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Asia

Singapore

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1. UNIFORMITY OF LAW AND REGULATIONS

Singapore is a city state governed by a single set of national laws and regulations. It is a common law jurisdiction. As the Singapore courts continually develop their jurisprudence in the area of private international law, English and Commonwealth cases are considered persuasive in instances where there is no local case law on the subject.

There are four ways by which foreign judgments may be enforced in Singapore:

- (1) by commencing a common law action for a debt owed pursuant to the foreign judgment (*common law debt action*);
- (2) by registering the foreign judgment under the Reciprocal Enforcement of Foreign Judgments Act 1959 (*REFJA*);¹
- (3) by registering the foreign judgment under the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (*RECJA*);² and
- (4) by making an application to the General Division of the High Court for a foreign judgment to be recognised and/or enforced under the Choice of Court Agreements Act 2016 (*CCAA*).³

1. The only country currently gazetted under the REFJA is the Hong Kong Special Administrative Region of the People's Republic of China.

2. See s. 2.3 below for a list of countries gazetted under this Act. The RECJA only applies to money judgments issued by the superior courts of Commonwealth countries.

3. Choice of Court Agreements Act (Cap 39A, Rev Ed 2017).

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The latter three methods provide efficient and effective means of enforcing foreign judgments. If it is not possible to proceed by way of registration, a judgment creditor may commence a common law debt action where judgment is usually obtained by way of summary proceedings on the basis that the judgment debtor has no defence to the claim. In cases where the judgment debtor does not enter an appearance, judgment may be entered in default.

There have been some important recent changes to the REFJA and RECJA scheme:

- (1) On 2 September 2019, the Reciprocal Enforcement of Foreign Judgments (Amendment) Bill and the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill were passed in Parliament, becoming the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (*'REFJA Amendment Act'*) and the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 (*'RECJA Repeal Act'*).
- (2) On 3 October 2019, the REFJA Amendment Act came into operation to amend the REFJA into a consolidated act (the *'2019 REFJA'*).
- (3) As at the date of this update, the RECJA Repeal Act has not come into force. The Commonwealth countries under the RECJA regime will be transferred to the 2019 REFJA regime once it does.

The main changes in the 2019 REFJA are as follows:

- (1) The scope of registrable judgments has been extended:
 - (a) Under the previous framework, only final money judgments given by superior courts in civil proceedings and final judgments given by superior courts in criminal proceedings for the payment of damages or compensation to an injured party were registrable.
 - (b) Under the 2019 REFJA, the following further judgments are recognised:⁴
 - (i) Non-money judgments, which would include freezing orders, injunctions and orders for specific performance.
 - (ii) Lower court judgments.
 - (iii) Interlocutory judgments.
 - (iv) Judicial settlements, consent judgments and consent orders.
- (2) To prevent circumvention of the requirement of reciprocity in the enforcement of foreign judgments, the 2019 REFJA provides that foreign judgments will not be recognised where:
 - (a) a judgment from a recognised court was given on appeal from an unrecognised court;⁵
 - (b) a judgment was recognised or enforced in a recognised court, but originated from a court that Singapore had no reciprocal enforcement arrangement with.⁶

4. Section 2 of the 2019 REFJA.

5. Section 3(4)(a) of the 2019 REFJA.

6. Section 3(4)(b)–(c) of the 2019 REFJA.

Execution may be issued on any registered judgment and on any judgment obtained pursuant to a common law debt action on the same basis as a judgment obtained in the Singapore courts.

2. JUDGMENTS

2.1. Definition

‘Judgment’ for the purpose of enforcement by a common law debt action refers to a final and conclusive judgment by a competent court for a definite sum of money.⁷ The test of finality is whether the foreign court would treat the judgment as finally deciding the rights of the litigants. A foreign judgment liable to be abrogated or varied by the court which pronounced it is not a final judgment for the purpose of a common law debt action.⁸ A foreign judgment will also not be enforced if it is shown that the foreign court lacked jurisdiction; the judgment was for a sum payable in respect of a penalty; the judgment was procured by fraud; enforcement of the judgment would be contrary to public policy; or if the proceedings in which the judgment was obtained were opposed to natural justice.⁹

The 2019 REFJA recognises several different instruments:

- (1) ‘Judgment’ means ‘an interlocutory or final judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, and includes a consent judgment, a consent order and a judicial settlement’.¹⁰
- (2) ‘Judicial Settlement’ means ‘a contract approved by, or concluded before, a court in the course of proceedings, being a contract (i) between the parties to proceedings before that court; (ii) by which those parties end those proceedings; and (iii) that is recorded by that court in an official document; but (b) does not include a consent order or consent judgment’.¹¹
- (3) The REFJA requires the foreign judgment to be final and conclusive as between the parties thereto before it can apply.¹² The grounds stated in the REFJA for refusing registration are that: (i) the foreign judgment has been wholly satisfied; or (ii) it has been discharged; or (iii) if it could not be enforced by execution in the country of the original court.¹³

7. *Poh Soon Kiat v. Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129; [2009] SGCA 60 at [14].

8. *Bellezza Club Japan Co Ltd v Matsumura Akihiko and others* [2010] 3 SLR 342; [2010] SGHC 94 at [14]–[16].

9. *Ibid.*, [11] and [33]. See also at [14].

10. Section 2(1) of the 2019 REFJA.

11. *Ibid.*

12. Section 3(2)(b) read with s. 3(3) of the 2019 REFJA.

13. Section 4(3) of the 2019 REFJA.

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The RECJA defines ‘judgment’ as ‘any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place’.¹⁴ The RECJA does not expressly require the Commonwealth judgment to be ‘final and conclusive’ before it can be registered, although allegations of fraud¹⁵ and the lack of jurisdiction of the foreign court¹⁶ are stated as grounds for refusing registration. There is an additional factor under the RECJA that the court is bound to consider in deciding whether to register the Commonwealth judgment in Singapore – that is, if in all the circumstances of the case, it is ‘just and convenient’ for it to do so. In this regard, the court is generally concerned with considerations of fairness and equity.

