

**Esin
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Partnership.**

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Editor's note

As we welcome the summer of 2023 and warmer days, it is time to review the developments and the new trends in the world of international arbitration that have taken place over the last three months. While the current trend to withdraw from the Energy Charter Treaty (ECT) continues among European countries, arbitral awards and other developments continue to shed light on the current flow of international arbitration.

With the eighth issue of Esin Arbitration Quarterly, we will once again present you the current dynamics of international arbitration, through essential court decisions and updates concerning international arbitration from around the globe.



1. Significant court decisions in the last trimester concerning arbitration

1.1 Decision of the 11th Civil Chamber of the Court of Cassation on set-aside of an arbitral award¹

The dispute between the parties arose from a share transfer agreement. The parties agreed that any disputes arising from this agreement should be resolved in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) ("**ICC Rules**"). In addition, the parties prepared a terms of reference in which they agreed that the arbitral tribunal may extend the arbitration term.

Due to their inability to come to an agreement on the extension of the arbitration term with the respondent (who is the plaintiff in the subsequent set-aside lawsuit initiated against the arbitral award), the claimants (who are the defendants in the subsequent set-aside lawsuit initiated against the arbitral award) filed five requests for extensions of the arbitration term with the Turkish courts during the arbitration proceedings. However, these were all rejected by Turkish courts. On the other hand, the ICC granted 18 extensions of time for failure to complete the arbitration proceedings within six months pursuant to the ICC Rules.

The plaintiff claimed that the arbitral award was rendered after the arbitration period expired, as Turkish courts had rejected the extension requests. The 13th

Civil Chamber of the Istanbul Regional Court thereby concluded that the arbitral award was rendered after the expiry of the arbitration term and set aside the arbitral award. Although the regional court determined that the extension made by ICC was invalid, the Court of Cassation concluded that the parties may freely agree on the arbitration rules to be applied to the dispute, unless they are contrary to the mandatory provisions of the Code of Civil Procedure. The arbitration term was extended by the ICC until 31 December 2020, and the final arbitral award was rendered on 14 December 2020. Therefore, the extension of time granted by the ICC was deemed valid. For this reason, the Court of Cassation reversed the decision of the regional court.

1.2 Decision of the 3rd Civil Chamber of Istanbul Regional Court on enforcement of an arbitral award

The dispute between the parties arose from a sales and marketing agreement. The parties agreed on an arbitration clause after a dispute arose from the sales and marketing agreement. Following the arbitration proceedings, the arbitral award was issued on 20 December 2020. The defendant requested a revision of the arbitral award to change the amount awarded, claiming that it had already paid a portion of the sum after the arbitration was first initiated. Therefore, the arbitral award was revised with the plaintiff's approval and became binding on 28 January 2021.

The plaintiff requested that this arbitral award be recognized and enforced by Turkish courts. However,

the defendant claimed that it was not duly notified of this arbitral award and the revised award, thus its right of defence was restricted, and that the award sought to be enforced became final without due service. The court of first instance ordered the enforcement of the arbitral award based on the assessment that the arbitration agreement, arbitral award and their certified translations were submitted.

The defendant appealed the decision. In its petition of appeal, the defendant also claimed that this judgment was not duly served. Thereafter, the Third Civil Chamber of the Istanbul Regional Court found that there were no translation documents containing the date on which the arbitral award and the revised award became final and the date of service of these awards to the parties.



1. The 11th Civil Chamber of Court of Cassation File No: 2021/4695, Decision No: 2022/6134.

2. The 3rd Civil Chamber of Istanbul Regional Court File No: 2022/1754, Decision No: 2023/138.



Accordingly, there is indeed no documentary evidence that these awards were served on the defendant. It was decided that the court of first instance's decision was based on an incomplete examination, as the court of first instance was not provided with the documents showing that the arbitral award for which enforcement was sought was duly served to the defendant. Therefore, the regional court reversed the decision of the court of first instance.

