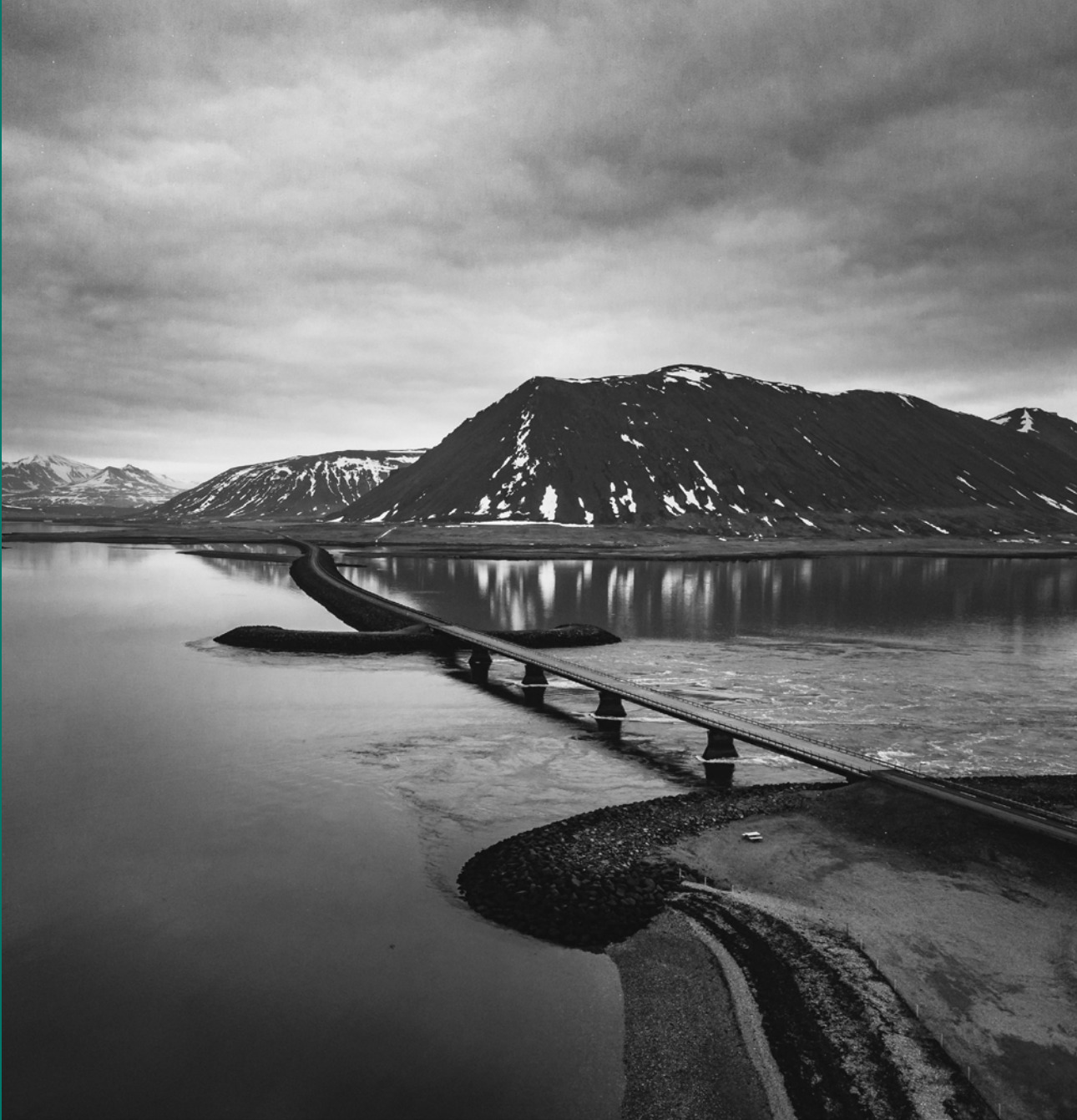




Welcome to the Q3 2025 edition of HFW's International Arbitration Quarterly, which features articles from colleagues across our network of global offices. This edition includes the following articles:

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ARBITRATOR IMPARTIALITY – WHEN CAN IT BE CHALLENGED?

Recent High Court decisions and statutory reforms in the United Kingdom have given detailed guidance on an arbitrators’ duties of disclosure and what must be shown to establish apparent bias. These developments will be of particular interest to users of London Arbitration, especially under LMAA Terms, and will interest parties who query what safeguards exist to ensure that a tribunal does not favour one side over the other.

In V and another v K’

In this case, K (the **Seller**) entered into a memorandum of agreement dated 14 July 2022 to sell a vessel to V or their guaranteed Nominee, N (together, the **Buyers**) for the amount of US\$ 13.1 million (the **MOA**).

On 19 July 2022, the Seller and V entered into an escrow agreement with the Seller’s solicitors. This provided for a deposit in the amount of 15% of the purchase price for the vessel US \$1.965 million (the **Deposit**) and the balance of the purchase price of US \$11,350,000 to be paid into the Seller’s solicitors client account.²

Following the imposition of sanctions on V in September 2022, the Seller terminated the MOA and sought release of the deposit held in escrow by the Seller’s solicitors. The Seller commenced LMAA arbitration in London. The two arbitrators appointed by the parties were senior KCs, and in due course, another senior KC was appointed as Tribunal Chair. For a period of time, the Buyers refused to participate any further, and claimed the arbitration was conducted without impartiality and was tainted by apparent bias.

The Buyers took particular issue with the conduct of the Seller’s party appointed arbitrator (**Mr H**) who was an experienced Barrister. Amongst other things, the Buyers’ solicitors asked Mr H to confirm the extent of his past professional relationship with the Sellers’ solicitors. They also

alleged that Mr H sought to protect the reputation of the law firm that had appointed him.

In one instance, the Buyers’ own party-appointed arbitrator intervened, and said:

“Your [allegation] ignores the fact that at all times I was a party to the decisions to which you object. None of those decisions could have been made without my participation. In every respect the tribunal’s decisions were made by [Mr. H] and myself jointly and I fully participated in and agreed with all of them. I am senior to [Mr. H] in call and am in no way under his influence, yet I am not accused of excessive closeness to [the Seller’s solicitors] nor could I be. If the allegations you make are justified, then they are just as much criticisms of myself but there could be no corruption of the sort you claim.”³

Mr H advised the relevant law firm appointed him on eight occasions since 2008 (only two of those progressed to an award where total fees amounted to around £41,000) and once as Barrister in 2014 (total fees earned were £3,900).

That being said, the Tribunal decided there was no substance to the allegations of bias and these were rejected. The Buyers appealed to the High Court in London to advance the serious accusation that the Tribunal was guilty of apparent bias on six grounds. At the hearing, the Buyers abandoned all but one of these grounds.

The remaining ground of challenge was that Mr H’s repeated lack of candour misrepresented the nature and extent of his relationships with the solicitors appointed by each side. In particular, Mr H downplayed or concealed his connection with himself and the law firm which appointed him.



