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Reciprocal Enforcement of Foreign Judgments (Amendment) Bill

Bill No. 19/2019.

Read the first time on 5 August 2019.

A BILL

intituled

An Act to amend the Reciprocal Enforcement of Foreign Judgments Act (Chapter 265 of the 2001 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Reciprocal Enforcement of Foreign Judgments (Amendment) Act 2019 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the Reciprocal Enforcement of Foreign Judgments Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the definition of “country of the original court” in subsection (1), the following definition:

““Family Justice Rules” means the Family Justice Rules made under section 46 of the Family Justice Act 2014 (Act 27 of 2014);”;

(b) by deleting the words “which is not part of the Commonwealth” in the definition of “foreign country” in subsection (1);

(c) by deleting the words “a judgment or order given or made by a court in any civil proceedings” in the definition of “judgment” in subsection (1) and substituting the words “an interlocutory or final judgment or order given or made by a court in any civil proceedings”;

(d) by inserting, immediately after the words “injured party” in the definition of “judgment” in subsection (1), the words “, and includes a consent judgment, a consent order and a judicial settlement”;

(e) by inserting, immediately after the word “given” in the definitions of “judgment creditor” and “judgment debtor” in subsection (1), the words “(whether or not a sum of money is payable under the judgment)”;

(f) by inserting, immediately after the definition of “judgment debtor” in subsection (1), the following definitions:

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““judicial settlement” —

(a) means a contract approved by, or concluded before, a court in the course of proceedings, being a contract —

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(i) between the parties to proceedings before that court;

(ii) by which those parties end those proceedings; and

(iii) that is recorded by that court in an official document; but

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(b) does not include a consent order or consent judgment;

“money judgment” means a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;

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“non-money judgment” means a judgment that is not a money judgment, but does not include a judgment under which a sum of money is payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;” and

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(g) by inserting, immediately after subsection (2), the following subsection:

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“(2A) A reference to the making or giving of a judgment, in the case of a judgment that is a judicial settlement, is a reference to the making or concluding of the contract in paragraph (a) of the definition of “judicial settlement” in subsection (1).”

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Repeal and re-enactment of section 3

3. Section 3 of the principal Act is repealed and the following section substituted therefor:

5 **“Extension of Part to judgments of recognised courts of foreign countries on basis of reciprocity**

3.—(1) If the Minister is satisfied that, in the event of the benefits conferred by this Part being extended to a particular description of judgments given in a particular court or description of courts of a foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of similar judgments given in a similar court or similar courts of Singapore, the Minister may, by order in the *Gazette*, direct that —

(a) this Part applies to that foreign country;

15 (b) the court or courts of the foreign country specified in the order is a recognised court or are recognised courts of the foreign country for the purposes of this Part; and

20 (c) judgments specified in the order of any such recognised court or courts, if within subsection (2), are judgments to which this Part applies.

(2) A judgment of a recognised court of a foreign country is within this subsection if —

25 (a) it is given after the coming into operation of the order; and

(b) it is final and conclusive as between the parties to it, unless it is an interlocutory judgment.

(3) A judgment —

30 (a) specified in an order under subsection (1) of a recognised court of a foreign country specified in the order; and

(b) that is within subsection (2),

is a judgment to which this Part applies.

(4) However, the following judgments of a recognised court of a foreign country are not judgments to which this Part applies:

(a) a judgment given by that court on appeal from a court that is not a recognised court;

(b) a judgment or other instrument that is regarded for the purposes of its enforcement as a judgment of that court but which was given or made in another foreign country;

(c) a judgment given by that court in proceedings founded on a judgment of a court in another foreign country and having as their object the enforcement of the second-mentioned judgment.

(5) For the purposes of this section, a judgment is taken to be final and conclusive even though —

(a) an appeal may be pending against it; or

(b) it may still be subject to appeal,

in the courts of the country of the original court.

(6) The Minister may by a subsequent order in the *Gazette* vary or revoke any order previously made under this section.”.

Amendment of section 4

4. Section 4 of the principal Act is amended —

(a) by deleting the word “or” at the end of paragraph (a) of subsection (3), and by inserting immediately thereafter the following paragraph:

“(aa) it has been discharged; or”;

(b) by inserting, immediately after subsection (3), the following subsections:

“(3A) The registering court —

(a) may only register a non-money judgment if, having regard to the circumstances of the case and the nature of the relief contained in the judgment, it is satisfied

that enforcement of the judgment would be just and convenient; and

5 (b) if it is of the opinion that such enforcement would not be just and convenient, may make an order for the registration of such amount as it considers to be the monetary equivalent of the relief.

