PARISBABYARBITRATION

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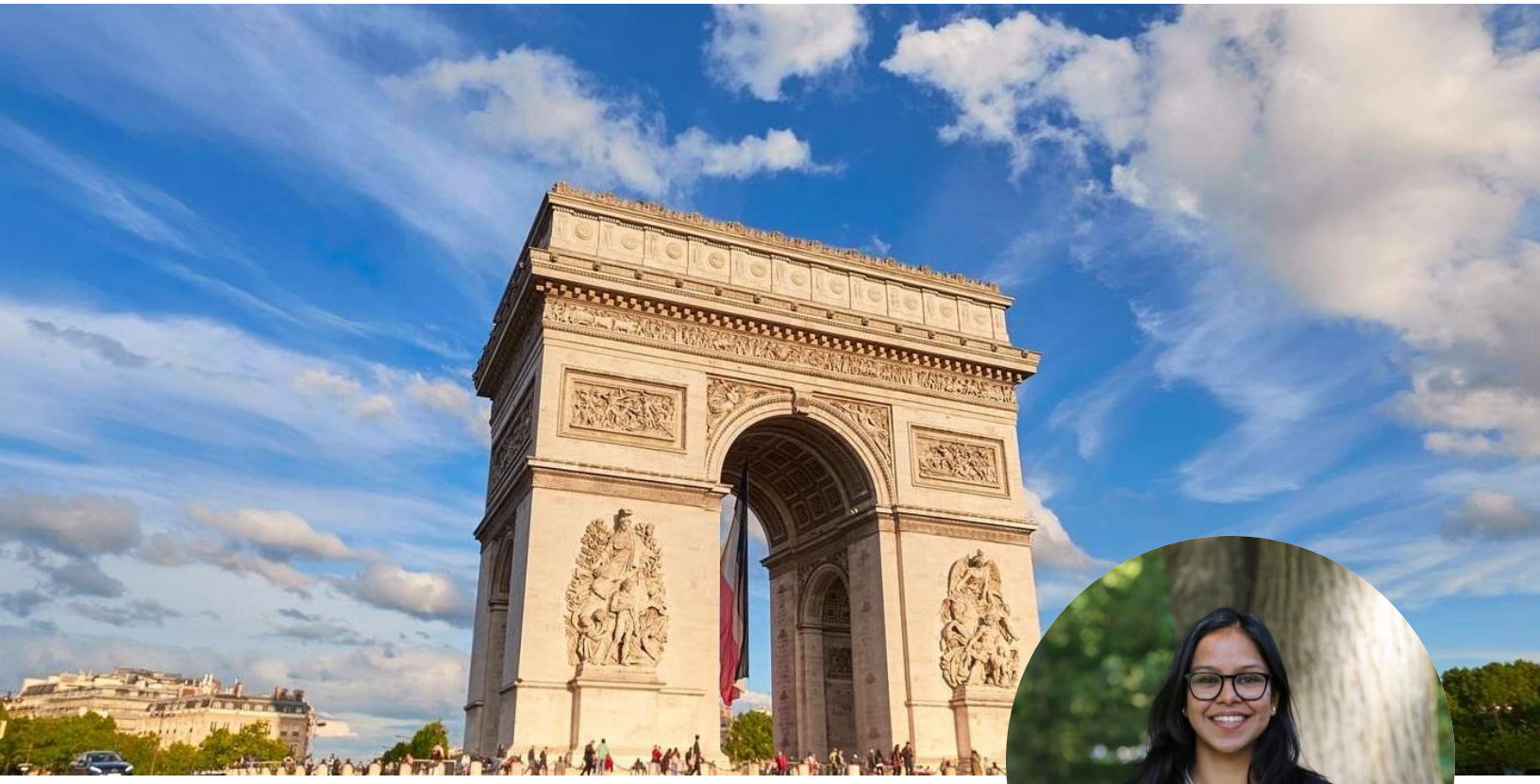

French and foreign courts' decisions

International arbitral awards and decisions

Interview with Ritika Ajitsaria

Our partners: Teynier Pic, Foley Hoag, afa, ReedSmith Driving progress through partnership, CMAP, Institut 131, CCI Paris Ile-de-France Entreprises, Jus Mundi

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Founded in 1943, Foley Hoag is a business law firm specialised in the resolution of national and international disputes. The Paris office has a particular expertise in arbitration and international commercial litigation, environmental and energy law, as well as public law and corporate M&A.

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FOREWORD

Paris Baby Arbitration is a Paris-based society and a networking group of students and young practitioners in international arbitration. Our aim is to promote accessibility and knowledge of this somewhat lesser-known field of law and industry within the student sphere.

Every month, our team publishes the Biberon. The Biberon is our newsletter in both English and French, designed to review and facilitate comprehension of the latest decisions and awards rendered by national and international courts, as well as arbitral tribunals.

In doing so, we hope to participate in keeping our community informed on the latest hot topics in international arbitration from our French perspective.

Dedicated to our primary goal, we also encourage students and young practitioners to actively contribute to the field by joining our team of writers. As such, Paris Baby Arbitration is proud to provide a platform for its members and wider community to share their enthusiasm for international arbitration.

To explore previously published editions of the Biberon and to subscribe for monthly updates, kindly visit our website: parisbabyarbitration.com (currently undergoing maintenance).

We also extend an invitation to connect with us on LinkedIn, and we welcome you to follow/share our latest news on LinkedIn and beyond.

Enjoy your reading!