The Buyers brought that appeal under section 68(2)(a) of the Arbitration Act 1996 (the **1996 Act**). It states:

“(1) A party to arbitral proceedings may... apply to the court challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award...

(2) Serious irregularity means an irregularity of one or more of the following kinds which the court considers has caused or will cause substantial injustice to the applicant - (a) failure by the tribunal to comply with section 33 (general duty of tribunal) ...”⁴

The High Court said the starting point was the common law principles laid down in Supreme Court’s decision in *Halliburton v Chubb*⁵:

- The test for apparent bias was: *“...whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that*

the tribunal was biased.”⁶

- In this regard, context forms an important part of the material which the fair-minded observer must consider before judgment.⁷ The objective observer, the Supreme Court said, “*will appreciate that there are differences between, on the one hand, arbitrations, in which there is an established expectation that a person before accepting an offer of appointment in a reference will disclose earlier relevant appointments to the parties and is expected similarly to disclose subsequent appointments occurring in the course of a reference, and, on the other hand, arbitrations in which, as a result of relevant custom and practice in an industry, those expectations would not normally arise*”.⁸ For instance, in GAFTA and LMAA arbitrations, it is well known that arbitrators acted in multiple arbitrations, which may arise from the same events. This is in contrast to other arbitral associations, such as ICC

arbitrations, where disclosure of multiple appointments is required at the date of appointment.

- A failure to disclose does not necessarily lead to the removal of the arbitrator, but it is a factor that the fair-minded and informed observer would consider in order to decide whether there is a real possibility of bias.

On this basis, the Buyers argued that a fair-minded and informed observer would think there was a real possibility of bias because Mr H failed to disclose his previous connection with the law firm which appointed him, and because of the way he answered their questions about that connection.⁹

With *Halliburton v Chubb* in mind, the court repeated it was a common feature of LMAA arbitrations that law firms often appoint arbitrators in unrelated references, and disclosure is not required unless there are particular circumstances that make it necessary.

Given that, the court reasoned a fair-minded and informed observer would not conclude that there was

1 [2025] EWHC 1523 (Comm).

2 For further details see: *Virgo Marine Inc and Nixie Marine v. Reed Smith LLP and Barclays Bank PLC* [2025] EWHC 1157 (Comm).

3 [2025] EWHC 1523 (Comm), para 89.

4 Under section 33 of the Arbitration Act 1996 an arbitrator is under statutory duties to act fairly and impartially. Those statutory duties give rise to an implied term in the contract between the arbitrator and the parties that the arbitrator will so act.

5 [2021] AC 1083.

6 *Porter v Magill* [2001] UKHL 67, para 103.

7 <https://www.hfw.com/insights/optics-and-context-in-arbitral-appointments-a-review-of-the-uk-supreme-court-judgment-in-halliburton-company-v-chubb-bermuda-insurance-ltd/>

8 [2021] AC 1083 paras 127-128.

9 [2025] EWHC 1523 (Comm), para 48.

a real possibility of bias in this case.¹⁰ The Tribunal’s procedural decisions were unanimous and fair, and the appointments in question made up a very small fraction of the arbitrator’s overall appointments and income within the relevant period. Buyers’ suggestion to the contrary was purely tactical, had no merit whatsoever and should never have been made.¹¹

The Buyers’ appeal failed on its merits.

Aiteo Eastern E&P v Shell Western Supply

Justice Calver in *V and another v K*, said it was noteworthy that his judgment contrasts with *Aiteo Eastern E&P v Shell Western Supply* [2024]¹².

In *Aiteo*, disputes were to be resolved by ICC arbitration in London. The Respondents appointed a retired judge as arbitrator. The judge had received seven other appointments by that law firm in the previous five years as well as some expert instructions. At the time of the appointment, the judge stated that she had been party- appointed in two other unrelated arbitrations in the last few years by that law firm.

The Claimant appealed to the High Court under section 68 of the 1996 Act to set aside the arbitration awards in the reference on the grounds of the judge’s apparent bias by reason of her professional links with the law firm which appointed her. Furthermore, it was alleged she failed to disclose those links in a timely fashion. The Claimant argued the breach of section 68 gave rise to substantial injustice.

There were factors in play, Justice Calver said, which distinguished *Aiteo* from *V and another v K*.

- Firstly, it was an arbitration under ICC rules (Article 11) which required disclosure of: “*any facts or circumstances which might be of such a nature as to call into question the arbitrator’s independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator’s impartiality*”. This stood in contrast to the relevant guidance in the LMAA Advice on Ethics, which states:

“there is a custom or practice for parties or their representatives to frequently appoint the same arbitrator in different cases.... However, it remains the case in maritime arbitration that the pool of arbitrators and the number of specialised law firms and other representatives who appoint arbitrators is not large and it is accepted as inevitable that such circumstances will arise. This is not considered to be a matter for disclosure although an arbitrator should always be satisfied as to the other matters referred to in these notes”.¹³

- Secondly, a successful challenge was brought before the ICC Court, the authority responsible for handling challenges to arbitrator appointments pursuant to article 14 of the rules which govern ICC arbitrations. The informed observer would appreciate that the decision to remove the arbitrator was a rare example of a challenge that succeeded, and the decision could serve as a useful cross-check on the observer’s own conclusions based on these facts.

In *Aiteo*, the fair-minded and informed observer would conclude that there was a real possibility the arbitrator was biased on the facts of that case.

Analysis and commentary

In February 2025, the Arbitration Act 2025 (AA25) entered into force in full on 1 August 2025. The AA25 codifies the duty of disclosure established by the UK Supreme Court in *Halliburton v Chubb*, and the subsequent cases discussed above, and requires arbitrators to disclose circumstances that would or might give rise to doubts as to their impartiality. This obligation extends to circumstances that an arbitrator is actually aware of or ought reasonably to be aware of.

The 2025 Act creates a clear framework that should cut down disputes over an arbitrator’s duty of disclosure and reduce the scope for parties to raise tactical arguments aimed only at delay. Even so, an arbitrator’s duty to disclose prior appointments will still turn on the rules of the relevant association and

the arbitrator’s own experience. Courts in the United Kingdom will not welcome opportunistic challenges and will continue to set a high bar for claims of bias. Parties should look hard at their own approach and decide whether disclosure is in fact needed in the circumstances of their case.

Crucially, the AA25 does not outline which specific circumstances must be disclosed; this is deliberate and allows the retention of some flexibility. As Mr Justice Calver explained at length in *V and another v K*, arbitration is used in a wide range of sectors, and the matters which may give rise to justifiable doubts as to the impartiality of an arbitrator will vary.

The arbitrator in *Aiteo* was held to have breached her duty of disclosure, even though she had arguably been more proactive in raising potential conflicts than the arbitrator in *V and another v K*. An important factor was that the ICC Rules applied in *Aiteo*, which impose a more exacting standard of disclosure than the LMAA Rules. The Court’s finding illustrates that the applicable institutional rules can materially affect the scope of an arbitrator’s disclosure obligations, and that what may be acceptable under one association can amount to a breach under another.

