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Arbitration law in 2024: a review

By Caroline Thomas, Vanessa Tsang and George Mallis

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We wish to once more thank Professor Rob Merkin for his kind input and the publishers, Lloyd's List Intelligence, for their stellar editorial support and patience.

The information contained in this review and our 2023 review is provided for general informational and educational purposes only. It may not reflect current legal developments or judgments and should not be construed as legal advice. It is not intended to be a substitute for legal counsel on any subject matter.

Furthermore, we would like to underline that the authors are very open-minded people who are aware that laws both vary across jurisdictions and can change. Neither this review nor our 2023 review should be construed as expressing our staunch views on any matter.

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Introduction

This year's review covers the court decisions and developments in the field of arbitration in 2024 which caught our attention, focusing more on commercial arbitration than investor-state dispute settlement (ISDS). It follows our first review in relation to 2023.[1] Conceptually the review is like an organised scrapbook with commentary on why 2024 developments are relevant. What will quickly be clear to readers is that the body of international arbitration law and practice continues to grow. Thus, while this review definitely is longer than last year's edition, it does not try to be exhaustive.

In terms of **jurisdictions covered,** since we are mainly based in Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong) and England, our review focuses on covering case law and trends in those jurisdictions as well as in other key common law arbitration seat jurisdictions including Singapore. We will occasionally cover leading cases from elsewhere especially by way of juxtaposition or underlining global trends. In particular, for the second time we provide an update on the law on winding up and arbitration across key common law jurisdictions.

By way of **structure and content,** this review again analyses cases in a sequence that mirrors the structure and chronology of a dispute resolved through arbitration – ie starting with the commencement of an arbitration and ending with the enforcement of a foreign award by a court. There is also a section on relief granted by courts in aid of arbitration. As last year, we also cover other major developments such as the Arbitration Act 2025 (which received Royal Assent on 24 February 2025), amendments to major arbitral rules (notably by SIAC and HKIAC) and developments in relation to how arbitrations can be funded (including PACCAR). Moreover, this review briefly covers major legal developments in China, India and Malaysia and other jurisdictions that are on our radar.

In a **final section** we seek to summarise the trends we have identified and suggest what 2025 might hold in store for arbitration. Since we released our first edition of this review last year, we can now assess our tea leaf reading abilities for the first time (and do this below).

Did our predictions for 2024 come true?

The short answer is that some of them did not – yet – whereas most of them did. Notably the Arbitration Act 2025 received Royal Assent in February 2025. Also 2024 cases reconfirm that parties should indeed be mindful of procedural matters including respecting timeframes to appeal. Interestingly, 2024 developments suggest that arbitrators too should be careful – especially as regards disclosures and avoiding prematurely becoming functus officio (eg by express reservations).

So what has *not* come true? In our 2023 review we noted that the UK "government has hinted that it might reverse PACCAR entirely (and so amend the [2013 Damages-Based Agreements ('DBA')] Regulations) at the first opportunity)". However, as is further explained below, the new government under Keir Starmer has chosen to first review funding more generally.

[1] Available on i-law.com.

We had also expected harmonisation at least within leading common law jurisdictions of the law in respect of arbitration and winding-up proceedings whereas the Privy Council decision in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd*[2] came as a surprise given that the previous leading decision on the topic (*Salford Estates (No 2) Ltd v Altomart Ltd*[3]) had stood since 2014 and a prevailing trend of decisions broadly favouring the approach taken in *Salford Estates*. *Sian Participation* has led to a harmonisation of the laws of England and Wales and the British Virgin Islands (and likely also the Cayman Islands and offshore jurisdictions) but means that there are still inconsistent decisions across key common law arbitration jurisdictions, most notably, Hong Kong and Singapore.

Commencing arbitration and arbitrability

Notice of arbitration

A Hong Kong judgment released in the summer of 2024 will likely be welcomed by sole arbitrators in the fairly common but awkward situation in which a respondent does not engage in arbitration proceedings. In such situations, as the below case illustrates, it helps if the arbitrator is very familiar with the arbitral process and meticulous (eg in carefully defining and monitoring how a respondent is to be notified).

Pan Ocean Container Suppliers Co Ltd v Spinnaker Equipment Services Inc[4] concerned an HKIAC award. The unsuccessful plaintiff (and non-responsive respondent in the arbitration) was a Mainland Chinese company engaged in the manufacture of marine cargo containers and the defendant (and claimant in the arbitration) was a Californian company engaged in the business of leasing and selling containers. The HKIAC arbitration clause was found in a Hong Kong law purchase agreement for the manufacture of containers.

The defendant had successfully applied for the arbitration to be conducted in accordance with the Expedited Procedure under article 42.1 of the 2018 HKIAC Administered Arbitration Rules ("2018 Rules"). A sole arbitrator was appointed and an award for over US$10 million was published granting the defendant liquidated damages and damages. Importantly, the plaintiff did not participate in the arbitration at all.

Afterwards, the plaintiff argued that it never received the award and only found out about it when it learned that its bank account was frozen by an order of the Ningbo Maritime Court in an enforcement action. It issued an originating summons (without a supporting affirmation) to set aside the award relying on four UNCITRAL Model Law grounds namely:

[2] [2024] UKPC 16; [2024] 2 Lloyd's Rep 65.
[3] [2014] EWCA Civ 1575.
[4] [2024] HKCFI 1753.

(1) article 34(2)(a)(ii) claiming it was not given proper **notice** of the appointment of the tribunal or of the arbitral proceedings or was otherwise unable to present its case;

(2) article 34(2)(a)(iii) claiming the award dealt with a dispute not contemplated by or falling within the terms of the submission to arbitration, or contains decisions on matters beyond the **scope** of the submission to arbitration;

(3) article 34(2)(a)(iv) arguing the **composition** of the tribunal or the arbitral **procedure** was not in accordance with the agreement of the parties; and

(4) article 34(2)(b)(ii) arguing that the award was in conflict with Hong Kong **public policy**.

Deputy High Court Judge Jonathan Wong in Chambers analysed the evidence in the context of the notification requirements under the applicable 2018 Rules and rejected all arguments. As to argument (1) upon characterising this argument was "entirely opportunistic", the judge approvingly cited *KB v S*[5] as authority for the premise that:

> "in dealing with applications to set aside an arbitral award, or to refuse enforcement of an award, whether on the ground of not having been given notice of the arbitral proceedings, inability to present one's case, or that the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement, the court is concerned with the structural integrity of the arbitration proceedings. In this regard, the conduct complained of "must be serious, even egregious", before the court would find that there was an error sufficiently serious so as to have undermined due process."

There were several sub-arguments that fell under argument (2), all of which failed. The most interesting argument relates to the quantum of the claim (which topic we also discuss in our final section). In its notice of arbitration the defendant had requested:

> "a direction pursuant to Article 42 that the arbitration be conducted in accordance with the Expedited Procedure ... The amount in dispute ... well below the monetary threshold of HKD 25m set by the HKIAC.[6] It follows that the matter falls under Article 42.1(a)."

The plaintiff argued, without citing authority, that the defendant should have on at least two occasions informed HKIAC that the Expedited Procedure was no longer appropriate. The judge disagreed and held:[7]

> "... even within the 'streamlined' Expedited Procedure, the Tribunal was meticulous and careful in the process, even disallowing substantial parts of the Defendant's claim without any input by the Plaintiff. ... this complaint does not come close to having the character of precipitating a substantial injustice which is shocking to the court's conscience."

A secondary argument related to the alleged adduction of without prejudice communication also did not persuade the judge who found:[8]

> "the Tribunal is an experienced barrister and I have no doubt that she was able to put any reference to without prejudice communications out of her mind. In any event, as pointed out above, the Plaintiff has not adduced into evidence what it considers to be without prejudice material."

> In a situation where a respondent does not participate, the tribunal may need to make an impartial and independent assessment of all arguments and evidence presented by the participating party to satisfy themselves that the claims of the participating party are well founded in fact and in law

Arguments 3 and 4 related to the tribunal's invitation for further submissions from the parties in the event that she was not minded to grant declaratory relief (for specific performance) and eventually led to an additional significant head of claim being awarded. The plaintiff's complaints in respect of these arguments were formulated in a number of different ways none of which succeeded.

5 HCCT 13 of 2015, 15 September 2015, para 1(6).
6 As we discuss below, the HKIAC has mentioned it is considering increasing this limit.
7 At paras 4.15 to 4.16.
8 At para 4.33.

The plaintiff was ordered to pay the defendant the costs of the originating summons application (and ancillary applications) on an indemnity basis.

As mentioned above, the judgment may be reassuring to arbitrators. In a situation where a respondent does not participate, the tribunal may need to make an impartial and independent assessment of all arguments and evidence presented by the participating party in order to satisfy themselves that the claims of the participating party are well founded in fact and in law[9]. This can, especially in complicated cases, lead to the claimant producing several consecutive rounds of submissions and evidence. The court also noted approvingly that the tribunal did not award exactly the relief sought:

"It is pertinent to note that, although the Plaintiff did not participate in the Arbitral Proceedings, the Tribunal disallowed two substantial claims made ... Even in respect of the Non-Delivery Claim, the sum awarded was significantly less than that originally claimed by the Defendant, upon clarification requested by the Tribunal's own initiation".[10]

Is there a dispute? "It takes two to tango"

The Hong Kong Court of Appeal's judgment in *CMBICDHAW Investments Ltd v CDH Fund V Ltd Partnership and Others*[11] has an amusing overture:

> "It is well settled that it takes two to tango. *The question which arises in this appeal is whether it also takes two to create a 'dispute'*, capable of giving jurisdiction to an arbitrator to resolve that dispute."[12]

The short answer is: yes. As "has become the usual practice in the context of challenges to arbitration awards"[13] in Hong Kong costs were awarded against the unsuccessful defendants on an indemnity basis.

The key facts were that there was an ICC arbitration agreement in an investment agreement (in a company specialised in Chinese meat production, sales and processing) made between three parties (Fund, Cattle and CMB). Fund and Cattle (plus three non-contracting parties) commenced arbitration claiming a declaration of non-liability to CMB. CMB, meanwhile asserted claims against the non-contracting parties in High Court litigation but never asserted any liability of Fund and Cattle (for which they sought the negative declaration of non-liability).

CMB objected to the jurisdiction of the arbitrator as regards: (1) Fund and Cattle's claim, on the basis that there was no "dispute" to be resolved; and (2) as regards the non-contracting parties, on the basis that they were not parties to the arbitration agreement. The arbitrator declined to rule on jurisdiction as preliminary threshold question. While, in his final award, the arbitrator agreed that there was no jurisdiction over the claim asserted by the non-contracting parties, he decided that there was jurisdiction over the claim made by Fund and Cattle, and granted a declaration of non-liability. CMB then applied to court under section 81 of the Arbitration Ordinance (ie article 34 of the UNCITRAL Model Law) to set aside that part of the award (and some other paragraphs of it), on the basis that it was made without jurisdiction and/or was contrary to public policy.

The case was originally heard de novo as *CMB v Fund and Others*[14] before Mimmie Chan J. She pointed out the arbitrator's apparent error – in conflating whether there is a dispute with whether there was a legitimate interest in seeking relief in the form of a negative declaration – and agreed that the arbitrator had no jurisdiction. The public policy point was not considered. Fund and Cattle then obtained leave to appeal and the Court of Appeal duly heard the appeal again approaching the jurisdiction question de novo: was there "a 'dispute' between Fund and Cattle on the one hand and CMB on the other – either at the time of the commencement of the arbitration and/or at the time the Arbitrator came to write his Award"?[15]

The Court of Appeal agreed with Mimmie Chan J that the arbitrator did not have jurisdiction having first summarised the applicable principles as follows:[16]

> "(1) In the arbitration context, the term 'dispute' should be construed inclusively and not overly legalistically.

[9] Paragraph 3(b). See "International Arbitration Practice Guideline: Party Non-Participation", Chartered Institute of Arbitrators, www.ciarb.org/media/iwpng5qv/9-party-non-participation-2015.pdf.
[10] Paragraph 1.14.
[11] [2024] HKCA 516.
[12] Emphasis added.
[13] Paragraph 88.
[14] [2023] HKCFI 760.
[15] [2024] HKCA 516 at para 2(26).
[16] Paragraph 53.

(2) For a 'dispute' to exist, it is unnecessary for there to be a 'claim' in the sense of a legal claim or legal cause of action asserted by one party against the other.

(3) Various phrases have been adopted in previous authorities to identify the sufficiency of existence of a 'dispute', such as 'assertion or adoption of a position by one party which is expressly or by implication rejected or at least not accepted by the other' and 'a difference of opinion about the central issues'.

(4) Therefore, there must be something in the nature of an assertion by one party, and a situation in which the parties neither agree nor disagree about the true position is not one in which there is a dispute.

(5) Further, some cases identified that silence in the face of a claim or assertion does not raise a dispute, as what is required is a rebuttal or denial of the claim or assertion.

(6) The phrase 'arising out of or relating to' is to be given a broad construction, and 'relating to' has a wide meaning intended to convey some connection between two subject matters.

(7) The time for determining whether a 'dispute' has arisen is as at the time of the commencement of the arbitration, when the arbitrator's jurisdiction is invoked, because it is the existence of the dispute which engages that jurisdiction.

(8) In other words, it must be possible to formulate the 'dispute' which is said to engage the jurisdiction.

(9) A 'dispute' may arise and continue to exist, unless there is a clear and unequivocal admission of both liability and quantum."

In addition, the Court of Appeal considered: "the relevant parts of the Award in conflict with the public policy of Hong Kong". While it accepted that the public policy ground in section 81/article 34(2)(b)(ii) of the Model Law is "not a 'catch-all' provision to be used whenever convenient" but rather is "limited in scope and sparingly applied" where there is "something which is contrary to fundamental conceptions of morality and justice", the Court of Appeal was persuaded that there had been a conflict within the award with the public policy of Hong Kong, that would (in addition to the jurisdiction point) lead to the setting aside of the parts of the award set aside. It commented[17]:

> "it is unfortunate that the Arbitrator – even after having recognised that he need not decide anything on the evidence – went on to give a declaration that the allegations made in the HCA were false, and further offered his 'notes' as potentially providing 'some assistance in' the HCA on the matters he thought not necessary for him to decide. With respect, that at least risked giving the impression that the Arbitrator was seeking to 'poison the well'."

Has the alternative dispute resolution mechanism clause been superseded?

Tyson International Co Ltd ("TICL") is a captive insurer[18] for Tyson (a multinational food company that processes, sells and markets meat) and was reinsured with various reinsurers including Partner Re and GIC. There was a fire and TICL paid claims whereas reinsurers resisted (eg GIC on the grounds of mis-representation and the rescission remedy). As a result, the English courts first had to consider interesting jurisdictional preludes.

In *Tyson International Co Ltd v Partner Reinsurance Europe SE*[19] Stephen Houseman KC sitting as judge in the High Court concluded that the dispute resolution provisions in the standard "Market Reform Contract" ("MRC") (namely English law and the exclusive jurisdiction of the English court) were superseded by those contained in a subsequent document ("Facultative Certificate" or "Market Uniform Reinsurance Agreement") which provided for New York law and arbitration issued eight days later. Accordingly, he granted a stay of the action begun by Tyson in the Commercial Court pursuant to section 9 of the Arbitration Act 1996 (and refused to grant an anti-arbitration injunction).

The Court of Appeal agreed:[20] "... as Lewis LJ put it in argument, the parties began by playing cricket but then switched to baseball".[21]

Similar questions arose in respect of reinsurance policies issued to TICL by GIC. But there was an important difference: in the GIC cases the conflicting documents also included the following clause "RI slip [ie, the Market Reform Contract] to take precedence over reinsurance

[17] Paragraph 84.

[18] A captive insurer is formed to provide risk mitigation services for its parent company or related entities.
[19] [2023] EWHC 3243 (Comm); [2024] Lloyd's Rep IR 279.
[20] [2024] EWCA Civ 363; [2024] Lloyd's Rep IR 633.
[21] Paragraph 64.

certificate in case of confusion". In *Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd*,[22] in considering whether it was appropriate to continue an interim anti-arbitration injunction restraining New York proceedings, Christopher Hancock KC sitting as High Court Judge continued an interim anti-arbitration injunction pending any application to be made by GIC challenging the jurisdiction of the English court, including any application made under section 9 of the Arbitration Act 1996. This was confirmed in a 2025 decision (by Mr Nigel Cooper KC sitting as High Court judge).[23] Christopher Hancock KC had read the afore-cited clause as a "hierarchy clause" whereas in 2025 Mr Nigel Cooper KC preferred the term "confusion clause". Mr Cooper KC considered that the term "confusion" encompasses both uncertainty and inconsistencies within the contractual terms.[24] He found "that the Confusion Clause is to be construed as a clause which gives precedence to the terms of the MRC in the event that there is confusion or inconsistency between the terms of the MRCs and the terms of the Facultative Certificates".[25]

While GIC tried to argue that that the two sets of dispute resolution provisions could be reconciled (either because one clause was a *Scott v Avery* clause or because the jurisdiction clause could be read as giving the English courts a supervisory jurisdiction in relation to the New York arbitration).[26] Mr Cooper KC disagreed:

> "... one can anticipate experienced insurance professionals such as the individuals working for GIC and TICL entering reinsurance contracts which provide either for dispute resolution under English law before the courts of England and Wales or dispute resolution under the law of New York before a New York arbitration tribunal with the New York courts having supervisory jurisdiction. What seems to me extremely unlikely is that such insurance professionals would agree that their disputes should be resolved by arbitration in New York with the courts of England and Wales exercising a supervisory jurisdiction and the courts of the United States also having a residual jurisdiction."[27]

In Singapore, in *CNA v CNB and Another*[28] the appellant sought to set aside a partial award rendered by an ICC tribunal. CNA, contended partial awards should be set aside under article 34(2)(a)(i) (incapacity) and/or (ii) (notice) of the UNCITRAL Model Law, as enacted in the International Arbitration Act 1994 (2020 Rev Ed) arguing that the tribunal had no jurisdiction because the ICC Clause, which purportedly gave it jurisdiction, had been superseded by a SHIAC Clause. The original arbitration agreement, contained in a software licencing agreement, dated 2010 read:

> "This Agreement shall be governed and construed by in accordance with the laws of Singapore. All disputes arising under this Agreement shall be submitted to final and binding arbitration. The arbitration shall be held in Singapore in accordance with the Rules of Arbitration of the International Chamber of Commerce."

A 2017 extension agreement contained the following:

> "Amendment to Disputes, Governing Law. The Original Software Licensing Agreement, each of the Amendments, and this Agreement shall be governed and construed by in accordance with the laws of People's Republic of China. All disputes arising under either the Original Software Licensing Agreement, any of the Amendments or this Agreement shall be submitted to final and binding arbitration to Shanghai International Arbitration Centre ('SHIAC'). The arbitration shall be held in Shanghai, PRC in accordance with the Rules of SHIAC."

The Court of Appeal rejected the appeal effectively for two reasons. The first had to do with whether CNA had validly entered into the extension agreement. It found CNA was in breach of fiduciary duty (arising out of the contractual matrix) to CNB in entering into the 2017 extension agreement. Secondly it noted that the ICC arbitration had already been commenced when the 2017 extension agreement was executed and suggested that:

> "The haste and secrecy with which CNA acted in entering into the 2017 Extension Agreement in the circumstances found by the SICC indicated a purpose of supporting a jurisdictional objection to the 2017 ICC Arbitration."[29]

[22] [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609.
[23] [2025] EWHC 77 (Comm); [2025] Lloyd's Rep IR 182.
[24] Paragraphs 99 to 100.
[25] Paragraph 109.
[26] This argument was based for example on *Sul América Cia Nacional de Seguros SA v Enesa Engenharia SA*, a decision of Cooke J at [2012] 1 Lloyd's Rep 275, affirmed by the Court of Appeal at [2012] 1 Lloyd's Rep 671. The argument made by GIC was that in *Sul América* the High Court and Court of Appeal saw no difficulty in concluding that a policy condition which provided for exclusive jurisdiction of the Brazilian courts and Brazilian law did not also mean that an arbitration agreement mandating London arbitration governed by English law should not be given effect. This is in accordance with "the strong legal policy in favour of arbitration".
[27] Paragraph 115.
[28] [2024] SGCA(I) 2.
[29] Paragraph 46.

The Court of Appeal found:[30]

> "As a matter of construction, the language of the dispute resolution clause in the 2017 Extension Agreement was not apt to remove the jurisdictional foundation previously agreed in the SLA between the parties to the 2017 ICC Arbitration. To affect an arbitration that was already afoot, cl 2 would have needed to be explicit in its terms; but that plainly was not done, presumably because it would have shone the light on precisely what CNA was trying to do – namely to fabricate a jurisdictional objection. Hence, for this reason also, even if it had not breached its fiduciary obligations to CNB, CNA could not have succeeded on the jurisdictional challenge based on the new dispute resolution provision."

Who decides – the tribunal or the court?

Normally a tribunal rules on its own jurisdiction (eg under Kompetenz-Kompetenz). For example, section 30 of the English Arbitration Act 1996 enables the tribunal to determine its own jurisdiction subject to the right of a party to challenge such a decision under section 67. Section 32 contains a derogation and reads:

> "32 Determination of preliminary point of jurisdiction.
>
> (1) The court may, on the application of a party to arbitral proceedings (upon notice to the other parties), determine any question as to the substantive jurisdiction of the tribunal. A party may lose the right to object (see section 73).
>
> (2) An application under this section shall not be considered unless—
>
> (a) it is made with the agreement in writing of all the other parties to the proceedings, or
>
> (b) it is made with the permission of the tribunal *and* the court is satisfied—
>
> (i) that the determination of the question is likely to produce substantial savings in costs,
>
> (ii) that the application was made without delay, and
>
> (iii) that there is good reason why the matter should be decided by the court."

[30] Paragraph 48.

In *Barclays Bank plc v VEB.RF*,[31] in a dispute between a UK and a Russian bank in relation to ISDA currency swaps impacted by sanctions, the Commercial Court concluded that it could exercise its rarely invoked power under section 32 to determine the jurisdiction of an LCIA sole arbitrator (a sole King's Counsel).

While the arbitrator had granted permission, the court nonetheless also had to apply the above test:

> "... the court is not a rubber stamp of approval for the arbitrator's decision. Even where permission is given, the judge will examine the issue afresh giving such weight to the arbitrator's decision as the judge considers appropriate in the circumstances. If an arbitrator has been too easily persuaded on the cost issue, for example, it is highly unlikely that would influence the judge to reach a similar conclusion, quite simply because the judge approaches the issue afresh."[32]

As regards the applicable principles, obiter comments in *Armada Ship Management (S) Pte Ltd v Schiste Oil and Gas Nigeria Ltd*,[33] a judgment on a paper application with submissions from only one party, were considered helpful (albeit non-binding):

> "The fundamental point that emerges from this authority and those referred to in it is that whether the statutory criteria set out in section 32(2) are satisfied is a fact-sensitive question which has to be resolved by reference to the particular facts of each and every case where the question arises."[34]

On the facts, the judge independently agreed that the court should decide jurisdiction:

> "... disposing of the jurisdiction issue now provides finality, eliminates substantial additional costs, eliminates the risk of costly and time-consuming issues on enforcement, and delivers substantial content to the contractual obligation concerning exceptional urgency. Given my conclusions, the conclusion of the tribunal to similar effect in the particular circumstances of this case add nothing to the conclusions I have already reached."[35]

The virtual certainty of a section 67 appeal was (as we discuss further below) an important factor.

[31] [2024] EWHC 2981 (Comm); [2025] 1 Lloyd's Rep 59.
[32] Paragraph 19.
[33] [2021] EWHC 1094 (Comm); [2021] 2 Lloyd's Rep 329.
[34] Paragraph 14.
[35] Paragraph 28.

Scope of arbitration clauses – can tort claims be covered?

The Singapore Court of Appeal in *COSCO Shipping Specialized Carriers Ltd v PT OKI Pulp & Paper Mills and Others*[36] contains helpful analysis on how to approach this question and how to apply the "closely knitted test". The issue that arose is that a trestle bridge was damaged by the vessel (an allision) causing significant loss to the bridge owner which issued proceedings in Indonesia. The arbitration was brought under contracts of carriage (namely bills of lading issued to the shipper) that were issued in the context of the vessel having been chartered to a charterer and sub-chartered (to the Indonesian company which owned the mill). As a matter of law, the relevant dispute resolution clause was incorporated (into the bill of lading) by reference from the head charterparty. It provided for "any dispute arising out of or in connection with this Contract" to be referred to SIAC arbitration. The question was whether tort claims were covered and whether the Singapore court could issue an anti-suit injunction to restrain the Indonesian proceedings. The High Court said no; the Court of Appeal said yes.

The Court of Appeal's view of the case was that:

> "... it was evident that the tortious claim, the contractual defence of negligent navigation and the cross-claim for breach of the Safe Port Warranty all shared a common connection – namely, what was the cause of the allision? The answer to that common question had a direct impact on the competing claims and defence."[37]

It was not relevant to ask – as had the High Court judge – whether the claim was causally connected to the legal relationship under the bills of lading:

> "The 'connection' inquiry required an examination of the nature of the tortious claim in tandem with the contractual defence and not the contracting capacities of the parties. The fact that [OKI's] was brought in its capacity as a jetty owner and not as a shipper did not change the fact that the allision occurred in the performance of the contract of carriage which also provided for the contractual defence of 'errors of navigation'."[38]

[36] [2024] SGCA 50.
[37] Paragraph 99.
[38] Paragraph 100.

Pathological clauses – are they salvageable?

Unfortunately, dispute resolution clauses (including arbitration clauses) are often "midnight clauses" which often causes problems. The term pathological clause (or clause pathologique) was first coined by Frédéric Eisemann, a former Secretary-General of the ICC Court of Arbitration, in 1974 to describe arbitration clauses that fail to achieve their object. As the following case illustrates, in pro-arbitration jurisdictions like Hong Kong, England and Singapore, the courts tend to do their best to uphold imperfect arbitration clauses.

In *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd and Another*,[39] Mimmie Chan J again considered what happens if the chosen arbitration institution does not exist or has ceased to exist. The defendant had applied to set aside a default judgment (and garnishee order to show cause) against it and to stay the proceedings to arbitration under section 20 of the Arbitration Ordinance. The stay application was determined first (in the defendant's favour in spite of the delay). The context was a Chinese language investment management agreement whereby the defendant was to manage the investments of the plaintiff (of approximately US$30 million) and which provided inter alia (as translated):

> "11.2 The *courts of Hong Kong shall have exclusive jurisdiction* over the parties to this Agreement.
>
> 11.3 Any and all dispute(s) arising out of or in connection with this agreement shall be resolved by friendly negotiations between the parties insofar as possible. Both parties agree to negotiate in good faith to resolve any dispute(s). If, within 7 days of one party notifying the other of any dispute(s), the parties fail to resolve any such dispute(s), the *dispute(s) shall be submitted to the relevant legally authorised body in Hong Kong for arbitration in accordance with the arbitration rules presently in force at the time of submission to arbitration*. The place of arbitration shall be Hong Kong and the language for arbitration shall be Chinese or English. The arbitral award is final and binding on both parties. During the period of dispute resolution, the parties shall continue to perform this agreement save for the disputed matters."

[39] [2024] HKCFI 2710.

The court resolved the case having approvingly cited her previous case: *Chimbusco International Petroleum (Singapore) Pte Ltd v Fully Best Trading Ltd*:[40]

> "Lucky-Goldstar International (HK) Ltd v Ng Moo Kee Engineering Ltd [1993] 1 HKC 404 is clear authority that *where the parties have clearly expressed an intention to arbitrate, the agreement is not nullified even if they chose the rules of a non-existent organizations.* In the present case, the parties expressed the manifestly clear intention to have the dispute submitted to arbitration in Singapore. Such agreement is capable of being performed in Singapore, and it is for the tribunal to decide on its own jurisdiction, and on the rules to be adopted. If necessary, the parties can apply to the Singapore court to appoint the arbitrator(s)."

Exclusive jurisdiction clauses (in addition to arbitration clauses)

In *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd and Another*[41] (which we have discussed above) the court also held that the conflict between clauses 11.2 and 11.3 (see above) was not irreconcilable:

> "Whereas clause 11.3 is an expression of the parties' intention to refer disputes to arbitration in Hong Kong, article 11.2 in providing for the parties' submission to the exclusive jurisdiction of the Hong Kong courts can be reconciled to mean that the Hong Kong court is to have supervisory jurisdiction over the arbitration in Hong Kong."[42]

The court reached this conclusion having discussed several decided Hong Kong and English law cases as authority: *Lee Cheong Construction & Building Materials Ltd v Incorporated Owners of The Arcadia (IO)*;[43] *Paul Smith Ltd v H&S International Holding Inc*;[44] *Sul América Cia Nacional de Seguros SA v Enesa Engenharia SA*;[45] *Arta Properties Ltd v Li Fu Yat Tso*;[46] *Bluegold Investments Holdings Ltd v Kwan Chun Fun Calvin*;[47] and *Neo Intelligence Holdings Ltd v Giant Crown Industries Ltd*.[48]

Readers may note that a similar argument failed in *Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd*[49] (discussed above) where GIC unsucessfully argued that the English court could supervise a New York seated arbitration (ie in a different jurisdiction) and where there was also a hierarchy clause.

