



# Enforcement of Arbitration Awards

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## A. Enforcement in the United States

### 1. Federal Court vs State Court

#### a) **Federal Court:** Is there federal subject matter jurisdiction?

- **Yes**, for “nondomestic award” – i.e. an award which is “made” in the United States ... but ... falls under the New York Convention and Chapter 2 of the FAA for one of two reasons: (1) it was “made within the legal framework of another country, e.g., pronounced in accordance with foreign law[,]” ... or (2) involves either entities that are not U.S. citizens or... involves “property located abroad, [or] envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states;
- **Yes**, for purely domestic awards which lack any of the above elements, if on the face of the complaint, there is an independent basis for federal subject matter jurisdiction – e.g. diversity of citizenship and an amount in controversy exceeding \$75,000;
- **Yes**, in the First and Second Circuits if, based on a “look-through” to the underlying dispute in the arbitration involved claims which, if they had been brought to federal court, would have been subject to admiralty or federal question jurisdiction but No in the Third or Seventh Circuits. (The Fifth Circuit has not yet ruled on this.)

#### b) **State courts** allow awards to be enforced regardless of basis for federal jurisdiction recognition.

### 2. **Time bar** for application to confirm:

- Domestic awards – One year
- Non-domestic awards – Three years



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3. **Streamlined Enforcement Procedures:** Under Section 6, “shall be made and heard in the manner provided by law for the making and hearing of motions.”
4. **Confirmation is required unless the award is vacated, modified or corrected:** When an application to confirm is made, “the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title.”
5. **Limited grounds to vacate:** There is no right to vacate based on an error of fact or law. The grounds for vacating an award under Section 10 are very narrow – only where it is shown:
  - the award was procured by corruption fraud or undue means
  - there was evident partiality or corruption in the arbitrators or either of them
  - the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
  - the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.
  - manifest disregard of the law

It is rare that an award is vacated on any of these grounds.

6. **Short time bar for applications to vacate:** An application to vacate must be served within three months.



## B. Enforcement outside the United States

### 1. Obstacles to Enforcement of US Court Judgments

- At the moment, there is no bilateral treaty or multilateral convention in force between the US and any other country on reciprocal recognition and enforcement of judgments.
- The Hague Center on International Law is working on a multilateral convention for enforcement of judgments, but the outcome of its efforts is uncertain.
- Enforcement abroad of a judgment issued by a US court depends upon the laws of the foreign country and international comity. Enforcement of US judgments abroad is inconsistent and faces a number of obstacles.

### 2. **The New York Convention:** Under the New York Convention, US arbitration awards are enforceable in virtually every country in the world. (The Convention has 159 state parties.) Foreign courts may refuse to recognize and enforce awards only on certain enumerated grounds:

#### a) **Main Grounds**

- i. The parties to the [arbitration] agreement ... were under some incapacity, or the said agreement is not valid ...; or
- ii. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- iii. The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration...; or
- iv. The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- v. The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.



## B. Enforcement outside the United States

- b) Additional grounds for refusal:** Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:
- i. The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
  - ii. The recognition or enforcement of the award would be contrary to the public policy of that country.

### 2. Experience with Enforcement Under the Convention

- **China: Enforcement of London arbitration award against a Chinese company in Ningbo Intermediate People's Court was relatively simple and straightforward:**
- The Supreme People's Court on Issues Concerning the Reporting and Approval in the Judicial Review of Arbitration Case (2017) Article 2, provides that, before being allowed to refuse enforcement of a foreign award, "the intermediate people's court ...shall report and request approval by the high people's court within the jurisdiction; Where, upon review, the high people's court is to approve the request, it shall report and request approval by the Supreme People's Court. Upon review of the Supreme People's Court, the intermediate people's court or special people's court may render a ruling based on the review opinions of the Supreme People's Court."
  - As a result of this provision, enforcing a foreign award is easier and less likely to incur criticism from above than refusing enforcement.
- **India: Enforcement of London arbitration award in Bombay High Court:**
- Slow going because of the enormous backlog of cases in Indian courts which results in multiple adjournments