Sincerely yours,
The Paris Baby Arbitration team

- **Cour de cassation, 1st Civil Chamber, 2 April 2025, nº 23-16.338, *République orientale d'Uruguay*** (set aside proceedings; jurisdiction *ratione temporis*; Court's power to re-examine the merits based on the temporal relationship between the investment and the State's breach)
- **Paris, 25 March 2025, nº 24/00739, *Roumanie*** (set aside proceedings; EU State aid law; due process; stay of proceedings)
- **England & Wales Court of Appeal, *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises* [2025] EWCA 369** (anti-suit injunctions; extension of ASIs to third parties subject to related Russian court proceedings; refusal to provide evidence)
- **England & Wales High Court, *Saif Alrubie v Chelsea Football Club Ltd and Marina Granovskia* [2025] EWHC 541 (Comm)** (existence of an arbitration agreement; implied arbitration agreement; stay of proceedings in favour of arbitration)
- **England & Wales High Court, *Destin Trading Inc v Saipem SA* [2025] EWHC 668 (Ch)** (jurisdiction; exclusive jurisdiction clause prevailing over previous arbitration clause; subsequent agreement prevailing over the initial agreement)
- **England & Wales High Court, *MSH Ltd v HCS* [2025] EWHC 815 (Comm)** (set aside proceedings; s.67 Arbitration Act 1996; jurisdiction *ratione personae*; lack of valid arbitration agreement; undisclosed principal)
- **Singapore Court of Appeal, *DJP and others v DJO* [2025] SGCA(I) 2** (natural justice; international public policy; Tribunal's duty to independently consider issues and adequately justify its decision; extensive copying from parallel awards; apparent bias)
- **Singapore High Court, DMF v DMG [2025] SGHC(I) 12** (jurisdiction *ratione personae*; arbitrability; enforceability of the arbitration agreement; limits of international public policy)

FRENCH COURTS

COURT OF CASSATION

Cour de cassation*, 1st Civil Chamber, 2 April 2025, nº 23-16.338, *République orientale d'Uruguay

On 2 April 2025, the French *Cour de cassation* rendered a decision in an international arbitration case, addressing the limits of the jurisdiction review exercised by the annulment judge under French law.

In 2016, British nationals became beneficiaries of a trust relating to a mining project for the exploitation of iron ore deposits in the Eastern Republic of Uruguay (hereinafter "Uruguay"). Following the project's failure, the beneficiaries accused Uruguay of having committed acts which allegedly led to the collapse of the investment. They initiated arbitral proceedings in 2017 under the bilateral investment treaty concluded between the United Kingdom and Uruguay in 1997 (hereinafter the "BIT").

In an award dated 6 August 2020, the arbitral tribunal declined jurisdiction ratione temporis, holding that it lacked jurisdiction due to the temporal circumstances of the investment.

The British investors subsequently filed a set-aside application before the Paris Court of Appeal. By decision dated 21 February 2023, the Court of Appeal annulled the arbitral award, reasoning that:

- The BIT did not make the tribunal's jurisdiction conditional upon the date on which the investment was made, and thus the Court held that it was competent to assess the existence of jurisdiction, given that the dispute had arisen after the treaty's entry into force;
- The requirement that the investment predate the alleged treaty breaches by the host State, as advanced by Uruguay under international investment law, did not pertain to jurisdictional consent, but constituted a substantive requirement relevant to the material protection regime under the treaty.

Uruguay brought the matter before the *Cour de cassation*, arguing notably that:

- The temporal requirement concerning the precedence of the investment over the alleged breaches falls within the arbitral tribunal's exclusive jurisdiction. By re-examining this issue, the Court of Appeal exceeded its authority, thereby violating Article 1520, 1° of the French Code of Civil Procedure;
- Under Article 8(2) of the BIT, the right to resort to arbitration arises only where no final decision has been rendered by the competent national courts within 18 months of seizure, or where such a final decision is contrary to the treaty's provisions.

Can the annulment judge, under the guise of verifying jurisdiction, re-examine the merits of an arbitral award in which the tribunal declined jurisdiction based on the temporal relationship between the investment and the State's alleged breaches?

The French *Cour de cassation* answered in the negative and quashed the appellate ruling. Relying on Article 1520, 1° of the French Code of Civil Procedure, the Court held that the requirement that the investment precede the host State's breaches does not concern the arbitral tribunal's jurisdiction, but rather pertains to the substantive legal framework governing investment protection under the BIT. By annulling the award based on this requirement, the Court of Appeal impermissibly reviewed the merits of the dispute, thereby exceeding the scope of its powers under the

aforementioned provision.

The Court reaffirmed the strict and limited role of the set-aside judge: it is not for the French courts to re-assess the substance of a dispute but solely to determine whether the arbitral tribunal had jurisdiction.

Through this decision, the First Civil Chamber of the Court of Cassation underscores a rigorous interpretation of the powers conferred upon national courts in annulment proceedings. The judgment reinforces the principle that national judges may not interfere with the merits of arbitral decisions under the pretext of jurisdictional review. While domestic courts are not bound by the arbitral tribunal's characterization of its decision as one of lack of jurisdiction, they may not annul an award if it is based on a rule that governs the substantive protection of investments.

This approach may have significant implications for how investment treaties and jurisdictional awards are interpreted and scrutinized by French courts in the future. It suggests heightened judicial attention to the precise legal nature of the rules invoked by arbitral tribunals when declining jurisdiction.

Contribution by Rheda El Hamzaoui

Paris, 25 March 2025, nº 24/00739, *Roumanie*

On 30 August 2022, an arbitral tribunal, constituted under the ICC Arbitration Rules, issued an award in Paris in favour of OMV Aktiengesellschaft against the Ministry of Environment, Waters, and Forests of Romania. The tribunal ordered the Romanian Ministry to pay over 31 million euros in compensation related to environmental damages and abandonment costs linked to the privatization of Petrom SA.

The underlying dispute stemmed from the privatization agreement signed in 2004, whereby OMV acquired Petrom. The agreement included an indemnification mechanism for environmental liabilities. OMV initiated arbitration proceedings on 2 October 2020, seeking compensation for pollution remediation and well abandonment costs.

Following the arbitral award, the Romanian Ministry challenged it before the Paris Court of Appeal, filing a set-aside application on 5 October 2022. It alleged that the award violated the prohibition of State aid under Article 107 of the Treaty on the Functioning of the European Union, thus breaching French international public policy. Subsequently, the Ministry lodged a complaint and pre-notification before the European Commission, seeking a formal decision on the compatibility of the award with EU internal market rules.

