

REDEFINING THE FINISH LINE IN ARBITRATION: EXECUTION, NOT THE AWARD

[2026] SAL Prac 28

The arbitration community often treats the award as the end of the dispute. In practice, recovery depends on recognition and execution before national courts, where local laws, public policy and procedural rules can significantly affect enforcement outcomes.

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I. The myth of arbitral finality

1 International arbitration is often presented as a self-contained, complete dispute resolution mechanism that operates independently of the national courts. As arbitration is premised upon party agreement, parties assume and expect procedural good faith and voluntary compliance with awards. The well-espoused doctrine of arbitral finality further encourages the mindset that the award represents the effective conclusion of the dispute.

2 However, in practice, a successful award is not an end unto itself. While the arbitral award determines legal rights, it does not secure recovery of the debt found to be due. If the award debtor does not voluntarily pay, the issuance of the award is only

the beginning of a new and more complex phase of recognition and enforcement.

3 The rate of voluntary compliance with awards has declined over time. A 2008 survey on corporate attitudes and practices in relation to investment arbitration¹ reported high rates of voluntary compliance with arbitral awards. 84% of participating corporate counsel indicated that, in more than 76% of their arbitration proceedings, the unsuccessful party voluntarily complied with the award.² Most corporate counsel surveyed reported a more than 90% compliance rate.³ Only 3% reported that an award debtor failed to comply.⁴ The recent 2025 Queen Mary University of London and White & Case LLP survey (“2025 International Arbitration Survey”)⁵ tells a vastly different story. Only 8% of respondents indicated an “almost always” compliance of awards.⁶ A further 32% indicated an “often” compliance rate.⁷ 44% indicated a “sometimes” compliance rate, 12% a “rarely” compliance rate and 4% a “never” compliance rate.⁸ It is also noteworthy that even consent awards do not produce a compliance rate of 100%; with only 43% of respondents indicating an “almost always” compliance rate for consent awards and 28% indicating an “often” compliance rate.⁹

4 The reason for this is unclear. It might be due to the fact that there simply are more arbitrations now than ever

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- 1 Queen Mary University of London (School of International Arbitration) & PricewaterhouseCoopers, *International Arbitration: Corporate Attitudes and Practices* (2008) <https://www.qmul.ac.uk/arbitration/media/arbitration/docs/IAstudy_2008.pdf> (accessed 9 September 2026) (“2008 International Arbitration Study”).
 - 2 2008 International Arbitration Study at p 2.
 - 3 2008 International Arbitration Study at p 2.
 - 4 2008 International Arbitration Study at p 8.
 - 5 Queen Mary University of London (School of International Arbitration) & White & Case LLP, *2025 International Arbitration Survey – The Path Forward: Realities and Opportunities in Arbitration* (2025) <<https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf>> (accessed 9 September 2026) (“2025 International Arbitration Survey”).
 - 6 2025 International Arbitration Survey at p 12; non-International Centre for Settlement of Investment Disputes (ICSID) and with no State involvement.
 - 7 2025 International Arbitration Survey at p 12.
 - 8 2025 International Arbitration Survey at p 12.
 - 9 2025 International Arbitration Survey at p 12.

before, with more diversity of users. Users now include smaller companies, developing jurisdictions and individuals who may be less accustomed to the concept of arbitral finality (and more inclined to attempt an appeal or challenge), or who are simply less able to pay. Tribunals have also become more diverse – in nationality, ethnicity as well as experience. With greater diversity of parties, counsel and arbitrators comes a corresponding diversity in perception of satisfaction with the arbitral process in relation to how it was run and whether due process was observed. Arbitrations nowadays also involve higher-value or more complex claims and may involve interesting combinations of seat, governing law, procedural law, rules, institutions, language, etc, which may result in a higher likelihood of the unsuccessful party questioning the process or feeling unheard or wronged by the outcome.

5 To compound the issue, global arbitration news has increasingly become inundated with reports of parties challenging awards worldwide – some with success, even in historically pro-arbitration jurisdictions. Singapore has itself recently encountered two significant cases whereby awards were set aside. In *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)*,¹⁰ the award was set aside because the court held that the tribunal had breached the fair hearing rule by deciding on the basis of a point which had not been submitted to it by either party, and by failing to give the parties a chance to address the same prior to the award.¹¹ In *DJP v DJO*,¹² the award was set aside because the tribunal was found to have substantially copied parts of the award from another award made in parallel proceedings, exhibiting apparent bias on the part of the tribunal and a breach of natural justice.¹³ While justified on their particular facts, these cases have shifted public perception away from the view that arbitral tribunals are immune from challenge, potentially encouraging dissatisfied parties to pursue challenges of their own.

