

International
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December
2014



Welcome to the December edition of our International Arbitration Quarterly Bulletin.

In the first article of this edition, Senior Associate Catherine Smith reviews the new CIETAC Rules, which come into effect on 1 January 2015.

Next, Senior Associate Andrew Williams reports on a recent decision of the English High Court in relation to service of arbitration claims on non-parties out of the jurisdiction. This decision is significant for parties attempting to enforce awards, because its effect appears to be that it is not possible to obtain a freezing order against a non-party outside the jurisdiction where that order is sought in aid of enforcement of an award.

In our third piece, Partner Chanaka Kumarasinghe reflects on the recent decision in *BLC v BLB* and what it reveals about the approach of the Singapore courts to arbitral awards.

In the last article in this edition, Partner Amanda Davidson, Special Counsel Nick Watts and Associate Ben Cerini consider the New York Convention and whether, half a century into its life, it is still effective.

Should you require any further information or assistance with any of the issues dealt with here, please do not hesitate to contact any of the contributors to this Bulletin, or your usual contact at HFW.

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New CIETAC Rules: 1 January 2015

New China International Economic Trade Arbitration Commission (CIETAC) Rules were published in November 2014 and will come into effect on 1 January 2015 (the 2015 Rules).

The amendments incorporated into the 2015 Rules include:

- New procedure for appointing emergency arbitrators.
- Mechanism for a claimant to appoint one arbitrator in respect of a dispute arising from multiple contracts, in certain circumstances.
- Powers to consolidate arbitrations and join third parties.
- New special provisions for arbitrations administered by CIETAC Arbitration Centre Hong Kong (CIETAC Hong Kong).

Application

The 2015 Rules will apply to CIETAC arbitrations commenced on or after 1 January 2015. Where arbitration proceedings are commenced prior to 1 January 2015, parties may agree to apply the 2015 Rules.

Split between CIETAC Beijing, Shanghai and Shenzhen sub-commissions

CIETAC last amended its Rules on 1 May 2012 (the 2012 Rules). This, at least in part, resulted in a split between CIETAC's arbitration commission in Beijing and the sub-commissions in Shanghai and Shenzhen (South China office).

CIETAC Beijing subsequently announced that CIETAC Shanghai and CIETAC Shenzhen no longer had



The 2015 Rules will apply to CIETAC arbitrations commenced on or after 1 January 2015.

CATHERINE SMITH, SENIOR ASSOCIATE

authorisation to accept and administer CIETAC arbitrations.

It then set up new sub-commissions in Shanghai and Shenzhen. Meanwhile, the breakaway Shanghai and Shenzhen sub-commissions set up their own independent commissions, known as SCIA and SHIAC respectively.

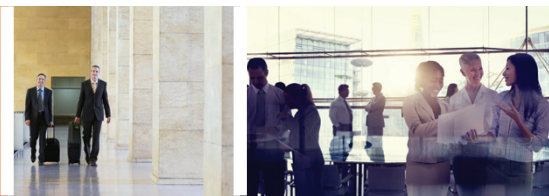

In September 2013, the Supreme People's Court (SPC) issued a "Notice on Certain Issues Relating to Correct Handling of Judicial Review of Arbitration Matters". This Notice required that any lower court hearing cases arising from SCIA or SHIAC should refer the matter to the SPC before making a decision, whether that decision was a positive or negative one.

This was an attempt to deal with the risk of inconsistent decisions from lower courts as to the validity of arbitration agreements providing for CIETAC Shanghai or Shenzhen arbitration and the enforceability of arbitration awards issued by the breakaway institutions. However, inconsistencies and a lack of clarity as to how best to deal with such cases remained. The 2015 Rules have made efforts to deal with this.

First, the structure of CIETAC "post split" is set out in Appendix I of the 2015 Rules. It provides details of the Beijing Commission and the various sub-commissions/arbitration centres. The Shanghai and Shenzhen sub-commissions are referred to as the "Shanghai Office, Arbitration Court of CIETAC" and the "South China Office, Arbitration Court of CIETAC" respectively. Reference to "arbitration center" is to CIETAC Hong Kong.

