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# "Asian" principles for the recognition and enforcement of foreign judgments? Singapore as a case study

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# "ASIAN" PRINCIPLES FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS? SINGAPORE AS A CASE STUDY

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This paper considers if there can be said to be an "Asian" body of principles for the recognition and enforcement of foreign judgments. Tapping on the results of a research project which was conducted from 2016 to 2020, it is submitted that the answer to this query is in the negative. However, it is suggested that what marks out the "Asian" approach to private international law is the willingness of Asian countries to look outwards for reform and development and to balance the adoption of international norms against important local norms and objectives. Singapore's approach to the recognition and enforcement is discussed as a case study of this Asian approach.

Keywords: foreign judgments, common law rules, Hague Judgments Convention, Hague Choice of Court Agreements Convention, Singapore private international law

## 1. Introduction

The recognition and enforcement of foreign judgments is an important and practical topic because the ultimate aim of any judgment creditor[1] is to obtain satisfaction of their judgment. A judgment obtained from the court of one country may need to be brought to a different country for enforcement if the judgment debtor[2] has their assets in the second country. The effectiveness of the judgment of the first court in the country of the second court depends on the receptiveness of the second country towards giving effect to a foreign judgment within its borders. Thus, this topic is particularly dependent on the maintenance of good ties and judicial comity between the countries involved. Given the rise in cross-border transactions, it is no surprise that the circulation of judgments abroad has been the subject of close attention at both the regional[3] and global level[4] in recent years.

This paper looks at the rules for the recognition and enforcement of foreign judgments in Asia. It has two objectives. The first objective is to discuss whether there can be said to be a body of "Asian" principles on this topic. This is covered in Section II where the discussion taps

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[1] That is, the party which prevailed in the litigation.

[2] That is, the party which lost in the litigation.

[3] Apart from the ABLI project which is described in Section II, other works and projects in Asia include the Asian Principles on Private International Law (Weizuo Chen and Gerald Goldstein, *The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law* 13 Journal of Private International Law 411 (2017)) and Anselmo Reyes (Ed.), *Recognition and Enforcement of Judgments in Civil and Commercial Matters (Studies in Private International Law – Asia)* (Bloomsbury Publishing, 2019).

[4] Two international instruments in this area are: Convention of 30 June 2005 on Choice of Court Agreements (entered into force Oct. 1, 2015) [hereinafter HCCCA] and The Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (entered into force Sept. 1, 2023). Singapore is the only Asian country to-date to have enacted the 2005 Convention. No Asian country has to-date signed the 2019 Convention.

on the findings of a project on this topic. The second objective is to consider, in more detail, the development of the rules on foreign judgments in one country to see if any lessons of general application can be gleaned towards the development of an "Asian" approach to this topic. This is the aim of Section III. Section IV concludes.

## 2. Project on Asian Principles for the Recognition and Enforcement of Foreign Judgments

### 2.1 Scope of the project

From around 2016 to 2020 I had the privilege of leading a project on the recognition and enforcement of foreign judgment rules on commercial matters in Asia. This project was conducted under the auspices of the Asian Business Law Institute (ABLI), a research institute based in Singapore. ABLI was set up with the objective of "stimulating the drive towards thoughtful legal convergence in the region."[5] The Foreign Judgments project was the first project launched by ABLI. The overall aim of the project was to support legal convergence on the recognition and enforcement of foreign judgments in Asia.

The countries covered within the scope of the project were the ten ASEAN Member States and five of ASEAN's key trade partners, i.e. Australia, China, India, Japan and South Korea. The project involved two phases. The first phase was a mapping exercise to lay out the rules on recognition and enforcement of foreign judgments in these 15 countries. A country reporter, who was either a leading scholar or practitioner based in that country, was appointed to produce a country report. The compendium of country reports was published in 2017.[6] The second phase involved seven of the original country reporters coming together to discern common principles and to produce a text on the Asian Principles for the Recognition and Enforcement of Foreign Judgments. This was published in 2020.[7] This text comprised 13 principles with accompanying commentary where we set out the commonalities in the various laws, discussed whether any differences were fatal to harmonisation, and made recommendations for the best approach to take.[8]

### 2.2 Findings

While the text of the second output of the project is titled the "Asian" principles, the word "Asian" was used because of the geographical location of the countries covered in the project rather than because we purported to espouse intrinsically "Asian" principles. Our 13 principles include standard principles such as the court of origin had international jurisdiction to render the judgment, the judgment is final and no review of the merits is allowed. The Principles also

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[5] Sundaresh Menon, Chief Justice, Singapore, Keynote Address at Doing Business Across Asia: Legal Convergence in an Asian Century (Jan. 21, 2016), para. 4.

