International Arbitration Focus

Reform

ReedSmith

Contents

Welcome

Welcome to our first Reed Smith International Arbitration (IA) newsletter of 2026.

We have been publishing our IA newsletter for many years now. For this first edition of 2026, we have chosen the topic of reform. In 2025, reform in international arbitration preoccupied not just emergent jurisdictions but also traditional ones. It is a sign of vibrant competition.

In this newsletter, we again call on our wide global network of IA practitioners, who help our clients daily to navigate the ever-changing environment of international arbitration and other dispute resolution tools.

The topic of change is a fitting subject for me personally, as this is my first edition as global chair of Reed Smith's international arbitration practice. At the end of 2025, we said goodbye to former global chair, Peter Rosher, who has started a new chapter in his career and is now taking up appointments as an independent arbitrator, enlarging this part of his practice outside Reed Smith. We would like to take this opportunity to thank Peter for all his leadership of Reed Smith's international arbitration practice over the past four years and look forward to seeing him thrive in the arbitral community in his new role.

Please enjoy this edition of our newsletter.

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Editorial

Reform is about change. The term evokes notions of modernization and improvement. It is suggestive of something being broken and needing repair.

As the contributions to this newsletter reveal, in 2025 there has been much thought given to, and action taken on, reform of arbitral laws. The phenomenon is global. But it is not new to those who have been following the development of international arbitration over the past five or so decades.

In 1505, while in the service of the free Republic of Florence, Niccolò Machiavelli published The Prince. In Chapter VI, while discussing the difficulties that princes have in acquiring a principality, he suggests that "it ought to be remembered that there is nothing more difficult to take in hand, more perilous to conduct, or more uncertain in its success, than to take the lead in the introduction of a new order of things."

In 1916, addressing a business gathering in Detroit, President Woodrow Wilson observed that: "If you want to make enemies, try to change something."

In 1925, but possibly wrongfully attributed, Winston Churchill is said to have adopted the following adage: "To improve is to change, so to be perfect is to have changed often."

In 1962, when addressing Congress, President Kennedy remarked that: "Pleasant as it may be to bask in the warmth of recovery … the time to repair the roof is when the sun is shining."

As is often the case, there is some truth in all such thoughts. Perhaps the most resonant is President Kennedy's admonition to a nation about to enter a long period of growth in a world in which nation states, rather than warring, started competing economically instead. In that world, getting ahead through reform while the sun was shining was no doubt good advice.

Historically, international arbitration has followed the same arc as trade. In a post-WW2 world, it has seen itself as playing a strong part in encouraging trade over war. The use of international arbitration has grown from strength to strength since President Kennedy's words in 1962. The global arbitral community had already put his advice into action, notably with the 1958 New York Convention. The ICSID Convention followed in 1965. Rapid growth in trade in the following decades carried international arbitration with it. BITs were agreed in ever-growing numbers. In this century, the proliferation of arbitral institutions around the world has been a standout feature.

Respecting Winston Churchill's view, in pursuit of perfection, the arbitration world has seen frequent and constant change for decades. Perfection is not obtainable, but striving for it is doable.

And along the way, the change and growth of international arbitration have met their fair share of doubters, refuseniks, and those who positively seek to obstruct its development – the rise (and fall and rise) of investment treaty arbitrations and their treatment in the EU being examples of the behavior predicted by President Woodrow Wilson where meaningful change is pursued.

But more generally, international arbitration has in modern times attracted criticism for having lost its way, for having become too time-consuming and costly. In the inaugural London Arbitration Week earlier this month, such themes were evoked.

So change is needed. But the modern history of international arbitration is that it is in an almost permanent state of change, shaped by new laws, by new guidelines, by leading arbitral and other institutions, and by practitioners and the courts.

So the subject of this newsletter is but a snapshot of a longstanding trend in international arbitration. But as the contributors to this newsletter illustrate, perhaps the speed of change accelerated somewhat in 2025. Certainly, there was much to talk about.

So with perfection being pursued, some enemies being made along the way, and with a healthy nod to Machiavelli's warning about pursuing a new order of things, we hope you will enjoy reading this edition of our newsletter.

As editor now for five years, I am going to take this opportunity to finish on a personal note. As Timothy revealed in the welcome section of this newsletter, Peter Rosher has now left us at Reed Smith for greener, but still arbitral, pastures. On behalf of all of the Reed Smith global IA group, and the wider firm, I take this opportunity to thank Peter for all that he has done to help build out and grow our global IA practice. He was with us for nearly nine years and in that time stepped into the very big shoes of José Astigarraga as global head of arbitration. I cannot think of a better homage than to say he filled those shoes with brio. We wish him well and look forward to staying in touch.

To our readers, as well as enjoying this newsletter, I hope you will have time to enjoy a restful and peaceful year-end.

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French arbitration law reform in prospect

1. France's arbitration reform: promises, pitfalls, and what users should watch out for

France is moving quickly to revise its arbitration framework. At the beginning of 2025, a ministerial working group proposed a comprehensive reform anchored in a standalone Arbitration Code and a near-merger of the rules for domestic and international arbitration (the "**Report**").

The Ministry of Justice has sketched an ambitious timeline for the reform: an initial decree in autumn 2025 on "consensus" issues, a broader consultation in spring 2026 for the harder questions, and codification in autumn 2026. Although, at the time of writing, the first decree has still not been published, the stakes are significant. France's 2011 regime is renowned worldwide for its clarity, modernity, and pro-arbitration stance. Any overhaul must improve usability and international competitiveness without sacrificing stability.

The 2011 regime has held up well in practice. It is coherent, largely settled by both appellate courts and the *Cour de Cassation* (Supreme Court for civil law matters) jurisprudence, and internationally respected. Yet France – like England and Wales and other leading seats – faces an increasingly competitive market for arbitral business. The reform aims to make French arbitration law even more accessible, readable, and exportable, while addressing issues reported by users, particularly in relation to post-award timelines. Users consulted expressed little appetite for wholesale change but support targeted upgrades that would streamline proceedings and reduce the duration of annulment actions.

2. A new arbitration code and quasi-unification of regimes

The flagship proposal is a self-contained Arbitration Code consolidating rules now dispersed in several codes, with the vast majority in the Code of Civil Procedure. Proponents, on the one hand, say codification will improve pedagogy and international readability and promote French arbitration law, in line with France's long-standing efforts to be a leading seat for arbitration worldwide. In addition, it symbolically affirms arbitration's autonomy under French law. Critics, on the other hand, worry about decoupling arbitration from civil procedure, including the unintentional secondary effects of having several provisions governing the same rules, or uncertainty over when and how general civil procedural provisions would fill gaps that would remain, or appear in the future, and the potentially disruptive effect of the proposal on a system that works.

The codification debate is ultimately secondary to the substance: If the new code is coherent and selfsufficient, placement matters less; but if it relies implicitly on civil procedure backstops, the risks of fragmentation and interpretive friction increase.

More consequential is the proposed near-unification of domestic and international regimes. The Report proposes to abandon the current dualism in favor of a common regime, aligning domestic arbitration with the more flexible rules of international arbitration, with limited exceptions. Harmonization of the two regimes reflects longrunning jurisprudential convergence. But international and domestic cases also present different risk profiles and party dynamics, which is why a dual regime had been adopted, and was a distinctive feature of French law until now. Historically, the aim pursued by the French legislator and courts has been to emancipate international arbitration law from the civil procedure rules applicable to domestic arbitration. Certain international flexibilities may be ill-suited to purely domestic disputes, while importing domestic constraints into international cases may blunt Paris' appeal as a seat. Examples illustrate the tension. First, removing the writing requirement for arbitration agreements in domestic cases may expose less sophisticated parties to uncertainty. Second, extending the requirement for an "odd-number tribunal" to international cases seated in France would eliminate party autonomy to constitute even-number tribunals – uncommon but not unheard of in complex contract matrices – and could drive a subset of cases to other seats. Third, the abolition of the appeal for domestic awards (see proposal 31 of the Report), which stems from this unification, might not be warranted because it is seen as a safety net in such cases.

3. Substantive updates worth welcoming – and stress testing

The reform package includes a series of targeted updates that, handled carefully, would modernize and improve practice.

- **Definition and form of awards**. The Report proposes to codify the jurisprudential definition of an award, i.e., the arbitral tribunal's decision that definitively disposes of, in whole or in part, the dispute submitted to it, whether on the merits, on jurisdiction, or on a procedural ground that leads it to terminate the proceedings. It also formally recognizes the validity of electronic awards. These incorporations are welcome, with the caveat that quirks and details will need to be worked out, for example, how electronic awards interact with *exequatur* formalities and what documentary form courts will require.
- **Competence-competence**. The Report proposes to clarify the negative effect of the competence-competence principle, according to which the state judge must decline jurisdiction in the presence of an arbitration agreement, except in specific, narrow circumstances. The clarification given is sensible. However, the proposed new wording may bring uncertainties as to the standard used: The current arbitration law is mandatory, stating that courts "shall" decline jurisdiction (unless narrow exceptions apply), and the draft proposes to replace it with "may," which introduces discretion where certainty is needed. In practice, predictability that state courts will step aside in favor of tribunals – save for manifest invalidity or inapplicability – underpins France's pro-arbitration standing.
- **Composition and capacity of arbitrators**. The Report requires that arbitrators in France be natural persons with legal capacity. This reflects a prudent, human-in-the-loop line at a time of rapid progress in AI-assisted decisionmaking.
- **Supporting judge (*juge d'appui*)**. The Report proposes to expand the *juge d'appui*'s remit to prevent denial of justice, safeguard party equality and autonomy, address impecuniosity, and enforce tribunalordered interim measures. This proposal targets real friction points. The question is not whether state court support should exist, but **when** it is the right tool, and for **what** measures. If institutional rules and tribunal case management can resolve most issues faster and with greater procedural economy, judicial enlargement may add complexity and cost without commensurate benefit. Clear guardrails around timing, scope, and deference to decisions by tribunals and arbitral institutions will be critical.

