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Review Article

The recognition and enforcement of foreign judgments in civil and commercial matters in Asia

Chukwuma Samuel Adesina Okoli*

Many scholars in the field of private international law in Asia are taking commercial conflict of laws seriously in a bid to drive harmonisation and economic development in the region. The recognition and enforcement of foreign judgments is an important aspect of private international law, as it seeks to provide certainty and predictability in cross-border matters relating to civil and commercial law, or family law. There have been recent global initiatives such as The Hague 2019 Convention, and the Commonwealth Model Law on Recognition and Enforcement of Foreign Judgments. Scholars writing on PIL in Asia are making their own initiatives in this area. Three recent edited books are worthy of attention because of their focus on the issue of recognition and enforcement of foreign judgments in Asia. These three edited books fill a significant gap, especially in terms of the number of Asian legal systems surveyed, the depth of analysis of each of the Asian legal systems examined, and the non-binding Principles enunciated. The central focus of this article is to outline and provide some analysis on the key contributions of these books.

Keywords: Recognition; Enforcement; Foreign Judgments; Comparative Law; Asia; Principles

A. Introduction

The recognition and enforcement of foreign judgments is an important aspect of private international law. Consider a party who has been sued in a foreign country but has all its assets in another country and hence can avoid paying the debtor. If this were the case, people will lose faith in the legal system, resorting to self-help will be unavoidable, and disorder will follow. If a judgment debtor is aware that a foreign judgment may be easily implemented with few or no obstacles, however, the debtor is more likely to comply with such a judgment quickly, thereby

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encouraging early settlement of disputes between international commercial parties. A significant part of the international community evidently shares a growing interest in working towards the stability of recognition and enforcement of foreign judgments in civil and commercial matters as evidenced by three Hague Conventions[1] and the Commonwealth Model Law on the Recognition and Enforcement of Foreign Judgments.[2] A growing body of recent scholarship underscores the significance of these global initiatives from a pragmatic perspective.[3]

The European Union has the most sophisticated and developed uniform regime on the recognition and enforcement of foreign judgments.[4] Its procedure is straightforward, quick, and predictable, which has improved the ease of conducting business among European Union Member States. A judgment creditor is very certain that if it gets a judgment from a Member State Court against another party, there will be almost no impediments when it comes to recognition and enforcement.

In contrast, Asia does not have a uniform regime on the recognition and enforcement of foreign judgments. However, in recent times, academics working on Asian private international law have made efforts towards drawing up principles of private international law in civil and commercial matters, known as the "Asian Principles of Private International Law".[5] These Principles cover choice of law, international jurisdiction, the recognition and enforcement of foreign judgments, and the judicial support of international commercial arbitration. The purpose of the Asian Principles of Private International Law is to serve as a non-binding model that legislators and judges (or decision makers) in the Asian region can use in supplementing or reforming their private international law rules in civil and

[1]1971 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters; 2005 Hague Convention on Choice of Court Agreements; and 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.

[2]Commonwealth Model Law on the Recognition and Enforcement of Foreign Judgments.

[3]See generally A Yekini, *The Hague Judgments Convention and Commonwealth Model Law*: *A Pragmatic Perspective* (Hart, 2021).

[4]Council Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 [2012] OJ L351/1 ("Brussels Ia"). See Arts 36–51 of Brussels Ia.

[5]For the most recent account of this initiative, see N Takasugi and B Elbalti, "Asian Principles of Private International Law", in D Girsberger et al (eds), *Choice of Law in International Commercial Contracts* (OUP, 2021) pp. 399ff. See also W Chen and G Goldstein, "The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law" (2017) 13 *Journal of Private International Law* 411; M Uematsu, "APPIL (Asian Principles of Private International Law) and its Perspectives Regarding International Jurisdiction" (2019) 37 *Ritsumeikan Law Review* 35. See further A Reyes and W Lui (eds), *Direct Jurisdiction: Asian Perspectives* (Hart, 2021).

commercial matters. The initiative is yet to release its final outcome and recommendations.

In the context of recognition and enforcement of foreign judgments in Asia, three recent books, one edited by Professor Reyes and two edited by Professor Chong, are worthy of attention.[6] The purpose of this review is to outline and provide some analysis on the contribution these books make to the development of recognition and enforcement of foreign judgments in Asia.

This review is divided into four parts, including the introduction and conclusion. The second part contains a summary of these three books and analyses their convergence and divergence. The third part highlights some of the Asian Principles on recognition and enforcement of foreign judgments, and the fourth part concludes.

B. A summary of the three books

This section summarises the three edited books and analyses their convergence and divergence.

1. *A Reyes (ed) recognition and enforcement of judgments in civil and commercial matters*

Reyes' edited book was published in 2019. It provides a survey of the regimes for the recognition and enforcement of foreign civil and commercial judgments in 15 Asian jurisdictions: mainland China, Hong Kong, Taiwan, Japan, South Korea, Malaysia, Singapore, Thailand, Vietnam, Cambodia, Myanmar, the Philippines, Indonesia, Sri Lanka and India. Chapter one provides an introduction by the editor, Reyes, who discusses in general terms the recognition and enforcement of foreign judgments in Asia, with reference to global perspectives on the three Hague Conventions on the recognition and enforcement of foreign judgments in civil and commercial matters: the 1971, 2005 and 2019 Hague Conventions. Each of the subsequent 15 chapters is devoted to a description of the law regulating the recognition and enforcement of foreign judgments in civil and commercial matters in the 15 Asian jurisdictions covered in the book.

Each of these chapters contains not only a survey of the existing law, but also suggestions for reform of the regime of recognition and enforcement of foreign judgments in each of the Asian jurisdictions studied. There are many interesting

[6] A Reyes (ed), *Recognition and Enforcement of Judgments in Civil and Commercial Matters* (Hart, 2019); A Chong (ed) *Recognition and Enforcement of Foreign Judgments in Asia* (Asia Business Law Institute, 2017) ("Chong, *Recognition and Enforcement*"); A Chong (ed) *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (Asia Business Law Institute, 2020) ("Chong, *Asian Principles*"). Chong (ed) on *Asian Principles* has previously been reviewed by B Elbalti, "Book Review" (2021) *Singapore Journal of Legal Studies* 267–70.

