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# Enforcement of Judgments 2022

Singapore: Law & Practice  
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# SINGAPORE

## Law and Practice

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## CONTENTS

<b>1. Identifying Assets in the Jurisdiction</b>	<b>p.3</b>	<b>4. Arbitral Awards</b>	<b>p.14</b>
1.1 Options to Identify Another Party's Asset Position	p.3	4.1 Legal Issues Concerning Enforcement of Arbitral Awards	p.14
<b>2. Domestic Judgments</b>	<b>p.3</b>	4.2 Variations in Approach to Enforcement of Arbitral Awards	p.14
2.1 Types of Domestic Judgments	p.3	4.3 Categories of Arbitral Awards Not Enforced	p.15
2.2 Enforcement of Domestic Judgments	p.4	4.4 Process of Enforcing Arbitral Awards	p.15
2.3 Costs and Time Taken to Enforce Domestic Judgments	p.5	4.5 Costs and Time Taken to Enforce Arbitral Awards	p.16
2.4 Post-judgment Procedures for Determining Defendants' Assets	p.6	4.6 Challenging Enforcement of Arbitral Awards	p.16
2.5 Challenging Enforcement of Domestic Judgments	p.6		
2.6 Unenforceable Domestic Judgments	p.7		
2.7 Register of Domestic Judgments	p.7		
<b>3. Foreign Judgments</b>	<b>p.7</b>		
3.1 Legal Issues Concerning Enforcement of Foreign Judgments	p.7		
3.2 Variations in Approach to Enforcement of Foreign Judgments	p.9		
3.3 Categories of Foreign Judgments Not Enforced	p.11		
3.4 Process of Enforcing Foreign Judgments	p.12		
3.5 Costs and Time Taken to Enforce Foreign Judgments	p.13		
3.6 Challenging Enforcement of Foreign Judgments	p.13		

## 1. IDENTIFYING ASSETS IN THE JURISDICTION

### 1.1 Options to Identify Another Party's Asset Position

There are sources of publicly available information that may help identify another party's asset position, upon payment of the prescribed fees. These comprise the following.

- The e-services of the Ministry of Law's Insolvency Office. Information can be obtained on the bankruptcy status of individuals and the solvency status of a body corporate.
- The Accounting and Corporate Regulatory Authority (ACRA) Business Information database. Details may be obtained as to:
  - (a) the basic profile of a company or business such as its registration number, business activities, registration date, its office-holders and business owners;
  - (b) financial information for companies that file accounts as part of their annual returns – while Singapore-incorporated companies are required to file annual returns with ACRA, Singapore-registered solvent exempt private limited companies are not required to file financial statements; and
  - (c) an individual's past and present businesses, offices held and shareholdings.
- The Integrated Land Information Service offered by the Singapore Land Authority. Information as to ownership details and encumbrances may be obtained.

Applications may also be made to court to obtain information on the assets of another party under the following circumstances:

- prior to legal action being started, applications may be made for pre-action discovery and interrogatories that may lead to disclosures as to a potential defendant's assets;

- a party entitled to enforcement of a judgment may apply for an order that a judgment debtor or its directors be examined in court to disclose information and relevant documents disclosing its available assets; and
- applications may be made to court for freezing orders to prevent a party from dissipating assets while also requiring such a party to file disclosures of information as to its assets.

Limited information on aircraft, ships and motor vehicles may also be obtained from searches performed with the Civil Aviation Authority of Singapore, the Maritime Port Authority of Singapore and the website of the Land Transport Authority of Singapore, known as "OneMotoring", respectively.

Private investigators are sometimes also engaged to locate and identify assets of another party. Evidence from such investigations is generally admissible in civil proceedings in Singapore, although there is a discretion by the civil courts to exclude evidence in circumstances where the prejudicial effect of such evidence outweighs its probative value. The ambit of such discretion remains unclear but developing case law on the subject shows that unlawfully or improperly obtained evidence weighs against its admission by the court.

## 2. DOMESTIC JUDGMENTS

### 2.1 Types of Domestic Judgments

The types of judgments in Singapore may be divided into two categories based on the nature of the reliefs which they seek to grant.

- Money judgments – these are judgments for a specified amount of money.
- Non-money judgments – these are judgments for other types of relief, such as declaratory

relief, injunctive relief, or specific performance.

Both money and non-money judgments can be granted after a full trial, with the benefit of cross-examination of affidavit evidence, or without a full trial in limited circumstances. Examples of this would include the following.

- Default judgments – these are judgments obtained in default of appearance or of a defence.
- Summary judgments – these are judgments obtained by way of an expedited summary procedure, which is only available in cases where a defendant has no defence to a claim or part thereof. Where a defendant is able to demonstrate a genuine triable issue, the court may instead choose to grant leave for a defendant to defend the action unconditionally or on such terms as it thinks fit.
- Consent judgments – these are judgments entered into by consent of the parties to bring the proceedings to a close.

## 2.2 Enforcement of Domestic Judgments

There are several prescribed methods for the enforcement of domestic judgments in Singapore. The names of the enforcement methods and the procedures involved have recently undergone changes due to the introduction of the new Rules of Court 2021 (the “New Rules”), as well as the Singapore International Commercial Court Rules 2021 (the “SICC Rules”), which came into operation on 1 April 2022.

