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Exclusive Feature on Singapore-China Legal Relations

Singapore and Chinese Judiciaries Meet and Affirm Relationship with Landmark Memorandum

Memorandum of Guidance on the enforcement of money judgments signed

On 31 August 2018, the Supreme Court of Singapore and the Supreme People's Court (SPC) of the People's Republic of China signed a Memorandum of Guidance (MOG) on the recognition and enforcement of money judgments in commercial cases. Chief Justice Sundaresh Menon of the Supreme Court of Singapore and Chief Justice and President of the SPC, Zhou Qiang, signed this agreement on the sidelines of the Second Singapore-China Legal and Judicial Roundtable ("the Roundtable"), as a testament of the rapidly deepening cooperation between both judiciaries.

The MOG provides clarity on the procedure of having money judgments of commercial cases from a Singapore court brought before the Chinese courts for them to be recognised and enforced in China, and vice versa. This also applies to the Singapore International Commercial Court (SICC), which is a division of the Singapore High Court.

It is comforting for parties who have commercial dealings, especially in light of the Belt & Road Initiative (BRI), to know that should a dispute arise and whether it is adjudicated in a Singapore or Chinese court, they are clear on how any money judgments that may arise therefrom can be enforced against the other party in



Chief Justice Zhou Qiang (left, front row) and Chief Justice Sundaresh Menon (right, front row) sign the MOG on the recognition and enforcement of money judgments in commercial cases, with the respective members of the China and Singapore judiciary in attendance to witness this momentous occasion.

OPENING REMARKS BY
**CHIEF JUSTICE
SUNDARESH MENON**
SUPREME COURT OF SINGAPORE



China or in Singapore. Hence, for an international court like the SICC, even non-Singaporean parties who have entered into business contracts with Chinese parties can choose the SICC as their dispute resolution forum of choice and apply to the Chinese courts to have their money judgments enforced.

This further builds on the SPC's endorsement of the Nanjing Intermediate People's Court decision to recognise a Singapore High Court money judgment by including it as one of 10 reference cases for the BRI in May 2017.

Chief Justice Menon said: "Establishing this MOG not only promotes a mutual understanding of our respective laws and judicial processes, but also reinforces the mutual trust in our respective legal systems. I look forward to more of such fruitful initiatives in the future, which will be borne out of our deep friendship with the Chinese Judiciary which we believe will ultimately benefit the wider international community."

Second Singapore-China Legal and Judicial Roundtable

Inking this MOG was also in line with what was discussed at the Roundtable, which was hosted by Singapore this year, following the inaugural meeting in Beijing last year. One of the topics covered was to develop international commercial law, with an emphasis on promoting the convergence of commercial law in an increasingly globalised and interconnected world. After all, the BRI alone brings together so many entities from around the world.

The other topics which both judiciaries exchanged insights and perspectives on were:

- the Courts and Alternative Dispute Resolution, with a focus on the suite of dispute resolution options (litigation, arbitration, and mediation) available to litigants today, and how they interact within the overall dispute resolution framework
- Development of a Legal Infrastructure to Support the BRI, including the establishment of a working group

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— **Chief Justice Sundaresh Menon,
Supreme Court of Singapore**

consisting of officials from the Supreme Court of Singapore and the SPC to bring some of the specific ideas discussed at the Roundtable forward

- Court Technology, with the focus on how the courts could harness the prowess of technology to improve court efficiency and to enhance access to justice

Both Chief Justices also held a bilateral meeting where they reaffirmed the close and abiding friendship between Singapore and China, as well as the Supreme Court of Singapore and the SPC. They had a fruitful discussion on a range of topics which concern both courts, and the ways in which their courts can cooperate for the mutual benefit of both courts and countries.

Positive impact on the SICC

China is not a party to any general convention that caters to the recognition and enforcement of foreign judgments, hence the signing of this MOG is significant



Chief Justice Zhou Qiang and his delegation also visited the State Courts (above right) and other legal institutions at the Maxwell Chambers like the Singapore International Arbitration Centre and Singapore International Mediation Centre.



At the Roundtable, judges from both Courts exchanged insights on dispute resolution options, the development of a legal infrastructure to support the BRI, harnessing the power of technology for the courts and the development of international commercial law.

in enhancing the SICC's role in the dispute resolution sphere. Besides providing clarity on the standards and procedure to be applied by Chinese courts with regards to a Singapore court judgment, the MOG will help to facilitate a party showing reciprocity towards the other party when applying for enforcement.

Senior Corporate Partner of Freshfields Bruckhaus Deringer, Stephen Revell, believes that with this development, companies and legal professionals alike can have greater confidence when dealing with Chinese parties. He added: **“This further strengthens the SICC’s position as a world-class dispute resolution venue for commercial matters. This is another reason to recommend clients consider exclusive SICC jurisdiction clauses in their contracts, be it for**

Chinese or other international parties.”

Judge-in-charge of the SICC, Justice Quentin Loh, added that while the MOG lends assurance to international parties involved in the BRI when it comes to the enforcement of judgments from the SICC, Singapore parties in general will benefit too.

“Whether one is involved in BRI or not, local and locally-based lawyers and Singapore companies now know that the SICC is a recognised, trusted and neutral venue for commercial dispute resolution. With China as the latest addition, SICC judgments can now be enforced in most major cities in the world,” he said.