1.3 Abu Dhabi Court of Cassation's ruling regarding the determination of the seat of arbitration

The Abu Dhabi Court of Cassation rendered a decision

3. You may find more details [here](#).

4. You may find more details on the case [here](#).

on determining the seat of arbitration in the Emirate of Abu Dhabi — and, by extension, the local courts that would have jurisdiction to hear challenges related to the relevant arbitration — when the arbitration agreement between the parties refers to ICC Rules without specifying a seat of arbitration in the Emirate of Abu Dhabi. This issue arises because there are two distinct jurisdictions under the Emirate of Abu Dhabi region, one being in “onshore” Abu Dhabi, where the Abu Dhabi courts have jurisdiction, and the other being within the financial free zone area of the Emirate of Abu Dhabi, the Abu Dhabi Global Market (ADGM), where the ADGM courts have jurisdiction.

Accordingly, the Abu Dhabi Court of Cassation held that when the arbitration agreement specifies that the ICC Rules will be applied to the arbitration proceedings, this indicates that the ADGM courts have jurisdiction in matters related to such arbitration as there is a representative office of the ICC in the ADGM region. Therefore, the existence of a representative office of the ICC played a determining factor in deciding which courts have jurisdiction when it is not expressly stated in the arbitration agreement.³

1.4 The Swiss Federal Supreme Court clarifies the requirements regarding the enforcement of interim attachment orders issued by the ICSID

A recently disclosed case ruling of the Swiss Federal Supreme Court offers guidelines regarding the

enforcement of the International Centre for Settlement of Investment Disputes (ICSID) awards in Switzerland to establish attachment on the assets of a foreign state. According to the Swiss Federal Supreme Court's judgment, it has been highlighted once again that, for a party to enforce an ICSID award in Switzerland, the party seeking to enforce the award is only required under Articles 54(1) and 54(2) of the ICSID Convention to provide a copy of the award certified by the Secretary General of ICSID and that the award cannot be reviewed on any grounds other than its authenticity. In other words, the Swiss Federal Supreme Court held that an ICSID award cannot be reviewed on merits by the local courts before its enforcement, including a public policy review.

However, with regard to seeking attachment of assets in Switzerland, Swiss case law requires (i) that the foreign state was not exercising its sovereign rights but its private law related rights in the underlying legal relationship and (ii) the party seeking the attachment must demonstrate that the legal relationship between the parties also has a “sufficient link to Swiss territory” and the relevant requirement also applies to the enforcement of ICSID awards. If the above requirement can be fulfilled, it has been ruled by the Swiss Federal Supreme Court that the local court should treat the ICSID award in question as a Swiss court judgment and is obligated to enforce it.⁴



1.5 UK court ruled that Spain cannot avoid enforcement of an ICSID award

On 24 May 2023, the London Commercial Court emphasized in its ruling that the European Court of Justice's *Achmea* and *Komstroy* decisions do not override Spain's international obligations incumbent from the ICSID Convention and ECT. The court therefore held that the UK courts are required to register the arbitral awards under the ICSID Convention and that the ECT does not contain a provision justifying its contracting parties to offer to arbitrate to only investors from certain states. The registration of a EUR 120 million ECT arbitral award in favor of a Luxembourgish investor was then refused to be set-aside. This ruling constitutes a landmark decision where a UK court has determined that Spain cannot rely on EU law restrictions on intra-EU investment arbitration as justification to prevent having an ICSID judgement enforced against it.

Considering that Spain had ratified the ICSID Convention, and that a "written arbitration agreement" expressly integrated into the ECT, the UK court determined that Spain was not exempt from enforcement procedures. The UK court acknowledged that international law encompasses EU law, while also stating that international law also calls for adherence to "pre-existing" treaty commitments under agreements like the ICSID Convention and the ECT. Therefore, these treaty obligations cannot be overridden by EU treaties.⁵

5. You may find more details on the case [here](#).

6. You may find more details on the case [here](#) and [here](#).

7. You may find more details [here](#).

2. Developments concerning international arbitration practice

2.1 Developments concerning investment treaty claims

(a) Russia has been ordered to pay USD 5 billion to Naftogaz for compensation on illegal seizure of assets in Crimea

The final award has been issued regarding the investment treaty claim submitted by Naftogaz against Russia at the Permanent Court of Arbitration in The Hague, regarding Russia's illegal seizure of Naftogaz's assets in Crimea in 2014. The arbitral tribunal has ordered Russia to pay around USD 5 billion to Naftogaz for compensation and for violating the bilateral investment treaty that was signed between Russia and Ukraine in 2019. The arbitral tribunal's decision to force Russia to pay the USD 5 billion is the largest one yet in relation to cases brought by Ukraine against Russia under the bilateral investment treaty concerning Ukraine's assets in Crimea.⁶

(b) Türkiye loses against US-based mining company before ICSID

The Westwater Resources case, which is based on an investment treaty between Türkiye and the US, was initiated before ICSID in 2018. In the case, it was alleged that Türkiye's revocation of the uranium mining licenses

granted to Adur Madencilik Limited Şirketi, a subsidiary of the American company Westwater Resources Inc., was contrary to the investment treaty.

