PRC Double Interest neither Double nor Penal: Australian Courts Clear Its Name When Enforcing Chinese Judgments



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[ABSTRACT]

Recent Australian case law clarifies that the "double interest" mechanism in the People's Republic of China (hereafter 'PRC') monetary judgments functions as a compensatory post-judgment interest framework rather than an unenforceable penalty. This consolidates Australia's position as a highly attractive and creditor-friendly forum for enforcing Chinese judgments. See Zhengzhou Lvdu Real Estate Group Co v Shu [2024] NSWSC 58 (6 February 2024), Fu v Pang [2025] VSC 597 (16 September 2025), and Shanghai Chenggong Industrial Co Ltd v Zhihua Chen [2025] NSWSC 1112 (27 October 2025).

Key takeaways:

- *Australian courts have astutely recognized that PRC "double interest" does not actually double the contractual rate, but operates as an additional statutory post-judgment rate (0.0175% per day) to compensate for delayed performance.*
- *Across three recent decisions, Australian courts in New South Wales and Victoria firmly ruled that Article 264 interest under China's Civil Procedure Law is not penal, as it aims to compensate rather than punish, and it vindicates a private right and lacks a state-enforced punitive purpose.*
- *The willingness to enforce this Article 264 interest mechanism was significantly enhanced by its functional equivalence to Australia's own post-judgment interest rules under the UCPR.*

In recent decades, Australia has increasingly become a top creditor-friendly jurisdiction for PRC judgment creditors. In just two years (2024-2025), six Chinese judgments have been recognized and enforced by Australian courts,[i] mainly in two states – New South Wales and Victoria.

Like in other common jurisdictions, as previously reported, the grounds that judgment debtors frequently use in challenging such recognition and enforcement in Australia are denial of procedural fairness and natural justice, often arising from the service of process in Chinese court proceedings. See *Zhou v Jing* [2023] NSWSC 214 (procedural fairness); *Yin v Wu* [2023] VSCA 130 (natural justice).

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More interestingly, Australian courts have been dealing with a newish defense in a series of three recent cases – *Zhengzhou Lvdu Real Estate Group Co v Shu* [2024] NSWSC 58 (6 February 2024), *Fu v Pang* [2025] VSC 597 (16 September 2025), and *Shanghai Chenggong Industrial Co Ltd v Zhihua Chen* [2025] NSWSC 1112 (27 October 2025). The common issue at heart is whether the "double interest", an element commonly seen in PRC monetary judgments, is penal, and hence renders the judgments wholly or partially unenforceable in Australia.

As misleading as the term "double interest" may appear, the way Australian courts endeavor to understand a term absolutely unique in a foreign country is admirable. The courts not only correctly pointed out that "double interest" is a misnomer, as it has nothing to do with "double", but also concluded that such "double interest" is not penal in nature.

For the avoidance of doubt, the so-called "double interest" refers to the double part debt interest of the "Article 264 interest" (also known as "double part debt interest of delayed performance interest" (迟延履行利息的加倍部分债务利息 / *chiyan lvxing lixi de jiabei bufen zhaiwu liyi*), the interests payable under Article 264 of China's 2023 Civil Procedure Law (CPL) (formerly numbered Article 253 of 2017 CPL, Article 260 of 2021 CPL), which applies in in circumstances where a judgment debtor fails to pay the judgment debt within the period as specified in a judgment.

The method to calculate the Article 264 interest is governed by the 2014 Interpretation by China's Supreme People's Court (SPC) on Several Issues concerning the Applicable Law for Calculating the Interest of Debt on Delayed Performance in Enforcement Procedures" (hereinafter the "SPC Interpretation").[ii] Article 1 of the SPC Interpretation provides that Article 264 interest – delayed performance interest (the debt interest during the period of delayed performance)- is composed of the 'general debt interest' and the 'double part debt interest', the former (if any) is specified by the judgment, and the latter is calculated via the formula as follows: Double part of debt interest = the outstanding monetary debt of the debtor other than general debt interest specified by effective legal document x 0.00175 per day x delayed performance period.

“Double Interest” Not Double

The term “double interest” is “something of a misnomer”, indicated the Supreme Court of New South Wales (the “NSW Supreme Court”) in *Zhengzhou Lvdu Real Estate Group Co v Shu*, a case where a judgment of Zhengzhou Intermediate People’s Court of Henan Province (hereinafter the “Zhengzhou Judgment”) for RMB 318,827,295.13 was ruled enforceable.

Like a koala bear is not a bear, the double interest is not double. By nature, it is an “additional” interest, in addition to general debt interest specified by judgment (if any), when the judgment debt was not paid within the period specified in the judgment.

In the Zhengzhou Judgment, the judgment debtors – both the borrower and the guarantor- were found liable for the all the payment obligations, i.e. 1) to repay to the lender (judgment creditor) the principal of the loan in the amount of CNY 170 million and its interest (based on principal of CNY 170 million, calculated on an annual interest rate of 12% for the period between 12 June 2019 and 11 May 2020; and calculated on an annual interest of 18% for the period from 12 May 2020 until the date when the debt is fully repaid) within ten days after this judgment takes effect; and 2) to pay the Article 264 interest, if the payment obligation is not performed within the period specified in this judgment, which is “within ten days after this judgment took effect on 20 September, 2020” (at [42]-[43]).

Clearly, Article 264 (formerly Article 253 of 2017 CPL) does not double the interest rate provided for under the Loan Agreement (which was 12% per annum from the date of the advance until the date of maturity, and then 18% per annum from the date of default until repayment). Instead, there is “double” interest only in the sense that, from the date when the judgment debt was required to be paid until the date of actual payment, there is a second interest rate applicable, in addition to the contractual interest rate of 18% which was found to apply in the Zhengzhou Judgment (at [65]).

Given the calculation method above, Article 264 Interest is calculated based on “the “outstanding monetary debt of the debtor other than general debt interest specified by effective legal document” is, in this case, the amount of the principal (CNY 170 million). The rate of Article 264 interest is a statutory rate, set at

0.0175% per day (around 6.3875% per annum). The "delayed performance period" starts from 29 September 2020 (ten days after this judgment took effect on 9 September) until repayment.

"Double Interest" Not Penal

In *Zhengzhou Lvdu Real Estate Group Co v Shu,* the NSW Supreme Court considered whether "Double Interest" could be regarded penal in nature, but did not reach any determination, given that "it is the Defendant who bears the burden of showing that any element of the Zhengzhou Judgment is penal in nature and that "no evidence and no submissions have been advanced to this effect" (at [68]).

Similarly, in *Fu v Pang*, the Victoria Supreme Court reviewed an application to enforce a Chinese judgment of Qingxiu District People's Court of Nanning City, Guangxi Zhuang Autonomous Region, and this time, the defendant did seek to persuade the court that the double interest was penal in nature.

With detailed reasoning, however, the Victoria Supreme Court rejected the defendant's submission and concluded it is not penal, ruling that

"there is no public interest element. The double part interest arises out of the exercise of a private right and it has no connection with the state, nor is the plaintiff here acting as a common informer. There is no basis on which it can be concluded that the payment of the extra interest component is imposed for public purposes to punish the defendant for non-compliance with the judgment, rather than being an additional compensation for the plaintiff for the detriment of being kept out of the judgment sum." (at [30])

Just one month later, in *Shanghai Chenggong Industrial Co Ltd v Zhihua Chen*, where two PRC judgments were enforced, the NSW Supreme Court reached the same conclusion. In this case, the double interest is the only issue that the defendant disputed, and the court held firmly that Article 264 interest is not penal.

As the NSW Supreme Court revealed, the question at heart is the purpose and nature of Article 264 interest: "does it punish for non-compliance with Court orders, or is it more appropriately considered a legislated post-judgment interest

rate?" (at [18]) The court opined the correct answer is the latter.

To start with, it is not akin to a contractual penalty by any comparison. There are also no authorities decided after *Schnable v Lui* [2002] NSWSC 15 that punitive damages will always be considered penal in Australian law. In other words, punitive damages are not necessarily penal.

More importantly, Article 264 interest aims "to compensate, and not to punish", because Article 264 is triggered where there is late or deferred payment, and it is "appropriate to compensate a plaintiff for being held out of money, just the way the Uniform Civil Procedure Rules (UCPR) provides for post-judgment interest on judgment debts". (at [31])

Comments

Not long after, by following the same stance on the "non-penal" nature of Article 264 interest in *Shanghai Chenggong Industrial Co Ltd v Zhihua Chen*, the same court, the NSW Supreme Court, enforced a PRC judgment of Zhangjiagang People's Court of Jiangsu Province for RMB 24,256,223.86 and interest in *Kai Yuan v Jian Hua Zhou* [2025] NSWSC 1469 (5 December 2025).

By clearing the name of "double interest", the series of recent Australian court decisions have pointed out that the double interest is not double, but additional; and its purpose is to compensate, rather than to punish.

At the end of the day, it is practically difficult to ascertain the purpose behind remedies ordered in foreign judgments. The "compensate or punish" question matters so much that taking on one side over the other can render the part containing such interest either enforceable or unenforceable. There seems to be no room for a mixed purpose, which might as well be a third way of interpretation (if taking into account the views of China's legislature and judiciary).[iii]

Moreover, behind the "compensate or punish" question lies a further question that has yet to be fully tested: what 'penal' actually means in the rule against enforcement of a foreign penal law, when discussing the relevant jurisprudence regarding recognition and enforcement of foreign judgments.

