

CHOICE OF COURT AGREEMENTS BILL

SECOND READING

PARLIAMENT, 14 APRIL 2016

ACTING MINISTER FOR LAW, MS INDRANEE RAJAH SC

Madam Speaker,

1. I beg to move, “That the Bill be now read a Second Time”.

I. Background

2. The Choice of Court Agreements Bill seeks to give effect to the Convention on Choice of Court Agreements done at The Hague on 30 June 2005 (“the Convention”), which establishes an international legal regime for upholding exclusive choice of court agreements in international civil or commercial cases, and governs the recognition and enforcement of judgments amongst parties to the Convention.

3. Globalisation has led to unprecedented growth in international trade and investment. This has seen a corresponding increase in cross-border disputes, and a heightened demand for cross-border dispute resolution services. Current economic conditions notwithstanding, in the long term, international trade, and consequently the need for international dispute resolution, is expected to grow. The establishment of the ASEAN Economic Community in 2015, which allows for freer movement of goods,

services, investments, skilled labour and capital in the region, will add to this demand.

4. Singapore is well-placed to meet this increased demand. Today, we already offer a full suite of international dispute resolution services:

- In arbitration, we are one of the most preferred seats of arbitration in the world. The Singapore International Arbitration Centre had a record year in 2015, with 271 new cases involving \$6.23 billion in disputes.
- For litigation, we recently established the Singapore International Commercial Court (“SICC”) to meet demand for commercial dispute resolution in the region and internationally;
- And for mediation, we established the Singapore International Mediation Centre to provide mediation services for international disputes.

5. In the recently concluded Committee of Supply debates, the Minister for Law informed members that the Government will create new frameworks to help our lawyers seize opportunities. The Convention regime, which today’s Bill seeks to implement is one such framework.

6. This Bill will boost Singapore’s position as a dispute resolution hub in Asia by enhancing the international enforceability of Singapore court judgments. Greater enforceability will make our Courts a more attractive

forum for determining cross-border disputes. This, in turn, will generate more opportunities for our legal industry.

7. The implementation of the Convention also demonstrates Singapore's commitment to be a global player in facilitating international commerce. Drawing more complex cross-border commercial cases to our courts will allow us to develop and shape commercial law, as well as international jurisprudence relating to the Convention.

II. The Hague Convention on Choice of Court Agreements

8. Let me first explain the broad framework of the Convention which is being implemented by this Bill.

9. Parties to commercial contracts commonly specify where disputes arising under the contract are to be resolved.

- If the parties specify that disputes arising from the contract are to be resolved in one jurisdiction to the exclusion of other jurisdictions, that is known as an exclusive choice of court agreement;

- If they specify one jurisdiction but do not exclude other jurisdictions, then that is known as a non-exclusive choice of court agreement.

10. When choosing the jurisdiction or forum to resolve their disputes, parties typically consider several factors, including :

- Whether the forum provides certainty as to how the law is to be interpreted and applied;
- Whether the forum is a trusted forum i.e. neutral and not corrupt;

- Whether the forum is competent and efficient in resolving disputes;
and
 - Whether the judgment or award obtained can be easily enforced domestically and overseas. This is particularly relevant where parties' assets are located in another jurisdiction.
11. Arbitral awards have wide enforceability because of the New York Convention.
12. In contrast, court judgments are generally more difficult to enforce in other jurisdictions, especially if the two jurisdictions concerned do not have reciprocal arrangements or treaties on the enforcement of judgments.
- In common law jurisdictions, for example, a party would generally have to commence fresh proceedings in that other jurisdiction and sue on the court judgment as a debt.
 - This incurs additional time and costs. It can also be open to more challenges, especially if the defendant disputes that the original court had jurisdiction to make the judgment sought to be enforced.
13. The Convention provides greater certainty on where disputes between parties will be litigated, and where judgments can be enforced. And it does so in two ways.
- (a) First, it establishes an international legal regime for upholding exclusive choice of court agreements in international civil or commercial cases.

(b) Second, it governs the recognition and enforcement of judgments amongst courts of the contracting states. In this regard, it does for court judgments of contracting states what the New York Convention does for arbitral awards.

14. Under the convention regime, parties will have greater assurance that :
 - (a) The court chosen by them under an exclusive choice of court agreement will hear their dispute and not some other courts; and
 - (b) The courts of contracting states will enforce the judgement of the chosen court.
15. This gives greater certainty which will, in turn, enable parties to better manage the risks involved in cross-border business and promote a more conducive legal environment for international trade investment.

