

Table of Contents

Preface	xvii	
Acknowledgments	xix	
List of Abbreviations	xxi	
Introduction	1	
I	Setting the Scene	1
	[A] Globalization and China's Recent Legal Evolvement	1
	[1] Globalization and International Disputes Resolution	1
	[2] Growing China Facing New Legal Challenges	2
	[B] Recognition and Enforcement of Foreign Judgments in the New Era	4
	[1] The Increasing Necessity of Recognition of Foreign Judgments	4
	[2] The Difficulties Deeply-Rooted in Cooperation of the REJ	6
	[3] The Possible Ways to Go Ahead in the REJ	9
II	Basic Considerations of the REJ	10
	[A] Rationales for the REJ	10
	[1] Existing Theories for the REJ	10
	[2] A Critique	11
	[B] The REJ in the Context of Private International Law	14
	[C] Recognition of Foreign Judgments versus Enforcement of Foreign Judgments	16

Table of Contents

[D]	Recognition as an Incidental Question versus Recognition as a Main Claim	18
[E]	Driving Forces for the Contemporary REJ	19
CHAPTER 1		
	A Preliminary Issue: Effects of Foreign Judgments in China	21
§1.01	Introduction: A New Significant Issue to Consider	21
§1.02	The Scene to Set: Differences in Effects of Judgments among Countries	23
§1.03	Possible Ways Out: Approaches to Circulation of Effects of Judgments	26
[A]	Preliminary Issues	26
[B]	The Typical Approaches	27
[C]	The Pros and Cons of the Approaches	28
[D]	Is There a Preferable Choice?	32
§1.04	Effects of Foreign Judgments in China	34
[A]	The “Equalization of Effects” Approach in China	34
[B]	Effects Chinese Judgments Domestically Have	37
[1]	Statutory Rules	37
[2]	Scholarly Discussion	40
§1.05	Conclusion	41
CHAPTER 2		
	The Skeleton: The Legal System regarding the REJ in China	43
§2.01	A Broad Picture	43
[A]	China with a “Modernized” Legal System	43
[B]	Sources of Law on the REJ in China	44
§2.02	A Three-Tiered System to the JRE in China	46
§2.03	The National Laws-Based REJ in China	47
[A]	General Considerations	47
[B]	A Glance at the Relevant National Rules	48
[1]	The Two Articles of the CCP	48
[2]	The Three Articles of the Opinion on the CCP	50
[3]	The Bankruptcy Act	51
[4]	The 1999 Regulation on Foreign Divorce Judgments	51
[5]	The 1991 Regulation on Foreign Divorce Judgments	54
[6]	Other Relevant Rules	57
[7]	Model Law of Private International Law of the PRC	60
[C]	Clarification of Key Terms of the Abovementioned National Rules	61
[1]	The Term “Judgments or Rulings”	61
[a]	Absence of Any Explicit Clarification	61
[b]	“Judgments or Rulings” in a Broad Context	62

Table of Contents

	[c] Recourse to the Term in Judicial Practice	64
	[2] The Term “Foreign” or “Foreign Country”	66
[D]	Conditions of the National Laws-Based REJ in China	69
	[1] Preliminary Remarks	69
	[2] The Foreign Judgment Must Be Ripe as “Legally Effective”: The Ripeness Requirement	71
	[a] Introduction to the Ripeness Requirement	71
	[b] Fundamental Issues Surrounding the Ripeness Requirement	73
	[i] The Ripeness Requirement versus the Ripeness Issue	73
	[ii] Problems and Solutions: From a Broad Perspective	75
	[c] The Ripeness Requirement in the Context of Chinese Law	78
	[i] A Brief Introduction	78
	[ii] The Term “Legally Effective”	79
	[iii] Fulfillment of the Requirement in the Context of the REJ in China	82
[3]	The Principle of Reciprocity Should Be Established	84
	[a] The Broad Picture	84
	[b] General Considerations of the Reciprocity Requirement	85
	[i] A Requirement: Fading or Flourishing?	85
	[ii] Survival of the Reciprocity Requirement	89
	[c] The Reciprocity Requirement under Chinese Law	92
	[i] Chinese Implications of the Term “Reciprocity”	92
	[ii] Particulars Concerning the Reciprocity Requirement	99
	[iii] Illustrative Cases	101
	[iv] Satisfaction of the Reciprocity Requirement	104
	[v] Strategical Considerations	107
[4]	The International Jurisdiction of the Rendering Country Should Be Assured	109
	[a] Setting the Scene	109
	[b] General Considerations	110
	[i] The Basic Concepts	110
	[ii] The Significance or Rationale of the Jurisdictional Requirement	112
	[iii] Conflicts: Exercise of Jurisdiction versus Review of Jurisdiction	114
	[iv] The Design of the Jurisdictional Requirement	116

