

**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.

Money judgments referred to in this memorandum include judgments on costs.

Article 2

This memorandum has no binding legal effect. It does not constitute a treaty or legislation, is not binding on the judges of either party and does not supersede any existing or future laws, judicial decisions or court rules. It is not intended to be exhaustive and is not intended to create or alter any existing or future legal rights or relations or to create any binding arrangements for the reciprocal recognition and enforcement of each party's money judgments.

Article 3

The parties desire and believe that the cooperation demonstrated by this memorandum will promote a mutual understanding of their laws and judicial processes and will improve public perception and understanding.

The Supreme People's Court of the People's Republic of China

Article 4

The Supreme People's Court of the People's Republic of China is the highest judicial organ of the People's Republic of China. Its responsibilities and mandates include adjudicating all types of cases, formulating judicial interpretations and supervising the adjudications of local courts at various levels and specialized courts.

The Supreme Court of Singapore

Article 5

The Supreme Court of Singapore is a superior court of law. It comprises the Singapore High Court and the Singapore Court of Appeal. The Singapore International Commercial Court is part of the Supreme Court of Singapore and is a division of the Singapore High Court.

Recognizing and Enforcing a Judgment of the Courts of Singapore in the Courts of the People's Republic of China

Article 6

There is currently no treaty in place pursuant to which either party's judgments may be recognized and enforced by the other party's courts. In the absence of a relevant treaty, a judgment of the courts of Singapore may be recognized and enforced in the courts of the People's Republic of China on the basis of reciprocity according to *Civil Procedure Law of the People's Republic of China* upon the application submitted by the claimant.

Article 7

A judgment of the courts of Singapore to be recognized and enforced in the People's Republic of China must be a final and conclusive judgment. Where the finality and conclusiveness of the judgment rendered or made by the courts of Singapore sought for recognition and enforcement in a Chinese court is challenged, the finality and conclusiveness of the judgment shall be determined in accordance with Chinese law. A judgment subject to or under appeal is not final and conclusive.

Article 8

The courts of the People's Republic of China will not recognize and enforce judgments of the courts of Singapore which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law.

The courts of the People's Republic of China will not recognize and enforce certain types of judgments of the courts of Singapore, including but not limited to, judgments related to intellectual property rights cases, unfair competition cases, monopoly cases.

Article 9

The courts of Singapore must have had jurisdiction to determine the subject matter of the dispute, as determined by the courts of the People's Republic of China, in accordance with Chinese law.

Article 10

Where the above requirements are established to the satisfaction of the court of the People's Republic of China, a judgment of the courts of Singapore may be challenged in the courts of the People's Republic of China only on limited grounds. Those grounds include but are not limited to:

- (a) the judgment is contrary to basic principles of the law of the People's Republic of China or will prejudice to its sovereignty, security or public interests;
- (b) the judgment was obtained by fraud;
- (c) the litigant had not been given proper notice of the judicial proceedings or had not been given a reasonable opportunity to defend the case;
- (d) the judicial body is constituted by persons with personal interests in the outcome of the case;
- (e) the litigant without capacity for action has not been properly represented;

- (f) the litigation between the same litigants and on the same subject is pending in the courts of the People's Republic of China, or the courts of the People's Republic of China have rendered or made a final and conclusive judgment, or have recognized or enforced a final and conclusive judgment rendered by a third state or an arbitration award.

Article 11

The courts of the People's Republic of China will not review the merits of a judgment of the courts of Singapore.

The judgment may not be challenged on the grounds that it contains an error of fact or law.

Article 12

In order to recognize and enforce a judgment of the courts of Singapore in the courts of the People's Republic of China, the claimant must commence the procedure by submitting an application to the intermediate people's court in the place where the litigant subject to execution has its domicile or where its property is located.

