

# THE RECIPROCAL ENFORCEMENT OF COMMONWEALTH JUDGMENTS ACT (RECJA): ITS REPERCUSSIONS, FLUCTUATIONS, AND IMPLICATIONS ON THE PAKISTAN LEGAL SYSTEM

*Written By Irfan Ali Thanvi*

*Independent Legal Counsel, Singapore City, Republic of Singapore*

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## INTRODUCTION

Global commercial arbitration has enacted as an exploratory and time-effective mechanism for dispute resolution as opposed to pre-existing local methods of litigation. The prime objective of foreign arbitration is to facilitate a neutral symposium for amicable settlement of disputes. Hitherto, complementing the conducive mechanism of commercial dispute resolution through arbitration, Pakistan ratified a multilateral treaty, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“Convention”) and enacted the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act 2011 (“2011 Act”) enabling enactment to the Convention. Section 10 of the Act repeals the Arbitration (Protocol and Convention) Act 1937 (“1937 Act”) which used to be promulgated in Pakistan.

Albeit the Convention anticipates promulgation policy which is further highlighted in Section 8 of the 2011 Act. Prior to the enactment of the 2011 Act, there was ambiguity defining a foreign arbitral award as well as its ratification. Furthermore, this ambiguity shed uncertainty and delinquent incompatibility in the local jurisprudence causing long delays in the enforcement of foreign arbitral awards. However, Section 2 (e) of the 2011 Act defined an award made in a Contracting State is a foreign award. Section 3 of the 2011 Act stipulates that the High Court shall hold exclusive jurisdiction for the recognition and enforcement of foreign awards. The 2011 Act aimed to reduce timeframes that were previously an obstacle in the enforcement of foreign awards.

Our inquiry took us to examples from case law exposing brief facts of cases by narrating the objections raised in front of the court. This analysis exposed the arguments of the legal

attorneys and opinion of the court, enlightening the judgment of the division bench of the Lahore High Court (“LHC”), dealt with the recognition and enforcement of foreign arbitral awards and made jurisprudential contribution in three important areas. Firstly, the judgment decided as to the exclusive jurisdiction of the LHC for the recognition and enforcement of foreign arbitral awards while highlighting the pro-enforcement policy of the Convention. This judgment effectively addressed the ambiguity emerged by the *Taisei Corporation v A.M. Construction Company (Pvt.) Ltd.* (“*Taisei case*”), in which the LHC held that the Arbitration Act 1940 (“1940 Act”) was incumbent. Secondly, this judgment enshrined jurisprudence of commercial contracts including but not limited to the documentations pertaining to the energy sector. While extensively exploring foreign jurisdictions, the LHC explained the meaning and concept of a give and take clause and held that it stipulates a contractual obligation albeit not a penalty clause. Thirdly, the judgment determined the meaning and scope of the public policy of Pakistan post a broader review of foreign and local jurisprudence. Hence in the backdrop of such a situation, Pakistan was in need to recognize an Act which should not only reciprocate foreign arbitrary awards but also enable criminal law implementation by enlarge between reciprocating states.

In this regard two significant legislations came into promulgation in Pakistan through foreign Acts. The registration of foreign judgments in Pakistan became governed by the Reciprocal Enforcement of Foreign Judgments Act (REFJA) and the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA).

There are a total of 11 countries covered under these two acts, specifically:

1. The United Kingdom
2. Australia
3. Hong Kong
4. New Zealand
5. Sri Lanka
6. Malaysia
7. Windward Islands
8. Singapore

9. Brunei Darussalam
10. Papua New Guinea
11. India (except the state of Jammu and Kashmir)

### ***Proposed Amendments***

The Reciprocal Enforcement of Foreign Judgments (Amendment) Bill and the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill have been assigned under both Geneva and the Hague conventions, of which Pakistan is a signatory.

The Reciprocal Enforcement of Foreign Judgments (Amendment) Bill was primarily intended to:

1. Expand the scope of reciprocal recognition and enforcement of foreign judgments.
2. Boost Pakistan's status as an international dispute resolution center; and
3. Streamline the statutory regime for the enforcement of foreign judgments into a single statute.

