

My re-draft of the New York Convention Copyright Adam Samuel 2014

The New York Convention on the Recognition and Enforcement of Arbitration Agreements and Awards

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards arising out of differences between persons, whether physical or legal [where the seat of arbitration is located in the territory of a State other than the State where the recognition and enforcement of such awards are sought . This Convention shall apply to arbitration agreements regardless of where the seat of arbitration is or whether they are international.

2. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration. This is so long as the definition of commercial is no wider than that contained in Article 7(4).

Article II

1. Each Contracting State shall recognize an agreement under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is unenforceable.

Article III

1. Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of any other arbitral awards.

2. Nothing in this Convention shall permit a Contracting State to decline to exercise jurisdiction over an application to enforce or recognise an arbitral award to which this Convention otherwise applies.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award shall only be refused, at the request of the party against whom it is invoked, if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were under some incapacity, or the said agreement is not valid under the law of the seat of the arbitration ; or

(b) 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; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced

(nothing in this provision will prevent an arbitrator or arbitrators from encouraging a party to amend its claim); or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the law of the seat of the arbitration; or

(e) 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 the seat of arbitration was located so long as any decision by a competent authority does not of itself or in the way in which it was made contravene the public policy of the country where enforcement or recognition of the award is being sought.

2 Recognition and enforcement is permitted even where a ground set out above has been proved, in particular if

(a) the party resisting recognition or enforced has waived or renounced the objection concerned

3. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security. That other party may not resist an order for security on the grounds of sovereign immunity.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect

between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

3. Any country that has ratified this Convention may refer another country that has ratified this Convention to the International Court of Justice for a ruling that that other country has broken the Convention in the way in which it has dealt with requests for the recognition and enforcement of awards and agreements.

4. In this Convention, the following definitions apply

“Arbitration” refers to a process by which the parties expressly or impliedly agree to refer disputes that have arisen between them to a third party or parties who after receiving submissions adjudicates finally on their dispute.

“Award” means a final decision on part or all of a case referred to arbitration which cannot be reversed by the arbitrator. It excludes interim or conservatory measures ordered by an arbitrator.

“Seat of arbitration” means the location which the parties have agreed will be the seat or place of arbitration or in default of such agreement the arbitrator or arbitration institution has selected as the seat or place of arbitration

“Commercial” means nothing more limited than “matters arising from all relationships of a commercial nature, whether contractual or not”. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road regardless of which type of concern enters into such relationships.