The ICSID tribunal rendered its award on 3 March 2023 and ruled that Türkiye breached its bilateral investment treaty with the US by revoking the licenses granted to the claimant's subsidiary.

However, the ICSID tribunal was unable to prove a connection between the breach and the company's loss of profits. The tribunal determined that although Westwater Resources Inc. might have fulfilled the requirements to be granted the appropriate licenses to carry out the project, even if it had done so, the claimant would not have been able to collect the funding required due to the low price of uranium at the time. The ICSID tribunal ordered the investor to pay USD





1.3 million (as opposed to the originally claimed USD 36.5 million) in sunk costs, legal fees, charges and pre-award interest because the causation of the loss of profits could not be proven.⁷

(c) The Ukrainian Supreme Court underlines the non-applicability of New York Convention and national laws in the recognition and enforcement of ICSID awards

In an ICSID case brought against Latvia by a Ukrainian investor, the ICSID tribunal closed the case due to the claimant's failure to pay the security for costs ordered by the tribunal, and ordered the claimant to compensate Latvia for the arbitration costs. Latvia then took the award to Ukrainian courts for the enforcement of the ICSID award.

In the enforcement proceedings, the claimant argued that, the ICSID award does not involve a judgement regarding the merits of the case and that the enforcement of the relevant award will constitute a breach of both the rules of the New York Convention and the laws regulating the public policy of Ukraine. The claimant thereby requested the application for the enforcement to be rejected. In turn, Latvia argued that the New York Convention is not applicable to the enforcement of ICSID awards.

In its judgement, the Supreme Court of Ukraine decided that, the New York Convention and national laws should not be applied for the recognition and enforcement of ICSID awards.

Accordingly, the Supreme Court of Ukraine has decided in favour of Latvia. However, the Supreme Court has also highlighted that the national court should analyse whether the ICSID decision violates the public policy of the State where the award is sought to be enforced. Thus, the Supreme Court of Ukraine held that in cases where the defined principles and justifications of fundamental constitutional rights, generally accepted moral principles, legitimate interests of individuals, society and the State, and fundamental principles of international law are threatened, the national courts can opt to refuse the enforcement of an ICSID award for public policy considerations.⁸

(d) Türkiye has Ratified the Bilateral Investment Treaty Signed with Belarus

According to the Presidential Decree published on 25 April 2023,⁹ the new bilateral investment treaty (BIT) signed between Türkiye and Belarus¹⁰ has come into force as of 30 December 2022 and has replaced the previous agreement between the two states.

8. You may find more details [here](#).

9. You may find the relevant Presidential Decree [here](#).

10. You may find both the English and the Turkish versions of the relevant agreement [here](#).





Accordingly, disputes arising from the newly adopted BIT will be resolved through one of the following forums: (i) national courts, (ii) an ICSID tribunal, (iii) an ad hoc arbitral tribunal governed by the United Nations Commission on International Trade Law (UNCITRAL) arbitration rules, or (iv) an arbitral tribunal under parties' choice of arbitration rules.¹¹

2.2 The rush to exit the ECT persists

While France, Germany and Poland withdraw from the ECT, Denmark also Raised Certain Concerns

The ECT, signed in Lisbon on 17 December 1994 by around 50 countries, provides foreign investors in the energy sector with comprehensive protection that goes far beyond the property protection that any company has under national law.

As we have shared in the previous issues of Esin Arbitration Quarterly, there is an ongoing trend within the EU states to withdraw from the ECT, which directly contradicts the United Nations Framework Convention on Climate Change ("**Paris Agreement**") and obligates the EU states to promote and respect fossil fuel investments in their respective regions. Accordingly, the latest state to express concerns and voice its intention to withdraw from the ECT is Denmark.¹²

In fact, as we previously highlighted, to modernize the ECT, reforms were discussed. When no agreement was reached on the reforms, the vote on whether to adopt a modernized version of the treaty was postponed. Some EU countries had already made their intention clear to withdraw from the ECT. They cited dissatisfaction with the reform process and the incompatibility of the agreement with climate change mitigation goals.

