Enforcement of Arbitration Awards (including state immunity from execution)

An analysis of English, French and Indian Law

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ENGLAND
Enforcement of Arbitral Awards under English law: Basics

- An award made by an arbitral tribunal pursuant to an arbitration agreement is immediately enforceable.

- Enforcement proceedings are necessary only if the losing party refuses to comply with the award.

- Enforcement means giving an award the same effect as a domestic court judgement, which then serves as the official basis of further execution.

- There is a slight difference between obtaining ‘permission to enforce’ (ss66(1) and 101(2)) and ‘entering judgment’ (ss66(2) and 101(3)).

- When considering enforcement, it is important to distinguish different types of awards. Partial awards that dispose some, but not all issues in the arbitration are enforceable in the same way as a final awards. Interim or provisional awards (such as an order to make an interim payment on account of costs of the arbitration) are not enforceable. It is therefore sensible to secure a final partial award whenever possible, instead of an interim or provisional award.
Enforcement of Arbitral Awards under English law: Basics

- The [English] Arbitration Act 1996 (Act) provides three routes of enforcement. I suggest trying them in the following order:

a. Enforcement under the New York Convention (ss100 to 103 of the Act), which specifies limited grounds for refusing recognition and enforcement.

b. Seeking permission to enforce on a without notice basis (s66). This is akin to a summary procedure under CPR 24 and is available for domestic as well as foreign awards.

c. Bringing ‘an action’ on the award for breach of the implied term that the parties agreed to comply with the award when they signed the arbitration agreement. This is a new cause of action with a limitation of six years.
Enforcement under the New York Convention in England

- The UK is a signatory and has enacted the New York Convention into domestic legislation (ss100 to 104 of the Act).

- Signatory states are allowed to make certain reservations (article I.3 of the NY Convention). The most popular is a reservation on grounds of reciprocity. States may limit the applicability of the Convention to awards made in reciprocating states. The United Kingdom applies the Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

- If the award is made in a NY Convention state and the assets are also located in a NY Convention state (with reciprocal status) then enforcement should be straightforward.

- Enforcement simply requires the court to give judgment “in terms of the award” itself and does not permit a review of the award.
Defences to enforcement of New York Convention Awards in England (s103)

- If a party to the arbitration agreement was under some incapacity, to be judged under the law applicable to the party (s103(2)(a))
- The arbitration agreement was not valid under the governing law or under the law of the seat (s103(2)(b))
- A party was not given proper notice of the appointment of the tribunal or proceedings or was otherwise unable to present its case (s103(2)(c))
- The award deals with an issue not falling within the terms of arbitration (s103(2)(d))
- The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties or laws of the country in which the arbitration took place (s103(2)(e))
- The award has not yet become binding on the parties or has been set aside by a competent authority of the country of governing law or seat (s103(2)(f))
- The award is in respect of a matter not capable of settlement by arbitration (s103(3))
- Enforcement of the award would be contrary to public policy (s103(3))
Defences to enforcement under s103 (in England)

- Refusal to enforce on one of the aforesaid grounds is at the court’s discretion. *China Agribusiness Development Corporation v Balli Trading* [1998] 2 Lloyd’s 76.


- The defence can be taken in England even if it was not challenged / appealed at the seat. *Dallah v Ministry of Religious Affairs* [2010] UKSC 46.
Enforcement under s66 (in England)

- An award made by a tribunal may, by leave of the court, be enforced in the same manner as a judgment or order of the court.

- Where leave is so given, judgment may be entered in identical terms to the award. Care should be taken because if the award merges with the judgment, it may not be possible to take advantage of the enforcement provisions of a particular arbitration convention.

- This can be used for domestic as well as international awards.

- It is known as a ‘summary procedure’ because the procedure is straightforward.
Defences to enforcement under s66 (in England)

**Mandatory grounds for refusing enforcement**
- The court will not grant leave to enforce an award where the defendant shows that the tribunal lacked substantive jurisdiction to make the award (s66(3)).
- However the right to raise such an objection may have been lost if the objection was not raised without delay under s73 or within 28 days of the date of the award.

