

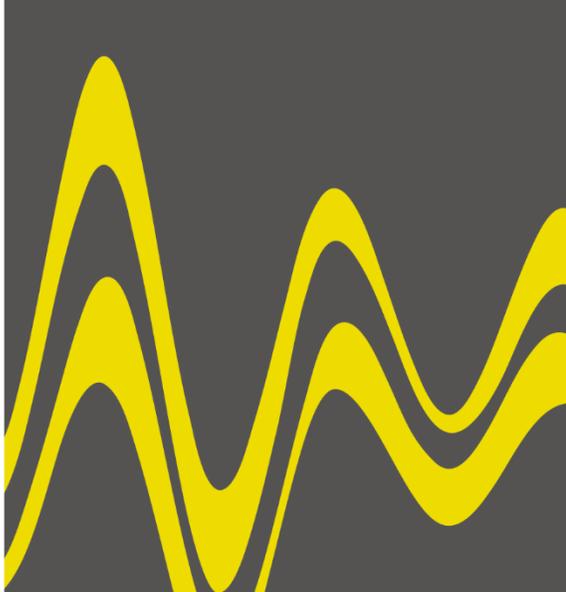
Recognition & Enforcement of Arbitral Awards

David A. Asiedu



Outline

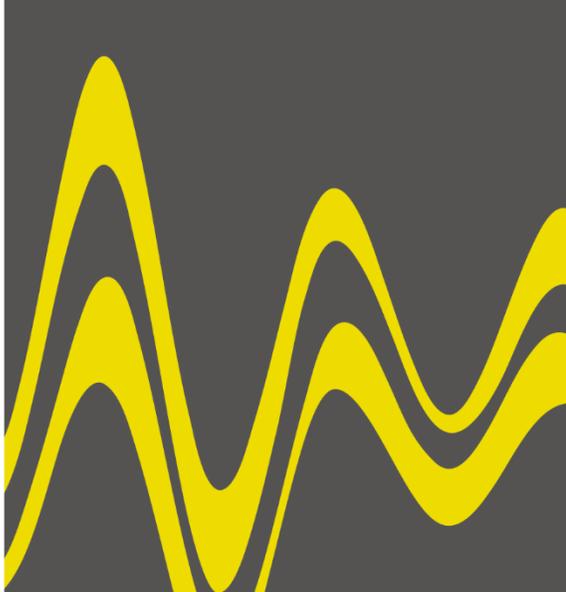
- Introduction & Objectives
- Foundations: Seat and Taxonomy
- Legal Framework
- Mechanics of Recognition & Enforcement
- Grounds for Refusal
- Special Topics
- Practical Strategies
- Questions, Comments, & Discussion



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Recognitions vs Enforcement – Why It Matters

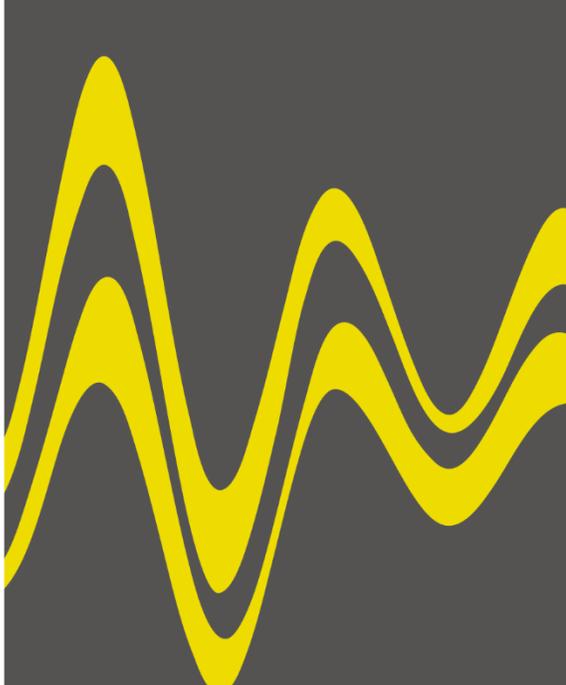
- Arbitration's promise is realised at enforcement: award on paper vs money in the bank
- Recognition = rendering award legally binding
- Enforcement = coercive measures to satisfy award
- The 'where' question: seat for supervision; assets for enforcement
- [Title of Short Story]
- [Hook: provocative statistic or quote on enforcement outcomes in Ghana]



