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Arbitration law in 2025: a review

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Isuru Devendra is a barrister at 36 Stone in London specialising in international arbitration and public international law. Isuru has over a decade of experience acting for states, state organs and bodies, state-owned entities, commercial clients and individuals in a variety of complex commercial and international law disputes. He is qualified in England and Wales and Australia, and has worked in London, Singapore and Australia. Isuru is the Co-Chair of the Asia-Pacific Forum for International Arbitration (AFIA) and a graduate of the University of Queensland and the University of Cambridge.

Isuru wrote the section entitled “IX. Investor–State Dispute Settlement (ISDS)”.

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Vanessa wrote the section entitled “V.(3) Challenging the award: serious irregularity (section 68)”, as well as the summaries of the following four cases: *African Distribution Company Sarl v Aastar Trading Pte Ltd*; *CCC v AAC* (both covered in the section entitled “II.(1) Notice of arbitration”); *Tecnicas Reunidas Saudia for Services & Contracting Co Ltd v Petroleum Chemicals and Mining Co Ltd* (in the section entitled “II.(6) ‘Pick and mix’ of conflicting arbitration agreements denied”); and *CNG v G* (in the section entitled “IV.(4) Challenge to arbitrators”).

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George Mallis is a Hong Kong-based offshore dispute resolution lawyer. He has a broad range of experience acting in arbitration and litigation matters throughout Asia and in offshore jurisdictions.

George wrote the section entitled “III. Contested winding up and arbitration”.

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The information contained in this review, and our 2023 and 2024 reviews, 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 open-minded people who are aware that laws vary across jurisdictions and can change. Neither this review, nor our 2023 and 2024 reviews, should be construed as expressing our staunch views on any matter.

Arbitration law in 2025: a review

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I. Introduction

As in previous years, this 2025 review non-exhaustively covers major court decisions and developments in the field of arbitration in 2025 which caught our attention, again focusing more on commercial arbitration (although this year we also include a short section by Isuru Devendra on investor-state dispute settlement (ISDS)-related cases). This edition follows our first review in relation to 2023[1] and our second review in relation to 2024.[2] Conceptually our reviews are organised a bit like scrapbooks with short commentaries explaining why developments may be relevant.

In terms of jurisdictions covered, since we are mainly based in England and the Hong Kong Special Administrative Region of the People's Republic of China (Hong Kong), our review focuses on covering case law and trends in our home jurisdictions as well as in other key common law arbitration seat jurisdictions including Singapore. Moreover, this review covers major legal developments in jurisdictions that are on our radar (such as France, Germany, Mainland China and Malaysia). The recent reforms in Mainland China "represent a paradigm shift, aligning the PRC Arbitration Law with the UNCITRAL Model Law and international best practices".[3]

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. For the third time we provide an update on the law on winding up and arbitration across key common law jurisdictions by George Mallis. There are also sections on assistance granted by courts in aid of arbitration (including a section by Jason Louie on anti-suit/anti-arbitration injunctions). As in past years, we also cover other major developments such as the Arbitration Act 2025 in England and Wales (which entered into force on 1 August 2025[4]), amendments to major arbitral rules and fees and – briefly – developments in relation to how arbitrations can be funded (especially the upcoming reversal of PACCAR).

At the end of this review, by way of conclusion, after a discussion of statistics released by leading arbitral institutions, we seek to draw together and comment on some of the key trends we have identified while writing this review and suggest what 2026 might hold in store for arbitration.

Since this is our third review, we can assess our tea leaf reading (and do this below).

Did our predictions for 2025 come true?

Once again, the short answer is generally yes. While some of our forecasts were slightly ahead of the curve, the majority have materialised.

[1] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[2] "Arbitration law in 2024: a review", also available on i-law.com.
[3] Lecture by Dr Anthony Neoh for Ciarb EAB entitled "Transformation of Arbitration Laws: the UK, HK, US and China and the UNCITRAL effect", slide 39.
[4] Commencement Notice 17 July 2025 Statutory instrument: 2025 No 905 (C. 41) dated 16 July 2025.

PACCAR

In our 2023 review, we anticipated a swift legislative reversal of the UK Supreme Court's decision on damages-based agreements. It is taking slightly longer than we expected but it seems reversal is coming for arbitration, possibly in 2026.

Arbitration statistics

Arbitration is increasingly popular. In 2025, as the statistics section at the end of this review draws out, several major bodies reported record-breaking case numbers (HKIAC, ICSID, ICC (one of the top three years), SCC (second year in a row recording over 200 cases and a strong start to 2026 with 53 cases already by late March), SIAC (second highest)), or significantly higher dispute quanta (eg CIETAC). A fascinating development, already noted last year, which continues, is the rise of "younger agreements" at institutions like the HKIAC and LCIA.

As for the English Commercial Court, we have speculated on whether the Arbitration Act 2025 (clarifying the law of the seat as the default law of the arbitration agreement) would reduce section 44 applications (injunctions indeed fell by 32 per cent in 2024-2025). That said, given that the Arbitration Act 2025 only applies to arbitrations commenced after August 2025, it remains too early to definitively say if the Act has streamlined these specific skirmishes. We will continue to monitor the statistics in our future reviews.

In fact, the statistics discussed at the end of this review show marked increases in challenges – both at arbitral institution and the English Commercial Court level (with exception of section 67 challenges). Although strategic challenges often fail, there is a time and cost to them. It will be interesting to see whether tribunals, courts and legislators start to take even more robust steps to curtail strategic challenges – eg will arbitrators increasingly make use of their powers (including to deal with matters summarily/by way of early determation/expedited proceedings) and will there be increasingly harsh consequences for bringing unmeritorious applications (including by courts).

Internationalisation

Last year we noted that the trend seems to be for cases becoming more international. This trend continues. We note in particular this trend in the number of Asian-seated arbitrations – eg CIETAC, HKIAC and SIAC arbitrations but also in terms of the numbers of Asian parties involved in arbitrations seated elsewhere (eg before the AAA's ICDR). In 2024, for the first time, the combined caseload of the top five foreign LCIA users – Kenya, the US, Switzerland, the UAE and Russia – exceeded that of UK parties. Similarly, in 2025, HKIAC is seeing more cases from Middle Eastern, Russian and Latin American parties.

Diversity

Based on the most recent 2024 and 2025 case statistics, there continues generally to be a sustained increase in the appointment of female arbitrators. This trend continues to be primarily driven by the institutions themselves.

Parties are starting to fall back a little in some jurisdictions – eg the SCC would again like to see parties appoint more female arbitrators, the parties' percentage of appointed women arbitrators having fallen from 31 per cent in 2023 to 28 per cent in 2024 to 22 per cent in 2025.[5]

Institutions are also expanding their focus to other forms of diversity, including geographic and generational inclusivity. The institutions are clearly trying to widen the pool and appointment of competent arbitrators in the staunch belief that this will continue to improve the quality and efficiency of arbitration.

Asia and Middle East

Last review we reported that the statistics confirm that arbitration in these regions is not only increasing in volume but also in institutional maturity, and that geopolitical tensions appear to be a driver. This trend appears to be continuing. Professor Felix Dasser, in his recurring thought-provoking statistical analysis and articles for the Swiss Arbitration Association, has written:

> "England and Switzerland remain havens for arbitration and Asia is embracing it more than ever

[5] Source, Caroline Falconer, 27 March 2026, www.youtube.com/live/73lW1wCckAs.

before – China and Japan in particular, also India, albeit somewhat less enthusiastically. China is a particularly interesting country to observe. It boasts more than 280 arbitration institutions, dealing with hundreds of thousands of domestic (and some international) cases every year, and has a very different approach to arbitration. In a multipolar world, we can expect Chinese approaches to arbitration to influence the future conduct of international arbitration."[6]

Mediation

In our last review we discussed the *Churchill* case[7] and the fact that more countries are signing and ratifying the Singapore Convention. In this review we discuss a consultation by the UK government on implementation of the Singapore Convention which it signed on 3 May 2023. Mediation is no longer a voluntary extra but increasingly a procedural requirement embedded both in court litigation procedure as well as in multi-tiered arbitration clauses. In England, following *Churchill* and the 2024 CPR changes, courts now have the teeth to compel ADR and we have discussed some of the leading cases. Similarly, Hong Kong's mandate for mediation clauses in government contracts and the establishment of IOMed signal a systemic shift toward swifter, out-of-court resolutions in 2026.

Is ISDS on a downwards trend?

In our 2023 and 2024 reviews we speculated that ISDS might be on a downwards trend. The context was the *Achmea*[8] decision followed by the termination of intra-EU bilateral investment treaties, the step back (and exit) from the Energy Charter Treaty and Advocate General Ćapeta's January 2025 opinion in *Royal Football Club Seraing v Fédération Internationale de Football Association (FIFA) and Others*.[9] While said opinion was not followed, the 2025 rulings in *Semenya v Switzerland*[10] and *Royal Football Club Seraing v FIFA* (1 August 2025) seem to continue the trend of heightened judicial scrutiny of mandatory sports arbitration at least in Europe.

Outside of the EU new investor-state arbitrations are increasing and awards are being enforced in many jurisdictions (including, as we see in this review, England and Wales but also in the USA and Australia). As we discuss in the statistics section, ICSID had a record year. Thus it is too early to tell whether ISDS is on a downwards trend. That said, we are experiencing a decline of the rules-based international order on which ISDS is based. Geopolitical tensions also are starting to mean that enforcement of awards under the New York Convention is no longer a given – we discuss several further Russian cases in this review.

Conflicting decisions on winding up and arbitration

It remains the case that courts in key common law arbitral seats are reaching conflicting decisions with England and offshore jurisdictions with appeals to the Privy Council taking a more creditor-friendly approach. In our 2024 review we speculated that we may see parties, in an attempt to promote contractual certainty, try to introduce bespoke arbitration clauses that either preserve or specifically exclude the option of cheaper and swifter winding-up proceedings. While we have not yet seen such clauses used in practice, they might avoid these kinds of challenges.

6 www.swissarbitration.org/43-2.
7 *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416; [2024] BLR 12.
8 *Slovak Republic v Achmea BV* Case C-284/16; EU:C:2018:158.
9 Case C-600/23; EU:C:2025:24.
10 Grand Chamber, Application No 10934/21 (10 July 2025).

II. Commencing arbitration and arbitrability

(1) Notice of arbitration

(a) Notice of arbitration sent to generic email addresses

By Vanessa Tsang

In the case of *African Distribution Company Sarl v Aastar Trading Pte Ltd*,[11] the English High Court considered how the strict 28-day deadline for challenging a standard arbitral award works alongside the exception allowed for non-participants under section 72(1) of the Arbitration Act 1996 (which we discuss below).

The dispute arose when ADC, a food distributor from the Côte d'Ivoire, sought to challenge an arbitration award in favour of Aastar, a trading company based in Singapore. Aastar had initiated arbitration in July 2023 by sending a notice of arbitration to two general email addresses associated with ADC. However, ADC asserted that it had never received or seen these emails and therefore did not participate in the arbitration process. ADC discovered the award's existence in July 2024 during enforcement actions in Côte d'Ivoire. By August 2024, when ADC finally filed a challenge with the English Commercial Court, arguing it lacked jurisdiction (section 67) and citing serious procedural irregularities (section 68), the 28-day deadline under section 70(3) had already expired. Alternatively, ADC sought declaratory relief under section 72(1), which protects a person alleged to be a party to arbitral proceedings who takes no part in them.[12]

HHJ Tindal, sitting as a Judge of the High Court, dismissed ADC's application for an extension of time for its section 67 and section 68 challenges. In refusing the time extension, the judge applied the *Kalmneft* factors[13] which consider: (i) length of the delay; (ii) whether the party was acting reasonably; (iii) who caused or contributed to the delay; (iv) whether the respondent to the application would suffer irremediable prejudice if the application was permitted; (v) whether the arbitration continued during the delay; (vi) strength of the application; and (vii) unfairness to the applicant.[14]

HHJ Tindal observed that ADC had failed "to get advice about challenging the Award – whether English or Singaporean [...] ADC's deliberate inaction for 22 days was unreasonable and weighs against their extension".[15] Furthermore, when assessing the merits of ADC's complaint regarding the email service, the judge found "ADC's jurisdictional/service challenge is no more than 'arguable' on the facts".[16] Dismissing the argument that the emails were defective service because they allegedly went to a spam folder, HHJ Tindal noted that "if a notice is received at an appropriate email address but misunderstood as spam, it has still been served, just like a claim form posted to a firm of solicitors which they accidentally dispose of. [...] with service, the absence of a read receipt is an evidential issue about whether service can be proved, not a legal one about whether it is valid".[17] Ultimately, the judge concluded that ADC had "failed to show sufficient risk of unfairness, or to justify its significant delay when expedition is fundamental to the arbitral system".[18]

(b) Online arbitration and adequacy of notice via SMS

By Vanessa Tsang

In *CCC v AAC*[19] the Hong Kong Court of First Instance examined whether sending a notice of arbitration via an SMS text message qualifies as "proper notice" to a borrower in an online money lending dispute. The court also emphasised the "good practice" that tribunals should follow when dealing with respondents who do not participate.

The dispute arose after the applicant (a moneylender) loaned a total of HK$900,000 to the respondent (a borrower). The dispute resolution clause, which gave the moneylender the right to arbitrate through the Hong Kong Arbitration Society (HKAS), was contained in a "Supplemental Loan Agreement". When the respondent

11 [2025] EWHC 2428 (Comm); [2025] 2 Lloyd's Rep 443.
12 See paras 1 to 3.
13 See *AOOT Kalmneft v Glencore International AG* [2001] EWHC 464 (Comm); [2002] 1 Lloyd's Rep 128.
14 See para 5.
15 At para 70.
16 At para 76.
17 At para 52(b).
18 At para 78(b).
19 [2025] HKCFI 2987.

later requested copies of the contracts via WhatsApp, the applicant provided the main loan documents but did not include the supplemental agreement. After the loan matured, the applicant initiated arbitration. The HKAS sent the notice of arbitration to the respondent via SMS, which included a login link and password. The respondent did not participate in the arbitration, resulting in a default award being issued in favour of the applicant. The respondent then filed an application to set aside the court's enforcement order, arguing that the agreement was invalid due to fraud and that he had not received proper notice, as he did not receive the SMS.[20]

> Good practice suggests that the arbitrator, or the claimant at the request of the arbitrator, should check whether the notice of arbitration has actually been received and understood

Deputy High Court Judge Sir William Blair dismissed the respondent's challenge. Regarding the fraud allegations, the judge found no clear basis for them, noting that the signatures on the loan agreements matched. This satisfied the court that the respondent signed and agreed to the documentation.[21] On the issue of notification, the court relied on evidence from the HKAS, which showed that the SMS was electronically marked as "delivered". Also, article 2.1 of the HKAS Online Arbitration Rules expressly provides that electronic service, among others, SMS, constitutes a valid receipt. Sir Blair concluded that:

> "[t]he authorities draw a distinction between a party actually knowing about an arbitration, and being given proper notice of the same. The term 'proper' is used in the provisions of s 86 of the Ordinance ..., which reproduce the Model Law. I consider that the Respondent was given proper notice of the arbitral proceedings."[22]

Notwithstanding the legal finding, the judge expressed unease about the practical realities of SMS service. Drawing on Gary Born's authoritative commentary in *International Commercial Arbitration*, Sir Blair expressed the view that:

> "in an online arbitration of this kind, good practice suggests that the arbitrator, or the claimant at the request of the arbitrator, should check whether the notice of arbitration has actually been received and understood as such by the non-participating respondent borrower."[23]

The judgment's obiter suggests that, although SMS notices are legally valid when stipulated in the rules, neither tribunals nor claimants should rely solely on delivery receipts. Instead, good practice is to ensure that the defaulting party is aware of the proceedings, thereby maintaining fundamental fairness. This appears to contrast with the strict electronic receipt approach adopted by the English courts (see *African Distribution Company Sarl v Aastar Trading Pte Ltd* discussed above), which may be explained by the different facts in these cases – while *African Distribution v Aastar* involved a business-to-business dispute, *CCC v AAC* concerned a dispute between a business and a consumer. That said, both the English and Hong Kong courts firmly rejected the respondents' arguments that subjective ignorance of a delivered message renders service invalid, and established that if a message successfully reaches the recipient's designated digital inbox or device in accordance with the agreed rules, the legal burden of "proper notice" is discharged.

(c) What if the respondent's contact details have changed?

In *CC v AC*,[24] CC was granted leave to enforce an Asian International Arbitration Centre (AIAC) award which required CC to pay sums of money plus costs. CC sought to set aside the enforcement order under section 86(1)(c) of the Arbitration Ordinance on the grounds that AC had not been given notice of the appointment of the arbitrator or of the arbitral proceedings, and was unable to present its case; and that enforcement of the award would be contrary to public policy. The ground of public policy was premised on the lack of proper notice of the arbitral proceedings and the defendant's inability to present his case as a result thereof. Mimmie Chan J dismissed AC's

[20] See paras 5 to 19.
[21] See paras 26 to 28.
[22] At para 41.
[23] At para 59.
[24] [2025] HKCFI 855.

application since it had failed to prove that it was not given proper notice, and awarded indemnity costs to CC:

> "I am not satisfied that the defendant has proved that it was not given proper notice, and was unable to present its case as a result. Even if the ground set out in section 86(1)(c) was established, the court has a residual discretion to enforce the Award (*Hebei Import & Export Corp v Polytek Engineering Co Ltd* (1999) 2 HKCFAR 111, 136A-B). On the facts and evidence of this case, I do not consider that enforcement should be refused when it is the *defendant's own fault in specifying an incorrect and outdated address for service in the Agreements, in ignoring emails sent to its advertised email addresses, and in failing to maintain its Website and email addresses*. It was also clearly in breach of the Agreements when it failed to notify the Plaintiff of its change of registered office address for service of documents under the Agreements. Holding the parties to their own agreement is not a denial of due process. I do not accept that there is any evidence of bad faith on the plaintiff's part, as the defendant suggested. On the other hand, it would be grossly unfair to the plaintiff, if the court should permit the defendant in this case to avoid the effect of the Award by taking advantage of its own wrongs."[25] (Our emphasis in italics.)

(d) Can the court intervene when an institution has decided when an arbitration commenced?

The Singapore Court of Appeal in *DMZ v DNA*[26] considered article 5 of the UNCITRAL Model Law on International Commercial Arbitration 1985 ("Model Law"). Article 5 (Extent of court intervention) reads: "In matters governed by this Law, no court shall intervene except where so provided in this Law". This principle is sometimes called "minimal curial interference".

The issue in this case was the expiry of a six-year limitation period – had an arbitration been commenced (under five contracts for the supply of oil) in time or too late (ie was the claim time-barred)?

Under rule 3.3 of the SIAC Arbitration Rules 2016 ("SIAC Rules"):

> "The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify the parties of the commencement of the arbitration."

Initially, the Registrar of the SIAC informed the parties that he deemed the arbitration to have commenced on 3 July 2024. Next, the respondent filed a response to notice of arbitration which included a time bar, on the basis that the arbitration was deemed to have commenced several days after 1 July 2024. The claimant wrote to the SIAC requesting that the Registrar's initial decision be amended and that the correct commencement date of the arbitration should have been 24 June 2024 – when the notice of arbitration was filed. The Registrar agreed and issued an amended decision.

The respondent thereupon filed an application to the General Division of the Singapore High Court against the claimant and the SIAC, seeking the following declarations:

> (a) that the commencement date of the Arbitration was 3 July 2024;
>
> (b) that the amended decision was unlawful as it was ultra vires the SIAC Rules;
>
> (c) further and/or alternatively, that the amended decision was unlawful because it was made in breach of the SIAC Rules; and
>
> (d) further and/or alternatively, that the amended decision was unlawful as it was made arbitrarily, capriciously and/or unreasonably.

In addition, the appellant also sought an order setting aside the amended decision.

The Court of Appeal also conserved the waiver in the SIAC Rules which reads:

> "40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority."

On the basis of the "manifest lack of merit in this appeal",[27] indemnity costs were awarded by the Court of Appeal (in the sum of S$60,000) which also allowed the indemnity costs awarded by the High Court to stand.

[25] At para 39.
[26] [2025] SGCA 52.
[27] At para 62.

(2) Has the alternative dispute resolution mechanism clause been superseded?

In our 2024 review,[28] under this rubric, we discussed the English cases of *Tyson International Co Ltd v Partner Reinsurance Europe SE*,[29] *Tyson International Co Ltd v GIC RE, India, Corporate Member Ltd*,[30] and the Singapore case *CNA v CNB*.[31] 2025 brought more cases on the same subject but with a twist – the 2025 cases we discuss below related to failed settlement attempts.

It is not uncommon for settlement agreements not to be complied with and to themselves give rise to new disputes and – potentially – the associated costs, delays and difficulties (eg service) of commencing (unless otherwise agreed) new proceedings to resolve such disputes. A key takeaway from the below 2025 cases is that parties settling disputes need to pay attention to the dispute resolution clause in the settlement agreement. Article 30(1) of the UNCITRAL Model 1985 (with amendments as adopted in 2006) provides a useful mechanism by way of which settlements can be recorded and enforced. By way of reminder, it reads:

> "(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. (2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case."

Over 85 states and 118 jurisdictions worldwide have substantially adopted the UNCITRAL Model Law (including Hong Kong, Singapore, Australia, India, Germany and many US states).

In *Destin Trading Inc v Saipem SA*,[32] the English Chancery Division refused to grant a stay of proceedings under section 9 of the Arbitration Act 1996 and held that an English court exclusive dispute resolution clause in the settlement agreement superseded arbitration clauses in the agreements under which the dispute arose.

It is not uncommon for settlement agreements not to be complied with and to themselves give rise to new disputes and – potentially – the associated costs, delays and difficulties of commencing proceedings to resolve such disputes

In September and October 2012 Destin and Saipem concluded three Frame Agreements, each of which provided that the parties were bound by Saipem's general terms and conditions which in turn incorporated ICC London arbitration clauses. In 2013, following a dispute as to the amount owing by Saipem (Destin alleged a significant shortfall), the parties entered into a settlement agreement under which the parties settled Destin's claim, gave a mutual release of claims and terminated the Frame Agreements. There was also a clause providing for the courts of England and Wales to have exclusive jurisdiction to settle any dispute arising out of or in connection with the settlement agreement.

In 2023 Destin commenced court proceedings in England and sought to avoid the settlement agreement on the basis of alleged fraudulent or negligent misrepresentation, and claimed damages. Saipem applied for a stay of the proceedings under section 9 of the Arbitration Act 1996. As mentioned above, the stay was refused by Andrew Lenon KC sitting as judge. The settlement agreement had terminated and replaced the Frame Agreements, and the exclusive jurisdiction agreement had superseded the arbitration clauses:

> *"35. Monde*[33] is, nevertheless, clear authority for the proposition that dispute resolution clauses in a settlement or termination agreement should generally be construed on the basis that they are intended to have a superseding or overriding effect, for the reasons explained by Popplewell J. The factors underlying the *Fiona Trust*[34] presumption in favour of one-stop adjudication, in particular

[28] "Arbitration law in 2024: a review", available on i-law.com.
[29] [2023] EWHC 3243 (Comm); [2024] Lloyd's Rep IR 279.
[30] [2024] EWHC 236 (Comm); [2024] Lloyd's Rep IR 609.
[31] [2024] SGCA(I) 2.
[32] [2025] EWHC 668 (Ch); [2025] Lloyd's Rep Plus 38.
[33] *Monde Petroleum SA v WesternZagros Ltd* [2015] EWHC 67 (Comm); [2015] 1 Lloyd's Rep 330.
[34] *Fiona Trust and Holding Corporation v Privalov* [2007] UKHL 40; [2008] 1 Lloyd's Rep 254.

> the desirability of having all questions arising out of parties' legal relationship determined by a single tribunal, are reinforced where parties have agreed on a dispute resolution clause in a settlement/termination agreement. In this situation, it may be readily inferred that the parties intended that the dispute resolution clause in the settlement/termination agreement would replace and supersede a dispute resolution clause in an earlier agreement. The later clause is the only operative clause concerning disputes arising out of the settlement/termination agreement; it has been agreed to in the light of the disputes arising under the earlier agreement; there will be a risk of inconsistent decisions if disputes arising out of an earlier agreement are determined by a different tribunal. The parties are terminating their prior agreement and replacing it with new rights and obligations for the future. In the words of Carr J in *C v D*,[35] it is likely that the centre of gravity of the relationship has changed and become a relationship centred on the settlement/termination agreement."[36]

Another key factor noted by the court was that the settlement agreement contained an entire agreement clause:

> "As in *Monde*, there was an entire agreement clause which suggested that the parties had in mind that the jurisdiction clause would include disputes as to rights under the parties' prior contractual arrangements because such rights were the subject matter of the Settlement Agreement (see clauses 3 and 4)."[37]

[35] *C v D1* [2015] EWHC 2126 (Comm).
[36] At para 35.
[37] At para 36.

(3) Can a dispute fall within two different arbitration agreements?

CAFI – Commodity & Freight Integrators DMCC v GTCS Trading DMCC[38] involved a similar fact pattern to *Destin*, discussed above, but with different contracts and outcomes. Arguably, parties wishing to permanently settle a dispute should learn from *CAFI*. This is because *CAFI* confirms that a claim or issue may fall within two or more different arbitration clauses, with the consequence that the claimant has the choice of which clause to invoke. Where there are also subsequent agreements (in addition to an original agreement), eg to vary the terms of that original agreement or settle any liability under it, a tribunal appointed under the original agreement should interpret the original agreement in light of the terms of the later agreements.

In *CAFI* the English Commercial Court allowed challenge to a Grain and Feed Trade Association (GAFTA) appeal award (unusually under all of sections 67, 68 and 69 of the Arbitration Act 1996).

Henshaw J summarised and applied the existing case law:

> "36. The cases also establish that where there are multiple contracts containing arbitration agreements or jurisdiction clauses, the task of the court is to construe the parties' contract in the light of the transaction as a whole: see, eg, *UBS AG v HSH Nordbank AG* [2009] 2 Lloyd's Rep 272 at para 83. Further, jurisdiction agreements are not always mutually exclusive: *Deutsche Bank AG v Comune di Savona* [2018] EWCA Civ 1740 at para

[38] [2025] EWHC 1350 (Comm); [2025] 1 Lloyd's Rep 603.

31; *Albion Energy Ltd v Energy Investments Global BRL* [2020] 1 Lloyd's Rep 501 at para 17."

The background was that a Russian company had agreed to sell wheat at a price under a First Contract dated 11 March 2022 which was subject to GAFTA arbitration. CAFI claimed it was unable to pay for the wheat because of sanctions on Russia. After the cargo arrived and no payment was forthcoming, GTCS purported to terminate the First Contract for anticipatory breach. With the help of a broker, a Second Contract at a lower price was entered into and backdated to 25 March 2022. It contained a termination clause stating: "Both parties have agreed that ... [the First Contract] ... is terminated and considered void", and an arbitration clause in the same terms as in the First Contract. CAFI made a SWIFT payment of US$12.32 million.

However, GTCS commenced arbitration under the arbitration clause in the First Contract seeking damages for repudiatory breach. CAFI's defence was the termination clause in the Second Contract, which it argued voided the First Contract. GTCS argued that the GAFTA First Tier Tribunal had no jurisdiction to consider the meaning of the termination clause because the arbitration had been brought under the First Contract. The GAFTA First Tier Tribunal issued an award on 28 March 2023 dismissing the claim on the basis that GTCS had waived its claim for damages. The award stated that: "the new contract is a stand-alone contract with an arbitration clause, and this Tribunal has no jurisdiction under the new contract". However, the tribunal went on to consider the effect of the termination clause on the basis that it was "evidence in this arbitration which could not be ignored".

CAFI appealed to the GAFTA Appeal Board, which allowed the appeal and held that GTCS was entitled to damages. The Board:

> "noted that the re-sale contained a separate arbitration agreement but no arbitration notice was ever given under the re-sale contract and so neither the first-tier Tribunal nor this Board were appointed to rule on any matters arising out of the re-sale contract.
>
> 9.8. WE THEREFORE FIND AND HOLD that we have no jurisdiction to interpret the terms of the re-sale or how any of those terms impact on the Contract. It however remains good evidence of what happened after the termination of the Contract."

Henshaw J disagreed. The Board did possess jurisdiction in relation to the Second Contract and failed to exercise it (section 67). The Board made a further significant error: having found that it had no jurisdiction to determine the issue as to the meaning of the termination clause, it should not have proceeded to made awards on the waiver issues and of damages against CAFI:

> "it was a serious procedural irregularity for the Appeal Board to hold CAFI liable for damages notwithstanding a live issue as to whether the claimant's liability for damages was extinguished by the Second Contract. CAFI makes this point by reference to section 68(2)(a) and/or (f) of the Act, ie (a) failure by the tribunal to comply with section 33 (general duty of tribunal) and/or (f) uncertainty or ambiguity as to the effect of the award. Of the two, I consider (a) the more pertinent one."[39]

The Board's conduct also involved a breach of its general duty under section 33 to act fairly because it pre-judged CAFI's defence. The court also agreed that there was an obvious error of law (section 69).

(4) Who decides – the tribunal or the court?

In many jurisdictions, a tribunal rules on its own jurisdiction (this is the Kompetenz-Kompetenz doctrine which was originally a German public law doctrine). As we will discuss elsewhere in this review, China has in 2026, with its revised Arbitration Law, moved further towards recognising Kompetenz-Kompetenz. The key advantage of the doctrine is that a tribunal is not required to stay proceedings every time a challenge to its jurisdiction is advanced. 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. Similarly, article 16 of the UNCITRAL Model Law concerns the competence of arbitral tribunal to rule on its jurisdiction.

In *XX and Others v ZZ*,[40] Mimmie Chan J of the Hong Kong High Court dismissed an application by 10 plaintiffs seeking to overturn a tribunal's preliminary ruling on jurisdiction under article 16(3) of the UNCITRAL Model

[39] At para 48.
[40] [2025] HKCFI 3089.

Law (which Hong Kong has incorporated as section 34(1) of the Arbitration Ordinance), with indemnity costs to costs and a certificate for two counsel to the successful defendant. The court noted:

> "There is no dispute that in deciding on the jurisdiction of the Tribunal under Article 16(3) of the Model Law, the hearing before the court is de novo and the court is not bound by or limited to either the findings made by the tribunal or the evidence adduced before it (*R v A* [2023] 6 HKC 189)."[41]

The court discussed the relevant case law and concluded:

> "All this leads to the conclusion that whether as a matter of construction of the relevant arbitration clause in the 2017 SPA, or on the application of the centre of gravity test as the Plaintiffs contend, the Claims fall within the 2017 SPA, which is the contract giving rise to the Claims and is the one which is most closely related to the dispute."[42]

(5) Does the tribunal have the power to award costs of jurisdictional challenge?

In the case of *Ravfox Ltd v Bexmoor Ltd*,[43] the Chancery Division of the English High Court (HHJ Keyser KC) found that a tribunal had incorrectly decided that it did not have the power to award the costs of a jurisdictional hearing. (The case will also be discussed below, since it is also relevant to the question of what constitutes an "award" for the purpose of time extensions and whether time extensions should be granted under section 79.)

Ravfox was head lessee of an industrial estate. It was also purely a management company with no assets: the company existed only to manage the industrial estate and to collect the ground rent and service charges. A dispute arose between Ravfox and Bexmoor as to the amount of service charges Bexmoor was paying as sublessee. Bexmoor referred the dispute to arbitration, originally naming Ravfox and its directors (the Dineens) as respondents in the arbitration. Bexmoor's Statement of Claim stated that it was not a party to and was not bound by the sublease mentioned in the referral but by a different sublease; it also claimed a repayment of ground rent that it had paid. Ravfox's Statement in Reply challenged the jurisdiction of the arbitrator on the grounds that: (i) that the defendant's own case was that it was not privy to or bound by the sublease; and (ii) that the claim for repayment of ground rent had not been part of the referral. Ravfox also sought the removal of its directors as respondents and sought full costs expenses.

Bexmoor contested the challenge to jurisdiction, but acceded to the removal of the directors as respondents. By a Directions Order, the arbitrator directed the removal of the directors as respondents and required the parties to make submissions as to: (i) whether the defendant was liable to pay the directors' costs; and (ii) the jurisdictional challenge. Four months later, the arbitrator issued an award (the "Main Award") inter alia concluding:

> "50. ... Bexmoor have not been able to satisfy the standard of proof necessary for me to find that all of the terms in the Bexmoor sub-leases, including the arbitration clauses, bind Ravfox. Where a contract containing an arbitration clause is not binding on both parties, I do not have jurisdiction."
>
> "51. The Costs of the Dineens
>
> Given that I do not consider that I have jurisdiction in the dispute referred to the RICS by Bexmoor, I am unable to make any determination on the costs of the Dineens who [sic] Bexmoor had asked to be removed as parties to the arbitration, having previously requested that they be included. However, I have read through the submissions made by the parties on this issue and, for completeness, if I did rule that I had jurisdiction in this matter I would have found in favour of the Claimant [ie the present defendant] and ordered that no costs were payable."

The Main Award said nothing expressly about costs as between the parties.

Subsequently, upon an application made by Ravfox over a month later, the arbitrator sent a short email (the "Costs Award") stating:

> "Whilst I accept that the arbitration agreement in a contract is separable, in the instant case I do not consider that I have jurisdiction to determine the costs of the jurisdictional challenge and am happy for this matter to be put before the court".

[41] At para 36.
[42] At para 99.
[43] [2025] EWHC 1313 (Ch); [2025] Lloyd's Rep Plus 51.

By an arbitration claim form Ravfox sought "to obtain relief from the court via three alternative routes: an appeal under section 69 of the 1996 Act ('the Appeal'); a challenge under section 68 ('the Challenge'); and an application for a costs award under section 63 ('the Claim')".[44] The court dismissed all three applications. Section 63(4) does not confer jurisdiction upon the court to make a costs order but concerns the calculation of recoverable costs and not their allocation. The arbitrator had jurisdiction to award the costs of a jurisdiction hearing where the claim was dismissed for want of jurisdiction and erred in thinking he did not. The judge stated that section 30:

> "confers jurisdiction on the tribunal to rule on its own jurisdiction. Section 31 confirms that it may do so by an award on jurisdiction. The proceedings on the jurisdictional challenge are therefore valid proceedings. There is thus no logical reason why a costs award in respect of those proceedings should be incapable of being made. ... Further, section 61 confers on the tribunal an express power to 'make an award allocating the costs of the arbitration as between the parties'. It might be said that, where there is no jurisdiction, there is no 'arbitration', so that section 61 does not apply. I do not consider it necessary to reach that conclusion. 'Arbitration' is not itself a defined word in the 1996 Act, but section 59 defines 'the costs of the arbitration' and does so in terms that are, in my view, wide enough to cover the costs of the parties in respect of a jurisdictional challenge."[45]

For the reasons discussed below,[46] the section 68 and 69 challenges also failed.

It is now generally understood that (at least, in pro-arbitration jurisdictions) the tribunal should be given the first opportunity to rule on its own jurisdiction. This deferential approach is especially prevalent in the context of anti-arbitration injunctions,[47] whereby both the English and Hong Kong courts have consistently declined to rule on the question of jurisdiction, preferring instead to leave the matter for the tribunal to decide. See, for example, the cases of *Orange Transgroup Ltd and Another v Shein Distribution UK Ltd*[48] and 李鳳欣 *and Another v Harvest Trade Investments Ltd*.[49]

(6) "Pick and mix" of conflicting arbitration agreements denied

By Vanessa Tsang

In *Tecnicas Reunidas Saudia for Services & Contracting Co Ltd v Petroleum Chemicals and Mining Co Ltd*,[50] the English Commercial Court considered whether an arbitral tribunal's "pick and mix" approach to conflicting arbitration agreements was permissible.

The dispute concerned Tecnicas, a head contractor, which had subcontracted elements of a Saudi Arabian gas project to PCMC, a subcontractor. The transaction comprised several contractual documents containing conflicting dispute resolution provisions, including a purchase order ("PO") that provided for ad hoc arbitration seated in London and the General Terms and Conditions for Construction Subcontracts ("GTCCS"), which provided for ICC arbitration seated in Riyadh under Saudi Arabian law.[51]

When a dispute arose, PCMC commenced ICC arbitration. In a partial award affirming its own jurisdiction, the ICC tribunal took the reference to "London" and "English law" from the PO and combined it with the reference to the "ICC Rules" from the GTCCS, and thereby "constructed" a hybrid agreement for an ICC-administered arbitration seated in London and governed by English law. The ICC tribunal said:

> "In the Tribunal's view, when read together with the other documents containing references to arbitration, namely the Purchase Order and the GTCCS, Item 18 of the Deviation List records a clear and unambiguous confirmation of the Parties' agreement to arbitrate under the ICC Rules [...] subject only to the change of the arbitral seat from Riyadh (Saudi Arabia) as per Article 32 of the GTCCS to London (England) as per Clause 11.1 of the Purchase Order."[52]

Tecnicas subsequently applied to the English Commercial Court under section 67 of the Arbitration Act 1996, bringing a claim on the ground that "the Tribunal had no jurisdiction to hear the claims [...] because (per Tecnicas) the parties never agreed to any arbitration under the auspices of the ICC, but only to an ad hoc arbitration in London before three arbitrators".[53]

[44] See para 2.
[45] At para 22.
[46] See section V(1): "Counting time to appeal".
[47] See section VI: "Court assistance and intervention: anti-suit/anti-arbitration injunctions".
[48] [2025] EWHC 2966 (KB); [2025] 2 Lloyd's Rep 632, at paras 97 to 98.
[49] [2025] HKCFI 2004 at paras 4.3 and 4.4.
[50] [2025] EWHC 1785 (Comm); [2025] 2 Lloyd's Rep 59.
[51] See paras 79 and 101.
[52] At para 142.
[53] At para 2.

Bryan J upheld the section 67 challenge and set aside the ICC award in full. Regarding the conflicting documents, the court found that the PO expressly sat at the top of the contractual order of precedence, meaning the agreement was for ad hoc London arbitration. The judge rejected the attempt to stitch the clauses together, stating that "[t]his led to the Tribunal undertaking an impermissible 'pick and mix' approach, taking aspects of clause 11 of the Purchase Order, clause 32 of the GTCCS and Item 18 of the Deviation List to create a dispute resolution mechanism which was not that contractually agreed to by the parties".[54]

Dismissing PCMC's argument that the choice of rules was merely procedural, the court highlighted the substantive distinction "that ad hoc arbitration and an institutional arbitration under the ICC Rules are fundamentally different beasts, and indeed have fundamentally different contractual consequences".[55] For example:

> "The parties agree to waive their right to any form of recourse in relation to the award (see article 35(5)) [sic] preventing any appeal on a point of law, in contrast to the regime under section 69 of the Arbitration Act 1996 under which a party to an ad hoc arbitration in England would be able to appeal a point of law subject to meeting the requirements of section 69. This is a fundamentally different contractual bargain, with potentially far-reaching consequences, and not necessarily one that both parties would ultimately be willing to agree."[56]

This decision serves as a reminder that courts will apply the hierarchy of clauses rather than salvage inconsistent dispute resolution suites through a "pick and mix" interpretation.

