

India recognises China, Hong Kong SAR & Macao SAR as a Convention Country for the Enforcement of Foreign Arbitral Awards

Arbitration, Conciliation & Mediation has become effective means of alternative dispute resolution globally. It was only a matter of time when the two ancient trading partners and economic powerhouse China and India started recognising each other's legal set up to further boost the trade and confidence amongst the businesses.

Recently, on March 19, 2012 the Department of Legal Affairs of the Indian Government Ministry of Law and Justice, issued a notification under section 44(b) of the Arbitration Act. This notification declared the People's Republic of China (including the Special Administrative Regions of Hong Kong and Macao) to be a territory to which the New York Convention set forth in Schedule I of the Arbitration Act, applies in respect of any awards made in China, Hong Kong or Macao on or after 19 March 2012.

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 following two conditions are fulfilled:

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.

Thus, even if a country is a signatory to the New York Convention, it does not ipso facto mean that an award passed in such country would be enforceable in India. There has to be a further notification by the Central Government under the Arbitration Act, declaring that country to be a territory to which the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (i.e. the New York Convention set forth in the Schedule I of the Arbitration Act) applies.

Previously there were about 46 countries to have been notified by the Central Government as convention countries for the purposes of the Arbitration Act. While most of the major international arbitration centres were included in the convention countries list, China and Hong Kong had been a notable omission. Thus, parties to India-related contracts preferred to choose a place other than China and Hong Kong to arbitrate their disputes. The notification of China and Hong Kong as a convention country now removes, what was otherwise seen as a significant hurdle to the enforcement of arbitral awards rendered in China and Hong Kong in India, and it further enhances China's and Hong Kong's appeal as a seat for international arbitration, particularly in matters with an India connection.

This is undoubtedly a positive and a welcome development in the field of International Arbitration in India.

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