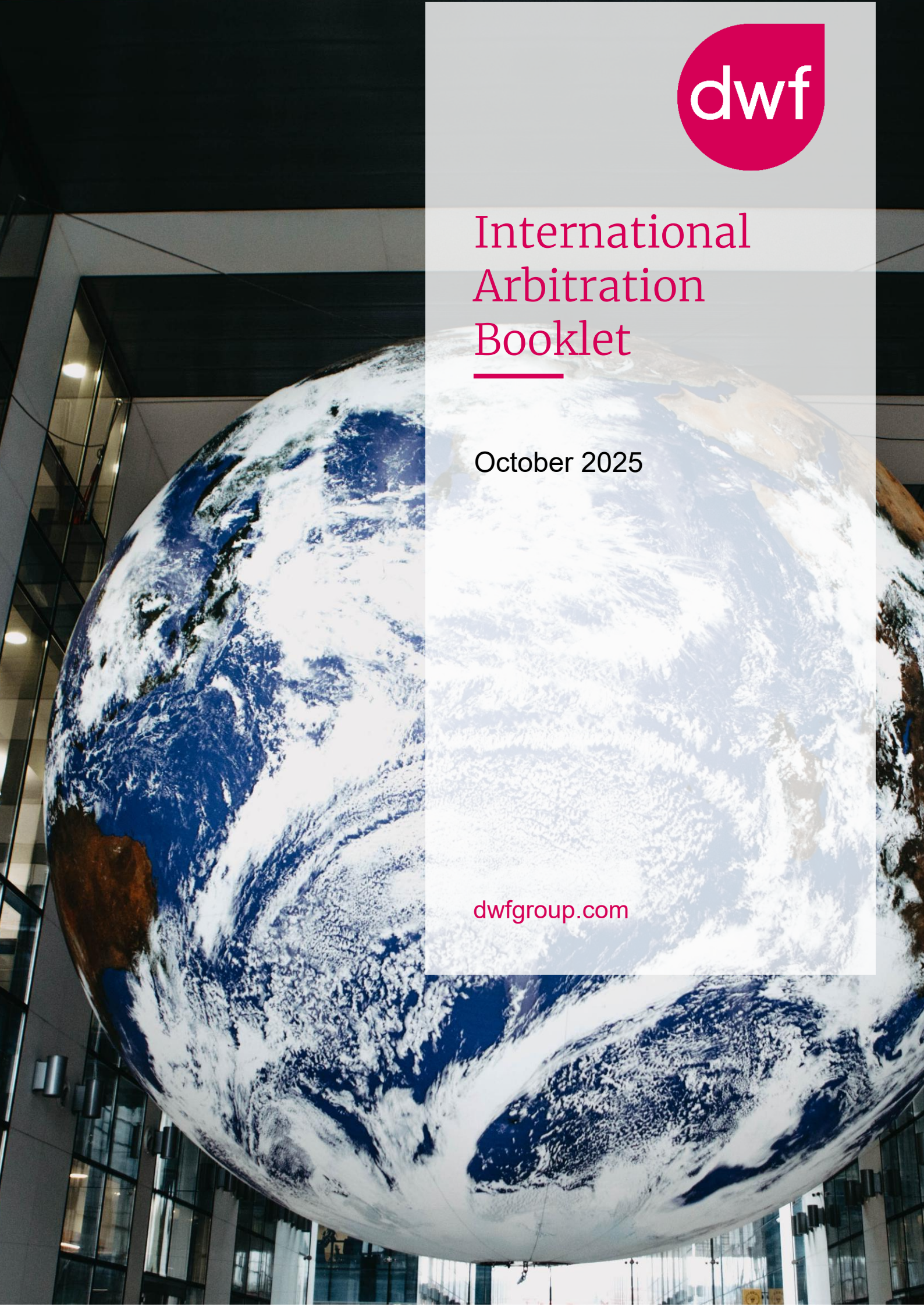

International Arbitration Booklet

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Introduction

This is the inaugural edition of DWF arbitration booklet.

It consists of a compilation of articles authored by various members of our International Arbitration team across multiple jurisdictions.

This booklet has been edited by partner **Richard Twomey**, Head of UK Arbitration Group, partner **Poupak Anjomshoaa**, international arbitration and construction practitioner, partner **Solomon Ebere**, international investor-State arbitration specialist and **Ioannis Milionis**, international arbitration associate.

If you wish to discuss the content of any of the articles, or have any questions on the topics discussed, please do not hesitate to reach out to the authors or our international arbitration team.

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AI in construction arbitrations: A game changer?

In an industry built on contracts, regulations, and razor-thin margins, disputes are inevitable. Arbitration has long been the preferred method for resolving disputes in construction projects internationally.

As projects grow in complexity, both parties and arbitrators are increasingly turning to artificial intelligence (AI) to enhance efficiencies and decision-making processes. From evidence gathering to expert analysis and final awards, AI is reshaping the arbitration landscape in profound ways, particularly in the construction industry.

AI-powered evidence gathering: Precision and efficiency

The sheer volume of documentation in construction disputes - from contracts and drawings to emails and site reports – can overwhelm conventional legal teams. AI-driven tools are now capable of scanning and analysing vast datasets at lightning speed, identifying relevant clauses, inconsistencies, and hidden patterns within the evidence.

AI technologies are transforming how evidence is collected and analysed in construction disputes. On the ground, tools such as drones, sensors, and machine-learning algorithms are being employed to gather detailed and accurate data to assist in forensic analysis, helping detect defects, cost overruns, or even fraudulent claims, by comparing historical project data to real-time records. As a result, updates have become more accurate and transparent, significantly reducing the likelihood of disputes over project status and payments.

Where disputes have arisen, advanced language processing tools facilitate the review of witness statements and correspondence, allowing arbitrators and lawyers to pinpoint crucial evidence more efficiently, without manually sifting through thousands of documents.

The risk with AI in performing evidence gathering and document production in an arbitration is that it may not identify all relevant data, potentially omitting crucial information due to the specificity of search terms used. This necessitates precise inputs into the AI platform to ensure comprehensive data collection.

Additionally, adopting AI in the collation and processing of construction data involves regulatory and liability risks. If data is not collected in a structured manner, deriving meaningful insights can be challenging. Thus, in the litigation process, there are stringent guidelines governing the production of documents. Relying on AI to assist in this process can present significant challenges. AI systems may struggle to adhere to strict legal guidelines, potentially leading to inaccuracies or misinterpretations of the evidence.

The role of experts: AI as a collaborator, not a replacement

Construction arbitration often hinges on expert testimony. Engineers, architects, and financial analysts weigh in on complex technical matters. AI does not eliminate the role of human experts but enhances their capabilities. AI-assisted modelling and predictive analytics allow experts to provide more precise assessments, backed by real-time data rather than assumptions.

In delay claims, for example, AI can simulate alternate project timelines and identify the true cause of setbacks. It can also analyse weather patterns, and material degradation, offering insights that go beyond traditional expertise. Rather than supplanting human judgment, AI serves as a data-driven collaborator,

enabling experts to deliver more informed and transparent opinions.

AI can also pose a hindrance from time to time however. The complexity of AI algorithms can make it difficult for experts to explain the basis of AI-generated findings. This lack of transparency can lead to scepticism and resistance from parties involved in the arbitration. If the data is biased or incomplete, the AI's conclusions may be flawed, potentially impacting the fairness of the expert reporting part of the arbitration process.

AI and the arbitrator's decision: Streamlining complex rulings

For arbitrators tasked with deciding multi-million-pound disputes, AI serves as an invaluable assistant. AI-powered legal research platforms help arbitrators access relevant case law and legal precedents almost instantly.

Predictive algorithms can also assess the likelihood of various legal outcomes based on historical data, and AI can be used to generate structured decision models. Of course arbitrators should take great care not to rely on such AI in making their determinations. AI cannot replace the element of human judgment in arbitral awards which is fundamental to maintain authenticity and reliability as well as the integrity of the legal process. Thus the final award remains a human judgment and AI should be used to only for the purposes of enhancing procedural efficiency.

Ethical considerations and the future of AI in arbitration

AI presents new opportunities – it has the potential to assist lawyers and arbitrators alike with reviewing submissions and large quantities of documentation. It has already shown the capability to summarise content, making it an effective preliminary review tool that can significantly reduce the time required for such tasks. Equally, it processes vast amounts of data quickly, aiding in tasks such as selecting arbitrators and analysing legal precedents. Thus AI is revolutionising international arbitration by enhancing efficiency, speed, and accuracy.