The CCAA implements the 2005 Hague Convention on Choice of Court Agreements (the ‘Hague Convention’) into Singapore law. It defines ‘judgment’ as ‘a final court decision (by whatever name called) on the merits, a consent order, a consent judgment or a judgment given by default’ or ‘a determination by a court of any costs or expenses relating to any such court decision, consent order, consent judgment or judgment given by default’.¹⁷

The requirements for the foreign judgment to satisfy the CCAA are:

- (1) it must be a judgment from a court of a Contracting State to the Hague Convention designated by an exclusive choice of court agreement¹⁸ concluded in a civil or commercial matter (a ‘chosen court’), or a court to which a chosen court had transferred the case to which the judgment relates;¹⁹
- (2) it must have effect in the state of origin, and it can only be enforced if it is enforceable in the state of origin;²⁰ and
- (3) the exclusive choice of court agreement cannot be concluded before the Hague Convention entered into force in that Contracting State (i.e., 1 October 2016).²¹

Matters excluded from the ambit of the Act are listed in section 9 of the CCAA. Generally, personal law matters, tortious claims that are non-contractual, claims relating to the validity of non-contractual infringement of intellectual property rights and antitrust matters are excluded.

14. Section 2(1) RECJA.

15. Section 3(2)(d) RECJA.

16. Section 3(2)(a) RECJA.

17. Section 2(1) CCAA.

18. Generally, a choice of court agreement is expressed. However, in the recent case of *Vizcaya Partners Ltd v. Picard* [2016] UKPC 5, the Privy Council held that an implied choice of court agreement could confer international jurisdiction on the foreign court. This has yet to be considered by the Singapore courts.

19. See ss 2, 3 and 8 CCAA.

20. Section 13(2) CCAA.

21. Section 24(1)–(2) CCAA.

Apart from these, there are two categories of grounds to challenge the recognition or enforcement of a foreign judgment under the CCAA.

First, the court must refuse to recognise or enforce a foreign judgment if:²²

- (a) the defendant was not notified of the document by which the proceedings were instituted in sufficient time to enable him to defend the proceedings unless the law of the foreign court permits the challenge of such notification and the defendant had entered appearance and presented his case without challenging the notification before the foreign court;²³
- (b) the foreign judgment was obtained by fraud in connection with a matter of procedure;²⁴ or
- (c) recognition or enforcement would be manifestly incompatible with the public policy of Singapore, including circumstances that would lead to incompatibility with fundamental principles of procedural fairness in Singapore.²⁵

Second, the court has the discretion to refuse to recognise or enforce a foreign judgment if:²⁶

- (a) the exclusive choice of court agreement is null and void under the law of the state of the chosen court unless the chosen court has determined that the agreement is valid;²⁷
- (b) a party to the exclusive choice of court agreement lacked capacity under Singapore law to enter into that agreement;²⁸
- (c) defendant was notified of the document by which the proceedings were instituted in a manner incompatible with fundamental principles in Singapore concerning the service of documents;²⁹
- (d) the foreign judgment is inconsistent with a judgment given by a Singapore court in a dispute between the same parties;³⁰
- (e) the foreign judgment is inconsistent with an earlier judgment given in another state between the same parties on the same cause of action, and the earlier judgment satisfied the conditions under Singapore law for recognition;³¹
- (f) the foreign judgment is being reviewed or appealed against in the state of origin³² or the time for applying for a review or appeal in the state of origin has not expired;³³

22. See s. 14 CCAA.

23. Section 14(a) CCAA.

24. Section 14(b) CCAA.

25. Section 14(c) CCAA.

26. See s. 15 CCAA.

27. Section 15(1)(a) CCAA.

28. Section 15(1)(b) CCAA.

29. Section 15(1)(c) CCAA.

30. Section 15(1)(d) CCAA.

31. Section 15(1)(e) CCAA.

32. Section 15(2)(a) CCAA.

33. Section 15(2)(b) CCAA.

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- (g) the exclusive choice of court agreement designates a chosen court which has the discretion to transfer the case to another court in the same state and does so, and the transferee court issues a judgment against a party who had objected in a timely manner to the transfer;³⁴ or
- (h) the foreign judgment awards damages in excess of compensation for the actual loss or harm suffered, and the court can refuse to recognise or enforce the foreign judgment to such extent.

2.2. Categories

- (a) *Money judgments*: The Singapore courts will enforce foreign judgments ‘under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty’.
- (b) *Non-money judgments*: The Singapore court may register non-money judgments under the REFJA if the court considers their enforcement to be just and convenient, or alternatively may make an order for such amount that it considers to be the monetary equivalent of the relief. This potentially includes judgments for equitable remedies such as injunctions and judgments for specific performance.
- (c) *Arbitration awards*: The procedure governing the enforcement of foreign arbitration awards is set out in the International Arbitration Act (Cap 143A, 2002 Rev Ed), which incorporates the UNCITRAL Model Law on International Commercial Arbitration. It provides that an award on an arbitration agreement may, by leave of the General Division of the High Court, be enforced in the same manner as a judgment or an order to the same effect and, where leave is so given, judgment may be entered in terms of the award.

Singapore is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*the New York Convention*). This Convention stipulates that each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon. Singapore is also a signatory to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which was signed on 18 March 1965. This Convention allows for enforcement in Singapore of any award obtained thereunder as if it were a final judgment of the Singapore court.

The RECJA also allows for the registration of a foreign arbitration award as a judgment for the purpose of enforcement if the foreign arbitration award has become enforceable as a judgment in that jurisdiction.

- (d) *Judgments concerning personal status*: Foreign judgments arising from matrimonial/family or probate proceedings are equally capable of being enforced in Singapore if they relate to the payment of a liquidated sum – for example, lump sum maintenance claims or the

34. Section 15(4) CCAA.

distribution of trust funds or costs awarded in these proceedings – provided that the assets of the party against whom the claim is being made are located in Singapore.

The Maintenance Orders (Reciprocal Enforcement) Act 1975 provides for the registration in Singapore of maintenance orders³⁵ made by the courts of reciprocating countries.³⁶ Upon registration, the foreign maintenance order may be enforced as if it had been an order originally obtained in the Singapore court.

If the foreign judgment is declaratory in nature – for example, a decree of divorce – it is not capable of enforcement.

- (e) *An award for multiple/punitive damages:* Although there are contending views as to whether an award for punitive (or exemplary) damages may be enforced in Singapore if it is liquidated, the better view is that an award of punitive damages by a foreign court to the successful plaintiff is not by itself penal and it would not be contrary to public policy to enforce such an award. The point remains an open one as it has not been decided by any Singapore court to date.

Under the CCAA, the court has the discretion to refuse to recognise or enforce a foreign judgment awarding damages that are in excess of compensation for the actual loss or harm suffered. Punitive damages thus potentially cannot be claimed under the CCAA.

