

**The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is the foundation upon which the whole of international commercial arbitration stands: PART 3 – how is it applied?**

Under Article 1(3) of the New York Convention, ratifying states have the option to limit the applicability of the New York Convention. The first of the two limitations refer to a reciprocal approach by states declaring to only enforce awards made in a country that is also a contracting state of the New York Convention. Secondly, a contracting state might declare to only apply the New York Convention to “commercial” relationships, whereby “commercial” shall be interpreted in accordance with the laws of such state.

The New York Convention outlines the requirements for (i) the enforceability of an arbitration agreement, (ii) the conditions of recognition and enforcement of an arbitration award and (iii) the grounds for a refusal of the recognition and enforcement of an arbitration award.

Article II of the New York Convention makes it clear that a fundamental requirement for the enforceability of the arbitration agreement is the need for such an agreement to exist in writing. The term “*agreement in writing*” has its legal definition in Article II (2) of the New York Convention “as to “*include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters and telegrams*”. It must be noted that the “Model Law on International Commercial Arbitration” (“*Model Law*”) that has been adopted by many states which are signatories of the New York Convention provides a much broader interpretation of the “writing” requirement taking into account newer modes of communication.

Further conditions outlined in Article II (1) New York Convention are a “defined legal relationship” and the “arbitrability” of the dispute.

The New York Convention further outlines the practical requirements for a recognition and enforcement of the arbitral award in its Article IV. Such requirements are the duty to provide a “*duly authenticated original award or a duly certified copy thereof*” and the original arbitration agreement or a duly certified copy thereof. Further translation requirements are stated if the award is in a different language from the official language in the country of recognition and enforcement.

Several grounds for refusal of the recognition and enforcement of an arbitration award are listed in Article V of the New York Convention. It should be noted that the grounds outlined in the New York Convention are exhaustive. No other grounds for refusal of recognition and enforcement are permitted. Further, it is important to understand that the grounds for a refusal do not necessarily lead to an automatic refused enforcement. The New York Convention uses the term “*may*” and provide the enforcing courts with the option to recognize or enforce the award even if the outlined grounds are applicable.

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