

**Enforcing Foreign (non-US)
International Arbitration Awards
Against Award Debtors in the United
States**

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The successful litigant in a litigation or arbitration usually expects the judgment or award debtor to pay the monetary damages specified in the judgment or award promptly. Hopefully, that ends up being the case and the matter is resolved satisfactorily. But, sometimes, the debtor does not do so, and the litigant is forced to embark on further litigation in the courts of those jurisdictions where the debtor's assets are located to satisfy the judgment or the award.

This update discusses the scenario when a party obtains an award in its favor from an arbitral tribunal that is seated outside the United States and is assessing whether it may be able to enforce that foreign (non-US) award in the United States. The award creditor might do so because the award debtor has assets in the United States, such as bank accounts and property, that can be used to satisfy the award. It may also be the case that at least part of the formation of the contract or performance of obligations under the contract took place in the United States, such that a US court would have personal jurisdiction over the award debtor.

But before courts in the United States decide whether to recognize and enforce a foreign award pursuant to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, they assess whether they have personal jurisdiction over the award debtor¹ or quasi-in-rem jurisdiction over the award debtor's property.² This alert discusses those jurisdictional requirements so that an award creditor can assess in advance whether it makes sense to seek enforcement of the award in the United States with the end-goal of executing that award against the assets of the debtor located in the United States. Issues to consider include:

- Did any part of the transaction giving rise to the dispute, such as soliciting bids or tender offers, road shows, or execution of the transaction take place in the United States?
- Did any of the formation of the contract or performance of the contract take place in the United States?
- Were payments related to the contract giving rise to the dispute made from a US bank account of the award debtor?
- Does the award debtor have any assets in the United States, such as bank accounts or property?

Affirmative answers to any of these questions may justify enforcing the non-US arbitral award in the United States to satisfy that unpaid award.

¹ See, e.g., *Reddy v. Buttar*, 38 F.4th 393, 400-03 (4th Cir. 2022).

² See, e.g., *CME Media Enters. B.V. Zelezny*, No. 01-CIV-1733(DC), 2001 WL 103518, at *3-5 (S.D.N.Y. Sept. 10, 2001).

Personal Jurisdiction Over the Award Debtor

In the United States, there are two forms of personal jurisdiction over an award debtor: general jurisdiction and specific jurisdiction.

General Jurisdiction

If an award debtor is subject to general jurisdiction, then the underlying dispute that led to the arbitration award does not need to relate to the debtor's contacts in the United States for there to be jurisdiction over the debtor to enforce a foreign arbitral award. An award debtor is subject to general jurisdiction where it is "essentially at home in the forum state."³ For corporations, this is its place of incorporation and its principal place of business.⁴ For individuals, this is where they are domiciled.⁵

1. For US debtors, foreign arbitral awards can be readily recognized against such US corporations by identifying their place of incorporation or principal place of business and against US individuals by identifying their domicile.
 - a. An arbitral award rendered by a tribunal in Singapore was recognized and enforced in a federal district court in North Carolina.⁶ The award creditor, who was a citizen of Vietnam, brought the enforcement action against a resident of North Carolina, who was the award debtor.⁷ In upholding the foreign arbitral award against the debtor, the court found jurisdiction appropriate because the debtor was domiciled in North Carolina, and thus the court had jurisdiction to hear any claim against the debtor.⁸
2. Obtaining general jurisdiction over foreign debtors in the United States is more difficult as they are not incorporated in the United States, and it is not likely that the United States is their principal place of business (although this could be the case depending on the company's business).
 - a. The Second Circuit found a lack of general jurisdiction where the contacts of the debtor's affiliate-US corporations were not enough to render the foreign debtor-corporation "at-home" because the debtor was organized under the laws of Turkey and primarily conducted its business in Turkey.⁹

Specific Jurisdiction

Specific jurisdiction is more likely to be the way in which a US court will have personal jurisdiction over a foreign debtor. In order to have specific jurisdiction over a debtor for the enforcement of an arbitral award, the award debtor must have "minimum contacts" with the forum state, and the underlying claim that was the subject of the award must arise out of or relate to the debtor's contacts with the forum state.¹⁰ This ensures that there is a connection between the claim, the defendant, and the forum state in which the award enforcement is being sought by the award creditor.¹¹

For recognition and enforcement proceedings of foreign arbitral awards, courts generally look to the underlying claim that led to the arbitration award to determine whether it arises out of or relates to the debtor's contact with the forum state.¹² Relevant factors include:

- Did any of the formation of the contract, negotiations about the contract, and performance of the debtor's obligations under the contract take place in the United States?

