

COMMERCIAL ARBITRATION – INCREASING CONFIDENCE IN FOREIGN DIRECT INVESTMENT

Dr Nicolas Wiegand
Managing Partner, CMS Hong Kong



Enforcement of Judgments and Awards

Enforcement of foreign judgements:

- Very often difficult and uncertain
- Subject to the law of civil procedure of the individual states
- In many jurisdictions, the general requirements are:
 - Due process
 - Fundamental principles of justice/morality (public policy)
 - Reciprocity
- Reciprocity is often a problem

Enforcement of Judgments and Awards

Recognition/enforcement of arbitral awards:

Domestic awards

- awards rendered in the state of enforcement
- enforcement under the national arbitration law of the state of enforcement

Foreign awards

- awards rendered in the territory of a state other than the state of enforcement
- enforcement under the New York Convention of 1958 (NYC)

Enforcement of Judgments and Awards | NY Convention

Currently, there are 159 state parties to the New York Convention

What does it mean to be a party to the NY Convention?

- State parties to the NY Convention are under an obligation to ensure that non-domestic awards are recognised and generally rendered capable of enforcement in their jurisdictions in the same ways as awards actually made there (Articles II and III, NY Convention).
- The courts of contracting states must give full effect to non-domestic arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Enforcement of Judgments and Awards | NY Convention



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Awards rendered in one of the signatories to the NY Convention will be enforced in any other country that is signatory to the NY Convention (in theory), save in the exceptional circumstances set out in Article V of the convention.

Article V sets out the following grounds on which to refuse enforcement:

- the parties to the arbitration agreement were under an incapacity or the arbitration agreement is not valid under the governing law or the law of the country where the award is made;
- the party against whom it is invoked was not given proper notice or otherwise unable to present its case (violation of right to be heard, due process);
- the award contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the procedure in the arbitration were not in accordance with the agreement between the parties or, failing such agreement, the law of the country in which the arbitration was seated;
- the award has not yet become binding, or has been set aside or suspended at the seat of the arbitration;
- the subject matter of the dispute is not capable of settlement by arbitration in the law of the country in which enforcement is sought; and
- the recognition or enforcement of the award would be contrary to public policy.

Enforcement of Judgments and Awards

Requirements for recognition and enforcement under the NYC

- foreign arbitral award
- validity of the arbitration agreement
- arbitrable dispute
- proper constitution of arbitral tribunal
- no violation of due process
- decision within the scope of the arbitration agreement
- award not contrary to public policy of enforcement state
- award is binding and has not been set aside at the seat



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