



Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

2012

Contributing editors: Mark Moedritzer and Kay C Whittaker



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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

Singapore is presently not a party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments.

However, Singapore is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and has reserved its application only to the recognition and enforcement of awards made in the territory of another contracting state.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Singapore is a single-jurisdiction country.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

There are two main regimes under which foreign judgments may be enforced in Singapore. Judgments of a majority of foreign jurisdictions may be enforced through the common law regime. The judgments of a limited number of foreign jurisdictions may be enforced through one of two statutory regimes.

Common law regime

A foreign judgment creates a fresh obligation to pay the judgment debt. This is separate and distinct from the underlying cause of action giving rise to the judgment. However, the foreign judgment must satisfy the legal requirements under Singapore law for enforcement.

As this is seen as an original action against the defendant, the Singapore court's jurisdiction over the person of the defendant must be established in accordance with the rules for establishing jurisdiction – including personal service and submission to jurisdiction or even, given the right circumstances, service out of jurisdiction.

Statutory regimes

The Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) and the Reciprocal Enforcement of Foreign Judgments Act (REFJA) provide the statutory rules governing the registration and enforcement of judgments from certain foreign jurisdictions in Singapore.

The RECJA provides for the registration and enforcement of judgments obtained from the superior courts in the United Kingdom and the following Commonwealth jurisdictions: New Zealand; Sri Lanka; Malaysia; Windward Islands; Pakistan; Brunei Darussalam; Papua New Guinea; India (except the states of Jammu and

Kashmir); Commonwealth of Australia (High Court of Australia, Federal Court of Australia and Family Court of Australia); New South Wales (Supreme Court of New South Wales); Queensland (Supreme Court of Queensland); South Australia (Supreme Court of South Australia); Tasmania (Supreme Court of Tasmania); Victoria (Supreme Court of Victoria); Western Australia (Family Court of Western Australia and Supreme Court of Western Australia); Australian Capital Territory (Supreme Court of the Australian Capital Territory); Norfolk Island (Supreme Court of Norfolk Island); and Northern Territory (Supreme Court of Northern Territory).

The REFJA allows for the enforcement in Singapore of judgments and awards in foreign countries that afford reciprocal treatment to judgments given in Singapore. At present, the REFJA only extends to the Hong Kong Special Administrative Region of the People's Republic of China (only Part 1 of the REFJA is applicable).

The Maintenance Orders (Reciprocal Enforcement) Act applies to the registration of foreign maintenance and affiliation orders made in reciprocating countries. Currently, these countries are: New Zealand; United Kingdom; Hong Kong Special Administrative Region of the People's Republic of China; Province of Manitoba; and Commonwealth of Australia and its external territories.

Not all maintenance orders may be registered under this Act, and different restrictions apply for each country.

A foreign judgment that may be registered under the RECJA may nonetheless be enforced by an action at common law. However, the enforcing judgment creditor cannot recover his or her costs of the enforcement unless he or she had earlier applied for registration and the application had been refused or the court orders otherwise. This is a disincentive to encourage first resort to the registration process under the RECJA. A foreign judgment that may be refused registration under the RECJA may nonetheless be capable of enforcement by way of an action at common law.

A foreign judgment that may be registered under the REFJA may not be enforced by an action at common law. Therefore, where the REFJA applies, the only option available to the judgment creditor is enforcement through registration under the statute and the enforcement action is entirely dependent upon satisfying the requirements of the REFJA.

Besides the provisions of the RECJA and REFJA, other applicable statutory provisions are found in the Maintenance Orders (Reciprocal Enforcement) Act and orders 67, 67A and 69 of the Supreme Court of Judicature Act (Rules of Court).

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Singapore is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial

Matters, and therefore its provisions are not applicable in the Singapore courts.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

The question of whether the limitation period for the enforcement of a foreign judgment was six years, as for an action in contract or tort, or 12 years, as for the enforcement of a local judgment, was only very recently settled in Singapore.