[6] Adeline Chong, *Recognition and Enforcement of Foreign Judgments in Asia, ABLI Legal Convergence Series* (ABLI, 2017).

[7] Adeline Chong, Asian Principles for the Recognition and Enforcement of Foreign Judgments, ABLI Legal Convergence Series (ABLI, 2020).

[8] For an overview of the project and findings, see Adeline Chong, *Moving towards harmonisation in the recognition and enforcement of foreign judgment rules in Asia*, 16 Journal of Private International Law 31-68 (2020).

lists grounds of refusal to recognise and enforce a foreign judgment such as fraud, the judgment is manifestly against the public policy of the country of the court addressed and lack of due process in the proceedings before the court of origin.

The 13 principles were drafted to capture, as far as possible, what was held in common in the 15 countries within the scope of the project. Thus, the principles were drafted in broad terms. However, there are differences which operate at a more granular level within each principle. These were discussed in the accompanying commentary. These differences are primarily of interpretation and application, which do not belie the general support for and adoption of the broad principle. For example, attitudes on fraud as a ground for refusal and what types of fraud would be relevant diverge, but there is consensus that fraud can be pleaded to resist the recognition and enforcement of a foreign judgment.[9] Similarly, the content of public policy is for each country to determine for itself and sovereignty concerns under this ground of refusal are more clearly highlighted in the laws of some countries compared to others.[10] However, there is no doubt that public policy is another generally accepted ground for refusal across board.[11]

Nevertheless, it must be acknowledged that some differences are more intractable. Two are mentioned here. For one, Indonesia and Thailand do not generally enforce foreign judgments. For another, reciprocity as a pre-condition is adopted in the civil law countries. Reciprocity features in the statutory registration schemes in the common law countries but does not apply to enforcement under the common law rules.

Therefore, the findings from the ABLI Foreign Judgments project do not clearly point towards a unified "Asian" body of law on the recognition and enforcement of foreign judgments. This conclusion is hardly surprising due to the heterogeneity of the region. There are divergences in terms of legal tradition, culture, modes of governance and religion in Asia. No singular concept of "Asian private international law" can claim to represent this richness of diversity. In addition, a number of Asian countries trace their legal tradition to non-Asian influences.[12] For example, South Korean and Japanese laws on foreign judgments are influenced by German law.[13] The common law countries within the ABLI project all owe their recognition and enforcement of foreign judgment rules to English law due to colonisation by Great Britain in the past. Of course, there may have been some modern adaptations, but the origins of the rules are very clearly English.

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[9] Narinder Singh, 'Principle 8: Fraud', in Adeline Chong (Ed.), *Asian Principles for the Recognition and Enforcement of Foreign Judgments*, ABLI Legal Convergence Series 100 (ABLI, 2020); Chong, *supra* note 8, at 48-51.
[10] Chong, *supra* note 8, at 46.
[11] Yu Un Oppusunggu, 'Principle 9: Public Policy', in Adeline Chong (Ed.), *Asian Principles for the Recognition and Enforcement of Foreign Judgments*, ABLI Legal Convergence Series 112 (ABLI, 2020).
[12] Within ASEAN, only Thailand can lay claim to never being colonised in the past.
[13] Kwang Hyun Suk, *Recognition and Enforcement of Judgments between China, Japan and South Korea in the New Era: South Korean Law Perspective*, 13 Frontiers of Law in China 171, 193 (2018).

The absence of an "Asian" body of law on the recognition and enforcement of foreign judgments is also due to the general reasons why countries are prepared to give effect to foreign judgments. The reasons include to have finality in litigation, to preserve comity and to facilitate commerce.[14] These reasons are universal and are not intrinsically Asian in nature. It is notable that the content of the Asian Principles is consistent with provisions in global instruments on the recognition and enforcement of foreign judgments, such as the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters.[15] Lastly, it may be added that the very nature of private international law – which deals with cross-border transactions, connections and events – demands that one cannot be insular in outlook. Thus, in my view, it is difficult to identify intrinsically "Asian" principles in the area of recognition and enforcement of foreign judgments.

### 2.3 Way forward?

It has been observed that the "interplay between formal law and society" in Asia differs from in the West.[16] Instead of focussing on substantive rules, perhaps looking towards legal processes and backdrop – such as how substantive rules are developed, applied and implemented – may provide a more fruitful path in determining whether there are any uniquely Asian features in private international law or lessons which Asian private international law could offer to the wider world.

