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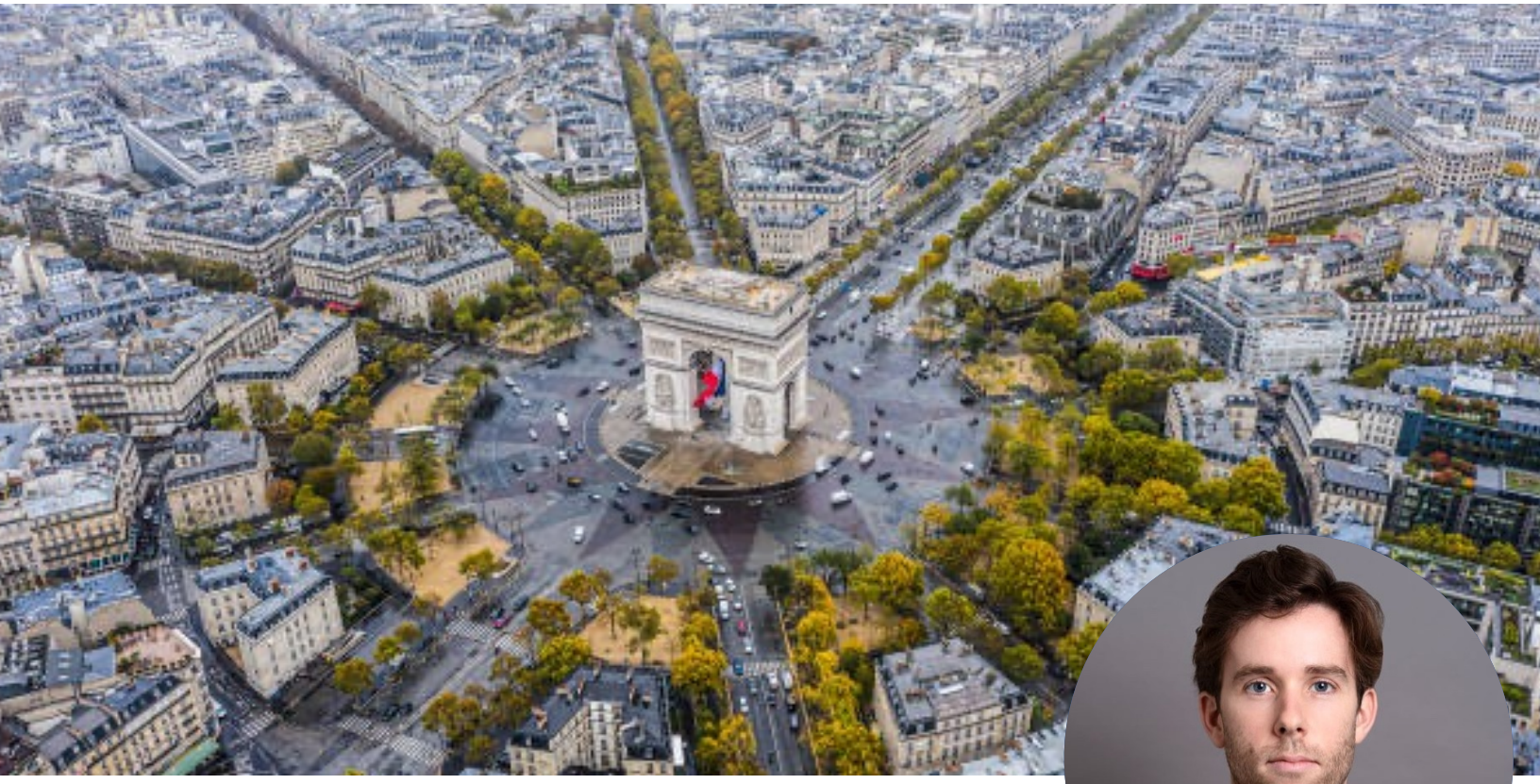

French and foreign court decisions

International arbitral awards and decisions

Interview with Thomas Adams

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CMAP

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TABLE OF CONTENTS

FOREWORD

Paris Baby Arbitration ("PBA") is a Paris-based association of students and young practitioners in international arbitration. Our aim is to promote accessibility and knowledge of this field of law and industry among students and young graduates.

Every month, our team publishes a bulletin 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, PBA 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 Bulletin and to subscribe for monthly updates, kindly visit our website: pbarbitration.fr.

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

FRENCH COURTS

COURTS OF APPEAL

Aix-en-Provence, 14 November 2025, n° 25/01921

By a judgment rendered on 14 November 2025, the Court of Appeal of Aix-en-Provence (the "Court") had the opportunity to rule on the extension of an arbitration agreement in the context of a chain of contracts transferring ownership.

On the facts, Golf Ressort Terre Blanche ("GRTB" or the "Appellant") entered into a contract in 2009 with D&O Management (the "Engineer") for the construction of golf facilities. Under a second contract concluded the following year, the Engineer subcontracted the supply and installation of a ball-washing and ball-dispensing system for the practice range (the "Equipment") to [X] Golf Challenge (the "Subcontractor"). The Equipment was manufactured by the Swedish company Range Servant AB (the "Manufacturer") pursuant to an exclusive distribution agreement dated 2009. That agreement contained an arbitration clause providing for arbitration before the Stockholm Chamber of Commerce.

Following the installation of the Equipment, defects arose. Remedial work was undertaken; however, it failed to resolve the issues encountered by GRTB.

GRTB initially obtained the appointment of an expert pursuant to Article 145 of the French Code of Civil Procedure. Thereafter, GRTB commenced proceedings against the Engineer, the Manufacturer and their respective insurers before the Commercial Court of Draguignan, seeking compensation for the damage caused by the defects. However, by a judgment dated 4 February 2025, the Commercial Court of Draguignan declined jurisdiction and invited the parties to bring their claims before a more appropriate forum.

In its ruling of 14 November 2025, the Court dismissed GRTB's appeal and upheld the judgment of the Commercial Court of Draguignan insofar as it had declined jurisdiction.

The Court began rejecting the Appellant's argument based on case law of the Court of Justice of the European Union relating to choice-of-forum clauses, noting that such case law related to the application of the so-called "Brussels I Regulation", which is inapplicable in matters of arbitration.

The Court then recalled, following detailed reasoning, that pursuant to the principle of kompetenz-kompetenz, a state court may only declare that it has jurisdiction in the presence of an arbitration clause if that clause is manifestly null or manifestly inapplicable. In this regard, the Court methodically examined the three grounds invoked by the Appellant, which it dismissed in turn.