Multiple party/multiple contract arbitrations

Multi-party arbitration involves more than two parties. In multi-contract arbitration the dispute arises out of two or more contracts which are connected to varying degrees, and there are arbitrations which are both multi-party and multi-contract.[50] It is often cheaper and faster for claims to be heard as one. That way awards should be consistent.

However, multiple related contracts with conflicting dispute resolution clauses risk instead causing increased costs, delays and inconsistent awards/judgments. Parties should carefully think through how dispute resolution clauses work – which is not necessarily straightforward if more than two parties are involved:

> "Courts and arbitral tribunals, in absence of an agreement of the *parties to that effect will generally refuse to unify in one proceeding under one arbitration clause all the disputes arising under various agreements, when they contain truly incompatible arbitration clauses or jurisdictional clauses unless it undoubtedly appears that all the disputes fall within the scope of the relevant arbitration clause.*"

Helpfully, the HKIAC has on 20 January 2025 issued a Practice Note on Compatibility of Arbitration Clauses under the HKIAC Administered Arbitration Rules[51] by way of non-binding guidance on how the HKIAC generally applies articles 28.1(c) and 29 in practice. Paragraph 3.1 thereof is surprisingly simple:

> "Where a transaction involves more than one contract, parties are advised to use HKIAC's model arbitration clause in each contract and to provide for the same seat, number of arbitrators, law governing the arbitration agreement and language

[40] [2016] 1 HKC 149.
[41] [2024] HKCFI 2710.
[42] Paragraph 32.
[43] [2012] HKLRD 975.
[44] [1991] 2 Lloyd's Rep 127.
[45] [2012] EWHC 42 (Comm); [2012] 1 Lloyd's Rep 275.
[46] HCA2741/1998, 2 June 1998.
[47] HCA1492/2015, 4 March 2016.
[48] HCA 1127/2017, 27 November 2017.
[49] [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609.
[50] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 2, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[51] www.hkiac.org/sites/default/files/ck_filebrowser/Practice%20Note%20on%20Compatibility%20of%20Arbitration%20Clauses_EN.pdf.

of the arbitration in each clause. Using HKIAC's model arbitration clause will maximise the chances that the clauses will be compatible."[52]

Below we set out some examples of the kinds of problems conflicting dispute resolution clauses caused just in 2024 which we imagine inspired the HKIAC to issue its guidance. By way of context, article 29 of the 2018 HKIAC Administered Arbitration Rules reads:

> "Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:
>
> (a) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration; and
>
> (b) the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions; and
>
> (c) the arbitration agreements under which those claims are made are compatible."

In *SYL and Another v GIF*,[53] in the context of an application to set aside an interim arbitral award, the Hong Kong court had to consider where three agreements were compatible. The problem can be described in a table:

	P1	P2	D	Two other mortgagors	Rules	Number of arbitrators
Loan Agreement	X	X	X	–	HKIAC	3
Security Agreement 1 (January Deed)	X	X	X	–	*"dispute resolution provision in the Loan Agreement applies mutatis mutandis"*	
Security Agreement 2 (July Deed)	X	–	X	X		

The dispute resolution clause in the Loan Agreement read:

> "Each of the parties hereto irrevocably … agrees that any dispute or controversy arising out of, relating to, or concerning any interpretation, construction, performance or breach of this Agreement, shall be settled by arbitration to be held in Hong Kong which shall be administered by the Hong Kong International Arbitration Centre ('HKIAC') in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules … There shall be three (3) arbitrators, with *one arbitrator to be appointed by the Borrowers and one arbitrator to be appointed by the Lender. If the aforesaid two arbitrators fails to agree on the third arbitrator, the HKIAC Council shall select the third arbitrator, who shall be qualified to practice law in Hong Kong* …"

The issue that arose is that the appointment mechanism did not work: three arbitrators had to be appointed whereas in all agreements the parties acted in different capacities (hence the need to work out what "mutatis mutandis" meant) and – another complication – Security Agreement 2 had different parties. The judge found as follows:

> "there is a clash in the appointment procedure in the Loan Agreement and the January Deed on the one hand, and the July Deed on the other hand:
>
> (1) Under the Loan Agreement and the January Deed, Ps would have the right to designate an arbitrator. The Other Mortgagors have no say.
>
> (2) However, under the July Deed, it is P1 and the Other Mortgagors who would have the right to designate an arbitrator. P2 has no say."[54]

The judge found that since the three agreements "provide for different appointment procedures, the Arbitration Agreements are not compatible with each other",[55] and set aside the interim award. He came to the conclusion on the basis that consolidation infringes party autonomy (and party consent); infringes the parties' contractual rights and there are valid concerns over whether D may gain an unfair advantage in the arbitration by refusing Ps a right to designate an arbitrator of Ps' choice.

It is worth underlining that the case related to 2018 Rules. As we further discuss below, new Administered Arbitration Rules were released by the HKIAC in 2024 which inter alia contain the below additional subsection to article 29:

> "29.2 Where HKIAC decides pursuant to Article 19.5 that the arbitration has been properly commenced under this Article 29, the parties shall be deemed to have waived their rights to designate an arbitrator.

[52] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 23, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[53] [2024] HKCFI 1324.
[54] Paragraph 31.
[55] Paragraph 36.

HKIAC shall appoint the arbitral tribunal with or without regard to any party's designation."

It is possible, however, that the above new provision would not solve the problem. In particular, it has already been argued[56] that compatibility of the arbitration agreements remains a threshold issue which must be satisfied in order for a single arbitration under multiple contracts to have been validly commenced in the first place. (The relevant section of the rules, as renumbered article 29(1)(c) remains unchanged.)

> Multiple related contracts with conflicting dispute resolution clauses risk causing increased costs, delays and inconsistent awards/judgments. Parties should carefully think through how dispute resolution clauses work – which is not necessarily straightforward if more than two parties are involved

In *AAA and Others v DDD*[57] the Hong Kong Court of First Instance set aside an arbitral tribunal's decision on jurisdiction. The context was a dispute triggered by borrower default. The court found that the tribunal had incorrectly assumed jurisdiction over disputes related to a Promissory Note despite conflicting arbitration clauses in related contracts including:

- Loan agreement (between lender; borrower; and guarantors) subject to HKIAC arbitration with a three-arbitrator tribunal.
- Promissory note (issued by the borrower to the lender; signed by borrower and guarantors) also subject to HKIAC arbitration but without specifying the number of arbitrators.
- Amendment agreement to the loan agreement which incorporated the arbitration clause of the loan agreement.

Before reaching its decision, the court (Anselmo Reyes SC) tried – unsuccessfully – to reconcile inconsistent arbitration clauses applying the "centre of gravity" approach (*Trust Risk Group SpA v AmTrust Europe Ltd*[58]) which we further discuss below.

The Singapore decision of *Sacofa Sdn Bhd v Super Sea Cable Networks Pte Ltd and Another*[59] raised a number of issues on the interpretation of an arbitration clause where there had been a partial carve out of issues under a separate agreement (a lease). The court's approach to the question whether a decision of an enforcing court had preclusive effect where a later challenge to the award was made in the curial court is also interesting.

Sacofa was a Malaysian telecommunications infrastructure supplier which operated a cable landing station. Sacofa and Super Sea entered into a Strategic Alliance Agreement (SSA) to build and operate various facilities including on the landing station. The SSA contained an arbitration clause providing for SIAC arbitration "for a dispute (of any kind whatsoever) [arising] between the Parties in connection with, or arising out of, the Agreement or the performance of the obligations of the Parties". SEAX Malaysia Sdn Bhd (R2) was not a party to the SSA, but was nominated as the licensee to which the built facilities would be transferred under the SSA. Per the SSA, Sacoma leased a part of its land to Super Sea, the lease providing for disputes to be subject to the exclusive jurisdiction of the Malaysian courts in respect of "validity, construction and performances" under the lease. The relationship soured when the claimant re-entered the land on which the system was to be built. The claimant claimed that Super Sea did not have the requisite regulatory licences to undertake the project and sued before the Malaysian courts.

The Malaysian court refused Super Sea and R2's application to stay in favour of arbitration on the ground that the dispute arose under the lease. Super Sea and R2 commenced arbitration against under the SSA (in conversion). The tribunal ruled that it had no jurisdiction over R2 because it was not a party to the arbitration clause, but held that Super Sea was entitled to an order requiring the delivery up of the built facilities to R2. Sacofa applied to the Malaysian court for an anti-arbitration injunction pending the resolution of the proceedings in Malaysia, arguing that the issues submitted to arbitration overlapped with those before the court. That application was dismissed without written reasons, as was an appeal.

[56] www.herbertsmithfreehills.com/notes/arbitration/2024-posts/hong-kong-court-upholds-jurisdiction-challenge-due-to-incompatible-arbitration-agreements
[57] [2024] HKCFI 513.
[58] [2015] EWCA Civ 437; [2015] 2 Lloyd's Rep 154.
[59] [2024] SGHC 54.

A month later Super Sea was granted an order from the Kuala Lumpur High Court registering and enforcing the award. Sacofa appealed, and failed – pending the appeal – to obtain a stay of enforcement.

The Singapore High Court refused to set aside the SIAC award. The set-aside application was based on two arguments: (i) that the tribunal had exceeded its jurisdiction; and (ii) that the award violated the governing Malaysian law, which was contrary to Malaysia's public policy and in turn also contrary to Singapore's public policy.

The Singapore court considered and answered three questions as follows.

(1) Whether the "centre of gravity" of the claim for conversion lay in the SAA or the lease; whether the claim for conversion was inextricably linked to the lease (and cannot arise solely from the SAA), and; whether the remedy of delivery-up was within the tribunal's jurisdiction

Where a dispute potentially falls within the ambit of either dispute resolution clause the test is which dispute resolution clause the parties objectively intended to apply. To determine this, the court must locate the "centre of gravity of the dispute" or the "pith and substance of the dispute as it appears from the circumstances in evidence" (*Oei Hong Leong v Goldman Sachs International*[60]). The court held that the centre of gravity of the claim for conversion lay in the SAA. The claim for conversion and the consequential relief of delivery-up arose out of the SAA, and hence was within the tribunal's jurisdiction.

(2) Whether the award was in furtherance of an illegal act under Malaysian law and hence against the public policy of Singapore, and whether the doctrine of res judicata applied to estop the claimant from raising its illegality objections

There was no evidence of an illegal act under Malaysian law:

> "The issue of foreign public policy is not a matter that Singapore courts can decide of its own accord and without evidence. On the latter, even if the Award were contrary to Malaysian public policy, it is trite law that the Public Policy Ground is only satisfied in exceptional circumstances.
>
> ...
>
> The extended doctrine of res judicata operates to estop a party from raising matters that (a) are covered by an arbitration agreement, (b) are arbitrable, and (c) could and should have been raised by one of the parties in an earlier set of proceedings that had already been concluded (*AKN and Another v ALC and Others and other appeals* [2016] 1 SLR 966 at [59]). Only the last element was disputed."[61]

The court found "the claimant could have raised the issue of illegality in the Arbitration but did not do so".[62]

Thus that even if the award fell under the Public Policy Ground, the claimant was estopped from raising its illegality objections to set aside the award.

(3) Under the doctrine of transnational issue estoppel, whether the claimant was estopped from raising its jurisdictional and/or illegality objections

The Court of Appeal in *Republic of India v Deutsche Telekom AG*[63] dealt with this doctrine in the context where an issue decided by a seat court was subsequently raised before the Singapore enforcement court. In that case the Court of Appeal also expressed a view on the reverse situation:

> "... We only observe that if the position to be taken is that transnational issue estoppel does apply in the context of international arbitration, then any *departure from that position when considering a prior decision of an enforcement court* would have to be grounded in principle, and that *may,* or may not, *lie in the policy that is reflected in the scheme for the judicial supervision and support of arbitral proceedings, which does place an emphasis on the seat court, and for the recognition and enforcement of awards*."[64]

The court found:

> "A distinction should be drawn between objections that specifically implicate the enforcement jurisdiction's own statutes, public policy and other domestic interests (eg, the alleged contravention of the CMA), and objections that do not (eg, the interpretation of the SAA and the LA). While the principle of comity has a greater weight in relation

[60] [2014] 3 SLR 1217.

[61] Paragraphs 54 and 59.
[62] Paragraph 61.
[63] [2023] SGCA(I) 10.
[64] Paragraph 92.

> to the former type of objections, the principle of party autonomy should be upheld in relation to the latter. To explain, the parties' choice of seat entails an implicit agreement to favour the supervisory jurisdiction of the seat court over the jurisdiction of the other enforcement courts (see Sundaresh Menon CJ, 'The Role of the National Courts of the Seat in International Arbitration', keynote address at the 10th Annual International Conference of the Nani Palkhivala Arbitration Centre (17 February 2018) at para 53). Hence, it is the seat court which ought to have a final say on that litigated objection. In this case, the claimant's jurisdictional objections were of a different nature from the illegality objections founded upon Malaysian law and public policy. Accordingly, I found that *transnational issue estoppel should not apply to the claimant's objection that the Tribunal acted in excess of his jurisdiction*."[65]

As we have seen in our above section ("Who are the parties"), where there are multiple contracts or parties, there is a risk that courts and tribunals reach inconsistent conclusions.

Court-mandated alternative dispute resolution

In *Halsey v Milton Keynes General NHS Trust*[66] Dyson LJ said that: "to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court". In 2024 the court had a chance to reconsider this. In November 2023, in *Churchill v Merthyr Tydfil County Borough Council*,[67] the English Court of Appeal held that a court can lawfully order the parties to court proceedings to engage in a non-court-based dispute resolution process (also known as alternative dispute resolution) provided that the order does not impair the essence of the claimant's right to a judicial hearing, and it is proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost. However, the judge did:

> "not believe that the court can or should lay down fixed principles as to what will be relevant to determining those questions. The matters mentioned by the Bar Council and Mr Churchill, and by the Court of Appeal in *Halsey* are likely to have some relevance. But other factors too may be relevant depending on all the circumstances. It would be undesirable to provide a checklist or a score sheet for judges to operate. They will be well qualified to decide whether a particular process is or is not likely or appropriate for the purpose of achieving the important objective of bringing about a fair, speedy and cost-effective solution to the dispute and the proceedings, in accordance with the overriding objective."[68]

It is helpful that the relatively young Singapore Convention on Mediation, which provides a harmonised framework for the enforcement and invocation of international settlement agreements resulting from mediation, is quickly being signed and coming into force in more and more countries

Halsey, which was viewed by many as a thorn in the side of mediation, was thus overruled. Unsurprisingly, *Churchill* led to a review of the Civil Procedure Rules (CPR) (which we discuss in the final "Trends" section under "Mediation") and it is looking likely that mediation will become more firmly integrated into the civil justice system.

While it is true that attempts to mandate parties to mediate can be counterproductive, prompts to consider ADR (that come to the attention of parties' C-suites) can be helpful. Similarly, it is helpful that the relatively young Singapore Convention on Mediation, which provides a harmonised framework for the enforcement and invocation of international settlement agreements resulting from mediation, is quickly being signed and coming into force in more and more countries.[69]

65 [2024] SGCA 54, para 74.
66 [2004] EWCA Civ 576.
67 [2023] EWCA Civ 1416; [2024] BLR 12.
68 Paragraph 66.
69 www.singaporeconvention.org/jurisdictions

Who are the parties?

The question of who the parties to an arbitration agreement can be complex especially in an international context.

"Arbitration is based on consent, generally express consent. Is it therefore possible for somebody that is not formally identified as a party in the contract containing the arbitration agreement (a non-signatory) to be still considered a part to it? We will see that it is possible by application of theories such as agency and representation, third party beneficiary, incorporation by reference, universal or individual transfer, estoppel, implied consent, community of rights and obligations, alter ego, piercing the corporate veil and also implied consent."[70]

Veil piercing and estoppel are theories often applied in the United States. Under English law (and Hong Kong and Singapore law) generally the doctrine of privity of contract applies. There, traditionally the parole evidence rule limits the ability to adduce of evidence on the intention of the parties. This makes it more difficult to apply the theory which Professor Hanatiau prefers to call "consent by conduct" or "implied consent" which has also been described as group of companies theory (applied for example in the United States, Canada, France, Switzerland, India, the Philippines and Bahrain).[71] Professor Hanotiau also notes that some civil law countries (eg Germany, Holland, Russia and the PRC) are more restrictive; with Germany and Holland for example considering that consent always has to be certain and thus cannot be implied from conduct.

In 2024 we noted the following cases on these subjects:

- In deciding an application seeking appointment of an arbitrator, the Indian Supreme Court gave a judgment clarifying the group of companies and composite transaction doctrines in *Ajay Madhusudan Patel and Others v Jyotrindra S Patel and Others*.[72] While SRG Group was not a signatory to a family arrangement agreement, the successful petitioner argued that SRG's active participation in negotiations and discussions on implementation made it a party to the arbitration agreement.
- In *Lakah et al v UBS AG et al*,[73] an attempt by Egyptian businessman Michel Lakah to set aside a 2018 ICDR award was rejected by the United States District Court for the Southern District of New York confirming its "strong presumption in favor of enforcing an arbitration award". The outcome also confirms New York corporate veil piercing laws can be applied by both arbitral tribunals and the courts to parties in New York arbitrations to bind individuals personally to an arbitration agreement, regardless of whether the individuals involved are foreign or domestic.[74]
- There have also been a couple of cases in England and Singapore in the context of anti-arbitration disputes which we discuss below including: *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*,[75] *London Steam-Ship Owners' Mutual Insurance Association Ltd v Trico Maritime (Pvt) Ltd and Others*[76] and *Asiana Airlines Inc v Gate Gourmet Korea Co Ltd and Others*.[77]

[70] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 3, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[71] Ibid, slide 18.

[72] Arbitration Petition No 19 of 2024, (SC) 727.
[73] No 07-CV-2799 (LAP), 2024 WL 4555701 (SDNY 22 October 2024).
[74] www.mayerbrown.com/en/insights/publications/2024/12/corporate-veil-piercing-remains-powerful-tool-in-new-york-seated-arbitrations
[75] [2024] EWHC 2843 (Comm).
[76] [2024] EWHC 884 (Comm).
[77] [2024] SGCA(I) 8.

Is the tribunal functus officio?

According to the traditional doctrine of functus officio, once a tribunal has issued its final award, its authority lapses. To allow de minimis changes nonetheless to be made to final awards, most arbitration laws and rules specifically contemplate the possibility of a party asking that the tribunal (in a limited way) correct, interpret, or supplement a rendered award (slip rule). Section 43 of Singapore's Arbitration Act prescribes three situations such namely: (a) to correct arithmetical mistakes in calculation or typographical errors in the award; (b) to provide interpretation on a specific point or portion of an award so as to provide greater clarity; or (c) to make an additional award dealing with claims which were presented during the arbitral proceedings, but which were omitted for some reason from the actual award.

In *Voltas Ltd v York International Pte Ltd*,[78] a major correction was requested after a final award had been issued. However, the Singapore Court of Appeal upheld the ruling of the High Court that an award made conditional on payment of damages by the award creditor to a third party was a *final award* and also *not* one that could be referred back to the arbitrator if there had been a dispute as to the amount paid.

In 2014 a sole arbitrator issued an award allowing some of the claims and counterclaims. However, the arbitrator noted Voltas had not actually paid certain sums claimed and might obtain a windfall if no payment was made. He discussed a legal authority[79] that held that, if a windfall is possible, it is open to a tribunal to adjourn the decision quantum or to make a quantum award on condition that money is paid. The arbitrator chose the latter option and made his orders conditional on Voltas actually making the payment, the amount of liability being capped at the amount paid. Thereupon York refused to pay because Voltas had not provided sufficient evidence that it had indeed paid.

Thus, Voltas applied to the arbitrator for a further award, to determine whether payment had been made and issued a fresh notice of arbitration claiming payment. York objected on the basis that: disputes in the notice of arbitration did not fall within terms of the arbitration agreement; and that the arbitrator had issued a final award and was functus officio. The arbitrator, however, issued a written ruling concluding that he had jurisdiction to make a further award: although there was no express reservation, it was nevertheless implicit. York commenced the proceedings seeking an order to the effect that the arbitrator was functus officio.

Both the High Court and the Court of Appeal agreed with York. The Court of Appeal confirmed that tribunal loses its jurisdiction to reconsider the merits of the parties' dispute, once it renders an award determining the issues. The award "was a final award in the third sense of *PT Perusahaan*. There was no substantive matter that was left undecided".[80] An implied reservation of jurisdiction is inconsistent with (article 43(4) of) the Arbitration Act.

Tribunals that would like to leave some matters (eg interest, costs or sanctions for failure to comply with an order) to be resolved by a subsequent award need to make expressly reservations (eg by designating the award as a "partial award" or adding a reservation to the operative part of the award).

Winding-up proceedings

As we discussed in our last review, when pursuing a straightforward commercial debt from a recalcitrant debtor, a creditor has two main options:

(1) commencing traditional proceedings and obtaining a judgment or an arbitration award (depending on the chosen forum in the contract) and then taking steps to enforce it via the courts against the debtor's assets, or;

(2) issuing a statutory demand and then (if unpaid), petitioning to wind up the debtor.

Winding up is a collective remedy for the benefit of all creditors, and absent special circumstances, it is the end of a company. When wound up, or liquidated, professional insolvency practitioners (usually specialist accountants) will take control of the company, collect in its assets, and pursue claims, as appropriate, on the company's behalf.

Ultimately, the liquidators, after deducting costs and certain statutory preferential payments, will distribute the company's assets pari passu (proportionately) among creditors according to their claims. Because of the severity of winding up, often the threat of insolvency proceedings (ie the sending of a statutory demand) can bring a recalcitrant debtor to the negotiating table quickly and cheaply.

[78] [2024] SGCA 12.
[79] *Biffa Waste Services Ltd v Maschinenfabrik Ernest Hese GmbH* [2008] EWHC 2210 (TCC).
[80] Paragraph 49, referencing *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2015] 4 SLR 364.

Contested winding up and arbitration

Prior to 2024, the leading decision regarding this topic (at least with respect to the law of England and Wales) was the Court of Appeal's decision *Salford Estates (No 2) Ltd v Altomart Ltd*.[81] In this case, the Court of Appeal held that if the debt in question was subject to an arbitration agreement and was disputed (or even "not admitted") then, save for in "wholly exceptional circumstances" any winding up-petition should be stayed. The court expressed concern that to hold otherwise would encourage parties to an arbitration agreement, as a "standard tactic", to bypass the arbitration agreement (and the intention of the Arbitration Act 1996) by presenting a winding up-petition to apply pressure on the alleged debtor. The approach set out and endorsed in *Salford Estates* was said to have represented a "new approach" whereby the parties are tightly held to the bargain laid out in the applicable arbitration agreement. This approach was generally viewed as being "pro-arbitration" as, while recognising the mandatory stay provisions were not triggered by the presentation of a winding-up petition, unless exceptional circumstances existed, required the court to exercise its discretion to stay the winding-up petition.

However, in *Sian Participation Corp (in liquidation) v Halimeda International Ltd*,[82] the Privy Council decided that Salford Estates was wrongly decided. Although the decision concerned the law of the British Virgin Islands, the Board issued a *Willers v Joyce* direction[83] to the effect that the decision in *Sian Participation* represents the law of England and Wales. The case concerned a US$226 million debt which, although denied by the company, was found not to be genuinely disputed. The Board held that:

> "... the correct test for the court to apply to the exercise of its discretion whether to make an order for the liquidation of a company where the debt on which the application is based is subject to an arbitration agreement or an exclusive jurisdiction clause and is said to be disputed is whether the debt is disputed on genuine and substantial grounds."[84]

In rejecting the approach endorsed in *Salford Estates* and reverting to the previously endorsed traditional approach, the Privy Council reasoned:

- that the negative covenant embodied in an arbitration agreement not to commence proceedings outside the arbitration agreement is not offended by the presentation of a winding-up petition;
- the pro-arbitration policies of the Model Law and the legislation enacting it are not infringed by a party to an arbitration agreement seeking to liquidate a debtor which fails to pay a debt; and
- "The clearest legislative signal about the boundary of the policy that a party to an arbitration agreement should arbitrate is the extent of the mandatory stay provision which implements art 8 of the Model Law ... A winding-up petition or similar application lies outside both that boundary and therefore the extent of the underlying policy."[85]

As explained further below, the rejection of the approach taken in *Salford Estates* means that there is a clear divergence between the courts of England and Wales, the British Virgin Islands and the Cayman Islands who favour the traditional approach and the courts of Hong Kong and Singapore, on the other, which have deviated from the traditional approach. Below we update the table we published last year.

[81] [2014] EWCA Civ 1575.
[82] [2024] UKPC 16; [2024] 2 Lloyd's Rep 65.
[83] *Willers v Joyce (No 2)* [2016] UKSC 44; [2018] AC 843.
[84] Paragraph 122.
[85] Paragraph 91.

	Traditional approach	New approach
England and Wales	*Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16; [2024] 2 Lloyd's Rep 65	
Hong Kong		*Re Guy Kwok-Hung Lam* [2023] HKCFA 9 *Simplicity & Vogue Retailing (HK) Co Ltd* [2024] HKCA 299 *Re Mega Gold Ltd; Re Man Chun Sing Matthew* [2024] HKCFI 2286
Singapore		*AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2020] SGCA 33 *BWG v BWF* [2020] SGCA 36 *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] SGCA 40; [2023] 2 SLR 554
British Virgin Islands	*Sian Participation Corp (in liquidation) v Halimeda International Ltd* [2024] UKPC 16; [2024] 2 Lloyd's Rep 65 *Jinpeng Group Ltd v Peak Hotels and Resorts Ltd* BVIHCMAP2014/0025, 8 December 2015, unreported	*Waterfront Property v Arius Litigation Funding* BVIHCM2023/0192, 27 March 2024, unreported
Cayman Islands	*Re BPGIC Holdings Ltd* 20 November 2023, unreported	

Hong Kong

In our last review we noted that there was no Court of Appeal authority on this point yet. There now is: In *Simplicity & Vogue Retailing (HK) Co Ltd*[86] the Court of Appeal upheld the discretion to wind up a company despite an arbitration clause. In so doing it confirmed that the principles regarding exclusive jurisdiction clauses laid down in the landmark decision by the Court of Final Appeal in *Re Guy Kwok-Hung Lam*[87] also apply to arbitration clauses.

After the Privy Council decision in *Sian Participation* (which we discuss above), in *Re Mega Gold Ltd; Re Man Chun Sing Matthew*[88] (heard together), the Hong Kong Court of First Instance held that it would nonetheless follow the Hong Kong approach as established in the Court of Final Appeal decision in *Re Guy Kwok-Hung Lam* and the Court of Appeal decision in *Simplicity & Vogue Retailing* as a matter of stare decisis.

Singapore

The High Court of Singapore commented on the contrasting positions of the English courts (as set out in the decision in *Sian Participation*) and the Singaporean courts (as set out in the decisions in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* and *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd*) in the decision in *Re Sapura Fabricaiton Sdn Bhd*.[89] Here the Abdullah J noted the contrasting positions between the two jurisdictions, observed that he was bound by the decisions in *AnAn* and *Founder Group* (which followed *Salford Estates*) but ultimately concluded that it was not necessary to resolve the matter in the case which was before him.

British Virgin Islands

Prior to the decision in *Sian Participation*, the leading BVI decision regarding this issue was the Eastern Caribbean Supreme Court of Appeal's decision in *Jinpeng Group Ltd v Peak Hotels and Resorts Ltd*.[90] In this judgment, the Court of Appeal firmly rejected the approach taken in *Salford Estates*, reasoning that the "statutory jurisdiction to wind up a company based on its inability to pay its debts as they fall due unless the debt is disputed on genuine and substantial grounds" is "too firmly a part of BVI law". The decision in *Sian Participation* endorses the ultimate conclusion of the Court of Appeal in *Jinpeng*.

[86] [2024] HKCA 299.
[87] [2023] HKCFA 9.
[88] [2024] HKCFI 2286.
[89] [2024] SGHC 241.
[90] BVIHCMAP2014/0025 (8 December 2015, unreported).

This is not to say, however, that there was no divergence within the BVI courts regarding the correct approach to be taken. In a decision published in the months prior to the decision in *Sian Participation*, Mangatal J in *Waterfront Property v Arius Litigation Funding*[91] relied in part on the basis of a belief that the Privy Council's earlier decision in *Familymart China Holding Ltd v Ting Chuan (Cayman Islands) Holding Corporation*[92] "although ... concerned with a winding-up petition under Cayman Law on just and equitable grounds ... made some very powerful pronouncements about the paramountcy of parties' agreements to arbitrate" declined to follow *Jinpeng*.