10 (3B) If it appears to the registering court that a money judgment awards damages (including exemplary or punitive damages) that are in excess of compensation for the actual loss or harm suffered by the party awarded the damages, the judgment may only be registered for the amount of the compensation.

15 (3C) In making its decision under subsection (3B), the registering court must take into account whether, and the extent to which, the damages awarded by the original court serve to cover costs and expenses relating to the proceedings in which the judgment was obtained.”; and

20 (c) by deleting subsection (8) and substituting the following subsection:

25 “(8) In addition to any sum of money payable under the judgment of the original court (including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration), or the amount of the monetary equivalent of the relief mentioned in subsection (3A)(b) (as the case may be), the judgment must be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.”.

Amendment of section 5

5. Section 5 of the principal Act is amended —

(a) by deleting the word “or” at the end of subsection (1)(a);

(b) by deleting the full-stop at the end of paragraph (b) of subsection (1) and substituting the word “; or”, and by inserting immediately thereafter the following paragraph: 5

“(c) may be set aside if the registering court is satisfied that the notice of registration had not been served on the judgment debtor, or that the notice of registration was defective.”; 10

(c) by inserting, immediately after subsection (1), the following subsection:

“(1A) To avoid doubt, subsection (1)(c) does not prevent the subsequent registration of a judgment the registration of which has been previously set aside solely under that provision.”; 15

(d) by deleting sub-paragraph (i) of subsection (2)(a) and substituting the following sub-paragraph:

“(i) if the judgment debtor, being a defendant in the proceedings in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of — 20

(A) protecting, or obtaining the release of, property seized or threatened with seizure in the proceedings; 25 30

(B) contesting the jurisdiction of that court; or

(C) inviting that court in its discretion not to exercise its

jurisdiction in the
proceedings;” and

(e) by inserting, immediately after subsection (3), the following subsection:

5 “(4) In this section, “notice of registration” means a notice of the registration of a judgment mentioned in section 8(1)(c) that is required to be served on a judgment debtor by the Rules of Court or Family Justice Rules, as the case may be.”.

10 **Repeal and re-enactment of section 9**

6. Section 9 of the principal Act is repealed and the following section substituted therefor:

15 **“Reciprocal Enforcement of Commonwealth Judgments Act ceases to apply to country to which Part I applies**

9. If the Minister makes an order under section 3 extending Part I to any part of the Commonwealth to which the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) applies, that Act ceases to have effect in relation to that part of
20 the Commonwealth beginning on the date of the order.”.

Amendment of section 10

7. Section 10 of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph:

25 “(a) in the case of a judgment registered under the Reciprocal Enforcement of Commonwealth Judgments Act before the date of coming into operation of the order, the expression “judgment” —

30 (i) means any judgment or order given or made by a court in any civil proceedings by which any sum of money is made payable (not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty); and

- (ii) 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;”.

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Amendment of section 12

8. Section 12 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) If it appears to the Minister that the treatment in respect of recognition and enforcement accorded by the courts of a foreign country to judgments given in a court of Singapore, is substantially less favourable than that accorded by the courts in Singapore to judgments of a court of that country that is similar to the firstmentioned court of Singapore, the Minister may by order apply this section to that country.”.

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Amendment of section 13

9. Section 13 of the principal Act is amended by deleting subsection (1) and substituting the following subsection:

“(1) Where —

(a) a judgment has been given in a court of Singapore; and

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(b) the judgment creditor desires to enforce the judgment in a foreign country to which Part I applies,

the registrar of the court of Singapore, on an application made by a judgment creditor and on payment of such fee as may be prescribed, is to issue to the judgment creditor certified copies of the pleadings, order of court and written grounds of decision (if any), together with a certificate that contains such particulars as may be prescribed by the Rules of Court or Family Justice Rules.”.