In addition, Article 2 (6) of the 2015 Rules provides:

"The Parties may agree to submit their disputes to CIETAC or a sub-commission/arbitration center of CIETAC for arbitration. Where the parties have agreed to arbitration by CIETAC for arbitration the Arbitration Court shall accept the arbitration application and administer the case. Where the parties have agreed to arbitration by a sub-commission/arbitration center, the arbitration court of the sub-commission/arbitration center agreed upon by the parties shall accept the arbitration application and administer the case. Where the sub-commission/arbitration center agreed upon by the parties does not exist or its authorization has been terminated, or where the agreement is ambiguous the Arbitration Court (i.e. the former



Secretariat of CIETAC in Beijing) shall accept the arbitration application and administer the case. In the event of any dispute a decision shall be made by CIETAC.” (our emphasis)

The effect of the new Article 2 (6) is for arbitrations commenced under an arbitration agreement providing for CIETAC Shanghai or Shenzhen to be administered by CIETAC Beijing. (This provision is not binding on the PRC Courts.)

Emergency arbitrators (Article 23 and Appendix III)

The 2015 Rules include provisions to allow parties to apply for the appointment of an emergency arbitrator to grant interim relief, including orders for preservation of evidence, early disclosure and the provision of security.

The emergency arbitrator's powers cease on the appointment of the arbitral tribunal. The fact that the emergency procedures are now incorporated into the CIETAC Rules does not preclude a party from applying to a competent court for interim relief subject to the laws of that local jurisdiction.

This brings the CIETAC Rules in line with other international arbitration rules, including the HKIAC and SIAC Rules.

Consolidation of related arbitration proceedings (Article 19)

The new Article 19 provides that CIETAC may consolidate into a single arbitration two or more arbitrations pending under the Rules if the following conditions are met:

- All of the claims are made under the same arbitration agreement.
- The claims are made under multiple arbitration agreements that are identical or compatible

and the arbitrations involve the same parties, as well as legal relationships of the same nature.

- All the parties to the arbitrations have agreed to the consolidations.

Single arbitral proceedings arising out of multiple contracts (Article 14)

Subject to the following conditions, it is now possible for a claimant to commence one arbitration relating to multiple contracts:

- The contracts consist of a principal contract and its ancillary contracts.
- The contracts involve the same parties, as well as legal relationships of the same nature.
- The dispute(s) arise out of the same transaction or the same series of transactions.
- The arbitration agreements in the contracts are identical or compatible.

Tribunal's powers to join third parties. (Article 18)

The 2015 Rules include an entirely new power to join third parties to arbitration proceedings.

This is done by the party wishing to join a third party making a formal "Request for Joinder" to CIETAC, setting out why that party considers the subject arbitration agreement binds the third party.

Where the "Request for Joinder" is filed after the formation of the arbitral tribunal, a decision shall be made by CIETAC after the tribunal has heard from all parties, including the potential third party, if necessary.

Summary procedure (Article 56)

The summary procedure existed under the 2012 Rules. However, the 2015

Rules have increased the threshold for its application to cases where the amount in dispute does not exceed RMB5 million. It may also apply where the sum in dispute exceeds RMB5 million, but both parties agree to apply the summary procedure. This amendment will hopefully increase the efficiency of the administration of disputes which are capable of being resolved under this procedure.

CIETAC Hong Kong (Articles 73 to 80)

One of the main features of the 2015 Rules is the inclusion of specific rules for the administration of CIETAC arbitrations in Hong Kong.

Hong Kong maintains its own judicial and arbitration regime under the "one country two systems" arrangement made after the handover of Hong Kong to PR China on 1 July 2007.

Where the seat of an arbitration is Hong Kong, the legislation applicable to arbitration proceedings is the Arbitration Ordinance (Cap 609). The Arbitration Ordinance adopts much of the UNCITRAL Model law on International Commercial Arbitration. This legislation (together with other legislation applicable where the "seat" or arbitration is Hong Kong) applies to arbitrations administered by CIETAC Hong Kong.

CIETAC set up a sub-arbitration commission in Hong Kong in September 2012. The 2015 Rules include a new chapter containing provisions that deal with arbitrations administered by CIETAC Hong Kong. These include:

- Parties may nominate an arbitrator who is not on the CIETAC panel, with such nomination to be approved by the Chairman of CIETAC.



