Russian Arbitration Center

at the Russian Institute of Modern Arbitration

ARBITRATION DIGEST JUNE-JULE 2025

CASE LAW DEVELOPMENTS

Ask Me About Anti-Suits: EU Successfully Challenged WTO Panel Report in MPIA

Arbitrators in DS611: China – Enforcement of intellectual property rights on appeal rendered a decision recognizing China's policy of restricting intellectual property rights as inconsistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Both disputing parties – the European Union (EU) and China – appealed.

Earlier, the WTO panel considered that anti-suit measures adopted by Chinese courts, while affecting intellectual rights of European patent holders, cannot be limited under TRIPS. However, the panel noted this was targeted judicial policy determined, among other things, by China's Supreme People's Court. The practice consisted of Chinese licensee companies filing claims to revise royalty rates, with Chinese courts issuing prohibitions on European patent holders applying to courts in other jurisdictions.

The arbitral tribunal reviewing the case under the MPIA (Multi-Party Interim Appeal Arbitration Arrangement) mechanism disagreed with the panel's conclusions. In particular, it concluded that TRIPS provisions obligate China to refrain from adopting or maintaining measures that prevent other WTO member states from fulfilling the agreement in corresponding jurisdictions. Moreover, Chinese court policy affects not only court proceedings. Due to weakening European patent holders' negotiating position, they are deprived of the opportunity to conclude licensing contracts.

Given the WTO Appellate Body's inability to function, more states are turning to the MPIA mechanism. In particular, in May-June 2025, Paraguay, Malaysia, and the United Kingdom joined it. During this period, partial rotation of the MPIA arbitrator pool occurred (three out of ten).

Read

Show Must Go On: Amsterdam Court of Appeal Refused to Terminate Set-Aside Proceedings After Declaring Applicant Bankrupt

The Amsterdam Court of Appeal examined the non-standard question of interaction between arbitration and bankruptcy law norms regulating civil procedure issues. The court considered an application to set aside an arbitral award rendered in Exem Energy v. Sonangol (I) (NAI Case No. 4687). Shortly after filing the application, claimant Dutch company Exem Energy was declared bankrupt.

The arbitral proceedings themselves require special attention. In 2005, entrepreneur Américo Amorim – friend of former Angolan president's daughter Isabel dos Santos – wanted to participate in privatization of Portugal's largest oil and gas company Galp. However, he lacked necessary funds to participate in this deal. He then sought help from Isabel dos Santos. Thanks to her support, they managed to arrange for Angola's state oil company Sonangol to invest EUR 190 million in this venture. The investment was made by purchasing 40% of shares in company Esperaza, owned by Amorim, through which participation in privatization was planned.

Sonangol then concluded a contract with a company controlled by dos Santos herself – Exem Energy. Under the agreement, Sonangol sold its share in Esperaza for EUR 75 million. However, privatization had

already been conducted by that time, as a result of which Esperaza gained control over 1/3 of Galp, while the successful Galp IPO conducted simultaneously showed that the company share was worth much more (at the time of the deal between Sonangol and Exem Energy, Galp's capitalization was valued at USD 7.5 billion). Under contract terms, part of the share purchase price should be covered by dividends from Esperaza, but within the established deadline, the intermediary company's dividends did not cover this amount. Exem Energy proposed to pay the necessary amount not in euros but in Angolan kwanza. Sonangol, headed by Isabel dos Santos at the time, agreed to this. However, some time later the former Angolan president's daughter was dismissed from Sonangol, and the new leader returned the kwanza payment to Exem Energy, demanding fulfillment of obligation in euros as originally agreed.

Under the arbitration agreement, claimant applied to the Netherlands Arbitration Institute (NAI) seeking recognition of proper acquisition of 40% shares in Esperaza. Respondent filed a counterclaim seeking recognition of the transaction as invalid due to violation of Dutch public order in its conclusion.

Procedural aspects of proceedings are noteworthy. Claimant requested consolidation of the arbitration with another case, Exem v. Sonangol (II) (NAI Case No. 4760), regarding another dispute between parties related to joint management agreement for intermediary company Esperaza. Under Article 39 of NAI 2015 Arbitration Rules, this issue should be resolved by a third party appointed by parties or the arbitral institution. Independent practicing lawyer Willem van Baren issued an order refusing consolidation of cases.

Moreover, the arbitral tribunal in the main case also prohibited claimant from asserting most claims considered in the main arbitration in separate arbitration Exem v. Sonangol (III) (NAI Case No. 4807), conducted under summary procedure. Comparing NAI 2015 and 2024 Arbitration Rules versions, summary arbitration procedure can be characterized as combining features of emergency and expedited arbitration procedures. The arbitral tribunal justified the prohibition by stating that consideration of corresponding issues belongs only to its competence, not the summary procedure arbitrator's competence. Moreover, according to arbitrators, presenting claims in another arbitration would lead to unjustified procedural complications.

Claimant also applied to the Enterprise Chamber of Amsterdam Court of Appeal for provisional measures in the form of arrest of Esperaza shares. However, the claim was refused. Earlier, the Chamber imposed external management on Esperaza. Claimant also applied to the arbitral tribunal for a provisional measure in the form of prohibition for respondent to dispose of its 40% share in Esperaza. The arbitral tribunal rejected the claim, citing arrest of Esperaza shares by prosecutors and imposition of company external management.

When considering the case on merits, arbitrators concluded that the share sale transaction was not market-based. Additionally, the arbitral tribunal considered that payment of remaining share value in kwanza could not be commercial in nature. Respondent's agreement, expressed during Isabel dos Santos' management, seemed strange for a company located in a country with shortage of hard currencies, which includes the euro.

Given that the transaction was related to the former Angolan president's family, arbitrators concluded there was a corruption scheme. The fact of corruption alone was sufficient for the arbitral tribunal to recognize the transaction as invalid due to violation of Dutch public order, without any specific criminal law qualification.

Exem Energy expectedly applied to the competent Netherlands court seeking to set aside the NAI decision. However, before considering the application, claimant was declared bankrupt. In connection with this, respondent filed an application to terminate court proceedings under Article 27 of Netherlands bankruptcy law. This provision states that proceedings on already asserted claims of the debtor must be terminated if the bankruptcy trustee refuses to participate in such proceedings.

The Amsterdam Court of Appeal noted that the arbitration considered not only claimant's claims but also respondent's counterclaims. Consequently, claimant's application to set aside the decision is also related to respondent's substantive claim for recognition of the transaction as invalid. This substantive claim must be qualified as a claim already asserted against the debtor under Netherlands bankruptcy law. In this case, Article 28 of bankruptcy law applies, under which court proceedings on claims against the debtor do not terminate even if the bankruptcy trustee refuses to participate.

The court concluded that continuing proceedings is necessary for compliance with due legal procedure. Despite claims asserted in arbitration being governed by different bankruptcy law provisions, they are inextricably linked and cannot be considered in separate proceedings.

Read

Vietnamese Court Decision: Dispute Without Commercial Character Cannot Be Heard in Arbitration Despite Arbitration Agreement

A recent decision by Ho Chi Minh City People's Court (Decision No. 35/2025/QD-PQTT dated February 26, 2025) sheds light on criteria for determining "commercial" disputes in the context of applying Vietnam's Law on Commercial Arbitration (Law No. 54/2010/QH12, "LCA"). The court set aside the arbitral award, indicating that the dispute was civil rather than commercial in nature and therefore not subject to arbitration under Article 68.2(c) LCA.

