

Photo: Supreme Court



ENHANCING THE INTERNATIONAL ENFORCEABILITY OF SINGAPORE JUDGMENTS

THE CHOICE OF COURT AGREEMENTS ACT 2016

A note from Indranee Rajah S.C., Senior Minister of State for Law

Parliament enacted the **Choice of Court Agreements Act** (“CCAA”) on 14 April 2016. The full text of my speech at the Second Reading in Parliament can be found at www.mlaw.gov.sg ([here](#)).

The CCAA implements the **2005 Hague Convention on Choice of Court Agreements** (“**Convention**”) to which Singapore is a signatory. With the passing of the Act, we are now in a position to ratify the Convention.

The CCAA will enhance our position as an international dispute resolution hub. It will strengthen enforcement of agreements which specify Singapore courts as the exclusive dispute resolution forum and at the same time widen the recognition and enforceability of judgments issued by the Singapore courts so chosen.

Singapore aims to ratify the Convention and bring the Act into force within this year.

THE 2005 HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS

Singapore signed the Convention on 25 March 2015. The Convention can be found at www.hcch.net ([here](#)).

The Convention establishes an international legal regime which requires contracting states to:

- uphold exclusive choice of court agreements designating the courts of contracting states in international civil or commercial cases; and
- recognise and enforce judgments of the courts of other contracting states designated in exclusive choice of court agreements, subject to the exceptions in the Convention.



Photo: Hague Convention on Private International Law
Ms Thian Yee Sze, Director-General of the Ministry of Law's Legal Group, at the signing ceremony.

The Convention regime is not restricted to superior courts of contracting states. Any court of a contracting state chosen by the parties as the exclusive forum for their disputes will fall within the ambit of the Convention. Therefore even if a European Municipal Court (or in our context the State Courts) is the chosen court, the Convention would still apply.

Upon our ratification of the Convention, where a Singapore court is the chosen court under an exclusive choice of court agreement:

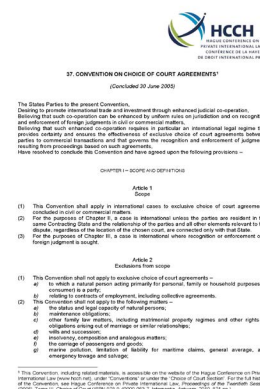
- the courts of other contracting states will be obliged to suspend or dismiss parallel proceedings brought in their jurisdiction, in favour of the Singapore court; and
- the Singapore court judgment must be recognised and enforced by all the other contracting states.

Singapore will likewise have reciprocal obligations to afford the same treatment to exclusive choice of court agreements in favour of the courts of other contracting states, and to the judgments of their courts.

Currently, 28 countries are party to the Convention – these are Mexico and the EU member states (save for Denmark). For the full list of contracting states, please see the Annex to this Note.

The US and Ukraine have signed the Convention but have not yet ratified it.

As Mexico and the EU states (save for the UK) are not covered under our current reciprocal enforcement regimes under the **Reciprocal Enforcement of Commonwealth Judgments Act (“RECJA”)** and the **Reciprocal Enforcement of Foreign Judgments Act (“REFJA”)**, our ratification of the Convention will significantly extend the enforceability of Singapore court judgments.



TYPES OF CASES TO WHICH THE CONVENTION AND CCAA APPLY

The Convention and the CCAA only apply to *international civil or commercial disputes*. They do not cover matters of personal law e.g. family, matrimonial, insolvency or consumer matters. Tortious claims which do not arise from contracts, anti-trust and intellectual property matters are also excluded. (For the full list of excluded categories, see: Article 2 of the Convention and Section 9 of the CCAA.)

FRAMEWORK OF THE CCAA

The CCAA implements the Convention regime. The CCAA can be found at statutes.agc.gov.sg ([here](#)).

The broad framework of the CCAA is as follows:

- Where parties have chosen a Singapore court under the exclusive choice of court agreement:
 - the Singapore court will have jurisdiction to decide the dispute, unless the agreement is null and void under Singapore law;
 - the Singapore court generally cannot decline jurisdiction on the ground that the dispute should be decided by a court of another state.

