

# Kluwer Arbitration Blog

## India gives Hong Kong a golden opportunity

Tom Lidstrom (Linklaters) · Wednesday, April 25th, 2012

A recent administrative event in Delhi may have profound implications for the ongoing rivalry between Singapore and Hong Kong as Asia's arbitration hubs of choice.

On 19 March 2012 India confirmed that it will add the Peoples' Republic of China (including the Special Administrative Regions of Hong Kong and Macao) to the list of so-called "gazetted" states. Only arbitral awards rendered in states notified via the Government of India Official Gazette will be recognised and enforced in India under the New York Convention. This condition flows from s.44 of the Indian Arbitration and Conciliation Act 1995. The list of 45 or so gazetted states (out of 144 ratifying New York Convention states) has arisen piecemeal and throws up some odd results. For example, San Marino, a tiny European republic of 32,000 souls, was gazetted – but China, the world's second largest economy, was not.

Singapore (gazetted by India several years ago) has benefited greatly from its membership of the "gazette club". The fact that Singapore was gazetted – and China was not – was actively promoted by Singapore as a reason to select Singapore (over Hong Kong) as the seat of an arbitration having an Indian connection. After all, an award rendered in Singapore would be enforceable in India – but a Hong Kong award would not. The same parties, the same facts, the same outcome in the arbitration – but an "ungazetted" Hong Kong award was worthless in the Indian courts. And all this despite the fact that India, China and Singapore have all ratified the New York Convention.

China's (and therefore Hong Kong's) omission from the list of gazetted territories coincided with Singapore's ambitious push for arbitration market share. The Singaporean government, assisted by the highly accomplished Singapore International Arbitration Centre, has taken Singapore to a point where it is the only viable Asian rival to Hong Kong as an arbitration seat. Both have excellent infrastructure, strong independent courts, sensible arbitration legislation, and (generally) a pro-arbitration environment. Both are easy places in which to do business and to conduct hearings. In terms of arbitration seat selection, the two cities are now arguably neck and neck, although each has perceived strengths in certain market sectors. Finance/banking institutions tend to favour Hong Kong while shipping/insurance disputes have gravitated towards Singapore.

Like any business, arbitration hubs need distinctive ways of differentiating themselves. One such differentiation was the China/India axis. Hong Kong seems to command a lead in PRC-related disputes. Hong Kong is seen as a natural and neutral alternative to an arbitration on the Mainland. As regards India, however, parties looked to Singapore. This is partly historical/cultural (Singapore is much more "Indian" than Hong Kong) and partly economic/diplomatic (Singapore and India

have closer trade accords). But the omission of China from India's list of gazetted states has also had a profound practical impact on Hong Kong as an arbitration seat. At a stroke it took Hong Kong out of the running for most Indian-connected arbitrations.

The Hong Kong International Arbitration Centre has been quick to spot the implications of Delhi's decision to gazette China. HKIAC's Secretary-General, Chiam Bao, commented on 11 April that "with Sino-Indian trade on the increase, this long-awaited clarification is welcomed by the HK arbitral community. We look forward to showcasing to India the many attractive features that Hong Kong has to offer as a seat of arbitration". By contrast, Singapore (at least in official circles) has been silent about Hong Kong's piece of good news.

What does this mean in practical terms? HKIAC is right – Sino-Indian trade is on the rise, and it was always artificial for Sino-Indian parties to opt for Singapore automatically because Hong Kong was not (in Indian eyes) a "recognised" seat. Indian-connected agreements with no PRC connection will probably continue to gravitate to Singapore – old habits die hard. But Indian parties with potential disputes against Singaporean entities/governmental agencies now have a viable alternative seat to Singapore – a fact they may exploit by opting for Hong Kong. And multi-party contracts with some Indian content will no longer exclude Hong Kong merely on the ground that China is not a gazetted state.

HKIAC and the HK Government must explain the implications of the Indian notification to users of arbitration. HKIAC will need to go on a charm offensive – especially in Indian commercial and official circles – to sell Hong Kong as the attractive alternative that it is. Singapore has done this very effectively to date. Hong Kong now needs to make a concerted effort to broaden its appeal in the previously challenging Indian market.

Granted, any flow of Indian-connected work from Singapore to Hong Kong will be slow and gradual. Arbitration clauses revised in Hong Kong's favour today may not yield references for months or even years. Above all, Hong Kong must alter arbitration users' habits and mindset in order to explode the notion "think India, think Singapore". India's notification of PRC/Hong Kong is a golden opportunity for Hong Kong as a seat and venue – let's see if Hong Kong capitalises on that opportunity.

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