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Learning Objectives & Roadmap

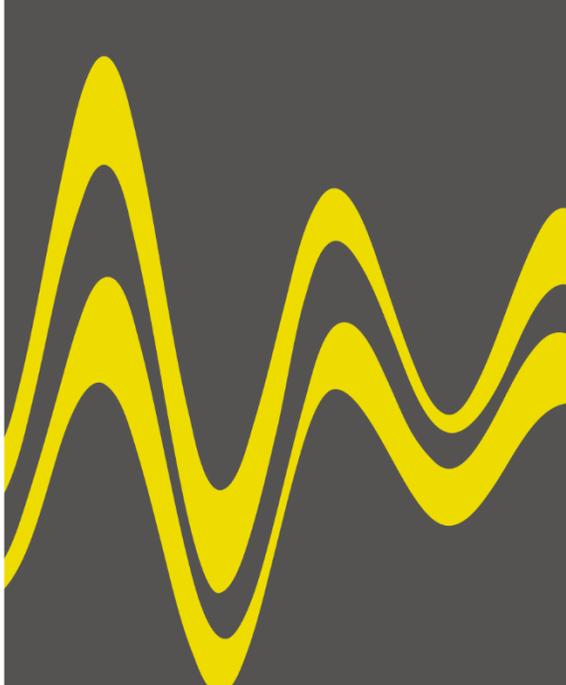
- Understand the legal architecture: international instruments, model law concepts, national procedure
- Run the mechanics: forums, documents, timelines, stays, interest
- Anticipate and navigate refusal grounds: Article V themes and national public policy
- Apply strategy: assets, interim measures, sovereigns, annulment



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The Seat – Supervisory Court & Set-Aside

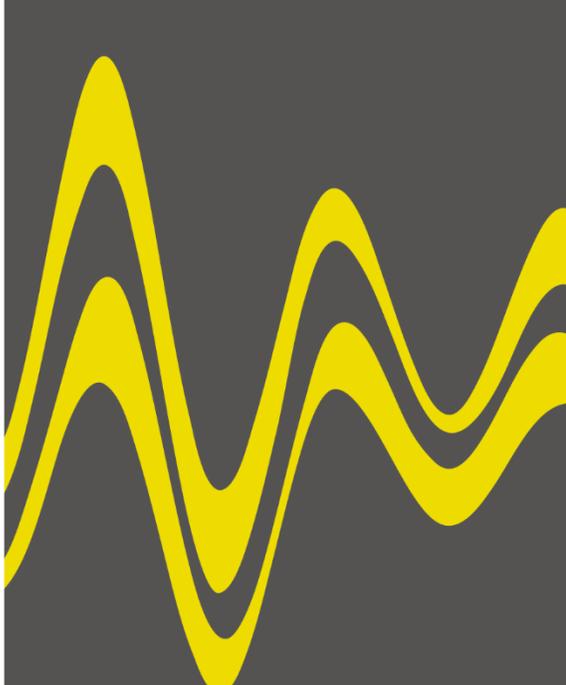
- Seat defines lex arbitri and the court with supervisory jurisdiction
- Set-aside happens at the seat; recognition/enforcement happens where assets are
- “Place award is made” vs “place of enforcement”
- Practical effect: annulment risk, stays pending set-aside, coordination across courts
- Why the seat matters: determines set-aside and possible stays; enforcement courts focus on Art. V grounds and asset-location strategy



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Domestic vs Foreign Arbitral Awards (And the ICSID Outlier)

