Asian Journal of International Law (2025), 1–29
doi:10.1017/S2044251324000389

CAMBRIDGE UNIVERSITY PRESS

ARTICLE

Enforcing Singapore Judgments in Cambodia: Reciprocity Under the Loupe

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(Received 30 August 2023; revised 8 September 2024; accepted 24 September 2024)

Abstract

This article examines the feasibility of enforcing Singapore money judgments in Cambodia, focusing on the "guarantee of reciprocity" – an ambiguous yet critical condition. It is ambiguous because Cambodian courts have not yet interpreted it. It is critical because it is perceived as the main obstacle to enforcing foreign judgments. Without a treaty-based mutual enforcement mechanism between Cambodia and Singapore, it is unclear whether a Singapore money judgment could be enforced in Cambodia or if a judgment creditor's application would be dismissed in any event citing lack of reciprocity. Following an analysis of the laws of Cambodia, Singapore, and Japan, the article concludes that there is no legal obstacle before the Cambodian courts to enforce a Singapore money judgment. The flexible interpretation of the guarantee of reciprocity outlined in this article would enhance access to justice, eliminate a trade barrier, and make the investment environment more attractive in Cambodia.

Keywords: Access to justice; Cambodian law; conflict of laws; private international law; reciprocity; recognition and enforcement of foreign judgments

> The reception of foreign legal institutions is not a matter of nationality, but of usefulness and need. No one bothers to fetch a thing from afar when he has one as good or better at home, but only a fool would refuse quinine just because it didn't grow in his back garden.
>
> – Rudolf VON JHERING[1]

Cambodian legal professionals have expressed significant scepticism regarding the enforceability of foreign judgments. This scepticism arises from the Code of Civil Procedure of the Kingdom of Cambodia of 2006 (Cambodian CCP),[2] which provides threshold conditions for a foreign judgment to have legal effect. It stipulates that for a foreign judgment to be

[1] As translated in Konrad ZWEIGERT and Hein KÖTZ, *An Introduction to Comparative Law*, 3rd ed. (Oxford: Oxford University Press, 1998) quoted in Mathias SIEMS, *Comparative Law*, 2nd ed. (Cambridge: Cambridge University Press, 2018) at 233.

[2] See Cambodian CCP (entered into force July 2007), art. 199; English translation of the Cambodian CCP, online: JICA <https://www.jica.go.jp/Resource/project/english/cambodia/0701047/materials/c8h0vm000000zsb2-att/01_01e.pdf>.

recognized in Cambodia, there must be a "guarantee of reciprocity"[3] between Cambodia and the state of origin.[4] In simple terms, this means that Cambodian courts will give effect to foreign judgments on condition that the state of origin also gives effect to Cambodian judgments. However, what constitutes the prerequisite guarantee can be interpreted in various ways.[5] Since the entry into force of the Cambodian CCP in 2007,[6] Cambodian courts have not published any judgments clarifying the content of this term,[7] leaving foreign judgment creditors and their lawyers in uncertainty.

Nonetheless, Cambodian legal professionals tend to adopt a narrow interpretation, suggesting that only a treaty between Cambodia and the state of origin can provide such a guarantee. Since Cambodia is currently party to only one such treaty – the Cambodia–Vietnam Treaty[8] – the common view is that foreign judgments are not enforceable in Cambodia, except for those from Vietnam.

This article aims to demonstrate that the prerequisite guarantee of reciprocity, commonly believed to require a treaty and perceived as the main hindrance to the enforceability of foreign judgments in Cambodia, can be met by other means.[9]

Japanese case law will be presented as an example to show how the national laws of the country of origin can guarantee reciprocity. Our analysis is based on the interpretation of reciprocity as developed by Japanese courts, given that the Cambodian CCP is a Japanese legal transplant within which the relevant rules are embedded.[10] The rules concerning the recognition and enforcement of foreign judgments are essentially identical in Cambodia and Japan.[11] Without published Cambodian judgments on the recognition and enforcement of foreign judgments,[12] the abundant Japanese case law holds significant explanatory value.[13]

While the enforceability of foreign money judgments in Cambodia entails legal certainty irrespective of the nationality of the judgment, our analysis is confined to examining the enforceability of Singapore judgments. There are multiple reasons that our choice has fallen on Singapore. In addition to the two countries' geographical proximity and interconnectedness through numerous trade agreements, we aimed to select a jurisdiction with a firm adherence to the rule of law, where surveys and indexes support the integrity and

[3] *Ibid* at art. 199(d).

[4] In this article "court of origin" refers to the court which granted the foreign judgment, and "state of origin" refers to the state in which the court of origin is situated. Meanwhile, "court addressed" indicates the court which is asked to recognize and enforce the judgment, and "requested state" indicates the state in which the court addressed is situated. The term "state", where appropriate, may be replaced by "country".

[5] *Infra* Section III.A.

[6] Tomoki MIYAZAKI, "Cambodia" *ICD News* (December 2009), online: International Cooperation Department Research and Training Institute, Ministry of Justice <https://www.moj.go.jp/content/001321510.pdf> at 41.

[7] List of the 104 judgments published by the Ministry of Justice of the Kingdom of Cambodia until 31 May 2024, online: Ministry of Justice of the Kingdom of Cambodia <https://www.moj.gov.kh/kh/actual-civil-judgments>. The Asian Legal Information Institute (AsianLII) provides English translations of judgments rendered by the Constitutional Court of Cambodia between 2003 and 2009. Additionally, JICA legal experts have translated selected Cambodian civil court judgments in Japanese. However, those judgments do not address private international law issues: Nobumichi TERAMURA, "Cambodia" in Kazuaki NISHIOKA, ed., *Treatment of Foreign Law in Asia* (Oxford: Hart Publishing, 2023), 171 at 188.

[8] *Agreement on mutual judicial assistance in civil matters between the Kingdom of Cambodia and the Socialist Republic of Viet Nam*, 21 January 2013 (promulgated 17 July 2014) [Cambodia–Vietnam Treaty].

[9] *Infra* Section III.

[10] *Infra* Section I.B.

[11] *Infra* Table 1 and Table 2.

[12] Ministry of Justice of the Kingdom of Cambodia, *supra* note 7.

[13] *Infra* Section III.D.

expertise of the courts.[14] In Singapore, trust in the administration of justice, a relevant consideration underlying any judicial cooperation between countries,[15] cannot be seriously questioned. Furthermore, we considered the apparent interest of Cambodian businesses in submitting to the jurisdiction of Singaporean courts.[16] Singapore is a significant dispute resolution centre in Southeast Asia. A modern legislative framework and the availability of highly skilled lawyers and judges with a wide range of industry expertise make Singapore courts well-suited for adjudicating cross-border commercial transactions. Singapore has mastered these judicial capabilities since the Singapore International Commercial Court (SICC) launched in 2015.[17]

A functional comparative method is adopted in this research to compare the civil law type of *exequatur* proceedings[18] under the laws of Cambodia and Japan[19] with the "fresh action" required under Singapore's common law.[20] Both approaches enable the enforcement of foreign judgments under certain conditions without reviewing the merits (*révision au fond*) of the case.

Our analysis is limited to the recognition and enforcement[21] of *in personam* money judgments in commercial cases.[22] The conclusions are exclusive to such judgments and may not

[14] According to the civil justice factor of the World Justice Project's Rule of Law Index 2023, Singapore achieved the highest score in the East Asia and Pacific region. This result ranked Singapore the ninth best performer globally in terms of civil justice. World Justice Project, "Rule of Law Index 2023" (2023), online: WJP <https://worldjusticeproject.org/rule-of-law-index/global/2023/Singapore/Civil%20Justice/>. According to the enforcing contracts indicator of the World Bank's Doing Business Report 2020, Singapore is the jurisdiction where the enforcement of contracts scored the best worldwide, considering factors such as time, costs, and the quality of the judicial process. World Bank, "Doing Business 2020" (2020), online: WB <https://archive.doingbusiness.org/en/data/exploreeconomies/singapore#DB_ec>.

[15] Matthias WELLER, "The HCCH 2019 Judgments Convention: New Trends in Trust Management?" in Christophe BENICKE and Stefan HUBER, eds., *National, International, Transnational: Harmonischer Dreiklang im Recht - Festschrift für Herbert Kronke zum 70. Gebrustag* (Bielefeld: 2020), 621 at 622–6.

[16] We contacted five commercial law firms with a significant presence in Cambodia and with international clients, and each confirmed the view that their international clients would consider submitting to the jurisdiction of the Singapore courts if Singaporean judgments could be enforced in Cambodia. The survey was conducted in February 2024.

[17] Adeline CHONG and Man YIP, "Singapore as a Centre for International Commercial Litigation: Party Autonomy to the Fore" (2019) 15(1) Journal of Private International Law 97 at 97–8; See also SG Courts, "Establishment of the SICC", online: SG Courts <https://www.sicc.gov.sg/about-the-sicc/establishment-of-the-sicc>.

[18] *Exequatur* is the Latin for "let it be executed". In the context of foreign judgments, *exequatur* refers to a judicial decision providing for the enforceability of a foreign judgment in the forum, but it may also describe the judicial procedure leading to the aforementioned decision. A foreign judgment must meet different conditions to qualify for *exequatur,* which are referred to as conditions for *exequatur*. See also Gilles CUNIBERTI and Isabelle RUEDA, "Abolition of Exequatur: Addressing the Commission's Concerns", Faculty of Law, Economics and Finance, Université du Luxembourg, Working Paper, October 2010 at 2.

[19] On exequatur proceedings under Cambodian and Japanese law see *infra* Table 2.

[20] Adeline CHONG and Man YIP, *Singapore Private International Law: Commercial Issues and Practice* (Oxford: Oxford University Press, 2023) at 173. See also *infra* Section III.C.

[21] By "recognition" we mean that the court addressed gives effect to the determination of the legal rights and obligations made by the court of origin. By "enforcement" we mean the application of legal procedures by the courts (or any other competent authority) of the requested state to ensure that the judgment debtor obeys the judgment given by the court of origin. See Francisco GARCIMARTIN and Geneviève SAUMIER, "Explanatory Report on the Convention of 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters" (The Hague, the Netherlands: The Hague Conference on Private International Law–HCCH Permanent Bureau, 2020) at 79–80, paras 113 and 116.

[22] By "commercial case" we mean cases listed in the footnote related to art. 1(1) of the UNCITRAL Model Law on International Commercial Arbitration, which corresponds to the list of transactions set out in art. 2(i) of the Law on Commercial Arbitration of the Kingdom of Cambodia of 2006.

apply to *in rem* judgments[23] or judgments rendered in non-commercial matters such as family law[24] or succession. Notwithstanding these limitations, we do not intend to exclude the possibility that the rationale of our argument may also apply to other types of judgments or non-Singapore foreign judgments.

Section I of this article outlines economic considerations regarding enforcing foreign commercial judgments in Cambodia, focusing on those from Singapore. It introduces Cambodia's relatively new private international law framework, which delineates rules for recognizing and enforcing foreign judgments and points out the uncertainty of their application. Section II details the conditions that must be met for a foreign judgment to have a legal effect in Cambodia. Section III analyses reciprocity and relevant laws of Cambodia, Singapore, and Japan. Section IV summarizes our line of argumentation and concludes that the enforcement of Singapore judgments is desirable and that current Cambodian laws permit the enforcement of Singapore judgments in Cambodia.

I. Economic and legal background

Section A proposes that enforcement of foreign judgments, including those from Singapore, could improve the Cambodian economy and alleviate the burden on the judiciary. Section B outlines Cambodia's historical legacy with a special focus on the Japanese roots of the Cambodian CCP, which is the source of law regulating issues of Cambodia's private international law, such as enforcing foreign judgments. Section C underscores how inadequate access to court decisions over a prolonged period has led to persistent legal uncertainty, including the enforcement of foreign judgments.

A. Cross-border judgment enforcement matters for Cambodia

Given the heightened movement of individuals and capital across borders, there is an apparent necessity for, and advantages to, establishing an efficient mechanism for enforcing judgments issued in one country against assets in another. When judgments flow freely, duplicate suits can be avoided, logically lowering transaction costs and business costs. Litigants obtain greater access to justice if the winning party does not end up with a mere paper judgment unenforceable in the country where debtors' assets are located.[25]

Since foreign judgments are considered unenforceable in Cambodia, creditors need to re-litigate the same dispute in Cambodian courts to enforce the debtors' assets located in Cambodia. To this end, creditors need to go through new legal proceedings, prove and win their case again before Cambodian courts to obtain a local judgment, which can be subject to compulsory execution.[26] Re-litigating such cases demands substantial

[23] By "*in personam* judgment", we mean judgments laying down the rights and obligations between the parties to the action that binds only those parties. In contrast, "*in rem* judgment" refers to judgments pronouncing upon the status of a particular subject matter, which purports to bind the whole world.

