Russian Arbitration Center

at the Russian Institute of Modern Arbitration

ARBITRATION DIGEST AUGUST-SEPTEMBER 2025

ARBITRATION PRACTICE

English High Court Prohibits Enforcement of Its Own Default Judgment on Suspicion of Fraude

In 2018, Louis Emovbira Williams obtained a default judgment against Nigeria for approximately USD 15 million. In 2023, he initiated recognition and enforcement proceedings in New York court.

In response, Nigeria applied to the High Court of England and Wales for a declaration that the 2018 judgment was void, claiming it was obtained through fraud – based on forged and fabricated documents. At the same time, Nigeria applied for an interim injunction against enforcement pending hearing of the claim on the merits.

On 26 August 2025, Judge Henshaw granted Nigeria's application. The court found that:

- Nigeria presented convincing prima facie evidence of fraud, creating a high probability of success of its claim;

- In case of enforcement Nigeria could suffer irreparable harm (amounts collected could prove irrecoverable), while Williams would suffer only delay – with interest accruing on the amount;

- The interim injunction does not conflict with the principle of international comity: the court is protecting the integrity of its own processes and preventing the use of an English judgment as an instrument of fraud. The New York court itself agreed to stay proceedings pending the English court's decision.

Williams cited the absence of evidence of fraud, the length of the proceedings, and deteriorating health, but the court rejected these arguments as insufficient against the backdrop of Nigeria's position.

Read

Res Judicata and 'Effective Judicial Review' in Sports Arbitration in the Seraing Case (C-600/23)

On 1 August 2025, the Court of Justice of the European Union (CJEU) issued its judgment in Seraing v FIFA (C-600/23), addressing the binding nature of sports arbitration in CAS and the limits of recognition of its awards within the EU legal order. The Court ruled that national law rules giving arbitral awards the force of res judicata are not applicable if:

(1) the dispute is connected with sporting activity as an economic activity within EU territory, and

(2) the CAS award has not been reviewed for compliance with EU public policy by a court of an EU Member State.

Thus, the CJEU confirmed that courts of EU Member States may disregard the finality of CAS awards outside standard recognition and annulment procedures when necessary to ensure effective judicial protection of rights based on Union law.

The dispute arose after football club RFC Seraing was sanctioned by FIFA for violating the Regulations on the Status and Transfer of Players. The sanctions included a fine and a ban on registering players. The club challenged the legality of these measures in CAS, arguing that the Regulations violated EU competition rules and fundamental freedoms. CAS denied the Club's claims, and the Swiss Federal Tribunal found no violations of public policy.

Subsequently, the Belgian Court of Cassation referred questions to the CJEU regarding whether a national court is obliged to give a CAS award the force of res judicata if the CAS award has been reviewed only by Swiss courts but not by EU courts.

Answering this question, the CJEU emphasized that the binding nature of sports arbitration is permissible in principle; however, it cannot restrict the exercise of rights guaranteed by EU law. Since arbitral tribunals do not have the right to refer questions for preliminary rulings under Article 267 TFEU, judicial review by national courts of Member States is necessary, including review of CAS awards for compliance with EU law and the ability to provide interim and provisional measures. Under these circumstances, national courts are required to depart from rules on the finality of arbitral awards if such review was absent.

At the same time, the CJEU did not support the radical approach of Advocate General Ćapeta, who proposed excluding CAS awards from the scope of the New York Convention. Instead, the CJEU confirmed the applicability of the Convention while introducing the criterion of "effective judicial review" as a mandatory condition for recognizing the finality of CAS awards within the EU.

Read

Signed the Contract – Means Consented to Enforcement of Arbitral Awards in Others' Disputes

A dispute arose in the Queensland Court of Appeal concerning the enforcement of obligations arising from an arbitral award (KGLNG E&P Pty Ltd v Santos Toga Pty Ltd [2025] QCA 114). Notably, the dispute did not concern setting aside or enforcing the arbitral award – the applicants brought a substantive claim against the respondents for recovery of monetary amounts.

The original source of disagreement was the way the parties structured their participation in an oil and gas project in Texas. Unlike most commercial projects for which a legal entity is created, in this case the entire project was structured through a group of contracts. One participant owned the land, other participants extracted oil and gas on that land, third parties handled transportation and processing, and fourth parties handled sales.

Initially, the land on which oil and gas were extracted was owned by Tri-Star. Later, however, it decided to sell the land rights to the claimants, and the latter undertook to pay Tri-Star royalties for oil and gas extracted on these plots. Subsequently, the claimants sold part of the land to the defendants, and the defendants undertook to compensate the royalties, the amount of which was determined in accordance with the agreement between Tri-Star and the claimant. At the same time, the defendants themselves were not parties to said agreement. This is where the problem arose.

Shortly after closing the transaction between the claimants and defendants, Tri-Star initiated arbitration against the claimants, demanding a review of the royalty amount for 5 years. The tribunal upheld the claims and awarded Tri-Star almost USD 60 million. The claimants in turn demanded that the defendants compensate for the additional royalties collected from them by Tri-Star. The defendants objected – they claimed they were not parties to the arbitration, therefore the decision on royalty collection cannot create obligations for them.

During the proceedings in state court, the claimants put forward two alternative arguments in support of their claims:

1. The defendants have a contractual obligation to compensate the claimants for any royalty amount the latter must pay to Tri-Star, even if the royalty amount was established in an arbitral award.

