JUS MUNDI

REPORT

2025 Arbitration Year in Review

Foreword

The reach and resilience of international arbitration have never been more evident. In 2025, major legislative reforms reshaped foundational frameworks in key jurisdictions, investment treaty disputes tested enforcement principles across borders, and institutional innovations responded to evolving user needs. Against this dynamic backdrop, we present a reimagined **Arbitration Year in Review**, covering **40+ jurisdictions** across Africa, Asia Pacific, Latin America, Europe, the Middle East & North Africa, and North America, offering a truly global perspective on the year's most significant developments.

This edition brings together **young practitioners and senior trusted experts**, fostering connections between fresh perspectives and seasoned experience. This intergenerational approach enriches our analysis, combining innovative thinking with deep expertise to deliver the most comprehensive view of each region's arbitration landscape.

2025 was a landmark year for arbitration reform. England & Wales saw the **Arbitration Act 2025** take effect in August, codifying arbitrator disclosure duties, establishing default rules for the law applicable to arbitration agreements, and empowering tribunals to issue summary awards. France unveiled its ambitious **Code de l'Arbitrage** project, comprising 146 articles that unify domestic and international arbitration rules, enhance procedural flexibility, and strengthen fundamental principles including confidentiality. China passed its most comprehensive update in three decades with the **revised Arbitration Law**, expanding arbitrable disputes, strengthening arbitration agreements, and aligning more closely with international best practices. India's Draft Arbitration and Conciliation (Amendment) Bill proposed institutional reforms, while Saudi Arabia modernized its framework with enhanced enforcement mechanisms.

The year brought continued complexity in enforcement landscapes. **Spain's** ongoing battles over intra-EU Energy Charter Treaty awards reflected broader tensions between EU law and international arbitration, with foreign courts consistently enforcing awards while Spanish courts resist. The Netherlands emerged as an active enforcement forum, with diverging judicial approaches to sovereign immunity and asset attachment in cases involving Russia and other sovereigns.

Leading institutions demonstrated continued vitality. **Sweden's SCC** established the SCC Council and launched the Nordic Commercial Arbitration Forum, handling 204 new cases in 2024. **Australia's ACICA** celebrated its 40th anniversary at Australian Arbitration Week with 300+ delegates from 18 countries.

Cross-cutting themes dominated the year's discourse: **artificial intelligence** integration raised questions about transparency, confidentiality, and fabricated evidence; **cryptoassets** challenged traditional valuation and jurisdictional frameworks; and **sustainability** considerations increasingly influenced investment treaty negotiations and institutional practices.

This expanded edition would not have been possible without the dedication of our newly established **Daily Jus Editorial Team** led by Editor-in-Chief Giulia Bartoletti. Special thanks to Assistant Editors Rania Alnabar, Daniel Hemerly Ferreira, Benedikt Kaneko, Adam Malek, Mark Malekela, Galo Márquez Ruiz, Vaishali Movva, Gabriel Ortega, Guilherme Pina Cabral, Jessica Rado, and Aaron Tan, whose invaluable work made this ambitious project a reality. We are also grateful to Clémence Prévot and Helene Maïo for their continued support.

As legislative reforms take effect and institutional innovations reshape practice, the developments documented in these pages will continue to influence arbitration for years to come. It has been a privilege to work with so many talented contributors on this edition. Their dedication to documenting and analyzing these developments reflects the best of our arbitration community, and we hope their work proves as valuable to you as it has been enlightening to us.

*All views expressed in the 2025 Arbitration Year in Review are solely those of the authors and do not necessarily reflect the views of their organizations, employers, Daily Jus, Jus Mundi, or Jus Connect.

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AFRICA

Mauritius

Mauritius continues to position itself as a credible and arbitration-friendly seat for international disputes, particularly those connected to Africa-related commerce and investment. Its arbitration regime remains anchored in the International Arbitration Act 2008, a statute closely modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985, and is supported by a judiciary that has regularly demonstrated deference to party autonomy, Kompetenz-Kompetenz, and the finality of arbitral awards.

The year 2025 did not bring structural legislative reform. Instead, it was marked by judicial and institutional developments. A series of Supreme Court decisions clarified the scope of court intervention in support of arbitration agreements, the consequences of defective arbitration clauses, and the treatment of enforcement and security issues at the post-award stage. In parallel, institutional innovation emerged through the launch of the MARC Mediation Rules 2025 and MARC's Protocol on Mediation for Climate Change-Related Disputes, currently the only dedicated protocol worldwide addressing environmental disputes through mediation, situating Mauritius at the forefront of climate-conscious dispute resolution.

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Anti-Suit Injunctions and the Protection of the Parties' Agreement to Arbitrate

SBM Africa Holdings Ltd v. Khimji S [2025 SCJ 445]

In *SBM Africa Holdings Ltd v. Khimji S* [2025 SCJ 445], the Supreme Court of Mauritius delivered one of its most authoritative pronouncements to date on the availability of anti-suit injunctions in support of international arbitration, confirming its willingness to act decisively to protect the integrity of the negative and positive obligations arising from the arbitration agreement.

The dispute arose from a share acquisition governed by a Sale and Purchase Agreement containing an LCIA-MIAC (London International Court of Arbitration - Mauritius International Arbitration Centre) arbitration clause with Mauritius as the seat. Notwithstanding this agreement, the respondent commenced anti-suit proceedings in Kenya and sought relief

aimed at preventing the applicant from initiating arbitration. The applicant applied to the Supreme Court of Mauritius for an anti-suit injunction restraining the respondent from pursuing litigation in any forum in breach of the arbitration agreement.

A panel of three designated judges, constituted under section 42 of the International Arbitration Act 2008 (the "**IAA**"), granted the injunction. The Court restrained the respondent not only from continuing existing foreign proceedings, but also from commencing, procuring, or assisting any proceedings outside arbitration in relation to the dispute. The breadth of the relief granted underscores the Court's view that anti-suit injunctions serve to enforce both the positive obligation to arbitrate and the negative obligation not to litigate elsewhere.

The Court's reasoning reflects a clear presumption in favour of enforcing arbitration agreements. Relying expressly on the *Aggeliki Charis Compania Maritima SA v Pagnan SPA [1995] 1 Lloyd's Rep 87* (The Angelic Grace) and subsequent English and Privy Council authority, the Court held that where foreign proceedings are brought in breach of a valid and operative arbitration clause, an anti-suit injunction will ordinarily follow unless the respondent can demonstrate strong reasons why such relief should be refused.

The burden of persuasion thus lies squarely on the party seeking to escape the arbitral forum to which it contractually committed.

Of particular significance is the Court's confirmation (by reference to *Ust-Kamenogorsk Hydropower Plant LLP v. AES Ust-Kamenogorsk*) that its jurisdiction to grant anti-suit relief derives from the contractual right to arbitrate, rather than from the existence of pending arbitral proceedings. Anti-suit injunctions may therefore be granted even before arbitration has been formally commenced, provided that the arbitration agreement is valid and the relief sought is necessary to prevent its frustration.

In exercising its discretion, the Court placed considerable weight on the need to avoid parallel and duplicative proceedings, which it regarded as inherently vexatious where they undermine an agreed dispute resolution mechanism. It also emphasised the importance of promptness, noting that applicants must act before foreign proceedings have advanced to a stage where injunctive relief would risk undue interference or procedural unfairness.

The Court further rejected potential arguments based on international comity, reiterating that an anti-suit injunction is directed at the litigant rather than the foreign court and does not purport to restrain the exercise of foreign judicial authority. Finally, it ordered the respondent to pay the applicant's costs on an indemnity basis, recognising that the application had been rendered necessary by the respondent's breach of the arbitration agreement.

Pathological Arbitration Clauses, Parallel Proceedings, and the Limits of Tribunal Discretion

Compagnie de Sécurité Privée et Industrielle v. Flashbird Limited [2025 SCJ 471]

In *Compagnie de Sécurité Privée et Industrielle v. Flashbird Limited* [2025 SCJ 471], the Supreme Court of Mauritius confronted the procedural consequences of a pathological arbitration clause and clarified the limits of arbitral discretion where parallel proceedings and due process concerns intersect.

The dispute arose from two successive contracts between the parties, with the second contract purporting to annul and replace the first. The arbitration clause contained in the second contract referred ambiguously to the "Mauritius Chamber of Commerce" while providing that disputes were to be resolved under the ICC Rules. This hybrid formulation failed to identify a single arbitral institution with sufficient clarity and ultimately facilitated the commencement of parallel arbitrations before the Mau-

ritius Mediation and Arbitration Center ("**MARC**") and the International Chamber of Commerce.

Compagnie de Sécurité Privée et Industrielle commenced arbitration before MARC, seeking rescission of the second contract. The MARC tribunal declared the second contract void *ab initio* under Malagasy law, with retroactive effect, an award subsequently upheld by both the Supreme Court and the Judicial Committee of the Privy Council. Notwithstanding this and in parallel, Flashbird pursued ICC arbitration under the same clause, initially advancing claims on the basis of the first contract.

The arbitral tribunal in the ICC arbitration, in its award, granted damages on the basis of the second contract, notwithstanding its prior rescission by the MARC tribunal, and did so without inviting submissions from the parties on this decisive legal shift. The result was the coexistence of two irreconcilable arbitral awards addressing overlapping factual and legal issues.

The Supreme Court of Mauritius set aside the ICC award pursuant to sections 39(2)(a)(ii), 39(2)(a)(iii), and 39(2)(b)(iv) of the International Arbitration Act 2008, holding that the arbitral tribunal had both exceeded its mandate and violated fundamental principles of natural justice. The Court reaffirmed that while arbitral tribunals enjoy wide procedural discretion, that discretion is not unbounded. A tribunal may not decide a dispute on a legal or factual basis not advanced by the parties without affording them a reasonable opportunity to be heard.

Of particular significance is the Court's treatment of the risk of conflicting arbitral awards. While the Court stopped short of articulating a freestanding doctrine of *res judicata* between arbitral proceedings conducted under competing institutional frameworks, its reasoning may reflect an implicit concern with preserving the systemic coherence of arbitral justice, even in the absence of express statutory guidance on parallel proceedings.

The decision also underscores the central role of arbitration clause drafting in managing jurisdictional risk. The Court's intervention was not driven by institutional preference but by procedural failure: ambiguity in the arbitration agreement created a vacuum in which parallel proceedings became possible, and the tribunal's failure to observe basic due process principles ultimately proved fatal to the award.

Viewed in its broader context, the Flashbird case stands as a cautionary illustration of how defective arbitration clauses can erode the very efficiencies arbitration is intended to deliver. It simultaneously confirms that Mauritian courts will intervene decisively (but only exceptionally) where procedural irregularities strike at the core of arbitral legitimacy.

Enforcement, Security, and Appeals to the Privy Council

Laporte E.G.L v. Laporte M.A.R [2025 SCJ 35]

In *Laporte E.G.L v. Laporte M.A.R* [2025 SCJ 35], the Supreme Court of Mauritius delivered a decision of particular importance for post-award strategy and enforcement risk management in international arbitration. The judgment clarifies both the scope of Article VI of the New York Convention (1958) ("**Convention**") and the Court's powers to order security for costs in arbitration-related appeals to the Judicial Committee of the Privy Council ("**JCPC**").

Following a MARC arbitral award rendered in Mauritius, the respondent unsuccessfully applied to set aside the award and subsequently appealed to the JCPC. Although the appeal had the practical effect of suspending enforcement proceedings in Mauritius, the respondent resisted the provision of security, arguing that Article VI of the Convention was only engaged where a party formally applies for an adjournment of enforcement.

The Supreme Court rejected that restrictive construction. Emphasising the functional purpose of Article VI, the Court held that it retains a broad discretion to order "suitable security" whenever enforcement is

effectively delayed by set-aside or appellate proceedings, irrespective of the procedural route by which that delay arises. In doing so, the Court confirmed that Article VI is not a technical or formalistic provision, but a protective mechanism designed to balance the award debtor's right to pursue recourse with the award creditor's right to effective enforcement.

The Court ordered the respondent to provide security by way of a bank guarantee for the full amount of the award, signalling a clear preference for security that offers genuine and immediate protection against asset dissipation. This approach aligns Mauritius with pro-enforcement jurisdictions that interpret Article VI as empowering courts to neutralise dilatory tactics and to preserve the economic value of the award pending the outcome of appellate proceedings.

The decision is equally significant in its treatment of security for costs. The Court held that the International Arbitration Act 2008 and the Supreme Court (International Arbitration Claims) Rules 2013 constitute *lex specialis* in arbitration matters and therefore prevail over the general regime governing appeals to the JCPC. Rule 30 of the 2013 Rules was interpreted as conferring an express and autonomous power to order security for costs in arbitration-related appeals, reflecting the realities and expense of international arbitration litigation before the JCPC.

This decision provides valuable guidance on the interaction between enforcement, appeals, and security, and confirms Mauritius' position as a jurisdiction that combines respect for due process with a decidedly enforcement-oriented approach.

Institutional Developments: Climate-Conscious Dispute Resolution in Comparative Perspective

MARC Mediation Rules 2025 and its Protocol on Climate-Change Related Disputes

A significant institutional development in Mauritius in 2025 was the launch by the MARC of a Protocol on Mediation for Climate Change-Related Disputes, accompanied by the revised MARC Mediation Rules 2025. These initiatives position Mauritius at the forefront of procedural innovation in environmentally conscious dispute resolution. The adoption of the Protocol for Climate Change-Related Disputes is currently the only such framework in the world and distinguishes Mauritius within an otherwise limited international landscape, signalling a proactive effort to adapt dispute resolution processes to the distinctive procedural and stakeholder complexities of climate and sustainability related disputes.

At the international level, comparable efforts have included the work of the ICC Commission on Arbitration and ADR Task Force on Climate Change, as well as the Permanent Court of Arbitration's Environmental Rules, both of which recognise that climate-related disputes often transcend traditional bilateral commercial models. Such disputes frequently involve public-interest considerations, scientific and technical complexity, regulatory overlay, and multiple stakeholders with diverging interests. Against this backdrop, MARC's Climate Change Protocol adopts a procedural approach rather than a substantive redefinition of rights and obligations.

The Protocol encourages procedural adaptations tailored to the characteristics of climate-related disputes, including the use of co-mediation as a default design, combining legal expertise with scientific, environmental,

or community-based competence; calibrated approaches to confidentiality to facilitate appropriate information-sharing; and mechanisms to encourage inclusive stakeholder participation. In doing so, it resonates with international discussions emphasising the need for dispute resolution frameworks capable of managing multi-party dynamics and long-term relational interests, while remaining compatible with fundamental principles of neutrality and party autonomy.

Notably, the Climate-Change Protocol does not impose substantive environmental standards or outcomes. Its normative significance lies instead in treating procedure as an instrument of sustainability, promoting digital engagement, reducing unnecessary travel, and encouraging early and structured dialogue. In this respect, it parallels broader international initiatives seeking to reduce the environmental footprint of dispute resolution processes, while preserving procedural fairness and efficiency.

The revised MARC Mediation Rules 2025 provide the procedural foundation within which the Climate Change Protocol operates. The Rules modernise mediation practice through clearer provisions on scope, commencement, and termination; enhanced disclosure obligations, including in relation to third-party funding; express recognition of technology-assisted mediation; and a transparent, revised schedule of costs, including targeted reductions for SMEs. Together, the Rules and the Protocol reflect an institutional willingness to engage with evolving categories of disputes and to experiment with procedural innovation in a manner consistent with internationally recognised ADR standards.

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EDITED BY GIULIA BARTOLETTI

AFRICA

Nigeria

*The Nigerian arbitration landscape in 2025 was shaped less by new legislation but by how courts and arbitral tribunals applied existing legislation in practice. The year reflects a clear effort to balance finality and enforcement with procedural fairness, as courts define the extent of their intervention in arbitral proceedings. The National Policy on Arbitration and Alternative Dispute Resolution ("**ADR**") 2024 continues to show the policy direction of Nigeria's intention to strengthen arbitration and ADR across domestic and international commercial disputes. These trends signal a maturing arbitration landscape focused on certainty, efficiency, and legitimacy.*

In this review, we provide a high-level summary of the significant developments that have occurred over the past year.

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Market Highlights

East Africa Arbitration Conference 2025

In September 2025, Abuja hosted the 12th East Africa International Arbitration Conference ("**EAIAC 2025**"), underscoring Nigeria's significant role in dispute resolution in Africa. The theme of the conference was "***Arbitrating in Times of Global Uncertainty and the Race for Natural Resources***," bringing together key arbitration players, together to discuss key challenges facing arbitration amid geopolitical volatility and intense competition over natural resources. This was the first time EAIAC was hosted outside East Africa.

Over the two-day event, participants engaged in high-level panels on sanction-related disputes, geopolitics and arbitration, pan-African dispute mechanisms, and the opportunities and practicalities of cross-border arbitration in resource-driven sectors. The conference also featured thought-leadership sessions, fireside chats, and an Oxford-style debate, providing a platform for robust dialogue on improving arbitration frameworks across African jurisdictions. The conference further strengthened regional integration, fostering collaboration between East and West African arbitration communities and highlighting the strategic

importance of arbitration in supporting investment certainty and commercial dispute management across Africa.

Legislative Developments

The National Policy on Arbitration and Alternative Dispute Resolution (ADR) 2024

The National Policy on Arbitration and Alternative Dispute Resolution ("**ADR**") 2024, officially unveiled by the Federal Ministry of Justice provides a comprehensive framework designed to strengthen arbitration and ADR across domestic and international commercial disputes, enhance judicial support for arbitration agreements, and align Nigeria's dispute resolution regime with global best practices under instruments like the UNCITRAL Model Law on International Commercial Arbitration (1985) and the New York Convention (1958). It represents a strategic effort to institutionalise ADR, broaden its utilisation, and reinforce confidence in arbitration as a reliable dispute resolution mechanism.

The Policy focuses on promoting Nigeria as a preferred seat and venue for arbitration by encouraging parties, especially government Ministries, Departments, and Agencies ("**MDAs**") to choose arbitration within Nigeria and by supporting judicial practices that uphold arbitration agreements and limit unnecessary court interference. It also proposes the establishment of small claims arbitration and mandates transparent registers for arbitrations involving MDAs to foster accountability and consistency. By encouraging the use of ADR mechanisms at multi-door courthouses and enhancing specialised ADR infrastructure, the Policy seeks to reduce reliance on foreign venues and strengthen local adjudicative capacity.

To support its objectives, the Policy emphasises judicial efficiency and predictability by calling for strict timelines for court proceedings related to arbitration and ADR, punitive measures against obstructive litigation tactics, and specialised judicial divisions dedicated to arbitration matters. It also calls for the creation and strengthening of ADR centres, as well as the development of rules and practice directions to streamline arbitration-related judicial processes. By integrating these measures into national dispute resolution practice, the Policy aims to boost investor confidence, retain commercial disputes within Nigeria, and contribute to the country's broader economic and legal reform agenda. The Policy will be implemented for 5 years and thereafter be reviewed to reflect the growing trends in arbitration and ADR.

Influence of the English Arbitration Act 2025 on Nigerian Arbitration Practice

A defining arbitration trend in Nigeria in 2025 has been the renewed and intensified influence of English arbitration law, following the coming into force of the English Arbitration Act 2025 ("**AA**") Given the continued dominance of English law as the governing choice of law and London as a preferred seat in Nigeria-related commercial contracts, the reforms introduced by the AA have had immediate relevance for Nigerian arbitration users and practitioners.

The AA introduces targeted reforms aimed at enhancing certainty, efficiency, and cost control in arbitration proceedings. These reforms have prompted renewed scrutiny of Nigeria's Arbitration and Mediation Act 2023 ("**AMA**"), particularly in areas where the AMA remains silent or underdeveloped. Key aspects Nigeria can learn from include AA's clarification that, where the arbitration agreement is silent on its governing law, the law of the seat governs the arbitration agreement; expanded arbitrator immunity; refined limits on court intervention in jurisdictional challenges; and the introduction of a tribunal's power to award costs for unmeritorious claims.

In practice, Nigerian courts have historically looked to English law to fill gaps in domestic arbitration law. The enactment of the AA has therefore reshaped the persuasive landscape, raising questions as to whether legislative amendments to the AMA may be required for clarity and alignment

with international best practice. For Nigerian stakeholders, the AA 2025 has become both a reference point and a benchmark, reinforcing the need for ongoing reform, judicial consistency, and legislative responsiveness if Nigeria is to consolidate its position as an arbitration-friendly jurisdiction.

Significant Cases

Judicial Resistance to Merit-Based Challenges of Arbitral Awards

The Nigerian Supreme Court in *NICON Insurance Ltd v. Brighthouse Estate Ltd.*, (2025) 8 NWLR (Pt 1993) 469, adopted a narrow and disciplined interpretation of "misconduct" as a ground for setting aside an arbitral award under the former Arbitration and Conciliation Act, which remains applicable to old cases. In that case, following a favourable award to Brighthouse Estate Limited, NICON Insurance Ltd sought to set aside the award on grounds of misconduct, on the basis that the arbitrator had exceeded his jurisdiction and improperly evaluated evidence. The courts at both first instance and on appeal rejected these arguments, holding that dissatisfaction with an arbitrator's reasoning, evidential assessment, or conclusions does not amount to misconduct.

The Supreme Court emphasised that misconduct must be confined to serious procedural or ethical breaches such as corruption, bias, or violations of natural justice that fundamentally undermine the arbitral process. In doing so, the court reinforced the principle that arbitration is not subject to appellate review on the merits and that post-award challenges should not serve as a substitute for appeals.

The decision also underscores another emerging trend: procedural waiver and *estoppel* in arbitration-related litigation. The Supreme Court held that a party that participates fully in arbitral proceedings without raising jurisdictional objections promptly cannot later seek to invalidate the award on that basis. This reinforces the expectation that parties must raise procedural objections promptly or risk forfeiting them.

The case reflects Nigeria's continued alignment with pro-enforcement and finality-driven international arbitration standards, consistent with the New York Convention. Overall, Nigerian courts are increasingly unwilling to entertain disguised appeals against arbitral awards, reserving intervention for truly exceptional cases where the integrity of the arbitral process is demonstrably compromised.

Bayshore Technologies Ltd v. Green Fuels Ltd (FHC/L/CS/377/2025, 10 April 2025)

In *Bayshore v. Green Fuels*, the Federal High Court reaffirmed the Nigerian courts' willingness to intervene in arbitral proceedings where there is a breach of the fundamental principle of equal treatment of parties. During an ongoing arbitration, the Tribunal issued a Procedural Order 5, granting all of Green Fuels Ltd's document production requests against Bayshore. Subsequently, by Procedural Order 8, the Tribunal refused almost all of Bayshore's reciprocal document requests against Green Fuels Ltd, allowing only a limited request relating to a maintenance schedule.

Bayshore challenged Procedural Order 8 before the Federal High Court, contending that the Tribunal's refusal undermined Bayshore's ability to fairly present its case and violated section 30 of the AMA on equal treatment of parties and section 36 of Nigeria's Constitution. The Court agreed with Bayshore. Applying the threshold question of whether the Tribunal had treated the parties equally, the Court held that granting one party extensive document production while denying the other comparable access constituted a serious imbalance. The refusal was found to constitute a "violent breach" of the parties' rights to equal treatment and a fair hearing. Accordingly, the Court set aside Procedural Order 8 and directed Green Fuels Ltd to produce the requested documents within seven days.

The decision is significant for Nigerian arbitration practice in 2025. While

concerns have been raised about excessive judicial interference, the case illustrates that Nigerian courts remain prepared to intervene at the procedural stage where a tribunal's decision threatens procedural fairness. Importantly, the Court recognised that the AMA permits challenges to tribunal decisions, distinct from final awards, reinforcing that procedural fairness is not deferred until the award stage. The decision is currently on appeal, and it remains to be seen how the appellate court will view this important issue.

Oil & Industries Services Ltd v. Hempel Paints (South Africa) Pty Ltd (CA/PH/1777/2021, on 24 January 2025) & *Champion Breweries Plc v. Brauerei Beck GMBH & Co* (CA/L/1237/2015, 20 June 2025)

In *OIS Ltd v. Hempel and Champion v. Beck*, the Court of Appeal in two separate cases held that Nigerian courts did not have jurisdiction to set aside a foreign-seated arbitral award.

In *OIS Ltd v. Hempel*, after the conclusion of an LCIA arbitration seated in London, England with an award in favour of Hempel, Hempel commenced enforcement proceedings. OIS Ltd contested these proceedings, but also filed set aside proceedings before the same court. Both proceedings were consolidated and heard by a single judge.

Relying on Article V(1)(e) of the New York Convention, which the court held to have been domesticated in Nigeria, the court held that the jurisdiction to set aside a foreign-seated award had been allocated to the court of the seat. Consequently, it dismissed the set aside proceedings for want of jurisdiction. OIS Ltd appealed this decision, but the Court of Appeal endorsed the decision of the first instance court without reservation.

In *Champion v. Beck*, following an ICC arbitration seated in Geneva, Switzerland, with an award in favour of Beck, Beck commenced enforcement proceedings in Nigeria. Champion contested these proceedings. As the period to file set aside proceedings had lapsed, it also filed an application seeking an extension of time to set aside the Final Award and an order setting aside the award.

As in *OIS Ltd v. Hempel*, the court of first instance held that the Arbitration and Conciliation Act (i.e., the erstwhile arbitration legislation) did not empower Nigerian courts to set aside awards made in respect of international commercial arbitrations held outside Nigeria, leading it to strike out Champion's application. The Court of Appeal dismissed Champion's appeal from this decision and affirmed the decision of the first instance court.

Both cases are significant given a prior decision by the same court in *Limak v. Sahelian*, in which the court held that Nigerian courts "*are expressly conferred with jurisdiction to set aside an arbitral award made outside Nigeria irrespective of the Country in which it is made*", to wide criticism from the arbitration community within and outside of Nigeria. Neither case refers to or distinguishes its position from the decision in *Limak* despite one of the judges that decided *Limak* being presiding over the appeal *in OIS Ltd v. Hempel.* However, the inference to be drawn from the silence, as well as the rule of precedents, signals a clear intention to put an end to *Limak* once and for all. All three decisions are appealable to the Supreme Court, Nigeria's apex court, and it remains to be seen whether *Limak* is truly dead and gone.

Fougerolle v. Federal Republic of Nigeria

In *Fougerolle v. Federal Republic of Nigeria* the arbitration arose from contracts relating to the Ajaokuta Steel Plant project, under which Société Fougerolle (through its Nigerian and French entities) undertook construction works for the Federal Republic of Nigeria. Alleging non-payment and contractual breaches, Fougerolle commenced arbitration in December 2022 at the ADR Centre of the Federal High Court of Nigeria, claiming approximately ₦4 billion and €185.7 million in damages.

Nigeria denied liability, contending that Fougerolle failed to perform its contractual obligations and that the claims were unsubstantiated,

time-barred, or previously settled. It also challenged the evidentiary basis and quantum of the sums claimed. In its Final Arbitral Award of 11 November 2025, the tribunal dismissed all claims, holding that Fougerolle failed to establish Nigeria's liability or prove its alleged losses. The tribunal found the evidence insufficient to support both breach and damages. The award marked a notable victory for Nigeria, reflecting stronger defence of high-value arbitral claims and reinforcing the centrality of proof and causation in infrastructure-related arbitration.

ABOUT THE AUTHORS

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AFRICA

South Africa

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South Africa's arbitration regime occupies a pivotal position in both African and international commerce. Arbitration has been part of South African dispute resolution for generations, and the market has long benefited from a sophisticated community of specialist arbitrators, experienced counsel and well-established institutional practices. As cross-border dealings become more intricate and regulatory demands increase, parties (local and foreign) continue to rely on arbitration for its neutrality, efficiency and commercial acumen. While legislation provides the foundation, it is the depth of expertise within South Africa's arbitral community, supported by credible institutions and a judiciary familiar with arbitral principles, that has cemented the country's reputation as a trusted seat. The system is not static; it reflects decades of accumulated practice shaped by commercial evolution and growing regional integration.

Institutional Reforms and Regulatory Developments

Arbitration is widely used in South Africa for the settlement of commercial and labour disputes. Arbitration is also common across various industries and sectors. International arbitrations have become more prevalent since the introduction of the International Arbitration Act, 2017 ("**IAA**"). The Arbitration Foundation of Southern Africa ("**AFSA**"), for example, registered 21 new international arbitrations in 2024, up from 18 in 2022 and 18 in 2023.

While the Judicial Matters Amendment Act of 2023 introduced a minor technical correction to the IAA, which took effect on 3 April 2024, there are currently no known plans to update the legislation governing inter-

national arbitration in South Africa. Instead, the focus has shifted to institutional capacity-building and technological modernisation. In line with this focus, at the Johannesburg Arbitration Week ("**JAW**") in 2024, the AFSA-SADC Alliance Charter was signed, aimed at harmonising and standardising arbitration practices across the region. This development has the potential to significantly reshape arbitration in the Southern African Development Community ("**SADC**") states by promoting consistency, cooperation, and trust in regional arbitration mechanisms, although its full impact remains to be seen as implementation progresses.

The most significant development on the horizon is the imminent launch of the AFSA e-filing platform. This digital infrastructure represents a crucial step in modernising South Africa's arbitration administration and aligning AFSA's operational capabilities with international best practices. The e-filing platform is anticipated to streamline case management, reduce administrative delays, and enhance accessibility for international parties, thereby reinforcing South Africa's position as a competitive arbitration seat in the region.

In August 2025, the Association of Arbitrators published Guidelines on the Use of Artificial Intelligence ("AI") in Arbitrations and Adjudications, dealing with, among other things, the use of AI in proceedings, core principles, risks and challenges, and practical guidelines for tribunals. This proactive approach to emerging technology demonstrates South African arbitral institutions' commitment to addressing contemporary challenges in dispute resolution and providing guidance to practitioners navigating the intersection of AI and arbitration. It also reflects a broader global movement in dispute resolution, where digital hearings, automated document management, and AI-assisted decision-making are becoming increasingly acceptable, even in complex international arbitrations.

In a further move towards enhancing the attraction of South African seated arbitrations, in October 2025 the Acting Judge President of the Gauteng High Court issued a notice confirming that arbitration-related disputes are eligible to be heard in the Commercial Court, thus providing a faster track for arbitration related court proceedings. The notice emphasises that arbitration matters are deemed to be in the public interest, because the arbitration process is premised on achieving expeditious outcomes. This helps ensure that matters related to arbitration proceedings (such as enforcement of awards or stay applications) are heard by the expedited, more commercially focused arm of the High Court.

Notable Case Law in 2025

The South African Supreme Court of Appeal's decision in *Industrial Development Corporation of South Africa Limited and Another v Kalagadi Manganese (Pty) Ltd*, (661/2024) ZASCA 70 firmly established that disputes arising from international arbitration agreements must be resolved through arbitration rather than domestic courts, reinforcing the principle of party autonomy and South Africa's commitment to honouring international commercial agreements.

The dispute in this matter arose when Kalagadi Manganese attempted to bypass a contractually agreed arbitration clause and bring proceedings before the South African High Court. Clause 40.2.1 of the parties' Common Terms Agreement stipulated that any dispute arising from or in connection with the agreement must be referred to and finally resolved by arbitration under the ICC (International Chamber of Commerce) Rules in London.

Despite this clear provision, the High Court initially *dismissed* the preliminary objection and assumed jurisdiction. The Supreme Court of Appeal overturned this decision. The Court emphasised that the IAA governs international arbitration agreements, and the Common Terms Agreement qualified as such because the parties had places of business in different states and the arbitration seat was in London.

Crucially, Article 8(1) of the UNCITRAL (United Nations Commission on International Trade Law) Model Law on International Commercial Arbitration (1985) (which has been adopted in Schedule 1 of the IAA) requires courts to stay proceedings and refer parties to arbitration unless the

arbitration agreement is "*null and void, inoperative or incapable of being performed.*" The Supreme Court of Appeal stated that this heightens the stringent standard that parties must meet to escape arbitration agreements, reflecting the modern approach of respecting party autonomy and minimising judicial interference.

By aligning South Africa with the modern approach to arbitration that respects party autonomy and minimises judicial interference, this judgment enhances South Africa's attractiveness as a destination for international commerce. It establishes that South African courts will robustly enforce arbitration agreements, ensuring that parties cannot unilaterally abandon agreed dispute resolution mechanisms when litigation appears more convenient. It sends a clear message that arbitration agreements will be enforced according to their terms, providing predictability and confidence to foreign investors and lenders.

Emerging Trends in Arbitration in Southern Africa

Arbitration across Southern Africa is undergoing a period of significant transformation, driven by technological innovation, institutional development, and shifts in regional economic activity. Several developments in recent years point to an evolving landscape that is reshaping how disputes are managed and resolved both domestically and internationally.

As AI becomes more integrated into arbitration practice, concerns around data security, potential bias in predictive algorithms, and the transparency of AI-assisted decision-making are expected to grow. Practitioners and institutions will need to develop clear frameworks to manage these risks while maintaining confidence in the fairness and integrity of the process.

In light of the significant backlogs in South Africa's Courts, particularly in Pretoria and Johannesburg, there is mounting pressure on litigants and legal practitioners to consider Alternative Dispute Resolution ("**ADR**") mechanisms, including arbitration and mediation. The increased reliance on arbitration is not only easing the burden on the courts but also reinforcing arbitration's role as a practical and efficient alternative to traditional litigation.

Global arbitration trends increasingly incorporate Environmental, Social, and Governance ("**ESG**") considerations, and South Africa is no exception. There is growing pressure to adopt "green arbitration" clauses and promote sustainable dispute-resolution processes. This includes measures such as limiting unnecessary travel, encouraging virtual hearings, and reducing the environmental footprint of large-scale disputes.

Third-party funding is gaining traction in South Africa as arbitration becomes more sophisticated and more frequently used for high-value commercial disputes. When AFSA amended its International Arbitration Rules in 2021, it expressly provided for third-party funding arrangements, paving the way for greater acceptance and regulatory clarity in this space. Although the third-party funding market in South Africa remains relatively small, the adoption of these rules and the growing complexity of commercial disputes suggest that interest in and availability of third-party funding will continue to rise. This trend is particularly relevant for parties seeking to manage the financial risk associated with large-scale arbitration.

Several key sectors are expected to fuel continued growth in arbitration across Southern Africa and the broader continent:

- **Infrastructure:** Ongoing development projects across SADC member countries, often involving cross-border components, are likely to generate substantial construction and infrastructure-related disputes.
- **Energy and Natural Resources:** With South Africa's resource-rich landscape and Africa's broader energy transition, disputes in mining, oil and gas, and renewables are expected to remain prominent.
- **Technology and Telecommunications:** As digital infrastructure expands across the continent, so too does the potential for technology and telecom-related disputes, particularly in commercial contracting and cross-border service agreements.

Conclusion

South Africa’s prospects in arbitration are underpinned by a long-standing tradition of arbitral practice, highly specialised practitioners and a judiciary that has engaged with arbitration for decades. As African commercial activity expands and investor expectations become more exacting, the country’s established strengths, which are credible institutions, seasoned arbitrators and a mature legal culture, provide a solid basis for continued growth.

To maintain and extend its position, South Africa continues to reinforce institutional quality, ensuring consistent judicial support, and integrating further into regional and international arbitral networks. The increasing sophistication of disputes arising on the continent, together with rising expectations around efficiency, enforceability and governance, present opportunities for South Africa to leverage its depth of expertise.

South Africa's potential continues to grow, building on sustained collaboration across institutions, practitioners and the courts. With a strong historical foundation and a highly skilled arbitral community, South Africa is well placed not only to remain a reliable seat, but to strengthen its standing as a preferred arbitral hub in the region and beyond.

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AFRICA

Tanzania

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The key developments in arbitration in Tanzania in 2025 emanate from judicial decisions giving interpretation to the provisions of the Arbitration Act. This discussion examines the Courts approach towards arbitration agreements with specific consideration on instances when questions arise regarding their scope, validity or enforceability. It explores the extent of the Court's intervention when presented with an ambiguous arbitration agreement and the parties' intention to resolve disputes through arbitration.

Arbitration Act [CAP 15 R.E 2023]

*The Arbitration Act CAP 15 Revised Edition 2023 ("**the Act**") came into force on 1st July 2025 as stipulated by the Government Notice No. 262 of 2025. The Act has not introduced any significant amendments to the Arbitration Act of 2020 ("former Act'), apart from correcting minor clerical errors. However, a notable change, which is discussed in detail below, is evident from the Act.*

Powers of the Arbitral Tribunal on Default by the Claimant

The powers of the arbitral tribunal upon a party's default in compliance and/or failure to take essential steps for conduct of arbitral proceedings in an expeditious manner are governed by Section 48 of the Act. While the former Act did not establish the power of the arbitral tribunal where default is occasioned by the Claimant and there is a risk or potential risk of failing to fairly resolve the claim, but only established the powers where the default would lead to prejudice to the Respondent, the same has been rectified by the Act. The arbitral tribunal now has the power to make an award dismissing the claim by the Claimant if the default may lead to a risk of not having a fair resolution of the claim.

Further to the amendment, the year 2025 has seen several significant judicial decisions addressing legal questions and establishing precedents in arbitration through the interpretation of the Act. This comes as a result of the increase in reliance on arbitration as a mechanism for the settlement of disputes between parties. A search on TANZLII shows that until November 2025 there has been a total of 189 judgments on arbitration from both the Court of Appeal (127 decisions) and the High Court Commercial

Division (62 decisions) reported for 2025. From these reported decisions, this article presents decisions worth noting with a remarkable impact on the interpretation of crucial provisions of the Act.

Tanzania As a Pro–Arbitration Jurisdiction

On 25 April 2025, the High Court of the United Republic of Tanzania (Commercial Division) pronounced two Rulings of significance in the interpretation of arbitration agreements and the Arbitration Act. These are *Oasis Brand Tanzania Limited v. Nancy Senyoni* (Commercial Application No. 028130 of 2024) [2025] TZHCComD 74 (25 April 2025) and *Lipton Teas Infusions Tanzania Limited v. C. H. B. S LTD* (Commercial Case No. 11123 of 2024) [2025] TZHCComD 79 (25 April 2025), all decided by Hon. Gonzi, J.

From the outset, it should be noted that both cases were decided in 2025 but before the coming into force of the Arbitration Act of 2023, hence, the decisions refer to the Arbitration Act of 2020 whose provisions as highlighted above are *para materia* to the current Act.

In *Oasis Brand Tanzania Limited*, the Applicant lodged an application under Section 95 of the Civil Procedure Code and Rule 5 of the Civil Procedure (Arbitration) Rules for the court to invoke its inherent powers and proceed to grant an order appointing a sole arbitrator over a dispute between the parties. The application resulted from the parties' failure to agree on the selection of an arbitrator. In determining the questions posed before it, the court determined that:

- Pathological clauses in arbitration agreements are poorly drafted or ambiguous provisions that hinder the execution of arbitration proceedings. The court found that there are two judicial approaches to tackling this hurdle. The first approach is to be taken by a court that is not in a pro-arbitration jurisdiction, where the jurisdiction of an arbitrator explicitly emanates from the arbitration agreement. The interpretation of the arbitration clause (agreement) by the court in such a jurisdiction is narrow to the extent that an ambiguous arbitration clause is interpretated against both parties' intention to refer their dispute to arbitration. This, in turn, has the effect of giving mandate to the court's interference in arbitration proceedings.

  The second approach is taken by courts in a pro-arbitration jurisdiction. It is centred around the parties' intention to resolve the claim through arbitration, which is to be upheld despite the presence of an ambiguous and poorly drafted arbitration clause. The court ruled that courts in Tanzania are in a jurisdiction which is pro-arbitration, as evidenced by the provisions of Section 14 (1) and (3) of the Act, which calls upon the court to refer parties to arbitration where an arbitration agreement exists. The Court cemented its holding that Tanzania takes a pro-arbitration approach by making reference to Article 107 A (2) (d) and the Civil Procedure Code, which emphasizes the settlement of disputes by alternative mechanisms.
- What comes after the court determines an arbitration clause as being pathological? The court found that the result of a pathological clause, such as the one leading to the dispute laid before it, was to put parties in a deadlock insofar as the choice of arbitrators is concerned. It is at this point that the court has now been called upon to first cure the deficiency in the pathological clause by "*augmenting or supplementing*" the pathological agreement in a manner that makes it effective and does not interfere with parties' autonomy in arbitration. This can be done by subjecting the pathological agreement to institutional arbitration and rules of the institution which take into consideration the principle of party autonomy.

Similarly, in Lipton Teas Infusions Tanzania Limited, the suit emanated from a construction agreement between the Plaintiff and the Defendant. where the Plaintiff claimed for payment of 167, 397.511.70 Tanzanian

Shillings and interest both at commercial rate of 18% and interest on decretal sum at the court rate of 7% per annum. While filing its Written Statement of Defense, The Defendant lodged a preliminary objection against the claim on the basis that it was instituted prematurely because of the presence of an arbitration clause. In determining the case the Court found that the arbitration clauses between the parties were pathological clauses which were poorly drafted. The same two approaches of dealing with pathological clauses were also discussed in this case. The first approach is for Courts in a pro-arbitration jurisdiction when faced with pathological clauses, the Court will give effect to the parties' intention to arbitrate by upholding the arbitration clauses despite the anomaly. The second approach is practiced by Courts not in a jurisdiction that is pro-arbitration where the Courts interpret an arbitration clause narrowly and any ambiguity is to be resolved against the parties.

These two cases have established that the court's role in relation to pathological arbitration clauses does not end in identifying and pinpointing the clauses. It further extends to giving effect to the arbitration agreement by amplifying the pathological agreement to make it effective while upholding the principle of party's autonomy. This position is exemplified by the Court in Lipton Teas Infusions Tanzania Limited where the parties' initial agreement provided for settlement of disputes through arbitration by a non- existing institution that is the Tanzania Arbitration Association. The Court found that although this clause was salvageable, the best approach to uphold the party's intention to arbitrate is to subject/direct the parties to an ideal existing arbitration institution with prevailing institutional rules.

These include institutions such as the Tanzania Institute of Arbitrators ("**TIArb**"), the National Construction Council ("**NCC Tanzania**"), and the Tanzania International Arbitration Centre.

Parallel Proceedings Before the Court of Law and an Arbitral Tribunal

In *Arab Contractors (Osmond Ahmed Osman & Co Limited) and Another v. Tanzania Electric Supply Corporation (TANESCO) and Another* (Miscellaneous Commercial Application No. 000009573 of 2025) [2025] TZHCComD 247 (29 August 2025), the applicant instituted an application for the court to grant an order for stay of proceedings of a commercial case pending the conclusion of ongoing arbitration between the applicant and the 1st respondent. In determining the application before it the Court established that there is no law mandating it to order stay of proceedings pending determination of a related issue through arbitration where there is no arbitration agreement providing for reference of the matter to arbitration. The Court established that the test to be used when determining an application for stay is the existence of a valid and enforceable arbitration agreement.

The Court found that pursuant to the provisions of Section 14 (3) and 15 (5) of the Act, the conduct of what it termed as "parallel proceedings" is allowed if the dispute is the same before both the court of law and an arbitral tribunal, even in instances where there is an arbitration agreement. That, the court may permit such a situation where the court: (a) does not find it fit to refer the dispute to arbitration; (b) where the court refuses to refer the dispute to arbitration; or (c) where the court refuses to stay a suit pending referral to arbitration. Despite the arbitration agreement, proceedings before the court are to be regarded as valid since arbitration is regarded as a condition precedent to institute legal proceedings in respect of the same dispute.

The Principle of Separability in *Softpawa Limited v. Nanovas Tanzania Limited and 2 Others* (Misc. Commercial Cause No. 19565 of 2024) [2025] TZHCComD 192 (25 July 2025) the applicant prayed for, *inter alia*,

the recognition as final and binding the award of the sole arbitrator in Tanzania, in an arbitration where the seat of arbitration was England and Wales. In determining the various matters laid before it in relation to the arbitration proceedings, the Court found that:

- The respondent is precluded from challenging the validity of the arbitration agreement before the domestic court. This is because a claim of validity of an arbitral agreement is part of the elements of substantive jurisdiction of the arbitral tribunal, which were already determined by the tribunal, and the respondent had not raised the challenge under the laws of England and Wales before the arbitrator. This restriction is also presented under Section 80 (1) and (2) of the Act.
- A challenge of an agreement between the parties does not translate to a challenge of the arbitration agreement. The court found that the two agreements are regarded as separate agreements by the doctrine of separability pursuant to Section 12 of the Act. As such, the Court went further to regard the conduct of the parties upon occurrence of the dispute as significant in supplementing the application of the separability principle. The Court found that the act of exchanging written correspondences between parties after occurrence of the dispute as well as taking part in the arbitration without objecting to the existence or validity of the arbitration agreement are all impliedly regarded as waiver to a claim of lack of substantive jurisdiction.

This decision has further expanded the applicability of the principle of separability in Tanzania. A party to an arbitration agreement cannot escape obligations arising out of the agreement in instances where upon occurrence of a dispute they took part in the arbitration process.

Conclusion

The recent legislative and judicial developments signify Tanzania's commitment to bring attention to and uphold settlement of disputes through arbitration. The Court is also seen to maintain its position to reduce interference in arbitral proceedings and give room to the parties to determine their proceedings in a manner agreed by them. This has in turn led to an increase in the use of alternative dispute resolution mechanisms to settle disputes rather than total reliance on litigation.

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AFRICA

Togo

2025 was a year of consolidation for refereeing in Togo. Significant innovations, improvements, and advances were introduced in Arbitration and Mediation.

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Digital Transformation of Institutional Arbitration: The Launch of CATO's Online Platform

As part of efforts to enhance the influence of national arbitration centres, the Court of Arbitration of Togo ("**CATO**") has taken an important step toward modernizing of its services with the official launch of its new digital platform. It is now possible for any natural or legal person to submit their commercial disputes online.

This platform reduces the time it takes to process files and increases the transparency of the process, by offering fully digitized management, from the submission of requests to the final decision.

The Minister of Trade said that "this is a step towards the complete digitalization of arbitration procedures". The President of the Chamber of Commerce and Industry of Togo ("**CCI-T**"), for his part, stressed that this initiative strengthens the business climate by ensuring a secure legal environment for economic operators and investors.

This approach is part of the national strategy for the digitalization of public services, aiming to achieve 75% of dematerialized procedures in Togo by 2025.

Created in 1989, the Court of Arbitration plays a major role in providing a reliable framework for economic operators to resolve their disputes, thus contributing to the security of the business sector in Togo.

Mandatory ADR in Land Disputes: Legislative Recognition of Arbitration and Mediation

In the same spirit, the previous year Interministerial Order No. 728/MUHRF/MJL of 23/08/2024 of the Ministers of Urban Planning, Housing and Land Reform, and Justice was signed.

Through this regulatory instrument, OHADA mediation and arbitration are now formally recognised as lawful mechanisms for the resolution of land disputes in Togo. In accordance with the Uniform Act on the Law of Arbitration and the Act on Mediation, both adopted on 23 November 2017, arbitration and mediation are accepted as alternative methods of dispute resolution in land matters alongside conciliation. The decree is

not limited to offering the parties to a land dispute the option to resort to these alternative methods, because Article 4 specifies that "Any referral to the courts must be preceded by one of the alternative methods of dispute resolution". Article 5 adds that "Before any case in land matters is enrolled, the court seized shall ensure that the parties have previously had recourse to one of the alternative dispute resolution methods". In view of the large number of disputes in land matters in our States, this prior recourse to ADRs must be seen as a solution to relieve court congestion (See Yvette Rachel Kalieu Elongo, 'La consécration de la médiation et de l'arbitrage OHADA comme modes de règlement des litiges au Togo' (2024/6) 78 ERSUMA Bulletin of Professional Practice). But, beyond that, an amicable settlement of land disputes should contribute to promoting peace in families and communities, in view of the fact that many land disputes oppose family members or people belonging to the same communities. Ideally, whatever the outcome of the disputes, the parties should continue to coexist peacefully.

Promoting Arbitration Through Dialogue: "The Power of L.A.W." and Lomé's Growing Regional Role

- Togo was highlighted by organizing the 1st edition of the event "The Power of L.A.W." on February 05 to 08, 2025, in Lomé. This international meeting brought together experts, practitioners, and operators from the maritime and financial sectors to discuss the challenges and prospects of arbitration in Africa.

"The Power of L.A.W." was organized by the International Arbitration and Mediation Center ("**CIAM**") in collaboration with the International Association for the Development of Arbitration in Africa ("**AIDAA**"), with partners such as Jus Mundi.

The organizers aim to make "The Power of L.A.W." an essential annual event to influence arbitration among economic operators in Togo and beyond. It brings together professionals from the maritime and financial sectors, as well as national and international legal actors, to discuss the challenges and opportunities of alternative dispute resolution methods in Africa, under the chairmanship of seasoned panelists.

This meeting highlighted Lomé's privileged and attractive position as a leading economic hub in Africa. Home to renowned regional financial institutions such as BOAD, EBID, ETI, and CICA-RE, Lomé, through this event, reinforces its reputation as a major sub-regional financial center. In addition, with the Autonomous Port of Lomé, the Togolese capital offers a conducive environment for business and attracts more and more international investors.

Created in 2019 by AIDAA, the CIAM is an institution specialising in the settlement of maritime and financial disputes. Since its creation, CIAM has established itself as an international reference, offering arbitration and mediation solutions adapted to the needs of economic operators in the sector.

Institutional Reform at the OHADA Level: Centralising Arbitration Administration at the CCJA

- At the community level, reform of the Common Court of Justice and Arbitration ("**CCJA**") in OHADA arbitration has been implemented through the establishment of the Arbitration Proceedings Monitoring Committee.

Indeed, Resolution 121/2025 of June 27, 2025, establishes a single *Procedure Monitoring Committee*, centralizing the OHADA arbitral administration for more efficiency, transparency, modernization, sustainability, and optimization.

This resolution is based on the following legal bases:

- The Treaty of Port-Louis of 17 October 1993 was amended in 2008.
- The CCJA Rules of Procedure and Arbitration Rules.
- The CCJA's Rules of Procedure for Arbitration were approved by the Council of Ministers on 17 October 2023.

These texts empower the general assembly to organise internal governance and to designate the competent administrative bodies. As of 1 July 2025, the Proceedings Monitoring Committee is established as the sole body of arbitral administration. The resolution revokes the previous resolution dated 22 November 2023 regarding the administration of proceedings.

Centralization within a single body has several advantages, including the clarification of the chain of administrative responsibility; the guarantee of continuity thanks to the substitute mechanism; the strengthening of transparency through the traceability of acts; and the reduction of conflicts of competence between services.

The reform is part of the international dynamic of the professionalization of arbitration administrations and is perceived as a breath of fresh air, announcing the modernization and strengthening of the Arbitration Center through the unification of administrative management. The Procedures Monitoring Committee becomes the central body for all administrative matters related to CCJA arbitrations. Centralization promises to simplify processes and speed up file processing. This decision consolidates the position of the Arbitration Center within the OHADA system and underlines its strategic role.

These elements bear witness to a resolutely modern orientation, aimed at improving the responsiveness and quality of the refereeing service.

Resolution No. 121 of June 27, 2025 marks a decisive step forward for CCJA-OHADA arbitration. By establishing a single Monitoring Committee and a back-up mechanism, the CCJA is enhancing the coherence, transparency, and efficiency of its procedures. The new breath of fresh air brought by this reform must now be measured by its practical application and its impact on arbitral governance.

Conclusion

These initiatives, institutional and digital reforms, are updates of practices to promote and make Togolese arbitration competitive in the regional space and at the international level, and thus attract investors.

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AFRICA

Uganda

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A Watershed Year for Ugandan Dispute Resolution

The year 2025 represents a landmark period in the evolution of Uganda's Alternative Dispute Resolution ("**ADR**") framework, particularly concerning commercial arbitration.

The developments in 2025 were dominated by two powerful, converging forces: a major government-led legislative reform impacting the country's public arbitral institution, and a series of definitive decisions from the Ugandan courts. These judicial decisions have vigorously reinforced the foundational principles of party autonomy, arbitral finality, and a stringent "hands-off" approach to court intervention.

Legislative Highlights: The Restructuring of Institutional Arbitration

The Arbitration and Conciliation Act, Cap 4 (now Cap 5) ("**ACA**") was enacted to amend the law relating to domestic arbitration, international commercial arbitration, and enforcement of foreign arbitral awards. It was also enacted to define the law relating to the conciliation of disputes. The statute provides for the procedure for conducting arbitral proceedings in Uganda as well as recognition and enforcement of domestic arbitral awards and foreign awards under the New York Convention (1958) and International Center for Settlement of Investment Disputes ("**ICSID**") Convention (1965).

The Centre for Arbitration & Dispute Resolution ("**CADER**") is a body that was established under Section 67(1) of the ACA. Section 69 of the ACA provides that CADER was to be governed by a council comprising the chairperson, an executive director, the president of the Commercial Court, three representatives from existing private sector organizations, and a representative of the Uganda Law Society.

CADER, under section 68 of Cap 4, was to play a number of roles, namely:

- acting as an appointing authority for arbitrators and conciliators;
- establishing a roster of competent and qualified arbitrators, making rules;
- administrative procedures and forms for the effective performance of arbitration; and
- qualifying and accrediting of arbitrators.

The single most consequential legislative action regarding arbitration in 2025 was the final implementation of the amendments to the ACA, which were presented in the Arbitration and Conciliation (Amendment) Act,

2024. Assented to by the President of the Republic of Uganda on 18th December 2024, the operational changes became fully effective in 2025, fundamentally altering the institutional landscape of the CADER.

The Dissolution and Mainstreaming of CADER

Among the key amendments was the dissolution of CADER as an independent, self-accounting statutory body corporate and its re-establishment as a department in the Ministry of Justice and Constitutional Affairs ("**MoJCA**"), retaining the CADER acronym for continuity. The rationale for this drastic institutional shift stemmed from persistent, well-documented governance and financial crises. CADER had often failed to operate with a legally constituted Governing Council, as required by Section 69 Cap 4 of the ACA. The High Court had also previously ruled against the Executive Director's attempts to unilaterally exercise the Council's powers under Section 69, rendering some administrative decisions, such as the appointment of arbitrators, *ultra vires* and subject to judicial review in *International Development Consultants Ltd v. Jimmy Muyanja & Others* (Miscellaneous Cause No. 133 of 2018). This decision had the effect of stripping CADER of its power to act as an appointing authority under Section 2 of the Act. Additionally, despite its mandate to be self-sustaining, CADER was chronically underfunded by the Government for over two decades, relying on often-ephemeral external donor support. Reports also indicated failures in depositing collected arbitration fees into the Consolidated Fund, a critical violation of public financial management regulations.

The Judicial Response to the Institutional Vacuum

Following its dissolution and restructuring, CADER's role as the statutory default appointing authority under Sections 11, 51, and 68 of the Act posed an immediate operational challenge, particularly for contracts in which the arbitration clause did not name an institution or the parties were unable to agree on the appointment. The High Court demonstrated remarkable pro-arbitration adaptability, refusing to let the institutional vacuum frustrate party autonomy. Faced with a valid arbitration agreement but a functionally unavailable appointing authority, the courts had to interpret the law judiciously to "breathe life" into the arbitration clause.

In cases such as *LABX Scientific Ltd v. Katakwi District Local Government and Attorney General* (Miscellaneous Cause No.02 of 2025), the High Court proactively exercised its powers to appoint an alternative institutional body, such as the International Centre for Arbitration and Mediation in Kampala ("**ICAMEK**"). ICAMEK was issued with an instrument by the Minister of Justice and Constitutional Affairs on 23rd April 2019, which designated it as an appointing authority under the Act. This decisive action by the courts prevented the reform from becoming a tool for delaying dispute resolution and underlined the judiciary's commitment to upholding the parties' contractual intent to arbitrate. While the judicial response was swift and effective, the long-term success of the new institutional model hinges on the operational independence granted to the CADER department within MoJCA. The international arbitration community will closely monitor whether the department can now attract and manage high-profile cases, given the political and financial stability it lacked in its previous iteration.

Key Judicial Decisions: Upholding Finality and Independence

Beyond reacting to the legislative changes, the Ugandan Judiciary in 2025 continued its robust development of arbitration jurisprudence, notably reinforcing the finality of awards and setting high standards for arbitral fairness in both domestic and international contexts.

