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The Enforcement of Judgements and International Arbitral Awards In and From Singapore

Singapore News

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Parties do not always voluntarily comply with a judgement or arbitral award issued. Therefore, before commencing litigation or arbitration proceedings, it is important to verify whether the judgement or award to be issued will be recognized and enforceable in the country where there are assets of the defendant/respondent.

The international enforcement of judgements is currently not governed by a single international standard regime, unlike the situation for international arbitral awards, where there is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"). Nevertheless, there has been a new milestone in the international enforcement of judgements by the entering into force of the Hague Convention of 30 June 2005 on Choice of Court Agreements (the "Hague Convention") on 1 October 2015 in the EU Member States (except Denmark) and Mexico. Singapore has signed the Hague Convention in March 2015. On 14 April 2016 Parliament passed the Choice of Courts Agreements Bill to enable Singapore to give effect to the Hague Convention. It will come into force on the date of its publication in the Government Gazette.

The present article will deal with the various means of enforcement of court decisions in and outside Singapore (I) and the enforcement of arbitral awards in and outside Singapore (II) with a view to offering a clear understanding of the considerations to be borne in mind prior to deciding the appropriate dispute resolution mechanism to be used.

I. The Enforcement of Judgments

The enforcement of judgments under several regimes established in Singapore (A) and abroad (B) will be outlined hereunder.

I.A. The enforcement of foreign judgments in Singapore

I.A.1. The existing mechanisms

A party obtaining a favourable judgment abroad may wish to enforce its judgement in Singapore if the losing party

possesses recoverable assets in the city-State. In such case, it will have to commence enforcement proceedings in the Singapore courts to grant such enforcement.

Currently three methods for the enforcement of foreign judgements are in place in Singapore: (1) enforcement under the Reciprocal Enforcement of Commonwealth Judgments Act ("RECJA"), (2) enforcement under the Reciprocal Enforcement of Foreign Judgments Act ("REFJA") and (3) the enforcement by way of action at common law.

I.A.1.1. RECJA

A party can apply for registration of a foreign judgement to the High Court within 12 months (or such longer period as may be allowed by the High Court) after the date of the judgement if the following conditions are met:

- a) The judgment was rendered by a superior court of the United Kingdom, Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea or India (except the State of Jammu and Kashmir);
- b) The judgment was rendered in any civil proceedings;
- c) The judgment awards a sum of money (no non-monetary equitable remedies);
- d) There is no reason to reject the applied registration in accordance with Section 3(2) of the RECJA (e.g. judgment was obtained by fraud; judgment violates the public policy of Singapore); and
- e) The judgement debtor has not succeeded in setting aside the registration on one of the grounds prescribed in the RECJA.

After the successful registration of the judgment, the judgment creditor can easily enforce the decision without any review on the merits in the same way as a Singaporean judgment would be treated under Singaporean law. Such procedure may take only a few weeks. Furthermore, the judgment creditor is entitled to his costs for registration.

In conclusion, RECJA offers a cost-efficient enforcement mechanism that allows parties to quickly recover monies granted by a foreign judgment provided that the judgment was issued by a country recognised by the RECJA.

I.A.1.2. REFJA

Similarly, if a company has obtained a foreign money judgment in a different country than one falling under the RECJA, it may apply for its registration and hence enforcement in Singapore under the REFJA. To date, only foreign money judgments from Hong Kong are registrable in Singapore under the REFJA.

Under the REFJA the following conditions have to be met:

- a) The judgment was rendered either by a superior court of Hong Kong;
- b) The judgment was given in any civil proceedings (except bankruptcy and winding-up a company) or criminal proceedings;
- c) The judgment awards a sum of money (no non-monetary equitable remedies);
- d) The judgment creditor applies to the High Court of Singapore for registration of the judgment within 6 years after the date of the judgment;
- e) There is no reason to reject the applied registration in accordance with Section 4 (3); and
- f) There is no reason to set aside the registered judgment pursuant to Section 5 (e.g. when a judgment is obtained by fraud).

After successful registration, the judgement may be enforced in the same way as a Singapore judgement.

I.A.1.3. Action at common law

If a foreign judgment in personam (i.e. acting against the person) falls outside the scope of the RECJA or REFJA, Singapore allows enforcement by way of action at common law. Such enforcement can only take place if:

- a) The judgment is final and conclusive on the merits;
- b) The judgment is given by a court of competent jurisdiction;
- c) The judgment awards a fixed sum of money¹;

¹ The foreign judgement does not have to be for a sum of money if the judgement creditor only applies for recognition of the foreign judgement.

- d) The judgment was not procured by fraud;
- e) The enforcement of the judgment would not be contrary to Singapore public policy; and
- f) The proceedings were not carried out in a manner contrary to natural justice.

Summary proceedings on the foreign monetary judgment may be instituted on the ground that the defendant has no defence to the claim.