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THE ENGLISH ARBITRATION ACT 2025 – KEY CHANGES

The new English Arbitration Act 2025 (AA25) officially came into force on the 1 August 2025' after receiving Royal Assent (i.e. being passed by Parliament) on 24 February 2025. In this article we look beyond the headline, analyse the changes, and discuss the impact they will have on those involved in arbitration.

Background

The changes brought in by the AA25 follow the Law Commission’s 2022-2023 Review² and aim to modernise the 1996 Arbitration Act (**AA96**) and address a number of issues that parties and courts have grappled with in recent years. However, it is important to note that the AA25 is not a significant departure from the long-established principles in the AA96. Instead, the changes provide clarity; confirm England’s pro-arbitration stance; and will bolster London’s reputation as a premier arbitration seat. The AA25 is also expected to bring additional business to the UK legal services sector, which in 2024 was valued at £42.6 billion³.

Summary of key changes:

The key amendments the AA25 makes to AA96 are as follows:

1. Clarification of the governing law applicable to arbitration agreements.
2. Providing tribunals with summary judgment/early dismissal style powers.
3. A wider and clearer duty on arbitrators to disclose circumstances they may raise doubts on their impartiality.
4. Increased court powers to support arbitration including emergency arbitrations and obtaining evidence from third parties.
5. Greater protection against liability for arbitrators when resigning or being removed.

6. Limiting Section 67 Challenges.

Key changes in detail:

1. Clarity on the Governing Law of an Arbitration Agreement

The issue of governing law of an arbitration agreement arises when the applicable law of the contract differs from the seat of arbitration (e.g., Swiss law contract, English seat of arbitration), or is silent on that choice of governing law.

Following the decision of the UK Supreme Court in *Enka v Chubb* [2020] UKSC 38, the issue was widely debated, and it was universally agreed that moving away from common law principles to a more codified regime, offering more certainty, would be helpful.

A new section 6A in the AA25 introduces a default position, which will end uncertainty and align English arbitration legislation with many Institutional Rules, e.g. the LCIA’s rules. Section 6A now provides that, in the absence of an express agreement by the parties, and by default, the governing law of the arbitration agreement will be the law of the seat of the arbitration.

Moreover, section 6A confirms that where the governing law is agreed in the underlying contract, this will not of itself result in that law applying to the arbitration agreement.

This amendment brings clarity, and the consistent rule makes commercial sense, which will be welcomed by many.

2. Summary Disposal

The AA96 does not contain any express provision for summary disposal in arbitration. The changes brought in by the new section 39A in the AA25 give arbitrators a default power of summary or early disposal, via an application by a party, and subject to a test similar to that in the English Civil Procedural Rules⁴, namely that of there being “no real prospect of success” on the relevant

10 Ibid. para 141.
11 Ibid. para 47.
12 EWHC 1993 (Comm).
13 <https://lmaa.london/advice-on-ethics/>

1 [Arbitration Act 2025](#)
2 Discussed in our previous article - [Reform of the 1996 English Arbitration Act – The Six Key Proposed Amendments - HFW](#)
3 [Professional and Business Services, Sector Plan](#)
4 CPR Part 24



issue and apply equally to the claim and the defence.

This non-mandatory reform could help resolve disputes more efficiently both in terms of costs and time, and reflects the approach taken by a number of Institutional Rules. The change also helpfully aligns arbitration with the position in English litigation.

3. Arbitrators' Statutory Duty of Disclosure

The AA96 provides that arbitrators must be impartial (section 33). Under English common law, arbitrators have a continuing duty to disclose "any relevant circumstances", which may reasonably give rise to justifiable doubts as to their impartiality, as established by the Supreme Court in *Halliburton v Chubb* [2020] UKSC 48.

The AA25 codifies this duty, and in addition, the new statutory duty of disclosure is objective i.e. based on what the arbitrator ought reasonably to be aware of (rather than, subjective i.e. based on actual knowledge).

Importantly, the new provision also provides that the duty will commence from the time the arbitrator is approached to act.

It is hoped that these changes will encourage early disclosure and help reduce the number of arbitrator challenges, thereby saving all parties time and money.

4. Empowering Courts to Support Arbitration

In a change that will be widely welcomed by parties and practitioners, the courts' supportive

powers of arbitration have been further enhanced by an amendment to Section 44 AA96, and which provides that the court can now make orders "in relation to a party or any other person" i.e. to third parties.

5. Enhanced Arbitrator Immunity

The AA25 amends section 24 AA96 and provides that resignation by an arbitrator will not result in liability unless the resignation was unreasonable. Further that an arbitrator will not be required to pay the costs of proceedings to remove them unless their refusal was unreasonable.

These reforms will support and encourage those wishing to act as arbitrators.

6. Limiting Scope for Challenges to Awards

Section 67 of the AA96 enables a party to challenge the tribunal's jurisdiction to hear the arbitration (or part of it) during the arbitration. If they are unsuccessful, they can later challenge the award in court claiming that the tribunal lacked jurisdiction.

The changes brought in by the AA25 Act provide that a challenging party can only make new objections, or present new evidence relating to jurisdiction, if it can demonstrate that these could not have been raised on the earlier challenge for example, they are facts that subsequently came to light.

In a departure from the Supreme Court judgment in *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs*,

Government of Pakistan [2010] UKSC 46, the AA25 provides that there should be no rehearing of oral evidence, unless the court determines it necessary in the interests of justice. This provision is aimed at preventing tactical appeals intended to cause delays by effectively holding a re-hearing of the issues.

Conclusion

The amendments introduced by AA25 are the result of extensive debate, consultation, and submissions by those involved in the arbitration process, including HFW. The AA25 has built on the AA96, preserving the strengths of the original legislation whilst addressing practical needs that have developed over the last three decades.

By facilitating the evolving needs of business and ensuring smoother resolution of disputes by arbitration, the AA25 will help reinforce England's position as a leading forum for commercial arbitration and wider Disputes.

It is worth noting that the changes will not apply retrospectively. Arbitrations commenced prior to 1 August 2025 will continue to be governed by AA96.

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UNDERSTANDING THE JURISDICTIONAL LIMITS OF ARBITRATION: INSIGHTS FROM THE AUSTRALIAN CASE OF FREMANTLE PORT AUTHORITY V MARTIN [2025] WASC 301

The recent Western Australian Supreme Court decision in *Fremantle Port Authority v Martin* [2025] WASC 301 serves as a timely reminder of the fine line between an arbitrator's conferred authority and the limits of their jurisdiction. At the heart of the case lies the question of whether the arbitrator exceeded the scope of the authority conferred by the parties in their arbitration agreement. While arbitration is often praised for its flexibility and efficiency, this judgment underscores the critical need for clear, well-defined arbitration clauses. The Supreme Court of Western Australia reinforced that an arbitrator's jurisdiction is strictly confined to what the parties have expressly agreed upon, emphasising the importance of precision in drafting arbitration clauses to avoid jurisdictional overreach.

