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ALERT MEMORANDUM

International Arbitration Trends and Topics for 2026

Many topics captured the interest of the international arbitration community in 2025. The implementation of sweeping tariffs by the new U.S. administration created unprecedented disruption in cross-border commerce and triggered a wave of trade-related disputes, while other political reform efforts – including shifts in energy and environmental policy under the Trump administration affecting wind energy development, natural resource extraction, fuel emission standards, and related supply chains – similarly create uncertainty and have the potential to foster new disputes. Environmental, social, and governance ("ESG") issues continued to gain prominence in international arbitration, with parties increasingly invoking sustainability commitments, climate-related obligations, and human rights standards in investment treaty and commercial disputes spanning the energy, infrastructure, and natural resources sectors. We expect that 2026 similarly will herald a number of interesting developments in international arbitration.

This article summarizes what are likely to be key trends and topics in international arbitrations in 2026, including: (1) the surge in commercial arbitrations driven by tariff-related disputes and other U.S. government policy changes, as parties grapple with questions of cost allocation, contract modification, and force majeure in an era of unprecedented trade uncertainty; (2) evolving trends in M&A and securities arbitration, including the implications of the U.S. Securities Exchange Commission's ("SEC") policy shift permitting mandatory arbitration clauses in public company registration statements; (3) strategic considerations in selecting arbitral seats amid political and legal changes, particularly following Mexico's judicial reform and the entry into force of England's new Arbitration Act 2025; (4) the complex landscape of enforcing arbitral awards against sovereign states, including ongoing debates over sovereign immunity, assignability of awards, and public policy defenses based on fraud and corruption; and (5) the intersection of international arbitration with emerging technologies, including the deployment of AI systems in adjudicative roles and the enforceability challenges facing cryptocurrency-related disputes.

1

Tariff Changes Drive Transformation and Growth in Commercial Arbitrations

The rapidly changing global tariff landscape is poised to reshape international arbitration in 2026 and beyond. Since early 2025, the U.S. administration has imposed tariffs, some of which are now at 100-year highs, that have disrupted supply chains and injected acute uncertainty into cross-border commerce.[1] As a result, many commercial relationships are now under strain: some contracts can only be performed with delay or at sharply increased cost, while others may become commercially irrational or outright impossible. Because large cross-border commercial agreements often include arbitration as the preferred dispute resolution mechanism, international arbitration is set to become a critical forum for resolving disputes arising from the shifting tariff regime.

Legality of Tariffs

In addition to product-specific tariffs imposed pursuant to Section 232 of the Trade Expansion Act of 1962, U.S. President Donald J. Trump has also imposed country-specific tariffs pursuant to the International Emergency Economic Powers Act of 1977 (the "IEEPA").[2] On April 2, 2025, the Trump administration announced sweeping reciprocal tariffs affecting nearly all of the United States' trading partners, including large-scale economies like China and Brazil.[3]

The IEEPA-based tariffs in particular have sparked intense legal debate. The D.C. District Court and the Court of Appeals for the Federal Circuit enjoined certain IEEPA tariffs as exceeding presidential authority, though appeals remain pending.[4] The Supreme Court heard oral arguments in *Learning Resources, Inc. v. Trump* on November 5, 2025, and is expected to rule in its upcoming term on (i) whether the IEEPA authorizes the President to impose tariffs, and (ii) if so, whether it unconstitutionally delegates legislative power to the President.[5]

This constitutional uncertainty is now playing out not only in the courts but also in commercial arbitrations. Parties benefitting from tariffs or seeking continued performance under their contractual arrangements argue that the measures are lawful exercises of executive authority and do not excuse counterparty obligations. Conversely, parties suffering from the impact of certain tariffs or seeking to be excused for non-performance contend that the measures

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[1] *See, e.g.,* Reuters, *IMF says new US tariffs keep trade uncertainty running high* (July 10, 2025), https://www.investing.com/news/economy-news/imf-says-new-us-tariffs-keep-trade-uncertainty-running-high-4130762.

[2] *See, e.g.*, Reuters, *What's in Trump's sweeping new reciprocal tariff regime* (Apr. 3, 2025), available at https://www.reuters.com/world/us/whats-trumps-sweeping-new-reciprocal-tariff-regime-2025-04-03/.

[3] *Id.*

[4] *See generally Learning Resources, Inc. v. Trump*, No. 24-1287 (D.D.C. May 2025); *V.O.S. Selections, Inc. v. Trump*, No. 25-1812 (Fed. Cir. Aug. 29, 2025).

[5] Oral Argument, *Learning Resources, Inc. v. Trump*, (2025) (No. 24-1287), https://www.supremecourt.gov/oral_arguments/audio/2025/24-1287.

are *ultra vires*, fundamentally alter the economic basis of the contract, or constitute unforeseeable governmental action triggering force majeure or hardship relief. Some arbitral tribunals have elected to stay tariff-related proceedings pending the Supreme Court's decision.[6]

Contractual Tariff Disputes

1. *If the contract remains in place as-is, who bears the cost of tariffs?*

When parties continue to perform under existing contracts despite tariff increases, disputes frequently arise over who bears the additional cost. Under U.S. customs law, the importer of record is generally responsible for paying duties and tariffs upon entry of goods into the United States.[7] However, commercial contracts often allocate tariff risk through a range of provisions such as pricing clauses, change-in-law provisions, or trade terms such as Incoterms.[8] These clauses are now receiving renewed scrutiny as parties – and arbitral tribunals, once matters escalate – seek to determine whether the seller or buyer ultimately bears the cost of import duties.

2. *If the contract is to be modified, what mechanisms allow adjustment?*

Many long-term contracts contain mechanisms to adjust terms in response to changed circumstances. Depending on the contractual language and the applicable law, the imposition of tariffs may constitute just such a change. Key adjustment mechanisms include:

— **Hardship clauses**: These provisions allow parties to demand renegotiation of key terms (e.g., volume, price) under certain circumstances, such as when an event fundamentally alters the economic balance of the contract and renders performance excessively onerous.

— **Price review clauses**: Common in energy and commodity contracts, these clauses permit price adjustments according to an agreed formula, either periodically (without cause) or if specific criteria, such as a significant change in circumstances, are satisfied.

— **Material adverse effect ("MAE") clauses**: Frequently found in M&A agreements, these clauses allow parties to renegotiate or terminate transactions if circumstances materially worsen between signing and closing. However, U.S. courts construe MAE clauses narrowly and often exclude general economic changes or industry-wide disruptions.[9]

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[6] Even in arbitrations governed by non-U.S. law, such as English law, or seated elsewhere, parties are invoking representation and warranties clauses on compliance with local laws and regulations to contend that U.S. legal developments concerning tariffs have an impact on the parties' ability to carry out their obligations under the contract.

[7] *See* 19 U.S.C. § 1484(a)(1) (2022).

[8] The most common of these are Ex Works ("EXW"), whereby the risk transfers when the seller makes the goods available at its premises, and Delivered Duty Paid ("DDP") whereby the risk transfers at deliver to the buyer's location. *See, e.g.*, Int'l Chamber of Commerce, Incoterms 2020: ICC Rules for the Use of Domestic and International Trade Terms (2019).

