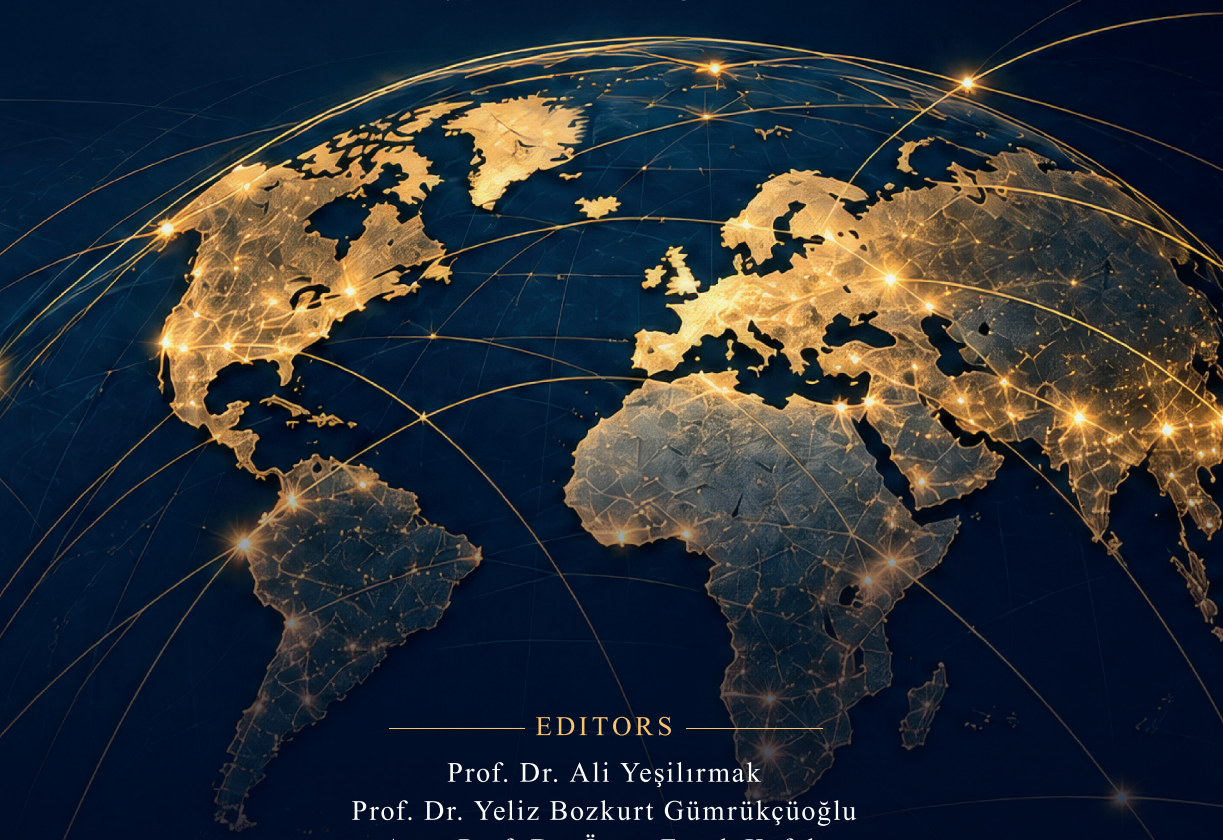
Arbitration Law and Practice Yearbook

— 2025 Annual Review —

France • Türkiye • United Kingdom • United States



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Arbitration Law and Practice

Annual Review

2025

IBN HALDUN UNIVERSITY PRESS

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ISBN	978-625-8592-63-4
1st Edition	2026 / İstanbul
IHU Press	189
Executive Editor	Savaş C. Tali
Publishing Director	Ayşenur Alper
Design	IHU Press
Cover Design	IHU Press
Layout	Abdullah Mantıcı
Imprinting and Binding	Erkam Yayın San. ve Tic. A.Ş. Sertifika No: 51796

Arbitration law and practice : annual review 2025 / editors Ali Yeşilırmak, Yeliz Bozkurt Gümrükçüoğlu, Ömer Faruk Kafalı, Hüseyin Yağızhan Kol. -- First edition. -- İstanbul : Ibn Haldun University Press, 2026.

128 p. ; 24 cm. -- (IHU Press ; 189).

ISBN : 978-625-8592-63-4.

1. Arbitration and award. 2. Arbitration (International law). 3. Dispute resolution (Law).

K2400

341.552

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Ibn Haldun University Press is a department of Ibn Haldun University.
Publishing Certificate No: 51227 | Ordu St. No:3, 34480 Başakşehir/İstanbul
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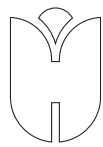

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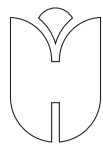


Foreword

I am pleased to introduce *Arbitration Law and Practice: Annual Review*, prepared by the Dispute Resolution Application and Research Center (UÇAM) at Ibn Haldun University. I hope that this publication will become a regular annual series, examining developments in arbitration law and practice across different jurisdictions and contributing to academic and professional discussions in the field.

At UÇAM, we support the development of arbitration through research, education and cooperation with academic and professional institutions. We aim to make knowledge of arbitration more accessible and to encourage informed discussion of its use in resolving disputes. Bringing scholars, practitioners and students together is an important part of this work.

Our cooperation with public institutions, arbitration centres, and university research centres provides opportunities to pursue these aims through joint programmes and events. We also organise comparative programmes on arbitration law and practice in other jurisdictions. These include our webinars on developments in the United Kingdom, France, Switzerland and the United States, as well as events on arbitration in Turkic states and on arbitrability and the formation and validity of arbitration agreements in light of recent judicial decisions. Through these activities, we seek to strengthen understanding of arbitration and support its effective use in Türkiye and in cross-border disputes.

The 2025 edition brings together studies of four jurisdictions with distinct legal traditions: France, Türkiye, the United Kingdom and the United States. The French chapter addresses reform proposals and judicial developments concerning commercial and

investment arbitration. The chapter on Türkiye examines the interpretation of arbitration agreements, arbitrator impartiality, and judicial assistance and supervision. The United Kingdom chapter considers legislative reform and significant decisions on matters including state immunity, dispute resolution clauses, confidentiality and procedural time limits. The United States chapter examines institutional developments, the use of artificial intelligence in arbitration, and judicial decisions concerning jurisdiction, sovereign immunity and award enforcement.

These contributions demonstrate the importance of examining legislation alongside judicial practice. Courts play a significant role in giving effect to arbitration agreements, supporting arbitral proceedings and reviewing awards within the limits prescribed by law. Their decisions help define the practical scope of party autonomy and the safeguards on which confidence in arbitration depends. Examining developments across jurisdictions helps illuminate the issues that shape arbitration law and practice in different legal systems.

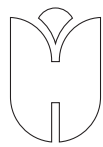
As Director of UÇAM, I attach particular importance to connecting academic research with the questions encountered in practice. Publications such as this review provide a basis for discussion among judges, arbitrators, counsel and scholars. They also offer students and young researchers an opportunity to examine how principles of arbitration law operate in concrete disputes. We remain committed to supporting this exchange through our research, publications, educational programmes and institutional partnerships.

I thank the authors and fellow editors for their contributions, and the institutions and colleagues who support UÇAM's work. I hope this review will benefit scholars, practitioners and students.

Prof. Dr. Yeliz Bozkurt Gümrükçüoğlu

Director of Dispute Resolution Application and Research Center (UÇAM)
Ibn Haldun University

Chapter One



French Arbitration Law and Practice: 2025 Review

Cem Kalelioglu[*]

If French arbitration law were a river, it would be a long, well-charted one: originating early, deepened by steady jurisprudence, liberal in its course, and flowing well beyond national borders. Indeed, France is considered one of the world's leading jurisdictions for international arbitration.

Its attractiveness as a seat is grounded in arbitration-friendly legislation and judiciary. Indeed, French arbitration law is widely regarded as liberal. The 1980 and 1981 decrees – adopted prior to the UNCITRAL Model Law on International Commercial Arbitration of 1985 and later incorporated into the Code of Civil Procedure ("*Code de procédure civile*" in French) – established one of the earliest modern arbitration regimes.[1] Beyond creating one of the earliest modern arbitration legal frameworks, both the French legislature and judiciary actively promoted arbitration as an autonomous and efficient dispute resolution mechanism, emphasizing the finality of arbitral awards and permitting only limited judicial intervention.[2] This approach reflected the French government's longstanding policy of positioning Paris as a leading center for international

* Cem Kalelioglu is a Partner at Pinsent Masons LLP in London.
The author wishes to thank Cristian De Fazio, a research assistant at King's College London, and Laurie Labbaye for their valuable research support. The views discussed in this report are those of the author's and not necessarily the views of his firm.

1 *See* French Decree No. 80-354 of 14 May 1980 on Domestic Arbitration; French Decree No. 81-500 of 12 May 1981 on International Arbitration (codified in Book IV of the French Code of Civil Procedure).

2 *See* E. Gaillard, *Legal Theory of International Arbitration* 15–45 (2010); French Code of Civil Procedure, at Arts. 1492, 1520.

arbitration, which was a strategy that has proven highly successful since the beginning of the twentieth century but especially after the 1980s.

French arbitration law has been following a dualist structure, similar to that of Türkiye, which distinguishes between domestic arbitration and international arbitration, each governed by separate sets of provisions in the Code of Civil Procedure. While these regimes are distinct, certain provisions are identical, and – like in Türkiye – principles developed in one context may influence judicial reasoning in the other. As discussed below, recent reform proposals envisage a transition to a monist regime, under which the rules governing domestic and international arbitration would be merged.

France also benefits from an experienced judiciary well versed not only in international arbitration matters but also in private and public international law, and fully capable of keeping pace with ongoing legal developments. That experience allowed French courts to render some landmark decisions that have shaped core principles of international arbitration and contributed to France's consistently pro-arbitration judicial approach. For example, one of the earliest and most influential decisions shaping the principle of separability was rendered by the French courts. Indeed, in the *Dalico* decision rendered in 1993,[3] the French Cour de cassation held that an arbitration agreement has a legal existence and effect independent of the main contract in which it is contained, and that its validity and scope are determined by the common intention of the parties and by international public policy, rather than by the substantive law governing the underlying contract. This reasoning was subsequently followed by numerous other national courts and arbitral tribunals, and it paved the way for the modern doctrine of separability, now a cornerstone of international arbitration.

3 French Cour de cassation, *Municipalité de Khoms El Mergeb v. Société Dalico*, Case No. 91-16828, 20 December 1993.

Shortly after the *Dalico* decision, French courts rendered another landmark decision that would be controversial in some other jurisdictions but firmly established France's pro-arbitration approach.[4] Indeed, in the *Hilmarton* decision rendered in 1994, the French Cour de cassation held that a foreign arbitral award could be recognized and enforced in France even if it had been annulled in the country of origin.[5] This delocalised approach contrasts with many jurisdictions that refuse enforcement of awards annulled at their seat.[6] The decision has been cited internationally as a leading example of arbitration autonomy, reinforcing the principle that international arbitral awards exist independently, which was later confirmed by the same courts in the *Putrabali* decision in 2007.[7] While still debated, these decisions and others were instrumental in establishing France's reputation as one of the most arbitration-friendly jurisdictions in the world.[8] One point remains uncontroversial, however: France – through its multiple organs – seeks to ensure that Paris remains a leading hub for international arbitration and French arbitration law exerts influence

4 *See* French Cour de cassation (Civ. 1e), *Hilmarton Ltd v. Omnium de traitement et de valorisation* (OTV), Case No. 92-15.137, 23 March 1994.

5 The court held that an international arbitral award 'was not integrated into the legal order of [the seat state], so that its existence remained established despite its annulment and its recognition in France was not contrary to international public policy.' This position was subsequently confirmed in French Cour de Cassation (Civ. 1e), *PT Putrabali Adyamulia v. Rena Holding*, Case No. 05-18.053, 29 June 2007.

6 Compare the approach in the United States under *Chromalloy Aeroservices v. Arab Republic of Egypt*, 939 F. Supp. 907 (D.D.C. 1996) (enforcing annulled award) with the more restrictive approach in Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd., 191 F.3d 194 (2d Cir. 1999). English courts have traditionally refused enforcement of awards annulled at the seat. *See also* Chilean Supreme Court, *EDF Internacional SA v. Endesa*, Case No. MJJ29225 [915], 8 September 2011

7 French Cour de cassation (Civ. 1e), *PT Putrabali Adyamulia v. Rena Holding*, Case No. 05-18.053, 29 June 2007. The court characterized international awards as "*international judicial decisions whose regularity is examined according to the rules applicable in the country where recognition and enforcement are sought.*"

8 *See* Queen Mary University of London & White & Case LLP, 2025 International Arbitration Survey: The Path Forward – Realities and Opportunities in Arbitration (2025); ICC, 2024 Dispute Resolution Statistics (2025) ranking Paris among the top five most preferred arbitration seats globally, with particularly strong preferences in Europe (2nd), the Middle East (2nd), and Africa (2nd). The 2024 ICC Statistics confirm that Paris remains the second most popular ICC arbitration seat with 91 cases.

over other jurisdictions through its liberal approach, as reflected in the recent reform efforts discussed below.

The principal arbitral institution in France is the International Chamber of Commerce ("ICC"), which is headquartered in Paris. Since its establishment in 1923, the ICC has administered over 30,000 cases worldwide, and the ICC Rules remain the most widely adopted rules globally. A revised version of the Rules is expected to enter into force in 2026. Hosting such a prestigious institution has reinforced Paris's appeal as an international arbitral seat and contributed to the frequent application of French arbitration law for procedural aspects in numerous cases. This also enabled France and French law to exert influence on the development of international arbitration law that might otherwise have been limited, given widespread dominance of English law in commercial matters and London's historic role in international dispute settlement. In this respect, the ICC played an important role in placing Paris firmly on the map of international arbitration.[9]

Since the 1990s, competition between Paris and London has frequently involved the French and English judiciaries, sometimes producing conflicting outcomes. The French judiciary has generally championed a liberal approach to arbitration, while the English judiciary has tended to adhere to – or seek to maintain – a more rigid, black-letter approach in certain matters. This dynamic has at times resulted in divergent results between the two jurisdictions. Notable examples include the *Dallah* and *Kabab-ji* cases, where English courts

9 Indeed, the ICC's statistics highlight both the institution's global pre-eminence and the increasingly competitive dynamic between Paris and London. In 2024 alone, the ICC registered 841 new cases with a record-breaking total pending caseload value of USD 354 billion - the highest in its history. The average amount in dispute rose USD 130 million. United Kingdom overtook France as the most frequently chosen seat of ICC arbitration in 2024, with 96 cases compared to Paris's 91 (followed by Switzerland with 83). This marked a reversal from 2023, when Paris held the leading position. Meanwhile, the ICC Hearing Centre in Paris, which opened in December 2024, hosted more than 120 hearing days in its first year of operation, with 90% of hearings involving remote participation. *See* ICC, 2024 Dispute Resolution Statistics (2025).

were criticized for decisions perceived as less pro-arbitration compared with French courts reviewing the same cases.[10] This situation arguably changed in 2025, when the English legislature reformed the English Arbitration Act to address perceived shortcomings arising from court interpretations and common law principles, aligning English arbitration law more closely with international standards, particularly regarding procedural rules and the law applicable to the arbitration agreement.[11]

Observing these developments, the French legislature ostensibly recognized the need to further modernize French arbitration law. Indeed, in 2025 the French legislature launched a reform process (*see* Section I). In addition, the French courts handed down several landmark decisions, including one involving two prominent Turkish companies (*see* Section II).

I. The French Arbitration Reform: Progress and Prospects

As discussed above, in 2025, France took steps to modernize its arbitration framework, reflecting the country's ambition to maintain its status as a leading seat of international arbitration. As the Working

10 *See* United Kingdom Supreme Court, *Dallah Real Estate and Tourism Holding Co v. Ministry of Religious Affairs of Pakistan* [2010] UKSC 46; Paris Court of Appeal, *Dallah v. Pakistan*, Case No. 09/28533, 17 February 2011. The UK Supreme Court refused enforcement, finding that the Government of Pakistan was not a party to the arbitration agreement. The Paris Court of Appeal, reviewing the same award, reached the opposite conclusion and granted enforcement, finding that Pakistan's conduct demonstrated its intention to be bound. Similarly, in United Kingdom Supreme Court, *Kabab-Ji SAL v. Kout Food Group*, [2021] UKSC 48, English courts applied the governing law of the main contract to the arbitration agreement and refused enforcement, while French courts in French Cour de cassation, *Kabab-Ji S.A.L Company v. Kout Food Group Company*, Case No. 20-20.260, 28 September 2022 applied French substantive rules and upheld the award. Jointly, these cases showcase the divergence between the English conflict-of-laws approach and the French substantive rules approach to determining arbitration agreement validity.

11 *See* M. Scherer, O. Jensen, C. Kalelioğlu, *The Law of the Arbitration Agreement Meets Russia-Related Anti-Suit Injunctions: The United Kingdom Supreme Court's Decision in* UniCredit Bank GmbH v. RusChemAlliance LLC [2025] IPRax 200-211, discussing the English Arbitration Act 2025 reforms in the context of arbitration agreement law.

Group of the reform project stated, "[c]odification *is not an end in itself*. ***It is a strategy of influence.***"[12]

At this stage, in order to simplify matters, it is useful to distinguish between two parallel reform tracks operating on different timelines. First, the Working Group's March 2025 report proposes a structural reorganization culminating in a standalone "Arbitration Code", intended to consolidate currently dispersed arbitration provisions and rationalize the overall architecture of French arbitration law. Second, the Ministry of Justice has opted for a phased approach, beginning with a "Phase 1" package implemented through targeted amendments to the Code of Civil Procedure. This report therefore focuses on the proposed amendments to the Code of Civil Procedure, as they constitute the concrete measures presently under consultation and capable of near-term implementation. By contrast, the proposed Arbitration Code ("*Code de l'arbitrage*" in French) represents a broader codification project that would require further institutional – and in part legislative – steps before it could supplant the existing Code of Civil Procedure framework.

In March 2025, the Working Group published a comprehensive report proposing significant reforms, the centrepiece of which is, ultimately, the creation of a dedicated Arbitration Code. This initiative aims to consolidate the legislation, providing both domestic and international practitioners with a clear, cohesive legal framework. The reforms were publicly endorsed in April 2025, during Paris Arbitration Week, when the French Minister of Justice emphasized the role of the arbitration law as "***a lever for sovereignty and stability in an uncertain world.***"[13] He outlined a three-phase implementation plan running from Autumn 2025 to Autumn 2026. In December 2025, the Ministry of Justice launched a public consultation to gather

12 G. Darmanin, Speech at Paris Arbitration Week, 8 April 2025 ("*La codification n'est pas une fin en soi. C'est une stratégie d'influence*").

13 G. Darmanin, Speech at Paris Arbitration Week, 8 April 2025. The Minister described the proposed Code as "*un outil de pédagogie, un levier d'attractivité, un vecteur d'identité juridique*" and emphasized that "*la codification n'est pas une fin en soi. C'est une stratégie d'influence.*"

feedback on the initial proposals to amend the Code of Civil Procedure, which remains open until 20 January 2026.[14]

The Working Group's report contains 40 proposals, combining structural and substantive reforms.

First, the reform includes nine structural proposals:

- Proposal 1 calls for the creation of an Arbitration Code, consolidating all arbitration-related provisions currently scattered across 23 different legal codes into 146 coherent articles.
- Proposals 2-4 suggest a transition from the current dualist system to a monist regime, merging domestic and international arbitration rules by integrating domestic provisions into the more liberal international framework.
- Proposal 5 introduces 19 guiding principles ("*principes directeurs*" in French) for French arbitration law, including independence, impartiality, procedural loyalty, and a new principle of proportionality aimed at controlling costs and duration.
- Proposals 6-9 focus on judicial concentration: consolidating arbitration-related litigation before civil courts (including disputes involving public entities), strengthening the role of the supporting judge ("*juge d'appui*" in French), and establishing exclusive jurisdiction for Paris civil courts and the Cour de cassation for exequatur procedures – a measure partially implemented by Decree No. 2025-619 in July 2025.

Second, the reform includes other substantive proposals which focus on three key objectives: flexibility, protection, and effectiveness. We discuss some of these noteworthy proposals below.[15]

14 Ministère de la Justice, Consultation publique sur le projet de décret réformant le droit de l'arbitrage – phase 1, 12 December 2025, available at https://www.justice.gouv.fr/actualites/actualite/consultation-reforme-du-droit-larbitrage.

15 Because the current governmental "Phase 1" package takes the form of amendments to the Code of Civil Procedure, the draft provisions discussed below are cited by reference to their Code of Civil Procedure article numbers, notwithstanding the longer-term codification project, which envisages a possible future reorganisation into a standalone Arbitration Code.

The reform proposes to amend Article 1443 so that domestic arbitration agreements are no longer subject to formal requirements, aligning them with international practice.

> **Current Article 1443:** "*Under penalty of nullity, the arbitration agreement shall be in writing. It may result from an exchange of writings or a document to which reference is made in the main agreement.*"[16]
>
> **Proposed Article 1443:** "*The arbitration agreement is not subject to any formal requirement.*"[17]

Article 1448 is proposed to be revised to streamline the principle of *compétence-compétence*, removing the final paragraph to reflect the approach used in international arbitration.

> **Current Article 1448:** "*When a dispute covered by an arbitration agreement is brought before a court of the State, the court shall declare itself incompetent unless the arbitral tribunal has not yet been seized and the arbitration agreement is manifestly invalid or manifestly inapplicable.*
>
> *The court of the State may not raise its lack of jurisdiction of its own initiative.*
>
> *Any provision contrary to this article shall be deemed null and void.*"[18]
>
> **Proposed modification to Article 1448:** "*When a dispute covered by an arbitration agreement is brought before a court of the State, the court shall declare itself incompetent, unless:*

16 French Code of Civil Procedure, at Article 1443 ("*A peine de nullité, la convention d'arbitrage est écrite. Elle peut résulter d'un échange d'écrits ou d'un document auquel il est fait référence dans la convention principale*").

17 Proposed modification to the French Code of Civil Procedure, at Article 1443 ("*La convention d'arbitrage n'est soumise à aucune condition de forme*").

18 French Code of Civil Procedure, at Article 1448 ("*Lorsqu'un litige relevant d'une convention d'arbitrage est porté devant une juridiction de l'Etat, celle-ci se déclare incompétente sauf si le tribunal arbitral n'est pas encore saisi et si la convention d'arbitrage est manifestement nulle ou manifestement inapplicable. La juridiction de l'Etat ne peut relever d'office son incompétence. Toute stipulation contraire au présent article est réputée non écrite*").

> *1° the arbitral tribunal has not yet been seized of the matter on the date on which it rules; and*
>
> *2° the arbitration agreement is manifestly null and void or manifestly inapplicable.*
>
> *The court of the State may not raise its lack of jurisdiction on its own initiative."*[19]

Article 1464 is proposed to incentivize tribunals to adapt procedures to the complexity and stakes of each case, while the newly created Article 1462-1 allows a single tribunal to hear disputes arising from multiple contracts or arbitration agreements unless a party objects. This is a welcome development, as the proposal explicitly allows the tribunal to adapt the resolution of the dispute – for example, to control costs or streamline proceedings. While such authority is generally recognized as part of the tribunal's discretion, codifying it in law helps remove any doubt and provides greater certainty for parties and practitioners.