Under the New Rules, a single consolidated application must be filed by the enforcing applicant, regardless of whether that party intends to seek one or multiple types of enforcement orders (Order 22 Rule 2(3), New Rules). The single application must be filed by way of summons supported by an affidavit which complies with

the requirements set out in Order 22 Rule 2(4), New Rules. It may be filed ex parte but cannot be filed earlier than three days after a judgment is served.

Where multiple methods of enforcement are sought, the application must specify the sequence in which they are to be carried out. If no such sequence is stated, the sheriff may carry out the enforcement terms in any sequence or concurrently. Only one order should be drawn up by the party who takes out the application (Order 17 Rule 3(4), New Rules). This potentially simplifies the process but also means that applicants must take care to consider all available enforcement options before proceeding with any application.

### Types of Enforcement Methods

An enforcing applicant may apply for the following types of enforcement orders:

- order for seizure and sale of property;
- order for delivery or possession of property;
- order for attachment of debt;
- order for committal; and
- order for bankruptcy or winding up.

### *Order for seizure and sale of property*

This mode of enforcement involves the seizure and sale of such property belonging to a judgment debtor as may be sufficient to satisfy a judgment debt (Order 22 Rule 2(a), New Rules).

Save for the following types of property (Section 13, Supreme Court of Judicature Act), both movable and immovable property may be seized:

- wearing apparel, bedding and tools of trade which do not exceed SGD1,000 in value;
- wages, salary, pension and gratuities or allowances granted by the government; and
- housing and development flats.

The sale of seized property must be conducted by an auctioneer and by public auction if the seized property is immovable property, or the estimated value of the seized property exceeds a particular limit. If not, the sale may be conducted by the sheriff and may be by private treaty or by public auction. Different limits apply under the Revoked Rules (Order 46 Rule 24) and the New Rules (Order 22 Rule 7(4) and 7(5)).

### *Order for delivery or possession of property*

An order for delivery authorises the sheriff to seize and deliver movable property or take possession of immovable property in the possession or control of a judgment debtor.

Orders of this type relating to immovable property are usually served on a tenant by a landlord requiring the tenant to leave the premises by a certain time.

### *Order for attachment of debt*

This is an order for a non-party (such as an employer, bank or financial institution) to pay to the enforcing applicant money (not being wages or salary) that it presently owes to the judgment debtor, whether immediately or at some future date (such as a deposit). It effectively places the non-party in the position of an assignee of the judgment debtor.

This enforcement method does not apply to money standing to the credit of a judgment debtor in court (see Order 22 Rule 5, New Rules). Instead, a separate summons application may be taken out for the money to be paid to the enforcing party.

### *Order for committal*

An enforcing applicant may apply for an order for committal if a judgment debtor fails or refuses to perform an act required by an order or judgment (Order 23, New Rules). The purpose or effect of the order is to penalise or sanction the judgment

debtor for non-compliance with the judgment, whether by way of a fine or imprisonment. This is to protect the administration of justice in Singapore.

An application for leave must first be filed by way of originating summons supported by affidavit. If leave is granted, an application for the committal order must also be filed via summons within 14 days and served on the judgment debtor.

The matter will be heard in open court, and the criminal standard of proof will apply. The court will ultimately retain discretion as to whether to grant the order for committal.

### *Order for bankruptcy or winding-up*

An enforcing applicant may also apply to wind up corporate debtors or to bankrupt individual debtors which fail to satisfy judgment debts. Such proceedings are not technically regarded as enforcement methods as they are not always based on judgment debts. However, they may be effective in persuading a judgment debtor to comply with a money judgment.

The relevant applications are governed by Part 8 and Part 16 of the Insolvency, Restructuring and Dissolution Act 2018. In general, bankruptcy or winding-up proceedings may be filed against a debtor if it is unable to pay its debts, and is not eligible for any other repayment schemes. In the case of an individual debtor, the debt must also exceed SGD15,000. A corporate or individual debtor may be presumed to be unable to pay its debts if it fails to respond to a statutory demand requiring payment of a sum exceeding SGD15,000 within 21 days.

## **2.3 Costs and Time Taken to Enforce Domestic Judgments**

The time required to enforce a judgment may range from two to eight months, depending on the number and type of proceedings which are taken out, and whether they are contested or

heard over multiple rounds of hearings. More time will also be required if there is little to no information on the assets available for enforcement.

The following types of costs may be involved in the process:

- legal costs;
- court filing fees;
- expenses of execution and other disbursements (eg, advertising fees, auction fees); and
- sheriff's commission (see Order 22 Rule 9, New Rules).

Part payment of such costs may be recoverable from the judgment debtor if the enforcement applications are granted, though this will usually be a fraction of the costs incurred.

The effectiveness of the enforcement process of a money judgment depends heavily on the type of assets the enforcing respondent has, while non-money judgments are often enforced through committal proceedings.

## **2.4 Post-judgment Procedures for Determining Defendants' Assets**

If an enforcing party wishes to find out what assets a judgment debtor holds before taking out an enforcement application, they can seek an order for the examination of the judgment debtor (EJD) (Order 22 Rule 11, New Rules). This is an order requiring the judgment debtor to appear before the court on a date to be fixed, and to be questioned under oath as to the assets that they have and where these assets are located.

If the order is granted, it must be served on the judgment debtor together with a list of questions which the enforcing party wishes to ask. The judgment debtor will have to complete the questions and provide all supporting documents via affidavit or statutory declaration prior to the

scheduled hearing date. The enforcing party may ask further questions at the hearing and may also request that it be adjourned for the debtor to produce further documents in support of their answers. If the debtor does not attend the hearing, the enforcing party may apply for a committal order to be made against them.

