

Enforcing Foreign Arbitral Awards Against Non-Signatories: A Plea for Strict Scrutiny

Austin I Pullé*

Abstract

Many American cases have discussed the circumstances under which a non-signatory to an arbitration agreement, ie a person who is not *ex-facie* a party to the agreement, can be compelled to submit to arbitration or can compel another party to submit to arbitration instead of litigating in the courts. In contrast, the number of cases that discuss the conditions necessary for a foreign award to be enforced against a non-signatory are relatively few. The number and complexity of cross border transactions have increased because of the pace of globalisation, and many of these transactions envisage arbitration as the method of dispute settlement. When a foreign arbitral tribunal makes an award against a non-signatory, the court before which enforcement of that award is sought must determine whether the award is a New York Convention award. More than 140 countries are parties to this Convention, and while the local conflicts of law rules in many of these countries permit courts to ignore the judgments of the most respected courts in the world, the Convention requires enforcement of awards from any duly constituted foreign arbitral panel. A decision of the High Court of Singapore allowing the enforcement of a foreign award against a non-signatory affords an opportunity to examine the law and policy on the issue and their significance for Asian courts. The argument of the article is that foreign awards against non-signatories should be carefully scrutinised. The enforcing court must satisfy itself that the non-signatory should be treated as a party to the arbitration agreement and the persuasive burden of proof should be on the enforcing party.

* The author, a faculty member of the School of Law at the Singapore Management University, teaches the Law of International Business, the Law of International Trade, and Ethics and Social Responsibility. He received LLM and SJD degrees from the Harvard Law School and practised as an offshore lawyer in the Southeast Asian region prior to joining the University. The helpful comments of the anonymous referee are gratefully acknowledged. All errors remain mine alone.