

INDIA CLEARS OBSTACLE TO ENFORCEMENT OF MAINLAND CHINA AND HONG KONG ARBITRAL AWARDS BY NOTIFYING CHINA AS NEW YORK CONVENTION TERRITORY

April 26, 2012

To Our Clients and Friends:

The Indian Ministry of Law and Justice has declared the People's Republic of China (including Hong Kong and Macau) to be a territory to which the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention" or "the Convention") applies. China and Hong Kong had long been omitted from India's official list of New York Convention territories, a prerequisite to the enforcement of foreign arbitral awards in India. This development removes a significant obstacle to the enforcement of Mainland China and Hong Kong arbitral awards in India, and it should transform Hong Kong in particular into a credible and attractive arbitral seat for disputes involving Indian parties.

On March 19, 2012, the Indian Ministry of Law and Justice (the "Ministry") issued a notification as envisaged by Section 44(b) of the Arbitration and Conciliation Act 1996 declaring China (including Hong Kong and Macau) to be a territory to which the New York Convention is recognized to apply for the purpose of any award rendered in China, Hong Kong or Macau on or after that date.¹

India and China have both been parties to the New York Convention since ratification in 1980 and 1987, respectively.² The Convention requires the courts of contracting states to give effect to agreements to arbitrate rendered in other contracting states, and to recognize and enforce arbitral awards rendered in other contracting states. The Indian Arbitration and Conciliation Act 1996, however, permits Indian courts to recognize and enforce as foreign arbitral awards only those awards rendered in countries notified by the Indian Central Government as territories to

¹ Ministry of Justice, Notification, March 19, 2012, available at <http://www.globalarbitrationreview.com/cdn/files/gar/articles/ordinance.pdf>; see also <http://www.bkaiac.org/index.php/en/news/442>.

² Status 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html.

which the Convention applies.³ To date, India has so notified fewer than 50 of the Convention's 146 signatories.⁴

China and Hong Kong had long been glaring omissions from India's official list of New York Convention territories, despite Hong Kong's considerable popularity as an arbitral seat, status as a major international financial center, geographical proximity to India and sizeable Indian population. This state of affairs had presented a significant obstacle to the enforcement in India of arbitral awards rendered in Hong Kong, leading parties to disputes involving India to select other regional arbitral seats, most notably Singapore.

As a result of the Ministry's recent notification, this obstacle to the enforcement in India of arbitral awards rendered in Mainland China and Hong Kong on or after March 19 should no longer exist. This represents an important development and transforms Hong Kong in particular into a credible and attractive arbitral seat for disputes involving Indian parties. As part of talks on promoting cooperation between India and Hong Kong, Hong Kong officials had pressed for recognition of Hong Kong-rendered awards.⁵ This announcement also occurs at the time of a broader campaign to improve China-India relations and commitments by both countries to promote bilateral trade and mutual investment.⁶

³ *Arbitration and Conciliation Act 1996 (India), section 44(b).*

⁴ *Chinese Awards Made Enforceable in India*, Global Arbitration Review, April 5, 2012, <http://www.globalarbitrationreview.com/news/article/30455/chinese-awards-made-enforceable-india/>.

⁵ *CE Starts His Visit in India*, Hong Kong Government News Service, October 26, 2010 (reporting that Chief Executive Donald Tsang asked the Indian authorities during talks in New Delhi to recognize Hong Kong's arbitral awards).

⁶ *Beijing Municipal Government: China, India Vow to Work for Peace and Stability*, Hong Kong Government News Service, April 2, 2012.

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