2026 Int'l Arbitration Trends: M&A And Securities Disputes

By **Katie Gonzalez, Mark McDonald and Maria Manghi** (January 21, 2026)

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This is the second article in a five-part series discussing international arbitration trends and topics for 2026. This article focuses on emerging trends in mergers and acquisitions 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.[1]

As deal values and strategic stakes rise, so too does the potential for disagreement over contractual provisions, such as rights of first refusal, or ROFR, and change of control clauses.

Recent developments, such as the high-profile arbitration involving Exxon Mobil Corp., Hess Corp., Chevron Corp. and China National Offshore Oil Corp., or CNOOC, over a joint operating agreement, and the changes by the U.S. Securities and Exchange Commission to its long-standing opposition to mandatory arbitration clauses in public company registration statements, highlight key issues to consider 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 Stabroek 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.[2]

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 rules seated in Paris seeking to apply the ROFR, alleging that it should have been given an opportunity to purchase Hess' interest in the joint venture.[3] 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.[4]

In contrast, Exxon and CNOOC argued that the merger was a change of control that would have triggered the ROFR requirement, and that the merger was structured to bypass the ROFR clause.[5] The arbitration proceeded on an expedited basis, as the one preclosing 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 joint operating agreement sufficient to trigger Exxon's and CNOOC's ROFR rights under the Stabroek Block agreement.

SEC Policy Changes

Another notable development in 2025 was the SEC's policy statement issued in September in which it changed its long-standing position that mandatory arbitration clauses were a barrier to accelerating the effectiveness of registration statements.[6] 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 Dec. 1, 2025, Zion Oil & Gas became the first public company to adopt a mandatory arbitration provision under its bylaws, requiring Texas-law governed arbitration.[7]

As the prevalence of arbitration in disputes surrounding public companies grows, 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.[8] 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.

Confidentiality

A key distinction between arbitration and litigation has always been the confidentiality afforded to arbitration.[9] 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[10] — the parties are often afforded additional protections in having a case proceed outside the public docket that is typical in U.S. courts.[11]

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.[12]

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 affect large international transactions.

The specific language of the ROFR in the Stabroek Block joint operating agreement is unknown, although it is widely believed that the agreement was based the model language published in 2002 by the Association of International Energy Negotiators.[13]

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 Arbitral Awards, known as the New York Convention, in 172 jurisdictions.[14] The speed with which parties can enforce foreign arbitration awards is often important in M&A disputes.

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 a tribunal's authority to grant interim and even emergency measures,[15] 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 time frame 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).

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[1] 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/.

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

[3] 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.

[4] Kevin Crowley, Chevron 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.

[5] 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/.

[6] 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.

[7] 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.

[8] 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.

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

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

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

[12] 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.

[13] See 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/.

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

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