[9] *See, e.g., In re IBP, Inc. S'holders Litig. v. Tyson Foods*, 789 A.2d 14, 67-68 (Del. Ch. 2001).

Arbitral tribunals, especially when applying laws from civil law jurisdictions, may also apply hardship doctrines or the principle of *rebus sic stantibus* which allow relief short of termination in response to disruptive tariff shocks.[10] Even where contracts lack formal adjustment mechanisms, parties may nonetheless attempt renegotiation, sometimes under the shadow of pending arbitration.

3. *If the contract is suspended or terminated, can non-performance be excused?*

When tariffs make contracts difficult or impossible to perform, parties may seek to excuse non-performance. The most common avenue to do so is typically through "force majeure" clauses, which may excuse parties from liability for extraordinary events beyond their control. Whether tariffs trigger such a clause depends on the specific language of the force majeure provision. Pandemic-era cases in the U.S. and England suggest that courts generally construe force majeure clauses narrowly and require that the triggering event be specified in the provision or fall within a catch-all category.[11]

In parallel with force majeure clauses, parties often invoke common law doctrines—such as impossibility, impracticability (U.S.), or frustration (English law)—as fallback arguments. However, these doctrines tend to be applied sparingly.[12]

In response to recent disruptions caused by increased tariffs or other political changes, parties are increasingly drafting force majeure and related clauses, sometimes colloquially referred to as "Trump measure clauses," into their contracts. These clauses explicitly reference tariffs, trade sanctions, or governmental actions, and may include structured renegotiation or price review triggers tied to defined tariff thresholds.

As the tariff landscape continues to evolve, the coming years are expected to witness a significant rise in tariff-related commercial arbitrations, as disputes mature and parties exhaust available avenues for negotiation.

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[10] *See, e.g.*, Int'l Inst. for the Unification of Private Law, UNIDROIT Principles of International Commercial Contracts (2016), Article 6.2 (empowering a court or tribunal to adapt a contract to restore its equilibrium after renegotiation fails). *See also* Ingeborg Schwenzer & Edgardo Muñoz, "Duty to Renegotiate and Contract Adaptation in Case of Hardship," 24 Uniform Law Rev. 149 (2019).

[11] *See, e.g., JN Contemp. Art LLC v. Phillips Auctioneers LLC*, 507 F. Supp. 3d 490, 501-02 (S.D.N.Y. 2020), aff'd, 29 F.4th 118 (2d Cir. 2022) (holding that COVID-19 and related restrictions constituted a "natural disaster" under the force majeure clause only where the contract defined the triggering circumstances broadly enough to include such an event); *Dwyer (UK Franchising) Ltd v. Fredbar Ltd* [2021] EWHC 1218 (Ch).

[12] *See, e.g., Kel Kim Corp. v. Cent. Markets, Inc.*, 70 N.Y.2d 900 (N.Y. 1987) (holding that common-law doctrines of impossibility and impracticability are applied narrowly and only in extreme circumstances); *Bank of New York Mellon (International) Ltd v Cine-UK Ltd* [2021] EWHC 1013 (QB) (holding that frustration only applies when performance has become radically different from what was contemplated at the time of contracting).

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Beyond the Deal: Emerging Trends in M&A and Securities Arbitration

Resolving M&A and securities disputes has become increasingly complex, particularly in cross-border transactions and joint ventures involving multiple stakeholders. Global M&A activity was up 10% in the first nine months of 2025 as compared to the same period in 2024, demonstrating that the trend of high-profile mergers and acquisitions continues to be on the rise.[13] As deal values and strategic stakes rise, so too does the potential for disagreement over contractual provisions, such as rights of first refusal ("ROFR") and change of control clauses. Recent developments, such as the high-profile arbitration involving Exxon Mobil Corporation ("Exxon"), Hess Corporation ("Hess"), Chevron Corporation ("Chevron"), and China National Offshore Oil Corporation ("CNOOC") over a Joint Operating Agreement ("JOA"), and the changes by the U.S. Securities and Exchange Commission ("SEC") to its long-standing opposition to mandatory arbitration clauses in public company registration statements, highlight key issues to consider in when drafting relevant agreements and arbitrating M&A disputes.

The Exxon-Hess Arbitration

One of the most high-profile M&A cases arbitrated in 2025 was the dispute that arose out of the Stabroeck Block joint venture between Hess, Exxon, and CNOOC for offshore exploration and drilling off of the coast of Guyana. Chevron announced it had reached a deal with Hess in October 2023 to enter into a merger, which was valued at $53 billion and would create one of the largest energy companies in the world.[14] However, the deal was then held up for nearly two years part of which was attributable to an arbitration focused on a few words in a joint venture agreement.

After Chevron and Hess announced their merger, Exxon initiated an arbitration under the International Chamber of Commerce ("ICC") rules seated in Paris seeking to apply the ROFR, alleging that it should have been given an opportunity to purchase Hess's interest in the joint venture.[15] CNOOC filed a similar arbitration shortly thereafter, and the cases were consolidated. Based on public statements, it appears that Chevron and Hess argued that the ROFR did not apply due to the structure of the merger, which was set up as a corporate merger rather than an asset sale pursuant to which Hess would become a direct, wholly owned subsidiary of Chevron.[16] In contrast, Exxon and CNOOC argued that the merger was a change of control which would

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[13] *See* Reuters, *Global M&A activity up 10% in first nine months of 2025, study shows* (Oct. 28, 2025), https://www.reuters.com/business/global-ma-activity-up-10-first-nine-months-2025-study-shows-2025-10-28/.

[14] *See* Hess Corp. Annual Report (Form 10-K), (Dec. 31, 2023, at 7, https://investors.hess.com/static-files/514e8ef4-2d5b-4765-b48c-e6e681a06163.

[15] *See* Spencer Kimball, *Exxon could make a bid for Hess' oil assets in Guyana if Chevron deal terminates,*CNBC, (Mar. 6, 2024), https://www.cnbc.com/2024/03/06/exxon-could-make-bid-for-hess-oil-assets-in-guyana-if-cvx-deal-terminates.html.

[16] Kevin Crowley, C*hevron Set to Clear FTC Hurdle for Its $53 Billion Hess Deal*, Bloomberg (Sep. 23, 2024) https://news.bloombergtax.com/mergers-and-acquisitions/chevron-set-to-clear-ftc-hurdle-for-its-53-billion-hess-deal?context=search&index=7.

have triggered the ROFR requirement, and that the merger was structured to bypass the ROFR clause.[17] The arbitration proceeded on an expedited basis, as the one pre-closing condition preventing the Chevron-Hess merger.

In July 2025, an ICC tribunal ruled in favor of Hess and shortly thereafter, Chevron announced the merger had immediately closed. While details of the award are confidential, it is likely that the tribunal found that the merger did not qualify as an "applicable change of control" under the language of the JOA sufficient to trigger Exxon's and CNOOC's ROFR rights under the Stabroeck Block JOA.

SEC Policy Changes

Another notable development in 2025 was the SEC's policy statement issued in September in which it changed its longstanding position that mandatory arbitration clauses were a barrier to accelerating the effectiveness of registration statements.[18] The SEC thus opened the door for issuers to include clauses that will require investors to arbitrate disputes, so long as the arbitration clauses are adequately disclosed.

