Interregional Recognition and Enforcement of Civil and Commercial Judgments: Lessons for China from US and EU Laws

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INTERREGIONAL RECOGNITION AND ENFORCEMENT OF CIVIL AND COMMERCIAL JUDGMENTS: LESSONS FOR CHINA FROM US AND EU LAWS

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A. INTRODUCTION

Generally speaking, states in a country or Member States in a supranational system have a higher degree of economic, political, social and legal proximity with one another than with outsiders. Therefore, a state is usually more willing to recognize and enforce a judgment issued by a court in a sister state than a court in a state outside a system of which it is part. In the US, for example, the Full Faith and Credit clause of the Constitution and the related statute require full-faith-and-credit recognition and enforcement of judgments between

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sister states, but they do not apply to judgments from foreign countries. Similarly, the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the “Brussels Convention”) and the corresponding 2002 Regulation (the “Brussels I Regulation”) provide that judgments rendered in an EU Member State are entitled to recognition without review of the merits and subject to only limited exceptions, but neither the Brussels Convention nor the Brussels I Regulation applies to judgments from non-EU countries.

A comparable situation exists in China. Hong Kong and Macao were reunited with Mainland China in 1997 and 1999, respectively, but they are independent from Mainland China in terms of legislative and adjudicative autonomy. Two mutual judgment recognition and enforcement (JRE) arrangements have been concluded between these regions in 2006. Compared with JRE between the US sister states and between the EU Member States, JRE between the three Chinese regions is still in its infancy. Although many studies have probed JRE within the US and the EU, little attention has so far been paid to China. Even fewer scholars have ever compared JRE in the US, the EU and China. Yet the three topics are related and belong to the same category: interregional JRE.

“Interregional JRE” refers to recognising and enforcing judgments between different regions within a country, such as between states in the US and between Mainland China, Hong Kong and Macao in China, or within a supranational system, such as between Member States in the EU. “Region” is used to denote a territorial unit that has its own system of private law, as opposed to “coun-

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4 USC IV, § 1 provides that “Full Faith and Credit shall be given in each State to the . . . judicial proceedings of every other State”. The meaning of this provision is particularised by the Judiciary Act of 1790: “records and judicial proceedings of any court of any . . . State” of the United States “shall have the same full faith and credit in every court . . . as they have by law or usage in the courts of such State . . . from which they are taken”. For explanations, see EF Sloes et al, Conflict of Laws (West Group, 4th edn, 2004), 1264–65 and 1279–82.

5 OJ 1978 L304/36. The 1968 text of the Brussels Convention has been amended four times because of the enlargement of the EU: the accession of Denmark, Ireland and the United Kingdom on 9 October 1978; the accession of Greece on 25 October 1982; the accession of Spain and Portugal on 26 May 1989; and the accession of Austria, Finland and Sweden on 29 November 1996. The latest consolidated version of the Brussels Convention was reproduced at OJ 1998 C27 and it is this version to which reference is made in this paper.


7 For exceptions, see Art 35 Brussels I Regulation.

8 Art 32 Brussels I Regulation.

9 Art 2 Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (promulgated by Order No 26 of the President of the People’s Republic of China, 4 April 1990, effective 1 July 1990) (“Hong Kong Basic Law”) and Art 2 Basic Law of the Macao Special Administrative Region of the People’s Republic of China (promulgated by Order No 3 of the President of the People’s Republic of China, 31 March 1993, effective 20 December 1999) (“Macao Basic Law”).
try”, which always implies sovereignty, or to “state”, which has never been used to describe the status of Hong Kong and Macao in Chinese law.

Interregional JRE is distinct from international JRE, because for the former the participating regions are under a constitutional or quasi-constitutional regime, such as the US Constitution for American states or the European Union Treaty for EU Members. For the case of international JRE, no mutually accepted constitutional or quasi-constitutional system exists between signatories. For example, China and France concluded the Treaty for Judicial Assistance in Civil and Commercial Affairs, but they have never shared any constitutional or quasi-constitutional regime. Thus, the JRE between China and France is international JRE.

As between Mainland China, Hong Kong and Macao, the policy of “one country, two systems” provides a similar quasi-constitutional regime. After the Government of the People’s Republic of China (PRC) gained sovereignty over Hong Kong on 1 July 1997 and over Macao on 20 December 1999, it designated Hong Kong and Macao as Special Administrative Regions (SARs) under this policy. The Chinese leader, Deng Xiaoping, had originally formulated this

10 “Region” and “country” are not used interchangeably in this paper. “Country” is a territorial unit with sovereignty. But “region” may be a country, or a territorial subdivision of a country and this subdivision has no sovereignty. Therefore, a “country” is a “region” but a “region” is not necessarily a “country”.

11 This paper focuses on what lessons US and EU law may provide to develop the interregional JRE system in China. In this context, “state” is less appropriate than “region” for two reasons. First, Hong Kong and Macao are special administrative regions in China. “State” has never been used to describe the status of Hong Kong and Macao in either Mainland law or laws in Hong Kong and Macao. The second reason is that shortly after the Joint Declaration on the Question of Hong Kong between China and Britain was concluded, the People’s Daily published an article intended as a blueprint for the SARs. It states: “The special administrative regions are local administrative regions under the unified central leadership. They are not member states.” Therefore, “region” is a better phrase to describe Hong Kong and Macao than “state”. See XIAN FA [Mainland Constitution] Art 31 (1982) (PRC). Art 1 Hong Kong Basic Law and Art 1 Macao Basic Law, supra n 9. GG Wang and PM Leung, “One Country, Two Systems: Theory into Practice” (1998), 7 Pacific Rim Law & Policy 279, 284 and quoted in H Chiu, “Legal Problems with Hong Kong Model for Unification of China and Their Implications for Taiwan,” (1998) 2 Journal of Chinese Law 83, 87. For a general definition of “state”, see SC Symeonides et al, Conflict of Laws: American, Comparative, International: Cases and Materials (Thomson West, 2nd edn, 2003), 1, n 1. (indicating that “hereafter the word ‘state’ is used to denote any country or a territorial subdivision of a country, such as a state or province, that has its own system of private law”). This definition is actually borrowed from Art 2 of the US 1st Restatement of Conflicts, which provides “the word state denotes a territorial unit in which the general body of law is separate and distinct from the law of any other territorial unit”. However, the latter definition of “state” is for the purpose of the Restatement rather than in a general sense.


13 See the Preamble of the Hong Kong Basic Law and the Preamble of the Macao Basic Law, supra n 9.

14 Art 31 Mainland Constitution, supra n 11.
policy for the peaceful settlement of the Taiwan question. However, Hong Kong and Macao were the first cases where this policy was put into practice. Under this policy, Mainland socialism was not be applied to Hong Kong and Macao and their previous capitalist systems remained unchanged. Moreover, these two regions were to enjoy legislative autonomy, independent judicial systems, and final adjudicative power. Therefore, although they are only local authorities under the direct leadership of the central government in Mainland China, the Mainland cannot require them to recognise and enforce its judgments.

Importantly, in terms of conflict of laws, the three Chinese regions are equal. This view has been embraced by many conflict-of-laws scholars in the three regions. Mainland Professor Jin Huang described the equality between the three regions as follows:

"From the conflict of laws perspective, the Mainland's socialist legal system will not be superior to any of the other legal systems. The PRC Constitution, the HK Basic Law and Macao Basic Law, and statutes governing national issues such as defense and diplomacy shall constitute the "supreme law of the land" over the Hong Kong and Macao SARs. Nevertheless, in the private law context, China's socialist laws will be on par with the laws of the SARs, because the Mainland, Hong Kong, Macao, and Taiwan will all be equal, independent legal regions."

Some other scholars also argue that the legitimacy of the equality between the three Chinese regions comes from Article 2 of the Hong Kong Basic Law and of the Macao Basic Law. Those scholars argue that because SARs enjoy

16 Art 5 Hong Kong Basic Law and Macao Basic Law, supra n 9.
17 Ibid, Art 2 provides that “the National People’s Congress authorizes Hong Kong to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law”. In addition, Arts 12-23 provide that Hong Kong shall be vested with autonomous rights in dealing with its own affairs except foreign affairs and defence. Therefore, as SARs, Hong Kong and Macao enjoy a higher degree of autonomy than autonomous regions in China, such as the Tibet Autonomous Region. For comments regarding the policy of “one country, two systems”, see P Raghbir and GV Johar, “Hong Kong 1997 in Context” (1999) 63 Public Opinion Quarterly 543.
18 Art 12 Hong Kong Basic Law provides that “Hong Kong shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government”, supra n 9.
20 See Liu and Zhang, supra n 19.
a very high degree of autonomy, they should have equal status to Mainland China in terms of JRE.

This paper is divided into three sections. The first one analyses the status quo of the interregional JRE in China, the second discusses the relationship between interregional economic integration and JRE, and the last section explores the lessons that the US and EU interregional JRE laws can offer China for solving the four most crucial challenges in developing its interregional JRE system. In this paper, a judgment-rendering court or forum (F1) refers to the court that rendered a judgment; a requested court or forum (F2) means the court that is requested to recognise or enforce a judgment.

B. INTERREGIONAL JRE IN CHINA: THE STATUS QUO

The current interregional JRE system between Mainland China, Hong Kong and Macao is constituted both by bilateral regimes in the form of interregional arrangements and unilateral regimes in the form of regional laws. Two such arrangements exist: the Arrangement between the Mainland and Macao on the Mutual Recognition and Enforcement of Civil and Commercial Judgments (the “Mainland–Macao Arrangement”),21 and the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of Hong Kong Pursuant to Choice of Court Agreements between the Parties Concerned (the “Mainland–Hong Kong Arrangement”).22 These arrangements established the basic framework of interregional JRE laws in China. Judgments excluded by the two arrangements23 are recognised and enforced according to regional laws, such as the Mainland

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21 This arrangement was signed by Mainland China and Macao on 28 February 2008 and came into force on 1 April 2008. In Mainland China, see Interpretation No 2 [2006] of the Supreme People’s Court Adopted at the 1378th meeting of the Judicial Committee of the Supreme People’s Court on 13 February 2006. In Macao, see Announcement No 12/2006 of the Executive Chief of Macao on 14 March 2006.


23 Such as non-monetary judgments or judgments for disputes in which parties failed to make a choice-of-court agreement.
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Civil Procedure Law (CPL) and its judicial interpretations, the Macao Civil Procedure Code and Hong Kong common law. Figure 1 demonstrates the current JRE system among Mainland China, Hong Kong and Macao.

**Figure 1.** JRE system among Mainland China, Hong Kong and Macao. Solid lines represent interregional laws and dotted lines represent regional laws.

1. Between the Mainland and Hong Kong, judgments included by the Mainland–Hong Kong Arrangement are recognised and enforced accordingly, and other judgments are recognised and enforced under regional laws.
2. Between the Mainland and Macao judgments are recognised and enforced under the Mainland–Macao Arrangement.
3. Hong Kong recognises and enforces Macao judgments according to common law.
4. Macao recognises and enforces Hong Kong judgments according to the Macao Civil Procedure Code.

Civil Procedure Law (CPL) and its judicial interpretations, the Macao Civil Procedure Code and Hong Kong common law. Figure 1 demonstrates the current JRE system among Mainland China, Hong Kong and Macao.
“Anpai” or “arrangement” is not a formal legal term, but it is used in the title of the three legal documents concerning service, JRE, and recognition and enforcement of arbitral awards between Mainland China and Hong Kong, and those between Mainland China and Macao. This term is also found in legal documents concerning interregional economic issues. Examples include the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) and the Mainland and Macao CEPA. Future legal documents concerning interregional issues in China will probably continue to use this term. The selection of this term is deliberate. Compared with other more widely used legal terms, such as “agreement”, “treaty” and “convention”, “arrangement” in Chinese has a stronger connotation of family and of reaching a consensus harmoniously, peacefully, jointly and amicably. This is consistent with Confucianism, which emphasises solving disputes by a peaceful way in a family or a society. Put in legal terms, “arrangement” suggests that the three Chinese regions are equal and voluntarily agree to make joint efforts to solve legal conflicts among them for mutual benefits. The coexistence of Chinese regions results from a history of foreign invasions. In response, the PRC has repeated that solving interregional conflicts is its internal affair and resists any foreign the FJREO, it should not be enforced under common law, and vice versa. In the enforcement proceedings under the two schemes, Hong Kong courts will not examine the merits of foreign judgments.

