

Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard, Gordon E Kaiser and Benjamin Siino

Second Edition

The Guide to Challenging and Enforcing Arbitration Awards

Second Edition

General Editor

J William Rowley QC

Editors

Emmanuel Gaillard, Gordon E Kaiser

and Benjamin Siino

Reproduced with permission from Law Business Research Ltd

This article was first published in May 2021

For further information please contact Natalie.Clarke@lbresearch.com



Publisher

David Samuels

Account Managers

Marta Jurkowska and Samuel Romp

Editorial Coordinator

Georgia Goldberg

Production Operations Director

Adam Myers

Head of Content Production

Simon Busby

Copy-editor

Caroline Fewkes

Proofreaders

Felicia Rosas and Martin Roach

Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34-35 Farringdon Street, London, EC4A 4HL, UK

© 2021 Law Business Research Ltd

www.globalarbitrationreview.com

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at April 2021, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – David.Samuels@lbresearch.com

ISBN 978-1-83862-575-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

Acknowledgements

The publisher acknowledges and thanks the following for their learned assistance throughout the preparation of this book:

ADVOKATFIRMAN VINGE KB

ALSTON & BIRD LLP

BGP LITIGATION

CARMIGNIANI PÉREZ ABOGADOS

CECIL ABRAHAM & PARTNERS

CLEARY GOTTlieb STEEN & HAMILTON LLP

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP

DEBEVOISE & PLIMPTON

DE BRAUW BLACKSTONE WESTBROEK

DLA PIPER

ENERGY ARBITRATION LLP • TORONTO • WASHINGTON

FIELDFISHER LLP

FRESHFIELDS BRUCKHAUS DERINGER LLP

FRORIEP LEGAL SA

GAILLARD BANIFATEMI SHELBAYA DISPUTES

G ELIAS & CO

GIBSON, DUNN & CRUTCHER UK LLP

Acknowledgements

GOWLINGS WLG
HAN KUN LAW OFFICES
HORIZONS & CO LAW FIRM
JENNER & BLOCK LONDON LLP
KHAITAN & CO
KING & SPALDING INTERNATIONAL LLP
KONRAD PARTNERS
LITREDI, SC
LOYENS & LOEFF
MARTINEZ DE HOZ & RUEDA
MILBANK LLP
NAGASHIMA OHNO & TSUNEMATSU
NORTON ROSE FULBRIGHT LLP
REED SMITH
RESOURCE LAW LLC
SERGIO BERMUDEZ ABOGADOS
STIRNIMANN FUENTES DISPUTE RESOLUTION
STUDIO LEGALE ARBLIT
TWENTY ESSEX CHAMBERS
YOUSSEF & PARTNERS
YULCHON LLC

Publisher's Note

Global Arbitration Review is delighted to publish this new edition of *The Guide to Challenging and Enforcing Arbitration Awards*.

For those new to Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and more in-depth books and reviews. We also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial 'official journal' of international arbitration, sometimes we spot gaps in the literature earlier than others. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters had increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes – and soon evidence and investor-state disputes – in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the original group of editors for their vision and energy in pursuing this project and to our authors and my colleagues in production for achieving such a polished work.

Alas, as we were about to go to press, we were stunned by the unexpected demise of one of those editors, Emmanuel Gaillard. This news was as big a shock as I can recall. Emmanuel was one of three or four names who define international arbitration in the modern era. It was a delight to know him, and a source of huge satisfaction that he respected GAR, and it is hard to imagine professional life without him. Our sympathies go to his family and beloved colleagues, who I have no doubt will keep at least some of the magic alive.

David Samuels

London

April 2021

Contents

Foreword.....ix
Alan Redfern

Prefacexiii
J William Rowley QC

Part I – Issues relating to Challenging and Enforcing Arbitration Awards

1 Awards: Early Stage Consideration of Enforcement Issues3
Sally-Ann Underhill and M Cristina Cárdenas

2 Awards: Form, Content, Effect..... 12
James Hope

3 Awards: Challenges..... 22
Michael Ostrove, James Carter and Ben Sanderson

4 Arbitrability and Public Policy Challenges 35
Penny Madden QC, Ceyda Knoebel and Besma Grifat-Spackman

5 Jurisdictional Challenges 48
Michael Nolan and Kamel Aitelaj

6 Due Process and Procedural Irregularities: Challenges..... 58
Simon Sloane and Emily Wyse Jackson

Contents

7	Awards: Challenges Based on Misuse of Tribunal Secretaries.....	69
	<i>Chloe J Carswell and Lucy Winnington-Ingram</i>	
8	Substantive Grounds for Challenge.....	85
	<i>Joseph D Pizzurro, Robert B García and Juan O Perla</i>	
9	Enforcement under the New York Convention	98
	<i>Emmanuel Gaillard and Benjamin Siino</i>	
10	Enforcement of Interim Measures	112
	<i>James E Castello and Rami Chahine</i>	
11	Prevention of Asset Stripping: Worldwide Freezing Orders.....	127
	<i>Charlie Lightfoot and Michaela Croft</i>	
12	Grounds to Refuse Enforcement.....	141
	<i>Sherina Petit and Ewelina Kajkowska</i>	
13	ICSID Awards.....	152
	<i>Christopher P Moore, Laurie Ahtouk-Spivak and Zeïneb Bouraoui</i>	
14	Enforcement Strategies where the Opponent is a Sovereign	166
	<i>Alexander A Yanos and Kristen K Bromberek</i>	