Given that this policy statement came into effect in late 2025, it is to be expected that more issuers in 2026 will include arbitration clauses in their registration statements. Indeed, on December 1, 2025, Zion Oil & Gas became the first public company to adopt a mandatory arbitration provision under its bylaws, requiring Texas-law governed arbitration.[19]

As the prevalence of arbitration in disputes surrounding public companies grow, one potential model for U.S. practitioners to turn to is the integration of arbitration into the capital markets in Brazil. For over 20 years, public companies in Brazil have included arbitration clauses under a securities arbitration framework developed by the Brazilian stock exchange, with companies under this framework disclosing mandatory arbitration clauses in their bylaws. In 2024, the Brazilian Câmara dos Deputados (Chamber of Deputies) approved a capital markets reform package that included additional protections for minority shareholders, along with other changes and policies to solidify transparency and predictability.[20] As the U.S. perspective on arbitrating disputes relating to investments in private companies continues to change, the Brazilian model may serve as a helpful reference point.

Key Considerations

Both the Exxon-Hess arbitration and the SEC policy statement serve to highlight the differences between arbitrating and litigating M&A and securities-related disputes, which will continue to be emphasized as more companies adhere to the SEC statement, or more companies elect to arbitrate M&A disputes.

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[17] Sabrina Valle, *Exxon clash with Chevron hinges on change of control of Hess' Guyana asset, sources say Reuters* (July 18, 2024), https://www.reuters.com/business/energy/exxon-clash-with-chevron-hinges-change-control-hess-guyana-asset-sources-say-2024-07-18/.

[18] Securities and Exchange Commission, *Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions*, Release Nos. 33-11389 & 34-103988 (Sep. 17, 2025), https://www.sec.gov/files/rules/policy/33-11389.pdf.

[19] *See* Zion Oil& Gas, Inc., Current Report (Form 8-K) (Dec. 1, 2025), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001131312/000143774925036533/znog20251201_8k.htm.

[20] Pedro Marinho Nunes &, Gabriel Teixeira Alvez, *An overview of Brazil's arbitration landscape* Global Arbitration Review (Aug. 26, 2025), https://globalarbitrationreview.com/guide/the-guide-arbitration-in-latin-america/fourth-edition/article/overview-of-brazils-arbitration-landscape.

Confidentiality. A key distinction between arbitration and litigation has always been the confidentiality afforded to arbitration.[21] Even when the applicable procedural rules do not automatically provide for awards or proceedings to be confidential – as was the case for the ICC Rules governing the Exxon-Hess arbitration[22] – the parties are often afforded additional protections in having a case proceed outside of a public docket that is typical in U.S. courts.[23] This can be critical in M&A disputes where sensitive commercial information is often at stake, including given ongoing business relationships, and can be even more important in a case with such heightened media scrutiny as the Exxon-Hess arbitration.

In disputes regarding a company's bylaws or other corporate governance issues in particular, the ability to now send those disputes to confidential arbitration may provide an enticing incentive to companies. However, some proxy advisory services companies have said that they will recommend that shareholders vote against any bylaw or charter amendment seeking to adopt a mandatory arbitration provision due to concerns about transparency.[24]

Interpretation of Preemption and Control Rights. While not all arbitrations are the subject of such public interest, the Exxon-Hess arbitration highlights the importance of change of control and preemption provisions in agreements that are common in the energy and natural resources sector. While ROFR provisions are common in joint venture agreements, and have the underlying objective of insulating the parties to a joint venture from changing without the approval of all members, it is clear that disputes will continue to arise as to the interpretation of these clauses, with the potential to impact large international transactions.

The specific language of the ROFR in the Stabroeck Block JOA is unknown, although it is widely believed that the JOA was based the model language published in 2002 by the Association of International Energy Negotiators.[25] The Exxon-Hess arbitration demonstrates that the parties had a different interpretation of what conditions would trigger the ROFR, particularly in light of the structure of the Hess-Chevron merger. As M&A volume continues to show year-over-year growth, it may be important for parties in industries that typically rely on form contracts as a starting point for their negotiations to ensure that such provisions relating to preemption and control rights cover potential future transactions.

Enforceability of Final and Interim Awards. Another key difference between arbitrating and litigating these disputes includes the enforceability of foreign arbitral awards as opposed to foreign judgments. Where there are concerns that a party may seek to avoid enforcement of a foreign court judgment against them, arbitration presents a major advantage in obtaining recognition and enforcement of an arbitral award in light of the widespread adoption of the 1958 Convention on the Recognition and Enforcement of Foreign

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[21] *See* Nigel Blackaby *et al., Redfern and Hunter on International Arbitration* ¶ 2.179, at 100 (7th ed. 2022).

[22] *See* ICC Rules of Arbitration, effective as of January 1, 2021 ("ICC Rules"), Art. 8, App'x II.

[23] *See* Nigel Blackaby *et al.*, Redfern and Hunter on International Arbitration ¶ 2.179, at 100 (7th ed. 2022).

[24] *See, e.g., Glass Lewis 2026 Benchmark Policy Guidelines* at 7, 77, https://resources.glasslewis.com/hubfs/2026%20Guidelines/Benchmark/Benchmark%20Policy%20Guidelines%202026%20-%20United%20States.pdf.

[25] *See* Sabrina Valle, E*xxon clash with Chevron hinges on change of control of Hess' Guyana asset, sources say*, Reuters, (July 18, 2024), https://www.reuters.com/business/energy/exxon-clash-with-chevron-hinges-change-control-hess-guyana-asset-sources-say-2024-07-18/.

Arbitral Awards (the "New York Convention") in 172 jurisdictions.[26] The speed with which parties can enforce foreign arbitration awards is often important in M&A disputes, which may involve that the contracting parties may want to minimize.

The advantages of enforceability of final awards, however, may not translate to interim or provisional measures, which can be important in M&A disputes, where there is a particular threat that assets may be dissipated or a loss of control threatens to render a party's requested relief nugatory. While institutional arbitration rules increasingly provide for tribunal's authority to grant interim and even emergency measures,[27] unless the losing party voluntarily complies, the prevailing party will generally need to resort to domestic courts to enforce, and in certain jurisdictions, courts may be more expeditious at granting relief (and can provide the added benefit of granting such relief on an *ex parte* basis). As a result, parties may continue to look to courts in the context of M&A disputes to provide interim relief and assistance in aid of the arbitration, although the ability of parties to avail themselves of this option may depend on the language of the parties' arbitration agreement, the applicable arbitration rules, and whether the parties can agree to an expedited timeframe for resolving the dispute as a whole, which was the case in the Hess-Exxon arbitration (where it does not appear that the parties opted for interim measures in court, but the case was concluded in just over one year).

[26] *See* Contracting States, New York Convention, https://www.newyorkconvention.org/contracting-states/contracting-states (last visited Dec. 2, 2025).

[27] *See, e.g.*, ICC Rules, Arts. 28–29.

3

Arbitral Seats in Flux: Strategic Choices in a Shifting Legal and Political Landscape

As global political and legal landscapes continue to shift across key jurisdictions, parties in international arbitration are becoming increasingly strategic in selecting their arbitral seats. With these developments reshaping procedural expectations, parties and practitioners alike rightfully consider the choice of seat in arbitration agreements to be a critical decision shaped by evolving political realities and other factors, including legal predictability and stability.

