



Arbitration Lab

Advancing innovative ideas and practical knowledge of arbitration.

Sponsors:



LALIVE

Schellenberg
Wittmer

LALIVE



Enforcement of Arbitral Awards

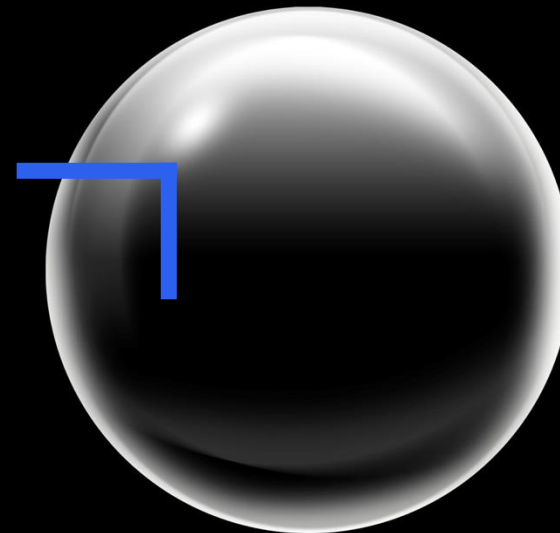
Laura Azaria
Basel Winter Arbitration School
4 February 2026

Topics



- 1 Why enforcement matters
- 2 Voluntary compliance with awards: reality v. myth?
- 3 Legal framework for enforcement
- 4 The New York Convention
- 5 Enforcement against States and States-Owned Entities
- 6 “On-Chain” enforcement
- 7 Practical considerations for securing enforcement

Why Enforcement Matters



Why Enforcement Matters



Why Enforcement Matters

**WHERE IS
MY MONEY?**



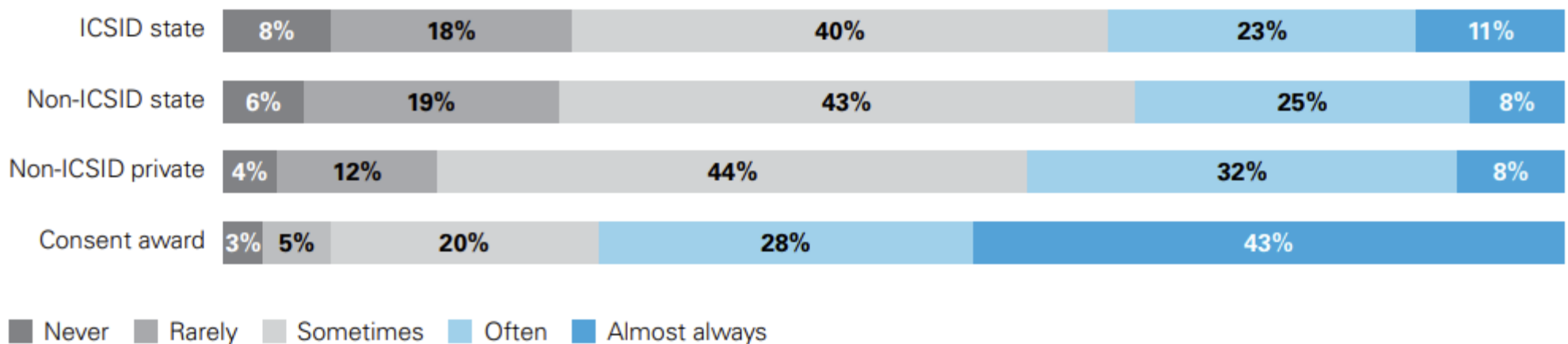
Voluntary Compliance with Awards: Reality v. Myth?



2025 Queen Mary Survey

- + Diverse pool of participants (in-house counsel, arbitrators, private practitioners, arbitral institutions)

Chart 7: How often do award debtors voluntarily comply with arbitral awards?



