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ACADEMIC NEWS

RECOGNITION AND ENFORCEMENT OF JUDGMENTS AMONG CHINA, JAPAN AND SOUTH KOREA IN THE NEW ERA

Recognition and enforcement of judgments (hereinafter the "REJ") in civil and commercial matters among jurisdictions has become a global focal point that is full of practical and theoretical significance. Against this broad backdrop, major world players including Asian countries such as China, South Korea and Japan have been actively participating in the global judgments project, aiming at promoting free movement of judgments in parallel with free movement of goods, services, capital and labor. Unfortunately, despite the immense volume of civil and commercial interactions, China and Japan have been stuck in the REJ deadlock ever since China first refused to recognize Japanese judgments in the infamous 1994 case *Gomi Akira*. After this misfortune, both Chinese and Japanese courts have waged rounds of repeated refusals or revenges, forming a vicious circle in the guise of the so-called reciprocity. The Sino-Japanese REJ stalemate is considered to be illustrative of the most formidable blockades lying on the way to free movement of judgments. Among China and South Korea, the REJ future is promising. Although China refused to recognize, at least in one case, Korean judgments for lack of reciprocity, Korean courts have nevertheless recognized Chinese courts on a reciprocity basis. The positive move by Korean courts may well pave the way for Chinese courts to recognize Korean judgments in the future. Ever since 2015, China has been advancing its Belt & Road Initiative, which provides a very good platform for promoting judicial cooperation, especially for turning a new page for REJ among China, South Korea and Japan. We also witness the encouraging China's recent series of movements in the field of promoting judicial cooperation with other jurisdictions or institutions.

Considering the foregoing picture depicted, on 19 December 2017 scholars from the three jurisdictions — China, South Korea and Japan convened in Renmin Law School, Beijing, China, discussing the increasingly prominent topic — recognition and enforcement of judgments among China, Japan and South Korea in the new era. The seminar was divided into two sessions: the morning session exploring the very special issue — the role of reciprocity in the REJ and the afternoon session investigating the more general REJ issues among the three jurisdictions. Through the seminar, the scholars from the three jurisdictions furthered their mutual understanding and proposed possible solutions for the lasting REJ deadlock. And it is believed that resolution of the persisting dilemma under the three jurisdictions' REJ practice will have a much better academic ground if such seminars or conferences could be regularly held.

In the morning session, there were three speakers. The first speaker Prof. Nishitani,

from Kyoto University Law School, delivered a speech on the topic of "Coordination of Legal Systems by Recognition of Judgments — Rethinking Reciprocity in Sino-Japanese Relationships." After introducing the evolution of Japan's REJ regime, Prof. Nishitani expounded the reciprocity requirement in Japan's legislation and practice. A softened approach is witnessed to have been adopted in Japan in interpreting and applying the reciprocity requirement. To be more specific, now the standard for judging if there is any reciprocal relationship among Japan and other countries is "under conditions not different in essential parts," which is very different from the past "equivalent or less strict conditions." Reciprocity is no longer a problem for movement of foreign judgments in Japan, except for Chinese judgments. Based on mutual understanding, it is proposed that the two sides (China and Japan) may achieve some breakthroughs in the context of China's Belt & Road Initiative. Prof. HE Qisheng, from Peking Law School, gave a talk on "Judgment Reciprocity among China, Japan and South Korea: Some Thinking for Future Cooperation." Prof. HE conducted a deep research on China's reciprocity requirement and predicted a brighter future in the new era of China's further opening up. Assistant prof. ZHU Lei, from Wuhan University Law School, talked about "Latest Development on the Principle of Reciprocity in the Recognition and Enforcement of Foreign Judgments in China." Assistant Prof. ZHU pointed out that reciprocity features in China' REJ practice, especially in view of the fact there are no relevant bilateral or multilateral JRE treaties among China and most foreign countries. It is expected that if the Sino-foreign REJ dilemma surrounding reciprocity is solved, other tough issues such as due service and international jurisdiction may become prominent.

In the afternoon session, Prof. Kwang Hyun Suk, from Seoul National University Law School, made a speech on "Recognition and Enforcement of Foreign Judgments among China, Japan and South Korea: Korean Law Perspective." Prof. Suk explored Korea's JRE rules and practice. In particular, Prof. Suk emphasized on such REJ requirements in South Korea as international jurisdiction, service of process and reciprocity. Prof. Suk's speech well paved the way for the outsiders to understand South Korea's REJ legislation and practice. Assistant Prof. ZHANG Wenliang, from Renmin Law School, presented a topic on "To Break the Sino-Japanese Recognition Feud — Lessons Learnt As Yet." Based on the basic fact that the persisting Sino-Japanese recognition feud emerges as a rather contrasting picture against the global efforts to promote free movement of judgments, Assistant prof. ZHANG concluded that mutual trust and understanding holds the key for overcoming the impasse. In order to make a breakthrough, a follow-suit recognition model accompanied by mutual trust is believed to be the most reliable approach. Treaty arrangements, bilateral or multilateral, are not promising since Japan has not been incentivized to reach any relevant treaties.

Also present in the seminar were prominent scholars from other universities and practitioners from official or unofficial institutions. For the participants of the seminar, it was well agreed on that for promoting smooth REJ, mutual understanding must be

ensured among each other and mutual trust should be established for making any further breakthroughs in the REJ. The Sino-Japanese REJ dilemma is so notorious and disastrous that it represents the most difficult REJ deadlock to break. Objectively speaking, REJ in China and recognition of Chinese judgments abroad are two sides of the same coin, with the latter significantly influencing the former and vice versa. Consequently, any consideration of one issue cannot bypass the other. In light of China's recent positive movement in applying reciprocity, there may exist a way out for the REJ deadlock if the other two jurisdictions could well join the trend. The jurisdictions involved must have forward-looking gesture and hold mutual trust towards each other. Only in this way may the three jurisdictions establish a relatively free REJ mechanism.

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