

Increasingly active self-promotion will see Hong Kong make further inroads as a favoured arbitration venue

India's decision to recognise Chinese arbitral awards is a bold step – but what happens next?

The Indian Ministry of Law and Justice has declared that arbitral awards made in China (including Hong Kong and Macau) may be recognised and enforced by Indian courts. The addition of China to India's official list of so-called 'gazetted' states, which currently contains fewer than one third of the signatory states to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 'New York Convention') will increase the appeal of arbitration centres in China – in particular, Hong Kong – in the context of disputes with an Indian connection.

Recognition and enforcement of arbitral awards in India

India and China are both parties to the New York Convention. This requires *inter alia* that contracting states recognise and enforce arbitral awards made in other states, subject to the declarations and reservations of contracting states.

The Indian Arbitration and Conciliation Act 1996 governs the enforcement of "foreign awards" by Indian courts. In relation to India's reciprocity reservation to the New York Convention, the Act requires the central government, via a notification in the Official Gazette, to specify (or gazette) a state before an arbitral award made in that state will be recognised and enforced by Indian courts. Of the 146 parties to the New York Convention, only 44 have been gazetted by the Indian Government.

On 19 March, the Department of Legal Affairs of the Indian Ministry of Law and Justice issued a notification pursuant to the Act declaring that it would add China (including Hong Kong and Macau) to the list of gazetted states. This notification is expected to be published in the Official Gazette shortly. Upon notification in the Official Gazette, arbitral awards made in China, Hong Kong and Macau on or after 19 March must

be recognised and enforced by Indian courts. The absence of China from the list of gazetted states was widely considered to be an anomaly by the international arbitration community, not least due to the popularity of Hong Kong as a well-established centre for arbitration.

Implications

This development coincides with an unprecedented level of trade between India and China, which has risen from \$61.7bn (£39.5bn) in 2010 to a record \$73.9bn (\$47.4bn) in 2011. India and China have expressed clear intentions for this to increase and have set a bilateral trade target of \$100bn (\$64bn) for the year 2015. This intended growth will be facilitated by the new China-India Strategic Economic Dialogue.

In light of India's notification, and the consequent recognition of and ability to enforce arbitral awards made in China in the Indian courts, the appeal of China – and in particular of Hong Kong – as an arbitration centre for disputes with an Indian connection will increase. Consequently, there will be a much more evenly balanced choice for those deciding between Hong Kong and Singapore (which was gazetted some time ago), and the institutions based in those two jurisdictions: the Singapore International Arbitration Centre (SIAC) and the Hong Kong International Arbitration Centre (HKIAC). The latter is undergoing an initiative to amend its Administered Arbitration Rules in order to ensure their suitability for increasingly complex international arbitration disputes. It has also recently issued a consultation paper inviting users to comment on the extent to which certain provisions should be changed.

The HKIAC is also engaged in an extensive refurbishment of its premises to provide state-of-the-art facilities for arbitrations conducted in Hong Kong; the grand opening



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of which will follow on from its ADR in Asia Conference, which is being held in Hong Kong in October. These developments, and India's notification, will offer users of arbitration services a viable alternative to SIAC for arbitrations with a connection to India.

Although HKIAC handles some arbitrations involving parties from India, SIAC has for the past three years handled more cases emanating from India than from any other jurisdiction.

The HKIAC has historically been, and currently remains, more popular for parties outside of China than the principal arbitration centre in mainland China, the China International Economic and Trade Arbitration Commission (CIETAC, also known as the Court of Arbitration of the China Chamber of International Commerce). But CIETAC, headquartered in Beijing, has recently increased its efforts to appeal more widely to those outside China.

These efforts include the adoption of new arbitration rules, which came into effect on 1 May and seek to conform with the current practice of international arbitration, and reflect recent

changes to the rules of other major arbitration centres. Some of the more significant changes to the CIETAC rules include the provision of flexibility for CIETAC to choose a non-Chinese arbitral seat if appropriate and the removal of the provision making Chinese the default language of an arbitration.

The new CIETAC rules, and the recognition and enforcement of its awards within India, may result in parties being more attracted to CIETAC when selecting an arbitration centre.

Conclusion

The recognition and enforcement of arbitral awards made in China and Hong Kong in the Indian courts is an interesting development for international arbitration and is representative of the deepening economic ties and relationship between the two states. But the extent to which Chinese arbitration institutions, particularly HKIAC and CIETAC, will attract parties with arbitration disputes connected to India remains to be seen.

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