First, the Court rejected, pursuant to Article 2061 of the Civil Code, the Appellant's argument that the arbitration clause was unenforceable on the ground that he had not accepted it. It held that it was unnecessary to establish the sub-purchaser's consent to the arbitration clause stipulated in the initial contract, since the transaction was part of a chain of contracts transferring ownership. The Court then dismissed the existence of an express waiver of the benefit of the arbitration clause solely on the basis of the exercise of a pre-emptive evidentiary action before the state courts. Finally, the Court rejected the Appellant's argument that the arbitration clause was manifestly inapplicable because it has been concluded *intuitu personae*.

The Court's findings on the first and second arguments warrant further comments.

With regard to the absence of a waiver of the benefit of the arbitration clause, the Court's

decision can only be approved. Case law recognises that, in the context of a pre-emptive evidentiary action, the arbitration clause is unenforceable, and the state courts have jurisdiction in this respect (Civ. 3ème, 20 Dec. 1982, No. 81-.15.746). Accordingly, to hold in these circumstances that the filing of a request for the appointment of an expert would constitute a waiver of the benefit of the arbitration clause would appear doubly absurd. First, such a solution would lead to the party seeking to invoke the arbitration clause to be blamed for not having challenged the jurisdiction of the interim relief judge, even though, at this stage, the clause is unenforceable before this judge. Secondly, such a solution would encourage, in a totally inequitable manner, the party wishing to unilaterally evade an arbitration clause to initiate proceedings before the state courts under a pre-emptive evidentiary action, in order to argue later that such action had resulted in a waiver of the clause, even though the opposing party was, by hypothesis, unable to oppose it.

However, while the outcome is justified, the reasoning advanced by the Court warrants scrutiny. According to the Court, "*this participation does not in fact constitute a positive act unequivocally expressing the express or tacit intention to waive the benefit of arbitration, when the dispute on the merits had not yet arisen.*" Such a statement is nonetheless perplexing in light of the requirements for the application of Article 145 of the French Code of Civil Procedure, which specifically presupposes the existence of a "*potential dispute*" (Com., 16 Oct. 2019, No. 18-11.635).

With regard to the transfer of the arbitration clause within a chain of contracts, the solution adopted by the Court is perfectly coherent in principle. However, the reasoning employed to reach this solution is highly questionable. The Court bases its reasoning on Article 2061 of the French Civil Code, which states in its first paragraph that "*the arbitration clause must have been accepted by the party against whom it is invoked, unless that party has succeeded to the rights and obligations of the party who initially accepted it.*" However, it is settled case law that this provision is inapplicable in matters of international arbitration (Civ. 1ère, 5 Jan. 1999, No. 96-21.430).

In the present case, everything suggests that the rules governing international arbitration should have applied. On the one hand, the initial contract clearly involved international trade interests, traditionally defined as a "*transaction that is not economically settled in a single State*" (Civ. 1ère, 26 Jan. 2011, No. 09-10.198), given that a Swedish company supplied goods to a French company. On the other hand, it appears from the parties' statements of claim that the Subcontractor itself referred to the provisions of the French Code of Civil Procedure relating to international arbitration, while simultaneously invoking Article 2061 of the French Civil Code). Finally, and somewhat paradoxically, the Court refers to "*the effect of the international arbitration clause*" while relying to the first paragraph of Article 2061 of the Civil Code, even though, in international matters, an arbitration clause is exclusively subject, unless the parties agree otherwise, to the substantive rules of international arbitration, independently of any state law (a fortiori French law), as the Court of Cassation has long held since the *Dalico* ruling.

The Court thus conflates the domestic and international arbitration regimes; that is difficult to justify. Perhaps this confusion reflects, at least in an anticipatory and inadvertent way, the proposed reform of French arbitration law; one of the major proposals is precisely to challenge the distinction between domestic and international arbitration. The solution, however, would have been the same under international arbitration law, as case law recognises the transfer of arbitration clauses in chains of contracts transferring ownership (Civ. 1ère, 6 February 2001, *Peavey Company v. Organisme général des fourrages*). Nevertheless, the Court would have greatly benefited from adopting a more rigorous and consistent line of reasoning.

In the wake of this decision, the Court of Cassation has recently confirmed that third parties may be bound by the provisions of a contract when they rely on it, a development that has been favorably received by the arbitration community (see Com., 17 Dec. 2025, No. 24-20.154).

Contribution by Adrien Bach

The decision rendered on 18 November 2025 by the International Commercial Chamber of the Paris Court of Appeal concerns an application to set aside a jurisdictional award rendered under the auspices of the Paris International Arbitration Chamber (hereinafter "CAIP"). The dispute concerns the applicability of two conflicting arbitration clauses designating two different arbitral institutions.

The parties had been in a business relationship for several years. Novial (hereinafter the "buyer"), who was insured under a civil liability insurance policy with AXA France IARD (hereinafter "AXA"), purchased soybean meal from Soyl under eleven successive contracts. The purchases were carried out through the brokerage company Courtagrain, which issued the order confirmations. The buyer alleged defects in the quality of the products.

An initial amicable expert assessment was conducted, after which Novial and AXA brought proceedings against Soyl before the Commercial Court of Beauvais seeking the appointment of a judicial expert, and subsequently initiated arbitration proceedings before the CAIP on the basis of an arbitration clause contained in the disputed sales contracts (hereinafter the "CAIP clause"). The arbitral tribunal established under the auspices of the CAIP rendered an award holding that it had jurisdiction to hear the dispute, fixing the seat of arbitration in Paris, and providing that the proceedings would be governed by French law. Soyl (hereinafter the "applicant") then brought an application to set aside the award on the basis of Article 1520(1) of the French Code of Civil Procedure.

The Applicant argued that the CAIP clause was inoperative due to the existence of a conflicting arbitration clause designating the Arbitration and Conciliation Chamber of FEGRA (hereinafter the "FEGRA clause"). It relied on the principle according to which, in the presence of conflicting arbitration clauses, it is for the court to ascertain the parties' common intent, emphasizing that specific conditions prevail over general conditions.