In the case of *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR1129, the Singapore Court of Appeal, after consideration of authorities from throughout the Commonwealth, held that the applicable limitation period was six years, since the enforcement of a foreign judgment at common law is based upon an implied obligation to pay a debt and not on the judgment.

Under the RECJA, the limitation period is within 12 months from the date of the judgment, although the court has the discretion to extend this period. This is consistent with the fact that failure to register a foreign judgment under the RECJA does not prejudice the rights of the judgment creditor, since he or she can still seek enforcement at common law.

Under the REFJA, the limitation period is within six years after the date of the judgment, or after the date of the last judgment given in any appeal proceedings against the judgment. Again, this is consistent with the fact that registration under the REFJA is mandatory where it applies, and therefore a limitation period concurrent with the limitation period under common law is only reasonable.

If the limitation period for the enforcement of judgments in the foreign jurisdiction from which the judgment is obtained is shorter than the limitation period locally, this may affect the enforceability of the foreign judgment.

If the limitation is substantive, in the sense that it extinguishes the right to enforce, no implied obligation to pay the judgment debt can arise at common law. If the limitation is procedural, in the sense that it is merely a bar to action, it should not prevent enforcement at common law in Singapore.

The Court of Appeal in *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166 held that the foreign judgment must be capable of enforcement under the laws of the foreign jurisdiction to be capable of registration. However, this is a low threshold, and so long as the foreign judgment may be enforced in some manner, even if leave is required, it will fulfil the requirement under the RECJA.

Section 4(3)(b) of the REFJA disallows the registration of a foreign judgment that is not capable of enforcement under the foreign jurisdiction's law.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

To be enforceable at common law, a foreign judgment must be final and conclusive on the merits of the case and for a fixed or ascertainable sum of money. The foreign judgment not be for the enforcement, directly or indirectly, of any foreign penal, revenue or other public law.

A foreign judgment is final and conclusive and on the merits if it cannot be reopened, varied or set aside by the same tribunal or a tribunal with coordinate jurisdiction. The fact that there is an appeal to a higher court does not prevent a foreign judgment from being final and conclusive. Even interlocutory judgments may be final and conclusive if they finally dispose of the issue of the judgment debt. In general a default judgment, even one in default of appearance, may be considered final and conclusive and on the merits.

For registration under the RECJA, the foreign judgment must be given or made by a court in civil proceedings and for a sum of monies to be made payable. The judgment should also be final and conclusive. However, registration may be refused if the judgment debtor can show that an appeal is pending or that he or she is entitled to appeal and intends to do so.

Under the REFJA, besides a foreign judgment made by a court in civil proceedings for the payment of a sum of money, a judgment by a court in criminal proceedings in respect of the payment of a sum of monies for compensation or damages to an injured party may also be registered. The judgment must also be final and conclusive.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Depending on the amount claimed, an action brought to enforce a foreign judgment at common law may be brought in the Magistrates' Court (for claims of S\$60,000 and under), the District Court (for claims of S\$250,000 and under) and the High Court (for claims above S\$250,000).

Applications for registration of foreign judgments under the RECJA and the REFJA have to be made to the High Court of Singapore.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Generally, a foreign judgment does not need to be registered in order for it to be given judicial recognition in the courts. It is usually sufficient for the party who wishes to rely on the judgment to produce documentary evidence of the same.

The REFJA gives judicial recognition to foreign judgments even if they have not been registered under the Act. However, the exception to this is where the judgment was registered and subsequently set aside on a ground other than:

- a sum of money was not payable under the judgment;
- the judgment had been wholly or partly satisfied; or
- as at the date of the application for registration, the judgment could not be enforced by execution in the country of the original court.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

As a general rule, merit-based defences to liability will not be entertained when challenging the enforcement of a foreign judgment in Singapore. Where the foreign judgment is validly obtained, and is final and conclusive on the merits, the Singapore court will generally not re-examine the merits of the dispute.

