2025

2025 Report on International Asset Recovery for PRC Financial Creditors

Chief Editors: Yipeng Jia, Guodong Du

Authors: Guodong Du, Ting Luo, Anthony Ellwood-Russell, Marijn Flinterman

Co-Publishers： Hylands Law Firm, Omni Bridgeway, Global Yudu

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Team Support:

Qingqing Liu, Yiwei Zhuo, Wenliang Zhang

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Preface

International Asset Recovery, from Bad Loans to Big Gains.

In China, creditors often write off substantial non-performing loans (NPLs) as losses when debtors lack executable assets domestically. Yet, many such enterprises or individuals hold significant offshore assets ripe for recovery. Through international asset recovery, Chinese creditors can pinpoint debtors' overseas activities, map their global asset holdings, and leverage foreign judicial systems to enforce claims, thereby mitigating losses effectively.

This report adopts a broad definition of "NPLs", encompassing debts arising from loans, equity investments, and diverse financial instruments. International asset recovery for NPLs differs markedly from trade receivables collection: the former emphasizes asset identification and enforcement, while the latter focuses on resolving trade disputes. Each demands distinct expertise, international networks, and tailored solutions.

Chinese financial creditors currently face immense pressure to resolve NPLs, with the Chinese supervisory authorities prioritizing financial risk mitigation as a core economic objective. In many cases, international asset recovery represents the last resort—and often the only viable option—for Chinese creditors seeking to recoup losses.

The success of international asset recovery for Chinese financial creditors rests on two critical pillars:

- **Legal Frameworks**: Judgments from Chinese courts are now practically enforceable in at least 47 jurisdictions worldwide, while Chinese arbitral awards enjoy enforceability in the vast majority of countries. These mechanisms provide a robust legal foundation for Chinese creditors to utilize foreign judicial systems for asset recovery.

- **Professional Expertise**: International asset recovery demands sophisticated, multidisciplinary capabilities. A cadre of international practitioner has amassed extensive experience and proven success in global asset recovery, complemented by a growing pool of Chinese legal professionals adept at coordinating international resources and executing recovery strategies. Together, they have shaped industry best practices.

This report serves four key objectives:

- To underscore the necessity and feasibility of international asset recovery for **Chinese financial creditors**.

- To highlight the vast market opportunities in this field for **Chinese financial and legal practitioners**.

- To reveal the immense potential to collaborate with Chinese creditors for **international practitioners**.

- To foster the development of a global **collaborative network and community**.

The report is organized into three chapters:

Chapter One: Market Landscape

Examines the challenges faced by Chinese financial creditors amid rising non-performing assets and limited domestic debtor assets. It analyzes debtors' cross-border asset transfers to evade obligations and highlights how creditors leverage legal mechanisms, such as the cross-border enforcement of Chinese judgments and arbitral awards, to accelerate international asset recovery and protect their interests.

Chapter Two: Third-Party Litigation Funding

Explores the role of third-party litigation funding, where funders assume financial and litigation risks, allowing creditors to access premier global legal resources without upfront costs. This innovative model equips Chinese creditors with a cost-effective tool to pursue efficient cross-border asset recovery.

Chapter Three: Case Studies

Presents eighteen (18) illustrative case studies of international asset recovery by Chinese financial creditors across jurisdictions, including the United States, Canada, Australia, the United Kingdom, Hong Kong, Singapore, the Cayman Islands, and the British Virgin Islands (BVI). These cases cover the overseas enforcement of Chinese civil judgments, mediation judgments, arbitral awards, and notarized debt instruments, offering insights into successes and lessons learned for a comprehensive reference.

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Omni Bridgeway

Omni Bridgeway is a publicly listed company on the ASX (Australian Stock Exchange) (ASX:OBL) since 2001 and has professionals around the world managing a global investment portfolio. We have a highly experienced team of 185+ specialists in law, intelligence and finance with expertise in civil and common law legal and recovery systems. We work with individual claimants, law firms, corporations, sovereigns and multilateral institutions. Our team assesses investments and enforcement opportunities arising in nearly every region, including Africa, Asia, Australia, Canada, Europe, Latin America, the Middle East, the UK and the US. We have funded hundreds of cases to completion, offering disputes financing and judgment enforcement capability and experience that is unsurpassed in the industry.

Global Yudu

Global Yudu is a Hong Kong-based international debt recovery service provider specializing in assisting financial institutions, private creditors and other claimants in resolving non-performing loans (NPLs) through cross-border asset recovery. With our global investigation network and legal partners, Global Yudu provide overseas asset tracing, cross-border enforcement of judgments & arbitration awards and litigation funding matching services to help creditors recover debtors' offshore-hidden assets. To date, Global Yudu have collaborated with asset investigation agencies, multinational law firms and international third-party litigation funding to complete multiple international recovery cases, enhancing Chinese clients' and Chinese lawyers' professional capabilities in offshore asset recovery.

Biographies

Yipeng Jia

Mr. Yipeng Jia is currently the Executive Director, Senior Partner and Chair of the Dispute Resolution Committee at Hylands Law Firm in Beijing. With 21 years of experience in the legal profession, he has been specializing in commercial dispute resolution, successfully handling numerous complex and high-profile cases involving corporate equity, private equity funds, financial derivatives, real estate and construction projects, as well as intellectual property disputes.

Recognized for his exceptional legal expertise and extensive practice experience, Mr. Jia has received numerous prestigious awards, including Top 15 Litigation Lawyers in China by LEGALBAND (2023), Outstanding Alumni of Benjamin N. Cardozo School of Law at Yeshiva University (2023), and Recommended Lawyer in Dispute Resolution (Litigation) by The Legal 500 Greater China Region (2024).

Contact: jiayipeng@hylandslaw.com

Guodong Du

Mr. Guodong Du is a partner at Hylands Law Firm in Beijing, with over 15 years of legal practice experience. His sole area of practice is cross-border debt recovery, where he specializes in assisting Chinese creditors in pursuing overseas debtors' assets. Leveraging extensive hands-on experience and profound legal expertise, he has successfully handled numerous complex cross-border recovery cases. He has established long-term strategic partnerships with international legal practitioners, asset investigation firms, and third-party litigation funders, building a globally connected network for cross-border asset recovery.

Since 2019, Guodong has annually published the *List of China's Cases on Recognition of Foreign Judgments*, which has become a key reference for the international legal community to understand Chinese judicial practices. This report has been widely cited and highly commended by legislative bodies, judicial authorities, and academic institutions across multiple jurisdictions.

Contact: duguodong@hylandslaw.com

Ting Luo

Ms. Ting Luo is working at Hylands Law Firm in Beijing, engaging in financial claims recovery and special assets disposition. She provides legal services for Chinese enterprises in overseas asset recovery and cross-border dispute resolution. Prior to joining Hylands, Ms. Luo worked at the head office of a large state-owned bank, where she gained extensive experience in the financial sector and developed an in-depth understanding of financial institutions' risk management practices and cross-border operations.

With a unique combination of legal and financial expertise, Ting is adept at crafting comprehensive cross-border debt recovery solutions from both compliance and financial operational perspectives. In cross-border recovery cases, she excels at analyzing the underlying structures of financial products to develop efficient and pragmatic asset recovery strategies. She ensures all case handling strictly complies with domestic and international regulatory requirements, delivering risk-free and highly efficient legal services to her clients.

Contact: luoting@hylandslaw.com

Anthony Ellwood-Russell

Mr. Anthony Ellwood-Russell is an Investment Manager (Asset Tracing and Intelligence) at Omni Bridgeway. Anthony is a Mandarin-speaking Investment Manager who focuses on gauging payment capacity, identifying liquid assets and providing case intelligence. He is responsible for the origination, recoverability assessment and management of cross-border litigation, with a focus on debt recovery proceedings and helping creditors convert non-performing loans to cash.

Before joining Omni Bridgeway, Anthony was a managing consultant with Berkeley Research Group and J.S. Held in Hong Kong where he worked on multi-jurisdictional projects including asset traces, debtor location, litigation support, strategic intelligence and contingency planning; he has completed investigative projects spanning a range of jurisdictions across five continents. Prior to Berkeley Research Group, Anthony led the Asia-Pacific efforts of a London-based corporate intelligence consultancy.

Contact: aellwoodrussell@omnibridgeway.com

Marijn Flinterman

Mr. Marijn Flinterman is a Senior Investment Manager and Head of DARP at Omni Bridgeway. Marijn is responsible for the recovery and work-out of non-performing loans (NPLs) in connection with the EMEA focused Distressed Asset Recovery Program (DARP). In addition, Marijn works with insolvency practitioners, liquidators and creditors to help them unlock value captured in insolvent companies, by funding the pursuit of claims globally, by funding the estate and/or by purchasing complex claims.

Marijn has extensive expertise in the recovery of complex NPLs across the globe, including in bankruptcy scenarios, court-sanctioned restructurings, wind-downs and fraud cases. He holds a combined experience of close to 20 years as an international debt and recovery specialist, both as lawyer (private practice and in-house) and as banker. Marijn is also an officer of the International Bar Association's Asset Recovery Committee.

Contact: mflinterman@omnibridgeway.com

Team Support

Qingqing Liu, Partner at Hylands Law Firm

Yiwei Zhuo, Partner at Hylands Law Firm

Wenliang Zhang, Senior Counsel at Global Yudu

For any questions or suggestions regarding this report, please contact:

Mr. Guodong Du

Mobile: +86 138 1123 2421

WeChat: duguodong

Email: duguodong@hylandslaw.com

Address: 3/F, Fortune Financial Center, No. 5 Dongsanhuan Middle Road, Chaoyang District, Beijing 100020, China

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Chapter One Market Landscape: How International Asset Recovery is Reshaping China's NPLs Playbook

Authors: Guodong Du, Ting Luo

Amid the surge of non-performing assets and the growing challenges of domestic debt recovery, the debtors in China increasingly exploit cross-border asset transfers to evade repayment obligations, rendering traditional domestic enforcement mechanisms ineffective. International asset recovery, as a strategic approach to overcoming jurisdictional barriers and safeguarding creditor rights, transcends mere technicality. It is emerging as an urgent imperative for Chinese financial creditors to navigate and resolve the complexities of debt recovery in a globalized landscape.

1. Key Stakeholders: Who Needs International Asset Recovery

In an era of increasingly fluid and frequent cross-border asset flows, Chinese financial creditors face a stark reality: traditional domestic recovery mechanisms often fall short when debtors transfer assets overseas. This section systematically examines which types of Chinese financial creditors may require international asset recovery and underscores the practical necessity of this solution.

For the purposes of this report, "financial creditors" is defined broadly, encompassing not only traditional debt financiers—such as banks and trust companies providing loans—but also private equity funds, venture capital firms, and participants in innovative financial instruments derived from debt or equity.

Currently, many Chinese financial creditors remain unaware of the critical role international asset recovery can play in resolving NPLs, with some lacking even basic knowledge of this approach. This gap in understanding significantly hampers their ability to protect their interests.

In practice, numerous creditors face recovery challenges when debtors evade repayment obligations by transferring assets across borders. These creditors include commercial banks, trust companies, insurance companies, fund managers, guarantee companies, microfinance providers, private lenders, asset management companies (AMCs), and investors in distressed assets.

When creditors provide funds to enterprises or individuals through loans, investments, or other financial instruments, the transfer of assets offshore often renders domestic judicial enforcement and asset disposal ineffective. In such cases, international asset recovery becomes essential to safeguard creditors' rights. Based on the nature of their operations and risk exposures, the

international recovery needs of key creditor categories in China are explored below:

I. Commercial Banks

As central players in the financial system, commercial banks play a pivotal role in providing corporate financing. Beyond traditional on-balance-sheet lending, banks increasingly channel funds through off-balance-sheet wealth management products and innovative structures, such as entrusted loans and beneficial interest transfers, particularly in response to tightened regulations in sectors like real estate. While these arrangements alleviate corporate funding pressures, they can expose banks to international recovery challenges when debtors transfer assets overseas.

II. Trust Companies, Insurance Companies, and Securities Firms

Non-bank financial institutions also face significant cross-border recovery needs. Trust companies, for instance, often provide funding through direct loans or "equity-like debt" arrangements, involving complex transaction structures and multilayered guarantees. Despite these safeguards, defaults can still occur, compelling trust companies to pursue global asset recovery to fulfill obligations to investors.

Insurance companies, through their asset management platforms, establish debt investment plans to allocate stable, long-term insurance funds into projects with predictable cash flows, such as commercial real estate and infrastructure. These investments typically offer long tenors and stable returns, aligning with insurers' asset-liability matching requirements. However, when projects falter, insurance funds face substantial recovery challenges.

Securities firms, acting as financial creditors, provide funding through margin financing and stock-pledged repo transactions to major shareholders, controlling parties, or institutional investors of listed companies. When debtors default and the pledged stock's market value fails to cover the debt, bad debts arise. The recent wave of stock pledge defaults has highlighted the urgent recovery needs of securities firms.

III. Private Equity and Venture Capital (PE/VC)

Private equity and venture capital firms often incorporate protective mechanisms, such as earn-out clauses or share repurchase agreements, to safeguard their investments. These measures aim to ensure legitimate returns, but when performance triggers are met, founders may face cash compensation or repurchase obligations. In practice, however, many founders' primary assets are already transferred overseas, rendering these protections unenforceable without global asset recovery.

IV. Guarantee Companies, Microfinance Providers, and Private Lenders

Guarantee companies, as professional credit enhancement providers, often become de facto creditors after fulfilling repayment obligations on behalf of borrowers. Microfinance providers and private lenders typically offer short-term financing to small and medium-sized enterprises or individuals, often through secured or unsecured loans. When debtors transfer assets offshore, these creditors—lacking the professional expertise and resources of larger institutions—face particularly acute recovery challenges.

V. Asset Management Companies (AMCs) and Distressed Asset Investors

AMCs, as specialized entities for distressed asset disposal, acquire non-performing loans from banks and other institutions, becoming new creditors. Similarly, private investors in distressed assets purchase defaulted claims in pursuit of high returns. While these entities possess expertise in handling distressed assets, they too require robust cross-border recovery systems to counter sophisticated offshore asset transfer schemes and effectively protect their interests.

2. Market Catalysts: The Crisis of Non-Performing Loans

In the current economic climate, financial creditors in China face severe challenges in domestic debt recovery, driven primarily by a rapid surge in NPLs. This phenomenon stems from macroeconomic pressures such as insufficient domestic demand and operational difficulties for Chinese enterprises, compounded by liquidity crises triggered by the real estate sector's high-leverage model. The cross-border transfer of assets by debtors further exacerbates recovery challenges, rendering the judgments enforcement and asset recovery in China increasingly ineffective and underscoring the critical need for international asset recovery.

According to data from Chinese National Financial Regulatory Administration, the banking sector disposed of 3.8 trillion yuan in NPLs in 2024, a record high. This marks a significant increase from 3.1 trillion yuan in 2022 and 3.23 trillion yuan in 2023, reflecting the pressing need for risk resolution. Concurrently, the NPL market has seen heightened transaction activity. In 2024, the ChinaBanking Credit Asset Registration and Transfer Center recorded over 280 billion yuan in NPLs transfers, an 80.2% year-on-year increase, with an average of three transactions completed daily.[3]

The real estate sector is a primary driver of the NPA surge. The 2024 Debt Restructuring Market Observation Report: Real Estate Sector by King & Wood Mallesons notes that real estate firms' long-standing reliance on a "high-leverage, high-turnover, high-debt" model has led to concentrated liquidity risks amid tightened financing conditions. Since 2023, a wave of delistings has swept through the sector, with many firms failing to meet listing compliance requirements due to[4]

[1] 3.8 Trillion Yuan in Non-Performing Assets Disposed of in 2024 [Internet]. Caixin; Mar. 5, 2025, available at: https://topics.caixin.com/2025-03-05/102294796.html
[2] China Financial Stability Report 2023 [Internet]. People's Bank of China; 2023, available at: http://www.pbc.gov.cn/jinrongwendingju/146766/146772/5177895/index.html
[3] Financial Institutions Accelerate Clearing NPAs to Free Resources [Internet]. Securities Times; 2025, available at: https://www.stcn.com/article/detail/1603765.html
[4] 2024 Debt Restructuring Market Observation Report [Internet]. King & Wood Mallesons; 2024, available at: https://www.kwm.com/cn/zh/insights/latest-thinking/annual-observation-of-china-s-debt-restructuring-market-2024-property-sector.html

operational deterioration and debt defaults. This trend persisted into 2024, further devaluing the collateral held by financial creditors. According to the China Index Academy, real estate firms faced 770.31 billion yuan in maturing bonds in 2024, a 19.6% decrease from the over 950 billion yuan in 2023, yet still a substantial figure. Of this, 69.0% were domestic bonds and 31.0% were offshore, with domestic debt repayment pressures remaining significant.[5] The concentration of maturing debts has heightened default risks, with ripple effects impacting financial institutions.

Chinese financial institutions continue to grapple with challenges such as declining asset valuations and prolonged disposal cycles during market corrections. When collateral—such as land or projects under construction—fails to cover principal and interest, and debtors' domestic assets are depleted, often due to deliberate cross-border asset transfers, domestic recovery mechanisms frequently falter. This dilemma is widespread among commercial banks, trust companies, insurance companies, private equity funds, guarantee companies, microfinance providers, private lenders, AMCs, and distressed asset investors. Confronted with the dual challenges of surging NPAs and asset outflows, international asset recovery has become an indispensable pathway for financial creditors to safeguard their interests.

3. Debtor Counterstrategies: Domestic Asset Evasion and Offshore Asset Concealment

The path to debt resolution for Chinese financial creditors is increasingly fraught with obstacles. Domestically, the scarcity of debtors' assets and fierce competition among creditors have mired enforcement proceedings in inefficiency, driving repayment rates to new lows. Offshore, debtors employ covert and sophisticated asset transfers to conceal wealth, leveraging cross-border legal barriers to evade repayment obligations. This dual predicament tests creditors' resources and ingenuity while highlighting international asset recovery as a critical strategy to break the impasse.

I. Domestic Asset Evasion: Asset Scarcity and Creditor Competition

Financial creditors pursuing domestic debt recovery often find themselves at an impasse, primarily due to the twin challenges of debtors' asset shortages and intense creditor competition.[2]

At a press conference on April 7, 2025, the Supreme People's Court reported that in 2024, Chinese courts concluded 9.1182 million enforcement cases, with over 2 trillion yuan in assets recovered. However, the enforcement system remains burdened by a "high caseload and significant pressure to clear backlogs." Structural challenges persist, including difficulties in locating debtors and their assets, complex disposal processes, and high coordination costs.[6] Local judicial practices corroborate this trend: in The First People's Court of Dongguan in Guangdong Province, 35.55% of financial enforcement cases over the past three years resulted in zero repayment due to the absence of executable assets, while 71.41% of auctions in cases with assets failed, far exceeding the court's

[5] Real Estate Firms Face Over 700 Billion Yuan in Maturing Debt [Internet]. 21st Century Business Herald; May 29, 2024, available at: https://www.21jingji.com/article/20240529/herald/bffb52feaf5bdf077bd1b038b38d2ae8.
[6] html Deepening Cross-Enforcement and Standardizing Enforcement Work [Internet]. Supreme People's Court; Apr. 7, 2025, available at: https://www.court.gov.cn/zixun/xiangqing/461291.html
[7] Wu XT, Xie Y. Analysis of Difficulties and Solutions in Financial Case Enforcement [Internet]. People's Court Daily; Dec. 5, 2024.
[8] Gu JJ. On the Abolition of Final Termination Procedures [Internet]. Journal of China University of Political Science and Law; 2023(2).
[9] Hainan Airlines Holding Co., Ltd. Reorganization Plan [Internet]. Hainan Airlines; Oct. 2021.

average rate.Historical data reinforces this grim reality. According to the Supreme People's Court's 2018 statistics, 40%–50% of enforcement cases annually are deemed "unenforceable" due to a lack of executable assets. More alarmingly, the proportion of cases terminated without further enforcement action ("enforcement termination") has remained high, accounting for over 40% of first-time enforcement case closures, with some courts reporting civil enforcement termination rates exceeding 60%.[8]

When limited assets are swarmed by competing creditors, repayment rates plummet. The bankruptcy reorganization of HNA Group exemplifies this struggle, with 4,915 creditors vying for residual assets. According to its reorganization plan disclosed in October 2021, in a hypothetical liquidation scenario, the ordinary creditor repayment rate for core entity Hainan Airlines Holding would be a mere 4.45%, with some subsidiaries facing zero repayment.[9]

II. Offshore Asset Concealment: Illicit Cross-Border Transfers

While creditors grapple with domestic enforcement quagmires, debtors are actively transferring assets offshore, a tactic increasingly favored by high-net-worth individuals to evade repayment. A Wall Street Journal report estimated that up to $254 billion may have illicitly flowed out of China in the year ending June 2024.[10] Forbes noted that Chinese millionaires and billionaires are emigrating at record levels, with an estimated 15,200 individuals projected to leave in 2024—a 10% increase from 13,800 in 2023. Henley & Partners estimated that each emigrant relocates with wealth ranging from $30 million to $1 billion.[11]

Data from the State Administration of Foreign Exchange (SAFE) reveals that by the end of 2024, China's external securities investment assets totaled $1.42 trillion, comprising $859.8 billion in equities and $557.5 billion in bonds. These assets were primarily concentrated in Hong Kong ($610.1 billion), the United States ($331.6 billion), the Cayman Islands ($115.6 billion), the British Virgin Islands ($72 billion), and the United Kingdom ($36 billion).[12] Total external financial assets reached $10.22 trillion, with direct investment assets amounting to $3.13 trillion, reflecting the scale of asset allocation abroad by residents and enterprises.[13]

2

Many corporate controllers exploit illegal channels—such as foreign exchange brokers and underground money changers—to transfer funds to these jurisdictions via cryptocurrency transactions, offshore shell companies, or trusts. For instance, funds raised domestically are funneled through multilayered holding companies registered in the Cayman Islands to purchase luxury properties in Hong Kong or commercial real estate in Singapore, evading domestic repayment obligations. Recent Supreme People's Court cases indicate that some debtors, prior to default, establish offshore companies or trusts to shield assets behind cross-border legal barriers, significantly complicating recovery efforts. Foreign exchange brokers further exploit the cross-border

[10] The Quarter-Trillion-Dollar Rush to Get Money Out of China [Internet]. Wall Street Journal; Oct. 23, 2024, available at: https://www.wsj.com/world/china/china-economy-capital-flight-2ba6391b

[11] High-Net-Worth People Are Leaving China [Internet]. Forbes; Jul. 3, 2024, available at: https://www.forbes.com/sites/miltonezrati/2024/07/03/high-net-worth-people-are-leaving-china/

[12] China’ s External Securities Investment Assets by Country/Region and Holder Sector, End of 2024 [Internet]. State Administration of Foreign Exchange; Jun. 3, 2025, available at: https://www.safe.gov.cn/shanxi/2025/0603/1495.html

[13] China’ s International Investment Position, End of 2024 [Internet]. State Administration of Foreign Exchange; Mar. 28, 2025, available at: https://www.safe.gov.cn/safe/2025/0328/25906.html

convenience[7] of cryptocurrencies, facilitating indirect currency exchanges or using shell companies registered at trade ports for illicit settlements, thereby circumventing foreign exchange regulations.[6]

4. Breakthrough Strategies: Unlocking International Asset Enforcement

As domestic debt levels soar and offshore asset outflows intensify, jurisdictional boundaries create a formidable barrier between Chinese creditors and debtors' overseas assets, generating significant potential for international financial claims enforcement. The key to unlocking this potential lies in the recognition and enforcement of Chinese court judgments and arbitral awards abroad. When domestic recovery efforts fail, creditors who secure favorable judgments or arbitral awards in China can leverage foreign enforcement mechanisms to access debtors' offshore assets, thereby recovering their claims.

This mechanism rests on a robust foundation. Chinese court judgments are now practically enforceable in at least 47 countries and regions, while Chinese arbitral awards, backed by the New York Convention, face minimal obstacles in 170 member states. These jurisdictions encompass nearly all preferred destinations for Chinese high-net-worth individuals' immigration and asset allocation, offering creditors a viable pathway to overcome enforcement challenges.

I. Enforcement of Chinese Court Judgments

Chinese court judgments are enforceable in at least 47 jurisdictions, provided they meet basic procedural fairness requirements. Of these, 35 countries have signed bilateral judicial assistance treaties with China, explicitly supporting the recognition and enforcement of Chinese judgments. An additional 12 jurisdictions enforce Chinese judgments under their domestic laws, providing a solid legal framework for international recovery.