The Reciprocal Enforcement of Commonwealth Judgments (Repeal) Act will further provide for the repeal of RECJA on a date to be stipulated by the Attorney General's office. Reciprocating countries currently recognized by the RECJA are expected to be transferred to the new regime.

### ***Effect***

The scope of judgments which may be registered may include four further types of judgments:

1. Non-commercial judgments, including but not limited to freezing orders, injunctions and orders for specific performance.
2. Judgements of the Lower court.
3. Interlocutory judgments.
4. Judicial settlements consent judgments and consent orders, including but not limited to judgements ratified by an Apex Court.

### ***Ensuring Reciprocity***

The amended REFJA ensures that the requirement for reciprocity is not an obstacle by eschewing a few other types of foreign judgments may be recognized under this act:

1. Where a judgment is given by a recognized court on appeal from a court which is not recognized; or
2. Where a judgment is enforced in a recognized court but originated from a court that Pakistan has no reciprocal enforcement arrangements with.

## **LEGAL AND JUDICIAL FRAMEWORK**

### ***Which legislative and regulatory provisions govern the recognition and enforcement of foreign judgments in your jurisdiction?***

Currently, the following legislative provisions are in force:

- The Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) applies to judgments ordained from the apex courts in Australia, Brunei Darussalam, Hong Kong (for judgments obtained up until 30 June 1997), India (except the states of Jammu and Kashmir), Malaysia, New Zealand, Singapore, Papua New Guinea, Sri Lanka, the United Kingdom and the Windward Islands.
- The Reciprocal Enforcement of Foreign Judgments Act (REFJA) applies to judgments ordained in the Hong Kong Special Administrative Region of the People's Republic of China (for judgments on or post 1<sup>st</sup> of July 1997); and
- The Choice of Courts Agreement Act (CCAA) applies to judgments ordained in Non-Commonwealth countries like Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and one commonwealth country, which is the United Kingdom.

Beyond these legislative provisions, foreign judgments may be recognized and enforced in Pakistan by promulgating a common law action for the judgment debt, on the basis that the

foreign judgment creates an obligation on the judgment debtor to make a payment. This duty (to pay the debt in Pakistan) is separate from the original cause of action in the foreign court of origin. It should be noted that:

- foreign judgments registered under the REFJA cannot be enforced by a common law action; and
- foreign judgments registered under the RECJA can be enforced by a common law action, but the applicant cannot recover the costs of the enforcement unless:
  - the application to register the foreign judgment under the RECJA was refused; or
  - the Pakistan court orders otherwise.

***Which bilateral and multilateral instruments on the recognition and enforcement of foreign judgments have effect in your jurisdiction?***

**RECJA/REFJA:** The RECJA and REFJA are promulgated upon reciprocity. Subsequently, under the RECJA, reciprocal provisions should be enacted in the jurisdictions to which the RECJA extends. In the case of the REFJA, the Attorney General holds the prerogative to enter bilateral or multilateral treaties to provide for the substantial reciprocity of treatment.

**CCAA: Pakistan** is a party to the **Hague Convention** on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters. Pakistan signed the Hague Convention post depositing its instrument of accession to the Convention on 22 December 2016, Pakistan became the 96th Contracting State to the instrument on Choice of Court Agreements on 25 March 2016 and the convention came into force on 1 October 2017.

***Which courts have jurisdiction to hear applications for the recognition and enforcement of foreign judgments?***

**RECJA/REFJA/CCAA:** The High Courts of Pakistan.

**Common law actions:** Depending on the amount claimed, a common law action must be brought in:

- the Magistrates' Court, for claims not exceeding USD \$60,000;

- the District Court, for claims of between USD \$60,000 and USD \$250,000; and
- The High Court, for claims exceeding USD \$250,000.

