

ENFORCING ARBITRATION AWARDS

The ease of recognition and enforcement of arbitration awards, compared to court judgments in foreign courts is often seen as one of the key advantages to arbitration. Once a winning party has successfully obtained an arbitration award, if the unsuccessful party does not voluntarily comply with it, they will need to take steps to enforce it.

Where assets are located in other jurisdictions advice on local law should be sought from lawyers in that jurisdiction. When there are assets in multiple jurisdictions advice will need to be considered prior to enforcement, and preferably prior to issue of proceedings.

Informal enforcement

The enforcing party may be able to use informal methods to make the unsuccessful party comply with the award. These alternatives to formal enforcement include:

- Applying commercial pressure to the unsuccessful party to comply with the award. It is worth noting that pressure can be asserted via the 'black list' operated by some trade bodies.
- Applying diplomatic or reputational pressure to the unsuccessful party to comply with the arbitration award.
- Negotiating a reduction in payment (reflecting costs saved by not pursuing formal enforcement proceedings).

Formal enforcement

A winning party looking to enforce an arbitration award is most likely to rely on the worldwide mutual enforcement treaty for arbitration – the New York Convention of Enforcement of Arbitral Awards 1958 (the NYC). Under the NYC over 150 countries, including the UK, have agreed to enforce arbitration awards from other NYC signatories in their jurisdiction as if they were local judgments without the need to review the substantive case as some jurisdictions have particular rules which require the Award to state certain things.

Provided that both the country in which the award was ordered and the country in which the enforcement will take place are signatories to the NYC and the arbitration award meets the NYC's basic requirements e.g. it is in writing and is signed, the award will be recognised as binding and can be enforced by the party in any other signatory states with the assistance of the local courts.

There are limited grounds on which the local court may refuse to recognise and enforce the award. The award may not be challenged on its merits under the NYC but may be challenged on the following grounds:

- Incapacity of the parties/invalidity of the agreement.
- Failure to give proper notice of the appointment of the arbitrator or the arbitration (denial of a fair hearing).
- Award refers to an issue not submitted to the arbitration (excess of authority or lack of jurisdiction).
- Composition of the arbitral tribunal/procedure was not in accordance with the parties or applicable law (procedural irregularity).

- Award not binding or has been set aside/suspended (invalid award).
- Subject matter of the dispute is not capable of being resolved through arbitration or public policy of enforcing state.

In order to resist enforcement successfully, the party opposing enforcement must establish one of the above grounds. If one is established the court may exercise its discretion and refuse to enforce the arbitration award. Public policy is the most common ground for refusal to enforce an arbitration award under the NYC, however its application varies significantly between jurisdictions.

Notably there is no global reciprocal agreement to the NYC for enforcement of court orders. Therefore if you are considering litigation, it is vital to establish if there are any individual treaties or conventions that will allow foreign enforcement of judgments.

Top tips for successful enforcement of arbitration awards:

- Consider where the seat of the arbitration award will be – is it a signatory state of the NYC?
- Consider where the debtor has or will have significant assets. Are these located in a NYC state?
- Consider whether a freezing order (or other methods of preservation of assets) is required in advance.
- Consider formalities required in the award and the form of award for enforcement purposes.
- Consider claiming post award interest.

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This client guide was produced by the HFW Knowledge Management team, should you require any further information or assistance with any of the issues dealt with here, please do not hesitate to contact them at KM@hfw.com or your usual HFW contact to discuss.



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