## **2.5 Challenging Enforcement of Domestic Judgments**

There are several ways in which a defendant may challenge enforcement of a domestic judgment. For example, the defendant may dispute the following.

- Service of documents: statutory requirements as to service of the judgment, the enforcement order and any related cause papers must be strictly complied with.
- Ownership of the assets being enforced: any person with a claim to the assets intended to be taken in execution may dispute ownership of the assets by filing a notice of objection and serving it on the relevant parties – if the matter is contested, the court will fix a hearing to decide the issues in dispute.
- Validity of the judgment:
  - (a) the defendant may apply to set aside a judgment made by default of appearance or default of a defence;
  - (b) where a judgment was granted pursuant to a trial on the merits, the defendant may apply to set it aside on the basis that it was granted in their absence (Order 35 Rule 1(2), Revoked Rules) or procured by fraud (*Su Sh-Hsyu v Wee Yue Chew* (2007) SGCA 31 at 66(b)), as the case may be; or
  - (c) the defendant may file an appeal on grounds that the judge hearing the matter had made an error of fact or law – in an appropriate case, where there has been a substantial wrong or miscarriage of

justice, the defendant may even seek a re-trial as part of the appeal.

The defendant may also take one of the following additional steps:

- apply for a stay of execution pending appeal; or
- apply for a general stay of execution of the judgment.

In general, the defendant must demonstrate special circumstances that render it inexpedient to enforce the judgment or order (*Lee Kuan Yew v Jeyaretnam Joshua Benjamin* (1990) 1 SLR(R) 772; *Strandore Invest A/S and others v Soh Kim Wat* (2010) SGHC at 7). The existence of an appeal does not itself warrant the grant of a stay, as the courts do not want to deprive a successful litigant of the fruits of litigation or lock up funds to which they are prima facie entitled. The court's power to grant a stay is ultimately discretionary and may be exercised subject to such conditions as the court thinks fit.

## 2.6 Unenforceable Domestic Judgments

There are no specific domestic judgments that are excluded from recognition and enforcement, save that where a judgment orders costs to be taxed, those costs must first be taxed (Order 47 Rule 2, Revoked Rules). However, it may not always be commercially viable to pursue enforcement where the cost is disproportionate to the judgment sum.

An enforcement applicant should always consider whether it is worthwhile to pursue enforcement as time and effort will be spent to make the necessary applications and there is no guarantee that there will be actual recovery from the enforcement respondent.

In this regard, the Ministry of Law has announced that as part of its initiatives for 2022, it will be studying proposals to make the enforcement of civil judgments simpler and more streamlined, so as to benefit small and medium-sized enterprises who may find the current process expensive and costly, especially where lower-value judgments are concerned. The proposals that are being considered purportedly include:

- introducing new powers to punish and disincentivise non-compliance with court orders; or
- where a party still fails to comply, the courts will be given enhanced powers to track and trace the assets of the judgment debtor.

## 2.7 Register of Domestic Judgments

All cause papers (including judgments and orders) are filed with the Singapore Court Registry, and it is possible for interested parties to apply to inspect these cause papers subject to leave of the court.

There are also private service providers who can perform litigation searches where records of past proceedings can be traced.

As such, it is not likely that a debtor can apply to remove or expunge a judgment from the Registry once it has been satisfied. Instead, any judgment debtor who has satisfied a judgment debt should apply to the court for satisfaction to be recorded (Order 22 Rule 3, New Rules).

## 3. FOREIGN JUDGMENTS

### 3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Legal issues with the enforcement of foreign judgments often arise due to confusion as to the scope and applicability of the various enforcement regimes in Singapore.

At present, there are both common law and statutory regimes for the enforcement of judgments in Singapore. The common law method essentially involves the filing of a fresh action on an implied debt. The statutory regimes are as follows.

- Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (RECJA): This provides for the enforcement of certain judgments of the United Kingdom of Great Britain and Northern Ireland and other Commonwealth States (eg, Australia, Malaysia, New Zealand, Windward Islands, Sri Lanka, Pakistan, Brunei Darussalam, Papua New Guinea and India, except the state of Jammu and Kashmir).
- Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) (REFJA): This provides for the enforcement of certain judgments of the Hong Kong Special Administrative Region of the People's Republic of China (HKSAR).
- Choice of Court Agreements Act 2016 (Cap 39A, 2017 Rev Ed) (CCAA): This enacted the Hague Convention on Choice of Court Agreements 2005 (HCCCA) into Singapore Law with effect from 1 October 2016. Part 3 of the CCAA provides for the enforcement of judgments from a court of a contracting state to the HCCCA, if that court was the chosen court designated in an exclusive choice of court agreement concluded in a civil or commercial matter after the date that the HCCCA had entered into force in that contracting state.

The common law route should be pursued if none of the statutory regimes apply. However, the latter are to some extent mutually exclusive. The RECJA and REFJA do not apply to judgments that may be recognised or enforced under the CCAA (Section 2A, RECJA; Section 2A, REFJA). Additionally, where the RECJA applies, an

enforcing party cannot recover costs for pursuing enforcement under the common law (Section 3(5), RECJA). Where the REFJA applies, a foreign judgment cannot be enforced through the common law at all (Section 7(1), REFJA).