- **Impecuniosity**. Few issues are harder in a private, feefunded system than what to do when a party cannot pay. The highly innovative proposal to empower the supporting judge to adopt measures enabling proceedings to continue – adjusting the clause to reduce cost, replacing the institution, ordering reducedcost procedures, requiring the respondent to advance costs, or even using a public fund – squarely confronts the problem. But it raises questions of practicality (can a national judge outinnovate an experienced institution?) and party autonomy (how far can and should a judge reengineer the parties' bargain?). Any mechanism should be exceptional, tightly conditioned, and coordinated with institutional process.

- **Interim or provisional relief**. Judicial enforcement of tribunalordered measures is a real area of debate. Today, tribunal or emergency arbitrator orders for interim relief are procedural orders, as opposed to "awards" as defined above. The consequence of this is that they cannot be enforced through *exequatur*, which limits their effect compared with state court measures as they cannot be enforced judicially in France. The Report proposes to adopt a pathway – modeled on the 2006 UNCITRAL Model Law – to have a judge enforce tribunalordered conservatory or provisional measures. This would close a real gap, especially once the tribunal is constituted and recourse to the *juge d'appui* is no longer available to order interim or provisional relief.

- **Exclusive jurisdiction of the judicial judge for annulment proceedings in relation to administrative matters**. Under the current law as applied by the courts, annulment proceedings in relation to arbitral awards are brought before either the judicial courts or the administrative courts, depending on whether French mandatory rules of public law apply. This duality of jurisdiction is a source of uncertainty for both domestic and international users. The proposal assigns exclusive jurisdiction to the judicial judge to decide annulment proceedings on international awards, including those involving the application of French mandatory rules of public law. However, it remains to be seen how France's Supreme Court for public law matters (*Conseil d'Etat*) will react and whether it will allow the administrative courts to be deprived of jurisdiction on this matter. This is in circumstances where the *Conseil d'Etat* provides advisory recommendations, and more generally exercises a strong influence on the French legislative process.

- **Rationalization of the judicial organization of arbitration**. Several proposals aim to specialize the judges involved in arbitration by abolishing the residual jurisdiction of the commercial courts as support judges,[1] by centralizing all international litigation in Paris,[2] and by grouping domestic litigation into specialized units.[3] These reorganization measures are seen as technical and logical clarifications aimed at strengthening the jurisdiction and efficiency of the state courts.

1 Report, p.42, proposal 7.
2 Report, pp.42-43, proposal 8.
3 Report, pp.43-44, proposal 9.

- **Multi-contract arbitration**. The proposals include allowing a single arbitration to encompass claims "based on or related to" multiple contracts where the agreements are compatible and where the joinder serves the "interest of justice." This proposal seeks to reflect the market reality in EPC, project finance, supply chains, and franchise networks, and would be particularly useful in ad hoc cases. However, the vagueness of the criteria set out to extend a single arbitration to multiple contracts invites threshold skirmishes. The chronology, procedural sequencing, and compatibility analysis should be spelled out to minimize satellite litigation.
- **Hearing arbitrators during annulment proceedings**. This proposal aims at enabling the supporting judge or the appellate court in annulment proceedings to "hear" an arbitrator or receive written statements when independence, capacity, or authenticity is at issue. This tool is already available in other jurisdictions (e.g., Switzerland, Spain) but would be a novelty in France. It would permit the judges to obtain a true sense of whether annulment is indeed warranted or not, but also raises real concerns about intruding on the confidentiality of deliberations.
- **Creation of an autonomous procedural regime for post-award litigation before the Court of Appeal**. While the current law provides that the action for annulment is governed by the rules of the Code of Civil Procedure relating to the appeal procedure, the Report provides for the creation of an autonomous procedural regime for annulment proceedings before the Court of Appeal. Although this proposal would enhance the autonomy of arbitration in France, caution has been voiced as to the secondary effects, gaps, and potential contradictions it could bring. On the other hand, the proposed dedicated, accelerated procedure for annulment proceedings – with mandatory timetables, targeted civil fines for noncompliance, and meaningful penalties for abusive challenges – is viewed as an interesting development. This will hopefully contribute to addressing one of the chief user complaints against arbitration.
- **Abolition of the possibility for the parties to waive their right to seek annulment of an award**. Under the current law, the parties can waive their right to seek annulment of an international arbitral award. However, this right does not seem to be used in practice, with only one occurrence having been made public. The abolition has been suggested on the basis that this right is considered ineffective.[4]

4 Report, pp.55-56.

- **Preventive action against foreign awards manifestly contrary to international public policy**. A new action for *inopposabilité* (roughly translatable as "inadmissibility") would allow a party to seek, in advance, to neutralize the *res judicata* effect of a foreign award that is manifestly incompatible with international public policy in France. The instinct – to give parties a shield before recognition is sought – is understandable. The mechanism needs, however, tighter coordination with *exequatur* applications and clarity on the consequences of dismissal; otherwise it will invite tactical filings and delay.
- **Remission to the tribunal during annulment proceedings**. This pragmatic, pro-arbitration, and efficient proposal (taken from the 2006 UNCITRAL Model Law) aims at allowing the court to stay annulment proceedings and remit issues to the tribunal to "regularize" the award for enforcement. This is a novelty under French law. This proposal sensibly prioritizes salvaging awards where possible, for example, allowing the tribunal to address an overlooked publicpolicy point, add reasons, or cure a formal defect. It may also serve to discourage technical challenges without real commercial merit.

4. Practical implications for users and counsel

For parties drafting arbitration agreements or managing Frenchseated cases, several practical effects follow if the reform proceeds on the current lines. First, expect greater emphasis on front-end drafting to avoid later resort to judicial "fixes" around impecuniosity, multi-contract architecture, and interim measures enforceability. Institutional rules will matter even more as a first line of resilience. Where institutional rules already solve the identified problems, parties may prefer to rely on the institution rather than judicial intervention, whose contours may take years to settle. Second, anticipate tighter, more disciplined annulment calendars in Paris and plan post-award strategy accordingly.

5. The path forward: Reform by consultation, not by decree

France has an opportunity to fine-tune a strong system and reinforce Paris' appeal as a seat, particularly by accelerating post-award proceedings and enabling enforcement of tribunalordered interim measures. But structural choices – the shift to a standalone code and a quasimonistic regime – carry risks if they are pursued too quickly or without broad input. There is ongoing wide and in-depth consultation with practitioners, institutions, and, critically, users.[5] This should shape the final text, with the aim to see final reform delivering clarity and efficiency while preserving the legal certainty that users of arbitration prize.

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5 As this newsletter was being finalised, the French Ministry of Justice published a draft decree intending to reform French arbitration law and launched a public consultation, calling on users to comment individually on the suggested amendments.

China adopts major amendments to the Arbitration Law

The arbitration law currently in force in China was adopted in 1994 and underwent partial amendments in 2009 and 2017 (the current Arbitration Law).

On September 12, 2025, the seventeenth meeting of the Standing Committee of the Fourteenth National People's Congress (NPC) adopted the newly revised Arbitration Law of the People's Republic of China (the Arbitration Law 2025), bringing significant reform to the existing regime. The revisions will take effect on March 1, 2026.

In this article, we outline the key amendments brought about by the Arbitration Law 2025, which should be borne in mind when assessing the business implications and strategic considerations for industry players.

Key amendments

1. Improvement of foreign-related arbitration system

Scope of arbitration cases: In China, there is a clear distinction between arbitration in respect of purely domestic disputes and foreign-related arbitration, and a foreign arbitral institution is not allowed to administer purely domestic disputes.

The Arbitration Law 2025 broadens the definition of "foreign-related arbitration" to include "other foreign-related disputes" (Article 78). Under the current Arbitration Law, the scope of foreign-related arbitration is limited to "arbitration of disputes arising from foreign-related economic trade, transportation, and maritime matters." On top of that, the Arbitration Law 2025 adds a catch-all provision for other foreign-related disputes, thereby moderately expanding the range of cases eligible for foreign-related arbitration.

Such expansion widens the scope of cases that can be administered by a foreign arbitral institution, in turn offering more dispute resolution choices to the parties.

Seat of arbitration: The Arbitration Law 2025 codifies the concept of "seat of arbitration" in foreign-related arbitration cases. It allows the parties to choose the seat of arbitration, and unless otherwise agreed by the parties, such seat of arbitration determines the applicable procedural law in the arbitration and the court with jurisdiction over the arbitral proceedings (Article 81). The Arbitration Law 2025 fills a critical legal gap by adopting the internationally recognized concept of the seat of arbitration, a concept that the current Arbitration Law does not acknowledge.

Foreign arbitral institutions: Another much welcomed amendment is officially opening up the Chinese arbitration market by permitting foreign arbitral institutions to operate in certain areas in China and handle foreign-related disputes (Article 86). That is, foreign arbitral institutions are allowed to set up offices in areas approved by the State Council, such as the pilot free trade zones (FTZs) and Hainan Free Trade Port, and to conduct foreign-related arbitration activities in accordance with relevant PRC regulations. This enhances the international compatibility and flexibility of China's arbitration system.

Ad hoc arbitration: The Arbitration Law 2025 also brings another breakthrough – the introduction of ad hoc arbitration in China. Under the current Arbitration Law, while a foreign ad hoc arbitration award is generally recognized and enforced in China pursuant to the New York Convention, ad hoc arbitration in China is not recognized for want of designation of an arbitration commission. Pursuant to Articles 16 and 18 of the current Arbitration Law, an arbitration agreement must include the following: (1) an expression of intent to submit disputes to arbitration; (2) the scope of disputes for arbitration; and (3) a selected arbitration commission. Due to

the third requirement, an ad hoc arbitration agreement, which does not provide for an arbitration commission, is considered invalid under the current Arbitration Law.

