

# PBA

*Monthly Arbitration Bulletin*

May 2026 | N° 85



French and foreign  
court decisions

International arbitral  
awards and decisions

Interview with  
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## 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](http://pbarbitration.fr).

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Sincerely yours,

The Paris Baby Arbitration team

# FRENCH COURTS

## COURTS OF APPEAL

**Paris, 17 February 2026, n° 22/17161, Roumanie**

In a return to the so-called "*Micula*" saga opposing the world of international arbitration and the case law of the European Union Court of Justice on State aid, the Paris Court of Appeal rendered a judgment on 17 February 2026 dismissing an application to set aside an arbitral award that had ordered Romania to compensate an Austrian company. The Court held that the recognition and enforcement of an arbitral award issued in commercial arbitration proceedings does not constitute a violation of international public policy.

In 2004, the Austrian company OMV Aktiengesellschaft (hereinafter the "Respondent") concluded a privatisation agreement with the Romanian Ministry of Economy and Commerce for the acquisition by the Respondent of 51% of the share capital (hereinafter the "Privatisation Agreement") of the former Romanian state-owned company National Petroleum Company Petrom SA (hereinafter "Petrom"). The Privatisation Agreement provided for a guarantee mechanism whereby Romania undertook to indemnify environmental losses and abandonment costs arising from pollution historically caused by Petrom prior to its acquisition by the Respondent. In the arbitration proceedings conducted under the Rules of the International Chamber of Commerce, the arbitral tribunal ordered the Romanian Ministry of Environment, Waters and Forests, claimant in the annulment proceedings before the Court (hereinafter the "Claimant"), to pay Petrom the sums provided for under the indemnification mechanism stipulated in the Privatisation Agreement.

Taking the view that the award and the condemnations issued against the Romanian State were constitutive of illegal State aid within the meaning of Article 107 of the Treaty on the Functioning of the European Union (hereinafter "TFEU") and the case law of the European Court of

Justice (hereinafter "ECJ"), the Claimant brought an application to set aside the award before the Paris Court of Appeal on grounds of violation of international public policy.

The Respondent contested the characterisation of illegal State aid by relying on the most recent case law of the ECJ in this area, as well as on a decision of the Romanian Competition Authority (*Consiliul Concurenței*) which, consulted prior to the conclusion of the Privatisation Agreement, had found that no State aid was present.

The proceedings before the Court of Appeal also gave rise to the intervention of the European Commission as *amicus curiae*, for the purpose of assisting the Court in interpreting and applying the European legal framework on State aid. In that context, the Commission concluded that the measures at issue did not qualify as State aid.

The legal question before the Court was whether an arbitral award may constitute prohibited State aid within the meaning of European law and whether, by concluding the Privatisation Agreement, Romania had granted the Respondent illegal State aid to which the arbitral award would have given effect.

The Court of Appeal dismissed the application to set aside the award, on the grounds that the arbitral award did not constitute illegal State aid in itself and that the Claimant had failed to demonstrate that the measure adopted by the Romanian State, namely, the conclusion of the Privatisation Agreement to which the arbitral award gave effect constituted illegal State aid within the meaning of Article 107 TFEU.

First of all, the Court recalled the concept of international public policy, understood as the body of fundamental values and principles of the French

legal order from which no derogation may be permitted, even in an international context, and clarified that its review is limited to cases in which the enforcement of the measures taken by the arbitral tribunal would manifestly violate those principles and values.

The Court then observed that the prohibition of State aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods on the internal market, as set out in Article 107 TFEU, forms part of French international public policy, and that it was therefore for the Claimant to demonstrate how the recognition or enforcement of the award would give effect to prohibited State aid in the present case.

Regarding the first part of the legal question, the Court dismissed the ECJ case law relied upon by the Claimant in support of the argument that an arbitral award imposing pecuniary obligations on a State for the benefit of a private operator may constitute State aid. The Court found that this case law was not relevant in the present case, since the notion of State aid developed in the judgment *Commission v European Food e.a.* (C-638/19) concerned investment arbitration only.

Aligning itself with the conclusions of the European Commission, the Court clarified that the notion of State aid developed in the context of investment arbitration cannot be transposed to so-called "conventional" commercial arbitration. In particular, arbitral proceedings based on a State's consent expressed in a specific agreement reflecting the autonomy of the parties, which does not seek to remove from the jurisdiction of national courts and the ECJ disputes liable to concern the interpretation and application of EU law, do not in principle constitute illegal State aid.

Relying on the ECJ judgment of 22 February 2024 in joined cases C-701/21 and C-739/21 (*Mytilinaios/DEI*), the Court recalled that a Member State's decision to conclude an arbitration agreement with a private operator does not confer upon the latter a selective advantage within the

meaning of State aid rules, unless it is demonstrated that the arbitration clause and the conduct of the arbitral proceedings form part of a scheme put in place with the specific aim of circumventing State aid rules. Since the Claimant had not argued that this was the case, the Court concluded that the arbitral award did not, as such, constitute illegal State aid within the meaning of Article 107 TFEU.

Regarding the second part of the question, whether the conclusion of the Privatisation Agreement constituted State aid to which the award had given effect, it was necessary to satisfy the four cumulative criteria for the characterisation of State aid within the meaning of Article 107 TFEU namely, that the Privatisation Agreement constituted a measure imputable to the State, liable to affect trade between Member States and to distort or threaten to distort competition, and that it could be characterised as a selective advantage conferred upon the Respondent.

The Court found that the Claimant, who bore the burden of proof, had failed to substantiate its allegations, having produced no economic analysis of the relevant market or of the Respondent's market position and economic activity. By contrast, the Court relied on the decision of the Romanian Competition Authority (*Consiliul Concurenței*) produced by the Respondent, which, following a thorough analysis of the Respondent's market position and the various stages of Petrom's privatisation process, including a review of the indemnification mechanism for environmental losses and abandonment costs contained in the Privatisation Agreement, had concluded that no State aid was present.

The Claimant having failed to adduce sufficient evidence to demonstrate that the conclusion of the Privatisation Agreement satisfied the constitutive criteria of illegal State aid, the Court could only conclude that no State aid was established.

In the absence of any demonstration of prohibited State aid within the meaning of the European legal framework, the Court therefore dismissed the sole

ground of annulment based on the incompatibility of the award with international public policy and, consequently, the application to set aside the award.

This decision reflects a rigorous application of recent developments in the ECJ's case law on State aid. In doing so, the Paris Court of Appeal adopts an open approach, demonstrating that arbitration is not categorically closed as a means of resolving disputes between a Member State and economic operators from another Member State. The cornerstone of the reasoning lies in the nature and scope of the State's consent to arbitration: where that consent is not generalised and does not specifically seek to circumvent State aid rules, the resulting award does not infringe international public policy.

This welcome distinction preserves a space for contractual autonomy for Member States wishing to resort to arbitration in the context of economic transactions concluded with private actors in international commerce, without thereby exposing themselves to the systematic recharacterisation of their commitments as violations of EU State aid rules.



*Contribution by Raluca Szabo*

## Paris, 10 March 2026, n° 23/08160, *République de Turquie*

On 10 March 2026, the Paris Court of Appeal dismissed the application for partial annulment of an arbitral award rendered under the aegis of the International Chamber of Commerce (hereinafter "ICC"). The court held that the arbitral tribunal had acted in accordance with its mission and had not disregarded the principle of adversarial proceedings.

In the present case, the Republic of Turkey ("the Claimant") and the Republic of Iraq ("the Defendant") concluded an agreement in 1973 for the construction, maintenance and operation of an oil pipeline ("the 1973 Agreement"). That agreement was subsequently supplemented by various contractual instruments ("the TTP Agreements"), including a 2010 amendment ("the Amendment") amending the dispute settlement clause. The TTP Agreements provided for the construction of two pipelines linking northern Iraq to southern Turkey and detailed the modalities for the operation of the various crude oil transport, storage and loading facilities.

On 23 May 2014, considering that the Republic of Turkey had violated these agreements by allowing the transport of oil without the agreement of the Iraqi Ministry of Oil, the Republic of Iraq initiated arbitration proceedings under the aegis of the ICC, on the basis of Article 10 of the Amendment. By a partial award of 16 June 2016, the arbitral tribunal declared that it had jurisdiction to rule on claims based on the TTP Agreements. The arbitral tribunal then ruled on the merits by an award of 13 February 2023 issued on the basis of international law ("the Final Award"), finding that several contractual breaches attributable to the Republic of Turkey were incurred and ordering it to pay substantial compensation. The arbitral tribunal also declared the Republic of Iraq liable to the Republic of Turkey for royalties and expenses relating to the implementation of the TTP Agreements.

On 5 May 2023, the Republic of Turkey filed an application for partial annulment of the Final Award before the Paris Court of Appeal, based on

three grounds of annulment: (i) the court's failure to comply with its mission, (ii) the violation of the principle of adversarial proceedings as regards the determination of the applicable law, and (iii) the violation of the principle of adversarial proceedings as regards the deprivation of the possibility of obtaining evidence necessary for the defence of a party.

