Russian Arbitration Center

at the Russian Institute of Modern Arbitration

ARBITRATION DIGEST APRIL-MAY 2025

CASE LAW DEVELOPMENTS

Paris Court of Appeal Resumes Proceedings in *OMV v. Romania* Case: Borderline between Arbitration and EU Law

In March 2025, the Paris Court of Appeal overturned the suspension of proceedings in a case where Austrian company OMV challenged Romania's refusal to enforce an ICC arbitral award of €31 million (*OMV Aktiengesellschaft v. Ministry of Environment, Water and Forests of Romania (II)*, ICC Case No. 25704/HBH). This dispute, related to OMV's environmental obligations in the privatisation of Romanian oil company Petrom, went beyond ordinary arbitration and became a hindrance between international law and European state aid rules.

At the centre of the conflict is Article 107 of the Treaty on the Functioning of the European Union (TFEU), which prohibits Member States from providing aid that creates obstacles to competition within the single market. In such cases, states are obliged to notify the European Commission, which has exclusive competence to monitor compliance with these rules. The Commission not only assesses the legality of state aid but can also initiate investigations and issue binding decisions, thereby ensuring equal conditions for all market participants.

Romania, trying to obtain annulment of the arbitral award by insisting that its enforcement would amount to unlawful state aid prohibited by EU law, failed to notify the European Commission officially, limiting itself to informal notifications. In July 2024, the Commission confirmed that there were no signs of violation. Nevertheless, the emergency judge in Paris suspended the proceedings to set aside the arbitral award pending the European Commission's decision, without seeking the parties' views, thus violating the adversarial principle.

The Court of Appeal carefully analysed the situation and concluded that the suspension was unfounded: for 2.5 years, Romania had not taken formal steps to notify the Commission, and the European Commission itself had not initiated an investigation and explicitly indicated the absence of violations. Moreover, the emergency judge exceeded his authority by independently deciding on his own jurisdiction without the parties' participation.

This decision confirms that states cannot abuse state aid notification procedures to delay enforcement of unfavourable arbitral awards. The court emphasised the importance of complying with both the substantive requirements of EU law and procedural guarantees in arbitration.

Read

Fishing for Balance: Ecology vs. Trade Obligations

In April 2025, a Permanent Court of Arbitration (PCA) tribunal in The Hague issued an award in the dispute between the European Union and the United Kingdom regarding the ban on industrial fishing of sand-eel in North Sea and Scottish waters (*UK-Sandeel*; *the European Union v. the United Kingdom of Great Britain and Northern Ireland*, PCA Case No. 2024-45). This dispute became an important precedent in EU-UK relations post-Brexit, demonstrating the complexity of finding a balance between environmental protection and international trade.

The arbitral tribunal recognised that the ban introduced by the UK in 2024 in Scottish waters was necessary and based on scientific evidence. The ban is aimed at preserving the marine ecosystem, as sand-eel is a key element in the food chain for many species of seabirds and other animals. In this context, the UK's measures do not violate the principle of non-discrimination and do not create unreasonable restrictions for EU fishermen.

At the same time, the ban in English waters was found to be disproportionate. The arbitral tribunal noted that British authorities did not properly consider the interests of European fishermen, which contradicts the provisions of the Trade and Cooperation Agreement (TCA). As a result, the UK was ordered to adjust the measures introduced in this zone while maintaining the pro-environmental approach and not completely lifting the ban.

The UK, without resuming fishing in English waters on a significant scale, intends to find alternative ways to ensure proportionality in European fishermen's catches.

Read

Alternative Grounds for Refusing Enforcement of a Russian Arbitral Award

The Higher Regional Court of Stuttgart in Germany issued a landmark decision refusing recognition and enforcement of an arbitral award rendered in Russia by the International Commercial Arbitration Court (ICAC) at the Russian Federation Chamber of Commerce and Industry. This decision became the first case in Europe where a court refused to enforce a Russian arbitral award specifically due to European Union sanctions.

The case involved a dispute between a Russian company and a German counterpart who concluded a contract in 2021 for the supply of three machines and associated equipment with subsequent installation and commissioning. The Russian party fulfilled part of its obligations by paying the first instalments, but the German company ceased deliveries in 2022 against the backdrop of imposed sanctions and termination of business relations. In February 2023, the Russian firm notified about contract termination and appealed to ICAC seeking return of advance payments and accrued interest.

In November 2023, the arbitral tribunal in Moscow satisfied the Russian claimant's demands, ordering the German company to return the advance and pay interest. The tribunal ruled that sanctions do not release the respondent from contractual obligations, including the return of already received funds.

However, in Germany, the Higher Regional Court of Stuttgart, considering the Russian company's application for recognition and enforcement of this award, concluded that enforcement of the arbitral award currently contradicts EU and German law. The court highlighted that payments provided for in the ICAC award violate existing sanctions, and their enforcement would be tantamount to violating EU public policy. An important aspect is that the court qualified this refusal as temporary - the recognition and enforcement process may be resumed after sanctions are lifted. The court also concluded that the return of advance payments received before the introduction of sanctions still violates EU legislation, as sanctions prohibit any operations that may contribute to strengthening Russia's industrial potential.

In addition, the court rejected the German company's arguments about procedural violations in the Russian arbitration. The German party argued that it could not fully participate in the proceedings due to their con-

duct in Russian and was not timely informed about the appointment of one of the arbitrators who had previously participated in disputes with the Russian claimant. The court found that the German company should have timely challenged the arbitrator, and these arguments do not constitute grounds for refusing recognition of the award.

The court ordered the Russian party to pay court costs and also emphasised that the parties retain the right to appeal on points of law. The Russian company, despite the refusal to enforce the award, retains the possibility to again apply to German courts for recognition of the award after sanctions are lifted, which leaves open the further development of the situation.

Read

Canada's "Brick Wall" of Misunderstanding: the Canadian Approach to State Court Intervention in Arbitration Competence

The principle of *kompetenz-kompetenz* assumes that arbitrators have the right to independently determine their jurisdiction. However, the Canadian judicial system has developed a unique approach to this principle of competence-competence - the "brick wall framework," which allows state courts to intervene in arbitration jurisdiction in exceptional cases. Thus, in the Supreme Court of Canada's decision in *Uber Technologies Inc. v. Heller* (2020), an exception was established: if there is a "real prospect" that arbitration will not occur due to excessive financial or other practical obstacles, the state court may intervene and refuse to refer the case to arbitration. This rule is a "deviation" from UNCITRAL Model Law standards, which allow state court intervention in arbitration jurisdiction only in cases where the arbitration agreement is invalid or unenforceable.

Despite this, Canadian courts cautiously continue to adhere to their approach to applying the principle of *kompetenz-kompetenz*, intervening in arbitration jurisdiction issues only in cases where the arbitration agreement actually deprives one of the parties of the opportunity to exercise their rights. For example, in *Spark Event Rentals Ltd. v. Google LLC* (2024), the state court refused to intervene, despite the claimant's arguments about the high cost of arbitration, since it was not proven that these costs represent an insurmountable obstacle to initiating arbitration.

In another case, *Lochan v. Binance Holdings Limited* (2024), the state court refused to refer the case to arbitration, finding that the arbitration agreement was "hidden" in long terms of use under the main contract and provided the Binance platform with a unilateral right to change its terms without notifying users, which created a so-called "brick wall" for access to arbitration.

Read

Limits of Court Intervention in Administrative Decisions of Singapore Arbitration Institutions

In *DMZ v DNA* [2025] SGHC 31, the Singapore High Court confirmed the principle of minimal judicial intervention in arbitration and refused to review an administrative decision of the Singapore International Arbitration Centre (SIAC) Registrar, reaffirming the autonomy of the arbitral institution.

The respondent initiated arbitration at SIAC on June 24, 2024, referring to several arbitration clauses. However, SIAC indicated July 3, 2024, as the commencement date of arbitration, when the "complete" set of documents was received upon request. By this time, the six-year limitation period had expired. Subsequently, on July 30, 2024, the Registrar, at the respondent's request, reconsidered his position and indicated June 24, 2024, as the commencement date of arbitration. The claimant then applied to the court seeking to declare the July 30 decision unlawful and violating the SIAC Arbitration Rules, but the state court refused to grant the application.

The court indicated the following in support of its position:

1. The court recognised that it lacks authority to review the Registrar's decisions, referring to:

– The contractual nature of relations between the parties and SIAC;

– The principle of minimal judicial intervention (*Sun Travels & Tours v Hilton*, [2019] SGHC 291);

– The absence of direct grounds for intervention in the International Arbitration Act 1994 (IAA);

– The existence of alternative protection under Article 34(2)(a)(iv) of the UNCITRAL Model Law in the form of challenging the final arbitral award after completion of proceedings.

2. The Registrar has the right to review his own administrative decisions and there are no violations in his decision:

– Article 40.1 of the SIAC Arbitration Rules does not prohibit such possibility;

– The Registrar has implied authority to review by analogy with the right of arbitrators to change procedural orders;

– The principle of finality of decisions does not extend to reviews within SIAC;

– If review of the Registrar's decisions were prohibited, this would be explicitly stated in the Arbitration Rules.

