

Gaming

# Singapore High Court Allows Registration of Foreign Judgment in Relation to Gambling Debts Incurred at Foreign Casino

## Introduction and Factual Background

The Singapore High Court in *The Star Entertainment QLD Ltd v Yong Khong Yoong Mark* [2021] SGHC 280 has confirmed that based on the current state of the law in Singapore, s 3(2)(f) of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) ("**RECJA**") does not prevent the registration of a foreign judgment based on a gambling debt.

In this case, the applicant Star Entertainment QLD ("**Star Entertainment**") operated a casino, The Star Gold Coast in Queensland, Australia. The respondent, Yong Khong Yoong Mark ("**Yong**") was a seasoned gambler who had patronised The Star Gold Coast. He incurred gambling debts there pursuant to a cheque cashing facility ("**CCF**"), whereby Yong would hand over a cheque drawn in favour of The Star Gold Coast in exchange for chips for the purpose of gambling at The Star Gold Coast. Any losses sustained by Yong would have to be paid by himself, and the cheque could be redeemed by Yong by way of cash, gambling chips, bank draft or electronic fund transfer. The CCF was previously used twice by Yong at The Star Gold Coast.

In the Supreme Court of Queensland, Star Entertainment claimed against Yong for his unpaid gambling debts, and successfully obtained default judgment for the sum of A\$3,883,058.28 (the "**Judgment**"). Star Entertainment subsequently registered the Judgment in Singapore under the RECJA. Yong applied to set aside the registration pursuant to s 3(2)(f) of the RECJA, which was dismissed at first instance by the Assistant Registrar. Yong then appealed against the Assistant Registrar's decision.

## The Court's Decision

In his appeal, Yong submitted that s 3(2)(f) of the RECJA read with s 5(2) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("**CLA**") barred the registration of the Judgment.

**Contribution Note:** This Client Update was written with contributions from Edina Lim, Associate, and Yong Yi Xiang, Associate, from Intellectual Property, Technology and Gaming.



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The RECJA allows for certain judgments of foreign courts to be recognised and enforced in Singapore, namely monetary judgments made in civil proceedings by superior courts in the UK and other Commonwealth countries, including Malaysia, Brunei Darussalam and Australia. S 3(2)(f) of the RECJA provides that a foreign judgment shall not be registered 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."*

S 5(2) of the CLA provides that:

*"No action shall be brought or maintained in the court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made."*

Yong argued that based on existing case law interpreting s 5(2) of the CLA, including the recent decision of the Singapore International Commercial Court ("**SICC**") in *The Star Entertainment QLD v Wong Yew Choy and another matter* [2020] SGHC(I) 15 ("**Wong Yew Choy**"), claims for gambling debts could not be entertained by Singapore courts even if such debts were incurred pursuant to gambling activities overseas and wagering contracts governed by foreign law. Therefore, the combined effect of s 3(2)(f) of the RECJA and s 5(2) of the CLA was that, where the underlying debt arose from a wager, a foreign judgment in respect of such a debt could not be registered under RECJA.

However, the High Court found difficulty in accepting Yong's arguments as the same arguments had already been previously considered and rejected by the Singapore Court of Appeal in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR(R) 690 ("**Burswood Nominees**"), which had a similar factual matrix to the present case. *Burswood Nominees* was a case involving the registration in Singapore under the RECJA of an Australian judgment for gambling debts incurred by a Singaporean at the Burswood casino in Perth. The Court of Appeal had held in *Burswood Nominees* that the threshold of public policy required under s 3(2)(f) of the RECJA to render a foreign judgment unenforceable was higher than that which is required under s 5(2) of the CLA, as the former concerned "international" public policy while the latter involved domestic public policy. The Court of Appeal pointed out that it would be against public policy for Singaporeans to gamble abroad and return to Singapore to escape from their debts incurred abroad. Accordingly, the Court of Appeal in *Burswood Nominees* deemed that the higher threshold was not met, and declined to set aside the registration of the foreign judgment.

The High Court in the present case noted that a differently constituted Court of Appeal had subsequently, in *Poh Soon Kiat v Desert Palace Inc* [2010] 1 SLR 1129 ("**Desert Palace**") disagreed with the reasoning in *Burswood Nominees*, taking the view that the higher "international" public policy

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in relation to foreign judgments was *common law* public policy, and when faced with the *statutory* public policy enshrined in s 5(2) of the CLA, the latter would prevail. The Court of Appeal in *Desert Palace* reiterated the position under the CLA, and observed that the presence of legalised gambling in Singapore simply meant that gambling that is regulated in Singapore is not regarded as being contrary to public policy, but did not mean or imply that other forms of gambling (including gambling in overseas casinos) were not contrary to public policy. The Court of Appeal in *Desert Palace* therefore deemed that the decision in *Burswood Nominees* was "*unsound and should be reviewed if a similar issue were to come before this court in the future*".

Nevertheless, the High Court in the present case held that the statements in *Desert Palace* in relation to the correctness of *Burswood Nominees* were merely *obiter*, as the decision in *Desert Palace* concerned the enforcement, and not the registration, of a foreign judgment under the RECJA. The Court of Appeal in *Desert Palace* had in the first place, found that the California judgment which the casino had obtained against the gambler and upon which it was seeking to enforce by way of a fresh action in Singapore, was not a foreign judgment for a fixed sum of money. As such, the California judgment was incapable of enforcement as a foreign debt. Furthermore, the Court of Appeal's statement in *Desert Palace* that the decision in *Burswood Nominees* was to be reviewed by a later Court of Appeal confirmed that *Desert Palace* had not overruled *Burswood Nominees*. Consequently, the High Court considered itself bound by *Burswood Nominees*, and dismissed Yong's appeal.