The dispute arose between two individuals – former spouses who concluded an agreement on distributing commissions under a multi-level marketing agreement. Although they initially conducted joint commercial activities, the proceedings concerned payment of commissions under an agreement concluded after divorce, under which one party was obligated to pay the former spouse part of income. Later parties signed an arbitration agreement and submitted the dispute to VIAC (Vietnam International Arbitration Centre).

The arbitral tribunal rejected claimant's claim, but he achieved setting aside the decision in court, claiming the dispute actually concerned division of spouses' common property (Article 28.1 Vietnam Civil Procedure Code) and therefore falls exclusively under court jurisdiction.

The court agreed that despite parties' participation in commercial activities in the past, the dispute between two individuals lacked commercial character under Article 2 LCA. The agreement concluded by spouses was not aimed at profit-making as a business operation between merchants but concerned personal property relations. Consequently, the arbitration agreement was invalid and the arbitral award was set aside.

Decision Significance

- The court confirmed that existence of an arbitration agreement does not make a dispute arbitrable if it does not fall under categories defined by Article 2 LCA: disputes arising from commercial activities; disputes where at least one party conducts such activities; and others directly specified by law.

- The court also emphasized a narrow approach to arbitrability in Vietnamese law, distinguishing it from laws based on UNCITRAL Model Law: purely civil disputes between individuals are not subject to arbitration even by mutual agreement of parties.

- In conditions of absence of established court practice, Decision No. 35/2025/QD-PQTT acquires reference significance for similar cases, despite lacking mandatory precedent status.

The decision emphasizes the need for preliminary analysis of dispute arbitrability under Vietnamese law, especially in disputes between individuals.

Read

Interim Relief After Arbitral Award: Mexican Court Position

On February 14, 2024, Mexico City Sixth Collegiate Court for Civil Matters rendered two significant decisions (Amparo en Revisión 402/2023 and 461/2023), first confirming the possibility of applying interim relief after rendering an arbitral award but before its recognition and enforcement. These cases concerned enforcement of an International Centre for Dispute Resolution (ICDR) decision in Mexico, where one party sought asset arrest to secure award enforcement.

Earlier, lower courts consistently rejected applications for provisional measures, citing that Mexico's Arbitration Act (MAA), based on UNCITRAL Model Law, does not provide for such measures after arbitration completion. However, the Sixth Collegiate Court reached the opposite conclusion: MAA contains no prohibition on post-award measures, and their application promotes enforcement efficiency and serves arbitration regulation purposes.

The court emphasized that even before official recognition of an arbitral award, courts can take measures to protect its potential enforcement. This teleological approach to legislation interpretation creates precedent for more active judicial support of arbitration in Mexico.

Nevertheless, this approach is not yet mandatory and may be challenged in the future. The question of admissibility of such measures from the losing party deserves special attention, as well as the need for possible legislative clarifications in MAA.

Read

Choice of Arbitration Seat as Choice of Applicable Law: Prince Edward Island Supreme Court Position in HZPC Americas Corp. v. Skye View Farms Ltd., 2025 PESC 25

In June 2025, Prince Edward Island Supreme Court (SCPEI) considered a key question regarding determination of applicable legislation to judicial review of an arbitral award when arbitration seat is specified as one jurisdiction but hearings actually take place in another. The court concluded that the decisive factor is the legally established seat – in this case, Ontario province.

Factual circumstances: A dispute arose between companies HZPC Americas Corp. and Skye View Farms Ltd. regarding conclusion of a contract for seed potato supply. HZPC claimed the contract was not concluded, while Skye View disagreed and argued that the dispute between parties should be resolved through arbitration under DRC (Fruit & Vegetable Dispute Resolution Corporation) rules, as both parties are DRC members.

DRC rules contain a provision (Article 69) under which Ontario province is the default arbitration seat, whose legislation applies to the arbitration agreement and procedure. Although parties chose an Ontario arbitrator, hearings were conducted physically in Prince Edward Island (PEI) territory for economic and convenience reasons.

The arbitrator rendered a decision in favor of Skye View. HZPC attempted to challenge this decision in SCPEI, citing either applicability of PEI legislation or court jurisdiction to apply Ontario arbitration law. Skye View insisted only Ontario legislation applies and PEI court is not authorized to review the dispute.

Court position: SCPEI sided with Skye View, indicating that choice of arbitration seat is a legal, not geographical category. The fact of physically conducting hearings in PEI does not mean changing the legal seat if not expressly agreed by parties. Since parties did not agree to change arbitration seat and the arbitrator signed the decision in Ontario, Ontario Arbitration Act remained applicable. Consequently, SCPEI lacks jurisdiction to review the decision.

The court decision also highlighted changes in PEI arbitration regulation. The former law provided extremely narrow grounds for reviewing decisions (e.g., arbitrator misconduct). The new law, effective March 1, 2024, expands such grounds, including procedural violations. However, unlike Ontario, appeals on questions of fact are completely excluded in PEI, while appeals on questions of law are possible only with corresponding provision in the arbitration agreement and appellate court permission.

Notably, PEI's new Arbitration Act expressly provides for remote hearings, bringing it closer to British Columbia and Northwest Territories regimes. This further emphasizes the distinction between physical location of proceedings and legal seat of arbitration.

For international arbitrations in PEI, a separate law continues to apply (International Commercial Arbitration Act) corresponding to UNCITRAL Model Law.

SCPEI decision confirms Canada's established approach to determining arbitration seat as choice of applicable arbitration legislation, regardless of physical location of hearings. This approach is consistent with Ontario court position in recent Tehama Group Inc. v. Pythian Services Inc., 2024 ONSC 1819.

Read

State Immunity Issues in Anti-Suit Injunction Cases in Singapore Courts

Issuing anti-suit injunctions is common practice in pro-arbitration jurisdictions like England and Singapore. But what should a court do if the arbitration clause is violated not by an ordinary legal entity but by a state body? And how to determine that a state body participates in the dispute? Singapore International Commercial Court faced such a question in Cooperativa Muratori and Cementisti – CMC di Ravenna, Italy v Department of Water Supply & Sewerage Management, Kathmandu [2025] SGHC(I) 16.

In 2013, an Italian contractor concluded an agreement with Melamchi Water Supply Development Board (Board) – an agency created by Nepal's Government to address water shortage problems in one region. The agreement provided for dispute resolution in Singapore International Arbitration Centre (SIAC).

Disputes between agreement parties indeed arose and led to its termination in 2018, and in 2022 the contractor initiated SIAC arbitration. However, the contractor specified "Department of Water Supply & Sewerage Management, Kathmandu, formerly known as Melamchi Water Supply Development Board" as respondent. As claimant later explained, Nepal's Government convinced him that the Board was abolished and Department of Water Supply & Sewerage Management, Kathmandu (Department) became Board's successor, so claimant named respondent accordingly. Soon it became clear, however, that the Board continues to exist. Claimant filed an application to join the Board to arbitration, and Department requested termination of arbitration regarding itself due to not being party to the arbitration clause. Arbitrators granted both applications and the Board became the new respondent.

When the Board joined proceedings, a dispute arose between it and claimant regarding arbitration seat. The agreement referenced Singapore, but the problem was that the term "place of Arbitration" was used, not "seat of Arbitration." The Board argued that parties chose Nepalese law as applicable, meaning Nepal was implied as arbitration seat. The arbitral tribunal disagreed with the new respondent and determined that Singapore is the arbitration seat. The Board attempted to challenge this arbitrators' decision in Nepalese state court, and claimant applied for anti-suit interim relief.