In the present case, the applicant submitted that the CAIP clause constituted a general condition, as it was pre-printed in small print at the bottom of the order confirmations issued by Courtagrain, whereas the FEGRA clause was incorporated by reference to Liprobel Conditions No. 7, which were expressly mentioned in the body of the order confirmation. The parties' common intent was further inferred from the fact that the CAIP clause appeared systematically in all order confirmations issued by Courtagrain, unlike the Liprobel conditions, which had been specifically negotiated in the sales contracts concluded between the two parties to the dispute. The applicant also relied on the specialisation of the Arbitration and Conciliation Chamber of FEGRA in disputes relating to soybean meal, combined with the absence of any reservation or exclusion of the FEGRA clause by the buyer, as additional probative factors. In the alternative, it invoked the applicability of the Vienna Convention on Contracts for the International Sale of Goods and argued that the FEGRA clause constituted an essential term of the contract.

In response, Novial and AXA characterised the CAIP clause as a specific term, insofar as it was expressly and explicitly set out in the order confirmations, which contained the decisive information relating to the sales contracts, and had therefore been accepted by the parties. By contrast, the FEGRA clause was included in the section entitled "General Conditions" of Liprobel Conditions No. 7, whereas the section relating to the specific conditions of Liprobel No. 7 required completion by the parties. The FEGRA clause further provided that it was applicable unless expressly stated otherwise.

It therefore fell to the Paris Court of Appeal, confronted with the coexistence of two conflicting

arbitration clauses, to determine which clause was to be given effect.

The Court of Appeal recalled that, under the substantive rule of international arbitration law, the validity of an arbitration clause is not subject to any formal requirements and is independent from the main contract. Its validity must be assessed in light of the parties' common intent, independently of any national law, except for mandatory rules of French law or considerations of international public policy.

The Court then undertook an examination of the parties' common intent in light of the facts of the case, relying on the principles of good faith interpretation of contracts and of effectiveness.

After excluding the applicability of the Vienna Convention on Contracts for the International Sale of Goods, it emphasised that, in the present case, the sales transactions were evidenced solely by the order confirmations issued by Courtagrain, which contained the pre-printed CAIP clause at the bottom of the page. According to the Court, the systematic and standardised inclusion of the clause in the order confirmations was not sufficient to characterise it as a general condition. It held that the CAIP clause constituted a specific term reflecting the parties' exchange of consent.

In this respect, the Court noted that the clause was expressly and autonomously mentioned in the order confirmations, was legible and immediately identifiable as it appeared isolated at the end of the document and was contained in documents setting out the elements regarded as specific contractual terms, such as the price or the quality of the goods.

By contrast, the FEGRA clause appeared in the section entitled "General Conditions" of Liprobel Conditions No. 7, which were themselves incorporated by reference in the terms of the order confirmations. Furthermore, Liprobel Conditions No. 7 contained general terms customarily used in this type of contract. The absence of direct incorporation of the FEGRA clause into the sales contracts, together with the absence of any reservation by Soyl regarding the CAIP clause, ultimately convinced the Court that the parties' genuine intent to give effect to the CAIP clause.

In light of the foregoing, the Court of Appeal dismissed the application to set aside the jurisdictional award rendered by the arbitral tribunal constituted under the auspices of the CAIP and gave effect to the arbitration clause expressly contained in the sales contracts, following an examination of the parties' common intention.

Contribution by Louise Malingrey

Paris, 9 December 2025, nº 22/04007, *Sultan de Sulu*

In the extensively litigated *Sultan de Sulu* saga, the Paris Court of Appeal has ultimately set aside the final arbitral award rendered in February 2022. This should come as no surprise given the Paris Court of Appeal's decision in June 2023 to uphold Malaysia's challenge against the partial award on jurisdiction.

As a reminder, the Sultan de Sulu saga is a lengthy land dispute between Malaysia and the heirs of the last Sultan de Sulu over an area of land located on the north side of Borneo, a large island in southeast Asia. The dispute stems from an agreement, made in 1878, between the late Sultan de Sulu and two individuals, which was then successively passed onto the British North Borneo Company and eventually Malaysia following its declaration of independence. By this agreement, the Sultan de Sulu and its heirs were to receive an annual sum in exchange for rights to the land which Malaysia kept paying up until 2013. Due to the cessation of payments, the heirs initiated an arbitration through the designation of a sole arbitrator by the Spanish courts. The arbitrator first rendered a partial award finding that the arbitral tribunal had jurisdiction to hear the dispute, which was subsequently refused enforcement by the French courts in June 2023. Nevertheless, a final award was rendered in February 2022 by the sole arbitrator ordering Malaysia to pay the heirs USD 14.92 billion.

Consequently, Malaysia has challenged the final award before the Paris Court of Appeal, requesting that it set aside the final award in its entirety on the basis on article 1520(1) of the French Code of Civil Procedure which states that an award may be set aside if the arbitral tribunal has wrongly upheld or declined its jurisdiction. The Court thus had to decide whether or not the 1878 agreement, which was written in Jawi and translated multiple times, had a valid and enforceable arbitration agreement.

In its recent judgment, the Paris Court of Appeal, following a similar reasoning to the 2023 enforcement judge, confirmed that a passage of the 1878 agreement does establish a dispute-resolution mechanism giving the British Consul-General of Brunei the power to hear any dispute between the parties, their heirs and their successors. The Court concluded that such a mechanism could be treated as an arbitration agreement given that it excluded the possibility of settling their disputes before national courts.

However, the main issue was whether this arbitration agreement could be enforceable after the specific function of the designated arbitrator, i.e. the British Consul-General of Brunei, ceased to exist. The Court reinterpreted the arbitration agreement by focusing on the will of the parties without limiting itself to a strict interpretation of the wording. The Court also considered new evidence which led it to conclude that the arbitration agreement was in fact not *intuitu personae*, meaning intrinsically linked to a designated person, but instead *intuitu officium*, relating to the function itself. The Court stated that the will of the parties to submit their disputes to arbitration was thus inseparably linked to a condition, that the arbitrator have the function of Consul-General of Brunei. Since said function no longer exists in Brunei, the Court unavoidably judged that the disappearance of the designated function rendered the disputed arbitration agreement unenforceable. The Paris Court of Appeal therefore set aside the final award in its entirety, finding that the sole arbitrator had wrongly declared itself to have jurisdiction.

This judgment could be seen as a warning to parties who take an overly specific approach to drafting their arbitration agreement. As evidenced in this saga, consent to arbitration that is subject to a specific condition such as a function, risks rendering it inoperable in the event of change, in this case, the function ceases to exist. Whilst parties must ensure a degree of precision in their arbitration agreements to avoid uncertainty, they must be wary about how developments such as the death of an arbitrator or the dissolution of an office

could affect their agreements. It is therefore critical to revisit or renew arbitration agreements over time to ensure their effectiveness in the face of changing circumstances, which, as the Court highlighted, was lacking in this case.