Article 13

In order to recognize and enforce a judgment of the courts of Singapore in the courts of the People's Republic of China, the claimant must submit an application, as well as the following documents authenticated by a notarial office in Singapore and confirmed by the Chinese embassy or consulate stationed in Singapore:

- (a) a certified copy of the judgment;
- (b) documents to certify that the judgment is not subject to or under appeal, the appeal period has expired in respect of the judgment and there is no pending application for an extension of time to appeal, unless that is specified in the judgment itself;
- (c) in the case of default judgment, documents to certify that the defaulting litigant has been legally summoned, unless that is specified in the judgment itself;
- (d) documents to certify that the litigant without capacity for action has been properly represented, unless that is specified in the judgment itself.

The application, judgment and documents mentioned above, if not made in Chinese, shall be accompanied by a certified translation into Chinese.

Article 14

A litigant may obtain a certified copy of a judgment of the court of Singapore by making an application in accordance with the *Supreme Court Practice Directions*.

Article 15

The courts of the People's Republic of China shall adjudicate the case of application for recognition and enforcement of a Singapore court judgment in accordance with its domestic law.

Article 16

After the judgment of a court of Singapore is recognized in a court of the People's Republic of China, where necessary, the litigant is entitled to apply for compulsory enforcement. The enforcement procedure and measures taken thereof are governed by *Civil Procedure Law of the People's Republic of China* and related judicial interpretations.

Recognizing and Enforcing a Judgment of the Court of the People's Republic of China in the Courts of Singapore

Article 17

There is currently no treaty in place pursuant to which either Party's judgments may be enforced by the other party's courts. In the absence of a relevant treaty, a judgment of the courts of the People's Republic of China may be enforced in the courts of Singapore by a claim made at common law.

Article 18

The approach of the courts of Singapore is similar to the position found in the English common law. Where a foreign court of competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation arises on the debtor to pay that sum. The creditor may bring a claim to enforce that obligation as a debt. This legal obligation to pay the debt is however separate from the underlying cause of action.

Article 19

The judgments of the courts of the People's Republic of China to be enforced in Singapore must be final and conclusive.

Where the finality and conclusiveness of the judgment rendered or made by the courts of the People's Republic of China sought for enforcement in a Singapore court is challenged, the finality and conclusiveness of the judgment shall be determined in accordance with Chinese law.

The courts of Singapore may request the claimant seeking enforcement to obtain certification from the court which rendered or made the judgment that the judgment is final and conclusive. The Singapore courts may also seek assistance from the Supreme People's Court of the People's Republic of China through the Supreme Court of Singapore to obtain such certification.

The certification issued by the court of the People's Republic of China which rendered or made the judgment to certify that the judgment has come into force shall be regarded as conclusive evidence on the finality and conclusiveness of the judgment.

Article 20

The courts of Singapore will not enforce judgments of the courts of the People's Republic of China which would amount to the direct or indirect enforcement of any foreign penal, revenue or public law.

Article 21

The courts of the People's Republic of China must have had jurisdiction to determine the subject matter of the dispute, as determined by the courts of Singapore. The courts of Singapore will generally consider the courts of the People's Republic of China to have had the required jurisdiction where the person against whom the judgment was given:

- (a) was, at the time that the case was filed, present or resident in the jurisdiction of the court of the People's Republic of China; or
- (b) was the claimant, or counterclaimant, in the proceedings; or
- (c) submitted to the jurisdiction of the court of the People's Republic of China; or
- (d) agreed, before commencement, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the court of the People's Republic of China.

Article 22

A judgment of the courts of the People's Republic of China may be challenged in the courts of Singapore only on limited grounds. Those grounds include (but are not limited to):

- (a) the judgment was obtained by fraud;
- (b) the judgment is contrary to Singapore public policy;
- (c) the proceedings were conducted in a manner which the court of Singapore regards as contrary to the principles of natural justice, such as but not limited to:
 - i. the litigant had not been given notice of the judicial proceedings or had not been given a reasonable opportunity to be heard;
 - ii. the judicial body is constituted by persons with personal interests in the outcome of the case.

