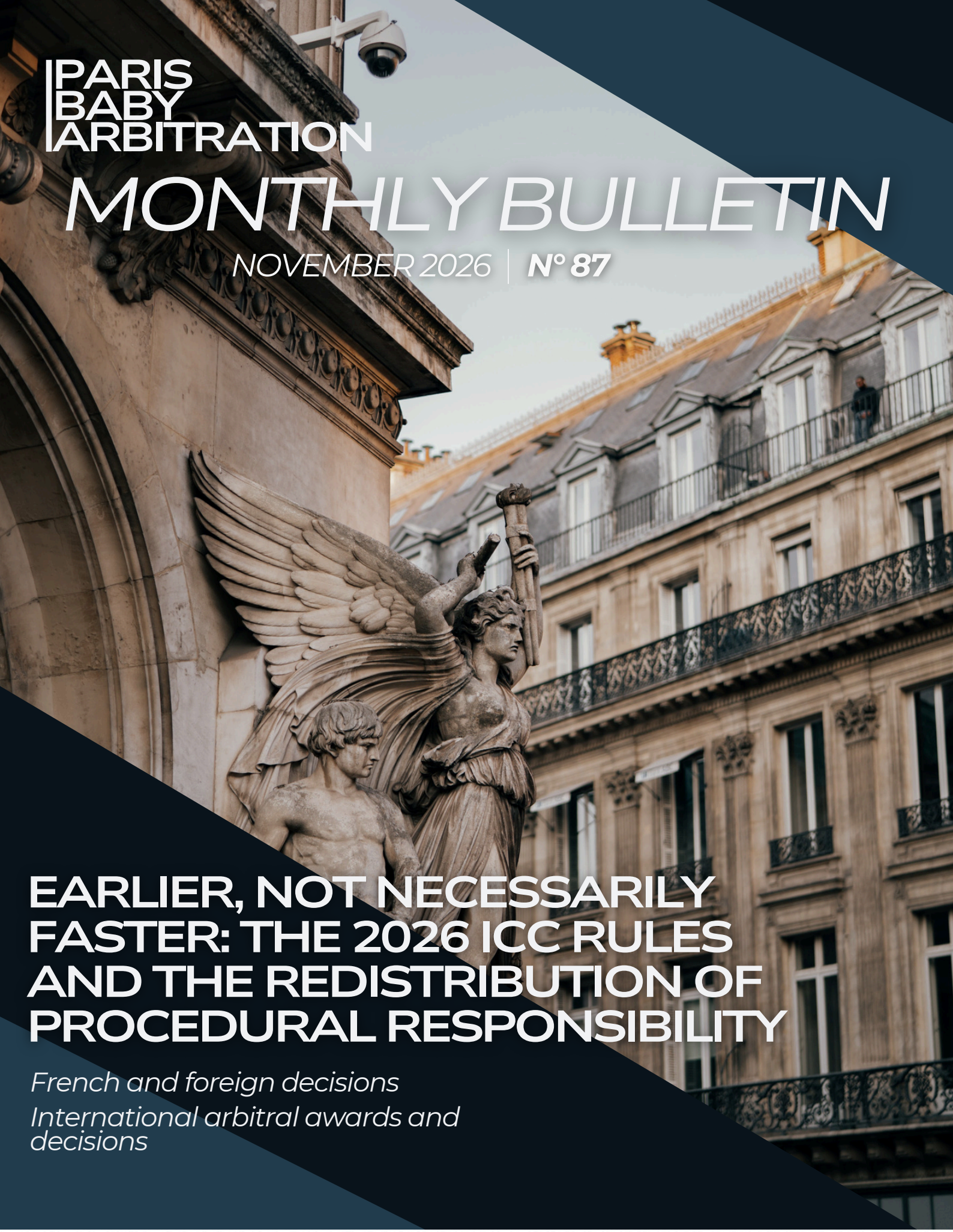

PARIS BABY ARBITRATION

MONTHLY BULLETIN

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EARLIER, NOT NECESSARILY FASTER: THE 2026 ICC RULES AND THE REDISTRIBUTION OF PROCEDURAL RESPONSIBILITY

French and foreign decisions

International arbitral awards and decisions

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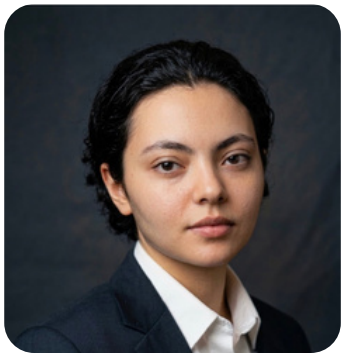

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FOREWORD

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Sincerely yours,
The Paris Baby Arbitration team

PARIS COURT OF APPEAL, 28 JULY 2026, N° 24/17843, *MR U v MR J*

By a judgment dated July 28, 2026, the International Commercial Chamber of the Paris Court of Appeal upheld an order granting exequatur to an arbitral award rendered in Dubai, in proceedings administered by the Dubai International Arbitration Centre (hereinafter the "DIAC"). The Court held that a shareholder who had himself relied on the arbitration clause found in a company's articles of association, and subsequently signed Terms of Reference stating that the clause applied to the dispute, had consented to arbitration, even though the wording of the clause did not cover disputes between shareholders.

Mr U (hereinafter the "appellant") and Mr J, two brothers, each held 50% of the share capital of ALS Logistic Solutions DMCC (hereinafter the "company"), a logistics consultancy incorporated in Dubai on January 15, 2018. Article 93 of the company's articles of association contained an arbitration clause referring to arbitration any differences arising between the company, on the one hand, and any of its shareholders, on the other, concerning, among other things, the interpretation of the articles of association or the affairs of the company. Article 94 further provided that, in the absence of arbitration rules within the Dubai Multi Commodities Centre, the DIAC Rules would apply. A disagreement subsequently arose between the two shareholders regarding the management of the company, Mr J alleging that the appellant had committed various breaches both in his personal capacity and as a director.