- The emergency appointment procures and the powers to order interim measures also apply to CIETAC Hong Kong arbitrations.
- A separate fee scale for arbitrations administered in Hong Kong. (The “administrative” fee and the arbitrators’ fee scale are higher for CIETAC Hong Kong administered arbitrations than for arbitrations administered by CIETAC in China. The purpose of this fee structure is to attract high calibre arbitrators onto the CIETAC panel and in turn increase the number of arbitrations commenced with CIETAC Hong Kong.)

It will be interesting to see whether going forward, parties adopt a “CIETAC Hong Kong” arbitration clause in their contracts and the extent to which parties choose to have their disputes administered by CIETAC Hong Kong rather than the long established HKIAC.

Summary

The addition of a number of new procedures and powers to CIETAC tribunals brings CIETAC arbitrations in line with other international arbitration rules, including the HKIAC and SIAC rules. It remains to be seen how many CIETAC administered arbitrations are commenced in Hong Kong compared with those commenced under the HKIAC rules.

It also remains to be seen how effective the 2015 Rules are in dealing with the “split” between CIETAC Beijing, Shanghai and Shenzhen.

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hfw Enforcing an arbitration award against a non-party: a recent English case

In *Cruz City 1 Mauritius Holdings v Unitech Limited and others* (11 November 2014), the English Commercial Court addressed the following issue: “whether the English court has jurisdiction to make a freezing order in aid of enforcement of a London arbitration award against subsidiaries of the award debtor against whom no substantive claim is asserted and who have no presence or assets within the jurisdiction”. The Court decided that it did not.

This decision demonstrates that there is a limit to the policy of the English Courts of doing everything possible to support the enforcement of arbitration awards. It now appears that the Court will not give relief to applicants seeking to freeze the assets of non-UK subsidiaries of a party against whom an arbitration award has been made where those subsidiaries are not parties to the arbitration agreement.

The Claimant (Cruz) had been granted permission to serve arbitration claim forms on five companies (the Subsidiary Defendants) and to add them to proceedings. Their parent was the First Defendant, the Indian company Unitech Limited (Unitech). Unitech had persistently failed to satisfy a London arbitration award exceeding US\$350 million in Cruz’s favour, despite several enforcement measures, including a worldwide freezing order over Unitech’s assets and an order appointing receivers over Unitech’s shareholdings in the Subsidiary Defendants.

The arbitration claim form served by Cruz sought a Chabra order in relation to the Subsidiary Defendants – that is, an order in accordance with *TSB Private Bank International SA v Chabra*¹. Chabra orders permit the assets of third parties to be frozen even where the claimant has no substantive claim against the party whose assets it seeks to freeze. They are only granted where the claimant has a good arguable case that such assets are beneficially owned by the defendant, or in other limited circumstances where the assets may in due course become available to the claimant as judgment creditor.

Since none of the Subsidiary Defendants was incorporated in England and Wales and none had any assets or business in the jurisdiction, Cruz had obtained an order permitting service on them out of the jurisdiction. The Subsidiary Defendants applied to set aside the order, submitting that both grounds upon which Cruz had asserted English jurisdiction were invalid.

Cruz’s primary ground for asserting jurisdiction was under CPR62.5(1)(c), that Cruz was seeking “*some other remedy affecting an arbitration award*”.

The Court rejected this approach, citing a long line of authority in support of the proposition that service out of the jurisdiction under CPR 62.5(1)(c) was permissible only against a party to the arbitration or arbitration agreement in question.

These authorities stressed that arbitration is a consensual process in which parties have voluntarily agreed to the determination of their disputes in a certain forum. The same is not true of persons not party to the arbitration agreement, including subsidiaries of parties to an arbitration agreement.

1 [1992] 1 WLR 231



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Consequently, there could be no rationale for permitting service on third parties who had not made such a voluntary submission.