³ *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 US 915, 919 (2011).

⁴ *Id.*

⁵ *Id.* at 924.

⁶ *Reddy v. Buttar*, 38 F.4th 393, 400-03 (4th Cir. 2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 225-26 (2nd Cir. 2015).

¹⁰ *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 US 351, 358-60 (2021).

¹¹ *Id.*

¹² See, e.g., Conti 11. *Container Schiffarts-GMBH & Co. KG M.S., MSC Flaminia v. MSC Mediterranean Shipping Co. S.A.*, 94 F.4th 789 (5th Cir. 2024) (holding that the relevant contacts for specific jurisdiction analysis are those that arise out of or relate to the underlying claim that led to the arbitral award).

- Does US law govern the agreement that gives rise to the dispute?
- Did the foreign debtor make payments due under the contract using a bank account located in the United States?

Examples of US courts finding specific personal jurisdiction over a foreign debtor include:

- Discussions surrounding the formation of a contract, negotiations about the contract, and attempted enforcement of the contract all occurred within the forum state and thus were sufficient to establish minimum contacts that related to the underlying arbitral dispute for breach of contract.¹³ Therefore, the court had specific jurisdiction over the award debtor in the recognition and enforcement action.¹⁴
- A court had jurisdiction over a South African telecommunications company, Telkom, to enforce an arbitral award against it for a breach of contract with a New Jersey telecommunications software company.¹⁵ The court found the following contacts sufficient to confer jurisdiction: Telkom had entered into a substantial contract with a New Jersey company, Telkom visited New Jersey in connection with the contract, Telkom had extensive communication with the New Jersey office, Telkom made payments via a New Jersey bank, and the breach was that Telkom did not make the payments to the creditor's New Jersey bank account.¹⁶
- A court exercised jurisdiction over an Israeli energy company to enforce an arbitral award in favor of the Republic of Guatemala.¹⁷ The Israeli energy company had acquired Guatemalan energy distributors and alleged that the Republic of Guatemala treated them unfairly as investors.¹⁸ The arbitral tribunal disagreed and awarded the Republic of Guatemala expenses incurred during the arbitration.¹⁹ In recognizing and enforcing the award against the Israeli energy company, the court held the underlying investment in the Guatemalan companies took place substantially in New York.²⁰ Specifically, bids for the companies were solicited and accepted in New York, the deal closed in New York, and the purchase agreement was governed by New York law.²¹ This transaction ultimately led to the arbitral dispute, thus the court held there was a substantial relation between the claim and the debtor's contacts with the forum state.²²

Jurisdiction Over the Assets of an Award Debtor

Quasi-in-rem

While an award debtor may not have sufficient contacts to establish specific jurisdiction, creditors may bring an action against a debtor's assets located in a given jurisdiction, thereby giving the court jurisdiction over the property. However, because jurisdiction is over the property, enforcement of the award in quasi-in-rem actions is limited to the value of the assets subject to the court's jurisdiction.

- The District Court for the Southern District of New York enforced a foreign arbitral award against a debtor who had no contacts with New York besides a bank account with Citibank that was maintained in New York.²³ Jurisdiction was over the bank account and not the individual, thus enforcement of the award was limited to the assets in the bank account.²⁴

¹³ *Compania de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269 (10th Cir. 2020).

¹⁴ *Id.*

¹⁵ *Telecordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 175 (3rd Cir. 2006).

¹⁶ *Id.* at 177-78.

¹⁷ *Republic of Guatemala v. IC Power Asia Dev. Ltd.*, 619 F.Supp.3d 421 (S.D.N.Y. 2022).

¹⁸ *Id.* at 425.

¹⁹ *Id.* at 427-28.

²⁰ *Id.* at 429-30.

²¹ *Id.*

²² *Id.*

²³ *CME Media Enters. B.V. v. Zelezny*, No. 01-CIV-1733(DC), 2001 WL 103518, at *3-5 (S.D.N.Y. Sept. 10, 2001).

²⁴ *Id.*

- The Ninth Circuit, which includes California, held that it was proper for a federal district court in Oregon to recognize and enforce a foreign arbitral award where the award debtor maintained a bank account in Oregon.²⁵

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²⁵ *Cerner Middle E. Ltd. v. iCapital, LLC*, 939 F.3d 1016, 1023 (9th Cir. 2019).