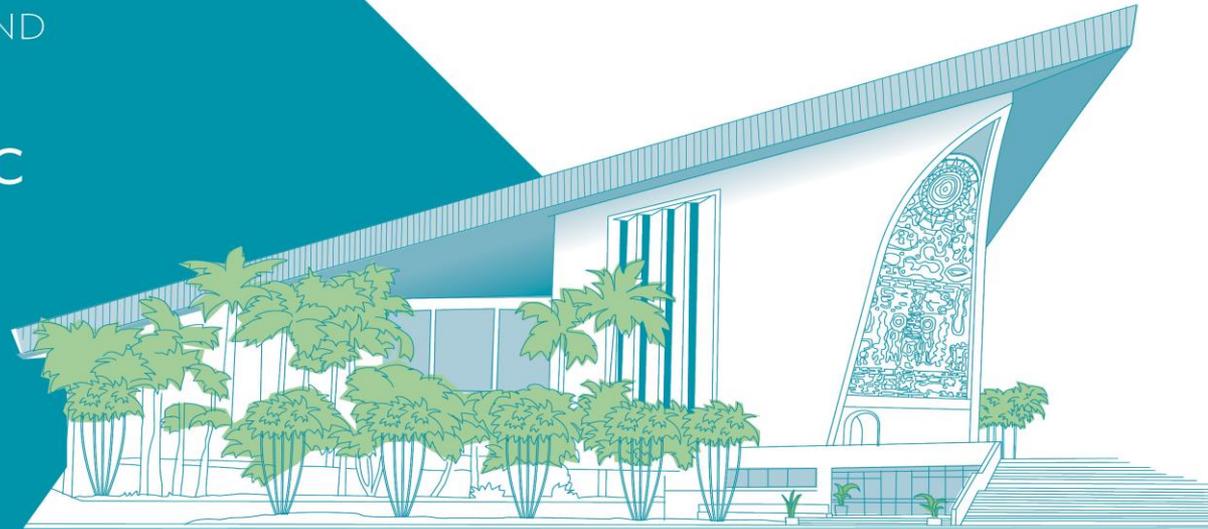




INTERNATIONAL MEDIATION AND  
ARBITRATION CONFERENCE

# 2nd South Pacific International Arbitration Conference

25–26 March 2019  
Stanley Hotel, Port Moresby  
Papua New Guinea



## INTRODUCTION TO THE NEW YORK CONVENTION

KOH Swee Yen

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**Convention on the  
Recognition and  
Enforcement of  
Foreign Arbitral Awards,  
1958  
(New York Convention)**



# The New York Convention

*“one of the most important and successful United Nations treaties in the area of international trade law, and the cornerstone of the international arbitration system”*

[Renaud Sorieul, the Secretary of UNCITRAL]

# The New York Convention

Status map

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958)

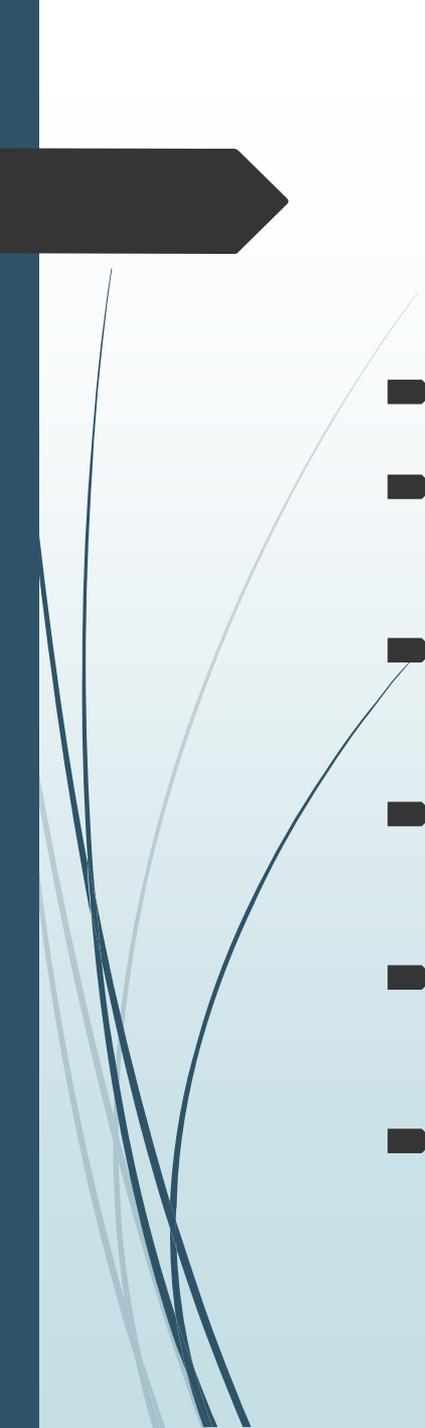


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# Twin objectives of the New York Convention