On September 21, 2020, Mr J filed a Request for Arbitration with the DIAC. In his Answer to the Request for Arbitration dated November 15, 2020, the appellant referred to the company's articles of association and quoted Article 93 in full, before stating that he was not aware of any arbitration rules applicable to the dispute other than the DIAC Rules. On February 21, 2021, the parties and the arbitrators signed Terms of Reference, under which the parties agreed that the disputes submitted to the arbitral tribunal were subject to the arbitration clause contained in the articles of association. The appellant nonetheless reserved his right to challenge the tribunal's jurisdiction "*in due time*."

In a partial award dated September 15, 2021, the arbitral tribunal upheld its jurisdiction, having found that the appellant's objection to the applicability of the clause was untimely under the DIAC Rules. One of the arbitrators issued a dissenting opinion. The challenge brought against this award was dismissed by the Dubai Court of Appeal on December 8, 2021.

In a final award dated February 6, 2023, the arbitral tribunal ordered the appellant to pay Mr J AED 16,257,062.50 (EUR 4,126,042.46), excluding interest, including AED 15 million in damages. The award was subsequently set aside by the Dubai Court of Appeal. However, by a judgment dated December 18, 2023, the Dubai Court of Cassation upheld Mr J's appeal and overturned that decision, thereby restoring the award.

By an order dated January 11, 2024, the Paris Judicial Court (*Tribunal judiciaire*) granted exequatur to the final award. On 18 October 2024, the appellant lodged an appeal against that order.

Before the Court, the appellant relied on several of the grounds set out in Article 1520 of the French Code of Civil Procedure, applicable by virtue of Article 1525 of the same Code. His main argument was that the arbitral tribunal had wrongly upheld its jurisdiction, since the clause in the articles of association only covered disputes between the company and its shareholders, and not a dispute between him and his brother, to which he had never consented. He further argued that the tribunal had ruled ultra petita by awarding AED 15 million, whereas the Terms of Reference only referred to a claim for AED 1 million. He also contended that the adversarial principle (*principe de la contradiction*) had been breached, since he had not been allowed to attend Mr J's examination and the witnesses had not been sworn in. In addition, he submitted that recognition of the award would be contrary to international public policy, relying in particular on a confusion between the loss suffered by the company and that suffered by the shareholder, as well as alleged corruption and manipulation of the dispute by the arbitrators, who had allegedly inflated the claims in order to multiply their fees. Finally, he argued that the conditions laid down in the Franco-Emirati Convention of September 9, 1991 had not been met.

Mr J argued, as his primary submission, that the jurisdictional objection was inadmissible, on the grounds that the arbitral tribunal had already found it to be untimely under the DIAC Rules and that the appellant had waived his right to raise it under Article 1466 of the French Code of Civil Procedure. In the alternative, he requested that all of the appellant's arguments be dismissed, arguing that the appellant had accepted the application of the clause by signing the Terms of Reference and that most of his remaining complaints in fact sought a review of the merits of the award.

The question before the Court was whether a shareholder who had relied on an arbitration clause in the articles of association, and then signed Terms of Reference confirming its application, could later argue that the clause did not cover disputes between shareholders.

The Paris Court of Appeal dismissed all of the appellant's arguments and upheld the exequatur order. Before turning to the question of consent, the Court first examined the admissibility of the jurisdictional objection.

As regards the admissibility of the jurisdictional objection, the Court recalled that, under Article 1466 of the French Code of Civil Procedure, which applies to international arbitration by virtue of Article 1506, a party which knowingly fails to raise an irregularity before the arbitral tribunal in a timely manner is deemed to have waived its right to raise it. This presumption, which is rooted in a duty of consistency and good faith, is of general scope, except where a party alleges a breach of mandatory international public policy (*ordre public international de direction*). It applies to jurisdictional objections by virtue of the competence-competence principle, which gives the arbitrator priority to rule on his or her own jurisdiction. However, the Court found that Mr J had confused the admissibility of the objection before the arbitral tribunal with its admissibility before the French court reviewing the exequatur. The fact that the tribunal had found the objection untimely under the DIAC Rules did not prevent the appellant from raising it before the court, since Article 1466 is distinct from the rules of admissibility laid down in arbitration rules. As the appellant had challenged the tribunal's jurisdiction during the arbitral proceedings, the plea of inadmissibility was rejected.

As regards whether the objection was well founded, the Court recalled that it was required to review the arbitral tribunal's decision on jurisdiction by examining all the legal and factual elements relevant to the scope of the arbitration agreement, without any review of the merits of the award. The existence and effectiveness of an arbitration agreement are assessed according to the common intention of the parties. The Court specified that, although the admissibility of the jurisdictional objection before the arbitral tribunal fell outside its review, it nonetheless remained bound to verify the parties' consent to arbitration. The Court acknowledged that the clause in the articles of association covered disputes between the company and its shareholders, and not disputes between shareholders.

It nevertheless observed that the appellant, a co-founder of the company and a signatory of its articles of association, had himself relied on the clause in his Answer to the Request for Arbitration, and had subsequently signed Terms of Reference expressly recording the parties' agreement to its application to the dispute. It concluded that he had consented to the arbitration clause contained in the articles of association, and that his general reservation of the right to challenge the tribunal's jurisdiction could not call into question that express agreement.

The Court also dismissed the remaining arguments. It held that the arbitral tribunal had not ruled *ultra petita*, since the parties' claims are not fixed by the Terms of Reference, and Mr J had later increased his claim to AED 15 million, which was the amount awarded. It considered that the adversarial principle had not been breached, since the appellant had been represented by counsel during Mr J's examination as a witness and had not shown any substantial disadvantage, while the absence of an oath was a mere formality that did not affect the adversarial nature of the proceedings. It further found that the complaints relating to the confusion between the company's loss and the shareholder's loss in fact sought a review of the merits of the award, and that the alleged corruption was not supported by any evidence. Lastly, it noted that the award had already become final before the exequatur order was issued, following the judgment of the Dubai Court of Cassation of December 18, 2023, and that the formal requirements of Article 16 of the Franco-Emirati Convention do not apply to arbitral awards. The appellant was ordered to pay Mr J EUR 50,000 in respect of legal costs under Article 700 of the French Code of Civil Procedure.

