

India declares it will enforce arbitration awards from China and Hong Kong

On March 19, 2012, the government of India declared that the People's Republic of China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region, is a territory to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly known as the "New York Convention") applies for the purpose of enforcement of foreign arbitral awards in India. The formal notification is expected to be published shortly in the official Gazette of India.

Indian Arbitration Law

Foreign entities often view international arbitration as the best way to enforce their rights in India because litigation in Indian courts is perceived as lengthy and burdensome. India is a signatory to the New York Convention. In most countries that are signatories to the Convention, foreign arbitral awards issued in any of the other signatory countries are readily recognized and enforced. However, Indian arbitration law imposes local restrictions on the enforcement of foreign awards and this has posed some difficulties.

Under Section 44 of the India Arbitration and Conciliation Act 1996 ("Arbitration Act"), the Indian court recognizes and enforces foreign arbitral awards only if the awards satisfy the following two conditions:

1. there is a valid agreement in writing for arbitration to which the New York Convention applies; and
2. the arbitral award is made in a territory which the Indian Government, being satisfied that reciprocal provisions have been made may, by notification in the official Gazette, declare to be a territory to which the New York Convention applies.

The second condition has posed obstacles to parties wishing to have certain foreign arbitral awards enforced in India. Of the 146 New York Convention countries, only about 47 countries have been notified in the Official Gazette of India as countries to which the New York Convention applies. While most of the major international arbitration centers are included in that official list, Hong Kong has been a notable omission. As a result, most India-related contracts encouraged parties to choose a seat other than Hong Kong to arbitrate their disputes.

Enforcement

With the addition of China to the official list, any remaining doubts as to the enforcement in India of Mainland Chinese and Hong Kong arbitral awards is dispelled.

In line with the provisions of the New York Convention, the enforcement of foreign awards may only be refused by the Indian courts in very limited cases:

1. the subject-matter is not capable of settlement by arbitration under the law of India; or

2. the enforcement of the award would be contrary to the public policy of India.

Conclusion

With Sino-Indian trade on the increase, this clarification has long been awaited and much welcomed by the arbitral community in Mainland China, as well as Hong Kong. It should also be welcomed by the shipping community as it removes an anomaly. The clarification provides an additional choice of seats for the growing number of arbitration cases involving Indian parties. Hong Kong is also likely to benefit most since it is a popular seat for arbitrating international disputes given that it is one of the few common law jurisdictions in the Far East, has a developed pro-arbitration legal and judiciary system and a relatively large arbitral community.

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