China is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards (New York Convention), which has been implemented into Chinese law. Accordingly, the recognition and enforcement of international awards are governed by the New York Convention.

The Civil Procedure Law of the People’s Republic of China (Civil Procedure Law) contains a number of fundamental provisions that allow the party of an international arbitral award to apply directly to the competent Chinese court for the recognition and enforcement of a foreign arbitral award.

**International Arbitration**

China is a signatory to the New York Convention. The notice confirming the implementation of the New York Convention was issued by the Supreme People’s Court with two reservations – a reciprocity reservation and a commercial reservation. Pursuant to the reciprocity reservation, China will recognise and enforce awards made in the territory of another contracting state.

In China, foreign arbitral awards can be divided into a number of categories:

- Foreign arbitration, with a seat outside mainland China, which can be further sub-categorised as:
  - Convention awards, governing states and territories that are a signatory to the New York Convention.
  - Non-convention awards, governing states and territories that are not a signatory of the New York Convention.
- Foreign-related arbitration involving one foreign party or between two Chinese parties where the subject matter of the dispute is outside mainland China and with a seat in mainland China.
- Arbitral awards made in Hong Kong, Macau or Taiwan.

The significance of the categorisation is discussed below.

The Civil Procedure Law contains some fundamental provisions that allow the party of an international arbitral award to apply directly to the competent Chinese court for the recognition and enforcement of an international arbitral award. In the situation of any discrepancy between the stipulations of the New York Convention and those of the Chinese law, the New York Convention prevails. This is stipulated at Article 267 of the Civil Procedure Law, which requires the People’s Courts to follow any international convention entered by China in dealing with applications for recognition and enforcement of foreign arbitral awards.
Application of Enforcement Provisions

In order to have an award recognised under the New York Convention, the party seeking to enforce the award must file an application with the Intermediate People’s Court in the Province where:

- (In the case of a natural person) the counterparty is domiciled or has a place residence;
- (In the case of a company) the counterparty’s principal place of business is located; or
- (In the case of a counterparty which does not have any domicile, residence or principal business office in China) the counterparty has property located.

Formalities Required for Enforcement

A party seeking enforcement of an international arbitral awards must fulfil the following requirements before it can be enforceable:

- A written application;
- Produce an original or certified copy of the award;
- Produce an original or certified copy of the arbitration agreement; and
- Translate any document if made in a foreign language.

Once the formal requirements are met and the People’s Court recognises the international award, it is then enforceable in the same manner as a judgment of the court that has the same effect.

Enforcement of Arbitral Awards

Convention Awards

The reasons for refusal of a convention award are outlined in Article V of the New York Convention are as follows:

- A party was under some incapacity at the time the relevant arbitration agreement was made.
- The arbitration agreement was invalid.
- A party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings.
- The award was made outside the jurisdiction of the arbitral tribunal.
- The composition of the tribunal or the arbitral procedure was not in accordance with the parties’ arbitration agreement or the laws where the arbitration was conducted.
- The award has not yet become binding on the parties or has been set aside or suspended by a competent authority in the jurisdiction where the arbitration was conducted.

Furthermore, the court asked to enforce the foreign arbitral award may refuse to enforce the award if it finds:

- The dispute between the parties was not capable of settlement by arbitration under the laws of China; or
- To enforce the award would be contrary to public policy.

Non-Convention Awards

Non-convention awards may be enforced in China if there is a treaty that provides for such recognition and enforcement. In principle, an application to enforce a non-convention award in China may be brought in accordance with the principle of reciprocity as stipulated under Article 267 of the Civil Procedure Law. Therefore, the grounds for the refusal of enforcement would be governed by the governing treaty.
Foreign-Related Arbitration

Article 260 of the Civil Procedure Law outlines the reasons for refusal of a foreign-related arbitral award:

- The parties concerned have not stipulated clauses on arbitration in the contract or have not subsequently reached a written agreement for arbitration.
- The person against whom the application is made is not duly notified to appoint the arbitrator or to proceed with the arbitration, or the said person fails to state its opinions due to reasons for which he or she is not held responsible.
- The composition of the arbitration tribunal or the procedure for arbitration is not in conformity with the rules of arbitration.
- Matters for arbitration are outside the scope of the agreement for arbitration or the limits of authority of the arbitration agency.