Contribution by Saskia Dodds

Paris, 9 December 2025, n° 25/01855

By a procedural order dated 9 December 2025, the "*conseiller de la mise en état*" of the Paris Court of Appeal ruled on the conditions for granting exequatur and on the stay of enforcement of international arbitral awards involving a sovereign State.
The dispute is between the Government of Georgia and the Georgian company Enka Renewables LLC and arises from the termination, on 20 September 2021, of a "Built-Own-Operate" (BOO) agreement entered into on 25 April 2019 for the construction and operation of a hydroelectric power generation project in Georgia. Following the termination of the contract by Enka Renewables LLC in September 2021, a dispute arose regarding the validity of that termination, the transfer of assets, and the compensation allegedly due.

Seized pursuant to an arbitration clause, an arbitral tribunal acting under the auspices of the International Court of Arbitration of the International Chamber of Commerce (ICC) rendered a final award on 13 November 2024 ordering the Georgian State, inter alia, to pay USD 297,000,000 as the fair market value of the transferred assets, together with a tax gross-up exceeding USD 52 million and various procedural costs. An addendum to the award was issued on 6 January 2025 to correct a clerical error relating to the applicable interest rate.

The Georgian Government subsequently filed applications to set aside the award and its addendum on 7 and 9 January 2025. In parallel, on 14 March 2025, the Georgian company applied to the Case Management Judge for the granting of exequatur of the awards.
Enka Renewables LLC sought exequatur of the final award, arguing that the conditions set out in Articles 1514 and 1515 of the French Code of Civil Procedure were satisfied and that no manifest breach of international public policy could be established. It opposed the stay of enforcement sought by its opponent, contending that the amounts awarded did not constitute a serious infringement of the State's rights when assessed against Georgia's overall budgetary resources rather than isolated ministerial budgets. It further denied any risk of non-restitution of the funds, emphasizing that it is a subsidiary of a global construction group of significant scale, and, in the alternative, requested that enforcement be structured through the deposit of the sums due with the "*Caisse des Dépôts et Consignations*".

In response, the Government of Georgia primarily sought a stay of provisional enforcement of the arbitral award pending determination of the application for setting aside, relying on Article 1526 of the French Code of Civil Procedure and arguing that immediate payment of more than USD 400 million would seriously prejudice its rights due to its massive financial impact and would have a disruptive effect on the conduct of public affairs. The Georgian Government further emphasized a real risk of non-restitution in the event of subsequent annulment, as Enka Renewables LLC is a mere project company with no genuine economic activity or attachable assets since 2021. Finally, the Government alleged a violation of the principle of adversarial proceedings, arguing that the arbitral tribunal improperly considered itself bound by a binary technical constraint derived from a financial model without allowing the parties to debate it.

The Court was required to determine whether recognition or enforcement of the arbitral awards was manifestly contrary to international public policy due to the alleged violation of the principle of adversarial proceedings, and whether, moreover, enforcement of the awards was likely to seriously prejudice the rights of the State of Georgia, thereby justifying a stay of enforcement pursuant to Article 1526 of the Code of Civil Procedure.

The Court granted exequatur of the final award and its addendum. It held that the alleged breach of the principle of adversarial proceedings was not apparent on the face of the award and that the Georgian Government's arguments would require

an in-depth examination of the arbitral proceedings and evidence, a task falling within the jurisdiction of the annulment judge rather than the exequatur judge. However, the Court ordered a stay of enforcement of the awards pending the ruling on the application for setting aside. He found that the total amount awarded, exceeding USD 400 million, constituted a disproportionate financial burden on the State concerned, representing nearly 60% of its defence budget and 250% of its justice budget. Immediate enforcement would have a disruptive effect on the sovereign conduct of public affairs and on planned public policies. Finally, the risk of serious prejudice was aggravated by the fact that the Georgian company is a project company with no current genuine economic activity, casting doubt on its ability to repay the sums in the event of annulment of the awards.

This decision illustrates the strictly limited review exercised by the exequatur judge, confined to identifying a manifest and obvious breach of international public policy, without any reconsideration of the merits or detailed examination of the arbitral proceedings. It also recalls that a stay of enforcement of an international arbitral award is an exceptional measure, subject to concrete proof of a serious risk of prejudice to a party's rights, assessed *in concreto*, in particular in light of the immediate financial impact of enforcement on a condemned State.

The order further highlights the strict distinction between the role of the exequatur judge—limited to verifying, on the face of the award, the absence of any manifest breach of international public policy—and that of the annulment judge. It also confirms that the apparent insolvency of the creditor, where it is a project company without assets, constitutes an aggravating factual factor increasing the risk of serious prejudice to the debtor's rights.

Contribution by Rheda El Hamzaoui

V v K [2025] EWHC 1523 (Comm)

On 19 June 2025, the English High Court handed down a judgment relating to arbitrator bias. This maritime dispute was a London seated arbitration under the LMAA (London Maritime Arbitrators Association) Rules. The Claimant challenged the enforcement of the award on the grounds of lack of jurisdiction and apparent bias of an arbitrator.

Contract in dispute

A maritime dispute crystallised regarding sanctions imposed by the United States which affected the sale of a ship. Subsequently, the Defendant claimed that they were entitled to release a deposit which had been lodged in escrow. The Partial Final Award was rendered in August 2024, in favour of the Defendant. All of the Claimants' counterclaims were dismissed.

The Claimant originally put forward two main arguments: firstly, under section 67 of the English Arbitration Act (the "Act"), alleging a lack of jurisdiction, and, secondly, under section 68 of the Act, alleging serious irregularity.

Jurisdiction

The section 67 challenge was based on the assertion that the arbitrators had committed a repudiatory breach of the arbitration agreement and therefore lacked jurisdiction. This repudiatory breach was alleged by Claimant on the basis of what they deemed to be unfavourable procedural decisions taken by the Tribunal.

The judge went through the procedural history in minute detail and was very critical of Claimant's behaviour in general. In particular, he noted that in several instances in their submissions, they had mischaracterised what had occurred during the arbitration. The Claimant alleged that this tainted the arbitration and that they had made the Partial award without the jurisdiction over the parties. During the hearing, Claimant decided not to pursue the challenge under section 67 (lack of jurisdiction). Nevertheless, the Judge did hold that this challenge was "*hopeless in any event*".