With regard to the first plea, the Plaintiff argues, on the basis of Article 1520 3° of the Code of Civil Procedure, that the arbitral tribunal did not respect its mission by setting aside French law, even though it was designated by the parties, in favour of international law to settle the dispute on the merits. It argues that French law had been chosen by the parties in the arbitration agreement (which provided that the applicable law would be French law, without further details) and that this choice had been constantly reaffirmed and applied by them during the arbitral proceedings. The Defendant submits that the arbitral tribunal complied with its mission when it determined the law applicable on the merits, since there was a disagreement between the parties during the debates, resulting from the reference to French law in the arbitration clause which does not specify the aspects that this law should govern.

With regard to the second plea, the Plaintiff alleged that the arbitral tribunal, on the basis of Article 1520 4° of the Code of Civil Procedure, had violated the principle of adversarial proceedings by raising of its own motion the application of French law to the proceedings when, on the one hand, the parties had always agreed to apply the ICC Rules and not French law to the proceedings, and on the other hand, the arbitral tribunal never submitted this possibility to the discussion of the parties, the debates relating only to the applicability of French law for substantive and not procedural issues. The Respondent submits that the arbitral tribunal did not infringe the principle of adversarial proceedings by determining French law as the law applicable to the proceedings, since the reference to French law in the arbitration clause was the

subject of debate during the proceedings, leaving the opportunity for each of the parties to make known its position on the issue, both on the procedure and on the merits.

Concerning the third and last plea, the Claimant alleges, on the basis of Article 1520 4° of the Code of Civil Procedure, that the arbitral tribunal infringed the principle of adversarial proceedings by refusing to order the production of certain documents that it considered decisive and necessary for its defence. The Respondent submits that the Tribunal complied with the principle of adversarial proceedings, as it rejected a request for production of exhibits that was irrelevant to the present dispute and that the issue that gave rise to the request for production of exhibits was argued at the substantive stage of the arbitration.

Thus, this Court had to rule on the following points: (i) does the arbitral tribunal fail to comply with its mission when it determines the law applicable on the merits in the absence of a clear agreement between the parties? (ii) does it infringe the principle of adversarial proceedings when it rules on the question of the law applicable to the procedure which has not been the subject of a thorough debate between the parties? (iii) can the arbitral tribunal's refusal to order the production of documents constitute a violation of the principle of adversarial proceedings? The Court answers these three questions in the negative.

Indeed, with regard to the first question concerning compliance with the arbitrators' mission, the Court recalls that Article 1520 3° of the Code of Civil Procedure opens the action for annulment when the arbitral tribunal has ruled without complying with the mission entrusted to it by the parties, defined by the arbitration agreement. The Court also recalls that under Article 1511 of the Code of Civil Procedure, the arbitral tribunal decides the dispute by applying the law chosen by the parties or, failing that, in accordance with the rules it deems appropriate, taking into account, in all cases, commercial usage. It emphasises that the determination of the applicable law is not subject to review by the annulment judge, in application of the principle of prohibition of review on the merits

. In the present case, it notes that the matter of the law applicable to the merits was the subject of intense debate between the parties throughout the arbitral proceedings, without the latter having reached an agreement. The Court infers from this that, in those circumstances, the arbitral tribunal could, without exceeding its mission, determine itself the applicable rules of law, in accordance with the will of the parties. The plea is therefore rejected.

With regard to the second question concerning the determination of the law applicable to the procedure, the Court recalls the definition of the principle of adversarial proceedings, stating that this principle prevents pleas of fact or law from being raised of their own motion without the parties having been called upon to comment on them. On the other hand, it adds that the arbitrator may draw conclusions from a fact in the debates or interpret the elements in the debates, even if the parties have not insisted on this point, without this meaning that he has raised a plea of his own motion and therefore disregarded the principle of adversarial proceedings. The Court notes that in the present case, the arbitral tribunal invited the parties to comment on the scope of the clause designating French law, including its application to the proceedings. It thus considers that the applicability of French law was the subject of a debate and that the arbitral tribunal confined itself to interpreting the elements of this debate, without raising of its own motion a plea as invoked by the Applicant. The violation of the principle of adversarial proceedings by the arbitral tribunal is therefore not established.

With regard to the third and final question, relating to the rejection of a request for the production of documents, the Court recalls that the principle of adversarial proceedings does not in any way require the arbitral tribunal to receive any request for the compulsory production of documents: the arbitrators have the power to assess the appropriateness of having recourse to such a measure without infringing this principle. The Court specifies that this choice is not subject to review by the annulment judge. Thus, the mere exercise of the power offered to the arbitral tribunal

to accept or refuse the production of requested documents cannot suffice to characterize an infringement of the rights of the defence. The Court further notes that the issue giving rise to the documents production request was debated during the arbitral proceedings. It therefore concludes that there was no violation of the adversarial principle by the arbitral tribunal.

Consequently, the Court dismisses all the grounds of annulment and confirms the arbitral award in the French legal system.

This decision is in line with the consistent case law of the French annulment judge, characterized by a limited review of the arbitral award. It illustrates the desire to preserve the autonomy of international arbitration, by avoiding any disguised review of the merits of the decisions rendered by arbitrators.



*Contribution by Audrey-Anne Gomis*

## FOREIGN COURTS

### Supreme Court of the United Kingdom, *Kingdom of Spain v Infrastructure Services Luxembourg SARL* [2026] UKSC 8

By a judgment dated 4 March 2026, the UK Supreme Court dismissed the appeals brought by the Kingdom of Spain and the Republic of Zimbabwe against the registration, in England, of two ICSID awards. The Supreme Court held that, by becoming parties to the ICSID Convention, and in particular to Article 54(1), contracting states had clearly and unequivocally waived their adjudicative immunity, but distinguished that this waiver applied solely to recognition and enforcement proceedings, whereas immunity from execution was held to be expressly preserved under Article 55. Therefore, the decision clarified the relationship between investment arbitration, the ICSID enforcement regime, and the State Immunity Act 1978.

On the facts, Infrastructure Services Luxembourg S.À.R.L. and Energia Termosolar B.V. (hereinafter the “Investors”) had invested in renewable energy facilities in Spain, notably through a shareholding in the Andasol solar power station. They claimed that subsequent changes to Spain’s regulatory regime for renewable energy had damaged their investment in breach of the Energy Charter Treaty. They, therefore, initiated an arbitration under the ICSID Convention against Spain on 22 November 2013. By an award dated 15 June 2018, the Tribunal rejected Spain’s jurisdictional objections, found a breach of the “fair and equitable treatment” standard, and ordered Spain to pay €112 million plus interest and costs. Following a rectification on 29 January 2019, the award was reduced by €11 million. Spain’s subsequent annulment application before an ICSID ad hoc committee was rejected on 30 July 2021.

The Supreme Court heard Spain’s appeal together with the linked appeal brought by Zimbabwe in *Republic of Zimbabwe v Border Timbers Ltd* and another. Although the Zimbabwean proceedings arose out of a different factual matrix, namely the expropriation of land investments protected by a

Switzerland-Zimbabwe bilateral investment treaty, both appeals raised the same central issue: whether a foreign state could invoke state immunity to resist the registration of an ICSID award in England.

In Spain’s case, the Investors applied on 4 June 2021 to register the rectified award with the High Court under the Arbitration (International Investment Disputes) Act 1966, the statute by which the United Kingdom gives effect to the ICSID Convention. On 29 June 2021, the High Court registered the award as if it were a final judgment of that court. Spain then sought to set aside that registration, arguing that it benefitted from immunity under section 1(1) of the State Immunity Act 1978.

At first instance, Fraser J, in a judgment dated 24 May 2023, dismissed Spain’s application. So far as relevant to the Supreme Court appeal, he held that Spain had submitted to the jurisdiction of the English courts by prior written agreement within the meaning of section 2(2) of the 1978 Act, notably by becoming party to Article 54(1) of the ICSID Convention. He also considered, in the alternative, that the arbitration exception in section 9(1) might apply.

The appeals of Spain and Zimbabwe were then heard together by the Court of Appeal, which dismissed them by judgment dated 22 October 2024. The Court of Appeal held that the registration of an ICSID award under the 1966 Act involved an exercise of the adjudicative jurisdiction of the English courts. It further held that Article 54(1) of the ICSID Convention amounted to a sufficiently clear prior written agreement by contracting states to submit to the jurisdiction of the courts of other contracting states for recognition and enforcement proceedings, thereby satisfying section 2(2) of the 1978 Act. The Court of Appeal considered it unnecessary to decide the separate argument based on section 9(1), despite

indicating some difficulty with the suggestion that English courts would be bound, for that purpose, by an ICSID tribunal's own jurisdictional ruling.

Before the Supreme Court, Spain and Zimbabwe argued, in substance, that a treaty-based waiver of state immunity required a particularly clear and express manifestation of consent, and that Article 54(1) did not contain any explicit language of "waiver" or "submission". They maintained that the provision merely imposed an obligation on each contracting state to create a domestic mechanism for recognition and enforcement, without amounting to consent to the exercise of foreign judicial jurisdiction over them. The Investors, by contrast, argued that the structure and wording of the ICSID Convention necessarily meant that each contracting state had accepted that awards rendered against it could be recognised and enforced by the courts of every other contracting state.

The principal legal question before the UK Supreme Court was whether, by agreeing to be bound by Article 54(1) of the ICSID Convention, Spain had submitted to the jurisdiction of the English courts within the meaning of section 2(2) of the State Immunity Act 1978, and therefore lost immunity from adjudicative jurisdiction in proceedings seeking recognition and enforcement of the ICSID award. A secondary issue, which the Court ultimately found unnecessary to decide, was whether the arbitration exception in section 9(1) independently displaced immunity.