Notwithstanding the advantages, the use of AI in arbitration raises critical ethical questions. Can arbitrators use AI to determine disputes and draft their awards? Can algorithms uses to assess outcomes be impartial? How transparent should AI-generated analyses be? Who will be liable if AI-driven insights lead to flawed conclusions? Legal frameworks and regulatory standards must evolve to address these challenges, ensuring AI enhances, rather than undermines, the integrity of arbitration.

Conclusion

As AI continues to evolve, its role in construction arbitration will only deepen. While human judgment remains irreplaceable, AI is proving to be a powerful ally; transforming the ways in which evidence is gathered, expert opinions are formulated, and decisions are made.

By balancing technological innovation with human expertise and judgment, the construction industry can navigate these risks and fully harness the benefits of AI, ultimately shaping the future landscape of dispute resolution without compromising its core principles.

Those who embrace AI in arbitration today may well set the standards for the future of dispute resolution in construction.

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From rulings to rubles: Navigating the enforcement of arbitration awards against Russian parties in the UK

In the wake of recent geopolitical turbulence and the imposition of international sanctions, enforcing arbitration awards against Russian parties has become more challenging.

Despite these complexities, recent rulings by English courts have shown a strong commitment to upholding arbitration agreements involving Russian entities, providing claimants with confidence in pursuing justice. Additionally, the GBP 25 billion in Russian assets currently frozen in the UK serve as a tantalising treasure trove for potential enforcement proceedings. Understanding the key considerations that influence the enforcement of arbitration awards equips businesses with the savvy necessary to stay ahead of the game, and significantly boost their chances of successful enforcement proceedings.

The crown jewel: The New York Convention

One of the crown jewels of international arbitration is the New York Convention (NYC), ratified by over 170 sovereign States, including the UK and Russia. The NYC provides a robust and far-reaching enforcement regime, making it easier to enforce arbitral awards than foreign judgments.

Sovereign States that have signed the NYC have committed to recognising and enforcing arbitration awards made in other member States, rather than in the State where enforcement is being sought. The convention mandates that national courts must uphold and enforce these awards, with certain exceptions outlined in the NYC. If the award is issued in an NYC member State and the assets are also located within an NYC member State, the chances of successful enforcement are greatly improved.

Given these circumstances, the UK stands out as a prime destination for enforcing arbitral awards against Russian entities (where the latter has assets within the UK), offering a compelling blend of legal rigour and strategic advantage.

English courts: The knights in shining armour

In the realm of English law, an arbitration award is akin to a royal decree – final and binding, unless the parties have agreed otherwise. According to section 58(1) of the English Arbitration Act 1996 (1996 Act), which remains unchanged by the Arbitration Act 2025, such awards are conclusive, not only for the parties involved but also for anyone claiming through or under them. This principle of res judicata prevents any future challenges of the award's findings of law or fact.

However, the finality of an award does not preclude the right to challenge it through available arbitral processes of appeal or review, as outlined in Part I of the 1996 Act (section 58(2)). These challenges are limited to specific grounds, such as the tribunal's substantive jurisdiction, serious irregularity, and points of law.

The success rate of such challenges continues to be low, with only 5 out of 83 (6%) of applications determined in 2022-2023 succeeding—highlighting the UK's strong support for arbitration and its commitment to upholding the finality of arbitral decisions.

State immunity: Not always a bulletproof shield

State immunity is a frequently invoked defence when enforcing arbitration awards against sovereign States. This immunity protects a State from the jurisdiction of foreign courts. Under English law, State immunity is governed by the State Immunity Act 1978 (SIA). Section 1 of the SIA states that UK courts do not generally have jurisdiction over disputes involving sovereign States unless specific exceptions, outlined in Sections 2 to 11, apply. These exceptions include situations where the State has waived its immunity, distinguishing between the State's submission to adjudicative and enforcement functions of the courts.

A defendant may claim immunity from the jurisdiction of the English court under the SIA or, if adjudicative immunity is not applicable, may claim immunity against execution under section 13 of the SIA. The court cannot exercise its powers under the 1996 Act to enforce an award until it determines that the defendant lacks immunity. Only then can the court assume jurisdiction over the defendant.

In the UK, Russia's attempts to invoke State immunity so far have been met with limited success. In the high-profile Yukos case, the Commercial Court ruled in Hulley Enterprises Ltd v Russia that Russia could not claim immunity under the arbitration exception in Section 9 of the SIA 1978. The court recognised an issue estoppel based on an earlier decision of the Dutch Supreme Court, thus preventing Russia from re-arguing the validity of the arbitration agreement. The court's decision was affirmed by the Court of Appeal.

Anti-suit injunctions: The legal sword

In 2020, Russia enacted changes to its Arbitrazh (Commercial) Procedure Code allowing local courts to assert exclusive jurisdiction over disputes involving sanctioned parties where sanctions are perceived to hinder access to justice in the agreed-upon forum (Articles 248.1 and 248.2). The Code also empowered Russian courts to issue anti-suit and anti-arbitration injunctions, effectively barring foreign partners from pursuing claims outside of Russia (Article 248.2). On 26 July 2024, the Russian Supreme Court went even further and issued a ruling that restricts the enforcement of international arbitration awards against Russian entities if those awards are rendered by arbitrators from 'unfriendly' States, being countries that imposed sanctions on Russia following its full-scale invasion of Ukraine.

Such an anti-arbitration approach has been met with anti-suit and anti-anti-suit injunctions granted by English courts, upholding arbitration agreements between the parties. Such injunctions would usually prohibit Russian parties from initiating or continuing foreign legal proceedings in breach of an arbitration agreement and requiring the arbitration proceedings to be discontinued. For example, in 2024, in the case of *UniCredit Bank GmbH v RusChemAlliance LLC*, the Supreme Court upheld the Court of Appeal's judgment, which included a final mandatory anti-suit injunction requiring RusChem to withdraw the proceedings it had initiated in Russia in violation of an arbitration agreement. This followed a claim filed in the Russian courts by RusChem against UniCredit, seeking payment under bonds. Given that the bonds were governed by an arbitration clause, UniCredit moved to dismiss the claim, arguing that the Russian courts lacked jurisdiction. However, the Russian courts determined that, under Article 248.1 of the Arbitrazh Procedural Code, the dispute fell within the exclusive jurisdiction of the Arbitrazh Courts of Russia. UniCredit successfully sought injunctive relief from the English courts to prevent RusChem from continuing the Russian proceedings.

Other notable examples include Barclays Bank PLC v VEB.RF and Magomedov & Ors v PJSC Transneft & Ors.

Conclusion

The English courts have demonstrated a proactive stance in enforcing arbitration awards against Russian parties, even amidst complex international dynamics and legal challenges. For legal practitioners and claimants alike, the message is unmistakable – when it comes to enforcing arbitration awards against Russian entities, the English courts are ready to play their part with both rigour and resolve.

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The Middle East – transitioning to a pro-arbitration approach

Historically, arbitration was viewed with suspicion in the Middle East. This scepticism can be traced back to the significant arbitration awards of the 1950s and 1960s relating to oil disputes where Middle Eastern laws were often overlooked and Western parties frequently emerged victorious.

For instance, as reflected in the widely known award rendered in 1952 in Sheikh of Abu Dhabi v. Petroleum Development, Lord Asquith disqualified Abu Dhabi law (which is based on Shariaa law) and instead applied what he called the "general principles of law recognized by civilized nations." He sought to justify this approach on the basis that "it would be fanciful to suggest that in this very primitive region there is any settled body of legal principles applicable to the construction of modern commercial instruments." As a result, international arbitration was viewed for decades as a tool for Western dominance over the Middle East.

Modernisation of the arbitration legal framework

Thanks to the progress of international order, including developments in the political landscape and legal instruments, the Middle East's perception of arbitration has changed significantly. Over the past thirty years, numerous sovereign States have reformed their arbitration legal frameworks. They have adopted modern frameworks, inspired for instance by the 1985 UNCITRAL Model Law on International Commercial Arbitration. Egypt and Tunisia were pioneers in this movement and other sovereign States followed suit, either adopting the Egyptian version of the UNCITRAL Model Law or the French law.

With the introduction of an improved legal framework and a new guiding philosophy, courts across the Middle East are now recognising their supportive role in arbitration. Consequently, in many (though not all) Middle Eastern jurisdictions, arbitration is increasingly seen as the preferred method for resolving commercial disputes through flexible rules and procedures that contrast with those of the local courts, which still very much adhere to specific, rigid formalities.