[54] At para 144.
[55] At para 227.
[56] At para 228(1).

(7) Alternative dispute resolution

In our 2024 review[57] we reported on the seminal Court of Appeal decision in *Churchill v Merthyr Tydfil County Borough Council*,[58] which led to a review of the English Civil Procedure Rules (CPR) and speculated that it was "looking likely that mediation will become more firmly integrated into the civil justice system". We noted:

> "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."

We continue to believe this.

In 2024 we reported that although the court in *Churchill* declined to lay down fixed principles when it would order the parties to engage in a non-court-based dispute resolution process, the CPR was amended in light of the decision. For example CPR 1.4(2)(e) now extends the court's purview of furthering the overriding objective to include "ordering or encouraging the parties to use, and facilitating the use of, alternative dispute resolution", and CPR 3.1(2)(o) expressly gives the court that power within the context of case management.

Since *Churchill* there have already been several cases in England which suggest that a refusal to mediate now can carry procedural and cost consequences.

- *DKH Retail Ltd and Others v City Football Group Ltd*[59] confirmed that the courts are taking robust approach even where a defendant resists mediation. This case pitched the owners of the "Superdry brand" (as claimant), seeking an order for compulsory pre-trial mediation, against the company which runs Manchester City Football Club's commercial operations. The claimant succeeded despite the defendant's objection that "it is too late in the day; it is not a case where his client is being obstructive; mediation will fail; and this is a case where a ruling is needed".[60] A postscript to the judgment confirms

[57] "Arbitration law in 2024: a review", available on i-law.com.
[58] [2023] EWCA Civ 1416; [2024] BLR 12. This was a major departure from *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 in which 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".
[59] [2024] EWHC 3231 (Ch).
[60] At para 37.

the parties settled on 13 January 2025[61] having been ordered to mediate during December 2024.

- In *Brooke Homes (Bicester) Ltd v Portfolio Property Partners Ltd*[62] the judge noted:

  "I raised with the parties during the course of the hearing whether or not they had engaged in any ADR or mediation on the applications before me. They confirmed they had not. I consider this is unfortunate as it appeared to me there were a number of matters which would have benefited from further dialogue between the parties, and if such dialogue had occurred this would or should have resulted in resolution of the issue or a narrowing of the issues before the hearing. Resolution or a narrowing occurred on many points during the course of the hearing. I would be inclined to order some form of mandatory mediation between the parties to assist them in resolving any remaining disputes, should a voluntary mediation not now take place, as there are still a number of points between them, and to be worked through, on the account. I consider the amount of costs which have already been incurred on the applications are likely to have the unfortunate effect of further reducing the return likely to be made to those who rank below ... Overall, I have gained the impression that greater dialogue is required, even if no love is lost."[63]

- In *Appiah and Another v Leeds City Council and Another*,[64] the court held the defendant in breach of a Master's order that any party not engaging in any proposed ADR was to serve a witness statement giving reasons within 21 days of receipt of that proposal. The second defendant claimed that it had not refused to engage in ADR but that it needed sight of the claimant's expert evidence in order for ADR to be effective. In this case, Deputy Master Marzec held that the relevant "order is clear that any party *not engaging* in the ADR proposed by the other side within 21 days of the proposal must provide a witness statement.... the fact that D2 did not expressly *refuse* to engage in ADR is nothing to the point."[65]

- In *Fernandez v Fernandez and Others*[66] before HHJ Paul Matthews, Bristol Chancery Appeals, a refusal to mediate resulted in the court awarding indemnity costs to siblings in a family dispute (with no entitlement to any indemnity out of the estates or the trust fund). The judge found that Mr Fernandez (who appealed against his removal as executor and trustee) had unreasonably refused to mediate despite being offered 26 possible mediation dates:

  "In a case where the successful party unreasonably fails to mediate, that sanction can involve a reduction in costs receivable. Here it is the unsuccessful party that should be sanctioned, so the court cannot reduce the costs receivable. Instead, the appropriate sanction may be to award indemnity costs."[67]

> In many countries governments and judiciaries have tried or are considering whether to embed ADR into the litigation process ... to take pressure off the court system and achieve swifter resolutions

- In contrast, in *Royal Borough of Kensington and Chelsea and Another v Beko Poland Manufacturing SP zoo and Others*,[68] a case related to the tragic Grenfell Tower fire, the court ordered that mediation take place after disclosure:

  "The court and some of the parties have observed that mediation is often not a one-stop shop and that the parties may return to ADR on more than one occasion in the course of the life of the proceedings, but we consider that it is not in accordance with the overriding objective or the spirit of mediation to put the parties in the position where some are, for understandable, if to some extent overstated, reasons concerned that they lack the information which will underlie a successful mediation and that there is, as a result, a real risk that the costs of the mediation itself may be wasted. We also have taken into account Ms Piercy's point that a party with less deep pockets, such as her client, could quite probably not afford to participate in multiple mediations."[69]

61 At para 44.
62 [2025] EWHC 1305 (Ch).
63 At para 120.
64 [2025] EWHC 1537 (KB).
65 At para 85.
66 [2025] EWHC 2373 (Ch).
67 At para 18.
68 [2025] EWHC 3276 (KB).
69 At para 18.

(a) Consultation on the Singapore Convention

In previous reviews we have discussed the speedy uptake of the United Nations Convention on International Settlement Agreements Resulting from Mediation which was only adopted by the UN General Assembly in late 2018 (the "Singapore Convention"). This is a multilateral private international law convention that provides a framework for the effective recognition and enforcement of international commercial settlement agreements resulting from mediation and in many ways resembles the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 which gives arbitration one of its most important advantages – international enforceability of awards. 19 countries are currently bound by the Singapore Convention, namely Bahrain, Belarus, Brazil, Costa Rica, Ecuador, Fiji, Georgia, Honduras, Israel, Japan, Kazakhstan, Nigeria, Paraguay, Qatar, Saudi Arabia, Singapore, Sri Lanka, Turkey and Uruguay. Kyrgyzstan is also set to become a party, with entry into force scheduled for 1 June 2026. Just under 40 further countries (including the UK) are signatories to the Convention but have not yet ratified it.

A consultation paper was issued by the UK government on implementation of the Singapore Convention which it signed on 3 May 2023.[70] The paper sought views on certain proposals and options for how the Convention might be implemented and could operate in the UK. The consultation closed on 15 October 2025.

[70] www.ciarb.org/media/faycikeg/singapore-convention-consultation-uk-implementation-august-2025.pdf

(b) International Organization for Mediation (Hong Kong)

In our 2024 review[71] we reported that in the 2024–2025 Budget Speech in Hong Kong,[72] it was announced that the International Organization for Mediation (IOMed), would have its headquarters hosted in Hong Kong and specialise in resolving international disputes by means of mediation.

IOMed is the world's first intergovernmental legal organisation dedicated specifically to resolving international disputes through mediation. It is designed to handle: (1) inter-state disputes; (2) disputes between states and foreign nationals; and (3) international commercial disputes submitted by mutual consent. We suspect that initially at least IOMed will focus on (3).

Progress has been rapid. In October 2024 delegations met in Hong Kong to successfully conclude the Convention on the Establishment of IOMed. In May 2025 a formal signing ceremony was held where 33 countries became founding members. In October 2025 Professor Teresa Cheng (past Chairperson of HKIAC and past Secretary for Justice) was appointed as the organisation's first Secretary-General, serving as the organisation's legal representative and CEO, with Dr Sun Jin (who had provisionally headed IOMed) appointed as its Deputy Secretary-General.

The organisation is currently focused on two primary goals: (1) raising visibility: promoting global awareness and understanding of mediation; and (2) building capacity: developing a professional pool of mediators and fostering the necessary skills to create a comprehensive long-term mediation ecosystem. The former Wan Chai Police Station, one of the few remaining pre-war police stations, has been repurposed as IOMed's impressive headquarters and is equipped with state-of-the-art mediation rooms and breakout rooms to assist mediations and capacity building.

In our last review we also highlighted the Hong Kong government's 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.[73]

[71] "Arbitration law in 2024: a review", available on i-law.com.
[72] www.budget.gov.hk/2024/eng/budget21.html.
[73] www.info.gov.hk/gia/general/202502/06/P2025020600168.htm.

A new mediation-related development relates to the appointment of mediators. In 2024 the Department of Justice established a Working Group on Mediation Regulatory System. In May 2025 the working group made preliminary recommendations including that the Hong Kong Mediation Accreditation Association Ltd (HKMAAL) be granted statutory default appointing power in the absence of an agreed choice of a mediator through legislative amendments (recommendation 3). HKMAAL was incorporated in 2012 as a non-statutory industry-led accreditation body. It was also recommended (recommendation 1) that mediation in Hong Kong should remain as a non-licensed activity with no mandatory licensing or accreditation regime for practising as a mediator. It was further recommended that HKMAAL complete the review of the Mediation Code, and going forward, take ownership and responsibility of reviewing, managing and administering it (recommendation 4) and work on a complaint handling and disciplinary framework enforcing it (recommendation 5). It was also recommended that parties be encouraged to adopt the Mediation Code in their mediation agreements as the professional standard (recommendation 5).[74]

(c) Expert determination

A disproportionately high number of arbitration cases are shipping and commodities cases. In our view there are two reasons: the high number of maritime arbitrations (which we discuss in our statistics section below[75]) and because the standard[76] LMAA Terms[77] do not contain finality clauses (unlike many institutional rules). Indeed, this important difference was drawn out in the *Tecnicas* case which we discussed in section II(6) above. (The HKMAG Terms also discussed in this review deliberately opt into Schedule 2 appeals.)

It is therefore striking (pun intended) that 2025 included a football-related case which is relevant to shipping and commodities – specifically to bunkers claims and the trading of oil (eg the trade of crude oil and petroleum products). The case is also relevant to expert determination clauses generally – and such clauses can be found in a variety of agreements where disputes are referred to technical valuation/measurement/appraisal – eg shareholder agreements or price adjustment clauses following the sale of a privately held company.

A disproportionately high number of arbitration cases are shipping and commodities cases. In our view there are two reasons: the high number of maritime arbitrations and because the standard LMAA Terms do not contain finality clauses (unlike many institutional rules)

In *WH Holding Ltd v E20 Stadium LLP*[78] the court found that a reasoned expert determination by a KC was not binding because it contained two manifest errors. E20 granted a 99-year concession to WHH, as a result West Ham United Football Club Ltd could use the Queen Elizabeth Olympic Park as it home ground. Clause 20 of the agreement contained provisions to "ensure that E20 was able to share in gains that might in future be made by a Relevant Shareholder if such Relevant Shareholder effected a transaction which amounted to a sale or transfer of any interest in the Club".[79] Clause 50 of the agreement provided that any dispute which related to clause 20 was to be referred to an expert, whose decision was to be final and binding "in the absence of manifest error". The expert determination clause was detailed and lengthy, but the case turned on the preceding wording which is frequently included in expert determination clauses designed to resolve disputes concerning the measurement/quality of bunkers/oil commodities.

The starting point per Paul Mitchell KC sitting as Deputy High Court Judge was:

> "Where two parties to a contract have agreed that an expert shall be tasked with determining a question of importance to them and that they will be bound by the determination, the starting point is that they will be held to their agreement as long as the expert has not departed from his instructions

[74] www.doj.gov.hk/en/legco/pdf/ajls20250602e2.pdf.
[75] See section XII(1): "Statistics".
[76] Small and intermediate claims are different.
[77] The LMAA small and intermediate claims procedures exclude and curtail appeal rights respectively.
[78] [2025] EWHC 140 (Comm); [2025] BLR 150.
[79] At para 3.

> and absent fraud or bad faith: *Jones v Sherwood Computer Services plc* [1992] 1 WLR 277."[80]

He further explained why expert determination clauses exist and why the "manifest error wording" was introduced namely:

> "to prevent disputes arising between the parties by providing for a reliable external measurement of a critical value. ... it is common for the parties to provide in such clauses for a measure of protection against error on the part of the expert, by way of a 'manifest error' exception: a certificate will be binding in the absence of manifest error."[81]

The judge noted that much of the law relating to the meaning of "manifest error" exceptions has been developed in the context of contracts providing for the certification of a fact within a conclusive evidence clause, and summarised the relevant cases including the decision of the Supreme Court in *Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd*[82] which the parties had agreed was most authoritative. He distilled the "court's task" which he explained is different to the determination of an appeal – the expert was not sitting as arbitrator and there could be no appeal from his decision. Instead:

> "the court's role is to decide if WHH has proved the manifest errors it contends for. As Thomas J put it in *Invensys* [*Invensys plc v Automotive Sealing Systems Ltd* [2001] EWHC 501 (Comm)] at para 48: 'It is not enough for the purchasers to show that their interpretation of the agreement is right; they have to show that the Expert's interpretation of the agreement was obviously wrong'."[83]

To judge whether an error is "manifest", "it is safer to focus on the *van der Merwe* [*van der Merwe v IIG Capital LLC* (Ch D) [2007] EWHC 2631 (Ch)] guidance read together [with] the *Veba* [*Veba Oil Supply & Trading GmbH v Petrotrade Inc (The Robin)* [2002] 1 Lloyd's Rep 295] guidance: to be 'manifest', errors must be so obvious and obviously capable of affecting the determination as to admit of no difference of opinion".[84] Applied to the facts, the two errors by the expert were obvious.

The judge was willing to consider a bundle of material, some of which must have been before the expert, on the basis that this was an: "investigation of the type that the parties must be taken to have agreed could take place in the event that one of them challenged the outcome of a reasoned expert determination on the basis that it contained a manifest error".[85] It was thus important that the expert determination was reasoned.

As mentioned above, this case is relevant to the interpretation of expert determination clauses, particularly those containing similar "manifest error" wording. Expert determination can be a very cost effective and efficient dispute resolution tool, but it can also lead to disputes particularly when the wording is unclear or fails to consider whether there should be further recourse if one of the parties does not agree with the determination. This case illustrates that it might be helpful where "manifest error" wording is included to also include an express requirement for a reasoned determination.

(8) Who are the parties?

As we mentioned in our 2024 review,[86] the question of who the parties are to an arbitration agreement can be complex especially in an international context. Arbitration is based on consent, generally express consent. Last year we discussed that it may be possible for somebody that is not formally identified as a party in the contract containing the arbitration agreement (a non-signatory) to either sue or sue under the contract 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."[87]

In 2025, a comparative law article by Jeffrey, Chien-Yu Long caught our attention. It contains the below useful table which we reproduce with his kind permission:[88]

[80] At para 18.
[81] At para 22.
[82] [2023] UKSC 2.
[83] At para 30(vi).
[84] At para 83.
[85] At para 29.
[86] "Arbitration law in 2024: a review", available on i-law.com.
[87] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 2, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[88] https://aria.law.columbia.edu/issues-relating-to-non-signatories-in-international-arbitration-a-comparative-analysis-of-three-recent-landmark-cases/

Case/Jurisdiction	Theory	Implications	Who-decides Issue
GE Energy Power Conversion France SAS v Outokumpu Stainless USA LLC (2020)/US	Equitable Estoppel	Fairness	Deferential
Cox and Kings Ltd v SAP India Pvt Ltd (2023)/India	Group of Companies Doctrine	Commercial Reality/ Expansion of Consent	Deference to Tribunal at the referral stage
Dallah Real Estate and Tourism Holding Company v Ministry of Religious Affairs, Government of Pakistan (2010)/UK	Formalism	Consent Goes First	De Novo Review

In 2025 we also noticed a couple of very interesting English and Hong Kong cases. As we explained in our 2024 review, 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 Hanotiau 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).[89]

In *Alrubie v Chelsea Football Club Ltd and Another*,[90] David Quest KC, sitting as a Deputy High Court Judge, had to decide whether to stay the proceedings, either: (i) under section 9 of the Arbitration Act 1996, on the ground that they were in respect of a matter subject to arbitration under Rule K of the Rules of the Football Association; or (ii) on case management grounds under the court's inherent jurisdiction and/or section 49(3) of the Senior Courts Act 1981 and/or CPR 3.1(2)(f).The question was whether the parties were bound by a horizonal arbitration clause.

Mr Alrubie was a football agent who acted as an intermediary/ introducer between clubs. Ms Granovskaia (the second defendant) was formerly a director and employee of Chelsea Football Club, with responsibility for player contracts. Mr Alrubie alleged that he negotiated an introduction agreement to the effect that he was entitled to a commission because the fee that the club paid for the transfer of Kurt Zouma was over €30 million. Having not been paid commission, Mr Alrubie commenced proceedings against both Chelsea as well as against Ms Granovskaia for damages for inducing breach of contract by Chelsea. He discontinued his claim against Chelsea, but the claim against Ms Granovskaia (who had meanwhile left Chelsea) continued. Ms Granovskaia denied liability on the grounds that there was no contract between Mr Alrubie and Chelsea. She also sought a stay of proceedings under section 9 of the Arbitration Act 1996.

David Quest KC found as follows:

(1) There was a binding arbitration agreement in the form of the Rules of the Football Association, Rule K of which provided that "*any dispute or difference between any two or more Participants ... shall be referred to and finally resolved by arbitration under these Rules*".[91] Both Ms Granovskaia and Mr Alrubie were "Participants", and there was an implied horizontal agreement between them by virtue of each agreeing to adhere to Rule K (as supported by the case law).

(2) Ms Granovskaia's resignation from Chelsea, at which point she ceased to be a Participant, did not negative the agreement to arbitrate any dispute that had arisen before that date (accrued rights).

(3) The dispute fell within the scope of the arbitration clause.

(4) Mr Alrubie had not shown that the agreement was null, void, inoperative or incapable of being performed.

(5) The court was therefore bound under section 9(4) of the Arbitration Act to grant a stay of the proceedings.

Energyen Corporation v HD Hyundai Heavy Industries Co Ltd and Another[92] involved a hearing of section 67 challenges (arguing the tribunal lacked jurisdiction under section 30) and section 68 challenges (which were not pursued at the hearing). The dispute arose from a "spin-off" restructuring that took place before the arbitration began. Foxton J dismissed the challenges, relying on expert evidence of Korean law to conclude that the restructuring validly transferred contractual rights and arbitration agreements to a new entity (HHIC2), allowing it to commence arbitration.

[89] "Multiparty – Multicontract Arbitrations: Lessons from 40 Years of Case Law", slide 2, Professor Bernard Hanotiau, held during the Swiss Arbitration Summit 2025.
[90] [2025] EWHC 541 (Comm); [2025] Lloyd's Rep Plus 37.
[91] At para 19.
[92] [2025] EWHC 1586 (Comm); [2025] 1 Lloyd's Rep 615.

> "It was common ground that the effect of a corporate succession of a company incorporated in a foreign jurisdiction on an English law contract to which the pre-succession entity was a party is determined by the law of the company's domicile (*Dicey, Morris and Collins on the Conflict of Laws* (16th Edition), para 30-030). In reported cases (including all those cited in the relevant footnote of *Dicey*) that principle has been applied in the context of universal succession. The effect of 'partial succession', where the original entity remains in being, does not appear to have been addressed in English case law – certainly, none that I was referred to."[93]

As a matter of Korean law the spin-off operated to transfer the Supply Contract to HHIC2. The same applied to a partial succession. There was accordingly a binding arbitration agreement.

In *CIX v DGN* the Singapore Court of Appeal affirmed that the extended doctrine of res judicata applies if issues could and should have been raised in an earlier arbitration, even if the later proceeding involved a non-party to the arbitration

A key issue was whether the correct party had commenced arbitration. In working out who commenced the arbitration, the "starting point under English law is that this issue falls to be determined objectively, by asking 'who would reasonably have been understood by the party against whom the claim was asserted to be bringing the claim?' (*SEB Trygg Holding Aktiebolag v Manches* [2006] 1 Lloyd's Rep 318, para 51)".[94] The court determined that HHIC2 validly commenced arbitration under ICC Rules as the requirement to specify claims and include contracts goes to admissibility rather than jurisdiction, with general breach of contract claims and identification of the main contract being sufficient. Furthermore, the court held that the term "matter" in section 30 of the Arbitration Act 1996 should be interpreted broadly and, because HHIC2 became a party to the arbitration agreement before commencement, no procedural duty to notify the tribunal of a transfer of rights was required.

Res judicata

In *CIX v DGN*,[95] the Singapore Court of Appeal dismissed an appeal against a High Court decision, holding that claims brought in court were an abuse of process and failed on the merits. The court affirmed that the extended doctrine of res judicata applies if issues could and should have been raised in an earlier arbitration, even if the later proceeding involved a non-party to the arbitration.

In *C1 and Others v IBS*[96] the plaintiffs sought to set aside various declarations made by a tribunal in the counterclaim of an arbitration. The grounds for the setting aside were that the award contained decisions which were beyond the scope of the submission to arbitration, and for which the plaintiffs as respondents in the counterclaim were unable to present their case – ergo the argument award was in conflict with Hong Kong public policy. Mimmie Chan J dismissed the application, granted enforcement and awarded indemnity costs with certificate for two counsel.[97]

This was effectively a shareholder dispute relating to a publishing venture originally structured under "2007 Agreements". One of the issues raised was that:

> "the School, Y Co and ManCo were not parties to the 2007 Agreements and the arbitration agreements therein contained. As such, the declarations and rulings made on the 2016 and 2020 ManCo Share Transfers were made in excess of the jurisdiction of the Tribunal, which was appointed and constituted under the arbitration agreements in the 2007 Agreements only. It was highlighted that these parties did not have the opportunity to present their case to the Tribunal which made declarations that the 2016 and 2020 Transfers of shares to them were invalid".[98]

93 At para 36.
94 At para 58.
95 [2025] SGCA 10.
96 [2025] HKCFI 227.
97 See paras 89 and 90.
98 At para 85.

However, undertakings had been given by said three parties to the Hong Kong court (in winding up proceedings instituted by IBS against CPG, which were stayed in favour of arbitration), that they would be bound by the determinations made in the arbitration.

Mimmie Chan J found:

> "that the Tribunal's declarations and findings were made within its jurisdiction, on issues arising and submitted to the Tribunal for determination in the Arbitration, under the 2007 Agreements. The School, Y Co and ManCo undertook to the Court to be bound by the findings and determinations made in the Arbitration. The findings have now been made, and they are bound. Whether they should apply to be joined in the Arbitration, or to make submissions, were for their own choosing and they opted not to do so ... the Declarations were purely declaratory, and were made against the parties to the Arbitration which were IBS, C Parties and the School. Technically, the Award is not directly binding on third parties, but in this case, Y Co, the School and ManCo chose to undertake to the Court in terms which extended to include all findings and determinations in the Arbitration which may affect their rights and obligations. It was on the basis of these undertakings that the Hong Kong Court stayed the winding up proceedings, and I see nothing unjust in accepting that Y Co, the School and ManCo should be bound by and according to the terms of their undertakings."[99]

Applications by non-parties for a stay in favour of arbitration

Article 8(1) of the UNCITRAL Model Law provides that where a plaintiff brings a court action which is the subject of an arbitration agreement, the court must refer the parties to arbitration, if a party so requests, unless the court finds that the agreement is null and void, inoperative or incapable of being performed.

In two decisions in *Techteryx Ltd v Legacy Trust Co Ltd and Others*,[100] the Hong Kong court granted applications by non-parties to the arbitration agreement for a stay in favour of arbitration under article 8(1) Model Law (incorporated by section 20(1) of the Arbitration Ordinance). Costs in both cases had to be paid by the plaintiff on an indemnity basis, with certificates for two counsel.

In the first decision, Deputy High Court Judge Jonathan Wong found that:

> "there is a prima facie case that Techteryx, subject to the further issue of whether the Arbitration Agreement should be rendered null and void by reason of public policy discussed below, is bound by the Arbitration Agreement in pursuing the present claims against Crossbridge. As this issue should be deferred to arbitral tribunal for determination, I will only set out my brief observations."[101]

He also decided that this second question, whether the Arbitration Agreement should be rendered null and void by reason of public policy, should be referred to the arbitral tribunal for determination[102].

In the second decision, Mimmie Chan J found that:

> "the allegations made against the 5th Defendant arise out of and relate directly to the MSA and SSA, such there is a prima facie case that equitable estoppel applies under Delaware law to allow the 5th Defendant to enforce the arbitration agreement, despite not being a signatory to the MSA and SSA. As the 5th Defendant highlighted, the Delaware Court does not allow a valid arbitration clause to be defeated by 'artful pleading' which seeks to avoid the effect of a mandatory arbitration agreement. I would add that this is also the general approach of the Hong Kong Court (see for example *Linde GmbH and Another v RusChemAlliance LLC* [2023] HKCFI 2409, paras 75 to 77)."[103]

Delaware law experts had agreed before the court that the doctrine of equitable estoppel applies to allow a non-signatory to compel arbitration where a signatory to a contract containing an arbitration clause "raises allegations of substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract"; or where the signatory's claims "arise out of and relate directly to the written agreement".

[99] At paras 87 and 88.
[100] [2025] HKCFI 665; [2025] HKCFI 787.
[101] At para 5.7.
[102] See para 6.11.
[103] At para 41.

We note in passing that we have written about this plaintiff and the fourth defendant in [2025] HKCFI 665 before. In our 2024 review we discussed that in *TrueCoin LLC v Techteryx Ltd*[104] the Singapore High Court had granted an anti-suit injunction to a stablecoin developer, effectively restraining court actions in Hong Kong in favour of arbitration based in Singapore. That decision marked the first time the Singapore courts had issued an anti-suit injunction and applied established legal principles to uphold arbitration agreements in cryptocurrency disputes.

Cases on non-signatories from other jurisdictions

In 2025 we also noted the following other law cases.

- In *OLG Frankfurt am Main* (26 SchH 1/23), a German court ruled that third-party affiliates can invoke arbitration clauses in framework contracts, provided the contract confers direct rights under section 328 of the German Civil Code.
- The Supreme Court of India in *Kamal Gupta v L R Builders* (2025 INSC 975) enforced confidentiality under section 42A of the Arbitration and Conciliation Act, holding that non-signatories could not attend proceedings and re-affirmed the functus officio doctrine for appointing courts.

Whether third parties can take benefit of an arbitration agreement is a question arising with increasing frequency in the context of anti-suit injunctions (see section below). As a result of the current geopolitical climate, some western companies have been desperately trying to avoid litigating in Russia. Some have even attempted to argue that the commencement of Russian court proceedings against the affiliate of a party to an arbitration agreement (ie, a third party) amounts to a breach of the arbitration agreement and, thus, warrants the grant of an anti-suit injunction. Such arguments are generally unsuccessful, unless the contract in question expressly enables the affiliate(s) to enforce, rely upon, and/or take benefit of the arbitration agreement as if it were a party itself (see, for example, *JP Morgan Securities plc v VTB Bank PJSC*[105]).

[104] [2024] SGHC 296.
[105] [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15, at paras 87 to 88.

III. Contested winding up and arbitration

By George Mallis

One year after the Privy Council's decision in *Sian Participation Corp (in liquidation) v Halimeda International Ltd*,[106] its impact across common law jurisdictions has been uneven. On the one hand, *Sian Participation* remains good authority in England and Wales, the Cayman Islands, and the British Virgin Islands. On the other hand, Singapore, however, continues to follow its earlier decision in *AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)*,[107] with the High Court recently reaffirming that it is "not open to the court to depart from *AnAn v VTB*". Hong Kong presents a more complex picture. While long regarded as diverging from *Sian Participation* through its adherence to *Re Simplicity & Vogue Retailing (HK) Co Ltd*[108] and *Re Guy Kwok-Hung Lam*,[109] the Court of First Instance's refusal to grant an anti-suit injunction in *Hyalroute Communication Group Ltd v Industrial and Commercial Bank of China (Asia) Ltd*[110] may suggest the gap between Hong Kong and *Sian Participation* is narrower than previously thought.

England and Wales

In England and Wales *Sian Participation* remains good authority. While there has not been a significant case applying *Sian Participation* in the past year, the decision has been widely discussed and is now regarded as the applicable test.

In addition, a notable case in Ireland is *San Leon Energy plc v Brightwaters Energy Ltd*,[111] where the Irish High Court endorsed the reasoning of the Privy Council in Sian Participation, holding that whether a genuine dispute existed was a matter for Irish law and refusing to restrain the presentation of a winding-up petition. *San Leon Energy* therefore brought Irish law in line with the position in England and Wales.

[106] [2024] UKPC 16; [2024] 2 Lloyd's Rep 65.
[107] [2020] SGCA 33; [2020] 1 SLR 1158.
[108] [2024] HKCA 299.
[109] [2023] HKCFA 9.
[110] [2025] HKCFI 2417.
[111] [2026] IEHC 1.

Cayman Islands

In April 2025 the Grand Court of the Cayman Islands delivered its judgment in *Re NaaS Technology Inc*,[112] marking the first occasion on which the Cayman Islands courts have applied Sian Participation. In this case, the company applied to restrain a winding-up petition presented by LMR Multi-Strategy Master Fund, contending that the debt was disputed under a Convertible Note Exchange Agreement containing an arbitration clause. Doyle J dismissed the application, finding that no satisfactory evidence of a genuine and substantial dispute had been adduced. In reaching this determination, Doyle J also relied upon *Re BPGIC Holdings Ltd*,[113] which earlier declined to follow *Salford Estates (No 2) Ltd v Altomart Ltd*.[114]

> Where policy concerns of both the arbitration and insolvency regimes arise, it will balance these competing considerations. Consequently, stays or carve-outs will be granted only where arbitration can proceed without undermining the broader objectives of the insolvency regime

British Virgin Islands

Sian Participation also remains good authority in BVI. In the case *Welltech Group Ltd v Techmix Ltd*,[115] although the case concerned a declaration regarding amendments to the company's Memorandum and Articles of Association rather than insolvency, Mithani J's judgment stands consistent with *Sian Participation*, holding that where a shareholders' dispute falls within an LCIA arbitration clause, the court must determine: (a) whether the dispute is within the arbitration clause, and (b) whether there is a "genuine dispute on substantial grounds".

[112] KY 2025 GC 54.
[113] 20 November 2023, unreported.
[114] [2014] EWCA Civ 1575.
[115] BVIHCM2025/0209, 5 December 2025.

Singapore

In *Aryan (SEA) Pte Ltd v Pure Group (Singapore) Pte Ltd*,[116] the High Court reaffirmed that *AnAn Group v VTB Bank* remains binding authority. The court observed that it was "not open to the Court to depart from *AnAn v VTB*", while noting that the petitioner retained the right to invite an appellate court to reconsider the applicability of *Sian Participation*.

Notably, in *Sapura Fabrication Sdn Bhd v GAS*,[117] where the insolvency procedure had commenced, the Singapore Court of Appeal also addressed the intersection of arbitration and insolvency proceedings. The Court of Appeal upheld the lower court's decision to grant a carve-out for arbitration, determining that although courts possess no mandatory obligation to grant such carve-outs, they retain the discretion to do so. The court further clarified that where policy concerns of both the arbitration and insolvency regimes arise, it will balance these competing considerations. Consequently, stays or carve-outs will be granted only where arbitration can proceed without undermining the broader objectives of the insolvency regime.

Hong Kong

Whilst Hong Kong appears to diverge from the *Sian Participation* approach by following *Simplicity & Vogue Retailing (HK) Co Ltd* and *Re Guy Kwok-Hung Lam*, the recent decision in *Hyalroute Communication Group v Industrial and Commercial Bank of China* (*ICBC*) suggests this divergence may be less pronounced than initially thought. In that case, the Court of First Instance refused to grant an anti-suit injunction to restrain winding-up proceedings commenced in the Cayman Islands. Hyalroute had sought the injunction to prevent ICBC from presenting a winding-up petition in the Cayman Islands, contending that the underlying Term Facility Agreement contained a Hong Kong-seated arbitration clause. The court rejected this argument, holding that the commencement of Cayman winding-up proceedings would not breach the arbitration clause because such proceedings would not finally resolve the substantive dispute within the meaning of that clause. Accordingly, the application for an anti-suit injunction was dismissed.

[116] [2025] SGHC 99.
[117] [2025] SGCA 13.

IV. Arbitrators and procedure

(1) Confidentiality

Confidentiality is often cited as one of arbitration's main advantages over other forms of dispute resolution.

In England, the 1996 Arbitration Act has been criticised for not providing a clear statutory duty of confidentiality, particularly given the uncertainty over its extent, scope and source. Nonetheless as we reported in our 2023 review,[118] in its 2023 Final Report, the Law Commission declined to make proposals on confidentiality (as well as on discrimination and appeals on a point of law) hence confidentiality does not feature in 2025 Arbitration Act.

An important open question was the extent to which information and documents relating to one arbitration can be used in another arbitration. This issue frequently arises in maritime arbitrations because of the high frequency of long chains of contracts and subcontracts – where the parties "in the middle" often claim to just be passing along claims and could be badly caught out in the event of inconsistent arbitration awards. It is also relevant where parties are targeting the same respondent and sharing information about strategies and assets can be advantageous.

Usefully, *A Corporation v Firm B and Another*[119] now provides more clarity on the scope of the duty of confidentiality (especially its application to solicitors). The English Commercial Court refused to grant an injunction related to alleged misuse of confidential information from a previous arbitration. This is because it found that most contested information was not covered by confidentiality or fell within exceptions. The court clarified that while documents created for an arbitration are confidential, documents existing independently do not become confidential solely due to disclosure in proceedings, and confirmed that the "idea of a sliding scale of arbitral confidentiality, with the ease of establishing exceptions and the appropriateness of injunctive relief varying accordingly"[120] was supported by authority.

[118] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[119] [2025] EWHC 1092 (Comm); [2025] 1 Lloyd's Rep 443.
[120] At para 22.

The parties and facts of the case were as follows:

A Corporation	Claimant	A ship-owning company that was a party to a previous arbitration (relating to Vessel 1) against B Corporation which settled. A Corporation and D Corporation are in the same corporate group.
Law Firm B	First defendant	A firm of solicitors had offices in London and Asia. It previously represented B Corporation against A Corporation and currently represents C Corporation against D Corporation.
Mr W	Second defendant	A partner in Firm B's London office involved in the previous "Vessel 1 Reference" arbitration. Z, a partner in the firm's London office, acted for B and for C in the arbitrations.
Mr Y		Y, a partner in the firm's Asia office, acted for C Corporation in its arbitration against D Corporation.
C Corporation	Non-party	The client currently being represented by Firm B in an arbitration against D Corporation (in respect of Vessel 2).
D Corporation	Non-party	The opponent of Firm C in the current arbitration; shares the same ultimate ownership as A Corporation. D Corporation was engaged in an arbitration against C Corporation involving Vessel 2.

A Corporation relied on the implied duty of arbitral confidentiality to seek interim injunctive relief as follows:

(i) Law Firm B was to cease acting for C Corporation in the *C v D* arbitration;

(ii) Law Firm B was to procure a partner with no previous involvement in that reference to "cleanse" the files held by Law Firm B in relation to the Vessel 2 Reference of information confidential to the Vessel 1 arbitration;

(iii) Law Firm B was to refrain from providing any confidential information to C Corporation or anyone assisting C Corporation in relation to their claims in *C v D* arbitration; and

(iv) an affidavit was to be sworn by Mr W giving details of the extent to which fee earners at Law Firm B's London office had provided information to persons working in Law Firm B's Asia office.

Foxton J held that no orders would be made. Although an injunction against acting could be granted against a solicitor formerly acting for the applicant, where the solicitor had acted against the applicant, any injunction

would be confined to the use of confidential information. On the facts there was no basis for the grant of relief: "Firm B has confirmed that no lawyer who acted in the Vessel 1 Reference will act for C Corporation in the Vessel 2 Reference, save for the Excepted Personnel, and have offered an undertaking to the court to this effect".[121] Thus the requirements for a mandatory injunction preventing Firm B Asia office from continuing to act were not made out. There was also no point in repeating the cleansing of the Vessel 2 file. Further, there was no realistic possibility of lawyers who worked on the Vessel 1 Reference providing confidential information to C Corporation. At the court's request, Mr W had sworn a short affidavit confirming the contents of his first, second and third witness statements, taken as a whole and the court was satisfied that no further affidavit was required.

> As a matter of English law, the default rule is that the parties to an arbitration agreement will be taken to have impliedly agreed to an obligation of confidentiality

It was "common ground that, as a matter of English law, the default rule is that the parties to an arbitration agreement will be taken to have impliedly agreed to an obligation of confidentiality".[122] The court considered two questions:

(i) "[W]hat material does the obligation of arbitral confidentiality extend to?" The court found:

> "The authorities establish that the obligation of arbitral confidentiality extends to the following categories of documents or information:
>
> (i) The hearing or hearings in the arbitration ...
>
> (ii) Documents disclosed by a party in the arbitration to other parties in the arbitration in the hands of those other parties ...
>
> (iii) Documents 'generated' or 'prepared for' and then used or produced in the arbitration ... This would extend to pleadings, witness statements and expert reports, written submissions and correspondence between the parties or their representatives relating to the arbitration.
>
> (iv) The arbitral award ...
>
> I also accept that to the extent that those documents are themselves the source of confidential information, information derived from documents is itself subject to the arbitral obligation of confidentiality ...
>
> However, a party's own documents which came into existence independently of the arbitral process do not become subject to a limiting obligation of confidence in the hands of the party whose documents they already are merely because that party discloses or relies upon them in the arbitration ...
>
> ... the fact that a commercial dispute leads to the commencement of an arbitration does not of itself make the existence of the dispute and the events which gave rise to it confidential ...
>
> ... it is important to distinguish between information protected by the obligation of arbitral confidentiality, and the experience which lawyers inevitably acquire from conducting arbitrations."[123]

(ii) "[T]o the extent that the obligation of arbitral confidentiality is engaged, what are the relevant exceptions?" The court cited *Emmott v Michael Wilson & Partners*[124] with approval:

> "[T]he first is where there is consent, express or implied; second, where there is an order, or leave of the court (but that does not mean that the court has a general discretion to lift the obligation of confidentiality); third, where it is reasonably necessary for the protection of the legitimate interests of an arbitrating party; fourth, where the interests of justice require disclosure, and also (perhaps) where the public interest requires disclosure."

Some key assessments were made by the court:

> "(i) I am not persuaded A Corporation has an arguable complaint about the disclosure by the

[121] At para 59(i).
[122] At para 10.
[123] Paragraphs 14 to 15, 17 to 18 and 24.
[124] [2008] EWCA Civ 184, [2008] 1 Lloyd's Rep 616; [2008] BLR 515.