Queen Mary University of London & White & Case, 2025 International Arbitration Survey: The Path Forward, p. 12

- + Voluntarily compliance: 40% for private parties v. 33% for States/SOEs
- + Caution: answers not necessarily based on actual experience; influenced by perception

Takeaways

Figures capture overall trend:

- † Higher voluntary compliance among private entities
- † States / SOEs tend to comply less voluntarily

† Why?

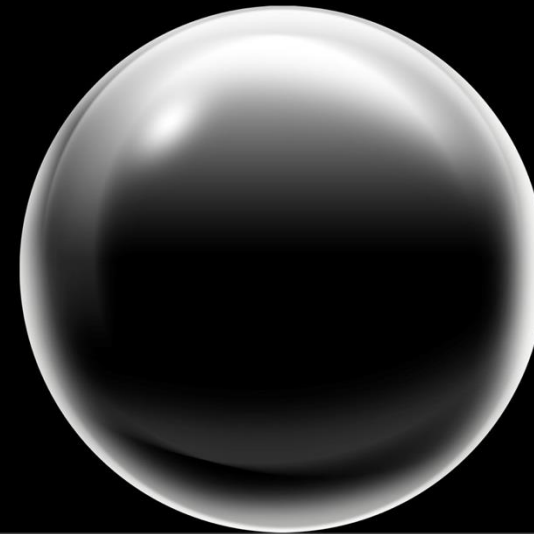
- Robust enforcement regimes incentivise voluntarily compliance
 - If resisting enforcement is costly and unsuccessful, more likely to voluntarily comply
- This explains why private entities tend to voluntarily comply

Situation is different for States/SOEs:

- Enforcement pose unique challenges; additional defences may be raised
 - Enforcement hurdles reduce the pressure on States/SOEs
- Weaker incentive for prompt voluntary compliance



Legal Framework for Enforcement



Legal Framework for Enforcement

- ‡ Which authority can grant enforcement measures?
- ‡ Can arbitral tribunals enforce their own decisions?

- ‡ Only State courts can give awards coercive effect

- ‡ Courts exercise the State's police powers (e.g. seizure, freezing, turnover of assets)

- ‡ Arbitral tribunals have no *imperium*
No coercive authority to enforce their decisions

- ‡ Bring enforcement actions before State courts where assets are located

Legal Framework for Enforcement

✚ Two-layer legal framework

(1) **National laws**

- National enforcement laws differ from one country to another
- Different regimes apply to international v. domestic awards

E.g. in Switzerland:

- Art. 194 PILA: NYC applies to international awards
- Another sets of rules for domestic awards
- Many national laws give international awards same force as court judgments, subject to due process and public policy

Legal Framework for Enforcement

(2) **International conventions**

- 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC Convention)
 - 172 States parties
 - Creates uniform global framework for recognition and enforcement
 - Art. VII(1) NYC: favourability principle. More enforcement-friendly treaties may apply

In practice: NYC is often most favourable treaty
- Other key instrument: Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention)
 - Self-contained regime for investment awards

Which States are not Parties to the NYC Convention?

E.g.:

- + Eritrea
- + Libya
- + Namibia
- + Somalia
- + South Sudan
- + Tchad
- + Yemen

Key Terms : Distinctions

- + Exequatur

Decision by which a national court declares a foreign award enforceable domestically

