



Enforcement of Arbitral Awards in Asia

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INTRODUCTION

Arbitration as a means to solve contractual disputes often involving a variety of international parties, multinational concerns, global financial institutions and multi-lateral organizations is rapidly on the rise in Asia. This development goes hand in hand with growth in the region, with more arbitral institutions being set up in Asia in recent years and better capacity development in terms of handling complex and multivariate international matters. Arbitration, crucially, is increasingly seen as a better alternative to conventional litigation especially when it comes to cross-border disputes. Thanks to the New York Convention to which most countries are signatories, awards are easier to enforce in other jurisdictions than local court orders and the relevant parties are spared the problems of conflicting legislation or other local idiosyncrasies and disparities.

Nonetheless, parties to arbitration may still face practical challenges in the enforcement of their awards. While a greater general consensus around the efficiency and efficacy of enforcing international arbitral awards takes on fuller shape in Asia; nuances in national arbitration laws and practices across countries that may impact arbitral award enforcement must be considered. It thus remains essential that parties be advised by competent specialist practitioners attuned to certain local cultural sensitivities and fully-familiarized with enforcement proceedings in Asian courts.

In pursuit of these goals, this brief aims to cast greater light on the practical issues surrounding the enforceability of arbitral awards in Bangladesh, Cambodia, Hong Kong, Indonesia, the Lao PDR, Myanmar, Thailand and Vietnam.

DFDL DISPUTE RESOLUTION PRACTICE

As the emerging markets of Southeast and South Asia are rapidly growing, so are the complexity of investment projects, resulting in the exponential rise of commercial disputes, and thus the need for durable and reliable solutions to disputes related matters. As a full-service legal and tax advisory firm born in the Mekong region, DFDL is uniquely equipped to ensure that clients efficiently navigate local jurisdictional complexities and disparate corporate cultures, to avoid and overcome contentious challenges wherever possible.

Our dispute resolution practice includes advising clients on their legal recourse for disputes and on procedures related to mediation, arbitration, pre-litigation and litigation proceedings. This covers numerous areas, such as contract disputes, construction disputes, land disputes, international trade disputes, labor disputes, insolvency and bankruptcy, and more.

DFDL was established in 1994 and founded on a unique vision: to create an integrated legal and tax advisory firm, with in-depth knowledge of the developing jurisdictions in which we are based.

GALL DISPUTE RESOLUTION PRACTICE

Gall is a leading independent Hong Kong law firm focusing primarily on dispute resolution. We specialise in handling highly complex disputes, many of which involve multi-jurisdictional litigation.

Our partners all come from international firms and have practiced in Hong Kong or overseas for many years. They have a wealth of experience in a wide variety of litigation, mediation and arbitration. We use a partner led, team-based approach to complex litigation, drawing upon the legal and linguistic skills of lawyers with different areas of expertise. We ensure that we maintain an “around-the-clock” service to our clients.

KEY CONTACTS



NISHANT CHOUDHARY
Partner,
Head of Regional Dispute Resolution Practice, DFDL
nishant.choudhary@dfd.com



FELDA YEUNG
Of Counsel, GALL Solicitors
feldayeung@gallhk.com



General information on enforcement of arbitral awards

1. What types of arbitral awards are recognized and enforceable in your jurisdiction?

As per the Arbitration Act 2001, all types of arbitral awards are recognized and enforceable in Bangladesh subject to the satisfaction of the following conditions:

- (a) a party to the arbitration agreement was not under some incapacity;
- (b) the arbitration agreement is valid under the law to which the parties have subjected it;
- (c) the party making the application was given proper notice of the appointment of an arbitrator or of the arbitral proceedings;
- (d) the arbitral award deals with a dispute contemplated by or falling within the terms of the submission to arbitration or it does not contain decision on matters beyond the scope of the submission to arbitration;
- (e) the subject-matter of the dispute is capable of being settled by arbitration under the laws currently in force in Bangladesh;
- (f) the arbitral award is prima facie not opposed to the laws currently in force in Bangladesh;
- (g) the arbitral award is not in conflict with the public policy of Bangladesh;
- (h) the arbitral award is not induced or affected by fraud or corruption;
- (i) the award has become binding on the parties, or has not been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; and
- (j) the composition of the arbitral tribunal or the arbitral procedures was in accordance with the agreement of the parties or, absent such an agreement was in accordance with the laws of the country where the arbitration took place.

2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Bangladesh is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Procedure on enforcement of arbitral awards

3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?

An arbitral award can be enforced by filing an application before the District Courts of Bangladesh. In this regard the application is required to be filed along with the following:

- (a) the original arbitral award or a copy thereof duly authenticated in the manner required by the laws of the country in which it was made;
- (b) the original agreement for arbitration or a duly certified copy thereof; and
- (c) evidence as may be necessary to prove that the award is a foreign award (in the case of a foreign arbitral award).



Subsequently, the court will set a date for hearing for the motion hearing to assess whether the application is prima facie admissible or not. Thereafter, the court will set dates for as many hearings as may be required to reach a decision. Once the court is satisfied with the application, the court will issue a decree for execution and enforcement of the arbitral award.

4. Will the Court recognize and enforce decisions made in interlocutory proceedings?

Pursuant to the Arbitration Act 2001, a party to arbitration proceedings at any time before or during the proceedings or until enforcement of the award can file an application before the court seeking interim orders in relation to the following:

- (a) to appoint a guardian for minor or insane parties to represent such an individual on his/her behalf during the arbitral proceedings;
- (b) to take into interim custody of or sale of or other protective measures in respect of goods or property included in the arbitration agreement;
- (c) to restrain any party from transferring certain property or passing injunctions on the transfer of such property which is intended to create impediments to enforcement of an award;
- (d) to empower any person to seize, preserve, inspect, take photographs, collect specimens, examine, to take evidence of any goods or property included in an arbitration agreement and for that purpose to enter the land or building in possession of any party;
- (e) to issue any interim injunctions;
- (f) to appoint a receiver; and
- (g) to take any other interim protective measures which may appear reasonable or appropriate to the court.

An order of an arbitral tribunal requiring the taking of interim measures may be enforced by the court, on an application made by the party requesting the taking of such interim measures.

5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?

Enforcement of an arbitral award will be refused for failing to comply with any of the conditions set out in reference to our response in question 1.

Additionally, recognition or enforcement of a foreign arbitral award may be refused if the concerned foreign arbitral award contains decisions on matters beyond the scope of the submission to arbitration; the composition of the arbitral tribunal or the arbitral procedures were not in accordance with the agreement of the parties or, absent such an agreement was not in accordance with the law of the country where the arbitration took place; 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; or the subject matter of the dispute is not capable of settlement by arbitration under the laws for the time being in force in Bangladesh.

The courts of Bangladesh are bound to issue a decree to enforce an arbitral award subject to fulfillment of the conditions set out in reference to our response in question 1.

Where the time for making an application to set aside the arbitral award, has expired, or such application having been made, has been refused, the award shall be enforced under the Code of Civil Procedure, in the same manner as if it were a decree of the Court.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

Given the belabored nature of the court systems in Bangladesh, it can become quite time consuming to successfully obtain a decree from the courts of Bangladesh in relation to enforcing arbitral awards.



If the award is in a language other than English or Bangla, the party seeking enforcement of the award will have to produce an English translation of the award and associated documents certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other a manner as may be sufficient according to the laws in force in Bangladesh. This can be time consuming and translation services may be insufficiently available.

Challenges against an arbitral award

7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?
Yes, it is possible to appeal before the High Court Division against an arbitral award provided that the appellant is able to prove that the arbitral award is not consistent with the conditions mentioned in response 1.

An appeal can also be made against setting aside (or the refusal to do so) an arbitral award.

8. Can one appeal against arbitral awards and if yes, on what grounds?
Yes, pursuant to Sections 42 and 43 of the Arbitration Act 2001, it is possible to file an application before the courts of Bangladesh to set aside an arbitral award.

