

# Client Alert

Latham & Watkins Litigation Department

## India Announces That It Will Now Recognize and Enforce Arbitral Awards From China and Hong Kong

The Indian Ministry of Law and Justice has declared that arbitral awards made in China (including Hong Kong and Macau) may be recognized and enforced by Indian courts. This will come into effect once the Indian Central Government has provided notification in the Official Gazette. The addition of China to India's official list of so-called "gazetted" States, which currently contains fewer than one third of the signatory States to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), will increase the appeal of arbitration centers in China, and in particular Hong Kong, in the context of disputes with an Indian connection.

### Recognition and Enforcement of Arbitral Awards in India

India and China are both parties to the New York Convention, having ratified it in 1960 and 1987 respectively. The New York Convention requires *inter alia* that Contracting States recognize and enforce arbitral awards made in other States, subject to the declarations and reservations of Contracting States.

India, together with numerous other signatory States, signed the New York Convention subject to the "reciprocity" and "commercial" reservations, which provide respectively that they will apply the New York Convention only to: (i) awards made in the territory of other Contracting States; and (ii) differences arising out of legal relationships that are considered commercial under national law.

The Indian Arbitration and Conciliation Act 1996 (the Act) governs the enforcement of "foreign awards" by Indian courts. In relation to India's reciprocity reservation to the New York Convention, the Act requires the Central Government, via a notification in the Official Gazette, to specify (or gazette) a State before an arbitral award made in that State will be recognized and enforced by Indian courts. Of the 146 parties to the New York Convention, currently only 44 have been gazetted by the Central Government of India.

### China Will Finally be "Gazetted"

On March 19, 2012, the Department of Legal Affairs of the Indian Ministry of Law and Justice issued a notification pursuant to the Act declaring that it would add China (including Hong Kong and Macau) to the list of gazetted States. This notification is expected to be published in the Official Gazette shortly. Upon notification in the Official Gazette, arbitral awards made in China, Hong Kong and Macau must be recognized and enforced by Indian courts.

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The absence of China from the list of gazetted States was widely considered to be an anomaly by the international arbitration community, not least due to the popularity of Hong Kong as a well-established center for arbitration.

## **Implications**

In light of India's notification, and the consequent recognition of and ability to enforce arbitral awards made in China in the Indian courts, the appeal of China, and in particular of Hong Kong, as an arbitration center for disputes with an Indian connection will increase. Consequently, there will be a much more evenly balanced choice for those deciding between the two popular Asian arbitration centers of Hong Kong and Singapore (which was gazetted some time ago) and the institutions based in those two jurisdictions: the Hong Kong International Arbitration Centre (HKIAC) and the Singapore International Arbitration Centre (SIAC).

HKIAC has historically been and currently remains more popular for parties outside of China than the principal arbitration center in mainland China, the China International Economic and Trade Arbitration Commission (CIETAC, also known as the Court of Arbitration of the China Chamber of International Commerce). However, CIETAC, headquartered in Beijing, has recently strengthened efforts to appeal more widely to those outside China. These efforts include the adoption of its new arbitration rules, which came into effect on May 1, 2012 and seek to conform with the current practice of international arbitration and reflect recent changes to the rules of other major arbitration centers. Some of the more significant changes to the CIETAC rules include the provision of flexibility for CIETAC to choose a non-Chinese arbitral seat if appropriate and the removal of the provision making Chinese the default language of an arbitration. The new CIETAC rules and the recognition and enforcement of its awards within India may result in parties being more attracted to CIETAC when selecting an arbitration center.

Facing an ever-growing range of choices for arbitration centers, it is important that clients seek specific advice in relation to the suitability of each option within Asia (including Singapore, Hong Kong and mainland China) and elsewhere.

## **About Latham's International Arbitration Practice**

*Latham & Watkins has a leading global international arbitration practice. Latham & Watkins represents public and private corporations, State-owned enterprises and States themselves in major international arbitrations, mediations and lawsuits all over the world. Latham & Watkins has handled proceedings under all of the major international arbitration rules, including CIETAC, HKIAC and SIAC.*

If you have any questions about this *Client Alert*, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

**Simon D. Powell**

+852.2912.2693

simon.powell@lw.com

Hong Kong

**Philip Clifford**

+44.20.7710.1861

philip.clifford@lw.com

London

**Oliver Browne**

+44.20.7710.1825

oliver.browne@lw.com

London

**Michelle Bradfield**

+44.20.7710.5812

michelle.bradfield@lw.com

London

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