In that, it is suggested that Singapore represents a good case study. Its multi-racial and multi-religious society is a microcosm of Asia generally. The framework of the legal system is derived from its colonial past but there are concerted efforts to develop an autochthonous body of law.[17] Governmental initiatives aimed at positioning Singapore as the forum for choice for international commercial dispute resolution has led to development of Singapore private international law generally including the rules on the recognition and enforcement of foreign judgments. The next section thus focusses on the Singapore approach.

## 3. Singapore's Rules on the Recognition and Enforcement of Foreign Judgments: A Case Study

### 3.1 Overview

Singapore's rules on private international law, which include the rules on recognition and enforcement of foreign judgments, are largely derived from English common law principles. This is due to its status as a former British colony. English law was formally received into Singapore by way of the Second Charter of Justice of 1826. After independence in 1965, the

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[14] Adeline Chong, 'Principle 1: General Principle' in Adeline Chong (Ed.), *Asian Principles for the Recognition and Enforcement of Foreign Judgments*, ABLI Legal Convergence Series 14 (ABLI 2020).
[15] HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, JUDGMENTS SECTION, *available at* https://www.hcch.net/en/instruments/conventions/specialised-sections/judgments.
[16] Ralf Michaels, 'How Asian Should Asian Law Be?', in Gary Low (Ed.), *Convergence and Divergence of Private Law in Asia* 227, 234 (Cambridge University Press, 2022).
[17] Andrew B.L. Phang, Goh Yihan & Jerrold Soh, *The Development of Singapore Law: A Bicentennial Retrospective*, 32 Singapore Academy of Law Journal 804 (2020).

Application of English Law Act 1993 maintained the application of certain English enactments as part of Singapore law and the common law of England in Singapore insofar as it was part of the law of Singapore prior to the Act.[18]

The specific area of recognition and enforcement of foreign judgments provides a good basis for a discussion of Singapore private international law because this topic has been the subject of considerable governmental attention in recent years. The government has been making efforts to position Singapore as a centre for international commercial dispute resolution. The Singapore International Arbitration Centre was established in 1991. With the objective of offering a complete suite of dispute resolution services for international commercial disputes, the Singapore International Mediation Centre was established in 2014 and the Singapore International Commercial Court (SICC) was established in 2015. The establishment of the SICC is a key reason why there have been a number of developments on the recognition and enforcement of foreign judgments in Singapore law. The SICC is a specialist court set up to hear disputes with little connection to Singapore. These disputes will likely require enforcement of the resulting SICC judgment abroad. Thus, ensuring the enforceability of SICC judgments abroad is an important component to increasing its popularity for international litigation.

To that end, various initiatives have been pursued by the government in the field of foreign judgments. To appreciate these initiatives, it should be noted that there are three regimes covering the recognition and enforcement of foreign judgments in Singapore: the Reciprocal Enforcement of Foreign Judgments Act 1959 (REFJA),[19] the Choice of Court Agreements Act 2016,[20] which enacts the Hague Convention on Choice of Court Agreements 2005[21] (HCCCA) into Singapore law, and the common law rules. The following sections will touch on each of these regimes and discuss developments which have enhanced Singapore's landscape on foreign judgments.

### 3.2 Executive and legislative developments

Singapore signed the HCCCA on 25 March 2015. This followed from the establishment of the SICC on 5 January 2015. That the two developments are linked together was made clear in the Parliamentary debates on the enactment of the HCCCA into Singapore law. It was stated that:

> "It is an opportune time for Singapore to implement and ratify the Convention. Doing so will be beneficial to our position as a dispute resolution hub. First, it will enhance the enforceability of Singapore judgments in other jurisdictions. This includes judgments from the SICC, which was established as a specialist court to hear international commercial disputes, including disputes which have no substantial connection to

[18] *See* generally, Andrew B.L. Phang, 'The Reception of English Law', in Kelvin Y.L. Tan (Ed.), *Essays in Singapore Legal History* (Marshall Cavendish Academic and Singapore Academy of Law, 2005), ch. 2.
[19] Reciprocal Enforcement of Foreign Judgments Act 1959 (Sing.) [hereinafter REFJA].
[20] Choice of Court Agreements Act 2016 (Sing.).
[21] HCCCA, *supra* note 4.