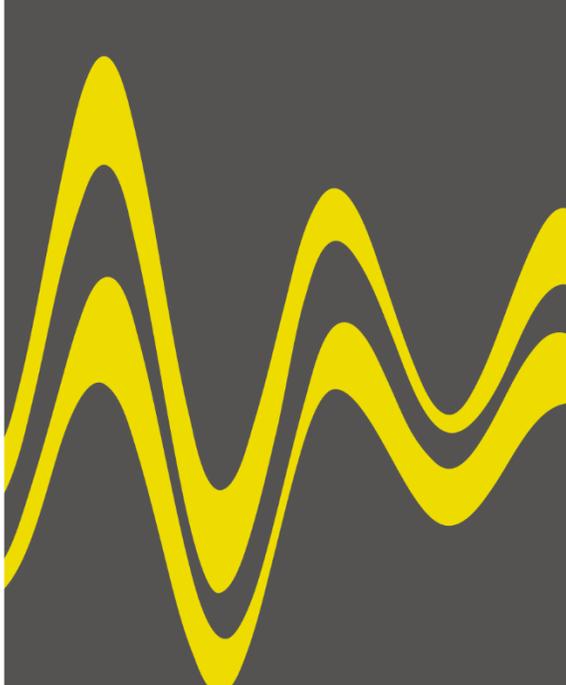
- Domestic vs foreign/international classifications vary by statute and case law
- Classification primarily affects procedure and proof (not the narrow refusal grounds)
- Investment treaty/ICSID awards follow a sui generis recognition & execution regime
- Commercial vs investment: do not mix up NY Convention and ICSID logic
- [Gh law note: how Ghana labels “foreign” or “international” awards]



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The Legal Architecture – 3 Layers

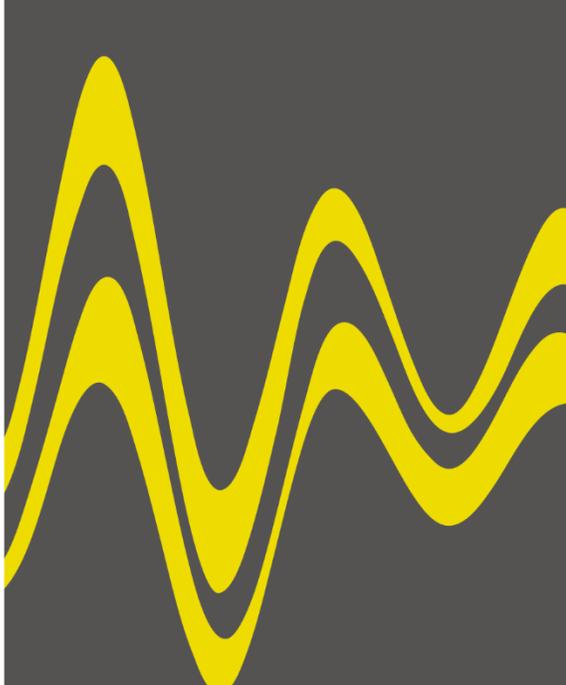
- International layer: New York Convention = backbone for cross-border enforcement
- Harmonisation layer: UNCITRAL Model Law concepts adopted in many seats
- National layer: enabling statutes and court rules for recognition and execution
- Principle: courts start from enforcement; Art. V grounds are narrow, procedural, and exhaustive; no merits review; public policy = exceptional; partial enforcement and judicial discretion apply
- [Ghana-specific references: key statute/rule numbers]



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New York Convention – Art. IV and V at a Glance