[24] On the recognition of foreign family decrees in Cambodia, see Nobumichi TERAMURA, "Cambodia" in Anselmo REYES, Wilson LUI, and Kazuaki NISHIOKA, eds., *Choice of Law and Recognition in Asian Family Law* (Oxford: Hart Publishing, 2023), 219 at 236–9.

[25] Adeline CHONG, "General Principle" in Adeline CHONG, ed., *Asian Principles for the Recognition and Enforcement of Foreign Judgments* (Singapore: Asian Business Law Institute, 2020), 1 at 6; *First Property Holdings Pte Ltd v Nyunt* [2019] NSWSC 249 at 8. See also Garcimartin and Saumier, *supra* note 21 at 48, para. 12–19.

[26] While there is no publicly available Cambodian judgment on the effect of foreign *res judicata* (i.e. whether it would bar subsequent proceedings between the same parties in the same subject matter), we are aware of a ruling in which the Phnom Penh Court of First Instance positively ruled on its own jurisdiction despite a dispute in the same subject matter between the same parties being conclusively resolved by the courts of Malaysia (Ruling No. 121 dated 29 January 2024 in Civil Case File No. 2030 dated 12 December 2022 of the Phnom Penh Court of First Instance). This ruling is, however, subject to appeal.

resources[27] and entails a lengthy process,[28] potentially spanning several years if all three instances are exhausted. The situation is further exacerbated by the difficulty in predicting case outcomes before Cambodian courts.[29] One may think that assets representing significant value are retained overseas, and therefore, enforcing foreign judgments against Cambodian assets is a marginal issue. However, this is not the case. Cambodian law firms frequently receive enquiries from clients seeking to enforce foreign judgments.[30] The Cambodian government's long-persisting incentivisation of foreign direct investment (FDI) induced the growth of multiple industries, which materialized in power plants, factories, resorts, and casinos scattered throughout Cambodia. These are often part of multinational groups. When these multinationals become indebted, creditors may need to look after their assets in more than one country, often including Cambodia. With increasing FDI, the number of disputes requiring the enforcement of foreign judgments and the value of assets in Cambodia that could satisfy a foreign judgment also increase. Considering Cambodia's intent to attract further FDI and increase its stake in international commerce,[31] the enforceability of claims arising from such transactions, including those already adjudicated before a foreign court, should be an elemental consideration. While the quantification of the correlation between FDI inflow or the volume of international commerce and a liberal judgment enforcement regime exceeds the scope of this research, it is indisputable that challenges or uncertainties in the claim enforcement mechanism of a country, including the enforcement of foreign judgments, deter, rather than incentivize, trade and investment.

The enforceability of foreign commercial judgments matters even more for Cambodia in the context of Singapore, given the multiple ties between the two economies. Cambodia and

[27] According to the World Bank's Doing Business Report 2020, the cost of litigation was notably high in Cambodia. This is evident from the cost (per cent of claim value) indicator within the enforcing contracts component of the report, which was last published in 2020. Based on this report, which assessed the expenditure involved in enforcing a simple contract debt, the costs in Cambodia amounted to 103.4 per cent of the claim value. See World Bank, *supra* note 14. In comparison, the average ratio in East Asia and Pacific was 47.2 per cent, while in Singapore, for further comparison, the costs amounted to 25.8 per cent of the claim value. See World Bank, *supra* note 14. Similar results emerge from the "people can access and afford civil justice" sub-factor within the civil justice factor of the World Justice Project's Rule of Law Index, ranking Cambodia 139th of the 142 surveyed countries. See World Justice Project, *supra* note 14.

[28] According to the time indicator of the enforcing contracts component of the World Bank's Doing Business Report 2020, it takes 483 days for a plaintiff to obtain a judgment of first instance from the Cambodian court and, assuming no appeal, to enforce it. See World Bank, *supra* note 14. According to the "civil justice is not subject to unreasonable delay" sub-factor within the civil justice factor of the World Justice Project's Rule of Law Index, Cambodia ranks 127th of the 142 surveyed countries. See World Justice Project, *supra* note 14.

[29] This experience may be attributed to various factors, including the relatively young age of the Cambodian CCP and Civil Code, implemented in 2007 and 2011, respectively. Additionally, limited availability of judgments for public research contributes to a lack of clarity regarding their interpretation. The weak performance of the Cambodian judiciary in civil justice also exacerbates the situation. According to the civil justice factor in the World Justice Project's Rule of Law Index for 2023, Cambodia's civil justice system ranked last among the 142 countries surveyed. See World Justice Project, *supra* note 14.

[30] We contacted five commercial law firms having significant presence in Cambodia with international clients, and each confirmed that they receive inquiries about the enforceability of foreign judgments. The survey was conducted in February 2024.

[31] CHHEANG Vannarith, "Cambodia's Economic Diplomacy Gains Momentum" *Khmer Times* (25 January 2024), online: Khmer Times <https://www.khmertimeskh.com/501428588/cambodias-economic-diplomacy-gains-momentum/>. See also TEAN Samnang, "Cambodia's Economic Diplomacy Strategy 2021–2023: A Positive Deliberation for 2050" (17 May 2023), online: Asian Vision Institute <https://asianvision.org/wp-content/uploads/2023/05/230517-AVI-Commentary-2023-Issue-11-TEAN-Samnang-.pdf>; Ministry of Foreign Affairs and International Cooperation, "Economic Diplomacy Strategy 2021–2023" (2021), online: MFAIC <https://www.mfaic.gov.kh/files/uploads/S2QKPXXAOTPW/[En]_Economic_Diplomacy_Strategy.pdf>.

Singapore are members of the Association of Southeast Asian Nations (ASEAN) Economic Community (AEC), formally launched in 2015. Member States are committed to achieving "dynamic", "competitive", and "highly integrated" regional economic cooperation. They also aspire to transform AEC into a single market with a free flow of goods, services, investments, skilled labour, and a freer movement of capital across the region.[32] The higher costs of contract enforcement due to the unenforceability of foreign judgments will be factored into the price of products and services, which works against the targeted "dynamic", "competitive", and "highly integrated" markets of AEC.[33] In discussing the legal barriers to supply chain connectivity in the AEC, Hsu specifically highlights the negative impact of differences in legal requirements and procedures and uncertainty in laws governing the enforcement of foreign judgments in another Member State, which could lead to delays and added costs.[34] The Regional Comprehensive Economic Partnership (RCEP), entered into force in 2022, to which Cambodia and Singapore are parties, further intensified ties between the two economies.[35] The progressive phase-out of trade and investment barriers between the two economies positively impacts and may increase the volume of cross-border transactions between Singapore and Cambodia.[36] Logically, the number of cross-border commercial disputes and judgments arising therefrom, which may necessitate overseas enforcement, will increase accordingly.

The enforceability of Singapore judgments would not only profit businesses and the economy but also help Cambodia conserve its judicial resources. Ho elucidates that it is a waste of judicial resources to litigate an action that has already been adjudicated, noting that this is one of the reasons that many countries have rules that limit or hinder re-litigation of the same cause of action.[37] The conservation of judicial resources is an important consideration for Cambodia, especially in light of the pronounced efforts of the Ministry of Justice to overcome the huge backlog of cases amid a shortage of human resources in the judiciary.[38]

[32] ASEAN, "ASEAN Economic Community Blueprint 2025", (2015), online: ASEAN <https://asean.org/book/asean-economic-community-blueprint-2025/>.

[33] *Ibid.*

[34] Locknie HSU, "Legal Barriers to Supply Chain Connectivity in ASEAN" in Rebecca Sta. MARIA, Shujiro URATA, and Ponciano S. INTAL, Jr, *The ASEAN Economic Community Into 2025 and Beyond* (2017) at 191, online: ERIA <https://www.eria.org/ASEAN_50_Vol_5_Complete_Book.pdf>.

[35] ASEAN, "The RCEP Agreement Enters into Force" (2022), online: ASEAN <https://asean.org/rcep-agreement-enters-into-force/>.

[36] SOK Siphana and SOK KHIEU Rosette, *The Regional Comprehensive Economic Partnership (RCEP): Part I – Geo-Political, Geo-Economic, and Legal Analysis* (Cambodia: Asian Vision Institute and Sok Siphana & Associates, 2023) at 17, 305. See also HIN Pisei, "Cambodia-Singapore Trade Jumps Amid Deficit and New Tax Protocol" *The Phnom Penh Post* (5 November 2023), online: The Phnom Penh Post <https://www.phnompenhpost.com/business/cambodia-singapore-trade-jumps-amid-deficit-and-new-tax-protocol>; MONOJ Mathew, "Singapore Replaces China as Cambodia's Top FDI Source" *Khmer Times* (2 November 2022), online: Khmer Times <https://www.khmertimeskh.com/501178069/singapore-replaces-china-as-cambodias-top-fdi-source/#google_vignette>.

[37] H. L. HO, "Policies Underlying the Enforcement of Foreign Commercial Judgments" (1997) 46(2) The International and Comparative Law Quarterly 443 at 460. See also Tanja DOMEJ, "Recognition and Enforcement of Judgments (Civil Law)" in Jürgen BASEDOW, Giesela RÜHL, Franco FERRARI, and Pedro De Miguel ASENSIO eds., *Encyclopedia of Private International Law* (Cheltenham (UK) and Northampton (US): Edward Elgar Publishing, 2017) at 1471–9; Adrian BRIGGS, "Recognition and Enforcement of Judgments (Common Law)" in Jürgen BASEDOW, Giesela RÜHL, Franco FERRARI and Pedro De Miguel ASENSIO, eds., *Encyclopedia of Private International Law* (Cheltenham (UK) and Northampton (US): Edward Elgar Publishing, 2017) at 1479–85.

[38] BUTH Reaksmey Kongkea, "Two-Pronged Approach to Reduce Court Case Backlogs" *Khmer Times* (3 October 2023), online: Khmer Times <https://www.khmertimeskh.com/501370104/two-pronged-approach-to-reduce-court-case-backlogs/>.

B. A snapshot of the Cambodian private international law

The Cambodian legal system and knowledge of laws are in the process of being rebuilt and acquired. In 2012, Menzel, a senior legal adviser to the Senate of the Kingdom of Cambodia and co-editor and co-author of *Introduction to Cambodian Law*, wrote, "[i]t seems that Cambodia currently still has no comprehensive framework in the field of private international law".[39] We would tone down this description. While there are several gaps in Cambodia's private international law (e.g. direct jurisdiction[40] and choice of law[41]), many important issues in this field (e.g. recognition and enforcement of foreign judgments, service of process abroad, and taking evidence abroad) are covered in the Cambodian CCP.[42]

The French Protectorate between 1863 and 1953 laid down the path of Cambodia's private laws, but such a path has been possibly erased completely.[43] Cambodia experienced a radical break in its legal development during the Khmer Rouge, which seized power in 1975. In Pol Pot's Democratic Kampuchea, laws were abolished, books were destroyed, and among the many targeted groups of the population, educated people, including lawyers, were forced to flee and, in many cases, executed.[44] Vickery described these years as "without any legal system or even a pretence of legality",[45] which chimes with Menzel's description that "the Khmer Rouge did not operate under any kind of 'legal' system … the Khmer Rouge simply abolished the law".[46] In 1979, Vietnamese troops overthrew Pol Pot's regime. In the following decade, Vietnam exercised strong control over the People's Republic of Kampuchea. Cambodia's laws were influenced by and modelled after Vietnam's socialist laws. These years can be described as a continuous civil war when codifying laws and legal education were not among the Cambodian government's priorities. In 1991, the Paris Peace Agreements ended the war and paved the way for the modernization of the state and economy, after which more attention could be paid to the legal system. With the assistance of the United Nations Transitional Authority in Cambodia, elections were organized in 1992–1993, and a new constitution was adopted in 1993. It respects fundamental human rights, the rule of law, and the separation of powers, replacing the former centrally planned economy with a modern market economy.[47] According to Dolores, in the early 1990s, there were only five private lawyers in Cambodia. She aptly states that the Cambodian legal system had to be rebuilt "from scratch".[48]

A basic private law setup, including the most essential laws for FDI, was created after the Paris Peace Agreements. The Ministry of Justice relied heavily on technical assistance

[39] Jörg MENZEL, "Cambodian Law: Some Comparative and International Perspectives" in HOR Peng, KONG Phallack, and Jörg MENZEL, eds., *Introduction to Cambodian Law* (Phnom Penh: Konrad-Adenauer-Stiftung, 2012), 477 at 490.

[40] Nobumichi TERAMURA, "Cambodia" in Anselmo REYES and Wilson LUI, eds., *Direct Jurisdiction: Asian Perspectives* (Oxford: Hart Publishing, 2021), 201.

[41] Teramura, *supra* note 24.

[42] Cambodian CCP, *supra* note 2 at arts. 129, 199, and 253.

