

Client Alert

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Singapore High Court holds that enforcement of a foreign judgment may be refused if the debtor has no assets in the jurisdiction or if the judgment breaches international comity

In *Global Distressed Alpha Fund I Limited Partnership v. PT Bakrie Investindo*, [2013] SGHC 12, the Singapore High Court was asked to set aside an order (the "**Registration Order**") registering an English judgment on the grounds that the debtor did not appear to have any assets in the jurisdiction and that the judgment "*appeared to be in conflict*" with an Indonesian court order. The judgment had been registered pursuant to the Reciprocal Enforcement of Commonwealth Judgments Act ("**RECJA**"). Although the Court held that issues of international comity and whether the debtor had assets in the jurisdiction could be considered before a foreign judgment was registered under the RECJA, these grounds were not made out and the Court declined to set aside the Registration Order on those grounds. The decision appears to recognise, for the first time in Singapore, that issues of international comity and whether the debtor had assets in the jurisdiction were grounds for refusing to enforce a foreign judgment registered under the RECJA.

Facts

The Appellant, PT Bakrie Investindo ("**PT Bakrie**"), became liable under a guarantee (the "**Guarantee**") for defaults in payment of sums due under loan notes issued by its subsidiary. The Guarantee was governed by English law. On 6 March 2002, PT Bakrie entered into an arrangement with some of its creditors, which was subsequently ratified by the Commercial Court of the Central Jakarta District Court (the "**Indonesian Order**"). Pursuant to the Indonesian Order, and under Indonesian law, creditor claims against PT Bakrie, including those under the Guarantee, were discharged.

In 2009, the Respondent, Global Distressed Alpha Fund I Limited Partnership ("**GDAF**"), obtained judgment against PT Bakrie in the UK High Court on the Guarantee (the "**UK Judgment**").

GDAF registered the UK Judgment in Singapore (i.e., the "**Registration Order**"), and PT Bakrie applied to set it aside. PT Bakrie's application was dismissed by the Assistant Registrar. PT Bakrie's appeal to the High Court was dismissed.

Issues and Findings

PT Bakrie applied to set aside the Registration Order on three grounds:

1. GDAF knew that PT Bakrie was a dormant company without any assets and so the registration of the UK Judgment was futile and therefore, not "just and convenient", as required under Section 3(1) of the RECJA.
2. Registering the UK Judgment would disregard the Indonesian Order and breach international comity and infringe public policy.
3. GDAF had failed to meet its obligation to give full and frank disclosure when it applied to the Court ex parte to obtain the Registration Order.

Whether the registration of the UK Judgment was "just and convenient" under Section 3(1) of the RECJA

Section 3(1) of the RECJA provides as follows:

"Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on any such application the High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to this section, order the judgment to be registered accordingly."

The Court recognised that Section 3(1) did not give it an "*untrammelled discretion*" to set aside the registration of a foreign judgment, but it would do so only where it is "*practicable and required by the interests of justice*". The Court appeared to accept PT Bakrie's argument that since the purpose of registering a foreign judgment is for enforcement in Singapore, it would not be "just and convenient" to register the UK Judgment if GDAF knew that PT Bakrie was a dormant company without any assets in the jurisdiction. The Court however held that there was in fact no evidence before it that PT Bakrie had no assets. In the absence of such evidence, the Court declined to set aside the Registration Order on this ground.

Whether the Registration Order should be set aside for breach of international comity

PT Bakrie argued that the doctrine of international comity forms part of Singapore's public policy and that international comity would be breached if the UK Judgment was registered since it would have the effect of disregarding the Indonesian Order, which had discharged all of PT Bakrie's liabilities under Indonesian law. PT Bakrie relied on Section 3(2)(f) of the RECJA which provides:

"No judgments shall be ordered to be registered under this section if ... the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court."

Section 3(2) of the RECJA specifies several grounds under which the Court may refuse registration of a foreign judgment - for example, where a judgment was obtained by fraud or the foreign court acted without jurisdiction.

The Court held that Section 3(2)(f) of the RECJA was not relevant, but that the issue of international comity could be considered under the "just and convenient" ground under Section 3(1) of the RECJA, although ultimately the Court found that this ground was not made out.

First, whilst the UK Judgment appeared to conflict with the Indonesian Order, the Court reaffirmed the principle that the enforcement forum is not an appellate tribunal vis-à-vis the foreign judgment. Accordingly, a Singapore court may not investigate into the merits of the UK Judgment and/or the Indonesian Order at the enforcement stage and/or "select" one judgment over the other.

Second, and in any event, the UK High Court was aware of the Indonesian Order but nevertheless decided in favour of GDAF. PT Bakrie therefore had an opportunity to address the conflict.

Whether the Registration Order should be set aside due to GDAF's material non-disclosure

The Court found that GDAF had failed to disclose certain material facts in its supporting affidavit for its application for the Registration Order. Ordinarily such material non-disclosure would be a ground to set aside the Registration Order. The Court however took the view that it was in the interest of justice not to set aside the Registration Order because, amongst other things, the omission by GDAF was not deliberate and there was no draconian effect immediately arising from the Registration Order itself.

The Court also took the opportunity to remind litigants and their lawyers of the importance of disclosing all material facts, even those favourable to the other party.

Significance

In determining whether it was "just and convenient" to set aside the registration of a foreign judgment under the RECJA, the Court was prepared to consider whether the debtor had assets in the jurisdiction and whether the registration of a foreign judgment would breach international comity. The "just and convenient" ground by its nature gives the Court some discretion to decide whether, apart from the enumerated grounds in Section 3(2) of the RECJA, the foreign judgment should nevertheless be denied registration. Earlier Singapore decisions have not specified what "just and convenient" means - except to say, as the Court of Appeal did in *Yong Tet Miaw and anor v. MBF Finance Bhd*, [1992] 2 SLR(R) 549, that the registration of the foreign judgment will be set aside only "where it is practicable and requested by the interests of justice." The High Court's decision is useful in at least giving some concrete examples of when it would not be "just and convenient" to register a foreign judgment, even if ultimately, those grounds were not successfully invoked.