> defendants to Firm B Asia office of the identity of B Corporation's own counsel and experts, nor of the identity of its party-appointed arbitrator, or in recommending C Corporation appoint that arbitrator.
>
> (ii) "To the extent the defendants discussed the issues and allegations in the Vessel 1 Reference with Firm B Asia office, there was an arguable communication of information subject to arbitral confidentiality, but the defendants have the better of the argument that this would fall within one of the exceptions to arbitral confidentiality to the extent it went beyond the facts of the pre-arbitration complaints and the events giving rise to them.
>
> (iii) The defendants have the better of the argument that they were reasonably entitled to conclude that they were permitted to pass on Mr Z's comments about C Corporation's claim on 2 May 2024 to Firm B Asia office for transmission to C Corporation, alternatively that this information fell within an exception to the obligation of arbitral confidentiality having regard to the common interest and ongoing cooperation between B Corporation and C Corporation ...
>
> (vi) A Corporation does not have an arguable claim that the defendants breached confidentiality by informing Firm B Asia office that the Vessel 1 Reference had settled, and that B corporation were pleased it had."[125]

The court left an interesting question open:

> "A concern in this case arises from the suggestion by Mr W that he was seeking to try and coordinate the settlement of the two references, and that there was some form of agreement along these lines with Mr Y. To take a hypothetical example, two parties involved in similar claims with a common enemy might reach an agreement to coordinate their settlement strategies, to avoid being 'picked off', and in the belief that if they stood together, a better deal for both was likely to be achieved. The issue of whether the sharing of information about 'without prejudice' settlement negotiations in such circumstances would breach the inherent obligation of confidentiality does not strike me as wholly straightforward."[126]

[125] At para 35.
[126] At para 34.

(2) How tribunals should operate

In *DJP and Others v DJO*,[127] the Singapore Court of Appeal (Sundaresh Menon CJ, Steven Chong JCA and Lord David Neuberger IJ) had to consider issues relating to an arbitrator's duty of independence and impartiality where he finds himself adjudicating upon related but separate arbitrations.

DJO was special purpose vehicle set up to manage a network of dedicated freight corridors in India. DJP, DJQ and DJR formed a consortium to enter into a contract with DJO in relation to its western dedicated freight corridors which provided for disputes to be resolved by a Singapore-seated ICC. In January 2017 the Indian Government issued a "Notification" that daily minimum wages payable to workmen would immediately increase. In March 2020 a claim was made against DJO for additional payment on the ground that the Notification constituted a "change of legislation" within the terms of the contract. The claim was rejected and the dispute was referred to an arbitration tribunal comprising three retired Indian judges chaired by Dipak Misra J (DM) a former Chief Justice of India. By an award dated 24 November 2023 the tribunal upheld the claim and dismissed DJO's defence.

The arbitration was conducted at the same time as two similar parallel arbitrations seated in India against DJO brought by two other consortia (of which DJR was a member) for additional payments also resulting from the Notification. DJO successfully applied to the Singapore court to have the award set aside on the basis that much of it (212 of the 451 paragraphs) had, unbenownst to the other arbitrators, been impermissibly directly copied and pasted by DM (who chaired all three tribunals) from the other two awards. Additional arguments raised by DJO in the arbitration, but not in the parallel arbitrations, had been rejected.

The respondent applied to set aside the award on three grounds.

> "First, it argued that the tribunal had acted in breach of the agreed arbitral procedure under article 34(2)(a)(iv) of the UNCITRAL Model Law by failing to independently assess and apply its mind to the issues at hand and to give proper reasons for its decision. Secondly, it argued that in having

[127] [2025] SGCA(I) 2; [2026] Lloyd's Rep Plus 2.

reproduced in the award such a substantial portion of the awards in the parallel arbitrations, the tribunal had conducted the arbitration in a manner that was contrary to Singapore public policy and the award was therefore liable to be set aside under article 34(2)(b)(ii) of the UNCITRAL Model Law. Thirdly, it argued that the tribunal had acted in breach of natural justice under section 24(*b*) of the International Arbitration Act 1994 (2020 Rev Ed)." [128]

The Court of Appeal agreed the judge had been correct in setting the award aside on the third ground, breach of the rules of natural justice:

(1) Prejudgment amounting to apparent bias:

> "69. ... It [was] common ground that the Award was not drafted afresh. Rather, the Parallel Awards were used as templates, with adjustments made to account for what were thought to be the specificities of the Arbitration.
>
> 70. ... [a] fair-minded and informed observer would, after considering all the relevant facts and circumstances, reasonably apprehend or harbour the suspicion that by reason of what [DM] had done, he [had been] materially influenced by the earlier decisions."

However:,

> "... it was incumbent on this Tribunal to consider the matter afresh. This was especially the case where there were new members on the Tribunal; new counsel at least on one side; and to some degree new arguments being raised. The point can be demonstrated by considering what the reaction of the co-arbitrators and the parties would have been if, at the very outset, the President had made it clear that he would unilaterally have regard to, draw from and/or be influenced by whatever earlier decisions he alone had made or been party to in other related arbitrations."[129]

The award was made up of paragraphs taken from the parallel awards, giving rise to the reasonable impression that the additional arguments "might not have been considered by an open mind".[130] Further, there were errors in the award resulting from reference to arguments, authorities and contracts discussed in the parallel awards.

"... the Tribunal [in *DJP v DJO*] impermissibly drew on materials that the parties did not have access to and could not address. To restate the relevant legal principles briefly, a tribunal must consider the material before it and make a decision on this basis"

(2) The tribunal had reference to extraneous considerations, ie relied on material other than that put to it by the parties to the arbitration:

> "... the Tribunal impermissibly drew on materials that the parties did not have access to and could not address. To restate the relevant legal principles briefly, a tribunal must consider the material before it and make a decision on this basis: see *Front Row* [*Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd* [2010] SGHC 80] at para 37; *Pacific Recreation* [*Pacific Recreation Pte Ltd v S Y Technology Inc* [2008] 2 SLR(R) 491] at para 30; *CAJ v CAI* [2022] 1 SLR 505 at para 55. An arbitrator who finds himself or herself struck by a point not raised by either party should put this to the parties for their consideration and comment: see *Zermalt Holding SA v Nu-Life Upholstery Repairs Ltd* [1985] 2 EGLR 14 at page 15, per Bingham LJ."[131]

(3) The expectation of equality as between the arbitrators had been compromised. Two of the arbitrators were not privy to the parallel arbitrations and thus would "have had no direct access to any material or knowledge derived from those proceedings, but which appeared to have significantly influenced the outcome of the present Arbitration. The integrity of the Arbitration was therefore further compromised as a result".[132]

[128] See para 21.
[129] At para 70.
[130] At para 77.
[131] At para 80.
[132] At para 83.

(3) What costs can a tribunal award?

In *DOI v DOJ and Others*,[133] the Singapore International Commercial Court of the Republic of Singapore (SICC) reiterated the principles governing costs awards. The background was that the claimant had been successful in having an award set aside, with costs to be determined if not agreed. There being no agreement, it fell to the SICC, to determine costs payable to the claimant.

Although the defendants submitted they did not apply, Roger Giles IJ upheld and applied the following applicable principles and burden of proof:

> "5. Guiding principles for the assessment of costs in proceedings in the Singapore International Commercial Court ('the SICC') have been expounded in *Senda International Capital Ltd v Kiri Industries Ltd* [2023] 1 SLR 96. The award of costs is intended to compensate the successful party for its expense sensibly incurred in the proceedings. The court must consider whether the costs were reasonably incurred and whether the amount of costs is reasonable. The starting point is a subjective inquiry into what costs were in fact incurred by the *successful party, which should provide evidence of its costs and "a sufficient breakdown" of those costs. Once the court has the requisite level of information in support of the contention that the claimed costs are reasonable costs, the evidential burden shifts to the unsuccessful party to adduce evidence to show that the claimed costs are not reasonable costs*: it is not enough for the unsuccessful party to make unsubstantiated contentions that the claimed costs are disproportionate, exorbitant, or unreasonable. A number of factors may be taken into consideration in enquiring into whether the claimed costs are reasonable costs (see now O 22 r 3(2) of the Singapore International Commercial Court Rules 2021)."[134] (Our emphasis.)

The claimant's costs of the interlocutory application were nonetheless taxed down from S$80,065.45 to S$43,000 and its costs of the substantive proceedings were taxed down from S$571,702 plus disbursements of S$197,440.40, INR12,91,947 and US$1,600 toS$526,632.40.

Further key points to note are:

- The court declined to apply the Guidelines for Party-and-Party Costs Awards in the Supreme Court of *Singapore* set out in Appendix G of the Supreme Court Practice Directions 2021 ("Appendix G") since: "Senda makes clear the fundamentally different bases for the assessment of costs in the High Court with regard to Appendix G and the compensatory assessment of costs in the SICC".[135]
- The court noted several times that the defendants did not provide any information as to their own costs and noted that this would have been helpful: "see *Senda* at para 75 referring to this as the best evidence that the unsuccessful party can adduce to discharge its evidential burden". [136]
- The court did not allow the costs of Indian lawyers attending the hearing (which was subject to Singapore law on which their "input could not have been significant and the excess cannot reasonably be laid upon the defendants".[137]

[133] [2025] SGHC(I) 20.
[134] At para 5.
[135] At para 10.
[136] At para 19.
[137] At para 25.

(4) Challenges to arbitrators

Hong Kong High Court dismisses arbitrator challenge based on sleeping and hostility

By Vanessa Tsang

In *CNG v G and Another*[138] the Hong Kong Court of First Instance examined the threshold for challenging an arbitrator for apparent bias, based on allegations of sleeping during a hearing and of displaying hostility towards counsel.

The dispute arose from a bitterly contested four-year HKIAC arbitration concerning a joint venture exploration and mining project. Following a series of partial final awards ("PFAs") which the applicant, CNG, failed to comply with, the tribunal held hearings in June 2024 on interim measures and costs. Shortly after, CNG applied to the HKIAC to challenge the Presiding Arbitrator ("PA") under article 12(2) of the Model Law, alleging that the PA had fallen asleep during the hearings and made unbalanced, hostile comments that demonstrated a closed mind to CNG's case. After the HKIAC panel dismissed the challenge, CNG applied to the court under article 13(3) of the Model Law to have the challenge decided de novo, while simultaneously seeking to set aside the tribunal's subsequent PFA on the ground that it was tainted by the alleged bias.[139]

Mimmie Chan J unequivocally dismissed the challenge. To begin with, the court applied the doctrine of waiver to CNG's complaints about the PA's conduct in hearings. The judge ruled that a party cannot proceed with an arbitration without promptly stating its objection, effectively "keeping the point up its sleeve for later use".[140] Noting that CNG's legal team had continued to participate in multiple hearings without immediately objecting to the PA's earlier conduct, the court found that "[o]n the facts and evidence, there had been voluntary, informed and unequivocal waiver of the incidents said to comprise the PA's lack of impartiality or bias before 25 June 2024".[141]

Turning to the allegation of sleeping, the court rejected the argument that the PA's 10-to-15-minute sleeping episodes created a real possibility of bias. Distinguishing this case from her own previous ruling in *Song Lihua v Lee Chen Hon (No 2)*,[142] Mimmie Chan J concluded that:

> Hong Kong courts will not entertain tactical, belated challenges to arbitrators ... while adjudicators must remain impartial, parties cannot weaponise isolated instances of fatigue or justify derailing an arbitration merely because the awards are unpalatable

> "[t]he fair-minded and objective observer would not be unduly suspicious, to conclude or infer from the PA's sleeping episode that he slept because he had made up his mind against CNG in particular, for reasons unconnected with the legal or factual merits of the case."[143]

Furthermore, the court dismissed the allegations that the PA's robust and critical remarks demonstrated hostility amounting to apparent bias. The court affirmed that arbitrators are permitted to express preliminary views to focus the proceedings and observed that "in the process of resolution of disputes, whether before the court or before an arbitral tribunal, it is common and very normal for the judge or arbitrator to comment on the apparent merits of the case, or the credibility of a proposition advanced". The court further clarified that "[t]he views may be robust, or expressed more emphatically, but the experienced and trained judge and arbitrator would not have his/her mind entirely shut to any contrary view or opposing arguments when finally deciding the matter".[144]

Because the challenge to the PA failed, the court also dismissed CNG's parallel application to set aside the fourth PFA, noting that CNG's own counsel accepted the set-aside application was "parasitic to the Challenge".[145] This decision serves as a reminder that the Hong Kong courts will not entertain tactical, belated challenges to arbitrators. It confirms that while adjudicators must remain impartial, parties cannot weaponise isolated instances of fatigue or justify derailing an arbitration merely because the awards are unpalatable.

[138] [2025] HKCFI 3598.
[139] See paras 1 to 27, 30, 69 to 70, and 111 to 113.
[140] See para 48.
[141] See para 54.
[142] [2023] HKCFI 2540.
[143] At para 82.
[144] At para 103.
[145] At para 114.

V. Appealing awards

(1) When to appeal and who can appeal

(a) Counting time to appeal

As we explained in our 2023[146] and 2024[147] reviews, an appeal under section 69 of the English Arbitration Act 1996 can only be made in respect of an "award". This term 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. 2025 was no exception.

Above,[148] we have already discussed *Ravfox Ltd v Bexmoor Ltd*,[149] in which the English Chancery Division (HHJ Keyser KC) found that a tribunal had incorrectly decided that it did not have the power to award the costs of a jurisdictional hearing. Ravfox (which wanted its costs) sought "to obtain relief from the court via three alternative routes: an appeal under section 69 of the 1996 Act ('the Appeal'); a challenge under section 68 ('the Challenge'); and an application for a costs award under section 63 ('the Claim')".[150] As regards section 68, HHJ Keyser KC found:

> "... there can be no challenge to what I have called the Costs Award, because *it is not an award at all*. ... I have, after a degree of vacillation on the point, come to the view that the Arbitrator did not fail to deal with the issue of costs because, although he did not expressly say anything about costs as between the claimant and the defendant, it was inherent in his reasoning that he was deciding that he could not make an award in that regard. Therefore I do not think that there was a serious irregularity within the terms of section 68."[151] (Our emphasis.)

Previously in the judgment he had held:

> "The critical question, however, is whether the Costs Award was an award at all. In my judgment, it was not. The Arbitrator was not purporting to determine an application for costs; that is why he responded, without any formality, by a short, unsigned email and without giving directions for the determination of the issue of costs or seeking any representations from the defendant. He was not purporting to make an award; he was declining to make an award, and I cannot see that he could have done so more clearly. To say, as the claimant is in effect saying, that by refusing to make an award he was making an award is a 'heads I win, tails you lose' sort of argument."[152]

Furthermore, he found that both section 68 and section 69 challenges were time-barred and he refused to extend time. The reasoning was as follows: As Bexmoor had not agreed to the bringing of an appeal, Ravfox required the leave of the court: section 69(2)(b). Section 70(3) requires the appeal to be brought within 28 days of the date of the award and "that time ran from the date of the award rather than the later date of the release of the award"[153] which had to be the date of the earlier Main Award (as the Costs Award was not an award). The court has power to extend time for an appeal under section 79. While expressing displeasure that no application for an extension of time was made before the hearing, the court nonetheless considered the relevant principles set out in *Rollitt v Ballard*,[154] namely:

> "(i) the length of the delay; (ii) whether the party who permitted the time limit to expire and subsequently delayed was acting reasonably in the circumstances in doing so; (iii) whether the respondent to the application or the arbitrator caused or contributed to the delay; (iv) whether the respondent to the application would by reason of the delay suffer irremediable prejudice in addition to the mere loss of time if the application were permitted to proceed; (v) whether the arbitration has continued during the period of delay and, if so, what impact on the progress of the arbitration, or the costs incurred in respect of the arbitration, the determination of the application by the court might now have; (vi) the strength of the application; (vii) whether in the broadest sense it would be unfair to the applicant for him to be denied the opportunity of having the application determined."[155]

Leave to appeal was refused.

[146] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[147] "Arbitration law in 2024: a review", available on i-law.com.
[148] At section II(5): "Does the tribunal have the power to award costs of jurisdictional challenge?".
[149] [2025] EWHC 1313 (Ch); [2025] Lloyd's Rep Plus 51.
[150] At para 2.
[151] At paras 42 and 43.
[152] At para 31.
[153] At para 34.
[154] [2017] EWHC 1500 (TCC).
[155] *Rollitt v Ballard* [2017] EWHC 1500 (TCC), para 19, citing *Terna Bahrain Holding Company WLL v Al Shamsi* [2012] EWHC 3283 (Comm); [2013] 1 Lloyd's Rep 86 at para 27.

We covered *Eronat v CPNC International (Chad) Ltd and Another*[156] in our 2024 review. By way of short recap, 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 bespoke clause 14.3 (in a Deed of Indemnity) stated:

> "(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. (b) ... For avoidance of doubt, the parties expressly waive all rights to make an application or to appeal to the English courts under the Arbitration Act, except pursuant to clause 14.3(a) above."

The claimant issued an arbitration claim form more than 30 days after the award but less than 30 days from its notification. Bryan J concluded it could not be extended and refused leave to appeal.

The Court of Appeal (Lewison, Males and Phillips LJJ)[157] unanimously denied leave to appeal (with Males LJ delivering the judgment). He held: "that the judge was right to interpret the time limit in clause 14.3(a) as running from the date of the award, so that Mr Eronat's appeal came too late".[158] He further held:

> "The next question is whether the court has power to extend the time limit contained in clause 14.3(a). Any such power must be found in section 79(1) of the 1996 Act, which provides: 'Unless the parties otherwise agree, the court may by order extend any time limit agreed by them in relation to any matter relating to the arbitral proceedings or specified in any provision of this Part having effect in default of such agreement'. ... the parties have clearly excluded the possibility of such an application. Clause 14.3(b) contains an express waiver ... An application for an extension of time is an application under the Act and has therefore been excluded. In the language of section 79(1), the parties have agreed otherwise. ...Therefore the question whether this court should grant an extension of time does not arise."[159]

In *JSC "Kazan Oil Plant" v Aves Trade DMCC*[160] Bright J of the Commercial Court considered a challenge to a FOSFA[161] Board of Appeal award. The questions were: "(i) Was the claimant's claim form issued within time under section 70(3) of the Arbitration Act 1996? (ii) If not, should time be extended under section 80(5)?"[162]

Section 70(3) of the 1996 Act reads: "(3) Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process".

The court discussed two slightly conflicting obiter authorities on the interpretation of the preceeding underlined wording, namely *UR Power GmbH v Kuok Oils and Grains Pte Ltd*,[163] a FOSFA case per Gross J, and *PEC Ltd v Asia Golden Rice Co Ltd*[164] per Hamblen J which concerned a GAFTA arbitration, and concluded: "Gross J and Hamblen J essentially agreed on the fundamental point: any challenge under the Arbitration Act 1996 to an appeal award must run from the date of the appeal award ... where there is or cannot be any arbitral appeal or review of the relevant award, the second limb does not apply".[165]

The claimant, a Russian entity, contracted to sell crude sunflower oil to the defendant under a contract governed by the Rules of Arbitration and Appeal of FOSFA. The defendant won and the claimant appealed to the FOSFA Board of Appeal which issued an award. In late March 2025 the claimant was notified by email that the award could be collected on payment of the fees and expenses. However, sanctions prevented payment being made until April.

The claimant applied for permission to appeal under section 69 of the Arbitration Act 1996 in early May. Bright J held that the claim should be struck out. Time ran from the date of the Appeal Award, and he declined to extend time under section 80(5) of the Arbitration Act 1996 with the applicable principal factors summarised in *AOOT Kalmneft v Glencore International AG*[166] (a case discussed in our 2024 review).[167]

156 [2024] EWHC 2880 (Comm); [2024] Lloyd's Rep Plus 69.
157 *Eronat v CNPC International (Chad) Ltd and Another* [2025] EWCA Civ 1054; [2025] 2 Lloyd's Rep 196.
158 At para 27.
159 At paras 28, and 30 to 31.
160 [2025] EWHC 2713 (Comm), [2025] 2 Lloyd's Rep 552.
161 Federation of Oils, Seeds and Fats Association Ltd.
162 At para 9.
163 [2009] EWHC 1940 (Comm); [2009] 2 Lloyd's Rep 495 at paras 58 to 60.
164 [2012] EWHC 846 (Comm).
165 [2025] EWHC 2713 (Comm), [2025] 2 Lloyd's Rep 552, at paras 19 and 21.
166 [2002] 1 Lloyd's Rep 128, per Colman J at para 59.
167 "Arbitration law in 2024: a review", available on i-law.com.

Similarly, in *RTI Ltd and Another v OWH SE iL*,[168] Butcher J of the Commercial Court, refused to extend time. The arbitration related to an early termination notice given under an ISDA agreement triggered by the depreciation of the Russian rouble. By an award dated 25 September 2024 an LCIA arbitration tribunal seated in England ordered that RTI, a Jersey subsidiary of Rusal, should pay OWH the sum of €213.7 million. The award was not transmitted to the parties immediately, but by court order Bryan J extended the time for the making of any application or appeal challenging the award until 1 November 2024, representing the period of delay. However, there was considerable further delay: on 19 February 2025 RTI applied to the tribunal for an admission of an irregularity in the conduct of the proceedings or in the award which was denied on 1 April 2025 by way of a procedural ruling. On 11 April 2025 RTI issued a claim form seeking: "(1) orders under section 68(3) of the 1996 Act that the award (a) be remitted to the tribunal in whole for reconsideration or (b) be set aside or (c) be declared to be of no effect, on the grounds that the award was affected by serious irregularities under section 68(2)(a) and/or (c) and/or (d) and/or (g) (fraud/ public policy) of the 1996 Act".[169] OWH in turn applied for the summary dismissal of the section 68 application. The claimants contended that the section 68 application was issued within time, on the basis that their 19 February 2025 application to the tribunal for an admission pursuant to section 68(2)(i) of the 1996 Act had postponed the running of time. Alternatively, the claimants sought an extension of time.

Butcher J held that the appeal was time-barred.

(1) The appeal was not brought within the 28 days permitted by section 70(3). "Asking the Tribunal to admit an irregularity was not the operation of an 'arbitral process of appeal or review'" under section 70(2)[170] (which requires an appellant to first exhaust "any available arbitral process of appeal or review"):

> "I agree with the approach of Teare J in *K v S* [2015] 2 Lloyd's Rep 363, and of Bryan J in *Daewoo Shipbuilding & Marine Engineering Co Ltd v Songa Offshore Equinox Ltd* [2018] 1 Lloyd's Rep 443 that 'an arbitral process of appeal or review' is a reference to a process by which an award is subject to an appeal or review by another arbitral body."[171]
>
> "The request for an admission was not made on the basis of a procedural rule applicable to the arbitration, whether contained in the LCIA Rules or the arbitration agreement; it was, instead, entirely ad hoc. Furthermore, even if an 'arbitral process' was involved, it was clearly not a 'process of appeal'. Nor, in my view, was it a 'process of review'."[172]

(2) Time would not be extended under section 80(5). The principles on which the court should act were summarised in para 27(1) and (2) of *Terna Bahrain Holding Company WLL v Al Shamsi*[173] per Popplewell J. The delay was substantial, no adequate explanation for the delay had been given, neither OWH nor the tribunal caused or contributed to the delay, and the case for the section 68 challenge was weak.

(b) Saving for rights of person who takes no part in proceedings (section 72)

By Vanessa Tsang

We have already discussed *African Distribution Company Sarl v Aastar Trading Pte Ltd*[174] above.[175] This case also concerned the exception allowed for non-participants under section 72(1).

HHJ Tindal dismissed ADC's application for an extension of time for section 67 and section 68 challenges. In refusing the time extension, the judge applied the Kalmneft[176] factors which consider: (i) length of the delay; (ii) whether the party was acting reasonably; (iii) who caused or contributed to the delay; (iv) whether the respondent to the application would suffer irremediable prejudice if the application is permitted; (v) whether the arbitration continued during the delay; (vi) strength of the application; and (vii) unfairness to the applicant.[177]

In this case, HHJ Tindal observed that ADC had failed "to get advice about challenging the Award – whether English or Singaporean [...] ADC's deliberate inaction for 22 days

[168] [2025] EWHC 1945 (Comm); [2025] 2 Lloyd's Rep 202.
[169] At para 12.
[170] At para 20(1).
[171] At para 20(1).
[172] At para 20(2).
[173] [2012] EWHC 3283 (Comm); [2013] 1 Lloyd's Rep 86.
[174] [2025] EWHC 2428 (Comm); [2025] 2 Lloyd's Rep 443.
[175] See section 1(a): "Notice of arbitration sent to generic email addresses and non-participant rights under section 72(1), Arbitration Act 1996 (England)".
[176] *AOOT Kalmneft v Glencore International AG* [2002] 1 Lloyd's Rep 128.
[177] [2025] EWHC 2428 (Comm); [2025] 2 Lloyd's Rep 443, at para 5.

was unreasonable and weighs against their extension".[178] Ultimately, the judge concluded that ADC had "failed to show sufficient risk of unfairness, or to justify its significant delay when expedition is fundamental to the arbitral system".[179]

Section 72(1) "can be used to 'question' and give declaratory and injunctive relief about arbitral awards, not just pre-award applications; and potentially even set them aside, but only with caution"

Notwithstanding the above, the judge allowed the section 72(1) claim to proceed and undertook a detailed analysis of the provision's temporal scope. Acknowledging a divergence of judicial and textbook opinion, HHJ Tindal ruled that section 72(1) "can be used to 'question' and give declaratory and injunctive relief about arbitral awards, not just pre-award applications; and potentially even set them aside, but only with caution".[180] Crucially, because section 72(1) provides a distinct route for non-participants, it operates independently of the 28-day statutory limit in section 70(3). The court noted that, for ADC, "whilst there is a risk it might be 'stuck' with an Award unfairly made against it, that is mitigated to an extent by potential section 72(1) relief, together with whatever arguments it can deploy to resist Ivorian enforcement".[181]

This decision confirms that section 72(1) sets out a post-award pathway for non-participants who run out of time. It provides a flexible, standalone remedy for requesting declaratory or injunctive relief. This is not to say that parties can ignore arbitral proceedings with impunity. On the one hand, section 72(1) route serves as an essential safeguard for those who do not participate. On the other hand, English courts strongly emphasise the need for swift arbitration, so unnecessary delays may forfeit rights under sections 67 and 68. An upcoming hearing in autumn 2026 will likely clarify the exact scope of the declarations the courts are willing to grant under this section.

(c) Loss of right to object (section 73)

This section of the Arbitration Act 1996 provides that a party that fails to make timely objections that: a "tribunal lacks substantive jurisdiction"; "proceedings have been improperly conducted"; "there has been a failure to comply with the arbitration agreement or with any provision of this Part"; or "there has been any other irregularity affecting the tribunal or the proceedings", he may not raise that objection later and that "where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings" could have questioned that ruling but fails to make a timely objection, he may not later object.

We discuss several Investor–State Dispute Settlement cases in relation to section 73 of the Arbitration Act in the section entitled "IX. Investor–State Dispute Settlement (ISDS)" below.

[178] At para 70.
[179] At para 78(b).
[180] At para 39.
[181] At para 78.

(2) Challenging the award: substantive jurisdiction (section 67)

Several cases brought under section 67 are discussed in the below section entitled "IX. Investor–State Dispute Settlement (ISDS)". We have also discussed *African Distribution Company Sarl v Aastar Trading Pte Ltd*,[182] *CAFI – Commodity & Freight Integrators DMCC v GTCS Trading DMCC*,[183] *Energyen Corporation v HD Hyundai Heavy Industries Co Ltd and Another*[184] and *Tecnicas Reunidas Saudia for Services & Contracting Co Ltd v Petroleum Chemicals and Mining Co Ltd*[185] above.

(3) Challenging the award: serious irregularity (section 68)

By Vanessa Tsang

In *Republic of Kazakhstan v World Wide Minerals Ltd and Others*[186] the English Commercial Court upheld a challenge to an investor-state arbitral award after finding that there was a serious irregularity in which the tribunal ignored a state's causation defence entirely.[187]

The case stemmed from a long-running UNCITRAL arbitration regarding a failed uranium investment in Kazakhstan. Following a successful challenge in 2020 that remitted the matter back to the tribunal to determine damages, Kazakhstan advanced a counterfactual case. It argued that the claimant's investment would have inevitably failed regardless of the state's breach due to the claimant's own ongoing contractual defaults. When the tribunal issued its second award upholding the original US$13.7 million damages figure, Kazakhstan challenged it under section 68(2)(d) of the Arbitration Act 1996 for the tribunal's failure to address all the issues brought before it.[188]

Bryan J upheld the challenge. The court stressed that determining whether a tribunal failed to deal with an issue involves a "fair, commercial and commonsense reading of the award".[189] Applying this, the court noted that it was "quite remarkable" that "in a 427 paragraph Award running to some 174 pages, the Tribunal addresses the question of causation and loss in one paragraph", and "that the Tribunal did not deal with the Counterfactual Case either in para 293 or indeed, anywhere else in the Award".[190] The court rejected the claimant's argument that Kazakhstan should have simply sought clarification from the tribunal under article 35 of the UNCITRAL Rules, finding that the failure was not merely an ambiguity but a wholesale omission of an essential issue.[191] The court was satisfied that the irregularity caused substantial injustice because, had the tribunal assessed the alternative causal chain, the damages awarded could have been considerably different.[192]

In *Djanogly v Djanogly and Others*[193] the English High Court provided guidance on how English limitation periods apply when parties choose a non-state religious law to govern their dispute.

> Under section 1 of the Foreign Limitation Periods Act 1984, foreign limitation law applies only "where in any action or proceedings in a court in England and Wales the law of any other country falls ... to be taken into account"

The arbitration, seated in England and conducted before the Golders Green Beth Din, involved a family dispute over the repayment of historic loans. The parties chose Jewish law (halacha) to determine the substance of the dispute. The Jewish law does not recognise a limitation period for monetary claims. The defendant argued that the claims were time-barred under the English Limitation Act 1980, but the Beth Din tribunal did not address this defence in its award.[194]

182 [2025] EWHC 2428 (Comm); [2025] 2 Lloyd's Rep 443.
183 [2025] EWHC 1350 (Comm); [2025] 1 Lloyd's Rep 603.
184 [2025] EWHC 1586 (Comm); [2025] 1 Lloyd's Rep 615.
185 [2025] EWHC 1785 (Comm); [2025] 2 Lloyd's Rep 59.
186 [2025] EWHC 452 (Comm); [2025] 1 Lloyd's Rep 298.
187 See paras 152 to 153.
188 See paras 1, 3 to 4, 8 to 9, 15(3), 17 to 18, 21(2) and 22.
189 See paras 36, 80, 84 and 141.
190 See paras 63 to 64, 125 and 127.
191 See paras 29, 44 to 49 and 144 to 145.
192 See paras 146 to 150.
193 [2025] EWHC 61 (Ch).
194 See paras 1, 4, 8, 10, 27, 68, 77 and 151.

Miles J upheld a challenge under section 68 of the Arbitration Act 1996. He ruled that section 13 of the 1996 Act mandatorily provides that the Limitation Acts apply to arbitral proceedings as they apply to legal proceedings. The court clarified the interaction with the Foreign Limitation Periods Act 1984, noting that under section 1 of the 1984 Act, foreign limitation law applies only "where in any action or proceedings in a court in England and Wales the law of any other country falls ... to be taken into account". The court held that "based on the case law I conclude that Jewish law is not the law of 'any other country' applicable in accordance with the rules of private international law of the English courts. Therefore, English law is not disapplied under section 1 of the 1984 Act".[195] By failing to determine the English limitation defence, the court found a serious irregularity that caused substantial injustice.[196]

In *Mare Nova Inc v Zhangjiagang Jiushun Ship Engineering Co Ltd*[197] the Commercial Court held that an award be remitted to the tribunal for reconsideration after the sole arbitrator dismissed a claim based on a novel legal interpretation that neither party had advanced.[198]

The dispute concerned defective ship repair works. The respondent did not participate in the arbitration, which was conducted solely by paper. Although the arbitrator found that the shipyard caused the damage in breach of the contract, he dismissed the owner's primary damages claim, concluding that the shipyard's liability was discharged as soon as the vessel sailed. The claimant challenged the award under section 68(2)(a) of the Arbitration Act 1996, arguing that the tribunal breached its duty under section 33 by failing to give the claimant the opportunity to address this unpleaded discharge theory.[199]

HHJ Keyser KC upheld the challenge. He held that ruling on the discharge of liability, an issue never raised in the proceedings, was a serious irregularity. He found this caused substantial injustice because the claimant "lost the opportunity, which had a realistic prospect of success" to persuade the tribunal otherwise. Furthermore, the judge examined the clauses and concluded that the arbitrator's conclusion that the defendant's liability for breach of contract had been discharged was "obviously wrong in law".[200]

In *DOM v DON*[201] the Singapore High Court partially set aside an arbitral award after finding an unforeseen disconnect between a tribunal's factual findings and its final decision.

The arbitration involved a construction dispute over building defects and rectification costs. In assessing damages the tribunal awarded the respondent 50 per cent of the fees claimed for three consultants. However, the tribunal explicitly found in the same award that the appointment of one consultant was unnecessary and noted there was no evidence justifying the necessity of the other two. The applicant sought to set aside this portion of the award, alleging the tribunal, "in deciding to grant 50 per cent of the consultants' fees despite its finding that DON's evidence was inadequate, the tribunal had adopted a chain of reasoning that was unforeseeable and had insufficient nexus to the parties' arguments".[202]

The High Court agreed and set aside "the portion of the Award for DON's claims for consultant fees in part". The court ruled that the tribunal's decision to award fees despite determining the consultants' services unnecessary lacks a sufficient connection to the parties' arguments. The court emphasised that "incongruency, or, to use the Court of Appeal's words, 'manifest incoherence', is not in itself a ground to challenge an award for a breach of natural justice. Any manifest incoherence or incongruence that is said to infect an award must be tied back to a demonstrable breach of an established rule of natural justice".[203]

[195] At para 150.
[196] See paras 92, 107, 150, 152 to 153 and 158.
[197] [2025] EWHC 223 (Comm); [2025] 1 Lloyd's Rep 245.
[198] See paras 18 and 32.
[199] See paras 6 to 7, 10 to 11, 14, 16 and 19.
[200] See paras 16 to 17 and 30.
[201] [2025] SGHC 103.
[202] At para 64.
[203] At para 24.

In *DKT v DKU*[204] the Singapore Court of Appeal affirmed the framework for addressing infra petita challenges (ie claims that a tribunal failed to consider issues) while dismissing an attempt to set aside an arbitral award.

The dispute involved a contractor seeking payment for crack repair works, which the respondent successfully contested in arbitration through an expert report, proving the repairs were unnecessary. The appellant sought to set aside the award under section 48(1) of the Arbitration Act 2001, alleging that the tribunal breached natural justice by disregarding pleaded defences and adopting an unexpected chain of reasoning concerning errors in the expert's sampling.

The court found the complaints were "nothing more than unmeritorious complaints because they were, in truth, directed at challenging the merits of the award, but presented under the guise of natural justice challenges in a vain attempt"[205] to reopen the case. Addressing the "increasing tendency for disgruntled award debtors to abuse this ground of challenge on wholly unmeritorious grounds",[206] the court set out a four-part test for infra petita claims: the point must have been (1) properly raised, (2) essential to the resolution, (3) completely ignored by the tribunal and (4) caused actual prejudice. Finding that the tribunal had expressly considered the defences, the court warned that "in this sort of inquiry, the court is not to be drawn into the merits, correctness or sufficiency of the arbitrator's analysis".[207]

In *DLV and Another v DLX and Others*[208] the Singapore High Court confirmed that tribunals are not obliged to specifically address every argument raised by a party to uphold natural justice, as long as the core factual or legal premises of those defences are implicitly considered.

The arbitration centred on an exit clause (clause 19.1) in a Share Acquisition and Shareholders' Agreement. The tribunal determined that the clause imposed an absolute obligation on the company and the promoters to find a buyer for the investors' shares at a guaranteed "Exit Price" and ruled in favour of the investors.[209] The promoters applied to set aside the award under section 24(b) of the International Arbitration Act, alleging that the tribunal failed to consider two key defences: the "Waiver Defence" (that the investors waived their rights by consenting to pursue a "Split Sale" instead); and the "Buy-back Defence" (that awarding damages equivalent to the Exit Price amounted to an impermissible share buy-back under Indian law).

Kristy Tan JC dismissed the application. Setting out the legal threshold, the court emphasised that an issue "need not be resolved expressly in an arbitral award; it may be resolved implicitly". The court noted that a failure to address a case expressly "does not, without more, mean that the tribunal failed to apply its mind to the same" and that an award will only be set aside if the failure is a "clear and virtually inescapable inference from the award".[210]

Applying this standard to the Waiver Defence, the court found the tribunal had implicitly rejected its factual and

[204] [2025] SGCA 23.
[205] At para 1.
[206] At para 7.
[207] At para 11.

[208] [2025] SGHC 29.
[209] See paras 11 and 14.
[210] At para 31.

legal foundations. The tribunal had already found that the parties' contemporaneous conduct showed "a unified resolve on all sides to try to proceed towards bringing about a Secondary Sale".[211] The court observed that the effect of this finding was to "implicitly repudiate the alleged factual basis for the Waiver Defence, thereby rendering the defence untenable".[212] The tribunal had also relied on a clause requiring any waiver to be in writing, which the court noted "would be a complete answer to the Waiver Defence" since the promoters relied solely on the investors' conduct.[213]

Similarly, the court found the Buy-back Defence depended entirely on the promoters' interpretation of the exit clause, and specifically, their argument that holding them liable for damages would "*effectively amount*" to the company buying back the shares.[214] Because the tribunal had "expressly signalled a wholesale rejection"[215] of the promoters' interpretation of the clause, the foundation of the defence was destroyed. The court concluded that "[i]f the Interpretation Limb fails, it follows that the Unenforceability Limb must necessarily fail as well",[216] rendering further express engagement with the argument by the tribunal unnecessary.

In *L v R*[217] the Hong Kong Court of First Instance cautioned against "interlocutory skirmishes" and unwarranted applications that distract from the speedy resolution of substantive disputes.

The proceedings involved an originating summons applied under sections 66 and 81 of the Arbitration Ordinance to set aside a settlement agreement related to arbitral proceedings. The dispute led to several "interlocutory skirmishes". The defendant first applied to expunge parts of the plaintiff's affirmation and later issued a further summons for security for costs. The defendant then unilaterally attempted to have the security summons heard on the same day as the short hearing scheduled for the expunge summons.[218]

The court criticised the defendant's behaviour, emphasising that it is "not the practice of the Arbitration Court to permit any party unilaterally to set a summons down for hearing on the day set for the hearing of an earlier summons on a different subject matter".[219] Highlighting that the aim of the Arbitration Ordinance is to promote the swift resolution of disputes, the court cautioned against turning interlocutory disputes into weapons and stressed that "[i]nterlocutory skirmishes should be avoided" as they "only distract and derail proceedings before the Court, the preparations for the substantive hearing and its determination".[220]

> Courts are willing to set aside arbitral awards when genuine grounds exist, such as breaches of the fair hearing rule, while firmly dismissing applications that seek to reopen the substantive merits of a dispute

The court also noted that the security for costs applications "can be dismissed on the ground of delay alone, in the absence of some exceptional circumstance".[221] For "[u]nwarranted applications", they "will be penalized by costs orders, including orders against the legal representatives in appropriate cases".[222]

In *MHA Advisory Ltd v Wynter*[223] the English High Court dismissed an application to set aside an award, emphasising the mandatory exhaustion of section 57 of the Arbitration Act 1996 and rejecting a literal interpretation of an arbitrator's wording.

