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An Important New Development in International Business

Internationally Enforceable Business Dispute Settlement Agreements

By Jerrold Kippen

As many are aware, international arbitration is a popular dispute resolution device for international business disputes. This is in no small part because international arbitration awards are readily enforceable in practically every jurisdiction in the world, which is not the case if parties take their dispute to state court. This advantage of international arbitration is due to the success of the United Nations New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (NY Convention)[1]. The NY Convention is a multilateral treaty, which among other things, requires the courts of the contracting states to recognize and enforce arbitration awards made by tribunals seated in other states. With 160 contracting states (including Thailand as one of its earliest contracting states) and the ever-increasing popularity of international arbitration around the world, the NY Convention is widely viewed as one of, if not the most, successful international treaties.[2]

As of August 2019, a new international convention – the United Nations Singapore Convention on International Settlement Agreements Resulting from Mediation ("Singapore Convention") – is seeking to replicate the success of the NY Convention and create a system for the universal recognition and enforcement of foreign court judgments and mediated settlement agreements.[3]

On August 7, 2019, in Singapore, forty-six states signed up to the Singapore Convention. While still in its infancy, the Singapore Convention is worth watching and, in some ways, may affect the manner in which international business parties approach dispute resolution in the future.[4] This is because, like international arbitration awards were prior to the NY Convention, mediated international dispute settlement agreements are very difficult if not impossible to enforce in most jurisdictions.

Business parties generally prefer a mutually agreed settlement to any

On August 7, 2019, forty-six states signed up to the Singapore Convention. The Singapore skyline shown here. Photo credit Getty Images

dispute with a contract party if any such settlement agreement would be enforceable. It is less costly, less time consuming, and may maintain a valued business relationship. All of this is generally not the case once such a dispute goes to arbitration or state court litigation for final resolution. However, if the Singapore Convention can gain similar global traction to that of the NY Convention, then mediated settlement may quickly become a much more favored means of dispute resolution between international parties than it currently is. And, if so, then jurisdictions that become contracting states to the Singapore Convention will become more attractive locations to international parties in which to do business than non-contracting states.

The purpose of the Singapore Convention is to provide a general framework for the streamlined enforcement of mediated dispute settlement agreements between international parties. What does mediation mean in this context? The Singapore Convention casts a wide net by defining mediation as:

"a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute".

An agreement in writing between two international parties that is also signed by the mediator qualifies for enforcement in the courts of a Singapore Convention contracting state. The grounds for objection to enforcement are provided in Article 5 of the Singapore Convention and are very similar to those of the NY Convention.

Although the two largest economies in the world, the United States and China have signed the Singapore Convention, so far, no European state has joined. It is unclear why this is the case. It may be because enforceable settlement agreements are part of a mature European dispute resolution regimen and court order or arbitration settlement awards are widely recognized and implemented. However, in both cases, the parties must commit to formal dispute resolution before mediating, which can create hostility and undermine the very goals of a mediation—to reduce costs and maintain the valued business relationship. Thus, it remains to be seen whether Europe will sign up to the Singapore Convention and to what extent its scope will be expanded beyond the current forty-six signatories. However, and in any case, forty-six states is about one-quarter of all the countries in the world—not a bad start at all.

Thus, while the scope of the NY Convention is limited to the recognition and enforcement arbitration agreements and awards, the Singapore Convention deals with something quite different. By way of the NY Convention, arbitration awards tend to become something very similar to a court judgment that is enforceable worldwide.

The Singapore Convention, however, recognizes and enforces settlement agreements between parties but offers enforceability of those agreements internationally, thus encouraging international contract parties to take a more amicable path to resolution of any dispute. Settling disputes rather than fighting them out which is almost always the best way to go for commercial parties when they can come to a truly mutually acceptable settlement. Commercial parties know this. But of course, in order to be willing to settle any dispute, international parties need to know the resulting settlement agreement will be adhered to or, in extreme cases, enforced. This is the assurance that the Singapore Convention provides in the international/cross-border parties context.

Therefore, like the NY Convention, the Singapore Convention provides another, but different and arguably more commercially attractive, internationally enforceable means of resolving disputes between parties. And the more confident potential contract parties are that their contract expectations will be met, the more likely they will be to enter a contract and do business. Thus, jurisdictions that join the Singapore Convention will become more attractive to international commercial parties and reap the benefits of increased cross-border business.

Thailand, however, has yet to join the Singapore Convent while half of its ASEAN neighbors—who are also its most significant economic competitors—already have. If it wishes to reap the benefits of increased international business and investment, Thailand would be wise to very seriously consider joining the Singapore Convention soon. ■

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