However, over the past decade, to meet the needs of opening up and the development of specific fields, several pilot regions have been introduced in China to explore the recognition of ad hoc arbitration within China. For example, the PRC Supreme People's Court issued an Opinion in 2016 that provides that where enterprises registered in an FTZ agree with each other to arbitrate a dispute at "a specific location in Chinese Mainland," according to "specific arbitration rules" and by "specific arbitrators," such arbitration agreement may be deemed valid.[1] While this Opinion does not expressly mention ad hoc arbitration, it is commonly considered to have laid down a pioneering foundation for the introduction of ad hoc arbitration in FTZs. Following issuance of the Opinion, regional pilot practice of ad hoc arbitration in certain types of cases (e.g., resolution of disputes between enterprises registered in FTZs) can be seen in, for instance, the Shanghai Municipality, the Hainan Free Trade Port, and Hengqin FTZ.

Following the regional experiment, the Arbitration Law 2025 formally introduces ad hoc arbitration nationally. Parties may now agree to ad hoc arbitration for two specific types of cases, namely (1) foreign-related maritime disputes and (2) foreign-related disputes between enterprises registered in the pilot FTZs, the Hainan Free Trade Port, and other approved areas.

(1) In foreign-related maritime disputes, the scope may be defined by reference to the list in Article 6 of the Special Procedures for Maritime Litigation of the PRC, including maritime torts, maritime transport contracts, ship leasing, ship sale and construction, and marine insurance.

(2) In foreign-related disputes between enterprises in specific regions, such regions include the 22 pilot FTZs established with the approval of the State Council, the Hainan Free Trade Port, and other areas designated by the government. The determining factor is whether the registered address on the enterprise's business license is located within such zones and areas.

The Arbitration Law 2025 marks the introduction of ad hoc arbitration with Chinese characteristics. Firstly, it is limited to disputes with foreign-related elements, such as disputes involving parties with foreign connections, legal facts occurring abroad, or subject matter located overseas (Article 520 of the Judicial Interpretation of the Civil Procedure Law of the PRC). Further, parties are required to appoint arbitrators that meet

1 Reference: *Opinions of the Supreme People's Court on Providing Judicial Guarantee for the Development of Free Trade Zones*

the criteria specified in the Arbitration Law 2025, including both qualification requirements and ethical standards. Last but not least, an additional requirement is for the arbitral tribunal to file details of the arbitration (including the names of the parties, seat of arbitration, composition of the arbitral tribunal, and arbitration rules) with the China Arbitration Association (Article 82), a self-disciplinary organization of arbitral institutions.

This reform marks a significant shift from traditionally relying solely on institutional arbitration to gradually aligning with accepted international practice and embracing ad hoc arbitration. However, given its limited scope, the extent to which ad hoc arbitration will be used remains to be seen in practice.

2. Recognition and enforcement of arbitral awards made outside of China

Prior to the Arbitration Law 2025, the legal framework governing the recognition and enforcement of foreign arbitral awards was primarily set out in the Civil Procedure Law. In alignment with the Civil Procedure Law, the Arbitration Law 2025 now clearly provides which PRC court parties should apply to for the recognition and enforcement in China of a foreign arbitral award. An award creditor may apply to the intermediate people's court at the place where the award debtor resides or where the award debtor's assets are located. If the award debtor's domicile or location of assets is not within the territory of the PRC, the award creditor may apply to the intermediate people's court at the place where the award creditor resides or at a place with an appropriate connection to the dispute. Further, the courts shall handle such matters in accordance with the international treaties concluded or acceded to by the PRC (e.g., the New York Convention), or based on the principle of reciprocity (Article 88).

The same article further introduces a mechanism pursuant to which, in the event of a foreign arbitral institution imposing restrictions or discriminatory measures against PRC parties (including citizens, legal persons, and other organizations of the PRC), the relevant PRC authorities are allowed to implement reciprocal countermeasures against the citizens of, and enterprises and other organizations in such foreign countries. It is expected that the exact countermeasures to be implemented will depend on the actual circumstances.

3. Modernization of arbitration procedures

Principle of independence and jurisdiction: The Arbitration Law 2025 confirms that the validity of an arbitration agreement is not affected by the validity of the underlying contract (Article 30). It further confirms that, in addition to the People's Court and the arbitral institution, the arbitral tribunal also has the power to determine the validity of an arbitration agreement (Article 31). However, where one party requests a determination on the validity of an arbitration agreement from the arbitral institution or tribunal while the other party requests a determination from the PRC court, the application to the court shall prevail. The regime can be considered a partial adoption of the internationally recognized *kompetenz-kompetenz* principle.

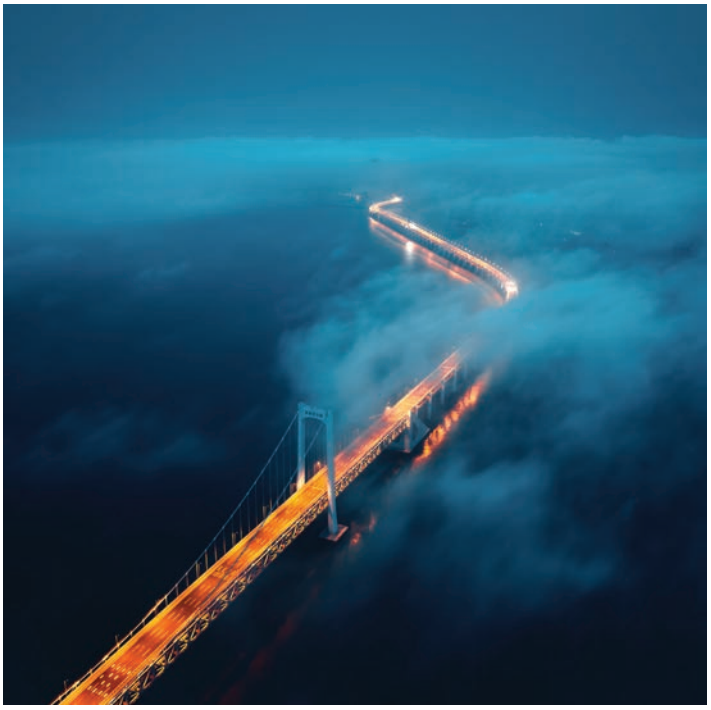
Disclosure obligations for arbitrators: The Arbitration Law 2025 requires an arbitrator to disclose in writing to the arbitral institution circumstances that may give rise to reasonable doubts as to the arbitrator's independence or impartiality upon becoming aware of such circumstances. The arbitral institution should in turn notify the parties to the arbitration about such disclosure (Article 45). Although the main arbitral institutions in China have provided for disclosure requirements in their rules, these statutory provisions offer a clearer and more uniform standard.

China adopts major amendments to the Arbitration Law

Interim measures: The current Arbitration Law only explicitly stipulates two categories of interim measures: property preservation and evidence preservation. While in practice, prior to the reform, courts may make injunctive orders against a party (i.e., ordering a party to perform or refrain from performing a specific act) on a case-by-case basis to protect the relevant parties' rights, there was no clear legal basis for such orders. The Arbitration Law 2025 formally introduces injunctions, in the form of conduct preservation, as a third category of interim measures.

Additionally, prior to the Arbitration Law 2025, the legal framework governing applications for interim measures (i.e., evidence preservation and property preservation) in urgent circumstances prior to application for arbitration was primarily set out in the Civil Procedure Law (Articles 84 and 104). In alignment with and further to the Civil Procedure Law, the Arbitration Law 2025 now clearly provides that parties to an arbitration agreement can apply to the PRC court for the preservation of evidence or property, or for an injunctive order against a party in urgent circumstances prior to the commencement of arbitration proceedings. If the applicant fails to commence arbitration within 30 days of the adoption of preservation measures by the court, the court shall lift such measures (Articles 39 and 58).

Service: The Arbitration Law 2025 provides that all documents related to the arbitration shall be served in a reasonable manner as agreed upon by the parties. In the absence of clear agreement, such documents shall be served in the manner prescribed by the applicable arbitration rules (Article 41). This article reminds parties to the arbitration to specify accurate methods of service in the arbitration agreement, so as to better safeguard their own legitimate rights and interests.



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4. Promotion of innovations in arbitration practice

While online arbitration has taken place in China for some time, the Arbitration Law 2025 offers a clear and explicit legal basis, with the agreement of the parties, for online arbitration to have the same legal effect as traditional arbitration (Article 11).

Summary

The Arbitration Law 2025, building on over 30 years of practical experience, incorporates international best practices to modernize China's arbitration framework. It refines provisions governing domestic arbitration, while modernizing the foreign-related regime through the introduction of key concepts, such as seat of arbitration and ad hoc arbitration, bringing China's system into closer alignment with international practice.

Key changes introduced by the UK Arbitration Act 2025

The Arbitration Act 2025 (the Act) came into force on August 1, 2025, introducing long-anticipated reforms to the Arbitration Act 1996 that will have a direct impact on businesses in the UK and internationally.

The Act is the biggest change in arbitration law in England, Wales, and Northern Ireland since 1996 and will have a major impact on London-seated arbitrations.

Although the Act represents the biggest change in arbitration law in those jurisdictions for almost 30 years, it is perhaps best seen as introducing important, targeted amendments to the previous position rather than initiating a wholesale revolution.

The Act features enhancements aimed at improving the speed, cost-effectiveness, efficiency, and enforceability of arbitrations and will cement London's popularity as a seat of arbitration.

The Act is based closely on recommendations made by the Law Commission, the statutory body tasked by the UK government with reviewing the law. Although the existing arbitration law was already seen as arbitration-friendly and has helped London to become one of the world's preeminent arbitration centers, the UK government decided to update it to ensure that modern UK arbitration law remains fit for purpose.

Reed Smith was one of the law firms that fed into, and was quoted in, the reports prepared by the Law Commission upon which the Act was based. At the time that those reports were issued, Reed Smith also published a series of thought leadership pieces dealing with the proposed changes.

Overview of key changes introduced by the Act

1. **Summary disposal of issues**: The Act introduces a new power for an arbitral tribunal to make an award on a summary basis upon an application by one of the parties if there is "no real prospect of success." This is the same threshold applied in court proceedings in England and Wales. This will encourage changes to London-seated arbitrations and could have significant implications when deciding whether to choose London as an arbitral seat and for case strategy.