- + Recognition

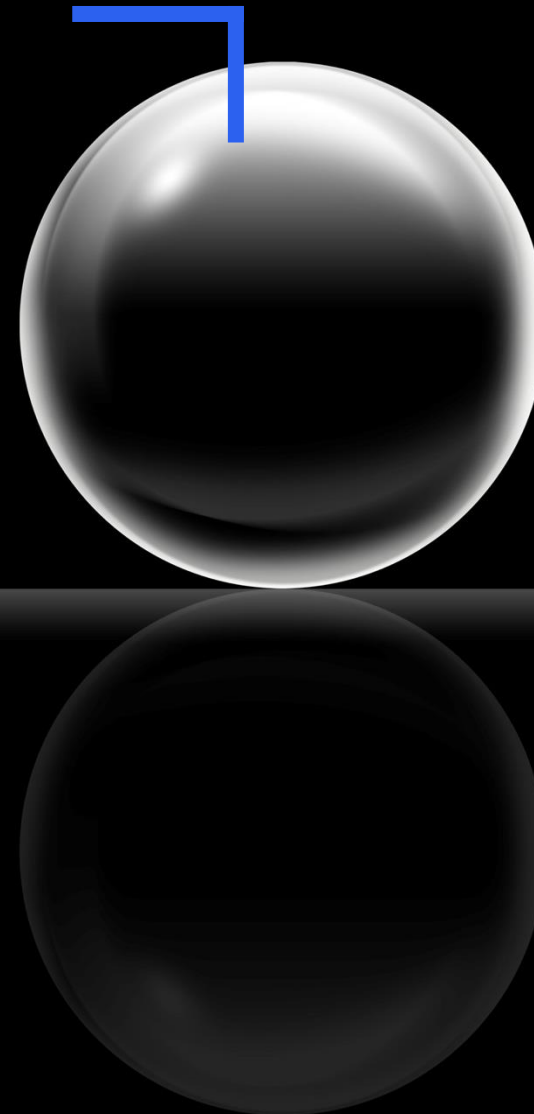
Formal acceptance of award and “conversion” into a domestic court judgement

- + Enforcement

Execution of the award through national enforcement procedures

- + Recognition & Enforcement: two-step process (often simultaneous)

The New York Convention



New York Convention

- + Adopted on 10 June 1958; entered into force on 7 June 1959
- + Enjoys global reach
 - 172 States parties
 - Network continues to expand: Suriname (8 February 2022); Timor-Leste (17 April 2023)
- + Most successful treaty in private international law
- + If compare success of NYC with 2019 Hague Judgments Convention: contrast is striking
 - Counterpart to NY Convention: governs recognition of judgements in civil and commercial matters. Entered into force 1 Sept. 2023
 - Far less successful; limited uptake:
 - Only 33 Contracting Parties
 - EU joined as single party but automatically bound 26 EU Member States
 - Only a handful of non-EU States

New York Convention

- ✦ How has the NYC contributed to the success of international arbitration as one of the most preferred dispute resolution mechanisms?
 - Effective enforcement is key
 - Robust enforcement mechanism provided by NYC
 - Foreign awards more easily enforceable than foreign court judgments
 - NYC has also boosted international trade and foreign direct investment

Worldwide mutual enforcement regime

- † Contracting States must enforce awards from other Contracting States as if their **own domestic judgments** (provided conditions in Art. IV-VI are met)

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.

Scope of Application – Art. I NYC

✦ Foreign arbitral awards

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 not considered as domestic awards in the State where their recognition and enforcement are sought.

What is an “arbitral award”?

- ✦ Not defined by NYC

- ✦ Which law should the enforcing State courts apply?
 - No single answer
 - In practice: *Lex arbitri*, or alternatively autonomous Convention interpretation

- ✦ Two core requirements
 - Rendered by an arbitral tribunal
 - Finally resolves a legal disputes
 - Decisions of dispute boards or expert determinations excluded

- ✦ Substance over form: label not determinative

What is a “foreign” award?

† Award *made* in the territory of another State, i.e. legal seat

† Territorial test

→ NYC applies to awards rendered in **any** State (not only Contracting States)

Exception: when State applies the reciprocity reservation (Art. I[3])

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.

† Last requirement: “Arising out of differences between persons, whether physical or legal”

- Very broad personal scope

Formal Requirements – Art. IV NYC

† Documents to be provided by party seeking enforcement

- Award

Duly authenticated original or duly certified copy

- Arbitration agreement

Original or duly certified copy (see Art. II)

- Certified translations if not in an official language of the enforcing State

Sworn/official translator or diplomatic/consular agent

† In practice

- Many Courts apply a non-formalistic approach
- E.g. Switzerland:
 - Translation often not required when documents in English
 - Authentication of award not required if authenticity undisputed
- However, caution shall apply!

