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Gaming Or Gambling Debt: The Case For Public Policy Argument

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One of the most common issues raised in a case involving gaming or gambling debt is that the recovery of such debt is against the public policy of Malaysia. In cases involving the enforcement of foreign judgment under the Reciprocal Enforcement of Judgments Act 1958 (REJA), Section 5(1)(a)(v) of REJA is usually relied upon to argue that the enforcement of the foreign judgment is against the public policy of Malaysia.

On the other hand, in cases involving a fresh suit for gaming or gambling debt granted by a foreign casino in countries that are not listed under the First Schedule of REJA, Section 26 of the Civil Law Act 1956 (CLA) and Section 31(1) of the Contracts Act 1950 (CA) are usually relied upon to defend such suits.

Enforcement Of Foreign Judgment Under REJA

In *Resorts World at Sentosa v Lim Soo Kok* [2017] 8 CLJ 93, Resorts World At Sentosa Pte Ltd (RWS) filed a suit against Lim Soo Kok (Lim) at the Singapore High Court and obtained a judgment in default against Lim (the Singapore Judgment).

Since Singapore is a country listed under the First Schedule of the REJA, the Singapore Judgment was then registered by an order of the High Court of Malaya (Order for Registration) under Section 4 of the REJA.

Lim then filed an application to set aside the Order for Registration on the ground that the enforcement of the Singapore Judgment is contrary to the public policy in Malaysia under section 5(1)(a)(v) of REJA as the Singapore Judgment is based on a gaming debt.

RWS argued that the registration of the Singapore Judgment is not contrary to the public policy of Malaysia under Section 5(1)(a)(v) of REJA as the debt was incurred in a lawful gaming transaction in Singapore. RWS also argued that a

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distinction must be drawn between suing on a gaming or wagering contract and the registration and enforcement of a valid and lawful foreign judgment for gaming debt under REJA.

The High Court agreed with RWS and held that since the gaming transaction in the casino in Singapore is a lawful gaming transaction, the registration and enforcement of the Singapore judgment is not against the public policy in Malaysia.

Lim's appeal to the Court of Appeal was dismissed and his application for leave to appeal to the Federal Court was also dismissed.

As such, the position of law in Malaysia on the issue of public policy under REJA for enforcement of gambling debt is settled. Where a gaming transaction is lawful in the foreign country from which the judgment originates, the registration and enforcement of the foreign judgment is not against the public policy in Malaysia.

Action To Recover Debt Owing Under Gaming Credit Facility

In *Wynn Resorts (Macau) S.A. v Poh Yang Hong* [2019] MLJU 2003, a case involving a claim for debt owing under a gaming credit facility granted by a foreign casino not involving the countries under the First Schedule of REJA. In this case, Wynn Resorts Macau (Wynn Macau) filed a suit in the Malaysian High Court for HK\$33,186,554 being the amount owing by Poh Yang Hong (Poh) under a gaming credit facility granted by the Wynn Macau to Poh at its casino in Macau.

Poh argued inter alia, that Wynn Macau's claim is not enforceable in Malaysia as it is a "gambling debt" which is based on a "wagering" contract and is therefore contrary to Sections 26(1) and 26(2) of the CLA and Section 31(1) of the CA. Poh also argued that the action to recover the debt owing under the gaming credit facility granted to him is against the public policy of Malaysia under Section 24(e) of the CA.

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The High Court drew a distinction between a gaming and wagering agreement from a gaming credit facility agreement. The High Court also held that while a wagering agreement is unenforceable in Malaysia, the present action by Wynn Macau is premised upon a debt due under a gaming credit facility agreement is not a wagering agreement and not an action to recover money won on a wagering agreement. The action by Wynn Macau is simply an action to recover a debt owing under a gaming credit facility given to Poh.

Further, the High Court also held that Poh has also failed to establish that Wynn Macau's claim is contrary to public policy under Section 24(e) of the CA. The High Court also held that the legality of the credit agreement being substantive law, is governed by Macau law. The credit agreement between Wynn Macau and Poh is clearly valid and lawful under Macau law.

The High Court held that rather than precluding any recovery action to compel a gambler to settle his debt on the ground of public policy, there is a compelling public policy to support the position that those who borrow to gamble should not be entitled to seek refuge under the protection of public policy argument to avoid their legal obligation to repay their debt.

Poh's appeal to the Court of Appeal has been dismissed and the Poh's application for leave to appeal to the Federal Court was also dismissed in November 2020.

As such, the position of law in Malaysia on the issue of public policy in a suit filed to recover debt owing under a gaming credit facility is clear. As long as the gaming credit facility agreement is valid and lawful, the recovery of debt owing under a gaming credit facility is not against the public policy of Malaysia and does not fall within the prohibition of Sections 26(1) and 26(2) of the CLA and Section 31(1) of the CA as long as the gaming credit facility agreement is valid and lawful.

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Conclusion

The position of law in Malaysia in not availing the veil of public policy to shield the debtor from his liability to pay any debt owing under a gaming credit facility is welcomed.

This is because even in Malaysia, licensed betting, gaming and gambling activities are allowed to take place under the law. Thus, it cannot be said that an action to recover the debt owing under gaming credit facilities is against the public policy of Malaysia.

Authored by Nur Syafinaz Vani, partner from the firm's Dispute Resolution team.

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