2. **Changes in the method used to determine the law applicable to the arbitration agreement**: The Act introduces a default rule that an arbitration agreement is governed by the law of the seat unless expressly agreed otherwise by the parties. This new statutory rule replaces the previous common law position established by the UK Supreme Court in *Enka v. Chubb* (2020), which held that an arbitration agreement is typically governed by the law of the underlying contract unless expressly stated otherwise. Again, this marks a significant change in English arbitration law.

3. **Changes to jurisdictional challenges**: The Act provides clarity on challenging the jurisdiction of arbitral tribunals before the English courts. The Act provides that, if an arbitral tribunal has ruled on its jurisdiction, the parties can only file an application under section 67 of the Arbitration Act 1996 and the courts can no longer entertain any new grounds of objection or any new evidence, or rehear evidence already heard by the arbitral tribunal, subject to certain limited exceptions. This aims to prevent the losing party before an arbitral tribunal from seeking an expensive full rehearing before an English judge. The Act also limits applications for a jurisdictional ruling from the English courts under section 32 (determination of preliminary point of jurisdiction) of the Arbitration Act 1996 to situations where the arbitral tribunal has not yet ruled on the jurisdictional question in issue.

4. **Enhanced disclosure requirements to give further confidence in impartiality of arbitrators**: The Act introduces a statutory and ongoing duty on prospective and sitting arbitrators to disclose, as soon as reasonably practicable, any circumstances that might reasonably give rise to justifiable doubts as to their impartiality.

5. **Immunity of arbitrators**: The Act provides that an arbitrator will not be liable for the costs of an application to court for their removal, unless the arbitrator has acted in bad faith, and will be immune from the consequences of resignation, provided that the resignation was not unreasonable.

6. **Court powers exercisable in support of arbitral proceedings and emergency arbitrators**: Under section 44 of the Arbitration Act 1996, the UK courts can make orders regarding the taking of witness evidence, preservation of evidence, relevant property, the sale of goods, interim injunctions, and the appointment of a receiver. The Act makes clear that such court orders can now be made against third parties. Further, the existing scheme in relation to non-compliance with an arbitrator's order, including the possibility of issuing a peremptory order or applying to court to order compliance, has been extended to emergency arbitrators.

We deal with each of these key changes in further detail below.

1. Summary disposal of issues

The Act introduces a new power[1] that allows an arbitral tribunal, following the application of a party, to make an award if a claim or issue (or a defense to a claim or issue) has no "real prospect of succeeding." The arbitral tribunal is required to give the parties a "reasonable opportunity to make representations" with respect to any such application for an award.

Previously, a key difference between English courts and English-seated arbitrations was that the courts could (and regularly would) dismiss meritless claims at an early stage, whereas such an approach was much rarer in arbitration.

Before the Act, arbitrators already had a statutory duty to adopt procedures to avoid unnecessary delay and expense[2] and, depending on the applicable institutional rules, also had summary disposal powers, but they did not have the same express powers to dismiss meritless claims as those that were spelled out in the courts' procedural rules.

In practice this meant that, prior to the introduction of the new power under the Act, even legally hopeless claims could sometimes be the subject of drawn-out arbitration, in the hope that an opponent might opt for settlement rather than spend time and money taking an arbitration through to the final merits hearing.

The practical impact of this change is significant and should not be underestimated. It fundamentally shifts how businesses involved in, or planning to use, London-seated arbitrations should approach arbitration planning and strategy.

It is foreseeable that summary disposal applications will become a common feature of English-seated arbitration, rather like how strike-out applications for delay did when section 41(3) was introduced in 1996, and will be deployed in a highly strategic fashion.

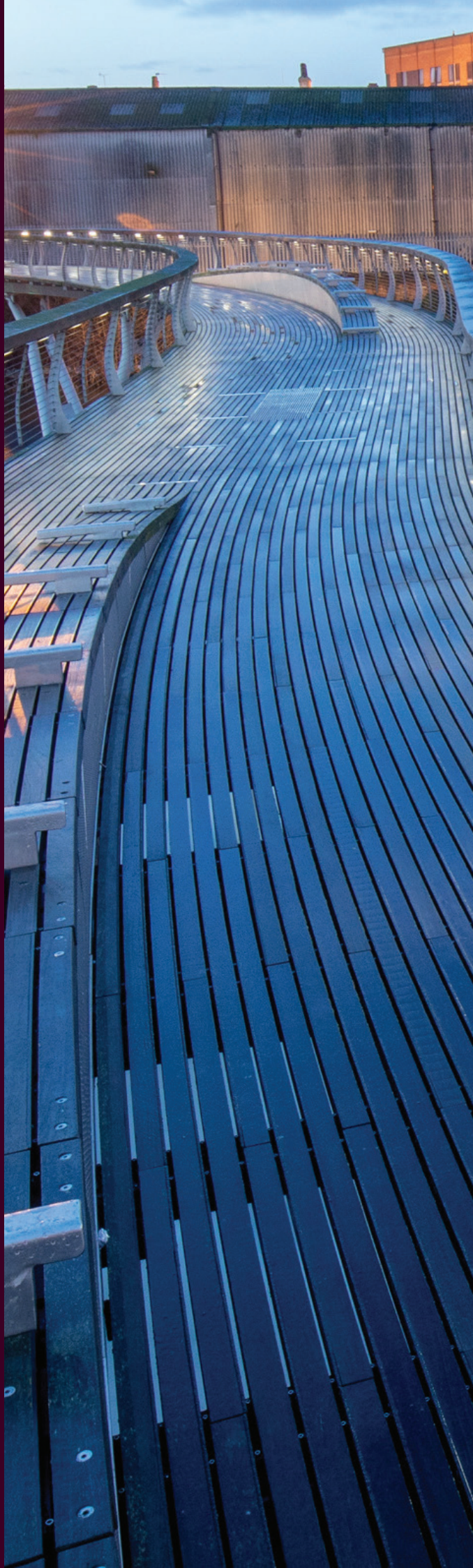
Bearing that in mind, we would make the following observations about the practical consequences of this reform:

- **Summary disposal will not be available in all types of case.** English case law does not view summary disposal as appropriate for all kinds of cases. Summary disposal is rare where factual evidence is required to determine an issue because such cases by their nature require a tribunal to hear evidence at trial. This will include, for example, situations where one side alleges that a contract has been orally formed or varied, or that a term has been orally waived. Similarly, summary disposal is generally not suitable where a case turns on complex technical issues (such as delay or disruption cases in the construction or engineering industry, or cases dealing with defects), which often require expert evidence. Summary disposal may also not be suitable in certain professional negligence cases because of the requirement for expert evidence regarding the appropriate standards expected of the profession in question.

1 Arbitration Act 1996, section 39A.
2 Arbitration Act 1996, section 33(1)(b).

Key changes introduced by the UK Arbitration Act 2025

- **Time bars.** Arguments about the meaning and effect of contractual time bars will be front-loaded and take on additional importance (especially given the difficulties mentioned above with regard to securing summary disposal where there are complex factual or technical issues). Time bars that are expressed in clear, unambiguous terms as acting to prevent otherwise meritorious claims are enforceable in English law and could therefore potentially form the basis of an application for summary disposal, depending on the particular circumstances of the matter. Such provisions are particularly common in, for example, standard form construction contracts requiring notice of claims to be given within specified periods. Expect also to see an increased focus on issues around whether a party had de facto or constructive notice of events, with factual evidence playing a key role in frustrating attempts to summarily dispose of issues without a full trial.
- **Be careful about alleging fraud.** The English courts (and potentially, by extension, English-seated arbitral tribunals) are reluctant to make a finding of dishonesty without allowing the defendant the opportunity to address the allegations. Where summary disposal is strategically desirable, a party must be careful when alleging fraudulent conduct because this argument may backfire. The tribunal might be reluctant to deprive the opposing party of the opportunity to rebut the allegations and might dismiss the application for summary disposal for this reason. A defense argument based on the protection of reputation may have lesser force in confidential arbitration than in public litigation before the courts, but one can still foresee similar arguments being made before arbitral tribunals.
- **Enforceability.** Arbitrators are under a statutory duty to give each party a reasonable opportunity to put their case, failing which their award could be challenged before the domestic courts, and recognition and enforcement of an award could also be refused by foreign courts. Historically, this statutory duty of arbitrators was at the source of the differing approach to summary disposal between the English courts and English-seated arbitrations. The question remains whether, with the inclusion of an express power of summary disposal, a foreign court would nevertheless refuse enforcement on the basis that the losing party was not afforded sufficient opportunity to put its case. An arbitral claimant may elect not to apply for summary disposal to limit enforcement difficulties in a specific jurisdiction, in particular regarding summary awards.



- **Timing of applications: expert evidence and discovery.** Expect to see arguments that summary disposal should only be available after discovery of documents and/or after expert evidence has been exchanged. Case law suggests that summary disposal will only be ordered in cases that revolve around expert evidence after the exchange of experts' reports. Arbitral tribunals will not want to endorse "fishing expeditions" for documents, but equally, they will not be inclined to summarily dispose of a claim if a party can show that would be premature before it has had the opportunity to consider the other side's document production.
- **Choice of arbitral rules and drafting of arbitration clauses.** The choice of specific institutional rules and the way they interplay with the new statutory summary disposal power will be important. Some institutional rules already envisage summary disposal, while others do not, and the relationship between such rules (or the absence of them) and the Act may give rise to arguments as to what the parties have agreed with respect to summary disposal. In the event the parties are against summary disposal, it is advisable for the arbitration agreement to expressly record their agreement on this, as contemplated by the new section 39A.

In summary, although many practitioners welcome the introduction of an express power to summarily dispose of issues in English-seated arbitration, this raises important practical and strategic considerations that arbitration users should have at the forefront of their minds when arbitrating in England and Wales or Northern Ireland, including using lawyers familiar with the "no real prospect of succeeding" test.

2. Changes in the method used to determine the law applicable to the arbitration agreement

The Act provides that an arbitration agreement will be governed by the law of the seat of arbitration, unless the parties expressly agree otherwise.