2. The claimants and defendants had a privity of interest in the arbitration proceedings, because:

2.1. The defendants were interested in the outcome of the arbitration proceedings.

2.2. The defendants effectively identified themselves with a party to the arbitration proceedings and asked to be informed of all current information about the ongoing arbitration.

2.3. The content of the contracts concluded by the claimants and defendants for the sale of the land plot indicated that the defendants effectively entrusted the claimants to act in the proceedings with Tri-Star as their representatives.

The trial court upheld the claims, and later its decision was also upheld by the appellate court. The judges noted that when concluding the transaction with the claimants, the defendants were informed about the existence of the contract with Tri-Star, and they also knew about the arbitration clause in this contract. At the same time, the principle of separability of the arbitration agreement means that the arbitration clause remains valid even when there is a dispute about the validity of the main contract. This principle does not mean that the reference to the contract between the claimants and Tri-Star, which was contained in the contracts between the claimants and defendants, refers the parties only to the main contract without regard to the clause contained therein.

The courts also rejected the defendants' arguments that the arbitral award creates obligations for persons who were not parties to the proceedings. As the judges stated, the defendants are not bound by the arbitral award, but they are bound by contractual terms that depend on the results of the arbitration. At the same time, the court disagreed with the defendants' position that the royalty amount should be determined not by the tribunal but in accordance with the valuation method set out in the contract between Tri-Star and the claimants. As the court noted, the defendants agreed to pay the actual royalty amount that the claimant would pay to Tri-Star, not some theoretical sum calculated according to a contractual model.

At the same time, the courts considered it necessary to also examine the claimant's second argument about privity of interest in the arbitration proceedings. As the judges found, a simple economic interest in the outcome of the arbitration proceedings is insufficient to assert that the parties have a "privity of interest" as a legal category. To assert the existence of privity of interest, it must be proven that the claimants participated in the arbitration on behalf of and on the instructions of the defendants. As the judges noted, during the arbitration the defendants did not exercise control over the claimant, did not give it any instructions, and generally did not exert significant influence on the arbitration.

Read

Assignment of Contract Before Arbitration: How Careless Drafting of Initial Pleadings Can Lead to Disputes About the Claimant's Identity

Can problems arise if you make an error in describing factual circumstances in an arbitration request? As the dispute between Hyundai Heavy Industries Co Ltd and Energyen showed – they can.

This dispute arose in connection with a contract for the supply of equipment for a power plant. During the contract's performance, the buyer informed the supplier that it planned to create a new company to which all operating assets of the buyer would be transferred, including rights and obligations under the contract with the supplier. At the same time, the new company would be named the same as the current buyer, and the buyer itself would be renamed and take on holding functions.

Two years after the reorganization was completed, defects were discovered in the supplied equipment. The new company to which the buyer's rights were transferred initiated ICC arbitration (HD Hyundai Heavy Industries Co., Ltd. (formerly Hyundai Heavy Industries Co Ltd) v. Energyen Corporation, ICC Case No. 26615/XZG). At the same time, the request for arbitration stated that the claimant was the original signatory to the contract with the respondent, as well as that the claimant was founded in 1972. In the Terms of Reference, the claimant also indicated that it was the one who had concluded the disputed contract.

The tribunal rendered an award in favor of the claimant for more than USD 17 million. The respondent attempted to challenge this award under Section 67 of the Arbitration Act, citing lack of competence of the tribunal. The respondent argued that:

- there was no valid arbitration agreement between the respondent and the new company, since the party to the contract is the original buyer;

- the arbitration was initiated by the original buyer, and the tribunal improperly rendered an award in favor of the new company.

The respondent's objection was considered by the English court, as the parties had agreed on England as the seat of arbitration (Energyen Corporation v HD Hyundai Heavy Industries Co Ltd and another [2025] EWHC 1586 (Comm)).

In answering the first argument of the respondent, the court stated that when resolving the issue of the buyer's succession, the law of the country where the buyer was incorporated – Korean law – should apply. It did not matter that English law applied to the disputed contract. As the court established, the separation of the new company from the buyer complied with Korean law and resulted in succession under all contracts that were transferred to the new company, including the contract with the respondent. Consequently, the new company was considered a party to the arbitration agreement.

The answer to the second argument of the respondent required more complex analysis. The court applied a test to understand whom a reasonable party could consider the initiator of the arbitration. Among the circumstances that clearly indicated the new company, the court listed:

- by the time of the proceedings, the original buyer had changed its name, and the claim indicated the name of the new company, as well as its address;

- the respondent knew that rights and obligations under the disputed contract had been transferred to the new company by the time of the proceedings: it acknowledged receiving the relevant notice, and information about the reorganization was publicly available.

At the same time, the court itself verified the legality of such succession when answering the first argument of the respondent.

The court also examined the errors made in the request for arbitration. It noted that in the context of conclusions about the legality of succession, indicating the new company as the original signatory of the contract is not entirely an error. The indication that the claimant was founded in 1972, the court, of course, considered erroneous, but called this error immaterial given that the new company was the successor to the buyer in operational matters.

In addition to the two arguments listed above, in its objections the respondent also referred to the claimant's violation of the ICC Arbitration Rules. It noted that sub-paragraph (c) of paragraph 3 of Article 4 of the ICC Rules requires the request for arbitration to contain information about the grounds on which the claims are made. At the same time, sub-paragraph (e) of paragraph 3 of Article 4 of the ICC Rules obliges the claimant to provide all agreements relevant to the case and, in particular, the arbitration agreement. In the respondent's view, the claimant violated these requirements by not describing in the request for arbitration the history of succession, and also not attaching documents confirming this succession.

