

Reversing Its Precedent, Eleventh Circuit Holds That Courts May Vacate International Arbitral Awards on Same Grounds as Domestic Awards

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If you win an arbitration and want to enforce the award, you must first go to court and seek a judgment recognizing and enforcing the award against the losing party. At the same time, however, the losing party can likewise go to court and seek an order vacating the award—that is, setting aside or invalidating it. A recent Eleventh Circuit decision holds that the same grounds exist for vacating domestic and international arbitration awards. In so holding, the court reversed its own prior precedent and quoted an article by Miller Canfield’s **Charles H. Brower II**.

The recognition and enforcement of international arbitral awards in the U.S. is governed by the New York Convention, an international treaty signed by the U.S. and 171 other countries and implemented in U.S. law through Chapter 2 of the Federal Arbitration Act (“FAA”). A U.S. court must recognize and enforce an international arbitral award unless the losing party proves one of seven defenses listed in the Convention. But are those defenses to enforcement of an international arbitral award also the exclusive grounds for vacating such an award?

The U.S. Court of Appeals for the Eleventh Circuit recently overruled its own precedent by answering “no” to that question in *Corporación AIC, SA v. Hidroeléctrica Santa Rita, S.A.* In so doing, the court joined the majority of other federal appeals courts by holding that domestic U.S. law—specifically, Chapter 1 of the FAA—provides the grounds on which a U.S. court can vacate an international arbitration award.

This matters because the grounds for vacating a domestic arbitral award under U.S. law are not the same as the defenses to enforcement listed in the Convention. For example, the plaintiff in this case, *Corporación AIC*, asked the trial court to vacate an arbitral award because the arbitrators had exceeded their power. Chapter 1 of the FAA clearly permits a U.S. court to vacate a domestic arbitral award for that reason. But the trial court held that it could not vacate an international award (like the one at issue) for that reason, citing two decisions in which the Eleventh Circuit had previously held that the only grounds for vacating an international arbitral award are found in Chapter 2 of the FAA, and in particular Article V of the Convention.

Article V lists seven grounds on which a court can refuse to recognize or enforce such an award. Those grounds include that the award has been vacated by a court in the country where, or under whose law, the award was made. But the Convention’s text doesn’t specify the permissible grounds for vacating the award in the first place. As the Eleventh Circuit has now recognized in *Corporación AIC* its earlier decisions had it wrong. Because the Convention doesn’t supply the grounds for vacating an international arbitral award, U.S. courts must instead look to domestic arbitration law in Chapter 1 of the FAA. There, Section 10(a) lists four permissible grounds for vacating an arbitration award, including that the arbitrators exceeded their powers—the basis of *Corporación AIC*’s challenge.

As a consequence of this opinion, the Eleventh Circuit now joins the Second, Third, Fifth, and Seventh circuits in holding that Chapter 1 of the FAA provides the grounds for vacating an international arbitral award where the arbitration is seated in the U.S. or U.S. law governs the conduct of the arbitration. This change in Eleventh Circuit law is important, as a significant number of international arbitrations and related court proceedings take place in southern Florida, which is located in the Eleventh Circuit.

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If you have questions about this opinion or **international dispute resolution** more generally, please do not hesitate to contact the authors of this alert.