The previous common law position, established by the UK Supreme Court in *Enka v. Chubb*,1 involved a complex multi-stage test, which provided that, in the absence of an express choice, the governing law of the arbitration agreement would be the same as the governing law of the main contract, subject to certain key exceptions and provisos. Those provisos included that, in the absence of a choice of law governing the main contract, the law with the closest connection would apply, and that this would usually (but not always) be the law of the seat of arbitration. The *Enka v. Chubb* approach was criticised by some for being too complex and uncertain.

The law governing the arbitration agreement is important because it determines key issues such as: (i) whether the

1 [2020] UKSC 38. The Supreme Court also maintained its decision in *Enka v. Chubb* in *UniCredit Bank GmbH v. RusChemAlliance LLC* [2024] UKSC 30.

arbitration agreement is separable from the main contract such that it survives the termination of the main contract; (ii) what issues can be arbitrated under the arbitration agreement; (iii) whether the arbitration agreement can be modified or terminated by the parties, and if so, how; and (iv) whether the arbitration agreement is unenforceable because it runs counter to public policy, such as local consumer protection laws.

The change introduced by the Act has the following significant implications:

- When drafting contracts, businesses should have in mind that an agreement that a particular law applies to the main contract (such as is often contained in the standalone boilerplate governing law clause) does not mean that the same law will also apply to the arbitration agreement. In the absence of an express choice in the arbitration agreement, the law of the seat will govern the arbitration agreement.
- If London is specified in the contract as the seat of arbitration, then English law will govern the arbitration agreement. This will be welcomed by many parties, given the English courts' pro-arbitration stance and expertise in dealing with (and supporting) arbitrations.
- Following the change, we expect to see a reduction in satellite arguments over the legality and scope of the arbitration agreement, but it remains good practice for parties to specify the governing law of the arbitration agreement expressly in their contracts, as this is the surest way of guaranteeing clarity and certainty.
- The common law *Enka v. Chubb* position continues to apply to non-ICSID investor-state arbitration agreements and arbitral or court proceedings started under arbitration agreements before the Act came into force, on August 1, 2025.

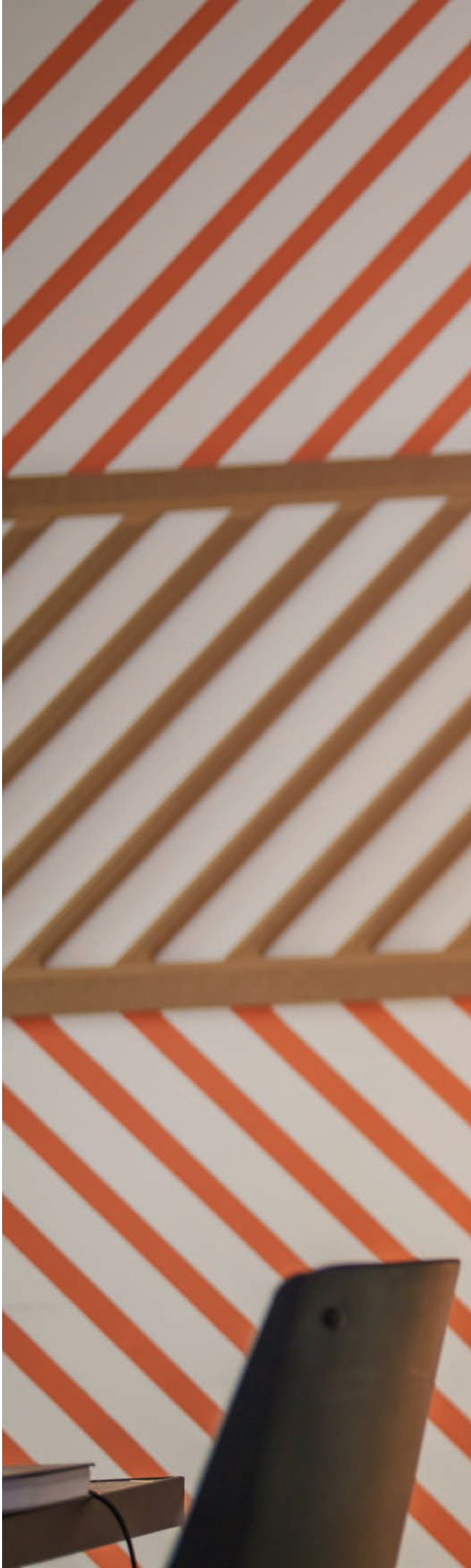
Practitioners and users of arbitration alike will likely welcome the shift away from a complex and uncertain common law legal position toward a new statutory rule that is easy to apply.

3. Changes to jurisdictional challenges

The Act delineates more clearly the two main tracks for making a jurisdictional challenge – under section 32 and section 67 of the Arbitration Act 1996.

The reform clarifies that the right under section 32 of the Arbitration Act 1996 to ask the court to decide the question of the tribunal's jurisdiction is available only where the tribunal has not already ruled on the jurisdictional question in issue.

Pursuant to the Act, where the tribunal has already ruled on its



jurisdiction and the objecting party participated in the process, any subsequent challenge to an award under section 67 of the Arbitration Act 1996 due to a lack of substantive jurisdiction will now be by way of review only and not a full rehearing.

This change should reduce the risk of unfair or wasteful repetition that can potentially result from a full rehearing. The ability to introduce new arguments or evidence, or have old evidence reheard, is limited to exceptional situations only.

Challenging jurisdiction in London-seated arbitration

The underlying principle when addressing the jurisdiction of an arbitrator in London-seated arbitration is simple – an arbitral tribunal can decide the matters put to it only if it has substantive jurisdiction. It will have substantive jurisdiction where three conditions are met: (i) there is a valid arbitration agreement; (ii) the tribunal is properly constituted; and (iii) the matters it has been asked to decide have been submitted to arbitration in accordance with the arbitration agreement.[1]

Under the Arbitration Act 1996, all tribunals have the competence to rule on their own jurisdiction.[2] However, where one party believes that the tribunal lacks substantive jurisdiction, it can challenge it in one of three ways:

1) under section 32 of the Arbitration Act 1996, it is possible to ask the English court to decide whether the tribunal has substantive jurisdiction, provided that both parties agree to this or the tribunal permits it despite the other party's objection;

2) under section 72(1) of the Arbitration Act 1996, the party can seek a declaration or injunction from the court, but only if they take no part in the arbitral proceedings; and

3) under section 67 of the Arbitration Act 1996, the party can challenge the tribunal's award on the basis that the tribunal lacked substantive jurisdiction.

Section 67 jurisdictional challenge generally now a review, not a full rehearing

Previously, pursuant to the Supreme Court decision in *Dallah Real Estate & Tourism Holding Co v. Ministry of Religious Affairs of the Government of Pakistan*,[3] jurisdictional challenges under section 67 had to proceed by way of a full rehearing that disregarded the tribunal's own findings on the question of jurisdiction.

As a result of the change introduced by the Act, English courts will **not** now approach section 67 challenges as a full rehearing. If the applicant has already taken part in the arbitration and provided that the interests of justice do not provide otherwise, then any grounds for objection or evidence already considered by the arbitral tribunal cannot be reconsidered by the court, nor can new grounds for objection or evidence be considered. This is subject to the proviso that new grounds for objection or new evidence will be admissible if the applicant did not know and could not, with reasonable diligence, have discovered the grounds or put forward the evidence to the arbitral tribunal.

This change should reduce the delay and costs that otherwise result from repetition. It also promotes efficiency by forcing an objecting party to make all its objections up front, rather than deploying them in waves.

Under the previous regime, a full rehearing gave the losing party a second bite of the cherry having learned from the arbitral tribunal's criticism of its original position. Previously,

1 Arbitration Act 1996, sections 82(1) and 30(1)(a)-(c).
2 Arbitration Act 1996, section 30.
3 *Dallah Real Estate & Tourism Holding Co v. Ministry of Religious Affairs of the Government of Pakistan* [2010] UKSC 46, [2011] 1 AC 763.

with a full rehearing, the losing party could potentially try to put its case differently to the court – perhaps using new arguments and new evidence – in an attempt to cure any deficiencies identified by the arbitral tribunal. At its most extreme, this incentivized a highly tactical approach to the initial challenges before the arbitral tribunal and led some parties to treat that stage as a mere dress rehearsal before making a challenge in court.

Although the court's prior case management powers already allowed it to control to a degree what arguments and evidence are put before it, there was little specific guidance on this particular issue, and so the changes introduced by the Act bring welcome clarity.

The Act also clarifies that a tribunal can still award costs even if it rules it lacks substantive jurisdiction over the main dispute.1

Clarifying the role of section 32 of the Arbitration Act 1996

Following the changes introduced by the Act, it is now clear that if an arbitral tribunal has already ruled on its jurisdiction, parties cannot then challenge jurisdiction in the courts in respect of a question on which the tribunal has already ruled using section 32 of the Arbitration Act 1996.

Prior to the change, it was arguable that section 32 could be used after the arbitral tribunal had already ruled on its jurisdiction.2 Having an alternative or additional route via section 32, in addition to section 67 (see above), created unnecessary complexity and uncertainty.

It is arguable that section 32 may still yet be open after a tribunal has ruled on questions of jurisdiction if the question of jurisdiction in issue has not been ruled on by the tribunal. In practice, this may be theoretical given that either the parties' agreement or the tribunal's permission is required (and the tribunal may well be relevantly *functus*). However, it may not be theoretical (or at least neutral) if a disgruntled party is looking to exploit any "new" jurisdictional question for enforcement purposes outside the UK.

Practical issues

The changes to jurisdictional challenges under section 67 and section 32 are likely to be welcomed by the majority of practitioners and arbitration users because they should improve cost-efficiency and increase procedural predictability.