28 The typical meaning of “arrangement” is “putting in order, plan, or preparation”. It does have a meaning of “agreement or settlement”, but which is seldom ranked as its top interpretations. See AS Hornby, *Oxford Advanced Learner’s English-Chinese Dictionary* (Commercial Press and Oxford University Press, 4th edn, 1997), 65-66. See also http://dictionary.oed.com/cgi/entry/50012277?single=1&query_type=word&queryword=arrangement&first=1&max_to_show=10 (accessed 21 December 2009); and http://www.merriam-webster.com/dictionary/arrangement (accessed 1 May 2009).

29 Judicial co-operation between two regions started in 1998, when the Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts was concluded. The second achievement in bilateral co-operation is the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong, which was reached in 1999. This Arrangement is a significant success because it helps parties to avoid arbitrating disputes multiple times. The Arrangement for Mutual Service of Judicial Documents and Collecting Evidence in Civil and Commercial Proceedings between the Mainland and Macao courts was concluded in 2001, which is the first time that these two regions had adopted a bilateral approach to address interregional judicial issues.


31 “China’s long history is full of glories and glooms. [However, from 1842 to 1949] China suffered humiliation by foreign powers through a series of ‘unequal treaties’ which undermined its sovereignty.” During this period, China was demoted to a semi-colony of Western countries. See Wang and Leung, supra n 11, 280-81. For a detailed discussion on unequal treaties, see Priscilla Mei-fun Leung, *The Hong Kong Basic Law: Hybrid of Common Law and Chinese Law* (LexisNexis, 2007), 17.
intervention. In a political sense, “arrangement” symbolises that it is made between local authorities to address their common affairs. Thus, it perfectly suits the legal, social, historical and political context of interregional conflicts in China.

This section analyses the two judgment arrangements. In order to achieve a better comparison, it starts from the more restrictive arrangement between Mainland China and Hong Kong and then proceeds to the more JRE-friendly arrangement between Mainland China and Macao.

1. The Mainland–Hong Kong Arrangement

(a) Requirements for JRE

The scope of the Mainland–Hong Kong Arrangement is limited. It applies only to “an enforceable final judgment requiring payment of money in a civil or commercial case pursuant to a choice-of-court agreement in writing, made by a People’s Court of the Mainland or a court of Hong Kong”. First, the Arrangement is limited to judgments requiring payment of money. This means that orders of injunction or specific performance are excluded. Second, only final judgments can be recognised and enforced under the Arrangement. Third, a severe limitation exists insofar as the Arrangement is confined to judgments rendered on the basis of a choice-of-court agreement. This does not mean that the parties to the judgment must be identical to those of the choice-of-court agreement: the laws of subrogation, alter ego and so forth in the region where the judgment is rendered apply. This choice-of-court agreement must be in a written form, expressly designating a Mainland court or a Hong Kong court as the one having exclusive jurisdiction. The written form includes not only written contracts and letters but also electronic data messages, such as e-mails, telegrams, telexes and facsimiles. This broad scope is in line with recent international private law conventions, including the 2005 UNCITRAL Convention on the Use of Electronic Communications in International Contracts. The choice-of-court agreement should aim to solve disputes arising from civil and

32 Art 1 Mainland–Hong Kong Arrangement.
33 For relevant Mainland law, see Art 3 of the Mainland CPL. For relevant Hong Kong law, see para 3 of Mainland Judgments (Reciprocal Enforcement) Ordinance, Ord No. 9 of 2008. For a discussion of the Mainland law, see also J Huang and DH Huanfang, “Private International Law in Chinese Courts” (2006) 1 Frontiers of Law in China 14, 14–33. For a discussion of Hong Kong law, see G Johnston, The Conflict of Laws in Hong Kong (Hong Kong, Sweet & Maxwell Asia; St Paul, MN, West Group, 2005), 579–80.
34 The written form in the Mainland–Hong Kong Arrangement follows the definition of “written form” in Art 11 of Mainland Contract Law [Contract Law] (Adopted at the Second Session of the Ninth National People’s Congress on 15 March 1999, effective 1 October 1999), translated in http://www.lawinfochina.com (accessed 3 November 2009).
commercial contracts between the parties concerned, excluding any employment contracts and contracts to which a natural person acting for personal consumption, family or other non-commercial purposes is a party (Article 3).

The limitation on judgments based on choice-of-court agreements is inspired by the Hague Convention on Choice of Court Agreements (the “Hague Convention”).36 The negotiation of the Mainland–Hong Kong Arrangement started in 2002. Since then, Mainland China has repeatedly expressed its hope that this Arrangement will cover judgments on labour contracts, marriage and family matters, but Hong Kong has been reluctant, which was one of several reasons why the negotiation took four years to reach a consensus. Many Hong Kong residents work in the Mainland, and a lot of people from the Mainland are employed in Hong Kong. Cross-region marriages are very common, and marriage and family traditions in the two regions are similar. Recognition and enforcement of non-commercial judgments can facilitate people’s lives in these two regions by avoiding limping relationships. Therefore, the narrow scope and strict requirements of the Hague Convention are good for the international scenario but are restrictive for the interregional context.37 Moreover, the Mainland–Macao Arrangement has a much broader scope and less restrictive requirements.38 Extending the scope of the Mainland–Hong Kong Arrangement will promote the growth of economic and familial bonds between the two regions.

(b) Grounds for Refusing JRE

The Mainland–Hong Kong Arrangement provides seven mandatory circumstances in which JRE will be denied. This paper refers to these as the “seven grounds for refusal”. Although the Arrangement does not indicate whether the list of seven grounds is exhaustive,39 they should be read as an exhaustive list for the purpose of legal certainty and predictability. The following comments serve to clarify the implications of the seven grounds.

The first ground is that “the choice of court agreement is invalid under the law of the place of the court chosen by agreement of the parties where the original trial was conducted, unless the chosen court has determined that the choice of court agreement is valid.”40 A critical issue is which law should

36 Arts 2 and 3 Hague Convention on Choice of Court Agreements, which also requires the writing format and exclusive selection of a forum and excludes personal, family matters and employment contracts.
38 See Art 1 Mainland–Macao Arrangement.
39 The same problem exists in the Mainland–Macao Arrangement.
40 Art 9 Mainland–Hong Kong Arrangement.
be applied to determine the validity of the agreement. One possibility is the law of the place of the chosen court. If a chosen court has decided that a choice of court agreement is valid under its law, its decision should have preclusive effect and bind any requested court. The reason is that the chosen court has the greatest expertise in its own law and its decision of the validity of the agreement under this law should be respected. However, a chosen court may issue a judgment without determining the validity of the choice of court agreement. For example, it may exert jurisdiction over the case on other jurisdictional grounds. In this scenario, the requested court can consider whether the agreement is valid under the law of the region where the chosen court is located.

The second possibility is that although the choice-of-court agreement is invalid under the law of the region where the chosen court is situated, the chosen court applies another law to decide the validity of the agreement. Under this law, the choice-of-court agreement is valid. This law can be the law of the region where the agreement is made or any other law. For example, two parties concluded a choice-of-court agreement in Hong Kong but they choose a court in Mainland China to resolve their disputes. A choice-of-court agreement may be valid under Hong Kong law but invalid under Mainland law. So a choice-of-court agreement may be valid under Hong Kong law but invalid under Mainland law. Suppose that the Mainland court determines the agreement is valid by invoking Hong Kong law: will this judgment be subject to the first ground for refusing JRE? The answer should be negative. Favor validitatis should be applied here: the chosen court can uphold the validity of the choice-of-court agreement under any law as long as this law was enacted by a region having a connection to the dispute. This suggestion is based on the purpose of the Mainland–Hong Kong Arrangement, which is to enhance JRE between the two regions. Given this purpose, F1’s decision regarding the validity of a choice-of-court agreement should have preclusive effect in F2.

The second ground for refusal is that JRE will be denied if a judgment has been wholly satisfied. This is based on a common-sense view that a creditor should not be doubly compensated.

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42 Art 9 Mainland–Hong Kong Arrangement.
43 See Yackee, supra n 41, 63 (providing a list of laws that may apply to determine the validity of a choice-of-court clause).
44 For example, unlike Hong Kong, Mainland China imposes many restrictions on choice-of-court agreements. See Art 242 of the Mainland CPL.
45 If a judgment has been partially satisfied in one region, only the unsatisfied part of the judgment can be enforced in the other region. See Arts 5 and 9 Mainland–Hong Kong Arrangement. See also para 10 of Mainland Judgments (Reciprocal Enforcement) Ordinance.
The third ground for refusal is the requested court has exclusive jurisdiction over the case according to its law. If a case involves real estate located in Hong Kong or an intellectual property right granted by Hong Kong, Hong Kong courts have exclusive jurisdiction over the case. Mainland law grants its courts a comparatively much broader scope of exclusive jurisdiction. For example, a People’s Court should have exclusive jurisdiction over cases where a lawsuit brought on a dispute over real estate, harbour operations, succession provided that a decedent’s domicile or major estate is located in the Mainland, or co-operative exploration and development of natural resources in the Mainland. These grounds for exclusive jurisdiction are reasonable. However, Mainland law also requires that lawsuits brought on disputes arising from the performance of contracts for Chinese–foreign (including Mainland–Hong Kong or Mainland–Macao) equity or contractual joint ventures in Mainland China shall fall under the exclusive jurisdiction of People’s Courts. This provision was made to protect Chinese parties who establish joint ventures with foreigners. It should not be applicable to parties from Hong Kong or Macao after these two regions have become part of China. Excessive use of exclusive jurisdiction will severely undermine choice-of-court agreements and thus inter-regional transactions.

The fourth ground for refusal concerns due-process violation. It includes cases where the party, who receives an unfavourable default judgment, had not been summoned according to the law of the judgment-rendering region, or the party had been summoned according to the law but had not been given the time to defend the proceedings as specified by the law.

Fraud is the fifth ground for refusal. If a judgment was obtained by fraud, JRE will be denied under the Arrangement. The adoption of this ground shows Mainland deference to Hong Kong law, because fraud is a common-law concept that has never existed in Mainland JRE law.

The sixth defence is res judicata. JRE will be refused if a judgment on the same cause of action has been made by a court of the region where JRE is

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66 Art 9 Mainland–Hong Kong Arrangement
67 For a detailed discussion of the lex situs rule in Hong Kong, see Johnston, supra n 33, 297–318.
68 Arts 34 and 246 Mainland CPL. Notably, if parties agree to arbitrate their dispute, Arts 34 and 246 do not apply according to Art 305 of Opinions of the Supreme People’s Court on Some Issues Concerning the Application of the Civil Procedure Law of the People’s Republic of China (discussed and adopted at the 529th meeting of the Judicial Committee of the Supreme People’s Court, and promulgated by Judicial Interpretation No 22 [1992] of the Supreme People’s Court on 14 July 1992) translated in http://wwwlawinfochina.com (accessed 3 May 2009).
69 Art 246 Mainland CPL. A choice-of-court agreement is invalid if it is inconsistent with exclusive jurisdiction of Mainland courts, see Art 305 Opinions of the Supreme People’s Court on Some Issues Concerning the Application of the Civil Procedure Law of the PRC.
70 Art 9 Mainland–Hong Kong Arrangement.
71 Ibid.
72 Ibid.
73 It should be noted that there is no fraud exception in the Mainland–Macao Arrangement.
sought, or a court of this region has already recognised or enforced a judgment or an arbitral award on the same cause of action made by a court of a foreign country or an arbitration tribunal. This provision does not specify whether the two judgments shall be between the same parties. The Hong Kong implementing legislation suggests that the two judgments shall be between the same parties, but Mainland legislation remains silent. It remains to be seen whether Mainland courts will restrict the res judicata rule to the same parties in interregional JRE.

The last ground for refusal is the public policy exception. JRE will be refused if it would violate public policy of the region where the requested court is located. The law of that region determines whether a judgment is repugnant to its public policy. Maintaining the public policy exception in interregional JRE in China is consistent with the policy of “one country, two systems” because it helps to prevent “the clash between fundamentally antagonistic socialist law and capitalist law” and preserve the crucial interests and autonomy of each region. However, the use of public policy exception should be strictly restrained, because manipulation will create uncertainties and instabilities, and, in the long run, will jeopardise the mutual trust between the regions and consequently harm the policy of “one country, two systems”.