In parallel proceedings, the Ministry requested a stay of the annulment proceedings before the Paris Court of Appeal, pending a decision from the European Commission. On 14 November 2024, the judge in charge of procedural matters ordered a stay, considering that the Commission's findings could impact the outcome of the annulment.
OMV appealed this procedural order by way of "*déféré*", arguing that the stay was unwarranted, and challenging the competency findings of the procedural judge regarding the exclusion of certain evidence and procedural arguments.

The Court of Appeal, sitting on 25 March 2025, assessed the situation. It found that the principle of contradiction had not been respected when the procedural judge declared himself incompetent without inviting the parties to comment. However, this irregularity did not warrant the annulment of the procedural decision, only its partial reversal.

The Court ruled that the procedural judge was competent to assess OMV's objections to the Ministry's evidence and procedural conduct. Nonetheless, it rejected OMV's request to exclude documents produced by the Ministry, holding that the non-communication of certain annexes had not caused procedural prejudice.

Regarding the stay, the Court emphasized that no formal investigation was pending before the European Commission. Indeed, the Commission's communications indicated that it had found no sufficient reasons to initiate formal proceedings concerning State aid. Therefore, the Court held that continuing the annulment proceedings would not jeopardize EU law's effectiveness.

Accordingly, the Court set aside the stay of proceedings ordered on 14 November 2024, and rejected the Ministry's request to suspend the annulment proceedings. The Ministry was ordered

to bear the costs of the incident and to pay OMV €25,000 under Article 700 of the French Code of Civil Procedure.

Contribution by Cristian Zannier

England & Wales Court of Appeal, *Renaissance Securities (Cyprus) Ltd v ILLC Chlodwig Enterprises* [2025] EWCA 369

This case raised the question of whether English courts can extend the benefit of an anti-suit injunction, initially granted to a Western company party to an arbitration clause, to one of its Russian entities, a third party to the contract but the subject of related proceedings brought before the Russian courts.

Renaissance Securities, a Cypriot investment company, had entered into contracts for the provision of investment services with several Russian companies, the beneficial owner of which was a Russian national subject to international sanctions. These contracts included an arbitration clause submitting the disputes to arbitration under the aegis of the London Court of International Arbitration (hereinafter "LCIA"). As a result of the sanctions imposed on the Russian Federation, Renaissance froze the funds concerned and refused to execute the transfers requested by its co-contractors.

Following proceedings brought in Russia by the Russian companies, Renaissance applied for and obtained an anti-suit injunction from the High Court of England and Wales to stop the foreign proceedings on the basis of the arbitration clause (EWHC 2816 [2023], 3 Nov 2023; PBA Newsletter Jan. 2024, No. 66).

The Russian companies then brought new proceedings before the Russian courts, this time against three Russian entities owned by Renaissance. They argued that Renaissance and its local entities constituted a single company and could be held jointly and severally liable for the damages allegedly suffered. This procedural development was referred to the High Court for a ruling on whether the anti-suit injunction should be extended to these subsidiary Russian entities.

In a subsequent judgment (Re Renaissance [2024] EWHC 1843 (Comm), 6 Nov 2024; PBA Newsletter Jan. 2025, No. 74), the High Court declined to extend the injunction. Pelling J considered that the Russian entities, not being parties to the contracts, could not be bound by the arbitration clause and that the proceedings brought against them could not be described as vexatious or oppressive.

The Court of Appeal of England and Wales confirmed this approach, in turn rejecting the application to extend the injunction in a rather specific context.

On the contractual side, Pelling J had previously pointed out that the arbitration clause was drafted in clear and delimited terms ("*between the parties*", exclusion of the Contracts (Rights of Third Parties) Act 1999, whereas English law is applicable to the contract), which precluded any application to third parties. Renaissance argued that it was not seeking to compel its Russian entities to submit to the arbitration proceedings, but only to prevent the continuation of foreign proceedings that might undermine the effectiveness of the main injunction; accordingly, it considered that the application did not raise any difficulty under the principle of the relative effect of contracts.

Singh J rejected this argument, pointing out that such an interpretation amounts to imposing a negative obligation that does not exist in the contract - that of not circumventing the arbitration agreement through third-party remedies. He concluded that extending the arbitration clause to Renaissance's Russian entities would be an unacceptable excess of interpretation.

In its judgment, the Court of Appeal focuses its

analysis on the second branch: the assessment of the vexatious or oppressive nature of the foreign proceedings.

The starting point for the reasoning remains the High Court's earlier judgment, in which Pelling J emphasised that there had been no abuse of jurisdiction by the Russian courts, stressing that the proceedings were exclusively between Russian entities, in a dispute of an extra-contractual nature, normally falling within the jurisdiction of the Russian courts. He also noted the uncertainty as to whether a forum other than Russia had jurisdiction to resolve the dispute.

However, this analysis was revised by Singh J. The Court held that the alleged uncertainty as to the jurisdiction of another court was not a relevant legal standard for the grant of an anti-suit injunction.

In exercising that discretion, the Court focused on a number of factual elements noted by both the parties to the proceedings and the judges in order to assess the allegedly abusive nature of the proceedings brought in Russia:

1. It is a tort law dispute, Russian law is applicable to the substance of the dispute, the dispute involves only Russian parties and has no legally significant connection with the United Kingdom.
2. Renaissance's Russian entities were disposed of after the High Court's judgment, so that Renaissance no longer has any organic or structural connection with them. Worse still, Renaissance refuses to produce the sale agreements, reinforcing the vagueness about the exact nature of the intra-group relationships.
3. These Russian entities agreed to participate in the LCIA arbitration while at the same time actively participating in the legal proceedings in Russia.