One thing is clear though: when evaluating a foreign concept like PRC "double

interest", the existence of a similar domestic mechanism—such as Australia's statutory post-judgment interest under the UCPR—makes the concept far easier for local courts to understand and accept. Conversely, courts in jurisdictions like Hong Kong, which lack such a domestic equivalent, may find it much more challenging to conceptualize and enforce.[iv]

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[i] See *Zhengzhou Lvdu Real Estate Group Co v Shu* [2024] NSWSC 58, *Fujian Rongtaiyuan Industrial Co Ltd v Zhan* [2024] NSWSC 1318, *Yangpu Huigu Pharmaceutical Corporation Limited v He* [2025] NSWSC 28, *Fu v Pang* [2025] VSC 597, *Shanghai Chenggong Industrial Co Ltd v Zhihua Chen* [2025] NSWSC 1112, *Kai Yuan v Jian Hua Zhou* [2025] NSWSC 1469.

[ii] Interpretation by China's Supreme People's Court on Several Issues concerning the Applicable Law for Calculating the Interest of Debt on Delayed Performance in Enforcement Procedures, Fa Shi (2014) No. 8, 7 July 2014.

[iii] See Legislative Affairs Commission of the Standing Committee of the National People's Congress (ed.), *Explanation of the Civil Procedure Law of the People's Republic of China* (Beijing: Law Press China, 2nd edition, 2012), p. 590; Civil Law Office of the Legislative Affairs Commission of the Standing Committee of the National People's Congress (ed.), *Explanations of Articles, Legislative Rationale, and Relevant Provisions of the Civil Procedure Law of the People's Republic of China* (Beijing: Peking University Press, 2nd edition, 2012), p. 398; and the Official from the Enforcement Bureau of the Supreme People's Court Answers Reporters' Questions, *People's Court Daily,* 31 July 2014, available at https://www.chinacourt.cn/article/detail/2014/07/id/1354917.shtml.

[iv] See *Hung Fung Enterprises Holdings Ltd v The Agricultural Bank of China* [2012] HKCA 251, *Foshan Nanhai Branch of Industrial and Commercial Bank of China Ltd v Foshan Ruifeng Petroleum and Chemical Fuel Co Ltd* [2019] 2 HKLRD 478, *Tianjin Financial Investment Services Group v Jinan Muhe Enterprise Management Co Ltd & Ors* [2025] HKCFI 6182, *Industrial Bank Co., Ltd., Ningbo Branch v Ningbo Baifeng Mineral Processing Co., Ltd. & Ors* [2026] HKCFI 2455, and *Letui (Shanghai) Cultural Communication Co., Ltd. v.*

Shenzhen Mega Combine Technology Co.,Ltd & Ors [2026] HKCFI 3204.

The AIFC Court, Gazprom v Naftogaz and the Emergence of a New Conduit Jurisdiction Debate

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Introduction

In May 2026, the Court of First Instance of the Astana International Financial Centre (AIFC) recognised and enforced a Swiss ICC arbitral award rendered in favour of Naftogaz against Gazprom. The award arose out of the disputes between the parties concerning the transit of Russian gas through Ukraine after the start of the war.

The decision was followed by public comments from Kazakhstan's Minister of Justice. According to press reports, the Minister stated that the award would not be enforced in Kazakhstan because neither Gazprom nor Naftogaz were participants in the AIFC and because the dispute had no connection to the Centre. He further suggested that the AIFC should not become a "transit platform" for the enforcement of foreign decisions unrelated to its activities.

The controversy raises an interesting private international law question that extends well beyond the particular dispute between Gazprom and Naftogaz. Can the AIFC Court function as a conduit jurisdiction for the recognition of foreign arbitral awards and their subsequent enforcement in Kazakhstan, i.e. outside the AIFC?

The Jurisdictional Problem

The AIFC occupies a unique constitutional position. Established in 2018, it operates under a separate common-law framework within Kazakhstan and possesses its own court system staffed by international judges. Article 13(2) of the AIFC Constitutional Statute on the AIFC expressly provides that the AIFC Court is not part of the judicial system of the Republic of Kazakhstan.

The difficulty is that the Constitutional Statute does not expressly address whether the AIFC Court may recognise foreign arbitral awards that have no connection to the Centre.

The Court relied principally on Article 45(1) of the AIFC Arbitration Regulations, which provides that: "An arbitral award, irrespective of the State or jurisdiction in which it was made, shall be recognised as binding within the AIFC." The Court also relied on Article 40(3) of the AIFC Court Regulations, which refers to the enforcement of "other judgments and arbitration awards".

Whether these provisions actually confer jurisdiction to recognise foreign arbitral awards remains debatable. The AIFC Constitutional Statute itself is largely silent on the matter. The dispute therefore raises a classic question of institutional competence: can jurisdiction be inferred from subordinate regulations where the constitutional instrument neither expressly grants nor expressly excludes it?

The New York Convention Argument

One possible justification for the Court's approach lies in Kazakhstan's obligations under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

The AIFC is located within the territory of Kazakhstan. Under Article 29 of the Vienna Convention on the Law of Treaties, treaties bind the entire territory of a state unless a contrary intention appears. Nothing in Kazakhstan's ratification of the New York Convention suggests that the Convention does not apply within the territory of the AIFC.

Article III of the Convention requires contracting states to recognise foreign arbitral awards. However, the Convention itself does not allocate jurisdiction among domestic courts. It does not specify whether recognition must be sought before an ordinary state court, a specialised commercial court or a court located within a financial centre. It may therefore be argued that once Kazakhstan

created the AIFC Court and granted it powers relating to arbitration, the Court became one of the institutions through which Kazakhstan fulfils its Convention obligations.

The contrary argument is equally plausible. Kazakhstan may comply fully with the Convention while reserving recognition proceedings to its ordinary courts. The Convention requires recognition; it does not dictate which court must provide it.

An Exequatur of an Exequatur?

The dispute also raises a more traditional private international law concern.

If a Swiss arbitral award is recognised by the AIFC Court and the resulting AIFC judgment is then enforced elsewhere in Kazakhstan, one might ask whether this effectively amounts to an "exequatur of an exequatur". Scholars have long expressed reservations about attempts to circulate recognition judgments relating to arbitral awards. Such practices may circumvent the grounds for refusal contained in Article V of the New York Convention by converting an arbitral award into a court judgment before seeking enforcement elsewhere.

Whether that objection applies here depends in part on how one characterises the relationship between the AIFC and Kazakhstan. Although the AIFC forms part of Kazakhstan's territory, it possesses a distinct legal system and separate courts. Therefore it is, properly speaking "another jurisdiction", if not another state.

Lessons from Dubai and Abu Dhabi

The most illuminating comparison comes from the Gulf financial centres, which the AIFC openly tries to emulate.

The Dubai International Financial Centre (DIFC) Courts have long been associated with the concept of a conduit jurisdiction. Under the DIFC framework, parties have sought recognition of foreign judgments and arbitral awards before the DIFC Courts even where neither the parties nor the dispute had any connection to the DIFC. Once recognised, the resulting DIFC judgment could potentially be enforced through the ordinary Dubai courts.

The leading authorities include *X1 and X2 v Y1 and Y2* and *Banyan Tree Corporate Pte Ltd v Meydan Group LLC*. In both cases, the DIFC Courts adopted a broad understanding of their recognition jurisdiction.

The Abu Dhabi Global Market (ADGM) followed a different path. Following legislative reforms in 2020, it became clear that the ADGM Courts could not be used as a conduit jurisdiction for the recognition of foreign judgments and arbitral awards. Abu Dhabi thus deliberately rejected a model that Dubai had largely embraced.

The AIFC now appears to stand somewhere between these two approaches. Unlike the DIFC legislation, the AIFC framework contains no clear statement granting recognition jurisdiction over foreign arbitral awards irrespective of any connection to the Centre. Unlike the ADGM legislation, however, it contains no express prohibition.

Conclusions

The Minister's remarks announcing that the AIFC Court judgement would not be enforced in Kazakhstan may be understood as reflecting a legitimate policy concern: whether an international financial-centre court should be used to bypass ordinary domestic recognition procedures. Yet, they also concern a matter that is arguably for the courts themselves to determine. The Constitutional Statute repeatedly emphasises the independence of the AIFC Court and grants it exclusive authority to interpret AIFC law.

The broader issue therefore concerns institutional design rather than merely arbitration enforcement. If Kazakhstan does not wish the AIFC Court to function as a conduit jurisdiction, the appropriate solution may be legislative clarification. Conversely, if the AIFC is intended to replicate aspects of the DIFC model, greater certainty regarding its recognition jurisdiction would be desirable.

Montana Supreme Court Decides International Child Custody Case

The Uniform Child Custody Jurisdiction and Enforcement Act, which has been enacted by every U.S. state, discourages forum shopping in child custody disputes

by assigning subject-matter jurisdiction to the court located in the "home state" of the child. In *Allen v. Allen*, decided on April 21, 2026, the Montana Supreme Court had to determine whether the child's "home state" was Montana or the Netherlands. This case shines an important spotlight on the importance of *timing* in international child custody disputes. The left-behind parent's likelihood of success is strongly correlated with how quickly her or she acts to vindicate their legal rights.

Facts

Jonathan Edward Allen (Father) and Petronella Gerline (Van Oosterom) Allen (Mother) were married in Colorado in 2009. Father is a United States citizen. Mother is a dual citizen of the United States and the Netherlands. Their child (R.A.A.) was born in 2015. In 2020, the family moved from Colorado to Montana.

In August 2023, after Father and Mother began having marital difficulties, Mother and R.A.A. relocated to the Netherlands. In February 2024, Mother filed a petition for divorce and custody with the District Court of Central Netherlands (Netherlands District Court).

In January 2025, Father filed a petition with the District Court of The Hague seeking the return of R.A.A. pursuant to the Hague Convention on the Civil Aspects of International Child Abduction. This petition was denied. Although the court held that R.A.A. had been wrongfully removed from the United States, the court reasoned that the one-year automatic return period had passed and that R.A.A. had become settled in her new environment in the Netherlands. This decision was affirmed on appeal.