Future changes

9. Can one apply to set aside an arbitral award?
Yes, pursuant to Sections 42 and 43 of the Arbitration Act 2001, it is possible to file an application before the courts of Bangladesh to set aside an arbitral award.

10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?
Based on the publicly available information, we are not aware of any proposed changes or reforms regarding the law on enforcement of arbitral awards in Bangladesh.



Author: Guillaume Massin | Partner, Cambodia & Thailand Managing Director | guillaume.masiin@dfd.com



Author: Sophal Yun | Senior Consultant | sophal.yun@dfd.com



General information on enforcement of arbitral awards

1. What types of arbitral awards are recognized and enforceable in your jurisdiction?

An domestic or foreign arbitral award made, may be recognized and enforced in Cambodia through the competent courts of Cambodia in accordance with Cambodia’s applicable laws, including the Law on the Recognition and Enforcement of Foreign Arbitral Awards on 23 July 2001 (“**Law on Enforcement of Foreign Arbitral Awards**”), the Cambodian Code of Civil Procedure, promulgated on 6 July 2006 (“**Code of Civil Procedure**”) and the Commercial Arbitration Law of the Kingdom of Cambodia, dated 5 May 2006 (“**Arbitration Law**”).

Cambodia has been a party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (“**New York Convention**”) since 5 January 1960. Cambodia then enacted the Law on the Recognition and Enforcement of Foreign Arbitral Awards which requires Cambodian courts to decide in accordance with the New York Convention on the recognition and enforcement of foreign arbitral awards and sets out further procedures for the recognition and enforcement of foreign arbitral awards to be enforced in Cambodia.

Article 42 of the Arbitration Law provides that the Appellate Court of Cambodia has jurisdiction over recourse, recognition, and enforcement of arbitral awards. The Supreme Court of Cambodia is the final competent court with jurisdiction to decide on appeals by parties not satisfied with a decision rendered by the Appellate Court pursuant to Article 43 of the Arbitration Law.

2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Cambodia has been a party to the New York Convention since 5 January 1960.

Procedure on enforcement of arbitral awards

3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?

In an amicable manner, the parties may voluntarily and jointly implement the rendered arbitral award.

In the event that one of the parties does not comply with the arbitral award decision, the prevailing party is entitled to file an application requesting the court to issue an “order to enforce the arbitral award” in accordance with the Code of Civil Procedure.

According to Articles 353(5) and 353(6) of the Code of Civil Procedure, to enforce domestic arbitral awards, the Court of First Instance may issue such orders, whereas the Appeal Court holds primary jurisdiction in the case of foreign arbitral awards.

Nonetheless, Article 42 of the Arbitration Law broadly provides that jurisdiction over the recognition and enforcement of arbitral awards rests with the Appeal Court.



There appears to be some inconsistency between Article 353(1) of the Code of Civil Procedure and Article 42 of the Arbitration Law regarding jurisdiction over the enforcement of domestic arbitral awards. While we are not aware of any judicial or official interpretation on this matter, one potential interpretation is that Article 42 of the Arbitration Law should take precedence pursuant to Article 1 of the Code of Civil Procedure which provides that civil suit procedures will be governed by the provisions of this Code, unless otherwise specifically provided in different laws.

According to Article 353(2) of the Code of Civil Procedure and Article 45 of the Arbitration Law, the party filing a motion seeking enforcement of the arbitral award must submit: (a) a duly authenticated original arbitral award (or true copy thereof); and (b) the original arbitration agreement (or a true copy thereof). Furthermore, if the award or agreement is not made in Khmer, the party must supply a duly certified Khmer translation of it.

Article 353(9) of the Code of Civil Procedure provides that an order to enforce an arbitral award may be appealed. Pursuant to Article 43 of the Arbitration Law, the Supreme Court holds final jurisdiction to rule on an appeal by a party not satisfied with the decision of the Appellate Court.

Furthermore, Articles 353(3) and 353(4) of the Code of Civil Procedure and Article 46 of the Arbitration Law detail certain grounds on which the competent court may refuse to enforce an arbitral award, whether upon request by a party (to the extent proven by such party) or by the court itself due to public policy considerations or other similar factors.

A party may apply to the court to set aside an award made in Cambodia. There is no right of appeal regarding the substance of the dispute. The grounds for setting aside an award are found in Article 44 of the Arbitration Law. This replicates the 'set aside' provisions contained in Article 34 of the UNCITRAL Model Law. An arbitral award may be set aside by the Appeal Court and the Supreme Court only if the party making the application can prove any grounds to set aside an arbitral award provided under Article 44 of the Arbitration Law or the Appeal Court. The Supreme Court must determine that the subject matter of the dispute cannot be arbitrated pursuant to applicable Cambodian laws or that recognition of the arbitral award would be contrary to Cambodian public policy. A party has 30 days from the date of receiving the final award to submit an appeal that the award be set aside.

According to Article 44(4) of the Arbitration Law, the Appeal Court and Supreme Court, when requested to set aside an award, may, where appropriate and as requested by a party, suspend the setting aside proceedings for a period of time determined by such a court, in order to give the arbitral tribunal, the opportunity to resume arbitral proceedings or to take such other actions to nullify the grounds to set aside the award as the arbitral tribunal deems fit.

4. Will the Court recognize and enforce decisions made in interlocutory proceedings?

Article 25 of the Arbitration Law and Article 43 of the Arbitration Rules of the National Commercial Arbitration Center 2021 (“**NCAC Arbitration Rules**”) deal with the granting of interim injunctions. The NCAC is the main arbitral institution in Cambodia that handles commercial disputes and at the request of a party, and by reasoned award or order, may issue interim injunctions at any time prior to the date of the final award.

As the Arbitration Law permits the arbitral tribunal to grant interim injunctions, any order so issued will be legally enforceable and recognized by the Cambodian courts.

Pursuant to Article 43.2 of the NCAC Arbitration Rules, these interim measures must be necessary, urgent and do not prejudice the final judgment of the tribunal with regard to the merits of the case.

Interim measures include, among others, orders:

- (1) to maintain or restore the status quo pending resolution of the dispute;
- (2) to take action that would prevent, or to prevent the taking of action likely to cause (i) current or imminent harm or (ii) prejudice to the arbitration process itself;



- (3) to provide a means of preserving assets out of which a subsequent award may be settled; or
- (4) to preserve evidence that may be relevant and material to resolving the dispute.

Apart from the above, under Article 9 of the Arbitration Law and Article 43.8 of the NCAC Arbitration Rules, a party may request, before or during the arbitral proceedings, an interim injunction from the competent court. However, such a request shall not be deemed incompatible with the arbitration agreement or a waiver thereof, and this shall not affect the relevant powers of the arbitral tribunal.

Furthermore, a party who submits a request for an interim injunction to a court must, as soon as possible, notify the arbitral tribunal thereof and on any decision made.

5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?

The grounds on which the court may reject recognition and enforcement of an award are set out in Article 46 of the Arbitration Law and Article 15 of the Law on Enforcement of Foreign Arbitral Awards, and mirror those under the New York Convention. These grounds also reflect those set out in Article 36 of the UNCITRAL Model Law.