- (f) *A judgment which is in itself a recognition of a previous foreign judgment:* There is no law in Singapore prohibiting the enforcement of ‘judgments on judgments’. The dicta of the Court of Appeal (Singapore’s apex court)³⁷ suggests that there is no reason in principle that a judgment creditor may not seek a second judgment to enforce the former, subject to the defence of abuse of process being made in the second action. It would appear that it is possible to enforce a judgment which was obtained in recognition or enforcement of a previous foreign judgment in Singapore. As discussed above, a judgment of a non-recognised court under the 2019 REFJA will not be recognised just because it is subsequently recognised by a recognised court.

35. These are orders providing for (a) the payment of a lump sum or the making of periodical payments by a man towards the maintenance of his wife or former wife or by a person towards the maintenance of his child; or (b) the payment by a person adjudged, found or declared to be a child’s father of expenses incidental to the child’s birth or, where the child had died, of his funeral expenses. *See* s. 6 read with s. 2.

36. New Zealand, United Kingdom, Hong Kong Special Administrative Region of the People’s Republic of China, Province of Manitoba, the Commonwealth of Australia and its external territories, the Bailiwick of Guernsey, the Bailiwick of Jersey, Brunei Darussalam, Cook Islands, the Republic of Malawi, Malaysia; Niue; the Independent State of Samoa, the Democratic Socialist Republic of Sri Lanka, Saint Vincent and the Grenadines, the Republic of Zambia, specified provinces and territories in Canada, and all the States in the Republic of India except the States of Jammu and Kashmir.

37. *Poh Soon Kiat v. Desert Palace Inc (trading as Caesar’s Palace)* [2010] 1 SLR 1129.

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- (g) *Foreign interim orders*:
- (i) *Relief pendente lite*: Interim orders are not enforceable; they are liable to be amended by the court of originating jurisdiction and are therefore not ‘final and conclusive’.
 - (ii) *Maintenance and custody*: The general rule applying to interim orders also applies to maintenance orders. However, if the maintenance order is one providing for periodical payments, it can be enforced by the local court if deemed final and conclusive by the court that made it.
- (h) *Judgments against the State or any of its organs*: As a sovereign State, Singapore and its organs cannot be subject to the jurisdiction of a foreign court unless it submits to such jurisdiction. A foreign judgment obtained without such a submission would not be enforceable in Singapore. If Singapore submits to the jurisdiction of the foreign court, then presumably any judgment given against it would be enforceable in Singapore subject to the defences discussed in section 10 *infra*.
- (i) *General*: A foreign judgment will not be enforced if it amounts to the direct or indirect enforcement of foreign penal, revenue or other public law.

2.3. Reciprocity

Reciprocity is not required if one proceeds by way of a common law debt action. It is, however, the touchstone of the statutory regimes, namely, REFJA, RECJA and the CCAA. The Singapore Court of Appeal has recently observed in *obiter* that a requirement of reciprocity is entirely consonant with the principle of comity, although the requirement for strict reciprocity is increasingly falling out of favour, and the absence of reciprocity would in practice rarely be an obstacle to the recognition of a foreign judgment.³⁸

Judgments from the superior courts of the following countries enjoy reciprocity under the RECJA:

- Hong Kong (for judgments obtained on or before 30 June 1997).
- New Zealand.
- Sri Lanka.
- Malaysia.
- The Windward Islands.
- Pakistan.
- Brunei Darussalam.
- Papua New Guinea.
- India (except the State of Jammu and Kashmir).
- United Kingdom.

Judgments from the specified courts of the following countries enjoy reciprocity under the RECJA:

38. *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v. Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102, [2021] SGCA 14 at [39].

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

There is presently only one country gazetted under the REFJA: the Hong Kong Special Administrative Region of the People's Republic of China. It is likely that the countries stated above will be moved under the 2019 REFJA regime although that has not happened as at the date of this update.

Under the CCAA, a Contracting State refers to a State or Regional Economic Integration Organisation which is party to the Hague Convention. The States party to the Hague Convention are listed:

- (1) Austria
- (2) Belgium
- (3) Bulgaria
- (4) Croatia
- (5) Cyprus
- (6) The Czech Republic
- (7) Denmark
- (8) Estonia
- (9) European Union
- (10) Finland
- (11) France
- (12) Germany
- (13) Greece
- (14) Hungary
- (15) Ireland
- (16) Italy
- (17) Latvia
- (18) Lithuania
- (19) Luxembourg
- (20) Malta
- (21) Mexico
- (22) Montenegro
- (23) The Netherlands
- (24) Poland
- (25) Portugal
- (26) Romania

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- (27) Slovakia
- (28) Slovenia
- (29) Spain
- (30) Sweden
- (31) United Kingdom
- (32) Ukraine³⁹
- (33) United States⁴⁰
- (34) China⁴¹
- (35) Israel⁴²
- (36) Republic of North Macedonia.⁴³

Notably, all European Union Member States are party to the Hague Convention.

3. CURRENCY REGULATIONS AND RESTRICTIONS

There are no exchange control restrictions on the payment of money pursuant to a foreign judgment. The Monetary Authority of Singapore abolished exchange controls in 1978.

The Singapore courts can enter judgments in foreign currency where that is the currency of claim.

4. DOCUMENTARY REQUIREMENTS

An application for enforcement by registration under the REFJA or RECJA must be supported by an Affidavit exhibiting either the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in English, a translation certified by a notary public or authenticated by Affidavit.⁴⁴

Evidence of an individual's authority to act on behalf of a company in enforcement proceedings may be in the form of a valid power of attorney or a signed director's resolution appointing the individual to act on the company's behalf. The formal requirements in this regard can usually be found in the company's Memorandum and Articles of Association.

39. Signed but not ratified/acceded.

40. Signed but not ratified/acceded.

41. While China has not ratified the CCAA, on 31 Aug. 2018, the Supreme Court of Singapore and the Supreme People's Court of the People's Republic of China signed a Memorandum of Guidance (*MOG*) on the recognition and enforcement of money judgments in commercial cases. Although the *MOG* is not a treaty and has no binding effect, Chinese courts are expected to be guided by the *MOG* when it comes to enforcement of a Singapore judgment in China. The *MOG* sets out various conditions for enforcement – most importantly, it stipulates that the courts of the PRC will not review the merits of a Singapore judgment and it may only be challenged on limited procedural and jurisdictional grounds (unless the judgment violates public policy).