examples of suggested reforms, which include abolishing or limiting reciprocity (especially *de facto* reciprocity) in some civil law Asian jurisdictions (such as China) studied in the book;[7] making the principle of submission clearer in Hong Kong by stating that the protest system qualifies as non-submission only where the protest has been lodged before the originating court;[8] using non-binding Memoranda of Guidance ("MOG") or Memoranda of Understanding ("MOU") between Asian courts to improve recognition and enforcement of foreign judgments,[9] as well as to improve knowledge of the law in other Asian regions;[10] making specific statutory provisions for choice of court agreements in enforcing foreign judgments in South Korea;[11] challenging the common law principle of obligation in recognising and enforcing foreign judgments in Singapore;[12] submitting that in recognising and enforcing foreign judgments in Philippines, "clear mistake of law or fact review should mirror the public policy ground and foreign judgments should be rejected only when recognition would go against some overriding or mandatory statutory provision or fundamental legal principle";[13] and improving the use of technology in judicial proceedings for the recognition and enforcement of foreign judgments in India.[14] Reyes, the editor, concludes in chapter 17 by discussing the portability of foreign judgments by using the Singapore International Commercial Court ("SICC") as an example in each of the 15 countries studied in the book. In other words, Reyes sets out what he refers to as a "rudimentary system" by using the SICC as a test example to ascertain whether its judgments can be enforced in each of the 15 countries studied in the book. He submits that judgments from the SICC can be enforced "in all but two of the 15 Asian jurisdictions. The two exceptions are Indonesia and Thailand. Even then the position in Thailand is not wholly clear … "[15] He then makes six key proposals in the final analysis. "First, indirect jurisdiction needs to be clarified."[16] "Second reciprocity needs to be thought

[7]A Reyes in Reyes (ed), *supra* n 6, 27–28, 323–24; W Gu, "China" in Reyes (ed), *supra* n 6, 31, 43–46; F Li and Y-T Wu, "Taiwan" in Reyes (ed), *supra* n 6, 85, 92; K Nishioka, "Japan" in Reyes (ed), *supra* n 6, 97, 116; U Lee, "South Korea" in Reyes (ed), *supra* n 6, 119, 138–39.; A Laowonsiri, "Thailand" in Reyes (ed), *supra* n 6, 259, 268. *Cf* SR Garimella, "India" in Reyes (ed), *supra* n 6, 291, 307.
[8]JP Wong, "Hong Kong" in Reyes (ed), *supra* n 6, 67–70.
[9]Reyes in Reyes (ed), *supra* n 6, 15–16, 323; Nishioka, *supra* n 7,117; K Chng, "Singapore" in Reyes (ed), *supra* n 6, 141, 160; S Selvaratnam, "Malaysia" in Reyes (ed), *supra* n 6, 162, 177–78; Garimella, *supra* n 7, 291, 307.
[10]N Minh *et al*, "Vietnam" in Reyes (ed), *supra* n 6, 179, 199–200; Laowonsiri, *supra* n 7, 264.
[11]Lee, *supra* n 7, 138.
[12]Chng, *supra* n 9, 159–60.
[13]AA Jo and JP Cruz, "The Philippines" in Reyes (ed), *supra* n 6, 238.
[14]Garimella, *supra* n 7, 307.
[15]Reyes, *supra* n 6, 322.
[16]*Ibid* 323.

through."[17] Third, the Asian jurisdictions studied in the book need to focus on achieving a consensus as to what adherence to due process involves. In addition, the public policy defence should be a truly exceptional device to challenge the recognition and enforcement of foreign judgments in Asian jurisdictions. "Fourth, procedures for enforcement within a state should be streamlined," so that States should "institute simple processes of registration or summary judgment adjudication as means for converting foreign judgments into domestic decrees capable of ready execution against a defendant's assets within the enforcing state."[18] "Fifth, once an efficient and cost-effective rudimentary regime for recognition and enforcement is in place, a country might consider refinements."[19] Sixth, he suggests that the Asian jurisdictions studied in the book should consider ratifying the 2005 and 2019 Hague Conventions.[20] His final word is that, though there have been arguments that recognition and enforcement of arbitral awards is better than recognition and enforcement of foreign judgments, it is the public that should be given this choice – the best way to do this is to make recognition and enforcement of foreign judgments a viable and suitable alternative to foreign arbitral awards, so that the public can make the appropriate choice.[21]

2. *A Chong (ed) recognition and enforcement of foreign judgments in Asia*

The second book, *Recognition and Enforcement of Foreign Judgments in Asia*, the first of two companion volumes edited by Professor Chong, was published in 2017. This book contains a powerful foreword by Justice Leong of the Supreme Court of Singapore praising the richness and quality of the book, unlike Reyes' edited book (2019) that does not contain a foreword.[22] Chong's edited book discusses the recognition and enforcement of foreign judgments in 14 Asian countries in

[17] *Ibid* 324.
[18] *Ibid*.
[19] *Ibid* 324–25. The refinements considered are:

> "For instance, to what extent should foreign judgments relating to IPRs, competition law, immovables or environmental wrongs be enforceable? Should a country countenance the possibility of enforcing judgments where such matters merely arise as preliminary or incidental questions and the rendering court's principal decision essentially deals with the substantive rights of the parties as among themselves? A current hot topic in the Hague Conference's Judgments Project is the extent to which the judgments of "common courts" (that is, the regional court of an association of countries such as the European Court of the European Union) should be recognised. How should requirements such as reciprocity be applied (if at all) to the recognition and enforcement of the judgments of common courts, where (say) some but not all countries within the relevant association have reciprocal arrangements with the enforcing state?"

[20] *Ibid* 325.
[21] *Ibid* 325–26.
[22] Justice Leong, "Foreword" in Chong (ed) *Recognition and Enforcement*, *supra* n 6, iii–v.

alphabetical order: Brunei, Cambodia, China, India, Indonesia, Japan, Lao, Malaysia, Myanmar, Philippines, Singapore, South Korea, Thailand, and Vietnam. It also includes a discussion of Australia, which is not an Asian country. The reason why Australia is covered, despite not being an Asian country, might be that it is a strategic partner with ASEAN[23] Member States. In total, therefore, this book provides a survey of 15 countries on the recognition and enforcement of foreign judgments. Professor Chong in the first chapter introduces the book. In the introduction Professor Chong states that global initiatives on recognition and enforcement of foreign judgments like the 2005 Hague Convention, and the need to enhance certainty and economic development through harmonisation of the rules on recognition and enforcement of foreign judgments in the Asian countries studied, are the main reasons for the book.[24] The introduction also contains a brief comparative summary of the regime on recognition and enforcement of foreign judgments in the Asian countries studied in the book.[25]

The next 15 chapters each provide a survey of the law of 14 Asian jurisdictions on the recognition and enforcement of foreign judgments, and an additional chapter on Australia. The book has no conclusion, unlike Reyes' edited book that provides a rich conclusion, and makes a range of suggestions for reform.