In an action for enforcement of a foreign judgment at common law, the defendant may challenge the action on the basis that the foreign court lacked jurisdiction, or that the judgment was not final and conclusive and on the merits.

The defendant may also seek to show that enforcement would be contrary to the public policy of Singapore, that it would conflict with an earlier Singapore judgment or foreign judgment, that it was obtained by fraud or in breach of the principles of natural justice or that enforcement would amount to direct or indirect enforcement of a foreign penal, revenue or other public law.

Under the RECJA, registration may be refused if:

- the original court acted without jurisdiction;
- the judgment debtor, not being ordinarily subject to the jurisdiction of the foreign court, did not submit to its jurisdiction;

- the judgment debtor was not duly served with process of the original court and did not appear;
- the judgment was obtained by fraud;
- an appeal is pending, or the judgment debtor is entitled to appeal and intends to do so; and
- the judgment is in respect of a cause of action that, for reasons of public policy or for some other similar reason, could not have been entertained by the Singapore court.

Under the REFJA, a foreign judgment may not be registered, or if registered may be set aside, if:

- it has been wholly satisfied;
- it could not be enforced by execution in the country of the original court;
- the original court did not have jurisdiction;
- the judgment debtor did not receive notice of the proceedings in sufficient time to enable him or her to defend the proceedings and did not appear;
- it was obtained by fraud;
- its enforcement would be contrary to the public policy of Singapore;
- the person seeking registration did not have the rights under the foreign judgment; and
- there is a prior conflicting judgment by a competent court.

10 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The requirements for recognition of foreign judgments are similar to that for enforcement, in that the judgment must be final and conclusive and on the merits.

The original court must be shown to have jurisdiction over the defendant in order for the decision to be recognised. Jurisdiction is usually found by presence or residence or submission, either by express agreement or implied by conduct (such as by taking substantive steps in the proceedings or by putting in a counterclaim). The original court must also have subject-matter jurisdiction for the judgment to be recognised.

The RECJA is silent as to recognition. For the requirements of recognition under the REFJA, please see question 8.

The REFJA provides judicial recognition of foreign judgments to which it applies or would have applied if a sum of money had been payable thereunder. However, a foreign judgment would not be recognised if it has been registered and the registration has been set aside for reasons other than:

- a sum of money was not payable under the judgment;
- the judgment had been wholly or partly satisfied; or
- as at the date of the application for registration, the judgment could not be enforced by execution in the country of the original court; and
- if not registered, if the foreign judgment had been registered, the registration would have been set aside for reasons other than those set out above.

11 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

Enforcement under the common law and registration under REFJA are as of right once the relevant requirements are met. The court does not have discretion to consider other factors.

However, the RECJA provides that the court may refuse registration where it is not 'just and convenient'. In practice, the discretion will only be exercised after considering all the circumstances of the case and only where it would be 'practicable and the interests of justice requires it'. The court may refuse registration if to do so would

allow the applicant to take advantage of its own wrongdoing at the expense of innocent parties.

Under the REFJA, the lack of reciprocity may result in the minister of law ordering that foreign judgments from a particular jurisdiction be rendered unenforceable in Singapore.

12 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

If the foreign judgment was obtained in circumstances that amount to a breach of natural justice, enforcement of the foreign judgment in the Singapore courts would be refused. Otherwise, there is no requirement of procedural equivalence for the enforcement of foreign judgments in Singapore.

13 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

For a foreign judgment to be enforced or recognised in Singapore, the original court must be shown to have personal jurisdiction over the defendant.

Personal jurisdiction is usually established by presence or residence within the jurisdiction of the original court or by submission.

Presence of an individual within the jurisdiction, even temporary presence, is sufficient basis for finding personal jurisdiction for enforcement or recognition at common law. However, this is insufficient under the RECJA and REFJA, which require residence.