> Singapore. Second, the ability to enforce our judgments more widely will be an added incentive for parties to choose Singapore courts, including the SICC, in exclusive choice of court agreements."[22]

The HCCCA was enacted into Singapore law by way of the Choice of Court Agreements Act 2016 (CCAA),[23] which entered into force on 1 October 2016. Part 3 of the Choice of Court Agreements Act 2016 deals with the recognition and enforcement of judgments from a chosen Contracting State court to the HCCCA. It obliges a Contracting State Court to recognise or enforce judgments from an exclusively chosen Contracting State court by the parties, subject to an exhaustive list of grounds for refusal.[24] Thus, if the parties choose the SICC as the exclusive forum for dispute resolution, the resulting SICC judgment will circulate in the other Contracting States pursuant to the Convention's rules. Likewise, the Singapore court has the obligation to recognise or enforce a judgment from another chosen Contracting State court, subject to the exhaustive grounds for refusal.

The REFJA is based on the United Kingdom's Foreign Judgments (Reciprocal Enforcement) Act 1933.[25] The UK Act and, in turn, the REFJA, are modelled on the common law rules. Judgments from courts of countries which are gazetted under the REFJA can be registered under the statute, and once registered, will be treated as if it were a local judgment. Countries are gazetted upon the Minister in charge being satisfied that "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 in Singapore".[26]

However, amendments to the REFJA in 2019 significantly widened its scope of operation. Prior to the amendments, only money judgments from superior courts of gazetted countries which are final and conclusive could be registered under the REFJA. The requirements of finality and money judgments are also cardinal requirements under the common law enforcement of foreign judgment rules. Under the amended REFJA, it is possible to register judgments from non-superior courts, interlocutory orders such as freezing orders, non-money judgments provided that enforcement of the non-money judgment would be "just and convenient",[27] and judicial settlements, consent judgments and consent orders.[28]

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[22] *Singapore Parliamentary Debates, Official Report* (14 April 2016) vol 94, https://sprs.parl.gov.sg/search/#/sprs3topic?reportid=bill-207 (Indranee Rajah, Senior Minister of State for Law).
[23] Choice of Court Agreements Act 2016 (Sing.) [hereinafter CCAA]
[24] HCCCA, *supra* note 4, at art 8(1); CCAA, *supra* note 23, at §13(4).
[25] Foreign Judgments (Reciprocal Enforcement) Act 1933, C. 13 (UK).
[26] REFJA, *supra* note 19, at §3(1).
[27] REFJA, *supra* note 19, at §4(4)(a). Examples of when it would not be "just and convenient" to register a non-money judgment include where to do so would give rise to practical difficulties or issues of policy and convenience. The court has a discretion to make an order for the registration of the monetary equivalent of the non-money relief if this is the case: *Singapore Parliamentary Debates*, *Official Report* (2 September 2019) vol 94 https://sprs.parl.gov.sg/search/#/fullreport?sittingdate=2-9-2019 (Edwin Tong Chun Fai, Senior Minister of State for Law (for the Minister of Law) [hereinafter Speech during REFJA (Amendment) Bill].
[28] REFJA, *supra* note 19, at §2(1) (definition of 'judgment'). The last inclusion aligns the REFJA with the HCCCA.

Prior to the reform, only Hong Kong SAR was gazetted under the REFJA.[29] The intention of Parliament, pursuant to the reform, was to negotiate on a country-by-country basis to determine the suitable reciprocal arrangements for each case. In particular, there was an intention to transfer the countries which were gazetted under the now-repealed Reciprocal Enforcement of Commonwealth Judgments Act 1921 (RECJA)[30] to the reformed REFJA.[31] This was effected on 1 March 2023. The list of gazetted jurisdictions under the REFJA, apart from HK SAR, currently comprises Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka, United Kingdom of Great Britain and Northern Ireland.[32] What is notable, however, is that all of these jurisdictions have been gazetted on generally the same terms as the previous arrangements, that is, only money judgements rendered by the superior courts of the gazetted countries which are final and conclusive between the parties can be registered under the REFJA.[33] The 2019 reforms modernised the law and included significant deviations from common law principles, such as allowing for the registration of non-money judgments and interlocutory judgments which need not be final and conclusive in nature. That the usual terms continue to apply is a disappointment and given the requirement of reciprocity of treatment between Singapore and the counterpart country, suggests a lack of success on the Singapore government's part to persuade the counterpart countries to widen their foreign judgment rules in relation to treatment of Singapore judgments.