> **Current Article 1464:** "*Unless the parties have agreed otherwise, the arbitral tribunal shall determine the arbitral procedure without being bound to follow the rules established for state courts.*
>
> *However, the guiding principles of the proceedings set out in Articles 4 to 10, the first paragraph of Article 11, the second and third paragraphs of Article 12 and Articles 13 to 21, 23 and 23-1 shall always apply.*
>
> *The parties and arbitrators shall act expeditiously and fairly in the conduct of the proceedings.*

19 Proposed modification to the French Code of Civil Procedure, at Article 1448 (*"Lorsqu'un litige relevant d'une convention d'arbitrage est porté devant une juridiction de l'Etat, celle-ci se déclare incompétente, sauf si: **1°** le tribunal arbitral n'est pas encore saisi à la date à laquelle elle statue et si; **2°** la convention d'arbitrage est manifestement nulle ou manifestement inapplicable. La juridiction de l'Etat ne peut relever d'office son incompétence*") (emphasis added).

> *Subject to legal obligations and unless the parties otherwise agree, the arbitration proceedings shall be subject to the principle of confidentiality."*[20]
>
> **Proposed addition to Article 1464:** "*The arbitral tribunal shall endeavor to adopt a procedure adapted to the complexity and stakes of the dispute."*[21]
>
> **New Article 1462-1:**[22] "*Unless a party objects, the arbitral tribunal may be seized in a single arbitral proceeding of claims relating to several contracts, pursuant to one or more arbitration agreements."*[23]

Another change is the proposal to amend Article 1466 to deem arguments or irregularities waived if not raised in due time. The reform also proposes to add Article 1468, which will allow French courts to grant provisional enforcement of interim measure orders.

> **Current Article 1466:** "*The party who, knowingly and without legitimate reason, fails to raise an irregularity before the arbitral tribunal in a timely manner is deemed to have waived the right to rely on it."*[24]

---

20 French Code of Civil Procedure, at Article 1464(*"A moins que les parties n'en soient convenues autrement, le tribunal arbitral détermine la procédure arbitrale sans être tenu de suivre les règles établies pour les tribunaux étatiques.Toutefois, sont toujours applicables les principes directeurs du procès énoncés aux articles 4 à 10, au premier alinéa de l'article 11, aux deuxième et troisième alinéas de l'article 12 et aux articles 13 à 21,23 et 23-1. Les parties et les arbitres agissent avec célérité et loyauté dans la conduite de la procédure. Sous réserve des obligations légales et à moins que les parties n'en disposent autrement, la procédure arbitrale est soumise au principe de confidentialité."*).

21 Proposed addition to the French Code of Civil Procedure, at Article 1464 ("*Le tribunal arbitral s'efforce d'adopter une procédure adaptée à la complexité et aux enjeux du litige*").

22 Article 1462-1 is proposed as a new provision (rather than an amendment to an existing article) because the current Code contains no equivalent consolidation mechanism in domestic arbitration.

23 Proposed addition to the French Code of Civil Procedure, at Article 1462-1 ("*Sauf opposition d'une des parties, le tribunal arbitral peut être saisi dans une procédure arbitrale unique de demandes relatives à plusieurs contrats, en application d'une ou de plusieurs conventions d'arbitrage*").

24 French Code of Civil Procedure, at Article 1466 ("*La partie qui, en connaissance de cause et sans motif légitime, s'abstient d'invoquer en temps utile une irrégularité devant le tribunal arbitral est réputée avoir renoncé à s'en prévaloir."*).

> **Proposed modification to Article 1466:** "*The party who, knowingly and without legitimate reason, fails to raise an irregularity, a complaint or an argument before the arbitral tribunal in a timely manner is deemed to have waived the right to rely on it.*"[25]

Proposed Article 1468: Adds that the *juge d'appui* may grant provisional enforcement ("*exécution provisoire*" in French) to interim measures ordered by arbitral tribunals, closing a significant enforcement gap in French law.

In addition, the reform introduces a new Article 1470-1 empowering arbitral tribunals to liquidate (*i.e.*, determine the amount of) any penalty payment ("*astreinte*" in French) they have ordered, provided the tribunal remains seized of the dispute. This amendment addresses a well-identified gap in the current regime: while arbitral tribunals may already impose a penalty payment, they lack the power to liquidate it, a limitation that can significantly undermine its practical effectiveness. The draft article further clarifies that the liquidation decision must be rendered "*by award,*" thereby keeping it within the award framework and subject to the ordinary regime applicable to arbitral awards.

> **New Article 1470-1:** "*As long as the case is pending before it, the arbitral tribunal may, by award, liquidate the penalty payment it has imposed.*"[26]

Further, the reform codifies a definition of an arbitral award that reflects the settled approach of the French courts. Under this definition, an award is an act that definitively resolves, in whole or in part, the dispute submitted to the tribunal, whether on the merits, on jurisdiction, or on a procedural issue capable of terminating the

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25 Proposed modification to the French Code of Civil Procedure, at Article 1466 ("*La partie qui, en connaissance de cause et sans motif légitime, s'abstient d'invoquer en temps utile une irrégularité, un grief ou un moyen devant le tribunal arbitral est réputée avoir renoncé à s'en prévaloir*") (emphasis added).

26 Proposed addition to the French Code of Civil Procedure, at Article 1470-1 ("*Tant qu'il est saisi, le tribunal arbitral peut liquider, par une sentence, l'astreinte qu'il a prononcée*").

proceedings. Importantly, provisional or conservatory measures are expressly excluded, thereby reducing uncertainty and disputes as to whether a tribunal's decision qualifies as an "*award*" for purposes of challenge or enforcement.

> **New Article 1479-1:** "*The arbitral award is the act of the arbitral tribunal that definitively settles, in whole or in part, the dispute submitted to it, whether on the merits, on jurisdiction, or on a procedural issue that may terminate the proceedings.*"[27]

In connection with the issuance of awards, the draft expressly confirms that awards may be rendered either in paper form or digitally. Where issued electronically, the methods used must guarantee the award's integrity and preservation. This amendment seeks to reflect contemporary arbitral practice and to align the arbitration framework with broader developments in civil procedure concerning dematerialisation and electronic documents and signatures.

> **New Article 1479-2:** "*The sentence may be issued on paper or digitally.*
>
> *When issued digitally, the processes used must guarantee its integrity and preservation.*"[28]

Finally, Article 1526 is proposed to be amended to place appeals and annulment proceedings in a dedicated procedural framework, generally removing their suspensive effect and making awards enforceable more rapidly, with stays of enforcement becoming exceptional.

This also appears to be a positive development, though its practical impact remains uncertain. Many of the award debtor's assets may be located outside France, where the appeal could have suspensive

27 Proposed addition to the French Code of Civil Procedure, at Article 1479-1 ("*La sentence arbitrale est l'acte du tribunal arbitral qui tranche de manière définitive, en tout ou en partie, le litige qui lui est soumis, que ce soit sur le fond, sur la compétence ou sur un moyen de procédure susceptible de mettre fin à l'instance*").

28 Proposed addition to the French Code of Civil Procedure, at Article 1479-2 ("*La sentence peut être établie sur support papier ou numériquement.Lorsqu'elle est établie numériquement, les procédés utilisés doivent en garantir l'intégrité et la conservation*").

effects, limiting the provision's immediate influence. To the extent that assets are in France, however, the measure could encourage timely compliance with arbitral awards. It is nonetheless prudent to maintain the possibility of a stay in exceptional cases, as set aside proceedings generally present a high threshold. A stay should therefore be reserved for situations where serious rights are genuinely at risk, ensuring that enforcement is not delayed unnecessarily while still protecting fundamental rights.

> **Current Article 1526:** "*An application for annulment of the award and an appeal against the order granting enforcement shall not have suspensive effect.*
>
> *However, the first president ruling in summary proceedings or, as soon as the matter is brought before him, the pre-trial judge may stay or modify the enforcement of the award if such enforcement is likely to seriously prejudice the rights of one of the parties."*[29]
>
> **Proposed Article 1526:** "*An application for annulment of the award and an appeal against the order upholding the application for enforcement or recognition shall not have suspensive effect.*
>
> *However, the first president ruling in summary proceedings or, as soon as the matter is brought before him, the pre-trial judge may, by an order not subject to appeal, stay or modify the enforcement of the award if such enforcement is likely to seriously prejudice the rights of one of the parties."*[30]

29 French Code of Civil Procedure, at Article 1526 (*"Le recours en annulation formé contre la sentence et l'appel de l'ordonnance ayant accordé l'exequatur ne sont pas suspensifs. Toutefois, le premier président statuant en référé ou, dès qu'il est saisi, le conseiller de la mise en état peut arrêter ou aménager l'exécution de la sentence si cette exécution est susceptible de léser gravement les droits de l'une des parties"*).

30 Proposed modification to the French Code of Civil Procedure, at Article 1526 ("*Le recours en annulation formé contre la sentence et l'appel de l'ordonnance ayant* ***fait droit à la demande d****'l'exequatur* ***ou de reconnaissance*** *ne sont pas suspensif. Toutefois, le premier président statuant en référé ou, dès qu'il est saisi, le conseiller de la mise en état peut,* ***par une ordonnance non susceptible de recours,*** *arrêter ou aménager l'exécution de la*

II. Landmark Decisions Rendered By the French Courts In 2025

As discussed above, France benefits from a highly experienced judiciary in arbitration. We have identified eight leading cases decided by the French courts in 2025 and examine their key implications.

A. *Nurol Insaat* and *Cengiz Insaat v. Libya* (Cour de cassation, 12 February 2025)

On 12 February 2025, the French Cour de cassation delivered two closely related decisions in investment arbitration arising from Libya's challenges to two ICC awards obtained by Turkish construction groups under the Turkey-Libya BIT of 25 November 2009. In *Nurol*, the court upheld the Paris Court of Appeal's refusal to set aside a partial award on jurisdiction. In *Cengiz*, it upheld the refusal to set aside a final award granting monetary compensation and ordering Libya to take steps to release bank guarantees connected to the underlying projects.

Read together, the decisions do more than resolve case-specific challenges. They refine the French courts' investment-arbitration doctrine on temporal jurisdiction and, more significantly, clarify how French law conceptualizes treaty consent as a standing offer to arbitrate while strictly policing the boundary between jurisdictional review and merits review. They also confirm – of particular importance for construction and infrastructure disputes – that a tribunal's remedial powers are not confined to monetary damages, but may extend to measures aimed at neutralizing the continuing effects of a breach, including the release of bank guarantees.[31]

In *Nurol*, the court's treatment of temporal jurisdiction is especially instructive for long-cycle infrastructure projects. Although the

sentence si cette exécution est susceptible de léser gravement les droits de l'une des parties") (emphasis added).

31 French Cour de cassation (Civ. 1e), Nurol Insaat ve Ticaret A.S. v. Libya, Case No. 22-11.436, 12 February 2025; French Cour de cassation (Civ. 1e), Cengiz Insaat Sanayi Ve Ticaret A.S. v. Libya, Case No. 21-22.978, 12 February 2025.

BIT applied to investments made before or after its entry into force, it excluded disputes that had arisen beforehand. Libya argued that the entire controversy constituted a single dispute that had crystallized prior to the treaty's entry into force. The court rejected this monolithic framing. Endorsing a granular approach, it accepted that disputes may be legally distinct even when they arise out of a single investment relationship. While certain contractual grievances were indeed definitively constituted before the treaty entered into force and therefore fell outside jurisdiction, the court approved the view that later events – such as the non-performance of restart agreements and subsequent contract terminations – could give rise to new disputes rather than merely prolong an earlier one. As the court put it:

> "*If the first dispute was definitively constituted before the Treaty's entry into force … it was different for the non-performance of the restart agreements concluded in 2013 and for the termination of the contracts in June 2014.*"[32]

The court also endorsed a demanding threshold for crystallization in unstable contexts, holding that early claims coupled with brief State silence amid political upheaval did not necessarily establish that a dispute had crystallized in all its elements before entry into force. The practical effect is to prevent temporal limitation clauses from operating as blunt instruments that exclude treaty protection for later, legally significant State conduct in post-conflict project settings.

A second contribution, most clearly articulated in *Cengiz* and echoed in *Nurol*, concerns the standing-offer structure of treaty arbitration and its implications for illegality-based set-aside arguments. Libya contended that the BIT's legality requirement deprived the tribunal of jurisdiction unless the investment fully complied with Libyan law and authorizations. The Cour de cassation responded by restating two interlocking principles that are foundational in French

32 French Cour de cassation (Civ. 1e), Nurol Insaat ve Ticaret A.S. v. Libya, Case No. 22-11.436, 12 February 2025, at p. 4 ("*… si le premier était définitivement constitué avant l'entrée en vigueur… il en allait différemment du non-respect des accords de reprise… ainsi que de la résiliation…*").

arbitration law as applied to investment disputes. The court explained that "*The annulment judge reviews the arbitral tribunal's decision on jurisdiction … this review being exclusive of any review on the merits of the award.*"[33] The court further explained that in investment arbitration, State consent does not arise from a negotiated arbitration agreement embedded in the investment contracts, but from a standing offer to arbitrate addressed to a category of investors and investments defined by the treaty. In the court's words: "*In transnational investment protection, the State's consent to arbitration arises from the standing offer of arbitration formulated in a treaty, addressed to a category of investors that the treaty defines.*"[34]

The operational consequence is decisive for illegality defenses. The standing offer is autonomous from the validity of the investment operation itself. Acceptance through the filing of a request for arbitration suffices to establish jurisdiction, leaving questions of the investment's legality to be assessed by the tribunal in the context of liability and reparation. This framing limits a common award-debtor strategy: if alleged illegality is characterized as a defect of consent, the set-aside court may be invited to decide, in substance, whether the investment was lawful. By insisting on the autonomy of the standing offer and the limits of annulment review, the Cour de cassation contains that risk and prevents annulment proceedings from becoming disguised appeals on the merits.

This approach is not the only model in comparative practice. In some other debated investor-State cases, tribunals have treated "*in accordance with law*" requirements and corruption at the establishment stage as jurisdictional gateways and have declined jurisdiction on that basis. *Inceysa v. El Salvador* is frequently cited for the proposition that fraud in securing the investment can place it outside the

33 Cengiz Insaat Sanayi Ve Ticaret A.S. v. Libya, Case No. 21-22.978, 12 February 2025, at p. 3 ("*… ce contrôle étant exclusif de toute révision au fond de la sentence*").

34 Cengiz Insaat Sanayi Ve Ticaret A.S. v. Libya, Case No. 21-22.978, 12 February 2025, at p. 3 ("*le consentement de l'Etat à l'arbitrage procède de l'offre permanente d'arbitrage formulée dans un traité, adressée à une catégorie d'investisseurs que ce traité délimite pour le règlement des différends touchant aux investissements qu'il définit*").

host State's treaty consent when the treaty protects only investments made in accordance with law.[35] *Metal-Tech v. Uzbekistan* similarly illustrates how corruption can negate jurisdiction where the definition of protected investment is tied to compliance with host State law at establishment. Against this backdrop, the French courts' insistence on standing-offer autonomy and restrained annulment review constitutes a meaningful, seat-level intervention in the ongoing debate over the proper treatment of illegality defenses.[36]

The *Cengiz* decision adds a further, highly practical dimension for construction and infrastructure disputes. The award against Libya did not stop at monetary compensation. It ordered Libya to take all necessary measures to release the existing bank guarantees linked to the WAH and Sebha projects. The Cour de cassation noted that this remedy formed part of the tribunal's analysis of indemnification and full reparation, recording that "*[the tribunal] ordered [Libya] to take all measures necessary to release the existing bank guarantees linked to the WAH and Sebha projects.*"[37]The court rejected Libya's attempt to recast this remedy as a jurisdictional defect, holding that whatever the legal characterization of the guarantees, their release did not obstruct jurisdiction and could properly be taken into account in determining the modalities of reparation.

This confirmation has concrete consequences. In construction disputes, bank guarantees often become the immediate pressure point following disruption or termination, affecting cashflow, credit facilities, and the contractor's capacity to remobilize. By validating a remedy that targets the continuing financial constraints imposed by outstanding guarantees, the court affirmed that full reparation may require more than a monetary award while guarantees remain live.

35 *See* Inceysa Vallisoletana S.L. v. Republic of El Salvador, ICSID Case No. ARB/03/26, Award, 2 August 2006.

36 *See* Metal-Tech Ltd. v. Republic of Uzbekistan, ICSID Case No. ARB/10/3, Award, 4 October 2013.

37 Cengiz Insaat Sanayi Ve Ticaret A.S. v. Libya, Case No. 21-22.978, 12 February 2025, at p. 4 (*"… lui a ordonné de prendre toutes les mesures nécessaires pour libérer les garanties bancaires existantes en lien avec les projets WAH et [Localité 3]"*).

Comparative practice underscores the importance of this point without overstating its novelty. Arbitration-friendly jurisdictions commonly distinguish between the autonomy of the bank's undertaking and the tribunal's authority to grant party-directed relief. The Swiss Federal Supreme Court, for example, has upheld an arbitral tribunal's competence to order a contractual counterparty to refrain from calling a bank guarantee in a construction context, even as courts remain cautious about interfering directly with the bank's obligation. Indeed, in *Eurobank Ergasias S.A. v. Bombardier Inc.,* the Supreme Court of Canada likewise suggested that disregard of a binding international arbitration order relating to a letter of guarantee may implicate international public order at the enforcement stage. Against this background, *Cengiz* is best understood as a strong confirmation at the French seat that treaty tribunals' remedial toolkit can, where appropriate, include measures directed at the release of bank guarantees as part of full reparation in high-risk infrastructure disputes.[38]

B. *Heirs of the Sultan of Sulu v. Malaysia* (Paris Court of Appeal, 9 December 2025)

The long-running arbitration brought by the heirs of the Sultan of Sulu against Malaysia came to a definitive end when the Paris Court of Appeal annulled the USD 14.92 billion final award on 9 December 2025 and ordered the claimants to pay EUR 200,000 in costs. The dispute traced back to an 1878 agreement between the Sultan of Sulu and two private individuals, under which rights over territory in North Borneo (now Sabah, Malaysia) were granted in exchange for annual payments. The agreement contained a dispute-resolution clause referring disputes to Her Britannic Majesty's consul-general in Brunei/Borneo.

After Malaysia ceased payments in 2013, the claimants attempted to activate that clause by seeking the involvement of the United Kingdom. When that effort failed, they pursued an *ad hoc* arbitration strategy in Spain. In 2019, they obtained the judicial appointment of

38 *See* Supreme Court of Canada, *Eurobank Ergasias S.A. v. Bombardier inc.,* Case No. 40350, 5 April 2024.

a sole arbitrator in Madrid, secured a partial award on jurisdiction in May 2020, and ultimately obtained a final award in February 2022.

Malaysia contested the arbitration from the outset, including the appointment of the arbitrator and the choice of forum, and declined to participate on the merits. In June 2021, the Madrid Superior Court of Justice annulled the Spanish appointment proceedings on the ground that service on Malaysia as a foreign state had not complied with the applicable rules and ordered the annulment of all subsequent procedural acts flowing from that appointment. Notwithstanding this ruling, the sole arbitrator maintained that he remained seized and, by procedural order, accepted the claimants' request to transfer the seat to Paris in October 2021, before rendering the final award in February 2022.

In parallel, proceedings in France had already eroded the fundamentals of international arbitration. In June 2023, the Paris Court of Appeal refused exequatur of the 2020 partial award on jurisdiction, and in November 2024 the Cour de cassation rejected the claimants' challenge. The annulment proceedings against the 2022 final award then resumed and culminated in the 9 December 2025 decision annulling the award in its entirety.

Before turning to jurisdiction, the court disposed of several procedural objections in a manner that kept the focus squarely on consent. It rejected the claimants' argument that the proceedings were irregular because the written opinion of the public ministry was communicated on the day of the hearing rather than in advance, holding that no text required earlier communication and that the adversarial principle had been respected, as the parties were given a genuine opportunity to respond.

The court then addressed whether Malaysia could be precluded from raising jurisdictional objections by waiver or estoppel. The claimants argued that Malaysia had forfeited its right to rely on annulment grounds by failing to raise them "*in time*" before the arbitrator and that its decades-long practice of making annual payments

barred it from challenging the dispute-resolution clause. The court rejected both arguments. It held that Malaysia had consistently refused to participate in an arbitration whose very principle it disputed and therefore could not be criticized for not raising objections before the tribunal. It further held that the history of payments could not ground an estoppel as to dispute-resolution modalities, since those payments were not procedural positions adopted in a proceeding and did not amount to assent to a particular arbitration mechanism.

On jurisdiction, the court restated the French approach to international arbitration agreements and applied it as the governing framework for determining whether the arbitrator ever possessed jurisdictional power. It recalled that the annulment judge must review jurisdiction by examining all legal and factual elements bearing on the scope and effectiveness of the arbitration agreement. It then articulated the interpretive method in terms consistent with *Dalico*: "*The international arbitration agreement, whose existence and effectiveness are assessed according to the parties' common intention, is interpreted, without reference to any state law, according to the principles of good faith and effectiveness.*"[39] The court also reiterated the consent-based nature of arbitral jurisdiction, emphasizing that "*only the contracting parties' common will can invest the arbitrator with jurisdictional power.*"[40]

Applying those principles to the 1878 clause, the court accepted that the clause could, in functional terms, be characterized as an arbitration agreement, since it vested a third party with dispute-resolving authority to the exclusion of national courts – a point no longer seriously contested. The decisive issue, however, was the clause's operability following the disappearance of the designated decision-maker. Referring to its earlier decision of 6 June 2023 refusing exequatur

39 Paris Court of Appeal, Heirs of the Sultan of Sulu v. Malaysia, Case No. 22/04007, 9 December 2025, at p. 25 (*"La convention d'arbitrage international, dont l'existence et l'efficacité s'apprécient d'après la commune volonté des parties, s'interprète, sans qu'il soit nécessaire de se référer à une loi étatique, d'après les principes de bonne foi et d'effet utile"*).

40 Paris Court of Appeal, Heirs of the Sultan of Sulu v. Malaysia, Case No. 22/04007, 9 December 2025, at p. 25 (*"Seule la volonté commune des contractants peut investir l'arbitre de son pouvoir juridictionnel"*).

of the jurisdictional award, the court recalled that it had already held the clause to be inoperative because the designated office no longer existed and that this designation was inseparable from the parties' will to arbitrate. That determination had become final after the Cour de cassation rejected the claimants' challenge, including their allegation of distortion of the clause.

The claimants sought to reopen the analysis by producing the complete version of an 1878 consular dispatch that had previously been relied upon only in part. The court accepted that proof of the parties' common intention is free and cannot be confined to the text of the clause alone, particularly where the clause has become inoperative due to changed circumstances. It therefore examined the document in full. Rather than weakening the centrality of the consul's office, the additional passages reinforced the conclusion that the selection of that office and its authority was a core element of the parties' agreement.