Some important practical implications flow from the changes:

- **Exceptions to the prohibitions.** The prohibition on bringing new arguments or evidence in a section 67 challenge does not apply where it was not possible with "reasonable diligence" to put the arguments or evidence

1 Arbitration Act 1996, section 61(1A).
2 *Film Finance Inc v. Royal Bank of Scotland* [2007] EWHC 195 (Comm), [2007] 1 Lloyd's Rep 382.

in question before the tribunal. Similarly, the rehearing of original evidence will not be prohibited where necessary "in the interests of justice." Both caveats are vague and untested in the current context. The Law Commission suggested that "interests of justice" could cover situations where the record of the original evidence is unavailable or possibly where one party's evidence was not admitted by the arbitral tribunal, depending on the specific reasons for this non-admission. However, the Law Commission's commentary is non-binding and adds little clarity. Expect to see these two caveats tested and the position to remain uncertain until ruled upon by the courts.

- **Threshold for participation.** The new prohibition on rehearing applies only where the objecting party had already participated in the arbitration before the arbitral tribunal ruled on its jurisdiction. Otherwise, the section 67 challenge constitutes the objecting party's first chance to present their challenge, and no concerns as to repetition or second bites of the cherry arise. It is not entirely clear what steps or actions will count as "took part in the arbitration proceedings" in practice. Some guidance may arguably be derived from the courts' approach to section 73(1) of the Arbitration Act 1996, but this is not a perfect analogy since the context, intended effect, and wording of the two provisions are not identical. This could be another hotly contested area.

- **Issue estoppel.** Many commentators have expressed concerns that a section 67 challenge that is not a full rehearing may not be enough to trigger an issue estoppel when enforcing the award abroad. The objecting party could then launch yet another jurisdictional challenge before the foreign enforcing court. The resulting delays and increased costs would likely be much greater than the savings made by avoiding a full rehearing in England. The Law Commission was not convinced about the significance of this risk, in part because it expects that foreign courts will still find an issue estoppel even in the absence of a full rehearing. However, given the differences between judicial attitudes across the globe, this is not a universally safe assumption, especially when it comes to jurisdictions where achieving a quick and easy enforcement against local counterparties is already seen as difficult. The Law Commission pointed out at the consultation stage that the objecting party is not required to use section 67 as a precondition to challenging the enforcement of the award before a foreign court. However, this does not alleviate the risk that parties will in fact still use section 67 first, including specifically to gain the same tactical advantage that the reform is intended to protect against – getting two bites of the cherry.

4. Enhanced disclosure requirements to give further confidence in impartiality of arbitrators

The Act requires potential and appointed arbitrators to disclose any circumstances of which they are aware (or ought reasonably to be aware) that might give rise to justifiable doubts as to their impartiality. The Act also provides that disclosure is a continuing duty and must be made as soon as reasonably practicable. This duty is mandatory and applies regardless of any contrary agreement by the parties.

The codification of the arbitrator's duty of disclosure is better seen as a useful restatement of the current law rather than a revolution. That is because section 33 of the Arbitration Act 1996 already imposes a duty on arbitrators to act fairly and impartially, and in *Halliburton v. Chubb*[1] the UK Supreme Court confirmed that this duty required arbitrators to disclose circumstances that might give rise to justifiable doubts as to their impartiality.

5. Immunity of arbitrators

The Act enhances arbitrators' immunity from personal liability in the following two ways:

- First, arbitrators who resign will not be held personally liable unless it is shown that their resignation was unreasonable in all the circumstances.[2]

- Second, arbitrators will not be liable for the costs of a court application for their removal unless they have acted in bad faith.[3]

These two changes bolster the existing protections that arbitrators already have under section 29 of the Arbitration Act 1996, which provides that an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of their functions as arbitrator unless the act or omission is shown to have been in bad faith. The two changes now close two potential previous routes around the section 29 protections. This should promote the integrity and impartiality of arbitration by encouraging arbitrators to act in line with their obligations, without fear of personal liability.

The practical implications of these changes include:

- **Ongoing uncertainty in the scope and application of arbitrators' duty of disclosure.** While the duty of disclosure is now codified, its precise scope remains somewhat vague, such as the extent of an arbitrator's duty to investigate potential conflicts or the specific circumstances that must be disclosed. This reflects the fact that arbitration is used in a wide variety of industry sectors and the circumstances that might reasonably give rise to

1 *Halliburton Company v. Chubb Bermuda Insurance Ltd* [2020] UKSC 48.
2 Arbitration Act 1996, section 29(4).
3 Arbitration Act 1996, section 24(5A).

justifiable doubts as to an arbitrator's impartiality may well vary from field to field. Future case law will therefore be crucial in defining the boundaries of this obligation and the consequences of non-disclosure of specific types of circumstance.

- **Stronger protections for arbitrators.** By limiting arbitrators' exposure to personal liability in resignation and removal scenarios, the Act reduces the risk of parties using threats of legal action as a tactic to pressure arbitrators. This protection should foster more independent and confident arbitral tribunals.

6. Court powers exercisable in support of arbitral proceedings and emergency arbitrators

Court orders against third parties

Section 44 of the Arbitration Act 1996 governs the courts' powers to grant interim measures in support of arbitration.

Under section 44, an arbitral tribunal seated in England has the same power as the English courts to make orders regarding: (a) the taking of the evidence of witnesses; (b) the preservation of evidence; (c) the inspection, photographing, preservation, custody, or detention of property related to the arbitration, or the taking of samples from, observation of, or experiment on such property; (d) the sale of any goods the subject of the arbitration; and (e) the granting of an interim injunction or the appointment of a receiver.

The Act now explicitly confirms that orders under section 44 may be made "whether in relation to a party **or any other person** [emphasis added]." Accordingly, under section 44, orders can be made with respect to third parties to an arbitration. This addresses prior ambiguity and inconsistencies in case law.

This clarification strengthens the courts' role in assisting arbitration while preserving procedural protections available to third parties. However, while this amendment resolves uncertainty, the application of section 44 to third parties remains subject to complicated case law concerning the application of the measures set out in section 44, and its exact application to each specific case will depend on the specific requirements for each individual measure.

Even with that caveat, the proposed clarification is a positive step, offering enhanced support for the arbitral process and bolstering the protection of crucial elements such as evidence.

Third-party rights of appeal

The explicit extension of section 44 to third parties raises an important question: What rights do third parties have to appeal such orders?

Section 44(7) of the Arbitration Act 1996 has been amended so that third parties have a right to appeal without requiring the court's consent, which, conversely, a party to arbitration must obtain.

This distinction reflects a fundamental difference between parties to an arbitration agreement – who have voluntarily agreed to arbitration – and third parties, who have not.

Emergency arbitration

Prior to the Act, the Arbitration Act 1996 did not explicitly address emergency arbitration, despite its widespread adoption in institutional arbitration rules, the UNCITRAL Model Law, and the laws of multiple jurisdictions. The Act now introduces specific provisions regarding emergency arbitrators and the enforcement of their orders.

Key changes introduced by the UK Arbitration Act 2025

The Act expressly refers to emergency arbitrators and provides that where the parties have agreed to the application of arbitral rules that allow the appointment of an emergency arbitrator, the emergency arbitrator has the power to make a peremptory order, which is enforceable by the court, where a party fails to comply with the emergency arbitrator's order (unless the parties have agreed otherwise).

As discussed above, section 44 of the Arbitration Act 1996 governs the courts' powers to grant interim measures in arbitration. The Act now explicitly extends these provisions to emergency arbitrators, ensuring clarity on their ability to seek court assistance and enforce peremptory orders.

Section 44(4) provides that, if the case is not one of urgency, the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties. Section 44(5) provides that courts should only intervene when the arbitral tribunal cannot do so effectively. The Act now makes it clear that sections 44(4) and (5) extend to emergency arbitrators.

Finally, under the new section 41A introduced by the Act, if a party fails to comply with an order or direction of an emergency arbitrator without sufficient cause, the emergency arbitrator may issue a peremptory order prescribing a timeframe for compliance. The Act further confirms that courts can enforce such orders in the same manner as orders from an ordinary (that is, non-emergency) tribunal, eliminating previous uncertainty on that point.

Peter Rosher
Independent Arbitrator

Liam Hart
Partner

Proposed reforms to Singapore's International Arbitration Act – 2025

The Singapore Ministry of Law initiated a public consultation in March 2025 seeking feedback on Singapore's international arbitration regime and the Singapore International Arbitration Act 1994 (IAA). This followed a study commissioned by the Ministry of Law and conducted by the Singapore International Dispute Resolution Academy (SIDRA), in which SIDRA set out various recommendations.

This review and the amendments contemplated are welcome and timely, given the review of arbitration regimes taking place around the world. The study and public consultation sought feedback on eight issues, which we discuss briefly below.

Issue 1: Whether to confer on the courts the power to make costs orders for arbitral proceedings following a successful setting aside of an award.

SIDRA recommended that an express provision in the IAA be enacted, giving the Singapore courts the discretion to make an order in respect of the costs of the arbitration proceedings following a successful set-aside application. This discretion will extend to apportioning, but not varying, such costs. SIDRA also recommended that the courts have the discretion to remit the issue of costs of the arbitration proceedings back to the tribunal, but that this be an exceptional remedy subject to party consent and where it is in the interests of justice to do so.

This recommendation addresses an issue identified by the Singapore Court of Appeal in CBX v. CBZ, where two awards were partially set aside because the tribunal had exceeded its jurisdiction and on grounds of natural justice. The costs award was also consequentially set aside. The court observed that it would be "a matter of regret if some sensible method of addressing the issues of costs does not exist in situations such as the present." As the law stands, costs would lie where they fall.

This recommendation is one of the more significant proposed amendments to the IAA, although it has received relatively little attention. The recommended amendment allowing a curial court to apportion costs would be a first among the major international arbitral seats. A similar issue and the need for reform had previously been considered by a separate Law Reform Committee, without any amendments being passed. As noted in the SIDRA study, it has traditionally been the case that arbitrating parties equally bear the risk that arbitral proceedings may go wrong, and as a matter of practice the parties would equally bear the costs of that risk materializing. This, in turn, flows from the principle of party autonomy. However, the recommended amendment seeks to address situations where it would be "unfair" to have costs lie where they fall (e.g., where one party has engaged in procedural fraud in the arbitration, or where the tribunal lacks jurisdiction).