Recognition and Enforcement of Foreign Judgments in Asia is the first output of a project undertaken by the Asian Business Law Institute to promote greater harmonisation of the laws regulating the recognition and enforcement of foreign judgments in Asia. It reports on "a mapping exercise to identify the existing rules in the countries within the scope of the project."[26] This book project was facilitated and supported by the Asian Business Law Institute that "initiates, conducts and facilitates research and produces authoritative texts with a view to providing practical guidance in the field of Asian legal development and promoting the convergence of Asian business laws."[27]

3. *A Chong (ed) Asian principles for the recognition and enforcement of foreign judgments*

The third book considered in this review article, *Asian Principles for the Recognition and Enforcement of Foreign Judgments*, also edited by Professor Chong is the second phase of the Asian Business Law Institute's project on foreign judgments. It builds upon the first phase by proposing principles on the recognition

[23]ASEAN is an abbreviation for Association of Southeast Asian Nations.
[24]A Chong, "Introduction" in Chong (ed) *Recognition and Enforcement*, *supra* n 6, 1–3; [1]–[4].
[25]*Ibid* 3–5; [7] – [11]. For a more extensive comparative analysis in this journal, see A Chong, "Moving Towards Harmonisation in the Recognition and Enforcement of Foreign Judgment Rules in Asia" (2020) 16 *Journal of Private International Law* 31.
[26]Chong, *supra* n 24, 3.
[27]*Ibid*, i.

and enforcement of foreign judgments which are intended to be utilised by legislators and judges in Asia as part of the process of harmonisation of rules in the region. These principles are called the "Asian Principles for the Recognition and Enforcement of Foreign Judgments" ("the Principles"). Again, like Chong's edited book published in 2017, *Asian Principles for the Recognition and Enforcement of Foreign Judgments* contains a powerful foreword by Justice Leong of the Supreme Court of Singapore praising the richness and quality of this book and stating that the 2017 publication was very successful.[28] In the introduction, Chong outlines the success of the 2017 edited book on recognition and enforcement, such as recognition of the work by very important institutions in Asia, and translation into various languages.[29] The introduction then takes account of recent developments that have occurred since the 2017 edited book was published, such as separate Memoranda of Guidance which were concluded between Singapore and China on 31 August 2018,[30] and Singapore and Myanmar on 10 February 2020;[31] the recognition and enforcement of Chinese judgments in Australia[32] and the recognition of South Korean judgments in China;[33] and the conclusion of the 2019 Hague Convention.[34]

There are 13 chapters, each devoted to one of the Principles, namely: the general principle, jurisdiction of court, finality of foreign judgments, merits review and errors of fact and law, reciprocity, enforcement of monetary judgments, enforcement of non-monetary judgments, fraud, public policy, due process, inconsistent judgments, *in rem* judgments and severability. Each chapter contains suggestions as to how the law should be developed. The edited book has no overall conclusion, unlike Professor Reyes' edited book published in 2019, that has a rich conclusion.

Seven of the reporters in Chong's 2017 edited book on recognition and enforcement wrote the 13 chapters in the 2020 edited book on Asian Principles. The Principles were translated into various languages in the book, which is a sizable portion of the book. Unlike the "Asian Principles of Private International Law", the "Asian Principles for the Recognition and Enforcement of Foreign Judgments" ("the Principles") "do not purport to set out a model law or a comprehensive code."[35] The objective of the Principles seems to be more modest

[28]Justice Leong, "Foreword" in Chong (ed), *Asian Principles*, *supra* n 6, v – vii.
[29]A Chong, "Introduction" in Chong (ed), *Asian Principles*, *supra* n 6, xii – xiv.
[30]https://www.sicc.gov.sg/enforcement-of-money-judgment. Accessed on 11 August 2022.
[31]*Ibid*. See Chong, *supra* n 29, xiv.
[32]See for example *Bao v Qu*; *Tian (No 2)* [2020] NSWSC 588 (19 May 2020) (Supreme Court of New South Wales, Australia) - cited in Chong, *supra* n 29, xv.
[33](2019) HU 01 XIE WAI REN No 17 (2 April 2020) (Shanghai No. 1 Intermediate People's Court, Shanghai Municipality, China) ((2019) 沪01协外认17号) – cited in Chong, *supra* n 29, xvi. It is noted that this was not the case in the past.
[34]Chong, *supra* n 29, xvii – xviii.
[35]*Ibid*, xix.

since – as indicated by the editor of the Principles herself – it aims at providing a "useful resource for judges, practitioners, legislators and policymakers in Asia".[36] This book is the output of the second phase of the Asian Business Law Institute's project promoting harmonisation of the law on the recognition and enforcement of foreign judgments in the Asian region. Thus, the two books edited by Professor Chong in 2017 and 2020 are complementary in the sense that they are the outcomes of different phases of a single project.[37]

4. *Convergence and divergence*

Together, these three edited books provide an insight into the regimes of 16 Asian legal systems. Reyes' edited book, and Chong's 2017 edited book overlap in that they both cover Brunei, Cambodia, China, Hong Kong, India, Indonesia, Japan, Lao, Malaysia, Myanmar, Philippines, Singapore, South Korea, Sri Lanka, Taiwan, and Vietnam.[38] Chong's second edited book on the Principles builds on the regimes surveyed in her first edited book on the subject of recognition and enforcement of foreign judgments in Asia. Though these collections are mainly focused on civil and commercial matters, there are relatively brief references to family law aspects in each of the three edited books.[39]

Some important substantive differences will be observed in the three edited books. First, as regards the scope of the three edited books, Professor Reyes' edited book does not discuss Australia, Brunei and Lao as Professor Chong's edited book on recognition and enforcement of foreign judgments in Asia does;

[36] *Ibid*.
[37] *Ibid*, xi.
[38] There is also a discussion of Australia's regime on recognition and enforcement of foreign judgments in Chong (ed) *Recognition and Enforcement, supra* n 6.
[39] Lee, *supra* n 7, 129–30 (divorce); Minh *et al*, *supra* n 10, 197–98 (divorce); Selvaratnam, *supra* n 9, 174 (matrimonial causes); Li and Wu, *supra* n 7, 93 (divorce); Laowonsiri, *supra* n 7, 269 (marriage); Chong, *supra* n 24, 3 [5]; C Ong, "Brunei Darussalam" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 34 [42], fn 53, 68 [35] fn 86 (marriage); Y Guo, "China" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 1[1] fn 3, 55 [5] fn 26, 69 [37] fn 89 (matrimonial causes); 56–57 [11], 60 [17], 61[18] – [19], 63 [24], 66 [30], [32], fn 83 (divorce), 59 [15] fn 49, 60 [15], 68 [35] fn 86 (maintenance) 63–64 [24] (parenthood and legitimation); N Singh, "India" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 70, 86 [40]; YU Oppusunggu, "Indonesia" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 91, 98 [20] 103–04 [34] (marriage); KH Suk, "South Korea" in Chong (ed) *Recognition and Enforcement*, *supra* n 6, 179, 195 [40] – [41] (divorce); P Sooksripaisarnkit, "Thailand" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 202, 207–10 [14] – [20] (marriage, legitimacy of a child and custody); NB Du, "Socialist Republic of Vietnam" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 211, 211–12 [2], 214 [5], 219 [16], fn 39, 220 [18] (marriage), 224 [30] (divorce). The book on the Principles has only one reference to a family law case in a footnote: YU Oppusunggu, "Principle 9. Public Policy" in Chong (ed), *Asian Principles*, *supra* n 6, 112, 114 [d] fn 7.