Factual Background

The dispute between Freemantle Port Authority (FPA), the Plaintiff, and Container Refrigeration Pty Ltd, the second Defendant, arose under a long-term lease agreement. The lease stipulated that upon expiry, Container Refrigeration would be entitled to be paid "fair value" for improvements made to the leased land. These improvements included various warehouses and infrastructure developed during the lease term (Improvements).

The lease set out a process for determining the "fair value," which included appointing valuers, and, in the event of a disagreement, the appointment of a third-party arbitrator to resolve the dispute. As the lease approached its expiration, FPA and Container Refrigeration could not agree on how to calculate the fair value of the Improvements. Accordingly, the dispute was referred to arbitration.

The parties approached the arbitration with different views:

- FPA sought to limit the issues for arbitration, arguing that the dispute over "fair value" methodology, particularly, the inclusion of certain factors (such as the unexpired lease term) fell outside the scope of the arbitration clause.
- Container Registration argued that the arbitration clause covered all disputes arising from the lease, including the methodology for calculating "fair value," and sought compensation based on a broad valuation approach that included factors FPA disputed.

The arbitrator determined that the methodology for assessing the "fair value" of the Improvements fell within the scope of the arbitration agreement under the lease. FPA, disputing this outcome, applied for judicial review. It argued, among other things, that the arbitrator had exceeded his jurisdiction by addressing matters beyond what the parties had agreed to arbitrate, specifically by considering the appropriateness of the valuation methodology adopted by the valuers appointed by the parties.

The Supreme Court's Ruling

The Supreme Court of Western Australia ultimately agreed with FPA, finding that the arbitrator had exceeded his jurisdiction. The Court held that the arbitration clause did not extend to disputes about the methodology used to determine the fair value of the Improvements. Rather, it conferred on the arbitrator a narrow and confined authority to resolve the identified "differences" between the valuations provided by the parties' appointed valuers. The only issue that was to be referred to arbitration was the point of difference between the valuations, not the process or method used to arrive at those valuations.



Insights and Practical Implications

1. Clarifying Arbitrator's Jurisdiction

This case highlights how important it is to clearly define the scope of an arbitrator's authority. When arbitration clauses are not specific enough, arbitrators may end up addressing issues outside their remit, leading to confusion and unnecessary legal challenges. Conversely, when the scope of an arbitrator's authority is too narrow, the parties may need to bring proceedings in multiple forums to resolve a single dispute. For businesses and legal teams, it is crucial to clearly identify, upfront, which disputes are for arbitration, and which are not, particularly in complex agreements like long term leases or construction contracts.

2. Keep Arbitration Clauses Clear and Focused

Arbitration clauses should be comprehensive but not overly complicated. Overly detailed or vague clauses can lead to confusion, opening the door for disputes about what's actually being arbitrated. The key is simplicity: a clear, focused clause is the most effective way to ensure smooth dispute resolution.

For complex industries like construction, it is especially important to:

- **Clearly define** the types of disputes subject to arbitration (e.g., valuation, performance related issues).

- **Specify methods** for resolving these disputes (e.g., how valuations should be calculated).
- **Outline the process** for escalating disputes to arbitration, avoiding jurisdictional uncertainty.

A well-structured clause, kept simple and precise, helps avoid unnecessary complications, ensuring a predictable arbitration process and reducing the risk of costly court interventions.

3. Anticipating Future Disputes

An important takeaway from this case is the value of anticipating future disputes in your arbitration clause. While simplicity is essential, it is equally important to consider potential issues that could arise during the life of the contract, such as valuation disagreements, performance issues, or unexpected contract changes. By proactively planning for these scenarios, businesses can ensure that the arbitration process remains clear and efficient. However, this does not mean overcomplicating the clause. Instead, consideration should be given to the disputes that are likely to occur and outlining simple, practical steps for resolving them. For example, specifying how disputes over valuation will be handled or how performance-related issues should be addressed in arbitration can help avoid the need for costly litigation later.

A well-crafted arbitration clause does not just minimise risks it also promotes a more collaborative, long-term business relationship

by providing a clear framework for resolving potential disputes before they escalate.

4. Global Relevance of Arbitration

While this case is based in Western Australia, the principles outlined are highly relevant to international arbitration. In cross-border transactions, where multiple jurisdictions may be involved, clearly defined arbitration clauses become even more critical. Global businesses should ensure that international arbitration agreements not only clarify the scope of arbitrable disputes but also ensure alignment with local legal practices and expectations. The need for clarity in arbitration clauses is universal and cannot be overstated, particularly as arbitration continues to grow as the preferred method of dispute resolution worldwide.

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ENFORCEMENT OF FOREIGN ARBITRAL AWARDS IN THE UAE: DUBAI COURT OF CASSATION REINFORCES THE NEW YORK CONVENTION

Recognition and enforcement of foreign arbitral awards in the UAE is becoming increasingly straightforward. In Dubai Court of Cassation Judgments Nos. 778 and 887 of 2025 (Commercial), the court confirmed its liberal and pro-enforcement approach when assessing the enforceability of foreign arbitral awards. Importantly, the court clarified that the grounds for resisting enforcement are confined strictly to those set out in the New York Convention (NYC), without expansion or reference to additional requirements under the UAE Civil Procedure Law (CPL).

Introduction

This article provides an overview of those judgments which are particularly significant as they clarify and affirm several key principles regarding the enforcement of foreign awards under UAE law, including the application of the NYC.

The Court of Cassation held that:

1. Neither UAE Arbitration Law nor the NYC requires foreign arbitral awards to be signed by all tribunal members.
2. The requirements of Article 222 of the CPL apply to foreign court judgments only, not to foreign arbitral awards governed by the NYC.
3. Issues such as capacity and authority to the signatory of the contract/agreement, once determined during the arbitration, cannot be revisited by the UAE enforcement court, in line with the NYC.
4. Public policy objections are generally limited to the law of the seat, unless there exists a substantial conflict with UAE public policy.

Grounds of Appeal

The underlying dispute arose from two commodities sale contracts. The Buyer (Claimant), represented by HFW, obtained final arbitral awards against the Seller (Defendant) and sought recognition and enforcement before the Dubai Courts. The Defendant challenged enforcement, raising the following grounds before the Court of Appeal and subsequently in cassation:

1. The arbitral awards were not signed by all tribunal members, allegedly breaching UAE law and public policy.
2. The arbitration clauses and sale contracts were not executed by an authorised manager / employee of the Defendant and thus were not binding.
3. The individual who contracted with the Claimant lacked actual or ostensible authority to bind the Defendant.
4. Even if ostensible authority existed, UAE law requires only a general manager or duly authorised attorney to agree validly to arbitration.
5. The awards conflicted with UAE public policy by granting compound interest.

The Defence

The Claimant countered that:

1. Enforcement is governed exclusively by the NYC, not Article 222 CPL, and the awards satisfied all NYC requirements.
2. None of the Defendant's objections fell within the limited grounds for refusal under the NYC.
3. No requirement exists for all tribunal members to sign an award under either UAE Arbitration Law or the NYC.