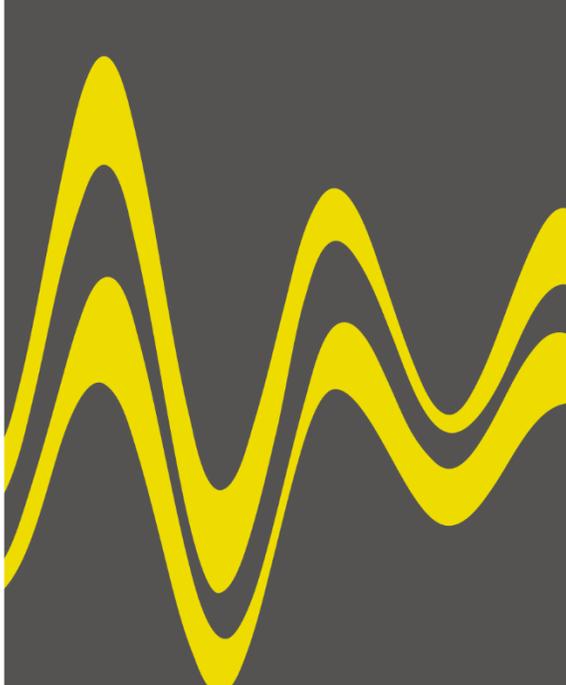
- Art. IV (documents): award + arbitration agreement; originals or certified copies; translations as needed
- Art. V (refusal grounds): consent/scope, capacity, due process, composition/mandate, finality/set-aside, public policy, arbitrability
- Burden: applicant proves Art. IV; respondent bears burden on Art. V
- Court Approach: narrow construction of refusal grounds; procedural (not merits) review
- Practice pointer: authentication/translation pitfalls in Ghana]



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National Procedure – From Award to Judgment

- Application type: ex parte or on notice; affidavit evidence for authenticity and finality
- Court powers: convert award to judgment; order security; stay pending annulment
- Timelines and limitation: short procedural timelines vs statutory limitation periods
- Post-judgment: interest, costs, and execution tools follow local law
- Ghanaian law references: [Order/Rule on filing and service]



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Mechanics – Documents, Translations, Service

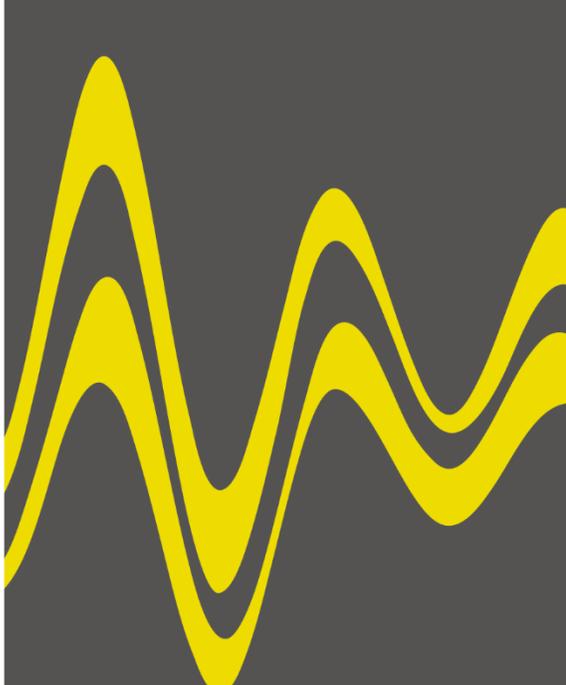
- Core bundle: authenticated award, arbitration agreement, certified translations, evidence of binding nature
- Supporting evidence: seat details, tribunal composition, correction/interpretation status
- Service: domestic vs international service rules; agents; substituted service (where permitted)
- Evidential standards: hearsay for document authenticity; expert evidence on foreign law (as needed)



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Forum Choice and Parallel Filings