Read

Reading between the Lines: Reasoning and Operative Parts of an Arbitral Award

The UK Court of Appeal evaluated an unusual argument by a party in favour of non-enforcement of an arbitral award - a paragraph in the reasoning part of the award contradicted a paragraph in the operative part (*Nigeria LNG Ltd v Taleveras Petroleum Trading DMCC* [2025] EWCA Civ 457).

This arbitral award was rendered in a dispute between a gas supplier, NLNG company, and a gas reseller, Taleveras. NLNG partially failed to fulfill its delivery obligation, prompting Taleveras to demand damages. The main complexity of the case was that Taleveras itself also faced two lawsuits, as it failed to deliver gas it expected to receive from NLNG. For this reason, Taleveras demanded compensation not only for damages already incurred but also for amounts that would be awarded in the two lawsuits filed against it.

The arbitral tribunal granted Taleveras' demands, awarding in its favor (1) damages in the form of lost profits; (2) any amounts that Taleveras would be obliged to pay to those two parties who filed lawsuits against it due to non-performance of gas delivery obligations. About a year after this award was rendered, one of the arbitrations between Taleveras and its counterpart ended - $233 million was awarded in favour of the counterpart. Taleveras demanded that NLNG compensate it for this amount, as required by the arbitral award rendered earlier in the dispute between these parties. However, NLNG refused to pay and applied to court seeking a declaration that it had no obligation to compensate amounts awarded in favor of Taleveras' counterparts in other proceedings. In support of its claim, NLNG referred to paragraph 607 of the arbitral award, which stated:

"The tribunal orders that the conditions for recovery of the specified damages must be brought to the attention of the arbitrators considering the 'Vitol' and 'Glencore' [claimant's counterparts] cases, and that the possibility of recovering the specified damages depends on whether the arbitrators confirm these damages in an award or settlement agreement."

This paragraph was contained in the reasoning part of the award. In NLNG's opinion, it established a condition for recovering damages from it - this recovery must be approved by the arbitrators in disputes with Taleveras' counterparts.

The court of first instance disagreed with NLNG's arguments and issued an enforcement order in favor of Taleveras. NLNG appealed to the Court of Appeal, but it also sided with Taleveras.

First of all, the appellate court agreed with the court of first instance that the interpretation of the arbitral award claimed by NLNG lacked commercial sense: it was unclear why and on what basis arbitrators should approve recovery of damages from a third party (NLNG) that was not a party to the dispute between Taleveras and its counterpart.

The Court of Appeal also commented on the relationship between different parts of the arbitral award. It admitted that formats of arbitral awards may differ, but the generally accepted format includes division into descriptive, reasoning, and operative parts, as was the case here. The court noted that in an award prepared by English arbitrators, after the words "The tribunal hereby decided…" one should expect exhaustive results of the arbitral proceedings.

The court saw no contradiction between the operative part of the award and paragraph 607, but indicated that even in case of such contradiction, the operative part would prevail over the reasoning part.

Read

Precedent in Favour of Arbitration: Court Vindicated Arbitrator's Participation

The Norwegian Supreme Court issued the first decision in the country's history on the issue of arbitrator bias, confirming the legality of an arbitral award in a dispute between shareholders of the Mo Industripark industrial park (*Øijord & Aanes AS and Celsa Armeringsstål AS v. Helgeland Invest AS and Helgeland Industriutvikling AS*).

The claimants (Øijord & Aanes and Celsa Armeringsstål companies) challenged the appointment of Stefan Jervell, a partner at major law firm Wiersholm, to the tribunal. During the arbitration period, the firm was conducting an unrelated environmental project for Celsa. The claimants argued that the firm's long-standing

relationship with Celsa and the fee of 1.9 million Norwegian crowns raised "justifiable doubts" about the arbitrator's objectivity and his violation of the duty to disclose this fact.

The Supreme Court, however, found that exclusion of an arbitrator requires the presence of a "substantial" conflict of interest. The court focused on comparing the fee volume with Wiersholm's total turnover (over 1 billion Norwegian crowns in 2022), as well as the narrow-specialised nature of the environmental project in which Jervell did not personally participate. The violation of the formal duty to notify the court about the existing connection did not prove sufficient to doubt his impartiality - in the judges' opinion, such "minor" work does not create grounds for automatic disqualification for the parties. The court also considered the IBA Guidelines, which distinguish between "red" (inadmissible) and "orange" (requiring disclosure) lists of conflicts.

Read

TrueCoin and Crossbridge Directors Achieved Arbitration Despite Formal Agreements

The Hong Kong Court of First Instance considered two similar applications for stay of proceedings in favour of SIAC arbitration, filed by Crossbridge and a TrueCoin director in disputes with Techteryx Ltd (*Techteryx Ltd v. Legacy Trust Company Limited & Others* [2025] HKCFI 665; *Techteryx Ltd v. Legacy Trust Company Limited & Others* [2025] HKCFI 787). Despite the fact that neither Crossbridge nor the TrueCoin director were formal parties to the respective arbitration agreements, the court found that upon *prima facie* existence of a disputable obligation under these agreements, the proceedings should be referred to arbitration rather than conducted in court. This position is based on Article 8(1) of the UNCITRAL Model Law included in Hong Kong's arbitration law, which obliges the court to yield to arbitration disputes falling under an arbitration clause.

In the Crossbridge dispute, Techteryx claimed that its lawsuit was based on violation of an investment mandate concluded between the trustee and Crossbridge, as well as on obligations arising from this mandate. Although Techteryx was the formal claimant, the court found that the company actually "stepped into the position" of the trustee and acted on its behalf in a derivative action. Consequently, its claims fell under the arbitration clause in the mandate, and doubts about the validity of such a clause were not "irrefutable" enough to prevent referral of the dispute to arbitration.

In the TrueCoin director case, the key issue was the qualification of his actions: Techteryx made claims both for bad faith investment of reserves and for fraud and breach of fiduciary duties. The Delaware court, which considered the question of interpreting arbitration conditions in the agreements, found that without these agreements, the director would not have received authority to act on behalf of Techteryx and TrueCoin. Applying the principles of agency and equitable estoppel, the court concluded that lawsuits against the director are closely related to contracts containing an arbitration clause and therefore should be referred to arbitration.

The court particularly noted that when considering an application for stay in favour of arbitration, only the existence of a *prima facie* basis for considering the dispute to fall under an arbitration agreement is examined. If the question of jurisdiction cannot be resolved unambiguously, it is referred to the arbitral tribunal, not left within the court's competence. Subsequently, the arbitration itself will determine whether it has authority to consider the dispute on the merits.

The decisions in the Techteryx Ltd v Legacy Trust Company Ltd cases emphasise that the format and legal status of parties do not exempt from obligations arising from arbitration clauses if there is a plausible basis for their application. This is an important reminder for all parties to commercial relationships: before choosing jurisdiction, it is necessary to carefully analyse whether your claims fall under existing arbitration agreements, even if you are not their formal signatory.

Read

Confidentiality Under Cover: London Court Saved Lawyers from Ban

The English Commercial Court refused to issue an injunction against an international law firm that allowed the transfer of confidential information between two related arbitration cases (*A Corporation v Firm B and Mr W* [2025] EWHC 1092).

Large law firm Firm B was simultaneously conducting two maritime arbitrations. In the first case, the London office of the firm represented A Corporation, while in the second, the Asian office represented another company against the same A Corporation. The problem arose when a lawyer from the London office passed confidential information about A Corporation's settlement proposals from the first case to colleagues from the Asian office.

A Corporation applied to court demanding a complete ban on Firm B's participation in the second arbitration, citing violation of arbitration confidentiality. The company argued that the transfer of information about its negotiating position to the opposing party created an irremovable conflict of interest.

The court recognised the fact of confidentiality violation but refused to issue an injunction for several reasons. First, the firm promptly took corrective measures: removed all lawyers working on the first case from the second case team, created information barriers between offices, and provided written guarantees to prevent further leaks.

Second, the court considered the client's interests - his right to choose lawyers should not be violated due to a single violation that was corrected.

This decision shows a pragmatic approach by English courts to conflicts of interest in arbitration. Even serious confidentiality violations can be corrected with adequate information protection measures, and a complete ban on participation in a case remains an extreme measure.

Read

Absence of Alternative Forum Is Not Grounds for Refusing Anti-Suit Injunction, But Interest in It Must Be Well-Substantiated

The English Court of Appeal refused to review the decision to refuse an anti-suit injunction against proceedings in Russian state courts (*Renaissance Securities (Cyprus) Ltd -v- ILLC Chlodwig Enterprises & others* [2025] EWCA Civ 369). An interesting circumstance of the case is that the applicant requested the anti-suit injunction not for itself but for affiliated companies from Russia.

The dispute between the parties arose from investment contracts that the applicant (Renaissance) concluded with six companies allegedly linked to Andrey Guryev. When the UK imposed sanctions against Andrey Guryev, Renaissance froze investments it managed under these contracts and refused to return them. The investors initiated proceedings in Russian courts, and Renaissance applied to the English court for an anti-suit injunction, as the investment contracts contained an LCIA clause. The English court granted this application.