Table of Contents

	[v] Special Considerations of Administration of the Jurisdictional Requirement	119
	[c] The Jurisdictional Requirement under Chinese Law	122
	[i] An Implied Jurisdictional Requirement	122
	[ii] The Implications of the Jurisdictional Requirement	124
	[d] The Jurisdictional Grounds in Chinese Law	126
	[i] Introduction	126
	[ii] Domestic Jurisdictional Rules	127
	[iii] International Jurisdictional Grounds	130
	[e] The Relevant Cases on the Jurisdictional Requirement	133
	[f] Summary	134
[E]	Defenses to the National Laws-Based REJ in China	135
	[1] Preliminary Remarks	135
	[2] Contradiction to “Basic Principles of Chinese Law”	139
	[a] A General Consideration	139
	[b] Contents of “Basic Principles” of Chinese Law	141
	[3] Contradiction to China’s National Sovereignty, Security and Social and Public Interests	144
	[a] Introduction	144
	[b] A General Consideration of Public Policy	147
	[i] A Dialectical Reading of Public Policy	147
	[ii] Public Policy: A Concept of Amorphous Nature	147
	[iii] Public Policy in Different Contexts	149
	[iv] Application of Public Policy	150
	[c] The Public Policy Defense under Chinese Law	153
	[i] The Status Quo	153
	[ii] Legal Provisions on Public Policy	154
	[iii] Propositions for Application of the Defense	156
	[d] Chinese Judicial Practice on the Public Policy Exception	159
	[e] Further Limits to the Public Policy Exception	161
	[4] Fraud	164
	[a] A Broad Consideration	164
	[i] Introduction	164
	[ii] Moderate Application of Fraud	166
	[b] The Concept of Fraud in the Chinese National Law	168
	[5] Breach of Natural Justice	170
	[a] General Considerations	170
	[b] Implications of “Breach of Natural Justice”	172
	[i] The Term of Natural Justice	172
	[ii] Connotations of the Defense	173

Table of Contents

	[c] “Breach of Natural Justice” under Chinese Law	177
	[d] Application of the Defense in Chinese Judicial Practice	181
	[6] Parallel Proceedings or Conflicting Judgments	186
	[a] Setting the Scene	186
	[b] A General Consideration	187
	[c] The Res Judicata Effect of Local Judgments	187
	[d] The Res Judicata Effect of Foreign Judgments Recognized	189
	[e] Pending Proceedings or Future Judgments	190
	[f] The Defense of “Conflicting Judgments” under Chinese Law	191
[F]	Recognition of Special Categories of Foreign Judgments	195
	[1] Introduction	195
	[2] Recognition of Foreign Divorce Judgments	196
	[a] A General Consideration	196
	[b] The Conditions of the Recognition of Foreign Divorce Judgments	196
	[c] Defenses to the Recognition of Foreign Divorce Judgments	197
	[3] Recognition of Foreign Bankruptcy Judgments	198
	[4] Recognition of Foreign Default Judgments	199
[G]	Remedies against the Decisions on Applications for the REJ in China	201
[H]	Currency and Rate of Exchange Regarding Foreign-Money Judgments	202
	[1] Currency and Rate of Exchange: A Common Problem	202
	[2] Chinese Law and Judicial Practice	205
[I]	Interests Accrued to Foreign Judgments	205
§2.04	The Bilateral Treaties-Based REJ in China	206
	[A] A Broad Picture	206
	[B] A Preliminary Consideration	208
	[C] The Conditions of the REJ	209
	[1] A General Consideration	209
	[2] Foreign Judgments Should Be Ripe	210
	[3] The Original Courts Must Have International Jurisdiction	211
	[a] Introduction	211
	[b] Approaches to Prescribing the Jurisdictional Requirement	212
	[c] Some Concluding Remarks	218
[D]	The Defenses to the REJ	223
	[1] Contradiction to Sovereignty, Security, Social and Public Interests	223

Table of Contents

	[2] Breach of Natural Justice	224
	[3] Conflicting Judgments or Parallel Proceedings	225
	[4] Other Available Defenses	226
§2.05	The Multilateral Conventions-Based REJ in China	227
	[A] A General Consideration	227
	[B] The Multilateral Conventions in This Regard	228
	[C] Possibility for China to Accede to the International Conventions on the REJ	234
§2.06	Concluding Remarks	236
CHAPTER 3		
	The Flesh: The Judicial System Supporting the REJ in China	239
§3.01	Introduction	239
§3.02	The Unique Chinese Judicial System	240
	[A] The Structure of the Chinese Courts System	240
	[B] The Instances for a Case	241
	[C] The Independence of Chinese Courts	242
	[1] A Legislative Perspective	243
	[2] A Practical Perspective	244
	[D] Reform of the Chinese Judicial System	246
	[E] The Judges, Lawyers and Other Legal Professionals	248
§3.03	Proceedings Leading to the REJ in China	250
	[A] Preliminary Remarks	250
	[B] Proceedings for the National Laws-Based REJ in China	251
	[1] Judicial Assistance versus the REJ in China	251
	[a] Judicial Assistance: A Broad Context of the REJ	251
	[b] Implications of the Rules on Judicial Assistance	253
	[2] Fundamental Issues regarding the Proceedings of the REJ in China	254
	[a] The Legal Basis	254
	[b] Qualified Subjects for Making the Submission	255
	[c] The Courts Having Adjudicatory Authority to Entertain the REJ-Related Cases	256
	[i] The General Rule: <i>Intermediate</i> People's Courts	256
	[ii] Concentrated Jurisdiction in Judicial Practice	257
	[iii] To Pinpoint the Specific Courts Addressing the REJ	259
	[d] Other Important Procedural Issues	264
	[i] The Basic Procedure to Submit Applications	264
	[ii] The Issue of Translation of Relevant Documents	266
	[iii] The Withdrawal of Applications	268