The enactment of arbitration laws and regulations in the emerging common law freezones

Whilst Middle Eastern laws are rooted in the Civil law tradition, many free zones (for instance, the Dubai International Financial Centre (DIFC), the Qatar Financial Centre (QFC) and the Abu Dhabi Global Market (ADGM)) have been established in the Middle East which have adopted commercial laws inspired by the common law. These freezones have their own courts, presided over by judges trained in the common law tradition, who deliver judgments in English on behalf of the sovereign State where the freezone is located. The freezones have utilised their regulatory authority to enact their own arbitration laws and regulations, which are influenced by the UNCITRAL Model Law.

The rise and evolution of arbitral institutions

In view of the change of perception towards arbitration in the Middle East, arbitration institutions started to emerge in the region, with the foundation in 1979 of the Cairo Regional Centre for International Commercial Arbitration (CRCICA). Today, there are numerous institutions in the Middle East, including the Dubai International Arbitration Centre (DIAC) established in 1994, the Kuwait Commercial Arbitration Centre (KCAC) founded in 1999, the Qatar International Center for Conciliation and Arbitration

(QICCA) established in 2006, the Saudi Center for Commercial Arbitration (SCCA) founded in 2014, and the Oman Commercial Arbitration Centre (OCAC) established in 2018.

Most recently, the Abu Dhabi Chamber of Commerce and Industry (ADCCI) launched in 2024 the Abu Dhabi International Arbitration Centre (ADIAC). ADIAC replaced the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC), which had previously served as Abu Dhabi's principal arbitration centre. One of the key features of ADIAC is the creation of a stand-alone Court of Arbitration, which operates independently from ADCCI. The arbitration rules for ADIAC came into force on 1 February 2024. These rules provide that ADGM will be the default seat of arbitration where the seat is not agreed.

In addition, CRCICA, QICCA and the Lebanese Arbitration and Mediation Center (LAMC) have all recently adopted new rules, signalling a shift towards modernised legislative frameworks that prioritise procedural efficiency, transparency, and alignment with international best practice.

CRCICA's new arbitration rules, effective 15 January 2024, replace the 2011 rules. They are available in English, Arabic and French. Among the new developments, Section VI titled '*other provisions*' addresses issues not dealt with under the UNCITRAL Arbitration Rules, such as consolidation of arbitrations, arbitrations arising out of multiple contracts, early dismissal of claims and third-party funding. The new rules have also introduced online filing of the notice of arbitration and the response to the notice of arbitration, and encourage the use of technology in arbitration proceedings, including in communications and hearings.

QICCA's updated arbitration rules, effective 1 January 2025, represent a significant evolution from the 2012 rules, expanding from 38 to 78 articles across seven chapters. The new rules enhance procedural flexibility – enabling consolidation, joinder, bifurcation, and expedited processes – while embracing a digital-first approach with electronic submissions and filings. They also promote greater transparency through clearer provisions on arbitrator appointments, disclosures, and the publication of awards, offering a modern and reliable platform for both regional and international dispute resolution, as the centre witnesses an increasing caseload.

LAMC's new arbitration rules, effective 1 July 2024, replace the 1995 rules. Among their main features, they address the consolidation of arbitrations, third-party joinders, emergency and expedited arbitrations, interim measures, and the ability to exclude mandatory award scrutiny and award correction and interpretation.

Significant recent judgments affecting arbitration

In recent judicial developments across the Middle East, several notable decisions have been rendered regarding arbitration.

The Dubai Court of Cassation, in Case No. 735 of 2024 (Civil) dated 29 October 2024, ruled that unilateral or asymmetric arbitration agreements are not valid under UAE law, diverging from the practice in offshore UAE courts such as the DIFC, which recognise such agreements.

The Amman (Jordanian) Court of Appeal, in Decision No. 5137/2024 on 31 July 2024, determined that a settlement agreement constitutes a standalone contract, thereby nullifying any arbitration clauses in prior agreements.

In Oman, the Supreme Court's Decision (709/8103/2024) oddly retained the Omani courts' jurisdiction to hear annulment proceedings against an arbitral award pertaining to an arbitration seated in London, justifying the decision on the basis that the respondent in the arbitration was an Omani entity.

The Kuwait Court of Cassation, in Case No. 62/2021 on 21 January 2024, reaffirmed Article 187 of the Code of Civil Procedure, mandating the Kuwaiti courts that set aside an arbitral award to hear the subject matter of the dispute and decide on the merits, highlighting a unique aspect of Kuwaiti arbitration law.

These cases collectively underscore the evolving landscape of arbitration in the region and the varying positions taken by different courts in respect of arbitration-related issues.

Conclusion

Arbitration in the Middle East has advanced substantially over the last three decades. This is evident from the recent proliferation of Middle Eastern arbitration institutions. Nonetheless, the effective operation of the new legal framework(s) is largely dependent on a supportive and capable judiciary. Although courts in the Middle East have generally moved towards a pro-arbitration mindset, this does not apply in every jurisdiction, nor in every case. Therefore, it is essential to seek legal advice prior to entering into an arbitration agreement that designates a Middle East jurisdiction as the seat of arbitration, in order to best understand and evaluate the implications of this agreement.

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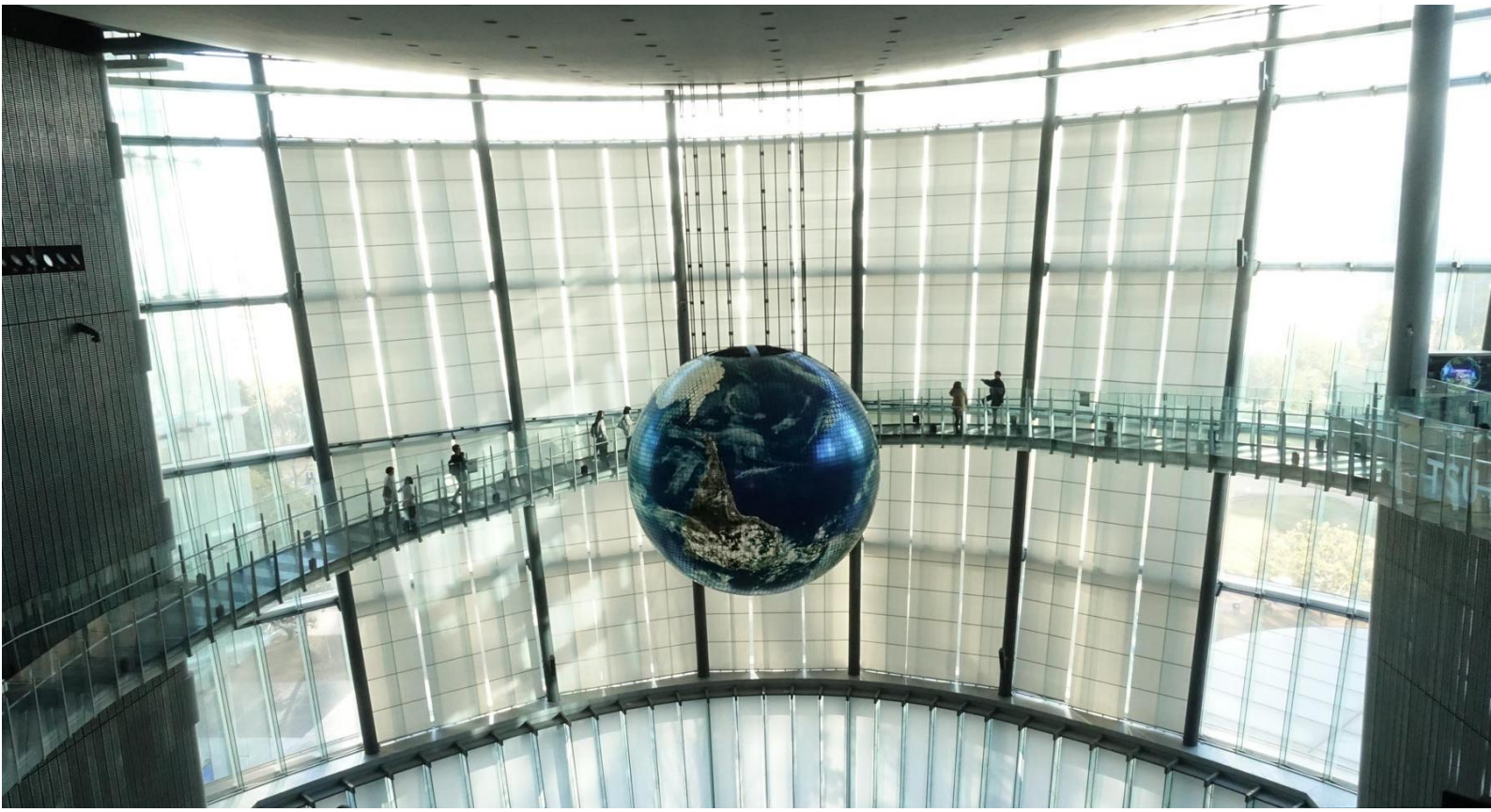


Fraud in arbitration

The spectre of fraud has long cast a shadow over arbitration – that is, arbitral proceedings being used to facilitate money-laundering, awards obtained by fraud, and other such nefarious misfeasance. For the Arbitral Tribunal, it can be difficult to establish such ulterior motives, and even if suspicion arises, to do anything about it.