However, the investors did not lose heart. They filed tort claims against three companies affiliated with Renaissance, demanding their joint liability. Renaissance asked the English court to supplement the anti-suit injunction to prohibit both the involvement of affiliated companies as co-respondents in current cases and the filing of independent lawsuits against them. The English Commercial Court refused to grant this application. It indicated that the affiliated companies were not bound by arbitration agreements from the contracts and these agreements did not provide the right to file lawsuits against third parties. In its opinion, the Russian court was the only forum for considering the investors' claims, and in such a situation, an anti-suit injunction cannot be issued because there is no alternative forum for dispute resolution.

Renaissance appealed this decision. The English Court of Appeal disagreed with the reasoning of the first instance court but agreed with its conclusions. In the appellate court's opinion, the English court can issue an anti-suit injunction against clearly bad faith proceedings (vexatious litigation) even if there is no alternative forum provided between the parties. Nevertheless, in this specific case, the Court of Appeal found that the injunction should not be issued. The reason for this was the behaviour of the applicant itself. During the proceedings, the investors reported that two affiliated companies had been sold, and the third denied any connection with Renaissance in Russian courts. The applicant limited itself to indicating that the question of the owner of the affiliated companies was unrelated to the case and provided no evidence on this issue. The judges found that the applicant was keeping them in the dark and refused to grant the application.

Read

Challenging Arbitral Awards in Singapore Courts: Conflicts of Interest, Timing, and Form

When challenging arbitrators' decisions on interim measures, the content of the document is much more important than its form. This was the conclusion reached by the Singapore court when considering an application by a company that tried to challenge these measures (*DLS v DLT* [2025] SGHC 61).

The arbitral proceedings were conducted in a dispute between a main contractor and a subcontractor. It was initiated by the subcontractor, who believed that due to the respondent's actions, the project delivery was delayed and the claimant was suffering losses. When filing the claim, the subcontractor asked the arbitral tribunal to adopt urgent interim measures. The arbitral tribunal granted this application and ordered the main contractor to:

- Pay the subcontractor $172,135.54 monthly until completion of work as compensation for operating expenses.

- Pay the subcontractor $117,339.48 as a one-time VAT compensation.

These decisions were confirmed by the arbitral tribunal in the form of Orders. The main contractor filed an application with the Singapore court to set aside these measures. The main question the court had to answer was whether the arbitral tribunal's orders on interim measures were "arbitral awards," as only an arbitral award can be set aside judicially.

As the court indicated, the distinguishing feature of an arbitral award is that it finally resolves an issue and cannot be changed. The first disputed order of the arbitral tribunal on monthly payment did not meet these criteria. Explaining why the order on monthly payment is not an "arbitral award," the court noted the following circumstances:

- The arbitral tribunal immediately said it was unsure whether the subcontractor's right to reimbursement of operating expenses would be recognised as a result of the dispute. For this reason, the arbitrators conditioned the obligation to transfer the monthly payment on the subcontractor's counter-obligation to provide a guarantee. If the subcontractor lost the dispute, the guarantee was intended to secure the main contractor's interests in returning the paid monthly payments.

- The arbitrators were also unsure about the accuracy of the awarded amount. They explicitly stated that the reliable size of the monthly payment could only be established after examining all evidence. That is, in the future, even if the subcontractor's claim were satisfied, the amount of operating expenses could be adjusted.

The Singapore court reached the opposite decision regarding the order on one-time payment. As the court noted, the amount was precisely established and the arbitral tribunal did not plan to reconsider its size in the future, and the question of the right to receive it was not planned to be further considered during evidence examination. Payment of this amount was not conditioned on counter-actions by the claimant (subcontractor). The court did not care that the arbitral tribunal awarded this amount based on the claimant's application for interim measures and clothed its decision to award the amount in the form of an "order."

Thus, the order on interim measures in the form of monthly payment could not be set aside judicially, while the order on one-time payment was actually an arbitral award and could become subject to appeal.

The Singapore court then proceeded to consider grounds for setting aside the decision on one-time payment. The respondent noted that this "arbitral award" was adopted without conducting an oral hearing, and the requirement for one-time payment was not contained in the claim. The court rejected these arguments of the respondent. As the judge indicated, the respondent knew that such an issue was on the agenda, provided objections, but never requested an oral hearing in any document. Commenting on the second argument, the judge noted that although the request for one-time payment was not contained in the claim, the corresponding application for interim measures was filed simultaneously with the claim.

The court also considered the respondent's arguments about one arbitrator's conflict of interest as grounds for setting aside the decision on one-time payment. First, the court considered the question of timeliness of such an argument. The fact is that a three-month period is established for challenging an arbitral award in Singapore: the application itself with arguments about violation of the award adoption procedure was filed within the deadline, but arguments about the arbitrator's bias were raised after its expiration.

Regarding extension of the deadline, the court accommodated the respondent. In the court's opinion, although additions to the application for setting aside the award were filed in violation of the deadline, they were nevertheless complete (contained all necessary evidence and were detailed), and the claimant had sufficient time to provide a response to them. The court also disagreed that the ICC's refusal to disqualify the arbitrator does not allow further consideration of the arbitrator's bias issue in court. Nevertheless, the court did not set aside the decision on one-time payment on this ground either, as the disclosed circumstances (appointment of the arbitrator in another dispute with the claimant's participation 4 years ago) did

not indicate the arbitrator's obvious bias. When resolving this issue, the court was guided by, among other things, the International Bar Association Guidelines on Conflicts of Interest in International Arbitration (IBA Guidelines).

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Arbitration on Undisclosed Principal's Claim

Why should attention be paid to the appearance in legal relationships of persons who are not mentioned in the contract? The answer to this question was received by a company that concluded a coke sale contract on September 28, 2020. Soon after concluding this seemingly ordinary contract, the seller faced an unusual claim: a third party, which had previously only appeared in payment documents, unexpectedly informed the seller that it was actually the undisclosed principal and filed a claim under the arbitration clause from the contract. The arbitral tribunal granted the claim.

The seller applied to the state court under Section 67 of the Arbitration Act 1996 (*MSH Ltd v HCS Ltd* [2025] EWHC 815 (Comm)). It argued that the arbitral tribunal lacked jurisdiction to consider the dispute, as the claimant had not signed the arbitration agreement and was not mentioned in the contract. The seller noted that the disputed contract restricted assignment, contained a confidentiality clause, and included a provision on the completeness and finality of the terms agreed by the parties.

When considering the seller's application, the court outlined the conditions that must be met by an undisclosed principal to have the right to enforce the contract (including being a claimant and respondent in disputes arising from the contract):

- The agent intended to conclude the contract for the principal's benefit;
- The agent was authorised to conclude the contract for the principal's benefit;
- The contract provisions and the parties' behaviour did not exclude the possibility of the contract being performed by the undisclosed principal.

The court analysed the case circumstances and concluded that all the listed conditions were met. The court noted that concluding contracts for this specific principal was standard business practice for the agent who was a party to the disputed contract. The agent was authorised by the principal to conclude contracts, including receiving instructions via WhatsApp. The seller made no attempt to exclude the principal's participation, although signs of its presence were there from the beginning: the goods were paid for by a letter of credit provided not by the agent-party to the contract, but by the principal.

Responding to the seller's objections, the court indicated that the assignment restriction clause could not be interpreted as excluding the undisclosed principal's participation, as contractual obligations by their nature could be performed by any person. The court rejected the reference to contract confidentiality due to the presence of the already mentioned letter of credit in the case: it was obvious that the party arranging the letter of credit would learn about the contract in any case. The clause on completeness and finality of contract terms was, in the court's opinion, formulated in such a way that it could be argued to be "template."

Read

How Many Problems a Poorly Drafted Clause Can Cause

The Arizona District Court enforced an arbitral award rendered in a dispute between American and Ukrainian companies (*Subsidiary Enterprise of State Company "Ukrspecexport" State Enterprise Specialised Foreign Trade Firm "Progress" v. OTL Firearms and Imports Corporation*, VIAC Case No. ARB-5740). The dispute between the parties arose because the buyer transferred an advance under the contract, but the seller could not deliver the goods due to imposed export restrictions. During this arbitral proceeding, the arbitrators faced issues of pathological clauses, admissibility of claims, and applicable law.

During the arbitration, the respondent argued that the arbitrators lacked jurisdiction because the arbitration clause was pathological. According to the clause, disputes were subject to consideration in the "International Arbitration Centre (VIAC) at the Austrian Federal Economic Chamber (Vienna Rules)." In the respondent's opinion, VIAC could well refer to the Vietnamese Arbitration Centre rather than the Vienna Arbitration Centre. The arbitrators disagreed with the respondent's position. In their opinion, the arbitration clause mentioned Vienna, which clearly indicated the choice of the Vienna Arbitration Centre. Moreover, the term "Vienna Rules" appears in the text of the VIAC Arbitration Rules, which additionally confirms the parties' intention to consider disputes in this centre.