The European Commission had argued that the modernized ECT, which is finalized after two years of preparation and negotiations, would address many concerns about the current agreement. However, as support for these revisions waned, it proposed a "coordinated withdrawal" from the ECT by the member states in early 2023.

Recently, on 22 March 2023, the Energy Charter Secretariat announced that France, Germany and Poland had withdrawn from the ECT, notifying Portugal, the treaty's depositary, in writing. The withdrawal will take effect on 8 December 2023 for France, 21 December 2023 for Germany and 29 December 2023 for Poland. However, in accordance with the sunset clause of the ECT, all investments covered by the ECT on the date of withdrawal will continue to benefit from its protection for 20 years.

Apart from the aforementioned countries, while no other EU member states have yet to inform the Energy Charter Secretariat on their intention to withdraw from the ECT,

certain contracting states, such as Spain, have publicly stated their intention to do so.¹³

2.3 Other developments in the arbitration practice

(a) Iraq wins pipeline arbitration against Türkiye

On 23 March 2013, the arbitral tribunal rendered its award in the arbitration initiated by Iraq against Türkiye for violating the 1973 Crude Oil Pipeline Agreement signed between the two states ("**Pipeline Agreement**") by buying oil from the Kurdistan Regional Government of Iraq (KRG) contrary to Iraq's instructions and without its



11. You may find more details [here](#).

12. You may find more details [here](#).

13. You may find more details [here](#).



consent. An arbitral tribunal within the ICC in Paris ruled that Türkiye violated the treaty. Moreover, it ordered Türkiye to pay compensation of USD 1.47 billion for its oil purchases from the KRG between the years 2014 and 2018. Another phase in the arbitral proceedings, concerning the claims related to the period after 2018, is still pending.

According to Iraq, Türkiye violated the Pipeline Agreement by permitting the shipment of KRG-owned crude oil through the pipeline to the Turkish port city of Ceyhan without the permission and contrary to the instructions of Iraq. In its relief sought, Iraq requested the arbitral tribunal to order that shipment of the

commodities be ceased and remuneration be paid for the crude oil that was unduly shipped.

In the decision, while the arbitral tribunal granted Türkiye's counterclaims concerning unpaid transportation and storage fees, after setting off the compensation granted to Iraq, Türkiye was ordered to pay Iraq USD 1.47 billion in compensation. While Iraq and Türkiye will soon hold a meeting to agree on a new method to export the oil drilled from the northern part of Iraq, Iraq has requested the US courts to enforce the arbitral award.¹⁴

(b) Albania becomes the latest state to withdraw from the ICSID Convention

Following an ICSID case, which resulted in Albania being ordered to pay around EUR 110 million in damages, the prime minister of Albania has expressed the state's intention to withdraw from the ICSID Convention. Accordingly, Albania is currently working on the establishment of a local court that will specifically focus on the resolution of commercial disputes. A local arbitration court will allow private individuals to bring claims both against states and other private individuals.

The local arbitration court will be accepted as the dispute resolution method only if the parties agree to exclude international arbitration and local litigation and to bring their claim before local arbitration courts. While Albania's withdrawal from the ICSID Convention is not yet official, a draft law was recently introduced by the

Minister of Justice. If Albania finalizes the implementation of the draft law, it will join among Bolivia, Ecuador and Venezuela as the States that have replaced the ICSID. The justification behind the decision is that the ICSID Convention has been restricting the national sovereignty of the respective States and that the ICSID has failed to fulfill its promises.

While many argue that Albania's withdrawal from the ICSID Convention will hamper foreign investment to Albania, the prime minister of Albania has stated that the possible reform will boost investments and "... would be a quick choice and eliminate informalities, but at the same time fulfill the obligations arising from commercial disputes."¹⁵

(c) UNCITRAL working group III has completed its draft code of conduct

Working Group III of UNCITRAL has been tasked with developing a draft Code of Conduct for Arbitrators that will specifically focus on improving the aspects of impartiality, the arbitrators' duty to disclose issues of conflict and guide arbitrators on double-hatting in investor-state dispute settlements. While the draft code is yet to be published, Working Group III intends to complete and adopt it in June, during UNCITRAL's 56th annual session in Vienna.

