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KEY DEVELOPMENTS UPDATE FEBRUARY 2025

MESSAGE FROM KHAWAR QURESHI KC, HEAD OF MCNAIR INTERNATIONAL

In this edition of our update, the highlights include the enactment of the Arbitration Act 2025, a recent ICSID "limitation" decision and English Court of Appeal decisions on State Immunity and Sanctions, as well as annual statistics released by the ICC and HKIAC.

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- **The Arbitration Act 2025 receives Royal Assent**. On 24 February 2025, the Arbitration Act 2025 received Royal Assent, signposting the most significant update to English arbitration law in nearly 30 years. The 2025 Act aims to increase efficacy in English arbitral practice by implementing recommendations provided by the Law Commission in 2023, ensuring London remains a pre-eminent dispute resolution location.

- **ICSID Tribunal declines jurisdiction over NAFTA/USMCA claim.** In *Westmoreland Coal Company v Canada* (ICSID Case No. UNT/23/2), an ICSID tribunal held that a second arbitration brought by a US mining company under NAFTA and the US-Mexico-Canada Agreement were time-barred and failed to qualify as a "*legacy investment*".

- **Court of Appeal rejects Spain's State Immunity plea in employment claim.** In *Spain v Lorenzo* [2024] EWCA Civ 1602 and [2025] EWCA Civ 59, the Court of Appeal found that Spain was not immune from proceedings brought by a former employee at its London embassy, and declared Section 4(2)(a) of the State Immunity Act 1978 incompatible with Article 6 of the European Convention on Human Rights.

- **Failure to consider limitation defence amounts to serious irregularity.** In *Djanogly v Djanogly and others* [2025] EWHC 61 (Ch), the English High Court partially upheld a challenge to an award on the basis of a failure to address a defence of limitation.

- **Court of Appeal upholds designation of wife "associated with" sanctioned husband.** In *Khan v Secretary of State for Foreign, Commonwealth & Development Affairs* [2025] EWCA Civ 41, the Court of Appeal dismissed an appeal against a judgment upholding the designation under UK sanctions legislation of the wife of a businessman himself designated for his position on the supervisory board of a Russian private bank.

- **Commercial Court declines jurisdiction over fraud/conspiracy dispute.** In *Magomedov and others v TPG Group Holding (SBS) LP and others* [2025] EWHC 59 (Comm), the Commercial Court held it had no jurisdiction over enormous fraud/conspiracy claims in relation to the commercial interests of an imprisoned Russian businessman.

- **ICC provides updated guidance on identifying corruption "Red Flags" in arbitration.** In December 2024, the ICC Commission on Arbitration published clear guidance on the identification and assessment of red flags of corruption in international arbitration, including the introduction of a three-step methodology.

- **ICC and HKIAC publish their 2024 statistics.** The ICC's and HKIAC's statistics for 2024 show growth in terms of the number of cases heard and the sums at stake. The HKIAC's statistics also show an increased use of an Arrangement between Hong Kong and China to preserve evidence and assets in support of cross-border arbitrations.

THE ARBITRATION ACT 2025 RECEIVES ROYAL ASSENT

Introduction

On 24 February 2025, the Arbitration Act 2025 ("2025 Act") received Royal Assent, signposting the most significant update to English arbitration law in nearly 30 years. The 2025 Act aims to increase efficacy in English arbitral practice by implementing recommendations made by the Law Commission in 2023 to amend the Arbitration Act 1996 ("1996 Act"), ensuring London remains a pre-eminent dispute resolution location.

Governing Law

The 2025 Act, via s.6A(1), implements a new default rule that absent the parties' express agreement, the governing law of the arbitration agreement shall be the law of the arbitral seat. However, this default position does not apply to arbitration agreements in which the standing offer to submit to arbitration is contained in a treaty or legislation of a non-UK territory.

Summary disposal

Section 39A of the 2025 Act explicitly empowers arbitrators to summarily dispose of claims or issues, unless the parties agree otherwise – the test being the same as summary disposal in English court proceedings ("no real prospect of success").

Orders against third parties under s.44

Section 9 of the 2025 Act clarifies the court's powers exercisable in support of arbitral proceedings in respect of third parties – amending s.44(1) of the 1996 Act to add the words "*whether in relation to a party or any other person*".