Cayman Islands

The Grand Court of the Cayman Islands is yet to publish a judgment concerning this topic following the publication of the decision in *Sian Participation*. However, given the similarities between the arbitration and insolvency regimes of the UK and the BVI which were considered in *Sian Participation* and those of the Cayman Islands and the weight that Privy Council's decision in *Sian Participation* will no doubt be given by the Grand Court, the decision in *Sian Participation* will almost certainly be found to represent the law of the Cayman Islands. Support for such a conclusion can be found in the Grand Court's prior decision in *Re BPGIC Holdings Ltd*[93] which was handed down in the intervening period between the Privy Council's decision in *Familymart China Holding v Ting Chuan* and its subsequent decision in *Sian Participation*. In *Re BPGIC Holdings Ltd*, Ramsay-Hale CJ refused to stay a winding-up petition based on a debt which was not genuinely or substantially disputed on the basis that the matter fell within the scope of an arbitration agreement.

Are damages available for breach of implied promise to honour award?

In the 2023 edition of this review we discussed the grounding and sinking of M/T *Prestige* off Spain and France in 2002 and how Butcher J confirmed awards of compensation granted by both arbitrators for contravention by the states of an equitable obligation to arbitrate (in an equal and opposite sum to the amount of the foreign judgment, effectively neutralising the judgment). We ended with a note of caution: "Given the amounts at stake, and fact that this is one of the first cases in which monetary remedies for breach of an equitable obligation were awarded, appeals are likely". This prediction was correct. The English Court of Appeal in *Kingdom of Spain v London Steam-Ship Owners' Mutual Insurance Association Ltd (The Prestige)*[94] has heard appeals from three judgments of Butcher J.[95] We leave aside the CJEU/Brussels and human rights appeals and focus below on Spain and France appealing against the ruling by Butcher J that Sir Peter Gross and Dame Elizabeth Gloster (as arbitrators) had not erred in law by awarding equitable compensation for failure to comply with the obligation to arbitrate.[96]

The Court of Appeal agreed with Butcher J that an injunction could not be granted against Spain or France as the ban on such relief being given by a court under section 13(2)(a) of the State Immunity Act 1978 is clear. Section 48(5) of the Arbitration Act 1996 provides that a "tribunal has the same powers as the court ... to order a party to do or refrain from doing anything". However, the Court of Appeal also found that it follows that that if a court does not have the power to grant relief, neither do arbitrators. That was confirmed by *UK P&I Club NV v Republica Bolivariana de Venezuela (The RCGS Resolute)*.[97] Therefore, the arbitrators' views in *The Prestige* were incorrect:

> "The judge and the Arbitrators were wrong to think that equitable compensation could be granted in this case, and the Arbitrators were wrong to think that equitable damages under section 50 could be granted in lieu of or in substitution for an injunction."[98]

[91] BVIHCM2023/0192 (27 March 2024, unreported).
[92] [2023] UKPC 33; [2023] 2 Lloyd's Rep 529.
[93] 20 November 2023, unreported.
[94] [2024] EWCA Civ 1536; [2025] 1 Lloyd's Rep 115.
[95] [2021] EWHC 1247 (Comm), [2023] EWHC 2473 (Comm); [2024] 1 Lloyd's Rep 199 and [2023] EWHC 2474 (Comm); [2024] 1 Lloyd's Rep 157.
[96] Issues 4, 5 and 6.
[97] [2023] EWCA Civ 1497; [2024] 1 Lloyd's Rep 417.
[98] [2024] EWCA Civ 1536; [2025] 1 Lloyd's Rep 115, para 234.

A further case that caught our attention, namely 廈門新景地集團有限公司 *formerly known as* 廈門市鑫新景地房地產有限公司 *(Xiamen Xinjingdi Group) v Eton Properties Ltd and Another*[99] is also part of a long-standing saga (involving arbitration and proceedings in the Hong Kong Court of First Instance, Court of Appeal and Court of Final Appeal). Common law actions to enforce an award are used when another route of enforcement is not available, for example when a country is not party to the New York Convention (unusual). In this case, judgment had entered by the Hong Kong court in terms of the award but the defendants applied to set it aside on the ground that performance was impossible (including because 99 per cent of subject matter land units had by then already been sold). Hence a common law action to enforce the award was commenced.

In the common law action, the plaintiff's claims were dismissed at first instance. However, the Court of Appeal allowed its claim in respect of the first and second defendants' breach of their implied promise, that they would honour the award obtained by arbitration in accordance with a valid submission under the agreement. At para 114 of the judgment of the Court of Appeal, Yuen JA explained that the essential ingredients of the new and fresh cause of action on an award, which is separate and independent from an action based on breach of the underlying contract, are simply a valid submission of the dispute to arbitration, an award in favor of the plaintiff, and the defendant's failure to honour it. The plaintiff then had to elect between: (1) maintaining the statutory judgment; and (2) obtaining a judgment for damages for breach of the implied promise at common law. It opted for (2). In October 2017 judgment was entered against the first and second defendants, for payment of damages for breach of the implied promise. The trial on quantum for assessment of the damages finally proceeded in September 2023, 17 years after the award.

The court held that the plaintiff's damages were to be assessed on the basis as if the award (ie the implied promise) had been performed at the time:

> "I accept the counterfactual propounded for the Plaintiff, that damages should be assessed on the basis that the Plaintiff would, in 2006, have been in a position to have obtained the Shares in the 4th Defendant and be entitled to obtain the earnings from the development of the Land, this being the entire purpose of the Agreement at the time when it was made and as accepted by the tribunal in the Award."[100]

The damages assessment thus involved an analysis of the award and what it contemplated as well as of the complicated relevant counterfactual. Interest at prime +1 per cent was allowed from October 2006 until the date of judgment (some of the time after the award having been disallowed by the judge excercising his discretion).

When tribunals did not but should have assumed jurisdiction

In *Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd*,[101] the Singapore International Commercial Court allowed an application to set aside jurisdictional ruling in which the majority of an ICC tribunal concluded that it had no jurisdiction to resolve the dispute before it. The case is the first reported decision in Singapore where a negative jurisdictional ruling was successfully challenged.[102] The case arose under agreements (Petroleum Concession Agreements annexing a Joint Operating Agreement) relating to the exploration of oil and gas in Pakistan. The court held that in construing the agreements (under Pakistan law), the majority of the tribunal erred in concluding that it had no jurisdiction to hear the disputes. To the contrary, "on a proper construction, the PCAs and JOAs evince the parties' intention for FWIO-PWIO disputes to be resolved outside of Pakistan" (rather than domestic arbitration in Pakistan). The court also concluded that the tribunal had jurisdiction over the arbitration, including the jurisdiction to determine the costs of the jurisdictional phase of the arbitration; and the merits of the dispute in the arbitration and made ancillary rulings.

[99] [2024] HKCFI 1291.
[100] Paragraph 70.
[101] [2024] SGHC(I) 34.
[102] www.mayerbrown.com/en/news/2025/01/mayer-brown-secures-landmark-victory-in-singapore-arbitration-jurisdiction-challenge-case

Arbitrators and procedure

Failure to give reasons

Article 31 of the UNCITRAL Model Law ("Form and contents of award") reads:

> "(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Article 30."

Singapore, like Hong Kong, has adopted the UNCITRAL Model Law. The Singapore Court of Appeal, in *CVV and Others v CWB*,[103] an appeal from an application to set aside an award under section 24(b) of the Singapore International Arbitration Act (breach of natural justice), noted:

> "... case law on the duty of an arbitral tribunal to give reasons is sparse and we take the opportunity to make two observations about this area of the law. First, while Art 31(2) of the Model Law indeed places the arbitral tribunal under a general duty to give reasons, we caution that it is not settled in the case law whether a tribunal's failure to give adequate reasons is itself a reason to set aside an award. ...
>
> Secondly, it is also not entirely settled what the content of a tribunal's duty to give reasons is."[104]

The Singapore High Court in *DGE v DGF*,[105] which was an application to set aside a partial award under articles 34(2)(a)(i)(capacity) and/or (iii)(scope) of the Model Law, cited the above passages from *CVV* with approval.[106] It went on to hold:

> "... the Tribunal was not obliged to explicitly reject or explain why it rejected E's evidence as a criticism against Fraunhofer's visual inspection. A tribunal is not obliged to explain each step of its evaluation of the evidence and the weight attached to particular evidence, or to explain each step by which it reached its conclusion. Indeed, where a tribunal arrives at a conclusion of fact expressly on the basis of particular evidence, it is 'unambiguously clear' that the tribunal placed more weight on that evidence than on other evidence, and no clarification is required (*TMM Division Maritima SA de CV v Pacific Richfield Marine Pte Ltd* [2013] 4 SLR 972 at [100]–[101], citing *World Trade Corporation v C Czarnikow Sugar Ltd* [2005] 1 Lloyd's Rep 422 at [8] and [9] and *Hussman (Europe) Ltd v Al Ameen Development & Trade Co* [2000] 2 Lloyd's Rep 83 at [56]). The Award thus cannot be impugned on the basis that it did not contain adequate reasons for rejecting E's criticism of the lack of randomness in sampling."[107]

Confidentiality orders

In *Beijing Songxianghu Architectural Decoration Engineering Co Ltd v Kitty Kam*[108] the Hong Kong Court of First Instance refused to grant a confidentiality order preventing the public disclosure of information relating to an HKIAC arbitration. Before the court were parallel litigation proceedings against a party related to the arbitration respondent to recover "sums totalling about HK$253[109] millions, or damages, for fraud, dishonest assistance and conspiracy to injure by unlawful means". The decision confirms that while express statutory confidentiality protections under sections 16 and 18 of the Arbitration Ordinance Cap 609 are important, they are not absolute.

The decision also clarifies how to apply an important exception to confidentiality. Section 18(2)(a)(i) of the Arbitration Ordinance provides the exception that a party may disclose confidential information "to protect or pursue a legal right or interest of the party". Similarly, article 45.3 of the 2018 HKIAC Administered Arbitration Rules (which governed the arbitration) provides that a party is not prevented from disclosure of such information to protect or pursue a legal right or interest of the party. Deputy High Court Judge KC Chan discussed the English Court of Appeal case of *CDE v NOP*[110] (discussing a similar provision under the LCIA Rules) and in particular cited Males LJ at para 50 thereof with approval and adding his own emphasis:[111]

[103] [2023] SGCA(I) 9.
[104] Paragraphs 32 and 33.
[105] [2024] SGHC 107.
[106] Paragraph 148f.
[107] Paragraph 149.
[108] [2024] HKCFI 1657.
[109] Divide by 7.8 for US dollars.
[110] [2021] EWCA Civ 1908; [2022] BLR 108.
[111] Paragraph 20.

> "50. That said, we make clear that the considerations which led us to conclude that the judge was right to hold the case management conference in private will not apply, or at least will not apply with anything like the same force, to the privity application. *That will be an application for summary judgment at which the court will be required to adjudicate on the merits of the dispute. Moreover, if the court holds that the hearing should be held in public, there will be no question of any breach of article 30.1 of the LCIA Rules. That rules entitles a party to put the award in evidence before a state court in order to protect or pursue a legal right.* That is what the clamant will do. *If the applicable procedural rules mean that the court will sit in public to hear that application, these is no breach of article 30.1.*"

Deputy High Court Judge KC Chan concluded that *CDE v NOP* did not assist the defendant. Rather, it reinforced that disclosure to protect or pursue a legal right of the party, as provided by section 18(2)(a)(i) of the arbitration, does not amount to a breach of the arbitral confidentiality and that arbitral confidentiality being so excepted by section 18(2)(a)(i), it fell on the defendant to satisfy the court that there were otherwise cogent reasons in this particular case (save arbitral confidentiality) to justify a departure from open justice, or that due administration of justice requires the principle of open administration of justice to be compromised.[112]

Below we discuss the dispute between Messieurs Ganz and Goren. A related case[113] concerned whether the judgment on the arbitration should be handed down publicly. The answer as you may have guessed was yes. Mr Goren strongly objected whereas Mr Ganz desired publication. The test was set out by the Court of Appeal in *Department of Economic Policy and Development of the City of Moscow v Bankers Trust Co*[114] where it was said that the courts, when called upon to exercise their supervisory role under the Arbitration Act "are acting in the public interest to facilitate the fairness and wellbeing of the consensual method of dispute resolution ... and the courts can still take into account the parties' expectations regarding privacy and confidentiality when agreeing to arbitrate".[115] The court accepted, on the authority of City of Moscow, that the court has to weigh: "The factors militating in favour of publicity together with the desirability of preserving the confidentiality of the original arbitration and its subject matter".[116] One factor that the court particularly drew out before deciding in favour of publication was: "There is a much broader issue of public interest, which is the desirability of public scrutiny as a means by which confidence in the courts can be maintained and the administration of justice made transparent".[117]

In *H1 and Another v W and Others*[118] (see below) confidentiality in the context of apparent bias applications was also discussed.

Revised IBA Guidelines on Conflicts of Interest in International Arbitration

The first Guidelines were prepared by the IBA Arbitration Committee and adopted by the IBA Council in 2004. Since then they have gained wide acceptance and have been recognised as a solid soft law instrument reflecting standards expected to apply to impartiality and independence of arbitrators, as well as disclosures in specific circumstances.[119] It is the IBA Arbitration Committee's practice to assess every 10 years whether its rules and guidelines should be adapted. Accordingly the Guidelines were first revised in 2014. They have just been revised again (in May 2024) following a survey conducted in 2022 by the IBA Arbitration Guidelines and Rules Subcommittee which advised against a complete overhaul but suggested modernising/finetuning the following areas: "(i) arbitrator disclosures; (ii) third-party funding; (iii) issue conflicts; (iv) organisational models for legal professionals in different jurisdictions (eg, barristers' chambers, vereins, etc.); (v) expert witnesses; (vi) sovereigns or their agencies and instrumentalities; (vii) non-lawyer arbitrators; and (viii) social media".[120]

The revised Guidelines emphasise the importance of the General Standards. As before, specific situations are then described with the aim of illustrating the General Standards, assisting arbitrators in making their disclosures, and aiding parties in assessing whether disclosed information may be such as to create a doubt as to the arbitrator's independence and impartiality:

[112] Paragraphs 26 to 27.
[113] [2024] EWHC 1011 (Comm).
[114] (CA) [2004] EWCA Civ 314; [2004] 2 Lloyd's Rep 179; [2004] BLR 229.
[115] Paragraph 34.
[116] *City of Moscow* at para 40.
[117] *Ganz v Petronz FZE*, para 30.
[118] [2024] EWHC 382 (Comm); [2024] 1 Lloyd's Rep 449.
[119] www.ibanet.org/document?id=Guidelines-on-Conflicts-of-Interest-in-International-Arbitration-2024, page 2.
[120] Ibid, page 2.

- Red, where a conflict of interest is understood to exist (sub-divided into waivable and non-waivable lists);
- Orange, which may, depending on the facts of a given case, give rise to a doubt in the eyes of the parties and must therefore be disclosed pursuant to General Standard; and
- Green, understood not to create a conflict of interest or appearance thereof.

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Important changes to note include:

- Significant expansion to the Orange list, giving further examples of further disclosable circumstances.
- One addition to the Green list of examples, namely the situation where an arbitrator has previously heard testimony from an expert who appears in the proceedings (when acting as arbitrator in another matter).
- Confirmation that a failure to disclose does not per se mean that a conflict exists. As the commentary explains, this is because the arbitrator must apply a subjective standard in determining what to disclose, whereas General Standard 2 requires an objective determination (applying the reasonable third person test) of whether a conflict indeed exists.
- A party is deemed to have learned facts a reasonable inquiry would have revealed that a reasonable enquiry would have yielded if conducted at the outset or during the proceedings and waived the right to object if it fails to do so within 30 days. This emphasises the parties' duty to enquire about potential conflicts early on.
- Acknowledging that arbitrators work outside traditional law firm settings: "activities of an arbitrator's law firm or employer, if any, the law firm's or employer's organisational structure and mode of practice, and the relationship of the arbitrator with the law firm or employer, should be considered in each individual case".[121] Thus General Standard 6 has been broadened to include conflicts arising from arbitrators' non-firm employers, and details what entities, affiliates, and structures may give rise to a conflict.
- "Any legal entity or natural person having a controlling influence on a party, or a direct economic interest in, or a duty to indemnify a party for the award to be rendered in the arbitration" or "over which a party has a controlling influence may be considered to bear the identity of such party".[122]

Third-party funders and insurers may have a direct economic interest in the prosecution of defence of the case in dispute. There is also brief specific disclosure guidance whenever a state or a state entity, subdivision, or instrumentality is party to the arbitration.

Challenge of arbitrators

H1 and Another v W and Others,[123] a colourful case, is one of the few cases where an arbitrator was challenged and removed – during rather than after an arbitration – on the ground of apparent bias under section 24(1(a) of the 1996 Act which reads:

> "24 Power of court to remove arbitrator.
>
> (1) A party to arbitral proceedings may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the court to remove an arbitrator on any of the following grounds—
>
> (a) that circumstances exist that give rise to justifiable doubts as to his impartiality; ..."

The contract concerned was an English law film insurance policy which covered expenses incurred if a named actor

[121] Ibid, page 10.
[122] Ibid, page 11.
[123] [2024] EWHC 382 (Comm); [2024] 1 Lloyd's Rep 449.

suffered injury which delayed the production of the film – with certain exclusions and a condition precedent to liability. An accident occurred in Sweden during a scene involving a stunt actor lighting a Molotov cocktail and the lead actor grabbing it from her, and then throwing it. The lead actor was badly burned and filming was delayed causing additional expense. Any dispute was to be resolved by arbitration in London by a sole arbitrator who was to be "an experienced practitioner in film or television programme production, as appropriate. If agreement cannot be reached on a suitable arbitrator, one will be chosen by the chairperson or president of the film or television production industry body as appropriate".

The insurers suggested that the arbitrator should be senior counsel or alternatively a lawyer with media production experience. However, the assured did not agree and insisted that the above arbitration clause be adhered to. The parties could not agree on an arbitrator, and the decision was left to the British Film Institute which nominated W. The parties agreed W's Terms of Appointment and confirmed that they waived any objection to W's appointment. The arbitrator knew and had worked with several of the witnesses.

During a procedural meeting W indicated that he did not need to hear from the certain expert witnesses on the basis that he knew the assured's experts well and he was good friends with four of them. After exchanges with the insurers' lawyer, W confirmed that he would of course reserve his judgment but he knew the professionals and he could say at that point what he thought. He added that one of the witnesses was one of the top Norwegian producers and "would know".[124] Another witness, originally instructed by the assured seemed to have changed sides whereupon W commented: "I believe that his evidence to either party should be disallowed. ... He cannot change sides half-way through. I think it is absolutely wrong."[125]

The court applied the leading case on apparent bias (discussed in our last review) set out in the Supreme Court in *Halliburton Co v Chubb Bermuda Insurance Ltd*:[126] "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased". "Fair-minded" means an observer who "does not reach a judgment on any point before acquiring a full understanding of both sides of the argument".

The court also noted the comments of Sir Ross Cranston in *Africa Sourcing Cameroun Ltd v LMBS Société par Actions Simplifée*[127] (also discussed in our 2023 review) that where the parties had agreed a trade arbitrator there was every likelihood that the arbitrator would have had dealings with one or other of the parties. The view of Colman J in *Norbrook Laboratories Ltd v Tank*[128] that an arbitrator appointed for technical skill and knowledge could not be expected to run an arbitration in the same way as a King's Counsel was also taken into account. While it was the case that an arbitrator could use his personal knowledge to evaluate the evidence and submissions before him (*Fox v P G Wellfair Ltd*[129]), and while it was also permissible for an arbitrator to state a preliminary view and to act in an inept fashion (*Bubbles & Wine Ltd v Lusha*[130]), the line was crossed where the arbitrator took account of extraneous factors. In this case several comments made by W were problematic. An order was made for the removal of W as arbitrator under section 24(1). His fees and expenses were to be paid up to the date of the procedural hearing referred to above (at which the comments were made).

Applying the principles set out in previous case law[131] the court ruled that the judgment should be published but that the identities of the witnesses should be withheld. Exceptionally, W's identity would also be withheld: while in *Halliburton* it was established that that open justice demands the publication of the name of an arbitrator where there was an allegation of apparent bias – this was outweighed by the expectation of confidentiality of the arbitration and the witnesses' right to confidentiality. W had never before been appointed as an arbitrator and thus there was no public interest in publishing his name.

[124] Paragraph 45.
[125] Paragraph 46.
[126] [2020] UKSC 48; [2021] Lloyd's Rep IR 1; [2021] BLR 1.
[127] [2023] EWHC 150 (Comm); [2023] 1 Lloyd's Rep 627.
[128] [2006] EWHC 1055 (Comm); [2006] 2 Lloyd's Rep 485; [2006] BLR 412.
[129] [1981] 2 Lloyd's Rep 514.
[130] [2018] EWCA Civ 468.
[131] *Manchester City Football Club Ltd v Football Association Premier League Ltd* [2021] EWCA Civ 1110; [2022] 1 Lloyd's Rep 429, and *Radisson Hotels ApS Danmark v Hayat Otel Işletmeciliği Turizm Yatirim ve Ticaret Anonim Şirketi* [2023] EWHC 1233 (Comm).

Hong Kong

In *P v D*[132] the Court of First Instance dismissed a challenge application under section 26 of the Arbitration Ordinance Cap 609 to remove two HKIAC arbitrators (the parties appointee had previously resigned) on the basis of apparent bias with reference to various procedural decisions and comments made during the proceedings. The challenge had already been dismissed by the Proceedings Committee of HKIAC. P was not entitled to rely on additional grounds not addressed by D and the impugned arbitrators and not dealt with by the Panel. In reaching the above conclusion Deputy High Court Judge Jonathan Wong cited section 26(1) of the Ordinance, which gives effect to article 13 of the UNICTRAL Model Law which deals with challenge procedure:

> "... if P were allowed to rely on the Additional Grounds, the challenge before me is no longer the unsuccessful challenge previously determined under the procedures agreed between the parties. I have already set out the relevant Applicable Rules at section 3(i) above. Permitting P to rely on the Additional Grounds would be a clear departure from (1) Article 13(1) of the UNICTRAL Rules and Clause 2.1 of the Practice Note (allowing a challenge to be raised beyond 15 days after P became aware of the relevant circumstances) and (2) Clause 2.5 of the Practice Note (allowing P to rely on grounds not stated in the Notice of Challenge without consulting D and the Impugned Arbitrators)."[133]

Later in the year, in *TGL v SDC and Another*[134] the Hong Kong Court of First Instance dismissed an application to set aside an award enforcement order (with indemnity costs and a certificate for counsel) having emphasised that for a claim of arbitrator bias to succeed, there must be a "cogent and rational link" between any association which the arbitrator may have had with the applicant, and the capacity of such association to influence the arbitrator's decision in the arbitration, to give any impression of possible bias on the arbitrator's part.

By order dated July 2023, leave was granted to enforce an arbitral award delivered by the Shenzhen Court of International Arbitration (SCIA) dated May 2022. However, meanwhile, the first respondent had applied to the Shenzhen Intermediate People's Court to set aside the award, on the basis that one of the arbitrators (Chen) had acted in breach of the relevant rules and regulations governing the arbitration, and that the constitution of the tribunal and the procedure in the arbitration was against the agreed procedure prescribed by law. The relationships relied on included that: (i) the arbitrator had given legal training to (CN Zhongyuan) an indirectly associated company of the award creditor's parent company three years before the arbitration; (ii) the arbitrator's law firm had acted for the award creditor's sister company (TFE) in Mainland PRC court proceedings some years prior to his appointment as a co-arbitrator (and before he became a partner); (iii) the arbitrator's law firm was awarded a legal due diligence contract from (CN Nuclear Capital/CN Investment) two entities at the "corporate grandparent" level of the award creditor the day after the award was rendered; and (iv) the arbitrator's former law firm had acted for (TFH) the award creditor's parent company in a construction dispute at an unknown time.

On the basis of Chen's written response and a formal reply by the SCIA, the Shenzhen court ruled (in a decision dated April 2023) that an arbitrator's duty of disclosure or to recuse himself was confined to cases in which a relationship of conflict exists between the arbitrator and the case itself, or the parties to the arbitration, or the agents/representatives of the parties, or by virtue of other matters which may affect a fair decision. The Shenzhen court considered that CN Zhongyuan, CN Investment, TFH and TFE were *not* parties to the arbitration, but were independent legal entities, with businesses which were unrelated to the dispute in the arbitration. According to the Shenzhen court, there was no evidence of any relationship of interest between Chen and these companies which might affect the impartiality of Chen's judgment, nor create reasonable doubt as to Chen's independence and fairness, to require disclosure under the SCIA Rules.

The ground subsequently pursued by the respondents before the Hong Kong courts was: [135]

> "that on the facts relating to the relationship between Chen (the arbitrator appointed by the Applicant), and companies associated with the Applicant, there was apparent bias on the part of Chen, in that he failed to disclose his relationship with the relevant companies associated with the Applicant and the possibility of the existence of a conflict of interests on his part [giving] rise to justifiable and reasonable

[132] [2024] HKCFI 1132.
[133] Paragraph 4.6.
[134] [2024] HKCFI 2393.
[135] Paragraph 5.

> doubts in the mind of an objective observer as to the arbitrator's independence or impartiality, and of apparent bias on his part, such that the composition of the tribunal was not in accordance with the parties' arbitration agreement, or the law of the Mainland, and it would be contrary to the public policy of Hong Kong to enforce the Award as being in breach of the basic principles of natural justice."

As the underlying contract and the arbitration were governed by PRC law, the Hong Kong court gave due regard and weight[136] to the Shenzhen court's findings and dismissal of the application to set aside the award on the grounds of procedure, the constitution of the tribunal, and the alleged failure to comply with PRC law and the Shenzhen court's decision is evidence of the applicable PRC law, and whether there is breach of such law and of the SCIA Rules. However, since the respondents relied on the award having been made against principles of natural justice, and claimed that enforcement of the award would be contrary to the public policy of Hong Kong, the Hong Kong court still had to consider common law principles governing bias, and decide whether there were circumstances which would indicate to an objective observer in Hong Kong that there was a real possibility that the tribunal was biased, and that it would be shocking to the conscience of the Hong Kong court to enforce the award given in such circumstances.[137]

Mimmie Chan J helpfully summarised the law and thereupon applied it:

> "39. It is clear from the authorities, that the test applied by the courts is that of the reasonable third person, and the Court is required to look at the matter through the eyes of that reasonable man, to ascertain the relevant circumstances from the available evidence as would have been considered by the reasonable man, and consider what that properly informed, independent and objective observer would have concluded, as to whether there was a real possibility of bias.
>
> 40. In this case, Chen made a Response, but as explained in *Helow v Secretary of State for the Home Secretary* [2008] 1 WLR 2416, the Court is not necessarily bound to accept the statement made by the judge/adjudicator at face value, and no attention will be paid to any statement by the judge/adjudicator as to the impact of any knowledge on his/her mind. Put simply, the key question is what the objective observer, and not what Chen himself, considered as to the possibility or otherwise of bias, and Chen's own statement of any impact on his mind is not relevant to the issue which the objective observer must decide.
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> 41. The judgment in *Aussie Airlines Pty Ltd v Australian Airlines Pty Ltd* (1996) 135 ALR 753 (cited in the judgment of *Jung Science*) highlighted the fact that the objective observer must be treated as fully informed of the facts and circumstances constituting the association alleged and relied upon in the complaint.
>
> ...
>
> 55. From my experience, the best practice for solicitors and other professionals require conflict searches to be conducted prior to the acceptance of any new assignment or instructions, to enable relevant members of the firm to inform each other and be informed of potential work and any conflicts of interests that may be created by accepting such work. The best practice would involve the disclosure of general information of the potential work and the parties involved, and may include particular information of the group of companies to which the parties belong. However, some practices may not be so stringent to require such detailed or mass of particulars, other than the basic information of the actual party or parties concerned."

Leave to appeal to the Court of Appeal was granted in a later decision (also by Mimmie Chan J) since:

> "... the parties had not advanced focused arguments at the hearing on the duties of an arbitrator to make disclosure throughout the course of an arbitration (which duty exists under Article 12 of the Model Law, which has effect by virtue of section 25(1) of the Ordinance), the extent of such duties with regard to matters which came to the knowledge of the arbitrator or which he ought reasonably to have known, and whether the matters required to be disclosed should be wider in scope than what would justify recusal of an arbitrator. Breach of such duties may be relevant to the question of whether enforcement of the Award should be refused as being contrary to public policy. This question is one of general principle and is of importance, such that a decision of the Court of Appeal would serve advantage to the arbitration community."[138]

[136] Referencing *Gao Haiyan v Keeneye Holdings Ltd* [2012] 1 HKLRD 627, para 102.
[137] Referencing *A v R (Arbitration: Enforcement)* [2009] 3 HKLRD 389, *X Chartering v Y* HCCT 20/2013, 3 March 2014.
[138] *TGL v SDC*, para 15.