The court also rejected these arguments. It stated that the parties to the arbitration have the right to determine for themselves how detailed the submitted claim will be. They are not required to comply with English standards of pleading, even if the seat of arbitration is England. At the same time, even if the claimant had indeed violated paragraph 3 of Article 4 of the ICC Rules, in the court's opinion this would be a question of admissibility, not competence.

Read

Subject of Proof When Setting Aside an Arbitral Award on Public Policy Grounds in Russia

The Supreme Court of the Russian Federation protected an arbitral award from de novo review on the merits. This award was rendered in a dispute between a sea port and an insurance company. The port insured a vessel for RUB 70 million. When the vessel went to sea, it encountered adverse weather conditions and ran aground. It was only possible to tow the vessel back to port two months later, when water had already filled the hull. Expert organizations valued the cost of repairing the vessel at RUB 167-190 million.

Since restoring the vessel was not economically viable, the port abandoned its rights to the vessel in favor of the insurance company and demanded payment of insurance compensation in full. The insurance company refused to pay. In its view, the port had violated the insurance policy conditions, as this vessel should not have gone to sea at all under ice formation conditions. The port applied to the Maritime Arbitration Commission, which supported it and rendered an award for full insurance compensation against the respondent. As the tribunal noted, the vessel was operated during a period when, according to the order of the authorized person, any vessels could go to sea without restrictions. The tribunal also noted that the vessel underwent regular surveys.

The claimant applied to the Moscow Arbitrazh Court for issuance of a writ of execution on the arbitral award. However, both the trial court and subsequently the cassation court refused to grant the claimant's application. Referring to the principle of legality, they effectively reviewed the award on the merits, stating that the claimant was knowingly aware of the presence of ice in the water area, while it sent to sea a vessel suitable for operation only in tropical conditions. In the courts' view, such actions by the claimant constitute gross negligence, and the tribunal groundlessly rejected the insurance company's corresponding arguments. The courts saw a violation of public policy in the tribunal's actions.

The Supreme Court disagreed with the lower courts. It stated that to set aside or refuse enforcement of an arbitral award on public policy grounds, the court must establish the combined presence of two elements: first, violation of fundamental principles of the construction of the economic, political, and legal system of the Russian Federation, which, second, may have consequences in the form of damage to state sovereignty or security, affect the interests of large social groups, or violate constitutional rights and freedoms of individuals or legal entities. In refusing to issue the writ of execution, the courts did not justify exactly how the arbitral tribunal violated public policy, but merely re-evaluated the evidence examined by the tribunal. The Supreme Court determined to set aside the decisions of the lower courts and issue the writ of execution.

Read

Application to Set Aside an Arbitral Award Disguised as an Application for Enforcement

In a dispute between a South Korean and a Pakistani company, an English court faced an unusual request for anti-suit relief: the applicant sought to prohibit the Pakistani company from continuing enforcement proceedings of an LCIA arbitral award (Star Hydro Power Limited v. National Transmission and Despatch Company Limited (II), LCIA Case No. 215280).

This arbitral award was rendered in a dispute under a power purchase agreement. Under the contract, the South Korean company undertook to build a hydroelectric power plant and sell the energy produced by this HPP, and the Pakistani company undertook to purchase the generated energy at a specified tariff for subsequent sale to consumers. The electricity price was determined based on a preliminary estimate of the HPP construction project cost. At the same time, the contract provided for the possibility of adjusting the tariff.

Since the actual cost of works turned out to be higher than planned, the South Korean company approached its Pakistani counterparty with a proposal to revise the tariffs. In response, the counterparty stated that only a specialized state body of Pakistan could revise the tariff amounts. The South Korean company's proposals were submitted to this body, but officials refused to revise electricity tariffs. Having exhausted peaceful means of dispute resolution, the South Korean company applied to LCIA arbitration.

In its award, the tribunal acknowledged that the establishment and collection of tariffs falls within the exclusive jurisdiction of the state body and the tribunal cannot order a change to this tariff. Nevertheless, as the tribunal noted, a commercial contract was concluded between the parties, which contained a tariff adjustment methodology and an arbitration clause. All these provisions were also approved by the state body. Thus, in the tribunal's opinion, it has the right to decide that the tariff established by the state body is erroneous. This is exactly what the tribunal did in this case: it recalculated the tariff amount and awarded the claimant the difference between the actually charged tariff and what the tribunal considered correct.

At the same time, the tariff amount determined by the tribunal was slightly less than what the claimant demanded. For this reason, the operative part of the arbitral award contained the phrase "dismiss remaining claims for damages."

After the award was rendered, an event occurred that the claimant could hardly have expected – an application for enforcement of the arbitral award in Pakistan was filed by the respondent itself. In reality, however, the respondent did not intend to enforce the award: filing the application was part of its procedural strategy. It asked the court to enforce only part of the award, namely the paragraph of the reasoning where the tribunal acknowledged the exclusive competence of the state body to set tariffs, and the paragraph of the operative part where the tribunal dismissed "remaining claims." At the same time, the respondent asked the court to find the award in the remaining part unenforceable given the tribunal's position on the person authorized to change tariffs.