This mechanism is not the most efficient one to obtain enforcement. It may be advisable for parties having disputes in countries not falling under the RECJA or REFJA to consider arbitration in order to benefit from the provisions of the New York Convention, should the country in which the dispute is to be resolved be a party to the same.

I.A.2. Hague Convention

The Hague Convention is a multilateral treaty signed in 2005 and entered into force on 1 October 2015 in the EU Member States (except Denmark) and Mexico. The United States of America, Ukraine, as well as Singapore have signed the Hague Convention. On 14 April 2016 Parliament enacted the Choice of Court Agreements Act ("CCAA"), which implements the Hague Convention. Therefore judgments of the High Court and the International Commercial Court will be enforceable in the other signatory countries.

The Hague Convention and the CCAA only apply to exclusive choice of court agreements. They also only apply to international civil or commercial disputes. They do not cover matters of personal law e.g. family, matrimonial, insolvency or consumer matters. Tortious claims which do not arise from contracts, anti-trust and intellectual property matters are also excluded. The full list of excluded categories is provided in article 2 of the Hague Convention and Section 9 of the CCAA.

There may be instances where a foreign judgement falls within the scope of both the CCAA and the RECJA or REFJA. In case of overlap, the CCAA overrides RECJA and REFJA.

I.B. The enforcement of Singapore judgments in foreign countries

Enforcement of Singapore judgments in foreign countries is much more complex and less straightforward than enforcement of foreign judgments in Singapore.

The following possibilities are to be considered in enforcing a Singaporean judgment abroad, the RECJA, REFJA, other domestic legislations and the Hague Convention / CCAA.

I.B.1. RECJA and REFJA

The recognition and enforcement of judgments made in the RECJA and REFJA countries are based on the principle of mutual recognition. As a consequence Singapore judgments are recognised and enforced by those countries whose judgments are recognised and enforced in Singapore as well. Therefore, Singaporean superior court judgments are registrable and hence enforceable in the UK, Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea, India (except the states of Jammu and Kashmir) and Hong Kong.

I.B.2. Domestic Laws

When the RECJA or REFJA does not apply, the enforcement becomes more complex. In such case an analysis of the local legislation of the country where a party seeks to enforce a Singapore judgment has to be analysed. In short, it is mostly dependent on the law of the enforcement country whether and how a Singapore judgment can be enforced.

Domestic legislations are extremely different from one another when it comes to enforcement of foreign judgments. On the one hand most European countries are favourable to enforcement of foreign judgments and will only reject enforcement on limited grounds (e.g. if the judgement is contrary to its international public policy).

On the other hand, several countries consider foreign judgements as a matter of pure fact and simply not 'binding'/unenforceable in their jurisdiction. In Indonesia for instance fresh proceedings on the merits of the case will be needed. A foreign judgment will only be accepted as non-binding evidence before the Indonesian courts. Also the procedure in Thailand for enforcing arbitral awards will follow the normal Thai Court practice. Mostly these proceedings require a lot of time and have no guaranteed outcome.

I.B.3 Hague Convention / CCAA

As discussed above, the Hague Convention / CCAA should enable the recognition and enforcement of Singapore judgments in EU Member States (except Denmark) and Mexico.

II. Enforcing of international arbitral awards

In 1985, Singapore has adopted the UNCITRAL Model Law on International Commercial Arbitration with some modifications, giving rise to two sets of statutes. In fact, there are two categories of arbitral awards recognised under Singapore Law, namely, international and domestic awards.

A foreign international award is obtained through an international arbitration outside Singapore and must fulfil at least one of the following requirements:

- a) At least one of the parties to the arbitration has its place of business in any place other than Singapore;
- b) The juridical seat of the arbitration is outside the parties' places of business;
- c) A substantial part of the contractual obligations is to be performed outside the parties' places of business;
- d) The subject-matter of the dispute is most connected to a place that is outside the parties' places of business; or
- e) The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

A domestic international award is obtained through an international arbitration in Singapore (juridical seat) and carries at least one of the characteristics of an international award.

A domestic award² is awarded through a domestic arbitration that has its seat in Singapore and does not fulfil any of the requirements set out above. Domestic arbitrations are submitted to the Arbitration Act ("AA") whereas the International Arbitration Act ("IAA") applies to international arbitration. Parties can also provide for the application of the IAA in their agreement, even if the arbitration is not international. For the purpose of this article, we will only focus the discussion on international arbitral awards.

The IAA provides for rules regarding the enforcement of international arbitral awards in Singapore. If the latter rarely causes significant issues (A), enforcement of arbitral awards outside Singapore is much more dependent on the laws of the country where enforcement has to take place (B).

² Also called "Singapore awards".