In our view, statutory amendment to address the concerns raised in CBX v. CBZ is warranted, but not in the broad form currently under consideration. There will be instances, albeit rare ones, where it would be preferable in the interests of justice for the court to be able to apportion the underlying costs of the arbitration or remit the matter to the tribunal. This can be justified on the basis that arbitrating parties cannot be said to have assumed the risk of counterparties engaging in fraudulent conduct in the arbitration, nor of an arbitration that they did not consent to. Of course, it would in theory be possible for one party to sue the other in tort for fraudulently conducting arbitration proceedings; this, however, would

be an inefficient course of action for an issue that could be statutorily solved in the manner suggested by SIDRA. However, in our view, the proposed amendment is couched in terms that are too broad and that raise the specter that arguments on underlying arbitration costs are going to arise in every setting-aside case, which will disproportionately increase time and costs.

Issue 2: Whether separate cost principles should be applied in respect of unsuccessful setting-aside applications.

The question that arose in relation to this issue was whether costs should be assessed on an "indemnity" basis as a default for setting-aside cases (as is the case in Hong Kong). SIDRA did not recommend any reform to the IAA, primarily on the basis that this was not necessary. This was especially in light of the fact that the cost regime in the Singapore International Commercial Court (the SICC), with jurisdiction to hear applications to set aside arbitral awards for international commercial arbitrations, would typically allow a successful respondent in a setting-aside application to recover reasonable costs that more closely approximate the actual costs incurred. In the High Court, cost recovery is more limited, and so a successful award creditor does not recover as much of its costs even though it was successful; the corollary is that an award debtor may be more motivated to chance their arm with a setting-aside application in the High Court if its exposure to the award creditor's costs (in the event the application fails) is limited.

This issue is not new. There have been calls for Singapore to adopt the Hong Kong approach, so as to deter unmeritorious setting-aside applications. As SIDRA observed, a Law Reform Committee had been tasked in 2018 to consider whether indemnity costs should be imposed as a default in setting-aside cases, but was put on hold.

Consistent with SIDRA's recommendation, we note that the focus group consulted by SIDRA was generally in favor of no amendments being made, highlighting that the default costs regime for civil litigation had been successfully applied to other specific types of disputes, such as insolvency or IP disputes. The focus group also observed that the SICC's costs regime may be more suitable in setting-aside applications, and that recoverability of costs in the SICC may in any event be greater than the indemnity costs awarded in non-SICC proceedings.

While we understand the rationale for SIDRA's recommendation, setting-aside applications for international arbitrations are not, as a default, heard in the SICC. Parties seeking to delay enforcement proceedings for strategic reasons are likely to still file setting-aside applications in non-SICC proceedings in light of the limited costs consequences against them. It would be preferable, in our view, for the costs regimes in SICC and non-SICC setting-aside proceedings to be aligned in order to promote certainty. Further, successful parties to an international arbitration generally obtain all reasonable costs incurred in the underlying arbitration – it would be incongruent with this international practice for successful parties defending an award in setting-aside proceedings to only recover a fraction of their costs.

Issue 3: Whether to introduce a leave requirement for appeals to the Court of Appeal arising from a High Court decision in a setting-aside application.

SIDRA recommended that permission to appeal be obtained from the appellate court for applications to set aside awards or resist enforcement of awards, and that an application for permission be determined without a hearing unless deemed necessary by the court. The requirement for permission to appeal aligns with the position in Hong Kong and England.

Our view is that a clear rule about obtaining permission is to be welcomed. This adds a mechanism by which the court can filter out undeserving or frivolous appeals, bearing in mind the principle of minimal curial intervention. Concerns about unnecessarily lengthening the time needed to see a case through to the conclusion of any appeal are addressed by the fact that a hearing is, by default, unnecessary. Further safeguards, such as a requirement to pay the award sum into court pending any application for permission to appeal, could also be introduced to limit any potential delay caused by the need for an additional application for permission (i.e., by making enforcement easier).

The issue – i.e., whether permission to appeal should be granted – is also narrow and already subject to a developed jurisprudence in local case law, such that it would be reasonably obvious, in most cases, whether an appeal can be justified. In our view, the proposed amendment is very likely to save parties time and costs in obtaining a final judgment, as well as judicial resources at the appellate level for deserving cases.

Issue 4: Whether the time limit to file a setting-aside application should be reduced.

SIDRA recommended that the three-month time limit not be reduced and that the courts not be given general discretion to extend the time limit. However, SIDRA recommended enacting a new provision allowing the courts discretion to extend the time limit in setting-aside applications involving fraud or corruption under section 24(a) of the IAA.

This recommendation is a departure from the current position, under which the courts have no discretion to extend time even in cases of fraud or corruption under section 24(a) of the IAA. While we consider that the previous "bright-line" rule provided clarity and certainty, the proposed amendment accords with common sense and is unlikely to undermine certainty as long as the discretion is sparingly exercised by the courts, and only in cases of fraud and corruption (which are rare).

Issue 5: Whether a right of appeal on questions of law is desirable.

SIDRA recommended that the IAA be amended to provide parties with an opt-in right to appeal to the court on points of law.

This, again, is not a new issue and was the subject of public consultation in 2019 by the Ministry of Law. Again, no amendments were implemented at the time. England and Hong Kong both have provisions allowing for appeal on points of law.

We think there are pros and cons of a right to appeal, but that the opt-in approach is the correct one to preserve party autonomy to the maximum extent possible. The recommended amendment and the considerations underlying that amendment are lengthy, and we do not propose setting out a detailed review. The most controversial aspect of the recommendation is that "question of law" would encompass both Singapore law and foreign and international law.

In domestic litigation, such questions of foreign law are generally treated as questions of fact (derived from foreign law expert evidence). By treating questions of foreign and international law as questions of law subject to appeal, such legal issues are open to review by a Singapore court, which may not always be best placed to rule on such questions compared to the tribunal chosen by the parties. While this concern is mitigated, to some extent, by the fact that the SICC has international judges and more flexible rules for the proving of foreign law, and that it is up to the parties to opt in, it seems counterintuitive that an award written by the parties' arbitrators (who would presumably be experts or at least fluent in the governing law of the contract) is subject to appeal scrutiny by judges who are quite likely not to possess the same fluency in the governing law of the contract and may even have to determine those questions of foreign law by reference to expert evidence.

Issue 6: How to ascertain the governing law of the arbitration agreement.

SIDRA recommended that a new statutory choice of law approach for determining the governing law of an arbitration agreement be adopted. In short, the governing law of the arbitration agreement under this recommended approach would be (a) the express choice of law for the arbitration agreement; (b) if there is no such choice, the express choice of law for the main contract; and (c) in all other cases, the law of the seat. This would replace the existing common law approach, which first looks to the parties' express choice of law; then, in its absence, an implied choice of law (usually the choice of law of the main contract); and lastly, the law with the closest and most real connection to the arbitration agreement. We understand the rationale behind a statutory choice of law rule, which favors certainty versus potential arguments about implied choice of law or the law of closest connection.

We do not have strong views on this recommendation, which appears to us to be a question of policy emphasis on certainty. The rationale of the common law approach is to give effect to party autonomy by ascertaining the parties' choice of law. As part of that approach, there is a presumption that the express law of the main contract was intended by the parties to also be the law of the arbitration agreement (where this is not expressly chosen). However, this presumption is not absolute, which means there is room for dispute about whether this presumption should be rebutted. Replacing this with the suggested statutory approach means there would be little room for debate about which law applies, while giving effect to party autonomy.

Issue 7: Whether the review of the tribunal's jurisdiction should be conducted by way of an appeal or a rehearing.

SIDRA recommended that a tribunal's ruling on jurisdiction continue to be subject to a rehearing by the courts. While no amendment to the IAA was recommended, SIDRA recommended that new Rules of Court be introduced requiring parties to identify new arguments and new evidence they seek to introduce before the courts.

We agree with this recommendation. In principle, if a tribunal has no jurisdiction, its ruling should not be afforded any weight (given that the parties had not consented to the tribunal's jurisdiction). The limitations on new arguments and new evidence help reduce the perception that a losing party on this issue gets two bites of the cherry afresh, having now had the benefit of the jurisdictional ruling that may help it shore up its case.

Issue 8: Whether the summary disposal powers of arbitral tribunals should be set out in the IAA.

SIDRA recommended that section 19A of the IAA be amended to expressly provide that the tribunal has the power to summarily dispose of matters in dispute by way of an award, unless the parties otherwise agree. We consider this to be an uncontroversial amendment, given that most institutional rules now contain similar provisions.

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Innovation and reforms to the UAE's arbitration landscape

Over the past decade, the UAE has moved from procedural uncertainty to a jurisdiction that is actively refining the efficiency, transparency, and enforceability of arbitral awards. With modernized federal legislation, specialist arbitration centers, a judiciary that is increasingly comfortable engaging with arbitration practice, and a commercial community with global ambitions, the UAE is consistently refining and improving the arbitral environment. The direction of travel is clear: continuous innovation aimed at making the UAE a predictable, sophisticated, and user-focused selection of seats for resolving complex commercial disputes.

Key takeaways

- Driven by modern legislation, specialist institutions, and an increasingly arbitration-friendly judiciary, the United Arab Emirates (UAE) is actively reshaping its arbitral landscape through constant innovation and refinement.
- Three recent decisions by UAE courts have reformed key aspects of local arbitration practice:
  - Termination of an arbitration by an arbitral institution for nonpayment of fees does not undermine the enforceability of the arbitration agreement. Parties must recommence arbitration; onshore UAE courts should decline jurisdiction.
  - Arbitrators in UAE-seated arbitrations are only required to sign the final page of an award. Page-by-page signatures are unnecessary, aligning practice with international norms.
  - If a tribunal orders interim measures in an arbitration, only that tribunal can amend, suspend, or cancel the order. The UAE courts have no jurisdiction to do so, though they retain their own statutory powers to grant interim relief in support of arbitration.