## REQUIREMENTS FOR ENFORCEABILITY

*What types of judgments may be recognized and enforced in your jurisdiction? Are any types of judgments specifically precluded from enforcement?*

**Reciprocal Enforcement of Commonwealth Judgments Act (RECJA):** The judgment must be stipulated by a court in any civil proceedings, whereby any financial liability is made payable. This includes an award in arbitration proceedings albeit the award has, in pursuance of the enforced law in the jurisdiction where it was initially enacted, become enforceable in the same manner as a judgment given by a court of that signatory jurisdiction.

However, judgments which can be recognized/enforced under the CCAA are eschewed from this domain.

**Reciprocal Enforcement of Foreign Judgments Act (REFJA):** The judgment must be given or made by a court in any civil proceedings or given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.

However, this excludes judgments which may be recognized and enforced under the CCAA.

**CCAA:** The CCAA applies only to judgments obtained from courts of contracting states to the Hague Convention and an exclusive choice of court agreement concluded in a civil or commercial dispute is guaranteed. This usually excludes certain types of disputes and subject matter, including but not limited to:

- Family law, personal law, Adat laws (Indonesia), Hudood Ordinance 1984 (Pakistan), Muslim Personal law board (India), probate, insolvency, or personal injury claims.
- Tortious claims not arising from contracts.
- claims relating to the validity or infringement of non-contractual infringement rights; and

- Antitrust matters.

A 'judgment' is:

- a final court decision (by whatever name addressed) on the merits, a consent order, a consent judgment or a judgment ordained by default; or
- a determination by a court of any costs or expenses relating to any such court decision, consent order, consent judgment or judgment ordered by default.

About the foreign judgment itself, it must:

- have effect in the state of origin (if the applicant is seeking recognition in Pakistan); and
- be enforceable in the state of origin (if the applicant is seeking enforcement in Pakistan).

**Common law action:** For recognition, the foreign judgment must be:

- from a court of competent jurisdiction (in the conflict of laws sense) in the foreign country; and
- final and conclusive on the merits by the law of that particular country.

For enforcement, the foreign judgment must be:

- from a court of competent jurisdiction (in the conflict of laws sense) in the foreign country.
- final and conclusive on the merits under the law of that country; and
- for a fixed or ascertainable financial asset.

The applicant must also establish that the Pakistan court has *in personam* jurisdiction over the judgment debtor, by showing that the judgment debtor:

- has submitted to the jurisdiction of the Pakistan court.
- has been validly served with the originating process in Pakistan; or
- has been validly served with the originating process outside Pakistan (after obtaining leave from the Pakistan court).

***Must a foreign judgment be final and binding before it can be enforced?***

Yes. Foreign judgments are generally treated as final and conclusive, even if they are subject to appeal.

Hitherto, if there is a pending appeal or if the judgment debtor shows that it is entitled to and intends to appeal, it will probably seek to set aside or adjourn the registration proceedings.

***Is a foreign judgment enforceable if it is subject to appeal in the foreign jurisdiction?***

**RECJA:** Registration can be refused if the judgment debtor presents the following:

- an appeal for that foreign judgment is pending; or
- it is entitled to and intends to appeal that foreign judgment.

**REFJA:** Registration may be set aside or adjourned if the judgment debtor shows that:

- an appeal for this foreign judgment is pending; or
- it is entitled to and intends to appeal this foreign judgment.

**CCAA:** Recognition and/or enforcement may be refused, set aside or postponed if:

- the foreign judgment is being reviewed or appealed in the state of origin; or
- the time for applying for a review or appeal in the state of origin has not expired.

***What is the limitation period for making an application for recognition and enforcement?***

**RECJA:** An application for registering the case should be initiated within 12 months of the date of the passing of that judgment, but the court holds the prerogative to extend this limitation period.

**REFJA:** An application for registration should initiate within six years of the date of the judgment or the date of the last judgment in the proceedings (if the initial judgment was appealed).



**CCAA:** An application may be initiated any time if the foreign judgment remains effective in the state of origin (for applications for recognition) and remains enforceable in the state of its origin (for applications for enforcement).

