

Dispute Resolution Hotline

April 11, 2012

FOREIGN ARBITRATION AWARD: CHINA (INCLUDING HONG KONG SAR AND MACAO SAR) NOTIFIED AS CONVENTION COUNTRY, 1996

An award is regarded as a foreign award in India only if it originates from one of such territories as the Central Government, being satisfied that reciprocal provisions made may, by notification in the Official Gazette, declare to be territories to which the New York Convention and Geneva Convention applies ("**Convention Countries**"). Only such foreign awards are enforceable under the statutory framework for the enforcement in India. In the case of *Bhatia International v Bulk Trading*¹, the Supreme Court held that an arbitration award not made in a convention country will not be considered a foreign award.

Thus, even if a country is a signatory to the New York Convention or Geneva Convention, it does not ipso facto mean that an award passed in such country would be enforceable in India. There has to be further notification by the Central Government declaring that country to be a Convention Country.

For Example: An award passed in arbitration with seat of arbitration in Singapore can be enforced in India as a foreign award and thus would get the recognition and protections a New York Convention Award is given internationally.

Whereas an award passed in arbitration with seat of arbitration in Indonesia will not be regarded as a foreign award and hence will not receive the recognition and protection a New York Convention Award is given even though Indonesia is a signatory to the New York Convention.

Previously there were about 46 countries to have been notified by the Central Government as Convention Countries. They are:- Australia; Austria; Belgium; Botswana; Bulgaria; Central African Republic; Chile; Cuba; Czechoslovak Socialist Republic; Denmark; Ecuador; Federal Republic of Germany; Finland; France; German; Democratic Republic; Ghana; Greece; Hungary; Italy; Japan; Kuwait; Malagasy Republic; Malaysia; Mexico; Morocco; Nigeria; Norway; Philippines; Poland; Republic of Korea; Romania; San Marino; Singapore; Spain; Sweden; Switzerland; Syrian Arab Republic; Thailand; The Arab Republic of Egypt; The Netherlands; Trinidad and Tobago; Tunisia; U.K.; U.S.S.R.; United Republic of Tanzania and United States of America.

On March 19, 2012 the Central Government has now notified People's Republic of China (including Hong Kong Special Administrative Region and the Macao Special Administrative Region of the People's Republic of China) as a Convention Country.

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

– Prateek Bagaria & Vyapak Desai

You can direct your queries or comments to the authors

¹ AIR 2002 SC 1432

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