The claimant applied to the English court requesting that the respondent be prohibited from continuing proceedings in Pakistan. As the claimant stated, the respondent is effectively attempting to set aside the award outside the seat of arbitration. The trial court disagreed with the claimant. The judge found that the respondent had simply filed preliminary objections to enforcement of the arbitral award, which is not prohibited by the New York Convention. At the same time, based on the principle of comity, the court found it inappropriate to limit the Pakistani state court in any way in applying the New York Convention.

The Court of Appeal reversed the trial court's decision. It stated that the ability to file preliminary objections to enforcement of an arbitral award under the New York Convention would undermine the supervisory role of the court at the seat of arbitration. The court particularly noted that in its application the respondent claimed that the tribunal lacked competence to hear the dispute. Thus, the respondent's position in the application was structured as follows: the tribunal acknowledged the exclusive jurisdiction of the state body to set tariffs, therefore the tribunal itself lacked competence to consider these issues, but contrary to its own conclusion rendered a decision on tariffs. As the appellate court found, the respondent was entitled to make such statements about the tribunal's competence only in the English court at the seat of arbitration.

During the appellate court proceedings, the respondent offered to change the wording of its application filed in the Pakistani court. In the new version of the application, the respondent asked the court to recognize and enforce either the paragraph in which the tribunal acknowledged the exclusive jurisdiction of the state body to set the tariff, or the entire award as a whole, and also asked the court to find that the claimant has no right to submit any invoices to the respondent that contradict the mentioned paragraph of the award. The appellate court noted that the new application is formulated more carefully than the previous one, but still aims not to recognize the award but to set it aside. At the same time, the court did not find that the principle of international comity was violated in this case: in the court's opinion, it is performing its supervisory function by limiting the respondent's bad faith actions, rather than attempting to influence the Pakistani court in any way. As a result, the appellate court prohibited the respondent from continuing proceedings in the Pakistani court.

Read

INVESTMENT ARBITRATION NEWS

Australian Magnate Not Recognized as Foreign Investor

Australian mining magnate Clive Palmer was ordered to pay more than AUD 13 million after the Permanent Court of Arbitration in The Hague dismissed his claim, ruling that he does not have the status of a "foreign investor."

Clive Palmer has been challenging the Western Australian government's refusal to allow him to develop the Balmoral South iron ore project in the Pilbara region for many years. In 2012, state authorities rejected his application. Palmer and his company Mineralogy filed suit for AUD 30 billion, but in 2020 the Western Australian Parliament passed a law prohibiting him from suing the state. In 2021, the High Court of Australia upheld the constitutionality of this law.

Having exhausted his options in Australian courts, Palmer used a Singaporean company, Zeph Investments, to which he had previously transferred his Australian assets. Zeph filed a claim against Australia at the Permanent Court of Arbitration (PCA) in The Hague for approximately USD 200 billion, citing violations of the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA).

On 27 September 2025, the tribunal dismissed the claim for lack of jurisdiction. Australia successfully proved that Zeph Investments is not a genuine foreign investor: the company is controlled by an Australian citizen and does not conduct any real business activity in Singapore. The tribunal ordered Zeph to reimburse Australia's legal costs in the amount of AUD 13.6 million.

Australian Attorney-General Michelle Rowland stated that Palmer is not entitled to the protection of international investment agreements and expressed hope that he would withdraw his remaining three claims against Australia totaling another AUD 120 billion.

Read

A Loophole in US Law for De Novo Review of Investment Arbitration Awards

In most jurisdictions, it is recognized that an arbitral tribunal must decide on its own competence independently. State courts do not review the arbitrators' decision but only verify whether grounds for setting aside exist under applicable law. This was the position taken by a US judge when an application for enforcement of the Yukos award for USD 50 billion was filed. He rejected Russia's objections about the absence of an arbitration agreement between the parties, noting that the tribunal had already examined this issue. The court held that it was bound by the arbitrators' conclusions.

The Court of Appeals disagreed with this conclusion and remanded the case for reconsideration (*Hulley Enterprises Ltd. v. Russian Federation*, No. 23-7174 (D.C. Cir. 2025)). As the judges stated, foreign states

enjoy immunity in the United States – US courts do not have jurisdiction to hear disputes involving them. Exceptions to this rule are provided by the Foreign Sovereign Immunities Act (FSIA), including cases where enforcement of an arbitral award against a state is sought in the United States. When enforcing an arbitral award against a state, US courts must verify the following criteria to confirm their jurisdiction:

- the existence of an arbitration agreement between the parties;
- the fact that an arbitral award was rendered;
- the existence of an international treaty under which the arbitral award was rendered.

The nuance is that state courts themselves must verify compliance with these criteria. If respondent's representatives claim that any criterion was not met, the court cannot rely on the arbitrators' decision on this issue but must independently examine and resolve it. The burden of proof lies with the party seeking enforcement of the arbitral award.

In this dispute, Russia argued that the Energy Charter Treaty, which contains an arbitration clause, was not ratified by the Federal Assembly but was only signed by the Deputy Prime Minister. Moreover, provisional application of an international treaty without parliamentary ratification does not comply with Russian law; therefore, it cannot be asserted that a valid arbitration agreement exists between the parties. Guided by the above interpretation of the FSIA, the Court of Appeals held that the trial court must make its own assessment of Russia's objection.

Simultaneously with the objection about the absence of an arbitration agreement, Russia also argued that the claimants in the arbitration were controlled by Russian citizens and therefore could not be considered investors for purposes of applying ECT provisions. The Court of Appeals rejected this objection from Russia. It stated that the objection about the claimant's status relates to arbitrability, on which the state court is bound by the arbitrators' conclusions.

