

Enforcement of arbitral awards in the Netherlands

The procedure for enforcement of arbitral awards in the Netherlands was changed with the introduction of the revised [Dutch Arbitration Act](#) ("DAA") on 1 January 2015. The below schedule provides a concise overview of the amended Dutch enforcement procedure in relation to (i) domestic arbitral awards, (ii) foreign arbitral awards under treaties such as the [New York Convention](#) and (iii) foreign arbitral awards to which no treaties apply. Besides it shortly discusses the most relevant case law.

What is an "arbitral award"?	What are the procedural requirements for enforcement?	On what grounds can enforcement of a arbitral award be denied?
<p>Domestic arbitral awards</p> <p>The DAA makes a distinction between different types of arbitral awards such as final award, partial award and interim award (Article 1049 DAA). The Parliamentary History to the DAA stipulates that the final, partial and enforceable interim awards, such as awards on costs, can be enforced in the Netherlands. Arbitral awards in arbitral summary proceedings (<i>kort geding</i>) as well as arbitral awards granted in first instance that are declared immediately enforceable or in which respect the time period</p>	<p>Domestic arbitral awards</p> <p>Pursuant to Article 1062 DAA the party seeking enforcement of an arbitral award rendered in the Netherlands will have to obtain an enforcement leave ('exequatur') from the Preliminary Relief Judge of the competent District Court. Therefore, the applicant will have to submit a petition (<i>verzoekschrift</i>) requesting an enforcement leave and to provide to the Preliminary Relief Judge the original or certified copy of the award together with translations, if necessary, and a copy of the arbitration agreement. Generally speaking, parties will not have to appear before the Preliminary Relief Judge, although the Preliminary Relief Judge may convoke the parties to appear and will do so if the losing party, upon receipt of the award, has requested the Preliminary Relief Judge to be heard.</p>	<p>Domestic arbitral awards</p> <p>The grounds for refusal of leave for enforcement of domestic arbitral awards are laid down in article 1063 DAA. Pursuant to this provision the enforcement of an arbitral award may be refused by the Preliminary Relief Judge only if after a <i>summary investigation</i> it seems plausible that the award will be (i) set aside based on the grounds named in Article 1065(1) DAA, or (ii) revoked based on the grounds named in article 1068(1) DAA, or (iii) if a penalty for non-compliance is set contrary to provisions of DAA, in which case the refusal concerns only the enforcement of the penalty.</p> <p>The grounds for setting aside an award are the following (Article 1065(1) DAA):</p> <ul style="list-style-type: none"> • There is no valid arbitration agreement; • The tribunal has not been appointed in conformity with the rules; • The tribunal has exceeded its mandate; • The award is not signed or lacks reasoning; and/or • The award or the manner in which it was made violates public policy (i.e. violation of the right to hear and be heard, impartiality of arbitrators, etc.). <p>Revocation of the award can take place only on one or more of the following grounds</p>

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<p>for instituting arbitral appeal expired without appeal having been instituted or renounced in writing can also be enforced.</p>	<p>Leave for enforcement shall be recorded on the original of the arbitral award or shall be laid down in a decision. Once the enforcement leave is granted, the enforcing party must serve it to the other party.</p>	<p>(Article 1068(1) DAA):</p> <ul style="list-style-type: none"> • The award is wholly or partially based on fraud; • The award is wholly or partially based on forged records; and • After the award is made, a party obtains records, which would have had an influence on the decision of the arbitral tribunal and which were withheld as a result of the acts of the other party. <p>The appeal possibilities are asymmetric: the <i>refusal</i> of the enforcement leave <i>can be appealed</i> before the Court of Appeal and if the leave for enforcement is also not granted on appeal, then an appeal to the Supreme Court of the Netherlands can be instituted (Article 1063 DAA). On the other hand, the decision <i>granting</i> a leave for enforcement <i>cannot be appealed</i> and the sole remedy in this respect remains the setting aside proceedings and revocation (Article 1064 DAA).</p>
<p>Foreign arbitral awards under treaties (Article 1075 DAA)</p> <p>The relevant enforcement treaty contains a definition of the arbitral award for recognition and enforcement purposes. The most important enforcement treaty in relation to arbitral awards – the New York Convention – defines an arbitral award in Article I as follows: “[t]he term “arbitral awards” shall 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”.</p>	<p>Foreign arbitral awards under treaties (Article 1075 DAA)</p> <p>Both the DAA and the relevant enforcement treaty such as the New York Convention contain the provisions relating to enforcement procedure. In this respect it should be noted that the provisions of the New York Convention always prevail above the deviating provisions from the DAA.</p> <p>Under the DAA the enforcement procedure of an arbitral award to which the New York Convention applies entails that in order to enforce a foreign award an enforcement leave will have to be obtained from the competent Court of Appeal, in which respect the applicant will have to submit a petition (<i>verzoekschrift</i>) requesting the enforcement leave. Article IV of the New York Convention specifies in this respect that the applicant will have to provide a duly authenticated original arbitral award together with the original arbitration agreement or certified copies thereof, accompanied by translation, if necessary.</p>	<p>Foreign arbitral awards under treaties (Article 1075 DAA)</p> <p>The grounds for denial of enforcement of an arbitral award are set out in the relevant enforcement treaty. The New York Convention contains the following grounds for denial of recognition and enforcement in Article V:</p> <ul style="list-style-type: none"> • Incapacity of the parties or lack of a valid arbitration agreement (Article V(1)(a)); • Violation of due process (Article V(1)(b)); • Excess of the arbitral tribunal’s authority (Article V(1)(c)); • Irregularity in the composition of the arbitral tribunal or arbitral procedure (Article V(1)(d)); • The award has not yet become binding, has been set aside or has been suspended (Article V(1)(e)); • The subject matter of an award is not arbitrable (Article V(2)(a)); and • The award contradicts the public policy (Article V(1)(b)). <p>As it is the case with the enforcement of domestic arbitral awards, the appeal possibilities are also asymmetric in so far as it concerns the enforcement of the foreign arbitral awards: an <i>appeal can be lodged against the refusal</i> of enforcement leave from the competent Court of Appeal, which can be done within three months at the Supreme Court of the Netherlands. Also here the DAA does <i>not allow an appeal against granting</i> a leave for enforcement and sole remedy in this respect remains the setting aside proceedings and revocation (Article 1064 DAA).</p>