Having declined to find jurisdiction on the first ground, the Court considered Cruz's alternative submission, under CPR6, Practice Direction (PD) 6B, para 3.1(3). This permits service out of the jurisdiction in relation to a claim:

"made against a person [the defendant] on whom the claim form has been or will be served (otherwise than in reliance on this paragraph) and –

- (a) there is between the claimant and the defendant a real issue which it is reasonable for the court to try; and*
- (b) the claimant wishes to serve the claim form on another person who is a necessary or proper party to that claim."*

The Court approached this by way of three key questions:

1. Was there a 'claim made' against Unitech, such that it could be treated as the 'Anchor Defendant' against whom there must be a claim in order for service on a third party to be permissible?
2. Was there a 'real issue' that it was "reasonable for the court to try" between Cruz and Unitech?
3. Were the Subsidiary Defendants 'necessary or proper' parties to any trial between Unitech and Cruz?

As to question 1, the Defendants submitted that a "claim made" had to be a substantive claim, and that the only claims brought against Unitech in the English Courts had been for ancillary orders such as the freezing order and the order appointing receivers.

The Court agreed, holding that the language of PD 6B para 3.1(3) clearly required a substantive claim against the 'Anchor Defendant' and that relief ancillary to the enforcement of an arbitration award did not meet this threshold.

Turning to question 2, the Court found that as the substantive claim between Cruz and Unitech had been decided at arbitration, this could not be the 'real issue'. Similarly, as the ancillary orders awarded in Cruz's favour had already been made, these could not be 'reasonable for the court to try'.

Accordingly, even if the Court was wrong in relation to question 1, Cruz would still have failed to meet the requirements for service out.

The Court concluded that the Subsidiary Defendants could not be 'necessary and proper' parties for the purposes of question 3.

The Court had no jurisdiction over the Subsidiary Defendants and their application to set aside the order for service upon them out of the jurisdiction succeeded.

It appears that permission for service out under CPR62.5(1)(c) on a person not party to an arbitration agreement will be very difficult to obtain going forward. Under PD 6B para. 3.1(3), a claimant must have a substantive claim against the anchor defendant before it can serve on a third party. In such cases, there must also be a 'real issue' triable before the English Court.

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hfw Singapore Court of Appeal continues to support non-interventionist approach to arbitration

In the recent decision of *BLC and others v BLB and another* (30 July 2014) (*BLC v BLB*), the Singapore Court of Appeal reversed the Singapore High Court's decision to set aside an arbitral award on the grounds of a breach of natural justice.

Its decision strongly reaffirms the non-interventionist, pro-arbitration stance of the Singapore Courts and should encourage international traders to choose Singapore as an arbitral seat in their contractual dispute resolution clauses going forward. The decision also provides clear guidance to parties who are faced with an unfavourable award in relation to a Singapore seated arbitration.

Background

The case concerned a dispute between two groups of companies, BLC (the Appellants) and BLB (the Respondents), following an unsuccessful joint venture.

The Appellants commenced arbitration proceedings alleging that goods manufactured and delivered by the Respondents were defective and claiming rectification costs. The Respondents counterclaimed for certain sums, including an amount which they alleged the Appellants owed for goods delivered but for which the Appellants had not paid (the Disputed Counterclaim).

As the parties could not agree a framework of issues to be heard, they submitted separate lists of issues to the arbitrator.



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CHANAKA KUMARASINGHE, PARTNER

The award

The arbitrator held that the goods supplied were defective and allowed the Appellants' claim for rectification costs. He dismissed all of the Respondents' counterclaims, including the Disputed Counterclaim. The arbitrator suggested in his award that he had accepted the Appellants' list of issues as a convenient framework to discuss the counterclaims. The award did not expressly identify or discuss two issues which featured only on the Respondents' list of issues, relating to the Disputed Counterclaim.

The Singapore High Court's decision

The Respondents applied to the Singapore High Court for the award to be set aside on the ground of denial of natural justice resulting from the arbitrator's failure to address the Disputed Counterclaim.

The High Court agreed and held that as a result of extensively adopting the Appellants' list of issues, the arbitrator had failed to deal with the Disputed Counterclaim and there had been a denial of natural justice. It set aside the part of the award which dealt with the Disputed Counterclaim and remitted it to a new tribunal for determination.