The court's key conclusion was that the parties' intention to submit disputes to arbitration was inseparable from the condition that disputes be submitted to the designated office. The disappearance of that office rendered the clause inoperative and would have required a renewed agreement of will, which was absent. As the court stated, "*the conclusion that the disappearance of the designated function renders the clause inoperative is unavoidable, because this change of circumstances implies a new agreement of the parties' will, which is lacking.*" On that basis, the court held that the sole arbitrator had ruled without jurisdictional power and annulled the final award in its entirety under Article 1520(1) of the French Code of Civil Procedure.

The decision illustrates the limits of *effet utile* in French arbitration law. Even where a clause can be treated as an arbitration agreement in principle, the court will not reconstruct consent by substitution when the evidence shows that the designated decision-maker was an essential and non-severable component of the parties' agreement. More broadly, it confirms that where an arbitration agreement

is inoperative for lack of renewed consent, subsequent procedural steps – including a transfer of seat and a final award on the merits – cannot cure the absence of jurisdictional power.

C. *Mesa S.P.A. v. Nùmero Um* (Paris Court of Appeal, 4 November 2025)

In a decision of 4 November 2025 in *Mesa S.p.A. v. Nùmero Um*, rendered by the court's case-management judge as an incident order, the Paris Court of Appeal dismissed as inadmissible Mesa's attempt to set aside three ICC "*procedural orders,*" holding that they did not constitute arbitral awards within the meaning of Article 1518 of the French Code of Civil Procedure. The dispute arose from an ICC arbitration commenced in August 2023 concerning the performance and non-renewal of a master franchise agreement for the development of the Midas brand in Portugal.

On 28 February 2025, Mesa notified an "*immediate withdrawal without prejudice*" of its claims and, on the same day, initiated a second ICC arbitration against the same respondents and additional parties. The sole arbitrator refused to accept the withdrawal and ordered the first arbitration to continue, while granting Mesa extensions to file its statement of claim. Mesa then sought annulment of Procedural Orders Nos. 2, 3, and 4, arguing that the arbitrator's refusal to allow withdrawal definitively resolved a contested issue and should therefore be treated as a partial award.[41]

The Paris Court of Appeal framed the matter as a threshold issue of admissibility. It recalled that Article 1518 permits annulment only of arbitral awards rendered in France and restated the settled test for identifying an award: "*only genuine arbitral awards may be challenged, namely acts of arbitrators that definitively determine, in whole or in part, the dispute submitted to them, whether on the merits, on jurisdiction, or on a procedural ground that leads them to terminate the proceedings.*"[42]

41 Paris Court of Appeal, *Mesa S.p.A. v. Nùmero Um,* Case No. RG 25/09824, 4 November 2025, at pp. 3–4.

42 Paris Court of Appeal, *Mesa S.p.A. v. Nùmero Um*, Case No. RG 25/09824, 4 No-

Applying that test, the court held that Procedural Order No. 2 was not an award. It neither resolved the dispute nor brought the arbitration to an end. On the contrary, it rejected Mesa's request to withdraw "*without prejudice,*" expressly ordered the continuation of the proceedings, and granted Mesa additional time to file its statement of claim. As the court stated, "*precisely insofar as it rejects the withdrawal request and orders the continuation of the arbitration, Procedural Order No. 2 cannot in any event be regarded as an award definitively determining all or part of the dispute.*"[43]

The court also relied on Mesa's own procedural conduct to confirm the purely managerial nature of the challenged orders. Mesa's withdrawal was expressly "*without prejudice,*" preserving its ability to refile, and Mesa in fact commenced a new arbitration on the same day based on the same factual matrix. In the court's view, Mesa was seeking to reorganize the handling of the dispute to suit its preferences, which undercut its attempt to recharacterize the tribunal's case-management decisions as partial awards susceptible to annulment.[44]

For the same reasons, the court held that Procedural Orders Nos. 3 and 4 – concerning only the granting or refusal of further extensions for Mesa to file its statement of claim and challenged merely as a consequence of Order No. 2 – were likewise not awards. The annulment application was therefore declared inadmissible, and the court did not address Mesa's ancillary requests for injunction-type relief seeking to suspend the arbitral proceedings pending the annulment attempt.

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vember 2025, at p. 9 (*"Seules peuvent faire l'objet d'un tel recours les véritables sentences arbitrales, constituées par les actes des arbitres qui tranchent de manière définitive, en tout ou en partie, le litige qui leur est soumis, que ce soit sur le fond, sur la compétence ou sur un moyen de procédure qui les conduit à mettre fin à l'instance"*).

43 Paris Court of Appeal, Mesa S.p.A. v. Nùmero Um, Case No. RG 25/09824, 4 November 2025, at p. 10 (*"Précisément en ce qu'elle rejette la demande de désistement et ordonne la poursuite de l'arbitrage, en aucun cas l'Ordonnance n°2 ne peut être considérée comme une sentence tranchant de manière définitive tout ou partie du litige."*).

44 Paris Court of Appeal, Mesa S.p.A. v. Nùmero Um, Case No. RG 25/09824, 4 November 2025, at p. 10.

The decision is of practical importance in confirming a strict gatekeeping approach under Article 1518, preventing annulment proceedings from being used as an interlocutory appeal against arbitral case-management decisions. It also provides a concrete illustration of the type of dispute that the current reform project seeks to eliminate by codifying a definition of an "*award,*" as Mesa attempted to transform a procedural refusal to permit withdrawal into a partial award.

D. *WNR v. Mercuria* (Paris Court of Appeal, 16 September 2025)

In a decision of 16 September 2025, the Paris Court of Appeal rejected WNR Ltd's and WNR Congo's application to set aside an ICC partial award on jurisdiction rendered on 18 August 2023. In that award, the tribunal declined jurisdiction ratione personae over Mercuria Energy Trading S.A. (METSA) and Mercuria Capital Partners Limited (MCP). The dispute arose from the Marine XI offshore oil project and an arbitration commenced in June 2021 under the arbitration clause contained in the Sale and Purchase and Cooperation Agreement (SPCA) dated 31 December 2013 – a contract to which neither METSA nor MCP was a signatory.[45]

The court approached the case squarely as one of consent under French substantive rules governing international arbitration agreements, coupled with a strict refusal to allow annulment proceedings to become a re-examination of the tribunal's reasoning. It recalled that, in reviewing jurisdiction, the annulment judge must examine "*all legal and factual elements enabling the scope of the arbitration agreement to be assessed,*" while emphasizing that such review remains "*exclusive of any review of the merits.*" Consistently with the *Dalico* line of authority, the court reiterated that the arbitration agreement is legally independent and that its existence and effectiveness are assessed by reference to the parties' common intention, "*without needing to*

45 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at pp. 4–6.

refer to any state law." It also stressed that the annulment judge does not rule on the admissibility or the well-foundedness of the claims.

On the extension of an arbitration clause to non-signatories, the court restated the settled French test: an arbitration clause in an international contract has "*its own validity and effectiveness*" and may be extended to non-signatories who were directly involved in the performance of the contract and in disputes arising from it, where the contractual situation, the parties' activities, and their usual relations give rise to a presumption that they accepted the clause, despite not having signed it.[46]

Applying that framework, WNR advanced two overlapping theories to bind METSA and MCP to the SPCA clause. First, it argued that Energy Complex was merely a nominee or interposed entity acting on behalf of METSA and MCP, which were said to be the true parties to the SPCA. Second, it contended that METSA and MCP were sufficiently involved in the negotiation and execution of the SPCA and the broader project to justify an inference that they had accepted the arbitration clause. The court rejected the nominee theory as inconsistent with WNR's own evidence. It found that the materials showed METSA's desire for economic exposure to the asset while lacking internal resources to manage a small, high-risk investment in a sensitive jurisdiction and wishing to remain discreet. Energy Complex was therefore engaged because its principal was trusted and willing to assume financial risk. In those circumstances, the court held that Energy Complex's role "*did not appear fictitious,*" even if considerations of discretion influenced the structuring.[47]

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46 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at pp. 4–6 ("*parties directement impliquées dans l'exécution du contrat et dans les litiges qui peuvent en résulter font présumer qu'elles ont accepté la clause compromissoire dont elles connaissaient l'existence et la portée bien qu'elles n'aient pas été signataires du contrat*").

47 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at p. 13–14 ("*n'apparaît pas fictive*").

The court likewise rejected the attempt to infer consent from broader project involvement. While it accepted that METSA and MCP (or the wider group behind them) were present at various stages of the project, it considered that involvement to be consistent with a financing role rather than participation in the negotiation and execution of the SPCA itself. The court placed particular weight on the project's contractual architecture and the diversity of dispute-resolution clauses across the transaction documents. It noted, among other things, a Paris-seated ICC clause in the Farmout Agreement and London-seated ICC clauses in the loan agreements and related instruments. From this "*multiplicity and diversity*" of arbitration clauses, the court inferred that the parties intended dispute-resolution mechanisms specific to each contract, making it untenable to infer acceptance of the SPCA clause from involvement in the broader project or in other agreements.[48]

The court also relied on provisions of the SPCA limiting third-party effects. While acknowledging the autonomy of the arbitration clause, it held that those provisions were relevant in assessing the parties' common intention. On that basis, it concluded that WNR had failed to establish METSA's or MCP's consent to the SPCA arbitration clause and upheld the tribunal's finding that it lacked jurisdiction ratione personae.[49]

WNR's remaining annulment grounds did not alter the outcome. The court rejected the alleged excess of mission, noting that the tribunal's dispositif was strictly confined to jurisdiction ratione personae and therefore remained within the agreed scope of the first

48 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at p. 16 ("*the multiplicity and diversity of arbitration clauses show that the parties intended arbitration modalities specific to each agreement*") ("*La multiplicité et la diversité des clauses compromissoires caractérisent le fait que les parties ont entendu prévoir des modalités d'arbitrage spécifiques à chacun d'eux*").

49 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at p. 16

phase of the arbitration. It dismissed the contradiction argument by recalling that the principle requires only that the parties be given the opportunity to debate the evidence and submissions, not that the annulment judge re-assess the tribunal's evaluation of proof. Finally, the court rejected the international public policy arguments, holding that WNR had not demonstrated the existence of a fictitious scheme and that its allegations of fraud and partiality amounted to a renewed attack on the jurisdiction ruling already addressed under Article 1520(1) of the Code of Civil Procedure.[50] The annulment application was therefore dismissed in full, and the court expressly recalled that, under Article 1527 of the Code of Civil Procedure, dismissal of an annulment application confers exequatur on the award.[51]

E. *Oschadbank v. Russian Federation* (Paris Court of Appeal, 1 July 2025)

On 1 July 2025, the Paris Court of Appeal dismissed Russia's application to set aside a PCA award dated 26 November 2018 ordering Russia to pay Oschadbank USD 1,111,300,729 (plus interest and costs) for the unlawful expropriation of Oschadbank's assets in Crimea. The arbitration was brought under the 1998 Ukraine–Russia BIT. Russia challenged the award on multiple grounds, including alleged lack of jurisdiction *ratione temporis*, *ratione loci*, *and ratione materiae*, as well as other annulment grounds.[52]

First, on *ratione temporis*, the court began by recalling the French conception of treaty consent in investment arbitration: State consent "*arises from the standing offer of arbitration formulated in a treaty,*" and the annulment judge's control of jurisdiction is "*exclusive of any*

50 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at p. 23.

51 Paris Court of Appeal, World Natural Resources and WNR Congo v. Mercuria Energy Trading, Mercuria Capital Partners and Energy Complex DMCC, Case No. 23/18252, 16 September 2025, at p. 24

52 Paris Court of Appeal, Oschadbank v. Russian Federation (I), Case No. 24/05336, 1 July 2025, at p. 4-7.

review of the merits," so it does not extend to admissibility or the substantive validity of the claims.

Applying these principles, the court set out the treaty provisions underpinning Russia's temporal objection. Article 9 of the BIT contains the standing offer to arbitrate and allows disputes "*arising in connection with investments*" to be submitted, after a six-month negotiation period, to domestic courts, the Stockholm Chamber of Commerce, or UNCITRAL *ad hoc* arbitration. Article 1 defines "*investment*" broadly as "*all kinds of assets and intellectual values … invested by an investor of one Contracting Party in the territory of the other Contracting Party,*" and defines "*territory*" to include each State's territory, exclusive economic zone, and continental shelf as determined in accordance with international law. Russia relied on Article 12, which provides that the treaty "*shall apply to all investments made … as of 1 January 1992,*" arguing that because Oschadbank's presence in Crimea predated that date, the tribunal lacked jurisdiction.

The court rejected this use of Article 12 as a jurisdictional filter by focusing on the content and structure of the standing offer in Article 9. It held that Article 9 "*does not provide any condition relating to the date the investments were made,*" and that Article 1 likewise contains "*no temporal restriction.*" While acknowledging that Article 12 sets out a temporal limitation on the treaty's application, the court held that the standing offer in Article 9 is "*autonomous*" from Article 12, since Article 9 makes no reference to it. From that autonomy, the court drew a decisive consequence for annulment review: assessing compliance with Article 12 as a condition of jurisdiction "*falls outside the annulment judge's control,*" because arbitral competence ratione temporis must be assessed solely by reference to "*the date on which the dispute arose.*" As it was undisputed that the dispute arose after the treaty's entry into force on 27 January 2000, the temporal requirement for jurisdiction was satisfied.[53]

53 Paris Court of Appeal, Oschadbank v. Russian Federation (I), Case No. 24/05336, 1 July 2025, at p. 4-7 ("*échappe au contrôle du juge de l'annulation la compétence ratione temporis devant s'apprécier en considération de la seule date à laquelle le litige est né*")

Second, on *ratione loci*, Russia argued that the treaty could not apply to Crimea because the territory was disputed and lacked mutual recognition and reciprocity. The court held that these objections "*do not concern arbitral jurisdiction … but the substantive protection attached to the Treaty,*" and therefore could not support annulment. Applying the treaty's territorial definition, it described Article 1(4) as "*particularly broad*" and containing "*no condition of reciprocity or mutual or international recognition.*" It held that, for treaty purposes, it was sufficient that Russia exercised authority over Crimea following the 2014 attachment, without requiring either the tribunal or the court to determine the underlying sovereignty dispute under international law.

Third, on *ratione materiae*, Russia argued that Oschadbank's investment was originally Ukrainian in Ukraine and therefore not foreign when made, contending that the treaty protects only investments that were foreign "*from the outset.*" The court rejected that construction, holding that Article 1(1) contains "*no condition of temporal limitation*" affecting the standing offer and that the phrase "*are invested*" cannot be read as excluding consideration of the existence of the investment at the time the dispute arose. Once again, it emphasized that Article 12 could not be used to narrow the scope of the standing offer in Article 9 for jurisdictional purposes.

Fourth, Russia's remaining annulment grounds were likewise dismissed. In particular, Russia alleged a violation of international public policy based on procedural fraud, claiming that Oschadbank had concealed documents showing that the investment predated 1992. Applying the French standard – under which procedural fraud requires forged documents, false testimony, or fraudulent concealment of decisive evidence such that the tribunal's decision was "*surprising*" – the court found no fraud. The tribunal's jurisdictional reasoning had treated the original date of the investment as legally non-determinative, so the alleged concealment could not have affected the outcome in an unexpected way.

The set-aside application was therefore rejected in full, and the court recalled that, under Article 1527 of the Code of Civil Procedure, dismissal of an annulment application confers exequatur on the award.

The decision confirms, in the Crimea-related BIT context, the sharp French distinction between treaty consent to arbitrate and substantive conditions of treaty protection. By treating the Article 12 "*as of 1 January 1992*" clause as a merits issue lying beyond the annulment judge's jurisdictional control once Article 9's standing offer is found autonomous, the court again resisted attempts to repackage substantive objections – including reciprocity and "*foreign-from-the-outset*" arguments – as jurisdictional defects capable of annulling an award at the seat.

F. *Averda Gabon v. Republic of Gabon* (Paris Court of Appeal, 28 October 2025)

In its 28 October 2025 decision, the Paris Court of Appeal addressed the interaction between allegations of corruption and French international public policy at the set-aside stage, rejecting an application to annul an ICC award dated 23 August 2023. The dispute arose from three contracts concluded in late December 2014 for waste management and public cleaning services in Gabon, performed from 2015 to 2019, and suspended by Averda as of 1 August 2019 due to alleged payment delays. The award ordered payment of unpaid invoices and other sums, applying a 35% reduction to the relevant balance in light of corruption allegations.[54]

The annulment application argued that recognition or enforcement would contravene international public policy because performance of the contracts had allegedly been tainted by corruption of a Gabonese public official and related overbilling. The court began by reaffirming that corruption and money laundering form part of French international public policy. It emphasized that the court's

54 Paris Court of Appeal, Averda Environmental Services Gabon S.A. v. Gabonese Republic, Clean Africa and others, Case No. 23/16145, 28 October 2025.

role is not to determine criminal liability but to assess whether enforcing the award would undermine anti-corruption objectives by allowing a party to benefit from the proceeds of corruption. The court framed the controlling threshold as requiring serious, specific, and consistent indicia showing that enforcement would either give effect to a contract obtained by corruption or allow a party to profit from corrupt proceeds:

> *"… not being the judge of the contract or the operation, annulment is incurred only if it is demonstrated by serious, specific and consistent indicia that inserting the award into the domestic legal order would have the effect of giving force to a contract obtained by corruption or allowing a party to benefit from the proceeds of such activities."*[55]

Focusing the public policy inquiry on the allegations, the court noted that the public entities did not claim corruption at the contract formation stage; thus, the issue concerned only whether execution of the award would give effect to overbilling facilitated by corruption during performance. The alleged scheme involved bribes to certify invoices, use of false invoices through third parties to generate illicit cash, and concealment of services and financial data. While the existence of corruption indicia was largely undisputed, the dispute before the court was whether the award's financial outcome allowed Averda to benefit from the alleged corruption.[56]

A key element of the court's analysis was the distinction between service streams and invoicing structures. Contract performance included both waste collection and street cleaning, but the overbilling

55 Paris Court of Appeal, Averda Environmental Services Gabon S.A. v. Gabonese Republic, Clean Africa and others, Case No. 23/16145, 28 October 2025, at p. 15 ("*La cour n'étant pas le juge du contrat ou de l'opération, l'annulation n'est toutefois encourue que s'il est démontré par des indices graves, précis et concordants que l'insertion de la sentence dans l'ordre juridique interne aurait pour effet de donner force à un contrat obtenu par corruption ou de permettre à une partie de bénéficier du produit d'activités de cette nature*").

56 Paris Court of Appeal, Averda Environmental Services Gabon S.A. v. Gabonese Republic, Clean Africa and others, Case No. 23/16145, 28 October 2025, at pp. 16–17.

risk related primarily to the cleaning component. Evidence showed that cleaning services were difficult to quantify and sometimes not performed, while collection services were measurable. Invoices reflected this: collection invoices were based on specific waste quantities, whereas cleaning invoices were flat-rate per day. Some cleaning services, however, were performed. The court concluded that serious, specific, and consistent *indicia* pointed to a mixed picture: part of the invoiced sums reflected overbilling facilitated by corruption, and part reflected services actually rendered.[57]

The decisive question was remedial: did the award, as structured, neutralize the economic effects of corruption? The court emphasized that the tribunal had incorporated corruption into its quantification, rather than ignoring it. The 35% reduction had been debated, with the public entities' expert proposing 33–35% and Averda's expert proposing 17%; the tribunal adopted the most conservative rate to neutralize overbilling and prevent any benefit from corruption. The court concluded that, as the tribunal had effectively offset the financial effects of corruption, enforcement could not be regarded as giving effect to corrupt conduct, and the Article 1520(5) challenge failed.

This decision is significant for illustrating how the Paris Court of Appeal applies the "*characterized violation*" threshold in corruption cases: while corruption remains a core public policy concern, the annulment analysis focuses on the concrete effect of the award and whether the tribunal's remedial approach prevents a claimant from profiting from corrupt conduct, particularly where the tribunal adopts the most conservative reduction supported by the record.

57 Paris Court of Appeal, Averda Environmental Services Gabon S.A. v. Gabonese Republic, Clean Africa and others, Case No. 23/16145, 28 October 2025, at pp. 16–17.

G. *Agarwal and Mehta v. Uruguay* (Cour de cassation, 2 April 2025)

On 2 April 2025, the French Cour de cassation delivered a significant decision clarifying the distinction between jurisdiction and admissibility in treaty-based arbitration seated in France, while reaffirming the limits of set-aside review under Article 1520(1) of the Code of Civil Procedure. The case arose from an ICSID Additional Facility arbitration initiated under the UK–Uruguay BIT. The claimants – beneficiaries of rights under a Cayman trust holding a mining project in Uruguay – notified a dispute in October 2016 and commenced arbitration in July 2017. On 6 August 2020, the tribunal rendered a decision declining jurisdiction ("*sentence d'incompétence*" in French), which the claimants challenged before the Paris Court of Appeal.

The first strand of the Cour de cassation's reasoning concerned the "*local remedies*" or "*litigation-first*" mechanism in Article 8(2) of the BIT and its procedural consequences. Uruguay argued that the treaty required recourse to domestic courts for 18 months (or until a manifestly unjust decision), and that failure to comply deprived the tribunal of jurisdiction rather than merely rendering the claims inadmissible. The Cour de cassation rejected that characterization, endorsing the Paris Court of Appeal's analysis that the requirement operates as a procedural precondition to the exercise of consent, not as a condition affecting the existence or scope of consent itself. It held that Article 8(2) constitutes "*only a prerequisite to seizing the arbitral tribunal, relating to the procedural conditions for implementing that consent,*" such that non-compliance concerns "*not the tribunal's jurisdiction, but the admissibility of the claims,*" which lies beyond the annulment judge's control. As the court put it, having so characterized the requirement, the Court of Appeal "*correctly deduced*" that the issue escaped review under Article 1520(1).[58]

58 French Cour de cassation (Civ. 1e), Prenay Agarwal, Vinita Agarwal and Ritika Mehta v. Oriental Republic of Uruguay (I), Case No. 23-16.338, 2 April 2025, at p. 2 ("*Ayant retenu que l'exigence figurant sous le point (2) de l'article 8 constituait seulement un préalable à la saisine de la juridiction arbitrale, relatif aux conditions procédurales de la mise en*

This holding draws a clear line between matters subject to judicial control at the annulment stage and those reserved to the arbitral tribunal. The Cour de cassation reiterated that jurisdictional review is real and autonomous, allowing the annulment judge to examine all factual and legal elements bearing on the scope of the arbitration agreement, but that it remains "*exclusive of any review on the merits.*" In the context of treaty arbitration, the Cour de cassation anchored that analysis in the standing-offer conception of consent, emphasizing that State consent "*arises from the standing offer of arbitration formulated in a treaty.*" Within that framework, a domestic-litigation-first clause functions as a gatekeeping rule governing the conduct of proceedings; it does not redefine the category of investors or disputes to which the State's standing offer applies. The practical consequence is to prevent award debtors from recharacterizing procedural preconditions – commonly treated by tribunals as issues of admissibility – as jurisdictional defects capable of being re-litigated in set-aside proceedings.[59]

The Cour de cassation then identified a second, related error in the Court of Appeal's reasoning, this time concerning its treatment of a ratione temporis objection. Reaffirming that the annulment judge must control jurisdiction "*without stopping at the labels used by the arbitrators or proposed by the parties,*" while still respecting the prohibition on revising the merits, the court held that the Court of Appeal had overstepped its role. By annulling the tribunal's finding of lack of jurisdiction ratione temporis while simultaneously characterizing the relevant "*antecedent investment*" requirement as a substantive rule of treaty protection, the Court of Appeal had impermissibly reviewed the merits of the award. In the Cour de cassation's words, it

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œuvre de ce consentement, la cour d'appel en a exactement déduit que l'inobservation de cette formalité de procédure se rapportait non à la compétence du tribunal arbitral, mais à l'examen de la recevabilité des demandes qui échappait au contrôle du juge de l'annulation").