and Professor Chong's edited book on recognition and enforcement of foreign judgments in Asia does not discuss Sri Lanka, Hong Kong and Taiwan as Professor Reyes' edited book does. Second, as mentioned earlier, Reyes and the contributing editors in Reyes' edited book make suggestions for reform and improvements for the future. Compared to Reyes' edited book published in 2019 and Chong's edited book published in 2020, the first edited book of Chong published in 2017 makes no suggestions for reform. Third, Chong's two edited books published in 2017 and 2019 specifically discuss the issue of the distinction between recognition and enforcement of *in personam* versus *in rem* foreign judgments;[40] this is not an approach taken in Reyes' book published in 2019. Fourth, Chong's second edited book published in 2020 contains non-binding principles that look like a code, while the first edited book of Chong published in 2017 on recognition and enforcement, and Reyes edited book published in 2019, are not written in this way.

The central theme and key relationship that unites these three edited books is that a harmonised regime on recognition and enforcement of foreign judgments in Asia will bring economic prosperity to Asian countries. This is especially so given the significant volume of trade that goes on between Asian countries, as well as the strong political, economic, social, and cultural ties they share. The edited books are thus important contributions to the development of Asian private international law, especially their dedicated focus to the topic of recognition and enforcement of foreign judgments in certain Asian countries.[41]

Asia is composed of countries with very diverse legal traditions (common law, civil law, and hybrid), and inherent legal pluralism in some of its countries. Like in Africa, some Asian countries were colonised by various Western[42] powers, and this is reflected in the diverse approaches that they employ regarding the recognition and enforcement of foreign judgments. For example, countries like Singapore, Hong Kong, Brunei and Malaysia's approach to recognition and

[40]See for example, Ong, *supra* n 39, 20 [5] – [8]; Guo, *supra* n 39, 68 [37]; T Kono, "Japan" in Chong (ed), *Recognition and Enforcement, supra* n 6, 105 [2], 116 [23]; X Chanthala and K Santivong, "Lao" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 117, 118 [3]; CY Chow, "Malaysia" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 123 [2]; E Aguiling-Pangalangan, "The Philippines" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 146, 161 [46]; A Chong, "Singapore" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 163 [1]; KH Suk, *supra* n 39, 181 [6]. See also N Singh and A Chong, "Principle 12. *In Rem* Judgments" in Chong (ed), *Asian Principles*, *supra* n 6, 174–84.

[41]There have been similar initiatives in the past. For example, see CYC Ong, *Cross-Border Litigation within ASEAN* (Kluwer Law International, 1997); M Pryles (ed), *Dispute Resolution in Asia* (Kluwer Law, 3rd edn, 2006); AC Leyda, *Asian Conflict of Laws—East and Southeast Asia* (Wolters Kluwer, 2015).

[42]It is important to note that Japan was not formally colonised by Western powers but was previously a coloniser; it colonised countries like South Korea and Taiwan. Japan is also very strongly aligned with the West.

enforcement of foreign judgment is influenced by those countries' historic colonisation by Britain. Though some Asian countries' courts do recognise and enforce judgments of others' courts, the present law is not satisfactory due to the diversity of legal regimes in the various Asian countries, such as on the concept of international jurisdiction, reciprocity, and the enforcement of non-monetary judgments, which will be discussed in the next section of this review.

C. Some principles

Chong's edited book entitled *Asian Principles for the Recognition and Enforcement of Foreign Judgments* contains suggested principles on the recognition and enforcement of foreign judgments in Asia ("the Principles"). The book sets out the Principles and provides a detailed commentary on them. The real purpose of the Principles is to drive harmonisation in the region on recognition and enforcement of foreign judgments in civil and commercial matters. These Principles are deduced from the existing law of the Asian countries surveyed in *Recognition and Enforcement of Foreign Judgments in Asia*. Some of the laws in the Asian jurisdictions studied are generally harmonious such as the general principle that foreign judgments can be recognised and enforced, but divergent in areas such as the concept of reciprocity and enforcement of non-monetary judgments.

These Principles could also be of interest to other countries or regions such as Africa. For example, OHADA[43] is in the process of making private international rules in civil and commercial matters, and there is also AfCTA (African Continental Free Trade Area Agreement),[44] where issues of recognition and enforcement of foreign judgments will be very important.[45] It is anticipated that by way of comparative analysis other jurisdictions or regions can draw some insights from the Principles.

This section highlights and comments on some of the Principles, also with reference to the other edited books of Professors Reyes and Chong. Due to space restrictions, it focuses on seven of the 13 Principles proposed and analysed in Chong's book. The seven Principles discussed in this review are what I would categorise as the core principles. Moreover, some of the Principles overlap,

[43]L'Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA). In English, this translates as the Organisation for the Harmonisation of Business Law in Africa.

[44]https://au.int/en/cfta. Accessed 16 August 2022.

[45]RF Oppong, "AfCFTA and International Commercial Dispute Resolution – A Private International Law (Conflict of Laws) Perspective", AfronomicsLaw, 20 October 2021; OA Uka, "Cross Border Dispute Resolution under AfcFTA: A Call for the Establishment of a Pan African Harmonised Private International Legal Regime to Actualise Agenda 2063" Conflictoflaws.net, 20 November, 2020; A Yekini, "Nigeria and AfCFTA: What role has Private International Law to Play" Conflictoflaws.net, 18 November, 2020. See also CSA Okoli, "International Commercial Litigation in English-Speaking Africa: A Critical Review" (2020) 16 *Journal of Private International Law* 189, 199.

especially public policy and other grounds of defences to the recognition and enforcement of a foreign judgment in the Asian jurisdictions studied.

