

Hong Kong is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Arbitration Awards (New York Convention) by virtue of China's accession. Thus, the Hong Kong laws that govern the recognition and enforcement of international awards reflect the articles contained in the New York Convention.

Both foreign and international arbitral awards are presumed to be enforceable unless one of the reasons for refusal applies. If the respondent is unable to establish a ground for refusal, then the arbitral award is enforceable in the same manner as a judgment of the court that has the same effect.

International and Domestic Arbitration

In Hong Kong, the Arbitration Ordinance (cap 609) (the Ordinance) governs both domestic and foreign arbitration.¹ The Ordinance is largely based on the UNCITRAL Model Law on International Commercial Arbitration (Model Law).

Arbitral awards made outside Hong Kong are classified into four categories under the Ordinance:

- **Convention awards** – Awards made in a state or the territory of a state (other than China) that are a party to the New York Convention.
- **Mainland awards** – Awards made in mainland China by a recognised tribunal authority in accordance with the Arbitration Law of the People's Republic of China.
- **Other foreign awards** – Any other foreign awards that do not fall within the above two categories (note: includes awards made in Hong Kong and Taiwan).



- **Macao awards** – Awards made in Macao in accordance with the arbitration law of Macao and enforceable in the same way.

In this chapter, the term “domestic awards” includes “other foreign awards” and the term “international awards” includes “convention awards”, “mainland awards” and “Macao awards”. Furthermore, in the Ordinance, there is no statutory definition of “award” or “arbitral award” for the purpose of enforcement proceedings. It is assumed that “arbitral awards” equate to what is defined as “domestic awards”.

Hong Kong is a signatory to the New York Convention by virtue of China's accession to the New York Convention. This allows the enforcement of arbitral awards from the other signatories to the New York Convention. However, since the 1997 handover of Hong Kong to Chinese sovereignty, the New York Convention no longer applies to the enforcement of Hong Kong awards in mainland China and vice versa.

Application of Enforcement Provisions

The Ordinance reflects the fact that that Hong Kong, by virtue of China's accession, is a signatory to the New York Convention as an international award under the Ordinance, and is presumed to be enforceable unless one of the reasons for refusal outlined in the Ordinance applies.²

If the respondent is unable to establish a ground for refusal, then the arbitral award is enforceable in the same manner as a judgment of the court that has the same effect.

Formalities Required for Enforcement

A party seeking enforcement of a domestic or international arbitral awards as defined in the Ordinance must fulfil the following requirements before it can be enforceable:

- Produce an original or certified copy of the award;
- Produce an original or certified copy of the arbitration agreement; and
- Translate any document that is not in English.⁴

When these requirements are met, the rules of enforcement that apply are slightly different for each category of award:

- An award, whether made in or outside Hong Kong, in arbitral proceedings by an arbitral tribunal is enforceable in the same manner as a judgement of the Court that has the same effect, but only with the leave of the Court. If this leave is granted, the Court may enter judgment in terms of the award.⁵
- A Convention award is, subject to Part 10 Division 2, enforceable in Hong Kong either by action in the Court or in the same manner as an award.⁶
- A Mainland award is, subject to Part 10 Division 3, enforceable in Hong Kong either by action in the Court or in the same manner as an award.⁷

- A Macao award is, subject to Part 10 Division 4, enforceable in Hong Kong either by action in the Court or in the same manner as an award.⁸

A Convention award, Mainland award and Macao award are to be treated as binding for all purposes on the parties, and may accordingly be relied on by any of them by way of defence, set off or otherwise in any legal proceedings in Hong Kong.

It should be noted that the Ordinance states that articles 35 and 36 of the Model Law (which provide a mechanism for the recognition and enforcement of arbitral awards) will not have effect. However, Part 10 of the Ordinance reflects the New York Convention, therefore, is seen to be pro-arbitration.

Enforcement of Arbitral Awards

International Awards

The reasons for refusal for an international award under the Ordinance correspond to the grounds for refusing to enforce arbitral awards outlined in Article V of the New York Convention – these 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.⁹

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 Hong Kong; or
- To enforce the award would be contrary to public policy.

Domestic Awards

The reasons for refusal for a domestic award under the Ordinance are the same as for an international award.¹⁰ However, under section 86(2)(c), an enforcement award may also be refused if for any other reason the court considers it just to do so.

The common law position is that the court will refuse leave to enforce only if there are real grounds for doubting the validity of the award or where the award is not in a form that can be entered as a judgment. However, this section does provide the court with broader powers and may mean that the court can refuse enforcing a domestic award based on the merits of the case.

Remedies Available to Enforce Arbitral Awards

Once judgment has been obtained that enforces the arbitral award, the successful party may pursue the same enforcement measures as for any court judgment, including execution against goods belonging to the judgment debtor, a garnishee order or a charging order.

Take Away Points

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

- Hong Kong is a signatory to the New York Convention by virtue of China's accession.
- 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 enforcement of a domestic award can be refused if for any other reason the court considers it just to do so.

Footnotes

1 Arbitration Ordinance (cap 609) s 5.

2 Arbitration Ordinance (cap 609) ss 84, 87, 92 and 98A.

3 Arbitration Ordinance (cap 609) ss 84, 87, 92 and 98A.

4 Arbitration Ordinance (cap 609) ss 85, 88, 94 and 98C.

5 Arbitration Ordinance (cap 609) s 84.

6 Arbitration Ordinance (cap 609) s 87.

7 Arbitration Ordinance (cap 609) s 92.

8 Arbitration Ordinance (cap 609) s 98A.

9 Arbitration Ordinance (cap 609) ss 89, 95 and 98D.

10 Arbitration Ordinance (cap 609) s 86.

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