NEW YORK AT THE EPICENTRE OF INTERNATIONAL ARBITRATION

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New York is not only a global financial centre, it is also a leading venue for international arbitration. Parties choose to arbitrate in New York for various reasons, including the well-developed nature of New York substantive law in commercial matters, the city's international profile, and its deep pool of talented practitioners.

New York also has neutral courts with extensive experience in complex commercial disputes that follow a strong policy in favour of international arbitration. The New York Court of Appeals has emphasised "the long and strong public policy in favor of arbitration" and the Second Circuit (the federal appellate court covering New York) has held that the "federal policy favoring arbitration is even stronger in the context of international transactions".

This article examines the legal framework for recognising and enforcing foreign arbitral awards in New York courts, as well as the limited grounds for challenging arbitration awards made in New York under the Federal Arbitration Act.

New York supports recognition and enforcement of arbitral awards

The United States is party to both the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and the Inter-American Convention on International Commercial Arbitration (the Panama Convention).

The New York Convention greatly enhances the portability of arbitral awards by identifying limited grounds for challenging the recognition and enforcement of awards made in another state that is party to the Convention. Domestically, the New York Convention is enacted in United States law as Chapter 2 of the Federal Arbitration Act.

The Panama Convention has a similar function with respect to recognition and enforcement, and it is enacted domestically in the United States as Chapter 3 of the Federal Arbitration Act. In United States courts, the Panama Convention (and not the New York Convention) applies if "a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the [Panama] Convention and are a member of the Organization of American States". (9 U.S.C. s. 305(1))

The Second Circuit has said that "basic thrust" of the New York Convention was to "liberalize procedures for enforcing foreign arbitral awards". (*Parsons & Whittemore Overseas Co. v. Societe Generale de l'Industrie du Papier*, 508 F.2d 969, 973 (2d Cir. 1974)) The party wishing to have a foreign arbitral award recognised in New York courts is required to provide the "duly authorized original award or a duly certified copy thereof" and the arbitration agreement "or a duly certified copy thereof". If the documents are not in English, a certified translation must be included.

Once these basic documents have been provided to the court and jurisdictional requirements have been satisfied, the party resisting enforcement bears the burden of demonstrating that the award should not be enforced. New York courts narrowly construe the grounds for non-recognition of arbitral awards set forth in the New York and Panama Conventions. Notably, recognition and enforcement may not be denied on the basis that the arbitrators erred in their assessment of the facts or interpretation of the law.

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Grounds for vacating arbitral awards are narrowly interpreted

Arbitral awards that are made in New York may be challenged on a motion to set aside or to vacate the award. Chapter 1 of the Federal Arbitration Act sets forth grounds for challenging international arbitration awards rendered in the United States. These are substantially similar to the grounds for non-recognition of arbitral awards set forth in the New York Convention and the Panama Convention.

The Federal Arbitration Act grounds are that: (i) the award was procured by corruption, fraud, or undue means; (ii) there was evident partiality or corruption by the arbitrators; (iii) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy or of any other misbehaviour by which the rights of any party have been prejudiced; or (iv) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

The United States Supreme Court has held that the Federal Arbitration Act grounds for the setting-aside or vacatur of arbitral awards are exclusive. The law remains unsettled as to the continued viability or effect of a judicially-created doctrine, "manifest disregard for the law", which has its origins in a 1953 case, *Wilko v. Swan*. However, it is clear that the application of the doctrine is exceedingly rare. A detailed report issued by the Committee on International Commercial Disputes of the New York City Bar Association in August 2012 concluded that "the manifest disregard doctrine has been applied sparingly, especially so in the context of international awards challenged in New York state and federal courts". Indeed, on the basis of extensive empirical research, the report noted that "no international arbitral award rendered in New York has ever been set aside in the Second Circuit on the ground of manifest disregard".

Conclusion

The enforceability of arbitral awards made elsewhere and the finality of arbitration awards rendered in New York both illustrate New York's pro-arbitration policy and legal framework. New York's attractiveness as a venue for international arbitration is heightened by the presence of world-class arbitration practitioners and service providers, as well as the city's global profile and accessibility. The convenience of holding arbitrations in New York was recently enhanced with the launch of a dedicated hearing centre for international arbitrations, centrally located in Midtown Manhattan. CD

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