The Arbitration Review of the Americas

2019

United States

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The Arbitration Review of the Americas 2019 provides an unparalleled annual update – written by the experts – on key developments. It is their wealth of experience and knowledge – enabling them not only to explain law and policy, but also to put theory into context – which makes the report of particular value to those conducting international business in the Americas today.

GAR Global Arbitration Review

United States

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Summary

INTRODUCTION

Last year in GAR Arbitration Review of the Americas we addressed the grounds for vacating international arbitration awards issued by arbitral tribunals seated in the United States – in particular the judicially-created ground for 'manifest disregard' of the law.[2] There has been little change in that area in the past year.[3]

This year we address recent developments in the United States concerning enforcement of international arbitration awards issued by tribunals seated outside the United States – particularly challenges to the enforcement of such awards under Article V(1)(e) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THE UNITED STATES

Enforcement of international arbitration awards by US courts is generally governed by the New York Convention and the Inter-American Convention on International Commercial Arbitration (the Panama Convention), as implemented by Chapters 2 and 3 of the Federal Arbitration Act (US Code Title 9 (9 USC), sections 1 et seq; the FAA).[4] As discussed in a 2017 decision by the United States Court of Appeals for the Second Circuit (which considers appeals from federal courts in New York), the terminology used by US courts in reviewing arbitral awards can be confusing, or at least is often confused by US courts.[5] The Second Circuit:

Encourage[s] litigants and district courts alike to take care to specify explicitly the type of arbitral award the district court is evaluating (domestic, nondomestic, or foreign), whether the district court is sitting in primary or secondary jurisdiction, and, accordingly, whether the action seeks confirmation of a domestic or nondomestic arbitral award under the district court's primary jurisdiction or enforcement of a foreign arbitral award under its secondary jurisdiction.[6]

In this nomenclature, domestic awards are those issued by arbitral tribunals sitting in the United States which do not have foreign elements. They are not governed by the New York Convention. Non-domestic awards are issued by arbitral tribunals seated in the United States, but which are governed by foreign law, involve non-US parties, or 'involve property located abroad, envisage performance or enforcement abroad or have some other reasonable relationship with on or more foreign states'.[7] US courts sit in 'primary' jurisdiction over non-domestic awards, which are 'confirmed' by the US courts – ie, the US court issues a judgment which can be enforced in the same manner as other US court judgments.

Foreign awards, on the other hand, are issued by arbitral tribunals seated outside of the US and are considered under the 'secondary' jurisdiction of US courts. Although the FAA states that such awards may be 'confirmed',[8] the Second Circuit now encourages parties and federal district courts use the term 'enforce' as set forth in the New York Convention when seeking a US court judgment to give legal effect to a foreign award in the United States.[9]

Pursuant to Article V(1) of the New York Convention, enforcement of foreign awards may be refused if:

- the underlying agreement to arbitrate is invalid;
- the award debtor did not have notice of the arbitration, or could not otherwise present its case;

- the award dealt with matters outside of the scope of the arbitration agreement;
- the composition of the tribunal, or the arbitral procedure, did not conform to the arbitration agreement; or
- the award is not binding or has been set aside by courts of the country in which, or under the law of which, the award was made.10

In practice, it is the final ground, Article V(1)(e), that is most often the subject of a defence to enforcement of foreign awards in US courts. Although a party may bring an action to enforce an international arbitration award in either state or federal court, state court actions concerning New York Convention awards may be removed to federal court by the defendant (and usually are).11

The remainder of this article analyses recent US jurisprudence regarding the application of Article V(1)(e).

Enforceability of partial and consent awards

As noted above, US courts generally enforce awards under the New York Convention where such an award has not been set aside by a court in the place of arbitration. Two recent cases clarify that this generally includes partial final awards and consent awards.

ENFORCEABILITY OF PARTIAL FINAL DECISION ON LIABILITY

In University of Notre Dame (USA) In England v TJAC Waterloo, LLC,12 a university (Notre Dame) agreed to buy a building in England from TJAC and ZVI, contingent upon completion of renovation and conversion of the building into a student dormitory. Notre Dame claimed that construction inadequacies required substantial remedial work.13

The parties submitted the dispute to an 'expert determination' by a member of the Royal Institution of Chartered Surveyors in London and agreed to bifurcate the proceedings into liability and damages phases. After written submissions and three days of hearings, the expert issued a draft decision for the parties' comments finding TJAC and ZVI jointly liable to Notre Dame for construction deficiencies. After receiving such comments, the expert issued a determination of liability.14

TJAC and ZVI asked to postpone the damages phase of the arbitration due to the ill health of a key employee. Notre Dame consented, and requested a showing of their financial ability to satisfy a potential damages award.15 When TJAC and ZVI did not respond to Notre Dame's request, Notre Dame brought an action in state court in Massachusetts – the location of ZVI – to enjoin TJAC and ZVI from dissipating, encumbering or transferring assets. TJAC and ZVI removed the case to a federal district court in Massachusetts under 9 USC section 205.16

In proceedings before the district court, Notre Dame requested confirmation of the expert's liability findings. The court granted confirmation and authorised an attachment as security for the judgment.17 TJAC and ZVI appealed to the US Court of Appeals for the First Circuit, arguing, inter alia, that the liability decision lacked the requisite finality required for judicial confirmation of an arbitration award under the New York Convention.18

The First Circuit agreed with the district court that, while the FAA requires an arbitration decision to be 'final' before judicial recognition, a liability award will be considered final where the parties have formally agreed to a bifurcation of issues. The First Circuit noted that this

comports with the US Supreme Court's view that the FAA allows parties to tailor the features of arbitration by contract.19

TJAC and ZVI argued that the expert decision was not final based on language in the draft decision and, apparently, inadvertently left in the final decision, stating '[n]one of the answers are final answers. All and any may now be commented upon in any way seen fit'.20

The First Circuit rejected this argument because the award emphasised the finality of the liability determination;21 and the expert titled the final decision as '[a]n Expert Determination on Liability' and – in denying a subsequent challenge by ZVI of the expert's jurisdiction over it – the expert stated that '[l]iability was decided via the 81-page award', and that the 'binding decision . . . cannot be changed'. Neither TJAC nor ZVI objected to this characterisation until the matter came to the US courts.22 The First Circuit also noted that the New York Convention uses the word 'binding' rather than final.23

Courts in the Second Circuit (which encompasses New York) have long held that partial awards are subject to confirmation, or enforcement under the New York Convention, if they are 'final'.24 However, in the Notre Dame decision, the First Circuit did not cite to this line of cases, but rather noted 'no [New York] Convention case has been brought to [its] attention addressing the significance of bifurcation in addressing finality'.25 The court thus looked to its own decision in Hart Surgical, Inc v Ultracision, Inc,26 in which it held that parties to a domestic arbitration had agreed to bifurcate a proceeding, an award deciding the first phase of that arbitration was final, and could be confirmed under the FAA.

The court's decision to treat foreign awards the same as domestic awards in this context seems well-grounded, both in logic and precedent. As the First Circuit noted, many previous cases have drawn an explicit or implicit parallel between the requirement the domestic requirements be 'final' and the New York Convention's requirement that an award be 'binding'.27 The decision also may allow courts in future cases to dispense with a more in-depth review of whether a partial award is binding where, as in Notre Dame, that award arose out of the first phase of an arbitration which the parties had agreed to a bifurcation of proceedings.

The First Circuit's decision promotes the efficacy of international arbitration, as it allows – as happened in this case – parties that are successful in a liability phase to seek attachment to ensure that respondents will not dissipate their assets to avoid payment of an eventual award on damages. Furthermore, while the losing party may seek to vacate a domestic partial final award to attempt to derail the arbitration,28 this should not often be an issue for foreign partial awards, which are subject only to enforcement by the successful party, and not to requests to vacate by the losing party.29

Consent awards found enforceable

Two cases decided in the last year dealt with a question that apparently had not been previously addressed by any court and is the subject of some debate internationally: are awards issued by the consent of the parties subject to enforcement under the New York Convention? Both decisions found that they can be.

In Albtelecom SH.A v UNIFI Comms, Inc,30 Albtelecom initiated arbitration under the rules of the International Chamber of Commerce (ICC) in Switzerland against UNIFI for breach of contract. After the arbitration proceedings began, the parties entered into a settlement agreement and requested the sole arbitrator issue a consent award incorporating the

parties' agreement. The arbitrator agreed. The consent award required UNIFI to make certain monthly payments to Albtelecom.31

UNIFI allegedly stopped making payments and Albtelecom asked a federal district court in New York to enforce the award against UNIFI, which was based in New York. UNIFI contended, inter alia, that the New York Convention does not apply to consent awards.32

The court noted a lack of US jurisprudence on the issue, and did not discuss any foreign or international law or commentary. However, it held that there is 'no reason' to treat consent awards differently from contentious awards, noting that 'the opposite rule would discourage the resolution of disputes in mid-arbitration'.33 Therefore, and because none of the other New York Convention grounds for refusal to recognise an award existed, the court enforced the consent award.34

In Transocean Offshore Gulf of Guinea VII Ltd v Erin Energy Corp,35 Transocean brought an arbitration against Erin Energy Corp under the rules of the London Court of International Arbitration (LCIA) pursuant to a contract concerning drilling off the coast of Nigeria. Before the arbitration hearings took place, the parties agreed to have the tribunal issue two consent awards, a partial final award for damages by consent, without reasons, and a partial final award on legal costs.36 When Erin refused to satisfy the awards, Transocean sought to enforce the awards in the federal district court in the Southern District of Texas, Erin's domicile.

The respondent objected to enforcement and argued that a consent award was 'fundamentally different' from a contested award and not subject to the New York Convention. It relied on the 2016 edition of the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which stated that 'the application of the [New York] Convention to such decisions was raised, but not decided upon. Reported case law does not address this issue'. However, the district court noted the recently-decided Albtelecom decision (discussed above), which it found 'thorough and persuasive'.37

Erin also argued that the LCIA rules required all awards to be reasoned, and the consent awards at issue were not. The court noted that the LCIA rules in fact 'hurt, not help' Erin's argument, as they specifically provide in rule 26.9 that consent awards 'need not contain reasons'.38 The court enforced the consent award.39

Albtelecom and Transocean represent useful contributions to New York Convention jurisprudence. As noted in the UNCITRAL report, although the issue of consent awards was discussed during the negotiation of the New York Convention some 60 years ago, reported case law had not previously addressed the issues squarely.40

Some commentators have argued that the New York Convention should not apply to consent awards, as they are not truly arbitral awards.41 But this argument ignores the fact that rules of many arbitral institutions (including the ICC, LCIA, the International Centre for Dispute Resolution of the American Arbitration Association and the Singapore International Arbitration Centre),42 specifically allow for the issuance of consent awards, and the UNCITRAL Model Law on International Commercial Arbitration provides that a consent award 'has the same status and effect as any other award on the merits of the case'.-43 Further, many jurisdictions (including the United States), permit and encourage national courts to issue consent judgments, which have the force of contentious judgments. As noted by both the Southern District of New York and the Southern District of Texas in the above

decisions, allowing consent awards to be enforced as contentious awards encourages early settlement of arbitrations.

Some commentators have expressed concern that consent awards may be tainted by illegality in some circumstances, for example, to facilitate money laundering or bribery.44 However, under the above-cited institutional rules, consent awards require the approval of the arbitral tribunal. Arbitrators that suspect illegal activity may refuse to sign such awards and the major arbitral institutions encourage tribunals to exercise vigilance in such matters.

In any case, given the above decisions, parties that enter into consent awards should now have confidence that such awards will be enforced by US courts pursuant to the New York Convention.

ENFORCEABILITY OF AWARDS UNDER REVIEW IN COUNTRY OF ORIGIN

Arbitral awards that have been set aside by courts in their country of origin are generally not enforced by US courts. In its 1996 decision in Chromalloy Aeroservices v Arab Republic of Egypt, the district court for the District of Columbia permitted an award to be enforced notwithstanding the fact that it was set aside in the place of arbitration, Egypt.45

However, this precedent was not followed in any other reported case over the next two decades, and subsequent cases clarified that an award set aside in its country of origin should not be enforced by US courts absent 'extraordinary circumstances' such that failure to enforce would be 'repugnant to fundamental notions of what is decent and just'.46

To date, these criteria have only been found to be present in one case Corporación Mexicana de Mantenimiento Integral, S De RL De CV v Pemex-Exploración y Producción, which enforced in the United States an award that had been set aside at the place of arbitration in Mexico by retroactive application of post-dispute legislation which excused the state's expropriation of private property without compensation.47

However, the situation is less clear when a US court is asked to enforce a foreign award that is under pending challenge in the courts of the place of arbitration. We now address two cases that consider this subject.

Award enforced pending set aside in country of origin

In Venco Imtiaz Construction Co v Symbion Power LLC,48 Venco secured an award against Symbion in an ICC arbitration in London concerning construction of a power plant in Kabul, Afghanistan. Venco sought to enforce the award in the federal district court for the District of Columbia, where Symbion is located. Symbion requested a stay in enforcing the award, based on its attempt to set aside the award before the High Court of Justice in London. The High Court had dismissed Symbion's challenge, but Symbion argued to the district court that it intended to seek leave to appeal that decision.

In considering Symbion's request for a stay, the federal court considered the following factors:

- the general objectives of arbitration – the expeditious resolution of disputes and the avoidance of protracted and expensive litigation;
- the status of the foreign proceedings and the estimated time for those proceedings to be resolved;
-

whether the award sought to be enforced will receive greater scrutiny in the foreign proceedings under a less deferential standard of review;

- the characteristics of the foreign proceedings including:
    - whether they were brought to enforce an award (which would tend to weigh in favour of a stay) or to set the award aside (which would tend to weigh in favour of enforcement);
    - whether they were initiated before the underlying enforcement proceeding so as to raise concerns of international comity;
    - whether they were initiated by the party now seeking to enforce the award in federal court; and
    - whether they were initiated under circumstances indicating an intent to hinder or delay resolution of the dispute;
- a balance of the possible hardships to each of the parties; and
- any other circumstances.[49]

The district court held that, given that the 'primary goal of the [New York] Convention is to facilitate the recognition and enforcement of arbitral awards, the first and second factors' should have the most weight and that these factors suggested enforcing the award and denying a stay, especially as the 'court has no way of knowing whether an appeal in the UK proceeding will be permitted at all, much less how long any appeal might take'.[50]

However, the court noted that the third factor weighed in favour of a stay, as the English Arbitration Act's standard of review was less constrained than the very narrow grounds under Article V of the New York Convention, which were the only grounds under which a US court could refuse to enforce the award. The court further found that the fourth factor did not favour either party. The fifth factor weighed in favour of denying a stay, in light of the 'need for prompt enforcement of the award'.[51] And the sixth factor was irrelevant as no other circumstances had been identified by either party for the court's consideration.[52]

Thus, on balance, the court refused to grant a stay, and enforced the award against Symbion despite the fact that an appeal to set aside that award was pending before the English courts.[53]

The Venco decision should be reassuring to award creditors who wish to enforce an award in the US despite pending set-aside proceedings at the situs of the arbitration, particularly after the 2015 decision of the District of Columbia federal court in Getma Int'l v Republic of Guinea, in which the court refused to enforce an award pending the resolution of a challenge before the Common Court of Justice and Arbitration of the Organisation for the Harmonization of Business Law in Africa, a supranational court and arbitration institution.[54]

However, award creditors should note that the Venco court appeared to find it significant that – unlike in Getma – the court of first instance had already heard and denied the award debtor's challenge. As shown in the next case we examine, enforcement efforts may be frustrated if the court at the place of arbitration does eventually set aside the award after the award is enforced by a US court.

Enforcement of award in US overturned after award set aside in country of origin

In Thai-Lao Lignite (Thailand) Co, Ltd v Gov't of the Lao People's Democratic Republic,55 Thai Lao Lignite (Thai Lao) and its subsidiary, Hongsa Lignite (HLL), initiated arbitration in Malaysia under UNCITRAL rules against the Government of the Lao People's Democratic Republic (Laos) concerning mining contracts and a power generation project. The arbitral tribunal issued an award in favour of Thai Lao and HLL. After the time for applications to set aside the award under Malaysian law had passed, Thai Lao and HLL sought to enforce the award in the United States, the United Kingdom and France.

Laos then initiated set aside proceedings in Malaysia. Despite expiry of the time to challenge the award, Laos applied to the court for an extension due to its 'lack of knowledge of the local law and inadequate advice from its legal advisors'. The trial court denied Laos' request, but the request was subsequently granted by the Court of Appeal of Malaysia, which found that a sovereign should be given special treatment, noting that to 'refuse the extension of time would be tantamount to shutting out the government of Laos from challenging the award'.56

Meanwhile, in the United States, the federal district court in New York enforced the award and issued a judgment in August 2011,57 and the Second Circuit affirmed the lower court decision in July 2012.58 The petitioner moved ahead with attempts to collect the resulting judgment from Laos' assets in the US, but faced difficulties identifying assets not protected by the US Foreign Sovereign Immunities Act.59

In December 2012, the Malaysian High Court annulled the award and ordered the parties to re-arbitrate their claims. In February 2013, Laos moved the New York district court to vacate its judgment pursuant to Federal Rule of Civil Procedure (FRCP) 60(b)(5), which provides the procedures for challenging a final judgment. Rule 60(b)5) states that relief from a final judgment may be obtained where that judgment was 'based on an earlier judgment that has been reversed or vacated'. The burden lies with the party seeking to overturn the final judgment, in this case Laos, to demonstrate that it is entitled to relief.60

In February 2014, the district court granted Laos's motion and vacated its earlier judgment, based on Article V(1)(e) of the New York Convention.61 The court's decision was notable for the fact that it did not appear to treat the FRCP rule 60 motion differently than it would have a challenge to the award under the New York Convention in the first instance, ie, the fact that it was vacating its own final judgment did not enter into its analysis.62 On appeal, while the Second Circuit stated that the lower court should have carried out a more robust analysis of the FRCP rule 60 factors, it found that such an analysis would not have affected the outcome of the decision, and therefore affirmed the district court's vacatur.63

This decision is apparently the first time a US judgment enforcing an arbitral award under the New York Convention has been vacated under FRCP rule 60, and presents an intriguing conflict between the provisions of Article V(1)(e) of the New York Convention and the US principle of finality of judgments. The fact that the former principle was given decisive weight demonstrates the substantial deference US courts give to the New York Convention.

In any case, the Thai-Lao case presents a cautionary tale for parties seeking to enforce awards that may still be subject to set-aside proceedings in the courts in the country of origin. Even if, as in Venco, a US court declines to stay the enforcement of the award during the foreign set-aside proceedings, the enforcing party runs some risk that the underlying award may be vacated and any enforcement efforts will have been for naught.

CONCLUSION

As the above cases demonstrate, US courts enforce Article V(1)(e) the New York Convention. Where a foreign arbitral award has not been set aside in the place of origin, it is very likely to be enforced in the United States, even in the case of partial final awards issued after the first phase of a bifurcated proceeding, or consent awards.

Further, awards set aside in the place of arbitration generally will not be enforced in the US, absent unusual circumstances. This is true even when an award that was previously enforced and subject to a US judgment is set aside in its country of origin, requiring the exceptional circumstances of vacating a final, binding award to revoke that enforcement.

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Notes

1 This article draws on case notes published in Baker McKenzie's International Litigation and Arbitration Newsletter, edited by Mr Hanessian and David Zaslowsky, a partner in the New York office of Baker McKenzie.
2 G Hanessian, D Soller and L Zimmerman, 'United States', in The Arbitration Review of the Americas 2018, available at https://globalarbitrationreview.com/benchmarking/the-arbitration-review-of-the-americas-2018/1146880/united-stat
3 The outlier case which we addressed last year, in which the New York Supreme Court (the state's court of first instance) found manifest disregard of the law, Daesang v NutraSweet, No. 655019/2016, 2017 NY Slip Op 31023(U) (Sup. Ct., NY County 16 May 2012) (Ramos, J) (the Decision), has been appealed to the Appellate Division, First Department, and remains under consideration by that court as of the date of this writing. Messrs Hanessian and Soller served as counsel for the International Commercial Disputes Committee of the Association of the Bar of the City of New York as amicus curiae in the case.
4 9 USC sections 201 et seq.
5 See CBF Indústria de Gusa S/A v AMCI Holdings, Inc, 846 F3d 35, 51–52 (2d Cir. 2017)
6 Id at 52.
7 Id at 50, citing 9 USC section 209.
8 USC section 207
9 Id at 52.
10 9 USC section 207 (providing 'the court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.'). In addition, pursuant to Article V(2) of the New York Convention, as implemented by 9 USC section 207, enforcement of an award may also be refused on public policy grounds, or if the subject matter of the underlying dispute is not capable of being arbitrated under the law of the party in which enforcement is sought.
11 FAA, 9 USC section 205.
12 861 F3d 287 (1st Cir. 2017)
13 Id 861 F3d at 290.
14 Id.
15 University of Notre Dame (USA) v TJAC Waterloo, LLC, No. 16-cv-10150, 2016 US Dist. LEXIS 47259, at *6 (7 April 2016)
16 Univ. of Notre Dame (USA) In Eng., 861 F3d at 290.
17 See Univ. of Notre Dame (USA), 2016 US Dist. LEXIS 47259, at *7–16, 27.
18 Univ. of Notre Dame (USA) In Eng., 861 F3d at 290.
19 Id. at 291, citing Hall St. Assocs., LLC v Mattel, Inc., 552 US 576, 586 (2008)
20 Id. at 292.
21 Id. at 292–93.
22 Id. at 293.
23 Id. at 291.

24 See, eg, Metallgesellschaft AG v M/V Capitan Constante, 790 F2d 280, 283 (2d Cir. 1982) (enforcing award deciding one claim among many at issue in an arbitration, and holding that 'an award which finally and definitely disposes of a separate independent claim may be confirmed although it does not dispose of all the claims that were submitted to arbitration'); Zeiler v Deitsch, 500 F3d 157 (2d. Cir. 2007) (finding that arbitral orders subject to the New York Convention and enforceable because the 'require specific action and do not serve as a preparation or a basis for further decisions by the arbitrators') Bailey Shipping Ltd v Am. Bureau of Shipping, 2014 US Dist. LEXIS 42530 (SDNY 2014) (finding that a 'interim award' denying plaintiff's request to dismiss its claim was not a resolution of any claim at issue before the panel).
25 The authors also have not found any case addressing whether a partial final award resulting from the first phase of a bifurcated proceeding is 'binding on the parties' and is thus enforceable under Article V(1)(e) of the New York Convention, although it believes that under the precedent set in Metallgesellschaft et al such awards would be found to be 'binding' by courts in the Second Circuit.
26 244 F3d 231, 233 (1st Cir. 2001)
27 See, eg, Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v Cubic Def. Sys., Inc, 665 F3d 1091, 1100 (9th Cir. 2011) ('Th[e not-binding] defence [in the Convention's Article V(1)(e)] may be invoked when an action to confirm or enforce an arbitration award is filed before the award has become final.'); Ecopetrol SA v Offshore Expl. & Prod. LLC, 46 F Supp. 3d 327, 336 (SDNY 2014) (referring interchangeably to the New York Convention's condition that an award must be 'binding' and a requirement that the award be 'final'); Daum Glob. Holdings Corp v Ybrant Digital Ltd, No. 13 Civ. 03135 (AJN), 2014 US Dist. LEXIS 30031, 2014 WL 896716, at *2 (SDNY 20 February 2014) (citing as an 'example' of a foreign award that 'is not binding on the parties' one 'that is interim, not final' (internal quotation marks omitted).
28 See, Metallgesellschaft, 790 F2d at 285 (Feinberg, CJ, dissenting) (noting that 'confirmation of partial awards will inevitably interrupt and extend arbitration proceedings . . . [and] make arbitration more like litigation, a result not to be desired.').
29 Compare 9 USC section 207 (allowing for action to enforce New York Convention awards, but not to vacate such awards) with 9 USC section 10 (allowing actions to vacate or modify an award in the district in which it was made).
30 No. 16 Civ. 9001, 2017 US Dist. LEXIS 82154 (SDNY 30 May 2017)
31 Albtelecom SH.A v UNIFI Comms., Inc, No. 16 Civ. 9001, 2017 US Dist. LEXIS 82154, at *5 (SDNY 30 May 2017).
32 Id at *7.
33 Id at *13–14.
34 Id at *14.
35 No. H-17-2623, 2018 US Dist. LEXIS 39494 (SD Tex. 12 March 2018).
36 Transocean Offshore Gulf of Guinea VII Ltd v Erin Energy Corp, No. H-17-2623, 2018 US Dist. LEXIS 39494, at *2–3 (SD Tex. 12 March 2018).
37 Id at *12.
38 Id at *12–13.
39 Id at *15.
40 See UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 16–17 (2016 edition), available at http://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/2016_Guide_on_the_Convention.pdf.
41 Domenico Di Pietro, 'What Constitutes an Arbitral Award Under the New York Convention?', in Emmanuel Gaillard and Domenico Di Pietro (eds), Enforcement of Arbitration Agreements and International Arbitral Awards: The New York Convention in Practice (2008), p 145.
42 See, eg, 2017 ICC Arbitration Rules, article 33; LCIA Arbitration Rules, article 26.9; ICDR Arbitration Rules, article 32.1; SIAC Arbitration Rules, R 32.10. But note that certain rules, including the UNCITRAL Rules, and the Rules of the Hong Kong International Arbitration Center (HKIAC) do not have rules regarding consent awards.
43 UNCITRAL, Model Law On International Commercial Arbitration, article 30(2) (2008), available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf.

44 See, eg, 'Yaraslau Kryvoi and Dmitry Davydenko, Consent Awards in International Arbitration: From Settlement to Enforcement', 40 Brooklyn J. Int'l Law, pp 855–62 (2015) (citing other authorities).
45 939 F Supp. 907 (DDC 1996).
46 TermoRio v Electranta, 487 F 3d 928, 938 (DC Cir. 2007).
47 832 F3d 92 (2d Cir. 2016).
48 2017 US Dist. LEXIS 82480 (D DC 31 May 2017).
49 The court cited Second Circuit's decision in Europcar Italia, SPA v Maiellano Tours, Inc, 156 F3d 310 (2d Cir. 1998). These factors have been applied in numerous decisions by US courts. See, eg, InterDigital Comms., Inc v Huawei Inv. & Holding Co, 166 F Supp. 3d 463 (SDNY 2016); Clientron Corp v Devon IT, Inc, No. 13-05634, 2014 US Dist. LEXIS 31086 (ED Pa., 10 March 2014); Interdigital Comms. Corp. v Samsung Elecs. Co, 528 F Supp. 2d 340 (SDNY 2007).
50 Venco Imtiaz Constr. Co v Symbion Power LLC, 2017 US Dist. LEXIS 82480, at *16–18 (DDC 31 May 2017).
51 Id at *19–20.
52 Id at *18–20.
53 Id at *20.
54 Getma Int'l v Republic of Guinea, 142 F Supp. 3d 110, 114–15 (DDC 2015).
55 2017 US App. LEXIS 13065 (2d Cir. 20 July 2017)
56 Thai-Lao Lignite (Thailand) Co, Ltd v Gov't of the Lao People's Democratic Republic, 2017 US App. LEXIS 13065, at *19 (2d Cir. 20 July 2017).
57 See Thai-Lao Lignite (Thailand) Co v Gov't of the Lao People's Democratic Republic, 10 Civ. 5256, 2011 US Dist. LEXIS 87844 (3 August 2011).
58 See Thai-Lao Lignite (Thail.) Co v Gov't of the Lao People's Democratic Republic, 492 Fed. Appx. 150 (2d Cir. 2012)
59 The 'FSIA', 28 USC sections 1602 et seq. See Thai Lao Lignite (Thailand) Co, Ltd v Gov't of the Lao People's Democratic Republic, 10 Civ. 5256, 2013 US Dist. LEXIS 56815 (SDNY 19 April 2013) (vacating restraining orders as assets were immune to execution under FSIA).
60 Id at *7–8.
61 Thai-Lao Lignite (Thailand) Co, Ltd v Lao People's Democratic Republic, No. 10-cv-5256, US Dist. LEXIS 15004, at *2–4 (SDNY 6 February 2014).
62 Id.
63 Thai-Lao Lignite (Thailand) Co, Ltd, 2017 US App. LEXIS 13065, at *9–10.

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