For corporations, the question of presence or residence is more complicated. In general a corporation will be treated as having a presence or residence sufficient for personal jurisdiction if it is incorporated in that jurisdiction, or carries on business or has a fixed place of business in the jurisdiction.

The RECJA adopts the common law approach to presence and residence for corporations. The REFJA, however, places a test of principal place of business or having an office or place of business through which the transaction in dispute was effected.

Submission must be voluntary and may be by express agreement or implied by conduct. A defendant has voluntarily submitted to jurisdiction if he or she has taken a step in the proceedings that necessarily requires that he or she waive objections to the jurisdiction of the court in question. Such a step may include pleading the merits of his or her defence or advancing his or her own claims and counterclaims. There may not be voluntary submission if the defendant merely takes steps to object to jurisdiction or is compelled to defend his or her property.

14 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

At common law, it appears to be an open question whether or not the lack of subject-matter jurisdiction by the foreign court is fatal to an action to enforce a foreign judgment. It is submitted that the better view is that if the lack of subject-matter jurisdiction can be demonstrated that would render the foreign judgment unenforceable in the foreign jurisdiction, the action for enforcement should be refused.

The RECJA provides that there be no registration when the original court acted without jurisdiction. The REFJA provides that registration of an applicable foreign judgment may be set aside if the courts of the country of the original court had no jurisdiction in the circumstances of the case.

15 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The lack of notice or of sufficient notice of the proceedings may result in a breach of natural justice if it denies the defendant the opportunity to properly present his or her case. Mere procedural irregularity would not be sufficient.

Reasonable notice should be afforded to enable the defendant sufficient time to prepare his or her defence. What constitutes reasonable notice must necessarily be a question based on the facts of each case.

The RECJA only requires that the defendant be duly served with process of the original court. The REFJA goes further by requiring that the defendant receive notice of the proceedings in sufficient time to enable him or her to defend the proceedings. The defendant must not have entered an appearance.

Whether or not a defendant was 'duly served' is a question to be determined under the procedural laws of that foreign jurisdiction. If the Singapore courts are satisfied that the method of service on the defendant in the foreign court was in accordance with the laws of that jurisdiction, they will generally not examine the issue any further. Of course, if the laws of the foreign jurisdiction relating to service are so repugnant as to constitute a breach of natural justice, or make it contrary to public policy to allow the enforcement of the judgment, the courts may take such factors into account.

16 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The Singapore courts do not consider the relative inconvenience of the foreign jurisdiction to the defendant when deciding whether to enforce a foreign judgment. Forum non conveniens arguments are only considered when deciding whether or not to exercise original jurisdiction.

17 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Allegations of fraud upon the defendant or the foreign court may be examined by the Singapore courts in considering whether to enforce a foreign judgment.

The traditional approach under common law did not require the production of newly discovered evidence, even if the fraud may have been at issue in the foreign proceedings. However, in *Hong Pian Tee v Les Placements Germain Gauthier Inc* [2002] 2 SLR 81, the Singapore Court of Appeal rejected the traditional approach, holding that it was inconsistent with the doctrine of comity and with the principle of finality. Therefore, fraud can only be raised as a defence in disputing the enforcement of a foreign judgment if the defendant can produce compelling evidence that was material and not previously discoverable with reasonable diligence for use in the foreign proceedings.

However, the Court of Appeal appears to retain the traditional approach in instances of 'extrinsic fraud', adopting the definition of the Ontario Court of Appeal in *Woodruff v McLennan* (1887) 14 OAR 242:

... the defendant had never been served with process, that the suit had been undefended without the defendant's default, that the defendant had been fraudulently persuaded by the plaintiff to let judgment go by default ... or some fraud to the defendant's prejudice committed or allowed in the proceedings of the other court.

Both the RECJA and the REFJA provide for a defence of fraud against the registration of a foreign judgment. It was assumed that this would be construed consistently with the traditional approach in common law. However, in view of the decision of the Court of Appeal in *Hong Pian Tee v Les Placements Germain Gauthier Inc*, it may be that the courts may adopt a more restrictive approach to the defence under these statutes as well.