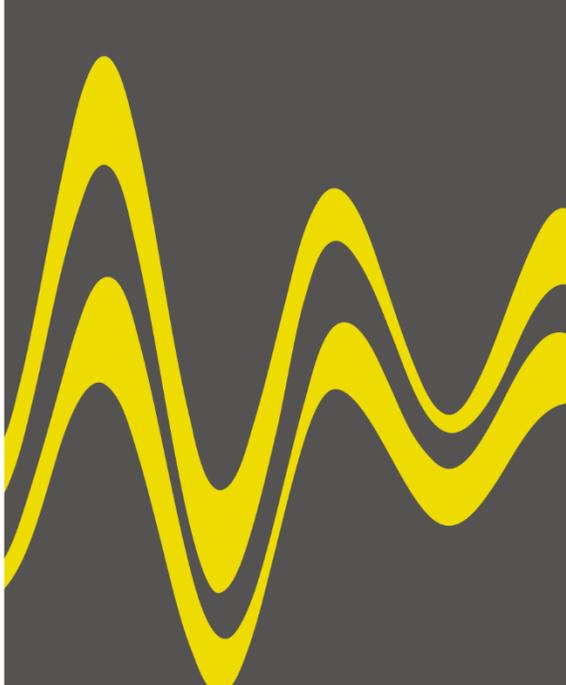
- Go where the assets are, not just where the debtor is incorporated
- Evaluate court culture, interim relief, disclosure, and speed
- Parallel filings create pressure; coordinate to avoid inconsistent positions
- Confidentiality and publicity: enforcement can expose the record
- Prioritisation factors: asset liquidity; interim relief/disclosure; court speed; immunity/public policy risk, cost



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Stays Pending Set-Aside; Security and Coordination

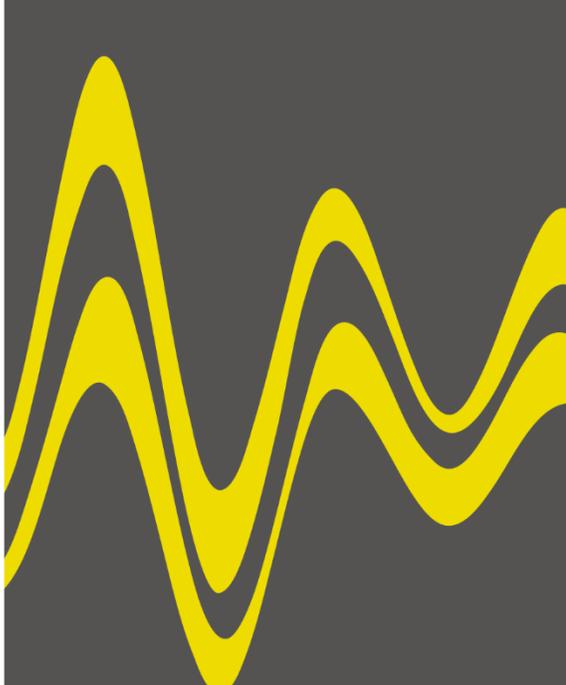
- If annulment is pending at seat, local court may stay enforcement
- Security as condition of any stay to prevent asset dissipation
- Continue in other jurisdictions not bound by seat-court interim orders
- Plan the timing across courts: file in phases, keep consistent messages, and use wins in one place to drive progress in others



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Refusal Grounds – Consent and Jurisdiction

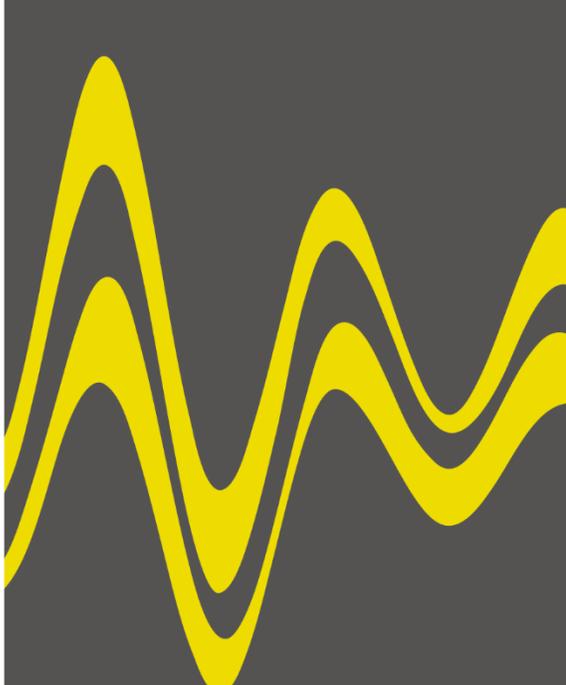
- Valid agreement: existence, scope, pathologies, assignment/novation issues
- Non-signatories: agency, estoppel, alter ego, group of companies (forum-specific)
- Tribunal competence: excess of mandate vs interpretation of the clause
- Severance: enforce separable parts if only part of the award tainted
- [Clause pathology example: [Sample arbitration clause] and fix]