The arbitration clause also contained a provision according to which "the substantive law is the claimant's law." The respondent indicated that since this provision is contained in the arbitration clause, it also applies to determining the law of the arbitration clause. Given that a counterclaim was filed in the case, it is impossible to determine the applicable law to the clause, therefore it is unenforceable. The arbitral tribunal rejected these objections. As the arbitrators explained, what mattered was not the part of the contract where the provision on applicable law was contained, but the content of this provision.

When deciding on the applicable substantive law, the arbitral tribunal recognised that the wording "claimant's substantive law" could lead to uncertainty and imbalance in contract performance. For this reason, the arbitrators independently determined the applicable substantive law. According to their decision, the Vienna Convention on International Sale of Goods and the buyer's substantive law apply to the parties' legal relationship, as the dispute has the closest connection to this jurisdiction.

The arbitral tribunal also analysed the admissibility of claims in the context of compliance with pre-arbitration dispute resolution procedures. The contract between the parties contained a provision requiring the parties to attempt peaceful dispute resolution before resorting to arbitration. In the arbitrators' opinion, this provision was not sufficiently specifically formulated to obligate the parties to anything: it was not clear in what exact form "peaceful resolution attempts" should be undertaken. Moreover, as the arbitrators noted, before the arbitration began, the claimant conducted active correspondence with the respondent, which led to nothing, and there are no grounds to believe that the parties would be able to resolve the dispute even if the arbitrators suspended the arbitration.

Read

Multi-Year Dispute Between Hamer and Tajik Aluminium Plant: Issues of Corruption, Evidence, and Double Recovery

State courts worldwide continue attempts to enforce an arbitral award rendered in a dispute that began in the early 2000s (*Hamer Investment Ltd. v. Tajik Aluminium Plant (Talco)*, ZCC Case No. 600097-2007).

Despite the relatively small amount of claims – the claimant was awarded $112 million - the circumstances of the dispute and facts revealed during it became for a long time one of the symbols of non-transparent business in Central Asia. During the proceedings, the arbitral tribunal considered issues of evidence admissibility, double recovery, and corruption.

The roots of this dispute go back to the Soviet past. In the mid-1970s, a large aluminium plant was built on the territory of modern Tajikistan. Raw materials for production came from other USSR republics, as they were not mined in Tajikistan itself. Due to this circumstance, after the USSR collapse, the plant faced difficulties - it was necessary to find foreign suppliers of aluminium raw materials from which finished products could be manufactured at the plant. The situation was aggravated by the fact that Tajikistan's legislation prohibited the plant from supplying products without prior payment in money or raw materials.

The problem was solved with the help of an intermediary – Ansol company, which was controlled by local businessman Avaz Nazarov. To implement their commercial plans, Ansol and Russian company Rusal agreed to create a joint venture – Hamer. As a result, the parties developed a complex barter scheme:

- The plant produced aluminium and transferred it to Ansol company;
- In exchange, Ansol transferred raw materials obtained from Rusal to the plant;
- The finished aluminium received from the plant was transferred by Ansol to Hamer company;
- Hamer company sold the aluminium on the world market, and the received money went through Ansol to purchase new raw materials.

The scheme lasted only one year. Already in December 2004, the Tajikistan government terminated the barter agreements, and criminal cases were initiated against Ansol's management and the plant's director on corruption charges. These events became a trigger for several disputes simultaneously.

Ansol believed that the criminal cases were initiated at Rusal's instigation, which wanted to get rid of the intermediary and work directly with the plant. This circumstance was indirectly indicated by the fact that after termination of barter agreements with Hamer, the plant concluded agreements with CDH, which was presumably controlled by Rusal. In this regard, Ansol filed a lawsuit against Rusal and Oleg Deripaska in the English High Court. In 2007, however, the parties managed to settle the dispute.

At the same time, Ansol itself faced a lawsuit from the plant, filed in the same English High Court. The claimant argued that the raw materials transferred to the plant were purchased at inflated prices, causing losses to the plant. Ansol in turn filed a counterclaim, arguing that the plant had a large debt to the intermediary. This dispute was also settled in 2008.

The plant also faced claims from an external buyer – Norwegian company Hydro Aluminium. It did not directly participate in the barter scheme but was one of the largest buyers of aluminium produced at the plant. It was mainly their money that went to purchase raw materials. When the barter scheme collapsed in 2004, the plant refused to give aluminium for which the Norwegians had already paid. As a result, already in 2005, Hydro Aluminium obtained an LCIA award against the plant for $150 million (*Hydro Aluminium A.S. v. Tajik Aluminium Plant*). The plant made concessions and agreed to pay this amount voluntarily.

Finally, the main dispute erupted between Hamer company and the plant: all agreements with "Rusal's" CDH were terminated, and Rusal itself was forced to cease its activities in Tajikistan. Then, in 2007, Rusal decided to act through the old joint venture: Hamer filed a claim against the plant in the arbitration institute

at the Zurich Chamber of Commerce, demanding recovery of losses incurred in connection with the termination of barter agreements. The plant in turn filed a counterclaim, demanding that Hamer compensate for losses caused by the joint venture's corrupt actions.

In 2008, the parties suspended the arbitration in an attempt to reach a peaceful settlement. The attempt failed, but the respondent used it as one of the arguments in its defence. It argued that a clear promise had been received from a Rusal representative that all disputes, including the dispute with Hamer, would be settled. The fact that the arbitration was resumed a year after the alleged promise at the respondent's request was explained by the respondent as necessary to resume proceedings to comply with the limitation period. The respondent also had an explanation for why the joint application for suspension provided for informing the arbitral tribunal about successful settlement of the dispute, but this information was not actually provided. As the respondent argued, such information was actually provided to the arbitrators, just in a non-standard form: in the 2009 prospectus, Rusal reported that it had reached a principal agreement with the plant to settle all disputes, and since the prospectus was public, the arbitrators could familiarise themselves with it.

However, the arbitrators were not convinced by the respondent's arguments. They found that the respondent's behaviour was inconsistent: if the respondent really believed in the prospect of peaceful settlement, it would not have resumed the arbitration, especially to comply with the limitation period for counterclaims that should also have been settled according to this logic. Commenting on the reference to the prospectus, the arbitral tribunal indicated that the mere existence of information in the public domain does not mean that such information was "provided" to the arbitrators. The arbitrators did not consider the fact of disclosure of arbitration information in the prospectus a violation, as the obligation to disclose such legal risks was provided by law.

A separate substantial issue in the arbitration was the admissibility of evidence protected by the confidentiality principle. As indicated above, the termination of barter agreements entailed multiple disputes. During the arbitration, both parties attempted to present witness testimony from parallel judicial and arbitral proceedings. The arbitral tribunal refused to admit this evidence. In the arbitrators' opinion, the presented evidence was *prima facie* protected by judicial secrecy and arbitration confidentiality. Moreover, part of the witness testimony was presented in disputes settled by agreement - thus this evidence was never examined by judges or arbitrators, making it of little value. Additionally, the arbitrators were concerned that in the arbitration with Hydro Aluminium, the plant was caught falsifying evidence, making attempts to provide documents and testimony from this process particularly concerning. The only exception the arbitral tribunal was ready to make was for evidence that was already in the public domain or that confirmed the need to call certain witnesses.

The respondent's main line of defence was built around assertions that the barter agreements were concluded as a result of corrupt crimes. In support of its position, the respondent had strong arguments. For example, the plant director received regular gifts and monetary payments from Ansol (the intermediary in the barter transaction). The intermediary gave the plant director's son an apartment in London and £1 million for education and daily expenses, and also appointed him to manage Ansol's London branch. Hamer itself also undertook to pay the intermediary $1 million monthly, which was then distributed among plant employees. Nevertheless, the listed arguments did not help the respondent. Given the seriousness of the accusations, the arbitrators applied a heightened standard of proof, requiring clear and convincing evidence of corruption from the respondent, not just references to the balance of probabilities. The arbitrators did not see such evidence and were satisfied with the claimant's explanations:

- In Tajik society, it was customary to give expensive gifts; moreover, payments and gifts to the plant director began before the barter agreements were concluded and continued after their termination;

- The plant director's son merely used the London apartment, while the intermediary remained its actual owner, who simply did not want his name to appear in the ownership register. To confirm this, the claimant referred to the intermediary's testimony in other disputes, where he called himself the actual owner of the apartment, and to the fact that the intermediary, not the director's son, chose the renovation design and necessary furniture for the apartment;

- Ansol paid for education not only of the plant director's son but also of other Tajik students. This was because the Ansol owner was himself Tajik by nationality, and gratuitous assistance to Tajik youth was expected from him. The claimant explained the fact that the plant director's son was made head of Ansol's London branch by the desire to introduce the young man "into the business";

- Payments from Hamer were not secret and went to bonus payments for plant employees determined by the respondent itself, as well as to finance state projects.