The underlying arbitration concerned the enforceability of a two-year restrictive covenant in a limited liability partnership agreement. The arbitrator dismissed the claimant's case, finding the two-year restriction to be unreasonable. In rendering his decision the arbitrator stated that, regarding the "stickiness" of client relationships, "there is a conflict on the evidence and I am unable to decide that the 2 year Restrictions are reasonable on that

[211] At paras 35 and 37.
[212] At para 45.
[213] At para 50.
[214] See paras 84 to 85.
[215] At para 92.
[216] At para 87.
[217] [2025] HKCFI 3162.
[218] See paras 1 to 5.
[219] At para 8.
[220] At para 9.
[221] At para 11.
[222] At para 12.
[223] [2025] EWHC 2497 (Comm).

basis, with the burden being, as agreed, on the Claimant to establish that the Restrictions are reasonable".[224] Building on the phrase "unable to decide", the claimant challenged the award under sections 68(2)(a) and (d) of the 1996 Act and argued that the arbitrator had essentially failed to discharge his responsibility to resolve a key conflict of evidence, which amounted to a serious irregularity and a failure of his general duty.

Paul Mitchell KC, sitting as a deputy judge of the High Court, dismissed the application. In his judgment he found that the claimant failed to first seek clarification from the tribunal, and if the claimant felt the award lacked rationale, it "could legitimately have asked the Arbitrator to unpack further his conclusion".[225] The judge also rejected the claimant's literal interpretation of the award. The phrase "I am unable to decide" simply meant the arbitrator "was not prepared to accept the LLP's evidence as decisive"[226] to discharge its burden of proof, not that he refused to make a decision at all.

Reminding practitioners that section 68 is a remedy of last resort, the judge found the application to be "abusive of the right to bring an application of last resort" and dismissed the allegations of arbitral incompetence as being "patently wrong and [...] was unjustified".[227]

Recent jurisprudence across the UK, Singapore and Hong Kong shows a balanced judicial approach: courts are willing to set aside arbitral awards when genuine grounds exist, such as breaches of the fair hearing rule, while firmly dismissing applications that seek to reopen the substantive merits of a dispute. This distinction affirms the courts' supervisory role rather than functioning as a secondary avenue of appeal for arbitral awards that are regarded as final and binding.

V and Another v K

By Caroline Thomas

The English High Court case *V and Another v K*[228] gives detailed insight into how arbitrator conflicts of interest challenges are viewed by the English courts – particularly in the context of popular "niche"[229] areas of arbitration such as shipping. In this case the Mercantile Court robustly dismissed apparent bias allegations relating to a London maritime arbitration (LMAA). The unsuccessful allegation was that the arbitrator appointed by K (in a panel of three King's Counsels) failed to disclose previous appointments in unrelated arbitrations by K's solicitors. Specifically, the key ground for a section 68 challenge was:

> "the repeated lack of candour by K's party-appointed arbitrator ... in misrepresenting the nature and extent of his relationships with Zaiwalla, the claimants' solicitors, and with Reed Smith (K's solicitors who had appointed him). These inadequate disclosures are said to go to his impartiality and independence; it is said that he 'either downplayed or even concealed' until the Award was rendered, the connection between himself and Reed Smith."[230]

The English High Court case *V and Another v K* gives detailed insight into how arbitrator conflicts of interest challenges are viewed by the English courts – particularly in the context of popular "niche" areas of arbitration such as shipping

A vessel had been sold to V and their nominee N for US$13.1 million but that in the meantime V was subject to OFAC[231] sanctions. K terminated the agreement and sought release of a US$1.965 million deposit held by Reed Smith. V and N counterclaimed for repudiatory breach. A Partial Final Award was made awarding K the deposit plus interest and dismissing the counterclaims. The court noted that the leading case concerning an arbitrator's duty of impartiality, albeit in the context of section 24 of the Act, is the Supreme Court's decision in *Halliburton Co v Chubb Bermuda Insurance Ltd*[232] and went on to cite the test therein for "apparent bias" and its application to maritime arbitration, including in the following passages:

[224] At para 36.
[225] At para 60.
[226] At para 56(iv).
[227] At para 65.
[228] [2025] EWHC 1523 (Comm); [2025] 2 Lloyd's Rep 90.
[229] The statistics we discuss below suggest that shipping is anything but niche.
[230] At para 16(a).
[231] The US Office of Foreign Assets Control.
[232] [2020] UKSC 48; [2021] 1 Lloyd's Rep 1.

> "51. At para 52 Lord Hodge set out the relevant test for apparent bias, as stated by Lord Hope in *Porter v Magill* [2002] 2 AC 357 at para 103 as follows: 'The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased'. This requires objectivity and detachment.
>
> 52. The fair-minded observer is neither complacent nor unduly sensitive or suspicious and the conclusions which they reach must be justified objectively (paras 52 to 53).
>
> 53. However, context forms an important part of the material which the fair-minded observer must consider before passing judgment (para 52) ...
>
> 56. It follows that, as Lord Hodge stated at para 130, the custom and practice in the relevant field (in this case the LMAA) should be 'examined closely', as the assessment of the fair-minded and informed observer of whether there is a real possibility of bias is an objective assessment which has regard to the customs and practices of the relevant field of arbitration (para 152) ...
>
> 60. An arbitrator is under *the statutory duties in section 33 of the Act to act fairly and impartially in conducting arbitral proceedings*. Those statutory duties give rise to an *implied term* in the contract between the arbitrator and the parties that the arbitrator will so act. The arbitrator is accordingly under a legal duty to disclose facts or circumstances which would or might lead the fair-minded and informed observer, having considered the facts, to conclude that there was a real possibility that the arbitrator was biased (paras 74 to 81).
>
> 61. However, if, because of the *custom and practice of specialist arbitrators in specific fields, such as LMAA arbitrations, multiple appointments are a part of the process* which is known to and accepted by the participants, then no duty of disclosure would arise (para 135) ..." (Our emphasis.)

The court then applied the test. In so doing it considered and cited from the LMAA Advice on Ethics and distinguished the case of *Aiteo Eastern E&P Co Ltd v Shell Western Supply and Trading Ltd*.[233] Finally the court listed 11 "Other factors which the fair-minded and informed observer would take into account".[234] An interesting factor listed was the number of appointments the arbitrator in question had received:

> "During the past five years (2019 to 2024), Mr H has received 88 appointments as arbitrator, of which just 14 were appointments by Reed Smith (16 per cent) over the entire five-year period (which averages under three a year), being mostly LMAA arbitrations. It follows that 74 were not (the other 84 per cent). Moreover, most of these never proceeded beyond appointment. Last, Reed Smith's appointments account for merely 8 per cent of Mr H's total income from his arbitral appointments during this period (of which K itself accounts for 37 per cent)."[235]

Factor 9 is also noteworthy:

> "Ninthly, despite threatening to do so and despite *repeated offers by the Tribunal to do so, the claimants never brought a section 24 challenge to have Mr H removed as arbitrator based upon his past professional connections with Reed Smith* and/or Mr Weller (when Mr H would have been entitled to appear before the court and be heard)."[236] (Our emphasis.)

The court was not impressed that the challenge had been saved up (until the award) rather than raised when it arose (under article 24 of the Arbitration Act).

(4) Appeal on point of law (section 69)

In *Allseeds Switzerland SA v Intergrain SA*[237] Butcher J heard an appeal from a decision of the FOSFA Board of Appeal, arising out of a CIF (cost, insurance and freight) soy bean sale contract. The defendant appears to have failed to arrange insurance before the cargo perished and insurance subsequently obtained was voided by the insurer. The defendant commenced FOSFA arbitration and obtained an award from the First Tier Tribunal ("FTT") in which it was determined that, even though the validity of the insurers' avoidance remained pending in proceedings in Belgium, it was appropriate for the arbitration to go ahead. The FTT later held that the insurers had the right to avoid the policy and that the claimant was in breach of

[233] [2024] EWHC 1993 (Comm); [2024] 2 Lloyd's Rep 489, discussed in our 2024 review, "Arbitration law in 2024: a review", available on i-law.com.

[234] At paras 137 to 151.
[235] At para 141.
[236] At para 149.
[237] [2025] EWHC 2788 (Comm); [2025] 2 Lloyd's Rep 545.

its obligation under the CIF contract to provide effective insurance. The claimant appealed to the Appeal Board, which upheld the FTT award on the ground that the defendant had been unable to pursue the insurers so that the insurance was ineffective.

An appeal under section 69 cannot be brought except with the agreement of all the other parties to the proceedings, or with the leave of the court.[238]Accordingly, the claimant obtained permission to appeal from Dias J on the papers (as is usual). The questions of law stated in the claim form were:

> "(1) Where CIF buyers allege that sellers were in breach because they failed to procure a compliant contract of insurance, is it sufficient for buyers to prove that the cargo insurers have rejected the claim, or do they have to prove that the cargo insurers were entitled to reject the claim?
>
> (2) Does it make any difference that the insurers might have had grounds for rejecting the claim, if there is no finding in the Award that they were in fact entitled to reject?"[239]

The defendant argued that the point of law on which permission to appeal had been given had not been put to the Appeal Board, so that there was no valid appeal.

Butcher J held as follows:

> (1) "... it will require highly unusual circumstances for the court to revisit, on the appeal, the component parts of the test for permission to appeal ... I do not consider that there are any highly unusual circumstances which justify this court revisiting the issue of whether the questions of law for which permission was given by Dias J were ones which the Appeal Board was asked to determine... there appears to me to be no good reason why the court should not determine the questions of law for which permission to appeal was granted."[240]
>
> (2) Question 1: "The obligation of CIF sellers is to provide an effective policy of insurance. One circumstance in which a policy of insurance is not effective is if it is void or voidable for misrepresentation or non-disclosure, unless insurers have affirmed the policy notwithstanding its voidability. *To establish that a policy of insurance is not effective it is not enough for buyers to prove only that the insurers have rejected the claim on the basis that the policy was void or voidable, without there being sufficient proof that the policy was void or voidable*".[241] (Our emphasis.)
>
> (3) Question 2: "CIF buyers do not establish a breach of contract by proving only that there were grounds on which cargo insurers might have relied to reject the claim, without its being established that the policy was in law and/or fact ineffective on those grounds."[242]
>
> (4) The award was remitted to the Appeal Board for reconsideration in light of the above answers to the two questions.

In terms of procedure this case confirms previous authorities, that the court hearing an appeal under section 69 retains full discretion to assess whether a genuine question of law arises, regardless of the earlier grant of permission.

Prices for the charter (lease) and sale of vessels can significantly ebb and flow. This is highly relevant to the calculation of damages.

Skyros Maritime Corporation and Another v Hapag-Lloyd AG (The Skyros and The Agios Minas)[243] is an English Court of Appeal decision (heard by Coulson, Males and Andrews LJJ) which reaffirms for the time being (the decision is under appeal) that damages for late vessel redelivery under a time charter are generally based on the market rate. This was true regardless of pre-existing sale agreements that prevented the owner from exploiting that market. The court restored the award (issued by Sir Bernard Eder, David Steward and Peter Jago) and sent the case back to them to assess the damages to which the owners were entitled.

The facts of the case were that the vessels *Skyros* and *Agios Minas* were redelivered a few days late by Hapag-Lloyd, a major German container line operator, when market rates were considerably higher than the contractual rates under two largely identical charterparties. However, the vessels' owners had sold the vessels and were committed to delivering them to their new owners upon redelivery.

The LMAA tribunal formulated the preliminary issue as follows: "In essence, the question is whether substantial damages are recoverable for late redelivery of a ship under a time charterparty where there is evidence that

[238] Section 69(2).
[239] At para 18.
[240] At paras 31 to 33.
[241] Paragraph 34.
[242] Paragraph 35.
[243] [2025] EWCA Civ 1529.

after a timely redelivery, the owner could not or would not have chartered it out".[244] The charterers argued that the owners would not in any case have chartered the vessels after redelivery and had made no loss:

> "... an award of substantial damages in such circumstances would be contrary to the fundamental compensatory principle in contract that where a party sustains loss by reason of a breach, it is, so far as money can do it, to be placed in the same situation as if the contract had been performed."[245]

The tribunal accepted all of the owners' arguments including that the vessels' sale should be disregarded. Owners were awarded quantum meruit or user damages. The arbitrators considered:

> "... that there was an implied request by the charterer for services outside the scope of the charterparty (ie for the use of the vessel during the period of the overrun), coupled with an implied agreement to pay for those services at the current market rate; and that this was consistent with the principle of compensatory damages because it compensated the owners for providing a service outside the scope of that for which they had contracted ... Alternatively ... that the owners would be entitled to recover user damages, again consisting of the difference between the contract rate and the market rate prevailing during the overrun period ... on the basis that such damages would compensate the owners for the loss of their right to use the vessels, which was a valuable right, whether or not the owners would actually have used them during the overrun period. The fact that the owners would not have chartered out the vessels, and would instead have sold them to their buyers, should be disregarded as being too remote or res inter alios acta. ... Finally, if they were wrong on both quantum meruit and user damages, the arbitrators would have held that the owners were entitled in principle to negotiating damages for the period of the overrun, ie what would have been agreed in a hypothetical negotiation between the parties, although this would not necessarily have been the same as the prevailing market rate."[246]

The charterers appealed under section 69 of the Arbitration Act 1996. The first instance judge (Bright J) considered that the owners were not entitled to a substantial recovery on any of the bases on which they had succeeded before the arbitrators. Quantum meruit could not apply because the services of the vessel was provided under charterparties, and hire had been earned and paid at the charterparty rate; user damages did not apply because the owners remained in possession of their vessels at all times and did in fact use the vessels to provide the services under the charterparties which enabled them to earn hire until the time of redelivery; and the claim for negotiating damages measured by reference to the economic value of the owners' rights which had been breached failed because, on the facts, timely redelivery was not of any economic value to the owners. As a result the owners were entitled to nominal damages only. Bright J granted permission to appeal on two issues only: (1) whether the owners were entitled in principle to recover user damages; and (2) whether the owners' contracts for the sale of the vessels were to be disregarded in assessing any damages.

[244] At para 18.
[245] At para 19.
[246] At paras 20 to 22.

In the Court of Appeal Males LJ found:

> (1) "It has been clear for over a century that in the event of late redelivery under a time charter where the market has risen above the contract rate since the date of the charterparty, the shipowner is entitled to recover damages in respect of the overrun period consisting of the difference between the market rate and the contract rate."[247]
>
> (2) In none of the cases or textbooks discussed was there "any suggestion that the owner's entitlement to recover damages in accordance with this measure has depended or should depend on whether the owner would in fact have entered the market to conclude a new fixture on the latest date when the vessel ought to have been redelivered ... The late redelivery means that the owner has lost the opportunity to conclude a new fixture at the market rate, but whether it would or could in fact have done so (or when) is res inter alios acta – or, to use more modern terminology, is a collateral matter disregarded by the law for the purpose of assessing damages ... Just as the owner in *The Achilleas* [*Transfield Shipping Inc v Mercator Shipping Inc (The Achilleas)* [2008] UKHL 48; [2008] 2 Lloyd's Rep 275] was not entitled to recover damages for loss of the follow-on fixture, so too the owners in the present case would not have been entitled to recover damages for loss of the sale contracts if the late redelivery of the vessels had given the buyers a right to cancel those contracts. In that event, at least, the sale contracts would have been regarded as either too remote or res inter alios acta".[248]
>
> (3) The Court of Appeal's conclusions were reached based on the compensatory principle but it had also been tasked with considering whether the owners were entitled in principle to recover user damages. "The leading modern authority on the circumstances in which user damages are recoverable is the decision of the Supreme Court in *One Step (Support) Ltd v Morris-Garner* [2018] UKSC 20; [2018] 1 Lloyd's Rep 495. In that case, Lord Reed described user damages as being available where there has been an invasion of the claimant's rights to property, including intangible property, but no pecuniary loss or physical damage to the property in question."[249] In this case, "although late redelivery can to some extent be characterised as a wrongful use of property, it is in one sense a use to which the owners have agreed".[250] Males LJ saw: "no justification for introducing into the law of damages in contract a novel basis of recovery, outflanking the basic compensatory principle and awarding user damages where in fact no loss has been suffered".[251]

Under English law, there is a principle that in general a party exercising a contractual right of termination as a reaction to a breach is not entitled to damages for loss of bargain unless the breach was repudiatory

Interestingly, Coulson LJ came to the same conclusion, adopting a different reasoning:

> "I found myself drawn to a different but analogous line of cases: those where an asset had been damaged by the defendant, who then sought to avoid the ordinary measure of loss (in those cases, the cost of repair) by relying on subsequent events. In *Manchikalapati v Zurich Insurance plc* [2019] EWCA Civ 2163; [2020] Lloyd's Rep IR 77, it was submitted that, because the homeowners had not carried out any repairs works themselves, they had suffered no loss; in *The London Corporation* (1935) 51 Ll L Rep 67 it was argued that, because the owners had previously arranged that the vessel was to be sold and broken up, it would never be repaired, and again there was therefore no loss. Neither argument succeeded. In the latter case, Greer LJ referred at page 78 to the sale of the vessel as an 'accidental circumstance which ought not to be taken into account in the way of diminution of damages'. In my view, the fact that, in the present case, the vessels had been sold and therefore could not have been chartered for the period of the overrun, was a similar 'accidental circumstance' which was irrelevant to the assessment of damages."[252]

[247] At para 32.
[248] At paras 37, 39 and 45.
[249] At para 52.
[250] At para 56.
[251] At para 57.
[252] At para 62.

Under English law, there is a principle that in general a party exercising a contractual right of termination as a reaction to a breach is not entitled to damages for loss of bargain unless the breach was repudiatory (this is sometimes called the "*Financings* principle" (after *Financings Ltd v Baldock*[253])). It is however possible to draft a contract to make the provision in question a condition or stipulate that a right of cancellation carries equivalent rights to termination for repudiatory breach, or carries some different rights. In *Orion Shipping and Trading LLC v Great Asia Maritime Ltd (The Lila Lisbon)*[254] the Court of Appeal (Phillips, Nugee and Birss LJJ) had to interpret a clause of standard contract used in the sale of second-hand vessels and assess damages payable in respect of a breach thereof. A vessel (*Lila Lisbon*) was being sold by the sellers (Orion) to the buyers (Great Asia) under the standard form contract Norwegian SALEFORM 2012. By clause 14 of this form of contract, if sellers fail to give a notice of readiness by the cancelling date and the failure is due to proven negligence, sellers are liable to make due compensation to buyers for their loss whether or not buyers cancel the agreement. Said eventuality materialised and the buyers exercised the contractual right to cancel and then commenced arbitration. In the arbitration the buyers claimed, among other things, loss of bargain compensation (ie the difference between the contract price and the market price of the vessel).

The tribunal (comprising Clare Ambrose, Peter Jago and Toh Sian King SC) held that the buyers were entitled to loss of bargain compensation (US$1.85 million). "Sellers' failure to deliver by the original Cancelling Date was due to proven negligence on their part."[255] Further:

> "Clause 14 expressly confers a right to cancel and a right to compensation where the failure was caused by proven negligence. On its ordinary meaning the parties would have understood such compensation to extend to the consequences of cancellation thereunder, including loss of profit. It would be inconsistent with the wording conferring the right to compensation to suggest that a cancelling buyer would not be entitled to compensation for losses caused by such cancellation including the loss of profit, and would instead have to establish an independent repudiatory breach. Accordingly the cause of Buyers' loss of profits was Sellers' failure to deliver, and this caused Buyers to bring the MoA to an end. Buyers were entitled to recover damages assessed as the difference between market and contract price as compensation for Sellers' default under clause 14."[256]

The sellers appealed under section 69 of the Arbitration Act 1996 to the High Court, where Dias J decided[257] that the buyers were not entitled to loss of bargain compensation. She held that neither clause 5 nor any other contract provision imposed any positive obligation on the sellers to deliver, or give notice of readiness, by the cancelling date. Clause 14 did not permit a recovery for loss of bargain damages; in the alternative any obligation on the sellers to meet the cancelling date was not a condition, such that the sellers were not in repudiatory breach anyway.

Upon an appeal by the buyers, the Court of Appeal reversed the decision of the High Court and decided that loss of bargain compensation was recoverable. Nugee LJ delivered the judgment. Salient points include:

> (1) "[T]he reference to 'Seller's default' in the heading to clause 14 is some indication, even regarding it as a mere label or signpost, that those who drafted Saleform 2012 considered that Sellers' failure to give Notice of Readiness by the Cancelling Date could be characterised, at least in some circumstances, as a breach of obligation."[258]
>
> (2) "[C]lause 5 does impose on Sellers an implied obligation to exercise reasonable diligence to deliver the vessel by the Cancelling Date."[259] This was similar to an owner's obligation of reasonable diligence to meet a charterparty laycan with the Lord Denning MR case *The Democritos*[260] commented on extensively as a close analogy.
>
> (3) In clause 14B, "due compensation" "does not mean compensation that has already accrued due; it means proper or appropriate compensation".[261]
>
> (4) The natural and ordinary meaning of the word "loss" in clause 14B "extends to Buyers' loss of bargain".[262]
>
> (5) "[T]he scheme of the contract is that Sellers are given a contractual window in which to get themselves ready, failing which Buyers are given a right to cancel.

[253] [1963] 2 QB 104.
[254] [2025] EWCA Civ 1210; [2026] 1 Lloyd's Rep 125.
[255] At para 23(1).
[256] At para 24.
[257] [2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep 101.
[258] At para 44.
[259] At para 59.
[260] *Marbienes Compania Naviera SA v Ferrostaal AG (The Democritos)* [1976] 2 Lloyd's Rep 149.
[261] At para 71.
[262] At para 75.

> If they do cancel, I do not see why that was not caused by the failure to meet the window, at any rate where that failure was due to Sellers' breach of contract".[263]
>
> (6) "Where Sellers are not ready by the Cancelling Date and Buyers cancel under clause 14(A) they can ... recover damages for loss of bargain under clause 14(B) if they can prove that Sellers' lack of readiness is due to their negligence."[264]

This was the first time the nature of a seller's obligation to deliver the vessel has been held to be one of reasonable diligence to meet the cancelling date and that it has judicially been decided that loss of bargain damages are recoverable under clause 14. The judgment raises an interesting question in respect of the "*Financings* Principle": "It is not obvious to me that the same principles necessarily apply to a contract for a single transaction such as a sale".[265]

Permission to appeal to the Supreme Court was granted in December 2025 with the appeal due to be heard on 2 June 2026.[266] We will be reporting on this, if it takes place, nd a 2026 case (*SLB and Others v PAK and Others*[267]) in our next review.

As an interesting postscript, we note that Great Asia had sought permission on three grounds, the third of which was that Dias J had been wrong to alter the question of law and/or to answer a question which the tribunal had not been asked to determine (cf *Sharp Corp Ltd v Viterra BV*[268]). Bright J granted permission to appeal on the other two grounds but refused permission on this third ground and thus no argument was on it.

In *Nigeria LNG Ltd v Taleveras Petroleum Trading DMCC*[269] the English Court of Appeal (Phillips, Warby and Zacaroli LJJ) had to decide whether orders made by an arbitral tribunal were limited to those contained in the final dispositive section of its award, headed "Award", or whether they also encompassed matters the tribunal stated that it was ordering in an earlier section headed "Analysis", but not to be found in the final dispositive section. Per curiam they dismissed the appeal against the Commercial Court's decision.[270]

Paragraph 607, in the "Analysis" section of the UNCITRAL award, stated:

> "The Tribunal further orders that the terms of this indemnity be drawn forthwith to the attention of the tribunals seised of the Vitol and Glencore arbitrations, and that any eventual enforcement of this indemnity be subject to the endorsement of those tribunals as to its applicability in the context of any award and, in particular, any consent award, made in either of those proceedings."

However, the dispositive section of the award ("the Tribunal hereby DECIDES AND AWARDS as follows") only set out the obligation on NLNG to make payment and, if claims by Vitol and Glencore were made in arbitration, the obligation on Taleveras "draw the terms of the indemnities ordered at 2 and 3 above to the attention of the tribunals seised of the Vitol and Glencore Arbitrations respectively". NLNG commenced proceedings in the Commercial Court, disputing its liability to indemnify Taleveras as claimed on the ground (among others) that it was a condition precedent of the condition being expressed in para 607 of the analysis section of the award that the tribunal in the Vitol arbitration should have endorsed its award as to the applicability of the indemnity to the sums awarded. NLNG claimed a declaration of non-liability and an injunction to prevent Taleveras enforcing the Indemnity in respect of the Vitol award.

HHJ Pelling KC had:

> "recognised at para 17 that the form of arbitral awards varies, but that the format adopted by experienced legally trained arbitrators generally follows a conventional format, leading to the tribunal's conclusions on the issues and finally to

[263] At para 84.
[264] At para 156.
[265] At para 119.
[266] https://supremecourt.uk/cases/uksc-2025-0178
[267] [2026] EWHC 449 (Comm).
[268] [2024] UKSC 14; [2024] 1 Lloyd's Rep 568 at paras 54 to 70 per Lord Hamblen JSC. This case was discussed in our 2024 review. "Arbitration law in 2024: a review", available on i-law.com.
[269] [2025] EWCA Civ 457; [2025] 1 Lloyd's Rep 549.
[270] [2024] EWHC 1847 (Comm); [2024] 2 Lloyd's Rep 269, HHJ Pelling KC.

> a dispositive section in which the tribunal sets out the sums awarded and other remedies granted as a result of the conclusions reached ... where such an approach is adopted, the section of the award that commences '... the Tribunal hereby DECIDES AND AWARDS as follows ...' is likely to, and to have been intended by the tribunal to, contain a comprehensive statement of what in English proceedings would appear in an order following a trial. He pointed out that this is all the more likely to have been what was intended when the curial law of the reference is English law and at least a majority of the arbitrators are English lawyers ..."[271]

The Court of Appeal agreed:

> "Section XVIII of the Award contained a carefully drafted set of orders, progressing logically through the monetary award, the Indemnity, interest and costs, concluding with a dismissal of all other claims. It was plainly designed and intended to serve the same purpose as a court order following a reasoned judgment, setting out the formal orders made for the reasons given. It was accordingly intended to be a self-contained and comprehensive statement of the relief being granted by the Tribunal. It is perhaps unfortunate that the Tribunal used the words 'further orders' in para 607 of its analysis section, but that loose wording does not come close, in this case, to undermining the clear structure of the Award and in particular the meaning and comprehensive effect of its dispositive section."[272]

[271] [2025] EWCA Civ 457; [2025] 1 Lloyd's Rep 549 at para 18.
[272] At paras 46 and 47, per Phillips LJ.

(5) Grounds for appealing awards in Hong Kong are normally much narrower than in England unless the parties "opt in"

CI v IU[273] is an interesting Hong Kong judgment issued by Deputy High Court Judge Jonathan Wong for two reasons: (1) it serves a reminder that it is possible for any parties contracts to opt into Schedule 2 of the Arbitration Ordinance (ie this is not just an option for construction contracts); and (2) its obiter holding that foreign law, particularly English law which under which maritime arbitrations are commonly resolved, can in appropriate circumstances give rise to a "question of law" for the purposes of Schedule 2 of the Arbitration Ordinance.

An award had been issued by two "Full Members" of HKMAG.[274] There had been an application for leave to appeal but that was dismissed. The charterers thus next sought leave to appeal by originating summons pursuant to section 6 of Schedule 2 to the Arbitration Ordinance which, by virtue of article 26 of the HKMAG Terms, the parties had agreed to opt into. The leave application failed because it did not meet the requisite threshold. It is the obiter discussion that is interesting.

In defending the leave application one of the owner's arguments was that, where, as here, the award raises question of foreign law (in this case English law) no appeal can lie to the court since a question of foreign law is not a question of law within the meaning of sections 5 and 6 of Schedule 2 to the Arbitration Ordinance The judge summarised the case law as follows:

> "One can envisage a range of situations. On the one hand, an arbitration may be governed by a system of law which is truly 'exotic' such that the foreign law can only be proved by expert evidence (and therefore truly a question of fact). However, even in that situation, a question of law may still arise. ... On the other end of the spectrum is a case (such as the present one) ... 'the relevant legal system is one that applies an approach similar to that under English law ... So while an appellate court or tribunal is not in the same position as the fact-finding tribunal,

[273] [2025] HKCFI 4397.
[274] HKMAG is the Hong Kong equivalent of the LMAA. This explains why the award could be issued by two arbitrators – under the HKMAG rules this is permissible where the arbitrators agree and there has not been a hearing.

> if it considers that that tribunal has erred in its application of legal principles then it would be able to conclude that it made an error of law'."[275]

Interestingly he also noted that there is a difference between the English and the Hong Kong regimes:

> "Where the Hong Kong statutory regime is such that the phrase 'question of law' is, in contrast with the English position, without any restriction or limitation, it seems to me whether an appeal falls within the rubric of section 5 and 6 of Schedule 2 to the AO necessarily depends on the nature of the complaint, and the exercise is examine whether the complaint constitutes a question of law in the eyes of the Hong Kong court (such as the examples given in the preceding two paragraphs). In my judgment, the fact that the governing law of an arbitration is not Hong Kong law does not automatically preclude the court from entertaining an appeal (or an application for leave to appeal) made under those sections."[276]

[275] At paras 5.7 and 5.8.
[276] At para 5.9

VI. Court assistance and intervention: anti-suit/anti-arbitration injunctions

By Jason Louie

In 2024 we saw a marked increase in cases involving sanctions against Russian entities. This trend has continued throughout 2025, with a significant number of Western claimants seeking ASIs to restrain (typically Russian) parties from issuing proceedings before the Russian courts in breach of their arbitration agreement.

To counterbalance the sanction-heavy focus of this section, we have also sought to include notable judgments in other contexts that contribute to the discourse on this topic. In each of these cases, the English and Hong Kong courts have consistently demonstrated a robust ability to separate the wheat from the chaff, and to grant only those applications that are meritorious.

(1) Applicability of ASI to third parties

In our 2023 review[277] we covered the English High Court's judgment in *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*,[278] wherein HHJ Pelling KC rejected Renaissance Securities' application for an ASI. This judgment has now been upheld on appeal.[279]

By way of background, in 2019 and 2020 Renaissance Securities entered into six investment service agreements ("ISAs") with each of the six defendants. Each ISA was governed by English law and stipulated that disputes were to be resolved by arbitration seated in London and administered by the LCIA.

In 2023 the defendants directed Renaissance Securities to return assets which it held for them pursuant to the ISAs. Renaissance Securities refused because it considered the defendants to be under US sanctions. In an attempt to recover said assets, each of the defendants commenced court proceedings in Russia against Renaissance

[277] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[278] [2024] EWHC 2843 (Comm).
[279] [2025] EWCA Civ 369; [2025] 1 Lloyd's Rep 518.

Securities and its Russian affiliates. In response, the English High Court granted an ASI, prohibiting each of the defendants from pursuing claims against Renaissance Securities in the Russian courts, on the basis that those claims had been brought in breach of the arbitration clauses in the ISAs.

The issue that came before the Court of Appeal was whether additional ASIs should be granted to prohibit the defendants from suing the affiliates as well and, in this context, one of the main arguments relied upon by Renaissance Securities was that the arbitration agreement contained in the ISAs covered claims against the affiliates.

To be specific, Renaissance Securities contended that the arbitration agreements allocated jurisdiction exclusively to LCIA arbitration, and this implicitly included a negative promise not to bring claims for which Renaissance Securities and the affiliates were (allegedly) jointly and severally liable in another forum.[280] In applying the usual principles of contractual interpretation and implication, Singh LJ (delivering the primary judgment of the Court of Appeal) rejected this argument, concluding that "*[Renaissance Securities]'s submissions would require the court to go beyond permissible interpretation of the relevant contracts and would require it to rewrite them*".[281] Accordingly, it could not be said that the arbitration agreements included claims against the affiliates.

The case of *JP Morgan Securities plc and Others v VTB Bank PJSC*[282] is contextually identical. The claimants were all part of the JP Morgan group of companies. The dispute arose out of three contracts between the defendant ("VTB") and the first and second claimants. Each contract was governed by English law and contained an arbitration clause requiring all disputes to be resolved by arbitration, seated in London, under LCIA Rules.

After the Russian invasion of Ukraine in February 2022, sanctions were imposed on VTB by, among others, the UK and US governments. Consequently, the first and second claimants exercised their rights to terminate each of the contracts with VTB and deposited the outstanding sums owed to VTB into a blocked account. VTB issued numerous proceedings in Russia, alleging that all of the claimants (not merely the first and second claimants) "committed unlawful actions in respect of the Claimant's property, including failing to transfer (retaining) the monies that were due"[283] and demanded compensation for the losses caused. In response the claimants applied to the English courts for an ASI to restrain VTB from continuing the Russian proceedings, together with an anti-enforcement injunction.

Upon unwinding and analysing the complex factual circumstances, Foxton J ultimately found it proper to grant the requested injunctions (albeit for other reasons). That being said, the first part of his judgment focused on whether there was a contractual basis to grant the ASIs.

In this regard, his Lordship held that all of the claims brought against the first and second claimants were "being pursued in breach of the applicable arbitration agreement".[284] On this basis, the first and second claimants were entitled to an ASI.

But what of the remaining claimants? The first of the three contracts stipulated that "any Affiliate may enforce and rely upon any provision of these Terms conferring a benefit upon it to the same extent as if it were a party to these Terms".[285] Applying the usual principles of contractual interpretation, his Lordship held that this provision meant the remaining claimants could – in relation to disputes arising out of this particular contract – take benefit of the arbitration agreement and, more importantly, the corresponding negative obligation not to be sued in another forum.[286]

However, in relation to disputes arising out of the remaining two contracts, his Lordship found no contractual basis to limit VTB's right to bring proceedings in Russia against third parties (including the remaining claimants). Such an interpretation was simply unsustainable on the language used,[287] and there was no reasonable scope to imply a term to such effect.[288] Therefore, VTB's commencement of court proceedings in Russia against the remaining claimants was permissible under the remaining two contracts.

[280] See paras 41 to 43.
[281] At para 48.
[282] [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15.
[283] At para 63.
[284] At para 78.
[285] At para 87.
[286] See paras 87 to 88.
[287] See para 135.
[288] See paras 139 to 143.

(2) Use of ASI against proceedings designed to circumvent/undermine the arbitration agreement

We have above discussed *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*[289] in the context of ASIs and third parties. However, this story does not end there. A second issue arose as to whether an ASI should be granted on the basis that the target proceedings were vexatious and oppressive.

In relation to this issue, the Court of Appeal found that the lower court's judgment contained an error of law. Instead of remitting the matter for re-determination, the Court of Appeal itself proceeded to determine whether to grant an ASI or not. Singh LJ began by accepting that the Russian proceedings "appear to be designed to circumvent and undermine the effect of those agreements" because "the Russian courts will disregard as a matter of public policy the sanctions laws imposed by English law".[290] His Lordship was further prepared to accept that, by litigating in Russia, the defendants were seeking to obtain an "illegitimate juridical advantage", which is a sufficient a reason for treating a claim brought in such a jurisdiction as vexatious and oppressive.[291]

Notwithstanding this prima facie position, the Court of Appeal ultimately refused to grant the ASI for the simple yet fundamental reason that Renaissance Securities was not forthcoming with the court as to the circumstances of the dispute.[292] In this regard, the court drew attention to Lord Bingham's dicta in *Donohue v Armco Inc*:[293]

> "The grant of an anti-suit injunction, as of any other injunction, involves an exercise of discretion by the court. To exercise its discretion reliably and rationally, the court must have the fullest possible knowledge and understanding of all the circumstances relevant to the litigation and the parties to it. This is particularly true of an anti-suit injunction because, as explained below, the likely effect of an injunction on proceedings in the foreign and the domestic forum and on parties not bound by the injunction may be matters very material to the decision whether an injunction should be granted or not."

In this case, Renaissance Securities refused to adduce any evidence as to: (i) the relationship between Renaissance Securities and the affiliates; and (ii) what kind of liability Renaissance Securities may be exposed to if the proceedings in Russia were allowed to proceed. When faced with this inexplicable secrecy, his Lordship concluded:

> "71. In my judgment, the precise nature of the relationship between [Renaissance Securities] and the [affiliates], and what was said about them [...] would have material significance for the discretionary remedy which [Renaissance Securities] seeks from this court. [...]
>
> 72. In those circumstances, I have reached the conclusion that this court should, in the exercise of its discretion, refuse the injunction sought and dismiss this appeal."

A party's otherwise meritorious application for an ASI can and will be refused if it has not been upfront with the court

This judgment serves as a poignant reminder that a party's otherwise meritorious application for an ASI can and will be refused if it has not been upfront with the court. On a more general level, it also shows that a party inviting a court to exercise its judicial powers in aid of arbitration must, when making its application, adhere to the procedural rules and expectations of that court.

Given their contextual similarities, it should come as no surprise that the claimants in *JP Morgan Securities plc*

[289] [2025] EWCA Civ 369; [2025] 1 Lloyd's Rep 518, at section VI(1): "Applicability of ASI to third parties".
[290] At paras 55 and 59.
[291] See paras 55 to 60.
[292] See paras 67 to 72.
[293] [2001] UKHL 64; [2002] 1 Lloyd's Rep 425, at para 16.

and Others v VTB Bank PJSC[294] also argued that the Russian proceedings were vexatious and oppressive. But, unlike in *Renaissance*,[295] this ground was successfully made out. The court was ultimately satisfied that the commencement and pursuit of the Russian claims were vexatious and oppressive,[296] in that it was intended to circumvent the arbitration agreements, the rules of English law, and the English law sanctions regime. Furthermore, the provisions of Russian law used to impose liability on non-parties (ie, all claimants aside from the first and second claimants) do not accord with generally recognised principles of civil law, insofar as it imposed liability on all companies of the corporate group regardless of any involvement in the transaction. For these reasons, the court found it proper to restrain VTB from continuing the Russian proceedings by way of anti-suit relief.

Foxton J further recognised that, given the aforementioned circumstances, "the court will grant anti-suit relief unless there are strong reasons not to do so" and that "having concluded that the pursuit of the proceedings [...] is vexatious and oppressive, it would require cogent reasons for it not to be just and convenient to grant the relief sought".[297] Thereafter, his Lordship entertained but ultimately rejected VTB's arguments that: (i) there was delay seeking injunctive relief; (ii) none of the *JP Morgan* entities had commenced arbitration against VTB; (iii) VTB would be deprived of the interim conservatory orders obtained from the Russian courts; and (iv) Russia was the more appropriate forum to determine the disputes.[298]

(3) ASI granted to protect supervisory court's exclusive jurisdiction

The case of *Star Hydro Power Ltd v National Transmission and Despatch Co Ltd*[299] is, by all measures, quite an unusual one. It is not often that a party asks a court (in this case, the English courts) to exercise its supervisory jurisdiction over an arbitration (seated in London) to grant an ASI restraining the other party from enforcing the final award in a foreign country (Pakistan). And it is even more unusual for such an injunction to be granted.

