

Enforcement of Awards



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Orders and Awards



- ∞ Orders are not reviewable by a court
- ∞ Some orders which are sufficiently final can be reviewed – Section 37
- ∞ Orders usually deal with procedural aspects
- ∞ Award is final and binding – resolves all of the remaining disputes

Types of Awards



∞ Final award

- ∞ Can only be challenged by the losing party
- ∞ Enforceable under the NYC
- ∞ Terminates the mandate of the Tribunal

∞ Partial Awards – substantive claims

∞ Interim Awards – jurisdiction or applicable law

∞ Interim Orders!

Types of Awards



∞ Consent Award

∞ Default of Award

Validity of the Award



- ∞ Must conform to – parties' agreement, chosen rules and applicable law
- ∞ UNCITRAL Rules on formalities
- ∞ Communication
- ∞ Time-limits
- ∞ Concurring and Dissenting Views
- ∞ Scrutiny
- ∞ Finality, Clarity and Scope

Remedies & Costs



- ∞ Monetary Damages
- ∞ Interest – subject to *lex arbitri*
- ∞ Other Remedies
 - ∞ Declaratory Award
 - ∞ Injunctive Relief
 - ∞ Specific Performance
 - ∞ Punitive Damages – subject to public policy

Remedies & Costs



- ∞ Costs

- ∞ Administrative

- ∞ Legal

Effect of the Award



- œ *Res Judicata* – claim preclusion
- œ Collateral Estoppel
- œ Confidentiality – UNCITRAL
Transparency Rules
- œ Remand – post hearings

Challenging an Award



- ∞ Annul, set-aside and vacate at *lex arbitri* – usually the Model Law
- ∞ On procedural grounds or public policy
- ∞ Two places:
 - ∞ *Lex Arbitri* – application to set-aside the award
 - ∞ *Lex Fori* – place of enforcement (other than the seat)

Challenging an Award



- ⌘ Not on mistake of law or fact
- ⌘ Challenge on two grounds – jurisdictional or procedural
- ⌘ Jurisdictional – beyond the agreement, claim. Did not consider all issues, or decides issues not before the Tribunal
- ⌘ Procedural – Incapacity, notice, arbitrability, composition of the tribunal
- ⌘ Two other grounds – subject matter is not arbitrable and public policy

Challenging an Award



- ∞ On merits – appeal – manifest disregard of law
- ∞ Limitation – 3 months (Model Law)
- ∞ Award set-aside – back to the Tribunal

Enforcement



- ∞ Pro-enforcement bias
- ∞ NYC – two reservations: reciprocity and commercial matters
- ∞ Jurisdiction over assets & *forum non conveniens*

Non-Enforcement



∞ 5 grounds for resisting enforcement –
Art. V(I) of NYC

- ∞ Incapacity & Invalidity;
- ∞ Lack of notice or fairness;
- ∞ Excess of authority;
- ∞ Composition of tribunal or procedure was contrary to the agreement of the parties;
- ∞ Award is not yet binding.

Non-Enforcement



∞ Art. V(II) – lack of arbitrability and public policy

Non-Enforcement



- ∞ Incapacity of the party – sovereign immunity, lack of authority while signing the arb. Agreement – (Validity of Arb. Agreement – in writing & signed)
- ∞ Agreement is invalid

Non-Enforcement



- ∞ Notice or fairness – fair hearing (moot)
- ∞ Excess of Authority
- ∞ Parties' Agreement – constitution of the Tribunal or procedure not consistent with the agreement
- ∞ Award is not binding yet or set-aside – *double exequator*

Non-Enforcement



- ∞ Vacated Award – in the country where the award was rendered or under the law to which it is subject
- ∞ Courts under NYC can only enforce an award, not vacate it. Awards can be vacated only at the seat!

Non-Enforcement



∞ Art V(II) of NYC – *sua sponte*

THANK YOU!