Arbitral Finality: The Restriction on Appeals

The Courts in Uganda have not allowed challenges to arbitration awards via the general avenues provided by the Civil Procedure Act. This decisive principle was affirmed in *Simba Properties Investment Co. Ltd and Others v. Vantage Mezzanine Fund II Partnership and Another* (Civil Application No. 231 of 2025). The Court of Appeal of Uganda ("**Court**") conclusively ruled that no inherent right of appeal exists from interim orders or decisions of the High Court during proceedings under the Act, effectively closing any potential procedural loophole that allowed parties to frustrate the process through multiple appellate layers. Further to this, in *Simba Properties Investment Co. Ltd and Others v. Vantage Mezzanine Fund II Partnership and Another* (Civil Application No. 1295 of 2023), the Court held that an appeal against interlocutory orders in arbitration proceedings does not lie to the Court of Appeal unless expressly provided by law. These rulings cement the doctrine that parties who choose arbitration inherently waive their right to the extensive judicial review available in civil litigation. The decision is vital for international commerce, as it guarantees that an arbitral process, once initiated, cannot be indefinitely stalled by domestic procedural appeals.

Arbitrator Independence and the Appearance of Bias

The Courts dedicated significant attention to reinforcing the integrity and independence of the arbitral process, particularly focusing on the grounds for setting aside a domestic award under Section 34 of the ACA, specifically regarding impartiality.

In *China Railway 18th Bureau (Group) Co. Ltd v. Tumo Technical Services Limited* (Miscellaneous Cause No.72 of 2025), the High Court held that an arbitrator has an absolute, continuing duty to disclose any past, present, or prospective relationship, professional connection, or financial interest with any of the parties, their counsel, or the subject matter of the dispute. In *Kenlloyd Logistics (U) Limited v. Fratch AG* (Miscellaneous Cause 78 of 2023), the High Court set aside an arbitral award citing the arbitrator's abdication of duty when he failed to ensure a fair and complete record and conducted himself in a manner raising suspicion of partiality. As such, the standard for bias is not restricted to proof of actual bias which is notoriously difficult to prove.

Enforcement of Foreign Arbitral Awards: A Pro-Creditor Stance

Uganda's commitment to the New York Convention remains unwavering, cementing its position as a highly enforcement-friendly jurisdiction. The 2025 judicial approach was characterized by a strict and narrow interpretation of the Convention's defence grounds, particularly the elusive "public policy" exception. The landmark High Court decision in *Kampala International University v. Housing Finance Company Limited* (Arbitration Causes No. 0038 and 0046 of 2024 (Consolidated)) ("***Kampala International University***") in granting enforcement of a foreign award under the New York Convention, reiterated a high-water mark for a public policy challenge. The High Court held that the public policy defence against enforcement of arbitral awards is reserved only for circumstances where enforcement would violate the country's most fundamental principles of justice and morality, constitutional law, or national interests. The High Court reaffirmed that Ugandan courts could not review the merits of an arbitral award, thereby emphasizing the principle of finality.

A crucial pro-creditor outcome of the *Kampala International University*

case was the High Court's explicit confirmation of the principle of parallel enforcement. The court permitted the creditor to pursue enforcement of the award in Uganda even where the award had already been recognized as a judgment in Kenya, provided the underlying debt remained unpaid. This principle prevents debtors from using foreign judgment recognition as a shield against asset tracing and enforcement in Uganda, thereby empowering creditors to efficiently pursue debtor assets across multiple jurisdictions.

Procedural Clarity: Foreign Entities and *Locus Standi*

A significant procedural clarification that directly benefits international trade and finance was delivered by the Court of Appeal in 2025 regarding the legal capacity of foreign entities to enforce contractual rights, including arbitration clauses.

In *Vantage Mezzanine Fund II Partnership v. Uganda Registration Services Bureau and Others* (Civil Appeal No. 263 of 2022) ("***Vantage Mezzanine Fund II Partnership***"), the Court of Appeal overturned a High Court ruling that had previously caused concern among international lenders. The Appellate Court held that a foreign partnership or financial entity that merely provides a loan facility or invests capital in a Ugandan company is not required to register locally under the Partnership Act or Business Names Registration Act to possess the *locus standi* (legal standing) to enforce its contractual agreements, including an arbitration clause or a resultant award. The Court correctly reasoned that advancing a loan from abroad does not constitute "carrying on business" within the meaning of the registration statutes. This ruling successfully removes a potentially devastating procedural hurdle for cross-border transactions and reinforces the sanctity of international contractual obligations in Uganda.

Conclusion

The year 2025 was transformative for arbitration in Uganda. On the legislative front, the government's decision to restructure CADER has had an initial disruption, which has caused an institutional vacuum for the appointment of arbitrators under various contracts. However, the immediate judicial response to the CADER dissolution was commendable, upholding the sanctity of arbitration agreements even in the absence of an institutional framework.

The Ugandan courts continue to serve as strong guardians of the arbitral process. The firm restriction on appeals, the strict test for arbitrator independence, and the pro-enforcement stance toward foreign awards, particularly the narrow application of the public policy defence in *Kampala International University*, provide the predictability and finality that international investors demand. The clarification of *locus standi* for foreign lenders in the *Vantage Mezzanine Fund II Partnership* case further removes a major procedural obstacle to cross-border finance. The sole major area requiring legislative attention is the post-award interim relief gap. As Uganda seeks to establish itself as the premier East African seat for arbitration, this final refinement of the ACA will be necessary to fully align the jurisdiction with international best practice and complete the robust, pro-arbitration ecosystem evidenced by the legislative and judicial activity of 2025.

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Asia-Pacific

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Australia

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Australia's arbitration landscape in 2025 has featured notable developments across both the domestic and international spheres. That year included the resolution of a high profile investment treaty claim in the Zeph Investments arbitration, alongside a series of significant decisions shaping the interpretation and enforcement of arbitration agreements and awards. In addition, 2025 marks a milestone for the ACICA (Australian Centre for International Commercial Arbitration), which celebrated forty years of contribution to the growth and practice of international arbitration in Australia.

We start with a review of several significant Australian legal decisions followed by a reflection on the impact of ACICA over the last 40 years.

Significant Australian Decisions

Australia Defeats Investment Treaty Claim

In *Zeph Investments Pte Ltd v. Commonwealth of Australia,* PCA Case No 2023-40, the tribunal comprised of Gabrielle Kaufmann-Kohler as chair and William Kirtley and Donald McRae as co-arbitrators, issued a jurisdictional award in September dismissing the claims brought by Zeph Investments ("**Zeph**"), a Singaporean holding company owned by Australian mining magnate and former politician Clive Palmer.

The arbitration, brought against the Commonwealth of Australia ("**Australia**"), concerned emergency legislation introduced by Western Australia (an Australian State Government) in 2020. That legislation amended the "state agreement" (by extinguishing the arbitration agreement) between Minerology and Western Australia, thereby removing Minerology's ability to pursue damages in the arbitration forum. The emergency legislation was introduced to limit Western Australia's exposure to significant damages (predicted by some experts to potentially reach the State government's annual budget), following two successful arbitration awards on liability in which Minerology (Zeph's subsidiary) had established that Western Australia had wrongly refused to assess its mining proposal.

Following a failed constitutional law claim challenging the emergency legislation, Mr Palmer directed Zeph to commence an investment treaty claim against Australia under the Agreement Establishing the ASEAN - Australia - New Zealand Free Trade Area (2009) ("**AANZFTA**"), claiming US$195 billion.

The arbitral tribunal declined jurisdiction, finding that Zeph was not an

"investor" that had made an "investment" within the meaning of the AANZFTA. Zeph was consequently ordered to pay Australia's arbitration costs, which amounted to US$8.9 million.

Mr Palmer has said he intends to challenge the award before the Swiss courts.

Zeph has also brought three further investment treaty claims against Australia that are still pending (PCA Case No 2023-67, PCA Case No 2024-23, PCA Case No 2024-48).

Significant Decisions by Australian Courts

It was a busy year of arbitration decisions before the Australian courts, which delivered a substantial and diverse body of case law touching nearly every stage of the arbitral lifecycle.

In 2025, Australian courts adopted a consistently robust, pro-arbitration posture: compelling parties to honour agreements to arbitrate, respecting the *kompetenz-kompetenz* principle, and deploying an increasingly sophisticated range of remedies to ensure the effective enforcement of foreign awards. At the same time, the courts reaffirmed the narrow boundaries of permissible judicial intervention, maintaining a high threshold for appeals and set-aside applications and emphasising the centrality of party autonomy and finality. These decisions reinforce Australia's standing as a dependable, arbitration-supportive jurisdiction and demonstrate that Australia's courts continue to merit their pro-arbitration reputation. This section provides a snapshot of some of the key decisions issued by Australian courts over the course of the year.

Stays in Favour of Arbitration

Australian courts are required by section 7 of the International Arbitration Act 1974 (Cth) ("**IAA**") to stay proceedings commenced in breach of an arbitration agreement. However, certain matters are not arbitrable under Australian law. This issue of arbitrability arose in the case of *Elecnor Australia Pty Ltd v. Clough Projects Australia Pty Ltd* [2025] NSWSC 610, which concerned a joint venture for a major energy infrastructure project. After Clough entered administration, Elecnor sought declarations and specific performance concerning a buy-out under the joint venture deed, while Clough and its administrators counterclaimed for contribution to substantial performance security calls. Elecnor sought to refer the counterclaims to arbitration in Singapore.

The Supreme Court of New South Wales accepted that the arbitration clause was mandatory and broad enough to capture the counterclaims and stayed them accordingly. However, Elecnor's own claims were not stayed, as they raised matters under the *Corporations Act 2001* (Cth) and the operation of a deed of company arrangement. The Court considered that these issues were not 'capable of settlement by arbitration', recognising that they involved more than merely the settlement of a private dispute.

Enforcement Against Sovereign States

Next, investors are increasingly turning to the Australian courts to seek recognition and enforcement of foreign arbitral awards rendered against sovereign States.

The Republic of India v. CCDM Holdings LLC [2025] FCAFC 2 arose from an award obtained by investors in an ad hoc arbitration against India under the Mauritius–India BIT (1998). India resisted enforcement in Australia on the basis that 'a foreign State is immune from the jurisdiction' under section 9 of the Foreign States Immunities Act 1985 (Cth).

At first instance, the Federal Court of Australia found that a statutory exception to State immunity applied: by signing the New York Convention, India agreed that Australia would recognise arbitral awards within the Convention's scope, including awards involving India as a party. India's ratification of the Convention thus constituted a 'submission by agreement' to proceedings in Australia. This finding was overturned by the Full Court of the Federal Court of Australia based on India's reservation

under Article I(3) of the New York Convention. The reservation limits the application of the Convention to legal relationships considered as commercial under Indian law. The Full Court found that: (i) India did not submit to Australian proceedings falling outside that reservation; and (ii) the award did not concern a 'commercial' relationship as it arose from India's obligations under the relevant BIT. This decision may have broader implications given the number of States that have made similar Article I (3) reservations. An appeal was heard by Australia's apex court, the High Court of Australia, in early November 2025.

Blasket Renewable Investments LLC v. Kingdom of Spain [2025] FCA 1028 concerned the recognition of four ICSID awards handed down against Spain under intra-EU BITs following Spain's repeal of certain renewable energy subsidies. Spain argued unsuccessfully that it had not waived foreign State immunity in acceding to the ICSID Convention, and further contended that the High Court's decision in *Kingdom of Spain v. Infrastructure Services Luxembourg Sàrl* [2023] HCA 11 was wrongly decided. Spain provided that any immunity it waived in acceding to the ICSID Convention could only extend to awards that are binding. Relying on the *Achmea v. Slovakia* and *Komstroy v. Moldova* decisions, Spain argued that the four awards were not binding as they were inconsistent with EU foundational treaties. The Federal Court rejected these arguments and found in favour of the award creditors, dismissing Spain's EU law-based objections and State immunity defences.

Set Aside Applications

Consistent with the supportive approach to the enforcement of awards, Australian courts have required applicants to meet a high threshold before they will intervene to set aside arbitration awards. It is only in clear situations of procedural unfairness or a manifest legal error that the courts traditionally intervene.

In *Clarke Energy (Australia) Pty Ltd v. Power Generation Corporation (Trading as Territory Generation) and Robert Holt KC* [2025] QSC 6, Clarke sought to set aside a partial award on public policy grounds, alleging denial of procedural fairness. The Supreme Court of Queensland rejected the application, finding that the allegedly overlooked issue was neither properly pleaded nor squarely within the arbitrator's remit and, in any event, had been considered. The Court emphasised that an arbitrator is not required to expressly navigate all submissions advanced by the parties; an issue can be implicitly resolved within the reasoning of the award. The application to set aside was therefore dismissed. The key takeaway is that arbitral awards will not be set aside for procedural imperfections unless they result in a fundamental denial of justice.

This standard was found to be met by the Supreme Court of Western Australia in *Fremantle Port Authority v. Martin* [2025] WASC 301. The arbitrator, who was not legally qualified, adopted a valuation methodology not advanced by either party. The Court held that the arbitrator's approach deprived Fremantle Port of a reasonable opportunity to present its case and resulted in a real risk of a materially different outcome. Accordingly, this amounted to a material denial of procedural fairness. The Court also held that the arbitrator had exceeded the scope of their authority. The referral to arbitration gave the arbitrator the authority to decide points of difference between the valuers appointed by the parties. It did not provide the arbitrator with the jurisdiction to develop their own valuation methodology. This decision demonstrates that while the threshold for intervention is high, Australian courts will intervene where the arbitral process falls short of minimum standards of fairness and fails to provide reasoned consideration of the parties' positions.

ACICA at 40: Four Decades of Shaping International Arbitration in Australia

Going beyond the national courts, another significant milestone was

achieved this year. The ACICA marked its 40th anniversary in 2025, a milestone solidifying its role in positioning Australia as a trusted seat and arbitration-friendly jurisdiction. Initially formed in 1985 as a non-profit public company, ACICA began with a modest remit, primarily appointing arbitrators under the UNCITRAL Rules. Its evolution accelerated in 2005 with the launch of the ACICA Arbitration Rules, cementing its status as a fully-fledged arbitral institution. Subsequent revisions to the Rules in 2011, 2016, and 2021 introduced a range of innovations, including emergency arbitrator provisions and expedited procedures. ACICA is currently preparing its 4th revision to its Arbitration Rules, to be published in 2026.

ACICA's caseload reflects both the scale and diversity of ACICA governed arbitrations. In 2024, ACICA administered 54 matters with a combined quantified case value exceeding AUD 3.315 billion, up 57.9% from 2023. Of note, 46% of new arbitrations in 2024 involved at least one non-Australian party, reinforcing ACICA's international reach. These matters spanned sectors including energy, construction, and technology. Diversity remains a core priority; institutional appointments in 2024 achieved gender parity (50% female), and early 2025 data suggest this trend is continuing. ACICA also reported strong engagement with its digital innovations and sustainability initiatives, including enhanced online case management tools and the launch of its Sustainability Protocol, for which it received the Campaign for Greener Arbitrations Award at the 2025 GAR Awards.

The 40th anniversary was celebrated at a record-breaking Australian Arbitration Week in Sydney (12–17 October 2025). The week commenced with a Welcome Reception at Corrs Chambers Westgarth overlooking Sydney Harbour, attended by over 180 guests.

Yvonne Weldon AM, Sydney City Councillor, commenced the formalities with an inspiring Welcome to Country, followed by welcoming remarks from Joshua Paffey (Corrs Chambers Westgarth and ACICA Vice-President). Judith Levine (Independent Arbitrator and ACICA President) then introduced Her Excellency the Honourable Margaret Beazley AC KC, Governor of New South Wales, who delivered thoughtful opening remarks about the importance of institutions and the rule of law. Diana Bowman (ACICA Secretary General) thanked Her Excellency and introduced the Honourable Stephen Gageler AC, Chief Justice of the High Court of Australia, who delivered remarks about the positive relationship between ACICA and the judiciary, including the combined effort to promote the harmonisation of approaches to arbitration-related court proceedings.

The formalities concluded with a Life Fellow Membership Ceremony, during which Judith Levine awarded Life Fellowships to three former ACICA Presidents, Dr Michael Pryles AM PBM (President from 2002–2008), PAC Member Professor Doug Jones AO (President from 2008–2015) and Ms Georgia Quick (President from 2021–2024), for their outstanding contributions to ACICA, with the certificates being presented by Her Excellency the Honourable Margaret Beazley AC KC.

The flagship International Arbitration Conference, the following day, themed '*Revolutions and Solutions: Future-Proofing Arbitration*', drew more than 300 delegates from 18 countries.

Following a Welcome to Country delivered by Melissa Stubbings (Merana Aboriginal Community Association Inc.), Judith Levine set the tone for the day with an engaging Opening Address, with the Honourable Andrew Bell, Chief Justice of the Supreme Court of New South Wales, then delivering a thought-provoking and insightful Keynote Address on 'AI in International Arbitration'. This was followed by seven panel sessions examining the evolving role of arbitration in an era of global change.

As ACICA looks ahead, its commitment to innovation, diversity, and global engagement ensures that the next 40 years will be as transformative as the last.

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EDITED BY AARON TAN

ASIA-PACIFIC

China

The year 2025 was a significant year for arbitration in China. According to Xinhua News, as of the end of August 2025, China's 285 arbitration commissions/institutions had reached a cumulative total of over 5 million cases. The total value of these cases exceeded RMB 9 trillion. This immense volume shows the deep and growing reliance on arbitration as one of the primary mechanisms for commercial dispute resolution. This growth is not merely domestic, and parties from over 100 countries and regions engaged in Chinese arbitration proceedings in 2025. The disputes spanned many fields, including finance, e-commerce, and construction projects.

Beyond these impressive statistics, 2025 was a year of major legal reform. In September 2025, China passed the revised Arbitration Law, the largest update to the arbitration framework in decades. Set to take effect on 1 March 2026, the new law aligns China's regime more closely with international best practices.

In this 2025 year in review, we will introduce the key changes in the new Arbitration Law. We will also cover other significant updates in its rules and judicial practice from the past year.

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Amendment to China's Arbitration Law

China's Arbitration Law came into force on 1 September 1995 and has only undergone two minor amendments in 2009 and 2017. With the rapid expansion of the arbitration business, the old Arbitration Law struggled to meet the needs of an open and inclusive arbitration legal system. Against this background, the New Arbitration Law was adopted on 12 September 2025 and will officially come into force on 1 March 2026. Expanding from 80 articles in the 2017 revised version to 96 articles, the law introduces significant adjustments. The following analysis is about the core revisions.

Jurisdiction

The revisions to the New Arbitration Law at the jurisdictional level have further expanded the scope of arbitration, strengthened the stability of arbitration agreements, and improved the rules for determining jurisdiction.

Arbitrable Disputes

- Previously, the 2017 Arbitration Law limited foreign-related arbitration to specific disputes in the economic, trade, transportation, and maritime sectors. Article 78 of the New Arbitration Law expands this by adding the phrase "and other foreign-related disputes", which signals a clear expansion beyond those four original categories, allowing a much wider range of disputes involving a foreign element to be arbitrated.
- Article 94 of the New Arbitration Law clearly stipulates that arbitration institutions and arbitral tribunals may accept investment arbitration disputes in accordance with international treaties, filling the previous legislative gap in the field of investment arbitration.

Arbitration Agreements

- Article 27 of the New Arbitration Law clearly states that if a party does not raise an objection to the validity of the arbitration agreement before the first hearing, the arbitration clause shall be deemed valid. This provision is not entirely new. Similar provisions can be found in Articles 13 and 27 of the Interpretation of the Supreme People's Court ("**SPC**") on Several Issues Concerning the Application of the Arbitration Law. Many arbitration institutions have long incorporated this principle into their arbitration rules, such as Article 10(2) of SCIA (Shenzhen Court of International Arbitration) Arbitration Rules 2025 and Article 6 of CIETAC (China International Economic and Trade Arbitration Commission) Arbitration Rules 2024.
- Article 30 of the New Arbitration Law strengthens the doctrine of separability that an arbitration agreement is independent of the main contract, by clarifying that the arbitration agreement remains valid even if the main contract is challenged based on its "formation", "ineffectiveness", or "rescission". This revision echoes judicial practice. On 18 September 2019, SPC issued the [(2019) Zui Gao Fa Min Te 1] Civil Ruling in a case accepted by the China International Commercial Court ("**CICC**") for confirming the validity of the arbitration agreement. The ruling clearly stated that "even if the contracts are not established, the validity of the arbitration clause shall not be affected."

Competence-Competence

- Article 31 of the New Arbitration Law formally establishes the "competence-competence" principle by granting arbitral tribunals the power to rule on their own jurisdiction. Previously, the law vested this power only in people's courts and arbitration institutions. This new legislation codifies a mature practice, as many institutions (like CIETAC and SCIA) had already authorised tribunals to exercise this power through their internal rules.

Arbitration Procedure

Judicial Support for Arbitration

- Articles 39 and 79 expand arbitration preservation by explicitly including "injunctive relief" (a form of conduct preservation) and adding the "pre-arbitration preservation" procedure, which allows parties to apply to the courts for preservation before initiating arbitration.
- Articles 55 and 58 strengthen the judicial assistance for arbitral tribunals in obtaining evidence. Since arbitration institutions lack direct investigative powers, they rely on the courts to issue investigation orders (调查令). The new law formalises this support, codifying an emerging practice already seen in courts such as those in Shanghai (2025) and Guangdong (2024).

Party Autonomy

- The New Arbitration Law further enhances party autonomy. Article 41 clearly stipulates that parties may agree on the method of service, and Article 43(1) allows them to agree on the method of appointing arbitrators.

Principles of Good Faith

- Article 8 of the New Arbitration Law formally incorporates the good faith principle, providing a basic principle for all arbitration activities. This principle was first stipulated in the General Principles of the Civil Law in 1986.
- Article 61 introduces a mechanism to combat bad faith claims, stipulating that the arbitral tribunal shall dismiss the arbitration request if it finds that a party has unilaterally fabricated basic facts or that the parties have maliciously colluded to harm national interests, the public interest, or the legitimate rights of others.

Seat of Arbitration

- The previous Arbitration Law lacked a clear criterion for determining the nationality of an arbitral award. Over time, judicial practice gradually shifted away from using the "arbitration institution's location" as the standard, moving instead toward the internally accepted "seat of arbitration" standard. The New Arbitration Law formally codifies this mature judicial practice. Article 81, within the chapter on foreign-related disputes, defines the "seat of arbitration" and provides a clear basis for determining the nationality of the award, the supervisory court, and the governing procedural law (*lex arbitri*).

Ad Hoc Arbitration

- A major breakthrough is the limited recognition of ad hoc arbitration, which the 2017 Arbitration Law did not provide for. Previously, only institutional arbitration was legally recognised. Article 82 now cautiously permits ad hoc arbitration for specific foreign-related disputes: maritime cases and those involving enterprises in Pilot Free Trade Zones, the Hainan Free Trade Port, or other approved regions; the law also imposes a new procedural step that the ad hoc tribunal must file a record with the arbitration association detailing the parties, seat, tribunal composition, and rules. This provision remains vague and requires further supporting measures.

Arbitration Institutions

Arbitration Institutions

- Article 13 defines arbitration institutions as "public-interest and non-profit legal persons", clearly delineating their role as social service organisations, which helps to strengthen the credibility and impartiality of arbitration.
- Article 26, for the first time, adds a clause on the supervision and guidance of arbitration institutions. However, this new supervisory role is carefully balanced against arbitral independence. Any provisions implying "management" (e.g., Article 14(3) and Article 95) should be understood as being specifically limited to registration work, and must not involve supervising case hearings. In addition, Articles 9 and 24 confirm that arbitration shall be conducted independently, which further strengthens the independence of arbitration institutions.

Foreign Arbitration Institutions

- Article 86 of the New Arbitration Law marks a significant development by confirming, for the first time at the legislative level, that foreign arbitration institutions may establish case management offices in China. They may set up branches in specific areas, such as Pilot Free Trade Zones or the Hainan Free Trade Port, to conduct foreign-related arbitration activities.

Other Judicial and Institutional Developments

In December 2024, the Hong Kong International Arbitration Centre ("**HKIAC**") officially opened its Beijing representative office. This is HKIAC's second office in mainland China, following its Shanghai office. It also marks the first time an international arbitration institution has established a representative office in Beijing.

The Beijing Arbitration Commission/Beijing International Arbitration Court ("**BAC/BIAC**") announced several key developments in 2025. On 15 April 2025, BAC/BIAC released the Med-Arb Expedited Rules, providing a fast-track, cost-effective mechanism to convert settlement agreements into legally enforceable mediation statements or consent awards. Later, on 29 October 2025, the BAC/BIAC adopted new "Domestic Arbitration Rules" and "International Arbitration Rules", which have been in effect since 1 January 2026. Additionally, the institution opened its Hong Kong Center on 12 November 2025. Previously, several mainland arbitration institutions had already established operations in Hong Kong, though in different institutional forms: SCIA HK and SHIAC HK operate as independent arbitral institutions incorporated under Hong Kong law, whereas CIETAC HK and CMAC maintain Hong Kong sub-commission or branch-type entities rather than fully separate institutions.

The SCIA also revised its Schedules of Arbitration Fees and Costs for cases accepted from 1 July 2025. The new schedule aims to optimise fee structures, lower overall arbitration costs, and increase transparency. It also includes incentives for efficient dispute resolution, support for specific industries, and improved hourly billing methods to offer more flexible fee options. Notably, SCIA has long promoted fee relief: back in 2022, it launched a pandemic relief program under which it cut arbitration fees, granted up to 50% reduction for settlement resolved cases, and offered additional concessions for remote hearings.

In October 2025, China's first "maritime mediation + ad hoc arbitration" case was concluded in Pudong, Shanghai. This case, involving a payment dispute between a British and a Greek company, was the first in China to be initiated using an ad hoc arbitration clause from within a settlement agreement. The parties agreed on Shanghai as the arbitration location, applied the "Shanghai Arbitration Association Ad Hoc Arbitration Rules" and selected a sole arbitrator from the association's recommended list.

Chinese arbitral awards are seeing growing success in international enforcement. For example, in July 2025, the Saudi Court of Appeal issued a final judgment upholding the enforcement of a 2024 CIETAC award. Similarly, recently in October 2025, an arbitral award from SCIA was successfully recognised and enforced by the U.S. Federal District Court for the Northern District of Texas.

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Hong Kong

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2025 is another fruitful year for Hong Kong to celebrate significant developments in arbitration, highlighted by its rise to the second most preferred seat globally, the establishment of the International Organisation for Mediation, and a series of landmark court decisions. These developments enhance Hong Kong's appeal as a one-stop hub for international dispute resolution, underpinned by a sophisticated legal system, a deep pool of professional expertise, strong legislative support, and the cutting-edge insights of the legal community.

Hong Kong as the Second Preferred Seat Globally

According to the highly regarded 2025 International Arbitration Survey: *'The Path Forward: Realities and Opportunities in Arbitration'* - School of International Arbitration (the "**Survey**") issued by Queen Mary University of London, Hong Kong was named the most preferred seat in the Asia-Pacific region, with 45% of survey respondents selecting it. Globally, Hong Kong, together with Singapore, ranks as the joint second most preferred seat of arbitration, with 31% of respondents choosing it, just behind London (34%). As mentioned in the Survey (on pages 7-8), the preference for Hong Kong as the seat of arbitration can be attributed to its pro-arbitration legal environment, neutrality, impartiality, and the strength of its national arbitration laws, and close connection with Mainland China.

In addition, this year marks the 40th Anniversary of HKIAC (Hong Kong International Arbitration Centre). Founded in 1985, HKIAC has become one of the leading arbitral centres worldwide. Today, HKIAC's Administered Arbitration Rules rank the most preferred set of arbitration rules in Asia-Pacific and the second most preferred globally. According to the Survey (on page 10), respondents appreciate the sense of innovation in the HKIAC Rules, the "light touch" approach with full respects to parties' autonomy in arbitration administration, and its Policy to maintain administrative function in sanction-related disputes. HKIAC-administered arbitration is also particularly attractive for resolving sino-foreign disputes because parties can apply for interim measures from the Mainland China People's Courts throughout the entire lifespan of the arbitration including the enforcement stage, pursuant to the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region* and *Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region*. Notably, the newly implemented 2024 HKIAC Administered Arbitration Rules | HKIAC ("**2024 HKIAC Rules**")

which feature an updated toolkit, including expanded discretion of arbitral tribunal, power for HKIAC to revoke appointment of arbitrator in exceptional circumstances, consideration of diversity and environmental impact, further enhance Hong Kong's capabilities to facilitate impartial, efficient, secure and socially responsible arbitrations.

Hong Kong Announces Review of Arbitration Ordinance

In 2025, the Legislative Council of Hong Kong announced the plan to review the Hong Kong Cap. 609 Arbitration Ordinance ("**Hong Kong Arbitration Ordinance**"), which has been in effect since 2011. Historical amendments have reflected global trends, including the enforceability of emergency arbitrator orders in Hong Kong, the recognition of the arbitrability of IP disputes, and the removal of restrictions on contingency fees.

A Working Group was formed in late October 2025, chaired by the Secretary for Justice, Mr Paul Lam SC, to advise the Department of Justice to comprehensively study whether further amendments to the Hong Kong Arbitration Ordinance are necessary. According to the Terms of Reference of the Working Group, the potential areas of reform include issues concerning the governing law of arbitration agreement, the scope of disputes for arbitration, the arbitral tribunal's powers and jurisdiction, the court's powers, and the use of artificial intelligence in arbitration. Among these varied and wide areas of potential reform, it is particularly interesting to see whether Hong Kong may adopt similar amendments recently made to the English Arbitration Act, which introduced a new default rule regarding the governing law of the arbitration agreement. The potential changes aim to align Hong Kong's arbitration framework with international best practices, foster cooperation with the newly established International Organisation for Mediation (as introduced below), and reinforce Hong Kong's role as a global dispute resolution hub.

BAC Opens New Office in Hong Kong

On 12 November 2025, the BAC (Beijing Arbitration Commission / Beijing International ArbitrationCourt) officially opened its first overseas office in Hong Kong. BAC becomes the fourth Mainland China arbitral institution to establish a presence in Hong Kong, underscoring the city's growing importance in global arbitration. According to BAC 2024 Work Report (in Chinese), BAC administered a record 14,060 arbitration matters, with over 10,000 cases resolved through expedited procedures. Of these, 277 cases were international arbitrations, with a total disputed amount amounting to RMB 10.4 billion.

The new BAC Hong Kong Centre will advance its services and management systems in line with global best practices, deepen collaboration between Mainland China and Hong Kong, and provide reliable dispute resolution services in support of outbound investment by PRC companies. Notably, BAC Hong Kong Centre has been equipped with arbitration rules in eight languages, including French, Spanish, Russian, Arabic, Japanese, and Korean, to meet the needs of potential foreign parties.

Establishment of the International Organisation for Mediation

Another eye-catching event in 2025 was the inauguration of the IMOed (International Organization for Mediation) with its headquarters in Hong Kong. On 30 May 2025, 33 countries signed the Convention on the Establishment of the International Organization for Mediation ("**IMOed Convention**"), marking the launch of the world's first intergovernmental legal organisation dedicated exclusively to international mediation. The number of Signatory States has since grown to 38, with more countries expected to join.

In the trend of increasing demand for mediation, a more flexible, cost-ef-

fective, convenient and well-implemented alternative dispute resolution method, this institution offers a new option for parties and countries to seek peaceful and reliable settlement of disputes. IMOed will provide comprehensive mediation services with respect to interstate disputes, investor-state disputes as well as international commercial disputes.

Notably, IMOed also intends to address the challenge of the enforceability of the settlement agreement. Specifically, the IMOed grants the Contracting States the authority to directly enforce the settlement agreements reached during mediation, but limited to international commercial disputes between private parties (Article 41(1) of the IMOed Convention). Mediation administered by IMOed remains available and could proceed at any time, even if other dispute resolution processes like arbitration are ongoing (Article 38(1) of the IMOed Convention). Two Panels of mediators will be maintained by IMOed, with one Panel consisting of professionals in political matter to be qualified to deal with inter-state disputes (Article 19(1) of the IMOed Convention).

As of the date of this review, the IMOed Convention is mainly signed by States from Asia-Pacific, Africa and Latin America. While traditional arbitration centres such as Singapore, the UK, and Sweden remain cautious, IMOed's establishment is a significant step forward for Mainland and Hong Kong to jointly strengthen Hong Kong's position as a one-stop international legal hub for dispute resolution. Together with the advanced arbitration system, the IMOed will also appeal to parties to explore more possibilities of hybrid dispute resolution processes such as Med-Arb, Arb-Med, Arb-Med-Arb, etc.

Significant Decisions by the Hong Kong Court

Besides the achievement in building legal mechanisms, there have been a number of significant decisions rendered by the Hong Kong courts in the past year.

Limitation of the *Re Guy Lam* Approach

On 21 October 2025, the Hong Kong Court of Appeal ("**HKCA**") handed down a significant judgment in *Hyalroute Communication v. Industrial and Commercial Bank of China* [2025] HKCA 936 ("***Hyalroute v. ICBC***"), where it for the first time clarified the relevance of merits in an injunction restraining a Cayman winding up in support of Hong Kong arbitration.

In relation to the intersection between insolvency proceedings and arbitration agreements, a series of decisions were issued in recent years. In 2023, the Hong Kong Court of Final Appeal ("**HKCFA**") established the remarkable *Re Guy Lam* approach in *Guy Kwok-Hung Lam v. Tor Asia Credit Master Fund LP* [2023] HKCFA 9, 4 May 2023 ("***Re Guy Lam***"), confirming that an insolvency or winding-up petition should generally be stayed or dismissed if it involves a petition debt subject to an exclusive jurisdiction clause which has similar effect of arbitration clause in terms of reflecting parties' agreement on tribunal-selection. Although the implications of arbitration agreements were not mentioned in *Re Guy Lam*, subsequent decisions in cases such as *Re Simplicity & Vogue Retailing (HK) Co., Limited* [2024] HKCA 299, 23 April 2024 and *Shandong Chenming Paper v. Arjowiggins HKK 2 (II)* [2024] HKCA 352, 23 April 2024 affirmed that *Re Guy Lam* approach was also applicable to arbitration agreements. For details, please see '*2024 Arbitration Year In Review – Hong Kong*'.

In *Hyalroute v. ICBC*, the Plaintiff, acting as the guarantor under a Term Facility Agreement, pleaded for an anti-suit injunction to restrain the Defendant from presenting a winding-up petition in the Cayman Islands

where the Plaintiff is incorporated. The Hong Kong Court of First Instance ("**HKCFI**") dismissed the Plaintiff's anti-suit injunction, holding that the Plaintiff's underlying defence was frivolous and an abuse of process, for which the Plaintiff appealed. After review, the HKCA rejected the Plaintiff's argument that the merits of the Plaintiff's defence against the underlying debt are irrelevant. Instead, Anthony Chan JA made it clear that the lack of any bona fide dispute to the petitioning debt, which may constitute an abuse of process, shall be a strong reason to justify the court's refusal to grant an anti-suit injunction. In so holding, the HKCA for the first time confirmed the applicability of the abuse of process exception set out by the HKCFA in *Re Guy Lam*.

Non-Signatories Can Be Bound by Arbitration Agreements

In two related decisions handed down by HKCFI (with different judges seated), *Techteryx Ltd v. Legacy Trust Company Limited & Others* [2025] HKCFI 665, 11 February 2025 ("***Techteryx v. Legacy Decision 1***") and *Techteryx Ltd v. Legacy Trust Company Limited & Others* [2025] HKCFI 787, 24 February 2025 ("***Techteryx v. Legacy Decision 2***"), the Court affirmed that a non-signatory can be bound by or invoke the arbitration agreement, provided that claim raised by or against the non-signatory is inextricably linked to the contract containing the arbitration clause.

The underlying dispute involves the acquisition of a cryptocurrency business. Disputes arose when the manager transferred funds in the Reserves to its financial adviser, who failed to redeem them as instructed. The plaintiff (the buyer) alleged that fraudulent misrepresentations were committed by, *inter alia*, the seller, the seller's authorised person (an individual) and the financial adviser. Initially, the seller initiated SIAC (Singapore International Arbitration Centre) arbitrations against the buyer and other parties to recover payment under the acquisition instruments. In response, the buyer commenced litigation proceedings in the Hong Kong court, alleging fraud. After the seller obtained an anti-suit injunction order rendered by the Singapore Court, the buyer consented to stay the Hong Kong proceedings against the seller. These two decisions addressed stay applications filed by the authorised person and the financial adviser, both scenarios involved a non-signatory to the relevant arbitration clauses.

In *Techteryx v. Legacy Decision 1*, the financial adviser sought to bind the plaintiff to an arbitration clause executed between the financial adviser and the manager, to which the plaintiff was not a party. After applying the Singapore law which governs the arbitration agreement, by finding a beneficiary derivative claim where the plaintiff was "stepping into the shoes" of the manager, Deputy High Court Judge Jonathan Wong concluded that there was a *prima facie* case that the plaintiff should be bound by the arbitration clause.

As two sides of the same coin, in *Techteryx v. Legacy Decision 2*, the authorised person sought to invoke arbitration clauses contained in the acquisition instruments where he was not a signatory. Applying the Delaware Law applicable to the arbitration agreements, the Honourable Madam Justice Mimmie Chan ("**Mimmie Chan J**") found a *prima case* that the matter in dispute fell within the jurisdiction of the SIAC arbitral tribunal, reasoning that:

- The plaintiff's claims against the authorised person are "*inextricably related to and connected with*" the plaintiff's claims against the seller; and
- The doctrine of equitable estoppel allows a non-signatory to enforce the arbitration agreement against a non-signatory where allegations of "*substantially interdependent and concerted misconduct*" were raised against both the non-signatory and at least one signatory of the underlying contract.

Mimmie Chan J further noted that a similar outcome would be reached under Hong Kong law.

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Over the past decade, legislative reforms and judicial pronouncements in India have aimed to align the Indian arbitral regime with international best practices.

The Supreme Court of India has progressively sought to limit judicial intervention in matters suitable for arbitration (See Duro Felguera v. Gangavaram Port Limited, 2017 INSC 1026 and Vidya Drolia and others v. Durga Trading, 2019 INSC 290). The Court has held that, at the reference stage, courts need only examine the prima facie existence of a valid arbitration agreement (See SBI General v. Krish Spinning, 2024 INSC 532). Notably, challenges based on insufficient stamping have also been held to be outside the scope of a referral court (See In Re: Interplay, 2023 INSC 1066).

The Supreme Court has consistently recognized party autonomy as the cornerstone of arbitration, (See, PASL Wind Solutions v. GE Power Conversion, 2021 INSC 264), allowing parties to adopt bespoke dispute-resolution mechanisms tailored to their specific needs (See Arif Azim Co. Ltd., 2024 INSC 155).

In cases involving related entities, the Supreme Court has applied the "group of companies" doctrine to honor the mutual intent of parties to bind related non-signatories (See Cox and Kings, 2022 INSC 523). Collectively, these judicial pronouncements have significantly transformed the Indian arbitration landscape, advancing it toward a more sophisticated and mature legal regime.

*The year 2025 marked a period of quiet yet meaningful consolidation in Indian arbitration-law jurisprudence. The Supreme Court's prominent decisions this year reflect a balanced mix of restraint and pragmatism. The Court clarified the rare and limited circumstances under which modification of an award is permitted, Gayatri Balasamy ("**Balasamy**") (2025 INSC 605)], explained when delay renders an award "unworkable", Lancor Holdings Ltd. ("**Lancor**"), defined what constitutes consent in an arbitration agreement, Glencore ("**Glencore**") (2025 INSC 1036)], and addressed confidentiality requirements as well as the participation of non-signatories in arbitrations, Kamal Gupta ("**Kamal**") (2025 INSC 975), and Ajay Madhusudan ("**Madhusudan**") (2024 INSC 710)]. Equally*

*noteworthy were rulings that prioritized commercial realities over interventionism Sri Lakshmi Hotel (2025 INSC 1327)].("**Sri Lakshmi**").*

We now take a closer look at several important Supreme Court judgments.

Modification of an Arbitral Award

A five-judge bench of the Supreme Court in *Balasamy* resolved a long-standing controversy regarding whether courts may modify arbitral awards when deciding challenges under Section 34 or in appellate proceedings under Section 37 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**").

By a 4:1 majority, the Supreme Court recognized a narrow power to modify an award, which may be exercised when the offending part can be legally severed and the defect is self-contained, such as typographical or arithmetical errors, clear jurisdictional overreach, or manifest illegality on the record.

While affirming the UNCITRAL Model Law on International Commercial Arbitration 2006's policy of minimal judicial intervention, the majority reasoned that remitting every defective award for re-arbitration undermines the efficiency rationale underlying the Arbitration Act. The Supreme Court therefore permitted "*corrective modification*," limited to substituting an obviously erroneous or patently illegal portion of the award without reopening the merits.

The sole dissenting opinion took the opposite stance, arguing that any judicial modification of an arbitral award, however narrowly defined, amounts to an appellate review of the merits, which is contrary to the limited supervisory jurisdiction under Sections 34 and 37 of the Arbitration Act. The dissent further argued that this blending of functions is fundamentally incompatible with the UNCITRAL Model Law and cautioned that judicial rewriting of an award poses significant risks for international enforceability, as foreign regimes may not recognize a judicially modified award as an arbitral award under the New York Convention (1958).

Delay Rendering an Award "*Unworkable*"

In *Lancor*, the Supreme Court addressed an arbitral award issued after an extraordinary, unexplained delay of nearly 4 years. The Court was particularly troubled that, even after such a prolonged delay, the arbitral tribunal concluded it was unable to offer equitable relief to either party. The award noted that, due to inadequate pleadings and evidence, the parties would have to pursue fresh proceedings, effectively nullifying years of arbitration.

Against this backdrop, the key question before the Supreme Court was whether an arbitral award that is both unreasonably delayed and substantively incapable of resolving the parties' disputes can withstand scrutiny under the Arbitration Act.

The Supreme Court held that delay alone is not sufficient to set aside an award under Section 34 of the Arbitration Act. However, excessive delay that undermines the enforceability of the decision, creates prejudice, or generates uncertainty may render the award inconsistent with fundamental principles of justice and public policy in India. Upon review, the Court found that the arbitrator not only failed to issue the award promptly but also produced an inconsistent and incomplete decision that could not be implemented. The award was therefore set aside. After doing so, the Supreme Court invoked its powers under Article 142 of the Constitution of India to resolve the long-standing dispute by granting appropriate reliefs, acknowledging that the arbitration process had already taken years without a substantial resolution.

Giving Effect to the Commercial Intent of the Parties

In *Sri Lakshmi* (2025 INSC 1327), the dispute arose from NBFC loan agreements where the borrower repeatedly defaulted despite assurances of repayment. The borrower even tendered a cheque for full settlement, which was later dishonoured.

The arbitrator awarded the full amount in default, along with interest at 24% per annum. This high interest rate was expressly agreed upon by the parties, as the case involved high-risk lending to a borrower already in financial distress.

Given this context, the Supreme Court adopted an approach grounded in economic realism. It held that once parties have consciously agreed on a commercial rate of interest, the arbitral tribunal is bound by that bargain, and courts cannot dilute the agreement under the guise of "*unconscionability.*" The Court noted that NBFC lending is a risk-priced business model, where higher interest rates often reflect the borrower's default profile, the urgency of the loan, and the lender's exposure. Accordingly, the Supreme Court refused to treat a high contractual interest rate as a ground for challenge under the Arbitration Act and reiterated that the tribunal's treatment of interest should be upheld.

Fundamentals of an Arbitration Agreement

In *Alchemist Hospitals* (2025 INSC 1289), the Supreme Court revisited the criteria for what constitutes an arbitration agreement under Section 7 of the Arbitration Act. The Court reaffirmed that the hallmark of an arbitration agreement is a clear, written expression of the mutual intention to submit disputes to a private decision-making body. In the case at hand, the clause only required the parties to attempt amicable settlement and, if unsuccessful, to approach civil courts. The Supreme Court held that this clause did not constitute an arbitration agreement.

Relying on *K.K. Modi* (1998 INSC 63) and subsequent cases, the Supreme Court held that an arbitration agreement must have three key elements:

- a written and binding commitment to refer disputes to arbitration;
- a neutral adjudicator whose decision is final; and
- an enforceable process that substitutes the jurisdiction of civil courts.

In *Glencore*, the Supreme Court affirmed that a binding arbitration agreement can be formed through correspondence and subsequent conduct. In this case, the parties exchanged emails agreeing on essential terms and acted upon those terms by supplying goods and accepting delivery. The Court held that, taken together, the correspondence and conduct satisfied the requirements under Section 7(4) of the Arbitration Act.

Confidentiality and Rights of Non-Signatories

In *Kamal*, the Supreme Court held that Section 42A of the Arbitration Act, which mandates confidentiality of arbitral proceedings, is a fundamental and non-derogable aspect of Indian arbitration law. The central question in this case was whether a non-signatory, claiming an interest in the subject matter, could participate in arbitration hearings as an "*observer.*"

The Supreme Court, emphasizing the confidentiality requirements in Section 42A of the Arbitration Act, answered this question in the negative and refused to permit a non-signatory to participate in the arbitral proceedings.

The decision in *Kamal*, when compared with a similar matter decided earlier in *Madhusudan*, highlights the Supreme Court's varied approach to this issue. In *Madhusudan*, the Court adopted a markedly different stance

regarding the presence of non-signatories. Unlike *Kamal*, where confidentiality was paramount, in *Madhusudan*, the Court held that at the referral stage, the examination is limited to a *prima facie* assessment of whether an arbitration agreement exists and whether there is a reasonably arguable case that the non-signatory intended to be bound by it.

What distinguishes the judgment in *Madhusudan* is its recognition that complex commercial and family arrangements often involve groups of entities and individuals operating as a single economic unit. In such cases, requiring strict signature-based consent could undermine the entire transactional structure.

In *Geojit Financial Services*, (2025 INSC 1021), the Supreme Court held that once a party files an application under Section 33 of the Arbitration Act eeking clarifications regarding an arbitral award within the prescribed thirty-day period and notifies the other party, the limitation period to challenge the award under Section 34 begins from the date the tribunal decides that application. This applies regardless of whether the application under Section 33 is allowed or results in a correction.

Challenge at the Execution Stage

In *MMTC Ltd.* (2025 INSC 1279), the key question before the Supreme Court was whether a judgment debtor could oppose enforcement of an arbitral award at the execution stage by alleging fraud and collusion, even after the award had passed scrutiny in two rounds of litigation under Sections 34 and 37 of the Arbitration Act. The Supreme Court ruled that such objections are not permissible. It reaffirmed that an executing court may intervene only if the decree is a nullity due to fundamental jurisdictional defects. Allegations of misconduct, post-award discovery of facts, or accusations of fraud that do not affect the tribunal's inherent jurisdiction cannot be reopened once finality is achieved.

Way Forward

In 2025, the Supreme Court of India strengthened the foundational principles of arbitration and continued to steer India toward becoming a global arbitration hub. This year's jurisprudence reflects a consistent trust in arbitral tribunals to manage procedures, affirms party autonomy, and adopts a cautious approach to judicial intervention, intervening only in exceptional circumstances.

Nevertheless, some tensions remain unresolved. The boundary between acceptable modification and impermissible rewriting of an award under *Balasamy* remains a delicate issue for Indian courts. The decisions in *Kamal* and *Madhusudan* also reflect ongoing debates over the appropriate balance between confidentiality and transparency—a concern likely to intensify with increasingly complex, multi-party arbitrations.

The Ministry of Law and Justice has published the Draft Arbitration and Conciliation (Amendment) Bill, 2024 (**"the Bill"**), which introduces significant institutional changes aimed at streamlining procedures, reducing court involvement, and enhancing institutional arbitration. The Bill seeks to create a more modern and efficiency-focused arbitration framework.

Taken together, the key decisions rendered in 2025 reinforce India's development as an arbitration jurisdiction that prioritizes balanced oversight over heavy intervention, maintaining a strong pro-enforcement stance. The evolving jurisprudence increasingly emphasizes practical effectiveness over rigid formalities, focuses on commercial realities rather than interventionism, and supports party autonomy.

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ASIA-PACIFIC

Japan

Japan continued to sharpen its profile as an arbitration friendly jurisdiction in 2024–2025 through coordinated public–private initiatives and visible community building. After the successful inaugural Japan International Arbitration Week in Tokyo in November 2024, the event has returned on 25–29 November 2025, signaling continued commitment to institutional collaboration and international outreach.

Key highlights from 2025 include:

- *legislative and institutional developments—notably the first full year under the amended Arbitration Act;*
- *ISDS related developments, including Japan's successful defense in an investment treaty case and rising outbound activism by Japanese investors; and*
- *market and policy initiatives that deepen capacity, internationalization, and public–private alignment.*

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Developments in Key Legislation: Arbitration Act

2025 marked the first full year of implementation of Japan's amended Arbitration Act (the "**Act**"), which came into force on 1 April 2024.

The goal of the amendment was to promote prompt, appropriate, and effective dispute resolution in light of the globalization of economic transactions and to align Japan with the UNCITRAL Model Law on International Commercial Arbitration 2006.

Enforcement of Tribunal Ordered Interim Measures (Articles 24, 47–49)

It is now possible to enforce interim measures ordered by the arbitral tribunal to preserve rights and evidence pending the final award. Applicants may seek a decision authorizing civil enforcement of a tribunal ordered interim measure, or a decision permitting the issuance of a monetary payment order for breaches of an interim measure, depending on the types of interim measures granted.

Enforceable measures include orders for preservation or restoration of the subject matter in its pre dispute state to prevent significant harm or imminent danger, as well as measures prohibiting the disposal of assets, acts that obstruct proceedings, and the destruction or alteration of evidence (Article 24, paragraph 1).

The Japanese courts having jurisdiction will grant applications for enforcement unless one of the limited grounds listed in Article 47, paragraph 7 applies (e.g., the arbitration agreement is invalid due to a party's incapacity, or the order for interim measures has been revoked, amended, or suspended by the arbitral tribunal or a competent judicial body).

Although interim measures are now enforceable in Japan, the Act does not provide for the enforcement of decisions issued by an emergency arbitrator. This means that when a party needs provisional measures in Japan before the tribunal is constituted, they must apply to the Japanese courts for a court ordered injunction.

Concurrent Jurisdiction of Tokyo and Osaka District Courts with Respect to Arbitration (e.g., Article 5, Paragraph2)

Previously, parties seeking to have Japanese courts deal with cases in relation to arbitration (e.g., recognition or enforcement of arbitral awards, challenges to arbitral awards) were generally required to file with the district court:

- designated by party agreement;
- having territorial jurisdiction over the seat of arbitration; or
- having general jurisdiction over the other party.

Under the amendment, however, if the seat of the arbitration is Japan, they may now also choose to file with the Tokyo or Osaka District Courts—arguably the two most sophisticated district courts in the country with regard to international business matters—creating the potential for these courts to build on existing expertise and strengthen capacities and experience with arbitration matters.

Translations (Article 46, Clause 2)

Under Article 46(2) of the Arbitration Act, a Japanese translation of a non Japanese award must, in principle, accompany an enforcement petition. However, after hearing the respondent, the court may now waive the requirement in whole or in part, alleviating the procedural burden on petitioners.

Developments in Key Legislation: Act for Implementation of the International Settlement Agreements Convention

Japan's new framework for enforcing international mediated settlements has also undergone changes to complement the changes to the Arbitration Act and strengthening Japan's appeal as a one-stop venue for resolving and closing cross-border dispute. The Act for Implementation of the United Nations Convention on International Settlement Agreements Resulting from Mediation (Act No. 16 of 2023), enacted on 21 April 2023, entered into force on 1 April 2024—the same day the Singapore Convention on Mediation (2019) entered into force for Japan.

Settlement Agreements Resulting from Mediation (Articles 3 and 5)

A court may now order enforcement of an international settlement agreement reached through mediation if the parties have agreed that civil enforcement is possible. The court's decision is subject to specified grounds for refusal, such as questions regarding the validity of the settlement.

Enforceable international settlement agreements are limited to those arising from commercial disputes and do not apply to certain disputes, such as those involving individuals acting in a personal capacity (unless they

are acting as businesses or for their business), family matters, or employment-related disputes.

Prior to this, there was no framework to promptly enforce international settlement agreements.

Jurisdiction of Local Courts with Respect to Mediation (Article 5)

When applying for the enforcement of an international settlement agreement, the applicant may file not only with the district court designated by the parties in the agreement, the district court having jurisdiction over the other party's ordinary place of residence, or the district court having jurisdiction over the location of the other party's property that is the subject of the claim or can otherwise be seized, but also with the Tokyo District Court or the Osaka District Court. This aligns with the amendments to the Arbitration Act.

Digital Court Filings (Article 10)

It is now possible to submit applications for the enforcement of mediated settlement agreements digitally, enhancing the efficiency and accessibility of enforcement.

Increased Investor State Dispute Settlement (ISDS) Activity

While Japan is known for having a relatively disputes-averse culture, recent years have seen increased arbitration activities involving Japanese parties. ISDS activity appears to be no exception.

Shift Energy v. Japan

Japan successfully defended its first investor–state arbitration claim brought under an investment treaty by Hong Kong–based Shift Energy. Although the 2023 award has not been made public, reports indicate that the dispute centered on Japan's reforms to its renewable energy regime after the 2011 Fukushima nuclear disaster.

Beginning in 2012, feed in tariffs ("**FITs**") were offered to renewable investors, leading to significant investment in photovoltaic plants in Japan. However, the regime was progressively revised to include reductions in FITs rates, the introduction of competitive auctions for certain projects, and a move toward a feed in premium ("**FIP**") model in which a premium is paid on top of the market price for many projects. Shift Energy claimed an entitlement to higher tariffs from the year of its certification, however, a tribunal majority ruled in favor of Japan and rejected Shift Energy's claim.

The limited fallout from Shift Energy has not produced the feared cascade of claims – rather, as will be explained below, action in 2025 is outward facing, with Japanese investors increasingly prepared to use treaty mechanisms abroad.

Potential Claim by Japanese Investors Against Switzerland

More recently, Japanese investors have sought damages from Switzerland in relation to the Swiss regulator FINMA's instruction on 19 March 2023, to write down Credit Suisse's AT1 bonds to zero, based on breaches of the Japan–Switzerland Economic Partnership Agreement. Two claims, one brought by a Japanese individual and another by a group of approximately 400 Japanese investors (both represented by Mori Hamada), were registered with ICSID in early January 2026.

The latter claim is one of the relatively few publicly organized "group" investment treaty cases against a state. Against that backdrop, the AT1 case could add to the jurisprudence on issues arising from such cases.

It would also most likely be the seventh known treaty based case brought by Japanese investors and may catalyze more filings by Japanese inves-

tors in the future. Historically, Japanese ISDS claims have largely been brought by major corporates—Mitsui, Itochu, JGC, Nissan, and Eurus Energy among them. By contrast, the AT1 initiative is a funded group action that lowers cost and coordination barriers for non "blue chip" investors. Funders' growing focus on Japan following the Credit Suisse episode is already well-documented and could sustain this trend.

Market and Policy Initiatives

In recent years, the Japanese government and related institutions have intensified efforts to establish Japan—particularly Tokyo and Osaka—as a leading hub for international arbitration in Asia. This initiative reflects a growing recognition that ensuring swift and neutral dispute resolution within Japan is essential for enhancing the country's global competitiveness and credibility amid the ever expanding cross border investment and trade environment.

Against this backdrop, the Japan Federation of Bar Associations ("**JFBA**"), a national organization representing lawyers in Japan, published an opinion paper reaffirming the public importance of international arbitration and mediation, and calling for closer collaboration among the government, relevant institutions, and the private sector to further promote these dispute resolution mechanisms.

The opinion builds upon the significant progress made in recent years, including the 2023 amendment to the Arbitration Act and Japan's ratification of the Singapore Convention on Mediation, signaling a transition from building the legal framework to promoting practical use and effective operation.

Notably, the opinion was submitted to the Minister of Justice, the Minister for Foreign Affairs, the Minister of Economy, Trade and Industry, the Minister of Land, Infrastructure, Transport and Tourism, the Commissioner of the Japan Patent Office, and the Commissioner of the Japan Sports Agency. This submission to a broad range of departments underscores the view that the enhancement of arbitration is not merely a matter of legal reform, but also concerns national policy as it affects economic, intellectual property, infrastructure, and even sports related domains. It reflects the view that alternative dispute resolution forms a key component of Japan's broader industrial and international engagement strategy.

This initiative also aligns with Japan's 2020 amendment to the Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers (the "Foreign Lawyers Act"), which established three key rules regarding foreign lawyers:

- registered foreign lawyers may represent clients in Japan seated arbitrations, provided the dispute has a foreign element (parties or governing law);
- experience required for registration as a foreign lawyer in Japan may include up to two years of work experience in Japan (an increase from one year previously); and
- the amendment confirmed the legality of joint legal corporations (whereby Japanese attorneys and registered foreign lawyers may form joint law corporations).