This menace was brought firmly into the spotlight in late 2023, in the English case of Nigeria v Process & Industrial Developments Limited, when the English High court, reliant on Section 68 of the Arbitration Act 1996, set aside a USD 11 billion arbitral award. The court found that the award had been procured through fraud and in a manner contrary to public policy.

The court's willingness to set aside the award gives comfort in protecting arbitral processes and ensuring they remain credible. However, considered in detail, its decision to do so might be said not to have been as straightforward as it should have been. Further, the outcome was heavily reliant on documents disclosed during the course of the court proceedings, but not all arbitrations will see such voluminous disclosure.

What lessons can be drawn from the case, and what else can be done to ensure that arbitral proceedings remain free of the taint of fraud?

Nigeria v Process & Industrial Developments Limited (P&ID)

By way of summary:

- On 11 January 2020 Nigeria and P&ID signed a Gas Supply and Processing Agreement for Accelerated Gas Development (the GSPA). Under the GSPA, P&ID was to construct Gas Processing Facilities (GPFs), which would strip 'wet' gas supplied by Nigeria into 'lean' gas to be delivered to Nigeria for power generation.
- The GSPA was for a minimum term of 20 years.
- P&ID did not build any GPFs. Nigeria did not supply any 'wet' gas. Seemingly, neither party did anything.
- In the third year of the GSPA, P&ID commenced an arbitration, alleging that Nigeria had committed a repudiatory breach of GSPA, entitling P&ID to terminate the GSPA and claim damages.
- After rejecting a jurisdictional challenge, the Tribunal issued a Final Award, requiring Nigeria to pay P&ID USD 6.6 billion plus interest at the rate of 7% per annum.

The set aside application

By early 2023, with interest, the final award exceeded USD 11 billion. At this time, Nigeria made application in the English courts to set the final award aside. Nigeria did so relying on Section 68 - alleging "*serious irregularity affecting the tribunal, the proceedings or the award*".

Applications under Section 68 are rarely successful, intended only for extreme cases where:

"*the tribunal has gone so wrong in its conduct of the arbitration that justice calls out for it to be corrected*".

Nigeria's application was heard by Mr Justice Robin Knowles CBE. He had no reluctance in setting the award aside, concluding that it had been obtained by "*practising the most severe abuses of the arbitral process*":

- P&ID's legal team had obtained and made use of privileged and confidential legal documents belonging to Nigeria, which it relied on to track Nigeria's strategy. The judge described the handling of this material as 'indefensible' and reported P&ID's legal team to their regulatory authorities for doing so.

- P&ID had presented and relied on evidence that it knew to be false, seeking to avoid and hide from the Tribunal that the GSPA had been procured through bribes paid to a Nigerian official.
- Throughout the Arbitral proceedings, P&ID had continued to bribe a Nigerian official to 'buy her silence' about the bribes she had accepted.

The judge concluded that the Tribunal had not known any of these issues and, if it had "*the entire picture would have had a different complexion*". He found the matters constituted "*serious irregularity*", causing "*substantial injustice to Nigeria*". That said, of significance, he concluded the second ground – bribes paid to procure the contract – would not have been sufficient in itself for the award to be set aside. Rather it was the process through which the award was obtained during the arbitration that was significant.

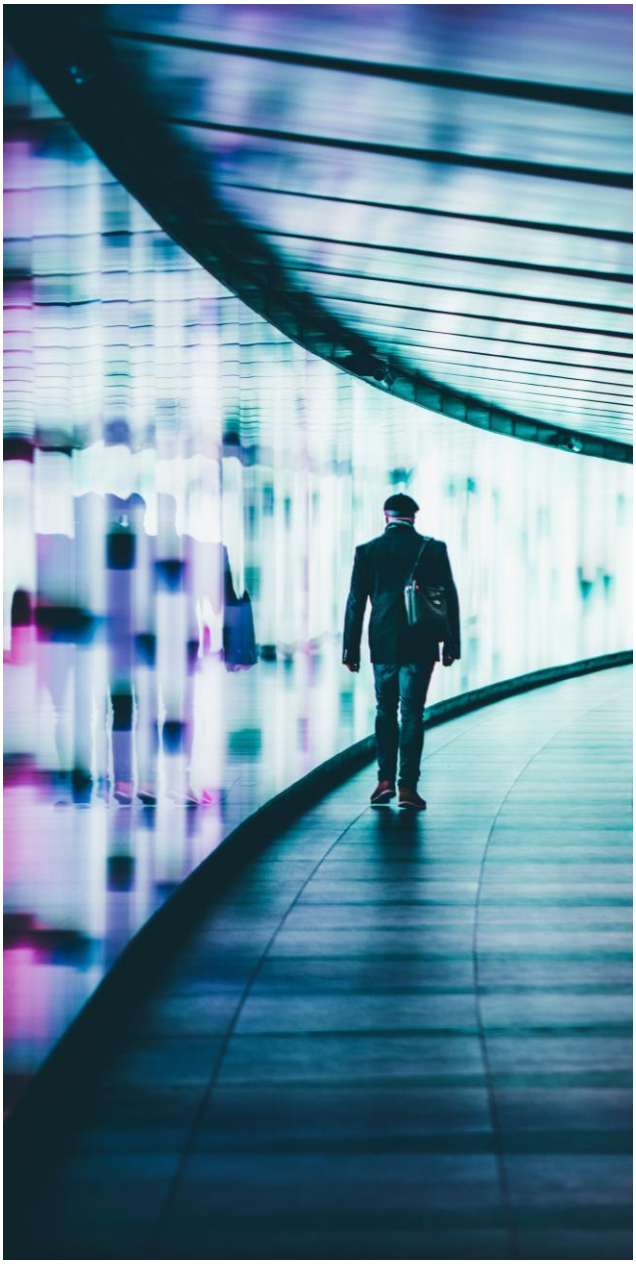
The judge's reflections

The judge was keen for there to be 'debate and reflection' as to whether arbitration processes need further attention to prevent such abuse, particularly where the value was so large and where a state was involved. He suggested four key points of analysis:

1. **Drafting major contracts:** The importance of proper professional standards and ethics in the drafting of major contracts. Perhaps not one for litigators, but certainly a key issue for our corporate partners to consider.
2. **Disclosure/Discovery:** Highlighting that the fraud was uncovered through the disclosure process, the judge noted the importance of robust documentation production. Given the widely different disclosure obligations/practices across jurisdictions, this is (putting it lightly), a thorny issue.
3. **Inadequate representation**: The judge found that, P&ID's dishonest behaviour notwithstanding, Nigeria's legal team and those instructing them put Nigeria at risk, the result of which was that "*The Tribunal did not have the assistance it was entitled to expect, and which makes the arbitration process work*". But is it an Independent Tribunals' job to make it a fair fight, and, if so, how do they do it?
4. **Transparency**: The forever debate – do issues of confidentiality put arbitration at risk of corruption? Is that risk avoidable?

The Arbitration Act 2025 – a missed opportunity?

Various proposed amendments to the Arbitration Act 2025 had included placing duties on arbitrators to raise suspicious of corruption with the parties, and to engage in 'red flag' analysis where appropriate. However, none of these amendments formed part of the act when it received Royal Asset in February 2025.



The ICC's red flags

In December 2024, the ICC Commission on International Arbitration and ADR published its guidance on "*Red Flags or other Indications of Corruption in International Arbitration*". This document is intended to *provide* "*detailed guidance on the identification and assessment of corruption in arbitration proceedings*" and sets out three stages of analysis which an arbitral tribunal should carry out:

a) identifying the potential/asserted red flags;

b) validating or confirming (or negating) the red flags; and

c) assessing red flags from the perspective of the law of evidence.

The note sets out in detail the steps an Arbitral Tribunal and the parties should consider in these analyses. Nevertheless, the guidance is clear that "*the tribunal must resolve the dispute submitted before them by the parties, and must do their best to ensure that the award rendered is enforceable*". It concludes: "*the arbitrator must not divert the process and resources to unnecessary investigations that may create an unjustified burden on the parties or, in some cases, violate due process.*" Hardly reassuring for those concerned about fraud and corruption.