Based on the primary destinations for Chinese debtors' offshore asset allocation, we categorize relevant jurisdictions into tiers and analyze their enforcement landscapes below.

First Tier: United States, Canada, Australia, New Zealand, Singapore, British Virgin Islands (BVI), and the United Kingdom

These predominantly English-speaking, common-law jurisdictions are top destinations for Chinese immigration and asset allocation. While most lack bilateral treaties with China, their legal systems are generally receptive to foreign judgments and have established precedents for recognizing and enforcing Chinese judgments.

[14] Wu XM, Zhao XL, Li J. Characteristics and Governance of "Match-Fixing" Illegal Foreign Exchange Trading Crimes [Internet]. Procuratorial Daily; Jul. 25, 2023.

- **United States:** Jurisdictions with significant Chinese immigrant populations, such as California, New York, and Washington State, have repeatedly recognized and enforced Chinese judgments. Most states apply the 1962 or 2005 Uniform Foreign Money Judgments Recognition Act, providing a stable and predictable framework for enforcing Chinese monetary judgments.

- **Canada:** British Columbia and Ontario (home to Toronto and Vancouver) are key hubs for Chinese immigrants and assets. British Columbia courts have recognized and enforced Chinese judgments on two occasions, including a civil mediation agreement.

- **Australia:** Courts in Victoria and New South Wales (Sydney and Melbourne) have enforced multiple Chinese judgments, including civil mediation agreements, demonstrating a favorable stance toward foreign judgments.

- **New Zealand:** With Chinese immigrants comprising 4.9% of the population, demand for enforcing Chinese judgments is growing. New Zealand courts have recognized and enforced two Chinese judgments.

- **Singapore:** A prime destination for Chinese asset allocation, Singapore saw a 59% increase in capital inflows in 2021, with family offices quadrupling in two years. Singapore courts have repeatedly recognized and enforced Chinese judgments, bolstered by the 2019 Memorandum of Guidance on Recognition and Enforcement of Monetary Judgments in Commercial Cases signed between the supreme courts of Singapore and China, providing a clear legal framework.

- **United Kingdom:** With its stable legal environment and premium educational resources, the UK is a major target for Chinese asset allocation. UK courts have recognized and enforced Chinese judgments on two occasions.

- **British Virgin Islands (BVI):** A leading offshore company registration hub, BVI has recognized and enforced Chinese judgments since January 2020. Notably, the Cayman Islands, another favored offshore center, poses no substantive legal barriers to enforcing Chinese judgments, though no cases have been recorded to date.

Second Tier: France, Italy, Spain, Portugal, Greece, Cyprus, and Turkey

These jurisdictions are less popular than the first tier but attract Chinese debtors due to lower immigration thresholds, such as investment immigration programs, particularly in Portugal, Greece, Cyprus, and Turkey. All have bilateral judicial assistance treaties with China, explicitly providing for mutual recognition and enforcement of judgments, establishing a foundational legal basis for enforcing Chinese judgments.

Third Tier: South Korea, Japan, and Germany

These countries draw Chinese debtors due to geographic proximity, cultural ties, or investment appeal, but the certainty of enforcing Chinese judgments varies.

- **South Korea**: Korean courts have recognized and enforced Chinese judgments on two occasions, most recently a 2019 judgment from Beijing's Chaoyang District Court. Chinese courts have also recognized Korean judgments (e.g., Beijing Fourth Intermediate Court's recognition of a Korean intellectual property judgment), fostering reciprocity that supports continued enforcement of Chinese judgments.

- **Japan**: Japanese courts have recognized and enforced Chinese judgments in two cases, but a 1995 refusal to enforce a Japanese judgment in China (Gomi Akira case) has led to inconsistent Japanese court rulings. Since 2015, Chinese courts have gradually relaxed standards for recognizing foreign judgments, raising optimism that Japanese courts may adopt a more favorable stance, though uncertainty persists.

- **Germany**: A German court recognized a Chinese judgment in one case but refused enforcement in 2021 (LG Saarbrücken, Case No. 5 O 249/19) due to insufficient reciprocity. However, the 2023 recognition of a German Aachen District Court bankruptcy ruling by Beijing First Intermediate Court signals improving prospects for reciprocity. Under German civil procedure law, persuading German courts to enforce Chinese judgments in the future appears increasingly feasible.

Fourth Tier: Other Countries and Regions

These jurisdictions support the enforcement of Chinese judgments through bilateral treaties with China, offering recovery potential. While not primary destinations for Chinese debtors' asset allocation, growing commercial investments or trade ties may result in debtor assets in these regions. They include Vietnam, Israel, Iran, UAE, Kuwait, Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Uzbekistan, Laos, North Korea, Russia, Hungary, Lithuania, Poland, Ukraine, Belarus, Bosnia and Herzegovina, Bulgaria, Romania, Egypt, Algeria, Morocco, Tunisia, Ethiopia, Brazil, Argentina, Peru, and Cuba.

II. Enforcement of Chinese Arbitral Awards Abroad

The enforcement of Chinese arbitral awards abroad is significantly more straightforward, thanks to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Covering over 170 member states, the Convention encompasses nearly all major jurisdictions where Chinese debtors allocate assets. As a member state, China's arbitral awards can be recognized and enforced in these jurisdictions through relatively streamlined procedures, substantially reducing legal barriers to cross-border recovery.

III. Strategic Implications

The enforceability of Chinese court judgments and arbitral awards abroad provides financial creditors with a practical solution to bridge the gap left by ineffective domestic recovery efforts. Supported by established legal frameworks in key jurisdictions and the broad applicability of the New York Convention, creditors can effectively pursue debtors' overseas assets. This mechanism not only overcomes jurisdictional barriers but also equips creditors with the strategic capability to counter the internationalization of asset transfers, serving as a critical pathway to safeguard their claims.

5. Typical Model: Corporate Debt with Shareholder Guarantees

In the practice of international financial claims enforcement, the "corporate financing with controlling shareholder guarantee" model stands out as the most common recovery structure. Its strength lies in piercing the corporate veil, enabling creditors to bypass the limited liability of enterprises and directly pursue the international assets of the controlling shareholder.

I. Transaction Structure

In cases well-suited for international asset recovery, a corporate entity typically serves as the borrower, securing funds from creditors such as banks or trust companies. To enhance the security of the claim, creditors often require multiple credit enhancement measures, including but not limited to asset mortgages, pledges, or third-party guarantees. The most critical of these is the personal joint and several liability guarantee provided by the enterprise's controlling shareholder. Should the corporate borrower default and the collateral prove insufficient to cover the debt, creditors can directly pursue all assets held by the controlling shareholder, both domestically and internationally.

When only the corporate entity is the debtor, its offshore asset holdings are typically limited, constrained by the principle of limited liability, and easily identified by other creditors through financial statements, leading to competing claims. Conversely, direct individual borrowing often involves smaller loan amounts, making international recovery less cost-effective relative to the scale of corporate financing.

In the "corporate financing with controlling shareholder guarantee" model, the controlling shareholder's personal guarantee exposes them to liability for the substantial debts of the corporate financing transaction. This significantly expands the pool of recoverable assets, allowing creditors to target the shareholder's broader asset portfolio.

II. Recovery Tools

When the controlling shareholder is a debtor, the scope of recoverable assets extends beyond the enterprise's balance sheet to encompass all personal assets, whether held domestically or abroad. First, directly held personal assets are the most common enforcement targets, including overseas luxury properties, bank deposits, stocks, mutual funds, private jets, yachts, and other high-liquidity or high-value assets. Second, investment assets are also recoverable, such as equity in international enterprises, interests in offshore companies, or stakes in private equity funds. In certain cases, creditors may even pursue the debtor's family assets.

Debtors often employ sophisticated asset transfer strategies to evade obligations, such as transferring assets to relatives at below-market prices, using shell companies to hold assets, or isolating wealth through offshore trusts. However, robust countermeasures exist within various legal systems. In the United States, for example, most states have adopted the Uniform Fraudulent Transfer Act (UFTA) or its updated version, the Uniform Voidable Transactions Act (UVTA). Under these frameworks, if creditors can demonstrate fraudulent intent—such as transfers at significantly undervalued prices or transfers rendering the debtor insolvent—the court can void the transaction and restore the assets to the debtor's name for enforcement.

Some debtors attempt to sever debt connections by immigrating, changing nationality, or altering their names, but these tactics hold no legal weight. Debt obligations, as civil liabilities, remain unaffected by changes in passport or identity. Moreover, many jurisdictions prioritize transparency in identity tracing. For instance, U.S. green card applicants must use names consistent with their original nationality's passport, and name changes during naturalization are recorded in publicly accessible court databases. Creditors can engage legal counsel to retrieve such records and establish identity mappings.

Thus, regardless of how debtors change their identity, transfer assets, or conceal wealth across borders, creditors can leverage established legal tools and international recovery networks to locate and seize their assets. This mechanism ensures that cross-border financial claims enforcement is not only feasible but also highly effective.

6. Timing Constraints: Why Creditors Must Act Now

In the practice of international asset recovery, timing is a critical determinant of success. As cross-border asset recovery emerges as a vital strategy for Chinese financial creditors, prompt action not only secures a competitive edge but also mitigates risks such as asset dissipation, further transfers, and statutory limitation periods.

I. Creditor Competition

While international asset recovery is not yet a widely adopted strategy among Chinese financial creditors and market awareness remains in its early stages, competition is rapidly intensifying as more institutions and individuals recognize its strategic value. Debtors' overseas assets—such as real estate, bank accounts, equities, or offshore company interests—are, like domestic assets, subject to competitive enforcement by multiple creditors. The "first-in-time, first-in-right" principle is particularly pronounced in cross-border recovery. Creditors who act early can prioritize asset seizure, securing higher repayment rates, whereas those who delay risk significantly reduced recovery due to assets being divided or frozen by others.

Currently, Chinese financial creditors exhibit varying levels of awareness and expertise in international recovery. Large state-owned institutions, such as commercial banks and asset management companies, often lag due to slower decision-making processes. In contrast, smaller financial institutions, microfinance providers, and private lenders, with more agile decision-making, have already begun pursuing international recovery. Acting promptly is thus essential for creditors to gain a competitive advantage.

II. Overseas Asset Dissipation

As high-net-worth Chinese debtors engage in extravagant spending, suffer investment losses, or actively liquidate assets to evade obligations, the scale and enforceability of their overseas assets can diminish rapidly, undermining creditors' recovery potential. In the current climate of global economic volatility and heightened market uncertainty, the dissipation of debtors' overseas assets may accelerate.

For instance, many Chinese debtors, particularly real estate firms and high-net-worth individuals, made substantial investments in the United States, United Kingdom, Australia, and other jurisdictions following the 2015 investment boom, including real estate development projects, corporate acquisitions, or financial portfolios. However, due to poor investment decisions, operational failures, or market fluctuations, these assets have often depreciated significantly or been liquidated. Additionally, debtors may proactively sell overseas assets to alleviate domestic debt pressures or evade enforcement, opting for low-value transfers or rapid liquidation to raise funds or relocate assets to harder-to-trace jurisdictions. Such actions drastically reduce the pool of executable assets, increasing recovery costs and complexity. Creditors who fail to act swiftly risk facing an asset-depleted landscape.

III. Statutory Limitation Constraints

Statutory limitation periods pose a rigid constraint on international recovery, with jurisdictions imposing strict deadlines for enforcing judgments and arbitral awards. For example:

• In California, United States (covering Los Angeles and San Francisco), the enforcement period for civil monetary judgments is 10 years.

• In New South Wales, Australia (covering Sydney), the enforcement period is 12 years.

• In British Columbia, Canada (covering Vancouver), the enforcement period is 10 years.

• In Singapore, the enforcement period is 6 years.

• In Hong Kong, the registration of mainland judgments has a 2 years limitation period, while recognition and enforcement under common law allows 6 years.

Many Chinese debts originate from the post-2015 investment boom, with related judgments and arbitral awards obtained thereafter, triggering the start of enforcement limitation periods. Failure to promptly seek enforcement abroad risks the expiration of these periods, resulting in the loss of legal enforceability.

7. Obstacles and Tactics: Overcoming Barriers to Recovery

In the pursuit of international asset recovery, financial creditors face multifaceted challenges involving legal technicalities and professional expertise. These hurdles stem not only from debtors' cross-border asset transfer tactics but also from the diverse legal frameworks across jurisdictions. To overcome these obstacles, creditors must adopt targeted strategies, integrating domestic legal practices with international cooperation mechanisms to enhance recovery success rates.

I. Legal Challenges and Solutions

The primary legal obstacle in international recovery lies in procedural issues, particularly with default judgments and notarized debt instruments in cross-border enforcement.

In many cases, debtors relocate overseas or deliberately evade litigation, making it impossible to serve summons or ensure their substantive awareness of domestic Chinese litigation or arbitration proceedings. Under Chinese law, when direct service is infeasible, courts resort to methods such as postal service, substituted service, or public announcement. While these methods satisfy domestic procedural requirements, they often fail to demonstrate that the debtor was meaningfully informed of the proceedings. Consequently, foreign courts reviewing Chinese default judgments or arbitral awards may find that the debtor's right to a defense was inadequately protected, violating due process principles, and refuse recognition and enforcement. Recent Australian cases have rejected Chinese judgments on these grounds.

To address this, creditors should employ multiple service methods during domestic litigation—such as phone calls, text messages, emails, or social media notifications—to ensure the debtor's actual awareness of the proceedings and retain evidence of such efforts. For existing default judgments, creditors must gather robust proof that the debtor was aware of the litigation prior to trial, thereby strengthening the enforceability of the judgment in foreign courts.

Additionally, the cross-border enforcement of notarized debt instruments poses significant challenges. In China, notarized debt instruments carry direct enforcement power, allowing creditors to seek court execution without full trial proceedings, significantly reducing recovery costs. This tool is widely used in Chinese financial transactions. However, in foreign jurisdictions, notarized debt instruments often lack the formal characteristics of a "judgment" and the adversarial process involving both parties, leading to perceptions of procedural deficiencies and enforcement failures. A recent Hong Kong High Court case, for instance, declined to recognize a notarized debt instrument due to such defects, a precedent likely to influence other common-law jurisdictions.

To overcome this limitation, proactive creditors are adopting a "dual-track" strategy: before seeking enforcement of notarized debt instruments, they initiate litigation or arbitration under relevant jurisdictional rules to obtain a court judgment or arbitral award. This approach preserves domestic enforcement options while enhancing the likelihood of successful cross-border recovery.

II. Professional Expertise Challenges and Solutions

Another significant challenge in cross-border asset recovery is the high threshold for professional expertise.

First, creditors' legal teams must possess deep expertise in international legal services, including proficiency in international litigation and arbitration procedures, as well as the specific processes for asset enforcement, such as evidence discovery, asset freezing, receivership, seizure, auctions, and bankruptcy proceedings.

Second, recovery efforts require interdisciplinary capabilities, encompassing commercial investigations, cryptocurrency tracing, and capital markets operations, to counter debtors' sophisticated asset transfer strategies.

Finally, international collaboration is critical. Debtors' assets often span multiple jurisdictions, necessitating legal teams that are well-versed in the legal systems of key asset destinations (e.g., the United States, Canada, Australia, New Zealand) and capable of establishing efficient cooperation mechanisms with local professional firms. This enables synchronized asset recovery actions across jurisdictions, creating a cohesive international enforcement network.

Encouragingly, China's legal services industry has progressively developed professional teams with these capabilities through the practice of international financial claims enforcement. These efforts demonstrate that cross-border recovery serves not only as a challenge but also as a proving ground for cultivating specialized talent. As this field grows, an increasing number of international legal professionals are entering the arena, further bolstering the competitiveness of Chinese financial creditors in global asset recovery.

8. Cost Dilemma: Litigation Finance Empowers International Recovery

The high legal costs associated with cross-border asset recovery pose a core barrier for Chinese financial creditors seeking to pursue claims in foreign jurisdictions. The rise of third-party litigation funding is reshaping the landscape of international asset recovery, offering a transformative solution to overcome these financial challenges.

I. High Legal Costs of International Recovery

The substantial legal costs of international recovery represent a primary obstacle for Chinese creditors pursuing enforcement abroad. Firstly, civil litigation procedures in common-law jurisdictions differ significantly from those in China. Rooted in the inquisitorial system, Chinese enforcement processes are primarily court-driven, with judicial costs largely borne by the courts. In contrast, common-law jurisdictions operate on an adversarial system, where asset enforcement is driven by the parties and their legal counsel, with costs predominantly borne by the parties themselves. Secondly, legal fee structures vary starkly. In common-law jurisdictions, legal services are priced at a premium and typically billed hourly, unlike the fixed-fee or contingency-fee models common in China. This requires Chinese creditors to pay legal fees upfront, with overall costs often difficult to predict.

II. Innovative Solutions to the Cost Dilemma

Litigation funding offers an effective solution to address these cost challenges. Third-party litigation funding (also known as Litigation Finance) is an emerging investment model where funders advance all or part of the legal costs, receiving a return only upon a successful outcome and recovery of proceeds. This mechanism not only enables financially constrained parties to access judicial remedies but also provides robust support for Chinese creditors to actively engage in cross-border litigation and protect their legitimate interests. Leading litigation funders, with ample financial resources, ensure sustained investment in cases, preventing disruptions due to funding shortages. Additionally, their specialized expertise, accumulated over years in specific domains, offers creditors comprehensive strategic support beyond mere financial backing.

Third-party funding has gained preliminary acceptance in China. The China International Economic and Trade Arbitration Commission (CIETAC) incorporated third-party funding provisions in its 2024 Arbitration Rules, while its Hong Kong Arbitration Centre issued the Guidelines on Third-Party Funding for Arbitration as early as 2017. Chinese judicial precedents further reflect an open stance toward third-party funding. For instance, in the case of Sunan Ruili Air Co., Ltd. v. CDB Aviation Lease Finance (Tianjin) Co., Ltd. regarding the annulment of an arbitral award, the Beijing Fourth Intermediate People's Court issued Civil Ruling No. (2022) Jing 04 Min Te 368, determining that "the funding activities of the third-party funding institution involved did not violate existing laws or arbitration rules, nor did they affect the fairness of the arbitration decision." In this case, the state-owned enterprise CDB Aviation Lease Finance (Tianjin) Co., Ltd. received funding from the third-party litigation funder IMF Bentham Limited, now merged with Omni Bridgeway and operating globally under the unified name Omni Bridgeway Limited.

III. Global Pursuit of Financial Claims with Third-Party Funding

In the realm of global financial claims recovery, litigation funding plays a pivotal role. It not only enables Chinese financial creditors to initiate cases previously sidelined due to budget constraints but also, with its substantial financial backing, supports the simultaneous pursuit of multiple cross-border recovery actions, ensuring creditors do not miss critical enforcement windows. Litigation funding is clearing barriers for Chinese financial creditors in cross-border litigation, providing a new pathway to realize claims and resolve debts.

Chinese international legal professionals have developed specialized expertise in collaborating with third-party litigation funders throughout this process. Chinese lawyers play a crucial role in securing opportunities for creditors to partner with these funders. Given the rigorous case selection criteria and diverse preferences of funders, Chinese lawyers' professional services are instrumental in facilitating effective connections and securing support. After facilitating partnerships between creditors and funders, Chinese lawyers continue to serve as the central hub for Chinese creditors, orchestrating the entire cross-border enforcement process and coordinating asset recovery actions across multiple jurisdictions to ensure efficient progress.

[15] See Civil Ruling No. (2022) Jing 04 Min Te 368((2022)京04民特368号民事裁定书).

Chapter Two Enabling PRC Onshore Creditors: Funded Recovery of Non-Performing Loans

Authors: Anthony Ellwood-Russell, Marijn Flinterman

Litigation finance offers a powerful solution for onshore creditors seeking to recover their non-performing loans ("NPLs"): it shifts the financial risk and time burden of debt recovery actions to a third-party, thereby allowing creditors to pursue best-in-class cross-border recovery solutions without tying up their own internal resources or balance sheets. This allows creditors to maximise recoveries whilst preserving liquidity and focusing on core operations.

1. Historical context

Beginning in 2016, the People's Republic of China ("PRC") set about deleveraging its economy through tightening the flow of credit. Authorities took a number of measures including bolstering regulatory oversight, reducing the size of the country's "shadow banking" system where a large portion of lending was taking place and, in 2020, the "Three Red Lines" policy was introduced to stem excessive leverage amongst real estate developers (who are typically reliant on debt finance in their capital chains).

The impact of these changes can be seen today in a reduction of the size of the shadow banking system as well as the collapse of certain high-profile developers. Having curbed lending in these areas, the regulators are now turning their attention to local government financing vehicles in order to address debt issues at the local level.

2. Recent experience

Over the past 24 months, we at Omni Bridgeway have seen a significant increase in interest in our debt recovery funding offering from PRC onshore banks, asset management companies (i.e. "bad banks") and a multitude of non-bank financial institutions. These creditors have sought assistance with recovering on their NPLs, many of which feature the following characteristics:

(1) A loan was granted by the creditor to an onshore corporate borrower;

(2) The loan was unsecured, with the ultimate beneficial owner or key principal of the borrower issuing a personal guarantee to the creditor;

(3) The corporate borrower defaulted on the loan and did not offer sufficient recourse, typically because of insolvency, mismanagement and/or fraud;

(4) The personal guarantor used "underground" banking or informal value transfer systems to dissipate assets to an offshore jurisdiction;

(5) The personal guarantor left the jurisdiction, typically (but not necessarily) to a non-extradition common law jurisdiction;

(6) In certain cases, the creditors were able to realise some domestic recoveries (often through notarised debt instruments) but the bulk of the claim remains unpaid; and

(7) In most cases, the creditors are unaware of either (i) the exact location of the key principal / personal guarantor or (ii) what assets they hold.

3. Commercial considerations

For non-domiciled funders, transacting with state-owned onshore creditors can present a unique set of challenges for a variety of reasons and, whilst individual experiences may vary, the following are common themes:

(1) Hesitance in making decisions around settlement (they often rely on domestic court orders in deciding the reasonableness of domestic recoveries, which do not factor into cross-border debt recovery proceedings);

(2) Extensive KYC processes; and

(3) Concerns around cultural barriers when dealing with foreign counterparties.

Moreover, the incentive of any NPL creditor is often an outright disposal in order to free their balance sheet from the contagion of the NPL. One issue with the purchase and assignment of unsecured assets backed only by personal guarantees (normally from individuals who have left the jurisdiction) is that it is hard to determine a fair value of the asset.

The alternative to an outright purchase is a classic funding agreement wherein the creditor is paid upon successful recoveries and, in such scenarios, funders seeking to transact with PRC counterparties are often compared to local lawyers who operate through the country's contingency framework, as follows:

(a) for the portion [of recoveries] below 1 million CNY [USD 140k], the maximum percentage is 18%;

(b) for the portion [of recoveries] between 1 million [USD 140k] and 5 million CNY [USD 700k], the maximum percentage is 15%;

(c) for the portion [of recoveries] between 5 million [USD 700k] and 10 million CNY [USD 1.4m], the maximum percentage is 12%;

(d) for the portion [of recoveries] between 10 million [USD 1.4m] and 50 million CNY [USD 7m], the maximum percentage is 9%; and

(e) for the portion [of recoveries] above 50 million [USD 7m], the maximum percentage is 6%.[7]

The cost of capital for litigation funders is such that few if any funders will be able to contend with single digit percentage recoveries. Omni Bridgeway aims to educate creditors that the capital we can provide is "value-added", and comes with a suite of global, best-in-class legal and investigative expertise that enables creditors to unlock value from non-performing assets.

Our NPL solutions are always bespoke and aim to address all requirements of the creditor. Typical structures include:

(1) outright purchase and assignment;

(2) purchase with a (partial) earn-out element; or

(3) a contractual structure providing a funding and recovery framework, in which both the creditor and the funder are paid out of actual recoveries.

4. Our approach

We typically undertake several steps in our due diligence:

(1) Conduct "skip tracing" to locate the whereabouts of the personal guarantor;

(2) Identify assets of the personal guarantor in the relevant jurisdiction; and

(3) Develop a global debt recovery strategy.

[7] China Issues New Rules on Lawyers' Fees, Regulating Contingent Fees [Internet]. China Justice Observer; 2021, available at: https://www.chinajusticeobserver.com/a/china-issues-new-rules-on-lawyers-fees-regulating-contingent-fees

In numerous instances, we see debtors' assets having been transferred to relatives or proxies which would necessitate our funding "*alter ego*" arguments in relation to the fraudulent transfer. These require careful consideration since the calculus shifts from calling on the personal guarantee (in the above example) to the funding of a more complex tort claim.

