



United Nations
UNCITRAL

United Nations Commission on International Trade Law

Accession Kit for States intending to become Parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York Convention, 1958

**Practical information on the accession process
to the Convention and model instruments**

This is not an ADB material. The views expressed in this document are the views of the author/s and/or their organizations and do not necessarily reflect the views or policies of the Asian Development Bank, or its Board of Governors, or the governments they represent. ADB does not guarantee the accuracy and/or completeness of the material's contents, and accepts no responsibility for any direct or indirect consequence of their use or reliance, whether wholly or partially. Please feel free to contact the authors directly should you have queries.

Introduction

1. Arbitration is widely perceived as being the most suitable method of dispute resolution for international trade law due to its efficiency and neutrality. The General Assembly of the United Nations in its resolution 62/65 of 6 December 2007 has recognized the value of arbitration as a method of dispute settlement in international trade relations insofar that it harmonizes trade relations and stimulates international trade. Consequently, it is common to find an arbitration clause in an international commercial contract. Investment instruments do also often state its choice in favour of this mode of alternative dispute resolution.

2. Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term “non-domestic” appears to embrace awards which, although made in the State of enforcement, are treated as “foreign” under its law because of some foreign element in the proceedings, e.g. another State’s procedural laws are applied.

3. Ratified by 157 States in the world,¹ the Convention has become an essential element in the facilitation of international trade and in the promotion of arbitration as an alternative and effective method of resolving trade disputes. Although adoption of the Convention is almost universal, the Secretariat continues its efforts in promoting the Convention so that countries that are still not parties to the Convention can become a party to it.

4. This brochure describes the procedures that States must follow in order to become a party to the Convention. Annexed to this brochure are model instruments of (i) ratification, acceptance, or approval, (ii) accession and (iii) declarations that may be used for deposition at the Secretary-General of the United Nations.

Objectives

5. The Convention’s principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

¹ Further information on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, including the status of ratification, is available at the following address:
http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html

Key provisions

6. The Convention applies to awards made in any State other than the State in which recognition and enforcement is sought. It also applies to awards “not considered as domestic awards”. When consenting to be bound by the Convention, a State may declare that it will apply the Convention (a) in respect to awards made only in the territory of another Party and (b) only to legal relationships that are considered “commercial” under its domestic law.

7. The Convention contains provisions on arbitration agreements. This aspect was covered in recognition of the fact that an award could be refused enforcement on the grounds that the agreement upon which it was based might not be recognized. Article II (1) provides that Parties shall recognize written arbitration agreements. In that respect, UNCITRAL adopted, at its thirty-ninth session in 2006, a Recommendation that seeks to provide guidance to Parties on the interpretation of the requirement in article II (2) that an arbitration agreement be in writing and to encourage application of article VII (1) to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

8. The central obligation imposed upon Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the *lex fori*. Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.

9. The Convention defines five grounds upon which recognition and enforcement may be refused at the request of the party against whom it is invoked. The grounds include incapacity of the parties, invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made. The Convention defines two additional grounds upon which the court may, on its own motion, refuse recognition and enforcement of an award. Those grounds relate to arbitrability and public policy.

10. The Convention seeks to encourage recognition and enforcement of awards in the greatest number of cases as possible. That purpose is achieved through article VII (1) of the Convention by removing conditions for recognition and enforcement in national laws that are more stringent than the conditions in the Convention, while allowing the continued application of any national provisions that give special or more favourable rights to a party seeking to enforce an award. That article recognizes the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention.

Entry into force

11. The Convention entered into force on 7 June 1959 (article XII).

How to become a party

12. The Convention is closed for signature. It is subject to ratification, and is open to accession by any Member State of the United Nations, any other State which is a member of any specialized agency of the United Nations, or is a Party to the Statute of the International Court of Justice (articles VIII and IX).

Optional and/or mandatory declarations and notifications

13. When signing, ratifying or acceding to the Convention, or notifying a territorial extension under article X, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Party to the Convention. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration (article I).

