

HARMONISING JUDICIAL APPROACHES TO DETERMINING THE ENFORCEABILITY OF FOREIGN ANNULLED AWARDS

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ABSTRACT

Judicial enforcement of foreign annulled awards has engendered fervent debate. Pursuant to Article V(1)(e) of the New York Convention, the enforcement court may refuse to enforce an award which has been set aside in “the country in which, or under the law of which, that award was made”. Yet some enforcement courts have allowed enforcement notwithstanding such annulment, primarily on two bases. The first basis is that Article V(1)(e) is a discretionary ground for non-enforcement. The second basis is that Article VII(1) of the New York Convention allows enforcement through the application of the more favourable law.

This paper examines the judicial disparities in determining the enforceability of foreign annulled awards, and explores the reasons for such disparities. It analyses the various approaches to enforcing foreign annulled awards, highlighting any controversies and challenges for the judiciary. It emphasises the need for harmonious and effective interaction between annulment and enforcement of arbitral awards, as well as between recognition of foreign judgments and foreign awards. It offers recommendations on determining the enforceability of foreign annulled awards under New York Convention Articles V(1)(e) (the annulment exception to

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enforcement), VII(1) (the more favourable enforcement provision) and V(2)(b) (the public policy exception to enforcement).

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