The arbitrators were also not convinced by the respondent's arguments that if the barter agreements had been concluded honestly, they would not have been so disadvantageous. In the arbitrators' opinion, the agreements' disadvantageousness was due to objective factors. Due to the undeveloped financial system in the CIS of those years, the plant simply did not have enough currency to purchase raw materials and cover its operating expenses. Moreover, the plant did not have qualified personnel who could establish a complex supply chain. In the circumstances, the plant's counterparts in the barter agreements took on a substantial share of obligations and risk: they purchased raw materials, were responsible for their quality, looked for buyers for finished aluminium, organised its delivery to buyers, paid the plant's expenses for wages, taxes, etc. The plant simply sent requests for raw materials to counterparts and manufactured products, bearing no risks - in such conditions, it was logical that Hamer and other intermediaries received increased profits. If the plant had independently organised all these processes, it could have counted on more favourable aluminium sales conditions, but as the arbitrators noted, even at the time of the arbitral award, the plant was still working through intermediaries.

Finally, the arbitrators faced the issue of double recovery. The problem was that money for purchasing raw materials came from an external buyer - Hydro Aluminium. It transferred money to the claimant (Hamer) through the intermediary – Ansol. When the barter scheme collapsed, a collision arose. Hydro Aluminium transferred $25 million to Ansol so that it would pay for raw materials that the claimant had already supplied to the plant. In exchange, Hydro Aluminium expected aluminium delivery. However, as a result, the aluminium was not delivered, and Hydro Aluminium went to LCIA with a lawsuit, where it successfully recovered from the plant, including the named $25 million. At the same time, Ansol never transferred the money to Hamer for the supplied raw materials, and given that the raw materials were supplied to the plant, claims also arose precisely against it. On this issue, the arbitrators also sided with the claimant. In their opinion, Hamer did not assume the risk of non-payment for raw materials. At the same time, the plant could have demanded the disputed amount from Ansol but preferred to settle this dispute, and now it is trying to impose on Hamer the consequences of its own commercial decisions.

This landmark arbitral award was adopted back in 2013, and in 2017, the plant and Rusal (as Hamer's parent company) settled the dispute. However, payment never came, and already in 2025, the parties met again in arbitral and state courts.

Read

EU Appeals WTO Panel Report That Found No Violations in Anti-Suit Injunctions in Patent Disputes Adopted by Chinese Courts

The European Union, in the case *DS611: China — Enforcement of intellectual property rights*, used the mechanism provided by the Multi-Party Interim Appeal Arbitration Arrangement (MPIA). The US blocked the WTO Appellate Body's work from 2019. In connection with this, a number of WTO member states in 2020 sent a joint communiqué to the Dispute Settlement Body (DSB) on referring appellate complaints to arbitration.

The possibility for WTO member states to resort to arbitration to resolve disputes is provided in Article 25 of the WTO Dispute Settlement Understanding (DSU). The dispute resolution mechanism under MPIA is based on Article 25 of the DSU and is structured as follows. MPIA participating states initiate the standard dispute resolution procedure in the WTO DSB with the appointment of a panel. If a party to the dispute intends to appeal the panel's conclusion, it must send the panel an application for suspension of proceedings. After such suspension, the party must send a notice of appeal.

MPIA participating states have agreed by consensus on a list of 10 arbitrators to resolve disputes on appellate complaints. To consider a specific dispute, an arbitral tribunal of three arbitrators appointed randomly is formed. Any WTO member state can join MPIA by sending a corresponding application to the DSB. In addition, a party to a dispute that has not joined MPIA can, under Article 25 of the DSU, conclude an arbitration agreement with a participating state to refer a specific dispute for consideration. Thus, the dispute in case *DS583: Turkey — Pharmaceutical Products* was considered.

The dispute between the EU and China concerns the compliance of Chinese courts' actions with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A number of Chinese licensee companies applied to Chinese courts with claims regarding the fair, reasonable, and non-discriminatory nature of royalty rates in favour of European patent holders. Given that such disputes can extend to several jurisdictions, Chinese companies asked courts to adopt anti-suit measures against their opponents.

The requested anti-suit measures provided for prohibiting certain actions by European patent holders in courts of other jurisdictions. Chinese courts in five similar cases adopted such measures after the Supreme People's Court of China issued corresponding guiding principles in 2020. These anti-suit measures, in the EU's opinion, allow Chinese companies to establish global royalty rates without the consent of European patent holders.

The WTO DSB panel concluded that China developed a policy of restricting intellectual property rights that is supported by state courts. However, the panel did not find the EU's argument that TRIPS provisions oblige China to refrain from adopting or maintaining measures that prevent other WTO member states from fulfilling the agreement in relevant jurisdictions to be substantiated. In the EU's opinion, this conclusion may lead to preservation of the practice of adopting anti-suit measures, in connection with which it appealed the panel's conclusion.

Read

INVESTMENT ARBITRATION NEWS

Germany's Supreme Court in *Antaris* Case: Is This the Final Verdict for Intra-EU Arbitration?

The German Bundesgerichtshof decision rendered in March 2025 in the *Antaris v. Czech Republic* case became another confirmation of the strict position of European courts regarding intra-European investment arbitrations.

The dispute arose from changes in the Czech Republic's renewable energy support system, which, in German investors' opinion, violated the Energy Charter Treaty and bilateral investment treaty provisions. The arbitration was conducted at PCA according to the UNCITRAL Arbitration Rules. Although the arbitral tribunal in 2018 rejected the investors' claims on the merits, it ordered them to reimburse the Czech Republic for significant arbitration costs.

When the Czech Republic tried to enforce this award in Germany, courts consistently refused, arguing that:

1. The arbitration agreement between an EU investor and an EU Member State is invalid according to European Union law;

2. This applies not only to awards on the merits but also to issues of arbitration costs distribution;

3. No "implied powers" of arbitrators can exist in the absence of a valid arbitration agreement.

The court particularly emphasised that even if one party behaved in bad faith (as the Czech Republic claimed regarding the investors), this cannot outweigh the fundamental incompatibility of such arbitration with EU law.

This decision calls into question the very possibility of enforcing any awards in intra-European investment disputes, even if they are rendered in favour of states, and adds to the collection of decisions demonstrating the growing gap between the existing international arbitration system and the EU legal order.

Read

Swiss Federal Court Confirmed Applicability of "Dominant Nationality" Test in Interpreting BIT between Spain and Venezuela

In a recent decision, the Swiss Federal Court confirmed that the dominant nationality test can be used to fill a gap in the bilateral investment treaty (BIT) between Spain and Venezuela. The decision was made in the context of the *Venezuelan Holding v Venezuela* dispute regarding recognition and enforcement of an arbitral award rendered in favour of a claimant with dual citizenship (Spanish and Venezuelan).

Venezuela challenged the arbitral tribunal's jurisdiction, arguing that a person with dual citizenship (including Venezuelan) cannot be a "foreign investor" within the meaning of the BIT. The BIT between Spain and Venezuela itself does not directly regulate the issue of participation in arbitration by persons with dual citizenship, including citizenship of the respondent state.

The arbitral tribunal, and later the Swiss Federal Court, found that in the absence of direct regulation in the BIT, the internationally recognised approach in the form of the dominant nationality test can be applied. Since in this case Spanish citizenship was dominant (due to the centre of vital interests, economic and social connection), the BIT's application extended to the claimant.

Read

Does Actual Control Matter for Investment Arbitration Claims: Opinion of the England and Wales Court of Appeal

The UK Court of Appeal issued an important decision evaluating what matters more for investment dispute purposes - the place of registration of the claimant trust or the nationality of the trust's actual owner (*Czech Republic v Diag Human SE [2025] EWCA Civ 588*).

English courts have considered cases in the dispute between these parties more than once. At different forums and in different jurisdictions, it has lasted for more than thirty years. It all began in the early 1990s when Czechoslovakia faced problems in blood plasma production. A Swiss businessman who had emigrated from Czechoslovakia, Josef Štava, volunteered to help solve this problem. He agreed with several local hospitals and the state as a whole that he would be provided with the necessary material, which he would transfer to a Danish partner for processing, and would return plasma ready for use.

Soon, however, a new Minister of Health was appointed in Czechoslovakia, who came into conflict with Štava. He prohibited hospitals from cooperating with the businessman and then wrote a letter to the businessman's Danish partner. In the letter, the health minister reported that as long as the Danish firm continued cooperation with Štava, it would not be allowed into the Czechoslovak market. After this, the Danish firm preferred to terminate agreements with the businessman.

In 1993, Czechoslovakia ceased to exist, which, however, did not lead to the conflict's resolution. The parties continued their dispute in Czech courts, and in 1996 managed to agree on arbitration. During the proceedings, the Czech Republic threatened arbitrators with criminal prosecution and even tried to bribe the claimant's lawyer, but in 2008 still lost the dispute. But this did not lead to the dispute's conclusion either.

What prevented the award's enforcement was the fact that the arbitration agreement contained the right to appeal the award by forming a new arbitral tribunal, which the respondent hastened to use. This time, the Czech Republic decided to minimise the risk of defeat. Under the pretext that the arbitrators chosen by the parties could not agree on the chairman's candidacy, he was appointed by the Czech court. As a result, the chairman and the co-arbitrator appointed by the Czech Republic forced the other co-arbitrator to withdraw, after which the third arbitrator was also appointed by the Czech court.