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54 Art 9 Mainland–Hong Kong Arrangement.
55 Mainland Judgments (Reciprocal Enforcement) Ordinance, Ord No 9 of 2008, para 18 (i) and (h) provide that “a judgment on the same cause of action between the parties to the judgment has been given by a court in Hong Kong” (emphasis added).
56 The Mainland implementation legislation of the Arrangement does not specify whether or not “the same cause of action” should be “between the parties”. Art 9(6) Judicial Interpretation of No 9 [2008] of the Supreme People’s Court. In other words, Mainland law does not clarify whether the same cause of action should be between the same parties, or can be between the parties’ privies or between totally different parties.
57 Art 9 Mainland–Hong Kong Arrangement.
58 Huang and Qian, supra n 19, 319. H Depei (ed), *Zhong guo chong tu fa yan jiu* [Studies of Chinese Conflict of Laws] (Wuhan, Wuhan University Press, 1993), 422 (arguing that the public policy exception should be allowed between Mainland China and Hong Kong due to their great disparities in political and economic systems).
60 See Liu and Zhang, supra n 19 (urging the Hong Kong legislature to clarify the meaning of the public policy exception and also arguing that this exception should be restricted in inter-regional JRE). See also W Chen, “Qu ji fa yuan pan jue chen ren yu zhi xing tiao jian zhi bi jiao [A Comparative Study of the Conditions of Interregional Judgment Recognition and Enforcement]” (1999) *Zhong guo guo ji si fa yu bi jiao fa nan kan* [Annual Journal of Chinese Private International Law and Comparative Law] 353.
61 See Huang and Qian, supra n 19, 321. See also X Yu, “Zheng qu jie jue taiwan yu nei di ji gang ao de fa lv chong tu wen ti” [Correct Solution of the Legal Conflicts Between Taiwan and Mainland China as well as Hong Kong and Macao] (1999) *Zhong guo guo ji si fa yu bi jiao fa nan kan* [Annual Journal of Chinese Private International Law and Comparative Law] 263.
2. The Mainland–Macao Arrangement

The Mainland–Macao Arrangement regulates JRE in civil and commercial cases between the Mainland and Macao. If a judgment is covered by this Arrangement, JRE will be guaranteed unless any of the five grounds for refusal in the Arrangement exists. This Arrangement embarks on the full-faith-and-credit JRE between the two regions.

This Arrangement has a very broad scope. It includes not only the types of judgments covered by the Mainland–Hong Kong Arrangement but also judgments rendered in civil labour disputes and civil compensation in criminal proceedings.\(^\text{62}\) Unlike the Mainland–Hong Kong Arrangement, it provides that non-monetary judgments of one region may be petitioned for recognition through a separate proceeding or directly used in legal proceedings of the other region as effective evidence.\(^\text{63}\) Moreover, this Arrangement requires that official documents issued by a competent public institution (including notaries public) of one region should be recognised by the other region without any authentication formalities.\(^\text{64}\) In other words, full faith and credit also extends to various official documents.

Under the Arrangement, a judgment debtor may raise any of the five grounds for refusing JRE: ineffective judgments, exclusive jurisdiction of the requested court, \textit{res judicata}, due-process violation and public policy exception.

The Arrangement requires that a judgment qualified for JRE should have legal effects, but whether a judgment is effective should be decided according to the law of the region where the judgment-rendering court is located.\(^\text{65}\) JRE should be refused if the judgment has not become effective or is ruled not to come into force due to a retrial according to the laws of the region where the judgment is rendered.\(^\text{66}\) Finality is not a ground for denying JRE under the Arrangement.

The only jurisdictional review explicitly allowed in the Arrangement is whether the case is under the exclusive jurisdiction of the requested court according to its law. Thus, this Arrangement is distinct from the Mainland–Hong Kong Arrangement, which requires a choice-of-court agreement. A requested court should be allowed to raise the defence of exclusive jurisdiction of its own motion.

The second ground is \textit{res judicata}. The Mainland–Macao Arrangement provides two \textit{res judicata} rules. First, JRE should be refused if, before the case was brought in the judgment-rendering court, the same case had been brought

\(^{62}\) Art 1 Mainland–Macao Arrangement.

\(^{63}\) Ibid, Art 3.

\(^{64}\) Ibid, Art 18. This provision applies to the original, duplicate and translation of official documents.

\(^{65}\) Ibid, Art 11.5.

\(^{66}\) Ibid.
in the requested court that had proper jurisdiction. This rule is problematic because it uses when the case is brought, rather than when a court is seized of an action, as the point in time to determine which action should be given priority. Uncertainty will occur in this circumstance. Suppose that a party brings an action in court A but the court refuses to accept the case. Later the other party brings the same action in a sister-region court B and wins a favourable judgment. Then the judgment creditor applies to court A for JRE. The judgment debtor invokes this res judicata rule as a defence to JRE. JRE should be rejected according to the text of this rule. However, this result is unfair and unjust because it greatly encourages forum shopping: a party can simply bring a case in the region where her property is located in order to defend any future JRE. Thus, a better rule would be “JRE should be refused, if a court of the region where JRE is sought has jurisdiction over the same cause of action and had seized the action before the judgment-rendering court seized the action”.

However, the first res judicata rule is not without merits. The Mainland civil procedure is famous for its rapidity: generally a first-instance court will issue a judgment within six months after it accepts a case, and an appellate court will render a judgment within three months after the appeal commences. Under the first res judicata rule, suppose that after a Macao court seizes a case, one of the parties conducts a forum shopping and brings a suit on the same cause of action in Mainland China. Under this res judicata rule, although the Mainland court makes a judgment earlier than the Macao court, the Mainland judgment is unrecognisable and unenforceable in Macao. However, the downside of this res judicata rule is that parties have to race to the court. Notably, the res judicata rule in the Mainland–Hong Kong Arrangement is different, which provides that JRE should be refused if a court of the region where JRE is sought has made a judgment on the same cause of action. Therefore, Mainland China compromises the rapidity of its civil procedure by implementing the Mainland–Macao Arrangement. This is Mainland deference to Macao and symbolises mutual trust and understanding.

The first res judicata rule raises a question: should a requested court deny JRE and entertain a negative declaratory action brought by the defendant when it had been seized of the declaratory action before the judgment-rendering court seized the case brought by the “natural” plaintiff on the same cause of action? This question involves both res judicata and lis pendens. Arguably, an action for a negative declaratory judgment should be entertained where the “natural” plain-

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67 Ibid., Art 11.2.
68 Johnston supra n 33, 123 (stating that “Mainland legal system, which is well known for its rapidity compared to that of Hong Kong and other common law systems”).
69 Art 135 Mainland CPL.
70 Ibid., Art 159.
71 Art 9 Mainland–Hong Kong Arrangement. See supra n 54 and accompanying text.
tiff delays in filing suit to the detriment of the “natural” defendant. However, a different scenario exists. The natural plaintiff does not delay in filing suit. On the contrary, the defendant conducts a malicious forum shopping and brings a negative declaratory action first in the region where his assets are located in order to resist the recognition and enforcement of the sister-region judgment favourable to the plaintiff in the future. The requested court should apply the first res judicata rule only when the natural plaintiff purposefully delays in filing suit.

The second res judicata rule is that JRE will be refused if the court of the region where JRE is sought has already recognised or enforced a judgment or an arbitral award on the same cause of action made by a court of a foreign country or by an arbitration tribunal. This is the same as the res judicata rule adopted in the Mainland–Hong Kong Arrangement.

The Mainland–Macao Arrangement provides two rules of due-process violation as grounds for refusing JRE: where the party that loses the case has not been lawfully summoned, or where the party with diminished capacity is not provided with any attorney or guardian according to the laws of the region where the judgment is rendered.

Nevertheless, neither of the two arrangements lists all possible due-process violations in the original trial. For example, supposing that a judge who should recuse according to the law of the region where the original trial was conducted did not recuse, or that the hearing judge accepted bribery, do such procedural deficiencies fall into the ground of due-process violation under the two arrangements? The Mainland–Hong Kong Arrangement answers “no”, because such cases fall into the category of fraud. However, in the Mainland–Macao Arrangement the answer is unclear because fraud is not a ground for refusing JRE. Courts may interpret the aforementioned two rules of due-process violation broadly so as to include other procedural deficiencies, or it may use the public policy exception to deny JRE. In order to avoid disputes in practice, it is advisable to design a generic due-process ground for refusing JRE and leave interpretation to the judges.

The fifth ground for refusing JRE is the public policy exception. The Arrangement provides that Mainland courts can deny JRE if it would be contrary to the basic principles of the laws or social public interests of the Mainland, and that Macao can deny JRE if it would violate the basic principles of the laws or public order of Macao. Advisably, both regions should exercise the public policy exception with strict restraint. Otherwise, this ground

73 Art 11.3 Mainland–Macao Arrangement.
74 Ibid, Art 11.4.
75 See Zhang and Smart, supra n 37, 574.
will become a catch-all escape clause and hinder interregional JRE. Of particular concern is whether the two regions will use the public policy exception to refuse JRE if they think the judgment-rendering court exercised exorbitant jurisdiction. Extending full faith and credit to the jurisdictional ground of the judgment-rendering court is a great achievement. It will become fruitless if the two regions are allowed to use the public policy exception to deny JRE because of jurisdictional disputes.

Moreover, Macao is famous for its casino industry but casinos are illegal in Mainland China. Suppose a party wins a judgment in Macao based on a gambling debt and seeks JRE in Mainland China, should JRE be denied according to the public policy exception clause under the Arrangement? The answer should be “yes”, because the policy of “one country, two systems” allows each region to maintain its independent political, social, and economic systems; in Mainland China it is a deep-rooted tradition that casinos are against public policy and recognising and enforcing judgments involving gambling debts would violate the fundamental principle of justice and prevalent conception of good morals.

3. Problems of the Current JRE system

The two arrangements are laudable yet far from satisfactory, because a substantial number of differences exist between them and reconciling these differences will certainly take time and effort. No JRE arrangement exists between Hong Kong and Macao, so JRE between them is governed by regional laws. Thus, a judgment creditor in one region has to follow different laws to enforce his or her judgment in the other two regions, which is costly and time consuming. Moreover, the scope of the Mainland–Hong Kong Arrangement is very narrow. Judgments excluded by this Arrangement are subject to regional laws in Mainland China and Hong Kong.


77 See Loucks v Standard Oil Co of New York, 224 NY 99, 120 NE 198 (New York 1918). If a fact pattern similar to the one in Fauntleroy v Lum, 210 US 230, 28 SCt 641, 52 LEd 1039 (1908) takes place between the Mainland China and Macao, the judgment should not be recognised and enforced in Mainland China under the Mainland–Macao Arrangement.
Mainland courts are split regarding whether judgments excluded by the Arrangement are recognisable and enforceable. 78 Some courts may recognise and enforce judgments from Hong Kong by reference to the law of recognition and enforcement of Taiwanese judgments. 79 The majority of courts reject this approach on different grounds. Some courts apply the law of recognition and enforcement of foreign judgments to judgments from Hong Kong. 80 This law requires either a JRE treaty or reciprocity existing between the country where the judgment is made and where JRE is requested. The first requirement is not satisfied when a judgment from Hong Kong is beyond the scope of the Mainland–Hong Kong Arrangement. Reciprocity in JRE has never been established between Mainland China and Hong Kong. Therefore, the second requirement is not met either. Consequently, Hong Kong judgments beyond the scope of the Arrangement cannot be recognised and enforced in Mainland China. The remainder of courts, however, hold that because Hong Kong has been reunited with China it is improper to consider its judgments as foreign judgments. These courts refuse JRE because they hold that Article 95 of the Hong Kong Basic Law requires that only judgments covered by the Arrangement can be recognised and enforced. 81 Hong Kong judgments that are excluded by the

78 If a judgment is excluded by the Mainland–Hong Kong Arrangement, Mainland courts will treat this judgment as they would have done prior to the conclusion of the Arrangement.

79 The Provisions on Recognition of Civil Judgments of Taiwanese Courts, issued by the Supreme People’s Court on 22 May 1998. One example is that in 1999 Changsha Intermediate People’s Court of Hunan Province recognised and enforced a judgment of the Hong Kong High Court by reference (zangzhao) to the Provisions; see Zhang and Smart, supra n 37, 555.

80 Art 268 Mainland CPL concerns recognition and enforcement of foreign judgments in Mainland China. Essentially, courts holding this opinion treated Hong Kong judgments as foreign judgments. One example of applying Art 268 to judgments from Hong Kong is that in 2001 the Quanzhou Intermediate People’s Court of Fujian Province refused to recognise and enforce a judgment of the Hong Kong High Court because the requirements to recognise and enforce a foreign judgment under Art 268 were not satisfied in this case. Yuanqiao tou zi you xian gong si shen qing cheng ren xiang gang fa yuan min shi shu song pan jue an [The case of Investment Co of Hong Kong to recognise a Hong Kong civil judgment] (Quanzhou Interm People’s Ct, 26 November 2001), available at www.lawyee.net (accessed 15 January 2010).

