

MEMORANDUM OF GUIDANCE IMPROVES ENFORCEMENT PROSPECTS FOR MONEY JUDGMENTS BETWEEN SINGAPORE AND CHINA

INTRODUCTION

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 on the Recognition and Enforcement of Money Judgments in Commercial Cases* (MOG). While not legally binding, this is a milestone development given that there are no treaties or other existing arrangements for reciprocal enforcement of judgments between the PRC and Singapore.¹

The signing of the MOG is a welcome development for companies which have dealings with entities with assets in the PRC, as well as Chinese companies which have dealings with entities with assets in Singapore against which a judgment may potentially be enforced.

SCOPE OF THE MOG

The MOG is only concerned with judgments requiring the payment of a **fixed or ascertainable sum of money** in commercial cases. The MOG is not applicable to judgments for non-monetary reliefs, such as specific performance and declaratory relief.

A key point is that the MOG applies to all judgments made in the Singapore Courts, including the Singapore International Commercial Court (SICC). Therefore, commercial parties whose counterparties have assets in Singapore or the PRC may now find dispute resolution in the SICC to be an attractive option to facilitate recognition and enforcement of money judgments (as an alternative to international arbitration), even if their disputes do not have any direct nexus with Singapore. The SICC Model Clause is publicly available at https://www.sicc.gov.sg/docs/default-source/guide-to-the-sicc/sicc_model_clauses.pdf.

ENFORCEMENT OF SINGAPORE JUDGMENTS IN THE PRC

Before the MOG, Singapore court judgments have, on occasion, been enforced in the PRC under the "principle of reciprocity" set out in Articles 281 and 282 of the PRC Civil Procedure Law.

Key issues

- Newly-signed Memorandum of Guidance provides clarity on the procedure for the reciprocal enforcement of money judgments between the PRC and Singapore
- Enhanced enforcement regime may make dispute resolution in the Singapore International Commercial Court more attractive to parties doing business with PRC counterparties
- Memorandum of Guidance forms part of the dispute resolution landscape to be considered by parties involved in projects along the Belt and Road Initiative.

¹ Both Singapore and the PRC have signed the *Hague Convention on Choice of Court Agreements* (Hague Convention), which provides for the recognition and enforcement of judgments given by a court of a Contracting State designated in an exclusive choice of court agreement in other Contracting States. To date, the Hague Convention has become binding on Singapore, but has not yet been ratified by and is hence not binding on, the PRC.

The MOG clarifies the circumstances in which a Singapore court judgment can be enforced by a PRC court under the principle of reciprocity.

Pursuant to the MOG, a final and conclusive judgment of a Singapore court (i.e. a judgment which is not under or subject to appeal) may be recognised and enforced by a PRC court, unless:

- The recognition and enforcement of such a judgment *amounts to the direct or indirect enforcement of any foreign penal, revenue or public law* (Article 8)
- The judgment relates to a ring-fenced area of law, including but not limited to judgments relating to intellectual property, unfair competition and monopoly (Article 8)
- The Singapore court did not have jurisdiction to determine the subject matter of the dispute (Article 9)
- Enforcement is successfully challenged on the basis of limited grounds, including but not limited to the following (Article 10):
 - The judgment is *contrary to basic principles of PRC law* or will prejudice its sovereignty, security or public interests;
 - The judgment was obtained by *fraud*;
 - *Breach of natural justice*: litigant was not given proper notice or a reasonable opportunity to defend the case; litigant without capacity was not properly represented; or judgment was made by a judicial body with personal interests in the outcome of the case;
 - There are *parallel proceedings* between the same litigants and on the same subject, pending in the Courts of the PRC, or the PRC courts have made a final and conclusive judgment or recognised/enforced a final and conclusive judgment rendered by a third state or an arbitration award.

While the limitations to enforcement set out in Article 8 and Article 10 of the MOG are not exhaustive, a party trying to resist enforcement of a Singaporean judgment in PRC would bear the burden of proving that there are other reasons why the judgment should not be enforced, apart from the grounds expressly set out in the MOG.