In 2011, Josef Štava entered into informal negotiations with the Czech Republic, which told him that it was not against settling the dispute, but for this, the businessman needed to distance himself from the firm acting as claimant in the dispute. Štava accommodated and transferred the company's shares to the ownership of a discretionary trust registered in Liechtenstein. He actually remained the person controlling the company, as he was simultaneously the settlor, protector, and beneficiary of the trust, but formally his ownership right to the claimant's shares ceased. However, this did not help resolve the dispute - in 2014, the new arbitral tribunal ruled that the previously rendered arbitral award could not be enforced.

The businessman unsuccessfully tried to enforce the 2008 arbitral award, in particular filing a corresponding application in England. When the futility of these attempts became obvious, he decided to use another arbitration mechanism: being a Swiss citizen, in 2017 he initiated investment arbitration against the Czech Republic under the Swiss-Czechoslovak Investment Protection Agreement. Both the businessman himself and the Liechtenstein trust to which the affected company's shares were transferred appeared as claimants in the new arbitration.

In 2022, the arbitration ended with the claimant's victory, and Štava returned to the English court to enforce the new arbitral award. The Czech Republic raised an objection under Section 67 of the Arbitration Act 1996, stating that the arbitral tribunal lacked jurisdiction to consider both claimants' claims:

- Josef Štava transferred all shares of the company affected by the Czech Republic's actions to the Liechtenstein trust in 2011, so he can no longer be considered an investor;

- The trust itself is registered in Liechtenstein, therefore cannot use the protection means provided to investors under the agreement between Switzerland and Czechoslovakia.

The English High Court rejected both of the Czech Republic's objections in its decision:

- In the court's opinion, objections related to Štava's citizenship could not be raised under Section 67 of the Arbitration Act 1996, as they relate to standing issues, not jurisdiction issues. The court substantiated this by the fact that the right to file a claim under the investment protection agreement is conditioned on making such investments, but it says nothing about the need to own investments at any particular time. Consequently, such an issue should have been decided by the arbitral tribunal;

- The court also saw no problems in the Liechtenstein trust's filing of a claim, noting that the trust was actually under the control of a Swiss citizen, therefore he could file claims under the agreement between Switzerland and Czechoslovakia.

Although the first instance court generally took the claimants' position, it agreed with the respondent on one substantial issue. The court accepted its objections regarding the arbitral tribunal's jurisdiction despite the fact that the claimants claimed their untimeliness under Section 73 of the Arbitration Act 1996. The respondents raised the issue of the arbitral tribunal's lack of jurisdiction only 11 months after the arbitration began, after filing the statement of defence. The English High Court indicated that even considering such delay, objections to jurisdiction cannot be considered untimely since the claimants never claimed the deadline was missed during the arbitration, and the arbitral tribunal accepted them.

Both parties ultimately appealed the decision to the England and Wales Court of Appeal. The claimants wanted the court to agree that objections to jurisdiction were untimely, while the respondent challenged the jurisdiction to consider the dispute on both the businessman's and the trust's claims.

The appellate court agreed with the first instance court that the claimants have no right to rely on the untimeliness of objections to jurisdiction under Section 73 of the Arbitration Act 1996, as they did not try to raise this issue before the arbitral tribunal. The Court of Appeal also agreed that the question of Josef Štava's right concerns standing, not the arbitral tribunal's jurisdiction.

However, the Court of Appeal reconsidered the first instance court's decision that for filing a claim under the agreement between Switzerland and Czechoslovakia, it is sufficient for the claimant to simply be under the actual control of a Swiss citizen. The appellate court explained its position by the fact that the question of actual control can depend on many factors: from the relationship between the controlling person and the claimant's formal management to the strength of the controlling person's character. The court found that

providing the right to claim in such conditions creates substantial legal uncertainty. The court also noted that the transfer of shares to the trust was not a simple formality: Josef Štava consciously conducted this procedure for succession planning purposes. For this reason, the arbitral award was set aside in the part satisfying the Liechtenstein trust's claims.

Read

Distinguishing Treaty Claims from Contract Claims Based on the "Fundamental Basis of the Claim"

In *Iskandar Safa and Akram Safa v. Hellenic Republic* (ICSID Case No. ARB/21/38), the ICSID tribunal applied the "fundamental basis of the claim" test to distinguish contract claims from claims under a BIT.

The claim was initiated by two French nationals (the Safas) in connection with their loss of control over Greek shipbuilding company Hellenic Shipyards S.A. (HSY) as a result of the debtor state's actions - Greece. The claimants argued that Greece violated obligations under the BIT between France and Greece, including the obligation for fair and equitable treatment and protection from expropriation.

Greece, in turn, raised jurisdictional objections, arguing that the Safas' claims are essentially contract disputes arising from an agreement between HSY and state structures, and accordingly do not fall under the arbitral tribunal's jurisdiction within the BIT framework.

The arbitral tribunal recognised that the determining factor is the fundamental nature of the claim. If the essence of the claims concerns violation of international investment protection standards, then they are qualified as BIT claims, even if contractual relations are involved.

The arbitral tribunal also concluded that the claims stated by the claimants concern the state's actions as a sovereign regulator, in particular the use of legal mechanisms for restructuring and transfer of assets. Thus, the claim is treaty-based, not exclusively contractual.

This approach is consistent with previous ICSID practice (in particular, *Vivendi v. Argentina* and *Bayindir v. Pakistan* cases) and strengthens investors' legal position in protecting rights violated as a result of the state's bad faith behaviour, even if it arises within contractual relations.

Read

ICSID Rejected Objections About Non-Exhaustion of Domestic Remedies

In *Honduras Próspera Inc. et al. v. Republic of Honduras* (ICSID Case No. ARB/23/53), the arbitral tribunal rejected the respondent's preliminary objection about the inadmissibility of the claim in connection with non-exhaustion of local remedies.

The claimants (US investors) argued that Honduras' cancellation of the special legal regime for the private development zone ZEDE, in which they made investments, violated obligations under the Trade and Investment Promotion Agreement between the US and Honduras (CAFTA-DR). In particular, the investors cited violation of fair and equitable treatment (FET) and protection from expropriation.

Honduras, in turn, insisted that the dispute should be recognised as prematurely initiated, since the claimants did not challenge the authorities' actions in national courts, and therefore did not exhaust available domestic remedies, as required by CAFTA-DR in several cases.

The arbitral tribunal reached the following key conclusions:

- There is no universal requirement to exhaust domestic remedies if they are not mandatory under the treaty itself. In this case, CAFTA-DR provides an alternative path: the investor can either apply to national courts and wait for 6 months to expire, or immediately initiate arbitration after complying with other procedures (including mandatory dispute notification).

- The claimants complied with the requirements for preliminary notification and expiration of the "cooling-off period" provided by the treaty, and thus obtained the right to initiate arbitration.

- Applying to national courts under conditions of legal regime instability in Honduras would not guarantee effective protection, which additionally confirms the validity of resorting to international arbitration.

- The possibility of reconsidering this issue at the merits stage is not excluded if it is proven that the lack of appeal to national courts affected the occurrence of damage or its amount.

Read

Can One Request Correction of a Dissenting Opinion to an Arbitral Award in ICSID

Standard practice in arbitration is correcting errors and typos in arbitral awards at the parties' request. But can a dissenting opinion of an arbitrator be corrected? This question was answered by the arbitral tribunal in an investment dispute conducted in accordance with the ICSID Arbitration Rules (*Eco Oro Minerals Corp. v. Republic of Colombia*, ICSID Case No. ARB/16/41).

The dispute between the parties was related to a gold and silver mining project. Colombia's Constitutional Court decided that the country's government had no right to make an exception for the Canadian investor and allow it to conduct mining in a nature reserve. During the proceedings, the arbitrators often disagreed with each other. Thus, the tribunal chairman and one co-arbitrator concluded that Colombia's actions constitute expropriation, but they are justified by public benefit considerations (police powers doctrine). At the same time, the other co-arbitrator agreed with the chairman on the question that Colombia violated the minimum standard of treatment of the investor (which the first co-arbitrator disagreed with), but believed that Colombia's actions cannot be justified.

As a result, in addition to the arbitral award rejecting the claim, three dissenting opinions were issued in the dispute: one from the co-arbitrator who generally agreed with the award and signed it but believed that

Colombia did not violate the minimum standard of treatment, and two from the arbitrator who believed that the claim should be granted, although Colombia did violate the minimum standard.

The subject of the correction application was the second dissenting opinion of the dissenting co-arbitrator (Second Note of Dissent of Horacio A. Grigrera Naón). It contained the following phrase:

“Despite the fact that the award (with which I disagree) concluded that the respondent’s actions do not constitute expropriation, the adoption [by Colombia’s Constitutional Court] of Resolution 2029 in itself is a violation of the minimum standard of treatment and entitles [the claimant] to demand compensation for damages.”

The claimant requested a small but substantively significant correction:

“Despite the fact that the award (with which I disagree) concluded that the respondent’s actions do not constitute expropriation, the same award recognises that the adoption of Resolution 2029 in itself is a violation of the minimum standard of treatment and entitles [the claimant] to demand compensation for damages.”