81 Art 95 Hong Kong Basic Law provides that Hong Kong, may, through consultations and in accordance with law, maintain juridical relations with courts in the other regions, and they may render assistance to each other. Supra n 9. Art 95 authorises the competent authorities in the two regions to reach a mutual JRE agreement. One example of courts using Art 95 to refuse JRE is that when in 2000 Li Deng Li Development Co and Fu Hua Enterprise applied to enforce a judgment of the Hong Kong High Court in the Xiameng Intermediate People’s Court of Fujian Province against Yao Sheng Far East Co. The Xiameng court held that because the Hong Kong court was independent from its Mainland counterpart, under Art 95 Hong Kong Basic Law interregional JRE should be carried out after the competent authorities in the two regions reached a mutual agreement. Since no such agreement existed, the Xiameng court dismissed the suit and suggested Li Deng Li and Fu Fua bring an action to resolve their contractual dispute (not a JRE action) against Yao Sheng. Li deng li fa zhan you xian gong si, fu fua qi ye gong si shen qing min shi zhi xing an [The case of enforcing the judgment of Li Deng Li Development Co and Fu Fua Enterprise] (Xiameng Intern People’s Ct, 23 February 2000), available at www.lawyee.net (accessed 15 January 2009).
Arrangement are generally unrecognisable and unenforceable in Mainland China.

Hong Kong courts regularly deny JRE to Mainland judgments because they hold that those judgments lack finality. Under Mainland law, a judgment will become final after being tried by an appellate court or after the period for appeal expires. However, under the Mainland procedure for trial supervision, a competent court – including the judgment-rendering court – can retry the case in circumstances designated by the Mainland CPL. Therefore, although the circumstances may be rare, the judgment-rendering court may reverse its judgment in the retrial proceedings. This played out in the leading case *Chiyu Banking Corporation Limited v Chan Tin Kwun*, where a Mainland judgment creditor sought JRE in Hong Kong. The court applied Hong Kong law to determine whether a Mainland judgment is final and conclusive, and concluded that if a court retains the power to reverse its own judgment, this judgment is not final, and a mere possibility that a retrial may be brought under the Mainland procedure for trial supervision is enough to make a Mainland judgment unrecognisable and unenforceable in Hong Kong. In response to this and similar decisions, since 2001 the Mainland Supreme People’s Court and Supreme People’s Procurator have published internal regulations for lower courts and

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83 *Chiyu Banking Corp Ltd v Chan Tin Kwun*, [1996] 2 HKLR 395 (HC). This case concerns how a retrial, which may be brought by a procurator under the procedure for trial supervision, influences the finality of a Mainland judgment. In this case the plaintiff applied to a Hong Kong court to enforce a Mainland judgment. This judgment was final under Mainland law because it was obtained in a first-instance People’s Court and then affirmed by an appellate court. The defendant applied to stay the Hong Kong proceedings on the grounds that he had requested a Mainland procurator to issue a protest. The defendant argued that if a protest was lodged in due course, the judgment-rendering court would have to order a retrial and the court might revise the original judgment. The Hong Kong Supreme Court held that a Mainland judgment was not final and conclusive for enforcement in Hong Kong in the light of the procedure for trial supervision. Available at http://www.judiciary.gov.hk/en/legal_ref/judgments.htm (accessed 7 January 2010).

84 As a sharp contrast to Hong Kong courts, US courts apply the law of the judgment-rendering court to decide whether a judgment is final under the Uniform Foreign Money Judgment Recognition Act (UFMJRA). For example, “[T]he UFMJRA, adopted in California and codified at former California Code of Civil Procedure sections 1713 to 1713.8, applied to any foreign judgment that is final, conclusive, and enforceable under the laws where rendered. Former Cal Civ Proc Code § 1713.2.” (emphasis added). *Hubei Gezhouba Sanlian Indus Co v Robinson Helicopter Co*, No 2:06-cv-01798-FMC-SS-x 2009 WL 2190187, at *5, *8 (CD Cal 22 July 2009) (in this case, the court recognised and enforced a Mainland monetary judgment, and the court held that “[t]he PRC Judgment was final, conclusive, and enforceable under the laws of the PRC”) Arguably, the US courts’ approach should be praised.

procurators to restrict the grounds of retrial.\textsuperscript{86} \textit{Li You Rong v Li Rui Qiong} was a 2004 case and the issue was whether a Mainland judgment was final if it was made by an appellate People’s Court and affirmed in retrial. The dissenting judge in the Hong Kong Court of Appeal held that the Mainland judgment was final and should be recognised.\textsuperscript{87} In his view, Hong Kong courts should not deny JRE because of a \textit{theoretical possibility} that a retrial may be brought in Mainland China.\textsuperscript{88} He held that the Mainland reform of the procedure for trial supervision had made it practically impossible for the judgment debtor in this case to bring the retrial again.\textsuperscript{89} However, the majority remanded the case partly on the procedural ground that the legal effects of the new Mainland internal regulations were unclear.\textsuperscript{90} In 2007 the Mainland legislator – the Standing Committee of the National People’s Congress – amended the CPL and largely reduced the circumstances in which a judgment-rendering court may reopen its own judgments.\textsuperscript{91} It remains to be seen how Hong Kong courts will respond to the Mainland’s efforts and whether they will apply Chiyu to refuse the recognition and enforcement of Mainland judgments beyond the scope of the Arrangement.

A way ultimately to solve all these JRE difficulties is to develop the current two JRE arrangements into a multilateral arrangement between Mainland China, Hong Kong and Macao, as shown in Figure 2.

Such a broad-scope multilateral JRE arrangement could help to promote certainty between parties and efficiency for courts and society and boost commerce in the three regions.\textsuperscript{92} More importantly, developing this multilateral JRE arrangement could help to promote certainty between parties and efficiency for courts and society and boost commerce in the three regions.


\textsuperscript{91} See generally RA Brand, “Recognition of Foreign Judgments as a Trade Law Issue: The Economics of Private International Law,” in J Bhandari and A Sykes (eds), \textit{Economic Analysis of International Law: Comparative and Empirical Perspectives} (Cambridge University Press, 1997), 592–641. Scoles, supra n 4, 1258 (indicating that “[Preclusion] seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes”). See Symeonides, supra n 11, 713. See also GA Bermann \textit{et al}, \textit{Cases and Materials on European Union
arrangement is essential for interregional economic integration among the three regions.

C. CEPAS AND JRE

Interregional economic integration and JRE should develop together so that all participating regions can achieve the best comparative advantages. For example, the development of the European common market requires the establishment of a JRE system between its members. In return, the Brussels Convention and Regulation help to develop the common market, because once merchants know the judgments rendered in their favour at home can be recognised and enforced in the other region with certainty and at a low cost, they would be more willing to “buy and sell, work and hire, render and purchase services, and invest across [regions]”.

Similarly, the necessities and possibilities of developing a multilateral JRE arrangement among Chinese regions also come from their increasingly close


93 Brand, supra n 92, 620–26.
94 The significance of JRE to trade is best described by an invitation note sent by the European Economic Community’s Commission to the Community’s six Member States on 22 October 1959 to invite them to negotiate the Brussels Convention. In this note, the Commission stated that “The economic life of the Community may be subject to disturbances and difficulties unless it is possible, where necessary by judicial means, to ensure the recognition and enforcement of the various rights arising from the existence of a multiplicity of legal relationships. As jurisdiction in both civil and commercial matters is derived from the sovereignty of Member States, and since the effect of judicial acts is confined to each territory, legal protection and, hence, legal certainty in the common market are essentially dependent on the adoption by the Member States of a satisfactory solution to the problem of recognition and enforcement of judgments.” Von Mehren, supra n 72, 70. U Magnus and P Mankowski (eds), European Commentaries on Private International Law Brussels I Regulation (Sellier, European Law Publishers, 2007), 47.
95 Bermann, supra n 92, 1383–84. See Magnus and Mankowski, supra n 94, 7.
economic integration. A free trade area emerged in 2003 when Mainland China, Hong Kong and Macao concluded two CEPAs. The CEPAs comprise three pillars: zero-tariff for trade in goods, preferential treatment for trade in services, and trade and investment facilitation. It is noteworthy that the trade liberalisation measures offered by Mainland China to Hong Kong and Macao are more favourable than its commitments to the World Trade Organization (WTO). The CEPAs adopt a building-block approach and since 2003 the three regions have worked closely to introduce further liberalisation measures by annual improvements to the agreements. The CEPAs are moving the three regions in the direction of a single market at an unprecedented pace. The two JRE arrangements aim to facilitate the increasingly free circulation of goods, services, capital and people among the three regions.

Taiwan has also established a very close trade relationship with the other three regions. Since 2001, Mainland China and Taiwan have co-operated in improving cross-strait trade. Their economic integration has been largely advanced by the conclusion of cross-strait agreements in air and sea trans-
port as well as postal service in 2007. Taiwan and Mainland China also sealed a Memorandum of Understanding on Cross-strait Financial Supervision in November 2009. The proposed Economic Cooperation Framework Agreement (ECFA) may be concluded in the foreseen future. Currently, JRE between Taiwan and the other three regions is conducted by regional laws.


107 Early in 1991 at the Fourth Session of the Seventh National People’s Congress, Justice Jianxin Ren, the then President of the Supreme People’s Court, formally announced a principle for recognising Taiwanese judgments: the Mainland will recognise civil conduct or vested civil rights in Taiwan, unless these violate the basic principles of the laws of the Mainland or are injurious to the public interest of the society; the effect of Taiwanese civil judgments will be recognised according to specific conditions in each case based on this principle. In 1998, the Supreme People’s Court promulgated the Regulation on Recognition of Judgments in Civil and Commercial Matters by the Courts of Taiwan. In 2009, a supplementary judicial interpretation for the 1998 Regulation was published by the Supreme People’s Court. As for JRE between Hong Kong and Taiwan, in 2000 the Hong Kong Court of Final Appeal determined that judgments made by Taiwan courts were generally enforceable in Hong Kong under ordinary common law principles in the Chen Li Hung v Ting Lei Miao 3 HKCFAR 9 2000, http://legal-ref.judiciary.gov.hk/ls/common/pu/judgment.jsp (accessed 8 January 2009). The Chen Li Hong court regarded Taiwanese courts as “non-recognised courts”. In the words of Bokhary PJ, with whom the other members of the Court of Final Appeal agreed, “‘non-recognised courts’ . . . covers courts sitting in foreign states the government of which our sovereign does not recognise as courts sitting in territory under the de jure sovereignty of our sovereign but presently under the de facto albeit unlawful control of a usurper government. Our courts will give effect to the orders of non-recognised courts where: (i) the rights governed by these judgments are private rights; (ii) giving effect to such judgments accords with the interests of justice, the dictates of common sense and the needs of law and order; and (iii) giving them effect would not be inimical to the sovereign’s interests or otherwise contrary to public policy. This is the principle; and none of it involves recognising any unrecognised entity. It goes purely and simply to protecting private rights.” See Johnston, supra n 33, 599–600. As for JRE between Taiwan and Mainland China, in 1992 Taiwan published the Act Governing Relations Between Peoples of the Taiwan Area and the Mainland Area. This Act was revised in 2003 and Art 74 provides that: “To the extent that an irrevocable civil ruling or judgment, or arbitral award rendered in the Mainland Area is not contrary to the public order or good morals of the Taiwan Area, an application may be filed with a court for a ruling to recognise it. Where any ruling or judgment, or award recognized by a court’s ruling as referred to in the preceding paragraph requires performance, it may serve as a writ of execution. The preceding two paragraphs shall not apply until the time when for any irrevocable civil ruling or judgment, or arbitral award rendered in the Taiwan Area, an application may be filed with a court of the Mainland Area for a ruling to recognise it, or it may serve as a writ of execution in the Mainland Area.”
The two CEPAs and the proposed ECFA aim to bring the four regions into a single market. This process demands a multilateral JRE arrangement, just as the development of the EU single market requires free circulation of judgments. Figure 3 demonstrates the fundamental goal of the development of interregional JRE in China.