Singapore case on apparent bias

In a ruling in November 2024, the Singapore High Court in *DJK et al v DJN*[139] also addressed this issue. The claimant applied to nullify a final SIAC award. The allegations related to the arbitrator's decisions on security for the claim and or costs and his rejection of the claimants' request to these aside. In short, the claimants argued that these actions demonstrated a predisposition against them, thus violating the principles of natural justice and equal treatment as mandated by the Model Law and the International Arbitration Act 1994.

The court dismissed the allegations. With approval it cited *BOI v BOJ*[140] in which the Court of Appeal set out the principles applicable to apparent bias (ie the objective test whether there are circumstances that would give rise to a reasonable suspicion or apprehension of bias in the fair-minded and informed observer) and confirmed that prejudgment is a form of apparent bias. The court examined the arbitrator's conduct, particularly in relation to the security orders and rejecting the request to set the same aside. The court found that the arbitrator's actions, including the consideration of the claimants' financial difficulties and the reliance on certain authorities, fell within his jurisdiction and did not demonstrate any predisposition:

> "The claimants' arguments, whether independently or taken together, were not sufficient to show that the Arbitrator had prejudged the merits of the dispute in the Arbitration."[141]

139 [2024] SGHC 309.
140 [2018] 2 SLR 1156.
141 Paragraph 88.

Ukraine and Russia

The war in Ukraine and Russia's designation of several countries as "unfriendly" has gave rise to several challenges to arbitrators in 2024 including:

- In a decision dated 26 July 2024 (Case No A45-19015/2023), the Russian Supreme Court refused to enforce a foreign (English) arbitral award because it violated Russian public policy. A key ground for this decision was that all the arbitrators were nationals of countries designated as "unfriendly" which created a reasonable presumption of bias.

- In a Permanent Court of Arbitration ("PCA") inter-state dispute between Russia and Ukraine, two unchallenged arbitrators of a five-member tribunal decided to accept Russia's challenge of the other two arbitrators based on their political positions concerning the war in Ukraine.

- An unsuccessful challenge in ICSID Case No ARB/24/1 against Ukraine. The claimant unsuccessfully argued that a US arbitrator, Prof Sean Murphy's, vote in favour of the IDI Declaration gave rise to manifest doubts as to his ability to exercise impartial judgment, considering the issues already raised by Ukraine and likely to be raised further in the course of the proceeding.[142]

142 www.italaw.com/sites/default/files/case-documents/italaw182390.pdf

Appealing awards

Counting time to appeal

As we explained in our 2023 review, an appeal under section 69 of the English Arbitration Act 1996 can only be made in respect of an "award". This term which is not defined (although section 52 sets out formal requirements). Thus, the question whether an order or direction from a tribunal is an "award" for the purposes of the Act comes up often. 2024 was no exception.

In *Eronat v CPNC International (Chad) Ltd and Another*[143] Bryan J robustly considered when time started to run for an appeal and whether time could be extended in the context of a bespoke arbitration clause. The context were applications for reverse summary judgment of a section 69 appeal (on the basis that it was out of time) and enforcement of the award – both of which succeeded. The contract provided for LCIA arbitration under Hong Kong law. By a partial award *dated* 11 April 2024 the tribunal published findings on all substantive issues in the arbitration except for costs and expenses. The award was *notified* to the parties by the LCIA on 16 April 2024. On 16 May 2024 the claimant *issued* an arbitration claim form appealing against the award for error of law under section 69 of the Arbitration Act 1996.

The bespoke arbitration clause inter alia stated:

> "Clause 14.3 headed "Appeal" ... "(a) In the event that the arbitration tribunal has materially erred in fact and/or law, the Parties are entitled to appeal the decision of the arbitration tribunal to a court in England provided that such appeal is brought within thirty (30) days after *the decision is rendered* [emphasis added]. (b) The parties shall not be entitled to commence or maintain any action in any court of law upon any matter in dispute arising out of this Deed except for the enforcement of an arbitral award granted pursuant to this clause 14 [original emphasis]. *For the avoidance of doubt, the parties expressly waive all rights to make an application or to appeal to the English courts under the Arbitration Act* [emphasis added], except pursuant to clause 14.3(a) [original emphasis] above."

Bryan J rejected the claimant's construction of the bespoke arbitration clause, whereby "rendered" meant "notified" rather than "made". The clause referred to a "decision" being rendered, and that could refer only to the award itself:

> "It is clear under the structure of both the Arbitration Act 1996 and the LCIA Rules that what occurred on 16 April was the notification of the Award which under both the Act and the LCIA Rules is distinct from and subsequent to the making of the Award. It is also distinct from and subsequent to the rendering of the Award in this case on 11 April 2024 ..."[144]

An alternative argument raised by the claimant was that correspondence between the tribunal and the claimant after the making of the award amounted to an agreement by the tribunal to vary the date for the rendering of the award to that on which it was received by the claimant. However, Bryan J could find nothing in the short exchanges to that effect.

The claimant had also applied for an extension of time for the contractually agreed period of 30 days from the rendering of the award. An application to extend contractual time limits falls under section 79 rather than section 80, as the latter is concerned with extension of time for statutory time limits. However, the application was treated as one under section 80. Bryan J held that he had no jurisdiction to grant an extension since the bespoke arbitration clause removed all rights of application to the courts other than for error, so the application could not be entertained:

> "Had I had jurisdiction to extend time, I am satisfied that this is an archetypal case where this Court would not extend time in the absence of any proper application to extend time and, more importantly, in the absence of any witness statement explaining why there had been a delay and why it was appropriate to allow further time. As I say, this Court has repeatedly stressed the importance of finality in arbitration and progressing all stages of any arbitral process with the utmost expedition."[145]

[143] [2024] EWHC 2880 (Comm); [2024] Lloyd's Rep Plus 69.

[144] Paragraph 53.

[145] Paragraph 70.

Challenging the award: substantive jurisdiction (section 67)

We have already discussed *Barclays Bank plc v VEB.RF*[146] above. There the court agreed with an LCIA arbitrator that a challenge to his jurisdiction should be decided by the court (under section 32(2)) rather than the arbitrator. An important consideration was that regardless which party lost the jurisdictional issue before the arbitrator would likely challenge the arbitrator's decision before the court under section 67 given: the sum in issue; the issues in dispute in relation to jurisdiction; the importance the claimant placed on its asymmetric rights under the jurisdiction and arbitration agreement; and the importance the defendant apparently placed on the dispute being resolved by the arbitrator rather than by the court.[147] It would, therefore, save time and costs if the court decided the jurisdictional issue.

The issue in another English case, *Ganz v Petronz FZE and Another*,[148] boiled down to whether there was a valid arbitration agreement between the parties. By an alleged English law share purchase agreement ("SPA") dated 2015, Mr Ganz and Mr Goren agreed to sell their shares in Gi3 to Petronz, a Dubai Airport Free Zone Enterprise in the United Arab Emirates. The SPA provided for the final and binding resolution of future disputes in respect of it by arbitration pursuant to the rules of the London Court of International Arbitration. Petronz did not pay the purchase price for the shares pursuant to the SPA and alleged that its signature on the SPA was a forgery.

By a Final Award on substantive jurisdiction dated March 2020, the arbitrator agreed:

> "(1) the SPA is not an authentic and concluded agreement binding on all three Parties to it;
>
> (2)the agreement to arbitrate contained within the SPA is accordingly not valid;
>
> (3) therefore the Tribunal has no substantive jurisdiction over the Parties; and
>
> (4)the Tribunal retains jurisdiction over the Parties solely for the purpose of awarding costs incurred in connection with these arbitration proceedings."[149]

Thereafter, in July 2020, the arbitrator refused a request by Mr Ganz for an additional award against Mr Goren, upholding the SPA as between Mr Ganz and Mr Goren only. The arbitrator's response was that that matter had been addressed in the Final Award.

Mr Ganz challenged the award on two grounds. First, the arbitrator had erred on the jurisdictional question, and Mr Ganz sought a rehearing under section 67 of the Arbitration Act 1996. Secondly, the arbitrator failed to comply with her general duty under section 33 of the Act to act fairly and impartially as between the parties and/or adopt procedures suitable to the circumstances of the particular case so as to provide a fair means for the resolution of matters referred to her, so that the award could be set aside under section 68(2)(a) of the Act. Mr Goren applied for a strike out.

Dame Clare Moulder rejected the application. She ruled that once the parties were present for a substantive hearing, it was too late for a strike out. It was settled that a section 67 appeal took effect as a rehearing, and with the evidence now before the court it would not be appropriate for the matter to be determined summarily. Delay was irrelevant.

The approach of the court to a section 67 challenge was set out in *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs, Government of Pakistan*.[150] The views of the tribunal were not binding but the court was entitled to take them into account. On the facts, Dame Clare Moulder applied the principle in *RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Company KG (UK Production)*[151] that, in determining whether there was an agreement between the parties, the test was not their subjective states of mind but "a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations".[152]

The court concluded that Mr Ganz had failed to prove his assertion that the SPA had been entered into. While it was the case that section 7 of the 1996 Act required separability of the SPA and the Arbitration Agreement so that their validity had to be determined separately, the finding that Mr Ganz had not proved that there was a binding SPA applied equally to the alleged arbitration agreement. Thus, the challenge under section 68 also fell away.

146 [2024] EWHC 2981 (Comm); [2025] 1 Lloyd's Rep 59.
147 Paragraph 17.
148 [2024] EWHC 635 (Comm).
149 Cited at para 18 of judgment.
150 [2010] UKSC 46; [2010] 2 Lloyd's Rep 691.
151 [2010] UKSC 14; [2010] BLR 337.
152 *RTS Flexible Systems Ltd v Molkerei Alois Muller* at para 45.

Challenging the award: serious irregularity (section 68)

In our 2023 review, we said that section 68 is scarcely invoked. Interestingly, in 2024, there were at least two section 68 applications involving Nigeria in some way. [153]

In the infamous case *Federal Republic of Nigeria v Process & Industrial Developments Ltd*[154] two awards against Nigeria were set aside on the basis that they had obtained by fraud or procured in a way that was contrary to public policy within the meaning of section 68(2)(g). At a subsequent hearing, Robin Knowles J ordered Nigeria's costs to be assessed on the standard basis if not otherwise agreed. A dispute arose over which currency costs should be assessed in. Nigeria submitted pounds sterling because ills were payable in that currency to English solicitors. P&ID countered the assessment should be in Nigerian naira because funds would have originally derived from central government funds and would then have been converted into sterling for payment. Robin Knowles J agreed with Nigeria (refusing leave to appeal) and P&ID appealed. It made a big difference because the naira had significantly depreciated against sterling (to less than a third).

The Court of Appeal in *Process & Industrial Developments Ltd v Federal Republic of Nigeria*[155] thus had to consider a rolled-up application for: permission to appeal the currency of the costs order; with the appeal to follow if permission was granted. There were two questions:

(1) Whether section 68(4) of the Arbitration Act ("The leave of the court is required for any appeal from a decision of the court *under* this section.") deprived the Court of Appeal of jurisdiction to hear the appeal.

(2) If the court has and grants jurisdiction, whether the judge was right to order P&ID to pay Nigeria's costs in sterling.

Lord Snowdon, with whom the other two judges fully agreed, noted that the meaning of section 68(4) and the identically worded section 67(4) has been explored in three relatively recent decisions[156] which he applied. Broadly, the Court of Appeal held that the subject decision on costs was not one "under" section 68 and thus was not caught by the section 68(4) prohibition on the granting of leave to appeal by the Court of Appeal. The Court of Appeal also noted that the judge had not given any reasons for refusing the application for leave to appeal against the costs ruling and commented obiter that it was desirable for a judge who refused permission to appeal to "give sufficient reasons so that it can be seen that he has properly considered all of the arguments and so that the parties know why no further appeal is possible".[157]

However it made no difference. P&ID failed on Question 2 above. Lord Snowden explained that it is long established that costs awarded by the courts are awards of a statutory indemnity: "an award of costs is a statutory indemnity against the liability that the receiving party has incurred to his own lawyers".[158] It was not a statutory indemnity against personal loss, because it might be that the costs were paid by a third party. Applying that principle: Nigeria had been invoiced and incurred liability to its solicitors in sterling, and paid those bills in sterling. It followed that the costs order should also be in sterling.

Non-disclosure by an arbitrator

Aiteo Eastern E&P Co Ltd v Shell Western Supply and Trading Ltd and Others[159] is a cautionary tale on arbitrator disclosures. Shell (through Freshfields) nominated the retired Court of Appeal judge, and distinguished arbitrator, Dame Elizabeth Gloster as arbitrator who duly completed the standard "ICC Arbitrator Statement Acceptance, Availability, Impartiality and Independence" form. Therein she disclosed that she "had been party appointed in two other unrelated arbitrations in the last 2 years by clients represented by Freshfields". However, as we will see, Jacobs J decided that further disclosures should have been made. The failure resulted in one of four awards being remitted to the reconstituted tribunal.[160]

After several awards had been issued, Dame Elizabeth Gloster made a disclosure that she had recently been instructed by Freshfields to provide an expert opinion on English law in the context of potential foreign insolvency

[153] Please also see the statistics at towards the end of this review.
[154] [2023] EWHC 2638 (Comm); [2024] 1 Lloyd's Rep 1.
[155] [2024] EWCA Civ 790; [2024] 2 Lloyd's Rep 53.
[156] Those cases are *Manchester City Football Club Ltd v Football Association Premier League Ltd* [2021] EWCA Civ 1110; [2022] 1 Lloyd's Rep 429; *National Iranian Oil Co v Crescent Petroleum Co International Ltd* [2023] EWCA Civ 826; [2023] 2 Lloyd's Rep 279; and *Czech Republic v Diag Human SE* [2023] EWCA Civ 1518.
[157] Paragraph 52.
[158] Paragraph 58.
[159] [2024] EWHC 1993 (Comm); [2024] 2 Lloyd's Rep 489.
[160] The reason the others were not remitted is that they had effectively already been reheard de novo by the court in appeals (and thus the "substantial injustice" test under section 68 was not met.

proceedings. Prompted by this, Aiteo requested further information regarding said disclosure and any other appointments or instructions involving Freshfields. Dame Elizabeth Gloster emailed a full response: (a) the expert instruction (already disclosed); (b) expert advice to Freshfield's client (disclosed to Freshfields but neither to the ICC nor Aieto because of an oversight by her clerk); (c) an expert declaration in unrelated foreign law proceedings through Freshfields (not disclosed); and (d) as arbitrator in an arbitration in which Freshfields had meanwhile replaced other lawyers (not disclosed).[161]

Aieto challenged Dame Elizabeth Gloster's appointment in an application to the ICC under article 14(1) of the ICC Rules, alleging that there were justifiable doubts as to her independence and impartiality as a result of (a), (b) and (c) above as well as on the basis that Dame Elizabeth Gloster had given the annual Freshfields arbitration lecture at Queen Mary University of London in 2017. The ICC asked the other arbitrators for comments – they had not noticed any lack of independence or impartiality or bias. Nonetheless, the ICC Court determined that the challenge was "admissible" and upheld it on the merits. No reasons were given (the parties had not requested any). Dame Elizabeth Gloster was replaced as arbitrator.

Aiteo filed a challenge under section 68 of the Arbitration Act 1996 alleging that there had been serious irregularity in the arbitration effecting four awards. Jacobs J set out and then applied the key principals concerning apparent bias from the leading decision: *Halliburton Co v Chubb Bermuda Insurance Ltd*.[162] He also considered the ICC Rules and IBA Guidelines 2014 (then applicable) and concluded: "Ultimately, I consider that ... the observer would consider that there was a real possibility of unconscious bias, notwithstanding that there were some factors which would favour a different conclusion". He appears to have been particularly concerned by the non-disclosure of engagements to advise on English law in connection with foreign proceedings since such engagements were "akin to, a relationship of co-counsel advising a client".[163] He also considered the cumulative picture to be relevant:

> "... the observer would consider that the appointments/engagements by Freshfields numbered six or seven: three arbitral appointments (including the Offshore Arbitration); three advisory/expert engagements; and the nomination, unsuccessful in the event, in the Onshore Arbitration. The observer would consider that this was a significant number of appointments and engagements by a single firm in a relatively short space of time. DEG had retired from the Court of Appeal in June 2018, and therefore the six or seven appointments/engagements were within a period of around five years or thereabouts."[164]

Another question was whether res judicata applied. Jacobs J held it did not as res juridicata requires a final decision on the merits by a judicial tribunal whereas the ICC Court is not a conventional court and its decision was purely procedural. While the Departmental Advisory Committee whose reports had led to the 1996 Act had specifically stated that "it would be a very rare case indeed where the Court will remove an arbitrator notwithstanding that that process has reached a different conclusion", that did not amount to an exclusion of judicial review by way of res judicata. Nevertheless, Jacobs J held that the informed observer could be coloured by the decision of the ICC Court, as it would recognise that the ICC Court has considerable experience of determining challenges. He also noted that such challenges rarely succeed.[165] Ultimately:

> "I consider that the fair-minded and informed observer would accord considerable respect to the decision of the ICC Court, and realistically could not avoid being struck by the fact that this was one of the rare challenges that succeeded. However, the observer would recognise that he or she should make up his or her own mind on the basis of the underlying facts, and that it would be wrong to reach a conclusion simply by reference to what the ICC Court had decided. The decision of the ICC Court could serve as a useful cross-check on the observer's own conclusions based on the underlying facts, but ultimately the observer needed to make up his or her own mind. If appropriate, that might lead the observer to conclude (as Mr Juratowitch KC submitted) that the arbitral institution had reached the wrong conclusion."[166]

As the application was made well after section 70(3)'s 28-day period, Aiteo also requested a time extension (section 80). This was granted on *Kalmneft* grounds.[167]

The reader may wish to refer also our above discussions of arbitrator bias and the updated IBA Guidelines.

[161] Two further appointments/instructions are mentioned in the award.
[162] [2020] UKSC 48; [2021] 1 Lloyd's Rep 1 (also discussed in our 2023 review).
[163] Paragraphs 79, 101 and 110.
[164] Paragraph 168.
[165] Jacobs J discusses the ICC statistics at para 137.
[166] Paragraph 138.
[167] *AOOT Kalmneft v Glencore International AG* [2002] 1 Lloyd's Rep 128 (which we also discussed in our 2023 review).

Allegations of fraud

In *FIC Properties Sdn Bhd v PT Rajawali Capital International*,[168] a three-member bench of the Singapore International Commercial Court dismissed, with costs in FIC's favour, the applications to set aside a SIAC Award and an enforcement order. The court found no merit in the Rajawalis' grounds for setting aside, which included allegations of fraud, illegality, and breach of natural justice. The judgment, delivered by Philip Jeyaretnam J, clarified that under Singapore law, "fraud" includes "procedural fraud," eg perjury, concealment of material information, or suppression of evidence with substantial effect on the award's making. Importantly, for conduct to constitute procedural fraud, there must be an intention to deceive the arbitral tribunal.[169]

The court found no evidence that FIC intentionally concealed the existence of the pledge (that FIC was alleged to have "deliberately failed to disclose") in arbitration with the intention of deceiving anyone. The pledge was public information and had been communicated to persons associated with the Rajawalis also the issues framed in the arbitration did not give rise to any obligation on FIC to disclose the pledge or its terms.

Appeal on point of law (section 69)

The Supreme Court case of *Sharp Corp Ltd v Viterra BV*[170] primarily concerned the proper contractual construction of a damages clause. However, it also discussed the operation of section 69 of the Arbitration Act 1996.

The question of damages was initially heard in two Grain and Feed Trade Association ("GAFTA") appeal awards which Sharp further appealed. Jacobs J granted permission to appeal, having ruled that the appeal raised a question of general public importance and that the Appeal Board was obviously wrong. The appeal was heard by Cockerill J[171] who dismissed it (having considered that the argument that the tribunal erred in law was not made out) but gave permission to appeal.

[168] [2024] SGHC(I) 33.
[169] Paragraphs 43 to 44.
[170] [2024] UKSC 14; [2024] 1 Lloyd's Rep 568.
[171] *Sharp Corp Ltd v Viterra BV (previously known as Glencore Agriculture BV)* [2022] EWHC 354 (Comm); [2022] 2 Lloyd's Rep 43.

The Court of Appeal[172] came up with yet a different answer and, importantly as we shall see, varied the question of law. It also held that damages should be awarded on the basis that the contracts had been varied, as to which there was no finding by the Appeal Board. Viterra sought permission to appeal to the Supreme Court (claiming that the Court of Appeal exceeded its jurisdiction) and Sharp cross-appealed (that damages should be awarded on an "as is, where is" basis, being the estimated ex warehouse Mundra value of the commodities concerned).

> When determining whether the tribunal made an error of law in relation to the question of law, the court must proceed on the basis of the findings of fact in the award

The Supreme Court ruled that the Court of Appeal had failed to comply with the requirements of section 69 and that the matter would be remitted to the Appeal Board for reconsideration. It set out the basic principles governing section 69 relevant to the appeal:[173]

> "(1) A party may appeal on 'a question of law arising out of an award'(section 69(1)).
>
> (2) The question must be one 'which the tribunal was asked to determine'(section 69(3)(b)).
>
> (3) The application for permission to appeal must 'identify the question of law to be determined' (section 69(4)).
>
> (4) At the permission to appeal stage, the court must be satisfied (inter alia) that 'on the basis of the findings of fact in the award', the decision of the tribunal is 'obviously wrong' or 'the question is one of general public importance and the decision of the tribunal is at least open to serious doubt' (section 69(3)(c)).

[172] [2023] EWCA Civ 7; [2024] 1 Lloyd's Rep 553.
[173] Paragraph 51.

> (5) When determining whether the tribunal made an error of law in relation to the question of law, the court must proceed on the basis of the findings of fact in the award."

The first ground was whether the Court of Appeal had erred in amending the question of law for which permission to appeal had been given. The Supreme Court thought not, and applying *Cottonex Anstalt v Patriot Spinning Mills Ltd*[174] recognised that:

> "It is common for applicants for permission to appeal to identify the question of law in broad or general terms in order to support the contention that the question is one of general public importance. At the hearing of the appeal refinements are often made to the question of law in order better to reflect the substance of the question of law raised."[175]

However, on the second ground, the Supreme Court found that the Court of Appeal had erred in deciding a question of law which the Appeal Board had not been asked to determine and on which it did not decide. Section 69(3)(b) provides that leave to appeal may only be given in relation to a question of law "which the tribunal was asked to determine".[176] In accordance with *Safeway Stores v Legal and General Assurance Society Ltd*,[177] it was necessary to show that "the point was fairly and squarely before the tribunal for determination, whether or not it was actually articulated as a question of law". Whether and, if so, how the contracts had been varied was neither argued before nor addressed by the Appeal Board. "On any view the finding that discharge was made against the original bills of lading is a finding of fact which it was not open to the Court of Appeal to make and this was critical to the Court's conclusion that the contracts had been varied."[178]

As to ground 3, Court of Appeal did err in making findings of fact on matters on which the Appeal Board had made no finding. While in some cases it is possible to infer that the tribunal had made a finding of fact even though it was not expressly set out in the award,[179] in such circumstances the court was not making a finding of fact. Rather it was recognising a finding of fact made by the tribunal. In the present case there was an impermissible finding of fact, namely that that the cargo had been discharged against presentation of the original bills of lading to the vessel's agent.

Security for costs

In *SA and Others v BH and Another*[180] the Hong Kong court confirmed for the first time[181] that it has jurisdiction under Order 23 of the Rules of the High Court to order security for costs in proceedings initiated by parties to set aside an arbitral award. In making this decision, the court made it clear: "I have found that Order 23 has not been excluded by any express statutory provision of the Ordinance or Order 73 itself".[182] Previously the court had ordered security for costs against a party which applied to set aside an award many times and without challenge. What was different in this case is that the plaintiffs (who had themselves challenged the award) unsuccessfully had opposed the Order 23 "application on the ground that the Court has no jurisdiction or power to order security, when section 7 of Schedule 2 to the Arbitration Ordinance ("Ordinance") does not apply to the arbitration, and the Court has no other power under the Ordinance to order security".

[174] [2014] EWHC 236 (Comm); [2014] 1 Lloyd's Rep 615.
[175] Paragraph 54.
[176] Paragraph 60.
[177] [2004] EWHC 415 (Ch). as cited in para 61.
[178] Paragraph 78.
[179] See *Geogas SA v Trammo Gas Ltd (The Baleares)* [1993] 1 Lloyd's Rep 215, and *Bem Dis A Turk Ticaret S/A TR v International Agri Trade Co Ltd (The Selda)* [1999] 1 Lloyd's Rep 729.
[180] [2024] HKCFI 1357.
[181] https://dcc.law/court-confirms-jurisdiction-to-order-security-for-costs-against-parties-seeking-to-set-aside-an-arbitral-award-under-order-23-rhc/
[182] Paragraph 23.

Court assistance and intervention

Charging order

On 22 March 2024 the English High Court issued a final charging order against a substantial London property owned by the State of Libya in the case of *General Dynamics United Kingdom Ltd v State of Libya*.[183] This order was part of General Dynamics' efforts to enforce an ICC arbitral award obtained against Libya in 2016.[184]

After commencing proceedings in 2018, General Dynamics navigated a lengthy process concerning service, ultimately receiving permission to enforce the award in 2022.[185] The company then sought a charging order in April 2022, leading to an interim order granted by HHJ Pelling KC in February 2023.[186] Libya opposed the final charging order, claiming immunity under section 13(2) of the State Immunity Act 1978 (SIA).[187] General Dynamics argued that Libya had waived its immunity by providing written consent for enforcement under section 13(3) of the SIA, as indicated in their contract.[188] The English High Court concluded that the phrase "wholly enforceable" in the arbitration clause (clause 32) constituted such consent.[189] The final charging order was thus upheld, with the court holding that Libya's contractual agreement to "wholly enforceable" awards waived immunity from execution under the SIA.[190] Libya's appeal against this decision was dismissed by the Court of Appeal.[191]

[183] [2024] EWHC 472 (Comm).
[184] Paragraph 3.
[185] Paragraph 3.
[186] Paragraph 4.
[187] Paragraphs 4 to 6.
[188] Paragraphs 7 to 10.
[189] Paragraphs 15, and 22 to 24 (wording in the arbitration clause: "[b]oth parties agree that the decision of the arbitration panel shall be final, binding and *wholly enforceable*" (emphasis added)).
[190] Paragraph 26.
[191] [2025] EWCA Civ 134; [2025] Lloyds Rep Plus 25.

Anti-suit/arbitration injunctions

As geopolitical dynamics continue to evolve and influence international arbitration and cross-border disputes, courts around the world are seeing an increase in cases involving sanctions against Russian entities. The injunction rulings from the courts in England, Singapore, and Hong Kong showcase their commitment to prioritising arbitration agreements amidst challenges from international sanctions and conflicting foreign directives, while maintaining the integrity of arbitration in the face of complex global political tensions.

England

Governing law of the arbitration agreement

The English courts will grant anti-suit relief (under the Senior Courts Act 1981) to restrain a party to an arbitration clause specifying England as the seat from commencing or pursuing proceedings in the courts of another jurisdiction. In our 2023 review, we covered the previously unanswered question of whether the English courts will intervene where the seat of the arbitration is outside England which had been considered – inconsistently – in cases arising out of payments in respect of an engineering, construction and procurement ("EPC") contract with Linde for an LNG plant in Russia complicated by sanctions.

Three different claimant banks were involved (Deutsche Bank, UniCredit and Commerzbank) who had issued English law on-demand bonds and guarantees. In all cases, despite arbitration agreements providing for Paris-seated ICC arbitration, RusChem commenced proceedings in Russia.

In the 2023 edition of this review we summarised that English courts have been extending their reach by granting anti-suit injunctions in two cases (*Deutsche Bank AG v RusChemAlliance LLC*[192] and *Commerzbank AG v RusChemAlliance LLC*[193]) where the arbitral seat was Paris, not England. We also noted that the appeal in

[192] [2023] EWCA Civ 1144; [2023] 2 Lloyd's Rep 600.
[193] [2023] EWHC 2510 (Comm); [2023] 2 Lloyd's Rep 587.

the third case, *UniCredit Bank GmbH v RusChemAlliance LLC*[194] (formerly known as *G v R*), where a similar injunction was not granted, was heard in January 2024.

By way of an update, the *UniCredit* case has now gone all the way up to the English Supreme Court which, on 18 September 2024, delivered a unanimous judgment in *UniCredit Bank GmbH v RusChemAlliance LLC*,[195] dismissing an appeal by RusChem.

To recap the facts of *UniCredit*, in view of the sanctions, Linde, the German contractor, claimed it could not fulfil the contracts, leading RusChem to terminate them and request the return of advance payments. UniCredit refused payment due to the sanctions, prompting RusChem to sue UniCredit before a Russian court.[196] On 22 August 2023 UniCredit sought an injunction in the English Commercial Court against RusChem's Russian proceedings.[197] The Court of Appeal granted the final anti-suit injunction ("ASI").