- Recognition and enforcement of foreign arbitral awards
- Recognition of arbitration agreements; referral by a Court to arbitration

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# The New York Convention - Overview

- **Article I** - Scope of application
- **Article II** - Obligation to recognise arbitration agreements and refer parties to arbitration
- **Article III** - Obligation to recognise international arbitral awards as binding and enforce them
- **Article IV** - Requirements of formal proof of arbitral awards
- **Article V** - Grounds for refusing recognition and enforcement of arbitral awards
- **Article VI** - Procedure during pendency of a setting aside application



# Article I of the New York Convention

1. This Convention shall apply to the **recognition and enforcement of arbitral awards made in the territory of a State other than the State** where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards **not** considered as **domestic** awards in the State where their recognition and enforcement are sought.
2. The term “arbitral awards” shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which parties have submitted.

# Article I of the New York Convention

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, 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 Contracting State. 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



# Article II of the New York Convention

1. Each Contracting State **shall** recognize an **agreement in writing** under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.



# Article II of the New York Convention

2. The term “agreement in writing” shall **include** an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, **shall**, at the request of one of the parties, **refer the parties to arbitration, unless** it finds that the said agreement is **null and void, inoperative or incapable of being performed.**



# Article III of the New York Convention

Each Contracting State **shall recognize arbitral awards as binding and enforce them** in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There **shall not** be imposed substantially **more onerous conditions** or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.



# Article IV of the New York Convention

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The **duly authenticated original award** or a duly certified copy thereof;

(b) The **original agreement** referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

# Article V(1) of the New York Convention

1. Recognition and enforcement of the award **may** be refused, at the request of the party against whom it is invoked, **only if** that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the arbitration agreement were, under the law applicable to them, under some **incapacity**, or the said **agreement is not valid** under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or



# Article V(1) of the New York Convention

(b) The party against whom the award is invoked was **not given proper notice** of the appointment of the arbitrator or of the arbitration proceedings or was **otherwise unable to present his case**; or

(c) The award deals with a difference **not contemplated by** or **not falling within the terms of the submission to arbitration**, or it contains **decisions on matters beyond the scope of the submission to arbitration**, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or



# Article V(1) of the New York Convention

(d) The composition of the arbitral authority or the arbitral procedure was **not in accordance with the agreement of the parties**, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become **binding** on the parties, or has been **set aside** or **suspended** by a competent authority of the country in which, or under the law of which, that award was made.



# Article V(2) of the New York Convention

2. Recognition and enforcement of an arbitral award **may** also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The **subject matter** of the difference is **not capable of settlement by arbitration** under the law of that country; or

(b) The recognition or enforcement of the award would be **contrary to the public policy** of that country.

# Article VI of the New York Convention

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) (e), the authority before which the award is sought to be relied upon **may**, if it considers it proper, **adjourn** the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable **security**.



# UNCITRAL Model Law & the New York Convention

- ▶ UNCITRAL Model Law on International Commercial Arbitration, 1985
- ▶ The grounds for setting aside an arbitral award in Article 34(2) of Model Law are the same as those in Article V of the New York Convention
- ▶ The grounds for refusing recognition and enforcement of an arbitral award in Article 36 of the Model Law are the same as those in Article V of the New York Convention

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# A Challenging Enforcement Environment

- ▶ Applications for setting aside of arbitral awards
- ▶ Applications to resist recognition and enforcement of arbitral awards
- ▶ Asset-tracing and recovery
- ▶ Enforcement against State-respondents

# Thank you



KOH Swee Yen  
Partner, International Arbitration &  
Commercial and Corporate Disputes  
WongPartnership LLP

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d +65 6416 6876

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sweeyen.koh@wongpartnership.com