[43] Menzel, *supra* note 39 at 490–1. On the French Protectorate, see HOR Peng, "The Modern Era of Cambodian Constitutionalism" in Hor, Kong, and Menzel, eds., *supra* note 39 at 31.

[44] Kathryn E. NEILSON, "They Killed All the Lawyers: Rebuilding the Judicial System in Cambodia", University of Victoria, Occasional Paper, October 1996, online: University of Victoria <https://www.uvic.ca/research/centres/capi/research/home/researchpublications/papers/Neilson_Killed_Lawyers.pdf>.

[45] Michael VICKERY, "Kampuchea: Politics, Economics and Society" (London: Frances Pinter (Publishers); Boulder, Colorado: Lynne Rienner Publications, 1986) at 120.

[46] Menzel, *supra* note 39 at 484.

[47] Hor, *supra* note 43 at 39–64.

[48] Dolores A. DONOVAN, "Cambodia: Building a Legal System from Scratch" (1993) 27 The International Lawyer 445 at 445.

from various development agencies. Regarding the Cambodian CCP, legal assistance materialized through the Japan International Cooperation Agency (JICA). Japanese legal experts have considered the local circumstances of the host country, and accordingly, several parts of the Cambodian CCP differ from the Japanese model.[49] However, the provisions providing *exequatur* proceedings and conditions for recognizing and enforcing foreign judgments do not differ from Japanese law.[50] Japan has nevertheless moved on and, through published judicial decisions, has crystallized the interpretation of its laws. Such progress has yet to be witnessed in Cambodia. This article does not aim to compare the development levels of the Cambodian and Japanese legislative and judicial systems or to draw any conclusions from such a comparison. This would be extremely unfair, considering the different historical backgrounds of the two countries, with Japan modernizing its legal system during the Meiji era in the second part of the nineteenth century[51] and Cambodia commencing modernization only at the end of the twentieth century. The development of Japanese judicial decisions and doctrines demonstrates that even by relying on the same statutory provisions, one can provide a more efficient and certain legal environment to its citizens and foreign investors compared to others. Therefore, the path followed by Japan may be worthy of consideration by the Cambodian judiciary.[52] In fact, it is common among top Cambodian law firms to refer to Japanese judgments in their submissions in civil proceedings, and Cambodian courts deliver judgments based on those submissions.[53] As Cambodian judges generally prefer to make their rulings and judgments very succinct and unpublished, it usually is difficult to tell from the reasoning of their decisions whether they have adopted Japanese jurisprudence. However, they are not allowed to ignore the parties' submissions containing Japanese precedents. Moreover, the core official texts of the CCP and the Civil Code of Cambodia, which are read by virtually all trainee judges at the Royal Academy for Justice of Cambodia (and most Cambodian lawyers), were prepared by Cambodian and Japanese legal experts based on Japanese legal principles and jurisprudence.[54]

C. Limited access to legal information leading to legal uncertainty

Theoretically, foreign judgments can be recognized and enforced in Cambodia. Although Cambodia is not a party to the Hague Conventions, which ensure the circulation of foreign

[49] Nobumichi TERAMURA, "Japan as a Source of Legal Ideas: A View from the Mekong Subregion of ASEAN" (2021) 13 New Voices in Japanese Studies 19 at 34. See also Kamika ATSUSI, "Comparing the Civil Codes and Civil Procedure Across Borders: The Cases of Japan and Cambodia" in Kuong TEILEE, ed., *Cambodian Yearbook of Comparative Legal Studies* (Phnom Penh: Cambodian Society of Comparative Law, 2010), 37 at 37–52; Miyazaki, *supra* note 6 at 40–1.

[50] On the *exequatur* proceedings, see the Japanese Civil Execution Act (Act No. 4 of 1979), (2007 revised edition, entered into force 1 December 2008), art. 24 and the Cambodian CCP, *supra* note 2 at art. 352. On the conditions for *exequatur*, see the Japanese Code of Civil Procedure (Act No. 109 of 1996), (2011 revised edition, entered into force 1 April 2012), art. 118 and the Cambodian CCP, *supra* note 2 art. 199. For ease of comparison, see also Tables 1 and 2.

[51] TAUCHI Masahiro, "Becoming the Focal Point for Information Distribution on the Japanese Legal Assistance" *ICD News* (July 2003), online: Ministry of Justice, International Cooperation Department, Research and Training Institute <https://www.moj.go.jp/content/000111066.pdf> at 2–4.

[52] See also Menzel, *supra* note 39 at 490–1, who wrote that:

> [t]oday, however the new Civil Code and Civil Procedure Code are not influenced by France but Japanese legal concepts, thus it may be appropriate to draft legislation largely inspired by Japanese private international law and apply those principles as much as appropriate for the interim period.

[53] Based on the authors' experience at Cambodian law firms.

[54] Teramura, *supra* note 40 at 202–03.

judgments in civil and commercial matters on a global scale,[55] nor has it concluded bilateral agreements on the subject matter (except for the Cambodia–Vietnam Treaty), according to its national law, subject to certain threshold conditions foreign judgments can be recognized and enforced. Conditions for *exequatur* that a foreign judgment must meet to qualify for recognition and enforcement, namely, (1) finality, (2) indirect jurisdiction,[56] (3) service of process, (4) public policy and good morals, and (5) guarantee of reciprocity, are set out in Article 199 of the Cambodian CCP.

The *exequatur* proceedings provided for by Article 352 of the Cambodian CCP are simple. The person holding a final and binding foreign judgment must file a "motion for execution judgment" with the Cambodian court, which has territorial jurisdiction over the judgment debtor or its assets. Without reviewing the merits of the foreign judgment, the Cambodian court issues a so-called "execution judgment" unless the judgment fails to meet either threshold condition outlined in Article 199 of the Cambodian CCP. If not appealed, a foreign judgment that has obtained an execution judgment qualifies as "title of execution", implying that the foreign judgment is enforceable in Cambodia in the same manner as domestic judgments.[57]

However, the practice of enforcing foreign judgment remains largely unknown to a significant portion of the Cambodian legal community. This is despite the Cambodian CCP establishing conditions and procedures for recognizing and enforcing foreign judgments, which entered into force in 2007[58] and has remained unchanged since. While the law is stable, it lacks interpretation. To date, only 104 judgments have been published as points of reference providing limited insight into how the law is interpreted. Moreover, none of these judgments addresses the recognition and enforcement of foreign judgments.[59] Given that judicial decisions are largely unavailable, it is not surprising that Cambodian legal research struggles to flourish.[60] Although legal professionals strive for information and a better understanding of the legal transplants they must work with, most contemplations of the law remain hypothetical without sufficient knowledge regarding how Cambodian courts interpret the laws.

Teramura observes that legal information in Cambodia has a "private nature" and explains that "[i]n Cambodia, legal research is often understood as a synonym of

[55] The Hague Conventions, which are relevant in the subject of the recognition and enforcement of foreign commercial judgments, are as follows: (1) Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1 February 1971 (entered into force 20 August 1979); (2) the Convention on Choice of Court Agreements of 30 June 2005 (entered into force 1 October 2015) [HCCH 2005 Choice of Court Convention]; and (3) the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, 2 July 2019 (entered into force 1 September 2023) [HCCH 2019 Judgments Convention]; Status Chart (31 May 2024), online: HCCH <https://www.hcch.net/en/instruments/status-charts>.

[56] By "indirect jurisdiction" we mean the power or ability of the court addressed to recognize and enforce a judgment. Indirect jurisdiction is to be distinguished from "direct jurisdiction", which is the power or ability of a court to hear a case and render a decision on that matter. In various laws and legal scholarship, indirect jurisdiction is referred to as international jurisdiction, or described in other terms, such as court of origin having jurisdiction in an "international" sense, that the court of origin is a court of "competent" jurisdiction, or that the court of origin has "proper" jurisdiction. In this article, except for quotes *in verbatim*, we consistently use the term indirect jurisdiction regardless of how it is referred to or described in the respective source. On this terminology, see Reyes and Lui, eds., *supra* note 40 at 3. See also Adeline CHONG, "Jurisdiction of the Court" in Chong, ed., *supra* note 25 at 18–19.

[57] Cambodian CCP, *supra* note 2 at arts. 199, 350, and 352.

[58] Miyazaki, *supra* note 6.

[59] Ministry of Justice of the Kingdom of Cambodia, *supra* note 7.

[60] There are small study groups for law students and legal practitioners, such as "Sala Traju Association", "Contribution of Law", and "Research and Promotion Khmer Law Association", but their main focus is not legal research. See CHEA Seavmey, "Challenges of Legal Education in Cambodia [in Japanese]" (2020) 85 ICD News at 20.

networking", which indicates that in practice, "lawyers are expected to communicate with contact persons – judges, court clerks, government officials and politicians – to obtain 'allegedly' reliable and updated legal information".[61] The situation that Teramura described signals the need for more official information to be available to the Cambodian legal community.

Although the availability of information is modest, there are two important academic studies on enforcing foreign judgments in Cambodia, both of which are the output of large-scale academic research projects led by Chong[62] and Reyes,[63] covering numerous Asian jurisdictions. Cambodian law experts for the two research projects were selected from among the most reputable members of the Cambodian legal community, comprising lawyers who had long been exposed to international commercial disputes. Therefore, one may expect that they had all the information regarding the recognition and enforcement of foreign commercial judgments. However, this does not seem to be the case. The study, which was released in 2017 (a decade after the Cambodian CCP came into force), includes the following:

> While there is a legal framework which would allow a Cambodian court to recognise and enforce a foreign judgment, to date, we are unaware of any foreign judgment that has been recognised and enforced, or refused to be recognised and enforced by the Cambodian courts.[64]

The succinct Cambodia chapter of the other project, published in 2019, states, "to our knowledge Cambodia has yet to see a foreign judgment recognised and enforced in the local courts".[65] As of early 2024, we could still not identify reliable information confirming that any foreign judgment had ever been enforced or refused to be enforced by Cambodian courts.[66] Although some may possess the knowledge we have been trying to obtain, the wider public, including domestic businesses, foreign investors, and their Cambodian lawyers, have no official information about Cambodian courts' position on whether a Singapore judgment can be enforced.

II. Conditions for the enforcement of foreign judgments in Cambodian law

According to the Cambodian CCP, enforcing a foreign judgment requires a judgment creditor to obtain an execution judgment from a competent Cambodian court.[67] The Cambodian

[61] Teramura, *supra* note 40 at 218.

[62] Adeline CHONG, ed., *Recognition and Enforcement of Foreign Judgments in Asia* (Singapore: Asian Business Law Institute, 2017).

[63] Anselmo REYES, ed., *Recognition and Enforcement of Judgments in Civil and Commercial Matters* (Oxford: Hart Publishing, 2019).

[64] Youdy BUN, "Country Report: Cambodia" in Chong, ed., *supra* note 62 at 38.

[65] Alex LARKIN and Potim YUN, "Cambodia" in Reyes, ed., *supra* note 63 at 204.

[66] Data for this article were collected until 31 March 2024. On the unenforceability of foreign judgments in Cambodia in the absence of a treaty ensuring reciprocal treatment, see, for example, Baker McKenzie, "Asia Pacific Guide to Lending and Taking Security: Cambodia" online: Baker McKenzie <https://resourcehub.bakermckenzie.com/en/resources/asia-pacific-guide-to-lending-and-taking-security/asia-pacific/cambodia/topics/if-things-go-wrong>.

[67] The rules and conditions outlined in this section apply to judgments of any foreign country, except for Vietnam. For Vietnamese judgments, the rules and conditions set out in the Cambodia–Vietnam Treaty, *supra* note 8, specifically at art. 22, apply. Given that our intent is to present an alternative to the prevailing interpretation of reciprocity according to which reciprocity presumes the existence of a relevant treaty, Vietnamese judgments, which enjoy the benefit of a treaty based reciprocal treatment, fall beyond the scope of this article.

CCP explicitly states that during this process, there is no room for a merit review;[68] rather, the Cambodian court is limited to dismissing the creditor's application if the foreign judgment fails to meet one or more of the five threshold conditions.[69] These conditions, listed in Article 199 of the Cambodian CCP, are as follows:

> [a] final and binding judgment of a foreign court shall be effective only where all of the following requirements have been fulfilled:
>
> (a) jurisdiction is properly conferred on the foreign court by law or by treaty which the Kingdom of Cambodia has concluded;
> (b) the non-prevailing defendant received service of a summons or any other order necessary to commence the action, or responded without receiving such summons or order;
> (c) the contents of the judgment and the court proceedings in the action do not violate the public order or good morals of Cambodia; and
> (d) there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.