59 French Cour de cassation (Civ. 1e), Prenay Agarwal, Vinita Agarwal and Ritika Mehta v. Oriental Republic of Uruguay (I), Case No. 23-16.338, 2 April 2025, at p. 2("*ce contrôle est exclusif de toute révision au fond de la sentence*").

had "*revised the award on the merits, misunderstood its office, and violated*" Article 1520(1).[60]

The result was quashing of the Paris Court of Appeal's judgment and a remand to a differently composed court. Beyond the outcome, the decision's broader contribution lies in its disciplined allocation of issues between arbitral tribunals and set-aside courts. It confirms that treaty-based procedural preconditions – including litigation-first mechanisms – are matters of admissibility, not jurisdiction, for purposes of Article 1520(1) review, and it cautions against transforming annulment proceedings into a disguised appeal on the merits by collapsing substantive treaty requirements into jurisdictional analysis. In doing so, the decision reinforces the finality of Paris-seated investment awards and narrows the scope for post-award strategies aimed at expanding judicial scrutiny through the relabeling of admissibility objections as jurisdictional defects.

H. *Astaris, Ghella and Webuild v. Venezuela* (Paris Court of Appeal, 30 September 2025)

Finally, in its 30 September 2025 decision (Paris Court of Appeal, No. 23/11499), the Paris Court of Appeal applied Article 1466 of the Code of Civil Procedure in a way that illustrates, in practice, the policy objective later pursued by the reform proposals, namely preventing parties from holding back arguments in arbitration only to relaunch them in set-aside proceedings.[61] The case arose from an ICC arbitration seated in Paris (CCI 24538/JPA/AJP) concerning six contracts for the development of three portions of the Venezuelan railway network. Those contracts contained jurisdiction clauses in favor

60 French Cour de cassation (Civ. 1e), Prenay Agarwal, Vinita Agarwal and Ritika Mehta v. Oriental Republic of Uruguay (I), Case No. 23-16.338, 2 April 2025, at p. 4 (*"En statuant ainsi, après avoir qualifié de règle de fond l'exigence d'antériorité de l'investissement par rapport aux manquements de l'Etat, la cour d'appel, qui a annulé la sentence pour avoir fait application de cette règle, a, en révisant ainsi la sentence au fond, méconnu son office et violé le texte susvisé."*)

61 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado*, Case No. 23/11499, 30 September 2025.

of Venezuelan courts, and three contained ad hoc arbitration clauses limited to "*exclusively technical*" differences, while the claimants initiated ICC arbitration in 2019 relying instead on the dispute resolution provisions of an Italy–Venezuela "*framework agreement*" signed in 2001 and in force from 2004 (the "*Accord-cadre*"), which contemplated ICC arbitration for disputes connected to its execution. The tribunal declined jurisdiction in an award dated 20 March 2023, and Astaris, [W] and Webuild sought annulment on the ground that the tribunal had wrongly declined to exercise jurisdiction.

The procedural issue before the court was not whether a party may, in principle, develop its jurisdiction arguments at the set-aside stage, but whether it may do so by switching to a fundamentally different jurisdictional basis than the one presented to and debated before the tribunal. The respondents argued that the claimants' annulment theory was inadmissible because it contradicted what they had argued before the arbitrators and was raised for the first time in set-aside proceedings, and they invoked Article 1466 of the Code of Civil Procedure and estoppel. The court addressed both objections but treated Article 1466 as the operative gatekeeper. It recalled the rule in Article 1466, applicable in international arbitration by virtue of Article 1506, that "*a party who, knowingly and without legitimate reason, fails to raise in due time an irregularity, a complaint, or a plea before the arbitral tribunal is deemed to have waived the right to rely on it.*"[62]

The court then made two points that are useful in practice. First, it treated Article 1466 as having general scope, grounded in a duty of coherence and procedural loyalty, while noting an important limit: it cannot bar an annulment ground under Article 1520(5) (international public policy of direction), because public policy compliance cannot be conditioned on party conduct before the tribunal.[63]

62 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado*, Case No. 23/11499, 30 September 2025, at p. 10 (*"la partie qui, en connaissance de cause et sans motif légitime, s'abstient d'invoquer en temps utile une irrégularité, un grief ou un moyen devant le tribunal arbitral est réputée avoir renoncé à s'en prévaloir"*)

63 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di*

Second, it confirmed that Article 1466 applies to jurisdictional set-aside grounds under Article 1520(1), even though the annulment judge conducts full review of jurisdiction, because *competence-competence* gives the tribunal chronological priority to rule on its own competence and parties must therefore raise their jurisdictional "*means*" in the arbitration first.[64]

On the merits, the court identified a clear and explicit "*radical change*" in the claimants' jurisdictional reasoning between the arbitral phase and the annulment phase. It noted that, before the tribunal, the claimants' position was that Article XV of the Framework Agreement contained a State offer of arbitration in favor of investors, and it quoted the tribunal's record of their argument that "*Article XV [of the framework agreement] contains an offer of arbitration by the State in favor of investors of the other contracting State to bring international claims.*"[65] By contrast, the court found that in their submissions on annulment the claimants argued a different jurisdictional source, contending that Article XV bound the Italian companies and the Venezuelan rail entity (IFE) as if it were a commercial arbitration agreement and that it should be extended to Venezuela due to Venezuela's involvement in negotiating and performing the contracts, going so far as to assert, "*contrary to what they invoked before the tribunal,*" that "*Venezuela's consent to arbitration does not result from an offer of arbitration made by the State in the framework agreement, but from the circumstances of the case.*"[66]

Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado, Case No. 23/11499, 30 September 2025, at p. 11.

64 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado*, Case No. 23/11499, 30 September 2025, at p. 11.

65 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado*, Case No. 23/11499, 30 September 2025, at p. 11 ("*l'Article XV [de l'Accord-cadre] comporte une offre d'arbitrage de l'État en faveur des investisseurs de l'autre État contractant pour formuler des réclamations internationales*").

66 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del*

The court rejected the estoppel objection because, although the claimants' position had changed, it did not create the type of procedural prejudice required for estoppel, the need to answer an opponent's arguments not being sufficient prejudice, and the court also observed that the claimants' overall intention to pursue arbitration had remained constant. Article 1466, however, was applied in a more stringent way. The court held that the claimants' "*radical change*" in argument "*clashes with Article 1466,*" because the set-aside plea relied on a distinct arbitration offer from the one invoked and debated before the arbitrators, and it therefore declared the annulment plea inadmissible. The dispositive part of the decision reflects that sequencing: the court first declared inadmissible the plea that the tribunal had wrongly declined jurisdiction and then rejected the annulment application.[67]

The practical significance is that *Astaris* shows how Article 1466 functions as an anti–"*disguised appeal*" device in annulment proceedings, including in the sensitive area of jurisdictional review. Even though French courts exercise full control of jurisdiction under Article 1520(1), a party cannot reserve a materially different jurisdictional theory for the annulment stage when that theory was not put to the tribunal in time, because doing so undermines procedural loyalty and the chronological priority embedded *in compétence-compétence*.

* * * * *

France serves as a prime example of a country where the legislature, judiciary, and executive collaborate closely to promote Paris as a hub for arbitration. By adopting a liberal approach and with the support of institutions like the ICC, Paris and France have secured a prominent place on the international arbitration map. In 2025, this

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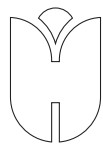
Estado, Case No. 23/11499, 30 September 2025, at p. 11 ("*le consentement du Venezuela à l'arbitrage ne résulte pas d'une offre d'arbitrage faite par l'État dans l'Accord-cadre mais des circonstances de l'affaire*").

67 Paris Court of Appeal, *Astaldi S.p.A., Ghella S.p.A. and Webuild SpA (Consorzio di Imprese Italiane) v. Bolivarian Republic of Venezuela and the Instituto de Ferrocarriles del Estado*, Case No. 23/11499, 30 September 2025, at p. 12.

effort advanced further with the launch of an arbitration reform project, which is likely to enhance Paris's attractiveness – though certain proposals, while seemingly liberal, could present challenges. The decisions rendered by the French courts in 2025 also reinforced France's judicial expertise and longstanding liberal orientation in international arbitration.



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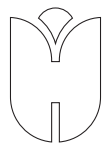

Turkish Arbitration Law and Practice: 2025 Review

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I. Introduction

Judgments by Turkish courts concerning arbitration in 2025 reflect differing judicial approaches. The courts upheld the effectiveness of arbitration agreements in disputes involving transferred contracts and claims arising from objections to debt enforcement proceedings, while maintaining a strict approach to determining whether the parties had clearly and unequivocally agreed to arbitrate. Their approach cannot be measured simply by counting decisions that uphold or set aside awards. The decisions instead raise a more useful question: when will a court give effect to an agreed method of resolving disputes, and when will it find that the parties have not clearly chosen arbitration over court proceedings?

The division of jurisdiction between arbitral tribunals and state courts was a central issue in the case before the General Assembly of Civil Chambers of the Court of Cassation (*Yargıtay Hukuk Genel Kurulu*). Other decisions considered the effect of transferring a contract, arbitrators' disclosure obligations, the arbitrability of debt claims and measures in support of enforcement. Taken together, they show that

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commercial arbitration depends both on how courts interpret consent and on how they treat the award at later procedural stages.

This review examines the legal framework, selected developments and court decisions affecting arbitration in 2025. It focuses on how courts treat arbitration agreements, arbitral proceedings, challenges to awards and measures in support of enforcement. Investment arbitration and specialised statutory dispute resolution regimes fall outside that focus.

A notable inconsistency among the decisions reviewed concerned mediation followed by arbitration (*Med-Arb*). Two decisions of the Third Civil Chamber of the Court of Cassation[1] ("Yargıtay") reached opposite conclusions on a clause requiring mediation before arbitration. Their reasoning raises a fundamental question: can an agreement to attempt mediation before arbitration cast doubt on the parties' otherwise clear and unequivocal intention to resolve their disputes through arbitration?

II. General Framework

A. Domestic and International Arbitration

Turkish arbitration law distinguishes between domestic and international arbitration under separate statutes.[2] International arbitration is regulated by the International Arbitration Law No 4686 (IAL), enacted in 2001.[3] Domestic arbitration is regulated by Articles 407–444 of the Code of Civil Procedure No 6100 (CCP), enacted in 2011.[4] For arbitrations seated in Türkiye, the principal distinction between domestic and international arbitration is whether the

1 The Court of Cassation is Türkiye's highest court of appeal in civil and criminal matters. It reviews judgments in proceedings to set aside arbitral awards; those proceedings are brought before the competent regional court of appeal at first instance.

2 For more detailed general framework see Ali Yeşilırmak, Ömer Faruk Kafalı and H. Yağızhan Kol, "Turkey (Türkiye)", in *World Arbitration Reporter* (2nd edn, Release 23, JurisNet 2024).

3 International Arbitration Law No 4686, adopted on 21 June 2001, Official Gazette, 5 July 2001, No 24453.

4 Code of Civil Procedure No 6100, adopted on 12 January 2011, Official Gazette, 4 February 2011, No 27836.

dispute involves a foreign element within the meaning of Article 2 of the IAL. As a general rule, the IAL applies to arbitrations involving such a foreign element, subject to the additional provisions governing its scope of application under Article 1. The domestic arbitration provisions apply under CCP Article 407 to disputes without such an element. Both regimes draw on the UNCITRAL Model Law, but their scope and rules on judicial supervision remain distinct.[5]

Jurisdiction also depends on the type of application. Under CCP Articles 410 and 439(1), an action to set aside a domestic award is brought before the regional court of appeal ("Bölge Adliye Mahkemesi") at the seat, acting as a court of first instance. Under IAL Article 15(A) and Additional Article 1, an action to set aside an award likewise falls within the original jurisdiction of the relevant regional court of appeal. Other applications for judicial assistance are allocated to civil or commercial courts of first instance, according to their subject matter. Under Articles 60–63 of the Law on Private International Law and International Civil Procedure No 5718, recognition and enforcement of foreign arbitral awards are separate proceedings commenced before the competent court of first instance.[6]

B. Scope and Common Principles

IAL Article 2 identifies several alternative grounds on which a dispute has a foreign element. These include the parties having their domiciles, habitual residences or places of business in different states. They also include relevant connections with the seat of arbitration, a place of substantial performance or the place most closely connected with the dispute in another state. Further grounds include the specified foreign investment or overseas financing connections and a cross-border transfer of capital or goods under the underlying

5 See Ali Yeşilırmak, Ömer Faruk Kafalı and H. Yağızhan Kol, "Türkiye'de Tahkimin Gelişimi ve Değişimi", in Hakan Pekcanıtez and Muhammet Özekes (eds), *Cumhuriyetin 100. Yılında Medenî Usûl ve İcra İflâs Hukukumuzun Gelişim ve Değişim Süreci* (On İki Levha Yayıncılık 2023) 885–910.

6 Law on Private International Law and International Civil Procedure No 5718, adopted on 27 November 2007, Official Gazette, 12 December 2007, No 26728.

contract or legal relationship. The inquiry thus extends beyond the parties' nationality. IAL Article 1 also provides for the application of the Law where the parties or the arbitrator or tribunal select its provisions, and makes Articles 5 and 6 applicable even where the seat is outside Türkiye. The domestic-international distinction must consequently be read together with these statutory scope provisions.

CCP Articles 412 and 422 and IAL Articles 4 and 7(H) recognise that an arbitration clause can operate independently of the underlying contract and that arbitrators may rule on their own jurisdiction. These principles allow a tribunal to address its jurisdiction even if the principal contract is challenged. They do not preclude judicial examination of whether the parties concluded a valid arbitration agreement. CCP Article 413 and IAL Article 5 govern objections based on an arbitration agreement when a party nevertheless brings proceedings in court. Judicial review also arises when a party seeks to set aside the resulting award.

Arbitrability places a further limit on the scope of arbitration. Both statutes exclude disputes concerning rights of which the parties cannot freely dispose.[7] CCP Article 408 also excludes disputes concerning rights in rem over immovable property. IAL Article 1 expressly refers to immovable property situated in Türkiye. CCP Article 408 does not contain that territorial qualification. A claim does not fall outside arbitration merely because pursuing it in court would involve a specialised procedural remedy. As the October 2025 debt recovery decision illustrates, the underlying private right must be distinguished from the state powers used to enforce it.[8]

Judicial review of arbitral awards is limited to the grounds for setting aside prescribed under Article 439 of the CCP or Article 15 of

7 For arbitration agreements and arbitrability, see Hüseyin Yağızhan Kol, *Tasarruf Finansman Sözleşmesinden Doğan Uyuşmazlıkların Tahkim ve Diğer Alternatif Uyuşmazlık Çözüm Yöntemleri ile Çözümü (Tüketici Hukuku Bağlamında)* (On İki Levha Yayıncılık 2025).

8 Court of Cassation, 6th Civil Chamber, 20 October 2025, E. 2025/2168, K. 2025/3478.

the IAL, depending on the applicable legal framework. An action to set aside an arbitral award does not permit a review of the merits of the dispute, including the arbitral tribunal's interpretation of the contract or assessment of the evidence. Nevertheless, issues concerning the jurisdiction and constitution of the arbitral tribunal, procedural irregularities specified by law, arbitrability, and public policy remain subject to judicial review within the statutory grounds for setting aside.

Accordingly, the legal characterisation of the objections raised by the parties is of particular importance. While objections concerning the merits of the dispute generally fall outside the scope of judicial review, objections concerning the constitution of the arbitral tribunal or the validity of the arbitration agreement may constitute grounds for setting aside an arbitral award. In a decision, the Eleventh Civil Chamber of the Court of Cassation upheld the dismissal of an action to set aside an arbitral award, affirming the regional court of appeal's rejection of objections concerning the merits of the dispute that had been presented as allegations of a violation of public policy.[9]

C. Setting Aside and Enforcement of Arbitral Awards

Under CCP Article 439(2)–(3) and IAL Article 15(A), the grounds for setting aside concern incapacity, invalidity of the arbitration agreement, constitution of the tribunal, and expiry of the time limit for rendering the award. They also include the arbitral tribunal's unlawful determination that it has or lacks jurisdiction, decisions exceeding the scope of the submission to arbitration or failing to determine the claims submitted to arbitration in full, and procedural irregularities constituting grounds for setting aside under the applicable law. The statutory framework for review also covers equality of the parties, arbitrability and public policy. The CCP expressly identifies the right to be heard. These are limited grounds, not a general power to correct errors of fact or law. The requirement that a procedural

9 Court of Cassation, 11th Civil Chamber, 22 October 2025, E. 2025/4652, K. 2025/6461.

irregularity affect the substance of the award applies to that ground. It should not be assumed to govern the other grounds.

Under CCP Article 439(1) and (4), proceedings to set aside awards are brought before the regional court of appeal at the seat, acting at first instance. The proceedings must be brought within one month after notification of the award or the relevant correction, interpretation or additional decision. Under IAL Article 15(A), the period is thirty days. Territorial jurisdiction lies with the regional court of appeal whose district includes the competent court identified in Article 3. The competent court is determined by reference to the respondent's domicile, habitual residence or place of business in Türkiye, or Istanbul if none of those connections exists. The two periods should not be expressed interchangeably. CCP Article 439(6) and IAL Article 15(A) permit an appeal to the Court of Cassation against the judgment in proceedings to set aside the award, with review confined to the statutory grounds for setting aside.

The regimes also differ on enforcement pending challenge. Filing an action to set aside the award under IAL Article 15(A) automatically stays execution. Under CCP Article 439(4), filing does not itself stay execution, although a stay may be ordered on a party's application, subject to the provision of security covering the money or property awarded. A cassation appeal likewise has no automatic suspensive effect under Article 439(6). The applicable statute therefore determines whether a challenge itself suspends execution.

For an IAL award, Article 15(B) provides for a certificate of enforceability following the final rejection of an application to set aside the award, expiry of the challenge period or waiver of the right to challenge. In the latter two situations, the court must examine arbitrability and public policy of its own motion. The competent court of first instance is determined by Article 3 and Additional Article 1, including the allocation to a commercial court where the subject matter so requires. This procedure differs from the recognition and

enforcement of foreign awards.[10] The July 2025 decision discussed below illustrates the importance of using the correct procedural route even after proceedings to set aside the award have ended.

The possibility of waiver is subject to statutory conditions. IAL Article 15(A) expressly permits parties whose domiciles or habitual residences are outside Türkiye to waive the right to seek to set aside the award, either wholly or in respect of specified grounds. The waiver must be made by an express declaration in the arbitration agreement or a subsequent written agreement. A clause describing an award as final should not simply be treated as satisfying these statutory requirements. Moreover, waiver does not dispense with the court's ex officio examination of arbitrability and public policy when issuing the certificate under Article 15(B). Contractual limits on challenge and the statutory conditions for enforcement remain distinct.

D. Foreign Arbitral Awards and Interim Protection

The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC) provides the principal framework for the recognition and enforcement of foreign arbitral awards falling within its scope in Türkiye. Articles 60-63 of Law No 5718 also govern foreign arbitral awards, subject to the preservation of applicable international conventions under Article 1(2). A foreign award should therefore not be treated as an award made in an arbitration seated in Türkiye under the IAL.[11]

For awards falling within the scope of the NYC, the creditor must provide the award and arbitration agreement in the forms required by Article IV, together with the required translation where necessary. Article V allows refusal on specified grounds involving validity, notice and the opportunity to present a case, the scope of the submission, and tribunal composition or procedure. Those grounds

10 See generally, on arbitral awards and their enforcement, Ömer Faruk Kafalı, *Tahkim Yargılamasında Ara ve Nihaî Hakem Kararları* (On İki Levha Yayıncılık 2022).

11 Court of Cassation, 11th Civil Chamber, 6 October 2025, E. 2025/1684, K. 2025/5964.

also concern whether the award is binding or has been set aside or suspended. Non-arbitrability and public policy may be considered by the enforcing court of its own motion. The NYC does not permit the enforcing court to reconsider the merits of the dispute, a restriction that Turkish courts generally observe in practice.

Proceedings for recognition or enforcement of a foreign arbitral award are initiated before the competent court of first instance ("asliye hukuk or asliye ticaret mahkemesi"). Commercial matters fall within the jurisdiction of a commercial court ("asliye ticaret mahkemesi") under Article 5(1) of the Turkish Commercial Code No 6102,[12] read together with Article 60(2) of Law No 5718. Article 5 of Law No 5235 provides for a panel of judges to hear proceedings for recognition and enforcement of foreign arbitral awards before a commercial court.[13] Contrary to the proceedings to set aside awards, they are not initiated before a regional court of appeal. The latter may review a first-instance judgment on appeal, a function distinct from its original jurisdiction in proceedings to set aside awards. Article 60(2) of Law No 5718 permits a written agreement on territorial jurisdiction. Otherwise, territorial jurisdiction is determined by the respondent's domicile in Türkiye, then residence and, finally, the location of assets available for execution. Articles 61(2) and 57 govern the suspensive effect of an appeal against the enforcement judgment. As the attachment decisions below show, preserving assets while an appeal is pending is distinct from proceeding with compulsory execution.

Interim relief raises a related but distinct question. CCP Article 414 and IAL Article 6 provide for court assistance with protective measures despite the existence of an arbitration agreement. However, the availability of a particular measure depends on its statutory requirements and on the procedural status of the award relied upon.

12 Turkish Commercial Code No 6102, adopted on 13 January 2011, Official Gazette, 14 February 2011, No 27846.

13 Law on the Establishment, Duties and Powers of Courts of First Instance and Regional Courts of Appeal No 5235, adopted on 26 September 2004, Official Gazette, 7 October 2004, No 25606.

Protective attachment is governed by Articles 257 et seq. of the Enforcement and Bankruptcy Law No 2004.[14] The distinction between preserving assets and executing an award is especially important when an enforcement judgment has been obtained but has not yet become final.

The route to court assistance is not identical under the two arbitration statutes. CCP Article 411 limits judicial intervention to the cases expressly provided for in its arbitration provisions. CCP Article 414(3) permits a party to seek an interim measure or preservation of evidence from a court where the tribunal, or another person appointed by the parties (generally interpreted as an emergency arbitrator), cannot act in time or effectively. Otherwise, recourse requires the tribunal's permission or the parties' written agreement. IAL Article 6 expressly preserves recourse to courts before or during arbitration and also limits measures ordered by the tribunal that would bind third parties or require implementation by enforcement bodies or other public authorities. Parties seeking judicial assistance must therefore satisfy the conditions of the applicable statute.