**Discretionary grounds for refusing enforcement**
- These are similar to the defences against enforcement of a New York Convention award.
- In addition, the Court may refuse enforcement if it considers the award invalid on grounds of public policy. This includes situations when the Court thinks a party has not come to it with clean hands.
- An applicant may be estopped from enforcement if there a foreign judgment has previously pronounced judgment on the merits of the action [Carl Zeiss Stiftung v Rayner and Keller Ltd (No 2) [1967] 1 AC 853]
Action on the Award (in England)

- In most cases, the parties will be able to enforce a tribunal’s award using the summary procedure under s66 of the Act. However, in the following two sets of circumstances this may not be possible:
  a. Where the arbitration agreement has been made orally rather than in writing. [See Goldstein v Conley [2002] 1 W.L.R. 281 at [294]]
  b. Where there is a defect in the form or substance of the award.

- An arbitration agreement includes an implied promise to pay an award subsequently made [See Purslow v Bailey (1704) 2 Ld Raym 1039)]. Where an award is not honoured and the enforcing party cannot rely on the summary procedure contained in s66 of the AA 1996, it may commence an action in the courts for breach of this implied promise to pay. This creates a fresh cause of action. It is an action to enforce a contract.

- Enforcement as an ‘action on the award’ is more difficult than enforcement under the New York convention because grounds for refusing enforcement at common law are broader.

- Nearly the same objections that can be raised to oppose the grant of permission to enforce an award under s66 of the Act.
Securing a freezing injunction at an early stage, including pre-award, may be useful. Applications can be made pre-award or post-award.

The court’s power arises under s44 of the Act while arbitration proceedings are ongoing and thereafter under s37(1) of the Senior Courts Act 1981.

The Court of Appeal has held that such freezing orders in aid of foreign enforcement awards should normally allow payments in the ordinary course of business. [Mobile Telesystems Finance SA v Nomihold Securities Inc [2011] EWCA Civ 1040]

It may be possible to obtain a freezing order against a non-party to the arbitration, such as subsidiaries, where they are holding assets on behalf of the defendant in the jurisdiction. [TSB Private Bank International SA v Chabra [1992] 2 All ER 245]
Freezing Injunctions (contd)

Since freezing injunctions are equitable remedies, applicants must act conscionably and without delay. There must be

- A real risk that the award will not be satisfied unless a freezer is granted, or, unless the respondent is restrained, they will make enforcement difficult. [Congentra v Sixteen Thirteen Marine [2008] EWHC 1615 (Comm) at 49].

- A real connecting link between the subject matter of the measures sought and the territorial jurisdiction of the English court.

- It is appropriate within the limits of comity, including whether there is a risk of irreconcilable orders in other jurisdictions.

- the order can be enforced in practice, if disobeyed. [Conocophillips China Inc v Greka Energy (International) BV [2013] EWHC 2733 at 41]
Appointment of Receivers (in England)

In addition to freezing injunctions, the court has powers to appoint receivers over the defendant’s foreign assets, to prevent the dissipation of assets and assist with enforcement.

[s 44 of the Act and Cruz City 1 Mauritius Holdings v Unitech Ltd and others [2014] EWHC 3131 (Comm)]
English Enforcement Procedure

- Enforcement procedure is the same for ss 66 and 101. It is
  a. An application is made by way of an arbitration claim form, on paper and without notice, for an order seeking permission to enforce. The Court may require service on the other party. [CPR 62.18(1) and (2)]
  b. The defendant then has limited time in which to apply to set it aside.

- Although commonly described as a “summary” procedure, the court can determine factual issues.

- The application may be made in respect of the whole or part of the award (such as unpaid interest or costs). However, the court cannot cure a deficiency in the award [Walker v Rowe [2000] 1 Lloyd’s Rep 116].

- The application must be made within six years of the date of the failure to honour the award. The fact that enforcement of an award may be time-barred overseas will not affect enforceability in England [Good Challenger Navegante v Metalexportimport [2003] EWCA Civ 1668]
Evidence needed (in England)

The application must be supported by [CPR 62.18(6)]

- The original arbitration agreement and award, or certified true copies.
- The name and the usual or last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award.
- States either that the award has not been complied with, or the extent to which it has not been complied with at the date of the application.
Interest that maybe awarded (in England)

The tribunal may decide whether post-award interest should be granted [s49(4)]. Notwithstanding the terms of s49, the court may also grant post-award interest once judgment has been entered in terms of the award, pursuant to the Judgments Act 1838.

For s66 domestic & foreign awards

Interest will run under the Judgments Act 1838 from the date of the judgment. s49(4) is irrelevant once judgment is entered. [Sonatrach v Statoil Natural Gas LLC [2014] EWHC 875 (Comm) and Gater Assets Ltd v Nak Naftogaz Ukrainiy [2008] EWHC 1108 (Comm)]
State Immunity from Execution (England) Introduction

- English law draws the same distinction between jurisdictional immunity and immunity from enforcement.