First, the Singapore court noted that anti-suit interim measures can be applied in two cases: if a party violates contractual jurisdiction and if a party files obviously unfounded claims for bad faith purposes. Depending on grounds for applying interim measures, the subject of proof will change. In this case, the court decided that the ground for applying interim measures is precisely violation of contractual jurisdiction, so applicant must prove that:

- Singapore court has jurisdiction to issue anti-suit injunction.
- foreign court proceedings violate contractual jurisdiction provision.
- there are no grounds for refusing to enforce contractual jurisdiction provision.

The most difficult issue was court jurisdiction. For this, judges had to decide whether Singapore is actually the arbitration seat or not. Citing case law, the court indicated that words "place" and "venue" may indicate agreed arbitration seat if the contract does not contain terminologically more correct words about "seat of Arbitration." According to judges, physical location of hearings has much less significance than arbitration seat. For this reason, it seemed logical to judges that by including provisions about "place" in the clause, parties primarily wanted to agree on arbitration seat, even if they use incorrect terms. The fact that parties agreed on Nepalese law as applicable did not change judges' decision. In this situation, the court formulated the following rule: if a contract contains reference to arbitration seat and applicable law different from arbitration seat, then procedure will be governed by arbitration seat law, and law reference should be read as reference to substantive law.

The court separately considered the sovereign immunity argument. As judges noted, neither party cited immunity, but under Singapore's State Immunity Act 1979, courts must in any case verify whether respondent is protected by state immunity.

First, the court explained why it is in any case entitled to consider an application for interim measures regardless of whether the Board possesses sovereign immunity. Thus, under Singapore law, written consent to arbitration simultaneously deprives the state of immunity also regarding court proceedings related to arbitration. However, this circumstance removed only the judicial immunity issue, while executive immunity remained – even if the state agreed to arbitration, Singapore court cannot require it to refrain from any actions.

To answer the second question, judges referred to State Immunity Act provisions establishing a list of persons enjoying immunity. This list includes:

- head of state in his public capacity.
- government and its ministries.
- legal entities when exercising state sovereign powers (such persons enjoy immunity only if proceedings relate precisely to exercising sovereign powers and the state would also enjoy immunity in such circumstances).

To establish which category the Board belongs to, judges referred to arbitral proceedings materials. As established, during party questioning, Department claimed that the Board is actually not a government structural subdivision but a separate legal entity that can independently be plaintiff and defendant in court, has the right to own property and make transactions.

Thus only one question remained – whether the Board exercised sovereign powers. The court considered that the contract between contractor and Board was commercial in nature. Moreover, as judges noted, a transaction can be conducted either within commercial activities or within exercise of sovereign powers, but never simultaneously. Consequently, the dispute between contractor and Board concerned commercial activities and Singapore court was entitled to issue anti-suit injunction, which it did.

Read

Claim in Arbitration Against Non-Signatory Holding Company for Subsidiary Obligations

English courts traditionally maintain a pro-arbitration approach, but this policy has its limits. A company that filed a claim in LCIA against a non-signatory to the arbitration agreement learned this.

Relations between dispute parties concerned pharmaceutical product supply. Claimant concluded two contracts – with a British firm and a Malaysian-registered firm. Both contracts included LCIA arbitration clauses. Claimant was dissatisfied with how counterparts fulfilled their obligations and filed a claim in LCIA. In its claim, it specified the British firm, Malaysian firm, and their parent company, which had not signed any agreements with claimant, as respondents. Claimant justified such respondent composition by arguing that the parent company bears joint liability with other respondents since due to its position in the corporate group it should have exercised supervisory function.

The parent company applied to English court under Section 72 of Arbitration Act 1996. It requested that the court recognize absence of a valid arbitration agreement between parties and allow it not to participate in arbitral proceedings initiated by claimant.

During oral hearing in state court, claimant abandoned the argument that the parent company was bound by arbitration agreement due to its position in corporate structure. Nevertheless, the court commented on this argument, indicating it would not have accepted it in any case. According to the judge, such position ignores legal entity legal personality, and recognizing parent and subsidiary organizations as a single entity is possible only to prevent abuse of rights. Moreover, as the court noted, both contracts included clauses establishing that any addition, amendment, or novation can be made only in written form.

Claimant also stated a second argument. It indicated that the parent company participated in obligation fulfillment and consequently an implied arbitration agreement arose between them, analogous to those included in contracts. The court considered this argument only harms claimant's position since earlier during arbitration claimant had not stated it, and now the arbitral tribunal would hardly accept such significant position change. Thus it turned out that in arbitral proceedings claimant justified arbitral tribunal competence by one circumstance, while in state court it cited completely different circumstances to confirm this competence.

The court recognized that arbitral tribunals have the right to independently conclude about their competence, so courts should act especially cautiously when considering applications under Section 72 of Arbitration Act. However, in this case it was obvious to the court that the acting arbitral tribunal lacks competence to hear the dispute. However, the court indicated that claimant has the right to initiate new arbitral proceedings, citing implied contract as basis for arbitrators' competence.

Read

How to Force Respondent to Disclose Information About Assets Subject to Enforcement, and What Sanction Follows Refusal to Disclose

US District Court for District of Columbia rendered decision in favor of arbitral award winner, ruling that respondent is obligated to pay claimant a penalty of USD 15,000 per day.

The dispute Archirodon v. General Company for Ports of Iraq was heard in ICC and concerned port modernization in Iraq. Following arbitration, an award was rendered in favor of contractor ordering General Company for Ports of Iraq to pay over USD 90 million.

After arbitration completion, contractor applied to US court for arbitral award enforcement, which was granted. However, award enforcement was not very successful, so contractor requested the court issue a disclosure order. Under such order, the party against whom the arbitral award is enforced must disclose its assets subject to enforcement. The court granted contractor's application and obligated General Company for Ports of Iraq to disclose its assets within 31 days of the corresponding order.

However, respondent did not comply with the order, limiting itself to sending claimant one email characterized by the court as "ambiguous." In this email, respondent informed claimant it was conducting formal procedures in accordance with the court order and would inform claimant of results upon completion. The judge considered such respondent behavior as contempt of court. He noted that respondent did not even present a position on claimant's application for imposing a fine for non-compliance with the disclosure order.

When imposing the fine, the judge separately verified its amount's fairness: he compared the fine with amounts recovered under the arbitral award and Iraq's annual budget income. Additionally, the court clarified that imposing contempt of court fine on General Company for Ports of Iraq is possible despite this entity being Iraq's state body and protected by immunity.

Read

Inter-State Arbitration on Indus River Resource Use: Res Judicata, Consistency of Dispute Resolution Methods and Evolutionary Interpretation of International Treaty

In the prolonged dispute between India and Pakistan regarding Indus River water resource use, arbitrators completed work on an arbitral award. On most issues arbitrators agreed with Pakistan, which initiated the dispute, but some issues were resolved in India's favor. Nevertheless, India continues to maintain that arbitration should not have considered this dispute.

Party disagreements on the issue that became the dispute subject have lasted since India and Pakistan's founding. When British India was divided into two states, all river sources supplying Pakistan with fresh water and having key significance for the country's agriculture remained in India's territory. Thus India could at any moment block rivers and artificially cause catastrophic drought in Pakistan's territory. To prevent such development and resolve disagreements, India and Pakistan, with World Bank mediation, concluded the 1960 Indus Waters Treaty. This treaty regulated water resource use and countries' cooperation in this sphere.