It is not often that a party asks a court to exercise its supervisory jurisdiction over an arbitration to grant an ASI restraining the other party from enforcing the final award in a foreign country. And it is even more unusual for such an injunction to be granted

The background of this case is not complicated. Pursuant to a Power Purchase Agreement ("PPA") between the appellant (Star Hydro) and the respondent (NTDCL), NTDCL agreed to purchase the electricity generated by Star Hydro for a period of 30 years. The PPA contained a detailed tariff (ie, price) adjustment mechanism but, as a matter of Pakistani law, determination of tariffs for electricity is the exclusive statutory responsibility of the National Electric Power Regulatory Authority (NEPRA). As fate would have it, the tariff set by NEPRA was significantly lower than the figure stipulated in the PPA. This gave rise to a dispute as to which tariff should be applied. In accordance with the arbitration agreement, Star Hydro commenced arbitration in London under LCIA Rules, and the tribunal ultimately determined that the contractual tariff was applicable.

Subsequently, NTDCL commenced proceedings in the Pakistan High Court, seeking the "recognition and enforcement" of certain paragraphs in the arbitral award, and to ignore the rest. Referring to these few paragraphs, NTDCL then asserted that "the natural and necessary consequence of the foregoing findings of the Sole Arbitrator, particularly in relation to tariff, was that the Sole Arbitrator did not have jurisdiction in relation to the Subject Matter".[300]

In response, Star Hydro sought an ASI from the English courts to restrain NTDCL from pursuing the "enforcement" proceedings in Pakistan, arguing that it "had nothing whatsoever to do with recognition or enforcement but was rather a root and branch attack on the award seeking to undermine its reasoning".[301]

[294] [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15.
[295] [2025] EWCA Civ 369; [2025] 1 Lloyd's Rep 518.
[296] See paras 151 and 155.
[297] [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15, at para 157.
[298] See paras 159 to 162.
[299] [2025] EWCA Civ 928; [2025] 2 Lloyd's Rep 215.
[300] At para 22.
[301] At para 39.

In the face of such unusual circumstances, the Court of Appeal took the opportunity to set the record straight on certain fundamental principles pertaining to the role and function of a supervisory court:

> "The starting point is that, as established in *C v D* [2007] EWCA Civ 1282; [2008] 1 Lloyd's Rep 239, the parties' agreement to the seat of an arbitration constitutes an agreement as to the 'curial law' of the arbitration and is analogous to an exclusive jurisdiction clause in favour of the courts of the jurisdiction of the seat, the 'supervisory' jurisdiction. Where that curial law is the law of England and Wales, the parties thereby incorporate the framework of the Arbitration Act 1996 ("the 1996 Act"). This necessarily means that any challenges to the award can be only those permitted by the 1996 Act."[302]

The court then went on to clarify the circumstances in which an ASI can (and will) be ordered by the English courts to enforce the exclusivity of its supervisory jurisdiction:

> "It is well established that where court proceedings are brought in breach of an agreement to arbitrate the court will generally grant an anti-suit injunction to prevent any further breach unless there are strong reasons not to do so ...

That approach applies with even more force to court proceedings brought to challenge or invalidate an arbitration award in a foreign jurisdiction when England and Wales is, as the jurisdiction of the seat of the arbitration, the supervisory (and therefore exclusive) jurisdiction for such challenges."[303]

This exclusivity is also (implicitly) recognised under the New York Convention. Thereunder, the only scenario in which a party can challenge the validity of an award is when it is resisting recognition and enforcement:

> "Giving the terms of the New York Convention their 'ordinary meaning ... in the light of the Convention's object and purpose' ..., it is clear that the Convention is solely concerned with recognition and enforcement in a secondary jurisdiction (which is a contracting state) of awards made in the territory of another contracting state, the latter being the primary jurisdiction ...
>
> It is apparent, therefore, that 'challenges' to an award under the New York Convention are a shield against applications for the recognition and/or enforcement of an award, not a sword by which the award may be attacked pre-emptively."[304]

And, in its capacity as the supervisory court, the courts are duty bound to guard against any attempt to usurp or undermine its exclusive jurisdiction to entertain challenges to awards arising out of domestic arbitrations:

> "The English court ... does have exclusive jurisdiction in relation to proceedings to challenge the award ... and is entitled (and, indeed is bound on an application for an anti-suit injunction) to consider whether the party is doing so in the foreign jurisdiction in breach of the arbitration agreement (and the exclusive jurisdiction of the supervisory court) and should be restrained ...
>
> ... the English court cannot simply abrogate its supervisory role and permit a party to breach the arbitration agreement and the exclusivity of the supervisory court, relying on the foreign court to decline jurisdiction. Apart from being wrong as a matter of principle, it would undermine the approach mandated in *C v D* and would enable parties to avail themselves of inapplicable domestic provisions in foreign jurisdictions which purport to invalidate or permit interference with foreign awards."[305]

With these principles in mind, the Court of Appeal turned to address the facts. It refused to accept that the labelling of NTDCL's application in Pakistan as being under the New York Convention should automatically cause the English court to leave the matter to the Pakistani courts.[306] On the contrary, the claim in the Pakistan proceedings, although framed as an application for recognition and enforcement, is undoubtedly a full-throated challenge to the validity of the award and its effect. This means the Pakistan proceedings were brought in breach of the arbitration agreement, which (by virtue of the selection of London as the seat) requires that such applications are made exclusively to the English courts.[307] On this basis, the Court of Appeal granted the ASI requested by Star Hydro.

[302] At para 42.
[303] At paras 46 and 47.
[304] At paras 49 and 50.
[305] At paras 58 and 59.
[306] See para 60.
[307] See paras 62 and 65 to 66.

(4) AAI/ASI not granted

The judgment in *Orange Transgroup Ltd and Another v Shein Distribution UK Ltd*[308] was delivered at the end of a rolled-up hearing of several interconnected applications made by both the claimants and the defendants. A brief chronology of these applications is as follows. First, the defendant applied to stay the court proceedings in favour of arbitration, in accordance with the procedures under section 9 of the Arbitration Act 1996 and Part 62 of the Civil Procedure Rules ("CPR"). Then, the claimants applied for injunctive relief to restrain the defendant from pursuing arbitral proceedings on the basis that: (i) the defendant was deemed to have accepted the court's jurisdiction (per Part 11 of the CPR) because it failed to contest said jurisdiction; and (ii) there was major public interest in the issues raised against the defendant. In response, the defendant argued that it did not need to dispute the court's jurisdiction as had already applied to stay the court proceedings.

From this jumble of applications, three issues arose for the court's determination: (1) whether the defendant had implicitly accepted the court's jurisdiction; (2) whether an AAI should be granted; and (3) if not, whether the court proceedings should nevertheless be stayed.

First, in terms of the procedural dispute, Dexter Dias J agreed with the defendant and held that a Part 11 application was not needed. The learned judge reasoned that:

> "It seems to me unnecessarily duplicative to have to comply with the requirements of section 9 and Part 62 and also be obliged to make an application under Part 11. Instead, for my part, the stay application under section 9 was the appropriate course.[309]

The court went on to say that, even if a Part 11 application was needed, it would exercise its discretion to waive this technical irregularity because: (i) "[i]t is clear at all points that the defendant disputed this court's jurisdiction in favour of the arbitral proceedings"; and (ii) there is no "material prejudice to the claimants resulting from the jurisdiction challenge under section 9 as opposed to Part 11".[310] As a result of the foregoing, it could be said that the defendant had implicitly accepted the court's jurisdiction.

Secondly, the court held that neither of the reasons raised by the claimants justified the granting of an AAI. For one, the court had already concluded that the defendant had not accepted the court's jurisdiction. For another, public interest is not a relevant consideration when determining whether to grant an AAI. On that point, his Lordship explained:

> "If the arbitrator finds that she has jurisdiction, the public interest arguments the claimants advance in their skeleton argument can be developed for her consideration. It will be a matter for her whether what the claimants allege fall within scope or whether they rendered it inappropriate to proceed with the arbitral proceedings. Once more, that is a matter for her and this court does not intrude or constrain her assessment by comment at this point."[311]

Thirdly, in terms of the application to stay the court proceedings, the court started by emphasising the cardinal principles of separability and Kompetenz-Kompetenz.[312]

[308] [2025] EWHC 2966 (KB); [2025] 2 Lloyd's Rep 632.

[309] At para 30.
[310] At paras 43 to 44.
[311] At para 55.
[312] See paras 64 to 66.

Then, the court proceeded to thoroughly peruse the evidence adduced by both the claimant and the defendant. His Lordship concluded that there was a "significant evidential vacuum at the heart of the dispute" and, as a result, there was a clear triable issue as to the validity of the arbitration agreement.[313] In other words, the issue of jurisdiction could not be resolved by the court, at this moment, with the limited evidence on hand.

Consequently, the question then became: which forum will provide the most expeditious and effective venue to resolve the jurisdiction issue? The court had a clear answer in mind:

> "I am satisfied that the issue of Bill's authority will be most expeditiously and appropriately determined by the sole arbitrator at her forthcoming hearing. I also have in mind the approach of the Court of Appeal in *Fiona Trust* [*Fiona Trust and Holding Corporation v Privalov* [2007] EWCA Civ 20; [2007] 2 Lloyd's Rep 267]. The court said at para 34 that there is a presumption that the arbitral tribunal should determine its own jurisdiction first if at all possible ...
>
> I cannot think that such a course prejudices the claimants. It is open to them to engage with the arbitral proceedings and file such evidence as they wish directed at the authority/jurisdiction issue. If they succeed before the arbitrator on the substantive jurisdiction question, then the path is clear for the claimants to apply to pursue their claims against the defendant in this court."[314]

His Lordship therefore concluded that "for the sake of good order, and to avoid duplication, it seems to me that Orange's claim should be stayed behind the determination of the arbitral dispute".[315]

The plaintiff in *FH Holding Moscow Ltd v AO UniCredit Bank and Another*[316] is a Cyprus company that does business in Russia. It borrowed some €43 million from the defendants under a loan transaction. As with all complex commercial transactions, this loan involved a suite of contracts. On one hand, the overarching Facility Agreement was governed by English law and contained a clause which required all disputes to be resolved by arbitration, seated in Vienna, conducted under the Rules of Arbitration of the Vienna International Arbitral Centre. On the other hand, the Mortgage Agreement (under which various assets owned by FH Holding were provided as security for the loans) stipulated that "[a]ny dispute arising out of or in connection with this Agreement shall be referred to and finally settled by the Commercial Court of Moscow (the Court) in accordance with the laws of the Russian Federation".

Due to Russian counter-sanctions prohibiting transactions in euros, FH Holding was unable to discharge its repayment obligations. The first defendant therefore commenced court proceedings in Moscow, asserting that an Event of Default under the Facility Agreement had taken place and sought foreclosure of the mortgaged assets pursuant to the Mortgage Agreement. FH Holding sought an ASI, on the basis that the dispute should be resolved by arbitration in Vienna, pursuant to the arbitration clause in the Facility Agreement.

In determining whether to grant the requested ASI, Henshaw J considered: (1) whether there was a breach of the arbitration agreement; and (2) whether the Moscow proceedings were vexatious and oppressive.

Insofar as the first issue was concerned, his Lordship found it appropriate to first construe the two inconsistent dispute resolution clauses in the context of the entire transaction as a whole, and then to consider the nature of the dispute in question. He took the view that the dispute "falls within the scope of the Mortgage Agreement jurisdiction clause, as well as the Facility Agreement Arbitration Agreement" and, furthermore, "it cannot be said that the dispute falls more naturally within" one or the other.[317] Consequently, the learned judge concluded that "I am not persuaded that there is a high probability, or a high degree of assurance, that the Moscow proceedings are in breach of the Arbitration Agreement".[318]

As for the second issue, his Lordship noted this ground for seeking an ASI arises independently from FH Holding's contention that the Moscow proceedings were brought in breach of an arbitration agreement. He therefore concluded that that it would be just and convenient to grant an ASI on the vexatious/oppressive ground for, inter alia, the following reasons:

> "This is not, therefore, a case where (as is often the case) an injunction is sought on the vexation/oppression ground in order to prevent indirect circumvention of an English jurisdiction clause

[313] See paras 89 to 90.
[314] At paras 97 and 98.
[315] At para 101.
[316] [2025] EWHC 3111 (Comm); [2025] 2 Lloyd's Rep 593.
[317] At paras 55 to 56.
[318] At para 62.

> or an arbitration clause, and hence to protect the jurisdiction of the English court or the arbitral tribunal. The court accordingly must proceed with great caution, given the requirements of comity, and give careful consideration to whether it is justifiable to interfere in the way proposed with the foreign court's processes ...
>
> I am not persuaded either that the English court has sufficient interest in the matter, or that the injunction sought would be consistent with the requirements of comity. On the hypothesis on which the question arises, the only links with England are that the Facility Agreement is governed by English law, though subject to VIAC arbitration, and [the second defendant] has a branch in England. However, the execution proceedings are brought under the Mortgage Agreement rather than the Facility Agreement, and have no demonstrated link with [the second defendant]'s English branch. The injunction would be to prevent [the first defendant], a Russian company, from pursuing foreclosure proceedings in respect of Russian real property, owned by a Cypriot company tax resident and only operating in Russia, properly brought before the Russian court pursuant to a Russian law contract with a Russian jurisdiction clause. The connection with the Russian court is thus very strong, whereas the English court's legitimate interest in the matter is tenuous."[319]

Eagle-eyed readers will have noticed that the arguments raised by FH Holdings in this present case are quite similar to those featured in the previously discussed cases of *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others*[320] as well as *JP Morgan Securities plc v VTB Bank PJSC*.[321] And yet, all three outcomes are noticeably different. This can mean only one thing: these issues (ie, whether an ASI will be granted in response to: (i) a breach of an arbitration agreement; and/or (ii) vexations and oppressive proceedings) depend heavily on the unique circumstances in each case. And, in our view, that is how it should be.

In 李鳳欣 *and Another v Harvest Trade Investments Ltd*[322] the Hong Kong Court of First Instance granted a limited AAI to restrain the defendants from pursuing certain claims in a Hong Kong-seated arbitration.

> Whether an ASI will be granted in response to (i) a breach of an arbitration agreement; and/or (ii) vexations and oppressive proceedings depends heavily on the unique circumstances in each case. And, in our view, that is how it should be

The dispute arose out of a sale and purchase agreement, which contained the following dispute resolution clause: "either party may submit the dispute to the judicial authorities of the Hong Kong Special Administrative Region for litigation or arbitration".

In 2019 the defendants commenced arbitral proceedings at CIETAC (Beijing), which ultimately resulted in an award largely in the defendant's favour (the "First Arbitration"). Subsequently, the defendants commenced another arbitration, this time administered by CIETAC (Hong Kong), against (inter alios) the plaintiffs (the "Second Arbitration"). The plaintiffs immediately raised jurisdictional objections with CIETAC (Hong Kong), and while the jurisdictional objections were still pending determination, the plaintiffs also applied to the Hong Kong courts to seek an AAI to restrain the defendant from pursuing the arbitration proceedings.

It did so on four grounds: (1) the arbitration agreement was not valid; (2) the Second Arbitration was not permissible under the arbitration agreement; (3) the Second Arbitration was vexatious, oppressive, and/or abusive because the dispute had already been decided in the First Arbitration; and (4) the second plaintiff was not a proper respondent.

Before addressing the parties' arguments, DHCJ Jonathan Wong reviewed the legal principles pertaining to the grant of an AAI. Citing 廈門新景地集團有限公司 *v Eton Properties Ltd and Another*[323] (a case we briefly covered in our 2023 review[324]), he emphasised (that:

[319] At paras 65 and 66.
[320] [2025] EWCA Civ 369; [2025] 1 Lloyd's Rep 518.
[321] [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15.
[322] [2025] HKCFI 2004.
[323] [2023] HKCFI 1327.
[324] Arbitration law in 2023: a review of developments in case law", available on i-law.com.

> "(1) Whilst the court has the jurisdiction and power under section 21L of the High Court Ordinance Cap 4 to grant an anti-arbitration injunction, the power to grant such an injunction must be exercised not only with great caution and in circumstances which can be shown to be wholly exceptional, but also with due and proper regard to the objectives and principles of the autonomy, independence and finality of arbitration ...
>
> (2) Two conditions have to be satisfied before the power to grant an anti-arbitration injunction may be exercised, namely: (a) the injunction does not cause injustice to the claimant in the arbitration, and (b) the continuance of the injunction would be oppressive, vexatious, unconscionable or an abuse of process."[325]

Turning to address the issues in dispute, the learned judge noted that the jurisdictional objection raised with CIETAC (Hong Kong) relied on the same four grounds made before the court. He then made the following observations:

> "4.3 Grounds (1), (2) and (4) essentially raise a dispute over the validity of Clause 12.2 of the Agreement. Where there is a dispute over the validity of an arbitration agreement, it would generally be appropriate for that issue to be left in the first instance to be determined by the arbitral tribunal ...
>
> 4.4 ... unless the point is clear, the court should not attempt to resolve the issue and the matter should be stayed in favour of arbitration, as it is for the tribunal to decide first on its jurisdiction.
>
> 4.14 In the light of the principles set out above, it seems to me that the existence of the Pending Jurisdictional Challenges is a weighty factor against the grant of the injunctive relief sought by Ps, at least in respect of Grounds (1), (2) and (4) which are typical jurisdictional challenges."

Given that none of grounds (1), (2), or (4) were "clearly shown" on the facts of the case, there was no justification for the court to determine the same issues in parallel. Hence, the proper course of action was to allow the tribunal to decide on its own jurisdiction. For this reason, the court refused to grant an AAI on the basis of grounds (1), (2), or (4).

[325] At para 4.1.

Insofar as ground (3) was concerned, the court began by recognising and accepting that "it is within the jurisdiction of the tribunal to decide questions of res judicata or issue estoppel, which go to the merits of the defence and can be raised by the Plaintiff as an answer to the claims made by the Defendants in the New Arbitration".[326] Thus, the case for res judicata or issue estoppel must, once again, be "clearly shown" in order to justify the grant of an AAI.[327]

The court then carried out a side-by-side comparison of the various issues raised in the First and Second Arbitrations. It concluded that one overlapping issue – namely that relating to the issue of liquidated damages – was decided against the defendant in the First Arbitration.[328] Applying the aforementioned principles, the court held that re-making this specific claim in the Second Arbitration would indeed be vexatious, oppressive, and an abuse of process.[329] A limited AAI was granted on this basis.

This case emphatically illustrates the high threshold that must be met before an AAI is to be granted and further provides a practical example of the substance that is required to meet that high threshold.

(5) Releasing an ASI

We have been diligently following the saga that is *UniCredit Bank GmbH v RusChemAlliance LLC* in the 2023 and 2024 editions of this review and, in this latest instalment, the story takes a surprising and unexpected turn. UniCredit, after securing a hard-fought victory before the English Supreme Court[330] to maintain an ASI against *RusChemAlliance* ("RusChem"), now seeks to revoke the very same ASI.

To recap the facts, UniCredit is a German bank. In 2021 it issued bonds to guarantee the liabilities of two German contractors hired to build LNG processing plants in Russia for RusChem. Each of the bonds was governed by English law and provided for arbitration in Paris. Due to EU sanctions imposed following the Russian invasion of Ukraine, the German contractors were unable to perform the building contract and, furthermore, UniCredit was unable to fulfil RusChem's demand for payment under

[326] At para 4.6.
[327] At para 4.7.
[328] At para 7.7.
[329] At para 7.10.
[330] [2024] UKSC 30; [2024] 2 Lloyd's Rep 466.

the bonds. RusChem therefore commenced proceedings before the St Petersburg Court for payment under the bonds.

Following an application by UniCredit, the English Court of Appeal:[331] (i) granted a final ASI restraining RusChem from pursuing claims under the bonds in any Russian or other court; and (ii) ordered RusChem to discontinue its Russian proceedings in respect of the bonds ("CA's Order"). As discussed in the 2024 edition of this review, the CA's order was upheld by the English Supreme Court.

Since then, RusChem has applied for and obtained a ruling from the St. Petersburg Court (the "Russian Ruling"). Inter alia, the Russian Ruling: (i) prohibited UniCredit from initiating or continuing proceedings (or enforcing any judgments) against RusChem except in the Russian courts; and (ii) required UniCredit to take all measures within its control to cancel the CA's Order, failing which it would have to pay €250 million to RusChem.

In the face of the Russian Ruling, UniCredit was forced to accept defeat; it concluded that contempt proceedings against RusChem in the English courts would have no practical effect because RusChem has no assets outside Russia. It therefore applied to revoke or vary the ASI.

The Court of Appeal ultimately granted UniCredit's application and revoked the injunctive components of the CA's Order, but left the declaratory parts intact. In coming to this conclusion, the Court of Appeal[332] addressed five issues:

> "(i) whether UniCredit is actually at risk of being forced to pay a penalty, (ii) whether the court has power to revoke or vary a final order for an anti-suit injunction, (iii) whether UniCredit has been coerced into making this application, and if so, whether that weighs against acceding to it, (iv) whether there are English public policy reasons for refusing to accede to the application, and, if so, how strongly they militate in favour of refusing it, and (v) whether the application should be allowed and, if so, whether the CA's Order should be revoked or varied."[333]

While these issues are not novel, the context and circumstances in which they arise are highly relevant to the jurisprudence of international arbitration. It is therefore worth discussing them in some depth.

On the first issue, UniCredit submitted that compliance with the Ruling not only requires it to make the present application, but further requires said application to be granted. Sir Geoffrey Vos MR, delivering the judgment of the court, disagreed with the latter proposition.[334] Nevertheless, "there is a risk that, if this court did not accede to UniCredit's application, the St Petersburg Court would still impose the financial penalty on UniCredit" because "we cannot predict how the St Petersburg Court would judge whether or not UniCredit had indeed taken all measures within its control to achieve the cancellation of the CA's Order".[335]

On the second issue, his Lordship concluded (upon reviewing the relevant authorities) that the Court of Appeal did indeed have the power to revoke or amend the CA's Order.[336] Amongst the various reason given, two in particular are worth emphasising:

> "24. ... this is private litigation between commercial parties. It would be very strange if a party that had obtained an injunction, even a final one, could never return to the court to ask that, in the changed circumstances that followed the grant of the injunction, it wanted it discharged ...
>
> 25. ... in the special situation of an anti-suit injunction, it is commonplace for competing orders to be made against the parties in different jurisdictions. Eventually, it is one party that 'wins' the jurisdiction battle, and the parties either agree or are constrained to accept that the litigation will take place in that party's chosen jurisdiction. It would be strange indeed if the party that obtained the 'losing' anti-suit injunction could not return to ask for it to be discharged even if it was an order made after a trial."

As for the third issue, his Lordship began by highlighting that "an anti-suit injunction is a coercive remedy wherever it is granted. The objective of any such order is to require the defendant to litigate against its will in one jurisdiction rather than another".[337] But, even then, "UniCredit is a major bank, capable of making its own decisions. It is making this application, no doubt, because its board has decided that it is in its own commercial interests to do so. We cannot second guess that decision.[338] Therefore, whilst UniCredit has in some sense been coerced,

[331] [2024] EWCA Civ 64; [2024] 1 Lloyd's Rep 350.
[332] [2025] EWCA Civ 99; [2025] 1 Lloyd's Rep 264.
[333] At para 10.
[334] See para 16.
[335] At para 17.
[336] See para 27.
[337] At para 28.
[338] At para 30.

this is not a factor that weighs heavily against granting UniCredit's present application.

Regarding the fourth issue, the court held that "there are some English public policy reasons for refusing to accede to UniCredit's application, but they do not militate, as strongly as one might initially have thought, in favour of refusing the application".[339] Perhaps the most pertinent public policy issue discussed is whether the English court will, by granting the application, have condoned a breach of the treaty obligation under article II(3) of the New York Convention as owed by the Russian Federation to the other signatories. In this connection, his Lordship endorsed the view of the advocate to the court:

> "However, it is doubtful that the Russian Federation would be in continuing breach in circumstances where UniCredit may be taken to have waived RusChem's obligation to arbitrate. In addition, although it is arguable that discretionary powers ought to be exercised in a manner that ensures that the United Kingdom is not in breach of its own treaty obligations, it is more debateable whether discretionary powers should be exercised with a view to ensuring treaty compliance by foreign states. Accordingly, my current view is that the public policy interest in encouraging compliance with the New York Convention ought not to operate as a material factor in exercising the Court's discretion ..."[340]

In relation to the fifth and final issue, his Lordship resolved to discharge the injunctive parts of the CA's Order. Having regard to the previous findings, he concluded that "in those circumstances, it would be unjust and unfair to force UniCredit to risk massive penalties in Russia that may be avoidable if the CA's Order is discharged or varied".[341]

[339] At para 41.
[340] At para 34.
[341] At para 43.

VII. Other types of court assistance : disclosure

(1) Non-party document production

Arbitration is contractual – and rests on a pillar of party consent. Tribunals generally have no power over third parties. Generally courts also cannot compel non-party disclosure in arbitration; however national arbitration laws may assist. In *VXJ v FY and Others*[342] Calver J of the English Commercial Court explained the law and underlined the need to be "specific" many times. This was a failed application by the claimant to court for the production of certain documents or categories of documents by the second defendant (D2) and third defendant (D3) by way of: (i) court-ordered witness summonses pursuant to section 43 of the 1996 Act (securing the attendance of witnesses); alternatively (ii) a court order for the copying of documents under section 44(2)(c) (court power to make orders relating to property which is the subject of arbitration proceedings or as to which any question arises in the proceedings). The prior permission of the tribunal is normally required under sections 43(2) and 44(4).

Tribunals generally have no power over third parties. Generally courts also cannot compel non-party disclosure in arbitration; however national arbitration laws may assist

The arbitration in support of which the application was made was a London seated UNCITRAL 2013 arbitration under an Investment Agreement concerning a valuable minerals mining project and involved a counterclaim. Applications had already been made to the tribunal. Controlling shareholders/affiliated companies D2 and D3

[342] [2025] EWHC 2394 (Comm); [2025] 2 Lloyd's Rep 428.

were not parties to the arbitration; however, the tribunal in procedural orders directed FY to use "best efforts" to obtain the relevant documentation. VXJ argued that FY had failed to comply with the tribunal's direction and obtained the required permission from the tribunal to apply to the court.

Paragraphs 26 to 28 of the judgment contain several useful pointers:

> "(1) Each document should be individually identified in the witness summons, although a compendious description of several documents will suffice provided that the exact document in each case is clearly indicated ...
>
> (2) ... the person to whom the witness summons is addressed should be told clearly when and where he must attend and what he must bring with him. The documents must be identified with sufficient certainty to leave no real doubt in the mind of the person to whom the summons is addressed about what he is required to do ...
>
> (3) The particular documents must be actual documents, about which there is evidence which has satisfied the court that they exist, or that they did exist, and that they are likely to be in the respondent's possession. Actual documents are to be contrasted with conjectural documents which may or may not exist ... It is sufficient to show that the specified documents are likely to exist, but it is not sufficient to show that they may or may not exist ...
>
> ... [T]he applicant is not entitled to seek production of documents with a view to ascertaining whether they may be useful rather than with a view to adducing them in evidence of proof of some fact; and the fact that the material before the arbitrator might be improved by the production of the documents does not necessarily justify the conclusion that the arbitrator is unable to dispose fairly of the arbitration without them ... the witness must not be required to undertake an unfairly burdensome search through his records to find this or that document or to see if he has any documents relating to a particular subject matter.
>
> Gross J (as he then was) helpfully sought to pull together the various requirements of a valid witness summons by reference to the position under the 'old Rules of the Supreme Court in *South Tyneside* [*Council of the Borough of South Tyneside v Wickes Building Supplies Ltd* [2004] EWHC 2428 (Comm)] ..."

(2) Mareva

In 周惠明 *(Zhou Hui Ming) v* 挪信新能源科技 *(*南通*)* 有限公司 *(Noxin) and Another*[343] the Hong Kong court (Mr Recorder William Wong SC in Chambers) continued a worldwide Mareva injunction and granted the immediate appointment of interim receivers. The Hong Kong court may appoint receivers in support of a Mareva injunction when it is "just and convenient to do so" under section 21L of the High Court Ordinance (Cap 4). The case had been adjourned to give the third parties the opportunity to present their case. This case serves as a useful reminder of the relevant legal tests.

The background of the case involved four Shanghai Arbitration Commission awards. The Hong Kong court had already granted the applicant leave to enforce said awards (as court judgments) and worldwide Mareva injunctions both against the respondents and Chabra injunctions against third parties. In addition the court had granted disclosure orders requiring the third party to reveal the status of its assets. The third parties gave incomplete disclosure and so failed to fully comply with statutory and court-ordered disclosure obligations.

In this 2025 judgment the court did not only continue the Mareva injunction:

> "The requirements for granting worldwide Mareva relief are well established. The applicant should show (1) a good arguable case on the merits, (2) the respondents have insufficient assets within the jurisdiction to satisfy the claim and there are assets without the jurisdiction, and (3) there is a real risk of dissipation of the respondents' assets to render judgment nugatory: White Book 2025 at §29/1/8.
>
> As to risk of dissipation specifically: ... (c) Indicia which strongly support an inference of risk of dissipation include (1) evidence of actual dissipation of assets, (2) failure to comply with disclosure requirements, and (3) more generally, evidence of dishonest or fraudulent conduct."[344]

The court also held that given the inadequate disclosure, the Mareva injunction was insufficient to preserve the third party's assets for enforcement and ordered immediate appointment of interim receivers over those assets.

[343] [2025] HKCFI 1503.
[344] At paras 14 and 15.

VIII. Enforcement of awards: penalties and sanctions

(1) Discussion of typical costs orders

As we have underlined in our past reviews, 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. 2025 was no different: in *CC v AC*,[345] indemnity costs were awarded to CC following having successfully defended an application to set aside an enforcement order under section 86(1)(c) of the Arbitration Ordinance.

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There are also costs consequences of unmeritorious applications. For example, in 周惠明 *(Zhou Hui Ming) v* 挪信新能源科技 *(*南通*)* 有限公司 *(Noxin) and Another*,[346] the court conceded, at para 7, that the third parties were "entitled to take out whatever applications they like but there are always costs consequences for unmeritorious applications ... particularly so when ... the Mainland court swiftly dismissed parallel applications in the Mainland to set aside the Awards based on the same evidence, on the grounds that Sun's assertion were 'obviously baseless and not to be believed'".[347] At paras 11 and 12, the consequences were spelled out: "accept that ... unreasonable maintenance of the Setting Aside Summons is an attempt to frustrate enforcement ... I agree ... a costs order on indemnity basis is justified ...". Similarly, in *XX and Others v ZZ*,[348] the cost consequences of dismissal of an application by 10 plaintiffs seeking to overturn a tribunal's preliminary ruling on jurisdiction were indemnity costs to costs and a certificate for two counsel[349] to the successful defendant . Parties can also be penalised for seeking to avoid arbitration clauses. As we saw above, in *Techteryx Ltd v Legacy Trust Co Ltd and Others*,[350] the CFI granted applications by non-parties to the arbitration agreement for a stay in favour of arbitration under article 8(1) of the Model Law with a costs order against the plaintiff on an indemnity basis, with certificate for two counsel.

As regards failure to mediate, we have above discussed that the English courts following *Churchill v Merthyr Tydfil County Borough Council*[351] are increasingly ordering indemnity costs.

(2) "End of the road" debtors

Unfortunately, it is sometimes the case that debtors try to avoid payment in every possible way. However, fortunately, arbitrators and the courts can make this strategy less attractive. In *Deinon Insurance Brokers LLC v Reen*[352] the English High Court refused a stay application by defendants under CPR 83.7 for execution and enforcement of six court orders on four arbitral awards.

Deinon, a UAE company providing insurance and reinsurance services, had won four arbitrations in respect of unpaid loans against the defendants and secured permission to enforce those awards under section 66 of the 1996 Act. While the defendants subsequently made section 68 and 69 applications, all of these had been rejected with leave to appeal/ applications to set aside refused: "The end of the road has been reached as regards all challenges".[353]

[345] [2025] HKCFI 855, discussed above in section II(1)(c): "What if the respondent's contact details have changed?".
[346] [2025] HKCFI 1503, discussed above in section VII(2): "Mareva".
[347] At para 7.
[348] [2025] HKCFI 3089, discussed above in section II(4): "Who decides – the tribunal or the court?"
[349] At para 103.
[350] [2025] HKCFI 665 and [2025] HKCFI 787, discussed above in section II(8): "Who are the parties?"
[351] [2023] EWCA Civ 1416; [2024] BLR 12, discussed above at section II(7): "Alternative dispute resolution".
[352] [2025] EWHC 1263 (Comm).
[353] At para 11.

CPR 83.7 applies in all cases where a party seeks a stay of execution of a money judgment. This power is discretionary and any applicant must prove there are "special circumstances" rendering enforcement inexpedient

Money judgments were entered for Deinon in the terms of the awards. The defendants sought a stay of these judgments pending conclusion of Dubai proceedings (which seem to have been commenced only "after the numerous challenges had been dismissed in the English courts"[354]), alleging a "real risk of prejudice" to them if they were enforced. This was argued on the basis that: (1) Deinon was currently under the control of a person who wrongly claimed to be Deinon's beneficial owner; (2) Deinon's true beneficial owner was Mr Dastur (the brother-in-law of one of the defendants); (3) Mr Dastur had issued proceedings in Dubai local courts to prove this; and (4) if those proceedings succeeded, Mr Dastur would not enforce any of the awards. Therefore, paying money to Deinon would allow the current owner of Deinon to purportedly misappropriate and dissipate the monies.

CPR 83.7 applies in all cases where a party seeks a stay of execution of a money judgment. This power is discretionary and any applicant must prove there are "special circumstances" rendering enforcement inexpedient. Well-known examples of where that discretion might be exercised are stays pending appeals or determination of cross-claims. In this case, the court refused a stay. Paragraph 28 of the judgment is particularly damning:

> "Not only are there no special circumstances but to grant any form of stay would defeat the underlying principles of finality of arbitration awards. The Dubai Proceedings, when combined with the application for a stay, are in substance a collateral attack on the Awards. They should be seen for what they are, a device created to put off the time when Deinon itself actually receives the sums which it should have been paid long ago. The Dubai Proceedings and Application bear all the hallmarks of an unsuccessful defendant in arbitration proceedings thinking *all challenges have failed but what can I do next to avoid actually paying the claimant*?"

One might ask whether these tactics were worth it? In the proceedings against Mr Reen, Stephen Auld KC found KMDH and Mr Reen (the applicants) liable in their respective Partial Final Awards to repay Deinon certain sums and interest under loan arrangements. There were further awards as regards costs.[355] The Partial Final Award of Sir Nigel Teare on the principal money award was issued against KMDH on 16 August 2023. A costs award against KMDH followed.[356] Unusually, the judgment sets out schedules of awards and judgments rendered. The "Deinon v Reen – Schedule of Arbitral Awards and subsequent Judgments" adds up to £871,415.16 whereas the "Deinon v KMDH – Schedule of Arbitral Awards and subsequent Judgments" adds up to US$1,071.320 and £339,158.51. The disputed loans themselves were only in the sum of £400,000 and US$1,017,320. However, it is also worth noting that the costs awarded to Deinon following some of the court proceedings were fairly modest.

[354] At para 20.

[355] At para 3.
[356] At para 8.

IX. Investor–State Dispute Settlement (ISDS)

By Isuru Devendra

Our focus in this review is mainly on international commercial arbitration. However, investor-state dispute settlement (ISDS) cases also give rise to court proceedings, such as challenges to arbitrators (as we have seen above[357]), challenges to awards and attempts to enforce awards against states and state property. These court proceedings often concern issues relevant to commercial disputes as well. Significant ISDS developments during 2025 included the following cases which principally concern challenges to ISDS awards and the enforcement of New York Convention and ICSID awards.

(1) State immunity and enforcement of New York Convention awards

CC/Devas (Mauritius) Ltd and Others v Republic of India[358] was a significant decision by the English Commercial Court concerning the immunity of states from the jurisdiction of the English courts in proceedings to enforce a New York Convention award. The case concerned an application by the claimants to seek enforcement of an arbitral award issued by a tribunal seated in The Hague, Netherlands. The PCA[359]-administered arbitration had been commenced by the claimants in respect of a dispute under the Mauritius-India BIT. The core issue before the Commercial Court was whether India had waived its immunity from the jurisdiction of the English courts, pursuant to the exception to immunity in section 2(2) of the State Immunity Act 1978 ("SIA"). Section 2(2) of the SIA provides:

> "A State may submit after the dispute giving rise to the proceedings has arisen or by a prior written agreement; but a provision in any agreement that it is to be governed by the law of the United Kingdom is not to be regarded as a submission."

The claimants argued that India's ratification of the New York Convention constituted a prior written agreement of India submitting to the jurisdiction of the English courts for the purposes of section 2(2) of the SIA. In doing so, the claimants drew on the similarity in language between article III of the New York Convention and article 54(1) of the ICSID Convention:

- Article III of the New York Convention provides that: "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles".
- Article 54(1) of the ICSID Convention provides that: "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State".

Article 54(1) of the ICSID Convention had in England and other jurisdictions been held to constitute a prior written agreement submitting to the jurisdiction of the English courts for the purposes of section 2(2) of the SIA: see *Infrastructure Services Luxembourg Sàrl v Kingdom of Spain; Border Timbers Ltd and Another v Republic of Zimbabwe*.[360]

The Commercial Court held that article III of the New York Convention did not have the same effect as article 54(1) of the ICSID Convention for the purposes of section 2.2 of the SIA. Important to the court's decision was the inclusion of the words "in accordance with the rules of procedure of the territory where the award is relied upon" in article III of the New York Convention, which do not appear in article 54(1) of the ICSID Convention. The court held that those words preserved state immunity, because under English law state immunity is a procedural rule rather than a substantive one. On this basis, the court held that India had not submitted to the jurisdiction of the English courts and accordingly had not waived state immunity from jurisdiction pursuant to section 2(2) of the SIA.

The claimants were, therefore, unable to enforce their award in England pursuant to the exception to state immunity from jurisdiction in section 2(2) of the SIA. The proceedings nevertheless will continue to consider whether there may be an exception to India's immunity from the jurisdiction of the English courts pursuant to section 9(1)

[357] See section IV(4): "Challenges to arbitrators".
[358] [2025] EWHC 964 (Comm); [2025] 1 Lloyd's Rep 499.
[359] Permanent Court of Arbitration.
[360] [2024] EWCA Civ 1257; [2025] 1 Lloyd's Rep 66, which was recently upheld by the UK Supreme Court in [2026] UKSC 9; [2026] Lloyd's Rep Plus 24.

of the SIA ("Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration").