† No “double exequatur”: no need to obtain enforceability at the seat

Grounds for Refusal of Recognition and Enforcement

- + If formal requirements met: courts **must** enforce award, unless ground for refusal (Art. V)
 - No discretion to refuse enforcement absent a ground
- + **NYC does not require States to deny** enforcement even if ground for refusal is met; **may** still enforce award

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:

- + Exhaustive list of refusal grounds - no review of the merits
- + Application varies across jurisdictions: strict/more flexible interpretations

Grounds examined upon request – Art. V(1)

- ✦ Grounds of Art. V(1) available only upon request; Courts cannot raise them *ex officio*

- ✦ Exhaustive grounds:
 - Incapacity of parties or invalidity of arbitration agreement (let. a)
 - No proper notice or violation of due process (let. b)
 - Arbitral tribunal decided on matters not covered by arbitration agreement (*extra potestatem*) or granted relief beyond relief requested by parties (*ultra petita*) (let. c)
 - Irregularity in composition of arbitral tribunal (let. d)
 - Awards not binding, set aside or suspended (let. e)

- ✦ Burden of proof lies with the debtor

Art. V(1)(a): Incapacity of party/invalidity of the agreement

Two grounds:

+ Incapacity

- Whether party had legal ability to conclude agreement (issues of authority)
- Rarely relevant in practice

+ Invalidity of arbitration agreement

- *De novo* review of validity; not bound by tribunal's findings
- Separability doctrine
Arbitration agreement assessed independently of main contract
- Law chosen by parties to govern agreement; alternatively, *lex arbitri*

Typical cases failing under the grounds of invalidity

- Formal invalidity

E.g. not in writing (Art. II[1])

(Art. VII(1) allows application of more-favourable national law)

- Substantive invalidity

E.g. Lack of consent:

- Enforcement against/by non-signatory to the agreement
- Awards arising from intra-EU investment disputes rest on invalid agreement

Art. V(1)(b): No proper notice or violation of due process

Two grounds:

- + Party resisting enforcement not given proper notice of arbitrator appointment/arbitration

Must show that has not been informed of arbitration and all essential procedural steps

- + Party otherwise unable to present its case

Must show that did not have opportunity to present argument, evidence, defence

→ Material impact on outcome of award required

- + Protect fair conduct of proceedings and right to be heard

- + Frequently invoked; rarely successful

- + Often law of enforcing State, with international standard

Art. V(1)(c): Award decided on matters not covered by the arbitration agreement or granted relief beyond the relief requested by the parties

- † Must show that award deals with issues not contemplated by or not falling within terms of submission to arbitration (arbitration agreement; pleadings)
- † Party accepts tribunal's jurisdiction, but argues the award went beyond its mandate
- † E.g.: tribunal acted as *amiable compositeur/ex aequo et bono* without authorisation
- † Partial enforcement: if separable, courts may declare award partially enforceable

Art. V(1)(d): Irregularity in the Composition of the Tribunal or flawed in the proceedings

- ✦ Must show that tribunal composition or procedure not in accordance with parties' agreement or, absent such agreement, with *lex arbitri*
- ✦ Scope of "agreement"
 - Any arrangement: express or implied, oral or written
 - Includes: number of arbitrators, appointment method, qualifications
- ✦ Generally applied restrictively; irregularity must be substantial
- ✦ Material impact on outcome of award required

Art. V(1)(e): Awards not Binding, Set Aside or Suspended

Covers 3 scenarios:

+ Award not yet binding

- “Binding” does not mean enforceable at the seat
- E.g. in Switzerland: Award binding if no ordinary recourse available, even if not enforceable at the seat
- Pending set-aside proceedings does NOT make an award “non-binding”