Serious irregularity and apparent bias

The other challenge based on serious irregularity was grounded in the apparent bias of a co-arbitrator. The Claimant initially enquired as to the multiple appointments between the co-arbitrator and a partner in the law firm which had appointed him. This request was complied with. Only after the award was rendered did Claimant make further and more detailed enquiries. On the basis that the arbitrator had not disclosed appointments by the Defendants' law firm, the Claimant brought the challenge under section 68 of the Act. It was on the basis of these further and better particulars that the Claimant alleged apparent bias under section 68 of the Act.

The judge outlined how under section 33 of the Act the tribunal has a general duty to act fairly and impartially. The test for apparent bias was set out in *Porter v Magill* [2002], as follows: "*The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased*". The recent English Supreme Court decision in *Haliburton* was also used in determining the obligations of an arbitrator. In particular, Lord Hodge had confirmed that there is a practice or custom in LMAA arbitrations under which arbitrators may take multiple appointments without disclosure. This differing disclosure standard is also reflected in the IBA Guidelines on the Conflict of Interest (footnote 3 of 2024 version). The IBA Guidelines mention the areas of

maritime, sports and commodities.

The Claimant also sought to rely on *Aiteo v Shell* [2024] EWHC 1993, asserting that it was similar to the present case. However, the judge differentiated the two cases on two main points. First, the *Aiteo* case was subject to an ICC arbitration and the accompanying 'subjective' stance on arbitrator independence and impartiality. Mainly, he pointed out that Article 11(2) of the ICC Rules 2021 regarding disclosure has a subjective element, and that English law has an objective element. Secondly, he also noted the fact that the ICC Court had upheld the challenge to the arbitrator as a distinguishing feature in the *Aiteo* case.

Decision

Neither of the challenges under section 67 or Section 68 were upheld. The decision once again underlines the very high bar for challenging an arbitrator for bias. It also emphasises the importance of specific questioning of an arbitrator and the timing of such questioning. It also brought to the fore the differing standards of disclosure applying to different types of arbitration

Contribution by Padraic Mc Cafferty

Seacrest v BCPR [2025] EWHC 3266 (Comm)

By a judgment dated 15 December 2025, the High Court of Justice (Commercial Court) dismissed an application brought by Seacrest Group Ltd (hereinafter "**Seacrest**") seeking to set aside, pursuant to section 68 of the Arbitration Act 1996 (hereinafter the "**1996 Act**"), a final arbitral award rendered on 27 September 2024 in a UNCITRAL arbitration between Seacrest and BCPR Pte Ltd and Bangchak Corporation Public Company Limited (together, "**BCP**").

The Court held, first, that the arbitral tribunal had not committed a serious irregularity by treating as undisputed the NOK/USD conversion method used to calculate a deferred consideration, where the contrary contention had been advanced by Seacrest only at the stage of written closing submissions without permission to do so (the "Exchange Rate Issue"). Second, it declined to declare that the tribunal's decision on a correction request made under Article 38 of the 2021 UNCITRAL Arbitration Rules lacked legal effect (the "Article 38 Issue").

On the facts, Seacrest and BCP entered into an investment agreement governed by English law dated 30 November 2018 (the "Investment Agreement"), which concerned, inter alia, BCP's acquisition of an indirect interest in a Norwegian company, OKEA AS, held by a Seacrest affiliate.

Under the Investment Agreement, a "Performance Compensation" mechanism provided for the payment to Seacrest of deferred consideration (the "Deferred Consideration Payment" or "DCP"), calculated by reference to a waterfall distribution from the "Received Proceeds".

Where OKEA's shares were listed as at the fourth anniversary of the investment, the amount of the Received Proceeds fell to be determined by reference to a deemed sale price equal to the average closing price over the 60-day period preceding that date (the "Pricing Period").

The dispute concerned the currency in which the calculation was to be performed (Norwegian kroner ("NOK") or United States dollars ("USD")) and, correlatively, the NOK/USD conversion method applicable to the deemed sale price of the shares still held by BCP at the fourth anniversary date.

In the award, the tribunal composed of Mr Stuart Isaacs KC, Mr Jasbir Dhillon KC and Professor Benjamin F. Hughes held, inter alia, that the currency of account for calculating the DCP was USD. The tribunal treated as undisputed that the amount of the Received Proceeds (rounded to the nearest dollar) was USD 184,614,435, a figure obtained by applying an average NOK/USD exchange rate over the Pricing Period.

Taking the view that the award failed to make any finding as to what exchange rate should be used to calculate the Received Proceeds, Seacrest submitted, on 07 October 2024, a request for correction pursuant to Article 38 of the UNCITRAL Rules.

By a decision dated 30 October 2024, the tribunal refused to make any correction, holding, inter alia, that the exchange-rate challenge had been raised for the first time in written closing submissions and could therefore not be introduced without permission.

Seacrest then brought a challenge before the High Court under section 68 of the 1996 Act. Two grounds were pursued: the Exchange Rate Issue (section 68(2)(a), alleged breach of the duty of procedural fairness under section 33); and the Article 38 Issue (section 68(2)(b), alleged excess of powers and alleged lack of legal effect of the decision on the correction request).

Seacrest contended that the tribunal had breached its duty under section 33 of the 1996 Act by failing to give it a reasonable opportunity to present its case and to consider the submissions properly

advanced.

Seacrest argued that, in its final submissions, it had stated that, if the calculation was to be performed in USD, the NOK/USD conversion should be carried out at the rate prevailing on the fourth anniversary date (or, in the alternative, on the DCP due date), rather than by reference to a 60-day average.

According to Seacrest, by stating in the award that the USD amount of the Received Proceeds was "undisputed", the tribunal had, in substance, ignored its final submissions and decided a contested issue without addressing it. It submitted that this amounted to a serious irregularity causing substantial injustice, with the financial impact being assessed at approximately USD 3 million.

As regards the correction request under Article 38 of the UNCITRAL Rules, Seacrest argued that the refusal decision (and the findings it contained) was not binding because the tribunal was *functus officio* after issuing the final award. It therefore sought declaratory relief that the decision should be treated as having no legal effect and could not be relied upon to defeat its section 68 challenge.

BCP responded that, throughout the proceedings, Seacrest had maintained that the currency of account was NOK and had not, either in its reply submissions or at the hearing, challenged the period or methodology for calculating the exchange rate to be applied if conversion into USD was required.

BCP submitted that the argument advanced in the closing submissions amounted to a new issue, which was raised late and without an application for permission, contrary to the procedural indications given by the tribunal.