Arbitrators' disclosure duty

Section s.23A of the 2025 Act codifies an arbitrator's common law duty to disclose any circumstances which might reasonably raise justifiable doubts as to their impartiality, and clarifies that such obligation is based on what an arbitrator knows or "*ought reasonably to be aware*".

Challenging the tribunal's jurisdiction under s.67

Where the tribunal has already ruled on a challenge to its jurisdiction, the 2025 Act states that, save in the interests of justice, any subsequent challenge under s.67 of the 1996 Act will not allow any new grounds of objection or new evidence, unless the applicant shows that, at the time the applicant took part in the proceedings, the applicant did not know and could not with reasonable diligence have discovered the ground or evidence.

Arbitrators' immunity

Arbitrators' immunity is now extended under s.3 of the 2025 Act. The court cannot order an arbitrator to pay costs in proceedings under this section unless any act or omission of the arbitrator in connection with the proceedings is shown to have been in bad faith. Further, an arbitrator's resignation does not give rise to any liability for the arbitrator unless the resignation was, in all the circumstances, unreasonable (per s.4).

Emergency arbitrators

The 2025 Act now empowers emergency arbitrators to (i) issue peremptory orders and to (ii) give permissions for applications made under s.44 of the 1996 Act. These reforms aim to bring emergency arbitrators onto a more equal footing with regular arbitrators.

Power to award costs despite no substantive jurisdiction

The 2025 Act makes clear by s.6 that subject to an agreement of the parties, it is irrelevant for the purposes of s.61(1) of the 1996 Act and the tribunals right to award costs, whether (i) the tribunal has ruled (or a court has held) that the tribunal has no substantive jurisdiction or (ii) has exceeded its substantive jurisdiction concerning its right to award costs.

Entry into force

S.16 and s.18 of the 2025 Act came into force upon Royal Assent, whereas the rest of its substantive provisions come into force when the Secretary of State makes regulations for the same.

The full 2025 Act can be found here.

ICSID TRIBUNAL DECLINES JURISDICTION OVER NAFTA/USMCA CLAIM

Westmoreland Coal Company v Canada (ICSID Case No. UNT/23/2)

Introduction

By a decision issued on 17 December 2024 in *Westmoreland Coal Company v Canada* (ICSID Case No. UNT/23/2), an ICSID tribunal (Gabrielle Kaufmann-Kohler (presiding); Laurence Shore; Judith Levine) held it had no jurisdiction to hear a claim brought by a US mining company concerning the confiscation of mines in Canada.

Background

The claimant US company acquired Canadian coal assets in 2014, including a coal-mining company operating in Alberta ("Prairie"). At the time of acquisition, Canada and Alberta had implemented policies to reduce greenhouse gas emissions, including federal regulations aimed at phasing out coal-fired electricity generation.

In 2015, Alberta announced a "Climate Leadership Plan" to accelerate the phase-out of coal-fired power plants by 2030 and impose stricter emissions regulations. As part of the transition, Alberta provided financial compensation to Canadian-owned power companies, but not to Prairie or the claimant.

In 2018, the claimant began NAFTA arbitration against Canada, claiming that the differential treatment of compensation violated its rights under Chapter 11. In parallel, the claimant filed for US bankruptcy, and its coal assets (including Prairie) were transferred to a new entity ("WMH"), controlled by the claimant's first-lien lenders. WMH attempted to continue the arbitration but was dismissed for lack of standing under NAFTA in 2022.

The claimant then reasserted its own claims under NAFTA and the US-Mexico-Canada Agreement ("USMCA"), arguing that it had never transferred its NAFTA claim to WMH and remained entitled to pursue its arbitration. Canada opposed the claims, arguing (1) they were time-barred, and (2) did not qualify as a "*legacy investment*" under the USMCA.

Decision

The Tribunal upheld Canada's jurisdictional objections.

As to whether the claims were time-barred under the 3-year limitation period in Articles 1116(2) and 1117(2) NAFTA, the claimant knew or ought to have known of Canada's alleged treaty breaches by November 2016 when Alberta's coal-phase out policy was finalised. However, the claimant did not initiate the instant arbitration until October 2022 — almost 6 years later.