These grounds for refusal are similar to those outlined in the New York Convention.

Arbitral Awards Made in Hong Kong, Macau or Taiwan

Awards made in Hong Kong, Macau or Taiwan are governed by the respective arbitration arrangements China has entered into with each of these regions. The enforcement of Hong Kong awards is similar to that for Convention awards.

Domestic Arbitration


Article 9 of the Arbitration Law states that an arbitration award is final. After the award is given, the arbitration commission or the People’s Court shall not accept the re-application of the suit concerning the same dispute by any of the parties concerned.

Article 62 states that a party may apply for enforcement of a domestic arbitral award with the People’s Court according to the relevant provisions of the Civil Procedure Law and that the People’s Court with which the application is filed should enforce it.

The reasons for refusal of enforcement of a domestic arbitral award are outlined in Article 217 of the Civil Procedure Law, which states:

- The parties have not stipulated clauses on arbitration in the contracts, or have not subsequently reached a written agreement for arbitration.
- Matters proposed for arbitration are outside scope of the agreement for arbitration or the limits of authority of the arbitration agency.
- The composition of the arbitration tribunal or the procedure for arbitration is not in conformity with the legal procedure.

This internal reporting system was initiated in response to the lower People’s Courts refusing to enforce international arbitral awards on the “public policy” ground. The lower courts were using a very broad interpretation of public policy to refuse to enforce a number of international awards.

Supreme People’s Court Internal Court Reporting System

To demonstrate China’s pro-arbitration approach to enforcement of awards, the Supreme People’s Court (China’s highest court) has set up an internal court reporting system to ensure that every court decision (at every level of the court system up to the Supreme People’s Court) to refuse enforcement of international arbitral awards is seriously examined.
The main evidence is sufficient to substantiate the facts.

There are errors in the cited law.

The arbitrators committed acts of malpractice for personal benefits and perverted the law in the arbitration of the case.

Unlike international arbitral awards, a People’s Court has considerably more discretion to refuse to enforce a domestic arbitral decision.

Domestic arbitral awards can be set aside by the People’s Court on the ground that the evidence for ascertaining facts was insufficient or that there was a clear error in the application of law, meaning that the People’s Court can refuse to enforce a domestic award based on the merits of the case. This makes any domestic arbitration reliant on the views of the People’s Courts.

Remedies Available to Enforce Arbitral Awards

Domestic Awards

After a domestic arbitral award takes effect, and where the debtor fails to satisfy its obligations within the specified period, the creditor can apply for enforcement. After accepting the enforcement application, the People’s Court serves notice on the debtor, requiring it to satisfy the judgment, and takes enforcement measures (such as seizing or freezing the debtor’s assets). If the debtor still fails to comply, the enforcing court can take measures to realise the debtor’s assets to discharge the debt.

International Awards

The court first decides whether to recognise or acknowledge the arbitral award, and if so, then moves on to the enforcement stage, the procedure of which is in general the same as for domestic arbitral awards.

Take Away Points

The key points to takeaway in relation to the enforcement of arbitral awards in China are as follows:

- China is a signatory to the New York Convention and notice confirming the implementation of the New York Convention was issued by the Supreme People’s Court.
- When the formal requirements are met, an international award is presumed to be enforceable, unless one of the grounds for refusing to enforce arbitral awards applies.
- The reasons for refusal of an international award are procedural in nature, whereas the People’s Court has considerably more discretion to refuse to enforce a domestic arbitral decision.
- The Supreme People’s Court has set up an internal court reporting system to ensure that every court decision to refuse enforcement of international arbitral awards is seriously examined.

Footnotes

1 Article IV, New York Convention.
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