- On the other hand, where parties have chosen the court of another contracting state in an exclusive choice of court agreement, the Singapore court must stay or dismiss the matter in favour of the chosen court subject to certain limited grounds.
 - Such grounds include situations where the agreement is null and void under the law of the state of the chosen court, or the chosen court has decided not to hear the case.
- A judgment of the foreign chosen court must be recognised and enforced in Singapore, so long as that foreign judgment has effect and is enforceable in the state of the chosen court, save for certain exceptions. The grounds for refusing recognition or enforcement fall into two categories:
 - mandatory grounds, where the court *must* refuse recognition or enforcement;
 - discretionary grounds where the court *may or may not* refuse recognition or enforcement as it deems appropriate.
- It is mandatory to refuse recognition or enforcement where:
 - the judgment was obtained by fraud in connection with a matter of procedure;
 - the defendant was not notified in time to defend the proceedings against him;
 - recognition would be incompatible with Singapore public policy, including our principles of procedural fairness.
- It is discretionary to refuse recognition or enforcement where:
 - the exclusive choice of court agreement is null and void;
 - one of the parties lacked capacity to enter into the exclusive choice of court agreement;
 - the foreign judgment is inconsistent with a Singapore judgment in a dispute between the same parties.

INTERPLAY BETWEEN THE CCAA, RECJA AND REFJA

There may be instances where a foreign judgment falls within the scope of both the CCAA and either RECJA or REFJA e.g. judgments of the superior UK courts. These would be enforceable under RECJA (since the UK is a Commonwealth country) and the CCAA (as the UK is an EU member state).

In instances of overlap, the CCAA overrides RECJA and REFJA. RECJA and REFJA have been amended to make them inapplicable to judgments falling under the CCAA.

This is to ensure that a foreign judgment will be subject to only one regime for recognition and enforcement, and avoid confusion and disputes as to which regime should apply.

A BOOST FOR SICC

Given that the **Singapore International Commercial Court** (“SICC”) was established specifically to hear international commercial cases and where the jurisdiction of the court is by mutual consent, the CCAA will also bolster the services offered by the SICC, and the enforceability of SICC judgments.

More information on the SICC, as well as model exclusive choice of court clauses, can be found at www.sicc.gov.sg.



TRANSFER OF CASES FROM HIGH COURT TO SICC

Cases commenced in the Singapore High Court can be transferred to the SICC and vice-versa (See: Order 110 rule 2).

Clause 2(2) of the CCAA provides that where the “High Court” is designated in an exclusive choice of court agreement, the designation is to be construed as including the SICC unless a contrary intention appears in the agreement.

Hence a party specifying the Singapore High Court as the chosen forum would be taken to have included the SICC as a chosen court.

This provision was enacted to make it clear that cases transferred from the Singapore High Court to the SICC would be considered as transfers between chosen courts notwithstanding the transfer, on the basis the SICC is part of the High Court. This is consistent with the fact that the SICC is a division of the High Court (See: Section 18A of the Supreme Court of Judicature Act).

Lawyers drafting dispute resolution clauses designating the Singapore High Court as the exclusive choice of court should highlight this to their clients.

ANOTHER STEP FURTHER

Parties choosing Singapore courts as their exclusive dispute resolution forum now have greater assurance as to the enforceability of Singapore court judgments. The range of countries in which Singapore judgments can be enforced has now expanded, and this will only continue to increase as more states become parties to the Convention.

Becoming party to the Convention is another key milestone in the development of Singapore’s legal industry, and takes us yet another step further in the direction of our goal to be a premier international commercial dispute resolution hub.

– *Indranee Rajah S.C., Senior Minister of State for Law*
26 April 2016

STATES WHICH ARE PARTY TO THE CONVENTION

1. Austria
2. Belgium
3. Bulgaria
4. Croatia
5. Cyprus
6. Czech Republic
7. Estonia
8. Finland
9. France
10. Germany
11. Greece
12. Hungary
13. Ireland
14. Italy
15. Latvia
16. Lithuania
17. Luxembourg
18. Malta
19. Netherlands
20. Poland
21. Portugal
22. Romania
23. Slovakia
24. Slovenia
25. Spain
26. Sweden
27. United Kingdom
28. Mexico

*All of the European Union member states (excluding Denmark) are party to the Convention.

STATES WHICH ARE SIGNATORIES (BUT NOT PARTY) TO THE CONVENTION

1. USA
2. Ukraine