Indeed, the choice of the arbitral seat is one of the most important decisions that parties can make when drafting their agreements, as it carries significant consequences. Among the most important are establishing the applicable lex arbitri – which governs procedural matters – as well as the designation of the courts to assist in enforcing the arbitration agreement and adjudicate any annulment, or set aside, proceedings once an award has been issued.

Several global developments are expected to influence parties' choice of arbitral seats in 2026, including Mexico's judicial reform and the entry into force of the revised English Arbitration Act.

Mexico's judicial reform

In 2025, Mexico became the first country to elect its judiciary through popular vote.[28] Following the enactment of the judicial reform on September 15, 2024,[29] and a subsequent general election, the first phase of the new reform took effect on September 1, 2025 when over 2,600 newly-elected local and federal judges – including all nine justices of the Mexican Supreme Court of Justice – were sworn in.

Mexican government officials and some commentators have hailed the reform as a democratic milestone to combat corruption and enhance representation.[30] On the other hand, some legal practitioners, businesses, and investors remain skeptical of the implications of this significant change.[31] The reform replaced appointed judges with elected individuals, some of whom may lack prior judicial experience (including a background in alternative dispute

[28] *Mexico Will Be the Only Country That Elects All Its Judges*, The Economist (May 15, 2025), https://www.economist.com/the-americas/2025/05/15/mexico-will-be-the-only-country-that-elects-all-its-judges.

[29] *Diario Oficial de la Federación [DOF]*[Official Gazette of the Federation], *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Constitución Política de los Estados Unidos Mexicanos, en materia de reforma del Poder Judicial* (Sep. 15, 2024) (Mex.), https://www.dof.gob.mx/nota_detalle.php?codigo=5738985&fecha=15/09/2024#gsc.tab=0.

[30] *See* Mexico, Presidency, *Reforma al Poder Judicial es la lucha del pueblo de México contra la corrupción y el nepotismo: Presidenta Claudia Sheinbaum* (2024) https://www.gob.mx/presidencia/prensa/reforma-al-poder-judicial-es-la-lucha-del-pueblo-de-mexico-contra-la-corrupcion-y-el-nepotismo-presidenta-claudia-sheinbaum.

[31] Cyrus R. Vance Center for International Justice, *Judicial Reform in Mexico: A Guide for Companies on Implications and Risks* (Jan. 28, 2025), https://www.vancecenter.org/wp-content/uploads/2025/01/VC-Guide-Judicial-Reform-in-Mexico-1.28.25.pdf.

resolution).[32] Several of the newly elected judges are affiliated with the ruling political party that also controls Mexico's executive and legislative branches.[33]

Some practitioners perceive the judicial reform as a potential catalyst to expand arbitration in Mexico beyond traditional complex, high-value disputes,[34] particularly given recent arbitration-friendly developments such as the creation of a specialized arbitration court in Yucatán, Mexico.[35] While the reform may lead parties to rely more heavily on arbitration, certain parties may be hesitant to choose Mexico as the seat of arbitration. This could create exposure to potential judicial overreach and the risk of a ruling issued by judges with more limited experience. While the judicial reform's impact is not yet known, parties to Mexico-related arbitrations may be more likely to choose a seat outside of Mexico. U.S. investors – who account for the largest share of foreign direct investment in Mexico – may increasingly consider seating their arbitrations in New York, Houston, or Miami, as they are viewed as seats with a stable and predictable judicial framework with a long-standing record of adjudicating complex commercial disputes, while offering a high degree of legal certainty.[36]

England's New Arbitration Act 2025

While London has long been an attractive arbitral seat – owing to the strength of English commercial law, the reputation of the English courts, and the well-established framework of the Arbitration Act 1996 – the entry into force of the revised English Arbitration Act will likely further strengthen its position as a seat favored by international parties.

The English Arbitration Act 2025 (the "Arbitration Act") amends the Arbitration Act 1996 in a way that, according to the Ministry of Justice, will "turbocharge UK's position as the world-leader in arbitration."[37] The Arbitration Act, which entered into force in England and Wales on August 1, 2025, applies to all newly commenced arbitration proceedings after this date.

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[32] *See* Luis Asali, Santiago Escobar, Felipe Solís and Bernardo de Llaca Bufete Asali, *Mexico: judicial reform: implications for the country's arbitration-friendly position*, Global Arbitration Review (July 18, 2025), https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2026/article/mexico-judicial-reform-implications-the-countrys-arbitration-friendly-position.

[33] Cassandra Garrison, *Mexico's New Supreme Court Will Likely Heavily Favor Sheinbaum's Ruling Party*, Reuters (June 4, 2025), https://www.reuters.com/world/americas/mexicos-new-supreme-court-will-likely-heavily-favor-sheinbaums-ruling-party-2025-06-04/.

[34] *See* Adrián Magallanes Pérez, *Judicial Reform and Implementation of Effective Dispute Resolution Mechanisms*, Presentation at the Mitsui Seminar on Recent Judicial and Energy Reforms, Monterrey, Mexico (June 2025). *See also* Daniel García Barragán, *Shining a light on 30 years of successful arbitration law and practice in Mexico*, Global Arbitration Review (Aug. 26, 2025), https://globalarbitrationreview.com/guide/the-guide-arbitration-in-latin-america/fourth-edition/article/shining-light-30-years-of-successful-arbitration-law-and-practice-in-mexico. *See also* Galicia, *Propuesta de Reformas Constitucionales: Poder Judicial y Organismos Autónomos*, Galicia Client Alert (Sep. 3, 2024), https://www.galicia.com.mx/links/files/Actualizaciones/Client-Alert_Organismos-Autonomos-y-PJF.pdf.

[35] *See* Judicial authorities of the state of Yucatán, *Poder Judicial de Yucatán continúa hacia la vanguardia jurídica* (Apr. 28, 2025), https://www.pjyucatan.gob.mx/secciones/prensa_comunicado/175_poder_judicial_de_yucatan_continua_hacia_la_vanguardia_juridica.

[36] *See, e.g.,* Michael A. Fernández, Alberto Fortún, Eve Perez-Torres & Rodolfo Rivera, *Understanding Mexico's Judicial Reform: Implications and Strategies for Foreign Investors*, Association of Corporate Counsel (June 23, 2025), https://docket.acc.com/understanding-mexicos-judicial-reform-implications-and-strategies-foreign-investors. Asian investors in Mexico may favor Singapore as an arbitral seat. Duane Morris and Selvam, *The potential impact of Mexico's judicial reforms: does Singapore have a role to play as an international arbitration centre?* (May 27, 2025), https://blogs.duanemorris.com/duanemorrisandselvam/2025/05/27/the-potential-impact-of-mexicos-judicial-reforms-does-singapore-have-a-role-to-play-as-an-international-arbitration-centre/.

[37] Sarah Sackman KC MP, *Boost for UK economy as Arbitration Act receives Royal Assent*, Ministry of Justice (Press Release, Feb. 24, 2025), https://www.gov.uk/government/news/boost-for-uk-economy-as-arbitration-act-receives-royal-assent.

