



# COMMENTARIES ON PRIVATE INTERNATIONAL LAW THE PILIG NEWSLETTER

## Co-Chairs' Notes

We are pleased to present the newest Commentaries on Private International Law (Vol. 7, Issue 1), the Newsletter of the American Society of International Law (ASIL) Private International Law Interest Group (PILIG). The primary purpose of our newsletter is to communicate global news on Private International Law (PIL). Accordingly, the newsletter aims to convey information on new developments in PIL rather than provide substantive analysis, in a non-exclusive manner, with the goal of delivering specific and concise information that our readers can use in their daily work. These updates on developments on PIL may include information on new laws, rules and regulations; judicial and arbitral decisions; treaties and conventions; scholarly work; conferences; proposed legislation; and more.

This issue has two sections. Section one contains Highlights on the indirect jurisdiction in India, an amendment to the Chinese civil procedural law, the James Finlay (Kenya) Ltd litigation at the United Kingdom, and a review of the development of PIL in the US and beyond in the year of 2023. Section two reports on the recent developments on PIL in Africa, Asia, Europe, North

America, Oceania, and South America from June 2023 to June 2024.

We express our sincere appreciation to our 2024 editorial team, which consists of 20 editors from around the world:

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- Mukarrum Ahmed (Lincoln's Inn & Lancaster University),
- Sai Ramani Garimella (South Asian University),

- Suvethan G. Sundaralingam (Stockholm University),
- Xiaohan Lin (Jun He Law Offices),
- Yu Xu (Jun He Law Offices), and
- Yuchen Xiang (Jun He Law Offices).

We are also grateful for the proof-reading and styling service provided by Kim Nguyen (University of Sydney).

We want to thank the last PILIG Co-Chair Carrie Shang's significant contribution and welcome the new IG Co-Chair George Tian. The chief editors of this Issue are PILIG Co-Chairs Jie (Jeanne) Huang (University of Sydney) and George Tian (University of Technology Sydney).

PILIG is constantly looking forward to your suggestions to improve our services to our members. If you would like to contribute to the Newsletter, to propose an event idea, or bring our attention to an important private international law development in your region, please contact us at Jie (Jeanne) Huang [Jeanne.huang@sydney.edu.au](mailto:Jeanne.huang@sydney.edu.au) or George Tian [YiJun.Tian@uts.edu.au](mailto:YiJun.Tian@uts.edu.au).

\*All names are listed in the given name alphabetic order. Disclaimer: all maps used in this Newsletter are for illustration purposes only with no political, legal, or other intentions.



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## Highlights

### Indirect Jurisdiction Rules in India – Comity Over Convention Obligations?

Sai Ramani Garimella\*

Indirect jurisdiction rules, related to recognition and enforcement of foreign court orders in India, have been inspired by the colonial law – the principle of comity laced with the principle of due process. This post chronicles two interesting judicial statements concerning India, emerging from the higher judiciary in India and Nepal. The two – on enforceability of foreign judgments in India, and the other related to the enforceability of a foreign arbitral awards (originating in India) in Nepal – demonstrate the persistence of comity-based approach, despite other international law obligations.

The Code of Civil Procedure, 1908 specifies,

#### Section 13 – Foreign Judgment when not conclusive

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except--

- (a) where it has not been pronounced by a Court of competent jurisdiction;
- (b) where it has not been given on the merits of the case;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of 1 [India] in cases in which such law is applicable;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice;
- (e) where it has been obtained by fraud;
- (f) where it sustains a claim founded on a breach of any law in force in [India] (as substituted by Act 2 of 1951).

#### Section 44A – Execution of Decrees passed by Courts in reciprocating territory

(1) Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

[..]

[Explanation 1.-- "Reciprocating territory" means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and superior Courts, with reference to any such territory, means such Courts as may be specified in the said notification.

[..]

#### *TransAsia Private Capital Limited v Gaurav Dhawan*

concerned a S 44A execution petition before the Delhi High Court for enforcement of a foreign judgment from the High Court of Justice Business and Property Court of England and Wales Commercial Court (QBC) in New Delhi. *TransAsia* obtained an *ex parte* interim order for injunction over the Respondent's assets upon registration of the execution proceedings. In a rare exception, the Court dispensed with the processes related to the issuance of notice, explaining it as necessary to protect the interests of the Decree-holder. *Dhawan* contested the interim orders in a review petition which was ruled in favor of *TransAsia*. They then contested the enforceability of the foreign judgment for jurisdiction and *ex parte* rendering by the said foreign court for being inconclusive, thus failing the S 13 requirement. They argued that the English court, though a notified territory as per S 44A, was not competent to hear and decide upon the dispute as it was not a court of natural jurisdiction – either because of the subject-matter or via the submission to jurisdiction by the defendant/respondent thereto. It may be noted here that the contract and the personal guarantees provided by the defendant/respondent included asymmetric jurisdiction clause (the legal tenability of such clauses is unclear in the Indian jurisprudence) allowing the execution petitioner to institute proceedings in a court of its choice. Referring to this feature the Delhi High Court rejected the arguments on competency of the foreign court to enter a judgment in the dispute. The Respondent argued that they were not served a valid notice as per the law for service of notice/documents abroad, an argument that was rejected by the Court. Regarding the contention that the proceedings further violated S 13 for being *ex parte*, the Court held that the said foreign court proceedings demonstrated that the Foreign Judgment was given on merits of the case and upon taking into consideration the evidence that was placed before it, and therefore there was no violation of due process and natural justice, nor an



impeding of public policy. Noting the above, the Court listed the Execution petition for further proceedings.

The Delhi High Court's decision demonstrates a commitment to comity outlined within the Indirect Jurisdiction rules in India by refusing to review the circumstances that led to an *ex parte* decision, even in matters where the court of origin's jurisdiction is sourced to an asymmetric jurisdiction clause.

The presence of comity as a feature of the law persists even in the regime on arbitration. India is a signatory to the New York Convention on the Recognition of Foreign Arbitral Awards, 1958. An UNCITRAL Model Law-based legislation, the Arbitration and Conciliation Act, 1996, and the jurisprudence of Indian courts demonstrate a pro-arbitration approach in the matter of recognition and enforcement of arbitral awards. However, the principle of comity explains the practice of India with regard to notifying territories for the purpose of recognition and enforcement of arbitral awards made therein. India's Territorial Reservation is more restrictive than Article I(III) of the Convention. Section 44(b) of the Act restricts Reciprocating Territories to only those countries which have been officially notified by the Indian government. If a Contracting State recognises India as a Reciprocating Territory, or a Contracting State does not have a Territorial Reservation, it will not be considered a Reciprocating Territory by India unless officially notified to be one by the Indian government.

The [\*Sanghi Brothers India Pvt Ltd v High Court of Patan, Lalitpur\* \(decision no 10904\)](#) decision of the Supreme Court of Nepal returns the focus to the reciprocity-related declaration within Article I(III) of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. India, a founding member of the Convention, adopted the reciprocity declaration, while Nepal which acceded to Convention in 1998, and also adopted the reciprocity declaration. Note that the Convention does not specify the manner in which Reciprocating Territories ought to be notified. Section 44(b) of the Arbitration and Conciliation Act, 1996 restricts Reciprocating Territories to only those countries which have been officially notified by the Indian government. This is done by the relevant Ministry (such as the Ministry of Foreign Trade or the Ministry of Commerce) by publishing a notification in India's official gazette. Nepal has not been notified as a reciprocity territory within the meaning of the

said provision. In the *Sanghi Brothers* the Supreme Court of Nepal dismissed the applicant's petition against the High Court of Patan's order of refusing enforcement of an arbitral award from an India-seated arbitration. The Supreme Court heard whether the High Court erred in its interpretation of S 34 of Nepal's Arbitration Act, 1999, specifically S 34(2)(e) reproduced hereinbelow

[...]

(e) In case the laws of the country of the petitioner or the laws of the country where arbitration proceedings have been conducted, do not contain provision under which arbitration award taken in Nepal cannot be implemented.

The Supreme Court defined reciprocity as the condition where a state-party to the New York Convention does not discriminate in between foreign and domestic arbitral awards and enforces the foreign arbitral award in a manner similar to its own judgments enforced in a foreign jurisdiction. It emphasized the principle of reciprocity as fundamental in private international law, based on notions of equitability and mutuality. The Court found that India, based on its NYC commitments and national law, listed a select number of member states for recognition and enforcement of arbitral awards. This implies that for Nepali arbitral awards to be enforced in India, they must meet the conditions outlined in Section 44(2), which necessitates Nepal's inclusion in the list of reciprocating territories published in the official gazette by the Indian Government. Given the absence of Nepal on the notified territory list, the Court concluded that the reciprocity requirement, as outlined in the Nepalese Arbitration Act and Nepal's reservation under the New York Convention, therefore, has not been fulfilled in this case. The Court therefore dismissed the writ filed by the applicant and upheld the High Court's decision wherein the enforcement of the Indian arbitral award was denied.

The decision does not augur well for India's arbitration regime and the vision of making India an arbitration hub in South Asia. Persistence with the practice of notification a vestige of comity-based recognition, especially when the Convention has gained a near-universal acceptance, can only be detrimental to the pro-arbitration regime that India's law strives to achieve. It would be worthwhile to consider qualifying the notification process to the default membership of the Convention, if India is to persist with the territoriality reservation. India could consider contracting international law obligations related to recognition and



enforcement of foreign court orders to ensure efficient judgment mobility.

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## Amendment to the Civil Procedure Law in Mainland China

Jane Willems\*

On January 1, 2024, [the Amendment to the Civil Procedure Law of China](#) came into force. This amendment significantly alters civil procedure in foreign-related litigation in the PRC and represents the first substantive modification of the provisions in the Civil Procedure Law concerning foreign-related civil cases since 1991.[1]

*Jurisdiction of Chinese Court courts over against defendants without domicile in China:* first, the amended Article 276 expands Chinese courts' jurisdiction from a narrow focus on "disputes due to contract or other property rights" to "foreign-related civil disputes excluding identity-related disputes", i.e., most civil matters, including tort and labor dispute. Second, Article 276 introduces a test based on "appropriate connections" for Chinese courts to determine their jurisdiction, a wording conferring discretionary power on Chinese courts to determine whether there are relevant connections between foreign-related civil and commercial cases and China.

*Choice of court agreements:* The new Article 277 provides that parties involved in foreign-related civil cases can agree in writing to submit to the jurisdiction of Chinese courts. However, Chinese courts have exclusive jurisdiction in (i) disputes relating to the establishment, dissolution or liquidation of legal entities or other organizations established within the territory of the PRC; and in (ii) disputes relating to the validity of intellectual property rights granted in (but not outside) the PRC territory. Accordingly, judgments obtained from other fora in disputes falling within either category cannot be recognized and enforced in China, except for intellectual property rights granted outside China.

*Parallel litigation and coordination of jurisdictional conflicts:* the new Article 210 provides that a Chinese court may accept to hear a case regardless of whether a party is pursuing proceedings in a foreign court, if the Chinese court has jurisdiction pursuant to the Civil Procedure Law. However, Article 210 requires Chinese courts to respect parties' exclusive choice of court agreements in favor of a foreign court, provided that such agreements do not conflict with Chinese courts' exclusive jurisdiction or the sovereignty, security or public interests of the PRC.

The amendment in new Article 282 incorporates the doctrine of *forum non conveniens*, whereby a court may acknowledge that another forum or court where the case might have been brought is a more appropriate venue and decline to hear the case, if any of the following requirements is satisfied: (1) the basic facts in dispute occurred outside of the territory of the PRC, and it is manifestly inconvenient for the Chinese courts to hear the case and for the parties to participate in the litigation; (2) there is no agreement between the parties to choose the jurisdiction of a Chinese court; (3) the case does not fall under the exclusive jurisdiction of a Chinese court; (4) the case does not involve sovereignty, security or public interests of the PRC; and (5) it would be more convenient for the foreign court to hear the case.

*Service on foreign parties and collection of evidence abroad.* The new Article 283 makes it easier to serve foreign parties through their PRC subsidiaries, branches and agents. The revised Article 284 maintains the option for Chinese courts to collect evidence abroad in accordance with international treaties or through diplomatic channels and adds that Chinese courts can investigate and collect evidence abroad by alternative methods if such method are no prohibited by the laws of the country concerned, including (1) entrusting the Chinese embassy or consulate of the PRC in the relevant country to collect evidence from the parties and witnesses who are PRC nationals; (2) with the consent of the parties concerned, collecting evidence by means of instant messaging tools; and (3) taking evidence by other methods agreed upon by the parties.

*Enforcement of foreign judgments.* Articles 300-304 maintain the principle that Chinese courts will continue to recognize foreign judgments only on the basis of international treaties or reciprocity, and formalize the grounds of refusal: (1) the foreign court had no jurisdiction over the dispute pursuant to Article 301 (i.e., the court had



no jurisdiction to rule over the dispute pursuant to its own laws; pursuant to the law of a foreign state, or pursuant to the parties' exclusive choice of court agreement); (2) the defendant was not lawfully summoned or given a reasonable opportunity to be heard or argue the case, or a party lacking capacity had not been appropriately represented; (3) the foreign judgment was obtained by fraud; (5) a Chinese court has already rendered a judgment on the same dispute, or recognized a judgment from a third country on the same dispute; or (5) recognition and enforcement would be violate the basic principles of PRC law or would jeopardize the sovereignty, security or public interests of the state..

*Enforcement of foreign arbitral Awards.* The new Article 304 has changed the definition of a foreign arbitral award for the purposes of recognition and enforcement of an "arbitral award rendered by a foreign arbitration institution" to an "arbitral award which takes effect outside China". China has now departed from its former position that the nationality of an arbitral award was determined by the jurisdiction where the arbitration institution was located (the so-called institutional theory) to adopt international practice and view arbitral awards as having been issued in the seat of arbitration (the territorial theory). Accordingly, China seated arbitral awards rendered under the auspices of non-Chinese arbitration institutions will be considered as Chinese foreign-related awards (See also China judicial practice, *Brentwood Industries v. Guangdong Fa Anlong Machinery Equipment Co., Ltd.* Civil Ruling of the Guangdong Intermediate People's Court, [2015] Sui Zhong Fa Min Si Chu No. 62, August 6, 2020, involving the enforcement in China of an ICC award seated in Guangzhou).