Singh J emphasised that the natural connection of the contested proceedings to Russian territory, by virtue of the nationality of the parties, could not, as such, preclude intervention by the English court; he simply pointed out that the exercise of the power to grant an anti-suit injunction required a particularly measured and rigorous assessment. Singh J also referred to Males J's analysis in *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, in stating that the active participation of Renaissance's Russian entities in the proceedings brought in Russia is certainly a relevant factor in assessing whether those proceedings are vexatious or oppressive, but not a decisive one.

But the main obstacle to extending the injunction lies elsewhere - in the lack of clarity about the relationship between Renaissance Securities and the said Russian entities. Two of them had been sold; the third disputed any current link with Renaissance, even though it shares the same ultimate beneficial owner. Philipps J. also noted another point of tension in Renaissance's reasoning: Renaissance itself invoked the risk that its former Russian entities might subsequently engage its liability to pay compensation for the convictions handed down against them in the Russian proceedings, possibly by virtue of the terms of the sale agreement, the precise terms of which it nevertheless refused to communicate to the Court.

Combining the observations of the three judges, the Court of Appeal concluded that these structural uncertainties deprived the court of the elements necessary to exercise its discretion in an informed manner, in accordance with the standard formulated by Lord Bingham in *Donohue v. Armco Inc.* [2001] UKHL 64. It is precisely this lack of understanding that led the Court of Appeal once again to refuse to extend the anti-suit injunction to Renaissance's Russian entities.

The Renaissance Securities judgment does not definitively settle the question of whether, in the context of litigation initiated in Russia against the Russian subsidiaries of Western companies, the English judge - who has jurisdiction by virtue of the seat of the arbitration or the law applicable to the substance of the dispute - is able to grant anti-suit injunctions for the indirect benefit of the

Russian entities of these groups. The answer remains uncertain but, nevertheless, deliberately nuanced. This interpretive caution is illustrated by the obiter dictum of Miles J, which suggests that if the foreign proceedings appear to be backdoor manoeuvres designed to circumvent a main anti-suit injunction already granted in favour of the western company, the English judge could then consider a more constructive interpretation of the obligations arising from the arbitration clause, with a view to protecting its effectiveness.

The judgment should be read less as a leading case than as a decision rendered in specie, based on the particular factual circumstances of the case. The refusal here is largely explained by the ambiguous, even opaque, attitude of Renaissance Securities. The judge's assessment is without appeal: "*I am left with the distinct impression that this court is being invited to grant an anti-suit injunction while being deliberately kept in the dark*" (extract selected by the author).

In so doing, Miles J emphasises the essential nature of transparency vis-à-vis the English judge when an extension of the injunction is sought.

Contribution by Iulian Chetreanu

England & Wales High Court, *Saif Alrubie v Chelsea Football Club Ltd and Marina Granovskaia* [2025] EWHC 541 (Comm)

On 14 March 2025, the England & Wales High Court (hereinafter "the Court") stayed proceedings, concluding that there was an implied arbitration agreement between the parties in a dispute concerning a football agent's right to a commission.

In July 2021, a football agent (hereinafter "the Claimant"), acting as an intermediary between football clubs, approached the director of a British football club (hereinafter "the Director") to propose the transfer of one of their players to another club. According to the Claimant, through a series of email exchanges, he negotiated an introduction agreement with the Director, under which he would be entitled to a commission if the transfer fee exceeded €30 million.

In August 2021, the transfer took place for a total amount of €34 million. While the Claimant was aware that the transfer had occurred, he did not know the exact amount of the fee until May 2022. At that point, he contacted the Director to claim his commission allegedly due under the introduction agreement. As the Director denied the existence of any contract, the Claimant brought a claim against both her and the football club before the English courts in September 2024.

The Claimant sued the football club for breach of contract and the Director for inducing that breach, alleging that she had concealed the existence of the commission to which he claimed entitlement. The Director contested the claim, arguing that no contract had been concluded between the Claimant and the football club. She further sought a stay of proceedings under Section 9(1) of the Arbitration Act 1996, arguing that there was an arbitration agreement between the parties by virtue of Rule K of the Football Association Rules (hereinafter "Rule K of the FA Rules"). Conversely, the Claimant argued that there was no arbitration agreement, as the Director had ceased to be an employee of the football club in September 2022, well before the proceedings began in 2024.

The central issue before the Court was whether there existed an arbitration agreement under Rule K of the FA Rules, requiring the judge to stay proceedings pursuant to section 9(1) of the Arbitration Act 1996.

First, the judge examined the wording of the arbitration clause in Rule K of the FA Rules, which provides that "*any dispute between two or more Participants […] shall be referred to and finally resolved by arbitration*". Having determined that both parties qualified as "Participants," the judge considered whether their consent to arbitration could be implied through Rule K of the FA Rules. Each party had signed a document expressly agreeing to be bound by the FA Rules, thereby establishing a vertical agreement between each party and the Football Association. As no bilateral agreement had been concluded between the parties, the judge had to assess whether the FA Rules also created a horizontal agreement —i.e., an agreement between Participants themselves. Referring to case law, the judge held that the FA Rules create a horizontal agreement as they do give rise to obligations between bound parties, including the obligation to arbitrate under Rule K. Therefore, even in the absence of an express arbitration agreement between the parties, their separate and express agreement to be bound by the FA Rules sufficed to establish an implied arbitration agreement.

Second, with regard to the Director ceasing to be an employee in September 2022, the judge rejected the Claimant's argument that this rendered the arbitration agreement void. He held that "*Participant*" status is assessed at the time the dispute arises, not when proceedings are initiated. This conclusion was based on two reasons: first, the FA Rules do not provide for the loss of

arbitration rights under Rule K once a person ceases to be a Participant and second, it would be unfair to rule otherwise, as someone might involuntarily lose Participant status or do so deliberately to avoid arbitration.