The grounds are as follows:

- (1) At the request of the opposing party, if such a party is able to furnish evidence confirming that:
 - (a) a party to the arbitration agreement was under some incapacity;
 - (b) the arbitration agreement is not valid under the law to which the parties have subjected it or by any indication by the parties, under Cambodian Law;
 - (c) the party making the application was not given proper notice of the appointment of an arbitrator(s) or of the arbitral proceedings, or was otherwise unable to effectively present his or her case;
 - (d) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of the arbitration agreement. This is provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside;
 - (e) the composition of the arbitral panel or the arbitral procedures were not in accordance with the agreement of the parties or, lacking such an agreement, not in accordance with the laws in force where the arbitration took place;
 - (f) the award has not yet become binding on the parties in the country in which, or under the law of which, that award was made, or the award has been set aside or suspended by a court in the country where the award was made;
 - (g) In the event that an application for setting aside or suspension of an award is submitted to the Appeal Court due to these grounds, the Appeal Court may, if it considers appropriate, adjourn its decision and may also, on the application of the party claiming recognition of the award, order the other party to provide appropriate security;
- (2) The Court of Appeal finds that the subject matter of the dispute is not capable of being settled by arbitration under the laws of Cambodia, or the recognition of the award would be contrary to Cambodian public policy.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

Subject to certain conditions provided under applicable Cambodian laws, the Cambodian courts will generally enforce foreign arbitral awards without re-trying the case or otherwise examining its merits. To-date, we understand that there are a few instances in which the competent court in Cambodia has ruled in favor of enforcing foreign commercial arbitral awards. In other words, there is generally no concern that the courts in Cambodia are unfavorably disposed to enforcing arbitral awards, regardless of whether they are domestic or foreign in nature.



Challenges against an arbitral award

<p>7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?</p>	<p>Subject to certain conditions provided under applicable Cambodian laws, the Cambodian courts will generally enforce foreign arbitral awards without re-trying the case or otherwise examining its merits. To-date, we understand that there are a few instances in which the competent court in Cambodia has ruled in favor of enforcing foreign commercial arbitral awards. In other words, there is generally no concern that the courts in Cambodia are unfavorably disposed to enforcing arbitral awards, regardless of whether they are domestic or foreign in nature.</p>
<p>8. Can one appeal against arbitral awards and if yes, on what grounds?</p>	<p>Under applicable Cambodia laws, there is no right of appeal regarding the substance of the dispute. However, there are grounds for refusal to enforce an arbitral award or setting aside an arbitral award. Please see the responses to Q5 and Q9.</p>

Future changes

<p>9. Can one apply to set aside an arbitral award?</p>	<p>(1) Yes, a party may apply to the court in Cambodia to set aside an arbitral award. The grounds for setting aside an arbitral award are found in Article 44 of the Arbitration Law. An arbitral award may be set aside by the Appeal Court and Supreme Court only if the party making the application furnishes proof that:</p> <ul style="list-style-type: none"> (a) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, as indicated by the parties, under Cambodian laws; or (b) the party making the application was not given proper notice of the appointment of an arbitrator(s) or of the arbitral proceedings, or was otherwise unable to effectively present his or her case; or (c) the award deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement. This is provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or (d) the composition of the arbitral tribunal or the arbitral procedures were not in accordance with the agreement of the parties, unless such an agreement was in conflict with a provision of the Arbitration Law from which the parties cannot derogate, or, failing such an agreement, was not in accordance with this law; or <p>(2) The Court of Appeal and Supreme Court find that:</p> <ul style="list-style-type: none"> (a) the subject matter of the dispute is not capable of settlement by arbitration under the laws of Cambodia; or (b) recognition of the award would be contrary to Cambodian public policy. <p>A party has 30 days from the date of receiving a final award to submit an application seeking that the award be set aside.</p> <p>According to Article 44(4) of the Arbitration Law, the Court of Appeal and Supreme Court, when asked to set aside an award, may, where appropriate and when so requested by a party, suspend the setting aside proceedings for a period of time determined by such a court, in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take other action that, in the arbitral tribunal’s considered opinion, will eliminate the grounds to set aside the award.</p>
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10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?

No, we are currently not aware of any such proposed changes or reforms.



General information on enforcement of arbitral awards

<p>1. What types of arbitral awards are recognized and enforceable in your jurisdiction?</p>	<p>An arbitral award made, whether in or outside of Hong Kong, can be enforced in Hong Kong once the leave of the Hong Kong Court is obtained, and judgment is entered in the terms of the award.</p> <p>As an arbitration-friendly jurisdiction, the Hong Kong Courts regularly hear and grant numerous applications for the recognition and enforcement of both domestic and international arbitral awards.</p>
<p>2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?</p>	<p>Hong Kong is a party to the following three main conventions and agreements on enforcement of arbitral awards:</p> <ul style="list-style-type: none"> (1) the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”); (2) the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (“Mainland-HK Arrangement”); and (3) the Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Hong Kong Special Administrative Region and the Macao Special Administrative Region (“HK-Macao Arrangement”).

Procedure on enforcement of arbitral awards

<p>3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?</p>	<p>The first step is to make an <i>ex parte</i> application to the Hong Kong Courts to enter into a judgment in the terms of the arbitral award.</p> <p>If uncontested, the application can be decided on the papers and, once leave has been obtained, the Court order is served on the defendant. The defendant will then have 14 days to apply to set aside this order granting leave to enforce. If no such application is made, then the Hong Kong Court will issue a judgment in terms of the arbitral award.</p> <p>Thereafter, all methods of enforcement of a judgment ordinarily available to a holder of a Hong Kong Court judgment, such as garnishing the debtor’s bank account, become available to the judgment creditor.</p>
<p>4. Will the Court recognize and enforce decisions made in interlocutory proceedings?</p>	<p>Yes, section 61(1) of the Arbitration Ordinance (Cap. 609) (“AO”) provides that with the leave of the Hong Kong Courts, any order or direction made by the tribunal is enforceable and section 61(5) of the AO makes clear that an order or direction granted by the tribunal includes an interim measure. Examples of interim measures include direction by the tribunal to: -</p> <ul style="list-style-type: none"> 1) maintain or restore the status quo pending determination of the dispute; 2) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm of prejudice to the arbitral process itself;



- 3) provide a means of preserving assets out of which a subsequent award may be satisfied; and
- 4) preserve evidence that may be relevant and material to the resolution of the dispute.

5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?

The AO is modelled on the United Nations Commission on International Trade Law (“**UNCITRAL**”) Model Law and overall, Hong Kong Courts follow the approach set out in the New York Convention. If the application for leave to enforce an arbitral award is contested, then the defendant will have to satisfy a high threshold of proving to the Hong Kong Courts that the case falls within the limited grounds for refusal of enforcement. The defendant will need to prove that:

- (1) a party to the arbitration was under some incapacity;
- (2) the arbitration agreement was not valid;
- (3) it was not given proper notice of the appointment of the arbitrator or the arbitral proceedings or was otherwise unable to present its case;
- (4) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;
- (5) the composition of the arbitral authority or arbitral procedure was not in accordance with the agreement of the parties or the law of the country where the arbitration took place; or
- (6) 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, it was made.

Overall, the Hong Kong Courts have residual discretion to refuse to enforce a convention award if the award is in respect of a matter which is not capable of settlement by arbitration under the laws of Hong Kong or it would be contrary to public policy to enforce the award. However, even where any of the grounds for refusal of enforcement has been proven, the Hong Kong Courts have a residual discretion to order enforcement.

The grounds for refusal of enforcement of non-convention awards are mostly identical to the grounds relating to convention awards. In addition, the Court can also refuse to enforce a non-convention award for any other reason the Court considers it just to do so.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

Hong Kong Courts have consistently adopted a pro-arbitration and pro-enforcement stance and have emphasised in numerous judgments that they will only interfere in limited circumstances.

The AO is modelled on the UNCITRAL Model Law and adopts well-established international practices. Section 3 of the AO expressly provides that subject to the observance of safeguards that are necessary in the public interest, the parties to a dispute should be free to agree on how the dispute should be resolved; and that the Hong Kong Courts should interfere in the arbitration of a dispute only in very limited circumstances as expressly provided for in the AO.

Hong Kong is the third most preferred seat in the world according to the 2021 Queen Mary University of London and White & Case International Arbitration Survey.



The Hong Kong Courts reinforced its favourable attitude towards arbitration by commenting that “parties should be entitled to expect that the [Hong Kong] Court will enforce arbitration agreements and arbitral awards made pursuant thereto as a matter of course”¹.