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Refusal Grounds – Due Process and Natural Justice

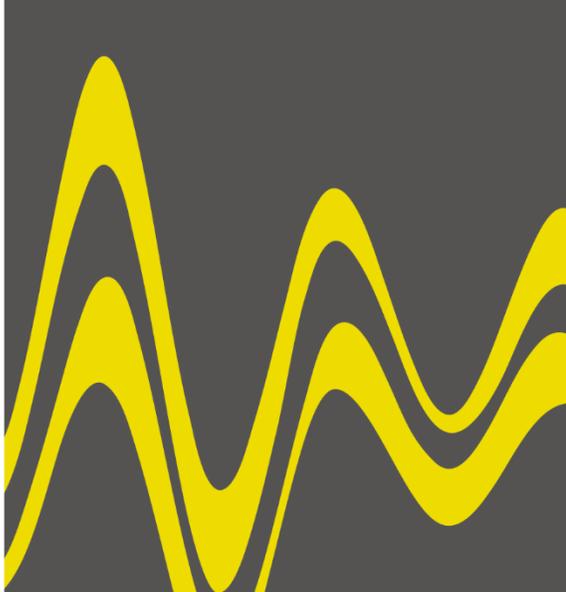
- Proper notice and opportunity to present case; equality of arms
- Procedural surprises vs legitimate case management
- Evidentiary issues: refusal to admit key evidence; time limits; translations
- Build the record: show reasonableness of opportunities give by tribunal
- Do/Don't: do build the record on notice and opportunity; don't try to re-argue the merits under “due process”



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Refusal Grounds – Composition, Mandate, Public Policy, Formalities

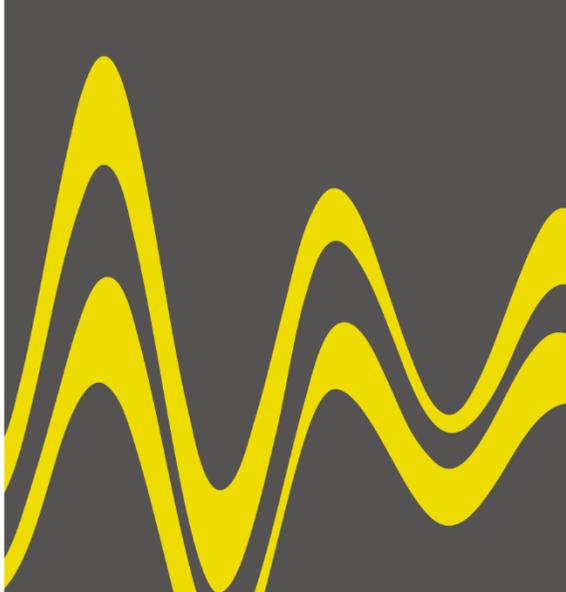
- Composition & procedure agreed by parties vs institutional rules applied
- Ultra/extra petita: relief beyond submission; severable where possible
- Public policy: narrow, fundamental norms; illegality, corruption, sanctions scenarios
- Formalities: signatures, reasons if required, finality; corrections and remissions
- [Public policy examples: what tends to succeed/fail in Ghana]



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Special Topic – States & Immunity

