

Enforceability of Foreign Judgments and Awards

1. Start with the enforcement map. At contracting, identify where the counterparty's assets are (and may move), what treaty/statutory regimes apply there, and whether reciprocity is required. Draft dispute resolution and remedy clauses to match that reality, not just convenience.
2. Court judgments are jurisdictionally fragmented. Hague judgment/choice-of-court conventions can help where adopted, but coverage is uneven; in the U.S., enforcement of foreign-country judgments is primarily state-law driven (*e.g.*, UFCMJRA variants, CPLR Article 53), so outcomes differ materially by state.
3. Arbitral awards usually travel better. The New York Convention is the default cross-border enforcement engine; choose the seat and arbitration clause carefully, and check local "commercial" and "reciprocity" reservations and document requirements (award + arbitration agreement authentication/translation).
4. Expect—and preempt—the standard defenses. The recurring refusal/stay themes are: (i) lack of jurisdiction/authority, (ii) defective service/notice/due process, (iii) public policy, (iv) lack of finality or set-aside at the seat, (v) non-arbitrability/scope overreach, and (vi) damages/interest components that collide with local limits (*e.g.*, punitive/multiple damages).
5. Win the record, then win the collection. Build a litigation/arbitration record designed for later recognition (service proofs, hearing notices, translations, chain of custody). Run asset-tracing early, assume evasion (especially in high-value online/Software as a Service deals), and be ready to file in parallel forums and pursue interim relief where available.

5 FOR THE ROAD

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