+ Award set aside

- = annulled at the seat
- Courts may still enforce annulled award using Art. VII(1) (more-favourable-law rule)
- For e.g. in Switzerland: Courts generally refuse enforcement if award set aside

+ Award suspended

- Suspension = judicial decision at the seat temporarily halting the award
- Courts treat suspension similarly to annulment
- For e.g. in Switzerland: Courts generally refuse enforcement if effects of award stayed at the seat

+ Burden of proof on party resisting enforcement

Grounds examined *ex officio* – Art. V(2)

(1) Non-arbitrability

‡ Dispute not capable of settlement by arbitration

- Enforcing courts apply their own law
- Each State decides which matters cannot be arbitrated
- Limits: national rules must not undermine the NYC's pro-enforcement purpose.

Commercial disputes are presumed arbitrable among Contracting States

Grounds examined *ex officio* – Art. V(2)

(2) Incompatibility with Public Policy

- † Refers to public policy of enforcing States
- † Procedural public policy (e.g. fundamental due process violations)
- † Substantive public policy (e.g. illegality, corruption)
 - **Only** ground permitting a **substantive review** of award
- † Many States adopt international public policy standard
 - Very limited scope, consistent with NYC's pro-enforcement bias

Waiver & Estoppel Risks in Enforcement

Risk of waiving or losing grounds to contest enforcement – or being estopped:

- + Failure to raise ground for challenging enforcement during arbitration

E.g.: invalidity of arbitration agreement; due process violations; improper composition of arbitral tribunal

Timely objection preserves enforcement defences

- + Failure to challenge award at the seat

Loosing at the seat may narrow arguments at enforcement

BUT not challenging award may be held against party at enforcement stage

- + Grounds already rejected in annulment/enforcement proceedings elsewhere

Prior unsuccessful annulment/enforcement argument may be treated as precluded in subsequent enforcement actions

Time Limit for Seeking Enforcement

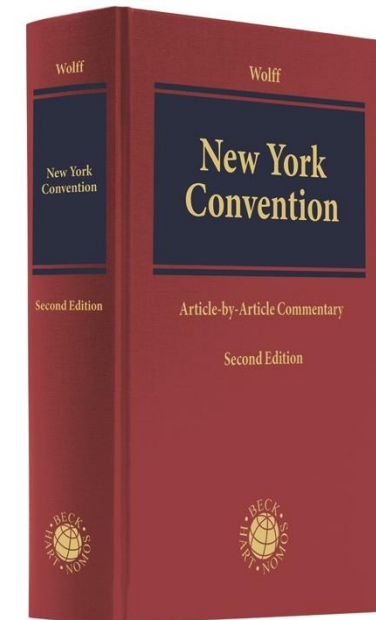
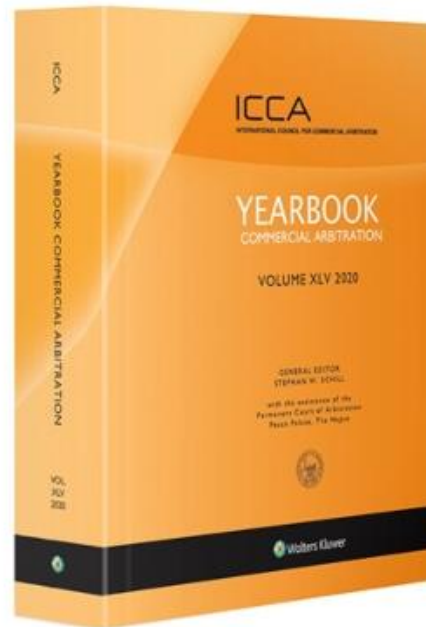
- ✦ No time limit in NYC
- ✦ Governed by domestic law of enforcement forum
- ✦ Many national laws impose limitation periods; wide variation across jurisdictions
- ✦ Practical impacts
 - Winning parties may need to act quickly
 - Losing parties must anticipate time-bar arguments in enforcement proceedings

Time for a reform?