Together, these reforms illustrate Japan's continued commitment to developing an open, internationally trusted, and collaborative environment for dispute resolution, positioning the country as a credible and accessible venue for global arbitration and mediation.

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ASIA-PACIFIC

Pakistan

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*In its seminal judgment of Taisei v. AM Construction, 2024 SCMR 640 ("**Taisei**"), the Supreme Court of Pakistan firmly established that the location of the seat will determine which law is to apply to a given arbitration. Accordingly, arbitrations seated in Pakistan are governed by the Arbitration Act, 1940 (the "**1940 Act**"), while those seated abroad and subject to the New York Convention (1958) (the "**NYC**") are subject to the Recognition and Enforcement (Arbitration Agreements and Foreign Arbitral Awards) Act, 2011 (the "**2011 Act**").*

*Pakistan's superior courts have made great strides in recent years, delivering pro-arbitration judgments and recognizing the pro-enforcement bias of the NYC as part of the country's jurisprudence. That said, it has long been felt that the country's arbitration regime is in dire need of reform, as the 1940 Act is a relic of the colonial era. To address this, the Law and Justice Commission of Pakistan formed the Arbitration Law Review Committee (the "**ALRC**"), comprising subject-matter experts, and tasked it with preparing a modern arbitration legislation. After extensive consultations, the ALRC prepared the Draft Arbitration Act, 2024 (the "**Draft Act**"), which is based on the UNCITRAL Model Law on International Commercial Arbitration 2006 (the "**Model Law**"). The proposed law has been awaiting enactment since May 2024, and the Supreme Court of Pakistan most recently renewed the call for its promulgation in Kausar Rana v. Qatar Lubricants, 2025 SCLR 27.*

Notably, the Draft Act's scope of application is limited to arbitrations seated in Pakistan. Therefore, upon enactment, the proposed law will only repeal the 1940 Act, while the regime for foreign-seated arbitrations will remain largely unchanged.

The Draft Act

A key feature of the Draft Act is its foundation on the principle of judicial non-intervention. This principle is enshrined in Section 6 of the Draft Act, which states that no court or judicial authority may intervene in the arbitral process, except to the limited extent expressly provided in the proposed law.

Thus, party autonomy is paramount under the Draft Act. This marks a significant departure from the regime under the 1940 Act, which was generally perceived as not conducive to the arbitral process with undue court intervention.

Consistent with this approach, the proposed law gives primacy to the parties' chosen arbitral tribunal, while courts are assigned a subsidiary role. A few of its key features are discussed below.

Determination of the Arbitral Tribunal's Jurisdiction

Section 18 of the Draft Act codifies the principle of competence-competence, pursuant to which the arbitral tribunal determines its own jurisdiction with respect to any dispute referred to it.

Limitations have also been placed on the right to contest the arbitral tribunal's jurisdiction. Under Section 18(2), pleas contesting jurisdiction in general (including those relating to the existence or validity of an arbitration agreement) must be raised before submission of the statement of defence. Section 18(3) provides that a plea asserting the arbitral tribunal has exceeded the scope of its authority must be made as soon as the matter arises during the arbitral proceedings.

More importantly, unlike the Model Law, the arbitral tribunal's finding on jurisdiction may not be appealed but only set aside on the limited grounds as provided under Section 39 of the Draft Act.

Limited Role of Courts During the Arbitral Proceedings

Section 10(3) of the Draft Act ousts the jurisdiction of courts to grant interim relief once the arbitral tribunal has been constituted.

This bar on court jurisdiction may only be overcome if the party seeking interim relief satisfies the court that the arbitral tribunal is unable to grant "adequate interim relief". Notably, no such ouster of court jurisdiction is provided for under the Model Law. Article 9 of the Model Law states that seeking interim relief from the court is not incompatible with the parties' arbitration agreement. The jurisdictional bar has been inspired by the Indian Arbitration and Conciliation Act, 1996 (the "**IAA**"), which, like Pakistan, also struggled with undue court interference in the arbitral process under its earlier version.

Further, under Section 19 of the Draft Act, arbitral tribunals are empowered to grant interim measures. Drawing on the Singaporean arbitration law, the Draft Act recognizes emergency arbitration by including it within the definition of "arbitral tribunal." Given these broad powers, court intervention would be limited to the most extreme cases.

Setting Aside of Awards on Limited Grounds

Perhaps the most significant feature of the Draft Act is that, once the arbitral award has been rendered, it restricts the power of courts to set it aside only on the limited grounds stipulated in Section 39. These grounds largely mirror those provided under the Model Law and thus align Pakistan's regime with the NYC in respect of domestic-seated arbitrations with a foreign nexus.

The only additional ground not contemplated under the Model Law is the power of the courts to set aside awards on the ground of patent illegality. Once again, this change from the Model Law has been adopted from the IAA.

Nevertheless, the patent illegality ground is very limited in its application, as it cannot be invoked in the context of "international commercial arbitrations". These include Pakistan-seated arbitrations with a foreign nexus (e.g., where one of the parties is resident abroad) and, in the absence of such a nexus, arbitrations designated as such by the parties through agreement.

The 2011 Act

As noted above, the 2011 Act governs foreign-seated arbitrations that are subject to the NYC. The legislation itself, however, is very scant, with its substantive provisions spanning just two pages. The remainder of the law appends the NYC as a schedule, with Section 8 stipulating that the latter should prevail in case of conflict between the two.

It is therefore puzzling why the ALRC chose to exclude the 2011 Act

from the scope of its review in its effort to overhaul Pakistan's arbitration regime. This is especially so because the operation of a few of the Draft Act's provisions have specifically been extended to foreign-seated arbitrations, to address certain deficiencies found under the 2011 Act. For instance, the power of courts to order interim relief under Section 10 of the Draft Act has also been extended to foreign-seated arbitrations, since one cannot seek such relief under the 2011 Act. Having identified the2011 Act's deficiencies, it is safe to assume that the ALRC was also aware of the law's other drawbacks, not least its many drafting issues with which the courts are still grappling.

Notwithstanding the above, the ALRC consciously refrained from overhauling Pakistan's foreign-seated arbitration regime, citing the trend of pro-arbitration judgments from superior courts as the reason for doing so. Recent competing judgments, however, call into question whether such a piecemeal development of the law is desirable.

Significant Cases

SpaceCom v. Wateen Telecom ("*SpaceCom*")

This case concerned the enforcement of arbitral awards rendered nearly six years earlier by a DIFC (Dubai International Financial Centre)-LCIA (London Court of International Arbitration) tribunal, which was being contested by the award debtor under Section 7 of the 2011 Act. It was argued that the arbitrator had wrongly assumed jurisdiction over the dispute, since he had designated the DIFC—an economic zone in the city of Dubai—as the seat of arbitration, despite the parties' arbitration agreement providing that disputes were to be resolved "through arbitration in Dubai, UAE."

The Lahore High Court (the "**LHC**") agreed with the award debtor, holding that the correct seat of arbitration in the circumstances was onshore Dubai, not the DIFC. It reasoned that the sole arbitrator's wrong seat designation violated Article V(1)(d) of the NYC, and, as a result, this assumption of jurisdiction was defective. Consequently, recognition and enforcement of the awards were refused.

Setting the Dial Back on Pro-Enforcement Jurisprudence

Quite apart from the fact that the LHC relied heavily on the English judgment of *Dallah v. Pakistan*, which has since been statutorily reconsidered in the UK, the judgment conflicts with the established pro-enforcement jurisprudence mandated by the Supreme Court of Pakistan under the 2011 Act. In *Taisei v AMC*, the author judge was at pains to point out that the grounds for refusing recognition and enforcement of awards under Article V of the NYC are not mandatory but merely permissive in nature.

SpaceCom was arguably an instance where the permissive nature of the refusal grounds required that the awards nevertheless be recognised, as the alleged defective seat determination did not otherwise affect the awards rendered. It is also worth noting that the parties' chosen arbitration rules provided that the question of jurisdiction was to be determined by the arbitrator, which could not later be challenged.

Zaver Petroleum v. Saif Energy 2025 CLD 69

This case concerned the enforcement of arbitral awards rendered by an arbitrator appointed under the London Court of International Arbitration Rules, 2020 (the "**LCIA Rules**").

Although the award creditor's application for enforcement of the awards under Section 6 of the 2011 Act was accepted, the reasoning employed by the Islamabad High Court (the "**IHC**") highlights the issues associated with relying on a piecemeal development of the regime under the 2011 Act.

Which Court?

On the basic question of which court a party is to approach to file a stay of proceedings injunction against in an instance where the opposing party had filed a suit before a local court, the IHC struggled considerably with

the (unfortunate) drafting of the 2011 Act.

This is because while the 2011 Act allows the filing of such an injunction (consistent with Article II (3) of the NYC), it is not at all clear as to which forum is to entertain such an application. For starters, the term "Court" has been defined in Section 2 (d) to mean High Court and other superior courts notified by the Federal Government. Thereafter, Section 3 of the 2011 Act, which deals with the exclusivity of jurisdiction of the High Court(s) over all "matters related to arising from this Act", provides that such an application "may be filed in the Court, in which the legal proceedings are pending". Confusingly, however, the very next provision, Section 4, states that such an injunction may also be applied "to the court in which proceedings have been brought". Thus, leading one to wonder whether a party seeking such an injunction is to approach the "Court" defined in Section 2 (d) of the 2011 Act (i.e., a High Court of relevant jurisdiction) or any "court" which is seized of such an action.

The IHC held that both Sections 3 (2) and 4 of the 2011 Act point to the same provision of the NYC, namely, Article II (3). The said Article II (3) requires the relevant court before which proceedings have been brought in violation of an arbitration agreement to stay the same. Thus, the IHC reasoned that use of the defined term "Court" in Section 3 (2) did not imply that such an application may *only* be filed before a High Court. Instead, a stay of proceedings application could be filed before *any* court, where an action in violation of the arbitration agreement had been brought.

Notably, in reaching its conclusion, the IHC specifically disagreed with the reasoning employed by the LHC in its earlier judgment of *Tradhol International v. Shakarganj Limited, 28 April, 2023* ("***Tradhol***"). In *Tradhol*, the opposite result was reached, with the LHC ruling that the term "court" in Section 4 was to be read as the High Court.

Needless to say, the divergent views from Lahore and Islamabad are hardly helpful for a party anxiously seeking to enforce its arbitration agreement in an instance where the opposing party has brought proceedings before a court in violation thereof.

Which Seat?

One of the grounds on which the award debtor contested the recognition and enforcement of the awards was the arbitrator's designation of London as the seat of arbitration.

The IHC, however, paid short shrift to this argument. While rejecting this contention, the judgment referred to the parties' chosen arbitration rules, namely, the LCIA Rules. Specifically, Article 16.2 of the LCIA Rules provides that in case there is no agreement between the parties as to the seat of arbitration, the default seat is London. Thus, the arbitrator's choice of seat was upheld.

This is a markedly different result from the LHC's judgment in *SpaceCom*, where awards were refused recognition on this very basis—and no mention was made of the fact that the parties' chosen arbitration rules stipulated the DIFC as the default seat and that the arbitrator's finding of jurisdiction was not open to challenge.

Concluding Remarks

The enactment of the Draft Act would no doubt go a long way to modernizing Pakistan's domestic arbitration landscape. However, in the absence clear legislative mandate under the 2011 Act, coupled with the legislation's many drafting complications, one can hope that the superior courts propound consistent jurisprudence which is conducive to the enforcement and recognition of foreign arbitration agreements and arbitral awards in Pakistan.

ABOUT THE AUTHOR

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ASIA-PACIFIC

Singapore

This article highlights the notable developments in international arbitration in Singapore in 2025.

Singapore International Commercial Court Upholds Worldwide Freezing Order in Support of an ICC Arbitration

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In *Novo Nordisk A/S v. KBP Biosciences* [2025] SGHC(I) 22, the Singapore International Commercial Court ("**SICC**") upheld a USD 730 million worldwide freezing order, known as a Mareva injunction, in aid of a New York-seated International Chamber of Commerce ("**ICC**") arbitration. This decision offers clarification on the threshold requirements for obtaining interim freezing relief from the Singapore courts, as well as on the scope of the court's jurisdiction and discretionary powers to order interim relief under section 12A of Singapore's International Arbitration Act 1994 ("**IAA**").

The dispute stems from Danish pharmaceutical group Novo Nordisk's purchase of rights to the experimental drug Ocedurenone, pursuant to an asset purchase agreement dated 11 October 2023 ("**APA**") entered into with KBP Biosciences ("**KBP**"). KBP, which was founded by a Dr Huang Zhenhua, promoted Ocedurenone as a drug that could effectively treat hypertension in chronic kidney disease. However, post-closing clinical trials indicated that the drug failed to live up to KBP's claims regarding its efficacy. Moreover, Novo Nordisk discovered that KBP had been in possession of material facts regarding the drug's inefficacy prior to the APA being concluded, but had failed to disclose this information to Novo Nordisk, and that there were quality and compliance issues at a Bulgarian clinical test site, affecting the integrity of the data provided by KBP. Novo Nordisk therefore alleged that KBP had misled it at the time of the acquisition.

Novo Nordisk sought (without notice and on an *ex parte* basis) and was granted a worldwide freezing order against KBP and Dr Huang from the Singapore High Court in February 2025. The APA contained an arbitration agreement, which expressly extended the arbitration agreement to officers and directors of either party or their affiliates. In March 2025, Novo Nordisk filed its request for arbitration against KBP and Dr Huang with the ICC. KBP and Dr Huang subsequently applied for the worldwide freezing order to be set aside.

The SICC found that first, Novo Nordisk had a good arguable case against both KBP and Dr Huang that the non-disclosure was deliberate and dishonest. Second, it was satisfied that that there was a real risk of dissipation, with the relevant test being whether there is objectively a real risk that judgment may not be satisfied because of a risk of unjustified dealings with assets. The SICC found, in particular, that the transfer of

approximately USD 330 million from KBP to its ultimate beneficial owner, Dr Huang, was not justified and constituted dissipative conduct, and that Dr Huang had demonstrated dishonesty that had implications for the risk of dissipation.

Third, the SICC held that Novo Nordisk had not breached its duty of full and frank disclosure (in relation to material facts establishing a good arguable case and a real risk of dissipation) in making the *ex parte* application for the worldwide freezing order in February 2025. Fourth, the SICC was satisfied that it could order relief under s12A of the IAA as (a) the arbitral tribunal or emergency arbitrator was unable to act effectively at the time of the *ex parte* application; (b) the case is one of urgency, based on the defendants' history of dissipative conduct; and (c) it is appropriate for the Singapore court to make the order, based on evidence that the New York courts do not consider Mareva relief by foreign courts objectionable.

Singapore High Court Clarifies Distinction Between Interim Measures and Partial Awards

In *DLS v. DLT* [2025] SGHC 61, the Singapore High Court provided critical guidance on the difference between interim measures and partial awards. The underlying arbitration arose out of a dispute between a main contract and a subcontractor in relation to delays in the completion of a project. In April 2023, the subcontractor commenced an arbitration under the ICC Rules against the main contractor, claiming for the losses arising out of these delays.

In November 2023, the subcontractor brought an application for "urgent interim measures" which culminated in the Tribunal's decisions in its "First Partial Award" dated 19 July 2024, to which a number of corrections were made thereafter on 9 October 2024.

In November 2024, the main contractor applied to set aside two of the decisions in the "First Partial Award", namely:

- An order for the "Monthly Payment" of USD 172,135.54, which the Tribunal ordered the main contractor to pay to the subcontractor until final completion of the project; and
- An order for the "Lump Sum Payment" of USD 117,339.48 comprising VAT refunds owed to the subcontractor.

Andre Maniam J found that under s 12 of the IAA, the "Monthly Payment" order was an "order or direction" and not an "award", because:

- it did not definitively or finally dispose of either a preliminary issue or a claim in the arbitration (i.e., that the subcontractor was entitled to the "Monthly Payment" order)
- it inherently capable of being varied in due course (as the Tribunal's decision in the "First Partial Award" recognised that the subcontractor might subsequently be ordered to repay this sum to the contractor and the requirement for the subcontractor to furnish security for the sum it would receive); and
- it was an order for interim payment of damages prior to a final assessment, which is a provisional decision.

Consequently, as the "Monthly Payment" order was an "order or direction" under s 12 of the IAA, it could not be set aside under s 24 of the IAA or under Article 34(1) of the Model Law read with s 3 of the IAA. As a result, the Contractor's application to set the "Monthly Payment" decision aside failed.

On the other hand, Andre Maniam J found that the "Lump Sum Payment" decision was an "award" and not an "order or direction" under s 12 of the IAA. In particular, he found that the "Lump Sum Payment" order:

- definitively or finally disposed of either a preliminary issue or a claim in the arbitration (as the Tribunal found that this sum was owing and due to the subcontractor and there was nothing further to be determined in the merits hearing in relation to this item);
- was not inherently capable of being varied in due course (as there

was no contemplation of having the subcontractor return this sum to the main contractor and there was no requirement for the subcontractor to furnish security for this sum); and

- was not an order for interim payment of damages prior to a final assessment (it was instead an order for the main contractor to pay a sum due and owing to the subcontractor and there was no final assessment to come in relation to this item).

Andre Maniam J concluded that the "Lump Sum Payment" decision was therefore susceptible to being set aside as it is an "award" under s 12 of the IAA. However, he declined to set aside the "Lump Sum Payment" decision, holding that contrary to the main contractor's contentions, there was no breach of natural justice and the order for payment of USD 117,339.48 did not exceed the scope of submission to arbitration.

Singapore International Arbitration Centre Launches Restructuring and Insolvency Arbitration Protocol

On 26 August 2025, the SIAC launched its Restructuring and Insolvency Arbitration Protocol ("**RIA Protocol**"), comprising a dedicated framework for disputes arising in the context of restructuring, adjustment of debt, or insolvency. The RIA Protocol requires the consent of the parties to apply, and modifies the SIAC Rules to enhance efficiency.

The Key Features of the RIA Protocol Include:

- the shortening of certain timelines under the SIAC Rules, including in relation to responses to notices of arbitration, nomination of party-appointed arbitrators, arbitrator challenges, and the making of the final award;
- the prompting of tribunals to consider, at an early case management conference, matters aligned to the restructuring and insolvency context, such as the joinder of third parties, potential jurisdictional challenges and the need to report to a court or other adjudicative body on the commencement and status of the arbitration;
- the designation of Singapore as the default seat and Singapore law as the governing law, unless otherwise agreed by the parties or determined by the tribunal; and
- the appointment of a sole arbitrator unless the Registrar determines otherwise, taking into account the parties' proposals (if any), the dispute's complexity, the quantum involved, or other relevant circumstances of the dispute.

ABOUT THE AUTHOR

Sunita P. Advani is an arbitral assistant to Mr. Michael Lee, an experienced English arbitrator and member of Twenty Essex practising principally from London and Singapore. In this role, she serves as tribunal secretary in Mr Lee's high-value and complex international commercial arbitrations administered by the leading arbitral institutions globally, such as the ICC, LCIA, and SIAC. Sunita previously practiced international arbitration as an Associate at a leading international law firm in Singapore, and is admitted to practice in England & Wales, New York, Singapore, and Ireland. She holds an LL.B. from the University of Nottingham, and an LL.M. from the University of California, Berkeley, School of Law. Sunita is an LCIA YIAG Regional Representative for Asia Pacific for the 2025-2027 term, a Group Advisor in the Young ICCA Mentoring Programme 2026-2027 and is also the Founder and Chair of Singapore Very Young Arbitration Practitioners ("**SG VYAP**").

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Latin America & Brazil

LATIN AMERICA & BRAZIL

Bolivia

Bolivia's arbitration landscape has just closed one of its most dynamic years on record. A systemic shortage of U.S. dollars triggered extraordinary financial disputes that tested the limits of contractual risk allocation and force majeure in a highly specialized banking context. In parallel, arbitral institutions accelerated the adoption of modern dispute board frameworks, signaling a shift toward proactive, project-embedded dispute prevention, even if practical deployment remains incipient.

The courts, for their part, sent an unmistakable signal by recognizing arbitration's jurisdictional character within the constitutional framework, reinforcing due process and the parties' right to their chosen "natural judge". In the background, the hydrocarbons sector may be on the cusp of a contentious cycle, with public claims that could be replicated, raising the specter of an arbitral storm. This year's developments showcase a system that is becoming more sophisticated and resilient under pressure.

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Systemic Dollar Illiquidity and Extraordinary Financial Disputes

The year's factual backdrop was unmistakable: acute dollar illiquidity, a widening gap between official and parallel exchange rates, and regulatory ceilings on commissions for outbound transfers. These conditions disrupted otherwise routine cross-border payment flows, immediately affecting fiduciary, banking, and commercial arrangements that presupposed dollar availability at predictable cost.

The result was a wave of financial disputes that forced tribunals to define the limits of the parties' obligations under circumstances of impossibility, and to assess how systemic constraints interact with strict obligations in specialized financial instruments.

The centerpiece of this surge—indeed, the largest and most important commercial arbitration in Bolivia's history—was a dispute between a bank operating in Bolivia and a logistics company. The tribunal ultimately ordered the bank to transfer U.S. dollars to accounts designated in Bolivia. The award, together with its complementary award, which entered the public domain through their interaction with court proceedings, is notable on

several fronts.

Throughout the year, a central theme is the reevaluation of force majeure and impossibility, especially when they stem from a systemic macro-financial disruption rather than a localized event. Bolivia's arbitration community faced a new category of dispute, unusual both in scale and in the technicalities of banking, fiduciary accounting, and payment systems. Understandably, the collective understanding of force majeure in this niche remains underdeveloped.

From the foregoing, two conclusions stand out:

- First, tribunals appear to be setting a very high threshold—arguably superhuman—for a party to establish that a systemic crisis renders performance impossible. Regulatory friction, elevated costs, or the unavailability of "ideal" channels do not suffice; the inquiry turns on whether any lawful, contract-compatible pathway remained open that would not improperly shift risk.
- Second, even under these high standards, local arbitration has produced partial, workable answers to large-scale issues. Further doctrinal refinement is likely as additional systemic-constraint cases reach tribunals and as parties draft contracts with greater precision regarding currency pathways.

Dispute Boards: Modern Rules Are In, Implementation Is Next

Institutionally, 2025 marked a meaningful step change. Most leading Bolivian arbitration centers such as Centro de Conciliación y Arbitraje de la Cámara de Industria, Comercio, Servicios y Turismo ("**CAINICO – CCAC**") in Santa Cruz, CAC in La Paz and ICAM in Cochabamba, have now approved modern dispute board rules, defining their jurisdiction across contract execution, and specifying the continuum from nonbinding recommendations to decisions with contractual force. Centers complemented the adoption of the Dispute Boards Rules with capacity-building, including workshops and technical sessions with international practitioners focused on real-world design, panel composition, and the operational integration of boards in complex projects, from EPC to PPPs.

This is an authentic modernization. By anchoring dispute boards in up-to-date institutional rules, Bolivia has equipped project owners, contractors, and lenders with a tool specifically designed to prevent conflict escalation, generate real-time guidance, and preserve relationships under pressure. However, the practical curve is still ahead. Large-scale deployments in national projects remain limited; model clauses and procurement templates require greater diffusion; and sector actors must converge on panel rosters and standard operating procedures.

The outlook is cautiously optimistic. A handful of early, well-structured boards—embedded from contract signature, resourced to issue prompt recommendations or decisions, and backed by clear escalation clauses—can demonstrate reduced cycle time, cost deflection, and project delivery continuity. Crucially, arbitration remains in the background as the designated backstop when board outputs are not complied with. In that sense, boards function as an agile, front-loaded filter, with arbitration absorbing only the disputes that truly require it.

Courts and Constitutional Law: Arbitration Recognized as Jurisdiction

A significant development emerged from the judicial-constitutional interface. In publicly available proceedings arising from a constitutional protection action, a constitutional judge in Santa Cruz rejected an attempt to reopen award control through ordinary civil procedure. The court emphasized that the sole avenue for challenging an arbitral award is the annulment action provided under the Arbitration Law—underscoring that

arbitral awards are subject to a distinct, limited review regime.

More importantly, the constitutional judge articulated a jurisdictional understanding of arbitration through the lens of due process and the "natural judge" chosen by the parties. In essence, the court recognized that when parties opt for arbitration, they elect a jurisdiction whose decisions are autonomous within their statutory boundaries. Judicial courts are not a forum of appeal; they are guardians of minimal external control, limited to grounds explicitly set out in the Arbitration Law.

This articulation aligns with comparative best practice and strengthens the predictability that users—especially international investors and lenders—seek in Bolivia's dispute resolution architecture.

For practitioners, the implications are concrete. Attempts to judicialize arbitral disputes by recasting them as civil actions are unlikely to succeed. The arbitration-judiciary boundary is clearer. And tribunals can proceed with greater confidence that their awards, once rendered, will not face collateral attacks disguised as ordinary suits. That, in turn, enhances the value proposition of local arbitration as a credible forum for both domestic and cross-border disputes.

Hydrocarbons: Public Claims Today, Potential Replication Tomorrow

Hydrocarbons returned to center stage. A notice of dispute publicly attributed to Shell Bolivia Corporation as an international operator, cataloged several measures, mainly related to alleged unpaid receivables. The notification's details are in the public domain because they were served on State authorities and reported by the press (See, Shell Bolivia Corporation launches dispute against Bolivia over alleged illegal measures causing multimillion-dollar damage, ANF — Agencia de Noticias Fides (19 August 2025); Shell ratifies that it submitted a "Notice of Dispute" to the Procuraduría General del Estado, El Deber (20 August 2025); Procurator clarifies that the Bolivian State received a dispute notification from Shell with six months to issue a position, ABI (Agencia Boliviana de Información) (20 August 2025)).

This matters: by laying out an articulated theory of breach, the notice provides a template that other operators might adapt if their factual matrices are analogous.

The policy implications are serious. If replicated, such claims could precipitate multiple arbitrations, stretching the State's dispute management capacity, its inter-agency coordination, and its approach to legacy awards and payment practices involving state-owned entities. The risk is not merely financial. Repeated challenges to the integrity of award treatment, regulatory predictability, or contract performance can erode investor confidence and exacerbate the fiscal and foreign-exchange constraints that have complicated commercial performance.

Early neutral intervention—through dispute boards or targeted expert determinations—can keep disputes from ossifying into arbitration. For both the State and operators, prevention is vastly cheaper than post hoc cure.

Outlook and Practical Takeaways

The past year compressed multiple stress tests into a single cycle. The ongoing economic crisis will undoubtedly trigger a surge of arbitration disputes, particularly in the financial and hydrocarbons sectors. In this context, it is essential for arbitral tribunals to adapt to the increasing complexity and demands of these cases, delivering awards that provide effective and practical solutions.

For transactional lawyers and contract drafters, the message is unmistakable: write for the storm. When obligations are dollar-denominated or hinge on outbound transfers, contracts should specify currency pathways, the allocation of commission and liquidity risks, fallback modalities consistent with sector regulation, and procedures for real-time adjustment under a dispute board. Boilerplate force majeure clauses will not suffice; the standard is rigorous and proof-intensive.

For project owners, contractors, and lenders, the time to implement dispute boards is now. With modern rules in place, pilot boards in infrastructure and PPPs can produce data on time and cost savings and establish a roster of trusted panelists. Aligning procurement and financing documents with board-ready clauses will accelerate uptake and normalize the mechanism as a pre-arbitral filter.

For public authorities and state-owned enterprises, a coherent dispute posture is essential. That means consistent award treatment, timely settlement where liability is clear, and structured dialogue during cooling-off periods to avoid multiplication of claims. In parallel, inter-institutional protocols on payment practices and documentation issuance can defuse friction before it triggers arbitration.

Conclusions

Bolivia's arbitration year was bracing. It delivered the country's most consequential commercial award. It advanced institutional modernization by installing dispute boards in the rulebooks and building capacity for their use. It solidified the judicial backstop by recognizing arbitration as a jurisdiction chosen by the parties, protected by due process and limited review. And it flagged real exposure in hydrocarbons, where public claims could replicate and multiply.

The system is not yet at cruising altitude. The jurisprudence around force majeure and systemic crises remains under construction, and some tribunals may indeed be setting exceptionally demanding benchmarks for impossibility. But in a year of stress, local arbitration produced partial, credible answers to large-scale issues. The path forward is clear: sharper drafting around currency risk and performance channels; deeper pre-dispute architecture through well-designed dispute boards; and disciplined, predictable court-arbitration interfaces. If institutions, courts, state actors, and market participants align on these pillars, Bolivia can transform a year of strain into a platform for resilient, high-credibility dispute resolution, ready not only to absorb shocks, but to deter them.

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*This article offers an overview of the main arbitration developments in Brazil in 2025, many of which were shaped by the jurisprudence of Brazil's Superior Tribunal de Justiça (Superior Court, referenced hereinafter as the "**STJ**" or the "**Court**"). To illustrate these trends, we have selected rulings that have had a notable impact on arbitral practice, along with data released by the STJ and institutional measures adopted by arbitral institutions in response to the Court's recent decisions.*

Recognition of Foreign Arbitral Awards by the STJ: Two Decades of Consistency

Over the past twenty years, the STJ has consolidated its reputation as an arbitration-friendly court, particularly as it pertains to the recognition of foreign arbitral awards. A recent empirical study conducted by FGV Justiça revealed that between 2005 and March 2025, the STJ granted recognition to foreign awards in 87.7% of the cases submitted, denying only 12.2% of requests—a figure that underscores the Court's strong adherence to international standards and its commitment to legal certainty in cross-border transactions.

The study examined 127 decisions and confirmed that the STJ's role in these proceedings is strictly limited to verifying the formal regularity of the foreign award, without revisiting its merits. This approach reflects the principle of non-reviewability enshrined in the New York Convention and the Brazilian Arbitration Act (Law No. 9.307/1996), both of which guide the Court's jurisprudence. Grounds for refusal remain exceptional and typically involve procedural defects, such as the absence of a valid arbitration agreement—particularly where signatures evidencing consent are missing—or violations of Brazilian public policy. Other recurrent issues include irregular tribunal composition or awards annulled at the seat of arbitration.

The study also mapped the geographic and thematic origins of recognized awards, highlighting cases from England, the United States, France, and Switzerland, often involving international trade, intellectual property licensing, and complex contractual arrangements. This diversity illustrates Brazil's growing integration into global commerce and the pivotal role of arbitration in facilitating such relationships and enhancing Brazil's attractiveness as a hub for international dispute resolution.

A recent case illustrates this consistent approach. In Recognition Procedure N. 1607, ruled on December 2025, the STJ recognized a Ukrainian arbitral award issued against Alcântara Cyclone Space ("**ACS**"), a bina-

tional Brazil–Ukraine company that had already been extinguished and whose obligations were, in part, succeeded by the Federal Union (the Brazilian Government itself). Arguments based on sovereignty, public policy, and the company's extinction were rejected by the majority, as the Court held that any questions regarding potential State liability should be resolved, if necessary, at the enforcement stage, and did not justify refusing award recognition.

Such a decision reaffirms the STJ's restrained review in recognition proceedings and its firm adherence to international arbitration standards. By prioritizing predictability and efficiency, the Court contributes to the stability of transnational commercial relations and affirms the country's commitment to the rule of law in the global arbitration landscape.

No More Tactical Pauses: Brazilian Superior Court of Justice (STJ) Reinforces Autonomy Between Arbitration and Enforcement in Brazil

In a defining development for Brazil's arbitration landscape, the STJ resolved an issue that had generated uncertainty in practice. In Special Appeal N. 2.167.089/RJ, the STJ confirmed that a creditor who holds a valid enforceable debt instrument may pursue enforcement immediately. The presence of an arbitration clause *per se* does not halt judicial enforcement of an extrajudicial title, enforceable by law.

The underlying dispute concerned unpaid commercial titles issued under an agreement that contained an arbitration clause. The Rio de Janeiro Court of Appeal suspended enforcement of said titles pending an arbitral tribunal's ruling on the validity of the clause and the underlying contract. The STJ, however, overturned that decision. STJ's *rapporteur* for the case, Justice Nancy Andrighi, clarified that "arbitral tribunals decide rights, while state courts enforce them". In other words, where there is an arbitration agreement, the merits (including issues concerning the validity or existence of the arbitration clause) shall be decided by arbitrators, but only the judiciary has the power to carry out coercive measures such as seizure of assets.

Accordingly, as the Court stressed, a creditor with a valid enforceable title should not be required to commence arbitration merely to obtain a "new" decision confirming an obligation that is already legally enforceable. Such a requirement would have no basis in the Brazilian Code of Civil Procedure ("**BCCP**") and would undermine the purpose of extrajudicial enforceable titles. For that reason, enforcement proceedings and arbitral proceedings may coexist as long as each remains within its proper scope.

Brazilian law sets out the requirements for an enforceable extrajudicial title. Such an instrument must fall within the statutory list (art. 784, BCCP), and the obligation must be quantifiable, certain, and due (arts. 783 and 786, BCCP). Once these criteria are met, direct enforcement can be pursued . A debtor who wishes to interrupt enforcement must submit an objection to the court, usually done through "*embargos à execução*" (art. 919, BCCP), or through an application for a provisional measure (arts. 294 to 300, BCCP). In either case, to present its objection, the debtor must demonstrate both a likelihood of success of its claim and a risk of irreparable harm if enforcement proceeds. In order to suspend enforcement proceedings filed by private plaintiffs, the debtor must also provide a guarantee of payment (i.e., via deposit, attachment, or claim insurance).

Furthermore, the Court explained that, even where a substantiated objection is made, suspension may occur only if an arbitration proceeding has commenced, and the debtor has submitted a request for suspension to the enforcement judge. However, in the case before the Court in Special Appeal No. 2.167.089/RJ, the debtor had not even filed a request for arbitration. Therefore, no legal basis existed for halting enforcement.

The STJ's decision reflected a mature understanding of the limits of arbitral jurisdiction and of the judiciary's essential role in providing coercive relief. Arbitration remains available for genuine disputes on the merits, but it cannot be used as a tool to create procedural delay and postpone payment. Moreover, broader implications include an increase in legal certainty for creditors who rely on prompt enforcement of valid titles, which are essential for many corporate and financial transactions. This may also encourage the earlier commencement of arbitration when substantive issues arise and for cross-border practitioners, the judgment aligns Brazil's domestic practice with the world's leading arbitration jurisdictions' standards.

Jurisdictional Boundaries Between Arbitration and Insolvency

Another important ruling, which brought greater certainty to practice, concerns arbitrations involving companies undergoing judicial reorganization or bankruptcy. In Special Appeal No. 2.163.463/SP, decided in 2025, the STJ partially annulled an arbitral award that had authorized the set-off of reciprocal credits between two contracting parties, one of which was subject to judicial reorganization.

The Court held that, although arbitration may proceed normally even when one of the parties is under judicial reorganization, disputes concerning the payment of credits subject to the reorganization process may fall outside arbitral jurisdiction. Because a set-off constitutes a form of extinguishing obligations, determining its applicability in relation to credits governed by the recovery plan may involve a non-disposable patrimonial right, thereby failing to satisfy the requirement of objective arbitrability under the Brazilian Arbitration Act. According to the STJ, such matters must be decided exclusively by the reorganization court, given their direct impact on the *pari passu* treatment of creditors and on the implementation of the court-approved plan.

The ruling confirms that, while arbitral tribunals remain competent to assess the existence and quantum of credits arising from commercial relationships, any repercussion of those credits within insolvency proceedings—including their potential extinguishment by set-off—must be addressed by the judicial reorganization court. In practical terms, the decision reinforces that arbitration and judicial reorganization may coexist, subject to clear jurisdictional boundaries designed to preserve creditor equality and ensure coherence in insolvency framework.

The Consolidation of Special Rules for Early Production of Evidence in Arbitration

In 2025, the Brazilian arbitral landscape also witnessed the consolidation of special procedures designed to govern the anticipated production of evidence in arbitration. Such regulation stemmed from the fact the anticipated production of evidence a standalone judicial procedure, governed by Arts. 381-383 of the BCCP, aimed at the preservation and collection of evidence independently of a decision on the merits, in order to prevent its loss or deterioration, as well as to facilitate settlement discussions or assess the feasibility of future litigation, thereby raising doubts as to the competent authority to conduct the procedure in the presence of an arbitration agreement.

The initiatives were prompted by the STJ's landmark ruling in Special Appeal No. 2.023.615/SP, which limited the role of state courts where an arbitration agreement exists to situations involving urgent or precautionary relief. In this sense, the Court clarified that, in the absence of urgency, applications for anticipated production of evidence fall exclusively within the arbitral forum.

Regulations issued by the Chamber of Arbitration and Mediation of the American Chamber of Commerce ("**AMCHAM**") in 2023, the Chamber of Conciliation, Mediation, and Arbitration ("**CIESP/FIESP**") in 2024 and,

most recently, by the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**") in 2025 reflect a largely harmonized framework for non-urgent, pre-arbitration evidence taking. Under these regimes, parties may submit requests to an Evidence Arbitrator, who has the authority to organize and order the production of targeted evidence.

There is no limitation on the types of evidence that may be requested: document production, expert examinations, and witness testimony are all available. The Evidence Arbitrator, however, is expressly barred from examining the merits or assessing the probative value of the evidence, which will be evaluated by the arbitral tribunal should a full arbitration be commenced. The Evidence Arbitrator is likewise prohibited from serving on any subsequent tribunal in the same dispute. Their jurisdiction is confined solely to evidence taking and must be exercised on an expedited basis, with proceedings typically expected to conclude within approximately six months, subject to extension.

As reflected in the newly issued rules, the mechanism is designed to compel the production of evidence where such production may facilitate settlement or another appropriate form of dispute resolution, or where prior factual clarification may justify or avoid the initiation of an arbitration. This approach mirrors the logic of the BBCP provisions governing anticipated production of evidence in non-urgent scenarios and confirms that these institutional rules give practical effect to the STJ's jurisdictional guidance. Taken together, they reinforce that, once arbitration is chosen, arbitral jurisdiction extends even to preliminary evidentiary measures.

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The year 2025 marked a new phase for arbitration in Chile: as international caseloads continued to rise, the country deepened its institutional integration with the Ibero-American community, courts reaffirmed a policy of minimum intervention in arbitrations, and recent investment arbitration developments tested the resilience of Chile's pro-arbitration framework. This report covers:

- *The integration agreement between the Arbitration and Mediation Center of the Santiago Chamber of Commerce ("**CAM Santiago**") and the International Arbitration Center - Ibero-American Arbitration Center ("**CIAM-CIAR**");*

- *2022–2025 statistics confirming the low success rate of challenges to arbitral awards; and*

- *The latest developments in investment arbitrations against Chile.*

International Integration: The CAM Santiago–CIAM–CIAR Alliance in 2025

One of the most noteworthy developments in the field of international arbitration in Chile in 2025 was the consolidation of the partnership between CAM Santiago and CIAM-CIAR.

Through this alliance, both institutions agreed to integrate their arbitral activity with the shared aim of jointly promoting the development of international arbitration and addressing its growing needs, particularly within Spanish-language and Ibero-American markets.

CAM Santiago is Chile's leading arbitral institution and a benchmark in Latin America. Since its establishment in 1992, it has played a pivotal role in the development and consolidation of institutional arbitrations for both domestic and international proceedings.

CIAM-CIAR is an arbitral institution that administers international proceedings with a strong focus on the Ibero-American region. It was founded in 2020 following the consolidation of the Madrid Court of Arbitration, the Spanish Court of Arbitration, the Civil and Commercial Court of Arbitration, and the Madrid Bar Association.

On April 2, 2025, during the III National Arbitration Meeting hosted by CAM Santiago in Santiago, Chile, both institutions executed a cooperation agreement under which CAM Santiago joined CIAM-CIAR as a member institution with the same standing as its founding organizations. As part of this integration, members of CAM Santiago's executive team were incorporated into CIAM-CIAR, enabling a joint administration for international cases.

Specifically, CAM Santiago will refer the administration of its international arbitration cases -as defined in Law No. 19.971 on International Commercial Arbitration- to CIAM-CIAR, allowing both institutions to administer a case. This joint administration may be eased given that CAM Santiago's President, joined CIAM-CIAR's Presidency as Vice President; CAM Santiago's Legal Director, joined the institution's Plenary; and CAM Santiago's Deputy Director, joined as Deputy Secretary. To this end, CAM Santiago amended its International Arbitration Rules to include a referral clause directing cases arising from contracts executed on or after July 1, 2025, to CIAM-CIAR. Additionally, for international arbitrations arising from contracts signed prior to that date, the parties may also submit their disputes to CIAM-CIAR.

The relationship between the two institutions has now evolved from mere cooperation into genuine integration, encompassing institutional governance to the administration of international arbitration cases. This is an innovative agreement that poses a challenge for the institutions involved, as it requires the integration of distinct and geographically distant yet compatible arbitral cultures. It also creates a significant platform for the entire Ibero-American region and strengthens Spanish-language arbitration by helping to unify practices, customs, and standards.

Ultimately, this is a mutually beneficial agreement for the institutions and for the consolidation of international arbitration in the region. The fact that Chile's principal arbitral center has joined a leading Ibero-American arbitration initiative as a member is evidence of the consolidation of arbitration in Chile, as well as a strong endorsement and recognition of CAM Santiago, which has expanded institutional arbitration beyond national borders. The challenge, however, will be ensuring that Chile continues to grow as a seat of arbitration and that administering European-seated cases does not hinder that growth or the development of its arbitrators.

Minimal Intervention in Practice: How Chilean Courts Treated Challenges (2022–2025)

Statistics on the rate of upheld challenges to arbitral awards in Chile show a clear picture: challenges are filed but rarely succeed. Data from 2022, 2023, 2024, and 2025 show that the number of complaints and challenges accepted is very low, which reinforces arbitration as a definitive solution to disputes and provides legal certainty for the parties.

Likewise, the case law of the Chilean superior courts has consistently upheld the principle of minimal intervention of the judiciary in arbitration, a key principle to preserve the autonomy of the arbitration system.

According to CAM Santiago statistics, in 2022, the courts ruled on 63 challenges against CAM awards. The most frequently used mechanism was complaints against arbitrators, of which only one was partially upheld out of 45. Overall, two-thirds of the challenges were rejected; the rest were declared inadmissible, withdrawn, archived, or received no ruling. The message was clear: judicial review operates as an exceptional safeguard, not as a second instance.

The year 2023 confirmed the same trend. According to CAM Santiago statistics, of the 247 awards issued that year, 41.3% were challenged. The courts ruled on 108 challenges, with 77 complaints against arbitrators processed and only six partially accepted. No cassation motions were successful and, on appeal, only one case was partially accepted.

The year 2024 followed—and even deepened—the same trend: 142 of 211 awards were challenged (67.3%), with complaints against arbitrators predominating. Courts ruled on 104 challenges, including complaints against arbitrators, annulment petitions, appeals, and cassation requests. Of the 69 complaints against arbitrators, only three were accepted (4.3%). In addition, the Chilean courts rejected all 5 petitions to annul international awards filed that year.

Between 2024 and 2025, the courts broadened the spectrum to include complaints against arbitrators in CAM and ad hoc arbitrations, as well as those handled by other arbitration institutions. The courts heard 165 complaints, of which 12 were accepted. If we also consider that during this period, 30 additional complaints were declared inadmissible and 14 were withdrawn, the acceptance rate is approximately 5.7%. The very low rate of challenges in 2022, 2023, 2024, and 2025 does not suggest an absence of control, but rather calibrated control, consistent with its function: to guarantee the regularity of the process without distorting the arbitral decision. In other words, the effectiveness of the award is not a slogan; it is a measurable outcome.

Latest Developments in Investment Arbitration

Chile's investor–State docket in late 2024–2025 features three milestones: one award, one pending proceeding, and one case suspended for settlement negotiations.

Interconexión Eléctrica S.A. E.S.P. v. Republic of Chile (ICSID Case No. ARB/21/27) — Award (December 13, 2024)

Interconexión Eléctrica S.A. E.S.P. is a Colombian company that invested in Chile through Interchile S.A. and ISA Inversiones Chile SpA (jointly, "**ISA**"). The entities were created for the construction and commissioning of three high-voltage power transmission lines. During construction, authorities applied several delay penalties and called on the performance bonds provided by the contractor. ISA filed an ICSID claim alleging that Chile violated the obligations of fair and equitable treatment and full protection and security of international investments, as provided in the Chile–Colombia Free Trade Agreement ("**FTA**") (2006).

According to the claimants, the social unrest of 2019 constituted an event of force majeure, contributing to delays and damages. ISA claimed

US$223 million in damages. On December 13, 2024, the tribunal rendered its award, with a partial dissent by the arbitrator appointed by Chile, ordering Chile to reimburse US$16 million of the delay penalty applied, plus interest, while rejecting the remainder of the US$223 million claim. Considering the outcome of the proceeding, the tribunal ordered the claimants to bear 80% of the proceeding costs.

The Award was subsequently rectified by Decision of 11 March 2025, finding that there had been an arithmetic error in the amount to be reimbursed by the claimant as costs of the proceedings.

ADP International S.A. and Vinci Airports S.A.S. v. Republic of Chile (ICSID Case No. ARB/21/40) — Pending

ADP International S.A. and Vinci Airports S.A.S., the two majority shareholders of Sociedad Concesionaria Nuevo Pudahuel S.A. ("**Nuevo Pudahuel**"), created in Chile for the expansion and operation of Santiago's international airport, were awarded a 20-year concession in 2015. The claimants argue that Chile failed to restore the concession's post-pandemic economic and financial balance by refusing to renegotiate the terms of the concession to mitigate the financial burden caused by COVID-19-related air-traffic restrictions, thereby breaching fair and equitable treatment under the Chile–France Bilateral Investment Treaty ("**BIT**") (1992).

In parallel with the ICSID proceedings, Nuevo Pudahuel (the concessionaire) initiated a domestic ad hoc arbitration against the Ministry of Public Works; in its decision of 15 May 2024, the Arbitral Commission dismissed the principal claims but partially upheld a subsidiary claim, finding that the pandemic constituted a supervening event that affected the contractual equilibrium.

NC Telecom AS, NC Telecom II AS, WOM Mobile S.A., and WOM S.A. v. Republic of Chile (ICSID Case No. ARB/24/30) — Provisional Measures Denied; Suspension for Settlement Talks (2025)

Norwegian parent companies NC Telecom AS and NC Telecom II AS, and their Chilean subsidiaries WOM Mobile S.A. and WOM S.A., filed an ICSID claim alleging a breach of the obligation of fair and equitable treatment due to a block imposed by the Chilean government on their efforts to expand the 5G network.

Before the ICSID proceedings were initiated, the Chilean subsidiaries requested, as a provisional measure in local courts, an order preventing Chilean authorities from enforcing a series of performance bonds, arguing that the measure was urgent and necessary to avoid permanent damage, pending the constitution of the arbitral tribunal.

Although the local courts granted WOM's request for interim relief, the ICSID tribunal rejected a similar request before it in June 2025, allowing Chile to enforce the performance bonds.

The claimants also requested, as a provisional measure, .

In September 2025, the parties jointly requested a suspension of the proceedings to negotiate a settlement. The agreement has not yet been officially published by ICSID. According to local press reports, the company will complete the rollout of the 5G network by a new deadline and pay approximately US$53 million to the Chilean government. The proceedings remain suspended to date.

Bupa Investments Overseas Limited v. Republic of Chile (ICSID Case No. ARB/25/50) – Request for Arbitration

In November 2025 the British company Bupa Investments Overseas Limited ("**BUPA**") registered a request for arbitration proceedings against Chile. Although the request was declared admissible it has not yet been published at the ICSID Database.

According to local press, "Isapre Cruz Blanca" a health insurance company owned by BUPA, was negatively affected by several judicial and legislative measures adopted by Chile. Specifically, the company asserts that in context of Covid-19 pandemic they were forced to freeze prices, and once the pandemic was over, a law was passed that made these effects permanent and forced them to refund what they had allegedly overcharged.

These developments—the CAM Santiago–CIAM-CIAR integration, minimal court intervention, and an active investor–State caseload—suggest a more predictable and internationally connected Chilean seat, a trajectory that is expected to continue into 2026.

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Santiago Very Young Arbitration Practitioners ("**SVYAP**") is a network that brings together young professionals interested in domestic and international arbitration, promoting both professional and academic engagement. SVYAP hosts academic and social events for its members, creating high-quality intergenerational spaces for networking and development.

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Key International Agreements

Colombia expanded and updated its international arbitration and investment promotion framework through the following key developments:

United States-Colombia Free Trade Commission Decision No. 9

On January 15, 2025, the Free Trade Commission of the United States-Colombia Trade Promotion Agreement (2006) ("**US – Colombia TPA**") issued Decision No. 9, which sets out interpretations of certain provisions in the Free Trade Agreement ("**FTA**") Investment Chapter, such as national treatment, most-favored-nation treatment, minimum standard of treatment, expropriation, and submissions of claims to arbitration.

Belt and Road Initiative with China

In May 2025, Colombia signed a cooperation agreement with China to join the Belt and Road Initiative, thereby opening channels for Chinese investment and potentially expanding the scope of disputes that may be subject to arbitration under China-Colombia investment frameworks. This development builds on the existing China – Colombia Bilateral Investment Treaty (2008), signed in 2008 and in force since 2013.

Colombia-Venezuela Bilateral Investment Treaty

On August 13, 2025, Colombia's Constitutional Court approved the Colombia – Venezuela Bilateral Investment Treaty (2023), confirming its consistency with the national constitution. The treaty establishes investor-state dispute resolution through ad hoc arbitration under the United Nations Commission on International Trade Law Rules (1976) ("**UNCITRAL Rules**"), and excludes International Centre for Settlement of Investment Disputes ("**ICSID**") arbitration, reflecting Venezuela's withdrawal from the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) ("**ICSID Convention**") in 2012.

Permanent Court of Arbitration ("PCA") Host Country Agreement

On September 30, 2025, Colombia entered into a Host Country Agreement with the PCA, facilitating the conduct of PCA proceedings in Colombia. The agreement enables the PCA to administer arbitrations seated in Colombia and reinforces Colombia's position as a viable seat for international arbitration proceedings.

Japan Economic Partnership Agreement Negotiations

In September 2025, Colombia reactivated negotiations for an Economic Partnership Agreement with Japan, which had been suspended since

2021 after starting in 2012. If concluded, the agreement will likely include investment protection and arbitration provisions, further expanding Colombia's network of investment treaties.

Saudi Arabia-Colombia Memorandum of Understanding

On October 30 2025, Colombia and Saudi Arabia concluded a memorandum of understanding to promote direct investment and facilitate the exchange of statistical information on investments, thereby diversifying Colombia's investment partnerships beyond its traditional focus on the Western Hemisphere and European partners.

Notable Arbitral Proceedings

Perimetral Oriental de Bogota U.S. Award Enforcement

On April 11 2025, Perimetral Oriental de Bogota filed an action in the U.S. District Court for the District of Columbia to enforce a USD 317 million AAA-ICDR (International Centre for Dispute Resolution) award against Colombia's National Infrastructure Agency pursuant to the New York Convention (1958), as incorporated into the U.S. Federal Arbitration Act.

Perimetral Oriental seeks to enforce an arbitral award issued on December 18 2024, in the case *Perimetral Oriental de Bogota v. ANI*, 01-20-0015-3123 (clarified on March 7 2025). The arbitration proceedings were seated in Bogota, Colombia, and were conducted pursuant to an arbitration agreement contained in a concession contract dated September 8 2014, for the construction and operation of a highway section.

Aris Mining Arbitration Settlement

On November 19 2025, Colombia reached a settlement with Aris Mining to terminate an ongoing ICSID arbitration (*Aris Mining v. Colombia, ARB 18/23*). The settlement agreement establishes a 10-year cooperation framework supervised by a joint committee. The arbitration was initiated in May 2018 by Gran Colombia Gold Corp. (now Aris Mining), with a claim for up to USD 380 million in damages. While details remain confidential, this resolution demonstrates Colombia's willingness to negotiate settlements in investment disputes, potentially avoiding adverse awards.

Key Legislative Developments

Colombia issued the Enforcement Arbitration Statute through Law 2540 of 2025 ("**Enforcement Arbitration Statute**"), introducing arbitration for enforcement proceedings (Carolina Posada, Camila Castaño, Daniela Corchuelo, 'Arbitrators Will Now Have Enforcement Powers in Colombia' (*Kluwer Arbitration Blog*, 29 September 2025)). This reform responds to a practical problem: enforcement proceedings represent over 70% of all civil litigation in Colombia, resulting in court congestion and delays in access to justice. The Enforcement Arbitration Statute complements Colombia's existing arbitration framework, set forth in Law 1563 of 2012, which is based on the UNCITRAL Model Law on International Commercial Arbitration (1985).

Under the Enforcement Arbitration Statute, arbitrators are empowered to conduct enforcement proceedings and to order the compulsory execution of obligations, producing effects equivalent to those of a state court judge. This delegation of enforcement authority—traditionally reserved for the judiciary—aims to alleviate court congestion and provide creditors with an alternative and efficient mechanism for debt recovery.

The Enforcement Arbitration Statute establishes specific procedural limitations for enforcement arbitration. For example:

- Enforcement arbitration must be conducted through an institutional arbitration mechanism,
- Ad hoc arbitration is strictly prohibited,
- All arbitral awards must be rendered in law (*en derecho*), and
- Any provision allowing awards rendered in equity or technical exper-

tise is null and void.

The Enforcement Arbitration Statute also establishes procedures and limitations for award enforcement. Certain national arbitral awards may be enforced by the same tribunal that issued them, provided the enforcement request is filed within 10 business days following notification of the award or the decision resolving any clarification, correction, or addition. In panel tribunals, the enforcing arbitrator is the presiding arbitrator or, alternatively, another arbitrator selected in alphabetical order. For sole arbitrator tribunals, the same arbitrator acts as the enforcement arbitrator. If no arbitrator accepts the role, the arbitration center will constitute a new tribunal from its list of enforcement arbitrators.

Enforcement arbitral proceedings are conducted by two types of arbitrators with distinct but complementary roles:

- Enforcement arbitrators (*árbitros ejecutores*) are responsible for conducting and deciding the enforcement arbitration process. Typically, a single arbitrator presides over each case regardless of its value, although the parties may agree to appoint an odd-numbered panel for cases of higher value.
- Preliminary measures arbitrators (*árbitros de medidas cautelares previas*), by contrast, are appointed to handle preliminary precautionary measures before the main enforcement arbitration process begins. They act as sole arbitrators, must meet at least the same qualifications as enforcement arbitrators, and are bound by equivalent duties, disclosure obligations, and grounds for disqualification or recusal.

Key Institutional Developments

On July 16 2025, the Colombian government issued Presidential Directive No. 5 (“**Directive**”), establishing guidelines for national executive branch entities regarding arbitration agreements in domestic and international arbitrations. The Directive governs how the state engages with arbitration.

The Directive requires that any decision to enter into arbitration agreements or arbitration clauses be preceded by a legal and economic evaluation of the appropriateness of arbitration in each specific case, considering the alternative, temporal, exceptional, and voluntary nature of this dispute resolution mechanism. The subscription of arbitration agreements shall correspond to a public management decision.

Under the Directive, whenever a covered executive branch entity enters into an arbitration agreement or includes an arbitration clause, it must first obtain legal opinion from its legal office or directorate on the legal and economic advisability of arbitration in the specific case. The entity must record the justification for choosing arbitration in the contract file to ensure transparency and accountability. The clause must also guarantee gender diversity by including at least one woman arbitrator on the tribunal.

In addition, the entity must seek prior approval from the Director of the National Agency for the Legal Defense of the State (*Agencia Nacional de Defensa Jurídica del Estado*) to coordinate the protection of state interests in legal proceedings. Finally, covered entities shall refrain from submitting commercial disputes to ICSID tribunals.

The Directive also contains guidelines for the appointment of arbitrators, requiring the approval of the Director of the National Agency for the Legal Defense of the State before the appointment of arbitrators and promoting the appointment of women arbitrators.

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LATIN AMERICA & BRAZIL

Guatemala

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This year was particularly relevant for arbitration in Guatemala. Two investment arbitration cases were filed; local courts issued key decisions which have impacted the local framework for commercial and investment arbitrations; sectors prone to arbitration disputes had major developments; and local arbitral institutions contributed to the improvement of the arbitral landscape in the country.