42. Signed but not ratified/acceded.

43. Signed but not ratified/acceded.

44. Order 60 Rule 3(1)(a), Rules of Court 2021 (*ROC*).

An Affidavit in support of an application under the REFJA or RECJA must allege:⁴⁵

- (i) that the judgment creditor is entitled to enforce the judgment;
- (ii) that as at the date of the application, the judgment has not been satisfied or the extent to which it remains unsatisfied;
- (iii) where the application is made under the RECJA, that the judgment does not fall within any of the cases in which a judgment may not be ordered to be registered under section 3(2) of the RECJA;
- (iv) where the application is made under the REFJA, that at the date of the application the judgment can be enforced by the issuance of an enforcement order in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 5 of the REFJA; and
- (v) where the application is made under the REFJA, the amount of interest that has become due under the judgment up to the time of registration.

There is no rule requiring supporting documents to be originals (unless the authenticity of the document(s) is challenged), but any judgment issued by the foreign court must be a certified true copy. Any documents exhibited to the applicant's Affidavit should be certified by a notary public.

An application under the CCAA must be made by an originating application without notice supported by Affidavit.⁴⁶

The Affidavit must state, to the best of the information or belief of the deponent:⁴⁷

- (i) that the judgment, the whole or part of which is to be recognised or recognised and enforced, is a foreign judgment within the meaning of section 2(1) of the CCAA;
- (ii) where the foreign judgment or part of the foreign judgment is to be recognised, that the judgment or that part (as the case may be) has effect in the State of origin;
- (iii) where the foreign judgment or part of the foreign judgment is to be enforced, that the judgment or that part (as the case may be) is enforceable in the State of origin;
- (iv) that the exclusive choice of court agreement, applicable to the dispute in relation to which the foreign judgment was obtained, was concluded in a civil or commercial matter;
- (v) either of the following:
 - (a) that at the date of the application, the foreign judgment, or the part of the foreign judgment to be recognised or recognised and enforced, has not been satisfied;

45. Order 60 Rules 3(1)(c) and 3(1)(d), ROC.

46. Order 37 Rule 2(1), ROC.

47. Order 37 Rule 2(2), ROC.

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- (b) the amount in respect of which, at the date of the application, the foreign judgment, or the part of the foreign judgment to be recognised or recognised and enforced, remains unsatisfied;
- (vi) that the foreign judgment does not relate to a matter mentioned in section 9 or 10 to which the Act does not apply;
- (vii) that there are no circumstances under Part 3 of the Act in which the Court must refuse to recognise or enforce the foreign judgment;
- (viii) whether there are any circumstances under Part 3 of the Act in which the Court may refuse to recognise or enforce the foreign judgment; and
- (ix) where there are circumstances in which the Court may refuse to recognise or enforce the foreign judgment, each reason why the Court should nevertheless recognise or enforce the judgment.

The Affidavit must exhibit a complete and certified copy of the foreign judgment and the relevant exclusive choice of court agreement.⁴⁸ Like the REFJA and RECJA, documents not in English must be accompanied by a certified translation.⁴⁹

5. CONVENTIONS

Singapore has acceded to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction on 28 December 2010 and the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Singapore has also ratified the Hague Convention on Choice of Court Agreements. Singapore is, however, not a signatory to the other Hague conventions.

6. AUTHENTICATION OF DOCUMENTS

There are no specific requirements on authentication of documents. Authentication should as far as possible be by the issuing party, for example, by the foreign court. Authentication by a notary public or a consulate officer of the Singapore Embassy or High Commission is advisable.

7. TRANSLATION OF DOCUMENTS

Documents for use in Singapore court proceedings must be translated into English.

48. Order 37 Rule 2(3), ROC.

49. Order 37 Rule 5, ROC.

Translation should as far as possible be done in Singapore. The Singapore courts have a panel of official translators and translations for the purpose of Singapore proceedings, which are usually carried out by this panel for a fee. For languages that are outside the proficiency of court translators, the translation should be carried out by translators who have been accredited by the relevant High Commissions or Embassies in Singapore. If translation into English is carried out abroad, the translation should be done by a sworn translator or certified correct by an official or by a diplomatic or consular agent or notary public of the country in which the judgment (or award) was made.

8. REOPENING OR REVIEW OF JUDGMENTS

The Singapore courts will generally refrain from reviewing or examining the merits of the foreign judgment that is sought to be enforced here (subject to the relevant defences being raised as discussed in section 10 *infra*) as a matter of international comity. For example, section 13(3)(a) of the CCAA explicitly provides that the court must not review the merits of the foreign judgment except where necessary to apply specified provisions.

However, an allegation of fraud not previously raised in proceedings in the foreign court can be raised before the Singapore court for the purpose of impeaching the foreign judgment sought to be enforced. Different rules apply depending on the nature of the fraud. Where the alleged fraud is intrinsic (e.g., procuring forged evidence), the foreign judgment may only be challenged on the ground of fraud where fresh evidence has come to light that reasonable diligence on the part of the judgment debtor would not have previously uncovered and such fresh evidence would likely have made a difference to the outcome of the trial (*the Fresh Evidence Rule*).⁵⁰ Where fraud is extrinsic (e.g., bribery of witnesses), then the foreign judgment can be challenged even if no freshly discovered evidence is produced.⁵¹ The Fresh Evidence Rule is meant to bring finality to litigation and prevent the enforcement forum from being placed in an invidious position whereby it is asked to pass judgment or exercise appellate jurisdiction on an issue – including the very allegation of fraud – which has been decided by another court of competent jurisdiction.

Where the foreign judgment has already been registered under the REFJA, fraud necessitates that the court set aside the registration. Where the foreign judgment has been registered under the RECJA, the court is only granted a discretion to set aside the foreign judgment.⁵²

50. *Bellezza Club Japan Co Ltd v. Matsumura Akihiko and others* [2010] 3 SLR 342; [2010] SGHC 94 at [12].

51. See *Hong Pian Tee v. Les Placements Germain Gauthier Inc* [2002] 1 SLR(R) 515; [2002] SGCA 17 at [19] and [27]; *Eleven Gesellschaft Zur Entwicklung Und Vermarktung Von Netzwerktechnologien MBH v. Boxsentry Pte Ltd* [2014] SGHC 210 at [99]. See also *Ong Han Nam v. Borneo Ventures Pte Ltd* [2021] SGCA 21 at [49].

52. *Tan Hock Keng v. Malaysian Trustees Bhd and another matter* [2021] SGHC(A) 18 at [26].

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9. PENDING PROCEEDINGS

If there are pending proceedings instituted by the defendant in Singapore or in another foreign country in which the issues to be determined are the same, the Singapore court may, prior to the granting of judgment in the foreign forum, stay the domestic proceedings to avoid multiplicity of actions.