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	<p>It should also be noted that Article VII(1) of the New York Convention contains the so-called 'more-favourable-right provision', which allows the applicant to rely upon the law of the country in which enforcement is sought and seek enforcement pursuant to the regime applicable to arbitral awards without treaties (see below), which sometimes can have an advantage.</p>	<p>Furthermore, it should be noted in relation to interpretation of Article V(1)(e) that the Amsterdam Court of Appeal held in <i>Yukos Capital v. Rosneft</i>¹ case that a Russian arbitral award, which was set aside by a Russian court, could still be enforced in the Netherlands because there was evidence that the decision of the Russian court in the setting aside proceedings was partial, dependent and influenced by the campaign of the Russian state against the claimant. In <i>Maximov v. OJSC NLMK</i>² case the Amsterdam Court of Appeal held that enforcement of an annulled arbitral award should be refused under Article V(1)(e), unless the setting aside proceedings are the result of an unfair trial. The Amsterdam Court of Appeal ordered in that case expert evidence on Russian arbitration and procedural law in order to establish whether this is the case.</p>
<p>Foreign arbitral awards without treaties (Article 1076 DAA) Neither Article 1076 DAA nor its Parliamentary History contains a definition of an arbitral award.</p>	<p>Foreign arbitral awards without treaties (Article 1076 DAA) If no treaty concerning recognition and enforcement is applicable, or if an applicable treaty allows a party to rely upon the law of the country in which recognition and enforcement is sought (as it is the case with the New York Convention), an arbitral award made in a foreign state may be recognised in the Netherlands and its enforcement may be sought in the Netherlands by one of the parties. An enforcement leave will be required from the competent Court of Appeal, which can be obtained upon submission of the original or a certified copy of the arbitration agreement and arbitral award. No records need to be submitted evidencing the enforceability of the arbitral award in the country where it was made (no requirement of double-exequatur).</p>	<p>Foreign arbitral awards without treaties (Article 1076 DAA)</p> <p>The grounds for refusal of recognition and enforcement are the following:</p> <ul style="list-style-type: none"> • Lack of a valid arbitration agreement; • The tribunal has not been appointed in conformity with the rules; • Excess of the arbitral tribunal’s authority; • The award is still open to appeal to a second arbitral tribunal, or to a court in the country in which the award is made; • The award has been set aside by a competent authority of the country where it was made; and • The award contradicts public policy. <p>Case law³ shows that contrary to the applicable regime in relation to the foreign arbitral awards subject to New York Convention and domestic awards, in so far as it concerns the enforcement of the arbitral awards without treaties pursuant to Article 1076, an appeal <i>can also</i> be lodged against <i>granting</i> (and not only <i>refusal</i>) of enforcement leave. This cause of action should be initiated at the Supreme Court of the Netherlands within a three months period.</p>

¹ Amsterdam Court of Appeal, 28 April 2009, ECLI:NL:GHAMS:2009:BI2451.

² Amsterdam Court of Appeal, 18 September 2012, ECLI:NL:GHAMS:2012:BY5010. See also Amsterdam Court of Appeal, 15 April 2014, ECLI:NL:GHAMS:2014:6020 and Amsterdam District Court, 17 November 2011, ECLI:NL:RBAMS:2011:BV5646.

³ Amsterdam Court of Appeal, 16 October 2012, ECLI:NL:GHAMS:2012:BZ0138.

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