Investment Treaty Case Development

Within the context of investor-State dispute resolution, three major cases saw developments in 2025: *Energía y Renovación Holding, S.A. v. Republic of Guatemala, ICSID Case No. ARB/21/56* (“***Energía y Renovación***”), *Grupo Energía Bogotá S.A. E.S.P. & Transportadora de Energía de Centroamérica S.A. v. Republic of Guatemala (I),* ICSID Case No. ARB/20/4. (“***GEB & TRECSA***”) and *Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala,* ICSID Case No. ARB/18/43. (“***Daniel W. Kappes***”). In *Energía y Renovación*, the Tribunal issued a final award holding Guatemala internationally responsible for breaching the 2002 Central America-Panama Free Trade Agreement (FTA). In *GEB & TRECSA*, a decision on jurisdiction was issued, and hearings on jurisdiction, merits and quantum were held. Finally, in *Daniel W. Kappes* the Tribunal issued an award, dismissing all claims and upholding that Guatemala did not breach the 2002 Central America-Panama Free Trade Agreement (“**CAFTA**”).

Energía y Renovación Holding, S.A. v. Republic of Guatemala, ICSID Case No. ARB/21/56

The dispute in *Energía y Renovación Holding, S.A. v. Guatemala* arose from alleged failures by the Guatemalan State to protect the investor’s hydroelectric projects, licenses, permits, and shares in its domestic subsidiaries. According to the claimant, Guatemala failed to answer adequately to repeated violent incidents by local indigenous communities, including attacks, threats, and damage to equipment, which caused delays and increased project costs. The investor initiated the arbitration under the CAFTA, claiming breaches to the full range of standards for protection for foreign investments.

Guatemala opposed the investor’s claims and challenged the tribunal’s jurisdiction on *ratione materiae* and personae grounds including by arguing that the investment was illegal because its domestic laws prohibit foreigners from owning real estate within the country’s borders.

The Tribunal issued an Award on March 31, 2025. The majority of the Tribunal rejected Guatemala’s jurisdictional challenges, considering them to

be circular. On the merits, the Majority held Guatemala liable for failing to protect the investor's hydroelectric projects from persistent social unrest and community hostility, awarding approximately US $64.5 million in damages and costs. The Tribunal found that Guatemala's failure to exercise vigilance and due diligence constituted a breach to the CAFTA.

Prof. Raul E. Vinuesa issued a dissenting opinion, where he expressed his disagreement on the legality of the investment, the statute of limitations, and the quantum of damages.

October 24, 2025, Guatemala filed an application for annulment under Article 52 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) ("**ICSID Convention**"). The annulment proceedings are currently ongoing.

Grupo Energía Bogotá S.A. E.S.P. & Transportadora de Energía de Centroamérica S.A. v. Republic of Guatemala (I), ICSID Case No. ARB/20/48

GEB & TRECSA initiated ICSID proceedings against Guatemala under the Colombia–Guatemala–El Salvador–Honduras Free Trade Agreement (2007), claiming that Guatemala violated treaty protections in relation to a large electricity-transmission project. The dispute centers on the alleged failure by Guatemala to comply with its contractual obligations, particularly with respect to force majeure provisions and the delayed issuance of authorizations for the project's construction. These setbacks, according to the claimants, caused substantial delays and additional costs.

Guatemala raised four preliminary objections, arguing that claims were time-barred, that parallel proceedings are ongoing before Guatemalan domestic courts, and that the challenged measures did not constitute treaty breaches. In a November 24, 2023, decision, the tribunal rejected most of the jurisdictional objections, but upheld Guatemala's objection to investor's use of several umbrella-clauses from other treaties via the FTA's Most Favoured Nation ("**MFN**") clause, ruling it lacked jurisdiction over those.

In 2025, from July 07 to July 12, a hearing on jurisdiction, merits, and quantum took place.

Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala, ICSID Case No. ARB/18/43.

Daniel Kappes initiated arbitration proceedings against Guatemala arguing the breach of the Minimum Standard of Treatment ("**MST**") and protection against expropriation.

In 2025, the Tribunal issued a historic decision declining to award damages for suspension of the investor's mining license pending community consultations under the the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries ("**Convention No. 169**"). This decision, uncommon in investment arbitration, granted Guatemala a clear victory.

Key Local Court Decisions Impacting International Arbitration

In 2025, Guatemalan courts issued two decisions relevant to the local arbitration framework. The first concerns a new law that introduced a provision regarding umbrella clauses. The second decision pertains to the application of the ICC Arbitration Rules and the waiver of the right to challenge an award through a domestic *revisión* proceeding – a particular feature of the Guatemalan arbitration framework.

Unconstitutionality of the Umbrella Clause in the *Ley de Infraestructura Vial Prioritaria*.

In November 2024, Guatemala's Congress enacted the Ley de *Infraestructura Vial Prioritaria* or Priority Road Infrastructure Law ("**LIVP**"). The LIVP regulates the contracting of priority road projects, aiming to enhance legal certainty and security for investors. It establishes mechanisms to ensure project execution and timely payments, while promoting com-

petition and international participation through measures such as using English in bidding documents and meetings, pre-qualifying international bidders, and removing obstacles to their participation.

One of the highlights of the LIVP was the inclusion of a so-called umbrella clause allowing foreign investors to resort to ICSID arbitration if a relevant investment treaty applies. According to Art. 84 of the LIVP: "*Foreign investors will have the right to resort to ICSID provided that an Investment Treaty applicable to the investor so provides. For the purposes of Investment Arbitration, this article shall be understood as an umbrella clause for Road Infrastructure Contracts*". Umbrella clauses are commonly found in treaties but, it is rare to find them as part of domestic law as these benefits for foreign investors are often negotiated in an international context and subject to reciprocity.

On July 9, 2025, the Guatemala's Constitutional Court ruled that Art. 84 was unconstitutional. The Constitutional Court considered that the umbrella clause in the LIVP was disproportionate as it grants unilateral privileges to foreign investors without reciprocity to Guatemalan investors, which creates both economical and legal uncertainty for Guatemala.

Guatemalan Constitutional Court Upholds Waiver to Challenge Award Under ICC Rules

Under Art. 43 of the Guatemala's Arbitration Law, awards may be challenged before the Court of Appeals, which can order an award's modification or annulment.

This may run contrary to international practice which considers awards to be final, binding, and enforceable under the law. However, recently the Court of Appeals confirmed that, in arbitrations administered by the ICC, the parties are deemed to have waived their right to challenge the award under Art. 35 of the ICC Arbitration Rules. This new interpretation aligns Guatemalan jurisprudence with international standards.

Recently, the Constitutional Court confirmed the view of the Court of Appeals and further elaborated on the application of the stoppel or *non venirem contra factum propium* principle to the waiver of the right to challenge an award. The Constitutional Court concluded that, if the conduct of a party to the arbitration agreement indicates that it effectively waived its right to challenge the award, then the *revisión* proceeding will not be considered available as a remedy against the award.

Recent Developments in Sectors Prone to Arbitration Disputes

Mining

Back in 2024, International Metal Supply Holding S.A (a Swiss company, parent of Guatemalan mining company Mayaníquel) filed a Notice of Intent under the Switzerland-Guatemala Bilateral Investment Treaty ("**BIT**") (2002), arguing that Guatemala unlawfully blocked its nickel-export operations by withholding the necessary export credentials and imposing unjustified administrative restrictions. The claim is estimated at around US $100 million.

Although this case has no significant updates for 2025, based on conversations with stakeholders in the mining sector, it appears that the dispute continues to deepen based on recent measures by the Guatemalan mining authorities.

Energy

In April 2025, Guatemala's national electricity distributors and the CNEE launched PEG 5, the country's largest energy tender, aiming to contract up to 1,400 MW for delivery between 2030 and 2045, with an estimated US $4 billion investment. PEG 5 removes the previous price cap and restricts participation from existing plants to encourage new developments. Compared to previous PEG tenders, the PEG 5 introduces several key innovations. It eliminates the previous cap on the maximum sale price to

distribution companies––a cap previously tied to outcomes from previous PEGs––and limits participation from existing power plants to encourage the development of new plants.

Guatemala's electricity sector is notoriously active in international commercial and investment arbitrations. With the launch of PEG 5 and the expected investment of billions of dollars, the risk of future disputes is heightened: new long-term contracts (PPAs) with both local and foreign investors, novel regulatory frameworks (e.g., for energy storage), and large-capacity generation projects all create fertile ground for potential contractual or treaty-based claims.

As Guatemala expands its grid and promotes competition, investors could challenge future regulatory decisions, changes in price or capacity terms, or enforcement of contractual obligations, making the sector a likely hotspot for arbitration.

Updates on Local Arbitration Centers in Guatemala

In 2025, Guatemala's arbitration institutions saw a notable generational shift in leadership. At the Comisión de Resolución de Conflictos de la Cámara de Industria de Guatemala ("**CRECIG**"), Victor López was appointed General President and Coordinator, while Carolina Diab continues to contribute from the Board of Directors. Similarly, at the Arbitration and Conciliation Center of the Chamber of Commerce of Guatemala ("**CENAC**"), Edson López assumed the role of President, and Maria Eugenia Ferreyra was appointed General Director, signaling the emergence of a new generation of leaders shaping the future of arbitration in the country.

IBT Arbitration Center

The IBT Arbitration Center ("**IBT**"), established in 2021, has quickly become a leading Guatemalan arbitral institution specializing in technology, financing, and consumer protection. In just four years, IBT has consolidated its position as a reference for promoting effective alternative dispute resolution methods. In 2025, the Center handled over 40 cases—the highest caseload in the Northern Triangle (Guatemala, El Salvador, and Honduras)—with a majority focused on the financing sector.

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LATIN AMERICA & BRAZIL

Mexico

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This article briefly recaps Mexico's 2025 arbitration landscape, covering the controversial judicial reform, the recent ADR law, the upcoming USMCA review, as well as some noteworthy judicial and arbitral precedents.

Constitutional Reform of the Judiciary

In February 2024, former President Andrés Manuel López Obrador submitted a priority bill to Congress amending the functioning and structure of the Mexican judiciary branch.

This bill, commonly referred to as the "judicial reform", proposed a series of constitutional amendments that, most notably: restructured Mexico's Supreme Court of Justice, replaced the appointment-based system of all judicial positions—including that of Supreme Court justices—to one where they are elected by popular vote, permitted the use of "faceless judges" in certain cases, created new oversight entities, and limited the effects of constitutional claims (*amparos*) to only the participating parties, among others.

Despite significant pushback from national and international stakeholders and watchdogs—including members of the former judiciary itself—that mainly argued that the reform could erode judicial independence, the bill was approved by the Mexican Congress in early September 2024 and published into law on September 15, 2024.

The first round of judicial elections under the reform—covering all nine of the Supreme Court justices, several federal judges, and local judges of 19 states—took place in June 2025, with the remaining judges scheduled to be elected in 2027. The elected judges from this first round of elections assumed office on September 1, 2025.

With the newly minted judges only having been in power for a few months now, it remains to be seen how exactly this new reform will shape Mexico's judicial branch and, particularly, whether the judiciary under this new system will continue to uphold the arbitration-friendly precedents that had previously prevailed in Mexican courts, and whether the reform will in fact lead to an increase of arbitration proceedings arising from Mexican agreements in lieu of local proceedings, as has been broadly speculated.

Entry Into Force of the General Law on Alternative Dispute Resolution Mechanisms

On January 26, 2024, the General Law on Alternative Dispute Resolution Mechanisms (*Ley General de Mecanismos Alternativos de Solución de Controversias*; the "**ADR Law**") was published into law. This statute stems from a constitutional amendment enacted in February 2017, which added section XXIX-A into Article 73 of the Mexican Constitution and empowered Congress to issue general laws containing the principles and foundations for alternative dispute resolution mechanisms, except for criminal matters.

In general terms, the ADR Law establishes the basis, general principles, and distribution of powers governing alternative dispute resolution in Mexico, as well as the enforceability of outcomes reached through these processes. It expressly recognizes negotiation, collaborative negotiation, mediation, conciliation, and arbitration as mechanisms, while allowing for others by agreement of the parties. The law's objective is to facilitate agreements that resolve some or all disputes between the parties. When such agreements meet the law's formal requirements, they are accorded *res judicata* effect. To support these processes, the law provides for the creation of various roles and institutions responsible for facilitating the proceedings.

The law applies to private individuals, public agencies, bodies, and organizations across all three levels of government, public authorities, state owned enterprises, and autonomous constitutional bodies. It also extends to certain administrative proceedings and to hydrocarbon exploration and extraction contracts.

Most notably, the ADR Law regulates technology enabled dispute resolution. It permits online dispute resolution and the conduct of proceedings through information and communication technologies, including systems that use automation and decentralized justice protocols supported by smart contracts and blockchain, when expressly agreed by the parties. In such cases, parties are entitled to transparency regarding how the applicable system operates, and proceedings remain subject to data protection, confidentiality, and the substantive and procedural requirements of the ADR Law.

Although there are currently no publicly available figures on the number of cases resolved under the ADR Law thus far, it can be expected that this law will ultimately encourage the use of consensual and digital dispute resolution in Mexico, reducing litigation.

Upcoming Review of the USMCA

As of July 1, 2020, the North American Free Trade Agreement (1994) ("**NAFTA**") was replaced by the United States-Mexico-Canada Agreement (2018) (the "**USMCA**"). Pursuant to Article 34.7 (Review and Term Extension) thereof, the USMCA has an initial 16-year term and, on the sixth anniversary of the agreement's entry into force, the Free Trade Commission—composed of representatives of the government of each Party—shall convene to conduct a review of the USMCA's operation and decide on any appropriate actions. Accordingly, the first review of the USMCA is scheduled to take place in 2026.

In the context of the upcoming joint review, on September 17, 2025, a notice was published in the Official Federal Gazette whereby the Mexican Ministry of Economy invited stakeholders to submit comments and recommendations regarding the USMCA's performance and its impact across the productive sectors covered by the agreement. This comment period closed on November 18, 2025.

As expected, the upcoming review has become quite politicized and there has been much speculation as to what it may entail. However, it can be expected that the general framework under Chapter 14 (Investment), which regulates protections for foreign investments and investor-State

arbitration between Mexico and the U.S., will likely remain in force for the duration of its term.

Investor–State Arbitrations Held Against Mexico

Mexico is currently involved in 24 publicly known investment arbitration proceedings initiated under various International Investment Agreements, with its representation led by the General Directorate of Legal Counsel for International Trade of the Mexican Ministry of Economy. Among the Investor-State arbitration proceedings concluded since 2024 are the following:

Alicia Grace et al. v. The United Mexican States (UNCT/18/4)

Alicia Grace et al. v. The United Mexican States, Case No. UNCT/18/4, was brought against Mexico by a consortium led by Alicia Grace under NAFTA, in accordance with the UNCITRAL Arbitration Rules 1976. The dispute concerned the adverse effects suffered by 27 investors following the renegotiation of lease rates for drilling platforms used by Petróleos Mexicanos ("**Pemex**"), Mexico's state-owned oil company, which ultimately resulted in the termination of the contracts by the state entity. In particular, the investors alleged that, upon refusing to pay bribes to various Pemex officials, those officials allegedly implemented a series of strategies, together with competitors, aimed to drive the consortium into insolvency, which ultimately led to an indirect expropriation of the claimants' investments and a corresponding breach of Mexico's Fair and Equitable Treatment obligations under NAFTA.

After the proceedings, the Arbitral Tribunal determined that it lacked jurisdiction to resolve the disputes on the grounds that some of the claimants possessed dominant Mexican nationality, rendering them ineligible to bring claims under the treaty. As to the remaining claimants, the Tribunal held that it lacked jurisdiction because the procedural route chosen by the claimants under NAFTA Article 1116 is intended solely for claims arising from direct harm to investors. However, the claimants who invoked that provision did so essentially on behalf of enterprises or entities under their control, making the harm indirect and requiring recourse under NAFTA Article 1117, thereby depriving the Tribunal of jurisdiction over the claims submitted.

Odyssey Marine Exploration, Inc. v. The United Mexican States (UNCT/20/1)

This second proceeding concerned the development of a project aimed at exploiting minerals contained in marine deposits located off the coast of the Gulf of Ulloa in northern Mexico, using a novel seabed dredging technique that, at the time of the proceedings, had not been tested anywhere else in the world.

Due to the attention the project attracted, various institutions and civil organizations requested that Mexican authorities to submit the project's approval to public consultation, particularly given the

inability to determine the true environmental impact of the techniques Odyssey Marine intended to implement to extract the sought minerals nor to remediate damage to the ecosystem caused by the before mentioned techniques.

Following a series of interactions between investors, administrative and judicial authorities, the Mexican environmental authority (SEMARNAT) ultimately denied authorization to the project, citing methodological deficiencies in the studies submitted by Odyssey, as well as the potential harm to the marine environment posed by the project, particularly to certain species at risk of extinction in the region. In response, the investors initiated ISDS proceedings under NAFTA, arguing that Mexican authorities had denied environmental permits based on political rather than scientific considerations.

The Arbitral Tribunal issued its Final Award by majority, finding that Mexico breached its obligations under NAFTA Article 1105 regarding the Fair and Equitable Treatment standard by failing to establish that its denial of environmental permits was based strictly on environmental grounds. Relevantly, the Tribunal ultimately awarded the claimant compensation equivalent to US $37.1 million plus costs of the proceedings, by rejecting Claimant's request to rely on an income based approach for the calculation of damages and instead awarding only sunk cost for the project.

It is important to note that there was a dissenting opinion by Professor Philippe Sands KC, who pointed out certain deficiencies in the majority's reasoning in the Final Award. In particular, he considered it crucial that the project sought to implement—in an area of high environmental fragility—mineral extraction techniques never used before, whose consequences were unpredictable forcing Mexican authorities to prevent and avoid any risk that could turn into irreparable harm to the environment. This, without disregarding the fact that the investor acknowledged having no prior experience in the mining industry.

Relevant jurisprudence developments

On January 16, 2025, the final award in the *Credit Suisse Mexico and Casa de Bolsa v. Respondent* (ICC Case No. 27990/PDP) was issued and subsequently made public.

In this case, after conciliation failed, the respondent filed a claim in a Mexican federal labor court seeking payment of alleged outstanding compensation from the claimants, its former employers. The claimants then commenced arbitration under the ICC Rules, with seat in New York, on the basis of a separation agreement signed by the parties. Although labor disputes are generally understood to fall within the exclusive jurisdiction of Mexican federal labor courts, the tribunal upheld its jurisdiction, among other reasons, because the amounts at issue did not constitute "salary" or labor compensation under Mexican law, and because the respondent did not establish that Mexican law holds such disputes non arbitrable. The tribunal further found that the respondent did not prove that Mexican public policy would render the award unenforceable in Mexico and noted that enforcement could also be sought in other jurisdictions.

This case establishes an interesting, though divisive, precedent that highlights the importance of seat selection to arbitral awards' reasoning and, ultimately, their validity and enforcement.

Relevant Jurisprudence Developments

While Mexican courts did not issue any groundbreaking jurisprudential decisions last year, a few interesting developments are worth highlighting.

First, it was reaffirmed that the court of the seat of arbitration has jurisdiction to hear actions to set aside the arbitral award, further clarifying that this applies even when an annulment argument is raised as a counterclaim within proceedings for the recognition or enforcement of a foreign award. Courts also confirmed their authority to grant provisional precautionary measures during recognition/enforcement proceedings to safeguard the award's effectiveness, upholding the constitutionality of Articles 1425 and 1478 of the Commercial Code which confer this power. In addition, it was held that, while an award issued by an arbitral tribunal is affected by *res judicata*, this document lacks public faith and thus is not opposable to third parties. To make any property transfer ordered in an award enforceable against third parties, the transfer must be duly notarized and registered before the applicable public registry.

In procedural-related issues, it was held that the calculation of time limits within recognition/enforcement proceedings is in business days (as opposed to calendar days), and the lapse of a proceeding for inactivity

(*caducidad*) can terminate stalled recognition/enforcement actions.

Thus, taken together, these decisions are generally in line with Mexico's arbitration friendly disposition.

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Arbitration in Peru saw notable developments in 2025.

*In investment arbitration, Peru remained an active respondent before the International Centre for Settlement of Investment Disputes ("**ICSID**"), with a new claim registered, several ongoing annulment proceedings, and the issuance of the Lupaka v. Peru award (2025).*

On the commercial side, high-value public works and public procurement disputes continue to dominate the Peruvian arbitration market, and the high-profile Rutas de Lima v. Municipalidad Metropolitana de Lima (I) saga continued, with the denial of an unsecured stay of enforcement of the federal judgment confirming the 2020 and 2022 awards by the Supreme Court of the State of New York, on June 17 2025 and the D.C. Circuit's 24 June 2025 decision affirming that federal judgment. Most recently, on 18 November 2025, the U.S. District Court for the Southern District of New York granted in part Peru's request for discovery under 28 U.S.C. § 1782, in aid of related Peruvian proceedings. The court ordered Brookfield Asset Management Ltd. and several financial and market institutions to produce due diligence, financial, and banking records concerning Brookfield's 2016 acquisition of its majority stake in Rutas de Lima, while limiting production where Peruvian bank-secrecy rules apply.

*At the legislative level, the General Public Procurement Law ("**Law No. 32069**") and its implementing regulation entered into force, and RENACE, the national registry of arbitrators and*

arbitration centers, became mandatory with the issuance of Supreme Decree 016-2025-JUS.

At the institutional level, the CCL (Center of Arbitration of the Lima Chamber of Commerce) adopted its 2025 Arbitration Rules, which entered into force on 1 March 2025 and replaced the 2017 rules.

Investment Arbitration

New ICSID Claim Registered: Brookfield

On 27 March 2025, ICSID registered a new arbitration between *Brookfield v. Peru* under the Canada-Peru Free Trade Agreement (2008) (**"Canada–Peru FTA"**). Public statements by the investor indicate a damages claim of approximately USD 2.7 billion arising from measures affecting the Rutas de Lima toll-road concession, including restrictions on toll collection and subsequent State actions that Brookfield characterizes as expropriatory. The Brookfield filing marks an escalation from prior contract-based disputes into treaty arbitration and aligns with high-stakes award-enforcement actions discussed later in this report.

Ongoing Annulment Proceedings

There are currently five ongoing annulment proceedings arising from earlier ICSID awards—four initiated by Peru and one initiated by the investor. These include:

- *APM Terminals v. Peru (II)*, ARB/21/28,
- *Metro de Lima v. Peru (I)*, ARB/17/3,
- *ENAGÁS v. Peru (I)*, ARB/18/26,
- *IC Power v. Peru*, ARB/19/19,
- The investor-initiated annulment in *Freeport-McMoRan v. Peru*, ARB/20/8.

The *Lupaka v. Peru* Award

On June 30 2025, the tribunal in *Lupaka v. Peru* rendered its award under the Canada – Peru FTA, arising from the Invicta mining project. The tribunal found that actions of rural communities in Peru amounted to the exercise of governmental authority and were therefore attributable to the Peruvian State.

It further concluded that Peru breached its obligations to provide Full Protection and Security and Fair and Equitable Treatment, and that the investor had been directly expropriated. As a result, the tribunal awarded USD 40.4 million in compensation, plus compound interest from August 2019.

Peru's Procedural Default in Kuntur Wasi's enforcement

On April 8, 2025, the Bankruptcy Court of the District of Columbia declared Peru "in default" as the State failed to appear to defend itself in the enforcement action for the USD 91 million ICSID award within the statutory 60-day period. This enabled the consortium to seek attachments against Peruvian assets in U.S. territory.

Recognition of the Lima Expresa Award

On 10 September 2025, the Superior Court of Justice of Lima (First Civil Commercial Chamber) recognized a Paris-seated arbitral award issued in the dispute *Municipalidad Metropolitana de Lima ("**MML**") v. Lima Expresa*, the concessionaire of the Línea Amarilla toll-road project. In the arbitration, administered by the CAIP (Paris International Arbitration Chamber), MML argued that the concession contract and several contract amendments were invalid due to alleged corruption and raised issues

concerning the project's economic equilibrium.

In a partial award rendered in January 2024 and subsequent decisions, the tribunal dismissed the corruption-related claims and upheld the concession framework, granting Lima Expresa compensation in the form of an extension of the concession term. In the recognition proceedings, MML reiterated its corruption allegations as grounds to invoke domestic and international public-policy exceptions. The Court dismissed these objections, holding that unproven allegations or preliminary indications of corruption were insufficient to deny recognition, particularly given the tribunal's prior assessment of the same allegations and the absence of any final criminal conviction. The ruling reinforces the high evidentiary threshold required to rely on corruption-based defenses at the enforcement stage.

Commercial Arbitration

Rutas de Lima Saga

On June 24 2025, the D.C. Circuit affirmed the District Court's confirmation of two United Nations Commission on International Trade Law ("**UNCITRAL**") arbitral awards in favor of Rutas de Lima, rejecting the MML's corruption-based public-policy defense and two procedural challenges. The court emphasized the tribunals' findings that the record lacked a quid-pro-quo link between Odebrecht-related payments and the 2013 Concession Contract or the 2014-2016 amendments and found no prejudice or misconduct in the tribunals' handling of evidence.

Separately, on June 17 2025, the New York Supreme Court denied the MML an unsecured stay of enforcement of the roughly USD 198.4 million federal judgment registered in New York, holding that the MML neither satisfied the statutory requirement to furnish security nor met the discretionary standard for an unsecured stay. Together, these rulings keep the awards and the U.S. judgment intact and enforceable unless MML posts appropriate security or obtains contrary federal relief.

A New Set of Disputes

In 2020, Peru and the United Kingdom signed a government-to-government agreement ("**G2G**") to support the implementation of the *Reconstrucción con Cambios* program, created after the 2017 *El Niño Costero*—the coastal warming event that caused severe flooding and landslides—to rebuild and climate-proof schools, hospitals, roads, and flood-defense infrastructure.

Through this partnership, Peru adopted the New Engineering Contract ("**NEC**") suite as the standard for many reconstruction works, introducing a contractual model that was relatively new to the local market. This shift has since generated a distinct set of disputes, driven by the challenges of reconciling NEC contract mechanisms, and collaborative-contracting obligations with projects seriously impacted by, among other factors, public funding shortfalls.

Recently, on August 2025, the *Autoridad Nacional de Infraestructura* ("**ANIN**"), entity responsible for important projects in the region, suspended funding for many projects, halting works nationwide and threatening public-infrastructure programs due to a budget shortfall. Although the Ministry of Economy later transferred resources, the amount covers only about 10% of the debt owed for works already executed, leaving substantial outstanding liabilities, placing projects at risk, and creating potential disputes and claims from contractors.

Legislative Developments

Since the issuance of the Arbitration Law (2008) in Peru, there have been few significant amendments to this framework. Over the past decade, Peru has maintained a solid reputation for having a modern and predictable arbitration framework and specialized institutions. Peru continues to be regarded as one of the most reliable and attractive arbitration venues in Latin America.

The arbitration landscape in Peru continues to be dominated by disputes

arising from public procurement. According to the latest data collected by the Peruvian Comptroller General, pending arbitration accounts for 9.1% of the total number of paralyzed public infrastructure projects (222 projects). Although this percentage may appear modest, these cases involve some of the largest and most expensive public infrastructure investments. They account for 44.2% of the public infrastructure budget still pending execution, representing the highest share among all causes of project paralysis.

On 22 April 2025, the General Public Procurement Law ("**Law No. 32069**") and Supreme Decree No. 009-2025-EF entered into force, deliberately preserving existing arbitration regulations. However, in August 2025 the Regulation of the National Registry of Arbitrators and Arbitration Centers ("**RENACE**") entered into force through Supreme Decree 016-2025-JUS, establishing mandatory registration for both arbitration centers and individual arbitrators.

This reform allegedly aims to address concerns arising from contentious public-procurement arbitrations handled by new or insufficiently supervised arbitral centers. The government considered that a general, centralized registry was necessary to ensure transparency, verify arbitrators' experience, track challenges and sanctions, and strengthen due process guarantees. Various concerns and criticisms have emerged in response to this new regulation. Practitioners have questioned its potential impact on the autonomy of arbitration institutions, the validity of awards rendered by unregistered arbitrators, and the delays and restrictions imposed on parties in appointing arbitrators.

Institutional Developments

Peru hosts several well-established and reputable arbitration institutions that have contributed significantly to the country's credibility as an arbitral seat. The CCL (Lima Chamber of Commerce) and AmCham Peru (American Chamber of Commerce of Peru) are widely recognized for their solid procedural frameworks and experience in case administration.

The CCL adopted its 2025 Arbitration Rules, effective 1 March 2025, replacing the 2017 rules. Notable features include updates necessary for the administration of Dispute Resolution Boards ("**DRBs**"), which have become relevant and widely used in construction dispute resolution in Peru.

Finally, the CCL now allows scrutiny of arbitral awards when expressly agreed by the parties. This practice aligns with those of leading international arbitration institutions, such as the ICC (International Chamber of Commerce). These updates reflect the CCL's commitment to enhancing procedural efficiency, transparency, and party autonomy.

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Legal Framework and Arbitral Landscape

Croatia adopted its Arbitration Act ("**AA**") in 2001. The AA has remained unchanged since its enactment and closely follows the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law on International Commercial Arbitration (2006). Although formally based on the 1985 version, it is widely accepted that the AA reflects the 2006 UNCITRAL Amendments.

The institutional arbitration landscape remains equally stable. Established in 1853, the Permanent Arbitration Court at the Croatian Chamber of Economy ("**PAC CCE**") continues to be the principal arbitral institution in Croatia, administering the majority of arbitrations seated in the country.

Against this backdrop, 2025 saw significant developments in Croatia's investment regulatory landscape.

Amendments to the Foreign Investment Screening Act

In 2025, Croatia significantly reformed its Foreign Direct Investment ("**FDI**") screening framework with the unanimous adoption of amendments to the Foreign Investment Screening Act ("**FDI Act**") (2025), thereby strengthening the State's ability to review and, where necessary, restrict foreign investments on grounds of national security and public order, in line with the European Union ("**EU**")-wide FDI screening framework.

The amended FDI Act aligns Croatia more closely with Regulation (EU) 2019/452 on the screening of foreign direct investments. It introduces a more comprehensive and structured screening mechanism, expanding both the scope of reviewable investments and the institutional powers of the competent authorities, including Croatia's participation in the EU cooperation mechanism for information exchange and coordinated assessment of foreign investments.

Under the revised regime, a broader range of transactions are subject to mandatory notification and potential screening, including acquisitions by non-EU investors of at least 10% of voting rights or equivalent influence in Croatian companies operating in designated sensitive sectors. These sectors include, inter alia, critical infrastructure and technologies, the supply of critical inputs, access to sensitive information, and media freedom and pluralism.

The amendments further clarify the notion of "foreign investor" and extend screening obligations to indirect and certain greenfield investments, including those structured through EU-based entities ultimately controlled by non-EU persons, and allow authorities to review non-noti-

fied transactions within statutory time limits.

Institutionally, the amendments enhance the role of the interministerial screening mechanism, with the Ministry of Economy designated as the central coordinating authority. The screening authorities are empowered to impose conditions, prohibit a transaction, or unwind investments completed in breach of notification obligations. The Act also introduces clearer procedural timelines and strengthens enforcement mechanisms, including administrative fines for non-compliance.

The adoption of the amended FDI Act reflects Croatia's broader policy trend towards increased regulatory scrutiny of foreign investments in sensitive sectors, consistent with EU-wide developments and Croatia's Organization for Economic Co-operation and Development ("**OECD**") accession efforts. While the new regime does not target any specific country or category of investor, it is expected to have practical implications for cross-border transactions involving undertakings operating in sensitive sectors identified by the Act, as well as for investors structuring acquisitions through indirect ownership or control, including via intermediary entities.

Statistical Trends and the Rise of Construction Arbitration

In recent years, arbitration in Croatia has been marked by a notable increase in construction-related disputes, particularly those arising from public procurement projects.

By way of comparison, in 2023, the PAC CCE registered 19 new cases, 6 of which concerned construction disputes representing EUR 6.6 million of the EUR 34 million total in dispute. The trend intensified in 2024, when construction disputes accounted for 13 of 24 new cases and EUR 17.4 million of the EUR 28.6 million total.

As of December 2025, the PAC CCE recorded 20 new cases, 15 of which involved construction disputes, primarily concerning road construction and ancillary infrastructure, as well as railway construction and reconstruction projects.

Annulment and Recognition & Enforcement Practice

Croatia continues to be regarded as an arbitration-friendly jurisdiction, particularly with respect to judicial control of arbitral awards.

Over the last decade, Croatian courts have annulled only two arbitral awards. This record reflects a consistently restrained judicial approach and strong respect for the finality of arbitral awards.

Croatian courts have also demonstrated a consistently pro-enforcement stance in proceedings for the recognition and enforcement of foreign arbitral awards. In all cases that were finally adjudicated, recognition and enforcement were granted in favor of the applicant, in accordance with the New York Convention (1958) and domestic arbitration law.

Judicial Developments

Supreme Court: Violation of the Right to Be Heard

In decision Gž-17/2024-2, 29 October 2024,the Supreme Court of the Republic of Croatia ("**Supreme Court**") set aside a decision of the Commercial Court in Zagreb granting recognition and enforcement of a foreign arbitral award rendered under the auspices of the London Maritime Arbitrators Association.

The Supreme Court found that the first-instance court had ruled on the recognition request without reliably establishing that the opposing party had been properly served and given an opportunity to be heard. Although the lower court assumed that the respondent had failed to submit a ti-

mely response, the case file contained no clear proof of service.

Relying on Article 49(2) of the AA, the Supreme Court emphasized that courts are obliged to enable the opposing party to respond to a recognition application. The absence of evidence that this procedural safeguard had been respected constituted a serious violation of the right to be heard. The decision was therefore set aside, and the case remitted to the first-instance court.

The ruling confirms that, while Croatian courts generally favor recognition and enforcement of foreign arbitral awards, compliance with fundamental due process requirements remains a non-negotiable prerequisite.

In its decision No. Revd-5287/2024, 28 May 2025, the Supreme Court rejected an application for extraordinary legal remedy against an appellate decision that had upheld an arbitral award of the PAC CCE. The award was challenged on the basis of an alleged violation of the claimant's right to be heard, as the arbitral tribunal rejected the claimant's request to hear the parties through their oral testimony and instead based its decision on documentary evidence and the respondent's written witness statements.

The Supreme Court found that both parties had been afforded a reasonable opportunity to present their arguments and evidence and were therefore treated equally. The Court emphasized that a violation of the right to be heard arises only where a party is prevented from submitting arguments, proposing evidence, or commenting on the opposing party's submissions, and not where the arbitral tribunal, acting within its discretion, rejects a specific evidentiary request and provides reasons for doing so, as in the present case. The Court further noted that the claimant had the opportunity, but failed, to submit documentary and written witness evidence.

Violation of Ordre Public and *No Révision au Fond*

The Croatian courts have consistently interpreted public policy narrowly and have rarely upheld this annulment ground.

In its decision No. P-2204/2024, 14 March 2025, rejecting an application for annulment of a PAC CCE award, the Zagreb Commercial Court reaffirmed that public policy comprises only the fundamental legal, social, economic, and moral principles on which the Constitution of the Republic of Croatia is based. The Court emphasized that annulment proceedings do not permit review of the correctness of the award, and that not every breach of mandatory law falls within the narrow public policy exception.

In the same vein, a public policy objection was rejected by the Supreme Court in decision Gž-25/2024, 6 May 2025, thereby upholding the recognition and enforcement of a VIAC (Vienna International Arbitration Centre) award. Addressing the award debtor's argument that the award violated public policy because it was contrary to "common sense," the Supreme Court held that a debatable, or even incorrect, application of domestic law does not constitute a violation of public policy.

In judgment P-1187/2022, 7 November 2025, the Commercial Court in Zagreb dismissed a claim for partial annulment of a final ICC (International Chamber of Commerce) award in an international construction dispute. The claimant argued that parts of the award were contradictory, insufficiently reasoned, and contrary to Croatian public policy. The Court rejected these arguments, reiterating the strictly limited scope of judicial review in annulment proceedings.

The Court emphasized that Croatian courts are not entitled to review arbitral awards on the merits. Judicial scrutiny is confined to the exhaustively listed statutory grounds for annulment. The Court held that, where the dispositive part of the award clearly determines the parties' rights and obligations, any inconsistencies in the reasoning do not justify annulment

so long as the inconsistency is not such that the content of the decision cannot be discerned. The Court further clarified that Croatian public policy does not extend to alleged errors of fact or law, nor to dissatisfaction with the outcome of the arbitration. Only violations of fundamental legal principles may justify judicial intervention. While the decision is not yet final, it reflects a consistent judicial approach favoring the finality and autonomy of arbitration.

Arbitration Agreement and Action before Court

In decision No. Pz-4500/2024, 27 December 2024, the High Commercial Court of the Republic of Croatia upheld a Commercial Court decision declining jurisdiction in a dispute over a bank guarantee, on the basis that the applicable general terms contained an arbitration clause. The guarantee beneficiary had initiated court proceedings against the issuing bank, seeking payment under a performance guarantee. The beneficiary relied on the bank's general terms and conditions referenced in the guarantee, which contained a jurisdiction clause.

The bank objected to the Commercial Court's jurisdiction, arguing that the guarantee also referred to the bank's general terms for guarantee and letter-of-credit business, which provided that all disputes were to be finally resolved by arbitration under the Rules of the International Arbitration of the PAC CCE (1992). Both court instances upheld the objection.

They held that:

- the bank's general terms for guarantee and letter-of-credit business were special terms that took precedence over the bank's general terms and conditions; and
- that the reference to those special terms which contained an arbitration clause, constituted a valid arbitration agreement pursuant to Article 6(4) of the AA regardless of the fact, emphasized by the beneficiary, that there was no express reference to the arbitration clause in the text of the guarantee.

This conclusion applied notwithstanding the beneficiary's argument that the text of the guarantee did not expressly refer to the arbitration clause itself.

European Court of Human Rights ("ECHR") Proceedings Relating to the *Croatia v. MOL* Saga

In September 2025, the ECHR communicated applications lodged by Zsolt Hernádi and Ivo Sanader against Croatia, in which the applicants allege violations of Article 6 of the European Convention on Human Rights (1950) in connection with domestic criminal proceedings, which were also addressed in the long-running arbitration proceedings between MOL and the Republic of Croatia. The Croatian Government has been invited to submit written observations by mid-January 2026.

While no determination has yet been made on admissibility or on the merits, the proceedings are being closely followed as part of the broader legal context surrounding these disputes. MOL and the Republic of Croatia have two ongoing arbitrations:

- one initiated in June 2024 before ICSID (*MOL v. Croatia (III)*), and
- one initiated in 2022 in ad hoc proceedings under UNCITRAL Arbitration Rules (1976) (*MOL v. Croatia (II)*).

Prominent Arbitration Events in 2025

The ICC Croatia Third Annual Regional Conference on Arbitration and ADR – Construction Project Disputes convened in Dubrovnik on 6–7 October, featuring leading construction practitioners discussing risk allocation,

dispute boards, and the latest trends in contract preparation and dispute resolution.

On 4-5 December, the regional arbitration community gathered in Zagreb for the 33rd Croatian Arbitration Days, with panels focusing on construction disputes and broader international arbitration topics.

These events underscore the importance of the construction sector in Croatia and the country's engagement with international arbitration developments.

Conclusion

Taken together, recent statistical developments and judicial practice confirm Croatia's position as a stable and arbitration-friendly jurisdiction. The growing prominence of construction and infrastructure disputes before the PAC CCE highlights arbitration's increasing role in resolving complex construction matters. At the same time, Croatian courts continue to balance support for enforcement and finality with strict protection of due process, reinforcing legal certainty and predictability for arbitration users. At the regulatory level, the 2025 amendments to Croatia's foreign investment screening regime signal enhanced oversight of foreign investments in sensitive sectors, aligning Croatia more closely with EU practice.

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The 2025 Reform of French Arbitration Law

The year 2025 marks a pivotal moment for French arbitration. Fourteen years after the landmark Decree of 13 January 2011, the French Ministry of Justice has initiated a comprehensive overhaul of domestic and international arbitration law. In March 2025, the French Ministry of Justice received the long-awaited Report on the Reform of French Arbitration Law ("**Report**") produced by a comprehensive working group co-chaired by François Ancel (Judge at the Cour de cassation) and Professor Thomas Clay. The Report proposes the creation of a French Code of Arbitration aimed at modernising French arbitration law thereby strengthening Paris as one of the world's foremost arbitration hubs.

Towards a French Code de l'*Arbitrage*

One of the most significant innovations is the proposal to create a standalone French *Code de l'Arbitrage*, comprising 146 articles and 40 reform proposals. The draft Code is designed to be self-sufficient and minimizes references to other instruments. It also provides a dedicated procedural framework for post-arbitral judicial proceedings, including annulment actions.

Unifying Domestic and International Arbitration

The envisaged project seeks to unify the rules applicable to domestic and international arbitration. For instance, the draft abandons the traditional reference to "commerce" for defining international arbitration and the application of trade usages, opting instead for a clear definition of internationality within the Code itself.

Substantive Improvements: Flexibility, Protection, and Efficiency

- **Flexibility**
  The considered reform introduces several measures to increase procedural flexibility, including the simplification of the arbitration agreement's formal requirements, the recognition of electronic awards, and the possibility for parties to agree on electronic communication of awards.
- **Protection of Parties**
  The draft Code introduces mechanisms that prevent denial of justice, such as empowering the supporting judge (*juge d'appui*) to intervene when a party is unable to pay arbitration costs. The proposals also

entail the prohibition of advance waivers of challenging awards, to ensure procedural fairness. Finally, it recommends specific rules for consumer, employment and family arbitrations.

- **Third Parties**
  The draft Code also strengthens third parties' procedural rights. It provides for their voluntary intervention before the court of appeal and recognizes third-party *opposition* against judicial rulings on awards.
- **Efficiency**
  The envisaged reform excludes appeals of arbitral awards except in exceptional cases, and eliminates the suspensive effect of annulment proceedings, with the aim of reducing delays and enhancing the finality of awards.

  It also considers the possibility for the tribunal to consolidate related proceedings, addressing an increasingly common feature of complex multiparty disputes.

  Finally, it empowers arbitrators to liquidate penalties.

Reaffirmed Autonomy of Arbitration

The draft Code affirms the contractual nature of the relationships between arbitrators, parties, and arbitral institutions.

It also enshrines the autonomy of the arbitration agreement, thereby strengthening the *compétence-compétence* principle and party autonomy in choosing applicable law.

Independence, Impartiality, and Confidentiality

The draft Code codifies the principle of independence and impartiality of arbitrators throughout the arbitral proceedings, with a strict duty of disclosure.

The contemplated reform also addresses the longstanding debate on confidentiality, proposing to extend the principle to international arbitration and clarify its scope.

Adjustments and Promotion: Enhancing Coherence and Visibility

To ensure coherence, the envisaged reform rationalizes the interaction between the new draft Code and other legal texts, promotes judicial specialization, and clarifies the role of supporting judges (*juges d'appui*) who are granted significantly expanded powers, including:

- to safeguard equality and party autonomy;
- to order the production of documents;
- to enforce provisional or conservatory measures ordered by the tribunal; and

A separate book within the draft Code dedicated to the recognition and enforcement of awards is considered. Key innovations include:

- unifying all exequatur and annulment proceedings before the *juge judiciaire*;
- stronger recognition of awards, including the possibility of initiating proceedings to declare foreign awards unenforceable;
- rules governing the effects of annulment on related awards;
- a mechanism allowing courts to invite the tribunal to rectify the award to avoid annulment.

The envisioned reform also includes measures to promote French arbitration law domestically and internationally, such as translating the Code, organizing promotional events, and conducting impact studies on the economic influence of the arbitration community in France.

The French Minister of Justice has announced that the creation of a dedi-

cated arbitration Code, is expected in autumn 2026.

The Report and underlying reform of French arbitration law represent a decisive step towards modernizing and consolidating France's position as a leading arbitration seat. By codifying and unifying the legal framework, enhancing procedural flexibility and protection, and reaffirming foundational principles, the reform addresses both domestic needs and international expectations. It is poised to strengthen the attractiveness of Paris and the French legal system for arbitration in a competitive global environment.

Beyond the reform-related advances in French arbitration law, decisions of French courts in 2025 continue to cement France's position as one of the world's leading arbitration seats. Through key rulings, French judges have once again reaffirmed the firmly pro-arbitration stance of domestic courts. Below is a selection of decisions that inform on key aspects of arbitration from a French perspective.

Annulment Proceedings Before French Courts

Jurisdictional Review Exclusively, Merits Reserved

French courts continue to clarify the narrow path of jurisdictional review under Article 1520 1° CPC.

One of the notable rulings is the Court of Appeal decision in *Oschadbank v. Russia (I)* (Paris, 1 July 2025, RG No. 24/05336) discussed in earlier reports. In a long-awaited decision, the Paris Court of Appeal drew on reasoning of the Cour de cassation decision and rejected the jurisdictional objections raised by Russia:

- the ratione temporis jurisdiction is assessed only by the date the dispute arose;
- from a ratione loci standpoint, Russia could not exclude a region from treaty scope on territorial grounds since those issues go to merits, not jurisdiction;
- the treaty's definition of investment contains no time limit and protects existing investments at the time of the dispute, rejecting Russia's claim that only investments created as "foreign" were protected, thereby accepting the jurisdiction of the tribunal ratione materiae.

The Court further reaffirmed that arbitral jurisdiction must be reviewed exclusively against the State's treaty arbitration offer and that no external conditions on the temporal or territorial scope of treaty protection may be imported from substantive treaty protections. This decision reaffirms the principle of non-revision on the merits applicable to annulment proceedings and the limited scope of judicial review applied by the Paris Court of Appeal under 1520-1 CPC.

In *Cengiz v. Libya* (Civ. 1st, 12 February 2025, No. 21-22.978) the Cour de cassation (Cengiz v. Libya reaffirmed its strict approach, preserving a clear boundary between jurisdictional control and substantive treaty protections. The dispute involved an ICC award seated in Paris ordering Libya to pay US$51m in damages after attacks on project sites during the Libyan uprisings. Libya sought annulment of the award alleging that the protections granted under the Libya-Turkey BIT (2009) were conditional upon the investment being legal under Libyan law, and that such condition was a prerequisite for activating the BIT arbitration clause. The Court rejected Libya's contentions and confirmed the Paris Court of Appeal decision. It recalled that in international investment protection, State consent to arbitration is derived from the continuous arbitration offer in a treaty and that said offer is autonomous and independent of the validity of the underlying investment. In doing so, the *Cour de cassation* clarified the distinction between jurisdiction and merits, confirming that the legality of the investment pertained to the merits.

The subsequent decision in *Selmani v. Kosovo* (Paris, 21 October 2025, RG No. 22/15877) reaffirmed the Court of Appeal's position on jurisdictio-

nal review in annulment proceedings. In Selmani v. Kosovo, the claimant had operated 61 petrol stations in Kosovo under UNMIK-era licences granted in 2000, later terminated after Kosovo's 2008 independence. He commenced ICC arbitration in 2019 under the 2014 Kosovo investment law arguing the statute conferred retroactive arbitral jurisdiction. The tribunal accepted jurisdiction solely over post-2014 State acts, declining competence for earlier conduct. On annulment, the Paris Court of Appeal drew a distinction between the scope *ratione temporis* of a BIT and the jurisdiction ratione temporis of an investment arbitral tribunal, and held that the temporal reach of the investment law governs substantive investment protection, not the existence or scope of the State's offer to arbitrate, and therefore sits outside Article 1520-1 review.

Arbitrator Independence: Defining the Boundaries

French courts keep refining the contours of arbitrators' disclosure obligations and independence standards. The resulting decisions demonstrate judicial restraint in annulment proceedings.

In *CWT Travel v. Seitur* (Civ. 1st, 7 May 2025, No. 21-14.162), the *Cour de cassation* addressed disclosure obligations regarding third parties. The case originated in a 1986 partnership agreement enabling CWT to distribute travel services in Ecuador through Seitur under a co-branding model. After Seitur lost its IATA accreditation in 2012, CWT terminated the agreement and entered a new commercial partnership with Polimundo, years before the ICC arbitration was initiated. One of the ICC arbitrators had failed to reveal family ties with *Polimundo's manager*, a company listed as "other concerned entity" in the ICC case information sheet. Seitur sought annulment, arguing that this non-disclosure compromised impartiality under Article 1520-2 CPC.

The court rejected the annulment challenge, holding that disclosure obligations extend only to entities having "an actual interest in the outcome of the dispute", and that in the matter at hand:

- the contractual obligations between Polimundo and CWT preexisted the arbitration involving CWT and Seitur began;
- Polimundo was not a party to the arbitration, and Seitur did not raise any claims, even indirectly, involving Polimundo; and
- any finding of wrongful termination against CWT under Dutch law could lead solely to award damages and would produce no financial or commercial effect vis-à-vis Polimundo.

The *Oschadbank v. Russia (I)* case also presented an inventive impartiality challenge. One co-arbitrator had sought authorization to file an *amicus curiae* brief before a U.S. court on a pure question of law – in support of claimants in a separate case where the Russian Federation was respondent. The court rejected the challenge, finding no independence issue since the amicus participation revealed no links to the parties, counsel, or witnesses in the arbitration.

As to impartiality, the court emphasized temporal considerations: the amicus brief addressed neither the dispute's subject matter nor any related issue and was filed more than five years after the award was rendered. Consequently, it demonstrated no prejudice or bias during the arbitral proceedings.

Together, *CWT Travel v. Seitur* and *Oschadbank v. Russia (I)* underscore French courts' demanding threshold for successful challenges based on independence and impartiality grounds.

Stay Is No Sword: French Courts Shield off Enforcement from Dilatory Tactics

In 2025, French courts have refined the conditions under which courts may order a stay of proceedings (*sursis à statuer*) regarding recognition or enforcement of awards. Recent decisions confirm a coherent approach, aimed at preventing dilatory tactics and safeguarding the efficiency of the French exequatur regime.

In *Eova v. El Sewedy Electric Power System Projects* (Paris, 13 March 2025,

RG No. 24/11322), the Paris Court of Appeal reaffirmed that the existence of a domestic parallel criminal investigation does not in itself justify staying proceedings. The case involved the debtor, Eova, seeking to stay the enforcement of an arbitral award rendered in Paris. Parallel to the exequatur appeal, Eova initiated a forgery (inscription de faux) procedure before French criminal courts, alleging that documents relied upon in arbitration were falsified. On that basis, it requested the *conseiller de la mise en état* to suspend enforcement under Article 1526 CPC. The Paris Court of Appeal refused to grant the stay pending the outcome of the criminal proceedings considering it would impermissibly restrict its office and improperly deprive it of its exclusive power to assess appeal grounds of the exequatur order.

In another case, the Paris Court of Appeal (Paris, 25 March 2025, RG No. 24/00739) dismissed the request for a *sursis* absent a pending procedure before the European Commission when asked to order a stay of proceedings on the basis that the European Commission had allegedly been seized in relation to unlawful State aid. Accordingly, a *contrario*, the commencement of proceedings before the Commission may constitute grounds for granting a stay. It also confirmed that the judge must assess the merits of the objection raised, and that neither lateness nor a party's procedural conduct may justify rejecting the request.

Finally, the Paris Court of Appeal (Paris, 8 April 2025, Ord. No 23/16460 ; Paris, 8 April 2025, RG. No. 23/16464) ruled on a request for the stay of exequatur proceedings of a partial arbitral award liquidating a financial penalty (*astreinte*) pending the annulment proceedings against the partial award and other decisions of the tribunal. The Court held that a conflict with international public policy must arise directly from the specific arbitral award whose exequatur is requested, i.e., the partial award liquidating the *astreinte*, and cannot be based on alleged violations contained in a different award. Additionally, the court ruled that an award ordering the liquidation the *astreinte* is not manifestly contrary to international public policy.

Extension of the Compromissory Clause to Third Parties: Signature Is Not the Gate, Conduct Is the Key

The year offered a strong reaffirmation that non-signature does not equal non-consent when the facts place a party at the heart of contractual operations. In *World Nature Resources v. Mercuria* (Paris, 16 September 2025, No. 23/18252) the arbitration clause was contained in trade confirmations exchanged in the energy commodities market, and the court accepted that a non-signatory could be bound where contractual participation, negotiation conduct or operational implication made acceptance of the clause objectively plausible. This ruling confirmed that in the trading world, consent may emerge from transactional behaviour, commercial structure and objective counterpart expectations rather than handwritten execution ceremonies.

Two further decisions of the Paris Court of Appeal dated 20 May 2025 confirmed the same approach:

- In *Stophytrav. SCEA* (Paris, RG No. 24/08190), the Court addressed jurisdiction in a grain supply conflict arising from unperformed purchase confirmations. The contract was never signed, but purchase confirmations containing an arbitration clause had been exchanged, reflecting standard practice in the agricultural commodity sector. The defendant opposed jurisdiction, citing the lack of signature and contract formation. The Paris Court of Appeal ruled that the clause must exist in writing but requires no specific form of acceptance, and is legally autonomous from the main contract. Jurisdiction was affirmed based on proof of receipt and a consistent course of dealings.
- In *Groupe Carré v. YH* (Paris, RG No. 24/01866), the Court upheld jurisdiction in internal arbitration arising from unsigned cereal supply confirmations performed according to industry usage. While a party sought to invoke the clause against non-signatory affiliates, the Court confirmed that receipt and awareness of the arbitration agreement can be proven by any means, yet rejected any abstract or automatic group extension based solely on theoretical corporate or regulatory

influence. Repeated performance under the same unsigned method, without objection, created a legitimate expectation of arbitration and supported jurisdiction.

No Consul, No Arbitration: The *Sultan de Sulu* Saga Ends in Paris

The Sultan de Sulu saga reached its French denouement in 2025. On 6 June 2023, the Paris Court of Appeal had refused enforcement of the partial award on jurisdiction, a decision subsequently upheld by the Cour de cassation on 6 November 2024. On 9 December 2025, applying identical reasoning, the Court of Appeal annulled the USD 14.92 billion final award, holding that the arbitration clause designating the British Consul General in Brunei had become inapplicable following the disappearance of that diplomatic function. The Court concluded that the clause was concluded *intuitu officium* (i.e., in consideration of the function itself) and that the disappearance of the office rendered it unenforceable, the *effet* utile doctrine being unable to override such an essential element of the parties' consent to arbitrate.

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EUROPE

Greece

This article provides an overview of key developments in international arbitration in Greece in 2025, with a particular focus on important arbitration-related decisions issued by Greek courts and governmental initiatives promoting arbitration in Greece.

*In Greece, the longstanding dual system (opposed to the monistic system), under which domestic arbitration continues to be governed by the Greek Code of Civil Procedure ("**GCCP**"), while international commercial arbitration is governed exclusively by Greek Law 5016/2023, remains in place. This bifurcated framework is increasingly regarded as outdated and structurally inefficient. A growing body of scholars and practitioners has called upon the legislature to abolish this dualism and to adopt Law 5016/2023 as a unified statutory regime applicable to all arbitrations seated in Greece. Such reform would bring Greek arbitration law fully in line with prevailing international practice, enhance legal coherence, and promote greater predictability for the users of arbitration.*

Pending such legislative consolidation, Law 5016/2023 continues to govern international commercial arbitration.

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Although minor amendments were introduced by Law 5197/2025, said amendments did not modify any of the statute's substantive or innovative features - most of which deriving from the UNCITRAL Model Law on International Commercial Arbitration 2006 - but rather concerned initiatives aimed at strengthening the institutional framework for mediation in Greece. The following section presents key judicial decisions reflecting the Greek courts' pro-arbitration stance in 2025.

Case Law Highlights

Decision 551/2025 (Supreme Court of Greece)

Decision 551/2025 addressed the issue of annulment of an arbitral award on the grounds of alleged violation of public policy. The case involved a dispute between the Hellenic Republic and a private concessionaire, focusing on the enforceability of an arbitral award awarding compensation for lost toll revenues.

Definition of Public Policy: The Court clarified that violations of public policy justify annulment of an arbitral award only when the award contravenes mandatory rules intended primarily to protect the public interest, reflecting the fundamental political, cultural, social, or economic foundations of Greek law. It emphasized that rules established to protect private interests, including errors of law or insufficient reasoning by arbitrators, do not constitute public policy violations. In this context, the Court held that statutory limitation rules governing claims against the State do not fall within the scope of public policy, as they regulate private-law relationships between the State and private parties rather than serving the public interest. Accordingly, partial enforcement of claims otherwise barred by limitation periods is permissible if refusal would contravene principles of good faith. Furthermore, the Court distinguished between rules of mandatory law and rules of public policy, concluding that the provisions of the Greek Civil Code ("**GCC**") on good faith and fair dealing, i.e., Articles 281 and 288 GCC, are mandatory private-law norms but do not constitute rules of public policy, insofar as their purpose is to protect private interests rather than safeguard the public order.