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[1] For a commentary, see, Jie (Jeanne) Huang, *Developing Chinese Private International Law for Transnational Civil and Commercial Litigation: The 2024 New Chinese Civil Procedure Law*, 70 NETH. INT. L. REV. 205–249 (2023), available at <https://doi.org/10.1007/s40802-023-00243-3>.

## James Finlay (Kenya) Ltd Litigation in Scotland

Mukarrum Ahmed\*

The Court of Session was tasked with determining whether the past and present employees of James Finlay (Kenya) Ltd ("JFKL") could sue in Scotland for musculoskeletal injuries sustained whilst tea picking in Kenya allegedly caused by JFKL's negligence. JKLF is registered in Scotland and carries out its business activities directly in Kenya without relying on a local subsidiary. Before adjudication on the *forum non conveniens* issue, Lord Carloway ([2022] CSIH 29, [5]) had decided that the issues of fact or law are sufficiently similar or related to justify the grant of permission for group proceedings pursuant to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018. JFKL proceeded to seek an anti-suit injunction in the Kenyan courts, but the Scottish proceedings were well under way at this juncture. In retaliation, an interim anti-suit interdict was sought and granted ([2022] CSOH 57 (Lord Braid) affirmed in [2022] CSOH 94 (Lord Weir)) by the Scottish courts. The legal basis of the latter injunctive relief may be justified in terms of protecting the jurisdiction of the Scottish courts. Alternatively, the conduct of JFKL was held to be unconscionable, vexatious and oppressive as there was evidence of harassment of employees, misrepresentation in the Kenyan proceedings and misuse of the group register.

The Court of Session (Inner House) sisted the Scottish proceedings until the claims are resolved through a statutory administrative procedure in Kenya ([2023] CSIH 39). Lord Carloway (with Lords Pentland and Doherty) adjudicated on the issue of *forum non conveniens*. Although the Court of Session had jurisdiction to hear the claims, the employment contracts provided for the application of Kenyan law to workplace injury claims. The court found that the injuries suffered by the group members fell within the ambit of the Work Injury Benefits Act 2007 ("WIBA"). This posed a "jurisdictional dilemma", as the Court of Session lacked experience in applying the WIBA scheme and could only award no fault compensation. These considerations rendered Kenya as the more appropriate forum. The judicious approach under the circumstances was to suspend the Scottish proceedings until the resolution of claims under the Kenyan statutory administrative procedure. The court refrained from stating that the WIBA system could not deliver "substantial justice" to the group



members. The latter could perhaps be better phrased in the language of the “interests of justice” (see Professor Paul Beaumont in *Anton’s Private International Law*, 3rd edition, para 8.410). The words of Lord Goff of Chieveley remind us that the “advantage of financial assistance available here to obtain a Rolls Royce presentation of his case, as opposed to a more rudimentary presentation in the appropriate forum” is not sufficient to justify the refusal of a stay of proceedings (*Connelly v RTZ* [1997] UKHL 30, page 874D; See also, *Limbu v Dyson* [2023] EWHC 2592 (KB), [44] (Sheldon KC)). It may be observed that references to the “general public interest” and available Scottish “heads of loss” in [2023] CSIH 39, [69] are inconsistent with *Lubbe v Cape* [2000] UKHL 41, [51]-[54] (Lord Hope of Craighead) and Article 4(1) read along with Article 15(c) of the retained Rome II Regulation respectively. Regarding the latter, the retained Rome II Regulation has now been legally transposed into the ‘assimilated’ Rome II from 1 January 2024 pursuant to Section 5 of the Retained EU Law (Revocation and Reform) Act 2023. If the claims in Kenya were not determined according to WIBA or faced unreasonable delays, the court reserved the right to resuscitate the proceedings.

It may be argued that the protective jurisdictional provision in Section 15C of the Civil Jurisdiction and Judgments Act 1982 (CJA 1982) could have been harnessed to give rise to the right to sue the employer in Scotland and the correlative duty not to be sued abroad. However, it is noteworthy that this provision operates within a unilateral jurisdictional regime (in the absence of harmonised rules for the recognition and enforcement of judgments) and the pre-IP completion day CJEU jurisprudence and expert reports on the Brussels regime only retain persuasive interpretative value under Section 15E(2) of the CJA 1982. Therefore, a stay of proceedings would still be possible on the basis of *forum non conveniens*.

For the judgment see, [https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2023csih39.pdf?sfvrsn=50a40816\\_1](https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2023csih39.pdf?sfvrsn=50a40816_1).

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## Developments in Private International Law in the Year of 2023: the US and Beyond

Ronald A. Brand, Sarah Prosser, Carlos M. Vázquez, and Jie (Jeanne) Huang [1]

At the 118<sup>th</sup> [American Society of International Law \(ASIL\) Annual Meeting](#), the [ASIL Private International Law Interest Group](#) organized a fireside chat on Thursday, April 4 at 3:30 PM - 4:30 PM ET.

### Opening:

#### Dr. Jeanne Huang:

I am Dr. Jie (Jeanne) Huang, Co-Chair of the ASIL Private International Law Interest Group and Associate Professor at the University of Sydney Law School.

The ASIL Private International Law Interest Group is pleased to organize this fireside chat. It is designed to provide the audience with a quick yet comprehensive review of developments in private international law in the US and beyond. We will cover important US cases, the US position in the implementation of existing treaties and negotiations of new treaties as well as other international instruments, and private international law projects in international organizations such as the Hague Conference on Private International Law (HCCH), the United Nations Commission on International Trade Law (UNCITRAL), and the International Institute for the Unification of Private Law (UNIDROIT).

Let me introduce our distinguished speakers today.

Our first speaker is Professor Ronald A. Brand from the University of Pittsburgh School of Law. Professor Brand will share his insights and experiences at the HCCH, specifically regarding the jurisdiction project.

Our second speaker is Ms. Sarah Prosser, an Assistant Legal Adviser for private international law from the Office of the Legal Adviser, U.S. Department of State. The Interest Group is immensely grateful to the Office of the Legal Adviser for sending an excellent speaker to our IG meeting for the second time.

Our final speaker, though certainly not least, is Professor Carlos M. Vázquez. He is the Associate Dean for Graduate and International Programs and the Scott K. Ginsburg Professor of Law at Georgetown University Law Center. This marks the second time we have had the privilege of highly appreciated support from Georgetown University professors at our IG meeting.

Let us turn to Professor Brand first. In terms of private international law in cross-border litigation in civil and





commercial matters, the HCCH has developed two significant conventions: *the 2005 Choice of Court Convention* and *the 2019 Judgments Convention*. The HCCH has now focuses on jurisdiction. Could you provide us with recent developments on the jurisdiction project at the HCCH, such as ongoing debates regarding concurrent proceedings, parallel proceedings, and related actions or claims? Thank you.

**Professor Ronald A. Brand:**

I will focus on negotiation at the HCCH on a treaty on parallel proceedings. Two aspects of the project are especially important: one is process, and the other is substance.

**1. Process**

In terms of process, the current work is part of a project that began in 1992 when the U.S. suggested negotiation of a convention on jurisdiction and the recognition enforcement of judgments. In 2001 that focus changed. The larger judgments project did not fail, but the focus changed to where it should have started. That it ended up with the 2005 Choice of Court Convention being completed.

The rest of the process was reinvigorated in about 2008 when an expert group was established, which was followed by a working group providing an initial text. Later, a special Commission was organized and finally a diplomatic session completed the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention).

In 2020, the remainder of the jurisdiction aspect was picked up again, but it is important, I think, to note that if you are going to draft a treaty, you have to know what problem you're trying to consider. And I think that some Member States at the Hague Conference (the EU became a member state during this process) originally were trying to use a treaty to change the U.S. rules on general jurisdiction. However, the U.S. Supreme Court did that for them in 2011 with the *Goodyear*[2] and *Nicastro*[3] pair of cases. *Goodyear* significantly changed and limited general jurisdiction in U.S. courts, thus achieving in some ways what other Hague Conference Member States had wanted in the negotiations.

Right now, the project on the Hague Conference website is listed as the jurisdiction project, but the mandate given by the Council on General Affairs and Policy is to draft provisions on matters related to jurisdiction and civil or commercial matters including rules for concurrent

proceedings. That mandate calls for an initial focus on developing binding rules for concurrent proceedings, including parallel proceedings and related actions.

So, we have these three terms, concurrent proceedings, parallel proceedings, and related actions or claims. And that gets us into where we are now. We have moved from an expert group to a working group. There have been six sessions of that Working Group, two per year in each of the last three years; one in the fall, one in the spring. Broadly stated there will be two more scheduled one in the fall and one in the spring. For most, I think the intention is then to be able to move at this time next year to a special commission, with involvement from a larger group.

**2. Substantive issues**

The initial draft coming out of the working group takes us to a number of substantive issues. I can focus on seven very briefly.

The first is getting past the common law/civil law distinctions that exist. They are very different. Common law countries use *forum non conveniens* to address parallel proceedings. Civil law countries adopt a *lis pendens* racing to the courthouse first seized approach that gives strict priority to the first seized court. These are very different. Neither of them is a good approach. Each of them has very serious problems, and so in trying to get a treaty we really shouldn't go one way or the other.

The second substantive question is determining what type of cases we are addressing, and I mentioned the different terminologies. One of the problems so far has been that the U.S. delegation has been thinking in terms of concurrent proceedings generally, while the European Union and others were thinking of strict parallel proceedings. Notably, the Brussels I Regulation defines parallel proceedings as proceedings between the same parties, with the same cause of action. It then separates related actions or claims, which is not the same as parallel proceedings.

That gets us to the third major issue. We have dealt primarily with strict parallel proceedings, with the idea of now adding in a separate chapter for related actions or claims, and thus capturing all of concurrent proceedings within that process. It may well be that we come out with a different approach depending on whether it is parallel proceeding or related action or claim. Strictly defined, parallel proceedings would be addressed through a very formalistic approach, more like the European *lis pendens* approach; with related actions or claims having a more



discretionary approach. We will see if it really goes that way. But that means the definitional line that moves us from one to the other is really important. It also means that if you use simply the same party, same cause of action for parallel proceedings and a different description for related actions or claims, you can see how litigants can add a party and move from one category to another. That ability to manipulate the rules is an issue we need to deal with by first having clear definitions.

The fourth substantive issue is how the rules will address parallel proceedings and related actions or claims differently. It is undecided whether we should address one category with a more rigid system and one with a more discretionary system. Nevertheless, if there is a discretionary category and a more rigid category, there is a question of what factors the Court will consider for each. How do you determine the better forum? That's really what you're looking for in this - What is the better forum?

That then raises three final substantive issues. One is whether or not recognition and enforcement should be tied into the Convention, because what you are really trying to do is preventing inconsistent judgments. Does that mean that, since jurisdiction belongs to one court, every other contracting state should recognize and enforce the consequent judgement?

The second of these final substantive issues is the role of jurisdictional rules. In my view, this is not a jurisdiction convention. It is a convention to solve a very specific problem that really does not need to address rules of jurisdiction. But there is a push to grant priority status to connections that result in exclusive jurisdiction in certain states.

Finally, there is the question of judicial communication and cooperation. Will there be direct communication between courts? Will this communication be mandatory or discretionary? How will that work if two courts are trying to apply the same test at the same time? Can they talk with each other about it? And if they can, through what channels? All of those are issues to be determined.

So, there is still some work to do. Thanks.

**Dr. Jeanne Huang:**

Thank you so much, Professor Brand. Navigating these complex issues will require careful and nuanced negotiations.

Now, let us shift our focus to other crucial areas of private international law: international family law and international commercial law.

Dear Ms. Prosser, I know that you and your colleagues at the U.S. Department of State have undertaken significant work at these domains. Our audience would be very interested to learn about the implementation of existing treaties and model laws, as well as the drafting of new international instruments at the HCCH, UNCITRAL, and UNIDROIT.

**Ms. Sarah Prosser:**

Thank you so much for being here and thank you for your interest in private international law. It is an honor to share this event with such distinguished Professors, Professor Brand, Professor Vasquez. Thank you to Jeanne for organizing this Private International Law program for the ASIL conference, which has been amazing so far. For anyone who was at the March 21<sup>st</sup> Advisory Committee on Private International Law meeting, some of my remarks today are going to sound a little familiar, so I apologize for that. But for those who did not attend, I will note, as you already know, private international law is such a diverse field. There are so many different aspects of the law that fall under private international law, and during the past year, the United States has participated in numerous efforts to progress and advance the harmonization of private international law. Today, I am going to talk about three developments in international family law and three developments in international commercial law.

### **1. International family law**

I will start with, first, an international family law development. In June 2023 and again in January 2024, the U.S. Department of State participated in the first two meetings of the HCCH working group on the financial aspects of intercountry adoption. During these meetings, states discussed ways to minimize the presence or impact of money in international adoption cases, including through adoptive parents' contributions and their donations. The working group is developing tools, such as a road map of cooperation, to achieve separation of contributions and donations from intercountry adoption. The working group expects to present these tools to the Hague Conference's Council on General Affairs and Policy (CGAP) meeting in 2025 for adoption.

Secondly, in October of last year, there was the eighth meeting of the Special Commission on the Practical Operation of the *1980 Child Abduction Convention* and the *1996 Child Protection Convention*. The last time the Special Commission met was in 2017. These Special Commissions happen irregularly, but the purpose is for all



the states parties of those particular conventions to discuss the workings of the Convention, and, if there are any problems, how to solve these problems or make improvements. Major topics of the October discussion regarding the *1980 Child Abduction Convention* included how best to address delays in convention cases, how domestic violence might impact a convention case, and return applications where there is a parallel asylum claim. As was discussed at the October Special Commission and approved last month in March at the annual CGAP meeting, the Secretary General of the Hague Conference will host in June 2024 in South Africa an open forum to discuss domestic violence issues as they relate to Article 13b of the *1980 Convention*.

The Special Commission also discussed the operation of the *1996 Child Protection Convention*. The Special Commission discussed protection measures such as the use of “urgent” measures under Article 11, the change of habitual residence of the child, the transfer of jurisdiction under Articles 8 and 9, and placing a child in care, such as foster care, in another contracting state.

