

ENFORCING FOREIGN ARBITRAL AWARDS IN MAINLAND CHINA

An introduction to the recognition and enforcement of foreign arbitral awards in mainland China

China acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ('Convention') in 1986, and ratified the Convention in 1987, with two reservations, including:

- (a) Reciprocity Reservation – China will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting state; and
- (b) Commercial Reservation – China will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under Chinese law.

Application

A foreign arbitral award must be recognised by a competent Chinese court before it is enforced. Moreover, only a party to the foreign award may seek recognition and enforcement of an award in China.

The party seeking recognition and enforcement of a foreign award shall submit an application to the intermediate people's court at:

- (a) in the case of a natural person – the counterparty's domicile or place of residence;
- (b) in the case of a legal person – the counterparty's principal place of business; or
- (c) the location of the counterparty's property, if neither of the above is applicable.

If none of the above is applicable, an application may also be filed with a Chinese court reviewing a case that is relevant to the award.

Time limitation

The period for application is two years, while the limitation clock may start ticking at different points depending on the content of the award. Such period may be suspended or interrupted for reasons provided by Chinese law.

Review

An application for recognition and enforcement of an award made in another contracting state of the Convention ('Convention Award') will be reviewed according to the Convention. The court may refuse to recognise and enforce a Convention Award only if one of the grounds for refusal provided in the Convention is found. However, before refusing to recognise and enforce a foreign arbitral award, the court should report to the Higher People's Court, and subsequently to the Supreme People's Court for further review and decision, as an

internal control mechanism to ensure that every decision to refuse recognition and enforcement of a foreign arbitral award is fully and seriously examined.

Grounds for refusal of enforcement

For a Convention Award, recognition and enforcement may be refused if the counterparty can establish one of the following grounds:

- (a) There was not an effective arbitration agreement;
- (b) A party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;
- (c) The award was made beyond the terms of reference of the tribunal;
- (d) The composition of the tribunal or the arbitral procedure was not in accordance with the parties' arbitration agreement or the laws where the arbitration took place; 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, or under the law of which, that award was made.

Recognition and enforcement may also be refused if the court finds that:

- (a) The subject matter of the difference is not capable of settlement by arbitration under Chinese law; or
- (b) The recognition or enforcement of the award would be contrary to the public policy of China.

Please note that courts will only find a violation of public policy, as a last resort, if the award is contrary to the fundamental principles of law, social or public interests or good morals. Only a handful of Convention Awards were refused on public policy ground from 1998 to 2020.

Arbitral awards made in Hong Kong, Macau and Taiwan

Arbitral awards made in Hong Kong, Macau and Taiwan, as separate jurisdictions within one country, are not considered Convention Awards in mainland China, and their enforcement are not governed by the Convention. Rather, recognition and enforcement of such awards shall be governed by special arrangements, although the grounds for refusal largely resemble those in the Convention.



Zhang Guanglei,
partner



Zhang Jinhui,
associate

競天公誠律師事務所
JINGTIAN & GONGCHENG

34th Floor, Tower 3, China Central Place, 77 Jianguo Road, Chaoyang District, Beijing, China, 100025 Tel: (86 10) 5809 1515

E-mail: zhang.guanglei@jingtian.com Web: www.jingtian.com