

Singapore's Choice of Court Agreements Act 2016: A Network of International Commercial Courts as an Alternative to International Arbitration

Singapore passed the Choice of Court Agreements Act 2016 (the Act) into law on 14 April 2016, implementing the obligations contained in the Hague Convention on Choice of Court Agreements (the Convention) which was ratified on 2 June 2016. The Act will allow judgments rendered by the Singapore High Court (including the Singapore International Commercial Court (SICC)) pursuant to choice of court agreements to be enforceable in all state parties to the Convention.

It is envisaged that this will allow the SICC to form part of a "network of international commercial courts" with reciprocally enforceable judgments.

Extending the reach of the SICC

In a move to extend the international enforceability of judgments issued by the SICC, Singapore has ratified the Hague Choice of Court Convention.

The SICC was established as an attractive alternative to, amongst other modes of dispute resolution, international arbitration. However, a perceived disadvantage of the SICC was the limited international enforceability of its judgments. This is in contrast to arbitral awards, which

are enforceable in over 150 States by virtue of the New York Convention.

Following Singapore's signing of the Convention, the Act was passed into law by Parliament to give effect to its obligations under the treaty. Notably, this regime will extend the enforceability of judgments rendered by the Singapore High Court (including the SICC) pursuant to choice of court agreements to include the Convention's 31 signatory/party States, including the EU (excluding Denmark) and the USA.

The Convention will apply to international civil or commercial disputes, and will come into force for Singapore on 1 October 2016.

Key features

- If a Singapore court is the chosen court of an exclusive choice of court agreement covered by the Convention, the dispute must be heard in Singapore only
- Judgments emanating from such agreements rendered by the SICC and the Singapore High Court will be enforceable in states which have ratified the Convention
- The enhanced international enforceability of Singapore judgments will make the SICC a more attractive dispute settlement option and improve its position as an alternative to arbitration
- The Convention will come into force for Singapore on 1 October 2016

Key features of the recognition/enforcement regime

Cases covered by the Convention

The Convention will apply only to international civil or commercial disputes. It will not cover matters of personal law, or tortious claims which do not arise from contracts. The full list of excluded categories is contained in Section 9 of the Act.

Given that the Convention is premised on mutuality, it is reasonable to expect the following doctrines and regime evinced in the Singapore legislation to be applicable with considerable consistency amongst the various other state parties as the Convention comes to be implemented.

Doctrine of Severability

The doctrine of severability, which is well-established for arbitration agreements, has been imported so that choice of court agreements are to be treated as independent of the other terms of the contract. Accordingly, choice of court agreements in favour of the Singapore courts will continue to apply even if the rest of the contract is deemed to be invalid.

Non-enforceability of foreign judgments granting interim measures

Foreign judgments granting interim measures are not enforceable, although a party is at liberty to separately apply to the Singapore court for an interim measure in cases involving a choice of court agreement. This is broadly similar to the position for arbitral awards granting interim measures, which are not generally enforceable.

Judgments generally recognised and/or enforced

Generally, a foreign judgment from another contracting State to the Convention is to be recognised if it has effect in its origin state, and is enforceable in Singapore if it is enforceable in the origin state. Where either of these conditions is met, the foreign judgment "*must*" be recognised and/or enforced (as the case may be).

Judgments which the Court *must* refuse to recognise or enforce

There are four broad categories of judgments which will **not** be recognised or enforced:

- judgments emanating from proceedings in which the defendant was not notified of the originating document/process, *unless* the defendant chose nonetheless to participate substantively in the proceedings;
- judgments obtained pursuant to proceedings which itself were tainted by fraud;
- judgments which are such that their recognition or enforcement would be "*manifestly incompatible with the public policy of Singapore, including circumstances where specific proceedings leading to the judgment would be incompatible with fundamental principles of procedural fairness in Singapore*". This broadly mirrors the arbitration enforcement regime of other accepted frameworks, such as the New York Convention, in

which a breach of natural justice forms a ground for setting aside an award; and

- judgments which are not covered by the above but which the Minister may prescribe in subsidiary legislation.

Judgments which the court *may* refuse to recognise or enforce

There are six broad categories of such judgments:

- where the choice of court agreement is void under the law of the origin state unless a court of that state holds otherwise;
- where a party to the choice of court agreement has no capacity to enter into that agreement under Singapore law;
- where the defendant, while notified of the originating document, was so notified in a manner incompatible with fundamental principles under Singapore law on service of documents;
- where the judgment is inconsistent with a Singapore judgment between the same parties or inconsistent with another foreign judgment which is recognisable in Singapore;
- where the judgment is for damages in excess of compensation for actual loss (for example, punitive damages); and
- judgments which fall within other circumstances which the Minister

may prescribe in subsidiary legislation.

Commentary

The net effect of the Act is such that judgments rendered by the SICC (as well as judgments rendered by the Singapore High Court) ought to be enforceable in all states party to the Convention in the same way that arbitral awards are enforceable in all states party to the New York Convention. This will undoubtedly go some way towards enhancing the attractiveness of the SICC as a dispute settlement option. Although there are only 31 state signatories/parties to the Convention as compared to the more than 150 state signatories to the New York Convention, it is important to note that this includes the European Union (excluding Denmark) and the USA, both major trading partners of Singapore.

While the Act currently grants the Minister the power to modify its application by passing subsidiary legislation, it is anticipated that considering Singapore's history in developing arbitration-friendly jurisprudence built primarily on minimising court-intervention, it is

likely that Singapore's approach to enforcement under the Act will be equally commercially-friendly, with considerable deference to party autonomy as reflected in the parties' choice of court to resolve their dispute.

It is also noteworthy that the SICC is not intended to be a stand-alone court. Chief Justice Sundaresh Menon in a 2015 speech envisions a "*network of international commercial courts helmed by a community of renowned international commercial judges*" which could "*emerge as a very significant platform for the development of a body of consistent jurisprudence*" presently not easily discerned in the context of international arbitration. In this context, it is not inconceivable that a network of international commercial courts could be linked by the Convention as regards the enforceability of their respective judgments.

Relevance to users

The above regime is "opt-in" in the sense that it applies only to judgments emanating from choice of court agreements. If users wish to avail themselves of this regime, they may include in their contracts a

dispute resolution clause which incorporates a choice of court agreement, for example, the SICC model jurisdiction clause, available at: http://www.sicc.gov.sg/documents/docs/SICC_Model_Clauses.pdf

Further information

For more information on the Act, please see the note produced by the Ministry of Law, accessible at: <https://www.mlaw.gov.sg/content/dam/minlaw/corp/News/Choice%20of%20Court%20Agreements%20Act%202016.pdf>

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