The third international family law matter is regarding international payments of child support pursuant to the *2007 Child Support Convention*. The issue here is that a number of countries, particularly in the EU, are phasing out their acceptances of paper cheques issued by the U.S. states for child support payments. In response, in 2023, the U.S. Department of Health and Human Services initiated the Central Authority Payment (CAP) service. Under the CAP service, the U.S. states send payments on international child support cases to the CAP using an electronic process. Then the CAP transmits those payments via the U.S. Treasury to foreign Child Support Authorities. The real benefit to families is that CAP reduces the state’s burden to send international payments electronically by reducing the cost of transmission, such as reducing fees. This in turn ensures that the recipient families receive more money. There are currently 42 U.S. states that are participating in the CAP program, and more are expected to be joining soon. As of March 27, 2024, 12,466 individual payments have been made under the CAP system to benefit families in foreign countries.

## **2. International commercial law**

Regarding the first international commercial law matter, in February 2024, the State Department participated at the UNCITRAL Working Group I discussions regarding the draft UNIDROIT - UNCITRAL Model Law on

Warehouse Receipts and its draft Guide to Enactment. A warehouse receipt is a type of documentation that is issued to guarantee the quality and quantity of a commodity that is stored in a warehouse facility. That warehouse receipt can in turn be used as collateral for loans. This Model Law on Warehouse Receipts was intended to help countries to establish state-of-the-art legislation on warehouse receipts. This legislation supports the issuance and transfer of both electronic and paper-based receipts. The Model Law is intended to guide states that already have enabling warehouse receipt legislation as well as states that do not have such legislation. For example, if a state already has such legislation, it might want to modernize the legislation, such as moving from paper-based receipts to electronic receipts. The Model Law can be helpful in that regard. The delegates and observers at the New York meeting approved both texts of the draft Model Law and its Guide to Enactment, subject to the changes they discussed at the meeting. The Model Law and its Guide to Enactment will be considered for adoption at the UNCITRAL Commission meeting in June.

The next issue is regarding the efforts in the UNCITRAL Working Group II on commercial dispute resolution. In February 2024, Working Group II completed its work on developing ways to further expedite dispute resolution for long term or specialized contracts. Building on the UNCITRAL expedited arbitration rules that already exist, the Working Group developed two types of additional model contract clauses. One set of model clauses could be used in contracts where rapid decisions may be needed to be made to resolve disputes that would otherwise threaten a commercial or business relationship. The second set of model clauses, modelled on adjudication procedures, would be embedded in a standard arbitration clause. Adjudication procedures are common to construction contracts in which a neutral expert decision maker makes an interim determination on disputes that may arise during the course of a long-term contractual relationship. Following the adjudication, the prevailing party could obtain, through a separate expedited arbitration, specifically on the question of adjudication compliance, an award confirming the non-prevailing party’s obligation to comply. This compliance arbitration creates an innovative framework for resolving disputes quickly in a way that allows cross-border enforcement under the New York Convention. It supplements the existing domestic statutory frameworks that are not as readily enforceable across borders. Therefore,



it allows for parties to have these decisions made quickly. For example, in a construction situation, the construction work does not have to stop while an otherwise lengthy arbitration proceeds.

Outside of the adjudication space and referring to a more usual arbitration, Working Group II's goal is to assist contractual parties to be able to keep the work under their contractual relationship going while still resolving an underlying short or small problem or dispute. Toward that goal, Working Group II prepared two other model clauses, one on confidentiality and one involving the use of a technical advisor by the Arbitral Tribunal. These last two model clauses could be particularly useful to those who are engaged in high tech industries but who may not be as experienced with using arbitration to resolve disputes. Like the products from UNCITRAL Working Group I, these products coming out of Working Group II are expected to be submitted to the UNCITRAL Commission meetings in June and July for adoption.

Finally, the Hague Conference and UNIDROIT conducted joint exploratory work over the past year on digital assets that seeks to build on the work that was completed by UNIDROIT in early 2023 on digital assets and private law. The subsequent joint project was intended to build on the so-called Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law (Principles). Principle 5 pertains to the conflict of laws issue, and it defines factors for determining the applicable law governing the proprietary issues regarding a digital asset. However, the joint project was derailed last fall, when France submitted a position paper that objected to Principle 5 of the UNIDROIT Principles. In addition, France was against the broad definition of digital assets found in the Principles because it led to uniform treatment of too wide a variety of assets, which France believed would create an inconsistency with EU law. France also argued that the party autonomy factor in Principle 5 is inconsistent with the standard EU approach. The United States strongly disagreed with the French position. Ultimately, France threatened to break consensus at CGAP if the Hague Conference Permanent Bureau proposed to extend the mandate of this joint project. This effectively ended the joint project.

The Hague Conference Permanent Bureau proposed an alternative study at this year's CGAP meeting related to digital tokens, not digital assets. The Permanent Bureau believed that the Digital Tokens study could be scoped in a manner to avoid the French objection and would be

acceptable to many other delegations. The CGAP largely adopted the Permanent Bureau's proposal in March. However, at the United States insistence, the CGAP mandate for the study also reflects the importance of avoiding fragmentation among existing private international law instruments, including the UNIDROIT Principles.

**Dr. Jeanne Huang:**

Thank you, Ms. Prosser. From your review, we can see how international organizations and states collaborate to develop private international law in diverse fields, including child abduction, protection, and support; warehouse receipts; expedite dispute resolution for long term or specialized contracts; model clauses for short or small problem or dispute; and digital tokens.

Now, let us move on to the developments in private international law in the United States. Professor Vázquez will analyze two significant cases: *Mallory v. Norfolk Southern Railway Co* and *Cassirer v. Thyssen Bornemisza Collection Foundation*.

**Professor Carlos M. Vázquez:**

I will discuss two notable recent cases in the area of private international law. I am interpreting "private international law" in the narrow sense of jurisdiction, choice of law and enforcement of judgments. I will discuss one case on jurisdiction and one case on choice of law.

**1. Mallory v. Norfolk Southern Railway Co.**

The first case is the *Mallory* decision by the U.S. Supreme Court.[4] This decision seems to go against the trend in the recent Supreme Court decisions on jurisdiction, a trend reflected in the cases that Professor Brand referred to, *Nicastro*,[5] *Daimler*,[6] and *Ford Motor*,[7] which went out of their way to reject the "doing business" category of general jurisdiction. At one point, there were cases that suggested that doing unrelated business in the jurisdiction, if it is of sufficient magnitude, can be a basis of general jurisdiction. But the court in recent cases before *Mallory* went out of its way to reject that proposition and held instead that, to support general jurisdiction, the defendant had to be "at home" in the jurisdiction--which in the case of corporations generally means the place of incorporation or the principal place of business.[8] *Mallory* involved a Pennsylvania law providing that, as a condition of doing business in the state, a corporation incorporated in another state is deemed to have consented to the state's general jurisdiction. Specifically, the corporation has to appoint an office for the receipt of service of process, and the statute specifies that acceptance of service of process by that person



would be deemed to be consent to general jurisdiction in the case, meaning that the defendant could be sued on any matter, no matter how unrelated to the contacts or to the state.[9] One would have thought that the Court would have found such “deemed consent” to be invalid because doing business is not a permissible basis of general jurisdiction. If Pennsylvania legislature cannot pass a long-arm statute saying you can be sued on any matter in this state if you do business in the state, it seems odd to say that they can pass a statute saying that, if you do business in this state, you shall be deemed to have consented to the jurisdiction of the state.

The dissent by Justice Barrett for four Justices made that argument, and would have so ruled.[10] A plurality of four Justices found that such deemed consent was consistent with the due process clause. They relied on the *Burnham*’s upholding of tag jurisdiction.[11] If you can exercise general jurisdiction on the basis of physical presence of an individual, then, according to the plurality, it follows that you should be able to exercise jurisdiction on the basis of deemed consent.[12] I think the dissent persuasively argues that that does not follow.[13] It seems to be a different category of jurisdiction.

One way to interpret *Mallory* would be as suggesting that the court is shifting its approach to personal jurisdiction. Some of the justices in the plurality were not in the majority in the earlier cases and did not join the opinions rejecting doing business jurisdiction.[14] So one possible interpretation is that the court is shifting ground. A more likely interpretation, though, is that this case is ultimately not of huge significance because of the position of one Justice who was essential to the upholding of the statute against the due process objection. Justice Alito agreed that the Pennsylvania statute did not violate the due process clause, but he went on to say—and argued at some length—that, in his view, it violates the dormant commerce clause to do what Pennsylvania did. He maintained that a state cannot condition doing business in the state on the corporation consenting to general jurisdiction in the state.[15] So it may be that this is the way that the doctrine on this question will develop. The plurality opinion had a footnote saying that they were not deciding the dormant commerce clause issue, and that the issue was open for consideration on remand.[16] The case has been remanded and the Pennsylvania Supreme Court has ordered briefing on the dormant commerce clause issue.[17] If the outcome is

ultimately that the Pennsylvania statute does not violate the due process clause, but it does violate the commerce clause, then it is not that big of a change. We will see.

## **2. Cassirer v. Thyssen Bornemisza Collection Foundation**

The second case I want to talk about is *Cassirer v Thyssen-Bornemisza Collection*. [18] First I should disclose that I submitted two expert affidavits in this case at the District Court stage in support of the plaintiff’s position on two separate issues. The case is currently before the Ninth Circuit on the choice-of-law issue. The case was begun a long time ago, and has gone up and down the Ninth Circuit and been to the Supreme Court on one issue. The defendant is a foreign state instrumentality, so one of the first important issues decided was whether this case fell within an exception to foreign sovereign immunity. The court held that it did fall within the exception for takings of property in violation of international law.[19]

The *Cassirer* case is about a painting by Camille Pissarro stolen by the Nazis. The case was brought by descendants of the original owner, whose descendants moved to California in 1980. They assumed that the painting had been destroyed during the war, but they later found out that the painting still existed and was located in Spain at the Thyssen Bornemisza museum.

The issue that is currently pending before the Ninth Circuit concerns choice of law. The District Court decided that a federal choice-of-law rule applied in cases under the Foreign Sovereign Immunities Act.[20] There was Ninth Circuit precedent to this effect, and, according to that precedent, the applicable federal choice-of-law rule is that of the Second Restatement of Conflict of Laws.[21] The district court held that, under that choice-of-law rule, Spanish law applies,[22] and it held further that, under Spanish law, the museum wins because of Spain’s adverse possession law, which entitles the possessor of property to title if it possesses the property in good faith for three years, or even in bad faith for six years.[23] There is an exception requiring a longer period of possession if the possessor is deemed to have been an accessory to the theft of the property.[24] The district court found, and the Ninth Circuit agreed, that the museum was not an accessory to the theft,[25] but at the same time it held that the party from whom the museum acquired the painting—the Baron von Thyssen-Bornemisza—had not acquired the painting in good faith.[26] Whether there was good faith by the



Thyssen-Bornemisza Museum was an issue that was addressed in the Ninth Circuit's most recent decision, which I will talk about it in a second.

The choice-of-law issue is dispositive to the case because, under California law, the plaintiff wins.[27] California does not recognize adverse possession of movable property.[28] It has a statute of limitations which runs six years from the time of discovery,[29] and the plaintiffs are well within that. There is now a federal statute of limitations that says exactly that as well.[30] Under Spanish law, as interpreted by the court in this case, the museum wins because Spain recognizes adverse possession of movables if possessed for six years in good faith, or in three years in bad faith.[31] The court has held, as I have mentioned, that the museum was not an accessory to the crime, so the longer period that would apply in that context does not apply.[32] Therefore, at the end of the day, the museum wins if the court applies Spanish law, and the plaintiff wins if the court applies California law.

The question is, which law should be applied? On that question, the District Court held that Spanish law applies under the federal choice-of-law rule.[33] The Ninth Circuit agreed that federal choice-of-law rules apply and that, under those choice-of-law rules, Spanish law applies to merits.[34] The Ninth Circuit upheld the District Court's conclusions, and then the case went up to the U.S. Supreme Court. The U.S. Supreme Court held that, under the Foreign Sovereign Immunities Act, there is no federal choice of law rule.[35] The Court held that courts should instead apply the choice-of-law rules of the state in which they sit—in this case, California.[36] After the case was remanded to the Ninth Circuit, the Ninth Circuit certified the question of applicable law to the California Supreme Court.[37] But, to the surprise of many, the California Court declined to answer the question.[38] So, the Ninth Circuit proceeded to answer the choice-of-law question in its most recent decision in the case. And the court held that, under California's choice-of-law rule, which is the comparative impairment approach, Spanish law applies.[39] Therefore, the defendant wins because, as the court had already held, under Spanish law, the defendant has title to the painting because of adverse possession.

The Court of Appeals emphasized, as did the District Court, that Spain's interest would be more impaired if not applied because the case's nexus to California was fortuitous. The dispute was connected to California mainly

because the plaintiffs decided to move to California in 1980, which, in the court's view was a fortuitous contact with California.[40] What the court failed to recognize, even though it was argued by the plaintiffs, is that one could say exactly the same thing about the painting's location in Spain. From the defendant's perspective, the plaintiff's connection to California might be thought fortuitous, but from the plaintiff's perspective, the painting's location in Spain is equally fortuitous. The painting was stolen in Germany. It spent time in Missouri, New York, California, and Switzerland, and then ultimately arrived in Spain.[41] This case reflects what could be said of a lot of cases decided under the comparative impairment approach: often, you can make a parallel argument in favor of the contrary conclusion.[42]

Secondly, the painting's location in Spain may not be that fortuitous because Spanish law is actually quite beneficial to possessors of stolen property. Spain is an outlier in allowing adverse possession in six years without good faith.[43] Commonwealth countries and the states of Missouri, California, and New York, where the painting was located for periods of time, do not recognize adverse possession of movable property. Even civil law countries either do not recognize adverse possession without good faith, or, if they do recognize adverse possession without good faith, they require a much longer period of possession than six years. It would not be surprising if stolen moveable property made its way to Spain precisely because Spain has such a favorable adverse possession rule. I think that is a reason not to apply Spanish law.[44]

For the same reason, it is arguable that the courts should not have framed the choice-of-law issue as a binary choice between California law and Spanish law. It could alternatively have framed the issue as a contest between Spanish law, on the one hand, and the law of every other state or country having connections to this dispute, on the other. As I have argued elsewhere, under the laws of all of the states that the painting passed through before arriving in Spain, the plaintiff would have won.[45] All of the states or countries where the plaintiffs and their ancestor lived—Germany, where the painting was stolen; England, where Lily Cassirer moved after escaping from the Nazis, and California, where the Cassirers ultimately settled—also have laws under which the plaintiff should have won. It is common in choice of law to aggregate the contacts of states having laws with the same content. I think that approach would have been appropriate here. It is true that the laws of



all of those states are not the same in every respect, but they are the same in the relevant respect—they all would have produced an outcome in favor of the plaintiffs (under some of them, because they do not recognize adverse possession of movables and under others because they recognize adverse possession only in very limited conditions that were not met here). The Ninth Circuit seems to have avoided that conclusion by holding that the museum actually possessed this painting in good faith.[46] But this part of the court’s most recent decision is inconsistent with its own prior decisions in this case. The court earlier held that, although the defendant was not an accessory to the theft, the defendants’ predecessor, the Baron Thyssen-Bornemisza, from whom the Thyssen-Bornemisza Museum obtained the painting, did not possess the painting in good faith.[47] A fair reading of that earlier decision that the museum itself did not possess the painting in good faith—there were many red flags that were known to the Baron and should have been imputed to the museum indicating that this painting was stolen.