This judgment is significant in that the Court upheld the tribunal's jurisdiction without adopting a broad interpretation of the clause in the articles of association, which it acknowledged did not cover disputes between shareholders. Instead, it relied on the appellant's own conduct during the arbitration, i.e. his Answer to the Request for Arbitration and the Terms of Reference, as evidence of his consent. In practical terms, the decision highlights that a reservation of general scope may not be sufficient to neutralize an express agreement on the application of an arbitration clause.



Contribution by Haifa Houthan

PARIS, TJ (JEX), 5 OCTOBER 2026, RG N° 26/80898, *RÉPUBLIQUE DU CAMEROUN*

In a judgment dated October 5, 2026, the enforcement judge of the Paris Judicial Court dismissed the Republic of Cameroon's application, which sought the release of the third-party debt order levied by the company CFS 37 Funding LP (hereinafter "CFS"). This enforcement measure had been undertaken by CFS as beneficiary of a pledged arbitral award claim. Such a claim arose both from a funding agreement (hereinafter the "Contract") entered into between CFS and the company Projet pilot Garoubé (hereinafter "Garoubé"), and from an ICC arbitral award (hereinafter the "Award") rendered on September 22, 2021, ordering the Republic of Cameroon to pay the sum of 17,880,000 euros to Garoubé. The enforcement judge was called upon to decide whether the third-party debt order levied by a funder – which held a pledged arbitral award claim – was valid.

The dispute stemmed from the Contract entered into on September 12, 2020 between Garoubé and CFS, under which the latter agreed to fund the costs of the arbitration between Garoubé and the Republic of Cameroon. The Contract was backed by a pledge for the benefit of CFS. The Award rendered by the arbitral tribunal, which ordered the Republic of Cameroon to pay the sum of 17,880,000 euros to Garoubé, was granted exequatur in France in 2021 and survived annulment proceedings in 2023.

In the same year, after notifying the relevant parties of the operation, CFS enforced the pledge over the claim. This enforcement was subsequently upheld by the Paris Commercial Court in a judgment dated February 13, 2025, which dismissed the claim for annulment of the Contract and ordered the transfer of all rights, title and interest from Garoubé to CFS. The latter then levied a third-party debt order on a third party – in respect of sums owed to the Republic of Cameroon – in order to recover the amount mentioned in the Award.

The Republic of Cameroon then applied to the enforcement judge to challenge the third-party debt order levied by CFS. It raised the nullity of the Contract, which would deprive CFS of the rights arising under it. Furthermore, it argued that the pledge over the claim did not transfer to CFS any part of the arbitral award claim. Accordingly, it asked the enforcement judge to declare the Contract and the order of February 6. 2026 authorizing the third-party debt order null and void, and to lift the third-party debt order levied by CFS.

In any event, if its claims were to be rejected, it sought to limit the recovery solely to the amount that CFS was entitled to recover from the funded party under the Contract.

CFS opposed the claims made by the Republic of Cameroon on the ground that the pledge of the claim had transferred to it the rights relating to the arbitration, and thus the arbitral award claim. CFS was therefore entitled to levy the third-party debt order against the Republic of Cameroon to recover the amount mentioned in the Award.

The enforcement judge was asked whether it was possible for the funder, as pledgee, to enforce an arbitral award claim pledged by its defaulting pledgor.

The enforcement judge answered in the affirmative and dismissed the claims brought by the Republic of Cameroon. As regards the nullity of the Contract, the enforcement judge held that the Republic of Cameroon did not have standing to challenge the validity of the Contract as it was a third party to it and, moreover, because the Contract had been upheld by the Paris Commercial Court in its February 13, 2025 judgment. When it comes to the transfer of the rights related to the pledged arbitral award claim, the enforcement judge found that, according to Articles 2363 and 2365 of the French Civil Code, the pledge mechanism provides that, after notification, the pledgee is the sole holder of the right to payment under the pledged claim, and, in the event of the pledgor's default, the pledgee may have the said claim assigned to it by the judge together with all the rights attached to the claim.

Accordingly, the enforcement judge noted that the pledged claim was automatically transferred to CFS as a result of Garoubé's default, that the operation had been notified to all the parties concerned, and that the Paris Commercial Court had also ordered the said transfer to CFS in its February 13, 2025 judgment. The enforcement judge held that CFS had standing to act and to enforce its pledged claim arising from the Award, as the pledge had transferred to it all the rights attached, in particular those against the Republic of Cameroon.

Finally, as regards the sum CFS was entitled to recover, the enforcement judge held that there was no reason to limit the said sum to the amount of the claim that the funder held against the funded party under the Contract. This was a matter for the internal relations between the parties, thus allowing the funder to seek full recovery of the sum provided for in the Award.

The solution found by the enforcement judge affords a degree of legal certainty for the funder. By reconciling the regime of pledged claims with the regime governing the enforcement of arbitral awards, it eases the recovery of the funder's claim, whether through the possibility of seeking enforcement of the said claim or through that of recovering the entire sum provided for in the Award. However, this guarantee is not unlimited as it is conditional upon the pledgor's default and upon notification by the pledgee.

Nevertheless, the defaulting pledgor appears to benefit from this mechanism since the recovery of the claim by the funder will give rise to the distribution of the sum between the parties as provided for in the Contract. Thus, the enforcement judge placed the pledge regime at the service of the regime governing the enforcement of arbitral awards in order to accelerate the recovery of arbitral award claims and to facilitate the post-arbitral process.