Conclusion

Arbitral rules may empower tribunals to police proceedings and safeguard against abuses, but it is evident that fraud, and those who seek to abuse the process, will always lurk beneath the surface. Parties to arbitration proceedings should always be on guard and should consider such risks when choosing the arbitral seat and applicable law – at the end of the day arbitration, it is access to and the support of robust court systems that gives it the best protection.

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France fast-forwards reform on arbitration law

As the 2025 Arbitration Act is set to come into force in the UK, France has initiated its own reform process, with legislation expected to be adopted in 2025 and 2026.

To guide this effort, the Minister of Justice appointed a working group composed of eleven experts, including lawyers, university professors, and representatives of arbitration institutions. The group submitted its report on 20 March 2025 and suggested significantly remodelling the existing French arbitration legal regime, which dates back to 2011, to maintain and reinforce its competitiveness and efficiency in the global arbitration market.

With France being a leading seat for international arbitrations, the proposed reform should be of interest to all arbitration users.

Key reform proposals

Some of the proposed changes mark a significant departure from the current legal framework.

The central proposal is the creation of a dedicated and comprehensive Code of Arbitration, aimed at codifying and affirming the autonomy of French arbitration law.

Currently, French arbitration law is primarily codified in the French Code of Civil Procedure, which contains separate provisions for domestic and international arbitration. Additional relevant rules appear in a number of other codes, including the Civil Code, Consumer Code, Labour Code and Intellectual Property Code, all of which have been further developed through precedent emanating from the French Courts.

The reform also aims to replace the dual structure distinguishing domestic and international arbitration with a unified legal framework.

Another major innovation is the extension of arbitration to certain areas previously excluded, such as family, consumer and employment-related disputes.

Guiding principles

The draft code opens with a definition of international arbitration as "*a jurisdictional method of settling disputes*" involving "*international economic interests*", followed by a set of guiding principles that largely reflect existing French law, including:

- the obligation of independence and impartiality of arbitrators;
- the competence of the arbitral tribunal to rule on its own jurisdiction;
- the confidentiality of proceedings;
- the principle that the setting aside of an arbitral award at the seat of arbitration does not, in itself, prevent its recognition or enforcement in France; and
- the principle that no party may invoke its own domestic law to challenge either the arbitrability of the dispute or its own capacity to arbitrate once it has consented to arbitration.

Law applicable to the arbitration agreement

Unlike the UK reform, the French working group does not propose a default rule. Instead, it favours party autonomy. In the absence of a choice of law, the arbitral tribunal would apply the law it deems most appropriate.

Simplification of formalities

The draft code also proposes eliminating formal requirements for the validity of arbitration agreements to reduce unnecessary litigation.

Similarly, purely formal grounds for annulment of arbitral awards would be abolished.

Procedural innovations

The reform introduces several changes to arbitration-related litigation and appeals procedures.

Under the draft text, the parties would be able to seek enforcement of provisional measures ordered by the arbitral tribunal before the French judge with authority to issue orders related to the arbitration ("*juge d'appui*"). It is not specified at this stage whether that also includes decisions of emergency arbitrators.

Another notable reform is that parties would no longer be permitted to waive in advance their right to challenge an arbitral award.

In addition, third-party opposition to arbitral awards would no longer be permitted. However, third-party proceedings could allow third parties to intervene against recognition and enforcement of awards (arts. 117 and 129, 81 of the draft code).

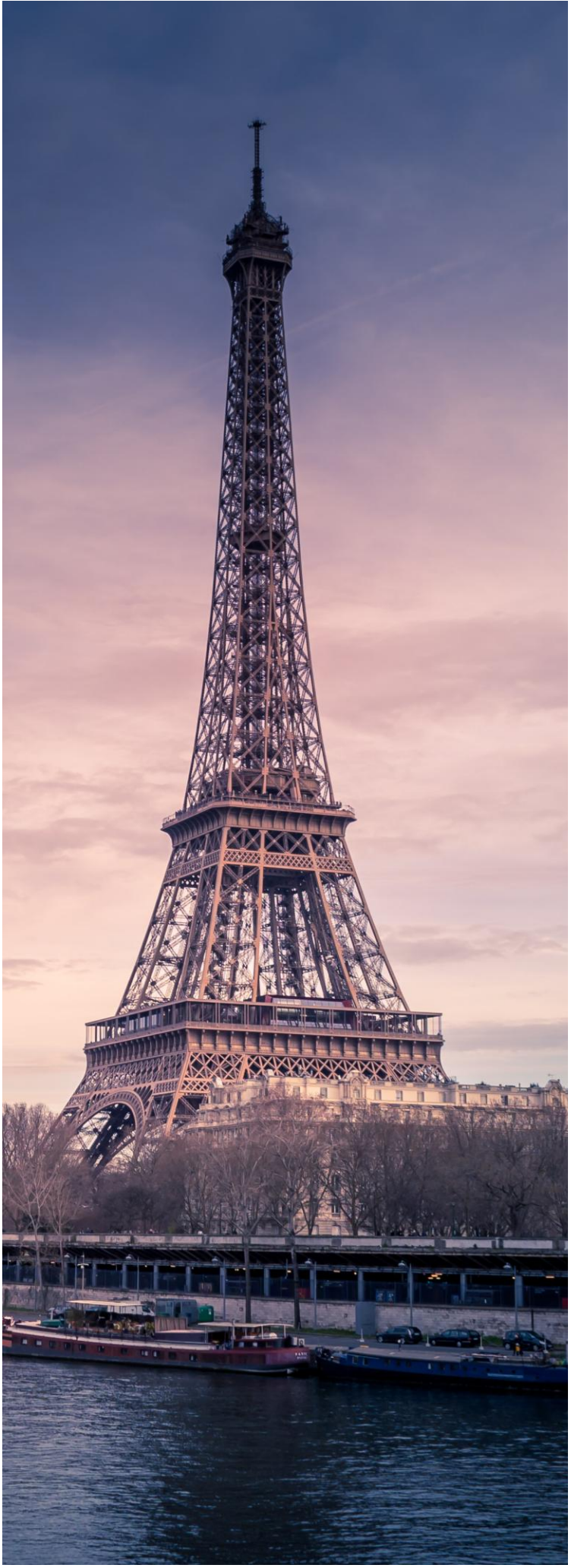
Jurisdiction for such matters – including appeals concerning recognition or annulment of international arbitral awards – would be concentrated in the Paris Court of Appeal. These cases would be heard by that court's International Commercial Chamber.

Documents could be submitted in English without translation, and non-French-speaking parties would be allowed to speak English, even where hearings are held in French.

Furthermore, procedural documents such as certificates would no longer need to be handwritten.

Judicial review of arbitral awards

The draft preserves the existing limited grounds for challenging an award under Article 81 of the draft Code.



An award may be set aside, or its recognition refused, only if the tribunal wrongly accepted or declined jurisdiction, was improperly constituted, exceeded its mandate, violated the principle of adversarial proceedings, or rendered an award contrary to public policy (in domestic arbitration) or international public policy (in international arbitration).

Access to arbitration despite impecuniosity

A pragmatic feature of the reform addresses cases where a party is unable to afford arbitration. In such instances, the matter could be referred to the "*juge d'appui*", specifically the president of the Paris Judicial Court, who would be empowered to take all necessary measures to allow the arbitration to proceed despite a party's financial hardship.

Mass arbitration

Finally, the working group's draft introduces the possibility of mass or group arbitration.

Article 1 allows such arbitration to be organised through an agreement that expressly refers to this mechanism. Article 2 provides that a request for arbitration may be submitted on behalf of either a clearly defined group of claimants or a group to be determined at a later stage.

Conclusion

The proposed reform of French arbitration law aims to establish a single, separate, and comprehensive Code of Arbitration that brings together all provisions governing arbitration in one unified instrument. It seeks to unify domestic and international arbitration rules, with only limited exceptions, thereby simplifying the current dual structure.

The adoption of the reform will follow a three stage process: regulatory measures are expected to be implemented by the Autumn of 2025, followed by legislative provisions in early 2026, and culminating in the enactment of the full Arbitration Code by the summer of 2026. This phased approach is expected to ensure a smooth transition to a modernised and coherent arbitration framework.

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A *tour D'ESG*: The surge of ESG claims in arbitration

Sustainability and responsible practices are no longer just buzzwords. Rather, Environmental, Social and Governance (ESG) metrics are nowadays a fundamental part of lending and investment criteria, and form an integral part of, for example, transaction-related due diligence or prospectus disclosures, influencing shareholder and management bodies' strategies alike.

