The Choice of Court Agreements Act – Enhancing International Dispute Resolution in Singapore

Introduction

When commencing litigation, the question is which court has jurisdiction? And upon (hopefully) a successful conclusion, the question is where do we enforce? On 14 April 2016, the Singapore Parliament passed the Choice of Court Agreements Act ("CCAA"), which will lead to the development of a stronger legal and institutional infrastructure to support this role.

The CCAA gives effect to the Hague Convention on Choice of Court Agreements (the "Hague Convention") and enhances cross-boundary dispute resolution by providing a framework for the mutual recognition and enforcement of foreign judgments of states which are parties to the Hague Convention ("member states"), as well as giving effect to exclusive jurisdiction clauses.

Features of the CCAA

Regarding enforcement:

(i) Section 13 provides for the enforcement and recognition of judgments from member states in the same manner as local judgments. The court cannot review the merits of the judgment and are bound by any findings of fact.

(ii) Sections 14 and 15 provide a limited scope in which the enforcement and recognition of such judgments may be refused.

Regarding jurisdiction:

(i) The CCAA gives effect to exclusive choice of court agreements, in which contracting parties designate which court will have jurisdiction over disputes arising from the agreement.

(ii) Section 11 provides that, where Singapore is the designated court, it has jurisdiction to decide the dispute, and cannot decline to exercise jurisdiction on the ground that the dispute should be decided in the court of another state.

(iii) Conversely, section 12 provides that, where Singapore is not the chosen court, it must stay or dismiss proceedings to which the agreement applies.

Jurisdiction clauses in contracts are a complex topic, and the different courts have various approaches to giving effect to such clauses. The CCAA thus creates a more secure method for parties to designate the court which will have jurisdiction over their contractual disputes.

Existing Framework

The jurisdiction of a court is determined by the law in its own jurisdiction and while Singapore law does recognise the choice of litigants to have Singapore courts decide their disputes, jurisdiction clauses are a complex topic. The CCAA thus creates a more secure method for parties to designate the court which will have jurisdiction over their contractual disputes.
As regards enforcement, there are 2 relevant aspects: will a Singapore court judgment be recognised by the courts of the jurisdiction where the judgment debtor has assets, and will a foreign court judgment be recognised in Singapore. Without any agreement of reciprocity between the relevant states, a judgment is only binding in the state of the issuing court. Before the CCAA, this was provided for in Singapore through the Reciprocal Enforcement of Commonwealth Judgments Act (“RECJA”) and the Reciprocal Enforcement of Foreign Judgments Act (“REFJA”). These statutes provide for the recognition and enforcement of judgments from states with which Singapore has relevant treaties.

The main differences between the RECJA and REFJA regime and the CCAA framework are as follows:

(i) The RECJA and REFJA only cover judgments from 11 states (essentially Commonwealth states and Hong Kong). However, the European Union (excluding Denmark) and Mexico have all ratified the Hague Convention, with the USA and Ukraine as additional signatories. The CCAA thus greatly increases the number of partners for the mutual enforcement of judgments.

(ii) The RECJA and REFJA only covers monetary judgments, while the CCAA includes a wider scope of judgments, including non-monetary judgments, default judgments, and consent judgments.

While there is currently no overlap between member states of the Hague Convention and the RECJA and REFJA, it should also be noted that the CCAA takes priority, should any overlap occur in the future.

**Concluding Words**

The CCAA is another significant step, following the establishment in January 2015 of the Singapore International Commercial Court, in Singapore’s development as a dispute resolution centre. In creating a framework for the mutual recognition and enforcement of foreign judgments, particularly with the EU states, commercial parties are given clarity and certainty with regard to where to litigate. The Singapore International Commercial Court itself is the subject of much interest in the regional business and legal industry. The proceedings of its first few cases are being keenly watched and Rajah & Tann Singapore LLP is currently representing parties in two cases before the SICC, both involving 9 figure claims and international litigants. The first of these cases involves an USD800 million claim between an Indonesian company and a Singapore subsidiary of an Australian company. The second involves a $150 million suit by a BVI company against a Taiwanese citizen.

Parties with any queries may contact our team below.
Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

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By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com.
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