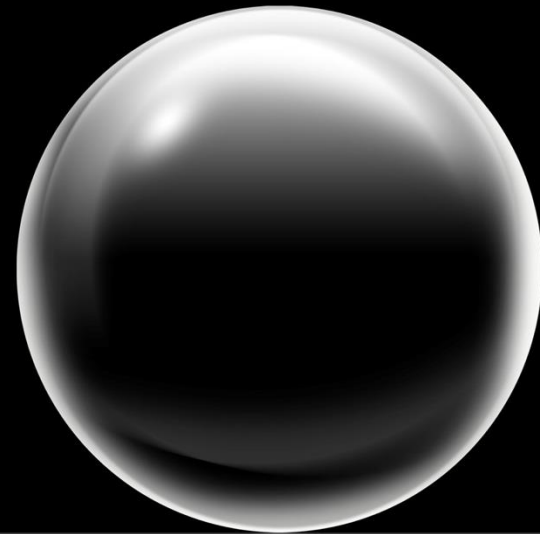
- ✦ Shortcomings of NYC require reforms, or can be addressed through interpretation?
Debate is ongoing
- ✦ Key challenges faced
 - Art. II(2): “agreement in writing” no longer in line with today’s business reality
 - Art. V(1)(e): enforcement can be refused if award has been set aside → inconsistent decisions on enforcement
 - Art. V(2)(b): inconsistent interpretation of notion of public policy → inconsistent decisions on enforcement

Useful sources

- + <https://www.newyorkconvention.org/>
- + <https://newyorkconvention1958.org/>
- + ICCA's Guide to the Interpretation of 1958 New York Convention
- + ICCA Yearbook
- + Wolff Commentary



Enforcement against States
and States-Owned Entities



Enforcement against States/SOEs

- ✦ Sovereign actors: integral part of international commerce
- ✦ Disputes involving States have grown significantly
 - Growing number of cases: 19% of new ICC cases (2024) involved States/SOEs
 - Increasing trend of non-compliance by States/SOEs
- ✦ Enforcing awards against States/SOEs poses unique challenges

Specific Defences States/SOEs May Raise

States Immunity Defence

✦ Jurisdictional and enforcement immunity

✦ Most jurisdictions follow restrictive theory of immunity:

- Assets linked to State's acts in the exercise of sovereign authority (*acta iure imperii*)

→ Immune

- Assets linked to a State's private or commercial activities (*acts de iure gestionis*)

→ NOT immune

✦ States can waive immunity

Waivers must be tailored to legal requirements of enforcement jurisdiction

Specific Defences States/SOEs May Raise

+ Intra-EU Objection

- Enforcement complicated by CJEU's *Achmea* and *Komstroy* decisions
- Intra-Eu awards have become virtually unenforceable within EU
- Investors sought enforcement in non-EU jurisdictions

+ Defence before Swiss Courts: sufficient Swiss Connection

- Additional condition required by case law for enforcement measures against States
E.g. claim originated or had to be performed in Switzerland
- Mere existence of assets in Switzerland is insufficient

Enforcement of ICSID Awards

- ✦ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention)
 - ICSID - Specialized investor-State dispute mechanism
 - Ratified by 158+ states

- ✦ Enforcement of ICSID awards not governed by NYC

- ✦ Robust self-contained enforcement regime provided by Washington Convention
 - Art. 53: ICSID awards binding on the parties; obligation to comply
 - Art. 54: Contracting States must recognize and enforce ICSID award as domestic final judgment
 - Art. 55: Domestic rules on sovereign immunity from execution continue to apply
 - Art. 52(5): ICSID awards are enforceable irrespective of annulment proceedings, unless stay exceptionally ordered

What about “On-Chain”
Enforcement?