The Appellants then appealed to the Singapore Court of Appeal where the central question raised was a factual one – whether the High Court judge was correct in finding that the arbitrator had not addressed his mind to the Disputed Counterclaim and thereby failed to deal with an essential issue in the dispute.

The Singapore Court of Appeal's decision

The Singapore Court of Appeal disagreed with the High Court, holding that the arbitrator had both considered the Disputed Counterclaim and rendered a decision in respect of this aspect of the dispute. It reinstated the arbitral award in full.

The decision of the Singapore Court of Appeal strongly affirmed the principle of minimal curial intervention and made the following key points:

1. The Court must be wary of accusations by dissatisfied parties that an arbitrator has failed to consider an issue that was never before him in the first place.
2. The Court should resist the natural inclination to be drawn into the



arguments in relation to the substantive merits of the underlying dispute between the parties. These are beyond the remit of the Court. There is “no right of recourse to the courts where an arbitrator has simply made an error of law and/or fact”.

3. Where a breach of natural justice is alleged, the Court is not required to conduct a “hypercritical or excessively syntactical analysis” of the award and must only remedy meaningful breaches that have actually caused prejudice.

In this case, the provisions of the joint venture agreement that the Respondents relied on in their application to set aside the award did not appear in the pleadings, list of issues or written submissions before the arbitrator. The Court held that the Respondents were seeking to rely on the case they wished they had put forward and not the case which was actually run.

The Court also held that the award must be read as a whole, not in isolated parts. From the award as a whole, it was clear that the arbitrator did in fact address his mind to each of the Respondents’ counterclaims, including the Disputed Counterclaim.

The Court noted that dissatisfied parties should first seek redress from the tribunal before turning to the Courts. It considered Article 33(3)

of the UNCITRAL Model Law which allows a party to make an application for an additional award where a claim has been presented in the arbitral proceedings but omitted from the award. Turning to the Courts should be a remedy of last resort.

Finally, the Court of Appeal disagreed with the High Court’s decision to remit the award to a newly constituted tribunal. There was no language in the UNCITRAL Model Law which permitted remission to a newly constituted tribunal: if the Disputed Counterclaim had not been considered because of a pure oversight, it would have been open to the High Court to remit the award back to the original tribunal. Only if the arbitrator himself decided to withdraw would the parties need to appoint a substitute tribunal.

Conclusion

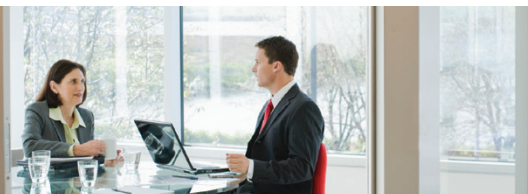
This decision will reinforce Singapore’s efforts to market itself as a dispute resolution “hub”. This is significant because trade within Asia is growing faster than anywhere else in the world and with it, the number of commercial disputes has also increased. In recognition of this, Singapore has put considerable work into developing itself as a centre for all types of dispute resolution. The Singapore International Mediation Centre (SIMC) was launched on 5 November 2014, focusing on providing amicable solutions, through mediation and other related

services, to cross border commercial disputes. The Singapore International Commercial Court is due to open in early 2015, targeting international commercial disputes that may be subject to foreign law and may not otherwise be dealt with in Singapore.

Alongside these newer developments, Singapore is maintaining its reputation as a key location for international arbitration. The legal regulatory environment in Singapore is an important factor to its success in this field. No restrictions are placed on foreign counsel or foreign arbitrators acting in Singapore seated arbitrations. In addition, and as reiterated by *BLC v BLB*, the Singapore Courts have consistently adopted a policy of minimal curial intervention, even with regard to domestic cases. Under Singapore’s International Arbitration Act, the Singapore Courts can only set aside an arbitral award in circumstances of fraud or breach of natural justice and have taken a narrow approach when interpreting these rules. They will not examine an award assiduously looking for blame or fault in the arbitral process.

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hfw The New York Convention 1958 half a century on: is it still effective?

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards – known as the “New York Convention” – has been described as the most important and successful United Nations treaty in the area of international trade law, and “the cornerstone of the international arbitration system”¹.

