

NOTE ON ENFORCEMENT OF SICC JUDGMENTS

1. The Singapore International Commercial Court (“SICC”) is part of the Supreme Court of Singapore and is a division of the High Court. It is a superior court of law. SICC judgments may therefore be enforced in the same manner as other judgments issued by the Singapore High Court.

2. SICC judgments can be enforced in almost all major commercial jurisdictions and in many other regional ones. Presently, as elaborated on below, a judgment of the SICC is likely to be capable of registration or otherwise enforceable in:¹

- i. common law jurisdictions, including Australia, Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong SAR”), India and the United States of America (“the USA”);
- ii. the European Union (except Denmark);
- iii. various Asian jurisdictions, such as the People’s Republic of China (“China”), Japan and a number of ASEAN jurisdictions.

3. This note highlights the four usual modes by which SICC judgments may be enforced. They are as follows:

- i. enforcement under the 2005 Hague Convention on Choice of Court Agreements (“the Convention”);
- ii. enforcement by way of registration;
- iii. enforcement under the common law cause of action on a debt; and
- iv. enforcement under a civil law procedure.

Enforcement under the Convention

4. Singapore is a party to the Convention. Convention members are required to recognise and enforce each other’s judgments to which the Convention applies,² subject only to limited, specified grounds for refusing enforcement. As at 1 March 2018, there are 29 states (including Singapore) which are bound by the Convention. A current list of the contracting states can be found at: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>. China,

¹ For more information on the enforcement of foreign judgments in Asian jurisdictions, please refer to Adeline Chong (Ed), *Recognition and Enforcement of Foreign Judgments in Asia*, (Asian Business Law Institute, 2017) (“**ABLI Publication**”) accessible at <http://abli.asia/LinkClick.aspx?fileticket=I0rTeJ0yljw%3d&portalid=0> (accessed March 2018).

² The Convention only applies in international cases to exclusive choice of court agreements concluded in civil or commercial matters: see Article 1 of the Convention. It does not cover matters of personal law (eg. family, consumer, or insolvency matters): see Article 2 of the Convention for the full list of excluded categories.

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Montenegro, the Ukraine, and the USA have signed the Convention and it is pending their ratification.³

5. Through the Convention, SICC judgments may be enforced in:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Mexico
- Netherlands
- Poland
- Portugal
- Romania
- Singapore
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom

Enforcement by way of registration

6. As a judgment of a division of the High Court of Singapore, SICC judgments can be enforced by registration in courts of the countries and/or territories scheduled under:

i. the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264), which covers:

- Australia⁴
- Brunei Darussalam
- India
(except the State of Jammu and Kashmir)
- Malaysia
- New Zealand
- Pakistan
- Papua New Guinea
- Sri Lanka
- United Kingdom
- Windward Islands

ii. the Reciprocal Enforcement of Foreign Judgments Act (Cap 265), which covers Hong Kong SAR.

³ Note, however, that enforcement of SICC judgments in China and the USA is presently possible under the civil law principle of reciprocity (see paragraph 8) and the common law cause of action on a debt (see paragraph 7), respectively.

⁴ The federal jurisdiction of Australia including New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia, Australian Capital Territory, Norfolk Island, and Northern Territory. The SICC has had an Exchange of Letters with the Supreme Court of Victoria clarifying the arrangements for the cross-border enforcement of money judgments in each other's jurisdictions – see <https://www.supremecourt.gov.sg/publications/enforcement-of-money-judgments> (accessed March 2018).

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Enforcement under the common law cause of action on a debt

7. Enforcement in common law jurisdictions can generally be done by commencing an action on the SICC judgment against the losing party.⁵ This action is based on the common law cause of action on a debt, with the SICC judgment as evidence of that debt. This generally means that there is unlikely to be re-litigation on the merits of the original action. In this regard, it has been observed that “[i]t is hard to see how there could be a defence to such action. Accordingly, it should be possible to obtain summary judgment and enforce the summary judgment against the debtor as a matter of course.”⁶

Enforcement under a civil law procedure

8. There are many civil law jurisdictions with codes that provide for the enforcement of foreign judgments upon certain requirements being met.⁷ Some common requirements are as follows:⁸

- the court that issued the judgment had jurisdiction over the matter;
- the judgment is final, was obtained in accordance with due process, and is not against the public policy of the enforcing jurisdiction; and
- there is reciprocity in the recognition and enforcement of judgments between the court that issued the judgment and the court that is asked to enforce the judgment.

9. An SICC judgment may be enforceable in civil law jurisdictions when the applicable requirements are satisfied. For example, judgments of the Supreme Court of Singapore, of which the SICC is a part, have been enforced in China and Japan in accordance with the principle of reciprocity. In China, the Nanjing Intermediate People’s Court held that reciprocal relations with Singapore have been established,⁹ and recognised and enforced a decision of the

⁵ However, this route may not be available where Singapore judgments (which includes SICC judgments) are directly registrable in that jurisdiction. For example, Singapore judgments are in general directly registrable in Australia and Brunei and legislation has required that registrable judgments should be enforced only by way of registration: see, in this regard, the ABLI Publication at p 7 para 3 (for the position in Australia), and at p 22 para 12 (for the position in Brunei).

⁶ Anselmo Reyes, “Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court” (2015) 2 J. Int’l & Comp. L. 337 at p 342. See, for a similar observation, the keynote address delivered by Justice Quentin Loh at the Asia Pacific Insurance Conference 2017 at pp 13–14 (“In [a common law action on a judgment debt], the SICC judgment simply serves as evidence of the debt, which means the merits of the original action will not be re-litigated ... In many cases, summary judgment, *ie*, obtaining judgment without a full trial, will be available.”), accessible at <http://apacinsuranceconference.com/wp-content/uploads/2017/10/Justice-Quentin-Loh-Keynote-1.pdf> (accessed March 2018). For an example of a Singapore money judgment that was sued upon abroad and summary judgment obtained in the foreign court, see the decision of the District Court in the State of New York in *Kim v Co-op Centrale Raiffeisen-Boerenleebank B.A* 364 F.Supp.2d.346 (SDNY, 2005).