- *Lex fori* applies to the question of when immunity should be granted.

- The State Immunity Act 1978 (“SIA”):
  - Implementing the European Convention on State Immunity concluded on 16 May 1972 and ratified by, inter alia, the United Kingdom (though never ratified by France).
  - Jurisdictional immunity: section 1(1) of the SIA provides that “A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.”
  - Sections 2 to 11 of the SIA then set out exceptions (including, in section 9, arbitration to which the State has agreed).
  - These exceptions are exceptions to state immunity from adjudication – they do not necessarily overcome a state’s immunity from enforcement.

- The State’s agreement to an ICC arbitration is considered to be a waiver of immunity in respect of leave to enforce an award: *Svenska Petroleum Exploration AB v Government of the Republic of Lithuania* [2006] EWCA Civ 1529, [2007] 1 All ER (Comm) 909 (whether the state’s property benefits from immunity from enforcement is a separate question).
Which entities are covered?

- According to section 14(1) SIA, those entitled to immunity are as follows:
  
  "The immunities and privileges conferred by this Part of this Act apply to any foreign or commonwealth State other than the United Kingdom; and references to a State include references to—
  
  (a) the sovereign or other head of that State in his public capacity;
  (b) the government of that State; and
  (c) any department of that government"

- However, a separate entity which is distinct from the executive organs of the government of the State and capable of suing or being sued is immune only if
  
  ➔ the proceedings relate to anything done by it in the exercise of sovereign authority; and
  
  ➔ the State itself would have been immune in the circumstances.

- Persons who act on behalf of the State are also covered by State immunity:
  
  *Propend Finance Pty Ltd v Sing, The Times May 2, 1997 (CA)*
Extent of Immunity from Enforcement

- SIA s. 13(2) establishes the general principle: “the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award”.

- However, SIA s.13(3) provides that the State can waive its immunity from enforcement:
  - Enforcement is possible “with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally”.
  - Merely submitting to the jurisdiction of the courts is not a consent.
  - Can be a contractual clause, eg: Sabah Shipyard (Pakistan) Ltd v The Islamic Republic of Pakistan [2002] EWCA Civ 1643; NML Capital Ltd v Republic of Argentina [2011] UKSC 31

- SIA s.13(4) provides that this immunity does not apply to “property which is for the time being in use or intended for use for commercial purposes”
  - Regarding a sum of money in a bank account: this depends on the circumstances, but in Orascom v Republic of Chad and another [2008] EWHC 1841, [2009] 1 All ER (Comm) 315 the Court held that a sum of money was a commercial asset.
  - Section 14(4) expressly protects central banks and monetary authorities from enforcement measures.
Challenges to Arbitration Awards in France - Introduction

- Limited possibilities to challenge an arbitration award – by way of appeal or application to set aside the award.
  - Depends on the law of the seat.
- France is regarded as being arbitration friendly, meaning that the opportunities for challenge are restricted:
  - Appeal:
    - In domestic arbitration, no right of appeal unless the parties agree otherwise – CPC Art. 1489.
    - In international arbitration, appeals are excluded; no right even to agree to an appeal - CPC Art. 1518.
  - Application to set aside the award (*recours en annulation*):
    - Not a reconsideration of the merits or the law – very limited grounds.
    - In domestic arbitration provided that the parties have not agreed to a right of appeal – CPC Art. 1491.
    - In international arbitration provided that the parties have not agreed to opt out of the right to apply to set aside the award – CPC Art. 1518 and 1522.
Application to Set Aside an Award
(recours en annulation)

- May be brought before the Court of Appeal of the place where the award was made (CPC Art. 1494 for domestic arbitrations and CPC Art. 1519 for international awards).

- Time limit of one month from the service of the award on the parties.

- The right of challenge only applies to awards – not procedural orders.

- Does the application to set aside the award suspend enforcement?
  - In domestic arbitration, enforcement is suspended unless the arbitrator has ordered that it should be provisionally enforceable or the judge orders enforcement (CPC Art. 1496).
  - In international arbitration, enforcement is not suspended unless the judge orders a suspension because “enforcement could severely prejudice the rights of one of the parties” (CPC Art. 1526).