Hulley Enterprises Ltd and Others v The Russian Federation[361] was another 2025 case in England that concerned state immunity issues arising in the enforcement of a New York Convention arbitral award. The underlying arbitrations are the well-known cases commenced by the former shareholders of Yukos Oil Company against the Russian Federation under the Energy Charter Treaty ("ECT") in which identically constituted tribunals rendered awards finding that Russia had unlawfully expropriated the claimants' investments in Russia and ordered Russia to pay more than US$50 billion in damages. The arbitrations were seated in The Hague, Netherlands, and Russia had challenged the awards in the Dutch courts, which upheld the awards and dismissed Russia's primary argument that there was no valid arbitration agreement as Russia had never consented to arbitration under the ECT.

The claimants applied to enforce the awards in England. With regard to Russia's prima facie immunity from the jurisdiction of the English courts, the claimants relied on the exception to state immunity from jurisdiction in section 9 of the SIA. Section 9 provides that: "Where a State has agreed in writing to submit a dispute which has arisen, or may arise, to arbitration, the State is not immune as respects proceedings in the courts of the United Kingdom which relate to the arbitration". Russia argued that the English courts could not defer to the tribunal or the Dutch courts as to whether there is a valid arbitration agreement and instead had to determine the question for itself. Russia then, effectively, repeated its arguments made in the Dutch courts in which it claimed there was no valid arbitration agreement.

At first instance,[362] in 2023, Cockerill J had held that the claimants were able to rely on the exception to state immunity from jurisdiction in section 9 of the SIA. This was on the basis that Russia was precluded from arguing that the arbitration agreement was not valid because the judgment of the Dutch courts on the same issue gave rise to an issue estoppel. Russia appealed, arguing that: (i) issue estoppel does not apply to matters of state immunity under the SIA; (ii) the nature of state immunity constitutes "special circumstances" under the doctrine of issue estoppel that militate against applying an issue estoppel; and (iii) the public policy considerations relating to state immunity should prevail over the public policy considerations relating to issue estoppel.

> Issues of state immunity under the State Immunity Act 1978 do not exclude the application of ordinary rules of English law, including issue estoppel

In its February 2025 judgment the Court of Appeal rejected these arguments and dismissed Russia's appeal. The Court of Appeal affirmed Cockerill J's decision that the Dutch court's judgment which had found there to be a valid arbitration agreement gave rise to an issue estoppel that precluded Russia from re-arguing the same point before the English courts. The court held in particular that a foreign judgment issued by the courts of the seat can give rise to an issue estoppel with respect to questions relating to state immunity under the SIA, provided the foreign judgment meets the requirements for recognition under section 31 of the Civil Jurisdiction and Judgments Act 1982. The Court of Appeal also rejected Russia's argument that the nature of state immunity constituted "special circumstances" such that issue estoppel should not apply, as well as its argument that state immunity should prevail over issue estoppel as a matter of public policy. With regard to the latter, the Court of Appeal explained that issues of state immunity under the SIA do not exclude the application of ordinary rules of English law, including issue estoppel, which the court stated was a rule of substantive law that is founded on the principle of public policy that there should be finality in litigation. Accordingly, the court held that there was no question of making a choice between competing public policies.

[361] [2025] EWCA Civ 108; [2025] 1 Lloyd's Rep 411.
[362] [2023] EWHC 2704 (Comm); [2023] 2 Lloyd's Rep 648.

(2) Whether an ICSID Award can be assigned

In *Operafund Eco-Invest SICAV plc and Another v Kingdom of Spain*,[363] the English Commercial Court was asked to determine whether an ICSID award issued in proceedings arising under the ECT could be assigned. The English proceedings arose from an application by the claimants in the ICSID arbitration seeking to register the award in England, in which proceedings the claimants applied for an order that a third party, Blasket Renewable Investments LLC, be substituted for the claimants as the claimant in the English proceedings. The latter application was made under CPR 19.2(4)(a) on the basis that the claimants purported to assign their interests in the award to Blasket by an assignment agreement between the claimants and Blasket. Spain opposed the application, arguing that it had not given express permission for the assignment of the award and, in those circumstances, that the award was not assignable as a matter of international law. Hence, the jurisdictional requirements of CPR 19.2(4)(a) had not been satisfied.

The Commercial Court dismissed the application to substitute Blasket in place of the claimants. In doing so, the court observed that: (i) the ICSID Convention does not expressly provide for, or preclude, the assignment of ICSID awards; and (ii) there is no customary international law rule which provides whether awards are assignable or not. In those circumstances the court proceeded to determine whether the true meaning and effect of primarily the ICSID Convention, and to a lesser extent the ECT, permits assignment of the award. This analysis was conducted in accordance with the rules of treaty interpretation in articles 31 and 32 of the Vienna Convention on the Law of Treaties 1969. The court concluded that, as a matter of construction of the ICSID Convention, ICSID awards are not capable of assignment. The court then proceeded to consider whether the rights that accrued to the claimants from the commencement of the proceedings to register the award in England can be assigned as a matter of English law. It found that they could not, because registration of an ICSID award was held not to create new substantive rights. This creates a difference between England and Australia with respect to whether an ICSID award can be assigned and enforced by the assignee.[364]

The case also involved consideration by the court of an argument by the claimants that a judgment of the Federal Court of Australia which held that the award could be assigned under international law created an issue estoppel that precluded Spain from arguing the same point before the English courts. The Commercial Court held that the claimants and Blasket had failed to establish that Spain was estopped from advancing its substantive arguments on the assignability of the award, as there was as yet no final order in the Australian proceedings capable of triggering the right to assert an issue estoppel; and by appearing in the Australian proceedings for the purpose of asserting its claim to state immunity, Spain was not submitting to the jurisdiction of the Australian courts, with the result that the Federal Court of Australia's judgment is not capable of (or at least yet) being enforced in England.

(3) What constitutes substantive jurisdiction for section 67 of the Arbitration Act?

In our 2024 review,[365] we reported on the English Commercial Court's decision in *Republic of Korea v Elliott Associates LP*,[366] which rejected South Korea's challenge to the tribunal's award under section 67 of the Arbitration Act 1996. South Korea had argued that its consent to arbitration in article 11.16 of the US–Korea Free Trade Agreement ("FTA") was conditioned by article 11.1 of the FTA, which provides that: "This Chapter applies to measures adopted or maintained by a Party relating to: (a) investors of the other Party …". South Korea argued that the tribunal lacked jurisdiction because there was no relevant "measure" nor any measure "adopted or maintained" by South Korea and no measure related to the claimant or its investment for the purposes of article 11.1 of the FTA.

The Commercial Court dismissed South Korea's challenge, finding that its offer to arbitrate was free-standing and not conditional on the requirements of article 11.1 of the FTA being satisfied, and accordingly the grounds of challenge did not go to the tribunal's substantive jurisdiction.

South Korea appealed the Commercial Court's decision. In 2025 the Court of Appeal allowed the appeal. It held

[363] [2025] EWHC 2874 (Comm); [2025] 2 Lloyd's Rep 614.
[364] See below our discussion of the position in Australia, in section IX(1): "State immunity and enforcement of New York Convention Awards".
[365] "Arbitration law in 2024: a review", available on i-law.com.
[366] [2024] EWHC 2037 (Comm); [2024] 2 Lloyd's Rep 363.

that the requirements in article 11.1 of the FTA (that measures be "adopted or maintained" by a party and "relate to" investors/investments) are indeed conditions of the state's consent to arbitrate. The challenge has been remitted to the Commercial Court for determination.

(4) Late objections and whether trust property can be a protected investment

In our 2024 review we reported on the Commercial Court's decision in *Czech Republic v Diag Human SE*,[367] which considered several challenges by the Czech Republic under sections 67 and 68 of the Arbitration Act 1996 to an award issued in a London-seated UNCITRAL arbitration between Josef Stava (a Swiss national) and Diag Human SE (a European company with its seat in Liechtenstein), as claimants, and the Czech Republic under a bilateral investment treaty (BIT). The Commercial Court upheld one challenge under section 68, on the basis that the tribunal had failed to decide an issue, which caused the Czech Republic substantial injustice. The court also provided important guidance on section 73, which may preclude parties from pursuing challenges not brought in a timely manner. The Commercial Court's judgment was appealed and was heard alongside an appeal from another judgment in the same proceedings,[368] in which the court determined that Mr Stava had retained de facto control of Diag Human SE following shares in the company being placed into a discretionary trust, which was sufficient for Diag Human SE to be a protected investor under the BIT.[369]

The Court of Appeal[370] considered: (i) whether the Commercial Court erred in holding that certain of the Czech Republic's grounds of challenge were not barred by section 73 of the Arbitration Act 1996; (ii) whether the Commercial Court erred in holding that the Czech Republic's objection relating to Mr Stava's disposal of his interest in the treaty-protected investments was not an issue going to substantive jurisdiction and did not fall within section 67 of the Arbitration Act; and (iii) whether the Commercial Court erred in finding that notwithstanding the fact that Mr Stava placed the shares of Diag Human SE into a discretionary trust, he nevertheless continued to control Diag Human SE, such that the company was a protected investor under the BIT.[371]

On the first appeal, (i) above, the Court of Appeal dismissed the appeal, finding that the timeliness objection itself falls within section 73 of the Arbitration Act 1996 since no objection to the timing of the Czech Republic's grounds of challenge was made during the arbitration; that the Czech Republic's challenges were made during the arbitration; that the Czech Republic's challenges were made within time as permitted by the tribunal and accordingly within the time permitted under section 73 of the Arbitration Act 1996 – and in any event admitted by the tribunal for the purposes of section 31(3) of the Arbitration Act. The Court of Appeal dismissed the second appeal, (ii) above, as well. It held that the Czech Republic's objection relating to Mr Stava's disposal of his interest in the treaty protected investments was not a jurisdictional issue for the purposes of section 30 of the Arbitration Act, as the relevant time for linking the investor and their investment for the purposes of the state's offer to arbitrate in article 9 of the BIT is when the investment is made.

The Court of Appeal did, however, allow the third appeal, (iii) above, holding that the BIT required de jure control, rather than merely de facto control, of Diag Human SE for it to be a protected investor, which Mr Stava did not have, either directly or indirectly, following the transfer his shares in Diag Human SE into a discretionary trust. Consequently, the Court of Appeal upheld the Czech Republic's objection to the substantive jurisdiction of the tribunal under section 67 of the Arbitration Act 1996 with respect to Diag Human SE and set aside the award to the extent it concerned Diag Human SE as a protected investor. This did not affect the tribunal's substantive jurisdiction in respect of Mr Stava's claims.

A subsequent second judgment was issued by the Court of Appeal concerning the impact of its decision to partially set aside the award on the basis of the third appeal above.[372] In that judgment, the Court of Appeal rejected the Czech Republic's argument that the award in favour of Mr Stava could not stand given the award in favour of Diag Human SE had been set aside. The court proceeded to order that the award be awarded in full to Mr Stava.

[367] [2024] EWHC 503 (Comm); [2024] 1 Lloyd's Rep 367.
[368] [2024] EWHC 2102 (Comm); [2025] 1 Lloyd's Rep 1.
[369] Article 1(1)(c) of the Czechia-Switzerland BIT defines the term "investor" as including "legal entities established under the law of any country which are, directly or indirectly, controlled by nationals of that Contracting Party or by legal entities having their seat, together with real economic activities, in the territory of that Contracting Party".
[370] [2025] EWCA Civ 588; [2025] 1 Lloyd's Rep 458.
[371] We summarise section 73 above, in section V(1)(c): "Loss of right to object (section 73)".
[372] [2025] EWCA Civ 998.

(5) State immunity and enforcement of New York Convention Awards

Australia is another jurisdiction in which the claimants in the abovementioned *CC/Devas (Mauritius) Ltd and Others v Republic of India* arbitration have sought to enforce their award. These proceedings have given rise to interesting issues of state immunity and enforcement of New York Convention awards. Like in the English proceedings, India resisted enforcement of the awards on the basis that it had not submitted to the jurisdiction of the Australian courts. At first instance,[373] Jackman J of the Federal Court rejected India's argument on the basis that India had submitted to the jurisdiction of the Australian courts, for the purposes of section 10 of the Foreign States Immunities Act 1985, by virtue of its ratification of the New York Convention and the terms of article III of the New York Convention[374] – the same argument India ran in the English proceedings. Jackman J also dismissed India's argument that India's reservation to the New York Convention precluded reliance on the New York Convention as a basis for any waiver to its immunity from the jurisdiction of the Australian courts. The reservation provides as follows:

> "India will apply the Convention only to recognition and enforcement of awards made in the territory of another contracting State. India will apply the Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law."

India appealed Jackman J's decision to the Full Court of the Federal Court of Australia. In *Republic of India v CCDM Holdings LLC and Others*,[375] the Full Court allowed the appeal, holding that India had not waived state immunity by ratifying the New York Convention. However, unlike the English courts which came to the same conclusion based on the text of article III of the New York Convention, the Full Court reached its decision on the basis of India's reservation to the New York Convention (see above). The Full Court found that, by making the reservation, India had qualified its obligations under the New York Convention, including that the scope of India's obligations under article III extended only to recognising as binding and to enforce arbitral awards which arose from legal relationships which are considered to be commercial under Indian law. In this regard, the Full Court found that the award in this case, which concerns a dispute under the Mauritius-India BIT, was not an award with regard to differences that arose from a commercial relationship (ie, was not within the scope of India's ratification of the New York Convention).[376] Consequently, the Full Court held that India's ratification of the New York Convention, and the terms of article III of the Convention, could not constitute a waiver to India's immunity from the jurisdiction of the Australian courts for the purposes of enforcing the Hague-seated New York Convention award.

> India's ratification of the New York Convention, and the terms of article III of the Convention, could not constitute a waiver to India's immunity from the jurisdiction of the Australian courts for the purposes of enforcing the Hague-seated New York Convention award

The difference in approach between the English courts and the Australian courts is notable and may need to be reconciled by courts in various New York Convention countries in due course, including with regard to whether an investor's dispute with India under an investment treaty arises from a commercial relationship under Indian law (which, as stated above, was determined by the Full Court of the Federal Court of Australia applying Australian law rather than Indian law due to the absence of evidence before the court on the latter).

[373] *CCDM Holdings LLC v The Republic of India (No 3)* [2023] FCA 1266.
[374] "Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."
[375] [2025] FCAFC 2; [2025] Lloyd's Rep Plus 73.
[376] Interestingly, the Full Court arrived at this conclusion applying Australian law due to the absence of evidence of Indian law on this issue before the court.

(6) Whether an ICSID award can be assigned

We have already discussed the English Commercial Court's decision in *Operafund Eco-Invest SICAV plc and Another v Kingdom of Spain* above.[377] In *Blasket Renewable Investments LLC v Kingdom of Spain*,[378] the Federal Court of Australia considered four applications to enforce in Australia ICSID awards against Spain. The applications were made by Blasket Renewable Investments LLC (in NSD2169/2019), 9REN Holding Sàrl (in NSD365/2020), Blasket Renewable Investments LLC (in NSD449/2020) and NextEra Energy Global Holdings BV and Another (in NSD415/2023). The two applications by Blasket Renewable Investments LLC were to enforce an award issued in favour of RREEF Infrastructure (GP) Ltd and RREEF Pan European Infrastructure Two Lux Sàrl and another award issued in favour of Watkins Holding Sàrl and Watkins (Ned) BV, each as claimants in the respective arbitration. Blasket claimed to be an assignee of the award in each of those two cases.

Spain objected to the jurisdiction of the Australian courts on the basis of state immunity. However, those objections were dismissed as the Federal Court held that Spain had waived its immunity to jurisdiction due to article 54 of the ICSID Convention, which Spain had ratified. The court also dismissed Spain's EU law and constitutional law-based arguments opposing enforcement.

The more interesting issue, however, was the Federal Court's consideration of whether two of the awards could be assigned to Blasket. Spain argued that it had no obligation under article 53 of the ICSID Convention to pay an assignee of an ICSID award and that Blasket did not have standing to enforce the award under article 54 of the ICSID Convention because it is not a "party" for the purposes of the provision. This, Spain argued, meant that section 35(4) of the International Arbitration Act 1974 cannot apply.[379] Spain also argued in the alternative that it had not waived immunity from the jurisdiction of the Australian courts in proceedings brought by a non-party to an award (ie, the assignee, Blasket).

On the other hand, Blasket argued that section 33(1) of the International Arbitration Act 1974 created a right under Australian law in favour of the award creditors, which right is capable of assignment. It also contended that, as a dualist jurisdiction, Spain's obligation to pay under article 53 of the ICSID Convention is a debt governed by Australian law under sections 32 and 33 of the International Arbitration Act 1974.

The Federal Court rejected Spain's argument on the assignability of the two awards. It held that, irrespective of whether the question of assignment is governed by international law or Australian law, Blasket is the proper assignee of the rights under and in respect of the relevant awards. The court reached its conclusion under international law by finding that: (i) under international law, there is no rule prohibiting the assignment or an award between a private party and a state or the assignment of awards more broadly; (ii) there is no prohibition in the ICSID Convention on assignment of rights under an award nor any express provision concerning assignment; (iii) any attempts to read in an implied prohibition to article 54 would be inconsistent with its ordinary meaning as well as the object and purpose of the ICSID convention; and (iv) the object and purpose of the ICSID Convention would be better served by allowing assignment by award creditors. Considered under domestic law, the court held that by operation of section 32 of the International Arbitration Act 1974,[380] Spain's obligation under article 53(1) of the ICSID Convention to abide by and comply with the terms of the awards had domestic legal effect. Accordingly, the award creditors were entitled to enforce that obligation in Australia under domestic law and there is no reason why that statutory right could not be assigned.

[377] [2025] EWHC 2874 (Comm); [2025] 2 Lloyd's Rep 614. See section IX(2): "Whether an ICSID Award can be assigned".
[378] [2025] FCA 1028.
[379] Section 35(4) provides that: "An award may be enforced in the Federal Court of Australia with the leave of that court as if the award were a judgment or order of that court".
[380] Section 32 provides that: "Subject to this Part, Chapters II to VII (inclusive) of the Investment Convention have the force of law in Australia".

X. Updates to legislation, rules and soft law

(1) Updates to arbitration laws

(a) England and Wales

In our 2023 review[381] we reviewed the English Arbitration Bill and its key proposed amendments in detail, and in our 2024 review[382] we examined two subsequent major changes and thus will not do so again here. Since our last review, the big change of course is that the Arbitration Act 2025 took effect on 1 August 2025. The Arbitration Act 2025 applies to arbitrations commenced on or after 1 August 2025. It does not replace the Arbitration Act 1996, but amends sections of it (mainly using insertions). The Arbitration Act 1996 remains the primary legislation governing arbitrations in England, Wales, and Northern Ireland.

The LMAA has given its members practical guidance in respect of headings for awards.[383]

(b) France

In view of the international reforms of arbitral law and in order to remain an attractive seat and encourage parties to opt for French law, France is in the process of updating its arbitration law (last reviewed in 2011). The latest reforms were launched in 2024. In March 2025 an ad hoc working group (led by Court of Cassation judge François Ancel and Professor Thomas Clay) submitted a report to the French Ministry of Justice, with 40 detailed proposals, including the creation of a standalone arbitration code. Currently, French arbitration law is not unified – it is to be found across nearly 20 different codes and several laws. A key reform aim is thus consolidation.

Other proposals include:

- Lowering and simplifying form requirements for domestic arbitration agreements.
- Lowering signature requirements for awards: allowing the presiding arbitrator to sign the arbitral award alone in domestic arbitration (currently in domestic arbitration practice all arbitrators must sign).
- Allowing electronic arbitral awards.
- Simplifying how awards are released: replacing the "notification" with the "communication" of the award in the forms and modalities agreed by the parties, a broader concept that allows for the delivery of electronic awards.
- Requirement for an odd number of arbitrators in tribunals seated in France, while allowing awards rendered abroad by evenly composed tribunals. In the latter situation, the enforcement judge (juge de l'exequatur) would have discretion to enforce the award despite the even number of arbitrators.
- Requirement that arbitrators seated in France be natural persons, to exclude the possibility of fully AI-generated arbitral tribunals, without preventing the enforcement in France of awards rendered abroad by legal entities.
- Under article 33 of the proposed Code, the juge d'appui, the French judge competent to support and assist the arbitration proceeding, would be empowered to adopt any necessary procedural or substantive measures to provide support for the arbitral proceedings in the presence of an impecunious party.
- Clarification of arbitration rules in family, labour and consumer matters by codifying arbitration rules in these areas and introducing protective rules for family arbitration.
- Introduction of new provisions to clarify matters related to third-party opposition (tierce opposition) and to allow accessory voluntary interventions (intervention volontaire accessoire) before the Court of Appeal, thereby enhancing procedural fairness and transparency for third-parties to the arbitration agreement.
- Clarification of the negative effect of the compétence-compétence doctrine through a revised version of article 1448 of the French Code of Civil Procedure.
- Empowering arbitral tribunals to consolidate arbitration proceedings (this is useful for ad hoc arbitration and rare institutional arbitrations lacking specific consolidation provisions).
- Considering permitting class arbitration (like in the US).
- Expanding the powers of the juge d'appui, (this is a French arbitration law specificity, followed in some countries like Luxembourg, whereby there is a judge responsible for arbitration), including by giving the juge d'appui the power to prevent a denial of justice, and to enforce provisional measures adopted by the arbitral tribunal.

[381] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[382] "Arbitration law in 2024: a review", available on i-law.com.
[383] https://lmaa.london/arbitration-act-2025.

- Establishing an autonomous procedural regime for the examination of appeals before the Court of Appeal including eliminating the Court of Appeal's ability to rule on the merits of domestic arbitral awards, and allowing the juge d'appui or the Court of Appeal to hear arbitrators or collect their statements when their independence and impartiality are challenged.
- Incorporating certain rules applicable before the international commercial chamber of the Paris Court of Appeal into the proposed Code, such as allowing the production of English-language documents without the need for translations and allowing documents in languages other than French and English to be produced without certified translations.
- Allowing action en inopposabilité – to challenge an arbitral award rendered abroad before enforcement is sought in France – and removing the suspensive effect of appeals against awards in domestic arbitration.

According to Gérald Darmanin, French Minister of Justice, and Louis Degos, President of the Paris Bar, during Paris Arbitration Week 2025, the reform process will unfold in three phases:

(1) the first set of consensual measures are to be introduced in autumn 2025;

(2) the second set addressing more sensitive issues to be introduced by summer 2026; and

(3) the third set to present the final version of the arbitration code in the autumn of 2026.

(c) Germany

In the context of a reform initiative launched in 2024, on 27 January 2026 the Federal Ministry of Justice of Germany published a draft bill to update the 1998 German arbitration law. The draft bill aims to modernise the 1998 German arbitration law to align it with international standards like the UNCITRAL Model Law and increase Germany's attractiveness as a seat. Key proposals are as follows:

- Lowering form requirements for arbitration agreements. While the 2024 version considered removing form requirements entirely, the 2026 proposal requires that the agreement be documented by any means (eg, email, electronic platforms or messaging apps), effectively moving away from mandatory "wet-ink" signatures while excluding purely oral agreements.
- Greater digitalisation. To reflect modern practice, the bill provides statutory legal certainty for remote hearings. Arbitral tribunals are granted the discretion to order virtual or hybrid hearings even if one party objects, provided due process is maintained. Additionally, it allows for electronic arbitral awards signed with qualified electronic signatures, though parties retain the right to request a paper version for easier enforcement in certain jurisdictions.
- Internationalising court proceedings. The reform allows certain arbitration-related proceedings – such as the setting-aside or enforcement of awards – to be conducted entirely in English. These will take place before specialised Commercial Courts at the Higher Regional Court level (the result of earlier reforms). Furthermore, appeals to the Federal Court of Justice can also be in English upon request, reducing the expense of translations.
- Increasing transparency. The bill encourages the publication of anonymised arbitral awards and dissenting or concurring opinions. It introduces an "opt-out" mechanism where consent for publication is deemed given unless a party objects within three months of the tribunal's request. This aims to foster the development of case law while respecting party confidentiality.
- Enhanced court support. The draft simplifies the enforcement of interim measures issued by tribunals seated outside of Germany. It also introduces a new right to judicial review if a tribunal declines jurisdiction, correcting a previous legal asymmetry that only allowed review when jurisdiction was assumed.

The consultation period ended on 27 February 2026, with enactment potentially expected by the end of the year.

(d) Hong Kong

In our 2024 review[384] we noted that the Construction Industry Security of Payment Ordinance (Cap 652) ("SOP Ordinance") was gazetted on 27 December 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.[385]

What is additionally new in 2025 is that Hong Kong's Chief Executive John Lee announced, during his 2025 Policy Address on 17 September 2025, that:

> "the Government will continue to take forward the Pilot Scheme on Sports Dispute Resolution and

[384] "Arbitration law in 2024: a review", available on i-law.com.
[385] www.news.gov.hk/eng/2024/12/20241218/20241218_195102_346.html, accessed 17 March 2026.

> the Pilot Scheme on Community Mediation and will strengthen the accreditation and disciplinary systems for the mediation profession, and step up promotion of Hong Kong's arbitration services, while studying the need to amend the Arbitration Ordinance."[386]

Following this announcement, the Department of Justice established the Working Group on Arbitration Law Reform in October 2025 to identify potential updates to the Ordinance. Members of the Working Group advise the DoJ on the legislative framework for arbitration in Hong Kong, including reviewing and making recommendations to amend the Arbitration Ordinance (Cap 609), with a view to further strengthening Hong Kong's position as an international arbitration centre.[387] The working group will consider the governing law of arbitration agreements (which as we have seen in our last reviews the reforms in England and Malaysia also cemented), the use of AI and expanded court powers. As we discuss further below, it may be a good opportunity to consider whether tribunal and court powers against parties using guerilla tactics – such as debtors that using every excuse not to pay (see our discussion of *Deinon Insurance Brokers LLC v Reen*[388]) – should be bolstered, eg making it easier for claimants to secure their claims during appeals/court applications and increasing cost penalties of unmeritorious applications/ appeals both before tribunals and the courts.

As regards sports arbitration, following the Hong Kong chief executive's 2024 policy address, an Advisory Committee on Sports Dispute Resolution chaired by the Deputy Secretary for Justice was set up to support Hong Kong's drive to become a sports arbitration hub. The committee advised the government on the design and implementation of a two-year pilot program on sports dispute resolution, launched in the second half of 2025. On 13 February 2026 the Department of Justice announced the launch of a designated online platform for sports dispute resolution under the pilot scheme open for applications for mediation and arbitration of sports disputes.[389] Panels of over 53 mediators and 43 arbitrators were established under the scheme from 23 jurisdictions, including experts in international sports mediation and arbitration. Proceedings are administered by AALCO-HKRAC on a secure designated online platform from eBRAM in accordance with the AALCO-HKRAC Sports Industry Mediation and Arbitration Rules (2026).[390] The prescribed mechanism is a two-tiered process comprising mediation followed, if necessary, by arbitration. Other resources include:[391] Model Hybrid Mediation and Arbitration Clause for the AALCO-HKRAC Sports Industry Mediation and Arbitration Rules (2026); Agreement to Submit Dispute to Mediation and Arbitration under the AALCO-HKRAC Sports Industry Mediation and Arbitration Rules (2026) (for existing disputes); Fee Schedule under the AALCO-HKRAC Sports Industry Mediation and Arbitration Rules (2026); and Government Subsidy Guidelines for the Pilot Scheme on Sports Dispute Resolution. The focus is on commercial sports disputes (contracts and promotions, IP and media and events and ownership) and non-commercial sports disputes (eg competitions and governance and regulation). Matters such as anti-doping, employment and criminal matters fall outside the pilot program.

We also note that on 1 March 2025 the government regularised the Immigration Facilitation Scheme for Persons Participating in Arbitral Proceedings in Hong Kong, allowing arbitrators, witnesses and counsel to participate in proceedings as visitors without needing employment visas.[392]

(e) Ireland

The Arbitration (Amendment) Bill 2025 is relevant to investment arbitration enforcement and appeals. Its aim is to enable Ireland to ratify agreements with investment protection agreements that are in line with the Irish constitution and EU law. The Bill amends the Arbitration Act 2010.

(f) Mainland China

The revised Arbitration Law of the People's Republic of China (the "Revised Law") was approved by the Standing Committee of the National People's Congress on 12 September 2025 and came into force on 1 March 2026. We drew out some of the salient features of the draft Revised Law in our 2024 review, thus below we only remind you of some of its key changes.

- Ad hoc arbitration is expressly permitted in limited circumstances, namely foreign-related maritime disputes and foreign-related and foreign-related disputes

386 www.policyaddress.gov.hk/2025/en/p131.html, para 133, accessed 17 March 2026.
387 www.doj.gov.hk/en/community_engagement/press/20251117_pr1.html, accessed 17 March 2026.
388 [2025] EWHC 1263 (Comm). See section VIII(2): "'End of the road' debtors".
389 www.doj.gov.hk/en/community_engagement/press/20260213_pr1.html, accessed 17 March 2026.
390 https://aalcohkrac.org/pilot-scheme-on-sports-dispute-resolution/ , accessed 17 March 2026.
391 Elizabeth Chan and Caroline Thomas have written on sports arbitration in the July 2024 edition of the *Asian Dispute Review*: www.serlecourt.co.uk/images/uploads/news-and-events/DSH_AND_SMT_ADR_July_2024.pdf, accessed 17 March 2026.
392 www.doj.gov.hk/en/community_engagement/press/20251008_pr1.html, accessed 17 March 2026.

between entities registered in state council-approved free trade zones, the Hainan Free Trade Port, and other approved areas (article 82). This formalises earlier pilot programs and judicial interpretations. Many international maritime arbitrations are ad hoc (eg the LMAA and HKMAG Terms discussed in this review). Article 82 introduces a new requirement for ad hoc tribunals to file a record with the (to be established) China Arbitration Association within three working days of formation.

- Codification of party autonomy to explicitly designate the seat of arbitration in the arbitration agreement, in default of which the Revised Law sets out how the seat is determined. The parties now have the ability to select the lex arbitri (procedural law) and courts with primary supervisory powers over the arbitration (article 81).
- A further step towards Kompetenz-Kompetenz. Going forward, arbitral tribunals can rule on their own jurisdiction at the request of the parties. Nonetheless, either party may object directly to the People's Court (article 31). This is a major change since, as we explained in our 2024 review, under the Chinese Arbitration Law of 1995 only the arbitration commission or the court (which had the final say) had 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. In recent years administering institutions, such as CIETAC, started to delegate this right to the parties.
- Interim measures: the Revised Law authorises parties to petition and Chinese courts to issue property preservation orders and injunctions prior to commencing the arbitration (article 39).
- Mainland PRC Hearing Centres in Approved FTZs for Foreign Arbitral Institutions. A trial policy in the Shanghai free trade zone has been formalised under the Revised Law, subject to approval requirements to be detailed (article 86). Potentially, this could resolve cross-border data transfer restrictions in arbitrations administered overseas.
- The Revised Law supports the expansion of Chinese arbitral institutions overseas (article 86). Several Chinese arbitral institutions already released plans to establish hearing centres in various foreign jurisdictions.

As we explained in our 2024 review,[393] SHIAC and CIETAC have already modernised their procedural rules by incorporating features such as emergency arbitration, requirements for third-party funding disclosures and mechanisms to address multi-contract disputes.

[393] "Arbitration law in 2024: a review", available on i-law.com.

(g) Malaysia

The reform to the Asian International Arbitration Centre (AIAC)'s institutional framework and the modernisation of Malaysia's arbitration law have advanced significantly since our last review. The following section has kindly been prepared by the AIAC. The editor hereby thanks the AIAC's team for their contributions to two sections of this review.

The Arbitration (Amendment) Act 2024 [Act A1737], which came into force on 1 January 2026,[394] represents a substantial enhancement of the Arbitration Act 2005 [Act 646]. Two reforms stand out: the introduction of a statutory regime for third-party funding (TPF) in arbitration; and the codification of a default law applicable to the arbitration agreement.

Third-party funding

The landmark reform introduces a new Chapter 2 (sections 46A to 46I) under Part III of the Act. Section 46C expressly abolishes the applicability of common law doctrines of maintenance and champerty in relation to arbitration, declaring that TPF agreements are not contrary to public policy on the said ground.[395] This statutory abrogation removes a long-standing obstacle to funding and aligns Malaysia with global development including that of Singapore and Hong Kong, both of which equally legalised TPF in their 2017 and 2019 legislations.[396] The legislative intent, as stated during the Bill's second reading, was to enhance access to justice and investor confidence in arbitrations conducted in Malaysia.[397]

The new provisions entail mandatory disclosure obligations. Section 46G requires the funded party to disclose the existence of the TPF agreement and the funder's identity to the opposing party and the tribunal within 15 days of the executed agreement, while section 46H obliges similar disclosure upon termination.[398] Section 46F, an exception to the confidentiality obligation entrenched in section 41A, permits disclosure of arbitral information to potential funders for the purpose of seeking or securing funding.

The Minister in the Prime Minister's Department (Law and Institutional Reform) is empowered under section 46D

[394] Arbitration (Amendment) Act 2024 (Act A1737), gazetted 1 November 2024. Commencement date appointed as 1 January 2026: PU(B) 368/2025, gazetted 13 October 2025.
[395] Arbitration (Amendment) Act 2024, section 10, inserting section 46C(1) under Chapter 2 in Part III of the Arbitration Act 2005.
[396] Civil Law (Amendment) Act 2017 (Singapore); Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Hong Kong) (took effect in 2019).
[397] Hansard, Dewan Rakyat, Second Reading of the Arbitration (Amendment) Bill 2024.
[398] Arbitration (Amendment) Act 2024, section 10, inserting sections 46G(1) to (3) and 46H under Chapter 2 in Part III of the Arbitration Act 2005.

to issue a Code of Practice governing TPF.[399] The Code of Practice for Third Party Funding 2026 has, thus, been issued and came into operation on 1 January 2026 alongside the Amendment Act.[400] It prescribes detailed standards including capital adequacy requirements (a minimum of RM10 million or the equivalent in foreign currency),[401] conflict of interest procedures, restrictions on funder control over proceedings, annual audit obligations, and complaints management procedures. Nevertheless, non-compliance does not, in itself, render the funder liable but it may be considered by a tribunal or court where relevant to a question (section 46E(2)). This light-touch approach mirrors international best practices by combining flexibility with accountability.

Law applicable to the arbitration agreement

The second major reform addresses the governing law of an arbitration agreement where there is an absence of an express choice of law between the parties. As noted in our last review, the Amendment Act provides that, unless the parties agree otherwise, by default, the law of the seat of arbitration is the law applicable to the arbitration agreement. The new section 9A[402] achieves this through a three-part structure: subsection (1) preserves party autonomy where parties are free to agree on a choice of law; subsection (2) provides that where they fail to agree, the law of the seat applies; and – critically – subsection (3) provides that an agreement on the law applicable to the main contract does not constitute an express agreement that the same law applies to the arbitration agreement.

Section 9A essentially codifies the established precedent of the Malaysian Federal Court in *Thai-Lao Lignite Co Ltd and Another v Government of The Lao PDR*[403] on the applicable law being the law of the seat. Though the apex court applied the "closest and most real connection" test to reach such decision, section 9A now elevates the law of the seat as a bright-line default, thereby eliminating any necessity for conflict-of-laws analysis.

Reading with section 12(2) of the Amendment Act, it is evident that section 9A applies in a prospective manner.[404] By adopting the default position, Malaysia effectively minimises any ambiguity arising from the absence of a choice of law, preventing a similar scenario to that in *Kabab-Ji SAL (Lebanon) v Kout Food Group (Kuwait)*[405] – where the English and French courts arrived at conflicting conclusions – from occurring.

Other reforms and institutional restructuring

Beyond these two key reforms, the Amendment Act introduces a number of additional changes that collectively enhance procedural clarity, efficiency and institutional governance in arbitration.

First, the Amendment Act formalises the restructuring of the AIAC by introducing the President of the AIAC Court of Arbitration, who replaced references to the Director in the Arbitration Act 2005. This change reflects a broader institutional shift towards a court-based governance model, in which the President assumes functions such as the appointment of arbitrators.

Secondly, section 13(3A) of the Amendment Act provides clarity as to the appointment of arbitrators in multi-party proceedings. In particular, it stipulates that multiple claimants shall jointly appoint one arbitrator and multiple respondents shall jointly appoint one arbitrator. Meanwhile, to promote procedural efficiency, the amended section 17 enables the tribunal to determine any repetition of prior hearings in situation where an arbitrator (including the presiding arbitrator) is replaced, unless otherwise agreed by the parties.

In addition, the Amendment Act streamlines the formal requirements for arbitration agreements and forms of awards in line with international standards. The scope of what constitutes a written arbitration agreement has been expanded to include "any other documents", aside from the scope of exchanged pleadings. Further, amendments to section 33 recognise the use of digital and electronic signatures in arbitral awards, reaffirming a readiness to embrace digitalisation in arbitral practice.

The Amendment Act also refines the framework for the recognition and enforcement of arbitral awards. In line with the UNCITRAL Model Law, an arbitral award is automatically recognised as binding without the need for such application to be filed.

Finally, the Amendment Act introduces a broader jurisdictional reach for certain provisions, including those

[399] Arbitration (Amendment) Act 2024, section 10, inserting section 46D under Chapter 2 in Part III of the Arbitration Act 2005.
[400] Code of Practice for Third Party Funding 2026, issued under section 46D of the Arbitration Act 2005, which came into operation on 1 January 2026.
[401] Code of Practice for Third Party Funding 2026, para 9(1).
[402] Arbitration (Amendment) Act 2024, section 5, inserting section 9A to the Arbitration Act 2005.
[403] [2017] 9 CLJ 273 at paras 165 and 187.
[404] Arbitration (Amendment) Act 2024, section 12(2). By contrast, the English Arbitration Act 2025, section 17(4), provides that section 6A applies to all arbitration agreements whenever made, provided the arbitration commences on or after 1 August 2025.
[405] [2021] UKSC 48; [2022] 1 Lloyd's Rep 24.

relating to third party funding where section 3(A) extended its application to arbitrations seated outside Malaysia but services in relation to the arbitration are provided in Malaysia.

These reforms, alongside the legalisation of third-party funding and codification of the default law applicable to arbitration agreements, represent a coordinated effort to enhance Malaysia's appeal as a premier arbitral seat. The legislative revisions reinforce institutional confidence, improve procedural efficiency and align the Malaysian arbitration framework with international standards and best practices.

(h) Singapore

Singapore is also reviewing its Arbitration Act. In March 2025, Singapore's Ministry of Law launched a public consultation (which concluded in May 2025) on the International Arbitration Act, following a report by the Singapore International Dispute Resolution Academy (SIDRA). The Ministry of Law is currently in the process of reviewing the consultation feedback to formulate a bill for Parliament.

