

Singapore High Court Clarifies that Hong Kong Non-Money Judgments Are Not Registrable in Singapore Under the Reciprocal Enforcement of Judgments Act 1959

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The General Division of the High Court of Singapore (“**High Court**”) has, in *Ha Chi Kut (suing as the sole executrix of the estate of Khoo Ee Liam, deceased) v Chen Aun-Li Andrew* [2022] SGHC 149, held that an order issued in Hong Kong ordering the payment of legal costs to be taxed (if not agreed) is not a money judgment in the sense that no sum of money is payable under it until the quantum of costs has been taxed and certified. Accordingly, the six-year period allowed for registration under the Reciprocal Enforcement of Judgments Act 1959 (“**REFJA**”) did not commence until after the quantum of costs payable had been taxed and certified. In reaching its decision, the High Court noted that, at present, non-final and non-money judgments from Hong Kong are not registrable under the REFJA.

Our Comments

The High Court dismissed an application to set aside the registration of a Hong Kong judgment for the payment of costs in Singapore under the REFJA after finding that it was registered within the six-year period specified in the REFJA for doing so.

Importantly, the High Court meticulously traced the legislative history of the REFJA and concluded that, although the REFJA was amended in 2019 with a view to expanding the scope of foreign judgments registrable in Singapore to include non-money judgments, only final money judgments from Hong Kong are, for now, registrable under the REFJA. This is because, to date, no orders have been made under section 3 of the REFJA to extend the scope of registrable judgments to non-money judgments of any description from Hong Kong.

The practical implication is that non-final or non-money judgments issued in Hong Kong -- such as orders for specific performance, freezing orders (or *Mareva* injunctions) and other interim injunctions and orders -- would not be registrable under the REFJA unless and until the scope of registrable judgments under the REFJA is expanded to include such non-final or non-money judgments.

Background

The plaintiff was the sole executrix of the estate of the late Mr Khoo Ee Liam (“**Mr Khoo**”) and appeared in the proceedings in that capacity. The defendant was the director and sole shareholder of Aachen (Asia Pacific) Consultants Limited (“**ACL**”), a company incorporated in Hong Kong.

In 2003, ACL commenced an action against Mr Khoo in Hong Kong for arrears in consultancy fees, while Mr Khoo counterclaimed against ACL for certain sums of money. The Hong Kong Court of First Instance (“**HKCFI**”) dismissed ACL’s claim and allowed Mr Khoo’s counterclaim, with costs of the claim and the counterclaim to be paid by ACL to Mr Khoo to be taxed if not agreed. On 20 March 2013, Mr Khoo applied for the defendant to be made jointly and severally liable with ACL for the said costs. This application was allowed on 30 April 2013 (“**2013 Order**”). The 2013 Order provided that:

... the costs of the main action herein and the counterclaim herein be paid by [the defendant] (jointly and severally with [ACL]) to [Mr Khoo], to be taxed if not agreed ...

Taxation proceedings were commenced by Mr Khoo in September 2014 but adjourned indefinitely following Mr Khoo's passing on 26 May 2015. The plaintiff obtained probate of Mr Khoo's estate on 14 March 2016 and joined herself as a party to the Hong Kong proceedings on 30 November 2018. Thereafter, the plaintiff restored the taxation proceedings and had Mr Khoo's bill of costs taxed and certified by the HKCFI on 14 January 2020 ("**2020 Certificate**").

On 21 June 2021, the plaintiff applied for the registration of the 2013 Order and 2020 Certificate as a judgment in Singapore under the REFJA. The application was granted *ex parte* on 22 June 2021 and served on the defendant on 7 October 2021. The defendant thereafter applied to set aside the registration on the grounds that more than six years had passed since the date of the foreign judgment, which the defendant contended was 30 April 2013, i.e., the date of the 2013 Order.

The Assistant Registrar dismissed the defendant's setting-aside application on 13 December 2021 and the defendant appealed.

The High Court's Decision

The Honourable Justice Pang Khang Chau ("**Pang J**") upheld the Assistant Registrar's decision.

