



## Na Mídia

11/10/2024 | [Youngicca.org](https://Youngicca.org)**Skills Training Workshop: Enforcement of Arbitral Awards**

Please join us in São Paulo for a skills training workshop on the enforcement of arbitral awards. Hosted by Young ICCA and CAM-CCBC, the workshop will involve two interactive sessions, the first of which will provide an overview of the New York Convention and the second of which will involve a detailed discussion of the enforcement of arbitral awards in Brazil, together with a number of thought-provoking practical exercises.

## YOUNG ICCA SKILLS WORKSHOP

### Enforcement of Arbitral Awards

#### PANEL 1: OVERVIEW OF NY CONVENTION



**MODERATOR**  
**Raquel Macedo Moreira**  
Lawyer & Arbitrator  
Research Associate  
Lecturer



**SPEAKER**  
**Alex Wilbraham**  
Independent  
Arbitrator and  
Mediator



**SPEAKER**  
**Rafael Bittencourt Silva**  
Associate at  
Skadden, Arps, Slate,  
Meagher & Flom



**SPEAKER**  
**Eva Y. Chan**  
Young ICCA Co-Chair  
Associate at  
Skadden, Arps, Slate,  
Meagher & Flom

#### PANEL 2: ENFORCEMENT OF AWARDS IN BRAZIL



**MODERATOR**  
**Gustavo Kulesza**  
Partner at BMA  
Advogados



**SPEAKER**  
**Adriana Braghetta**  
Partner of Adriana  
Braghetta  
Advogados



**SPEAKER**  
**Flavia Mange**  
Partner at Flavia  
Mange Disputes



**SPEAKER**  
**Rodrigo Garcia da Fonseca**  
CAM-CCBC  
President



**CLOSING REMARKS**  
**Ana Flavia Furtado**  
CAM-CCBC Deputy  
Secretary General



📍 CAM-CCBC Auditorium, São Paulo, Brazil  
📅 11 October 2024 ⌚ 03pm - 06pm





## Post Event Report – Young ICCA Skills Workshop: Enforcement of Arbitral Awards

By *Isabela Albini Maté (Young ICCA Regional Representative and associate at Lobo de Rizzo Advogados - São Paulo, Brazil)* and *Bruna Bessa de Medeiros (Young ICCA Member and associate at Demarest Advogados – São Paulo, Brazil)*

The Young ICCA Workshop on Enforcement of Arbitral Awards was held on October 11th, 2024, as part of the São Paulo Arbitration Week, at the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC), in São Paulo, Brazil. The workshop offered a comprehensive overview of the New York Convention and its applicability, giving attendees with the opportunity to discuss and study Convention's application through fictional fact case scenarios.

The workshop began with introductory remarks from Eva Y. Chan, Co-chair of Young ICCA, who gave an overview of Young ICCA and its initiatives. This was followed by a panel discussion on the Overview of the New York Convention, featuring Alex Wilbraham (independent arbitrator and mediator), Eva Y. Chan (Young ICCA Co-chair and Associate at Skadden, Arps, Slate, Meagher & Flom), and Rafael Bittencourt Silva (Associate at Skadden, Arps, Slate, Meagher & Flom), moderated by Raquel Macedo Moreira (Young ICCA Mentoring Co-director, Lawyer and Arbitrator).

Mr. Wilbraham provided the historical context and scope of the New York Convention. He explained that in a post-World War era, the Geneva Protocol and the Geneva Convention aimed to address issues regarding international dispute resolution. However, these instruments raised complications, particularly the “double exequatur” requirement, where an arbitral award had to be confirmed by the courts of the seat of the arbitration before being enforced in a foreign country. The New York Convention was enacted as a response to the need to ensure that arbitral awards would be enforced more easily and efficiently. With 172 Contracting States, the Convention has been highly successful, and national courts generally interpret its provisions in favor of enforcement.

Ms. Chan discussed the enforcement of arbitral agreements under Article II of the New York Convention. She outlined the criteria for determining the enforceability of an arbitration agreement: (i) the agreement must be in writing; (ii) it must involve parties from at least two Contracting States (subject to reciprocity); and (iii) it must arise out of a

commercial relationship. She emphasized that the courts are required to enforce such agreements unless they are found to be null or void, inoperative, or incapable of being performed.