10 [2025] 2 SLR 273.

11 *Vietnam Oil and Gas Group v Joint Stock Company (Power Machines – ZTL, LMZ, Electrosila Energomachexport)* [2025] 2 SLR 273 at [132].

12 [2025] 1 SLR 576.

13 *DJP v DJO* [2025] 1 SLR 576 at [2], [79] and [88]–[89].

6 Whatever the case, it is clear that clients and counsel can no longer rely on or have an expectation that arbitral awards will have a high rate of compliance. Good arbitration strategy must therefore include consideration of the possibility or perhaps even the probability that the award will need to be enforced before recovery is had.

II. Navigating the enforcement minefield

7 Too often, enforcement considerations are addressed only after an award has been obtained. Recognition and enforcement proceedings are frequently described as mere procedural formalities. However, the practical reality is more complicated.

8 First, a common misconception is that award enforcement is a single process. In reality, there are two distinct stages: (a) recognition; and (b) execution. Recognition is the judicial act by which a national court accepts an arbitral award and grants it legal effect within the jurisdiction. Execution is the process by which the coercive power of the State is used to recover against the assets of the award debtor. This distinction is important because success in one phase does not guarantee success in another. Even if the award is recognised, the award creditor may not find assets within the jurisdiction to execute against. Assets may be jointly owned or transferred to third parties, insulated by insolvency regimes or held through complex corporate structures. Execution may require co-operation of a sheriff or bailiff, sometimes with substantial attendant costs and varying success of outcome. The award creditor may require interim relief or security pending execution, which may or may not be available in the jurisdiction.

9 Recognition (or annulment) of an award at the seat also does not necessarily entail the same result in another jurisdiction. Jurisdictions like the US, the UK, Singapore, Hong Kong and Switzerland generally treat annulment at the seat as dispositive, whereas the courts of Belgium, Netherlands and France may enforce awards annulled at the seat. France, in particular, adopts the notion of “double control” which regards arbitral awards to have independent validity outside of any national law system. In the 2025 International Arbitration Survey, 61% of respondents

took the view that awards set aside, annulled or suspended at the seat should still be enforceable in other jurisdictions (39% said they should not).¹⁴

10 States also differ in their application of the accepted tests under the New York Convention,¹⁵ principally on the scope of the arbitrability and/or public policy exception. The notable case of *Anupam Mittal v Westbridge Ventures II Investment Holdings*¹⁶ is illustrative. This case concerned the question of whether claims of oppression and mismanagement can be arbitrated. Under Singapore law, such claims are arbitrable. However, in India, such matters are subject to the exclusive jurisdiction of the National Company Law Tribunal (“NCLT”) and are non-arbitrable. The Singapore Court of Appeal held in *Anupam Mittal v Westbridge Ventures II Investment Holdings*¹⁷ that Singapore law was both the law of the arbitration agreement and the law of the seat, and the dispute should therefore be arbitrated.¹⁸ The Singapore court issued an anti-suit injunction to restrain NCLT proceedings in India. India took a strong stance the other way. The Bombay High Court issued an injunction to restrain Westbridge Ventures II Investment Holdings from enforcing in India the anti-suit injunction obtained from the Singapore courts on the basis that non-arbitrability of subject matter was a recognised ground to resist enforcement of a foreign award under the Indian Arbitration and Conciliation Act 1996.¹⁹ The essential reasoning was that, since any arbitral award issued would be unenforceable, Anupam Mittal would be left without remedy if he were not permitted to continue with the NCLT proceedings and would therefore suffer irreparable harm in breach of Indian public policy requiring access to justice. Pursuant to this decision, the NCLT issued an anti-arbitration injunction and restrained the parties from continuing arbitration proceedings in

14 2025 International Arbitration Survey at p 5.

15 United Nations Commission on International Trade, Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (entered into force 7 June 1959).

16 [2023] 1 SLR 349.

17 [2023] 1 SLR 349.

18 *Anupam Mittal v Westbridge Ventures II Investment Holdings* [2023] 1 SLR 349 at [75].

19 No 26 of 1996.

Singapore.²⁰ Regardless of the ultimate outcome, the resolution of the substantive dispute has been significantly disrupted and delayed, whilst imposing substantial costs on the parties.