### 3.3 Judicial initiatives and the development of the common law rules

#### 3.3.1 Conclusion of MOGs

In the midst of executive and legislative developments, the Singapore judiciary has also been actively furthering the agenda of increasing the portability of Singapore judgments abroad. The Singapore court has signed various Memoranda of Guidance (MOGs) on the enforcement of money judgments with nine courts to-date.[34] These MOGs set out each signatory country's rules on the enforcement of foreign money judgments. They have no legal effect and do not guarantee that the two courts would enforce each other's judgment. Nevertheless, the

[29] Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order (G.N. No. S 93/1999).
[30] Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act 2019 (No. 24 of 2019)(Sing.).
[31] Speech during REFJA (Amendment) Bill, *supra* note 27.
[32] Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 (No. S 90) (Sing.).
[33] See, e.g., DGX v. DGY [2024] SGHC 17 (Sing.).
[34] The list of courts and MOGs can be found at: SINGAPORE INTERNATIONAL COMMERCIAL COURT, ENFORCEMENT OF MONEY JUDGMENTS, *available at* https://www.judiciary.gov.sg/singapore-international-commercial-court/enforcement-of-money-judgments.

conclusion of these bilateral MOGs[35] of course strongly suggests that the signatory courts would be prepared to do so.[36]

The practice of concluding MOGs on foreign judgments originated with the Dubai International Financial Centre Courts.[37] Such MOGs have been criticised as bearing mainly a "signalling function" on the enforceability of the judgments of the participating courts.[38] Nevertheless, they are helpful in clarifying the law for countries where certain rules may be unclear and signifies the existence of judicial comity between the signatory courts.

3.3.2 Development of the common law rules

A foreign judgment which does not fall within the scope of either the CCAA or the REFJA can still be recognised or enforced under the common law rules.[39] Under the common law, the judgment creditor has to pursue a fresh local action based on the foreign judgment. Whether the foreign judgment is recognised or enforced in Singapore depends on the satisfaction of certain requirements. For *in personam* foreign judgments, these include requirements such as the judgment is on the merits, the court of origin had international jurisdiction and the judgment is final and conclusive. For enforcement purposes, the foreign judgment must be a money judgment.[40] The usual grounds of refusal apply, such as fraud, breach of natural justice or the foreign judgment is against Singapore public policy. These rules are inherited from English common law rules.

Just as the Singapore legislature has not shied away from departing from established rules, the Singapore judiciary has demonstrated the same attitude. One particular trait of Singapore decisions is that the court frequently refers to approaches elsewhere that are taken on a specific issue, not only in England but also in other countries, before deciding on the appropriate solution under Singapore law. The judiciary has had no qualms in rejecting the English approach where it is not considered appropriate in Singapore's context. The Court of Appeal has also alluded to the desirability of coherence between statute and the common law rules on specific issues.[41] All these go towards the building an autochthonous body of Singapore law.

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[35] There is also a multilateral memorandum concluded by the courts of the Standing International Forum of Commercial Courts (SIFoCC): SIFoCC, *Multilateral Memorandum on Enforcement of Commercial Judgments for Money* (2nd ed., 2021).

[36] Gilles Cuniberti, *Signalling the Enforceability of the Forum's Judgments Abroad*, Rivista di Diritto Internazionale Privato e Processuale 33, 43 (2020).

[37] Yeo Tiong Min, The Changing Global Landscape for Foreign Judgments, in *Yong Pung How Professorship of Law Lecture Series* (Singapore, 2021), 5 (fn. 29).

[38] Cuniberti, *supra* note 36, at 41-46.

[39] For a detailed discussion of the common law rules in Singapore, *see* Adeline Chong & Man Yip, *Singapore Private International Law: Commercial Issues and Practice* (Oxford University Press, 2023), ch 5.

[40] It is possible to ask the court to recognise, as oppose to enforce, the judgment. This could be done to raise an estoppel from the foreign judgment. For recognition purposes, the foreign judgment need not be monetary in nature.

[41] Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v. Merck KGaA (formerly known as E Merck) [2021] SGCA 14, [2021] 1 SLR 1102 (Sing.) [hereinafter Merck v. Merck] [37] (Sing.).

Four instances where the Singapore court has carved its own way or signalled the possibility of doing so under the common law rules are discussed below: fraud as a ground of refusal for the recognition and enforcement of foreign judgments, mistake of Singapore law as a potential ground of refusal, the possible imposition of a requirement of reciprocity and the elevation of judgments of the court of the seat in international arbitration matters.

