

**Hypothetical Draft Convention on the International  
Enforcement of Arbitration Agreements and Awards**

**TEXT**

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*Article 1 – Field of Application*

1. This Convention applies to the enforcement of an arbitration agreement if:
  - (a) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their place of business or residence in different States, or
  - (b) the subject matter of the arbitration agreement relates to more than one State.
2. This Convention applies also to the enforcement of an arbitral award based on an arbitration agreement referred to in paragraph 1.
3. Where this Convention refers to the enforcement of an arbitral award, it comprises the recognition of an arbitral award.

*Article 2 – Enforcement of Arbitration Agreement*

1. If a dispute is brought before a court of a Contracting State which the parties have agreed to submit to arbitration, the

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court shall, at the request of a party, refer the dispute to arbitration, subject to the conditions set forth in this article.

2. The court shall not refer the dispute to arbitration if the party against whom the arbitration agreement is invoked asserts and proves that:

- (a) the other party has requested the referral subsequent to the submission of its first statement on the substance of the dispute in the court proceedings; or
- (b) there is *prima facie* no valid arbitration agreement under the law of the country where the award will be made; or
- (c) arbitration of the dispute would violate international public policy as prevailing in the country where the agreement is invoked.

3. The court may on its own motion refuse to refer the dispute to arbitration on ground (c) mentioned in paragraph 2.

### *Article 3 – Enforcement of Award – General*

1. An arbitral award shall be enforced exclusively on the basis of the conditions set forth in this Convention.

2. The law of the country where enforcement is sought shall govern the procedure for enforcement of the award.

3. There shall not be imposed onerous requirements on the procedure for enforcement nor substantial fees or charges.

4. Courts shall act expeditiously on a request for enforcement of an arbitral award.

*Article 4 – Request for Enforcement*

1. Fulfillment of the conditions set forth in this article entitles the party seeking enforcement to be granted enforcement of the arbitral award, unless the court finds that a ground for refusal is present under the conditions set forth in articles 5 and 6.
2. The party seeking enforcement shall supply to the court the original of the arbitral award.
3. Instead of an original of the arbitral award, the party seeking enforcement may submit a copy certified as conforming to the original. The certification shall be in such form as directed by the court.
4. If the arbitral award is not in an official language of the court before which enforcement is sought, the party seeking enforcement shall, at the request of the other party or the court, submit a translation. The translation shall be in such form as directed by the court.

*Article 5 – Grounds for Refusal of Enforcement*

1. Enforcement of an arbitral award shall not be refused on any ground other than the grounds expressly set forth in this article.
2. Enforcement shall be refused on the grounds set forth in this article in manifest cases only.
3. Enforcement of an arbitral award shall be refused if, at the request of the party against whom the award is invoked, that party asserts and proves that:
  - (a) there is no valid arbitration agreement under the law of the country where the award was made; or

- (b) the party against whom the award is invoked was not treated with equality or was not given a reasonable opportunity of presenting its case; or
- (c) the relief granted in the award is more than, or different from, the relief sought in the arbitration and such relief cannot be severed from the relief sought and granted; or
- (d) the composition of the arbitral tribunal was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; or
- (e) the arbitral procedure was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; or
- (f) the award is subject to appeal on the merits before an arbitral appeal tribunal or a court in the country where the award was made; or
- (g) the award has been set aside by the court in the country where the award was made on grounds equivalent to grounds (a) to (e) of this paragraph; or
- (h) enforcement of the award would violate international public policy as prevailing in the country where enforcement is sought.

4. The court may on its own motion refuse enforcement of an arbitral award on ground (h) of paragraph 3.

5. The party against whom the award is invoked cannot rely on grounds (a) to (e) of paragraph 3 if that party has not raised them in the arbitration without undue delay after the moment when the existence of the ground became known to that party.

*Article 6 – Action for Setting Aside Pending in Country of Origin*

1. If the application for setting aside the award referred to in article 5(3)(g) is pending in the country where the award was made, the court before which the enforcement of the award is sought under this Convention has the discretion to adjourn the decision on the enforcement.
2. When deciding on the adjournment, the court may, at the request of a party, require suitable security from the party seeking enforcement or the party against whom the award is invoked.

*Article 7 – More-Favourable-Right*

If an arbitration agreement or arbitral award can be enforced on a legal basis other than this Convention in the country where the agreement or award is invoked, a party seeking enforcement is allowed to rely on such basis.

*Article 8 – General Clauses*

The General Clauses to be considered and possibly included in the Draft Convention include amongst others:

- (a) Designation of Competent Enforcement Court
- (b) Interpretation
- (c) Relationship with the New York Convention
- (d) References to the New York Convention in other treaties
- (e) Compatibility with other treaties
- (f) [No] reservations
- (g) General reciprocity (see also § **Error! Reference source not found.**)
- (h) Applicability of the Draft Convention to territories and in federal states
- (i) Signature, ratification and accession, and deposit
- (j) Entry into force
- (k) Retroactive [in]applicability; transitional clauses
- (l) Denunciation
- (m) Notifications
- (n) Language of authentic texts.