1. *General principle*

"As a general proposition and subject to these Principles, a foreign judgment in a commercial matter is entitled to recognition and enforcement."[46] The preceding quotation is Principle 1.[47] It is the prevailing law in most of the Asian countries studied in the edited books. However, in Indonesia and Thailand, the general principle is that a foreign judgment cannot be recognised and enforced.[48] In addition, there have been no records of judgments recognised and enforced in Cambodia,[49] while in Lao foreign judgments cannot be given effect in the absence of a treaty obligation.[50]

The situation in Thailand is more complicated because, contrary to the mainstream academic view in Thailand,[51] there is a "1918 decision of the Supreme Court of Thailand (Thailand's highest court) which accepted that foreign judgments are enforceable in principle, provided the foreign judgment was rendered by a court of competent jurisdiction and is final and conclusive of the merits of the case."[52] In this connection, Chong opined earlier in this journal that:

> the strategy of choice among litigants in Thailand is to commence local proceedings at which the foreign judgment is tendered as evidence, as in Indonesia. This may be due to the fact that the 1918 decision has received heavy academic criticism from Thai scholars. The general perception is that the case is an inaccurate reflection of Thai law on the recognition and enforcement on foreign judgments, with criticisms centreing (*sic*) on the President of the Supreme Court at that time, who wrote the opinion of the Court, having been allegedly unduly influenced by English law. In addition, the Thai statute on private international law, which was enacted in 1938 after the Supreme Court decision, is thought not to contain any provision dealing with the recognition and enforcement of foreign judgments. The cumulative effect of these two developments may have been to put off wary litigants from testing the authoritativeness of the 1918 decision.[53]

[46]A Chong, "Principle 1. General Principle" in Chong (ed), *Asian Principles*, *supra* n 6, 1 -17.
[47]*Ibid*.
[48]Oppusunggu, *supra* n 39, 91; A Kusumadara, "Indonesia" in Reyes (ed), *supra* n 6, 243; Sooksripaisarnkit, *supra* n 39, 202–10 (though the author mentions a single Thai case where it was held that a foreign judgment can be recognised and enforced, which was heavily criticised in literature); Laowonsiri, *supra* n 7, 259–69. However, in Indonesia and Thailand the foreign judgment can be provided as evidence in a fresh action before their courts.
[49]A Larkin and P Yun, "Cambodia" in Reyes (ed), *supra* n 6, 201–07; Y Bun, "Cambodia" in Chong (ed), *Recognition and Enforcement*, *supra* n 6, 37–48.
[50]Chanthala and Santivong, *supra* n 40, 117.
[51]See footnote 48.
[52]Chong, *supra* n 25, 38 citing Case No 585/2461 (1918) and Sooksripaisarnkit, *supra* n 39, [8].
[53]Chong, *supra* n 25, 38–39.

Professors Chong and Reyes as editors are strongly in favour of the recognition and enforcement of foreign judgments,[54] advocating legal certainty, commercial certainty, and predictability over concerns of sovereignty and territoriality. In the final analysis of Principle 1, Chong perceptively suggests that:

> Given the advantages that would accrue should judgments be freely portable across borders, judgments recognition and enforcement should not only be a universal principle, but the requirements for recognition and enforcement should be considered carefully so as not to raise unreasonable impediments.[55]

The idea that generally recognising and enforcing foreign judgments in a country undermines the sovereignty of that country (i.e. the country where the judgment is being recognised and enforced) is now an outdated idea. This is especially evidenced in the EU experience where the harmonised regime on recognition and enforcement of foreign judgments has fostered economic prosperity among Member States.

2. *International jurisdiction*

Principle 2 states that:

> A foreign judgment is eligible for recognition and enforcement if the court of origin has international jurisdiction to render that judgment. The typical grounds on which a court is considered to have international jurisdiction include:
>
> (a) where the judgment debtor was present, resident or domiciled in the country of the court of origin;
> (b) where the judgment debtor, being a corporation, had its principal place of business in the country of the court of origin;
> (c) where the judgment debtor submitted to the jurisdiction of the court of origin by invoking its jurisdiction or by arguing the merits of the case against it; and
> (d) where the judgment debtor submitted to the jurisdiction of the court of origin by way of a choice of court agreement for the court of origin.[56]

It is concerned with the bases of international jurisdiction (or indirect jurisdiction).[57] The current rules of international jurisdiction vary significantly among Asian countries on the recognition and enforcement of foreign judgments. In Asia, countries that apply the common law approach (such as Singapore, Hong Kong, Malaysia and Brunei), utilise residence, presence and submission as the basic criteria of international jurisdiction; whereas some civil law countries

[54]Chong, *supra* n 24, 2–4; Reyes in Reyes (ed), *supra* n 6, 427–28.
[55]Chong, *supra* n 46, 17.
[56]A Chong, "Principle 2. Jurisdiction of the Court" in Chong (ed) *Asian Principles*, *supra* n 6, 18–40.
[57]*Ibid*.

(such as China, Taiwan, Japan, Vietnam, and South Korea) distinguish convention-based enforcement regimes from domestic ones as the logic behind each regime is different.[58] Some key differences are that, unlike some civil law Asian jurisdictions like China and Vietnam studied in Reyes (2019) and Chong's (2017) edited books, reciprocity is not a ground for recognition and enforcement of foreign judgments in common law, hybrid, and other civil law countries. In common law countries, even under their statutes, reciprocity is not a jurisdictional ground to enforce a foreign judgment.[59] Second, common law, hybrid, and some civil law countries studied in the edited books do not apply as a basis of international jurisdiction the "mirror image" approach applied by civil law countries like Japan and South Korea.[60] Third, the principle of comity in a hybrid jurisdiction like Philippines is not a ground of jurisdiction in common law and some civil law Asian countries studied in the book.[61]

[58]For example, under China's bilateral treaties on recognition and enforcement of foreign judgments, "There are several common elements … that the Chinese courts will consider prior to recognising and enforcing a foreign judgment … Generally, these elements are (1) indirect jurisdiction of the rendering court; (2) finality of foreign judgment; (3) due process and public policy; and (4) due service of legal documents.": Gu, *supra* n 7, 31, 39.

Gu, while citing other scholars, states that in the absence of bilateral treaties (domestic), Chinese courts take three approaches on the recognition and enforcement of foreign judgments: *ibid* at 41. First, the Chinese Court may simply disregard the foreign judgment. Second, the Chinese court may apply the principle of reciprocity to recognise and enforce a foreign judgment if the rendering court had previously recognised a Chinese judgment in the past. Third, the Chinese court may recognise and enforce a foreign judgment if it meets certain procedural and substantive requirements.

