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The Enforcement of Arbitral Awards under the Reciprocal Enforcement of Commonwealth Judgments Act 1921 in Singapore: An Enforcement Regime that Undermines the New York Convention?

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Arbitration's key strength lies in the near-universal enforcement of its arbitral awards. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”) offers parties the benefit of going under a uniform enforcement regime in all of its Contracting States. But whilst it is a popular choice, the New York Convention may not be the only mechanism to enforce foreign awards in some jurisdictions. For instance, in Singapore's context, a party may alternatively enforce an arbitral award through the Reciprocal Enforcement of Commonwealth Judgments Act 1921 (“**RECJA**”).

The RECJA enforcement option has not received much judicial attention in the past. But this article posits that upon closer examination, the RECJA *may* provide shrewd arbitral award creditors with unintended enforcement advantages in Singapore that they might not otherwise receive under the New York Convention regime encompassed in the Second Schedule of the International Arbitration Act 1994 (“**IAA**”). More generally, it may be questioned whether a parallel arbitration enforcement regime ought to exist as it arguably undermines New York Convention provisions aimed at safeguarding the procedural integrity of the issuance of arbitral awards. An unwelcome “gaming” of a country's arbitral award enforcement framework may also ensue. While this article's primary focus is on Singapore, it may be equally applicable to other jurisdictions with similar legal frameworks.

The enforcement of arbitral awards under the RECJA

The starting point is that a party can enforce an arbitral award as a foreign *Commonwealth* judgment in Singapore under the RECJA.¹⁾ A “judgment” under Section 2 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*”.²⁾ There is also precedent for award enforcement under the RECJA. In *Westacre Investments Inc v The State-Owned Company Yugoimport SDPR [2008] SGCA 48* (“**Westacre Investments**”), the Appellant commenced proceedings against the Respondent in England for leave to enforce its Geneva-seated ICC tribunal award terms in the form of a judgment. The Appellant then applied for

the English judgment to be registered in Singapore under the RECJA, even though it was brought after the 12-month time-limit for English judgments stipulated in [Section 3\(1\) of the RECJA](#).³⁾ In rejecting the Respondent's attempt to set aside the Appellant's application, the Singapore Court of Appeal reasoned that the Appellant's delay was due to factors outside of its control, and it had brought its application with reasonable diligence – and despite the Respondent's attempts to conceal its Singapore assets. The enforcement of the English judgment containing the arbitral award terms in Singapore was hence just and convenient under the RECJA.

Thus, the RECJA arguably operates as a parallel enforcement regime to the New York Convention for foreign arbitral awards.

The RECJA's narrower grounds for refusing the enforcement of judgment-cum-awards potentially undermines the New York Convention framework

The trouble with the RECJA starts with its seemingly narrower grounds for refusing the enforcement of foreign judgments under [Section 3\(2\) of the RECJA](#). Broadly, a judgment would not be registered if: (i) the original court acted without jurisdiction, (ii) the judgment debtor, if not ordinarily resident or carrying out business in the jurisdiction, did not submit or otherwise agree to submit to the court's jurisdiction – or conversely – if he was ordinarily resident or carrying out business in the jurisdiction, was not duly served with the process of the original court and did not appear, (iii) the judgment was obtained by fraud, (iv) an appeal for the judgment is pending, or the judgment debtor is entitled and intending to appeal, or (v) the judgment is in respect of a cause of action which cannot be entertained for public policy or other similar reason.

Notably absent in the RECJA are grounds refusing the enforcement of judgment-cum-awards under [Articles V\(1\)\(a\)-\(e\) of the New York Convention](#) – i.e., (i) the arbitral tribunal lacked jurisdiction by virtue of an improper/invalid arbitration agreement or acted outside the scope of parties' submissions, (ii) improper conduct of arbitration proceedings, or (iii) the award is not yet binding or has been set aside at the seat.