The claimant's argument that its claims were preserved through subsequent procedural developments was rejected. The Tribunal held that NAFTA's limitation period is construed strictly and does not allow for extensions or "*tolling*" (i.e. the suspension of a limitation period).

As to whether the claims qualified as a "*legacy investment*" under the USMCA, in order so to qualify the investment would need to be "*in existence*" when the USMCA entered into force on 1 July 2020. The Tribunal found that the claimant had no investment in Canada at that time because, by 2020, Prairie and the claimant's other Canadian assets were transferred to WMH through the US bankruptcy proceedings. As a result, the claimant no longer had ownership or control over the relevant investment and did not qualify under the USMCA's definition of a "*legacy investor*".

Concluding observations

The Tribunal's decision reinforces the strict interpretation to be given to limitation periods under NAFTA, as well as the narrow scope for qualification of legacy investment claims under the USMCA. It also highlights a need to be well aware of the potential ramifications of parallel bankruptcy/insolvency proceedings on ongoing dispute resolution processes.

The decision is available here.

COURT OF APPEAL REJECTS SPAIN'S STATE IMMUNITY PLEA IN EMPLOYMENT CLAIM

Spain v Lorenzo [2024] EWCA Civ 1602 and [2025] EWCA Civ 59

Introduction

By a judgment handed down on 20 December 2024 in *Spain v Lorenzo* [2024] EWCA Civ 1602, the Court of Appeal held that Spain was not immune from claims under the Equality Act 2010 brought by a former employee at its London embassy. By a supplementary judgment dated 29 January 2025 ([2025] EWCA Civ 59), a declaration was granted that Section 4(2)(a) SIA 1978 is incompatible with Article 6 ECHR.

Background

Ms Lorenzo, a dual UK-Spanish national, worked at the Spanish Embassy in London from 2008 to 2011 and again from 2013 to 2015. After her resignation, she issued a claim in the employment tribunal ("ET") for, *inter alia*, constructive unfair dismissal, harassment and racial discrimination on the grounds of nationality due to comments made by a diplomat at the embassy. Spain first asserted state immunity under Section 4(2)(a) of the State Immunity Act 1978 ("SIA 1978") on grounds of the claimant's Spanish nationality. Spain amended its case so as to assert diplomatic immunity under the Vienna Convention on Diplomatic Relations 1961.

The ET held Spain was entitled to immunity from claims made under the Employment Rights Act 1996 and Employment Act 2002, but rejected its claims to either sovereign or diplomatic immunity from claims under the Equality Act 2010. The Employment Appeal Tribunal also dismissed Spain's claim and Spain subsequently appealed to the Court of Appeal.

Decision

The Court of Appeal dismissed Spain's appeal.

The relevant employment acts were not sovereign acts and thus did not benefit from sovereign immunity. The court determined that the status and nature of the claimant's employment did not call for personal involvement in diplomatic or political operations but were rather activities that might be carried out by private persons.

The court also dismissed Spain's reliance on the claimant's Spanish nationality, relying upon the ruling in *Benkharbouche v Secretary of State for Foreign & Commonwealth Affairs; Libya v Janah* [2017] UKSC 62 that "*the nature of the job is generally of much greater significance than the nationality of the post-holder*". In *Benkharbouche*, the Supreme Court held there was no basis in customary international law for the application of state immunity in the context of employment whose functions were of a private law character. The wider immunity which had been conferred by Sections 4(2)(b) and 16(1)(a) SIA 1978 was therefore inconsistent with Article 6 ECHR and Article 47 of the Charter of Fundamental Rights of the European Union.

Spain's arguments on diplomatic immunity were rejected on the basis that such immunity is personal to the diplomatic agent concerned and cannot be invoked by the sending State.

The Court of Appeal invited submissions from the parties and His Majesty's Government as to whether the court should make a declaration that Section 4(2)(a) SIA 1978 is incompatible with the ECHR. Consequently, in a supplementary judgement dated 29 January 2025 ([2025] EWCA Civ 59), the court exercised its discretion to declare (with acceptance from His Majesty's Government) that Section 4(2)(a) SIA 1978 was incompatible with Article 6 ECHR, but refrained from making any declarations in relation to Article 14 ECHR and Article 1 of the First Protocol of the ECHR.