It is hoped that the PRC Courts will adopt a cautious approach in applying the exceptions for enforcing Singaporean judgments.

No review of merits

When a Singaporean judgment is presented to the PRC Courts for enforcement, the PRC court will not review the merits of a judgment of the Singapore courts. Also, the judgment cannot be challenged on the grounds that it contains an error of fact or law.

ENFORCEMENT OF PRC COURT JUDGMENTS IN SINGAPORE

Singapore courts apply the general common law test in determining whether a foreign judgment is capable of recognition. A foreign judgment is capable of recognition at common law if (i) it is final and conclusive; (ii) the Court issuing the judgment had international jurisdiction; and (iii) there is no defence to the recognition of the judgment.

As with enforcement of a Singapore court judgment in the PRC, the MOG lends greater clarity to the enforcement of PRC judgments in Singapore. A final and conclusive PRC court judgment may be enforced by a Singapore court unless:

- Enforcement would amount to the direct or indirect enforcement of any foreign penal, revenue or public law (Article 20)
- The PRC court which issued the judgment did not have jurisdiction to determine the subject-matter of the dispute (Article 21)
- The PRC judgment is successfully challenged on limited grounds, including but not limited to the following (Article 22):
 - The judgment was obtained by *fraud*;
 - The judgment is *contrary to Singapore public policy*;
 - *Breach of natural justice*: litigant was not given proper notice; judgment was made by a judicial body with personal interests in the outcome of the case; etc.

No review of merits

Similarly, a Singapore court will not review the merits of a judgment of the courts of the PRC. A PRC court judgment cannot be challenged on the grounds that it contains an error of fact or law.

CONCLUSION

Overall, the signing of the MOG between the Singapore and PRC courts is a positive development for businesses with commercial interests in both Singapore and the PRC. If (as expected) the PRC proceeds to ratify the Hague Convention, in due course Singapore and the PRC will be under a legally binding framework for the mutual recognition and enforcement of court judgments. In the meantime, the MOG represents a significant improvement for the enforcement prospects of money judgments between Singapore and the PRC.

The MOG is therefore particularly relevant for businesses which have commercial dealings with counterparties which have assets in the PRC or in Singapore. This includes parties involved in projects along the Belt and Road Initiative, which may be considering their dispute resolution options.

CONTACTS



Paul Sandosham
Partner
Clifford Chance

T +65 6661 2055
E paul.sandosham
@cliffordchance.com



Nish Shetty
Partner
Clifford Chance

T +65 6410 2285
E nish.shetty
@cliffordchance.com



Joan Lim-Casanova
Senior Associate
Cavenagh Law LLP

T +65 6661 2050
E joan.lim-casanova
@cliffordchance.com



Tian Yi Tan
Associate
Cavenagh Law LLP

T +65 90111107
E tianyi.tan
@cliffordchance.com



Lei Shi
Consultant
Clifford Chance

T +852 2826 3547
E lei.shi
@cliffordchance.com



Feifei Yu
Registered Foreign
Lawyer
Clifford Chance

T +852 2825 8091
E feifei.yu
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Any content above relating to the PRC is based on our experience as international counsel representing clients in business activities in the PRC and should not be construed as constituting a legal opinion on the application of, or in respect of, PRC law. As is the case for all international law firms with offices in the PRC, while we are authorised to provide information concerning the effect of the Chinese legal environment, we are not permitted to engage in Chinese legal affairs. Should the services of a Chinese domestic law firm be required, we would be glad to recommend one.

www.cliffordchance.com

www.cavenaghlaw.com.sg

Clifford Chance Asia

12 Marina Boulevard, 25th Floor Tower 3,
Marina Bay Financial Centre, Singapore
018982

Clifford Chance Asia is a Formal Law Alliance in Singapore between Clifford Chance Pte Ltd and Cavenagh Law LLP. Please approach Cavenagh Law LLP if you require any advice on court procedures in Singapore.

© Clifford Chance Pte Ltd and
Cavenagh Law LLP 2018

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • Newcastle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.