In September 2025, Father filed an Emergency Motion for Temporary Custody and Petition for Permanent Parenting Plan in Montana state court. That court dismissed the petition on the grounds that it lacked subject-matter jurisdiction. Specifically, it held that it lacked the power to adjudicate the dispute because Montana was no longer the "home state" of R.A.A. Father, acting pro se, appealed to the Montana Supreme Court.

Analysis

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) assigns

exclusive subject-matter jurisdiction to courts located in the child's "home state" when it comes to matters relating to child custody. The "home state" is "the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding." The UCCJEA specifically provides that courts "shall treat a foreign country as if it were a state of the United States" for purposes of resolving these disputes.

On the facts presented in *Allen v. Allen*, the Montana Supreme Court correctly held that it lacked subject-matter jurisdiction to consider Father's emergency motion. Mother and R.A.A. relocated to the Netherlands in August 2023. Six months later—in February 2024—R.A.A.'s home state shifted to the Netherlands. The Dutch courts—not the Montana courts—now had exclusive subject-matter jurisdiction to resolve custody disputes involving R.A.A. Father did not file his motion in Montana until September 2025, which was nineteen months too late.

Conclusion

If Father had filed his suit in Montana before February 2024, he could have shown that Montana was R.A.A.'s "home state" because the child had not yet resided in the Netherlands for six months. The suit was, however, not filed until September 2025.

If Father had filed suit in the Netherlands before August 2024, he could have argued that R.A.A. should be returned to the United States pursuant to the Hague Convention on the Civil Aspects of International Child Abduction because the child had not yet resided in the Netherlands for a year. The suit was, however, not filed until January 2025.

The takeaway of *Allen v. Allen* is the need for speed in international child custody cases. The timelines baked into the relevant laws and treaties mandate that the left-behind parent move quickly to assert their rights. If they are slow off the mark, they be forced to litigate in foreign courts under less favorable legal rules.

China’s Countering Improper Foreign Extraterritorial Jurisdiction Regulation Blocked EU’s Extraterritorial Data Acquisition

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I. Background

On 15 May this year, Ministry of Justice (MOJ) of China issued its Official Notice No 5 of 2026 (‘the MOJ Notice’), announcing that the relevant extraterritorial investigation carried out by EU on Chinese entities Nuctech constitutes improper extraterritorial jurisdiction measures under China’s Regulation on Countering Improper Foreign Extraterritorial Jurisdiction (ROCIFEJ, State Council Decree No 835).[1] This Regulation was promulgated and entered into force on 7 April 2026. As a nationwide regulation promulgated by State Council, although it cannot be called an ‘Act’ that should be passed by the National People’s Congress, its legal hierarchical force directly follows an ‘Act’, higher than the previous Blocking Rules issued by Ministry of Commerce (MOC).[2]

The MOJ Notice arises from an information request issued by the European Commission to Nuctech’s EU entities. Nuctech is a multinational threat-detection systems manufacturer and seller headquartered in China. The Commission started investigation under Foreign Subsidies Regulation (FSR) and sought access to emails of employees of Nuctech’s EU entities. Although those entities are registered and operate within the EU, their email are stored on their parent company’s servers in China.

II. Legal basis and effects under Chinese law

The legal basis for this declaration is Articles 3 and 6 of ROCIFEJ. Article 3 empowers Chinese government to take measures countering foreign improper extraterritorial jurisdiction. Article 6 mandates MOJ to issue official notices identifying a foreign measure constitutes improper extraterritorial jurisdiction, taking into account (1) violation of international law and basic norms governing international relations; (2) inappropriate jurisdictional nexus with that foreign state; (3) danger to China's national sovereignty, security and development interests, or damage to lawful rights and interests of Chinese citizens and organisations; and (4) other factors that shall be taken into consideration.

According to the press releases of MOJ and MOC (which also participated in the investigation), the Notice is issued on these grounds: (1) the scope of requested data is broad that 'obviously violates international law and basic norms governing international relations'; and (2) EU has also compelled Chinese banking institutions to provide vast and unrelated information located in China, adversely affecting the normal investment and business operations of Chinese enterprises.[3] Although the factor of inappropriate jurisdictional nexus is not mentioned, it can be impliedly conveyed that the Chinese authorities find it inappropriate for EU to unilaterally acquire data stored in China.

The MOJ Notice states that 'any organisation or individual shall not enforce or assist in enforcing such improper extraterritorial jurisdiction measures.' It is immaterial whether the provider or assistant is a Chinese entity. The MOJ Notice creates a direct conflict between EU law and Chinese law. Nuctech EU entities will face the dilemma of either violating EU law or violating Chinese law. There is also no doctrine like 'foreign sovereign compulsion' in either EU or China.[4] Under EU law, entities choosing to carry out commercial activities in the EU internal market cannot, in principle, rely on the rules of a non-EU state to violate mandatory regulations of the EU.[5] If the European Commission insists acquisition of those data, Nuctech cannot use the Chinese prohibition as an effective defence.

III. The Deepening Jurisdictional Conflict and the Limits of Existing Frameworks

The Nuctech case is not an isolated incident but a manifestation of a systemic problem: the escalating horizontal conflict between states' assertions of data jurisdiction. This conflict is not new. The Microsoft v. United States (2016) litigation already demonstrated the core tension. However, The Nuctech situation under the ROCIFEJ represents a qualitative escalation for three reasons.

First, it involves a direct, public, and legally binding prohibition by China against compliance with an EU measure. Unlike the US where the Microsoft litigation ultimately turned on statutory interpretation, China has now issued a formal notice under a newly enacted regulation (ROCIFEJ), declaring the EU's FSR investigation ab initio improper and imposing a positive legal duty on "any organisation or individual" not to comply. This is a blocking statute in its most potent form. It transforms a conflict of jurisdiction between states into a direct legal dilemma for the corporate entity: comply with the EU and violate Chinese law with potential sanctions under ROCIFEJ, or comply with Chinese order and risk penalties from the EU including fines or a negative inference under the FSR. The only possible way out is Art 5 of the ROCIFEJ which allows the affected company to apply for an exemption from MOJ.

Second, the conflict is now hardwired into the enforcement actions of two major economies without a mutual legal assistance or data-sharing framework. The EU and China have no equivalent of the US-EU Data Privacy Framework, no bilateral judicial assistance treaty specifically tailored to data, and no CLOUD Act-style agreement. The EU's FSR allows it to demand broad access to information, including electronically stored data, from any entity receiving EU subsidies. China's ROCIFEJ allows it to block precisely such demands if they are deemed to violate international law or threaten national interests. Neither legal order contains a doctrine of "foreign sovereign compulsion" that would excuse non-compliance. From an EU law perspective, the Nuctech EU entities are established in the EU, operate within the EU internal market, and are subject to EU law. The CJEU has consistently held that EU mandatory rules can follow EU entities even

in their extra-EU activities. A Chinese blocking notice is unlikely to be recognised as a valid defence.

Third, the underlying jurisdictional nexus is fundamentally contested. The EU's FSR investigation targets Nuctech's EU entities, which are legally incorporated in EU member states. The Commission's information request is directed at those EU entities. The fact that those emails are stored on parent company servers in China is, from an EU perspective, a matter of corporate organisation, not a jurisdictional bar. The Chinese government, however, views the request as an improper extraterritorial measure because it seeks data physically located in China, effectively compelling production from the Chinese parent company via its EU subsidiaries. This is the classic "data controller" (EU) versus "data location" (China) jurisdictional conflict, now weaponised by two comprehensive legal regimes.

The MOJ Notice declares that the EU measure shall not be enforced or assisted in enforcement. But what are the practical consequences, given the EU's likely disregard for the Chinese notice? Under Chinese law, the ROCIFEJ provides for enforcement mechanisms. Article 7 allows the Chinese government to "take necessary measures" against any person who complies with a foreign improper extraterritorial measure, including prohibiting them from doing business with Chinese entities, restricting or denying them certain rights, and imposing fines. More significantly, Article 8 allows Chinese citizens or organisations that have suffered losses due to another person's compliance with such foreign measures to sue for damages in Chinese courts. Nuctech's EU entities or any third parties, such as lawyers, service providers, etc., if they comply with the EU's data demand, could theoretically face legal action in China. However, enforcement against EU-based entities with no assets in China is largely symbolic.

Under EU law, as noted, there is no "foreign sovereign compulsion" defence. The European Commission can and likely will ignore the MOJ Notice. The FSR empowers the Commission to impose fines for non-compliance with information requests (Article 26). The Commission could also draw adverse inferences about Nuctech's subsidy status from the refusal. Thus, if Nuctech's EU entities cannot receive exemption from China, the MOJ Notice creates a classic compliance dilemma.

[1] Ministry of Justice of the People's Republic of China, 'Notice on the

Constitution of Improper Extraterritorial Jurisdiction as regards Relevant Measures Taken by EU in Foreign Subsidies Investigation' (*Gov.cn* 15 May 2026) <https://www.moj.gov.cn/pub/sfbgw/zwxxgk/fdzdgknr/fdzdgknrtzwj/202605/t20260515_535049.html> accessed 21 May 2026.

[2] Rules on Blocking Improper Extraterritorial Application of Foreign Laws and Measures (Decree [2021] No 1 of Ministry of Commerce) (China).

[3] Ministry of Justice of the People's Republic of China, 'Spokesperson for the Ministry of Justice Answers Questions from the Press about the Constitution of Improper Extraterritorial Jurisdiction as regards Relevant Measures Taken by EU in Foreign Subsidies Investigation' (*Gov.cn* 15 May 2026) <https://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202605/t20260515_535048.html> accessed 21 May 2026; Ministry of Commerce of the People's Republic of China, 'Spokesperson for the Ministry of Commerce Answers Questions from the Press about the Determination that Relevant Measures Taken by EU in Foreign Subsidies Investigation Constitute Improper Extraterritorial Jurisdiction Measures' (*Gov.cn* 16 May 2026) <https://www.mofcom.gov.cn/xwfb/xwfyrth/art/2026/art_df1b7dd65f014ea29f7de59bb04e2ebf.html> accessed 21 May 2026.