Concluding observations

The Court of Appeal's judgment is the latest in a line of judgments delineating the applicability of State Immunity in the context of employment claims. This exercise involves a balancing act between, on the one hand, comity, and, on the other hand, the human rights of individuals. The *Lorenzo* decision provides a strong signal that the English courts are unwilling to allow State Immunity to block claims aimed at holding States responsible for misconduct in the context of the employment of persons in the UK jurisdiction.

The two decisions are available here and here.

FAILURE TO CONSIDER LIMITATION DEFENCE AMOUNTS TO SERIOUS IRREGULARITY

Djanogly v Djanogly and others [2025] EWHC 61 (Ch)

Introduction

By a decision handed down on 17 January 2025 in *Djanogly v Djanogly and others* [2025] EWHC 61 (Ch), the English High Court (Miles J) partially upheld a challenge to an award under Section 68 of the Arbitration Act 1996, based on a failure to deal with a defence of limitation, but rejected all other challenges that had been brought.

Background

The underlying dispute concerned claims between a father ("DD") and his two sons ("SD" (the claimant) and "AD"). DD's initial position was that he had loaned SD and AD £125,000 each to establish a property company ("SAS"). DD's position changed in a subsequent arbitration in that he claimed to have loaned over £610,000 to SAS itself. DD alleged that SD (who controlled SAS) misappropriated sums purportedly repaid by SAS to discharge the loans.

The Tribunal found SD liable to account for the sums loaned by DD to SAS and gave an award in favour of DD. SD challenged the award under Section 67 of the Arbitration Act 1996 (arguing that the tribunal had no jurisdiction over claims against SAS because it was not party to the relevant arbitration agreement) and Section 68 (arguing that the tribunal had failed to address his defence under the Limitation Act 1980).

Decision

Miles J upheld SD's Section 68 challenge in respect of the limitation defence, but rejected all other challenges.

Rejecting SD's challenges under Section 67, finding that the tribunal had substantive jurisdiction over DD's claims against SD for an account of the loans made to SAS. SD's had objected that the claims (as reformulated) were, in truth, against SAS rather than SD personally, but any (separate) objection that the claims were not within the scope of the arbitration agreement had not been brought in a timely manner. As a result, SD had lost the right to object to jurisdiction pursuant to Sections 31(2) and 73 of the Arbitration Act 1996.

As regards the limitation defence, Miles J held that English statutes on limitation (including the Limitation Act 1980) apply mandatorily to English-seated arbitrations by virtue of Section 13 of the Arbitration Act 1996. Rejecting DD's submissions that the claim was in reality a claim for financial support/maintenance under Jewish Law, and that Jewish Law (which would not time-bar the claims) applied by virtue of the Foreign Limitation Periods Act 1984 ("FLPA 1984"), Miles J held that Jewish Law did not qualify as a law of "*any other country*" for the purposes of the FLPA 1984. As a result, English limitation law was not displaced by Jewish Law and continued to apply to the claims. Since the tribunal had not dealt with the English Law limitation defence there was a serious irregularity for the purposes of Section 68(2)(d) of the Arbitration Act 1996.

Further, that serious irregularity had occasioned substantial injustice in circumstances where, had the tribunal addressed the limitation defence, the tribunal might well have arrived at a conclusion favourable to SD.

SD's other challenges based on other alleged procedural irregularities were all dismissed.

Concluding observations

The judgment illustrates the vital importance of being aware of the implications of the mandatory provisions of the law of the seat in circumstances where the parties choose to apply a particular governing law, especially one that is not the law of a State. This has implications for commercial parties that might choose to have disputes governed by soft law instruments or parties that might choose to have disputes governed by religious laws.

The decision is available here.

COURT OF APPEAL UPHOLDS DESIGNATION OF WIFE "*ASSOCIATED WITH*" SANCTIONED HUSBAND

Khan v Foreign Secretary [2025] EWCA Civ 41

Introduction

By a judgment handed down on 24 January 2025 in *Khan v Foreign Secretary* [2025] EWCA Civ 41, the Court of Appeal dismissed the claimant's appeal against the decision to maintain her designation under the Russia (Sanctions) (EU Exit) Regulations 2019 ("2019 Regulations").