III. Institutional Context

A. Caseload and The Role of The Institutions

Arbitration services in Türkiye are mainly offered by the Istanbul Arbitration Center (ISTAC), Istanbul Chamber of Commerce Arbitration and Mediation Center (ITOTAM), the Energy Disputes Arbitration Center (EDAC) and the Union of Chambers and Commodity Exchanges of Türkiye (TOBB).

ISTAC reported 138 cases in 2023, 167 in 2024 and 263 in 2025. Domestic matters represented 83 per cent, 87 per cent and 86 per cent respectively, and international matters 17 per cent, 13 per cent and 14 per cent. These are institution-wide figures across the categories in ISTAC's statistics, rather than a count confined to the

14 Enforcement and Bankruptcy Law No 2004, adopted on 9 June 1932, Official Gazette, 19 June 1932, No 2128.

commercial disputes examined in this review. They do not measure the size of the Turkish commercial arbitration market.[15]

ITOTAM is another institution administering arbitration in Türkiye. Alongside ISTAC, it offers an emergency arbitrator mechanism and provides for remote procedural meetings and hearings. These mechanisms facilitate the conduct of proceedings and access to urgent relief. In a statement reported in December 2025, the President of the Istanbul Chamber of Commerce put ITOTAM's active caseload at 70, predominantly in construction and energy disputes.[16] This is a snapshot of active cases, not a total of new filings during 2025. Comparable published annual caseload totals for 2025 could not be identified for EDAC or TOBB arbitration.

B. Transparency Standards

In November 2025, the Turkish Arbitration Academy published the Guiding Principles on Transparency for Ensuring the Independence and Impartiality of Arbitrators (Transparency Principles). The principles provide institutional guidance on disclosure.[17] The statutory duties and grounds for setting aside remain the basis for assessing the February judgment discussed below.[18]

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15 ISTAC, 2023 statistics, https://istac.org.tr/wp-content/uploads/2024/10/2023-Verileri.pdf. 2024 statistics, https://istac.org.tr/wp-content/uploads/2025/01/2024-Verileri.pdf. 2025 statistics, https://istac.org.tr/wp-content/uploads/2026/02/2025-Verileri.pdf.

16 Istanbul Ticaret Gazetesi, "2026 yapay zeka destekli çözümler yılı olacak! Şekib Avdagiç: İTO'da dijital adımlar hızlanacak", 26 December 2025, reporting the statement of Istanbul Chamber of Commerce President Şekib Avdagiç, https://istanbulticaretgazetesi.com/2026-yapay-zeka-destekli-cozumler-yili-olacak-avdagic-ito-da-dijital-adimlar-hizlanacak.

17 Turkish Arbitration Academy, Tahkimde Hakemlerin Bağımsızlık ve Tarafsızlığının Sağlanması Konusunda Şeffaflığa İlişkin Kılavuz İlkeler, November 2025, https://turkisharbitrationacademy.com/upload/publication/edd883804c967ec711e80d2bdce5dac1.pdf.

18 Court of Cassation, 11th Civil Chamber, 6 February 2025, E. 2024/4087, K. 2025/620.

IV. Selected Case Law

A. Arbitration and Court Jurisdiction In The Same Contract

The statutory starting point is an agreement to submit identified disputes to arbitration, recorded in the form required by CCP Article 412 or IAL Article 4. CCP Article 413 and IAL Article 5 govern objections based on an arbitration agreement when proceedings are nevertheless brought in court. IAL Article 5 also applies where the seat is abroad.

When enforcement of a foreign award is sought, NYC Article V(1)(a) directs the validity inquiry to the law chosen for the arbitration agreement. In the absence of any such indication, the inquiry is directed to the law of the country where the award was made. Whether the parties agreed to arbitrate and which law governs the validity of that agreement are separate questions.

The General Assembly of Civil Chambers of the Court of Cassation considered the relationship between an ICC arbitration clause and a separate clause conferring non-exclusive jurisdiction on the English courts.[19] The dispute arose from a longstanding commercial relationship. The agreement provided for arbitration in London, while another provision addressed English law and the jurisdiction of the English courts. The contractual relationship had subsequently been transferred.

The General Assembly treated the clarity of consent as decisive. It explained:

> "*Specifically, after clause K(ii) of the contract provides for arbitral jurisdiction, the additional conferral of jurisdiction on the English courts in clause L(ii), without making clear that the court is authorised to assist arbitration,*

19 Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584.

> *is also open to interpretation as giving the parties a choice between court proceedings and arbitration."*[20]

The fact that arbitrators had accepted jurisdiction did not bind the Turkish court when it considered the objection based on the arbitration agreement. The General Assembly consequently reversed, by a majority, the lower court's decision to adhere to its earlier judgment.

Two aspects of the General Assembly's reasoning warrant attention. First, the judgment reflects a demanding approach to consent. The court asked not only whether the parties had included an arbitration clause, but whether the agreement as a whole left uncertainty as to the forum that would render a decision concerning the dispute.

Secondly, despite the choice of English governing law and London as the seat, the General Assembly treated the existence of a clear intention to arbitrate as a preliminary question governed by Turkish law as the lex fori. It treated this question as distinct from the substantive validity of an existing arbitration agreement. It concluded that the competing forum provisions did not establish the unequivocal consent required under Turkish law.[21] By contrast, the Eleventh Civil Chamber of the Court of Cassation had held on 22 March 2023 that the validity of the arbitration clause should be examined under English law because the contract expressly selected that law to govern the agreement in all respects. The stated basis was the contractual choice of law, rather than the choice of London as the seat.[22]

A related enforcement dispute concerning the ICC award resulted in a July 2025 decision of the Eleventh Civil Chamber of the Court of Cassation upholding the refusal to enforce the award.[23] The

20 Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584, para 19.

21 Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584, paras 10, 13 and 18–20.

22 Court of Cassation, 11th Civil Chamber, 22 March 2023, E. 2021/6517, K. 2023/1762, as identified and reproduced in Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584, section V.A.2, point 6.

23 Court of Cassation, 11th Civil Chamber, 3 July 2025, E. 2024/5356, K. 2025/4827.

reasoning of the Istanbul Regional Court of Appeal also addressed a clause conferring exclusive jurisdiction on the English courts in the 2013 transfer agreement.[24] The Eleventh Civil Chamber of the Court of Cassation emphasised the absence of a clear limitation of the courts' role to assistance with arbitration. Both decisions arose from the same contractual dispute and should be considered together. They show how uncertainty about the agreed forum can affect both the court proceedings and later enforcement of the award.

The most important lesson from these judgements is that when drafting an arbitration agreement, parties should clarify the purpose of any accompanying court jurisdiction clause. A clause reserving applications for interim relief or other assistance should identify that limited purpose. The decisions do not establish that every reference to a court necessarily invalidates an arbitration agreement. They do show the risk of leaving the relationship between two broadly drafted forum provisions unresolved. The reasoning also calls for closer examination of the law governing the arbitration agreement and whether apparently overlapping clauses can be reconciled before a court concludes that the parties have not consented to arbitration.

Earlier decisions took different approaches to forum clauses that appear to overlap. In July 2014, the Court of Cassation's Fifteenth Civil Chamber upheld the dismissal of a court action following an objection based on the arbitration agreement, expressly emphasising the tribunal's authority to decide the validity of the clause. The dissent argued that an unrestricted reference to Bursa courts undermined unequivocal consent.[25] In January 2017, a majority of the same Chamber instead rejected a clause combining arbitration with recourse to Istanbul courts in circumstances specified by the

24 Istanbul Regional Court of Appeal, 14th Civil Chamber, 11 July 2024, E. 2021/718, K. 2024/1128, as reported in Court of Cassation, 11th Civil Chamber, 3 July 2025, E. 2024/5356, K. 2025/4827. The decision date is also recorded in Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584, para 16.

25 Court of Cassation, 15th Civil Chamber, 1 July 2014, E. 2014/3330, K. 2014/4607, majority and dissent.

contract. The dissent considered those exceptions compatible with an agreement to arbitrate some disputes.[26]

In December 2019, the Fifteenth Civil Chamber of the Court of Cassation upheld a clause referring disputes to the "arbitral tribunals of the ... Chamber of Commerce". The clause designated arbitration under the chamber's rules and permitted recourse to the courts only if those tribunals could not perform their function.[27] Against that background, the 2025 General Assembly ruling favours a restrictive approach when a court clause is not expressly limited to a supporting or exceptional role.[28] The clauses and procedural settings differed, however, so the ruling does not overrule every earlier decision upholding an arbitration agreement.

The central interpretive issue remains whether the court clause competes with the agreement to arbitrate or enables it to operate.

B. Conflicting Approaches To Mediation Followed By Arbitration (Med-Arb)

Article 3(1) of the Law on Mediation in Civil Disputes No 6325 preserves party autonomy in mediation, subject to statutory requirements for mandatory mediation.[29] Article 18/A(18) provides for an important exception: *"Where special laws require recourse to arbitration or another alternative dispute resolution procedure, or where an arbitration agreement exists, the provisions concerning mediation as a prerequisite to bringing an action shall not apply."* This provision removes the statutory requirement to attempt mediation before bringing an action. It does not expressly prohibit parties from agreeing to attempt mediation before arbitration.

26 Court of Cassation, 15th Civil Chamber, 23 January 2017, E. 2016/4735, K. 2017/259, majority and dissent.

27 Court of Cassation, 15th Civil Chamber, 12 December 2019, E. 2019/2824, K. 2019/5139.

28 Court of Cassation, General Assembly of Civil Chambers, 1 October 2025, E. 2024/11-653, K. 2025/584, para 19.

29 Law on Mediation in Civil Disputes No 6325, adopted on 7 June 2012, Official Gazette, 22 June 2012, No 28331.

Two contrasting decisions of the Court of Cassation's Third Civil Chamber also considered whether the parties had unequivocally agreed to arbitrate. In those cases, however, mediation was to precede arbitration, rather than serve as an alternative forum for deciding the dispute. Although the underlying disputes arose from an agreement on fees for legal services, the reasoning is relevant to commercial arbitration because it addresses the general validity of sequential dispute resolution clauses.[30]

Both decisions refer to an agreement requiring the parties first to attempt mediation and, if no settlement was reached, to proceed to arbitration. Crucially, both record that the parties had attempted mediation without reaching settlement. The disagreement therefore concerned the validity of the arbitration clause, although the parties had completed the preliminary mediation step.

On 15 April 2025, the Chamber held that the mediation requirement prevented the clause from expressing the clear and unequivocal intention necessary for arbitration. It concluded that *"the arbitration clause must therefore be regarded as invalid"* and reversed the judgment dismissing the application to set aside the award insofar as it concerned the dispute arising under the agreement of 1 March 2022.[31]

The reasoning in the April judgment relied on Articles 3, 13 and 18/A(18) of Law No 6325. These provisions concern the voluntary nature of mediation and the exemption of disputes covered by an arbitration agreement from the relevant mandatory pre-action mediation requirement. Neither proposition necessarily prevents parties from agreeing to attempt settlement before arbitration. Exemption

30 Court of Cassation, 3rd Civil Chamber, 15 April 2025, E. 2025/225, K. 2025/2164; Court of Cassation, 3rd Civil Chamber, 4 November 2025, E. 2024/3208, K. 2025/5240. See generally, on mediation and arbitration as dispute resolution methods, Ali Yeşilırmak, *Türkiye'de Ticari Hayatın ve Yatırım Ortamının İyileştirilmesi İçin Uyuşmazlıkların Etkin Çözümünde Doğrudan Görüşme, Arabuluculuk, Hakem-Bilirkişilik ve Tahkim: Sorunlar ve Çözüm Önerileri* (On İki Levha Yayıncılık 2011).

31 Court of Cassation, 3rd Civil Chamber, 15 April 2025, E. 2025/225, K. 2025/2164, reasoning. Reviewing Ankara Regional Court of Appeal, 4th Civil Chamber, E. 2024/5, K. 2024/14.

from a statutory prerequisite to litigation and the validity of an agreed preliminary settlement process are distinct questions.

On 4 November 2025, the same Chamber upheld the rejection of an application to set aside the award and accepted the agreed sequence of mediation followed by arbitration. It stated:

> *"The relevant contractual provision clearly expresses, without leaving room for doubt, the parties' intention that the dispute will be resolved by arbitration if it cannot be resolved through mediation."*[32]

The parties could thus attempt to settle through mediation and, if that failed, submit their dispute to the agreed arbitral process.

The November judgment drew support from Article 5(1) of Law No 6325, which expressly addresses restrictions on the use of specified statements and documents from mediation in subsequent litigation or arbitration. The Chamber inferred that the legislature contemplated arbitration after unsuccessful mediation.[33] The provision supports the view that the two processes can be combined, although it does not establish that every clause combining them is valid. The dispute must remain suitable for both procedures.

The two decisions appear closely connected: both texts refer to an award dated 14 February 2024 bearing file number 2023/37. These shared identifiers suggest distinct proceedings to set aside awards concerning the same underlying award, but the anonymised texts do not establish a complete procedural history. They also describe the same contractual wording, making it difficult to attribute the opposing conclusions to differences in drafting.[34]

32 Court of Cassation, 3rd Civil Chamber, 4 November 2025, E. 2024/3208, K. 2025/5240, reasoning. Reviewing Ankara Regional Court of Appeal, 36th Civil Chamber, E. 2024/4, K. 2024/6.

33 Court of Cassation, 3rd Civil Chamber, 4 November 2025, E. 2024/3208, K. 2025/5240, reasoning.

34 Court of Cassation, 3rd Civil Chamber, 15 April 2025, E. 2025/225, K. 2025/2164. Court of Cassation, 3rd Civil Chamber, 4 November 2025, E. 2024/3208, K. 2025/5240. Both decision texts identify the award as dated 14 February 2024, file No 2023/37.

The November judgment does not discuss the April decision or expressly depart from its reasoning. It adopts a more receptive approach, but does not establish that the earlier position has been displaced. Nor should either decision be read as resolving all issues associated with one person acting as both mediator and arbitrator. The validity of a sequence of mediation followed by arbitration is separate from the consent, impartiality and confidentiality issues arising when the same neutral performs both roles.

For parties, the November approach draws a clearer distinction between consent to arbitrate and an agreed opportunity to settle beforehand. Clear provisions specifying when mediation begins and ends remain useful, but the fact that mediation had already failed in both cases shows why drafting advice alone cannot resolve this divergence. The central uncertainty is whether courts will consistently give effect to the parties' express choice of arbitration as the next stage.

The 2019 construction decision offers further context. In reproducing the contractual provision, the court recorded: *"It is desired that disputes which may arise between the contractor and the owners of the consolidated plot should first be resolved through negotiations."*[35] *That was not a ruling on mediation under the 2025 clause. It nevertheless shows why a preliminary settlement stage must be analysed separately from a provision leaving the merits open to determination by state courts after arbitration. The unresolved issue is whether the April decision wrongly treated the settlement step as casting doubt on consent to binding arbitration.*

C. Transfer of A Contract and The Arbitration Clause

Article 205(1)–(3) of the Turkish Code of Obligations No 6098 distinguishes transfer of the entire contractual position from assignment of an individual claim.[36] It requires an agreement involving the outgoing, incoming and remaining parties, while also recognising

35 Court of Cassation, 15th Civil Chamber, 12 December 2019, E. 2019/2824, K. 2019/5139.

36 Turkish Code of Obligations No 6098, adopted on 11 January 2011, Official Gazette, 4 February 2011, No 27836.

the remaining party's prior permission or subsequent approval. The transfer must comply with the formal requirements applicable to the contract transferred.

In the decision discussed below, the court examined the transfer agreement and the remaining parties' notarised consents to determine whether the transfer was valid and the arbitration clause bound the incoming parties.[37]

The Court of Cassation's Sixth Civil Chamber addressed the effect of a contractual transfer on an arbitration agreement in a construction dispute.[38] The issue concerned companies that were not original signatories but had subsequently taken over the contractual position. The court examined the consents and formalities supporting the transfer. It did not treat the absence of a signature on the original agreement as decisive.

Applying the rules governing the transfer of a contract, the Chamber stated:

> *"By virtue of the transfer agreement and the consent given, the arbitration clause, like the other provisions of the contract, now becomes binding on the parties."*[39]

The documented consents, including the relevant notarial arrangements, were material to that conclusion. The court also considered it inconsistent for parties to participate in the contractual arrangement and subsequently deny that they were bound by the arbitration clause. It thus reversed the judgment setting aside the award.

The decision is best understood as giving effect to a legally established transfer, rather than recognising a general power to bind any economically connected company to arbitration. Corporate affiliation, commercial involvement and succession to an agreed

37 Court of Cassation, 6th Civil Chamber, 10 April 2025, E. 2024/159, K. 2025/1431, reasoning.

38 Court of Cassation, 6th Civil Chamber, 10 April 2025, E. 2024/159, K. 2025/1431.

39 Court of Cassation, 6th Civil Chamber, 10 April 2025, E. 2024/159, K. 2025/1431, reasoning.

contractual position are different grounds. The evidence of transfer establishes the link between the original arbitration agreement and the incoming party.

The decision also shows why consent should not be assessed solely by reference to the signatures on the original contract. Consent remains necessary, but it may be established through the legal transaction by which a party acquires the contractual position.

In transactional practice, the judgment supports expressly addressing the arbitration clause in transfer documentation and retaining evidence of all required consents. In a dispute, the legal effect of the transfer matters as much as the identities of the original signatories.

D. Disclosure and The Appearance of Arbitrator Impartiality

CCP Article 417(1) requires disclosure before acceptance of an appointment: *"A person offered appointment as an arbitrator must, before accepting that office, disclose circumstances and conditions that justify doubts as to their impartiality and independence."* It also requires prompt disclosure of subsequently arising circumstances where the parties have not already been informed. IAL Article 7(C) contains a parallel obligation. Whether a failure to disclose warrants setting aside the award is a separate question under CCP Article 439 or IAL Article 15, as applicable.[40]

In February, the Court of Cassation's Eleventh Civil Chamber examined an undisclosed professional connection involving the chair of a tribunal in a share purchase dispute. The chair's son had worked as a trainee at a law firm founded by a co-arbitrator. The respondent acknowledged the placement, describing it as lasting approximately eleven months at a firm with more than thirty lawyers

40 For a discussion of arbitrators' disclosure obligations and transparency in arbitrator selection, see Ali Yeşilırmak, "Transparency and Stakeholders' Role in the Selection of the Arbitral Tribunal", in Stavros Brekoulakis, Romesh Weeramantry and Lilit Nagapetyan (eds), *Achieving the Arbitration Dream: Liber Amicorum for Professor Julian D.M. Lew KC* (Kluwer Law International 2023) 285.

and ending in July 2023.[41] The issue was whether that connection and the failure to disclose it justified setting aside the award.

The regional court had rejected the challenge, referring to the absence of a timely objection and insufficient proof of actual bias. The majority in the Court of Cassation approached the issue by applying the objective test of whether the circumstances could give rise to justifiable doubts about independence or impartiality. It emphasised the continuing disclosure obligation and explained:

> "*The independence and impartiality of arbitrators are matters of public policy. Accordingly, in proceedings to set aside an arbitral award, an allegation that the arbitrators have lost their impartiality and independence must be examined.*"[42]

The majority held that the circumstances acknowledged in the respondent's defence satisfied the conditions for setting aside, and reversed the judgment dismissing the application to set aside the award. It remitted the case to the regional court without determining the merits of the underlying commercial dispute.[43]

The dissent took a narrower view. It accepted the relevance of disclosure but resisted treating non-disclosure as an independent ground for setting aside. It accepted that non-disclosure could engage the principle of equal treatment or public policy, but required concrete evidence of its effect on the award and considered setting aside the award disproportionate on the facts presented. Failure to disclose does not, on that view, invariably establish partiality or justify setting aside an award.[44] The judges therefore disagreed about the

41 Court of Cassation, 11th Civil Chamber, 6 February 2025, E. 2024/4087, K. 2025/620.

42 Court of Cassation, 11th Civil Chamber, 6 February 2025, E. 2024/4087, K. 2025/620, majority reasoning.

43 Court of Cassation, 11th Civil Chamber, 6 February 2025, E. 2024/4087, K. 2025/620, majority reasoning.

44 Court of Cassation, 11th Civil Chamber, 6 February 2025, E. 2024/4087, K. 2025/620, dissenting opinion.

legal consequences of the omission and the assessment required before an award could be set aside.

The majority's approach encourages disclosure beyond direct relationships between an arbitrator and a party. Connections involving close family members and other tribunal members may also require consideration. At the same time, the judgment should not be read as establishing a universal rule that any past employment relationship involving a relative disqualifies an arbitrator. Its implications for other cases should be assessed in light of the duration, proximity, timing and nature of the relationship.

Although the majority found the conditions for setting aside satisfied in this case, the division between the majority and dissent leaves uncertainty about the threshold to be applied in future cases of non-disclosure. The broader question is how courts should relate a breach of disclosure obligations to the exhaustive grounds for setting aside while maintaining an objective standard of impartiality. An approach requiring proof of actual bias risks giving too little weight to the disclosure obligation. An approach equating every omission with invalidity risks attaching an automatic consequence to non-disclosure that the statutory scheme does not expressly provide for. The majority and dissent illustrate the difficulty of reconciling these concerns.

The Turkish Arbitration Academy's Guiding Principles on Transparency for Ensuring the Independence and Impartiality of Arbitrators (November 2025), discussed in section III.B, offer a practical response to the disclosure problem. However, their role should be distinguished from that of judicial review. A tribunal member may have a reason to disclose a relationship even where that relationship does not ultimately justify the arbitrator's removal or setting aside of the award.[45] The majority and dissent instead call for careful analysis of the consequences of non-disclosure in each case.

45 Turkish Arbitration Academy, Transparency Principles (November 2025), sections 3.1–3.5 and 4.

E. Arbitration of Claims Following Objections to Debt Enforcement

Under the ordinary procedure for debt enforcement without a prior judgment (ilamsız icra), the creditor applies to an enforcement office, which issues a payment order. A timely objection by the debtor stays enforcement in respect of the disputed debt under Article 66 of the Enforcement and Bankruptcy Law No 2004. Article 67(1) of the Enforcement and Bankruptcy Law No 2004 permits a creditor to seek cancellation of an objection ("itirazın iptali") within one year of being notified of it. The creditor must prove the claim in accordance with the general rules. Article 67(5) also preserves the right to bring an ordinary action for payment if that period expires. In arbitration, the further question is whether the dispute falls within the arbitration agreement and concerns a right of which the parties may freely dispose under CCP Article 408 or IAL Article 1. The availability of the enforcement remedy and the arbitrability of the underlying right must therefore be assessed separately.[46]

The October decision of the Sixth Civil Chamber of the Court of Cassation concerned a claim arising from international carriage and payments connected with customs procedures in Spain. The creditor had initiated enforcement proceedings, and the debtor had objected. The subsequent arbitral claim sought cancellation of that objection, a remedy associated with the Turkish system of debt enforcement.[47]

The regional court set aside the award on the basis that initiating enforcement proceedings before the tribunal had determined the debt circumvented the arbitration agreement. It found that no procedurally valid enforcement proceedings had been brought, although such proceedings were a prerequisite to a claim for cancellation of

46 See generally, for the debate on arbitration agreements, debt enforcement and actions for cancellation of objections, Hakan Pekcanıtez and Ali Yeşilırmak, "Tahkim", in *Pekcanıtez Usûl: Medenî Usûl Hukuku*, vol V (16th edn, On İki Levha Yayıncılık 2025) 4618–4625.