While the Arbitration Act represents an evolution rather than a revolution in English arbitration law, it introduces modernized reforms aimed at enhancing the efficiency, certainty, and fairness of English-seated arbitration. Notably, the Arbitration Act establishes a new default rule under which an arbitration agreement will be governed by the law of the seat unless the parties expressly agree otherwise.[38] The Arbitration Act further clarifies that choosing a governing law for the underlying contract does not, on its own, amount to an express choice of law for the arbitration agreement. This departs from previously contested UK Supreme Court case law,[39] and brings welcome clarity and predictability to arbitration users.

In addition, the Arbitration Act introduces a new express duty of disclosure for arbitrators (codifying the prior common law duty) to reveal circumstances which might reasonably give rise to justifiable doubts as to their impartiality.[40] The Arbitration Act also clarifies the powers of arbitral tribunals,[41] including to make an award on a summary basis if a party has no real prospect of succeeding on a claim or particular issue arising in a claim,[42] and clarifies the powers of courts in support of arbitration.[43]

Although London continues to compete with other established arbitral seats, including Singapore, Paris, New York, and Geneva, the Arbitration Act represents a deliberate legislative step to maintain London's position as a leading and reliable arbitral seat in 2026 and onwards.

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[38] Arbitration Act 2025, c. 4, § 1(2) (UK) (introducing Arbitration Act 1996, c. 23, § 6A(1)(b), https://www.legislation.gov.uk/ukpga/2025/4. However, this new default rule does not apply to cases involving arbitration under investment treaties or national investment legislation. Arbitration Act 2025, c. 4, § 1(2)(UK) (introducing Arbitration Act 1996, c. 6A(3)).

[39] *Enka Insaat Ve Sanayi AS v OOO Insurance Company Chubb* [2020] UKSC 38.

[40] Arbitration Act 2025, c. 4 § 2(2) (UK) (introducing Arbitration Act 1996, c. 23, § 23A). This duty, which applies to both prospective and appointed arbitrators, is based on actual knowledge as well as matters that the arbitrators reasonably ought to have known.

[41] For instance, the Arbitration Act gives emergency arbitrators the power to issue enforceable peremptory orders. Arbitration Act 2025, c. 4, § 8 (UK) (amending Arbitration Act 1996, c. 23, § 41 and introducing § 41A).

[42] Arbitration Act 2025, c. 4, § 7 (UK) (introducing Arbitration Act 1996, c. 23, § 39A).

[43] For instance, the Arbitration Act seeks to curb tactical jurisdictional challenges by limiting the ability of parties to re-argue points before the courts once they have been determined by the tribunal. Arbitration Act 2025 c. 4, §§ 10–11 (UK), (amending Arbitration Act 1996, c. 23, § 67).

4

Enforcement Of Arbitral Awards Against Sovereign States

The enforcement of arbitral awards against sovereign states remains one of the most contentious and rapidly evolving areas in international arbitration. While both the New York Convention and the ICSID Convention establish frameworks favorable to the recognition and enforcement of awards, neither treaty directly addresses sovereign immunity at the enforcement or execution stage.[44] This has produced divergent results across jurisdictions, creating both strategic opportunities and challenges for award creditors.

Three issues are likely to define the enforcement landscape in 2026: (1) the scope of sovereign immunity; (2) the assignability of rights under arbitral awards; and (3) the availability and scope of public policy defenses based on fraud and corruption.

Sovereign Immunity

A central question over the last decade has been whether sovereign states implicitly waive immunity from enforcement by ratifying multilateral treaties such as the ICSID Convention or the Energy Charter Treaty ("ECT"). This debate has been particularly acute in the context of intra-EU investment disputes against Spain, where changes to renewable energy policies have triggered claims by foreign investors.

In the EU, the Court of Justice of the European Union ("CJEU") has held that arbitration clauses in intra-EU bilateral investment treaties and the ECT are incompatible with EU law because they undermine the autonomy of the EU legal order and remove disputes involving EU law from the jurisdiction of EU courts.[45] As a result, in the EU, arbitral awards under such clauses are unenforceable in certain intra-EU disputes. In a 2025 decision, the European Commission went further and concluded that Spain's payment of an ICSID award to certain Dutch and Luxembourgish investors would constitute illegal State aid.[46]

By contrast, courts in the UK and Australia have recently concluded that ratification of the ICSID Convention requires signatory states to recognize and enforce ICSID awards. In *Infrastructure Servs. Luxembourg SARL & Anor v. Kingdom of Spain*, the English High Court considered whether Article 54 of the ICSID Convention amounts to a submission by a signatory state to the adjudicative jurisdiction of any other signatory state for purposes of recognizing and enforcing an ICSID award. Both the English High Court and the Court of Appeal held that it did and, therefore, that sovereign immunity is not an available defense against recognition or enforcement.[47] The Courts also confirmed that EU law cannot alter the obligation on ICSID Convention signatories to recognize and enforce awards made

[44] *See Kingdom of Spain v. Infrastructure Servs. Luxembourg S.à.r.l.,* [2023] HCA 11, ¶ 44–58 (Austl.).

[45] *See* Case C-284/16 *Slovak Republic v. Achmea* BV [2018] 4 WLR 87; Case C-741/19 *Republic of Moldova v. Komstroy LLC* [2021] 4 WLR 132.

[46] *See Antin (Case SA.54155 (2021/NN))* Commission Decision C(2025) 1781 final [2025] OJ L 1235/1.

[47] *See Infrastructure Servs. Luxembourg SARL & Anor v Kingdom of Spain* [2023] EWHC 1225 (Comm). This decision was upheld on appeal to the English Court of Appeal in [2024] EWCA 1257 (Civ) and is currently pending appeal to the UK Supreme Court.

pursuant to that convention, and thus Spain's EU law objections did not provide a basis for immunity or for refusing registration. In *Blasket Renewable Investments LLC v. Kingdom of Spain*, the Federal Court of Australia reached a similar conclusion, reaffirming that Australia's enforcement obligations under the ICSID Convention are autonomous and leave no room for reconsidering jurisdiction or merits.[48]

In the United States, years of inconsistent district court decisions were provisionally clarified by the U.S. Court of Appeals for the District of Columbia in Blasket Renewable Investments LLC v. Spain, in which the D.C. Circuit Court held that the arbitration exception to the Foreign Sovereign Immunities Act ("FSIA") applies to intra-EU ICSID awards and, therefore, Spain's immunity was waived.[49] According to the D.C. Circuit Court, a sovereign's consent to arbitration derives from its ratification of the ECT (which designates ICSID as an available forum)—not from the validity of the underlying arbitration clause under EU law.[50]

The D.C. Circuit Court's decision may not be the last word on the matter, as Spain has sought *certiorari* review from the U.S. Supreme Court. In October 2025, the Supreme Court invited the U.S. Solicitor General to submit a brief addressing the questions on appeal, including whether the FSIA requires U.S. courts to confirm that a foreign sovereign specifically consented to arbitrate the underlying dispute before asserting personal jurisdiction, or whether general consent through a multilateral treaty is sufficient.[51] In the event that the Supreme Court reviews this case, the decision will likely weigh in on these and other issues impacting enforcement of arbitration awards against foreign sovereigns.