If no stay is ordered and judgment is pronounced in the Singapore courts prior to the foreign courts, the subsequent foreign judgment will not be enforced locally if it is inconsistent with the Singapore judgment.

It is unclear if a judgment given in the foreign courts would be enforced locally if local proceedings on the same or substantially the same subject matter are pending. On the one hand, such foreign judgment is capable of raising an estoppel that would prevent the Singapore court from deciding the matter. On the other hand, the foreign judgment may nonetheless be recognised as the desirability of bringing litigation to an end is just as relevant when foreign and local suits pertaining to the same or substantially the same subject matter are almost contemporaneous, and a rule of non-recognition in such circumstances might incentivise the strategic initiation of pre-emptive local proceedings to prevent the recognition of an impending foreign judgment.⁵³

A pending appeal against the judgment in the foreign court does not prevent the judgment from being deemed ‘final and conclusive’. The position at common law is no different from that under the statutory provisions.

However, the fact that an appeal is pending or that the judgment debtor is entitled and intends to appeal is a ground for refusing the registration under section 3(2)(e) of the RECJA. Under the REFJA, a foreign judgment that is pending appeal can still be registered if it is final and conclusive.⁵⁴ Under section 6(1) of the REFJA, the court may either set aside the registration or adjourn the application to set aside the registration ‘until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal’. In such circumstances, the judgment creditor can re-register the judgment after the appeal has been disposed of or when the judgment becomes legally enforceable, as the case may be.

Under the CCAA, a pending appeal or review of the foreign judgment is a discretionary ground for the court to refuse to recognise or enforce a foreign judgment.⁵⁵ However, when the review or appeal has been disposed of, a subsequent application for the recognition and/or enforcement of the foreign judgment can be made.⁵⁶

It is also very likely that the Singapore court will stay execution/enforcement proceedings pending the outcome of the appeal.

53. *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v. Merck KGaA (formerly known as E Merck)* [2021] 1 SLR 1102; [2021] SGCA 14 at [38].

54. *Tan Hock Keng v. Malaysian Trustees Bhd and another matter* [2021] SGHC(A) 18 at [27].

55. Section 15(2)(a) CCAA.

56. Section 15(3)(a) CCAA.

10. DEFENCES

In summary, the various defences to the enforcement of a foreign judgment in Singapore are that:

- (i) the foreign judgment has been wholly satisfied or discharged;
- (ii) the judgment debtor, being a person who neither carried on business nor ordinarily resided within the jurisdiction of the foreign court, did not voluntarily appear or submit to the court's jurisdiction;
- (iii) the judgment debtor, being the defendant in the original proceedings, was not duly served with the process of the foreign court and did not so appear;
- (iv) the foreign judgment is not enforceable in the jurisdiction in which it was obtained;
- (v) there had been a breach of natural justice in the proceedings before the foreign court (whether there had been such a breach is determined by the law of the forum; the breach complained of must be a denial of substantive justice as opposed to mere procedural irregularity);
- (vi) enforcement of the foreign judgment would be contrary to public policy in Singapore;
- (vii) the foreign court which granted the foreign judgment had no jurisdiction to do so;
- (viii) the foreign judgment was obtained by fraud;
- (ix) the foreign judgment is not final and conclusive; or
- (x) the judgment debtor intends to appeal or has appealed against the foreign judgment.

11. JURISDICTION

A foreign judgment is enforceable provided the foreign court had jurisdiction (according to Singapore conflict of laws rules) and was properly seized of the matter.

The Singapore courts will recognise a court of a foreign country as having jurisdiction in giving a judgment in personam where:⁵⁷

- (i) the judgment debtor was, at the time proceedings were instituted, resident or present in the foreign country;
- (ii) the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the foreign court;
- (iii) the judgment debtor had submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings; or

57. *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd* [2014] 2 SLR 545 (HC).

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- (iv) the judgment debtor had before the commencement of proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the court of the foreign country.

The Singapore courts will recognise a court of a foreign country as having jurisdiction in giving a judgment in rem if the subject matter of the proceedings wherein that judgment was given was immovable or movable property that was situated in the country of that court⁵⁸ at the time of the proceedings in the original court.⁵⁹

The entry of appearance in the foreign court by the judgment debtor for the purpose of protecting or obtaining the release of property seized or threatened with seizure in the proceedings or to contest the jurisdiction of that court will not preclude him or her from mounting a jurisdictional challenge against that court in enforcement proceedings.

However, in the event he or she enters an appearance and contests the claim, but still pleads on the merits, agrees to a consent order or, upon failing to appear at first instance, appeals on the merits, this will still be deemed a voluntary submission to the jurisdiction of the originating court.

On a side note, if the judgment debtor had contested jurisdiction in the proceedings before the foreign court and was unsuccessful, the foreign decision/judgment on the issue of jurisdiction would give rise to *res judicata*, which would prevent the matter from being relitigated in Singapore.

Conversely, if a litigant enters an appearance and pleads to the merits of the case without contesting the jurisdiction of the court, this is automatically deemed voluntary submission. Since it is trite law that a litigant who voluntarily submits him or herself to the jurisdiction of a court cannot later dispute that same jurisdiction, the litigant is henceforth bound by his or her appearance.

There is no rule that foreign default judgments will be treated differently in Singapore. It is commonly argued that default judgments, not being judgments obtained on the merits, are not final and conclusive since they are liable to be set aside upon the judgment debtor's application in the foreign judgment. In general, whether a default judgment is final and conclusive depends on whether the foreign court treats the judgment as such. Under English law, a default judgment is generally final and conclusive. It may be argued in opposition that in that case, the judgment debtor should show not only that he or she intends to or has taken out an application to set aside the default judgment in the foreign court but also that such application is likely to succeed. The mere fact that the default judgment is liable to be set aside when the judgment debtor is not serious about exercising his or her right to do so should not be sufficient to stave off enforcement proceedings. The Singapore court may stay enforcement proceedings pending the outcome of an application to set aside the foreign

58. These factors are listed under a deeming provision in the 2019 REFJA; the Singapore courts will deem that the foreign court had jurisdiction if one of these factors is satisfied.

59. See, e.g., 2019 REFJA s. 5(2)(b).

default judgment in the foreign court or, where no setting aside application has been taken out, direct parties to apply to the foreign court to determine whether the application for the setting aside of the foreign default judgment would succeed before it. However, it is useful to note that default judgments fall within the ambit of the CCAA.