First, foreign judgments must be final and binding to be enforceable in Cambodia.[70] The pertinent commentary clarifies that Article 199 of the Cambodian CCP applies not only to foreign judgments but also to foreign judicial orders.[71] The commentary reflects a similarly flexible interpretation of the term "judgment of a foreign court" by Japanese courts.[72] In the Cambodian legal context, the terms final and binding signify that a judgment is not susceptible to further appeal.[73] Neither the Cambodian CCP nor the accompanying commentary notes provide explicit guidance on whether finality should be evaluated under Cambodian law or the laws of the country of origin.[74] Bun nevertheless argues that the finality of a foreign judgment should be assessed with reference to the laws of the country of origin, adding that the burden of proof regarding the finality of the judgment rests on the judgment creditor seeking recognition and enforcement of a foreign judgment.[75] Bun's view aligns with Du's suggestion that the finality of a foreign judgment should generally be determined with reference to the law of the country of origin, on the basis that a foreign judgment should not have a greater effect abroad than within the country of origin.[76] However, this explanation does not address the situation where the judgment is enforceable in the country of origin, despite an appeal pending against the concerned judgment. Such a situation may easily arise regarding the enforceability of Singapore's judgments in Cambodia. This is because finality under common law is determined by whether the matter is considered *res judicata* in the specific court in which it is heard, rather than the legal system as a whole.[77]

[68] Cambodian CCP, *supra* note 2 at art. 352(4).

[69] Cambodian CCP, *supra* note 2 at arts. 352(3) and 199.

[70] Cambodian CCP, *supra* note 2 at art. 199.

[71] Bun, *supra* note 64 at 43.

[72] Kazuaki NISHIOKA and Yuko NISHITANI, *Japanese Private International Law* (Oxford: Hart Publishing, 2021) at 207.

[73] Cambodian CCP, *supra* note 2 at art. 193.

[74] Bun, *supra* note 64 at 43.

[75] *Ibid.*

[76] Bich Ngoc DU, "Finality of Foreign Judgments" in Chong, ed., *supra* note 25 at 52. See also the HCCH 2005 Choice of Court Convention, art. 8(3) and the HCCH 2019 Judgments Convention, art. 4(3), *supra* note 55.

[77] Du, *supra* note 76 at 48–9.

The second requisite for enforcing a foreign judgment in Cambodia is that the foreign court must have indirect jurisdiction. Neither the Cambodian CCP nor the relevant commentary notes elaborate on indirect jurisdiction. They do not clarify the circumstances under which the Cambodian court deems the jurisdiction properly conferred upon a foreign court. It is also unclear whether indirect jurisdiction should be assessed from the perspective of Cambodian law or that of the state of origin.[78] While clarification of this issue is necessary, indirect jurisdiction is unlikely to impede the enforcement of Singapore's judgments. This is because the primary grounds on which Singapore courts establish jurisdiction, such as the defendant's presence or residence in Singapore and submission to the jurisdiction of Singapore courts,[79] are also explicit jurisdictional grounds under Cambodian law.[80]

The third condition requires that the defendant who lost the case before the foreign court receive summons or any other necessary order to commence action or respond to the action without receiving such summons or order.[81] This aligns with Cambodia's recognition of the principle of *"la contradiction"*,[82] ensuring that litigants can argue and counter-argue before the court.[83] Given the stringent service requirements in Singapore courts,[84] satisfying the third *exequatur* condition should not be an issue when the non-prevailing defendant participated in the foreign court proceedings or there is clear evidence that the defendant actually received the summons or order. However, attention must be paid to the terms of Article 199(b) of the Cambodian CCP ("received service of summons …"), which suggests a narrow interpretation. This raises the question of whether certain methods of service, such as service by publication[85] or where service is deemed complete after a contractually agreed period following dispatch, meet the threshold.

The fourth states that the contents of the foreign judgment and court proceedings in the action must not violate Cambodia's public order or good morals.[86] This provision indicates that public order and good morals encompass substantive and procedural aspects. Although the commentary does not elaborate on what could be considered a contravention of public order or good morals,[87] it is generally the task of courts to develop, on a case-by-case basis, rules and principles that amount to public order. Among published Cambodian judgments, no decision has specifically addressed public order challenges.[88] This is even though

[78] Adeline CHONG, "Jurisdiction of the Court" in Chong, ed., *supra* note 25 at 24.

[79] Kenny CHNG, "Singapore" in Reyes, ed., *supra* note 63 at 151. See also Chong and Yip, *supra* note 20 at 181.

[80] Cambodian CCP, *supra* note 2 at arts. 8, 13, and 14.

[81] Cambodian CCP, *supra* note 2 at art. 199(b).

[82] *La contradiction* is the French word for contradiction. In the context of Cambodian civil proceedings, it refers to the parties' right to request a hearing and the principle of adversarial examination (Cambodian CCP, *supra* note 2 at art. 3). See also Bun, *supra* note 64 at 40.

[83] Yu Un OPPOSUNGU, "Due Process" in Chong, ed., *supra* note 25 at 139.

[84] See, for instance, the Supreme Court of Judicature Act (Chapter 322) Singapore International Commercial Court Rules 2021, Order 5 Service.

[85] In this regard, we note that the wording of the service condition in the Cambodian CCP differs from that of the Japanese CCP, which explicitly excludes service by publication as a means of service acceptable in *exequatur* proceedings for foreign default judgments. See, *infra*, Table 1.

[86] Cambodian CCP, *supra* note 2 at art. 199(c).

[87] Bun, *supra* note 64 at 43.

[88] Ministry of Justice of the Kingdom of Cambodia, *supra* note 7. We are aware of only one case in which the debtor of a foreign, accidentally a Singaporean, arbitral award, raised public order objections before the Phnom Penh Court of Appeal (Ruling No. 39 dated 27 December 2023 in Civil Case No. 16 of the Phnom Penh Court of Appeal dated 8 February 2023). However, while the Phnom Penh Court of Appeal recognized the foreign arbitral award, it did not delve into a deeper reasoning other than stating that the award was correctly made and following the applicable procedure. Nevertheless, based on the factual and procedural background of that case, it can be inferred from the ruling that the Phnom Penh Court of Appeal agreed with the creditor's view that the

Cambodia is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, under which public order is also a ground of refusal and, contrary to the enforcement of foreign judgments, it is known that Cambodian courts have already enforced several foreign arbitral awards.[89] Considering that the principle of natural justice is well-established in Singaporean law[90] and upheld by its courts,[91] and given the confidence in Singapore's administration of justice for its strong adherence to the rule of law,[92] it is unlikely that *exequatur* for a Singapore judgment would often be denied on the grounds of violating Cambodia's procedural public order. As for substantive public order, defences based on this ground are rarely successful,[93] and there is a noticeable trend towards limiting such defenses to cases involving manifest incompatibility with public order.[94] However, Cambodian courts have yet to define their own specific standards.

Section III discusses the fifth threshold, the guarantee of reciprocity, which is considered the most complex among all uncertainties related to interpreting the five *exequatur* criteria.

III. Reciprocity as a condition for enforcement of foreign judgments

Section A outlines the concept of reciprocity from a theoretical perspective and its alleged pros and contras. Section B summarizes what is currently known about interpreting reciprocity under Cambodian law. Section C states that under the well-established rules of common law, Cambodian money judgments can be enforced in Singapore; hence, Singapore's law guarantees the reciprocal treatment of Cambodian judgments. Section D outlines the *exequatur* conditions under Japanese law and describes the development of judicial interpretation of reciprocity. This section demonstrates how a country with similar private laws and essentially identical *exequatur* mechanisms could overcome the hurdle of reciprocity without amending its laws or concluding any treaty.

A. A critical examination of reciprocity

In a general context, reciprocity denotes the relationship between two states when each of them gives the subjects of the other certain privileges on the condition that its subjects enjoy similar privileges in the latter state.[95] While reciprocity is based on public international law, during the nineteenth century, it also appeared in laws related to cross-border

parties' right to be heard does not extend to cases where the debtor fails to avail themselves of the opportunity to be heard. Accordingly, despite the debtor's non-participation in the hearing before the foreign arbitral tribunal, the Phnom Penh Court of Appeal did not determine that this award contravened Cambodian public policy. We note, however, that the award debtor's appeal against the said ruling is pending before the Supreme Court.

[89] Convention on the Recognition and Enforcement of Foreign Arbitral Awards,New York, 10 June 1958 (entered into force 4 April 1960), art. V(2)(b). See also the Law on Commercial Arbitration of the Kingdom of Cambodia, 2006 (entered into force May 2006), art. 46(2)(b).

[90] Chen SIYUAN and Eunice Chua Hui HAN, Civil Procedure in Singapore (Alphen aan den Rijn: Wolters Kluwer, 2021) 222–3.

[91] *Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd* [2010] SGCA 39 at paras 55–61.

[92] World Justice Project, *supra* note 14.

[93] Burkhard HESS and Thomas PFEIFFER, "Interpretation of the Public Policy Exception as referred to in EU Instruments of Private International and Procedural Law", Heidelberg University, Study, June 2011 at 13.

[94] HCCH 2005 Choice of Court Convention, *supra* note 55 at art. 9(e); HCCH 2019 Judgments Convention, *supra* note 55 at art. 7(1)(c); Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (entered into force 9 January 2013) OJ L 351, 20.12.2012, p. 1–32, art. 45(1)(a); see also, Yu Un OPPOSUNGU, "Public Policy" in Chong, ed., *supra* note 25 at 112, 129.

[95] Black's Law Dictionary, 6th ed. (Eagan: West Publishing, 1990) at 1270.

litigation, such as laws on foreign legal assistance and enforcing foreign judgments,[96] both falling under private international law. In the context of foreign judgments, reciprocity implies that state A will only enforce a judgment rendered by the courts of state B if state B also enforces judgments rendered by the courts of state A.

However, reciprocity is understood in various ways across countries,[97] underscoring the need for a more detailed review. In analyzing reciprocity in Asian civil law jurisdictions, Guo identified various ways courts interpret it.[98] One such understanding is treaty-based reciprocity, which necessitates the existence of a treaty between the state of origin and the requested state to establish reciprocity (e.g. Lao law).[99] Another interpretation, frequently termed *de facto* reciprocity, requires a precedent where the country of origin has recognized and enforced judgments from the courts of the country addressed (e.g. former Chinese practice).[100] Another approach, presumptive reciprocity, involves the court addressed presuming the existence of a reciprocal relationship between two countries unless evidence demonstrates that courts of the state of origin previously refused to recognize or enforce a judgment of the requested state (e.g. the Nanning Statement).[101] Lastly, a more liberal interpretation, often referred to as *de lege* reciprocity, where it is immaterial that the state of origin has yet to recognize and enforce a judgment of the court addressed as long as it is expected that it would do so, subject to certain requirements being fulfilled if a judgment of the requested state were before it (e.g. Japanese law).[102] Although reciprocity is not unfamiliar in Asian common-law countries, its significance is limited to recognition and enforcement under statutory schemes. In contrast with statutory schemes, at common law, reciprocity is not a requirement; courts do not consider reciprocity when enforcing foreign judgments at common law.[103]

[96] Arthur LENHOFF, "Reciprocity and the Law of Foreign Judgments: A Historical – Critical Analysis" (1956) 16(3) Louisiana Law Review 465 at 478.

[97] Yujun GUO, "Reciprocity" in Chong, ed., *supra* note 25 at 58.

[98] *Ibid*., at 62–9, 76. On courts' interpretation of reciprocity on a global scale see Béligh ELBALTI, "Reciprocity and the Recognition and Enforcement of Foreign Judgments: A Lot of Bark But Not Much Bite" (2017) 13(1) Journal of Private International Law 184 at 190–6.

[99] In contrast with Cambodian law, Lao law expressly requires the existence of a treaty to establish prerequisite reciprocity. See Xaynari CHANTHALA and Kongphanh SANTIVONG, "Country Report: Lao" in Chong, ed., *supra* note 62 at 119; Guo, *supra* note 97 at 62–6.

[100] Yujun GUO, "Country Report: The People's Republic of China" in Chong, ed., *supra* note 62 at 56–8. See also Guo, *supra* note 97 at 66–7; Weixia GU, "China" in Reyes, ed., *supra* note 63 at 43–5; Qisheng HE and Yahan WANG, "Resolving the Dilemma of Judgment Reciprocity: From a Sino–Japanese Model to a Sino–Singapore Model in Yearbook of Private International Law" (2017/2018) 19 at 226; Elbalti, *supra* note 98 at 202–3. On China's reliance on *de facto* reciprocity and its subsequent turn to *de jure* reciprocity see "Chinese Court Enforces Singaporean Judgment based on De Jure Reciprocity" Conflict of Laws.Net (2 December 2021), online: Conflict of Laws.Net <https://conflictoflaws.net/2021/chinese-court-enforces-singaporean-judgments-based-on-de-jure-reciprocity/?print=pdf>.