4. Authority and capacity objections were fully litigated in the arbitration and thus are res judicata under the NYC.
5. Public policy and capacity issues must be assessed in accordance with the law of the seat (England). As such, UAE domestic standards could not be invoked to invalidate the award.

The Cassation Judgment

The Dubai Court of Cassation dismissed both appeals and upheld the recognition and enforcement orders. The court held that:

1. The enforcement orders were properly issued under the NYC.
2. No legal requirement exists under UAE law or the NYC for all arbitrators to sign foreign awards.
3. The awards were final and therefore res judicata applied—namely meaning that issues of capacity, authority, and contract validity cannot be re-examined at the enforcement stage.
4. The Defendant's objections did not fall within the limited grounds for refusal of enforcement under the NYC.
5. The Defendant failed to prove that compound interest or incomplete signatures violated the public policy of the seat of arbitration (England).

Conclusion

These judgments confirm that UAE courts, in line with the New York Convention, clearly support the enforcement of foreign arbitral awards. This is good news for parties wishing to resolve disputes by arbitration and then enforce those awards in the UAE.

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EVEN MORE ARBITRATION FRIENDLY DECISIONS FROM THE UAE COURTS

Since the Federal Arbitration Law (Law No. 6 of 2018) was passed in the UAE in 2018, there has been a consistent trend in 2025 of the UAE Courts issuing judgments which are supportive of arbitration in the Emirates. This has been illustrated by a number of recent Court of Cassation judgments across the UAE.

We should note that these “onshore” Courts are distinct from the English language Courts in the DIFC and ADGM freezones in Dubai and Abu Dhabi respectively.

However, it is common that all Courts of the UAE including these ones are pro-arbitration and will support parties in upholding arbitration agreements and supervising arbitration proceedings seated in the UAE and elsewhere.

Arbitral Tribunals can issue Anti-Suit Injunctions without interference

The Dubai Court of Cassation recently issued a significant decision in Case No. 657 of 2025, where it confirmed an arbitral tribunal's power to issue an anti-suit injunction in a UAE-seated arbitration, and reaffirmed an arbitral tribunal's authority to order interim or provisional measures.

The judgment arose from an ICC arbitration seated in Dubai, where the arbitral tribunal issued an order preventing the respondent party by filing claims in other courts on issues covered by the arbitration agreement. The anti-suit injunction was challenged before the Dubai Court of Appeal and annulled on the basis that it violated a party's right to access courts and the Federal Arbitration Law.

The Dubai Court of Cassation reversed the ruling, affirming the arbitral tribunal's jurisdiction and declaring that onshore courts lacked authority to intervene in such interim decisions. The anti-suit injunction was upheld.

The Dubai Court of Cassation held that Article 21 of the Federal Arbitration Law grants arbitral tribunals in UAE-seated arbitrations the power to order interim or precautionary measures (including

anti-suit injunctions) as it may deem necessary. It was also noted that the arbitral tribunal had the sole authority to modify, suspend or revoke any measures ordered, either upon request or by the arbitral tribunal's own initiative.

Clarifications on signatures in arbitral awards

On 4 August 2025, the Authority for Unification of Federal and Local Judicial Principles (**the Authority**) issued Decision No. 1 of 2025, clarifying the position on the signature of arbitral awards in the UAE.

Historically, it was understood that arbitral awards issued in a UAE-seated arbitration, or foreign arbitral awards to be enforced in the UAE (especially in Dubai), needed to be signed on every page in order to be valid and enforceable. Some Emirates adopted a different position; the Ras-Al-Khaimah Court of Cassation considered that there was no requirement for arbitrators to sign all pages, and this was adopted by the Abu Dhabi Court of Cassation in a number of cases. These differing approaches led to uncertainty as regards the requirements for issuing a valid award under the Federal Arbitration Law.

The conflicting positions were resolved by the Authority in its decision, and it was decided, amongst other things that: (1) there was no provision in the Federal Arbitration Law for an arbitral award to be signed on every page, and an arbitral award was valid and enforceable if signed by all arbitrators (or the majority), on the final page of the arbitral award; and (2) Failure of an arbitrator to sign on every page of an arbitral award did not violate the public policy requirements under Article 53 of the Federal Arbitration Law, and excessive formality would go against public policy as it could cause difficulties with enforcement and increase costs.

This decision unifies the position in the UAE and also reinforces the notion that the UAE is an enforcement friendly jurisdiction, which will be welcomed by legal practitioners not only in the UAE, but abroad.



In light of the above, on 11 September 2025, the Dubai Court of Cassation issued a decision in Case No. 778 of 2025, confirming that there is no requirement under either the Federal Arbitration Law or the New York Convention for foreign arbitral awards to be signed by all tribunal members.

Unilateral Arbitration Agreements are not Enforceable

The Dubai Court of Cassation ruled in Case No. 735 of 2024 (Commercial), that a unilateral arbitration agreement is not a valid and binding arbitration agreement under UAE law.

A dispute arose between a contractor and subcontractor about payment under two subcontract agreements, which contained identical arbitration agreements. The clause stated that if a dispute was not resolved by amicable settlement, it should be referred to either: i) arbitration at the Dubai Chamber of Commerce, or ii) the local courts of the UAE, and the choice of forum was to be decided by the contractor. The subcontractor commenced a claim in the Dubai Court of First Instance, and the contractor argued that arbitration was the correct forum for the dispute. The contractor’s argument was rejected by the Court of First Instance, and the decision was then appealed in the Court of Appeal on the basis that the Dubai courts lacked jurisdiction due to the arbitration clause, as it gave the contractor the sole right to determine which forum would resolve any dispute between

the parties. The appeal was rejected, and the contractor then appealed to the Court of Cassation.

The Dubai Court of Cassation upheld the decisions of the lower courts, that unilateral arbitration agreements are not valid and binding, and in order to be valid, the arbitration agreement must be clear and explicit, with no ambiguity or vagueness, and the agreement to arbitrate cannot be presumed or implicit.

Unilateral arbitration clauses are commonly used (e.g. by banks, employers or insurers), as they can restrict a party to a single dispute forum. This judgment may now cause parties to review their existing contracts and arbitration agreements and reconsider their joint intention. We consider that it is likely that UAE onshore Courts may well find unilateral arbitration clauses unenforceable.

Legal Costs are recoverable in ICC arbitration

There has been an ongoing question regarding the enforceability of costs orders issued by arbitral tribunals in arbitrations seated in the UAE. This was notably absent from the Federal Arbitration Law, which only deals with recovery of tribunal and arbitration costs. Even as recently as February 2024, the Dubai Court of Cassation in Case No. 821 of 2023 (Commercial), upheld the decision of a lower court to partially annul an ICC award in order to render the tribunal’s costs order unenforceable.

In Case No. 756 of 2024, in March 2025, the Dubai Court of Cassation appear to have resolved the question of recoverability of legal costs. Importantly, the Court considered that the mutual consent of parties to resolve a dispute under a particular set of arbitral rules (such as the ICC rules) binds those parties to those rules, except for any rule that would be contrary to public order.