Scope of Review: The Supreme Court dismissed the appeal, affirming the arbitral award. It concluded that the tribunal did not violate public policy and that partial enforcement of the claims, even if they were subject to statutory limitation, did not contravene fundamental legal principles or rules of public order.

This decision highlights the Greek judiciary's support for arbitration as a flexible and autonomous mechanism, while outlining the narrow circumstances under which arbitral awards may be annulled on public policy grounds. It underscores the distinction between private-law mandatory rules and rules of public policy and showcases the careful balance between party autonomy and the protection of public policy, thereby reinforcing the finality and effectiveness of arbitral awards, even in disputes involving the State.

Decision No. 503/2025 (Single-Member Court of First Instance of Piraeus)

The Decision No. 503/2025 examined the revocation of interim measures in light of a final foreign arbitral award. The case arose from a Removal of Shipwrecks and Maritime Services Contract involving oil transfer and transshipment, governed by English law with arbitration held in London.

Effect of Arbitral Awards: The Court confirmed that arbitral awards, final and binding in the place of issuance (in this case, in the United Kingdom), which are not subject to judicial remedies, have a *res judicata* effect (pursuant to Article 903 of the GCCP), which had been recognized by a prior decision of the Court. In addition, the Court emphasized that appeals against the recognition of such awards do not automatically suspend their enforceability (Article 763 para. 1, GCCP). Furthermore, the Court examined Articles 696(3) and 698(1) – (2) of the GCCP, emphasizing that interim measures may be revoked if circumstances change or once the underlying dispute is resolved by a final judgment, with an arbitral award being treated as equivalent to such a final judgment.

Scope of Review: The Court determined that it was competent to hear the present application, holding that international jurisdiction was established under the applicable procedural rules of the GCCP (*lex fori*). Then, the Court proceeded with revoking its prior interim measures under article 698 § 1(a) of the GCCP, since it held that an arbitral award resolving the dispute constitutes a "change of circumstances" within the meaning of Article 696 § 3 of the GCCP and that these circumstances result in the automatic cessation of the respondents' need for extraordinary judicial protection and, consequently, constitute a lawful basis for the revocation of the imposed interim measure.

This decision underscores the Greek judiciary's recognition of arbitration as a binding, effective, and internationally respected dispute-resolution mechanism, and it also establishes a precedent for the mandatory revocation of interim measures once an arbitral award is rendered.

Decision 1913/2025 (Court of Appeals of Athens)

Decision 1913/2025 examined the scope and interpretation of an arbitral clause in a consulting contract ("**TSAA**") between a Greek technical advisory company and a German parent/supplier company, and whether all their disputes fell under that clause.

Broad Interpretation of Arbitral Clause: The Court rejected the argument that the arbitral clause applied only to disputes concerning the validity or interpretation of the TSAA. Instead, applying Greek contract interpretation rules (Articles 173 and 200 of the GCC), the Court held that all disputes arising out of the TSAA (and even earlier oral agreements) fall under arbitration. This included not just interpretative issues but also business substantive claims.

The Court inferred the parties' genuine mutual will, based on their conduct, good faith, and trade usage, to have submitted all their disputes to arbitration, not just narrow legal issues. It noted that if they had intended a narrow clause, they would have omitted the broader term "any disputes" from the clause. The Court reasoned that limiting arbitration to interpretative disputes would risk procedural fragmentation, litigation delays, and increased costs, especially when validity, interpretation, and substantive claims are at issue. By contrast, a broad arbitration clause serves procedural efficiency.

Party autonomy: Given that the parties are based in different countries (Greece and Germany) and agreed to arbitrate in Zurich, the Court considered this further evidence that they did not want the courts of either country to have jurisdiction over all their disputes. The tribunal in Zurich was a neutral forum.

Scope of Review: The Court dismissed the appeal and upheld the decision of the lower court, which had found that it lacked jurisdiction due to the dispute being subject to arbitration and had referred the action for adjudication to the Arbitral Tribunal in Zurich, Switzerland. The Court concluded that the lower court's decision was not erroneous in its interpretation or application of the law, nor in its assessment of the evidence, although its reasoning was partially different and was replaced and supplemented by that of the decision of the Court.

This decision underlines the willingness of Greek courts to interpret arbitration clauses very broadly, especially in international commercial contexts. It emphasizes that parties' real intentions, good faith, and commercial reality should guide the interpretation of arbitration agreements, not just literal wording.

Procedural Reforms

In 2025, Article 947(1) of the GCCP underwent an important amendment introducing a targeted clarification with respect to the enforcement of non-monetary obligations imposed by arbitral awards. Under the revised text, where an arbitral tribunal orders a party to refrain from, or to tolerate, a particular act, the power to issue the corresponding threat of a monetary penalty or personal detention (traditional enforcement measures aimed at ensuring compliance) is vested explicitly in the Single-Member Court of First Instance. The same court is designated as the competent authority both to determine whether a breach has occurred and to impose the relevant sanction. This legislative intervention enhances procedural certainty at the enforcement phase, strengthens the practical effectiveness of arbitral injunctive relief, and harmonises the enforcement regime of arbitral awards with that applicable to judicial decisions, thereby reinforcing Greece's overall pro-enforcement approach to arbitration.

Within this broader reform context, additional initiatives have been adopted to promote arbitration and other forms of alternative dispute resolution. Notably, a Special Secretariat for Alternative Dispute Resolution was established within the Ministry of Justice, reporting directly to the Minister, with a mandate to reform the legislative framework governing arbitration, mediation, judicial mediation, and other ADR mechanisms. Moreover, work is underway on a new comprehensive Code on Arbitra-

tion and ADR, which is expected to further streamline and modernise the relevant procedures.

These measures underscore Greece's commitment to the modernisation and institutional strengthening of dispute resolution, including arbitration. This commitment is further reflected in the establishment of the Chalcis Bar Association Arbitration Mechanism under Presidential Decree 46/2025. The mechanism creates a permanent arbitral institution for private-law disputes, supervised by a three-member Arbitration Committee responsible for overseeing proceedings and maintaining the register of arbitrators.

Conclusion

In 2025, developments in Greek arbitration emphasized the finality of awards, expansive interpretation of arbitral clauses, and narrow public policy grounds for challenge of arbitral awards. Legislative and procedural reforms, along with strengthened ADR frameworks, further enhanced enforcement, efficiency, and alignment with international arbitration standards.

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*This article offers an analysis of the key developments and emerging trends in arbitration in Italy, and judicial interpretations in the aftermath of the entry into force of the Cartabia Reform (Legislative Decree No. 149/2022) (the "**Reform**").*

The Impact of the Reform and Judicial Interpretation

The Reform was a turning point for Italian arbitration: recalibrating and strengthening the relationship between arbitration and court proceedings while harmonizing the legal framework to international best practices. The novelties introduced by the Reform have been given operational force by courts' decisions and emerging jurisprudence, steadily modernizing Italy's arbitral landscape

Greater Transparency Through the Duty to Disclose

With the Reform, appointed arbitrators are under a duty to disclose any circumstances capable of affecting, or reasonably perceived as affecting, their ability to adjudicate the dispute independently and impartially from the outset and throughout the proceedings. This development has also been crystallized and adopted in the 2023 version of the Arbitration Rules of the Milan Chamber of Arbitration ("**CAM Arbitration Rules**"). Failure to discharge such duty, whether by omitting the disclosure or by not revealing existing conflicts in the statement of acceptance, may give rise to a successful challenge and annulment of the arbitrator's appointment. However, transparency should not be construed as rigid formalism. By way of example, the Tribunal of Rome (Decision No. 643 dated 16 December 2023) held that challenges must rest on serious grounds capable of affecting the independence and impartiality of the arbitrator, rather than on remote or benign connections. Accordingly, the court rejected an attempt to remove an arbitrator for failing to disclose past professional and academic interactions with counsel, finding that such links did not undermine the arbitrator's independence and impartiality.

Interim Measures within the Powers of Arbitrators

Arguably, the most groundbreaking innovation of the Reform is the empowerment to arbitral tribunals in granting interim measures. Before the Reform, parties could only apply for interim measures before a judicial court unless an express or implicit agreement existed between the parties to confer such ability upon an arbitral tribunal. Unlike other jurisdictions, in Italy, the exercise of this power by arbitral tribunals depends on

the explicit or implicit intent by the disputing parties to confer it upon the arbitrators. The Reform clarifies that the parties' intent may be evident either through an express agreement between the parties or by way of reference to institutional arbitration rules that contain provisions granting arbitral tribunals the power to order interim measures (e.g., Art. 26 of the CAM Arbitration Rules).

Whether the parties intended to confer such powers to arbitral tribunals has been particularly relevant in relation to disputes governed by a pre-Reform arbitration clause or institutional rules. In a recent decision of the Tribunal of Milan (Decision No. 18058 dated 7 January 2025), the court held that arbitrators appointed under a clause referencing the CAM Arbitration Rules prior to the entry into force of the Reform did not have the authority to grant interim measures since the version of these rules at the time of the conclusion of the agreement did not provided for such powers. Accordingly, the court retained jurisdiction over requests for interim measures.

New Challenges in the Recognition and Enforcement of Arbitral Awards

The Reform consolidated the recognition and enforcement proceedings of awards issued by arbitral tribunals into one single application before domestic courts. Within this framework, a particularly notable development in Italy this year has been the widely discussed decision of the Court of Appeal of Trieste (Decision No. 226 dated 28 March 2025) concerning an *ante causam* request for interim measures. In this case, the award creditor sought a precautionary seizure of the award debtor's assets before the award had been recognized and enforced. The court was confronted with the question of whether it could grant the requested preliminary measure based on an award that had yet to be recognized and enforced, relying instead on its underlying coercive nature. In its reasoning, the court held that the focus should not be on the declaratory nature of the recognition and enforcement decision, but rather on the enforceable title that arises from it following the Reform. The decision of the court crystallizes the interpretation shift towards a more substantive approach and highlights the practical implications of the Reform for recognition and enforcement of awards. While the court ultimately rejected the award creditor's request for a precautionary seizure due to insufficient evidence of *periculum in mora* (i.e., serious and irreparable harm), it nevertheless affirmed that interim measures may be granted prior to a decision on the recognition and enforcement of the award. The court further noted that denying such measures could potentially contravene constitutionally grounded procedural principles governing interim measures.

Translatio Iudicii

The Reform also intervened in regulating the *translatio iudicii*, namely the resubmission of a claim from an incompetent judge to a competent arbitrator, or vice versa, while preserving all procedural effects as if the claim had originally been filed before the correct forum, provided that resubmission occurs within 90 days. In 2013, long before the Reform, the Italian Constitutional Court had declared part of Art. 819-ter of the Code of Civil Procedure, which regulates the relationship between courts and arbitral tribunals, unconstitutional insofar as it prevented claims from retaining their procedural effects when resubmitted before the competent judge or arbitrator. Following that ruling, courts applied the principle in practice, but it was only with the Reform that it was expressly codified. Consistently with this approach, the Tribunal of Rome (Decision No. 4161 dated 6 March 2024), *inter alia*, ordered that a claim be resubmitted before the competent arbitral tribunal as established by the arbitration agreement between the parties in that case, determining that the resubmission would preserve all procedural effects. Similarly, this year, in reviewing a decision from 2022 (*i.e.*, prior to the entry into force of the Reform), the Italian Court of Cassation (Decision No. 24391 dated 2 September 2025) confirmed that following the 2013 ruling of the Italian Constitutional Court, the claimant could resume the proceedings before the competent forum with full preservation of procedural effects.

Increase in Reliance on Arbitration

Italy has become an increasingly attractive seat for arbitration following the implementation of the Reform, gaining traction from domestic and cross-border parties, especially in light of the possibility for the parties at dispute to choose a governing law other than Italian law on the merits. Prior to the Reform, parties opting to arbitrate in Italy were bound to the application of Italian law to the merits of the dispute, thus limiting access to arbitration in Italy. Typically, parties opting to arbitrate in Italy predominantly rely on the Milan Chamber of Arbitration to administrate their dispute and on the CAM Arbitration Rules. Data from the 2025 CAM Annual Report record that the institution registered 135 requests for arbitration in 2024, gaining traction from disputes in new sectors such as franchising and real estate. Notably, recourse to expedited arbitration proceedings increased by 57%, and, for the first time in CAM's history, emergency arbitral proceedings were relied upon. While this year's statistical data on arbitration is still being defined, these promising numbers support the increase and continuous reliance in resolving dispute through arbitration proceedings in Italy.

Emerging Trends in Italy and their Effects on Arbitration

Third-Party Funding

Third-Party Funding ("**TPF**") in litigation and arbitration has been increasingly used in recent years, especially with respect to large and complex dispute requiring financing. The TPF sector is mostly unregulated worldwide, including in Italy, where there are no specific legal provisions governing TPF, or requiring parties at dispute to disclose any financial agreements with third-party funders. Against this backdrop, and in line with international arbitral institutions' standards, Article 43 of the CAM Arbitration Rules includes an express provision for the disclosure of TPF, including the identity of the funder. Therefore, when arbitrating under the CAM Arbitration Rules, it is mandatory upon the parties to disclose any funding of the dispute. In the European Commission's report, "*Mapping Third Party Litigation Funding in the European Union*", Italy appears in the early development stages of adopting TPF, with strong potential for growth despite the regulatory uncertainties that have slowed down the market development. Nevertheless, the existence of TPF mechanisms to finance disputes has been recognized by the Italian Court of Cassation (Decision No. 4543 dated 20 February 2024), and differentiated from the broader regulatory framework for the banking industry, confirming the trend that resorting to TPF is becoming more popular.

Use of Artificial Intelligence

The use of Artificial Intelligence ("**AI**") in judicial activities, including arbitration, has been one of the hot topics within the international community in recent years. Few institutions have published guidelines on the use of AI in arbitration, and the Reform and the CAM Arbitration Rules have not established a framework for the use of AI in arbitration, given the complexity and continuous development of AI and its applications. Nonetheless, as is often the case, judicial practice has outpaced the law, and Italian courts have already started to address matters arising from the use of AI in judicial proceedings. In 2025, several Italian courts have been addressing the improper use of AI concerning generated evidence, case law and appeal submissions, although not limited to arbitration-related proceedings. For instance, the Tribunal of Turin (Decision No. 2120 dated 16 September 2025) held, *inter alia*, that part of the cost imposed on the losing party was justified by its improper use of AI, having cited non-existent legal provisions and fabricated case law. A different approach was taken by the Regional Administrative Court of Lombardy (Decision No. 3348 dated 21 October 2025) which, once it had ascertained the submission of fabricated case law by one of the disputing parties, referred the legal counsel of that party to the relevant Bar Association (the

Milan Bar in this case) to assess the counsel's conduct and commence disciplinary proceedings against him. In fact, the Milan Bar Association is one of the first Italian Bars to have introduced a Charter of Principles for the responsible use of AI system in the legal profession. Accordingly, such code of conduct applies to all counsel registered at the Milan Bar Association, whether before a court or arbitral tribunal.

Building on these developments, Italy is among the first EU Member States to have adopted a national law on AI in alignment with the EU AI Act. Italian Law No. 132/2025 ("**AI Law**") which regulates AI deployment across multiple sectors, including judicial activity, has entered into force on 10 October 2025. Article 15 of the AI Law establishes that judges have full authority over the interpretation and application of the law, assessment of evidence, and issuance of judicial measures in cases involving the use of AI. This provision may carry particular relevance for arbitration proceedings in Italy or abroad in which the parties have chosen Italian law as the governing substantive law. This evolving framework indicates that Italy is positioning itself as a frontrunner in the regulation of AI, the practical implications of which for arbitration proceedings are yet to fully unfold.

Italy as a Forward-Looking Arbitration Hub

Taken together, the recent Reform, the growing reliance on arbitration, and the emerging trends in third-party funding and artificial intelligence signal a modernized approach in Italy's arbitration landscape in 2025. As shown by case law in practice, the Reform has not only harmonized procedural mechanisms, such as transparency duties, interim measures, and *translatio iudicii*, with international best practices, but has also enhanced the predictability and efficiency of arbitration in Italy. In the same vein, Italy has emerged as a forward-looking arbitration hub with its proactive legislative and practical approaches to address market and technological developments due to the increased use of third-party funding and AI.

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EUROPE

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2025 has been an eventful year for arbitration in the Netherlands. Various landmark rulings have been issued by the Dutch courts. This article provides an overview of the most significant issues of those rulings.

Supreme Court Issues Final Ruling in Yukos Set-Aside Proceedings

On 17 October 2025, the Supreme Court of the Netherlands issued a judgment that brought to an end the set-aside proceedings between *Yukos Universal v. Russia.* The tribunal seated in The Hague awarded approximately USD 50 billion to the claimants for, among other things, the expropriation of their assets.

The District Court of the Hague initially set aside the award, but this decision was later overturned by the Court of Appeal of The Hague. In 2021, the Supreme Court of the Netherlands issued a first ruling in these proceedings. It held, in short, that the Court of Appeal had failed to recognize that allegations of fraud can be raised during set-aside proceedings. The case was remanded to the Court of Appeal of Amsterdam.

The 2025 Supreme Court appeal concerned the Russian Federation's complaints that the Court of Appeal of Amsterdam had rejected its arguments that the award had been obtained by fraud. That allegation was only raised in the appeal and not before the District Court of The Hague.

The Court of Appeal of Amsterdam declared the arguments – which in essence constituted a change of claim – inadmissible on due process grounds. The Supreme Court rejected the Russian Federation's appeal because Dutch Code of Civil Procedure prohibits appeals against decisions rejecting a change of claim.

Intra-EU Arbitration

After the European Court of Justice issued decisions in cases such as *Achmea v. Slovakia (I)*, *Komstroy v. Moldova*, and *Micula v. Romania (I)*, intra-EU arbitration has come under increasing pressure. These rulings eventually led several EU Member States, including the Netherlands, to withdraw from The Energy Charter Treaty (1994) ("**ECT**"). That withdrawal took effect on 28 June 2025. In case law as well, 2025 proved to be a tumultuous year for intra-EU arbitration.

LC Corp v. Poland

In *LC Corp v. Poland*, the Court of Appeal of Amsterdam granted an anti-suit injunction that requires LC Corp to end its London-seated United Nations Commission on International Trade Law ("**UNCITRAL**") arbitration against Poland. The Court of Appeal of Amsterdam held that the principle of *Kompetenz-Kompetenz* does not prohibit the Dutch courts from taking action.

It further held that the arbitration clause in the Netherlands-Poland BIT (1992) has been terminated due to its incompatibility with EU law and rejected LC Corp's reliance on the ECT's sunset clause. Continuing the arbitration would therefore be unlawful under Dutch law. An appeal is pending before the Supreme Court.

AES Solar and others (PV Investors) v. Spain

In *AES Solar and others (PV Investors) v. Spain*, the District Court of Amsterdam rules on the enforcement of an intra-EU award and its compatibility with EU State Aid Law. Although enforcement action was pending in the United States, Spain already made claims to obtain the full amounts awarded to AES and AEF arguing that such was required by its standstill obligation under EU State Aid Law. The District Court of Amsterdam rejected the payment claim, but held that any successful enforcement action would give rise to an obligation to repay the amounts to Spain.

Sovereign Immunity

Despite the Supreme Court's strict case law on the interpretation of sovereign immunity from execution, the Netherlands remains an active forum for levying attachments on the property of foreign sovereign entities. Outcomes, however, differ on a case-by-case basis. Recent case law reflects this with diverging approaches.

Enforcement Action Against the Russian Federation and Its Assets

In *Zhnyva v. Gazprom*, the District Court of The Hague rejected a request for the recognition and enforcement of a Ukrainian court decision against Gazprom. In that case, a Ukrainian court had held that Gazprom was an alter ego of the Russian Federation. The District Court of the Hague adopted this finding and subsequently denied jurisdiction over the request on the ground that Russia's sovereign immunity can also be attributed to Gazprom. In a separate judgment, the pre-judgment attachments levied by Zhnyva were lifted. The interim relief judge held that its was unlikely that the findings on sovereign immunity would be overturned on appeal.

In *DTEK v. Russia*, the District Court of The Hague rejected Gazprom's request to lift pre-judgment attachments. The interim relief judge held that the attached shares in Gazprom International could be regarded as property of the Russian Federation due to the latter's control over those shares. However, the interim relief judge held that the assets served a commercial purpose, rather than a public purpose, given Gazprom's activities.

State Immunity Is No Bar for Auction of State-Owned Property

In a case between an undisclosed Iranian state-owned entity and Heuvel Vastgoed, the District Court of Rotterdam rejected a bid to reclaim a property after it was seized and auctioned. The state owned-entity argued that the seizure and the subsequent sale were void because the property was protected by state immunity from execution.

The District Court of Rotterdam ruled that a buyer at a public execution auction is generally entitled to rely on the validity of the transfer of ownership. The District Court of Rotterdam decided that the principle of legal certainty protects the buyer, even where the seizure of the state entity's property may have violated procedural rules regarding public-service goods.

Jurisdiction via Most Favor Nation ("MFN")-Clause Accepted

In *Venezuela US v. Venezuela*, the Court of Appeal of The Hague rejected Venezuela's request for setting aside a PCA (Permanent Court of Arbitration)-administered UNCITRAL award relating to the investments made in the Venezuelan oil sector. The Tribunal rejected jurisdiction by means of the arbitration clause in the applicable Barbados-Venezuela BIT (1994) but upheld jurisdiction based on the MFN-clause. The Court of Appeal of The Hague adopted the tribunal's reasoning.

Article 8 of the BIT stipulates that disputes can be submitted to ICSID-arbitration or, if Venezuela has not become a contracting State of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) ("**ICSID Convention**"), under either the ICSID Additional Facility Arbitration Rules or UNCITRAL Arbitration Rules. The Court of Appeal of The Hague held, in line with the tribunal, that these later options were intended only as temporary solutions, given that the BIT was concluded while Venezuela's accession to the ICSID Convention was still pending. Eventually Venezuela became a contracting party to the ICSID Convention but withdrew from the convention in 2012. According to the Court of Appeal of The Hague, the arbitration clause in Article 8 of the BIT no longer reflected a valid offer to arbitrate.

However, Article 3 of the BIT grants investors treatment no less favorable than that accorded to investors of any third State. This MFN clause also expressly applies to the arbitration clause in Article 8 of the BIT. In both the arbitration and the set-aside proceedings, the investor relied on various BITs containing more favorable arbitration provisions. In particular, the Ecuador-Venezuela, Bolivarian Republic of BIT (1993) allows investors to initiate UNCITRAL arbitration. The Court of Appeal of The Hague, therefore, concluded that the tribunal had rightfully assumed jurisdiction.

Res Judicata Effect of Domestic Judgment in Arbitration

In *Panamericana Television v. Peru*, the Court of Appeal of The Hague rejected the investor's request to set aside a PCA-administered UNCITRAL award relating to a dispute involving a local TV station.

The investor argued that the award must be set aside because the tribunal did not apply the principle of *res judicata* to a prior judgment by the Peruvian Constitutional Court holding the Peruvian authorities accountable for an accruing tax debt.

The Court of Appeal of The Hague first determined that the issue was governed by Dutch law as the procedural law governing the arbitration. It then held that the tribunal did not violate its mandate, having correctly applied the relevant standards for *res judicata*. The Court further held that *res judicata* does not form part of Dutch or international public policy and therefore could not justify setting aside the award.

Jurisdiction Over Arbitrator Release of Mandate

On 9 May 2025, the Dutch Supreme Court issued a judgment clarifying which body has jurisdiction to decide a request by an arbitrator to be released from his mandate.

The Court of Appeal of Amsterdam had set aside an arbitral award rendered under the NAI (Netherlands Arbitration Institute) Arbitration Rules 2015 because it was issued by only two of the three arbitrators. The third arbitrator notified all parties at a late stage of the proceedings that he wanted to be released from his mandate. The NAI administrator, who decides over such a request under the applicable rules, denied the request.

One of the parties then initiated summary proceedings before the state courts to secure the arbitrator's release, but that request was denied. The arbitrator subsequently announced that he would initiate summary proceedings himself. The two remaining arbitrators rendered the award shortly thereafter. The Court of Appeal of Amsterdam held that this sequence of events violated public policy.

The Supreme Court appeal concerned the question whether it was still possible to initiate summary proceedings before the state courts, af-

ter the NAI-administrator had already rejected the request for release. Article 1029(2) of the Dutch Code of Civil Procedure provides that such a decision is to be made by a third-party designated by the parties, or, in the absence of such designation, by the interim relief judge.

The Supreme Court reversed the decision, holding that Article 1029(2) only grants jurisdiction to the state court if the parties have not designated a third party. Because the parties agreed to the NAI Rules, such a designation had been made.

Independence and Impartiality of the Arbitrators

In a decision dated 7 May 2025, the District Court of Zeeland-West-Brabant upheld a challenge against an arbitrator. The challenge arose after it was discovered that the arbitrator had incorporated a new company together with one of the parties involved in the pending arbitration.

The court ruled that this circumstance alone was sufficient to challenge an arbitrator's independence. The arbitrator had also failed to disclose the relationship with the party in question, which independently gave rise to justifiable doubts regarding his impartiality.

Inadmissible Evidence in Another State – Violation of Public Policy

In *Vitrus Consultoria de Mercados v. Thales International Latin America*, the Court of Appeal of Amsterdam suspended the set-aside proceedings and remitted the award to the tribunal due to potential violations of public policy. In the arbitration, Thales had relied on statements that were later declared inadmissible in criminal proceedings in Brazil. Vitrus's objections against relying on these statements were briefly rejected by the tribunal. The Court of Appeal of Amsterdam held that the tribunal therefore could not assume the statements to be reliable. The award was thus rendered contrary to public policy. Because the tribunal could also rely on other admissible evidence, the court remitted the case under Article 1065a of the Dutch Code of Civil Procedure. .

Evidence of the Arbitration Agreement (Article IV New York Convention)

In *Melbourne Investments v. Sodiam*, the Court of Appeal of Amsterdam granted a request for leave for the enforcement of an award, despite the fact that the original arbitration agreement could not be produced. Article IV of the New York Convention requires the party requesting leave for enforcement to provide the authentic arbitration agreement or a duly authenticated copy thereof. The Court of Appeal of Amsterdam held that this requirement had nonetheless been satisfied. The purpose of Article IV is to verify the existence of the arbitration agreement, which was sufficiently established by the parties' conduct, in particular, the fact that the resisting party had itself initiated the arbitration.

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*In 2025, arbitration in Poland has seen further, steady development, encompassing both the stabilisation of case law and the growing role of technology in arbitral proceedings. The country maintains a strong and stable position as an important hub for international arbitration in the Central and Eastern European ("**CEE**") region.*

This report provides an overview of developments in the fields of commercial and investment arbitration, as well as highlights technological innovations on the Polish arbitration market.

Developments in Commercial Arbitration

Polish Supreme Court on the Separability Principle, Jurisdiction Objections, and Restitution Claims under Polish Law

On 24 January 2025, the Polish Supreme Court issued a judgment in case no. *II CSKP 440/23* concerning the enforcement of a foreign arbitral award in Poland. The dispute arose from a long-standing commercial relationship in the cocoa industry. The parties concluded agreements that contained arbitration clauses. Even though the agreements were never formally signed, the parties nevertheless began performing them, with deliveries made and orders partially executed. While the commercial dealings between the parties were still ongoing, the claimant, believing the buyer breached the agreements, initiated arbitration proceedings and obtained a favourable award.

The Supreme Court confirmed several key aspects of Polish arbitration law, including the rules on enforcement. First, it reaffirmed the principle of separability of the arbitration agreement, which must be assessed independently from the underlying contract, as prescribed by Article 1180 § 1 of the Polish Code of Civil Procedure ("**CCP**").

Second, the Court confirmed that if a party takes part in arbitration without objecting to the tribunal's jurisdiction or the validity of the arbitration agreement, it will lose the right to challenge them in subsequent enforcement proceedings.

Third, the Court clarified that, under Polish civil procedure, restitution claims, i.e., claims to recover amounts paid under an immediately enforceable award which is subsequently annulled or amended, cannot be adjudicated during enforcement proceedings. Enforcement proceedings

do not involve a merits review, and the court may not reassess the obligations that form the subject of the award.

Polish Supreme Court on the Ability of an Assignee to Seek Enforcement of a Foreign Arbitral Award

On 23 May 2025, the Polish Supreme Court issued an important Decision in case no. *II CSKP 2065/22*, offering some valuable clarifications as to how an assignee may prove an assignment when seeking enforcement of a foreign arbitral award in Poland.

The case concerned a claimant who sought enforcement of a foreign arbitral award that had been acquired by way of an assignment agreement. In the first instance, the Court of Appeal dismissed the application, holding that the claimant (the assignee) did not demonstrate that the assignment had been concluded within the form required under Article 788 § 1 CCP. This provision applies when a claim or obligation has been transferred to another person after a domestically enforceable title has been created. It requires the transfer to be proven by an official document or by a private document with an official certification.

The Supreme Court overturned that ruling. It explained that the strict requirements of Article 788 § 1 CCP do not apply to proceedings concerning the enforcement of foreign arbitral awards. According to the Court, a legal successor of a party involved in the arbitration proceedings may act in place of the original creditor by virtue of the very nature of legal succession, without the need to meet the formal requirements applicable to domestic enforcement titles. The Court further emphasized that a foreign arbitral award is not an enforceable title until its enforceability has been declared in Poland, making Article 788 § 1 CCP procedurally inapplicable at this stage.

In light of these considerations, the Supreme Court held that under Polish law, an assignee can demonstrate that a transfer of a claim has been made using general evidentiary principles, without submitting formally officialised documents as evidence. The case was referred to the Court of Appeal for reconsideration.

The decision is regarded as a valuable clarification of Polish procedural law, particularly in cases where successors of the original parties to the arbitration seek to enforce foreign arbitral awards in Poland.

Developments in Investment Arbitration

In 2025, Poland was involved in a significant number of investment arbitration cases. Below, we highlight the most notable examples.

Poland Prevailed in a Potash Investment Arbitration

In *Honwood v. Poland*, an ICC (International Chamber of Commerce) investment arbitration tribunal comprising Aloysius Llamzon, Philippe Sands, and Lucy Reed (Presiding) issued an Award dated 28 March 2025, declaring Poland victorious in a USD 300 million dispute against the Cyprus-based investor – Honwood Services Limited ("**Claimant**").

The case, commenced in 2017, was based on the Agreement between the Republic of Cyprus and the Republic of Poland for the Promotion and Reciprocal Protection of Investments executed on 4 June 1992 ("**Cyprus-Poland BIT**"). The Cyprus-Poland BIT is an older-style treaty that limits arbitration to disputes concerning expropriation.

While the Award is not (yet) publicly available, on 5 May 2025, Polish Ministry of Climate and Environment (*pl. Ministerstwo Klimatu i Środowiska*) issued a press release explaining the background of the dispute and the determinations reached by the tribunal in the Award. The case concerned claims arising from the refusal to grant a concession to Darley Energy Polska sp. z o.o., Claimant's subsidiary, for the exploration and identification of potassium-magnesium salt (potash) deposits in the Puck region (Poland), and subsequently awarding that concession to KGHM

PM S.A. (whose largest shareholder is the Polish State). The Claimant alleged that Poland had violated the Cyprus-Poland BIT's provisions on protection against expropriation, as well as the obligations of fair and equitable treatment ("**FET**") and full protection and security ("**FPS**") of investments. The arbitral tribunal found no expropriation and determined that the actions of the Polish concession authority "*did not go beyond the public interest, were in accordance with the procedure and were not discriminatory or arbitrary*". The tribunal also confirmed that claims other than on expropriation fell outside of its jurisdiction. Interestingly, the tribunal dismissed both the State's Achmea-based intra-EU jurisdictional objection and the inadmissibility objection based on an abuse of rights.

The issue of the tribunal's composition added noteworthy aspects to the dispute. Initially, the Tribunal was chaired by the late James Crawford, with Kaj Hobér and Philippe Sands serving as co-arbitrators. In 2021, however, the Claimant unexpectedly challenged its own appointee, Mr. Hobér, after learning of his undisclosed role on a tribunal that dismissed a similar claim, brought by another Cypriot investor against Poland. The challenge resulted in an ICC's decision disqualifying Mr. Hobér from the proceedings and the subsequent appointment of Aloysius Llamzon. Additionally, Lucy Reed replaced judge Crawford upon his passing in 2021.

US Court Declines to Enforce Intra-EU Award Against Poland Set Aside in Sweden

The US District Court for the District of Columbia declined to enforce an arbitral award in *Mercuria Energy Group v. Poland (II)* rendered under the Energy Charter Treaty 1994 ("**ECT**"). The refusal was based on the fact that the Award had previously been set aside at the seat of arbitration in Sweden. Two very interesting conclusions stem from this Judgment:

- The US court took a side in the highly contentious debate over whether arbitral awards may be enforced if they had been set aside at the seat of arbitration. The US court reasoned that judgments that have set aside underlying awards may be ignored only when they are "*repugnant to the fundamental notions of what is decent and just*". This seems to be in line with the minority view of the arbitration community, allowing enforcement of set aside awards in exceptional circumstances, as has been found by Queen Mary University of London and White & Case 2025 arbitration survey; and
- In the US, the intra-EU prohibition of investment arbitration established by *Komstroy v. Moldova* ("***Komstroy***") and *Achmea v. Slovakia* ("***Achmea***") CJEU judgments does not qualify as "*repugnant to the fundamental notions of what is decent and just*".

Dutch Court Orders Dutch Investor to Terminate its Claim against Poland

In *LC Corp v. Poland*, on 22 April, the Court of Appeal in Amsterdam ordered LC Corp, a Dutch company, to terminate its initiated intra-EU investment arbitration proceedings against the Republic of Poland. The claim was brought against Poland in December 2020 on the basis of the sunset clause of the Agreement between the Kingdom of Netherlands and the Republic of Poland on encouragement and reciprocal protection of investments (1992) ("**Netherlands-Poland BIT**") where the investor alleged expropriation and unfair and discriminatory treatment from Polish Authorities.

Poland has terminated the Netherlands-Poland BIT in 2019, following the *Achmea* Judgment, while both Poland and the Netherlands have signed the EU Agreement for the termination of intra-EU Bilateral Investment Treaties ("**Termination Agreement**") in 2021. Hence, after LC Corp had initiated the arbitration, Poland brought actions before the Dutch Courts.

The Court of Appeal found that the arbitration and sunset clauses of the Netherlands-Poland BIT were no longer valid due to their incompatibility with EU law. It emphasised that the choice of London as the seat of arbitration – outside of the EU jurisdiction – combined with the tendency of arbitral tribunals to disregard the *Achmea* Judgment and the Termination

Agreement, exposes Poland to a real risk of infringement proceedings by the European Commission, since any enforcement against Polish assets located outside the EU could be viewed as granting unlawful state aid.

Thus, the Court of Appeal found LC Corp obligated under Dutch civil law to discontinue the investment arbitration; ordered LC Corp to terminate the arbitration proceedings and imposed a daily penalty of EUR 100.000 for non-compliance with its order, with the cap of EUR 10 million.

Huawei Notifies Poland about a Potential Claim

Chinese telecoms firm Huawei Technologies has formally notified the Polish government that it reserves the right to initiate arbitration proceedings under the ECT if Poland adopts a proposed amendment to its Cybersecurity Act (the "**Amendment**"). The Amendment implements the European Union NIS2 Directive 2022/2555 and designates "high-risk suppliers" for critical sectors.

In its letter of 15 October 2025, Huawei Technologies Cooperatief U.A., the Dutch parent company holding 90% of the shares in Huawei Polska cites the views of "leading enterprises" that the proposed criteria for identifying high-risk suppliers are discriminatory, disproportionately aimed at non-EU and non-NATO companies, and risk excluding Huawei from key sectors such as telecommunications, energy, health care and water, thereby potentially infringing its treaty-based investment protections. The company estimates the financial impact of the proposed law could reach into billions of Polish zloty and has urged constructive dialogue with Poland to consider the influence of the proposed Amendment on the foreign investors. Arbitration, as Huawei emphasizes, would only be a "last resort".

AI in Polish Arbitration Courts

Ultima Ratio, a platform for conducting arbitration disputes, has announced this year that its arbitrators are using artificial intelligence to issue awards in arbitration proceedings. The platform serves as the exclusive venue for arbitration proceedings before the Electronic Arbitration and Mediation Centre at the Association of Notaries of the Republic of Poland in Warsaw and the Online Arbitration Court in Bratislava. By using AI in its operation, the platform advertises shortening the time spent by the arbitrators on issuing the award from 3 hours to a few seconds, claiming to save 95% of the time spent on the award drafting. The AI used by Ultima Ratio is presented to learn both from cases adjudicated by national courts and cases assessed by arbitrators of Ultima Ratio, while the AI is supposed to ensure impartiality and quality of objective focus on the facts and legal rules. The specifics of how the AI operates are, however, not disclosed, nor are they described in the Ultima Ratio Arbitration Rules.

Polish Arbitration Law remains silent on the use of artificial intelligence tools. Nevertheless, if any dispute arises in the context of AI use by arbitrators during enforcement or annulment proceedings, Polish courts will have to take a stance, placing them at the forefront of the debate on the use of AI in arbitration.

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*This article provides an overview of developments in arbitration in Portugal in 2025. As is customary, Portuguese arbitral awards issued in the context of voluntary arbitration are not publicly available. Consequently, our analysis relies exclusively on the judgments issued by state courts, primarily in cases involving jurisdictional objections, the recognition and enforcement of foreign awards, and actions seeking the annulment of arbitral awards. While our focus is on judgments from the Portuguese Supreme Court of Justice ("**SCJ**"), it is worth noting that several courts of appeal also addressed arbitration matters, generally aligning with the SCJ's approach.*

It is also noteworthy that there were no relevant legislative developments affecting arbitration in 2025, which is why no chapter is dedicated to this topic.

Judicial Jurisdictional Objections and the Interpretation of Arbitration Clauses

Decision of the Supreme Court of Justice, Case No. 13951/22.2T8LSB-1.L1.S1 (*Maria de Deus Correia*), 13 March 2025

The *sub judice* case concerned two agreements executed on the same date:

- a Share Purchase Agreement ("**SPA**") between Reditus Gestão, S.A., Greendry, Lda ("**Claimants**") and Inetum Tech Portugal, S.A. ("**First Respondent**"), which contained an arbitration clause; and
- an Escrow Agreement involving the same parties plus Haitong Bank, S.A. (**"Second Respondent"**), which submitted all the disputes related to the contract to the exclusive jurisdiction of the Courts of Lisbon.

The Claimants alleged breaches of both the SPA and the Escrow Agreement. The key question was whether the dispute should be settled by an arbitral tribunal (under the SPA) or by the Courts of Lisbon (under the Escrow Agreement).

The SCJ held that the arbitration clause in the SPA was fully binding on its signatories. Consequently, the state courts lacked jurisdiction over disputes arising under that contract, and the objection of absolute lack of jurisdiction was well-founded. On the other hand, the breach of the Escrow Agreement must be disputed under the jurisdiction of the Courts of Lisbon.

That said, SCJ confirmed that the proceedings could be bifurcated: arbitration for the disputes related with the SPA, and state courts for the disputes arising from the Escrow-Agreement against the non-signatory party of the SPA.

Decision of the Lisbon Court of Appeal, Case No. 22823/24.5T8LSB.L1.-2 (*Laurinda Gemas*), 22 May 2025

This case concerned a Share Purchase Agreement ("**SPA**") executed between the BBI – Banif Banco de Investimento, S.A. ("**Seller**") and Fund Box Holdings, S.A. ("**Buyer**"), under which the Buyer undertook to pay a variable price component directly to Oitante, S.A. ("**Claimant"** or "**Oitante**") designated in the SPA as a third-party beneficiary, meaning it was not a signatory. The SPA included an arbitration clause which submitted all the disputes arising from the SPA to the *Commercial Arbitration Centre of the Portuguese Chamber of Commerce and Industry* ("**CAC-CCIP**").

The Claimant claimed the breach of payment of the variable price component from the Buyer by filing a lawsuit against it in the state courts.

The Court of Appeal decided that the Claimant was bound by the arbitration clause despite not having signed the SPA. The Court considered that Oitante's right to receive a variable price component derived directly from the SPA and that the arbitration clause was accessory to the substantive right it sought to enforce. By basing its claim on the SPA, Oitante tacitly adhered to the contractual terms, including the dispute resolution mechanism.

The Court further held that, under Article 18 of the Portuguese Arbitration Law ("**LAV**"), the state courts must decline jurisdiction unless the arbitration agreement is manifestly invalid or inapplicable, which was not the case. Accordingly, the judicial courts lacked jurisdiction, and the dispute should be submitted to arbitration.

Other Decisions

Several other decisions were rendered by the Courts of Appeal regarding the interpretation of arbitration clauses. For example, decision of the Guimarães Court of Appeal, Case No. 6872/24.6YIPRT.G1 (*Maria dos Anjos Nogueira*), dated 16 October 2025, reiterating the principle that the existence of an arbitration clause makes it plausible that a state court will not be competent to hear the dispute, and that the state courts ought to wait for the arbitral tribunal's decision regarding its own competence.

Also, regarding a case where the arbitration clause made reference to an arbitral institution, the Lisbon Court of Appeal in Case No. 1005/25.4YRLSB.L1-8 (*Teresa Sandiães*), dated 23 October 2025, held that the adherence to the arbitration rules of an arbitral institution implies the acceptance of the appealability of the arbitral award, where such rules expressly allow it.

Annulment of Arbitral Awards

Decision of the Lisbon Court of Appeal, Case No. 2394/22.8YRLSB-2 (*Fernando Alberto Caetano Besteiro*), 13 February 2025

In annulment proceedings concerning an arbitral award rendered under

the Arbitration Rules of the CAC-CCIP (2021), the Lisbon Court of Appeal held that this type of legal action does not entail a broad knowledge of the merits of the arbitral decision for which annulment is sought. The state court's review is limited to verifying whether one of the specific grounds for annulment is met (Article 46(3) of LAV).

The Court of Appeal further specified that, even where annulment is granted, the re-examination of the merits falls on another arbitral tribunal (Article 46(9) of LAV).

Decision of the Supreme Court of Justice, Case No. 1599/22.6YRLSB.S1 (*Maria Olinda Garcia*), 1 July 2025

The SCJ was called upon to rule on a request for the annulment of an arbitral award issued in CAC-CCIP-administered proceedings. The SCJ began by affirming that the grounds for annulment under Article 46(3) of LAV are exhaustive; an arbitral award may only be annulled if one of those grounds is established.

As to the alleged breach of fundamental principles under Article 46(3)(ii) of LAV, the SCJ held that the appellant must demonstrate a causal link between the alleged violation and the outcome of the award — notably, that the decision would have been wholly or partly different had the principles been observed. The appellant failed to discharge that burden.

The SCJ further noted that the submission of the proceedings to the rules of an arbitration centre without prior acceptance by the parties could, in principle, constitute a ground for annulment. However, annulment on this basis requires proof that such submission had a decisive influence on the decision of the dispute, within the meaning of Article 46(3)(iv) of LAV. That showing was not made, particularly given that the parties' counsel had stated in writing, prior to the issuance of the award, that no irregularities had occurred during the proceedings.

In this context, the SCJ also referred to Article 30(3) of LAV, which provides that, in the absence of an agreement by the parties on procedural rules, the arbitral tribunal may conduct the arbitration as it considers appropriate, defining the rules it deems suitable. The Court concluded that the appellant failed to demonstrate that the parties had agreed on different procedural rules or had excluded the application of the CAC-CCIP rules - evidence that would be required to rebut the arbitral tribunal's authority under Article 30(3) LAV to define the applicable procedural rules.

Decision of the Supreme Court of Justice, Case No. 1692/24.0YRLSB.S1 (*Catarina Serra*), 3 July 2025

Following a decision of the Lisbon Court of Appeal declining to partially annul an award for lack of reasoning under Articles 46(3)(vi) and 42(3) of LAV, the SCJ upheld that ruling.

The Court clarified that a lack of reasoning exists only where the arbitral decision is devoid of grounds, *i.e.*, where no reasoning is provided at all. An award that is inadequately reasoned, sparsely reasoned, or even wrongly reasoned, whether on facts or on law, is not an "unreasoned" decision for purposes of annulment under Articles 46(3)(a)(vi) and 42(3) of LAV.

Other Decisions

Several other decisions were rendered by Courts of Appeal in the context of requests for the annulment of arbitral awards. All but one concluded that there were no legitimate grounds for annulment. Indeed, in Case No. 1012/25.7YRLSB-7 (*Carlos Oliveira*), on 29 April 2025, the Lisbon Court of Appeal declared the nullity of an arbitral award due to the absolute lack of reasoning, both legal and factual. The Court, however, specified that the award could become valid if the reasoning behind the arbitrator's decision were subsequently made clear.

Recognition and Enforcement of Foreign Awards

Decision of the Lisbon Court of Appeal, Case No. 108.24/7YRLSB-6 (*Gabriela de Fátima Marques*), 20 February 2025

This decision concerned the review and confirmation of a foreign investment arbitral award handed down in Paris, France, under the ICSID (International Centre for Settlement of Investment Disputes) Additional Facility Rules 2022, in the *Gold Reserve v. Venezuela* case.

The Lisbon Court of Appeal ruled that the award should be confirmed and recognised, dismissing Venezuela's objection based on jurisdictional immunity. The Court's decision was grounded in the principles of the protection of expectations, the respect for the self-determination of the parties and the development of international commerce. The Court relied its judgment on the LAV as well as the New York Convention (1958), stating that the recognition of the award could have been refused if it were incompatible with Public International Law, European Union Law, or the Portuguese Constitution; however, the Court found no grounds for such refusal.

Decision of the Supreme Court of Justice, Case No. 108.24/7YRLSB.S1 (*Henrique Antunes*), 9 July 2025

The SCJ analysed the above-mentioned decision issued by the Lisbon Court of Appeal, regarding the *Gold Reserve Inc v. Venezuela*. Therefore, SCJ ruled on *(i)* jurisdictional immunity and *(ii)* the compatibility of foreign awards with the international public policy of the Portuguese State. The SCJ held that jurisdictional immunity may be validly waived - in favour of recognition of the arbitral award – notably through an international instrument or by the State's voluntary decision to resort to arbitration to resolve a dispute.

The SCJ further emphasised that incompatibility with the international public policy of the Portuguese State only occurs when the foreign judgment manifestly and ostensibly breaches an essential legal rule or a fundamental right. In this regard, the SCJ analysed the application of the principle of the higher interests of the State, the principle of non-interference, the principle of proportionality, and the prohibition of abuse of rights. The SCJ ruled that, in this case, Venezuela had failed to prove the facts that would have prevented recognition of the arbitral award, upholding the decision of the Lisbon Court of Appeal.

Decision of the Supreme Court of Justice, Case No. 1999/24.7YRLSB.S1 (*Emidio Francisco Santos*), 2 October 2025

In an action seeking for the review of a foreign arbitral award issued by the Council of the Refined Sugar Association (London) regarding a case that opposed LP Grace PTE, LDT (a Singaporean company) to Energy ECP, Unipessoal, Lda (a Portuguese company based in the Autonomous Region of Madeira), the latest challenged the confirmation of the award, stating, among other motives, that a decision rendered under the Portuguese law would have been more favourable to its interests.

The SCJ, however, confirmed the arbitral award, stating that it was not incompatible with the Portuguese public policy and that any error in the decision on the merits does not constitute grounds for refusal to recognise foreign arbitral awards.

Other Decisions

As far as we are aware, no other decisions were issued by Portuguese courts regarding the enforceability of foreign arbitral awards.

Conclusion

The analysis of these judgments shows that Portuguese courts are increasingly:

- declaring their own incompetence in cases involving arbitration clauses;
- confirming the validity of arbitral awards and setting high (mainly formal) standards for their annulment; and
- confirming the recognition and enforcement of foreign arbitral awards.

Thus, the Portuguese jurisprudence continues to demonstrate a pro-arbitration approach, which we consider extremely positive for ensuring that Portugal is an arbitration venue that offers security and efficiency.

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*Arbitration in Spain has seen significant developments regarding the enforcement of investment arbitration awards against Spain, judicial decisions from Spanish courts dealing with longstanding arbitral doctrines, legislative initiatives on Alternative Dispute Resolution ("**ADR**"), and reforms of arbitral institutional rules.*

Investment Arbitration Landscape: Enforcement on the Rise

Spain continues to dominate the global investment arbitration landscape in 2025, facing the consequences of its long-running disputes over renewable energy reforms. More than a decade after the government retroactively restructured its solar and renewable-energy subsidies regime, Spain remains embroiled in over 52 claims under the *Energy Charter Treaty (1994)* ("**ECT**"). Of the 52 arbitrations initiated to date, Spain has lost 27, several of which remain under challenge. This section outlines recent developments in the Spanish renewable-energy saga, focusing on the enforcement phase.

Spain is ranked among the world's least compliant States in investment arbitration, with around 15 to 24 unpaid awards totaling approximately USD 1.5 billion. The State continues to resist enforcement abroad, invoking sovereign immunity and challenging jurisdiction in the United States ("**US**"), Australia, and the United Kingdom ("**UK**"). Its withdrawal from the ECT, effective on 17 April 2025, formally concluded a significant phase of its investment treaty exposure. However, the ECT's 20-year sunset clause preserves investor protections for existing investments until 2045.

A Pivotal Year for Enforcement Claims

Enforcement within the European Union ("**EU**") for intra-EU arbitrations remains blocked due to EU law and the European Commission's ongoing state-aid interventions. In March 2025, the European Commission issued a landmark decision in *Infrastructure Services (Antin) v. Spain*, declaring the €101 million award constituted illegal state aid under EU law. The Commission prevented Spain from paying, reasoning that enforcement would breach Articles 107 and 108(3) of the Treaty on the Functioning of the European Union ("**TFEU**"). This precedent was aligned with the CJEU decisions in *Achmea v. Slovakia (I)* ("***Achmea***") and *Energoalians v. Moldova* ("***Komstroy***"), reinforcing this idea of primacy of EU law on intra-EU investment arbitrations.

Beyond the EU, investors pursue enforcement in several jurisdictions:

- **The United States of America:** A major turning point came with

the D.C. Circuit's decision in *NextEra v. Spain* in August 2024, which confirmed that US courts have jurisdiction under the Foreign Sovereign Immunities Act ("**FSIA**") to enforce ECT awards. The court rejected Spain's argument that *Achmea and Komstroy* invalidated the arbitration agreement, treating those objections as issues of merits rather than jurisdiction. Later decisions, including *Cube Infrastructure v. Spain*, 14 August 2025, and *Antin v. Spain*, 30 September 2025, confirmed this reasoning.

- **United Kingdom:** In October 2025, in *Operafund v. Spain, 10 November 2025*, the UK courts ruled that rights under an ICSID (International Centre for Settlement of Investment Disputes) arbitration award cannot be assigned to a third party. The case arose after the claimants, who had secured a €29.3 million award against Spain, assigned their rights to Blasket Renewable Investments LLC. Spain argued that ICSID awards were non-assignable. The court agreed, concluding that the ICSID framework contemplates enforcement only by the original parties to the arbitration, excluding third-party assignees. The judge further noted that the registration of the award in England did not create new rights capable of assignment. This decision is still subject to appeal.
- **Australia:** On 29 August 2025, 9REN Holdings, NextEra, and Blasket Renewable Investments (as assignee of RREEF and Watkins Holdings) sought to enforce four arbitral awards totalling €470 million against Spain. The Federal Court of Australia upheld enforcement, finding that Spain waived sovereign immunity by ratifying the ICSID Convention and could not invoke EU law to resist payment.

First Signs of Compliance

Despite the State's persistent resistance to enforcement, Spain showed its first instance of compliance in June 2025 with the *JGC v. Spain* award. Notably, Spain paid approximately €32 million to Blasket Renewable Investments, which had acquired the rights originally held by Japanese investor JGC Holdings Corporation ("**JGC**"). Because JGC was a non-EU investor, the European Commission's state-aid concerns did not apply. Spain's recent voluntary payment shows a meaningful shift.

Moving forward, enforcement proceedings are likely to continue across multiple jurisdictions, requiring investors to navigate a complex and evolving legal environment.

Judicial Decisions Shaping Arbitration

Spanish courts continue to review a growing number of arbitration cases, in line with Madrid's consolidation as an arbitral hub. Two key cases provide interesting developments to longstanding arbitration doctrines.

EU Law, Public Policy and the Role of the CJEU in National Annulment Proceedings

Annulment proceedings in the case *Cabify v. Auro* continue to pose questions about the relationship between public policy and EU law, demonstrating diverging views between the Superior Court of Justice of Madrid ("**TSJM**") and the Spanish Constitutional Court.

The award, issued by the Madrid Court of Arbitration, dealt with an exclusivity clause between two Spanish companies for transportation services and had considered the contract valid as not having breached competition rules. The claimant had brought set-aside proceedings before the TSJM, which partially annulled the award in its judgment of 22 October 2021, arguing that the tribunal had only considered Spanish law and had failed to apply the EU competition rule of Article 101 TFEU. The respondent resorted to the Spanish Constitutional Court, which reversed that decision in its judgment of 2 December 2024, reasoning that Article 101 TFEU was part of public policy but that the tribunal had correctly applied it, and that the TSJM had exceeded the due standard of limited review of the award.

The Constitutional Court remanded the case to the TSJM, instructing it to issue a new judgment.

The TSJM, in its order of 20 March 2025, made a preliminary reference before the Court of Justice of the European Union ("**CJEU**") before issuing a new judgment. The TSJM challenges the Constitutional Court's view of a limited review of the award, even when this implies mandatory public policy of the EU, such as Article 101 TFEU. The preliminary reference will clarify the standard of review of awards when these imply mandatory rules of EU law and further deepens the diverging stances of the TSJM and the Constitutional Court regarding arbitration.

Criminal Liability of Arbitrators, Kompetenz-kompetenz and Arbitrator Immunity

The Spanish Supreme Court, in its judgment of 8 October 2025, upheld the criminal conviction of the arbitrator for contempt of court in the *Heirs of the Sultanate of Sulu v. Malaysia* saga. The TSJM had appointed the arbitrator in its judgment of 29 March 2019 based on a commercial arbitration agreement. The arbitrator subsequently issued a preliminary award on jurisdiction. Later, in the judgment of 29 June 2021, the TSJM annulled the appointment stating that Malaysia had not been properly served. The arbitrator considered there was a jurisdictional interference with his function, moved the seat of the arbitration from Spain to France, and issued a final award. Respondent issued a criminal complaint against the arbitrator, who was convicted for contempt of court.

The arbitrator argued, among other grounds, that his preliminary award on jurisdiction had not been set aside and that was the proper procedure to follow according to the Spanish Arbitration Act. The arbitrator contended that an arbitral tribunal has the power to decide its own jurisdiction and stated that the law clerk of the court who issued the order had no authority, therefore, he had an arbitral duty to continue the proceedings. The Spanish Supreme Court dismissed these arguments and upheld the conviction, arguing that for criminal law purposes, arbitrators cannot disagree with the interpretation of the courts by disobeying, and there was no criminal defence to contempt of court based on an arbitral duty.

Legislative and Institutional Rules Reforms

The Spanish Court of Arbitration ("**Corte Española de Arbitraje**" or "**CEA**") and the Barcelona Arbitration Court ("**Tribunal Arbitral de Barcelona**" or "**TAB**") have introduced comprehensive reforms to their arbitration rules, signalling Spain's competitiveness as an arbitral seat. Additionally, new legislation on alternative dispute resolution mechanisms might foster arbitration as the preferred method to resolve commercial disputes.

Reforms to the CEA Arbitration Rules

The CEA's new Arbitration Rules, which shall enter into force on 1 January 2026, introduce an "optional challenge procedure" —"*impugnación opcional del laudo*"— allowing parties to agree to an intra-institutional review mechanism that provides an additional layer of scrutiny before the award becomes final. This creates a second-tier arbitral review for manifest breach of substantive rules or manifest error in fact assessment, providing quality control whilst the award has no *res judicata* effect or enforcement power. Parties must expressly opt-in via their arbitration clause or an early agreement before the appointment of any arbitrator. A challenge tribunal appointed by the CEA reviews the challenged award, with limited evidence generally restricted to what was filed in the arbitration. The challenge proceedings result in a final award that remains susceptible to judicial annulment. This is particularly valuable for complex disputes where parties want additional arbitral scrutiny as a safeguard against potential annulment.