Assignability

While the rapid growth of third-party funding and specialized enforcement vehicles has increased the importance of assignment of rights under arbitral awards,[52] the legal landscape remains fragmented across different jurisdictions. In 2025, there were a number of critical decisions regarding the ability to enforce assigned ICSID claims, which will have implications on enforcement proceedings in 2026 and beyond.

In *Operafund Eco-Invest Sicav Plc & another v. Spain*, the English High Court held that courts may not enforce an award made pursuant to the ICSID Convention that has been assigned.[53] This decision was based on an interpretation of Article 54(2) of the ICSID Convention, which the English court held authorizes only "parties" to the arbitration to seek recognition and enforcement of an award. The Court further held that the Arbitration (International Investments Disputes) Act 1966, which implements the ICSID Convention into English law, treats the process of registering an award for the purposes of enforcement as a procedural mechanism, one that does not give rise to new substantive

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[48] *Blasket Renewable Invs. LLC v. Kingdom of Spain* [2025] FCA 1028 (29 August 2025) (Austl.).

[49] *See generally Blasket Renewable Invs., LLC v. Kingdom of Spain*, No. 20-817 (JDB), 2025 WL 2336428 (D.C. Cir. Aug. 13, 2025). The arbitration exception allows jurisdiction over actions to confirm arbitral awards if the award is governed by a treaty or other international agreement in force in the United States. 28 U.S.C. § 1605(a)(6).

[50] *Blasket*, 2025 WL 2336428, at *1.

[51] *Kingdom of Spain v. Blasket Renewable Invs., LLC*, No. 24-1130 (U.S. petition for cert. filed May 1, 2025). The U.S. Solicitor General may also address whether dismissal *on forum non conveniens* grounds is categorically unavailable in suits to confirm foreign arbitral awards.

[52] *See* Cleary Gottlieb Steen & Hamilton, *International Arbitration Trends and Topics for 2025*, 8–10 (Jan. 6, 2025).

[53] *Operafund Eco-Invest SICAV PLC, Schwab Holding AG v. Kingdom of Spain* [2025] EWHC 2874 (Comm).

rights that are capable of assignment.[54] Blasket Renewable Investments LLC, the assignee of the ICSID award, was granted permission to appeal the *Operafund* judgment, leaving open the possibility of a shift in the UK's stance on award assignability.

This decision represents a significant departure from courts' practice in jurisdictions like the U.S. and Australia, which have generally permitted third-party assignees to enforce ICSID awards provided the assignment is valid under applicable law.[55]

Corruption and Fraud

Even where immunity obstacles are overcome and any assignments are found to be valid (or uncontested), enforcement of arbitral awards may still be vulnerable to public policy defenses such as corruption and fraud. Challenges on the basis of corruption or fraud are increasingly invoked, particularly following the decision by the High Court of England in *Process & Industrial Developments Ltd. v. Nigeria*. In that case, the High Court set aside two awards valued at $11 billion after finding, among other things, that the underlying contract had been procured through bribery, that bribery persisted during the arbitration, and that the claimant had committed perjury during the arbitration.[56] The Court of Appeal upheld the costs order in July 2024, and in 2025 the UK Supreme Court dismissed P&ID's appeal on that issue.[57]

Although parties may invoke fraud or corruption as a grounds for vacating, or otherwise resisting enforcement, of arbitral awards, the evidentiary burden for demonstrating such fraud or corruption remains high, and courts are often unwilling to review allegations that were considered by, or could have been raised before, the tribunal. For example, in *Metropolitan Municipality of Lima v. Rutas de Lima S.A.C.*, the D.C. Circuit Court affirmed the district court's denial of Lima's petition to vacate two arbitration awards totaling over $200 million, despite allegations that the concession contract had been procured through bribes by Rutas de Lima's parent company, Odebrecht.[58] Although Lima also alleged fraud and procedural misconduct during the arbitration itself (including false discovery responses and the exclusion of allegedly probative evidence), the district court held that vacatur was unwarranted, including because both arbitral tribunals rejected Lima's corruption claims, finding insufficient evidence linking Odebrecht's corrupt payments to the concession contract.[59] The D.C. Circuit Court upheld the tribunals' factual findings and declined to vacate, rejecting Lima's arguments that there was fraud and misconduct in the arbitration itself, and declined to revisit allegations of corruption already considered by the tribunals.[60] The decision confirms that courts will give "significant weight" to arbitrators' factual findings and may view with skepticism arguments that there was fraud or misconduct in the arbitration process itself, absent compelling evidence of corruption

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[54] *Id*., ¶ 78. The Court also refused to apply issue estoppel against Spain based on an earlier Australian decision upholding assignments to Blasket Renewable Investments LLC, on the basis that (i) no final order had been issued by the Australian court, and (ii) Spain had only appeared in the Australian proceedings in order to assert state immunity. See Operafund [2025] EWHC 2874 (Comm), [33].

[55] *See, e.g., Blasket,* [2025] FCA 1028; *Blasket*, 2025 WL 2336428, at *9.

[56] *Process & Industrial Developments Ltd. v. Nigeria* [2023] EWHC 2638 (Comm).

[57] *Process & Industrial Developments Ltd. v. Nigeria*, [2024] EWCA Civ. 790, aff'd, [2025] UKSC 36.

[58] *Metro. Mun. of Lima v. Rutas De Lima S.A.C.*, 141 F.4th 209, 212, 219 (D.C. Cir. 2025).

[59] *Id.* at 215, 216.

[60] *Id.* at 221.

directly linked to the arbitration proceeding that could not have been raised in the arbitration itself.[61]

The threshold for corruption and fraud, whether as a public policy defense to recognition under the New York Convention or as a standalone ground for vacatur under Sections 10(a)(1) or 10(a)(2) of the Federal Arbitration Act, remains high. But as was the case in *Process & Industrial Developments Ltd. v. Nigeria*, courts may be more willing to intervene where the court is persuaded that the arbitration process amounted to little more than "a shell that got nowhere near the truth."[62]

Strategic Considerations in 2026

Recent developments suggest that the following trends in the enforcement of awards against sovereign states will continue into 2026:

— The U.S., UK, and Australia are emerging as principal fora for enforcement of intra-EU investment awards, which have become effectively unenforceable within the EU itself. However, the forthcoming U.S. Supreme Court decision whether to hear Kingdom of *Spain v. Blasket Renewable Invs., LLC* could significantly reshape the U.S. framework for treaty-based sovereign immunity and, by extension, global enforcement strategies.

— Investors must carefully evaluate whether to assign rights under an arbitral award, as assignability may facilitate obtaining a recovery and/ or enforcement in some jurisdictions but bar it entirely in others. Recent decisions in the UK may chill the market for buying and selling certain arbitration awards and claims.

— Public-policy defenses grounded in corruption and fraud impose a high evidentiary burden, but remain a potential mechanism to resist enforcement.

[61] *Id.* at 220 (citing *Enron Nigeria Power Holding, Ltd, v. Federal Republic of Nigeria*, 844 F.3d 281, 289 (D.C. Cir. 2016)).

