

# Enforcement of Awards or Judgments – Examining a Debtor on Assets in a Foreign Jurisdiction

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## Introduction

In the dispute resolution process, the enforcement of an arbitral award or a judgment of court is often one of the more daunting challenges. It may be difficult in certain situations to obtain information regarding the counterparty's assets so as to plan for a strategy of enforcement. This is particularly so when the assets are located across different jurisdictions, which is common in an increasingly globalised world. To facilitate this process, the Singapore courts are empowered to make certain orders, including orders for the examination of a judgment debtor or its officer regarding the judgment debtor's property (referred to here as the "**EJD**" process).

The recent Singapore Court of Appeal decision in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2020] SGCA 65 concerned the types of questions permissible during the EJD process. In this appeal, the Appellant had objected to answering questions about its assets in the Maldives on the basis that those assets would not be available for satisfaction of the judgment debt.

Dismissing the Appellant's objections, the Court of Appeal confirmed that questions could be asked about assets of the judgment debtor in a foreign jurisdiction – regardless of the enforceability of the Singapore judgment there. In doing so, the Court of Appeal resolved the conflict in the earlier High Court decisions of *Indian Overseas Bank v Sarbjit Singh* [1990] 3 MLJ xxxi ("**IOB**") and *Sun Travels & Tours Pvt Ltd v Hilton*

*International Manage (Maldives) Pvt Ltd* [2019] SGHC 291 (the latter being the decision which was the subject of the appeal).

The Respondent was successfully represented by Paul Tan, Alessa Pang and David Isidore Tan of Rajah & Tann Singapore LLP, together with Toby Landau QC.

## Brief Facts

The Respondent had obtained arbitration awards against the Appellant ("**Awards**"), and sought to enforce them in Singapore. The Singapore Court granted a judgment for leave to enforce the Awards ("**Singapore Judgment**").

On the basis of the Singapore Judgment, the Respondent applied for and obtained an EJD order to examine an officer of the Appellant, a company incorporated in the Maldives.

The Appellant objected to these questions on the basis that EJD proceedings only allow for questions regarding assets in a foreign jurisdiction if the judgment concerned could be enforced in the foreign jurisdiction itself. Further, the Appellant took the position that the Singapore Judgment was not enforceable in the Maldives because enforcement of the Awards (which the Singapore Judgment sought to enforce) had been rejected by the Maldivian courts at the material time.

## Holding of the Court of Appeal

The Court of Appeal unanimously rejected the Appellant's objections, allowing the questions relating to the assets in the Maldives.

### EJD orders

The Court's power to make EJD orders arises from O 48 r 1 of the Singapore Rules of Court. The Order provides that the Court may order a judgment debtor to be "orally examined on whatever property the judgment debtor has and wheresoever situated" and to "produce any books or documents in the possession of the judgment debtor relevant to the questions".

The Appellant's contention was based on its interpretation of O 48 r 1(1), as well as the case of *IOB*, which had required the judgment creditor to prove that enforceability in a foreign jurisdiction was possible before questions could be asked about assets there. However, the Court held that the Appellant had conflated the central purpose of the EJD process, which is the gathering of information, with the concept of the actual enforcement of the relevant judgment abroad. The Court thus held that *IOB* should not be followed to the extent that it was inconsistent with the Court's decision.

The Court highlighted that the purpose of the EJD process is for the judgment creditor to gather information to determine how it might enforce the judgment, which is particularly important in light of modern technology and how easily and quickly assets can be moved across jurisdictions. While questions irrelevant to such enforcement should be excluded, it is not irrelevant to determine where assets may be situated, even if the judgment is not enforceable in that jurisdiction.

Further, the Court also highlighted that the Appellant's position would produce undesirable practical implications. For example, it might require a Singapore Court to determine the enforceability of a Singapore judgment in a foreign jurisdiction before/after a foreign court, which can result in inconsistent decisions and breach of comity. Further, the Court also deemed that the Appellant's position would produce a perverse incentive for the judgment debtor to move assets into a foreign jurisdiction in order to escape scrutiny during the EJD process.

## **Application**

Based on the above reasoning, the Court held that whether or not the Singapore Judgment could be enforced in the Maldives was immaterial and irrelevant to the outcome of the present appeal, and allowed the questions relating to the assets in the Maldives.

## **Concluding Remarks**

While gathering information on a judgment debtor's assets, particularly in foreign jurisdictions, may be an uphill task, the Singapore courts have demonstrated that they are equipped with the authority to make the relevant orders to support the information gathering process, and would not be overly solicitous in a recalcitrant judgment debtor's favour. This is vital for a judgment creditor seeking to enforce an award or judgment against an uncooperative counterparty.

Nonetheless, the Court in this decision also raised the caveat that information gathering pursuant to the EJD process is not a licence for a fishing expedition. This would in turn depend on the precise facts and circumstances before the Court.

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