In commercial contracts, a wide range of contractual ESG obligations are implemented. According to an International Bar Association's (IBA) 2023 report, 42% of responding businesses have already had experience with contractual ESG disputes, and 37% have had experience with external ESG complaint mechanisms. ESG is omnipresent, regardless of sector, industry and contract.

While ESG-related investor-state arbitration has been established for decades, there has been a global surge in ESG arbitration in various other areas in recent years. Current cases demonstrate that ESG arbitrations involving all types of parties, all kinds of contracts, and all areas of law, are on the increase.

The complexity of implementing ESG metrics

Despite ESG's universal adoption, its implementation carries legal risks and potential for disputes. In particular, ESG metrics must comply with both governmental and supranational regulations, such as the dense European regulatory landscape, recently expanded to include the Supply Chain Directive (CS3D) (although the implementation date of that directive has been partially extended: A majority of the EU parliament has recently voted to postpone the CS3D's implementation). Supranational ESG regulations are backed up (or countered...) by national ones. For example, various national supply chain laws with different scopes were already in place even before the implementation of CS3D (e.g., the French *Loi sur le devoir de vigilance* or the Netherland's Child Labour Due Diligence Law). The German *Lieferkettensorgfaltspflichtgesetz* (LkSG) shows that such additional national legislature could create confusion. To protect human rights and the environment throughout the supply chain, German law stipulates that responsible parties must be clearly designated, preventive measures must be implemented, and risk management and complaint systems must be put in place. There are also comprehensive documentation and reporting obligations. The domestic law of Germany is not necessarily in line with the EU directive. Thus, the law is to be abolished again after only a short period of validity.

Further complexity arises in cross-border business and investment relationships, where the respective parties' home countries have different approaches to ESG issues. For instance, the EU's ESG-friendly policies are in stark contrast to the US-administration's anti-ESG sentiment. To give a few examples: The US withdrew (again) from the Paris Agreement and its emission reduction commitments on 20 January 2025; The Securities and Exchange Commission announced on 27 March 2025 that it was withdrawing its legal defence of the climate disclosure rules, effectively abandoning its efforts to require companies to report on climate risks and greenhouse gas emissions such that the climate disclosure rule is now considered highly unlikely to be implemented; The US-administration is now also targeting State ESG laws, with an announcement on 8 April 2025 that "*many States have enacted, or are in the process of enacting burdensome and ideologically motivated 'climate change' or energy policies (...)*".

The approach to ESG taken by governments will shape corporate and investment strategies in their respective regions. There is increasing pressure from investors, lenders and business partners to establish legally binding ESG responsibilities – but where government approaches vary, global businesses with a presence in multiple regions may struggle with the implementation of those ESG responsibilities, leading to further tension. The implementation of ESG metrics also opens the door for competitors to take a closer look at what companies are or are not doing. As such, market participants have a lot to consider when navigating this dynamic environment.

Recent examples from Germany show regular problems with the implementation of ESG metrics. The NGO Deutsche Umwelthilfe recently won a greenwashing lawsuit against Lufthansa. According to the Cologne Regional Court (judgment of 21 March 2025 - 84 O 29/24), Lufthansa had failed to inform its passengers about its CO2 offsetting measures in relation to flights that were advertised as 'climate-neutral' or 'sustainable'. That was after Lufthansa won the MSCI ESG Ranking for the "strongest ESG performance" for the third time in autumn 2024. Additionally, Frankfurt's public prosecutors found that Deutsche Bank's DWS falsely promoted financial products with ESG characteristics and fined Deutsche Bank EUR 25 million.

ESG in arbitration

Given the reputational risks associated with ESG and the importance of confidentiality, ESG-related arbitration is rising too. As the case law shows, ESG arbitration is complex and can take different forms:

- ***First Quantum vs. Panama*:**
  In November 2023, Panama's Supreme Court declared a concession agreement in favour of Canadian First Quantum, for the Cobre Panama mine, invalid on constitutional grounds following mass protests over environmental and corruption concerns. Consequently, the mine was shut down. First Quantum immediately initiated ICC arbitration proceedings against Panama in which it claimed USD 20 billion and, at the same time, issued a notice of intent to initiate arbitration proceedings under the Canada-Panama Free Trade Agreement (FTA). In April 2025, Panama's President announced that the mine would reopen as part of an association with First Quantum, after the latter withdrew its claims in March 2025 (*First Quantum Minerals Ltd. v. Republic of Panama* - ICC Case No. unknown, ICSID Case No. ARB/25/18).
- ***Solvay v. Edison*:**
  In 2001, Italian company Solvay acquired shares in the Italian subsidiary of Edison, Agora. Agora's subsidiaries operated industrial plants in Italy. In the SPA between Solvay and Edison, Edison guaranteed that it and its subsidiaries would 'in substance' comply with applicable Health, Safety and Environment laws. In a subsequent ICC arbitration, Solvay claimed that the plants at certain locations had contaminated the environment. Additionally, available reports confirming the contamination had not been submitted to the authorities. By a partial award, the tribunal awarded Solvay damages of approx. EUR 91 million in respect of losses for the period up to 2016. Proceedings in respect of losses for the period from 2017 onwards are still pending (*Solvay Specialty Polymers Italy v. Edison S.p.A.* - ICC Case No. 18666/FM/MHM/GFG).
- ***Glencore International A.G. v. Republic of Colombia***
  In the current investment arbitration between mining giant Glencore and the government of Colombia, the ICSID tribunal has accepted two indigenous groups as petitioners alleging violations of indigenous rights and the right of access to water (*Glencore International A.G. v. Republic of Colombia* - ICSID Case No. ARB/21/30).

As can be seen, although primarily focused on environmental issues, there are also major pending arbitrations that arise from social and governance issues.

Conclusion

Despite the EU's campaign against the Energy Charter Treaty, that Treaty remains a gateway to environmental investor-State arbitration due to its 20-year sunset clause.

The issue of governance will further find its way into ESG-related arbitration, not least due to rising global sanctions regimes (e.g. against Russia for its war of aggression against Ukraine), and through force majeure clauses (e.g., as was discussed but ultimately rejected in *JSC PowerMachines vs Vietnam Oil and Gas*

Group and PetroVietnam Technical Service Corporation - SIAC Case No. ARB 274/19/AB).

While the arbitrability of greenwashing allegations is being debated in Australia, Latin America is seeing a sharp rise in ESG-related arbitrations, as is Africa. Sustainability commitments are becoming binding as greater sensitivity to ESG issues results from political awareness.

All of this points to the rise of 'ESG arbitration' as part of the international dispute resolution environment – one that is likely to shape the legal landscape in the coming years.

At the same time, tribunals are likely to further refine their approach to ESG issues, in balancing the economic interests of businesses and investors against ESG objectives.

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Insights on the new KSA Civil Law: Key implications for construction contracts

The Kingdom of Saudi Arabia's enactment of the Civil Transactions Law (the KSA Civil Law) has laid down a long anticipated legal framework that significantly impacts businesses operating within the Kingdom, particularly in the construction sector. It represents a significant shift, offering greater clarity and predictability.

Many provisions of the KSA Civil Code mirror those found in other civil codes across the Gulf, which facilitates consistency and clarity in the management of construction contracts across the Gulf region. At the same time, the KSA Civil Law introduces tailored provisions that are particularly relevant to developers and contractors working in the Kingdom. This article offers an insight into these latter provisions and their practical implications, providing critical insights for industry professionals navigating this evolving legal terrain.

The KSA Civil Law and construction contracts

Articles 461 to 478 of the Civil Code of the KSA Civil Law address Muqawala contracts (contracts for works), which are the backbone of construction projects. The KSA Civil Law establishes a foundational framework for construction professionals by outlining their rights and obligations, as well as the mechanisms governing contract formation and execution. Importantly, it provides both employers and contractors with guidance on how to manage project obligations and resolve disputes. It can be expected that the introduction of these clear statutory rules will now influence how construction disputes are framed and resolved in arbitration, particularly in claims for non-performance or breach.

Quantum meruit: Getting paid for work done

Disputes in construction projects often stem from incomplete works, informal agreements or disputed variations. The KSA Civil Law recognises the principle of *quantum meruit*, a Latin phrase meaning "*what one has earned*", ensuring fairness in situations where a party provides services or performs work without a formalised contract, or when a contract is voided.

This is particularly important in a sector where verbal instructions and site instructions are common. For instance, a subcontractor may begin additional works upon a verbal request by the site engineer. If the formal variation order never materialises, *quantum meruit* may still provide a path for payment.

