Enforcement of International Arbitration Awards and Judgments in Foreign Countries

Kurt B. Gerstner

Dentons Lee

14F Poongsan Bldg.
23 Chungjeong-ro, Seodaemun-gu
Seoul, 03737,
Republic of Korea

P +82 2 2262 6000

M 1-617-851-3889

kurt.gerstner@dentons.com

Introduction

IADC lawyers should anticipate that at some point, they will have clients involved in a dispute with a party located in another country. Cross-border disputes show no sign of diminishing. For example, the American Arbitration Association's International Centre for Dispute Resolution saw significant filings in 2025 (725 international arbitrations and 73 international mediations) having a total claim value of US $5.6 billion.[1] Other popular international arbitration centers likewise saw very significant numbers of filings and large amounts in dispute. The International Chamber of Commerce Court had 894 new cases registered in 2025, making it one of that institution's top three years in case volume.[2] The Hong Kong International Arbitration Centre also broke new records in 2025, both in terms of the number of new cases submitted (582) and the total amount in dispute (approximately US $16.2 billion.)[3] It is projected that there will be some slowing in cross border trade activities stemming from tariffs, wars and other geopolitical disruptions.[4] But those same factors that account for slowing of new transactions are also the types of factors that may lead to more disputes flowing from currently existing international contracts and business relationships.

Given the probability that IADC lawyers' clients will be arbitrating or litigating against companies located in other countries and obtaining judgments or awards that will require enforcement in other countries, it is important to have some understanding of processes that are available for recognition and enforcement of foreign awards and judgments. Although the processes will vary by country, this article will discuss some common elements and will examine recognition and enforcement proceedings in Korea as an example to illustrate how the process may apply.

Arbitration Award Recognition and Enforcement

After obtaining an international arbitration award, if the losing party does not comply with the arbitration award, the victorious claimant will need to seek recognition and enforcement of the award by a court in the country where the losing party (or its assets) are located. Effectively, this will mean converting the award to a court order or a judgment and utilizing the enforcement mechanisms that are available under that country's law to comply with the order or execute on the judgment.

Obtaining recognition of an arbitration award may be accomplished more easily if the country where the award is to be recognized is a signatory to an international treaty designed for that purpose. For example, currently 172 countries are parties to the Convention

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1 https://s3.pushplanet.com/users/197990a3c42a4fb6b17b939a4dcce1f5/uploads/011be8c7ef824f00ae67032d392fa77d/2025_ICDRInfographic.pdf.

2 https://iccwbo.org/news-publications/news/icc-releases-preliminary-2025-dispute-resolution-statistics/#:~:text=In%202025%2C%20881%20cases%20were,in%20terms%20of%20case%20volume.

3 https://hkiac.org/about-us/statistics; https://www.hsfkramer.com/en_US/notes/arbitration/2026-02/hkiac-publishes-2025-statistics

4 https://unctad.org/publication/global-trade-update-january-2026-top-trends-redefining-global-trade-2026

on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), which is intended to facilitate the efficient recognition and enforcement of international arbitration awards. See list of signatories and parties.[5]

However, countries that become signatories may ratify only part of the New York Convention or adopt it with certain reservations or exclusions. Therefore, it is necessary to determine any limitations or reservations that may have been imposed when the country in question adopted the New York Convention. For example, many countries will recognize only awards that arise from commercial disputes, and only awards made in another country that is a signatory to the New York Convention and that will give reciprocal treatment to awards rendered in the country from which recognition is being sought.

Generally, parties to the New York Convention are expected to enforce arbitration awards of other party member countries. However, there exist certain limited grounds that may permit refusal to recognize and enforce. Those grounds are contained in Article V of the New York Convention. They are:

- Incapacity of a party to the arbitration agreement;
- Invalidity of the arbitration agreement;
- Lack of notice or an ability to present one's case (lack of due process);
- Award goes beyond the scope of what was submitted to arbitration;
- The composition of the arbitral authority or procedure was not in accordance with the parties' agreement or the law of the arbitral seat;
- The award is not yet a binding final award or it has been set aside in the country where made.

Recognition and enforcement may also be refused if under the law of the country being asked to enforce the award, the subject matter of the dispute is not allowed to be resolved by arbitration or recognition and enforcement would violate the public policy of that country.

In many countries, including Korea, there is a clear policy in favor of enforcing arbitration awards under the New York Convention, and challenges to enforcement usually end in failure.

Even if an award is not rendered in a country that is a party to the New York Convention, recognition and enforcement may still be available under the domestic laws of the country where recognition is being requested. In Korea, for example, awards that are not subject to the New York Convention may be recognized under Article 39(2) of the Korean Arbitration Act (KAA), and in accordance with the Civil Procedure Act and the Civil Execution Act, which also address recognition and enforcement of foreign judgments. In that case, a foreign arbitration award not subject to the New York Convention may be recognized and

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[5] https://www.newyorkconvention.org/list+of+contracting+states

enforced in Korea if all the following requirements are met:

1. That the international jurisdiction of such foreign court is recognized under the principle of international jurisdiction pursuant to the statutes or treaties of the Republic of Korea;

2. That a defeated defendant is served, by a lawful method, with a written complaint or document corresponding thereto, and notification of date or written order allowing him/her sufficient time to defend (excluding cases of service by public notice or similar), or that he/she responds to the lawsuit even without having been served such documents;

3. That the approval of such final judgment, etc. does not undermine sound morals or other social order of the Republic of Korea in light of the contents of such final judgment, etc. and judicial procedures;

4. That a mutual guarantee exists, or the requirements for recognition of a final judgment, etc. in the Republic of Korea and the foreign country to which the foreign country court belongs are not far off balance and have no actual difference between each other in important points.