To view the English version of the MOG, visit <http://goo.gl/TCwU8X>

To view the Chinese version of the MOG, visit <http://goo.gl/fZpu8>

MEMORANDUM OF GUIDANCE BETWEEN THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA AND THE SUPREME COURT OF SINGAPORE ON RECOGNITION AND ENFORCEMENT OF MONEY JUDGMENTS IN COMMERCIAL CASES

Introduction

Article 1

The purpose of this memorandum is two-fold:

- (a) To allow the Supreme People's Court of the People's Republic of China to set out how a judgment issued by the courts of Singapore may be recognized and enforced in the courts of the People's Republic of China. This is set out by the Supreme People's Court of the People's Republic of China in Articles 6 – 16 of this memorandum.
- (b) To allow the Supreme Court of Singapore to set out how a judgment issued by the courts of the People's Republic of China may be recognized and enforced in the courts of Singapore. This is set out by the Supreme Court of Singapore in Articles 17 – 30 of this memorandum.

This memorandum is concerned only with judgments requiring a natural or legal person to pay a fixed or ascertainable sum of money to another natural or legal person in commercial cases. The term "judgment" as used in this memorandum refers to any decision, whatever its designation, rendered or made by courts and with court seal.

Commercial cases referred to in this memorandum include not only international (foreign element involved) cases, but also non-international (no foreign element involved) cases of which recognition and enforcement of judgment is sought in the other party's courts.

中华人民共和国最高人民法院和新加坡最高法院关于承认与执行商事案件金钱判决的指导备忘录

导言

第一条

本备忘录的目的包括以下两个方面：

1、中华人民共和国最高人民法院借以说明新加坡法院作出的判决如何才能在中华人民共和国法院获得承认与执行。详见本指导备忘录第 6 至 16 条。

2、新加坡最高法院借以说明中华人民共和国法院作出的判决如何才能在新加坡法院获得承认与执行。详见本指导备忘录第 17 至 30 条。

本备忘录仅适用于在商事案件中要求某一自然人或者法人向另一自然人或者法人支付固定或者可确定数额金钱的判决。

A Significant Step for Enforcement of Money Judgments in Commercial Cases between Singapore and China

By a Rajah & Tann team comprising (left to right) Mr Toh Kian Sing SC (Senior Partner, Shipping & International Trade), Mr Yu Zheng (Partner, Foreign Lawyer) and Mr Anssen Yang (International Counsel)



On 31 August 2018, the Supreme Court of Singapore and the Supreme People's Court of the People's Republic of China ("PRC") signed a Memorandum of Guidance ("MOG") on the recognition and enforcement of money judgments in commercial cases. The MOG sets out how a judgment issued by the courts of Singapore may be recognised and enforced in the courts of the PRC and vice-versa.

Prior to this MOG, a judgment made by the High Court of Singapore in *Kolmar v Jiangsu Textile* had been recognised and enforced by the Nanjing Intermediate People's Court ("Nanjing Court") in December 2016 ("Nanjing Kolmar Case"). The Nanjing Court had in *Nanjing Kolmar Case* decreed that Singapore judgments in line with certain conditions could be recognised and enforced according to the principle of reciprocity provided in Article 128 of the Civil Procedure Law of the PRC. Amongst these certain conditions, the most important one is that Singapore court had, prior to the *Nanjing Kolmar Case*, enforced another Chinese judgment in *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd [2014] 2 SLR 545* ("Giant Light Case"). In *Giant Light Case*, the Singapore court enforced a judgment issued by the Suzhou Intermediate People's Court. Since Singapore court had enforced a Chinese judgment, Chinese court should give "reciprocity" by enforcing a Singapore judgment. Rajah & Tann was involved in both the *Giant Light Case* and the *Nanjing Kolmar Case*. The *Giant Light Case* is believed

to be the first instance of a Singapore court enforcing a judgment from the PRC. The *Nanjing Kolmar Case* is also the first case of a PRC court enforcing a judgment from Singapore.

Chinese courts do not recognise the principle of *stare decisis*. The *Nanjing Kolmar Case* does not have binding effect on other courts in China. Therefore, the MOG marks a significant step in the development of mutual enforcement arrangements between Singapore and China. 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 judgments in China. The MOG sets out various conditions for the enforcement of Singapore judgments in China. Most importantly, the MOG stipulates that the courts of the PRC will not review the merits of a Singapore judgment and it may only be challenged on limited grounds of procedural and jurisdictional issues (unless the judgment violates public policy). This would give great confidence to commercial parties as well as their counsels to consider resolving their disputes in the Singapore courts with a view to enforcement in China.

The MOG also applies to judgments issued by the Singapore International Commercial Court ("SICC"). Now, non-Singaporean parties who have commercial dealings with Chinese parties or parties with assets in China can choose to have their disputes resolved at the SICC and thereafter proceed towards enforcement under in the provisions of the MOG. Singapore is an important and neutral place for disputes resolution, especially for these parties involved in the Belt and Road Initiative ("BRI"). Diverse parties from different countries involved in the BRI may opt for disputes resolution at the SICC to enjoy the benefit of the MOG, in addition to the strengths of the SICC, namely the ability to join third and related parties in multi-party or multi-contract situations, and the availability of appeal.

The views expressed in this article are the writers' and do not necessarily reflect those of the Supreme Court of Singapore and the SICC.



For more information on the enforcement of SICC judgments, you may access the Note at <https://goo.gl/2VtHpv>



Registered Foreign Lawyers

As at 30 September 2018, the SICC has 80 registered foreign lawyers (RFLs) on its register. Foreign lawyers are welcome to apply to be registered with the SICC. To view the full list of RFLs and find out more about registration, please visit <http://www.sicc.gov.sg/registration-of-foreign-lawyers>



SICC Model Clauses

The SICC has model clauses available, including clauses for submission of disputes to the jurisdiction of the SICC (both pre- and post-dispute) and in relation to the parties' rights of appeal. You may view them here: https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf