

Challenging an Arbitral Award: Grounds for Nullification

Part 1

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Introduction

Securing an arbitral award is only half the battle; enforcement is where its true power lies. Without effective enforcement, an award remains a mere declaration rather than a binding resolution.

Arbitral awards are typically classified into two main categories: domestic and international, and each follows a distinct legal process concerning recognition, enforcement, and annulment. Here's a clearer breakdown of both types:

Domestic Arbitral Awards

Definition:

A domestic arbitral award is one made in the same country between two entities in the same country where both the arbitration and enforcement take place.

Legal Framework:

- Governed by the national arbitration law of that country.
- Typically, simpler in enforcement since it's within one legal system.

International Arbitral Awards

Definition:

An international award arises from disputes involving parties from different countries or when the dispute has a cross-border element.

Legal Framework:

- Governed by international treaties and national laws, the most significant being:
 - The New York Convention (1958) – adopted by over 170 countries.
 - The UNCITRAL Model Law – adopted in whole or part by many jurisdictions.

Grounds for Nullification the Arbitral Award

The common grounds for challenging the Arbitral Award are outlined below in six categories:

- 1. Invalid Arbitration Agreement:** If the arbitration agreement (clause in the contract) was absent, expired, or deemed invalid under applicable law.

Definition and Context Arbitration is a contractual mechanism, its legitimacy and enforceability depend on the existence of a valid and binding arbitration agreement between the parties. If that agreement is found to be absent, invalid, or no longer in force, the entire arbitration process, including the resulting award, may be challenged or annulled for lack of consent or jurisdiction.

When an Arbitration Agreement May Be Invalid

1,1 Absence of Agreement

- No arbitration agreement was ever formed.
- Arbitration was imposed unilaterally, without mutual consent.
- The party against whom arbitration was initiated never signed or agreed to arbitrate.

1,2 Expired Agreement

- The arbitration clause had a time-limited validity and has since expired.
- The agreement was revoked or replaced by mutual consent.
- Formal Invalidity (Lack of Compliance with Legal Requirements)
- The agreement does not meet statutory formalities, such as:
 - Writing requirements (as under the New York Convention).
 - Signature or authentication requirements under local law.
- Ambiguity in the language makes it unclear whether the parties truly agreed to arbitrate.

1,3 Lack of Capacity

- One of the parties lacked the legal capacity to enter into an arbitration agreement.

1,4 Duress, Fraud, or Coercion

- The arbitration agreement was obtained by fraudulent means or under undue influence.
- Consent was not freely given.

1,5 Non-Arbitrability of the Subject Matter

- Even if the arbitration agreement is valid in form, it may still be invalid in effect if the subject matter is not arbitrable under national law.

2. **Procedural Irregularities:** If the tribunal failed to adhere to agreed-upon procedures or violated due process.

- 2,1 Failure to Provide Equal Treatment: If one party is given preferential treatment, such as extended deadlines or additional opportunities to present evidence, while the other is denied similar privileges.
- 2,2 Lack of Proper Notice: If a party is not adequately informed about hearings, submissions, or procedural steps, leading to an inability to participate effectively.
- 2,3 Exceeding Jurisdiction: If the tribunal rules on matters beyond the scope of the arbitration agreement or decides issues not submitted by the parties.
- 2,4 Improper Appointment of Arbitrators: If the arbitrators are appointed in violation of agreed-upon procedures or if there is a conflict of interest that was not disclosed.
- 2,5 Denial of the Right to Present a Case: If a party is prevented from submitting evidence or making arguments that are crucial to their position.
- 2,6 Failure to Follow Agreed Rules: If the tribunal disregards procedural rules set by the arbitration agreement or applicable arbitration laws.
- 2,7 Bias or Misconduct by Arbitrators: If arbitrators demonstrate partiality or engage in unethical behavior that affects the fairness of the proceedings.

3. **Lack of Jurisdiction:** If the tribunal exceeded its authority or ruled on matters beyond its scope not submitted to them.

Acting in ways inconsistent with the arbitration agreement, the award can be challenged for lack of jurisdiction or excess of authority.

The arbitration agreement may impose:

- Substantive limits (e.g., only monetary disputes under \$1 million may be arbitrated).
- Temporal limits (e.g., only disputes arising after a certain date).
- Procedural limits (e.g., specific methods for appointing arbitrators or handling certain issues).

Violation of such limits could render the award partially or wholly invalid.

- 4. Fraud or Misconduct:** If the award was obtained through fraudulent means or if there was misconduct by arbitrators.

Fraud or misconduct as a ground for challenging an arbitration award arises when the integrity of the arbitration process has been compromised, either by the parties (e.g., through fraudulent conduct or suppression of evidence) or by the arbitrators themselves (e.g., through bias, corruption, or improper behavior). This ground strikes at the core of the legitimacy and fairness of the arbitral process and is taken seriously by courts, though the threshold for proving it is typically high.

- 5. Violation of Public Policy:** If the award contradicts public policy even where it sought to be enforced or violate fundamental legal principles.

- 6. Award not binding:** The award is not yet binding or has been set aside in the seat of arbitration.

One of the fundamental principles of arbitration is that only a final and binding award is enforceable. If an arbitral award is not yet final, not binding, or has been suspended, annulled, or is subject to ongoing appeals or challenges, a party may challenge its enforcement or seek to set it aside.

This ground is recognized under both international and domestic arbitration laws, particularly where the award is sought to be enforced in another jurisdiction or set aside at the seat of arbitration.

Strategic Considerations

- **Timeliness:** If an award is not binding yet, a party should act promptly to challenge or suspend enforcement efforts.
- **Preservation of Rights:** Where a party seeks to enforce an award prematurely, raising this ground can preserve the opposing party's right to a full legal review.
- **International Enforcement:** Under the New York Convention, even if an award is valid under one country's law, it may not be enforced elsewhere if not binding.