[4] *Re Vitamin C Antitrust Litigation* 8 F 4th 136 (2d Cir US 2021); Restatement (Fourth) of Foreign Relations Law § 442 (2018) (US).

[5] *Nuctech* (n **3**) [80]–[81].

Enforcement of New York Judgments in Côte d'Ivoire: Insights from a Recent Decision of

the Abidjan Commercial Court

Many thanks to Boris Awa (Kigali Independent University ULK, Kigali, Rwanda) for the tip-off

I. Introduction

The recognition and enforcement of foreign judgments in Francophone African countries remains a largely underexplored subject in the literature, including in French-language scholarship. The laws of many countries have not yet been systematically analysed from a comparative perspective, and in several jurisdictions access to even the most basic information is itself a considerable challenge. This note aims to raise awareness of African private international law, in particular in Francophone Sub-Saharan African countries. The case discussed here concerns the enforcement of a New York judgment in Côte d'Ivoire. It provides an opportunity to present the Ivorian system of recognition and enforcement of foreign judgments and to examine some of the key issues addressed by the Ivorian court.

II. Facts and Procedural Developments

The case involved a dispute between X (an American company) and Y (an Ivorian company). The American company sought the enforcement in Côte d'Ivoire of a U.S. judgment rendered by the New York Supreme Court, ordering Y to pay a certain sum of money. To that end, X brought an action before the Abidjan Commercial Court.

In support of its application, X argued that the foreign judgment satisfied the legal requirements for enforcement under Ivorian law, in particular that:

- the foreign judgment was rendered by a court having jurisdiction under New York law;
- the decision had become final and irrevocable (*passée en force de chose jugée*), as evidenced by a certificate of non-appeal;

- the dispute arose from the non-performance of a commercial contract and did not fall within the exclusive jurisdiction of Ivorian courts;
- reciprocity was established, since Ivorian judgments may be enforced in the United States, on the ground that both the United States and Côte d'Ivoire are contracting states to the 1993 HCCH Adoption Convention.

By an interlocutory default judgment (*jugement de défaut avant dire droit*) dated 6 June 2024, the Court invited X to supplement its application, finding in particular that

- it had not been established that the laws of the State of New York provide that a mere certificate of non-appeal is sufficient to render a judgment enforceable;
- given that service of the foreign judgment on Y had been effected by electronic means, it had not been demonstrated that, under New York law, service of a judgment may validly be effected by electronic mail.

Subsequently, X brought a new action, this time against the Public Prosecutor attached to the Abidjan Court of First Instance, seeking enforcement of the same foreign judgment.

By an interlocutory civil judgment rendered after adversarial proceedings (*jugement contradictoire avant dire droit*) dated 30 October 2025, the Abidjan Commercial Court again invited X to submit:

- the complete original judgment in English, together with a French translation prepared by a sworn translator; and
- evidence that the foreign judgment had become final and binding and that it had been duly served on the judgment debtor.

X was also invited to summon Y to join the proceedings by way of compulsory intervention (*intervention forcée*).

X complied with the Court's requests. Following Y's intervention, Y contested the enforcement of the American judgment, arguing *inter alia* that reciprocity was not established with the United States. In response, X contended that a convention existed between the two countries, arguably referring to the 1993 HCCH Adoption Convention.

III. Ruling

By a judgment rendered after adversarial proceedings (*jugement contradictoire*) dated 15 January 2026, the Abidjan Commercial Court declared the American judgment enforceable in Côte d'Ivoire, ruling as follows (summary).

First, the Court recalled the legal regime governing the enforcement of foreign judgments in Côte d'Ivoire, referring to the relevant statutory provisions (see below, Comment).

Applying this framework to the case at hand, the Court found, upon examination of all the documents in the case file, that:

- Y had been duly notified of the existence of the proceedings conducted in the United States that resulted in the judgment at issue;
- the time limits for lodging an appeal had expired; and
- no element in the case file established that judgments rendered in Côte d'Ivoire could not be enforced in the United States.

IV. Comments

1. Applicable framework

The enforcement (*exequatur*) of foreign judgments in Côte d'Ivoire is governed by Articles 345 to 350 of the 1972 Code of Civil, Commercial and Administrative Procedure (CCCAP), which establishes the legal framework under which foreign judgments may be declared enforceable in Côte d'Ivoire. The applicable provisions may be succinctly summarized as follows:

Article 345 lays down the principle that foreign judgments have no legal effect in Côte d'Ivoire unless they are declared enforceable by an exequatur decision.

Article 346 determines both the nature of the exequatur procedure and the court having jurisdiction to hear applications for enforcement.

Articles 347 and 348 set out the conditions that must be satisfied for a foreign judgment to be declared enforceable in Côte d'Ivoire.

Article 347 specifies the substantive and procedural requirements, which include in particular that:

- the foreign judgment was rendered by a court having jurisdiction under the law of the State of origin;
- it has become final and enforceable under that law;
- it was rendered in proceedings in which the defendant was properly summoned and afforded an opportunity to present a defence;
- the dispute does not fall within the exclusive jurisdiction of Ivorian courts;
- the foreign judgment does not conflict with a prior final judgment rendered by an Ivorian court between the same parties concerning the same cause and object; and
- its does not violate Ivorian public policy.

Article 348 adds reciprocity as an additional requirement, providing that foreign judgments may be enforced in Côte d'Ivoire only if judgments rendered in Côte d'Ivoire may likewise be enforced in the State of origin.

Finally, decisions granting or refusing exequatur are subject to the ordinary remedies available under domestic law (Article 349), and, once declared enforceable, foreign judgments are executed in Côte d'Ivoire in accordance with Ivorian law (Article 350).

2. Significance of the case

The case discussed here provides several significant insights into the manner in which foreign judgments may be enforced in Côte d'Ivoire.

Two are of particular relevance.

a) Exclusive jurisdiction.

First, contrary to what is often asserted in the literature, Ivorian courts do not necessarily claim exclusive jurisdiction in disputes involving Ivorian nationals. In

this respect, it is commonly submitted that Articles 14 and 15 of the Ivorian Civil Code, inherited from the French Civil Code, have traditionally been interpreted as conferring exclusive jurisdiction on Ivorian courts. Accordingly, the exclusive character of Articles 14 and 15 of the Ivorian Civil Code would prevent the enforcement of foreign judgments rendered against Ivorian defendants.

Interestingly, the present case shows that the Ivorian nationality of the judgment debtor neither prevented the enforcement of the American judgment on grounds of exclusive jurisdiction nor gave rise to any argument to that effect by the parties.

b) Reciprocity

The second concerns the reciprocity requirement and its operation in Côte d'Ivoire.

The commented case is consistent with the available judicial practice, according to which the following elements may be identified:

i) Enforcement does not depend on the existence of a treaty between Côte d'Ivoire and the rendering State. Accordingly, the absence of a treaty does not lead to the refusal of enforcement of foreign judgments in Côte d'Ivoire. Several cases, including the one presented here, show that even in the absence of a treaty, foreign judgments have been declared enforceable.

ii) Reciprocity requires a showing that judgments rendered in Côte d'Ivoire may be enforced in the rendering State. This does not depend on demonstrating that the courts of the State of origin have in fact enforced an Ivorian judgment (*de facto* reciprocity). Available case law, however, shows that the party seeking enforcement sometimes submits such decisions as evidence to establish reciprocity.

In the present case, interestingly, the American company argued that a treaty exists between Côte d'Ivoire and the United States, referring to the HCCH 1993 Adoption Convention. This argument is not really convincing for two reasons: (i) reliance on the Convention is misplaced given its limited scope, which is confined to adoption matters; and (ii) even assuming that the Convention were applicable,

it does not address the enforcement of adoption decisions as such, but instead it focuses on recognition.

Despite the parties' arguments concerning the relevance of the existence of a treaty for the purpose of establishing reciprocity, the Abidjan Commercial Court merely held that no element in the case file shows that Ivorian judgments could not be declared enforceable in the United States. While the Court adopted a relatively liberal approach, it must be acknowledged that its position is not entirely clear. In particular, it remains uncertain whether the Court sought to treat a federal State such as the United States, which is composed of autonomous legal units with their own legal and judicial systems, as a unified legal system. In line with the Court's position, one may wonder whether, for the purpose of challenging reciprocity, it would be sufficient to show that an Ivorian judgment was denied enforcement in a particular U.S. state, given that some states do require reciprocity, albeit as a discretionary ground for refusing enforcement. In any event, the available judicial practice, together with the present case, suggests that, despite certain remaining uncertainties (including, *inter alia*, the question of burden of proof), reciprocity does not appear to constitute a serious practical hurdle in Côte d'Ivoire.

Investment Awards vs Sovereign Immunity: Navigating the Enforcement Maze

By Cara North, Counsel, Ashurst

The intersection of foreign State immunity and the enforcement of international arbitral awards has been a hotly contested issues in recent years. First the question was whether a State has waived immunity from court processes concerning recognition and enforcement of arbitral awards by ratifying the *1965 Convention of Settlement of Investment Disputes* (**ICSID Convention**) – to which

the answer has been yes in Australia and the England and Wales (among other jurisdictions). More recently, the question has been whether a State's ratification of the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (**New York Convention**) constitutes an implicit waiver of sovereign immunity, to which the High Court of Australia most recently held no.

In *CCDM Holdings, LLC v The Republic of India* [2026] HCA 9, the High Court of Australia unanimously held that ratification of the New York Convention does not, of itself, waive foreign State immunity under the *Foreign States Immunities Act 1985* (Cth). The decision aligns Australia with the current position in the United States, Canada, and England and Wales, reinforcing an emerging common law consensus in that regard.