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Saving and transitional provisions

10.—(1) Any order made before the date of commencement of this Act (called in this section the appointed date) under section 3 of the principal Act as in force immediately before that date, which —

- 5 (a) extends Part I of the principal Act to a foreign country; and
 (b) deems a specified court of the foreign country as a superior court of that country for the purposes of Part I of the principal Act,

10 has effect beginning on the appointed date as an order made under section 3 of the principal Act as if —

- (c) the order directed that that court is a recognised court of that foreign country for those purposes; and
 (d) the order directed that final money judgments of that court that are within section 3(2) of the principal Act are
 15 judgments to which Part I of the principal Act applies.

(2) In determining, for the purposes of Part I of the principal Act, whether a judgment mentioned in subsection (1)(d) is one to which that Part applies, section 3(2)(b) of the principal Act is omitted.

20 (3) In the application of the principal Act to a judgment of a court mentioned in subsection (1) that was registered before the appointed date, a reference to “judgment” —

- (a) is a reference to any judgment or order given or made by a court in any civil proceedings, by which any sum of money is made payable (not being a sum payable in respect of
 25 taxes or other charges of a similar nature or in respect of a fine or other penalty); and
 (b) 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
 30 manner as a judgment given by a court in that place.

(4) For a period of 2 years after the appointed date, the Minister may, by regulations, prescribe such additional provisions of a saving

or transitional nature consequent on the enactment of any provision of this Act as the Minister may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to expand the types of judgments from a foreign country which may be registered and enforced under the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265), to enable judgments from any court of a foreign country to be so registered and enforced, and to make other amendments to the Act.

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2 —

- (a) to insert a definition for “Family Justice Rules” as the term is used several times in the Act;
- (b) to amend the definition of “foreign country” so that it includes a Commonwealth country, as an order under section 3 may be made to apply Part I to any foreign country, including one from the Commonwealth; and
- (c) to extend the definition of “judgment” to include a non-money judgment, an interlocutory judgment, a judicial settlement, a consent judgment and a consent order, and to make other amendments relating to this.

Clause 3 repeals and re-enacts section 3. The re-enacted section 3 enables the Minister to extend Part I to a particular description of judgments (and not just a money judgment) given in a particular court or description of courts (and not just a superior court) of a foreign country, if substantial reciprocal treatment will be assured for the enforcement in that foreign country of similar judgments given in a similar court or similar courts (and not just the High Court) of Singapore.

The new section 3(4) provides that certain judgments are not judgments to which Part I applies. The purpose of this is to prevent litigants from a country which does not provide reciprocity to Singapore judgments, from circumventing section 3 by making an appeal to or enforcing their judgments in a court of a country that gives such reciprocity.

Clause 4 amends section 4 —

- (a) to provide that a foreign judgment is not registrable if it is discharged (e.g. in the event of a bankruptcy);

- (b) to provide that a non-money judgment may only be registered if the registering court is satisfied that it would be just and convenient to enforce the judgment, and if not the court may order it to be registered for an amount which it considers to be the monetary equivalent of the relief; and
- (c) to provide that a judgment for damages that include non-compensatory damages may only be registered for the amount of the compensation.

Clause 5 amends section 5 —

- (a) to include an additional ground for setting aside the registration of a judgment, *viz.* the notice of registration had not been served on the judgment debtor or is defective; and
- (b) to provide additionally that the original court is not deemed to have jurisdiction (a ground for setting aside registration) merely because the judgment debtor appeared in the proceedings for the purpose of inviting the court not to exercise its jurisdiction in the proceedings.

Clause 6 repeals and re-enacts section 9. The existing section 9(1) and (2), which allows the Minister to make an order applying Part I to the Commonwealth other than to those parts of the Commonwealth which the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) (called the RECJA) applies as at the date of the order, is no longer necessary.

Clause 7 amends section 10 so that, where an order is made extending Part I to a country to which the RECJA applies (called the RECJA country), the extension of the Act to an arbitration award from a RECJA country under that section only applies if the arbitration award is registered under the RECJA before the operative date of the order.

Clause 8 deletes and substitutes section 12(1) to be consistent with the re-enacted section 3.

Clause 9 amends section 13 to enable the judgment creditor of a judgment (and not just a money judgment) obtained in a court of Singapore (and not just the High Court) to apply for certified copies of the pleadings, order of court and written grounds of decision, together with a certificate that contains prescribed particulars.

Clause 10 contains saving and transitional provisions for the amendments in the Bill. Sub-clauses (1), (2) and (3) save orders made under the existing section 3 with modifications. Sub-clause (4) enables other saving and transitional provisions to be made.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