II. A. Enforcement of international arbitral awards in Singapore

II. A .1. International arbitral awards made in a New York Convention country

An international arbitral award has to fulfil the following requirements before it will be enforceable in Singapore: a) it is made in writing, b) signed by the arbitrators, c) contains information as to the date and the juridical seat of arbitration and d) contains the reasons upon which the award is made, unless the parties have agreed that no reasons are to be given. Apart from these formalistic requirements, the substantive issues referred to in the arbitral award must have been fully considered and addressed by the arbitral tribunal in the award.

The party seeking to enforce a foreign arbitral award made in a New York Convention country in Singapore is required, within six years of the final award, to:

- a) File an originating summons to the Singapore High Court;
- b) Support the application with an affidavit which:
 - Exhibits the arbitration agreement;
 - Exhibits an authenticated copy of original arbitral award accompanied by translation where required;
 - States the name and address of the party seeking to enforce the award;
 - States the name of the party to whom the award is sought to be enforced against; and
 - States the details of how and to what extent the award has not been complied with.

When these formalistic requirements are met, the High Court will usually grant leave to enforce the arbitral awards as if it was a Singapore Court Order/Judgement.

The High Court may refuse to enforce the award where the party resisting enforcement proves that:

- a) A party to the arbitration agreement was under some legal incapacity when the agreement was made;

- b) The arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;
- c) A party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;
- d) A party was unable to present its case in the arbitration proceedings;
- e) The award deals with an issue that is beyond the authority of the arbitral tribunal;
- f) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or failing such an agreement, was not in accordance with the law of the country where the arbitration took place;

If the award is a foreign international award, it also may not be enforceable if a) the award has not yet become binding on the parties to the arbitral award; b) the award has been set aside or suspended by the proper authority, c) the subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore, d) enforcement of the award would be contrary to the public policy of Singapore.

In case of a domestic international award, it may also not be enforceable if a) the making of the award was induced or affected by fraud or corruption; or b) the rights of a party have been prejudiced as a result of a breach of the rules of natural justice during the arbitration.

II. A.2. International awards made in countries which are not signatories to the New York Convention

The AA provides for a default rule for awards that were made in States where the seat of arbitration is not in a State party to the New York Convention. Indeed, foreign awards made in non-State parties may be enforced in Singapore, but in the same manner as a foreign judgment would be, with the leave of the High Court.

So far, there has been no occurrence of the use of this possibility.

II. A.3. Commonwealth awards under RECJA

Commonwealth arbitral awards offer another ground for enforcement. As mentioned in the context of Commonwealth judgments, Singapore also has reciprocal arrangements for the recognition of arbitral awards with England or other Commonwealth jurisdictions. In practice, this procedure has less importance as it is more expensive than enforcement under the New York Convention and most of these countries to which it applies are parties to the New York Convention.

This ground also allows for a more important intervention of the courts and thereby reduces parties' freedom in arbitration.

II.B. Enforcement of Singaporean arbitral awards overseas

A party seeking to enforce a Singaporean arbitral award outside Singapore in a jurisdiction party to the New York Convention will be required, pursuant to Article IV(1) of the New York Convention to provide:

- 1) A duly authenticated original award or a duly certified copy thereof; and
- 2) The original arbitration agreement or a duly certified copy thereof.

The interpretation of these provisions may depend on the jurisdictions of the Court and sometimes involves additional formalities. In Singapore, the SIAC Register certifies and authenticates the awards made in SIAC arbitrations.

One must concede that the application of the New York Convention might sometimes vary from one country to another. Indeed, the New York Convention only allows for limited grounds of rejection of enforcement requests. One of these grounds is public policy. Unfortunately, public policy receives very different interpretations depending on jurisdiction and in certain jurisdictions no definition at all.

For instance, Indonesia is a State party to the New York Convention without a clear definition of what public policy covers and entails. This opens grounds for systematic challenge from the losing side which could very well argue that an award inconsistent with substantive Indonesian laws violates public policies. In this context, legal certainty is jeopardized and the likelihood of enforcement is hard to assess.

For more information, please contact:



Dr. Claus Trenner, LL.M. (NUS Singapore)
Attorney-at-Law, Partner
Luther LLP
Singapore
Phone +65 6408-8009
claus.trenner@luther-lawfirm.com



Els Van Poucke, LL.M.
Attorney-at-Law, Counsel
Luther LLP
Singapore
Phone +65 6408 8018
els.vanpoucke@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editors: Dr. Claus Trenner, LL.M. (NUS Singapore), Attorney-at-Law, Partner,
Luther LLP, 4 Battery Road, Bank of China Building, #25-01, 049908 Singapore,
Phone +65 6408 8009, Fax +65 6408 8001, claus.trenner@luther-lawfirm.com

Els Van Poucke, LL.M., Attorney-at-Law, Counsel, Luther LLP,
4 Battery Road, Bank of China Building, #25-01, 049908 Singapore,
Phone +65 6408 8018, Fax +65 6408 8001, els.vanpoucke@luther-lawfirm.com

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contact@luther-lawfirm.com

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