Judgment given pursuant to a failure by the defendant to enter an appearance in the action, failure by the plaintiff to file his or her Statement of Claim or failure by the defendant to file his or her defence (or the plaintiff to file his or her defence to counterclaim) will be regarded by the Singapore court as a ‘default judgment’.

The Singapore court is likely to uphold a clause in the contract between parties conferring the foreign court with exclusive jurisdiction and on which the foreign court relied in exercising its jurisdiction. Local cases exhibit a general judicial willingness to hold that a foreign court has jurisdiction in cases where there is a prior agreement to submit to the jurisdiction of the foreign court.

The Singapore courts will, in enforcement proceedings, grant leave to serve the writ for a common law debt action on the judgment debtor outside Singapore solely on the basis that the action is to enforce a foreign judgment, notwithstanding that the judgment debtor has no personal connection with Singapore. The judgment debtor does not have to be a citizen of or be domiciled in Singapore or carry on a business here for the Singapore courts to exercise its jurisdiction; it is sufficient that the judgment debtor has assets in Singapore against which execution may be levied.

12. CONTRACTUAL WAIVER

Parties to a contract may agree to waive the service requirements for any originating court process or provide for a particular method of service. Service carried out pursuant to a contract will be accepted by the Singapore court as good service.

By the same token, the Singapore court will not decline to enforce a foreign judgment on the ground that such judgment was granted where there had been a contractual waiver of procedural requirements which must ordinarily be followed in an action begun in Singapore.

13. SERVICE REQUIREMENTS

The Singapore court does not require the originating process issued in the foreign court to have been served in a manner that is in accordance with the Singapore rules of civil procedure before the foreign judgment will be enforced. The defendant will be held to have sufficient notice of the proceedings in the foreign court as long as service was effected in accordance with the laws of the foreign country.

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14. CESSION

The cession of a judgment to another foreign claimant or a local claimant is akin to an assignment of rights in common law.

The definition of ‘judgment creditor’ in the RECJA and REFJA includes the successors and assigns of that person. On a plain reading of the statutes, a foreign judgment that is the subject of a cession will be recognised by the Singapore courts upon the claimant to whom the judgment was ceded showing that the cession was proper and valid.

There is no advantage in ceding the judgment to another claimant since whether a foreign judgment is capable of enforcement depends on the nature of the judgment and not on the identity of the claimant as such.

15. INTERIM RELIEF

It is possible for the judgment creditor to obtain interim relief pending the enforcement of the foreign judgment in Singapore. The most common form of relief is by way of an interlocutory prohibitory injunction restraining the judgment debtor from dealing with or disposing of his or her assets pending the outcome of the enforcement proceedings. The granting of such relief is governed by equitable principles.

While there is no rule requiring a judgment creditor seeking interim relief to provide security for costs, the court will ordinarily order the creditor to fortify his or her undertaking to the court that he or she will pay any damages that the judgment debtor may sustain if it turns out subsequently that the interim relief ought not to have been granted.

The CCAA does not apply to interim measures of protection.⁶⁰

16. INTEREST

The Singapore court will grant interest as awarded in the original judgment. Otherwise, the Singapore court will award the default rate of 5.33% per annum on the principal sum owed from the date of the Singapore proceedings to the date of judgment.⁶¹

The same default rate applies for the interest awarded upon recognition of the foreign judgment.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

The estimated time required for enforcing a foreign judgment by way of a common law debt action is within two months of commencing the action if

60. Section 10(1) CCAA.

61. Supreme Court Practice Direction No. 1 of 2007.

the judgment debtor fails to enter an appearance or file a defence within the stipulated time, enabling the judgment creditor to obtain a judgment in default. If the matter is contested, the foreign judgment may be enforced in approximately three to six months if the judgment creditor succeeds in obtaining summary judgment. If the matter goes to trial, it may take about twelve to eighteen months before final judgment is obtained.

However, enforcement by way of registration under the RECJA and REFJA takes about four weeks if registration is uncontested. It could take anything between three to twelve months (possibly more) if registration is contested.

A judgment may be enforced in Singapore by:

- (i) a writ of seizure and sale against movable and immovable property. The seized property will then be sold by auction by the Sheriff; or
- (ii) bankruptcy proceedings under the Insolvency, Restructuring and Dissolution Act 2018 (*IRDA*). A creditor can make a bankruptcy application against an individual debtor pursuant to section 307 of the said Act.⁶² If, however, the judgment debtor is a company, the judgment creditor can apply to the court to wind up the company pursuant to section 124(1) of the *IRDA*.

A judgment debtor will not be imprisoned because he or she is unable to pay his or her debts. However, a judgment debtor may be arrested if it appears to the court that there is probable reason for believing, having regard to his or her conduct, or the state of his or her affairs, or otherwise, that he or she is likely to leave Singapore with a view to avoiding payment of such money or to avoiding examination in respect of his or her affairs.

When a writ of execution is issued and delivered to the Sheriff, he or she will fix an appointment for execution. An application for an early date for the appointment may be made to the registrar if, for example, the judgment debtor is dissipating assets. In addition to the above, the judgment creditor may also commence garnishee proceedings to recover the judgment debt. A provisional garnishee order may be obtained on an *ex parte* basis. The judgment creditor is then required to serve the provisional garnishee order on the garnishee. The garnishee may show cause against the provisional order if it disputes the debt. Otherwise, the judgment creditor may proceed to seek a final garnishee order, which will require the garnishee to pay over to the judgment creditor the sum that it is indebted to the judgment debtor for within a stipulated time limit.

Generally, parties may appeal against any decision taken in enforcement proceedings (e.g., the registration or setting aside of the registration of a foreign judgment), judgment (summarily decided or after a full trial) in a common law debt action, the grant or setting aside of judgment in default without requiring leave of court. No appeal may be brought to the Court of

62. Where a judgment debtor has been made bankrupt, he or she will require the permission of the Official Assignee to travel out of the country.

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Appeal where a Judge in chambers has ordered a default judgment to be set aside unconditionally or on the condition that the judgment debtor gives security (unless the appellant is the judgment debtor).

An application to court is usually heard by a registrar in chambers at the first instance. A party intending to appeal has fourteen days from the date of the order or decision of the registrar to appeal to a Judge in chambers. It has one month to appeal to the Court of Appeal against the decision of the Judge. An appeal does not operate as a stay of execution; an appellant would have to make an application for a stay. The court will grant a stay if the appellant can show that the appeal will be rendered nugatory if a stay is not granted.

