Why “Enforceable” Doesn’t Mean the Same Thing in Every Market

Commercial and Contracts

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Insights from "Contract Enforcement: Best Practices Across the APAC Region," a webcast presented as part of the International Legal Affairs Network (ILAN), generously sponsored by Primerus.


Jian Zhang, Partner, [Pamir Law Group](#)

A few weeks ago, I joined two colleagues I admire — Jian Zhang, Partner at Pamir Law Group in China, and Samuel Leong, Deputy Registrar at the Singapore International Arbitration Centre (SIAC) — for an ILAN webcast on a question every in-house lawyer in this region eventually has to answer: when a contract goes wrong, can you actually make it stick?

Samuel Leong, Deputy Registrar, Singapore International Arbitration Centre (SIAC)

It's a deceptively simple question. And after an hour of comparing notes across India, China, and Singapore, the honest answer is: It depends entirely on where you're standing when you ask it.

Enforceability starts before the dispute does

I spend most of my time on employment and commercial contracts across the Indian subcontinent, and if there's one thing I keep coming back to with my team, it's this: enforceability isn't something you fix after the fact. It's something you either built in or didn't.

Take employment contracts. In India, courts are, and have long been, employee-protective. Section 27 of the Indian Contracts Act — yes, a piece of legislation from 1872 that is still very much alive — voids any agreement that restrains someone from exercising a lawful profession, trade, or business. In practice, that means a non-compete clause is generally enforceable while someone is on your payroll, and generally not once they've left. The Constitution's protection of the freedom to pursue a livelihood only reinforces that.

Non-solicitation is a little more forgiving, but only if you draft it narrowly. I always use the same example with junior counsel: if a supplier posts a job advertisement that simply requires relevant technical experience, that's fine, even if it happens to attract people from your company. But if the advertisement is written in a way that specifically targets your employees' expertise, courts will treat that very differently. The line is narrower than people think.

Confidentiality is where employers have the most room to work with, both during employment and after it ends, provided the obligation is properly drafted and isn't excessively harsh or one-sided. Two cases I go back to often: in *Diljeet Titus v. Alfred A. Adebare*, the Delhi High Court drew a clean distinction between what a former employee retains mentally, which they're free to use, and what they copy, which they're not. And in *Hi-Tech Systems & Services v. Suprabhat Ray*, the Calcutta High Court stopped ex-employees from using a former employer's database and trade secrets after the relationship ended, precisely because that was documented material, not memory.

The takeaway for anyone drafting these agreements: be specific, be clear, and don't assume a clause will hold just because it sounds reasonable. Courts here are looking for precision, not aspiration.

Commercial contracts: arbitration is the default, but the clause has to earn it

On the commercial side, India has three real enforcement paths: civil and commercial courts, arbitration, and, increasingly, mediation under the Mediation Act, 2023. India is a signatory to the New York Convention, so foreign arbitral awards from other signatory states are enforceable here, though the process can be slower than clients expect.

If you’re drafting for cross-border enforcement, arbitration is usually the better mechanism, but only if the clause does its job. Unlike a court clause, where “exclusive jurisdiction of the courts of Mumbai” more or less settles the matter, an arbitration clause needs to spell out the seat, the venue, the number of arbitrators, and the governing mechanism in full. Leave any of that ambiguous and you've handed yourself a second dispute before you've resolved the first one.

Two practical points I’d add for anyone operating here: get your stamping and registration right. Contracts that fall into certain value categories in India have to be adequately stamped and registered, and skipping that step can make enforcement unnecessarily difficult regardless of how well the substantive terms are written. And remember that arbitration’s privacy is a genuine advantage — litigation in India is largely a matter of public record, arbitration isn’t.

My own bottom line, which I gave the audience when we wrapped up: get the basics right first. Check whether sector-specific regulation applies on top of the obvious body of law. Match your enforcement mechanism to what the contract actually needs, since arbitration is not automatically the right answer for every deal. And never treat cross-border enforcement as a domestic problem, because you are never dealing with the laws of just one country.

China: Enforceability means more than a signature

Jian Zhang shared his insights from another region: A contract's language matters less than whether it actually works in a Chinese court. China has no bilateral judicial assistance treaty with the US, the UK, India, Japan, or Singapore, so a foreign judgment is effectively unenforceable there, and a foreign plaintiff has to relitigate from scratch.

Arbitration is often the more realistic path. China is a New York Convention signatory, and a Chinese court cannot unilaterally deny enforcement of a foreign award; that decision goes to the Supreme People's Court, a safeguard against local protectionism.

But arbitration clauses are not self-executing. Zhang described a case where a dispute between two Chinese entities of a multinational group was found to lack the foreign-related elements needed to enforce a foreign arbitration clause at all, despite clear contract language calling for it. Chinese mandatory law can also override a contract entirely: in one case, a carrier's sanctions-driven refusal to perform was still found a breach, because a mandatory Chinese statute could not be contracted around.

The lesson for cross-border contracts: think through jurisdiction, governing law, and mandatory-law exposure before a dispute, not after.

Singapore: The default second choice that actually gets chosen

Samuel Leong's advice: Singapore does not need to be your first choice of seat to be the one that gets negotiated. SIAC has operated for 35 years and now draws parties from more than 100 jurisdictions, with China and India among its largest users. Use SIAC's model clause rather than drafting arbitration language from scratch; getting the seat, arbitrator count, language, and governing law right at drafting unlocks tools like emergency arbitrator relief and streamlined procedures that can produce an award in three to six months.

His sharpest point for in-house teams: most contracts are drafted assuming you will be the one filing a claim. In reality, roughly half of SIAC's parties are respondents. Draft with that in mind, and think through interim relief and asset visibility from both sides of a dispute, not just your own.

The through-line

Three jurisdictions, three very different legal traditions, and the same underlying message: enforceability is a design choice, not a formality you tack on at the signature block. Know your mandatory law. Know what remedy you'll actually need before you need it. Draft your dispute resolution clause as if it will genuinely be tested, because eventually, for some contracts, it will be.

I'm grateful to ILAN for putting this program together and to Primerus for sponsoring it, and to Jian and Samuel for making an hour on contract enforcement genuinely useful rather than academic. If your team is negotiating across India, China, or Singapore, I'd encourage you to treat your dispute resolution clause with the same care you'd give the commercial terms. It's cheaper to get right at drafting than to fix at enforcement.

This article is drawn from insights shared by Smitha Chandrashekaraiah (Harman International), Jian Zhang (Pamir Law Group), and Samuel Leong (Singapore International Arbitration Centre), during the ILAN webcast "Contract Enforcement: Best Practices Across the APAC Region," sponsored by Primerus.

Join ACC for more insights!

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Smitha Chandrashekaraiah joined Harman following an extensive international and national legal career mainly in the in-house sector. She was initially based in Singapore for about seven years and subsequently relocated to India. She has work across various verticals ranging from asset/ project finance to logistics, technology, healthcare and infotainment. She is a recipient of several prestigious awards and actively participates in the capacity of a speaker at various international and national conferences and seminars. That apart, she also enjoys conducting workshops and delivering guest lectures at educational institutions in India. In her current role at Harman, she is primarily responsible for the automotive division and also manages all legal, privacy, employment, real estate, corporate secretarial, compliance & ethics, regulatory, investigations and governance amongst other areas for the India sub-continent. She is also the Chapter Leader of the Harman Pride Chapter in India. Outside of Harman, she is a regional committee member at ILAN (International Legal Affairs Network @ ACC) and also a core committee member of Work From Anywhere sub-committee at BSPIN, a not for profit organization.