In the 2000s, several disputes arose between countries related to India's construction of hydroelectric power stations (HPS) on the river. Pakistan considered that these structures lead to river level changes and would affect the country's irrigation systems. The Treaty provided that on several issues listed in Treaty appendix, parties can request appointment of independent adjudicator. If the issue does not fall under the mentioned list or adjudicator considers that a full dispute has arisen between parties, then the issue should be transferred to arbitration. In the first dispute in 2005 an adjudicator was appointed, and in the second, in 2010, arbitrators.

In 2016 a new dispute arose, which Pakistan requested to transfer to arbitration. India considered that conditions for transferring dispute to arbitration were not met and requested first appointing adjudicator. World Bank consequently satisfied both applications, starting arbitration and parallel appointing adjudicator. India demanded amendments to the Treaty, justifying this by Pakistan's previous Treaty violations, and now due to these violations two parallel proceedings were started, and India would no longer tolerate such behavior. India did not recognize arbitral tribunal competence to hear the dispute and refused to participate in its formation.

Due to India's position, the arbitral tribunal decided to separately address India's refusal to participate in arbitration. Arbitrators noted that party non-participation in arbitration does not deprive arbitral tribunal of competence, and this principle is universally recognized in international law. Moreover, the Treaty expressly provided procedure for cases where a party refuses to participate in arbitral tribunal formation, and this procedure was fully complied with. India was provided all opportunities to state its position and participate in proceedings during arbitration. The fact that India announced Treaty suspension in 2025 due to military actions between India and Pakistan does not affect arbitrators' competence.

Arbitrators also faced a non-standard situation when determining applicable law. The Treaty provided a strict list of applicable norms: first was the Treaty itself, then mentioned conventions recognized by both parties. However, conventions application was permitted only for Treaty interpretation purposes and only to extent necessary for interpretation. Finally, possibility of applying international customs was established. Thus the Treaty established a narrow list of applicable norms and their strict hierarchy. Arbitrators considered that no interpretation issue arose in this proceeding that would require applying international conventions. However, as source of international legal custom, arbitrators used Vienna Convention on Law of Treaties. Arbitrators also considered that some international environmental law principles should apply when resolving the dispute.

Besides applicable norms, arbitrators faced the question whether previous arbitration decisions conducted under the Treaty should apply. According to arbitrators, arbitration decisions became part of applicable law. The arbitral tribunal explained its position by noting that the Treaty contained clause on finality and binding nature of arbitral awards for parties. If subsequent dispute resolution procedures could re-discuss considered issues, the dispute resolution mechanism would not achieve its purposes. As necessary conditions for decision to have res judicata character, arbitrators indicated the following: arbitral award was rendered in accordance with form established by Treaty and fully resolved disputed issue. However, according to arbitrators, the Treaty does not require mandatory consideration of issue by adjudicator before transferring to arbitration.

Simultaneously, adjudicator himself must consider arbitrators' conclusions during work, including on Treaty interpretation issues. Adjudicator decisions have only limited res judicata character. Thus, adjudicator decision is binding only on specific issue he considered, while arbitral award has systemic significance. In context of current dispute this means the following. Adjudicator can check specific HPS technical characteristics for Treaty compliance, and subsequently his decision will have res judicata character when discussing these characteristics at this HPS. But arbitral tribunal can interpret Treaty so that using certain technology at HPS is not permitted, and parties will be prohibited from using such technology at any new HPS on Indus River.

When analyzing technologies that can be used at HPS, arbitral tribunal concluded that Treaty should not be interpreted evolutionally. Thus, compliance of certain HPS construction technologies with best and modern practices cannot justify using these technologies if they lead to Treaty violation. At the same time, if applying new technologies does not lead to violating certain criteria established in Treaty, India can use them in construction. One arbitrator disagreed with this opinion. In his separate opinion, he indicated that Treaty purpose is to prohibit India from using any technology that can be used to harm Pakistan's water supply, regardless of establishing certain criteria in Treaty. Notably, in response to separate opinion, one majority arbitrator issued his separate opinion commenting on disagreeing arbitrator's position.

Following dispute consideration, arbitrators interpreted Treaty, but applying this interpretation regarding specific HPS, according to arbitrators, belongs to adjudicator competence, whose appointment India requested at dispute beginning. Thus arbitral tribunal answered India's objections related to conducting two parallel proceedings.

Read

INVESTMENT ARBITRATION NEWS

Alternative Access to Justice: The Hague Court of Appeal Found that the Rights of German Investors Previously Bringing Claims to ICSID Were Not Violated

The Hague Court of Appeal rendered a decision refusing two German companies – Uniper and RWE – damages due to the adoption of legislation on the phased closure of coal-fired power plants aimed at combating climate change. Previously, the same claims were brought in ICSID in the cases RWE v. Netherlands (ICSID Case No. ARB/21/4) and Uniper v. Netherlands (ICSID Case No. ARB/21/22). Both claims were based on provisions of the ECT.

Shortly after filing the claims, the Netherlands applied to competent German courts for anti-suit relief, specifically seeking termination of the ICSID proceedings. The Higher Regional Court of Cologne granted the applications, later confirmed by the Federal Supreme Court of Germany. The main argument in favor of terminating the arbitrations was their intra-European character.

Both investors also approached ICSID arbitral tribunals with applications for provisional measures in the form of a prohibition on the respondent continuing proceedings in German courts. However, the arbitrators refused the applications in both cases. The Netherlands' actions led to RWE filing an application to terminate the arbitration. The situation with Uniper was more interesting. Germany provided financial assistance to the latter and fully nationalized it. One condition for providing assistance was withdrawal of the claim against the Netherlands.

In parallel, the investors approached Dutch courts with similar claims but on different grounds. Claimants argued that their property rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR) and Article 17 of the EU Charter of Fundamental Rights were violated. The District Court of The Hague refused the German companies' claims. Claimants filed appeals, with RWE citing ECT violations, which it had previously alleged only in arbitration.

The Hague Court of Appeal analyzed the European Court of Human Rights (ECtHR) case law regarding criteria for de facto expropriation. ECtHR practice provides that to qualify state actions as de facto expropriation, evidence is needed that investors could not use their investments (power plants) otherwise.

The court further noted that both companies have the opportunity to convert their power plants to use biofuel, moreover, investors retained ownership of land plots that can be used for other energy-related purposes. The court supported its argument by noting that RWE's power plant is almost fully converted to biofuel and can therefore continue to function completely without coal. The court's argument that if biofuel use incentives cease, RWE's business may become unprofitable, but this does not directly relate to Dutch government measures prohibiting coal use, was particularly interesting.

In addition to other arguments, the court noted that the Netherlands' actions were predictable for investors. Investors were clearly aware of EU norms aimed at reducing carbon dioxide levels. The Netherlands' commitment to this mission also clearly followed from government statements made in 2009.

According to the court, in this case the Dutch government acted in compliance with the principle of proportionality – it considered public interests and investors' interests. Regarding RWE's reference to the ECT, the court concluded that the relevant ECT provisions are analogous to ECHR provisions as interpreted by the ECtHR. Thus, the court concluded that the Dutch government did not violate the ECT.

Read

You Shall Not Pass: ICSID Arbitral Tribunal Refused the European Commission's Request to Intervene in Proceedings at the Expedited Preliminary Objection Stage

In the case Eurohold and EIG v. Romania (ICSID Case No. ARB/24/18), the respondent raised a preliminary objection regarding lack of merit under Article 41(1) of the 2022 ICSID Arbitration Rules. This application initiated an expedited procedure for reviewing the merits of the claims. The dispute relates to a Romanian financial regulator revoking a license from a company within the Bulgarian holding Eurohold, which specializes in financial and insurance services.