The inclusion of *quantum meruit* provisions in the KSA Civil Law also benefits employers, ensuring that payments are due only for work actually completed or services provided. It fosters a more balanced approach to compensation, particularly in cases where the original contract is either void or ambiguous. In arbitration, *quantum meruit* is frequently invoked where works have been performed outside of strict contractual boundaries. These new statutory provisions now offer clearer benchmarks for tribunals to assess such claims.

Managing variations: Timely notice is key

Variations are a fact of life in construction, arising due to changes in design, unforeseen circumstances, or modifications requested by the employer.

Under Article 470 of the KSA Civil Law, should the quantities listed in the itemised Bill of Quantities be exceeded, the contractor must "*immediately notify*" the employer to avoid waiving the right to recover additional costs.

The requirement for immediate notification mirrors international best practice, but will likely result in a shift of day-to-day practice for many local contractors, accustomed to a more informal approach. Furthermore, the requirement for 'immediate' notice provides a degree of uncertainty, with the issue of fulfilment of notice requirements featuring in the vast majority of construction disputes in the region.

Article 471 of the KSA Civil Law introduces unique provisions regarding variations in Muqawala contracts. It stipulates that a contractor may not demand an increase in the contract price, irrespective of changes in material prices or wages, unless due to the employer's fault or with the employer's permission. Additionally, Article 471(2) limits a contractor's entitlement to additional costs for variations. As such, contractors need to be cautious when pricing projects to account for any significant price fluctuation in materials.

These provisions are likely to feature prominently in arbitration proceedings where variation claims are raised, especially where contractors allege that increased costs arose from employer-driven changes without having obtained timely written approvals from the employer.

Suspension of work

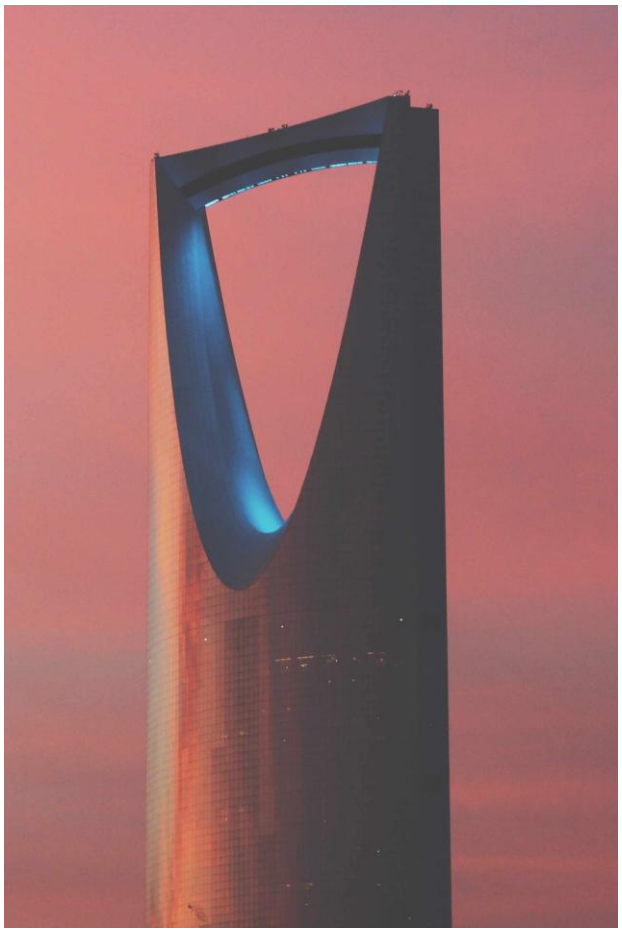
While the KSA Civil Law does not explicitly provide for suspension of work, Article 114 allows a party to withhold performance if the other party fails to perform its obligations. This is an important tool for contractors, particularly in the case of non-payment.

For example, if an employer does not make a payment when it falls due, the contractor may be entitled to stop work until the issue is resolved. Ideally, the contract will contain clearer provisions addressing the circumstances under which the contractor has the right to suspend work and the process for doing so. However, even where the contract is silent on this issue, Article 114 of the KSA Civil Law may offer comfort to contractors by permitting them to withhold performance in response to non-payment by the employer.

That said, any suspension should be approached with care. It must be exercised in good faith and must be proportionate to the breach. Contractors should also ensure that any action taken is consistent with the terms of the contract and with general principles of contract law, including the obligation to mitigate losses wherever possible.

Termination of contracts

Termination of a construction contract is a complex process that must be approached with a great deal of care because the legal consequences of wrongful termination can be substantial. Under the KSA Civil Law, several methods are available for terminating a contract, including mutual agreement, completion of the agreed work, or a court order.



Article 466 provides specific provisions for termination due to contractor breach. If a contractor fails to perform the work according to the contract terms, the employer has the right to issue a notice requiring the contractor to correct the breach within a reasonable period. If the breach is not remedied within the specified timeframe, the employer may terminate the contract or appoint another contractor to complete the work at the original contractor's expense.

Additionally, Article 476 allows either party to request termination if external factors make the work impossible to complete.

This mechanism will provide considerable comfort to developers, especially those delivering complex or high-value projects under the Kingdom's Vision 2030 programme. Many of these giga projects involve newly formed joint ventures or local contractors who may have limited experience operating at such scale. In this context, clear contractual remedies and protection such as those provided under Article 466 are essential to managing performance risk. They offer developers a structured and enforceable route to remove underperforming contractors while preserving project timelines and budgets.

In circumstances where termination is necessary, the KSA Civil Law also provides guidance on compensation. If a contractor is unable to complete the work through no fault of its own, it is entitled to compensation for the completed work and expenses incurred up to that point, helping ensure that contractors are not left financially vulnerable when external factors disrupt their ability to complete the project. As such, if a contractor or subcontractor is terminated, it is important to promptly carry out a site survey to assess the progress made at the time of termination. Doing so ensures that there is a clear and well-documented record of the work completed, which will assist in resolving any disputes over the final account and mitigate the risk of prolonged payment disagreements.

Where termination leads to arbitration, these statutory provisions offer a valuable framework for tribunals assessing both wrongful termination claims and claims for outstanding payment or loss of profit.

Conclusion

The KSA Civil Law offers a comprehensive and robust legal framework that governs construction contracts within Saudi Arabia. The provisions covering *quantum* meruit, variations, suspension, and termination are designed to provide fairness, clarity, and protection for both employers and contractors. By aligning the law with regional legal expectations, the KSA Civil Law aims to foster a more consistent and predictable environment for construction professionals operating in the Kingdom.

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Global crypto-currency regulation: Investment treaty crypto-arbitration on the horizon?

The global crypto-currency market continues to witness an exponential growth. Naturally, disputes in relation to crypto-assets are also on the rise. Such disputes tend to arise between private parties and are often resolved through commercial arbitration. Due to crypto-currency's decentralised nature, sovereign States have had little role to play in the general regulation of crypto-currency activities until recently.

The tides have turned. There is an emerging trend of global crypto-currency regulation by sovereign States and supranational organisations, such as the European Union. Sovereign States are becoming increasingly concerned with the interplay between an unrestricted crypto-currency market and illegal activities (e.g. cybercrime, tax evasion, money laundering), as well as consumer protection and environmental considerations. For instance:

- In 2024, the Government of Nigeria, one of the world's largest crypto-currency markets, brought a USD 10 billion tax evasion/money-laundering claim against Binance, the world's leading crypto-currency exchange. Nigerian authorities arrested and detained one of Binance's executives on charges of money laundering. Nigeria later dropped the charges due to the executive's health issues.
- In April 2025, the French Government introduced strict regulation of privacy digital assets and crypto-exchanges.
- In April 2025, the Government of Kuwait implemented a total ban of 'crypto-mining' (i.e. the process of creating new crypto-currency, usually in so-called 'mining farms', which are warehouses where super-computers 'mine' crypto-currency) for, among others, environmental reasons.
- In May 2025, the UK Government published draft statutory provisions that, if formally adopted, will introduce restrictions on crypto-asset activities in the retail sector.

There is yet to be a first (public) investment treaty crypto-arbitration, i.e. a dispute between a foreign investor and a sovereign State/State-owned entity under an international investment treaty in relation to measures adopted that are alleged to cause damage to the investor's crypto-currency business. However, as sovereign States are introducing strict regulations on crypto-currency, the odds of such disputes arising have increased significantly.

Types of relevant State measures

Examples of State crypto-currency measures that could amount to a violation of an international investment treaty include:

- The introduction of stricter requirements for the authorisation/licencing necessary for the operation of crypto-currency platforms, which can result in revocation of licences or rejections of applications.

