



## Dispute Resolution Update

*The recognition and enforcement of UK judgments in Singapore post no deal Brexit*

September 2019

### How are UK judgments currently enforced in Singapore?

Generally, a judgment of a foreign court may only be recognised and enforced under the domestic laws of the enforcing state, unless that enforcing state is bound by enforcement obligations under a treaty (bilateral or multilateral). Presently, such treaties are given force of law in Singapore through the following acts:

- Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) ("**RECJA**")
- Reciprocal Enforcement of Foreign Judgments Act (Cap 265) ("**REFJA**")
- Maintenance Orders (Reciprocal Enforcement) Act (Cap. 169, 1985 Rev Ed) ("**MOREA**")
- Choice of Court Agreements Act (Cap. 39A, 2017 Rev Ed) ("**CCAA**")

Absent an applicable treaty, a foreign final money judgment that is sought to be enforced in Singapore would have to be done by way of common law through the commencement of a fresh suit in the Singapore courts.

A UK judgment can therefore be recognised and enforced pursuant to RECJA, which applies to the judgments of the superior courts of 10 Commonwealth nations, including the UK. Further, the CCAA gives effect to the Hague Convention of 30 June 2005 on Choice of Court Agreements (the 2005 Hague Convention), whose ratifying states include the EU and thus presently the UK.

Where a foreign judgment is sought to be recognised and enforced in Singapore under RECJA or the CCAA, the process is substantially easier than

under common law—the registration application is made ex-parte and is primarily a formalistic one. The default practice for registration under RECJA is a light touch one where registration of foreign judgments is permitted unless certain formal features are missing. The onus is then on the judgment debtor to seek to set aside the registered judgment. There has only been one reported decision regarding enforcement under the CCAA, and in which the Singapore High Court required a hearing on an ex-parte basis before it recognised a UK summary judgment (*Ermgassen & Co Ltd v Sixcap Financials Pte Ltd* [2018] SGHCR 8).

### Are there any potential issues with the enforcement regime continuing to apply following no deal Brexit?

Following the passage of the European Union (Withdrawal) (No. 2) Act 2019 and the UK Supreme Court decision in *Miller, R (on the application of) v The Prime Minister* [2019] UKSC 41, it cannot be assumed that the exit day will remain that of 31 October 2019.

As discussed in the next section, there are pending bills in Parliament, which when passed, would repeal RECJA and essentially subsume the same under an expanded REFJA instead. However, these amendments may not be effected before 31 October 2019.

Pertinently, there is a real risk that the CCAA will not apply to existing UK exclusive choice of court agreements and UK judgments issued pursuant to the same.

Prior to 28 December 2018, there would have been concerns that a no deal Brexit would result in the UK no longer being a contracting party to the 2005

Hague Convention by virtue of it no longer being a member of the EU post no deal Brexit. However, on 28 December 2018, the UK deposited its instrument of accession to the 2005 Hague Convention. In the event of a no deal Brexit, the UK would ascend to and be bound by the 2005 Hague Convention as an independent contracting State.

Nonetheless, there is a real risk that this would result in a situation where only UK judgments issued pursuant to UK exclusive choice of court agreements, which agreements were entered into *after* exit day and the corresponding ascension of the UK to the 2005 Hague Convention, would thereby be recognised and enforced under the CCAA. This is because section 24(2) of the CCAA expressly provides that it "does not apply to an exclusive choice of court agreement that designates a court of another Contracting State as a chosen court, if the agreement is concluded before the Convention enters into force in that Contracting State".

In the present circumstances, it is unclear if the Singapore courts (or Parliament through legislative amendments) would choose to continue to give effect to UK exclusive choice of court agreements entered into prior to exit day and the UK ascension to the 2005 Hague Convention on the basis of the UK had been an EU member and thereby a contracting State to the 2005 Hague Convention.

## Will RECJA and the REFJA be applicable for enforcement of UK civil and commercial judgments?

The RECJA will continue to apply to final money judgments of the superior courts of UK post exit day of a no deal Brexit, assuming that an exit day which set for 31 October 2019.

REFJA currently only applies to final money judgments of the superior courts of Hong Kong, SAR. However, the Singapore's Ministry of Law has recently introduced amendments to REFJA, to be effected through the Reciprocal Enforcement of Foreign Judgments (Amendment) Bill (the "**Amendment Bill**"). Concurrently, RECJA is also sought to be repealed through the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill (the "**Repeal Bill**").

The Repeal Bill was introduced in Parliament on 5 August 2019 and, when passed, will come into effect on a date that the Minister appoints by notification

in the *Gazette*. The Amendment Bill was introduced in Parliament on 5 August 2019 and seeks to expand the types of judgments from a foreign country which may be registered and enforced under the amended REFJA on a reciprocity basis. It is expected that the jurisdictions designated under REFJA will go beyond just Hong Kong.

Notwithstanding the proposed repeal of RECJA under the Repeal Bill, there are savings and transitional provisions for foreign judgments obtained before the repeal date that are otherwise registrable under RECJA as well as for foreign judgments that have already been registered under RECJA.

Substantive amendments in the Amendment Bill include expanding the definition of 'judgment' beyond final or monetary judgments, the judgments of foreign 'superior' courts, as well as creating new grounds for refusing, setting aside registration and/or limiting enforcement of a registered foreign judgment. The Amendment Bill also essentially seeks to consolidate both RECJA and REFJA. This is because, in the event that the Minister extends the amended REFJA to a reciprocating Commonwealth jurisdiction, then RECJA will cease to have effect to that Commonwealth jurisdiction.

The Ministry has also expressed that the Amendment Bill will not impact the CCAA. Absent any amendments or subsidiary legislation to the CCAA, there is a real risk that all existing UK exclusive choice of court agreements and UK judgments issued pursuant to the same would not be recognised and enforced under the CCAA in the event of a no deal Brexit and the UK's ascension to the 2005 Hague Convention as an independent contracting State.

## If enforcement of a UK judgment is not completed prior to the exit day of no deal Brexit can the judgment creditor change enforcement regimes to ensure enforcement of the UK judgment?

Insofar as there are no envisaged changes to the enforcement regime of foreign judgments in Singapore prior to an exit day on 31 October 2019, there would be no need for a judgment creditor to change enforcement regimes to ensure enforcement of the UK judgment. Such UK judgments would remain enforceable under RECJA or the CCAA

(assuming continuity despite the UK's change of status as contracting State under the 2005 Hague Convention).

Even if the Amendment Bill is passed prior to exit day and the UK is designated as a jurisdiction to which REFJA applies, the recognition and enforcement of a UK judgment under REFJA would only be applicable if the UK judgment is made on a date after the date on which the UK is designated as a jurisdiction under REFJA.

As regards the CCAA, insofar as the UK is an overlapping jurisdiction under RECJA and the CCAA, a judgment creditor could choose to enforce a final money judgment of a UK superior court through RECJA (or REFJA as the case may be) in the event that the CCAA is no longer applicable by virtue of no deal Brexit.

*An earlier version of this article was published by LexisPSL prior to the European Union (Withdrawal) (No. 2) Act 2019 and the UK Supreme Court decision in Miller, R (on the application of) v The Prime Minister [2019] UKSC 41. Click [here](#) to read more.*

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