The European Commission (EC) considered it possible to intervene in the case as a non-disputing party. The EC stated it was very interested in having arbitrators consider EU legal order norms as interpreted by the EU Court. The EC requested the arbitral tribunal for intervention, the right to provide amicus curiae, access to case materials, and participation in oral hearings.

The arbitrators assessed the justifiability of involving the EC in non-disputing party participation under Article 67 of the ICSID Arbitration Rules. One requirement is establishing all necessary circumstances related to the application. The arbitral tribunal noted that the respondent's objections related only to ICSID provisions and did not address issues related to EU norms at all. This argument was sufficient for arbitrators to conclude there were no circumstances necessary for involving the EC.

Regarding procedural issues, the arbitral tribunal concluded that involving the EC at the expedited procedure stage would disrupt proceedings and unreasonably burden the parties or lead to improper prejudice to their rights. Arbitrators separately noted that the expedited merit review procedure is an early stage of proceedings with limited time – both for parties presenting positions and arbitrators resolving the issue. However, it was noted that the EC is not deprived of the right to submit an application for intervention at a later stage of the arbitration.

Read

European Commission Initiated Proceedings Against Hungary in the EU Court

The EC intends to challenge Hungary's position in the EU Court regarding the Declaration of June 26, 2024, on the legal consequences of the EU Court's decision in Komstroy and the common understanding on the inapplicability of Article 26 of the ECT as a basis for intra-European investment arbitration. It is noted that

this position may be related to Croatia's participation in MOL Hungarian Oil & Gas company, which had already appealed to the ECT at the time of signing the Declaration.

Shortly after the EU's decision to withdraw from the ECT, EU member states, except Hungary, signed the Declaration of June 26, 2024, on the legal consequences of the EU Court's decision in Komstroy and the common understanding on the inapplicability of Article 26 of the ECT as a basis for arbitral proceedings between member states. Hungary adopted a separate declaration agreeing to the inapplicability of Article 26 of the ECT, but only regarding arbitral proceedings initiated after the Komstroy decision.

In July last year, the EC already used the mechanism for monitoring member states' compliance with EU law and proposed that Hungary provide explanations. According to the EC press release, the Hungarian authorities' response did not eliminate the EC's concerns regarding violations of EU law. According to the EC, Hungary violated the principles of autonomy, supremacy, effectiveness, and uniform application of EU law.

The EU as a whole continues its course toward modernizing investment arbitration participation policy. At the end of May this year, the EU Council adopted the UN Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention). The only investment treaty adopted at the EU level is precisely the ECT.

Read

New Stage in EU's Battle Against Intra-EU Arbitration: Antin v. Spain Case

In a decision from March 2025, the European Commission (EC) officially recognized that any payment by Spain of compensation to investors under the 2018 ICSID arbitral award in Antin v. Spain would constitute unlawful state aid violating Article 107(1) TFEU.

The EC consistently opposes investor-state dispute settlement (ISDS) based on bilateral investment treaties (BITs) between EU member states. This is based on EU Court decisions in Achmea (2018) and Komstroy (2021), which recognized that such arbitral mechanisms violate EU legal order autonomy and Articles 267 and 344 TFEU. In 2020, 23 states signed an agreement to terminate intra-European BITs.

The arbitral award concerned compensation awarded to Antin for Spain's changes to the renewable energy support system, violating Energy Charter Treaty (ECT) provisions. The EC recognized this decision as legally null and void since the ECT, in its opinion, does not apply to intra-European arbitrations. Moreover, the EC qualified payment under the decision as new state aid since the right to compensation arose not from law but from an arbitral award (see also Micula case).

The EC not only instructed Spain not to make payment under the decision but also indicated to third-country courts the need to refuse enforcement of the decision. This significantly limits investors' ability to achieve enforcement of decisions not only in the EU but beyond: EU member states risk violating EU law if they voluntarily comply with such decisions even after orders from courts outside the EU.

The Antin decision became an important precedent: for the first time, the very fact of payment under an arbitral award was recognized as an economically significant measure subject to EC control under state aid

rules. This strengthens the EC's position in future disputes and limits investors' opportunities to recover compensation awarded to them in intra-European disputes.

Read

Minimum Contacts Doctrine in Enforcement of Arbitral Awards Against Persons Protected by Immunity in the USA

The famous Devas v. Antrix case continues its journey through state courts of various jurisdictions, contributing to the development of practice on enforcement of arbitral awards. This time the case was considered by the US Supreme Court (CC/Devas (Mauritius) Ltd. v. Antrix Corp., 605 U.S. (2025)), and the result was an answer to the long-standing question about conditions for American courts' personal jurisdiction over foreign states.

Antrix is an Indian state company from which an ICC arbitral tribunal ordered payment of more than USD 500 million in damages to Devas. Claimant applied to a US state court to enforce the arbitral award, and its application was granted in the first instance. However, on appeal the court's decision was reversed.

The disputed issue was what criteria must be met to enforce an arbitral award against a company protected by state immunity. The US Foreign Sovereign Immunities Act establishes only two criteria for a US court to recognize jurisdiction to hear a case involving state entities: the subject matter must fall under exceptions to state immunity established by law, and the state must be properly notified of proceedings. Exceptions to state immunity include situations involving enforcement of arbitral awards against state entities.

However, despite the certainty of these criteria, US courts have also developed a third criterion for personal jurisdiction. Thus, when establishing jurisdiction over any disputes, US courts have long applied the "minimum contacts" doctrine. This doctrine is based on the Fifth and Fourteenth Amendments to the US Constitution. The doctrine's essence is that requiring a person without minimum contacts with the USA to participate in proceedings on US territory violates their rights to due process. The appellate court also applied this doctrine in Devas v. Antrix. It considered that Antrix lacks minimum contacts with the USA and therefore the decision cannot be enforced.

The US Supreme Court disagreed with the lower instance. It indicated that the US Foreign Sovereign Immunities Act contains no provisions that would establish courts' obligation to check minimum contacts in each case to establish jurisdiction. Judges paid special attention to the fact that for some categories of cases, the Act directly establishes the court's obligation to verify certain contacts with the USA. According to the judges, this circumstance demonstrates that such contacts should be checked only in cases provided by the Act. Cases on recognition of arbitral awards do not belong to such categories of cases. On this basis, the Supreme Court enforced the arbitral award against Antrix.

Read

European Courts Devise New Methods to Combat Intra-EU Arbitration

The Amsterdam Court of Appeal overturned the first instance decision and ordered the company that filed an investment claim against Poland to file a motion to terminate the arbitration. The court established a two-week deadline for filing the corresponding motion and provided for a penalty of EUR 100,000 for each day of delay in executing the court decision.

The arbitral proceedings LC Corp B.V. v. Poland were initiated in 2020 regarding alleged expropriation by Poland of the investor's banking assets. The claimant was a Dutch firm controlled by a Polish citizen. The arbitration was conducted under UNCITRAL Rules with London as the seat of arbitration.

By the time proceedings began, intra-EU arbitration had already been recognized as inconsistent with EU law, and EU member countries had terminated bilateral investment treaties. Despite such difficult conditions, the investor continued the arbitration and even managed to win the dispute in the Dutch first instance court when Poland demanded termination of the arbitration. As the court indicated in that case, claimant had reason to expect satisfaction of claims since London was the seat of arbitration, where EU law does not apply, including the prohibition on intra-EU arbitration, and therefore the arbitration was not obviously hopeless.