14. You may find more details [here](#) and [here](#).

15. You may find more details [here](#).



The topic of double-hatting, or the practice of allowing arbitrators to also function as consultants or experts in other investor state dispute settlement cases, was one of the most important topics in the negotiation of the draft code.

As a final note, at its session in Vienna in September 2022, the working group said that it would submit two distinct texts to UNCITRAL, namely; a code of conduct for judges, and a code of conduct for arbitrators. According to the group, this would give "*flexibility to reconsider outstanding issues.*"¹⁶

(d) The IBA has assembled a task force to reform the 2014 Guidelines on Conflict of Interests

A survey conducted in 2022 by the International Bar Association (IBA) had illustrated certain deficiencies and subjects that the IBA's Guidelines on Conflict of Interests in International Arbitration, published in 2014, can be improved. The survey had emphasized that modifications and clarifications are needed, specifically on: (i) arbitrators' disclosure on issues of conflict on interests; (ii) third-party funding; (iii) organizational models for legal professions in different jurisdictions; (iv) expert witnesses; (v) sovereigns or their agencies and instrumentalities; (vi) non-lawyer arbitrators; and (vii) the use of social media. The appointed task force for this matter intends to conclude its proposed amendments by 2024.¹⁷

16. You may find more details [here](#).

17. You may find more details [here](#) and [here](#).

18. You may find more details [here](#).

(e) The UN General Assembly has asked the court to elaborate on states' accountability for climate change

In its letter dated 12 April 2023, the United Nations (UN) General Assembly has requested the International Court of Justice (ICJ) to further clarify States' obligations regarding safeguarding and respecting climate change. The UN General Assembly has particularly asked the ICJ to emphasize States' obligations to safeguard and to protect the environment from potential climate change and possible legal consequences for states if they significantly harm or fail to protect the environment from climate change.¹⁸

(f) Greece adopts a new law on international arbitration

On 4 February 2023, the Greek legislator adopted a new law ("**Law**") in the field of international arbitration. The Law aims to modernize the national legal framework governing international commercial arbitration and harmonize its provisions with the UNCITRAL Model Law on International Commercial Arbitration ("**UNCITRAL Model Law**"), as amended and in force. The Law states that, as a rule, barring express statutory prohibition, all conflicts are, arbitrable.

Even though the Law clearly covers conflicts involving international arbitration, the parties may agree for it to

also apply in situations involving only domestic issues. According to the Law, arbitration agreements may be written in any format the parties choose. In this respect, exchange of letters or electronic communications are recognized as legitimate arbitration agreements under the Law. The Law also regulates the freedom of choice regarding the number of arbitrators. However, the number must be odd. In the absence of an agreement, three arbitrators will be appointed.

The Law also outlines the criteria and the processes for challenging an arbitrator or secretary; however, arbitrators can only be held accountable for misconduct or wilful neglect in the performance of their duties.





The procedure to be followed, the language of the proceedings and any requirements for confidentiality are all up to the parties' discretion. If they are unable to agree, the arbitral tribunal will make the decision.

Finally, the Law expressly provides that interim measures can be sought from courts instead of the arbitral tribunal before or even after the arbitration has commenced. If the interim measure obtained from the arbitral tribunal is then found to be unwarranted, the Law provides for a duty to compensate.¹⁹

(g) Germany decided to modernize its arbitration law

The 1985 edition of UNCITRAL Model Law serves as the foundation for the current German arbitration law. The German Federal Ministry of Justice declared on 18 April 2023 that this legislation would strengthen Germany's position as the centre for arbitration, update current laws and make German arbitration rules more effective. The German Federal Ministry of Justice also introduced its new plan to implement an unusual remedy that would let parties to set aside domestic awards if they suffer from "*significant defects*". If this occurs, a retrial will be required.

The use of emergency arbitrators is another potential area for reform that the German Federal Ministry of

Justice claims it intends to look at.