47 Court of Cassation, 6th Civil Chamber, 20 October 2025, E. 2025/2168, K. 2025/3478.

the objection. The Court of Cassation rejected that reasoning: commencing enforcement proceedings did not circumvent the clause because the creditor could pursue the contested claim in arbitration after an objection. The underlying payment dispute concerned rights of which the parties could freely dispose. The action's procedural connection to existing enforcement proceedings did not make the underlying debt a matter reserved for the courts.

The Chamber stated:

> "*Therefore, following an objection to enforcement proceedings, the opposing party may bring an action in arbitration for cancellation of the objection, or may bring an action directly for payment of the debt.*"[48]

Arbitrators may determine a contractual debt without exercising the state's coercive enforcement powers.[49] Similarly, the adjudication of a debt must be distinguished from a declaration of bankruptcy, which engages a different legal function. The Chamber reversed the judgment in proceedings to set aside the award rather than treating every remedy linked to enforcement legislation as falling outside arbitration.[50]

A January 2025 judgment of the Court of Cassation's Eleventh Civil Chamber provides further support for that conclusion. In a dispute arising from a distributorship agreement, the Chamber upheld the dismissal of an application to set aside an award determining a claim for cancellation of an objection to enforcement. The regional court had held that such claims concerned rights of which the parties could freely dispose and were therefore arbitrable. It also found no statutory bar to the tribunal determining a claim for the compensation available under Turkish enforcement law for an unjustified

48 Court of Cassation, 6th Civil Chamber, 20 October 2025, E. 2025/2168, K. 2025/3478, reasoning.

49 See Ali Yeşilırmak, "Geçerli Bir Tahkim Anlaşmasının Varlığına Rağmen Genel Haciz Yoluyla Takip Yapılabilir mi?" (2011) 96 Türkiye Barolar Birliği Dergisi 205.

50 Court of Cassation, 6th Civil Chamber, 20 October 2025, E. 2025/2168, K. 2025/3478, reasoning.

objection to the debt (icra inkâr tazminatı). The Chamber affirmed that judgment without developing a separate detailed analysis.[51]

The result supports the practical utility of arbitration clauses in payment disputes. If an objection alone displaced the arbitration agreement, a debtor could move an arbitrable contractual claim into court proceedings. The ruling also reinforces the need to identify the precise relief sought. The reasoning concerns adjudication of a private right of which the parties may freely dispose. Its application to insolvency decisions or measures affecting third parties requires separate analysis.

F. Interim Attachment At Different Stages Of Award Enforcement

Under Article 257(1) of the Enforcement and Bankruptcy Law, interim attachment is available for a monetary debt that is due and not secured by a pledge. Paragraph 2 provides limited grounds for attachment before the debt falls due. Article 258 requires evidence sufficient to satisfy the court as to the claim and, where necessary, the grounds for attachment. Article 264 regulates the steps needed to maintain protection.

IAL Article 6, which also applies to arbitrations seated outside Türkiye by virtue of Article 1, permits court assistance and regulates the duration of protection ordered by a court before or during arbitration. Whether that provision governs protection sought after an award depends on the court's reasoning in the particular case.[52]

Two Istanbul regional courts of appeal decisions illustrate the importance of procedural timing when a creditor relies on a foreign arbitral award to obtain protective attachment. Their different outcomes must be read in light of the different procedural stages at which the creditors applied.

51 Court of Cassation, 11th Civil Chamber, 21 January 2025, E. 2024/4628, K. 2025/306.

52 For interim measures and court assistance in arbitration, see Ali Yeşilırmak, *Provisional Measures in International Commercial Arbitration* (Kluwer Law International 2005).

In April, the Forty-Third Civil Chamber of the Istanbul Regional Court of Appeal considered an application relying on two FOSFA awards, dated 29 April 2024 (No 1206) and 26 July 2024 (No 1206A), for which no enforcement judgment had yet been obtained. It lifted the attachment, stating:

> *"On the basis of a foreign court judgment or arbitral award for which enforcement has not yet been granted, and whose compliance with the conditions for enforcement will be determined at the conclusion of the proceedings, the debt adjudicated in the judgment or award sought to be enforced cannot be characterised as a 'debt that has fallen due'."*[53]

The court linked the maturity of the debt to the award's enforcement status and considered the unenforced awards insufficient to satisfy the prima facie evidentiary standard applicable to interim attachment.[54] That restrictive approach raises questions about the distinction between the underlying debt and the enforceability of the award. The holding concerns the evidentiary basis presented to the court. It should not be read as prohibiting every interim measure before enforcement proceedings are concluded.

In November, the Twelfth Civil Chamber of the Istanbul Regional Court of Appeal considered another FOSFA award at a later procedural stage. A Turkish enforcement judgment had already been issued, although it was under appeal and had not become final. The court stated:

> *"There is no doubt that a foreign arbitral award for which enforcement has been granted constitutes persuasive evidence of the existence of a debt that has fallen due, even if the judgment granting enforcement has not become final."*[55]

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53 Istanbul Regional Court of Appeal, 43rd Civil Chamber, 28 April 2025, E. 2025/541, K. 2025/559, reasoning.

54 Istanbul Regional Court of Appeal, 43rd Civil Chamber, 28 April 2025, E. 2025/541, K. 2025/559, reasoning.

55 Istanbul Regional Court of Appeal, 12th Civil Chamber, 10 November 2025, E. 2025/1617, K. 2025/1811, reasoning.

It also addressed the duration of protection by reference to IAL Article 6. It did not apply the ordinary follow-up time limit under Article 264 of the Enforcement and Bankruptcy Law in the manner urged by the objecting party. The appellate court allowed the appeal, set aside the first-instance decision and, on substituted grounds, again rejected the objection to the attachment, leaving the attachment in place.[56]

The key difference is that an enforcement judgment had been issued in the November case but not in the April case. The November ruling does not mean that a judgment that is not yet final permits immediate coercive execution of the award as though all enforcement requirements had been satisfied. It concerns the preservation of assets while the enforcement judgment remains under appeal. Equally, the April ruling should not be used to predict the rejection of a request supported by a different evidentiary record or a later judicial determination.

A December decision of the Third Civil Chamber of the Istanbul Regional Court of Appeal concerned a different statutory setting: interim attachment sought on the basis of an ITOTAM award governed by the IAL, rather than a foreign award awaiting enforcement. The first-instance court had upheld the debtor's objection and lifted the attachment. The regional court of appeal dismissed the creditor's appeal, leaving that decision in place. In addition to the proceedings to set aside the award, the majority relied on the nature of the claim arising from the liquidation of an ordinary partnership. It stated:

> "*In the present case, having regard to the fact that an action has been brought to set aside the arbitral award and that the claim for loss arising from the ordinary partnership between the parties is also in the nature of a claim arising on liquidation, the first-instance court's decision was appropriate for the reasons stated in that decision.*"[57]

56 Istanbul Regional Court of Appeal, 12th Civil Chamber, 10 November 2025, E. 2025/1617, K. 2025/1811, reasoning.

57 Istanbul Regional Court of Appeal, 3rd Civil Chamber, 11 December 2025, E. 2025/3095, K. 2025/3201, majority reasoning.

A separate opinion concurring in the result relied on the automatic stay of execution under IAL Article 15(A) upon the commencement of proceedings to set aside the award.[58] It should not be confused with a dissent from the disposition of the appeal.

The December decision therefore should not be treated as directly contradicting the two decisions on foreign awards. It concerns an award governed by the IAL, proceedings to set aside that award and a particular type of underlying claim. Read together, the decisions underline the need to identify the applicable enforcement regime and the evidentiary basis for interim attachment, rather than infer its availability solely from the existence of an award.

For parties seeking interim protection, the decisions underline the need to explain both the status of the foreign award and the independent requirements of the requested measure. For courts, the task is to distinguish the preliminary assessment required to preserve assets from the final determination governing enforcement. An arbitral award is relevant to both inquiries, but each has its own requirements.

G. Court Assistance and Return Of Security

A construction dispute provides another example of the distinction between setting aside an award and seeking court assistance with an interim measure. In May 2025, the Court of Cassation's Sixth Civil Chamber considered a request for the return of a TRY 10 million letter of guarantee provided as security for an interim measure ordered by the tribunal. The applicant applied to a regional court following proceedings concerning the arbitral awards. Referring to CCP Articles 411, 414(3) and 444, the Chamber treated the request as separate from an action to set aside the award. It reasoned that, because the measure had been sought from the arbitrators, the return of the security should also be requested from them.[59]

58 Istanbul Regional Court of Appeal, 3rd Civil Chamber, 11 December 2025, E. 2025/3095, K. 2025/3201, separate opinion concurring in the result.

59 Court of Cassation, 6th Civil Chamber, 15 May 2025, E. 2025/998, K. 2025/2056, reasoning.

The Chamber dismissed the cassation appeal, rather than reversing the decision or ordering the return of the guarantee. Referring to CCP Article 439(6), which limits cassation appeals to judgments in proceedings to set aside awards, the Chamber stated:

> *"Since this request and the decision rendered are not of that nature, it was necessary to dismiss the appeal."*[60]

The decision reinforces the need to identify the source of an interim measure and the procedural nature of the relief sought. It does not exclude the court assistance expressly available under Article 414 or settle every question concerning a tribunal's powers after its final award.

H. Enforceability Certificates and Legal Interest In Seeking Judicial Relief

IAL Article 15(B) provides for a certificate of enforceability after the final rejection of an application to set aside the award. Where the period for seeking to set aside the award has expired without an application or the right to challenge has been waived, it requires the court to examine arbitrability and public policy of its own motion. The applicant must also have a legal interest in seeking judicial relief under CCP Article 114(1)(h). Final resolution of the proceedings to set aside the award does not remove that requirement.

A July decision of the Fourteenth Civil Chamber of Istanbul Regional Court of Appeal addressed an application for a certificate of enforceability after a challenge to an Istanbul-seated ICC award had been finally rejected.[61] The award was dated 26 October 2023. The refusal to set it aside had been affirmed by the Court of Cassation in April 2025.[62]

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60 Court of Cassation, 6th Civil Chamber, 15 May 2025, E. 2025/998, K. 2025/2056.

61 Istanbul Regional Court of Appeal, 14th Civil Chamber, 14 July 2025, E. 2025/1248, K. 2025/1293.

62 Court of Cassation, 11th Civil Chamber, 10 April 2025, E. 2024/6541, K. 2025/2304, as reported in Istanbul Regional Court of Appeal, 14th Civil Chamber, 14 July 2025, E. 2025/1248, K. 2025/1293.

The appellate court held that IAL Article 15(B) did not require a fresh ex officio review of arbitrability and public policy where an application to set aside the award had already been finally dismissed. It distinguished that situation from cases in which no application to set aside the award had been made within the prescribed period or the right to challenge had been waived, where those matters remain subject to review.[63] This distinction prevents the certificate procedure from reopening a completed review in proceedings to set aside the award while preserving the statutory checks in other cases.

The application nevertheless failed for a separate procedural reason. The applicant had already sought a certificate before another court. While the jurisdictional ruling in those proceedings was not yet final, the applicant lodged a fresh application instead of completing the transfer process. The appellate court explained:

> *"Where an application has been made to a civil court of first instance and that court has declined subject-matter jurisdiction, there can be no legal interest in making the same application afresh to a commercial court of first instance instead of having it transferred to the competent court."*[64]

The non-contentious character of the requested certificate did not remove that requirement.

The outcome must be kept in mind when relying on this decision. The court did not grant a certificate merely because the application to set aside the award had failed. It declined to repeat substantive review and required the applicant to follow the proper procedural route. Finality of the judgment in proceedings to set aside the award and admissibility of a new certificate application therefore remained separate questions.

63 Istanbul Regional Court of Appeal, 14th Civil Chamber, 14 July 2025, E. 2025/1248, K. 2025/1293.

64 Istanbul Regional Court of Appeal, 14th Civil Chamber, 14 July 2025, E. 2025/1248, K. 2025/1293, reasoning.

V. Conclusion

The selected 2025 decisions give effect to arbitration in disputes involving transferred contracts and debt recovery. They also reveal continuing uncertainty about how courts identify binding consent and protect awards. The record does not establish a uniform movement either towards or away from arbitration. Their significance lies in the different standards courts apply at each stage.

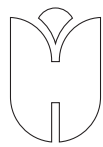
Courts would benefit from a more consistent approach to agreements that combine arbitration with other procedures. The earlier decisions and the 2025 General Assembly ruling show why an ancillary court clause, an exceptional fallback and an alternative forum for deciding the merits require different treatment. The contrasting decisions of the Third Civil Chamber of the Court of Cassation on mediation highlight the same problem: an attempt at settlement before arbitration should be assessed by asking whether the parties remained committed to submitting unresolved disputes to binding adjudication. The November judgment supports this approach, but does not address the April decision, leaving the divergence unresolved.

Courts must also distinguish an arbitrator's duties from the grounds for setting aside an award. The disclosure judgment draws attention to relationships involving tribunal members and their relatives. Predictability nevertheless requires courts to explain how the particular relationship and any failure to disclose engage the statutory grounds for setting aside. Neither requiring proof of actual bias in every case nor automatically concluding that non-disclosure requires the award to be set aside provides an adequate assessment.

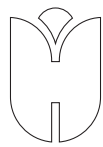
The enforcement decisions call for a clear distinction between determining a debt, preserving assets and carrying out compulsory execution. The stage reached in proceedings to enforce a foreign award affects the assessment of protective attachment, while the IAL certificate procedure requires an admissible application even after an application to set aside the award has been finally rejected. These distinctions should be made explicit in applications and in courts'

reasoning. Maintaining them helps courts preserve assets when appropriate without allowing execution before its conditions are met.

Future decisions could usefully clarify the effect of a mediation step, the consequences of non-disclosure and the availability of interim protection during enforcement. Those are the areas in which the cases reviewed leave commercial parties with the greatest uncertainty.



Chapter Three



UK Arbitration Law and Practice: 2025 Review

Dr. Dogan Gultutan[*]

I. Introduction

England is arguably the epicentre of international commercial arbitration. A change in arbitration law in England, whether in the statute books or in case law, tends to have a significant impact on a global scale, tending to have seismic repercussions. This is attributable both to historical factors[1] and to the significant role played by English courts on matters concerning arbitration.

England is one of the most popular seats of arbitration. According to a recent survey[2], London is the most preferred seat in Africa, Europe, Middle East and Caribbean / Latin America, ranking second in North America. This is an impressive achievement, and a well-deserved ranking. English arbitration laws, arbitral institution (i.e., the London Court of International Arbitration ("**LCIA**")) and

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1 England has had a statute on arbitration as early as 1698; the English Arbitration Act of 1968 (full title: 1968: 9 & 10 William 3 c. 15: An Act for determining Differences by Arbitration) was passed to "*promot[e] Trade, and render[] the Awards of Arbitrators the more effectual in all Cases, for the final Determination of Controversies referred to them by Merchants and Traders, or others, concerning Matters of Account or Trade, or other Matters*".

2 White & Case and Queen Mary 2025 International Arbitration Survey: 'The Path Forward: Realities and Opportunities in Arbitration'; the survey may be accessed via the following link: https://www.qmul.ac.uk/arbitration/research/2025-international-arbitration-survey/ (accessed on 22 March 2026).

its judiciary are revered around the globe. With a revamped arbitration law that received Royal Assent in 2025, it appears that England will continue to be a beacon of the arbitration community. The availability of practical and creative remedies through the English courts, such as anti-suit injunctions ("**ASIs**")[3] and injunctions against persons unknown[4], also makes England a primary choice for disputes.

The strong reputation of the LCIA as an arbitral institution further bolsters England's appeal as a centre of arbitration. Tracing its roots to 1883, the LCIA was established to provide an alternative to the slow and often costly court process that existed at the time. It was established to "*have all the virtues which the law lacks. It is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a peacemaker instead of a stirrer-up of strife*".[5] Its current rules were formulated in 2020 and have been in effect since October 2020.[6] The LCIA Annual Casework Report for 2024[7] reports that 362 cases were registered that year, with 95% of cases being international in nature with parties from 101 jurisdictions in 2024.

England, unlike some other jurisdictions (such as Türkiye and France), does not have a dualist legislative structure. The Arbitration Act 1996 (as amended) (the "**1996 Act**") governs both domestic and international arbitrations. Although England was initially on the path to becoming an UNCITRAL Model Law adopting jurisdiction, having had its senior lawyers contribute substantively to the drafting of the UNCITRAL Model Law on International Commercial Arbitration of 1985 (as amended) (the "**Model Law**"), it changed course and introduced tailor-made legislation, which received Royal Assent

3 See, e.g., *Unicredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30.

4 See, e.g., *Boyd v Ineos Upstream Ltd* [2019] EWCA Civ 515.

5 See, LCIA's website: https://www.lcia.org/LCIA/history.aspx (accessed on 22 March 2026).

6 The LCIA Rules may be accessed via the following link: https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2020.aspx (accessed on 22 March 2026).

7 The Report may be accessed via the following link: https://www.lcia.org/News/lcias-2024-annual-casework-report.aspx (accessed on 22 March 2026).

on 17 June 1996, entering into force on 31 January 1997. Whilst the 1996 Act has many features that resemble or are similar to those in the Model Law, there are variations.[8]

Shortly after its passage into law, the 1996 Act was described as a "*truly excellent law of arbitration, worthy of international emulation*".[9] The Act adopted a non-interventionist, party autonomy and arbitration-friendly approach, which has been retained in the 2025 amendments (see below). Commenting positively, Haddon-Cave LJ made the following remark about the positive changes introduced by the 1996 Act:

> "*The AA 1996 brought about a sea-change in the world of arbitration: it gave full effect to the notion of 'party autonomy' and abandoned the idea that the courts enjoyed 'some general power of supervisory jurisdiction over arbitrations'… Post-1996, the world of arbitration entered a new era, in which the scope for interference by the court in arbitral decisions became highly circumscribed.*"[10]

The Act was accordingly seen as a trend-setter for the entire arbitration community.

Section 1 of the 1996 Act sets out the general principles on which Part 1 is founded, stipulating that "*the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest*".[11]

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8 See, e.g., David Hacking, 'Arbitration Law Reform: The Impact of the UNCITRAL Model Law on the English Arbitration Act 1996', *in Arbitration: The International Journal of Arbitration, Mediation and Dispute Management* (1997) 63 (4) 291-299.

9 Thomas E. Carbonneau, A Comment on the 1996 United Kingdom Arbitration Act (1998) 22 *Tulane Maritime Law Journal* 131, 154, 131-132. However, Carbonneau did note (at 132) that the 1996 Act did not "achieve absolute perfection", principally on the basis that "it retains a version of the right of judicial appeal of the merits of arbitral awards and a restricted right of appeal on questions of law during the proceeding. For good or ill, England remains one of the few national jurisdictions that allows judicial supervision of arbitration on the merits."

10 *Haven Insurance Co Ltd v EUI Ltd (t/a Elephant Insurance)* [2018] EWCA Civ 2494, [28]-[29].

11 1996 Act, section 1(b).

Importantly, the Act recognises the following general principle: "*in matters governed by this Part the court should not intervene except as provided by this Part*".[12] As the author has noted elsewhere[13], this provides for an express statutory footing regarding the non-interventionist approach of the 1996 Act and requirement that the English courts also refrain from interfering with arbitral proceedings unless absolutely necessary.[14]

The 1996 Act limits the recourse available to disgruntled parties against arbitral awards. Section 66 stipulates that an "*award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect*".[15] The High Court in *Sterling v Rand* explained:

> "*Any arbitration award that has not been challenged is final and is treated as binding. It should ordinarily be enforceable, and s.66 should be a straightforward remedy for achieving that. The provisions of the 1996 Act are firmly in favour of giving effect to arbitration awards and enabling them to be enforced. The starting point is the statutory policy in favour of giving effect to an unchallenged award.*"[16]

There are three routes to challenging an award under the 1996 Act: (i) a challenge on the basis of substantive jurisdiction under section 67, (ii) a challenge on the basis of serious irregularity under section 68, and (iii) an appeal against the award on a point of law under section 69, each considered below in that order.

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12 1996 Act, section 1(c).

13 See, Gultutan D, "The UK Law Commission's Reforms Proposed to the English Arbitration Act 1996: Bonum, Malum Et Turpe" (2024) 44(1) *Public and Private International Law Bulletin* 197, 200.

14 See, *Halliburton Co v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [47] (**Halliburton**); and *Haven Insurance Co Ltd v EUI Ltd (t/a Elephant Insurance)* [2018] EWCA Civ 2494, [28]-[29].

15 1996 Act, section 66(1).

16 *David Sterling v Miriam Rand* [2019] EWHC 2560 (Ch), [65].

Section 67 allows a challenge against an arbitral award on the basis that the arbitral tribunal lacked substantive jurisdiction to hear and determine the matter. This is a high threshold and challenges on that basis rarely succeed.

For a challenge under section 68, the complainant may challenge an arbitral award if it can show that there was a "*serious irregularity affecting the tribunal, the proceedings or the award*". Again, the threshold is exceedingly high. There must be an irregularity, the irregularity must affect the tribunal, the proceedings or the award, and it must be a serious irregularity. Section 68(2) provides guidance as to what may constitute "*serious irregularity*", which are as follows:

(a) "failure by the tribunal to comply with section 33 (general duty of tribunal).

(b) the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction: see section 67);

(c) failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;

(d) failure by the tribunal to deal with all the issues that were put to it;

(e) any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award exceeding its powers;

(f) uncertainty or ambiguity as to the effect of the award;

(g) the award being obtained by fraud or the award or the way in which it was procured being contrary to public policy;

(h) failure to comply with the requirements as to the form of the award; or

(i) any irregularity in the conduct of the proceedings or in the award which is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award."

Where "*serious irregularity*" is established, the court may "*(a) remit the award to the tribunal, in whole or in part, for reconsideration, (b) set the award aside in whole or in part, or (c) declare the award to be of no effect, in whole or in part*", but is to exercise the powers under (b) or (c) "*unless it is satisfied that it would be inappropriate to remit the matters in question to the tribunal for reconsideration*".

Finally, a complainant may appeal against an arbitral award on a point of law; to succeed, it must show that the arbitral tribunal erroneously applied the law. Section 69(1) provides that "*[U]nless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.*" The Act clarifies that where the parties have agreed to dispense with reasons in respect of the arbitral award, such will be treated as an opt-out and will exclude the courts' jurisdiction for the purposes of an appeal on a point of law.

The 1996 Act has enjoyed immense popularity and remained largely untouched for a quarter of a century. However, judicial testing of its provisions surfaced some shortcomings. For instance, the UK Supreme Court's approach in *Enka*[17] *to determining the law applicable to the arbitration agreement, which was at odds with the approach taken in many other arbitration famous jurisdictions, required legislative correcting. Accordingly, on 21 March 2021 the Ministry of Justice formally instructed the UK Law Commission to conduct a review of the 1996 Act*[18]*, which ultimately culminated in the enactment of the Arbitration Act 2025 (the "***2025 Act***").*[19] The 2025 Act received its Royal Assent on 24 February 2025, and came into force on 1 August 2025.