A second major development is the hyper-expedited procedure, which establishes a three-month timeframe from the statement of claim to the award for straightforward disputes. This requires express agreement before the response is filed. The procedure features compressed timelines (15 days for statements of claim and defence), no first procedural order, limited evidence, generally no hearings, and succinct awards.

The third key innovation concerns consolidation, with expanded criteria including:

- party agreement;
- same arbitration agreement;
- compatible agreements with common legal relationships or legal issues and risk of incompatible decisions. The CEA will issue a reasoned decision within 15 days and may, if necessary, constitute a new tribunal to safeguard the principle of party equality.

Beyond these principal developments, the CEA has introduced several refinements:

- extended disclosure obligations to representatives and third-party funders;
- an enhanced emergency arbitrator procedure with faster appointment (2 business days) and an option to issue awards;
- expanded post-award remedies, adding rectification for partial excess of jurisdiction;
- harmonisation of "internationality" criteria with United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law standards;
- enhanced institutional control over the seat of arbitration to avoid modifications; and
- shift from opt-in to opt-out for award publication.

Reforms to the TAB Arbitration Rules

The TAB's 2025 Arbitration Rules, which entered into force on 1 January 2025, introduced an emergency arbitrator procedure allowing parties to request urgent provisional measures before tribunal constitution. This critical addition aligned TAB with international best practices.

A second notable development addresses technology use and liability, with Article 51 clarifying that parties or arbitrators may use technology in proceedings and shall assume the risks and responsibilities derived from using their own or TAB's technology. This article implicitly addresses the use of AI, a topic of paramount importance today.

The third key innovation is the preliminary review mechanism through Article 8, establishing a prima facie review of the arbitration agreement when the defendant does not respond, refuses arbitration, or raises exceptions regarding existence, validity or scope. This allows the TAB to conduct initial review before constituting the tribunal, potentially avoiding unnecessary costs if no valid agreement exists.

Other refinements include:

- mandatory disclosure of third-party funders;
- enhanced confidentiality protection through a two-year waiting period before publication and additional anonymisation requirements covering the subject of arbitration; and
- expanded post-award remedies adding rectification of partial excess of jurisdiction.

The Organic Law 1/2025

Finally, the enactment of Organic Law 1/2025 on measures for the efficiency of the Public Justice Service introduces mandatory alternative dispute resolution mechanisms as a prerequisite for accessing national courts in civil and commercial matters. As a private justice mechanism, arbitration remains exempt. With this additional obstacle to access to

domestic courts, arbitration may increasingly be favoured as a rapid and final method to resolve commercial disputes, offering the parties a direct path to a binding resolution without the procedural hurdles now imposed in litigation.

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In 2025, the efforts continued to further strengthen Sweden's position as an attractive and stable destination for international dispute resolution, through both institutional initiatives and court decisions reinforcing the principle of arbitral finality.

Developments in Commercial Arbitration During 2025

The SCC Arbitration Institute ("**SCC**"), which for many years has been among the leading global arbitral institutions, this year further strengthened its position by establishing the SCC Council for Swedish Arbitration. The background to the initiative was the positive development of the number of international commercial disputes that Sweden has seen in recent years, as well as their diversification. The council consists of 15 Swedish lawyers, with extensive experience in international arbitration. The purpose of the council is to further strengthen the already strong position of the SCC and ensuring that Sweden remains an attractive seat for international dispute resolution.

On 11 March 2025, the Nordic Commercial Arbitration Forum held its inaugural conference which gathered practitioners, academics and institutional representatives. The ambition is for the forum to be a biannual platform to showcase the Nordic region as a strategic venue for international arbitration. The program emphasized the Nordic legal family's shared concepts, arguing that the region functions as a *de facto* domestic market for commercial and contract law. A core message was that parties can confidently appoint neutrals from neighbouring Nordic jurisdictions because of common legal foundations and that the region's institutions collectively support efficient, business oriented dispute resolution. The next forum is planned for Oslo in 2027.

In other notable news during 2025, the Swedish Supreme Court clarified when an award can be declared partially invalid based on *ordre public*. Further, the Swedish Svea Court of Appeal reiterated the general courts commitment to the principle of finality in arbitration, illustrated by the court's reluctance to reassess a tribunal's evaluation of the merits or to interfere with costs allocation. It also demonstrates that Swedish courts will only set aside an award if there has been a procedural irregularity that likely affected the outcome of the case and illustrates the circumstances under which an award may be partially set aside. The developments of Swedish case law during 2025 will be further elaborated on below.

SCC Casework Statistics

Reports from the SCC, including the SCC's summarized and currently available statistics of caseload, highlight specific and current trends in Swedish arbitration. The SCC has as of the date of this article not yet published its statistics for 2025, however the statistics from 2024 shows clear and positive trends for the arbitral landscape in Sweden.

In 2024, the SCC registered 204 new cases with an almost even split between international (51 %) and domestic disputes (49 %). 53 % of the filings made to the SCC were handled under the SCC Arbitration Rules, while 35 % of the filings were handled under the SCC Expedited Arbitration Rules (2023). The SCC also handled 13 ad hoc services, 5 cases under the SCC Mediation Rules (2025), 4 Emergency Arbitrator proceedings, as well as one application for SCC Express Dispute Assessment (2023) (which is a dispute resolution service where a legal expert assesses the dispute within three weeks at a fixed price). The disputed amount in total at the SCC reached roughly EUR 13.5 billion, with an average just over EUR 100 million in the disputes administered under the SCC Arbitration Rules, while expedited cases averaged about EUR 672,000. These figures highlight both the SCC's and Sweden's role in resolving large and complex commercial matters.

The disputes brought to the SCC in 2024 originated from many different types of contracts. The most common were disputes arising out of business acquisitions (i.e., M&A-related), delivery and transportation agreements, as well as purchase agreements. By industry, the busiest areas were retail and consumer products, financial services, and real estate/construction, indicating sustained momentum in post M&A disputes and construction cases.

Challenging Arbitration Awards in Sweden

Introduction

In Sweden, arbitral awards are final, and the Swedish Arbitration Act (the "**SAA**") does not allow any appeals on the merits. Review is available only through challenge proceedings. Under Section 33 of the SAA, an award is invalid if the dispute is not arbitrable under Swedish law or if the award conflicts with Swedish public policy. In addition, an award may be set aside under Section 34 of the SAA in case there is no valid arbitration agreement, the tribunal exceeded its mandate, the arbitration was conducted in Sweden contrary to the parties' agreement, an arbitrator was improperly appointed or disqualified, or a procedural error occurred that likely affected the outcome.

Challenge proceedings must be brought before the competent court of appeal within two months of receipt of the award. The court's review is limited to the abovementioned statutory grounds.

A very small portion of arbitral awards are challenged in Sweden. An average of around 19 arbitral awards are challenged in Sweden yearly, according to the Westerberg Arbitration Tracker 2025. Out of the 357 initiated and decided cases between 2004 and 2024, the award was wholly or partially set aside or annulled in only 28 cases. This represents 7.84 % of all challenge cases decided 2004-2024. Statistically, this is an increase from previous years but mainly attributable to the annulment of five awards due to the prohibition to arbitrate intra-EU investor-state disputes. If these cases are excluded, the share of successful challenges to arbitral awards would instead amount to 6.53 %.

Case Law Highlights

In 2025, two decisions of the Swedish Supreme Court addressed seve-

rability and the circumstances under which Swedish courts may grant partial relief in challenges to arbitral awards. In the case called Blue Gas Holding, the Supreme Court confirmed that invalidity under Section 33 of the SAA can be confined to part of an award and articulated a structured two-step test: the court must first isolate the part of the award actually affected by *ordre public* and then decide whether the unaffected part can stand without creating incoherent or unfair *res judicata* effects. Applying that logic to an Energy Charter Treaty 1994 ("**ECT**") award involving EU and non EU investors, the Swedish Supreme Court held that the intra EU segment was tainted by procedural *ordre public*, but the remaining part concerning a Swiss investor was severable and remained valid, including the related costs orders.

In the second case, called Rydbergs, the Swedish Supreme Court addressed a partial set aside under Section 34 of the SAA. While accepting that the sole arbitrator exceeded the mandate by relying on a factual premise not pleaded by any party, the Supreme Court overturned the Court of Appeal's partial annulment. According to the judgment, a payment dispute of this kind was indivisible for *res judicata* purposes and leaving part of the award standing would have blocked any meaningful re hearing of the part of the arbitration which was challenged. Accordingly, the award was set aside in its entirety.

Another highlight in case law during 2025 was the Svea Court of Appeal's judgment T 10465-23 in the so-called Mall of Scandinavia case. The dispute arose out of an SCC arbitration between a Swedish construction group ("**Peab**") and a subsidiary of a French real estate group ("**Rodamco**") concerning the construction of a shopping centre. Peab requested additional payment, and Rodamco requested, among other things, damages and a penalty for delay in the work. In the award, the tribunal partially upheld both parties' claims. Rodamco challenged the award before the Svea Court of Appeal, alleging numerous errors amounting to both excess of mandate and procedural irregularities. In its judgement, the Svea Court of Appeal partially set aside the award concerning a contractual penalty claim for late completion, which a two-to-one majority in the tribunal awarded only partially to Rodamco. According to the court, the majority of the arbitral tribunal had failed to properly consider all of Rodamco's arguments in relation to that claim, thereby committing a procedural irregularity that likely affected the outcome. The court further determined that this part of the award could be meaningfully separated from the remainder, which should be upheld as not affected by this error.

The Svea Court of Appeal reached a similar conclusion in its judgment T 540-23 regarding the award in Gasum v. Gazprom Export. The award concerned a gas supply contract between state-owned gas companies Gasum Oy ("**Gasum**") and Gazprom export LLC, where Gasum was seeking (among other things) to be released from the obligation to purchase minimum annual quantities for 2020 and 2021. Gasum challenged the award before the Svea Court of Appeal, primarily seeking the partial setting aside of the award on the ground that the tribunal had failed to assess Gasum's separate claim that the contractual clause imposing minimum annual purchase obligations was invalid under EU competition law.

The court held that the arbitral tribunal had failed to assess the minimum purchase obligation in relation to Article 101 of the Treaty on the Functioning of the European Union and thereby had exceeded its mandate pursuant to Section 34 of the SAA. The court considered the tribunal's failure to examine a claim relating to a mandatory provision of EU law to be particularly serious, and found that the lack of reasoning in this respect constituted a serious disregard of due process. Therefore, the court presumed that the excess of mandate had affected the outcome of the case and set aside the relevant parts of the award.

Further, the Svea Court of Appeal in its judgments T 13423-24 and T 1729-25 regarding the awards in "*NTG Multimodal GmbH v If Skadeförsäkring AB*" set aside the two SCC awards and declared that the arbitrator lacked jurisdiction. The dispute arose from a Sweden–Italy road carriage framework agreement subject to the Convention on the Contract for the International Carriage of Goods by Road (1956) ("**CMR**"). Although

the contract contained an SCC arbitration clause and referenced Swedish law and the CMR generally, the clause did not expressly state that the arbitrator should apply the CMR as required by Article 33 of the CMR. The court concluded that neither a general choice of Swedish law nor a broader incorporation of the CMR elsewhere in the contract satisfied Article 33 of the CMR. The arbitration agreement was therefore invalid, and the court declared that the arbitrator lacked jurisdiction over the dispute.

Conclusions

The developments in Swedish international arbitration throughout 2025 reaffirm Sweden's position as a leading arbitration destination, where international disputes continue to represent approximately half of the SCC caseload. Key takeaways from 2025 include the Swedish courts' ongoing commitment to the principle of finality in arbitration, the national courts' willingness to intervene only in cases of clear procedural irregularity, and their careful approach to partial annulment of awards. Looking ahead, Sweden's arbitration framework appears well-equipped to address the evolving needs of international disputes, balancing finality and fairness while ensuring that parties can rely on an efficient dispute resolution process.

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*The Swiss Federal Tribunal ("**SFT**") has exclusive jurisdiction over applications to set aside or review international awards issued by arbitral tribunals based in Switzerland. These matters are regulated by Articles 190 and 190a of the 2021 Swiss Private International Law Act ("**PILA**"). Article 190 PILA provides the setting aside of awards under the following exhaustive grounds:*

- *Improper constitution of the arbitral tribunal (Article 190(2)(a)).*
- *Wrong acceptance or decline of jurisdiction (Article 190(2)(b)).*
- *Rulings beyond the claims submitted to the tribunal, or failure to decide one of them (Article 190(2)(c)).*
- *Violation of the principle of equal treatment of the parties or of their right to be heard (Article 190(2)(d)).*
- *Incompatibility of the award with public policy (Article 190(2)(e)).*

Article 190a PILA provides for the review of awards in limited circumstances:

- *Discovery of decisive new evidence that existed before the award was issued (Article 190a(a)).*
- *Criminal proceedings establishing that the arbitral award was influenced by a felony or misdemeanour (Article 190a(b)).*
- *Discovery of a ground for challenging an arbitrator's independence and impartiality after the conclusion of the arbitral proceedings (Article 190a(c)).*

The success rate of these applications is very low. In 2025, the SFT decided [31] set aside or review applications against international arbitration awards and overturned only one — decision 4A_92/2025 — in a sports arbitration on jurisdictional

*grounds under Article 190(2)(b) PILA. Switzerland remains one of the most arbitration-friendly jurisdictions, among other reasons, because of its modern legislation and efficient one-instance set-aside proceedings before the SFT. Nevertheless, this year, Switzerland's approach to international arbitration was heavily scrutinised by the European Court of Human Rights ("**ECtHR**"). This article provides an overview of this ECtHR decision, alongside other selected SFT decisions issued in 2025.*

Application for Set-Aside Based on Wrong Decision on Jurisdiction (Article 190(2)(b))

In decision 4A_466/2023 of 6 February 2025, the SFT rejected a request to set aside the award in the case *Raimundo Santamarta Devis v. Venezuela* (PCA Case No. 2020-56). The arbitral tribunal was constituted under the *Bilateral Investment Treaty ("BIT") between Venezuela and Spain (1995)* and declined jurisdiction on the ground of the claimant's dual Venezuelan and Spanish nationality. The claimant then requested to set aside the award based on Article 190(2)(b) PILA.

In its judgment, the SFT reiterated its jurisprudence that, in deciding such set-aside requests, it could freely examine any legal issue that determines the arbitral tribunal's jurisdiction. It also noted that its task was not to provide a general response on the highly debated matter of dual nationals' protection under investment treaties, but rather to determine whether the plaintiff in this case could invoke the protections of the BIT. The SFT then highlighted that, even under this same BIT, investment tribunals have reached different conclusions in dual nationals cases such as *Serafín García Armas and Karina García Gruber v. Venezuela*, *Manuel García Armas and others v. Venezuela*, and *Fernando Fraiz Trapote v. Venezuela*.

The SFT analysed these decisions and the reasons expressed by the *Santamarta* tribunal. Applying the rules of interpretation of the Vienna Convention on the Law of Treaties (1969) ("**VCLT**"), the arbitral tribunal concluded that the BIT was ambiguous as to whether its definition of "investor" included dual nationals. Based again on the VCLT, the arbitral tribunal then referred to other international law rules that could be relevant for interpreting the BIT, specifically the customary rule of dominant and effective nationality. The tribunal held that the claimant's dominant and effective nationality was indeed Venezuelan and that, consequently, he could not be considered a protected investor under the BIT.

The SFT considered this approach to be well-grounded. It also held that the tribunal's determination of the claimant's dominant and effective nationality was a matter of fact beyond the SFT's review. Notably, the SFT distinguished this case from its 2020 decision 4A_306/2019 to set aside the *Clorox v. Venezuela* award, rendered under the same BIT, in which the arbitral tribunal declined jurisdiction. There, the SFT held that the arbitral tribunal's interpretation was inconsistent with the BIT's broad definition of the term "investment". In contrast, in this case, the SFT stressed that the BIT did not address the specific situation of dual nationals and therefore the arbitral tribunal was correct in filling this gap.

Application for Set-Aside Due to Violation of Parties' Right to Be Heard (Article 190(2)(d))

In decision 4A_90/2025 of 4 August 2025, the SFT confirmed a commercial arbitration award issued by an arbitral tribunal seated in Geneva. The SFT affirmed that the arbitral tribunal had not violated the claimant's right to be heard under Article 190(2)(d) PILA by disregarding arguments and

evidence that were not decisive to the outcome of the dispute.

The SFT first clarified that, when the outcome of the award is based on several independent or alternative reasons, the applicant must demonstrate that each reason is tainted by a breach of Article 190(2) PILA. If the request only covers one of the award's several reasonings, it should be deemed inadmissible, since even if the request is granted, the award can still stand on its alternative arguments. In this case, the request was based on only one of the two arguments on which the award was based (namely, lack of fundamental breach and forfeiture of the right to terminate the contract), and therefore the SFT decided that it was inadmissible.

Nevertheless, the SFT stated that, even if it had been admissible, it would still have denied the set-aside request on the merits. The SFT recalled that the right to be heard does not imply an obligation to deal expressly with every argument or piece of evidence submitted by the parties, but only with those that are decisive for the outcome of the dispute. The SFT found that the arbitral tribunal had considered the relevant claims and evidence, respecting the parties' right to be heard. Moreover, following its usual practice, the SFT held that the applicant was in substance seeking to reopen the arbitral proceedings under the guise of a right-to-be-heard violation, as the arguments advanced had already been rejected by the tribunal.

Application for Set-Aside Due to Public Policy Incompatibility (Article 190(2)(e) PILA)

On 10 July 2025, the Grand Chamber of the ECtHR issued its decision in the landmark case of *Semenya v. Switzerland*, ruling that Switzerland violated Article 6(1) of the European Convention of Human Rights ("**ECHR**") when the SFT reviewed a Court of Arbitration for Sports ("**CAS**") award which upheld World Athletics' Regulations on Differences of Sex Development ("**DSD**").

Semenya initiated CAS proceedings against World Athletics, arguing that the DSD Regulations were discriminatory as they required athletes with DSD conditions to undergo hormone-lowering treatment to compete in the female category. On 29 April 2019, the CAS issued its award in which it ruled that although the regulations were discriminatory, this discrimination was "necessary, reasonable and proportionate" to ensure fairness in women's athletics. Semenya challenged the award before the SFT, affirming that she had been discriminated against based on her sexual characteristics. In its 2020 decision, the SFT dismissed the challenge, holding that the CAS award does not violate public policy under Article 190(2)(e) PILA.

Semenya then brought an application before the ECtHR alleging discriminatory treatment in violation of ECHR Articles 3 (prohibition of inhuman or degrading treatment), 6(1) (right to a fair hearing) and 8 (right to respect for private life) taken alone and in conjunction with Articles 14 (prohibition of discrimination), and 13 (right to an effective remedy). Following the first ECtHR Chamber judgement of 11 July 2023, the case was referred to the ECtHR Grand Chamber. The Grand Chamber's judgement partially upheld Switzerland's preliminary objection and dismissed the Chamber's earlier findings under Articles 8, 14 and 13, declining jurisdiction over those complaints. However, it retained jurisdiction over Article 6(1) holding that even though the underlying CAS award was rendered in a dispute between private parties, the case nevertheless fell within Switzerland's "jurisdiction" under Article 1 ECHR because CAS' arbitrations are governed by the Swiss *lex arbitri* and the SFT is the sole competent national court able review its awards.

The Grand Chamber emphasised that CAS arbitration is effectively mandatory and marked by a "structural imbalance" between athletes and sports federations, meaning athletes do not freely consent to CAS jurisdiction. In such non-voluntary arbitrations involving fundamental rights,

Article 6(1) ECHR requires the SFT to carry out a "particularly rigorous examination" of an athlete's application under Article 190(2)(e) PILA, considering the importance of the fundamental rights at issue. According to the Grand Chamber, the SFT's narrow conception of substantive public policy and limited scrutiny of proportionality fell short of this standard, resulting in a violation of Article 6(1) ECHR.

The Grand Chamber's judgment thus introduces, for the first time, a requirement that the SFT apply a "particularly rigorous examination" where CAS jurisdiction has been imposed on an athlete, and the dispute concerns fundamental rights. Although criticized in a joint dissent as a novel and potentially far-reaching standard, its precise contours remain undefined. One foreseeable implication is that the SFT may need to broaden its interpretation of substantive public policy when fundamental rights are invoked under Article 190(2)(e) PILA. While the ECtHR did not expressly confine its reasoning to sports arbitration, the judgment repeatedly stresses the structural imbalance and the non-voluntary nature of CAS proceedings, suggesting an implicit distinction between standard commercial arbitration and the "vertical" relationship that characterizes sports arbitration.

Application for Review Based on Subsequently Discovered Evidence (Article 190a(A))

In decision 4A_46/2024 of 17 April 2025, the STF rejected China's request for review of the award in the *Jason Yu Song v. People's Republic of China case* (PCA Case No. 2019-39) brought by a British investor under the UK-China BIT (1986). China brought its application under Article 190a(a) PILA, arguing that it had found new evidence that would have led the arbitral tribunal to decline jurisdiction. The alleged new evidence consisted of:

- a 2012 email sent by the investor;
- a 2012 document; and
- an October 2023 confession by one of the investor's witnesses admitting that his earlier testimony in the arbitration had been untruthful.

China submitted that this evidence would have shown that the investor had acquired his shares in the relevant company illegally and that he had obtained his British citizenship solely for the purpose of commencing the arbitration, and that the tribunal would have therefore declined jurisdiction.

The SFT recalled that, under Article 190a PILA, a request for review must be submitted within 90 days of discovering the grounds for review. The SFT ruled that China had failed to do so with respect to the 2012 email and document. China alleged that it had not had access to them until December 2023, but according to the SFT, it did not provide any supporting evidence or further details on the discovery and thus did not discharge its burden. As to the 2023 confession, the SFT held that under Article 190a(a), the newly discovered evidence should have existed prior to the issuance of the award under review. In this case, China obtained the confession almost two years after the issuance of the award in December 2021. The SFT therefore concluded that this evidence was also inadmissible. Separately, in its decision 4A_528/2024 of 26 June 2025, the SFT rejected a subsequent request for review filed by China against the same award.

Takeaways

In 2025, the SFT received fewer applications relating to arbitral awards than in previous years, and the success rate remained low. Indeed, the cases analysed in this article show that the SFT has a high threshold for the admissibility of any request to set aside or review an award and confirm its deference to arbitral tribunals. The *Semenya* judgment, ap-

pears to require the SFT to conduct a "particularly rigorous examination" when reviewing CAS awards in cases involving compulsory arbitration and fundamental rights. How this development will affect the SFT's pro-arbitration approach remains to be seen. Given that a significant portion of the SFT's international arbitration caseload concerns sports arbitration, cases in 2026 will show whether this precedent prompts a broader interpretation of public policy under Article 190(2)(e) PILA.

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For almost four years, Ukraine has been perceived and discussed through the lenses of war, martial law, and future reconstruction. One may even argue that the country has undergone a profound transformation in nearly every public sphere. Yet, when it comes to international arbitration, the expected shift simply did not happen. The context surrounding arbitration indeed has changed, but the system remains stable and functioning. The courts continue to enforce awards, institutions have operated without major interruption since April 2022, and no drastic legislative shifts have disrupted the existing framework.

What did emerge, however, is an entirely new category of disputes driven by the wartime sanctions legislation – the number of such disputes against Ukraine continues to grow (Section II.A.). In parallel, Ukrainian investors continue pursuing compensation from Russia for loss of their assets, both through enforcement efforts in the long-running Crimean cases and through a new series of claims initiated after the 2022 full-scale invasion (Section II.C.). Commercial disputes in the defence sector become increasingly common due to the expansion of Ukraine's military industry (Section III). Legislative and institutional reforms keep contributing to the favourable arbitration landscape in Ukraine (Section IV).

Investment Arbitration

Sanctions-Related Cases against Ukraine

Ukraine's sanctions regime, introduced in response to Russia's armed aggression, allows seizure and nationalization of assets through court proceedings initiated by the Ministry of Justice of Ukraine. Investors, deprived of their property without compensation – most often due to their Russian ties – resort to investor-state claims, seeking any possible recovery.

- In May 2025, the tribunal in *ABH Holdings S.A. ("**ABH**") v. Ukraine* (ICSID Case No. ARB/24/1) granted Ukraine's bifurcation request, separating the liability and quantum phases. ABH, controlled by Russian businessmen Mikhail Fridman and Petr Aven, claims compensation for allegedly unlawful, discriminatory, and accompanied by a "black

PR campaign" nationalisation of Sense Bank. The parties are now actively exchanging their submissions, with the next round scheduled for 23 February 2026. As a part of a broader strategy, Fridman and Aven also challenged the EU sanctions before the Court of Justice of the European Union ("**CJEU**"). On 10 April 2024, the CJEU annulled the initial listing decision dated 28 February 2022 due to insufficient reasoning. The subsequent listing decisions remained in force despite similar challenges. Another branch of this strategy is Fridman launching the first known treaty arbitration against Luxembourg.

- Cases *Enwell Energy plc v. Ukraine* (ICSID Case No. ARB/25/41) and *Smart Energy B.V. and PJSC Ukrgazvydobutok v. Ukraine* (ICSID Case No. ARB/25/38) were filed by companies under the control of the pro-Russian businessman Vadym Novynskyi. The claims concern wartime regulatory measures, including sanctions and state intervention in the management of energy assets. The claimants adopted an aggressive stance, requesting provisional measures at the outset of proceedings. The tribunal's appointment has reached its concluding stage as of December 2025.
- *AEROC v. Ukraine:* Ukraine faced an ICSID claim over sanctions-based expropriation measures, filed by AEROC Investment Deutschland GmbH ("**AEROC**"), a German company ultimately controlled by the Russian businessman Andrey Molchanov. The tribunal was constituted in early November 2025. In parallel, AEROC challenged the sanctions regime before the Constitutional Court of Ukraine, arguing that the measures breached principles of legal certainty, equality and right to property. Hearings commenced late last year.
- *Optim Holding v. Ukraine:* Optim Holding, a Vienna-based company founded by Ukrainian citizen Oleg Zudov, filed an ICSID claim after the Ukrainian authorities sanctioned the company in 2023. The claim concerns alleged "effective expropriation".
- *Ferrexpo v. Ukraine:* In March 2025, a London-based iron ore producer, Ferrexpo plc, and its Swiss subsidiary, Ferrexpo AG, notified Ukraine of an investment claim. The notice followed the seizure of the company's Ukrainian assets amid criminal proceedings against its founder Kostyantyn Zhevago, sanctioned in February 2025. The dispute concerns the nationalization of nearly half of the corporate rights in Ferrexpo Poltava Mining and their transfer to a state agency. Ferrexpo insists the measures are politically driven, legally unfounded, and unrelated to Zhevago's alleged embezzlement case.
- *Tatneft v. Ukraine (II):* Tatneft, a Russian oil company, filed a Notice of Dispute against Ukraine, alleging unlawful and discriminatory confiscation of its assets. This is the second case brought by this claimant against Ukraine: in *Tatneft v. Ukraine* (PCA Case No. 2008-8), the company was awarded USD 112 million for the loss of shares in the Kremenchuk refinery, but the arbitral award remains unenforced.

As Ukraine continues expanding wartime regulatory measures, further investment claims are likely to emerge. In this context, the Ministry of Justice remains a key agency involved both in the confiscation of sanctioned assets and Ukraine's defence in investor-state disputes.

Other Investor-State Cases against Ukraine

- Like Spain and Italy, Ukraine cut its previously generous "green tariff" for renewable energy producers in 2020. This decision generated significant tensions with investors in the renewable energy sector, giving rise to several investor-state disputes. In 2025, *Modus Energy International B.V. v. Ukraine* remained the only renewable energy arbitration case progressing. Modus Energy International launched three solar power plants in 2019 under a tariff guaranteed until 2029. After the 15% reduction, the claimant alleged that Ukraine had undermined its legitimate expectations and breached fair and equitable treatment standard under the Energy Charter Treaty (1994). The merits hearing took place in April 2025. In January 2026, the Ministry of Justice of Ukraine, reported a win in this case. According to the press-release the SCC tribunal decided that Ukraine properly exercised its

right to regulate for public purpose and positively assessed Ukraine's efforts to negotiate the change of the green tariff with the industry.

- The long-running case of *Gilward Investments B.V. v. Ukraine* (ICSID Case No. ARB/15/17) concluded in 2025. The case concerned a USD 947 million claim arising from the collapse of Aerosvit Airlines (Ukraine's largest commercial airlines before 2013). The claimant alleged that Ukraine restricted its access to international routes, granted preferential conditions to competitors, expropriated land plots, delayed VAT refunds and interfered with Aerosvit's bankruptcy proceedings. In August 2025, the tribunal discontinued the case after the claimant failed to pay advances on costs, effectively closing the proceedings in Ukraine's favour.

Ukrainian Claimants

In 2025, Ukrainian claimants continued pursuing their claims against Russia, however, with various intensity. New claimants make initial steps carefully, assessing the evolving legal landscape, in particular, the International Compensation Mechanism for Ukraine:

- *Oschadbank v. Russia (II):* On 24 July 2025, Oschadbank sent a formal Notice of Dispute to Russia seeking compensation for the loss of investments in the occupied Donetsk, Luhansk, Kherson, and Zaporizhzhia Regions.
- *Ukrhydroenergo v. Russia:* After sending a Notice of Dispute against Russia for the destruction of the Kakhovka Hydroelectric Power Station in mid-2024, Ukrhydroenergo did not take any procedural steps in 2025 – the company cancelled its tender for legal services in the planned investor-state dispute to align its legal strategy with Ukraine's broader national policy on reparations.
- An investment dispute by confidential Ukrainian investors for losses in Donbas since 2014 commenced in the summer of 2024 and remains at the cooling-off stage in 2025.
- *Rinat Akhmetov v. Russian Federation,* PCA Case No. 2025-02 and *Energoatom v. Russia* remain slow-moving.

Award holders actively target Russian assets in various jurisdictions in enforcement proceedings:

- In 2025, Naftogaz Group made notable progress in enforcing its USD 5 billion award (*Naftogaz and others v. Russia*, PCA Case No. 2017-16):
- An Austrian court authorised the attachment of more than 20 Russia-owned real estate properties;
- A French court granted exequatur;
- A Finnish court granted interim measures (attachment of movable and immovable property for tens of millions of USD). Russia attempted to challenge interim measures in Finland. In its appeal, it relied on sovereign immunity arguments and the special protection of diplomatic property. Yet, the Helsinki Court of Appeal rejected such arguments and confirmed that interim measures were lawful and proportionate to safeguard Naftogaz's rights.
- Oschadbank's Crimea-related case reached a decisive stage. After French Cassation Court annulled Oschadbank's USD 1.5 billion award in 2022 and remanded the case for new consideration, in July 2025 the Paris Court of Appeal issued a new judgment dismissing all Russia's objections and upholding the PCA award. This judgment opens the way for Oschadbank to continue enforcement in the United States and take steps in other jurisdictions.
- In November 2025 a Dutch court upheld the provisional attachment of assets of a gas pipeline operator South Stream Transport owned by Russia's Gazprom in support of DTEK Krymenergo's enforcement of USD 300 million award.

Commercial Arbitration:

Defence Industry on the Rise

Commercial arbitration is a common dispute resolution mechanism across key economic sectors in Ukraine. The defence industry is not an exception: rapid wartime expansion has led to a noticeable increase in defence-related disputes.

Defence companies tend to refer their cases to arbitration. As confirmed by the Vice President of International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry ("**ICAC**"), Mr. Volodymyr Nahnybida, defence-related disputes constitute a notable share of the ICAC's 2025 caseload, accounting for around **10% of new filings** (26 cases) and **11% of considered cases** (30 cases).

Moreover, Ukraine-related defence disputes are resolved under the premises of prominent arbitral institutions around the world. Some recent publicly reported cases include:

- Ukraine's Spetstechnoexport launched LCIA arbitration against Virginia-based Regulus Global seeking to recover USD 347 million in advance payments and penalties under a 2022 contract for the supply of artillery shells;
- An Arizona court enforced a VIAC award requiring OTL Firearms and Imports Corporation, a US weapons exporter to pay USD 20 million to Progress, a Ukrainian state-owned arms trading company over undelivered ammunition supplies.

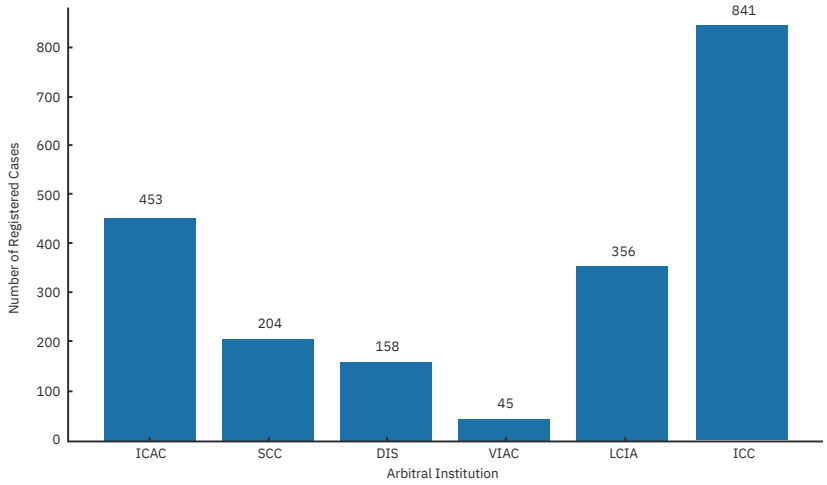
Ukraine also adjusted its enforcement framework to wartime realities – according to the Amendments to the Law on Enforcement Proceedings, enforcement proceedings against Ukrainian defence companies are now paused for the duration of martial law in Ukraine.

Ukraine as Arbitration-Friendly Jurisdiction: ICAC Reform and Changes to Legislation

Ukrainian lawmakers and ICAC are modernizing the country's arbitration framework to strengthen Ukraine's reputation as an arbitration-friendly jurisdiction.

Ukrainian Parliament works on Bill No. 12141 ("**Bill**"). Its updated version is now recommended for a second and final reading. The Bill seeks to extend the jurisdiction of Ukrainian arbitration institution in line with the UNCITRAL Model Law on International Commercial Arbitration (2006) and promote Ukraine as a seat for the resolution of investor-state disputes.

ICAC continues to demonstrate institutional resilience throughout martial law. In 2024, ICAC registered a higher number of cases than many major arbitral institutions, recording 453 new cases and significantly surpassing SCC (204 cases), DIS (158 cases), VIAC (45 cases) and LCIA (356 cases) in 2024. ICC remained the global leader with 841 cases.



By **mid-November 2025**, ICAC **registered 269 new cases** and r**esolved 275 cases**. This represents a substantial caseload despite the constraints and disruption caused by the war.

As a part of its digital transformation agenda, ICAC is now upgrading digital tools by developing a comprehensive online dispute-resolution platform. It is expected to be launched in 2026. The platform shall make case management faster and more convenient, in line with best practices of leading arbitration institutions.

Trends and Predictions

We expect that:

- The number of sanctions-related investment disputes against Ukraine by Russian and pro-Russian businesses is likely to grow.
- A large wave of new claims by Ukrainian investors against Russia for losses after 2022 is unlikely in the near future. Many potential claimants are waiting for the International Compensation Mechanism to be fully operational. The Register of Damage for Ukraine is in place and constitutes the first functioning component of the mechanism. A further institutional step was taken on 16 December 2025, when 34 states and the EU signed the Convention Establishing an International Claims Commission for Ukraine, creating an organ for the resolution of claims and awarding compensation. The Convention will enter into force upon ratification by 25 signatory States and subject to the availability of the sufficient funds to support the Commission's initial operations.
- New investment claims against Russia related to 2014-2022 period will pop up as these investors do not have any other viable options to pursue. Availability of third-party funding could accelerate such claims, however, the funders remain conservative.
- Construction arbitration is expected to become one of the most active segments of Ukraine's arbitration landscape once the post-war reconstruction begins. Arbitration in the defence sector will also continue to grow.
- Ukraine will continue creating an arbitration-friendly environment to promote investments and develop the economy.

ABOUT THE AUTHORS

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Anastasiia Kotliarchuk is an Associate of Cross-Border Litigation & Arbitration Practice at Arzinger Law Firm, Attorney-at-Law. Anastasiia has over 6 years of professional experience in investment and commercial arbitration, as well as litigation. She represented foreign investors in investment disputes in *Philip Morris v. Ukraine, Morgan Furniture v. Ukraine*, and related national court proceedings. Anastasiia has also represented clients in commercial arbitration and advised on disputes under the rules of key arbitral institutions (LCIA, SCC, SAC, VIAC, ICAC, GAFTA, FOSFA, ICSID).

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United Kingdom

*London continues to be a seat of choice in global arbitrations. This is reflected in the 2025 International Arbitration Survey conducted by Queen Mary University of London ("**QMUL**") and White & Case, in which London was the most preferred seat globally, selected by 34% of respondents (2025 International Arbitration Survey, The path forward: Realities and opportunities in arbitration, page 8). Many parties also continue to adopt English law as the applicable law in such disputes.*

Against this backdrop, the review identifies two important developments and outlines their implications for London-seated and English law governed arbitrations:

- *reforms to the jurisdictional framework under the Arbitration Act in Section 1; and*
- *substantive developments in relation to cryptoassets and their treatment and valuation in arbitration in Section 2.*

Sahba Mohtadi
Associate,
Jones Day

Section 67 of the Arbitration Act

Section 67 and its Rationale

The Arbitration Act 1996 ("**AA 1996**") as amended by the Arbitration Act 2025 ("**AA 2025**") applies to arbitral proceedings and related court proceedings commenced on or after 1 August 2025 (the "**Commencement Date**"). Arbitral proceedings commenced before the Commencement Date – and any related court proceedings, whenever commenced – continue to be governed by the pre-2025 regime; as do any other court proceedings commenced before the Commencement Date. Following a review by the Law Commission, AA 2025 introduced some refinements to the jurisdictional challenge regime under section 67 ("**s67**"). Under section 30 ("**s30**") of AA 1996, unless otherwise agreed by the parties, the arbitral tribunal may rule on its own "*substantive jurisdiction*" – that is as to:

- whether there is a valid arbitration agreement;
- whether the arbitral tribunal is properly constituted; and
- what matters have been submitted to arbitration in accordance with the arbitration agreement.

This reflects the competence-competence principle, which is well established under English law (in *Russell on Arbitration* (24th edn, 2015) [5-075]).

However, English law has long recognised that a tribunal cannot be the final arbiter of its own jurisdiction (see The Departmental Advisory Committee on Arbitration Law, *Report on the Arbitration Bill* (1996), [137]-[138]). In addition to raising objections in the arbitral proceedings themselves, a party may:

- with the agreement of the counterparty or permission of the tribunal, ask the English court to determine jurisdiction under s32; or
- if it does not participate in arbitration proceedings, seek a declaration or injunction under s72(1).

In practice, these routes are used relatively rarely, and parties more commonly rely on s67 once an award has been issued. This mechanism has been described by the Law Commission as the "*other side of the coin*" to competence-competence (*see* the Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, [9.143]).

Application of s67 Under AA 1996

An application under s67 requires the court to determine the outcome of the jurisdictional challenge; and order the appropriate remedy if the challenge succeeds.

Under AA 1996, a party may apply to the court under s67(1) either to:

- challenge an award of the arbitral tribunal as to its substantive jurisdiction; or
- obtain an order declaring an award made by the tribunal on the merits to be of no effect, in whole or in part, because the tribunal did not have substantive jurisdiction.

The court conducts a *de novo* determination, undertaking a full re-hearing in relation to the question of jurisdiction, rather than a review of the tribunal's decision. S73 precludes parties from raising new grounds of objection that could with reasonable diligence have been raised in the arbitral proceedings. Subject to s73, the court may consider relevant evidence and arguments and, in principle, admit new material not previously before the tribunal. In the re-hearing, the court is not required to give any special weight to the tribunal's award (*Dallah v. Pakistan,* [2008] EWHC 1901).

As to remedies, under AA 1996, parties can seek an order:

- confirming, varying or setting aside the award, in whole or in part (s67(3)); or
- declaring an award made by the tribunal on the merits to be of no effect (s67(1)(b)).

Although s67 did not expressly confer a power to remit matters to the tribunal, unlike ss68 and 69, the courts inferred such a power from the scheme of AA 1996 and exercised it in practice.

Key Cases Decided in 2025

According to the Commercial Court Report for 2023-2024, 24 s67 applications were filed (a 242% increase from 7 the year before), of which only one had succeeded by the time of the report. That backdrop frames a series of significant decisions in 2025.

- There were several notable s67 judgments related to investment treaty awards, including two key decisions issued by the Court of Appeal. The Court of Appeal in *Diag Human and Stava v. Czech Republic,* [2025] EWCA 998 partially set aside the tribunal's award under the Switzerland-Czech Republic Bilateral Investment Treaty (1990) (the "**BIT**"), insofar as it was made in favour of Diag SE, while leaving the award in favour of Mr Stava unaffected. The Court held that to qualify as an "Investor" under Article 1(1)(c) of the BIT, Diag SE had to be directly or indirectly controlled de *jure* by a Swiss national (i.e., Mr. Stava) or by a legal entity which would itself qualify as an "Investor" under Article 1(1)(b). The Court held that following the transfer of

shares into a trust, Mr Stava lacked de jure control with the result that Diag SE did not qualify as an "Investor". In *Elliott v. Korea,* [2025] EWCA 905, the Court of Appeal reversed the Commercial Court's first instance decision, which dismissed Korea's challenge on the basis that its reliance on Article 11.1 of the Korea-U.S FTA (2007) was non-jurisdictional. The Court held instead that Article 11.1 did impose jurisdictional limits on the offer to arbitrate, with the result that Korea's challenge was properly brought under s67. The matter was therefore referred back to the Commercial Court for determination on the merits. These decisions demonstrate the English courts' willingness to engage closely with treaty interpretation and jurisdictional gateways.

- Similarly, there were several successful challenges in the commercial sphere. In *PCMC v. Tecnicas* [2025] EWHC 1785, the Court held that the parties had agreed only to ad hoc arbitration, and that the ICC (International Chamber of Commerce) tribunal therefore lacked jurisdiction. In *Edward Marciniak and Chemia Bomer E. Marciniak v. Pannonia Bio Zrt*, [2025] EWHC 1005, the Court overruled the tribunal, finding that it had wrongly decided it possessed substantive jurisdiction. In *GTCS Tading v. CAFI – Commodity & Freight Integrators,* [2025] EWHC 1350, the court upheld challenges under ss67/68/69 to a GAFTA (Grain and Feed Trade Association) award.

Issues Identified by Law Commission and Reforms to AA 1996

The Law Commission's review focused on the re-hearing approach taken under s67 and the remedies available under s67.

Rehearing Rather than Review

On the current re-hearing approach, the Law Commission identified two principal concerns:

- the potential for delay and cost through repetition of proceedings; and
- the potential for unfairness – namely, the risk that a party could benefit from the tribunal's first determination of jurisdiction, then bolster its case with new evidence and arguments in court proceedings, turning the arbitration "*at its most extreme*" into a "*dress rehearsal*" (*see* the Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, [9.16]- [9.17]).

The reforms attempt to address these concerns through the introduction of the following provisions, which apply unless the court rules otherwise in the interests of justice and in addition to s73:

- A ground for the objection that was not raised before the arbitral tribunal must not be raised before the court unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant did not know and could not with reasonable diligence have discovered the ground. In fact, s.73(1) already provides that a party who takes part in arbitral proceedings may not later raise a jurisdictional objection if they did not raise it promptly, unless they show they could not with reasonable diligence have discovered the ground.
- Evidence that was not put before the tribunal must not be considered by the court unless the applicant shows at the time the applicant took part in the proceedings, it could not with reasonable diligence have put the evidence before the tribunal.
- Evidence heard by the tribunal must not be reheard by the court.

Collectively, these changes are designed to ensure that "*there are limits to the arguments and evidence which can be presented*" in s67 applications, while preserving the court's ultimate responsibility to determine jurisdiction (*see* the Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, [9.55]).

Remedies

On remedies, the Law Commission also identified inconsistencies between sections 67–69:

- Remittal is expressly available under ss68 and 69 but not under s67 (although common law has accepted the possibility of remittal under s67).
- Set aside is available under s67(1)(a)/ (3) but not expressly under s67(1)(b). Declaring an award of no effect is available under s67(1)(b) but not s67(1)(a).
- The remedy of setting aside the award and declaring the award to be of no effect, is subject to a further requirement, in ss68/69, that the court would not do so, unless satisfied that it would be inappropriate to remit the matters to the tribunal.

The Law Commission recommended harmonisation of the remedies available under ss67-69, to reflect the position under case law and avoid arguments that different wording mandated different approaches between s67 and ss68 and 69 (*see* the Law Commission, *Review of the Arbitration Act 1996: Final Report and Bill*, [9.143]).

Accordingly, AA 2025 has been reformed to include the following provisions:

- S67 has been harmonised with ss68 and 69, so the court may, by order:
    a. confirm the award;
    b. vary the award;
    c. remit the award to the tribunal, in whole or in part, for re consideration;
    d. set aside the award, in whole or in part; or
    e. declare the award to be of no effect, in whole or in part.
- (2) Under new s67(3A) the court must not exercise its power to set aside the award, or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration.

Looking Forward

Looking forward, there are likely to be several consequences and considerations for parties, during arbitral proceedings or upon the initiation of a challenge under s67.

- **Front-loading jurisdictional evidence and argument:** Parties must ensure that they rely on necessary evidence in the underlying arbitration.
- **More selective use of s67 challenges:** Given the increasing number of s67 applications, and tighter limits on new argumentation and material, parties may be advised to be more selective about bringing such challenges.
- **Greater reliance on the tribunal's award and the arbitral proceedings as the foundation of a s67 challenge:** Courts are likely to be less amenable to new arguments or evidence not presented to the tribunal, and to rely more heavily on the award and the tribunal's reasoning, as well as transcripts of the underlying arbitral proceedings, as the starting point.
- **Development of the "interests of justice" carve-out:** Early post-2025 cases will need to define the scope of the "*interests of justice*" exception.
- **Additional clarity on remedies:** The remedies available in the s67 context are now more clearly articulated and aligned with the assumed position under case-law.

* The views and opinions set forth herein are the personal views or opinions of the authors; they do not necessarily reflect views or opinions of the firms with which they are associated.

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Navigating Crypto Disputes: Legal Framework, Emerging Regulation & Valuation Challenges

Cryptoassets in Arbitration

As cryptoasset markets expand, disputes over digital assets have increased, typically involving fraud, misrepresentation, platform failures, or contract breaches. With evolving exchange practices, rising requirements for expert knowledge, and continual regulatory change, arbitration is rapidly becoming the favoured avenue for resolving disputes across this complex and globalised industry. Key reasons include:

- **Jurisdictional Neutrality:** Cryptocurrency transactions often span multiple jurisdictions, creating uncertainty in litigation. Arbitration allows parties to select a neutral seat and governing law, reducing unpredictability.
- **Confidentiality:** Given the sensitivity of digital asset holdings, arbitration's confidentiality is attractive compared to public court proceedings.
- **Technical Expertise:** Arbitrators can be chosen for their understanding of cryptoasset technology. Experts with specialised knowledge of blockchain and cryptocurrency can assist arbitration tribunals in interpreting technical and factual issues.
- **Flexibility and procedural autonomy:** Parties can design a process that suits the complexity of cryptoasset disputes including accelerated timelines, virtual hearings and tailored disclosure requirements.
- **Speed and efficiency:** Cryptoasset markets move quickly, and urgency is often required (as in *AA v Persons Unknown & Ors, Re Bitcoin,* [2019] EWHC 3556). Arbitration often provides a faster resolution and a streamlined procedure.
- **Enforceability of awards:** Unlike court judgements, arbitral awards are globally enforceable, less vulnerable to jurisdictional challenges, and recognised even when crypto laws vary between countries.

English law supports arbitration even in complex cryptoasset disputes. In *Grosskopf v Grosskopf & Ors* [2024] EWHC 291, the court confirmed that seeking remedies beyond a tribunal's powers does not render a dispute

inarbitrable.

Changes in UK Regulation

The legal landscape for cryptoassets is rapidly changing. The United Kingdom ("**UK**") has moved from a fragmented approach to a comprehensive regulatory regime through the Financial Services and Markets Act 2000 (Regulated Activities and Miscellaneous Provisions) (Cryptoassets) Order 2025. Key developments are as follows.

FCA Draft Framework

The Financial Conduct Authority ("**FCA**") published its draft rules for regulating cryptoasset activities on 17 September 2025, aiming to apply comparable standards to those governing traditional financial services (the "**Draft Framework**").

Under the Draft Framework, firms operating cryptoasset trading platforms, providing custody services, issuing stablecoins, or engaging in lending, borrowing, and staking will require FCA authorisation. The proposals also extend the FCA Handbook requirements, such as governance, operational resilience, and financial crime controls, to cryptoasset firms.

In addition, the FCA is consulting on measures to enhance market integrity, including admission and disclosure standards for cryptoassets and a market abuse regime tailored to digital markets. Prudential requirements for stablecoin issuers and custodians are also under consideration, alongside potential application of the Consumer Duty to cryptoasset businesses.

While the framework may lead to greater consumer protection and market confidence, it also introduces higher compliance burdens and capital requirements, which may challenge smaller businesses and create new compliance related disputes.

Property (Digital Assets) Bill

The Property (Digital Assets) Bill was introduced to Parliament on 11 September 2024, and seeks to enhance legal clarity around the treatment of digital assets in response to the Law Commission's recommendations in 2023. It explicitly states that Digital Assets (e.g. cryptocurrencies, tokenised representations of real-world or financial assets, and other blockchain-based instruments) can be considered as personal property. The Bill received Royal Assent on 2 December 2025.

This develops and formalises the precedent set in *Director of Public Prosecutions v Briedis* [2021] EWHC 3155 (Admin), where the High Court determined that cryptocurrency falls within the definition of property under the Proceeds of Crime Act 2002 s.316(4).

The Bill will strengthen legal protections for digital asset owners while providing clearer guidance for courts and tribunals in resolving disputes over digital holdings. Hong Kong is a leading venue for cryptocurrency-related disputes, partly due to its recognition of cryptocurrency as property under Hong Kong law. As the UK is expected to adopt a similar approach, this could make it an increasingly attractive jurisdiction for resolving digital asset disputes.

Valuation Challenges in Expert Evidence

The nature of cryptocurrency-related disputes introduces new valuation challenges and technical complexities that extend beyond traditional financial modelling. These valuation intricacies raise significant procedural complications, requiring tribunals to provide clear directions on methodology, disclosure, and the timing of updates to ensure fairness and consistency in the arbitration process.

Expert Evidence in Cryptoasset Arbitration

Guidance from the Ciarb (Chartered Institute of Arbitrators) emphasises that an expert's overriding duty is to assist the tribunal, not the party who appointed them. Although this is already considered as best practice,

tribunals have been critical of expert witnesses who do not expressly acknowledge Ikarian Reefer guidance.

A procedural implementation of further guidelines arising from the Ciarb Expert Witness Evidence Project may result in explicit directions on the scope and format of expert evidence, together with protocols that establish expert evidence as a shared responsibility among the parties, their counsel, and the tribunal. This highlights that arbitrators with true expertise in the sector may be needed for part of the panel.

Volatility of Cryptocurrency Results in High Variability in Quantum of Damages

A recent arbitration case, in which the author provided expert evidence, highlighted that selecting the date for calculating cryptocurrency denominated damages is crucial, as price volatility in the sector can greatly alter the amount awarded.

In this case, lost profit was calculated for a bitcoin mining business expressed in bitcoins, using a Mathematical Formula less the associated electricity costs.

Applying the bitcoin price at the date of award resulted in an award greater than three times what would have been calculated using the bitcoin price at the date of the breach. Notably, the expert report was filed approximately six months prior to the hearing, such that the quantum of the claim was highly sensitive to bitcoin's price movements after the evidence was submitted.

The party's business model involved holding all mined bitcoin in anticipation of a significant price increase. Accordingly, the authors' team concluded that any award should be expressed in traditional monetary terms, using the bitcoin price as at the date of the award, less the associated costs of electricity.

The Tribunal agreed with this approach and awarded damages consistent with the financial model based on the bitcoin price as at the date of the award.

The inherent volatility of cryptocurrency assets often compels tribunals to mandate periodic valuation updates to safeguard accuracy and the integrity of the claim quantification. Nevertheless, such requirements generate added costs, thereby producing a procedural dilemma that balances precision against efficiency.

Conclusion

Sections 1 and 2 address distinct developments in 2025 that are relevant to English-seated and English law governed arbitrations. The reforms to the AA 1996 refine the approach to court challenges following a tribunal's jurisdictional determination, including limits on new grounds and evidence and greater clarity as to the range and sequencing of remedies available to the court. Section 2 considers the evolving landscape for cryptoasset-related disputes and the implications for arbitration practice, including the growing body of legal and regulatory clarification affecting digital assets and practical issues that frequently arise in arbitration, particularly valuation methodology, volatility, and expert evidence.

Taken together, these developments provide a concise procedural and substantive snapshot of how English arbitration and English law have continued to evolve in 2025 in response to both established jurisdictional issues and the increasing prominence of digital-asset disputes.

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Middle East, North Africa & Türkiye

MIDDLE EAST & NORTH AFRICA

Algeria

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The year 2025 marked a turning point for Algeria's arbitration landscape, reflecting both legislative and regulatory innovation and active engagement in international dispute resolution. This article provides an overview of:

- *Major legislative changes, including Law No. 25-12 on mining activities (1);*
- *Notable arbitration proceedings and enforcement actions (2); and*
- *The launch of DZ VYAP, a pioneering initiative for emerging arbitration practitioners (3).*

Legislative and Regulatory Innovations

On 3 August 2025, Algeria enacted Law No. 25-12 governing mining activities, marking an overhaul of its mining regulatory framework. This law repeals Law No. 14-05 of 2014 and reflects the State's broader objective of attracting foreign investment and modernising the sector. Key changes include the abolition of the "49/51" ownership rule, allowing foreign investors to hold up to 80% in mining ventures, subject to a mandatory 20% state participation (Article 101). This recalibrated shareholding requirement substantially enhances foreign investors' managerial autonomy by removing the previous minority blocking position long held by the Algerian partner.

On 16 November 2025, the Algerian government issued Executive Decree No. 25-304, which sets out the detailed procedure for obtaining prior governmental authorisation for any transfer of shares or equity interests to a foreign investor in companies operating in "strategic sectors" (pursuant to Executive Decree No. 21-145 of 2021). Adopted pursuant to Article 52 of the 2020 Supplementary Finance Law of 4 June 2020, the Decree establishes a comprehensive screening mechanism comparable to foreign-investment review regimes in other jurisdictions. It requires that any contemplated transfer be filed by the Algerian company with the competent line ministry and be subject to a mandatory inter-ministerial review involving, *inter alia*, the Defence, Interior, Foreign Affairs and Finance ministries as well as the Bank of Algeria (Article 7). The administration must issue a reasoned decision within 60 days (Article 10), with rejection being compulsory where risks to public order, national security, public health, or the country's economic interests are identified, or where the prospective acquirer is implicated in corruption or financial crime (Article 9). Overall, Decree No. 25-304 reinforces the State's gatekeeping role in strategic industries and may indirectly shape the investment landscape relevant to future disputes and arbitration proceedings.

Notable Recent Arbitration Proceedings and Enforcement Actions Involving Algeria

Arbitration Proceedings Involving Algeria

- ***Algeria – Restrictions on Exports and Investments (European Union)***

In July 2025, the European Union commenced arbitration proceedings under the 2002 EU–Algeria Association Agreement against Algeria. The case concerns a series of trade and investment restrictions imposed by Algeria since 2021, and marks one of the few instances of treaty-based inter-State arbitration involving Algeria.

- ***Dirk Andres in his capacity as insolvency administrator regarding the assets of HBH v. Algeria* (ICSID Case No. ARB/25/11)**

On 14 March 2025, Dirk Andres, in his capacity as insolvency administrator of German construction company Heitkamp BauHolding GmbH, filed an ICSID (International Centre for Settlement of Investment Disputes) arbitration case against Algeria. The claim, brought under the Algeria – Germany BIT (1996), arises from the alleged wrongful expropriation or mismanagement of the company's assets by the Algerian state. Andres is seeking compensation on behalf of the company's creditors, arguing that Algeria breached its investment treaty obligations. The case, still pending, highlights the potential for insolvency administrators to bring claims against states for the benefit of creditors in international arbitration.