Background

The claimant, a British citizen, was the wife of Mr German Khan, who had been made subject to UK sanctions on 15 March 2022 on the basis of his ties to the Russian Government. The claimant was sanctioned too on the basis of reasonable grounds for believing that she was "*associated with*" an "*involved person*", i.e. her husband. The claimant was primary caregiver to their children.

The claimant unsuccessfully challenged her designation. On appeal, the claimant contended that the judge erred in concluding that: (i) the Foreign Secretary was not required, pursuant to the *Padfield* principle (that a statutory power can only be used to the further the purpose of the legislation conferring that power and not for some extraneous purpose), to consider whether the claimant's individual designation was "*likely*" to further the statutory purpose of dissuading Russia from destabilising Ukraine; (ii) Regulation 6(2)(d) of the 2019 Regulations was compatible with Article 8 and/or Article 1 of the First Protocol ECHR; and (iii) the designation was a proportionate interference with her rights.

Decision

The Court of Appeal rejected the claimant's appeal.

The *Padfield* principle required that discretionary power should be exercised so as to further the objects and policy of the legislation. It is not concerned with whether the exercise of that power is "*likely*" to further the statutory purpose. There was a rational connection between the claimant's designation and the purpose of the 2019 Regulations. Relying on *Phillips v Foreign Secretary* [2024] EWHC 32 (Admin), the court noted that the 2019 Regulations operate in a foreseeable manner and do not give the Foreign Secretary "*anything remotely approaching an unfettered discretion*". Consequently, the interference with the claimant's ECHR rights was done "*in accordance with the law*". Applying the proportionality principle, the court determined that the objective of the sanctions was sufficiently important to justify the claimant's designation and that less intrusive measures would not be equally effective, thus compromising the objectives of the 2019 Regulations. Accordingly, there had been no breach of the claimant's Article 8 ECHR rights.

However, the court criticised the UK Government for failing to give proper attention to the licensing system, which is intended to mitigate the harshness of the UK sanctions regime. The court noted there were serious delays by the Office of Financial Sanctions Implementation in responding to the claimant's requests for authorisation of necessary expenditures such as food. Underhill LJ stated that concerns in that regard were not wholly mitigated by the belated introduction of the Basic Needs Licence in January 2025, but in the absence of a direct challenge to the system's principles or practical operation, declined to comment further.

Concluding observations

This case was the first Court of Appeal decision in relation to a person designated solely on the basis they were "*associated with*" another designated person. The judgment provides a clear illustration of the English courts' proportionality assessment in the context of sanctions designations.

The decision is available here.

ENGLISH COMMERCIAL COURT DECLINES JURISDICTION OVER FRAUD/CONSPIRACY DISPUTE

Magomedov and others v TPG Group Holding (SBS) LP and others [2025] EWHC 59 (Comm)

Introduction

By a decision handed down on 17 January 2025 in *Magomedov and others v TPG Group Holding (SBS) LP* [2025] EWHC 59 (Comm), the English Commercial Court refused to take jurisdiction in a very substantial and complex US$14 billion dispute concerning allegations of fraud and conspiracy.

Background

The claimants alleged two separate but related conspiracies concerning interests of the first claimant: (1) in a Russian commercial seaport ("NCSP Conspiracy"), and (2) in a Russian parent company of a group owning another Russian commercial seaport ("FESCO Conspiracy").

The first claimant alleged that these investments had attracted a politically motivated campaign against him (including his arrest, conviction and imprisonment) with a view to appropriating his assets for the benefit of the Russian State.

The defendants resisted the English court's jurisdiction, and some sought to set aside *ex parte* orders for service/alternative service.

Decision

Bright J declined jurisdiction over the claims.

The NCSP Conspiracy

The claimants alleged that certain of the defendants had (in breach, *inter alia*, of fiduciary duties) communicated to the first claimant in prison that they would intercede with Russia's head of state to secure his release if his commercial interest was sold for a reduced price of US$750 million. Further, notwithstanding that the claimants did not agree, a sale agreement was nevertheless concluded at that reduced price.