> The Arbitration Act 2025 modifies the common law position established in *Enka* in that a new section (6A) has been added to the Act whereby the law governing the arbitration agreement will be either the law that the parties explicitly agree to or if no such agreement exists, the law of the seat

The English Supreme Court maintained the ASI, having concluded that the choice of English law governing the main contract also applies to the arbitration agreement contained within it, although French law governed the seat of arbitration. It reaffirmed its decision in *Enka*[198] and stated that: "[a]s was held in *Enka*, the choice of a different country for the seat of the arbitration does not justify reading 'this Bond' as excluding the arbitration agreement in clause 12. The arbitration agreements are therefore governed by English law".[199]

This ruling reinforces the authority of English courts to enforce arbitration agreements and highlights their ability to issue ASIs when a party fails to fulfil its contractual obligation to arbitrate. It also aligns with the outcomes in all three cases we discussed in our last review. However, as we briefly discuss in this review and explained in more detail in our 2023 review, the Arbitration Act 2025 modifies the common law position established in *Enka* in that a new section (6A) has been added to the Act whereby the law governing the arbitration agreement will be either the law that the parties explicitly agree to or if no such agreement exists, the law of the seat. It will be interesting to see whether the legislative change will lead to a decline in the number of ASI applications to the English courts (and Malaysian courts if the corresponding change there is enacted) or an increase in the number of such applications to other common law courts which still apply *Enka* (eg, Hong Kong).

Grounds for granting anti-arbitration injunctions

In *Sodzawiczny v Smith and Another*[200] Foxton J delivered a judgment that explains the circumstances under which a court will issue an anti-arbitration injunction (AAI), preventing an individual from pursuing arbitration proceedings.

The facts and history of *Smith* concern a long-standing dispute (since 2012). In 2014 the claimant entered into a settlement agreement with three individuals, which included an LCIA arbitration clause. Under the settlement agreement, Pro Vinci – controlled by Dr Smith, who was not a party to the agreement – was required to pay the claimant £12 million in instalments. However, Pro Vinci failed to pay all instalments, leading the claimant to secure an arbitration award in his favour. Following this, the claimant initiated LCIA arbitration, resulting in three awards. Although Dr Smith expressed his intention to challenge these awards in court, he did not meet the legal requirements for such a challenge. Instead, he filed a Request for Arbitration with the LCIA, seeking similar relief as in his court application. Additionally, Dr Smith sought a stay on the enforcement of the awards under section 9

194 [2023] EWHC 2365 (Comm).
195 [2024] UKSC 30; [2024] 2 Lloyd's Rep 466.
196 Paragraphs 2 to 8.
197 Paragraph 8.
198 *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb"* (CA) [2020] EWCA Civ 574; [2020] 2 Lloyd's Rep 389; (SC) [2020] UKSC 38; [2020] 2 Lloyd's Rep 449. For discussion about the *Enka* decision, see the 2023 edition of this review.
199 [2024] UKSC 30 ; [2024] 2 Lloyd's Rep 466, para 31.
200 [2024] EWHC 231 (Comm); [2024] 1 Lloyd's Rep 466.

of the Arbitration Act 1996, prompting the claimant to apply for an AAI. Dr Smith then requested that his stay application also apply to this injunction.[201]

In his judgment, Foxton J confirmed that the principles for granting ASIs also apply to AAIs, specifically that: (a) the arbitration process infringes the applicant's legal or equitable rights; and (b) it is vexatious and oppressive.[202] The court identified key scenarios for seeking AAIs, including when parties agreed to litigate in a different forum or when a party attempts a "Non-Compliant Challenge" against the arbitration outcome.[203] In this case, Dr Smith initiated LCIA arbitration, effectively making a "Non-Compliant Challenge" to three awards, violating the claimant's rights. The court, therefore, determined it appropriate to grant an AAI.[204]

Conflicting arbitration and jurisdiction provisions

We have above discussed *Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd*[205] in the context of cases in which it was argued that the alternative dispute resolution mechanism clause was superseded. So far as ASIs are concerned, *Tyson* confirms that an interim ASI is available even though there is a conflict of jurisdiction issue involving the jurisdiction of English courts and a foreign jurisdiction until such issue of conflict is resolved.[206]

Applicability of ASI to third parties

On 6 November 2024 HHJ Pelling KC handed down a judgment in *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*,[207] which discussed the applicability of ASIs over third parties to an arbitration agreement.

Renaissance concerns Renaissance Securities, a financial services provider, which was involved in a dispute with several of its clients in relation to investment service agreements. These agreements contained an arbitration clause stipulating that any disputes must be resolved through LCIA arbitration in London.[208] In October 2023, the defendants in *Renaissance* sued Renaissance Securities in Russian courts to recover assets frozen by Renaissance Securities in light of the anti-Russia sanctions.[209] Justice Dias granted an interim ASI in November 2023, restraining the defendants from pursuing the Russian claims.[210] Butcher and Henshaw JJ later continued the ASI.[211] The main issue in this case was whether an ASI would prevent the defendants from bringing claims in Russia against Renaissance Securities' affiliated Russian entities ("RREs"). Renaissance Securities argued that the claims against RREs were "a naked collateral attack on the claimant's arbitration rights", commenced for "evading (a) Henshaw J order, (b) the arbitration agreement, and (c) the international sanctions regime".[212]

The English High Court found that the arbitration agreement in this case does not bind the defendants to arbitrate claims against RREs, who were non-parties of the arbitration agreement.[213] The High Court thus rejected the ASI application based on the construction of the arbitration agreement. The High Court also rejected Renaissance Securities' argument that the RRE claims were "a collateral attack" and determined that the claims against the RREs were not vexatious but were legitimate tort actions under Russian law.[214]

ASI granted to enforce the arbitration agreement in maritime insurance dispute

In the case of *London Steam-Ship Owners' Mutual Insurance Association Ltd v Trico Maritime (Pvt) Ltd and Others*,[215] the English High Court highlights that a third party wishing to make a direct claim against liability insurers must adhere to the terms of the insurance policy, including compliance with the arbitration clause.

This case concerns the sinking of the container ship off the coast of Sri Lanka in June 2021.[216] The cargo claimants, who had an interest in the lost cargo, initiated legal proceedings in Sri Lanka to seek compensation for their losses.[217] However, the insurance contract stipulated that any disputes must be resolved through arbitration in London.[218]

[201] Paragraphs 6 to 43.
[202] Paragraph 63.
[203] Paragraph 67.
[204] Paragraph 63.
[205] [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609.
[206] Paragraphs 114 to 118.
[207] [2024] EWHC 2843 (Comm).
[208] Paragraphs 1, 2 and 4.
[209] Paragraphs 5 to 6.
[210] Paragraphs 7 and 9.
[211] Paragraphs 7 and 9.
[212] Paragraph 18.
[213] Paragraphs 34 to 40.
[214] Paragraphs 21 to 22, 34 to 40 and 44.
[215] [2024] EWHC 884 (Comm).
[216] Paragraph 2.
[217] Paragraphs 3 and 9.
[218] Paragraphs 14 to 15, and 18 to 21.

The English High Court noted that the claims made by the cargo claimants were not independent of the insurance contract and were, therefore, subject to the arbitration agreement.[219] The High Court emphasised that a foreign claimant cannot benefit from the rights granted by the insurance contract without fulfilling the associated obligation to pursue that right exclusively through arbitration. This principle is understood on a "benefit and burden" basis, meaning that the legal rights asserted by the claimant come with corresponding obligations.[220] If a claim is connected to the enforcement of the insurance contract, the foreign claimant is bound to adhere to the arbitration agreement. In such cases, the insurer may apply for an ASI. The court "generally grant[s] an [ASI], unless there is a good reason why it should not be granted."[221] The court granted the ASI in this case.[222]

> A foreign claimant cannot benefit from the rights granted by the insurance contract without fulfilling the associated obligation to pursue that right exclusively through arbitration

ASI and anti-enforcement injunction upheld in complex Liberian dispute

In *Investcom Global Ltd v PLC Investments Ltd and Others*,[223] a complex dispute arose from two contracts, each featuring an arbitration clause – one explicitly designating England as the seat of arbitration, while the other remained silent on the issue. The central question revolved around the possibility of granting ASIs and anti-enforcement injunctions ("AEIs"). Henshaw J ruled in favour of granting injunctions concerning one arbitration agreement but denied them for the other.

The dispute concerns a telecommunications company, Investcom Global Ltd, which was the claimant in this csae. PLC Investments Ltd (the first defendant, D1) is an investment holdings company in Liberia, owned by two Liberian entities controlled by the second and third defendants (D2 and D3).[224] The claimant and D1 entered into a shareholders agreement, which included arbitration clauses for resolving disputes.[225] The claimant also entered into a management agreement that contains an arbitration clause specifying ICC arbitration in London.[226] In March 2024, pursuant to the shareholders agreement, the claimant commenced arbitration, naming, inter alia, D1 to D3.[227] D2 and D3 filed then the second Liberian proceedings to stay the ICC arbitration.[228] D1 also filed third Liberian proceedings, alleging mismanagement under the management agreement.[229] The claimant sought ASIs and AEI against the second and third Liberian proceedings, and Justice Foxton granted them. The defendants sought to have the ASIs and AEI discharged.[230]

The English High Court upheld the ASI and AEI regarding the third Liberian proceedings, in which it determined that there is a strong argument that D1 is obligated to arbitrate the dispute under the arbitration clause in the management agreement and that D1 is vexatiously seeking to circumvent that arbitration agreement.[231] In relation to the second Liberian proceedings, the court discharged the relief, determining that it lacked jurisdiction to grant any relief concerning these proceedings after the ICC Court designated Toronto as the seat of arbitration. Here, the shareholders agreement did not specify the seat of arbitration, and the ICC Court had the authority to designate the seat under article 18(1) of the ICC Rules.[232]

Singapore

Applicability of ASI to third parties

The Singapore Court of Appeal faced a similar issue of applying to third parties in *Asiana Airlines Inc v Gate Gourmet Korea Co Ltd and Others*.[233] Similar to the approach of the court in *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*,[234] the Singapore Court of Appeal in *Asiana Airlines* refused to grant an ASI that

[219] Paragraphs 27 to 29.
[220] Paragraph 27(2).
[221] Paragraph 27(3).
[222] Paragraphs 30 and 36.
[223] [2024] EWHC 2505 (Comm); [2025] 1 Lloyd's Rep 163.
[224] [2024] EWHC 2505 (Comm), paras. 7-8.
[225] Paragraphs 9 to 11.
[226] Paragraphs 12 to 13.
[227] Paragraph 26.
[228] Paragraphs 39 to 40.
[229] Paragraphs 50 to 51.
[230] Paragraph 4.
[231] Paragraphs 82 to 84.
[232] Paragraphs 87 to 109.
[233] [2024] SGCA(I) 8.
[234] [2024] EWHC 2843 (Comm).

applies to third parties in the absence of clear contractual language to include non-party in the arbitration agreement as well as vexatious or oppressive conduct.

Asiana Airlines concerns a joint venture agreement ("JVA") entered between Asiana Airlines, Inc ("AA") and Gate Gourmet Switzerland GmbH ("GGS") to create Gate Gourmet Korea Co Ltd ("GGK"). AA and GGK later entered into a Catering Agreement ("CA"). Both the JVA and CA contain arbitration agreements seated in Singapore.[235] Later, investigations by a Korean authority revealed that these agreements were part of a scheme by AA's CEO, Mr Park Sam-Koo, to embezzle funds. Mr Park was convicted of various offenses, including breach of trust.[236] In response, Asiana sued GGK in Korea to declare the CA void, claiming GGK was complicit in Mr Park's misconduct. Asiana also sought damages from GGS and its directors. The defendants requested anti-suit injunctions from the Singapore International Commercial Court ("SICC"), arguing that the Korean proceedings breached the arbitration agreements. The SICC granted the injunctions, but an appeal raised an issue about their applicability to the directors, who were not part of the JVA.[237]

In determining the issue, the Singapore Court of Appeal first looked at the arbitration agreement and stated that:

> "The starting point is that this will not normally be granted unless the court finds that the clause was intended to also apply to the non-party. However, an ASI may also be granted where the court finds that the foreign action has been brought against the non-party for ulterior reasons, namely to bypass or avoid the constraints of the exclusive forum clause. In the latter category, among the key considerations is whether in pursuing the foreign proceedings, the ASI respondent is, in truth, seeking to evade its obligations under the exclusive forum clause or is in some way acting in bad faith. In such a situation, if the court grants the ASI, it will have been satisfied that the action against the nonparty was not being pursued for a legitimate purpose."[238]

In its judgment, the Singapore Court of Appeal found that there was nothing in the arbitration agreement of the JVA which suggested that it was intended to include the directors.[239] As to the vexatiousness ground, the court noted that the granting of an ASI faces a "high threshold" and vexatious or oppressive conduct is found in circumstances such that the conduct is "unconscionable", such as "where the real purpose and effect of suing the non-party is to frustrate or subvert an existing obligation under an exclusive forum clause."[240] The court's decision highlights that ASIs against third parties are granted in very limited circumstances. These include instances where the agreement was intended to encompass the non-party or when it is demonstrated that the primary motive behind suing the non-party was to circumvent the arbitration agreement in a vexatious or oppressive manner.

ASI upheld as tort claim is sufficiently connected to arbitration agreement

We have discussed *COSCO Shipping Specialized Carriers Ltd v PT OKI Pulp & Paper Mills and Others*[241] above. As we saw, the Singapore Court of Appeal has restrained a shipper under bill of lading contracts from pursuing a US$269 million litigation in Indonesia over an allision (with a trestle bridge) while clarifying how courts should approach requests for ASIs based on an arbitration clause. Where ASIs are concerned, the court adopts a generally pro-arbitration approach that favours upholding the parties' intent to arbitrate. The Singapore Court of Appeal reversed the decision of the Singapore High Court, granted the ASI, and held that the tort claim was sufficiently connected to the arbitration agreement.[242]

ASIs against third parties are granted in very limited circumstances. These include instances where the agreement was intended to encompass the non-party or when it is demonstrated that the primary motive behind suing the non-party was to circumvent the arbitration agreement in a vexatious or oppressive manner

[235] [2024] SGCA(I) 8, paras 5 to 7.
[236] Paragraphs 8, and 12 to 13.
[237] Paragraphs 8, 15, 17, 19 to 20, 25 and 99.
[238] Paragraph 77.
[239] Paragraph 102.
[240] Paragraphs 89 to 91.
[241] [2024] SGCA 50.
[242] Ibid, para 102.

ASI granted in support of enforcing arbitration agreement in cryptocurrency dispute

In *TrueCoin LLC v Techteryx Ltd*[243] the SGHC granted an ASI to a stablecoin developer, effectively restraining court actions in Hong Kong in favour of arbitration based in Singapore. This decision marks the first instance of the Singapore courts issuing an ASI and applying established legal principles to uphold arbitration agreements in cryptocurrency disputes.

TrueCoin was a Delaware company which granted exclusive rights and interests in its stablecoin products to Techteryx, a BVI company, under two agreements governed by Delaware law, which provides for SIAC arbitration seated in Singapore.[244] Later, TrueCoin and Techteryx entered into a joint written instruction notice to release and transfer escrow assets, in which the notice is governed by Hong Kong law and contains a non-exclusive jurisdiction clause for the Hong Kong Courts.[245] After Techteryx allegedly failed to fulfill payment obligations under the agreements, TrueCoin initiated SIAC arbitrations.[246] In response, Techteryx filed a separate action in the Hong Kong courts.[247] Techteryx contended that the arbitration clause was overridden by the Hong Kong jurisdiction clause in a joint instruction notice governed by Hong Kong law.[248] TrueCoin then sought an ASI from SGHC to restrain the Hong Kong proceedings. The key issues for determination include whether there was a prima facie breach of the arbitration agreements, whether the court should decline to entertain the application on grounds of comity, and whether there are compelling reasons to deny an ASI.

On the first issue the court found that Techteryx's claims in the Hong Kong action were prima facie in breach of the arbitration agreements.[249] Regarding the issue of comity, Techteryx contended that the Singapore court should refrain from considering the ASI application because TrueCoin had sought a stay of the Hong Kong action. Techteryx suggested that the Singapore court should wait for the Hong Kong court to decide on that application in the interest of comity.[250] The SGHC rejected this argument and stated that adopting such an approach would fundamentally undermine the purpose of ASI applications. The SGHC stated that it was more in line with comity for the Singapore court to address the ASI application before the proceedings between parties progressed further.[251]

Techteryx further argued granting the ASI would lead to significant fragmentation of the forum and conflicting rulings from both the Hong Kong courts and the SIAC arbitration.[252] The SGHC dismissed this argument and stated that the potential for forum fragmentation alone did not provide sufficient grounds to refuse the ASI and Techteryx should have anticipated the risks of multiple proceedings when entering into the arbitration agreements.[253]

[243] [2024] SGHC 296.
[244] Paragraphs 2 to 6.
[245] Paragraphs 7 to 9.
[246] Paragraphs 11 to 12.
[247] Paragraphs 13 to 18.
[248] Paragraphs 7 to 9.
[249] Paragraphs 33 to 34.
[250] Paragraph 37.
[251] Paragraphs 40 to 45.
[252] Paragraphs 86.
[253] Paragraphs 91 to 100.

Hong Kong

ASI granted against sanctioned Russian bank

In *Bank A v Bank B*[254] the Hong Kong Court of First Instance (CFI) granted an ASI and anti-enforcement injunctions to Bank A, a German bank, preventing Bank B, a Russian bank sanctioned by the EU, from pursuing enforcement of Russian court proceedings that breached an HKIAC arbitration clause.[255]

The case stemmed from a foreign exchange agreement between the two banks.[256] After the EU sanctions due to the Russia–Ukraine conflict barred Bank A from making payments,[257] the parties terminated the agreement through a termination agreement that included the arbitration clause.[258] When Bank B demanded the settlement amount and Bank A refused to pay, referring to EU sanctions, Bank B initiated proceedings in Russian courts and obtained a judgment.[259] Bank A then sought the injunctions to stop Bank B from enforcing this judgment.

The CFI granted the injunctions. In its decision, the CFI emphasised that an ASI is "an order in personam, and is not addressed to or binding upon a foreign court". In dismissing Bank B's jurisdictional challenge, in which Bank B argued that the effects of EU's anti-Russia sanctions were "acts of state",[260] the court found that the "court does not consider the merits of the underlying dispute when it decides the Plaintiff's claim for the injunctions".[261] The CFI continued to reject Bank B's arguments on futility[262] and public policy grounds.[263]

Asset-preservation injunctions in support of arbitration

In *Company A and Another v Company C*,[264] the plaintiffs sought two significant injunctions against the defendant: a disposal injunction and a Mareva injunction.[265] The disposal injunction aimed to prevent the defendant from transferring its assets to any subsidiary or associated entities, while the Mareva injunction sought to restrain the defendant from disposing of its assets up to approximately US$55.5 million.

> The Court of First Instance in *Bank A v Bank B* emphasised that an ASI is "an order in personam, and is not addressed to or binding upon a foreign court"

The court emphasised its power to grant interim measures to facilitate the arbitration process and support the arbitral tribunal's orders.[266] This was particularly the case given the delays ("the history of the case and the progress of the Emergency Relief Application before the Tribunal can best be described as procrastination, and frustration") and non-compliance by the defendant in executing the escrow agreement as directed by the tribunal ("it is clear beyond peradventure that the Tribunal's directions for the parties to negotiate and to finalize an escrow agreement have fallen on deaf ears, and have not been complied with by the Defendant despite the lapse of over 4 months from June 2024 when PO 32 was issued"), which justified the need for the court's intervention.[267]

Despite the tribunal issuing several procedural orders directing the defendant to deposit assets into an escrow account, the defendant failed to comply.[268] As a result, the court found it "appropriate, just, and convenient" to grant the injunctions necessary to preserve the status quo pending the tribunal's final orders and award.[269]

[254] [2024] HKCFI 2529.
[255] Paragraph 104.
[256] Paragraph 7.
[257] Paragraphs 8 to 11.
[258] Paragraphs 12 to 13.
[259] Paragraphs 16, and 18 to 27.
[260] Paragraph 45.
[261] Paragraph 60 (emphasis added).
[262] Paragraphs 75 to 85.
[263] Paragraphs 86 to 103.
[264] [2024] HKCFI 3505.
[265] Paragraph 2.
[266] Paragraph 24.
[267] Paragraphs 25 and 39.
[268] Paragraphs 27 to 34.
[269] Paragraph 41.

Enforcement of awards

Effect of Consumer Rights Act 2015

In our 2023 review we discussed two English Commercial Court decisions handed down by Bright J at the end of July 2023 which discussed the operation of the provisions of the Consumer Rights Act 2015 on consumer arbitrations, and in particular the extent to which arbitration agreements are enforceable against consumers. The cases we discussed were *Payward Inc and Others v Chechetkin*[270] in which the agreement was held to be invalid, and *Eternity Sky Investments Ltd v Zhang*[271] in which the agreement was held to be valid. As we foreshadowed, *Eternity Sky* has since been appealed.

In *Eternity Sky Investments Ltd v Zhang*, a HKIAC arbitration clause in a personal guarantee was deemed by Bright J to be enforceable because the personal guarantee did not have a "close connection with the United Kingdom", as required by section 74 of the 2015 Act (cited above), and therefore the 2015 Act did not need to be considered. Bright J also held that the arbitration clause was not unfair under the 2015 Act – the core provisions of the guarantee and the choice of governing law and dispute resolution clauses were transparent and prominent. The Court of Appeal upheld these findings.[272]

However, importantly, the Court of Appeal also reversed Bright J's finding that Mrs Zhang "was a consumer, albeit of a very untypical kind".[273] In the Court of Appeal, Males LJ, with whom Dingemans LJ and Falk LJ agreed, held that she had acted wholly or mainly for business purposes when entering into the guarantee. The question of whether she was a consumer fell to be determined objectively, taking into account the "sphere of activity" in which the personal guarantee took place – ie the HK$500 million corporate convertible bond issue by a company of which her late husband was largest individual shareholder (with just under 0.4 per cent). It was also legitimate to take into account Mrs Zhang's husband's shareholding, in which the applicable Hong Kong Stock Exchange regulatory regime considered her to have a beneficial interest. Males LJ accepted: "that there is a public policy in favour of enforcing arbitration awards in accordance with the New York Convention and that the public policy exception is relatively narrow".[274] The award was upheld.

Delay in objections

One essential consideration for a respondent in an arbitration is how and when to raise an objection against the tribunal's jurisdiction to hear the case, if it intends to do so, as the strategy adopted can lead to significant and irreversible consequences.

In *KZ v KY*[275] an out-of-time (by 44 months) attempt to challenge the enforcement of a Xiamen Arbitration Commission award was rejected by the Hong Kong Court of First Instance with indemnity costs:

> "Having given consideration to the substantial delay, the lack of justification for the delay, the lack of merits of the intended application to set aside the Enforcement Order, and the prejudice to the Applicant who has obtained a final and binding Award and been deprived of the fruits of the Award, I refuse leave to extend time for the Respondent to set aside the Enforcement Order."[276]

The court found:

> "... the Respondent's excuse disingenuous ... His failure to apply to set aside the Enforcement Order before the issue of the Summons in December 2023 must have been a conscious and deliberate choice."[277]

Similarly, in *DBL v DBM*,[278] the Singapore Court of Appeal held that an "appellant's belated objection to the Searoutes Demonstration in its setting aside application was inexcusable and opportunistic". An English law sales contract provided for Singapore Chamber of Maritime Arbitration. The tribunal found in favour of the respondent having relied on evidence the Searoutes Demonstration. The appellant took issue with the presentation of said

[270] [2023] EWHC 1780 (Comm); [2023] 2 Lloyd's Rep 507.
[271] [2023] EWHC 1964 (Comm); [2023] 2 Lloyd's Rep 419.
[272] [2024] EWCA Civ 630.
[273] Paragraph 2.
[274] Paragraph 136.
[275] [2024] HKCFI 1880.
[276] Paragraph 66.
[277] Paragraph 28.
[278] [2024] SGCA 19.

evidence and claimed that two other arguments had not been properly considered (in breach of natural justice). As regards the Searoutes Demonstration, it argued that this had been allowed by the tribunal despite the respondent's failure to adhere to the agreed hearing protocol and that the appellant was not afforded a reasonable and fair opportunity to address it. The Searoutes Demonstration objection was not raised in the proceedings before the arbitral tribunal. The Court of Appeal clarified that the principle of natural justice does not require the tribunal to give responses to all submissions made, and is only required to deal with the essential issues. Further, even if there is a breach of natural justice, the court affirmed its previous decision that the court would only intervene if there was actual or real prejudice occasioned by the breach.[279]

Failure to comply with procedural orders

In *Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co Ltd and Another*,[280] the Singapore Court agreed that it can *refuse to enforce an arbitral award* and strike out proceedings for enforcement if the applicant has breached unless discovery orders made in the enforcement proceedings. The court summarised the facts and questions (both of which it answered "yes") as follows:

> "the present case is situated in the somewhat unusual context of curial proceedings to enforce a foreign arbitral award. A putative award creditor in foreign arbitral proceedings commences proceedings in Singapore to enforce the arbitral award it has obtained in its favour, intending to leverage on the policy of no-frills enforcement embodied by the ... 'New York Convention', which is given the force of law in Singapore ... The award debtor, however, claims to know nothing of the arbitration and intends to resist enforcement of the award. To this end, it takes out an application for specific production of documents, seeking various documents relating to the arbitration and the parties' underlying dispute, pursuant to O 11 r 3 of the Rules of Court 2021 ('ROC 2021'). The court below grants the application and makes an order for the award creditor to produce specified categories of documents. After the award creditor fails to comply with its production obligations, an unless order is made against it, specifying, as the consequences of non-compliance, the dismissal of the enforcement proceedings and the rescission of the earlier grant of permission for the enforcement of the award. The award debtor alleges that the award creditor remains recalcitrant in its non-compliance. The broad issues that arose in the court below and in the appeal before me are twofold:
>
> (a) One, has the award creditor breached the unless order?
>
> (b) Two, should the specified consequences in the unless order be allowed to take effect."[281]

The judgment ends on cautionary note:

> "Xinbo has fear-mongered that enforcement of the Unless Order would set a 'dangerous precedent'. I disagree. In my judgment, accepting Xinbo's position would set a comparatively more dangerous precedent: it would give award creditors and enforcement applicants the impression that, with the award in hand, they have an open road to disobey the court's orders with impunity. Anyone who invokes the Singapore court's jurisdiction and powers for their own purpose – here, to enforce an award – necessarily subjects itself to the court's authority and any orders made by it."[282]

Penalties and sanctions

As we have seen, in Hong Kong indemnity costs tend to be ordered against the unsuccessful award debtors in every case, consistent with the long-standing policy of the Hong Kong courts to discourage unmeritorious award challenges. In *IO v Contractor*[283] the Court of First Instance went a step further. Having dismissed as "totally baseless" a challenge to the enforcement of a Hong Kong award arising from a construction dispute and awarded indemnity costs against the award debtor, Mimmie Chan J also criticised the award debtor's lawyers:

> "The Contractor obviously did not receive proper legal advice on whether or not to apply to oppose enforcement of the Award, and its legal costs of

[279] Paragraphs 43 to 47.
[280] [2024] SGHC 308.
[281] Paragraph 4.
[282] Paragraph 202.
[283] [2024] HKCFI 1802.

these proceedings (including the costs in HCCT 104/2023 which was dismissed by this Court on 22 February 2024) have been incurred in vain and have been totally wasted. If the Contractor had been advised to pursue these proceedings on the basis that it has a good cause of action, then its legal advisers have utterly failed in their duties to the Court and have caused its client to incur totally unnecessary legal costs and to engage in conduct amounting to abuse of process."[284]

> In Hong Kong indemnity costs tend to be ordered against the unsuccessful award debtors in every case, consistent with the long-standing policy of the Hong Kong courts to discourage unmeritorious award challenges

As regards sanctioning parties' failure to comply, in *Hilton International Manage (Maldives) Pvt Ltd v Sun Travels & Tours Pvt Ltd*,[285] the Singapore High Court imposed the statutory maximum fine (of S$100,000 (US$75,600)) for committal against a non-paying debtor company and threatened its managing director with imprisonment. In 2015 Hilton won an arbitration; it entered Singapore judgment two years later. In 2021, a Singapore court ordered Sun Travels to pay the amounts due under the judgment within three months – Sun Travels failed to comply. With the court's leave Hilton filed proceedings seeking committal orders against Sun Travels and its chairman and managing director. The court agreed a fine alone was not an adequate deterrent. Taking into consideration the coercive element, it suspended the sentence of one year's imprisonment for three months to give the managing director time to remedy the situation and procure payment. If payment was made (as it duly was), the imprisonment term would be substituted with a fine of $100,000.

[284] Paragraph 20.
[285] [2024] SGHC 119.