As of November 2014, 153 States have adopted the New York Convention, with the result that States who have failed or refused to adopt it are now the exception, rather than the norm.

This article outlines how the New York Convention works, considers some of its key limitations, and reflects on whether, after 56 years of operation, it is still an effective instrument.

The procedural advantages of international commercial arbitration over cross-border litigation are well understood, offering the parties the ability to choose a neutral forum and preferred legal system, the availability of specialist decision makers, comparative absence of bureaucratic and costly procedures, and confidentiality.

The New York Convention creates a uniform international framework, which enables parties to international commercial arbitration agreements to enforce foreign arbitral awards with relative ease. It achieves this by:

1 -Renaud Sorieul, The Secretary of UNCITRAL
2 Article I (1).
3 Article III
4 Article IV(1)
5 Article V.



...the registration and enforcement of foreign court judgments is only available where individual States have enacted legislation by which reciprocal enforcement of foreign judgments is permitted.

AMANDA DAVIDSON, PARTNER

- Requiring the courts of a signatory State (referred to as a “Contracting State”) to recognise and enforce an award rendered in another Contracting State.
- Limiting the grounds upon which the courts in Contracting States may refuse recognition and enforcement of foreign arbitral awards.

By contrast, the registration and enforcement of foreign court judgments is only available where individual States have enacted legislation by which reciprocal enforcement of foreign judgments is permitted. The process is therefore less certain and less consistent.

The New York Convention applies to arbitral awards made in the territory of a Contracting State other than the Contracting State in which the recognition and enforcement of such an award is sought, and to awards that are not considered to be domestic awards in the Contracting State where enforcement is sought² (referred to in this article as “Foreign Awards”).

Contracting States are required to recognise Foreign Awards as binding

and enforce them in accordance with the rules of procedure of the Contracting State, subject to the terms of the New York Convention.³

The enforcement procedure is designed to be free from onerous conditions and charges. It involves submission to a competent court in the Contracting State where enforcement is sought (referred to in this article as “Local Court”) of the following:

- An authenticated Foreign Award or certified copy and, if necessary, translations.
- The originals or a copy of the arbitration agreement and, if necessary, translations.⁴

Article V of the New York Convention prescribes the grounds on which the Local Court can refuse to enforce a Foreign Award⁵. The grounds in Article V are mirrored in the UNCITRAL Model Law (as amended in 2006). The grounds for refusal of enforcement under Article V are:

- Incapacity of the parties to the arbitration agreement.
- Invalidity of the arbitration agreement.



- Failure to give proper notice of the appointment of an arbitrator to the party against whom the award is invoked.
- Natural justice grounds - where the party against whom the award is invoked is not able to present its case.
- The Foreign Award is outside the scope of the terms of submission to arbitration.
- The arbitral authority or procedure was not in accordance with the agreement of the parties.
- The Foreign Award is not yet binding on the parties or has been set aside or suspended.
- The subject matter of the arbitration is not capable of being referred to arbitration under the law of the enforcing country.
- The recognition or enforcement of the Foreign Award is contrary to public policy of the enforcing country.

On any view, the New York Convention is one of the most successful international conventions in terms of its widespread and continuing adoption.

The efficacy of the New York Convention is a significant factor in the continuing popularity of international commercial arbitration as a means of dispute resolution in international commerce. However, it has a number of limitations:

1. Public policy

The principal limitation that has arisen over the years – causing considerable controversy – is the inconsistent approach taken by Local Courts in applying the public policy ground

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under Article V, resulting in many Foreign Awards being found to be unenforceable.

The New York Convention does not define or provide guidelines on what ought to be considered “public policy”. As a consequence, Local Courts have a significant degree of discretion in interpreting what constitutes “public policy” in their own jurisdictions.

United World v. Krasny Yakor is perhaps the best known example of this: a Russian federal arbitration court refused recognition and enforcement of an ICC award rendered in Paris against a significant Russian entity, because it considered that the effect of the award would be to force the Russian entity into bankruptcy. Given the size of the entity, it was considered that its bankruptcy would adversely affect regional and national economic stability, a matter which the court considered to constitute public policy.