Factual and Procedural Background

The dispute arose from an investment by Mauritian companies in an Indian Government-owned corporation. In 2011, the Indian Government annulled the underlying agreement on public policy and national security grounds. The investors commenced arbitral proceedings against India under Article 8 of the India-Mauritius bilateral investment treaty (BIT), which contemplated ICSID arbitration. As India is not a Contracting State to the ICSID Convention, the arbitration proceeded under UNCITRAL Rules.

In 2020, the tribunal rendered an award of US$111 million. The award creditors sought enforcement in Australia under the New York Convention. India resisted, invoking immunity under section 9 of the *Foreign States Immunities Act 1985* (Cth).

The Waiver Question in the Lower Courts

At first instance, Jackman J held that India had waived immunity by ratifying the New York Convention, finding a "clear" and "unmistakable" implication—particularly from Article III, read with Articles I(1) and II(1)—that ratification involved waiver and submission to the jurisdiction of other Contracting States.

On appeal, the Full Federal Court did not decide the waiver question definitively. It assumed ratification constituted a waiver, but held that India's

reservation—limiting the Convention to disputes "considered commercial under the Law of India"—circumscribed any such waiver. Finding the dispute was not commercial under Indian law, it held that India had not waived immunity in respect of the award.

The High Court's Analysis

The High Court addressed the fundamental question directly: whether ratification of the New York Convention is capable of constituting a waiver of foreign State immunity.

The governing principle is that any waiver in an international agreement must be "clear and unmistakeable", derived from the express words of the agreement, including necessary implications.

The High Court observed that the text of the New York Convention contains no express reference to foreign State immunity. The *travaux préparatoires* revealed an intention to preserve immunity in the courts of other States—a consideration militating against implied waiver.

Crucially, the Court examined Article III, which requires Contracting States to recognise awards as binding and enforce them "in accordance with the rules of procedure of the territory where the award is relied upon". The High Court held this phrase encompasses foreign State immunity rules, qualifying the enforcement obligation by reference to immunity rules in the relevant forum.

The Court also considered subsequent State practice under Article 31(3)(b) of the *Vienna Convention on the Law of Treaties*. It found that decisions from the United States, Canada, and England and Wales pointed in the opposite direction: ratification of the New York Convention is not, by itself, a sufficient act of waiver.

Distinguishing the ICSID Convention

The appellants sought to draw an analogy with *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* [2023] HCA 11, where Spain was held to have waived immunity by ratifying the ICSID Convention. The High Court rejected this analogy, identifying material distinctions:

- First, the ICSID Convention is expressly concerned with disputes to which a State is a party, and its *travaux préparatoires* addressed foreign State

immunity in detail.

- Second, Article 55 of the ICSID Convention preserves immunity only from execution—implying waiver of immunity from recognition and enforcement. Article III of the New York Convention supports preservation of immunity from jurisdiction altogether.

- Third, the International Law Commission materials relied upon by the appellants did not equate the two Conventions in any dispositive way.

Implications for Enforcement Against States

CCDM Holdings provides an authoritative demarcation between the two principal conventions. For ICSID awards, *Kingdom of Spain* establishes that enforcement against a Contracting State in Australia will not be barred by claims of immunity from jurisdiction. For non-ICSID awards—including investment treaty awards under UNCITRAL or other rules—enforcement against an unwilling State under the New York Convention is foreclosed absent clear and unmistakeable waiver.

Investors must give careful consideration to the availability of ICSID arbitration when contracting with States. Where unavailable, parties should seek clear waivers of immunity if enforcement in Australia or similar jurisdictions is contemplated.

Conclusion

The High Court's unanimous decision brings welcome clarity. Ratification of the New York Convention does not, of itself, waive foreign State immunity, aligning Australia with the United States, Canada, and (subject to the pending appeal) England and Wales.

For practitioners in cross-border dispute resolution, the message is clear: the choice of arbitral regime and the presence of an express waiver are matters of critical importance warranting attention from the earliest stages of investment planning.

Courtroom Attendance as a Forum Conveniens Factor in Hamilton v Barrow

*This post is written by **Timon Milan Solár**, Doctoral researcher, Faculty of Law, Trnava University, Slovakia.*

In October 2025, the High Court of England and Wales (King's Bench Division) handed down its judgment in Hamilton v Barrow [2025] EWHC 2593 (KB). The case concerned a failed unregulated investment scheme that collapsed in 2017, leaving investors without the possibility of recovering their investments, which ranged from £2,930 to £410,969. At first glance, the decision discusses important procedural questions, including abuse of process and champerty. However, on closer inspection, it also raises an interesting issue of English private international law that has gone overlooked. Can courtroom attendance be a factor in the forum conveniens test?

Facts of the Case

The defendants were all allegedly involved in a fraudulent investment scheme, under which investors from all over the world paid money to a 'currency club'. Those funds were then supposed to be traded in foreign currency by one of the defendants who was based in Malaysia. Following the collapse of the scheme, the aggrieved investors alleged that the defendants made fraudulent misrepresentations to obtain investments and that the defendants were in breach of contract in their handling of the scheme. It was alleged that the currency club operated as a 'Ponzi' scheme and defrauded the investors.

This was a follow-on action arising from a successful test case by the claimant, a former English solicitor residing in Cyprus, against three of the present defendants. The claimant has now brought proceedings against a wider group of 12 defendants, acting under 101 separate assignments from other investors. The

assignments provided that the assignors are entitled to 60% of the proceeds from the litigation.

Legal Issues

At this stage, the High Court was tasked with answering multiple preliminary legal issues, summarised by the judge (at para 15) as follows:

- Are the courts of England and Wales the appropriate forum for the trial (ie, is England and Wales the *forum conveniens*)?
- Are the assignments to the claimant void for being champertous agreements ('meaning the claimant has no title to bring the claim')?
- Are the proceedings an abuse of process?
- Should the claims against some of the defendants be summarily struck out?
- Should the claimant be allowed to amend his Particulars of Claim?

The Court ruled for the claimant, allowing the claim to proceed. A substantial part of the judgment related to the champerty and abuse of process issues. Looking at the case as a whole, the judge held that the assignments were not void as being champertous, nor did the proceedings constitute an oppressive abuse of process. On the contrary, voiding the assignments would deny the assignors an opportunity to be heard by a court, which the judge refused to allow given the *prima facie* evidence of fraud (at para 123).

Importantly, from a conflict of laws perspective, the interesting issue remains the Court's application of the forum conveniens test.

Forum Conveniens

Setting out the relevant provisions of the forum conveniens test, the judge cited Lord Briggs's judgment in *Vedanta Resources Plc v Lungowe* [2019] UKSC 20, which in turn refers to Lord Goff's speech in *Spiliada Maritime Corp v Cansulex Ltd* [1987] AC 460 (HL): 'The task of the court is to identify the forum in which the case can be suitably tried for the interests of all the parties and for the ends of justice…'. This includes the crucial consideration of all factors that connect the claim with a particular jurisdiction.

The judge then moved to his consideration of the proper forum for this litigation.

It was submitted by multiple defendants that Malaysia rather than England is the forum conveniens. Ultimately, the judge concluded that the appropriate forum is England, for seven listed reasons (at para 70):

- The claimant has already conducted a trial in England, is familiar with the forum, and has family in London who could provide him with accommodation during the trial; he would also lack the capacity to pursue this case in Malaysia;
- More than half of the key witnesses, the assignors, are located in the United Kingdom, whilst none in Malaysia;
- Only 2 of the 12 defendants are outside the United Kingdom and prefer Malaysia as the forum;
- The claimant's three important witnesses all appear to be located in England and Wales and most of the claimant's documentary evidence is available and in electronic form;
- Most of the participants in the trial will be English speakers, documents will be largely in English, and it does not appear that any participants speak Malay;
- Whilst there may be some difficulties in obtaining Malaysian banking material, this would not be impossible should the trial proceed in England, and the claimant has already shown that he was successful in obtaining Malaysian bank materials from HSBC Global; other banks can be approached in a similar way.

The final factor listed by the judge, however, introduces a rather unusual consideration of the forum conveniens test. At point (g), the judge noted:

'although I do not give significant weight to this factor and the claimant did not rely on it, I note that a significant number of people attended the hearing and sat in the public gallery. This suggests that there is significant active interest in these proceedings from people resident in the United Kingdom.'

Discussion

Reliance on courtroom attendance in the judge's forum conveniens analysis should strike every conflict of laws scholar or practitioner. It may appear benign; after all, the judge explicitly stated that he did not give that factor significant weight and it was not pleaded by the claimant. In hindsight, however, what the

judge was essentially doing was considering a public, rather than a private, interest under the forum conveniens test. Indeed, this is an approach taken on the other side of the Atlantic, where the United States courts regularly take public interest factors into account. In this regard, the English High Court's reasoning seems implicitly analogous to the Supreme Court of the United States's decision in *Gulf Oil Corp v Gilbert*, 330 U.S. 501 (1947), where Justice Jackson opined that the test should also take into account public considerations such as holding the trial within the view and reach of the affected persons or having localised controversies decided at home. The High Court treated the interest of the members of the English public as somewhat justifying holding the trial in England rather than in Malaysia. It is unfortunate that the judge did not elaborate further on why noting the public attendance should matter.

Crucially, considering public interest factors under the *Spiliada* test was decidedly rejected in England by the highest judicial authority in *Lubbe v Cape Plc* [2000] 1 WLR 1545 (HL). As Lord Hope held (at para 53):

'…if the interests of all parties and the ends of justice require that the action in this country should be stayed, a stay ought to be granted however desirable it may be on grounds of public interest or public policy that the action should be tried here.'

Considering the interest of the people residing in the United Kingdom in the litigation seems to be in clear contradiction with this ruling.

Not only does such an approach represent a doctrinal problem, its relevance for determining an appropriate forum seems questionable notwithstanding the well-established precedent. The investment club operated worldwide, and evidence suggested that there were thousands of investors from various countries. The proposition that the United Kingdom audience possesses any uniquely stronger active interest in the proceedings than an audience elsewhere is highly questionable. While this factor may have appeared to point clearly to England when contrasted solely against Malaysia (to which even the traditional connecting factors were missing), applying this logic to less clear-cut cases could easily lead to arbitrary results.