**Common law action:** An application should be initiated within the usual limitation period under the Limitation Act – that is, six years from the date of the foreign judgment – since this enactment is a civil law action on an implied debt. There are some exceptions to the Limitation Act, such as the following:

- If the right of action is to recover a debt/liquidated fiscal claim or a claim to the personal estate of a deceased, and the person liable or accountable therefor acknowledges the claim or performs payment in respect thereof, the right is deemed to have accrued on (and not before) the date of such acknowledgement or the last payment; and
- If the action is based on or concealed by fraud of the judgment debtor (or its agent), the limitation period begins to run only when the applicant:
  - has unravelled the fraud; or
  - may, with reasonable diligence, have revealed the fraud.

## **RECOGNITION AND ENFORCEMENT PROCESS**

### ***1. Is recognition of a foreign judgment a distinct process from enforcement and does it have separate legal effects?***

‘Registration’ refers to the claim (as adjudicated by the foreign court) with prima facie injunction. Hitherto, registration is usually sufficient to bar further action on the same facts between the same parties. Registration enacts as a prerequisite to enforcement.

‘Enforcement’ refers to the actual execution of the foreign judgment (i.e., to claim payment), as though that judgment had been made by a Pakistan court.

2. *What is the formal process for recognition and enforcement?*

**Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) and Reciprocal Enforcement of Foreign Judgments Act (REFJA):** An application for registration is made via *ex parte* originating summons, supported through an affidavit which is subject to further formal requirements in the Rules of Court (see question 3.3).

Thereafter, for enforcement, the applicant must:

- extract the order granting leave for registration.
- serve notice of the registration on the judgment debtor, which may apply to the court by summons to have that registered foreign judgment set aside; and
- wait until the period allowed for setting aside the registration of that foreign judgment expires, before being able to execute the registered foreign judgment. If the judgment debtor had applied to set aside the registration of the foreign judgment, that judgment may be executed only after the final determination of the setting aside matter.

**Choice of Courts Agreement Act (CCAA):** Application for recognition and enforcement is made via writ of summons or *ex parte* originating summons, supported by affidavit.

Thereafter, for enforcement, the applicant must serve notice of the order granting recognition and enforcement on every party to the proceedings in which the foreign judgment was obtained, within 28 days. The order must state that any party may apply to set aside the order within 28 days of service (or such longer period if allowed by the Pakistan court), and the order takes effect only after this time limit to set aside the order expires.

**Common law action:** Since the applicant is commencing a fresh action for the judgment debt, the usual rules of commencing an action in the Pakistan courts will apply:

- The applicant must serve the originating process (i.e., a writ of summons and statement of claim) on the judgment debtor.
- The judgment debtor may enter an appearance and file a defense in the fresh proceedings; and
- The applicant may then apply for summary judgment, assuming that the claim is straightforward, on the basis that the judgment debtor has no defense to the claim.

**3. *What documents act as a prerequisite in support of an application for recognition and enforcement?***

The following information builds on question 2.

**RECJA/REFJA:** The formal requirements for the supporting affidavit are contained in Order 67, Rule 3 of the ROC. In particular, the affidavit must:

- exhibit the judgment (or a verified/certified/duly authenticated copy thereof). If the judgment is not in the English language, it must also be accompanied by a certified translation.
- state the details of the judgment debtor.
- state that the applicant is entitled to enforce the judgment and that the judgment (or amount in respect of it) remains unsatisfied; and
- state that the judgment would not be disallowed from registration under Section 3(2) of the RECJA or would not be set aside under purview of Section 5 of the REFJA.

For applications under the REFJA, the affidavit should also:

- be accompanied by evidence with respect to enforceability of the judgment by execution in the jurisdiction of the original court; and
- state the amount of interest (if any) which, under the law of the jurisdiction of the original court, has become due under the judgment up to the time of registration.

**CCAA:** The affidavit must exhibit:

- a complete and certified copy of the foreign judgment; and
- a certified copy of the exclusive choice of court agreement.

If the judgment is not in the English language, it must also be accompanied by a certified translation.

#### ***4. What fees are payable for recognition and enforcement?***

The court fees in connection with filing of the relevant documents (see questions 3.2 and 3.3) are payable. The exact quantum of such filing fees depends on various factors (e.g., the length of the documents and extent of exhibits hitherto).