[101] Guo, *supra* note 97 at 72–3, 76. See also Ronald A. Brand, "Recognition of Foreign Judgments in China: The Liu Case and the 'Belt and Road' Initiative" (2018) 37 Journal of Law & Commerce 29 at 44–5; Guodong DO and Mang YO, "The Nanning Statement: A Milestone in Recognizing and Enforcing Foreign Judgments in China" (10 July 2018), online: China Justice Observer <https://www.chinajusticeobserver.com/a/the-nanning-statement-a-milestone-in-recognizing-and-enforcing-foreign-judgments-in-china>. On the Nanning Statement see *infra* Section III.B.

[102] Guo, *supra* note 97 at 68–9, 76. See also Adeline CHONG, "Moving Towards Harmonisation in the Recognition and Enforcement of Foreign Judgment Rules in Asia" (2020) 16(1) Journal of Private International Law 31, online: Singapore Management University <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=5066&context=sol_research> at 29.

[103] Chukwuma Samuel Adesina OKOLI, "The Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters in Asia" (2022) 18(3) Journal of Private International Law 522 at 536. See also Guo, *supra* note 97 at 58, 60–2. On recent development in Singaporean case law, see *infra* Section III.C.

Arguments favouring reciprocity in the context of foreign judgments relied on states' sovereignty[104] and, to a lesser extent, its alleged capability to incentivize other countries to recognize and enforce foreign judgments.[105]

The idea behind the former argument is that all states are sovereign and equal. Sovereign A cannot force sovereign B to enforce judgments from sovereign A, and vice versa. However, nothing prevents sovereign B from giving effect to the judgments rendered in sovereign A. It depends on sovereign B's sole discretion. Such decisions may or may not be conditional on reciprocal treatment (i.e. whether sovereign A reciprocates the recognition and enforcement of judgments rendered by the courts of sovereign B). For instance, at common law, reciprocity is not required to enforce foreign judgments,[106] while reciprocity is a statutory prerequisite in Japan and Cambodia.[107] Those who argue in favour of the necessity of reciprocity in judgment recognition based on sovereignty perceive that the enforcement of a foreign judgment negatively affects the sovereignty of the state; such an imbalanced situation can be addressed only when the other state also gives up the same portion of its sovereignty (i.e. it reciprocates the enforcement).

The rationale for this argument has been criticized in private international law scholarship from multiple perspectives. Ho analyzed governments' potential policy considerations underlying the enforcement of foreign judgments, arguing that it is not incompatible with its sovereignty when a state chooses to enforce a foreign judgment according to the processes, forms, and criteria it has set out for itself. The emphasis is on the state's own choice.[108] Along these lines, it can also be said that a state's decision to allow for the recognition and enforcement of foreign judgments is an expression of sovereign power; hence, not a detriment thereof. Meanwhile, Childs points out that reciprocity makes sense only if governments are considered to have a valid interest in private disputes and provides the reminder that public and private international laws were created as distinct categories because such governmental intervention in private disputes, either in the name of national interest or international relations, was once deemed inappropriate.[109] This aligns with the view of Nishioka and Nishitani, who question the appropriateness of giving weight to the sovereignty of states in private law relations, where parties are the most affected while having no means to influence states to recognize judgments reciprocally.[110]

Reciprocity has also been said to promote the recognition and enforcement of foreign judgments.[111] However, over time, this has not been proven. According to Elbalti, during the

[104] Anatol DUTTA, "Reciprocity" in Basedow, Rühl, and Asensio, eds., *supra* note 37 at 1466–71. See also Akira TAKAKUWA, "Recognition of Foreign Court Decisions [in Japanese]" in Akira TAKAKUWA and Masato DOGAUCHI, eds., *International Civil Litigation Law (Proprietary Matters)* (Seirinshoin Publishing, 2002) at 377, referred to in Nishioka and Nishitani, *supra* note 72 at 214.

[105] American Law Institute, Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute (2006), §7 comment (b) 95. See also Statement of Professor Linda J. Silberman Before the Subcommittee on Courts, Commercial and Administrative Law of the U.S. House of Representatives, Committee on the Judiciary "Recognition and Enforcement of Foreign Judgments" (15 November 2011), online: House of Representatives <https://judiciary.house.gov/sites/evo-subsites/judiciary.house.gov/files/2016-04/Silberman-11152011.pdf>; Guo, *supra* note 97 at 58; Elbalti, *supra* note 98 at 190.

[106] Reid MORTENSEN, Richard GARNETT and Mary KEYES, *Private International Law in Australia*, 5th ed. (Chatswood: LexisNexis Butterworths, 2023) at 118. See also Chng, *supra* note 79 at 147; Guo, *supra* note 97 at 60–2.

[107] Japanese CCP (2011 revised edition, entered into force 1 April 2012), art. 118(iv), online Japanese Law Translation <https://www.japaneselawtranslation.go.jp/en/laws/view/4421> and Cambodian CCP, *supra* note 2 at art. 199(d).

[108] Ho, *supra* note 37 at 449.

[109] Louisa B. CHILDS, "Shaky Foundations: Criticism of Reciprocity and the Distinction Between Public and Private International Law" (2006) 38 International Law and Politics 221 at 278.

[110] Nishioka and Nishitani, *supra* note 72 at 214.

[111] Guo, *supra* note 97 at 58. See also Okoli, *supra* note 103 at 536.

long history of reciprocity, it has rarely been proven to be effective. Essentially, the requirement of reciprocal treatment has rarely induced changes in states' policies regarding the enforceability of foreign judgments. Elbalti adds that even in rare cases where reciprocity attained its objective, it was not due to its intrinsic qualities, if any.[112] Nishioka and Nishitani argue that reciprocity may even have a reverse effect (i.e. instead of promoting it, it hinders the portability of judgments).[113] Guo expresses similar concerns and explains that reciprocity may lead to a mutual standoff in which none of the countries is willing to take the first step in recognizing and enforcing a judgment from the other country. This may lead to a vicious cycle in which none of them enforces judgments from the other country.[114] Childs notes that the aforementioned counterargument has been disproved by game theorists, who say that countries seeking to cooperate do not have to take the first step and it suffices if they signal their willingness to cooperate over time.[115] Essentially, reciprocity will not end in a mutual standoff in cases where states A and B are willing to cooperate, and state A gives a sign to state B indicating that state A is ready to enforce judgments rendered in state B, and vice versa.

The heaviest criticism of reciprocity is not along the lines of sovereignty or its naively expected quality to incentivize the enforceability of foreign judgments but rather on its unfairness towards the parties and its negative impact on preserving private parties' rights. It is unfair and unsound towards the parties if states enforce their legitimate rights conditionally upon a factor over which the parties have no influence.[116] Elbalti stresses the negative impact of reciprocity on parties' preservation of rights.[117] While reciprocity is unfair in the relationship between the state and the individual, Childs indicates that reciprocity does nothing to ensure fairness in the relationship between parties to a particular dispute. Reciprocity does nothing to filter out judgments based on fraud; it does not protect parties from the abuse of repeated litigation or prevent enforcement of foreign judgments decided under unjust foreign laws. Meanwhile, reciprocity may render a valid judgment completely useless (e.g. unenforceable in the country where the debtor's assets are located).[118] Lenhoff considers that reciprocity only misleads the forum by diverting its attention from the real issue of whether the judgment shows that the litigant had become the victim of severe injustice.[119]

Considering its disadvantages, scholars have suggested reconsidering the necessity of reciprocity as a prerequisite for the recognition and enforcement of foreign judgments, and many have gone so far as to propose its abolition.[120] States have considered and reacted to such criticism, and, in the end, as Elbalti concludes, many jurisdictions have eliminated reciprocity from their judgment recognition requirements. However, even in states where reciprocity is still required, it is often sufficient to show that the state of origin is likely to recognize the requested state's judgments to establish reciprocity. In other jurisdictions, reciprocity is either presumed or simply never applied.[121]

In Weller's works, private international law, including the issue of the enforcement of foreign judgments, is considered a matter of "trust management", which entails the task

[112] Elbalti, *supra* note 98 at 214–15.
[113] Nishioka and Nishitani, *supra* note 72 at 214.
[114] Guo, *supra* note 97 at 59.
[115] Childs, *supra* note 109 at 227–8.
[116] Nishioka and Nishitani, *supra* note 72 at 214. See also Guo, *supra* note 97 at 58–9.
[117] Elbalti, *supra* note 98 at 214–15.
[118] Childs, *supra* note 109 at 224.
[119] Lenhoff, *supra* note 96 at 482.
[120] Anselmo REYES, "Conclusions: Towards an Asian of Judgments without Borders" in Reyes, ed., *supra* note 63 at 324. See also Guo, *supra* note 97 at 76; Elbalti, *supra* note 98 at 214–15.
[121] Elbalti, *ibid.*, at 217.

of policymakers and legislators in determining the appropriate balance between trusting foreign states' administration of justice (i.e. leaving foreign courts to decide the case) and withholding residual controls, such as implementing grounds of refusal (e.g. public policy).[122] According to Weller, trust in private international law today is rights-driven instead of a sovereignty-oriented approach. Emphasis on people's right to access justice has grown over time. Weller states:

> in a legal order that follows a rule of law and which guarantees to its people justice and effective access to that justice, a state is obliged, as a matter of constitutional guarantees, to cooperate judicially with other states to an optimal degree.[123]

Cambodia, whose Constitution provides that "[t]he Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens",[124] and is a member of "people-oriented" and "people-centred" ASEAN,[125] may also consider and avail itself of Weller's position and orient itself towards a rights-driven approach to issues of private international law.

B. *Guarantee of reciprocity in Cambodian law*

According to Article 199(d) of the Cambodian CCP, a final and binding judgment of a foreign court is effective only if there is a guarantee of reciprocity between Cambodia and the state of origin.

Cambodian law experts concur that the guarantee of reciprocity is a threshold requirement that is difficult to establish.[126] Bun goes so far as to suggest that "[t]he fourth threshold requirement, a guarantee of reciprocity, is to date the most difficult of the four requirements to meet".[127] Likewise, the Asian Business Law Institute, which analysed the obstacles of the free flow of foreign judgments in ASEAN, pointed out that one of "[t]he main hurdle[s] is that Cambodia … ha[s] rigid standards of reciprocity".[128]

Regarding whether a guarantee of reciprocity could be established by means other than a treaty, the opinions of Cambodian law experts differ. Larkin and Yun opine that:

> [i]t is unlikely that Cambodia will recognise and enforce a foreign judgment voluntarily without a satisfactory reciprocity provision in a bilateral treaty or convention with the jurisdiction of the rendering court, as recognition and enforcement in the absence of such instrument would bypass the Article 199(d) requirement.[129]

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[122] Weller, *supra* note 15 at 622–6.

[123] Matthias WELLER, "Mutual Trust: A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?" in *Collected Courses of the Hague Academy of International Law*, Vol. 423 (Leiden: Brill Nijhoff, 2022) at 115.

[124] Constitution of the Kingdom of Cambodia (entered into force 24 September 1993), art. 128. For English translation see "Constitution of the Kingdom of Cambodia", online: Office of the Council of Ministers <https://pressocm.gov.kh/en/archives/9539>.

[125] ASEAN, "ASEAN Community Vision 2025" (2015), online: ASEAN <https://www.asean.org/wp-content/uploads/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf>.

[126] Larkin and Yun, *supra* note 65 at 201–7; Bun, *supra* note 64 at 37–48.

[127] Bun, *ibid.*, at 41.

[128] Asian Business Law Institute, "Enforcement of Foreign Judgments in ASEAN: Ranking the Portability of ASEAN Judgments within ASEAN" (February 2022) at 3, online: ABLI <https://abli.asia/abli-publications/ranking-the-portability-of-asean-judgments-within-asean/>.

[129] Larkin and Yun, *supra* note 65 at 205–6.

Unlike Larkin and Yun, Bun does not exclude the possibility of establishing reciprocal relationships by means other than a treaty. Bun says, "[w]ithout the threshold requirement of a guarantee of reciprocity, such as is found in the [Cambodia–Vietnam Treaty], Cambodian courts will not recognise and enforce a foreign judgment in Cambodia". He nevertheless acknowledges that "[a] guarantee of reciprocity does not expressly need to be found in a treaty". However, Bun is "not aware of any mechanism used by a foreign country other than a treaty that may be deemed to give Cambodia such a guarantee of reciprocity".[130] Based on these expert views, the interpretation of the guarantee of reciprocity is a central issue regarding the enforceability of foreign judgments in Cambodia. Therefore, it is imperative to clarify its meaning further.