The first four RECJA grounds focus on the procedural correctness of the *foreign judgment* a party obtains. The fifth RECJA ground, however, appears to mirror [Article V\(2\) of the New York Convention](#), although it is unclear whether its application can also be extended to the Article V(1) grounds. The public policy ground under the RECJA seems only to be invoked if the *underlying cause of action* contravenes Singapore public policy (e.g., foreign judgments on issues related to unregulated gambling), or if the *judgment proceedings* were contrary to natural justice.⁴⁾

It is possible that the differences between the RECJA and New York Convention grounds may be bridged through another requirement under [Section 3\(1\) of the RECJA](#). Foreign judgments are ultimately only registered if the Singapore Court is satisfied in all circumstances and having regard to parties' rights that it is “*just and convenient*” to do so.⁵⁾ While this point is yet to be judicially determined, the New York Convention grounds could arguably be imported under [Section 3\(1\)](#) on the basis that it is only *fair and equitable in the circumstances*⁶⁾ to resist the enforcement of an arbitral award in a consistent manner to that provided under [Section 31\(2\) of the IAA](#) (i.e., Article V(1) of the New York Convention). But even this position may be challenged on the basis that the IAA and RECJA arbitral award enforcement regimes may have been statutorily intended to remain

separate and distinct pursuant to [Section 33\(1\) of the IAA](#) – which preserves parties’ rights to enforce an arbitral award *otherwise* than provided for under Part 3 (i.e., Section 31) of the IAA.

Observations for arbitration parties and policymakers

The RECJA thus creates, rather unnecessarily, a parallel but inconsistent arbitral award enforcement regime to the New York Convention. This is particularly so given that practically all the recognized jurisdictions under the RECJA also adopt the New York Convention.⁷⁾

Award creditors may increasingly elect to enforce their awards in Singapore as foreign judgments under the RECJA to minimize the chances of the awards being successfully challenged – especially if they were not too confident about the procedural basis on which the award was issued.

In contrast, award debtors may have to rethink their strategies in resisting award enforcement. Award debtors might have to actively challenge foreign court proceedings where an award is being recorded as a judgment to have a shot at setting it aside under the New York Convention grounds. Previously, they may have refrained from taking such steps for tactical or cost reasons, and only focused their challenge in the enforcing jurisdiction. The corollary would be higher costs, and time expended in a contrived game of international cat-and-mouse.

Finally, for policymakers, it is undesirable for the differences between the RECJA and New York Convention regimes to remain – even if they could be judicially resolved with time. The key concern is addressing the potential for Singapore’s arbitration enforcement framework to be “gamed” and possibly abused by opportunistic parties. The legal and commercial uncertainty that could arise ought to be addressed by a statutory amendment in the RECJA affirming that – for the avoidance of doubt, the New York Convention grounds for resisting the enforcement of judgments-cum-arbitral awards still continue to operate. Alternatively, it may be sensible to amend Section 33 of the IAA such that the New York Convention is the *exclusive* enforcement regime for Commonwealth-seated arbitral awards that also fall within the scope of the RECJA. These measures would ensure that curial intervention for unfairness, prejudice and other breaches of natural justice in the issuance of arbitral awards continue to be preserved in a jurisdiction, whatever the elected enforcement regime may be.

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References

The RECJA enforces the judgments of the United Kingdom, Australia, New Zealand, Sri Lanka, ^{?1} Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea, India (except Jammu and Kashmir), and Hong Kong (obtained on or before 30th June 1997).

N.B.: The Reciprocal Enforcement of Foreign Judgments Act 1959 (“**REFJA**”) is intended to ^{?2} replace the RECJA in the enforcement of Commonwealth judgments in the future. But even in such a case, a “judgment” under Section 2 of the RECJA continues to remain under [Section 10\(a\) of the REFJA](#).

See also *Sri Lanka Cricket v World Sport Nimbus Pte Ltd [2006] 3 MLJ 117* at [13], where Gopal ^{?3} Sri Ram JCA suggested that an arbitral award could be registered as a judgment in the Singapore High Court, and enforced in Malaysia under the Reciprocal Enforcement of Judgments Act 1958 as an alternative to the New York Convention.

Global Distressed Alpha Fund I Ltd Partnership v PT Bakrie Investindo [2013] SGHC 12 at [40]; ^{?4} *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace) [2009] SGCA 60* (“**Poh Soon Kiat**”) at [14], [97]-[98]

^{?5} See also *Westacre Investments* at [20], [52]

^{?6} *Westacre Investments* at [21]

^{?7} Save for Windward Islands

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