D. LESSONS FOR CHINA FROM US AND EU INTERREGIONAL JRE LAWS

The two bilateral arrangements in China establish a foundation whereby a multilateral JRE arrangement can be developed. This multilateral arrangement will ultimately realise free circulation of judgments among Mainland China, Hong Kong and Macao, and may be extended to Taiwan. Some academic works have looked to the interregional JRE mechanisms in the US and the EU for lessons to develop this arrangement. Although they have made outstanding achievements, most of the studies make general comparisons without digging into the details of the interregional laws in China, the US and the EU, and even less scholarship especially focuses on the JRE issues.

For example, Professor Jin Huang acknowledges that drawing experience from other countries will help Chinese jurists to improve Chinese interregional conflict of laws.108 He rightly emphasises that any solution drawn by compara-

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108 Huang and Qian, supra n 19, 303.
tive studies needs to adapt to China’s unique situation. He also observes four distinctive features of the interregional conflicts in China. First, Chinese interregional conflicts are domestic conflicts but with an international scope because Hong Kong and Macao enjoy much broader autonomy than states in a federal system such as the US. Second, the divergences of socioeconomic systems between Chinese regions significantly increase the difficulty of solving conflicts between them. Third, certain international treaties may apply to one of the above Chinese regions and be inapplicable to the others, which brings the conflicts between international laws into Chinese interregional conflicts. Last, no supreme court exists to co-ordinate and to develop interregional conflict of laws between the four regions. The four features are valuable, but Huang has not undertaken any comparative studies between China and other countries in detail. Similarly, Professor Tung-Pi Chen also points out that China may draw useful insights from foreign experiences to solve the interregional conflicts between Mainland China and Taiwan but he does not specify what these insights are.

Mainland professors Guanghui Li and Han Wang propose that the ideal approach to solve interregional JRE in China is to refer to the US model and to make a uniform law applicable to the three regions. However, Li and Wang do not explain what the “US model” is and how to make this uniform law. They also briefly argue that China may draw useful lessons from the Brussels Convention. For example, they point out that the current arrangement between Mainland China and Hong Kong should be expanded to include the cases without choice-of-court agreements, and to include judgments involving consumers, the status and legal capacity of natural persons, and civil com-

109 Ibid.
110 The autonomy includes “legislative autonomy, judicial independence, and final adjudicative power”, ibid, 303–04.
111 Ibid, 304–05.
112 Ibid, 305–06. Under the two joint declarations, the Hong Kong Basic Law, and the Macao Basic Law, international treaties in effect in Hong Kong and Macao before their reunification with Mainland China continue to be effective, and, moreover, Hong Kong and Macao can conclude treaties on numerous matters with other countries or international organisations under the name of “Hong Kong, China” or “Macao, China.”
113 Ibid, 306.
114 See TP Chen, “Bridge Across the Formosa Strait: Private Law Relations Between Taiwan and Mainland China” (1990) 4 Journal of Chinese Law 101, 125. (At the end of this article, the author indicates that “[a]lthough the Taiwan–PRC [conflict of law] situation is unique, the [Mainland and Taiwan] governments may look to foreign experience on both theoretical and practical levels to help rebuild a prosperous and peaceful relationship.”)
pensation in criminal proceedings. Nevertheless, they do not explain how to expand the scope of the arrangement in practice.

Some Hong Kong scholars rightly suggest that the laws to solve conflicts between EU law and UK law, such as the European Communities Act 1972, may be a valuable reference for Mainland China and Hong Kong to solve their legal conflicts. In this Act, the UK Parliament adopted a principle: directly effective EU law prevails over UK law. Putting this in the Chinese context, if a multilateral JRE arrangement comes into reality, it should prevail over any conflicting regional laws.

Obviously, more in-depth comparative studies need to be done between the JRE systems in China, the US and the EU, so as to improve the current two arrangements and ultimately design a multilateral JRE arrangement. Interregional JRE in China is confronted with four main challenges: the challenge relating to the socialist characteristics of Mainland law; conflicts between civil law and common law; weak mutual trust; and the lack of a court of final review for cases from all the three regions. US and EU laws can shed light on how to solve these challenges.

1. The Socialist Characteristics of Mainland Law

Mainland China belongs to the family of socialist law, characterised by a powerful government, a dependent court system, the political leadership of the working class, and the public ownership of lands. These socialist characteristics make it problematic to recognise and enforce sister-region judgments against governments, workers and lands in Mainland China. Thus far, Mainland courts have never recognised and enforced such judgments. However, further interregional integration with Hong Kong, Macao, and Taiwan will require Mainland courts to make a transition. Therefore, the recognition and enforcement of these judgments deserve special attention. Notably, recognition and enforcement of these judgments is also an issue in the interregional JRE in the US and the EU, although less acute than in the Chinese interregional JRE context. Insights from the US and EU will provide new perspectives for Mainland courts and help them to make this transition.

(a) Judgments Relating to Governments

When a party to a judgment is a Mainland government agency, two questions are especially critical: would Mainland courts categorise such judgments as not

116 Ibid.
being “civil and commercial matters”;118 and would Mainland courts use the public policy exception to deny JRE? The problem is acute because many functions that would be performed by private actors in capitalist economies are assigned to government agencies in Mainland China.

In Mainland China, “civil and commercial matters” means matters between private parties such as between natural persons,119 between legal persons, and between natural and legal persons.120 In contrast, “administrative matters” refer to matters between a private party and a government agency exercising its public authoritative powers.121 The key to their distinction is that the former is between parties of an equal status; but the latter is deemed to be between parties of an unequal status. For example, a judgment is administrative if it relates to a debt between two parties where one is required by the law to use the other’s services or equipment at a price, a place or a procedure unilaterally decided by the latter, particularly when the latter is a government agency exercising its public power.122 However, public institutions (Shiye Danwei), which are unique socialist organisations, may cause confusion in the JRE scenario. Public institutions are legal persons, owned by the Mainland government, to promote education, science and technology, culture, and hygiene. Schools, hospitals, publishing houses and television stations are typical public institutions. They are different from state-owned enterprises because of their non-profit nature. However, there is no clear line between them and government agencies—for example the China Securities Regulatory Commission is a public institution, but it acts like a government agency.123 Regarding JRE, a tricky case

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118 The best way to interpret “civil and commercial matters” is to give it an autonomous meaning. See the discussion in the section of “conflicts between civil law and common law”.

119 Natural persons include citizens and organisations, such as partnership, which are not legal persons. See ch 2 Min Fa Tong Ze [General Principles of the Civil Law] (hereinafter “Mainland Civil Law”) (Adopted at the Fourth Session of the Sixth National People’s Congress, promulgated by Order No 37 of the President of the People’s Republic of China on 12 April 1986, and effective 1 January 1987), translated in http://www.cilawinfochina.com (accessed 11 February 2010).

120 See Art 2 Mainland Civil Law.


122 The facts are based on Ltu Lufttransportunternehmen GMBH & Co KG v Eurocontrol, Case C-29/76, [1976] ECR 1541, 1550.

would be a medical malpractice judgment rendered by a sister-region court against a Mainland public hospital or a judgment against a Mainland public school because negligence by one of its teachers causes injury to a student. Under Mainland law, hospitals and schools are liable for doctors’ and teachers’ negligence when they act in the course of their duty. Because public hospitals and schools are public institutions, the government will eventually pay for the judgments against them. Would Mainland courts hold such judgments in the category of “civil and commercial matters” in the JRE context?

The ECJ faced a similar question in Volker Sonntag v Hans Waidmann, which may serve as a valuable reference for Mainland courts. In this case, a German pupil was injured in Italy because of a teacher’s negligence during a school trip. The pupil’s family applied to a German court for the enforcement of an Italian judgment against the teacher. The German court made a preliminary reference to the ECJ, asking whether this case, “[w]here the holder of a public office who has caused injury to another person by reason of an unlawful breach of his official duties is personally sued by that person for damages”, is a civil matter under the Brussels Convention. The ECJ answered in the affirmative because although a teacher working in a public school has the status of a civil servant, he does not exercise public power because the teacher’s “conduct does not entail the exercise of any powers going beyond those existing under the rules applicable to relations between private individuals” and a teacher in a public school or a private school assumes the same function to students.

The ECJ also held that the fact that the teacher’s liability was covered by a social insurance scheme governed by public law was irrelevant “since the basis of the civil claim, that is to say liability in tort or delict, is not affected by the existence of that public insurance.”

Although China’s situation is different from the EU (eg teachers working in public schools are not civil servants), this case can provide two useful insights

125 Art 7 Interpretation of the Supreme People’s Court of Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (adopted at the 1299th meeting of the Judicial Committee of the Supreme People’s Court on 4 December 2003, and effective on 1 May 2004) and Art 52 Regulation on the Handling of Medical Accidents (adopted at the 55th executive meeting of the State Council on 20 February 2002, and effective on 1 September 2002), translated in http://www.lawinfochina.com (accessed 11 February 2010).
127 The pupil’s family tried to enforce the civil law provisions of a judgment given by an Italian criminal court in Germany. Ibid, para 2 and 4.
128 Ibid, para 10.
for China. First, a judgment should not be categorised out of “civil and commercial matters” simply because it involves a Mainland public institution. Only when sufficient evidence proves that the institution actually functions as a government agency may a requested court regard the case as an administrative case. Second, the question whether it is ultimately the government that pays for the judgment should be irrelevant to the JRE decision.

The second issue relating to judgments involving governments is whether Mainland courts would use a public policy exception to deny JRE simply because a sister-region judgment goes against one of its government agencies.

The doctrine of the public policy exception has played a role in Mainland legislation and judicial practice since the establishment of the PRC. But Mainland legislators have never used the term “public policy” in their legislation. Instead, they use terms such as “public interests”, “socio-economic order”, “the social and public interest of the country”, or “sovereignty, security or social and public interests”. Regarding recognition and enforcement of foreign judgments, Article 266 of the Mainland CPL provides that if a foreign judgment is against sovereignty, security or social and public interests, it should not be recognised and enforced. Both Arrangements indicates that if

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131 “Opinions on the Matrimonial Issues between Chinese Citizens and Foreign Residents as well as those between Foreign Residents” issued by the Legislative Committee of the Central People’s Government in 1950 is generally regarded as the first legislation invoking the doctrine of public policy in the history of China. The Opinions stipulated that “Lex patriae should be applied only to the extent that they are not incompatible with the ordre public, public interests, and the current basic policies of the State.” YP Xiao and ZX Huo, “Ordre Public in China’s Private International Law” (2005) 53 American Journal of Comparative Law 653, 655.
132 For example, Art 150 Mainland Civil Law provides: “The application of foreign laws or international custom and usage in accordance with the provisions of this chapter shall not violate the public interests of the People’s Republic of China” (emphasis added). Art 276 Maritime Act and Art 190 Civil Aviation Act have very similar provisions. Art 52 Contract Law provides: “A contract shall be null and void under any of the following circumstances: . . . (4) Damaging the public interests” (emphasis added).
133 For example, Art 7 Contract law provides: “In concluding and performing a contract, the parties shall abide by the laws and administrative regulations, observe social ethics. Neither party may disrupt the socio-economic order or damage the public interests” (emphasis added).
134 Art 258 Mainland CPL provides that: “If the People’s Court determines that the enforcement of the award goes against the social and public interest of the country, the People’s Court shall make a written order not to allow the enforcement of the arbitral award” (emphasis added).
135 Ibid, Art 260.2 provides that: “The People’s Court shall not render the assistance requested by a foreign court, if it impairs the sovereignty, security or social and public interest of the People’s Republic of China.” Art 262 provides that: “In the case of an application or request for recognition and enforcement of a legally effective judgment or written order of a foreign court, the People’s Court shall, after examining it in accordance with the international treaties concluded or acceded to by the People’s Republic of China or with the principle of reciprocity and arriving at the conclusion that it does not contradict the basic principles of the law of the People’s Republic of China nor violate State sovereignty, security and social and public interest of the country, recognise the validity of the judgment or written order, and, if required, issue a writ of execution to enforce
a sister-region judgment is against Mainland social and public interests, JRE should be refused.\textsuperscript{136} Notably, this wording departs from Article 266.\textsuperscript{137} The reason is that since the three regions are within one country, they should not have any disputes over sovereignty and security. Therefore, “sovereignty and security” should be left out.

