

# REMEDIES AT THE SEAT AND ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS: RES JUDICATA, ISSUE ESTOPPEL AND ABUSE OF PROCESS IN ENGLISH LAW

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## ABSTRACT

*Beyond the effect of a judgment setting aside the award, the relationship between a challenge of the award in the State of the seat and enforcement under Article V of the New York Convention is unclear. This article explores the effect of a judgment rejecting a challenge of the award at the seat of the arbitration in enforcement proceedings. In particular, it examines whether such a judgment, if recognized, gives rise to an estoppel in enforcement proceedings, which would preclude the party opposing enforcement from re-litigating issues that have been decided by, or could have been raised before, the supervisory court. Furthermore, this article discusses whether a party who does not challenge an arbitral award at the seat of the arbitration can raise, in enforcement proceedings, a defence that could have been a ground for challenging the award at the seat of the arbitration. Broadly, the answer to these questions has been that a party is not under a duty to challenge the award at the seat and that a judgment rejecting a challenge of the award at the seat does not prevent the unsuccessful party from opposing the enforcement of the award in*

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*a foreign country. This article challenges this general assumption and demonstrates how the English law doctrines of res judicata, issue estoppel and abuse of process may prevent a party from opposing enforcement on grounds that have been, or could have been, raised at the seat of the arbitration.*

**KEYWORDS:** *international arbitration, challenges, New York Convention, enforcement, res judicata, estoppel, abuse of process*