- Can you lose your right to object?
  - CPC Art. 1466 (applicable in both domestic and international arbitration): “A party which, knowingly and without a legitimate reason, fails to object to an irregularity before the arbitral tribunal in a timely manner shall be deemed to have waived its right to avail itself of such irregularity”
Grounds for an Application to Set Aside an Award

■ CPC Art. 1520:

An award may only be set aside where:

1. the arbitral tribunal wrongly upheld or declined jurisdiction; or
2. the arbitral tribunal was not properly constituted; or
3. the arbitral tribunal ruled without complying with the mandate conferred upon it; or
4. due process was violated; or
5. recognition or enforcement of the award is contrary to international public policy.

■ French international public policy = the set of values a breach of which cannot be tolerated by the French legal order, even in international cases:

- The breach must be “clear, effective and concrete” (CA Paris, 18 November 2004, SA Thalès Air Défense v GIE Euromissile, Rev. arb. 2005.751).

Recognition and Enforcement of Arbitral Awards

- A party may pay the amount awarded voluntarily. If it does not, the successful party will need to follow the procedures for enforcing the award.

- Enforcement in France is governed by the French Code of Civil Enforcement Procedures (“CPCE”):
  - Art. L. 111-2: “The creditor who has an enforceable title demonstrating a liquid and payable debt can pursue compulsory enforcement proceedings on the assets of his or her debtor in certain conditions, depending on the enforcement measure”.
  - Art. L. 111-3: An “enforceable title” includes “arbitral awards which have been declared to be enforceable by a decision not susceptible to a challenge which suspends enforcement”.

- Arbitral awards are therefore not automatically “enforceable titles” – the party seeking to enforce an award must first apply to the court for a grant of *exequatur* (= an order for recognition and enforcement).
Obtaining an order for Recognition and Enforcement

- The first step is an *ex parte* application:
  - In domestic arbitration or international arbitration with a seat in France, to the courts of the place where the award was made (CPC Art. 1487 and 1516 respectively).
  - For arbitration awards made abroad, to courts of Paris (CPC Art. 1516).

- The applicant must produce the original award and arbitral agreement (or certified copies) plus a translation into French (if they are in another language) (CPC Art. 1515).

- The court will grant an order (referred to as the *exequatur*) if:
  - the award is not “manifestly contrary to public policy” for domestic awards (CPC Art. 1488) or
  - not “manifestly contrary to international public policy” for international awards made in France, or for any awards made abroad (CPC Art. 1514).

- The order for *exequatur* is then served on the other party.
Appealing an Order for Recognition and Enforcement

- The way in which an order for *exequatur* can be challenged depends on the circumstances:
  - For awards made in France, the order for *exequatur* cannot be appealed - but an action to set aside the arbitration award automatically entails an appeal against any order for *exequatur* (CPC Art. 1522, 1524).
  - For awards made abroad, a party has one month to appeal the order for *exequatur* to the Court of Appeal (CPC Art. 1520, 1525).

- The grounds of appeal are the same as those for an application to set aside (i.e. those set out in CPC Art. 1520 – see above).

- The appeal does not suspend the enforcement of the award (unless the court orders otherwise).

- An award may be enforced by the French Courts, even if it has been set aside by the courts of the country in which the award was made: Cass. Civ 1st, 23 March 1994, *Société Hilmarton v Société OTV*, Rev. arb. 1994. 327.
Recourse against Arbitral Awards – Summary

<table>
<thead>
<tr>
<th>Awards made in France in domestic arbitrations</th>
<th>Right to appeal the award</th>
<th>Right to apply to set aside</th>
<th>Appeal from the exequatur order</th>
<th>Is the challenge suspensive?</th>
</tr>
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<tbody>
<tr>
<td>No, unless the parties agree otherwise (CPC Art. 1489)</td>
<td>No, unless the parties have agreed to a right of appeal instead</td>
<td>No (CPC Art. 1499)</td>
<td>Yes (CPC Art. 1496)</td>
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<th>Awards made in France in international arbitrations</th>
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<th>Is the challenge suspensive?</th>
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<tr>
<td>No</td>
<td>Yes, unless the parties agree otherwise (CPC Art. 1518 and 1522)</td>
<td>No, unless the parties have agreed to renounce their right to apply to set aside (CPC Art. 1522, 1524)</td>
<td>No (CPC Art. 1526)</td>
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<th>Awards made Overseas</th>
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<tr>
<td>No</td>
<td>No</td>
<td>Yes (CPC Art. 1525)</td>
<td>No (CPC Art. 1526)</td>
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Enforcement – Preliminary Measures

- An arbitration award (whether domestic, international or made abroad) has *res judicata* effect as soon as it is made (CPC Art. 1484 and 1506).
  - Certain conservatory measures are available even before the order for *exequatur*.
  - The aim is to prevent the dissipation of assets and the frustration of the award.

- A freezing order/attachment order (*saisie conservatoire)*:
  - Can be made over assets located in France, regardless of where the debtor is domiciled.
  - The application is usually made *ex parte* (*sur requête)*.
  - The applicant must demonstrate that both:
    - Its claim appears to be justified in principle.
    - Without the order, there is a risk of non-recovery of the debt.
  - Once a court order is obtained, notification is delivered by a bailiff (*huissier*).
  - The potential debtor is then unable to sell or otherwise dispose of the frozen asset.

- A preliminary charge over assets (*sûreté judiciaire*) for assets such as immoveable property, *fonds de commerce*, shares in a company, etc.
  - Creates a security interest in the asset, provided that the charge is duly registered.
Compulsory Enforcement Measures

- If the judgment debtor does not pay voluntarily, the judgment creditor can take steps to compel payment.

- The bailiff (*huissier*) has a monopoly on carrying out compulsory enforcement measures (CPCE Art. L122-1).

- Subject to the supervision of the *juge de l’exécution* (president of the TGI or his or her delegate).

- The bailiff may not exercise his or her functions on Sundays or public holidays, or before 6h or after 21h.

- Limitation period on any enforcement proceedings of 10 years (unless the underlying debt has a longer limitation period).
Compulsory Enforcement – limits

- Certain goods are not seizable, eg:
  - Goods which are used for the public interest.
  - Goods which are necessary for the profession of the debtor or his or her family (provided they are not particularly valuable).
  - The debtor’s clothes, food, household implements for preparing food, heating, books and other necessities for the pursuit of a course of professional training, the telephone.
  - Objects needed by a person who is handicapped or ill.
  - A certain minimum income for the debtor’s daily needs.
  - The debtor’s principal residence.
Types of Compulsory Enforcement Measure

- **Seizure of moveable property (la saisie-vente)**
  - The bailiff must first serve on the debtor an order to pay, following which he can enter the debtor’s property (using force if necessary) to take an inventory of the seizable goods and draw up a notice of seizure (acte de saisie).
  - The debtor has one month to sell the goods in agreement with the creditor (vente à l’amiable). Failing this, the bailiff may carry out a compulsory sale (vente forcée).

- **Seizure of a debt (la saisie-attribution)**
  - The bailiff will serve the notice of seizure (acte de saisie) on the third party which owes a debt to the judgment debtor.
  - Following the expiry of a period for challenge, the bailiff can compel that third party to pay the money directly to the creditor.

- **Seizure of Real Property (la saisie immobilière)**
  - A number of protections to ensure that the rights of third parties are protected - the debtor’s spouse, third party mortgagees, tenants, property in the public domain, other creditors etc.
  - Hearing before the judge de l’exécution (l’audience d’orientation).
  - In the event of a compulsory sale, a second hearing (l’audience d’adjudication) to determine the modalities of the sale.
  - Following the sale it is if necessary possible to obtain the expulsion of the debtor, but this cannot take place for a period of 2 months following the service of the notice, or in winter.
State Immunity from Execution (France) - Introduction

- There is a distinction between jurisdictional immunity and immunity from enforcement:
  - Jurisdictional immunity prevents a foreign (sovereign) State from becoming a defendant in legal proceedings of another State (or arbitral tribunal) without its consent.
  - Immunity from enforcement allows a sovereign state to prevent the seizure of its property by way of enforcement of an award or judgment.
  - Under French law, an order for *exequatur* is regarded as falling within the scope of immunity from jurisdiction (and not enforcement).

- Art. L.111-1 of the CPCE provides that “*compulsory enforcement and conservatory measures are not applicable to persons who benefit from immunity from enforcement*”.

- However France has not ratified the European Convention on State Immunity concluded on 16 May 1972. Until 2016, the principles of state immunity developed in case law.

- New articles L. 111-1-1 to L. 111-1-3 were added to the CPCE by Art. 59 of the Sapin II Law of 16 December 2016.
  - Reinforces the protection of states whose assets are subject to enforcement proceedings.
Which entities are covered?

- The essential criterion for immunity is sovereignty, i.e. any State which “justifies the existence of its own personality in its relations with other States envisaged from the point of view of public international law” (French Court of Cassation, 24 October 1932)
  - This does not apply to local authorities (cities, departments, provinces, etc).

- Emanations of the State which do not have a separate legal personality are covered by state immunity.
  - However, the mere fact that an entity is controlled by the State is not sufficient to make it an emanation of the State.

- Public or private entities who are acting as representatives of the State are also covered by State immunity.
Extent of Immunity from Enforcement

Article L. 111-1 of the French Code of Civil Enforcement Procedures (modified by the “Sapin II” Law of 9 December 2016):

- Any seizure must first be authorised by a judge in ex parte proceedings.

The new Art. L. 111-1-2 provides that seizure is only possible if:

- the State has expressly consented to the application of such a measure;
- the State has allocated the property to satisfy the request that is the subject of the proceedings; or
- the property is specifically used or intended to be used by the State for purposes other than non-commercial public service and has a link with the entity against which the proceedings have been brought.

The new Art. L. 111-1-3 reinforces the immunity of diplomatic assets, requiring an express and specific waiver by the state before they can be enforced against (and reference to rules of arbitration is no longer sufficient – see République du Congo v Commisimpex, Cass, Civ 1ère, n°16-22.494, 10 January 2018).

Previous case law which suggested that consent to an arbitration amounted to a waiver of immunity from enforcement must be regarded as no longer valid.
Enforcement of foreign awards under the [Indian] Arbitration Act 1996

- India has incorporated the UNCITRAL Model Law, the New York and Geneva Conventions and follows them letter and spirit.

- Ss44 to 60 of the Act provides for seamless enforcement of foreign awards so long as the award is from a country which is a signatory to one of the Conventions and the country has entered into reciprocal arrangements with India.

- Only 50 countries have been notified by India as reciprocating countries and United Kingdom is one of them.

- Where the Court is satisfied that the foreign award is enforceable, the award shall be deemed to be a decree of the Court. [ss49 and 58]
Where must enforcement proceedings be initiated?

▪ Any court in India where the assets are located. *Sundaram Finance Ltd. v. Abdul Samad and Anr*

▪ For international commercial arbitrations, the commercial division of any high court (where assets are located) shall have jurisdiction. In case of any other subject matter, the Commercial Division of a High Court which would have jurisdiction as if the subject matter of the award was the subject matter of a suit shall have jurisdiction i.e. where the other party resides, carries on business or personally works for gain.

▪ For domestic awards, the principal civil court at district level.
Evidence

Like the UK, a party applying for enforcement of a foreign award shall, at the time of the application, produce (s47)

a. The original award or a duly authenticated copy.
b. The original agreement or duly certified copy.
c. Evidence to prove that the award is a foreign award, where applicable.
Defences to Enforcement of New York Convention Awards (in India)

- Grounds for refusal to enforce New York Convention awards under s48 of the Indian Arbitration Act are identical to s103 of the English Arbitration Act. For example, incapacity.

- Enforcement of New York Convention awards may be refused on several grounds, including public policy [s47]. The 2015 amendments to the Indian Arbitration Act restricted the ambit of public policy to only those awards that are
  (i) affected by fraud or corruption
  (ii) in contravention with the fundamental policy of Indian law or
  (iii) conflict with the notions of morality or justice.

- The test as to whether there is a contravention with the fundamental policy of Indian law does not entail a review on the merits of the dispute.
Recent caselaw

- Unlike a domestic Indian award, a foreign award need not be on stamp paper. *Shri Ram EPC Limited v Rioglass Solar SA (2018)* SCC Online 147

- An application for enforcement of a foreign award can be filed within 12 years from the date when it becomes enforceable. *Imax Corporation v E-City Entertainment Commercial Arbitration Petition No.414/2018*] decided on November 13, 2019

- The date for applying the exchange rate for awards in foreign currency is the date of rejection of objections to enforcement of the foreign award, or when all the remedies (including appeals, revision petitions etc) are exhausted. *Fuerst Day Lawson Limited v Jindal Exports Limited; Progetto Grano SPA v Shri Lal Mahal Limited; DLF Universal Limited & Ors v Koncar Generators and Motors Limited (2018)* 190 PLR 398

- The Delhi HC rejected enforcement of a Singapore seated award to the extent that it held a fraud committed by an adult cannot bind a minor. *Daiichi Sankyo Company Limited v Malvinder Mohan Singh & Ors.*
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