

# Comparison of Inter-American Arbitration Treaties & The New York Convention

Subject	New York Convention 1958	Panama Convention 1975	Montevideo Convention 1979
Application of Convention	<p>Article I (1) - This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards in the State where their recognition and enforcement are sought.</p>		<p>Article 1 - This Convention shall apply to judgments and arbitral awards rendered in civil, commercial or labor proceedings in one of the States Parties, unless at the time of ratification it makes an express reservation to limit the Convention to compensatory judgments (sentencias de condena) involving property. In addition, any one of them may declare, when ratifying the Convention, that it also applies to rulings that end proceedings, to the decisions of authorities that exercise some jurisdictional function and to judgments in penal proceedings ordering compensation for damages resulting from an offense.</p> <p>The rules of this Convention shall apply to arbitral awards in all matters not covered by the Inter-American Convention on International Commercial Arbitration, signed in Panama on January 30, 1975.</p>
"Arbitral Awards" Defined	<p>Article I (2) - The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.</p>		
Reciprocity to Only Other Signatories	<p>Article I (3) - When signing, ratifying, or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.</p>		

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Recognition of Arbitral Agreement	Article II (1) - Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.	Article 1 - An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a commercial transaction is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.	
"Agreement in Writing" Defined	Article II (2) - The term "agreement in writing" shall include an arbitration clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.		
Referring Parties to Arbitration Unless Agreement is Null and Void, Inoperative, or Incapable of Being Performed	Article II (3) - The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds said agreement is null and void, inoperative or incapable of being performed.		
Binding Force of Arbitral Awards	Article III - Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the 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.	Article 4 - An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.	

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Authentication / Notary Requirements	<p>Article IV (1) - To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of application, supply: (a) The duly authenticated original award or a duly certified copy thereof; (b) The original agreement referred to in article II or a duly certified copy thereof.</p>		<p>Article 2 - The foreign judgments, awards and decisions referred to in Article 1 shall have extraterritorial validity in the States Parties if they meet the following conditions:  (a) They fulfill all the formal requirements necessary for them to be deemed authentic in the State of origin;  (c) They are presented duly legalized in accordance with the law of the State in which they are to take effect; -----  -----  Article 3 - The documents of proof required to request execution of judgments, awards and decisions are as follows:  (a) A certified copy of the judgment, award or decision; (b) A certified copy of the documents proving that the provisions of items (e) and (f) of the foregoing article have been complied with; and (c) A certified copy of the document stating that the judgment, award or decision is final or has the force of <u>res judicata</u>.</p>

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Translation of Required Documents	Article IV (2) - If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.		Article 2 (b) - The judgment, award or decision and the documents attached thereto that are required under this Convention are duly translated into the official language of the State where they are to take effect;
Grounds for Denying Recognition or Enforcement	Article V (1) - Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:	Article 5 (1) - The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:	
Grounds for Denying Recognition or Enforcement: Incapacity / Invalidity	Article V (1) (a) - The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or	Article 5 (1) (a) - That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decision was made;	
Grounds for Denying Recognition or Enforcement: Proper Notice	Article V (1) (b) - The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or	Article 5 (1) (b) - That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or	Article 2 (e) - the plaintiff has been summoned or subpoenaed in due legal form substantially equivalent to that accepted by the law of the State where the judgment, award or decision is to take effect; Article 2 (f) - The parties had an opportunity to present their defense;
Grounds for Denying Recognition or Enforcement: Difference Not Contemplated by Agreement	Article V (1) (c) - The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration can be separated from those not so submitted, that part of the award which contains decisions matters submitted to arbitration may be recognized and enforced; or	Article 5 (1) (c) - That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or	

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Grounds for Denying Recognition or Enforcement: Composition of Tribunal / Procedure Not In Accordance with Agreement	Article V (1) (d) - The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or	Article 5 (1) (d) - That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or	
Grounds for Denying Recognition or Enforcement: Not Yet Binding	Article V (1) (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.	Article 5 (1) (e) - That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.	Article 2 (g) - They are final or, where appropriate have the force of <u>res judicata</u> in the State in which they were rendered;
Grounds for Denying Recognition or Enforcement: Subject Not Capable of Settlement by Arbitration	Article V (2) (a) - The subject matter of the difference not capable of settlement by arbitration under the law of that country; or	Article 5 (2) (a) - That the subject of the dispute cannot be settled by arbitration under the law of that State; or	
Grounds for Denying Recognition or Enforcement: Public Policy	Article V (2) (b) - The recognition or enforcement of the award would be contrary to the public policy of that country.	Article 5 (2) (b) - That the recognition or execution of the decision would be contrary to the public policy ("order public") of that State.	Article 2 (h) - They are not manifestly contrary to the principles and laws of the public policy (ordre public) of the State in which recognition of execution is sought.
Court's Abilities During Set Aside Proceeding	Article VI - If an application for the setting aside or suspension of the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.	Article 6 - If the competent authority mentioned in Article 5.1(e) has been requested to annul or suspend the arbitral decision, the authority before which such decision is invoked may, if it deems it appropriate, postpone a decision on the execution of the arbitral decision and, at the request of the party requesting execution, may also instruct the other party to provide appropriate guaranties.	

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Present Convention Does Not Affect Validity of Other Arbitration Treaties	Article VII (1) - the provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon. Article VII (2) - The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.		
Window for Signatories / Requirements	Article VIII (1) - This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations. Article VIII (2) - This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary General of the United Nations.	Article 7 - This Convention shall be open for signature by the Member States of the Organization of American States. ----- Article 8 - This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.	Article 7 - This Convention shall be open for signature by the Member States of the Organization of American States. ----- Article 8 - This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.
Acceding to Convention	Article IX (1) - This Convention shall be open for accession to all States referred to in article VIII. Article IX (2) - Accession shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.	Article 9 - This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.	Article 9 - This Convention shall remain open for accession by any other State. The instrument of accession shall be deposited with the General Secretariat of the Organization of American States.
Appointment of Arbitrators		Article 2 - Arbitrators shall be appointed in the manner agreed upon by the parties. Their appointment may be delegated to a third party, whether a natural or juridical person. Arbitrators may be nationals or foreigners.	

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Absent Agreement on Procedure, IACAC Rules Apply		Article 3 - In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.	
Partial Execution of Judgment			Article 4 - If a foreign judgment, award or decision cannot be executed in its entirety, the judge or tribunal may agree to its partial execution at the request of an interested party.
Forma Pauperis			Article 5 - The declaration in forma pauperis recognized in the State of origin of the judgment shall be recognized in the State of destination.
Domestic Procedures Dictate Validity of Judgments / Awards			Article 6 - The procedures for ensuring the validity of foreign judgments, awards and decisions, including the jurisdiction of the respective judges and tribunals, shall be governed by the law of the State in which execution is sought.