The second issue the appellate court instructed the trial court to consider was what significance the Dutch Supreme Court's decision on the existence of a valid arbitration agreement between the parties has for US proceedings. The judges noted that there is no precedent on this issue in US courts, and also outlined the steps the trial court must take:

- first, the court was instructed to decide whether court judgments have preclusive effect when considering the existence of an arbitration agreement under the FSIA. As the court explained, preclusion is a judicial doctrine providing that the existence of a final judgment establishing certain facts or resolving questions of law may preclude reconsideration of these issues by other courts in related disputes.
- in case the preclusive nature of court judgments is established, the appellate court instructed determining whether foreign court judgments also have such preclusive effect. The judges specifically noted that this issue affects international relations, so the trial court must request the US Government's position on the preclusive effect of foreign court judgments.

Read

First Step in Challenging Anti-Arbitration Provisions of the 18th EU Sanctions Package

Several Russian investors have initiated proceedings in the EU Court to challenge provisions of the 18th sanctions package. The object of the challenge is provisions that prohibit EU member state courts from enforcing investment arbitration awards rendered outside the EU in disputes involving Russian parties if this could lead to a violation of sanctions legislation.

As media report, the claimants are investors who faced blocking of their assets in the Euroclear depository. This is reportedly the first proceeding in the EU Court initiated by Russian investors since 2022.

Read

British Investor Challenges Ukraine's Sanctions in ICSID

British oil and gas company Enwell Energy has initiated arbitration proceedings against Ukraine in ICSID (Enwell Energy plc v. Ukraine, ICSID Case No. ARB/25/41). The claim is based on the provisions of the 1993 bilateral investment treaty between the United Kingdom and Ukraine. The subject of the dispute is actions by Ukrainian authorities that led to the suspension of the company's key hydrocarbon production licenses.

The proceedings were triggered by Presidential Decree of Ukraine No. 698/2024 dated 08.10.2024, which imposed sanctions on a number of individuals and legal entities, including the ultimate beneficial owners of Enwell Energy. Based on this decree and Ukrainian Law No. 2805-IX, the State Service of Geology and Subsoil of Ukraine suspended three of the company's four licenses for the MEX-GOL, SV, and VAS fields for a 10-year period as early as November. The company challenged this decision in the Poltava District Administrative Court, where it initially secured a temporary lifting of the suspension; however, in February 2025 the appellate court reinstated the sanctions, forcing Enwell to cease operations at these assets.

In its press release, Enwell Energy states that it attempted to settle the dispute with Ukraine through pre-trial negotiations, as provided by the treaty, but these efforts were unsuccessful. The company believes that the state's actions violated its obligations under the treaty and the investor's rights. Accordingly, Enwell seeks compensation for losses suffered as a result of Ukrainian authorities' actions, restoration of the licenses, and reimbursement of costs.

Read

First Claim Against the United Kingdom in ICSID: Investment Arbitration Over a Coal Mine

For the first time in history, the United Kingdom has become a respondent in ICSID arbitration proceedings (Woodhouse Investment Pte Ltd and West Cumbria Mining (Holdings) Limited v. United Kingdom, ICSID Case No. ARB/25/37). The claim is filed by West Cumbria Mining (WCM) and its principal shareholder,

Singapore-based Woodhouse Investment, under the 1975 bilateral investment treaty between Singapore and the United Kingdom.

The dispute relates to the refusal by British authorities to approve the Whitehaven coal mine project in Cumbria – the first deep coal mine in the UK in over 30 years. In December 2022, the Conservative government issued planning permission. However, in September 2024, the High Court, on claims by environmental organizations Friends of the Earth and SLACC, quashed this permission, finding it legally flawed: the climate impact of the project was not properly assessed when the decision was made, and in particular, an incorrect assumption of "net zero emissions" was made – in reality, the company planned to offset emissions through purchasing carbon credits abroad, which contradicts UK climate policy and the requirements of the Climate Change Act 2008. In March 2025, West Cumbria Mining itself withdrew its planning application.

The investors claim that the UK's actions violated their rights under the BIT, including the fair and equitable treatment standard and protection against indirect expropriation.

The case touches on the complex issue of the relationship between treaty guarantees of investment protection and climate regulation. Established practice in this area is lacking: in Rockhopper v. Italy, the investor received compensation for denial of an extraction permit, while in Lone Pine Resources v. Canada, similar claims were rejected.

The proceedings may also be influenced by the recently issued Advisory Opinion of the International Court of Justice, which confirmed states' obligations to take measures to limit global warming in accordance with the Paris Agreement.

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Disagreement Within Jurisdictional Limits in Junefield Gold v Ecuador

In June 2025, a partial award on jurisdiction was published in Junefield Gold v. Republic of Ecuador (PCA Case No. 2023-35) concerning the interpretation of Article 9(3) of the bilateral investment treaty between China and Ecuador. By majority, the arbitrators concluded that the tribunal has jurisdiction to consider not only the amount of compensation for expropriation but also the preliminary question of whether expropriation occurred.

In reaching this conclusion, the majority of arbitrators proceeded from a broad interpretation of the phrase "disputes involving the amount of compensation" and, referring to the Vienna Convention on the Law of Treaties, indicated that establishing the fact of expropriation logically precedes the assessment of compensation and therefore falls within the tribunal's jurisdiction. The arbitrators also noted that limiting competence to compensation alone would practically render the fork-in-the-road mechanism meaningless, as it would force the investor first to apply to national courts and then to arbitration, making the arbitration agreement ineffective and formal regarding expropriation disputes.

