Recognition and enforcement of foreign arbitral awards in Tunisia are governed principally by the Tunisian Arbitration Code, enacted by Law No. 93-42 of 26 April 1993, and by the 1958 New York Convention. Tunisia acceded to the Convention in 1967 and its legislation follows the enforcement-friendly approach of the UNCITRAL Model Law.

A foreign arbitral award is not automatically enforceable against assets located in Tunisia. The successful party must obtain judicial recognition and, where coercive execution is required, an enforcement order. The court does not retry the merits of the dispute: its review is confined to the statutory grounds for refusal.

Legal framework for foreign arbitral awards in Tunisia

The applicable framework combines:

- the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;
- the Tunisian Arbitration Code, especially Articles 79 to 82;
- the relevant rules of Tunisian civil procedure concerning service, representation and execution against assets.

The international-arbitration chapter of the Tunisian Arbitration Code does not prejudice treaties binding Tunisia. Treaty rules and domestic provisions must therefore be read together, with the Convention prevailing where applicable.

Recognition and enforcement: two distinct effects

Recognition gives the award legal authority in Tunisia and may be invoked defensively or as res judicata. Enforcement goes further: it permits coercive measures against the debtor’s assets after the competent court grants execution.

This distinction matters in practice. A party may seek recognition without immediately pursuing attachment or sale of assets. Conversely, a creditor intending to enforce should first identify assets in Tunisia and assess whether conservatory measures are necessary to prevent their dissipation.

Jurisdiction of the Tunis Court of Appeal

Under Article 80 of the Arbitration Code, the written application for recognition or

enforcement is submitted to the Tunis Court of Appeal. The application should identify the parties, the award, the arbitration agreement, the relief sought and the assets or enforcement objective in Tunisia.

The proceedings are not an appeal against the arbitral award. The court may not substitute its interpretation of the contract or evidence for that of the arbitral tribunal. Its task is to verify the statutory requirements and determine whether a limited ground for refusal has been established.

Documents required under Article 80

The applicant must produce:

- the duly authenticated original award or a certified true copy;
- the original arbitration agreement referred to in Article 52, or a certified true copy;
- an official Arabic translation where the documents are drafted in another language;
- documents establishing the capacity and authority of the applicant and its Tunisian counsel;
- evidence concerning the final or enforceable status of the award where relevant;
- the documents required for valid service on the opposing party.

Formal defects frequently delay an otherwise valid application. Authentication, certification, translation and proof of signatory authority should therefore be reviewed before filing. Names, company numbers and addresses must correspond across the award, arbitration agreement, powers of attorney and corporate records.

Grounds for refusing enforcement under Article 81

Recognition or enforcement may be refused only on the limited grounds stated in Article 81. The party resisting enforcement bears the burden of proving the grounds on which it relies, except for public policy, which the court may examine.

Incapacity or invalid arbitration agreement

Enforcement may be refused if a party to the arbitration agreement lacked capacity, or if the agreement was invalid under the law chosen by the parties or, in the absence of such a choice, under the applicable rules of private international law.

Lack of proper notice or inability to present the case

The respondent may establish that it was not properly informed of the appointment of an arbitrator or of the arbitral proceedings, or that it was otherwise unable to present its case. A mere procedural disagreement is insufficient; the objection must concern a genuine denial of the right to be heard.

Award exceeding the scope of the arbitration agreement

Refusal may arise where the award decides a dispute not contemplated by the submission to arbitration or goes beyond its scope. If the decisions within the tribunal's jurisdiction can be separated from those outside it, the enforceable part may still be recognised and executed.

Irregular composition of the tribunal or procedure

The resisting party may rely on non-compliance with the parties' arbitration agreement, the selected institutional rules, the applicable procedural law or the mandatory rules governing constitution of the tribunal.

Award set aside or suspended at the seat

Enforcement may be refused where the award has been annulled or suspended by a competent court of the country in which, or under the law of which, it was made. The existence, scope and procedural status of the foreign decision must be proved by reliable documents and, where required, an official Arabic translation.

International public policy

The Tunis Court of Appeal may refuse recognition or enforcement where it would be contrary to public policy as understood in Tunisian private international law. Public policy is an exceptional safeguard, not a mechanism for reopening the merits or correcting alleged errors of fact or law made by the arbitral tribunal.

Pending annulment or suspension proceedings: Article 82

If an application to set aside or suspend the award is pending before the competent court at the seat, Article 82 permits the Tunis Court of Appeal to adjourn its decision. At the request

of the party seeking recognition or enforcement, the court may also order the opposing party to provide appropriate security.

This mechanism balances the risk of contradictory decisions against the creditor's interest in preventing delay from defeating enforcement. Evidence of the foreign proceedings, their seriousness and their procedural stage should be placed before the Tunisian court.

Interim and conservatory measures in Tunisia

An enforcement strategy should not be limited to the exequatur application. Where assets may be transferred or dissipated, the creditor should consider conservatory measures available under Tunisian law. The legal basis, competent court and evidence required depend on the nature of the asset and the measure sought.

Where the debtor owns a vessel calling at a Tunisian port, a precautionary ship arrest may be considered if the claim and statutory conditions permit it. Arrest is a protective measure and should not be confused with final execution of the award.

Practical enforcement checklist

1. Confirm the award, arbitration agreement and identities of all parties.
2. Verify whether the award has been paid, challenged, annulled or suspended.
3. Identify assets located in Tunisia before commencing proceedings.
4. Obtain authenticated originals or certified copies.
5. Arrange official Arabic translations.
6. Prepare evidence of corporate existence and signatory authority.
7. File the written application before the Tunis Court of Appeal.
8. Ensure valid service on the party resisting enforcement.
9. Anticipate the limited objections under Article 81.
10. Coordinate recognition with conservatory and execution measures.

Conclusion

Tunisian law provides a clear and generally arbitration-supportive regime for the recognition and enforcement of foreign arbitral awards in Tunisia. The decisive provisions are Articles 79 to 82 of the Arbitration Code, read with the New York Convention. The court's review is limited, but strict compliance with authentication, translation, service and procedural requirements remains essential.

Successful enforcement therefore depends on more than possession of a favourable award. It requires careful preparation of the Tunisian application, early identification of assets and coordination between exequatur proceedings and any necessary conservatory measures.

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