

Introduction to International Commercial Arbitration

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Enforcing and Challenging an Arbitral Award

Lesson n.12

Before challenging

- ▶ Any appeal or review has been exhausted;
- ▶ Any available provision for the correction of the award or for an additional award has been exhausted;
 - ICC Rules → Correction of the Award; Interpretation Award;
 - Additional Award to cover issues omitted (ICC; UNCITRAL Rules)
 - In case new facts are discovered (*e.g.* fraud): revising Award (without challenge)

Where to challenge?

- ▶ General rule: a national court of the place of arbitration.
- ▶ Which court?
 - France: Cour d'Appel de Paris
 - England: Commercial Court of the Queen's Bench Division in the High Court of Justice
- ▶ Any other possibility?
 - If the parties chose a different procedural law (?)
 - Substantial law → India, 2007.

Grounds for Challenge

- ▶ Three main possible grounds:
 - Jurisdiction
 - Procedure
 - Merits

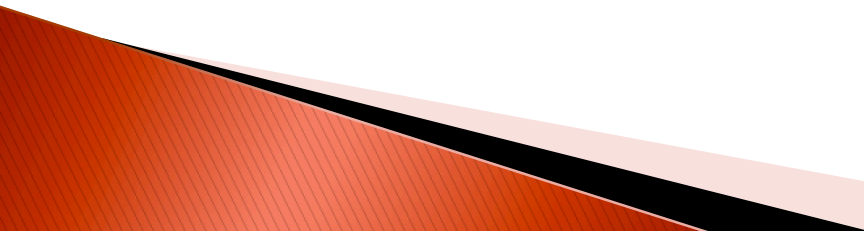
Recognition and Enforcement

- ▶ Recognition → the Award is formally held valid (*e.g. Res judicata* issues)
- ▶ Enforcement → a party ask the court to have the Award carried out

Where to apply for recognition and enforcement?

- ▶ Just recognition → court where the action is brought
- ▶ Enforcement → where it is useful to have the Award performed

The New York Convention

- ▶ One of the most widespread and important multilateral conventions, surely the most important for International Commercial Arbitration
 - ▶ It deals mainly with enforcement of Arbitral Awards (but also, as seen, of Arbitration Agreements)
 - ▶ An Award may be refused recognition and enforcement if...
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1° Ground for refusal

- ▶ The parties of the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made
 - ▶ State Agencies etc.

2° Ground for refusal

- ▶ 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
 - ▶ Basically, due process

3° Ground for refusal

- ▶ The award deals with a difference not contemplated by or not falling within the terms or the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matter submitted to arbitration may be recognised and enforced
 - Issues of *ultra petitem*

4° Ground for refusal

- ▶ The composition of the arbitral authority or the arbitral procedure was not in accordance with the the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place

5° Ground for refusal

- ▶ 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, the award was made
 - Remember: *may*
 - The Award is an «International» legal product

Two additional grounds *ex officio*

- ▶ The subject-matter of the difference is not capable of settlement by arbitration under the law of that country
- ▶ The recognition or enforcement of the award would be contrary to the public policy of that country

Public Policy

- ▶ Narrow construction
- ▶ Debate