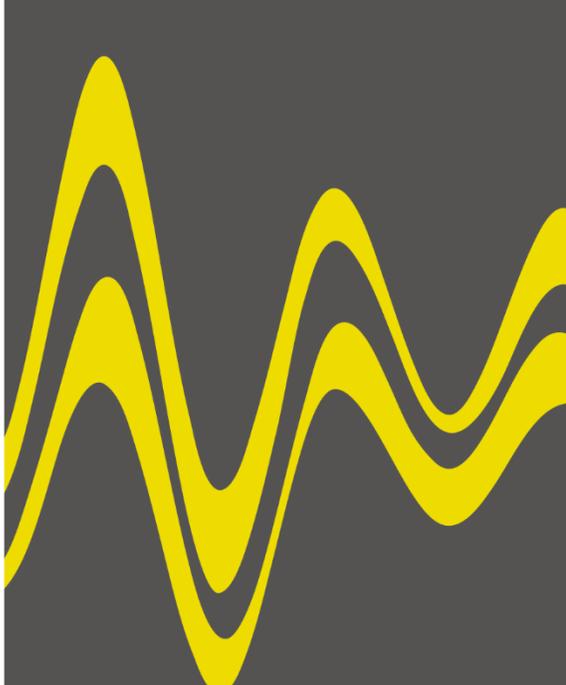
- Immunity vs adjudication & immunity vs execution
- Commercial-use exception: target assets used for commercial purposes
- Waivers: express and implied; reading waivers strictly
- Sensitive assets: central bank reserves, diplomatic premises, military property
- [Evidence plan: proving commercial use of [SOE/asset] in Ghana]



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Special Topic – Interim Measures & Emergency Orders

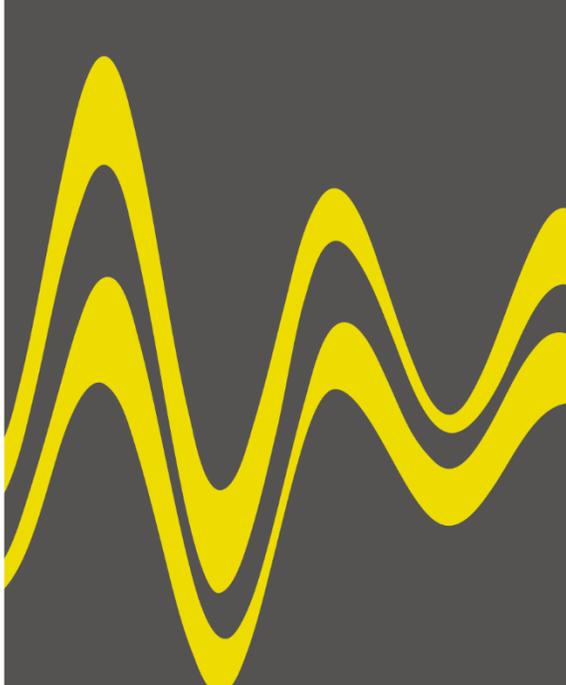
- Tribunal- ordered interim measures: mixed enforceability across jurisdictions
- Emergency arbitrator orders: treat as award or order? Forum-specific answers
- Parallel court measures: freezing orders, disclosure, receivership (where available)
- Tactical timing: secure assets before service (where permissible)
- [Local tools: interim relief menu in Ghana]



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Special Topic – Annulled Awards

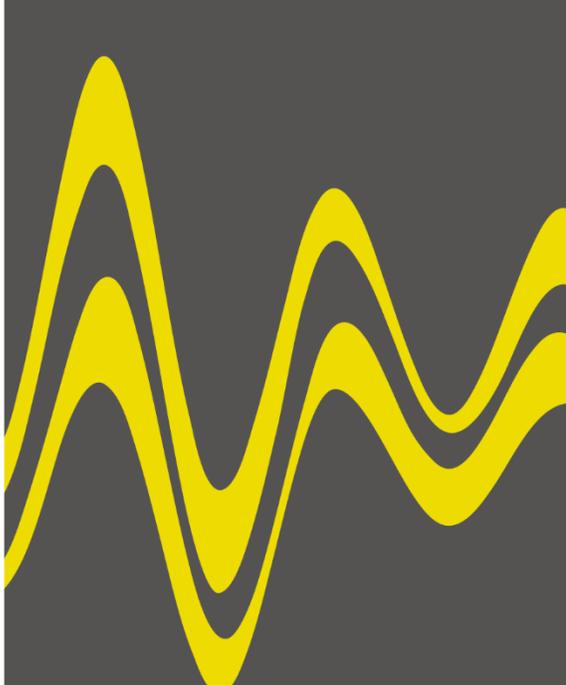
- Post-set-aside enforcement: divergent national approaches
- Comity vs pro-enforcement: how courts weight the seat's annulment
- Practical risk: costs, delay, collectability; settlement leverage
- Strategy: forum selection (where enforcement of annulled awards is possible)
- [Comparative note: approach of [Juris A] vs [Juris B]]