Conclusion

The judgment in *Hamilton v Barrow* should not be understood as an authority

bringing public interest factors into the *Spiliada* test. Indeed, the judge tried to downplay its significance for the forum conveniens calculus. The other connecting factors the judge relied on, particularly the location of litigants and witnesses, are non-controversial and were sufficient on their own to justify holding the trial in England in the absence of other factors pointing towards Malaysia. Nevertheless, the mere mention of the public interest in the trial is problematic. Forum conveniens being a discretionary doctrine, it is not necessarily clear how the overall balance of connecting factors plays out when the judge looks at the case 'holistically'. Any creeping in of public interest factors should therefore be viewed with scepticism. The law is clear on rejecting public interest factors from the *Spiliada* analysis. Such a structural change would need to come from the highest authority, an intervention which appears unlikely.

Greenpeace Anti-SLAPP Suit Blocked by International Antisuit Injunction

*This post was written by **Hannah Buxbaum**, Martin Luther King Jr. Professor of Law, UC Davis School of Law. The post is cross-posted from the **Transnational Litigation Blog** with kind permission.*

In 2019, Energy Transfer, the developer of the Dakota Access Pipeline, sued Greenpeace International, a Dutch foundation, in North Dakota state court. Last year, Greenpeace responded with an anti-SLAPP (Strategic Litigation Against Public Participation) lawsuit against Energy Transfer in Dutch court. In the latest twist in this lengthy dispute, the North Dakota Supreme Court issued an antisuit injunction last week blocking (partially) that anti-SLAPP suit.

The injunction is unusual in two respects. First, it does not actually bar Greenpeace from pursuing the Dutch action; rather, it purports to limit the issues that Greenpeace can raise in that litigation. Second, it was entered after judgment had already been reached in the North Dakota lawsuit.

Background

In 2016, the planned construction of the 1,000-mile Dakota Access oil pipeline engendered significant and sometimes violent protests near the Standing Rock Sioux Reservation in North Dakota. Greenpeace International was among the many civil society organizations that advocated against the pipeline project.

The U.S. Litigation

In 2019, Energy Transfer L.P. sued Greenpeace and its two U.S. affiliates, along with other environmental rights groups, in federal court in North Dakota. Energy Transfer alleged that Greenpeace had engaged in criminal activity violating the Racketeer Influenced and Corrupt Organizations Act (RICO). It also asked the court to exercise supplemental jurisdiction over a range of additional state law claims. This lawsuit was dismissed in its entirety for failure to state a claim—the racketeering claims with prejudice, and the state law claims without prejudice.

A week later, Energy Transfer filed a second lawsuit in North Dakota state court alleging defamation, tortious interference with business, and conspiracy under state law. On March 19, 2025, a jury found Greenpeace liable, concluding that it had supported the protests that delayed construction of the pipeline. It awarded Energy Transfer more than $650 million in compensatory and exemplary damages. In February 2026, the trial court finalized the judgment in Energy Transfer's favor, though it reduced the total damages to $345 million. Greenpeace is currently seeking a new trial in that case.

The Netherlands Litigation

Greenpeace characterizes both the proceedings in North Dakota federal court and the proceedings in North Dakota state court as SLAPP suits. It contends that Energy Transfer filed these claims in order to block Greenpeace from exercising its right to participate in public debate regarding the pipeline. In July 2024, it

sent Energy Transfer a notice of liability stating that the U.S. litigation constituted an abuse of its rights under Dutch and EU anti-SLAPP law. It demanded that Energy Transfer withdraw its U.S. claims against Greenpeace and "accept liability and responsibility for payment of all damage (including costs)" that Greenpeace suffered as a result of the proceedings.

Energy Transfer did not agree to these demands, and in February 2025, shortly before trial began in the North Dakota case, Greenpeace filed a summons initiating litigation in the District Court of Amsterdam. It seeks compensation for costs and damages, including reputational damage, and a declaratory judgment that Energy Transfer acted tortiously and abused Greenpeace's rights by commencing the U.S. lawsuits.

Greenpeace's suit in the Netherlands invokes the EU's Anti-SLAPP Directive, which entered into force in May 2024. The goal of the Directive is to protect journalists and civil society actors from "manifestly unfounded claims or abusive court proceedings" initiated in order to chill their participation in public debate.

While the Directive's primary objective was to address SLAPP suits initiated in European courts, it specifically recognizes and seeks to mitigate the threat of SLAPP suits brought in courts outside the EU against EU-based defendants. First, it includes an anti-enforcement provision (Article 16), which provides that a judgment rendered against an EU resident by a non-EU court can be denied recognition and enforcement if the foreign proceedings are deemed "manifestly unfounded or abusive under the law of the Member State in which recognition or enforcement is sought."

Second, it creates a jurisdictional basis for claims initiated by an EU person targeted by a third-country SLAPP suit (Article 17). In the case of abusive proceedings, such a person "may seek, in the courts or tribunals of the place where that person is domiciled, compensation for the damage and the costs incurred in connection with the proceedings before the court or tribunal of the third country." Such claims can be initiated before a decision has been rendered or become final in the foreign proceeding.

Although the deadline for EU member states to implement the Directive within their national legal systems has passed, it has not yet been fully transposed across the EU. Nevertheless, the Dutch Ministry of Justice and Security has stated

that Dutch private international law already permits the exercise of jurisdiction in anti-SLAPP claims involving a third-country proceeding. Greenpeace's anti-SLAPP claims against Energy Transfer are based on Dutch civil law.

The Antisuit Injunction

Five months after Greenpeace initiated its lawsuit in Amsterdam—and after the North Dakota state lawsuit had resulted in a jury verdict against Greenpeace—Energy Transfer filed a motion in the North Dakota court seeking an antisuit injunction prohibiting Greenpeace from proceeding with the Dutch anti-SLAPP suit.

Whether and under what circumstances a state court may issue an international antisuit injunction was apparently a matter of first impression in North Dakota. Given the lack of precedent, the state district court turned for guidance to federal law on the issuance of such injunctions. (Oddly, it relied not on Eighth Circuit precedent, but on a district court decision from another circuit.) The framework it chose laid out a three-step analysis, requiring the court to consider:

(1) Whether the parties and issues in the U.S. proceeding and the foreign proceeding are the same;

(2) Whether the foreign litigation would (a) frustrate a policy in the enjoining forum; (b) be vexatious; (c) threaten the enjoining court's *in rem* or *quasi in rem* jurisdiction; or (d) prejudice other equitable considerations; and

(3) Whether principles of comity counsel against an injunction.

Applying this framework, the district court denied Energy Transfer's motion for an antisuit injunction. Energy Transfer then petitioned the North Dakota Supreme Court for supervisory review. That court granted review and concluded that the district court had abused its discretion by misapplying the legal framework. Following the same framework, it concluded that an antisuit injunction was justified.

Although the North Dakota Supreme Court grappled with the challenges presented by anti-SLAPP litigation, the court's analysis did not adhere very closely to the test it purported to adopt.

Threshold Question: Identity of Issues

As a threshold matter, the party seeking an antisuit injunction must establish that the issues at stake in the foreign proceeding and the U.S. proceeding are substantially the same, such that the outcome of the latter would dispose of the former. That was not the case here. As the district court had recognized, while the two proceedings arose from the same activities, they raised different issues.

The core of the Dutch proceeding was a claim that was not at issue in the U.S. proceeding, since North Dakota law does not have an anti-SLAPP law. Moreover, the Dutch lawsuit involved allegations that Energy Transfer had defamed Greenpeace, based largely on statements the company made in and in connection with the failed RICO litigation. The question of defamatory conduct by Energy Transfer was not at issue in the North Dakota proceeding, since Greenpeace had made no counterclaims there.

The state Supreme Court nevertheless concluded that the issues were "substantially similar," holding that the threshold requirement had been met. However—presumably recognizing that its judgment would not in fact dispose of the Dutch proceeding—it offered a "narrowly tailored" injunction that left Greenpeace free to pursue claims premised on "matters the North Dakota proceedings did not adjudicate."

Equitable Factors and the Role of Comity

Following the district court, the Supreme Court indicated that it was adopting the conservative approach to antisuit injunctions, which views international comity as a significant factor weighing against the issuance of such injunctions. Even under that approach, however, courts are typically willing to enjoin "interdictory" foreign proceedings whose aim is to preclude or interfere with the adjudication of a claim in U.S. court.

In this case, the court characterized the Dutch action as vexatious, stating that it was filed after the North Dakota case had been ongoing for more than six years and "on the eve of trial." (It is worth pointing out that Greenpeace sent a notice of liability the previous year, after the EU Directive entered into force.) Nevertheless, as the district court noted, it is hard to see how the Dutch action could have actually blocked or interfered with the North Dakota proceeding,

which had already proceeded through trial at the time the injunction was sought.

Courts adopting the conservative approach are also willing to enjoin foreign proceedings that violate an important public policy of the forum. Invoking this doctrine, the North Dakota Supreme Court voiced its core objection to the Dutch suit:

North Dakota provides an orderly process for challenging an adverse verdict—post-trial motions and review in this Court… . [Greenpeace]'s Dutch action seeks a declaration that the North Dakota case was "manifestly unfounded and abusive" and demands damages designed to offset the jury's verdict. If successful, the Dutch action would contradict and offset the verdict, functionally nullifying it. This is not a legitimate parallel action. It is an attack on a fundamental policy of this state.