[62] *Process & Industrial Developments Ltd. v. Nigeria [2023] EWHC 2638 (Comm)* [580]

5

IA Meets AI: Next Steps for International Arbitration in the Age of Artificial Intelligence and Cryptocurrency

In 2025, artificial intelligence ("AI") became an acute area of interest for the international arbitration community, which focused on utilizing new AI capabilities as a means of recognizing additional efficiencies in the arbitral process.[63] In 2026, arbitration practitioners will likely continue to develop new ways of integrating AI into their cases, including, for example, through the American Arbitration Association – International Centre for Dispute Resolution's ("AAA-ICDR") recently released "AI Arbitrator" function. But as the usage of AI continues to expand, new challenges develop. Driven by concerns about the use of AI and confidentiality of information provided to large language models, arbitration institutions and organizations have sought to develop guidance for the usage of AI in arbitration proceedings.

Just as new and emerging technology like AI is used to enhance the arbitration process, such technologies are also providing novel battlegrounds for disputes. In the cryptocurrency space, 2026 is likely to see an influx of arbitrations as the result of the widespread adoption of arbitration as the preferred dispute resolution mechanism of crypto companies and exchange platforms. However, recent decisions by courts in the United States and Canada suggest that there may be a critical view of the enforceability of arbitration agreements in crypto exchange agreements, which are often presented within Terms of Use for parties using a particular platform.

AI Promoted from Assistant to Adjudicator

One of 2026's most significant developments will likely be the emerging use of AI systems that are designed not merely to assist the procedural aspects of an arbitration, but to perform adjudicative functions. In late 2025, the AAA-ICDR launched an "AI Arbitrator" to "evaluate the merits of claims, generate explainable recommendations, and prepare draft awards."[64] The tool is currently limited to documents-only construction cases (which under the AAA-ICDR rules are limited to $25,000 in dispute), and human arbitrators will review and validate or revise AI-generated decisions before finalization.[65]

According to the AAA-ICDR, the AI Arbitrator is "[t]rained on more than 1,500 construction awards and refined with expert-labeled examples,"[66] and could result in cost savings "start[ing] at 35-45%," coupled with an expedited

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[63] *See* Cleary Gottlieb, *International Arbitration Trends and Topics for 2025* (Jan. 6, 2025) https://www.clearygottlieb.com/-/media/files/alert-memos-2025/international-arbitration-trends-and-topics-for-2025.pdf.

[64] Press Release, American Arbitration Association–International Centre for Dispute Resolution, *AAA-ICDR to Launch AI-Native Arbitrator, Transforming Dispute Resolution* (Sept. 17, 2025), https://www.adr.org/press-releases/aaa-icdr-to-launch-ai-native-arbitrator-transforming-dispute-resolution/.

[65] *Id. See also AI Led Arbitration Rules,* American Arbitration Association (Nov. 20, 2025), https://www.adr.org/media/e20hq04d/ai-led_arbitration_rules.pdf.

[66] Press Release, American Arbitration Association–International Centre for Dispute Resolution, *AAA-ICDR to Launch AI-Native Arbitrator, Transforming Dispute Resolution* (Sept. 17, 2025), https://www.adr.org/press-releases/aaa-icdr-to-launch-ai-native-arbitrator-transforming-dispute-resolution/.

timeframe for final resolution.[67] The AAA-ICDR has already suggested that the AI Arbitrator tool could be extended to "additional industries, dispute types, and higher value claims" in 2026.[68] However, some commentators have expressed concern that AI-as-arbitrator tools will be ill-suited to handle complex cases because the models work best when "extensive case law is available and factual and legal scenarios are comparable and repetitive," which may not necessarily be the case in particularly complex or novel disputes.[69] As the AI Arbitrator is implemented in cases in 2026, it will be interesting to monitor its usage and functionality, and whether its adoption extends to larger, and other types of, disputes.

Promulgation of New Guidelines Monitoring AI Usage

AI's rapid evolution has also spurred a need for new rules to govern its use in international arbitration. A number of arbitration institutions and organizations promulgated new guidelines in 2025 attempting to address the implementation of AI in the arbitration process, particularly as it relates to disclosing AI usage. For example, the Chartered Institute of Arbitrators ("CIArb") published its inaugural guidelines on the use of AI in arbitration in September 2025. The guidelines promote flexibility surrounding disclosure of AI use by parties, including language like, "[d]isclosure of the use of an AI tool *may* be required . . . " and "arbitrators *may* impose certain AI-related disclosure obligations."[70] The goal of disclosure is described as helping "ensure transparency" and "preserve the integrity of the arbitration and/or the validity and enforceability of the award."[71] The guidelines list a few specific situations when such disclosure may be required, including for example if AI use "may have an impact on evidence, the outcome of the arbitration, or otherwise involve a delegation of an express duty towards the arbitrators or any other party."[72]

The CIArb's guidelines were similarly permissive with respect to disclosure of arbitrators' use of AI, stating that "[u]nless otherwise agreed by the parties, the arbitrators are encouraged to consult with the parties on the use of any AI tool."[73] The AAA-ICDR's "Guidance on Arbitrator Use of AI Tools" released in March 2025 was slightly more prescriptive, finding that "[a]rbitrators *should* disclose their use of generative AI tools when such

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[67] *AI Arbitrator*, American Arbitration Association (2025), https://www.adr.org/ai-arbitrator/.

[68] Press Release, American Arbitration Association–International Centre for Dispute Resolution, *AAA-ICDR to Launch AI-Native Arbitrator, Transforming Dispute Resolution* (Sept. 17, 2025), https://www.adr.org/press-releases/aaa-icdr-to-launch-ai-native-arbitrator-transforming-dispute-resolution/.

[69] Janine Haesler & Tim Isler, *Navigating the Main Impacts of Artificial Intelligence in International Arbitration: Insights from the ICC YAAF Workshop*, Kluwer Arb. Blog (Mar. 17, 2024), https://legalblogs.wolterskluwer.com/arbitration-blog/navigating-the-main-impacts-of-artificial-intelligence-in-international-arbitration-insights-from-the-icc-yaaf-workshop/.

[70] *See, e.g.*, Cristen Bauer et al., *Guideline on the Use of AI in Arbitration arts.* 7.1 – 7.3 (Chartered Inst. of Arbs., Sep. 2025), https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf (emphasis added).

[71] *Id*. at art. 7.2.

[72] *Id*. at art. 7.1.