Contribution by Mathieu Morel

INFRASTRUCTURE SERVICES LUXEMBOURG S.À R.L. v KINGDOM OF SPAIN, USDC DC, 10 AUGUST 2026, NO. 18-1753

The US District court decision has revived the discussion to a dispute that dates back to the 2010s. On the 10th of August 2026, the United States District Court for the District of Columbia ruled in favour of the investors in their efforts to enforce the International Centre for Settlement of Investment Disputes (hereinafter "ICSID") award against Spain. The Court rejected Spain's request for an unsecured stay of enforcement and authorized the investors to pursue attachment and execution proceedings against potentially executable Spanish assets in the United States, notwithstanding Spain's reliance on the European Commission's prohibition on payment of the award.

What began as a challenge to Spain's reform of its renewable-energy support regime has become a conflict between three legal frameworks: the binding force and enforcement of ICSID awards under the Washington convention, the European Union's State aid, competition and autonomy rules, and the United States' law on the recognition and execution of foreign arbitral awards.

On the facts, Spain had introduced an inviting regime in the renewable energy sector, promising a favorable remuneration system, with the purpose of encouraging investment. Having relied on this regulatory framework, the investors acquired interests in two concentrated solar power panels and began working on the project. From 2012 onwards, however, Spain progressively replaced that framework in a way that substantially altered the economic conditions on which the investments had been made.

Then, on the 1st of November 2013, the investors initiated arbitration proceedings against Spain before the ICSID, pursuant to Article 26 of the Energy Charter Treaty (hereinafter "ECT"). They argued that the successive regulatory changes had frustrated their legitimate expectations and breached Spain's obligation to accord their investments fair and equitable treatment. In its award of 15 June 2018 (hereinafter "*Antin* award"), the tribunal upheld the claim and found Spain liable for breaching that obligation. Spain subsequently sought the annulment of the award under Article 52 of the ICSID Convention, but the request was rejected by the ad hoc Committee in its decision of 30 July 2021.

The dispute nevertheless entered a new and particularly contentious phase when the European Commission intervened in the matter through its Decision (EU) 2025/1235 of March 24, 2025, following on Spain's submission in April 2019. The Commission concluded that the *Antin* award, and in any event its payment, implementation or execution, constituted illicit State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union (hereinafter "TFEU"). In the Commission's view, payment of the award would restore the economic advantage which the investors would have obtained under a scheme that the Commission had previously found to constitute unlawful State aid. The Commission considered that the award conferred a selective economic advantage to the investor, was imputable to Spain and involved State resources, with the potential to distort competition and affect trade between Member States. More importantly, wanting to uphold the long-standing opinion of the European court's *Achmea* and *Komstroy* judgments, it considered that the award resulted from an intra-EU investor-State arbitration mechanism incompatible with the autonomy of the EU legal order. In particular, the Commission maintained that the tribunal had exercised jurisdiction on the basis of Article 26 ECT in circumstances in which that provision could not operate between an investor of one Member State -*here being Luxembourg*- and another Member State -Spain. Several important consequences arose from this decision, basing Spain's arguments for refusal of enforcement before the US District Court. Under Article 2, Spain was prohibited from paying the aid in question. Article 3 required it to take all appropriate measures to prevent Antin, or any third-party holding rights under the award, from seeking its recognition, enforcement or execution, not only within the European Union but also in third countries. In other words, it expressly required the State to take steps to prevent the award from being enforced abroad.

This placed Spain in a particularly difficult legal position. On the one hand, the award had survived the ICSID annulment process and remained binding, Article 54 of the ICSID convention requires each Contracting State to recognize an ICSID award as binding and enforce its pecuniary obligations within its territory. On the other hand, as a Member State, Spain was bound by the Commission's decision and by its obligations under EU State aid law.

That is where the US proceedings intervened and brought that contradiction into practice.

The investors had already initiated proceedings in July 2018 to obtain recognition and enforcement of the ICSID award in the United States. Following several years of procedural developments, the District Court entered judgment on September 30, 2025, confirming the award. Spain appealed that judgment to the United States Court of Appeals for the District of Columbia Circuit. The appeal, however, did not prevent the investors from seeking measures to secure the eventual recovery of the sums awarded.

In December 2025, the investors applied for an order under the Foreign Sovereign Immunities Act (hereinafter "FSIA"), authorizing attachment and execution against Spain's assets in the United States, arguing that more than ten months had elapsed since the September 2025 judgment, satisfying the statutory requirement that a reasonable period of time must pass before attachment and execution may be pursued. Additionally, they sought permission to register the judgment in other federal judicial districts, on the basis that they were unaware of sufficient executable Spanish assets in the District of Columbia, whereas Spain was believed to hold substantial assets in New York.

In parallel, they issued subpoenas to the Clearing House Payments Company and the Federal Reserve Bank of New York, seeking information concerning Spain's assets. Spain opposed all these measures. It sought a stay of enforcement without being required to provide a supersedeas bond, arguing that the European Commission's decision prohibited it from paying the award and that posting security would expose it to further proceedings and financial sanctions under EU law, granting a justified exception under Federal Rule of Civil Procedure 62(b). In the alternative, Spain requested that the subpoenas be quashed. In response to this point, the investors argued that Spain's reliance on EU law to justify non-payment reinforced the need for enforcement measures and did not diminish their stance: if Spain maintained that it could not voluntarily satisfy the judgment, the investors had an interest in establishing priority over potentially attachable assets elsewhere.

The court was therefore asked to determine whether the investors satisfied statutory requirements to commence enforcement proceedings, and more importantly to the discussion, whether the European Commission's decision justified a request for unsecured suspension or stay of enforcement under US law.

The District Court responded by rejecting Spain's arguments and granting the investors' applications. Concerning the country's request, it recalled that although an unsecured stay may exceptionally be granted in unusual circumstances, Spain had failed to establish that such circumstances existed. The Court was not persuaded that the Commission's decision satisfied the exception's threshold. Specifically, it found that Spain had not demonstrated that posting a bond would necessarily trigger EU enforcement proceedings or financial penalties. It also noted that Spain had not sought fresh approval from the Commission to pay the judgment or provide security, relying instead on a notification made more than six years before the US judgment had been entered -*in 2019*.