In this case, the judge determined that the dispute arose, at the latest, in May 2022, when the Claimant emailed the Director to claim his commission. Since the Director was still a Participant at that time, the arbitration agreement was valid. Therefore, the Director was entitled to refer the dispute to arbitration under Rule K. Contrary to the Claimant's assertions, the arbitration agreement was not void.

In conclusion, the judge held that a valid and implied arbitration agreement existed between the parties and accordingly granted a stay of proceedings in favour of arbitration.

Contribution by Audrey-Anne Gomis

England & Wales High Court, *Destin Trading Inc v Saipem SA* [2025] EWHC 668 (Ch)

In a decision rendered on 24 March 2025, the England and Wales High Court (Chancery Division) dismissed an application filed by Saipem SA (hereinafter "Saipem") to stay judicial proceedings in favour of arbitration, holding that an exclusive jurisdiction clause contained in a settlement agreement prevailed over a previous arbitration clause contained in framework agreements concluded between the parties.

In 2011 and 2012, Destin Trading Inc. (hereinafter "Destin"), a Panamanian company specialising in logistics services and vessel chartering for the offshore oil industry in Africa, and Saipem, a French engineering company, entered into three framework agreements (hereinafter "Frame Agreements") containing arbitration clauses which referred disputes to ICC arbitration in London. In November 2013, following disputes regarding sums due to Destin, the parties entered into a Settlement Agreement intended to definitively resolve their disputes and terminate the Frame Agreements. This Settlement Agreement explicitly included an exclusive jurisdiction clause in favour of the courts of England and Wales for any disputes related to the agreement and expressly contained an entire agreement clause, confirming that it entirely replaced the previous agreements.

In July 2024, Destin initiated proceedings in the High Court, alleging that Saipem had induced it into entering the Settlement Agreement through fraudulent or negligent misrepresentations. Destin sought rescission of the agreement and restitution of allegedly due sums. Saipem applied to stay the judicial proceedings, relying on the arbitration clauses contained in the initial Frame Agreements, arguing that the financial claims derived directly from those agreements.

The High Court refused Saipem's application, ruling that the jurisdiction clause in the Settlement Agreement should prevail over the earlier arbitration clauses. The Court referred to the principle established in *Monde Petroleum v Westernzagros Limited* [2015] 1 Lloyd's Rep 330. Under that principle, a dispute resolution clause in a settlement or termination agreement is generally interpreted as superseding prior clauses, particularly when such an agreement includes an entire agreement clause and explicitly provides for the annulment or termination of prior contracts.

In *Monde Petroleum*, the Court found that a jurisdiction clause contained in a termination agreement replaced a prior ICC arbitration clause, as the termination agreement explicitly aimed to definitively resolve the disputes and contractual relationships between the parties.

Applying this reasoning to the present case, the High Court emphasised that Destin's claims were not based directly on the initial Frame Agreements but rather on allegations of misrepresentations leading to the execution of the Settlement Agreement. Thus, the Court concluded that Destin's claims clearly fell within the scope of the Settlement Agreement, thereby excluding arbitration jurisdiction.

This decision highlights the importance for parties to a settlement agreement of ensuring consistency of dispute resolution clauses with those of prior contracts. In particular, parties should explicitly indicate if the jurisdiction clause in a settlement agreement is intended to supersede any previous clause to avoid future jurisdictional uncertainties and related procedural complications.

Contribution by Sakhavat Yusifov

England & Wales High Court, *MSH Ltd v HCS* [2025] EWHC 815 (Comm)

On 7 April 2025, the High Court of England and Wales ruled, in case [2025] EWHC 815, that an arbitral award could not be set aside under section 67 of the Arbitration Act 1996 on the ground that the claimant in the arbitration was not formally named in the underlying contract, provided that the claimant had acted as an undisclosed principal with authority at the time of contract formation.

In this case, on 28 September 2020, a contract was signed between MSH Ltd, formally identified as the Seller, and CTW Ltd, listed as the Buyer, for the sale of Colombian metallurgical coke. HCS Ltd later initiated arbitration against MSH Ltd, claiming to be the undisclosed principal behind CTW Ltd, which it argued had acted on its behalf as agent. HCS Ltd obtained a favourable arbitral award, which MSH Ltd challenged before the High Court, arguing that there was no valid arbitration agreement between the two companies and that the arbitral tribunal lacked jurisdiction.

In response, HCS Ltd contended that English law permits an undisclosed principal to enforce a contract concluded by an agent acting with authority, and that its relationship with CTW Ltd (evidenced by internal communications, financial instructions, and the handling of the letter of credit) demonstrated such authority. HCS also highlighted that the contract was re-executed on 14 October 2020, after the authority had been expressly confirmed.

MSH Ltd relied on various contractual clauses, such as an entire agreement clause, a non-assignment clause, and an exclusive naming of CTW Ltd as the buyer, to argue that HCS Ltd could not assert rights under the contract. It also pointed to the absence of any formal naming of HCS Ltd in the contract to support its position that no arbitration agreement existed between the parties.

The High Court rejected MSH Ltd's arguments and upheld the arbitral tribunal's finding of jurisdiction. The Court concluded that CTW Ltd had acted with the authority of HCS Ltd and that the parties' intentions and dealings supported the conclusion that HCS Ltd was a party to the arbitration agreement as an undisclosed principal. It found that the contractual clauses invoked by MSH Ltd did not exclude the application of this doctrine, and that the award was properly made.

Accordingly, the Court dismissed the application to set aside the award, confirming that under English law, an undisclosed principal may rely on an arbitration clause where it can be shown that the agent had authority to bind it and the principal subsequently seeks to enforce the contract in its own name.

Contribution by Soukaina El Mouden

Singapore Court of Appeal, *DJP and others v DJO* [2025] SGCA(I) 2

On 8 April 2025, the Singapore Court of Appeal (hereinafter, the "Court of Appeal") dismissed an appeal upholding the decision of the Singapore International Commercial Court (hereinafter, the "Commercial Court") to set aside an ICC award on the basis that the entire decision-making process in the arbitration amounted to a breach of natural justice.