The review focuses on eight core areas, including summary disposal powers, costs following set-aside, and the governing law of arbitration agreements. In relation to the law governing arbitration agreements it is speculated that Singapore will adopt the opposite approach to the English Arbitration Act 2025 (where the law of the seat governs). In *BNA v BNB*[406] the Singapore Court of Appeal applied the *Sul América* test.[407] Since the seat was Shanghai, the court found PRC law governed the arbitration agreement. This created a high risk of invalidity because, under Chinese law at the time, foreign institutions (like SIAC) arguably could not administer "domestic" Chinese arbitrations. Allowing appeals on points of law is also being considered. Unlike England (where it is an opt-out right) or Hong Kong (where, as we discuss in this review, parties can opt into Schedule 2), Singapore currently has no right of appeal on questions of law for international arbitrations. The 2025 consultation explores introducing a limited opt-in right of appeal, similar to the New Zealand and Hong Kong models, to give parties more flexibility without sacrificing the finality of the award.[408]

(2) Updates to arbitration rules and fee schedules

Arbitral institutions generally update their rules at least once a decade. Fee schedules are also periodically updated.

In our 2024 review[409] we reported extensively on major rule changes in the main jurisdictions covered by this review. Notably, the 2024 Administered Arbitration Rules ("HKIAC 2024") came into force on 1 June 2024; the SIAC Rules 2025 ("SIAC 2025") and a corresponding revised Schedule of Fees came into force on 1 January 2025; and the SHIAC updated arbitration rules took effect on 1 January 2024. 2025 brought further changes.

(a) Hong Kong

As of 1 January 2026 the HKIAC updated its fee schedules and the scope of its expedited procedure. The Arbitrator Hourly Rate Cap increased from HK$6,500 to HK$7,500 for the first time since November 2013. The Registration Fee increased from HK$8,000 to HK$10,000, the first change to these fees in 12 years. The maximum amount in dispute allowed for a party to apply for the expedited procedure (under article 42.2) was doubled from HK$25 million to HK$50 million.[410]

(b) Mainland China

- On 14 February 2025 the CIETAC Hong Kong Arbitration Centre updated the "CIETAC's Guidance on Commercial Arbitration in Hong Kong: 50 Questions, Answers & Examples", which was first published in 2020. Covered topics include arbitration agreements, proceedings, awards and fees.[411]
- On 17 February 2025 CIETAC introduced "Procedures for Administering Cases under the UNCITRAL Arbitration Rules", effective from 1 March 2025. They are divided into seven chapters and 25 articles addressing general provisions, tribunal composition, arbitration procedures, awards, expedited arbitration, fee management and supplementary matters. [412]

[406] [2019] SGCA 84; [2020] 1 Lloyd's Rep 55.
[407] See *Sul América Cia Nacional de Seguros SA v Enesa Engenharia SA* [2012] EWCA Civ 638; [2012] 1 Lloyd's Rep 671.
[408] See further https://aria.law.columbia.edu/tagtime-with-matthew-gearing-qc-appeals-on-questions-of-law-worth-there-trouble/, accessed 17 March 2026.
[409] "Arbitration law in 2024: a review", available on i-law.com.
[410] https://hkiac.org/arbitration/fees/2024-schedule-of-fees/, accessed 17 March 2026.
[411] www.cietac.org/sfs/cms/fd4798d3dd430ed08c8079a5fbc29a44.pdf, accessed 17 March 2026.
[412] www.cietac.org/articles/32305, accessed 17 March 2026.

- The Beijing Arbitration Commission and Beijing International Arbitration Center (BAC/BIAC) introduced new Mediation–Arbitration Expedited Rules taking immediate effect. Pre-arbitration settlement agreements can be confirmed and recognised as legally enforceable. Arbitrations administered under the expedited rules benefit from a fee discount of up to 80 per cent, compared to standard arbitration fees. Electronic service and online submission are the default modes of delivery, promoting digital efficiency. With the parties' consent and waiver of certain procedural rights, proceedings can be expedited, with awards or mediation statements issued within seven days of the oral or written hearing.[413]
- The Shanghai International Arbitration Center (SHIAC) introduced an AI-assisted arbitration system in 2024 designed to assist administration of arbitral proceedings in line with its procedural requirements.[414]
- In June 2025 SHIAC published trial guidelines on improving procedural efficiency through early determination: "Guidelines on the Use of Early Determination to Improve Efficiency (for Trial Implementation)". These are initially only applicable to foreign related cases.[415]
- Draft regulations on establishing Beijing International Commercial Arbitration Center, an international commercial arbitration service platform, were submitted for second reading.[416]
- The SCIA published revised unified fee schedules for arbitration fees and costs which apply to all cases accepted on or after 1 July 2025. There is lower pricing and increased and a fee cap for disputes concerning over RMB3 billion. There are also fee concession ratios allowing parties proportionately higher refunds upon dismissal of a case and inducements for ADR.[417]

(d) Malaysia

The AIAC Arbitration Rules 2026 came into force on 1 January 2026, alongside the enforcement of Arbitration (Amendment) Act 2024 discussed above. They represent a comprehensive revision aimed at modernising AIAC-administered arbitrations and enhancing efficiency, transparency and procedural flexibility. In addition to other streamlined arbitration procedures in the Rules, the key developments include, among others, the following:

- **Establishment of the AIAC Court of Arbitration**. The most significant institutional reform is the establishment of the AIAC Court of Arbitration, which introduces the element of collective wisdom as well as reinforced independence and transparency in case management and administration. The Rules defines and delineates the respective functions of the President, the AIAC Court and the Registrar in AIAC-administered arbitrations.
- **Integration of the UNCITRAL Arbitration Rules**. The Rules consolidate the AIAC and UNCITRAL arbitration frameworks into a single integrated procedural regime. This approach simplifies the institutional architecture

[413] https://sfj.beijing.gov.cn/sfj/sfdt/fzxc74/743594236/index.html, accessed 17 March 2026.
[414] www.shiac.org/pc/SHIAC?moduleCode=news&securityId=j6eXMxIdDt8PQil3W4Bt1Q, accessed 17 March 2026.
[415] www.shiac.org/pc/SHIAC?moduleCode=guidelines&securityId=mczc2dncaYm8ItB86M_JqQ, accessed 17 March 2026.
[416] www.bjac.org.cn/#/journalisticActivities/news/newsDetail?id=1928291186215534593&categoryId=1906878101569753090, accessed 17 March 2026.
[417] https://en.scia.com.cn/2025-06/29/c_1104340.htm , accessed 17 March 2026.

of AIAC-administered arbitrations while preserving compatibility with the globally-accepted UNCITRAL procedural model and international standards.

- **Encouraging Fast Track Procedures**. The threshold for the maximum amount in dispute for fast track procedures is raised to US$3 million for international arbitration and RM2 million for domestic arbitration. The expedited procedures target the issuance of a final award within six months, thereby expanding the availability of streamlined proceedings for a wider range of commercial disputes.
- **Diversity and the Considerations for Appointment**. The Rules provide robust guidance on the appointment of arbitrators, including considerations of independence, impartiality, availability, expertise and procedural efficiency that meet the expectation of parties and unique peculiarity of each case, thereby promoting greater transparency and diversity in the appointment process.
- **Tribunal secretaries**. Rule 22 provides explicit recognition of the practice of appointing tribunal secretaries, subject to appropriate disclosures and the consent of the parties. The Rules clarify that tribunal secretaries may assist with administrative and procedural tasks without compromising the arbitral tribunal's non-delegable decision-making functions.
- **Disclosure of third-party funding**. Rule 31 reinforces the statutory obligations under sections 46F to H of the Arbitration (Amendment) Act 2024 by requiring a funded party to disclose in writing to the tribunal, the opposing party and the AIAC both the existence of any funding arrangement and the identity of the funder, at the commencement of proceedings or as soon as practicable thereafter.[418] The Rules further oblige prompt notification of any change in the funding relationship and empowers the tribunal to take the existence of funding, and any non-compliance with the disclosure duty, into account when making orders or allocating costs.[419]
- **Arb-Med-Arb and hybrid dispute resolution**. The revised framework encourages hybrid dispute resolution, featuring procedures for Arb-Med, Arb-Med-Arb and Med-Arb models. This encourages parties to attempt mediation at any point during the course of arbitration proceedings while preserving the tribunal's authority to resume arbitration should settlement efforts fail.
- **Technical review of draft awards**. The Rules reinforce the importance of technical review where all forms of draft awards, not limited to final award, are required to be submitted to the AIAC Court for technical review. The technical review, however, does not apply to emergency awards. This aims to minimise the risk of procedural irregularities as well as to uphold the quality and enforceability of awards issued under AIAC-administered arbitrations.

Taken together, the Arbitration (Amendment) Act 2024, the Code of Practice for Third Party Funding 2026 and the AIAC Arbitration Rules 2026 represent a comprehensive approach that strengthen the robustness of Malaysia's arbitration framework. The reforms position Malaysia as a more competitive arbitral seat – particularly for parties from the ASEAN region and those seeking a jurisdiction that offers pro-arbitration judicial support with statutory certainty and clarity.

(e) Singapore

As anticipated in our 2024 review, SIAC launched its SIAC Restructuring and Insolvency Arbitration Protocol which came into force on 26 August 2025. The protocol is a first for an international arbitration institution in introducing a specially designed mechanism for the resolution of restructuring and insolvency-related disputes.[420] The SIAC RIA Protocol applies by party agreement and adapts the SIAC Rules with modifications and truncating timelines. It was developed by SIAC in consultation with judges, insolvency and arbitration experts and practitioners, the Court of Arbitration of SIAC and based on feedback received during a public consultation exercise from December 2024 to January 2025. In addition to the Protocol, there is a specialist panel, guidance and model clauses.

SIAC also launched an Institute of Ethics in International Arbitration. The IEIA will engage in research, research and training programmes, and initiatives aimed at setting, codifying and advancing best practices on ethics.

[418] AIAC Arbitration Rules 2026, rule 31(1) to (3).
[419] AIAC Arbitration Rules 2026, rule 31(4).
[420] https://siac.org.sg/restructuring-and-insolvency-arbitration-ria-protocol, accessed 17 March 2026.

(3) Other updates

- In January 2025 the Qatar International Center for Conciliation and Arbitration (QICCA) launched new arbitration rules which refreshed its 2012 Rules.
- Kiran Sanghera re-joined HKIAC and became Deputy Secretary-General effective 20 January 2025. In early 2025 Kevin Nash (former SIAC Registrar) 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.
- In February 2025 the Supreme People's Court and Ministry of Justice jointly issued guidelines on leveraging arbitration to serve the high-quality development of the Guangdong Hong Kong Macao Greater Bay Area (GBA). Hong Kong or Macao-funded enterprises established in any of the nine mainland GBA cities can choose either a mainland city, Hong Kong or Macao as a seat of commercial arbitration. Other measures include the establishment of international commercial arbitration centres, enhanced information sharing, and the creation of a joint training mechanism for foreign-related arbitration professionals in the GBA.[421]
- In late February 2025 the Chartered Institute of Arbitrators (Ciarb) published its guidance on the Use of AI in arbitration (2025) (Guidelines).[422] This:

  > "seeks to give guidance on the use of AI in a manner that allows dispute resolvers, parties, their representatives, and other participants to take advantage of the benefits of AI, while supporting practical efforts to mitigate some of the risk to the integrity of the process, any party's procedural rights, and the enforceability of any ensuing award or settlement agreement."

  The Guidelines are structured as follows. Part I outlines the benefits and risks of the use of AI in arbitration. Part II sets out general recommendations on the use of AI in an arbitration. Part III addresses arbitrators' powers to give directions and make rulings on the use of AI by parties in arbitration. Part IV addresses the use of AI in arbitration by arbitrators. Appendix A is a template agreement on the use of AI in arbitration. Appendix B is a template procedural order on the use of AI in arbitration. Arbitrators may consider using AI tools but: "should not relinquish their decision-making powers to AI but may use AI to support more accurate and efficient processing of submitted information, always ensuring independent judgement".[423]
- In 2025 the Permanent Court of Arbitration (PCA) doubled its office space in Singapore. The expanded office, in Maxwell Chambers, will administer PCA proceedings and provide support for the court's activities and dispute resolution work for states and businesses across Asia.[424]
- In September 2025 Ciarb released a comprehensive framework for third-party funding.[425]

[421] https://research.hktdc.com/en/article/MTk0NjYyNjM2OQ.
[422] www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf , accessed 17 March 2026.
[423] See para 8.2.
[424] www.pinsentmasons.com/out-law/news/singapore-host-expanded-permanent-court-arbitration, accessed 17 March 2026.
[425] www.ciarb.org/media/xbbegf1e/guidelines-on-third-party-funding_-published-final.pdf, accessed 17 March 2026.

XI. Developments in relation to how arbitrations can be funded

In our 2023 review we anticipated that legislation would quickly be introduced to reverse the Supreme Court's judgment in *R (on the application of PACCAR Inc and Others) v Competition Appeal Tribunal and Others*.[426] However, instead, in August 2024, the newly elected Labour government pushed the Litigation Funding Agreements (Enforceability) Bill back until the Civil Justice Council ("CJC") review of litigation funding concluded. This created uncertainty for funders. We further reported that the CJC report was expected by summer 2025. Duly, on 2 June 2025, the CJJ published its final report[427] recommending (among other recommendations) that PACCAR be reversed by legislation "as soon as possible" and a "light-touch" statutory regulation regime. The report includes 58 detailed recommendations divided into 11 Parts.[428] Paragraph 5.46 recommends "that the Government introduce legislation at the earliest opportunity to clarify that LFAs are neither DBAs nor claims management services and that such legislation be both prospective and retrospective in effect". It is very unusual for legislation to be retroactive. In December 2025 the UK government indicated it intends to legislate with prospective effect only,[429] diverging from the CJC's recommendation – we shall see in due course.

The report distinguishes between contingency fee funding by lawyers through conditional fee agreements (CFAs) or damages-based agreements (DBAs), and funding provided by litigation funders for the purposes of dispute resolution. It seems that reforms will be made but that there is still no agreement on the details. Swift legislation to clarify that litigation funding agreements (LFAs) are not DBAs is intended to "mitigate the effect of the *PACCAR* judgment and improve access to justice by reassuring funders that LFAs can be used to fund cases". This will be followed by "proportionate regulation of LFAs".[430] Next, the government plans to "consider the CJC's wider litigation funding recommendations in detail and announce any further changes in due course".

> "Litigation funding of arbitration proceedings should not be subject to formal regulation. It should remain a matter for arbitral centres to determine whether and, if so, how any such regulation should be implemented"

The CJC report covers many different types of disputes – ie not just arbitration – and therefore it could take some time for the reforms to be fully implemented. However, we note the Report's Recommendation 6: "Litigation funding of arbitration proceedings should not be subject to formal regulation. It should remain a matter for arbitral centres to determine whether and, if so, how any such regulation should be implemented". In other words the changes relevant to arbitration could be introduced quickly possibly even within 2026 if parliamentary time allows.

As mentioned above, in September 2025, the Chartered Institute of Arbitrators (Ciarb) released a comprehensive framework for third-party funding.[431]

[426] [2023] UKSC 28.
[427] www.judiciary.uk/wp-content/uploads/2025/06/CJC-Review-of-Litigation-Funding-Final-Report.pdf , accessed 17 March 2026.
[428] We have found this Clyde & Co podcast insightful: www.youtube.com/watch?v=GoeDe_0182A&utm_source=bambu&utm_medium=social&utm_campaign=advocacy , , accessed 17 March 2026.
[429] https://questions-statements.parliament.uk/written-statements/detail/2025-12-17/hcws1192, accessed 17 March 2026.
[430] https://questions-statements.parliament.uk/written-statements/detail/2025-12-17/hcws1192, accessed 17 March 2026.
[431] www.ciarb.org/media/xbbegf1e/guidelines-on-third-party-funding_-published-final.pdf , accessed 17 March 2026.

XII. Trends in 2025, and what 2026 might hold in store for arbitration

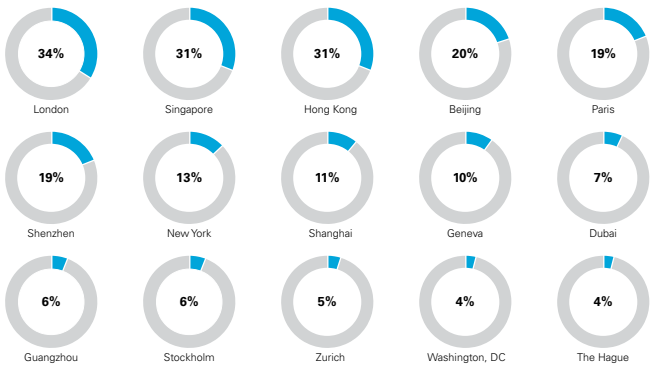
(1) Statistics

(a) New Queen Mary University London survey

In our 2024 review we noted that a QMUL survey had recently been conducted (its closing date was December 2024)[432] and that various institutions such as LMAA, Ciarb and HKIAC had encouraged their arbitrators to reply. Their 14th major empirical survey: the "2025 International Arbitration Survey: 'The Path Forward: Realities and Opportunities in Arbitration'" was released in June 2025.[433] It saw the widest ever pool of participants (2,402 questionnaire responses received and 117 interviews conducted), almost double the number who participated in the previous survey in 2021. Preliminary findings presented during Paris Arbitration Week 2025 and raised a little controversy. According to the survey (chart reproduced below), the five most preferred seats for arbitration were London first place, Singapore and Hong Kong (tied second place), Beijing and Paris. London and Singapore rank among the top five seats for each of the six regions in which respondents principally practice or operate.

Most preferred seats globally

Respondents were asked to specify up to five seats

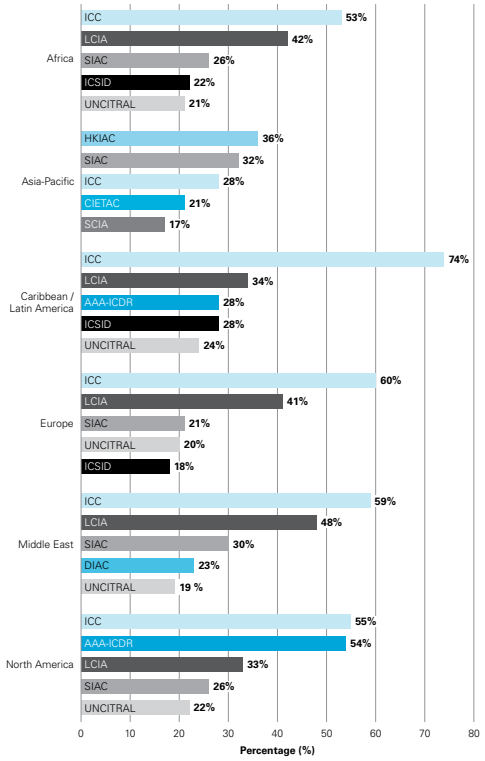


Source: QMUL - '2025 International Arbitration Survey: 'The Path Forward: Realities and Opportunities in Arbitration''

The five most preferred sets of arbitral rules are the ICC Rules, HKIAC Rules, SIAC Rules, LCIA Rules and UNCITRAL Rules.[434] Accordingly we will summarise the statistics released by leading four arbitral institutions in that order below (note that HKIAC and SIAC tied in second place). As the chart we reproduce below shows, the ICC Rules are in the top three choices for each of the six regions.

Top five most preferred seats of arbitration rules by region

Respondents were asked to specify up to five seats



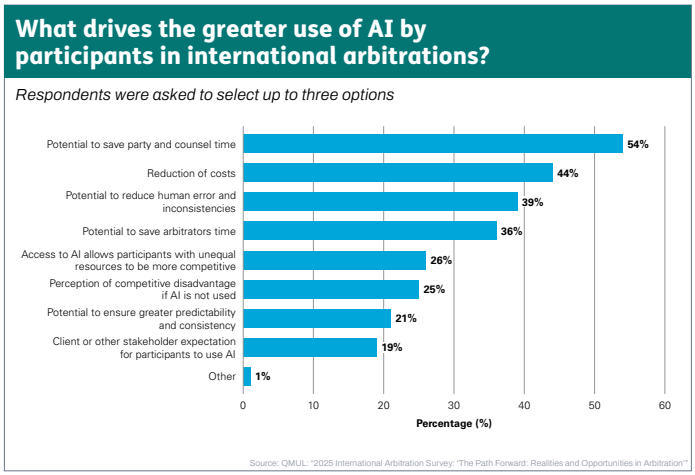
Source: QMUL - '2025 International Arbitration Survey: 'The Path Forward: Realities and Opportunities in Arbitration''

According to the survey, the "most effective mechanisms for enhancing efficiency were expedited arbitration procedures (50 per cent) and early determination procedures for manifestly unmeritorious claims or defences (49 per cent) ... The decision to choose expedited procedural mechanisms is driven by pragmatic concerns, principally the desire to minimise costs (65 per cent) and ensure rapid resolution (58 per cent), particularly for disputes of lower value or complexity".[435]

As regards AI, the "general consensus is that, over the next five years, international arbitration and its users will adopt, and adapt to, AI. Respondents predict that arbitrators will increasingly rely on AI (52 per cent) and

[432] https://aria.law.columbia.edu/tagtime-with-matthew-gearing-qc-appeals-on-questions-of-law-worth-there-trouble/ , accessed 17 March 2026.
[433] www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf.
[434] According to the 2021 survey, the five most preferred arbitral institutions were the ICC, SIAC, HKIAC, LCIA and CIETAC.
[435] www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf, page 3.

that new roles to work with AI will emerge (40 per cent). The enthusiasm for greater use is tempered, however, by the desire for transparency, clear guidelines and training on the use of AI".[436]



As explained above, we will summarise the statistics released by ICC, HKIAC, SIAC, LCIA in that order. Additionally, because they also have a significant number/quantum of cases, we will briefly also look at statistics published by the CIETAC, ICDR, ICSID and the LMAA.

(b) ICC

On 12 February 2026 preliminary 2025 dispute resolution statistics were released.[437] 881 cases were filed under the ICC Arbitration Rules and 13 new cases were filed under the ICC Appointing Authority Rules, bringing the total number of new cases registered to 894 (a rebound from 841 in 2024 and closer to the 890 cases seen in 2023). It was one of the top three years in the ICC's history. At the end of the year, 1,869 cases were ongoing, marking a record year in terms of pending caseload (against 1,789 cases pending at the end of 2024). The total value of pending cases reached US$299 billion. Disputes ranged from under US$2,500 to US$31 billion. The average amount for new cases was approximately US$50 million, while the median remained steady at US$5 million.

Cases were received from 2,531 parties in 147 jurisdictions (versus 2,392 parties in 136 jurisdictions in 2024). The US is still the home of more parties to ICC arbitrations (11.2 per cent, 283 parties) than any other country (versus 167 US parties in 2024). Brazil continued to hold second place (8.4 per cent, 213 parties) (versus 156 in 2024 but only 80 in 2023) and Spain third (5.6 per cent, 142 parties versus 137 parties in 2024). There was a notable rise in parties from East and South Asia with India returning to the top 10 in nationality rankings. As regards seat of arbitration, the jurisdictions with the most cases were France, the United Kingdom, the United States, Switzerland and Singapore. Compared to 2024, the top four stayed the same although France and the United Kingdom swapped back places (with France returning to the top spot).

169 new cases were administered under the Expedited Procedure Provisions (up from 152 in 2024), bringing the total to 1,034 cases since the procedure began in 2017. In 2025 confirmations and appointments of women arbitrators represented 30.5 per cent of the total confirmations and appointments (up from 28.6 per cent in 2024; 29.7 per cent in 2023; and 28.6 per cent in 2022). As it seems to be the trend, the institution is taking the lead. 46 per cent of all appointments by the ICC Court – either directly or upon the proposal of an ICC national committee or group – were women.

While the full 2025 sectoral report is expected later this year, preliminary data and consistent historical trends highlight the following as the top industry sectors for ICC cases:

- Construction and Engineering.
- Energy.
- Transportation.
- Financing and Insurance.
- Telecoms and Specialised Technologies.

In early 2026 the ICC released its "Toolkit for Arbitrators in Expedited Procedures". The resource is a "practical guide designed to help tribunals navigate every key stage of an expedited procedure". It includes: "References to other useful ICC Reports; a clear overview of how a typical EPP unfolds; step-by-step guidance for each phase; and short, action-oriented checklists for arbitrators".

(c) HKIAC

HKIAC released its 2025 statistics[438] in February 2026 with David Rivkin, co-chair of HKIAC, who commented:

> "We are proud to see HKIAC's caseload continue to grow, with over 70 per cent of contracts in new filings signed on or after 2020 reflecting continued

[436] Ibid, page 3.
[437] https://iccwbo.org/news-publications/news/icc-releases-preliminary-2025-dispute-resolution-statistics/ , accessed 17 March 2026.
[438] https://hkiac.org/about-us/statistics, accessed 17 March 2026.

> global confidence in HKIAC as a trusted choice for international arbitration. The increasing diversity and complexity of cases demonstrates that HKIAC remains a premier institution for resolving sophisticated cross-border disputes."[439]

In a nutshell, record numbers of cases have been filed with the HKIAC; many involve contracts concluded from 2020 onwards; the HKIAC Rules are being used in many high-value and complex claims; and parties are using the tools in the Rules to promote efficiency and expedition.

The upwards grow trend is healthy. A total of 582 new cases were received by the HKIAC (up from 503 cases in 2024 which was already a record year) resulting in the HKIAC's highest ever caseload. 388 cases were arbitrations; nine were mediations. The total amount in dispute across arbitrations in 2025 was approximately US$16.2 billion (against US$13.6 billion in 2024), which again represents a record high for HKIAC and a substantial increase in dispute value. For the 281 HKIAC-administered arbitrations, the total amount reached US$15.1 billion, with an average amount in dispute of US$53.7 million signaling that users continue to return to HKIAC for their high-value transactions. (By way of comparison, the average amount in dispute in administered arbitrations in 2024 was approximately US$48.1 million.) In 2025 1,233 parties and 578 contracts were involved up from 1,042 parties and 510 contracts in 2024 – ie the HKIAC is increasingly handling multi-party cases.

72.2 per cent of all arbitration cases filed in 2025 involved underlying contracts signed from 2020 onwards. Of these cases, 13.2 per cent included contracts signed in 2020, 20 per cent in 2021, 11.4 per cent in 2022, 16.8 per cent in 2023, 28.2 per cent in 2024, and 10.4 per cent in 2025. (By way of contrast in 2024, "only" 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.) This indicates that contractual parties continue to incorporate HKIAC arbitration clauses – note the small spike in 2024.

13.7 per cent involved no Asian parties which is slightly fewer than in 2024 (14.5 per cent) but higher than 9.6 per cent in 2023 and 5.8 per cent in 2022. Similarly 58.2 per cent involved no Mainland Chinese parties which is slightly fewer than in 2024, when the figure was 59.4 per cent. 84.3 per cent of all arbitrations, and 92.9 per cent of all administered arbitrations, were international in nature involving at least one non-Hong Kong party (up from 76.4 per cent and 86.1 per cent respectively in 2024). Parties came from 61 jurisdictions (by way of comparison, 2023 and 2024 involved only 45 and 53 jurisdictions respectively).

A HKIAC sector analysis of arbitrations where the amount in dispute is over US$50 million revealed that 22.5 per cent of such cases involve a party from the technology and cryptocurrency sector

Parties from 61 jurisdictions participated in the arbitrations submitted to HKIAC in 2025. The top 10 geographical origins or nationalities of these parties (apart from Hong Kong and the Chinese Mainland) were: British Virgin Islands; Cayman Islands; Singapore; United States; United Arab Emirates; Indonesia; Brazil; Russia, Switzerland and United Kingdom. South-east Asian parties regularly feature in HKIAC's top 10 with Indonesian parties ranking eighth in 2025. Parties from the United Arab Emirates have appeared in the top 10 three times since 2020 and Russian parties have appeared twice. Brazilian parties joined the top 10 for the first time. HKIAC is seeing more cases from Middle Eastern, Russian and Latin American parties. Further, HKIAC has been more active in Africa in recent years.

In terms of the sector subject matter of the arbitrations, the top category was corporate and shareholder disputes (23.6 per cent), the next category (which showed a notable increase from 12.2 per cent in 2024 but in line with historical figures) was maritime (19.9 per cent) followed by sale of goods (14.2 per cent). Construction cases were stable compared to 2024 (9.2 per cent). (Note that in 2010 28 per cent of arbitrations involved construction disputes). A new category was cryptocurrency and blockchain (7.2 per cent). A sector analysis of arbitrations where the amount in dispute is over US$50 million revealed that 22.5 per cent of such cases involve a party from the technology and cryptocurrency sector.[440]

[439] "Hong Kong - announce its case statistics for 2025", HKIAC Press Release, 13 February 2026, https://hkiac.org/news/hkiac-releases-2025-case-statistics-highlighting-strong-growth-and-global-reach, accessed 17 March 2026.

[440] Slides from HKIAC presentation on 11 February 2026. We are very grateful to the HKIAC's team for their work in confirming the statistics in this section.

As regards diversity, of the 176 direct appointments made by HKIAC Appointments Committee in 2025 (down from 199 in 2024), 64 (being 36.4 per cent and up from 34.7 per cent in 2024) were of female arbitrators and 36 (20.5 per cent) were of arbitrators not previously appointed by HKIAC over the last three years. HKIAC also confirmed 141 designations of arbitrators in 2025. Of the 141 designations, 103 were made by parties and 38 were made by co-arbitrators.

The top five geographical origins or nationalities of all arbitrators: (i) designated by parties or co-arbitrators and confirmed by HKIAC; and (ii) appointed by HKIAC based on the parties' and/or co-arbitrators' designations pursuant to articles 29.2 and 28.8 of the HKIAC Administered Arbitration Rules, in 2025, by number of cases and percentage were Hong Kong – 38.4 per cent (105); United Kingdom – 18.7 per cent (51); Chinese Mainland– 7.7 per cent (21); Singapore – 6.6 per cent (18) and Canada – 5.9 per cent (16).

The HKIAC's Proceedings Committee made on average more than one determination a week in 2025. Four challenges to arbitrators were made – all were dismissed. Almost half (48 per cent) of arbitrations submitted in 2025 involved multiple parties or contracts, up from 38.1 per cent in 2024. Nearly one quarter (24.7 per cent) of cases were commenced as a single arbitration under multiple contracts, up from 14.4 per cent in 2024. 14 requests were made for consolidation (double the number in 2024),[441] with 12 of those requests (86 per cent) being granted and two rejected. There were 13 requests for joinder from two in 2024), with nine of those requests (69 per cent) being granted, three rejected and one pending as at the end of 2025. 35 applications for expedited procedure were made (up from 24 determinations in 2024) – 32 applications were granted and three were rejected. (As we discussed above, the monetary threshold has been relaxed to HK$50 million from HK$25 million.[442]) The average time for the emergency arbitrator to render a decision was 12.1 days. Nine emergency arbitrator applications were submitted in 2025 (up from five in 2024), with 49 having been submitted in total since the emergency arbitrator procedures were introduced in 2013. The average time taken by the HKIAC to appoint an emergency arbitrator in the nine applications was 15 hours and 11 minutes whereas the HKIAC Rules say 24 hours. Five applications for early determination were submitted (up from three in 2024), of which one was granted, three were rejected and one was still pending as of the end of 2025. A total of 21 applications for early determination had been made up to the end of 2025. Finally, HKIAC staff acted as Tribunal Secretary on 133 occasions.

The Hong Kong-Mainland China arrangement on interim measures ("Arrangement") is one of Hong Kong arbitration's unique advantages (see our previous reviews) and remains popular. In 2025 HKIAC processed 34 applications made to 13 different Mainland Chinese courts under the Arrangement seeking to preserve evidence, assets or conduct worth a total of RMB10.9 billion (approximately US$1.6 billion) in Mainland China. In respect of those applications, HKIAC is aware of 17 orders made by the Mainland courts to preserve RMB5 billion (approximately US$719.8 million) worth of assets in 2025. Approximately 44.9 per cent of the applications concerned assets owned by Mainland Chinese parties and 55.1 per cent concerned assets or evidence owned by non-Mainland parties (ie from Australia, British Virgin Islands, Cayman Islands, Hong Kong, Italy, Japan, Singapore, Taiwan and United States). Since the Arrangement came into force on 1 October 2019, HKIAC has processed 178 applications. 171 applications were made for the preservation of assets, two were for the preservation of evidence, four were for the preservation of conduct and one was for the preservation of assets and conduct. The total value of assets requested to be preserved amounted to RMB45.3 billion (approximately US$6.4 billion). To 2025, HKIAC is aware of 133 decisions issued by Mainland courts. Of these 133 decisions, 126 granted the applications for preservation of assets upon the applicant's provision of security and seven rejected/ denied such an application. The total value of assets preserved by the 133 decisions amounted to RMB30.8 billion (approximately US$4.6 billion).

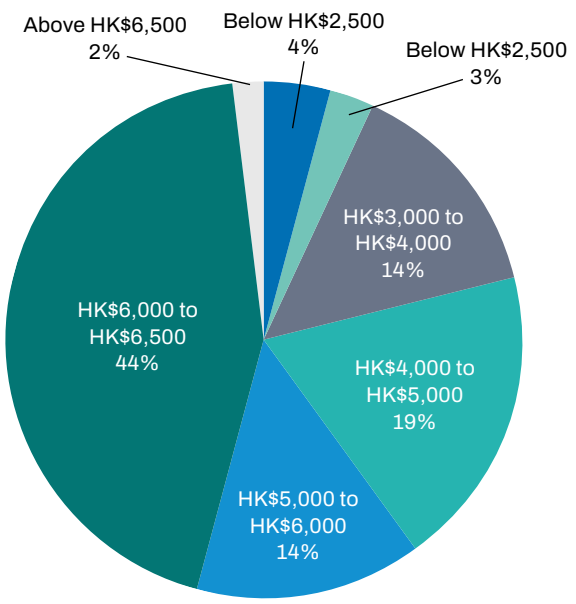
On 7 January 2025 the Shanghai Financial Court issued the "Guide to Parties for Hong Kong Arbitration Proceedings on Requesting Interim Measures at the Shanghai Financial Court under the Arrangement Concerning Mutual Assistance in Court-Ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region". The guide comprises 14 questions and answers including on the scope and types of property preservation, documents required, duration of court reviewing (within 48 hours in urgent cases), and procedures for relief in the event of rejection. The guide confirms the need generally for security to be provided. The Shanghai Financial Court will assess the need for security (and if so, the amount required) on a case-by-case basis, and may require security in the form of cash or property provided by the applicant or a third party, or a credit guarantee provided by a third party, such as a professional guaranty company.

[441] HKIAC presentation on 11 February 2026.
[442] See section X(2)(a): "Hong Kong".

(d) Report on Hourly Rate of Arbitrators in HKIAC-Administered Arbitrations[443]

In December 2025 the HKIAC released this study, which covered 1,429 arbitrator appointments made in HKIAC-administered arbitrations between 2020 and 2024. The overwhelming majority of arbitrations under the HKIAC Rules feature arbitrator fees based on hourly rates rather than the amount in dispute (97 per cent against 3 per cent). This is surprising because unusually under the HKIAC Rules, parties have the freedom to choose between Schedule 2 (hourly default) and Schedule 3 (ad valorem) costs of arbitrators.[444] If the parties do not agree, the default method is the hourly rate. HKIAC administration's costs are always ad valorem.

Distribution of hourly rates



So what are the arbitrator's average hourly rates? In general HKIAC-appointed arbitrators command lower rates than those designated by parties and/or co-arbitrators. Average arbitrator hourly rates generally correlate with the amount in dispute particularly for sole arbitrators and sole arbitrators' hourly rates are typically lower than those of arbitrators in three-member tribunals. Sole arbitrator's hourly rates had the widest variance between low and high-value disputes. This makes sense because sole arbitrators are more commonly seen in lower value cases. Hourly rates were usually over HK$3,000 (US$385) (only 7 per cent below) and most (60 per cent) were at least HK$5,000 (US$641). 34 per cent were equal to the previous default cap of HK$6,500 (US$833), which as we discuss above applied until 1 January 2026, and a further 10 per cent were at least 92 per cent of the cap. The cap set for hourly rates under the HKIAC-administered arbitration rules was rarely exceeded, with only a few cases going beyond this limit based on parties' consent and specific circumstances. Presiding arbitrators' average rates during the study period fell within a relatively narrow range between 83 per cent of the cap (equivalent to US$690) in the lowest-value disputes and 96 per cent of the cap (equivalent to US$799) in the highest-value cases. Hourly rates for cases administered under the UNCITRAL arbitration rules, where there is no cap on hourly rates, tended to be higher than those for cases under HKIAC Rules.[445]

(e) SIAC

On 10 March 2026 the Singapore International Arbitration Centre ("SIAC") released its 2025 Annual Report.[446] In 2025, SIAC received 886 new cases, including related cases, a significant increase from 625 in 2024 and 663 in 2023. Thus 2025 overtakes 2023 as the year of SIAC's second-highest ever caseload. (When annual new case numbers are plotted in a graph, record breaking 2020, during which 1,080 cases were registered, looks like an outlier.) There were 737 SIAC-administered cases in 2025 (83 per cent), compared to 585 in 2024 and 640 in 2023. The total sum in dispute in 2025 was S$18.66 billion (by comparison it was S$16.12 billion in 2024 and S$15.71 billion in 2023). Disputes arising from contracts entered into in the previous three years account for 60.2 per cent of new case filings (strikingly, 38 per cent were signed in 2024).

The institution maintained its global character, with 89 per cent (792 cases) of new filings being international (as opposed to domestic) in nature (compared to 91 per cent in 2024, 93 per cent in 2023 and 88 per cent in 2022). Cases were received from parties from a record 79 jurisdictions (up from 72 in 2024).[447] Mainland China, India and the USA remain among the top foreign users. The most commonly applicable substantive governing laws were Singapore (52.1 per cent) followed by the United Kingdom (28.4 per cent) and India (5 per cent).

[443] https://hkiac.org/wp-content/uploads/2025/12/Hourly-Rate-Report-ENG-3.pdf, accessed 17 March 2026.
[444] https://hkiac.org/arbitration/fees/2024-schedule-of-fees, accessed 17 March 2026.
[445] https://hkiac.org/wp-content/uploads/2025/12/Hourly-Rate-Report-ENG-3.pdf, page 9, accessed 17 March 2026.
[446] https://siac.org.sg/wp-content/uploads/2025/09/SIAC-Annual-Report-2025.pdf, accessed 17 March 2026.
[447] See pages 34 to 35 of the SIAC Annual Report 2024.

The 2025 sectoral breakdown highlights that 69 per cent of the disputes filed with SIAC related to trade, commercial, or corporate matters (considerably up from 60 per cent in 2024). The top industry sectors were as follows:

- Trade, which rebounded to 39 per cent (up from 29 per cent in 2024 but still down from 47 per cent in 2023).
- Commercial disputes, which grew to 20 per cent (up from 19 per cent in 2024 and 14 per cent in 2023).
- Construction / infrastructure / engineering, which decreased to 9 per cent (down from 11 per cent in 2024 but still up from 8 per cent in 2023).
- Maritime and shipping, which decreased slightly to 10 per cent (down from 11 per cent in 2024 and 13 per cent in 2023).