The Court further considered that Spain's reliance on EU law did not necessarily protect its interests in the enforcement proceedings. On the contrary, it agreed with the investors' position, that since Spain could not voluntarily satisfy any demands in the Antin award, there was reason to seek priority over Spain's attachable assets in the United States. It also rejected Spain's alternative request to quash the subpoenas, on the basis of lack of jurisdiction, considering that US Courts for the Southern District of New York are competent instead.

Finally, the Court granted the investors' request under the FSIA, and authorized registration of the judgment in other federal judicial districts. This leaves the investors with the chance to identify assets that could lawfully be subjected to execution under the FSIA and to satisfy the applicable requirements concerning sovereign immunity.

The resulting tension mentioned in the beginning of the article is hence evident. The Commission's decision does not annul the award within the ICSID system, nor does the US District Court's ruling resolve cross-border consequences of Spain's competing obligations. Rather, the two decisions expose the difficulty of reconciling them: Spain is required by the EU institutions to prevent enforcement, while investors are being authorised by a third-country court to take facilitated steps toward obtaining it. It remains to be seen how the European Commission will respond to these developments, whether Spain may face any sanctions under EU law, and whether similar enforcement proceedings will follow in other jurisdictions where Spain holds potentially executable assets.



Contribution by Salma Gharraf

SWISS FEDERAL TRIBUNAL, 8 OCTOBER 2026, NO. 4A_100/2025, *PEOPLE'S REPUBLIC OF CHINA v JASON YU SONG*

On September 2, 2026, the Swiss Federal Tribunal (Decision No. 4A_100/2025) dismissed an application filed by the People's Republic of China (hereinafter the "Applicant") to set aside a final arbitral award rendered in Geneva under the 1986 China–United Kingdom Bilateral Investment Treaty (hereinafter the "BIT"). The award ordered the Applicant to pay over USD 26 million in compensation, plus interest and costs, to British investor Jason Yu Song (hereinafter the "Respondent"). On the facts, the Respondent, a British national, held an interest in a Chinese company possessing land-use rights in China. Following measures taken by the Chinese authorities, which allegedly resulted in the unlawful deprivation of those rights without compensation, the Respondent claimed that the Applicant had breached Article 5 of the BIT concerning expropriation.

On January 9, 2019, the Respondent initiated investor–State arbitration proceedings against the Applicant under the UNCITRAL Arbitration Rules, administered by the Permanent Court of Arbitration (PCA Case No. 2019-39), with Geneva designated as the seat of arbitration. On December 30, 2021, the arbitral tribunal upheld its jurisdiction despite the Applicant's objections. Following an unsuccessful request for reconsideration, rejected on April 12, 2024, the proceedings continued. In its final award of January 24, 2025, the arbitral tribunal found that the Applicant had breached Article 5 of the BIT and ordered it to pay USD 26,045,613.90 in compensation, alongside interest and costs. Two applications for revision submitted by the Applicant before the Swiss Federal Tribunal were subsequently dismissed on April 17, 2025 and June 26, 2025.

The Applicant also initiated setting-aside proceedings against the final award before the Swiss Federal Tribunal, relying on several grounds under Article 190(2) of the Swiss Private International Law Act (hereinafter "PILA"). Specifically, the Applicant challenged the tribunal's impartiality, notably on the basis of a Chinese proverb used in the award and allegedly prejudicial procedural decisions. The use of the proverb in question, "*The mountains are high and the Emperor is far away,*" was invoked by China as allegedly conveying a negative portrayal of Chinese local authorities and reflecting the tribunal's purported bias against the State. It further alleged a violation of its right to be heard, particularly concerning the exclusion of witness evidence and the tribunal's assessment of the arguments relating to the alleged illegality of the investment.

In addition, the Applicant challenged the tribunal's jurisdiction on the ground that the investment had allegedly been unlawfully acquired. Finally, it argued that the award violated substantive public policy, particularly regarding the protection afforded to an allegedly illegal investment and the allocation of arbitration costs.

The central question before the Swiss Federal Tribunal was whether the arbitral award could be set aside under Article 190(2) PILA on grounds relating to the tribunal's impartiality, the right to be heard, jurisdiction, or substantive public policy.

The Swiss Federal Tribunal dismissed the application insofar as it was admissible, rejecting the Applicant's challenges to the arbitral award.

Regarding impartiality, the Court held that neither the tribunal's reference to a Chinese proverb nor its procedural decisions established an objectively justified appearance of bias, recalling that adverse procedural rulings do not, in themselves, demonstrate a lack of impartiality.

Concerning the right to be heard, the Court found that the arbitral tribunal had adequately addressed the Applicant's essential arguments and emphasized that this procedural guarantee did not entitle a party to challenge the tribunal's assessment of evidence.

As to jurisdiction, the Court held that the Applicant could not reopen objections directed against earlier jurisdictional decisions that had not been challenged through the appropriate procedural avenues. It further rejected the Applicant's attempt to challenge jurisdiction on the basis of the investment's alleged illegality, finding that the relevant objections were either inadmissible or insufficiently substantiated.

Finally, the Court rejected the Applicant's substantive public policy objections, finding that the Applicant had failed to demonstrate that the "*costs follow the event*" principle constituted a fundamental rule of substantive public policy. It further held that the arbitral tribunal was entitled to consider the parties' procedural conduct when allocating costs. The Court also rejected the allegations concerning the illegality of the investment.

This decision marks a significant development in investment treaty arbitration, leaving intact what has been reported as the first successful investor–State award against the People's Republic of China. Beyond its historical significance, the ruling illustrates the restrictive scope of judicial review of international arbitral awards under Swiss law. In particular, it highlights the consequences of failing to challenge jurisdictional decisions within the applicable procedural framework and confirms that disagreements over the assessment of evidence or the allocation of arbitration costs do not, in themselves, justify setting aside an award.

The decision thus reinforces the finality of international arbitral awards while underscoring the importance of procedural diligence in investor–State arbitration.