At this point, however, judgment in Energy Transfer's favor has already been entered in the North Dakota proceeding, triggering the principle of *res judicata*. Unless and until a new trial is granted or that judgment is overturned on appeal, one would expect the Dutch court to consider that when assessing Greenpeace's claims that the North Dakota proceedings were "manifestly unfounded or abusive." (As recital 29 of the Directive indicates, if the claimant in the foreign proceedings "pursues claims that are founded, such proceedings should not be regarded as abusive.") Issuing an antisuit injunction that indirectly takes that decision out of the hands of the Dutch court would seem inconsistent with the concept of international comity.

Conclusion

The North Dakota Supreme Court ultimately ordered the district court to enter a "narrowly framed" antisuit injunction. This injunction will bar Greenpeace "from pursuing any claim in the Dutch action whose elements require, as pleaded, a finding that the North Dakota case lacked legal foundation—including any claim premised on the 'manifestly unfounded' standard" of the EU Directive.

However, the injunction will *not* bar Greenpeace from asserting other claims in the Dutch litigation. Specifically, it would not bar claims "premised on Energy Transfer's dismissed federal RICO suit and on alleged out-of-court defamatory statements—matters the North Dakota proceedings did not adjudicate."

In a sense, this measure undermines international comity even more than a comprehensive antisuit injunction would. Its effect is to permit the foreign proceeding to continue while attempting to control the set of issues the foreign court can consider.

New Rules on the Enforcement of Foreign Judgments in Saudi Arabia – Some Preliminary Observations

Many thanks to Karim El Chazli (Consulting and Testifying Expert on Arab Laws) for the tip-off

I. Introduction

The field of foreign judgments in the MENA region has witnessed additional legal developments. After Morocco, which adopted in February a new Code of Civil Procedure containing an updated regime for the enforcement of foreign judgments (see my previous on this blog), Saudi Arabia followed suit by adopting a new Execution Law (*Nizam at-Tanfidh*), approved by the Council of Ministers on 15 April 2026 (27–28 Shawwal 1447 H), which contains rules on the enforcement of foreign judgments. The new law replaces the existing Execution Law promulgated by Royal Decree No. M/53 of 3 July 2012 (13 Sha'baan1433 H).

The Execution Law governs, *inter alia*, the execution of "titles of obligation" (*sanadat tanfidhiyya* (pl.), *sanad tanfidhi* (sing.); lit. "enforceable titles") in general, as defined by the Law. These include, among others, foreign judgments, foreign arbitral awards, and foreign authentic instruments declared enforceable in accordance with the rules set out in the Law. The new Execution Law (new Article 7) adds to the existing list (former Article 9) mediated settlement

agreements concluded abroad. This addition appears to be linked to the fact that Saudi Arabia is a State Party to the 2018 Singapore Convention, which was ratified on 5 May 2020 and entered into force on 5 November of the same year.

II. Enforcement Requirements

With respect to the regime applicable to the enforcement of foreign judgments, the new conditions are now laid down in new article 9 of the new Law.

New Article 9(1) of the 2026 Execution Law reads as follows (loose tentative translation):

> *1. Without prejudice to the obligations of the Kingdom under international treaties and agreements, the court [the Execution Court] shall not declare enforceable a foreign judgment or order except on the basis of reciprocity and after examining that the following conditions are met:*
>
> *a) The dispute in which the foreign judgment or order was rendered does not fall within the exclusive jurisdiction of the courts of the Kingdom.*
>
> *b) There is no similar case pending in the Kingdom that was filed before the case in which the foreign judgment or order was rendered.*
>
> *c) The parties to the proceedings in which the foreign judgment was rendered were duly summoned, properly represented, and given the opportunity to defend themselves.*
>
> *d) The foreign judgment or order has become final, in accordance with the law governing the competent judicial authority that rendered it.*
>
> *e) The foreign judgment or order does not conflict with a prior judgment or order—on the same subject matter—rendered by a competent judicial authority in the Kingdom.*
>
> *f) The foreign judgment or order does not violate the public policy of the Kingdom.*

Paragraph 2 deals with the enforcement of foreign arbitral awards and foreign

mediated settlement agreements, while paragraph 3 deals with the enforcement of foreign authentic instruments.

III. Observations

If we compare the new enforcement requirements with those set out in the 2012 Execution Law, we can see that most of them have been reproduced without any significant modification, although in some cases slightly different wording has been used. This is particularly true of the requirements listed in items (c) [service and the right of defence], (d) [finality], (e) [conflicting judgments], and (f) [public policy], as well as of the proviso, which contains a reference to the reciprocity requirement.

At the same time, some significant differences can be observed, particularly with respect to the rules on indirect jurisdiction (1) and the existence of a pending case before Saudi courts (2). Further important clarifications relate to two other fundamental issues: the prohibition of *révision au fond* (3) and the limitation period for enforcing titles of obligation (4).

1. Indirect Jurisdiction

First, the most notable change concerns the control of the indirect jurisdiction of the rendering court. Indeed, under the 2012 Execution Law, the jurisdiction of the foreign rendering court was subject to a double control: first, by verifying that the dispute did not fall within the jurisdiction of Saudi courts (in general, and without any specific limitation); and second, by checking that the rendering court had jurisdiction in accordance with its own rules of international jurisdiction.

The new Execution Law significantly modifies the scope of the jurisdictional requirement and limits it to cases over which Saudi courts have exclusive jurisdiction. In doing so, the Saudi legislator joins other countries in the region that have adopted similar approaches, notably Tunisia (see Béligh Elbalti, "The Jurisdiction of Foreign Courts and the Enforcement of their Judgments in Tunisia: A Need for Reconsideration", 8(2) *Journal of Private International Law* (2012) 195, and recently Morocco (see Béligh Elbalti, "The New Moroccan Framework

on International Jurisdiction and Foreign Judgment Enforcement – A Preliminary Critical Assessment", on this blog. For a comparative overview on the various approaches adopted in the MENA region, see Béligh Elbalti, "The recognition of foreign judgments as a tool of economic integration: Views from Middle Eastern and Arab Gulf countries", *in* P. Sooksripaisarnkit and S. R. Garimella (eds.), *China's One Belt One Road Initiative and Private International Law* (Routledge, 2018) 226; *idem*, "Perspective from the Arab World", *in* M. Weller et al. (eds.), *The 2019 HCCH Judgments Convention – Cornerstones, Prospects, Outlook* (Hart, 2023) 187).

The problem with the new rule, however, is that Saudi law on international jurisdiction does not contain clear rules on what constitutes "exclusive jurisdiction." The relevant provisions on international jurisdiction contained in the Law of Procedure before Sharia Courts (*Nizam al-Murafa'at al-Shar'iyya*, Royal Decree No. M/1 of 24 November 2013 (22 Muharram 1435H), Articles 24 to 30) do not define or clearly identify which heads of jurisdiction are exclusive. As a result, the scope of the requirement may remain uncertain in practice, which could lead to a restrictive or inconsistent approach in the recognition and enforcement of foreign judgments.

2. Pending case before Saudi Courts

Item (b) of Article 9 of the new Law is an addition that has no equivalent in Article 11 of the 2012 Execution Law. While this requirement is generally found in the international conventions applicable in the region (notably the 1983 Riyadh Convention and the 1995 GCC Convention), it has almost no equivalent in the domestic legislation of Arab countries (with the notable exception of Lebanon. See Elbalti, "Perspective from the Arab World", *op. cit.*, 192). It should be noted, however, that Article 9(b) requires that the action previously brought before Saudi courts and still pending be "similar (*mumathila*)" to the one in which the foreign judgment was rendered. While the terminology used is somewhat vague, this suggests that both actions should involve the same subject matter (as is more clearly required in Article 9(e) concerning conflicting judgments). It is, however, unclear whether this requirement also extends to the identity of the parties.

3. Explicit prohibition to review the merits of foreign judgments

Under the 2012 Execution Law, there is no explicit provision prohibiting a review of the merits of foreign judgments. Nevertheless, such a prohibition may be inferred from the imposition of a number of formal and procedural requirements for having foreign judgments declared enforceable. In judicial practice, the principle of the prohibition of *révision au fond* is frequently affirmed; however, some decisions suggest that it has not always been strictly observed (see Elbalti, "Perspective from the Arab World", *op. cit.*, 185). The new Law has addressed this issue expressly in Article 4(2), which provides that "Subject to the provisions of Article (9) of the Law, the court shall ensure that the title of obligation satisfies its statutory requirements, without examining the merits of the right forming its subject matter".

4. Limitation period to execution of the titles of obligations

The new Enforcement Law clarifies the limitation period applicable to the execution of titles of obligation. Under new Article 11, execution lapses upon the expiry of ten (10) years from the date on which the title becomes due and enforceable. Although this rule also applies to foreign judgments as titles of obligation (Article 7 of the new Law), the wording of the provision suggests that it concerns foreign judgments only once they have been declared enforceable by the Execution Court. The Law, however, contains no specific limitation period governing the filing of an application for a foreign judgment to be declared enforceable in Saudi Arabia. This suggests that, in principle, judgment creditors may apply at any time for such a declaration. By contrast, once enforceability has been granted, actual execution will be barred upon the expiry of the ten-year limitation period.

Bahraini Supreme Court Accepts the Applicability of "Foreign" Jewish Customs in a Succession Case Involving Bahraini Jews

I. Introduction

This is certainly a genuinely interesting case from Bahrain, involving the application of "foreign" Jewish customs in a succession dispute that appears to be between Jewish Bahraini nationals. Although the case seems to lack any foreign element, its relevance to conflict of laws is nonetheless clear, since – to my knowledge – this is the first case in which the applicability of "foreign" religious customs in matters of personal status has been explicitly admitted in what appears a purely domestic case. The case also provides a broader analytical framework, raising questions about the place and applicability of non-state law in private international law (this contrasts of the recent decision of the French Supreme Court denying the applicability of Jewish law, albeit in a different context) and, more generally, about the compatibility of non-Islamic religious norms with domestic public policy frameworks in Muslim-majority legal systems.

