Kluwer Arbitration Blog

LIDW 2025: Enforcement of Awards – Evolving Standards and Jurisdictional Tensions

Vaibhav Gogra (Gogra and Associates) and Pritam Dumbré · Tuesday, June 10th, 2025

Enforcing arbitral awards has been a recurring topic throughout the London International Disputes Week ("LIDW") events. Just when the enforcement regime appears to be stabilizing, new challenges continue to emerge. With globalisation and the rise of new market economies, asset distribution is more international than ever. The enforcement of awards involves interactions with various professionals, including lawyers, financial experts, funders, and investigators. Panels at LIDW have made a concerted effort to capture many of these perspectives.

Global Enforcement Issues from the Funders' and Asset Trackers' Perspective

Clyde & Co. and Ankura organised a panel comprising Ian Hopkinson (Clyde & Co), Nicholas Burkill (Ogier), Louise Trayhurn(Crescient), Charles McKeon (Thorndon Partners), and Aakash Brahmachari (Ankura), and featuring a detailed conversation on the topic of enforcement of awards, drawing from the perspectives of asset trackers, risk assessors, and funders in international arbitration.

The discussion began with an exploration of the characteristics of arbitral awards, particularly in terms of their enforcement across various jurisdictions. From a funder's perspective, the primary objective is achieving a return on investment as swiftly as possible. This means that funders, when deciding to fund, closely evaluate the strength and enforceability of an award, specifically examining the assets referenced in the award, whether these assets are traceable, and whether any asset-tracing has already been conducted.

However, this creates a kind of "chicken-and-egg" conundrum: effective asset tracing often requires substantial resources, which in turn depend on funding. Early asset tracing improves enforcement prospects, starting with corporate structures and extending to tax records, family ties, social media, and political links. In cases involving high-net-worth individuals, the use of offshore bank accounts and offshore corporate structures plays a significant role. Identifying and understanding these structures can have a major impact on enforcement strategies.

The panel also stressed the importance of jurisdictional awareness. Varying jurisdictions pose different challenges, including legal hurdles, social complexities, and even prejudices, which can complicate enforcement efforts. One panellist openly acknowledged the significant risks involved

in enforcing awards against certain states, such as Russia. The market currently sees only a small number of entities willing to fund enforcement efforts against the Russian state, largely due to the high professional and personal risks involved.

The discussion then turned to how digital tools and open-source data have made asset tracing more accessible, though navigating jurisdiction-specific information still requires expertise. The panel was optimistic that this accessibility will continue to improve in the coming years. They also briefly touched upon the growing complexity of enforcing awards involving crypto assets, due to difficulties in locating them and ensuing legal challenges.

The session concluded on a positive note. The panel agreed that the funding market, both primary and secondary, is growing in step with the rise of international arbitration. There is increasing client awareness around asset tracking and the use of third-party funders, which signals promising developments ahead for enforcement in international arbitration.

Judicial Gatekeeping and the Limits of Deference

Trowers & Hamlins hosted a thought-provoking panel exploring how courts approach challenges to arbitral awards and the evolving judicial philosophy underpinning such scrutiny. The discussion was led by Hendrik Puschmann (Trowers & Hamlins), with contributions from Vivek Kapoor and Marion Smith (39 Essex Chambers). The panel addressed several pertinent themes: practical guidance for initiating or resisting arbitral challenges, the increasing engagement of arbitral institutions in such proceedings, comparative insights from common and civil law jurisdictions, the potential implications of the revised English Arbitration Act 1996, and the growing trend of the English High Courts to summarily dismiss unmeritorious challenges.

A key portion of the discussion focused on judicial precedents that have shaped the contours of court intervention in arbitral matters. The panellists delved into the seminal Dallah v Pakistan decision, among others, as part of a broader inquiry into the shifting jurisprudential boundaries between judicial oversight and arbitral autonomy. As was highlighted, English courts have grown more exacting in their review of awards, a trend also mirrored in the Singapore Court of Appeal's decision in DJP v DJO, where an award was set aside for replicating substantial portions from unrelated proceedings. Such episodes have raised concerns not only about the integrity of individual proceedings but also about the reputation of the arbitration community at large.

Addressing the tension between arbitral autonomy and judicial supervision, Hendrik Puschmann pointed to the doctrine of *Kompetenz-Kompetenz*, which grants arbitral tribunals the authority to determine their jurisdiction. He noted that from a judicial standpoint, this doctrine can be seen as encroaching upon the traditional domain of courts, and thus, alternative dispute resolution mechanisms may require the court's blessing to proceed or be enforced.

Yet, as one panellist was quick to note that in spite of such a perceived trespass, English law provides a firm rooting to the flourishing arbitration industry in England and is known for being an arbitration-friendly jurisdiction given its virtues of clarity, predictability, and pro-enforcement ethos, qualities that continue to affirm its status as an arbitration-friendly jurisdiction.