11 Cases like this are not uncommon elsewhere in the world. In the widely discussed case of *ED & F Man (Sugar) Ltd v Yani Haryanto*,²¹ the Indonesian court set aside an arbitral award issued in London because the relevant contract was illegal under Indonesian law. At the time, the importation of sugar into Indonesia required authorisation of the Government Logistics Bureau (“BULOG”) and the Indonesian buyer had not obtained the requisite licence from BULOG. Parties however managed to conclude a settlement agreement which provided for the buyer to make certain payments to the seller by instalments. When the buyer breached the settlement, the seller brought arbitration proceedings and obtained an award, which it thereafter sought to enforce in Indonesia. Even though the arbitration was in respect of the parties’ dispute relating to the settlement agreement, not the original sugar importation contract, the District Court of Central Jakarta held that the award was still contrary to Indonesian law and public policy as it would still be considered an arbitration arising out of a dispute touching on such an illegal contract. Both the Jakarta Appellate Court and the Indonesian Supreme Court upheld the District Court’s decision.

12 This case has been widely criticised as an unfair extension of the public policy exception, particularly as it was the local buyer (and award debtor) in this case that breached Indonesian law – not the foreign seller (and award creditor). In *National Agricultural Cooperative Marketing Federation of India v Alimenta SA*,²² the Indian Supreme Court refused to enforce an arbitral award relating to a contract for the export of groundnuts. National Agricultural Cooperative Marketing Federation of India (“NAFED”) was only able to export groundnuts with the Government’s permission, and the permission it had obtained

20 *Anupam Mittal v People Interactive (India) Pvt Ltd* Interim Application No 1010 of 2021 in Suit No 95 of 2021, 2023:BHC-OS:9729 (Bombay High Court, 11 September 2023) at [83].

21 [1991] 1 Lloyd’s Rep 429.

22 (2020) 9 SCC 866.

initially was not extended in subsequent years.²³ Alimenta SA's arbitral award against NAFED was refused enforcement on the ground that it was illegal and in contravention of a fundamental policy of Indian law as it held liable for damages even when it was effectively prevented from carrying out the contract on account of government restrictions.²⁴ The Indian Supreme Court seemed to review the merits of the case in arriving at this decision rather than carrying out the limited due process review contemplated by the New York Convention, and further applied Indian law instead of the contractual governing law (*ie*, English law).²⁵ The Supreme Court also appeared to deviate from its own previously expressed position that the public policy defence should be construed narrowly where it pertains to enforcement of a foreign award – there must be violation of a fundamental policy of Indian law, the interests of India or justice or morality; and this must be more than a mere breach of Indian law.²⁶ The enforcement petition was also filed in 1993, and it took almost 27 years for the final decision of the Supreme Court to come in April 2020. In the landmark case of *Beijing Chaolai Xinsheng Sports and Leisure Co, Ltd v Beijing Suowang Zhixin Investment Consulting Co, Ltd*,²⁷ China's Supreme People's Court refused to enforce a Korean arbitral award. The parties in question were a Chinese company and a wholly foreign-owned enterprise that was registered in Beijing and owned by a Korean citizen. The Supreme People's Court regarded the dispute to be purely domestic and therefore not validly referable to foreign arbitration despite the express agreement of the parties.²⁸ Even in the UK, the English court refused in *Payward Inc v Chechetkin*²⁹ to enforce a California-seated arbitral award against a British citizen. The court found that enforcement of the award would be contrary to

23 *National Agricultural Cooperative Marketing Federation of India v Alimenta SA* (2020) 9 SCC 866 at [3], [8]–[12] and [31].

24 *National Agricultural Cooperative Marketing Federation of India v Alimenta SA* (2020) 9 SCC 866 at [57], [68]–[69] and [80]–[81].

25 *National Agricultural Cooperative Marketing Federation of India v Alimenta SA* (2020) 9 SCC 866 at [65], [67]–[69] and [80].

26 *Vijay Karia v Prysmian Cavi E Sistemi SRL* AIR 2020 Supreme Court 1807.

27 [2016] 6 CMCLR 10.

28 *Beijing Chaolai Xinsheng Sports and Leisure Co Ltd v Beijing Suowang Zhixin Investment Consulting Co, Ltd* [2016] 6 CMCLR 10 at 10–17.

29 [2023] EWHC 1780 (Comm).