**Part II – Challenging and Enforcing Arbitration Awards:
Jurisdictional Know-How**

15	Argentina.....	181
	<i>José Martínez de Hoz and Francisco Amallo</i>	
16	Austria.....	204
	<i>Christian W Konrad and Philipp A Peters</i>	
17	Belgium.....	223
	<i>Hakim Boularbah, Olivier van der Haegen and Anaïs Mallien</i>	
18	Brazil.....	248
	<i>Marcio Vieira Souto Costa Ferreira, Antonia de Araujo Lima and Renata Auler Monteiro</i>	

Contents

19	Canada	265
	<i>Gordon E Kaiser and Aweis Osman</i>	
20	China	298
	<i>Xianglin Chen</i>	
21	Ecuador	324
	<i>Eduardo Carmigniani, Hugo García Larriva, Alvaro Galindo, Carla Cepeda Altamirano, Daniel Caicedo and Bernarda Muriel</i>	
22	Egypt.....	337
	<i>Karim A Youssef</i>	
23	England and Wales	358
	<i>Oliver Marsden and Ella Davies</i>	
24	France	382
	<i>Christophe Seraglini and Camille Teynier</i>	
25	Germany	403
	<i>Boris Kasolowsky and Carsten Wendler</i>	
26	Hong Kong	421
	<i>Tony Dymond and Cameron Sim</i>	
27	India.....	441
	<i>Sanjeev K Kapoor and Saman Ahsan</i>	
28	Italy	467
	<i>Massimo Benedettelli and Marco Torsello</i>	
29	Japan.....	490
	<i>Hiroki Aoki and Takashi Ohno</i>	
30	Malaysia.....	514
	<i>Tan Sri Dato' Cecil W M Abraham, Aniz Ahmad Amirudin and Syukran Syafiq</i>	

Contents

31	Mexico	531
	<i>Michelle Carrillo Torres</i>	
32	Netherlands	550
	<i>Marnix Leijten, Erin Cronjé and Abdel Khalek Zirar</i>	
33	Nigeria	574
	<i>Gbolahan Elias SAN, Lawal Ijaodola, Athanasius Akor and Oluwaseun Oyekan</i>	
34	Russia.....	588
	<i>Alexander Vaneev, Elena Kolomiets, Viktoria Bogacheva and Sergey Ivanov</i>	
35	Singapore.....	607
	<i>Kohe Hasan, Justine Barthe-Dejean and Ian Choi</i>	
36	South Korea.....	630
	<i>Yun Jae Baek, Jeonghye Sophie Ahn and Hyunah Park</i>	
37	Sweden.....	651
	<i>James Hope</i>	
38	Switzerland.....	668
	<i>Franz Stirnimann Fuentes, Jean Marguerat, Tomás Navarro Blakemore and James F Reardon</i>	
39	United Arab Emirates.....	692
	<i>Areen Jayousi and Muhammad Mohsin Naseer</i>	
40	United States	715
	<i>Elliot Friedman, David Livshiz and Paige von Mehren</i>	
	About the Authors	737
	Contributors' Contact Details	773

Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial – leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 166 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 163.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2020, *Global Arbitration Review's* daily news reports contained hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2021, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Uganda fails to knock out rail-claim award
- Iranian state entity fails to overturn billion-euro award
- US Supreme Court rejects Petrobras bribery appeal
- Spanish court sets high bar for award scrutiny
- Swiss award against Glencore upheld on third attempt
- Tajik state airline escapes Lithuanian award
- Dutch court refuses to stay Yukos awards
- Undisclosed expert ties prove fatal to ICSID award
- Brazilian airline's award enforced in Cayman Islands
- ICC arbitrators targeted in Kenyan mobile dispute

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, in summer 2017, I raised the possibility of doing a book on the subject with David Samuels (Global Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in early April. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said almost 40 years ago:

an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide begins with a particularly welcome and inciteful foreword by Alan Redfern, recognised worldwide as one of the most thoughtful and experienced practitioners in our field. The guide is then structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this second edition, the 14 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and the special case of ICSID awards.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 26 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 51 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this second edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

London

April 2021

Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – in other words, efficient, experienced and impartial – leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in 166 countries (at the time of writing). When enforcement against a sovereign state is at issue, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 163.

Awards used to be honoured

International corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily – of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2020, *Global Arbitration Review's* daily news reports contained hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement. Indeed, in the first three months of 2021, there has not been a day when the news reports have not headlined the attack on, survival of, or a successful or failed attempt to enforce an arbitral award.