When seeking to hire attorneys in the application for recognition and enforcement, the legal fees for the attorneys' activities will also be payable. Inevitably, it is advisable to engage legal consultants with experience in such applications and expertise in dispute resolution in Pakistan, as they will be able to advice on the appropriate fee quotes, potential difficulties, and timelines for the application.

#### ***5. Is the applicant required to provide security for costs?***

**RECJA/REFJA:** Generally, the court may order the applicant to give security for costs of the application for registration and of any proceedings which may be brought to set aside the registration. This is subject to any contrary directions given in relevant notifications made under the RECJA or relevant orders under the REFJA.

**Common law action:** Since this is a nascent action in and off itself, the court may order the applicant to provide security for costs if it thinks it just to do so after considering the circumstances of the case, such as whether:

- the applicant is ordinarily resident out of jurisdiction; and
- There is reason to believe that the applicant will be unable to pay the judgment debtor's costs if ordered to do so.

#### ***6. The time frame to take to obtain a declaration of enforceability?***

As with most other legal matters, the time taken to obtain an order (in this case, for recognition and enforcement of the foreign judgment) will depend on various factors. In this regard, it is advisable to engage attorneys with experience with such applications, as they will be able to advise on the appropriate fee quotes, potential difficulties, and timelines for the application, based on the intricacies of each case.

**7. *Can the applicant seek injunctive relief while the process is ongoing?***

An injunction generally constitutes a separate application from the application to recognize and enforce the foreign judgment itself.

In short, the party applying for an injunction must show the following:

- There is a real risk of dissipation of assets (i.e., rendering any judgment obtained in the proceedings nugatory);
- The losses (if an injunction were not granted and the assets were indeed dissipated) would be unable to be adequately compensated by monetary damages.
- There is a serious question to be tried (i.e., the claim is not frivolous/vexatious such that there is some prospect of it succeeding at trial); and
- The balance of convenience lies in favor of granting the injunction. In this regard, the court may require an undertaking from the applicant to provide damages to the other party whose assets are subject to the injunction, if the court later decides that the injunction should not have been granted or the other party is eventually vindicated.

## **DEFENCES**

**1. *On what grounds can the defendant challenge recognition and enforcement of a foreign judgment?***

**Reciprocal Enforcement of Commonwealth Judgments Act (RECJA):** Registration will be refused if:

- the foreign court acted without jurisdiction;
- the foreign judgment was obtained by fraud;
- the foreign judgment relates to a cause of action which the Pakistan court would not recognize for public policy reasons;
- the judgment debtor had not voluntarily appeared/submitted/agreed to submit to the jurisdiction of the foreign court;
- the judgment debtor had not been served with process and did not appear; or

- the judgment debtor shows that:
  - an appeal for the foreign judgment is pending; or
  - it is entitled to and intends to appeal the foreign judgment.

**Reciprocal Enforcement of Foreign Judgments Act (REFJA):** Registration will be set aside if:

- the foreign court acted without jurisdiction. The foreign court will be deemed not to have jurisdiction if the proceedings were in breach of an agreement to settle the dispute, unless the judgment debtor had submitted to the jurisdiction of that foreign court;
- the foreign judgment was obtained by fraud;
- the judgment debtor did not receive notice of the proceedings in the foreign court in sufficient time to enable it to appear to defend those proceedings;
- enforcement of the foreign judgment would be contrary to the public policy of Pakistan; or
- the rights under the foreign judgment were not vested in the applicant.

**Choice of Courts Agreement Act (CCAA):** Recognition and enforcement will be refused if:

- the judgment debtor was not notified of the document by which the foreign proceedings were instituted in sufficient time as to enable it to defend those proceedings;
- the foreign judgment was obtained by fraud relating to a matter of procedure; or
- recognition and enforcement would be manifestly incompatible with the public policy of Pakistan.