Further, to ensure that the AO’s objectives are respected, the Hong Kong Courts have the discretion to penalise a party’s unsuccessful challenge to the validity of an arbitration agreement or an arbitral award with an order to pay the successful party’s legal costs on an indemnity basis.

In **GM1 and GM2 v KC** [2019] HKCFI 2793, the Hong Kong Courts granted an interim anti-suit injunction requiring the defendant to withdraw or to seek a stay of legal proceedings commenced by it against the plaintiffs in the PRC, and restraining the defendant from commencing or pursuing any other proceedings relating to their dispute, otherwise than by arbitration as agreed between the parties.

Challenges against an arbitral award

7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?

Previously, if a successful party wanted to apply for the recognition and enforcement of an arbitral award both in China and Hong Kong, under the Mainland-HK Arrangement, it was not possible to file applications in both jurisdictions simultaneously.

The Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region (the “**Supplemental Arrangement**”) has now remedied this practical challenge in choosing which jurisdiction to take enforcement proceedings. Under this Supplemental Arrangement, parties are now permitted to make simultaneous applications to both the Hong Kong and Mainland Courts for the enforcement of arbitral awards, provided that the total value of assets to be enforced by the courts of the two jurisdictions must not exceed the amount determined.

8. Can one appeal against arbitral awards and if yes, on what grounds?

Under the AO, the adjudication of arbitration is final. Save for very limited grounds of procedural irregularity or arbitrator’s misconduct, there is a very low chance for appeal. Review based on merits is not allowed. In Hong Kong, parties may expressly agree in the arbitration agreement to the effect that an award may be appealed in certain limited circumstances, for instance if the arbitrator has made an error of law or has committed misconduct.

Future changes

9. Can one apply to set aside an arbitral award?

It is possible to apply to set aside an arbitral award if the party making the application is able to persuade the Hong Kong Courts that the limited grounds set out in Article 34 of the UNCITRAL Model Law is applicable.

Any application for setting aside must be made within 3 months from the date on which the party making that application received the award, or if there has been an application for the correction and interpretation of the award, 3 months from the date on which that request has been disposed of by the arbitral tribunal.

¹ Fung Hing Chiu Cyril v Henry Wai & Co (a firm) [2018] HKCFI 31



10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?

There is currently no need for proposed changes or reforms as the AO was recently amended on 19 May 2021 when the Arbitration (Amendment) Ordinance came into effect. This amendment gives effect to the Supplemental Arrangement discussed above.

Prior to this amendment, only Mainland arbitral awards rendered by “*recognized*” Mainland arbitral authorities were enforceable in Hong Kong. By virtue of the amendment to section 2 of the AO and by repealing section 97 of the AO, all arbitration awards made under the PRC arbitration law even if they are made by foreign arbitral authorities are now enforceable in Hong Kong.

Further, Section 93 (bar on parallel proceedings) of the AO has been repealed to allow simultaneous enforcement of an arbitral award in Hong Kong and in the Mainland as discussed above. This will be particularly useful in cases where the debtor has assets in both jurisdictions and the amendment is expected to bring about efficiency and, address the issues of limitation.



Author: Vinay Ahuja | Partner, Head of Indonesia Practice | vinay.ahuja@dfd.com



Author: Deby Tridata | Legal Adviser | deby.tridata@dfd.com



General information on enforcement of arbitral awards

1. What types of arbitral awards are recognized and enforceable in your jurisdiction?	Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution (“ Arbitration Law ”) regulates the recognition and enforcement of domestic and international arbitral awards.
2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?	1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“ New York Convention ”).

Procedure on enforcement of arbitral awards

3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?	The application for enforcement of international arbitral awards shall be submitted by the arbitrator(s) or its proxy to the Clerk of the Central Jakarta District Court, as the authorized institution to handle matters with respect to the recognition and enforcement of international arbitral awards. If the writ of execution is issued by the Chairman of the Central Jakarta District Court, further enforcement will be delegated to the Chairman of the District Court which has jurisdiction to enforce it.
4. Will the Court recognize and enforce decisions made in interlocutory proceedings?	There are no specific provisions that set out the procedures to recognize and enforce decisions made in interlocutory proceedings.
5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?	<p>The Court can refuse to enforce an international arbitral award if:</p> <ul style="list-style-type: none"> ▪ the award is rendered by an arbitrator(s) in a country which is not bound to Indonesia by a bilateral or multilateral treaty on the recognition and enforcement of international arbitration awards; ▪ the awards are limited to matters within the scope of Indonesian commercial legislation; and



- the awards must not contradict Indonesian public policy.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards? In handling the enforcement of international arbitral awards, the Central Jakarta District Court takes approaches in accordance with the prevailing laws and regulations, as well as the New York Convention, which has been ratified by Presidential Decree No. 34 of 1981. Also, the court shall take into account that the award must not contradict public policy.

Challenges against an arbitral award

7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they? Pursuant to the Arbitration Law, public policy violation is one of the grounds to refuse enforcement of an international arbitral award. However, the Arbitration Law does not define what is considered public policy.

8. Can one appeal against arbitral awards and if yes, on what grounds? No appeal to either the High Court or the Supreme Court may be lodged against a decision of the Chairman of the Central Jakarta District Court granting the recognition and enforcement of an international arbitral award. An appeal may be filed to the Supreme Court against a decision to refuse a recognition and enforcement an international arbitral award. However, decisions issued by the Supreme Court (applied for international arbitral awards involving the Republic of Indonesia as one of the parties) are final, thus they cannot be appealed.

Future changes

9. Can one apply to set aside an arbitral award? One can apply for the annulment of arbitral award with the following grounds:

- Letters or documents submitted for examination in the arbitration proceedings, were admitted to be false or deemed to be false after the judgment was rendered;
- A document that was decisive in nature and deliberately concealed by the opposing party is found; and
- The judgment was rendered as a result of fraud committed by one of the parties.

10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction? No.



General information on enforcement of arbitral awards

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| 1. What types of arbitral awards are recognized and enforceable in your jurisdiction? | Domestic and foreign arbitral awards can be enforced in the Lao PDR in accordance Law on Economic Dispute Resolution Law (No. 51/NA, dated 22 June 2018 (“ Economic Dispute Resolution Law ”), the Instruction on the Consideration by the People’s Court of Economic Arbitral Awards (No. 62/PC, 7 February 2019) (“ Supreme Court Guidelines ”), the Civil Procedure Law (No. 13/NA, 4 July 2012) (“ Civil Procedure Law ”), and the Law on Judgment Enforcement (No. 04/NA, 8 July 2008). |
| 2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to? | The Lao PDR is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “ New York Convention ”). |