18 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Under common law as well as under the RECJA and the REFJA, the court may refuse enforcement of a foreign judgment on the ground that it would be against the public policy here.

In *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR 690, the Court of Appeal held that, in the context of a foreign judgment, there is a higher standard of public policy in operation than in the context of domestic proceedings before the enforcing court. Courts are more reluctant to refuse enforcement of foreign judgments on the basis of contravention of public policy.

In *Poh Soon Kiat v Desert Palace Inc* [1010] 1 SLR 1129, the Court of Appeal held that considerations of public policy in an action for registration of a foreign judgment under the RECJA and REFJA regimes are different from that in a common law action on a foreign judgment. The suggestion is that there is room for a wider consideration of public policy in the latter. Further, the Court of Appeal held that statutory public policy has greater legal force than common law public policy.

Common law public policy includes considerations of the forum's ideas of morality, decency, human liberty or justice. Prohibitions for the protection of the public interest emanating from statute would be described as statutory public policy.

19 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

A foreign judgment that is in conflict with another final and conclusive judgment from the Singapore courts that is binding on the parties will not be enforced, even if the foreign judgment is earlier in time. The prior foreign judgment should be raised in the Singapore proceedings.

Faced with conflicting foreign judgments, in general the judgment earlier in time will prevail unless there is an operative estoppel preventing reliance on the prior judgment.

20 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Unless it can be demonstrated that the foreign court does not have jurisdiction upon proof of a valid alternative dispute resolution clause, the existence of such a clause does not affect the enforceability of the foreign judgment. The decision of the foreign court on the issue of an alternative dispute resolution clause would give rise to an issue estoppel here.

21 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Jurisdictions to which the RECJA and the REFJA apply may be considered to be in a more advantageous position since the judgments of their courts may be enforced by registration. Judgments from other

jurisdictions would have to be enforced by an action at common law.

Otherwise, no foreign jurisdictions are treated more favourably than others by the Singapore courts.

22 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

If only a part of the foreign judgment is objectionable, it may still be enforced in respect of the unobjectionable part provided that the latter can be clearly identified and severed from the former.

23 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

The Singapore courts may convert the foreign judgment sum into local currency at the time enforcement of the foreign judgment is allowed. Interest pursuant to the laws of the foreign court shall run until the application for enforcement is allowed and thereafter the interest applicable to local judgments shall apply.

24 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

An application to register a foreign judgment under the RECJA and the REFJA is by way of ex parte originating summons. A decision to allow registration may be challenged by way of an application to set aside the registration.

A foreign judgment enforced by way of an action at common law may be appealed the same way as with any other decisions of the Singapore courts.

Update and trends

The trend in Singapore is towards a greater recognition of the importance of comity and emphasis on respecting the decisions of foreign courts. There is a corresponding drive towards closer cooperation with foreign jurisdictions, including in the areas of the collection of evidence for use in foreign proceedings and the resolution of questions on foreign law. The Singapore Court has also recently instituted a procedure for the referral of questions of foreign law to foreign courts either upon application by the parties or on the Court's own motion. As questions of foreign law (substantive and procedural) frequently arise in proceedings for the enforcement of foreign judgments, this new procedure is likely to have a significant impact in future.

25 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

A foreign judgment registered under the RECJA and the REFJA may be directly enforced as a local judgment.

A foreign judgment enforced by a common law action would result in a local judgment that may be enforced.

Execution processes include writs of seizure and sale, writs of possession, garnishee orders and applications for examination of judgment debtors.

26 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Recognition or enforcement of foreign judgments tends to be decided on the facts of each case. In general, the main problems tend to relate to demonstrating that the foreign judgment is final and conclusive on the merits, and dealing with conflicting judgments from other foreign jurisdictions, and sometimes the same jurisdiction but from a court of coordinate jurisdiction.

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