BCP therefore argued that the tribunal had been entitled to treat the point as undisputed and that this could not constitute a serious irregularity. In any event, it maintained that no substantial injustice had been shown, as the tribunal had confirmed in its Article 38 decision that it would, in any event, have applied the average rate over the Pricing Period.

Finally, BCP contended that the decision on the Article 38 correction request formed part of the review mechanism agreed by the parties and produced legal effects. A general declaration of non-binding effect was, it submitted, both unfounded and inappropriate.

On the Exchange Rate Issue, the Court first recalled the scheme of section 68 of the 1996 Act: judicial scrutiny was strictly confined to serious procedural irregularities and did not operate as a disguised appeal.

The Court then examined the pleadings and the course of the hearing and found that Seacrest had not, prior to final submissions, challenged the conversion method advanced by BCP (an average rate over the Pricing Period).

It held that the paragraphs dealing with the exchange rate in Seacrest's final submissions introduced for the first time a positive challenge as to the conversion date, without any application having been made to amend its case.

In those circumstances, the tribunal was entitled, consistently with its duty of procedural fairness, to treat the point as undisputed and to disregard a late argument advanced outside the procedural framework set.

The Court further noted that the tribunal had explained, in its Article 38 decision, why it was not required to reopen the debate and that it would, in any event, have applied the same exchange rate. Accordingly, even if an irregularity were assumed, substantial injustice was not established.

On the Article 38 Issue, the Court refused Seacrest's request for declaratory relief that the decision refusing correction lacked legal effect.

It emphasised that Article 38 established a correction mechanism forming part of the arbitral procedure agreed by the parties and that a decision issued by the tribunal within that mechanism produced legal effects between the parties, even if it did not itself constitute a final "award".

The Court considered that it was not appropriate, in the context of a section 68 challenge, to grant a general declaration of non-binding effect in respect of a correction decision, where such decision constituted the exercise of the tribunal's corrective competence under the applicable arbitral rules.

The High Court therefore dismissed Seacrest's application under section 68 of the 1996 Act and refused to grant the declaratory relief sought in relation to the Article 38 decision under the UNCITRAL Rules.

This judgment reaffirmed the rigour of the "*serious irregularity*" standard under the 1996 Act : a party that seeks, in its closing submissions alone, to introduce a challenge that was not pleaded and for which no permission was sought, runs the risk that the tribunal will treat it as inadmissible or, at the very least, as irrelevant.

The decision also reflected the high threshold for successfully challenging an arbitral award on the ground of serious irregularity leading to substantial injustice.

Parties to an arbitration should ensure that they address all matters in dispute adequately at an early stage of the arbitral proceedings and should avoid raising new arguments late in the day.

Contribution by Fouad El Hage

Ontario Superior Court of Justice, *Lochan v Binance Holdings Ltd*, 2025 ONSC 6493

On 25 November 2025, the Ontario Superior Court of Justice rendered its decision in *Lochan v. Binance Holdings Ltd.*, 2025 ONSC 6493, granting an anti-suit injunction restraining Binance and its affiliates from pursuing arbitration proceedings in Hong Kong. The ruling followed earlier Canadian decisions holding that Binance's arbitration clause was unenforceable, and addressed the interaction between arbitration clause validity, access to justice, and the use of foreign arbitration as a collateral attack on domestic litigation.

The dispute arose from a proposed class action brought by Canadian investors against Binance Holdings Ltd. and related entities, alleging the unlawful distribution of cryptocurrency derivative products in violation of Ontario securities law. The investors claimed that Binance had failed to comply with registration and prospectus requirements under Canadian law. The user agreements governing the transactions contained a standard-form arbitration clause providing for arbitration in Hong Kong under foreign institutional rules.

In earlier stages of the proceedings, Binance sought a stay of the Ontario class action in favour of arbitration. That request was rejected by the Ontario Superior Court, and the decision was upheld on appeal, on the basis that the arbitration clause was unconscionable and contrary to public policy. The courts emphasised that the clause was embedded in a non-negotiated click-wrap agreement, imposed a foreign forum with no meaningful connection to most users, and effectively denied access to justice for small-value claims.

Following these rulings, a Binance affiliate initiated arbitration proceedings in Hong Kong against the representative plaintiffs, alleging breach of contract and seeking indemnification in relation to the Ontario litigation. The plaintiffs applied to the Ontario Superior Court for an anti-suit injunction, arguing that the foreign arbitration constituted an abuse of process and a collateral attack on binding Canadian court decisions. Binance opposed the injunction, invoking principles of party autonomy, competence-competence, and international comity.

The Court was required to determine whether a Canadian court may restrain foreign arbitration proceedings where the underlying arbitration clause has been declared unenforceable, and whether the initiation of such arbitration amounts to an abuse of process justifying an anti-suit injunction. It also had to consider the weight to be given to comity in the context of private arbitral proceedings.

The Court granted the anti-suit injunction. It held that the Hong Kong arbitration was, in substance, an attempt to circumvent and undermine prior Ontario rulings declaring the arbitration clause unenforceable. The Court emphasised that allowing the arbitration to proceed would prejudice the plaintiffs and jeopardise access to justice by re-litigating issues already decided.

Applying the test for anti-suit injunctions, the Court found that Ontario was the natural and appropriate forum for the dispute and that the balance of convenience favoured injunctive relief. Importantly, the Court held that considerations of international comity carry less weight in relation to arbitral tribunals than foreign courts, as arbitration is a private dispute resolution mechanism rather than an exercise of state judicial authority. In the absence of a valid arbitration agreement, there was no legitimate basis for the foreign arbitration to proceed.

This decision is significant in confirming that courts may actively protect the integrity of domestic proceedings by restraining foreign arbitration when arbitration is used as a tactical device to defeat access to justice. *Lochan* illustrates

a firm judicial stance against the enforcement of standard-form arbitration clauses that are inaccessible or oppressive, particularly in mass consumer and investor contexts.

The ruling also contributes to a growing body of jurisprudence distinguishing comity toward foreign courts from deference to arbitral tribunals. It underscores that competence-competence is not absolute and that courts retain a central role in policing arbitration agreements that undermine fundamental procedural values. From a comparative perspective, the decision positions Canadian courts among the more interventionist jurisdictions when arbitration is invoked in a manner inconsistent with public policy and procedural fairness.