Another example is the approach taken by the Indian Supreme Court, which has held that the phrase “contrary to public policy” means contrary to, the fundamental policy of Indian Law, the interests of India, justice or morality, or where the award is patently illegal⁶ or is inconsistent with Indian domestic law⁷.

2. Interim or final awards

The New York Convention makes no distinction between interim and final awards. In certain circumstances, it may be necessary to enforce an interim or partial award, for instance where the tribunal makes interlocutory awards. This has caused confusion in some jurisdictions.

For example, in Queensland, Australia, the position was that a Foreign Award must determine finally at least some of the matters in dispute between the parties, in order to be enforceable.⁸ This led to some uncertainty until in 2010, the *International Arbitration Act 1974 (Cth)*⁹ was amended to remove this uncertainty by clarifying that the only grounds for refusing to enforce a foreign award in Australia are those grounds that are set out in Article V of the New York Convention.

3. Limitation periods

The New York Convention does not provide for any limitation period for enforcing awards or setting them aside. These are normally determined by the law of the seat of the arbitration, by the terms of the arbitration agreement, or the jurisdiction where enforcement occurs.

4. State immunity

The New York Convention does not deal with the question of whether a party may rely on any applicable doctrines of state immunity in defending any application for enforcement of a Foreign Award.

Conclusion

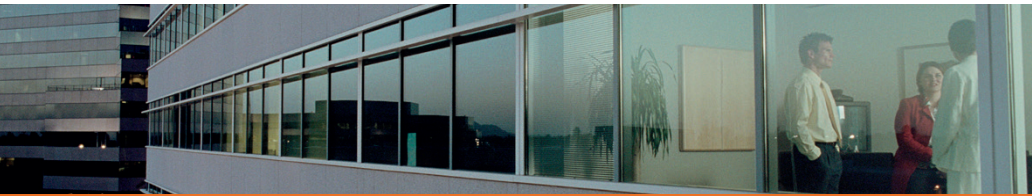
The New York Convention remains the preferred framework for providing an enforceable outcome in the context of cross border commercial disputes.

6 *Oil & National Gas Corporation Ltd v Saw Pipes* (2003) 5 SCC 705

7 *Venture Global Engineering v Satyam Computer Services Ltd* (2008) 4 SCC 190

8 *Resort Condominiums International Inc v Bolwell* (Supreme Court of Queensland)

9 *International Arbitration Act 1974 (Cth)* section 8(3A)



Although limited in application, an alternative process might be the use of investment treaty arbitrations under the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which created the International Centre For Settlement Of Investment Disputes (ICSID). These arbitrations have significant enforcement advantages in that ICSID awards are not subject to any review process by a Local Court and may be automatically enforced against assets as if they are final judgments of the Local Court. However, investment treaty arbitrations are only available for investment disputes where one party is a State and it is asserted that either an investment has been expropriated or an investor treated unfairly.

It is difficult to envisage how the New York Convention may be effectively amended to overcome the limitations identified above, as they are a product of the way in which the courts of Contracting States have applied it. An obvious solution is to encourage Contracting States to accept a more uniform approach to the application of the Convention through legislative reform.

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News

HFW is delighted to be part of a new Arbitration Club in Singapore. This is a forum where lawyers and arbitrators meet regularly to discuss topical arbitration issues and the development of arbitration, especially practical problems and matters concerning the profession. HFW Partner Paul Aston attended the inaugural meeting at Maxwell Chambers in October, chaired by Denys Hickey of 39 Essex Street Chambers, and will be hosting the next meeting at HFW's offices in Singapore, in January 2015.

hfw Conferences and events

HKIAC/HFW International Trade and Commodities Seminar

Hong Kong

Early 2015

Presenting: Andrew Johnstone and Fergus Saurin

European Federation for Investment Law and Arbitration Seminar

London

23 January 2015

Attending: Konstantinos Adamantopoulos, Folkert Graafsma and Damian Honey

HFW International Arbitration Conference

HFW London

3 February 2015

3rd Annual Kluwer Law – MENA International Arbitration Summit

Dubai

4 February 2015

Attending: Damian Honey

Chartered Institute of Arbitrators Hong Kong Centenary Conference

Hong Kong

19-21 March 2015

Attending: Nick Longley





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