Due to the ongoing cases, for arbitrations seated in the UAE, we advise that parties expressly agree in arbitration agreements (or with the tribunal at the first procedural order or terms of reference) that the tribunal should be granted the power to award costs.

Positive developments, but some uncertainties remain

These various cases demonstrate that the Courts of the UAE, and those onshore in Dubai in particular, are keen to demonstrate their credentials as arbitration friendly. Positive developments have been consistently seen in the last 12 months, albeit uncertainties remain in some areas.

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REVISED PRC ARBITRATION LAW INTRODUCES MAJOR REFORMS

Long-awaited revisions to China’s Arbitration Law have been published, which include modernisation of China’s arbitration regime and the explicit adoption of concepts and procedures which will be familiar to the international arbitration community.

These changes to China’s arbitration law align the PRC’s regime more closely with standard international arbitration practice, making China a more attractive, and accessible, seat of arbitration; a development which may have a significant impact on arbitration in China and beyond.

Background

The Arbitration Law of the People’s Republic of China (Arbitration Law) was first adopted on 31 August 1994. Although the Arbitration Law was amended in 2009 and 2017, reform of China’s arbitration regime was, according to some commentators, long overdue. Various draft amendments had been proposed over the years which also caused uncertainty as to the future of arbitration in China, as did questions over whether China would adopt the UNCITRAL Model Law.

China’s Revised Arbitration Law

On 12 September 2025, the Arbitration Law of the People’s Republic of China (2025 Revision) (**Revised Law**) was adopted¹. The Revised Law has 8 chapters, containing a total of 96 articles, and comes into effect on 1 March 2026². In this article we explore aspects of the Revised Law, which will be of interest to the global international arbitration community and to parties who engage in arbitration in China.

Online Arbitration

Arbitration in China has taken place online for many years, the China International Economic and Trade Arbitration Commission (**CIETAC**) arbitral rules regulated online arbitration as far back as 2009. Online arbitration proved

popular in China and in 2024 CIETAC administered 1,766 remote hearings³. The Revised Law continues this theme and expressly permits online arbitration (unless the parties disagree), and online arbitration activities have the same legal effect as in person arbitrations⁴.

The use of information technology (e.g. service by email) and remote hearings during arbitral proceedings have many benefits, including reducing costs, delay, and the carbon footprint. This aspect of the Revised Law will therefore be welcomed by the global arbitration community and by parties alike.

Arbitration Agreements: Deemed Existence

Article 27 of the Revised Law deals with the terms of arbitration agreements and states that if one party asserts that an arbitration agreement exists when applying for arbitration, the other party must deny that the agreement exists before the first hearing, or the arbitration agreement will be deemed to exist⁵.

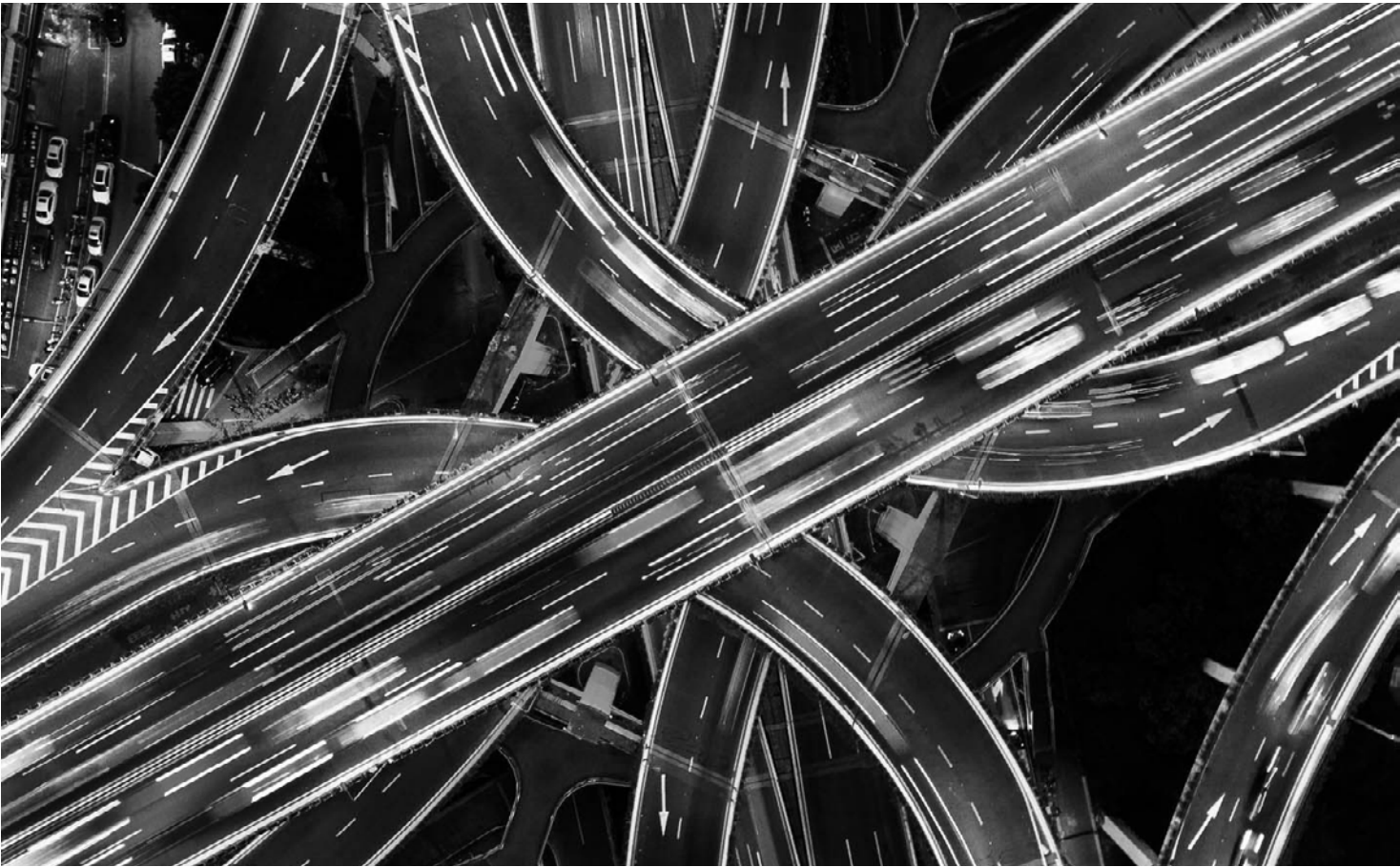
Early disposal of disputes over the existence of an arbitration agreement will enable claimants to proceed with their claims more efficiently, particularly where there is no written arbitration agreement, and will avoid arguments being used by respondents to delay the inevitable and/or exhaust the claimant’s funding.

On the other hand, respondents will need to bear this provision in mind and clearly set out their position - at an early stage - if they intend to argue that the arbitration agreement relied upon by the claimant does not exist and/or was not entered into by the parties.

