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Hague Convention on Choice of Court Agreements: ratification by Singapore

Singapore News

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I. The ratification of the Hague Convention on Choice of Court Agreements

The Hague Convention on Choice of Court Agreements (“the Convention”) was concluded in June 2005 by the Hague Conference on Private International Law, but did not enter into force until 1 October 2015.

Singapore has ratified the Convention on 2 June 2016 and became the first Asian country to join the Convention. Singapore had already signed the Convention on 25 March 2015, but could not ratify it until the Choice of Courts Agreement Bill was passed in April this year. The ratification of the Convention will promote Singapore’s position as a dispute resolution hub in Asia. The Convention will come into force for Singapore on 1 October 2016.

Currently, 28 countries are party to the Convention. These are the EU member states, (except Denmark), and Mexico.

The US and Ukraine have signed the Convention but have not yet ratified it. As Mexico and the EU member states, except for the UK, are not covered under Singapore’s current reciprocal enforcement regimes such as the Reciprocal Enforcement of Commonwealth Judgments Act (“RECJA”) and the Reciprocal Enforcement of Foreign Judgements Act (“REFJA”), Singapore’s ratification of the Convention will significantly extend the enforceability of Singapore court judgments.

II. Scope of the Hague Convention on Choice of Court Agreements

The Convention is designed to reduce the time and expenses courts and businesses face when dealing with international jurisdictional issues.

The Convention is only applicable to exclusive choice of court agreements between professional parties. The Convention’s aim is to enhance cross-boundary dispute resolution by providing a framework for the mutual recognition and

enforcement of foreign judgments of states which are member states of the Hague Convention and furthermore to give effect to exclusive jurisdiction clauses. The Convention has two main jurisdictional effects:

1. The international legal regime established by the Convention requires contracting states to uphold exclusive choice of court agreements designating the courts of contracting states in international civil or commercial cases. However, the Convention excludes some of the specific civil and commercial matters from its scope. The Convention shall for example not apply to exclusive choice of court agreements relating to contracts of employment, including collective agreements, family law matters, anti-trust matters or insolvency. Not only superior courts, but any court of a contracting state can be chosen by the parties for their disputes.

If a Singapore court is the chosen court in an exclusive choice of court agreement covered by the Convention, the dispute must be heard in Singapore only, unless the agreement is null and void under Singapore law. The Singapore court cannot decline jurisdiction on the ground that the dispute should be decided by a court of another state. This regime strengthens the enforcement of agreements which indicate Singapore courts as the exclusive dispute resolution forum. Furthermore, where the Singapore court has been chosen under the exclusive choice of court agreement, the courts of other contracting states will be obliged to suspend or dismiss parallel proceedings brought in their jurisdiction, in favour of the Singapore court.

2. The courts of other contracting states within the Convention will be obliged to recognize and enforce the Singapore court judgment related to an international dispute. This enhances the international enforceability of Singapore court judgments, including those of the Singapore International Commercial Court (SICC) which was established specifically to deal with international commercial cases.

However, the judgement must first be enforceable in the state of origin. The postponement or refusal of recognition or enforcement is possible when the judgement is under review in the state of origin or when the deadline for seeking ordinary review has not yet expired.

The reasons for the refusal of the recognition or enforcement of a judgment are divided in two categories:

a) *Mandatory reasons*: the court must refuse recognition or enforcement in the following cases:

- The judgment was obtained by fraud in connection with a matter of procedure;
- The defendant was not notified in time to defend the proceedings against him;
- Recognition would be incompatible with Singapore public policy, including Singapore's principles of procedural fairness.

b) *Discretionary reasons*: the court may refuse recognition or enforcement as it deems appropriate in the following cases:

- The exclusive choice of court agreement is null and void;
- One of the parties lacked capacity to enter into the exclusive choice of court agreement;
- The foreign judgment is inconsistent with a Singapore judgment in a dispute between the same parties.

III. Outlook

The Hague Convention on choice of Court Agreement creates a certain harmonization of the regulations governing the jurisdiction of courts and the recognition and enforcement of court judgments. The regime was created to make it easier to deal with international jurisdictional issues. Under the Convention there are only a limited number of reasons for the refusal to recognize or enforce a foreign judgment. There is also an increased level of legal certainty with respect to the validity and enforceability of exclusive choice of court agreements in an international context. When a Singapore court is the chosen court under an exclusive choice of court agreement, the Singapore court judgment must be recognized and enforced by all the other contracting states.

Time will tell whether the Convention can establish the same kind of international enforcement network as is currently available for arbitral awards under the New York Convention and if cross-border litigation will increase. Furthermore it will be necessary that more countries, besides Mexico, the EU except Denmark and Singapore will ratify the Convention to make it become more and more effective.

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