Contribution by Jihane Bensaid

CJEU, CASE C-842/24, *DNO YEMEN v PETROLIN*

While the civil war still rages in Yemen, its repercussions have reached as far as the Kirchberg plateau. In a judgment dated October 15, 2026, the Court of Justice of the European Union ruled on the interpretation of Council Regulation (EU) No 1352/2014 (hereinafter the "Regulation") concerning restrictive measures in view of the situation in Yemen, in the context of the recognition and enforcement of an arbitral award in the legal order of a Member State.

As the Court's judgment was the fourth decision rendered in this case, its background should first be recalled. On the facts, the Yemeni Ministry of Oil and Minerals (hereinafter the "Ministry") and Yemen Oil & Gas Corporation (hereinafter "YOGC"), a company wholly owned by the State, concluded oil and natural gas exploration and production sharing agreements with several Western companies, including DNO Yemen AS (hereinafter "DNO"), a company incorporated under Norwegian law. In 2015, at the same time as the outbreak of the civil war, DNO and the other companies withdrew from the agreements and transferred their interests to YOGC.

Disputing the validity of these withdrawals and seeking compensation for the loss suffered as a result of the breach of the agreements, the Ministry and YOGC initiated arbitral proceedings under the aegis of the International Chamber of Commerce against the other parties to the agreements, including DNO. In an award dated July 15, 2019, the arbitral tribunal upheld the claimants' claims and ordered DNO and the other respondents, jointly and severally, to pay damages. The latter then brought annulment proceedings against the award before the Paris Court of Appeal. The main ground relied upon was a breach of Article 1520, 5° of the French Code of Civil Procedure, on the basis that the recognition or enforcement of the award would be contrary to international public policy. According to the applicants, by ordering the payment of sums of money to YOGC, the award in fact organized a payment to an entity controlled by the Houthi movement, whose leaders are targeted by EU sanctions. Accordingly, the award could not be enforced in France without breaching the sanctions laid down in the Regulation. In a judgment dated October 5, 2021, the International Commercial Chamber of the Paris Court of Appeal dismissed the application. Following a thorough analysis of the facts of the case, it held that control of YOGC by the sanctioned persons had not been sufficiently established. In parallel, the Ministry obtained exequatur of the award in Norway, and DNO paid the sums due on December 4, 2023.

In France, DNO lodged an appeal before the *Cour de cassation*. It argued that the lower courts had breached the Regulation and Article 1520, 5° of the Code of Civil Procedure by confining their inquiry to whether the Houthi movement held a power of control over YOGC, whereas they should have extended it to whether the award could, or risked, benefiting a person targeted by the Regulation. In a judgment dated November 27, 2024, the First Civil Chamber of the *Cour de cassation* decided to stay the proceedings pending the answer of the Court of Justice to the three questions it referred for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union (TFEU). In essence, the *Cour de cassation* asked whether:
(1) the indirect making available of funds within the meaning of the Regulation may be established where sums are paid to an entity not targeted by the restrictive measures, over which targeted persons, such as the leaders of the Houthi movement, exert an influence competing with that of a non-targeted entity, such as the legitimate government;
(2) where such competing influence is established, control must be presumed to be exercised by the persons targeted by the sanctions and, if so, whether that presumption is rebuttable;
(3) a mere reasonable risk that the targeted persons might benefit from the funds is sufficient to trigger the application of the sanctions.

In his Opinion of March 19, 2026, Advocate General Szpunar – who was also the Advocate General in *Komstroy* – proposed a rather broad interpretation of the Regulation, which could make it easier to set aside awards. Like the Court, he first addressed the third question, on the likelihood of the risk, before turning to the second question, on the existence of a presumption of control and the burden of proof. On the third question, he considered that the existence of a "reasonable risk" that sanctioned persons might benefit from funds paid to a non-targeted entity was sufficient to trigger the prohibition laid down in the Regulation. On the second question, while he rejected a presumption of control in favor of the sanctioned persons, he took the view that, once a "reasonable risk" that the funds would benefit the sanctioned persons had been shown, it was for the respondent to prove the absence of such a risk.

In its judgment of October 15, 2026, the Fifth Chamber of the Court of Justice of the European Union adopted a more measured approach than its Advocate General as to how the Regulation should be applied in annulment proceedings.

On the first question, the Court accepted that funds could be made indirectly available within the meaning of the Regulation where they were paid to a non-sanctioned entity over which targeted persons claimed, without exercising it, a power of control, in the same way as the legitimate government. However, the Court made this characterization subject to the condition that the targeted persons "*are in a position actually to obtain those funds.*"

This solution was based on the necessarily broad meaning to be given to the words "made available, directly or indirectly," in order to ensure the effectiveness of the Regulation.

On the third question, the Court proved more demanding than the Advocate General, since it held that the probability of the risk of funds being made indirectly available materializing must be "s*ufficiently significant*" for the prohibition to apply. Whereas the Cour de cassation had asked whether a "*reasonable risk*" was sufficient for the sanctions to apply, the Court of Justice appeared to raise the threshold by clearly rejecting the standard of a "*purely hypothetical risk.*" This solution was based, in particular, on the adverse consequences that the prohibition would have for non-sanctioned persons. Indeed, setting aside the award would deprive the Ministry and YOGC of funds to which they were lawfully entitled under the award. Although restrictive measures may have adverse effects on the property rights of non-sanctioned persons, those effects must be limited to what is necessary to achieve the objectives of the Regulation. Furthermore, applying the prohibition solely on the ground that the Houthi movement claimed control over YOGC could deprive the legitimate government of resources and be exploited by that movement. Finally, the assessment of the risk had to be based on objective material evidence and to involve weighing the means available to the sanctioned persons to obtain the funds against the measures put in place by the legitimate beneficiaries to prevent them from doing so.

On the second question, the Court first rejected the idea of a presumption of control in favor of targeted persons claiming a power of control over the non-sanctioned public entity. It then held that compliance by a national court with the prohibition laid down in the Regulation could justify an adjustment (and not a reversal) of the rules on the burden of proof. Whereas, in annulment proceedings, the burden of proof traditionally rests solely on the applicant, the Court held that, once the applicant has shown "*that there is a non-negligible likelihood*" that the funds will be obtained by the sanctioned persons, it is for the respondent to produce material evidence permitting that risk to be excluded to the requisite legal standard.