Twelve major reforms that have been proposed thus far concern the following areas: relaxation of the form requirement in the arbitration agreement to allow for oral and electronic arbitration agreements; the manner in which the court appoints the arbitral tribunal in arbitrations with multiple parties; a mechanism for judicial review of adverse decisions on jurisdiction; the possibility of remote hearings unless otherwise agreed by the parties; the publication of arbitral awards with the parties' consent; and the use of English in the recognition, enforcement or annulment of an award in an arbitration conducted in English, thereby avoiding the cost of translation.²⁰

(h) Winners of GAR Awards

Diversity was the overarching theme of the Global Arbitration Review (GAR) Awards, which took place in Paris on 30 March 2023, with more than 370 guests from all over the world. The event's earnings were donated to the Swawou School for Girls in Sierra Leone, which was founded in 2009 by GAR's owner, Law Business Research, to provide free primary education to girls from underprivileged homes.



The following are some of the awards given out on this special night:

- The first award of the evening was for the best innovation by an individual or organization, one of the five categories voted for by GAR readers. The winner was Africa in the Moot, which aims to increase African participation in the Vis Moot Court and launched the East African Vis Pre-Moot.
- The award for the best development went to the UN General Assembly's recognition of the need for an international mechanism to raise compensation claims against Russia for its war in Ukraine.
- The Compendium of Unicorns, a global directory of female arbitrators published by Mute Off Thursdays, received the ERA Pledge award.
- The most important decision award, determined by a popular vote, went to the Paris Court of Appeal decision to annul an ICC award due to a eulogy written for Emmanuel Gaillard.
- Gabrielle Kaufmann-Kohler became the first woman to receive the GAR lifetime achievement award.

19. You may find more details [here](#).

20. You may find more details [here](#) and [here](#).



The annual GAR 30 ranking of the world's busiest international arbitration practices and the GAR's Expert Witness Power Index were also announced at the event.²¹

(i) GAR releases the UCIA's second version

Universal Citation in International Arbitration (UCIA) published by GAR is a consensus document on the most practical and advanced citation system to be followed in arbitral proceedings worldwide, written by experts in the field.

21. You may find more details [here](#).

22. You may find more details [here](#).

23. You may refer to the [Fourth Issue of Esin Arbitration Quarterly](#) for more information on the amended DIAC arbitration rules.

24. You may find more details [here](#).

25. You may find more details [here](#).

UCIA has been updated to include instructions for 16 new jurisdictions, namely: Argentina, Canada, Chile, China, Germany, India, Indonesia, Italy, Malaysia, Mexico, Pakistan, the Philippines, Saudi Arabia, South Korea, United Arab Emirates and Vietnam.²²

(j) DIAC uses technology at full speed in dispute resolution

On 30 March 2023, the Dubai International Arbitration Centre (DIAC) announced the launch of its metaverse for dispute resolution, which will revolutionize the way in which disputes are resolved worldwide. The DIAC metaverse platform makes use of cutting-edge technology to create immersive environments that make it easier for participants to communicate, share documents and work together in real time. While the new step towards conducting arbitration in an alternate reality spares the parties from travelling miles away and allows them to join the hearing from where they are comfortable with, the metaverse also provides a sustainable and greener environment for its users.

On 21 March 2022, DIAC's amended arbitration rules entered into force.²³ With this new metaverse initiative, it appears that DIAC is further cementing its place as a prominent arbitral institution in the region.²⁴

(k) ISTAC rules on costs and fees are updated

Istanbul Arbitration Centre (ISTAC) recently updated its Rules on Costs and Fees. Accordingly, the minimum fee for an arbitrator is TRY 5,000, whereas the minimum fee for an emergency arbitrator is TRY 30,000. In cases of ad hoc arbitration, the cost for the appointment of an arbitrator is TRY 5,000. Finally, as of 1 May 2023, the limit set out in the ISTAC Fast Track Arbitration Rules regarding its application has been increased to TRY 3 million.

(l) New arbitration clause on power purchase agreements in Brazil

An arbitration clause is included in the Convention for Commercialization of Electric Power ("**Convention**") which lays out certain mandatory terms and conditions of the purchase and sale of electric power within the Brazilian energy sector.²⁵ The Convention is administered by the Electric Power Commercialization Chamber (CCEE). The Brazilian Electric Power Agency admitted a new arbitration clause that applies to the Convention on 14 February 2023, to go into effect on 1 March 2023, with the following modifications on arbitration:

- Formerly, disputes before the CCEE had to be settled through arbitration before the Fundação Getulio Vargas Arbitration Chamber in Rio de Janeiro. Now, however, the parties can choose the institution of their choice.