Arbitration Agreements: Separability and ‘Kompetenz-Kompetenz’

The Revised Law confirms that the validity of an agreement in which the parties agreed to arbitrate disputes arising out of a specific contract is

1 You can access the official Chinese version of the Revised Law [here](#).
2 Revised Law, Article 96.
3 [CIETAC 2024 Work Report and 2025 Work Plan](#), published by CIETAC (accessed 17 September 2025).
4 Revised Law, Article 11.
5 Revised Law, Article 27.



not affected by the effectiveness, modification, invalidity, or revocation of that contract⁶. The Arbitration Law (2017 Revision) included a similar provision, on which the Revised Law has expanded.

Arbitration tribunals will be empowered by the Revised Law to confirm the validity of such arbitration agreements, and the Revised Law sets out the process whereby parties can request a decision from the tribunal – or a ruling from the People’s Court⁷. This party-led approach is pragmatic, commercial and will be familiar to the international arbitration community, given that it is in line with the position elsewhere.

The 2021 State Council Public Consultation Draft (**Draft**) featured broader drafting, which embraced the concept of Kompetenz-Kompetenz more fully. Under Article 28 of the Draft, questions

regarding the existence, validity, and effectiveness of the arbitration agreement, as well as the arbitration panel’s jurisdiction to hear the dispute would have been decided by the arbitral tribunal⁸, whereas the Revised Law takes a more conservative stance.

Preservation Measures

The Revised Law introduces interim measures for the first time for the preservation of assets and evidence and/or to restrain certain conduct via, for example, injunctive relief and are available before parties commence arbitration⁹. This is another new feature of the Revised Law, aligning itself with the availability of similar principles in PRC court proceedings, under the Civil Procedure Law of the People’s Republic of China.¹⁰

Emergency relief is also available, upon application by parties to the People’s Court.¹¹

In addition, arbitral tribunals are now empowered to collect their own evidence and request assistance with collection of evidence from relevant authorities.¹²

Service of Arbitration Documents

There has been discussion around the frequency with which PRC courts agree to set aside or refuse to enforce arbitral awards due to defects in the service of arbitration documents.¹³

The Revised Law states that:

*“An arbitration document shall be served in a reasonable manner agreed upon by the parties; if the parties have no such agreement or the agreement is unclear, the arbitration document shall be served in the manner prescribed by the rules of arbitration.”*¹⁴

The Revised Law therefore supports service of proceedings.

Arbitral Institutions update their rules to remain an Institution of choice, so their service rules tend to keep up with developments in modern technology, which is another benefit to aligning service provisions to those of the relevant Institution.

Setting Aside Awards: Time Limits

Under the Revised Law, parties will only have three months from the date of receipt of the arbitration award to file set aside applications¹⁵, rather than the six months allowed under the current regime.

This is a significant reduction, and one which parties and lawyers alike should bear in mind, lest they miss the opportunity to set aside an unfavourable award. On the other hand, this reform will result in disputes being disposed of swiftly, providing certainty and finality, and will be welcomed on that basis.

Foreign-Related Disputes: Expanded Scope of ‘Foreign-Related Disputes’

Currently, China’s arbitration regime defines ‘foreign-related disputes’ as the *“arbitration of disputes arising from economic, trade, transportation and maritime activities involving a foreign element”*¹⁶.

The Revised Law extends this definition to include *“and other foreign-related disputes”*¹⁷, which significantly widens the range of ‘foreign-related disputes’ which can take advantage of provisions which aim to facilitate the arbitration of international disputes in China.¹⁸

Foreign-Related Disputes: Seat of Arbitration

The Revised Law empowers parties who are arbitrating a foreign-related dispute to choose the seat of arbitration¹⁹. This provision also clarifies that the seat of arbitration dictates the law applicable to the arbitration proceedings and the court which has jurisdiction to hear any disputes arising from it (e.g. set aside or enforcement applications), which

further aligns it with international regimes. Significantly, this provision expressly adds the concept of “seat of arbitration” to Chinese arbitration law, which is welcome clarification.

Foreign-Related Disputes: Recognition & Enforcement

The Revised Law permits recognition and enforcement of arbitral awards made outside Mainland China²⁰. Rules setting out how jurisdiction is established are based on concepts which will be familiar to the international arbitration community, such as the domicile of the award debtor, location of assets, and *“an appropriate connection”* to the matters in dispute and the Revised Law explicitly requires Chinese courts to act in accordance with international treaties to which China is a party *“or on the principle of reciprocity”*.

Foreign-Related Disputes: Ad Hoc Arbitration in Foreign-Related Disputes

The Revised Law will permit entities formed and registered in designated locations to engage in ad hoc arbitration of foreign-related disputes.²¹

Ad hoc arbitration is not formally recognised under China’s current arbitration regime, albeit pilot schemes were trialled in certain areas (e.g. free trade zones)²². This development, which respects party autonomy and provides enhanced flexibility and efficiency, will be welcomed by the international arbitration community and parties alike.

Opening Up: International Ambitions

The Revised Law encourages Chinese arbitration Institutions to open offices in foreign jurisdictions and allows foreign arbitration Institutions to open in certain designated areas in China (e.g. free trade pilot zones), on the proviso that foreign institutes *“carry out foreign-related arbitration activities in accordance with the relevant provisions issued by the state”*²³.

Comments

The Revised Law represents a major development in China’s arbitration law, modernising the regime, respecting parties’ autonomy and incorporating concepts which are familiar to the international arbitration community.

This will foster trust in the Chinese arbitral regime and make arbitration in China more attractive, especially to foreign parties.

It is clear that the PRC aspires to continue to develop a reputation as a respected arbitration seat of choice for international disputes, building on its experience as a centre for domestic arbitration.

As is the norm in China, legislative amendments will be followed by judicial interpretation and further guidance, which may negate previous guidance. Therefore, this new legislation is likely the first step in the continued reform of China’s arbitral regime.

We will monitor developments closely and provide further updates and analysis in due course.

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6 Revised Law, Article 30.
7 Revised Law, Article 31.
8 **中华人民共和国仲裁法（修订）（征求意见稿）**, published by the Ministry of Justice of the People’s Republic of China on 30 July 2021 (accessed 19 September 2025).
9 Revised Law, Article 39, Article 58.
10 Revised Law, Article 39, Article 82.
11 Revised Law, Articles 39, 58.
12 Revised Law, Article 55.
13 **新修订的《仲裁法》对实务的重要影响**, published by Zhihu on 16 September 2025 (assessed 17 September 2025).
14 Revised Law, Art 41.
15 Revised Law, Article 72.
16 Arbitration Law of the People’s Republic of China (2017) Article 65.
17 Revised Law, Article 78.
18 Chapter VII of the Revised Law ‘**Special Provisions for Arbitration Involving Foreign Elements**’ deals with, for example, preservation of evidence, seat of arbitration, set aside and recognition and enforcement of arbitral awards.
19 Revised Law, Article 81.
20 Revised Law, Article 88.
21 Revised Law, Article 82.
22 See **Development and practice of ad hoc arbitration in mainland China**, published by Global Arbitration Review on 15 May 2025 (accessed 19 September 2025).
23 Revised Law, Article 86.



