercial litigation.

Whether or not one thinks that arbitration is preferable to litigation, a reason why it is vital and urgent to facilitate the recognition and enforcement of foreign judgments, especially foreign commercial judgments, is that international commercial arbitration is universally regarded today as having become overly technical, overly long and overly expensive.⁶³ At the very least, by developing improved systems for the recognition and enforcement of foreign judgments across Asia, countries give commercial businesses an option. If they find international commercial arbitration too expensive, they can instead opt for choice of court agreements designating a court as the forum to resolve their dispute. On the other hand, if they think that cross-border litigation is too expensive, they can put

⁶² See The Permanent Bureau, Hague Conference on Private International Law, ‘Note on “common courts” in Article 22 of the February 2017 Draft Convention’, Document No 9 of 2017 (*Hague Conference on Private International Law*, 13–17 November 2017), available online: assets.hcch.net/docs/c168c7c4-e790-4551-993e-fe791ee0a1a6.pdf.

⁶³ See Anselmo Reyes, *The Practice of International Commercial Arbitration: A Handbook for Hong Kong Arbitrators* (Oxon, Informa Law from Routledge, 2017) 11–12, 201–03.

an arbitration agreement into their commercial contract instead. The competition between the two modes of dispute resolution, arbitration on the one side and litigation on the other, will help to bring down the cost of cross-border commercial dispute resolution down across the board. Hopefully, that will mean that everyone is better off at the end of the day.⁶⁴ It is respectfully submitted that giving the public this choice between modes of dispute resolution is at heart what the recognition and enforcement of judgments and this book are about.

⁶⁴ See James Spigelman, 'The Hague Choice of Court Convention and International Commercial Litigation' (2009) 83(6) *Australian Law Journal* 386. See also Louise Ellen Teitz, 'The Hague Choice of Court Convention: Validating Party Autonomy and Providing an Alternative to Arbitration' (2005) 53(3) *American Journal of Comparative Law* 543.