# Table of Contents

Preface xvii

Acknowledgments xix

List of Abbreviations xxi

Introduction 1

I Setting the Scene 1

[A] Globalization and China’s Recent Legal Evolvement 1

[1] Globalization and International Disputes Resolution 1


[B] Recognition and Enforcement of Foreign Judgments in the New Era 4

[1] The Increasing Necessity of Recognition of Foreign Judgments 4


[3] The Possible Ways to Go Ahead in the REJ 9

II Basic Considerations of the REJ 10

[A] Rationales for the REJ 10

[1] Existing Theories for the REJ 10


[B] The REJ in the Context of Private International Law 14

[C] Recognition of Foreign Judgments versus Enforcement of Foreign Judgments 16
Table of Contents

[D] Recognition as an Incidental Question versus Recognition as a Main Claim 18

[E] Driving Forces for the Contemporary REJ 19

CHAPTER 1
A Preliminary Issue: Effects of Foreign Judgments in China 21

§1.01 Introduction: A New Significant Issue to Consider 21
§1.02 The Scene to Set: Differences in Effects of Judgments among Countries 23
§1.03 Possible Ways Out: Approaches to Circulation of Effects of Judgments
[A] Preliminary Issues 26
[B] The Typical Approaches 27
[C] The Pros and Cons of the Approaches 28
[D] Is There a Preferable Choice? 32
§1.04 Effects of Foreign Judgments in China 34
[A] The “Equalization of Effects” Approach in China 34
[B] Effects Chinese Judgments Domestically Have
   [1] Statutory Rules 37
   [2] Scholarly Discussion 40
§1.05 Conclusion 41

CHAPTER 2
The Skeleton: The Legal System regarding the REJ in China 43

§2.01 A Broad Picture 43
[A] China with a “Modernized” Legal System 43
[B] Sources of Law on the REJ in China 44
§2.02 A Three-Tiered System to the JRE in China 46
§2.03 The National Laws-Based REJ in China 47
[A] General Considerations 47
[B] A Glance at the Relevant National Rules
   [1] The Two Articles of the CCP 48
   [6] Other Relevant Rules 57
[C] Clarification of Key Terms of the Abovementioned National Rules
   [1] The Term “Judgments or Rulings” 61
      [a] Absence of Any Explicit Clarification 61
      [b] “Judgments or Rulings” in a Broad Context 62
Table of Contents

[v] Special Considerations of Administration of the Jurisdictional Requirement 119
[c] The Jurisdictional Requirement under Chinese Law 122
[i] An Implied Jurisdictional Requirement 122
[ii] The Implications of the Jurisdictional Requirement 124
[d] The Jurisdictional Grounds in Chinese Law 126
[i] Introduction 126
[ii] Domestic Jurisdictional Rules 127
[iii] International Jurisdictional Grounds 130
[e] The Relevant Cases on the Jurisdictional Requirement 133
[f] Summary 134

[E] Defenses to the National Laws-Based REJ in China 135
[1] Preliminary Remarks 135
[a] A General Consideration 139
[b] Contents of “Basic Principles” of Chinese Law 141
[3] Contradiction to China’s National Sovereignty, Security and Social and Public Interests 144
[a] Introduction 144
[b] A General Consideration of Public Policy 147
[i] A Dialectical Reading of Public Policy 147
[ii] Public Policy: A Concept of Amorphous Nature 147
[iii] Public Policy in Different Contexts 149
[iv] Application of Public Policy 150
[c] The Public Policy Defense under Chinese Law 153
[i] The Status Quo 153
[ii] Legal Provisions on Public Policy 154
[iii] Propositions for Application of the Defense Exception 156
[d] Chinese Judicial Practice on the Public Policy Exception 159
[e] Further Limits to the Public Policy Exception 161

[4] Fraud 164
[a] A Broad Consideration 164
[i] Introduction 164
[ii] Moderate Application of Fraud 166
[b] The Concept of Fraud in the Chinese National Law 168

[5] Breach of Natural Justice 170
[a] General Considerations 170
[b] Implications of “Breach of Natural Justice” 172
[i] The Term of Natural Justice 172
[ii] Connotations of the Defense 173

x
Table of Contents

[c] “Breach of Natural Justice” under Chinese Law 177
[6] Parallel Proceedings or Conflicting Judgments 186
[a] Setting the Scene 186
[b] A General Consideration 187
[c] The Res Judicata Effect of Local Judgments 187
[d] The Res Judicata Effect of Foreign Judgments Recognized 189
[e] Pending Proceedings or Future Judgments 190
[f] The Defense of “Conflicting Judgments” under Chinese Law 191

[F] Recognition of Special Categories of Foreign Judgments 195
[1] Introduction 195
[2] Recognition of Foreign Divorce Judgments 196
[a] A General Consideration 196
[b] The Conditions of the Recognition of Foreign Divorce Judgments 196
[c] Defenses to the Recognition of Foreign Divorce Judgments 197
[4] Recognition of Foreign Default Judgments 199