3.3.2.1 Fraud

Fraud is one of the defences that can be raised against the recognition or enforcement of a foreign judgment. Under English law, a generous approach to fraud is taken: the person alleging fraud is able to raise fraud as a ground for refusal to give effect to a foreign judgment even though no new evidence on fraud is tendered before the English court, the court of origin had considered and dismissed the allegation of fraud and person alleging fraud had the opportunity to allege fraud before the court of origin but did not pursue this opportunity. This generous approach to fraud is known as the *Abouloff* rule[42] and it remains the law[43] under English common law despite doubts expressed as to the desirability of the rule in a number of decisions.[44]

In *Hong Pian Tee v Les Placements Germain Gauthier Inc*,[45] the Singapore Court of Appeal canvassed the English, Canadian and Australian approaches towards the issue of fraud and foreign judgments. It decided to depart from the English position and drew a distinction between extrinsic fraud and intrinsic fraud. Extrinsic fraud involves situations where the judgment debtor did not have the opportunity to examine and challenge the alleged fraud, for example the bribery of solicitors.[46] Intrinsic fraud involves situations where the judgment debtor does have the opportunity to examine and challenge the alleged fraud, such as false statements made during trial.[47] Extrinsic fraud is still subject to the *Abouloff* rule. However, intrinsic fraud can only be raised when "fresh evidence has come to light which reasonable diligence on the part of the defendant would not have uncovered and the fresh evidence would have been likely to make a difference in the eventual result of the case."[48] In choosing to depart from the English approach, the Court of Appeal in *Hong Pian Tee* was concerned that the *Abouloff* rule would encourage endless litigation, encourage judicial chauvinism and set up the enforcement forum as an appellate tribunal vis-à-vis the foreign judgment.[49]

3.3.2.2 Public policy considerations: mistake on Singapore law?

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[42] This approach was named after the case Abouloff v. Oppenheimer & Co (1882) 10 QBD 295 (CA).
[43] The Privy Council supported the continued application of the *Abouloff* rule in *Altimo Holdings and Investment Ltd v. Kyrgyz Mobil Tel Ltd* [2011] UKPC 7 [116].
[44] Eg *Owens Bank Ltd v. Bracco* [1992] 2 AC 443 (HL), 489; *Owens Bank Ltd v. Etoile Commerciale SA* [1995] 1 WLR 44 (PC), 50.
[45] *Hong Pian Tee v. Les Placements Germain Gauthier Inc* [2002] SGCA 17, [2002] 1 SLR 515 (Sing.) [hereinafter *Hong Pian Tee*].
[46] *Ee Hoong Liang v. Panircelvan s/o Kaliannan* [2022] SGHC(A) 40, [16] (Sing.).
[47] *Ibid*.
[48] *Hong Pian Tee*, *supra* note 45, at [30].
[49] *Hong Pian Tee*, *supra* note 45, at [27]-[28].

One of the cardinal principles in the recognition and enforcement of foreign judgments is that there is a prohibition on the review of the merits of the decision. To allow a mistake by the court of origin to be raised as a ground to refuse recognition or enforcement of that judgment would undermine finality of litigation. The stance taken on mistake traditionally extends to a mistake made by the court of origin as to the law of the court addressed.[50]

However, in *Merck Sharp & Dohme Corp (formerly known as Merck & Co, Inc) v Merck KGaA (formerly known as E Merck)*[51] *(Merck v Merck*) a full bench of the Singapore Court of Appeal referred to its role as the guardian or custodian of Singapore law and administration of justice considerations. These suggested that it ought to ensure the correct application of Singapore law. The Court raised the question whether it could justify refusing to give effect to a foreign judgment on public policy grounds if the court of origin had made a mistake on Singapore law.[52] Ultimately, the Court left the question open. It did, however, suggest that a distinction may be made between cases where Singapore law was applied in a manner that is obviously wrong and cases where the point is uncertain under Singapore law at the time of the foreign decision but the point is subsequently decided in Singapore in a manner which renders the foreign decision incorrect.[53]

3.3.2.3 Reciprocity as a pre-condition?

A big difference between common law and civil law approaches towards foreign judgments is the requirement of reciprocity. Under the common law rules, the traditional explanation for why the forum court recognises and enforces *in personam* foreign judgments is the doctrine of obligations. Under this doctrine, an *in personam* foreign judgment which fulfils certain requirements is thought to give rise to an obligation which the judgment debtor has to obey.[54] This idea encapsulates the common law approach that foreign judgments are concerned with an obligation between private parties. The doctrine of obligations has been supported in a number of Singapore decisions.[55] In contrast, sovereignty concerns have a bearing on the recognition and enforcement of foreign judgments in civil law systems: thus, civil law countries impose the requirement of reciprocity. Reciprocity means that a court of country A would only recognise and enforce the judgment of a court of country B if the court of country B would recognise and enforce the judgment of a court of country A.