Table of Contents

	[iv] Costs Concerning Applications for the REJ in China	268
[3]	The Enforcement Procedure under Chinese Law	271
	[a] The Importance of Actual Enforcement of the Recognized Foreign Judgments	271
	[b] General Issues Regarding Enforcement of Foreign Judgments	273
	[i] An Enforcement Dilemma for Foreign Judgments	273
	[ii] Enforcement of Foreign Judgments by Analogy	274
	[iii] Legislative Basis	275
	[iv] Several Notable Aspects	276
	[c] The Subjects Qualified to Commence the Enforcement Procedure	278
	[d] Basis and Jurisdiction Respecting Enforcement of Judgments	279
	[e] Reliefs in the Event of Non-enforcement or Bureaucratic Inertia	281
	[f] Objections to Enforcement	283
	[g] The Time Limit for Submission of Applications for Enforcement	284
	[h] Availability of Provisional, Including Protective, Measures	287
	[i] A Practical Necessity for Such Measures	287
	[ii] Pre-judgment Provisional Measures	288
	[iii] Post-judgment Protective Measures	293
	[i] Other Noteworthy Aspects regarding Enforcement of Judgments	294
	[i] Settlement or Compromise in the Course of Enforcement	294
	[ii] Enforcement in the Case of Death or Demise of Judgment Debtors	295
	[iii] The Circumstances for Suspending and Terminating Enforcement	295
	[iv] Enforcement Measures to Be Taken	296
	[v] The Costs Incurred for Enforcement of Judgments	298
[C]	Proceedings for the Bilateral Treaties-Based REJ in China	299
	[1] Preliminary Considerations	299
	[2] Judicial Assistance versus the REJ in China	300
	[3] Specific Rules regarding the Bilateral Treaties-Based Proceedings	301
	[a] Qualified Subjects for Making the Submissions	301

Table of Contents

	[b] Bases and Jurisdiction Respecting the REJ	303
	[c] The Documents to Be Attached	304
	[4] The Enforcement Procedure for the Bilateral Treaties-Based REJ in China	305
	[D] Proceedings for the Multilateral Conventions-Based REJ in China	306
§3.04	Summary	306
CHAPTER 4		
	The Spirit: The Hidden Factors Influencing the REJ in China	309
§4.01	A General Introduction	309
§4.02	The Legal Culture	311
	[A] Setting the Scene	311
	[B] Implications of Legal Culture	312
	[C] The Chinese Legal Culture	314
	[1] Upheavals in Chinese Law in Recent Decades	314
	[2] The Chinese Traditional Legal Culture	317
	[a] “Confucianism” versus “Chinese Legal Culture”	317
	[b] “Legalism” versus “Confucianism”	319
	[c] “Economic and Political Factors” versus “Chinese Legal Culture”	319
	[d] Theoretical Anatomy of “Chinese Legal Culture”	320
	[e] Summary	321
	[D] “The REJ in China” versus “the Chinese Legal Culture”	322
	[i] A Broad Picture	322
	[ii] “Persons’ versus “the REJ in China”	322
	[iii] “Courts and Legislature” versus “the REJ in China”	323
	[iv] “Government” versus “the REJ in China”	323
§4.03	The Economic, Political and Other Factors	324
§4.04	Summary	327
CHAPTER 5		
	A Bird’s-Eye View of a Selected Chinese Court’s Practice	329
§5.01	A General Consideration	329
§5.02	Several Aspects to Be Considered	330
	[A] The Identities of the Applicants and Respondents	330
	[B] The Time Span from Delivery of Foreign Judgments to Submission of Applications	330
	[C] The Time Span for Chinese Courts’ Delivery of Rulings on Applications	331
	[D] The Litigation Costs	333
	[E] The Reasoning of the Beijing Court under the Decisions	333
	[F] The Operative Parts of the Rulings	334

Table of Contents

§5.03	Summary	335
CHAPTER 6		
	Conclusion	337
§6.01	A Harsh Reality	337
§6.02	The Essentials for the REJ in China	338
§6.03	Possible Ways Forward: “Litigation Strategies”?	341
§6.04	An Open Mind and the Outlook	343
	Bibliography	345
	Index	361