Pang J accepted the defendant's argument that the 2020 Certificate was not a judgment as it did not contain any direction or order for payment of costs, and merely quantified the amount of costs payable pursuant to the 2013 Order, and was therefore incapable of being registered independently of the 2013 Order. However, Pang J reasoned that, as the plaintiff was seeking to register both the 2013 Order and the 2020 Certificate, the real issue was whether the merged or collective judgment ("**Collective Judgment**") should date from the 2013 Order or the 2020 Certificate in relation to the six-year period allowed under the REFJA for the registration of foreign judgments.

Pang J held that the date of the Collective Judgment should be 14 January 2020, being the date on which the 2020 Certificate was issued. He found that, although the 2013 Order was a judgment providing for payment of money, it was not yet a money judgment in the sense that it did not specify a definite sum of money and no sum of money was payable under it. No meaningful relief could be granted on an action on such a bare costs order as it did not give rise to an obligation to pay any sum until the quantum of costs had been taxed and certified. He also took the view that the Collective Judgment became a money judgment registrable under the REFJA only on 14 January 2020, when the 2020 Certificate was issued, whereupon it became a judgment for a definite sum of money. On this textual analysis of the REFJA, since the application to register the Collective Judgment was made on 21 June 2021, Pang J found that the application was made within six years of the date of the Collective Judgment, and consequently not liable to be set aside.

Pang J further noted that the position set out above was reinforced by a purposive interpretation of the REFJA. Following an analysis of the United Kingdom's Foreign Judgments (Reciprocal Enforcement) Act 1933 (on which the REFJA was based), Pang J observed that the key object of the REFJA was to follow in substance the existing principles of the common law on enforcement of foreign judgments and not to diminish the rights of judgment creditors at common law. In this regard, the six-year limitation period for an action to enforce a foreign judgment under common law would commence only from the date on which the cause of action accrued. In this instance, since no cause of action could accrue on the Collective Judgment until after the issuance of the 2020 Certificate (for the reasons set out above), Pang J preferred an interpretation of the REFJA which would be consistent with common law principles.

For the reasons set out above, Pang J dismissed the defendant's appeal.

Pang J's observation that non-final and non-money judgments are not registrable under the REFJA warrants further analysis. He reasoned as follows:

- (a) Prior to amendments made to the REFJA in 2019 pursuant to the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 (Act 25 of 2019) ("**2019 Amendment Act**"), which came into force on 3 October 2019, the REFJA only allowed for the registration of money judgments;
- (b) The Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order (GN No S 93/1999) ("**Hong Kong Extension Order**"), which extended the applicability of the REFJA to Hong Kong, pre-dated the 2019 amendments;
- (c) The transitional provision in section 10 of the 2019 Amendment Act expressly provided for orders such as the Hong Kong Extension Order which pre-dated the commencement of the 2019 Amendment Act to take effect under the amended REFJA, but only in relation to "*final money judgments*";
- (d) The amended REFJA provided a statutory framework for non-money judgments to be registered, but did not have the effect of making non-money judgments immediately registrable; only particular judgments described in an order made by the Minister for Law under section 3(1) of the REFJA would be registrable under the REFJA; and
- (e) Since the 2019 amendments, no orders have been made under section 3(1) of the REFJA to extend Part I of the REFJA to non-money judgments of any description from Hong Kong.

From the foregoing, it would appear that, at present, only final money judgments from Hong Kong may be registered in Singapore under the REFJA. Until such time as the Minister for Law makes an order under section 3(1) of the REFJA to expand the description of judgments from Hong Kong to which Part I of the REFJA applies, non-final or non-money judgments issued in Hong Kong such as orders for specific performance, freezing orders (or *Mareva* injunctions) and other interim injunctions and orders would not be registrable under the REFJA. Moreover, such foreign non-final and non-monetary judgments would also not be enforceable at common law as they are not judgments for a definite sum of money which are final and conclusive as between the same parties.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:



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