Korean courts will investigate to determine if these requirements have been met. However, the court should grant a judgment of execution without making any examination as to whether the underlying judgment is correct or incorrect on the merits.

Consequently, counsel for the prevailing party should determine whether the country where enforcement is being sought is a signatory to the New York Convention, and if not, determine whether the domestic law of that country will still permit recognition and enforcement. A determination should also be made as to the requirements for recognition and enforcement if they are available under the domestic law.

It is prudent to conduct such research and/or to obtain information on recognition and enforcement requirements from counsel in the country where enforcement may be needed, in advance of initiating the arbitration (or litigation). That will help to ensure that all procedural requirements for recognition and enforcement occur during the litigation or arbitration proceedings to maximize the chances of the foreign award or judgment being found to be valid when the time comes to seek recognition and enforcement.

Foreign Judgment Recognition and Enforcement

Arbitration is a very popular dispute resolution method selected in cross-border commercial contracts. One major reason for that is because arbitrating parties have the benefit of the New York Convention and the many countries that have ratified it, making foreign recognition and enforcement more predictable. But there are still many cross-border disputes that are resolved through litigation.

The recognition and enforcement of foreign litigation judgments may be more challenging. While there are several conventions that are designed to facilitate the efficient recognition and enforcement of foreign judgments – the Hague Choice of Court Convention 2005 (applicable where contracting parties have agreed upon an exclusive jurisdiction clause) and the Hague Convention on the Recognition of Foreign Judgments in Civil and Commercial

Matters 2019 (applicable where contracting parties have not agreed on an exclusive jurisdiction clause), neither of these conventions has seen widespread acceptance yet. Only a small number of countries have ratified these conventions. Therefore, while it is important for counsel to determine whether either of these conventions will apply to their case, currently there is a strong likelihood that these conventions will not be available.

It is also possible that there are bilateral treaties and/or multilateral treaties between countries allowing for the reciprocal recognition and enforcement of foreign judgments. If such treaties exist between several countries, it is necessary to closely examine the terms of such treaties to determine their specific requirements, any limitations and exclusions, and other terms that might affect the recognition and enforcement of a particular judgment. Unfortunately, if you obtain a judgment in the United States, you will not find a treaty to assist in recognition and enforcement. Currently "there is no bilateral treaty or multilateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments." [6]

If the judgment in a particular case does not fall within the scope of a recognition and enforcement treaty, a country's domestic rules will apply. Most countries will likely have processes in place to enable foreign judgments to be recognized and enforced. However, in addition to examining rules and statutes themselves, it is important to also review domestic caselaw interpreting those rules because it is quite possible to find significant variation in how the rules and statutes are interpreted. This can result in widely divergent outcomes depending on which court or judge hears a case.

The domestic rules and laws on recognition and enforcement of foreign judgments in each country will likely contain specific requirements and exclusions that may affect the outcome. These may include limitations periods for recognition and enforcement actions to be initiated. There may be different processes and procedures that apply, depending on the type of judgment and/or the content of a judgment. For example, money judgments for compensatory damages may be enforceable, while judgments providing for punitive damages or granting injunctive relief may not be permitted. The public policy of some countries may prevent recognition in some cases. Likewise, if the country where the judgment was obtained does not recognize and enforce judgments from the country where recognition is being sought, that absence of reciprocity also could doom the request for recognition. A defendant, seeking to prevent recognition and enforcement is likely to raise any of these and other factors as defenses.

Once again, it is prudent for counsel to anticipate potential problems and tailor the litigation proceedings in a way that will enhance the chances of recognition if a judgment is obtained. Counsel should research in advance and inquire of counsel in the foreign country where enforcement might be needed, to determine the requirements and other factors before initiating the litigation. Local counsel can be especially helpful in advising on tips to avoid potential problems or defenses later based on local practices or cultural differences that might not be readily known or even knowable to a client or attorneys from another country. For

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[6] https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Enforcement-of-Judgements.html

example, knowledge of political or other conditions that exist in a particular country may impact how certain matters should be presented to increase the chances of success when seeking recognition and enforcement.

Due Diligence Before Acting

While your client may be eager to start an arbitration or litigation and seek the justice it deserves, there is another practical enforcement element that must be considered – collectability. It may do your client little good to get an award or a judgment that can be recognized in a foreign jurisdiction, if you cannot turn that award or judgment into cash that can be paid to your client.

The inability to collect is usually caused by the defendant having insufficient available assets to pay the judgment or award. But there could be other reasons, such as political considerations that may make an award uncollectable. For example, a foreign country's government may restrict the transfer of funds leaving the country because of insufficient foreign cash reserves. Or perhaps there are international sanctions against a country that will impact the ability to move funds through the local banking system. It is prudent to consult local counsel in the country where the defendant or its assets are located to determine if there are political, financial or other reasons why an award will be uncollectable, even if it is recognized by a court in that country.

Economic viability of the defendant is also a critical factor. If at all possible, it is sensible to do an asset search of the defendant before initiating the arbitration or litigation to assess its ability to pay the amount owed. Also, determine whether there are prejudgment procedures available to prevent dissipation of assets while the litigation or arbitration activities are proceeding. For instance, Korea has a provisional attachment process available to place liens on certain assets of a defendant, in advance of receiving a judgment. By obtaining a provisional attachment before initiating litigation or an arbitration, your client can ensure that certain assets will not be hidden or depleted before the litigation or arbitration proceedings are completed. Moreover, placing liens on the opposing party's assets often can lead to settlement negotiations that resolve a dispute without the need for litigation or arbitration taking place.