III. Benefits to Singapore

16. Singapore signed the Convention on 25 March 2015. The Convention came into force on 1 October 2015.

17. There are presently 28 states which are parties to the Convention.¹

18. It is an opportune time for Singapore to implement and ratify the Convention. Doing so will be beneficial to our position as a dispute resolution hub.

¹ Mexico and 27 member states of the European Union (except Denmark). The United States and Ukraine are signatories but have yet to ratify.

- (a) First, it will enhance the enforceability of Singapore judgments in other jurisdictions. This includes judgments from the SICC, which was established as a specialist court to hear international commercial disputes, including disputes which have no substantial connection to Singapore.
- (b) Second, the ability to enforce our judgments more widely will be an added incentive for parties to choose Singapore courts, including the SICC in exclusive choice of court agreements.

IV. Consultation with stakeholders

- 19. We have consulted various stakeholders such as the Law Society, foreign law firms, academics and the Judiciary. They support the signing of the Convention as they recognize the benefit that will result from judgments of the Singapore courts being more easily enforced or recognised in foreign jurisdictions.

V. Main features of the Bill

- 20. I will now highlight some important features of the Bill.
- 21. In line with the Convention, the Bill only applies to international civil or commercial matters. It does not apply to exclusive choice of court agreements in personal, family or consumer matters. It would not, therefore, apply to matrimonial matters, bankruptcy, insolvency, employment or personal injury.

22. Part 2 of the Bill deals with the jurisdiction of the Singapore courts in cases of an exclusive choice of court agreement that falls within the scope of the Bill.
23. Briefly, if a Singapore court is the chosen court under an exclusive choice of court agreement, the Singapore court will have the jurisdiction to decide the dispute at hand.
24. The Singapore court generally cannot decline jurisdiction on the ground that the dispute should be decided by a court of another state.
25. Conversely, if the Singapore court is *not* the chosen court, the Singapore court must generally stay or dismiss the matter.
26. Clause 2(2) of the Bill makes it clear that references to the High Court in an exclusive choice of court agreement to which the Convention applies is to be construed as including the SICC unless a contrary intention appears in the agreement.
27. This addresses a situation where an action which is commenced in the High Court pursuant to an exclusive choice of court agreement specifying the Singapore High Court as the forum is subsequently transferred to the SICC. Clause 2(2) makes it clear that the High Court includes the SICC, and removes any doubt that the intention of this Bill is for the Convention regime to apply to the SICC notwithstanding the transfer.
28. Part 3 of the Bill relates to the recognition and enforcement of foreign judgments.

- Generally, where a foreign judgment is valid and enforceable in the State in which the judgment originated, it will be recognised and enforced in Singapore.
- However, the Convention provides certain limited grounds on which the Singapore courts must or may refuse to recognise or enforce such foreign judgments.
- Examples of where a foreign judgment will not be recognized or enforced include where the foreign judgment was obtained by fraud or where recognition and enforcement of the judgment would be against Singapore's public policy. In such instances, the Bill makes it mandatory for the Singapore courts to refuse recognition and enforcement. The Bill also provides certain discretionary grounds of refusal.

29. Declarations can be made under the Convention to exclude or modify its application to specific matters; to allow the courts to refuse to hear disputes or decline to recognise and enforce foreign judgments in certain limited circumstances; or to extend the Convention obligations to non-exclusive choice of court agreements. Singapore is currently not making any declarations, but the Bill provides the Minister with the power to make regulations to incorporate the effect of any such future declarations.

30. The Bill only applies vis-à-vis other contracting states to the Convention. It would not apply where the court chosen under the exclusive choice of

court agreement is a court of a non-contracting state. In such cases, the current law applicable to enforcing such agreements, as well as the recognition and enforcement of foreign judgments, would apply.

31. Finally, in line with the Convention, the intention of the Bill is that when it is applied, regard shall be had to its international character and the need to promote uniformity in its application.

VI. Conclusion

32. In conclusion, Madam Speaker, this Bill will give effect to the Convention and allow Singapore to ratify it. Such implementation and ratification will enhance the overseas enforceability of judgments of our courts, further incentivise parties to litigate their disputes here, and demonstrate our commitment to contribute towards facilitating international commerce.
33. Madam Speaker, I beg to move.

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