- The introduction of general prohibitions/ restrictions of crypto-asset trading in a specific sector (e.g. retail sector).
- The adoption of restrictions with respect to 'crypto-mining', e.g. the prohibition of 'crypto-mining farms', as we have seen in Kuwait.
- The imposition of administrative fines and other penalties on crypto-currency businesses for violations of national laws, e.g. lack of registration/ licence to operate in the host State.

This is not an exhaustive list, all would depend on the precise terms of the treaty and the circumstances and impact of the regulation on the foreign investor's investment.

Investment law-related questions

An investment treaty crypto-arbitration would need to overcome the usual significant challenges that arise in investment treaty arbitration.

First, can crypto-assets qualify as protected investments under an international investment treaty? It is conceivable that under an asset-based definition of investments, crypto-assets would qualify as 'any kind of economic asset', 'property rights' or 'any performance under contract having an economic value', by way of example.

Second, is there a territorial link between the crypto-asset as an investment and the host State? Trade of crypto-currency happens via 'blockchain', which is a technology that records all crypto-currency transactions in a decentralised, transparent and cryptographic way. A territorial nexus is not straightforward when all transactions are happening on a server.

Third, what types of investment protection standards could an investment crypto-arbitration trigger? There is a variety of standards under international investment law that could come into play, for instance:

- **Fair and equitable treatment (FET)**: This standard relates to the host State's obligation to *inter alia* observe the investor's legitimate expectations, which form an integral part of FET. Crypto-currency investors will have to establish that the host State made clear representations to foster the investment, i.e. the crypto-asset.
- **Full protection and security**: This standard relates to the host State's obligation to provide the investment with legal protection. This includes the physical integrity of the investment and the investor. For instance, an illegal seizure of a crypto-mining farm or the arrest and detention of the executives of a crypto-currency business (as happened in Nigeria with Binance's executive) could amount to a violation of the standard.
- **Unreasonable or discriminatory measures**: This standard relates to the host State's obligation not to adopt measures that lack foundation, do not serve a legitimate purpose or are prejudicial. Crypto-currency measures, which lack an efficient consultation process with relevant stakeholders, and potentially affected businesses, risk triggering a breach of this standard.

Other traditional investment standards commonly contained in investment treaties, including the prohibition of unlawful expropriation, the most-favoured-nation treatment, or the commitment to observe contractual undertakings (also known as an 'umbrella clause'), might also become relevant in an investment treaty crypto-arbitration.

Conclusion

The global expansion of crypto-currency has led sovereign States to introduce crypto-currency regulations. We anticipate that these regulations will give rise to a wave of investment treaty claims.

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Towers of (re)insurance and arbitration – Halliburton and beyond

The financial impact of mass tort litigation in the US is increasingly reaching higher up the (re)insurance towers of the Fortune 500 companies than ever before.

Caused by more novel causes of action, such as those involving PFAS and opioids – where the class of potential claimants is much wider than just the individuals directly harmed – losses being presented to the market are routinely affecting multiple layers in those insurance towers, with each layer (and each co-insurer within each layer) typically having its own individual arbitration clauses. This is affecting the selection process for suitable arbitrators for those disputes, many of whom, given the insurance market's close connection with London, are appointed in arbitrations seated in England.

The process of selecting suitable arbitrators is of paramount importance in striving to achieve a fair and optimal outcome for both policyholders and (re)insurers. Under English law, the 2020 Supreme Court decision in Halliburton Company (Appellant) v Chubb Bermuda Insurance Ltd [2020] UKSC 48 (the "Halliburton decision") developed the law on which arbitrator appointments might be challenged. The Halliburton decision is the most significant decision impacting the appointment of an arbitration panel, with discussion around potential bias where an arbitrator is appointed in respect of the same subject matter on multiple panels with a common party. We discuss the developing implications of this decision below.

The Halliburton decision

The Halliburton decision involved claims arising out of the Deepwater Horizon incident, in relation to Halliburton's offshore services. Halliburton sought arbitration in respect of Chubb's denial of excess liability coverage under its Bermuda Form policy. Central to the dispute was the appointment of Mr. Kenneth Rokison QC as arbitrator by the English High Court. Issues arose in the context of Chubb having used Mr. Rokison previously, causing Halliburton to seek his removal on the basis of his lack of independence and impartiality. Specifically, Halliburton took the position that there was unconscious bias, allowing Chubb to influence Mr. Rokison with arguments in other matters without the ability for Halliburton to know or answer these arguments due to confidentiality in arbitration.

The Supreme Court ultimately rejected Halliburton's challenge. Among other things, the Court set out the general framework for pre-appointment disclosure of the arbitrator's appointment in other arbitrations over the same subject matter with a common party. The Court confirmed that such duty of disclosure is ongoing, that consent to disclose can be implied in certain circumstances, and such disclosure is required of the arbitrator as a matter of law in the context of Bermuda Form arbitrations. The Court held that the mere fact of appointments with overlapping subject matter with only one common party does not itself give rise to an appearance of bias; it depends on the circumstances, including the custom and practice in arbitrations in the relevant field. The test to be applied is the objective test of apparent bias to a fair-minded and informed observer, taking into account (i) the differing perceptions of the roles of the party-appointed arbitrator, and (ii) the relevant customs and practices in the relevant industry, given the fact

that there are different expectations as to the degree of independence of an arbitrator in different fields.

Post-Halliburton developments

Subsequent case law provides further clarification on the circumstances in which an arbitrator can be successfully removed.

The Supreme Court set the framework for challenging arbitration appointments in circumstances where arbitration is commenced in respect of the same subject matter against different insurers through a (re)insurance tower. Though somewhat vaguely described and necessarily context-driven, subsequent case law has provided some additional context on challenging an arbitration appointment.

In *H1 and another v W and others* [2024] All ER (D) 155, the claimant insurer successfully sought removal of W, a British Film Institute nominated arbitrator, from his role in determining an insurance dispute. The arbitration related to a claim arising from the filming of a television series, involving safety on set and prevalence of risk assessments in Sweden in 2018.

In that case, the arbitrator was successfully removed following comments by which the arbitrator expressed the view that expert evidence was not necessary because he "knew them all personally extremely well on the [insured's] side", and did not know the insurer's expert witnesses. It was not enough for the arbitrator to say he wanted to hear everyone in full, as a fair-minded and informed observer would conclude that the arbitrator would be materially influenced in his assessment of the expert evidence by the extraneous consideration quoted above.

In *Aiteo Eastern E&P Company Ltd v Shell Western Supply and Trading Ltd and other companies* [2024] EWHC 1993, the claimant (a Nigerian company) enjoyed partial success in overturning a series of four partial arbitration awards by a panel appointed by the International Chamber of Commerce on the basis of alleged bias by one of the members of the tribunal, Rt. Hon Dame Elizabeth Gloster DBE. Several lenders to the claimant had alleged breaches of certain facility agreements and commenced arbitration against the claimant. Gloster disclosed that she had been party nominated in two other

unrelated arbitrations in the last two years by parties represented by Freshfields. However, Gloster's clerk inadvertently failed to disclose in her ICC Arbitrator Statement that she gave expert advice in a conference to a client of Freshfields on an unrelated matter. Moreover, following her appointment, Freshfields replaced counsel previously representing the party which had nominated Gloster in yet another unrelated case, and this was not disclosed. The claimant was successful in arguing for Gloster's removal before the Commercial Court, but, unhappy with the ultimate decision reached in the arbitration, then applied to the English High Court to overturn the arbitration decision due to irregularity and bias. The English court was satisfied that this irregularity invalidated one of the partial awards where substantial injustice arose from the fact that the arguments were addressed by a tribunal where one member was affected by apparent bias, and ordered a reconsideration of the same. The remaining decisions were left undisturbed for separate reasons which resolved the apparent bias, including that they were the result of each of the arbitrators reaching the same decision individually and independently.

Thus, it remains possible to exclude an arbitrator for breach of duty to disclose the potential for conflicts alone. One must examine the alleged conflict in context and hold it up to the "fair-minded and informed observer" standard. Factors to consider include:

- repeated nomination by the same party;
- involvement with a party outside of the context of arbitration; and
- comments by the arbitrator that would tend to suggest their impartiality is undermined.

Conclusion

The case law makes clear that all factors must be assessed and weighed separately, leaving it to the parties to raise matters they feel may cause them prejudice in the final outcome of arbitration. The Halliburton decision and subsequent cases ultimately empower the parties to seek to remedy perceived unfairness and replace arbitrators where cause can be established. The parties, and their representatives, should maintain a lookout for such factors described above, to ensure that the high stakes coverage arbitrations (re)insurers and policyholders increasingly find themselves in, reach the best possible conclusion.

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