The dispute stems from a major rail construction project in India. DJO (hereinafter, the "Respondent"), a special purpose vehicle, entered into the CPT-13 Contract (hereinafter, the "Contract") in 2015 with a consortium composed of DJP, DJQ and DJR (hereinafter, the "Appellants"). The Contract, incorporating the FIDIC Conditions (1st Ed, 1999) as amended, provided mechanisms for price adjustments following changes in legislation or labour costs. In 2017, the Indian Ministry of Labour and Employment issued a notification (hereinafter, the "Notification") mandating an immediate increase in minimum wages. Three years later, the Appellants lodged a claim for additional payment alleging that the Notification was a change in legislation.

Following the Respondent's rejection of the claim, the Appellants started arbitration proceedings in 2021, seated in Singapore and conducted under the ICC Rules effective from 1 January 2021. The Appellants sought a declaration that the Notification triggered a change in legislation and claimed additional payment on that basis. The Respondent argued that these claims were barred for the three following reasons : (i) statutory time limitation, (ii) waiver of claims due to continued performance and (iii) failure to comply with the notification requirements under the Contract. First, the Respondent contended that the Appellants' claim was time-barred under the three-year limitation period prescribed by the Indian Limitation Act 1963. Second, the Respondent argued that the Appellants had waived their right to claim by filing around 40 interim payment certificates over three years. Third, the Appellants failed to notify the Respondent of their claim within 28 days following the issuance of the Notification.

In an award rendered on 24 November 2023, the Arbitral Tribunal ruled in favour of the Appellants on almost all of the issues. The Tribunal found that the Notification did constitute a change of legislation and held the Respondent liable for additional payment. It is also worth noting that, at the same time, the Respondent was also defending two parallel arbitration proceedings (hereinafter, the 'Parallel Arbitrations') arising from similar claims under different contracts. Although involving distinct parties and contractual terms, all three arbitrations concerned the impact of the same Notification on payment obligations, and were chaired by the same presiding arbitrator.

The Respondent applied before the Commercial Court to set aside the Award on three grounds. First, the Tribunal had acted in breach of the agreed arbitral procedure under Article 34(2)(a)(iv) of the UNCITRAL Model Law on International Commercial Arbitration (hereinafter, the 'Model Law') by failing to independently consider the issues and to adequately justify its decision. Second, the Tribunal's extensive copying from the Parallel Awards violated Singapore public policy, rendering the Award liable to be set aside under Article 34 of the Model Law. Indeed, at least 212 out of 451 paragraphs in the Award were almost copied verbatim from earlier decisions issued by the same presiding arbitrator in the Parallel Arbitrations involving the same Respondent. Third, the Tribunal had breached natural justice under section 24(b) of the International Arbitration Act 1994.

The Commercial Court ultimately set aside the Award and identified four flaws in the Award rendered :

(i) failure to restrict the Tribunal to submissions

made in the Arbitration, including copying submissions and computations from the Parallel Arbitrations;
(ii) reliance on authorities not cited by the Parties or submitted for their consideration;
(iii) application of the wrong version of clause 13.8 from a different contract, leading to errors in the calculation of adjustments; and
(iv) application of the wrong *lex arbitri*, resolving issues of interest and costs under Indian law instead of Singapore law.

The Commercial Court found that the President had prejudged the Arbitration by relying on knowledge from the Parallel Arbitrations, leading to apparent bias and that the Arbitral Tribunal also failed to consider key differences between the cases, denying the parties a fair and independent process.

On appeal, the Court of Appeal first addressed whether the Award was correctly set aside for breach of natural justice. Regarding the prejudgment amounting to apparent bias, the Court of Appeal found that the Arbitral Tribunal heavily reused material from earlier Parallel Arbitrations without properly reconsidering the case, giving rise to apparent bias. A fair-minded observer would suspect prejudgment especially since new arguments were ignored, and major errors showed the Tribunal had not genuinely engaged with the Arbitration. Regarding the reference to extraneous consideration, the Court of Appeal held that the Arbitral Tribunal improperly relied on material from the Parallel Arbitrations without giving the parties a chance to address it. This breach of the fair hearing rule further justified setting aside the Award for violation of natural justice. Regarding the unequal position of the arbitrators, the co-arbitrators' lack of access to material from the Parallel Arbitrations compromised the equality among arbitrators, further undermining the integrity of the arbitration proceedings.

The Court of Appeal then addressed the Appellants' request, on whether the Award should have been set aside in part. The Court of Appeal rejected such a request holding that the breach of natural justice in the case at hand tainted the entire decision-making process and that an order of remission on appeal was no longer open to the Appellants.

In dismissing the appeal, the Singapore Court of Appeal emphasized that its decision was based on the need to safeguard the integrity and fairness of the arbitral process. In an exceptional move, the Court of Appeal chose to publicly disclose the names of the members of the Arbitral Tribunal highlighting the seriousness of the breaches identified. While Singapore courts are generally reluctant to interfere in arbitral proceedings, they do not hesitate to intervene decisively when the core principles of international arbitration are being compromised.

Contribution by Elisa-Maire Goubeau

Singapore High Court, *DMF v DMG* [2025] SGHC(I) 12

On 17 April 2025, the Singapore International Commercial Court (SICC) issued a ruling in *DMF v DMG* [2025] SGHC(I) 12, dismissing two applications filed by DMF to avoid arbitration proceedings initiated by DMG. In the first application (hereinafter "OA 26"), DMF argued that it was not a party to the Charterparty agreement and, therefore, the arbitral tribunal lacked jurisdiction. In the second application (hereinafter "OA 27"), DMF sought declarations that the dispute was not arbitrable or that the arbitration agreement was unenforceable. The Court rejected both arguments, confirming that DMF was indeed a party to the Charterparty and that the arbitration clause was valid and enforceable under Singapore law, without violating public policy.