However, Professor Philippe Sands KC in his dissenting opinion took the opposite position. In his view, the text of Article 9(3) clearly limits the tribunal's jurisdiction to disputes about the amount of compensation, while questions of legality or the fact of expropriation fall within the competence of national courts. He believed that an expansive interpretation undermines the mechanism agreed by the parties and nullifies their right of choice. In support of his position, the arbitrator also referred to the approach reflected in Beijing

Shougang v Mongolia, in particular to the argument that fork-in-the-road makes sense only alongside the "triple identity test."

The majority of the tribunal also stated that Article 4 of the treaty, which deals with fair compensation, does not contain a provision requiring mandatory review of the legality of expropriation by national courts, which, in their opinion, supports the indivisibility of questions of compensation and the fact of expropriation. Sands, on the contrary, emphasized that Article 4 focuses specifically on compensation and does not contemplate consideration of the legality of expropriation in arbitration.

Although the discussion on the interpretation of such jurisdictional clauses is not new and has previously arisen, in particular in Sanum v Laos and AsiaPhos v China, this decision is notable for resolving whether arbitration is limited to assessing compensation or may consider the entire complex of issues related to expropriation.

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Intra-EU Arbitration and Enforcement in the US

The US District Court for the District of Columbia issued decisions in four cases in which investors sought enforcement in the US of ICSID arbitral awards under the Energy Charter Treaty (ECT) rendered against Spain for EUR 59.6 million, EUR 28.2 million, EUR 101 million, and EUR 33.7 million respectively (approximately EUR 220 million in total):

- RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v. Kingdom of Spain, ICSID Case No. ARB/13/30;
- InfraRed Environmental Infrastructure GP Limited and others v. Kingdom of Spain, ICSID Case No. ARB/14/12;
- Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. (formerly Antin Infrastructure Services Luxembourg S.à.r.l. and Antin Energia Termosolar B.V.) v. Kingdom of Spain, ICSID Case No. ARB/13/31;
- Cube Infrastructure Fund SICAV and others v. Kingdom of Spain, ICSID Case No. ARB/15/20.

Spain challenged previously issued decisions of the DC Circuit Court of Appeals and objected to enforcement on two grounds. First, it argued that the ICSID arbitrators lacked jurisdiction in light of EU law and its interpretation by the European Court. Second, Spain claimed that enforcement of these awards would force it to violate its obligations to the EU.

The court rejected both arguments. On the first – stating that US courts may not review ICSID tribunals' conclusions on their own jurisdiction. On the second – finding that the principle of international comity, on the contrary, requires respect for decisions of foreign arbitral tribunals.

Additionally, the DC District Court confirmed that US courts have jurisdiction to enforce intra-EU awards under the US Foreign Sovereign Immunities Act (FSIA) and upheld the lower court's conclusion that the existence of an arbitration agreement under the European Convention on Human Rights is sufficient to

satisfy the jurisdictional requirements of the Foreign Arbitral Proceedings Act, regardless of objections based on EU law.

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ADR NEWS

Convention on the Establishment of the International Organization for Mediation (IOMed) Enters into Force

On 29 August 2025, the Convention on the Establishment of the International Organization for Mediation (IOMed) – the world's first intergovernmental institution focused exclusively on mediation as a form of international dispute settlement – entered into force. IOMed's headquarters will be located in Hong Kong, in the former Wan Chai police station building.

The concept of IOMed arose as a result of the dispute over the construction of the Renaissance Dam on the Blue Nile between Ethiopia, Sudan, and Egypt. Since the dam's reservoir directly affects the amount of water available to Sudan and Egypt downstream, Ethiopia's decision to conserve water in 2020 led to a serious conflict between the three states. China was inevitably drawn into this conflict not only because it partially financed the dam's construction but also because it designed and maintains the power system to which the dam is connected. In 2021, China began mediating disputes between the conflicting parties, which ultimately led to the idea of creating IOMed.

The scope of the IOMed Convention covers disputes between states, between a state and citizens of other states, as well as disputes between private persons engaged in international commercial relations (Article 24). The distinguishing features of the IOMed Convention are the binding nature of settlement agreements reached through IOMed-facilitated mediation and the possibility of their enforcement within national legal systems of contracting states.

This consensus-based but legally binding dispute resolution model has much in common with and complements the United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention).

While the Singapore Convention offers uniform and efficient frameworks for enforcing settlement agreements resulting from mediation and allows parties to a dispute to invoke it to prove that a matter has already been settled, the IOMed Convention establishes the institutional and procedural frameworks necessary for conducting mediation itself. Thus, together these instruments strengthen the normative basis and practical viability of cross-border mediation in complex international settings.

Read

New Ethics and Insolvency Disputes: How SIAC Is Developing Arbitration

During the annual SIAC Symposium, the Singapore International Arbitration Centre (SIAC) presented the Restructuring and Insolvency Arbitration (RIA) Protocol, as well as the new Institute of Ethics in International Arbitration (IEIA).

The Protocol has become the world's first instrument specifically designed for resolving disputes of this category in international arbitration. Singaporean and foreign judges, insolvency and arbitration experts were involved in its creation; public consultations were also taken into account during development. A key feature of the Protocol is the adaptation of the SIAC Arbitration Rules, which have been in force since the beginning of the year, to the specifics of such disputes: deadlines for filing a response to the notice of arbitration, for appointing arbitrators by the parties, for resolving challenges, for rendering final awards, etc. have been shortened. By default, the seat of arbitration is Singapore, and the applicable law is the law of Singapore (the parties retain freedom of choice). The final award is rendered within six months of the tribunal's constitution.