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

For an application under RECJA or REFJA, the court fees at the Supreme Court level are as follows:⁶³

- (i) SGD 500–SGD 1,000 for sealing of originating application;
- (ii) SGD 50 for filing of Affidavit of twenty-five pages or less in support of registration, or SGD 2.00 per page for filing of Affidavit if the Affidavit exceeds twenty-five pages (not including processing and transmission fees); and
- (iii) SGD 100–SGD 200 for entry or sealing of order giving leave to register a foreign judgment.

If enforcement is by a common law debt action, court fees are as follows:⁶⁴

- (i) SGD 500–SGD 1,000 for sealing of originating summons;
- (ii) SGD 500–SGD 1,000 for sealing a summons for summary judgment;
- (iii) SGD 50 for filing of Affidavit of twenty-five pages or less in support of registration, or SGD 2.00 per page for filing of Affidavit if the Affidavit exceeds twenty-five pages (not including processing and transmission fees);
- (iv) SGD 100–SGD 200 on entering/sealing any order (e.g., summary judgment); and
- (v) SGD 100–SGD 200 on entering/sealing judgments or orders obtained at trial, hearing or further consideration of a cause or matter in court.

For requests relating to translations of documents to the Court in Singapore, the court fees are as follows:

- (i) SGD 45 per page or part thereof on a certified translation by an Interpreter of the Court.

63. Fourth Schedule to the ROC.

64. *Ibid.*

It is common for Singapore lawyers to charge clients on the basis of time spent on their matters according to pre-agreed rates. Fees for an agreed scope of work are also often agreed or capped.

Contingency fee arrangements are prohibited.⁶⁵

A losing party in Singapore will usually be ordered to pay the successful party's party-and-party costs (*P&P costs*) of the proceedings (which would include all court fees). The litigants must of course bear the costs of their own lawyers also known as solicitors and own client costs (*S&C costs*). P&P costs are usually a fraction of S&C costs, and a litigant should not ordinarily expect to recover more than 50% of S&C costs by way of P&P costs.

The judgment creditor may be ordered to give security for the costs of commencing a common law debt action and/or of the application to register the judgment under the RECJA or REFJA,⁶⁶ including the costs of any proceedings brought to set aside the registration if:⁶⁷

- (i) such a judgment creditor is an individual ordinarily resident outside Singapore;
- (ii) he or she is a nominal claimant who is suing for the benefit of some other person or is being funded by a non-party, and there is reason to believe that he or she will be unable to pay the costs of the defendant if ordered to do so;
- (iii) his or her address is not stated in the originating claim or originating application or is incorrectly stated therein; or
- (iv) he or she has changed his or her address during the course of the proceedings with a view to evading the consequences of the litigation.

The judgment debtor must also be able to show that the judgment creditor does not have a bona fide claim with a reasonable prospect of success.

19. BANKRUPTCY/LIQUIDATION

In the event of bankruptcy, either as a result of the foreign judgment or as a result of local bankruptcy proceedings, the foreign judgment creditor will share in the dividends *pari passu* with other unsecured creditors unless his or her claim enjoys a priority recognised by Singapore law, that is a claim falling within section 352(1) of the IRDA. Similarly, in liquidation, the *pari passu* principle applies unless the foreign creditor's claim falls within section 203(1) of the IRDA.

A foreign trustee/liquidator appointed as a result of foreign bankruptcy/winding-up proceedings has the same powers and functions as a local trustee/liquidator over assets in Singapore. Singapore courts will generally recognise and give effect to foreign insolvency proceedings without the foreign

65. Section 107(1)(b) of the Legal Profession Act 1966.

66. Order 60 Rule 4, ROC.

67. Order 9 Rule 12, ROC.

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liquidator/trustee having to make a fresh application for this purpose. While all movable property in Singapore automatically vests in the foreign liquidator/trustee, they would have to seek leave of court to vest immovable property in Singapore in him or her.

20. LAWYERS (WHO CAN APPEAR?)

All Singapore-qualified lawyers holding a current practising certificate may appear in Singapore courts. The Legal Profession Act 1966 has recently been amended to relax the ad hoc admission of English Queen’s Counsel and appointments of equivalent distinction.⁶⁸

21. INTERNATIONAL TREATIES

In the enforcement of foreign judgments, Singapore has so far only accorded reciprocity to countries listed under the RECJA and REFJA. Such reciprocity, however, does not stem from any bilateral or special treaties entered into between Singapore and the countries listed, but from a unilateral determination by the Minister that there is such ‘substantial reciprocity’ in the foreign law.

As stated earlier, Singapore is a signatory to the New York Convention and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. It has also acceded to the Vienna Convention on Diplomatic Relations as well as the Vienna Convention on Consular Relations.

Singapore has also ratified the Hague Convention on Choice of Court Agreements.

22. CROSS-EXAMINATION OF AFFIDAVIT’S DEPONENT

Evidence in any application is given by Affidavit. The Singapore court has the discretion to permit cross-examination on an Affidavit. The onus is on the applicant to show why the deponent should be cross-examined. Cross-examination on an Affidavit will be allowed to test the veracity of the deponent’s evidence where there is a question of motive or good faith of the deponent.

68. Section 15(1), Legal Profession Act 1966. It is expected that the reference to ‘Queen’s Counsel’ in the provision will be amended to ‘King’s Counsel’, in keeping with the automatic change of all QC titles to KC on 8 Sep. 2022 pursuant to the Demise of the Crown Act 1901, s. 1.

23. REQUIRED AFFIDAVIT

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE
REPUBLIC OF SINGAPORE**

OA No. of [•]/ **In the Matter of the Reciprocal Enforcement of Foreign
Judgments Act 1959 /
In the Matter of the Reciprocal Enforcement of
Commonwealth Judgments Act 1921 [as the case may be]**
And
**In the Matter of a Judgment of [•] obtained in Action No. [•]
and dated [•]**
Between
ABC COMPANY or ABC (RC No [•]) or (NRIC No [•])
... Judgment Creditor
And
EFG PTE LTD or EFG (RC No [•]) or (NRIC No [•])
... Judgment Debtor

Affidavit

I, [•] (NRIC No [•]) care of [•], do make oath/affirm and say as follows:

1. I am the [•] of the Judgment Creditor herein, and I am duly authorised to make this Affidavit on their behalf.
2. I have been concerned in the matters hereinafter referred to, and insofar as these matters are within my personal knowledge, they are true, and insofar as they are not within my personal knowledge, the statements and the facts herein deposed to are based on information gathered and obtained by me in my capacity as [•] of the Judgment Creditor from my perusal of all the papers and documents relating to this matter in the possession of the Judgment Creditor and which such information I verily believe to be true.
3. By a judgment of the court of [•] dated [•] (the '**Foreign Judgment**'), obtained in Action No. [•] commenced by [•], it was adjudged that the Judgment Debtor pays the Judgment Creditor the sum of [•] together with interest thereon at the following rates under the law of [•]:
 - (a) [•]
 - (b) [•]
4. A certified copy of the Foreign Judgment authenticated by the seal of the court of [•] is now produced and shown to me, marked '**JC-1**'.
5. The full name, address and other particulars of the Judgment Creditor and the Judgment Debtor (so far as known to me) respectively are as follows:
 - (a) The Judgment Creditor
[•]
The Judgment Debtor
[•]

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6. To the best of my knowledge, information and belief:
 - (a) The Foreign Judgment, pursuant to the law in force in [•], can be enforced by execution in [•];
 - (b) The Judgment Creditor is entitled to enforce the Foreign Judgment;
 - (c) As at the date of the application herein, the debt due from the Judgment Debtor to the Judgment Creditor under the Foreign Judgment has not been satisfied;
 - (d) If the Foreign Judgment was registered in the General Division of the High Court of the Republic of Singapore, the registration would not be, or be liable to be, set aside under [•] of [to state the Act judgment creditor is applying under] (the ‘Act’) as the same does not fall within any of the cases mentioned under [•] of the Act; and
 - (e) Interest amounting to [•] has become due under the Foreign Judgment as of the date of the registration herein in the General Division of the High Court of the Republic of Singapore.
7. A copy of the statement with respect to the enforceability of the Foreign Judgment by execution in [•] is attached hereto and marked ‘**JC-2**’.
8. The Judgment Debtor is and still remains indebted and liable to pay the Judgment Creditor the total adjudged sum of [•] plus interest at the rate of [•]. The rate of exchange prevailing at the date of Judgment, which is [•], was [•], and upon conversion, the total adjudged sum of [•] is due and owing by the Judgment Debtor to the Judgment Creditor. A copy of the letter certifying the exchange rate as at [•] is attached hereto and marked ‘**JC-3**’.
9. The Judgment Creditor is desirous of having the Foreign Judgment registered as a judgment in the General Division of the High Court of the Republic of Singapore pursuant to [•] of the Act, and in this respect, I for and on behalf of the Judgment Creditor humbly pray for an order that the Foreign Judgment may be so registered.

Sworn/affirmed at [•] by the)
above-named [• –Name])
On this [•] day of [•])
Before me
A COMMISSIONER FOR
OATHS

This Affidavit is filed on behalf of the [- Party].

24. NEW ACTION INSTEAD OF ENFORCEMENT

At common law, merger does not apply to foreign judgments.⁶⁹ Thus, the judgment creditor has the option of suing on the foreign judgment (by bringing a common law debt action) or suing on the original obligation

69. See *Malaysia Credit Finance Bhd v. Chen Huat Lai* [1991] 2 SLR(R) 300 at [17].

which has not merged with the foreign judgment. The latter course may be defended on the ground of abuse of process as the Singapore courts will not allow an issue already adjudicated by the foreign court to be relitigated in Singapore.

In cases where the RECJA and REFJA are applicable, the judgment creditor is required to proceed by way of registration to enforce the foreign judgment. The REFJA expressly prohibits the bringing of any other proceedings for the recovery of any sums payable under the foreign judgment where the REFJA applies.⁷⁰ The RECJA does not contain this express prohibition but provides that any judgment creditor who brings an action on the Commonwealth judgment registrable under the RECJA will not be entitled to recover costs for such an action.⁷¹ The intention of the legislature is to discourage recourse to the common law when registration by statute is available.

At this juncture, it is apposite to consider how the different statutory regimes interact with each other:

- (1) Section 2A of both the RECJA and the REFJA provides that the two Acts cannot apply to any foreign judgment within the ambit of CCAA.
- (2) It follows that a case involving an applicable exclusive choice of court agreement would fall in the first instance under CCAA. Only where there is no exclusive choice of court agreement, or where it falls outside the CCAA, the RECJA and REFJA will be relevant.
- (3) This does not affect the position of a common law debt action.

The priority of recourse is therefore:

- (1) apply under the CCAA where there is a relevant exclusive choice of court agreement;
- (2) if not, apply under the RECJA or REFJA where applicable; and
- (3) finally, the common law debt action.

25. PRESCRIPTION

An application to register a Commonwealth judgment under the RECJA must be made within twelve months after the date of the judgment, or such longer period as may be allowed by the court.⁷² Unlike under the RECJA where the extension of time for registration lies in the court's discretion, registration under the REFJA must be made within six years of the foreign judgment being made.⁷³

The factors which the court takes into account when deciding whether to allow an application to register a judgment under the RECJA where such an

70. Section 7(1) of the 2019 REFJA.

71. Section 3(5) RECJA.

72. Section 3(1) RECJA.

73. Section 4(1) of the 2019 REFJA.

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application is made more than twelve months after the date of judgment are:⁷⁴

- (i) whether the delay had caused prejudice to the judgment debtor;
- (ii) whether the judgment creditor can give a reasonable explanation for its delay in applying to register the Commonwealth judgment;
- (iii) whether the judgment creditor has been reasonably diligent in seeking to enforce the Commonwealth judgment; and
- (iv) whether the judgment debtor had been obstructive.

A common law debt action will have to be commenced within six years of the date of the foreign judgment,⁷⁵ and no arrears of interest in respect of such judgment debt shall be recovered after the expiration of six years from the date on which interest became due.

Registration of a judgment under the CCAA has no time limit. However, for recognition, the judgment must remain effective in the state of origin.⁷⁶ For enforcement purposes, the judgment must remain enforceable in the state of origin.⁷⁷

26. STATES/CANTONS

Not applicable.

74. See *Westacre Investments Inc v. The State-Owned Company Yugoimport SDPR* [2009] 2 SLR(R) 166 at [24].

75. Adeline Chong, 'Recognition and Enforcement of Foreign Judgments in Asia: Country Report: Singapore' (2017), ABLI Legal Convergence Series, pp. 163–178, citing *Poh Soon Kiat v. Desert Palace Inc* [2010] 1 SLR 1129 at [49] and [54].

76. Section 13(2)(a) CCAA.

77. Section 13(2)(b) CCAA.