Recognition/enforcement may be refused if:

- the exclusive choice of court agreement (ECCA) is null and void under the law of the state of the chosen court, unless the chosen court has determined that the agreement is valid.
- a party to the ECCA lacked capacity (under Pakistan law) to enter into that agreement.
- the judgment debtor was notified of the document by which the foreign proceedings were instituted in a manner incompatible with the fundamental principles of service of documents in Pakistan.

- the foreign judgment is inconsistent with a judgment given by the Pakistan courts in a dispute between the same parties.
- the foreign judgment is inconsistent with an earlier judgment given in another state between the same parties on the same cause of action, and the earlier judgment satisfies the conditions under Pakistan law for recognition.
- the foreign judgment is being reviewed or appealed in the state of origin.
- the timeframe for applying for a review or appeal in the state of origin has not expired.
- the ECCA designates a particular court which has discretion to transfer the case to another court in the same state and the transferee court issues a judgment against a party that objected to the transfer in a timely matter; or
- the foreign judgment awards damages more than compensation for the actual loss/harm suffered.

**Common law action:** Recognition/enforcement may be challenged, by raising the relevant grounds in the defense, if:

- the foreign judgment was procured through fraud.
- the foreign judgment was obtained in breach of natural justice.
- recognition and enforcement of the foreign judgment would be contrary to the public policy of Pakistan; or
- recognition and enforcement of the foreign judgment would amount to enforcement of foreign penal, revenue or other public laws.

## ***2. What is the limitation period for filing a challenge?***

There is unlikely to be any direct limitation period for filing a challenge itself *per se*. However, applicants should take note of the limitation periods for filing the application (see question 2.4).

## COURT ANALYSIS AND DECISION

### *Would Pakistan courts review service of process in the initial proceedings?*

Hitherto, the court does not review the service of process in the initial proceedings *per se*. The Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act (REFJA) subsequently to accept that the relevant methods of service implemented are in line with the mechanisms of the foreign court.

However, the effect of these relevant methods of service may affect the conditions for registration/enforcement in Pakistan or the criteria for setting aside the registration.

### *Will the court review the merits of the foreign judgment?*

If the requirements for recognition and enforcement are met, the court generally will not review the merits of the claim that led to the foreign judgment. Furthermore, this theme is expressly stated in the Choice of Courts Agreement Act.

### *How will the court proceed if the foreign judgment conflicts with a previous judgment in relation to the same dispute between the same parties?*

Primarily, employing the concept of *stare decisis* through *the doctrine of precedence* a previous judgment creates an estoppel against the recognition of a later judgment.

Subsequently, where *ratio decidendi* is a prior conflicting Pakistan judgment between the same parties and relating to the same issue, the court will not recognize or enforce the foreign judgment.

Likewise, where there are Pakistan proceedings that are merely pending, the court is likely to accord primacy to a prior foreign judgment between the same parties and concerning the same issues if that foreign judgment may be recognized under Pakistan law.

Under the REFJA, registration may also be set aside if the matter was the subject of a prior final and conclusive judgment by a court having jurisdiction in the matter.



*Is partial recognition and enforcement possible?*

If the foreign judgment contains both objectionable and unobjectionable sections, it is likely that the objectionable part of may be severed, and the unobjectionable portion may be enforced.

Presuming that the sections can be clearly identified and separated.

*How will the court deal with cost issues (e.g., interest, court costs, currency issues)?*

Interest under the laws of the foreign court will run until the application for enforcement in Pakistan is allowed.

Thereafter, the interest applicable to judgment debts in Pakistan (i.e., generally awarded at 5.33% per annum on a simple basis) will be stipulated.

## **APPEALS**

*Can decisions in relation to the recognition and enforcement of foreign judgments be appealed?*

**Reciprocal Enforcement of Commonwealth Judgments Act/Reciprocal Enforcement of Foreign Judgments Act/Choice of Courts Agreement Act:**

The judgment debtor may challenge the court's decision to recognize and enforce the foreign judgment by applying to set aside the order granting recognition and enforcement.

**Common law action:** Since this is a fresh action by itself, the order or decision may be appealed in the same way as other orders and decisions promulgated by the relevant court.