Innovation and reforms to the UAE's arbitration landscape

Three recent decisions by the "onshore" courts of the UAE have effected reforms to key points of contention in local arbitration practice. The decisions settle recurring procedural flashpoints: nonpayment of arbitral fees, award signatures, and interim measures orders. For users and counsel, the practical consequences are clearer case-management choices, reduced formalistic set-aside risk, and firmer tribunal autonomy over procedural orders. This article takes a closer look at these decisions, and how they demonstrate the growing maturity of the UAE's arbitration ecosystem.

1. Non-payment of the fees of arbitral institutions does not render arbitration agreements unenforceable

The Dubai Court of Cassation's (DCC) General Assembly Resolution No. 10 of October 24, 2023 (Resolution 10/2023) confirmed that where an arbitral institution terminates an arbitration due to non-payment of fees by the parties, this does not affect the enforceability of the parties' arbitration agreement.

A. Background

The rules of arbitral institutions typically provide that, where one or several parties to an arbitration fail to pay the institution's fees, and such non-payment subsists for a lengthy period, the arbitral institution may terminate the arbitration.

In such circumstances, opportunistic litigants might commence litigation before national courts, arguing that the arbitration agreement has become null, void, or incapable of being performed. Previously, the UAE courts had, on occasion, accepted such arguments and hence accepted jurisdiction over the dispute, notwithstanding the existence of an arbitration agreement.

The fact that the parties did not pay the fees of an arbitral institution does not render the arbitration agreement incapable of being performed. Rather, the parties failed to perform the obligations they had assumed under their arbitration agreement. A cynical claimant was able to exploit the old position to engineer the termination of an arbitration, in order to "defeat" an arbitration agreement and have its claims heard in court.

B. 2022 Dubai court decisions that departed from the court's historic approach

In 2022, two DCC decisions (Judgment No. 1782/2022 (Commercial) and Judgment No. 1514/2022 (Commercial)) departed from the court's previous approach.

In these decisions, the DCC rejected arguments that, by not paying the fees of an arbitral institution, a respondent waived its rights to rely on the arbitration agreement. Further, the DCC found that a claimant who had not paid the respondent's

share of the fees of an arbitral institution, as required by the institution's rules, was not permitted to argue that the respondent had waived its rights to rely on the arbitration agreement.

C. The power of the General Assembly of the Dubai Court of Cassation

While the onshore UAE courts do not operate a system of binding case precedent, pursuant to Dubai Law No. 13 of 2016, the General Assembly (comprising the DCC's presiding judge and its most senior judges) is empowered to determine issues of law that are new or have widespread significance conclusively. The General Assembly also resolves conflicting judgments rendered by the DCC, to ensure consistency in decision-making by Dubai's onshore courts.

D. Resolution 10/2023

By way of Resolution 10/2023, the General Assembly formalized the principles underlying the two positive decisions from 2022 (considered above) and confirmed that the Dubai onshore courts will follow this approach in the future.

The General Assembly determined that, where an arbitral institution terminates an arbitration for non-payment of fees, the parties have not waived their rights to rely on the arbitration agreement, nor has the arbitration agreement become unenforceable. Accordingly, where an arbitral institution terminates an arbitration for non-payment of fees and a party wishes to have its claims determined, it must commence a new arbitration. It cannot bring its claims before the courts.

The General Assembly grounded its reasoning in the UAE's Federal Law No. 6 of 2018 (the Federal Arbitration Law), highlighting two relevant provisions. First, under Article 45(1), arbitration proceedings are terminated by the issue of a final award, not by the administrative actions of an arbitral institution. Second, by reference to Article 54(4), the General Assembly highlighted that an arbitration agreement remains enforceable even if an arbitral award based on that arbitration agreement has been annulled (unless the annulment is on the basis of the nullity of the arbitration agreement).

E. Why the decision matters

Resolution 10/2023 aligns the UAE's onshore jurisprudence with international best practice. The General Assembly's decision sends a strong signal that the UAE judiciary is innovating in favor of a consistent, pro-arbitration approach.

2. The UAE's Unification Authority confirms that arbitrators need to sign only the final page of awards

The UAE has conclusively resolved a further longstanding issue in local arbitral practice by confirming that arbitrators are **not** required to sign every page of arbitral awards; a signature on the final page is sufficient.

A. Background

Although the Federal Arbitration Law does not contain any requirement that arbitrators sign every page of an award, UAE courts have, on occasion, issued decisions setting aside awards on the basis that the arbitrators did not sign every page of the award (for example, DCC Civil Cassation No. 403 of 2020, dated November 13, 2020; and Abu Dhabi Court of Cassation Civil Cassation No. 844 of 2022). More recently, rather than annulling awards, the UAE courts have remitted awards not signed on every page back to the tribunal, to sign every page of the award, in order to then uphold it. For example, in Case No. 984/2022, the Abu Dhabi Court of Cassation dismissed the application to set aside the arbitral award and upheld it, noting that the award had previously been remitted to the tribunal and subsequently re-executed with signatures on all pages. Although a positive step, the uncertainty of the procedural and practical impact of this issue remained.

B. The UAE's Unification Authority

As addressed above, although the UAE onshore courts do not operate a system of binding precedent, in 2019 the UAE created the Authority for the Unification of Federal and Local Judicial Principles (the Unification Authority) under Federal Law No. 10 of 2019. The Unification Authority was created to resolve conflicting decisions issued by the UAE onshore courts (that is, excluding the DIFC and ADGM), ensuring the consistent application of legal principles by the UAE's courts.

C. The inconsistent decisions in question

In DCC Appeal No. 403/2020 (and other cases), the court refused enforcement where the award bore only a signature on the final page, which did not contain the operative part of the award, holding that signatures must extend to the operative part and reasons. This was treated as a matter of public order, rendering the award invalid.

In May 2024, the Ras Al Khaimah Court of Cassation issued a judgment in Civil Cassation No. 5 of 2024, finding that an award signed only on its final page met the statutory requirements for awards in the Federal Arbitration Law, and recognition and enforcement of the award could not be refused on the basis that the tribunal did not sign every page of the award.

The Attorney General of the Federation submitted Request No. 1 of 2025 to the Unification Authority to resolve the inconsistency and render a binding determination.

D. The Unification Authority's decision

In Decision No. 1 of 2025, decided on August 4, 2025, the Unification Authority determined that while arbitrators must sign arbitral awards, the Federal Arbitration Law does not oblige them to sign every page. The Unification Authority decided that signing only the final page of an award satisfies the requirements of Article 41 of the Federal Arbitration Law; hence, not signing every page of an award cannot be relied on to set aside awards.

The Unification Authority further confirmed that (i) the provisions of the UAE's previous arbitration legislation, which required the signature of the arbitrators on every page of an award; and (ii) the provisions of the UAE's civil procedure law regarding the formalities for the issue of court judgments, do not apply to arbitral awards.

The decision is positive because the Unification Authority expressly recognized that (i) setting aside arbitral awards is an exceptional remedy, which should only occur in specific, limited circumstances; and (ii) in the context of recognizing and enforcing foreign arbitral awards in the UAE, a failure by a tribunal to sign every page of an award is not a matter of public policy, and therefore the non-signature of every page of an award cannot be a basis for refusing to recognize and enforce a foreign arbitral award in the UAE.

The Unification Authority's decision is binding on the UAE's onshore courts. The reform brought about by this decision is welcome and should draw a line under a perennial issue that had dogged the recognition and enforcement of arbitral awards in the UAE. The Unification Authority has brought the UAE courts fully into line with international best practice.

3. The Dubai Court of Cassation defines the limits of the court's powers to intervene with interim measures ordered by arbitral tribunals

A. Background

In an ICC arbitration, the tribunal issued an interim award ordering the respondent not to pursue its claims against the claimant in any forum other than the arbitration, pending the final award, unless the tribunal granted it permission to do so (the Interim Award).

The respondent applied to the Dubai Court of Appeal to set aside the Interim Award in April 2025, in Case No. 8/2025. The respondent argued that the Interim Award infringed its fundamental right to access the courts to determine disputes. It further argued that the Interim Award was not one which a tribunal was capable of issuing, because it alleged that the interim relief ordered by the tribunal did not fall within the scope of the interim measures permitted by Article 21 of the Federal Arbitration Law.

The Dubai Court of Appeal agreed with the respondent and set aside the Interim Award.

B. The Dubai Court of Cassation's decision

On July 3, 2025, the DCC overturned the Dubai Court of Appeal's decision and reinstated the Interim Award.

The DCC considered Article 21 of the Federal Arbitration Law, which empowers arbitral tribunals, in the course of an arbitration, to issue interim or precautionary measures. Crucially, Article 21 also provides that the tribunal may "amend, suspend or repeal an interim measure ordered," whether on its own initiative or upon a party's request. The DCC found that Article 21 does not confer on the courts of the seat any concurrent power to amend, suspend, or annul interim measures ordered by the tribunal, and that only the tribunal has such authority with respect to any interim measures it has ordered. The tribunal has sole authority to amend, suspend, or repeal its own orders on interim or precautionary measures. Accordingly, the DCC concluded that it had no jurisdiction to amend, suspend, or repeal the Interim Award.

The DCC's decision is a further positive example of the UAE courts affirming the principle of minimal court intervention in arbitration and deferring to the decisions of the tribunal. Parties dissatisfied with any interim measures ordered by a tribunal (prior to the issue of the final award) cannot seek redress before the UAE courts. This does not preclude the onshore courts' separate authority to grant their own interim relief in support of arbitration (including preconstitution), where the statute so permits. Strategic forum selection and sequencing therefore remain critical.

Conclusion

The UAE's arbitration framework continues to move toward greater procedural clarity, judicial alignment, and user-centered efficiency. These developments converge with international best practice. Taken together, they reflect a system that is maturing in substance, not merely structure. Those who anticipate and adapt to these shifts will be best positioned to take full advantage of the jurisdiction's increasingly sophisticated arbitral environment.

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