[73] *Id*. at art. 9.1. Other recently released AI guidelines are similarly permissive. *See, e.g.,* Association of Arbitrators (Southern Africa), *Guidelines on the Use of Artificial Intelligence in Arbitrations and Adjudications* rule 12.2, https://www.arbitrators.co.za/resources/ai-guidelines/ ("The use of AI and AI Tools may be covered in the Agreement or clarified by the Tribunal with the Parties. The Tribunal, the Parties, their representatives or witnesses should consider whether it is appropriate to disclose any other use of AI and AI Tools, and the nature and extent of such use."); Vienna International Arbitral Centre, *VIAC Note on the Use of Artificial Intelligence in Arbitration Proceedings* (Apr. 2025), https://www.viac.eu/wp-content/uploads/2025/04/VIAC-Note-on-AI-1.pdf, Rule 5.1 (Arbitrators "may wish to discuss in the case management conference, the potential use of AI in the proceedings, the requirement of disclosure as well as the potential impact of AI on the arbitration timeline and costs.").

use materially impacts the arbitration process or the reasoning underlying their decisions."[74] This language is similar to the Silicon Valley Arbitration and Mediation Center's ("SVAMC") guidelines published in 2024, which articulate a "duty" for arbitrators "to disclose any reliance on AI-generated outputs outside the record that influence their understanding of the case."[75]

Although these guidelines are relatively new, there has been at least one challenge of an arbitral award on the grounds that the arbitrator failed to disclose his own use of AI in drafting an award.[76] In *LaPaglia v. Valve Corporation*, petitioner John LaPaglia argued in a motion to vacate that that undisclosed use of AI by the sole arbitrator in drafting the final award meant the arbitrator exceeded his powers, because "the parties' expectations [was that there would be] a well-reasoned decision rendered by a human arbitrator."[77] On December 9, 2025, the U.S District Court for the Southern District of California dismissed the motion to vacate for lack of subject matter jurisdiction, declining to reach petitioner's substantive arguments.[78] This case demonstrates, however, that the undisclosed use of AI may be invoked by parties seeking to identify a grounds to vacate, and whether such challenges are successful in the future will be an interesting issue to monitor.

Challenges Evolve in Crypto-Related Arbitration

While enforceability concerns have started to arise regarding the use of AI in arbitration, relatively new technologies – like cryptocurrency – have provided fertile grounds for disputes, and similarly have been met with enforceability challenges.[79]

In 2025, Binance, a cryptocurrency exchange platform, faced setbacks in its efforts to enforce arbitration clauses contained in its Terms of Use when the U.S. District Court for the Southern District of New York partially denied Binance's motion to compel arbitration in a putative securities class action.[80] The court found that plaintiffs who had signed the 2017 Terms of Use did not have constructive notice of the arbitration agreement added in 2019, and therefore did not manifest their consent to arbitration.[81]

Courts in Canada have taken a similarly stringent approach to arbitration clauses. In 2024, the Ontario Court of Appeal upheld a decision that found Binance's arbitration

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[74] *AAA-ICDR Guidance on Arbitrators' Use of AI Tools*, American Arbitration Association (Mar. 2025), https://go.adr.org/rs/294-SFS-516/images/2025_AAA-ICDR%20Guidance%20on%20Arbitrators%20Use%20of%20AI%20Tools%20%282%29.pdf?version=0 (emphasis added).

[75] Silicon Valley Arbitration & Mediation Center, *SVAMC Guidelines on the Use of Artificial Intelligence in Arbitration* at 7 (Apr. 30, 2024), https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf.

[76] Tom Jones, Arbitrator *Accused of Relying on AI*, GLOBAL ARBITRATION REVIEW (May 15, 2025), https://globalarbitrationreview.com/article/arbitrator-accused-of-relying-ai; Petition to Vacate Arbitration Award, *LaPaglia v. Valve Corp.*, No. 25CV0833 DDL (S.D. Cal. Apr. 8, 2025).

[77] Pet. to Vacate Arbitration Award at 9, *LaPaglia v. Valve Corp.*, No. 25CV0833 DDL (S.D. Cal. Apr. 8, 2025).

[78] *LaPaglia v. Valve Corp.,* No. 25CV0833 DDL, 2025 WL 2527053, at *3-7 (S.D. Cal. Dec. 9, 2025).

[79] Edward Taylor, Jennifer Wu & Zach Li, *Crypto Arbitration: A Survival Guide*, Kluwer Arb. Blog (Sep. 29, 2022), https://legalblogs.wolterskluwer.com/arbitration-blog/crypto-arbitration-a-survival-guide/ ("If a Crypto Arbitration is seated in [a jurisdiction that heavily regulates or bans cryptocurrency use], or enforcement of an award is sought there, national courts may rule that crypto disputes are not arbitrable or deny enforcement of awards on public policy grounds.").

[80] Caroline Simson, *Binance Can't Send All Investors' Claims To Arbitration*, LAW360 (Apr. 2, 2025), https://www.law360.com/articles/2318171.

[81] *See id.*

agreement void as contrary to public policy and unconscionable.[82] When a Binance-related entity, Nest, initiated HKIAC arbitration proceedings against certain plaintiffs from the Ontario class action, those plaintiffs sought relief before the Ontario Superior Court of Justice. In late 2025, the Ontario Superior Court of Justice granted an anti-suit injunction against several Binance entities, including Nest, enjoining them from pursuing arbitration against the plaintiffs.[83]

Since crypto companies and exchanges often include arbitration agreements in their Terms of Use, there are likely to be further challenges to such obligations to arbitrate in 2026.[84] To the extent such disputes are arbitrable, they may present *sui generis* challenges, including those that arise from the pseudonymity and the decentralized nature of blockchain transactions, which can lead to difficulty identifying parties and enforcing awards once issued.[85]

Adapting to AI and Other Technology Challenges

The increased use of AI and blockchain technologies will continue in 2026, and arbitration will be called upon to evolve. Building expertise in blockchain functionality, cryptography, and decentralized finance protocols will be important for effectively handling disputes involving these new technologies, and preempting attacks on their enforceability.[86] Similarly, as AI systems take on adjudicative roles, arbitrators and practitioners should consider AI-related issues at the outset of their cases, understanding both the power and limitations of large language models.

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[82] Tom Jones, Canadian court restrains Binance's HKIAC case, GLOBAL ARBITRATION REVIEW (Dec. 8, 2025), https://globalarbitrationreview.com/article/canadian-court-restrains-binances-hkiac-case.

[83] *See id.*; Mot. for Anti-Suit Inj., *Lochan. v. Binance Holdings Ltd.*, No. CV-22-00683059-00CP (Ont. Sup. Ct. Just., Nov. 21, 2025).

[84] The advent of smart contracts – self-executing computer code that "automatically carries out obligations when pre-defined conditions are met – raises interesting and untested questions about whether arbitration clauses contained in code satisfies the in-writing requirement found in many domestic arbitration laws. Claudius Pietzcker, *Three Common Misunderstandings about Arbitration in the Blockchain Ecosystem,* HIALSA Blog (Jan. 29, 2025), https://orgs.law.harvard.edu/hialsa/2025/01/29/three-common-misunderstandings-about-arbitration-in-the-blockchain-ecosystem-by-claudius-pietzcker/.

[85] *See, e.g.,* Katerina Makri, *Blockchain Arbitration: Navigating the Interface Between Digital Code and Legal Order*, 21 Teorija ir Praktika 13, 14–16 (2025) (noting that questions remain as to "whether the absence of annulment or appellate mechanisms in decentralised protocols fatally undermines enforceability. . . . [D]isputes raise issues that strain the interpretative and procedural capacities of courts and tribunals accustomed to textual contracts and centralised systems."), https://www.arbitrazas.lt/failai/2025/metrastis/2.%20Blockchain%20Arbitration%20(Makri).pdf; Michael Buchwald, *Smart Contract Dispute Resolution: The Inescapable Flaws of Blockchain-Based Arbitration*, 168 U. PA. L. REV. 1370, 1400-03 (Comment) (2020).

[86] This has resulted in the formation of at least one specialized tribunal, the International Tribunal of the Blockchain Arbitration and Commerce Society, to provide a standing source of competent adjudicators. https://bacsociety.com/en/international-court/.

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