Another critique of the opinion is that, in considering California’s interest, the court failed to consider the relevant federal interests. There are a number of federal interests in this case, both in the form of declarations like the Terezin Declaration[48] and the Washington Principles,[49] as well as statutes like the Holocaust Expropriated Art Recovery (HEAR) Act[50] and other federal laws. These reflect policies that should have been considered as among California’s interests. In doing a comparative impairment analysis, California’s interests properly include federal interests, which are, by virtue of the Supremacy Clause,[51] also California’s interests.[52]

There is also a good argument that the HEAR Act pre-empts application of Spain’s adverse possession law. This was an issue the Ninth Circuit considered and rejected,[53] but I think there is a strong argument that its holding was erroneous. The HEAR Act imposes a federal statute of limitations of six years from the time of discovery.[54] And it says specifically that it applies “notwithstanding any other statute limitations or defense based on the passage of time.”[55] It seems to me that the term “defense based on the passage of time”[56] should include adverse possession laws. After all, adverse possession laws are the vehicle through which civil law countries resolve the same conflict of policies that, in common law countries, are resolved through statutes of limitations. Statutes of limitations and

adverse possession rules reflect a balancing of the same policies—the interest in repose, the interest in protecting the expectations of the possessor, and the interest in allowing enough time to for the rightful owner to obtain the property. The only difference is the form the laws take. In one case, the state’s balancing of these policies takes the form of a procedural rule: the law limits the time you have to bring suit. In the other case, the balancing takes the form of a substantive rule about title. In my view, that formal distinction should not make a difference.

Currently, a petition for rehearing en banc is pending in the Ninth Circuit, and the Ninth Circuit has invited the defendant to file a brief in response, an unusual move which suggests that the Ninth Circuit believe the petitioners have raised serious concerns. In addition, legislation has been introduced in California that would provide that, in cases involving stolen art claims by residents of California, California law would apply.[57] As it is currently framed, the bill would be applicable to this case as long as it is enacted before the judgment becomes final.

**Dr. Jeanne Huang:**

Thank you, Professor Vázquez, for this in-depth analysis.

In conclusion, I would like to encapsulate our discussion with two key themes: *conflicts* and *coordination*.

*Conflicts:* We observe conflicts in various aspects of private international law. Jurisdictional conflicts arise in debates over concurrent proceedings, parallel proceedings, and related actions or claims. The *Cassirer* case vividly illustrates conflicts in choice of law, where applying Spanish law versus California law would yield different outcomes. We also encounter conflicts in the negotiation of new international legal instruments, such as the diverse opinions within the HCCH’s jurisdiction project and France’s objection to Principle 5 of the UNIDROIT Principles on Digital Assets and Private Law.

*Coordination:* Coordination is essential in addressing these conflicts. International coordination involves both procedural and substantive aspects, as highlighted by Professor Brand’s discussion on the HCCH jurisdiction project. It also includes the operation and improvement of conventions like *the 1980 Child Abduction Convention* and *the 1996 Child Protection Convention*, as well as the international payment of child support under *the 2007 Child Support Convention*. Coordination efforts are also evident in the draft UNIDROIT-UNCITRAL Model Law on Warehouse Receipts and its Guide to Enactment, the work



of UNCITRAL Working Group II on commercial dispute resolution, and the digital token project proposed by the Hague Conference Permanent Bureau. Domestically, coordination is seen in approaches like the “deemed consent” or personal jurisdiction approach in the *Mallory* case.

The interplay of conflicts and coordination presents ongoing yet exciting challenges for us as conflicts lawyers. Let us warmly applaud our outstanding speakers for their invaluable insights.

[1] We are grateful to Ms. Yixue Mei (University of Sydney) for transcribing the recording, which serves as a preliminary draft for these proceedings.

[2] *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915 (2011).

[3] *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873 (2011).

[4] *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023).

[5] *Nicaastro*, 564 U.S. 873 (2011).

[6] *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

[7] *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021).

[8] *Daimler*, 571 U.S. at 137.

[9] *Mallory*, 600 U.S. at 133-36.

[10] *Mallory*, 600 U.S. at 163-180 (2023) (Barrett, J., Roberts, C. J., and Kagan and Kavanaugh, JJ., dissenting).

[11] *Mallory*, 600 U.S. at 129. (relying on *Burnham v. Superior Ct. of California, Cnty. of Marin*, 495 U.S. 604 (1990)).

[12] *Mallory*, 600 U.S. at 138.

[13] *Mallory*, 600 U.S. at 168 (2023) (Barrett, J., Roberts, C. J., and Kagan and Kavanaugh, JJ., dissenting).

[14] Gorsuch, J., concurred in *Ford Motor* and was not on the Court when *Nicaastro* and *Baumann* were decided. Sotomayor, J., dissented in *Nicaastro*, concurred in *Baumann*, and joined the majority in *Ford Motor*. Jackson, J., was not on the court when *Nicaastro*, *Baumann*, or *Ford Motor* was decided.

[15] *Mallory*, 600 U.S. at 149-63 (2023) (Alito, J., concurring in part and concurring in judgment).

[16] *Mallory*, 600 U.S. at 127 n.3.

[17] *Mallory v. Norfolk S. Ry. Co.*, 300 A.3d 1013 (Pa. 2023).

[18] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 89 F.4th 1226 (9th Cir. 2024).

[19] *Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1037 (9th Cir. 2010) (en banc).

[20] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 153 F. Supp. 3d 1148, 1154 (C.D. Cal. 2015), rev'd and remanded, 862 F.3d 951 (9th Cir. 2017).

[21] *Schoenberg v. Exportadora de Sal, S.A. de C.V.*, 930 F.2d 777, 782 (9th Cir.1991).

[22] *Cassirer*, 153 F. Supp. 3d at 1155.

[23] *Id.* at 1160.

[24] Código Civil [Civil Code] art. 1956 (Spain).

[25] *Cassirer*, 153 F. Supp. 3d at 1164.

[26] *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. CV 05-3459-JFW (EX), 2019 WL 13240413, at \*19 (C.D. Cal. Apr. 30, 2019), aff'd, 824 F. App'x 452 (9th Cir. 2020), vacated and remanded, 596 U.S. 107, 142 S. Ct. 1502, 212 L. Ed. 2d 451 (2022), and aff'd, 89 F.4th 1226 (9th Cir. 2024).

[27] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 69 F.4th 554, 571 (9th Cir. 2023).

[28] *Cassirer*, 153 F. Supp. 3d at 1156.

[29] Cal. Civ. Proc. Code § 338(c)(3) (2022).

[30] Holocaust Expropriated Art Recovery Act of 2016 § 5(a).

[31] Código Civil [Civil Code] art. 1955 (Spain).

[32] *Cassirer*, 153 F. Supp. 3d at 1164.

[33] *Id.* at 1155.

[34] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951, 964 (9th Cir. 2017).

[35] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 117 (2022).

[36] *Cassirer V*, 596 U.S. at 115.

[37] *Cassirer VI*, 69 F.4th at 557.

[38] *Cassirer v. Thyssen-Bornemisza Collection Found.*, 89 F.4th 1226, 1234 (9th Cir. 2024).

[39] *Id.* at 1245.

[40] *Id.* at 1242.

[41] *Id.* at 1231-32.

[42] For elaboration, see Carlos M. Vázquez, *Cassirer on Remand: Considering the Laws of Other Interested States*, <https://tlblog.org/cassirer-on-remand-considering-the-laws-of-other-interested-states/>.

[43] *See generally id.*

[44] *See id.*

[45] For elaboration of the arguments in this paragraph, see *id.*

[46] *Cassirer IV*, 824 F. App'x at 454–55.

[47] *Cassirer*, No. CV 05-3459-JFW (EX), 2019 WL 13240413, at \*19.

[48] Terezin Declaration on Holocaust Era Assets and Related Issues, U.S. Department of State (June 30, 2009), <https://www.state.gov/prague-holocaustera-assets-conference-terezin-declaration/>.

[49] Washington Conference Principles on Nazi-Confiscated Art, U.S. Department of State (December 3, 1998), <https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/>.

[50] Holocaust Expropriated Art Recovery Act of 2016, PL 114-308, December 16, 2016, 130 Stat 1524.

[51] U.S. Const, art. VI, sec. 2.





[52] *See, e.g., Testa v. Katt*, 330 U.S. 386, 393 (1947) (“For the policy of the federal Act is the prevailing policy in every state”)

[53] *Cassirer III*, 862 F.3d at 978.

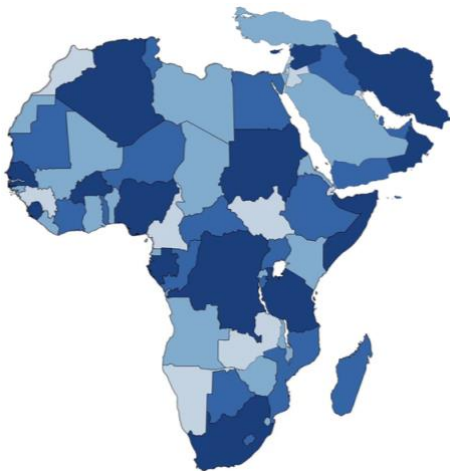
[54] Holocaust Expropriated Art Recovery Act of 2016 § 5(a).

[55] *Id.*

[56] *Id.*

[57] AB-2867 Recovery of artwork and personal property lost due to persecution.

## AFRICA & THE MIDDLE EAST



Recent developments across Africa and the Middle East are reshaping private international law, fostering cross-border cooperation, economic integration, and improved judicial processes. The OHADA Council's new Uniform Act, Mozambique's new Private Investment Law, and Egypt's amended Importers Registry Law all aim to attract foreign investment by enhancing legal certainty. Similarly, Kuwait's new law granting foreign companies direct market access, Angola's treaty with Japan, and Kenya's EU trade deal and Privatization Act boost economic opportunities and strengthen economic ties. Meanwhile, Saudi Arabia aligning with the CISG for global trade, Rwanda joining the HCCH Apostille Convention and seeking HCCH membership for document authentication, UAE amending its Arbitration Law, Botswana and Cabo Verde's accessing to the 2007 Child Support Convention, with Cabo Verde additionally simplifying citizenship and signing a social security agreement with Angola, all signify strides in international legal cooperation. Besides, Ghana's Human Sexual Rights and Family Values Bill and Zambia's Marriage Act amendment address sexual conduct and effectively outlaw child marriage, respectively. Court rulings have also significantly shaped private international law, evident in decisions from South Africa, Tanzania, the United Arab Emirates, and Türkiye, illustrating their pivotal role in legal developments across borders. Last but not least, several events organized by OHADA are slated for the third quarter of 2024. (Editor Lamine Balde)

### International Conventions

#### *Angola and Japan: Signed Bilateral Investment Treaty*

On August 9, 2023, Angola and Japan signed, in Luanda, a Bilateral Investment Treaty aimed at strengthening economic relations between the two countries. This treaty is designed to promote and protect investments, enhance cooperation, and create a stable and transparent investment environment. It is expected to encourage greater foreign direct investment (FDI), foster economic growth, and provide legal safeguards for investors from both nations.

The full text of the Agreement can be found here: <https://www.mofa.go.jp/files/100538275.pdf>. (Editor Lamine Balde)

#### *Saudi Arabia: accession to the United Nations Convention on Contracts for the International Sale of Goods*



On August 21, 2023, Saudi Arabia accessed to the United Nations Convention on Contracts for the International Sale of Goods (CISG), Saudi Arabia becomes the 96th State Party to the Convention.

For more information, see <https://unis.unvienna.org/unis/en/pressrels/2023/unis1347.html>. (Editor: Jie (Jeanne) Huang)

***Rwanda: accessed to the HCCH 1961 Apostille Convention and applied to become a Member of the Hague Conference on Private International Law (HCCH)***

On October 6, 2023, the Republic of Rwanda deposited its instrument of accession to the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (1961 Apostille Convention) and applied to become a Member of the HCCH.

On June 5, 2024, the 1961 Apostille Convention entered into force for Rwanda.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=941> (Editor: Jie (Jeanne) Huang)

***Democratic Republic of the Congo: Adoption of a New OHADA Uniform Act in Kinshasa***

On October 17, 2023, the OHADA Council of Ministers adopted in Kinshasa, DRC, a new Uniform Act organizing simplified recovery procedures and enforcement measures. This Act, which repeals and replaces the one from April 10, 1998, took effect on February 16, 2024, and applies to all Member States for simplified recovery procedures and enforcement measures initiated thereafter, with procedures initiated prior to this date being governed by the 1998 Uniform Act.

The full text of the Uniform Act can be found here: [https://www.ohada.com/uploads/actualite/7147/JO\\_AUVE\\_English.pdf](https://www.ohada.com/uploads/actualite/7147/JO_AUVE_English.pdf). (Editor: Lamine Balde)

***Botswana: the 2007 Child Support Convention entered into force***

On November 16, 2023, the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) entered into force for the Republic of Botswana following the deposit of its instrument of accession on November 14, 2022.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=948> (Editor: Jie (Jeanne) Huang)

***Nigeria: acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation***

On November 27, 2023, Nigeria ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation". The Convention became effective for Nigeria on May 27, 2024.