Article 23

The courts of Singapore will not review the merits of a judgment of the courts of the People's Republic of China.

The judgment may not be challenged on the grounds that it contains an error of fact or law.

Article 24

In order to enforce a judgment of the courts of the People's Republic of China, the judgment creditor must commence an action by filing a writ of summons in the competent court of Singapore, providing a concise statement of the nature of the claim and claiming the amount of the judgment debt. A certified copy of the judgment should be exhibited to the writ.

Article 25

Where the judgment debtor is outside of Singapore, without prejudice to Article 28, the judgment creditor will have to seek the leave of court to serve the writ of summons out of the jurisdiction in accordance with Order 11 of the *Singapore Rules of Court*. The application for leave should be supported by an affidavit:

- (a) exhibiting a certified copy of the judgment rendered or made by a court of the People's Republic of China;
- (b) stating that the claim is brought to enforce the judgment rendered or made by the court of the People's Republic of China (in particular, Order 11, rule

- 1(m) of the *Singapore Rules of Court*);
- (c) stating that the judgment creditor believes that it has a good cause of action;
 - (d) stating the place or country the judgment debtor is, or probably may be found.

Article 26

If, following service of the writ of summons, the judgment debtor does not respond to the claim, the claimant will be entitled to obtain judgment in default under Order 13 of the *Singapore Rules of Court*.

Article 27

If, following service of the writ of summons, the judgment debtor responds to the claim, the claimant must file and serve a statement of claim setting out the material facts which are relied upon for the claim, and the necessary particulars of the claim.

Article 28

We understand that where the judgment debtor is in the People's Republic of China, the service of writ of summons, the statement of claim, particulars of the claim and other subsequent documents should be effected through competent Chinese courts in accordance with *Treaty on Judicial Assistance in Civil and Commercial Matters between the People's Republic of China and the Republic of Singapore*.

Article 29

In most cases, a judgment creditor will be entitled to apply to obtain summary judgment without trial under Order 14 of the *Singapore Rules of Court*, unless the judgment debtor can raise a triable issue in relation to a defence based on the ground that the judgment rendered or made by the courts of the People's Republic of China was obtained by fraud, contrary to Singapore's public policy or rendered or made contrary to principles of natural justice. Applications for summary judgment are dealt with swiftly, without the need for oral evidence.

Article 30

If the claim on the judgment rendered or made by a court of the People's Republic of China is successful, the judgment creditor will then have the benefit of a judgment of a court of Singapore. The judgment creditor will be entitled, if necessary, to use the procedures of the courts of Singapore to enforce the judgment under Order 45 of the *Singapore Rules of Court*.

Article 31

Further information about the Supreme People's Court of the People's Republic of China can be obtained by visiting the website of the Supreme People's Court of the People's Republic of China at www.court.gov.cn.

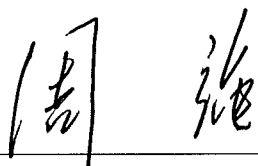
Article 32

Further information about the Supreme Court of Singapore can be obtained:

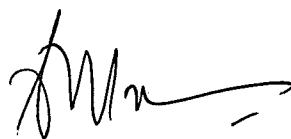
- (a) by visiting the website of the Supreme Court of Singapore at <http://www.supremecourt.gov.sg>; or
- (b) by contacting the Registry of the Supreme Court of Singapore:
 - i. at Level 2, 1 Supreme Court Lane, Singapore 178879;
 - ii. by telephone at +65 6336 0644; or
 - iii. by email at supcourt_registry@supcourt.gov.sg.

This memorandum is made in duplicate in Chinese and English language, both texts being equally authentic.

SIGNED this 31st day of August, 2018 by:



Zhou Qiang
Chief Justice and President
The Supreme People's Court
The People's Republic of China



Sundaresh Menon
Chief Justice
Supreme Court
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