Although the commentary note on the Cambodian CCP has a one-sentence definition on Article 199(d), it does not explain what guarantee would satisfy Cambodian courts. According to the commentary note, reciprocity "is an international principle that allows two states to reciprocally respect each other for the purpose of protecting their national interests and the private interest of their citizens".[131] There are at least two points worth considering in this brief explanation. First, reciprocity allows two states to respect each other. If one state showing respect to the other matters, then the question arises whether international comity expresses such respect more clearly.[132] Furthermore, the honesty of respect appears questionable if it is contingent upon mutual respect from the other state. According to this definition, reciprocity allows a state to protect its interests. The legitimate grounds for this are narrow. The question is how Cambodia's legitimate interests could be violated by recognizing and enforcing judgments which bind private parties in a commercial dispute. Likewise, it is difficult to explain how it would harm Cambodian citizens' interests if they could have access to the courts of another country (e.g. the SICC) and then enforce the judgment that can be used in Cambodia, especially in circumstances where the quality of judicial services in the other country's courts is high (e.g. in Singapore). Or why did such alleged harm no longer matter if the other country recognized and enforced Cambodian judgments? We have no valid responses to these questions. It is submitted that Cambodian citizens' interest can be protected by other, more efficient means, such as it is already protected by the other conditions set out in Article 199 of the Cambodian CCP (i.e. indirect jurisdiction, service of process, public policy, and good morals). We also submit that the filter of substantive public policy and good morals of Cambodia set out in the Cambodian CCP, Article 199(c), are sufficient to defend the Cambodian state's legitimate interests, if any, in commercial disputes between private parties.

While the commentary notes of the Cambodian CCP are silent on how reciprocity should be understood, the Nanning Statement of the 2nd China–ASEAN Justice Forum on 8 June 2017 (Nanning Statement) includes Cambodia's consent to presume reciprocity, at least regarding judgments rendered by the courts of a large number of Asian countries, which were also parties to the Nanning Statement. In this case, top judicial officials of the Supreme Courts of Asian countries, including Hon. Mr. You Ottara, Vice-President of the Supreme Court of the Kingdom of Cambodia, and Hon. Mr. Steven Chong, Justice, Judge of Appeal of the Supreme Court of the Republic of Singapore, acknowledged that (1) regional cross-border transactions and investments require judicial safeguards based on appropriate mutual recognition and enforcement of judicial judgments among countries in the region.

[130] Bun, *supra* note 64 at 41–2.

[131] This definition is available in the note on art. 199(d) in the Khmer and Japanese versions of CCP. Japan International Cooperation Agency, "Commentaries and Textbook (project achievement)", online: JICA <https://www.jica.go.jp/Resource/project/english/cambodia/0701047/materials/index.html>. We translated the definition from Japanese to English. See also Bun, *supra* 64 at 43.

[132] Reyes, *supra* note 120 at 323.

(2) They agreed that the Supreme Courts of participating countries would maintain good faith in interpreting domestic laws, (3) they would try to avoid unnecessary parallel proceedings, and (4) they would consider facilitating the appropriate mutual recognition and enforcement of civil or commercial judgments among different jurisdictions. (5) Essentially, they also consented to the fact that in cases where there is no treaty between the two states, the participating states, subject to their domestic laws, may presume the existence of reciprocity when a judgment rendered in a civil or commercial matter made in another participating country is sought to be enforced before their domestic courts.[133]

The Nanning Statement uses "may presume", not "shall presume". Therefore, the participating Supreme Courts' determination to presume reciprocity is not binding. Nonetheless, in the context of Cambodian private international law, the Nanning Statement is significant as it remains the only publicly available document indicating the Cambodian courts' stance on reciprocity.[134] Since there is no explicit legal barrier preventing Cambodian courts from aligning with the spirit of the Nanning Statement and establishing reciprocity on a presumptive basis, the Nanning Statement could potentially be transformative.[135] Moreover, based on the findings of game theorists,[136] the Supreme Court of the Republic of Singapore can be said to have "signalled" to the Vice-President of the Supreme Court of the Kingdom of Cambodia that he was "willing to cooperate" in the field of mutual recognition and enforcement of judgments rendered by their respective courts. By adhering to the Nanning Statement, the Vice-President of the Supreme Court of the Kingdom of Cambodia sent the same signal to his Singaporean counterpart. This suggests that the Cambodian judiciary agrees with interpreting the prerequisite reciprocity in a rather flexible way (i.e. presumptive reciprocity). In practice, however, we have yet to observe what weight can be given to the Vice-President of the Supreme Court of the Kingdom of Cambodia's consent to the Nanning Statement.

From the perspective of the enforceability of Singapore judgments in Cambodia, the Nanning Statement is positive; however, we argue that the main point is that under common law, a Cambodian money judgment could be enforced in Singapore. Therefore, it is unnecessary to presume the existence of something already granted, as discussed in Section C.

C. Guaranteed reciprocity by the laws of Singapore

In Singapore, foreign money judgments are enforceable under statutory schemes and common law. Statutory regimes apply to judgments emanating from a limited number of

[133] Do and Yo, *supra* note 101.

[134] See also Reyes, who, in the context of the enforceability of SICC's judgments in Cambodia, notes that "the approach of presuming reciprocity suggested by Article VII of the Nanning Statement should normally be applicable" and concludes that "given reciprocity and …, the SICC's judgment should be recognizerecognized and enforced" in Cambodia. He also states that "it is obvious that, although non-binding, the Nanning Statement of 2017 is important not just as a mere statement of aspiration, but as hard evidence of the approach that Asian judiciaries should and will be taking in the future on reciprocity". Reyes, *supra* note 120 at 317, 323–4.

[135] Similar to the situation in China, where, on 18 June 2024, a local court ruled to recognize and enforce a Thai money judgment based on presumptive reciprocity with Thailand as derived from the Nanning Statement. This case is notable for being the first instance of enforcing Thai monetary judgments in China as well as the first publicly reported case confirming a reciprocal relationship based on presumptive reciprocity (*Guangxi Nanning China Travel Service, Ltd. v. Orient Thai Airlines Co., Ltd.* (2023) Gui 71 Xie Wai Ren No. 1). See Meng YU, "First Thai Monetary Judgment Enforced in China, Highlighting Presumptive Reciprocity in China-ASEAN Region" *Conflict of Laws.net* (5 August 2024), online: Conflict of Laws.net <https://conflictoflaws.net/2024/first-thai-monetary-judgment-enforced-in-china-highlighting-presumptive-reciprocity-in-china-asean-region/>.

[136] Childs, *supra* note 109 at 227–8. See also Section III.A.

countries.[137] If neither statutory scheme applies to a country (e.g. Cambodia), at common law, judgments from these countries (e.g. Cambodian judgments) can still be recognized and enforced.

In Singapore at common law, the substantive requirements for a foreign judgment to be recognized are as follows: (1) the foreign judgment must be final and conclusive; (2) it must be from a court which had indirect jurisdiction as determined by Singapore's private international law rules; and (3) no defences to recognition must be applicable. To enforce a foreign judgment, in addition to the aforementioned requirements for recognition, (4) the foreign judgment must be for a fixed or ascertainable sum of money.[138] Finality under Singapore's law involves two aspects. First, a foreign judgment must be final and conclusive and cannot be varied, reopened, or set aside by the court that delivered it. Second, finality must be assessed by asking whether the foreign court regards the judgment as final and conclusive.[139] A foreign court issuing the judgment that is sought to be recognized must have had indirect jurisdiction under Singapore law. According to Singapore's private international law, a foreign court may assume jurisdiction based on the presence or residence of the defendant and submission to the jurisdiction. Submissions can occur either by choice of court agreement or the conduct of the defendant in a foreign jurisdiction. Filing a counterclaim, defence, or claim for set-off is generally taken as evidence of submission to a foreign court's jurisdiction.[140] The final requirement for recognizing a foreign judgment in Singapore is that no defences can be raised against such recognition or enforcement. The defences that exist at common law are as follows: (1) enforcement of a foreign judgment would amount to enforcement of a foreign penal, revenue, or other public law; (2) foreign judgment was obtained by fraud; (3) recognition or enforcement of foreign judgment would be contrary to Singapore's public policy; (4) the foreign judgment was obtained in a breach of natural justice; (5) the foreign judgment conflicts with an earlier Singapore or foreign judgment entitled to recognition in Singapore.[141] Where a foreign judgment is sought to be enforced in Singapore, it must be for a fixed or ascertainable sum of money. If there is a monetary component to the foreign judgment, it can be enforced; it is immaterial as to whether the foreign judgment contains other non-monetary relief.[142]

[137] There are two distinct statutory schemes for judgments of the courts of countries covered by such schemes: the Reciprocal Enforcement of Foreign Judgments Act 1959 (2020 revised edition,entered into force 31 December 2021) [REFJA] and the Choice of Court Agreements Act 2016 (2020 revised edition,entered into force 31 December 2021) [CCAA]. The CCAA is to give effect to the HCCH 2005 Choice of Court Convention and applies to judgments of countries parties thereto. Note that the system of Singaporean statutory schemes has been simplified. Countries, which had previously been governed by Singapore's Reciprocal Enforcement of Commonwealth Judgments Act 1921 (1985 revised edition,entered into force 30 March 1987) [RECJA] has been transferred to the REFJA. About such reform, effective since 1 March 2023, see Adeline CHONG, "Repeal of the RECJA and transfer of countries to the REFJA" (2023) 2, online: Research Collection Yong Pung How School Of Law <https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=6105&context=sol_research>.

[138] *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] SGHC 16 at para. 17 [*Giant Light Metal Technology*]. See also *Humpuss Sea Transport Pte Ltd (in compulsory liquidation). v. PT Humpuss Intermoda Transportasi TBK and another* [2016] SGHC 229 at para. 67 [*Humpuss Sea Transport*]; Chng, *supra* note 79 at 149–50. *Cf.* Adeline CHONG, "Country Report: Singapore" in Chong ed., *supra* note 62 at 166 and Chong and Yip, *supra* note 20 at 177–9 adding that the foreign judgment to be enforced must be on the merits of the case.

[139] *Humpuss Sea Transport, supra* note 138 at paras 69–70. See also Chng, *supra* note 79 at 150; Chong, *supra* note 138 at 167–8; Chong and Yip, *supra* note 20 at 190.

[140] Chng, *supra* note 79 at 150–2. See also Chong, *supra* note 138 at 168–9; Chong and Yip, *supra* note 20 at 181.

[141] *Alberto Justo Rodriguez Licea and others v Curacao Drydock Co, Inc* [2015] SGHC 136 at para. 23 [*Alberto Justo Rodriguez Licea and others*]; *Humpuss Sea Transport, supra* note 138 at para. 73. See also Chong, *supra* note 138 at 170; Chong and Yip, *supra* note 20 at 193–203. *Cf.* Chng, *supra* note 79 at 153.

[142] *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2009] SGCA 60 at para. 13; *Giant Light Metal Technology, supra* note 138 at para. 17. See also Chng, *supra* note 79 at 152–3; Chong, *supra* note 138 at 166–7; Chong and Yip, *supra* note 20 at 179–80.

At common law, reciprocity is not a prerequisite for recognizing and enforcing foreign judgments.[143] Instead, recognition and enforcement at common law rely on the "obligation theory", under which, when a judgment is issued by a court of competent jurisdiction over the parties, such judgment creates an obligation on the parties, and courts of other countries ought to recognize and enforce it. Traditionally, Singapore courts, when enforcing a foreign judgment, hold the parties to their obligation.[144] While a recent statement from the Singaporean Court of Appeal leans towards "transnational comity" and "reciprocal respect among courts of independent jurisdictions" as a conceptual justification for enforcing foreign judgments, it has not gone so far as to explicitly impose reciprocity as an additional threshold condition for enforcing foreign judgment debts.[145] Even if case law evolves to make reciprocity a mandatory requirement at Singapore common law, the prospects, as found by Chong and Yip, suggest that a liberal concept of reciprocity would be adopted.[146]

The application of the common law rules for a money judgment rendered by the courts of Cambodia in a commercial matter practically means that the prevailing party in the Cambodian judgment needs to file fresh action with the courts of Singapore to enforce the monetary rights arising from the Cambodian judgment.[147] The Singapore judge will not review the merits of the case,[148] but its compliance with basic substantive requirements for a foreign judgment (i.e. finality and conclusiveness, indirect jurisdiction, lack of defence, and fixed or ascertainable sum of money).[149] The potential grounds for refusal are narrow and justified by the defence of fundamental procedural rights or public policy.

Based on the above, we conclude that a Cambodian money judgment rendered in a commercial matter is enforceable in Singapore at common law.[150] Therefore, the enforcement of a Singapore money judgment rendered in a commercial matter in Cambodia would be (or may have already been) reciprocated by Singapore (i.e. via Singapore's common law).[151]

Regarding the enforceability of Singapore judgments in Cambodia, the only question remains whether Cambodia's domestic law requires a treaty to establish reciprocity or whether the internal laws of the foreign state (e.g. common law as applied in Singapore) would suffice to meet this threshold. In our view, the term guarantee of reciprocity does not

[143] *Giant Light Metal Technology, supra* note 138 at para. 17. See also Chng, *supra* note 79 at 147; Guo, *supra* note 97 at 58, 60–2; Okoli, *supra* note 103 at 536.

