

Accession by Angola to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards



Tito Arantes Fontes
Litigation and International Arbitration

In the context of international commercial relations –an area in which arbitration is of increasing importance– one of the most important reasons for choosing arbitration over litigation is often the relative ease with which arbitral decisions may be enforced in various jurisdictions, as compared to the enforcement of foreign judicial decisions. For arbitration to be an effective method of alternative dispute resolution, in the sense of being a reliable alternative to the courts, arbitral awards issued in a specific state must be easily recognised and enforced in another state with which they are connected; in particular, because awards issued in international arbitrations frequently have ramifications in various jurisdictions.



Constança Borges Sacoto
Litigation and International Arbitration

As one of the most successful international treaties (currently in force in 157 states), the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, also known as the New York Convention ('NYC'), puts together a body of rules on the enforcement of arbitration agreements and foreign arbitral awards that has withstood the test of time. Portugal acceded to the NYC in 1994. However, it was only in the summer of 2016 that Angola signalled its intention to seek accession to the NYC. After decades of oil-dependent economic growth, the Angolan state –one of the largest oil producers in the African continent– has been prompted to take action to promote foreign investment due to the fall in the price of crude oil.



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Angola's accession is subject to the requirement of reciprocity



The governing arbitration law in Angola is the Angola Voluntary Arbitration Law of 2003 (Law 16/03 of 25 July) ('Angolan VAL'), which was inspired by the UNCITRAL Model Law on International Commercial Arbitration ('Model Law'). It pre-dates the current Portuguese Voluntary Arbitration Law (Law 63/2011 of 14 December) by eight years, but not its prior version (Portuguese Voluntary Arbitration Law of 1986, Law 31/86 of 29 August) from which it also took inspiration. Despite this, the Angolan VAL has no provisions regarding the recognition and enforcement of foreign arbitral awards. Thus, until the entry into force of the NYC in the country, enforcement of a foreign arbitral award in Angola involved a lengthy procedure –including a trial– at the Supreme Court, with the participation of both parties and the Public Prosecutor. This procedure, which usually lasts well over a year, is governed by Articles 1094 and following of the Angolan Code of Civil Procedure. The procedure, at odds with the demands of international trade, will now be replaced by the NYC, which fills an important gap at a time where international arbitration is becoming increasingly relevant in the African continent.

It is in this context that Angola sought accession to the NYC. The accession was approved by the National Assembly in Resolution 38/16 on 12 August 2016 (published in the Official Gazette of the same date). As was the case for Portugal, Angola's accession is subject to the

requirement of reciprocity. Under this requirement, Angola will only apply the NYC in the event that the arbitral award for which recognition and enforcement is sought has been issued within the territory of a state also bound by the NYC. It is thus important to ensure that arbitrations are seated in a NYC member state if enforcement is expected to take place in Angola.

At present, the Angolan national process of accession to the NYC has already been completed. The President of the Republic of Angola confirmed the accession on 5 December 2016 (Official Gazette of 19 December 2016). On 6 March 2017, the letter of accession to the NYC was submitted to the Secretary-General of the United Nations and ninety days later, on 4 June 2017, the NYC entered into force for Angola. In accordance with the mechanism for the incorporation of international law set out in the Constitution of the Republic of Angola, the NYC is now applicable in the country as from its entry into force. No further legislation is required in this regard.

It remains to be seen how Angolan courts will apply the new regime. To ensure that enforcement actually occurs in accordance with the terms of the NYC, the legislator may need to harmonize certain national regulations (such as the Angolan Voluntary Arbitration Law and the Code of Civil Procedure) to bring them up to speed with the new requirements under the NYC.

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