Bright J held that (1) there had been serious breaches of the duty of full and frank disclosure, including in relation to the issue of whether the shares sale was authorised; (2) the claimants' pleadings did not disclose a good arguable case or a series issue to be tried as against the relevant defendants, and (3) in any event, the NCSP Conspiracy was time-barred under its applicable governing law (which was Russian Law).

FESCO Conspiracy

The FESCO Conspiracy was alleged to involve the manipulation of corporate governance structures, use of bribery, and deployment of threats which all amounted to an unlawful conspiracy by certain of the defendants to seize the claimants' commercial interests.

Bright J held that the claims had no real prospect of success and/or that there was no serious issue to be tried against certain of the defendants, including the alleged anchor defendants, although a serious issue could be established (at least at the jurisdictional threshold) in respect of other defendants. However, none of the jurisdictional gateways that the claimants had relied upon were properly available.

In any event, after a detailed review of the law on *forum non conveniens*, Bright J held that the appropriate forum for any claims that would have disclosed a serious issue and could rely on a jurisdictional gateway would be Cyprus, not England. The connections with Cyprus were "*undoubtedly…more numerous and stronger*" than those with England & Wales.

Concluding observations

The judgment is particularly lengthy for a jurisdiction challenge, reflecting the mammoth size and complexity of the claims as brought.

Consistent with the English courts' longstanding strong reputation as a reliable forum for the resolution of disputes by foreign parties (including those in the CIS region), Bright J's approach is illustrative of the close examination the English courts will take to ensure its jurisdiction is invoked on a correct basis.

The decision is available here.

ICC PROVIDES UPDATED GUIDANCE ON IDENTIFYING CORRUPTION "RED FLAGS" IN ARBITRATION

ICC Commission Document on Red Flags or Other Indicators of Corruption in International Arbitration

Introduction

In December 2024, the ICC Commission on Arbitration published a document identifying red flags and other indicators of corruption in international arbitration (the "Document"). The Document provides guidance on the identification and assessment of corruption in arbitration proceedings by introducing a three-step methodology for evaluating potential red flags.

What is a red flag?

The Document identifies two categories of red flags: (1) immutable characteristics of the country, geography, government or business sector (called general red flags), and (2) facts or circumstances relating to the counterparty, the proposed transaction, the relationship or payment, or the transaction itself (called specific red flags).

Three-step methodology

1. Identify – determine which facts, factors, or circumstances are relevant to the specific corrupt practice at issue (either as alleged or as they appear).

2. Validate (or negate) – assess the strengths of the red flag considering the totality of the relevant facts and circumstances, including the evidence, presence of 'green' flags, as well as mitigating factors. It also involves identifying the available fact-finding tools.

3. Assess and consolidate – this step evaluates whether the red flags only lead to circumstantial evidence or if there is direct evidence of corruption. It further requires establishing the overall picture formed by the red flags taking all relevancies into account and identifying gaps.

Procedural effects of red flags

The Document reports the impact of red flags on the procedure of arbitral proceedings:

1. Admissibility issues: parties may identify red flags as part of a tacit case of alleged corruption. However, in the absence of an obvious case of bribery, tribunals are more likely to examine alleged corruption when both general and specific red flags are present.

2. Admissibility of new evidence: in the presence of strong red flags, tribunals tend to subject the matter to heightened scrutiny, which leads them to grant more extensive document requests and results in a relaxation on issues of relevance and/or materiality. The Document notes raising red flags in conjunction with an allegation of corruption is likely to be more successful than merely raising red flags alone.

3. Shifting of the burden of proof: the Document notes that typically the burden of proof rests with the party making the allegation. However, there are instances where tribunals decide to shift the burden of proof to the other side to allow them to present evidence which prevents the drawing of an adverse inference of corruption.

4. Standard of proof: the Document notes that the Task Force has been alternating between two standards of proof to apply in corruption cases: (i) a heightened standard of proof, requiring "*clear and convincing*" evidence; and (ii) a low standard of proof, commonly referred to as a "*balance of probabilities*".