However, this decision did not survive on appeal. The appellate court agreed that arbitration has the right to independently decide on competence to hear the dispute, but in this case it was not about state court interference in arbitrators' powers but about alleged abuse of rights by claimant. As the court noted, claimant knew and did not deny that intra-EU arbitration contradicts EU law. By initiating arbitral proceedings against Poland and petitioning for choice of seat of arbitration outside the EU, he committed intentional actions to circumvent the law with the purpose of harming the state, which was forced to participate in unnecessary proceedings.

The Amsterdam Court of Appeal also satisfied Poland's request for a declaratory judgment recognizing that the arbitration agreement referenced by claimant had lost force. The court indicated that unlike commercial arbitration, where the source of arbitral tribunal competence is a clause agreed by both parties, in investment arbitration arbitrators' competence is based on an open offer included in an international treaty. The court noted that Poland and the Netherlands, in full compliance with the Vienna Convention on the Law of Treaties, exercised their right and terminated the bilateral investment treaty containing the clause.

The court also did not accept the investor's reference to Poland making a reservation about maintaining the arbitration agreement in force for 15 years when terminating the bilateral investment treaty. As the court noted, the countries later changed their decision and signed a joint declaration recognizing that the arbitration agreement had lost force, and the Dutch and Polish governments exchanged notes fixing that the arbitration agreement does not operate from the date of bilateral investment treaty termination.

The court separately considered the argument that the investment arbitration prohibition limits the investor's right to protection since he would have to apply to Polish national courts – the state against which he is conducting proceedings. According to the appellate court, this deficiency in the judicial protection mechanism is compensated by the investor's right to apply to the European Court of Human Rights and the European Court of Justice.

Read

Criteria for Recognizing a Legal Entity as State Alter Ego in French Courts

The Paris Court of Appeal upheld the first instance court decision on enforcement against French assets of Libya's National Oil Company. This application was filed as part of enforcement proceedings for an arbitral award rendered in a dispute between Cypriot company Olin Holdings and Libya. Claimant accused the state of expropriating its local business, namely a dairy production plant. However, Libya's National Oil Company was not a party to the dispute, so the main question judges had to answer was: should the company be liable for the state's debts?

To answer this question, judges analyzed several legal and factual circumstances. First, the court noted that the company was created under law for developing Libya's oil industry. Its management was appointed by the state, and some management decisions and financial reporting had to be approved by the government. The company also lacked independence in resource management: all its income went directly to the country's central bank and it needed state permission to use it, while hydrocarbon resources exploited by the company belonged to the state by law. Based on these facts, the court recognized that the company is actually Libya's alter ego and therefore its assets can be subject to enforcement under the arbitral award against this country.

However, recognizing the company as the state's alter ego automatically raised a new question: does sovereign immunity extend to its assets? The court considered that the assets claimant sought to enforce against (joint venture shares) were not used for public purposes and therefore were not protected by sovereign immunity.

Additionally, as objections to enforcing the arbitral award, Libya's National Oil Company indicated that courts are currently considering respondent's application to set aside the decision. This objection was also rejected. As judges noted, Libya has not been enforcing the decision since 2018, so delay in asset enforcement creates risk for claimant of not receiving due amounts.

Read

London Court Gives "Second Life" to UAE's USD 273 Million Arbitration Against India in Battle Over Bauxite

On June 20, 2025, the English High Court (Justice Robin Knowles) set aside a 2022 arbitral award in which the arbitral tribunal refused to hear RAKIA's claim against India due to allegedly "lacking jurisdiction" (Ras al-Khaimah Investment Authority (RAKIA) v. India).

Case background: In 2016, Indian state company APMDC (Andhra Pradesh state) unilaterally terminated the 2008 Bauxite Supply Agreement (BSA), depriving the ANRAK aluminum plant of raw materials – a project of Ras al-Khaimah Investment Authority (RAKIA), which is a UAE government body responsible for attracting investment to the emirate of the same name. RAKIA claimed violation of the bilateral investment treaty (BIT) and demanded USD 273 million in damages. The arbitral tribunal (Lord Hoffmann, Justice Chandramuli, and William Rowley) considered that APMDC's contract termination in 2016 directly affected only Indian company ANRAK, not RAKIA's investments as a shareholder, while the fund's damages were indirect (derivative from damage to the Indian company), which formally does not fall under investment treaty (BIT) protection.

Court's key argument: Refusal to supply bauxite is not just a commercial dispute but potential violation of investor protection standards under the BIT (citing precedent Swissbourgh v Lesotho). Justice Knowles rejected the tribunal's formalistic approach, indicating that measures sabotaging the ANRAK project, in

which RAKIA invested USD 42.5 million, directly affect UAE investments, even if legally the contract was terminated by the local partner. The case now returns to UNCITRAL rules arbitration, where the tribunal must assess whether BSA cancellation was unlawful expropriation or unfair treatment of the investor.

Read

Voluntary Payment Under Intra-EU Arbitration: Birth of New Practice or Exception to Rules?

On June 10, 2025, Spain took an unprecedented step: it paid EUR 32 million under an ICSID decision (2021) to American fund Blasket Renewable Investments (JGC Holdings Corporation (formerly JGC Corporation) v. Kingdom of Spain). This is the first successful payment out of more than 50 unenforced arbitral awards totaling EUR 1.5+ billion related to cancellation of "green" tariffs in 2013 (Energy Charter Treaty/ECT violation).

Case details: Initially, Japanese JGC Holdings, which invested in solar power plants, was claimant and won the dispute against Spain, but later the right of claim passed from the Japanese investor to American company (Blasket Renewable Investments) through assignment. After Spain's refusal to pay, JGC achieved enforcement of the decision in US federal court (November 2024), and Blasket continued the case, launching an aggressive campaign to search for and arrest Spain's assets abroad.

Why was this particular debt paid? First, extra-European status (investor – Japanese/American, arbitration in USA). Second, direct threat of liquid asset arrest (real estate, accounts). Third, absence of formal EC prohibition (unlike the Antin case, where in March 2025 the European Commission declared payment of EUR 101 million "unlawful state aid"). The Spanish government insists this is a "specific case" and does not change the strategy of challenging other decisions.

However, experts (including Prof. Nikos Lavranos) see a turning point: pressure through enforcement outside the EU works, while accumulated interest and court costs (already over EUR 350 million) make further resistance economically senseless. Now focus is on actions of funds like NextEra or RREEF, whose claims are also being enforced through US and UK courts.

Read

ARBITRATION NEWS

Centennial Crossroads: Need to Rethink US Federal Arbitration Act in Light of International Commercial Practice

In 2025, the US Federal Arbitration Act (FAA) turns 100 years old. This law, adopted in 1925, significantly influenced arbitration development not only in the United States but worldwide. However, as authors Guillermo Garcia Sanchez and Ian Stevens (Texas A&M University School of Law) emphasize in Kluwer Arbitration blog, FAA's anniversary is not only cause for celebration but a moment for rethinking its application in modern realities.

Authors argue that international commercial arbitration norms, originally intended for dispute settlement between equal parties in cross-border transactions, have gradually penetrated US domestic arbitration. This led to blurring legal distinctions between contexts and weakening protection of vulnerable parties – particularly employees and consumers.

Originally FAA was intended to ensure enforcement of arbitration agreements between commercial entities. However, starting in the 1980s, the US Supreme Court began applying a uniform approach to all types of arbitration, including labor and consumer disputes. This occurred through borrowing doctrines developed in international arbitral practice – a process authors call inverse fertilization.