### Concluding Remarks

In the case of *Wong Yew Choy* unsuccessfully relied on by Yong, Star Entertainment had brought a claim before the Singapore courts against a Singaporean who had gambled in The Star Gold Coast and racked up gambling debts. The SICC had dismissed Star Entertainment's claim on the basis that any action taken to recover any sum of money won upon any wager in a casino other than the two licensed casinos in Singapore would not be permitted by reason of s 5(2) of the CLA. At the same time, the SICC expressed little sympathy for the defendant as he was not a vulnerable individual who needed to be protected against exploitation against himself and his own proclivities, and only managed to escape payment of his debt due to s 5(2) of the CLA. In our client update on this case, which can be found [here](#), we had raised the issue of whether the outcome would have been different if Star Entertainment had obtained judgment in the Australian courts and then sought to register the judgment in Singapore. The present case has provided confirmation that, at least at the High Court / SICC level, foreign casinos should not directly commence proceedings of gambling debts in the Singapore courts, but should first obtain a judgment in the jurisdiction in which they are licensed to operate, and then subsequently obtain registration of such judgment in Singapore under the RECJA, if applicable.

Yong has appealed against the decision of the High Court, and as such, it appears that the Court of Appeal may soon have the opportunity to consider the different approaches taken in *Burswood*

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*Nominees* and *Desert Palace*, and to finally provide much-needed clarity on whether registration in Singapore of a foreign judgment founded upon gambling debts incurred at an overseas casino, will be prohibited by virtue of s 3(2)(f) of the RECJA read with s 5(2) of the CLA.

In addition, the authorities are presently reviewing the existing regulatory framework of gambling-related legislation. In July 2021, the Ministry of Home Affairs ("MHA") announced that they are seeking to amend gambling laws, including amending the scope of activities considered to be gambling, and granting exemptions to certain forms of social gambling between family and friends. Our client update on the MHA's public consultation can be found [here](#). Earlier this month, a new Gambling Duties Bill dealing with gambling duties went through its first reading in Parliament. This may therefore be an opportune juncture for the Singapore government to amend s 5(2) of the CLA to provide legislative clarity on whether foreign judgments based on gambling debts ought to be given effect to by the courts in Singapore.

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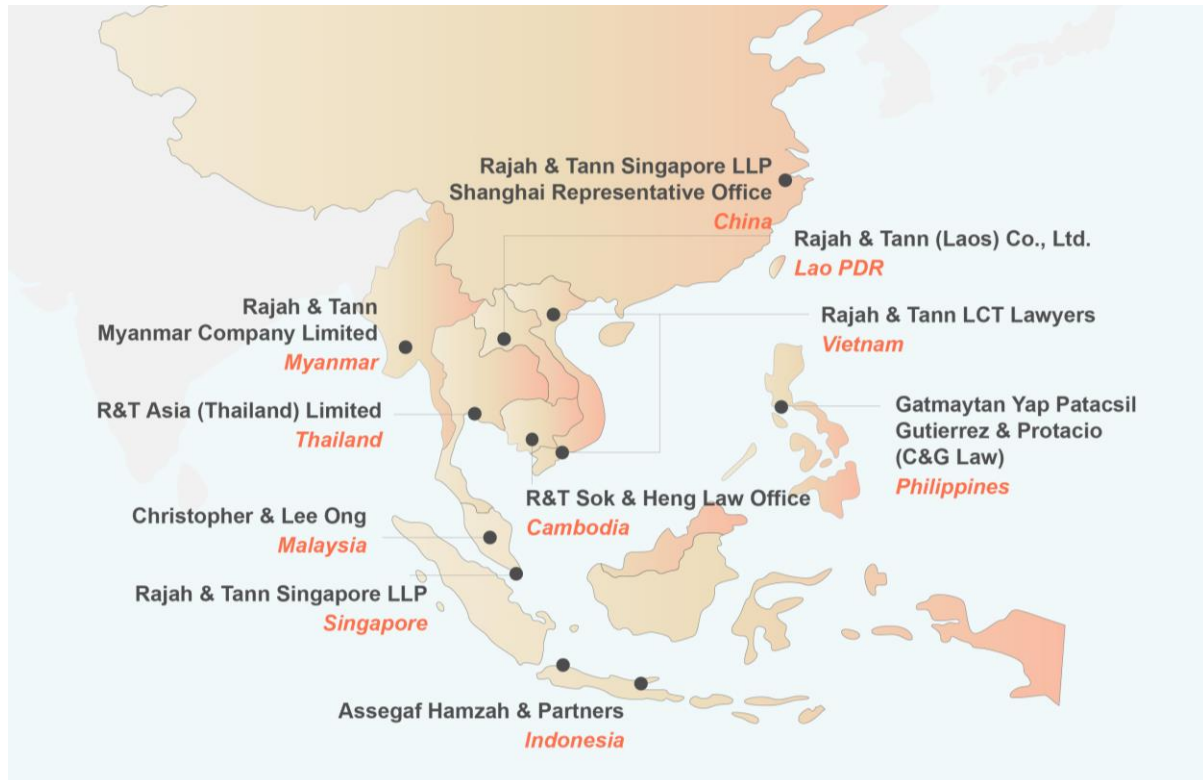
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