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Strategy – Sequencing, Assets, Interest, Limitation

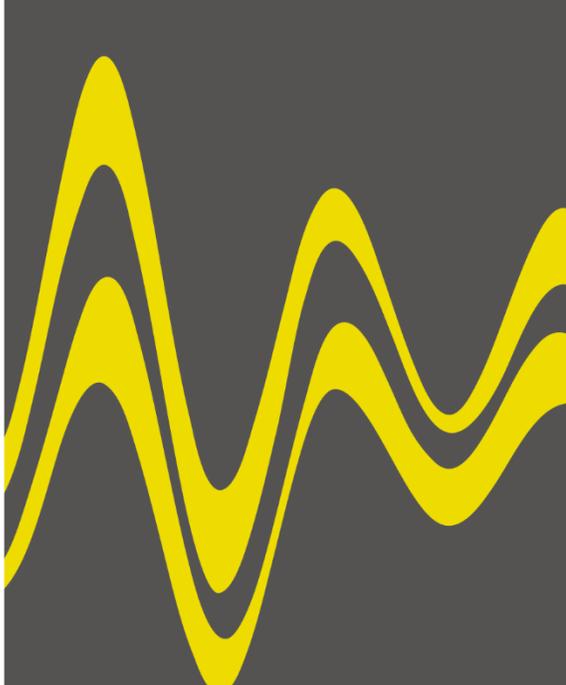
- Sequence by asset liquidity, legal tools, and court speed
- Asset tracing: banks, receivables, shares, third-party debtors
- Interest and currency: compute accurately; choose conversion date strategically
- Limitation: diarise deadlines for recognition & enforcement
- 90-day action plan: what to file, where, and when



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The One-Page Enforcement Checklist

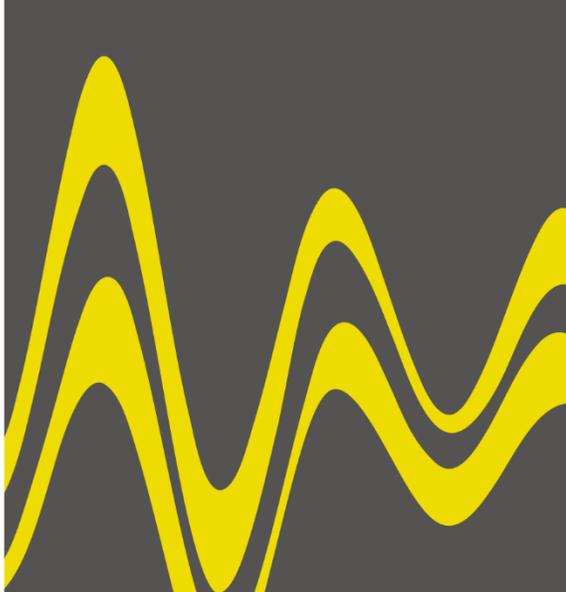
- Forums & assets identified: risk map prepared
- Documents assembled and certified; translations ready
- Filing pack drafted with affidavit evidence and exhibits
- Interim relief strategy settled: service plan mapped
- Refusal grounds risk scan completed: mitigation notes added



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Questions, Comments, & Discussion

- Quick poll: prior enforcement experience; sovereign counterparties; annulment issues
- Open floor: participant scenarios and local law nuances
- Key takeaways: pro-enforcement, narrow refusal, asset-focused strategy
- [Parking lot: topics to revisit if time permits]



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THANK YOU

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