

JAPAN P&I NEWS

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To the Members

Dear Sirs,

China Joins the Hague Choice of Court Convention League

We have obtained the following information from Wang Jing & Co., a law firm in China:

On 12 September, Chinese Government signed and became the latest contracting state of the “Hague Convention on Choice of Court Agreements” (the “Hague Convention”) alongside the EU (excluding Denmark), Mexico, Singapore, the USA, and Ukraine. The Convention will come into force after a routine official approval by the Chinese legislature. It would be a substantial leap for China’s private international law policy towards globalisation and marks an important advance of the global acceptance of the Hague Convention.

What is the Hague Convention?

The aim of the Hague Convention is to ensure exclusive choice of court agreements judgments delivered by the chosen court in international civil and commercial matters can be recognised and enforced across the Contracting States. By entering into the Convention, the chosen court of a Contracting State must in principle hear the case; those not chosen must in principle decline to hear the case; and any judgment rendered by the chosen court must be recognised and enforced in other Contracting States with a few exceptions.

The Hague Convention predominantly applies to international commercial matters with exclusions set out under its Article 2. Notably for the shipping community, the Convention does not apply to carriage of passengers and cargo by sea (also excluding air and land transports) marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage; but it applies to a wide range of the other maritime matters such as: all insurance matters (including marine insurance), non-emergency towage and salvage, shipbuilding and repairs, ship mortgage and liens etc.

The Impact to China related practices

The general position in China is that a foreign judgment cannot be recognised or enforced unless either there is the bilateral judicial assistance treaty between China and the foreign country or the applicant can prove the foreign country’s court had previously recognised or

enforce Chinese judgments (under the reciprocity principle).

By entering the Hague Convention, foreign judgments satisfying such conditions would now be recognised and enforced by Chinese courts:

- 1) The judgment must be made by a Convention State's court and enforceable in that Convention State;
- 2) The court had exercised its jurisdiction in accordance with the parties' exclusive choice of court agreement in writing;
- 3) The matter in dispute is one within the scope of the Convention.

Recognition and enforcement of other foreign judgments will stand on the old general position. For companies entering into contract that might have a prospect to be enforced against a party or property in China, China's embracement of the Hague Convention certainly provides an alternative dispute resolution arrangement than the traditional arbitration agreement, namely to enter into an exclusive choice of court agreement. However, parties must be alerted of the scope of subject matters that Hague Convention applies to and the practical problems of recognition and enforcement in China.

Yours faithfully,

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