In *Merck v Merck*, a full bench of the Singapore Court of Appeal reconsidered the basis for the recognition and enforcement of foreign judgments under Singapore law. It identified three bases: the doctrine of obligations, comity between states and upholding finality of litigation.

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[50] *Ralli v. Anguilla* (1917) 15 SSLR 33 (SS CA) at 68 (Sing.) [hereinafter *Ralli v. Anguilla*].
[51] *Merck v. Merck*, *supra* note 42, at [61].
[52] *Ibid*.
[53] *Ibid*. Relatedly, the Court also left open the *Arnold* exception, which applies as an exception to (domestic) issue estoppel where the first court made a decision that is clearly wrong, ought to extend to transnational issue estoppel: see [65].
[54] *Godard v. Grey* (1870) LR 6 QB 139, 149-150; *Schibsby v. Westenholz* (1870) LR 6 QB 155, 159.
[55] *Ralli v. Anguilla*, *supra* note 50; *Giant Light Metal Technology (Kunshan) Co Ltd v. Aksa Far East Pte Ltd* [2014] 2 SLR 545, [2014] SGHC 16 (Sing.).

While it did not reject the doctrine of obligations, it held that "considerations of transnational comity and reciprocal respect among courts of independent jurisdictions undergird the recognition of foreign judgments at common law".[56] This led the Court, controversially, to raise the question whether reciprocity ought to be imposed as a pre-condition to the recognition and enforcement of foreign judgments under the common law rules.[57] The Court observed that imposing a requirement of reciprocity would be aligned with accepting comity as the underlying rationale for this area of the law. It would also be consistent with the statutory regimes on the recognition and enforcement of foreign judgments which are undergirded by reciprocal treatment of each country's judgments. However, as with its comments on whether a mistake on Singapore law ought to be a ground for refusal, it ultimately left the question open.

Some take the view that insisting on reciprocity assists in increasing the enforceability of the forum court's judgments abroad.[58] While this was not stated by the Court of Appeal in *Merck v Merck* as a reason for considering the imposition of reciprocity, this view would of course be in line with the general push to increase the enforceability of Singapore judgments abroad. That said, it must be noted that reciprocity has been found to rarely have this effect.[59]

3.3.2.4 The Primacy Principle in international commercial arbitration

In *Republic of India v Deutsche Telekom AG*,[60] a majority of a full bench of the Court of Appeal held that a transnational issue estoppel ought to arise from a prior decision of the court of the seat on the validity of an arbitral award if all the requirements for issue estoppel are satisfied. The majority also accepted, in *obiter dicta*, that it would be appropriate to accord primacy to a prior decision of the court of the seat on matters pertaining to the validity of an arbitral award in situations where no transnational issue estoppel arose. This "Primacy Principle" accords a presumption that a prior decision of the court of the seat on the validity of an arbitral award is determinative, subject to three exceptions: where there are public policy considerations, where there are procedural deficiencies in the decision making of the seat court or to uphold its decision would be repugnant to fundamental notions of justice and where the decision of the seat court was plainly wrong.[61] The majority justified the Primacy Principle on the rule that "Singapore courts are duty-bound to interpret [Singapore's] domestic legislation and hence, develop our common law, as far as permissible, in a way that advances Singapore's

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[56] *Merck v. Merck*, *supra* note 41, at [33].
[57] *Merck v. Merck*, *supra* note 41, at [39].
[58] Arthur Taylor von Mehren, *Recognition and Enforcement of Foreign Judgments – General Theory and the Role of Jurisdictional Requirements*, 167 Collected Courses of The Hague Academy of International Law, 49 (1980); John F Coyle, *Rethinking Judgments Reciprocity* 92 North Carolina L Rev 1109 (2014).
[59] *Ibid*.
[60] *Republic of India v. Deutsche Telekom AG* [2023] SGCA(I) 10, [2024] 1 SLR 56 (Sing.) [hereinafter *India v. Deutsche Telekom*]. *See* YEO TIONG MIN, POSTMODERNISM IN SINGAPORE PRIVATE INTERNATIONAL LAW: FOREIGN JUDGMENTS IN THE COMMON LAW, *available at* https://conflictoflaws.net/2024/postmodernism-in-singapore-private-international-law-foreign-judgments-in-the-common-law/.
[61] *India v. Deutsche Telekom*, *supra* note 60, at [130].

international law obligations."[62] The relevant international law obligations in this situation were the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the UNCITRAL Model law on International Commercial Arbitration, both of which have effect in Singapore by way of the International Arbitration Act 1994.[63]