- The arbitration proceedings shall be governed by Brazilian law and shall be conducted in Portuguese.
- There will be a tribunal made up of three arbitrators, unless the parties agree otherwise.
- The city of São Paulo will serve as the seat of arbitration if CCEE is a party and the competent courts for interim injunctions will be the courts of São Paulo.

(m) Brazil adopted new regulations on Corporate Arbitrations

The most prominent arbitral institution in Brazil, the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada, published new rules specific for corporate arbitrations on 26 April 2023. Under the new rules, an arbitration is deemed “corporate” if the arbitral award affects not only the parties, but also the company, its shareholders, partners or managers. The following matters are presented as examples of corporate arbitration:

- the invalidity of the resolution of any meeting of the board of directors as well as of any meeting of shareholders, partners or associates;
- the expulsion of a shareholder, partner or associate from the company or the dissolution of a company, limited liability company or association in whole or in part;
- accountability of the director, controlling shareholder or manager in relation to the legal entity and its other shareholders, partners or associates;

26. You may find more details [here](#).

27. You may access the report [here](#).

- accountability for abuse of voting rights by a shareholder, partner or associate.

These new rules were implemented in a situation where arbitration, while preferred for settling business disputes in Brazil, has been causing a number of complex issues due to the requirement of identical outcomes for all parties. Corporate arbitrations are plagued by a number of problems, including concurrent litigation and the development of legal effects on stakeholders who were not the original parties to the arbitration. All of the relevant notified parties shall be bound by the decision of arbitration, whether or not any of them elect to participate therein. In accordance with any confidentiality agreement that may apply to the parties, even the notified parties that choose not to participate in the arbitration as a party may request a link to access all the documents submitted to the file.

Therefore, by requiring notification to the legal entity and any shareholders, partners, or associates who may join the proceeding, as applicable, those regulations attempt to address the above highlighted issues presented by corporate arbitrations.²⁶

(n) LCIA 2022 Annual Casework Report has been published

The newly published report on LCIA’s 2022 caseload (“**the Report**”) sheds light on the current trends in international arbitration and illustrates LCIA’s role within the sector.²⁷ Furthermore, the data shows the impact of Russia’s invasion of Ukraine and of the imposed sanctions

i. Leading industry sectors in LCIA Arbitrations

One of the most essential finding highlights that more than half of the LCIA Arbitrations were regarding transport & commodities and bank & finance sector disputes, 37% and 15% respectively. Surprisingly, energy related disputes made up around 25% of LCIA Arbitrations held in 2021, however, the current figure demonstrates that only 11% of LCIA Arbitrations were energy related disputes. The report suggests that this downfall may be related to “*the ripple effect the fluctuation energy prices has caused.*” Finally, construction & infrastructure related disputes represented only 5% of all the LCIA Arbitrations.





ii. Types of agreements

The next crucial data that requires attention illustrates the types of agreements that were a focal point to LCIA Arbitrations in 2022. Unsurprisingly, 34% of the arbitrations originate from 'sale of goods' agreements. On the other hand, 10% of arbitrations were in relation to SPA, SHA and joint venture agreements. While none of the LCIA Arbitrations in 2021 were regarding a charter party agreement, the new data shows that around 4% of the LCIA Arbitrations were initiated by relying on charter parties contracts.

iii. Parties in LCIA Arbitrations

The findings illustrate that only 12% of parties in LCIA Arbitrations were from the United Kingdom and the remaining 88% originated from 91 different countries. The data illustrates 22% of parties in LCIA Arbitrations were from Western Europe. The 2021 data highlighted that 8% of the parties in LCIA Arbitrations originated from Asian countries, however, this figure sky-rocketed to 24% in 2022.

iv. Governing law and the seat of LCIA Arbitrations

Other than the United Kingdom, the parties have chosen 12 other countries such as Germany, Singapore, Dubai and Switzerland as the seat of arbitration. The data illustrates that 258 LCIA Arbitrations were seated in the United Kingdom, whereas the number for Singapore and Dubai is 6 and 5 respectively. In terms of governing law, the laws of United Kingdom were the most dominant whereas, the laws of New York and Brazil were also both selected as governing law in 3 occasions.