Turning to instruments, we see many onshore creditors understandably making use of notarised debt instruments (公证债权文书). These instruments function as a "shortcut" to domestic recoveries since they allow liquidation of assets to begin immediately after a default has occurred.

A key question arises as to how foreign courts will treat these instruments and, whilst case law currently appears limited, we see in the appeal of *China Minsheng Trust Co., Ltd. ("Minsheng") v. Fu Kwan* as heard in the High Court of the Hong Kong SAR Court of Appeal the appellant Minsheng attempted to "export" a Beijing No. 3 Intermediate People's Court Execution Notice pertaining to a notarised debt instrument into Hong Kong through the Mainland Judgments (Reciprocal Enforcement) Ordinance, with the Court of Appeal finding that the instrument did not constitute a judgment given that "The relevant sums of money were determined, not by the Beijing Court in the Rulings, but by the Beijing Notary Office, to be payable."

Given that recognition was not possible through the Mainland Judgments (Reciprocal Enforcement) Ordinance, it is difficult to envisage how courts with no proximity to the PRC would ratify these instruments as enforceable (for detailed analysis on this topic, see *The Enforcement Challenges of Chinese Notarial Debt Instruments in Common Law Jurisdictions: A Case Study of China Minsheng Trust Co., Ltd. v. FU KWAN*)[17]. This is why our preference is to consider the funded recovery of NPLs which have crystallised into either judgment debts or arbitral awards. (Many of which were handed down in default with the guarantor having fled the jurisdiction, which raises questions of merits since the debt will have to be proved in the jurisdiction where recognition is sought.)

Another consideration for funders is the existence of other "competing" creditors, with the risk being that these third-party creditors will wait for a funder to take the substantive recovery steps before proving their debt at the eleventh hour (for example, in bankruptcy proceedings). The effect of this "piggybacking" is a dilution of the funded creditor's return, so the personal guarantor's aggregate exposure to potential claims must be considered holistically.

As legal debt recovery experts, NPL specialists and Mandarin speakers, we see a significant opportunity to partner with PRC onshore creditors in their debt recovery efforts. As a parting caution, we would encourage creditors to reach out sooner rather than later due to (i) the ability of the counterparties to make themselves "judgment proof" as time elapses and (ii) the time that has passed since many of these NPLs crystallised into judgment debts or awards, which may result in issues of "time barring" in the common law jurisdictions where the assets to be recovered are found.

[8] The Enforcement Challenges of Chinese Notarial Debt Instruments in Common Law Jurisdictions: A Case Study of China Minsheng Trust Co., Ltd. v. FU KWAN [Internet]. 2025, available at: https://www.yuanddu.com/2025/05/28/the-enforcement-challenges-of-chinese-notarial-debt-instruments-in-common-law-jurisdictions-a-case-study-of-china-minsheng-trust-co-ltd-v-fu-kwanabstract/

Chapter Three Case Studies: Real-World Applications of International Asset Recovery

Authors: Guodong Du, Ting Luo

This chapter presents a curated selection of eighteen representative cases of international asset recovery by Chinese financial creditors, chosen for their commercial significance.

These cases aim to provide Chinese financial creditors with relatable and practical references. By examining recovery actions undertaken by peer institutions abroad, creditors can benchmark their own pending claims and form realistic expectations for future cross-border efforts.

The core characteristics of the selected cases are as follows:

- Comprehensive Creditor Representation: The cases encompass a wide range of Chinese financial creditors, including banks, trust companies, securities firms, private equity funds, financial leasing companies, and private lenders.

- Pronounced Cross-Border Dynamics: Most cases involve debts formed domestically, triggered by the debtor's offshore asset holdings, necessitating cross-border recovery.

- Piercing the Corporate Veil: The majority of cases arise from domestic corporate financing, where personal guarantees by controlling shareholders enable creditors to pursue their overseas personal assets.

- Targeted Key Jurisdictions: The cases center on jurisdictions where Chinese debtors most commonly allocate assets, such as the United States, Canada, Australia, the United Kingdom, Hong Kong, Singapore, the Cayman Islands, and the British Virgin Islands (BVI).

- Diverse Debt Instruments: The cases cover various Chinese debt instruments enforced abroad, including civil judgments, mediation judgments, arbitral awards, and notarized debt instruments, distilling both successful strategies and lessons from failures.

- Balancing Innovation and Authority: The selection prioritizes recent cases to reflect current trends while including landmark cases that have shaped common-law jurisprudence.

Methodological Note: Case narratives anonymize sensitive details while preserving legally determinative facts.

1. Cases in U.S.

1.1 Zhang v. Yang et al.

1.1.1. Takeaways

The Zhang v. Yang et al. case represents a milestone for the recognition and enforcement of Chinese monetary judgments in the United States. Originating from a private lending dispute adjudicated in Beijing, the case marks the first time a Washington state court recognized a Chinese civil judgment and highlights the interaction between foreign judgment enforcement and U.S. bankruptcy proceedings.

I. Substantive Alignment and Due Process Support Recognition

This case demonstrates that U.S. courts are willing to recognize Chinese court judgments where procedural fairness is evident, and the substantive claim aligns with principles of contract law. The Fengtai District People's Court of Beijing rendered a default judgment in 2017 based on a loan agreement with a 24% annual interest rate—then the legal maximum under Chinese law.

In 2021, the King County Superior Court granted recognition under Washington's version of the Uniform Foreign-Country Money Judgments Recognition Act, affirming that the parties had adequate notice and opportunity to appear. The court's summary judgment ruling and follow-on damages award signal judicial comfort with the enforceability of well-documented and procedurally sound Chinese commercial judgments.

II. Cross-Border Enforcement Resilience in the Face of Chinese Judgment Revocation

After the Washington judgment was entered, the original Beijing judgment was later revoked by a different Chinese court in a separate case involving a third party. Nevertheless, the U.S. bankruptcy court (in related proceedings involving Chapter 11 reorganization in California) held that the confirmed reorganization plan—based on the recognized Chinese judgment—remained enforceable. The U.S. court emphasized that once a Chapter 11 plan is confirmed, its terms bind the debtor and cannot be undermined by subsequent foreign court actions. This reinforces the independent and finalizing nature of U.S. bankruptcy proceedings in cross-border disputes, even where foreign judicial outcomes shift.

III. Active Creditor Participation Prevents Judgment Avoidance in U.S. Bankruptcy

This case also illustrates the critical importance of creditor vigilance in U.S. bankruptcy. The debtor sought to avoid repayment by submitting an allegedly forged settlement agreement from 2019. The creditor timely intervened in the California Chapter 11 proceeding, presented expert evidence of forgery, and successfully opposed discharge. The bankruptcy court excluded the fraudulent document and accepted the Chinese judgment as a valid, enforceable claim. The court's deference to the creditor's advocacy and reliance on foreign judicial outcomes underscores the potential success of Chinese creditors who proactively engage with U.S. processes.

1.1.2. Case Brief

I. Background

In 2017, the Fengtai District People's Court in Beijing rendered a monetary judgment in favor of Ms. Zhang against Mr. Yang and his wife, Ms. Liu, for the repayment of a personal loan totaling RMB 14.65 million, with contractual interest of 24% per annum. The judgment, issued as a default ruling, was later recognized by the Superior Court of Washington for King County on December 22, 2021, pursuant to the state's enactment of the Uniform Foreign-Country Money Judgments Recognition Act.

The Washington court awarded Ms. Zhang a total of USD 4,698,122, including post-judgment interest accrued through December 2021. This case marked the first instance of a Washington state court and the sixth U.S. court overall recognizing and enforcing a Chinese court judgment—indicative of an increasingly reciprocal judicial recognition trend between the U.S. and China.

II. U.S. Proceedings

In March 2023, Mr. Yang filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Central District of California, seeking to restructure his debts. During the bankruptcy process, Mr. Yang attempted to introduce a 2019 "settlement agreement" allegedly signed by Ms. Zhang, claiming she had agreed to waive the remaining debt obligations.

Ms. Zhang challenged the document's authenticity, alleging that the signature was forged. She submitted expert handwriting analysis supporting her claim and argued that the document had never been raised in the original Chinese litigation nor in the U.S. recognition proceeding. The bankruptcy court ultimately rejected the purported settlement as lacking credibility and affirmed Ms. Zhang's claim as valid under the recognized Chinese judgment.

In a parallel development, in May 2022, the Beijing Second Intermediate People's Court, in a separate proceeding brought by a third-party creditor named Ms. Lu, revoked the original Fengtai court judgment from 2017.

Ms. Lu had filed an "execution objection action" (案外人执行异议之诉), claiming that his own debt claims against Mr. Yang and Ms. Liu predated Ms. Zhang's, and that Ms. Zhang's 2017 judgment was based on a fictitious debt relationship or had been repaid. The court agreed with Lu’ s position and issued a ruling that invalidated the Fengtai court's judgment.

This ruling—referred to by Ms. Zhang's counsel as the "Lu Case"—raised substantial legal questions about the finality and reliability of Chinese judgments once they have been recognized in the U.S. .

While the 2022 Chinese revocation order has legal consequences within China, its effect in the United States is highly limited. Under U.S. law, once a foreign judgment is recognized by a domestic court, any attempt to collaterally attack the judgment must meet high standards. The Ninth Circuit Bankruptcy Appellate Panel (BAP), in a 2024 decision, held that the existence of a post-recognition Chinese revocation does not, in and of itself, constitute grounds to vacate the U.S. recognition or enforcement order—especially when the revocation appears to be engineered through improper or collusive tactics.

The panel emphasized the importance of:
- Finality and fairness in the original foreign judgment.
- Proper service and due process in the foreign proceeding.
- The timing and credibility of challenges raised post-recognition.

U.S. courts will not revisit the merits of a foreign judgment unless it was procured by fraud, rendered in violation of fundamental due process, or contradicts public policy.

For further details, see Yun Zhang v. Rainbow USA Investments LLC, Zhiwen Yang et al., Case No. 20-2-14429-1 SEA.

1.2 Shanghai YR v. Xu, et al.

1.2.1. Takeaways

The *Shanghai YR v. Xu, et al.* case (hereinafter "Shanghai YR case") is a landmark precedent for Chinese creditors seeking to enforce Chinese monetary judgments in American courts. Originating from an equity transfer dispute in China, the case culminated in a 2022 New York appellate decision that clarified the path to recognition under the 1962 Uniform Foreign Money-Judgments Recognition Act.

I. Case-Specific Due Process as the Cornerstone for Recognition

The Shanghai YR case underscores that U.S. courts, particularly in New York, evaluate Chinese judgments on a case-specific basis under CPLR Article 53. The Appellate Division's 2022 reversal rejected generalized objections to China's judicial system, affirming recognition because the defendants had notice, counsel, and appellate rights in the Beijing proceedings.

II. Mitigating Risks of Generalized Procedural Objections

The trial court' s initial dismissal, based on U.S. State Department reports, highlights the risk of defendants using broad claims to challenge Chinese judgments. The Appellate Division overruled this, finding the reports irrelevant to the commercial dispute.

III. Leveraging Reciprocity and Strategic Venue Selection

The case reinforces the role of judicial reciprocity, as China's Civil Procedure Law (Article 282) conditions foreign judgment recognition on mutual practice. The Appellate Division's ruling bolsters the enforceability of Chinese judgments in the U.S., supporting reciprocity for U.S. judgments in China. New York's adoption of the 1962 Uniform Act makes it a favorable venue.

1.2.2. Case Brief

I. Background

Originating from an equity transfer and repurchase dispute in China, the case progressed to the United States, where Shanghai YR sought recognition and enforcement of a Chinese judgment in New York state courts. The litigation raised significant questions about the compatibility of Chinese judicial procedures with U.S. due process standards, culminating in a landmark appellate decision that clarified the approach to recognizing Chinese judgments.

The Shanghai YR case originated from a 2016 Equity Transfer Agreement in which Shanghai YR purchased a 1.667% stake in GI Group from KG Venture for RMB 200 million. The agreement included a repurchase clause, and a 2017 supplemental agreement obligated KG Venture and its controlling shareholder, Mr. Xu, to repurchase the stake by September 30, 2017, at the investment amount plus a 12% annual capital usage fee, with liquidated damages for non-compliance. KG Venture and Mr. Xu paid RMB 175 million, leaving RMB 25 million outstanding.

Shanghai YR sued KG Venture, Xu, and Xu's wife, Ms. Zhou, in the Beijing No. 1 Intermediate People's Court in 2018. The court ruled in Shanghai YR's favor on December 10, 2018, ordering KG Venture and Mr. Xu to pay RMB 25 million in repurchase price, RMB 26,061,333.33 in capital usage fees (as of April

12, 2018, at 12% annually), RMB 3,356,561 in liquidated damages (at 0.03% daily), and RMB 200,000 in attorney's fees, while dismissing claims against Zhou Fang. On appeal, the Beijing Higher People's Court adjusted the capital usage fee to RMB 25,704,328.77 (using a 365/366-day year) on May 20, 2019, upholding other findings. With no enforceable assets in China, Shanghai YR sought recognition in the U.S.

II. U.S. Proceedings

Shanghai YR's pursuit of enforcement in the U.S. began on August 13, 2020, when it filed an action in the New York Supreme Court, New York County, under Article 53 of New York's Civil Practice Law and Rules (CPLR), which incorporates the 1962 Uniform Foreign Money-Judgments Recognition Act. This statute allows recognition of foreign money judgments unless specific non-recognition grounds apply, such as lack of due process or impartial tribunals (CPLR 5304(a)(1)). The U.S. litigation unfolded in two phases: an initial trial court denial and a landmark appellate reversal, offering critical lessons for U.S. attorneys.

Trial Court Proceedings: Defendant Mr. Xu moved to dismiss under CPLR 3211(a)(1) and (a)(7), arguing that the Chinese judgment was rendered under a judicial system that warranted scrutiny for compliance with U.S. due process standards. Mr. Xu submitted the U.S. State Department's 2018 and 2019 related reports, which discussed certain aspects of Chinese judicial procedures, to suggest systemic concerns. He also noted that Shanghai YR's filing lacked a certified translator's affidavit, violating CPLR 2101(b). Shanghai YR countered that the Chinese proceedings were fair, emphasizing that defendants had counsel, presented their case, and appealed, satisfying due process. Shanghai YR argued that the State Department reports addressed unrelated contexts and did not qualify as "documentary evidence" under CPLR 3211(a)(1).

On April 30, 2021, the trial court issued its decision (2021 NY Slip Op 31459(U)), accepting the State Department reports as "documentary evidence" due to their perceived clarity and authority. Relying on the reports' descriptions, the court concluded that the Chinese judgment's procedural foundation required further evaluation and declined recognition. The missing translator's affidavit provided an additional basis for dismissal. This ruling raised alarms for Chinese creditors, as it implied that Chinese judgments could face blanket rejection in New York and other states using the 1962 or 2005 Uniform Acts, kindizing cross-border enforcement.

Appellate Proceedings: Shanghai YR appealed to the New York Supreme Court, Appellate Division, First Department, challenging the trial court's reliance on the State Department reports and its due process findings. Shanghai YR's legal team meticulously documented the Chinese proceedings, highlighting:

- Defendants' access to experienced counsel throughout the Beijing litigation.

- Full opportunity to present evidence and arguments at trial.
- Exercise of appellate rights before the Beijing Higher People's Court.
- Transparent judicial processes, with written judgments detailing the courts' reasoning.

Shanghai YR argued that these elements met U.S. due process standards, which require notice and a fair opportunity to be heard (*CIBC Mellon Trust Co. v. Mora Hotel Corp.,* 100 NY2d 215 (2003)). It further contended that the State Department reports were not "documentary evidence" under CPLR 3211(a)(1), as they lacked specificity to this commercial dispute and were not dispositive (*Fontanetta v. John Doe 1*, 73 AD3d 78 (2d Dep't 2010)). The reports' focus on unrelated contexts did not undermine the fairness of this case's proceedings.

On March 10, 2022, the Appellate Division unanimously reversed the trial court (2022 NY Slip Op 01523). The court held that the State Department reports did not constitute "documentary evidence" and failed to refute Shanghai YR's evidence of procedural fairness. The Appellate Division emphasized that due process assessments must be case-specific, not based on generalized assumptions about a foreign judicial system. Finding that the Chinese proceedings provided defendants with notice, representation, and appellate review, the court concluded that CPLR 5304(a)(1) did not bar recognition. The reversal allowed the case to proceed, affirming the enforceability of the Chinese judgment.

For further details, see Shanghai Yongrun Inv. Mgmt. Co. v. Xu, et al., 203 A.D.3d 495, 160 N.Y.S.3d 874 (N.Y. App. Div. 2022).

1.3 Three Chinese Investment Partnerships v. Qin, et al.

1.3.1. Takeaways

This case is stemming from a private equity investment dispute in China's audiovisual sector, the case culminated in arbitration under CIETAC Rules 2015 and enforcement proceedings in the U.S. District Court for the Southern District of New York, affirmed by the Second Circuit Court of Appeals in 2023.

I. Case-Specific Notice as a Prerequisite for Enforcement

This case emphasizes that U.S. courts evaluate the enforceability of Chinese arbitral awards under the New York Convention on a case-specific basis, with a focus on procedural fairness. The S.D.N.Y. and Second Circuit upheld the CIETAC award, finding that notice sent to an agreed Beijing address, per the parties' Supplemental Agreement and CIETAC Rules, was "reasonably calculated" to inform the respondents, satisfying Article V(1)(b) of the New York Convention and U.S. due process standards (Iran Aircraft Indus. v. Avco Corp., 980 F.2d 141 (2d Cir. 1992)).

This reinforces that challenges to notice must demonstrate specific deficiencies, not rely on generalized claims like a respondent's absence abroad.

II. Strategic Enforcement in U.S. Jurisdictions

The successful enforcement in the S.D.N.Y., affirmed by the Second Circuit, confirms New York as a favorable venue for recognizing Chinese arbitral awards under the New York Convention. The courts' deference to awards with procedurally fair notice strengthens predictability for cross-border enforcement. Chinese creditors should leverage this precedent to pursue assets in New York, while anticipating defenses under Article V(1)(b) or Federal Rule of Civil Procedure 60(b)(1), ensuring robust evidence of notice compliance.

1.3.2. Case Brief

I. Background

This case originated from a private equity investment dispute in China's audiovisual and film industry, culminating in international arbitration and enforcement proceedings in the United States District Court for the Southern District of New York, with an appeal to the Second Circuit Court of Appeals. Conducted under the China International Economic and Trade Arbitration Commission (CIETAC) Rules 2015 in Beijing, with Chinese law governing, the dispute arose from a 2017 Capital Increase Agreement and Supplemental Agreement between the claimants—three Chinese investment partnerships—and the respondents, including Mr. Qin, the target company and the others.

The claimants invested CNY 1.5 billion for a 9.37% stake in the target company, valuing the company at CNY 13.5 billion. The Supplemental Agreement included a Valuation Adjustment Mechanism (VAM) requiring the target company to achieve CNY 787.88 million in net profit for 2017 and complete an initial public offering (IPO) within 60 months. Failure to meet these conditions triggered a buyback obligation. In 2017, the target company reported only CNY 312.8 million in net profit, and IPO efforts were derailed by judicial freezes on the company's equity, Mr. Qin's five-year market ban by the China Securities Regulatory Commission in 2018, and the company's designation as a "dishonest debtor." The claimants initiated arbitration, seeking CNY 20.841 billion in buyback payments, a 5% equity transfer at a nominal price of CNY 1, CNY 6.75 billion in liquidated damages (later adjusted), and additional deposit-related damages, asserting joint liability among all respondents.

The claimants filed for arbitration with CIETAC, alleging breaches of the VAM conditions due to the performance shortfall and IPO failure. They argued that the respondents' actions, including equity freezes and Mr. Qin's regulatory sanctions, violated obligations under the agreements, triggering the buyback clause. The respondents countered that the Supplemental Agreement was an invalid

"equity-debt disguise" under Chinese law, that Mr. Qin was not an "original shareholder" liable for buyback, and that external factors, such as a 2018 Equity Trust Agreement and alleged audit inaccuracies, excused performance. They also challenged the arbitration notice's validity, claiming ineffective service due to Mr. Qin's prolonged absence abroad.

The CIETAC tribunal rejected the respondents' defenses, affirming the validity of the Capital Increase Agreement and Supplemental Agreement, including the VAM's commercial reasonableness under Chinese law. It found that the audited 2017 net profit, confirmed by a professional firm and acknowledged by the target company, substantiated the performance breach. The tribunal further determined that the equity freezes, Mr. Qin's market ban, and the company's "dishonest debtor" status constituted insurmountable IPO obstacles, breaching the agreements' cooperation and warranty provisions. Mr. Qin was held liable as the actual controller and an "original shareholder" under the Supplemental Agreement, while the target company and the others were liable for violating cooperation obligations. The tribunal adjusted the claimants' requested liquidated damages from CNY 6.75 billion (based on a daily 0.5% rate, equating to 180% annually) to CNY 4.5 billion, citing fairness, and reduced deposit-related penalties from 24% to 9% annually.

The arbitral award, issued in April 2021, ordered the respondents to: (1) pay CNY 20.841 billion in buyback payments (with 15% annualized interest, less CNY 30 million in paid advisory fees); (2) transfer 5% equity in the target company to the claimants for CNY 1; (3) pay CNY 4.5 billion in liquidated damages; (4) pay CNY 514,600 in deposit-related damages (with 9% interest); and (5) bear arbitration costs, with all respondents jointly liable.

II. U.S. Proceedings

Unable to enforce the award in China due to the respondents' lack of assets, the claimants sought recognition and enforcement in the S.D.N.Y. under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The respondents, led by Mr. Qin, opposed enforcement, invoking Article V(1)(b) of the New York Convention, which permits refusal if a party was not properly notified or unable to present its case. They argued that CIETAC's notice, sent to an agreed address in Beijing (per the Supplemental Agreement), was ineffective, as Mr. Qin was abroad. They also sought relief under Federal Rule of Civil Procedure 60(b)(1), alleging excusable neglect.

On October 11, 2022, the S.D.N.Y. (Judge Failla) rejected these objections, finding that CIETAC's notice complied with the Supplemental Agreement and CIETAC Rules, satisfying the "reasonably calculated" notice standard under U.S. due process (citing *Iran Aircraft Indus. v. Avco Corp.*, 980 F.2d 141 (2d Cir. 1992)). The court emphasized that the respondents had agreed to the Beijing address for service, rendering their notice objections meritless. The judgments confirmed the award's enforceability.

Mr. Qin appealed to the Second Circuit, reiterating the notice deficiency and seeking to strike certain documents. On appeal, the Second Circuit unanimously affirmed the S.D.N.Y.'s rulings, holding that the notice was sufficient under the New York Convention and U.S. due process standards. The court dismissed Mr. Qin's motion to strike as moot, as it did not rely on the contested documents, and denied the claimants' motion for sanctions. The decision, issued circa 2023, reinforced the enforceability of the CIETAC award in the U.S.

For further details, see Huzhou Chuangtai Rongyuan Inv. Mgmt. P' ship v. Shenzhen SMi Shengdian Culture Media Grp. Co., No. 21 CV 5621 (S.D.N.Y. Mar. 31, 2023), aff'd, Second Circuit (circa 2023).

1.4 ZT Company v. Y, et al.

1.4.1. Takeaways

This case arises from a commercial lending dispute originating in China. The dispute led to arbitration in China, followed by a petition to confirm and enforce the arbitral award in the United States under the New York Convention. The case has navigated through the U.S. District Court for the Central District of California and the Ninth Circuit Court of Appeals, highlighting critical issues of notice, agreement validity, and cross-border enforcement.

I. Critical Role of Proper Notice in Arbitration Enforcement

The Ninth Circuit's focus on notice underscores the importance of ensuring that arbitration proceedings comply with due process requirements under the New York Convention. American lawyers representing foreign creditors must verify that notices were properly served and documented, as inadequate notice can jeopardize enforcement. In this case, the undelivered notices and unclear findings on Mr. Y's control over notified entities led to a remand. Counsel should obtain detailed records of notice attempts (e.g., postal receipts, email confirmations) and, where applicable, evidence linking respondents to entities that received notice, such as corporate control documents.

II. High Interest Rates in Foreign Awards

The district court's acceptance of the 20% annual interest rate in the arbitral award highlights that U.S. courts may uphold high interest rates in commercial contracts if validly agreed upon and confirmed in a foreign arbitration. Lawyers should ensure that loan agreements clearly document the agreed interest rate and its commercial justification, as this strengthens enforceability under the New York Convention. However, counsel must be prepared to address potential public policy challenges to high rates in jurisdictions with stricter usury laws.