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WHEN LESS ISN'T TOO LITTLE: PARIS COURT OF APPEAL REJECTS INFRA PETITA AS GROUND FOR ANNULMENT

On 3 June 2025, the Paris Court of Appeal rendered a noteworthy decision in the saga between US-based restaurant franchisor, Wingstop Franchising LLC (Wingstop or the Franchisor) and its former French franchisees, B. Wing and Flight 83 (the Franchisees). The court dismissed an application to annul a partial arbitral award rendered under the auspices of the London Court of International Arbitration (LCIA), reinforcing important principles regarding the scope of an arbitral tribunal's mission and the limits of judicial review.

The Paris Court of Appeal was asked to consider whether an award could be annulled on the basis that the arbitrator had omitted to rule on one of the parties' claims, a situation commonly referred to as '*infra petita*'.

Background of the Dispute

The dispute arose from a 2017 franchise agreement granting B. Wing and Flight 83 exclusive rights to develop the Wingstop brand in France. However, what started as a promising partnership soon turned into a conflict, largely due to disagreements over territorial exclusivity and development obligations. In 2021, Wingstop initiated LCIA arbitration proceedings against the Franchisees, alleging multiple breaches of contract. The sole arbitrator issued a partial award on the merits in September 2023, followed by a final award on quantum in October 2024.

Seeking to set aside the partial award, the Franchisees initiated annulment proceedings before the Paris Court of Appeal, citing three grounds under Article 1520 of the French Code of Civil Procedure (FCPC). Among other grounds, the Franchisees argued that the sole arbitrator violated its mandate by neglecting to address a key counterclaim, thereby justifying annulment under Article 1520(3). This article allows for annulment where the arbitral tribunal has ruled without complying with the mandate entrusted to it.

The Infra Petita Allegation

The Franchisees argued that the sole arbitrator failed to address a counterclaim seeking EUR 8.8 million in damages for delays allegedly caused by Wingstop. They maintained that this claim has been clearly articulated in their submissions from February 2023 and reiterated in their quantum submissions in March 2024. According to the Franchisees, the sole arbitrator's failure to rule on this counterclaim amounted to a breach of mandate, warranting annulment of the partial award.

Wingstop, by contrast, maintained that the sole arbitrator had, in fact, dealt with the counterclaim in both the partial and final awards. In the alternative, the Franchisor argued, even if the sole arbitrator had failed to address a claim, such a failure would at most constitute *infra petita*, which is not recognised a ground for annulment under French law.

The Court's Analysis

In its carefully reasoned decision, the Paris Court of Appeal began by reaffirming that the arbitral tribunal's mandate is primarily defined by the subject matter of the dispute, which is determined by the parties' claims, without being strictly limited to the issues listed in the Terms of Reference.

The court held that, even if the sole arbitrator had failed to rule on the EUR 8.8 million counterclaim, such an omission would amount only to *infra petita*. Under French law, *infra petita* is not a valid ground for annulment pursuant to Article 1520(3) of the FCPC.

The court went further, reviewing the awards and concluding that no omission had occurred. The sole arbitrator had explicitly addressed the Franchisees' counterclaim in both the partial and final awards. Specifically, the sole arbitrator acknowledged that Wingstop had no express contractual right to reject the Franchisees' site proposals but found that the Franchisees were estopped from invoking this as a breach. The, the sole arbitrator dismissed



the counterclaim as untimely and unsubstantiated, and in doing so, fulfilled its mission.

On this basis, the court rejected the request for annulment.

Takeaways

The message is clear: *infra petita* does not justify annulment under French Law. Parties who consider that an arbitral tribunal has omitted to address a claim must rely on the procedural remedies provided under the arbitration rules applicable to the case, such as requesting an additional award to address the omitted claim.

The ruling further reinforces the important distinction between *infra petita* and *ultra petita*. While *ultra petita* (when an arbitral tribunal decides beyond the scope of its mandate) may constitute a valid ground for annulment under Article 1520(3) of the FCPC, *infra petita* does not, under current French jurisprudence.

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TEAM NEWS

- HFW strengthens global **maritime practice** and continues Asia Pacific growth with hire of leading shipping litigation and international arbitration partner Elizabeth Sloane
- HFW **achieves top-tier rankings** in the 2025-26 edition of The Legal 500 UK
- HFW **Recognised as a leading firm** in Chambers UK 2026 Guide
- HFW's **Julien Fouret** has been elected to the Board of the ASA - Swiss Arbitration Association (ASA), as announced in Global Arbitration Review
- HFW **continues growth** of global construction practice and Asia Pacific business with hire of senior disputes partner Simon Bellas in Singapore
- HFW **Paris office** has been named 2026 "Law Firm of the Year" for Litigation by Best Law Firms

HFW EVENTS AND SPEAKING ENGAGEMENTS

Events:

- HFW co-hosted a panel with Burford Capital at our Sydney office, exploring the opportunities and challenges in third-party funding of construction disputes
- HFW co-hosted a panel discussion with Society of Construction Law Australia (SoCLA) during Australian Arbitration Week, exploring the complexities of consolidation and multi-contract arbitrations in large-scale construction projects, **Jo Delaney** and **Nick Watts** were featured on the panel
- HFW co-hosted a panel discussion with International Centre for Settlement of Investment Disputes (ICSID) during Australian Arbitration Week, exploring Investor State Arbitration in energy transition projects, **Sean Marriott** moderated a panel of Investor State Arbitration experts including **Jo Delaney**, Jonathan Chevry (ICSID) and Professor Douglas Jones AO (Independent Arbitrator)

Speaking engagements and networking:

- **Sinyee Ong** spoke at International Association of Young Lawyers' 4th Annual Litigation Conference/15th Annual Arbitration Conference, sharing insights during a panel discussion on "The Rise of International Commercial Courts: Friend or Foe to Arbitration? A perspective from the Global South"
- **Michael Sergeant** spoke on a panel discussion at the ICC-FIDIC Conference on International Construction Contracts and Dispute Resolution, "Adverse Climatic Conditions – A Growing Challenge for Construction Projects, alongside other leading industry experts"
- **Kevin Warburton** was invited to participate in a panel discussion at THAC Thailand Arbitration Center ADR Conference 2025, held in Bangkok, "Thai-Chinese Economic Corridor: Dispute Resolution Options and Implications for Trade and Investment"

- **Michael Sergeant** spoke at the International Construction Arbitration Conference 2025, hosted by King's College London, exploring how artificial intelligence is reshaping the role of expert witnesses in construction disputes and the broader implications for international arbitration

Thought leadership

- **HFW Maritime Arbitration in Numbers report: London Leads, Asia Surges, and New Hubs Emerge**
- **A Look at the Key Changes Contemplated by Saudi Arabia's Recently Published Draft New Arbitration Law**



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HFW has over 700 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our International Arbitration capabilities, please visit www.hfw.com/international-arbitration.

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