Mr. Silva explained the requirements for the enforcement of the arbitral awards. First, he elucidated that, at a minimum, the party applying for enforcement must present an authenticated original or a duly certified copy of the agreement and the award. He also clarified that under Article V of the Convention, the party opposing enforcement bears the burden of proving any grounds for refusal. These grounds, including public policy, must be narrowly interpreted, with public policy objections generally tied to international rather than domestic standards. He highlighted that successful challenges to enforcement are rare, with an estimated success rate of only 10%. Finally, Mr. Silva noted that the New York Convention's primary purpose is to facilitate the enforcement of the arbitral awards, and if the domestic law offers an easier path for enforcement, it may be applied instead of or alongside the Convention.

The following panel discussed the Recognition of Arbitral Awards in Brazil. This session featured Adriana Braghetta (Partner at Adriana Braghetta Advogados), Flavia Mange (Partner at Flavia Mange Disputes), and Rodrigo Garcia da Fonseca (President of CAM-CCBC), and was moderated by Gustavo Kulesza (Young ICCA Co-chair and Partner at BMA Advogados).

Ms. Mange provided an overview of the legal framework for enforcing arbitral awards in Brazil, pointing out the applicable rules of the New York Convention, as well as the Brazilian Arbitration Act, the Brazilian Code of Civil Procedure, and the specific regulations of the Brazilian Superior Court of Justice. She explained the step-by-step enforcement process before the Superior Court and noted that urgent measures in recognition proceedings are also available under Brazilian law.

Ms. Braghetta highlighted the advantages of Brazil's centralized enforcement system, where the Superior Court exclusively handles all enforcement actions for foreign arbitral awards. This centralized approach helps prevent inconsistent rulings from different lower courts, ensuring uniformity in the enforcement process. She also mentioned important decisions by the Brazilian Superior Court of Justice that dealt with the enforceability of awards under the New York Convention.

Mr. Fonseca discussed notable Brazilian case law regarding recognition and enforcement of awards by the Superior Court of Justice. One of the precedents discussed was no. 5782, which involved a request for enforcement of an award that had been set aside by the courts at the seat of arbitration (Argentina). The Superior Court ruled that, under the New York Convention and the Las Leñas Protocol, an award annulled at the seat cannot be enforced in Brazil.

After the coffee break, the audience was divided into three groups, each tasked with analyzing a different fact pattern concerning the enforcement of arbitration agreements and awards under the New York Convention. Later, each group presented their fact pattern and their conclusion on the enforceability according to the New York Convention.

The first group discussed a case in which no arbitration clause was initially included in a supply agreement. Although the parties had discussed and agreed to amend the agreement to include an arbitration clause, the amendment was never executed. A dispute subsequently arose and was submitted to arbitration, where the respondent challenged the validity of the arbitration agreement under Brazilian Law. The Arbitral Tribunal rejected said objection. After discussing the case, the group concluded that the arbitral award would likely be enforceable. Although the amendment was never signed, the parties had exchanged messages and expressly agreed to submit any disputes to



arbitration – which would be enough to constitute an “agreement in writing” under Article II(1) and (2) of the New York Convention.

The second group discussed the enforceability of an award when setting-aside proceedings were initiated concurrently by the opposing party before the courts at the seat of arbitration, requesting a stay of award’s enforceability. After debating, the group concluded that this scenario falls under Article VI of the New York Convention, which allows the court to adjourn its decision on the enforcement of the award and require the party to provide suitable security.

The third group analyzed the enforceability of an award in which the respondent was found to have violated fair competition principles, with damages awarded to the claimant. The group concluded that the award could be enforced, since it deals with contractual damages, rather than an administrative penalty against respondent for fair competition violations. However, they noted that Article V(2) of Convention, which allows for refusal of recognition if the award is contrary to public policy, should be considered in similar situations.

In conclusion, the panels and workshop provided valuable insights into both the theoretical framework and practical challenges of enforcing arbitral awards, with a particular focus on the New York Convention and the Brazilian legal system. The New York Convention’s role in fostering international arbitration was underscored, demonstrating its enduring relevance in arbitration practice.

To close the event, all participants were invited to a cocktail reception provided by CAM-CCBC