However, the Court specified that "[*t*]*he beneficiaries of those sums cannot be required to prove a negative, that is to say, to adduce evidence of the absence of any risk of funds being made indirectly available.*"

In short, the Court provided measured answers in an area where uncertainty prevails. Thus, a "*non-negligible*" likelihood is sufficient to shift the burden of proof, whereas a "s*ufficiently significant*" probability is required for the award to be set aside.

Such a framework may prove difficult to apply for the lower courts, from which the Court of Justice appears to expect a great deal. Following this judgment, the case will return to the *Cour de cassation*, which will have to rule on DNO's appeal in the light of the interpretation provided by the Court of Justice. The hearing is scheduled for 15 December 2026.

This judgment should be placed in the highly charged context of the relationship between EU law and arbitration. The preliminary rulings and judgments on appeal by which the Court has sought to regulate arbitration in the name of EU law are now too numerous to count: *Achmea, London Steam-Ship, International Skating Union, Micula*… It is also worth recalling that the last time French courts referred questions to the Court of Justice in a case involving arbitration, the Court seized the opportunity to prohibit, by way of an *obiter dictum*, intra-EU investment arbitration based on State consent expressed in the Energy Charter Treaty (ECT).

It should be noted that the Court did not rule on whether sanctions form part of EU public policy, this question being at the heart of the *Reibel* (C-802/24), *Graudu sabiedrība* (C-701/25) and *Axpo Nordic* (C-635/25) cases. The relationship between EU sanctions and arbitration is therefore set to remain a topic of debate.



Contribution by Arthur Morieux

EARLIER, NOT NECESSARILY FASTER: THE 2026 ICC RULES AND THE REDISTRIBUTION OF PROCEDURAL RESPONSIBILITY

Why revisit the Rules now?

On March 23, 2026, the International Chamber of Commerce (hereinafter "ICC") announced the approval of revised Rules of Arbitration. Published on 22 May, they entered into force on June 1, 2026 for arbitrations whose Request reached the Secretariat from that date, unless the parties choose an earlier version. It is far too early to say whether ICC arbitrations have become shorter or cheaper: the ICC's latest statistics, which cover 2025 and thus predate the reform, put the average duration of arbitrations ending in a final award at 27 months. What five months of law firm commentary can show us is how practitioners read the reform, and whom they expected to carry its weight.

This article argues that the significance of the 2026 Rules lies less in a promise of speed than in a redistribution of procedural responsibility: the Rules move the work of defining a dispute onto parties and counsel, give tribunals discretionary tools whose effect depends on use, and reallocate control within the institution. The commentaries largely agreed on what had changed; they diverged on who would bear its cost and on what would check the new discretions.

What has materially changed

The most visible change concerns the opening of the case. Under the 2021 Rules, the Terms of Reference, due within 30 days, fixed the perimeter beyond which new claims required the tribunal's authorization. That cut-off is now the initial case management conference (hereinafter the "initial CMC"), held within 30 days of the file's transmission, and a tribunal asked to admit later claims must also consider their cost implications. Terms of Reference survive only as an optional technique in the ICC's Note to Parties and Arbitral Tribunals (hereinafter the "Note"). The default six-month time limit for the award has also gone: the President of the ICC International Court of Arbitration (hereinafter the "Court") now fixes it in light of the procedural timetable or of a reasoned request from the tribunal.

At the same stage, each party must now file, with its first submission, a reasoned list of persons and entities that prospective arbitrators should consider for disclosure; the Rules also provide that doubts are resolved in favor of disclosure and that a disclosure does not by itself establish a lack of independence or impartiality. Those two principles were previously set out in the Note; the list is new, but the duty to disclose remains the arbitrator's.

Article 30 also lets any party seek the early determination of claims or defenses manifestly without merit or manifestly outside the tribunal's jurisdiction; the tribunal decides in its discretion whether the application may proceed. The Note had addressed such applications since 2017.

A second strand is a graduated menu of speeds. The threshold of the Expedited Procedure Provisions (hereinafter "EPP") rises to US$4 million, but only for arbitration agreements concluded on or after June 1, 2026; earlier agreements keep US$3 million or US$2 million depending on their date, and those concluded before March 1, 2017 fall outside the EPP unless the parties opt in. The genuinely new track, open by agreement whatever the amount, is governed by the Highly Expedited Arbitration Provisions (hereinafter "HEAP"): pleadings are front-loaded, joinder and consolidation excluded, and a sole arbitrator must render the award within three months of an initial CMC held within seven days, save extension by the President; the parties may even dispense with reasons. According to the ICC, those three months include the Court's scrutiny.

Urgent relief is also extended. Emergency arbitrator proceedings may now target, beyond signatories and their successors, any party that the President is satisfied may be bound by an arbitration agreement. A party may also obtain, without notice, a preliminary order directing another party not to frustrate the purpose of its application; the emergency arbitrator must then immediately give the other parties a reasonable opportunity to present their case.

Other changes concern the tribunal and the award: arbitrators are now expressly bound by confidentiality, tribunal secretaries must meet the same standards as arbitrators, and tribunals may deliberate remotely and sign awards electronically. Within the institution, finally, the Secretary General now fixes advances on costs, and case management techniques have moved from an appendix into guidance that is easier to update.

How practitioners have read the reform

The corpus comprises seventeen publications by fourteen firms, issued between May and October 2026 by authors based mainly in Paris, London, New York, Singapore, Shanghai, Munich and Dubai. Two cautions apply: a firm's headquarters is not its authors' office, and client briefings reward description and measured approval, so silence is not endorsement.

Beyond a disagreement over labels that proved more apparent than real, the commentaries converged on two points and diverged on two.

