Enforcing International Arbitration Awards in England and Wales

Introduction

This advice note provides an overview of the methods available for the enforcement of an international arbitration award in England and Wales. Enforcement of an arbitral award in England and Wales is dependant upon where the award was granted. The process for enforcement applicable in any particular case is dependent upon the seat of arbitration and the arbitration rules that apply. Arbitral awards in England and Wales can be enforced under a number of different regimes:

- Common Law.

Arbitration Act 1996

- Section 66 of the 1996 Act applies to all domestic and foreign arbitral awards.
- Sections 100 to 103 of the 1996 Act provide for enforcement of arbitral awards under the New York Convention 1958 (see below).
- Section 99 of the 1996 Act provides for the enforcement of arbitral awards made in certain countries under the Geneva Convention 1927 (see below).
- Under Section 66 of the 1996 Act, the court's permission is required for an international arbitral award to be enforced in the UK. Once the court has given permission, judgment may be entered in terms of the arbitral award and enforced in the same manner as a court judgment or order.
- Permission will not be granted by the court if the party against whom enforcement is sought can show that (a) the tribunal lacked substantive jurisdiction and (b) the right to raise such an objection has not been lost.

New York Convention 1958 Arbitral Awards

- An arbitral award will be made under the New York Convention if it is made pursuant to an arbitration agreement in the territory of a state which is a party to the New York Convention - see Appendix 1 for a list of the contracting states to the New York Convention.
- An award is treated as being made at the seat of the arbitration in spite of where it was signed, sent from or delivered to. For example, if an award is made in Paris, the seat of the award is France. France is a party to the New York Convention and the award can therefore be enforced internationally as a New York Convention award.
- Under section 101 of the Arbitration Act 1996, an award subject to the New York Convention is recognised as binding between the parties and with the court's permission can be enforced in England and Wales in the same manner as a judgment or court order.
- The procedure to apply for enforcement is the same as section 66 of the Arbitration Act 1996.
- Recognition or enforcement of an award can be refused under section 103 (2) of the Arbitration Act 1996, if it is proved that:
  
  (a) a party to the arbitration agreement under the law applicable to him, was under some incapacity;
  (b) the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made;
  (c) the defendant was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present its case;
  (d) the award deals with an issue not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;
  (e) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such

1 For an up to date list with comments see: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

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agreement, with the law of the country in which
the arbitration took place; or
(f) 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, it was made.

• Recognition or enforcement of an arbitral award may
also be refused where it would be contrary to public
policy.
• A party seeking the enforcement of a New York
Convention award must produce a duly authenticated
original award or a certified copy of it and the original
arbitration agreement or a certified copy of it.
• Part III of the Arbitration Act 1996 does not affect any
right to rely upon or enforce a New York Convention
award at common law or enforcement of awards under
section 66 of the Act.

Geneva Convention 1927 arbitral awards

• An arbitral award will be made under the Geneva
Convention if it is made pursuant to an arbitration
agreement in the territory of a state which is a party to
the Geneva Convention but not the New York
Convention. See Appendix 2 for list of contracting states
to the Geneva Convention.
• An arbitral award made under the Geneva Convention is
enforceable under Part II of the 1950 Arbitration Act
• To enforce the arbitral award the applicant is required to
meet specific requirements as set out in sections 37 to

The Administration of Justice Act 1920 and the Foreign
Judgments (Reciprocal Enforcement) Act 1933

• Relates to arbitration awards made in mainly former
Commonwealth countries.
• An arbitral award made in a country which is listed in
these Acts can be enforced in England and Wales under
section 1(2) of the 1933 Act and section 9 of the 1920
Act (see Appendix 3 for the list of countries).
• The award may be registered for enforcement in England
& Wales. If registered, the arbitral award takes effect
and can be enforced as if it were a English judgment.
• An application to register under the 1920 Act must be
made within 12 months of the date of the award,
although it is possible to obtain an extension of time.

An application to register under the 1933 Act must be
made at the High Court within 6 years of the date of the
arbitral award.
• Both acts allow the party to appeal against registration
of the arbitral award.

Common Law

• A successful party in an arbitration can bring an 'action
on the award' at common law. This is an independent
action, which is based on breach of the arbitration
agreement due to the unsuccessful party being unable
to honour the terms of the award.
• The general principles of contract law apply when using
this as a means to enforce an arbitral award. For
example, if a term of the arbitration agreement is
breached in that the award sum made by the arbitrator
has not been paid, the receiving party will be able to
claim for breach of contract in respect of the non
payment.

Other issues that have to be taken into consideration
when enforcing an arbitral award

• Under the Human Rights Act 1998, courts must ensure
when an enforcing international arbitration award that it
is consistent with the European Convention of Human
Rights (ECHR). In particular, the courts must consider
article 6 (1) of the ECHR to ensure a party has a right to
a 'fair and public hearing…by an independent and
impartial tribunal.'

• An arbitration award which contravenes Article 81 of the
EC Treaty is be prohibited where:
1(a) there are direct or indirect fixed purchase or
selling prices or any other trading conditions;
1(b) there are limits or controls on production, markets,
technical development, or investment;
1(c) share markets or sources of supply;
1(d) the award applies dissimilar conditions to
equivalent transactions with other trading parties,
thereby placing them at a competitive
disadvantage; or
1(e) the award makes the conclusion of contracts
subject to acceptance by the other parties of
supplementary obligations which, by their nature
or according to commercial usage, have no
connection with the subject of such contracts.

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### APPENDIX 1

Countries currently covered by the New York Convention 1958

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<th>Country</th>
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<td>Afghanistan</td>
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<td>Belgium</td>
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<td>Benin</td>
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<td>Bolivia</td>
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APPENDIX 2
Geneva Convention signed 26 September 1927

United Kingdom of Britain

Anguilla

British Virgin Islands

Cayman Islands

Falkland Islands

Falkland Islands Dependencies

Gibraltar

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APPENDIX 3

Countries Covered for Reciprocal Enforcement Under The Foreign Judgments (Reciprocal Enforcement) Act 1933

- Australia

- Canada - The Federal Court of Canada and any court to the province of British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan or the Yukon Territory; Northwest Territories - Newfoundland, Alberta.

- Republic of India - The territories named in schedule to Order in Council - SI1958 No 425.

- Island of Guernsey

- Isle of Man - Will only recognise a High Court Judgment.

- Israel

- Jersey (Bailiwick of)

- Pakistan

- Surinam

- Tonga

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<th>Countries Currently Covered for Reciprocal Enforcement under the Administration of Justice Act 1920</th>
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<td>Antigua and Barbuda</td>
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<td>Bermuda</td>
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<td>Botswana</td>
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This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.

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