17 *Enka Insaat ve Sanayi AS v OOO Insurance Company, Chubb* [2020] UKSC 38 ("**Enka**").

18 See, Review of the Arbitration Act 1996: Final report and Bill, accessed via the following link: https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/12/Arbitration-final-report-with-cover.pdf (accessed on 22 March 2026).

19 A copy may be accessed here: https://www.legislation.gov.uk/ukpga/2025/4 (accessed on 22 March 2026).

The next section analyses the amendments introduced by the 2025 Act in some length.

II. Arbitration Act 2025: Reform and Evolution

The long title of the 2025 Act is that it is "*An Act to amend the Arbitration Act 1996; and for connected purposes*". Accordingly, the 1996 Act continues to govern arbitrations in England and Wales, in the form as amended by the 2025 Act.

The Act has introduced seven principal changes to the law of arbitration.

Section 1 stipulates that the law applicable to the arbitration agreement is the law of the seat of the arbitration, unless the parties have expressly agreed the law that applies to the arbitration agreement. This reverses the effect of the UK Supreme Court's judgment in *Enka*.[20] The amendment also aligns English arbitration law with the other centres of arbitration where the law of the seat generally applies to the arbitration agreement.[21]

Another change brought about by the 2025 Act is that arbitrators are now under an express, statutory duty to "*disclose to the parties to the arbitral proceedings any relevant circumstances of which the arbitrator is, or becomes, aware*", relevant circumstances being "*circumstances that might reasonably give rise to justifiable doubts as to the individual's impartiality in relation to the proceedings, or potential proceedings, concerned*" (section 2). This is not a new phenomenon, but simply codifies the test that had been formulated by the UK Supreme Court in H*alliburton.*[22]

20 *Enka Insaat ve Sanayi AS v OOO Insurance Company, Chubb* [2020] UKSC 38.

21 See, e.g., Johannes Koepp and David Turner, 'A Massive Fire and a Mass of Confusion: Enka v. Chubb and the Need for a Fresh Approach to the Choice of Law Governing the Arbitration Agreement' (2021) 38(3) *Journal of International Arbitration* 377-394.

22 *Halliburton Company v Chubb Bermuda Insurance Ltd (Formerly known as Ace Bermuda Insurance Ltd)* [2020] UKSC 48.

The 2025 Act also provides arbitrators with some level of protection through immunities against liability. Section 3 states that arbitrators are not liable for costs of proceedings relating to their removal unless it can be shown that they acted in bad faith. Similarly, under section 4, arbitrators are not to be held liable for losses arising from their resignation unless such resignation was unreasonable.

Furthermore, the 2025 Act provides confirmation that arbitrators may award costs in their awards despite a finding of absence of substantive jurisdiction (section 6). The 2025 Act additionally confirms and grants arbitrators express powers to "make an award on a summary basis in relation to a claim, or a particular issue arising in a claim, if the tribunal considers that— (a) a party has no real prospect of succeeding on the claim or issue, or (b) a party has no real prospect of succeeding in the defence of the claim or issue", unless the parties agree otherwise (section 7). The latter confirmation is intended to help equip the arbitrators with express statutory power to streamline proceedings and ensure a more efficient conduct of the case.

Moreover, the 2025 Act now expressly recognises that the courts' powers available for use in support of arbitral proceedings, as contained in section 44 of the 1996 Act, may be exercised against third parties (section 9).

The changes introduced by the 2025 Act have by and large been well-received. Burn and Clarke note, for instance, that "*the package of changes introduced by way of the 2025 Act represent a positive development in addressing issues that had arisen over the years*".[23] However, the authors point out that there are "*notable omissions from the reform package, particularly in relation to confidentiality*" and that it is therefore not "*a new Act that is truly state of the art*".[24] Notwithstand-

23 George Burn and Victoria Clark, 'The English Arbitration Act 2025: State of the art or a missed opportunity?', in Maarten Draye and Sophie Goldman (eds), b-Arbitra | *Belgian Review of Arbitration*, (2025) (1) 281 – 293, 293.

24 Id. The authors argue (at 289) that "*the inclusion of a statement of general principle of confidentiality in arbitration, reflecting the common law position, would have been a positive reform and reflective of the expectations of end users.*" It should be noted that

ing its perceived shortcomings, the 2025 Act will undoubtedly help ensure that London remains a desired destination for international commercial arbitration.[25]

III. Landmark Judicial Decisions

English courts have historically adopted and continue to adopt an arbitration friendly approach. Accordingly, challenges and appeals against arbitrations seated in London have been rarely successful.

For instance, the "*Commercial Court Report 2023–2024*"[26], published in March 2025, explains that during the relevant year, 52 section 69 applications (appeal on point of law) were made, but that only one appeal was successful during the relevant period. Similarly, 37 section 68 applications (procedural irregularity) were received, but no applications were successful. As for section 67 applications (on jurisdiction), 24 applications were received, but only one application was successful during the relevant period.

The above statistics confirm the firm stance English courts take towards attempts to invalidate final arbitral awards without good reason. With this in mind, below we analyse the most important nine decisions of 2025 (and one from 2026) rendered by the English courts pertaining to arbitration, and provide commentary on their implications for the practice of arbitration in England and elsewhere.

English law (through caselaw) recognises an implied duty of confidentiality in respect of arbitration proceedings: for more, see: Dogan Ali Gultutan, 'Confidentiality of arbitrations under English law: sufficiently sacrosanct to warrant legislative shielding? A critical analysis from a Rumian perspective' (2023) 29(1) *International Trade Law and Regulation* 5-26.

25 As the temporal scope of this analysis is limited to significant arbitration decisions within the past year, for a more detailed examination of 2025 Act and the reforms introduced, reference may be made to the author's related article wherein the reforms then proposed were analysed in some detail: Gultutan D, "The UK Law Commission's Reforms Proposed to the English Arbitration Act 1996: Bonum, Malum Et Turpe" (2024) 44(1) *Public and Private International Law Bulletin* 197.

26 The report may be accessed via the following link: https://www.judiciary.uk/wp-content/uploads/2025/03/24.295_JO_Commercial_Court_Report_23-24_WEB.pdf (accessed on 22 March 2026).

A. State Immunity

1. *Republic of Zimbabwe v Border Timbers Ltd & The Kingdom of Spain v Infrastructure Services Luxembourg S.A.R.L* [2026] UKSC 9

The UK Supreme Court[27] has recently issued its judgment on state immunity in connection with the enforcement of ICSID[28] awards, holding that states are not immune from the adjudicatory jurisdiction of the English courts when investors seek the enforcement of ICSID awards rendered against them.

Border Timbers and Infrastructure Services Luxembourg ("**ISL**") had obtained separate awards under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 ("**ICSID Convention**") for failure to comply with the applicable treaty protections.[29] Upon the investors seeking to enforce the awards in England, the states resisted on the basis of their immunity from the English courts' adjudicatory jurisdiction, as per section 1 of the UK State Immunity Act 1978 (the "**1978 Act**"). Section 1(1) stipulates:

> "*A State is immune from the jurisdiction of the courts of the United Kingdom except as provided in the following provisions of this Part of this Act.*"

Sections 2 and 9 of the 1978 Act stipulate for the following two relevant "*carve-outs*":

> "Section 2(1): A State is not immune as respects proceedings in respect of which it has submitted to the jurisdiction of the courts of the United Kingdom.

27 *Republic of Zimbabwe v Border Timbers Ltd & The Kingdom of Spain v Infrastructure Services Luxembourg S.A.R.L* [2026] UKSC 9 ("**Border Timbers**").

28 Full title: International Centre for Settlement of Investment Disputes.

29 For full particulars of the facts, see: Katherine Reece Thomas and Doğan Gültutan, 'Enforcement of ICSID awards and state immunity: should immunity trump all? Analysis of the English Court of Appeal's ISL / Border Timbers conjoined judgment, advocating for a domestic teleological interpretation' *Arbitration International* (2025) 41(3) 607–632 ("**Reece Thomas and Gultutan on Immunity**").

> Section 9(1): 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."

The investors (ISL and Border Timbers) principally argued that immunity had been waived under section 2 concerning submission to jurisdiction (by virtue of their accession to the ICSID Convention) and/or under section 9 concerning submission to arbitration (by virtue of the arbitration clauses contained in the underlying treaties).

The Court of Appeal had agreed with them, and had dismissed Spain and Zimbabwe's initial appeals. Dismissing the further appeal of the states, the UK Supreme court held that accession to the ICSID Convention constitutes a submission to jurisdiction under section 2 of SIA 1978. The Court did not need to answer the alternative question of whether there had been a waiver under section 9.

The UKSC's principal reasons for its judgment were as follows.

The Court held that accession to the ICSID Convention constitutes submission to jurisdiction. The Court relied heavily on Article 54(1) of the ICSID Convention, which requires contracting states to recognise and enforce ICSID awards as if they were final judgments of domestic courts. The Court opined that the reciprocal nature of this obligation "*… necessarily involves an express acceptance by each contracting state that if an ICSID award is rendered against it, then every other contracting state must exercise jurisdiction… to recognise and enforce that award*".[30]

Second, and in any event, adopting a purposive (teleological) interpretation of the ICSID Convention, the Court concluded that the Convention's structure indicates that only immunity from execution was preserved, but not immunity from suit.[31] The author noted elsewhere that this was the right approach to follow considering that

30 Border Timbers, [89].

31 Ibid [106] *et seq*.

such interpretation "*ensures adherence to the UK's treaty obligations, as well as avoiding the re-politicisation of investment disputes*".[32]

Finally, the Court noted that its interpretation was in accordance with the rule that international treaties must be interpreted consistently and in a uniform manner.[33] The Court emphasised the importance of uniform treaty interpretation, noting that courts in other ICSID contracting states have similarly interpreted ICSID accession as a waiver of adjudicatory immunity. The judgment will therefore ensure that the UK does not become an outlier in respect of the enforcement of ICSID awards.

2. *General Dynamics UK Limited v The State of Libya* [2025] EWCA Civ 134

The Court of Appeal held that an arbitration agreement which stipulates that the award of arbitrators "*shall be final, binding and wholly enforceable*" is sufficient to waive state immunity.[34]

The facts of the case were as follows. General Dynamics agreed to supply a Tactical Communications and Information System to Libya in return for GBP 84 million. The contract was governed by Swiss law, with disputes to be resolved via International Chamber of Commerce (the "**ICC**") arbitration. The arbitration clause provided that the award of the arbitrators "*shall be final, binding and wholly enforceable*".

The ICC tribunal ruled in General Dynamics' favour and ordered Libya to pay General Dynamics circa GBP 16 million.

Libya did not voluntarily comply with the award, so General Dynamics issued its claim in the English High court. Libya resisted enforcement on the basis of its immunity from enforcement.

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32 Reece Thomas and Gultutan on Immunity, 632.

33 Border Timbers, [79].

34 General Dynamics UK Limited v The State of Libya [2025] EWCA Civ 134 ("**General Dynamics**"). N.B. Permission to appeal was refused by the UK Supreme Court; see here: https://www.supremecourt.uk/cases/uksc-2025-0051 (accessed on 29 March 2026).

Under section 13(3) of the 1978 Act, immunity from execution over a state's assets is waivable provided the state provides written consent, "*and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection*".

Libya argued that the contents of the arbitration clause could not be construed as such written consent. The High Court disagreed and held that the relevant words did amount to such consent. A final charging order was accordingly made in General Dynamics' favour against a property in London that was owned by Libya. Libya appealed that decision, but the appeal was dismissed.

Libya appealed on the following two grounds: (1) Libya argued that the Judge erred in holding that "*clear words*" are not required for a state to consent to execution against its property within the meaning of section 13(3) of the 1978 Act; alternatively (2) Libya argued that the Judge erred in holding that, as a matter of construction of the arbitration clause, Libya had provided written consent for the purposes of section 13(3) of the SIA.

The Court of Appeal reasoned as follows:

- Ground 1: There was nothing in the language of section 13(3) of the 1978 Act to suggest that "*clear words*" were needed. The Court referred to the Court of Appeal's decision in *Border Timbers* wherein the appellate court had held similarly that clear words are not necessarily needed for a submission to jurisdiction under section 2 of the 1978 Act.[35]
- Ground 2: The majority (Zacaroli and Lewison LJJ) held that the words "*wholly enforceable*" were sufficiently clear to amount to a written consent for the waiver of immunity from execution. Zacaroli LJ explained that where the parties refer to an "*award being 'wholly' enforceable, [such] suggests …*

35 See, *Republic of Zimbabwe v Border Timbers Ltd & The Kingdom of Spain v Infrastructure Services Luxembourg S.A.R.L* [2024] EWCA Civ 1257.

> *the plain conclusion that they consented to the whole process of enforcement of the award, including its recognition in any jurisdiction where it is sought to be enforced."*[36]

The judgment illustrates that reference to "*enforcement*" or "*enforceability*", particularly contractual words indicating that awards are "*wholly enforceable*", are likely to suffice "*to defeat the last bastion of state immunity*".[37] Parties entering into contracts with states or state entities will be well-advised to insert such words into their contracts to ensure that their attempt to thrash the "*last bastion*" yield fruits.

3. *CC / Devas v Republic of India* [2025] EWHC 964 (Comm)

The Commercial Court (Blair J)[38] has held that ratification of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 ("**New York Convention**") does not constitute a submission to jurisdiction under section 2 of the 1978 Act, drawing a difference between ICSID and New York Convention awards.

A Mauritian company's shareholders and investors commenced treaty (Bilateral Investment Treaty "**BIT**") claims against India for the latter's failure to accord fair and equitable treatment. They succeeded and awards with a combined value of EUR 195 were made in their favour.

India attempted to resist enforcement on the basis that it was immune from the jurisdiction of the English courts (section 1 of the 1978 Act). India argued that the section 9 arbitration waiver did not apply as there was no valid submission to arbitration.

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36 General Dynamics, [48] (per Zacaroli LJ). Similarly, Lewison LJ noted: "*I consider that a straightforward reading of that sentence is that the parties have agreed that the award may be enforced. In other words they have not only consented to the court's adjudicative jurisdiction but also to its enforcement jurisdiction.*" [61].

37 See, Veena Srirangam, '"I've got two words for you": General Dynamics v Libya and the state's immunity from enforcement' (2026) 142(Apr) *Law Quarterly Review* 196-201.

38 CC/ *Devas v Republic of India* [2025] EWHC 964 (Comm).

The question before the Court was whether there had been a submission to jurisdiction within the meaning of section 2 of the 1978 Act, which requires a "*prior written agreement*", by virtue of India's ratification of the New York Convention. The Court was not invited to rule on the section 9 issue as part of the application on the basis that a positive finding would render a section 9 debate moot.

Article III of the New York Convention stipulates as follows:

> "*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. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.*" (Emphasis added)

The Court held that there was no submission to jurisdiction merely by virtue of ratification of the New York Convention. The Court disagreed with Devas that Article III of the New York Convention was a waiver of immunity through submission. The Court reasoned as follows:

> "*Article III of the NYC preserves state immunity by its own terms, because the obligation on a 'Contracting State' is expressed to be 'in accordance with the rules of procedure of the territory where the award is relied upon.' It is established in English law that 'State immunity is a procedural rule going to the jurisdiction of a national court… '*"[39]

The Court also found it relevant that the drafters of the New York Convention did not discuss or intend for the Convention to preclude states from raising immunity grounds to resist enforcement.[40]

39 Ibid [80].

40 Ibid [77].

The reasoning is not particularly persuasive. Article III of the New York Convention expressly directs contracting states to recognise and enforce New York Convention awards. That direction is subject, admittedly, to "*rules of procedure*" of the courts where the award is being enforced, but that is (it is submitted) a too tenuous ground on which to differentiate treatment of ICSID and New York Convention awards. Adopting a teleological approach to interpretation, an approach that was sanctioned by the UK Supreme Court in *Border Timbers*, dictates that states that have ratified the New York Convention be considered as having submitted to the English courts' jurisdiction for the purposes of section 2 of the 1978 Act. This is more so considering the arbitration gateway in section 9, and the rule of English law that statutory provisions be considered and interpreted in light of the other provisions of the enactment.[41]

B. Applicability and Validity of Dispute Resolution Clauses

1. *Tecnicas Reunidas Saudia v Petroleum Chemicals and Mining* [2025] EWHC 1785 (Comm)

The case concerned a section 67 challenge under the 1996 Act, to set aside a partial award in which an ICC tribunal had upheld its own jurisdiction.

The dispute concerned competing dispute resolution clauses in a sub-contract between the parties, associated with several documents subject to a hierarchical structure. The judgment doctrinally evaluates the substantive differences of *ad hoc* and institutional arbitration and construes hierarchical dispute-resolution clauses in complex commercial contracts.

41 See, R (O) v Secretary of State for the Home Department [2022] UKSC 3 [29] *et seq* (per Lord Hodge DPSC): "*Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context.*"

The sub-contract between the parties included a hierarchy of documents, of which the Purchase Order took express precedence. It included an arbitration clause, Clause 11.1, providing that disputes be submitted to *ad hoc* London arbitration before three arbitrators under English law.

However, two other documents lower in hierarchy included competing arbitration clauses. Clause 32 of the General Terms and Conditions for Construction Subcontracts ("**GTCCS**") provided for ICC arbitration seated in Riyadh under Saudi Arabian law, whereas Item 18 in the Deviation List used to record negotiations contained a reference to arbitration "u*nder ICC Laws*".

Failing to establish jurisdiction before the Saudi Commercial Court and the LCIA, the Defendant filed with the ICC, arguing that Clause 11.1 and Clause 32 together established jurisdiction for a London-seated ICC arbitration under English law. In its Partial Award on Preliminary Issues, the ICC Tribunal agreed and held that it had jurisdiction. The claimant (Tecnicas) challenged the partial award under section 67 of the 1996 Act.

The Commercial Court (Bryan J) upheld the challenge and determined that whether an arbitration agreement provides for *ad hoc* or institutional arbitration is a matter of challenge under substantive jurisdiction. According to the judge, the distinctions between the two choices were also fundamental; for instance, in an ICC arbitration the ICC Court appoints the presiding arbitrator and scrutinises awards. Accordingly, the judge explained that "*… ad hoc arbitration and an institutional arbitration under the ICC Rules are fundamentally different beasts…* "[42] As a result, the classification between ad hoc and institutional arbitration was substantive and capable of triggering section 67 challenges.

More importantly, Bryan J conducted a *de novo* review on the construction of the arbitration agreement itself, yielding that the

42 *Tecnicas Reunidas Saudia v Petroleum Chemicals and Mining* [2025] EWHC 1785 (Comm), [227].

Purchase Order included the sole operative arbitration clause as the highest-ranking hierarchical document. It unambiguously submitted the dispute to *ad hoc* London arbitration under English law, and contained no reference to institutional rules. The Defendant's attempt to combine and interpret the two arbitration agreement provisions together, by extracting only the ICC Rules component from Clause 32 while disregarding its Saudi governing law and Riyadh seat provisions, constituted an impermissible "*pick and mix*" approach. The judge commented:

> "*Just as PCMC could not suggest that Saudi Arabian law applied to the arbitration, or that there was a Saudi Arabian seat, so too it cannot suggest that what was agreed was an institutional arbitration under ICC Rules.*"[43]

Consequently, the Purchase Order prevailed.

Tecnicas confirms that the distinction between *ad hoc* and institutional arbitration is substantive rather than procedural, with prevailing implications on the arbitral process, and which matter is subject to challenge under section 67. Bryan J's construction of the arbitration agreement sets a methodological framework for addressing the coverage of dispute resolution clauses within complex hierarchical contractual structures, where different documents may impose conflicting obligations. Those drafting multi-layered contracts containing arbitration clauses should therefore take extra care to avoid any inconsistency between contractual documents.

2. *FH Holding Moscow Ltd v AO Unicredit Bank* [2025] EWHC 3111 (Comm)

The Commercial Court (Henshaw J) refused the ASIs sought by a Cypriot borrower against its Russian and Italian lenders to restrain mortgage enforcement proceedings in Moscow.

The claimant, the borrower, argued that the lender's initiation of foreclosure proceedings in Russia, following an alleged event of

43 Ibid [225].

default under the terms of the relevant facility agreement, was a breach of an arbitration agreement contained in the facility agreement, which stipulated for arbitration in Vienna according to the rules of the Vienna International Arbitration Centre ("**VIAC**").

The defendant lender (AO Unicredit) contended that its actions before the Moscow Commercial Court were permitted by the express terms of a separate (mortgage) agreement entered into by the parties, which agreement was governed by Russian law. The mortgage agreement was intended to secure the loan advanced.

The fundamental question therefore concerned the coverage of competing dispute-resolution clauses within a suite of related finance and security documents.

The Court held that although the facility agreement stipulated for VIAC arbitration in Vienna, the foreclosure proceedings were validly issued pursuant to the terms of the mortgage agreement, and as such there was no breach of an arbitration agreement. The mortgage agreement expressly permitted such foreclosure proceedings. The Court explained as follows:

> "*In my view, the dispute about whether an Event of Default has occurred falls within the scope of the Mortgage Agreement jurisdiction clause, as well as the Facility Agreement Arbitration Agreement. The fact that the Mortgage Agreement imports definitions and terms from the Facility Agreement does not undermine that point: rather, it is consistent with the view that some disputes under the Facility Agreement may also be disputes under the Mortgage Agreement. The questions of whether an Event of Default has occurred, and (if so) what amount is due to the lenders, are questions that may arise under the Mortgage Agreement as well as under the Facility Agreement… Further, it cannot be said that the dispute falls more naturally within the Facility Agreement Arbitration Agreement than the Mortgage Agreement jurisdiction clause. The*

> *Mortgage Agreement operates in a specific subset of circumstances where there is a dispute over an alleged Event of Default. Moreover, the parties have legislated for the position in clause 9 of the Mortgage Agreement."*[44]

The Commercial Court reasoned that the purpose in the circumstances to have two overlapping dispute resolution clauses was to "*[allow] the lenders can commence the execution procedure immediately, with any dispute about entitlement being resolved, under clause 21, by the Moscow Commercial Court in which those proceedings are commenced, rather than by a two-stage procedure requiring an arbitration followed by proceedings in the Moscow Commercial Court*".[45]

Accordingly, on its interpretation, it seemed to the Court that the parties intended claims to be brought before VIAC tribunal and/or Russian courts, depending on the factual matrix.

In any event, the Court noted that it lacked jurisdiction over the AO UniCredit, considering that the arbitration agreement did not have its seat in England.[46]

Once again, the case demonstrates the importance of aligning dispute resolution clauses in separate but related contracts to avoid unnecessary litigation. Where it is clear from the suite of documents that the parties intended for different dispute resolution mechanisms to apply to different contracts, such intention will be given effect.

3. *Hipgnosis SFH 1 Ltd v Barry Manilow* [2025] EWCA Civ 486

This Court of Appeal rejected the concept of "*floating jurisdiction*" in the context of an asymmetric dispute resolution clause and held that the English courts possessed jurisdiction despite commencement of proceedings in the US.

