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Ratified Hague Convention makes Singapore International Commercial Court more attractive

On 2 June 2016, Singapore ratified the 2005 Hague Convention on Choice of Court Agreements. With the ratification, Singapore further bolsters its standing as an international dispute resolution hub, particularly because ratification also facilitates the recognition and enforcement of judgments issued by the newly launched Singapore International Commercial Court (SICC). The main issue with the SICC until now had been that - unlike international arbitral awards which are widely enforceable under the New York Convention - the enforcement of SICC judgments outside of Singapore was limited. SICC judgments have the status of a Singapore High Court judgment. This means that, in the absence of a reciprocal enforcement agreement with Singapore, enforcement of SICC judgments depends on the principles governing the recognition of foreign judgments in the relevant enforcement jurisdiction. This is now starting to change with Singapore's ratification of the Hague Convention.

Although the number of contracting states to the Hague Convention is still low and in stark contrast to the large number of states that have adopted the New York Convention, each additional ratification of the Hague Convention will further expand its applicability, thus making SICC judgments more widely enforceable.

The Hague Convention

The Hague Convention aims at ensuring the effectiveness of choice of court agreements (also known as forum selection clauses) between parties to international commercial transactions. Where parties have agreed to have their disputes resolved exclusively by the courts of a state that has ratified the Hague Convention, their choice of court will be respected, and any subsequent judgment will be readily enforceable in other contracting states. This provides more legal certainty to parties on where to litigate a dispute that arises under their international commercial contract. It also reduces the time and expense that courts and companies face when dealing with international jurisdictional issues and foreign judgment enforcements.

The Hague Convention applies (i) in international cases (ii) to exclusive choice of court agreements (iii) concluded in civil or commercial matters. For a choice of court agreement to be exclusive, parties must have designated the courts of one contracting state or one or more specific courts of one contracting state to the exclusion of the jurisdiction of any other courts. In addition, a contracting state may declare that it will recognise and enforce

judgments given by courts designated in a non-exclusive choice of court agreement.

Certain matters are expressly excluded from the scope of the Hague Convention. It does not, for instance, apply to consumer and employment contracts, insolvency, the carriage of passengers and goods, anti-trust (competition), intellectual property rights. Nor does the Hague Convention apply to arbitration proceedings. Interim measures, such as the preservation of evidence or the seizure of assets, are also not governed by the Hague Convention. Contracting states have the right to exclude additional specific matters.

The Hague Convention sets out three basic rules that give effect to choice of court agreements:

1. The courts of a contracting state designated in an exclusive choice of court agreement must not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another state.
2. A court of a contracting state other than that of the chosen court must, subject to a limited number of exceptions, suspend or dismiss proceedings to which an exclusive choice of court agreement applies.
3. Any judgment rendered by the chosen court must be recognised and enforced in other contracting states, except where a ground for refusal applies (Articles 8 and 9). Recognition or enforcement may, for instance, be refused where the judgment was obtained by fraud, or where recognition or enforcement would be “manifestly incompatible” with public policy.

The litigation counterpart to the New York Convention?

The Hague Convention has often been cited as the litigation counterpart to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Like the New York Convention, the Hague Convention requires contracting states to recognise and enforce private party agreements regarding the forum for dispute resolution and decisions issued by the chosen forum in other contracting states, subject to certain limited exceptions. The Hague Convention, however, still has a long way to go before replicating the success of the New York Convention in international arbitration. With 156 countries being party to the New York Convention, international arbitration agreements and foreign arbitral awards in international cases are almost universally recognised and enforced. So far the Hague Convention has only entered into force in 28 countries (Singapore, Mexico, and the European Union member states except Denmark). Ample outreach to the world will be crucial for creating a global reciprocal enforcement regime similar to that established for arbitration by the New York Convention. Although the Hague Convention has the potential to become a worldwide legal basis for the recognition and enforcement of foreign judgments, time will tell whether the Hague Convention can do for litigation what the New York Convention has achieved for arbitration.

Implications for Singapore

Singapore’s ratification of the Hague Convention further enhances its status as a leading hub for international dispute resolution. Singapore has already positioned itself as the most preferred seat of arbitration in Asia and the third most preferred seat of arbitration in the world. This is evidenced by the exponential increase in the caseload of the Singapore International Arbitration Centre (SIAC) over recent years. The launch of two new dispute resolution centres, the Singapore International Mediation Centre (SIMC) in 2014 and the

Singapore International Commercial Court (SICC) in 2015, further expanded the range of international dispute resolution services available in Singapore.

The SIMC provides commercial mediation services targeted at the needs of parties in cross-border commercial disputes, and offers a panel of high quality international mediators and experts. The SICC is a division of the Singapore High Court. It offers the option of a court-based dispute resolution mechanism focused on international and commercial disputes, even where the dispute has no connection with Singapore and is not governed by Singapore law. The SICC has the jurisdiction to hear and try an action if (i) the claim in the action is of an international and commercial nature; (ii) the parties to the action have submitted to the SICC's jurisdiction under a written jurisdiction agreement; and (iii) the parties do not seek any relief in the form of, or connected with, a prerogative order (including a mandatory order, prohibiting order, a quashing order or an order for review of detention). In addition to its jurisdiction to hear international commercial disputes, other key features of the SICC include a panel of international judges, the possibility of representation by foreign lawyers, the power to join third parties to the proceedings, exclusion or limitation of right of appeal (by agreement), establishment of foreign law by submissions from counsel, no obligation to apply any rule of evidence under Singapore law and may apply other rules of evidence, limited document production (similar to IBA Rules), and confidentiality.

The ratification of the Hague Convention enables a wider recognition and enforcement of judgments rendered by Singapore courts, including the SICC. Until recently, SICC judgments could only be enforced in those jurisdictions covered in the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Commonwealth Judgments Act. Singapore's ratification of the Hague Convention increased this number of jurisdictions to every contracting state under the Hague Convention.

Netherlands Commercial Court

The Netherlands is also in the process of setting up a special judicial division to settle large national and international trade disputes: the Netherlands Commercial Court (NCC). This initiative responds to the need of large enterprises for fast, professional and efficient resolution of disputes. The NCC will further contribute to a positive business climate and strengthen the leading international position of the Dutch judiciary. The NCC is to open on 1 January 2017, assuming the government can timely pass legislation that facilitates proceedings in English. The government has announced that it will introduce this legislation by mid-2016. Considering that the Netherlands has also adopted the Hague Convention, the NCC has the potential of becoming an attractive forum for resolving international commercial disputes.