The arbitrators noted that the Washington Convention contains no definition of the term “arbitral award,” and in different parts of the convention it may have different meanings. Nevertheless, in paragraph 2 of Article 49 of the Washington Convention (correction of award), in the arbitrators’ opinion, it specifically concerns the operative part of the award. The arbitrators reached this conclusion by interpreting Article 49 together with Article 48 of the Washington Convention. Thus, paragraph 2 of Article 49 states that the arbitral tribunal, at a party’s request, may decide any question it did not decide in the arbitral award and must correct any technical, arithmetical, or similar error in the arbitral award. At the same time, Article 48 states that the arbitral tribunal, by majority vote, adopts an arbitral award on each of the questions that became the subject of consideration, after which the arbitral award is signed by the arbitrators who voted for it.

As the arbitrators noted, a dissenting opinion does not require the signature of the majority of arbitrators, and also should not contain a position on each question - the dissenting arbitrator can write in the dissenting opinion whatever he wants. The phrase in the convention that the dissenting arbitrator “attaches” his dissenting opinion to the arbitral award does not change the situation. In the arbitrators’ opinion, the fact of “attaching” the dissenting opinion does not change the self-sufficient arbitral award, including, for example, it does not change the date of its rendering.

The arbitrators also commented on the arbitral practice cited by the claimant. In *Ickale v. Turkmenistan*, the arbitrators indeed agreed to correct the dissenting opinion, but this was due to the presence of an error in the award itself, which the arbitrators also corrected. The arbitrators considered the *Patel Engineering v. Mozambique* case irrelevant, as the proceedings were conducted in accordance with the UNCITRAL Arbitration Rules.

Read

ARBITRATION NEWS

National Treasures: What Will Happen to Artworks Confiscated by the Nazis?

During the Nazi regime (1933-1945), mass confiscation of artistic valuables from persecuted persons occurred, as well as their forced sale under pressure conditions (lost art). In 1998, the international community agreed that there is a need to correct this historical injustice: representatives of 43 states and 13 public organisations adopted the Washington Principles on Nazi-Confiscated Art, committing to work toward "ensuring just and fair resolution" of such issues. Responding to this initiative, German authorities established in 2003 the Advisory Commission on the Restitution of Cultural Property Seized as a Result of Nazi Persecution, Especially Jewish Property (Advisory Commission). However, its role was limited to that of a mediator with non-binding recommendations. Therefore, in March 2025, Germany officially approved a new arbitration system for resolving disputes about lost artworks. The federal government, states, and municipal organisations concluded an agreement to create a specialised arbitration institute that should replace the former Advisory Commission.

The reform aims to accelerate and simplify the lost art process. The new arbitration institute will be based at the Lost Art Foundation in Magdeburg, with its legal address in Berlin. The Higher Regional Court of Frankfurt am Main will consider issues of award enforcement and jurisdiction disputes.

An important difference from the predecessor commission is the possibility for heirs of Nazi victims or their representatives to initiate arbitration unilaterally, without the respondent's consent. Federal and state authorities provide offers in advance to conclude arbitration agreements, which allows the procedure to be launched quickly. Private owners and municipalities can join the arbitration voluntarily but are not obliged to do so.

Each arbitral tribunal will consist of five arbitrators (3 lawyers and 2 historians specialising in the National Socialist period). The parties appoint one lawyer and one historian each, who then jointly choose the chairman - preferably a German judge. Candidates are selected from a closed list (22 lawyers and 14 historians) formed by federal, state, and municipal authorities, as well as Jewish organisations. Other associations of Nazi persecution victims do not have the right to nominate candidates, which has already caused criticism.

The German Institute of Arbitration (DIS) made a significant contribution to the development and implementation of the new arbitration system. The Institute participated in preparing the procedural rules and organisational structure of the new arbitration institute, and also contributed to developing special rules considering the specifics of such disputes, including eased standards of proof and the possibility of unilateral arbitration initiation.

The procedure is regulated by special arbitration rules and Germany's Civil Procedure Code. Hearings will be conducted in German, but evidence may be provided in other languages. Publicity of hearings is possible only with the parties' consent, and awards are subject to publication with possible anonymisation.

Instead of applying German law as substantive law (under which all periods, including acquisitive prescription, expired many years ago), it is possible to resort to a specially developed assessment system that actually performs the function of restitution. The claimant must prove that the loss of the artwork occurred as a result of Nazi persecution. In several cases (for example, if the claimant was recognised as Jewish by the Nazis), the fact of persecution is presumed. It is necessary to establish a connection between persecu-

tion and loss, and if the artwork was sold, the respondent can rebut the presumption by proving that compensation was adequate and the claimant freely disposed of it. For transactions after 1935, even stricter criteria apply.

Given the antiquity of events and loss of documents, the assessment system lowers the standard of proof: it is sufficient that the claimant's ownership of the artwork was more probable than not; indirect and presumptive evidence is acceptable. This should facilitate the task for heirs of Nazi victims, who often find it difficult to restore the entire chain of ownership of the artwork.

However, unresolved questions remain. Although the procedure is free, parties bear their own costs for lawyers, which with the high value of the subject matter can become an obstacle for some claimants. Moreover, only state and federal institutions are obliged to participate in arbitration, while private owners and municipalities are not.

Read

Swiss Arbitration Centre Developed Rules for Trust, Estate and Foundation Disputes (TEF Rules)

The Swiss Arbitration Centre's Additional Rules for Trust, Estate and Foundation Disputes - TEF Rules - came into force on July 1, 2025.

TEF Rules are a response to growing interest in using arbitration to resolve disputes in the sphere of private capital and estate management, especially in the international context.

The new rules are based on changes to the Swiss Civil Procedure Code (2021) and the Private International Law Act, which recognise the validity of arbitration clauses in unilateral legal acts (wills, trust and foundation founding documents), provided that Switzerland is chosen as the arbitration jurisdiction.

The new rules supplement the existing Swiss Rules of International Arbitration and apply in the presence of:

- An arbitration clause referring to the Swiss Rules in a unilateral act;
- Direct reference to TEF Rules;
- Separate agreement of the parties on their application.

The additional rules introduce the concept of "Entitled Persons" - persons whose rights may be affected by the dispute, including unborn and incapacitated persons. Procedures are established for notifying all entitled persons, ensuring their procedural representation, participation in arbitrator selection, and tribunal formation. Special attention is paid to arbitration confidentiality, which is extremely important for persons in matters of private capital and inheritance. Finally, within the framework of TEF Rules, model arbitration clauses are also offered for wills, inheritance contracts, trust and foundation founding documents.

Read

Publication of Official Translation of IBA Guidelines on Conflicts of Interest in International Arbitration 2024

The official translation of the IBA Guidelines on Conflicts of Interest in International Arbitration 2024 was published on the International Bar Association (IBA) website. The IBA Guidelines are the most authoritative source of "soft" regulation of the principle of impartiality and independence of arbitrators.

The updated English version of the Guidelines was adopted in May 2024. Publication of the Russian translation is particularly important for the Russian Arbitration Centre (RAC), as Article 14 of the RAC Arbitration Rules refers arbitrators to the current version of the IBA Guidelines for assessing possible conflicts of interest.

Among the most important changes in 2024, the following were noted:

- Updated General Standard 3(e) established the arbitrator's duty to decline appointment or withdraw if rules of professional secrecy, conduct, or other practice rules do not allow the arbitrator to make necessary disclosure.

- General Standard 4(a) introduced a criterion for determining the moment from which a party is considered aware of circumstances creating a risk of conflict of interest.

- General Standard 6 "Relationships" was supplemented with the concepts of "arbitrator's employer," "organisational structure," and "mode of practice." New paragraph 6(c) also provides for the possibility of identifying a party to the dispute with a person over whom it exercises controlling influence, for example, with a subsidiary company.

- General Standard 7 "Duties of the Parties and the Arbitrator" was expanded: now parties are obliged to report any direct or indirect connections between the arbitrator and a person over whom the party exercises controlling influence.

- Part II of the Guidelines "Practical Application of the General Standards," including lists of individual situations, also underwent changes. In particular, the Orange List was supplemented with seven new situations, including appointment of an arbitrator as an expert by the same legal representative or firm within the last three years (paragraph 3.2.9).

Read

ADR EVENTS

ICC Russia Conference “Features of Arbitration in Mainland China and Hong Kong”

On May 12, 2025, the ICC Russia conference dedicated to the subtleties and nuances of arbitration in mainland China and Hong Kong was held in Moscow. During the event, experts revealed the secrets of effective work with Chinese counterparts and successful enforcement of arbitral awards, and participants discussed the impact of sanctions on arbitration proceedings with the seat of arbitration in China, as well as the subtleties of Chinese courts’ interpretation of the “public policy” concept.

In addition, the discussion touched upon key aspects of drafting arbitration clauses, strategies for obtaining interim measures in Chinese courts, and issues of choosing an arbitration institution for proceedings in mainland China. The conference speakers were leading legal specialists and representatives of arbitration institutions from Russian and Chinese jurisdictions.