The Supreme Court unanimously dismissed the appeals. Lord Lloyd-Jones and Lady Simler, with whom the other Justices agreed, held that a treaty-based waiver of immunity did not require the use of express formulae such as "waiver" or "submission". What was required was a clear and unequivocal expression of the state's consent to the exercise of jurisdiction, to be determined through treaty interpretation in accordance with public international law, notably the interpretative principles reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. In the Supreme Court's view, the correct test was whether

the words used in the treaty necessarily led to the conclusion that the state had submitted to jurisdiction.

Applying said test, the Supreme Court held that Article 54(1) of the ICSID Convention did constitute such a waiver. In ordinary language, each contracting state agreed not only that it would recognise and enforce ICSID awards, but also that awards rendered against it would be recognised and enforced by all other contracting states as if they were final judgments of their own courts. That reciprocal undertaking was fundamentally incompatible with the continued assertion of adjudicative immunity. A contracting state could not, in the Supreme Court's words, agree that the United Kingdom "shall" recognise and enforce an ICSID award rendered against it, while at the same time claiming immunity in order to prevent the United Kingdom from fulfilling that obligation.

The Supreme Court also attached significance to the structure of Articles 53 to 55 of the ICSID Convention. Article 53 rendered awards final and binding, and Article 54 required recognition and enforcement to be granted without any review on the merits by domestic courts. By contrast, Article 55 expressly preserved immunity, but only from execution. For the Supreme Court, that distinction was decisive: had contracting states intended to preserve immunity from adjudicative jurisdiction as well, one would have expected the ICSID Convention to say so. The express preservation of execution immunity therefore reinforced the conclusion that adjudicative immunity had been waived for recognition and enforcement proceedings.

Finally, the Supreme Court noted that its interpretation concurred with a broad international consensus, referring in particular to decisions from Australia, New Zealand, Malaysia and the United States that had treated Article 54(1) as incompatible with adjudicative immunity. The Supreme Court thus confirmed that ICSID forms a self-contained enforcement regime, designed to ensure that awards may be converted into enforceable judgments across the territories of

contracting states without re-litigation on the merits. However, the Supreme Court was careful to stress that its judgment concerned immunity solely from adjudicative jurisdiction, not immunity from execution. In Zimbabwe's case, the Supreme Court therefore left standing the Court of Appeal's order remitting certain reserved non-immunity defences to the Commercial Court.

This judgment is significant for three reasons. First, it reinforces the practical effectiveness of the ICSID Convention in England by confirming that contracting states cannot invoke state immunity to resist the recognition of ICSID awards. Secondly, it clarifies the standard for a treaty-based waiver under section 2(2) of the State Immunity Act 1978, rejecting a formalistic requirement for express or "magic" words. Thirdly, and most significantly for practitioners, the judgment sharpens the distinction between two stages that are often conflated: while sovereign immunity does not bar the obtaining of a court judgment recognising the award, it remains preserved at the stage of execution against specific state assets. As such, the decision constitutes an important precedent clearly favourable to enforcement in the field of investment arbitration, while preserving the protective space afforded by immunity from execution.



*Contribution by Jihane Bensaid*

## England & Wales Court of Appeal, *Gluck v Endzweig* [2026] EWCA Civ 145

On 20 February 2026, the English Court of Appeal allowed an appeal brought by Mr Gluck (hereinafter the “Appellant”) against an order (hereinafter the “Second Order”) setting aside a prior order (hereinafter the “First Order”) granting permission to enforce an award rendered by the Beth Din Chosen Mishpot (hereinafter the “Tribunal”). The Court of Appeal was asked to determine the compatibility of a clause allowing an arbitral award to be reviewed by the arbitrators without any time limit with the finality required by the Arbitration Act.

The dispute arose out of a Share Purchase Agreement (hereinafter the “SPA”) by which the Appellant agreed to sell a 50% shareholding in Net Pex Ltd (hereinafter the “Company”) to Evertop Limited (hereinafter the “Respondent”, and together the “Parties”), with Mr Endzweig being the guarantor of the purchase price, which was payable in four instalments. The SPA provided that the purchase price would be reduced if the profits of the Company fell below a threshold in the first two and a half years after the sale. On 11 December 2019, after the Respondent stated that the Company had not met the said threshold, the Parties signed an arbitration agreement (hereinafter the “Arbitration Agreement”) and appointed two Rabbis as arbitrators, who had the power “to amend, and add to, and change the Judgement they have given, at any time.”

The Tribunal rendered an award (hereinafter the “First Award”) on 15 March 2024, which confirmed that the Respondent was entitled to a price reduction. The sum was fixed by a subsequent award (hereinafter the “Second Award”). As the Respondent raised concerns about possible calculation errors, the Tribunal informed the Parties on 6 June 2024 that the Second Award was not final and was being reviewed by one of the Rabbis. However, the Appellant made a without-notice application seeking enforcement of the Second Award. The application was granted on 8 November 2024 by the First Order.

On 10 February 2025, the Tribunal rendered a further award, reducing the sum payable by 43.6%.

On 21 February 2025, the Respondent’s application to set aside the First Order was granted on the ground that the Second Award was not final. The Judge’s reasoning rested on the clause of the Arbitration Agreement under which the award could be reviewed “at any time”. Thus, the default regime created by section 57(3) to (7) of the Arbitration Act could not apply.

The Appellant brought an appeal against the Second Order on the ground that the Judge erred in holding that an arbitration agreement conferring upon the Tribunal the power to review its award without any time limit was within the scope of section 57(1) of the Arbitration Act. Allowing amendments to the award at any time would mean that enforcement would be impossible, since the award would never be final and binding. This was contrary to the Parties’ intention, as they had agreed on an arbitration under the Arbitration Act, which would lead to an enforceable award.

The Respondent resisted the appeal and argued that the Judge had correctly held that the Parties had agreed a wider power of review than that provided for under section 57, as it was not subject to time limits. Thus, the Court should respect the agreement and the Parties’ autonomy. Furthermore, if the Court were to consider that the Parties had created an agreement which was not compatible with the Arbitration Act, any awards rendered by the Tribunal should be enforceable as a contract. The absence of a time limit does not preclude the existence of a final award capable of enforcement. Rather, consistently with section 58(1), an award could become final and binding upon the Tribunal’s confirmation that it had exhausted its jurisdiction.

Three issues were raised before the Court of Appeal, namely: (1) whether the arbitration agreement could be interpreted both as constituting

a valid, enforceable arbitration agreement and as permitting the arbitrators to review any award at any time, either as a matter of interpretation or having regard to section 57 of the Arbitration Act 1996. If not, (2) whether any part of the Arbitration Agreement was repugnant to the agreement as a whole, so that effect could be given to the remaining parts of the Arbitration Agreement. Finally, (3) whether the Judge was right in setting aside the First Order.

On the first issue, the Court of Appeal pointed out that the principal approach of a court to an arbitration agreement should be to uphold party autonomy wherever possible. Both the SPA and the Arbitration Agreement reflected the intention of the Parties to create a valid arbitration agreement under the Arbitration Act and to ensure that all parts of the agreement were given effect to.

However, the sentence “unless otherwise agreed by the parties” in section 58(1) of the Arbitration Act does not entitle the Parties to agree to an “unlimited amendment clause” giving free power to the arbitrators to change their awards at any time. If so, the award would always be subject to changes, which would preclude enforcement. Furthermore, the Court of Appeal did not accept that the arbitrators could declare themselves *functus officio* for an award to be final and binding. This is because the arbitrators could themselves amend their decision to declare themselves *functus officio*. The breadth of the clause is the identified problem.

Although section 57 is a non-mandatory provision of the Arbitration Act and allows the Parties to agree on the scope of the Tribunal’s power to amend an award, this is subject to the implied requirement that the award becomes, at some point, final and binding. The fact that an award could be changed “at any time” indicates that the Parties did not agree on any specific time limit. The default provisions of section 57 of the Arbitration Act, which impose a fixed time limit, apply and therefore cannot give effect to a clause under which the period for reviewing an award is unlimited.

As regards the second issue, the unlimited

amendment clause cannot be given effect to in a valid arbitration agreement because it is repugnant to the need for a final and binding award. The Court did not accept that the agreement could exist as a contract outside of the Arbitration Act. This is because the Parties clearly intended to create an arbitration agreement which would lead to an enforceable award pursuant to the Arbitration Act. Thus, the unlimited amendment clause could not be given effect to.

Finally, the Court considered that the Judge was wrong in setting aside the First Order because he relied on the Tribunal’s power to amend an award “at any time”. As such a clause is repugnant to the Arbitration Agreement, the Respondent could only have challenged the Second Award pursuant to the default provisions of section 57 of the Arbitration Act. The fact that the Respondent did not comply with these prescribed time limits meant that the Second Award was valid, and that its enforcement, as granted by the First Order, should not have been set aside.

By this decision, the Court of Appeal confirmed that the finality of an arbitral award is a mandatory requirement under the Arbitration Act. Although the Parties may be entitled to agree on procedural aspects, party autonomy cannot give effect to a clause by which an award would be perpetually open to revision, as it would always preclude the award from becoming final and binding. For party autonomy to comply with the Arbitration Act, the arbitration agreement must be compatible with its mandatory provisions. Although party autonomy is afforded wide latitude in shaping the arbitration agreement, mandatory rules remain mandatory.