[144] *Giant Light Metal Technology, supra* note 138 at para. 61; *Alberto Justo Rodriguez Licea, supra* note 141 at para. 21. See also Chng, *supra* note 79 at 147–8; Chong, *supra* note 138 at 165.

[145] *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)* [2021] SGCA 14 at para. 39. See also Chief Justice Sundaresh Menon, "Paper Delivered at the 8th Judicial Seminar on Commercial Litigation" (14 March 2024), online: SG Courts <https://www.judiciary.gov.sg/news-and-resources/news/news-details/chief-justice-sundaresh-menon–paper-delivered-at-the-8th-judicial-seminar-on-commercial-litigation> at para. 36(c).

[146] Chong and Yip, *supra* note 20 at 192.

[147] Chong, *supra* note 138 at 167–8. See also Chng, *supra* note 79 at 149; Chong and Yip, *supra* note 20 at 174–6.

[148] *Giant Light Metal Technology, supra* note 138 at para. 61. See also Chong, *supra* note 138 at 174, Chng, *supra* note 79 at 150; Chong and Yip, *supra* note 20 at 192–3; Yujun GUO, "Merits Review and Errors of Fact and Law" in Chong, ed., *supra* note 25 at 53–6.

[149] *Alberto Justo Rodriguez Licea and others, supra* note 141 at para. 23; *Humpuss Sea Transport, supra* note 138 at para. 73. See also Chong, *supra* note 138 at 170; Chong and Yip, *supra* note 20 at 193–203. *Cf.* Chng, *supra* note 79 at 153.

[150] This would remain the case even if, in the future, Singaporean common law imposes reciprocity as a condition for enforcing foreign judgments, given that Singapore's interpretation of reciprocity, as Chong and Yip suggest, would be a liberal one. However, should such a development arise, and should Cambodia refuse to enforce Singaporean judgments for lack of treaty between the two states, such a rigid stance could provoke the refusal of the enforcement of Cambodian judgments in Singapore.

[151] Despite the negative position of his Cambodia country reporters, Larkin and Yun, Reyes also holds the view that, in principle, an SICC judgment is enforceable in Cambodia. See Reyes, *supra* note 120 at 317; and Larkin and Yun, *supra* note 65 at 206.

hinder Cambodian courts from interpreting it so that the internal laws of the state of origin can guarantee reciprocity. Several arguments can support this interpretation. First, the liberal approach expressed in Article VII of the Nanning Statement towards recognizing and enforcing foreign judgments and the participating Supreme Courts' consent to interpret their domestic laws in a pro-recognition manner supports this.[152] Second, if the lawmaker wanted to narrow the interpretation of the guarantee of reciprocity to treaties, it would have used the word treaty instead of guarantee of reciprocity. For instance, among its conditions of *exequatur*, the laws of Laos explicitly require the existence of a treaty between Laos and the foreign country at issue.[153] Third, the Japanese law, which also requires reciprocity to be guaranteed, shows that such a guarantee can be established through internal laws of the foreign country from which the judgment originates. The Japanese example is presented in Section D.

D. *Guarantee of reciprocity in Japanese law*

The conditions for recognizing foreign judgments and *exequatur* proceedings, allowing for their enforcement in Cambodian and Japanese laws, are essentially identical. Importantly, both countries require that reciprocal treatment be guaranteed. It is only a technical issue of codification, but not a matter of substance, that in Japan, the laws providing for the rules of civil court procedure and compulsory execution can be found in two separate acts, whereas in Cambodia, CCP covers both subjects.[154] In Japan, the rules providing the conditions for *exequatur* can be found in Article 118 of the Code of Civil Procedure (Act No. 109 of 1996) (Japanese CCP), whereas the *exequatur* proceeding is set out in Article 24 of the Civil Execution Act (Act No. 4 of 1979) (Japanese CEA). The provisions of the Japanese and Cambodian laws governing the conditions of the *exequatur* and *exequatur* proceedings are compared in Tables 1 and 2, respectively.

It is also common ground for the two countries that neither Cambodia nor Japan are parties to the Hague Conventions that embody a guarantee of reciprocity on a multilateral treaty basis.[155] Furthermore, except for the Cambodia–Vietnam Treaty, neither Cambodia nor Japan entered into bilateral treaties on mutual legal assistance encompassing the subject of recognition and enforcement of the judgments rendered by their respective courts.[156] Lastly, a further similarity between Japan and Cambodia is that neither has concluded a Memorandum of Guidance with the Supreme Court of Singapore stating the *exequatur* conditions and proceedings of the signatory courts.[157]

Nishioka and Nishitani describe how the criterion of guarantee of reciprocity has crystallized through two landmark decisions of the highest judicial authority in Japan.[158] In the Supreme Court of Judicature judgment issued in 1933,[159] an *exequatur* was petitioned in the Japanese courts for a judgment rendered by a California State court. The defendants

[152] Do and Yo, *supra* note 101.

[153] Chanthala and Santivong, *supra* note 99 at 119.

[154] Atsusi, *supra* note 49 at 43.

[155] On the relevant Hague Conventions, see HCCH, *supra* note 55.

[156] Nishioka and Nishitani, *supra* note 72 at 204, 206; Larkin and Yun, *supra* note 65 at 203.

[157] See Singapore Courts, "Enforcement of Money Judgments", online: SG Courts <https://www.judiciary.gov.sg/singapore-international-commercial-court/enforcement-of-money-judgments>. This clarifies that under Japanese law, the prerequisite guarantee of reciprocity can be established solely by relying on Singapore's common law *exequatur* conditions and proceedings, without the need to incorporate them into a Memorandum of Guidance, because such conditions and proceedings under Singaporean law are clear to Japanese courts (and any other courts) and therefore do not have to be confirmed in non-legal or non-binding bilateral agreements, like a Memorandum of Guidance.

[158] Nishioka and Nishitani, *supra* note 72 at 214–17.

[159] The Supreme Court of Judicature was the highest judicial body in Japan from 1875 to 1947 and modelled after Court of Cassation in France.

Table 1. Conditions for recognizing and enforcing foreign judgments under Japanese and Cambodian laws.

	Japanese law	Cambodian law
	Article 118 (Validity of a Final and Binding Judgment Rendered by a Foreign Court) of the Japanese CCP provides that:	Article 199 (Effect of final and binding judgment of a foreign court) of the Cambodian CCP provides that:
Finality	[a] final and binding judgment rendered by a foreign court is valid only if it meets all of the following requirements:	[a] final and binding judgment of a foreign court shall be effective only where all of the following requirements have been fulfilled:
Indirect jurisdiction	(i) the jurisdiction of the foreign court is recognized pursuant to the laws and regulations, conventions, or treaties;	(a) jurisdiction is properly conferred on the foreign court by law or by treaty which the Kingdom of Cambodia has concluded;
Service of process	(ii) the defeated defendant has been served (excluding service by publication or any other service similar thereto) with the requisite summons or order for the commencement of litigation or has appeared without being so served;	(b) the non-prevailing defendant received service of a summons or any other order necessary to commence the action, or responded without receiving such summons or order;
Public policy	(iii) the content of the judgment and the litigation proceedings are not contrary to public policy in Japan;	(c) the contents of the judgment and the court proceedings in the action do not violate the public order or good morals of Cambodia; and
Reciprocity	(iv) a guarantee of reciprocity is in place.	(d) there is a guarantee of reciprocity between Cambodia and the foreign country in which the court is based.

Sources: JICA[160] and Japanese Law Translation[161]

moved to dismiss the claim for lack of reciprocity but were unsuccessful. The Supreme Court of Judicature reasoned that the reciprocity requirement was fulfilled, insofar as the state of origin recognized Japanese judgments under an international treaty or domestic law, without reopening the same on the merits, under "identical or more lenient conditions" than those provided by Japanese law. The reciprocity was established between Japan and California using these criteria. While leading authors and lower court decisions first supported the standard set by the Supreme Court of Judicature in 1933, criticism gradually increased. It was primarily maintained that the reciprocity requirement should be abolished as it would unduly hamper the recognition and enforcement of foreign judgments, causing a risk of re-litigation or conflicting judgments. It was argued that the requirements for recognizing and enforcing foreign judgments largely differ throughout various jurisdictions, so the relevant foreign and Japanese laws can hardly have identical conditions. It is problematic to establish which provided more lenient conditions. Instead, it should be sufficient that the requirements for recognition under Japanese and foreign laws are essentially equivalent. A lower court later followed this more flexible interpretation of reciprocity, which was eventually adopted by the Supreme Court of Japan in 1983.[162] It held that reciprocity exists:

[160] English translation of the Cambodian CCP, online: JICA <https://www.jica.go.jp/Resource/project/english/cambodia/0701047/materials/c8h0vm000000zsb2-att/01_01e.pdf>.

[161] English translation of the Japanese CCP, online: Japanese Law Translation <https://www.japaneselawtranslation.go.jp/en/laws/view/4421>.

[162] Nishioka and Nishitani, *supra* note 72 at 214–15.

Table 2. *Exequatur* proceedings for foreign judgments under Japanese and Cambodian laws.

	Japanese law	Cambodian law
	Article 24 of the (Execution Judgment for a Judgment of a Foreign Court) Japanese CEA provides that:	Article 352 (Execution judgment of foreign court judgment) of the Cambodian CCP provides that:
Jurisdiction of the court addressed	(1) An action seeking an execution judgment for a judgment of a foreign court shall be under the jurisdiction of the district court having jurisdiction over the location of the general venue of the obligor, and when there is no such general venue, it shall be under the jurisdiction of the district court having jurisdiction over the location of the subject matter of the claim or the seizable property of the obligor.	2. A motion seeking an execution judgment with regard to the judgment of a foreign court shall fall within the jurisdiction of the court having jurisdiction over the location of the Debtor-in-Execution in accordance with Article 8 (Jurisdiction determined by domicile), or if no such court is able to be determined under said Article, the court of first instance having jurisdiction over the place in which the property subject to the claim, or property that can be attached, is located.
Prohibition of merits review	(2) An execution judgment shall be made without investigating whether or not the judicial decision is appropriate.	4. The court shall render an execution judgment without examining whether or not the foreign court judgment is appropriate.
Threshold requirements determined by reference	(3) The action set forth in paragraph (1) shall be dismissed without prejudice when it is not proved that the judgment of a foreign court has become final and binding or when such judgment fails to satisfy the requirements listed in the items of Article 118 of the Code of Civil Procedure.	3. A motion under Paragraph 2 shall be dismissed if the foreign court judgment is not proven to have become final and binding or does not fulfil each of the requirements set forth in Article 199 (Effect of final and binding judgment of a foreign court).
Execution judgment	(4) An execution judgment shall declare that compulsory execution based on the judgment by a foreign court shall be permitted.	5. The execution judgment shall declare the compulsory execution of the foreign court judgment to be permitted.

Sources: JICA[163] and Japanese Law Translation[164]

> if in the rendering state, judgments of the courts of Japan that are of the same type as the judgment at issue are capable of being recognised in accordance with conditions that are not different in any material respect from those in CCP article 118.[165]

As reported by Elbalti,[166] in a decision rendered in 1998, the Supreme Court of Japan confirmed the position expressed in 1983 reiterating that:

[163] English translation of the Cambodian CCP, online: JICA <https://www.jica.go.jp/Resource/project/english/cambodia/0701047/materials/c8h0vm000000zsb2-att/01_01e.pdf>.

[164] English translation of the Japanese CEA, online: Japanese Law Translation <https://www.japaneselawtranslation.go.jp/en/laws/view/70/en#je_ch2sc1at3>.

[165] *Ibid.*, at 215; See also Supreme Court of Japan, Case No. 1982 (O) 826 dated 7 June 1983, online: Courts in Japan <https://www.courts.go.jp/app/hanrei_en/detail?id=70>.

[166] Béligh ELBALTI, "Foreign Judgments Recognition and Enforcement in Civil and Commercial Matters in Japan" (2019) 66 Osaka University Law Review 1 at 25–6.