III. Forgery as a Non-Waivable Defense

The Ninth Circuit's ruling on the forgery defense clarifies that challenges to the validity of an arbitration agreement, such as forgery, are not waived by non-participation in arbitration. This aligns with the principle that arbitration requires consent *(AT&T Techs., Inc. v. Commc' ns Workers of Am.*, 475 U.S. 643 (1986)). Lawyers defending or opposing enforcement must thoroughly investigate the authenticity of underlying agreements, securing evidence like signed originals, witness statements, or notarized documents to counter forgery claims.

1.4.2. Case Brief

I. Background

On November 16, 2017, ZT Company entered into a loan agreement with the Borrower, under which ZT Company lent RMB 30 million at an annual interest rate of 20% for a nine-month term. The agreement required monthly interest payments and repayment of the principal upon maturity. Governed by Chinese law, the loan agreement stipulated that disputes would be resolved through good-faith negotiations, failing which either party could initiate arbitration before the Beijing Arbitration Commission. Concurrently, ZT Company secured three Performance Joint Liability Guarantee Letters from Mr. Y, Ms. L, and Shanghai ZJ (collectively, "Guarantors"), holding them jointly and severally liable for the Borrower's obligations, including principal, interest, damages, and related costs. The guarantee letters incorporated the same arbitration clause as the loan agreement (Exhibit B, Art. 11). Mr. Y, the Borrower's actual controller, held 95% of Shanghai ZJ's equity.

The Borrower defaulted by failing to make interest payments and repay the principal by the September 22, 2018, maturity date. ZT Company assigned RMB 15 million of the loan principal to a third party under a Recoupment Agreement. On November 20, 2018, ZT Company initiated arbitration against the Borrower and Guarantors before the Beijing Arbitration Commission to recover the remaining RMB 15 million principal. Hearings were held on July 11 and December 17, 2019, with Mr. Y and Ms. L failing to appear despite notification.

On March 24, 2020, the tribunal issued a final award in ZT Company's favor, ordering the Borrower to pay RMB 15 million in principal, RMB 5.3167 million in interest as of November 20, 2018, ongoing interest at 20% per annum from November 21, 2018, until repayment, RMB 10,000 in attorneys' fees, and RMB 159,183.50 in arbitration costs. The Guarantors, including Mr. Y and Ms. L, were held jointly and severally liable.

Discovering that Mr. Y and Ms. L had relocated to the United States, ZT Company filed a petition in the U.S. District Court for the Central District of California in 2022 to confirm and enforce the award under the New York Convention. ZT Company provided certified copies and English translations of the loan

agreement, guarantee letters, arbitral award, and Chinese Arbitration Law, supported by a declaration from counsel Rongping Wu and an amended memorandum of points and authorities.

II. U.S. Proceedings

Discovering that Mr. Y and Ms. L had relocated to the United States, ZT Company filed a petition in the U.S. District Court for the Central District of California in 2022 to confirm and enforce the award under the New York Convention. ZT Company provided certified copies and English translations of the loan agreement, guarantee letters, arbitral award, and Chinese Arbitration Law, supported by a declaration from counsel and an amended memorandum of points and authorities.

On January 12, 2024, the district court (Judge Kenly Kiya Kato) granted ZT Company's petition to confirm and enforce the arbitral award. Applying the Federal Arbitration Act (FAA), 9 U.S.C. § 207, and the New York Convention, 9 U.S.C. § 201 et seq., the court found the award arose from a commercial legal relationship within the Convention's scope. The court ordered Mr. Y and Ms. L, under the guarantee letters, to be jointly and severally liable for: RMB 15 million in unpaid principal; RMB 5.3167 million in interest as of November 20, 2018, plus ongoing interest at 20% per annum from November 21, 2018, until repayment; RMB 159,183.50 in arbitration costs; and costs of the confirmation proceeding.

The court retained jurisdiction to ensure compliance. As of March 11, 2022, the total amount owed was approximately RMB 30,396,431.45. The court rejected any grounds for refusal under Article V of the New York Convention, finding no evidence of invalid agreements, improper notice, or public policy violations, and noted the respondents' failure to timely move to vacate the award under 9 U.S.C. § 12.

Mr. Y and Ms. L appealed to the Ninth Circuit Court of Appeals (Case No. 24-736), raising two defenses: (1) lack of proper notice of the arbitration proceedings under Article V(1)(b) of the New York Convention, and (2) forgery of the guarantee letters, rendering the arbitration agreement invalid under Article V(1)(a). On February 27, 2025, the Ninth Circuit issued a non-precedential memorandum, vacating the district court's judgment and remanding for further proceedings (Document: Ninth Circuit Memorandum).

1. Proper Notice Issue: The respondents argued that the Beijing Arbitration Commission failed to provide proper notice, as notices sent to their last-known Chinese addresses were returned undelivered. ZT Company countered that Mr. Y, as the actual controller of corporate entities that received notice and participated in the arbitration, was effectively notified. The district court acknowledged the undelivered notices but relied on ZT Company's allegations without making clear factual findings on Mr. Y's control over the entities. The Ninth Circuit, citing *Castro v. Tri Marine Fish Co. LLC*, 921 F.3d 766 (9th Cir. 2019), held that the district court failed to adequately address the

statutory conditions for confirmation. It vacated this portion of the judgment, remanding for the district court to determine whether Mr. Y controlled the notified entities and whether proper notice was provided.

2. Forgery Defense: The respondents claimed the guarantee letters were forged, invalidating the arbitration agreement. The district court held that they waived this defense by not raising it during arbitration. The Ninth Circuit disagreed, citing *Al-Qarqani v. Chevron Corp*., 8 F.4th 1018 (9th Cir. 2021), which establishes that forgery is a valid defense under the New York Convention, as arbitration requires consent. A party alleging lack of consent need not raise the issue in the arbitration itself (*Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.,* 925 F.2d 1136 (9th Cir. 1991)). The court vacated the waiver ruling, remanding for the district court to consider the forgery claim. It suggested prioritizing the forgery issue, as a finding of no valid agreement would moot the notice question.

For further details, see Zhongtie Dacheng (Zhuhai) Investment Management Co., Ltd. v. Yan, No. 8:22-cv-00461-KK-ADS (C.D. Cal. Jan. 12, 2024), vacated and remanded, No. 24-736 (9th Cir. Feb. 27, 2025).

2. Cases in Canada

2.1 Wei v. Mei

2.1.1. Takeaways

This case provides critical guidance for navigating the enforcement of foreign judgments, particularly Chinese civil settlement statement/mediation judgment, in British Columbia. These cases illustrate the Canadian courts' approach to recognizing foreign judgments, ensuring procedural fairness, and addressing high interest rates.

I. Rigorous Assessment of Natural Justice in Chinese Court-connected Mediation

The British Columbia courts' thorough scrutiny of the Chinese mediation process in civil litigation highlights the importance of verifying that foreign proceedings meet natural justice standards under *Beals v. Saldanha,* 2003 SCC 72. In Wei, the courts rejected claims of inadequate notice and unauthorized representation, relying on evidence of the defendants' participation, including authorized proxies and mediation records. Canadian lawyers must ensure foreign judgments, especially mediation-based ones, are supported by robust documentation of notice (e.g., service records, authorization documents) and voluntary consent. Chinese creditors should proactively address potential defenses by obtaining certified court records and affidavits, as the defendants' failure to prove a "reasonable apprehension of unfairness" was fatal to their case.

Given Vancouver's significant Chinese population and frequent cross-border transactions, Wei establishes a precedent for enforcing Chinese mediation agreements in British Columbia. The case's success enhances creditor confidence in pursuing assets held by Chinese nationals in Vancouver, a common destination for asset relocation. Lawyers should highlight this precedent to clients, emphasizing the courts' willingness to enforce mediation judgments while advising on procedural and evidentiary rigour to withstand natural justice challenges. This is particularly relevant for commercial disputes involving loans, guarantees, or real estate, prevalent in Vancouver's Chinese business community.

II. Application of Notional Severance to Foreign Judgment Interest Rates

The courts' novel extension of Transport v. New Solutions, 2004 SCC 7, to adjust a 73% penalty rate to the 60% cap under Criminal Code s. 347 marks a significant development in foreign judgment enforcement. The majority in *Wei v. Li* held that notional severance preserves creditor recovery while respecting Canadian public policy, balancing comity with statutory limits ([2019 BCCA 114, para. 43]).

However, Justice Willcock's dissent, advocating for holistic enforcement or re-litigation on the original cause (*Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52), signals ongoing debate ([2019 BCCA 114, para. 53-56]). Chinese creditors should structure arguments around Transport's four factors (preventing usury, intent, bargaining power, debtor windfalls) to secure maximum enforceable interest, while preparing alternative claims under the original contract to mitigate risks of judicial disagreement.

2.1.2. Case Brief

I. Background

The Wei v. Mei cases stem from a commercial lending dispute in China between plaintiff Mr. Wei, a Chinese citizen, and defendants Mr. Mei, Ms. Li (Mei's wife), and the Hebei Company, which is controlled by Mei and Li. In December 2010, Wei lent the Hebei Company RMB 11 million, followed by a consolidated loan agreement in August 2012 for RMB 23.2 million, guaranteed by Mei and Li. The agreement, governed by Chinese law, required repayment by August 31, 2012, with a default penalty of 0.3% daily. The Hebei Company defaulted, prompting Wei to sue in China's Tangshan Intermediate People's Court.

On March 14, 2014, the parties reached a mediated settlement, formalized in a civil mediation agreement on April 21, 2014, and confirmed by a civil mediation judgment on May 14, 2014. The judgment obligated the Hebei Company, Mei, and Li to pay RMB 38.3264 million (principal, interest, penalties, and losses) by June 14, 2014, with a 0.2% daily penalty (73% annualized) for late payment. Partial enforcement in China yielded RMB 13.2549 million, leaving a principal balance of RMB 25.0715 million. Discovering Mei and Li's assets in British Columbia, Wei filed suit in the British Columbia Supreme Court in 2017 to enforce the Chinese mediation judgment, securing a Mareva injunction to freeze the defendants' properties.

II. Canadian Proceedings

On February 1, 2018, Justice Macintosh of the British Columbia Supreme Court granted Wei's summary trial motion to enforce the Chinese mediation judgment. The court applied the framework from *Beals v. Saldanha*, 2003 SCC 72, requiring a foreign judgment to demonstrate: (1) jurisdiction via a "real and substantial connection," (2) finality, and (3) no valid defenses (fraud, denial of natural justice, or public policy violations).

The court found jurisdiction, as the loan was executed in China, the Hebei Company was a Chinese entity, and the defendants participated in the Chinese proceedings. The mediation judgment's finality was confirmed by its non-appealable status and the Hebei High Court's 2017 rejection of the defendants' retrial request. The defendants raised defenses of fraud (alleging forged documents and

non-existent loans) and denial of natural justice (claiming no notice of the mediation and unauthorized representation by Mr. Dong, an employee of the Hebei Company). Justice Macintosh rejected these defenses, citing extensive evidence of the defendants' participation, including Dong's authorization via a power of attorney bearing Li's seal, a second authorization with Li's signature and fingerprint, and mediation records showing voluntary agreement. The Hebei High Court's findings and the defendants' inconsistent claims (e.g., abandoning fraud allegations) undermined their credibility. The court admitted Chinese court documents under the Evidence Act (§ 26), supported by Wei's affidavits and red-stamped originals, dismissing hearsay objections.

However, the 73% penalty rate violated Canada's Criminal Code (§ 347), capping effective annual interest at 60%. The court deferred the remedy to a supplemental hearing, finding the issue separable from the judgment's enforceability.

On June 27, 2018, Justice Macintosh issued a supplemental ruling (*Wei v. Mei*, 2018 BCSC 1057) to address the principal amount, currency conversion, and interest rate remedy. The parties agreed the outstanding principal was RMB 25.0715 million, converted to CAD 5,041,018.39 at a 0.2015 exchange rate (as of June 27, 2018). The court focused on the 73% penalty rate, which Wei argued should be adjusted to 60% under Transport v. New Solutions, 2004 SCC 7, a Canadian precedent allowing "notional severance" of usurious rates to the legal maximum. Li countered that Transport applied only to domestic contracts and that foreign judgment interest was integral, citing *Dingwall v. Foster*, 2013 ABQB 424, and *Livesley v. E. Clemens Horst Co.*, 1924 SCR 605. Alternatively, Li proposed applying the low rates (2-5%) under the Court Order Interest Act (R.S.B.C. 1996, c. 79).

Justice Macintosh adopted Transport, extending its four-factor test (preventing usury, absence of predatory intent, equal bargaining power, and avoiding debtor windfalls) to foreign judgments. The court found the 73% rate was voluntarily agreed in mediation, not predatory; the defendants were sophisticated commercial actors; and removing interest would unjustly enrich them. Adjusting the rate to 60% preserved Wei's recovery while complying with Canadian law. Interest from June 14, 2014, to June 27, 2018, totaled RMB 80.9376 million, converted to CAD 16,308,923.21. The court ordered Mei, Li, and the Hebei Company jointly liable for CAD 5,041,018.39 (principal) and CAD 16,308,923.21 (interest), maintaining the Mareva injunction and awarding costs.

Li appealed, challenging the natural justice finding and interest rate adjustment (Wei v. Li, 2019 BCCA 114). On April 9, 2019, the Court of Appeal, led by Justice Newbury (with Justice Smith concurring), upheld the Supreme Court's rulings, while Justice Willcock dissented on the interest issue.

For further details, see Wei v. Mei, 2018 BCSC 157; Wei v. Mei, 2018 BCSC 1057; Wei v. Li, 2019 BCCA 114.

2.2 SLIC v. Lu, et al.

2.2.1. Takeaways

This case arises from a commercial dispute originating in China, concerning a CIETAC arbitral award. The dispute has navigated through the Ontario Superior Court of Justice (Commercial List) and the Court of Appeal for Ontario, addressing issues of arbitral award enforcement, property preservation, security for costs, and partial summary judgment.

I. Robust Enforcement of Arbitral Awards Under the New York Convention

The Ontario Superior Court's recognition of the CIETAC arbitral award in 2024 ONSC 2762 reaffirms Canada's commitment to the New York Convention, facilitating enforcement of foreign arbitral awards with minimal grounds for refusal. The creditor's success in obtaining recognition by providing certified copies and translations of the award and agreement underscores the importance of procedural compliance.

Toronto, as Ontario's capital and a major destination for Chinese immigrants, is a focal point for cross-border asset recovery due to its concentration of Chinese-held assets, particularly real estate. In this case, the credito targeted two Ontario properties registered in the name of the debtor's wife, alleging they were held in trust for the debtor. The proceedings, heard in Toronto's Commercial List court, highlight the city's role as a key venue for Chinese creditors seeking to enforce judgments or arbitral awards.

II. Stringent Requirements for Property Preservation Orders

The dismissal of SLIC's interim preservation order in 2023 ONSC 399 highlights Ontario's rigorous standards for pre-judgment asset restraint, which differ significantly from practices in China. In Ontario, the court rejected the creditor's reliance on Rule 45.01, emphasizing that such orders require a direct legal interest in the property, such as ownership or a contractual right, rather than a mere monetary claim or trust-based allegation. The creditor's failure to meet the stringent Mareva injunction test (demonstrating intentional asset dissipation) or to establish a direct property interest for a certificate of pending litigation underscored the high evidentiary threshold in Canada. Chinese creditors, particularly those accustomed to China's more lenient approach to obtaining property freezes, to distinguish between preservation orders (for evidence or specific rights) and Mareva injunctions (for preventing asset dissipation). To succeed, Chinese creditors should secure robust evidence, such as detailed financial records proving funding sources, to substantiate claims of beneficial ownership or intentional asset transfer.

III. Security for Costs as a Barrier for Non-Resident Plaintiffs

The court's order in 2023 ONSC 399 requiring the creditor to post $225,000 in security for costs

underscores the significant financial hurdles faced by non-resident plaintiffs in Ontario. The success of the debtor's wife in securing this order, based on SLIC's lack of Ontario assets and the complexity of the trust claim, highlights the importance of early assessment of clients' local asset holdings by counsel. Chinese creditors must budget for substantial security deposits and consider strategies such as settling with secondary defendants (as SLIC did with the corporate defendants) to minimize exposure. Demonstrating a strong likelihood of success, supported by robust evidence, may help mitigate the imposition or quantum of such orders.

2.2.2. Case Brief

I. Background

On November 8, 2016, the creditor SLIC entered into a Share Subscription and Capital Increase Agreement with a Chinese listed company founded by Mr. Lu, investing over CAD $470 million. Concurrently, SLIC and Mr. Lu executed a Supplemental Agreement, stipulating that if the Chinese listed company's share price failed to reach a specified threshold by May 8, 2020, Mr. Lu would pay SLIC the shortfall. The agreement, governed by Chinese law, included an arbitration clause mandating disputes be resolved by CIETAC. When the Chinese listed company's share price fell short, Mr. Lu became liable for RMB 1,189,535,620 (approximately CAD $233 million).

Mr. Lu failed to pay, prompting SLIC to initiate arbitration before CIETAC. On October 5, 2020, CIETAC issued a final award ordering Mr. Lu to pay the full amount plus costs, effective immediately. Mr. Lu made no payments.

II. Canadian Proceedings

In May 2022, SLIC commenced an action in the Ontario Superior Court of Justice (Commercial List) in Toronto against Mr. Lu, his wife Ms. Guo, and four corporations indirectly held by Ms. Guo. SLIC sought: (1) recognition of the CIETAC award as an enforceable judgment under the International Commercial Arbitration Act, 2017 (ICAA); and (2) declarations that two Ontario properties registered in Ms. Guo's name were held in trust for Mr. Lu, enabling enforcement against them. SLIC settled with the corporate defendants, leaving Mr. Lu and Ms. Guo as active defendants.

SLIC moved for an interim preservation order under Rule 45.01(1) to prevent Ms. Guo from disposing of the properties, alleging Mr. Lu funded their purchase, creating a resulting trust. Ms. Guo sought security for costs under Rule 56.01(1), citing SLIC's non-residency and lack of Ontario assets.

Preservation Order: Ms. Guo argued Rule 45.01 was inappropriate, as SLIC aimed to prevent asset dissipation, requiring a Mareva injunction (Rule 40) or certificate of pending litigation (Rule 42). SLIC conceded it could not meet the Mareva test and lacked a direct property interest for a CPL. Conway J.

dismissed the motion, holding that Rule 45.01 applies to preserving evidence or assets where a direct legal right exists, not for restraining dissipation based on a trust theory (Sadie Moranis Realty Corporation v. 1667038 Ontario Inc., 2012 ONCA 475). Allowing such use would bypass stricter Mareva requirements. SLIC was ordered to pay Ms. Guo $100,000 in costs.

Security for Costs: Ms. Guo met the Rule 56.01 threshold, as SLIC was a non-resident with insufficient Ontario assets. The court assessed the claim's merits, noting conflicting evidence: Ms. Guo claimed she funded the properties, while SLIC cited Ms. Guo's 2020 bankruptcy testimony suggesting Mr. Lu's financial control. Given unresolved legal issues (e.g., whether creditors can enforce against trust-held spousal property absent fraud, per *Vandokkumberg v. H. Meyer Construction Ltd*., 2007 BCSC 1341, vs. *Moody v. Ashton*, 2004 SKQB 488), SLIC's likelihood of success was uncertain. The court ordered SLIC to post $225,000 in security for costs up to discovery and $15,000 for the motion.

SLIC moved for recognition of the CIETAC award and partial summary judgment. Mr. Lu characterized the motion as improper partial summary judgment, arguing it would lead to multi-front litigation.

Award Recognition: SLIC provided certified copies and translations of the award and Supplemental Agreement, complying with Article IV of the New York Convention. Mr. Lu raised no valid defenses under Article V. Citing *Yugraneft Corp v. Rexx Management Corp*., 2010 SCC 19, Steele J. recognized the award as an enforceable judgment.

Partial Summary Judgment: Applying *Butera v. Chown, Cairns LLP* (2017 ONCA 783) and *Malik v. Attia* (2020 ONCA 787), the court found the recognition issue discrete from the trust dispute, posing no risk of inconsistent findings. Bifurcation was cost-effective and expedient, as recognition was a threshold issue. Mr. Lu concerned about multi-front enforcement were dismissed, given the $233 million debt and three-and-a-half-year delay. The court rejected Mr. Lu's request to stay enforcement under Rule 20.08 and ordered him to pay SLIC $17,750 in costs.

For further details, see Shanghai Lianyin Investment Co. Ltd. v. Lu, 2023 ONSC 399, 2023 ONCA 285, 2024 ONSC 2762.

3. Cases in Australia

3.1 Bank of China Limited v Chen

3.1.1. Takeaways

This case, adjudicated by the Supreme Court of New South Wales, addresses the enforcement of two Chinese civil mediation judgments (民事调解书, Minshi Tiaojie Shu, or "MTS") under Australian common law. The plaintiff, Bank of China, sought recognition and enforcement of judgments from China, against the defendant, Ms. Chen, for debts totaling RMB ¥17,990,172.26 and RMB ¥22,372,474.11. The case raises pivotal issues concerning the characterization of Chinese civil mediation judgments as "judgments," the procedural requirements for service outside Australia, and the application of common law principles to China-related international asset recovery.

I. Recognition of Chinese Civil Mediation Judgments as Enforceable Judgments

The Supreme Court's decision to recognize the Chinese civil mediation judgments as enforceable under Australian common law underscores the flexibility of common law jurisdictions in interpreting foreign judicial outcomes. The court held that an MTS constitutes a "judgment" under the Uniform Civil Procedure Rules 2005 (NSW) (UCPR) Schedule 6(m), as it establishes *res judicata* and derives coercive authority from the issuing court, aligning with Australian common law criteria (*Chamberlain v Deputy Commissioner of Taxation* [1988] HCA 21; *Beck v Weinstock* [2012] NSWCA 289). This determination was made despite the defendant's contention that, under Chinese law, an MTS is a mediation agreement rather than a judgment. The court’ s reliance on Australian law to define "judgment" highlights a key principle: the enforceability of foreign judicial documents depends on their legal effect in the forum jurisdiction, not their classification in the foreign jurisdiction.

The decision aligns with precedents in other common law jurisdictions, such as British Columbia (*Wei v Mei* [2018] BCJ No 163), Hong Kong (*Ng Yuk Keung* [2018] HKDC), and New Zealand (*Feng v Ye* [2014] NZHC 2377), which have recognized MTS as enforceable judgments. This trend signals a growing harmonization in common law approaches to Chinese judicial mediation outcomes, facilitating cross-border enforcement for creditors, particularly in jurisdictions like Australia with significant Chinese diaspora and asset holdings.

II. Service of Process Without Leave Under UCPR Schedule 6(m)

The court's dismissal of the defendant's motion to set aside service of the plaintiff's summons reinforces the procedural autonomy granted by UCPR Schedule 6(m), which permits service outside Australia without leave when seeking to enforce a foreign judgment. The plaintiff's compliance with

service requirements, evidenced by affidavits confirming personal service in China, was upheld as valid. This ruling clarifies that documents qualifying as "judgments" under Australian law trigger automatic service rights, reducing procedural barriers for foreign creditors.

III. Costs and Procedural Strategy in Cross-Border Litigation

The court's application of the "costs follow the event" principle, ordering the defendant to pay the plaintiff's costs, reflects the financial risks defendants face in challenging enforceable foreign judgments. The rejection of the defendant's application to vary a prior costs order further emphasizes the judiciary's reluctance to revisit settled cost allocations absent compelling reasons. For non-resident plaintiffs, such as Chinese financial institutions, this case highlights the need to anticipate significant litigation costs in Australia and to strategically assess the strength of their claims early to mitigate financial exposure.

3.1.2. Case Brief

I. Background

The plaintiff, Bank of China, sought to enforce two civil mediation judgments issued on October 23, 2019, by the People's Court of Jimo District, Qingdao, Shandong Province, China. These judgments arose from financial loan disputes involving the defendant, Ms. Chen, among others, and obligated her to pay RMB ¥17,990,172.26 and RMB ¥22,372,474.11, respectively, covering principal and interest. The judgments were the product of judicial mediation, formalized as civil mediation judgments (MTS), signed by the parties' legal representatives and affixed with the court's seal.