*Contribution by Mathieu Morel*

## England & Wales High Court, *MS "VI" GmbH v SY* [2026] EWHC 52 (Comm)

On 20 January 2026, Judge Pelling KC sitting as judge of the High Court of England and Wales issued a decision under section 67 of the Arbitration Act 1996, on the Claimants' challenge to two final awards rendered on 11 June 2024.

On the facts, each of the two claimant companies ("The Claimants") purchased in 2010 a ship from entities that had ordered them from the Defendant. The Claimants were therefore not parties to the shipbuilding contracts, which were entered into by a company, XY Marine GmbH, and the Defendant (the "Seller" or "Builder"). However, upon delivery, the Claimants entered into Guarantee Agreements which assigned to them rights pertaining to a year-long warranty post-delivery, set out in Article 9 of the shipbuilding contracts, notwithstanding some exclusions. Guarantee claims were raised, subsequently to the delivery, and dealt with. The dispute arose when the Claimants, many years later, discovered the presence of asbestos inside the ships.

Following this discovery, the claimant companies initiated tort and product liability proceedings before the Chinese courts. The Seller challenged the courts' jurisdiction, claiming that the matter had to be resolved through arbitration, pursuant to the arbitration clause contained in Article 9. On this basis, the Chinese courts declined jurisdiction, ruling that the dispute had to be referred to arbitration as there was a valid arbitration agreement between the Claimants and the Defendant, and the Claimants had themselves initiated the arbitration proceedings. The Claimants appealed this decision by the Chinese courts, which is still pending.

As highlighted by the Chinese courts, prior to initiating domestic proceedings in China, the Claimants had indeed each initiated arbitration proceedings on 15 October 2020, which remained dormant for a few years. Despite that, the Claimants later contended that the arbitral tribunals lacked jurisdiction, alleging that they were not bound by the arbitration clause contained in the

original shipbuilding contracts, as they were not parties to that contract. On 18 January 2024, the Claimants thus sought to get an order from the Tribunals declaring they lacked jurisdiction. The jurisdictional issue the arbitral tribunals had to determine was "*whether as a matter of English law [the law governing the shipbuilding contracts], the exclusions in Article 9 of the shipbuilding contracts exclude[d] actions in tort (or equivalent non-contractual civil liability under foreign law)*". The Tribunals concluded they had jurisdiction. The challenge to these jurisdictional awards by the Claimants led to the present case.

To support their argument, the Claimants put forward that they would have been bound by the arbitration clause in Article 9, had they sought to rely on the rights contained in that Article assigned to them by the Guarantee Agreements, which they argued was not the case. In addition, they underlined that their tort claims before the Chinese courts were independent from the contract (subject to an arbitration clause), and derived from Chinese statutory law, applicable to them as owners of the ships.

In contrast, the Builder invited the Judge to dismiss these claims, since the exclusions in Article 9 prevented the Claimants from bringing tort claims under Chinese domestic law, and since the dispute as to their applicability had to be resolved through arbitration, in accordance with the provisions in Article 9.

As Judge Pelling KC clearly put it, the legal issue before him was therefore "*whether an arbitral tribunal has jurisdiction over a dispute relating to non-contractual tortious claims governed by the laws of a foreign State brought in the courts of that State by a party who was not a party to a relevant arbitration agreement*".

Firstly, Judge Pelling KC examined the argument raised by the Builder that the arbitration clause in Article 9 should apply in order to give effect to the conditional benefits principle. According to this

principle, English law prevents an assignee from benefiting from contractual rights, while circumventing the restraint put on the enforcement of these rights by the contract, as a means to avoid inconsistency (as was held for instance in *Aspen Underwriting v Credit Europe Bank* [2020] UKSC 11). Furthermore, bearing notice to the jurisprudence invoked by the parties, Judge Pelling went on to state that the English Court of Appeal in *Airbus v Generali Italia* [2019] held that to act inconsistently with the contract in this manner would amount to a breach, not of the contract (which the assignee is not a party to), but of an equivalent equitable obligation – although, it is unclear whether he subscribed to this view in the case at hand.

Applying this principle, he asserted, providing few legal demonstrations, that the Claimants had taken “full advantage” of the rights conferred to them by Article 9.

Then, to determine whether the Claimants had also acted inconsistently with the exclusions provided in Article 9, Judge Pelling went on to consider whether the dispute fell into the categories of disputes subject to the arbitration clause under that same article. In this regard, the Seller disputed the tort claims brought by the Claimants in the Chinese court, because of the exclusions set out in Article 9. Indeed, Article 9(f) prevented the beneficiary of the Guarantee from seeking “*all other remedies, warranties, guarantees or liabilities, express or implied, arising by Law or otherwise*”. Moreover, according to Article 9(g), “[*a*]ny dispute under this Article shall be referred to arbitration”.

Construing Article 9(g) using the general principles of interpretation, Judge Pelling KC found that the terms agreed upon by the parties were unambiguous, and demonstrated that the parties intended a dispute as to the applicability of the exclusions in Article 9 to be resolved by arbitration.

Lastly, Judge Pelling KC turned to the Claimants’ argument according to which the tort claims before the Chinese courts originated from Chinese

domestic tort law, and were thus distinct from any claims under the contract. Drawing conclusions from another English Court of Appeal case, Judge Pelling distinguished claims and disputes, and placed the importance on the latter for the purposes of assessing the applicability of an arbitration agreement. Once the Defendant had disputed the claims brought before the Chinese courts on the basis of Article 9, a dispute as to the applicability of the contract existed, regardless of the statutory origin of the liability claims. He therefore rejected the Claimants’ argument.

For these reasons, Judge Pelling KC upheld the arbitral awards and dismissed the claims.



*Contribution by Marie Gauthier*

## England & Wales High Court, *Maxamcorp International SL v Eurotel LLC* [2026] EWHC 666 (Comm)

In a judgment dated on 13 March 2026, handed down by the High Court of Justice of England and Wales, concerning an arbitration application, the issue at stake was the breach of arbitration agreements and an anti-suit injunction.

### Facts

Maxam is a major Spanish company holding four subsidiaries in Russia. It had entered into seven Supply Agreements with various entities, including arbitration clauses (four of which provided for LCIA arbitration in London governed by English law; others provided for ICC arbitration; and others designated Hong Kong as the seat with Hong Kong law).

In 2023, assignments of receivables took place, and an alleged hostile takeover resulted in the loss of control over certain subsidiaries.

Maxam challenged certain assignments of litigious claims assigned in 2024, arguing lack of authority of the signatories, absence of corporate approval, and the prejudicial nature of the transactions. However, the legal actions brought by Maxam in Russia to challenge those assignments had largely failed.

A subsequent assignment transferred the litigious claims to Eurotel, which initiated proceedings against Maxam in Russia. The Russian court then ordered interim measures such as the seizure of Maxam's shares in its subsidiaries and dismissed the objection to jurisdiction based on the arbitration clauses.

In October 2024, Maxam contested the jurisdiction of the Russian court by invoking the Arbitration Agreements in the Supply Agreements, challenged the validity of the assignments and the merits of the claims, and alleged an abuse of rights.

In August 2025, the Russian court dismissed the Motion, but granted Maxam's application to stay

the Russian proceedings pending the outcome of the proceedings challenging the assignments. Eurotel appealed, and the appellate court set aside that stay.

### Procedure and the parties' legal arguments

The judgment arose from a return date hearing following the grant of an interim anti-suit injunction and anti-enforcement injunction by Mr Justice Andrew Baker in an order dated 2 March 2026. The order aimed to prevent Eurotel, the defendant, from pursuing proceedings before foreign courts in breach of arbitration agreements and from enforcing any judgment rendered against Maxam in the Russian proceedings.

Nevertheless, Eurotel continued the proceedings in Russia and obtained a Russian judgment on 4 March 2026. The Russian court dismissed Maxam's claims and granted all of Eurotel's claims.

Maxam therefore sought the continuation of the interim measures until the full hearing, as well as amendments to the 2 March order to (i) clarify that the anti-enforcement injunction applied to the Russian judgment of 4 March 2026, and (ii) order Eurotel to take all necessary steps to suspend the Russian proceedings and set aside the Russian judgment.

Maxam sought both an anti-suit injunction and an anti-enforcement injunction on a "quasi-contractual" basis, emphasizing that Eurotel relied on contractual rights that were subject to arbitration clauses which it failed to respect. Thus, Eurotel invoked contractual rights without complying with the associated obligations arising from the arbitration clauses.

Maxam further contended that it was the victim of an abusive corporate raid by a competitor in Russia, involving unauthorized asset transfers, invalid assignments of receivables, and, moreover,

the absence of validly transferred rights to Eurotel.

Although the application was served on it, Eurotel did not appear at the hearing. The court nevertheless considered that Eurotel had been properly notified and that its absence was voluntary, making it appropriate to proceed in its absence.

### Legal issues

The legal question before the court was whether an anti-suit injunction and an anti-enforcement injunction should be granted to ensure the effectiveness of arbitration clauses, even where a judgment has already been rendered abroad.

### Reasons for the decision

The court held that it had jurisdiction over all the supply contracts, reasoning that even where the seat is abroad, English courts may grant injunctions to enforce arbitration agreements.