- ***Grupo Villar Mir v. Fertiberia***

In early 2025, Spain's GVM (Grupo Villar Mir) and its former Algerian subsidiary, Fertial, have reportedly commenced arbitration before the CAM (Madrid Court of Arbitration) seeking recovery of €20 million in liabilities that Fertiberia – now owned by Triton Partners – allegedly refused to settle following GVM's divestment in 2020. The case follows an earlier €128 million ICC (International Chamber of Commerce) award rendered in GVM's favour in 2023 against Sonatrach subsidiary, Asmidal, concerning Fertial's share acquisition, later settled when Asmidal completed its takeover. In the new arbitration, GVM asserts unjust enrichment claims, and a tribunal has reportedly been constituted.

Post-Arbitration Litigation and Enforcement

- ***Ciments de Zahana v. ASEC* (Paris Court of Appeal, No. RG 24/01523, 4 November 2025)**

On 4 November 2025, the Paris Court of Appeal upheld the enforcement of an ICC award rendered in Algiers, ordering the state-owned *Société des Ciments de Zahana* ("**SCIZ**") to pay over US$60 million to Egypt's ASEC Cement. The court dismissed SCIZ's arguments based on insufficient reasoning, alleged reliance on equity, and purported violations of international public policy. The dispute arose from a management contract for a cement plant near Oran. In parallel, a separate investment treaty arbitration regarding projects in Zahana and Djelfa is pending before the PCA (Permanent Court of Arbitration), with Algeria challenging jurisdiction and admissibility.

- ***Various Insurers, Reinsurers and Retrocessionaires v. General Electric and others,* (United States Court of Appeals for the Eleventh Circuit, 18 March 2025)**

On 18 March 2025, in a US-based arbitration context, the Eleventh Circuit Court of Appeals upheld a lower court decision compelling ICC arbitration of a US$28 million claim by a consortium of insurers against General Electric. The dispute arose from a turbine failure at the Hadjret En Nouss power plant in Tipaza, near Algiers, owned by Shariket Kahraba Hadjret En Nouss ("**SKH**"), a joint venture involving the Algerian government, SNC-Lavalin (now AtkinsRéalis), and Mubadala. The insurers, as subrogees of SKH, were deemed third-party beneficiaries of a services contract providing for an ICC arbitration clause. The court emphasised that the arbitrators, rather than the judiciary, should determine the scope

of arbitrable claims. This follows an earlier ICC award (2020) in which SKH recovered US$100 million from Sonelgaz under the plant's electricity supply agreement, highlighting the complex interplay of contractual and treaty-based arbitration involving Algerian state entities.

Launch of DZ VYAP – Algeria Very Young Arbitration Practitioners

2025 marked a milestone for Algeria's arbitration community with the creation of DZ VYAP (Algeria Very Young Arbitration Practitioners), the country's first network dedicated to early-career professionals in international arbitration. As the Algerian chapter of the Global VYAP Network, DZ VYAP aims to amplify Algeria's voice on the global arbitration stage by fostering visibility, mentorship, and skills development for lawyers, students, and academics up to six years' experience.

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Egypt

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In recent years, Egypt has witnessed a marked improvement in its arbitration landscape, culminating in a series of significant developments throughout 2025. These advancements are most clearly reflected in the introduction of the new CRCICA Rules, a succession of pro-arbitration judicial decisions, and the emergence of high-profile arbitration events. Together, these changes underscore Egypt's commitment to modernizing its arbitral framework and strengthening its position as a leading venue for international dispute resolution in the region. The following article explores these key milestones and their impact on Egypt's evolving arbitration environment.

CRCICA Rules 2024

Founded in 1979 under the auspices of the Asian-African Legal Consultative Organization ("**AALCO**"), the Cairo Regional Centre for International Commercial Arbitration ("**CRCICA**") is the longest-standing arbitral institution in both Africa and the Middle East. CRCICA has played a foundational role in shaping and advancing international arbitration practice across the region. Over the past four decades, it has evolved into a leading, independent, and neutral forum for the resolution of complex cross-border disputes, contributing significantly to the growth and institutionalization of arbitration in Africa and the Middle East.

In support of Egypt's broader development as a regional hub for international arbitration, CRCICA has undertaken a comprehensive modernization of its procedural rules. The new CRCICA Rules, effective 15 January 2024 (the "**CRCICA 2024 Rules**"), mark a significant step forward for the arbitration community in Egypt and the wider region. These rules replace a framework that had been in place for approximately fourteen years, and reflect global best practices aimed at promoting greater efficiency, transparency, party autonomy, and cost-effectiveness.

As of 31 December 2024, CRCICA has administered a cumulative total of 1,747 cases, including 76 new filings in 2024. This trajectory reflects sustained market confidence in the Centre's administration and procedures. With the entry into force of CRCICA's updated procedural framework, the caseload is expected to continue increasing, driven by enhanced efficiency, modernized case-management tools, and alignment with contemporary international practice.

Taken together, these reforms demonstrate CRCICA's commitment to delivering a modern, reliable, and internationally competitive arbitral framework. They reinforce the Centre's leadership role in the region and support Egypt's emergence as a preferred seat and venue for international arbitration.

The summary below outlines the key differences between the CRCICA Rules of 2011 and the CRCICA 2024 Rules.

Emergency and expedited procedures: The CRCICA 2024 rules introduced formal Emergency Arbitrator Rules and an Expedited Arbitration stream within the institutional framework, which provides short-term provisional relief before a main arbitration is constituted. The expedited track is designed for faster resolution with a fee scale that is lower than ordinary proceedings.

Early dismissal: Tribunals now have clear power to dismiss, at an early stage, claims or defenses that are manifestly without legal merit. This aims to save time and reduce costs by removing clearly meritless issues before full hearings.

Transparency on third-party funding: The CRCICA 2024 rules require disclosure in the request (and response) of the existence and identity of third-party funders and of funding agreements.

Revised cost structure and arbitrator fees: A flat registration fee was replaced with a tiered registration fee tied to the amount in dispute, arbitrator fee tables were updated, and explicitly discounted fee scales for expedited proceedings.

Consolidation/multi-contract and multi-party provisions: New mechanisms were added or clarified for handling complex factual or contractual matrices, including: consolidation of related arbitrations, multi-contract arbitration, and related joinder-type solutions.

Digital case management and hearings: Online filing and case administration were introduced, express authorization for hearings to be in-person, remote (videoconference), or hybrid, and a broad power for tribunals to use appropriate technological means in the proceedings.

Key Case Law Developments

- **Administrative Contracts and Ministerial Approval- Egyptian Supreme Administrative Court, Decisions No. 39843 of JY 66, dated 25 June 2024**

Recently, the Supreme Administrative Court underscored that arbitration clauses in administrative contracts are contingent on the explicit approval of the competent minister, without delegation, and that failure to obtain such approval renders the arbitration agreement null and void. In the case at hand, the Court found no evidence of the required approval in the record and, consequently, affirmed the Administrative Court's jurisdiction over the dispute.

Notably, the Court clarified that the duty to obtain the minister's approval does not rest solely with the administrative authority. By framing the approval requirement as a mandatory, universally applicable rule that carves out a narrow exception to ordinary judicial jurisdiction—and for which ignorance is no excuse—the Court appears to have raised the bar on the consequences of non-compliance, diverging from earlier decisions that had placed the burden primarily on the administrative authority.

Supreme Administrative Court - Supreme Administrative Court - Third Circuit - Subject - Appeal No. 39843 of 66 AH | Session Date 25/6/2024

- **Conversion of Currency in Damages- Egyptian Court of Cassation, Decision No. 32779 and 32790 of JY 93, dated 8 May 2025**

In a significant reaffirmation of Egypt's monetary public policy, the Court of Cassation has clarified the limits of party autonomy in arbitration seated in Egypt, particularly where awards purport to grant compensation in foreign currency contrary to mandatory foreign exchange rules.

On 8 May 2025, the Egyptian Court of Cassation annulled an arbitral award in the Appeal nos. 32779 and 32790 for the judicial year 93, after

an arbitral tribunal awarded damages in US dollars under a domestic contract. The Court reaffirmed that foreign exchange rules are matters of Egyptian public policy. An arbitral award granting foreign currency compensation in contravention of these constraints is subject to annulment under Article 53 of the Egyptian Arbitration Law. This is a limiting precedent: private autonomy (even an agreement on a foreign currency) cannot prevail over mandatory monetary/public order rules.

Court of Cassation - Civil - Civil and Commercial Division - Appeal No. 32779 of 93 AH | Appeal No. 32790 of 93 AH | Session Date 8/5/2025

- **Strict Interpretation of Article 53 of the Egyptian Arbitration Law-Egyptian Court of Cassation Decision No. 3659 for JY 92, dated 23 June 2025**

This judgment further reinforces the autonomy of arbitration in Egypt by drawing a sharp line between limited judicial review for annulment and impermissible merits review. The court emphasized that Egypt's Arbitration Law confines annulment to specific, enumerated grounds and does not authorize courts to re-weigh evidence, re-characterize claims, or second-guess an arbitral tribunal's legal reasoning where the tribunal has applied the agreed law and relevant legal sources. By reversing a partial annulment that intruded on the tribunal's assessment of limitation and implied waiver, the judgment strengthens parties' confidence that arbitral awards seated in Egypt will be insulated from merits review. It also emphasizes that tribunals may, under Egyptian law, rely on widely recognized legal maxims set out in the Civil Code and the Code of Civil Procedures.

The Court of Cassation stated that annulment in Egypt is confined to the exclusive grounds mentioned in Article 53 of the Egyptian Arbitration Law and does not permit courts to revisit a tribunal's factual findings, contract characterization, or relief—errors of judgment alone are not annulment grounds. Issues like limitation and the legal effect of prolonged silence (implied acceptance or waiver) fall within the tribunal's remit, and a party's failure to object in time can signal implicit consent. Here, the tribunal applied the parties' chosen law, relying on the Civil Code, the Arbitration Law, and CRCICA Rules to assess obligations under the 26 March 2008 settlement, and its use of the maxim that one cannot profit from one's own wrong—reflected across Egyptian law and permissible under Civil Code Article 1(2)—did not displace the applicable law. Given the record, especially the companies' silence from 2008 through completion in 2013 and the six years before filing in 2019, the tribunal's conclusions on limitation and waiver stood, leaving no basis for annulment.

Court of Cassation - Civil - Civil and Commercial Division - Appeal No. 3659 of 92 AH | Session Date 23/6/2025

- **Recognition and Enforcement of Informal Arbitration Awards -Egyptian Court of Cassation Decision No. 5823 for JY94, dated 17 May 2025**

The following judgment reaffirms that arbitral awards are subject to a self-contained enforcement regime under the Egyptian Arbitration Law (Law 27/1994). The Court of Cassation held that only the President of the court originally competent (or a delegated judge)—and, for international arbitration, the Cairo court of appeal—may issue the enforcement order for arbitral awards. By treating these jurisdictional rules as matters of public order that courts must raise on their own, the decision prevents ordinary trial courts from re-characterizing arbitral awards or revisiting their merits, thereby strengthening the finality and enforceability of arbitration.

The Court of Cassation ruled that the lower courts erred by adjudicating the merits of a claim founded on an arbitral award, after mischaracterizing the award and related "customary session" minutes as a mere private document.

It held that a request to enforce an arbitral award in a domestic arbitration is, in substance, a petition to affix the exequatur, which falls within the exclusive functional jurisdiction of the President of the court originally competent to hear the underlying dispute (or a delegated judge). This rule is of public order and cannot be waived or altered by agreement. **Court of**

Cassation - Civil - Civil Division - Appeal No. 5823 of 94 AH | Session Date 17/5/2025

Key Arbitration Events

Egypt Arbitration Days 2025

One of the most important updates in Egypt in 2025 is the Egypt Arbitration Days ("**EAD**"), held from 13 to 16 October in Cairo, which is establishing itself as one of the most prominent platforms for arbitration in the MENA region. The event has quickly become a key gathering for anyone involved in arbitration, attracting participants from seasoned arbitrators and in-house counsel to judges and academics. Over four lively days, attendees explored topics ranging from investment arbitration and the protection of Egyptian investors to the evolution of Egypt's arbitration law and cross-border mediation. Beyond the sessions, the energy came from informal exchanges highlighting how Egypt is increasingly shaping the future of dispute resolution in a region bridging Africa, Asia, and Europe.

Potential Legal Reform to the Egyptian Arbitration Law

It has been over 30 years since the enactment of the 1994 EAL, and during this period, practice on the ground witnessed changes and challenges that revealed the need for urgent legislative intervention to develop it.

As of 2025, there is no new enacted arbitration law replacing Law No. 27 of 1994 (the current Egyptian Arbitration Law ("**EAL**"). However, proposed amendments are underway.

The proposed amendments are currently part of a legislative study discussed by the Council of Ministers. The proposed changes to the 1994 EAL include the following:

- **Amendment to Article 3:** Redefine and clarify "international arbitration" so that meeting any one of the criteria in the article suffices. The prior/customary reading required a link to "international commerce / trade" to qualify arbitration as "international." This aims to avoid inconsistent judicial determinations, and to reduce uncertainty about whether a given arbitration is "domestic" or "international."
- **Amendment to Article 9:** Confer exclusive jurisdiction to the Cairo Court of Appeal for arbitration related matters referred to courts under the EAL, whether the arbitration is "domestic" or "international". This aims at ending the conflict between different Egyptian courts and unifying judicial interpretations.
- **Amendment to Article 54:** Reducing the time limit for filing an action to annul an arbitral award from 90 to 30 days, and transferring jurisdiction over annulment actions to the Court of Cassation instead of the courts of first instance to ensure expedited adjudication.
- **Amendment to Article 56:** Make the court referred to in Article 9 (the Cairo Court of Appeal) the exclusive competent court for enforcement of all arbitral awards.
- **Amendment to Article 58:** Repeal Article 58(1) of the EAL, which currently bars applications to enforce an arbitral award until the time limit for bringing an annulment action has expired.

Further updates may follow as Egypt continues refining its arbitration framework.

Conclusion

Egypt's continued evolution as an arbitration hub is underpinned by a modernized institutional framework, progressive case law, and ongoing legislative reform ("Hub-formation!" Youssef's guide to transforming MENA seats - Global Arbitration Review White list / Institutions Worth a Closer Look - Middle East & Africa - Global Arbitration Review). These

developments reinforce Cairo's position as a leading seat for international arbitration in the region, offering parties a reliable, efficient, and internationally recognized forum for dispute resolution.

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MIDDLE EAST & NORTH AFRICA

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Beirut's legal heritage is often evoked through the expression Berytus Nutrix Legum ("Beirut, Nourisher of Laws"), which the Beirut Bar Association has adopted as its official motto. The phrase recalls the city's ancient Law School of Berytus—widely regarded as one of the earliest formal law faculties—which flourished during the Roman Empire and famously hosted jurists such as Ulpian and Papinian. While the city's legal preeminence has dimmed over the centuries, particularly in light of Lebanon's recent crises, 2025 offered several signs of a renewed and more modern role for Beirut within the regional arbitration landscape.

A major development was the inaugural of Beirut Arbitration Days, which drew an unprecedented gathering of regional and international practitioners. The event marked the first coordinated effort in years to insert Beirut into the broader arbitration map through substantive panels, institutional participation, and cross-border engagement.

On the institutional front, both of Beirut's principal arbitral institutions advance important reforms. The LAMC (Lebanese Arbitration & Mediation Centre of the Beirut and Mount-Lebanon Chamber of Commerce) continued to consolidate its position following its 2024 Arbitration Rules overhaul, while the LIAC-BBA (Lebanese and International Arbitration Center of the Beirut Bar Association) presented its new Arbitration Rules in the 2025 Beirut Arbitration Days, further aligning Beirut-based arbitration with contemporary international standards and reinforcing institutional pluralism in the market.

Finally, on the disputes' side, investor–state matters involving Lebanon remained active, while several Lebanon-seated commercial arbitrations tackled questions arising from the country's financial collapse—particularly the duties owed by banks and financial institutions to their clients, these cases increasingly turned Beirut into a forum for resolving crisis-related commercial disputes. This reflects both necessity and the growing maturity of the local arbitral framework.

Market Highlights

Despite persistent macro-economic headwinds and institutional strain on the court system, Beirut continued to entrench its profile as a regional arbitration forum in 2025. The inaugural Beirut Arbitration Days (20–22 May 2025) convened a large regional and international audience and featured the public presentation of the updated LIAC-BBA (Lebanese and International Arbitration Center of the Beirut Bar Association) Arbitration Rules, which had not yet been made publicly available as of the date of this article. Over the course of the event, several conferences addressing procedure, damages, arbitration, judiciary cooperation and advocacy matters were held. The scale and quality of participation marked a high point in community engagement and signaled a clear intention within the arbitration community to re-position Beirut as a credible regional hub for complex commercial and investment disputes, even as broader structural economic reforms remain outstanding.

In parallel, treaty exposure arising from Lebanon's de-facto capital controls continued to intensify; driven by foreign investors impacted by the banking crisis. Most notably, Al Habtoor Group (UAE) served a notice of dispute under the Lebanon - United Arab Emirates BIT (1998) alleging impeded transfers of funds and violations of treaty protections—particularly fair and equitable treatment and free-transfer guarantees. The Group publicly announced in January 2025 that it was cancelling all planned investments in Lebanon, a development that highlighted the mounting risk of additional Investor-Sate Dispute Settlement ("**ISDS**") claims premised on blocked deposits and transfer-of-funds provisions. Since then, however, Al Habtoor has signaled an intention to resume—or at least reconsider—the operation of its investments in the country.

Significant Cases and ISDS Developments

On the dispute landscape, investor–state matters with a Lebanese nexus remained active:

AVAX v. Lebanese Republic (ICSID) — Annulment Phase: The dispute arises from alleged breaches by the Lebanese Republic of a construction contract concluded with AVAX for the Deir Ammar II power plant, principally relating to non-payment. Following the tribunal's June 2024 award dismissing the investor's claims, an ICSID (International Centre for Settlement of Investment Disputes) ad hoc committee was constituted on 14 January 2025 to hear the investor's annulment application. To date, the annulment proceedings remain pending. The committee's eventual decision is expected to provide additional guidance on the scope of annulment review under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (1965) ("**ICSID Convention**"). While the merits award relieved the State of a substantial potential liability, careful management of the annulment phase—and of any subsequent enforcement or costs issues—remains essential. Practitioners should also monitor any partial or interim decisions addressing the customary annulment grounds, including alleged serious departures from a fundamental rule of procedure or manifest excess of powers.

Abed El Jaouni v. Lebanon (ICSID) — Post-Award Posture: for context, readers will recall that the case stems from the revocation of aviation licenses held by the claimant's subsidiary. Following the ad hoc committee's rejection of Lebanon's annulment application on 5 December 2024, the US$218.2 million award in favour of the investor remains final and in force. In 2025, the focus has therefore shifted to post-award strategy—including settlement dynamics, budgetary/sovereign considerations, and potential foreign enforcement measures. For counsel advising States or investors with similar aviation-licensing fact patterns, the case continues to shape expectations around expropriation analysis and

damages quantification under applicable treaties.

Lebanon-seated commercial arbitrations have also addressed matters relating to the Lebanese economic crisis:

Zeyad Salah v Ahli Investment Group and Arab Finance Corporation, BCCI Case No. 232/2021: in the commercial arbitration sphere, 2025 continued to illustrate how Lebanon's financial crisis is generating non-treaty claims against domestic financial institutions. The dispute arose from an alleged breach of a portfolio management and financial services agreement between a Jordanian investor and the respondent financial entities. In March 2024, a majority LAMC tribunal seated in Beirut rendered an award ordering the respondents to pay approximately US$5.1 million plus interest, finding breaches of their duties to inform, advise, and warn, as well as failures to exercise due diligence and care in managing a conservative-risk portfolio heavily exposed to Lebanese sovereign Eurobonds. Although the Beirut Court of First Instance granted exequatur in late 2024, enforcement has been suspended following annulment proceedings initiated by the respondents under Lebanese law. While the case remains pending, it is likely to shape both the trajectory of future banking-related arbitrations and the strategic risk assessment of foreign investors operating in Lebanon.

Court Support and Enforcement Outlook

Lebanese courts have consistently adopted a *favorem arbitrandum* approach, reinforcing party autonomy and the effectiveness of arbitration agreements. Traditionally, the courts have held that:

- The mere inclusion of an arbitration clause in a contract is sufficient to confer jurisdiction on the arbitral tribunal (*See*, Court of Cassation of Lebanon (Decision No. 79/2001)).
- Arbitral tribunals have primary authority to decide on their own jurisdiction. Courts must decline jurisdiction when a valid arbitration clause is invoked, unless the clause is null or clearly inapplicable (*See*, First Instance Tribunal of Mount Lebanon, Decision No. 79/2017).
- Contractual annexes that form part of the principal agreement are automatically subject to the arbitration clause included in the main contract, even if the annexes do not contain any express arbitration clause (*See*, Court of Appeal of Mount Lebanon, Decision No. 1/2022).
- Annulment proceedings may not serve as a vehicle for merits review; challenges alleging errors in substantive liability fall outside the narrow grounds for annulment (*See*, Court of Appeal of Beirut, Decision No. 385/2023).

In the post-award phase, Lebanese courts continue to apply the New York Convention (1958) ("**NYC**") unless its provisions are less favorable to the arbitration award than Lebanese laws. Notably, Article 814 of the Lebanese Code of Civil Procedure ("**LCCP**"), limiting refusal of enforcement to awards that manifestly violate international public policy, is considered more arbitration-friendly than the broader public-policy ground of Article V(2)(b) of the NYC.

Nothing in judgments issued in 2025 indicate a departure from these principles, though judicial resource constraints may affect timelines. Counsel should factor this into the enforcement strategy and sequencing.

Legislative and Regulatory Developments

No arbitration-specific legislation was enacted in 2025, and Lebanon continues to rely on the arbitration framework set out in Articles 762–821 of the Lebanese Code of Civil Procedure ("**LCCP**"). While these provisions remain broadly arbitration-friendly, they do not fully reflect the more modern architecture of the post-UNCITRAL Model Law on International Commercial Arbitration 2006. Throughout 2025, practitioners renewed longstanding calls for legislative modernization—particularly with respect to interim measures, tribunal powers, confidentiality, judicial assistance, and procedural formalities—but to date, no reform bill progressed to the

point of enactment.

In July 2025, Parliament adopted a justice-sector reform law aimed at strengthening judicial governance and institutional capacity. Reactions within the legal community were measured, with commentators generally viewing the reform as a limited but constructive step. Although not directed at arbitration, any medium-term improvement in court efficiency, especially in matters involving interim relief, evidence-taking, or the recognition and enforcement of awards, would indirectly reinforce Lebanon's arbitral infrastructure.

Institutional Developments

LAMC — Rules in Practice: The LAMC Arbitration Rules, which were comprehensively revised in 2024, continued to shape practice in 2025. Users increasingly relied on the rulebook's complex-case toolkit—multi-contract/multi-party configurations, consolidation, joinder, expedited tracks, emergency arbitrator, and technology-enabled case management (e-filing, virtual hearings). To reduce procedural skirmishes about institutional identity, any previous reference to arbitration under the "*Beirut and Mount Lebanon Chamber of Commerce*" are deemed to fall under the LAMC Rules of Arbitration. The concurrent implementation of the LIAC-BBA Rules provides parties with two updated institutional options in Beirut, enhancing both institutional competition and party choice.

Conclusion

2025 marked a return of confidence in Lebanon's arbitration community. The country did not overhaul its legal framework, but it demonstrated that its institutions, practitioners, and courts remain fully capable of supporting meaningful arbitral practice.

Growing engagement with international actors, steady jurisprudence, and reinvigorated institutions signal a system moving forward rather than standing still. Whether expressed through judicial consistency, institutional renewal, or broader international visibility, the year revealed a quiet but unmistakably Lebanese resilience within the country's arbitration landscape.

For 2026, the opportunity is clear: anchor this renewed energy in modernized legislation and consistent institutional practice. If Lebanon seizes that opportunity, Beirut could once again emerge as a natural meeting point for regional dispute resolution.

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MIDDLE EAST & NORTH AFRICA

Morocco

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Over the past two decades, arbitration has established itself as a key pillar for dispute resolution in Morocco, reflecting the Kingdom's desire to modernize its business environment and attract foreign investment.

This article aims to examine in detail the current legislative framework of arbitration in Morocco (1), analyze the major cases that marked 2025 (2), and highlight the growth of the Moroccan arbitration community as well as its international influence (3).

The Legislative and Regulatory Framework of Arbitration in Morocco

The Law No. 95-17 on Arbitration and Contractual Mediation dated May 24th, 2022 (the "***2022 Arbitration Law***") sets the legislative framework for alternative dispute resolution method in Morocco. The 2022 Arbitration Law establishes an independent and self-standing instrument, distinct from the Moroccan Code of Civil Procedure. Thus, it reinforces both clarity and the degree of specialization of the applicable regime to domestic and international arbitration. The 2022 Arbitration Law reaffirms key arbitration principles, including the autonomy of the arbitration clause, the *competence-competence* principle, and the strict limitation of state court review to annulment proceedings on grounds set out in Article 62 of the 2022 Arbitration Law.

Following the adoption of the 2022 Arbitration Law, the Decree No. 2-23-1119, dated May 23rd, 2024, setting out the modalities for compiling the list of arbitrators as well as the conditions for registration and removal (the "***2024 Decree***") was enacted. The 2024 Decree is rooted in articles 11 et 12 of the 2022 Arbitration Law and serves a dual purpose. First, it ensures the quality and transparency of arbitrators' missions. Second, it establishes a strict framework for the selection and maintenance of arbitrators on an official list. Through the 2024 Decree, Morocco strengthens confidence in the national arbitration process.

One of the key developments in Morocco's legislative framework in 2025 was the first implementation of the 2024 Decree through the publication of the first list of arbitrators approved by the Moroccan Ministry of Justice. This list was set out according to the registration criteria, which mostly pertain to professional experience, integrity, and specialized training.

Thus, the publication of the 2025 list of arbitrators illustrates the continued effects of the 2022 Arbitration Law and marks the beginning of a new formality contributing to the organization of arbitration practice in Morocco.

Landmark Arbitration Cases

Morocco's arbitration landscape features numerous high-profile cases, both in the field of international investment arbitration (**A.**) and domestic commercial arbitration (**B.**).

International Investment Arbitration

Through the 2022 Investment Charter, the creation of industrial acceleration zones, and the conclusion of several new generation investment agreements and treaties, foreign investors have massively gained interest in Morocco. However, where there is business, disputes inevitably arise. That is why the ICSID (International Centre for Settlement of Investment Disputes) was recently seized with several disputes involving the Kingdom of Morocco.

- ***Corral Morocco v. Kingdom of Morocco* (ICSID Case No. ARB/18/7)**

Among the most widely reported arbitration cases involving Morocco, the SAMIR case (*Société Anonyme Marocaine de l'Industrie du Raffinage*) reemerged in 2025 with Morocco's setting aside request.

This dispute arose between the Kingdom of Morocco and the Swedish group Corral, i.e., the majority shareholder of SAMIR. Corral claimed that Morocco violated the 1990 Morocco Sweden Bilateral Investment Treaty ("***BIT***") by engaging in unfair treatment and expropriation. On July 15th, 2024, an award was rendered against Morocco. The Kingdom was condemned to pay a compensation of USD 150 million to Corral.

Following the issuance of the award, Morocco filed a reconsideration request before ICSID. This procedure allows correction of material errors or interpretation of specific points without challenging the substance of the decision. After a first rectification request introduced by Morocco on September 3, 2024, the Tribunal issued a decision on the rectification of the award on November 6, 2024. A second rectification proceeding was subsequently registered on September 3, 2024 upon a request filed by Corral Morocco Holdings AB, leading to a further decision of the Tribunal on November 6, 2024.

Separately, and beyond the rectification phase, on December 6, 2024, the Secretary-General registered an application for partial annulment of the award filed by the Kingdom of Morocco. The ICSID ad hoc Committee convened and held its first meeting in March 2025 to examine Morocco's request. The Committee initially ruled on the suspension of enforcement, granting Morocco an extension of this suspension by decision on June 30th, 2025.

This case highlights the challenges in enforcing ICSID awards, a process that will continue in 2026.

- ***Khemisset v. Morocco* (ICSID Case No. ARB/25/22)**

This dispute arose between the British company Emmerson and the Kingdom of Morrocco after the Unified Regional Investment Commission ("***CRUI***") of the Regional Investment Commission of Rabat-Salé-Kenitra rejected Emerson's potash mining project in Khemisset province due to non-compliance with environmental standards.

On May 1st, 2025, Emerson announced it would initiate arbitration proceedings against Morocco, after securing third-party funding in January 2025.

The claimant considers that CRUI's refusal constitutes expropriation, thereby breaching the United Kingdom Morocco BIT (1990). It values the project at USD 2.2 million and seeks full compensation. The respondent considers that, despite alternatives proposed by the British company, the planned exploitation in Khemisset would threaten water resources and exacerbate waste management issues.

This dispute is a textbook example of the complexity of balancing economic and environmental concerns in a territory where water management and stress are central national issues. Full proceedings and debates will take place in 2026.

- ***Groupe Pizzorno v. Morocco* (ICSID Case No. ARB/23/34)**

This case underscores that settlement remains a preferred path to preserve relations and avoid costly and lengthy proceedings.

This dispute arose from a contract for waste management and sanitation services. It was ultimately settled amicably after arbitration proceedings were initiated in August 2023 under the 1996 France-Morocco BIT.

The settlement resulted in the filing of a withdrawal request before ICSID, which issued a procedural order on July 21st, 2025, officially ending the dispute.

Commercial Arbitration: Contribution of Moroccan Case Law

The case law of Moroccan courts shapes and defines the interpretation and application of the 2022 Arbitration Law. It notably defines the scope of judicial annulment review and clarifies procedural points.

- **Control of Deadlines and Procedure**

Exceeding arbitration deadlines is a common ground for annulment. However, in a decision of April 15th, 2025, the Casablanca Commercial Court of Appeal (No. 1913) ruled on the starting point of arbitration deadlines. It reaffirmed that while parties may contractually determine the starting point of arbitration deadline, the annulment judge retains control to ensure the right to a fair trial.

In this decision, the Court upheld the Marrakech Commercial Tribunal's ruling, which validated an award based on the parties' implicit consent, as evidenced by their continuation of the procedure beyond the initial deadline. This approach promotes arbitration efficiency by penalizing parties for failing to raise objections in a timely manner.

- **Limits of Judicial Review**

Moroccan case-law maintains a strict stance on state court intervention. The Marrakech Commercial Court of Appeal, on May 13th, 2025 (No. 900), held that orders appointing arbitrators are not subject to appeal. It thus reflects the desire not to delay the quick constitution of arbitral tribunals.

Furthermore, procedural errors often constitute an ineffective ground in setting aside proceedings, as annulment remains the primary route to challenge awards. Regarding counterclaims, the Marrakech Commercial Court of Appeal, in a decision dated May 27th, 2025 (No. 1008), emphasized that dismissal for lack of connection is a matter of arbitrators' discretion and does not breach public order.

- **Consent and Fees**

Regarding the validity of the arbitration agreement, the Casablanca Commercial Court of Appeal reaffirmed, on May 8th, 2025 (No. 2319), that silence from a party cannot substitute unequivocal consent. This principle is fundamental and protects arbitration's consensual nature.

Additionally, contesting arbitration fees is a practical issue. The Rabat Commercial Tribunal clarified, on May 5th, 2025 (No. 2025/8101/431), that the clause in the mandate designating the place for deposit of the award constitutes a jurisdiction clause for disputes related to fees, thus determining the competent commercial court.

The Rise and International Influence of the Moroccan Arbitration Community

The evolution of the Moroccan arbitration framework and practice has encouraged Moroccan practitioners to engage in this dynamic and to promote the country as a leading arbitration venue.

A major milestone in the development of Morocco's arbitration image was the creation of the Moroccan Arbitration Club ("***MAC***"), launched on May 27th, 2025. The MAC brings together all kinds of arbitration practitioners. The MAC's primary mission is to promote Moroccan arbitration, unite

practitioners, and serve as a platform for exchange and training.

Also, Morocco's visibility continued to grow in 2025 at global arbitration events:

- **The Paris Arbitration Week ("*PAW*")**: the French-Moroccan Business Lawyers Association ("***AFMAA***") hosted the first conference dedicated to arbitration in Morocco during PAW in 2025.
- **The Dubai Arbitration Week ("*DAW*")**: the MAC co-organized the first-ever conference on arbitration in and with Morocco during the 2025 DAW.
- **The ICC Young Arbitrators Forum (YAAF) Conference:** Morocco also hosted the ICC YAAF conference, themed "*Rethinking Arbitration Practice: From Client Expectations to Strategy*".
- **The 32nd Edition of the Willem C. Vis Moot in Vienna:** Every year, students from the Hassan II University are trained by Moroccan arbitration practitioners to participate to the Willem C. Vis Moot. During this year's edition, the Moroccan team scored 84/100 in the oral phase.
- **The Morocco Very Young Arbitration Practitioners ("*Morocco VYAP*"):** A new executive board was appointed in November 2025 to resume MVYAP's activities and events.

Conclusion

In 2025, Morocco's legal framework and arbitration practice continued to strengthen, reflecting the stability and lasting impact of the reforms initiated in 2022. The sustained engagement of the Moroccan arbitration community, from professionals to students, increases the country's visibility and credibility on the international stage. These dynamics contribute to the development of Morocco's role in the field of arbitration, enhancing its attractiveness for investment and the efficiency of dispute resolution.

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Saudi Arabia

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Saudi Arabia's arbitration framework is undergoing comprehensive modernization, reflecting broader legal reforms and economic policy under Saudi Vision 2030. The Draft Arbitration Law released for consultation in October 2025 signals a clear shift toward a modern enforcement-friendly regime, intended to align domestic practice with international standards while preserving core Sharia-based public policy. In parallel, the courts continue to support arbitration and the institutional environment has matured—anchored by the SCCA (Saudi Center for Commercial Arbitration) and complemented by regulatory steps to strengthen institutional quality and the administration of ad hoc proceedings.

This article will discuss the legislative reform trajectory, the enforcement process for local and foreign awards, policy preferences favouring licensed institutional arbitration, and enhancements to ad hoc proceedings in Saudi Arabia.

The Reform Trajectory: From the Board of Grievances to Specialized Enforcement and a Self-Contained Arbitration Law

The core reform in Saudi arbitration began with the 2012 Arbitration Law (promulgated by Royal Decree No. M/34 of 1433H as amended), modelled in significant part on international best practice, and the Enforcement Law (Royal Decree No. M/53 of 1433H as amended), which shifted execution proceedings to specialized Enforcement Courts. Historically, enforcement ran through the Board of Grievances, where awards, particularly foreign awards, were vulnerable to merits review and retrial risks, as exemplified by a recent case in which a tribunal's dismissal of a USD 1.2 billion claim was effectively reversed on merits at the enforcement stage. Under the post-2012 framework, that paradigm changed. Enforcement judges now apply the Enforcement Law's statutory checks and reciprocity requirements, and their decisions benefit from finality safeguards under Article 6 of the Enforcement Law, reflected in the streamlined procedures and robust coercive measures available under Articles 46 and 47 when debtors procrastinate.

The Arbitration Law's autonomy has been crystallized in judicial practice.

Courts have confirmed that arbitration is governed exclusively by the Arbitration Law and not by the Civil Procedures Law or the Commercial Courts Law, unless expressly stated. In a Riyadh Commercial Court case (No. 4670377800 before the Fifth Appellate Circuit), the court emphasized that the grounds for annulment are exhaustively set out in Article 50 of the Arbitration Law and that courts cannot import rules from other procedural codes to expand review. The Supreme Court, in case No. 41176982, reinforced that the Arbitration Law is a standalone regime. It stressed that annulment is the exclusive avenue for challenging awards and that judicial scrutiny cannot extend to the merits but is limited to ensuring compliance with the Arbitration Law, party-agreed rules, and overarching Shari'ah and public order considerations. This jurisprudence, together with statutory provisions such as Article 49 (no appeal save annulment), Article 54 (enforcement is not automatically stayed by an annulment claim), and Article 25 (party autonomy to select procedures and institutional rules), underscores the law's self-contained nature and limits applied judicially with increasing consistency.

Furthermore, the Draft of Arbitration Law released for consultation in October 2025 signals a comprehensive direction towards modernization. Its structure and content reflect international best practice adapted to Saudi legal fundamentals, while clarifying contested areas and codifying pro-arbitration judicial support.

Foremost, the Draft Arbitration Law codifies a clean conflict rule for the law governing the arbitration agreement. Article 11 of the Draft Arbitration Law makes the parties' express choice paramount and defaults to the law of the seat in the absence of an express choice, replacing uncertainty that previously surrounded the applicable law to the arbitration agreement. This aligns the Kingdom with widely accepted principles and encourages clear clause drafting, particularly in cross-border projects.

Equally important is the Draft Arbitration Law's articulation of tribunal competence and early court review. Article 28 of the Draft Arbitration Law confirms competence-competence, allowing the tribunal to rule on its own jurisdiction, including objections to existence, validity, termination, or scope of the arbitration agreement. Article 28(4) of the Draft Arbitration Law introduces immediate court review of positive jurisdictional rulings without halting proceedings; a party may challenge a preliminary decision rejecting a jurisdictional objection before the competent court within thirty days, while the tribunal proceeds to the merits. This balances early judicial clarity against arbitral efficiency.

With respect to interim measures, Articles 29 to 31 of the Draft Arbitration Law authorize tribunals to order interim and precautionary relief—maintaining the status quo, preventing harm, preserving assets or evidence—and provide a pathway to court enforcement. The criteria set in Article 30, requiring harm not adequately reparable by damages and a reasonable prospect of success on the merits, brings structure and predictability to urgent relief. Article 31 enables the competent court to enforce tribunal-ordered interim measures within fifteen days, and Article 65(3) allows short suspension of enforcement to cure formal defects without altering substance, reflecting a pragmatic cure-and-enforce philosophy.

The Draft Arbitration Law also addresses multi-party complexity and case management. Article 37 permits joinder or intervention when the intervening party is a party to the arbitration agreement; Article 43 allows consolidation by party agreement. These mechanisms respond the needs of disputes arising in layered contract and multiple stakeholders dealings familiarly seen construction and infrastructure disputes. The law embraces electronic process and flexibility: Article 35 allows tribunals to meet physically or virtually; Article 36 sets Arabic as the default language while permitting other languages by agreement; and Article 52 prescribes award form and content, including reasons unless the award records settlement, with electronic signature recognized when agreed.

Arbitrator qualifications and immunity are also modernized. Article 20 of the Draft Arbitration Law removes rigid educational prerequisites, expanding the pool of eligible arbitrators while preserving capacity and integrity

conditions. Article 27 introduces arbitrator immunity except in cases of fraud or gross professional misconduct, aligning with international norms and protecting independent decision-making.

Annulment and enforceability have improved to uphold awards while preserving mandatory safeguards. Article 61 of the Draft Arbitration Law channels recourse exclusively through an action to annul on limited grounds:

- absence or invalidity of the arbitration agreement;
- party incapacity at formation;
- lack of proper notice resulting in inability to defend;
- disregard of the agreed applicable law;
- tribunal composition or appointment in violation of mandatory provisions;
- excess of scope with severability where possible; and
- violation of the parties' agreed procedure or mandatory provisions.

The court must also set aside the award if it conflicts with Shar'iah or public policy in the Kingdom or concerns matters not arbitrable under the law. Crucially, Article 61(5) empowers the court to suspend annulment for up to sixty days to permit the tribunal to cure formal defects without altering substance, reinforcing a preference for validation where feasible. Article 63 gives awards *res judicata* effect regardless of the country of issuance, and Article 66 routes appeals of enforcement orders to the Supreme Court, consolidating a coherent enforcement hierarchy.

Taken together, the draft law codifies arbitral autonomy with defined court support, modernizes interim relief and multi-party tools, and streamlines annulment and enforcement to ensure certainty and efficacy for parties arbitrating in or connected to Saudi Arabia.

Enforcement of Arbitral Awards: Domestic and Foreign

Enforcement in Saudi Arabia has evolved and is anchored in the Enforcement Law and supported by the arbitration framework. The Execution Courts, acting under the Enforcement Law and its Implementing Regulations, have streamlined domestic and foreign award execution. Applications are made to the competent enforcement judge and must be accompanied by the execution document.

The enhanced enforcement architecture has yielded practical results. By way of example, a landmark Riyadh Enforcement Court decision in 2016 recognized and enforced an ICC award rendered in London against a Saudi-domiciled respondent, converting it into an executable Saudi judgment. That case was notable for navigating the transition from the Board of Grievances to the Enforcement Courts and for affirming that foreign awards meeting reciprocity and due process standards, and not contravening Shari'ah or public policy, are enforceable within the Kingdom. Procedurally, Article 11 of the Enforcement Law sets out the conditions for foreign award enforcement, including verification of the foreign tribunal's competence under its conflict rules, finality at the seat, and non-contradiction with existing Saudi judgments or public policy. For domestic awards, Article 53 of the Arbitration Law requires lodging the original or attested award, the arbitration agreement, an accredited Arabic translation, and proof of deposit with the competent court within fifteen days of issuance, with Article 55(2) mandating a judicial check for due process, finality, and public policy compliance prior to issuing an enforcement order.

The Enforcement Law's coercive apparatus has proven central to execution effectiveness. Articles 46 and 47 empower enforcement judges to impose travel bans on company managers, suspend powers of attorney related to assets, order disclosure and seizure of assets and future revenues, and notify credit agencies, among other measures, significantly

increasing recovery prospects and deterring non-compliance. The cumulative effect of these reforms is reflected in the growth in foreign enforcement applications and in the speed with which enforcement orders are issued, often within weeks, supporting the Kingdom's aspiration to be a pro-arbitration and predictable venue for cross-border commerce.

The Draft Arbitration Law brings additional clarity to arbitral enforcement. Article 64 sets out filing requirements for an enforcement order, including the award or certified copy, the arbitration agreement, and a certified Arabic translation where needed. Article 65 enumerates conditions for granting enforcement: expiry of the annulment filing window; non-contradiction with a final Saudi judgment or decision; and non-violation of Sharia or public policy, with severability permitting enforcement of compliant parts where feasible. Article 65(3) allows the court to suspend enforcement for up to sixty days to enable award-form corrections that eliminate enforcement obstacles without altering substance. Article 63 relating to res judicata for awards "regardless of the country of issuance" underscores the Kingdom's adherence to New York Convention principles and complements specialized enforcement procedures.

Recent judgments demonstrate a supportive enforcement climate. The SCCA's case law studies show consistently low annulment rates and disciplined and restrictive application of public policy. In sampled appeal court judgments between 2017 and 2023, motions to annul were predominantly rejected; successful annulments on grounds of violation of Shar'iah were rare and confined to express statutory limits. The Ministry of Justice data reported hundreds of domestic and foreign awards enforced in a single nine-month period, including awards rendered in Lebanon, Morocco, South Korea, Switzerland, the UAE, and the UK, with no precedents of refusal on public policy or Sharia grounds during that period. Appeal courts have further clarified that representation by foreign counsel in arbitration is not a valid annulment ground; parties retain freedom to select representatives before arbitral tribunals, consistent with Article 50 annulment constraints in the current law and the permissive stance reflected in the draft.

The Execution Courts' travel bans, account freezes, seizure and auction of assets, and law enforcement assistance— also ensure practical effectiveness once an enforcement order is granted. Electronic notification systems and digitized filing platforms accelerate timelines, often moving from application to execution orders in weeks. Against this backdrop, the Draft Arbitration Law and Supreme Court oversight of enforcement orders enhance predictability while respecting essential public policy parameters.

Encouraging Institutional Arbitration under Licensed Rules

Saudi policy has moved to consolidate institutional quality around licensed centres, with the SCCA positioned as the principal forum for complex disputes. The Saudi Center for Commercial Arbitration with the SCCA Court—established in 2023—administering appointments, challenges, jurisdictional objections, emergency measures, and award reviews under published internal rules that promote transparency. Caseload growth has been pronounced year-on-year, with sectoral breadth and diverse national participation, signalling international trust in the forum. Average award durations have been competitive, reflecting disciplined case management and digital infrastructure.

In addition, regulatory consolidation complements institutional governance. The Council of Ministers' 2025 market-structuring decision has restricted the establishment of new centers, channelling disputes toward licensed and well-governed platforms affiliated with the Federation of Saudi Chambers and within special economic zones where appropriate. This mitigates fragmentation, raises quality baselines, and aligns administration with global standards. The judiciary's engagement—through New York Convention sustained case law study—has reinforced shared understanding between courts and institutions on enforcement and annulment thresholds.

The Draft Arbitration Law dovetails with institutional practice. Articles 29 to 31's interim measures regime integrates seamlessly with institutional emergency procedures. Article 21's default constitution mechanics interface with institutional appointment processes, while Article 37's joinder and Article 43's consolidation provisions align with contemporary institutional rules designed to handle multi-contract and multi-party disputes in construction, energy, and commerce. Article 36's language flexibility and Article 35's virtual hearing recognition reflect standard institutional capabilities. The net effect is a statutory environment that both honours party autonomy to select institutional rules and supplies court support and enforcement pathways consistent with institutional case administration.

Taken together, policy consolidation, SCCA governance reforms, and digital case management have created firm prompts for parties to opt for licensed institutional arbitration when structuring dispute resolution clauses for Saudi-related transactions.

Enhancing Ad Hoc Arbitration Proceedings in the Kingdom

The Draft Arbitration Law also strengthens ad hoc arbitration by supplying default rules and court support where party agreement is silent. Articles 32–36 allow tribunals to conduct proceedings in the manner they deem appropriate, determine admissibility and weight of evidence, and set language rules, while preserving parties' agreement. Article 35 empowers tribunals to fix the place of arbitration and to hold virtual sessions and out-of-seat hearings for witness evidence, document inspection, and deliberations—enhancing flexibility without procedural insecurity. Article 46 provides for court assistance with witness summons, document production, and judicial commissions, while preserving tribunals' independent powers. Tribunal powers over interim and precautionary measures (Articles 29–31) are coupled with court enforcement within defined timelines, ensuring that ad hoc tribunals can obtain practical relief swiftly.

For award-making, the draft law codifies requirements for form, content, signatures, costs allocation, and reasons (Articles 48–53), including recognition of partial, interim, and emergency awards (Article 49). It introduces pragmatic post-award tools—interpretation (Article 56), correction of clerical and computational errors (Article 57), and additional awards for omitted claims (Article 58)—with all such determinations integrated into the original award's legal effect (Article 59). Annulment and enforcement mechanisms are framed to avoid procedural traps and permit curing of formal defects (Articles 61(5), 65(3)), reducing risk in ad hoc settings. Together, these features reduce the friction costs often associated with ad hoc arbitrations, supplying structure where needed while maintaining party autonomy.

Case Law and Awards

Recent Saudi appellate and Supreme Court case law confirm disciplined support for arbitration alongside careful jurisdictional policing in court litigation. The Board of Grievances' Decision No. 324/1433H recognized party autonomy in foreign forum selection and applied *lis pendens* to avoid parallel proceedings, staying Saudi litigation where a competent foreign court was seized under a valid forum clause. The Supreme Court's Decision No. 431413 (05/03/1443H) later clarified that party autonomy cannot divest Saudi courts of jurisdiction in suits against Saudi-resident defendants, placing arbitration, rather than foreign court litigation, as the practical path to neutral fora where local jurisdiction is mandatory.

Commercial court practice has emphasized threshold resolution of preliminary pleas and streamlined case management, curbing duplicative claims and enforcing timelines. In arbitration-related matters, appeal courts have consistently denied attempts to revisit merits and have applied public policy narrowly, with annulment largely confined to the statutory grounds analogous to Article 61. Enforcement Courts have executed both domestic and foreign awards at scale, with digitized filings and swift orders, and have rejected representation-based annulment theories—

confirming parties' freedom to engage foreign counsel in arbitration.

These holdings sharpen strategy. Parties seeking application of foreign substantive law or neutral process should prioritize arbitration; those litigating in Saudi courts should anticipate Saudi substantive law and public policy backstops. In either mode, the enforcement posture is predictable, and the draft law's further reduces risk around formal defects.

Government, Public Policy, and Shari'ah Considerations

Saudi arbitration remains aligned with Shari'ah and public order considerations, constraints that are explicit in the Arbitration Law and operationalized at enforcement. Article 2 frames the law's application "without prejudice" to Shari'ah and international convention obligations, and enforcement judges must ensure awards do not violate public policy or contradict binding Saudi judgments. This balancing of modern arbitral techniques with foundational legal principles has matured into a predictable practice: courts confine review to statutory grounds and do not reopen the merits, while parties and tribunals bear the responsibility to structure claims, defenses, and remedies consistent with Shari'ah and public policy. For public bodies and projects, the regime's clarity around annulment and enforcement, coupled with strong coercive powers against recalcitrant debtors, has reduced historical friction and supported efficient resolution of high-value disputes.

Annulment and Judicial Restraint: Article 50 in Practice

Article 50's exclusive grounds for annulment have become key to Saudi arbitral finality. Courts have reiterated that any annulment petition must fit within the law, and that procedural characteristics outside the law's architecture do not justify annulment. The Supreme Court's articulation in case No. 41176982 confirms the narrowness of judicial review, the strict application of Article 50, the non-availability of merits reassessment, and the imperative that party-agreed procedures remain valid if they do not affect the award's essential validity. Coupled with Article 54's non-automatic stay, this has significantly reduced strategic annulment filings as a lever to defer payment, stabilizing enforcement outcomes and reinforcing the Kingdom's reliability for commercial parties.

Conclusion

Saudi Arabia's arbitration ecosystem has developed into an enforcement-friendly regime that integrates international best practice with the Kingdom's legal fundamentals.

A clarified and modernized new Arbitration Law will reduce uncertainty, shorten resolution timelines, and improves the enforceability horizon for both domestic and foreign parties. By further articulating the courts' restrained role and the decisive nature of enforcement orders, the law will encourage parties to honour awards voluntarily and deter tactical relitigation. For sectors central to Saudi Vision 2030—construction, infrastructure, energy, and technology—the combination of institutional infrastructure, ad hoc flexibility, and enforcement reliability lowers transaction costs, improves risk allocation, and enhances the attractiveness of Saudi legal seats for complex cross-border projects.

Judicial practice has also reinforced predictability, with low annulment rates and disciplined public policy review, while enforcement courts remain efficient and technologically integrated. Against this background, policy has moved to encourage rules-based arbitration administered by licensed institutions, with the SCCA's governance and digital infrastructure offering a credible, neutral platform. At the same time, the Draft Arbitration Law's default procedures and court assistance meaningfully enhance ad hoc arbitration conducted in the Kingdom. Collectively, these

developments position Saudi Arabia as an increasingly attractive seat and enforcement forum—one that balances international best practice with local legal principles to deliver certainty, speed, and trust.

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MIDDLE EAST & NORTH AFRICA

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Tunisia's Arbitration Code (Law No. 93-42 dated April 26, 1993) and its Code of Private International Law (Law No. 97-98 dated November 27, 1998) provide a progressive legal framework, which the national courts have continued to develop through consistent case law in support of international arbitration. Tunisia has not undertaken any significant regulatory or legislative reforms in this area in recent years.

*The country is currently involved in, or impacted by, several ongoing arbitration proceedings (**1**) while the national legal and expert community is intensifying its efforts to promote international arbitration (**2**).*

Arbitration Proceedings

ICSID Cases Involving Tunisia

- ***Zenith and Compagnie du Désert v. Tunisia* (ICSID Case No. ARB/23/18)**

The case was brought on 7 June 2023, under the UK-Tunisia BIT (1989) in an oil and gas dispute. The Tribunal issued several procedural orders ("**PO**") between January 2024 and November 2025, including decisions on interim measures and on admission of said "ICC-1", *Ecume v. ETAP* award. PO No. 7 was particularly commented, as the Tribunal refused to order Tunisia to suspend related criminal proceedings before national courts against one of the claimants. The Tribunal determined indeed that the criminal case did not affect the arbitration.

This case arises out of Tunisia's termination of a series of onshore oil exploration and production concessions in Ezzarib & El Bibane regions held by Zenith's local subsidiaries. Zenith alleges that Tunisian authorities unlawfully terminated or refused to renew the operating concessions. Zenith also sustains that Tunisia's initiation of criminal investigations against Zenith executives over alleged irregularities in the concession transfers was retaliatory and intended to pressure the company.

- ***Minerali v. Tunisia* (ISCID Case No. ARB/24/52)**

The case was brought on 23 December 2024, under the Italy-Tunisia BIT (1985) in a mining dispute. The claim started being publicly discussed in January 2025.

The case involves an Italian industrial minerals company whose activities focused on the extraction and export of high-quality silica sand from Tunisia. The dispute reportedly concerns Tunisia's alleged regulatory actions which, according to the claimant, interfered with contractually acquired mining rights, and blocked its ability to extract and export silica sand. The case appears to have been suspended in 2025, possibly due to settlement discussions.

- ***ABCI Investments v.Tunisia* (ICSID Case No. ARB/04/12)**

We are referencing this case, brought in April 2004, as it effectively ended in late 2024. Two decades of proceedings involved an award dated 23 December 2023, parallel actions and subsequent annulment attempts. Tunisia largely defeated the substantial multibillion-dollar claim. The Tunisia-Netherlands BIT (adopted on 11 May 1998, entered into force on 1 August 1999) was invoked, and the case concerned the control and management of Banque Franco-Tunisienne ("**BFT**"). ABCI alleged expropriation of its shareholding, denial of justice through Tunisian court proceedings, breaches of assurances allegedly given by state officials, and destruction of the commercial value of the investment. Tunisia, for its part, argued that misconduct, mismanagement, and regulatory failures necessitated state intervention.

The ICSID (International Centre for Settlement of Investment Disputes) Secretary-General issued an order in November 2024 taking note of the discontinuance of the proceeding pursuant to ICSID Administrative and Financial Regulation (2022) 16(2)(c).

ICC Arbitrations Involving or Concerning Tunisia

The few details currently available on the below cases are based on news reports and media releases, as the ICC (International Chamber of Commerce) does not publish case reports.

- ***CNAOG v. Tunisia* (ICC Case No. 27399/SP/ETT/SVE, often referred to as "ICC-2")**

The claim of Canadian North Africa Oil & Gas Ltd ("**CNAOG**", a subsidiary of Zenith) is said to be based on an allegedly abusive termination by the state of Tunisia of the Sidi El Kilani ("**SLK**") oil concession. The claimant also invoked alleged arbitrary measures. On 16 July 2025, CNAOG announced that the ICC tribunal had rejected the claim in its entirety (approx. USD 130 million) and that Tunisia prevailed. In September 2025, CNAOG/Zenith filed an annulment application before the Swiss Federal Supreme Court challenging the ICC-2 award, alleging serious procedural irregularities.

- ***Shell v. Tunisia***

It is reported that this is a newly filed ICC case where the dispute is said to relate to the relinquishment of inherited upstream oil and gas concessions in the Mediterranean.

The Tunisian Community and the Promotion of International Arbitration

Several events were organized and well attended, reflecting the Tunisian arbitration community's strong commitment to the promotion of arbitration.

Colloquium, 13 & 14 November 2025, Tunis

The Arbitration & ADR Commission of ICC Tunisia, in collaboration with the DRIMAN Scientific Laboratories of the Faculty of Law of Tunis and the REDI Laboratory (Faculty of Legal, Political and Social Sciences of Tunis), organized a colloquium entitled "For a Reform of the Arbitration Code".

Meeting, ICC Paris Headquarters, 23 October 2025

The Arbitration and ADR Commission of ICC Tunisia conducted an extended working visit to the headquarters of the International Chamber of Commerce in Paris.

The purpose of the meeting was to gain deeper insight into the functioning of the ICC International Court of Arbitration, to enhance understanding of the criteria for the appointment of arbitrators and best practices in mediation, and to strengthen cooperation between ICC Tunisia and the ICC bodies.

ICC Tunisia Bulletin, July 2025

The Arbitration Commission of ICC Tunisia issued its first Bulletin. The Bulletin, published in both English and French, featuring scholarly articles of high academic value on international arbitration in Tunisia.

UNIDROIT Seminar, Tunis, 16 May 2025

ICC Tunisia in collaboration with Ifriqya Arbitration Forum and UNIDROIT – International Institute for the Unification of Private Law had the pleasure of organizing a seminar in Tunis on: "The UNIDROIT Principles and International Arbitration: an Emerging Framework for the Settlement of Disputes in the MENA Region."

