



Legal Update – June 2014

Recent significant developments in the Dispute Resolution scene in Singapore

In the first half of 2014, there had been several interesting developments in the dispute resolution scene in Singapore which reflected the growing need to recognise, accommodate and encourage current international business and commercial practices. In this update, we shall briefly set out these developments, both in terms of local Singapore case law and contemplated legislative amendments to further promote alternative means of international dispute resolution in Singapore.

Recognition and Enforcement of a Foreign Judgment

The Singapore High Court case of *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] SGHC 16 dealt with the recognition and enforcement of a foreign judgment obtained from the Suzhou Intermediate Court (the “PRC Court”) in the People’s Republic of China (the “PRC judgment”). After hearing arguments from both parties in open court, the Singapore High Court held that Aska Far East Pte Ltd (the “Defendant”) was liable to pay, amongst others, the principal amount of USD 190,000 sought by China-based Giant Light Metal Technology (Kunshan) Co Ltd (the “Plaintiff”), that which had been awarded in a civil suit in the PRC Court. While the oral judgment was issued in August 2013, the written judgment was released by the Singapore High Court only on 28 January 2014. This judgment is significant in that it is believed to be the first reported judgment dealing with the issue of enforcement of a judgment from the PRC.

By way of background, the Plaintiff had commenced legal proceedings before the PRC Court against the

Defendant and a third party, Shanghai Yates Genset Co Ltd (“SYG”), for breach of contract regarding the sale and purchase of generator sets on 25 July 2005 (the “2005 Proceedings”). Subsequently, the 2005 Proceedings were discontinued to allow parties to resolve the dispute. The settlement negotiations failed and the Plaintiff re-commenced proceedings for the same claim against the same parties on 9 May 2008 (the “2008 Proceedings”). The PRC Court consequently awarded judgment in favour of the Plaintiff and held, amongst other things, that the generator sets were to be returned to the Defendant and that the Defendant refund the purchase price to the Plaintiff. The Defendant failed to comply with the PRC judgment; hence, the Plaintiff sought to enforce the PRC judgment in Singapore.

As a starting point, the learned Andrew Ang J set out the common law position on the recognition and enforcement of foreign judgments in Singapore. First, the foreign judgment must be final and conclusive; second, the foreign judgment must be by a Court with international jurisdiction and third, there is no defence to the recognition of the foreign judgment. In the judgment, the Court noted that the Defendant did not raise any objection that the PRC judgment was not final and conclusive nor raise any defences to the recognition and enforcement of the PRC judgment. Accordingly, the issues in determining whether the PRC judgment should be recognised and enforced in this case were: (a) whether the PRC Court had international jurisdiction over the Defendant and (b) whether the Plaintiff’s claim satisfied the requirement that only foreign judgments for a definite sum of money are enforceable.

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On the first issue, the learned Judge held that the requirement of international jurisdiction was satisfied as the Defendant had submitted to the PRC Court based on the rules of Singapore private international law. The Court held that in determining “international jurisdiction”, a party’s consent to a foreign Court’s jurisdiction on certain claims may be imputed to further claims in certain circumstances, such as where the subsequent action concerned the same parties and also when the subsequent claims were reasonably closely related to the original claims. On the facts of this case, the Court held that imputed submission existed and the 2005 Proceedings and the 2008 Proceedings could be seen as one unit of litigation. In addition, it would be unfair to the Plaintiff if the Defendant was allowed to take advantage of aborted settlement talks to escape liability.

On the second issue, the Court dismissed the Defendant’s argument that the PRC judgment was not a pure money judgment as it contained other orders which were not for the payment of a fixed definite sum. The Court concluded that where a foreign Court has made an Order for payment of a definite sum of money, amongst other orders which do not require payment of definite sums of monies, the Order would be capable of founding an action in debt and hence enforceable in Singapore.

Observations

This judgment has clarified the approach which Singapore Courts should adopt, and the legal principles to be applied, when faced with the issue of recognition and enforcement of a foreign judgment (in particular, a PRC one) in Singapore. In particular, it highlighted the fact that Singapore Courts are prepared to adopt an approach skewed towards achieving fairness and justice when determining if a foreign Court has international jurisdiction. Undoubtedly, this judgment, given its factual matrix, would provide useful guidance for PRC companies contemplating enforcement proceedings in Singapore.