Fraud unravels all

In *Contax Partners Inc BVI v Kuwait Finance House (KFH-Kuwait) and Others*[286] Butcher J set aside his own earlier decision (following a without notice application) granting leave to enforce a purported Kuwait award under section 66 of the Arbitration Act 1996 (with judgment entered in the terms of the operative part of the award).

Based on Butcher J's original judgment third parties debt orders were made (by a Master) in relation to the judgment debt (of over £70 million) against Citibank UK, HSBC plc, Barclays Bank plc and JP Morgan Chase NA. The defendant only became aware of the proceedings as a result of the freezing of the bank accounts. It applied to court to prevent payment under the orders.

On hearing defendant's evidence (and noting that no original of the award was produced and that several passages of the award seemed to have been taken from the judgment of Picken J in *Manoukian v Société Générale de Banque au Liban SAL and Another*[287]), Butcher J agreed with the defendant and concluded:

> "that there was no arbitration agreement or arbitration, and that the Award and the Kuwaiti judgment are fabrications. ...
>
> For these reasons, I will set aside the August Order entering judgment against the Defendants in the terms of the purported Award.
>
> ... there are a considerable number of unanswered, but serious, questions, and in particular as to who was responsible for the fabrications which I have found to have been made, and whether there is culpability (and if any whose) as to the way in which the application for permission to enforce the purported Award was presented to the court. Those are matters which are likely to require investigation hereafter."[288]

[286] [2024] EWHC 436 (Comm).
[287] [2022] EWHC 669 (QB).
[288] Paragraphs 50 to 52.

Investor-state dispute settlement

Our focus in this review is mainly on international commercial arbitration. That said, investor-state dispute settlement (ISDS) cases tend to be very big (in terms of quantum), and thus give rise to many applications and cases (such as challenges to arbitrators (as we have seen above), ICSID annulment proceedings, and resisting enforcement). Interesting 2024 ISDS developments we noticed included the following.

Tribunals

- First Quantum Minerals and other investors brought ICC and ISDS arbitrations against Panama in relation to the Cobre Panamá mine and other investments.[289]
- The $16 billion claim by Mikhail Friedman filed against Luxembourg over its decision to freeze his assets after he was placed on the European Union's sanctions list. The arbitration is being heard in Hong Kong.
- There was a hearing in September 2024 in PCA Case No 2017-06: Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov and Kerch Strait (*Ukraine v The Russian Federation*).[290]
- In *Smurfit Holdings BV v Bolivarian Republic of Venezuela*, ICSID Case No ARB/18/49 Smurfit was awarded US$469 million. Venezuela brought annulment proceedings in early 2025.

France

- In *BP v Kosmos Energy – Senegal LNG Project*, a Paris-based arbitrator ruled in favour of BP prohibiting Kosmos from selling to third parties liquefied natural gas from the Greater Tortue (GTA) project off Senegal and Mauritania.[291]
- In *Malaysia Sulu Sultanate Heirs*, the Court of Cassation found in favour of Malaysia. It rejected an appeal by the heirs of a former sultan who sought nearly $15 billion from Malaysia's government.

[289] www.whitecase.com/insight-our-thinking/panamas-reckless-gamble-foreign-investments
[290] https://docs.pca-cpa.org/2024/09/52ff2984-2017-06-20240920-press-release.pdf
[291] www.reuters.com/business/energy/arbitration-rules-favour-bp-sole-buyer-kosmos-energys-senegal-lng-project-2024-10-08/

> The annulment judge's role in annulment proceedings is limited to assessing whether the award violates international public policy, not to re-evaluate the arbitral tribunal's procedural decisions

- In *Green Network SPA v Alpiq*, the Court of Cassation which upheld the Paris Court of Appeal's rejection of Green Network's attempt to annul an ICC award. Green Network argued that the arbitral tribunal violated its rights of defence by rejecting a document production request and closing the proceedings on the same day. The company contended that as the arbitral award was issued in violation of its right to a defence, its recognition is contrary to international public policy. The Court found that the arbitral tribunal acted within its discretion and had provided justification in the final award for rejecting the document production request. The court emphasised that the annulment judge's role in annulment proceedings is limited to assessing whether the award violates international public policy, not to re-evaluate the arbitral tribunal's procedural decisions.

England

- In *Infrastructure Services Luxembourg Sarl v The Kingdom of Spain; Borders Timber Ltd and Another v Republic Of Zimbabwe*[292] the English Court of Appeal heard a combined appeal against two decisions which raised the question of the relationship between the ICSID Convention and sovereign immunity under the State Immunity Act 1978. The first instance decisions took different views of that that relationship although each concluded that a contracting state could not rely upon sovereign immunity. The Court of Appeal was concerned only with immunity defences.
- In *Republic of Korea v Elliott Associates LP*[293] Korea sought to overturn an arbitration award under an investment treaty whereby Korea was found, through a commercial entity, to have interfered with Elliott's

[292] [2024] EWCA Civ 1257; [2025] 1 Lloyd's Rep 66.
[293] [2024] EWHC 2037 (Comm); [2024] 2 Lloyd's Rep 363.

rights in a company in which it held shares. The question for Foxton J was whether the tribunal had exceeded its jurisdiction so that the Award could be challenged under section 67 of the Arbitration Act 1996 (substantive jurisdiction). Foxton J reviewed the case law on the distinction between jurisdiction and merits in investment cases and summarised the principles to be drawn from the authorities on the meaning of substantive jurisdiction in BIT. Foxton J was satisfied that none of the three issues raised in the case was jurisdictional However, he accepted that the contrary argument had real prospect of success, and this was a case where there was a compelling reason to give permission for an appeal to the Court of Appeal under section 67(4) of the 1996 Act.

- The judgment of Foxton J in *Czech Republic v Diag Human SE*[294] sets out important analysis of a series of provisions of the Arbitration Act 1996, including sections 30, 57, 67, 68 and 73.

[294] [2024] EWHC 503 (Comm); [2024] 1 Lloyd's Rep 367.

Arbitration Bill/Act 2025

In our 2023 review we reviewed the English Arbitration Bill and its key proposed amendments in detail and thus will not do so again here. Since our review, two major changes have been introduced to the Arbitration Bill: (a) a specific exception to the default rule regarding the governing law of the arbitration agreement in investor-state arbitrations; and (b) clarifying updates concerning appeals from High Court decisions to the Court of Appeal.[295]

Notably, the latest iteration of the Bill features a new section 6A(1), which stipulates that the law of the seat will govern the arbitration agreement unless the parties explicitly designate a different legal framework. New sections 6A(3) and (4) make it clear that section 6A(1) does not apply to arbitration agreements arising from standing offers to arbitrate stipulated in treaties or non-English legislation.[296] For non-ICSID investor-state arbitration agreements, the applicable law will be determined by arbitral tribunals based on the relevant treaty or instrument in each individual case.

Since July 2024 the Government's Arbitration Bill has been making its way through Parliament. It commenced in the House of Lords and successfully passed through the Commons on 11 February 2025.[297] On 24 February 2025 the bill received its Royal Assent and formally became the Arbitration Act 2025.[298] Most of the Arbitration Act 2025 will come into force on a day appointed by the Secretary of State regulations "as soon as practicable".[299]

Several other jurisdictions are also reviewing their arbitration laws including: Argentina; China (as discussed below; France; Germany (discussed in our 2023 review); Italy; India (discussed below); Japan; Malaysia (as we discuss below); Malawi; and Nigeria and Vietnam. As we also discuss below, Hong Kong has introduced security of payment legislation which will impact construction disputes.

[295] https://commonslibrary.parliament.uk/research-briefings/cbp-10134/ ; https://publications.parliament.uk/pa/bills/cbill/59-01/0057/240057.pdf. For more information about the updates concerning appeals from the High Court, see https://hansard.parliament.uk/lords/2024-09-11/debates/0E484F17-9DB5-4A3D-ADB0-3731BECF558D/ArbitrationBill(HL)#contribution-127532B4-F7FB-4F81-90B5-EEECE2150C37.

[296] https://publications.parliament.uk/pa/bills/cbill/59-01/0057/240057.pdf.

[297] https://bills.parliament.uk/bills/3733.

[298] www.gov.uk/government/news/boost-for-uk-economy-as-arbitration-act-receives-royal-assent. For the full text of the Arbitration Act 2025, see www.legislation.gov.uk/ukpga/2025/4/contents/enacted.

[299] www.gov.uk/government/news/boost-for-uk-economy-as-arbitration-act-receives-royal-assent

Updates to other arbitration laws

Mainland China

In recent years, China has gained popularity and has become one of the busiest arbitration hubs in the world. According to the 2024 World Arbitration Caseload report by Arbitration Lab, the global share of disputes based in China increased by 5 per cent in 2024, rising from 67 per cent to 72 per cent. The report also shows that four of the world's five fastest-growing arbitral institutions are in China.[300]

As China continues to establish itself as a popular arbitration seat, there have been significant developments in the arbitration laws in China, as well as changes in the arbitration rules of major Chinese arbitral institutions that sought to align with global norms and practices. This section of the review will discuss some of these changes and developments in turn.

Overview of China updates

In 2024 China's arbitration landscape has seen significant advancements, showing its commitment to aligning with international standards. The draft amendment to the PRC Arbitration Law introduces important reforms, including the recognition of online arbitration, separability of arbitration agreements, and ad hoc arbitration in certain foreign-related cases. These changes enhance the efficiency and flexibility of dispute resolution processes. Furthermore, updates from SHIAC and CIETAC modernise procedural rules by incorporating features such as emergency arbitration, requirements for third-party funding disclosures, and mechanisms to address multi-contract disputes. Together, these developments position China as a more attractive and competitive arbitration hub, solidifying its role in the global arbitration landscape.

Under the Chinese Arbitration Law of 1995, only the arbitration commission or the court (which has the final say) has the power to determine the tribunal's jurisdiction in the event an objection to the arbitration agreement or the jurisdiction of the tribunal is raised. This deviates from Kompetenz-Kompetenz. The 2021 draft included a proposal to also allow the tribunal (once formed) to determine such questions. However, this revision is no longer included in the current draft. Several arbitral institutions (starting with CIETAC) have tried to bridge the gap by amending their Rules to delegate their power (to determine the existence and validity of an arbitration agreement and jurisdiction) to the tribunal (once formed).

Draft amendment to China's Arbitration Law

On 8 November 2024 the Standing Committee of the 14th National People's Congress published the draft amendment to the PRC Arbitration Law. This marks a significant development in the PRC Arbitration Law, which was originally enacted in 1995 and last updated in 2017.[301] The changes also show the effort of China to align its arbitration framework with global standards and practices. Some notable features of the draft amendment include the following:

(a) Online arbitration. Article 11 states that, with the consent of the parties, online arbitration proceedings have the same legal effect as offline ones.[302]

(b) Validity of arbitration agreement. Article 27 reinforces the principle of separability of arbitration agreements, which clearly states that an arbitration agreement remains valid even if the underlying contract is not formed, has been rescinded, or is deemed ineffective.[303] Article 28 grants the arbitral tribunal the authority to determine the validity of an arbitration agreement.[304]

[300] https://arbitrationlab.com/world-arbitration-caseload-2024-mapping-the-terrain/

[301] Text of the 2024 draft amendment: http://www.law-lib.com/fzdt/newshtml/20/20241109083812.htm. For the 2017 version of the arbitration law see: https://law.pkulaw.com/chinalaw/83c8fbd6da8a6eb8bdfb.html.

[302] Translation for article 11: "经当事人同意，仲裁活动可以通过信息网络平台在线进行。 仲裁活动通过信息网络平台在线进行的，与线下仲裁活动具有同等法律效力。With the consent of the parties, arbitration proceedings may be conducted online via an information network platform. Arbitration proceedings conducted online via an information network platform shall have the same legal effect as offline arbitration proceedings".

[303] Translation for article 27: "仲裁协议独立存在，合同是否成立及其变更、解除、不生效、终止、被撤销或者无效，不影响仲裁协议的效力。The arbitration agreement exists independently, and its validity is not affected by the establishment, modification, termination, ineffectiveness, rescission, or invalidation of the underlying contract".

[304] Translation for article 28: "当事人对仲裁协议的效力有异议的，可以请求仲裁委员会或者仲裁庭作出决定，也可以请求人民法院作出裁定。一方请求仲裁委员会或者仲裁庭作出决定，另一方请求人民法院作出裁定的，由人民法院裁定。If a party disputes the validity of the arbitration agreement, they may request a decision from the arbitration commission or arbitral tribunal, or they may apply to the people's court for a ruling. If one party requests a decision from the arbitration commission or arbitral tribunal while the other party applies to the people's court for a ruling, the people's court shall make the final determination".

(c) Time limit for setting aside an award. Article 69 shortens the time frame for challenging arbitral awards from six months to three months.[305] This change requires parties to act swiftly when challenging an arbitral award.

(d) Seat of arbitration. Article 78 specifies that the parties can mutually agree in writing on the seat of arbitration, which in turn will establish the governing law applicable to the arbitration and identify the court that has jurisdiction over the proceedings.[306] The arbitral award will be regarded as having been issued at the agreed seat of arbitration.

(e) Ad hoc arbitration in specific cases. Article 79 allows for ad hoc arbitration in two specific types of foreign-related cases: (i) disputes concerning foreign-related maritime issues; and (ii) disputes between businesses registered in pilot free trade zones.[307] This change marks a shift from the previous requirement that arbitration in Mainland China must adhere to institutional procedures.[308] The amendment thus enables parties to take greater control over their arbitration process, providing an alternative to institutional arbitration.

Malaysia

Plans are underway to reform the Asian International Arbitration Centre (AIAC). Notably an AIAC Court of Arbitration will be set up to promote speed, transparency, integrity, and accountability in the decision-making process. In July 2024 a draft bill[309] was tabled for a first reading in Parliament. It will amend the Arbitration Act 2005 to replace references to "Director" with references to "President" of the AIAC to allow the President to assume functions such as the appointment of arbitrators.

The bill also aims at modernising Malaysia's arbitration law including by allowing electronic signatures and third-party funding of arbitration (disapplying the doctrines of champerty and maintenance). It also provides that unless the parties otherwise agree, by default the law of the seat of arbitration is the law applicable to the arbitration agreement (solving the problem that arose in England in *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb"*[310] which will likely be solved by a similar legislative amendment in England).

It is expected that the AIAC will release corresponding and modernised Rules in the first half of 2025.

India

In 2024 India made improvements to its arbitration law and institutional regulations, showcasing the country's commitment to enhancing its arbitration framework and aligning with global standards. Some key developments include the proposal of a new draft bill aimed at streamlining and improving the efficiency of arbitration proceedings, such as empowering arbitral tribunals to address jurisdictional objections as a preliminary matter issue. The Indian courts also adopted an arbitration-friendly approach, as demonstrated by some of the pro-arbitration rulings from the Supreme Court of India and High Courts in 2024. For instance, in January 2024, the Supreme Court ruled in *S V Samudram v State of Karnataka*[311] that courts lack the authority to modify arbitral awards under the Arbitration and Conciliation Act.

[305] Translation for article 69: "当事人申请撤销裁决的，应当自收到裁决书之日起三个月内提出。 A party applying to set aside an arbitral award must submit the application within three months from the date of receiving the award".

[306] Translation for article 78: "当事人可以书面约定仲裁地，作为仲裁程序的适用法及司法管辖法院的确定依据。仲裁裁决视为在仲裁地作出。当事人没有约定或者约定不明确的，以仲裁规则规定的地点为仲裁地；仲裁规则没有规定的，由仲裁庭按照便利争议解决的原则确定仲裁地。The parties may agree in writing on the seat of arbitration, which shall serve as the basis for determining the applicable procedural law and the court with jurisdiction over the arbitration. The arbitral award shall be deemed to have been rendered at the seat of arbitration. If the parties have not agreed on the seat or if the agreement is unclear, the seat of arbitration shall be determined based on the location specified in the arbitration rules. If the arbitration rules do not specify a location, the arbitral tribunal shall determine the seat of arbitration based on the principle of facilitating dispute resolution".

[307] Translation for article 79: "涉外海事中发生的纠纷，或者在经国务院批准设立的自由贸易试验区内设立登记的企业之间发生的具有涉外因素的纠纷，当事人书面约定仲裁的，可以选择由仲裁委员会进行；也可以选择在中华人民共和国境内约定的地点，由符合本法第二十条规定条件的人员组成仲裁庭按照约定的仲裁规则进行，该仲裁庭应当在组庭后三个工作日内将当事人名称、约定地点、仲裁庭的组成情况、仲裁规则向仲裁协会备案。For disputes arising from foreign-related maritime matters or disputes with foreign-related elements between enterprises registered in pilot free trade zones established with State Council approval, if the parties agree in writing to arbitration, they may choose to have the arbitration conducted by an arbitration commission. Alternatively, they may agree on a location within the territory of the People's Republic of China and have the arbitration conducted by an arbitral tribunal composed of personnel meeting the requirements of article 20 of this law, in accordance with the agreed arbitration rules. The arbitral tribunal must, within three working days of its formation, submit a record to the arbitration association, including the names of the parties, the agreed location, the composition of the tribunal, and the applicable arbitration rules".

[308] See answer 5.1 at https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/china#:~:text=Pursuant%20to%20Article%2016%20of,not%20recognised%20under%20Chinese%20law.

[309] https://lh-ag.com/wp-content/uploads/2024/07/DR-38-BI.pdf

[310] [2020] UKSC 38; [2020] 2 Lloyd's Rep 449.

[311] Civil Appeal No 8067 of 2019, 4 January 2024.

In *Vedanta Ltd v Shreeji Shipping*,[312] the Delhi High Court found that an arbitration agreement with multiple seats is not invalid due to uncertainty. Rather, it enables the parties to select from the specified seats when disputes arise.

Hong Kong

After some fine tuning,[313] the Construction Industry Security of Payment Ordinance (Cap 652) ("SOP Ordinance") was gazetted on 27 December 2024 following passage of the Construction Industry Security of Payment Bill on 18 December 2024 and mandatory payment and dispute resolution provisions will be automatically incorporated into contracts that the SOP Ordinance applies to, that are entered into on or after 28 August 2025.[314] The Ordinance will facilitate the recovery of payments under construction contracts to provide a mechanism for the speedy resolution of payment disputes under certain construction contracts through adjudication proceedings. It will also (in certain circumstances) give a right to a party to a construction contract, under, to suspend or reduce the rate of progress of the construction work or the supply of related goods and services under the contract. Finally it provides for related matters.

Updates to arbitration rules

Arbitral institutions generally update their rules at least once a decade.

Singapore International Arbitration Centre (SIAC)

The SIAC Rules 2025 ("SIAC 2025") and a corresponding revised Schedule of Fees came into force on 1 January 2025.[315] Unless otherwise agreed by the parties, they apply to *any* arbitration commenced thereafter.

Several changes were made to the previous (2016) version:

(1) A cheaper new streamlined procedure (described in Schedule 2) is available if the amount in dispute is under S$1 million (approx US$0.74 million)[316] or the parties agree. Arbitrations under this procedure are decided by a sole arbitrator and, generally, within three months and only on the basis of written submissions and any accompanying documentary evidence with neither discovery nor factual and witness evidence. Generally, the tribunal and SIAC's fees are capped at 50 per cent of the maximum limits calculated in accordance with SIAC's Schedule of Fees. This is a helpful innovation (similar to those adopted by other institutions) aimed at keeping costs of smaller cases down.

(2) The (Schedule 3) Expedited Procedure's limit has been raised to S$10 million (approx US$7.37 million). This procedure is now also available if the circumstances of the case warrant its application (previously a higher requirement of "exceptional urgency" applied).

(3) "Spine stiffening provisions" have been added to give arbitrators more confidence by codifying their powers. For example, rule 46 allows parties to apply for a preliminary determination of any issue in the arbitration. Rule 17 provides for coordinated arbitration proceedings where the same tribunal is constituted in two or more arbitrations.

(4) Third-party funding was allowed in Singapore after the previous (2016) Rules were issued hence unsurprisingly

[312] 8 February 2024.
[313] Tweaks were made to the previous bill (www.legco.gov.hk/yr2024/english/bills/b202405172.pdf).
[314] www.news.gov.hk/eng/2024/12/20241218/20241218_195102_346.html
[315] An updated SIAC Model Clause (revised as of 9 December 2024) has also been published.
[316] Exchange rate 1 S$ = 0.760401 US$ (as of 25 April 2025 per Xe currency converter).

they were silent on this increasingly important subject. SIAC 2025 remedies this. New Rule 38 requires parties to disclose third-party funding arrangements on an ongoing basis in a manner which is more detailed than many other rules. The tribunal may make such orders for disclosure in respect of the funding agreement as it sees fit including in respect of details of the third-party funder's interest in the outcome of the proceedings and whether the third-party funder has committed to undertake adverse costs liability. While "disclosure and existence of a third-party funding agreement on its own shall not be taken as an indication of the financial status of a party", the "Tribunal may take into account any third-party funding agreement in apportioning costs". This wording may have been added to address a problem that arose in *Essar Oilfields Services Ltd v Norscot Management Pvt Ltd*.[317]

(5) The new rules contain many references to electronic communication.

(6) The Registrar can now conduct administrative conferences with the parties even prior to the constitution of the tribunal. The SIAC Gateway has been incorporated into the rules (it allows e-filing, online payment and document upload and storage services etc).

(7) Article 32.4 now reads:

> "As soon as practicable after the constitution of the Tribunal, the Tribunal shall convene a first case management conference with the parties to discuss the procedures that will be most appropriate and efficient for the case. At the first case management conference, the Tribunal may additionally consult with the parties on: (a) the potential for the settlement of all or part of the dispute, including through the adoption of amicable dispute resolution methods such as mediation under the SIAC-SIMC AMA Protocol; and (b) whether it would be appropriate to adopt environmentally sustainable procedures for the arbitration."

(8) Rule 40.5 provides guidance for lawyers on how to deal with witnesses. While rule 40.5 is "subject to any applicable laws or regulations" (and lawyers in international arbitration are often subject to different professional codes of conduct depending on where they are from) it categorically disallows coaching. Rule 40.5 reads:

> "*Subject to any applicable laws or regulations*, in respect of any witness or potential witness whose evidence it intends to adduce, a party or its representatives:(a) may interview any such witness or potential witness; (b) assist such witness or potential witness in the preparation of a witness statement or expert report; and (c) meet such witness prior to his or her appearance to give oral evidence at any hearing. *A party and its representatives should seek to ensure that the evidence of fact witnesses reflects their own account of the relevant facts and the evidence of experts reflects their genuinely held opinions*."

> If arbitration awards are completely confidential they cannot by definition be referred to – which makes it difficult for case law to develop

(9) A request for the appointment of an emergency arbitrator can now be made prior to (rather than as previously following or concurrent with) the filing of a Notice of Arbitration (schedule 1 article 2(a)) (ie ex parte with the Notice to follow within seven days). Parties will also have the option of filing an application for a protective preliminary order directing a party not to frustrate the purpose of the requested emergency interim or conservatory measure prior to notifying the other party (schedule 1 article 25). The emergency arbitrator is required to determine the request for a protective preliminary order within 24 hours of its appointment.

(10) Finally, it is worth noting some proposed changes which were not implemented:

> (a) If arbitration awards are completely confidential they cannot by definition be referred to – which makes it difficult for case law to develop.[318] Thus, there have been calls for awards to be published at least in redacted form (particularly in investor state arbitration). However, the other problem this proposed

[317] [2016] EWHC 2361 (Comm); [2016] 2 Lloyd's Rep 481.

[318] In common law jurisdictions arbitration awards unlike judgments are not binding – ie they do not strictly speaking create precedent.

solution needs to be balanced against is that one of the perceived (by many) main advantages of arbitration is confidentiality. It had been controversially proposed that rule 60 be amended to reverse the presumption that awards may not be made public absent consent from the parties and the tribunal (ie an opt out mechanism). However, rule 60 as adopted still requires the agreement of the parties (opt in) and envisages redaction.

(b) As regards rule 26.1, it was proposed that two grounds of challenge be added: if the arbitrators are: (a) unable to perform their functions; and (b) fail to act or perform their functions according to the SIAC Rules or "within the prescribed time limits". The latter additional ground appears to have been dropped.

(c) Text aimed at promoting diversity does not seem to have been included in SIAC 2025.[319]

Hong Kong International Arbitration Centre (HKIAC)

The 2024 Administered Arbitration Rules ("HKIAC 2024") were announced at the 2024 ICCA Congress. They came into on 1 June 2024 and, unless otherwise agreed, apply to all arbitrations falling on or after that date. Amendments (to the 2018 version) aim to improve the arbitration process and include:

(1) New provisions on diversity in appointing arbitrators (article 9A).[320]

(2) Article 13.1– General Provisions now reads:

> "Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute, the effective use of technology, **information security**, and **environmental impact**, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case."

(3) "Spine stiffening measures" have been added (including under article 13) confirming the tribunal's power to determine preliminary issues, bifurcate proceedings etc. Article 13.9 allows the tribunal, after consulting the parties, to take measures to avoid conflicts of interest in party representation including by excluding the proposed new representatives.

(4) Efficiency enhancing measures including a time limit for declaring proceedings closed which triggers a deadline for issuing an award (article 31).

(5) Emergency arbitrator's power to make interim-interim orders pending emergency decision.

(6) New powers for the HKIAC to review and adjust tribunal fees and expenses (schedule 2). The HKIAC can also revoke the appointment of arbitrators for failure to fulfil functions in accordance with the Rules or within the prescribed time limits (article 13.10).

(7) Modernised modes of communication (eg article 13.1(f)).

(8) Ongoing disclosure requirements (aimed at preventing conflicts of interest).

(9) New data protection measures have been included which are similar to those in the LCIA Rules (30A) (and a new SIAC 2025 rule 61) and allow the arbitral tribunal to adopt specific measures to protect shared data and issue information security directions.

(10) New rule 29.2 (discussed above) allows claims arising from multiple contracts to proceed under a single arbitration. The parties will be considered to have waived their right to select an arbitrator and the HKIAC will appoint the tribunal. Subsequently, on 20 January 2025, the HKIAC issued a Practice Note on Compatibility of Arbitration Clauses under the HKIAC Administered Arbitration Rules[321] by way of non-binding guidance on how the HKIAC generally applies articles 28.1(c) and 29 in practice.

(11) On cost allocation, article 34.4 provides that the "tribunal *shall* take into account the circumstances of the case" and:

[319] In the consultation, draft Rule 19.5 read: "In appointing an arbitrator under these Rules, the President shall take into account any agreed qualifications and such considerations that are relevant to the impartiality or independence of the arbitrator **and bearing in mind, as appropriate, principles of diversity and inclusion**." The text in bold is not included in the SIAC 2025 Rules.

[320] "Article 9A – Diversity. 9A.1 **The parties and co-arbitrators are encouraged to take into account considerations of diversity when designating arbitrators** in accordance with the Rules. 9A.2 When exercising its authority to appoint arbitrators under the Rules, **HKIAC shall take into account considerations of diversity together with all other relevant considerations**."

[321] www.hkiac.org/sites/default/files/ck_filebrowser/Practice%20Note%20on%20Compatibility%20of%20Arbitration%20Clauses_EN.pdf

> "*may* take into account any factors it considers relevant, including but not limited to: (a) the relative success of the parties; (b) the scale and complexity of the dispute; (c) the conduct of the parties in relation to the proceedings; (d) any *third-party funding arrangement*; (e) any *outcome related fee structure agreement*;[322] and/or (f) any *adverse environmental* impact arising out of the parties' conduct in the arbitration."

It is worth noting that the HKIAC has also updated its model clause[323] to contain the following optional choice:

> "*** The fees and expenses of the arbitral tribunal shall be determined on the basis of ... (Schedule 2 or Schedule 3) of these Rules... *** Optional. Pursuant to Article 10 of these Rules, the fees and expenses of the arbitral tribunal shall be determined on the basis of either (i) hourly rates in accordance with Schedule 2; or (ii) the schedule of fees based on the sum in dispute referred to in Schedule 3."

(12) Revised Schedule 2 (Arbitral Tribunal's Fees, Expenses, Terms And Conditions) allows the HKIAC to review an arbitral tribunal's fees and expenses.

We note, the HKIAC Domestic Arbitration Rules (often used in construction arbitration) were last updated in 2014. Similarly the Hong Kong International Arbitration Centre Small Claims Procedures and "Documents Only" Procedures could be updated.[324]

Shanghai International Arbitration Center (SHIAC)

Apart from the draft amendment of the arbitration laws in China (which we discussed above), the SHIAC also updated its arbitration rules, which took effect on 1 January 2024 (the "SHIAC Rules").[325] Some key features of the new SHIAC rules include the following.

(a) **Emergency arbitration and interim measures**. Article 25 provides for emergency arbitration and permits parties to request urgent relief prior to the formation of the arbitral tribunal. An emergency arbitrator can be appointed within two days of the application.[326]

(b) **Consolidation of arbitration**. Article 15 allows for the consolidation of multiple contracts into one arbitration, enabling parties to initiate arbitration for disputes arising from the same transaction or a series of transactions, related contractual relationships, or other circumstances as provided by law or agreed by the parties. Article 40 also empowers the tribunal to determine the consolidation of arbitrations when the subject matter of the multiple arbitrations is either the same or related.