Japan and Korea apply the mirror image approach as a jurisdictional ground in the absence of treaties. Under

> "the mirror-image approach, it must be established that the court of origin assumed jurisdiction on the same grounds on which the court addressed would itself have assumed jurisdiction in a cross-border case. For example, the laws of Japan and South Korea each provide that their home courts have jurisdiction in an action brought against a person domiciled within their respective jurisdictions: this means that if the court of origin assumed jurisdiction on the basis that the defendant was domiciled within its jurisdiction, the Japanese and South Korean courts would consider the court of origin to have international jurisdiction over the action." - Chong, *supra* n 56, 34 (footnotes omitted).

[59]Reciprocity is considered in determining whether a country can be named by the executive in the list of countries whose judgments can be registered in the enforcing court under the statute. It does not necessarily mean that if a country is mentioned in the list of reciprocating countries but does not recognise and enforce the judgment of the enforcing court in the past, that the enforcing court will retaliate. Moreover, if a foreign country is not mentioned in the statutory list, under the doctrine of obligation the common law international jurisdiction of residence, presence and submission will apply.

[60]Chong, *supra* n 56, 34 (y); Kono, *supra* n 40, 108 [7]; Nishioka, *supra* n 7, 105.

[61]Aguiling-Pangalangan, *supra* n 40, 159 [7]-[8]; Jo and Cruz, *supra* n 13, 226–27.

It is premature to state whether the civil law, hybrid, or common law approaches to international jurisdiction is better until a specific empirical study of each approach is comparatively analysed to see which works better. On the face of it, I prefer the approach in Singapore – a common law country. This is because, Singapore not only has a common law and statutory regime, but it has also ratified the 2005 Hague Convention, and the Supreme Court has entered into Memoranda of Guidance on recognition and enforcement of foreign judgments with the courts of several jurisdictions such as Republic of Rwanda, Republic of Myanmar, The People's Republic of China, Bermuda, Qatar, Australia and United Arab Emirates.[62] Thus my view is that Singapore's approach on international jurisdiction is superior to other Asian jurisdictions studied in the book given the multiple avenues it utilises on international jurisdiction to recognise and enforce foreign judgments.

In the Principles suggested by Professor Chong, the common law criteria of residence, presence and submission appear to be dominant.[63] This is probably due to the legal education of the author which is founded within the common law tradition.

It is open to question whether presence is an appropriate criterion for international jurisdiction in the context of the recognition and enforcement of foreign judgments, because it might be fortuitous and it potentially violates the human rights of a judgment debtor, who has little or no connection to the country rendering the judgment.[64] It is recommended that the connecting factor of presence is reconsidered in the event that Asia harmonises its rules on recognition and enforcement of foreign judgments, while the connecting factors of residence and submission could be retained.

3. *Reciprocity*

Principle 5 is that: "A foreign judgment is eligible for recognition and enforcement if there is reciprocity between the country of the court addressed and the country of the court of origin".[65] In most civil law jurisdictions, reciprocity is not "a basis" for the recognition and enforcement of foreign judgments but is rather a ground for refusal. Only a few civil countries, such as China or Vietnam treat reciprocity as "a basis" for the recognition and enforcement of foreign judgments.[66] In direct contrast, in some common law countries,

[62]https://www.sicc.gov.sg/enforcement-of-money-judgment. Accessed on 11 August 2022.
[63]See also Elbalti, *supra* n 6, 270 for a similar remark.
[64]See also *ibid*.
[65]Y Guo, "Principle 5. Reciprocity" in Chong (ed) *Asian Principles*, *supra* n 6, 57–76.
[66]B Elbalti, "Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark but Not Much Bite" (2017) 13 *Journal of Private International Law* 184, 186, 196.

reciprocity is only a factor that is applied by the executive in considering which countries should be included in the statutory regime on recognition and enforcement of foreign judgments.[67] In other words, in common law jurisdictions within Asia, reciprocity is not a factor that is considered by a court in the common law regime.[68]

Professors Reyes and Chong as editors favour a more liberal approach to the recognition and enforcement of foreign judgments in civil law countries.[69] Reciprocity in civil law Asian jurisdictions mainly plays the role of a tool of retaliation to sanction jurisdictions that refuse to give effect to the forum's judgments.[70] To my mind, reciprocity might have the advantage of encouraging the courts of a country where the judgment is being recognised or enforced to treat the judgment of a country of origin with due regard, though such an advantage is yet to be verified empirically. However, its main disadvantage is that it obstructs the free movement of foreign judgments and harms the interests of international commercial actors.

Although reciprocity is a requirement in Japan and South Korea, courts in both countries mutually give effect to judgments rendered by their respective courts.[71] The same can be said for Taiwan.[72] Therefore, reciprocity seems to be a hurdle only with respect to jurisdictions that continue to have excessively restrictive enforcement regimes. A case worth mentioning is that of the standoff between Chinese and Japanese courts, where both courts have consistently refused to enforce each other's judgments in a tit for tat approach.[73] Situations like this, in which national courts legally retaliate in refusing to recognise and enforce a foreign judgment, undermine the effectiveness of international commercial dealings between both countries.

My understanding of Principle 5 is that reciprocity operates as a gateway to recognition and enforcement. The idea behind Principle 5 is to recognise that reciprocity might be a strong basis to recognise and enforce a foreign judgment. It

[67]Under the traditional common law, the basis for recognising and enforcing a foreign judgment is the theory of obligation – a foreign judgment is treated as a debt. See Blackburn J in *Schibsy v Westenholz* (1870) LR 6 QB 155, 159; [1861–73] All ER Rep 991; *Alberto Justo Rodriguez Licea v Curacao Drydock Inc* [2015] 4 SLR 172, [21].

[68]Statutory regimes in common law Asian jurisdictions are based on reciprocal arrangements. See Guo, *supra* n 65, 60–61 [g]

[69]Chong, *supra* n 24, 4; Reyes, *supra* n 6, 27. See also Elbalti, *supra* n 66, 184.

[70]JF Coyle, "Rethinking Judgments Reciprocity" (2014) 92 *North Carolina Law Review* 1109.

[71]Nishioka, *supra* n 7, 107; Lee, *supra* n 7, 126; Suk, *supra* n 39, 195–96.

[72]Li and Wu, *supra* n 7, 91–92.