⁷ Samuel P. Baumgartner, “How Well do US Judgments Fare in Europe?” (2008) 40 *George Washington University International Law Review* 173.

⁸ For the position on the enforcement of foreign judgments in Asian jurisdictions generally, see the ABLI Publication. Based on the reports in the ABLI Publication, it appears that the civil law jurisdictions in which Singapore judgments may be enforced include China, Japan, the Philippines and South Korea.

⁹ (2016) Su 01 Xie Wai Ren No. 3 ((2016) 苏 01 协外认 3 号). The Nanjing Intermediate People’s Court relied on the Singapore High Court decision of *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa*

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Singapore High Court. In Japan, the Tokyo District Court concluded that a default judgment of the Singapore High Court had satisfied all the requirements in Art 118 of the Civil Procedure Code of Japan and enforced the Singapore judgment.¹⁰

Procedure for enforcement of money judgments

10. To facilitate the enforcement of money judgments in different jurisdictions, the Supreme Court of Singapore, of which the SICC is a part, has also entered into Memoranda of Guidance as to the Enforcement of Money Judgments (“MOGs”) with courts in various jurisdictions. These MOGs set out the mutual understanding of the procedures for the enforcement of money judgments in the other jurisdiction’s courts, generally on grounds similar to common law principles. To-date, MOGs have been concluded with the following courts:¹¹

- Bermuda – Supreme Court of Bermuda
- State of Qatar – Qatar International Court and Dispute Resolution Centre
- United Arab Emirates, Abu Dhabi – Abu Dhabi Global Market Courts
- United Arab Emirates, Dubai – Dubai International Financial Centre Courts

Recognition by parties of right to enforcement

11. As the SICC’s jurisdiction is primarily consensual, parties who have voluntarily chosen to have their disputes adjudicated by the SICC are not expected to need to resort to enforcement measures in most instances. This observation is supported by the experience in international arbitration where disputes are referred to arbitral tribunals by agreement and awards are typically honoured in full.¹²

12. In any event, each of these existing modes of enforcement may be complemented by the deeming provisions in the Supreme Court of Judicature Act (Cap 322), which provides at section 18F(1)(b) and (c) that parties to an agreement to submit to the jurisdiction of the SICC shall, subject to express provision in the agreement to the contrary, be considered to have agreed to (i) carry out any SICC judgment without undue delay and (ii) waive any recourse to any court or tribunal outside Singapore against any SICC judgment and the enforcement of such judgment.

Far East Pte Ltd [2014] 2 SLR 545 in which a judgment from China was ordered to be recognised and enforced. See also the ABLI Publication at pp 56–58, para 11.

¹⁰ Judgment of the Tokyo District Court, 19 January 2006 (Heisei 18), *Hanrei Times* No 1229 at p 334.

¹¹ See <https://www.supremecourt.gov.sg/publications/enforcement-of-money-judgments> (accessed March 2018).

¹² See Anselmo Reyes, “Recognition and Enforcement of Interlocutory and Final Judgments of the Singapore International Commercial Court” (2015) 2 J. Int’l & Comp. L. 337 at p 341. The article cites a 2008 survey of major corporations which use arbitration services conducted by the School of International Arbitration of Queen Mary College of London. This survey found that “high levels of compliance” were reported, with 84% of respondents indicating that the opposing party had honoured the award in full in more than 76% of cases. The “principal reason” given for compliance with the arbitral award was to preserve a business relationship. See also Gary B Born, *International Commercial Arbitration* vol III (2nd Ed, Wolters Kluwer) at para 26-03, where the learned commentator notes that “the overwhelming majority of international awards are complied with voluntarily”.

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13. In addition, parties may include the model SICC dispute resolution clauses in their jurisdiction agreement, which include the provision that parties who have submitted to or agreed to submit to the SICC's jurisdiction are deemed to have waived their right to defend against an action based on an SICC judgment in any jurisdiction. The model SICC dispute resolution clauses may be found at the following link on the SICC's official webpage: https://www.sicc.gov.sg/documents/docs/SICC_Model_Clauses.pdf.

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TABLE OF REFERENCES

1. 2005 Hague Convention on Choice of Court Agreements
(<https://www.hcch.net/en/instruments/conventions/full-text/?cid=98> – accessed March 2018)
2. Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264)
(<https://sso.agc.gov.sg/Act/RECJA1921> – accessed March 2018)
3. Reciprocal Enforcement of Foreign Judgments Act (Cap 265)
(<https://sso.agc.gov.sg/Act/REFJA1959> – accessed March 2018)
4. Adeline Chong (Ed), *Recognition and Enforcement of Foreign Judgments in Asia*, (Asian Business Law Institute, 2017)
(<http://abli.asia/LinkClick.aspx?fileticket=I0rTeJ0yljw%3d&portalid=0> – accessed March 2018)
5. Memoranda of Guidance and Exchange of Letters signed between the Supreme Court of Singapore and:
 - i. the Supreme Court of Victoria;
 - ii. the Supreme Court of Bermuda;
 - iii. the Qatar International Court and Dispute Resolution Centre;
 - iv. the Abu Dhabi Global Market Courts; and
 - v. the Dubai International Financial Centre Courts.(<https://www.supremecourt.gov.sg/publications/enforcement-of-money-judgments> – accessed March 2018).

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