Enforcement of arbitral awards in Gibraltar: overview

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ENFORCEMENT OF ARBITRAL AWARDS
Definitions and preliminary proceedings

1. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

There is no statutory definition of "arbitral award" in the local Arbitration Act 1895. However, the Arbitration Act 1895 provides that awards granted by arbitrators under the relevant arbitration agreement have the same weight as a judgment delivered in court.

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), (which applies to Gibraltar by an Order in Council of the UK extending its application) provides that "arbitral awards" must include both awards made by arbitrators appointed for each case and also those made by permanent arbitral bodies that the parties have submitted. The Arbitration Act 1895 also defines "convention awards" separately as an award made under an arbitration agreement in a member state other than Gibraltar that is a contracting party to the New York Convention.

2. Are decisions in preliminary/provisional proceedings recognised and enforceable?

Decisions must generally be "final" in the sense that it must be binding on the parties in order to be enforceable. The court can also grant interim relief in aid of these proceedings.

Applicable conventions

3. What conventions is your jurisdiction a contracting party to?

The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) was extended to Gibraltar by the UK. The New York Convention applies to the enforcement of foreign arbitral awards across the jurisdictions of its contracting states and Gibraltar is included as a jurisdiction for this purpose. The New York Convention is applicable to Gibraltar under Part IV of the local Arbitration Act.


Article VII of the New York Convention states that the Geneva Convention will cease to take effect on becoming bound by the New York Convention. The Geneva Convention therefore only applies where the New York Convention cannot be invoked (section 49, Arbitration Act 1895).

Enforcing awards

4. What is the applicable statutory framework for enforcement of awards?

Arbitral awards are enforceable in Gibraltar under a number of regimes:
- Arbitration Act 1895.
- Judgments (Reciprocal Enforcement) Act 1935.
- Common law.

Section 21 of the Arbitration Act 1895 allows for the enforcement of awards in the same way as a judgment or order with the same effect. Section 50 of the Arbitration Act 1895 extends the court's power to convention awards (under the New York Convention).

Section 42 of the Arbitration Act 1895 extends section 21 of the Act to foreign awards (defined under the Arbitration Act 1895 as awards under the Geneva Convention on the Execution of Foreign Arbitral Awards 1927). The award must (section 43, Arbitration Act 1895):
- Have been made under an agreement for arbitration that was duly valid in the jurisdiction that it is subject.
- Have been made by the tribunal provided for in the arbitration agreement.
- Have been made in conformity with the law governing the procedure for the arbitration.
- Have become final in the relevant jurisdiction.
- Have been in respect of a matter that may lawfully be referred to arbitration under the law.
- Not be contrary to law or public policy.

Section 11A of the Judgments (Reciprocal Enforcement) Act 1935 extends the provisions for the enforcement of judgments given in places that give reciprocal treatment to judgments given in Gibraltar to arbitral awards.

Awards can also be enforced by a party bringing an "action" on the award at common law, provided it is for a specified sum of money. In effect, this is a fresh action based on the breach of the arbitration agreement due to the terms of the award not being honoured.
5. What are the grounds for refusing enforcement?

**Domestic awards**
Section 20(1) of the Arbitration Act 1895 gives the court the power to set aside awards where the arbitrator is guilty of misconduct in the arbitration process and so the award was improperly procured.

**International awards**
"Foreign awards" under Part III of the Arbitration Act 1895 will be refused on the following grounds:
- The award was annulled in the country that it was made.
- The party against whom it is sought was not given notice of arbitration proceedings.
- The award is beyond the scope of the agreement for arbitration.
- The award was not in accordance with the arbitration agreement.

"Convention awards" (see Question 1) can be refused if the person against whom it is invoked proves:
- That a party to the arbitration agreement was under some incapacity.
- That the arbitration agreement was not valid under the law that the parties subject it.
- That he was not given proper notice of the appointment of the relevant arbitrator.
- That the award deals with something not falling within the terms of the submission to arbitration.
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.
- The award has not yet becoming binding or has been set aside or suspended by an authority competent in the jurisdiction that the arbitration agreement is submitted to under the law applicable in that jurisdiction.

Arbitral awards can also be refused if a matter is not capable of being resolved by arbitration.

6. Is the enforcing court required to examine the refusal grounds during the enforcement proceedings ex officio?

The enforcing court can examine grounds for refusal, but see Question 15 on serving notice to parties.

7. What is the effect of pending challenge proceedings in the foreign state where the decision is granted?

Any challenges to an award mean that the award is not deemed as final.

8. What types of arbitral awards are enforceable?

**Money awards**
Money awards are enforceable.

**Awards containing injunctions ordering or prohibiting the doing of acts**
Awards containing injunctions ordering or prohibiting the doing of acts are enforceable (although not under the common law).

Decisions or awards by arbitral tribunals (including emergency arbitrators) granting provisional measures
Decisions or awards by arbitral tribunals granting provisional measures are enforceable (although sometimes it will be necessary to seek appropriate interim relief).