Procedure on enforcement of arbitral awards

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| 3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction? | <p>Foreign arbitral award</p> <p>The Economic Dispute Resolution Law provides that Lao courts are required to consider the recognition of foreign arbitral awards and to this end, the procedures set out in the Civil Procedure Law and the Supreme Court Guidelines are applicable.</p> <p>The Civil Procedure Law provides that the court must consider a request for the recognition of a foreign arbitral award if the award:</p> <ul style="list-style-type: none"> (a) is made in a country which is a signatory to a treaty to which the Lao PDR is also a signatory; (b) does not have an adverse impact on the sovereignty, or contradict the laws of the Lao PDR; (c) does not have an adverse impact on security and social order. <p>Under the Civil Procedure Law and the Supreme Court Guidelines a foreign arbitral award may be submitted to a Lao diplomatic mission abroad. The award and the request must be translated into the Lao language and the request itself must be notarized by the Lao Notary Office. The Ministry of Foreign Affairs is charged with receiving requests for the recognition of foreign awards and must transmit these requests to the Ministry of Justice which shall, in turn, submit the request to the Supreme People’s Court. Upon examining the request, the Supreme People’s Court must transfer the request to the appropriate court having jurisdiction.</p> <p>The court considering the matter is required to make a decision within 30 days of receiving the request, however, it may only make a final order after affording the party against whom the award is made and who is a resident in Lao PDR an opportunity to be made aware of the request and offer any explanations to the court.</p> |
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	<p>Domestic arbitral award</p> <p>Once an arbitral award is issued, the parties may examine the award and they shall have 15 days within which to request corrections to an award or to seek an amendment to the quantum of the award.</p> <p>The parties may request a correction to an award if it contains manifest errors such as typographical or mathematical errors, provided that the correction of these errors does not alter the effect of the award. Any such request must be made within 15 days of the award being issued.</p> <p>If the quantum of an award is not the same as that claimed by one or both of the disputing parties then this may be amended too, upon request of either or both the parties within 15 days of the award being made. In such cases the arbitration panel may issue what is known as an “additional award” which is intended to supplement the original award.</p> <p>The People’s Court must issue a final judgment within 15 days from the date of receipt of the request. If the People’s Court does not confirm the award, the parties may request that the EDRC review the dispute or ask the People’s Court to consider making a decision.</p> <p>If the People’s Court does not confirm an award, the parties may request the EDCR re-arbitrate the matter, or to approach the court itself for a resolution to the matter.</p>
<p>4. Will the Court recognize and enforce decisions made in interlocutory proceedings?</p>	<p>Foreign arbitration</p> <p>An interim award made by a foreign arbitral tribunal would be enforceable in accordance with procedures noted above in Question 3.</p> <p>Domestic arbitration</p> <p>During the arbitration proceedings, the parties have the right to request that the arbitral tribunal propose that the Court issue an order to seize or sequester assets or to request any other measures to protect their interests, if such request is legally grounded. Upon receipt of such request from the arbitration tribunal on behalf of the parties, the Court shall make a decision within 5 days from the date of receipt of the request.</p>
<p>5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?</p>	<p>The People’s Court has a limited number of specified grounds upon which the request for recognition may be denied. These are:</p> <ul style="list-style-type: none"> (a) the award is not yet final; (b) the award is a default award, and the hearing was conducted in the absence of the party against whom it was made; (c) the case fell under the jurisdiction of the courts (and was therefore not arbitrable in the first place); (d) the award contradicts the Constitution and the laws of the Lao PDR; and (e) Other matters relating to the award (determined at the discretion of the court).



The Supreme Court Guidelines also provide for a number of additional grounds upon which a foreign award may not be recognized. It may be argued that these additional grounds are inconsistent with the Civil Procedure Law and therefore not effective, however it is advisable to assume that the courts may take them into account. These include instances where:

- (a) any disputant has legal incapacity to act;
- (b) the result of economic dispute resolution is inconsistent with the referring laws (which we assume to mean the procedural laws of the seat) or is inconsistent with the Lao PDR laws;
- (c) the award is not in effect or binding on the disputants or is cancelled, suspended or a final decision has been issued by the People’s Court or the foreign court in which the arbitration was conducted;
- (d) the award was made in a seat which is a non-member to the New York Convention;
- (e) the request does not fall under the jurisdiction of the Lao PDR court or cannot otherwise be resolved by the laws of Lao PDR;
- (f) the parties have not participated in the resolution; or
- (g) the dispute itself is under the jurisdiction of a Lao PDR court and the foreign or international arbitrator had no authority to resolve the dispute.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

Foreign arbitral award

Despite the laws providing a legal basis for the enforcement of foreign arbitral awards we are not aware of an instance where this has proceeded in the Lao PDR.

Domestic arbitration

Domestically, the Economic Dispute Resolution Law is being applied at an increasing rate due to continued economic dispute petitions being submitted for consideration and resolution. Based on our investigations with the Economic Dispute Resolution Centre (“EDRC”), the disputes which have been submitted to EDRC as of June 2020 are:

Dispute	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	June 2020
Total disputes	24	35	28	15	20	36	34	29	27	23	14
Between local parties	12	16	9	6	10	16	22	16	8	11	4
Local and foreign parties	12	19	17	8	9	17	10	13	17	12	10
Foreign party	0	0	2	1	1	3	2	0	2	0	0



Challenges against an arbitral award

<p>7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?</p>	<p>Despite the laws providing a legal basis for the enforcement of foreign arbitral awards we are not aware of an instance where this has proceeded.</p>
<p>8. Can one appeal against arbitral awards and if yes, on what grounds?</p>	<p>See response in Question 3 above.</p>

Future changes

<p>9. Can one apply to set aside an arbitral award?</p>	<p>The parties may request that the People’s Court set aside an arbitral award on the following bases:</p> <ul style="list-style-type: none">(a) The parties have not agreed to arbitrate the matter or the agreement to do so is void;(b) The composition of the arbitration panel did not comply with the parties’ agreement, laws, or regulations;(c) The conduct of the arbitration was not legally compliant;(d) The arbitration award was based upon falsified evidence or the arbitrator(s)’ impartiality was affected;(e) The dispute was not within the scope of the Economic Dispute Resolution Law; or(f) The award was excessive to the parties’ request or incomplete.
<p>10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?</p>	<p>We are not aware of any current proposed changes or reforms.</p>



Author: Nishant Choudhary | Partner, Head of Regional Dispute Resolution Practice | nishant.choudhary@dfd.com



Author: Rohan Bishayee | Legal Adviser | rohan.bishayee@dfd.com



General information on enforcement of arbitral awards

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| 1. What types of arbitral awards are recognized and enforceable in your jurisdiction? | An arbitral award made, whether in or outside of Myanmar, can be enforced in Myanmar in accordance with the Myanmar Arbitration Law 2016 (“AL”). Domestic and international arbitral awards are both recognized and enforceable through the Myanmar courts. |
| 2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to? | Myanmar is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”). |

Procedure on enforcement of arbitral awards

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| 3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction? | <p>In order to enforce an arbitral award, the party applying for recognition and enforcement of an arbitral award must produce the following evidence before the Court:</p> <ul style="list-style-type: none"> (a) the original award or duly certified copy thereof, duly authenticated in the manner required by the law of the country in which it was made; (b) the original arbitration agreement or duly certified copy thereof; and (c) evidence as may be necessary to prove that the arbitral award is a foreign arbitral award. <p>If the arbitral award or agreement is in a foreign language, the party must also provide an English translation, duly certified as a correct translation by a diplomatic or consular official or a sworn translator of the country.</p> <p>Arbitral awards are executed by a decree under the Myanmar Code of Civil Procedure (“CPC”).</p> |
| 4. Will the Court recognize and enforce decisions made in interlocutory proceedings? | Pursuant to Section 31 of the AL, an interim award made by an arbitral tribunal in the course of arbitration is enforceable and recognized by the court. However, if it related to a foreign arbitral award, the applicant must show to the court that such an award is a type of interim award that is recognized under Myanmar law. As per the AL, the following interim orders may be passed by the arbitral tribunal: |



- (a) security for costs;
- (b) disclosure of documents or interrogatories;
- (c) producing evidence by affidavit;
- (d) the preservation, interim custody or sale of any property under dispute;
- (e) taking samples from, any observation or conducting experiments upon any property under dispute;
- (f) preservation and interim custody of any evidence;
- (g) requiring security for the amount in dispute; or
- (h) issuing an interim injunction or taking other interim measures.

5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?

Part I:

Under Section 41 of the AL, enforceability of domestic awards may be refused on the following grounds:

- (1) A party to the arbitration agreement was under some incapacity; or
- (2) the arbitration agreement is not valid under the law to which the parties have agreed or, failing any indication thereon, under the laws of the Republic of the Union of Myanmar; or
- (3) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case; or
- (4) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matter beyond the scope of the submission to arbitration.

Proviso: If the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

- (5) the composition of the arbitral tribunal or the arbitral procedures were not in accordance with the agreement of the parties or was not in accordance with the AL.