Read

Paris Arbitration Week 2025 Results

Paris Arbitration Week (PAW) 2025, held from April 7-11, once again brought together in the French capital a wide circle of professionals: arbitrators, lawyers, teachers, and business representatives from around the world. The ninth PAW program was packed with relevant sessions dedicated to the most important issues of international arbitration.

One of the central themes was rapid technological changes and their impact on arbitration processes: issues such as artificial intelligence (AI), digital evidence, and online dispute resolution mechanisms were discussed. Experts actively debated how innovations can increase efficiency, transparency, and accessibility of justice, and also considered issues of cybersecurity and data protection. Speakers and participants also discussed strategies for promoting gender balance, cultural diversity, and involving young professionals in arbitration processes. The events examined recent legislative changes, problems of cross-border enforcement of awards, and the impact of new laws and international treaties on arbitration practice.

Read

RAA25 Event Series

On April 26, a meeting was held within the framework of the RAC25 Brunch series, which brought together young professionals interested in arbitration. The event took place in an informal setting and was dedicated to the view of arbitration from the arbitration centre and case administrator’s perspective, as well as discussion of the arbitration centre’s internal work.

Sofya Aseeva, case administrator of the Russian Arbitration Centre (RAC), shared her experience and talked about key aspects of the arbitration process. In particular, she highlighted arbitration opportunities that often remain unnoticed by the parties, explained how arbitrators are selected and appointed, and revealed the specifics of communication within the "arbitrator-assistant-parties" triangle.

In addition, Sofya talked about how to obtain the status of external assistant to the arbitral tribunal and thereby get "behind the scenes" of the arbitration process, and also dwelt in detail on the preparation of arbitral awards. The organisers noted the importance of such meetings for the professional development of young arbitration specialists.

Read

New Episode of "International Arbitration" Podcast: Guest Yulia Mullina

On May 6, a podcast was released that preceded the series of arbitration events in Moscow within the framework of the Russian International Arbitration Congress (RIAC), held from May 12-17. The episode featured Yulia Mullina, General Director of the Russian Institute of Modern Arbitration (RIMA), in a heartfelt conversation where professionally inspiring topics about ethics in lawyers' work were intertwined with touching family stories about travels to Italy, the mountains, and Saudi Arabia.

The podcast managed to discuss current RIAC topics, artificial intelligence (AI) in arbitration, trends in arbitration regionalisation and consideration of cultural features, development of arbitration weeks in Riyadh and Dubai, the importance of preserving the New York Convention's work, as well as reasons for the attraction to family and work travel and the need for an ethical approach in the profession even during periods of instability. This podcast became an excellent addition to RIAC's rich program.

Read

German Arbitration Institute Spring Conference 2025

The German Arbitration Institute (DIS) Spring Conference 2025, held on May 6-7 in Stuttgart, became one of the most important events for the European arbitration community, focusing on the impact of artificial intelligence (AI) on dispute resolution. The event brought together leading experts from the judicial system, law firms, and academia to discuss how AI is changing approaches to case management, evidence presentation, and decision-making in both arbitration and judicial proceedings.

One of the key moments was a lively discussion about the possibility of completely replacing a "live" arbitrator with artificial intelligence. This sparked active discussions on issues of feasibility, risks, and ethical aspects of AI decision-making. Other sessions were devoted to practical aspects of AI implementation in current DIS procedures. Guests were also given the opportunity to familiarise themselves with cutting-edge AI-based solutions from developer companies and see in practice the technologies shaping the future of arbitration practice.

Read

First Russian International Arbitration Congress (RIAC): Key Events and Results

From May 12-17, 2025, the first Russian International Arbitration Congress (RIAC) was held in Moscow, organised by the Russian Arbitration Centre at the Russian Institute of Modern Arbitration. This landmark event brought together leading lawyers, business representatives, arbitration institutions, and arbitrators from around the world interested in international dispute resolution.

Over 6 intensive days, more than 40 fascinating events prepared by RIAC organisers and partners took place on the Congress margins. They were attended by over 1,500 participants from different corners of the world, emphasising the international scale and significance of the event. The program included business sessions, satellite events, and a scientific-practical conference dedicated to current issues of international arbitration, modern trends, and innovations in legal practice.

In addition to the rich business program, Congress guests had the opportunity to familiarise themselves with Moscow's culture within the framework of informal events, which contributed to strengthening professional ties and cultural exchange.

Read

The VIII Russian Arbitration Day

On May 13, 2025, the Russian Arbitration Day (RAD 2025) conference was successfully held in Moscow, organised by the Russian Institute of Modern Arbitration (RIMA) together with the Legal Academy educational platform. The conference was attended by more than 240 in-person listeners and 380 online broadcast viewers.

The conference moderators and scientific editors of the RAD 2025 Collection were Anna Arkhipova, Dmitry Kaysin, and Andrey Panov. Based on competitive selection results, the Collection included 17 reports by Russian and foreign specialists on various international arbitration issues, including sanctions, arbitrator bias, AI influence, abuse of due process, and others.

Invited speakers at the Conference included Hawar Qureshi QC, Kevin Kim, Marike Paulsson, and Bernardo M. Cremades. The Conference recording is available on the RAC YouTube channel.

Read

RIAC 2025 Main Conference: Seeking Answers to Eternal Questions of Arbitration

The key event of RIAC 2025 was the main Congress Conference, which brought together world-class speakers and specialists in international arbitration. The conference was dedicated to seeking answers to

eternal questions of arbitration that remain relevant regardless of time, changes in legislation, or international disagreements. The program included four thematic sessions, each touching on important aspects of arbitration practice.

The first session, “Seeking Answers: Eternal Dilemmas in Arbitration Evolution,” focused on issues of stability and trust in the arbitration system, the influence of imperative norms, and the interaction of national and international legal orders. In the second session, “From Hidden to Explicit: The Path to Understanding Arbitrators’ Implied Powers,” experts discussed the concept of arbitrators’ implied powers and challenges related to balancing arbitrator autonomy and party rights. The third session, “ADR Kaleidoscope: At the Crossroads of Cultures,” was devoted to the features of alternative dispute resolution methods in different legal orders and prospects for their harmonious development. The concluding session, “Arbitration Battle: Back to the Future,” was held in an interactive format where participants considered a fictional dispute between trading houses from Shaharat and Rus.

Read

RAC Event “Need Advice: Adjudication as a Tool for Quick and Effective Dispute Resolution”

On May 16, within the framework of RIAC, RAC organised a discussion dedicated to a new method of dispute prevention and resolution for the domestic jurisdiction - adjudication. During the interactive session, speakers talked about real examples of adjudication application, peculiarities of enforcing adjudicators’ decisions, and also discussed key considerations within this ADR procedure that must be taken into account in modern realities.

The speakers included Robert Sliwinski, barrister, chairman of the RAC adjudication committee, arbitrator (CIArb), accredited adjudicator and mediator; Rajdeep Chaudhuri, barrister from 4-5 Gray’s Inn Square (London), advocate (India) and independent arbitrator; Vladimir Kostsov, Candidate of Legal Sciences, Master of Law from Harvard University, lecturer at HSE University and counsel at Stonebridge Legal; Stanislava Sosnina, head of the legal support direction for main activity at RAOS Project; and Daniil Petrukh, senior lawyer and head of the international arbitration direction at SIBUR.

The event allowed participants to better understand the specifics of adjudication as an effective dispute resolution tool that is only beginning to develop in Russia and is not yet regulated at the legislative level. The speakers discussed various adjudication models, including contractual dispute resolution boards and the peculiarities of their functioning in international practice.

Read

XII International Charity Legal Run 2025

Under the aegis of the large-scale charity project Legal Run, another run was held, uniting representatives of the legal community, their colleagues, and friends. Legal Run is the first international charity run aimed at supporting the wards of the “Gift of Life” Charitable Foundation and several regional foundations.

The project has existed since 2014, and during this time, thanks to Legal Run races and flash mobs, more than 35 million roubles have been raised, helping 111 children. In 2025, official races were held in more than 25 cities in Russia and worldwide from April 12 to June 12. In Moscow, the Legal Run race was held on May 17 in Meshchersky Park. About 1,500 runners aged 18 to 60 participated in the 5 and 10 km distances. The RAC team also participated in the race at both distances.

Read

Russian Institute of Modern Arbitration Cooperation

During RIAC, RIMA signed agreements with three institutions: the Bahrain Centre for Dispute Resolution (BCDR), the Astana International Financial Centre (AIFC) and the AIFC Court, and the Singapore International Arbitration Centre (SIAC).

The signing of all three memoranda consolidated the parties' commitment to developing international cooperation in the field of arbitration, knowledge exchange, and joint conducting of educational and expert events. The purpose of the concluded agreements is to promote arbitration as an effective mechanism for dispute resolution worldwide.

Read

AUTHORS

Arina Akulina

Mikhail Makeev

Aleksandra Konyaeva

Andrey Saveliev

Arina Medvedeva

Svetlana Paramonova

Alina Shirinyants

Darya Skosar

Alexandra Chobotova