Thus far, it has never been reported that Mainland China has recognised and enforced any foreign judgments against its government agencies in civil and commercial cases. Will this practice continue in interregional JRE? In 2006, a reply made by the Supreme People’s Court to a question posed by the High Court of An Hui Province (the “Reply”) helps to answer this question.\textsuperscript{138} This Reply addressed the issue whether the enforcement of an arbitral award against a government agency would violate Mainland social and public interests.\textsuperscript{139} The dispute was between a Hong Kong company and a Mainland government agency. The latter invested 105 million RMB to buy equipment from the former but this equipment did not work as designed. The China International Economic and Trade Arbitration Center ruled that the malfunction of the equipment was not due to the Hong Kong company so it made an award against the government agency. The High Court of An Hui Province refused to enforce this award on the grounds of social and public interests violation, because the government agency had invested millions in this equipment but gained no profits. A high court that would like to refuse the recognition and enforcement of an arbitral award involving foreign and sister-region factors needs to seek the approval of the Supreme People’s Court,\textsuperscript{140} so the An Hui High Court asked the Supreme Court for its opinion. The Supreme Court ruled that it was improper to refuse the enforcement of this award on the grounds of a social and public interest violation, because social and public interests refer to the fundamental national legal order. In this case, the parties concluded and performed a contract, which did not violate social and public interests. In addition, the fact that the expensive equipment was left unused did not result from the enforcement of the arbitral award. Moreover, the Court

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ruled that the failure of a governmental project has nothing to do with violations of social and public interests. Thus, this award should be enforced. This Reply does not presage that Mainland China will in the future be generally open to recognise judgments against its government agencies. But in this Reply the Supreme People’s Court does not restrict its interpretation of social and public interests only to recognition and enforcement of arbitral awards. Mainland courts should apply the Reply to interregional JRE, which will help soothe the concern that Mainland courts may abuse the public policy exception in order to protect government agencies in civil and commercial cases.

(b) Judgments Relating to Workers

The prologue of the Mainland Constitution indicates that the PRC is a country led by the working class. Mainland laws and government policies always pay special attention to protecting the interests of workers. This section will first answer the question of whether Mainland courts would recognise and enforce sister-region judgments against a state-owned enterprise, where doing so will bankrupt the company and cause it to lay off many workers. This question was posed by a Mainland judge and caused much academic debate. This section will then analyse the Mainland’s special concerns in recognising and enforcing sister-region workers’ compensation judgments. Finally, it will discuss how to expand the current Mainland–Hong Kong Arrangement to labour contracts.

There are two reasons why Mainland courts should recognise and enforce sister-region judgments against a Mainland state-owned enterprise even if doing so will bankrupt it and cause it to lay off many workers. First, the Reply clearly indicates that the “social and public interests” refer to the fundamental national legal order. The Mainland Enterprise Bankruptcy Code provides that all enterprises, including state-owned enterprises, should be treated equally in a market economy, and state-owned enterprises are subject to the same bankruptcy proce-
dure as other enterprises. Therefore, bankruptcy of a state-owned enterprise will not harm the fundamental national legal order and consequently will not involve violation of social and public interests. Second, there are better ways to protect workers than denying JRE. In a domestic context in instances where a company may be bankrupted by the enforcement of a People’s Court judgment, the enforcement proceedings will leave sufficient funds to support the basic life of workers. This law should apply to the interregional JRE context and the liquidated assets should be used to pay workers before being distributed to any other creditors.

Mainland China especially concerns what preclusive effects F2 should give to F1 workers’ compensation judgments. If F1 renders a judgment to award a certain amount of money as workers’ compensation to a party, and F2 in the other region also has jurisdiction over this case, can the party ask F2 to give an additional amount of compensation, or is F2 bound by the preclusive effect of the F1 judgment? Considering the vast exchange of workforces and business among the Chinese regions, this scenario will possibly happen. The Mainland–Macao Arrangement requires F2 to recognise F1 judgment if none of the five grounds for refusal exists. The Arrangement further requires that if F2 has recognised and enforced F1 judgment, it should not accept a case based on the same cause of action. Thus, the Arrangement precludes F2 from giving an additional amount of compensation to a worker. The Arrangement should make an exception for workers’ compensation and successive workers’ compensation awards should not be precluded. This can facilitate free movement of workers and in turn encourage interregional trade. Moreover, this advances

144 C Wei, “Several Thoughts on Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Mainland and Hong Kong”, in Botao Liu (ed), Zhong guo she wai shang shi shen pan re dian wen ti tan xi [Study on Chinese Foreign Related Commercial Trials] (Beijing, Law Press China, 2004), 298.


146 See Ibid, Arts 6, 48, 82, 113, 132 (providing that in the hearing of a bankruptcy case the People’s Court shall guarantee the legitimate rights and interests of the employers in the insolvent enterprise. For example, before outstanding tax and the unsecured creditors’ claims, the insolvent assets should be used to pay off employees’ wages, compensation for their medical treatment, their basic retirement insurance premiums, their basic medical insurance premiums, and other compensation for employees as prescribed by the relevant laws and administrative regulations). See also The Notice of the Supreme People’s Court on Strict Prohibition of Freezing and Transferring Basic Living Fund of Laid-off Workers of State Owned Enterprises, dated 24 November 1999 (providing that the basic living support fund for laid-off workers of state-owned enterprises is immune from any detention or execution).


148 Art 1 Mainland–Macao Arrangement.
Mainland special interests in protecting its workers without harming the interests of Hong Kong, Macao and Taiwan.

In the US, F2 determines whether the full faith and credit clause precludes it from making a successive workers’ compensation award by defining what F1 had decided in its judgment. A good example is *Thomas v Washington Gas Light Co.* In this case the worker resided, was hired and worked in Washington, DC. His employer was from this region too. The worker also worked for the same employer in Virginia where he was injured. He received an award of disability benefits from the Virginia Industrial Commission under the Virginia Workmen’s Compensation Act. Several years later, he wanted to seek additional compensation in Washington, DC under its law. The employer argued that the Virginia award must be given *res judicata* effect in Washington, DC to the extent that it was *res judicata* in Virginia. The US Supreme Court held that Washington, DC could render a supplemental compensation award to the worker, even though he had received a compensation award in Virginia. The Supreme Court noted that Virginia and Washington, DC had different interests: Virginia’s interests included limiting the potential liability of companies that operated within its borders, protecting workers who worked there, having other states giving full faith and credit to its decisions; Washington, DC also had an interest in protecting workers who worked within its borders. The Court, however, ruled that these two regions did not have conflicts of interests in this case for three reasons. First, because actions on workers’ compensation could be brought in either region, employers always would have to use the more generous of the two workers’ compensation schemes to measure their potential liability exposure. Therefore, a region’s interest in protecting the employers transacting business within its border was not of controlling importance. Second, obviously, both regions had an interest in providing adequate compensation to the injured worker, which would not be harmed by allowing

140 Ibid., Art 16.
150 *Thomas v Washington Gas Light Co.*, 448 US 261, 100 SCt 2647, 65 LEd2d 757 (1980). In *Industrial Comm’n of Wisconsin v McCartin*, a case decided before *Thomas*, the US Supreme Court had held that, in the absence of “unmistakable language” under the law of the state where F1 is located, F1’s award addressed only to the employment relationship in that state and not elsewhere, hence would not preclude subsequent litigation in F2. 330 US 622, 627–28 (1947).
151 Ibid.
152 Ibid.
153 Ibid.
154 Ibid.
155 Ibid., 265.
156 Ibid., 265–66.
157 Ibid., 286.
158 Ibid., 277.
159 Ibid.
160 Ibid., 284.
161 Ibid., 280.
a second region to award additional compensation. Third, because the jurisdiction of the Industrial Commission of Virginia is limited to questions arising under Virginia law, it had not determined the worker’s right under the law of Washington, DC, and therefore full faith and credit need not be given to what the Commission had no power to make. As a conclusion, Washington, DC was free to decide the worker’s right under its law, which would not conflict with Virginia’s interests. Notably, however, the Court held that the factual determinations in the Virginia award should be entitled to collateral-estoppel effect in Washington, DC courts.

Valuable insights for China can be drawn from this leading US case. The interests of Mainland China and Macao in interregional workers’ compensation cases are similar to those of Virginia and Washington, DC. They do not have a conflicting interest when F2 awards supplemental compensation, as long as an injured worker does not get double compensation. Accordingly, under the Mainland–Macao Arrangement the workers’ compensation judgment rendered by F1 should not preclude an injured worker from seeking additional compensation from F2, if F2’s law provides for a more generous award. Nevertheless, the factual determinations by F1 should have preclusive effect in F2 in a latter case based on the same cause of action. This can promote certainty between the parties and judicial efficiency in Mainland and Macao courts.

The current Mainland–Hong Kong Arrangement excludes cases involving labour contracts. One way to develop this Arrangement is to include labour contracts into its scope. The current Arrangement does not distinguish choice-of-court agreements concluded before or after disputes have arisen. However, if the future Arrangement extends interregional JRE to cases involving labour contracts, the two regions may consider this proposed provision: in cases relating to individual contracts of employment, a choice-of-court agreement shall have legal force only if it is entered into after the dispute has arisen; otherwise it shall have legal force only if the employee invokes it. This is in accordance with Articles 13, 17 and 21 of the Brussels I Regulation. This restriction of party autonomy is aimed at the protection of socially or economically weaker parties. It will probably be welcomed by Mainland China and it also serves Hong Kong’s interests by making it a more attractive place for Mainland skilled

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142 Ibid.
143 Ibid.
144 Ibid, 262–83.
145 Ibid, 283.
146 Ibid, 280–81.
147 Art 3 Mainland–Hong Kong Arrangement.
148 Art 18 Brussels Convention provides that “In matters relating to individual contracts of employment an agreement conferring jurisdiction shall have legal force only if it entered into after the dispute has arisen or if the employee invokes it to seize courts other than those for the defendant’s domicile or those specified in Art 5(1).” Relevant provisions in the Brussels I Regulation are developed based on Art 18 Brussels Convention.
workers. Consumer contracts are excluded by the current Arrangement, so this proposal may also apply to consumer contracts, including insurance contracts where a nature person is the policyholder, the insured or a beneficiary.

(c) Judgments Relating to Real Estate

Mainland law provides that a court where real estate is located should have exclusive jurisdiction over any disputes on the real estate. In Mainland China, all land is under socialist public ownership, and legal or natural persons, including those from sister regions, can own real estate including land use rights in the circumstances designated by law. Both Mainland Arrangements with Hong Kong and Macao, respectively, provide that a region can deny JRE when its courts have exclusive jurisdiction over the dispute. Thus, Mainland China can deny JRE when a sister-region judgment involves any real estate located in its territory. However, many loan agreements concluded in sister regions may involve mortgages on real estate located in Mainland China. This is because lending laws in Hong Kong and Macao are more liberal than those in Mainland China, so Mainland parties would go there to borrow money but may have to use their real estate located in Mainland China as collateral for the loan. If a Mainland debtor fails to pay the loan on time, a sister-region court may require the debtor to convey the title to the real estate to the creditor or to auction the real estate in order to pay off the loan. There were many such JRE cases in Mainland courts before the conclusion of the two arrangements. The courts generally denied JRE on account of the lack of a JRE.

169 Von Mehren, supra n 72, 229.
170 Under Mainland law, real estate includes land, houses, trees, etc.
171 Art 34 Mainland CPL.
174 See Stein, supra n 172, 1329–30 (discussing the types of collaterals that borrowers offer to lenders).
175 If a piece of land is involved, the land use rights, instead of the title, will be conveyed or auctioned, because the title to land belongs to the state.
arrangement or reciprocity. Now, under the current two arrangements, could these judgments be enforced?

The US jurisprudence may shed light on this issue. In the US, the exclusive subject matter jurisdiction over land also belongs to the court of the situs. US courts recognise and enforce sister-state judgments involving land in other states by distinguishing the in rem effect and the in personam effect of a judgment. The opinion in *Durfee v Duke* is pertinent. In this case, after Durfee won a Nebraska case adjudicating the location of certain land to be in Nebraska and to be his, the losing party, Duke, re-litigated the case in Missouri. The suit finally arrived at the US Supreme Court. The Court held that courts in Missouri should give full faith and credit to the Nebraska judgment. But meanwhile the Court carefully pointed out that the in personam and in rem effects of the Nebraska judgment should be distinguished:

“It is to be emphasized that all that was ultimately determined in the Nebraska litigation was title to the land in question as between the parties to the litigation there. Nothing there decided, and nothing that could be decided in litigation between the same parties or their privies in Missouri, could bind either Missouri or Nebraska with respect to any controversy they might have, now or in the future, as to the location of the boundary between them, or as to their respective sovereignty over the land in question.”

In other words, the F1 judgment directly affects and operates upon only the parties; it does not directly affect the relevant land. Moreover, the lex situs should decide the effect of the F1 judgment against a third party, such as an innocent purchaser of the land.