Proviso: Such agreement was not in conflict with a provision of this Law from which the parties cannot derogate.

- (6) the subject-matter of the dispute is not capable of settlement by arbitration under existing laws; or
- (7) the award is in conflict with the national interest (public policy) of the Republic of the Union of Myanmar.

Part II:

Similarly, in accordance with Section 46 (b) and (c) the AL, the court may refuse to recognize and enforce an arbitral award, on the following grounds:

- (1) the parties to the arbitration agreement were under some incapacity under the law applicable to them;
- (2) the arbitration agreement is not valid under the law which the parties are subject to or, in the absence of any indication of the law applicable to the parties thereon, under the laws of the country where the award was made;



- (3) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or the arbitral proceedings were not properly conducted or, was otherwise unable to present his or her case in the arbitral proceedings;
- (4) the arbitral tribunal's award deals with a dispute not contemplated by or not falling within the terms of submission to arbitration pursuant to the arbitration agreement, or it contains decisions on matters beyond the scope of the submission to arbitration;
- (5) the composition of the arbitral tribunal or the arbitral procedures were not in accordance with the agreement of the parties or, lacking such an agreement, was not in accordance with the law of the country where the arbitration took place;
- (6) the arbitral 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 arbitral award was made.

Furthermore, the court may refuse to enforce the arbitral award if it finds any of the following facts:

- (1) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the State;
- (2) the enforcement of the arbitral award would be contrary to the national interests of the State.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

It is only recently that a court in Myanmar has granted an execution order to approve enforcement of a foreign court judgment against defendants in Myanmar. This is reported to be one of the first cases where the courts of Myanmar have accepted enforcement of an arbitral award.

Enforcement of arbitral awards in Myanmar since enforcement of the AL has largely been only theoretical despite the AL providing a clear legal basis for the recognition and enforcement of arbitral awards.

Due to the lack of precedents and experience of the courts, in practice we have thus seen few cases where arbitral awards have been enforced. However, with the acceptance of the application for enforcement of the arbitral award, we hope that the courts would be willing to recognize foreign decisions in future.

Challenges against an arbitral award

7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?

Despite the AL providing a legal basis for the enforcement of arbitral awards, courts in Myanmar have been reluctant to accept applications for enforcement of arbitral awards. With the lack of precedents and clearly laid down guidelines, courts also suffer from capacity issues as far as enforcement of arbitral awards is concerned. The court accepting such application in itself may often take more than a year and the final execution of enforcement may stretch to more than three years. We hope that in the near future the courts are cognizant of the AL and the New York Convention and there are more precedents so that clear guidance can be provided in relation to enforcement of arbitral awards. Importantly, the term public policy due to which an award may not be recognized, has not been defined either as law or precedent. This may see interpretational issues going forward, as it has been seen in other jurisdiction which are a party to the New York Convention.



8. Can one appeal against arbitral awards and if yes, on what grounds?

Parties have the right to appeal against arbitral awards under the AL.

As per Section 42 of the AL, for domestic arbitration:

- (1) any party may, with notice to the other parties and arbitral tribunals, appeal to the court on a question of law arising out of an arbitral award made in the arbitral proceedings.
- (2) However, if the parties have made a written agreement to exclude the right of appeal, no appeal shall lie under this section.
- (3) If the parties have made a written agreement to dispense with reasons for the arbitral award, no appeal shall lie under this section on such grounds.
- (4) An application for appeal shall identify the question of law to be determined and state the grounds on which the appeal should be granted.
- (5) If the court refuses to accept the appeal, there shall be no second appeal.

Under Section 47 of the AL, for foreign arbitral awards, any party has the right to appeal against the following orders passed by a competent court:

- (1) the order refusing to refer the parties to arbitration;
- (2) an order passed when the court intervenes in the proceedings;
- (3) an order setting aside or refusing to set aside the foreign arbitral award;

Future changes

9. Can one apply to set aside an arbitral award?

Yes, one can apply to set aside domestic and foreign arbitral awards in accordance with the AL.

The grounds under which a domestic arbitral award can be set aside are mentioned under Part I of Question 5.

The grounds under which a foreign arbitral award can be set aside are mentioned under Part II of Question 5. However, Section 46 (d) of the AL states that on the application of the party claiming enforcement of the arbitral award, it may pass an order to the party claiming to set aside a foreign arbitral award to furnish appropriate security.

10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?

We are not aware of any current proposed changes or reforms regarding the AL.



Author: Guillaume Massin | Partner, Cambodia & Thailand Managing Director | guillaume.massin@dfd.com



Author: Noppadon Treephetchara | Senior Legal Adviser | noppadon@dfd.com



General information on enforcement of arbitral awards

1. What types of arbitral awards are recognized and enforceable in your jurisdiction?

The arbitral award, irrespective of the country in which it was made, shall be recognized as binding on the parties, and upon petition to the competent court in Thailand, shall be enforced subject to the conditions below.

If an arbitral award is made in a foreign country, the award shall be enforced by the competent court in Thailand only if it is subject to an international convention, treaty, or agreement to which Thailand is a party. Such an award shall be applicable only to the extent that Thailand accedes to be bound by whichever instrument.

The Thai court may refuse to enforce the arbitral award due to the following conditions.

- (1) A party to the arbitration agreement was under some incapacity under the law applicable to that party;
- (2) The arbitration agreement is not binding under the law of the country agreed to by the parties, or failing any indication thereon, under Thai law;
- (3) The party making the application was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings or was otherwise unable to defend the case in the arbitral proceedings;
- (4) The award deals with a disputed not falling within the scope of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement. However, if the award on the matter which is beyond the scope thereof can be separated from the part that is within the scope of arbitration agreement, the court may set aside only the part that is beyond the scope of the arbitration agreement or clause;
- (5) The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or arbitration rules of an arbitration institute that rendered the award;
- (6) The arbitral award has not yet become binding, or has been set aside or suspended by a competent court or under the law of the country where it was made.
- (7) The award deals with a dispute not capable of being settled by arbitration under the law; or
- (8) The recognition or enforcement of the award would be contrary to social morality or public policy.

2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations, New York, 1958.



Procedure on enforcement of arbitral awards	
<p>3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?</p>	<p>The party that seeks enforcement of the arbitral award must file an application to the competent court within three years from the day that the award became enforceable.</p> <p>The applicant seeking enforcement of the award must produce the following documents to the court:</p> <ul style="list-style-type: none">(1) Original or certified copy of the arbitral award;(2) Original or certified copy of the arbitration agreement; and(3) Thai translation of the award and of the arbitration agreement by the translator who has taken an oath or who affirmed before the court or in the presence of an official or an authorized person, or certified by an official authorized to certify translations or by a Thai envoy or consul in the country where the award or the arbitration agreement was made. <p>After receiving the application, the court will serve a summons and copy of the application to a respondent and request the respondent to submit an answer within 15 or 30 days (depending on the type of summons).</p> <p>Whether the respondent shall submit the answer or not, the court will schedule a witness hearing and let the claimant present witnesses and evidence proving such claims regarding arbitral enforcement.</p> <p>Subsequently, the court will issue an order within 30 – 60 days after finishing the witness hearing.</p>
<p>4. Will the Court recognize and enforce decisions made in interlocutory proceedings?</p>	<p>Yes. A party to an arbitration agreement may file a motion requesting the competent court to issue an order imposing interim injunctions to protect his or her interests before or during the arbitral proceedings. If the court views that had such proceedings been conducted in court, the court would have been able to issue such an order, the court may proceed as requested.</p> <p>Where the court issues an order at the party's request as mentioned above, if the party filing the motion fails to carry out the arbitral proceedings within 30 days from the date of the court order or within the period prescribed by the court, that order shall be deemed cancelled upon the expiry of such a time period.</p>
<p>5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?</p>	<p>The Thai courts may refuse to enforce the arbitral award due to the following reasons.</p> <ul style="list-style-type: none">(1) A party to the arbitration agreement was under some incapacity under the law applicable to that party;(2) The arbitration agreement is not binding under the law of the country agreed to by the parties, or failing any indication thereon, under Thai law;(3) The party making the application was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings or was otherwise unable to defend the case in the arbitral proceedings;