The dispute arose from a Charterparty agreement dated 10 June 2022, regarding the shipment of palm oil from Indonesia to Iran. DMG, a Singapore-based company and the charterer under the agreement, initiated arbitration proceedings against DMF, a Hong Kong-based entity referred to in the contract as the "Registered Owner" of the vessel. DMF disputed its status as a party to the Charterparty and questioned the arbitrability of the dispute. The arbitration in question was seated in Singapore and conducted under the rules of the Singapore Chamber of Maritime Arbitration (SCMA). In a partial award on jurisdiction, a majority of the tribunal determined that DMF was bound by the Charterparty and its arbitration clause. Following this, DMF filed two originating applications before the SICC.

In OA 26, DMF sought a declaration that it was not a party to the Charterparty and in OA 27, DMF argued that the dispute was non-arbitrable, asserting that enforcement of the agreement would violate Singapore's public policy due to its connections with Iran. The central issue in both applications concerned the interpretation of the contract, specifically governed by English law as stipulated in Clause 41 of the Charterparty.

DMF, as the Applicant, argued that when interpreting the Charterparty correctly, it was not a party to the agreement concluded on 10 June 2022. It claimed that the Addendum, dated 17 June 2022, and signed later, could not retroactively bind it to the original contract if it was not a party at the time the contract was formed. DMF maintained that the Charterparty and the Addendum should be treated as separate documents. Additionally, DMF raised public policy concerns, referring to foreign sanctions regimes, and argued that Singapore should not enforce an agreement related to Iranian trade. On the other hand, DMG argued that the Charterparty and the Addendum should be read together as one unified agreement, with the Addendum making DMF a party to the contract. DMG also argued that DMF was still bound by the original agreement, citing its name in the contract and its role in its performance. DMG further pointed to DMF's conduct in previous proceedings in Malaysia, claiming that DMF's statements and actions there implicitly acknowledged its status as a party. To support this, DMG relied on legal doctrines such as res judicata, estoppel by conduct (as outlined in *Henderson v Henderson*), and abuse of process, arguing that it would be unjust to allow DMF to change its position.

The Court's reasoning in this case highlights key principles in contract interpretation, the status of parties in arbitration, and the limits of public policy as a ground to avoid arbitration. The judgment is grounded in English law, which governed the Charterparty, and reflects Singapore's strong support for international arbitration.

First, regarding the interpretation of the Charterparty, the Court followed the well-established approach in *Marley v Rawlings*, which focuses on how a reasonable person, with all the relevant background knowledge, would have understood the agreement. Although there was no signed contract, the Court found that DMF was clearly identified as "Registered Owner" and actively involved in the performance of the contract. It held that the Charterparty and the

Addendum should be read together as one single agreement. As a result, DMF was considered a party to the contract and bound by the arbitration clause. Second, the Court considered DMF's earlier conduct in related Malaysian court proceedings, where DMF had represented itself as the owner or demise charterer of the vessel. While the Court did not need to rely on legal doctrines like res judicata, issue estoppel, or abuse of process, it noted that DMF's previous actions might prevent it from now denying its role under the Charterparty. This part of the judgment highlights how a party's behaviour in one legal proceeding can impact its position in another. Lastly, regarding the public policy objection, where DMF claimed that the shipment's destination (Iran) made the dispute non-arbitrable because of foreign sanctions, the Court firmly rejected this, clarifying that Singapore does not automatically apply sanctions imposed by other countries like the US or EU and that public policy grounds cannot be extended to encompass foreign sanctions regimes such as those of the US or EU. Only serious violations of Singapore's own core legal principles can be considered contrary to public policy, and this case did not meet that standard. Therefore, the arbitration agreement remained valid.

Building on the legal reasoning outlined above, the Court reaffirmed the importance of contractual interpretation grounded in commercial context and party conduct, while also clarifying the boundaries of public policy in the enforcement of arbitration agreements. Its decision reflects a pragmatic and commercially sensitive approach, consistent with Singapore's position as a leading arbitration hub. With respect to OA 26, the Court found that DMF was a party to the Charterparty. Referring to English law and cases like *Marley v Rawlings*, it treated the Agreement and Addendum, despite being signed on different dates, as a single instrument. It noted that DMF was listed as "Registered Owner" and actively participated in the contract's performance, including issuing a stamped Notice of Readiness. The Court adopted a contextual and objective interpretation, focusing on what a reasonable party would have understood, rather than minor formal distinctions. Turning to OA 27, the Court rejected DMF's public policy argument. It confirmed that Singapore does not recognize foreign sanctions (like those from the US or EU) as part of its own public policy. These exceptions are narrowly applied and only valid when a core principle of Singaporean law is clearly breached, which was not the case. As such, the arbitration agreement contained in the Charterparty was declared valid, enforceable, and unaffected by the alleged Iranian nexus of the transaction.

In conclusion, the Court declared that DMF was a party to the Charterparty and therefore bound by the arbitration clause contained therein and rejected the claim that the dispute was non-arbitrable or unenforceable on public policy grounds. Overall, the legal findings in this case confirm Singapore's pro-arbitration approach and its commitment to preserving legal certainty and contractual autonomy in international commercial disputes, emphasizing legal certainty, contractual coherence, and a pragmatic reading of commercial agreements by interpreting contracts in their full commercial context. Moreover, by affirming an objective standard for consent and strictly limiting public policy exceptions, *DMF v DMG* strengthens Singapore's role as a reliable venue for resolving complex international disputes. It also highlights Singapore's position as a trusted and predictable arbitration hub, particularly in complex cross-border matters involving sensitive geopolitical considerations.

Contribution by Ines Ayadi

INTERVIEW WITH RITIKA AJITSARIA

1. To begin with, could you please tell us about your background, and why you chose to pursue a career in international arbitration?