(c) **Joinder of third parties**. Under article 41 of the SHIAC Rules, a party involved in the arbitration may request the inclusion of a third party, or a third party may apply to join the proceedings. If the request for joinder is made before the arbitral tribunal is formed, the SHIAC Secretariat will review and decide on the joinder application. However, if the application is submitted after the tribunal has been formed, it is the arbitral tribunal that will determine the appropriateness of the joinder. If a third party joins before the tribunal is formed and the parties cannot agree on an arbitrator, the SHIAC Chairman may appoint all the arbitrators.

(d) **Online arbitration and technological integration**. The SHIAC has incorporated provisions for conducting arbitration proceedings online, including that of article 10 which allows the use of the SHIAC "E-Platform".[327] Article 9 also provides that all parties and other participants in the arbitration shall participate in the arbitration in line with the "green environmental protection principle". Articles 20 and 85 encourage the electronic submission of documents and services.

(e) **Confidentiality and publication of awards**. Article 11 provides for the principle of confidentiality. Specifically, article 11(4) of the SHIAC Rules allows the publication of redacted awards, given the parties have provided their written consents.

(f) **Arbitrator disclosure**. Article 35 requires arbitrators to disclose in writing any situations or facts that might create concerns regarding their impartiality or independence. Arbitrators may also refer to the IBA

[322] Legislative changes in recent years now permits Hong Kong lawyers to offer such fee arrangements in respect of arbitration (specifically disapplying the common law doctrines of champerty and maintenance). Please see: www.doj.gov.hk/en/publications/pdf/orfsa_e.pdf

[323] www.hkiac.org/arbitration/model-clauses

[324] www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/5.f.v.%20HKIAC%20Small%20Claims%20and%20%27Documents%20Only%27%20Procedures.pdf

[325] The new rules can be found here: https://katmai.oss-cn-hangzhou.aliyuncs.com/katmai/2024-01/3f72e824-3584-4e99-9c20-058f747c3be6.pdf?Expires=2019804707&OSSAccessKeyId=LTAI5tKiMFbYdsCyS76onj8W&Signature=UJA%2B0KbChcYNlSsRea3GUeYHm3I%3D.

[326] See also SHIAC Rules, article 80.

[327] SHIAC, Launch of "E-Platform": www.shiac.org/pc/SHIAC?moduleCode=search&securityId=0R51lQHLjMRoZpxEGpHmhg.

Guidelines on Conflicts of Interest for additional guidance. Moreover, parties are required to inform SHIAC about any agreements, including third-party funding arrangements, that could affect the independence of the arbitrators.

(g) **Summary procedure**. Articles 69 to 76 outline summary procedures that apply either when both parties agree or when claims are under a specified limit (RMB5 million). These procedures enhance arbitration efficiency by facilitating quicker case resolutions with a single arbitrator (article 70) and establishing reduced timelines for submissions and hearings (articles 71 to 73). Awards are required to be issued within three months (article 74). If the case becomes more complex, it may transition back to standard procedures (article 75). Other SHIAC rules still apply (article 76) These rules ensure both flexibility and efficiency in the process.

China International Economic and Trade Arbitration Commission ("CIETAC")

Similarly, the CEITAC introduced its new Arbitration Rules on 1 January 2024. Notable changes include the following.[328]

(a) **Determination of jurisdiction**. Article 6.1 addresses the challenges to the validity of an arbitration agreement and the jurisdiction of an arbitral tribunal. It provides that once the tribunal is established, it holds the authority to determine its own jurisdiction, including any challenges related to the existence or validity of the arbitration agreement. This reflects the principle of "Kompetenz-Kompetenz", which allows the tribunal to decide on its competence. Prior to the tribunal's formation, CIETAC would address such jurisdictional challenges.

(b) **Third-party funding**. Article 48 addresses third-party funding arrangements in arbitration. It mandates that any party receiving third-party funding must quickly inform the CIETAC Arbitration Court about the funding arrangement's existence, the financial stakes involved, and the third-party funder's contact details. The tribunal may request further information from the funded party if necessary. This provision seeks to improve transparency and mitigate possible conflicts of interest in the arbitration process.

(c) **Multiple contracts and consolidation of disputes**. Article 14 of the 2024 CIETAC Arbitration Rules broadens the scope to enable a single arbitration to encompass disputes from several contracts that involve related subject matters.[329] Furthermore, article 14.2 allows the claimant to request the inclusion of additional contracts into the arbitration once the proceedings have started, providing increased flexibility for managing complex disputes. Article 19 allows the consolidation of multiple arbitrations, including the scenario where the contracts share related subject matters.

(d) **Interim measures**. Article 23 explicitly grants arbitral tribunals the power to order interim measures. Furthermore, it allows CIETAC the authority to forward the applications to the courts designated by the applicant, including those outside Mainland China.

[328] Text of CIETAC 2024 Rules: https://jusmundi.com/en/document/rule/en-cietac-china-international-economic-and-trade-arbitration-commission-arbitration-rules-2024-cietac-arbitration-rules-2024-monday-1st-january-2024?pdf=true. See also https://arbitrationblog.kluwerarbitration.com/2024/01/01/the-cietac-arbitration-rules-2024-comes-into-force/.

[329] CIETAC: https://www.cietac.org/en/articles/20008?utm ("The previous rules allow disputes arising out of or in connection with multiple contracts consisting of a principal contract and its ancillary contract(s), disputes involving the same parties as well as legal relationships of the same nature, or disputes arising out of the same transaction or the same series of transactions to be resolved in one case.")

Other soft law and updates

- In February 2024 in the 2024-2025 Budget Speech,[330] it was announced that the International Organization for Mediation (IOMed), upon establishment, will have its headquarters hosted in Hong Kong. IOMed will specialise in in resolving international disputes by means of mediation and be the first international inter-governmental organisation to set up headquarters in Hong Kong.
- In February 2024 arbitrateAD started accepting cases. It is the result of the reorganisation and renaming of the Abu Dhabi Commercial and Conciliation Centre (ADCCAC), previously established by the Abu Dhabi Chamber of Commerce and Industry in 1993.
- In May 2024 Shanghai International Arbitration Centre (SHIAC) opened its first offshore branch in Hong Kong.[331]
- In May 2024 Hong Kong hosted ICCA 2024 attracting more than 1,400 global arbitration professionals from over 70 jurisdictions.[332]
- In November 2024 a task force of the ICC Commission on Arbitration and ADR released: "Red Flags or Other Indicators of Corruption in International Arbitration".[333]
- In November 2024 Unitech Ltd v Cruz City 1 Mauritius Holdings, Civil Appeal No 49/2016, the Supreme Court of Cyprus, favourably resolved a long-standing issue: whether any of the parties needs to be a resident of Cyprus to enforce an arbitral award (in that case an LCIA award). The answer was no.[334]
- In December 2024 HKIAC became the first offshore arbitration institution to set up an office in Beijing.[335]
- In December 2024 GAR-LCIA Roundtable Recommendations were published.[336] These set out 12 practical recommendations, tailored to provide tribunals with effective solutions for the perceived challenges currently faced in international arbitration.
- In December 2024 the LCIA released new Equality, Diversity and Inclusion guidelines.[337]
- In early 2025 the Qatar International Center for Conciliation and Arbitration (QICCA) launched new arbitration rules which refreshed its 2012 Rules.
- Kevin Nash (former SIAC Registrar) has stepped into the role of Director General of the LCIA. In turn Vivekananda Neelakantan (former SIAC Deputy Registrar) stepped into the role of SIAC Registrar.
- Kiran Sanghera re-joined HKIAC and became Deputy Secretary-General effective 20 January 2025.

330 www.budget.gov.hk/2024/eng/budget21.html
331 https://law.asia/shiac-first-offshore-branch-hong-kong-centre/
332 https://icca2024.hk/programme; https://www.hkiac.org/news/icca-hong-kong-2024-breaks-attendance-records
333 https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/red-flags-or-other-indicators-of-corruption-in-international-arbitration/#top
334 https://economoulegal.com/news/cyprus-supreme-courts-landmark-decision-on-arbitral-awards
335 www.hkiac.org/news/hkiac-opens-beijing-representative-office
336 www.lcia.org/News/gar-lcia-roundtable-recommendations.aspx
337 www.lcia.org/news/lcia-launches-new-edi-guidelines-for-international-arbitration.aspx

Developments in relation to how arbitrations can be funded

England and Wales: PACCAR

As mentioned above, this time last year we thought that legislation would quickly be introduced to reverse PACCAR. However, instead, in August 2024, the incoming Labour government pushed the Litigation Funding Agreements (Enforceability) Bill back until the Civil Justice Council ("CJC") review of litigation funding concludes. This has created uncertainty for funders. For example, in a *Times* article, Burford Capital's CEO Christopher Bogart was quoted as follows:

> "[L]egal services in England are harmed by inaction on litigation funding ... We've already moved some of our dispute resolution work out of London to other markets like Paris, Singapore and New York ... [Burford is] not alone in moving work to other jurisdictions ... the government has an acute issue it needs to fix – and urgently – otherwise it's going to continue costing the legal sector valuable business."[338]

Similarly, the *Financial Times*[339] has quoted Neil Purslow, co-founder of litigation funder Therium, as saying the restrictions were "creating an uncertain environment ... Many funders operate internationally, and it makes funding in the UK less attractive", adding that some meritorious cases "are not going forward".

As regards case developments, several cases considering the validity of litigation funding agreements (LFAs) based on a multiple of the sum were initially stayed because the previous government was moving to legislate to address PACCAR issues. We also noted that, in 2024, the Commercial Court, as a matter of contractual interpretation, blocked an ad hoc (King's Counsel) arbitration against Omni Bridgeway (which was already the subject of an LCIA arbitration).[340] In that case Dame Clare Moulder DBE concluded that the "claimants have not shown a good arguable case that clause 19.2 is an arbitration agreement; (ii) even if I were wrong on that, the claimants have not shown a good arguable case that the tribunal has jurisdiction to determine the disputes under clause 19.2 in circumstances where an arbitration has commenced ...". The reference to a King's Counsel did not involve judicial inquiry but rather for them to be "instructed to provide ...[an] opinion".

More recently, stays in a number of appeals dealing with the enforceability of litigation funding agreements that included returns based on multiples of sums invested were lifted on 4 February 2025. During a directions hearing, Chancellor of the High Court Sir Julian Flaux and Green LJ lifted the stays. Sir Flaux noted that since the change in government, there has been no indication that such legislation is imminent. He emphasised that staying cases without a good reason contradicts legal principles and that there is not now a good reason. The Court of Appeal will schedule one- or two-day hearings between late May and late July to address the multiplier issue in several cases.[341] The brief time slot allotted suggests that, depending on when the case is listed, a ruling could be published before the summer.[342]

Meanwhile, the consultation phase of the CJC's review of the litigation funding sector in England and Wales, including options about how it should be regulated in the future, which was initially due to end on 31 January has recently been extended to 3 March 2025. "The extension will **not** adversely affect the finalisation of the full report."[343] The report is expected by summer 2025.

[338] www.linkedin.com/posts/burford-capital_christopher-bogart-speaks-with-the-times-activity-7274781646808088577-VbGK/?utm_source=share&utm_medium=member_ios

[339] "Litigation funding in the dock as crunch UK judgments loom", AlistairGray, 16 February 2025. www.ft.com/content/9d1c8c95-efae-44c9-859b-8667304a1d3c?accessToken=zwAGLlOahPFYkdOdHIyV765EydOFm4ZnMEodPA.MEUCI...

[340] https://globalarbitrationreview.com/article/uk-court-blocks-new-arbitration-against-omni-bridgeway; *Bugsby Property LLC v Omni Bridgeway (Fund 5) Cayman Investment Ltd and Another* [2024] EWHC 2986 (Comm); [2025] Lloyds' Rep Plus 7.

[341] Ibid.

[342] *Law Society Gazette*, 4 February 2025.

[343] www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/current-work/third-party-funding/

Singapore

In *Government of the Lao People's Democratic Republic v Lao Holdings NV*,[344] the Singapore International Commercial Court (SICC) held that the non-disclosure of a conditional fee arrangement between the arbitrating party and its counsel did not satisfy the high threshold required for setting aside an ICSID award. The court considered it an abuse of process when a party who fails to raise the argument against the fee arrangement at a prior instance seeks to raise it again in the setting aside application. Further, the SICC held there was no obligation on the arbitrating party to disclose a fee arrangement when claiming an amount that was equal to or lower than the amount payable by the client.

We note, however, that the cases was brought under the ICSID Additional Facility Arbitration Rules 2006 whereas rule 14 of the newer 2022 ICSID Arbitration Rules states that disputing parties have an ongoing obligation to disclose third-party funding (including the name and address of the funder) to avoid conflicts of interest that may arise from such financing arrangements.

Opportunities elsewhere?

As we discussed above, some funders including Burford have indicated (in the context of the CJR review) that they are looking for opportunities elsewhere in view of the uncertainties. We noted that in the UAE, the Abu Dhabi Global Market is receptive to litigation funding and has prescriptive rules for the funding of claims in the Abu Dhabi Global Market courts. More funded claims are expected in the months and years to come, particularly in relation to investment and shareholder disputes.[345] As regards, whether litigation funders are really turning their backs on the United Kingdom, as mentioned in our 2023 review, we have heard that many funders have reviewed their agreements so that they are compliant. In other words, we suspect that many funders have found ways to continue regardless of whether PACCAR is reversed. We are keeping our eyes and ears open for statistics and articles on this question.

[344] [2022] SGCA(I) 9.
[345] www.law.com/international-edition/2024/12/18/burford-litigation-funder-sets-sights-on-uaes-surge-in-construction--disputes/

Trends in 2024, and what 2025 might hold in store for arbitration

Before attempting an analysis, we start by discussing the statistics issued by the leading arbitral institutions and the English Commercial Court.

As at the time of writing some institutions had published 2024 statistics whereas others had not. It is also worth noting that while the statistics released have massively improved over time, the format and content of statistics are different. In that vein, at Paris Arbitration Week 2025 during an event organised by Jus Mundi an opinion was expressed that institution statistics could be audited and that it might be useful for statistics to be published as to the percentage of arbitrations commenced that ended in settlement.

Statistics from the leading arbitral institutions

According to the Queen Mary University of London International Arbitration Survey ("QMUL Survey") of 2021: "The five most preferred arbitral institutions are the ICC, SIAC, HKIAC, LCIA and CIETAC".[346] We thus summarise their statistics in that order.

Additionally, because they also have a significant number/quantum of cases, we will briefly also look at statistics published by the ICDR, SCC and the LMAA.

ICC

In 2023 the ICC had 890 new cases (its third best year). In February 2025 the ICC unveiled preliminary dispute resolution statistics for 2024.[347]

- There were 831 new cases in 2024 (ie a slight drop from 2023).

[346] www.qmul.ac.uk/arbitration/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf, page 2.
[347] https://iccwbo.org/news-publications/news/unveiled-2024-icc-arbitration-and-adr-preliminary-statistics/

- However, with a total of US$354 billion, the aggregate amount in dispute for pending cases set an all-time record.
- Amounts in dispute in new cases varied significantly, ranging from just below US$10,000 to US$53 billion. The aggregate amount in dispute for new cases reached US$103 billion, with an average of US$130 million and a median of approximately US$5 million.
- The US is still the home of more parties to ICC arbitrations than any other country (167 US parties in 2024, out of the total of 2,392).
- There also was a large increase from last year in the number of parties from Brazil (156 in 2024 against 80 in 2023), Spain (137 in 2024 against 104 in 2023), Italy (101 in 2024 against 78 in 2023) and the People's Republic of China and Hong Kong (98 in 2024 against 72 in 2023).
- As regards place of arbitration, the four jurisdictions with the most cases were: United Kingdom (96 cases), France (91 cases), Switzerland (83) and the United States (72 cases). Compared to 2023, the top four stayed the same although France and the United Kingdom swapped places. Other places of arbitration were trending higher in 2024: United Arab Emirates (38 cases in 2024 against 24 in 2023) and Spain (33 cases in 2024 against 18 in 2023).
- 152 new cases were administered under the Expedited Procedure Provisions (EPP). The ICC Court has administered a total of 865 cases under the EPP since the procedure was established in 2017.
- Diversity statistics had not been published yet for 2024. In 2023, confirmations and appointments of women arbitrators represented 29.7 per cent (or 398) of the total confirmations and appointments (up from 28.6 per cent in 2022). As is seems to be the trend, the institution is taking the lead. 41 per cent (or 147) of all appointments by the ICC Court – either directly or upon the proposal of an ICC national committee or group) – were women.

SIAC

In 2023[348] SIAC recorded its second highest ever caseload with 663 new cases filed (including related cases) by parties in 66 jurisdictions and its second highest total sum in dispute of US$11.90 billion.

On 25 March 2025 SIAC released its 2024 annual report. In 2024, 625 new cases were recorded, including related cases.

- The total sum in dispute in 2024 of S$16.12 billion (US$11.86 billion per the exchange rate used in the SIAC report) surpassed 2023's S$15.71 billion (US$11.90 billion per the exchange rate used by SIAC) and is SIAC's second highest total sum in dispute to date.[349]
- 91 per cent (566 cases) of the new cases in were international in nature (compared to 93 per cent in 2023 and 88 per cent in 2022).
- China, India, and USA continued to remain among SIAC's top foreign users.
- The other top 10 foreign users included parties from Australia, Hong Kong (4th place), Indonesia, Japan, South Korea (1st place), UAE, and the UK.[350]
- SIAC further saw an increase in its geographical spread of arbitrator appointments with arbitrators appointed from 43 jurisdictions, an increase from 38 jurisdictions in 2023.
- There were 101 consolidation applications, the highest number since its introduction in 2016. 64 were granted.
- The most commonly applied governing laws were Singapore (53.2 per cent) followed by the United Kingdom (27.4 per cent) and India (5.3 per cent).
- SIAC received 143 requests for the Expedited Procedure (up from 94 in 2023) of which 66 requests were accepted. SIAC has received a total of 1,039 such applications (and accepted 598 requests) since the introduction of these provisions in 2010.
- There were 21 applications to appoint an emergency arbitrator, all of which were accepted.
- As regards diversity, of the 183 arbitrators appointed by the SIAC, 64 (or 35 per cent) were female (slightly down from 35 per cent in 2023).

HKIAC

In 2023[351] a total of 500 cases were submitted to the HKIAC of which 281[352] were arbitrations (of which 184 administered), 10 were mediations and 209 were domain name disputes. The total amount in dispute in all arbitration cases was approximately US$12.5 billion. HKIAC released its 2024 statistics in February 2025[353] with David Rivkin, Chairperson of the Executive Committee prefacing the announcement by saying 2024 was a "fantastic year" for HKIAC:

[348] https://siac.org.sg/wp-content/uploads/2024/04/Press-Release-SIAC-Annual-Report-2023.pdf; https://siac.org.sg/wp-content/uploads/2024/04/SIAC_AR2023.pdf

[349] On 23 April 2025, S$1 = US$0.76.
[350] On 25 March 2025 SIAC released its 2024 annual report: https://siac.org.sg/wp-content/uploads/2024/08/SIAC_Annual-Report-2024.pdf
[351] www.hkiac.org/about-us/statistics
[352] The numbers of arbitrations submitted to HKIAC in the prior three years were 344 (2022); 277 (2021); and 318 (2020).
[353] www.hkiac.org/news/hkiac-releases-statistics-2024

- A total of 503 matters were submitted (352 were arbitrations arising from 510 contracts) resulting in the HKIAC's highest ever caseload.
- The total amount in dispute across all arbitrations in 2024 was HK$106 billion (approximately US$13.6 billion), which represents a record high for HKIAC.
- Over 65 per cent arose from contracts signed in 2020 or later, and over 40 per cent arose from contracts signed in 2022 or later.
- 352 arbitrations submitted to HKIAC in 2024 involved a total of 1,042 parties and 510 contracts, reflecting an increase of over 30 per cent in both respects compared to 2023. It also means that HKIAC handled many multiparty cases.
- The average amount in dispute in administered arbitrations was HK$375 million (approximately US$48.1 million).
- Arbitrations featured parties from 53 jurisdictions (up from 45 in 2023).
- 76.4 per cent of all arbitrations and 86.1 per cent of administered arbitrations had at least one non-Hong Kong party. Nearly 15 per cent of all arbitrations submitted to HKIAC in 2024 involved no Asian parties (an increase from 9.2 per cent in 2023 and 5.8 per cent in 2022).
- 59.4 per cent of all arbitrations submitted to HKIAC in 2024 involved no parties from Mainland China (ie over 40 per cent of arbitrations involved Mainland Chinese parties). 21 per cent of all arbitrations submitted to HKIAC in 2024 involved neither Hong Kong nor Mainland Chinese parties.
- The top 10 parties to HKIAC arbitrations (apart from Hong Kong and Mainland China) were from the British Virgin Islands, Cayman Islands, Singapore, the United States, the United Arab Emirates, South Korea, Marshall Islands and the Philippines.
- The majority of arbitrations (97.1 per cent) were seated in Hong Kong, while other seats included London and Dubai.
- 15 different governing laws applied in arbitrations received in 2024, with Hong Kong law being the most commonly chosen governing law, followed by English law and PRC law.
- 79.3 per cent of the administered arbitrations commenced in 2024 were conducted in English. 15.9 per cent were in Chinese, 4.3 per cent bilingual (English and Chinese).
- The Appointments Committee made 199 appointments in 2024. Of those, 69 (34.7 per cent) were of female arbitrators, 73 (36.7 per cent) were of arbitrators not previously appointed by HKIAC over the last three years.
- The geographical origins/nationalities of arbitrators appointed by the HKIAC were Hong Kong (31 per cent); UK (21 per cent); Australia (11.5 per cent); Mainland China (7 per cent) and Singapore (5.7 per cent).
- The Proceedings Committee made 67 determinations. The top three issues which arose most frequently for the committee's determination concern single arbitrations commenced under multiple contracts ie under article 29 (18 determinations); arbitrations involving non-signatories (14 determinations); and applications for Expedited Procedure (12 determinations).
- At its presentation event on 19 February 2025, the HKIAC also indicated that it would review its Expedited Procedure threshold. One would assume this would involve an increase. The current threshold is HK$25 million (approx. US$3.2 million).[354]
- Only five challenges to arbitrators were submitted to HKIAC in 2024. Of those challenges, one was sustained, one was agreed to by the non-challenging party which resulted in the resignation of the challenged arbitrator, two were dismissed, and one was pending as of the end of 2024.
- HKIAC processed 40 applications made to 21 different Mainland Chinese courts under the 2019 Arrangement seeking to preserve evidence, assets or conduct worth a total of RMB9.1 billion (approximately US$1.2 billion)[355] in Mainland China. This is significantly up from 19 applications processed in 2023. In respect of the applications made in 2024, approximately 28.9 per cent were made by parties from Mainland China. HKIAC is aware of 31 decisions, whereby the Mainland Chinese courts issued orders to preserving a total of RMB6.3 billion (approximately US$865 million) worth of assets.
- At an event on 19 February 2025 announcing the statistics the HKIAC also provided the following table to illustrate the robustness of the Hong Kong courts:

Year	Number of applications to enforce arbitral awards	Number of orders to set aside
2024	100	1
2023	65	4
2022	72	0
2021	54	3
2020	51	2

[354] Indeed this arose in *Pan Ocean Container Suppliers Co Ltd v Spinnaker Equipment Services Inc* [2024] HKCFI 1753.
[355] Exchange rate 1 RMB = 0.137218 US$ (as of 25 April 2025 per Xe currency converter).

LCIA

On 31 May 2024 the LCIA shared its Annual Casework Report 2023. We note the following from this report.

- A strong increase in the number of referrals, up by 13 per cent from 333 cases in 2022 to 377.
- The LCIA commented:[356] "LCIA arbitration referrals over the last 10 years have grown steadily, with an exceptional, upward movement, and subsequent commensurate downward correction, caused by the Covid-19 pandemic. The number of referrals in 2023 (377 referrals, of which 327 are for LCIA arbitration) demonstrate a return to the long-term upward trajectory".
- Transport and commodities cases continue to dominate the LCIA's caseload, making up 36 per cent of cases, which the LCIA attributed this to "the ongoing impact of global developments on energy prices and supply chains". Sale of goods contracts (particularly commodities) are the most-common type of agreement in LCIA arbitrations (31 per cent). These statistics add colour to the cost analysis (which we discuss below) because in "these sectors, parties do not use the major institutions as much as their trade associations and ad hoc arbitration".[357]
- Banking and finance represented 16 per cent of cases, and energy and resources 14 per cent of cases.
- A sharp increase in disputes involving agreements concluded within the two years before the year of referral. Almost half of the agreements in 2023 referrals were such "younger" agreements. Almost half of the "younger" agreements were sale of goods contracts, mostly involving commodities.
- There has been a noticeable increase in monetary sums claimed in requests for arbitration pursuant to the LCIA Rules, with almost 30 per cent of quantified claims being over US$20 million, compared to 19 per cent in 2022.
- 96 per cent of cases involved international parties; 79 per cent of cases did not involve UK parties; only 17 per cent involved one or more UK party; and only 4 per cent involved only UK parties.
- The percentage of parties from Africa has doubled since 2022 (up from 4 per cent to 8 per cent). The top two countries in the African region from which parties originate in 2023 are the same as in 2022, namely Mauritius and Nigeria.
- There was a significant two-thirds decrease in Asian parties (from 24 per cent to 8 per cent). The percentage of parties from Singapore, China, Hong Kong and Pakistan had more than halved.
- There were proportionally fewer English seats (86 per cent in 2023 versus 88 per cent in 2022) and cases with English governing law (83 per cent in 2023 versus 85 per cent in 2022): "Parties mix and match applicable law and seat more frequently".
- Parties made 58 applications for interim measures pursuant to article 25 of the LCIA Rules, involving 43 arbitrations. Security for costs was the most common. Relief was granted in 14 instances only; rejected in 21; partially granted in five; and 18 were superseded or are pending.
- There continue to be a very low number of challenges (five in 2023).
- Gender diversity in appointments is improving, with the LCIA Court being the driver. In LCIA Court appointments, 48 per cent are of women (45 per cent in 2022), 39 per cent of all co-arbitrator appointments are of women (23 per cent in 2022), and 21 per cent of all party appointments are of women (from 19 per cent in 2022). The LCIA called for more input from parties and co-arbitrators to improve the overall percentage of appointments of women (33 per cent) while being mindful of the need to minimise appointments of the same arbitrators.

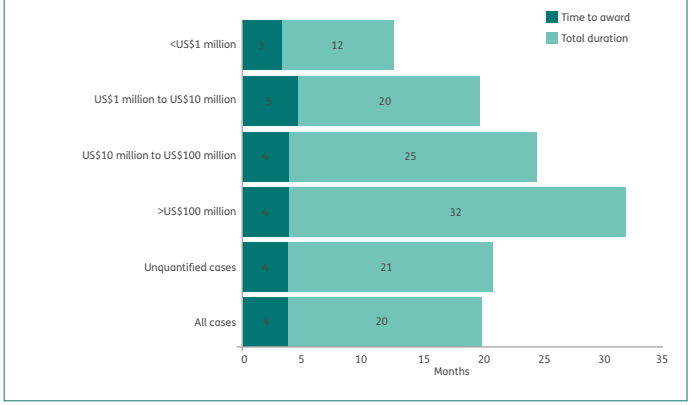
LCIA updated costs and duration analysis[358]

The LCIA – unlike many comparable arbitral institutions – typically calculates administrative and tribunal fees by reference to time spent, not the sum in dispute. In 2024, the LCIA released a third costs and duration analysis (building on reports dated 2015 and 2017) which covers all cases which reached a final award between 1 January 2017 and 12 May 2024 (the longest time period studied by the LCIA). It covered 616 cases in total (excluding settlements and emergency arbitrator awards), with a median amount in dispute of US$4.6 million.