1. As regards the anti-suit injunction, the court held that (i) there was a serious issue to be tried on the merits where foreign proceedings had been brought in breach of an arbitration agreement, (ii) that there was no strong reason why the injunction/relief should not be granted, (iii) nor was there any reason why the interim injunctions should be set aside in circumstances in which they continued to have practical utility, and finally (iv) that granting the injunction was just and convenient (or just and equitable). Indeed, these principles apply even in “quasi-contractual” situations, as in this case.

Furthermore, the court found that Eurotel was bound by the arbitration clauses attached to the rights it invoked; therefore, the arbitration clauses were validly incorporated into the contracts. Consequently, the initiation and continuation of the Russian proceedings constituted a breach of those Arbitration Agreements and Supply Agreements by Eurotel.

The judge also considered that the “*just and convenient/just and equitable*” requirement was satisfied. He added that the delay was explicable

and justified. He concluded that there was no reason to refuse the injunction, which was useful in preventing enforcement in other jurisdictions and could have a deterrent effect.

Finally, the court held that Maxam had not voluntarily submitted to the foreign (Russian) jurisdiction but had been compelled to participate despite contesting jurisdiction from the outset; therefore, it had not lost the right to seek an anti-suit injunction.

2. As regards the anti-enforcement injunction, the court noted that such injunctions are far from exceptional and are frequently granted by English courts in recent Russian-related cases, particularly where there is a real risk that the Russian judgment may be enforced elsewhere and that the party will pursue enforcement actions.

The court found that there was indeed a real risk that the Russian judgment would be enforced in other jurisdictions and that Eurotel would continue its enforcement efforts. Accordingly, an anti-enforcement injunction was justified, complementing the anti-suit injunction to ensure the effectiveness of the arbitration agreements.

3. Regarding Maxam’s request for permission to serve documents on Eurotel’s new lawyers in the Russian proceedings, the court found this request justified, appropriate, proportionate, and consistent with the proper administration of justice.

### Conclusions

The court decided to maintain the interim anti-suit and anti-enforcement injunctions, found that Eurotel had breached those injunctions, ordered the requested amendments to the 2 March order, and authorized alternative service of documents.



*Contribution by Louise Denoyes*

## Singapore High Court, *NextEra Energy v Spain* [2026] SGHC 43

The decision, rendered by the General Division of the High Court (hereinafter “GDHC”) of Singapore on 24 February 2026, relates to State immunity from the jurisdiction of national courts in proceedings for the recognition and enforcement of awards rendered by the International Centre for Settlement of Investment Disputes (hereinafter “ICSID”).

The proceedings stem from a dispute between the companies NextEra Energy Global Holdings B.V. and NextEra Energy Spain Holdings B.V. (hereinafter the “Dutch investors”), on the one hand, and the Kingdom of Spain (hereinafter “Spain”) on the other hand.

The Dutch investors submitted the dispute to the jurisdiction of ICSID (ICSID Case No. ARB/14/11) pursuant to Article 26 of the Energy Charter Treaty (hereinafter the “ECT”), to which both Spain and the Netherlands are contracting parties. This provision establishes an arbitration agreement for disputes between a contracting party to the ECT and an investor of another contracting party. The ICSID tribunal rendered an award against Spain, who was then unsuccessful in annulment proceedings. The Dutch investors subsequently initiated proceedings for the registration and enforcement of both the award and the annulment decision (hereinafter together, the “ICSID awards”) before the Singaporean courts. A registration order was issued in January 2024, giving the ICSID awards the same effects as a judgment of the GDHC.

The present decision arises from Spain’s application to set aside the registration order. Spain argued that it benefited from State immunity under the Singapore State Immunity Act 1979 (hereinafter “SSIA”), thereby preventing Singaporean courts from recognising or enforcing the ICSID awards. In the alternative, Spain argued that it would be contrary to the interests of justice to register the ICSID awards, on the ground of lack of notice to the affected party under the Singapore Rules of Court 2021. The Dutch investors

submitted that the submission exception (submission to the jurisdiction of the courts of Singapore) and the arbitration exception (where a State has agreed in writing to submit a dispute to arbitration, it is not immune from proceedings in Singapore which are related to that arbitration) to State immunity from the SSIA were applicable.

### Legal questions

- Did the exception to State immunity under section 4 SSIA (the “Submission Exception”) apply to the registration and enforcement proceedings of an ICSID award?
- Did the exception to State immunity under section 11 SSIA (the “Arbitration Exception”) apply to the registration and enforcement proceedings of an ICSID award based on an arbitration agreement contained in an international treaty to which two member states of the European Union are parties?
- Should the registration of the awards be set aside in the interests of justice?

### The Submission Exception

With regard to the submission exception, the judge recalled that several courts have held that a sovereign State’s accession to the ICSID Convention may be characterised as a submission to jurisdiction for the purposes of the State immunity exception in proceedings for the recognition and enforcement of an ICSID award.

Relying on two decisions rendered against Spain by the High Court of Australia and the Court of Appeal of England and Wales (concerning different awards), as well as on two decisions rendered by the Federal Court of Australia and the U.S. District Court for the District of Columbia (concerning the same ICSID awards), the Singaporean judge concluded that the submission exception applied.

The reasoning rests on the fact that, by acceding to the ICSID Convention, Spain agreed to Article 54, which requires Contracting States to recognise the

binding character of awards rendered under the auspices of ICSID and to enforce them as if they were final judgments of their own national courts. These obligations are given effect in Singapore's legal framework through the Arbitration (International Investment Disputes) Act 1969 (hereinafter the "Arbitration Act"), which provides for the registration procedure. Thus, the State's agreement to the ICSID Convention amounts to an express submission to jurisdiction for the purposes of the Submission Exception under the SSIA. Spain consequently agreed to submit to the jurisdiction of national courts for the purposes of the recognition and enforcement of ICSID awards.

The judge also reaffirmed the binding character of ICSID awards and the specific nature of the ICSID system as a self-contained regime, meaning that awards rendered by ICSID tribunals cannot, by virtue of these features, be challenged before national courts. Finally, the court rejected Spain's argument that the Submission Exception would only apply after establishing the application of the Arbitration Exception and the tribunal's jurisdiction.

### The Arbitration Exception

The second issue concerned the Arbitration Exception, which justifies a waiver of State immunity where the State has agreed in writing to submit a dispute to arbitration.

The decision considered whether there was a prima facie arbitration agreement based on Article 26 of the ECT. Article 26 constitutes an offer to arbitrate disputes relating to an investment arising between a contracting party and an investor of another contracting party, in the event of an alleged breach of an obligation under the ECT, with ICSID being one of the available fora. By ratifying the ECT, Spain made such an offer. The judge concluded that this therefore constitutes a prima facie arbitration agreement.

The Dutch investors argued that Spain cannot challenge the arbitration agreement that has been given effect by the ICSID tribunal. The judge considered it unnecessary to decide on the second,

third, and fourth arguments relating to the possibility for a party to challenge the arbitration agreement in the context of enforcement proceedings of an ICSID award before national jurisdictions.

The decision rejected Spain's argument that the ECT arbitration agreement is invalid due to the intra-European Union objection to arbitration. Spain invoked the overlap principle under the Vienna Convention on the Law of Treaties, which governs conflicts between treaties relating to the same subject matter. This argument was rejected by the Court because the European Union treaties and the ECT do not deal with the same subject matter. Then, the judge considered that the ECT is intended to apply between all contracting parties and cannot be set aside between certain parties of the agreement on the basis of the primacy of EU law. By accepting such an argument, the Court would effectively be establishing a distinction between investors based on their geographical origin, which would be contrary to the nature and purpose of the ECT. In addition, in the event of a conflict between the ECT and another international agreement, the ECT provides for the application of the provision most favourable to the investor, which, in this case, is the ECT that offers the possibility for investors to refer to arbitration. The second intra-EU objection was based on the fact that the European Union joined the ECT as a regional economic integration organisation. The Court rejected this argument, recalling that Spain and the Netherlands also concluded the ECT in their own capacity as independent contracting parties and are therefore bound to give effect to its obligations.

### The "interests of justice" argument

The judge also briefly dismissed the "interests of justice" argument, which allows a Court to revoke an order made without notice to an affected party. The Court first recalled that contrariety to public policy is not a ground for annulment under the ICSID Convention. It further emphasised that, since both Spain and Singapore have agreed, in acceding to the ICSID Convention, to recognise and enforce awards rendered by ICSID tribunal, it

would be contrary to both the Convention and the Arbitration Act to refuse to give effect to the awards.



*Contribution by Louise Malingrey*

## Singapore High Court, *DRL v DRK* [2026] SGHC 32

By a judgment dated 9 February 2026, delivered by V Coomaraswamy J, the General Division of the Singapore High Court dismissed an application to set aside an arbitral award which terminated proceedings under Article 32(2)(c) of the UNCITRAL Model Law on International Commercial Arbitration (the “Model Law”), as incorporated into Singapore law by section 3(1) of the International Arbitration Act 1994 (2020 Rev Ed) (the “IAA”). The application (HC/OA 517/2025) was brought on two alternative grounds: first, that the applicant was unable to present its case under Article 34(2)(a)(ii) of the Model Law; and secondly, that there had been a breach of the rules of natural justice within the meaning of section 24(b) of the same Act.