44 Ibid [55]-[56].

45 Ibid [57].

46 Ibid [81].

The dispute arose from a Music Catalogue Agreement, which contained the following dispute resolution clause (Clause 14):

> "*This Agreement and any related dispute or claim (contractual or non-contractual) shall be governed by, and construed in accordance with, English law. Each party irrevocably submits for all purposes of this Agreement (including any such dispute or claim) to the exclusive jurisdiction of the English courts. Any judgment obtained in the English courts may be enforced in any other jurisdiction.*
>
> *Notwithstanding the foregoing, any claims made by BM against Hipgnosis related to the Purchase Price may be brought by BM in the courts of Los Angeles, California or New York City, New York and solely in connection with such claims, Hipgnosis hereby agrees to submit to the jurisdiction of the courts located in Los Angeles, California and New York City, New York.*"[47]

The parties alleged non-payment of certain sums under the Music Catalogue Agreement, following which Hipgnosis commenced proceedings in England seeking relevant declarations. Within weeks, Manilow issued proceedings in Los Angeles, and sought an order from the English High Court that it lacked jurisdiction. The Court (Marcus Smith J) granted a stay of the English proceedings, holding that "*[whilst] English Proceedings were properly commenced… by commencing the Los Angeles Proceedings within a reasonable time of the commencement of English Proceedings [and] by making the Application [Manilow] crystallised the floating jurisdiction between England on the one hand and Los Angeles/New York on the other in favour of Los Angeles*".[48]

The Court of Appeal unanimously allowed the appeal by Hipgnosis. First and foremost, the appellate court held that the jurisdiction of a court is determined at the commencement of proceedings. It therefore rejected the lower court's concept of "*floating jurisdiction*".

47 *Hipgnosis SFH 1 Ltd v Barry Manilow* [2025] EWCA Civ 486 [3].

48 Ibid [21].

The concept was found to be "*heretical and contrary to authority*".[49] Accordingly, where the English courts are properly seized of a matter, the right to bring proceedings before other courts or tribunals cannot post *hoc rob* the court of jurisdiction. The appellate court noted that the fact that this may lead to parallel proceedings does not dictate a different conclusion as, by agreeing to an asymmetric dispute resolution clause, given that such "*is a possibility which is inherent in an asymmetric jurisdiction clause*", and that possibility arose simply because Manilow chose to exercise the contractual option.[50]

The judgment demonstrates that clear contractual terms will be given effect even if the consequence would be parallel proceedings potentially resulting in conflicting outcomes. That is a risk the parties assume by including an asymmetric jurisdiction clause in their agreement.

C. Confidentiality In Arbitration: *A Corporation v (1) Firm B and (2) Mr W* [2025] EWHC 1092

This case concerned the scope and operation of arbitral confidentiality under English law, particularly where a single law firm (through separate offices) acts for two unrelated claimants in separate arbitrations involving companies under common ownership.

The claims arose from two vessel sale agreements, with similar allegations as to the physical condition of the delivered vessels. The seller sought an injunction preventing the firm from acting, alleging a risk that confidential information from the earlier (concluded) arbitration might be used in the later reference.

By way of reminder, English law stipulates for a doctrine of implied confidentiality in respect of arbitrations. Consequently, absent express contrary agreement, an English law governed arbitration benefits from the shield of confidentiality. It is considered that by submitting their disputes to arbitration, the parties intend for their

49 Ibid [57].

50 Ibid [56].

disputes to remain private and, by natural extension, confidential.[51] In Bankers Trust, Mance LJ (with whom Carnwath LJ concurred) confirmed that "*[A]mong features long assumed to be implicit in parties' choice to arbitrate in England are privacy and confidentiality. The Act's silence does not detract from this.*"[52]

Foxton J refused the injunction sought and found (*inter alia*) that there was no arguable case that the firm disclosed identities of counsel, experts or the tribunal from the earlier arbitration. Furthermore, the judge explained that disclosure may be permissible where parties share a common interest in pursuing claims/defences. The judge also noted that informing another party that a dispute has settled does not itself breach confidentiality. Whilst one settlement offer was improperly shared, removing the firm would not realistically remedy any past harm.

In delivering judgment, the judge confirmed the following:

- *Implied duty of confidentiality*: English law presumes an implied obligation of confidentiality in arbitration agreements.
- *Sliding-scale analysis*: Confidentiality may attach with varying intensity to different categories of documents and information.
- Scope: The duty covers (i) hearings; (ii) documents disclosed between the parties; (iii) documents created for the arbitration; and (iv) the award itself.
- Limits: Material does not become confidential merely by being used in an arbitration; if it originated independently, it may not be protected.

51 See, Dogan Ali Gultutan, 'Confidentiality of arbitrations under English law: sufficiently sacrosanct to warrant legislative shielding? A critical analysis from a Rumian perspective' (2023) 29(1) International Trade Law and Regulation 5-26.

52 *Economic Department of City of Moscow v Bankers Trust Co* [2004] EWCA Civ 314, [2005] QB 207, [1]-[2].

The Judge also highlighted the well-recognised exceptions: consent, court order, protection of legitimate interests, and where the interests of justice (or public interest) require disclosure.

The case demonstrates the importance of technical compliance with the duty of confidentiality that applies to English arbitrations. Lawyers, especially those with large international firms, should therefore maintain robust internal barriers ("*Chinese walls*") where acting in multiple related or sensitive arbitrations, and carefully document all separation of teams to demonstrate that risks of confidential information transfer are eliminated or materially minimised.

D. Time Limits In Arbitration

1. *JSC "Kazan Oil Plant" v Aves Trade DMCC* [2025] EWHC 2713 (Comm)

The Commercial Court confirmed the strictness of time limit for an action to challenge an arbitral award under the 1996 Act.

In that case, Kazan appealed a FOSFA[53] arbitration award under section 69 of the 1996 Act. Section 69 provides that:

> "*Unless otherwise agreed by the parties, a party to arbitral proceedings may (upon notice to the other parties and to the tribunal) appeal to the court on a question of law arising out of an award made in the proceedings.*"

Section 70 of the 1996 Act further states:

> "(1) The following provisions apply to an application or appeal under section 67, 68 or 69.
>
> (2) An application or appeal may not be brought if the applicant or appellant has not first exhausted — (a) any available arbitral process of appeal or review, and (b) any available recourse under section 57 (correction of award or additional award).

53 Federation of Oils, Seeds and Fats Associations.

> (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."[54]

The appeal was lodged on the 28th day after receipt of the appeal award, but more than 28 days after the date of the said award. The Court had to consider whether the 28-day period ran from the date of an award or the date on which the award has been notified to the relevant parties.

The Court held that the 28-day period started to run from the date of the appeal award. Sub-section (3) was clear that an appeal or challenge had to be brought "*within 28 days of the date of the award*" where no further appeal or review lay against the award. The provision was given its literal meaning, such "*being a natural reading that easily accommodates the words used by the statutory draftsman and their context*".[55] The claim form was therefore belatedly issued.

Note that the 2025 Act has amended the 1996 Act to insert a new section 3(A) as follows:

> "*In subsection (3), "the applicable date" means — (a) in a case where there has been any arbitral process of appeal or review, the date when the applicant or appellant was notified of the result of that process; (b) in a case where the tribunal has, under section 57, made a material correction to an award or has made a material additional award, the date of the correction or additional award; (c) in a case where a material application for a correction to an award or for an additional award has been made to the tribunal under section 57 and the tribunal has decided not to grant the application, the date when the applicant or appellant*

54 N.B. Sub-section (3) has now been amended – see below.

55 *JSC "Kazan Oil Plant" v Aves Trade DMCC* [2025] EWHC 2713 (Comm) [30].

was notified of that decision; (d) in any other case, the date of the award."

The Court also rejected an application for extension of time under section 80(5) of the 1996 Act, reasoning that a 15 days' delay "*at over 50% of the entire time allowed under section 70(3)… is [not] it trifling*".[56] The Court held that the claimant had not used the remaining 13 days effectively, especially given the delay in obtaining counsel from English lawyers.[57] The claim was therefore struck out, with the result that the arbitral award became enforceable.

The case serves as a useful reminder to arbitration practitioners that they should file applications or appeals under section 67, 68 and 69 swiftly and within the 28-day period as construed by the enactment, and that the courts will not be forgiving unless good reasons exist.

2. *African Distribution Company S.a.r.L v Aastar Trading Pte Ltd* [2025] EWHC 2428 (Comm)

The Commercial Court[58] (i) dismissed an application to extend time for challenging an arbitral award, but (ii) left it possible for a non-participant party to challenge the award even after the 28-day period.

African Distribution Company ("**ADC**") sought to challenge a Grain and Feed Trade Association ("**GAFTA**") award rendered against it in connection with failure to pay sums foreseen in a series of contracts for the supply of rice, entered into with Aastar Trading Pte Ltd ("**Aastar**"). ADC did not participate in the arbitration proceedings initiated by Aastar, claiming that it was never made aware of the proceedings.

ADC sought to challenge the award on the basis of sections 67 (substantive jurisdiction) and 68 (serious irregularity) of the 1996 Act.

56 Ibid [33].

57 Ibid [36] *et seq*.

58 *African Distribution Company S.a.r.L v Aastar Trading Pte Ltd* [2025] EWHC 2428 (Comm) ("**ADC**").

The challenge was brought after the expiry of the 28-day period, so ADC also sought an extension of time. In the alternative, ADC argued that as a non-participant, it was entitled to question the tribunal's jurisdiction in court even after the 28-day period (under section 72(1)).

The Court dismissed the claimant's time extension application on the basis that it was not promptly made. The delay was over 5 months (159 days), a "*substantial*" delay.[59]

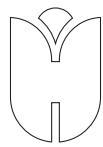
As for the right of relief under section 72(1)[60], the Court explained (in *obiter*) that the mechanism "*can be used to 'question' and give declaratory and injunctive relief about arbitral awards, not just pre-award applications; and potentially even set them aside, but only with caution*". According to the Court, section 72(1) "*is a 'safety valve': a free-standing, flexible remedy for non-participants to 'question' not arbitral awards as such, but the substantive jurisdiction of the arbitral process…*"[61]

The decision therefore leaves the door open to utilising section 72 to challenge arbitral awards after the 28-day period in cases of non-participation by the relevant party.

59 ADC, [66].

60 Which stipulates: "*A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question— (a) whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, or (c) what matters have been submitted to arbitration in accordance with the arbitration agreement, by proceedings in the court for a declaration or injunction or other appropriate relief.*"

61 ADC, [43].



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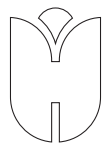

United States Arbitration Law and Practice: 2025 Review

Laurence Shore[*]

I. Introduction

The United States continued in 2025 to be one of the most important seats for international commercial arbitrations, both in terms of numbers and as a source of national court judgments that significantly develop the law and practice of international arbitration.

II. Institutional Context

The most significant international arbitral institution in the United States is the ICDR – the International Centre for Dispute Resolution – which is the international division of the American Arbitration Association ("AAA"). The ICDR was founded in 1996; the AAA was founded in 1926. To provide an idea of the ICDR numbers, consider that, in 2025, it registered 725 international arbitrations, while the 2025 filings in other major global arbitral institutions were as follows: ICC – 894; LCIA – 362; SIAC – 886; HKIAC – 582; and the Stockholm Chamber of Commerce – 213.

The most popular ICDR seats in 2025 were Miami, New York City, and Los Angeles, in that order. The principal reported industry sectors were technology, construction, financial services, and energy, in that order. It is perhaps somewhat surprising that the energy sector only came fourth, but it is likely that major energy arbitrations involving US companies are lodged in the ICC.

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It should be noted that there is another US international arbitral institution that is increasing in significance, though it is unlikely to keep pace with the ICDR. This 'second-place' institution is JAMS-International, which is the international arm of JAMS, which stands for "Judicial Arbitration and Mediation Services". JAMS was founded in 1979 and JAMS-International was established in 2011; the latter is now headquartered in London. JAMS had approximately 200 international arbitration cases filed in 2025. The most popular seats were New York City, Los Angeles, San Diego, San Francisco, and Miami.

A third arbitral institution, headquartered in New York City, which is both international and domestic in orientation is CPR – the "International Institute for Conflict Prevention & Resolution". CPR was founded in 1977. No case numbers were provided in its 2025 Annual Report. While CPR is a much smaller institution than ICDR or JAMS-International, the corporate general counsel of many US companies have been involved in CPR activities, including mediations, and speak highly of CPR's international arbitration rules. Moreover, CPR boasts a long list of prominent "neutrals", which includes non-US as well as US arbitration and mediation practitioners.

III. Artificial Intelligence In Arbitration

In short, the institutional infrastructure of US arbitration is very strong and continues to grow. Moreover, the AAA-ICDR is a leader in developing guidance for arbitrators and Parties on the use of Artificial Intelligence ("**AI**") tools. The immediate past President and CEO of the AAA, the Honourable Bridget McCormack, the former chief justice of the Michigan Supreme Court, was very influential and innovative in advocating for the responsible use of AI tools in arbitration, including in international cases. In 2025, under McCormack's leadership, the AAA-ICDR issued an important practice initiative titled "Guidance on Arbitrators' Use of AI Tools" (n.b., this Guidance was updated in January 2026). Among the notable provisions (quoting from the subsequent 2026 version) are the following:

"Arbitrators should disclose their use of generative AI tools when such use materially impacts the arbitration process or the reasoning underlying their decisions.

When to Disclose: Disclosure is appropriate when AI outputs inform or influence substantive reasoning, award language, or analysis of evidence.

How to Disclose: Disclosure should be made as soon as practicable, such as in a preliminary order, procedural order, or communications to the parties. Sample Language: Procedural Order: "The Arbitrator may utilize secure technology and AI-assisted tools to support administrative or drafting efficiency, provided such tools do not compromise confidentiality, fairness, or independent judgment. The Arbitrator will disclose any substantive use of AI tools that materially informs its reasoning or findings."

If a party inquires whether AI tools were used, arbitrators should respond transparently and within the boundaries of confidentiality and procedural fairness.

Disclosure is not required for administrative or clerical uses, such as grammar checking or formatting, or AI tools embedded within the AAA-ICDR's case administration platform".

It should be noted that while the AAA-ICDR Guidance at least contemplates the possibility that "*AI outputs [would] inform or influence substantive reasoning, award language, or analysis of evidence"*, it is unlikely that mainstream international arbitrators would accept this as a valid use of AI; indeed, this use would suggest that arbitrators were not fulfilling their mandate to make decisions themselves without substantive external inputs.

IV. Selected Case Law

Turning now to a few of the most significant 2025 judicial decisions on international arbitration issues, both in terms of (a) restating or redirecting US arbitration law, and (b) influencing non-US judicial approaches to key issues, let me begin with Federal Court decisions involving sovereign states, and the US Supreme Court.

A. State Immunity and Award Enforcement

1. CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.

In *CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd.*[1], the Supreme Court considered the question of personal jurisdiction under the US Foreign Sovereign Immunities Act ("**FSIA**"). In summary, the underlying factual background is as follows:

(i) Antrix, a space research organisation, is owned by the Republic of India.

(ii) Antrix entered into a contract with Devas.

(iii) When the Government of India annulled or terminated the contract, Devas sued Antrix in an ICC arbitration.

(iv) The ICC arbitral tribunal awarded more than USD 560 million, plus interest, to Devas.

(v) Devas petitioned the US District Court for the Western District of Washington to confirm the Award. The Western District did so. However, the US Court of Appeals for the Ninth Circuit reversed the District Court's ruling on the grounds that the FSIA requires a "minimum contacts" analysis for the purpose of demonstrating that a district court has personal jurisdiction over the defendant.

(vi) The Supreme Court reversed the Ninth Circuit, ruling that the FSIA does not require proof of minimum contacts over and above the contacts already specified in the FSIA's enumerated exceptions to foreign sovereign immunity. Here, because the immunity exception applied, the claimant did not need to do anything further to show that the district court could exercise jurisdiction over Antrix (the Indian governmental entity). Accordingly, the case was remanded to the Ninth Circuit on the basis that it had personal jurisdiction to consider the confirmation and Antrix's remaining defences.

(vii) In 2026, the Ninth Circuit affirmed the arbitral award (and disregarded the fact that the Indian Courts had annulled the award).

1 CC/Devas (Mauritius) Ltd. v. Antrix Corp. Ltd., 605 U.S. 223 (June 2025).

(viii) Thus, Devas v. Antrix is an extremely important FSIA ruling, as it eliminates one potentially significant personal jurisdiction challenge that a State could bring in trying to resist enforcement of an arbitral award.

2. Deutsche Telekom v. Republic of India

A further significant 2025 Federal Court decision involving a sovereign state is *Deutsche Telekom v. Republic of India*[2]. *The underlying facts of this investor-State case, in summary, are as follows:*

(i) The investor won a USD 100 million award in a Swiss-seated UNCITRAL arbitration under the Germany-India BIT.

(ii) The US District Court for the District of Columbia confirmed the award in rejecting India's argument for dismissal based on sovereign immunity. The DDC also ruled that India's substantive defences were either foreclosed by the arbitration agreement or otherwise forfeited.

(iii) On appeal, the D.C. Circuit affirmed the ruling of denial of dismissal on immunity grounds but held that India was entitled to have its substantive defences considered. Notably, the D.C. Circuit held that an objection that a dispute falls outside the scope of an arbitration agreement counts as a merits defence, and the terms of the BIT indicated that arbitrability had not been exclusively delegated to the arbitrators. Accordingly, India was entitled to have the DDC determine the validity of its argument that the dispute did not involve an investor or investment covered by the BIT.

(iv) On remand, last month (September 2026), the DDC re-confirmed the arbitral award.

(v) This is another highly significant judgement relating both to the FSIA and the New York Convention, this time to the advantage of the State (though the State's merits defences eventually failed): pursuant to this judgment, US courts must conduct a *de novo* review

2 Deutsche Telekom v. Republic of India, No. 24-7081 (D.C. Cir., 3 October 2025).

to determine whether an investment dispute comes within the BIT's scope unless the treaty clearly states that it does so.

3. Blasket Renewable Investments v. Spain

The final 2025 sovereign state case that it is important to mention is *Blasket Renewable Investments v. Spain*[3]. This case arose from an ICSID arbitration pursuant to the Energy Charter Treaty. Five UK companies sued Spain; in this particular case the claimant won EUR 28 million. European courts declared similar awards invalid, so the UK companies came to the US courts to seek enforcement. Spain's FSIA jurisdictional challenge previously had failed (the D.C. Circuit rejected the argument that there was no valid arbitration agreement). Spain then alleged that the ICSID tribunal lacked jurisdiction under EU law and the foreign sovereign compulsion doctrine barred enforcement. However, the DC Circuit recognised the award and enforced it, ruling, most importantly, that comity does not provide a disgruntled party with the opportunity to evade section 1650(a) of the FSIA, even if this were to put Spain at odds with its EU law obligations. The final part of the court's judgment – rejecting the application of the foreign sovereign compulsion doctrine in this context – is of course extremely important.

B. Commercial Arbitration

To complete this 2025 US arbitration law review, I shall mention four Federal Court decisions – one Second Circuit, one Third Circuit, and two Southern District of New York – involving commercial parties only.

1. Molecular Dynamics v. Spectrum Dynamics Medical

In *Molecular Dynamics v. Spectrum Dynamics Medical*[4], Molecular lost a Geneva-seated arbitration. The Parties' agreement provided

3 Blasket Renewable Investments v. Spain, US District Court for the District of Columbia, 13 August 2025.

4 Molecular Dynamics v. Spectrum Dynamics Medical, 143 F.4th 70 (2d Cir., July 2025).

that the New York courts would have exclusive jurisdiction over all matters concerning the arbitration. Molecular filed in the SDNY to vacate the award. The SDNY ruled that Molecular could only move to vacate at the foreign seat. On appeal, the Second Circuit affirmed that the court had no subject matter jurisdiction; the New York Convention chiefly concerns enforcement of foreign awards and does not contemplate a petition to vacate a foreign-made arbitral award. This case is an important restatement of the position under the New York Convention that a "secondary" jurisdiction (like New York, in this instance) may only decline to enforce an arbitral award pursuant to Article V; only "primary" jurisdictions can vacate an award.

2. Sociedad Concessionaria Metropolitana v. Webuild

In *Sociedad Concessionaria Metropolitana v. Webuild*[5] (outside the 2025 time frame but a case of such interest and importance that I take the liberty of including it here), the Court faced the following fact situation: a company called Astaldi spun off its operating business and merged it into Webuild, which acquired most of its assets. The original operating company lost an arbitration in Chile. The victor moved to enforce in the US against Webuild, the successor in interest, seeking to attach unrelated shares to the dispute. The Third Circuit held that (a) a court may exercise quasi-in-rem jurisdiction to enforce a foreign arbitral award in an action to collect on an already adjudicated debt; and (b) there was no requirement to show minimum contacts. Accordingly, the case was remanded to the District Court for determination whether Webuild was the successor in interest to the original award debtor. The extremely interesting aspect of this judgment was the Court's consideration of quasi-in-rem jurisdiction for the enforcement of a foreign award.

5 Sociedad Concessionaria Metropolitana v. Webuild, Third Circuit, 18 May 2026.

3. Sucafina NN v. Green Coffee Company

In the first of two SDNY decisions, *Sucafina NN v. Green Coffee Company*[6], Sucafina moved to compel arbitration against a non-signatory. The Court ruled that Sucafina had established that the non-signatory should be compelled to arbitration based on an apparent authority agency theory. This case highlights the New York courts' willingness to consider a variety of theories to enforce an arbitration agreement against a non-signatory, including assumption, alter ego, equitable estoppel, and incorporation by reference, in addition to agency.

4. Westinghouse Electric v. Salazar Electronics

Finally, in *Westinghouse Electric v. Salazar Electronics*[7], the SDNY granted the defendants' motion to compel arbitration and stay the lawsuit brought against them in court. The claimant argued that the Parties had not engaged in the contractual negotiation pre-condition to arbitration. The Court emphasised that all it could determine was whether the Parties had agreed to arbitrate. The rest was for the arbitrators to decide, because incorporation of rules (here, ICDR) that empower an arbitrator to decide issues of arbitrability is clear and unmistakable evidence of intent to delegate such issues to the arbitrator.

V. Conclusion

Thus, the New York 2025 commercial arbitration cases further refine US arbitration law concerning the difference between primary and secondary enforcement jurisdictions under the New York Convention, quasi-in-rem enforcement jurisdiction, arbitral jurisdiction over non-signatories, and whether incorporation of the ICDR Rules in an arbitration agreement meant that the Parties had agreed that an arbitrator would decide issues of arbitrability. These decisions are very thoughtful and will no doubt influence the jurisprudence of other national courts that must deal with 'spin-off' arbitration applications.

6 Sucafina NN v. Green Coffee Company, US District Court for the Southern District of New York, 16 December 2025.

7 Westinghouse Electric v. Salazar Electronics, US District Court for the Southern District of New York, 16 December 2025.

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Arbitration Law *and* Practice Yearbook

— 2025 Annual Review —

EDITORS

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Arbitration Law and Practice Yearbook offers an annual review of key legal and practical developments in arbitration. The 2025 edition examines recent legislative initiatives, judicial decisions, and institutional trends in France, Türkiye, the United Kingdom and the United States. Bringing together contributions from leading academics and practitioners, the Yearbook provides in-depth analysis of issues shaping arbitration in these jurisdictions.

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DISPUTE RESOLUTION APPLICATION AND RESEARCH CENTER

ISBN: 978-625-8592-63-4
9 786258 592634