The establishment of the Singapore International Commercial Court

In striving to enhance Singapore’s status as a leading forum for legal services and commercial dispute resolution, a Committee was set up in early 2013 to study the viability of developing a framework for the formation of the Singapore International Commercial Court (“SICC”).

On 29 November 2013, the SICC Committee submitted its report to the Singapore Ministry of Law, which thereafter conducted a public consultation on the SICC Report. At present, the Ministry of Law is considering and preparing the legislative amendments necessary to establish the SICC, for example, amendments to the Singapore Constitution, the Evidence Act and the Legal Profession Act.

We set out below some key features of the proposed SICC:-

- a) **Constitution and Jurisdiction of the SICC:** The SICC will be a superior court of law in order to maximise international enforceability of its judgments.
- b) **SICC panel of judges:** Judges hearing SICC matters will be drawn from a panel of SICC adjudicators comprising of existing Singapore Supreme Court Judges and Associate Judges, who are judges appointed to the SICC Panel and assigned cases on an ad hoc basis.
- c) **Categories of cases:** The SICC will deal with three categories of cases: (1) where parties have consented to use the SICC after their dispute has arisen; (2) where parties have agreed that SICC shall have jurisdiction over any dispute arising from a contract; and (3) cases within the Singapore High Court’s jurisdiction which are transferred to the SICC by the Chief Justice.
- d) **Joinder of parties:** The SICC may join third parties to the proceedings with or without the third parties’ consent. Joinder may be prompted by an application from one or more of the parties involved in the dispute.
- e) **Confidentiality:** As a general rule, SICC proceedings would take place in open Court. However, special measures can be taken to maintain confidentiality (parties can make such an application), particularly if cases have no substantial connection to Singapore and where parties agree that confidentiality should be maintained.
- f) **International Enforcement of SICC judgments:** Judgments of the SICC may be enforced in other jurisdictions, or through a common law action on the judgment debt.

- g) **Proof of foreign law:** Foreign law need not be pleaded and proved as fact in proceedings and Judges can take judicial notice of foreign law by way of oral and written legal submissions (with relevant authorities).

It is without doubt that Singapore is now widely recognised as a leading arbitration hub in Asia. Much of that has been due to her position as a neutral third party venue and well-developed and business friendly legal system. The time is now ripe for to her to further establish herself as the premium forum for court-based commercial dispute resolution both within and beyond Asia.

The establishment of the Singapore International Mediation Centre

While litigation and arbitration services in Singapore are well-established, in order for Singapore to become a focal point of dispute resolution in Asia, it is necessary to build a credible offering of the entire suite of dispute resolution services, including international commercial mediation services.

On 29 November 2013, the Working Group on International Commercial Mediation (“ICMWG”) submitted its recommendations on the establishment of a new independently run mediation centre. We set out below some of the key recommendations of the ICMWG:

- a) **Establish a Professional Body:** The Singapore International Mediation Institute (“SIMI”) will be set up to set standards and provide accreditation for mediators.
- b) **Establish an International Mediation Service Provider:** The Singapore International Mediation Centre (“SIMC”) will be set up to provide user-centric mediation products and services, such as case management services, deal making services and so on.
- c) **Enact a Mediation Act:** A Mediation Act shall be introduced to help strengthen the framework of mediation in Singapore and provide certainty in areas where the position in law may be unclear.
- d) **Exemptions and incentives:** Tax exemptions and incentives, which are currently applicable to arbitration, should be extended to the conduct of mediations in Singapore.

- e) **Judicial support for mediations:** Support for mediation could be enhanced by rules (such as within the Singapore Rules of Court) ensuring that parties seriously consider it as part of the dispute resolution.

Through the establishment of the SICC and SIMC, Singapore seeks to enhance its reputation as a venue of choice for legal services and resolution of regional and global commercial disputes. For companies and stakeholders who are intending to take advantage of the myriad of legal and commercial dispute resolution services Singapore has to offer, these exciting developments could not have been more timely.



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