The result was that even arbitration clauses in public employee labor contracts (as in McGee v. Armstrong) became obstacles to judicial protection despite special legislative guarantees.

Principles such as presumption of arbitrability and judicial deference to arbitrators' decisions were developed within international arbitration considering cross-border commercial dispute specifics and compensating mechanisms (e.g., refusal of recognition under Article V of New York Convention). However, in domestic arbitration context under FAA Chapter 1, such mechanisms are absent.

Authors advocate returning to contextual FAA interpretation – an approach the Supreme Court practiced in the first decades of law application. Application of arbitration clauses should consider:

- nature of contractual relations,
- dispute content,
- balance of power between parties.

This approach does not deny arbitration value as a form of dispute resolution but requires differentiation: arbitration is appropriate between equal entities but should not be used to circumvent guarantees provided in protective labor laws or consumer protection.

According to authors, arbitration as a form of alternative dispute resolution needs reassessment given dominance of confidentiality, limited access to judicial control, and shifting balance in favor of stronger parties. FAA's 100th anniversary is not only a milestone but an opportunity for reform. Returning context to law interpretation will ensure genuine protection of rights and fairness in arbitration – in the spirit of the legislator's original intent.

Read

Mandatory Adjudication as Protection from Bad Faith Main Contractors

On August 28, 2025, Hong Kong's Construction Industry Security of Payment Ordinance takes effect, designed to solve traditional problems with payment delays in construction. One main reason prompting legislator to adopt this act was record debt of HKD 300 million accumulated before contractors and workers in 2024 alone.

The law radically changes rules: it prohibits "pay when paid" clauses (which allowed general contractors not to pay subcontractors for years on grounds that money from construction client had not yet arrived), establishes strict deadlines – 30 days to respond to claims and 60 days for full payment. If payment demand is not satisfied – mandatory adjudication launches.

Adjudication refers to a method of preventing and settling disagreements and disputes where independent experts accompany project progress, monitor work implementation, and help resolve arising issues upon parties' request or on their own initiative. Under Hong Kong's established procedure, independent expert must resolve dispute within 55 days, and his decision takes effect immediately and is binding.

Another legal guarantee for subcontractors established by new law is the right to suspend work if general contractor does not voluntarily enforce adjudicator's payment decision. The only condition for exercising this right is notifying general contractor 5 days before suspension.

Nevertheless, the law provides certain limitations. Thus, adjudication procedure can be launched only for construction projects worth from HKD 5 million or supply contracts related to construction worth from HKD 500,000.

In February 2025, RAC published Adjudication (Dispute Board Settlement) Rules, which you can review at the link.

Read

ICC Summarized Annual Results: Complete Dispute Resolution Statistics for 2024 Published

ICC Court of Arbitration summarized 2024 results: record dispute amounts, global diversity growth, and new trends in international arbitration

International Chamber of Commerce (ICC) published detailed dispute resolution statistics for 2024, recording significant financial indicator growth and strengthening global character of arbitral proceedings.

Quantitative indicators:

ICC Secretariat registered 841 new cases, of which 831 were initiated under institutional arbitration and 10 under ad hoc arbitration. At end of reporting period, 1,789 active proceedings were under ICC administration.

Financial parameters:

Total claim amount across all cases reached historical maximum of USD 354 billion. Average dispute amount for newly registered cases was USD 130 million, while across all open proceedings this indicator reached USD 211 million.

Geographical coverage:

Parties from 136 jurisdictions participated in arbitral proceedings. Notably, in 19% of proceedings, one party was a state or state organization.

Arbitral tribunal formation:

In 2024, among ICC arbitrators, 73% were appointed by parties or proposed by co-arbitrators. Geographically, 13% of appointed arbitrators were from United Kingdom, the highest percentage among other countries of arbitrators' origin, while the smallest number – 2%, were represented from Australia.

Female arbitrator appointment share reached 28.6%. Progress in appointments made directly by ICC is particularly notable – among them women comprised 46%. In 43% of cases women served as sole arbitrators, and in 36% as tribunal chairs.

Arbitration seats:

Traditional centers maintained leadership: United Kingdom (96 cases), France (91), Switzerland (83), and USA (72). UAE's entry into top-5 with 38 cases became a landmark event, confirming Dubai's growing significance as arbitration hub.

Applicable law:

English law maintained leading position (125 cases), followed by various US state laws (69 cases) and Swiss law (60 cases). In 2% of contracts, parties referenced transnational law sources, including UNIDROIT Principles and Incoterms.

Procedure speed:

Average duration of proceedings concluded with final award was 26 months.

Russia's participation in ICC arbitrations:

Statistics show continued significant role of Russian participants in international arbitration. Parties from Russian Federation were represented in 19 proceedings, with Russian participants as claimants in 12 cases and respondents in 7 cases.

However, significant changes in contractual practice emerged. Russia was chosen as arbitration seat in only one case, and Russian law was applied to dispute merits also in only one case. It's difficult to predict potential future disputes with Russian parties since there's probability that arbitration agreements including ICC as dispute resolution forum have not yet been realized.

Read

IBA Prepared Report on Arbitrator Appointment in Investment Arbitration

International Bar Association (IBA) presented comprehensive report analyzing timeframes and methods for arbitral tribunal formation in investment disputes based on data from four leading arbitral institutions (ICC, ICSID, PCA, SCC) for 2013-2022 period.

Key Statistical Conclusions

Institutional data demonstrates significant duration of arbitral tribunal formation procedure. ICSID reports average time of 237 days from registration to chair appointment under default procedure. PCA records median time of 168 days from arbitration initiation, while SCC shows fastest times - 91 days under standard procedure.

Methodological Differences and Complexities:

Report emphasizes fundamental differences in data collection methodology between institutions. For example, ICSID calculates average tribunal formation time from date of receiving notice of claim filing, while PCA – from date respondent receives such notice. Some institutions consider appointment date as date arbitrator accepts appointment, others - date of notification about tribunal formation. These differences complicate direct data comparison.

Analysis revealed clear ranking of appointment method efficiency:

- Direct appointment by institution (e.g., SCC Board);
- Joint appointment by co-arbitrators – most popular method in ICSID (85 out of 446 cases);
- “Strike-and-rank” procedure;
- “Ballot” procedure – least efficient, 237 days in ICSID;
- Bespoke procedures agreed by parties – increase timeframes to 235 days in PCA.

Practical Problems and Solutions

Report details why complex arbitrator selection procedures fail: multi-stage process, lack of clear challenge criteria, “fear of failure.” In response, following solutions are proposed:

- Modified PCA procedure with challenge limitation on “half minus one” principle allows parties to strike less than half candidates and rank those not struck, after which appointing authority either selects candidate with best rating or appoints at discretion if two candidates have same rating;
- Clear instructions to institution on excluding previously rejected candidates;
- Ready templates based on ICSID 2022 rules.

Efficiency and Quality Balance

ICSID data shows institutions play key role in ensuring diversity - 43% of female arbitrators appointed by institution itself. As Alexandra Kuznetsova notes, “expedited arbitral tribunal formation procedures are more

justified in standard commercial disputes," while in investment arbitration careful selection may be critically important.

Conclusions and Recommendations

IBA report serves as practical guide for optimizing one of most important arbitral proceedings stages. Main trend – striving for efficiency while maintaining flexibility, where institutions play key role as process organizers.