	<ul style="list-style-type: none"> (4) The award deals with a disputed not falling within the scope of the arbitration agreement or contains a decision on matter beyond the scope of the arbitration agreement. However, if the award on the matter which is beyond the scope thereof can be separated from the part that is within the scope of arbitration agreement, the court may set aside only the part that is beyond the scope of arbitration agreement or clause; (5) The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or arbitration rules of an arbitration institute that rendered the award; (6) The arbitral award has not yet become binding, or has been set aside or suspended by a competent court or under the law of the country where it was made. (7) The award deals with a dispute not capable of settlement by arbitration under the law; or (8) The recognition or enforcement of the award would be contrary to social morality or public policy.
<p>6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?</p>	<p>The court would consider the following documents submitted by the plaintiff:</p> <ul style="list-style-type: none"> (1) Original or certified copy of the arbitral award; (2) Original or certified copy of the arbitration agreement; (3) Thai translation of the award and of the arbitration agreement by the translator who has taken an oath or who affirmed before the court or in the presence of an official or an authorized person, or certified by an official authorized to certify translations or by a Thai envoy or consul in the country where the award or the arbitration agreement was made. <p>If the claimant cannot present the justified aforesaid documents, the court is likely to dismiss the claim.</p> <p>On the other hand, if the claimant is able to present such documents and there are no justified arguments and evidence raised by the respondent, the court is likely to render its judgment directing compliance with the arbitral award.</p>

Challenges against an arbitral award

<p>7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?</p>	<p>Yes. Respondents normally raise the following challenges to motions requesting arbitral enforcement.</p> <ul style="list-style-type: none"> (1) A party to the arbitration agreement was under some incapacity under the laws applicable to that party; (2) The arbitration agreement is not binding under the law of the country agreed to by the parties, or failing any indication thereon, under Thai law; (3) The party making the application was not given proper advance notice of the appointment of the arbitral tribunal or of the arbitral proceedings or was otherwise unable to defend the case in the arbitral proceedings; (4) The award deals with a disputed not falling within the scope of the arbitration agreement or contains a decision on matters beyond the scope of the arbitration agreement. However, if the award on the matter which is beyond the scope thereof can be separated from the part that is within the scope of the arbitration agreement, the court may set aside only the part which is beyond the scope of the arbitration agreement or clause; (5) The composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties or arbitration rules of an arbitration institute that rendered the award; (6) The arbitral award has not yet become binding, or has been set aside or suspended by a competent court or under the law of the country where it was made.
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	<p>(7) The award deals with a dispute not capable of being settled by arbitration under the law; or (8) The recognition or enforcement of the award would be contrary to social morality or public policy.</p>
<p>8. Can one appeal against arbitral awards and if yes, on what grounds?</p>	<p>Yes, but the grounds for an appeal allowed by law are limited as follows:</p> <ul style="list-style-type: none">(1) The recognition or enforcement of the award is contrary to public policy;(2) The order or judgment is contrary to the provisions of law concerning public policy;(3) The order or judgment is not in accordance with the arbitral award; or(4) The judge who presided over the case gave a dissenting opinion.
<p>Future changes</p>	
<p>9. Can one apply to set aside an arbitral award?</p>	<p>Yes. Challenging the arbitral award may be done by filing a motion seeking the setting aside of the arbitral award to the competent court within 90 days following receipt of a copy of the award or after the correction or interpretation or issuance of an additional award.</p>
<p>10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?</p>	<p>After checking with the government agency, there is no plan to revise or update the law in relation to enforcing arbitral awards.</p>



General information on enforcement of arbitral awards

1. What types of arbitral awards are recognized and enforceable in your jurisdiction?

Under Vietnamese law, only arbitral awards by way of foreign arbitration may be recognized and enforced in Vietnam.

For your information, foreign arbitral awards are considered by Vietnamese courts for recognition and enforcement in Vietnam under two legal bases:

- (1) the country of the foreign arbitration forum and Vietnam are members of a relevant international treaty, and
- (2) there are grounds to apply the reciprocity principle with countries with which Vietnam does not have a treaty.

Only the person whose favour in an arbitral award is enforced (i.e., a judgment creditor) or its legal representative may petition the Vietnamese courts to recognize and enforce a foreign arbitral award in Vietnam.

2. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Vietnam is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention). In addition, Vietnam has also entered into 14 treaties on mutual legal assistance dealing with the recognition and enforcement of civil judgments and decisions of foreign courts, foreign arbitral awards, including agreements with: Russia, the Czech Republic, Slovakia, Poland, Hungary, Bulgaria, Cuba, the Lao PDR, China, North Korea, Ukraine, Belarus, France, and Mongolia respectively.

Procedure on enforcement of arbitral awards

3. What is the general procedure for the enforcement of arbitral awards in your jurisdiction?

Step 1: Filing

The person or entity seeking recognition and enforcement of a foreign arbitral award in Vietnam must, either directly or via his or her representative, file a petition with the Ministry of Justice of Vietnam.

Step 2: Transfer of the application dossier to the competent Vietnam courts

Within five days from the date of receipt of the petition and attached documents, the Ministry of Justice will forward the file to the competent court.

Step 3: Receipt and acceptance of the application dossier



Within five days from the date of receipt of the file, the competent court shall check the file for acceptance and notify the person or entity against whom the enforcement is sought and the procuracy at the same level.

Step 4: Consideration of the application dossier

Within two months from the date of acceptance, unless the petition examination process is suspended pursuant to the law, the court will issue a decision to hold a court hearing to examine the petition, which shall be held within 20 days from the date of such a decision.

Step 5: Court hearing

The court meeting to examine the petition will be conducted by a panel of three judges under the supervision of a prosecutor from the procuracy of the same level. Unless the court rejects the petition, the court will make a decision on recognition and enforcement of the foreign arbitral award of the court (the “**Recognition Decision**”).

Step 6: Sending the decision on recognition and enforcement of the foreign arbitral award of the court (the “Decision”)

Within 15 days from the date of the decision on recognition and enforcement, or on non-recognition in Vietnam of a foreign arbitral award, the court must send the Decision to the parties concerned or their legal representatives, the Ministry of Justice and the procuracy at the same level.

Step 7: Appeal against the court decision

The concerned parties have the right to make an appeal against the Decision within 15 days from the receipt of such a decision.

The chief prosecutor of the provincial procuracy or the chief prosecutor of the supreme procuracy also has the right to appeal the Decision. The time limit for an appeal is seven days for a provincial procuracy and 10 days for the supreme procuracy from the date of receipt of such a decision.

Step 8: Review of the appeal/the protest

The recognition and enforcement of the award will finally be decided by the supreme court within one month from the date of receipt of the appeal or the protest (the “**Supreme Court Decision**”).

Step 9: Request for enforcement of the award

The Supreme Court Decision takes effect from its date and may be appealed according to cassation or retrial procedures in accordance with the law.

4. Will the Court recognize and enforce decisions made in interlocutory proceedings?

Vietnamese law only sets out the process for recognition and enforcement of foreign arbitral awards in Vietnam. Vietnamese law is silent on procedures for recognition and enforcement of decisions made in interlocutory proceedings. Under Vietnamese law, a foreign arbitral award to be considered for recognition and enforcement in Vietnam must be a final award of a foreign arbitration panel dealing with the entire contents of the dispute, concluding the arbitration proceedings and being enforceable.