II. Facts

The case concerns a domestic succession dispute involving Jews in Bahrain. Although the ruling does not expressly state this, the absence of any reference to choice-of-law rules strongly suggests that the parties involved were Bahraini Jews and that the case contained no foreign elements.
Following their brother's death, Y1 (the deceased's brother) brought proceedings in 2024 before the High Civil Court against Y2 (the deceased's nephew) and Y3 (the deceased's sister), seeking the opening of the estate, the identification of the heirs, an inventory of the assets, and the devolution of the estate. The court ordered the opening of the estate and held that Y1 and Y2 were entitled to equal shares.

X et al. (the deceased's sisters), who were not parties to the original proceedings,

filed a third-party objection seeking annulment of the judgment and a redistribution of the estate among all heirs, including themselves, in equal shares, based on Jewish inheritance customs or, subsidiarily, Islamic law. The objection was dismissed on the merits, and this outcome was upheld on appeal. X et al. then appealed to the Supreme Court of Bahrain, challenging their exclusion from the inheritance.

Before the Supreme Court, X et al. argued that the lower courts had relied on Chapter 27 of the Torah (the Old Testament), a text which, they contended, no longer reflects contemporary Jewish social or religious practice. They maintained that Jewish inheritance rules have evolved over time and that current customs within Jewish communities grant women equal inheritance rights in the absence of a will, an approach adopted by many rabbinical courts worldwide. In the absence of established Jewish inheritance rules or locally recognised custom in Bahrain, they argued that prevailing foreign custom should apply, since it does not conflict with Bahraini public policy.

III. Ruling

In its decision of 1 December 2025, the Supreme Court ruled in favor of X et al. holding as follows (detailed summary):

> *Under Bahraini law, the High Civil Courts have jurisdiction over all personal status matters concerning non-Muslims. Where no statutory rule applies, Article 1 of the Civil Code requires courts to apply the customs of the religious community concerned.*
>
> *Such customs are not limited to those established locally in Bahrain. If no local custom is proven, courts may apply general or foreign customs, provided that they are genuinely observed by the members of the religion concerned. The application of foreign custom is subject to two conditions: first, that it is actually and consistently followed and regarded as binding within the community, that is, it has not fallen into disuse; and second, that it does not conflict with public policy in Bahrain. Where these conditions are met, the relevant foreign custom governs matters of personal status concerning members of the religion in question.*

In this case, the lower court applied Chapter 27 of the Torah on the ground that no local Jewish custom governing the distribution of inheritance existed in Bahrain, thereby excluding any consideration of customs prevailing outside the Kingdom. However, once its existence is established, foreign custom may be disregarded only where it conflicts with a statutory provision or with public policy. The failure to examine whether relevant foreign Jewish inheritance customs existed and satisfied the required conditions—namely, that they are applied in a consistent, continuous, and well-known manner among members of the Jewish faith, that they are regarded by them as binding, and that they do not violate public policy—justifies the quashing of the decision and the remittal of the case.

III. Comments

Generally speaking, the application of foreign law in the MENA region has long been a challenging issue question marked by uncertainty and resistance in practice (for a general comparative overview, with a special focus on civil and commercial matters, see Béligh Elbalti, "Choice of Law in International Contract and Foreign Law before MENA Arab Courts from the Perspective of Belt and Road Initiative", *in* Poomintr Sooksripaisarnkit, Sai Ramani Garimella (eds.), *Legal Challenges of China's One Belt One Road Initiative – Private International Law Considerations* (Routledge, 2025), pp. 145-150). Against this background, the acceptance by the Bahraini Supreme Court of the application of foreign customs in matters of personal status in a purely domestic case is all the more noteworthy, insofar as certain conditions are met.

The case raises in particular two fundamental questions: (1) the applicability of non-Muslim legal norms in Bahrain; and (2) the relevance of public policy in this context.

1. The applicability of non-Muslim legal norms in Bahrain

a) General Applicable framework

Unlike some non-neighboring countries in the region, where matters of personal

status of non-Muslims—whether foreigners or nationals—may be governed by special legislation (see, for example, UAE federal legislation on Civil Personal Status), Bahrain has not adopted any specific legal framework applicable to non-Muslims.

There are, however, a few notable exceptions.

First, the 1971 Code of Civil and Commercial Procedure (CCCP) sets out conflict-of-laws rules that are expressly applicable to personal status matters involving non-Muslims (Article 21 of the Bahraini CCCP).

Second, Legislative Decree No. 11 of 1971 regulates inheritance and the devolution of estates of foreign non-Muslims.

Third, Legislative Decree No. 42 of 2002 on Judicial Jurisdiction provides, in Article 6, that disputes relating to the personal status of non-Muslims fall within the jurisdiction of the civil courts, as opposed to the Muslim Sharia courts, which, by contrast, have subject-matter jurisdiction over all disputes relating to the personal status of Muslims, with the exception of certain disputes relating to succession, which fall within the jurisdiction of the civil courts (Article 13). In this context, the Muslim Sharia courts are required to apply Bahrain's Family Law of 2017 (Law No. 17 of 2017), which to date constitutes the only legislative framework governing family law matters in Bahrain. This law, however, applies exclusively before the Muslim Sharia courts, which lack jurisdiction over disputes involving non-Muslims.

Accordingly, while the civil courts have jurisdiction *ratione materiae* to hear personal status disputes involving non-Muslims, Bahraini law does not specify the substantive law to be applied by those courts in such matters—except where the parties are foreigners and foreign law is applicable pursuant to Bahraini choice-of-law rules, or where the dispute concerns the succession of foreign non-Muslims, in which case Legislative Decree No. 11 of 1971 applies.

b) Customs as a source of law

It is in this context that the Bahraini Supreme Court relied on Article 1 of the Bahraini Civil Code of 2001, which authorizes courts to apply customs (*'urf*) in the

absence of legislative provisions. The reference to customs is significant, given that Bahraini family law does not contain any provision allowing non-Muslims to invoke the application of their own religious law, unlike several neighbouring jurisdictions in the region (see Article 1(2) of the UAE Personal Status Law of 2024; Article 364 of the Kuwaiti Personal Status Law of 2007; Article 4 of the Qatari Family Law of 2006; and Article 282 of the Omani Personal Status Law of 1997).

The Bahraini Supreme Court's case law is consistent on this point. In a previous decision of 4 April 2023, the Supreme Court quashed a lower court judgment that had applied the 2017 Bahraini Family Law to a dispute involving spouses of the Bahá'í faith, without examining whether there existed any laws or regulations among members of the Bahá'í faith in Bahrain governing their personal status matters, or whether any customs regulated such matters. Unlike the case discussed here, the 2023 decision did involve a conflict-of-laws issue in the sense of private international law, which was resolved by applying Bahraini law as the *lex patriae* of the husband (Article 21(3) of the CCCP). It was at then that the Supreme Court emphasized the absence of Bahraini legislation governing personal status matters for non-Muslims and justified recourse to Article 1 of the Civil Code, thereby overruling the lower court's decision for failing to consider the applicability of Bahá'í law or custom.

However, what is remarkable in the present case is that the court extended the scope of the "customs" referred to in Article 1 of the Civil Code to include "general and foreign (external) customs", in the absence of a local one (*'urf mahalli*). Reference to foreign (external) customs is, however, subject to two cumulative conditions: (1) the foreign customs must be generally observed by members of the relevant religious community, in the sense that they must not have fallen into disuse; and (2) they must not be inconsistent with public policy in Bahrain. With respect to the first condition, the appellants argued that the classical Jewish rule prioritizing male heirs and allowing women to inherit only in the absence of sons has become obsolete in contemporary Jewish social and religious communities. They contended that it has become common practice across Jewish communities worldwide to allow women to inherit on an equal basis, a practice consistently endorsed by rabbinic courts in various legal systems worldwide.

2. Consistency with public policy

Another key question concerns whether succession rules that depart from Islamic Sharia should be regarded as contrary to public policy. Given the centrality of Islamic Sharia in the legal systems of many MENA countries, succession rules raise a particularly sensitive issue when they diverge from its principles. This is more so, knowing that, in some jurisdictions, such as Egypt, where non-Muslims are permitted to apply their own religious rules in matters of family law, succession remains governed by a unified regime based on Islamic Sharia, which applies equally to Muslims and non-Muslims.

In the present case before the Bahraini courts, the applicable Islamic Sharia rules would have entitled the deceased's sisters to inherit, but only on the basis of the principle that a male heir receives a share equal to that of two female heirs (Quran 4:176). In addition, remote male agnates, such as nephews, will be excluded. It is therefore understandable that X et al. invoked Islamic Sharia in the alternative, since, unlike the classical Jewish rule at issue, it would at least secure them a share in the estate, albeit an unequal one (on the reliance of Jewish community on Islamic Sharia courts, see Jessica M. Marglin, "Jews in Shari'a Courts: A Family Dispute From the Cairo Geniza", *in* A. E. Franklin et al. (eds.), *Jews, Christians and Muslims in Medieval and Early Modern Times – A Festschrift in Honor of Mark Cohen* (Brill, 2014), pp. 207-25).

The central issue, however, is whether an equal division of the estate among all potential heirs, without gender distinction, would raise concerns of Islamic public policy. On this point, comparative practice in the region shows a consistent reluctance to treat divergence from Islamic Sharia rules as such a violation. Courts across the Middle East have generally held that, in disputes involving non-Muslims, the application of foreign or religious rules differing from Islamic inheritance principles does not, in itself, offend public policy (for a detailed analysis from a private international law perspective, see Béligh Elbalti, "Applicable Law in Succession Matters in the MENA Arab Jurisdictions – Special Focus on Interfaith Successions and Difference of Religion as Impediment to Inheritance", *RabelsZ*, Vol. 88(4), 2024, pp. 734). Against this background, it is unlikely that the Bahraini courts would consider an equal distribution of the estate among heirs to be contrary to public policy, particularly where the applicable framework already permits recourse to religious or customary norms in the absence of specific legislation.