It is worth highlighting that significant changes to the local enforcement regime are being made to keep up with developments in the global enforcement landscape. The following pieces of legislation are of note.

- The Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 (the "RECJA Repeal Act"), which will repeal the RECJA on a future date. This was gazetted on 1 October 2019 but has yet to come into force. When it comes into operation, it will streamline Singapore's legal framework for the statutory recognition and enforcement of foreign judgments in civil proceedings such that a single statutory regime operates under the REFJA. Reciprocating countries currently recognised under the RECJA are expected to be transferred to the REFJA beforehand. Until then, the RECJA will continue to remain in force.
- Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (the "REFJA Amendment Act"), which potentially expands the types of foreign judgments which may be registered and enforced under the REFJA. This only came into operation on 3 October 2019. Judgments made before this date continue to be governed by the unamended REFJA.

The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (concluded on 2 July 2019) (the "Convention") is set to be another development on the horizon. It has been billed as a game-changer for cross-border dispute settlement. However, it has yet to be adopted in Singapore.

## 3.2 Variations in Approach to Enforcement of Foreign Judgments

There are both statutory and common law regimes for the enforcement of foreign judgments in the Singapore courts.

### Common Law

As the common law method of enforcement involves the filing of a fresh action on an implied debt, to be enforceable under the common law, a foreign judgment must be the following.

- A money judgment: It must be a judgment for a definite sum of money other than a sum payable in respect of taxes, fines or penalties (see *Poh Soon Kiat v Desert Palace Inc* (2010) 1 SLR 1129 at 13).
- A judgment that was granted less than six years ago, otherwise, Section 6(1)(a) of the Limitation Act would apply to prohibit the action.
- A judgment of a court of competent jurisdiction that is final and conclusive on the merits: see *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* (2016) 5 SLR 1322 at 67 to 71, which involves the following.
  - (a) Competent jurisdiction: The originating foreign court must have had international jurisdiction over the party sought to be bound, based on Singapore private international law rules. In Singapore, international jurisdiction is established at common law if the defending party –
    - (i) was present or resident in the foreign country at the time the proceedings were commenced;
    - (ii) had agreed to submit to the jurisdiction before the commencement of proceedings; or
    - (iii) had voluntarily submitted to the jurisdiction of the court by filing a counterclaim or appearing in the proceedings.
  - (b) Final and conclusive: The judgment must be one which cannot be varied, reopened or set aside by the court that delivered it (see *The Bunga Melati 5* (2012) 4 SLR 546 at 81). A practical test would be to see whether the judgment is capable of raising an estoppel and rendering the dispute between the parties *res judicata* in the originating foreign jurisdiction (see *KR Handley, Spencer Bower and Handley: Res Judicata* (LexisNexis, 4th Ed, 2009) at paragraph 5.01). Default and summary judgments can be final and conclusive if they satisfy this test.
  - (c) On the merits: The judgment must establish certain facts as proved, not proved or not in dispute, or state the relevant principles of law applicable to such facts, and express a conclusion on the effect of applying those principles to the factual situation (*Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2020 Reissue) known as “Halsbury’s” at paragraph 75.161).

### RECJA or REFJA

The enforcement regimes under the RECJA or REFJA are relatively similar. The general requirements for both regimes are that the judgment must be the following.

- A judgment from a “superior court”: A superior court should be one that is equivalent or higher in standing to the Singapore High Court (see the Malaysian High Court case of *Excelmore Trading Pte Ltd v Excelmore Classics Sdn Bhd* (1996) AMR 2837, cited by the Singapore High Court in *Cheong Ghim Fah v Murugian s/o Rangasamy* (2004) 3 SLR(R) 193 at 15).
- A money judgment, ie, a judgment for a definite sum of money. This is made clear by the definition of “judgment” under Section 2(1) of the RECJA and the REFJA, respectively (see also Section 3(2)(b), REFJA).

- A judgment that is final and conclusive: There must not be any pending or potential appeal against the judgment (see Section 3(2)(e), RECJA; Section 3(2)(a), REFJA).
  - A judgment of a court of competent jurisdiction: As would be the case at common law, this means the originating foreign court must have had international jurisdiction over the party sought to be bound. However, the accepted grounds of jurisdiction under the RECJA or REFJA are not entirely the same as those under the common law regime. For instance, unlike at common law, presence is not a ground for international jurisdiction under the RECJA or REFJA (see Section 3(2)(b), RECJA; Section 5(2)(a)(iv), REFJA). Furthermore, unlike at common law, note the following.
    - (a) For judgment debtors who are individuals, international jurisdiction may be established under the RECJA if that individual carries on business through an agent or representative (*United Malayan Banking Corp v Khoo Boo Hor* (1996) 1 SLR 359). Under the REFJA, it is sufficient if that individual has a place of business in the foreign country at the time the proceedings were commenced, provided that the proceedings were in respect of a transaction effected through that place of business (Section 5(2)(a)(v), REFJA).
    - (b) For corporate judgment debtors, international jurisdiction will likely be established under the RECJA if it were carrying on business from a fixed place of business for more than a minimal period of time through an agent or representative (*William Jacks & Co (Singapore) Pte Ltd v Nelson Honey & Marketing (NZ) Ltd* (2015) SGHCR 21 at 30). Under the REFJA, it is enough for the corporation's principal place of business to be in the foreign country (Section 5(2)(a)(iv), REFJA), or to have an office or place of business, provided that the transaction in dispute was effected through that office or place (Section 5(2)(a)(v), REFJA).
  - A judgment that is capable of enforcement under the laws of the originating foreign jurisdiction in which it was obtained: (Order 60 Rule 3(1)(c)(i), New Rules.) This is a threshold requirement, but the threshold is low. It may be satisfied as long as the foreign judgment is enforceable "in some manner" (see *Westacre Investments Inc v The State-Owned Company Yugoimport SPDR* (2009) 2 SLR(R) 166 at 9 and 52).
- Under the RECJA, the court retains discretion to refuse registration of a foreign judgment even if the above criteria are met. It must ultimately be "just and convenient" for the judgment to be enforced in Singapore having regard to all the circumstances of the case (Section 3(1), RECJA). This test simply requires the court to assess whether allowing registration will cause prejudice to the judgment debtor. It should allow registration "where it is practicable and the interests of justice require it" (see *Westacre Investments Inc v The State-Owned Company Yugoimport SPDR* (2009) 2 SLR(R) 166 at 20 to 21, citing *Tong Tet Miaw v MBF Finance Bhd* 1992 2 SLR(R) 549 at 31). In the absence of any strong prejudice, the courts will generally be inclined towards enforcement (*Sarawak Timber Industry Development Corp v Asia Pulp & Paper Co Ltd* (2014) 1 SLR 776 at 46).
- Amended REFJA**
- The Amended REFJA will only apply to the extent that there is reciprocity or agreement between Singapore and the individual countries gazetted under the REFJA. Where it does apply, a broader scope of judgments can be enforced, for example as follows.
- The foreign judgment need not be from a superior court: Lower-court judgments may