“On-Chain” Enforcement

- † Traditional enforcement of decisions requires State’s intervention
- † Model challenged by technology: smart contracts can enforce decisions directly on Blockchain
- † Smart contract :
 - Computer code based on blockchain technology
 - Automatically executes and enforces predetermined conditions
 - Runs according to a series of “if/then” statements: if event “X” happens (e.g. award issued), then “Y” occurs (e.g. crypto transferred).]
 - E.g. of smart contract (buy NFT of Nike digital shoes):

Contract Source Code (Solidity Standard Json-Input format)

File 1 of 15 : mn1thrvld.sol

```
1 // SPDX-License-Identifier: MIT
2
3 /*
4  RTFKT Legal Overview [https://rtfkt.com/LegalOverview]
5  1. RTFKT Platform Terms of Services [Document #1, https://rtfkt.com/tos]
6  2. End Use License Terms
7  A. Digital Collectible Terms (RTFKT-Owned Content) [Document #2-A, https://rtfkt.com/Legal-2A]
8  B. Digital Collectible Terms (Third Party Content) [Document #2-B, https://rtfkt.com/Legal-2B]
9  C. Digital Collectible Limited Commercial Use License Terms (RTFKT-Owned Content) [Document #2-C, https://rtfkt.com/Legal-2C]
10
11  3. Policies or other documentation
12  A. RTFKT Privacy Policy [Document #3-A, https://rtfkt.com/privacy]
13  B. NFT Issuance and Marketing Policy [Document #3-B, https://rtfkt.com/Legal-3B]
14  C. Transfer Fees [Document #3C, https://rtfkt.com/Legal-3C]
15  C. 1. Commercialization Registration [https://rtfkt.typeform.com/to/u671kiRL]
16
17  4. General notices
18  A. Murakami Short Verbiage - User Experience Notice [Document #X-1, https://rtfkt.com/Legal-X1]
19 */
20
21 pragma solidity ^0.8.2;
22
23 import "@openzeppelin/contracts/token/ERC721/ERC721.sol";
24 import "@openzeppelin/contracts/token/ERC721/extensions/ERC721Enumerable.sol";
25 import "@openzeppelin/contracts/token/ERC721/extensions/ERC721URIStorage.sol";
```

“On-Chain” Enforcement

+ What is “on-chain” enforcement?

- Parties agree to deploy smart contract that will automatically execute decision
- Funds placed in digital escrow
- Enforcement fully automated through pre-programmed smart-contract conditions
- No court intervention; enforcement is self-executing

+ Limits

- Smart contracts can only act on on-chain assets (crypto, tokens, NFTs)
- Does not apply to remedies involving real-world actions or off-chain assets

Practical considerations for
securing enforcement



Securing Enforcement of Awards

- ✦ Think enforcement early: planning starts at the contract-drafting stage

- ✦ What can you do at the negotiation stage?
 - Choose an arbitration-friendly seat; judiciary system that supports arbitration
 - Bind the right parties (parent companies, groups of companies)
 - Seek to obtain guarantees, bonds, letters of comfort
 - Anticipate assignments of contract and preserve enforcement rights

- ✦ What can you do once the dispute has arisen?
 - Seek interim measures (before/during arbitration or via emergency arbitrator)
E.g. Security for claim/costs, attachment orders, anti-dissipation injunctions
 - Identify relevant enforcement jurisdictions
 - Conduct asset tracing: investigation firms, public registries, tenders, procurement data

Securing Enforcement of Awards

✦ What can you do once the award is issued?

- Act quickly to prevent dissipation of assets
- Use intelligence gathered - or gather intelligence
- Use discovery tools to support enforcement
- Consider enforcement financing options
 - Monetising the award
 - Third-party funding for enforcement
- Use award as leverage for settlement negotiations

Parties sometimes negotiate a reduction of awarded sum (e.g. reflecting costs saved by not challenging award/not pursuing formal enforcement proceedings)

Thank you



Laura Azaria

Partner, Geneva
lazaria@lalive.law