Role and responsibilities of the tribunal concerning red flags

The Document discusses the duties of arbitrators facing allegations or suspicions of corruption based on asserted red flags, noting this has been subject to intense debate in recent years. It is noted that arbitrators must do their best to ensure that they resolve the dispute submitted to them, apply the law and that the award they render is enforceable.

The Document mentions two theories on the duties of arbitrators: (i) the jurisdictional approach, which suggests that arbitrators exercise a quasi-judicial function, and that they must ensure compliance with the international legal order. This approach has been adopted by a number of tribunals; and (ii) the contractual approach, which considers that the main role of arbitrators is to enforce the contract, not to be the guardians of public order. Consequently, they would not have a duty to investigate acts of corruption. This position has also been endorsed by some tribunals.

Concluding observations

The Document provides clear guidance on the tools available to arbitrators when examining corruption allegations. The Document also notes maintaining arbitrator impartiality in decision-making. The Document also considers the role of AI in red flag generation and analysis.

The document is available here.

ICC AND HKIAC PUBLISH 2024 STATISTICS

Introduction

The ICC and HKIAC have recently published statistics regarding arbitrations under their auspices in 2024. The key findings and trends are set out below:

ICC Provisional Report on 2024

Caseload and total value of claims

The ICC registered 831 new arbitration cases under the ICC Arbitration Rules, down from 890 in 2023.

Whilst the average amount in dispute on a new case was $130 million, the median amount in dispute was very substantially lower (approximately $5 million).

The ICC ended 2024 with 1789 cases still pending.

Emergency and expediated procedures

17 new cases began with emergency arbitrator applications, whilst 152 new cases were administered under the ICC's Expedited Procedure Provisions (both a reduction from the previous year's statistics).

Jurisdictional statistics

ICC arbitrations in 2024 involved parties from 136 different jurisdictions. In terms of new cases filed, the most came from USA (16%), Brazil (14%), Spain (13%), Mexico (10%), Italy (9%), the PRC and Hong Kong (9%), Germany (8%), Turkey (7%), France (7%) and the UAE (7%).

In 2024, ICC arbitrations were seated in 107 different cities in 62 countries, mostly the UK, France, Switzerland, the USA, the UAE, Spain, Brazil, Mexico, Singapore and Germany.

The cases filed in 2024 involved 45 states and 143 state-owned entities, which represented a significant uplift from the 2023 statistics.

The HKIAC statistics for 2024

Case Load and Amount

In 2024, of the 503 matters were submitted to HKIAC, 352 were arbitrations (understood to be its highest ever caseload). 249 of those arbitrations were administered by HKIAC under either the HKIAC Administered Arbitration Rules or the UNCITRAL Arbitration Rules.

Jurisdictional statistics

Arbitrations filed at HKIAC in 2024 featured parties from 53 jurisdictions (up from 45 in 2023).

76.4% of arbitrations were international in that they involved at least one non-Hong Kong party.

Leaving aside Hong Kong and Mainland China, the jurisdictions from which parties to HKIAC arbitrations mostly derive are the BVI, the Cayman Islands, Singapore, the USA, the UAE, South Korea, the Marshall Islands and the Philippines.

Whilst the majority of the arbitrations were seated in Hong Kong, other seats included London and Dubai. The arbitrations received in 2024 involved 15 different governing laws, of which the most popular was Hong Kong Law followed by English Law and PRC Law.

Appointments

The Appointments Committee of HKIAC made 199 appointments in 2024, of which 69 (34.7%) were of female arbitrators.

Applications Under the Hong Kong-Mainland China Arrangement for Interim Measures

HKIAC processed 40 applications made to 21 different Mainland Chinese courts under the 'Hong Kong-Mainland China Arrangement for Interim Measures' (up from 19 applications in the 2023 statistics). Those applications concerned the preservation of "evidence, assets or conduct worth a total of…approx. US$1.2 billion in Mainland China".

Those applications were made 28.9% by parties from Mainland China and 71.1% by parties outside of Mainland China.

The HKIAC indicates its awareness of 31 decisions of the Mainland Chinese courts to preserve a total of approximately US$865 million worth of assets, indicating that the Arrangement is becoming a powerful tool in cross-border dispute resolution involving Hong Kong and Chinese parties.

The ICC statistics are available here and the HKIAC statistics are available here.