- also be recognised and enforced in Singapore under the Amended REFJA.
- The foreign judgment need not be a money judgment: Non-money judgments can be enforced in Singapore if the court finds that it is “just and convenient” to do so. Alternatively, the court may order payment of what it considers to be the monetary equivalent of the non-money relief ordered by the foreign judgment.
  - The foreign judgment need not be final and conclusive: This means that interlocutory judgments such as interim freezing orders (ie, Mareva injunctions) may be recognised and enforced in Singapore under the Amended REFJA.

## CCAA

To be recognised and enforced under the CCAA, a foreign judgment from a court of a contracting state to the HCCCA need only satisfy two basic requirements, as follows.

- It must be “effective” and “enforceable” in the state of origin (Section 13(2), CCAA): The term “effective” means that the judgment must be legally valid and operative (*Ermgasen & Co Ltd v Sixcap Financials Pte Ltd* (2018) SGHCR 8 at 11).
- It must either be a final decision on the merits, a consent judgment, or a judgment given by default (Section 2(1), CCAA): The merits requirement means that procedural rulings are generally excluded, save for orders as to costs (see the definition of “judgment” in Section 2(1), CCAA). Interim measures of protection such as interlocutory and anti-suit injunctions are also expressly excluded (Section 10, CCAA).

The CCAA is not confined to money judgments. However, it will not apply to judgments involving specific subject matter, including but not limited to the following (Section 9, CCAA):

- consumer agreements;
- employment agreements;
- family law, probate and succession matters;
- bankruptcy insolvency matters;
- personal injury matters; and
- any right in rem in any immovable property.

The CCAA presently applies to judgments obtained in Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

## 3.3 Categories of Foreign Judgments Not Enforced

Judgments which do not meet the criteria of the various common law and statutory enforcement regimes cannot be enforced in Singapore. For example, any default judgments obtained without any determination on the merits of the case may face difficulties in enforcement in Singapore.

Two specific areas merit special mention:

- interim and final injunctions; and
- divorce and family-related orders.

### Interim and Final Injunctions

At present, interim injunctions (eg, interim freezing orders and interlocutory prohibitory or mandatory injunctions) granted by a foreign court may only be enforced under the Amended REFJA. This is because they are not final or conclusive in nature.

Where the Amended REFJA does not apply, a party will instead have to obtain an interim/interlocutory injunction from the Singapore courts (Section 4(1), Civil Law Act; Section 18(2), Supreme Court of Judicature Act). This

will require the actual commencement of legal proceedings in Singapore, though it is possible for such local proceedings to be stayed as a matter of case management (in the case of freezing orders, see *Bi Xiaoqiong v China Medical Technologies, Inc* (2019) 2 SLR 595 at 62; in the case of prohibitory or mandatory injunctions, see *Virsagi Management (S) Pte Ltd v Welltech Construction Pte Ltd* (2012) SGHC 207 at 41).

As for final injunctions, these may only be enforced under the Amended REFJA or the CCAA (if they are not anti-suit injunctions). This is because they are non-money judgments. Where the Amended REFJA and the CCAA do not apply, recent case law suggests that a judgment creditor may seek the grant of a freestanding injunction from the Singapore courts without having to commence substantive legal action in Singapore. In *Sulzer Pumps Spain, SA v Hyflux Membrane Manufacturing (S) Pte Ltd and another* (2020) 5 SLR 634 (at 75 and 91–93), the High Court established that it has the power to grant freestanding injunctions (as opposed to interlocutory injunctions) where this is necessary to prevent injustice in the exercise of its equitable jurisdiction. It remains to be seen whether this position will be endorsed by the Court of Appeal.