**Declaratory awards**
Declaratory awards are enforceable (but not as a matter of common law).

**Other awards**

9. Can parties seek to enforce only part of the award?

Parties cannot seek to enforce only part of the award.

10. Are any class of awards excluded from recognition and enforcement? If so, what types of awards?

There are no class of awards that are excluded from recognition and enforcement, except for awards that are contrary to law or public policy.

11. Will service that does not conform to the requirements of international treaties/regulations in force automatically result in a denial of the enforcement of an award?

Service that does not conform to the requirements of international treaties or regulations in force automatically results in a denial of the enforcement of an award.

12. What methods of service are not acceptable against defendants domiciled in the state where enforcement is sought?

There are no specific methods of service expressly deemed as unacceptable. However, see Question 11 for conformity with international treaties and Question 15 for service of notice.

**Public policy**

13. Which country’s public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or international award?

Awards, whether domestic or international, cannot be contrary to the law or public policy. This is a ground for refusal to enforce (see Question 10).

14. In which cases and against which awards has the principle of public policy generally been applied?

There are no local cases on this point.

**ENFORCEMENT PROCEEDINGS**

**Procedure**

15. What is the procedure for enforcing arbitral awards?

The following is applicable to domestic, international and convention awards.

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Ex parte or on notice. Notice of proceedings can be served on all parties by:
- Delivering it to the person on whom it is to be served.
- Registered post to their last known address.
- E-mail or other electronic means.
For companies, notice of proceedings can be served at the registered office of the company or by delivering the same to an individual holding a senior position in the company concerned.

Applicable court. This is the Supreme Court of Gibraltar (section 2, Arbitration Act 1899).

Limitation period. The Limitation Act applies in the same way to arbitration proceedings as they do to court proceedings (section 24, Arbitration Act 1899). There is a limitation period of six years for the enforcement of awards (section 4, Limitation Act).

Timing. Approximately two to three months on the assumption it is not contested.

Court fees. This depends on the value of the claim and the nature of the remedy sought (for example, the court fee is fixed for a non-monetary remedy but scaled in respect of the value of claims).

Recourse. Decisions of the Supreme Court can be subject to appeal.

16. Can the enforcing court review the foreign award if all formalities were complied with and if the award meets all requirements?

The enforcing court can review the foreign award if the award did not conform to local public policy.

Formalities

17. What are the documentary requirements for enforcement?

Documentary requirements
The original award is required or a copy of the award duly authenticated in the manner required by the law to which the award is subject.

Authentication
If the award is not the original award, then the copy relied on must be duly authenticated.

18. Is it required to translate the award into the language of the state where enforcement is requested?

Translations
Awards must be translated into English.

Other languages
Only English is allowed, therefore there is a requirement to translate other judgments in foreign languages into English.

Certification
Translations must be certified.

19. What is the format of the application for a declaration of enforceability?

Not applicable.

20. What information must be included in the application regarding the award, the claim as awarded in the award, the facts and legal grounds of the case, and that the judgment is no longer appealable?

There is no specific application form for the enforcement of arbitral awards.

21. Is it possible to request the enforcing court for provisional measures pending the enforcement proceedings?

It is possible to request the enforcing court for provisional measures pending the enforcement proceedings.

22. Is it required to convert the value of the award into the local currency?

The award can be enforced in foreign currency. However, it is normal to express the sterling equivalent by reference to the rate of exchange at the time of the commencement of the proceedings for enforcement.

23. Can the enforcing court stay the enforcement proceedings pending the outcome of proceedings to set aside the award at the seat of arbitration? If so, will the court order the party seeking the stay to provide security?

Proceedings can be stayed and an application can be made for security for costs in accordance with the relevant provisions of the Civil Procedure Rules (CPR).

ACTUAL ENFORCEMENT

24. What is the enforcement procedure when a declaration of enforceability is granted?

Not applicable.

25. Can defendants oppose the actual enforcement procedure, and if so, on what grounds/defences?

Defendants can oppose the actual enforcement procedure.

Defendants can do this on any of the potential grounds under which a court can refuse to enforce an award (see Question 5) and any other ground that may contest the validity of the award being sought.

PROPOSALS FOR REFORM

26. Are any changes to the law currently under consideration or being proposed?

There are no changes to the law that are currently under consideration or being proposed.
### Practical Law Contributor profiles

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**Areas of practice.** Dispute resolution and private client.

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**ONLINE RESOURCES**

**Laws of Gibraltar**

W [www.gibraltarlaws.gov.gi](http://www.gibraltarlaws.gov.gi)

**Description.** This website is maintained by the government and its legislation unit.

**Justice**

W [www.justice.gov.uk](http://www.justice.gov.uk)

**Description.** An English website that contains Civil Procedure Rules (CPR) and copies of relevant forms that are also used in Gibraltar in the absence of a local prescribed form.

**Gibraltar Court service**

W [www.gcs.gov.gi](http://www.gcs.gov.gi)

**Description.** This website is maintained by the Gibraltar Court Service and contains local judgments as well as other information relating to the court service provided.