[73]Guo, *supra* n 65, 59 [d]; W Zhang, "Sino-Foreign Recognition and Enforcement of Judgments: A Promising "Follow-Suit" Model?" (2017) 16 *Chinese Journal of International Law* 515, 542; Gu, *supra* n 7, 44; Kono, *supra* n 40, 113; Nishioka, *supra* n 7, 108; KF Tsang, "Enforcement of Foreign Commercial Judgments in China" (2018) 14 *Journal of Private International Law* 262, 272 fn 43.

also considers the judicial approach of some civil law countries.[74] If this Principle becomes law, there will be no change in Asian civil law jurisdictions as most of them already have reciprocity in their laws, but reciprocity will become an additional hurdle in the jurisdictions where reciprocity is not currently admitted as a requirement for the recognition and enforcement of judgments. In the final analysis, Guo's principal proposal on Principle 5 is that:

> A cogent case could be made for the abolition of reciprocity as a pre-condition to the recognition and enforcement of foreign judgments given the liberalisation of the concept in various jurisdictions and the low likelihood that it induces countries to recognise and enforce judgments from courts of countries which have this requirement.[75]

It is recommended that the future approach to reciprocity in the civil law countries mentioned in the edited books should be that a foreign judgment is entitled to recognition and enforcement except if it is established by evidence that the country of origin has a judicial practice of treating unfairly judgments emanating from the country of recognition and enforcement – a form of *de jure* reciprocity.[76] In other words, the approach that it should be a precondition that a foreign court must have had a practice of recognising or enforcing the foreign judgments of the country of recognition and enforcement (*de facto*) should be done away with entirely. Even China that has a very restrictive approach on reciprocity now appears to be moving towards *de jure* reciprocity in recent times.[77]

4. *Finality of foreign judgments*

Principle 3 states that "A foreign judgment is eligible for recognition and enforcement if it is final."[78] Principle 3 is a widely accepted principle in the Asian countries studied in the edited books. However, to determine a "final" foreign judgment, some countries such as Singapore, Lao and Vietnam courts rely on the law of the originating court, while some other courts apply the *lex fori*.[79] There is also no agreement on what is meant by "final" especially among

[74]Gu, *supra* n 7, 41–46.
[75]Guo, *supra* n 65, 57, 76 [x].
[76]See Art VII of the Nanning Statement of the 2nd China-ASEAN Justice Forum adopted on 8 June 2017. A similar idea is included in Reyes, *supra* n 6, 27, but not reflected in Principle 5 on reciprocity. The comment simply states that "if reciprocity is to be a pre-requisite … it is suggested that *de jure* reciprocity ought to be adopted": Guo, *supra* n 65, 76.
[77]See generally S Tang, "Chinese Court Enforces Singaporean Judgment based on De Jure Reciprocity" Conflictoflaws.net, 2 December 2021; M Yu and G Du, "China's Landmark Judicial Policy Clears Final Hurdle for Enforcement of Foreign Judgments" Conflictoflaws.net, 1 July 2022.
[78]BN Du, "Principle 3. Finality of Foreign Judgments" in Chong (ed) *Asian Principles, supra* n 6, 40. See also Gu, *supra* n 7, 40; Nishioka, *supra* n 7, 103–05.
[79]Du, *ibid* 42–25, [c] – [f].

common law and civil law countries studied in the edited books. For example, an interlocutory judgment, and judgment that can be appealed are capable of enforcement in some countries in the edited books (mainly common law countries) while they are not capable of enforcement in other countries in the edited books (mainly civil law and some hybrid countries).[80] This is an area that requires further clarification for the purpose of harmonisation in the future.[81]

Du suggests that, first:

> [t]he finality of a foreign judgment should generally be determined in accordance with the laws of the country of the court of origin. So long as a foreign judgment is final and binding under the laws of the country of the court of origin, in general, it may be recognised and enforced in the court addressed.[82]

The rationale for his position is that a foreign judgment should not have greater effect abroad than the country of origin.[83] He also suggests that this position should apply to even default and interlocutory judgments.[84]

Second, he suggests that: "provided the interlocutory judgment finally determines the rights between the parties under the law of the country of the court of origin, there should be no bar to it being enforceable."[85] The rationale for his view is that the focus should not be on the stage of proceedings, but whether the judgment is "final" in terms of *res judicata* between the parties.[86]

5. Enforcement of monetary judgments

Principle 6 is that "Monetary judgments that are not for a sum payable in respect of a foreign penal, revenue or other public law are enforceable."[87] The enforcement of money judgments, and the exclusion of enforcement of judgments which give effect to penal, revenue or public laws, appear to be a widely accepted principle in the Asian countries studied in the edited books. It is founded on legitimate concerns of sovereignty. Sooksripaisarnkit submits that: "Given the reasons underlying this prohibition, it should be considered to equally extend to the enforcement of non-monetary judgments."[88]

[80]For a liberal approach to this subject see Chng, *supra* n 9, 141, 150. See also Wong, *supra* n 8, 67–70; Chong, *supra* n 24, 3 [7].
[81]Du, *supra* n 78, 46–51.
[82]*Ibid* 52 [t].
[83]*Ibid*.
[84]*Ibid*.
[85]*Ibid*.
[86]*Ibid*.
[87]P Sooksripaisarnkit, "Principle 6. Enforcement of Monetary Judgments" in Chong (ed) *Asian Principles*, *supra* n 6, 77–85.
[88]*Ibid* 85 [n].

6. Enforcement of non-monetary judgments

Principle 7 states: "Non-monetary judgments that are not preliminary or provisional in nature may be enforced."[89] In respect of non-monetary judgments, in principle, the common law countries (except Singapore and possibly India) studied in the edited books do not recognise and enforce foreign non-monetary judgments. This is a principle that was inherited through colonial times from the British. However, some hybrid and civil law countries studied in the edited books enforce non-monetary judgments.[90] In principle, this approach is like what obtains in the European Union and Canada.[91] The Principle gives discretion to a judge to consider whether to enforce a non-monetary judgment.[92] It is important to stress that only final non-monetary judgments are enforceable under Principle 7. Preliminary or provisional injunctions are therefore excluded from the scope of application of the Principles. The enforcement of non-monetary judgments such as freezing injunctions is sometimes useful in international adjudication and enhances the sound administration of justice.[93]

Sooksripaisarnkit's key proposals are that:

> As a general principle, it is suggested that foreign non-monetary judgments, such as declaratory orders, orders for specific performance and final injunctions, should be enforceable. Non-monetary judgments may be more difficult to enforce compared to monetary judgments, therefore it is suggested that the court addressed should only enforce such judgments if the terms of the non-monetary order are clear and enforcement would not be unduly burdensome for the court addressed to supervise the carrying out of the non-monetary order.[94]

7. *Public policy*

Principle 9 is that "Recognition and enforcement of a foreign judgment may be refused if to do so would be manifestly incompatible with the public policy of the country of the court addressed."[95] It states that a foreign judgment could be denied recognition if it is manifestly contrary to public policy (usually of the forum).[96] This is a widely accepted principle in the Asian jurisdictions studied in the edited books.[97] Public policy is used as a defence. Some of the other Principles also mention distinct

