

NEW YORK CONVENTION 1958	HYPOTHETICAL DRAFT CONVENTION 2008
<i>Article I</i>	<i>Article 1 – Field of Application</i>
<i>[No comparable provision]</i>	<p>1. This Convention applies to the enforcement of an arbitration agreement if:</p> <p>(a) the parties to the arbitration agreement have, at the time of the conclusion of that agreement, their place of business or residence in different States, or</p> <p>(b) the subject matter of the arbitration agreement relates to more than one State.</p>
<p>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.</p>	<p>2. This Convention applies also to the enforcement of an arbitral award based on an arbitration agreement referred to in paragraph 1.</p>
<i>[Passim]</i>	<p>3. Where this Convention refers to the enforcement of an arbitral award, it comprises the recognition of an arbitral award.</p>
<p>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 the parties have submitted.</p>	<i>[Deleted]</i>
<p>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 declaration.</p>	<i>[See Article 8 - General Clauses below]</i>

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<i>Article II</i>	<i>Article 2 – Enforcement of Arbitration Agreement</i>
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.	<i>[Deleted in part; see paragraph 3(c)]</i>
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	<i>[Deleted]</i>
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	1. If a dispute is brought before a court of a Contracting State which the parties have agreed to submit to arbitration, the court shall, at the request of a party, refer the dispute to arbitration, subject to the conditions set forth in this article.
<i>[See in part paragraph 3 above]</i>	2. The court shall not refer the dispute to arbitration if the party against whom the arbitration agreement is invoked asserts and proves that:
<i>[No comparable provision]</i>	(a) the other party has requested the referral subsequent to the submission of its first statement on the substance of the dispute in the court proceedings; or
<i>[See paragraph 3]</i>	(b) there is <i>prima facie</i> no valid arbitration agreement under the law of the country where the award will be made; or
<i>[See paragraph 1 in fine]</i>	(c) arbitration of the dispute would violate international public policy as prevailing in the country where the agreement is invoked.

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<i>[No comparable provision]</i>	3. The court may on its own motion refuse to refer the dispute to arbitration on ground (c) mentioned in paragraph 2.
<b>Article III</b>	<b>Article 3 – Enforcement of Award – General</b>
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	<p>1. An arbitral award shall be enforced exclusively on the basis of the conditions set forth in this Convention.</p> <p>2. The law of the country where enforcement is sought shall govern the procedure for enforcement of the award.</p> <p>3. There shall not be imposed onerous requirements on the procedure for enforcement nor substantial fees or charges.</p>
<i>[No comparable provision]</i>	4. Courts shall act expeditiously on a request for enforcement of an arbitral award.
<b>Article IV</b>	<b>Article 4 – Request for Enforcement</b>
<i>[No comparable provision]</i>	1. Fulfillment of the conditions set forth in this article entitles the party seeking enforcement to be granted enforcement of the arbitral award, unless the court finds that a ground for refusal is present under the conditions set forth in articles 5 and 6.
<p>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:</p> <p>(a) The duly authenticated original award or a duly certified copy thereof;</p>	2. The party seeking enforcement shall supply to the court the original of the arbitral award.
<i>[See paragraph 1(a)]</i>	3. Instead of an original of the arbitral award, the party seeking enforcement may submit a copy certified as conforming to the original. The certification shall be in such form as directed by the court.

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(b) The original agreement referred to in article II or a duly certified copy thereof.	<i>[Deleted]</i>
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.	4. If the arbitral award is not in an official language of the court before which enforcement is sought, the party seeking enforcement shall, at the request of the other party or the court, submit a translation. The translation shall be in such form as directed by the court.
<i>Article V</i>	<i>Article 5 – Grounds for Refusal of Enforcement</i>
<i>[No comparable provision]</i>	1. Enforcement of an arbitral award shall not be refused on any ground other than the grounds expressly set forth in this article.
<i>[No comparable provision]</i>	2. Enforcement shall be refused on the grounds set forth in this article in manifest cases only.
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:	3. Enforcement of an arbitral award shall be refused if, at the request of the party against whom the award is invoked, that party asserts and proves that:
(a) The parties to the agreement referred to in article II 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	(a) there is no valid arbitration agreement under the law of the country where the award was made; or
(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	(b) the party against whom the award is invoked was not treated with equality or was not given a reasonable opportunity of presenting its case; or

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(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 recognized and enforced; or	(c) the relief granted in the award is more than, or different from, the relief sought in the arbitration and such relief cannot be severed from the relief sought and granted; or
(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	(d) the composition of the arbitral tribunal was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; or
<i>[See paragraph 1(d)]</i>	(e) the arbitral procedure was not in accordance with the agreement of the parties, or in the absence of such an agreement, not in accordance with the law of the country where the award was made; 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	(f) the award is subject to appeal on the merits before an arbitral appeal tribunal or a court in the country where the award was made; or
<i>[See paragraph 1(e)]</i>	(g) the award has been set aside by the court in the country where the award was made on grounds equivalent to grounds (a) to (e) of this paragraph; or
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:	<i>[See paragraph 4 below]</i>
(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or	<i>[Subsumed in ground (h) below]</i>

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(b) The recognition or enforcement of the award would be contrary to the public policy of that country	(h) enforcement of the award would violate international public policy as prevailing in the country where enforcement is sought.
	4. The court may on its own motion refuse enforcement of an arbitral award on ground (h) of paragraph 3.
<i>[No comparable provision]</i>	5. The party against whom the award is invoked cannot rely on grounds (a) to (e) of paragraph 3 if that party has not raised them in the arbitration without undue delay after the moment when the existence of the ground became known to that party.
<b>Article VI</b>	<b>Article 6 – Action for Setting Aside Pending in Country of Origin</b>
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.	<p>1. If the application for setting aside the award referred to in article 5(3)(g) is pending in the country where the award was made, the court before which the enforcement of the award is sought under this Convention has the discretion to adjourn the decision on the enforcement.</p> <p>2. When deciding on the adjournment, the court may, at the request of a party, require suitable security from the party seeking enforcement or the party against whom the award is invoked.</p>
<b>Article VII(1)</b>	<b>Article 7 – More-Favourable-Right</b>
1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.	If an arbitration agreement or arbitral award can be enforced on a legal basis other than this Convention in the country where the agreement or award is invoked, a party seeking enforcement is allowed to rely on such basis.

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<i>Articles VII(2) - XVI</i>	<i>Article 8 - General Clauses</i>
	The General Clauses to be considered and possibly included in the Draft Convention include amongst others:
<i>[No comparable provision]</i>	(a) Designation of Competent Enforcement Court
<i>[No comparable provision]</i>	(b) Interpretation
<i>Article VII(2)</i>	(c) Relationship with the New York Convention
<i>[No comparable provision]</i>	(d) References to the New York Convention in other treaties
<i>Article VII(1)</i>	(e) Compatibility with other treaties
<i>Article I(3)</i>	(f) [No] reservations .
<i>Article XIV</i>	(g) General reciprocity
<i>Articles X - XI</i>	(h) Applicability of the Draft Convention to territories and in federal states
<i>Articles VIII - IX</i>	(i) Signature, ratification and accession, and deposit
<i>Article XII</i>	(j) Entry into force
<i>[No comparable provision]</i>	(k) Retroactive [in]applicability; transitional clauses
<i>Article XIII</i>	(l) Denunciation
<i>Article XV</i>	(m) Notifications
<i>Article XVI</i>	(n) Language of authentic texts.