[356] www.lcia.org/News/lcia-news-annual-report-on-2023-lcia-court-and-african-users-c.aspx
[357] www.lexisnexis.co.uk/blog/research-legal-analysis/apples-and-oranges-the-lcia-s-costs-and-duration-report
[358] www.lcia.org/lcia/reports.aspx

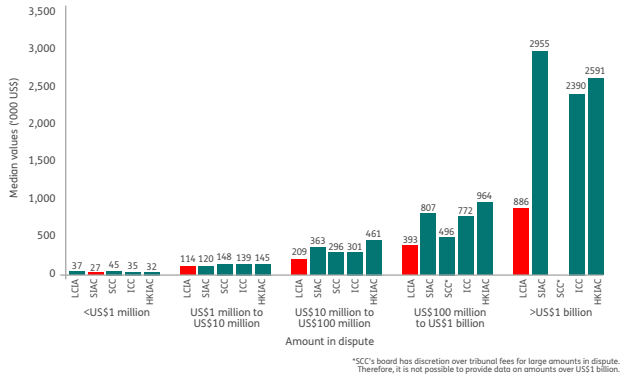
The median LCIA arbitration costs US$117,653, a modest increase from US$97,000 reported in the previous report (relating to a 2017 survey). However, numbers have not been adjusted for inflation and "the real increase is therefore even smaller". As the below figure illustrates, the median LCIA arbitration lasts a total of 20 months and of this, tribunals take four months to produce awards. Cases with claims under US$1 million are decided very expeditiously, namely in 12 months. The median duration of unquantified arbitrations is 21 months:[359]

Total duration and time to award by amounts in dispute



LCIA arbitration costs (being the sum of tribunal fees and LCIA administrative charges) compare as being lower than the estimated costs of the compared institutions (HKIAC, ICC, SCC and SIAC) across almost all amounts in dispute. This difference is especially notable for larger cases, with cases ranging from US$100 million to US$1 billion and cases above US$1 billion. A comparison with the previous (2017) study demonstrates that costs and duration have remained relatively stable, and that any increases or fluctuations are primarily due to an increase in the amount in dispute. The LCIA's interpretation of the data is that: "As cases get bigger, the incremental duration and cost increases are *attributable to the parties*". The onset of Covid-19 also appears to have been a factor, but more time is required for a comprehensive analysis of the impact of the pandemic on duration and the profile of arbitrations commenced in or after March 2020.[360]

Costs by institution and amount in dispute



It is interesting to note that SIAC has overtaken the LCIA for the lowest median costs for disputes involving less than US$1million and runs a close second for US$1million to US$10 million disputes (30 per cent). This suggests that procedures introduced by other arbitral institutions aimed at reducing costs in smaller cases are starting to work.

As regards numbers of arbitrators:

> "Nearly 40 per cent of cases with a sole arbitrator had a claim value of up to US$1 million, compared to just 17 per cent of cases with three arbitrators. Conversely, 17 per cent of cases with three arbitrators involve claims exceeding US$100 million, compared to just 5 per cent of single-arbitrator cases. This pattern indicates a preference for three member tribunals in higher value disputes. This finding is consistent across the three costs and duration analyses conducted."[361]

CIETAC

According to the CIETAC 2024 Work Report and 2025 Work Plan[362]: "New records were made in arbitration cases", and "The cases continued to be more international in nature".

- A total of 6,013 new cases were accepted with a year-on-year increase of 14.82 per cent. The total amount in dispute reached RMB188.96 billion with a year-on-year increase of 25.12 per cent, surpassing RMB100 billion for the seventh consecutive year.

[359] Source: www.lcia.org/News/lcia-releases-updated-costs-and-duration-analysis-2024.aspx
[360] Source: page 18 of the report.
[361] Page 7 of the report.
[362] www.cietac.org/en/articles/32306

- 758 foreign-related cases were accepted (a year-on-year increase of 17.52 per cent) with a total disputed amount of RMB81.125 billion (a year-on-year increase of 53.75 per cent), and the average disputed amount per case reaching RMB107 million.
- There were 5,255 domestic cases (a year-on-year increase of 14.44 per cent), and the total disputed amount thereof was RMB107.835 billion (a year-on-year increase of 9.75 per cent).
- Cases involved 93 countries and regions (a year-on-year increase of five), of which parties were from 77 countries and regions (a year-on-year increase of six).
- The top 10 most frequently involved countries and regions in foreign-related cases were, respectively, Hong Kong (China), the United States of America, the British Virgin Islands, the Cayman Islands, Italy, Germany, Japan, Singapore, South Korea, and Russia.
- There were 74 international cases where both parties were non-Chinese, representing a year-on-year increase of 19.35 per cent.
- A total of 106 cases adopted English or both English and Chinese as the language(s) of arbitration.
- In 38 cases parties agreed on governing laws including US law, Delaware law, English law, English and Welsh law, German law, Brazilian law, Hong Kong law, Thai law, Saudi Arabian law, Cambodian law, Cayman Islands law, and Chadian law. Among these, six cases chose English law, three chose US law, and 15 cases applied the United Nations Convention on Contracts for the International Sale of Goods (CISG), the Incoterms 2000 and Incoterms 2010 Rules.
- For 141 times foreign arbitrators from Hong Kong (China), Taiwan (China), the United States of America, the United Kingdom, Germany, France, Italy, Spain, Singapore, South Korea, and other countries participated in the arbitration of 126 cases.
- 377 cases involved “Belt and Road” countries, with a total disputed amount of RMB39.824 billion, and the average amount in dispute per case was RMB106 million. The parties came from 56 countries and regions.
- Like the HKIAC, CIETAC is one of the eligible arbitration institutions under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of Hong Kong. The CIETAC Hong Kong Arbitration Center submitted numerous applications for interim measures to People’s Courts in multiple jurisdictions of the Mainland. The parties involved came from jurisdictions such as the Chinese mainland, Hong Kong (China), Israel, the British Virgin Islands, Canada, and the United States of America. According to CIETAC the average preservation amount per case reached RMB29.49 million, and all preservation applications were ruled for full preservation by Mainland courts.
- 1,557 new multiple contracts cases were accepted, along with 30 consolidated arbitration cases, 10 cases involving adding contracts, and 1,045 cases involving multiple parties.
- 4,958 tribunals were formed throughout the year, 8,498 appointments/nominations of arbitrators were made. 1,996 appointments/nominations were made to 215 female arbitrators.

SCC

In 2023 the SCC registered 175 new cases with a total known disputed value of €3.05 billion of which 38 per cent (67 cases) were registered under the SCC Rules for Expedited Arbitrations. In 2023 439 parties from 42 different countries resolved their disputes at the SCC of which 251 were from Sweden and, interestingly, 28 were from Thailand (coming in second). The SCC appointed 92 arbitrators in 2023, of which 51 (55 per cent) were women and 41 (45 per cent) were men.[363]

ICDR

The ICDR is the international division of the AAA , which administered over 500,000 American domestic cases filed in 2023. From the ICDR’s 2023 Statistics[364] we note the following.

- 848 cases were filed. The total of claims/ counterclaims was US$5 billion.
- The top four caseloads by sector related to technology (226 cases), construction (67 cases), financial services (50 cases) and real estate (43 cases).

[363] https://sccarbitrationinstitute.se/en/statistics-2023#:~:text=In%202023%2C%20the%20SCC%20registered,all%20parties%20must%20be%20Swedish

[364] www.adr.org/sites/default/files/document_repository/AAA458_2023_ICDR_Case_Data.pdf

- The top four non US nationalities were (in descending order) China (174 parties), Canada (156 parties), the UK (93 parties) and Ukraine (88 parties).
- There were 887 US parties.
- The most used US venues were New York (121 cases) and Miami (91 cases), but there were hundreds of cases seated throughout the US and abroad.
- There were 160 applications for emergency measures of protection, of which 73 were granted partially or in full; 41 were denied; in 24 the parties settled and in 21 the application was withdrawn.
- 38 per cent of appointments were diverse.

LMAA

The LMAA facilitates ad hoc arbitrations ie, unlike the other institutions, it does not administer arbitrations. However, it is worth discussing because its rules apply to many international commercial arbitrations.

In 2024, 3006 appointments were made on LMAA Terms and Procedures and an estimated 1,733 references. Arbitrators made a total of 478 awards in 2024 of which 75 awards were made after oral hearings.[365] Finally, it is worth noting that because the LMAA does not administer arbitrations, its statistics are collected by way of an annual survey of members which very likely means that cases are underreported.

English Commercial Court

In the 2023 edition of this review we briefly ran though the "Commercial Court Report 2021–2022". In February 2024 the Commercial Court Report 2022–2023" was issued. "Matters arising from arbitration still make up a significant proportion of the claims issued in the Court (around 25 per cent), reflecting London's continued status as an important centre for international arbitration." The below table compares the three years:

[365] https://lmaa.london/statistics-of-appointments-awards

	2020–2021	2021–2022	2022–2023
Section 44 applications (injunctions)	27	15	15
Section 67 challenges			
Number	**17**	**27**	**8**
Successful so far	1	-	-
Results	9 dismissed, 3 discontinued, 1 transferred out, 3 pending	5 dismissed, 1 unsuccessful, 1 discontinued, 20 pending	2 dismissed, 1 discontinued, 5 pending
Per cent successful so far	6 per cent	0 per cent (our calculation)	0 per cent (our calculation)
Section 68 challenges			
Number	**26**	**40**	**25**
Successful so far	1	-	-
Results	15 dismissed, 2 discontinued, 2 withdrawn, 1 stayed, 2 transferred out, 3 pending	6 dismissed, 2 discontinued, 1 transferred out, 31 pending	11 dismissed, 1 discontinued, 1 settled, 1 transferred out, 11 pending
	Note: proportion of applications dismissed on paper under summary procedure is nearly 30 per cent.		
Per cent successful so far	4 per cent	0 per cent (our calculation)	0 per cent (our calculation)
Section 69 applications			
Number	**37**	**40**	**46**
Permission granted so far	2	13	9
Results	19 had permission refused, 4 discontinued, 5 dismissed, 1 settled, 1 transferred out, 5 pending	12 permission refused, 2 dismissed, 1 discontinued, 1 transferred out, 11 pending	6 permission refused, 6 dismissed, 2 discontinued, 3 transferred out, 20 pending
Per cent successful so far	5 per cent	33 per cent (our calculation)	20 per cent (our calculation)

As regards what has happened since, the below table has been sourced from Commercial Court User Group Meeting December 2024 Meeting Minutes.[366] It was headed "Year on Year Comparison of Commercial and Admiralty Court Business (excluding LCCC save as indicated)". We have highlighted several rows by using bold and underlining:

	October 2022 to September 2023	October 2023 to September 2024
Commercial claims issued:	**992**	**835**
Trials listed	123	95
Trials heard	37	41
Trials settlement rate	70 per cent	57 per cent
Hearings listed	1,179	1,251
Hearings effective	839	884
Hearings settlement rate	29 per cent	29 per cent
Urgent applications	74 across Hilary, Easter, Trinity and Long Vacation 2024	
Paper applications (including LCCC and Financial List)	5,377	4,906
Arbitration applications:		
Section 44 injunctions	**15**	**49**
Section 67 jurisdiction challenge	**8**	**25**
Section 68 procedural irregularity challenge	**28**	**36**
Section 69 appeal on a point of law	**46**	**54**

The increase in number of "Arbitration Applications" – particularly section 44 injunctions – is striking. We discuss this further below.

Having fallen (comparing 2021–2022 to 2022–2023), section 67 and 68 applications also seem to be trending up. This is interesting not least because the above table suggests that after a bumper year in 2023, there was a significant drop in the number of claims issued in the Commercial Court in 2024.

Another very interesting point, we discuss further below, is that section 69 applications appear to have a relatively higher rate of success.

[366] www.judiciary.uk/guidance-and-resources/commercial-court-user-group-meeting-december-2024/

New QMUL Survey

We note that a QMUL survey was recently conducted (its closing date was December 2024).[367] Various institutions such as LMAA, Ciarb, HKIAC have encouraged their arbitrators to reply. We look forward to reading the report in due course and are curious whether the five most preferred arbitral institutions have changed.

Analysis

Arbitration statistics

The statistics we have just discussed, indicate an increase in the use of arbitration generally. (This may or may not be linked to the fall in English Commercial Case numbers.) As we have seen, several of the institutions reported a strong increase in new case numbers or in the quantum of cases. Many institutions (such as the HKIAC and the LCIA) have seen an increase in the number of disputes arising from "younger" agreements – what this likely means is that arbitration clauses referring to those institutions have increasingly been agreed in recent years.

As regards the English Commercial Court statistics, we noted that the increase in number of "Arbitration Applications" – particularly section 44 injunctions – is striking. It will be interesting to see whether there will be fewer injunction applications following the Arbitration Act 2025 (which, as explained in our last review, fixes *Enka*,[368] ie going forward, unless otherwise agreed, the law of the arbitration agreement will be the law of the seat). In the context of arbitations, it is worth noting that some of the injunctions granted in the context of the Ukraine war are being discharged at the request of the party that sought them facing a massive penalty imposed by a foreign court (eg in *UniCredit Bank GmbH v RusChemAlliance LLC*,[369] a case decided after the *UniCredit* decision we reviewed above[370]). As noted above, section 69 applications appear to have a relatively higher rate of success – at the permission stage at least. This might be deliberate. Some commentators suggest that appeals are needed in order

[367] https://aria.law.columbia.edu/tagtime-with-matthew-gearing-qc-appeals-on-questions-of-law-worth-there-trouble/

[368] *Enka Insaat ve Sanayi AS v OOO "Insurance Company Chubb"* (SC) [2020] UKSC 38; [2020] 2 Lloyd's Rep 449.

[369] [2025] EWCA Civ 99; [2025] Lloyd's Rep Plus 24.

[370] *UniCredit Bank GmbH v RusChemAlliance LLC* (CA) [2024] EWCA Civ 64; [2024] 1 Lloyd's Rep 350; (SC) [2024] UKSC 30; [2024] 2 Lloyd's Rep 466.

for the common law to continue to develop.[371] Section 69 can be excluded by parties' agreement eg by adopting institutional rules , which explains why section 69 appeals of often arise out of ad hoc arbitrations.

The trend seems to be for cases to be becoming more international. The doubling of African parties in LCIA arbitrations is notable as is the trend for HKIAC and CIETAC arbitrations to becoming more international.

Institutions are also increasingly seeing multi-party disputes (which as we have seen in earlier sections has given rise to problems, new Rules and HKIAC guidance). As the Swiss Arbitration Summit 2025, Professor Hanotiau estimated: "Multiparty-multi-contract arbitrations represent approximately one third of all arbitrations".[372] Rules of several institutions have also been updated including to find ways to reduce costs of arbitrating relatively smaller claims. We predict that institutions with older rules may tweak their rules going forward.

There has been an increase in the appointment of female arbitrators mainly driven by the institutions themselves (with the SCC at 55 per cent ; the LCIA at 48 per cent and the ICC at 41 per cent). Institutions are looking at improving other forms of diversity also and the HKIAC stressed this at its 19 February 2025 event. We would suggest that the publication of statistics is significantly helping to address the issue.

Transparency trend

That we are able to review statistics at all is linked to the arbitral institutions increasingly publishing them. By way of further example of the trend to increasing transparency, the LCIA has a challenge database which so far covers decisions from July 2017 to December 2022 – each published as single decision PDFs.[373] The third batch was published in December 2024.[374]

Asia and Middle East

The statistics suggest that Asian arbitration numbers likely will continue to increase both in terms of parties involved and in terms of cases before Asian arbitral institutions. While we have not reviewed statistics from the Middle East above, the same trend seems to apply there. For example, for DIAC, "2023 was another very good year for the Centre, with a total of 355 cases registered (up from 340 in 2022, representing an increase of 4.4 per cent), broken down as 323 administered arbitrations (up from 292 in 2022, representing an increase of 11 per cent)".[375]

If geopolitical tensions continue, it will be interesting to see whether this impacts the nationalities of the parties selecting Asian and Middle Eastern seats and laws as well as the types of disputes arbitrated in Asia.

Parties contracting with Chinese companies may wish to consider specifying Hong Kong as the seat (using authorised institutions[376] including HKIAC, CIETAC Hong Kong Arbitration Center, ICC Hong Kong and HKMAG) in view of the "Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of Hong Kong". The above statistics confirm that this Arrangement is working – including for Mainland Chinese parties.

Mediation

Above, we discussed the *Churchill* case[377] and the fact that more countries are signing and ratifying the Singapore Convention. In many countries, including England and Wales and Hong Kong, governments and judiciaries have tried or are considering whether to embed ADR into the litigation process including to take pressure off the court system and achieve swifter resolutions.[378]

- Recent changes to the Civil Procedure Rules (CPR), made following *Churchill* and effective from October 2024, confirm the power of the English courts to compel parties to engage in out-of-court alternative dispute resolution with potential costs consequences for failure.[379]

[371] See for example: https://aria.law.columbia.edu/tagtime-with-matthew-gearing-qc-appeals-on-questions-of-law-worth-there-trouble/
[372] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 3, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[373] www.lcia.org/challenge-decision-database.aspx
[374] www.lcia.org/News/lcia-releases-additional-challenge-decisions-online.aspx
[375] Page 17, www.diac.com/wp-content/uploads/2024/11/DIAC-Annual-Report-2023.pdf
[376] www.doj.gov.hk/en/community_engagement/press/20230331_pr1.html
[377] *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416; [2024] BLR 12.
[378] www.gov.uk/government/consultations/increasing-the-use-of-mediation-in-the-civil-justice-system/outcome/increasing-the-use-of-mediation-in-the-civil-justice-system-government-response-to-consultation
[379] www.ciarb.org/news-listing/historic-moment-as-cpr-changes-embed-promotion-of-adr/

- In November 2024 the Hong Kong Government issued the Policy Statement on the Incorporation of Mediation Clauses in Government Contracts announcing that, as a matter of general policy, it will incorporate a mediation clause in government contracts. That policy took effect on 6 February 2025.[380]
- In December 2024 the Hong Kong Department of Justice officially released the Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel 2024.

Overall our sense is that mediation is again more popular including in the context of arbitration.

ISDS on a downwards trend?

In our 2023 review we speculated that ISDS might be on a downwards trend. The context was the *Achmea*[381] decision followed by the termination of intra-EU bilateral investment treaties and the EU's step back from the Energy Charter Treaty. Indeed in 2024,the EU took the final step to exit the Energy Charter Treaty (ECT).[382]

We also note several cases in context of sports arbitration including Advocate General Ćapeta's January 2025 opinion in *Royal Football Club Seraing v Fédération Internationale de Football Association (FIFA) and Others*[383] which suggests that any award Court of Arbitration for Sport (CAS) arbitration in Switzerland might be subject to review by the EU courts. The opinion also suggests that all "mandatory" arbitration might fall outside the scope of the New York Convention:

> "... it is possible to conclude that mandatory arbitration does not meet the requirement of Article II(1) of the New York Convention. ... That interpretation would allow national courts to interpret the New York Convention as not being applicable to mandatory arbitration of the same kind as FIFA sport arbitration."[384]

Time will tell whether the opinion is followed.

On the other hand, in November 2024, the Bolivarian Republic of Venezuela gazetted a Bilateral Investment Treaty executed with China.[385] We wonder: does this signal renewed interest in ISDS? As readers may recall, Venezuela withdraw from the ICSID Convention in 2012. Interestingly, Venezuela had already executed agreements with Colombia and Turkey in 2023. On a similar note, in mid-2024, the European Union signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (the "Mauritius Convention on Transparency") which opened the door to member states of the European Union to ratify, accede to or approve the Convention.[386]

Conflicting decisions on winding up and arbitration

As explained above, we are again (or perhaps still) in a position where courts in key common law arbitral seats are reaching conflicting decisions. We may see parties, in an attempt to promote contractual certainty, try to introduce bespoke arbitration clauses that either preserve or specifically exclude winding-up proceedings.

In this context, SIAC will likely publish its pioneering SIAC Insolvency Arbitration Protocol soon. The consultation period (on a draft) ended on 17 January 2025. The protocol is intended as a specifically designed mechanism to provide a procedure for arbitration at SIAC for the resolution of disputes arising in relation to, or in anticipation of any insolvency proceedings, or for specific use in the context of insolvency notwithstanding whether such a dispute arises in anticipation of, or in relation to, any insolvency proceedings.[387]

[380] www.info.gov.hk/gia/general/202502/06/P2025020600168.htm
[381] *Slovak Republic v Achmea BV* Case C-284/16; EU:C:2018:158
[382] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3513
[383] Case C-600/23, EU:C:2025:24.
[384] Paragraphs 118 to 119.
[385] https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bits/5165/china---venezuela-bolivarian-republic-of-bit-2024-
[386] https://unis.unvienna.org/unis/pressrels/2024/unisl359.html
[387] https://siac.org.sg/siac-announces-public-consultation-on-the-draft-siac-insolvency-arbitration-protocol

Appendix: judgments analysed and considered in this review

2024 judgments analysed

AAA and Others v DDD (HKCFI) [2024] HKCFI 513

Aiteo Eastern E&P Co Ltd v Shell Western Supply and Trading Ltd and Others (KBD (Comm Ct)) [2024] EWHC 1993 (Comm); [2024] 2 Lloyd's Rep 489

Ajay Madhusudan Patel and Others v Jyotrindra S Patel and Others (SC India) Arbitration Petition No 19 of 2024, (SC) 727.

Armada Ship Management (S) Pte Ltd v Schiste Oil and Gas Nigeria Ltd (QBD (Comm Ct)) [2021] EWHC 1094 (Comm); [2021] 2 Lloyd's Rep 329

Asiana Airlines Inc v Gate Gourmet Korea Co Ltd and Others [2024] SGCA(I) 8

Bank A v Bank B (HKCFI) [2024] HKCFI 2529

Barclays Bank plc v VEB.RF (KBD (Comm Ct)) [2024] EWHC 2981 (Comm); [2025] 1 Lloyd's Rep 59

Beijing Songxianghu Architectural Decoration Engineering Co Ltd v Kitty Kam (HKCFI) [2024] HKCFI 1657

Bugsby Property LLC v Omni Bridgeway (Fund 5) Cayman Investment Ltd and Another (KBD (Comm Ct)) [2024] EWHC 2986 (Comm); [2025] Lloyds' Rep Plus 7

Case No A45-19015/2023 (Russia SC) 26 July 2024

Churchill v Merthyr Tydfil County Borough Council (CA) [2023] EWCA Civ 1416; [2024] BLR 12

CMBICDHAW Investments Ltd v CDH Fund V Ltd Partnership and Others (HKCA) [2024] HKCA 516

CNA v CNB and Another (SGCA(I)) [2024] SGCA(I) 2

Company A and Another v Company C (HKCFI) [2024] HKCFI 3505

Contax Partners Inc BVI v Kuwait Finance House (KFH-Kuwait) and Others [2024] EWHC 436 (Comm)

COSCO Shipping Specialized Carriers Ltd v PT OKI Pulp & Paper Mills and Others (SGCA) [2024] SGCA 50

Czech Republic v Diag Human SE (KBD (Comm Ct)) [2024] EWHC 503 (Comm); [2024] 1 Lloyd's Rep 367

DBL v DBM (SGCA) [2024] SGCA 19

DGE v DGF (SGHC) [2024] SGHC 107

DJK et al v DJN [2024] SGHC 309

Eronat v CPNC International (Chad) Ltd and Another (KBD (Comm Ct)) [2024] EWHC 2880 (Comm); [2024] Lloyd's Rep Plus 69

Eternity Sky Investments Ltd v Zhang (KBD (Comm Ct)) [2023] EWHC 1964 (Comm); [2023] 2 Lloyd's Rep 419; (CA) [2024] EWCA Civ 630

Eton Properties Litigation: 廈門新景地集團有限公司 *formerly known as* 廈門市鑫新景地房地產有限公司 *(Xiamen Xinjingdi Group) v Eton Properties Ltd and Another* (HKCFI) [2024] HKCFI 1291

FIC Properties Sdn Bhd v PT Rajawali Capital International [2024] SGHC(I) 33

French State v London Steam-Ship Owners' Mutual Insurance Association Ltd (The Prestige) (KBD (Comm Ct)) [2023] EWHC 2474 (Comm); [2024] 1 Lloyd's Rep 157

Frontier Holdings Ltd v Petroleum Exploration (Pvt) Ltd (SGHC(I)) [2024] SGHC(I) 34

Ganz v Petronz FZE and Another (KBD (Comm Ct)) [2024] EWHC 635 (Comm)

Ganz v Petronz FZE and Another (KBD (Comm Ct)) [2024] EWHC 1011 (Comm)

General Dynamics United Kingdom Ltd v State of Libya (KBD (Comm Ct)) [2024] EWHC 472 (Comm); (CA) [2025] EWCA Civ 134; [2025] Lloyd's Rep Plus 25

Government of the Lao People's Democratic Republic v Lao Holdings NV [2022] SGCA(I) 9

H1 and Another v W and Others (KBD (Comm Ct)) [2024] EWHC 382 (Comm); [2024] 1 Lloyd's Rep 449

Hilton International Manage (Maldives) Pvt Ltd v Sun Travels & Tours Pvt Ltd (SGHC) [2024] SGHC 119

ICSID Case No ARB/24/1

Infrastructure Services Luxembourg Sarl v The Kingdom of Spain; Borders Timber Ltd and Another v Republic Of Zimbabwe (CA) [2024] EWCA Civ 1257; [2025] 1 Lloyd's Rep 66

Investcom Global Ltd v PLC Investments Ltd and Others (KBD (Comm Ct)) [2024] EWHC 2505 (Comm); [2025] 1 Lloyd's Rep 163

IO v Contractor (HKCFI) [2024] HKCFI 1802

Kingdom of Spain v London Steam-Ship Owners' Mutual Insurance Association Ltd (The Prestige) (CA) [2024] EWCA Civ 1536; [2025] 1 Lloyd's Rep 115

KZ v KY (HKCFI) [2024] HKCFI 1880

Lakah et al v UBS AG et al, No 07-CV-2799 (LAP), 2024 WL 4555701 (SDNY 22 October 2024)

London Steam-Ship Owners' Mutual Insurance Association Ltd v Trico Maritime (Pvt) Ltd and Others (KBD (Comm Ct)) [2024] EWHC 884 (Comm)

P v D (HKCFI) [2024] HKCFI 1132

Pan Ocean Container Suppliers Co Ltd v Spinnaker Equipment Services Inc (HKCFI) [2024] HKCFI 1753

Pan Ocean Container Suppliers Co Ltd v Spinnaker Equipment Services Inc (HKCFI) [2024] HKCFI 1753

Process & Industrial Developments Ltd v Federal Republic of Nigeria [2024] EWCA Civ 790; [2024] 2 Lloyd's Rep 53

Re Mega Gold Ltd; Re Man Chun Sing Matthew (HKCFI) [2024] HKCFI 2286

Re Sapura Fabricaiton Sdn Bhd (SGHC) [2024] SGHC 241

Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others (KBD (Comm Ct)) [2024] EWHC 2843 (Comm)

Republic of Korea v Elliott Associates LP [2024] EWHC 2037 (Comm); [2024] 2 Lloyd's Rep 363

Royal Football Club Seraing v Fédération Internationale de Football Association (FIFA) and Others (CJEU) Case C-600/23, EU:C:2025:24

S V Samudram v State of Karnataka Civil Appeal No 8067 of 2019, 4 January 2024

SA and Others v BH and Another (HKCFI) [2024] HKCFI 1357

Sacofa Sdn Bhd v Super Sea Cable Networks Pte Ltd and Another (SGHC) [2024] SGHC 54

Sharp Corp Ltd v Viterra BV (SC) [2024] UKSC 14; [2024] 1 Lloyd's Rep 568

Sian Participation Corp (In Liquidation) v Halimeda International Ltd (PC) [2024] UKPC 16; [2024] 2 Lloyd's Rep 65

Sian Participation Corp (in liquidation) v Halimeda International Ltd (PC) [2024] UKPC 16; [2024] 2 Lloyd's Rep 65

Simplicity & Vogue Retailing (HK) Co Ltd (HKCA) [2024] HKCA 299

Sodzawiczny v Smith and Another (KBD (Comm Ct)) [2024] EWHC 231 (Comm); [2024] 1 Lloyd's Rep 466

SYL and Another v GIF (HKCFI) [2024] HKCFI 1324

TGL v SDC and Another (HKCFI) [2024] HKCFI 2393

Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd and Another (HKCFI) [2024] HKCFI 2710

TrueCoin LLC v Techteryx Ltd (SGHC) [2024] SGHC 296

Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd (KBD (Comm Ct)) [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609

Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd (KBD (Comm Ct) [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609

Tyson International Co Ltd v GIC Re, India, Corporate Member Ltd (KBD (Comm Ct) [2025] EWHC 77 (Comm); [2025] Lloyd's Rep IR 182

Tyson International Co Ltd v Partner Reinsurance Europe SE (KBD (Comm Ct) [2023] EWHC 3243 (Comm); [2024] Lloyd's Rep IR 279; (CA) [2024] EWCA Civ 363; [2024] Lloyd's Rep IR 633

UniCredit Bank GmbH v RusChemAlliance LLC (KBD (Comm Ct)) [2023] EWHC 2365 (Comm); (CA) [2024] EWCA Civ 64; [2024] 1 Lloyd's Rep 350; (SC) [2024] UKSC 30; [2024] 2 Lloyd's Rep 466

UniCredit Bank GmbH v RusChemAlliance LLC (CA) [2025] EWCA Civ 99; [2025] Lloyd's Rep Plus 24

Vedanta Ltd v Shreeji Shipping 8 February 2024

Voltas Ltd v York International Pte Ltd (SGCA) [2024] SGCA 12

Waterfront Property v Arius Litigation Funding BVIHCM2023/0192 (27 March 2024, unreported)

Wuhu Ruyi Xinbo Investment Partnership (Ltd Partnership) v Shandong Ruyi Technology Group Co Ltd and Another [2024] SGHC 308

Judgments considered

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