Under the Brussels I Regulation, F2 can refuse to recognise an F1 judgment that conflicts with its exclusive jurisdiction. Article 22(1) provides that the court of the situs has the exclusive subject matter jurisdiction over real estate. Nevertheless, this provision only deals with claims founded in rights in rem and

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176 See *Meidadou cai wu you xian gong si yu ruichang zhi ye you xian gong si, ju long ji tuan you xian gong si* [Meidadou Financial Co v Ruichang Real Estate Co Ltd, Ju Long Group Co Ltd, Gan Lijun et al] (Guangzhou Inter People’s Ct, 13 April 2000); *Li deng li fa zhan you xian gong si, fu fua qi ye gong si shen qing min shi zhi xing an* [The case of enforcing the judgment of Li Deng Li Development Co and Fu Fua Enterprise] (Xiameng Inter People’s Ct, 23 February 2000); *Yuanqiao tou zi you xian gong si shen qing cheng ren xiang gang fa yuan min shi shu song pan jue an* [The case of Investment Co of Hong Kong to recognize a Hong Kong civil judgment], Quanzhou Intermediate People’s Court 26 November 2001. See www.Lawyee.net (accessed 15 January 2009).

177 See *supra* nn 79 and 80 and accompanying text.

178 *Fall v Eastin*, 215 US 1, 30 SCt 3, 54 LEd 65 (1909); *Fitch v Huntington*, 125 Wis 204, 102 NW 1066 (1905).


182 Arts 22 and 35 Brussels I Regulation.
not rights in personam, which include contractual obligations on conveying rights in rem affecting real estate (eg ownership).\textsuperscript{184}

The Brussels I Regulation requires Member States to observe the same exclusive jurisdictional rule, and the ECJ can ensure that these members consistently implement this rule. However, the situation in China is different. The two arrangements regulate only JRE and leave jurisdictional rules to the member regions. Furthermore, no court of final review exists. Therefore, the American approach fits the Chinese situation better. Although distinguishing the in rem effect and the in personam effect of a judgment has been criticised by some commentators as arbitrary and confusing,\textsuperscript{185} the result it brings is better than totally refusing JRE simply because a judgment involves real estate located outside of the jurisdiction of the judgment-rendering court. Therefore, the judgment in the hypothesis at the beginning of this section should be recognised and enforced under the two arrangements.

2. Conflicts between Civil Law and Common Law

Mainland China and Macao are influenced by the civil law tradition, whereas Hong Kong is governed by the common law tradition.\textsuperscript{186} The differences between the two traditions complicate interregional JRE in China particularly in two aspects.

First, the same term may connote different meanings in different legal traditions. One example is finality.\textsuperscript{187} In Mainland China, a final judgment should not be subject to any appeal but can be subject to retrial. However, Hong Kong courts hold that a judgment is final even if an appeal against it is pending but a judgment is not final if it may be retried under the Mainland procedure for trial supervision. This sharp contrast has been well reconciled after the Mainland–Hong Kong Arrangement gave an autonomous meaning to the term “finality”.\textsuperscript{188} This Arrangement defines “an enforceable final judgment” in the case of the Mainland as:


\textsuperscript{186} Hong Kong retains the common law tradition even after it was reunited with Mainland China. Art 8 Hong Kong Basic Law provides that “the laws previously in force in Hong Kong, that is, common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of Hong Kong.” Its Art 84 further provides that Hong Kong courts may refer to precedents of other common law jurisdictions when adjudicating cases. But those precedents will only have reference value and no binding force over Hong Kong courts. Supra n 9. For comments, see AHY Chen, “The Question of Conflict of Laws between Mainland China and Hong Kong”, in HY Chen and MM Chan (eds), Human Rights and Rule of Law [Renquan yu fazhi] (Hong Kong, Wide Angle Press, 1987), 48, fn 43. See also P Smart, “Enforcing Foreign Judgments after 1997” (2002) 4 Hong Kong Lawyer 144.

\textsuperscript{187} See supra n 81 and the accompanying text.

\textsuperscript{188} See Art 2 Mainland–Hong Kong Arrangement.
“(1) any judgment made by the Supreme People’s Court; (2) any judgment of the first instance made by a higher or intermediate People’s Court, or a designated basic People’s Court that has been authorized to exercise jurisdiction of the first instance in civil or commercial cases involving foreign, Hong Kong, Macao, and Taiwanese parties, from which no appeal is allowed according to the law or in respect of which the time limit for appeal has expired and no appeal has been filed; (3) any judgment of the second instance; and (4) any legally effective judgment made in accordance with the procedure for trial supervision by bringing up the case for a retrial by a People’s Court at the next higher level.”

In the case of Hong Kong, “an enforceable final judgment” refers to any legally effective judgment made by the Court of Final Appeal, the Court of Appeal, and the Court of First Instance of the High Court or the District Court. This means that under the Arrangement, Mainland judgments subject to retrial and Hong Kong judgments subject to appeal can be recognised.

Second, certain terms may exist in one legal tradition but be absent from the other. For example, fraud is a ground for refusing JRE in Hong Kong law. It had never explicitly existed in Mainland law until the Mainland–Hong Kong Arrangement was concluded. Regrettably, Mainland 2008 implementing legislation of the Arrangement does not define the meaning of “fraud”. Mainland China is confronted with the issue of how to integrate the common law concept of fraud into its civil law system. One solution is to extend the definition of “fraudulent act” from the Civil Law Code to the JRE context. However, this definition does not cover fraudulent acts by the court so it is much narrower than the definition of fraud in Hong Kong law. Consequently, the problem that the meaning of the same term varies in different legal traditions will occur.

The other solution for Mainland China is to adopt the Hong Kong definition of fraud in the JRE context. According to Hong Kong common law and statute, fraud “must be [the action] of the party seeking enforcement, or of the court itself”. For example, it could be that false evidence provided by a party is accepted by the judgment-rendering court, that one party intimidated the other party by illegal acts such as violence in the proceedings that

189 Ibid, Art 2.1.
190 Ibid, Art 2.2.
191 Art 68 Opinions on Application of the General Principle of Civil Law of the PRC promulgated by the Supreme People’s Court defines “fraudulent act” as “a party purposely conveys any false information to the other party, or purposely disguises any fact so as to induce the other party into making any false declaration of will”.
192 Common law and statute provides the same grounds to impeach a foreign judgment obtained by fraud. § 6(1)(a)(iv) of the FJREO provides that: “On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment . . . shall be set aside if the registering court is satisfied . . . that the judgment was obtained by fraud.”
193 Johnston, supra n 33, 564.
194 See Birch v Birch [1902] P130 at 137–38.
led to the judgment, or that judges of the court take bribes even if the party relying on its judgment was not involved in the corruption. Notably, Mainland China also recognises the acts under the heading of fraud in Hong Kong Law as grounds for refusing JRE, but it categorises these acts into the field of undue process or public policy violation. Therefore, it is not impossible for Mainland China to adopt the Hong Kong definition of fraud in the interregional JRE context. However, a barrier for the Mainland’s adoption of the Hong Kong’s definition of fraud is that it is rooted in numerous cases rather than a clear statute. In the view of Mainland China, case-law is unsystematic and confusing. Furthermore, courts in Hong Kong define “fraud” by reference to the English case-law. It is hard for Mainland China to adopt a common law concept whose meaning may evolve according to the decisions made by courts in the UK. Therefore, the best solution is to provide an autonomous definition of fraud when the two regions decide to amend the Mainland–Hong Kong Arrangement. The contents of this definition can be based on the Hong Kong law but its format should be clear and easy to implement, which suits the Mainland civil law preference. It is suggested that fraud should be defined by listing examples of fraud, such as providing knowingly false evidence, bribing judges or illegally intimidating the other party or witness.

The examples of “finality” and “fraud” demonstrate that adopting autonomous meanings is a good solution to reconcile the differences between the civil law and common law traditions. An autonomous meaning refers to a meaning disengaged from the special understandings that might be associated with it under a regional law or an international legal instrument that a region ratified. In other words, the interpretation of a certain word or phrase in an interregional legal instrument should not depend on the law of one or more of

196 Johnston, supra n 33, 564.
197 If the undue-process clause in a JRE agreement between Mainland China and a foreign country specifies that undue process includes providing knowingly false evidence, intimidating the other party by illegal acts or bribing judges, Mainland courts will deny JRE by invoking the undue-process clause. Otherwise, they use the public policy exception to refuse the recognition and enforcement of a judgment tainted by such acts.
198 S 6(1)(a)(iv) FJREO is a provision for refusing JRE on the ground of fraud. However, this provision does not define fraud and Hong Kong courts interpret this provision by following common law decisions. *WEM Motors Pty Ltd v Malcolm Maydwell* [1995] HKLY 1047 (this is a FJREO case concerning fraud; the Hong Kong Court of Appeal followed the English common law decision in *Owens Bank Limited v Bracco* [1992] 2 AC 443, [1992] 2 All ER 193).
199 See Johnston, supra n 33, 567-69.
200 Bermann, supra n 92, 1390. See also Magnus and Mankowski, supra n 94, 31–32 (indicating that interpreting the Brussels Convention and Regulation by autonomous meanings have two aspects: “First, questions of doubt were principally to be answered without redress to a specific national law but from an insofar autonomous, to some extent supra-national viewpoint . . . [s] econdly, the construction of terms and the gap-filling of the Convention was to be inferred from the Convention itself generally also without any redress to other international legislative instruments”) (internal citation omitted).
the regions concerned, but, first and foremost, on the legal instrument itself.\textsuperscript{201}

Using autonomous meanings to define terms or phrases in a legal instrument has valuable benefits. It can prevent the instrument from being subject to various regional laws, can increase certainty and predictability, can simplify the interpretation process, and also can ensure that the instrument will be applied in the way that it is intended to be applied.\textsuperscript{202}

The benefits of using autonomous meanings to ensure legal certainty and transparency in interregional JRE can be observed in the case-law of the ECJ, which has interpreted many terms and phrases in the Brussels Convention and Regulation in this way.\textsuperscript{203} For example, the Convention and Regulation does not define the phrase “civil or commercial matters”. In a German JRE proceeding involving a Belgian monetary judgment, a German appeal court asked the ECJ whether, for purposes of interpreting the term “civil or commercial matters”, reference should be made to the law of the state where the judgment was rendered or to the law of the state where enforcement is sought. The Court held that an autonomous definition should be given to this phrase:

“The concept in question must . . . be regarded as independent and must be interpreted by reference, first to the objectives and scheme of the convention and, secondly, to the general principles which stem from the corpus of the national legal systems.” \textsuperscript{204}

Similarly, the phrase “civil or commercial matters” is not defined in either Arrangement in China. It is better to define this phrase by a mutually accepted autonomous meaning in the arrangement-making process. Because if its definition is subject to regional laws, potentially a case deemed to be civil and commercial in one region may be classified out of this field in the other region.\textsuperscript{205} This will complicate interregional JRE and increase its cost and unpredictability.

3. Weak Mutual Trust

Free circulation of judgments is based on the mutual trust of each other’s legal system. The two arrangements have shown the growth of mutual trust between

\textsuperscript{201} See Bermann, \textit{supra} n 92, 1386.
\textsuperscript{202} \textit{Case C-29/76 Ltu Lufttransportunternehmern GMBH & Co KG v Eurocontrol} [1976] ECR 1541, 1556.
\textsuperscript{204} \textit{Case C-29/76 Ltu Lufttransportunternehmern GMBH & Co KG v Eurocontrol} [1976] ECR 1541, 1550.
\textsuperscript{205} The above discussion on judgments relating to governments, especially public institutions, demonstrates this problem.
Mainland China and Hong Kong and Macao, respectively. For example, a requested court should determine whether a sister-region judgment is achieved by undue process under the law of the judgment-rendering court. However, even though they were reunited ten years ago, mutual trust between the three regions remains fragile. For example, after the conclusion of the Mainland–Hong Kong Arrangement, the Hong Kong business community expressed deep worries about exposing Hong Kong businesspeople to judgments obtained through fraudulent means in Mainland courts. These worries come from a stereotypical presumption that the Mainland court system is incompetent due to factors such as the lack of judicial independence and local protectionism and other issues. However, a recent study proves that this presumption is not always correct. Moreover, in Mainland China, not every court has jurisdiction over cases involving interregional elements. As for district courts, only those located in economic and technological development zones enjoy first-instance jurisdiction over such cases, and they generally enjoy a better reputation for fair trial than courts in rural China.

