



E-Update 2012/6 – October 2012

Recent significant developments in International Arbitration in Asia

In the past few months, there have been many interesting developments in the International Arbitration scene in Asia. In this update we briefly set out recent developments in Singapore, China and in India concerning arbitration. These changes will have impact on parties' decision to arbitrate in these jurisdictions.

SINGAPORE: International Arbitration Act amended to introduce improvements

The Singapore International Arbitration Act was amended with effect from June 2012 to introduce some key changes that were recommended by industry stakeholders and practitioners.

Firstly, the strict requirement that the arbitration agreement must be in written form has been relaxed to include agreements that are "*concluded orally, by conduct or through other means*". Now an arbitration agreement is valid as long as the content of the arbitration agreement is in a recorded form.

Secondly, the recent amendments provide parties with recourse to negative jurisdictional rulings. The Singapore Courts have been empowered to review rulings by arbitral tribunal that they do not have jurisdiction to hear the dispute.

The amendments also clarified the enforceability of an emergency arbitrator's order and whether such orders amounted to the issue of an award by an "arbitral tribunal". The definition of the "arbitral

tribunal" has been amended to provide that an award of an emergency arbitrator has the same status as an award of an arbitral tribunal appointed in the usual way.

These changes that are in line with industry practice seek to improve arbitration in Singapore and maintain its "first-class" framework for International Arbitration.

INDIA: The role of Indian Courts in foreign arbitrations clarified in landmark judgement

On the 6th of September 2012, the Supreme Court of India ruled that Part I of the Indian Arbitration and Conciliation Act 1996 ("Indian Arbitration Act") has no application to international arbitrations. Therefore provisions in Part I, such as section 9 that gives Indian Courts power to order interim measures of protection, does not apply to arbitrations that are held outside of India.

The Court overruled the much criticised decision in *Bhatia International v Bulk Trading S.A.*, ("Bhatia International") which held that Part I of the Indian Arbitration Act applies to arbitrations held outside India unless parties excluded all or any of the provisions by agreement. The law now stands the Indian Courts will not have jurisdiction in relation to foreign-seated arbitrations until an application for enforcement is made under section 48 of the Indian Arbitration Act.

This rule, laid out in the recent judgement, only applies to arbitration agreements entered into after

6 September 2012. All past, present and future disputes dealt by arbitration agreements entered prior to this date will continue to be governed by the law in Bhatia International that allows Indian Courts to intervene in foreign arbitrations. This is a positive development.

CHINA:

Disagreement between arbitral institutions creates uncertainty for users of CIETAC Arbitration

The on-going conflict between Beijing headquarters of the China International Economic and Arbitration Commission ("CIETAC") and its sub-commissions in Shanghai ("CIETAC Shanghai") and South China (Shenzhen) ("CIETAC Shenzhen") has caused confusion for parties who have agreed to arbitrate in these arbitral institutions.

With effect from 1st August 2012, CIETAC has suspended its authorisation that allowed CIETAC Shanghai and CIETAC Shenzhen to accept and administer arbitration cases. Now, parties who have agreed to refer their disputes to these institutions have to submit their applications for arbitration to CIETAC's headquarters in Beijing. The CIETAC Secretariat will accept such applications and will administer them accordingly.

CIETAC Shanghai and CIETAC Shenzhen have, however, jointly objected this suspension. They announced that their powers to accept and administer arbitrations are derived from parties' agreement and therefore CIETAC's announcement suspending these powers does not have binding effect on them.

While this disagreement waits resolution, parties with agreements that provide for arbitration under CIETAC Shanghai or CIETAC Shenzhen should seek legal advice before proceeding with arbitration when dispute arises. To avoid uncertainties that may arise on enforcement of arbitral awards rendered from arbitration in these two institutions, it is advisable for concerned parties to amend their existing arbitration agreements to refer dispute to CIETAC Beijing. Similarly, parties should choose CIETAC Beijing as the seat of arbitration in their future contacts.

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