A sprinkling of recent headlines on the subject are illustrative:

- Uganda fails to knock out rail-claim award
- Iranian state entity fails to overturn billion-euro award
- US Supreme Court rejects Petrobras bribery appeal
- Spanish court sets high bar for award scrutiny
- Swiss award against Glencore upheld on third attempt
- Tajik state airline escapes Lithuanian award
- Dutch court refuses to stay Yukos awards
- Undisclosed expert ties prove fatal to ICSID award
- Brazilian airline's award enforced in Cayman Islands
- ICC arbitrators targeted in Kenyan mobile dispute

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, in summer 2017, I raised the possibility of doing a book on the subject with David Samuels (Global Arbitration Review's publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project. It was a dreadful shock to learn of Emmanuel's sudden death in early April. Emmanuel was an arbitration visionary. He was one of the first to recognise the revolutionary changes that were taking place in the world of international arbitration in the 1990s and the early years of the new century. From a tiny group defined principally by academic antiquity, we had become a thriving, multicultural global community, drawn from the youngest associate to the foremost practitioner. Emmanuel will be remembered for the enormous contribution he made to that remarkable evolution.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said almost 40 years ago:

an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide begins with a particularly welcome and inciteful foreword by Alan Redfern, recognised worldwide as one of the most thoughtful and experienced practitioners in our field. The guide is then structured to include, in Part I, coverage of general issues that will always need to be considered by parties, wherever situate, when faced with the need to enforce or to challenge an award. In this second edition, the 14 chapters in Part I deal with subjects that include initial strategic considerations in relation to prospective proceedings; how best to achieve an enforceable award; challenges generally and a variety of specific types of challenges; enforcement generally and enforcement against sovereigns; enforcement of interim measures; how to prevent asset stripping; grounds to refuse enforcement; and the special case of ICSID awards.

Part II of the guide is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This edition includes reports on 26 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 51 questions. All relate to essential, practical information about the local approach and requirements relating to challenging or seeking to enforce awards. Obviously, the answers to a common set of questions will provide readers with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

With this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors those colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach even further.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this second edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

London

April 2021

Appendix 1

About the Authors

J William Rowley QC

Twenty Essex Chambers

J William Rowley QC has chaired or participated as a tribunal member or counsel in more than 200 international arbitrations, involving more than 50 national or state laws or treaty systems. He is described as ‘one of the elite international arbitrators’ (*The New Peace Keepers*); a ‘Star Performer’ (*Legal Business Arbitration Report*); one of London’s ‘Super-Arbitrators’ (*Global Arbitration Review*); ‘exceptional’, ‘Olympian’, ‘no one ever leaves the chamber with a sense of injustice’, a ‘big character on the scene’ (*Chambers UK*); a ‘superb’ arbitrator and a ‘sensible chairman’, who is ‘very efficient and extremely charming’, an ‘extremely strong’ arbitrator and a ‘sensible’ chairman (*Chambers Global 2018’s Most In Demand Arbitrators*). *Who’s Who Legal* includes him on its Most Highly Regarded list, saying ‘he boasts “a giant reputation” in the international arbitration space’ as ‘a top arbitrator’ who ‘possesses vast experience in handling both commercial and public international law disputes’; he is ‘regarded as one of the leading arbitrators in the world for international disputes’, is ‘widely acknowledged to be “as good as it gets”, particularly for energy disputes’ and ‘in my opinion, the best of the big names of the arbitration space’.

He served as board chairman of the LCIA from 2013 to 2017 and is a former member of the LCIA Court. He is a member of the ICSID Panel of Arbitrators, the ICC Canadian Panel and multiple regional panels (including AAA/ICDR, SCC, DIAC, KLRC, SIAC, HKIAC). He is a former member of the NAFTA 2022 Committee.

He was general editor of *Arbitration World* from 2004 to 2012. He is chairman of the editorial board of *Global Arbitration Review*, a former chairman of the IBA Business Section and IBA Antitrust Committee, and co-author of *Rowley & Baker: International Mergers – The Antitrust Process*. He served as chairman at McMillan LLP from 1996 to 2009, and as chairman emeritus and special counsel from 2009 to 2014.

Twenty Essex Chambers

20 Essex Street

London, WC2R 3AL

United Kingdom

Tel: +44 20 7842 1200

Fax: +44 20 7842 1270

wrowley@twentyessex.com

www.twentyessex.com

Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

The Guide to Challenging and Enforcing Arbitration Awards is a comprehensive volume that addresses this new reality. It offers practical know-how on both sides of the coin: challenging, and enforcing, awards. Part I provides a full thematic overview, while Part II delves into the specifics seat by seat, covering 26 jurisdictions.

Visit globalarbitrationreview.com
Follow @garalerts on Twitter
Find us on LinkedIn

ISBN 978-1-83862-575-7