The applicant in the setting-aside proceedings was DRL, which had been the claimant in the underlying arbitral proceedings. The respondent, DRK, had been the respondent in the arbitration and had advanced a counterclaim.

The dispute arose from a contract governed by English law under which DRL alleged that DRK was indebted up to a nine-figure sum. The contract contained an arbitration agreement, requiring disputes to be resolved by arbitration in Singapore under the Singapore International Arbitration Centre (“SIAC”) Rules (6th Edition, 1 August 2016). Prior to the arbitration, DRL had commenced litigation proceedings in a foreign jurisdiction, but those proceedings were dismissed in favour of arbitration pursuant to the arbitration agreement.

The arbitration was initiated in May 2020, and the tribunal was constituted in August 2020. DRL pursued its claim for the alleged debt, while DRK denied liability and brought a counterclaim for breach of contract.

Between February and June 2022, several countries imposed sanctions on DRL, freezing its assets within the United States and Singapore, prohibiting dealings with US individuals, and preventing access to secure international banking systems,

including the SWIFT network. As a result, DRL was unable to pay further deposits to the SIAC, furnish security for the respondent’s costs, remunerate its legal representatives, or make or receive payments under any potential arbitral award.

In July 2022, DRK applied for security for costs under Rule 27(j) of the SIAC Rules. By an order dated 6 September 2023, the Tribunal directed DRL to (i) furnish security in the sum of S\$1.3 million; (ii) to state unequivocally whether it intended to proceed with the arbitration; and (iii) to explain how it proposed to address the impact of the sanctions.

Furthermore, DRK was granted permission by the Tribunal to apply for termination of the arbitration if DRL failed to comply with these directions. DRL ultimately failed to comply with the order. Instead, in October 2023, it applied for a stay of the arbitration, initially on an indefinite basis but ultimately limited to six months, in order to attempt to secure third-party funding or assign its claim. In November 2023, DRK applied for termination of the arbitration under Article 32(2)(c) of the Model Law on the basis that the continuation of the proceedings had become impossible.

In a decision dated 27 September 2024, the Tribunal dismissed the stay application and indicated it was minded to terminate the arbitration. It found that a further stay would serve no useful purpose given an earlier 11-month stay had yielded no progress, there was no evidence that DRL’s position would improve, and DRL remained unable to discharge its obligations as claimant. The Tribunal subsequently issued an award in March 2025 terminating the arbitration. By that time, the limitation period for DRL’s claim had expired, preventing fresh proceedings.

DRL subsequently applied to the Singapore High Court to set the award aside on grounds of breach of natural justice and inability to present its case, advancing three main arguments that: (i) it had been deprived of a fundamental right to a

determination on the merits; (ii) the Tribunal failed to consider essential issues; and (iii) the Tribunal acted unfairly, irrationally, or capriciously.

The High Court rejected all three submissions and dismissed the application in its entirety. In relation to the alleged fundamental right to a determination on the merits, the Court held that while parties generally expect such a determination, this expectation is not absolute. The “*irreducible core*” of procedural fairness in arbitration guarantees a fair hearing but does not guarantee that a dispute will always be resolved on the merits. Article 32(2)(c) of the Model Law constitutes an implicit qualification of this expectation. Once a tribunal finds that the continuation of the proceedings has become “*impossible*”, it is obliged, not just empowered, to terminate the arbitration. The mandatory language of Article 32(2) leaves no discretion to weigh the prejudice to the parties or to consider the causes of the impossibility. Accordingly, the expiry of the limitation period and the absence of fault on DRL’s part were irrelevant considerations.

Regarding the allegation that the tribunal failed to consider essential issues and arguments, the Court held that the Tribunal’s duty was confined to determining whether the threshold of impossibility under Article 32(2)(c) had been satisfied. Once the arbitration was terminated, the tribunal had no continuing obligation to consider the merits of the underlying dispute.

The Court also rejected DRL’s contention that procedural fairness required an oral hearing on the termination application. It noted that DRL had neither requested such a hearing nor objected to the Tribunal’s decision to determine the application on a documents-only basis. This approach fell squarely within the Tribunal’s procedural discretion. In this regard, the Court relied on *Vitol Asia Pte Ltd v Machlogic Singapore Pte Ltd* [2021] 4 SLR, which affirms that arbitral tribunals enjoy a wide margin of deference in procedural matters and may determine issues without an oral hearing where the parties have been afforded a reasonable opportunity to present their cases.

The Court used the high standard outlined in *China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2020] 1 SLR to address the claim that the Tribunal acted hastily and irrationally. This standard calls for behaviour that is “so far removed from what could reasonably be expected of the arbitral process” to warrant curial intervention. The Court could not find any proof of such behaviour. It was perfectly appropriate for the Tribunal to concentrate on the objective impossibility of carrying out the arbitration due to the sanctions, DRL’s incapacity to pay deposits and security for costs, and the lack of any realistic chance of improvement. According to Article 32(2)(c), the cause of the impossibility is irrelevant, thus claims that the Tribunal neglected to take the respondent’s delays into account were irrelevant.

The Court concluded that the set-aside application was, in substance, a disguised appeal against the Tribunal’s factual finding that the continuation of the arbitration had become impossible. Emphasizing the limited scope of curial intervention in arbitral awards, the Court held that no breach of natural justice had occurred and that DRL had been afforded a reasonable opportunity to present its case on the termination application.

The decision reinforces the high threshold for setting aside arbitral awards in Singapore and provides authoritative guidance on the operation of Article 32(2)(c) of the Model Law. It confirms that a tribunal is obliged to terminate an arbitration once impossibility is established, even where this results in significant prejudice to a party, including the loss of the ability to pursue its claim due to the expiry of a limitation period. The judgment further affirms judicial deference to arbitral tribunals in procedural matters and emphasises that challenges based on natural justice cannot be used as a substitute for an appeal on the merits.



*Contribution by Mohamed Hamaima*

# PBA'S ARBITRATION BRIEF

## China's arbitration law reform: what's new and what's at stake?

On 1 March 2026, the reform of the arbitration law adopted by the Standing Committee of the National People's Congress on 12 September 2025 officially entered into force.

The PRC Arbitration Law 2025 comes to reform the 1994 Chinese arbitration framework and its 2009 and 2017 amendments to form part of a broader global trend in which major jurisdictions like France and England, Wales, and Northern Ireland seek to modernise their arbitration regimes to further enhance the attractiveness of their procedural rules.

In this competitive landscape, to what extent does this reform signal a genuine alignment with international arbitration standards and place China as a serious competitor to the Singapore, Hong Kong, London and Paris hubs?

While the reform undeniably modernises key aspects of the previous law, it also reflects a more nuanced ambition: China's willingness to combine openness with a continued institutional and judicial control.

### Formal recognition of the seat of arbitration

One of the most important changes of the reform is the introduction of the seat of arbitration into Chinese law. This is an important step towards aligning Chinese arbitration law with international practice.

This development follows earlier key judicial decisions like *Brentwood v Guangdong Fa'anlong and Deasung (Guangzhou) Gases Co., Ltd. v Praxair (China) Investment Co., Ltd.* in which Chinese courts had recognised the importance of the arbitration seat. Hence, they departed from the "institution standard", which determines the nationality of an award in accordance with the nationality of the arbitration institution that administered the underlying arbitration. By doing

so, Chinese courts applied for the first time the "seat standard" to treat the enforcement of an award rendered in Mainland China as a Chinese award, despite having been rendered under the auspices of a foreign arbitral institution.

Article 81 of the PRC Arbitration Law 2025 thus establishes a cascade provision to determine the seat, which provides for:

1. The Parties' written choice on the place of arbitration as the basis to determine the governing law of the arbitration proceedings and the court with jurisdiction;
2. If no such choice has been made, the seat should be determined in accordance with the arbitration rules agreed by the Parties;
3. If no such determination is possible, the circumstances of the case and the principle of convenience for dispute resolution must be relied upon to determine the place of arbitration.

Through this approach, Chinese law shifted from overlooking the place of arbitration to making it central in the determination of the procedural aspect of arbitration-related proceedings, which enhances clarity and predictability.

### Opening the market to foreign arbitration institutions

Linked to the recognition of the seat of arbitration for foreign-related arbitration cases is the opening of the market to foreign arbitration institutions.

While until then the default rule was to conduct arbitration proceedings through Chinese institutions only, Article 86 of the PRC Arbitration Law 2025 now offers the possibility for foreign arbitration institutions to establish business offices in areas such as the pilot free trade zones and Hainan Free Trade Port approved by the State Council.

This opening represents a major step towards the internationalisation of China’s arbitration market “*for economic and social development*” needs, by extending foreign institutions’ role beyond representative functions and enhancing procedural flexibility for the parties.

However, this opening remains geographically limited to foreign-related arbitration activities.

### Expansion of arbitrability and scope

Chapter VII of the PRC Arbitration Law 2025 and its Article 78 now extends the scope of arbitrable foreign-related disputes beyond “*economic, trade, transportation and maritime activities involving a foreign element*” as defined in Article 65 of the former law, to include “*and other foreign-related disputes*”.

This addition significantly widens the scope of arbitrable disputes under Chinese law, and reflects the growing complexity of cross-border transactions, particularly in the context of large-scale international initiatives involving Chinese parties.

Article 94 of the new law also introduces a provision enabling arbitration institutions and arbitral tribunals to handle investment cases.