For the status table of the Singapore Convention on Mediation, see [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status). (Editor: Jie (Jeanne) Huang)

***Kenya and the EU: Signed an Economic Partnership Agreement***

On December 18, 2023, Kenya and the EU signed an Economic Partnership Agreement (EPA), aimed at boosting trade in goods and creating new economic opportunities. This agreement marks a significant step in strengthening economic ties between the Kenya and the EU, facilitating easier market access, promoting sustainable development, and enhancing trade relations. The EPA is expected to provide a framework for increased investment and cooperation, benefiting businesses and consumers in both regions.

For more information, please visit: [https://ec.europa.eu/commission/presscorner/detail/%20en/ip\\_23\\_6632](https://ec.europa.eu/commission/presscorner/detail/%20en/ip_23_6632). (Editor Lamine Balde)

***Cabo Verde: Acceded to the 2007 Child Support Convention***

On January 9, 2024, Cabo Verde deposited its instrument of accession to the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, with the Convention entering into force for Cabo Verde on January 12, 2025. Cabo Verde's accession has expanded the reach of the Convention, now binding 49 States and the European Union.

The full text of the announcement may be found here: <https://www.hcch.net/en/news-archive/details/?varevent=955> (Editor: Lamine Balde)



### ***Azerbaijan: the 2007 Child Support Convention entered into force***

On February 28, 2024, the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) entered into force for the Republic of Azerbaijan following the deposit of its instrument of accession on February 17, 2023.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=965> (Editor: Jie (Jeanne) Huang)

### ***Angola: deposited its instrument of accession to the 1993 Adoption Convention.***

On March 14, 2024, the Republic of Angola deposited its instrument of accession to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993 Adoption Convention).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=968> (Editor: Jie (Jeanne) Huang)

### ***Angola and Cabo Verde: Signed Cooperation Protocol on Social Security and Labor***

On May 28, 2024, Cabo Verde and Angola signed a cooperation protocol on social security and labor, enhancing bilateral ties by streamlining cooperation in these areas. The protocol underscores mutual commitment to supporting worker welfare and rights. It aims to enhance coordination, foster expertise exchange, and develop social protection mechanisms and labor practices in both countries, ensuring, inter alia, that individuals who have worked their entire lives in one country can receive their pension upon returning home through mutual agreements between their respective social security systems.

For more information, please visit: <https://www.verangola.net/va/en/052024/Politics/40185/Cape-Verde-and-Angola-sign-cooperation-protocol-on-social-security-and-labor.htm>. (Editor: Lamine Balde)

## **National Legislation**

### ***Kenya: Enacted a New Privatization Act***

On January 9, 2023, Kenya adopted the Privatization Act, 2023, replacing the 2005 Act. This new legislation, inter

alia, aims to streamline and modernize the privatization of state-owned enterprises. By enhancing transparency and efficiency, it facilitates foreign investment in Kenya's privatization efforts. The Act reduces bureaucratic hurdles and clarifies regulatory frameworks, boosting investor confidence, attracting foreign direct investment, and driving economic growth.

The full text of the Act can be found here: [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2023/PrivatizationAct\\_No.11of2023.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2023/PrivatizationAct_No.11of2023.pdf). (Editor: Lamine Balde)

### ***Mozambique: The New Private Investment Law Entered into Force***

On September 8, 2023, Mozambique's new Private Investment Law, Law No. 8/2023 of June 9, 2023, entered into force, following a 90-day period after its publication. The new law seeks to attract more investment, boost economic growth, and promote sustainable development in Mozambique, reflecting the country's commitment to creating a more business-friendly environment.

The full text in Portuguese of the New Private Investment Law can be found here: <https://www.mef.gov.mz/index.php/sobre-ministerio/cartas-de-servicos/1902-lei-de-alteracao-da-tabela-salarial-unica-tsu-e-lei-de-investimentos-2023/file>

### ***Egypt: Amended its Importers Registry Law***

On October 29, 2023, Egypt adopted Law No. 173, amending the Importers Register Law No. 121 of 1982. By updating and refining existing provisions, the amendments aim to attract foreign investment, boost economic efficiency, and support sustainable development. The new law is expected to enhance investor confidence and contribute to Egypt's overall economic growth and modernization efforts.

For more information. Please visit: <https://insightplus.bakermckenzie.com/bm/international-commercial-trade/egypt-lifts-the-egyptian-ownership-requirement-for-importation-for-commercial-trading>. (Editor: Lamine Balde)

### ***United Arab Emirates: First Amendment to UAE Arbitration Law***

The Ministry of Justice of the United Arab Emirates (UAE) issued Federal Decree-Law No. 15/2023, which amended Federal Law No. 6/2018 concerning arbitration. The law targets specific and restricted facets of the arbitration



statutes, including the express prohibition of any direct relationship between an arbitrator and one of the parties that could cast doubt on the arbitrator's impartiality, independence, or integrity. The amendment legislation introduces an exemption to the proscription on appointing members of arbitral institutions as arbitrators. Under eight conditions, individuals who are prohibited from doing so under Article 10(1)(b) are permitted to serve as arbitrators.

Numerous amendments have been made to the UAE Arbitration Law in order to conform to contemporary approaches to conducting arbitral proceedings. In addition, the amendment law grants parties the right to pursue civil damages against the arbitral institution and the arbitrator. Additionally, the amendment underscores the Tribunal's prerogative in establishing the relevant evidentiary standards, including applying foreign rules of evidence, so long as these do not conflict with UAE public policy.

The announcement regarding the new law by the UAE Ministry of Economy can be found [here](#). (Editor: Malak Nasreddine)

#### ***Zambia: Amended its Marriage Act***

On December 22, 2023, Zambia enacted an Act to amend its 1918 Marriage Act. The amendment raises the minimum marriage age to 18 and introduces strict penalties for violators. The amendment aligns with international standards, demonstrating Zambia's commitment to protecting children's rights, promoting gender equality, and empowering future generations.

The full text of the Act can be found here: <https://www.parliament.gov.zm/sites/default/files/documents/acts/Act%20No.%2013%20of%202023%2C%20The%20Marriage%2028Amendment%29%20Act.pdf> (Editor: Lamine Balde)

#### ***Kuwait: Law No. 1/2024 Entered into Force***

On January 21, 2024, Kuwait's Law No. 1/2024, amending Article 24 of the Kuwait Commercial Law No. 68/1980 and Article 31 of the Public Tenders Law No. 49/2016, entered into force. The law grants foreign companies and investors direct, unhindered access to the Kuwaiti market, allowing them to establish branches without a local agent or representative, thereby boosting foreign investment and economic growth.

The full text of the law, in its informal translation, can be found here: <https://www.tamimi.com/wp->

[content/uploads/2024/01/informal-translation-law-1-202413607574-003.pdf](https://www.tamimi.com/wp-content/uploads/2024/01/informal-translation-law-1-202413607574-003.pdf). (Editor: Lamine Balde)

#### ***Ghana: Parliament Passed Human Sexual Rights and Family Values Bill***

On February 28, 2024, Ghana's parliament passed the Human Sexual Rights and Family Values Bill. The bill, *inter alia*, aims to regulate sexual conduct and promote family values, addressing issues related to LGBTQ+ rights and societal norms. It has sparked intense debate, with supporters arguing it upholds traditional values and critics claiming it infringes on individual freedoms. The bill has been sent to the president's desk to be signed into law.

The full text of the Act can be found here: <https://www.accessnow.org/wp-content/uploads/2024/03/Anti-LGBTQ-Bill-Human-Sexual-Rights-and-Family-Values-Bill-2024.pdf>. (Editor: Lamine Balde)

#### ***Cabo Verde: Amended its Nationality Law***

On March 22, 2024, Cabo Verde enacted Law No. 37/X/2024, amending Law No. 33/X/2023, to extend nationality rights. This legislation allows individuals of Cabo Verdean descent, regardless of birthplace, to obtain citizenship more easily. This significant legal change aims to strengthen ties with the diaspora and enhance national unity, reflecting Cabo Verde's commitment to embracing its global community and fostering social cohesion.

The full text in Portuguese to the new nationality law can be found here: <https://kiosk.incv.cv/V/2024/3/22/1.1.24.5661/p650>. (Editor: Lamine Balde)

## **National Case Law**

#### ***United Arab Emirates: The ADGM Courts' exclusive jurisdiction to recognize and enforce ICC awards***

In *A8 v B8* [2023] ADGMCFI 0015, the Abu Dhabi Global Market (ADGM) Court considered an application for recognition and enforcement of an International Chamber of Commerce (ICC) award issued in an onshore Abu Dhabi-seated arbitration. Before approaching the ADGM Court, the parties filed applications before the Abu Dhabi Courts to recognize (as applied by the judgment creditor) and to set aside (as applied by the judgment debtor) the onshore Abu



Dhabi award. The Abu Dhabi Courts dismissed the applications on the basis that the ICC had established a representative office in the ADGM, and concluded that the ADGM Court has exclusive supervisory jurisdiction of the underlying application.

First, the ADGM Court granted the application for the recognition of the award on the basis that the language of section 61(1) of the ADGM Arbitration Regulations is drafted in mandatory terms, meaning that the ADGM Court is required to recognize and enforce an award unless one of the grounds for refusal of recognition and enforcement is satisfied. Second, the ADGM Court granted the application for the enforcement of the award and confirmed that the presence of a party's assets in the ADGM is not a precondition to the granting of an enforcement order. However, the ADGM Court did not direct the ADGM Registry to affix the "executory formula" to facilitate the enforcement of the order in other UAE Courts. The reasoning was that the effect of Article 13(14) of Abu Dhabi Law No. 4 of 2013 as amended precludes the use of the ADGM Court as a "conduit jurisdiction" for the enforcement of foreign judgments and arbitral awards. (Editor: Malak Nasreddine)

***United Arab Emirates: The precedential effect of English law in Abu Dhabi Global Market (ADGM)***

In [a recent Court of Appeal judgment \(\[2023\] ADGMCA 0002\)](#), the Court took the opportunity to explain the relationship between Article 1(1) of the ADGM Application of English Law Regulations 2015, which provides that English law applies and has legal force in, and forms part of ADGM law, and the English common law doctrine of precedent (or stare decisis) and how it is to be applied by ADGM judges. The Court viewed this as a matter of some importance, as ADGM judges are not sitting as English judges

In that case, Mr. Justice Stone in the ADGM Court of First Instance held he was not bound as a matter of stare decisis by a certain decision of the English Court of Appeal, as he was not sitting as an English court of first instance, and so he declined to follow it, as his court was not bound by the doctrine of precedent by a decision of the English Court of Appeal.

The Court of Appeal rejected his approach as rather missing the point which the Article raises, since following precedent is what the rule about the common law of England requires the ADGM judge to do when applying the rule in the

Article. The application of that doctrine is essential to a correct understanding of what the English common law is on the point at issue.

In other words, the doctrine of precedent applies in ADGM as it does in the English courts. (Editor: Malak Nasreddine)

***United Arab Emirates: DIFC-LCIA Arbitration Agreements remain valid and enforceable***

In Case No 449 of 2024, the Abu Dhabi Court of Appeal held that the abolition of the Dubai International Financial Centre – London Court of International Arbitration Centre (DIFC-LCIA) does not invalidate an arbitration agreement that refers a dispute to be resolved under the foregoing institution. The Court affirmed the lower court's finding that an arbitration agreement referring to the DIFC-LCIA is binding and enforceable irrespective of Dubai Decree 34 of 2021 abolishing the DIFC-LCIA and transferring its cases to the Dubai International Arbitration Centre (DIAC). The lower court declined jurisdiction over the claimant's claim in February 2024, finding that (i) the arbitration agreement remained valid, and (ii) the arbitration agreement could be interpreted by the courts "from a broad perspective", and (iii) the severability clause in the contract means that the arbitration agreement as a whole remains valid even if the section concerning administration by the DIFC-LCIA had become inoperable. (Editor: Malak Nasreddine)

***United Arab Emirates: Recognition and Enforcement of English Judgments***

In Case No 392 of 2024, the Dubai Court of Cassation issued its first judgment to recognize and enforce an English court judgment within the UAE. In its judgment, the Court confirmed that there is reciprocity in the enforcement of foreign judgments between the UAE and the UK. The Court allowed the enforcement of the English judgment, even in circumstances where the English judgment ordered the judgment debtor to transfer real estate properties located in Dubai to the judgment creditor. The Court held that the foreign judgment is not against the UAE public policy. (Editor: Malak Nasreddine)

***South Africa: The Supreme Court of Appeal held that merely residing in South Africa was not sufficient to establish jurisdiction***

On April 8, 2024, the South African Supreme Court of Appeal (SCA) dismissed an appeal by Organi Mark (Pty) Ltd against a decision of the Gauteng Division of the High Court, Pretoria. Organi Mark sought to hold former



directors of Spintex Swaziland (Pty) Ltd personally liable for the company's debts under section 361 of the Swaziland Companies Act 8 of 2009, alleging reckless trading. The High Court had ruled it lacked jurisdiction to apply and enforce eSwatini's company law. The SCA upheld this decision, stating that the mere residence of the directors in South Africa did not provide a sufficient jurisdictional basis. It emphasized that section 361 of the Swaziland Companies Act applied exclusively to eSwatini's courts and had no extraterritorial effect. Thus, Organi Mark's appeal was dismissed with costs.