### **Divorce and Family-Related Orders**

While a foreign divorce decree may potentially be recognised in Singapore pursuant to Section 108 of the Women's Charter (see *Ho Ah Chye v Hsinchieh Hsu Irene* (1994) 2 SLR 316; *Asha Maudgil v Suresh Kumar Gosain* (1994) 2 SLR 709), ancillary orders to the divorce relating to the custody of children, maintenance and the division of assets may not be enforceable if they are amenable to variation or involve rights in immovable property which are located outside of the jurisdiction. This can be problematic for divorcing couples who have decided to live in separate countries and have assets located in different jurisdictions.

The state of the law may be summarised as follows.

- **Custody orders:** Generally, the law does not recognise foreign custody orders unconditionally because the court's own independent view on the welfare of the child is of paramount importance (*TSH v TSE* (2017) SCHCF 21 at 50). A fresh application for custody would thus have to be filed in the Singapore courts, and this may be challenged on grounds of forum non conveniens.
- **Division of assets:** Foreign orders for the division of matrimonial assets are typically unenforceable for two reasons: (i) they are non-money judgments; and (ii) foreign orders affecting property generally have no effect on rights in property situated outside the jurisdiction of the court granting the order. To circumvent this, Sections 121A to 121G of the Women's Charter empower the courts to grant financial relief consequential to the termination of a marriage by foreign decree. However, the court will only agree to do so if it would be appropriate in all the circumstances of the case.
- **Maintenance:** Foreign maintenance orders have limited enforcement channels within Singapore. Only final orders of lump sum maintenance or accrued arrears may be enforced under the common law regime or the RECJA (see *Lee Pauline Bradnam v Lee Thien Terh George* (2006) SGHC 84). Orders for periodic maintenance must be enforced by registration under the Maintenance Orders (Reciprocal Enforcement) Act 1975 (Cap 169) (MO(RE) A), but this only applies to judgments from Australia, HKSAR, New Zealand, the UK and Manitoba.

### **3.4 Process of Enforcing Foreign Judgments**

The steps required for enforcement under the various regimes are briefly outlined as follows.

- Common law: This involves the filing of a fresh action for the judgment debt in Singapore (Order 6 Rule 1, New Rules). To expedite matters, the enforcing party should apply for summary judgment on the basis that there is no defence to the claim (Order 9 Rule 17, New Rules). If the judgment debtor is not in Singapore, the enforcing party must also apply for leave to serve the originating process out of jurisdiction (Order 8 Rule 1, New Rules).
- RECJA or REFJA: Enforcement under the RECJA or REFJA operates by way of registration. Once a foreign judgment is registered under this regime, it may be enforced as if it were a domestic judgment. The registration procedure is set out in Order 60 of the New Rules. This involves, among other things, the filing of an affidavit exhibiting (i) the duly authenticated judgment and its certified translation in English; and (ii) evidence as to the enforceability of the judgment by execution in the country of the original court. Under the RECJA, the application must be filed within 12 months of the grant of a foreign judgment. Under the REFJA, the application must be filed within six years. The enforcing party may also be required to furnish security for costs (Order 60 Rule 4, New Rules). If the application is successful, the enforcing party will have to extract the order of registration and arrange for personal service of both the order of registration and notice of registration on the judgment debtor. Execution on the foreign judgment will only be permitted after expiry of the period allowed for the judgment debtor to set aside the registration.
- CCAA: Registration is not required under the CCAA and there is accordingly no procedural time limit. However, an enforcing party must still file an ex parte application for enforcement to the High Court (Order 37, New Rules; Section 13(1), CCAA). This application must be supported by an affidavit exhibiting:

- (a) the certified foreign judgment;
- (b) the exclusive choice of court agreement; and
- (c) evidence that the foreign judgment has effect in the state of origin.

### **3.5 Costs and Time Taken to Enforce Foreign Judgments**

The costs and time taken to enforce foreign judgments will vary depending on the number of enforcement orders required to be sought and whether the applications are challenged. If contested, the entire process will likely take several months even if no appeals are filed.

In general, registration and enforcement under the statutory regimes is faster than the common law method of enforcement as the process is more straightforward.

The following types of costs may be involved in addition to the costs highlighted in respect of domestic judgments:

- security for costs;
- certification costs;
- translation expenses; and
- costs for arranging service out of jurisdiction.

### **3.6 Challenging Enforcement of Foreign Judgments**

The common defences to enforcement across both the statutory and common law enforcement regimes (Section 3(2), RECJA; Section 5, REFJA; Sections 14 and 16, CCAA) are as follows:

- that the defendant was not served with the process of the original court;
- that the judgment was obtained by fraud;
- that the judgment was obtained in breach of a settlement agreement;
- that the judgment was obtained in breach of natural justice;

- that the judgment is contrary to public policy in Singapore;
- that the judgment conflicts with an earlier judgment by the Singapore courts or an earlier foreign judgment entitled to recognition under Singapore law; and
- that enforcement of the judgment would amount to the direct or indirect enforcement of foreign penal, revenue or other public laws.

(See *Humpuss Sea Transport Pte Ltd v PT Humpuss Intermoda Transportasi TBK* (2016) 5 SLR 1322 at 73.)

Under the CCAA, there are other discretionary grounds on which the court may refuse to recognise or enforce a foreign judgment (Section 15, CCAA). Two of the more notable grounds are (i) where the choice of court agreement is void under the law of the originating foreign jurisdiction; and (ii) where a party to the choice of court agreement has no capacity under Singapore law to enter into the agreement. In relation to this, the CCAA expressly provides that the Singapore courts cannot review the merits of the foreign judgment or challenge any findings of fact on which the court assumed jurisdiction unless the judgment was given by default (Section 13(3)(b), CCAA). However, a finding that a choice of court agreement is valid would be binding on the Singapore courts, regardless of whether or not the foreign judgment was given in default (Section 15(1)(a), CCAA).