On December 24, 2020, the plaintiff filed a summons in the Supreme Court of New South Wales, seeking recognition and enforcement of the MTS under common law principles, as China is not a designated jurisdiction under the Foreign Judgments Act 1991 (Cth). The summons was served on the defendant in Shandong Province, China, on January 7, 2021, without prior leave, pursuant to UCPR Schedule 6(m). The defendant filed a notice of motion on April 21, 2021, seeking to set aside the summons and service, arguing that the MTS did not constitute "judgments" under UCPR Schedule 6(m), thus requiring court leave for service outside Australia.

II. Australian Proceedings

The court, presided over by Harrison AsJ, issued its decision on June 7, 2022, addressing the defendant's motion and the plaintiff's enforcement action.

The central issue was whether the MTS constituted "judgments" under UCPR Schedule 6(m) and Australian common law. The plaintiff relied on expert evidence from Associate Professor Jie (Jeanne)

Huang, who asserted that an MTS, once signed and sealed, establishes res judicata and is enforceable without further court orders, equivalent to a Chinese civil judgment (民事判决书, Minshi Panjue Shu, or MPS) under Chinese Civil Procedure Law Article 234 (Huang Report 1.10.21 [23]-[28]). The defendant's expert, Professor Lin, argued that an MTS is a mediation agreement under Chinese law, requiring party consent and thus distinct from a judgment (Lin Report 21.1.21 [42]-[44]). However, Lin conceded that an MTS has the same legal effect as an MPS once formalized (Lin Report 21.1.21 [51]).

The court held that the definition of "judgment" is governed by New South Wales law, not Chinese law, per the Interpretations Act 1987 (NSW) s 12(1)(b). Under common law, a judgment is an order that creates *res judicata* and derives coercive authority from the court (*Chamberlain v Deputy Commissioner of Taxation [1988]* HCA 21; *Beck v Weinstock* [2012] NSWCA 289). The court found that the MTS met these criteria, as they were final, binding, and enforceable without further judicial action, supported by expert evidence and precedents from other common law jurisdictions. Consequently, the MTS were recognized as enforceable judgments.

The defendant sought to set aside the summons and service under UCPR rr 11.6 and 12.11, contending that the MTS were not "judgments," rendering service without leave invalid. The court rejected this, affirming that the MTS qualified as judgments under UCPR Schedule 6(m), allowing service without leave. Evidence of personal service in China, corroborated by affidavits (Qiu Aff 8.6.21; Zhang Aff 8.6.21), satisfied procedural requirements.

The court applied the common law criteria for enforcing foreign judgments, as outlined in *Bao v Qu; Tian* (No 2) [2020] NSWSC 588:

1. Jurisdiction in the International Sense: The defendant's authorized legal representative appeared in the Chinese proceedings, agreeing to mediation, establishing voluntary submission to jurisdiction (Huang Aff 11.12.20 [5]-[8]).

2. Final and Conclusive: The MTS were final, creating *res judicata*, and enforceable without further orders (Huang Report 1.10.21 [23]-[28]; Cao Report 19.2.21 [3.5]-[3.8]).

3. Identity of Parties: The defendant's identity was confirmed through matching personal details in the MTS and service documents (Zhang Aff 8.6.21 Annexure "A").

4. Fixed Liquidated Sum: The MTS specified fixed sums of RMB ¥17,990,172.26 and RMB ¥22,372,474.11.

The court found all criteria satisfied, rendering the MTS enforceable.

The defendant sought to vary a prior costs order by Registrar Mr. K Jones (October 19, 2021), requesting each party bear their own costs for expert reports. The court dismissed this, upholding the original order and applying the "costs follow the event" principle, ordering the defendant to pay the plaintiff's costs.

For further details, see Bank of China Limited v Chen [2022] NSWSC 749.

3.2 Xu v Wang

3.2.1. Takeaways

In this case, the plaintiff, Mr. Xu, sought to enforce a Chinese judgment from the Ningbo Intermediate People's Court in Australia, alongside claims under a loan agreement and a dishonored cheque. The Supreme Court of Victoria refused to recognize the Chinese judgment due to improper service, fraud, and abuse of process, and dismissed Xu's substantive claims for lack of consideration.

I. Ensure Proper Service to Avoid Breaches of Natural Justice

In the Ningbo proceedings, the creditor served the debtor via public notice despite knowing the debtor's contact details from the Australian litigation. The court found this violated Article 92 (now Article 95) of China's Civil Procedure Law (2012), which permits public notice only when a defendant’ s whereabouts are unknown or service cannot otherwise be effected. This improper service deprived Wang of notice and a defense opportunity, breaching natural justice—a cornerstone of common law that requires proper notification and a fair hearing. Consequently, the Chinese judgment was unenforceable in Australia.

Public notice, common in Chinese default judgments, is often viewed skeptically in common law jurisdictions. Creditors may hesitate to notify debtors directly to prevent asset dissipation or due to social considerations. However, failing to use known contact details risks foreign courts interpreting this as deliberate deprivation of due process, as seen in *Yoon v Song* [2000] NSWSC 1147. Creditors must attempt direct service through known channels (e.g., email, phone, physical address, or messaging apps like WeChat) before resorting to public notice, even if local courts permit it. Retain evidence of service attempts (e.g., email receipts, courier records) to demonstrate compliance with natural justice.

II. Avoid Improper Parallel Proceedings to Prevent Abuse of Process

The creditor initiated parallel proceedings in China a year after commencing Australian litigation, without disclosing the Chinese action to the debtor or the Australian court after obtaining the

Chinese judgment. The Australian court deemed this an abuse of process, as the action in China duplicated the Australian claim, wasted judicial resources, and aimed to circumvent the debtor's defenses (e.g., failure of consideration). Citing CSR Ltd v Cigna Insurance Australia Ltd (1997) 189 CLR 345, the court emphasized that undisclosed parallel litigation undermines judicial integrity.

Parallel proceedings increase costs, risk conflicting judgments, and may be viewed as abusive if they overlap significantly in scope. Creditors should evaluate whether a single jurisdiction suffices, especially if assets are concentrated in one location. Creditors must disclose all concurrent proceedings to every relevant court, including details of claims, defenses, and documents. Courts may examine the intent behind parallel actions, and creditors should articulate legitimate reasons for multi-jurisdictional litigation (e.g., asset distribution across countries).

3.2.2. Case Brief

I. Background

This case was heard by the Supreme Court of Victoria, Commercial Court, with judgment delivered on April 30, 2019, by Cameron J. The plaintiff, Mr. Xu, a Chinese national residing in Australia, sought to enforce a civil judgment issued on March 25, 2016, by the Ningbo Intermediate People's Court in Zhejiang Province, China (the "Chinese Judgment"). The Chinese Judgment ordered the defendant, Mr. Wang, also a Chinese national residing in Australia, to repay AUD $1.3 million plus interest in connection with a loan dispute. Alternatively, Xu sought remedies under Australian law for a loan agreement and a dishonored cheque, both related to an investment in the Heritage Golf and Country Club redevelopment project in Melbourne, Australia.

The dispute arose from a failed property development project led by G COMPANY and its associated trust, G Trust. The project collapsed due to financial difficulties, entering voluntary administration on January 31, 2014, and liquidation on April 17, 2014. Xu claimed to have provided short-term loans totaling AUD $2.3 million to G COMPANY and entered into a loan agreement with Wang on December 11, 2013, lending AUD $1.3 million for Wang's investment in G Trust units. The loan was to be repaid by January 31, 2014, with 1% monthly interest, secured by Wang’ s trust units. Xu alleged he fulfilled his obligation by reducing his G COMPANY loan balance by AUD $1.3 million via a "contra agreement." On January 20, 2014, Wang issued a cheque for AUD $1.3 million to Xu, which was dishonored on February 28, 2014, due to insufficient funds.

Xu initiated proceedings in the Supreme Court of Victoria in March 2014 (case number S CI 2014 01312), claiming the loan amount, cheque amount, or damages for breach of contract. In July 2015, without notifying Wang or the Australian court, Xu commenced parallel proceedings in the Ningbo Intermediate People's Court, seeking repayment of the same AUD $1.3 million debt. The Ningbo court served Wang via public notice, and Wang did not appear, resulting in a default judgment. On

January 27, 2017, Xu amended his statement of claim in the Australian proceedings to include a request for recognition and enforcement of the Chinese Judgment as an alternative to his substantive claims.Wang defended the Australian proceedings, arguing that the Chinese Judgment was unenforceable due to improper service, fraud, and abuse of process. He also contended that the loan agreement and cheque lacked consideration, as Xu failed to pay AUD $1.3 million to G COMPANY as agreed.

II. Australian Proceedings

The trial took place from September 3–7, 10–12, 17–19, and October 11, 2018, before Cameron J, who addressed Xu's claims (enforcement of the Chinese Judgment, loan, and cheque) and Wang’ s counterclaim.

The court evaluated the enforceability of the Chinese Judgment under Australian common law principles, which require a foreign judgment to meet four criteria: (1) the foreign court had jurisdiction in the international sense; (2) the judgment is final and conclusive; (3) the parties are identical; and (4) the judgment is for a fixed, liquidated sum. Wang conceded jurisdiction (due to his domicile in China) and that the judgment was final, with identical parties and a fixed sum (AUD $1.3 million plus interest). However, Wang raised defenses of improper service (contrary to natural justice), fraud, and abuse of process.

The court found that Xu served Wang via public notice in the Ningbo proceedings, despite knowing Wang's contact details from the Australian litigation, including his Australian address, email, and phone number. Under Article 92 (now Article 95) of the Civil Procedure Law of the People's Republic of China (2012), public notice is permissible only when the defendant’ s whereabouts are unknown or service cannot otherwise be effected. The court held that Xu's use of public notice was improper, as he deliberately avoided direct service, depriving Wang of notice and an opportunity to defend. This constituted a breach of natural justice, a fundamental principle in common law jurisdictions requiring proper notification and a fair hearing opportunity. Citing *Yoon v Song* [2000] NSWSC 1147, the court concluded that improper service alone justified refusing recognition of the Chinese Judgment.

The court further found that Xu failed to disclose critical facts to the Ningbo court, including the existence of the Australian proceedings, Wang's defenses (e.g., failure of consideration), and key documents such as the loan agreement, investment agreement, and project management agreement. Under common law, fraud includes withholding material facts that could influence the court's decision. By concealing these matters, Xu obtained the Chinese Judgment on an incomplete factual basis, which the court deemed fraudulent within the meaning of common law. This provided an additional ground for non-recognition.

Xu's initiation of parallel proceedings in Ningbo, without informing Wang or the Australian court, was held to be an abuse of process. The Ningbo action duplicated the Australian litigation, seeking the same AUD $1.3 million debt. Xu's failure to disclose the parallel proceedings until January 2017, after obtaining the Chinese Judgment, was seen as an attempt to bypass Wang's defenses in Australia. Citing *CSR Ltd v Cigna Insurance Australia Ltd* (1997) 189 CLR 345, the court held that such conduct wasted judicial resources and undermined the integrity of the Australian proceedings, further justifying refusal to enforce the Chinese Judgment.

Based on these findings—improper service, fraud, and abuse of process—the court declined to recognize or enforce the Chinese Judgment.

Xu claimed AUD $1.3 million plus interest under the December 11, 2013, loan agreement, alleging he fulfilled his obligation by reducing his AUD $2.3 million loan balance to G COMPANY by AUD $1.3 million via a contra agreement. Wang argued that Xu failed to pay AUD $1.3 million to G COMPANY, resulting in a total failure of consideration, and that the agreement implied Xu would ensure Wang received 24 G COMPANY shares, which did not occur.

The court examined evidence, and concluded that Xu failed to perform his obligation to pay AUD $1.3 million to G COMPANY, resulting in a total failure of consideration. Consequently, the loan agreement was unenforceable, and Xu’ s claim was dismissed.

Xu sought AUD $1.3 million under the Cheques Act 1986 (Cth) for the dishonored cheque issued by Wang on January 20, 2014. Wang argued that the cheque lacked consideration, as it was issued pursuant to the loan agreement, which itself failed for lack of consideration. The court agreed, finding that the cheque's validity depended on the loan agreement's enforceability. Citing Pollard v Wilson [2010] VSCA 255, the court held that a cheque tied to an underlying contract fails if the contract lacks consideration. As the loan agreement suffered a total failure of consideration, the cheque claim was also dismissed.

For further details, see Xu v Wang [2019] VSC 269.

3.3 GA Group v Xue

3.3.1. Takeaways

This case offers critical insights for Chinese creditors handling cross-border debt enforcement, particularly the recognition and enforcement of Chinese arbitral awards in Australia. The case demonstrates the strategic use of freezing orders, contempt of court proceedings, and robust enforcement mechanisms to recover approximately AUD 43 million.

I. Leverage Freezing Orders to Secure Assets Early

Freezing orders are a powerful tool to prevent debtors from dissipating assets, ensuring creditors' interests are protected during enforcement proceedings. In this case, the creditor secured an ex parte freezing order, prohibiting the debtor and her controlled entity, from disposing of assets up to

AUD 43,409,320.56. The order's global scope and swift issuance preserved assets critical to enforcing a Beijing arbitral award.

II. Pursue Contempt of Court to Enforce Compliance

Breaches of freezing orders can trigger contempt of court proceedings, compelling debtor compliance and reinforcing judicial authority. The debtor transfer of AUD 798,687.65 to her mother's account shortly after the freezing order's service, and her overspending of AUD 59,303 on living expenses, led to criminal and civil contempt findings. The court's ruling and subsequent three-month suspended sentence, underscored the consequences of non-compliance.

Enforcement proceedings and contempt charges create significant pressure, often leading to favorable settlements. The creditor's persistent pursuit, including freezing orders and contempt allegations, culminated in a June 2024 settlement where the debtor paid AUD 43 million and AUD 930,000 in costs, leading to the discharge of the freezing order. The settlement resolved the dispute efficiently, avoiding prolonged litigation.

III. Capitalize on Australia's Robust Enforcement of Chinese Arbitral Awards

Australia's commitment to the 1958 New York Convention ensures Chinese arbitral awards are enforceable with high certainty. The creditor's enforcement of a 2021 Beijing Arbitration Commission award (RMB 189.7 million principal plus RMB 22.34 million interest), judgment for approximately AUD 42 million (AUD 43 million with interest). The debtor's unsuccessful defenses and withdrawn appeal highlight the difficulty of challenging valid awards.

3.3.2. Case Brief

I. Background

This case centers on the enforcement in Australia of a Beijing Arbitration Commission award arising from a RMB 200 million debt dispute between GA Group, a Chinese company, and Ms. Xue, a Chinese national residing in Sydney. On January 26, 2021, the Beijing Arbitration Commission ordered Ms. Xue to pay GA Group approximately RMB 189.7 million in principal and RMB 22.34 million in interest, equivalent to AUD 43 million.

In China, GA Group promptly pursued enforcement, securing a bank account freeze on March 8, 2021, and a consumption restriction order against Ms. Xue on May 14, 2021.However, Ms. Xue's significant Australian assets, including bank accounts and real estate, prompted GA Group to seek enforcement in Australia. Ms. Xue's awareness of potential asset freezes,evidenced by her subsequent actions, foreshadowed contempt proceedings. The case underscores the interplay of international arbitration and asset preservation strategies.

II. Australian Proceedings

In August 2022, GA Group initiated proceedings in the Federal Court of Australia to enforce the arbitral award and sought a freezing order to prevent Ms. Xue from dissipating assets. On August 31, 2022, the court granted an ex parte freezing order, prohibiting Ms. Xue and Tredmore Pty Ltd, her controlled entity, from disposing of assets up to AUD 43,409,320.56. The order restricted asset dealings, mandated disclosure, and permitted limited exceptions: AUD 2,000 weekly living expenses (later increased to AUD 4,200), AUD 200,000 for legal fees, ordinary business dealings, and contractual obligations with prior notice. A penal notice warned of imprisonment or asset seizure for non-compliance.

On September 14, 2022, the order was served personally at Ms. Xue's Sydney residence, including two packages. Within minutes, Ms. Xue sent images of the packages via WeChat to her lawyer, and at 10:57 AM transferred AUD 20,000 to her mother's account (controlled by Ms. Xue). After a call with her lawyer, she transferred AUD 78,687.65 and AUD at 7:30 AM the next day, totaling AUD 798,687.65. Ms. Xue claimed the transfers were to support her mother and son due to fears of insufficient funds, citing unfamiliarity with Australian freezing orders and Chinese asset preservation experiences. However, the timing and scale of the transfers suggested an intent to evade the order, forming the crux of contempt allegations.

Ms. Xue was required to disclose her assets. On October 3, 2022, she filed an affidavit disclosing Australian bank deposits of AUD 10,778,865.73 but omitted details of her mother's account . Further affidavits on October 24 and November 8, 2022, reiterated the disclosure's completeness, but GA Group contested the omission of the mother's account.

On December 6, 2022, the Federal Court heard GA Group's application to enforce the Beijing arbitral award. GA Group argued the award complied with the New York Convention, while Ms. Xue contested its validity and procedural fairness, offering insufficient evidence. On December 22, 2022, the court recognized the award, ordering Ms. Xue to pay approximately AUD 42 million, upheld the freezing order, and awarded GA Group costs. Ms. Xue's appeal was withdrawn in October 2023, solidifying the judgment.

In November 2022, GA Group filed contempt proceedings, alleging Ms. Xue breached the freezing order. The charges, refined by July 2023, included: (1) transferring AUD 798,687.65, (2) overspending AUD 59,303 on living expenses and disposing of AUD 245,433.65 without notice, and (3) failing to disclose her mother's account. On February 1-2, 2024, the court heard the contempt application under a criminal standard of proof. Findings on March 25, 2024, were:

Charge 1: The rapid transfers evidenced "wilful blindness" and intentional defiance, constituting criminal contempt.

Charge 2(a): Overspending reflected a lavish lifestyle, constituting criminal contempt.

Charge 2(b): Unauthorized disposals lacked intent, constituting civil contempt.

Charge 3: The disclosure obligation did not require specific account details, and the charge was dismissed.

In June 2024, GA Group and Ms. Xue settled, with Ms. Xue paying AUD 43 million and AUD 930,000 in costs. The freezing order was discharged on June 27, 2024, and the Registrar of the Federal Court pursued the contempt charges. Ms. Xue, having returned to China after her Australian visa was canceled on June 26, 2024, did not attend the December 18, 2024, sentencing hearing or show genuine remorse. On December 20, 2024, she was sentenced to three months' imprisonment, wholly suspended, conditional on paying the Registrar’ s indemnity costs.

For further details, see Guoao Holding Group Co Ltd v Xue [2022] FCA 1431; Guoao Holding Group Co Ltd v Xue (No 2) [2022] FCA 1584; Guoao Holding Group Co Ltd v Xue (No 3) [2023] FCA 689; Guoao Holding Group Co Ltd v Xue (Contempt) [2024] FCA 278; Guoao Holding Group Co Ltd v Xue (Sentencing) [2024] FCA 1503.

4. Cases in U.K.

4.1 HJAM & Anor v K

4.1.1. Takeaways

This case, a landmark in cross-border enforcement, involves the recognition and enforcement in England of two Chinese court judgments arising from private lending disputes. To our knowledge, it marks the first instance of Chinese court judgments being successfully enforced in England under common law, with the default interest stipulated under Article 253 of China's Civil Procedure Law also upheld.

I. Pioneering Enforcement of Chinese Judgments in England

This case establishes a groundbreaking precedent for Chinese creditors seeking to enforce Chinese court judgments in England. Creditors, Chinese companies HJAM and HBT, secured judgments from two district courts in Hangzhou, covering loan principal, contractual interest (24% per annum), and default interest for delayed performance. The English High Court's Commercial Court, through a summary judgment process, confirmed that the Chinese judgments met common law enforcement criteria: they were final and conclusive, issued by courts with competent jurisdiction (evidenced by the debtor's participation in Chinese proceedings and contractual jurisdiction clauses), and involved fixed or calculable sums. The court's swift approval, culminating in a judgment on December 19, 2022, highlights England's viability as an enforcement forum for Chinese creditors, particularly when debtors hold assets in England.

II. Recognition of China's Default Interest Regime

A significant breakthrough lies in the English court's recognition of default interest under Article 253 of China's Civil Procedure Law, reinforcing the enforceability of Chinese legal frameworks abroad. This provision imposes "double interest" for non-payment within ten days of a judgment, calculated at a daily rate of 0.0175% (annualized at 6.39%) per the 2014 Supreme People's Court Interpretation, resulting in a combined rate of 30.4% with contractual interest (24%). The debtor argued that this default interest constituted "multiple damages" under Section 5 of the Protection of Trading Interests Act 1980 (PTIA) or a penalty breaching English public policy. The court rejected both defenses, holding that default interest is a separate liability triggered by non-compliance, not a multiplication of compensatory sums, thus falling outside PTIA's scope. Furthermore, its rate, lower than the 8% statutory interest under Section 17 of the Judgments Act 1838, served legitimate aims—encouraging compliance and compensating creditors—aligned with English law, as supported by modern contract principles (Cavendish Square Holding BV v Talal El Makdessi [2015] UKSC 67).

4.1.2. Case Brief

I. Background

This case involves two Chinese creditors, HJAM and HBT, seeking enforcement of separate Chinese court judgments against the same debtor, Mr. K, arising from loan agreement disputes. HJAM's claim stems from a written loan agreement dated September 10, 2018, under which YL Company, a company controlled by K, borrowed RMB 21.5 million from HJAM at an annual interest rate of 24% for a term of 180 days, with Mr. K as guarantor. YL Company failed to repay the principal or interest, and Mr. K did not fulfill his guarantee obligations. HJAM initiated proceedings in the People's Court of Gongshu District, Hangzhou City, which on September 26, 2019, ruled in HJAM's favor, ordering YL Company and Mr. K to pay: (1) within ten days of the judgment, RMB 21,412,450 in principal, RMB 2,740,288.77 in interest up to April 10, 2019, ongoing interest at 24% per annum from April 11, 2019, and a guarantee service fee of RMB 24,150; and (2) double interest for delayed performance under Article 253 of the Civil Procedure Law of the People's Republic of China(PRC CPL) if payment was not made within the specified period. YL Company's appeal was dismissed on March 6, 2022, rendering the judgment final.

HBT's claim arises from two loan agreements dated May 29 and June 20, 2018, under which Mr. K borrowed RMB 25 million and RMB 14 million from Yu at an agreed interest rate of 36% per annum (later reduced to 24% due to Chinese legal limits), with a 90-day term. On January 7, 2019, Yu assigned the creditor's rights to HBT. Mr. K failed to repay the loans or interest, leading HBT to file a lawsuit in the People's Court of Jianggan District, Hangzhou City. On June 11, 2020, the court ruled in HBT's favor, ordering Mr. K to pay: (1) RMB 39 million in principal, RMB 7,083,999 in interest up to March 6, 2019, ongoing interest at 24% per annum from March 7, 2019, and RMB 200,000 in legal fees; and (2) double interest for delayed performance under PRC CPL Article 253 if payment was not made within ten days. An appeal by another guarantor was deemed withdrawn due to non-appearance, and the judgment became effective on November 7, 2020. Both judgments remain unsatisfied in China.

II. Proceedings in the UK

HJAM and HBT commenced proceedings in the English High Court of Justice, Business and Property Courts, Commercial Court, seeking recognition and enforcement of the Chinese judgments under common law. The cases were consolidated for hearing. HJAM sought an order for Mr. K to pay: (1) RMB 21,412,450 in principal, RMB 17,889,743.81 in contractual interest up to March 22, 2022, and RMB 24,150 in service fees; and (2) default interest under PRC CPL Article 253 (default interest) at a daily rate of 0.0175%. HBT sought an order for Mr. K to pay: (1) RMB 39 million in principal, RMB 35,574,301.37 in contractual interest up to March 22, 2022, and RMB 200,000 in legal fees; and (2) default interest at 0.0175% daily. On April 8, 2022, the claimants secured a freezing injunction from

Fraser J to preserve K's assets in England. Prior to the hearing, the claimants acknowledged an error in their default interest calculation, amending the daily rate from 0.175% to 0.0175%, reducing the total default interest claimed from approximately £7.285 million to £721,035.05, an amendment unopposed by K.

The claimants applied for summary judgment before Mr. K filed a defense, arguing that Mr. K had no real prospect of success. Mr. K raised four defenses: (1) the default interest was initially miscalculated (resolved by the claimants' amendment); (2) the Chinese judgments were unenforceable under Section 5 of the Protection of Trading Interests Act 1980 (PTIA) as they constituted "multiple damages"; (3) if the judgments were enforceable, the default interest should be refused as it constituted multiple damages; and (4) the default interest was an unenforceable penalty under English public policy. The hearing took place on December 5, 2022, with the judgment handed down remotely, by Christopher Hancock KC.