[89]Sooksripaisarnkit, *supra* n 87, 85–100.
[90]Aguiling-Pangalangan, *supra* n 40, 159**;** Nishioka, *supra* n 7, 104.
[91]Art 2(a) of Brussels Ia; and *Pro Swing Inc v Elta Golf Inc* [2006] 2 SCR 612.
[92]P Sooksripaisarnkit, "Principle 7. Enforcement of Non-monetary Judgments" in Chong (ed) *Asian Principles*, *supra* n 6, 85–100.
[93]RF Oppong, "Canadian Courts Enforce Non-money Judgments" (2007) 70 *Modern Law Review* 670, 677.
[94]Sooksripaisarnkit, *supra* n 92, 97 [w].
[95]YU Oppusunggu, "Principle 9. Public Policy" in Chong (ed) *Asian Principles*, *supra* n 6, 112–30.
[96]*Ibid*.
[97]Some examples are given at the accompanying text to footnotes 102–07.

heads of public policy such as fraud,[98] due process (or natural justice)[99] and inconsistent judgments.[100] To my mind while this is accurate, they can also be classified and subsumed under public policy requirements[101] including the fact that certain judgments such as those involving immovable property, breach of competition law, and environmental wrongs will not be entitled to recognition and enforcement.

An example of public policy in a civil law jurisdiction like China is "infringement or violation of morality and justice of China"[102] and "lack of fair hearing or lack of civil capacity among the parties."[103] In civil law jurisdictions like Taiwan, Japan, South Korea, and Lao, a foreign judgment that awards punitive damages, for example in US judgments, may not be enforced.[104]

An example of public policy in a common law jurisdiction like Hong Kong, Singapore,[105] and Brunei is a foreign judgment obtained contrary to an anti-suit injunction previously issued by the enforcing court,[106] or a foreign judgment relating to foreign penal, revenue or public laws.[107]

Oppusunggu makes the following key proposals:

> [i]t is suggested that public policy should not have a broad meaning. For example, to refuse to recognise and enforce a foreign judgment because the result achieved is dissimilar to the result which would have been achieved under local laws would be an overly broad use of public policy. Further, public policy in the context of private international law should have a more narrow meaning than in the domestic context; for example, a foreign judgment based on a contract procured by undue influence should not necessarily be refused recognition and enforcement. In addition, to promote further recognition and enforcement of foreign judgments, the use of public policy should be confined. It should only be invoked in situations

[98]N Singh, "Principle 8. Fraud" in Chong (ed) *Asian Principles, supra* n 6, 100–12. Singaporean courts create a distinction between extrinsic fraud (fraud external to the merits of the case) and intrinsic fraud (fraud going to the merits of the case): *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515; Chong "Singapore", *supra* n 40, 170–71 [19]; Chng, *supra* n 9, 154–55.

[99]YU Oppusunggu, "Principle 10. Due Process" in Chong (ed), *Asian Principles*, *supra* n 6, 130–56.

[100]C Ong, "Principle 11. Inconsistent Judgments" in Chong (ed) *Asian Principles*, *supra* n 6, 156–74.

[101]See also Lee, *supra* n 7, 128–37.

[102]Gu, *supra* n 7, 40.

[103]*Ibid*.

[104]Li and Wu, *supra* n 7, 89–90; Nishioka, *supra* n 7, 129; Suk, *supra* n 42, 197–99 [48] – [51]; Chanthala and Santivong, *supra* n 40, 117, 128 [zf]. However, South Korean courts have a relaxed approach to enforcing foreign judgments that award punitive damages, compared to other civil law Asian jurisdictions studied in the edited books.

[105]*WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088, cited in Chong "Singapore", *supra* n 40, 163, 172 [20], fn 49.

[106]Wong, *supra* n 8, 64; Chng, *supra* n 9, 146; Ong, *supra* n 42, 31 [33]; Chong, "Singapore", *supra* n 40, 172 [20].

[107]Wong, *supra* n 8, 70; Chng, *supra* n 9, 153–54; Ong, *supra* n 39, 31 [33].

where the recognition and enforcement of the foreign judgment would be manifestly incompatible with the public policy of the court addressed.[108]

D. Conclusion

The three edited books surveyed in this review article underscore the importance of comparative law in addressing private international law matters. In a global world, private international law can no longer be described as a topic of purely national study. It is important to study the private international law regimes of other countries and undertake comparative analysis to reach a conclusion on the best outcome. The practical use of comparative analysis can be seen in the Memoranda of Guidance made between courts of some Asian countries (such as between Singapore and China, and Singapore and Myanmar) on the recognition and enforcement of foreign judgments.[109] In the instant case, the private international law regimes of 16 Asian legal systems have been studied in two of the reviewed titles, and Principles have been suggested in a third. This is a triumph for using a comparative approach to study private international law.

These edited publications are also useful for scholars working in other regional regimes that are not completely established in terms of recognising and enforcing foreign decisions, such as those in Africa, where there has been some comparative analysis on the topic of recognition and enforcement of foreign judgments in English speaking Africa.[110]

To conclude, the three edited books are excellent and should be taken seriously by legislators, judges, and policy makers in Asia interested in deepening their understanding of the recognition and enforcement of foreign judgments, especially from a comparative perspective. The information they contain should form part of the curriculum for law students and lawyers in the Asian region. Indeed, scholars, judges, lawyers, legislators, and other stakeholders in the Asian economic integration project will benefit from reading the edited books. Overall, studies that shed light on these practices in Asia should spark additional in-depth research into the harmonisation of civil and commercial private international law norms in regions that have not done so.

Disclosure statement

No potential conflict of interest was reported by the author(s).

[108]Oppusunggu, *supra* n 99, 112, 129 [zi].
[109]https://www.sicc.gov.sg/enforcement-of-money-judgment. Accessed on 11 August 2022.
[110]AJ Moran and AJ Kennedy, *Commercial Litigation in Anglophone Africa: The law relating to civil jurisdiction, enforcement of foreign judgments, and interim remedies* (Juta, 2018); RF Oppong, *Private International Law in Commonwealth Africa* (Cambridge University Press, 2013) (chapter 19); M Rossouw, *The Harmonisation of Rules on the Recognition and Enforcement of Foreign Judgments in Southern African Customs Union* (Pretoria University Law Press, 2016); and P Okoli, *Promoting Foreign Judgments; Lessons in Legal Convergence from South Africa and Nigeria* (Wolters Kluwer, 2019).