## **ENFORCING THE FOREIGN JUDGMENT**

*Once a declaration of enforceability has been granted, how can the foreign judgment be enforced?*

The usual modes of enforcing judgments that are issued by the Pakistan courts will apply. Common, they may include:

- writ of seizure and sale of immovable and movable properties (including securities such as shares and debentures).
- garnishee orders to require third parties that are indebted to the judgment debtor (e.g., banks) to pay the amount of such debt due to the applicant instead, in satisfaction of the judgment; and
- appointment of a receiver by way of equitable execution.

In serious cases, the applicant may also choose to commence bankruptcy or winding-up proceedings against the judgment debtor.

To aid the enforcement process, the applicant may also apply to examine the judgment debtor on his/her property. If the judgment debtor fails to appear for the examination hearing, the applicant may also ask for an order to commit the judgment debtor for contempt of court, as per the Contempt of Court Act of 2012, subject to sub-section (2), any person who commits contempt of court shall be punished with imprisonment which may extend to six months simple imprisonment, or with fine which may extend to one hundred thousand rupees, or with both.

## **TRENDS AND PREDICTIONS**

*How can the current enforcement landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?*

The Reciprocal Enforcement of Foreign Judgments (Amendment) Bill and the Reciprocal Enforcement of Commonwealth Judgments (Repeal) Bill were ratified by the Commonwealth legislature on the 2<sup>nd</sup> of September 2019, to streamline the process of recognizing/enforcing foreign judgments by consolidating the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA) and the Reciprocal Enforcement of Foreign Judgments Act (REFJA)

In short, these two bills effectively repeal the RECJA and amend the REFJA, such that the REFJA will:

- encompass the recognition and enforcement of all foreign judgments in civil cases; and
- recognize a wider range of legal judgments on a reciprocal basis (including non-money judgments, interlocutory orders, and judgments from the lower courts).

However, the following should be noted:

- These changes are not yet effective, as the Attorney General's office has not stipulated the date on which they will take effect (as at the time of writing).
- The bills do not cover judgments or decisions in criminal cases; and
- The bills do not affect judgments that are sought to be recognized and enforced under the Choice of Courts Agreement Act or common law actions.

It is also possible that the Federal government of the Islamic Republic of Pakistan may enter new treaties with other countries. This will enhance the recognition and enforcement of Pakistan judgments overseas and vice versa, given that the regime enacts on a reciprocal basis. Such an action will likely benefit judgment creditors, given the increasingly transnational nature of legal proceedings and location of assets.

## **TIPS AND TRAPS**

*Identifying top tips for smooth recognition and enforcement of foreign judgments, and what potential promulgating points would you highlight?*

Provided that enforcement of foreign judgments under the Reciprocal Enforcement of Commonwealth Judgments Act, the Reciprocal Enforcement of Foreign Judgments Act and the Choice of Courts Agreement Act cannot be executed until the expiry of the timeframe allowed for setting aside the foreign judgment, there is a risk that assets may be moved out of the jurisdiction. In this regard, applicants may consider applying for a conducive injunction against the judgment debtor's assets.

Applicants should also be aware of the potential grounds on which their application may be refused, set aside or adjourned. This may affect how they approach the proceedings back in the original court in which the foreign judgment arose, especially about issues on:

- submission to jurisdiction.
- service of process; and
- appeals in the original court.

## CONCLUDING REMARKS

Legal Maxims conducted a survey between 2016 and 2018 of over 300 corporates and external counsel around the world, which showed that the ability to enforce outcomes was the top consideration when respondents had to decide how to resolve cross-border commercial conflicts.

The changes to the REFJA in terms of streamlining the process of enforcing foreign judgments based on reciprocity alludes to more foreign judgments can now be enforced in Pakistan, and similarly, the enforcement of more Pakistan judgments in reciprocating countries. For example, the expansion to include lower court judgments expounds those judgments from Pakistan's High courts can now be possibly enforced overseas.

Further, the inclusion of interlocutory judgments and judicial settlements stipulate those judgments may be enforced earlier and would make Pakistan courts more attractive to litigants.

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