3.4 Analysis of developments

A few points can be made from the developments above which illustrate Singapore's attitude towards the recognition and enforcement of foreign judgments. First, Singapore is keen to adopt and protect international norms. Singapore was one of the early adopters of the HCCCA as it was quick to recognise the benefits which ratification could bring. The concern to comply with international obligations is also apparent in the Court of Appeal's adoption of the Primacy Principle in international commercial arbitration. Secondly, judicial comity is prized. This is shown by the conclusion of MOGs with counterpart courts and the restrictive stance on fraud as a ground of refusal for the recognition and enforcement of foreign judgments. Comity, however, is also recognised to be a two-way process, given the Court of Appeal's comments on the potential imposition of reciprocity as a pre-condition to the recognition and enforcement of foreign judgments under the common law rules. The comments on reciprocity also illustrate the third point: despite the general internationalist mindset, local objectives and norms are still paramount. This explains the Court of Appeal's concern about its role as custodian of Singapore law when alluding to public policy considerations where the court of origin has made a mistake on Singapore law.

Generally, what can be surmised is that there is a willingness to reform and modernise the law by all arms of government. Sometimes, however, the reform can only be effected with support from abroad. This is the case for the amended REFJA which includes significant deviations from the usual rules but requires the cooperation of counterpart countries to bring to full fruition.

4. Conclusion

It has been observed that "Asian law" is usually defined in relation to Western law, in the sense that Asian law is thought to be non-Western law.[64] Insofar as the rules on the recognition and enforcement of foreign judgments are concerned, it has been argued that it is difficult to identify intrinsically "Asian" principles because the very nature of the topic demands a global outlook.

In terms of Asian modes of development, implementation and reform of the law, Singapore has been put forward as a case study. The nimbleness demonstrated by Singapore in the area of foreign judgments is possible due to Singapore's small size, close-knit legal fraternity and

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[62] *India v. Deutsche Telekom*, *supra* note 60, at [122].
[63] Mance IJ, who delivered a concurring judgment, differed from the majority in that he did not restrict the operation of transnational issue estoppel in the international commercial arbitration context to decisions of the court of the seat. Mance IJ was also doubtful of the utility of the Primary Principle. *See India v. Deutsche Telekom*, *supra* note 60, at [193]-[221].
[64] Michaels, *supra* note 16, at ch. 11.

efficient legal machinery. The Singapore experience demonstrates the extent and swiftness of reform possible where executive, legislature and judiciary all share a common goal – in this case, to place Singapore as the forum of choice for international commercial dispute resolution.

Singapore's willingness to reform and modernise its private international law rules in line with international developments while bearing in mind local objectives is shared by other Asian countries. China has gradually been relaxing its application of the reciprocity requirement for the recognition and enforcement of foreign judgments.[65] The recent promulgation of the Korean Act on Private International Law 2022 is another prime example of this attitude. The amendments involve substantial changes to the law on international jurisdiction. The amended Act sets out a comprehensive set of principles by which a South Korean court can assume jurisdiction in an international case and makes explicit the adoption of the doctrine of *forum non conveniens* under South Korean law. In reforming the law, the legislators looked towards instruments such as the European Union's Brussels I bis Regulation.[66] At the same time, they were careful to preserve existing important South Korean precedents.[67] Ultimately, what Asian private international law can perhaps offer the wider world is this attitude: the readiness to look outwards for legal development but at the same time maintain a balance between international and local norms.

[65] *See* MENG YU & GUODONG DU, CHINA'S 2022 LANDMARK JUDICIAL POLICY CLEARS FINAL HURDLE FOR ENFORCEMENT OF FOREIGN JUDGMENTS, *available at* https://conflictoflaws.net/2022/chinas-2022-landmark-judicial-policy-clears-final-hurdle-for-enforcement-of-foreign-judgments/.

[66] Council Regulation 1215/2012, Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), 2012 O.J. (L 351) 1. *See* Kwang Hyun Suk, *Introduction to Detailed Rules of International Adjudicatory Jurisdiction in the Republic of Korea: Proposed Amendments of the Private International Law Act*, 19 Japanese Yearbook of Private International Law 2 (2017).

[67] Relevant decisions of the Supreme Court of Korea were codified in the amended Act: *See* YULCHON LLC, SPONSORED BRIEFING: CATCHING UP WITH THE WORLD: KOREA UPDATES ITS CONFLICT OF LAWS, *available at* https://www.legalbusiness.co.uk/disputes-yearbook-2022/sponsored-briefing-catching-up-with-the-world-korea-updates-its-conflict-of-laws/.