Contribution by Cristian Zannier

Singapore High Court, *DPT v DPU* [2025] SGHC(I) 29

By a judgment dated 15 December 2025, delivered by *S Mohan J* (with *Roger Giles IJ* and *Anselmo Reyes IJ*), the Singapore International Commercial Court ("SICC") dismissed an application to set aside a partial arbitral award rendered in a Singapore International Arbitration Centre ("SIAC") arbitration. The application (SIC/OA 10/2025) was brought on two alternative grounds: firstly, that the applicants were unable to present their case under *Article 34(2)(a)(ii)* of the *UNCITRAL Model Law*, read with s 3 of the *International Arbitration Act 1994 (2020 Rev Ed)*; and secondly, that there had been a breach of the rules of natural justice within the meaning of *s 24(b)* of the same Act.

The applicants in the setting-aside proceedings were DPT and DPU, sister companies within the same corporate group. They had been the respondents in the underlying arbitral proceedings.

DPT and DPU were majority shareholders and investors in DPX, holding an initial 83.33% ownership stake. Established in 2017, DPX is a financial technology joint venture primarily engaged in providing an open-loop e-wallet payment solution. DPT and DPU were parties to DPX's governing Shareholders' Agreement ("SHA") and Investment Agreement ("IA"), pursuant to which they provided funding via twelve convertible loan notes ("CLNs") entered into between August 2018 and August 2020. In May 2021, the CLNs were converted into equity, increasing the applicants' shareholding in DPX to 99.6%.

The respondents in the setting-aside application were DPV and DPW, the founders and minority shareholders of DPX, who held senior management positions within the company. DPV served as Group Chief Executive Officer, while DPW was Head of Business Planning and Intelligence and Chief Strategy Officer. In the arbitration, the founders advanced claims against the applicants and DPX for breaches of the SHA and IA, and against the applicants for minority oppression under *s 216(1)* of the *Companies Act 1967 (2020 Rev Ed)*. They sought, *inter alia*, declarations of breach, relief in respect of the CLN share issuance, a buyout order, and damages in the alternative. DPX was named as a respondent in the proceedings in a nominal capacity.

The dispute was referred to arbitration in November 2021 and was administered by SIAC before a three-member tribunal. The applicants denied the founders' claims, contending that the SHA and IA had been validly terminated, and counterclaimed for malicious falsehood and costs.

In a Partial Award issued in December 2024, the tribunal held that the SHA and IA had not been validly terminated and that the applicants had breached both agreements. It further found that the applicants' conduct amounted to minority oppression. In relation to the CLNs, the tribunal declared the share issuance null and void as against the founders and ordered a buyout of the founders' shareholding in DPX.

The tribunal fixed 31 December 2021 as the valuation date and valued DPX at USD 120 million. It determined that the founders were entitled to 12.28% of the company's value, resulting in a buyout price of USD 14,736,000. The award was not unanimous, with a dissenting arbitrator disagreeing with the valuation and buyout methodology adopted by the majority.

Following the Partial Award, DPT and DPU applied to the SICC to set aside the award on grounds of breach of natural justice. Two complaints were advanced. First, in what was termed the "Buyout Issue," the applicants argued that the tribunal had adopted a valuation methodology that had not been pleaded. A methodology which labelled the CLNs "worthless as debt" and led to the tribunal's conclusion that there was no difference between pre and post conversion valuations, without giving the

applicants an opportunity to be heard. Secondly, the applicants contended that the tribunal failed to consider material responsive evidence filed in response to subpoenaed witnesses, amounting to infra *petita*. The founders opposed the application.

The Court identified two issues, both concerning the fair hearing rule:

1. Whether the tribunal's adoption of the buyout valuation methodology breached the fair hearing rule; and

1. Whether the tribunal failed to consider material responsive evidence, amounting to *infra petita*.

In citing the fair hearing rule as set out in BTN *v BTP [2021] 1 SLR 276* and *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86*, the SICC reaffirmed that an arbitral award may be set aside for breach of natural justice only where the applicant shows a denial of a reasonable opportunity to present its case and that such breach caused prejudice to the applicant's rights. The court further held, per *BZW v BZV [2022] 1 SLR 1080*, that the fair hearing rule does not require a tribunal to decide matters solely in the precise manner advanced by the parties, so long as its reasoning bears a sufficient *nexus* to the parties' submissions, consistent with the chain of reasoning doctrine.

Regarding the *infra petita* challenge, the court followed the rationale in *DKT v DKU [2025] 1 SLR 806*, which held that for a successful challenge, the applicant must demonstrate that the tribunal failed to consider an issue essential to the resolution of the dispute, and that such inference is clear and virtually inescapable. Relying on *ASG v ASH [2016] 5 SLR 54* and *DFI v DFJ [2024] SGHC(I) 4*, the court confirmed that this requirement of a clear and irrevocable inference also applies to a tribunal's alleged failure to consider material responsive evidence. The applicant bears the burden of proving that relevant and material evidence was disregarded by the tribunal in reaching its ruling.

The Court dismissed the setting-aside application in its entirety. With respect to the buyout issue, it held that the tribunal was not restricted to adopting a valuation methodology explicitly proposed by the parties. Its adoption of a third valuation methodology did not constitute a breach of natural justice. The court further cited *Hii Yii Ann v Tiong Thai King [2024] 6 SLR 96*, confirming that claimants are not expected to delve into precise quantification in relation to damages, or in this case, buyout order valuation.

Regarding the responsive evidence issue, the court rejected the *infra petita* challenge. It held that the requirements set out in *DKT* and *ASG* for a successful challenge in relation to material evidence were not met. Citing *Glaziers Engineering Pte Ltd v WCS Engineering Construction Pte Ltd [2018] 2 SLR 1311*, the court explained that even if the evidence in question was material, its omission does not automatically constitute non consideration. The applicant must demonstrate that the tribunal failed to consider the submission rather than simply disregarding it or choosing not to explain itself, in line with *CZT v CZU [2024] 3 SLR 169*, which confirmed that a tribunal is not obliged to summarize every argument put forward.

The decision reinforces the high threshold for setting aside arbitral awards in Singapore, affirms judicial deference to tribunals in matters of valuation, and confirms that natural justice challenges are not a substitute for an appeal on the merits.

Contribution by Mohamed Hamaima

INTERVIEW WITH THOMAS ADAMS

1. To begin with, can you tell us about your professional journey and what led you to specialise in international arbitration?

My interest in the field began during law school, through a course on international arbitration. I had a great professor, and while the subject itself was fascinating, what truly drew me in was seeing classmates travel internationally to compete in moots overseas. I remember thinking to myself, "that's something I want to do!" From there, I was hooked and went on to participate regularly in moots, travelling twice to Europe and across Australia.

