

CHAPTER 5

Jurisdictional Challenges

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Introduction

International arbitration practitioners the world over will be familiar with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) and its aim to bring uniformity to the recognition and enforcement of arbitration awards globally, pursuant to reciprocity between its many signatory states.

However, the New York Convention sets out a number of prescribed bases on which an award may be challenged. For the purpose of this chapter, the most relevant of those bases is an assertion as to lack of jurisdiction of the tribunal. The underlying basis for that contention may vary; for example, an aggrieved party may argue that the arbitration agreement is invalid, or that the tribunal exceeded the mandate it had been given by the parties' consent to arbitration.

First, what is clear, almost uniformly across all jurisdictions and as an entrenched beacon of the arbitral process, is that a tribunal is generally competent to rule on its own jurisdiction. This principle in practice opens the door to defeated parties to scrutinise and challenge the tribunal's award, and the basis on which it did so. When this happens, and jurisdictional challenges are raised, this can present choppy waters for arbitration practitioners and parties alike, with differing court interpretations and decisions leading to potential uncertainty.

This chapter seeks to help the reader understand (1) the potential grounds for jurisdictional challenge, (2) the practical ramifications of their existence, including how they may play out at different stages of the arbitral process and potential pitfalls to look out for and pre-emptively avoid, and (3) the procedural considerations that will almost certainly permeate a particular arbitral process, irrespective of the arbitral rules that are applicable or the national court having supervisory jurisdiction.

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