Such additions clarify the reform’s ambition to establish Mainland China and its PRC Arbitration Law 2025 as a more arbitration friendly environment, and extend arbitration into new domains.

### A limited opening to ad hoc arbitration

Another key addition of the PRC Arbitration Law 2025 is Article 82, which represents a departure from an institution-centric system and expressly adopts the concept of ad hoc arbitration.

Indeed, before the reform, arbitrations taking place in Mainland China could only be institutionally administered by a domestic arbitration commission. Such a rule placed China at a disadvantage compared to major commercial seats allowing ad hoc proceedings under the UNCITRAL Model Law.

The scope of this addition was strongly debated,

with the 2021 Draft establishing a provision enabling *ad hoc* arbitrations for all foreign-related commercial disputes (Article 91), and the 2024 Draft limiting them to foreign-related maritime disputes and Free Trade Zone enterprises (Article 79). The PRC Arbitration Law 2025 finally ended up codifying the approach taken in the latter, by allowing ad hoc arbitration “*for foreign-related maritime disputes or foreign-related disputes arising between enterprises registered within free trade pilot zones, Hainan Free Trade Port, or other areas designated by the State and established with the approval of the State Council*”.

While this aligns Chinese law with the basis of the international practices, it also contrasts sharply with major arbitration hub jurisdictions where *ad hoc* arbitration has no statutory restriction. The Chinese approach therefore reflects a compromise between recognition and liberalisation, by adopting international concepts while stopping short of full convergence.

### A persistent judicial control: interim measures and the principle of *Kompetenz-kompetenz*

The scope of interim measures was also subject to changes. While the 1994 amended Arbitration Law was limited to property and evidence preservation, Articles 39 and 58 of the 2025 PRC Arbitration Law now also include the possibility to request an order to require or prohibit the other party from performing certain acts.

Nevertheless, despite this broadening in scope, the granting of interim measures still requires parties to apply to the People’s Court, as the only competent authority to decide on interim measures.

By retaining a court-centric approach, this provision contrasts with the approach of the main arbitration-friendly hubs such as France, whose Article 1468 of the Code of Civil Procedure enables both the arbitral tribunal and the court to grant interim measures, despite the former having primary jurisdiction.

Once again embodying both a shift towards a more arbitration-friendly framework and a limited

alignment with international standards, the codification of the principle of *Kompetenz-kompetenz* in Article 31 of the 2025 PRC Arbitration Law retains a prevailing jurisdiction of the courts.

Just like for the introduction of ad hoc arbitration, the 2021 Draft proposed a progressivist position on the principle of *Kompetenz-kompetenz*, by empowering the tribunal to determine its own jurisdiction (Article 28), while the 2024 Draft removed that amendment and came back to a more restrictive position by preserving the court's final authority regarding the validity of the arbitration agreement, which was the approach retained in the new law.

Despite being a step towards giving some power to arbitral tribunals, the new law does not improve efficiency or predictability, especially when parties are in disagreement regarding jurisdiction.

### Efficiency and digitalisation

Finally, a further notable addition is the recognition of the possibility to conduct online hearings under Article 11 of the 2025 PRC Arbitration Law.

The new law thus establishes a default option allowing parties to conduct online arbitration proceedings via information networks, with the possibility for parties to opt out. It also specifies that such online proceedings have the same legal effect as arbitration proceedings conducted in person.

This provision therefore demonstrates a willingness to modernise arbitration proceedings, which can have a positive impact on cost reduction for parties and can lead to attracting more cross-border disputes. Its competitive significance should however be contextualised, in an era where the integration of digital proceedings has become a baseline expectation across all major arbitration seats since Covid-19. In that sense, this addition is best read as a necessary alignment, part of the reform's broader pattern of gradual convergence with international standards.

### Conclusion

The 2025 PRC Arbitration Law is a deliberate response to two converging pressures: intensifying global competition amongst arbitration hubs, and the growing need for a reliable dispute resolution mechanism to accompany China's expanding international economic presence.

But this reform reflects a distinct model of internationalisation, one that prioritises gradual liberalisation over full adherence to international standards.

A consistent pattern of selective convergence runs through each of the amendments. The new law thus adopts the language and mechanisms of international arbitration practice, while carefully preserving institutional and judicial oversight at every critical juncture.

Ultimately, the question remains whether this hybrid model will be sufficient to position Mainland China as a fully competitive arbitration seat, or whether parties will perceive this balance as a constraint and continue to shape their choices in favour of more established jurisdictions.



*Contribution by Anissa Boujdag*

## CONFERENCE COVERAGE

### **The Transatlantic Trade Corridor: Trends in Arbitration and Commercial Disputes between France and the US**

On Wednesday the 18th of March, on the occasion of French Arbitration Day, the French Embassy hosted a conference titled “The Transatlantic Trade Corridor: Arbitration Trends and their Role in Commercial Disputes between France and the U.S.” The panel was organized by Mr. Anthony Manwaring (Liaison Magistrate at the French Embassy), the Georgetown International Arbitration Society and was moderated by Mr. Remy Gerbay (Founding Partner at Hexagon Advocates). The event featured (in alphabetical order) Professor Thomas Clay (Founder of Clay Arbitration and Professor at Sorbonne Arbitration Centre), Ms. Cherine Foty (Senior Associate at Covington & Burling), Mr. Douglas Pilawa (Senior Associate at Squire Patton Boggs) and Ms. Anne Marie Whitesell (Arbitration Program Director at Georgetown Law).

Mr. Manwaring gave the opening remarks, introducing the topic of the transatlantic corridor, and the different ways in which arbitration disputes are resolved in France and the US. He thanked the organizers and his team and introduced the speakers, starting with Professor Clay, who is active in the French arbitration reform. He mentioned in his opening remarks that Justice officials announced they had requested a panel of experts to draft a multi-faceted reform to arbitration law to keep Paris’ attractiveness as the premier place for dispute resolution. He explained that the reform was in its final stage, specifically the process of codification, inviting Professor Clay to share more on this issue.

Professor Clay started by stating that the reason the French jurisdiction has historically been the best in the world is because it is able to constantly examine itself and its quality. He explained that 18 months ago, the Minister of Justice asked for a reform to the arbitration code, and a working group with French judges produced a report that outlined the changes that needed to be made. He shared with the crowd that the new “Code of Arbitration” he

participated in developing would go through in 2026 and outlined the four proposed pillars for the reform. These are: the creation of a new singular autonomous code to simplify access for foreign lawyers and solidify the 23 different codes across which provisions are currently distributed, with additional directing principles to provide guidance to practitioners; the homogenization of national and international French arbitration law into one broadly applicable code; an increase in the range of arbitrable topics to increase the popularity of private dispute resolution; and the streamlining of the process of appeals through a system of recognition to change the ways in which people challenge awards or decisions.

Professor Clay concluded his explanation by sharing that arbitration is unique since it serves as a melting pot where civil law’s written procedure and common law’s conventions are being fused through international collaboration. He emphasized that this new code allows practitioners to use the best of both traditions. Addressing digitalization and AI, in the Q & A he confirmed that this was taken into account for the reform and that in France, the arbitrator must be a person and cannot be an AI or a corporation.

Remy Gerbay, the moderator, then moved on to the issue of the Americanization of arbitration and ways in which the civil and common law world have converged. He started by framing the ways in which arbitration hubs have been decentralized, specifically discussing the ways in which Paris and France have been able to maintain their influence despite increasing competition. He mentioned Dubai and Singapore as the new up-and-coming arbitration hubs that have come to challenge older giants like France, the UK and Switzerland. To illustrate the current landscape, he brought up the statistic that, if you look at the ICDR (a US-based entity), almost 90% of cases this past year have had at least one US party and that many cases in the ICC (a French-based entity) have no French parties

involved at all, but that despite this fact most international actors still choose to resolve their disputes in the French jurisdiction. He argued that shifting dispute resolution to another part of the world would fundamentally change the established arbitral conventions. This reflects the extent to which French jurisdiction has been internalized, providing a predictable and essential framework for both practitioners and clients.

Ms. Foty continued on this subject, sharing that arbitration procedure is popular in both France and the US, and that interest in the practice area has only grown over the past few years. Foty explained that France and specifically Paris was popular because the ICC is based there, which boasts some of the best practitioners, judges, and boutique firms in the world. While Paris does have a historical advantage, she did agree with Mr. Gerbay and noted that there was also an increase in arbitration-friendly jurisdictions in the United States (e.g., Florida, California, DC). In New York, she noted arbitration often replaces court litigation and that the Supreme Court unequivocally supports the Arbitration Act. To illustrate growing American interest, she shared statistics from 2024 noting that the ICC saw a total of 2,392 parties involved in dispute resolution and that within these actors, the US leads global participation with 167 parties. This significantly outpaces France, which recorded only 73 parties for the year. While many nationalities of lawyers, from the UK and the US, outnumbered the French lawyers in the ICC, Paris still remains the No. 1 jurisdiction for arbitration for international parties. Regarding the future of the practice, she explained that the importance of labour is overlooked, and that arbitration clauses are present in over 50% of contracts for workers. She argued therefore that the future of arbitration will heavily involve labour law, and that this aspect should be taken into account when drafting new regulations.

