

SUPCT.CEO.003.0500/CEO/DC

20 March 2017

The Hon Justice Kim Hargrave
Principal Judge
Commercial Court
Supreme Court of Victoria

Dear Judge

**Exchange of Letters on cross-border enforcement of money judgments between
Singapore International Commercial Court and Supreme Court of Victoria
(Commercial Court)**

Introduction

The shared legal heritage and commercial ties between the State of Victoria, Australia and the Republic of Singapore date back to the late 19th century. In late 2014, the Supreme Court of Singapore and the Supreme Court of Victoria each set up the necessary structures to create divisions dedicated to the timely resolution of commercial disputes. These initiatives resulted in the establishment of the Singapore International Commercial Court and the Commercial Court within the Supreme Court of Victoria, respectively.

Our Courts have also collaborated on the development of commercial law and shared innovations in case management. Each of our Courts is a signatory to the International Framework for Court Excellence and exchanges strategies for applying the Global Measures of Court Performance contained within that Framework. Further, throughout the course of the past year, our jurisdictions have organised and implemented a study exchange for the benefit of our judicial officers and key personnel.

In the continued spirit of mutual cooperation and partnership between our two dedicated commercial courts, and having regard to the international dimension of commercial transactions and disputes, this Exchange of Letters explains and clarifies arrangements for the cross-border enforcement of money judgments in each other's jurisdiction.

General principles

This Exchange of Letters has no binding legal effect. The Letters do not constitute a treaty or legislation, are not binding on the judges of either Court and do not supersede any existing or future laws, judicial decisions or court rules. Nor are they intended to create or alter any existing or future legal rights or relations.

The Supreme Court of Victoria and the Commercial Court

The Supreme Court of Victoria is a superior court of law and comprises the Trial Division and the Court of Appeal. The Trial Division is made up of three divisions:

- a) the Criminal Division;
- b) the Common Law Division; and
- c) the Commercial Court.

The establishment in September 2014 of the Commercial Court as a separate division of the Supreme Court of Victoria was for the explicit purpose of resolving significant litigation arising from the usual range of commercial transactions, including those pertaining to contracts, banking and finance, construction, corporations, partnerships, joint ventures, arbitral proceedings, shipping arrangements and insurance.

Proceedings filed in the Commercial Court are allocated to Judge-managed lists containing cases which share common features. The lists include: 12 General Commercial Lists; two Corporations Lists; the Technology, Engineering and Construction List; the Intellectual Property List; the Arbitration List; the Admiralty List; the Taxation List; and the Insurance List.

The Supreme Court of Singapore and the Singapore International Commercial Court

The Supreme Court of Singapore is a superior court of law. It comprises the Singapore High Court (“**the SGHC**”) and the Singapore Court of Appeal. The Singapore International Commercial Court (“**the SICC**”) is a division of the SGHC and part of the Supreme Court of Singapore designed to deal with transnational commercial disputes.

The SICC hears cases involving international commercial disputes in three broad situations:

- a) where disputants are parties to a contract giving the SICC jurisdiction over any disputes arising out of that contract;
- b) where parties have consented in writing to use the SICC after their dispute has arisen; and
- c) where the SGHC exercises the power to transfer its cases to the SICC.

Cases will be adjudicated by a panel of experienced judges comprising specialist commercial judges from Singapore and international judges from both civil law and common law traditions. The procedures in the SICC follow international best practices.

Application of reciprocal enforcement statutes

There are reciprocal legislative mechanisms in force to facilitate the enforcement of money judgments in the Supreme Court of Singapore and the Supreme Court of Victoria.

A money judgment obtained in the Supreme Court of Victoria may be registered and enforced in the SGHC under the *Reciprocal Enforcement of Commonwealth Judgments Act* (Cap 264, 1985 Rev Ed) (“**the RECJA**”): s 5(1) of the *RECJA* and Schedule to *Declaration under Section 5* (Cap 264, Decl 1, 1999 Rev Ed). Upon registration, the judgment is directly enforceable as if it were a judgment originally obtained from the SGHC.