Denunciation/Withdrawal

14. Any Party may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of the receipt of the notification by the Secretary-General (article XIII).

Financial implications

15. Becoming a party to the convention does not have financial implications to Member States. The administration of the Convention at the domestic level does not require a body devoted to this purpose. Furthermore, the adoption of the Convention does not imply an obligation to submit reports.

Technical assistance for the implementation of the Convention

16. UNCITRAL can assist States in facilitating the application of the Convention after it has entered into force. The UNCITRAL Secretariat undertakes various technical assistance activities such as organizing training activities for judges and other legal practitioners to enable them to apply and interpret the Convention more easily. Such technical assistance is free and is provided upon official request by a State addressed to the UNCITRAL Secretariat.

17. In addition, UNCITRAL provides interested persons with many tools intended to promote the Convention to facilitate its application by practitioners. For example, a system for the dissemination of court decisions and arbitral awards relating to UNCITRAL legislative texts – including the New York Convention – has been established to assist in achieving uniformity in the interpretation and application of these texts. This system relies national correspondents who collect decisions and awards and prepare abstracts that are uploaded on an online database called CLOUT (*Case Law on UNCITRAL Texts.*)

As a result, legislators, judges, arbitrators, lawyers, parties to commercial transactions, academics, and students around the whole world have access to case law from a large number of countries thanks to those abstracts translated in the six official languages of the United Nations.

18. UNCITRAL has also undertaken work to eliminate or limit the effect of legal discrepancies by reinforcing uniform interpretation and effective application of the New York Convention in particular. This work has resulted in the creation of the website www.newyorkconvention1958.org and the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Guide). The Guide, available online in the six official languages of the United Nations, presents information on the Convention, article by article. Each section contains an analysis of case law that have applied the principles and exceptions provided in a given article, thereby highlighting the convergences and divergences of interpretation. The website provides legal experts from all regions and legal professions with constantly updated compilation of decisions that interpret the Convention and contains information in English concerning these decisions. The site also contains information on the ratification of the Convention by country.

19. These different tools are an important resource for countries and regions where there may be limited opportunities to develop knowledge and expertise on UNCITRAL texts, including the Convention. They are instrumental in promoting the uniform interpretation of UNCITRAL texts through their application by courts and arbitral tribunals worldwide, contributing to the development and refinement of a global interpretation of those texts, and enhancing their acceptability.

20. In conclusion, the UNCITRAL Secretariat is available to any State wishing to consider acceding to the Convention by accompanying the State during the accession process and subsequently facilitating the application of the text.

The UNCITRAL Secretariat
February 2018

**ANNEX 1 – MODEL INSTRUMENT OF RATIFICATION,
ACCEPTANCE OR APPROVAL**

**(To be signed by the Head of State, Head of Government or Minister for Foreign
Affairs)**

[RATIFICATION / ACCEPTANCE / APPROVAL]

WHEREAS the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted at New York on 10 June 1958,

AND WHEREAS the said convention has been signed on behalf of [the Government of (name of State)] on [date],

NOW THEREFORE I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs] declare that [the Government of (name of State)], having considered the above-mentioned convention, [ratifies, accepts, approves] the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of [ratification, acceptance, approval] at [place] on [date].

[Signature]

ANNEX 2 – MODEL INSTRUMENT OF ACCESSION

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

ACCESSION

WHEREAS the Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted at New York on 10 June 1958,

NOW THEREFORE I, [name and title of the Head of State] declare that [the Government of (name of State)], having considered the above-mentioned convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at [place] on [date].

[Signature]

ANNEX 3 – MODEL INSTRUMENT OF DECLARATIONS

(To be signed by the Head of State, Head of Government or Minister for Foreign Affairs)

DECLARATION

I, [name and title of the Head of State, Head of Government or Minister for Foreign Affairs],

HEREBY DECLARE that [the Government of (name of State)] makes the following [reservation/declaration] in relation to article(s) [.....] of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards : [...]

IN WITNESS WHEREOF, I have hereunto set my hand and seal.

Done at [place] on [date].

[Signature and title]