I completed my Bachelor's in Law in India from the National Law School, Bangalore, in 2018. I then worked for five years at a multi-service law firm in Mumbai called Trilegal, where I was part of the dispute resolution practice and worked on arbitrations, arbitration-related litigation, commercial litigation, and insolvency cases. In 2023–24, I completed the Geneva LL.M. in International Dispute Settlement (MIDS), followed by internships with HVDB in Brussels and ArbBoutique in Paris. I am now an Associate with ArbBoutique in Paris.

I think it's clear from my profile snapshot that I was always inclined towards dispute resolution and not, for instance, transactional work like mergers and acquisitions. My interest in arbitration came from my participation in the Vis (East) Moot and the FDI Investment Arbitration Moot in law school - like it did so for many of us. It became firmer while working at Trilegal, where despite enjoying litigation immensely, I was frustrated by the slow pace of proceedings. I wanted to be able to work on cases which I could see through from start to finish, which was possible only in arbitration. I also loved that arbitration cases often tended to be more complex, technical and international. A Master's in arbitration had been on my radar for a few years by that time and once I had this clarity, I decided to take the plunge.

2. You recently joined ArbBoutique as an associate. Could you please tell us about the firm and the team?

ArbBoutique is a unique "firm" as it really functions more like a chamber of independent lawyers and arbitrators working together and sharing resources. Prof. Maxi Scherer, Niuscha

Bassiri and Chiann Bao are the partners; Emily Hay and Ole Jensen are managing counsels; and Pierre Nosewicz and I are associates. We also currently have the brilliant Alice Dupouy as an intern and usually host one or two interns at any time. The team is simply amazing and it's really a privilege to work with each one of them.

3. You have taken part in a number of moot courts, including the Vis Moot and FDI moot, and have been recognised for your advocacy and argumentation. Based on your experience, do you have any advice or tips for students participating in moots for how to get the most out of them?

I think most students who participate in these moots already have a strong grasp of the basics – research, presentation, etiquette. My advice would be to try and approach the moot as closely as possible to how a real-life counsel would. This means occasionally taking a step back from the legal issues to look at the bigger picture — analysing the parties' real interests at each stage of the dispute and considering the commercial issues at stake.

It's also a great idea to have experienced

practitioners conduct practice rounds with you. They can help ground the problem in reality and make your arguments more reasonable and believable. Having seen how businesses really work and think, they often have insights into what may have led a party to act in a certain way — insights you might not get until you're an intern or junior associate.

4. Alongside your practice as counsel, you also act as tribunal secretary in arbitration proceedings. Could you tell us about what this has brought to your practice? Do you have any advice for young lawyers looking to gain experience as tribunal secretaries?

For me, being a tribunal secretary has been the first opportunity to see a case from the non-counsel side. The work itself is incredibly interesting and dynamic and your exposure to cases is likely to be much higher than as a junior lawyer in a team of counsels. From a young counsel's perspective, you learn a lot about what arbitrators would really find persuasive and helpful. The experience is even richer when you have an opportunity to work as a tribunal secretary with different arbitrators.

There are two broad avenues available for someone looking to gain experience as tribunal secretary. First, one can work in a law firm or with an arbitrator and assist them as secretary in their cases. Alternatively, one can work on a freelance basis and apply to assist arbitrators in any cases where they need a tribunal secretary. As a student or a very young lawyer, a good stepping stone could be to assist arbitrators as research assistants or other ad hoc roles, which can offer valuable insight into your skills and potential.

5. You qualified as a lawyer in India and practiced in Mumbai for a number of years. Could you tell us about the arbitration landscape in India? Are there any big differences in how it is handled by the courts, or are there any particular challenges that have to be taken into account?

Arbitration is used widely as a dispute resolution mechanism in India, including in contracts with the Central or State governments. The majority of the domestic arbitration cases are ad hoc arbitrations, which means that many cases end up before courts for procedurals matters such as appointment of arbitrators, challenge to arbitrators, deadline for the award, etc. in addition to setting aside and enforcement proceedings.

As for international arbitrations, which are more likely to be administered by an institution, there is a rich body of judicial literature on the grounds for setting aside and recognition of awards. In my experience, courts tend to proceed faster in such cases than in domestic arbitration matters. The level of efficiency also varies by jurisdiction — with the Delhi High Court, for instance, often considered the most efficient. Another point to note is that multiple levels of review are available against the initial court decision and as such, counsel must be prepared for multiple rounds of court proceedings.

NEXT MONTH'S EVENTS

15th May 2025: Master 2 Arbitrage et Commerce International (MACI) conference on the theme of "*L'arbitrage et les tiers : quelles voies d'intervention et de recours ?*"

Organised by Master 2 Arbitrage et Commerce International (MACI) and August Debouzy

Where ? August Debouzy

Website: https://www.linkedin.com/posts/master-arbitrage-et-commerce-international-maci-_le-master-2-arbitrage-et-commerce-international-activity-7314721859021811713-bwcG?utm_source=share&utm_medium=member_desktop&rcm=ACoAABpTfDMBKhtZbeQY_X9IZCUln3YoBiFZ1JI

12th June 2025: PBA Annual Conference on the theme of "*La conception française de l'arbitrage international et les litiges nouvelle génération*"

Organised by Paris Baby Arbitration, with the support of the Association Française d'Arbitrage

Where ? To be announced (Paris)

Website: https://www.eventbrite.fr/e/pba-annual-conference-with-afa-2025-tickets-1330724656269?aff=oddtdtcreator

INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

INTERNSHIP
A&O SHEARMAN

INTERNATIONAL ARBITRATION
Start date: January 2026
Duration: 6 months
Location: Paris

INTERNSHIP
D'ALVERNY AVOCATS

LITIGATION & ARBITRATION
Start date: January 2026
Duration: 6 months
Location: Paris

DECHERT LLP

TRIAL, INVESTIGATIONS & SECURITIES
Start date: January 2026
Duration: 6 months
Location: Paris

INTERNSHIP
NORTON ROSE FULBRIGHT

LITIGATION & ARBITRATION
Start date: January 2026
Duration: 6 months
Location: Paris