

# Papua New Guinea enforcement of foreign arbitral awards – what companies should know

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09.10.15

## Introduction

Even though Papua New Guinea (**PNG**) is not a member of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it is possible to agree in a contract to international arbitration.

PNG has domestic arbitration legislation, but it does not provide for the recognition and enforcement of foreign arbitral awards. The *Arbitration Act 1951 (Act)* allows parties to choose a tribunal which suits their specific needs but does not provide a mechanism for enforcing binding awards made by international commercial arbitration. Parties cannot rely on the Act to enforce a foreign arbitral award.

Given PNG has no bilateral reciprocal enforcement arrangements with any country concerning arbitral awards, it is worthwhile to consider including suitable international arbitration dispute resolution clauses into contracts.

## Contract drafting stage

At the contract drafting stage, it is advisable to choose a country for the seat of arbitration to be a jurisdiction that provides reciprocal treatment for PNG judgments under the Reciprocal Enforcement of Foreign Judgements Act 1976 (**Foreign Judgements Act**).

## Existing contracts

For existing contracts the only way to proceed is for one of the parties to ask a court in a country with which PNG has reciprocal enforcement of foreign judgement arrangements to seal the arbitration award, and then attempt to have the sealed award enforced in PNG as a judgment of the foreign court pursuant to the Foreign Judgements Act.

## Enforcement

The Foreign Judgements Act provides reciprocal treatment for judgements given in foreign countries which accord reciprocal treatment to judgements given in PNG. In order to validly enforce an international arbitral award in PNG, that award would need to:

- (a) be registered as a judgement by a court in the foreign country that already provides reciprocal treatment;
- (b) not be older than 6 years after the date of judgement;

- (c) have no ongoing appeals; and
- (d) be registered in the PNG National Court.

Once the foreign judgement is registered in the National Court, the judgement can be enforced.

## How we can help...

If you provide us with the country name we will be able to determine if that country provides reciprocal treatment to PNG under the Foreign Judgements Act. We can also assist in drafting a suitable international arbitration dispute resolution clause tailored for PNG. Please contact Keith Iduhu or Vanessa Kihanges if you require additional information regarding the enforcement options in PNG.

## Contact

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