

## Client Alert

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## Enhancing the International Enforceability of Singapore Judgments

Parties, in their commercial agreements with one another, will typically choose the jurisdiction and the court that will hear any disputes that may arise between them. In the event one party chooses to have the dispute heard in one jurisdiction, on what basis could the other party seek a stay of proceedings in order for the dispute to be heard in a more appropriate forum? At the conclusion of a trial, how would the winning party enforce the judgment obtained in his favour against the assets of the losing party in other jurisdictions?

These are often difficult questions. The enactment of the Choice of Court Agreements Act (the “**CCAA**”) by the Singapore Parliament on 14 April 2016, which gives effect to the 2005 Hague Convention on Choice of Court Agreements (the “**Convention**”), is a positive step forward for Singapore. In the words of the Senior Minister of State for Law, Ms Indranee Rajah, it is likely to boost Singapore’s position as “*a dispute resolution hub in Asia by enhancing the international enforceability of Singapore court judgments*”.

### The Existing Regime

Under the existing regime, Singapore court judgments are generally not directly enforceable in other jurisdictions (and vice versa), particularly if the two jurisdictions do not have any reciprocal arrangements or treaties on the enforcement of judgments. In respect of common law jurisdictions that do not have reciprocal arrangements with Singapore, what typically happens is that the winning party would have to commence a fresh set of proceedings in that other jurisdiction and sue on the court judgment as a debt.

The reciprocal enforcement regime in Singapore, in respect of Singapore court judgments, is governed by the Reciprocal Enforcement of Commonwealth Judgments Act (“**RECJA**”) and the Reciprocal Enforcement of Foreign Judgments Act (“**REFJA**”). The RECJA and REFJA allow for the mutual recognition and enforcement of judgments from states with whom Singapore has reciprocal treaty arrangements.

This existing regime is, however, currently limited to 11 states, namely:

- (a) the Commonwealth (viz the RECJA); and
- (b) Hong Kong (viz the REFJA).

### The Convention

Singapore became a signatory to the Convention on 25 March 2015. In essence, the Convention establishes a new international legal regime which requires contracting states to, amongst other things:

- (a) uphold exclusive choice of court agreements designating the courts of contracting states in international civil or commercial cases; and

- (b) recognise and enforce judgments of the courts of other contracting states designated in exclusive choice of court agreements, subject to the exceptions in the Convention.

This regime is not restricted to the superior courts of contracting states, and will apply to any court of a contracting state chosen by the parties as the exclusive forum for their disputes.

As such, once the Convention is ratified, and where a Singapore court is chosen as the court under an exclusive choice of court agreement, the courts of other contracting states will be obliged to suspend or dismiss parallel proceedings brought in their jurisdiction, in favour of the Singapore court. The court judgment obtained in Singapore will also be recognised and enforced by all the other contracting states.

Singapore will also have reciprocal obligations to afford the same aforesaid treatment to exclusive choice of court agreements in favour of the courts of other contracting states, and to the judgments of their courts. There are currently 28 states that are parties to the Convention, namely:

- (a) the European Union (with the exception of Denmark); and
- (b) Mexico.

The USA and Ukraine have both signed the Convention but have yet to ratify it.

## The Framework of the CCAA

The CCAA is the Act of Parliament that will implement the Convention regime.

### ***Recognition of Exclusive Choice of Court Agreements***

The CCAA confirms that where parties have chosen a Singapore court under the exclusive choice of court agreement, the Singapore court will have jurisdiction to decide the dispute unless the agreement is null and void under Singapore law. The Singapore court cannot generally decline jurisdiction on the basis that the dispute should be decided by the court of another state.

In the event the parties have chosen the court of another contracting state in an exclusive choice of court agreement, the Singapore court must stay or dismiss the matter in favour of the chosen court unless the chosen court has decided not to hear the case, or where the agreement is null and void under the law of the state of the chosen court.

### ***Enforcement of Judgments***

A judgment of a chosen court must also be recognised and enforced in Singapore so long as that judgment has effect and is enforceable in the state of the chosen court. This is subject to the following exceptions:

- (a) where it is mandatory to refuse recognition or enforcement (e.g. because the judgment was obtained by fraud with respect to a matter of procedure; the defendant was not notified in time to defend the proceedings; or recognition would be incompatible with Singapore public policy); and
- (b) where it is discretionary to refuse recognition or enforcement (e.g. the exclusive choice of court agreement is null and void; either of the parties lacked capacity to enter into the exclusive choice of court

agreement; or the foreign judgment is inconsistent with a Singapore judgment in a dispute between the same parties).

### ***Types of Cases***

The Convention and the CCAA only apply to international civil or commercial disputes. Matters of personal law (e.g. family, matrimonial, insolvency or consumer matters) are not covered. Other exclusions include tortious claims which do not arise from contracts, anti-trust suits and intellectual property matters.

## **The CCAA and the Existing Regime**

There may be some overlap where a foreign judgment falls within the scope of the CCAA and either the RECJA or the REFJA – e.g. in respect of a judgment of the English courts. The CCAA acknowledges this overlap and, in cases where there is overlap between the CCAA and either the RECJA or the REFJA, the CCAA will override the RECJA and the REFJA. The relevant legislation has been and/or will be amended to give effect to this, in order to avoid confusion and disputes as to which regime should apply.

## **Comments**

In her speech during the Second Reading of the Choice of Court Agreements Bill, Ms Indranee Rajah emphasised that the CCAA was necessitated because of the unprecedented growth in international trade and investment, which has seen a corresponding increase in cross-border disputes and heightened demand for cross-border dispute resolution services. The CCAA would accordingly “boost” Singapore’s position as a dispute resolution hub in Asia, and make the Singapore courts “a more attractive forum for determining cross-border disputes”.

In the area of arbitration, the Singapore International Arbitration Centre has helped to cement Singapore’s position as one of the most preferred seats of arbitration in the world. The newly-established Singapore International Commercial Court (“**SICC**”) is likely to do the same in meeting the demand for commercial dispute resolution in the region and internationally. It is only appropriate that the necessary infrastructure for the recognition of exclusive choice of court agreements and court judgments be set in place to pave the way for this<sup>i</sup>.

The Minister added that parties choosing Singapore courts as their exclusive dispute resolution forum will now have “greater assurance as to the enforceability of Singapore court judgments”, and that the range of countries in which Singapore judgments can be enforced has now expanded – and will keep on growing as more countries become signatories to the Convention.

In the words of the Minister, this is definitely a “key milestone in the development of Singapore’s legal industry”, and will take Singapore another step closer to its goal of becoming a premier international commercial dispute resolution hub.

<sup>i</sup> Under the CCAA, reference to the “High Court” in any exclusive choice of court agreement will be construed as including the SICC as well, unless a contrary intention appears in the agreement. Accordingly, a party specifying the Singapore High Court as the chosen forum will be taken to have included the SICC as a chosen court.