v. Appointment of arbitrators and their nationalities

Out of 423 appointments made in 2022, a total of 289 different arbitrators were selected to conduct LCIA Arbitrations and 60% of them were British arbitrators. The data also shows that almost 60% of the LCIA Arbitrations conducted in 2022 involved an arbitral tribunal (as opposed to a sole arbitrator), while this figure was around 50% in the 2021's report.

vi. Gender diversity in the appointed LCIA arbitrators

While the data shows a promising finding that 45% of all LCIA Court appointments were women, the parties have appointed female arbitrators in 19% of the cases and the co-arbitrators have appointed female arbitrators as the head of the tribunal in 23% of the instances.

vii. Multi-party arbitrations

In the year 2022, 20% of the LCIA Arbitrations were multi-party arbitrations and almost 1% of all the LCIA Arbitrations have involved ten or more parties.

(o) CI Arb has launched a guideline on multiparty arbitration

In a reception during London International Disputes Week held on 16 May 2023, CI Arb introduced a guideline on how to deal with complications related to multiparty arbitrations. The guideline mainly focuses on commonly faced scenarios and issues during multiparty arbitrations. The first chapter of the guideline highlights widely faced encounters on joinders, whereas second part of the guideline highlights the issues faced in relation to consolidation. Finally, the last chapter of the guideline sheds light on rights and roles in cases where multiple claimants and respondents are involved in the arbitration and whether an arbitral tribunal can deny a party's involvement to the arbitration.²⁸

28. You may access the guideline [here](#).



Conclusion

Just like the first three months of 2023, the field of international arbitration continues to be active and full of advancements. On one hand, investment treaty claims brought against States continue to be a focal point in international arbitration, and on the other, associations and institutions insist on achieving a reliable and sustainable ecosystem for the stakeholders of international arbitration by focusing on guidelines and issues regarding conflicts of interest.

Furthermore, as we have underlined in our previous issues, since the ECT directly contradicts with the Paris Agreement and is presenting contradictory obligations for its contracting parties, States all over Europe were starting to withdraw from the ECT and, the last three months were no different. Before our next publication, we will continue to monitor and analyze the news in international arbitration and provide updates on the new trends and developments in international arbitration.

Contacts of our Dispute Resolution Department

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Events Calendar

June 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				<p>1 Alternative Dispute Resolution (ADR) — What's New? — Regional and global arbitration specialists will update and consider recent global developments in ADR United Kingdom (webinar)</p> <p>Let's Discuss the Impact of AI in Arbitration United Kingdom (webinar)</p> <p>Mining Disputes Between Investors and States London, UK</p>	2	3
4	<p>5 International Arbitration 2023 New York, US</p>	6	<p>7 The Show Must Go On: Managing Document Production, Evidence and Hearings United Kingdom (webinar)</p>	8	9	10
11	12	<p>13 Everything an Advocate Needs to Know About Winning Attorney Fees and Costs in an Arbitration US (webinar)</p>	<p>14 The Active Arbitrator: Combatting Guerrilla Tactics and Adopting Proactive Case Management Practices United Kingdom (webinar)</p>	<p>15 Arbitration and Mediation 2023: Fulfilling the Promise - Getting Matters Resolved in a Timely and Efficient Way in Today's World US (webinar)</p>	16	17
18	19	20	21	<p>22 Practical Tips for Navigating Cybersecurity and Data Privacy Issues in Arbitration New York, US</p> <p>GAR Live: Istanbul 2023 Istanbul, Türkiye</p>	23	24
25	26	27	28	29	30	

Organizer

- IBA
- CI Arb
- British Institute for International and Comparative Law
- Practising Law Institute
- AAA
- New York State Bar Association
- GAR



Events Calendar

July 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4 Roundtable: The Impact of Economic Sanctions on International Arbitration London, UK		6 GAR Live: Energy Disputes 2023 London, UK	7	8
9	10	11	12	13	14	15
16	17 Comprehensive Commercial Arbitration Training For Arbitrators and Counsel July 2023 New York, US			18	19	20
21	22	23	24	25	26	27
28	29	30	31			

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- New York State Bar Association



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