The court confirmed that the Chinese judgments met the common law requirements for enforcement: they were final and conclusive, issued by courts with competent jurisdiction (K participated in the Chinese proceedings and agreed to jurisdiction via contract terms), and for fixed sums. On the PTIA defense, the court held that the principal and contractual interest were not multiplied, and the default interest was a separate liability triggered by non-payment, not "multiple damages" under PTIA Section 5, as its purpose was to penalize delay and incentivize compliance rather than multiply compensatory sums. The court distinguished this case from SAS Institute Inc v World Programming Ltd [2019] FSR 30, applying *Lewis v Eliades* [2004] 1 WLR 692 to allow enforcement of non-multiplied components.

Regarding the penalty defense, the court noted that penalties under common law typically involve payments to the state, not private claimants. The default interest, payable to the claimants, was not a penalty in this sense. Citing *JSC VTB Bank v Skurikhin* [2014] EWHC 271 (Comm), the court assessed whether the interest rate was "manifestly excessive." The default interest rate (0.0175% daily, annualized at 6.39%) was lower than the 8% rate under Section 17 of the Judgments Act 1838, and its purpose aligned with English law's approach to incentivizing payment and compensating creditors. Modern contract law principles (Cavendish Square Holding BV v Talal El Makdessi [2015] UKSC 67) further supported enforceability, as the interest pursued a legitimate aim and was not extravagant. The court granted summary judgment, ordering Mr. K to pay HJAM approximately £5.009 million and HBT approximately £9.310 million.

On January 26, 2023, the court addressed costs. The claimants sought £50,780 for the summary judgment application and overall litigation costs, with an interim payment of £133,000. Mr. K argued that the claimants' initial overstatement of default interest caused unnecessary expense. The court awarded £47,780 for the application (reduced by £3,000 due to excessive legal staffing) and orderedMr. K to pay litigation costs, with the amount to be assessed. An interim payment of £110,000

was ordered to avoid overpayment. This case, believed to be the first instance of Chinese court judgments enforced in England, underscores the viability of the English High Court as a forum for Chinese creditors pursuing cross-border debt recovery.

For further details, see Hangzhou Jiudang Asset Management Co Limited & Anor v K [2022] EWHC 3265 (Comm), [2023] EWHC 130 (Comm).

4.2 HS Company v K & Ors

4.2.1 Takeaways

This case exemplifies the complexities and strategic considerations involved in enforcing a Shanghai International Economic and Trade Arbitration Commission (SHIAC) arbitral award across multiple jurisdictions, including China, Hong Kong, the British Virgin Islands (BVI), and the United Kingdom. The claimant, HS Company, pursued enforcement against the debtor, Mr. K, leveraging a combination of arbitral proceedings, freezing injunctions, disclosure orders, and charging order applications.

I. Adopt a Global Approach with Flexible Jurisdictional Strategies

This case underscores the necessity for creditors to maintain a global perspective and adapt enforcement strategies based on real-time asset tracing. After securing a SHIAC arbitral award, HS Company identified Mr. K's assets across multiple jurisdictions and initiated enforcement actions in Hong Kong, the BVI, and the UK. In Hong Kong and the BVI, HS Company obtained worldwide freezing and disclosure orders, but Mr. K’ s non-compliance prompted further investigation. When HS Company confirmed Mr. K's ownership of high-value UK assets, it triggered UK proceedings that led to a freezing injunction and enforcement order. Chinese Creditors must engage professional investigators or cross-border legal teams to track debtor assets globally, anticipate jurisdictional complexities, such as varying procedural rules, language requirements (e.g., Mandarin witness statements in the UK), and time estimates, ensuring efficient resource allocation and strategic flexibility.

II. Leverage the UK's Efficient Enforcement Framework for Chinese Arbitral Awards

The case highlights the UK's robust and efficient framework for recognizing and enforcing Chinese arbitral awards under the New York Convention, offering a reliable avenue for Chinese creditors. When HS Company applied to the Commercial Court of the High Court of England and Wales to enforce the SHIAC award, and Knowles J promptly registered it as a UK judgment under section 101 of the Arbitration Act 1996, finding no grounds for refusal under Article V of the New York Convention (e.g., procedural irregularity or public policy violations).The court's expeditious handling, via a

without-notice hearing, minimized delays, reinforcing the UK's creditor-friendly approach.

III. Utilize Freezing Injunctions and Disclosure Orders as Critical Asset Recovery Tools

Freezing injunctions and disclosure orders are indispensable in safeguarding creditor interests, as demonstrated by their pivotal role in this case. On 16 July 2021, Knowles J issued a domestic freezing injunction prohibiting Mr. K from disposing of UK assets, followed by an amended disclosure order. These measures aimed to prevent asset dissipation and ensure transparency. UBS documents disclosed revealed Mr. K's breaches, HS Company initiated contempt proceeding alleging violations of the freezing and disclosure orders, alongside asset concealment and a false litigation friend certificate. UK courts treat contempt seriously, with potential penalties including fines, imprisonment, or asset forfeiture, as evidenced by HS Company's pursuit of further charging orders. Creditors should prioritize early applications for freezing injunctions (domestic or worldwide) and disclosure orders, ensuring precise terms (e.g., specific assets like properties or accounts). Upon detecting breaches, creditors should swiftly pursue contempt proceedings to leverage the UK’ s stringent enforcement mechanisms.

4.2.2. Case Brief

I. Background

On 1 September 2017, HS Company entered into a Revenue Right/Repurchase Agreement with YL Company, in which Mr. K, holding a 95% stake, acted as guarantor. YL Company's failure to meet its obligations prompted HS Company to commence arbitration before SHIAC on 16 April 2020, seeking approximately RMB 188 million (USD 22 million). During the arbitration, YL Company appointed lawyer Liu to represent Mr. K using his signature seal, but Mr. K later claimed he neither authorised Liu nor received notice of the proceedings, rendering him unable to present a defence. On 26 October 2020, SHIAC issued an award in HS Company's favour, holding YL Company and Mr. K jointly liable.

Mr. K sought to set aside the award in the Shanghai Second Intermediate People's Court on 3 November 2021, alleging Liu's lack of authority and HS Company's concealment of YL Company's alleged debt settlement via a share transfer of a Tangshan company. On 27 December 2021, the court dismissed the application, finding Liu's authority compliant with SHIAC rules and Mr. K's application untimely, exceeding the six-month limitation period. This upheld the award's enforceability, enabling HS Company to pursue execution globally.

HS Company promptly initiated enforcement in Hong Kong and the BVI. In Hong Kong, on 17 February 2021, the High Court registered the SHIAC award as a judgment and issued worldwide freezing and disclosure orders, compelling Mr. K to disclose his assets. Mr. K's non-compliance,

including incomplete disclosures, hindered progress. In the BVI, on 9 November 2020, the court similarly registered the award and issued freezing and disclosure orders. Evidence emerged that Mr. K transferred assets during the BVI freezing order, heightening HS Company's concerns about asset dissipation and prompting further investigation into Mr. K's UK-based assets.

II. Proceedings in the UK

HS Company's discovery of Mr. K's substantial UK assets—two high-value London properties and a racehorse—shifted enforcement efforts to England and Wales. The UK proceedings reflecting the procedural and substantive complexities of cross-border execution.

In May–June 2021, HS Company confirmed Mr. K's UK assets through investigations and applied to the Commercial Court of the High Court of England and Wales on 16 July 2021 to enforce the SHIAC award. Knowles J, in a without-notice hearing, recognised the award as a UK judgment under section 101 of the Arbitration Act 1996, supported by evidence of Mr. K's non-compliance with BVI and Hong Kong freezing orders, which demonstrated a risk of asset dissipation. Concurrently, a domestic freezing order ("July Order") was granted, prohibiting Mr. K from disposing of UK assets, explicitly covering the two properties and any bank accounts supporting his family. HS Company fulfilled its duty of full disclosure, addressing Mr. K's potential defences (e.g., lack of arbitration notice or unauthorised representation), though it omitted the Tangshan share transfer issue, as Mr. K had not raised it at the time.

On 20 August 2021, Mr. K applied to set aside the enforcement order and July Order under section 103(2)(c) of the Arbitration Act 1996, arguing he was not notified of the arbitration, lacked authority to appoint Liu, and that HS Company concealed YL Company's debt settlement. On 28 September 2021, HS Company sought to amend the July Order to include a disclosure obligation, which Knowles J approved on 8 October 2021 ("October Order"). The October Order mandated Mr. K to disclose UK assets exceeding £10,000, including the two properties and bank accounts, with Zhu permitted to file the affidavit.

On 25 March 2022, Dias J dismissed Mr. K's set-aside application, finding no evidence he was unaware of the arbitration, given his 95% ownership and directorship of YL Company. The Shanghai court's ruling created issue estoppel, and Mr. K's Tangshan share transfer claim lacked evidential support, constituting an abuse of process. The enforcement order and freezing orders remained intact. On 13 May 2022, HS Company secured interim charging orders over two high-value London properties, further safeguarding Mr. K's assets. HS Company identified a UBS mortgage on one of the two properties and sought disclosure of UBS documents, which required Mr. K's consent, granted on 15 February 2023. UBS provided documents on 22 March and 3 May 2023, revealing potential breaches of the freezing order.

The UBS documents disclosed Mr. K's active financial management from July 2021 to December 2022, included: a 28 July 2021 instruction to transfer London account assets to Switzerland, potentially breaching the July Order; multiple transfers (approximately £1.5 million) with an undisclosed account balance exceeding £25 million; and Mr. K's discussions with UBS on mortgage releases and property sales. HS Company leveraged this evidence to file applications for: (1) contempt proceedings (scheduled for March 2024), alleging asset transfers, account concealment, and a false litigation friend certificate; (2) extension of the freezing order to worldwide assets; and (3) Mr. K's personal submission of a global asset disclosure affidavit.

HS Company sought to finalize the interim charging orders against Mr. K, Mr. K's daughter, an entity controlled by Mr. K's daughter, and other respondents. The key dispute centered on the beneficial ownership of two London properties, with Mr. K's daughter and her controlled entity claiming ownership of one—an assertion HS Company dismissed as a sham.

The case remains ongoing, with the charging order finalisation and contempt proceedings poised to determine Mr. K's asset arrangements and HS Company's enforcement prospects.

For further details, see Hua She Asset Management (Shanghai) Co Ltd v Kei Kin Hung [2022] EWHC 662 (Comm); Kei Kin Hung v Hua She Asset Management (Shanghai) Company Limited [2023] EWCA Civ 1483; Hua She Asset Management (Shanghai) Co Ltd v Kei Kin Hung & Ors [2023] EWHC 2445 (Comm).

5. Cases in Hong Kong

5.1 China CT Bank v. Li & Others

5.1.1. Takeaways

This case represents a paradigm of cross-border debt recovery by a mainland Chinese bank creditor, involving a loan dispute and enforcement of maximum amount guarantee obligations. The proceedings illustrate how CT Bank successfully leveraged the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597, "MJREO") to register and enforce two judgments from the Quanzhou Intermediate People's Court in the Hong Kong Special Administrative Region (HKSAR) High Court, while securing a Mareva injunction to preserve the Defendants' assets.

I. Robust Service of Process Clauses Are Critical for Judgment Enforceability

A central issue in this case was the Defendants' claim that they were not "duly summoned according to mainland law" under MJREO section 18(1)(f)(i), challenging the validity of service of process by the Quanzhou court. The maximum amount guarantee contracts between CT Bank and the Defendants included explicit service clauses, stipulating that judicial documents could be served at a designated address. The Quanzhou court served hearing notices at this address, which were returned unclaimed, yet the court deemed service valid per the contracts and mainland Civil Procedure Law. The Hong Kong High Court rejected the Defendants' set-aside application, emphasizing that service validity hinges on compliance with mainland law and contractual terms, not actual receipt.

II. The MJREO Offers an Efficient Mechanism for Enforcing Mainland Judgments in Hong Kong

The case demonstrates the MJREO's effectiveness as a legal pathway for registering mainland judgments in Hong Kong, enabling creditors to pursue debtors' Hong Kong assets with relative ease. On June 21, 2017, CT Bank applied to register the two Quanzhou court Judgments, securing a registration order on August 28, 2017. Despite the Defendants' set-aside application, alleging improper service and non-disclosure, the Hong Kong High Court upheld registration, confirming the judgments met MJREO requirements: they were monetary, final, issued by a competent court, and served in accordance with mainland law. The court's deference to the Fujian courts' rulings on service reinforced the judgments' enforceability, allowing CT Bank to convert mainland obligations into executable Hong Kong orders, facilitating asset seizure and bank account freezes.

III. Mareva Injunctions Are a Powerful Tool for Asset Preservation in Cross-Border Enforcement

The Mareva injunction played a pivotal role in securing the Defendants' assets in Hong Kong,

preventing dissipation and ensuring funds were available for enforcement of the Quanzhou court Judgments. CT Bank obtained an ex parte Mareva injunction, freezing the Defendants' assets while allowing limited withdrawals for living and legal expenses. On December 18, 2019, the court ordered payment of court-held sums ("Paid-in Sums") to CT Bank, partially satisfying the judgments. The injunction compelled the Defendants to deposit assets under court supervision, significantly enhancing CT Bank's recovery prospects.

5.1.2. Case Brief

I. Background

The dispute originates from a long-standing commercial lending relationship between CT Bank and two Fujian-based companies. Since 2007, CT Bank's Quanzhou Branch provided financing to these companies, founded by the first Defendant, Ms. Li, who was alleged to be their ultimate beneficial owner. The second Defendant, Mr. Li (Ms. Li's son), and the third Defendant, Ms. Siu(his wife), are Hong Kong residents.

In June 2015, CT Bank entered into two loan agreements with two Fujian-based companies g, each for RMB 31.5 million, to refinance prior loans. To secure performance, the Defendants executed maximum amount guarantee contracts, undertaking joint and several liability for the companies' debts. These contracts included critical service clauses, stipulating that legal documents could be served at a designated address and deemed served upon return if unclaimed or refused. Address changes required written notification to the bank within three days, failing which service at the original address remained valid. In November 2015, CT Bank disbursed RMB 28,952,742 and RMB 30,817,595 to two companies respectively, repayable with interest by November 15, 2016. Both companies defaulted, triggering CT Bank's enforcement actions.

On December 9, 2016, CT Bank filed two lawsuits in the Quanzhou court against the two companies, and the Defendants. The court served hearing notices at the contractual address, which were returned unclaimed. Deeming service valid per the guarantee contracts and mainland Civil Procedure Law, the court proceeded in the Defendants' absence, issuing default judgments on February 17, 2017, holding the Defendants jointly liable for the outstanding amounts plus interest.

The Defendants challenged the judgments in mainland China. In July 2017, they applied for retrial before the Fujian High People's Court ("Fujian HPC"), alleging invalid service. The Fujian HPC rejected the applications in September 2017. In October 2017, the Defendants sought civil protest from the Fujian People's Procuratorate, which dismissed the claim in December 2017, reiterating the service's validity.

II. Hong Kong Proceedings

CT Bank pursued enforcement in Hong Kong to access the Defendants' assets, leveraging the MJREO for judgment registration and seeking a Mareva injunction under sections 21M and 21N of the High Court Ordinance (Cap 4) to freeze assets. The Hong Kong courts treated the two Quanzhou court Judgments as a single enforcement matter, reflecting their shared factual and legal basis.

On June 16, 2017, CT Bank applied for a Mareva injunction to support the enforcement of the Quanzhou court Judgments. Deputy Judge To granted an ex parte injunction, freezing the Defendants' assets while permitting a "reasonable weekly sum" for living and legal expenses. Concurrently, CT Bank filed for continuation of the injunction inter partes. On June 21, 2017, CT Bank sought registration of both Quanzhou court Judgments under the MJREO. On August 28, 2017, Master Hui approved a single registration order, with notice issued on September 13, 2017.

The Defendants responded aggressively, applied to discharge the Mareva injunction, and sought to set aside the registration order, arguing they were not "duly summoned according to mainland law" per MJREO section 18(1)(f)(i) and alleging material non-disclosure by CT Bank.

On August 3, 2018, Mr. Kth Yeung J upheld the Mareva injunction, rejecting the Defendants' discharge application and affirming its necessity for enforcing the Quanzhou court Judgments. The Defendants deposited sums into court ("Paid-in Sums") per court directions, securing potential enforcement.

On October 22, 2019, Mr. Kth Yeung J dismissed the set-aside application, reasoning: (1) the Defendants failed to prove they were not duly summoned, as the Quanzhou court's service complied with mainland law and contractual terms; (2) the Fujian HPC and Procuratorate's rulings carried "considerable and substantial weight," binding absent clear perversity, per Malicorp v. Egypt; (3) the contractual address was valid, aligning with the two companies' address; (4) CT Bank's expert, Professor Zhao, was preferred over the Defendants' expert, Professor Zhang, on the non-mandatory nature of the Supreme People's Court's service provisions; and (5) no evidence supported claims of insufficient defense time or material non-disclosure. The Defendants were ordered to pay costs, to be taxed if not agreed. This ruling underscored the deference Hong Kong courts afford mainland judicial findings in MJREO proceedings.

Following the registration judgment, CT Bank applied for payment out of the Paid-in Sums to enforce the Quanzhou court Judgments. On December 10, 2019, the third Defendant sought a stay of execution pending her appeal.

On December 18, 2019, Mr. Kth Yeung J dismissed the stay application, finding: (1) the appeal lacked reasonable prospects, given the mainland courts' authoritative rulings and the court's independent

analysis; (2) refusing the stay would not render the appeal nugatory; and (3) the third Defendant provided no evidence of financial hardship to justify prioritizing legal funding over CT Bank's judgment rights, per *Star Play Development Ltd v. Bess Fashion Management*. The court granted the payment-out application, citing its broad discretion under Order 22A of the Rules of the High Court and the absence of competing creditor claims.

For further details, see [2018] HKCFI 362; [2019] HKCFI 2540; [2019] HKCFI 3110; [2021] HKCA 791.

5.2 China EB Bank v China Kingho Energy Group Ltd & Others

5.2.1. Takeaways

This case, rooted in a loan default, illustrates the strategic options available to enforce mainland Chinese judgments in Hong Kong, leveraging both the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597, "MJREO") and common law.

I. Dual Enforcement Pathways: MJREO and Common Law

Chinese creditors holding mainland judgments must act swiftly to enforce claims against assets in Hong Kong. The MJREO provides a streamlined statutory mechanism, requiring registration of a mainland judgment within two years from its effective date or the stipulated performance deadline. In this case, China EB Bank missed the two-year MJREO registration window (ending June 27, 2020) for a 2018 Civil Mediation Judgment issued by the Beijing High People's Court. However, the Bank successfully pursued enforcement under common law, securing a Mareva injunction to freeze the defendant's Hong Kong properties. This underscores that common law enforcement remains a viable alternative when the MJREO deadline lapses.

The MJREO's two-year limitation contrasts with the common law's six-year limitation period under Hong Kong's Limitation Ordinance (Cap 347), offering creditors a longer window to initiate claims. MJREO registration is procedurally simpler, cost-effective, and faster, involving submission of the judgment and certified translations for court approval, followed by direct enforcement as a Hong Kong judgment. Common law enforcement, however, requires filing a new lawsuit, supported by detailed affidavits proving the judgment's finality, jurisdiction, and compliance with procedural fairness, often facing robust defense challenges. The case highlights the need for creditors to prioritize MJREO registration within the two-year period to capitalize on its efficiency, while retaining common law as a fallback for missed deadlines.

II. Civil Mediation Judgments as Enforceable Judgments in Hong Kong

The case reaffirms that mainland Civil Mediation Judgments are recognized as "mainland judgments" under MJREO section 2, encompassing "judgments, rulings, mediation judgments, or payment orders" issued by designated mainland courts in civil or commercial matters. In HCA 809/2024, the Beijing High People's Court's 2018 Civil Mediation Agreement was deemed eligible for MJREO registration, though the application was time-barred. The Hong Kong court' srecognition of its enforceability under common law aligns with Ng Yuk Keung v Yan Xiaojie [2018] HKDC 534, which clarified that Civil Mediation Judgments, bearing court confirmation, carry the same legal weight as judgments, not mere contracts.

The dual nature of Civil Mediation Judgments—combining voluntary settlement with judicial endorsement—enhances their enforceability in Hong Kong. Unlike private contracts, they are binding court orders under mainland China's Civil Procedure Law (Articles 97 and 234), as emphasized in Ng Yuk Keung. Creditors seeking enforcement must pursue recognition through MJREO registration or common law, rather than contract-based claims, to avoid procedural missteps, as seen in *Ng Yuk Keung* where the plaintiff's contract-based approach led to a stay of proceedings. For MJREO registration, the agreement must originate from a designated court (e.g., High People's Court), involve clear obligations (e.g., monetary payments or specific performance), and, where applicable, be supported by a valid court choice agreement. Common law enforcement further requires proof of finality, same parties, specific obligations, and jurisdictional competence.

5.2.2. Case Brief

I. Background

This dispute arises from a significant loan transaction between China EB Bank, and QH Group, a Chinese enterprise. On June 28, 2017, the Bank extended a loan of approximately RMB 439 million to QH Group to support its business operations. To secure the loan, QH Group's founder, Mr. Huo, his wife, Ms. Zhou, and their daughter, HR, provided personal guarantees, assuming joint and several liability in the event of QH Group's default. QH Group failed to meet its repayment obligations, triggering the Bank's enforcement actions.

In March 2018, the Bank initiated proceedings in the Beijing High People's Court against QH Group, Mr. Huo, Ms. Zhou, and HR, seeking repayment and enforcement of the guarantees. Following court-mediated negotiations, the parties reached a settlement, formalized in a Civil Mediation Agreement issued on September 4, 2018. This agreement confirmed QH Group's obligation to repay the principal of RMB 439 million plus interest, with Mr. Huo, Ms. Zhou, and HR liable as guarantors. Despite this, QH Group and the guarantors breached the agreement, prompting the Bank to pursue enforcement in mainland China.

In December 2019, the parties entered an enforcement settlement agreement to restructure

repayments, but the defendants defaulted again. A revised agreement in 2020 similarly failed to resolve the debt. On January 21, 2022, the Bank applied for compulsory enforcement in the Beijing First Intermediate People's Court, which issued enforcement notices. In March 2023, the court auctioned two mainland properties owned by HR, but the proceeds were insufficient to cover the outstanding debt of RMB 490.45 million (including principal, interest, and fees). With mainland enforcement proving inadequate, the Bank turned to the defendants' assets in Hong Kong.

II. Hong Kong Proceedings

Discovering that HR owned two properties in Hong Kong at Harbour Place, the Bank confirmed through signature analysis, family ties, and mainland records that this was HR. On April 30, 2024, the Bank commenced proceedings in the Hong Kong High Court of First Instance, seeking recognition and enforcement of the 2018 Civil Mediation Agreement under common law to recover the debt. On May 2, 2024, the Bank filed an amended summons requesting a Mareva injunction and ancillary disclosure orders to prevent HR from dissipating the Hong Kong properties and to compel asset disclosure. The Bank's applications against Mr. Huo and Ms. Zhou were dismissed on May 3, 2024, and QH Group's proceedings were handled separately, focusing the litigation on HR.

The central issue was whether the Civil Mediation Agreement, as a mainland judgment, could be enforced under common law in Hong Kong, given potential conflicts with the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap 597, "MJREO"). The Bank argued that the Mediation Agreement constituted a final and conclusive foreign judgment, meeting common law enforcement criteria: (1) finality and clarity; (2) same parties; (3) specific monetary obligation; and (4) issuance by a competent court. Although the Mediation Agreement qualified for MJREO registration, the 2-year registration deadline (expiring June 27, 2020) had lapsed, necessitating reliance on common law. HR's counsel contended that MJREO provided the exclusive mechanism for enforcing mainland judgments, rendering common law enforcement an abuse of process. They further argued that the Bank's filing was delayed and lacked evidence of asset dissipation risk.

On November 28, 2024, Hon Mr. K Yeung J ruled that the Bank's common law enforcement claim had a "good arguable case", defined as exceeding a merely arguable claim but not requiring a 50% likelihood of success. Citing *Lu Yongliang v Bank of China, Dongguan Branch* and *China NPL Holdings Pte Ltd v Mo Haidan*, the court held that MJREO's 2-year registration limit does not preclude common law enforcement. MJREO section 16 permits recognition of unregistered mainland judgments, and common law remains a viable pathway post-deadline, provided the judgment's finality, jurisdiction, and procedural fairness are established. The Mediation Agreement met these standards, as confirmed by expert evidence on its binding nature under mainland law.