Procedural efficiency saw record activity. There were 107 consolidation applications (the highest since their 2016 introduction and up from 101 in 2024), of which 66 had been granted. In addition, there were nine applications for joinder (of which five had been granted). SIAC received 130 requests for the Expedited Procedure (down from 143 in 2024 but still up from 94 in 2023), with 55 accepted (compared to 66 in 2024 and 41 in 2023), bringing the total applications to 1,169 since the introduction of the Expedited Procedure in 2010. Additionally, 19 applications for an emergency arbitrator were received and 18 were accepted, as against 21 in 2024 and 11 in 2023. 191 out of 192 such applications have been accepted by SIAC since the introduction of these provisions in 2010. Requests for Early Dismissal of Claims and Defences saw a decrease, with six applications made (four were allowed to proceed, of which one was granted, one was rejected, one was withdrawn, and one was pending as at 31 December 2025) compared to 13 applications in 2024 and nine in 2023.

On 1 January 2025 the SIAC Rules 2025 (which we discussed extensively in our 2024 review[448]) and Revised Schedule of Fees came into force, marking a significant milestone. Several of the procedural innovations have already been used: 60 cases proceeded under the Streamlined Procedure (award due within three-months of constitution of the tribunal), four applications for the new Protective Preliminary Order (one accepted) and four requests for Preliminary Determination (of which two were granted, one was rejected, and one was pending).

Regarding diversity, SIAC saw slight decrease in geographical spread with arbitrators appointed from 41 jurisdictions[449] (down from 43 in 2024 and up from 38 in 2023). Of the 231 arbitrators appointed by SIAC, 84 (36 per cent) were female, slightly higher than the 35 per cent recorded in 2024 and slightly below the 37 per cent reported in 2023. Women constitute 71 per cent of SIAC's overall workforce and 28 per cent of SIAC's Court of Arbitration.

In 2025, 11 challenges to an arbitrator were decided by the SIAC Court of Arbitration: one was upheld, six were rejected, one was withdrawn, two resulted in resignations, and one was pending as at 31 December 2025.

Usefully, in March 2026 SIAC released its Compendium of SIAC Challenge Decisions.[450] This contains redacted versions of challenge decisions issued by the SIAC Court of Arbitration. The objective is greater transparency and accessibility while preserving the confidentiality. What is particularly striking is that of 19 decisions on challenges (as at 11 March 2026), only two were upheld suggesting a success rate of just over 10 per cent. In Upheld Challenge 7 (2016) the arbitrator in question had been the presiding arbitrator of a tribunal in a previous arbitration brought by the claimant against the respondents, and similarly upheld Challenge 16 (2022) arises where one arbitrator was involved in two arbitrations (asymmetry of information).

(f) LCIA

On 3 July 2025 the LCIA published its 2024 Annual Casework Report.[451] While the institution saw a modest decline in volume compared to the previous year, the data underscores a move toward higher-value, more complex international disputes and a diversification of its user base beyond the UK market. In 2024 the LCIA registered 362 new referrals, of which 318 were arbitrations under the LCIA Rules. This represents a slight dip from 2023, which saw 377 referrals (327 arbitrations). The LCIA viewed the 2023 spike as a return to a long-term upward trajectory following the "commensurate downward correction" of the pandemic years. Notably, while case numbers dipped, quantified claims remained high; in 2023, nearly 30 per cent of claims exceeded US$20 million (up from 19 per cent in 2022). The trend of "younger agreements" continued to be a focal point, following 2023 where almost half of all referrals involved agreements concluded within just two years of the dispute arising.

[448] "Arbitration law in 2024: a review", available on i-law.com.

[449] See page 33 of the SIAC Annual Report 2025.

[450] https://siac.org.sg/compendium-of-siac-challenge-decisions, accessed 17 March 2026.

[451] www.lcia.org/News/lcias-2024-annual-casework-report.aspx, accessed 17 March 2026.

95 per cent of cases involved international parties. 75 per cent of cases involved only international parties (no UK parties), compared to 79 per cent in 2023. In total disputing parties hailed from 101 jurisdictions. For the first time, the combined caseload of the top five foreign users – Kenya, the US, Switzerland, the UAE and Russia – exceeded that of UK parties. This follows a 2023 trend where African parties doubled their representation (from 4 per cent to 8 per cent), while Asian parties saw a sharp two-thirds decrease. London remained the dominant seat (89 per cent, up from 86 per cent in 2023). However, "mixing and matching" continues; in 63 per cent of cases where English law was not the governing law, London was still chosen as the seat. English law was applied in 78 per cent of 2024 cases (down from 83 per cent in 2023). The LCIA administers some of the most complex and consequential disputes, with a significant proportion of cases involving states and state-owned entities (accounting for 14 per cent of the LCIA's caseload in 2024).

The 2024 report shows a slight shift in industry concentration. By contract types:

- Transport and commodities remained the leading sector at 29 per cent, though this is a decrease from the 36 per cent dominance seen in 2023 (attributed then to energy price volatility and supply chain issues).
- Banking and finance increased to 17 per cent (up from 16 per cent in 2023).
- Energy and resources accounted for 10 per cent (down from 14 per cent in 2023).
- Construction and infrastructure remained at 8 per cent (consistent with 8 per cent in 2023).
- Technology emerged as a key sector at 6 per cent.

2024 saw 19 applications for expedited formation/emergency arbitrators and 16 early determination applications. This compares to 2023, where 58 applications for interim measures were filed, though relief was granted in only 14 instances. Interestingly, the LCIA maintained a low number of arbitrator challenges, following a year (2023) where only five challenges were recorded. The LCIA's provisions on multi-contract and multi-party disputes are popular, with 29 composite requests, 40 applications for consolidation, three applications for concurrent conduct of proceedings, and eight applications for joinder.

In terms of diversity, The LCIA appointed 455 appointment of 318 arbitrators. 45 per cent of LCIA Court arbitrator appointments were women (up significantly from the 33 per cent overall figure reported in 2023). While the overall percentage of women appointments remained steady at 33 per cent (matching 2023), the LCIA Court continues to be the primary driver of diversity compared to party appointments (which stood at 21 per cent in 2023).

45 per cent of appointed arbitrators (and 59 per cent of those appointed directly by the court) were non-British, representing 47 different nationalities. 16 per cent (72 individuals) were first-time appointees.

(g) CIETAC

In early 2026 CIETAC published its 2025 Work Report. While the institution saw a slight adjustment in volume following its record-breaking 2024, the data underscores a move toward higher-value, more complex international disputes and a diversification of its global user base. In 2025 CIETAC registered 5,736 new referrals, a minor dip from the 6,013 referrals in 2024. However, the total amount in dispute reached a historic peak of RMB228.6 billion (approx US$31.6 billion) – a 20.98 per cent increase over the previous year. For the eighth consecutive year, the total amount in dispute surpassed RMB100 billion.

Importantly, foreign-related cases continued to rise, with 806 new cases (a 6.33 per cent increase) and a total disputed value of RMB88.075 billion. These cases spanned 97 countries and regions, with top users including Hong Kong, the US, Russia and Germany. Furthermore, the caseload reflected a rise in complexity, featuring 277 cases exceeding RMB100 million in dispute, including 28 cases valued over RMB1 billion.

(h) SCC

In early 2026 the SCC Arbitration Institute released its 2025 case statistics. In 2025 the SCC registered 213 new cases and, for the first time ever, the SCC registered more than 200 cases two years in a row. Of the caseload, 38 per cent (82 cases) were registered under the SCC Rules for Expedited Arbitrations (up from 71 in 2024), while 54 per cent (114 cases) followed the standard SCC Arbitration Rules. The total disputed amount reached €4.6 billion.

568 parties from 50 different countries resolved their disputes at the SCC. This represents a record in terms of party nationalities – never before has the SCC had parties

from so many different countries in a single year. While 344 parties were from Sweden, international participation remained high with notable representation from Russia, Cyprus, Denmark, Germany and the UK.

In 2025, a total of 289 appointments of arbitrators were made, with arbitrators from 33 countries on four continents – the highest number of arbitrator nationalities ever recorded in a single year. Women were appointed in 32 per cent of all appointments to arbitral tribunals in SCC proceedings in 2025, while men were appointed in 68 per cent. Notably, the SCC Board acted as the primary driver of diversity, with 49 per cent of its direct appointments being women, significantly outpacing party-led appointments, where women accounted for only 22 per cent.

(i) ICDR

In early 2026 the ICDR (the international division of the AAA) published its 2025 statistics. Overall, the AAA saw continued growth in its US domestic sector, administering over 580,000 cases in 2025. The ICDR itself administered 725 new international arbitrations, and 73 new international mediations. The total of claims and counterclaims remained high at US$5.6 billion, increasing from the US$4.8 billion recorded the previous year.

The top four caseloads by sector continue to be led by Technology (150 cases), maintaining its position as the dominant sector. This is followed by Construction (51 cases), Financial Services (44 cases), and Energy (34 cases).

The composition of non-US nationalities remained largely consistent with 2024. China has emerged as a top user with 105 parties, while Canada had 91 parties. The UK followed with 60 parties, while Indonesia (39 parties) remains in the top four. There were 761 US parties involved. The most used US venues remained Miami and New York, with Los Angeles as a major third hub. In 2025, 50 per cent of ICDR panel members were located outside the United States, reflecting the institution's international composition.

Emergency Relief Disposition measures remained robust: of the applications resolved between 2006 and 2025, 43 per cent were granted, 28 per cent were denied, 14 per cent settled, and 15 per cent were withdrawn.

(j) ICSID

The newest edition of "The ICSID Caseload – Statistics" was released in in February 2026[452] and covers cases registered and administered by ICSID since 1972 including during 2025. The year 2025 notably included: 63 newly registered cases, the second-highest number in a calendar year in ICSID's history. Of these 63 cases, 14 cases were administered under non-ICSID rules (including 10 under the UNCITRAL Rules). 67 per cent of ICSID arbitrations concluded in 2025 were decided by a tribunal, and only 33 per cent were settled or otherwise discontinued. Interestingly 60 per cent of arbitration cases decided by tribunals in 2025 resulted in no damages awarded to investors. Western European nationals accounted for 38 per cent of appointments to ICSID cases, with South American nationals as the second-largest group at 20 per cent. In terms of diversity, women accounted for 30 per cent of all appointments to ICSID cases in 2025, compared with the 16 per cent historical average.

(k) 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 and, as we see in our reviews, many court cases (especially in England and Hong Kong) arise out of LMAA awards.

In 2025, there were a total of 3,469 new appointments under LMAA Terms and Procedures, representing a significant 15 per cent increase from the 3,006 appointments in 2024. These appointments related to an estimated 2,015 new references, marking the first time in recent years that references have surpassed the 2,000 mark (a 16 per cent increase from 1,733 in 2024).

The productivity of LMAA arbitrators also reached a new peak, with a total of 563 awards published in 2025 (up from 478 in 2024 and 436 in 2023). Of these, 83 awards were made after oral hearings (compared to 75 in 2024), while the vast majority continued to be handled as "documents-only" arbitrations, reflecting the efficiency of the LMAA system. As last year, we again remind readers 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.

[452] https://icsid.worldbank.org/sites/default/files/publications/2026-1_ENG_TheICSIDCaseloadStatistics.pdf, accessed 17 March 2026.

(l) English Commercial Court

In the 2023 edition of this review[453] we briefly ran though the "Commercial Court Report 2021–2022".[454] In our 2024 edition[455] we added in the Commercial Court Report 2022–2023"[456] issued in February 2024 and noted that "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". As we see from the below quote – this percentage has increased by 5 per cent (per Henshaw J).

Below we further update our table adding in "Commercial Court Report 2023–2024"[457] correct as at October 2025, and the "Commercial Court Report 2024–2025"[458] (with published amendments to previous year's figures shown in red where available):

	2020–2021	2021–2022	2022–2023	2023–2024	2024–2025
Section 44 applications (injunctions)	27	15	~~15~~ 20	**50 (230 per cent increase)**	**34 (32 per cent decrease)**
Section 67 challenges					
Number	17	27	**~~8~~ 7**	**24 (242 per cent increase)**	**21 (12 per cent decrease)**
Successful so far	1	-	-	1	-
Results	9 dismissed, 3 discontinued, 1 transferred out, 3 pending	5 dismissed, 1 unsuccessful, 1 discontinued, 20 pending	~~2~~ 3 dismissed, ~~1~~ 2 discontinued, 1 settled, 1 withdrawn ~~5 pending~~	7 dismissed, 1 discontinued, 2 transferred out, 13 pending	7 dismissed. 1 unsuccessful, 1 discontinued, 12 pending
Per cent successful so far	6 per cent	0 per cent (our calculation)	0 per cent (our calculation)	4 per cent (our calculation)	0 per cent (our calculation)
Section 68 challenges					
Number	**26**	**40**	~~25~~ 27	**39 (44 per cent increase)**	**48 (25 per cent increase)**
Successful so far	1	-	-	8 partially successful	
Results	15 dismissed, 2 discontinued, 2 withdrawn, 1 stayed, 2 transferred out, 3 pending	6 dismissed, 2 discontinued, 1 transferred out, 31 pending	~~11~~ 16 dismissed, ~~1~~ 3 discontinued, ~~1~~ 3 settled, ~~1~~ 3 transferred out, 1 withdrawn, ~~11~~ 1 pending	8 stayed, 5 dismissed, 2 unsuccessful, 2 discontinued, 5 settled, 2 withdrawn, 1 transferred out, 6 pending	13 dismissed, 4 discontinued, 3 transferred out, 2 stayed, 26 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)	20 per cent partially successful (our calculation)	0 per cent (our calculation
Section 69 applications					
Number	**37**	**40**	**~~46~~ 37**	**52 (or 53: there are two figures in the report)**	**73**
Permission granted so far	2	13	9	10	18
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~~ 13 permission refused, ~~6~~ 5 dismissed, ~~2~~ 6 discontinued, ~~3~~ 4 transferred out, ~~20~~ 4 pending	21 permission refused, **1 appeal was successful,** 1 withdrawn, 2 settled, 1 transferred out, 4 discontinued, 3 dismissed, 19 pending	21 had permission refused, 4 discontinued, 2 appeals were unsuccessful, 1 transferred out, 45 pending
Per cent permission successful so far	5 per cent	33 per cent (our calculation)	24 per cent (our calculation)	19 per cent (our calculation)	25 per cent (our calculation)

[453] "Arbitration law in 2023: a review of developments in case law", available on i-law.com.
[454] www.judiciary.uk/wp-content/uploads/2023/04/14.244_JO_Commercial_Court_Report_WEB.pdf
[455] "Arbitration law in 2024: a review", available on i-law.com.< >
[456] www.judiciary.uk/wp-content/uploads/2024/03/14.448_JO_Commercial_Court_Report_2223_WEB.pdf
[457] www.judiciary.uk/wp-content/uploads/2025/03/24.295_JO_Commercial_Court_Report_23-24_WEB.pdf, accessed 17 March 2026.
[458] www.judiciary.uk/wp-content/uploads/2022/09/Commercial-Court-annual-report.pdf

In our 2024 review[459] we commented that the increase in number of "Arbitration Applications" – particularly section 44 injunctions – was striking. In 2024-2025 the number of section 44 injunctions fell again. Last year, we also noted that having fallen (comparing 2021–2022 to 2022–2023), section 67 and 68 applications also seemed to be trending up. In 2024-2025, section 67 applications fell back while section 68 applications continued to rise. In this context we also note the relatively high percentage of partially successful section 68 applications in 2023-2024. Another observation we made in our review last year was that section 69 applications appear to have a relatively higher rate of success (at least at the permission stage). As the above table illustrates, the upwards trend of section 69 applications further amplified in 2025.

Henshaw J, Judge in Charge of the Commercial Court, also commented on these developments in his introduction to the "Commercial Court Report 2024–2025":

> "Arbitration continues to be a cornerstone of the Commercial Court's work, accounting for around 30 per cent of claims issued. There has been a marked increase in arbitration-related applications, including 73 section 69 appeals on points of law (up from 53), 48 section 68 serious irregularity challenges (up from 39), and 21 section 67 jurisdiction challenges. The success rate for these applications remains low."[460]

Effective 1 July 2025, the London Circuit Commercial Court (LCCC) established the Arbitration Claims List. This specialist list was introduced to handle the growing volume of arbitration claims – as defined in CPR 62.2 – issued or transferred to the LCCC and ensures that claims requiring substantive hearings are dealt with as efficiently as possible. In a practice note, the LCCC stated:

> "... All urgent without notice applications will continue to be listed on the first date that a judge can be made available to hear the application ...

Where judgment is reserved, the court will endeavour to deliver it orally or to hand it down within 42 days of the end of the hearing unless heard in July, when delivery or hand down will be on the first available date in September and in any event no later than the end of the first week in October".[461]

At the Commercial Court User Group Meeting in December 2025[462] Henshaw J noted:

> "As to arbitration:
>
> 1. Since 2020, there have been between 180 and 220 arbitration-related new claims each year, representing between 20 per cent and 34 per cent of Comm Ct's new claims. Those figures are in addition to arbitration claims in LCCC, which were up to 40 during the calendar year 2025 to date.
>
> 2. Challenges under sections 67, 68 and/or 69 of the Arbitration Act 1996 were the largest overall category, at 81 in 2025 to date, followed by 39 applications to enforce arbitration awards and 15 applications for injunctions under section 44 of the Act.
>
> 3. The overall level of new arbitration claims, though it had fluctuated, showed no general pattern of increasing or decreasing. Within the overall figures, the largest growth had been in section 69 appeals or claims under both section 68 and section 69, which increased from 33 in 2020 to 60 in 2025 to date."

[459] "Arbitration law in 2024: a review", available on i-law.com.
[460] Page 2.
[461] www.judiciary.uk/guidance-and-resources/london-circuit-commercial-court-practice-note-on-arbitration-claims, accessed 17 March 2026.
[462] www.judiciary.uk/guidance-and-resources/commercial-court-user-group-meeting-december-2025, accessed 17 March 2026.

(2) Analysis and conclusion

(a) Arbitration is increasingly popular

Our impression is that commercial arbitration remains on a robust upwards trajectory, as evidenced by the 2025 record-breaking figures in 2025 for example from the HKIAC, LMAA, SCC and SIAC, as well as the rebound in ICC filings. We have also discussed that the English Commerical Court's arbitration worklaod is going up. In Hong Kong, for example, it is very noticeable how increasingly barristers whose practices previously mainly focused on court work are also becoming involved in arbitration, a shift mirrored by the QMUL 2025 Survey findings which place Hong Kong as a tied-second for most preferred seat globally.

Many institutions have seen an increase in disputes arising from "younger" agreements. For the HKIAC, a striking 72.2 per cent of 2025 cases involved contracts signed during or after 2020, suggesting that arbitration clauses referring to these institutions have been increasingly adopted in recent years. Similarly the 2024 LCIA statistics confirm the trend of "younger agreements".

Enforcement under the New York Convention remains one of arbitration's premier strengths, though the decline of the rules-based international order (see the Russian cases discussed above and in previous reviews) suggest this is no longer an absolute guarantee in all jurisdictions. Time and costs spent on an increasing number of challenges also undermine this strength. For example while the SIAC Compendium of SIAC Challenge Decisions[463] suggests a success rate of just over 10 per cent – challenges are disruptive.

Moreover, some types of challenges do seem to be succeeding more, eg English section 69 challenges seem to be relatively more successful, at least at the permission stage, and in Sweden the SSC has revealed that 3 of 14 arbitrator challenges were sustained in 2025.

Another cited advantage of arbitration is speed. The QMUL Survey confirms that users are increasingly looking toward "expedited arbitration procedures" (50 per cent) and "early determination" (49 per cent) to address efficiency concerns. This is borne out by the institutional statistics (discussed above) which confirm increased use and refinement of these tools (eg notably by ICC, HKIAC and SCC) and the fact that other institutions are introducing similar mechanisms (eg AIAC, BAC/BIAC and CIETAC).

AI use is another trend which national courts grappled with faster than arbitral institutions/organisations with the Silicon Valley Arbitration & Mediation Center leading the change with its 2024 guidelines.[464] The 2025 QMUL Survey highlights AI as a transformative force. Users must embrace AI for support but cannot rely on it for the core "formation" of legal strategy. The survey's "tempered enthusiasm" suggests that while 52 per cent of respondents expect arbitrators to rely on AI, there is a critical need for human-led analysis and transparency to prevent misuse. In this context, we have also discussed the Chartered Institute of Arbitrators (Ciarb) guidance on the Use of AI in arbitration (2025).[465] We understand that both the International Bar Association (IBA) and the International Chamber of Commerce (ICC) have established dedicated task forces to address the integration of AI in arbitration and will likely be covering these developments in future reviews. The AAA's AI Arbitrator, launched in late 2025, and is designed for two-party, documents-only construction disputes, typically valued at $25,000 or less, focusing on high-volume, technical cases, blends cutting-edge AI-powered technology with time-tested judgment (it was trained on over 1,500 redacted awards). While so far there has been no uptake, it may well be the way of the future – particularly for the resolution of high-volume low-value standarised disputes.

Sometimes, other forms of dispute resolution such as mediation, adjudication, and expert adjudication can lead to faster results, and some parties are becoming sophisticated in their drafting of dispute resolution clauses.

(b) Mediation

Mediation in particular is on an upwards trend, particularly in England as confirmed by the post-*Churchill*[466] cases discussed in this review, as well as in Hong Kong where IOMed is quickly taking shape. The HKIAC recorded its own mediation filings for the first time in 2025, which strikes us as a further sign that users are increasingly looking for a "multi-door" approach to dispute resolution.

[463] https://siac.org.sg/compendium-of-siac-challenge-decisions, accessed 17 March 2026.

[464] https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf, accessed 17 March 2026.

[465] www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf , accessed 17 March 2026

[466] Ref *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416; [2024] BLR 12.

(c) Sports

A trend we did not expect was the high number of football-related cases we have reported on in this review.[467] Sports arbitration is an interesting and growing niche area encompassing a wide range of claims (from contractual claims to doping claims). While the 2025 *Semenya* and *Seraing* rulings[468] indicate heightened judicial scrutiny in Europe, particularly of CAS arbitrations seated in Switzerland which touch on player's human rights, the Hong Kong government is piloting a project to bolster its position in sports arbitration.

(d) Diversity

With some outliers, there has been a sustained increase in the appointment of female arbitrators, still mainly driven by the institutions (although in some regions the parties are catching up. The SCC for example has in late March 2026, while unveiling its statistics, made clear that it wanted to see an increase in the number of women arbitrators appointed by the parties). As we have said before, the publication of statistics is significantly helping to address the issue of diversity by promoting transparency. Institutions are appointing at least a third female arbitrators. Overall, the ICC Court appointed 46 per cent women; the HKIAC Appointments Committee 36.4 per cent; SIAC 36 per cent; the LCIA Court 45 per cent and the SCC Board 57 per cent (in 2024). Women accounted for 30 per cent of all appointments to ICSID cases in 2025, compared with the 16 per cent historical average

(e) Asia

The statistics intimate that Asian arbitration numbers will only continue to increase. The HKIAC's record US$16.2 billion in dispute value for 2025 confirms that the region is increasingly attracting high-value, complex transactions. This trend is mirrored by SIAC's strong performance in 2025. Similarly, CIETAC continues to see its caseload become increasingly international, with significant presence in the construction and high-tech sectors. Other leading Chinese arbitral institutions have noted a similar trend. What is also interesting is that the AAA's ICDR recorded 290 parties from the region Asia and Oceania and specifically 105 Chinese parties in 2025.[469]

(f) Geopolitics and sanctions

If geopolitical tensions continue, it will be interesting to see if this further impacts seat selection. An announcement caught our attention, suggesting that the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC) completed 2025 with historic figures namely 923 new claims, 337 of which were international. The ICAS's website does not yet reflect the 2025 statistics.[470] However, according to the same article,[471] this is the second highest result in the institution's entire history, second only to 1981, up almost 70 per cent from 2024. The article's author, Igor Sokolov, Senior Associate at SL Legal, has suggested that since 2020, ICAC clauses are being used more frequently by Russian parties with ICAC often specified (particularly for claims valued at between US$10,000 and US$200,000) as the sole option or as a possible alternative to the SCC or the LCIA (our above statistics section confirms cases administered by these two institutions have many Russian parties). Similarly, Russian parties have appeared appeared twice in HKIAC's top 10 including in 2025. Seats perceived as neutral safe harbours may attract more disputes.

Another consequence of geopolitics can be that sanctions slow down awards. A further possible consequence may be contractual claims – leading to more arbitrations – arising out of sanctions, tariffs (including their unconstitutionality/reversal) and instability/war (eg Hormuz impassability). As we have seen in our various reviews, many shipping and commodity contracts are subject to arbitration.

[467] eg *Alrubie v Chelsea Football Club Ltd and Another* [2025] EWHC 541 (Comm); [2025] Lloyd's Rep Plus 37; *WH Holding Ltd v E20 Stadium LLP* [2025] EWHC 140 (Comm); [2025] BLR 150 and *DKH Retail Ltd and Others v City Football Group Ltd* [2024] EWHC 3231 (Ch).

[468] *Semenya v Switzerland* Grand Chamber, Application No 10934/21 (10 July 2025) and *Royal Football Club Seraing v Fédération Internationale de Football Association (FIFA) and Others* Case C-600/23; EU:C:2025:24.

[469] https://s3.pushplanet.com/users/197990a3c42a4fb6b17b939a4dcce1f5/uploads/011be8c7ef824f00ae67032d392fa77d/2025_ICDRInfographic.pdf, accessed 17 March 2026

[470] https://mkas.tpprf.ru/en/statistics.php.

[471] https://sl-legal.ru/news_events/tpost/3sur184md1-record-number-of-cases-and-more-internat.

Appendix: judgments analysed and considered in this review

2025 judgments analysed

A Corporation v Firm B and Another (KBD (Comm Ct)) [2025] EWHC 1092 (Comm); [2025] 1 Lloyd's Rep 443

African Distribution Company Sarl v Aastar Trading Pte Ltd (KBD (Comm Ct)) [2025] EWHC 2428 (Comm); [2025] 2 Lloyd's Rep 443

Allseeds Switzerland SA v Intergrain SA (KBD (Comm Ct)) [2025] EWHC 2788 (Comm); [2025] 2 Lloyd's Rep 545

Alrubie v Chelsea Football Club Ltd and Another (KBD (Comm Ct)) [2025] EWHC 541 (Comm); [2025] Lloyd's Rep Plus 37

Appiah and Another v Leeds City Council and Another (KBD) [2025] EWHC 1537 (KB)

Aryan (SEA) Pte Ltd v Pure Group (Singapore) Pte Ltd (SGHC) [2025] SGHC 99

Blasket Renewable Investments LLC v Kingdom of Spain (FCA) [2025] FCA 1028

Brooke Homes (Bicester) Ltd v Portfolio Property Partners Ltd (Ch D) [2025] EWHC 1305 (Ch)

C1 and Others v IBS (HKCFI) [2025] HKCFI 227

CAFI – Commodity & Freight Integrators DMCC v GTCS Trading DMCC (KBD (Comm Ct)) [2025] EWHC 1350 (Comm); [2025] 1 Lloyd's Rep 603

CC v AC (HKCFI) [2025] HKCFI 855

CC/Devas (Mauritius) Ltd and Others v Republic of India (KBD (Comm Ct)) [2025] EWHC 964 (Comm); [2025] 1 Lloyd's Rep 499

CCC v AAC (HKCFI) [2025] HKCFI 2987

CI v IU (HKCFI) [2025] HKCFI 4397

CIX v DGN (SGCA) [2025] SGCA 10

CNG v G and Another (HKCFI) [2025] HKCFI 3598

Czech Republic v Diag Human SE and Another (CA) [2025] EWCA Civ 588; [2025] 1 Lloyd's Rep 458

Czech Republic v Diag Human SE and Another (CA) [2025] EWCA Civ 998

Deinon Insurance Brokers LLC v Reen (KBD (Comm Ct)) [2025] EWHC 1263 (Comm)

Destin Trading Inc v Saipem SA (Ch D) [2025] EWHC 668 (Ch); [2025] Lloyd's Rep Plus 38

Djanogly v Djanogly and Others (Ch D) [2025] EWHC 61 (Ch)

DJP and Others v DJO (SGCA(I)) [2025] SGCA(I) 2; [2026] Lloyd's Rep Plus 2

DKH Retail Ltd and Others v City Football Group Ltd (Ch D) [2024] EWHC 3231 (Ch)

DKT v DKU (SGCA) [2025] SGCA 23

DLV and Another v DLX and Others (SGHC) [2025] SGHC 29

DMZ v DNA (SGCA) [2025] SGCA 52

DOI v DOJ and Others (SGHC(I)) [2025] SGHC(I) 20

DOM v DON (SGHC) [2025] SGHC 103

Energyen Corporation v HD Hyundai Heavy Industries Co Ltd and Another (KBD (Comm Ct)) [2025] EWHC 1586 (Comm); [2025] 1 Lloyd's Rep 615

Eronat v CNPC International (Chad) Ltd and Another (CA) [2025] EWCA Civ 1054; [2025] 2 Lloyd's Rep 196

Fernandez v Fernandez and Others (Ch D) [2025] EWHC 2373 (Ch)

FH Holding Moscow Ltd v AO UniCredit Bank and Another (KBD (Comm Ct)) [2025] EWHC 3111 (Comm); [2025] 2 Lloyd's Rep 593

Hulley Enterprises Ltd and Others v The Russian Federation (CA) [2025] EWCA Civ 108; [2025] 1 Lloyd's Rep 411

Hyalroute Communication Group Ltd v Industrial and Commercial Bank of China (Asia) Ltd (HKCFI) [2025] HKCFI 2417

JP Morgan Securities plc and Others v VTB Bank PJSC (KBD (Comm Ct)) [2025] EWHC 1368 (Comm); [2025] 2 Lloyd's Rep 15

JSC "Kazan Oil Plant" v Aves Trade DMCC (KBD (Comm Ct)) [2025] EWHC 2713 (Comm); [2025] 2 Lloyd's Rep 552

Kamal Gupta v L R Builders (2025 INSC 975)

L v R (HKCFI) [2025] HKCFI 3162

Mare Nova Inc v Zhangjiagang Jiushun Ship Engineering Co Ltd (KBD (Comm Ct)) [2025] EWHC 223 (Comm); [2025] 1 Lloyd's Rep 245

MHA Advisory Ltd v Wynter (KBD (Comm Ct)) [2025] EWHC 2497 (Comm)

NaaS Technology Inc, Re, KY 2025 GC 54

Nigeria LNG Ltd v Taleveras Petroleum Trading DMCC (CA) [2025] EWCA Civ 457; [2025] 1 Lloyd's Rep 549

OLG Frankfurt am Main (26 SchH 1/23)

Operafund Eco-Invest SICAV plc and Another v Kingdom of Spain (KBD (Comm Ct)) [2025] EWHC 2874 (Comm); [2025] 2 Lloyd's Rep 614

Orange Transgroup Ltd and Another v Shein Distribution UK Ltd (KBD) [2025] EWHC 2966 (KB); [2025] 2 Lloyd's Rep 632

Orion Shipping and Trading LLC v Great Asia Maritime Ltd (The Lila Lisbon) (CA) [2025] EWCA Civ 1210; [2026] 1 Lloyd's Rep 125

Ravfox Ltd v Bexmoor Ltd (Ch D) [2025] EWHC 1313 (Ch); [2025] Lloyd's Rep Plus 51

Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises and Others (CA) [2025] EWCA Civ 369; [2025] 1 Lloyd's Rep 518

Republic of India v CCDM Holdings LLC and Others (FCAFC) [2025] FCAFC 2; [2025] Lloyd's Rep Plus 73

Republic of Kazakhstan v World Wide Minerals Ltd and Others (KBD (Comm Ct)) [2025] EWHC 452 (Comm); [2025] 1 Lloyd's Rep 298

Royal Borough of Kensington and Chelsea and Another v Beko Poland Manufacturing SP zoo and Others (KBD) [2025] EWHC 3276 (KB)

RTI Ltd and Another v OWH SE iL (KBD (Comm Ct)) [2025] EWHC 1945 (Comm); [2025] 2 Lloyd's Rep 202

Sapura Fabrication Sdn Bhd v GAS (SGCA) [2025] SGCA 13

Skyros Maritime Corporation and Another v Hapag-Lloyd AG (The Skyros and The Agios Minas) (CA) [2025] EWCA Civ 1529

Star Hydro Power Ltd v National Transmission and Despatch Co Ltd (CA) [2025] EWCA Civ 928; [2025] 2 Lloyd's Rep 215

*Techteryx Ltd v Legacy Trust Co Ltd and Others (*HKCFI) [2025] HKCFI 665; (HKCFI) [2025] HKCFI 787

Tecnicas Reunidas Saudia for Services & Contracting Co Ltd v Petroleum Chemicals and Mining Co Ltd (KBD (Comm Ct)) [2025] EWHC 1785 (Comm); [2025] 2 Lloyd's Rep 59

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

UniCredit Bank GmbH v RusChemAlliance LLC (CA) [2025] EWCA Civ 99; [2025] 1 Lloyd's Rep 264

V and Another v K (KBD (Comm Ct)) [2025] EWHC 1523 (Comm); [2025] 2 Lloyd's Rep 90

VXJ v FY and Others (KBD (Comm Ct)) [2025] EWHC 2394 (Comm); [2025] 2 Lloyd's Rep 428

Welltech Group Ltd v Techmix Ltd BVIHCM2025/0209, 5 December 2025

WH Holding Ltd v E20 Stadium LLP (KBD (Comm Ct)) [2025] EWHC 140 (Comm); [2025] BLR 150

XX and Others v ZZ (HKCFI) [2025] HKCFI 3089

周惠明 *(Zhou Hui Ming) v* 挪信新能源科技 *(*南通*)* 有限公司 *(Noxin) and Another* (HKCFI) [2025] HKCFI 1503

李鳳欣 *and Another v Harvest Trade Investments Ltd* (HKCFI) [2025] HKCFI 2004

Judgments considered

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

AnAn Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co) (SGCA) [2020] SGCA 33; [2020] 1 SLR 1158

AOOT Kalmneft v Glencore International AG (QBD (Comm Ct)) [2001] EWHC 464 (Comm); [2002] 1 Lloyd's Rep 128

AOOT Kalmneft v Glencore International AG (QBD (Comm Ct)) [2002] 1 Lloyd's Rep 128

AZ v BY (KBD (Comm Ct)) [2024] EWHC 1847 (Comm); [2024] 2 Lloyd's Rep 269

BNA v BNB (SGCA) [2019] SGCA 84; [2020] 1 Lloyd's Rep 55

BPGIC Holdings Ltd, Re, 20 November 2023, unreported

C v D1 (QBD (Comm Ct)) [2015] EWHC 2126 (Comm)

CCDM Holdings LLC v The Republic of India (No 3) (FCA) [2023] FCA 1266

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

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

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

Czech Republic v Diag Human SE and Another (KBD (Comm Ct)) [2024] EWHC 2102 (Comm); [2025] 1 Lloyd's Rep 1

Donohue v Armco Inc (HL) [2001] UKHL 64; [2002] 1 Lloyd's Rep 425

Emmott v Michael Wilson & Partners Ltd (CA) [2008] EWCA Civ 184; [2008] 1 Lloyd's Rep 616; [2008] BLR 515

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

Financings Ltd v Baldock (CA) [1963] 2 QB 104

Fiona Trust and Holding Corporation v Privalov (HL) [2007] UKHL 40; [2008] 1 Lloyd's Rep 254

Guy Kwok-Hung Lam, Re (HKCFA) [2023] HKCFA 9

Halliburton Co v Chubb Bermuda Insurance Ltd (SC) [2020] UKSC 48; [2021] 1 Lloyd's Rep 1

Hulley Enterprises Ltd and Others v The Russian Federation (KBD (Comm Ct)) [2023] EWHC 2704 (Comm); [2023] 2 Lloyd's Rep 648

Infrastructure Services Luxembourg Sàrl v Kingdom of Spain; Border Timbers Ltd and Another v Republic of Zimbabwe (CA) [2024] EWCA Civ 1257; [2025] 1 Lloyd's Rep 66; (SC) [2026] UKSC 9; [2026] Lloyd's Rep Plus 24

Kabab-Ji SAL (Lebanon) v Kout Food Group (Kuwait) (SC) [2021] UKSC 48; [2022] 1 Lloyd's Rep 24

Marbienes Compania Naviera SA v Ferrostaal AG (The Democritos) (CA) [1976] 2 Lloyd's Rep 149

Monde Petroleum SA v WesternZagros Ltd (QBD (Comm Ct)) [2015] EWHC 67 (Comm); [2015] 1 Lloyd's Rep 330

Orion Shipping and Trading LLC v Great Asia Maritime Ltd (The Lila Lisbon) (KBD (Comm Ct)) [2024] EWHC 2075 (Comm); [2025] 1 Lloyd's Rep 101

PEC Ltd v Asia Golden Rice Co Ltd (QBD (Comm Ct)) [2012] EWHC 846 (Comm)

R (on the application of PACCAR Inc and Others) v Competition Appeal Tribunal and Others (SC) [2023] UKSC 28

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

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

Rollitt v Ballard (QBD (TCC)) [2017] EWHC 1500 (TCC)

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

San Leon Energy plc v Brightwaters Energy Ltd (IEHC) [2026] IEHC 1

Salford Estates (No 2) Ltd v Altomart Ltd (CA) [2014] EWCA Civ 1575

Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd (SC) [2023] UKSC 2

Semenya v Switzerland Grand Chamber, Application No 10934/21 (10 July 2025)

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 (UKPC) [2024] UKPC 16; [2024] 2 Lloyd's Rep 65

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

Slovak Republic v Achmea BV (CJEU) Case C-284/16; EU:C:2018:158

Song Lihua v Lee Chen Hon (No 2) (HKCFI) [2023] HKCFI 2540

Sul América Cia Nacional de Seguros SA v Enesa Engenharia SA (CA) [2012] EWCA Civ 638; [2012] 1 Lloyd's Rep 671

Terna Bahrain Holding Company WLL v Al Shamsi (QBD (Comm Ct)) [2012] EWHC 3283 (Comm); [2013] 1 Lloyd's Rep 86

Thai-Lao Lignite Co Ltd and Another v Government of The Lao PDR [2017] 9 CLJ 273

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 Partner Reinsurance Europe SE (KBD (Comm Ct)) [2023] EWHC 3243 (Comm); [2024] Lloyd's Rep IR 279

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

UR Power GmbH v Kuok Oils and Grains Pte Ltd (QBD (Comm Ct)) [2009] EWHC 1940 (Comm); [2009] 2 Lloyd's Rep 495

廈門新景地集團有限公司 v Eton Properties Ltd and Another (HKCFI) [2023] HKCFI 1327