The full text of the judgment can be found here: <https://www.supremecourtofappeal.org.za/index.php/component/jdownloads/send/94-judgements-2024/4203-organi-mark-pty-ltd-v-goolam-nabi-ebrahim-akoodie-and-another-240-2023-2024-zasca-44-8-april-2024?Itemid=0>

(Editor: Lamine Balde)

#### ***Tanzania: The Court of Appeal Overturns Judgment in Dangote Industries vs. Warnercom Case Due to Jurisdictional Issues***

On May 14, 2024, the Court of Appeal of Tanzania delivered its decision in the case *Dangote Industries Ltd. Tanzania vs. Warnercom (T) Limited* (Civil Appeal No. 292 of 2022). The case centered on a contractual dispute regarding transportation services. Warnercom sued Dangote for non-payment, resulting in an ex parte judgment by the Resident Magistrates' Court of Kinondoni, awarding Warnercom TZS 200,000,000 in special damages and TZS 150,000,000 in general damages. Dangote appealed, contending that the trial court lacked jurisdiction under section 40 (3) (b) of the Magistrates' Court Act (MCA). The High Court dismissed this appeal, leading to a further appeal to the Court of Appeal. The Court of Appeal determined that the initial suit was of commercial significance and exceeded the MCA's jurisdictional limit of TZS 70,000,000 for commercial claims. Consequently, the Court of Appeal overturned the High Court's decision and set aside the ex parte judgment against Dangote.

The full text of the judgment can be found here: <https://tanzi.org/akn/tz/judgment/tzca/2024/359/eng@2024-05-14/source.pdf> (Editor: Lamine Balde)

#### ***Türkiye: Conflict of Jurisdiction in the Appointment of a Guardian for a Foreign Person***

On April 29, 2024, the 5th Civil Chamber of the Court of Cassation issued the Decision No: 2024/4806. It was

determined that the appropriate jurisdiction for a petition seeking the appointment of a guardian for a foreign national under legal restriction is the Hacıbektas Civil Court of Peace.

According to Article 41 of the Turkish Act on International Private Law and the Civil Procedure of 2007 (TAPIL), legal actions pertaining to the personal status of Turkish nationals can be brought before the court with jurisdiction according to domestic venue rules. If no such court exists, the action can be taken where the individual resides in Türkiye. If the individual does not reside in Türkiye, the court of their last domicile in the country will have jurisdiction. In the absence of a court of last domicile, the action can be brought before a court in Ankara, İstanbul, or İzmir, provided that the case has not been initiated or cannot be initiated in a foreign court. According to the decision of Hacıbektas Civil Court of Peace dated 11.25.2022 (2022/382) Hacıbektas Civil Registry and Kırşehir Security Directorate investigated the place of residence of the restricted person, and in the reply letters, it was reported that the restricted candidate resided in Germany, in this case, pursuant to Article 41 of TAPIL, the case should be heard and concluded in Ankara Civil Court of Peace.

Ankara 11th Civil Court of Peace (11.14.2023, Decision No: 2023/2945) ruled for lack of jurisdiction on the grounds that the last place of residence of the restricted candidate living in Germany in Türkiye was Kırşehir.

The Kırşehir Civil Court of Peace (01.03.2024, Decision No: 2024/13) declared a lack of jurisdiction in the matter, based on several key findings. It was ascertained from the official register that the restricted candidate had relinquished Turkish citizenship pursuant to a decision by the Ministry of Interior dated May 14, 2008, and numbered 2008/10. Furthermore, it was established that the restricted candidate neither had a place of residence in Türkiye nor resided in the country, but instead lived in Germany. Despite owning immovable property in the Hacıbektas district, the court determined that the Hacıbektas Civil Court of Peace held the appropriate jurisdiction to adjudicate the case.

The Court of Cassation referred to Article 42 of the TAPIL on certain cases concerning the personal status of foreigners and held that the Hacıbektas Civil Court of Peace was competent. According to this article, decisions as to guardianship, tutelage, missing persons and the declaration



of death concerning foreign persons who do not have domicile in Türkiye shall be determined by the court where the person concerned has a place of habitual residence, or if he/she is not resident, by the court where his/her assets are located.

For the full text of the judgment see. [www.legalbank.net](http://www.legalbank.net). (Editor: Esra Tekin)

## Association and Events

### *Abu Dhabi: Second Financial Restructuring Week*

On February 19 and 20, 2024, Abu Dhabi will host its Second Financial Restructuring Week at the ADGM, with the strategic partnership of Bankruptcy Commission Saudi Arabia. This year's theme of "Navigating the Rising Wave of Large Corporate Insolvencies" will provide a unique opportunity for policymakers and other key players to collaborate on finding solutions to global challenges that impact trade and boost sustainable investments.

For more information, please visit: <https://financialrestructuringmena.com/>

### *Riyadh International Disputes Week*

In early March 2024, Riyadh will host its flagship international disputes week, which includes a number of events, including the third Saudi Centre for Commercial Arbitration International Conference and Exhibition.

With the significant developments plans that are under implementation in Saudi Arabia and the many mega-projects under construction, this event is expected to be heavily attended as a forum for legal practitioners, consultants and industry experts to discuss expected future trends in Saudi Arabia.

For more information, please visit: <https://ridw.org/>

### *3rd edition of the African Arbitration and Mediation Days (JAAM) themed: "Contemporary Issues in Arbitration and Mediation Law in Africa"*

Under the patronage of Gabon's Minister of Justice, the OHADA Regional Advanced School for Magistracy and the Association for the Promotion of Arbitration in Africa, in partnership with several organizations, are organizing the 3rd African Arbitration and Mediation Days on July 25-26, 2024, in Libreville and online. The event, themed "Contemporary Issues in Arbitration and Mediation Law in

Africa," will feature sessions led by leading specialists and international experts to strengthen ADR stakeholders' capacities.

For more information, please

visit: <https://www.ohada.org/en/3rd-edition-of-the-african-arbitration-and-mediation-days-jaam/> (Editor: Lamine Balde)

### *Training session themed "Seizure of Real Estate under OHADA Law."*

The Regional Advanced School of Magistracy, in collaboration with various bailiff associations, is organizing a bimodal training session on "Seizure of Real Estate under OHADA Law" from July 17-19, 2024. Held both onsite in Brazzaville and online, the session will cover procedural clarifications by the new AUPSRVE.

For more information, please

visit: <https://www.ohada.org/en/news-release-training-session-under-the-theme-seizure-of-real-estate-under-ohada-law/> (Editor: Lamine Balde)

## AMERICAS

### Mexico, Central & South America





During the second half of 2023, several decisions concerning Latin American parties have surfaced. In Paris, courts have addressed annulment proceedings concerning awards against Venezuela, emphasizing factors such as investor time-bar, qualifying status, and allegations of fraud. Similar relevant decisions have been observed in Dutch and US courts, particularly in the context of cases involving countries like Ecuador.

Furthermore, Mexican and Brazilian courts have played pivotal roles in upholding arbitration awards, reinforcing the importance of respecting arbitration clauses and rejecting claims that awards contradict public order. The legal landscape thus highlights the nuanced nature of disputes, reflecting a commitment to the principles of international arbitration while addressing jurisdictional, procedural, and substantive considerations.

Regulatory changes have occurred in the most prominent arbitral center in Brazil with CAM-CCBC revising its arbitration rules. These updates include the capacity to administer UNCITRAL proceedings, facilitate remote deliberations, and address arbitrator impartiality and independence, as well as handling multi-contract disputes. Additionally, CAM-CCBC introduced supplementary rules for corporate disputes.

## International Conventions

### *Paraguay: the 1970 Evidence Convention entered into force*

On August 22, 2023, the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (1970 Evidence Convention) entered into force for Paraguay.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=923> (Editor: Jie (Jeanne) Huang)

### *Paraguay: the 1965 Service Convention entered into force*

On January 1, 2024, the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965 Service Convention) entered into force for the Republic of Paraguay following the deposit of its instrument of accession on June 23, 2023.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=951> (Editor: Jie (Jeanne) Huang).

### *Uruguay: acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation*

On September 28, 2023, The United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation" became effective for Nigeria.

For the status table of the Singapore Convention on Mediation, see [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status). (Editor: Jie (Jeanne) Huang)

### *Dominican Republic: deposited its instruments of accession to the 1965 Service Convention and the 2007 Child Support Convention.*

On March 21, 2024, the Dominican Republic deposited its instruments of accession to the 1965 Service Convention and the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=970> (Editor: Jie (Jeanne) Huang)

### *El Salvador: deposited its instrument of accession to the 1965 Service Convention*

On March 21, 2024, the Republic of El Salvador deposited its instrument of accession to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965 Service Convention).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=970> (Editor: Jie (Jeanne) Huang)

### *El Salvador: accessed to the United Nations "Beijing Convention on the Judicial Sale of Ships"*

On May 23, 2024, El Salvador became the first State party to the Beijing Convention on the Judicial Sale of Ships.





For the official announcement, see <https://uncitral.un.org/en/judicialsaleofships>. (Editor: Jie (Jeanne) Huang)

## National Legislation

### *Brazil: The CAM-CCBC revised its arbitration rules*

The premier arbitration center in Brazil has recently updated its arbitration rules for the first time. The revisions encompass significant changes, including the capacity to administer UNCITRAL proceedings, facilitate remote deliberations, and incorporate new provisions addressing arbitrator impartiality and independence, as well as handling multi-contract disputes, among other key aspects.

The full text of the new Rules may be found here: <https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/wp-content/uploads/sites/10/2023/05/Arbitration-Rules-2022.pdf>. (Editor: Juan Pablo Gómez-Moreno)

### *Brazil: The CAM-CCBC issues rules for the administration of corporate disputes*

On April 26, 2023, CAM-CCBC introduced a set of supplementary rules for corporate disputes. These rules, encompassing 14 provisions, address various aspects, including the involvement of third parties and the coordination of parallel arbitral and corporate processes.

The full text of the Supplementary Rules in Portuguese may be found here:

<https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/norma-complementar-02-2023/>. (Editor: Juan Pablo Gómez-Moreno)

## National Case Law

### *Brazil: Court Confirms \$73 Million ICC Award for Brazilian Energy Company*

On June 11, 2023, the New York Southern District Court confirmed a US\$73 million ICC award in favor of Brazilian renewable energy company Focus Energia against Chinese solar panel manufacturer Risen Energy. The court dismissed Risen's bid to vacate the award, rejecting claims that the tribunal acted in manifest disregard of the law.

The full text of the decision may be found here: [https://files.lbr.cloud/public/2024-06/S.D.N.Y.%2023-cv-10993%20dckt%20000041\\_000%20filed%202024-06-11.pdf?VersionId=GYaakD.JBP6GVhv2iPEi6FAgZLxISA-dV](https://files.lbr.cloud/public/2024-06/S.D.N.Y.%2023-cv-10993%20dckt%20000041_000%20filed%202024-06-11.pdf?VersionId=GYaakD.JBP6GVhv2iPEi6FAgZLxISA-dV). (Editor: Juan Pablo Gómez-Moreno)

### *Brazil: A local court confirmed the annulment of a 2020 CAM award*

On November 8, 2023, the Regional Federal Court for the Third Region in São Paulo upheld the annulment of an award against Brazil filed by two minority shareholders of the national oil company, Petrobras. The court affirmed that the federal government was not obligated by an arbitration clause in Petrobras' bylaws.

The full text of the decision in Portuguese may be found here: <https://files.lbr.cloud/public/2023-11/Acordao-1-1.pdf?VersionId=Rvf1e3zzzhrCJ0vxv501jwkrMCEG1X.7>. (Editor: Juan Pablo Gómez-Moreno)

### *Brazil: Superior Court of Justice recognizes criminal conviction of soccer player "Robinho", sentenced in Italy - HDE 7986-EX*

On March 20, 2024, the Superior Court of Justice decided, by majority, to recognize and enforce the Italian court's conviction of the Brazilian soccer player Robson de Souza, known as "Robinho", transferring the enforcement of the 09-year prison sentence for the crime of rape. It was claimed by the Court that the application of article 100 of the Migration Law (Law n. 13.445/2017), since it deals with procedural matters, allows facts committed prior to the enactment of the law to be carried out in Brazil, thus applying the rules for transferring the sentence to the case.

The full text of the judgement can be found here: [https://processo.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num\\_registro=202300503547&dt\\_publicacao=22/03/2024](https://processo.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202300503547&dt_publicacao=22/03/2024) (Editor: Isabela Tonon da Costa Dondone)

### *Mexico: A local court upholds an AAA-ICDR award in favor of Pemex*

On June 8, 2023, the Sixteenth Collegiate Circuit Court in Mexico City rejected a plea to overturn a prior decision acknowledging a 2020 AAA-ICDR award. The court determined that the claimant failed to substantiate that the award contradicted public order, specifically in asserting the invalidity of the arbitration agreement.



The full text of the decision in Spanish may be found here: [https://files.lbr.cloud/public/2023-07/Ejecutoria%20-%20Rec.%20Rev.%20amparo%20Loadmaster%20418%202022%2016%20TCC%20-%20%208%20junio%202023%20\(2\).PDF?VersionId=QooA7LDwLZOTBL0waYaSfEieGI0u50s](https://files.lbr.cloud/public/2023-07/Ejecutoria%20-%20Rec.%20Rev.%20amparo%20Loadmaster%20418%202022%2016%20TCC%20-%20%208%20junio%202023%20(2).PDF?VersionId=QooA7LDwLZOTBL0waYaSfEieGI0u50s). (Editor: Juan Pablo Gómez-Moreno)

***Mexico: Canadian Court rejects challenge to a NAFTA award***

On October 23, 2023, Ontario's Superior Court of Justice determined that one of the arbitrators in a NAFTA dispute breached the duty to disclose communications with Mexico. However, the court concluded that this lapse did not compromise the integrity of the outcome, as it did not affect the other members of the tribunal.

The full text of the decision may be found here: <https://www.canlii.org/en/on/onsc/doc/2023/2023onsc5964/2023onsc5964.html?searchUrlHash=AAAAAAAAAAEA E1NPIDIwMTcsIGMgMiwgU2NoIDUAAAABABA vND MwNTMtY3VycmVudC0x AQ>. (Editor: Juan Pablo Gómez-Moreno)

***Panama: Supreme Court confirms that awards are not subject to constitutional actions***

On April 12, 2023, the Panamanian Supreme Court clarified that constitutional actions known as *amparos* are not a valid avenue for challenging awards. The ruling was based on the interpretation of Article 66 of the Arbitration Act of 2013, which explicitly designates annulment actions as the sole recourse for challenging awards.

The full text of the decision is not available. (Editor: Juan Pablo Gómez-Moreno)

***Panama: Supreme Court Upholds Foreign Lawyer Representation in Arbitration***

On June 17, 2024 Panama's Supreme Court affirmed foreign lawyer representation in international arbitration. The case involved a dispute between a Brazilian company and a Panamanian insurer over a construction subcontract. The Court found that neither arbitration law nor other domestic regulations restrict lawyer nationality or licensing to Panamanian nationals.