Recommendations include:

- Abandoning multi-stage procedures;
- Limiting number of challenges;
- Preliminary agreement on candidate by appointing authority;
- Considering qualification and diversity requirements at early stage;
- Using ready mechanisms proven effective (modified PCA procedure, ICSID template).

Read

EU Introduces Investment Arbitration Restrictions Under 18th Sanctions Package

European Union's eighteenth sanctions package, approved by Regulation (EU) 2025/1494, marks previously unthinkable escalation of legal regulation in investment disputes. Document not only tightens economic restrictions but creates comprehensive legal mechanism aimed at blocking possibility of challenging sanctions through international arbitrations. Key innovation was official interpretation of EU "public policy" doctrine as grounds for refusing recognition and enforcement of foreign arbitral awards.

Public policy doctrine as systemic barrier

EU Council in Regulation preamble established that recognition or enforcement of investment arbitration decisions aimed at circumventing sanctions restrictions contradicts EU public policy. This provides member state national courts with legal grounds for refusing recognition and enforcement of such decisions if they contradict sanctions regime established by Regulations No. 833/2014 and No. 269/2014.

This norm develops traditional refusal grounds established in Article 45 of "Brussels I bis" Regulation and 1958 New York Convention, first clearly linking them with sanctions law application.

Three-component legal mechanism

Package includes three interconnected legal instruments:

- Procedural prohibition on recognition and enforcement of international investment arbitration (ISDS) decisions rendered outside EU in disputes related to sanctions measures application. Prohibition extends to any Russian persons, including non-sanctioned.

- Procedural obligation for member states to actively challenge recognition and enforcement of such arbitral awards at all levels using all available legal means.

- Compensation mechanism (Article 11e), providing member states right to judicial recovery of direct and indirect damages and court costs from subjects initiating or participating in corresponding arbitral proceedings, including owners and controlling persons.

Legal consequences and international context

New provisions may result in increased number of court proceedings where sanctions regime compliance issues become key element of judicial analysis. This will require investment dispute participants to conduct thorough preliminary sanctions risk analysis when developing rights and interests protection strategies.

UN Conference on Trade and Development (UNCTAD) statistics show growth in number of investment disputes with Russian investor participation – 28 such cases registered as of early 2025. Introduction of new legal mechanisms creates additional procedural problems for resolving such dispute categories.

Court practice and implementation

Special attention in new regulation is paid to jurisdiction issues. Article 11d of updated Regulation No. 833/2014 provides member state courts right to hear damage compensation claims in exceptional cases even without ordinary jurisdictional connection, provided close connection exists with member state territory.

New norms are expected to simplify EU court enforcement practice since they provide clear grounds for citing sanctions regulation provisions instead of requiring comprehensive analysis of norm totality.

Legal experts note new provisions may influence bilateral investment treaty application practice, but their specific legal consequences will be determined during implementation and judicial interpretation in EU member states.

Long-term, new provision implementation may affect EU jurisdiction attractiveness for arbitral award enforcement, requiring investment protection and dispute settlement strategy revision.

Read

ADR EVENTS

Registration Opens for IX V.P. Mozolin Competition

Russian Institute of Modern Arbitration (RIMA) announced opening of registration for IX Student Competition in Corporate Dispute Arbitration named after V.P. Mozolin.

In 2025, Mozolin Competition will be held for the ninth time and again unite about one hundred teams of law students from across the country. This year's scenario will take participants into aerospace industry world. Teams will face problems of cascade arbitration clause execution, consider double derivative suit possibility, and take new look at settlement agreements.

Competition is conducted in Russian and consists of three stages:

- written stage – preparation and submission of Statements of Claim and Responses to Claims;
- online rounds, which will take place from October 31 to November 16, 2025;
- oral rounds, which will take place December 6 and 7, 2025.

More details about Competition scenario, rules, and team registration procedure: arbitrators and coaches can be found on Competition platform.

Read

Dispute Resolution Innovation: LIDW25 Results

Sixth London International Dispute Week (LIDW25) program, held June 2-6, 2025, included more than 150 events. LIDW25 focused on "Dispute Resolution Innovation: Navigating Global Risks."

During the week, numerous events were organized, including conferences, seminars, round tables, and panel discussions held at QEII centre and leading law firm offices. Program covered wide range of issues such as comparative analysis of arbitration and litigation advantages, international arbitration development in Turkic-speaking countries regions, artificial intelligence regulation role in arbitration, and practical aspects of post-merger and acquisition companies and hydrogen sector development prospects. Event formats included both in-person and hybrid formats, ensuring expert and representative participation from various jurisdictions, expanding opportunities for professional experience exchange and business networking.

Read

International Arbitration in Era of Change: ICCA-KIAC Conference

On June 5, 2025, ICCA-KIAC conference took place in Kigali. "Africa and International Arbitration: Untold Stories" conference became key platform for discussing current legal frameworks, debates, and latest trends in international arbitration, with special focus on Rwanda, African region, and global world context.

Conference was dedicated to legal reform processes implemented on continent to overcome historical obstacles, studying current problems and opportunities for trade, entrepreneurship, and investment in region, and forecasting international arbitration future in Africa.

Read

Arbitration in Global Economy Conditions: Bucharest Arbitration Days 2025 Conclusions

June 5-6, 2025, Bucharest Arbitration Days took place, examining contemporary challenges and current trends in arbitration both regionally and internationally.

During Conference sessions, participants discussed such key topics as barriers to arbitration access, importance of due process compliance, impact of recent legal changes and technological achievements on arbitral process, and arbitration relationship with fundamental human rights, including right to clean environment. Past event once again emphasized continuing relevance and dynamism of arbitration as effective method for resolving complex disputes in global economy conditions.

Read

8th Annual Middle East and Africa Energy Arbitration and Dispute Resolution Conference Overview

8th Annual Middle East and Africa Energy Arbitration and Dispute Resolution Conference took place June 12-13, 2025, in United Kingdom. Key discussion topics within Conference were: human rights, international trade law, dispute resolution, and global risk management within international commercial and investment arbitral process.

During event, participants actively discussed contemporary challenges faced by international legal community, including contract law development, new technology impact, and ensuring international legal norm compliance. Conference also covered latest case law examples and legal reforms regarding ICA.

Read

Arbitration Without Borders: AMINZ Arbitration Day in New Zealand 2025

June 13, 2025, Arbitration Day organized by Arbitration and Mediation Institute of New Zealand (AMINZ) took place. Discussions covered topics such as recent legislative changes, evolution of arbitrators' role, and challenges related to cross-border disputes.

Participants analyzed practical consequences of recent court decisions and legal regulation updates, paying special attention to their impact on arbitral processes in New Zealand. Speakers shared experience on

efficiency improvement, ensuring fairness, and implementing technological innovations in dispute resolution. Discussions also raised current issues concerning arbitrability of certain dispute types and international arbitration trend impact on national practice.

Read

International Arbitration at SPIEF 2025: New Development Vector

St. Petersburg International Economic Forum (SPIEF) 2025 held first specialized session dedicated to international arbitration issues. Within event framework, participants discussed current arbitral procedure problems, exchanged experience, and examined contemporary international commercial law development trends.

Organizers and speakers emphasized importance of conducting such specialized sessions in context of improving international dispute resolution efficiency and significance of strengthening legal framework for business community. Special attention was paid to international arbitration development prospects both in Russia and beyond, including new regulatory initiatives and cooperation mechanisms between countries. This event became important stage in forming professional dialogue between legal and business circles representatives, promoted international cooperation expansion and strengthening trust in Russian arbitral system at global level.

Read

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