akerman

Practice Update

Enforcement of Foreign Judgments Abroad (The New Hague Convention)

July 15, 2019

By Luis A. Perez and Alejandro Chevalier

Parties to a cross-border transaction must always take into account the possibility of facing future disputes. Tools such as the inclusion of arbitral clauses in international contracts have proven advantageous for a very practical reason: the efficient enforceability of arbitral awards in other jurisdictions which are signatories to the New York Convention on the Recognition and Enforcement of Foreign Judgments (1958). With a rise in the use of alternative dispute resolution methods, such as arbitration, parties to international transactions have moved away from solving their disputes through their States' traditional courts.

The enforcement of traditional civil and commercial judgments has demonstrated to be a costly, laborious, and technically demanding process. This procedure, known as *exequatur*, frequently involves a review on the merits by the domestic courts of the State wherein recognition and enforcement is attempted, usually where assets of the judgment debtor are located. Thus, the international enforcement of judgments made by traditional courts has always been less desirable than the enforcement of arbitral awards. In other words, it is more practical and convenient for parties to international transactions whose states are signatories to the New York Convention, to attempt to settle their disputes through arbitration.

Related People

Luis A. Perez

Related Work

International

International Litigation and Arbitration

Related Offices

Miami

However, on July 2, 2019, the delegates of the 22nd Diplomatic Session of the Hague Conference on Private International Law ("HCCH") finalized and adopted a new multilateral treaty, the 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the "2019 Enforcement Convention"), which obliges contracting states to recognize and enforce civil and commercial judgments rendered by the courts in another contracting state without a thorough review of the merits.

The principal obligation is found in Article 4, which provides: "a judgment given by a court of a Contracting State (State of origin) shall be recognized and enforced in another Contracting State (requested State) in accordance with [Chapter II of the Convention]." "Civil and commercial judgments" are final judgments, whether money or non-money judgments.

Additionally, the 2019 Enforcement Convention sets out in Article 7(1) the exclusive bases on which recognition and enforcement may be refused, which include improper service, fraud, and manifest incompatibility with the public policy of the requested state, which could translate directly into lack of due process.

The adoption of this New Convention could be a game changer, as it will facilitate the recognition and enforcement of court judgments entered in a foreign jurisdiction. Nevertheless, it is too early to say how foreign courts will react to an attempt to enforce a foreign judgment, and especially, the defenses that will be admitted and recognized - this will largely depend on the States that finally sign the Convention. Much remains to be decided once practical applications come into play, especially if the judgment has been entered in a jurisdiction where the prerequisites of "due process" are somewhat suspect. Therefore, until this New Convention comes into full force and effect, and is granted practical efficiency, arbitration should

continue to be used as the ideal method for parties involved in international transactions to resolve their disputes.

Please contact Akerman's International Litigation and Arbitration practice with any questions you may have or to request further details of recent developments.