## 4. ARBITRAL AWARDS

### 4.1 Legal Issues Concerning Enforcement of Arbitral Awards

The Arbitration Act 2001 (AA) governs enforcement of domestic arbitral awards. International arbitration awards are recognised and enforced under the International Arbitration Act 1994 (IAA).

The AA applies to any arbitration where the place of arbitration is Singapore and where Part II of the IAA does not apply to the given arbitration. Under Section 5 of the IAA, an arbitration is international in nature and governed by the IAA where:

- at least one of the parties to the arbitration has its place of business in a state other than Singapore;
- the place of arbitration or the place where a substantial part of the obligations of the commercial relationship to be performed is situated outside the state in which the parties have their place of business; or
- the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

The UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”) has force of law in Singapore, subject to modifications and exceptions in the IAA. However, Chapter VIII of the Model Law (on recognition and enforcement of arbitral awards) is expressly excluded under Singapore law by Section 3(1) IAA.

### 4.2 Variations in Approach to Enforcement of Arbitral Awards

A domestic arbitration award is enforced in the same manner as a judgment or order of the Singapore court, under Section 46 AA. An international arbitral award made in Singapore is also enforced in Singapore as a court judgment under Section 19 IAA.

Generally, the seat of an arbitration determines where the award is made. The IAA distinguishes between an award made in Singapore from an award made in another state. Section 29 IAA deals with recognition and enforcement of an award made in another state and gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958

by the United Nations Conference on International Commercial Arbitration (the “New York Convention”).

Foreign awards made in the few jurisdictions that are not parties to the New York Convention are excluded from the enforcement provisions of the IAA by Section 27 IAA. Such awards are conceivably enforceable under Section 46 AA. Section 46(3) AA provides that an arbitration award may be enforced as a Singapore court judgment “irrespective of whether the place of arbitration is Singapore or elsewhere”.

### 4.3 Categories of Arbitral Awards Not Enforced

Arbitration awards that have been set aside or which are not recognised by the Singapore courts will not be enforced. In *PT First Media TBK v Astro Nusantara International BV* (2014) 1 SLR 372 (“Astro”) (at paragraph 99) the highest court held that enforcement of a Singapore-seated award may be resisted under the grounds in Article 36(1) of the Model Law, despite this article being in Part VIII of the Model Law, which is excluded from operation in Singapore (as explained in **4.1 Legal Issues Concerning Enforcement of Arbitral Awards**). Astro decided that this was the most efficacious way to give effect to the policy of the Model Law and the New York Convention, with the following grounds under Article 36(1) being regarded as guidance to the Singapore courts in exercising their discretion over whether to enforce a Singapore-seated award:

- the incapacity or invalidity of the arbitration agreement (Article 36(1)(a)(i));
- the party against whom the award is invoked lacked notice of appointment of an arbitrator or the arbitration proceedings or was otherwise unable to present their case (Article 36(1)(a)(ii));

- the dispute is beyond the scope of submission to arbitration (Article 36(1)(a)(iii));
- the presence of defects in the arbitral tribunal or procedure (Article 36(1)(a)(iv));
- the award is not yet binding or has been set aside (Article 36(1)(a)(v));
- issues of subject matter arbitrability under Singapore law (Article 36(1)(b)(i)); and
- issues of public policy (Article 36(1)(b)(ii)).

The enforcement of foreign awards made in a New York Convention state other than Singapore may be refused on the grounds set out at Sections 31(2) or 31(4) of the IAA (*Aloe Vera of America, Inc v Asianic Food (S) Pte Ltd* (2006) 3 SLR(R) 174 (“Aloe”) at paragraph 46).

### 4.4 Process of Enforcing Arbitral Awards

Generally, there are two stages involved in the enforcement of an arbitral award.

#### First Stage

*An application is made by the award creditor to the court for permission to enforce the award*

At this stage, the award creditor applies (without notice to the award debtor) for permission from the court under Section 46 AA, Section 19 or Section 29 IAA (as the case may be) to enforce the award. The application must be supported by an affidavit that:

- exhibits the arbitration agreement and the award;
- states the names and the usual or last-known places of business of the award creditor and debtor; and
- states either that the award has not been complied with or the extent to which it has not been complied with at the date of application to the court.

Upon permission to enforce being granted by the court, the order granting permission to enforce is served on the award debtor.

Within 14 days after service of the order (or such other period fixed by the court), the award debtor may apply to set aside the order granting permission to enforce. An award cannot be enforced until after the expiry of the period fixed by the court. If the award debtor does not contest the order, the award creditor can proceed to enforce the award like a court judgment, after the expiry of the applicable time limit.

If the award debtor applies to set aside the order granting permission to enforce within the time stipulated in the order, the second stage of the enforcement process is engaged, which entails substantive arguments over whether there are grounds for resisting enforcement.

