



Laws & Treaties

The New York Convention comes into force in Turkmenistan

Turkmenistan has become the 170th state party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. After acceding on 4 May, Turkmenistan has brought the Convention into force on 2 August 2022.

Turkmenistan has made a number of reservations and declarations, which means it will apply the Convention with respect to:

- recognition and enforcement of awards made in the territory of another party to the Convention (the so-called “reciprocity reservation”);
- disputes which are considered commercial disputes under its national law (the so-called “commercial reservation”); and
- awards which are rendered after the convention enters into force for Turkmenistan (i.e. 2 August 2022).

Sierra Leone approves a new arbitration law

Sierra Leone’s House of Parliament has approved the Arbitration Act 2022 on 2 August 2022. The bill now awaits signature by the President of Sierra Leone.

The Arbitration Act 2022 will replace and update the existing Sierra Leonean arbitration law, which is found in Chapter 25 of the Laws of Sierra Leone 1960. The 1960 Act was based on the English Arbitration Act 1950, and does not reflect any of the changes brought by the English Arbitration Act 1996.

The Arbitration Act 2022 intends to give force of law to Sierra Leone’s obligations under the New

York Convention 1958 and to provide a modern arbitration framework for the country, which was acceded to in 2020. It also provides a legislative framework for the establishment of the Sierra Leone International Arbitration Centre.

Mediation compulsory in lower value disputes in England & Wales

The UK Government’s plan to introduce a requirement to attempt mediation will affect all proceedings allocated to the small claims track of the County Court, those which conduct claims valued under £10,000, although the level is lower for personal injury and housing disrepair claims.

Compulsory mediation will be accomplished through a free 1-hour mediation session conducted by a mediator from HM Courts and Tribunal Service. Parties will not be able to opt out of the mediation simply on the basis that they don’t want to take part, but there may be some exemptions yet to be determined. Consultation to the public is open until 4 October 2022.

International Arbitration

EU Commission objects to the enforcement of the NextEra Award in the US

The EU Commission presented an Amicus Brief in the proceedings filed in a Washington DC Federal Court by the NextEra Global Holdings BV, the Dutch subsidiary of the US-based NextEra Energy Inc. The said proceedings are aimed to enforce a EUR 291 million Award obtained by NextEra against the Kingdom of Spain, an award which had been formerly upheld by an Annulment Committee on 6 April 2020 in the ICSID Case No. ARB/14/11.

According to the EU Commission, the NextEra award violates the EU law and was issued by a non-competent ICSID tribunal, which had been appointed pursuant to the Energy Charter Treaty.

Case note: England & Wales

Lifestyle Equities CV and another v Hornby Street (MCR) and others [2022] EWCA Civ 51

Facts: In 1997, B. and S. entered into a “co-existence agreement” to regulate the use of their respective logos and trademarks worldwide (“the 1997 Agreement”). Clause 7 of the said agreement provided for any dispute to be resolved by arbitration in Los Angeles in accordance with the rules of the American Arbitration Association (“the Arbitration Agreement”). Clause 9 provided that the 1997 Agreement was to be construed and governed in accordance with the applicable laws of California. And Clause 12 provided that the said agreement should be binding on and inure to the benefit not only of the parties to it but also their “heirs, administrators, successors, assigns, licensees” and others.

Following several assignments by B., the trademarks conveyed in the 1997 Agreement were eventually assigned to Lifestyle Equities CV (‘Lifestyle’). Lifestyle brought a claim against S. in the English courts complaining of infringement of the trademarks and passing off by S. having used the logo on goods sold in the UK and the EU. In response, S. applied for a stay of the claim pursuant to Section 9 of the Arbitration Act 1996, which reads: “(1) A party to an arbitration agreement against whom legal proceedings are brought (whether by way of claim or counterclaim) in respect of a matter which under the agreement is to be referred to arbitration may (upon notice to the other parties to the proceedings) apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter. (2) On an application under this section the court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.” According to S., Lifestyle was bound by the arbitration Agreement under Californian law (i) as an assignee of the Trademarks; and (ii) by virtue of equitable estoppel following its reliance on the 1997 Agreement.

Held (Snowden’s LJ dissenting): The majority of the Court of Appeal upheld the stay of proceedings and found that Lifestyle was bound by the Arbitration Agreement despite the fact that it was not an original party to it. Lewison LJ said: “[T] here is nothing in section 9 (1) (at least on the face of it) which says that the application for a stay may only be made ‘against another party to the arbitration agreement (as opposed to a party to the proceedings).’” The majority of the Court agreed with Snowden LJ’s view that, “as a matter of English law, absent some express provisions for accession in the agreement, a person can only become a party to an existing agreement with the consent of all of the other parties, i.e. by novation or by the making of a new agreement”. However, the majority took the view that English law was not the applicable law.

Generally, the law governing an arbitration clause and the law governing the substantive dispute are often the same, but need not be. The choice of law applicable to the Arbitration Agreement determines who decides the substantive dispute, and the law applicable to the substantive dispute applies to the resolution of that dispute. Lewison LJ added: “As a general proposition, the law governing the validity of the arbitration agreement also governs the question who becomes party to it (...) Logically, the same principle must apply to the question who is bound by it.”

The parties to the Arbitration Agreement chose Californian law to govern their contract including the arbitration clause. Californian law was thus “the applicable law” for deciding who was a party to the arbitration. Having heard evidence from experts in Californian law, the Court held that, in accordance with that law, Lifestyle, as successors in title to the marks in issue, was bound by the Arbitration Agreement.

Tip of the month

☑ **What is the so-called “reciprocity reservation” in the recognition and enforcement of foreign awards?**

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) allows the Contracting States to trigger the so-called “reciprocity reservation” (Article I.3). Pursuant to it, the Contracting States may declare that they will apply the Convention

to the “recognition and enforcement of awards made only in the territory of another Contracting State”. So, when a Contracting State makes the reciprocity reservation, their domestic courts will apply the New York Convention only to awards rendered in the territory of a State which is also a party to the Convention. When it comes to establishing reciprocity, the nationality of the parties is irrelevant; what matters is the level of reciprocity between the State where the award was rendered and the State where recognition and enforcement is sought.

For more information, please contact any of the following members of our Arbitration Team:



Albert Badia



Ana Maria Daza



Erman Ozgur



An International Law Firm



AACNI (UK) LTD.

25 Southampton Buildings | WC2A 1AL London | United Kingdom Phone: +44 02071291271 | Email: aacni@aacni.com

AACNI (UK) Ltd. is a limited liability company with VAT no. 996434860 and registered in Thorntons, Whitehall, 33 Yeaman Shore, Dundee DD1 4BJ, United Kingdom, under no. SC354717. AACNI is a trademark registered in the EU with no. 7.516.776. The contents of this publication express the views of the editors only. They do not provide or supplement legal advice.