Similarly, a money judgment obtained in the Supreme Court of Singapore for a monetary sum may be registered and enforced in the Supreme Court of Victoria under the *Foreign Judgments Act 1991* (Cth) (“**the FJA**”): s 5(1) of the *FJA* and item 24 of the Schedule to the *Foreign Judgments Regulations 1992* (Cth). Upon registration, the judgment is directly enforceable as if it were a judgment originally obtained in the Supreme Court of Victoria.

Enforcing a Supreme Court of Victoria judgment in the SGHC

A money judgment obtained in the Supreme Court of Victoria (including an arbitration award which has become enforceable as a money judgment of the Supreme Court of Victoria) may be registered in the SGHC within 12 months after the date of the judgment, or within such longer period as may be allowed.

The SGHC may, if in all the circumstances of the case it thinks it is just and convenient¹, order the judgment to be registered and enforced in Singapore accordingly: ss 3(1) and 5(1) of the *RECJA*.² Registration will be refused if the case falls within any of the grounds set out in ss 3(2)(a) to (f) of the *RECJA*.³

Enforcing a SGHC judgment in the Supreme Court of Victoria

Similarly, a money judgment obtained in the SGHC (including an arbitration award which has become enforceable as a money judgment of the SGHC) may be registered in the Supreme

¹ The phrase “just and convenient” does not grant an untrammelled discretion to the court; the court will set aside the registration of a foreign judgment only where it is practicable and required by the interests of justice: see *Global Distressed Alpha Fund I Ltd Partnership v PT Bakire Investindo* [2013] 2 SLR 228, at [20].

² See further *Declaration under Section 5* (Cap 264, Decl 1, 1999 Rev Ed), Schedule.

³ The “public policy” referred to in s 3(2)(f) of the *RECJA* is the public policy of Singapore. Where there is a contest between international public policy at common law and statutory public policy, the latter prevails: see *Poh Soon Kiat v Desert Palace Inc (trading as Caesars Palace)* [2010] 1 SLR 1129, at [113].

Court of Victoria within six years after the date of the judgment, or within such longer period as may be allowed.⁴

The Supreme Court of Victoria will order the judgment to be registered if the matters prescribed by the applicable Rules of Court have been proved to its satisfaction.⁵ In addition, a judgment may be registered in Victoria even if the judgment creditor intends to enforce the judgment against assets located in another State or Territory.⁶ A registered judgment may nonetheless be set aside on an application by a judgment debtor, if the case falls within any of the grounds set out in ss 7(2)(a) or (b) of the *FJA*.⁷

Enforcement procedures

The procedures for enforcing a judgment of the Supreme Court of Victoria in the SGHC are set out in Order 67 of the *Rules of Court* (Cap 322, R 5, 2014 Rev Ed) made pursuant to s 80 of the *Supreme Court of Judicature Act* (Cap 322, 2007 Rev Ed).

The procedures for enforcing a SGHC judgment in the Supreme Court of Victoria are set out in Order 11 of *Chapter II – Supreme Court Rules (Miscellaneous Civil Proceedings) Rules 2008*.

It is hoped that this initiative will not only serve as a platform for further mutual cooperation between the SICC and the Supreme Court of Victoria (Commercial Court) but also strengthen the relationship between our jurisdictions more broadly.

SIGNED this ^{John}..... day of March 2017 by:



Hon Justice Quentin Loh
Judge-in-Charge
Singapore International
Commercial Court

⁴ See ss 6(1) and 6(5) of the *FJA*.

⁵ See s 6(3) of the *FJA*.

⁶ See *Re CA Cryonic Medical* [2002] VSC 338

⁷ See *Jenton Overseas Investment Pte v Townsing* (2008) 21 VR 241 in which Whelan J dismissed an application pursuant to s 7(2)(a)(xi) of the *FJA* that an order for registration be set aside on the ground that enforcement of the judgment would be contrary to public policy. His Honour noted (at [20]) that courts will be slow to apply public policy as a basis for refusing recognition and enforcement of foreign judgments because of the importance of comity with foreign courts, the need for respect and recognition of the institution of foreign States, particularly where there is reciprocity of treatment of judgments and because the concept of public policy is inherently fluid.