### **Second Stage**

*The court considers whether there are grounds for refusal of recognition and enforcement*

At the second stage, the award debtor must show that one of the grounds for resisting enforcement (as stated in **4.3 Categories of Arbitral Awards Not Enforced**) exists. The standard of proof is that of a balance of probabilities (*Beijing Sinozonto Mining Investment Co Ltd v Goldenray Consortium (Singapore) Pte Ltd* (2014) 1 SLR 814 at paragraph 48). At this stage, if the challenge to enforcement is jurisdictional in nature, the court will conduct a *de novo* review of the arbitral tribunal's decision on the question of jurisdiction. The court would otherwise not interfere with the tribunal's decisions on the merits of the dispute (*Bloomberry Resorts and Hotels v Global Gaming Philippines LLC* (2020) SGHC at paragraphs 38–65).

If the court rejects a challenge against enforcement, the award creditor will then obtain a judg-

ment of the Singapore courts in terms of the arbitral award, as provided for under Sections 46 AA, 19 IAA and 29 IAA. That judgment becomes enforceable like a regular Singapore court judgment.

### **4.5 Costs and Time Taken to Enforce Arbitral Awards**

An uncontested application to enforce an arbitral award is a relatively straightforward and quick process. Costs would begin to escalate if the award debtor resists the order granting permission to enforce the award. The costs of a fully contested application can be quite substantial, and may typically be several times the costs incurred for an undefended application to enforce an arbitral award.

The entire process for an uncontested enforcement may take less than six months, depending on the availability of the court's hearing dates. However, if an award debtor chooses to resist enforcement of the arbitral award, the second stage of the enforcement process will usually result in the award creditor incurring substantial time and costs in dealing with such resistance. If the outcome of the challenge to enforcement is appealed to a higher court, the overall process of enforcement could take a few years to reach a definitive conclusion.

### **4.6 Challenging Enforcement of Arbitral Awards**

#### **Choice of Remedies Doctrine**

An award debtor has a choice of pursuing an active strategy against enforcement by applying to pre-emptively invalidate the award through filing a setting-aside application at the place where the arbitration is seated. Alternatively, the award debtor can adopt a passive approach of resisting enforcement of the award by the award creditor in a country where its assets may be located. A party is not compelled to pursue the active remedy. Its rights to pursue a passive approach are

not waived or rendered unavailable just because the pre-emptive strategy is not pursued.

## **Nature of the Award**

Consistent with Singapore's reputation as an arbitration-friendly jurisdiction, Section 27(1) IAA defines an "arbitral award" very broadly to include "an order or a direction made or given by an arbitral tribunal in the course of an arbitration". This approach facilitates the enforceability of an award as to interim measures. Policy considerations to develop Singapore as a hub for international arbitration have also given impetus to legislative amendments to include emergency arbitrators within the definition of an "arbitral tribunal" under Section 2(1) of the IAA. This amendment makes clear that awards by emergency arbitrators are enforceable in Singapore courts in the same way as a final award of an arbitral tribunal.

## **Finality of the Award**

Section 19B IAA provides that an award is final and binding when made by the arbitral tribunal, signed and delivered to the parties. The widely held view is that an award remains binding notwithstanding the right of appeal. A party challenging enforcement has to prove to the satisfaction of the court that the award has not yet become binding on the parties or that the award has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made. While the highest court in Singapore in *Astro* took the view that an award that has been set aside would generally lead to the conclusion that "there is simply no award to enforce", any foreign court decision in Singapore would ultimately only have legal value if it was recognised under Singapore's private international law rules.

In *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* (2015) SGCA 30, it was held that an interim award enforcing a Dispute

Adjudication Board (DAB) decision under the FIDIC Conditions of Contract for Construction 1999 is "final and binding" within the meaning under Section 19B IAA. This decision of the highest court in Singapore effectively removes any ambiguity as to the enforceability of such interim awards under Singapore's international arbitration legislation, and was welcomed not only in international arbitration circles but also the construction industry, as it gave effect to the "argue now, pay later" principle that is crucial to the success of DABs under the FIDIC suite of contracts in ensuring security of payment in large international projects.

## **Limitation Period for the Enforcement and Setting Aside of Arbitral Awards**

A party seeking to enforce an arbitral award in Singapore must do so within six years from the date that the award was issued (Section 6(1)(c) Limitation Act 1959). An application to set aside an award made under the AA and IAA must be made within three months of the date the applicant receives the award (Sections 48(2) AA and Article 34(3) of the Model Law).

## **Appealing an Order for the Enforcement of an Arbitral Award**

Any appeal against a decision of the General Division of the High Court in the exercise of its original or appellate civil jurisdiction that arises from a case relating to the law of arbitration is made to the Court of Appeal (Sixth Schedule of the Supreme Court of Judicature Act 1969).

## **Judicial Attitude towards Challenges to Enforcement of Arbitral Awards**

In order to give effect to the New York Convention, which seeks to promote arbitration and eschews curial intervention, the grounds for resisting enforcement are generally construed narrowly. Recently, the Singapore International Commercial Court in *CKG v CKH* (2021) 5 SLR 84 held that the courts have to be satisfied that

the challenge against an award falls squarely within the grounds for resisting the enforcement, and that in its assessment of the award, the court will not be overly technical in its interpretation of the award.

For instance, to succeed in a challenge to enforcement of an arbitral award on the grounds of public policy, the award must “offend against our basic notions of justice and morality” or there must be “exceptional circumstances to justify a refusal of enforcement” (*Galsworthy Ltd of the Republic of Liberia v Glory Wealth Shipping Pte Ltd* (2011) 1 SLR 727 at paragraph 17). These high standards are driven by notions of international comity and the spirit of the New York Convention.

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