5. On what grounds can a Court in your jurisdiction refuse the enforcement of an arbitral award?

The court does not recognize a foreign arbitral award when considering that the evidence supplied by the enforcer to the court in order to object to the petition for recognition is grounded and legal, and the arbitration award falls under one of the following cases:

- (1) The parties signing the arbitration agreement did not have the capacity to sign such an agreement in accordance with the laws applicable to each party;
- (2) The arbitration agreement did not have legal effect in accordance with the law of the country selected by the parties for application, or in accordance with the law of the country where the award was issued, if the parties did not select an applicable law for such an agreement;
- (3) The agency, organization or individual against which the award is to be enforced was not notified in a timely and proper manner of the appointment of arbitrators, of the procedures for resolution of the dispute by foreign arbitration, or cannot exercise their litigation rights due to another legitimate reason;
- (4) The foreign arbitral award was pronounced on a dispute for which resolution was not requested by the parties, or which exceeds the request of the parties that signed the arbitration agreement. Where it is possible to separate the section of the decision on matters which were requested from the section of the decision on matters which were not requested to be resolved by foreign arbitration, the section of the decision on matters which were requested to be resolved may be recognized and enforced in Vietnam;
- (5) The composition of foreign arbitrators or the procedures for dispute resolution of foreign arbitrators did not conform with the arbitration agreement or with the law of the country where the foreign arbitral award was pronounced, if the arbitration agreement is silent on such issues;
- (6) The foreign arbitral award is not yet binding on the parties;
- (7) The foreign arbitral award has been rescinded or suspended from enforcement by a competent agency of the country where the award was pronounced, or of the country's applicable laws.

A foreign arbitral award shall also not be recognized if a Vietnamese court considers that:

- (1) The dispute may not be resolved by arbitration proceedings in accordance with Vietnamese law;
- (2) The recognition and enforcement of the foreign arbitral award in Vietnam is contrary to the basic principles of Vietnamese law.

Note: It should be noted that Vietnamese law does not clearly define what constitutes "basic principles of the Vietnamese law". This is a broad concept and hence is vague. In practice, it is often difficult and complicated (if possible, at all) to get a foreign arbitral award recognized and enforced in Vietnam.

6. What is the approach taken by the Courts in your jurisdiction regarding enforcement of arbitral awards?

Upon considering a petition for recognition and enforcement, the court shall not re-hear the dispute on which foreign arbitrators have issued an award. The court shall only check and compare the foreign arbitral award and the documents and materials accompanying the petition as prescribed by law, or other relevant provisions of Vietnamese law and international treaties of which Vietnam is a member, as the basis for issuance of a decision on recognition or non-recognition of such an award.

Challenges against an arbitral award

7. Are there any practical challenges for enforcing arbitral awards in your jurisdiction? If yes, what are they?

The most common reasons to reject recognition and enforcement include:

- (1) such arbitration tribunals had failed to properly serve the party against whom enforcement is sought with process of the tribunals;
- (2) such arbitral awards, if recognized, would be contrary to the basic principles of Vietnamese law, and



(3) there is a lack of authority for the parties to enter into the arbitration agreement or signing formalities had not been complied with.

In the past, Vietnamese courts tended to reject foreign arbitral awards. Only a limited number of foreign arbitral awards were recognized by the Vietnamese courts. Recently, it appears that the Vietnamese courts have changed their approach and are increasingly leaning towards giving permission to recognize and enforce foreign arbitral awards.

8. Can one appeal against arbitral awards and if yes, on what grounds?

As mentioned in Step 7 in Question 3 above, only the concerned parties or the chief prosecutor of the provincial procuracy or the chief prosecutor of the superior procuracy have the right to appeal the Decision.

Future changes

9. Can one apply to set aside an arbitral award?

In line with our response in Question 4, Vietnamese law only sets out the process for recognition and enforcement of foreign arbitral awards in Vietnam. Vietnamese law is silent on other procedures such as the process for setting aside an arbitral award.

10. Are there currently any proposed changes or reforms regarding the law on enforcement of arbitral awards in your jurisdiction?

The current effective regulations on recognition and enforcement of foreign arbitral awards is the Civil Proceedings Code No. 92/2015/QH13 issued by the National Assembly of Vietnam dated 25 November 2015. At this moment, there is no news on proposed changes or amendments to the Civil Proceedings Code.

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KEY CONTACTS


Nishant Choudhary
Partner,
Head of Regional Dispute Resolution Practice
nishant.choudhary@dfd.com



Audray Souche
Managing Partner
audray.souche@dfd.com



Guillaume Massin
Partner, Managing Director of Cambodia & Thailand
guillaume.massin@dfd.com



Vinay Ahuja
Partner, Head of Regional Banking, Finance & Technology Practice, Indonesia Practice & India Desk
vinay.ahuja@dfd.com



Shahwar Nizam
Partner,
Managing Director of Bangladesh
shahwar.nizam@dfd.com



Paul Volodarsky
Senior Legal Adviser, Deputy Head of Regional Real Estate & Construction Practice
paul.volodarsky@dfd.com



Noppadon Trephetchara
Senior Legal Adviser, Thailand
noppadon@dfd.com



Anne Coulon
Regional Legal Adviser, Thailand
anne.coulon@dfd.com



Bulbul Ahmed
Senior Associate, Bangladesh
bulbul.ahmed@dfd.com



Sophal Yun
Senior Consultant, Cambodia
sophal.yun@dfd.com



Rohan Bishayee
Legal Adviser, Myanmar
rohan.bishayee@dfd.com

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- Taxation disputes

SELECTED EXPERIENCE

Global healthcare provider: Alternative solutions of potential arbitration in Bangladesh or alternatively by way of enforcing a foreign judgement (Singapore or Bangkok) in Bangladesh.

Japan Tobacco International: Customs duty dispute in Cambodia on importation and distribution of tobacco products, impact of ASEAN free trade agreements (ASEAN-China FTA), liaising with Customs department.

A Hong-Kong listed gaming operator: Dispute over a long-term casino management contract with the owner of a casino in Vietnam.

A US-based energy services company: Employment dispute between a former employee on the unauthorized use and potential theft of corporate trade secrets in Thailand. The dispute was ultimately resolved by settlement and secure collection and removal of all proprietary information from the devices and cloud computing accounts of the former employee.

Facility maintenance company: Provided opinion regarding the Anti-Corruption and Bribery Laws in Myanmar. The case was related to arbitration proceedings in Paris which were brought about against the company which was involved an aspect of anti-corruption and bribery in Myanmar. Expert statement provided by DFDL.

A pesticide company: An industrial relations case registered in Semarang Industrial Relations Court in Indonesia in relation to an industrial relations dispute filed by a labor union.

A Thailand commercial bank: Court proceedings for creditor against debtor of USD 3 million in debt through revolving loan facilities in Cambodia.



DFDL offices

Bangladesh Dhaka bangladesh@dfd.com	Lao PDR Vientiane laos@dfd.com	Myanmar Naypyidaw Yangon myanmar@dfd.com
---	--------------------------------------	---

Singapore Singapore singapore@dfd.com	Thailand Bangkok thailand@dfd.com Samui samui@dfd.com	Vietnam Hanoi hanoi@dfd.com Ho Chi Minh City hcmc@dfd.com
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DFDL collaborating firms

Cambodia Sanin & Associates Phnom Penh cambodia@dfd.com	Indonesia Mataram Partners Jakarta indonesia@dfd.com
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Philippines
Ocampo & Suralvo Law Offices
Manila
info@ocamposuralvo.com

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KEY CONTACTS



Nick Gall
Senior Partner
+852 3405 7629
nickgall@gallhk.com



Chris Wong
Executive Partner
+852 3405 7620
chriswong@gallhk.com



Felda Yeung
Of Counsel
+852 3405 7674
feldayeung@gallhk.com



CONTACT US +852 3405 7688

info@gallhk.com [Gall Solicitors](#) [Gall_Solicitors](#)

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