Cocktail Reception with Squire Patton Boggs & ICC Africa Commission, Tunis, 9 April 2025

In collaboration with ICC Arbitration Africa Commission and Squire Patton Boggs, Ifriqya Arbitration Forum co-hosted a high-level cocktail reception during the Paris Arbitration Week. This gathering served as a platform to celebrate and elevate African perspectives in international arbitration and connect key stakeholders in the arbitration community.

"*Les Journées Maghrébines de l'Arbitrage et ADR*" – Casablanca, Morocco, 11–12 December 2024

Ifriqya Arbitration Forum collaborated with ICC Arbitration and ICC Morocco to organize this major regional event. The conference focused on advancing arbitration and ADR practices within the Maghreb region, bringing together legal professionals and experts from across North Africa.

SOAS/IFRIQYA Arbitration Training – Tunis, 20–22 November 2023

In partnership with SOAS University of London, Ifriqya Arbitration Forum organized a specialized training on arbitration counsel practice. The event brought together arbitration experts, bankers, financial professionals, corporate counsel, judges, and lawyers for a comprehensive exchange of knowledge and best practices.

ABOUT THE AUTHOR

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Türkiye

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Throughout 2025, Türkiye continued to feature prominently in both investment and commercial arbitration developments. While no new investment treaty claims were initiated by or against Türkiye, several ongoing cases saw significant procedural and enforcement milestones. Turkish investors remained active in international fora, with key decisions issued in cases involving Libya and other states. Domestically, Türkiye's role as a respondent also remained under close observation, particularly in relation to ongoing proceedings at the ICSID (International Centre for Settlement of Investment Disputes).

At the same time, 2025 was an equally active year for international commercial arbitration involving Türkiye. Although no legislative amendments were adopted, Turkish courts delivered a number of significant, detailed decisions on key arbitration issues. These included the validity and scope of arbitration agreements, the recognition and enforcement of foreign arbitral awards, and the availability of interim measures, particularly provisional attachment orders, issued in support of foreign arbitral proceedings. Collectively, this growing body of case law signals an increasingly sophisticated and arbitration-supportive judicial approach, clarifying established principles while also shaping emerging trends that will influence how parties draft contracts and conduct their disputes.

Recent Developments in Investment Treaty Arbitration

Bilateral Investment Treaties ("BITs")

No new BITs were signed or entered into force in 2025.

Disputes

Disputes Involving Türkiye

No new investment treaty claims were filed against the Republic of Türkiye in 2025. However, existing proceedings saw notable developments.

On 14 September 2025, Canada-based Alamos Gold announced the sale of its Turkish mining investments to Tümad Madencilik, a subsidiary of Nurol Holdings, for USD 470 million. The transaction is expected to lead to the discontinuance of *Alamos Gold v. Türkiye*, an ICSID arbitration initiated in 2021 under the Netherlands–Türkiye BIT (1986). The underlying dispute, valued at over USD 1 billion, concerns the state's alleged refusal

to renew permits for a gold and silver mining project in northwestern Türkiye.

Subsequently, on 7 October 2025, an ICSID tribunal in *ENCORE v. Türkiye* rejected Türkiye's application for expedited dismissal under Arbitration Rule 41. The tribunal found that Türkiye had not demonstrated that the claims were manifestly without legal merit. The case concerns the alleged expropriation of Encore's minority shareholding in Muradiye Elektrik Üretim A.Ş., a hydropower company in Van, following Turkish court decisions confiscating shares over alleged links to terrorist organisations.

Disputes Involving Turkish Investors Abroad

Turkish investors also saw progress in long-standing disputes abroad.

On 18 March 2025, the claimant in *Sistem v. Kyrgyz* confirmed that Kyrgyzstan had fully satisfied its payment obligations arising from the 2009 ICSID Additional Facility award and subsequent U.S. court judgments. The acknowledgment, filed before the U.S. District Court for the Southern District of New York, marked the final resolution of a protracted dispute concerning the expropriation of a hotel investment in Bishkek.

Court Decisions

2025 also saw several important court rulings in enforcement proceedings brought by Turkish investors, particularly against Libya.

On 4 February 2025, the U.S. District Court for the District of Columbia confirmed the arbitral award in *Etrak v. Libya*, rejecting Libya's motion to stay the case pending enforcement actions elsewhere. The court found it had jurisdiction under the Foreign Sovereign Immunities Act's ("**FSIA**") arbitration exception and that parallel proceedings abroad did not justify suspension under the New York Convention. The court also dismissed Libya's *res judicata* objection and, on 3 March 2025, entered judgment in favour of Etrak for approximately USD 30 million, plus post-judgment interest.

Shortly thereafter, on 12 February 2025, France's *Cour de Cassation* upheld the Paris Court of Appeal's decision confirming the validity of the ICC (International Chamber of Commerce) award in *Cengiz v. Libya*, rejecting Libya's annulment bid. The court found no excess of powers or legal error in the lower court's determination that Libya's corruption allegations related to the merits rather than jurisdiction and upheld the tribunal's attribution of armed-group activity during the Arab Spring to the state. The decision leaves intact the 2018 award of approximately USD 50 million in favour of Turkish investor Cengiz.

On the same day, the *Cour de Cassation* also dismissed Libya's appeal in *Nurol v. Libya*, confirming the validity of a partial ICC award that upheld jurisdiction under the Libya–Türkiye BIT (2009). The court affirmed that the treaty had duly entered into force, that the dispute arose after its entry into force, and that Libya's corruption allegations pertained to the merits. Libya was ordered to bear the costs.

Later in the year, on 19 September 2025, the US District Court for the District of Columbia granted Etrak's motion for post-judgment discovery, ordering Libya to produce documents by 3 November 2025 and warning that non-compliance could result in escalating fines. The decision forms part of Etrak's ongoing global enforcement campaign of its 2019 BIT award against Libya.

Developments in Commercial Arbitration

Although 2025 did not bring any legislative amendments in the field of international arbitration, it has nevertheless been an active year for commercial arbitration in Türkiye from a case-law perspective. Turkish courts at all levels have continued to deliver detailed and well-reasoned decisions on core issues such as the validity and scope of arbitration agreements, the recognition and enforcement of foreign arbitral awards, and the use of provisional measures in support of arbitration. Taken together, these judgments not only clarify existing principles but also signal emerging trends in the judicial approach to arbitration, and they are likely to

influence how parties structure their contracts and conduct their disputes in the years ahead.

Case Law

Provisional Attachments in Foreign Arbitral Awards

In its decision numbered 2025/259, 2025/265, dated 18 March 2025, the 31st Civil Chamber of the Ankara Regional Court of Appeal considered when Turkish courts may grant provisional attachment orders based on a foreign arbitral award that has not yet been recognized or enforced in Türkiye. The dispute arose from an ICC arbitration conducted outside Türkiye, which resulted in an award ordering the respondent to pay approximately USD 1.84 million. Relying on this award, the claimant initiated recognition and enforcement proceedings before the Ankara 14th Commercial Court of First Instance and, at the same time, requested a provisional attachment over the respondent's assets located in Türkiye.

The Court of First Instance accepted the request and ordered a provisional attachment over the respondent's movable and immovable assets and receivables up to the Turkish Lira equivalent of the awarded amount. Initially, the court treated the foreign arbitral award as equivalent to a domestic court judgment and therefore did not require the claimant to provide any security. The respondent objected, arguing that the award had not yet been declared enforceable in Türkiye and therefore did not constitute a due and payable claim within the meaning of the Enforcement and Bankruptcy Law. The respondent further argued that granting an attachment at this stage risked prejudging the outcome of the recognition and enforcement proceedings.

Upon examining the objection, the Court of First Instance partly revised its position. It held that the arbitral award established a specific and determined monetary claim and that, in principle, the conditions for provisional attachment were satisfied. However, it accepted that, until recognition and enforcement were granted, the award could not be equated with a domestic judgment. Accordingly, the claimant could not benefit from an attachment without providing security. The court therefore decided to maintain the attachment but made it conditional on the claimant depositing security equal to 15% of the Turkish-Lira equivalent of the claim.

The respondent applied to the Ankara Regional Court of Appeal, reiterating its arguments that there was no "matured" debt until the foreign award was formally enforced and that granting attachment at this stage gave the claimant the practical benefits of enforcement in advance. The claimant opposed the appeal, noting that it had already deposited the required security and that all statutory requirements for a provisional attachment were satisfied.

The Ankara Regional Court of Appeal rejected the appeal and upheld the decision of the Court of First Instance. It confirmed that a foreign arbitral award may be relied upon to demonstrate the existence of a monetary claim for the purpose of granting a provisional attachment, even before formal recognition and enforcement, provided that the claimant furnishes appropriate security. At the same time, it emphasized that such an award cannot be treated as a domestic judgment allowing attachment without security until an enforcement decision is rendered in Türkiye.

This judgment reflects a balanced approach. Turkish courts are willing to support arbitral awards rendered outside Türkiye by granting protective measures at an early stage, while also protecting respondents' interests by requiring claimants to provide security until the award has acquires the status of an enforceable judgment in Türkiye. The decision is final and cannot be challenged through an ordinary legal remedy.

Arbitration Agreement in Foreign Language and Defense Rights

In its decision numbered 2024/6135, 2024/8652, dated 4 December 2024, the 11th Civil Chamber of the Court of Cassation examined a dispute arising from a commercial contract dated 11 September 2019. The contract contained an arbitration clause referring disputes to an arbitral tribunal under the rules of the Grain and Feed Trade Association in London, with English law as the governing law. The tribunal rendered an arbitral award on 9 September 2020 in favor of the claimant. The claimant subsequently applied to the Turkish courts for recognition and enforcement of this foreign arbitral award under the New York Convention and Law No. 5718 on International Private and Civil Procedure.

The respondent objected to recognition and enforcement on two principal grounds:

- it argued that the arbitration clause and the contract were invalid because the contract was drafted in English in a single copy, allegedly in violation of Law No. 805 on the mandatory use of the Turkish language in commercial enterprises, and
- it claimed that its right of defense had been violated during the arbitration, asserting that the arbitral tribunal failed adequately to consider its submissions and evidence, amounting to a breach of public policy.

The Konya 1st Commercial Court of First Instance rejected these objections and granted recognition and enforcement of the arbitral award. The court found that none of the refusal grounds listed in the New York Convention or in Law No. 5718 were met. It noted, in particular, that the respondent had been given an opportunity to present its defense and had submitted petitions, which the arbitral tribunal received in May and June 2020. Regarding Law No. 805, the court held that the law does not apply to contracts between a Turkish company and a foreign company and that a party that has signed an English-language contract cannot later rely on that choice of language to invalidate its own agreement, as doing so would constitute an abuse of rights.

The Konya Regional Court of Appeal, 6th Civil Chamber, upheld the decision. It emphasised that the dispute had a foreign element because the claimant was not a Turkish company. Under Article 1 of Law No. 805, the law applies only when both parties are Turkish. Therefore, the use of English in the contract and arbitral proceedings did not violate Law No. 805. The Regional Court also observed that the respondent had been duly informed of the arbitration, had appointed counsel and had been able to submit evidence and arguments, so its right of defense had not been restricted. As none of the refusal grounds under Article 62 of Law No. 5718 were present, the Regional Court dismissed the appeal.

On further appeal, the Court of Cassation confirmed the lower courts' approach. It recalled that it may set aside a regional court decision only if one of the grounds listed in Articles 370 and 371 of the Code of Civil Procedure (Law No. 6100) is present. Finding no such ground, the Court of Cassation therefore rejected the appeal and upheld the decision.

This judgment clarifies two practical points for parties seeking to enforce foreign arbitral awards in Türkiye:

- Law No. 805 will not normally be accepted as a reason to invalidate an arbitration clause where at least one party is a foreign company, and
- Turkish courts are reluctant to refuse enforcement on the basis of alleged violations of the right of defense where the party was properly notified of the arbitration, represented by counsel, and has had a real opportunity to present its case. In such circumstances, complaints concerning the arbitral tribunal's assessment of evidence are unlikely to be treated as a public policy obstacle to recognition and enforcement.

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Emel Özaltun is a Turkish-qualified lawyer with seven years of experience in the field of international arbitration. She holds an LL.M in Comparative and International Dispute Resolution from Queen Mary University of London. Her expertise basically covers complex international construction and investment arbitration cases, including pre- and post-arbitral management. Emel advises both contractors and subcontractors on non-contentious matters concerning international construction contracts and holds considerable experience in the management of FIDIC contracts.

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Overview of the Arbitral Landscape of the United Arab Emirates

The United Arab Emirates ("**UAE**") comprises a federal judicial system and two financial-free zones with independent legal frameworks. The federal system operates on a civil law tradition and is not bound by judicial precedent. By contrast, the two freezones, the Dubai International Financial Centre ("**DIFC**"), and the Abu Dhabi Global Market ("**ADGM**"), are based on common law, each with a court system similar to that of England and Wales. The UAE federal legal system is often referred to as "*onshore*" system, with the DIFC and ADGM legal systems collectively referred to as "*offshore*" systems.

Consequently, if the seat of an arbitration is any onshore city, it is governed by Federal Law No. 6 Concerning Arbitration (2018) (the "**UAE Arbitration Law**"). If the seat is the DIFC or the ADGM, Arbitration Law No. 1 (2008) (the "**DIFC Arbitration Law**") or the ADGM Arbitration Regulations (2015) (the "**ADGM Arbitration Regulations**") respectively apply.

Changes in the Institutional and Court Landscape

Dubai International Arbitration Center (DIAC)

Since the entry into force of Decree No. 34/2021 concerning the DIAC (2021), the Centre has undergone significant modernization, including the adoption of the DIAC – Dubai Arbitration Rules (2022). In 2025, DIAC introduced further measures to strengthen its institutional framework and enhance user experience. Key developments include:

- **Revised Table of Fees and Costs (Effective 1 January 2025):** DIAC implemented a revised fee schedule applicable to all cases registered on or after 1 January 2025. The update provides greater transparency regarding the Centre's payment practices and introduces market-competitive compensation for both the Centre and arbitrators, with the aim of improving service quality and attracting experienced practitioners.
- **AI Partnership with Jus Mundi (June 2025):** DIAC entered into a

strategic partnership with Jus Mundi to integrate Jus AI tools into its operations, thus streamlining case management and enhancing efficiency. In return, DIAC agreed to make decisions on challenges accessible via Jus Mundi's platform, promoting transparency and knowledge-sharing within the arbitration community.

- **Launch of DANA Case Management System (November 2025):** DIAC unveiled DANA, a next-generation case management platform powered by Opus 2. Available to users from January 2026, DANA is a collaborative environment connecting parties, counsel, arbitrators, and DIAC staff. Key features include centralized e-filing, case registration, document submission, and integrated case management tools designed to optimize case administration.

DIFC Courts

In March 2025, Law No. 2 concerning DIFC Courts (2025) introduced a comprehensive reform of the DIFC Courts, the English-language common law courts based in the DIFC free zone. This legislation consolidates previous frameworks and introduces significant enhancements to jurisdiction and procedure. Notable changes include:

- **Unified Legislation:** The law repeals DIFC Court Law No. 10 (2004) and Dubai Law No. 12 in respect of The Judicial Authority at DIFC (2004), consolidating offshore and onshore provisions governing the DIFC Courts' jurisdiction into a single onshore statute.
- **Expanded Jurisdiction:** DIFC Courts now have exclusive authority over, among other matters, the recognition and ratification of arbitral awards under DIFC Arbitration Law (Article 14(A)(5)) and international treaty-based claims (Article 14(A)(7)).
- **Establishment of a Mediation Centre:** A statutory Mediation Centre has been established within DIFC Courts to facilitate amicable dispute resolution (Article 13). Settlement agreements approved by the Mediation Centre are subject to compulsory enforcement (Article 30(b)(4)), thereby strengthening the appeal of mediation.
- **Interim Measures:** The law expressly empowers DIFC Courts to grant interim relief considered just or appropriate (Article 24(c)). Importantly, DIFC Courts may issue interim measures in support of arbitral proceedings seated outside the DIFC if precautionary measures are sought within the DIFC (Article 15(4)).

Key Judicial Themes

The recent decisions of the UAE courts reflect a maturing and increasingly harmonized pro-arbitration approach. Key themes include a strict insistence on properly authorized and executed arbitration agreements, robust judicial support for tribunals' interim powers (including anti-suit injunctions), and a readiness to restrain parallel onshore or foreign proceedings that would otherwise undermine an arbitration clause.

Arbitration Agreements and Tribunal Authority

- ***Commercial Rulings – Appeal No. 778 (2025), Appeal No. 887/2025*, ruling of the Dubai Court of Cassation ("DCC")**: The dispute concerned the enforcement of an award under the New York Convention, introduced into UAE law through Federal Decree No. 43/2006 Regarding The UAE Joining the Convention of New York on Recognition and Enforcement of Foreign Arbitral Awards (2006). In the context of enforcing a foreign arbitral award, the DCC confirmed that:

  i) the New York Convention takes precedence over domestic arbitration law,

  ii) judicial review is strictly limited to the exhaustive grounds set out in Article V, of the New York Convention,

iii) the inclusion of compound interest in an award does not contravene UAE public policy since it did not breach fundamental principles of justice or morality under UAE law, and

iv) a prior UAE court ruling confirming the validity of the arbitration clause had acquired *res judicata* effect and could no longer be re-litigated.

- ***Commercial Rulings – Appeal No. 756 (2024), Appeal 760/2024***, **ruling of the DCC**: The DCC held that:

  i) the presence of the ICC (International Chamber of Commerce)'s representative office in ADGM had no impact on the seat of the arbitration,

  ii) an agreement to the ICC Rules of Arbitration displaced the application of the UAE Federal Arbitration Law, except in matters of public policy, and

  iii) the list set out in Article 38(1) of the ICC Rules of Arbitration (2021) was illustrative rather than exhaustive, with the phrase "other reasonable costs" sufficient to include a party's legal costs.

- ***Commercial Rulings, Appeal No. 657 (2025), ruling of the DCC***: The DCC confirmed that an arbitral tribunal is empowered to issue interim or precautionary measures and retains exclusive authority to amend or vacate such orders during the arbitration proceedings.

On the offshore front, the ADGM Courts and the DIFC Courts continued to consolidate a consistently pro-arbitration body of jurisprudence.

- ***Vianney Stephane Marie Nicolas Mathonnet v. Modus Operations LLC* [2025] ADGMCFI 0005**: It was held that employment disputes fall within the scope of arbitrable matters under the ADGM Employment Regulations 2019.
- ***Judgement of the ADGM Court of First Instance [2025]* ADGMCFI 0019**: The ADGM Courts applied principles arising from *Enka v. Chubb* to determine the governing law of the arbitration agreement, ultimately finding UAE law to be applicable. Importantly, the choice of ADGM as the seat of the arbitration did not by default mean that ADGM was the governing law of the arbitration agreement.
- ***Judgment of Justice Sir Andrew Smith of the ADGM Court of First Instance [2025] ADGMCFI 0001:*** The ADGM Courts confirmed that they have express authority to issue worldwide freezing orders, not only within the context of court litigation, but also in support of the enforcement of foreign arbitral awards.
- ***DIFC CFI ARB 011/2025 Naidoo and (1) Nofret v (2) Nandini (3) Nurine (4) Nadidah:*** The DIFC Courts declined to grant injunction relief to prevent the continuation of arbitration proceedings and order the setting aside or varying of a procedural decision in the arbitration. The Court reiterated the principles of party autonomy, its policy of "maximum support, minimum interference" and that the Court's powers do not extend to matters of case management, unless there is a serious denial of due process.
- ***DIFC CoA ARB 005/2025 Nashrah v (1) Najem (2) Nex:*** It was held that, in cases involving anti-suit injunctions based upon arbitration agreements, unless the case otherwise falls within a head of jurisdiction specifically identified in the Court Law (for example where one of the parties is a DIFC establishment), the only source of jurisdiction is the DIFC Arbitration Law.

Procedural Formalism

- ***Decision of the Authority for Unification of Local and Federal Judicial Principles of the UAE on Arbitral Awards Signature Requirements:*** The decision confirms that an arbitral award is valid where the arbitrators sign only the final page, thus eliminating the need for arbitrators to sign each page.
- ***Case No. 902/2024,* ruling of the Abu Dhabi Court of Cassation ("ADCC")**: The ADCC held that

i) an arbitration agreement must be in writing – otherwise it would be void, and

ii) non-compliance with the validity requirements of an arbitration agreement (such as the signatory lacking the requisite authority) cannot be ratified retrospectively (or waived for purposes of Article 25 of the UAE Federal Arbitration Law), unless a subsequent valid agreement, authorization or agency is established prior to the issuance of the award.

- ***Case No. 839, 885/2025***, **ruling of the ADCC:** The ADCC found that the arbitration agreement was invalid because the contract was signed by someone without express authority to enter into an arbitration agreement. The decision reiterates the importance of scrutinising capacity and authorisation documents to ensure that an arbitration agreement has been validly concluded.
- ***Commercial Rulings, Appeal Case No. No.445/2025/24,*** **ruling of the DCC:** An arbitration agreement contained in an unsigned, stamped annex to a contract was held to be invalid. The annex required a separate and express signature to constitute an enforceable arbitration agreement.

Waiver of the Defence of Arbitration

While the UAE has continued to adopt a pro-arbitration stance, including recent confirmations on the broad authority of arbitral tribunals and relaxation of certain procedural formalism previously applicable to arbitral awards, the onus remains on parties to ensure that arbitration clauses are invoked properly. Failure to do so may be considered that a party has waived the right to raise this as a defense in the future.

The DCC in *Commercial Rulings – Appeal No. 509 (2025)* faced a situation where a party sought to appeal a judgment by raising a jurisdictional objection on the basis that the dispute was inadmissible to the UAE courts due to an arbitration clause in the contract.

The DCC held that, because the appealing party did not raise the arbitration clause as a defense to the original suit filed before the UAE courts at first instance (which was a hearing at the Centre for Amicable Settlement of Disputes), and instead engaged on the merits of the dispute, this constituted an unequivocal waiver by the party to invoke the arbitration clause as a defense under Article 8(1) of the Federal Arbitration Law.

This decision brings into sharp focus the importance of parties understanding that, where arbitration has been agreed and stipulated in the contract as the form of final dispute resolution, should there be UAE court proceedings commenced in contravention of that agreement, it is their responsibility to raise arbitration as a defense in a timely manner at first instance, before the merits of the dispute are even engaged upon. Failure to do so, as Commercial Rulings – Appeal No. 509 (2025) has established, is fatal to any subsequent attempt to raise jurisdictional or procedural objections on the same basis.

This outcome also serves as a reminder for parties not to take the pro-arbitration stance in the UAE as an excuse for laziness in ensuring that the proper defenses concerning the right to arbitrate are raised at the earliest opportunity

Multi-Jurisdictional Interfacing

Given the international nature of parties residing in or conducting business in the UAE, it is common for arbitral awards rendered in foreign jurisdictions to be brought before UAE courts for recognition and enforcement.

Recent decisions have demonstrated that the UAE will enforce awards from seats outside the UAE in different scenarios, for instance, in *Olympio v Olwin*, the DIFC courts permitted the recognition and enforcement of a SIAC arbitration award, including the imposition of a worldwide freezing

order, and dismissed the stay applications made against the recognition and enforcement of the award.

In particular, the DIFC courts held that, while the defendant had registered a conflict of jurisdiction claim with the Conflict of Jurisdiction Tribunal, claiming that the UAE courts rather than DIFC courts had jurisdiction over the recognition and enforcement proceedings, did not automatically require a stay of the recognition and enforcement proceedings.

This developments showcase not only the continued pro-arbitration stance of the UAE, but also the general cooperation between the UAE and other jurisdictions concerning the recognition and enforcement arbitral awards, consistent with the commitments made in the New York Convention.

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Courts Consider the Interplay of Court Proceedings and Arbitration

Several decisions from various jurisdictions in Canada considered the circumstances in which court proceedings ought to be stayed in favour of arbitration.

In *Sivitilli v PesoRama Inc.* (2025 ABCA 56), the Court of Appeal of Alberta ("**ABCA**") examined whether a chambers justice failed to consider section 6(c) of Alberta's *Arbitration Act* (RSA 2000, c A-43) which permits the court "to prevent manifestly unfair or unequal treatment of a party to an arbitration agreement" in a decision not to enjoin an arbitration. The first instance judge allowed a wrongful dismissal dispute to proceed to arbitration despite ongoing related oppression litigation, finding the matters sufficiently separable. The appellant had argued that the arbitration duplicated the court proceeding and should be stayed. However, the first instance judge found that the overlapping facts and the use of the oppression litigation as leverage in the arbitration claim did not warrant staying the arbitration. The ABCA determined that although the chambers justice did not expressly reference section 6(c) of the *Arbitration Act*, it found the judge's decision was well reasoned and entitled to deference.

In *Halton Healthcare Services Corporation v. Plenary Health Milton LP* (2025 ONSC 2223), the Ontario Superior Court of Justice ("**ONSC**") considered a party's application seeking to stay litigation in favour of arbitration. The Court denied the stay and permitted the litigation to proceed. The ONSC found that there was no valid arbitration agreement; it also determined that the party seeking the stay had taken steps in the same litigation and that it had unduly delayed bringing the stay application. The Court was clear that it would respect agreements to arbitrate, but would not allow a matter that was never subject to an arbitration agreement to proceed in the place of litigation, particularly ongoing litigation.

In *Zanin v. Ooma, Inc.* (2025 FC 51), the Federal Court of Canada considered an arbitration agreement in a motion to certify a class action relating to marketing of a voice-over-internet-protocol telecommunication service. The Court found that the underlying contract contained a valid arbitration agreement, and that the competence-competence principle applied. The Court noted that only in exceptional circumstances would it not enforce an otherwise valid arbitration agreement, and finding no such exceptional circumstances in the case at bar, staying the action in favour of arbitration. The Court was not persuaded by unconscionability arguments, signalling that although courts will consider such arguments (following the Supreme Court of Canada's decision in *Uber Technologies Inc. v. Heller*, 2020 SCC 16), the competence-competence principle will continue to apply in cases where it is not impossible for the parties to arbitrate, which is a very high bar.

Courts Provide Clarification on Appeals of Arbitral Awards

Canadian courts also considered whether and how arbitration awards may be appealed to courts.

In *2501373 Ontario Inc. et al. v. Selfe et al.*, 2025 ONSC 5216, the ONSC considered an application for leave to appeal an arbitral award. Under Ontario's *Arbitration Act, 1991* (SO 1991, c 17) where an arbitration agreement is silent on appeals, arbitral awards may be appealed on questions of law, with leave from the Court. The applicant argued that the terms of the arbitrator's appointment was the relevant arbitration agreement, and was silent on appeals on questions of law, and that it was therefore permitted to seek leave to appeal. The Court disagreed, finding the share purchase agreement, over which the parties were arbitrating, was controlling, and expressly prohibited appeals. Citing the high bar for leave underscored in a previous 2025 case from the same Court (*Ontario Minister of Transportation v. Link 427 General Partnership*, 2025 ONSC 2375), the Court also found that even if appeals had not been precluded, it would not have granted the applicant leave because no truly extricable question of law had been identified.

In *HZPC Americas Corp. v. Skye View Farms Ltd.*, 2025 PESC 25, the Supreme Court of Prince Edward Island ("**PEISC**") considered the issue of which province was the proper seat of an arbitration in an application to set aside or appeal an award. The parties had proceeded to arbitration without discussing the seat of arbitration. The arbitration occurred under the auspices of the Fruit & Vegetable Dispute Resolution Corporation, whose arbitration rules stipulated that the seat of arbitration was Ontario, unless otherwise agreed. The hearing physically took place in Prince Edward Island. In the set-aside proceeding, the PEISC considered whether it was the proper reviewing court. The Court found that it was not, as the arbitration agreement stipulated Ontario as the seat and that the decision to physically conduct the arbitration in Prince Edward Island did not displace that choice of seat. The *Ontario Arbitration Act 1991* allows non-Ontario courts to intervene in some matters governed by the Act, but not in hearing applications to set aside or appeal awards, which must be brought in Ontario.

Canadian Courts Confirm High Bar for Setting Aside Arbitral Awards

Two 2025 decisions from the ONSC highlight the high bar that courts apply for setting aside arbitral awards.

In *The United Mexican States v. Gordon G. Burr* (2025 ONSC 5724), the ONSC dismissed Mexico's application to set aside an international arbitral award over allegations of procedural unfairness and denial of natural justice based on the arbitral tribunal's refusal to order production of alleged "key documents" and failing to expressly reference each argument of the losing party in the decision. The Court emphasized that it would only intervene "when the Tribunal's conduct is so serious that it cannot be condoned" and if the process offended "our most basic notions of morality and justice" (paragraph 75). Routine procedural decisions like the ones complained of do not meet this standard.

Similarly, in *Tehama Group Inc. v. Pythian Services Inc.* (2025 ONSC 4134), the ONSC refused to set aside an arbitral award based on allegations that the arbitrator's process was unfair or contrary to the parties' agreement. Pursuant to a previous decision of the Court (2024 ONSC 1819), the arbitration was heard by the global accounting firm PwC in Toronto. The Court determined that a lack of certain procedural steps (such as sur-reply or cross-examination), accorded with the parties' agreed arbitration process, and did not meet the test to set aside under *the Model Law on Commercial Arbitration*, scheduled to the *International Commercial Arbitration Act, 2017* (S.O. 2017, c. 2, Sched. 5).

Ontario Courts Apply Objective Test for Reasonable Apprehension of Bias of an Arbitrator

Two Ontario decisions considered the reasonable apprehension of bias.

In *Vento Motorcycles Inc. v. Mexico* (2025 ONCA 82), the Court of Appeal for Ontario ("**ONCA**") held that a reasonable apprehension of bias by one member of a three-member tribunal "taints" the process and justifies the set-aside of an arbitral award. In this case, undisclosed communications between Mexico's arbitrator nominee and government officials (which included professional advancement opportunities for the arbitrator) during an investor-state arbitration compromised the process's integrity. The ONCA overturned the lower-court decision, which denied set-aside where there was no bias issue in play with respect to two members of the tribunal. By contrast, the ONCA determined that impartiality is paramount and that neither the lack of direct financial gain by the subject arbitrator nor the presence of other unbiased tribunal members mitigates the taint of bias.

In *MTCC No. 1251 v. Windsor Arms Hotel Corp.* (2025 ONSC 5009) the ONSC considered the importance of how arbitrators manage disclosure of conflicts of interest in arbitration proceedings. In this case, the arbitrator promptly disclosed a conflict arising from a business referral that he had received from an expert involved in the arbitration over which he presided. He indicated that he would not proceed with the arbitration unless all parties to the arbitration agreed to waive the conflict. He subsequently reversed position, stating that he would not recuse himself as arbitrator despite the absence of the waivers he had requested. He also continued to interact with the expert on the second matter and refused to disclose his emails with the expert to allow a party in the arbitration to assess the seriousness of the issue. The ONSC applied the objective test for assessing reasonable apprehension of bias set out by the ONCA in *Aroma Franchise Company, Inc. v. Aroma Espresso Bar Canada Inc.* (2024 ONCA 839), which focuses on what a reasonable and informed observer would conclude, and does not require proof of actual bias. The Court found that the combination of the referral and the arbitrator's subsequent conduct (including admitting then denying the conflict, withdrawing his offer to resign without full waivers, refusing disclosure, ongoing interaction with the expert, etc.), rather than the referral alone, created an environment where a reasonable person could question the impartiality of the arbitrator. Therefore, the Court granted the application and removed the arbitrator.

New ADRIC Arbitration Rules – Effective March 1, 2025

The Arbitration Rules of the ADR Institute of Canada ("**ADRIC**"), which are commonly used in Canada, particularly in domestic disputes, were updated, effective March 1, 2025 ("**2025 Rules**"). Significant updates from the previous version of the rules (which had been in effect since December 1, 2016 ("**2016 Rules**")) include:

- **Disclosure at the appointment stage:** The 2025 Rules impose on parties an ongoing obligation to disclose to potential arbitrators, the other parties, and ADRIC (if it is involved in the appointment process) "any information that would enable an Arbitrator to assess whether circumstances exist that may give rise to justifiable doubts as to the Arbitrator's independence or impartiality".
- **Changes to pleadings and evidence procedures:** The 2025 Rules align the ADRIC pleading procedure with standard international arbitration practice. An arbitration commences with a claimant's Notice to Arbitrate. Respondents must respond with an Answer to Notice within 21 days, clearly stating any disputed facts, claims, issues, or disagreements regarding jurisdiction, arbitrator appointment or qualifications for arbitrators, as applicable. Any objections not raised

at this stage will be lost, unless new facts arise. The first substantive submission of each party that follows must include all available evidence (including witness statements and expert reports). The 2025 Rules retain the Redfern-type process for document production.

- **Updated arbitrator challenge procedures:** The 2025 Rules create a fast and final process for challenging arbitrator appointments if there are defensible doubts as to the arbitrator's qualifications, independence or impartiality. Within 15 days of becoming aware of a challengeable issue, a party may apply to ADRIC to obtain a challenge adjudicator to hear the dispute. The adjudicator's determination is not appealable. Procedures for challenging the appointment of a challenge adjudicator or an interim arbitrator are also available, on similarly short timelines, and are likewise final and not appealable.
- **Removal of the distinction between international and non-international arbitration:** The 2025 Rules apply equally to international and non-international arbitrations (which are governed by separate legislation in most Canadian jurisdictions). The previous ADRIC rules stipulated that unless the parties agreed otherwise, the UNCITRAL Arbitration Rules would apply to an international arbitration under the auspices of ADRIC.
- **Med-Arb procedure:** The ADRIC Med-Arb Rules came into effect in 2020; the 2025 Rules refer to those rules and clarify how they interact with the 2025 Rules where an arbitration is converted into a med-arb.
- **New appeal procedures:** The 2025 Rules contain a set of procedures for when parties opt into the ADRIC appeal procedure. This provides for the possibility of an appeal in writing made to a three-person appeal tribunal.
- **Equity, diversity, and inclusion:** Under the 2025 Rules, ADRIC will consider equity, diversity, and inclusion (in addition to existing factors from the 2016 Rules) in its arbitrator appointment process.
- **Precedents and checklist:** The 2025 Rules contain a sample procedural order and simplified procedure, as well as a checklist for the parties' preliminary meeting (i.e. the first case management conference).
- **Updated arbitrator appointment procedure:** Concurrently with the 2025 Rules, ADRIC released a new arbitrator appointment protocol, which sets out the procedures for arbitrators to be appointed by ADRIC and the criteria that arbitrators must meet to be considered for appointment.

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In 2025, New York remained a popular choice of arbitral seat and governing law for the resolution of commercial disputes across a range of industries. This chapter highlights key trends and developments relevant to arbitrations with a New York nexus in 2025.

Studies and Reports on Arbitrating in New York

ICC Dispute Resolution Statistics

In June 2025, the International Chamber of Commerce ("**ICC**") published its Dispute Resolution Statistics for 2024. New York law was the applicable law in 40 cases registered with the ICC in 2024, ranking fifth most frequently selected applicable law globally, and first among North American jurisdictions. New York was the fourth most popular seat of arbitration, with 37 ICC cases registered in 2024.

AAA-ICDR Dispute Resolution Data

In 2025, the international division of the New York-based American Arbitration Association ("**AAA**"), the International Centre for Dispute Resolution ("**ICDR**"), published the 2024 ICDR Dispute Resolution Data. A total of 811 international cases and 102 international mediations were filed. Most parties were from the U.S. (869 of 1,372 parties), followed by Canada, China, and the U.K. New York was the most frequently chosen seat, ahead of Miami and Los Angeles.

2025 International Arbitration Survey (QMUL with White & Case)

The 2025 International Arbitration Survey by Queen Mary University of London and White & Case reported that, among respondents asked to identify five preferred seats for their region, New York was identified by 50% of North American, 48% of Caribbean/Latin American, and 13% of global respondents. These figures are comparable to those reported in the 2021 edition of the Survey, which reported that New York was identified as a preferred seat by 46% of North American, 46% of Caribbean/Latin American, and 12% of global respondents.

Enforceability of Arbitration Agreements and Awards

The enforcement of international arbitration agreements and awards in

New York is governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("**New York Convention**"), as incorporated into the Federal Arbitration Act ("**FAA**").

In 2025, a federal appellate decision confirmed that the courts of New York will not assume jurisdiction to vacate foreign arbitral awards issued in an arbitration seated outside the U.S., even if the underlying agreement contains a New York forum selection clause.

- In July 2025, the Court of Appeals for the Second Circuit issued a decision in *Molecular Dynamics, Ltd. v Spectrum Dynamics Med. Ltd.*, declining a petition to vacate arbitral awards issued in a Geneva-seated arbitration governed by New York law.

  The dispute arose from a licensing agreement between two biotechnology companies relating to medical imaging technology. The tribunal awarded Spectrum Dynamics USD 7.5M plus interest as repayment for a loan it had made to Molecular Dynamics, along with USD 6.9M in costs and attorneys' fees. The agreement provided for disputes to be resolved through arbitration seated in Geneva, under the laws of New York. It also contained a forum selection clause providing that "on matters . . . concerning the Chosen Arbitration," the courts of New York would have "exclusive jurisdiction."

  Following the issuance of the award, Molecular Dynamics initiated proceedings in the U.S. District Court for the Southern District of New York, seeking vacatur. Molecular Dynamics argued that Spectrum Dynamics had consented to the jurisdiction of the court by agreeing to the New York forum selection clause. The district court denied the petition, and that decision was subsequently appealed. The Court of Appeals affirmed the district court's decision, holding that the lower court lacked subject matter jurisdiction to vacate the award because, under the New York Convention, only the courts of the country of the award's seat or governing law may grant vacatur. The Court of Appeals also held that this was not modified by the forum selection clause, because subject matter jurisdiction cannot be conferred by contract.

Two different federal appellate decisions issued in 2025 also highlight the circumstance-based approach that New York will take when deciding whether to enforce an agreement to arbitrate.

- In May 2025, the Court of Appeals for the Second *Circuit issued a decision in Certain Underwriters at Lloyd's, London v. 3131 Veterans Blvd. LLC.* The court enforced arbitration agreements despite a challenge based on conflicting state law.

  The dispute arose out of insurance contracts governed by New York law, with New York as the seat of arbitration. The insureds filed suit in Louisiana state court, arguing that Louisiana law prohibited arbitration in insurance contracts, rendering the arbitration agreements void. The insurers then filed a parallel action in the United States District Court for the Southern District of New York, seeking to compel arbitration under the FAA and the New York Convention. The court ultimately rejected the insureds' arguments and enforced the arbitration agreements.

- In July 2025, the Court of Appeals for the Second Circuit issued a decision in *Doyle v. UBS Fin. Servs., Inc.* The court declined to enforce an arbitration agreement, on the basis that the arbitration agreement had been waived by a party who had failed to invoke it earlier in the litigation.

  The dispute arose out of a client relationship agreement entered into by the plaintiff trustees of a foundation with UBS. The trustees of the foundation sued UBS, alleging breaches of fiduciary duties under U.S. federal and New York state law. UBS had initially filed a motion to dismiss without mentioning arbitration. After the motion to dismiss was denied, UBS filed a motion to compel arbitration. The court ultimately held that UBS's failure to mention arbitration in its motion to dismiss constituted a waiver of its right to arbitrate.

Courts in New York are also a common venue for parties to seek recognition and enforcement of foreign judgments. In 2025, a New York district court clarified that recognition of a foreign monetary judgment did not

require personal jurisdiction over the judgment debtor. This is a notable contrast to when a party seeks to confirm a foreign arbitral award, for which a court in New York would require personal jurisdiction over the award debtor.

- In February 2025, the United States District Court for the Southern District of New York issued a decision in *Cargill Fin. Servs. Int'l, Inc. v. Barshchovskiy*, recognizing an English judgment in the amount of approximately USD 120M plus interest, which had been obtained by Cargill after it obtained an arbitration award in its favor, in an LCIA arbitration.

  The LCIA arbitration was initiated by Cargill against Mr. Barshchovskiy to recover unpaid debts. After the LCIA's award was rendered in favor of Cargill, the English Commercial Court rejected the defendant's application to set aside the award, and instead recognized it. Cargill then initiated proceedings in a federal court in New York seeking recognition of the English judgment. In recognizing the English judgment, the New York district court rejected the defendant's arguments that due process would be violated if the New York district court enforced the English judgment without having personal jurisdiction. The court held that due process was not violated if a court recognized a foreign judgment even absent personal jurisdiction, provided that the foreign court protected the judgment debtor's due process rights.

New York: A Prime Venue for Commercial Disputes

New York continues to be a preferred choice for complex commercial disputes across a range of industries, including oil and gas, life sciences, and maritime.

Oil and Gas Disputes

A number of major oil and gas disputes were decided in New York-seated arbitrations in 2025, some of which are being challenged in courts in New York.

- In June 2025, an ICC tribunal in a New-York seated arbitration and applying New York law, issued an award in *DM Construtora de Obras Limitada, Ventura Locação de Equipamentos Limitada and Consorcio MGT v. Tupi B.V.*, ICC Case No. 24050/GSS/PFF/RLS. The arbitration was initiated by Consorcio MGT ("**CMGT**") (a consortium of Brazilian construction and equipment companies) against Tupi B.V. (a project company jointly owned by oil and gas majors Petrobras, Shell Brasil, and Petrogal Brasil).

  The claims arose out of the construction of facilities for one of the world's biggest deepwater oil fields, off the coast of Rio de Janeiro, with CMGT claiming that it was entitled to additional compensation for the time and material to perform work outside the scope of the contract. Tupi B.V. raised a series of counterclaims, seeking, *inter alia*, a price reduction and reimbursements. The tribunal partially granted some of CMGT's claims and Tupi B.V.'s counterclaims, which yielded a net favorable award for Tupi B.V of approximately USD 70 M.

  In September 2024, CMGT brought a petition in New York federal court to vacate the award. In addition to disputing CMGT's petition to vacate the award, in November 2025, Tupi B.V. filed a cross petition in New York federal court to confirm the award. Those petitions are still pending as of the date of publication.

- In August 2025, an ICC tribunal in a New York-seated arbitration issued an award in *Shell NA LNG LLC v. Venture Global Calcasieu Pass, LLC*, ICC Case No. 27797/PDP, rejecting a USD 1.7B claim brought by Shell against a subsidiary of Venture Global. Shell's claim was based on the Venture Global subsidiary's failure to deliver liquefied natural gas under long-term agreements with Shell following significant

delays in the Calcasieu Pass project, one of the largest LNG production facilities in the U.S. In November 2025, Shell filed a petition to vacate the arbitration award in the Supreme Court of New York.

In total, at least seven different companies have commenced arbitrations against Venture Global relating to the Calcasieu Pass project. One of these was an ICC arbitration, brought by Chinese state-owned entity Unipec, and settled in October 2025. Arbitral awards were also issued in two other cases since the Shell decision. In October 2025, an ICC tribunal issued a partial award in favor of BP on liability, with quantum to be decided in a subsequent phase. As disclosed by Venture Global, BP was reportedly seeking damages in excess of USD 1B. Moreover, in January 2026, an ICC tribunal in a separate arbitration brought by Repsol LNG Holding, S.A., reportedly issued an award denying all of Repsol's claims and awarding fees to the subsidiary.

Life Sciences Disputes

There continues to be an increase in life sciences arbitrations. The AAA-ICDR, which frequently administers arbitrations with a New York seat, reported 25 life sciences cases in 2024, an increase from 19 life sciences cases in 2023. Recent awards issued in 2025 highlight the use of New York law to decide large, complex life sciences disputes.

- In April 2025, an ICC tribunal in a Washington D.C.-seated arbitration issued the Final Award in *Novartis Pharma AG v. Genentech, Inc.*, ICC Case No. 27260/PDP, arising out of a New York-law governed license and collaboration agreement. The agreement provided Genentech with the exclusive commercial rights to an eye medication (ranibizumab, marketed as Lucentis) in the U.S., while providing that Novartis would have commercial rights outside of the U.S. Novartis claimed that Genentech had coordinated with Genentech's parent company (Roche) to develop another competing eye medication, (faricimab, marketed as Vabysmo), in breach of its agreement with Novartis.

  An award in Novartis' favor could have resulted in "tens of billions of dollars" in damages to Roche, with sales of Vabysmo surpassing USD 4 billion in early 2025. However, in addition to denying Novartis' claim, the tribunal ordered Novartis to pay Genentech approximately USD 18M in arbitration and legal fees plus expenses. In June 2025, Genentech filed a petition in the District Court for the District of Columbia to enforce the arbitration award.

- In August 2025, an International Institute for Conflict Prevention & Resolution ("**CPR**") tribunal in a New York-seated arbitration issued the Final Award in *Cipher Pharmaceuticals, Inc. v. Sun Pharmaceutical Industries, Inc.*, CPR Case No. G-24-38-AA. The dispute arose from a pharmaceutical distribution and supply agreement governed by New York law. Under the agreement, Sun would be the exclusive distributor of an acne medication (Absorica) in the United States, for which it would pay Cipher royalties.

  Amongst other claims, the dispute included concerns regarding the ownership of intellectual property created by Cipher. Cipher alleged that Sun improperly used Cipher's clinical trial data generated for U.S. regulatory approval of Absorica, by submitting it to Canadian regulators to obtain approval to market a low dose version of the medication ("Absorica LD") in Canada, without Cipher's consent. The tribunal upheld Cipher's claim relating to the misuse of its data, awarding approximately CAD 4.2M for breach of the agreement, a 15% royalty on Canadian sales of the product, and 80% of its legal fees and expenses.

  In October 2025, Sun petitioned the U.S. District Court for the Southern District of New York to partially vacate the award, and in November 2025, Cipher cross-moved to confirm it, with these applications pending as of publication.

- In August 2025, an ICC tribunal in a New York-seated arbitration issued an award in *Viatris Healthcare (Pty.) Ltd. v. Sedia Biosciences Corporation*, ICC Case No. 27707/PDP. The dispute, governed by

New York law, arose from Sedia's termination of an exclusive license agreement.

Under the agreement, Viatris would commercialize a rapid HIV infection testing device developed by Sedia worldwide. Sedia subsequently terminated the agreement. Viatris initiated the arbitration, alleging that Sedia had wrongfully terminated the agreement and Sedia's failure to maintain an underlying license with the U.S. Centers for Disease Control and Prevention ("**CDC**") was a breach of contract. Sedia brought several counterclaims and argued, amongst other things, that Viatris had not used commercially reasonable efforts to market the product and that Viatris had breached the contract by initiating litigation despite the arbitration agreement.

The tribunal awarded Viatris approximately USD 800K for Sedia's wrongful termination and failure to maintain the license with the CDC; and Sedia approximately USD 400K for Viatris's failure to comply with the dispute resolution provision by initiating parallel litigation and failing to pay amounts owed under purchase orders. The award was subsequently confirmed by the U.S. District Court for the Southern District of New York in December 2025.

Maritime Law Disputes

New York continues to be a popular choice of law and seat for maritime disputes, with 2025 marking the 200th anniversary of the events underlying New York's first known maritime arbitration award. Many of these arbitrations are conducted under the Maritime Arbitration Rules of the Society of Maritime Arbitrators ("**SMA**").

At least 24 final, partial, or interim awards were issued in SMA arbitrations seated in New York during 2025. These arbitrations include disputes arising out of maritime contracts and governed by U.S. maritime law, as well as disputes governed by New York state law. The publicly reported arbitral decisions from 2025 included: a decision finding that a party did not waive its right to arbitrate insurance coverage for flooding and a lightning strike on a vessel; an award of outstanding demurrage fees owed by a charterer of a vessel that never participated in the arbitration; and a decision denying the owners' of a vessel leave to file an emergency application relating to a suspension of hire payments by the charterers of the vessel.

Recent Updates from New York–based Arbitral Institutions

AAA-ICDR

In March 2025, the AAA-ICDR published its Guidance on Arbitrators' Use of AI Tools, which provides arbitrators with considerations when using artificial intelligence ("**AI**") tools in their work. The guidance "encourages arbitrators" to embrace artificial intelligence tools while adhering to their ethical and professional obligations. In May 2025, the AAA-ICDR then published the AAAi Standards for AI in Alternative Dispute Resolution, setting out standards the AAA-ICDR encourages administrators, arbitrators, and advocates to apply when using AI. The AAAi Standards provide a broad framework of ethical principles regarding the use of AI in alternative dispute resolution, while the AAA-ICDR Guidance offers practical considerations to guide arbitrators in using AI tools.

In November 2025, the AAA-ICDR launched the AI Arbitrator, currently limited to documents-only construction disputes. Under this mechanism, an artificial intelligence tool created by the AAA (in reliance on data from past AAA construction disputes) prepares a recommended draft award on the basis of party submissions. The recommended award is then reviewed and edited by a human arbitrator, who finalizes and signs the award.

JAMS

The New York-based JAMS (formerly, Judicial Arbitration and Mediation Services, Inc.) is a frequently used arbitral institution for domestic U.S. disputes. In April 2024, JAMS published the JAMS Artificial Intelligence Disputes Clause, Rules and Protective Order, which include the JAMS Rules Governing Disputes Involving Artificial Intelligence Systems.

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Texas has become an increasingly popular destination for companies seeking a corporate-friendly environment. In fact, in 2024, 24 companies relocated their headquarters to the state, and data suggests that 2025 is maintaining the momentum: Elon Musk recently reincorporated both Tesla and SpaceX in Texas. Other companies, such as KFC and Realtor.com, announced relocations to Texas this year. State officials are actively encouraging this trend by publicly promoting Texas's business-friendly regulatory and legal landscape. Supporting this push is the newly created Business Court of Texas, whose jurisdiction was recently expanded to include arbitration matters, including decisions on arbitrability and delegation to arbitrators.

The Business Court of Texas was created in 2024 as a statewide, specialized trial court to resolve complex business disputes. Texas Governor Greg Abbott, in a recent op-ed published in the Wall Street Journal, stated that the Texas Business Courts are intended "to specialize in corporate governance disputes, derivative actions and complex commercial transactions." The Business Court is divided up into eleven administrative judicial regions, five of which are currently operational. These divisions are located in Dallas, Austin, San Antonio, Fort Worth, and Houston. The Judges appointed to the bench in the Texas Business Court are highly sophisticated practitioners, many with prior experience on the bench or in complex, high-stakes business litigation throughout their careers.

When it was initially founded just over a year ago, the Business Court had civil jurisdiction concurrent with district courts in several categories of cases where the amount in controversy exceeded $10 million, including derivative proceedings, corporate governance actions, securities claims, actions brought by an organization against an owner, actions for breach of fiduciary duty, and actions arising from the Texas Business Organizations Code. The Business Court also originally had jurisdiction over actions where the amount in controversy exceeded $10 million and the case arose from a transaction with an aggregate value of at least $10 million, the action arose out of a violation of the Texas Finance Code, or the action arose out of a contract in which the parties to the contract agreed that the business court has jurisdiction.

In 2025, Texas House Bill 40, which became effective as of September 1, 2025, significantly expanded the jurisdictional reach of the Business Court. The amount-in-controversy requirement was reduced across all

jurisdictional categories to $5 million, the definition of "qualified transaction" was broadened to permit jurisdiction over a series of related transactions, and the Court's jurisdiction was expanded to include intellectual property and trade secrets disputes. Most notably, however, the Court's jurisdiction was also expanded to include arbitration-related matters: enforcement of arbitration agreements, appointment of arbitrators, and review of arbitral awards for disputes otherwise subject to the Court's jurisdiction.

This development has significant implications for practitioners. The specialized bench benefits Texas business practitioners due to the Court's efficiency, but the Court's novelty—particularly regarding arbitration issues—creates some uncertainty about outcomes. Ultimately, parties in Texas commercial disputes now have an additional venue to raise and defend arbitral issues. The Texas Business Court is still developing its precedential body of caselaw, but recent opinions indicate that its judges rely heavily on Texas Supreme Court precedent for guidance (and do not regularly cite Texas lower court opinions). It is therefore likely that the Texas Business Court, when considering delegation and arbitrability issues, will look to recent Texas Supreme Court opinions as dispositive

Delegation of Arbitrability in Texas: The Legal Landscape

Two recent Texas Supreme Court decisions have updated and clarified Texas caselaw on arbitrability and delegation. As practitioners may be aware, a contract with an arbitration clause does not insulate a dispute from court involvement. Courts are often asked to rule on the "arbitrability" of a dispute: the threshold question of whether that dispute is subject to arbitration (as opposed to the merits of the arbitration itself). Arbitrability includes two gateway questions:

- First, whether there is a valid arbitration agreement; and
- Second, whether the dispute falls within its scope.

Because arbitration clauses are a "matter of contract", "parties can agree that arbitrators, rather than courts, must resolve disputes over the validity and scope of their arbitration agreement." *TotalEnergies E&P USA, Inc. v. MP Gulf of Mexico, LLC, 667 S.W.3d 694, 702 (Tex. 2023)* ("**Total Energies**"), *reh'g denied* (June 9, 2023). This concept is known as "delegation," which concerns whether the parties agreed that the arbitrator (instead of the court) will decide arbitrability.

The default rule, both in Texas and nationally, is that the court decides arbitrability, unless the parties clearly and unmistakably delegate that question to the arbitrator. Recent decisions from the Texas Supreme Court clarify what satisfies this "clear and unmistakable" standard. In *TotalEnergies*, the Texas Supreme Court addressed whether incorporating the American Arbitration Association ("**AAA**") Rules (2013) into the arbitration agreement was "clear and unmistakable" evidence delegating arbitrability to the arbitrator. *Id.* at 708. Because the AAA Rules expressly grant arbitrators authority to decide their own jurisdiction, the court held that the incorporation of the AAA Rules is enough to constitute a valid delegation. *Id.* at 710–11. The approach in *Total Energies* shows that delegation does not need to be explicitly stated in the contract; incorporating rules that confer authority on arbitrators is enough to meet the "clear and unmistakable standard."

The ruling in *Total Energies* brings Texas in line with the majority of state and federal courts who have considered this issue. Id. at 708. The Texas Supreme Court quoted the Delaware Supreme Court in noting that "adopting a widely held interpretation of the applicable rule benefits our State's jurisprudence by promoting consistency and predictability, at least as long as that interpretation is not unreasonable." *Id.* at 711 (quoting *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 80 (Del. 2006) (internal quotation marks omitted)).

Nonetheless, even with broad delegation of arbitrability, parties may still find themselves in court, as delegation provisions can be subject to judi-

cial challenge. In *Lennar Homes of Texas Inc. v. Rafiei, 687 S.W.3d 726*, 730–31 (“***Lennar Homes***”) (Tex. 2024), the Texas Supreme Court held that “when an agreement delegates arbitrability issues to an arbitrator” (such as where the AAA Rules are incorporated into the arbitration agreement) “it is for the arbitrator—not a court—to determine whether the arbitration agreement as a whole is unconscionable.” The court emphasized, however, that a party may still challenge the arbitration provision on unconscionability grounds if the “delegation provision itself is unconscionable.” *Id.* *In Lennar Homes*, the moving party argued that the arbitration agreement as a whole was unconscionable due to excessive costs. Because the moving party did not quantify the difference between the cost of litigating versus arbitrating and the party’s ability to afford the “former but not the latter,” the Court denied the unconscionability challenge and held that the question whether the arbitration provision as a whole is unconscionable “is reserved for the arbitrator under the parties’ delegation agreement.” *Id.* at 732-33. The ruling in *Lennar Homes* underscores that while delegation narrows the role of courts, it does not eliminate judicial oversight altogether. However, parties must present specific evidence to support any claim that a delegation provision is unconscionable (and therefore unenforceable).

What This Means For Arbitration Strategy in Texas Business Litigation

The evolving Texas Supreme Court framework on arbitrability and delegation, combined with the Business Courts’ newly expanded jurisdiction, has practical implications for how arbitration disputes should be approached in Texas. Now that the Business Court is authorized to hear arbitration-related matters, practitioners must consider whether the Texas Business Court is a desirable venue for resolving arbitration-related issues (for both pre- or post-arbitration award relief).

This shift also calls for careful drafting. Arbitration and corporate-governance agreements should anticipate possible Texas Business Court jurisdiction, especially where there are possible overlapping or conflicting venue choices, or in cases where parties may prefer a specialized bench.

Finally, as the Business Court develops its body of arbitration related decisions, practitioners should also continue to track the Texas Business Court’s evolving approach to arbitration, from practical application of recent precedent on arbitrability and delegation, through the final stages of award enforcement.

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