In parallel with the Protocol, a Specialized Panel List for Restructuring and Insolvency Disputes was formed, and guidelines for parties and model arbitration clauses were issued.

The Institute of Ethics in International Arbitration will conduct research and develop educational programs to promote best practices in ethics. The Institute's activities will be aimed at both arbitrators and party representatives in international arbitration.

Read

Arbitration Law Reforms in Hong Kong and Colombia

In August 2025, Colombia adopted a law introducing the mechanism of arbitraje ejecutivo, i.e., arbitration for enforcement of obligations enshrined in títulos ejecutivos (payment documents, contracts, etc.), without recourse to ordinary courts. The new law, whose provisions will take effect on 27 February 2026, offers an alternative, faster, and more flexible way to collect debts and enforce obligations, particularly relevant for commercial transactions and credit agreements, as it can significantly relieve courts and speed up collection procedures.

Now, with a special arbitration agreement, parties can apply to an arbitrator rather than a judge for collection or enforcement of obligations. The process will be institutional – ad hoc arbitration is not permitted. Special roles are introduced: "enforcement arbitrator" (arbitro ejecutor) and "interim measures arbitrator" (such an arbitrator can impose measures such as attachment/security before the final award). The procedure is time-limited – a maximum of 12 months for the entire process.

Special attention is paid to consumer protection:

- For loans and other contracts with individuals, arbitration becomes possible only with separate, clear, and informed consent;

- An arbitration clause cannot be a condition for obtaining loan;

- In some cases (e.g., mortgage loans for social housing, or if minors reside in the dwelling), arbitration is excluded.

Changes are also expected in Hong Kong, where on 17 September 2025 Hong Kong Chief Executive John Lee Ka-chiu announced in his annual address to the Legislative Council plans to revise the arbitration law to align with advanced international practice. The initiative follows similar reforms in the United Kingdom and Singapore in 2025.

In parallel, plans were announced to strengthen Hong Kong's position as a mediation center through the International Organization for Mediation (IOMed), as well as construction of a Hong Kong International Legal Services building near IOMed headquarters.

Read

CIArb Releases New Guideline on Third-Party Funding in Arbitration

In September 2025, the Chartered Institute of Arbitrators (CIArb) published Guideline on Third-Party Funding (TPF) in arbitration. The Guideline addresses key practical issues: disclosure of the existence of a funding agreement, potential conflicts of interest for arbitrators, issues of costs and security for costs, as well as the tribunal's approach to assessing claims for costs of financing.

The Guideline recommends that disclosure of TPF be made at the earliest possible stage, optimally in the request for arbitration or response. Disclosure should include the name and address of the funder, the scope of funding, and whether the funder has authority to influence the conduct of the proceedings. The Guideline clarifies that disclosure does not extend to the terms of funding agreements (interest rate, success fee), unless this is required by law or the arbitration rules.

The Guideline is voluntary but can be adopted by agreement of the parties or by direction of the tribunal. Like other CIArb practice notes, the Guideline seeks to harmonize international practice by promoting transparency and trust while protecting the legitimate interests of all participants.

Read

Urgent Ex Parte Measures and the Balance of Procedural Fairness: SIAC Arbitration Rules 2025 as a Model?

On 23 September 2025, the Singapore International Arbitration Centre (SIAC) enacted the Arbitration Rules 2025, which for the first time expressly provide for the possibility of obtaining interim protective measures on an ex parte basis within emergency arbitration (Protective Preliminary Orders, PPOs). The new mechanism is designed for urgent protection of rights in situations where prior notification of the other party could render the measure ineffective, for example in cases of risk of asset dissipation, destruction of evidence, or loss of confidential information.

The Rules provide that a party may apply to the emergency arbitrator for a PPO before notifying the other party, however such mechanism is accompanied by clearly prescribed procedural limitations. First, the principle of party autonomy is preserved ("unless the parties have agreed otherwise..."). Second, strict time limits are established: the emergency arbitrator must be appointed within 24 hours, and the decision must be rendered within 24 hours of appointment, while the applicant is obliged to notify the other party within 12 hours, otherwise the measure lapses after three days. In any case, the measure expires after 14 days unless extended, which underscores the exclusively emergency nature of PPOs and prevents abuse.

A key element of the mechanism is ensuring the right to be heard. The respondent must be given the opportunity to present objections as soon as possible, and the emergency arbitrator must promptly consider them and, if necessary, modify or set aside the PPO. After the main tribunal is constituted, the powers to review such measures are transferred to it, which ensures institutional continuity and additional control.

The introduction of PPOs strengthens the role of emergency arbitration at SIAC and brings it closer to the "one-stop shop" model, in which arbitration is capable not only of hearing disputes on the merits but also of providing instant protection of rights without the need to apply to state courts. The new mechanism also unifies the approach to ex parte measures, which until now in many institutions remained outside formal procedures or depended on national procedural law.

Read

ADR EVENTS

RIMA x Young IMA Summer Academy 2025

From 18 to 22 August, the Russian Institute of Modern Arbitration (RIMA) together with the Young IMA Council held its sixth Summer Academy. As part of the project, 20 young specialists had the opportunity to immerse themselves in the study of arbitration fundamentals and acquire skills necessary for work as lawyers in the field of arbitration proceedings.