Zhang and Smart, supra n 37, 578. See Johnston supra n 33, 122. But other scholarship points out that the Mainland government is increasingly paying attention to the rule of law, and encourages Hong Kong businessmen to update their negative stereotypes about the Mainland legal system. See Kwong, supra n 117, 23. See also Johnston supra n 33, 123 (discussing Hong Kong courts dismissing cases in favour of courts in Mainland China as the forum conveniens).

QF Kong, “Enforcement of Hong Kong SAR Court Judgments in the People’s Republic of China” (2000) 49 International & Comparative Law Quarterly 867, 870 (discussing how in China administrative power dominates political and social affairs, so judgment enforcement tends to reflect the interests of political and senior leaders instead of those of legislators; therefore, judgment enforcement is often interfered by politically influential parties).


Other problems include incompetent judges, the phenomenon of relationship (guanxi) in China and corruption of local courts. See Cohen, ibid, 794–97, 801–02. See also Rosenberg, ibid, 58–59 (indicating the difficulty in freezing a debtor’s bank account and observing that a small market exists for the seized items; therefore a creditor may find it difficult to realise its rights).


X He, “Enforcing Commercial Judgments in the Pearl River Delta of China” (2009) 57 American Journal of Comparative Law 421, 421–55 (proving “with a diversified local economy; local governments have less incentive to help specific enterprises and thus local protectionism decreases; general judicial reforms aimed at building institutions and increasing the professionalism of the judiciary have been implemented; and specific measures to strengthen enforcement have been put into place”).

Arts 1 and 5 Provisions of the Supreme People’s Court on Some Issues Concerning the Jurisdiction of Civil and Commercial Cases Involving Foreign Elements, adopted at the 1203rd meeting of the Judicial Committee of the Supreme People’s Court on 25 December 2001, and effective on 1 March 2002.
Mainland–Hong Kong Arrangement and should be continued in the future multilateral JRE arrangement in order to soothe the sister-regions’ concerns on the quality of Mainland judgments.

Therefore, Hong Kong courts should not deny JRE on the ground of fraud because of a mere argument on the general organic deficiency of the Mainland judicial system. Instead, a judgment debtor must “particularize the fraud with precision” by using plausible evidence to establish a prima facie, arguable or credible case. Some authorities in Hong Kong suggest that the defence of fraud may be raised in Hong Kong even though this defence was pleaded and rejected by the judgment-rendering court. However, Wang Hsiao Yu v Wu Cho Ching adopted a better approach. In this case, the court held that Hong Kong courts should not impeach a sister-region judgment on the ground of fraud when the allegation of fraud had been examined extensively and thoroughly in the judgment-rendering court in Taiwan. This holding should be applied to Mainland judgments too. Similarly, Mainland China should not deny JRE because of fraud if the allegation has been fully litigated in the judgment-rendering court in Hong Kong. This approach can help the two regions to build mutual trust.

The remaining issue is whether a requested court should review a sister-region judgment in substance when the judgment debtor has not litigated the allegation of fraud in the judgment rendering court. The answer should be negative because reviewing a sister-region judgment in substance is detrimental to the mutual trust. The Queen’s Bench in the UK faced a similar issue in a

212 See the Attachment to the Mainland–Hong Kong Arrangement.
213 In a forum non conveniens case, the Hong Kong court rejected the plaintiff’s general arguments that: “(1) State-owned enterprises are economically important to the state and hence the Chinese Communist Party/Government authorities would interfere in the judicial process. (2) Because of its dependence on the Government, the judiciary is likely to be influenced by the Chinese Communist Party. (3) Even in the absence of any intervention from the Government, because of its dependence upon the Government’s financial well-being, the Chinese judiciary is prone to side with local/governmental economic interests.” New Link Consultants Ltd v Air China HCA 515 of 2001, http://legalref.judiciary.gov.hk/lrs/common/ju/judgment.jsp (accessed 11 February 2010).
214 WFM Motors Pty Ltd v Malcolm Maydwell (unrep, CACV 148 of 1995), Court of Appeal, per Ching JA ([1996] 2 HKLR 236 Court of Appeal).
217 Wang Hsiao Yu v Wu Cho Ching, HCA 1690/1997 (holding that it was an abuse of process to allow a defendant to re-litigate the issue of fraud in Hong Kong after his allegations had been examined extensively and thoroughly and determined against him by a judgment-rendering court in Taiwan after 6 rounds of appeal. The Wang Hsiao Yu court reconciled its decision with WFM Motors Pty Ltd by indicating that the latter court did not consider the issue of abuse of process).
JRE proceeding where the judgment debtor alleged that the creditor achieved this judgment by fraudulent acts in the judgment-rendering court in France.\footnote{Interdesco Sàrl v. Nullifire Ltd, [1992] 1 Lloyd’s Rep 180.} The court carefully distinguished judgments made in an EU Member State from those outside of the EU.\footnote{Ibid., 186–87.} It held that if a judgment debtor alleges that a judgment made in an EU Member State is tainted by fraud, the English court should first consider whether a remedy lies in the judgment-rendering country, and if so, the court should leave the debtor to pursue his or her remedy in that country.\footnote{Ibid., 187.} In any case, the court should not review the judgment in substance.\footnote{Ibid., 187.} This case provides a valuable lesson for China: the requested courts should strictly observe the no-review-of-substance principle because this principle can foster the mutual trust. If the debtor has not litigated the allegation of fraud in the judgment-rendering court, the requested court should avoid reviewing the sister-region judgment in substance. It should suggest the debtor challenges the judgment under the appellate procedure or the retrial procedure in the judgment-rendering region.

Besides stereotypical presumptions about the Mainland court system, the weak interregional mutual trust also comes from the divergence between the legal systems in the three regions.\footnote{See J Harris, “Understanding the English Response to the Europeanisation of Private International Law” (2008) 4 Journal of Private International Law, 347, 352–53, 359–63, 364–67 (discussing how the divergences between the English common-law system and the European continental civil-law system bring the UK many difficulties with European harmonisation of private international law).} Put in simple terms, the three regions do not trust each other partly because they are unfamiliar with each other’s legal systems. So, enhancing interregional communication is extremely important. The Mainland–Macao Arrangement has made a valuable effort. It authorises a requested court to directly contact a judgment-rendering court in the other region to verify the genuineness of the judgment.\footnote{See Art 7 Mainland–Macao Arrangement.} Moreover, it also requires the Supreme People’s Court and the Court of Final Appeal of Macao to provide each other with legal materials related to the implementation of the Arrangement and to inform each other of the results in implementation every year.\footnote{Ibid., Art 23.} Such communication channels will tremendously enhance interregional understandings. However, they are, regretfully, absent from the Mainland–Hong Kong Arrangement. EU law also provides good examples of enhancing communication on interregional legal affairs. For example, Council Regulation 290/2001 establishes a legislative basis to continue the “Grotius” programme of incentives and exchanges for legal practitioners in civil law, “entailing training, exchange, work-experience programmes, meetings, studies, research and
More importantly, Council Decision 2001/470 established a European Judicial Network in Civil and Commercial Matters. This Network aims to facilitate judicial co-operation, information exchange and periodic direct meetings between the national courts in EU Member States. All these EU instruments are valuable references for China. For instance, a current urgent issue is that someone wanting to research JRE laws in China is overwhelmed by the divergences of legal systems involved. Therefore, Chinese regions may refer to the European Judicial Network website and jointly establish a Chinese website that outlines interregional laws and regional laws (e.g., civil and commercial laws, civil procedural laws, JRE laws, legal aids, court systems and case-law). Each region may also establish an interregional JRE office or designate judges or civil servants in the Supreme Court or the judicial department as contact points responsible for interregional co-operation. All these efforts aim to make the laws in one region more understandable and usable for the public, judges and lawyers in the other region. So persons in transregional litigation will have better access to justice.

4. The Absence of a Court of Final Review

The Supreme People’s Court in Mainland China, and the Court of Final Appeal in Hong Kong and Macao, respectively, are the highest court in each region and are equal in authority. No court of final review exists to hear cases from all three regions. Establishing such a court is impossible in the near future, because doing so would probably be deemed to intrude upon the policy of “one country, two systems.” The absence of a court of final review may leave interregional JRE arrangements subject to inconsistent interpretations in the courts of each region. This can be partly remedied by giving autonomous meanings to terms and phrases in the arrangement-making process. The second solution is for the highest court in each region to regularly exchange information and participate in meetings to discuss how to uniformly interpret and apply the arrangements. Notably, interregional JRE in the US involves fifty states and the EU twenty-seven Member States. It is difficult for so many members to co-operate and maintain consistent interregional JRE without the supervision of the US Supreme Court or the ECJ. However, Chinese interregional JRE involves four regions at most. The small number of regions makes the co-operation between them considerably easier. If the four Supreme Courts or the four

227 Bermann, supra n 92, 1419.
229 The number of EU Members has been 27 since 2007.
judicial departments co-operate well, consistent application of arrangements is theoretically possible even if a court of final review is absent. However, this solution cannot assure litigants that regional courts will uniformly interpret and apply the arrangements.230

Another solution is to establish an organisation for interregional judicial cooperation that is responsible for the uniform interpretation of the arrangements. A preliminary question is whether it should be a governmental or non-governmental organisation.

Both methods deserve to be tried. For example, the Supreme Court or the judicial department in every region could jointly establish a commission for co-operation in interregional JRE issues. Alternatively, the Chinese Society of Private International Law in Mainland China231 could co-operate with academic organisations in the other three regions to promote interregional legal exchange. Because currently no association contains members from all Chinese regions, another channel of co-operation is to establish a comparative Chinese law association. It should be a non-governmental and non-profit organisation comprising the elites of academia, the judiciary and the private bar from the four regions. Its mission would be to promote the clarification and simplification of the interregional laws, including interregional JRE. It may draw useful insights from the development and function of the American Law Institute (ALI).232 The ALI is also a private, non-profit corporation,233 and has played a very important role in the harmonisation of American state laws since its establishment in 1923.234 It is dedicated to addressing controversial issues involving

230 See Von Mehren, supra n 1 (2001), 191, 202, fn 23 (indicating that information exchange and meetings “can, at best, encourage a greater measure of uniformity in the interpretation and application of the [Hague] convention than would otherwise be the case. They would not, however, assure litigants that the convention’s provisions will be fairly and uniformly interpreted and applied by national courts).”


232 The ALI was founded because the then best legal minds of the US were unsatisfied with the inconsistency, uncertainty and complexity of the common law. For more information about the ALI, see also http://www.ali.org/index.cfm?fuseaction=about.creationinstitute (accessed 11 February 2010).


difficult intersections of policy and social interests and its projects include restatements and model laws. It will certainly take years for the proposed comparative Chinese law association to become a major force, like the ALI, in shaping interregional laws in a plural legal system. The success of the proposed association will come from its contribution to the advancement and unification of laws in China’s interregional conflicts.

E. Conclusion

The ultimate goal of interregional JRE studies in China is to develop a multilateral JRE arrangement on the basis of the two current bilateral arrangements. It is hoped that the new arrangement can be extended to Taiwan. Interregional JRE laws in the US and the EU provide a rich reference resource for this endeavour. This paper aims to help solve the four most crucial challenges that the interregional JRE in China faces. As a summary, firstly, Mainland courts should prepare to make a transition and to recognise and enforce sister-region judgments involving Mainland governments, workers and lands. Mainland Courts should define “civil and commercial matters” broadly and should restrict the use of the public policy exception. Courts should be allowed to leave sufficient funds to support the basic life of workers before distributing the liquidated assets of a company to other creditors. In terms of workers’ compensation, F2 should be allowed to give additional compensation to an injured worker under its law as long as this worker does not get double compensation. F2 should distinguish the in rem effect and the in personam effect of an F1 judgment that involves real estate in F2. Secondly, giving autonomous meanings to terms and phrases in the arrangements is an excellent way to solve conflicts between civil law and common law. Thirdly, the weak mutual trust between regions can be improved when F2 strictly refrains from reviewing F1 judgments in substance and when one region is better informed of the laws and legal system of the other region. Fourthly, the most severe challenge is that no court of final review exists to guarantee the consistent application of the arrangements. The four Supreme Courts and/or the four judicial departments should co-operate to achieve consistent application of the arrangements.

As a Chinese proverb says, “A journey of ten thousand miles must begin with a single step.” This paper is only a single step. There is still a substantial amount of work to develop Chinese interregional JRE rules, in order to deal with the new challenges brought by the more and more frequent interactions among the distinctive regions within one China.