

AS EASY AS ONE, TWO, THREE

Enforcement and recognition of foreign awards
made in international arbitrations

Written by **MARIA COLE**

A Court's hands can be tied if a party does not ask for its assistance. In this case, the losing parties in an international arbitration had a foreign award enforced against them because they failed to ask the local Court to consider the law on when enforcement could be refused. Without that request, the Court's hands were tied and obtaining the orders was a straightforward process.

Background to the dispute

In mid-2018, Professor Ian Reeves CBE entered into an employment contract with the Respondents. The First Respondent, ALT Advisory (Jersey) Limited, is a company registered in the Channel Islands, and the Second Respondent, ALT Financial Group Limited, is an Australian registered company.

The employment contract contained an agreement to arbitrate any dispute between the parties under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The applicable law would be the law of England.



Seven months into the contract, Professor Reeves resigned. At that time, all his accrued entitlements under the contract were outstanding. In mid-2020, he issued a notice of dispute regarding his outstanding entitlements. The dispute was not resolved within the timeframe stipulated in the contract. Professor Reeves then filed a request for arbitration.

The Second Respondent proceeded to challenge the Arbitral Tribunal's jurisdiction on the basis that only one of its directors had signed the employment contract, which it argued *under Australian law would, in all probability, make it unenforceable* against it.



“An international arbitral award is recognised as binding and will be enforced except in limited circumstances”

Enforcement and recognition of foreign awards

→ This decision sets out the simple process involved in obtaining orders to enforce a foreign arbitral award and what happens when a losing party does not engage with a local court.

Issue of jurisdiction and determination of the merits

The Arbitral Tribunal found that the Second Respondent was bound by the employment contract and the agreement to arbitrate within it. This meant the Arbitral Tribunal had jurisdiction over the Second Respondent to hear and determine Professor Reeves' claims.

Professor Reeves proceeded to file further documents, including an amended statement of loss and a reply to questions which the Arbitral Tribunal had raised for the parties to consider. He advised the Tribunal he did not intend to apply for an in-person hearing, so the matter could

proceed on the papers.

The Respondents filed no further documents. They did not respond to the Tribunal's questions, nor did they confirm whether they would seek an in-person hearing.

The Arbitral Tribunal delivered a Final Award in September 2022. It awarded Professor Reeves approximately US\$820,000 against both Respondents, comprising damages, unpaid entitlements, legal costs and fees incurred, plus pre- and post-Award interest. There was also a separate award against the Second Respondent for costs and fees in connection to its objection to jurisdiction.



The Final Award was certified in Paris by the Secretary General of the ICC International Court of Arbitration in November 2022. Once again, the Respondents did nothing. Neither company paid Professor Reeves any part of the amount awarded in his favour.

Application to enforce the Final Award

In January 2023, Professor Reeves filed an application under the [International Arbitration Act 1974](#) (Cth) (the Act) in the Supreme Court of Victoria at Melbourne for an order to enforce the Final Award against the Respondents.¹

¹ *Reeves v ALT Advisory (Jersey) Limited and ALT Financial Group Limited* [2023] VSC 249.



The Court recorded that Professor Reeves had entered into the employment contract with both Respondents and that the Second Respondent had provided a guarantee of the First Respondent's obligations under the contract. It then satisfied itself that the Respondents had been properly served with all documents and that it had before it the requisite evidence of the Final Award plus a certified copy of the arbitration agreement. Once that was done, it turned its mind to whether it should order enforcement of the Final Award.

The Act stipulates at subsections 8(5) and 8(7) that the Court may only refuse to enforce a foreign award in the following circumstances:

- 8(5) ... in any proceedings in which the enforcement of a foreign award by virtue of this Part is sought, the court may, at the request of the party against whom it is invoked, refuse to enforce the award if that party proves to the satisfaction of the court that...
- (b) the arbitration agreement is not valid under the law expressed in the agreement to be applicable to it or, where no law is so expressed to be applicable, under the law of the country where the award was made...

...

- 8(7) In any proceedings in which the enforcement of a foreign

award by virtue of this Part is sought, the court may refuse to enforce the award if it finds that:

- (a) the subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the laws in force in the State or Territory in which the court is sitting; or
- (b) to enforce the award would be contrary to public policy.

The Court proceeded to consider the implications of the Respondents' failure to engage with the application to enforce the Final Award. It said that in the absence of any appearance by the Respondents, there was no basis for the Court

to consider any of the matters set out in section 8(5), as it was clear such matters had to be raised *at the request of the party*. Furthermore, that party had the burden of establishing the matters on which it was seeking to rely as justification for the Court to refuse to enforce the award. In the absence of such a request, the Court's hands were tied. This meant that the enforceability issue raised by the Second Respondent before the Arbitral Tribunal was simply noted as the ground for the earlier jurisdictional challenge. There was no consideration at all by the Court of its merits.

The Court then noted there was nothing in the material before it to suggest it should refuse to enforce

the Final Award under section 8(7), either because the subject matter of the Final Award was not capable of settlement under applicable law or that it would be contrary to public policy to enforce it.

Australia and New Zealand adopt the same approach

It appears the Respondents simply buried their heads in this matter. As a consequence, the only issues that the Court was required, or permitted, to consider before granting the orders to enforce the Final Award were whether the appropriate processes had been followed and whether the section 8(7) factors were engaged.

Both Australia and New Zealand are signatories of the UN

Convention for the Recognition and Enforcement of Foreign Arbitration Awards 1958.² The grounds for refusing recognition or enforcement in New Zealand also require a losing party to request the court's assistance before the court may refuse an application to recognise or enforce an arbitral award.³ The starting point in both countries is that an international arbitral award is recognised as binding and will be enforced except in the limited circumstances canvassed above. As shown, the enforcement process is straightforward and highlights the international appetite to encourage arbitration as a preferred method of dispute resolution.

² In New Zealand, the recognition and enforcement provisions are set out in [Article 35 of Schedule 1, Arbitration Act 1996](#).

³ [Article 36 of Schedule 1, Arbitration Act 1996](#).

About the author

Maria Cole works as a Knowledge Manager in The ADR Centre's Knowledge Management Team, including working with NZDRC and NZIAC. She was previously a civil litigation barrister for over a decade. During that time she worked on several multi-million dollar development disputes and was involved in arbitrations and mediations.

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