Slowly, the subject matter of international dispute resolution became more appealing when I understood that it was possible to make a career in the field. That appeal led me to intern with the ADR team of the International Chamber of Commerce in my final year of law school, which was a defining experience (more on that later).

After returning to Australia to complete my studies, I was faced with a choice: to begin practice domestically, or to try my luck in international arbitration in Paris. What initially attracted me to arbitration was the international aspect – the opportunity to work across borders, travel and collaborate with people from different legal traditions and cultural backgrounds. My deeper interest in the subject matter developed later, once I was immersed in practice.

2. Were there any unexpected turning points or influences that shaped interest in arbitration? Did you have any doubts about arbitration, and if so, what ultimately convinced you to choose either?

Once I had decided to go down the arbitration path, a key turning point was whether to pursue an LLM or apply as a paralegal for firms in Paris that had the need. I chose the latter, landing a paralegal job at White & Case, and in hindsight it was one of the best decisions I made. The hands-on exposure was invaluable – I attended hearings, observed cross-examinations, and importantly picked up on the subtleties of what it was actually like to be a junior lawyer (things like document management, communication with colleagues and clients, proof-reading etc.). Money can't buy that experience.

This was also my first experience working in BigLaw. I loved the mindset and the pace at which things moved, as well as the level of commitment people brought to their work. I also appreciated that even as a paralegal, you could be entrusted with real responsibility, finding yourself deeply immersed in matters and working closely with partners and associates. Hearings were also a huge upside to the job. For me, that included a massive hearing in São Paulo, Brazil, that was halted midway as COVID was emerging (that was in mid-March 2020) – we made it back to France just in time for the borders to close. Scary stuff! The team at White & Case are also a great bunch of people and I'm still close with many of my former colleagues.

3. You have worked at Quin Emanuel as an associate for 4 years, having also spent a year

as an intern at the firm before that. Could you tell us a bit about the team and the firm?

I have been at Quinn Emanuel since 2020, with a brief pause when I headed back to White & Case for an internship. Quinn Emanuel is relatively new to the arbitration market, and in many ways it still operates like a boutique – despite being involved in some of the most significant arbitrations globally.

What attracted me to the team were the lawyers, and more importantly, just how busy they were! I remember a professor at law school telling me that the first four years of your legal career are the most formative. That advice stayed with me and informed my decision to begin my career with Quinn Emanuel, which is a decision I am glad I made.

Quinn Emanuel is a unique firm. It works in small teams. It moves fast. Associates are busy – in my first year, I was working across six active cases (!) – and are entrusted with meaningful roles on major cases. It is a place where if you show yourself to be committed and dependable, you can find yourself doing substantive work well beyond your seniority – leading client calls, taking ownership of discrete workstreams, and helping shape case strategy (even as a junior). In Paris, the arbitration team is around 25 lawyers and includes a healthy mix of civil- and common-law practitioners. We work across commercial and investment arbitrations, with no rigid geographic or sector focus.

4. Do you a have a particular focus in your practice? If so, can you tell us a bit about this focus? Are there any particular challenges that need to be overcome?

Whilst my practice spans a range of sectors, I have a particular expertise in energy arbitrations – especially gas, LNG and oil disputes. This includes disputes across the entire value chain and includes price reviews, joint venture disputes, PSC and JOA disputes, delivery disputes, M&A claims, hardship and equivalent claims and terminations.

What I enjoy most about energy disputes is that they are unique beasts: highly technical, often involving complex quantum issues and almost always turning on contractual interpretation and thorny questions of law – most typically under English law. More than that, energy disputes in the European gas market – where we specialise – often carry a strong political dimension and involve very high stakes. We regularly act on leading cases that have long-term implications for the market.

5. You worked at the ICC for a year as an intern. What did this experience bring to your arbitration practice?

Working at an institution is a great idea for any arbitration practitioner. Whether as an intern or at a more senior level, it gives you an insight into how cases are administered, how challenges to arbitrators are decided and (for certain institutions) how awards are scrutinised. It is also a great platform from which you can deepen your professional network, particularly with others from your home jurisdiction working in the field. That is one piece of advice I would give to students looking to get into a career in arbitration: don't hesitate to reach out to practitioners who share your background – chances are they were once in the same position as you.

My time at the ICC was a formative experience. I dare say that had I not done the internship I probably would not be living in Paris nor would I be practicing in arbitration. The ICC is a natural meeting point for the international arbitration community and I am still very close with many of the people I worked with.

6. An LL.M is often seen as a springboard for young arbitration practitioners. Do you think doing an LLM is particularly useful for getting into arbitration, or is it just a plus?

It depends what you are hoping to get out of it. For me, getting a "practical education" in a leading arbitration practice was a much better option as I had an inkling that my place was working at a law

firm (rather than, say, at the Bar or in academia). But not everyone has the same background and career aspirations. LLMs can be a great way to travel overseas and meet new people. If I were to do one, I would opt for a more general programme focused on contract law or even an MBA or some finance degree, rather than one tailored to arbitration.

UPCOMING EVENTS

5th February 2026: Global Dispute Resolution Conference 2026

Organised by the Institut de Droit Comparé de Paris (IDC)

28 rue Saint-Guillaume 75007 Paris

Website: https://shorturl.at/4h9Ur

5th February 2026: Prevención de Disputas en los Sectores de Energía y Construcción

Organised by Club español e iberoamericano del arbitraje

White & Case, 19 Place Vendôme 75008 Paris

Website: https://shorturl.at/tXZgR

9th February 2026: Revisiter l'internationalité du contrat

Organised by the Cour de Cassation

5 quai de l'Horloge 75001

Website: https://shorturl.at/7UCu4

10th February 2026: ISDS in the face of geopolitical crises

Organised by Sciences Po Law School TADS LLM and Bredin Prat

Bredin Prat, 53 quai d'Orsay 75007 Paris

Website: https://shorturl.at/R3Gc8

11th March 2026: Does international arbitration still serve the needs of international business?

Organised by CFA – International Arbitration Institute

Hôtel Le Marois, 11 avenue Franklin D. Roosevelt 75008 Paris

Website: https://shorturl.at/nvBzu

INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

Internship – Ashurst

International Arbitration

January-June 2027

Paris, France

Internship – Charles Russell Speechlys

Litigation / International Arbitration

January-June 2027

Paris, France

Internship – Linklaters

International Arbitration

January-June 2027

Paris, France

Internship – Herbert Smith Freehills

International Arbitration

January-June 2027

Paris, France

Associate – Norton Rose Fulbright

Dispute Resolution

Paris, France