UK public policy because the tribunal applied California law and refused to consider UK's consumer protection laws, which ought to apply for the protection of all UK-domiciled consumers.³⁰

13 In other cases, enforcement may be refused due to a difference in procedure rather than the substantive law, eg, requirements of service or notice, views on tribunal independence, what constitutes witness coaching, improper cross-examination or witness-gating, documents disclosure, contractual formalities, party authority or even use of expedited procedures under the chosen arbitral rules. In *Beijing Jishi Venture Capital Fund (Limited Partnership) v Liu*,³¹ the China International Economic and Trade Arbitration Commission ("CIETAC") attempted to serve Mrs Liu at three addresses identified in the arbitration application, but the documents were not successfully delivered. Service was completed at a fourth address ("Qingpu Address") subsequently provided by the claimant and the arbitration proceeded on the basis that service was valid under CIETAC Arbitration Rules. The Federal Court of Australia held that Mrs Liu had not received proper notice of the arbitration even though she was the only one of several related respondents (including her husband) that disputed enforcement of the award and claimed not to have been given notice. The court declined to infer notice merely because her husband had actual knowledge of the arbitration.³² It found that the Qingpu Address had not been agreed by Mrs Liu because, although she was named in the relevant document, she did not sign it. Additionally, the claimant had not shown that this was Mrs Liu's current place of business or residence.³³ The Federal Court further declined to consider that deemed service had taken place pursuant to the CIETAC Arbitration Rules because Mrs Liu's current residential

30 *Payward Inc v Chechetkin* [2023] EWHC 1780 (Comm) at [1]–[2], [6], [75]–[82], [124]–[131] and [166]–[169].

31 [2021] FCA 477.

32 *Beijing Jishi Venture Capital Fund (Limited Partnership) v Liu* [2021] FCA 477 at [109].

33 *Beijing Jishi Venture Capital Fund (Limited Partnership) v Liu* [2021] FCA 477 at [113]–[132].

address and e-mail address were known³⁴ (though attempted service there was unsuccessful for unknown reasons).

14 National courts also differ in their treatment of non-compliance with multi-tiered dispute resolution clauses. Some consider it an issue of jurisdiction, while others regard the issue to be one of admissibility. This means that some courts would permit a review of a decision regarding such compliance or non-compliance on jurisdictional grounds, whereas others would not. The General Division recently held in *DRO v DRP*³⁵ that such non-compliance generally concerned the admissibility of the claim, not jurisdiction, departing from the position in the often-cited case of *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd*.³⁶ The subsequent case of *DSQ v DSR*³⁷ upheld the holding in *DRO v DRP*,³⁸ but added the nuance that this was only to be considered a general proposition that may be displaced where parties used unequivocally clear language which evinced an intention that compliance with the pre-arbitral procedure was a prerequisite to arbitration (and hence, a matter of jurisdiction).³⁹

15 The bottom line is that enforcement is too important a matter to be left to an afterthought. Parties and counsel who wait until after an award is issued to consider enforcement matters risk obtaining a pyrrhic victory.

III. Bridging the gap between award and recovery

16 Arbitration lawyers can no longer rely solely on expertise in arbitral procedure, institutional rules and advocacy before tribunals. Those skills are essential but insufficient for modern

34 *Beijing Jishi Venture Capital Fund (Limited Partnership) v Liu* [2021] FCA 477 at [133]–[134].

35 [2026] 3 SLR 1012.

36 [2014] 1 SLR 130. Adopting the reasoning in the Court of Appeal case of *BTN v BTP* [2021] 1 SLR 276 at [68], which dealt with the issue of whether a trial's decision on the *res judicata* effect of a prior decision was a decision on admissibility or jurisdiction.

37 *DSQ v DSR* [2026] SGHC 67 at [87].

38 [2026] 3 SLR 1012.

39 *DSQ v DSR* [2026] SGHC 67 at [88]–[95].

practice. Recovery and payment must be at the forefront of every arbitration strategy so that the time and costs spent on arbitration are not rendered nugatory by failed enforcement.

17 Early recognition of potential enforcement difficulties may justify reconsideration of arbitral procedures or consideration of alternative or complementary strategies outside arbitration. One may choose a different seat, arbitrator nominee or language. Funding arrangements may be influenced by the prospects of recovery, while the extent of effort in settlement discussions or proposal of mediation may depend on the anticipated difficulty of award execution.

18 Further, we now live in a geopolitically fragmented time where global order is often disrupted with tariffs, sanctions, counter-sanctions and increased regulatory compliance. These disruptions often form part of a state's political and public policy and add a new dimension to the question of enforcement of arbitral awards that are foreign to the place of enforcement. Parties' choice of seat ought now to include a nuanced consideration of all these matters, to ensure that the chosen seat is one that presents as little disruptive complication as possible in relation to the question of enforcement in other places.

19 Effective legal representation therefore increasingly requires a broader skill set, encompassing not only arbitral expertise but also a working knowledge of national laws, domestic court procedures and litigation strategy, as well as asset tracing, enforcement processes, and insolvency regimes. If States are involved, a keen understanding of sovereign immunity frameworks is also essential. Where a single firm or team does not possess this breadth of expertise, it is essential to collaborate with trusted local counsel and partner firms across relevant jurisdictions to deliver coordinated, seamless, and effective advice.