Douglas Pilawa echoed what others had said, also noting that France is by far the leader for international arbitration practice. He went on to discuss the role of Paris, explaining that most big arbitration firms have massive North African or Latin American teams in Paris, that are only focused on that part of the world despite being

based in Europe. When discussing the trend of growing US influence, he shared that he has observed an increase in academic focus on international arbitration, specifically in US universities like Georgetown that have international arbitration departments and are sending an increasing number of students to international arbitration conferences like the Vis Moot in Austria. He did say that, while there is a broad lack of familiarity with arbitration in the US, American arbitrators at top firms or in-house are very knowledgeable and able to understand arbitration in unique and sophisticated ways. He noted an ‘Americanization’ of arbitration trend has been happening recently, and that Europeans are now reciprocating some of the more adversarial and aggressive methods American practitioners were known to use in the past; specifically regarding the discovery process.

The panellists then went on to discuss the disconnect between the two cultures of arbitration. They agreed that while common and civil law practitioners agree on theory, they often differ in practice. The discovery process seemed to be the cornerstone of this disconnect, which is today often weaponized by American practitioners through a ‘scorched earth’ approach to document production. This method increases costs and wastes an opponent’s time by burying them in an excessive volume of documents. Professor Clay explained that this disconnect with document production practice is a demonstration of the differences between common and civil law that make arbitration so interesting. Ms. Foty highlighted innovative Swiss and French efficiencies, such as the “Redfern Schedule” and the practice of attaching document requests via footnotes in submissions to ensure immediate relevance.

Ms. Whitesell gave the final remarks, emphasizing the 250th anniversary of the United States, and the lasting friendship that exists between the French embassy and Georgetown University. She noted that France has always served as an example for the rest of the world for arbitration, and that over the years it has done a good job to reform and adapt. She concluded that even friends have disputes, and that now more than ever, there is a

need to keep adapting the approach to resolve difficulties and continue strong French-American collaboration.



*Contribution by Thomas Berg*

## INTERVIEW WITH EMILIE PIERREJEAN

**1. To start with, could you tell us about your career path and what led you to specialise in international arbitration? If you had any hesitations along the way, what ultimately tipped the scales?**

I chose to pursue legal studies through the European Law School programme. I was particularly drawn to this course because it offered the opportunity to obtain degrees in three different languages and countries. Having lived in Germany during my childhood, I was keen to continue practising German and to study in an international environment.

Over the course of my studies, international arbitration quickly became an obvious choice. This was due to the international dimension of the cases, my interest in dispute resolution, and above all the intellectual richness of the field. Specialising in international arbitration allows one to engage with a wide range of areas, including public international law, commercial law, French arbitration law, and civil procedure. We are also regularly exposed to foreign legal systems and a variety of sectors, which makes the practice particularly stimulating.

There were, of course, some hesitations, particularly with regards to litigation. However, the two fields are not mutually exclusive; on the contrary, they are closely connected, and the possibility of combining both ultimately reassured me in my choice. In addition, internships often help to resolve such uncertainties, either by confirming an interest in a particular field or, conversely, by ruling it out. In my case, my internships confirmed my decision to begin a career in international arbitration.

**2. Your academic background is particularly impressive, with a dual LL.M. in Berlin and London, which also enabled you to obtain, through equivalence, a master's degree from Paris II. What led you to make these choices, and what did these experiences bring to your**



**professional development in practical terms? Looking back, would you recommend this type of pathway, and is there anything you would do differently today?**

My choice of academic path stemmed from a desire to challenge a commonly held view: namely, that law studies confine you to a single legal system. During my studies, I was sometimes surprised to hear certain views that belittled experiences abroad. In my opinion, this is a major mistake. Exposure to different legal systems and methods helps to develop the intellectual agility that is essential to the legal profession. Very concretely, the French *commentaire d'arrêt* bears no resemblance to the German *Gutachtenstil* or to English essays. These are three different ways of approaching and resolving a legal problem. Being exposed to all three broadens one's horizons and fosters creativity.

As I am often required to engage with foreign laws or with subjects that are sometimes highly technical, I am convinced that my experience abroad now enables me to immerse myself more easily in topics I do not fully master. I would therefore strongly recommend this type of pathway, although it is only one route among others.

If I were to do things differently, I might have

completed another Master 2 in Paris after my LL.M.s, rather than passing the bar exam straight away. At the time, I was eager to start internships and enter professional life, but with hindsight, I could have devoted an additional year to study in order to deepen certain subjects, such as private international law, which I find particularly fascinating, and to get to know the Paris law firm market more easily, notably through organised networking events. That said, I also very much enjoyed deepening my knowledge and discovering new subjects during my internships, while learning independently through research. It was a highly formative experience.

**3. You were admitted to the Paris bar in 2025, after LL.M.s in Berlin and London. Did the Paris bar feel like the obvious choice? Why did you choose Paris rather than an English bar?**

I chose to sit the CRFPA straight after my years abroad because I wanted to be able to practise in my home jurisdiction. Having then decided to begin my career at Bredin Prat, Paris naturally became the obvious choice. That said, I do not exclude completing my training by also qualifying as a solicitor/barrister in England, on the contrary. A dual qualification can be a real asset in international arbitration, even if it is of course not an end in itself.

**4. You had the opportunity to do internships in very different settings — law firm, in-house, institution — before joining Bredin Prat. What did this teach you about how arbitration is experienced differently depending on whether you are an external practitioner, in-house counsel or part of an institution? What did these three environments teach you about arbitration proceedings that you would not have learned elsewhere?**

My internship at an institution gave me the chance to familiarise myself with procedural rules that are central to arbitration, to put them into practice and to understand their *rationale*. This experience is useful on a daily basis, as it helps me navigate ICC proceedings more effectively. I also came to understand the concern for efficiency and speed in

proceedings, a concern that is shared by the client, for whom the choice to resort to arbitration is often a weighty decision. Within EDF's international legal department, I also gained a clearer understanding of the importance of legal advice at the project structuring stage. This experience allowed me to discover a very different exercise: drafting contracts, anticipating and mitigating legal risks in order to avoid future disputes. I also learned how to communicate with operational teams, which is now very helpful when I have to explain legal issues to non-lawyer clients. Combining experiences in different environments is a very good way of putting the lawyer profession into perspective and of better understanding its role among the various actors involved in arbitration.

**5. You had a first stint at Bredin Prat before returning as an associate. Coming back as an associate after a final internship in the same team, what changes most in the way you approach cases?**

The way of approaching cases does not change fundamentally, but there is a real increase in responsibility. While this transition may seem a little daunting at the start, it brings a highly rewarding sense of autonomy. Getting a greater grasp of cases and becoming increasingly involved in the development of a strategy also allows you to progress very quickly. I would advise any lawyer starting their practice to trust themselves and not hesitate to ask questions, while relying on the support of their team.

**6. Bredin Prat is well known for representing both private companies and States in major investment arbitrations. In your practice, does representing a State or a sovereign entity fundamentally change the way you build and conduct a case?**

From my perspective, the participation of a State or a State entity in an arbitration is an important factor that cannot be ignored, and one that calls for adjustments of certain aspects of the procedure and of case management (document production, deadlines, etc.). There are realities that one cannot ignore. That said, it all depends on the nature of the

case, and the involvement of a State is merely one specificity among many: there is no universal approach from which one would have to depart simply because a State is involved. Other parameters, such as the technicality of the subject matter, the amount in dispute, or the scale of the matter, sometimes necessitate just as many adjustments. Ultimately, arbitration is a sort of toolbox that one must know how to use and adapt to the needs of each individual case.

**7. To conclude, what advice would you give to a student wishing to break into international arbitration — whether regarding the choice of programmes, internships, or more generally on how to build their profile?**

If I had one piece of advice to give, it would be not to fear testing different things and to seek out a variety of experiences, as these allow you to make an informed career choice. In my view, what matters the most is not necessarily to showcase a perfectly linear career path, but rather to be able to justify the choices you have made.

## UPCOMING EVENTS

### **5<sup>th</sup>-7<sup>th</sup> May 2026: ICC Dispute Resolution Universities Programme**

Organised by the International Chamber of Commerce (ICC)

Where: ICC HQ, 33-43 avenue du Président Wilson, 75116 Paris

Website: <https://shorturl.at/a8tNQ>

### **12<sup>th</sup> May 2026: CAIP Morning Conferences**

Organised by the Paris International Arbitration Chamber (CAIP)

Where: CAIP, 6 avenue Pierre 1<sup>er</sup> de Serbie, 75116 Paris

Website: <https://shorturl.at/bykED>

### **26<sup>th</sup> May 2026: MACI Conference: Interactions between arbitration and geopolitical conflicts**

Organised by the Master 2 Arbitrage et Commerce International (MACI)

Where: Linklaters, 25 rue de Marignan, 75008 Paris

Website: <https://shorturl.at/oWYSw>

# INTERNSHIP AND JOB OPPORTUNITIES

LAW PROFILER

## **Internship – Fidal**

### **Arbitration**

July-December 2026

Courbevoie, France

## **Internship – Eversheds Sutherland**

### **International Arbitration**

January-June 2027

Paris, France

## **Internship – ICC (International Chamber of Commerce)**

### **Dispute Resolution Services - Eastern European Case Management Team**

January-June 2027

Paris, France

## **Internship – Squire Patton Boggs**

### **Litigation, insurance and arbitration**

July-December 2027

Paris, France