[G] Remedies against the Decisions on Applications for the REJ in China 201

[H] Currency and Rate of Exchange Regarding Foreign-Money Judgments 202

[I] Interests Accrued to Foreign Judgments 205

§2.04 The Bilateral Treaties-Based REJ in China 206
[A] A Broad Picture 206
[B] A Preliminary Consideration 208
[C] The Conditions of the REJ 209
[1] A General Consideration 209
[2] Foreign Judgments Should Be Ripe 210
[3] The Original Courts Must Have International Jurisdiction 211
[a] Introduction 211
[b] Approaches to Prescribing the Jurisdictional Requirement 212
[c] Some Concluding Remarks 218

[D] The Defenses to the REJ 223
Table of Contents

| §2.05  | The Multilateral Conventions-Based REJ in China | 227 |
| [A]    | A General Consideration                       | 227 |
| [B]    | The Multilateral Conventions in This Regard    | 228 |
| [C]    | Possibility for China to Accede to the International Conventions on the REJ | 234 |

§2.06 Concluding Remarks 236

CHAPTER 3
The Flesh: The Judicial System Supporting the REJ in China 239

§3.01 Introduction 239

§3.02 The Unique Chinese Judicial System 240

[A] The Structure of the Chinese Courts System 240

[B] The Instances for a Case 241

[C] The Independence of Chinese Courts 242
  [1] A Legislative Perspective 243
  [2] A Practical Perspective 244

[D] Reform of the Chinese Judicial System 246

[E] The Judges, Lawyers and Other Legal Professionals 248

§3.03 Proceedings Leading to the REJ in China 250

[A] Preliminary Remarks 250

[B] Proceedings for the National Laws-Based REJ in China 251
  [1] Judicial Assistance versus the REJ in China 251
    [a] Judicial Assistance: A Broad Context of the REJ 251
    [b] Implications of the Rules on Judicial Assistance 253
    [a] The Legal Basis 254
    [b] Qualified Subjects for Making the Submission 255
    [c] The Courts Having Adjudicatory Authority to Entertain the REJ-Related Cases 256
      [i] The General Rule: Intermediate People’s Courts 256
      [ii] Concentrated Jurisdiction in Judicial Practice 257
      [iii] To Pinpoint the Specific Courts Addressing the REJ 259
    [d] Other Important Procedural Issues 264
      [i] The Basic Procedure to Submit Applications 264
      [ii] The Issue of Translation of Relevant Documents 266
      [iii] The Withdrawal of Applications 268
# Table of Contents

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

[§] Bases and Jurisdiction Respecting the REJ 303
[c] The Documents to Be Attached 304
[D] Proceedings for the Multilateral Conventions-Based REJ in China 306

§3.04 Summary 306

CHAPTER 4
The Spirit: The Hidden Factors Influencing the REJ in China 309

§4.01 A General Introduction 309
§4.02 The Legal Culture 311
[A] Setting the Scene 311
[B] Implications of Legal Culture 312
[C] The Chinese Legal Culture 314
[1] Upheavals in Chinese Law in Recent Decades 314
[a] “Confucianism” versus “Chinese Legal Culture” 317
[b] “Legalism” versus “Confucianism” 319
[c] “Economic and Political Factors” versus “Chinese Legal Culture” 319
[d] Theoretical Anatomy of “Chinese Legal Culture” 320
[e] Summary 321
[D] “The REJ in China” versus “the Chinese Legal Culture” 322
[i] A Broad Picture 322
[ii] “Persons’ versus “the REJ in China” 322
[iii] “Courts and Legislature” versus “the REJ in China” 323
[iv] “Government” versus “the REJ in China” 323
§4.03 The Economic, Political and Other Factors 324
§4.04 Summary 327

CHAPTER 5
A Bird’s-Eye View of a Selected Chinese Court’s Practice 329

§5.01 A General Consideration 329
§5.02 Several Aspects to Be Considered 330
[A] The Identities of the Applicants and Respondents 330
[B] The Time Span from Delivery of Foreign Judgments to Submission of Applications 330
[C] The Time Span for Chinese Courts’ Delivery of Rulings on Applications 331
[D] The Litigation Costs 333
[E] The Reasoning of the Beijing Court under the Decisions 333
[F] The Operative Parts of the Rulings 334

xv
<table>
<thead>
<tr>
<th>§5.03</th>
<th>Summary</th>
<th>335</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CHAPTER 6</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td></td>
<td>337</td>
</tr>
<tr>
<td>§6.01</td>
<td>A Harsh Reality</td>
<td>337</td>
</tr>
<tr>
<td>§6.02</td>
<td>The Essentials for the REJ in China</td>
<td>338</td>
</tr>
<tr>
<td>§6.03</td>
<td>Possible Ways Forward: “Litigation Strategies”?</td>
<td>341</td>
</tr>
<tr>
<td>§6.04</td>
<td>An Open Mind and the Outlook</td>
<td>343</td>
</tr>
<tr>
<td>Bibliography</td>
<td></td>
<td>345</td>
</tr>
<tr>
<td>Index</td>
<td></td>
<td>361</td>
</tr>
</tbody>
</table>