The first apparent disagreement concerned labels. Gide, in Paris, saw targeted adjustments in a deliberately limited revision; Norton Rose Fulbright, in London, described essentially incremental refinements; WilmerHale's London team saw no complete rewrite of the 2021 Rules. Debevoise & Plimpton, from New York, called the reform ambitious; K&L Gates, in Singapore, saw in it the biggest structural change to ICC procedure in more than ten years; Hogan Lovells Cadwalader (hereinafter "HLC"), in Paris, called it the most substantial revision since 2012. The opposition was more apparent than real: Debevoise also wrote of targeted reforms, and the two camps measured different things: the share of text changed,the depth of change at one point, the Terms of Reference, whose removal Clifford Chance and WilmerHale called a significant departure.

The first convergence, clear across arbitration centres, concerned where the weight would fall: the work had moved forward, not disappeared. Paul, Weiss, in New York, noted that parties might have to frame their case from the start; Debevoise expected early determination to put more pressure on pleadings; Freshfields' Paris-led team stressed the need to take stock of all claims before the initial CMC. K&L Gates wrote of "*a decisive shift of weight towards the opening of a case.*" HLC's Munich team added a qualification: what disappears is the document, not the need to have settled one's case by the initial CMC.

The first divergence concerned who would pay for that shift. HLC's Dubai-led team noted that Gulf construction and infrastructure claims tend to take shape gradually, and that the reform made their initial framing more important. The firm's Munich team warned that disputes of up to US$4 million can matter greatly to mid-sized companies, whose lean in-house teams may struggle with the pace of expedited proceedings. The conflict lists showed the same movement: Norton Rose Fulbright welcomed a transfer to the parties of the burden of flagging potential conflicts, and Cleary Gottlieb saw a more cooperative exercise, although, as the ICC stressed, the obligation to disclose stays with the arbitrator. Stephenson Harwood even saw in the lists a safeguard against later challenges based on tangential relationships. If so, an omission from a party's own list may later weigh against it: an inference, not a rule, but it shows how an aid to arbitrators can allocate risk to parties.

The second divergence concerned procedural risk, and it did not follow geography.

On early determination, several firms described the standard as demanding and the provision as largely codifying practice, but they differed on the risk at the enforcement stage.

K&L Gates warned that a party defeated summarily might invoke Article V(1)(b) of the New York Convention; Stephenson Harwood, also in Singapore, found such arguments unlikely to succeed given the analogy with summary judgment. HLC's Paris and Munich teams pointed to the reluctance of tribunals, as courts of last resort, to rule on the merits before mastering the record. In comments reported by Out-Law, Pinsent Masons' Shanghai-based partner saw a calibrated balance in preliminary orders, while her Singapore-based colleague contrasted the ICC's open-textured wording with the more prescriptive regime of the Singapore International Arbitration Centre (hereinafter "SIAC"). For HLC's Paris team, ex parte orders were defensible under French law only because they are provisional and the other parties must be heard immediately; its Dubai-led team put enforceability, not availability, at the center.

A second convergence ran through the corpus: success was made conditional on behavior, on whether parties and tribunals would actually use the new tools and whether the ICC and tribunals would resist delaying tactics. Claudia Salomon, President of the Court, said much the same in October 2026: amending the Rules could not cure tribunals' excessive caution in the face of due process challenges, and the remedy lay in tribunals applying the obligations they already have, with consistency and firmness.

Comparisons with other institutions were frequent, but the benchmark varied with the authors' market: SIAC for most Singapore-based authors, French arbitration law and its proposed reform in Paris, German procedure in Munich, Gulf enforcement practice in Dubai; in London, A&O Shearman measured Article 30 against the Arbitration Act 2025, whose no-real-prospect test it found arguably less demanding. The corpus thus revealed no Paris, London or New York view of the reform: what varied with place was the legal order against which the Rules were tested, the seat and the place of enforcement having the last word.

What will decide whether the reform succeeds

The 2026 Rules have not yet demonstrably made ICC arbitration faster; they have made clearer who is responsible when it is not. A serious objection is that most of this merely codifies practice, so nothing is really redistributed.

The objection holds where the Rules restate guidance or practice, as with the disclosure principles or remote deliberations, but not where they change a default or the moment at which a right is lost: the initial CMC cut-off, the party lists, emergency relief against non-signatories.

Four conditions will decide the outcome: whether tribunals use their discretion early and firmly; whether parties and counsel can absorb the uneven cost of front-loading; whether the institution uses its levers, from the President's time limits to the Note's fee reductions for late draft awards, to discipline rather than accommodate; and whether courts at the seat and place of enforcement accept summary decisions, unreasoned awards, electronic signatures and ex parte orders. For young practitioners, several practical points follow: draft the Request as if it were the Terms of Reference, prepare the conflict list early, check which EPP threshold each contract carries, and consider HEAP when drafting the clause, since agreement rarely comes once a dispute has arisen.



Contribution by Fouad El Hage

UPCOMING EVENTS

23 November 2026: Former le jugement quand l'IA fait le premier jet

Organized by PVYAP

Where: Bird & Bird, 75009, Paris

Website: https://www.eventbrite.com/e/former-le-jugement-quand-lia-fait-le-premier-jet-tickets-2003908658742

2 December 2026: Paris Dispute Resolution Day – Next Generation Disputes

Organized by Paris Place de Droit

Where: Hôtel Salomon de Rothschild, Paris

Website: https://www.parisdisputeresolutionday.com/en/

3rd December 2026 : ICC Joint Arbitration Day 2026

Organized by ICC

Where: Amsterdam

Website: https://2go.iccwbo.org/icc-joint-arbitration-day-2026.html

INTERNSHIP OPPORTUNITIES

A&O Shearman - Legal intern, Litigation and Investigation
International Arbitration
January - July 2027
Luxembourg

ICC - Internship, Dispute Resolution Services, Development
Regional Arbitration and ADR Promotion Africa
As soon as possible: 3 months
Paris

Eversheds Sutherland LLP - Internship, International Arbitration
Litigation Departmenr
July- December 2027
Paris

Norton Rose Fulbright - Internship
International Arbitration and Litigation
July- December 2027
Paris