Substance for Successful Challenge

The discussion at Trowers & Hamlins concluded with the panel noting that at the heart of enforceability concerns lie the grounds on which arbitral awards may be challenged. These include jurisdictional objections arising when a party challenges the validity of the arbitration clause itself, often invoking the doctrine of separability. However, the panel elaborated that the doctrine's practical application depends on the framing of the dispute, as affirmed in the Ganz v Goren verdict. Allegations of bias present a more immediate risk, with potential consequences including the removal of arbitrators and the setting aside of awards. This was notably illustrated in Aiteo Eastern v Shell, where issues of disclosure and impartiality surfaced yet again. Procedural failures, such as a tribunal's inadequate conduct of proceedings, may also provide valid grounds for challenge, as demonstrated in The Mare Nova verdict, where Sections 67 and 68 of the English Arbitration Act 1996 could be successfully invoked. Conclusively, to minimise the risk of challenge, what often proves decisive is not whether a tribunal is in fact independent and impartial, but whether it is perceived to be so by the parties involved.

Varied Routes to Enforcement in Global Practice

Another panel on enforcement was organised by Stephenson Harwood LLP, comprising Ros Prince and Priya Grigoriadis(Stephenson Harwood LLP), Ricky Diwan KC and Naomi Hart (Essex Court Chambers), Wendy Lin (WongPartnership LLP), Sara Margolis (MoloLamken LLP), Matthias Gstoehl (Schellenberg Wittmer Ltd.), and Faisal Alhazmi (Al Sahlawi & Co.).

The panel began by discussing what can go wrong during enforcement, highlighting the key defences often raised by award debtors to resist enforcement. One major defence involves public policy, which varies significantly across jurisdictions and can lead to inconsistency in international arbitration. Wendy Lin pointed out that in Southeast Asian markets like Thailand and Vietnam, there is an increasing reliance on public policy arguments, with parties often alleging that enforcement would violate national public policy. Faisal Alhazmi echoed this concern with reference to Sharia law in the Middle East.

The panel noted that pathological clauses, conflicts between the contract's governing law and the law of the seat, and invoking Article V(1)(c) of the New York Convention to claim the award exceeds the tribunal's mandate, are common hurdles that obstruct enforcement.

UK Legal Developments and Jurisdictional Questions

The discussion then turned to ongoing debates within the UK legal space. Ricky Diwan raised an important issue: Does a state, by ratifying the New York Convention, implicitly consent to the jurisdiction of foreign courts for enforcement purposes? He referred to CC/Devas et al. v The Republic of India, noting a policy problem where, even if jurisdiction was not raised during the arbitration itself, states can still invoke sovereign immunity at the enforcement stage under the UK's State Immunity Act 1978. Diwan argued that the Act was never intended to create friction between the enforcing court and the seat of arbitration, but current interpretations may be turning the New York Convention on its head.

Asset Discovery in the United States

Sara Margolis then discussed 28 U.S. Code § 1782, which permits discovery in the United States ("U.S.") to aid enforcement. Though not considered adjudicative proceedings, U.S. courts allow discovery targeting individuals or entities domiciled in the U.S. This often leads to the identification of assets held outside U.S. jurisdiction, which can be invaluable for award creditors but problematic for debtors.

Enforcement Against Third Parties

Finally, the panel concluded by highlighting three main methods to enforce against third parties: (1) *Chabra Injunctions* – Freezing orders against third-party assets in the UK where a connection to the award debtor can be demonstrated; (2) *Proprietary Injunctions* – Linking the debtor's professional or financial relationships (e.g., with colleagues or partners) to certain assets; (3) *Insolvency Proceedings* – Declaring the award debtor insolvent, thereby opening a route to pursue close relatives or connected parties for recovery. While the insolvency route can be effective, it often results in delays and may not be the most efficient approach for time-sensitive enforcement.

In Summation

Panellists at LIDW concluded that despite sophisticated legal frameworks for efficient recovery, parties still face hurdles at various stages, including funding, asset tracing, and domestic court proceedings. Notably, challenges under the New York Convention continue to burden award creditors with prolonged timelines and increased costs. On an optimistic note, however, asset tracking and funding have become a valuable and integral part of the enforcement process. Lastly, with due regard to the merits and applicable standards of every case, the ultimate aim in drafting an award is to ensure its effectiveness and enforceability – arguably the central focus and most desirable outcome of the arbitral process.

This post is part of Kluwer Arbitration Blog's coverage of London International Disputes Week 2025.

This entry was posted on Tuesday, June 10th, 2025 at 8:00 am and is filed under Enforcement, International arbitration, LIDW 2025, Uncategorized
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