



Singapore Signs Hague Convention on Choice of Court Agreements

In its latest maneuver to distinguish itself as a leading hub for international dispute resolution, Singapore signed the Hague Convention on Choice of Court Agreements (the “Convention”)¹ on March 25, 2015.

Singapore’s signing, and eventual ratification, of the Convention will provide greater certainty to businesses that wish to refer their disputes to the Singapore courts, including the recently launched Singapore International Commercial Court (“SICC”). It will also strengthen the enforceability of certain Singapore court judgments abroad.

The Convention

The Convention was concluded by the Hague Conference on Private International Law in June 2005. It is aimed at ensuring the effectiveness of choice of court agreements (otherwise known as “forum selection” or “exclusive jurisdiction” clauses) between parties to international commercial transactions. Choice of court agreements confine disputes to the courts of one jurisdiction as chosen by the parties, so they know exactly where they can sue and be sued. Such clauses are often used in contracts facilitating cross-border transactions, such as international loan, joint venture, supply, sale, merger, and acquisition agreements.

The Convention achieves its objectives by requiring that:

- The chosen court specified in the parties’ contract must hear the case when proceedings are brought before it;
- Any other court before which proceedings are brought must refuse to hear them; and
- The judgment of the chosen court will be recognized and enforced by the courts of other member States that have signed and given force of law to the Convention.²

Businesses engaging in cross-border activities will therefore have greater certainty on where their disputes will be litigated and where their judgments can be enforced.

It should be noted, however, that the Convention does not apply to choice of court agreements concluded in consumer contracts and employment contracts.³ Certain matters have also been expressly excluded from the scope of the Convention, including matters that are traditionally subject to the exclusive jurisdiction of the court of the place where the object is situated (e.g., immovable property) and matters that are subject to special jurisdiction rules found in widely accepted international agreements or conventions

(e.g., family law, insolvency, and carriage of passengers and goods matters).⁴ Member States may go even further and declare that the Convention will not apply to any additional specific matters if they so choose.⁵

The Convention's Entry into Force

The Convention requires at least two ratifications or accessions by member States before it will enter into force.⁶ Mexico was the first State to accede to the Convention in 2007. While the United States ("US"), the European Union ("EU"), and now Singapore have subsequently signed the Convention, none of them has formally ratified or acceded to it.⁷ Thus, the Convention has not yet entered into force.

It is anticipated that the EU will deposit its instrument of approval for the Convention by June 2015 to coincide with the 10th anniversary of the Convention's conclusion, following which the Convention will enter into force. Singapore is also expected to formally ratify the Convention once it has come into force.

Impact of the Convention

Assuming that Singapore does proceed to ratify the Convention, it will provide users of the Singapore courts and those of other member States with a number of significant benefits.

Greater Respect for Party Autonomy. Once the Convention enters into force, parties to commercial contracts can rest assured that if they confer exclusive jurisdiction upon the courts of a member State, the courts of all other member States must abide by their choice of court agreement. For example, if the parties confer exclusive jurisdiction upon the SICC in their contract but a party nevertheless commences proceedings in the US, the US courts will be obliged to either suspend or dismiss those proceedings in accordance with their obligations under the Convention.⁸

However, it remains to be seen whether Singapore will exclude specific matters from its application of the Convention. For instance, Singapore may follow in the EU's footsteps to exclude insurance contracts for consumers (so-called "personal lines" insurance contracts) from the scope of the Convention.

More Options for Enforcement of Court Judgments. The Convention will broaden the number of jurisdictions in which certain Singapore court judgments can be enforced. Singapore's pre-existing framework for the recognition and enforcement of court judgments abroad is currently set out in the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264)⁹ and the Reciprocal Enforcement of Foreign Judgments Act (Cap 265).¹⁰ While this provides for greater recognition and enforcement of Singapore court judgments than that afforded in many other countries, there are many important jurisdictions (such as the US) where currently Singapore court judgments can only be enforced to the extent permitted by the common law or other applicable domestic laws.

The Convention addresses this problem by providing that where the parties have expressly chosen a court of a member State to resolve their disputes, judgments by that court will be recognized and enforced by the courts of other member States. This is similar to the mechanism for the recognition and enforcement of arbitral awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (also known as the "New York Convention").

However, the Convention will assist the enforcement of a court judgment only if the judgment itself falls within the purview of the Convention (i.e., where the judgment is rendered by a court of a member State that is designated in the parties' choice of court agreement). The Convention will not assist in the enforcement of judgments that do not arise by virtue of a choice of court agreement and thus are not governed by the Convention.

Greater Predictability for Enforcement of Court Judgments. The Convention will streamline the recognition and enforcement of court judgments across member States. It does so by providing the grounds on which a member State's court may refuse recognition and enforcement of a court judgment,¹¹ which are similar to those for refusing the recognition and enforcement of arbitral awards under New York Convention. This will provide greater consistency and predictability for parties that seek to enforce a court judgment in a member State.

Conclusion

Singapore's adoption of the Convention will undoubtedly promote the use of the Singapore courts and, in particular, the SICC. It will also help maintain the city State's position as an efficient, effective, neutral, and leading jurisdiction for the resolution of international commercial disputes.

As the number of States that adopt the Convention grows, so too will the impact and value the Convention will bring to member States. But time will only tell if other States will follow suit and adopt the Convention, particularly those in the Asia-Pacific and Middle Eastern regions.

Lawyer Contacts

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Endnotes

- 1 For the [full text of the Convention](#), please refer to the Hague Conference on Private International Law's website.
- 2 The Convention, Articles 5, 6, and 8.
- 3 The Convention, Article 2(1). A "consumer" is defined as a natural person acting primarily for personal, family, or household purposes.
- 4 The Convention, Article 2(2).
- 5 The Convention, Article 21.
- 6 The Convention, Articles 27 and 31.
- 7 For an [updated list of signatories and ratifying States of the Convention](#), please refer to the Hague Conference on Private International Law's website.
- 8 The Convention, Article 6.
- 9 The Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264) provides for the registration and enforcement of judgments obtained from the superior courts in the United Kingdom and a number of Commonwealth jurisdictions, including New Zealand, Sri Lanka, Malaysia, Windward Island, India (except the states of Jammu and Kashmir), and Australia.
- 10 The Reciprocal Enforcement of Foreign Judgments Act (Cap 265) allows for the enforcement in Singapore of judgments and awards in foreign countries that afford reciprocal treatment to judgments given in Singapore. At present, the Act extends only to the Hong Kong Special Administrative Region of the People's Republic of China (only Part 1 of the Act is applicable).
- 11 The Convention, Articles 8 and 9.