

INTERNATIONAL LITIGATION

FROM THE U.S. PERSPECTIVE

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NATIONAL LAWS REGARDING ARBITRATION

UNITED STATES:

1. New York Convention
2. Federal Arbitration Act
3. State Revised Uniform Arbitration Acts

CZECH REPUBLIC

1. New York Convention
2. 1961 Geneva Convention (Int'l Comm Arb)
3. Czech Arbitration Act No. 216/1994

NEW YORK CONVENTION REQUIRES COURTS OF MEMBER STATES TO:

1. ART II (1) – Recognize the Validity of Arbitration Agreements
2. ART II (3) - Refer Parties, with a Valid Arbitration Agreement, to Arbitration
3. ART III & V – Recognize and Enforce Arbitration Awards (with 8 Exceptions)

THREE CATEGORIES OF ARBITRATION AGREEMENT DISPUTES

1. Challenge to the Existence, Validity or Legality of Agreement
2. Challenge to the Arbitrability of the Claims in Question
3. Challenge to the Interpretation of the Arbitration Clause

PREREQUISITES TO APPLICATION OF THE N.Y. CONVENTION

1. Dispute Must Arise Out of Commercial Relationship
 2. Reciprocity Between States
 3. Only Concerning Transnational Agreements
1. Disputes Respecting a Defined Legal Relationship

IF PREREQUISITES & WRITTEN AGREEMENT, THEN COURTS MUST

Recognize the Arbitration Agreement
and Refer the Parties to Arbitration,

Unless the Arbitration Agreement is
“Null and Void, Inoperative or
Incapable of Being Performed.”

STAGES WHERE COURT & ARBITRATION INTERACT

1. In Court Litigation Re Whether Court Should Hear All/Some of Dispute or Send to Arbitration (“Negative Comp/Comp”)
2. Arbitrators’ Decision to Hear Dispute (“Comp/Comp”)
3. Court’s Review of Arbitration Award

COMP/COMP AS PER U.S. COURTS

1. Validity of Container Contract
2. Existence of Arbitration Agreement
3. Invalidity of Arbitration Agreement
4. Scope of Arbitration Agreement
5. Arbitrability Under National Laws
6. Procedural Precondition to Arbitration
7. Party Waiver or Estoppel

COMPARE 1961 GENEVA CONVENTION

- ART VI (3): [If an arbitration has been initiated, a court asked to interpret an arbitration clause] “shall stay their ruling on the arbitrator’s jurisdiction until the arbitral award is made, unless they have good and substantial reason to the contrary.”

COMPARE UNCITRAL MODEL LAW

- ART 8(1): "A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement of substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed."

COMPARE UNCITRAL MODEL LAW (Con'd)

- ART 16(1): Statement of Separability.
- ART 16 (3): [If arbitral tribunal rules that it has jurisdiction] “any party may request, within 30 days after having received notice of that ruling, the court specified in Art 6 to decide the matter.” But no Appeal & Arbitration May Continue
- Compromise re Negative Comp/Comp

BOTTOM LINE RE U.S. NEG COMP/COMP

Presumption Case Goes to Court for Full Review:

1. Whether Arb K Ever Came Into Existence
2. Whether Arb K is Formally Invalid
3. Whether Mandatory State Law Prohibits Arb.

Presumption Case Stays With Arbitrators:

1. Whether Dispute is Within Scope of Arb K

All Others For Arbitrators to Decide

CZECH APPROACH TO NEG COMP/COMP

- ARB ACT ART 15: Party Objecting to Arbitrator Jurisdiction Must Do So in First Step Of Arbitration Proceeding (Like ML)
- BUT ARB ACT Does Not Allow Parties to Request Court Review Until After Arb Award Has Been Issued.

ENFORCEMENT OF ARBITRAL AWARDS UNDER N.Y. CONVENTION

- ART III: Each Contracting State shall recognize and enforce arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under 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.