> [t]he existence of mutual guarantee as provided by Article 118, subpara.4 of the Code of Civil Procedure means that in the country where the foreign court which rendered the judgment in question resides, judgments of a similar nature by Japanese courts are treated as valid under the requirements not substantially different from the requirements of the above provision.[167]

The latter judgment is of interest to this article given that the foreign money judgment that the judgment creditor sought to enforce in Japan was rendered by Hong Kong courts. In Hong Kong, as in Singapore, the principles of English common law apply for the recognition and enforcement of foreign judgments. In the same judgment, the Supreme Court of Japan pointed out that:

> [i]n Hong Kong, in relation to the recognition of foreign judgments, in addition to statutory law, principles of English Common Law was applicable, … under the Common Law, judgments of a foreign court ordering payment of money were recognised in accordance with the requirements of the original judgment.[168]

Importantly, in the same case, the Supreme Court of Japan also found that:

> [t]he requirements for the recognition of foreign judgments under the Common Law can be regarded as not substantially different from the requirements of the subparagraphs of Article 118 of the Code of Civil Procedure of Japan. And therefore, it is appropriate to conclude that between Hong Kong and Japan, there was a mutual guarantee on recognition of foreign judgments as provided by Article 118, subpara.4 of the Code of Civil Procedure.[169]

Along these lines, Elbalti elucidates that to establish reciprocity between Japan and a foreign country, three conditions should be met: (1) Japanese judgments of a same kind, (2) are likely to be recognized in the rendering court, and (3) under requirements that do not substantially differ from those accepted in Japan.[170]

The courts determine what requirements for judgment recognition and enforcement in the foreign country are not substantially different from those accepted in Japan on a case-by-case basis because any clear-cut rule for the determination has yet to be established.[171] As Elbalti indicated, "the simple fact that the rendering state adopts conditions that are not admitted in Japan or that the recognition requirements are stricter than those admitted in Japan does not necessarily lead to denying reciprocity with that state",[172] so that the

[167] Supreme Court of Japan, Case No. 1994 (O) 1838 dated 28 April 1998, online: Courts in Japan <https://www.courts.go.jp/app/hanrei_en/detail?id=392>.

[168] *Ibid.*

[169] *Ibid.*

[170] Elbalti, *supra* note 166 at 26.

[171] Yukitaka MURAKAMI, "Reciprocity: Judgments from Mainland China [in Japanese]" in Masato DOGAUCHI and Yasushi NAKANISHI, eds., *Leading Cases in Private International Law* (Tokyo: Yuhikaku Publishing, 2021) at 201; Eiichiro YOSHIKWA, "Reciprocity: Judgments from the Washington DC [in Japanese]" in Masato DOGAUCHI and Yasushi NAKANISHI, eds., *Leading Cases in Private International Law* (Tokyo: Yuhikaku Publishing, 2021) at 199.

[172] Elbalti, *supra* note 166 at 26.

threshold for the Japanese courts to establish a substantial difference is high. In fact, in addition to Hong Kong, courts in Japan have recognized and enforced commercial money judgments from the following common law jurisdictions: the USA (California, Washington DC, New York, and Hawaii), England, Australia (Queensland), and Singapore.[173] In enforcing the Singaporean judgment, the Tokyo District Court compared Singapore's conditions for judgment recognition and enforcement with those of Japan as follows:

> [t]he conditions for the recognition and enforcement of foreign judgments in the Republic of Singapore are based on the English common law: (1) the judgment is final and conclusive, (2) the defendant was given a proper notice of the original legal proceedings before the court of origin, (3) the judgment is for a fixed sum of money, (4) the judgment is not contrary to public policy, (5) there is a guarantee of reciprocity between the judgment's country of origin and the Republic of Singapore, and (6) the country of origin has personal jurisdiction over the parties under the principle of the English common law applicable in the Republic of Singapore. Accordingly, condition (1) is compatible with the first line of Article 118 of the Japanese CCP, condition (2) is Article 118(2), condition (4) is Article 118(3), condition (5) is Article 118(4), and condition (6) is Article 118(1). Therefore, judgments issued in the Republic of Singapore satisfy the reciprocity requirement under the Japanese CCP.[174]

The comment on the alleged reciprocity requirement under the common law of Singapore may indicate the Japanese courts' flexibility in applying the "not substantially different" test.[175] It is important to consider that the District Court confirmed the substantial equivalence between the recognition requirements under Singapore's common law and those under the Japanese CCP. The District Court's decision was appealed to the Tokyo High Court, and a further appeal was filed but dismissed by the Supreme Court of Japan.[176] Although the decisions by the higher courts have not been published in any case report,[177] accessible material does not suggest that the parties have further disputed the guarantee of reciprocity between Singapore and Japan.

It is reported that the Japanese courts have denied reciprocity in the recognition and enforcement of foreign judgments from Belgium and China,[178] both of which are civil law countries. In a decision rendered in 1960, the Tokyo District Court refused to enforce a monetary judgment issued by the Brussels Commercial Court, holding that the enforcement requirements under Belgian law were substantially different from those under Japanese law because only the former comprised the principle of *révision au fond* (review of merits).[179]

[173] Masaki HAGA, "Reciprocity as a Condition for the Recognition and Enforcement of Foreign Judgments (2): Its Contemporary Significance [in Japanese]" (2017) 90 Journal of Law, Politics and Sociology 25 at 27–66.

[174] *X v. Kouno Ichiro* [2007] Tokyo District Court 2005 (Wa) 8624, 1229 Hanrei Taimuzu 334, at Section 5 [our translation].

[175] On the recognition and enforcement requirements under the common law rules of Singaporean private international law, see *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2009] SGCA 60 at paras 13–14; *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] SGHC 16 at paras 13–14.

[176] Yoshiaki MIYASAKO, "Commercial Case Research (2006, No. 8) [in Japanese]" (2008) 1362 Jurist 132 at 133.

[177] *Ibid*, at 132–5.

[178] Hiroyuki EBISAWA, "Japan" in Louis GARB and Julian D.M. LEW, eds., *Enforcement of Foreign Judgments* (Alphen aan den Rijn: Wolters Kluwer, 2023) at 5–6.

However, this principle was later removed from Belgian law,[180] so that reciprocity between Belgium and Japan is now highly likely to be confirmed by the courts in Japan.[181] In 2015, the Tokyo High Court rejected the enforcement of a Chinese judgment on the compensation for defamatory publications. It justified the rejection by stating in principle that Japanese CCP Article 118 is substantially different from the recognition requirements in the Chinese Code of Civil Procedure that consist of examining "the non-contradiction to the basic principles of laws or the national sovereignty, security, and social and public interests [of China], after examining according to international treaties or based on the principle of reciprocity".[182] The High Court acknowledged that the requirement of "the non-contradiction to the basic principles of laws or the national sovereignty, security, and social and public interests [of China]" is virtually equivalent to the public policy ground under the Japanese CCP, Article 118.[183] However, the court held that the uncertainty of the principle of reciprocity under Chinese law prevented it from affirming that China's conditions for the recognition and enforcement of foreign judgments are essentially similar to those prescribed in the Japanese CCP.[184] According to some Japanese commentators, this decision is allegedly undue and even unconstitutional under Japanese (private international) law.[185] In any event, the Tokyo High Court's decision is exceptional and Japanese courts rarely acquire allegations of satisfaction with the substantially equivalent test.

Based on the above, it is clear that, in Japan, a mutual guarantee (or, specifically, a guarantee of reciprocity) can be established by means other than a treaty, for example, by examining the relevant laws of the foreign country. Considering the corresponding English common law-based quasi-*exequatur* mechanisms in the laws of Hong Kong and Singapore, it is clear that what applies to a Hong Kong judgment should also apply to a Singapore judgment. Japanese case law approves this. The Tokyo District Court confirmed these findings in 2006. Bound by the prerequisite guarantee of reciprocity but without a relevant treaty between Japan and Singapore, the Court recognized and enforced a judgment from Singapore.

[179] *Saruma Co Ltd v. Nozawa-gumi Co Ltd* [1960] Tokyo District Court 1956 (Wa) 5138, 8 Japanese Annual of International Law at 181.

[180] The Belgian Code of Private International Law (entered into force 1 October 2004), art. 25(2).

[181] Yasuhiro OKUDA, "Unconstitutionality of Reciprocity Requirements for Recognition and Enforcement of Foreign Judgments in Japan" (2018) 13(2) Frontiers of Chinese Law 160 at 164.

[182] *X v. Y1 and Y2* [2015] Tokyo High Court 2015 (Ne) 2461 [LEX/DB 25541803], 61 Japanese Yearbook of International Law 407 at 409.

[183] *Ibid.*, at 409.

[184] *Ibid.* The Tokyo High Court also referred to the Gazette of the Supreme People's Court of China in which the Supreme People's Court officially denied reciprocity between Japan and China on judgment recognition and enforcement, without making any reservation or limitation. However, in September 2023, the Shanghai Third Intermediate People's Court reportedly confirmed, for the first time, the existence of a reciprocal relationship between China and Japan in the recognition of cross-border bankruptcy decisions, stating that the lack of reciprocity between the two countries in the recognition and enforcement of civil and commercial judgments is "not automatically applicable" in the recognition of each other's bankruptcy proceedings: Guodong DU and Meng YU, "Turning Point: China First Recognizes Japanese Bankruptcy Decision" (11 March 2024), online: Conflict of Laws.net <https://conflictoflaws.net/2024/turning-point-china-first-recognizes-japanese-bankruptcy-decision/>; Asian Business Law Institute, "Corporate Restructuring: [Judgment] First Recognition of Japanese Bankruptcy Proceedings by Chinese Court" (16 November 2023), online: ABLI <https://abli.asia/judgment-recognition-of-japanese-bankruptcy-proceeding-by-chinese-court/>.

[185] Okuda, *supra* note 181 at 168–70; Yuko NISHITANI, "Coordination of Legal Systems by the Recognition of Foreign Judgments – Rethinking Reciprocity in Sino–Japanese Relationships" (2019) 14(2) Frontiers of Law in China 194 at 218–19; Mitsuo KAWAI, "Reciprocity between Japan and China in the Recognition of Foreign Judgments [in Japanese]" (2020) 45 Keio Law Journal 39 at 78–80.

IV. Conclusions

This article demonstrates that Cambodia has clear interests in enforcing Singapore's commercial money judgments within its own jurisdiction. First, FDI and Cambodia's connectedness in regional supply chains (e.g. under ASEAN or RCEP schemes, to which Singapore is also a party) are important objectives of Cambodian economic diplomacy policy. However, cross-border trade and investment require that the enforcement of contracts and resolution of disputes be streamlined. This includes ensuring that the rules on enforcing foreign judgments are clear and their application is transparent. If foreign judgments cannot be enforced in Cambodia, judgment creditors must re-litigate their case in Cambodia to enforce their debtors' Cambodian assets. Among their various problems, duplicate suits increase business costs and make the Cambodian market less competitive and attractive. Challenges or uncertainties within a country's claims enforcement system, particularly regarding enforcing foreign judgments, serve more as deterrents than incentives for trade and investment. Second, Singapore courts have built trust among business communities worldwide regarding the expertise and integrity of the Singaporean judges and their preparedness to resolve complex industry-specific commercial disputes within an acceptable timeframe. There is no reasonable reason for Cambodian citizens to fear that businesses would be exposed to legal proceedings in Singapore that do not meet the Cambodian thresholds of due process, procedural fairness, or natural justice. Third, the opening towards Singapore judgments by accepting a flexible interpretation of the guarantee of reciprocity would not result in uncontrollable and automatic enforcement of all Singapore judgments, as they can still be filtered out for lack of indirect jurisdiction, defects in the service of processor public policy grounds based on existing Cambodian law. Fourth, the more disputes are adjudicated abroad, the more alleviated the Cambodian courts are, which means time and cost savings for budgets allocated to the courts.

Meanwhile, we have not identified any benefit for Cambodia from the refusal to enforce Singapore's judgments. It has also been suggested that recognizing a foreign judgment does not negatively impact a state's sovereignty, even if it is not reciprocated. However, this would not be the case for Singapore's judgments because Cambodian money judgments are enforceable in Singapore at common law.

Not only is the enforceability of Singapore judgments in the interest of Cambodia, but we have also found no legal obstacles preventing Cambodian courts from enforcing them. We have demonstrated that the *exequatur* proceedings' statutory provisions are essentially identical in Japan and Cambodia. Attention has been paid to the circumstances in which both countries require the guarantee of reciprocity, and neither has concluded a treaty on the subject matter with Singapore. Evidence shows that Japanese courts are satisfied with the assurance of the Singaporean common law mechanism and consider that foreign states' internal laws may provide the desired guarantee of reciprocity. Accordingly, Japanese courts can enforce Singapore's judgments. The Cambodian CCP does not contain any express requirements about international treaties being the exclusive basis for recognizing and enforcing foreign judgments. Specifically, there is no reason that a prerequisite guarantee of reciprocity cannot be established based on the internal laws of the state of origin. This permissive interpretation of the reciprocity guarantee would align with global trends and the spirit of the Nanning Statement.

Acknowledgements. The authors would like to thank the reviewers of this article for their comments and their Cambodian colleagues for their support.

Funding statement. None.

Competing interests. The authors declare none.

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Cite this article: PAPP E and TERAMURA N (2025). Enforcing Singapore Judgments in Cambodia: Reciprocity Under the Loupe. *Asian Journal of International Law*, 1–29. https://doi.org/10.1017/S2044251324000389