The full text of the decision in Spanish may be found here: [https://files.lbr.cloud/public/2024-06/doc039420240516144834\\_240530\\_154416\(1\).pdf?VersionId=Tr7ZsajoOL\\_CP2wmlt9W1Onmd8ET\\_hr](https://files.lbr.cloud/public/2024-06/doc039420240516144834_240530_154416(1).pdf?VersionId=Tr7ZsajoOL_CP2wmlt9W1Onmd8ET_hr). (Editor: Juan Pablo Gómez-Moreno)

***Panama: A US Court upholds Panama Canal awards***

On August 18, 2023, the US Eleventh Circuit Court of Appeals dismissed allegations of evident partiality against arbitrators. The court concluded that there was insufficient evidence to meet the high threshold required to overturn an international award, emphasizing that indications of professional familiarity did not signify bias.

The full text of the decision may be found here: [https://files.lbr.cloud/public/2023-08/Decision%20of%20the%2011th%20Circuit%20Court%20of%20Appeal.pdf?VersionId=LKmmDNxB8UCZO.BQ LBv\\_UGS6edIclbd](https://files.lbr.cloud/public/2023-08/Decision%20of%20the%2011th%20Circuit%20Court%20of%20Appeal.pdf?VersionId=LKmmDNxB8UCZO.BQ LBv_UGS6edIclbd). (Editor: Juan Pablo Gómez-Moreno)

***Venezuela: Dutch Court prevents the enforcement of an ICSID award against the state***

On May 30, 2023, the Court of Appeal of The Hague decided that OIEG could not enforce a US\$500 million ICSID award against the Venezuelan oil company PDVSA. The ruling hinged on the lack of sufficient evidence establishing a substantial connection between the companies targeted for enforcement and the state.

The full text of the decision may be found here: <https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:GHDHA:2023:988>. (Editor: Juan Pablo Gómez-Moreno)

***Venezuela: A Paris Court upholds international award against the state***

On June 27, 2023, the Paris Court of Appeal rejected Venezuela's request to annul a 2014 decision by an UNCITRAL tribunal. The tribunal had affirmed its jurisdiction over claims brought by dual nationals from Venezuela and Spain under the BIT between the two nations. The court concluded that the treaty did not preclude claims by dual nationals.

The full text of the decision is not available. (Editor: Juan Pablo Gómez-Moreno)

***Venezuela: Paris Court upholds award against Venezuela***



On September 26, 2023, the Paris Court of Appeal rejected an application to annul a 2021 ICSID award. Venezuela's arguments, including claims of the investor being time-barred, not meeting the criteria as a qualifying investor, and the tribunal exceeding the scope of its powers, were all dismissed by the court.

The full text of the decision is not available. (Editor: Juan Pablo Gómez-Moreno)

***Venezuela: Paris Court set-aside partially a treaty award against the state***

On October 24, 2023, the Paris Court of Appeal partially annulled a US\$126 million UNCITRAL award against Venezuela. The court concluded that the investor's deposits were involved in a substantial tax fraud scheme in Chile, contradicting international public policy.

The full text of the decision is not available. (Editor: Juan Pablo Gómez-Moreno)

***Ecuador: Constitutional Court Upholds Enforcement of ICC Award and Rejects Homologation Requirement***

On May 9, 2024, the Ecuadorean Constitutional Court ruled that lower courts' refusal to enforce an ICC award due to the lack of homologation violated the petitioner's constitutional rights to juridical certainty and effective judicial protection. Homologation, a now-repealed requirement for foreign awards, was deemed burdensome and incompatible with the New York Convention.

The full text of the decision in Spanish may be found here: <https://files.lbr.cloud/public/2024-06/b5676797-798b-48f6-849e-2e35b546ed9c.pdf.pdf?VersionId=vm1SEANj7Kc8696XjhOg9fkVxvH6mMtN>. (Editor: Juan Pablo Gómez-Moreno)

***Ecuador: US Court dismissed Occidental Petroleum's challenge to an AAA award***

On June 15, 2023, the US Court of Appeals for the Second Circuit affirmed a 2021 AAA award, determining that Occidental Petroleum was obligated to share the proceeds of an ICSID settlement with a business partner. The dispute centered around an oil block in Ecuador.

The full text of the decision may be found here: [https://files.lbr.cloud/public/2023-06/127133535803.pdf?VersionId=muxlUzmOkgx\\_U3b\\_1eBmDmGe2.5.pkys](https://files.lbr.cloud/public/2023-06/127133535803.pdf?VersionId=muxlUzmOkgx_U3b_1eBmDmGe2.5.pkys). (Editor: Juan Pablo Gómez-Moreno)

***Colombia: Rejects Enforcement of US\$1.7 Billion Treaty Award Against Venezuela Based on Immunity***

On June 20, 2024, Colombia's Supreme Court refused to enforce a US\$1.7 billion investment treaty award against Venezuela, citing state immunity from execution. Canadian miner Rusoro sought recognition of the ICSID award stemming from Venezuela's 2012 nationalization of its gold mines. The court, however, distinguished between immunity from jurisdiction (which Venezuela may have waived) and immunity from execution, a principle it deemed applicable.

The full text of the decision in Spanish may be found here: [https://files.lbr.cloud/public/2024-06/1718967792997.pdf?VersionId=FDsAxvVi\\_7ZT9uMZm0NKjW25o4fPdg6N](https://files.lbr.cloud/public/2024-06/1718967792997.pdf?VersionId=FDsAxvVi_7ZT9uMZm0NKjW25o4fPdg6N). (Editor: Juan Pablo Gómez-Moreno)

***Haiti: US Court enforces award against the state***

On June 29, 2023, Judge Kevin Castel of the US District Court for the Southern District of New York affirmed the enforcement of an award against Haiti. The judge rejected Haiti's objections, which contended that the opposing party did not fulfill the necessary criteria for proper service under the Foreign Sovereign Immunities Act.

The full text of the decision may be found here: [https://files.lbr.cloud/public/2023-07/S.D.N.Y.%2021-cv-06704%20dckt%20000116\\_000%20filed%202023-06-29.pdf?VersionId=bWY1CYM5vnHYUHRNxruYJ09aTLy\\_80cB](https://files.lbr.cloud/public/2023-07/S.D.N.Y.%2021-cv-06704%20dckt%20000116_000%20filed%202023-06-29.pdf?VersionId=bWY1CYM5vnHYUHRNxruYJ09aTLy_80cB). (Editor: Juan Pablo Gómez-Moreno)

***Chile: US Court overturns an injunction concerning the drawing of a letter of credit***

On November 9, 2023, the Appellate Division of the New York Supreme Court upheld an appeal aiming to overturn an injunction blocking the withdrawal of a US\$90 million letter of credit during an ICC arbitration. The Court clarified that a party's behavior in the underlying transaction would not serve as a basis for preventing a draw on a letter of credit, except in cases involving fraud.

The full text of the decision is not available. (Editor: Juan Pablo Gómez-Moreno)

***Ecuador: Dutch Supreme Court rejects the claims of the state against a US\$9 billion investment award***



On November 17, 2023, the court concluded in an unreasoned decision a protracted legal dispute over an UNCITRAL award. Ecuador contended that the award, deemed to infringe on the rights of local plaintiffs, violated public policy. State claims had been previously dismissed in two separate instances before Dutch courts.

The full text of the decision in Dutch may be found here: <https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2023:1592>. (Editor: Juan Pablo Gómez-Moreno)

## Association and Events

***Brazil: 1st Regional Meeting of International Hague Network of Judges in Rio de Janeiro.***

On May 15 to 17, 2024, Rio de Janeiro held the First Regional Meeting of Hague International Network of Judges, which reunited liaison judges from Latin American and Caribbean countries to discuss the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The aim of the meeting was to promote the debate of legal cooperation systems improvement and mechanisms to protect children who have been removed from their habitual residence.

For more information see: <https://www10.trf2.jus.br/portal/juizes-de-enlace-da-america-latina-e-caribe-iniciam-encontro-inedito-no-rio-para-discutir-desafios-regionais/>. (Editor: Isabela Tonon da Costa Dondone)

## North America



## International Conventions

***Canada: Signed and Entry into force of the Arrangement with the European Space Agency concerning the Participation in the Space Safety Programme***

On June 8, 2023, the government of Canada and the European Space Agency entered into the Arrangement concerning the Participation by the Government of Canada in the Space Safety Programme.

For the official text of the Arrangement, please visit [https://www.treaty-accord.gc.ca/Treaty\\_Docs/PDF/105757.pdf](https://www.treaty-accord.gc.ca/Treaty_Docs/PDF/105757.pdf) (Editor: Kim Nguyen)

***Canada: Entry into force of the Agreement between Canada and Brazil on Air Transport***

On June 8, 2023, the Agreement between the Government of Canada and the Government of the Federative Republic of Brazil on Air Transport entered into force.

For the official text of the Agreement, please visit [https://www.treaty-accord.gc.ca/Treaty\\_Docs/PDF/105129.pdf](https://www.treaty-accord.gc.ca/Treaty_Docs/PDF/105129.pdf) (Editor: Kim Nguyen)

***Canada: Entry into force of the Agreement on Social Security between Canada and the Republic of Austria***



On July 1, 2023, the Agreement on Social Security between Canada and the Republic of Austria, which was signed on July 5, 2021, entered into force.

For the official text of the Agreement, please visit [https://www.treaty-accord.gc.ca/Treaty\\_Docs/PDF/105708.pdf](https://www.treaty-accord.gc.ca/Treaty_Docs/PDF/105708.pdf) (Editor: Kim Nguyen)

***Canada: ratified the 2007 Child Support Convention***

On October 27, 2023, Canada deposited its instrument of ratification of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention).

On February 1, 2024, the Convention became effective for Canada.

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=946> (Editor: Jie (Jeanne) Huang)

***Canada: the 1961 Apostille Convention entered into force***

On January 11, 2024, the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (1961 Apostille Convention) entered into force for Canada, following the deposit of its instrument of accession on May 12, 2023.

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=953> (Editor: Jie (Jeanne) Huang)

***Canada: the Convention concerning the elimination of violence and harassment in the world of work***

On January 30, 2024, the Convention concerning the elimination of violence and harassment in the world of work, which Canada acceded to on January 30, 2023, entered into force for Canada.

For the official text of the Agreement, please visit [https://www.treaty-accord.gc.ca/Treaty\\_Docs/PDF/105729.pdf](https://www.treaty-accord.gc.ca/Treaty_Docs/PDF/105729.pdf) (Editor: Kim Nguyen)

***UNCITRAL Working Group III concluded its work on the draft statute of an advisory center on international investment dispute resolution***

From April 1 to 5, 2024, representatives of more than 70 State delegations and 40 international organizations gathered at the UN Headquarters in New York to complete

another set of reforms in investor-State dispute settlement, which was carried out by the Working Group III of the United Nations Commission on International Trade Law (UNCITRAL) in 2017. The proposed advisory center on international investment dispute resolution aims to provide training and support to States in order to enhance their capacity to prevent and handle international investment disputes.

For further information on the draft statute, please visit: <https://unis.unvienna.org/unis/pressrels/2024/unisl355.html>

## National Case Law

***United States: Imposing further sanctions on Russia amid the war on Ukraine***

On September 14, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) imposed nearly 100 more sanctions on Russian elites and Russia's industrial base, financial institutions, and technology suppliers as the United States continues to leverage sanctions and economic restrictions to undermine Russia's capacity to wage its war against Ukraine. The United States has already imposed 100+ sanctions on entities connected with the Russian Federation.

For the official announcement, please visit: <https://home.treasury.gov/news/press-releases/jy1731>.

***United States: D.C. District Court Decides against Nigeria's motion to dismiss an arbitration enforcement action***

In *Zhongshan Fucheng Industrial Investment Co. v. Federal Republic of Nigeria*, the U.S. District Court for the District of Columbia rejected Nigeria's motion to dismiss a Chinese investor's action to enforce a \$55 million arbitral award. The court held that the award was "commercial" for purposes of the New York Convention and that the Foreign Sovereign Immunities Act's (FSIA) arbitration exception gave the court jurisdiction.

***United States: Supreme Court decided on public officials' use of social media***

On March 15, 2024, the Supreme Court issued two decisions on U.S. public officials' use of social media. These provide guidelines to distinguish public and private social media accounts in protecting people's First Amendment rights. In *Lindke v. Freed*, the Supreme Court



ruled that a public official who prevents someone from commenting on the official's social media page engages in state action under 42 U.S.C. § 1983 only if the official both (1) possessed the actual authority to speak on the state's behalf on a particular matter; and (2) purported to exercise that authority when speaking in the relevant social media posts. In light of *Lindke*, the Supreme Court vacated the Ninth Circuit's judgment in *O'Connor-Ratcliff v. Garnier*, concluding that the state-action requirement was satisfied because of the "close nexus" between petitioners' social media pages and their positions as public officials.

For a full text of the case opinion on *Lindke v. Freed*, please visit:

[https://www.supremecourt.gov/opinions/23pdf/601us1r08\\_a8cf.pdf](https://www.supremecourt.gov/opinions/23pdf/601us1r08_a8cf.pdf).

For a full text of the case opinion on *O'Connor-Ratcliff v. Garnier*, please visit: [https://www.supremecourt.gov/opinions/23pdf/601us1r09\\_hgci.pdf](https://www.supremecourt.gov/opinions/23pdf/601us1r09_hgci.pdf). (Editors: Alex Yong Hao, Yu Xu, Xiaohan Lin, and Yuchen Xiang).

***United States: Supreme Court decided on copyright infringement in Warner Chappell Music, Inc. v. Nealy***

On May 9, 2024, the U.S. Supreme Court ruled on *Warner Chappell Music, Inc. v. Nealy*, holding that the Copyright Act entitles a copyright owner to recover damages for any infringement claim, regardless of when it occurred, so long as the suit is timely filed under the discovery rule, as the Act imposes no separate time limit on monetary relief.

