

Insights



Jef Klazen, Marcus Green and Chris Cogburn Author Chapter on U.S. Enforcement of Arbitration Awards for Global Arbitration Review

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In a chapter for *Global Arbitration Review's* "The Arbitration Review of the Americas 2022," Kobre & Kim's Jef Klazen, Marcus Green and Chris Cogburn take a deep dive in the steps and nuances for parties looking to enforce an arbitration award in the United States.

U.S. courts are generally receptive to applications for the recognition of arbitration awards. Foreign awards are typically governed by the New York Convention or the ICSID Convention, whereas domestic arbitrations are governed by both federal and state law. Once recognized, the arbitration winner becomes a judgment creditor, gaining access to powerful discovery tools as well as having the option of either in personam remedies (court orders against the debtor or third party) or remedies in rem (court orders against a debtor's property).

The authors also look into the possibility of prejudgment attachments in anticipation of an arbitral award, which are governed by state law and generally hard to obtain. In addition, when enforcing an arbitral award in the investor-state context, there are further complications when the debtor is a sovereign state. Foreign states enjoy sovereign immunity, but while there are two relevant exceptions, even if a sovereign debtor is not immune, their U.S.-located assets may nonetheless be immune. Proving a lack of separateness between the state and a state-owned enterprise may be one of the only ways around this.

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