This year, the Academy program included not only lectures but also practical sessions (workshops) that helped participants to better master the specifics of arbitration: from drafting an arbitration clause and enforcement procedure for arbitral awards to the impact of sanctions and artificial intelligence on international arbitration.

Read

Singapore Convention Week 2025

Singapore Convention Week 2025, held from 25 to 28 August, traditionally brought together world experts in international dispute resolution. The event covered the latest developments in arbitration and mediation, including innovations of the Singapore Convention on Mediation, promoting cooperation and development of cross-border dispute resolution. Guests participated in substantive discussions and networking within various events organized by leading arbitration institutions, law firms, and research centers.

Read

Joint Event of LEVEL Legal Services and WongPartnership

The expert discussion held on 27 August was devoted to the latest legal changes in Russia and Central Asia and their impact on commercial disputes – from enforcement of decisions and procedural strategies to issues of jurisdiction and geopolitical risks.
Speakers paid special attention to the growing role of Singapore as a venue for dispute resolution. Yulia Mullina, General Director of the Center for International and Comparative Legal Studies (CICLS), was a speaker at the event.

Read

International Dispute Resolution: Current Trends and the Future

On 28 August 2025, ICLRC held a panel discussion within Singapore Convention Week 2025, with recognized experts in international law and dispute resolution as speakers: Roman Kolodkin, Alina Miron, Chin Heng Ong, Francis Xavier, and Xiashu Ji.

The experts discussed current and emerging trends in international dispute resolution, including reform of the investor-state dispute settlement (ISDS) system, alternative dispute resolution methods, and more. The discussion was moderated by Egor Fedorov, Head of Research Projects at ICLRC.

Read

Maritime Arbitration Committee – New Young IMA Initiative

The Young IMA Council has created a new professional platform for the study and promotion of maritime arbitration and maritime law. Konstantin Putrya, partner at NAVICUS.LAW, was elected as the Committee Head. Among the Committee's goals: studying the specifics of maritime disputes and arbitration practice; creating a platform for discussing current issues between practicing lawyers, arbitrators, students, and everyone interested in maritime law and international commercial arbitration; promoting alternative dispute resolution methods in the field of maritime trade navigation. Applications to join the Committee can be submitted via the link.

Read

RIMA Knowledge Days

Traditionally at the beginning of September, RIMA held Knowledge Days, during which invited speakers gave online lectures on current issues of corporate law and arbitration. Maria Vinokurova (Denuo) and Mikhail Makeev (RAC) lectured on "Cascade Clauses." Irina Akimova (RSPL) gave a lecture on "Unnamed Methods of Securing Obligations."

Vladislav Vatamanyuk concluded the lecture cycle by discussing judicial and out-of-court settlement agreements and the legal consequences of their conclusion.

Read

ICLRC Webinar: Third-Party Funding in Arbitration

On 4 September, participants of the Investment Law and Arbitration Laboratory of the International and Comparative Law Research Center 2024-2025, Evgeniya Savelyeva and Anton Zakharov, held a webinar presenting an analysis of approaches to regulating third-party funding in arbitration as formulated in the draft documents of UNCITRAL Working Group III. The webinar was particularly useful for those following ISDS reform and procedural guarantee issues in investment arbitration.

Read

India ADR Week 2025: Results

ADR Week 2025 was held from 15 to 19 September in Bangalore, Mumbai, and Delhi (India), bringing together professionals and experts from the international dispute resolution community.

Over six days, more than thirty partner events were held in the form of discussions, master classes, and panel sessions. The results of the week outlined the vector for further development of arbitration practice in the context of globalization and rapid technological progress.

Read

Results of the 13th China Arbitration Week 2025

China Arbitration Week 2025, organized by the China International Economic and Trade Arbitration Commission (CIETAC), brought together leading specialists in alternative dispute resolution, lawyers, and business representatives.

The event, held in Beijing from 15 to 21 September, included plenary sessions, thematic panels, and practical workshops devoted to current issues of international arbitration. Special attention was paid to China's role as a key arbitration center in Asia and opportunities for developing international cooperation.

During the week, participants discussed the latest changes in CIETAC rules, prospects for applying artificial intelligence technologies in arbitration procedures, and the development of alternative mediation methods.

Read

The Future of Arbitration in the Heart of the Bosphorus: Istanbul Arbitration Days

This year, Istanbul Arbitration Days events, held from 16 to 19 September, gathered more than 2,000 participants, including leading international and regional arbitration specialists, industry experts, and representatives of the academic community.
Over four days, participants had a unique opportunity to network and exchange experiences with representatives of Turkish and international law firms, corporate lawyers, arbitrators, company executives, and government representatives. The dynamic atmosphere, rich program, and substantive discussions made a significant contribution to the development of arbitration practice in the region.

Read

Preliminary Rounds of the IX V.P. Mozolin Corporate Disputes Arbitration Moot Court

On 20 and 27 September, online pre-moots of the National Moot Court on Arbitration of Corporate Disputes named after Professor V.P. Mozolin were held.

A total of 21 teams participated in the rounds – participants were able to test the strength of their positions and receive valuable comments from arbitrators that will be useful to them in the next stages of the Moot Court. According to the Moot Court's rules, teams could participate in one of the two pre-moots. The winners of the preliminary rounds were teams 737 (20 September) and 741 (27 September).

Read

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