Regarding the Mareva injunction, the court found a real risk of asset dissipation based on HR's history of defaults, involvement in 21 mainland lawsuits, nine high-consumption restriction orders,

and use of an alias for property registration, suggesting intent to evade enforcement. Although the Bank delayed filing from February 9, 2024 (when land search records were obtained) to May 2, 2024, the court deemed this reasonable due to the Lunar New Year and legal preparations. The Mareva injunction and disclosure orders were granted, effective until final judgment.

HR challenged the decision, applying on December 20, 2024, to stay the disclosure order and on December 25, 2024, for leave to appeal, arguing the court misconstrued MJREO's exclusivity . On February 20, 2025, the court denied leave to appeal, finding no reasonable prospect of success and upholding the common law's applicability. The disclosure order's stay was extended to March 6, 2025, to allow further applications.

For further details, see [2024] HKCFI 3586]; [2025] HKCFI 735]; [2025] HKCFI 958].

5.3 Zhou v Sun & Others

5.3.1. Takeaways

This case concerns the enforcement of Mainland Chinese arbitral awards in Hong Kong, highlighting the effectiveness of Hong Kong's legal framework in preventing asset dissipation and facilitating robust enforcement.

I. Mitigating Asset Dissipation Risks through Mareva Injunctions

Debtors often attempt to evade enforcement by transferring assets, including through third-party nominees, as seen in this case where the debtor transferred shares to a third party's nominee. Hong Kong's Mareva injunction is a powerful tool to freeze a debtor's global assets, preventing dissipation. Practitioners must demonstrate a good arguable case, insufficient assets within Hong Kong to satisfy the claim, and a real risk of dissipation, with the latter often inferred from evidence such as asset transfers, non-disclosure, or dishonest conduct. In this case, the debtor's sale of a Hong Kong property without disclosing proceeds and the transfer of shares to a nominee shortly after the creditor's demand not to dissipate assets justified the court's granting of a global Mareva injunction. For assets held by third parties, a Chabra injunction can be sought, requiring evidence that the third party likely holds assets as a nominee for the debtor.

II. Appointing Receivers to Address Limitations of Mareva Injunctions

When a Mareva injunction proves insufficient due to incomplete disclosure or complex asset structures, appointing interim receivers can enhance asset preservation. In this case, the debtor's failure to disclose significant assets (e.g., shares worth HK$11.3 million and securities accounts) and inconsistencies in financial reporting led the court to appoint receivers to manage the debtor's and

third party's assets. Receivers investigate and manage assets, prevent further dissipation, and facilitate enforcement, particularly for complex holdings. The court applied the "just and convenient" test under section 21L of the High Court Ordinance (Cap. 4), supported by the American Cyanamid principles, emphasizing the inadequacy of the injunction alone.

III. Efficient Recognition and Enforcement of Mainland Arbitral Awards in Hong Kong

Hong Kong's Arbitration Ordinance (Cap. 609) provides a streamlined process for recognizing and enforcing Mainland arbitral awards, making it an ideal jurisdiction for creditors targeting debtors with assets in Hong Kong or abroad. In this case, the creditor secured enforcement of four Shanghai Arbitration Commission awards within months, with the court rejecting the debtor's challenge due to its lack of merit. Once recognized, awards become enforceable as Hong Kong judgments, enabling access to robust tools like injunctions, receiverships, and charging orders. The case underscores Hong Kong's commitment to upholding arbitral awards under the New York Convention.

5.3.2. Case Brief

I. Background

The case arises from a commercial dispute between the applicant, Ms. Zhou, and the respondents, Mr. Sun, NX Company , and an interested party, Mr. Zhang (collectively, the "Debtor Parties"). The dispute originates from a contractual agreement in Mainland China concerning the registration of a security interest over land held by NX Company. The contract obligated Mr. Sun and NX Company to register Zhou's security interest, but the Shanghai Arbitration Commission found that they breached this obligation by failing to register the interest and concealing a prior security interest held by WZ Bank, thereby prejudicing Ms. Zhou's rights. This breach led to arbitration proceedings, resulting in four arbitral awards in Ms. Zhou's favor.

The Shanghai Arbitration Commission issued four arbitral awards on 25 July 2024, ordering Mr. Sun and NX Company to compensate Ms. Zhou for their contractual breach. The awards were upheld in Mainland China, with the Debtor Parties' application to set them aside dismissed by a Mainland court on 29 November 2024, which found their claims "obviously baseless and not to be believed." The Mainland arbitration process's integrity provided a strong foundation for enforcement in Hong Kong, where Ms. Zhou sought to execute the awards against the Debtor Parties' assets.

Enforcement in Mainland China faced obstacles due to the Debtor Parties' complex asset structure and evasive actions. The prior security interest held by WZ Bank limited Ms. Zhou's ability to enforce against the Mainland land. Additionally, Mr. Sun's transfer of assets, including shares in corporate entities, and incomplete disclosure of assets hindered execution efforts. These challenges prompted Ms. Zhou to pursue enforcement in Hong Kong, leveraging its robust legal framework under the

Arbitration Ordinance (Cap. 609) to secure the Debtor Parties' assets, particularly those in Hong Kong and abroad.

II. Hong Kong Proceedings

Pursuant to sections 84 and 92 of the Hong Kong Arbitration Ordinance (Cap. 609), Ms. Zhou applied to the Hong Kong Court of First Instance on 4 October 2024 to recognize and enforce the four Mainland arbitral awards. On 24 October 2024, Mimmie Chan J granted leave to enforce the awards as Hong Kong court judgments, establishing Ms. Zhou as a judgment creditor. The Debtor Parties filed a summons on 18 November 2024 to set aside this order, alleging procedural irregularities, but withdrew the application on 14 January 2025 after the Mainland court's dismissal of a parallel challenge. The Hong Kong court, on 7 February 2025, dismissed the set-aside summons, finding it lacked merit and was a tactical delay, awarding Ms. Zhou costs on an indemnity basis. This swift recognition process underscores Hong Kong's efficiency in enforcing Mainland arbitral awards under the New York Convention framework.

To prevent the Debtor Parties from dissipating assets to evade enforcement, Ms. Zhou applied for a global Mareva injunction on 4 October 2024, which was granted by Recorder Jenkin Suen SC on 3 October 2024. The court applied the principles outlined in the White Book 2025 (§ 29/1/83) and cases such as *Convoy Collateral Ltd v Cho Kwai Chee* [2020] 6 HKC 81, requiring a good arguable case, insufficient assets in Hong Kong, and a real risk of dissipation. Ms. Zhou presented compelling evidence of dissipation risk, including: (i) Mr. Sun's sale of a Hong Kong property on 13 September 2024, with non-disclosure of HK$680,000 in proceeds; (ii) the transfer of shares in two companies to Mr. Zhang's nominee on 12 September 2024, for nominal or no consideration, timed suspiciously close to Ms. Zhou's demand not to dissipate assets; (iii) incomplete disclosure of assets, such as Mr. Sun's HK$11.3 million shareholding in some listed company and an undisclosed securities account; and (iv) non-cooperation with court-appointed special managers. A Chabra injunction was also imposed on Zhang, as the court found he likely held the shares as Mr. Sun's nominee. On 29 April 2025, the court continued the Mareva injunction, ensuring the Debtor Parties' assets remained frozen to secure enforcement.

Recognizing the limitations of the Mareva injunction due to the Debtor Parties' inadequate and inaccurate disclosures, Ms. Zhou applied for the appointment of interim receivers on 12 December 2024. The court, applying section 21L of the High Court Ordinance (Cap. 4) and cases like *China Metal Recycling (Holdings) Ltd v Chun Chi Wai* [2016], assessed the "just and convenient" standard and the American Cyanamid test. The special managers' report highlighted the Debtor Parties' failure to provide complete asset information, including qualified financial statements of NX Company's parent company, and inconsistencies in Mr. Sun's shareholdings. The court found that the Mareva injunction's efficacy was undermined by non-disclosure, necessitating receivers to manage and preserve assets, including those held by Mr. Zhang as a nominee. On 29 April 2025, the court

appointed receivers with broad powers to investigate and manage the Debtor Parties' assets, including listed securities and shares, without a fixed term, to facilitate enforcement.

For further details, see [2024] HKCFI 3586]; [2025] HKCFI 735]; [2025] HKCFI 958].

5.4 M Trust Co., Ltd v Fu

5.4.1. Takeaways

This case addresses the recognition and enforcement of notarised debt instruments in Hong Kong, where the courts refused to register rulings issued by a Mainland court terminating enforcement proceedings under the notarised debt regime. The principles established in this case not only set a precedent in Hong Kong but also offer valuable guidance for other common law jurisdictions. The ruling suggests significant challenges for the recognition and enforcement of Chinese notarised debt instruments in other common law regions.

I. Notarised Debt Instruments in Mainland China

Notarised debt instruments have become a preferred tool for Chinese financial institutions due to their efficiency and convenience in securing debt recovery. Unlike traditional debt disputes requiring court adjudication and subsequent enforcement, notarised debt instruments enable creditors to bypass litigation or arbitration, significantly expediting debt realisation. The process comprises three key stages:

(1) Notarisation for Enforcement Effect: Financial institutions and debtors execute debt instruments (e.g., loan or guarantee agreements) and jointly apply to a notary public to endow the instruments with compulsory enforcement effect.

(2) Issuance of Execution Certificate: Upon the debtor's default (e.g., failure to repay principal or interest), the creditor applies to the original notary public for an execution certificate. The notary verifies compliance, issuing a certificate specifying the applicant, the party subject to enforcement, the enforcement objects (e.g., principal, interest, penalties), and the enforcement period, accounting for any partial performance.

(3) Court Enforcement: Armed with the notarised debt instrument and execution certificate, the creditor applies to a people's court with jurisdiction for compulsory enforcement without litigation or arbitration. The court, upon review, initiates enforcement measures such as asset freezing or property seizure.

II. Cross-Border Enforcement Limitations of Notarised Debt Instruments

Despite their efficacy in Mainland China, notarised debt instruments face fundamental obstacles in cross-border enforcement. These instruments derive their enforceability from notarial acts, not judicial judgments or arbitral awards. Under international enforcement frameworks, foreign courts typically recognise and enforce only Chinese court judgments or arbitral awards, excluding administrative or notarial documents. Consequently, notarised debt instruments, being non-judicial in nature, are generally not recognised or enforceable abroad.

In Hong Kong, the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597, "MJREO") governs the registrationof Mainland judgments, requiring that they be: given by a court, final and conclusive, enforceable in the Mainland, and order the payment of a sum of money (section 5(2)). Notarised debt instruments and execution certificates, issued by notarial offices rather than courts, fail to meet the "given by a court" requirement. Even when courts are involved in enforcement (e.g., issuing an Execution Notice), the enforceability stems from the notarial certificate, not a judicial judgment. Foreign courts, including those in Hong Kong, do not treat such instruments as enforceable judicial documents, rendering them ineffective for cross-border enforcement and limiting their utility in international financial transactions.

III. Role of Courts in Notarised Debt Instrument Enforcement and Cross-Border Limitations of Termination Rulings

In the Mainland's notarised debt instrument enforcement process, Chinese courts primarily facilitate execution rather than adjudicate debt disputes. Courts review debt validity only if the debtor raises objections, issuing a ruling accordingly. Absent objections, courts issue administrative documents like execution notices or freezing orders to initiate measures such as seizure or attachment, without rendering judgments.

When enforcement proceedings terminate due to the debtor's lack of executable assets, Chinese court issues a "ruling terminating the current enforcement proceedings" (the "Rulings"), as seen in the four rulings by the Beijing No. 3 Intermediate People's Court in this case. These Rulings confirm the termination, noting that "the persons subject to enforcement have the obligation to continue to fulfil the debt obligation to the applicant for enforcement" and that the creditor retains the right to resume enforcement. However, the Rulings do not order the payment of a sum of money; they merely record the enforcement status and outstanding debt to facilitate future proceedings. In cross-border contexts, such Rulings fail to satisfy the MJREO's requirement under section 5(2)(e) for a payment order, precluding their recognition and enforcement in Hong Kong and other foreign jurisdictions.

5.4.2. Case Brief

I. Background

This case arises from four loan agreements executed on 4 April 2019 between M Trust and the Borrower, involving loans of RMB 110 million, RMB 120 million, RMB 110 million, and RMB 100 million, respectively, with a term of 12 months. On the same day, M Trust entered into four guarantee agreements with the defendant, Mr. Fu, whereby Mr. Fu agreed to guarantee the Borrower's obligations under the loan agreements. The guarantee agreements stipulated that disputes arising from or related to the contract "shall first be resolved through negotiation or mediation, failing which, the parties shall bring the case before a people's court with jurisdiction at the creditor's domicile at the time of filing". Additionally, the guarantee agreements provided that if Mr. Fu failed to perform his obligations, he would "voluntarily accept their enforcement by judicial authorities without the need to go through litigation procedures," allowing M Trust to directly apply to the People's Court with jurisdiction for enforcement in accordance with Article 238 of the PRC Civil Procedure Law, with Mr. Fu waiving his right to defend against such enforcement.

On 8 April 2019, pursuant to the guarantee agreements, M Trust and Mr. Fu obtained notarial certificates from the a notary public office in Beijing, confirming the contracts' enforceability under the PRC's notarised debt instrument regime. In December 2019, the Borrower defaulted by failing to pay interest and principal. On 26 December 2019, M Trust issued a notice declaring the loans immediately repayable by 31 December 2019, but neither the Borrower nor Mr. Fu complied, prompting enforcement proceedings. On 6 January 2020, M Trust applied for, and on 13 January 2020 obtained, execution certificates from the Beijing Notary Office, specifying the enforcement objects: the principal, unpaid contractual interest up to 26 December 2019, penalty interest at 18% per annum from 27 December 2019, a 5% breach of contract penalty, Mr. Fu's unlimited joint guarantee liability, and M Trust's enforcement costs.

On 14 January 2020, the Beijing No. 3 Intermediate People's Court ("Beijing Court") issued a Notice of Execution to the Borrower and Mr. Fu, commanding performance of the obligations under the notarial and execution certificates. On 15 January 2020, the Beijing Court ordered the freezing of certain bank deposits. A settlement was reached on 20 January 2020, leading to the termination of enforcement, but due to non-compliance with the settlement, M Trust applied to resume enforcement on 10 March 2020. The Beijing Court resumed proceedings on 12 March 2020 and issued another Execution Notice on 14 March 2020. After investigation revealed no executable assets under the Borrower's or Mr. Fu's names, M Trust agreed to terminate the proceedings. On 1 December 2020, the Beijing Court issued four rulings, terminating the enforcement proceedings. The Rulings stated that M Trust "has the right to request the persons subject to enforcement to continue to fulfil the debt obligation" and that "the persons subject to enforcement have the obligation to continue to fulfil the debt obligation to the applicant for enforcement."

II. Hong Kong Proceedings

On 25 November 2022, M Trust applied ex parte to the Hong Kong Court of First Instance under the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597, "MJREO") to register the four Rulings as Hong Kong judgments to pursue recovery against Mr. Fu. M Trust argued that the Rulings satisfied section 5(2) of the MJREO, requiring that a judgment: (a) be given by a chosen court; (b) be based on a choice of Mainland court agreement made between 1 August 2008 and 29 January 2024; (c) be final and conclusive; (d) be enforceable in the Mainland; and (e) order the payment of a sum of money (not being taxes, fines, or penalties). M Trust contended that the Rulings' final sentence constituted an order for payment. On 7 March 2023, Master Hui granted the registration orders after M Trust addressed court requisitions.

On 31 March 2023, Mr. Fu applied to set aside the registrations, raising six grounds: (1) the Rulings were not given by a "chosen court" under section 3(2) of the MJREO, as the guarantee agreements designated enforcement jurisdiction, not dispute resolution jurisdiction, thus not constituting a "choice of Mainland court agreement"; (2) the Rulings did not order the payment of a sum of money under section 5(2)(e), as they merely terminated enforcement proceedings and described existing obligations; (3) the Rulings were not directly enforceable in the Mainland, requiring further court action, breaching section 5(2)(d); (4) Mr. Fu did not appear in the Beijing Court and was not summoned according to Mainland law, violating natural justice under section 18(1)(f)(i); (5) enforcing the Rulings would interfere with the Borrower's bankruptcy restructuring, commenced with M Trust's participation, contravening Hong Kong public policy under section 18(1)(j); and (6) M Trust failed to disclose the Borrower's restructuring, its participation, and the expiration of the two-year enforcement period, constituting material non-disclosure warranting set-aside under the court's inherent jurisdiction.

On 29 February 2024, Deputy High Court Judge H. Au-Yeung delivered the Decision, setting aside the registrations on the ground that the Rulings did not satisfy section 5(2)(e) of the MJREO. The court's analysis was as follows:

(1) No Payment Order Ground: The court held that the Rulings' plain reading showed no payment demand against Mr. Fu, merely describing his continuing obligation as per the Execution Notice. The Rulings' role in future enforcement was to record the enforcement history and outstanding amount, not to order payment. Allowing registration would reset the two-year registration time limit under section 7 of the MJREO with each enforcement ruling, undermining the ordinance's intent for timely registration of original payment orders. Expert evidence confirmed the Rulings lacked the legal effect of a payment order, leading to set-aside under section 5(2)(e).

(2) No Chosen Court Ground: The court rejected this, holding that "in connection with" broadly encompasses enforcement disputes. The guarantee agreements reference to Article 238 designated Mainland courts, satisfying the requirement, as supported by *Export-Import Bank of China v Taifeng Textile.*

(3) Non-Enforceability Ground: Mr. Fu argued the Rulings were not directly enforceable in the Mainland, relying on notarial certificates. The court dismissed this, noting that section 5(2)(d) does not require "direct" enforceability. The Rulings, supported by a 15 November 2022 Beijing Court certificate, were enforceable as part of the enforcement process.

(4) Not Summoned to Appear Ground: Mr. Fu claimed he was not summoned to appear in the Beijing Court, breaching natural justice. The court held that section 18(1)(f)(i) applies only when Mainland law requires summoning but is not complied with. Under Article 238, no summons was required, and Mr. Fu's voluntary acceptance of the notarised debt regime waived his right to appear, akin to a Hong Kong defendant not contesting a claim.

(5) Public Policy Ground: Mr. Fu argued that enforcement would disrupt the Borrower's restructuring. The court found the restructuring, starting post-Rulings, irrelevant, and M Trust's right to pursue Mr. Fu under joint liability did not risk double recovery, as Hong Kong enforcement would be credited in the Mainland.

(6) Material Non-Disclosure Ground: Mr. Fu alleged M Trust concealed the restructuring and time-bar issues. The court found these immaterial, as the restructuring was ongoing without recovery, and time-bar issues were not pursued.

The court set aside the registrations, and M Trust appealed the No Payment Order finding. On 21 May 2025, the Court of Appeal dismissed M Trust's appeals, affirming the set-aside. The court elucidated the PRC's notarised debt instrument regime under Article 238, where debts are determined by notarial certificates, not court judgments. The Rulings terminated enforcement without ordering payment, with the final sentence merely describing obligations under the execution certificates. Section 5(2)(e) requires a judgment debt, absent here, as obligations arose from notarial acts. Allowing registration would incongruously reset the two-year limit under section 7. The No Chosen Court ground was deemed academic, as no dispute arose during enforcement, and the Not Summoned to Appear ground failed, as Article 238 required no summons, with natural justice protected by sections 18(1)(g) and (j).

For further details, see China Minsheng Trust Co., Ltd v Fu [2025] HKCA, CACV 118–121/2024; [2024] HKCFI, HCMP 1943–1946/2022.

6. Cases in Other Key Jurisdictions

6.1 LDVFD v Zhang

6.1.1. Takeaways

This case, arising from a 2013 share acquisition transaction, involves the recognition and enforcement in Singapore of arbitral awards issued by the China International Economic and Trade Arbitration Commission (CIETAC) concerning a share transfer dispute. The proceedings focus on the enforcement of trust assets, the receivership mechanism, and the feasibility of seeking pre-action disclosure orders in Singapore during CIETAC arbitration in China.

I. Enforceability of Debtor's Trust Assets

Trust assets are enforceable in Singapore if the debtor retains beneficial ownership or the trust serves to evade creditors: (1) Beneficial Ownership: A resulting trust applies if the debtor intends to retain beneficial ownership. The debtor's unilateral transfers confirmed her beneficial ownership, making the accounts enforceable. (2) Sham or Fraudulent Transfer: Trusts hiding assets may be set aside. The debtor's transfers, supported by an email, suggested evasion. (3) Excluded Assets: Assets not specified in trust documents remain enforceable. The Success Elegant Trust only covered BVI Company's share, not account assets. (4) De Facto Control: Control (e.g., the debtor's signatory role) infers beneficial ownership.

II. Receivership for Trust Asset Enforcement

In Singapore, when traditional execution methods, such as writs of seizure and sale, are impracticable due to assets being registered in a third party's name (e.g., a trust or company), the court may appoint a receiver to achieve equitable execution, targeting the debtor's equitable interest. In this case, the court found that the bank account assets, though held in BVI Company’ s name, were beneficially owned by the debtor in equity. As writs of seizure were infeasible due to the accounts' registration, receivership was approved to enforce the SG Registration Order. Upon appointment, the receiver manages and disposes of the debtor's equitable interest (e.g., trust assets) to satisfy the judgment debt, subject to court oversight. The receiver may take control of bank accounts, securities, or other assets, selling or transferring them to discharge the debt.

III. Pre-Action Disclosure During CIETAC Arbitration

During CIETAC arbitration in China, creditors may apply for pre-action disclosure orders in Singapore, such as Norwich Pharmacal or Bankers Trust orders, to obtain evidence of a debtor's assets. This case confirms this possibility. Norwich Pharmacal orders (*Norwich Pharmacal Co v*

and Excise Commissioners [1974] AC 133) facilitate identifying wrongdoers, while Bankers Trust orders (*Bankers Trust Co v Shapira* [1980] 1 WLR 1274) support asset tracing in fraud cases. In this case, the creditors secured disclosure orders for BVI Company' s account documents during CIETAC arbitration to trace the debtor's assets.

Requirements for Disclosure: (1) Prima Facie Case of Wrongdoing: Creditors must show preliminary evidence of unlawful conduct, such as fraud or improper asset transfers. (2) Singapore Jurisdiction: The target assets or information (e.g., bank accounts) must be located in Singapore. The BVI Company's accounts in Singapore conferred jurisdiction. (3) Necessity for Litigation: Disclosure must be necessary to support existing or prospective proceedings (e.g., CIETAC arbitration) with no alternative means to obtain the information. The account documents were essential for the creditors' CIETAC claims.

6.1.2. Case Brief

I. Background

The dispute originates from a 2013 share acquisition transaction. The creditors, LDVFD Company Limited and LDVFD Group Holdings Limited (collectively, "The creditors"), entered into a Share Purchase Agreement ("SPA") with the debtor, Ms. Z, and her controlled entities, to acquire 86.2% of target company for approximately USD 286.85 million. The purchase price was paid in three tranches from December 2013 to June 2014 to Ms. Z's account at SS Account in Hong Kong. Post-acquisition, target company's financial performance significantly declined. The creditors' investigation revealed misrepresentations by Ms. Z in the SPA, prompting arbitration proceedings before the China International Economic and Trade Arbitration Commission ("CIETAC") in March 2015. On April 28, 2019, CIETAC issued awards confirming Ms. Z's negligent misrepresentation but rejecting claims of fraudulent misrepresentation, entitling the creditors to compensation.

Following the CIETAC awards, the creditors sought recognition and enforcement in the Hong Kong High Court, obtaining judgments ("HK Judgments") on May 20, 2020. These judgments were registered in Singapore on November 11, 2020, via HC/OS 1139/2020 and HC/OS 1140/2020 under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed), forming the Singapore Registration Order ("SG Registration Order") to pursue Ms. Z's assets in Singapore.

Concurrently, Ms. Z's asset movements raised concerns. In January 2014, she incorporated a BVI Company and opened accounts with Credit Suisse ("CS Account") and Deutsche Bank ("DB Account") in Singapore. Between March and July 2014, approximately USD 142.05 million was transferred from the SS Account to the CS Account, with USD 85.225 million subsequently moved to the DB Account. The creditors alleged these transfers were designed to shield assets from potential claims.

