15 Highlights on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Description

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Ethiopia has ratified the Convention on the Recognition and and Enforcement of Foreign Arbitral Awards by **PROCLAMATION No.1184 /2020**, done on 13th day of March 2020.
The Purpose: the purpose for the ratification is because the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention hereafter) as adopted on 10th June 1958 is believed to enhance foreign investment by boosting a country's goodwill in enforcing contracts of foreign parties;
The Ethiopian Government **declares** that the Convention will apply when done in the territory of another contracting state and on legal relationships, whether contractual or not, which are considered commercial under the National Law of Ethiopia.
Ethiopia **reserves** the application of the Convention only to apply with respect to Arbitration Agreements concluded and Arbitral Awards rendered after the date of its accession to the Convention.
With the above reservation, the Convention is **ratified** and it shall come into force upon publication in the Federal Negarit Gazette.
The Attorney General of the Federal Democratic Republic of Ethiopia is authorized to undertake, in collaboration with the Ministry of Foreign Affairs and other Government Organs, all acts necessary for the implementation of the Convention.

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With the ratification by Ethiopia of the Convention in mind, lets look at the highlights of the The Convention on the Recognition and Enforcement of Foreign Arbitral Awards New York 1958.
The objective: the aim of the Convention is to seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" appears to embrace
awards which, although made in the state of enforcement, are treated as
"foreign" under its law because of some foreign element in the proceedings,
e.g. another State's procedural laws are applied. Also the aim is to avoid discrimination on foreign and non-domestic arbitral awards. It obliges Parties to the Convention to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. In addition to the above, arbitration agreements will be given full effect by courts in enforcing the agreed form of dispute settlement which is arbitration.
Application of the Convention: The Convention 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. The term "arbitral awards" is defined to include not only awards made by
arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
Form of Agreement: Each Contracting State shall recognize an agreement in writing under which the

parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration. The term “agreement in writing” shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. However, unless the said agreement is found by the court to be null and void, inoperative or incapable of being performed, the court should direct the parties to arbitration.
The Same Standard of Recognition and Enforceability: parties to the convention should give recognition to the same standard that of domestic ruling and should not burden parties with more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards, as opposed to domestic awards.
Submission requirements: (a) The duly authenticated original award or a duly certified copy thereof; (b) The original agreement or a duly certified copy thereof. (c)a translation of these documents into the official language when needed and the translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.
Refusal of Recognition or Enforcement: refusal to recognize or enforce an arbitral award comes at the request of the party in which recognition or enforcement is invoked up on or the competent authority in which recognition or enforcement is requested. Recognition or enforcement may be refused a) if under the law applicable to law, the parties to the arbitral award are under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such
agreement, was not in accordance with the law of the country where the
arbitration took place; or (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made or (f) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (g) the recognition or enforcement of the award would be contrary to the public policy of that country
Suitable Security: the competent authority that was requested refusal on the terms and conditions mentioned on (e) above, it may adjourn enforcing and may require at the request of a party seeking enforcement, for the other party to produce suitable security.
Multilateral or Bilateral Agreements: the Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
Signature, Ratification, Accession and Deposit: This Convention shall be open for signature until 31 December 1958 for signature. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations. This Convention shall be open for accession to all States. Accession shall be effected by the deposit of an instrument of accession with

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the Secretary-General of the United Nation.
Federal or Non-unitary States Application of the Convention: the following provisions shall apply: (a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States; (b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment; (c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.
Coming into force: This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.
Denunciation: Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.
Languages:This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.
Recommendations: 1. that article II, paragraph 2(the term ‘agreements in writing’), of the Convention be applied recognizing that the circumstances described therein are not exhaustive; 2. that article VII, paragraph 1(i.e ‘multilateral or bilateral agreements’), of the Convention, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

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