

## Recognition and enforcement of arbitral awards

One of the advantages of arbitration over other methods of alternative dispute resolution is the ease with which arbitral awards can be enforced in other states.

The recognition and enforcement of arbitral awards mainly are sought by the winning party before the national courts of the seat of arbitration or in the state where the assets of the losing party are located or is applied forum shopping.

### New York Convention

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as “The New York Convention” is regarded as the primary tool for the recognition and enforcement of foreign arbitral awards.

This convention has been specifically designed for the purpose of facilitating the effective recognition and enforcement of foreign arbitral awards by *adopting uniform international standards accepting the presumptive validity of these awards and limiting the grounds for denying their recognition.*

- Is ratified by (to date) 168 countries. Albania has ratified it in 2001.



## Distinction between recognition and enforcement of an arbitral award

**Recognition** is a defensive process, metaphorically called the “*shield*”.

This process aims to obtain recognition of an arbitral award with the prospect of preventing a bid to bring new proceedings that raise the same issues as those which have been dealt with in the award in respect of which recognition is sought.

**The enforcement** is metaphorically called the “*sword*”.

This process is sought by the successful party which seeks the court's assistance in order to ensure that the award is complied with and to obtain the redress to which it is entitled.

- An award may be recognized without being enforced. Where a court orders its enforcement, the court has logically recognized it.

*Redfern and Hunter on International Arbitration, (Nigel, Partasides, Redfern, et al, 2015)*



## Formalities to obtain recognition and enforcement of arbitral awards

Under the New York Convention, Article IV, the party seeking recognition and enforcement of the arbitral award is required to provide to the relevant court:

- ✓ The duly authenticated original award *or*
  - ✓ A duly certified copy thereof *and*
  - ✓ The original agreement referred to in Article II of the New York Convention *or*
  - ✓ A duly certified copy thereof.
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- In the case when the award or the arbitration agreement are not in the official language of the country in which it is sought recognition and enforcement it is needed their certified translation.
  - Once complied with these requirements by the parties the national court will proceed with the recognition and enforcement of the arbitral award, unless there are grounds for refusal.



## Grounds for refusal of recognition and enforcement of an arbitral award

Under the New York Convention, Article V (1) the relevant court can refuse the recognition and enforcement of the arbitral award under the grounds:

- i. Incapacity of one or both parties *and* invalidity of the arbitration agreement.
- ii. No proper notice was given for the appointment of arbitrator *or* for the proceedings *and* lack of due process.
- iii. Existence of jurisdictional issues.
- iv. The arbitral tribunal has been composed *or* the procedure has not been in accordance with arbitration agreement *or* relevant law.
- v. The arbitral award is not binding, has been suspended *or* has been set aside.
- vi. *Arbitrability*, meaning whether the dispute should have been or not settled by arbitration.
- vii. Public policy of enforcement state *or* of the challenge state.

