

# Electronic Arbitral Awards

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# Electronic Judgment in China

- Since 1 Jan 2022, judgments can be delivered by electronic means if the parties give consent (CPL, Art 90)
- Successful delivery of e-judgments: electronic judgment enters recipient's system if the address is provided or confirmed by recipient; recipient respond; recipient's system shows recipient read the message
- Uncertainty as to originality
- Same Legal Effects as Original: A copy of the data that is identical with the original, or a printout directly from the data, is deemed to be the original. (Civil Evidence Provisions, Art 15(2))
- Proof of authenticity: electronic seal

# Enforcement and Execution of Judgments

- National Enforcement information disclosure platform sharing information with public security, land and resource bureaus, housing departments, finance department, railway corporation, aviation bureaus, banks, etc.
  - Inquiry of dishonest people
  - Joint credit punishment
- SPC Enforcement command System: connect enforcement networks of four-tier courts, and horizontal mutual connection with all central national authorities, departments and ministries and the headquarters of commercial banks
  - Courts can use the platform to search the respondent's property.
  - Courts can send banks the digital enforcement/execution ruling with electronic seals, execution assistance order, and the scanned copy of the official working card of the execution officer.

# Electronic Arbitral Awards—Legal Uncertainty

- In writing
  - “Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible to be usable for subsequent reference.” (MLEC 1996, article 6 (1))
- Signature
  - Where the law requires a signature of a person, that requirement is met in relation to a data message if: (a) a method is used to identify that person and to indicate that person’s approval of the information contained in the data message; and (b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement. (2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the absence of a signature. (MLEC 1996, Article 7)

# Electronic Arbitral Awards—Legal Uncertainty

- Originality
  - Duly authenticated original award—NYC art IV
    - 1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:
      - (a) The duly authenticated original award or a duly certified copy thereof;
  - National law may require original awards
- Delivery and time of notification

# Prosepcts of enforcement of e-awards

- Advantage of e-awards: efficiency, convenience, low cost, environmental friendly
- Similarity of e-awards: certainty of receipt, user-friendly,
- Weakness of e-awards
  - Enforceability - legal uncertainty (Legal uncertainty  $\neq$  illegality)
    - Eg. ICC Commission Report on Information Technology in International Arbitration (2022): ‘for the time being, original awards probably should continue to be made and signed on paper and physically served on the parties’.
- Integrity: technologic can make it an advantage of e-awards (electronic seals)

Ongenae, K. (2023). Electronic arbitral awards: Yea or Nay. *Journal of International Arbitration*, 40(Issue 3), 283.

Electronic v. paper award comparisons