To address potential litigation, Ms. Z established the Success Elegant Trust in June 2014, purportedly for her son, Wang Xiaofei, and his descendants. The Declaration of Trust (June 3, 2014) appointed Asiatrust Limited as trustee, with an initial trust fund of USD 10. The Deed of Addition (June 4, 2014) transferred BVI Company's sole share to Asiatrust. Ms. Z resigned as BVI Company's director and ceased being a shareholder but remained the sole authorized signatory for the bank accounts until March 2015. The creditors challenged the trust's legitimacy, asserting Ms. Z used BVI Company and the trust to conceal assets. Ms. Z and BVI Company maintained the transfers were lawful for the trust's benefit. In February 2015, the creditors secured freezing orders in Hong Kong ("HK Freezing Orders") and Singapore ("SG Freezing Orders") via HC/OS 178/2015 and HC/OS 180/2015, freezing approximately USD 55.38 million in BVI Company's accounts, which banks executed believing Ms. Z to be the beneficial owner.

II. Proceedings in Singapore

In 2016, suspecting Ms. Z transferred SPA proceeds to BVI COMPANY accounts to evade claims, the creditors applied for Norwich Pharmacal and Bankers Trust disclosure ordersduring the CIETAC arbitration. They sought account documents from CS and DB, alleging Ms. Z's fraudulent conduct in the SPA and asserting her beneficial ownership of BVI Company accounts. The court reviewed preliminary evidence, including the CS Account Opening Form (identifying Ms. Z as the "beneficial owner"), the banks' compliance with SG Freezing Orders targeting Ms. Z, and a March 6, 2015, letter from Ms. Z's counsel, to DB stating she "maintains" the DB Account. Finding a prima facie case of fraud and Singapore's jurisdiction over the accounts, the court granted the disclosure orders. This phase laid the evidential foundation, supporting an initial inference of Ms. Z's beneficial ownership.

In 2021, following the CIETAC awards and registration of the HK Judgments in Singapore, the creditors applied to appoint receivers over BVI Company's CS and DB account assets to enforce the SG Registration Order. BVI Company was joined as a defendant. Key issues included: (1) whether Ms. Z was the beneficial owner of the assets; (2) whether de facto control justified receivership; and (3) whether receivership was just and convenient.

The creditors presented evidence: (a) Ms. Z's unilateral transfers post-June 2014, including an unexplained USD 3 million transfer to her personal account in September 2014 and USD 35.833 million in urgent transfers from the DB Account in March 2015; (b) the March 6, 2015, Reed Smith letter; (c) BVI Company's failure to challenge the SG Freezing Orders for seven years; and (d) bank documents and a SS Account email (March 13, 2014) indicating Ms. Z's intent to shield assets. Ms. Z and BVI Company countered that the assets belonged to the Success Elegant Trust, supported by trust documents and a W-8BEN form designating BVI Company as the beneficial owner of CS Account income.

he court rejected the creditors' argument for receivership based on de facto control, emphasizing that equitable execution under Order 51 rule 1(1) of the Rules of Court 2014 requires the judgment debtor's clear equitable interest, such as beneficial ownership, not mere operational control. Citing *JSC VTB Bank v Skurikhin* [2015] EWHC 2131 (Comm), the court noted de facto control is evidence of beneficial ownership, not an independent basis for receivership.

Evaluating Ms. Z's intent objectively, the court found she retained beneficial ownership. Post-trust establishment, Ms. Z unilaterally transferred funds from the CS Account to her personal accounts, lacking justification and suggesting personal use. The March 2015 DB transfers, marked "TOP URGENT" and coinciding with the HK Freezing Orders' notification on March 2, 2015, indicated Ms. Z's belief that the assets were hers. BVI Company's inaction against the SG Freezing Orders for seven years, despite claiming absolute ownership, implied acquiescence to Ms. Z's control. The March 6, 2015, letter constituted an admission under sections 17 and 18 of the Evidence Act (Cap 97, 1997 Rev Ed), reinforcing her beneficial ownership. The trust documents, including the Declaration of Trust and Deed of Addition, were neutral, addressing only BVI Company's share, not the account assets, and their probative value was outweighed by Ms. Z's conduct.

The court deemed traditional execution methods, like writs of seizure and sale, infeasible since the accounts were in BVI Company's name. Receivership was cost-effective, just, and convenient, enabling enforcement against Ms. Z's equitable interest. The court approved the receivership, maintaining the freezing orders and directing parties to submit on the receivership order's form and costs. This judgment confirmed Ms. Z's beneficial ownership, providing a legal basis for enforcement.

Ms. Z and BVI Company appealed the 2022 decision in AD/CA 4 to 7/2023. The Appellate Division addressed: (1) whether leave to appeal was required; and (2) whether the High Court erred in finding Ms. Z the beneficial owner. The court clarified that the receivership order was final under Order 51 rule 1(1), not interlocutory under section 4(10) of the Civil Law Act, requiring no leave.

Upholding the High Court's finding, the Appellate Division found Ms. Z intended to retain beneficial ownership, evidenced by: (a) CS Account transfers from June 2014 to February 2015 (some unexplained); (b) urgent DB Account transfers in March 2015 (USD 35.833 million, marked "TOP URGENT"); (c) BVI Company's failure to contest the SG Freezing Orders; and (d) the March 6, 2015, letter. All appeals were dismissed, affirming Ms. Z's beneficial ownership and the receivership's legitimacy.

For further details, see La Dolce Vita Fine Dining Group Holdings Limited v Zhang Lan [2023] SGHC(A) 22; [2022] SGHC 278; [2021] HKCFI, HCMP 927/2021.

6.2 NE Securities Co., Ltd. v. Que et al.

6.2.1. Takeaways

This case arose from a dispute between a Chinese securities firm (the creditor) and a borrower over a pledged share repurchase agreement. The creditor obtained a favorable civil judgment from a Chinese court confirming that the debtor and his spouse were jointly and severally liable. However, when initiating global enforcement proceedings, the creditor encountered serious obstacles due to the debtor's deliberate concealment of assets. During the process of enforcing the Chinese judgment and identifying offshore assets, the creditor discovered that the Cayman Islands—like many offshore jurisdictions—maintains a highly confidential company disclosure regime. This secrecy prevented the creditor from identifying information about Cayman entities potentially linked to the debtor. To overcome this barrier, the creditor applied for a Norwich Pharmacal Order (NPO) in the Cayman Islands, compelling local company service providers to disclose critical information on the offshore structures. This disclosure proved pivotal to the creditor's global asset tracing and recovery strategy.

I. Opaque Cayman Company Structures Present a Serious Barrier to Judgment Creditors

In the Cayman Islands, key corporate information such as shareholder registers and company financials are not available to the public. Even company members (e.g., shareholders) cannot access this information unless explicitly authorized by the board. Registers of members can be kept in any jurisdiction, and there is no statutory requirement for exempted companies to file shareholder information with the Cayman Registrar. As a result, Chinese creditors seeking to enforce judgments find it extremely difficult to determine a debtor's asset holdings or affiliate companies within Cayman-based structures.

II. NPOs Can Breach the Veil of Offshore Confidentiality

To bypass this structural secrecy, the Chinese creditor in this case obtained a Norwich Pharmacal Order from the Grand Court of the Cayman Islands. An NPO is a form of equitable relief available under common law that allows the court to compel third parties—typically those innocently involved in the wrongdoing, such as registered agents or company administrators—to disclose relevant information.

To succeed in an NPO application, the applicant must demonstrate:

(1) An arguable case that a legal wrong has been committed or will be committed (e.g., fraudulent concealment or dissipation of assets);

(2) The information sought is necessary to take action against the wrongdoer and cannot be obtained by other straightforward means;

(3) The third party is "mixed up" in the wrongdoing (not necessarily culpably) and possesses the sought-after information.

This remedy is particularly valuable in cross-border debt enforcement as it allows access to otherwise unavailable records including company control structures, beneficial ownership, and financial arrangements.

III. Disclosed Information Lays the Groundwork for Global Enforcement

The information obtained through the Cayman NPO—including corporate documents, transaction histories, and ownership details—can be deployed globally to:

(1) Apply for Mareva injunctions to freeze assets in other jurisdictions;

(2) Initiate proceedings for liquidation, derivative claims, or shareholder liability based on the revealed control structures;

(3) Provide evidence in recognition and enforcement actions to pierce offshore holding companies and connect them to the judgment debtor.

While liquidation proceedings in the Cayman Islands may also provide a route to discovery, they are collective in nature and risk dilution of recovery due to competing claims. In contrast, NPOs offer a creditor-specific, strategic, and cost-efficient mechanism to support enforcement efforts with focused evidentiary tools.

6.2.2. Case Brief

I. Background

This case concerns the stock repurchase contract dispute involving NE Securities against Mr. Que , Ms. He, and HK Company, encompassing both the Chinese domestic litigation and the related Cayman Islands proceedings.

In 2016, a securities company entered into two stock-pledged repurchase agreements with Mr. Que, involving a total financing amount of RMB 500 million, which ultimately gave rise to the present dispute. Mr. Que, the controlling shareholder and legal representative of HK Group (a listed company) and HK Company, pledged his shares in HK Group to obtain financing from the securities company.

On August 1, 2016, both parties signed the "Stock Pledge Repurchase Agreement" to refinance

earlier borrowings, supplement HK Company's working capital, and support the integration of healthcare service enterprises. Under the transaction, a total of 98.87 million shares of the listed company were pledged and registered with the China Securities Depository anClearing Corporation, securing a loan of RMB 500 million.

Ms. He, Mr. Que's wife, consented to the use of jointly owned marital property as collateral through a notarized "Spousal Consent" dated August 1, 2016. Meanwhile, HK Company executed a Guarantee Agreement and a Tripartite Agreement, undertaking joint and several liability and committing to joint repayment obligations. However, upon maturity, Mr. Que failed to repay the principal and interest, thereby breaching the agreement. As of February 13, 2018, the outstanding principal stood at RMB 500 million, with accrued interest of RMB 4.2 million.

NE Securities filed a lawsuit in the Jilin Provincial High People's Court, seeking: (1) repayment of RMB 500 million plus interest at 6.3% until full settlement; (2) priority over proceeds from the 98.87 million pledged shares; (3) joint liability from Ms. He and HK Company; and (4) litigation and preservation fees (RMB 2,560,350 and RMB 5,000, respectively) borne by the defendants. The court held a public hearing, but all defendants failed to appear without justification, resulting in a default judgment.

On November 16, 2018, the court ruled in favor of NE Securities, finding the contracts and guarantees legally binding and Que in breach. The judgment ordered: (1) the defendants to pay RMB 500 million within 15 days of the judgment's effective date; (2) payment of RMB 4.2 million in interest (up to February 13, 2018) plus ongoing interest at 6.3%; (3) joint liability among the defendants; (4) NE Securities' priority over the pledged shares via sale or auction.

The judgment secured NE Securities' claims but faced enforcement challenges due to Mr. Que's apparent financial distress and potential asset concealment. The defendants' absence suggested an inability or unwillingness to contest, prompting NE Securities to suspect offshore asset transfers, particularly through Cayman Islands entities, leading to the Cayman litigation.

II. Proceedings in Cayman

Suspecting that Mr. Que had transferred assets offshore via Cayman-registered entities, NE Securities initiated proceedings in the Cayman Islands to pursue asset tracing and support enforcement of a Chinese court judgment. The Cayman action was a procedural claim seeking a NPO to compel the disclosure of corporate records relating to entities allegedly controlled by Mr. Que.

As a leading offshore financial center, the Cayman Islands is home to numerous Chinese-owned structures used for shareholding, financing, and asset management. NE Securities believed that Mr. Que had exploited Cayman vehicles to conceal assets and frustrate enforcement of a RMB 500

million debt confirmed by a 2018 Chinese court judgment.

Under the Cayman Islands Companies Act (CICA), sensitive information such as registers of members and financial records of exempted companies is not publicly accessible, making enforcement especially difficult for creditors. To overcome this barrier, NE Securities relied on the common law mechanism of a Norwich Pharmacal Order—originating from the UK case Norwich Pharmacal Co v Customs & Excise—which enables a court to compel third parties involved in wrongdoing (even innocently) to disclose relevant information. The Cayman legal system is well developed in handling such applications, making it a favorable jurisdiction for cross-border asset tracing.

NE Securities applied for an NPO against Tricor Services (Cayman Islands) Limited, the registered agent for several companies linked to Mr. Que. The creditor requested the disclosure of registers of members and directors, as well as transaction records detailing asset holdings and fund flows, in order to determine whether Que had diverted assets through offshore entities.

The application was based on three core grounds:

(1) Wrongdoing: The creditor argued that Que had likely committed fraudulent asset transfers via Cayman entities to evade execution of the Chinese judgment. The RMB 500 million debt, his default, and his financial distress created a reasonable basis for suspicion.

(2) Necessity: The requested information was not available through any other legal channels, particularly given the secrecy provisions under CICA. The NPO was deemed essential to asset tracing and potential follow-on proceedings.

(3) Tricor's Involvement: As the registered agent, Tricor maintained corporate records and was involved in the companies' administration. While not alleged to have engaged in wrongdoing, Tricor was sufficiently "mixed up" in the matter to justify the disclosure order.

Justice Ian RC Kawaley of the Cayman Grand Court carefully applied Norwich Pharmacal principles to the facts. The court held that:

(1) there was an arguable case of wrongdoing, based on the Chinese judgment and the evidence of default, justifying an inference of asset dissipation;

(2) the necessity requirement was met, as no alternative means existed to obtain the requested information; and

(3) Tricor's involvement as registered agent satisfied the legal threshold, as active wrongdoing was not required—mere facilitation sufficed.

The court balanced NE Securities' need for disclosure against Tricor's confidentiality obligations, narrowing the order's scope to ensure proportionality. The court concluded that the application was made for a legitimate purpose: enforcing a valid foreign judgment, not for any collateral motive.

In 2020, the Grand Court granted the NPO, compelling Tricor to produce the specified corporate documents. Tricor was also ordered to bear a portion of the litigation costs. The decision furnished NE Securities with crucial information for identifying and locating Que's offshore assets, laying the foundation for potential freezing orders, liquidation claims, or further enforcement proceedings in Cayman or other jurisdictions.

For further details, see In the Matter of Northeast Securities Co., Ltd. v. Tricor Services (Cayman Islands) Ltd. and International Corporation Services Ltd., FSD 297 of 2022 (IKJ), Grand Court of the Cayman Islands, Financial Services Division, Judgment delivered on 3 April 2023 and 30 November 2023.

6.3 IB Financial Leasing Company v Xing

6.3.1. Takeaways

This case involves a financial leasing dispute and the recognition and enforcement of Chinese judgments in the British Virgin Islands (BVI). The claimant, a Chinese financial leasing company, secured Chinese court judgments against the defendant, Mr. Xing, and pursued enforcement in the BVI, where Xing wholly owns a BVI company used as a platform to hold assets, including Hong Kong-listed shares, bank accounts, and a potential interest in real property. The following takeaways highlight key considerations for cross-border enforcement.

I. Recognition and Enforcement of Chinese Judgments in the BVI

Chinese creditors can enforce Chinese court judgments in the BVI, provided they meet the requisite legal standards. In this case, three judgments from the Supreme People's Court of China were registered in the Hong Kong High Court and subsequently recognized as enforceable by the BVI High Court (Commercial Division) on 26th February 2019. This demonstrates that Chinese judgments, when final and conclusive, can gain legal effect in the BVI, either directly or via an intermediary jurisdiction like Hong Kong, offering a robust pathway for creditors to pursue debtor assets.

The BVI, alongside the Cayman Islands, ranks among the most favored offshore financial centers for Chinese investors, owing to its flexible company law, streamlined registration processes, stringent privacy protections, and tax advantages (e.g., no corporate income tax or capital gains tax). In this case, Mr. Xing's BVI company, held significant assets, including 93,693,306 shares in a Hong Kong-listed company (valued at approximately US$19.2 million), bank accounts, and a potential interest in

a Hong Kong property. Such structures are common among Chinese investors for holding overseas assets, facilitating cross-border investments, and optimizing tax arrangements. However, the privacy and asset isolation features of BVI companies complicate creditor enforcement. BVI companies typically serve as asset-holding vehicles with minimal operational activity, making the debtor’ s shares in such companies a primary target for enforcement. Creditors must identify and target these shares through BVI court proceedings to indirectly access company assets.

II. Strategy for Enforcing BVI Company Shares

Executing against a debtor's shares in a BVI company is a critical strategy for cross-border debt recovery. In this case, the BVI Court approved the appointment of an equitable receiver to manage Xing's shares in the BVI Company, rather than ordering their sale on the open market. The receiver, by controlling the shares, can replace the company's directors (typically with the receiver) and manage its assets, such as selling listed shares, pursuing property interests, or initiating liquidation. In contrast, enforcing a charging order followed by an open market sale of the shares often faces liquidity challenges and valuation difficulties. The complexity of the BVI Company's assets—litigation risks tied to the Hong Kong property, unknown bank account balances, and discounted share value due to associated legal disputes—rendered an open market sale suboptimal, as it would likely yield a price significantly below the company's true asset value. This case illustrates that appointing a receiver to control the BVI Company shares maximizes asset realization, making it a preferred strategy for Chinese creditors targeting debtor-held BVI shares.

III. Operational Mechanics and Advantages of Receivership

The appointment of an equitable receiver over a debtor's BVI company shares involves a structured process: (1) the receiver assumes control of the debtor's shares; (2) exercises shareholder rights to appoint new directors, typically the receiver, to manage the company; (3) evaluates and realizes company assets, such as selling listed shares or pursuing property interests; and (4) if necessary, initiates voluntary liquidation to distribute proceeds to satisfy creditors, while safeguarding third-party creditor interests.

In this case, the BVI Company's primary asset—93,693,306 shares in a Hong Kong-listed company valued at approximately US$19.2 million—could be sold directly by the receiver under company management, achieving a higher recovery than a discounted sale of the BVI Company's shares. This approach avoids the valuation and liquidity challenges of open market share sales, which are exacerbated by litigation risks and asset uncertainty. The receivership mechanism benefits creditors by maximizing debt recovery and protects debtors by ensuring fair asset realization, which could increase recoverable amounts if the underlying judgments are set aside. For Chinese creditors, this case underscores the efficacy of receivership as a strategic tool to overcome enforcement obstacles and optimize recovery from BVI company assets.

6.3.2. Case Brief

I. Background

The claimant, IB Financial Leasing company (the "Bank"), a company incorporated in the People's Republic of China, pursued claims against the defendant, Mr. Xing, arising from financial leasing transactions. Between 2015 and 2016, the Bank obtained three judgments from the Supreme People's Court of China, ordering Xing to pay approximately RMB 325.37 million (circa US$48.45 million), plus interest at RMB 44,571.87 (circa US$6,600) per day and associated legal costs.

II. Proceedings in BVI

To enforce its claims, the IB Financial Leasing company initiated cross-border enforcement proceedings. The Chinese judgments were first registered in the Hong Kong High Court on 29th October 2016 and 10th April 2018, accompanied by pre- and post-judgment freezing orders restricting Xing and his wholly owned BVI Company, from dissipating assets. The BVI Company holds three categories of assets: (1) 93,693,306 shares in a Hong Kong-listed company, valued at approximately US$19.2 million (based on a share price of HK$1.61 in October 2019); (2) two bank accounts in Hong Kong (with HSBC and BNP Paribas), with unknown balances; and (3) a potential interest in a Hong Kong property, registered in the name of Xing's son but partially funded by the BVI Company's mortgage payments, rendering its value speculative.

On 26th February 2019, the BVI Court (Green J) recognized the Chinese judgments as enforceable in the BVI. To secure the BVI Company's assets, the IB Financial Leasing company obtained an interim charging order over Xing's shares in the BVI Company on 11th July 2019 (Adderley J), which was made final on 18th September 2019 (Farrara J). On 22nd November 2019, the IB Financial Leasing company applied for the appointment of equitable receivers to manage Xing's shares in the BVI Company and the company's assets.

The BVI Court distinguished between interim and final receivership orders. An interim receivership order has a broader scope, covering assets under the debtor’ s de facto control, as per the principles in *VTB Bank v Miccros Group Ltd* ([2018] BVIHC (COM) 0067, [9]). Such an order aligns with the English standard freezing order, encompassing assets "whether in the debtor's name or not, solely or jointly owned, or in which the debtor has a legal, beneficial, or discretionary interest." This allows interim receivers to manage assets controlled through third parties (e.g., companies or trusts) to prevent dissipation. However, the Court noted that a freezing order is typically sufficient for this purpose. Conversely, a final receivership order is narrower, limited to assets legally or beneficially owned by the debtor (*de jure* ownership). As company assets are distinct from those of a

shareholder, even a 100% shareholder, absent piercing the corporate veil (which did not apply here, per Prest v Petrodel Resources Ltd [2013] UKSC 34), the Court declined to appoint a receiver over the BVI Company's assets but permitted a final receivership order over Xing's shares in the BVI Company, as these were directly owned by him.The appointed receiver can control the BVI Company's shares, replace its directors (typically with the receiver), and manage the company to sell its assets or initiate voluntary liquidation, subject to protecting third-party creditors' interests.

The BVI Court held that selling Xing's shares in the BVI Company on the open market was unsuitable, favoring the appointment of an equitable receiver to manage the shares. Open market sales faced significant obstacles:

(1) The Hong Kong property, registered in Xing's son's name but partially funded by the BVI Company, carries litigation uncertainty, deterring third-party buyers from paying a premium.

(2) The unknown balances in the BVI Company's bank accounts hinder accurate valuation.

(3) The shares of the Hong Kong-listed company, while valued at US$19.2 million, would likely be heavily discounted in a sale of the BVI Company's shares due to associated litigation risks. Buyers could acquire equivalent shares directly on the Hong Kong Stock Exchange without such risks.

These complexities and uncertainties would result in a sale price significantly below the BVI Company's true asset value, prejudicing both the IB Financial Leasing company's ability to recover its full judgment debt and Xing's interests. Citing *Cruz City I Mauritius Holdings v Unitech Ltd* [2014] EWHC 3131 (Comm), the Court found that such "hindrances or difficulties" justify appointing a receiver for equitable execution. By controlling the BVI Company's shares, the receiver can replace directors, sell assets (e.g., the listed shares) directly, or liquidate the company to maximize recovery, ensuring a higher realization value. This approach benefits the IB Financial Leasing company by increasing debt recovery and protects Xing, as greater asset realization reduces his judgment debt and preserves potential recovery if the Chinese judgments are set aside. In contrast, a discounted open market sale could satisfy the IB Financial Leasing company's claim but would unfairly prejudice Xing and other third-party creditors by limiting recovery to the discounted share price.

The BVI Court's appointment of an equitable receiver over Xing's shares in the BVI Company, rather than permitting an open market sale, addresses the valuation and litigation risks inherent in the company's assets. This approach maximizes asset realization, balances the interests of the IB Financial Leasing company and Xing, and upholds the flexibility of equitable execution principles. This case underscores the efficacy of receivership in enforcing foreign judgments against BVI company shares, particularly when open market sales risk significant discounts.

For further details, see Industrial Bank Financial Leasing Co Ltd v Xing [2020] BVIHC (COM) 0032.

ACKNOWLEDGEMENTS

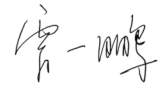
On behalf of **Hylands Law Firm**, I would like to express our deepest gratitude to all the partners, authors, support team members, and design professionals who contributed to 2025 Report on International Asset Recovery for PRC Financial Creditors.

First and foremost, we extend our sincere appreciation to our co-publishing partners, **Omni Bridgeway** and **Global Yudu**, for their invaluable support. As a global leader in litigation finance, Omni Bridgeway brought a wealth of international expertise and strategic insight to this report. Global Yudu's extensive global asset recovery network provided critical case study materials and practical perspectives. Your collaboration and professionalism were instrumental in shaping this report's success.

We also pay special tribute to our exceptional author team. **Mr. Guodong Du** and **Ms. Ting Luo** authored Chapters One and Three, delivering incisive analysis on cross-border financial claims recovery with their deep industry knowledge and sharp market acumen. **Mr. Anthony Ellwood-Russell** and **Mr. Marijn Flinterman** contributed Chapter Two, offering innovative solutions grounded in international dispute resolution and third-party funding practices. Your scholarly rigor and practical wisdom have greatly enriched the report's value.

Our heartfelt thanks go to **Ms. Qingqing Liu** and **Ms. Yiwei Zhuo**, whose professional legal experience provided essential guidance, ensuring the report's practical relevance. **Mr. Wenliang Zhang** brought an academic perspective to case analysis and theoretical frameworks, elevating the report's scholarly standards. Your contributions have made this report both actionable and intellectually robust.

This report is a collective achievement, and we are grateful to every contributor. We look forward to continuing this important work together to advance the field of global financial claims recovery.



Yipeng Jia
Executive Director, Senior Partner and Chair of the Dispute Resolution Committee
at Hylands Law Firm
July 2025