For a full text of the case opinion, please visit: [https://www.supremecourt.gov/opinions/23pdf/22-1078\\_4gci.pdf](https://www.supremecourt.gov/opinions/23pdf/22-1078_4gci.pdf). (Editors: Alex Yong Hao, Yu Xu, Xiaohan Lin, and Yuchen Xiang).

***United States: Supreme Court decided CFPB's funding structure constitutional***

On May 16, 2024, the U.S. Supreme Court issued its 7-2 decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.*, holding that the Consumer Financial Protection Bureau (CFPB)'s funding mechanism, which permits the agency to draw funds directly from the Federal Reserve in an amount that the CFPB's director deems reasonably necessary as set forth in Title X of the Dodd-Frank Wall Street Reform Consumer Protection Act, is in compliance with the Appropriations Clause of the U.S. Constitution.

For a full text of the case opinion, please visit:

[https://www.supremecourt.gov/opinions/23pdf/22-448\\_o7jp.pdf](https://www.supremecourt.gov/opinions/23pdf/22-448_o7jp.pdf). (Editors: Alex Yong Hao, Yu Xu, Xiaohan Lin, and Yuchen Xiang).

***United States: Supreme Court decided that cases sent to arbitration must be stayed***

On May 16, 2024, the U.S. Supreme Court solved a circuit split in *Smith v. Spizzirri*, in which the delivery drivers brought a misclassification claim against their employer. The Court held that federal district courts do not have the discretion to dismiss cases when the underlying claims are subject to mandatory arbitration; instead, they must stay the cases pursuant to the requirement set forth in Section 3 of the Federal Arbitration Act.

For a full text of the case opinion, please visit: [https://www.supremecourt.gov/opinions/23pdf/22-1218\\_5357.pdf](https://www.supremecourt.gov/opinions/23pdf/22-1218_5357.pdf). (Editors: Alex Yong Hao, Yu Xu, Xiaohan Lin, and Yuchen Xiang).

***United States: Supreme Court decided on the conflicted contract clauses in regard to arbitrability***

On May 23, 2024, the U.S. Supreme Court concluded *Coinbase, Inc., v. Suski*, holding that where parties have agreed to two contracts — one with a delegation clause sending arbitrability disputes to arbitration, and the other sending arbitrability disputes to the courts — a court must decide which contract governs. This decision, however, does not change the general rule applicable in deciding arbitrability, for which the Supreme Court reiterated that “[i]n cases where parties have agreed to only one contract, and that contract contains an arbitration clause with a delegation provision, then, absent a successful challenge to the delegation provision, courts must send all arbitrability disputes to arbitration.”

For a full text of the case opinion, please visit: [https://www.supremecourt.gov/opinions/23pdf/23-3\\_879d.pdf](https://www.supremecourt.gov/opinions/23pdf/23-3_879d.pdf). (Editors: Alex Yong Hao, Yu Xu, Xiaohan Lin, and Yuchen Xiang).



## ASIA



## International Conventions

### ***Republic of Korea: acceded to the Digital Economy Partnership Agreement***

On June 9, 2023, the government of Chile, New Zealand, and Singapore, parties of the Digital Economy Partnership Agreement (DEPA), and the Republic of Korea (ROK), released a Joint Press Release to announce the ROK's accession to the DEPA.

For a press release, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/06/Joint-Press-Release-on-the-accession-of-the-Republic-of-Korea> (Editor: Kim Nguyen)

### ***China: The United Nations Convention on the International Effects of Judicial Sales of Ships (the "Beijing Convention on the Judicial Sale of Ships")***

On September 5, 2023, the Beijing Convention on the Judicial Sale of Ships was opened for signature at a ceremony in Beijing China. Fifteen States signed the Convention at the ceremony, which was attended by senior officials and representatives of more than 30 States.

For more information, please visit <https://unis.unvienna.org/unis/en/pressrels/2023/unis1348.html>. (Editor: Jie (Jeanne) Huang)

### ***China: the 1961 Apostille Convention entered into force***

On November 7, 2023, the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents (1961 Apostille Convention) entered into force for the People's Republic of China.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=947> (Editor: Jie (Jeanne) Huang)

### ***Japan: acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation***

On October 1, 2023, with the deposit of the instrument of accession at the UN Headquarters in New York, Japan became the twelfth State Party to the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation". The Convention entered into force for Japan on April 1, 2024. In acceding to the Convention, Japan made a reservation in accordance with article 8(1)(b) of the Convention.

For the status table of the Singapore Convention on Mediation, see [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status). (Editor: Jie (Jeanne) Huang)

### ***Kyrgyzstan: acceded to the Child Support Convention***

On October 27, 2023, the Kyrgyz Republic acceded to the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=946> (Editor: Jie (Jeanne) Huang)

### ***Singapore: Signed the Singapore-Qatar Memorandum of Understanding on Liquefied Natural Gas and Low-Carbon Technology***

On June 21, 2023, the government of Singapore and Qatar signed a Memorandum of Understanding (MOU) on Liquefied Natural Gas (LNG) and Low-carbon Technology Collaboration at the sidelines of President Halimah Yacob's State Visit to Qatar.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press->



[Releases/2023/06/Signing-of-Singapore-Qatar-MOU-on-Liquefied-Natural-Gas-and-Low-Carbon-Technology](https://www.mti.gov.sg/Newsroom/Press-Releases/2023/06/Signing-of-Singapore-Qatar-MOU-on-Liquefied-Natural-Gas-and-Low-Carbon-Technology)

(Editor: Kim Nguyen)

***Singapore: Entry into force of the Kenya-Singapore Bilateral Investment Treaty***

On August 20, 2023, the Kenya-Singapore Bilateral Investment Treaty (BIT) entered into force. The BIT will promote greater investment flows between Singapore and Kenya by protecting the interests of both Singapore and Kenyan investors.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/08/Kenya-Singapore-Bilateral-Investment-Treaty-enters-into-force> (Editor: Kim Nguyen)

***Singapore and Republic of Korea: signed a Memorandum of Understanding to support transition to a low-carbon economy***

On November 21, 2023, the government of Singapore and the Republic of Korea signed a Memorandum of Understanding (MOU) to pursue collaboration in areas relating to energy and climate change.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/11/Singapore-and-the-Republic-of-Korea-deepen-cooperation-to-support-transition-to-a-low-carbon-economy> (Editor: Kim Nguyen)

***Singapore: the 1965 Service Convention entered into force***

On December 1, 2023, the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965 Service Convention) entered into force for the Republic of Singapore following the deposit of its instrument of accession on May 16, 2023.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=950>. (Editor: Jie (Jeanne) Huang)

***Singapore: signed a Memorandum of Understanding with Rwanda to collaborate on carbon credits to accelerate climate action***

On December 2, 2023, the government of Singapore and Rwanda signed a Memorandum of Understanding to collaborate on carbon credits, aligned with Article 6.2 of the Paris Agreement.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/12/Singapore-and-Rwanda-sign-Memorandum-of-Understanding-to-collaborate> (Editor: Kim Nguyen)

***Singapore: signed a Memorandum of Understanding with Fiji to collaborate on carbon credits to accelerate climate action***

On December 3, 2023, the government of Singapore and Fiji signed a Memorandum of Understanding to collaborate on carbon credits, aligned with Article 6.2 of the Paris Agreement.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/12/Singapore-and-Fiji-sign-Memorandum-of-Understanding-to-collaborate> (Editor: Kim Nguyen)

***Singapore: signed the MERCOSUR-Singapore Free Trade Agreement***

On December 7, 2023, the government of Singapore and the four member countries of the MERCOSUR – Argentina, Brazil, Paraguay and Uruguay – signed the MERCOSUR-Singapore Free Trade Agreement.

For the official announcement, see <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2023/12/Singapore-and-Mercosur-Sign-the-Mercosur-Singapore-Free-Trade-Agreement> (Editor: Kim Nguyen)

***Singapore and China: signed the China-Singapore Free Trade Agreement Further Upgrade Protocol***

On December 7, 2023, the government of China and Singapore signed the China-Singapore Free Trade Agreement (CSFTA) Further Upgrade Protocol to deepen cooperation, at the 19<sup>th</sup> Joint Council for Bilateral Cooperation Meeting in Tianjin, China.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/12/China-and-Singapore-sign-the-China-Singapore-Free-Trade-Agreement-Further-Upgrade-Protocol> (Editor: Kim Nguyen)

***Sri Lanka: acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation***





On February 28, 2024, with the deposit of the instrument of ratification at the UN Headquarters in New York, Sri Lanka became the fourteenth State Party to the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation". The ratification by Sri Lanka was effected on February 28, 2024, and the Convention will enter into force for Sri Lanka on August 28, 2024.

For the status table of the Singapore Convention on Mediation, see [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status). (Editor: Jie (Jeanne) Huang)

## National Legislation

### *Mainland China: enacted Foreign State Immunity Law*

On September 1, 2023, China enacted the Foreign States Immunities Law. The Law contains a commercial activities exception to immunity of jurisdiction in Chinese courts in litigation involving states arising from commercial activities that do not constitute an exercise of sovereign authority, and an exception to immunity of execution to enforce an effective judgment, where the property of the foreign state is used for commercial activities, is connected to the litigation, and is located in PRC territory. The Foreign States Immunities Law also contains provisions as to the waiver of immunity of jurisdiction and of waiver of immunity of execution.

The full text of the Law in Chinese can be found here: [https://www.gov.cn/yaowen/liebiao/202309/content\\_6901571.htm](https://www.gov.cn/yaowen/liebiao/202309/content_6901571.htm). (Editor: Jie (Jeanne) Huang)

### *India: New Guidelines for Arbitration and Mediation in Public Procurement*

On June 3, 2024, the Government of India issued new Office Memorandum No. F. 11212024-PPD, Ministry of Finance for domestic public procurement contracts.

Key highlights include:

- **Selective Inclusion of Arbitration Clauses:** Arbitration clauses are restricted to disputes arising from contracts valued less than Rs. 10 crore and are not automatically included in larger contracts. The memo notes concerns that arbitrations are expensive and not as

expeditious as expected, often leading to incorrect decisions on facts and improper application of law.

- **Encouragement of Mediation:** The memo promotes mediation under the Mediation Act, 2023, for amicable dispute resolution. It acknowledges that when contracts include arbitration clauses, government officials tend to avoid settlements and defer to arbitration.

While promoting mediation, this move contradicts India's vision of becoming a hub for international arbitration and has sparked mixed reactions from the nation's arbitration community, including a call for withdrawal from Arbitration Bar of India (ABI) and the Indian Arbitration Forum (IAF).

Find more about this in the Office Memorandum at [https://doe.gov.in/files/circulars\\_document/Guidelines\\_for\\_Arbitration\\_and\\_Mediation\\_in\\_Contracts\\_of\\_Domestic\\_Public\\_Procurement.pdf](https://doe.gov.in/files/circulars_document/Guidelines_for_Arbitration_and_Mediation_in_Contracts_of_Domestic_Public_Procurement.pdf) (Editor: Suvethan G. Sundaralingam)

### *Republic of Korea: Commitment to the promotion of alternative dispute settlement in Asia Pacific*

Around August 2023, the Ministry of Justice of the Republic of Korea newly established the International Legal Affairs Bureau within the Ministry to lead the government's defense work in international legal disputes, which include issues of international arbitration and private international law. The Minister of Justice, HAN Dong Hoon, announced at the 12th Asia Pacific ADR Conference of the government's commitment to rendering the Asia Pacific region, including Korea, as the global hub of alternative dispute settlement. (Editor: A Joo Kim)

### *Singapore: Introduced the Significant Investments Review Bill*

On November 3, 2023, the Ministry of Trade and Industry will introduce the Significant Investments Review Bill to ensure the continuity of critical entities. The Bill sets out a new investment management regime, which applies to both local and foreign investors, thereby providing a level playing field for all investors. The Bill will complement existing legislation by regulating entities which are not adequately covered under these legislation.

For the official announcement, see <https://www.mti.gov.sg/Newsroom/Press-Releases/2023/10/Introduction-of-the-Significant-Investments-Review-Bill> (Editor: Kim Nguyen)



## International and National Case Law

### ***Pakistan: Taisei decision - revisiting arbitration law for a pro-enforcement regime in Pakistan***

On February 28, 2024, Pakistan's Supreme Court, in a consolidated proceedings titled [\*Taisei Corporation v AM Construction Company\*](#), delivered a landmark decision that addressed, amongst others, the categorization of a foreign award, and the enforceability of such awards vis-à-vis public policy. The court hearing a consolidated appeal against the provincial High Courts of Lahore and Sindh, ruled in favour of the retrospective application of the [Recognition and Enforcement \(Foreign Arbitral Awards and Arbitration Agreements\) Act, 2011](#) and dated such retrospectivity to July 14, 2005 when Pakistan ratified the New York Convention, 1958 via a Presidential Ordinance.

The decision ruled that the ICC award delivered by a tribunal seated in Singapore as a foreign award, despite the governing law being Pakistan law. The precedent in Pakistan was that governing law had a definitive role in determinations on foreign award. The Court ruled for a territorial approach as against its earlier 1998 decision in [\*Hitachi Limited V. Rupali Polyester Limited \(1998 SCMR 1618\)\*](#), wherein the court leaned in favour of governing law of the underlying contract (in this case, Pakistan's law) for decisions on characterisation as foreign award (and therefore, the applicability of the Arbitration (Protocol and Convention) Act, 1937 which applied only to foreign awards. The *Taisei* decision therefore aligned Pakistan's arbitration with the territorial approach, common in many pro-arbitration jurisdictions.

Pakistan is now considering arbitration law reform, modelled on UNCITRAL Model Law on International Commercial Arbitration, 1983. The [reform paper](#) has recently been made available with the Law Commission of Pakistan. The reform paper promises extensive party autonomy, with regard to the choice of the seat of arbitration, appointment of arbitrators, and the rules related to arbitral proceedings. Judicial intervention has been limited only to the circumstances identified within the proposed law, thereby promising parties of finality and binding nature of arbitral awards and arbitral proceedings.

The draft law is to be tabled in the Parliament, soon. (Editor: Sai Ramani Garimella)

### ***Republic of Korea: Tribunal decides Elliott v. Republic of Korea arbitration and Korea files to set aside the arbitral award***

In June 2023, a PCA arbitral tribunal in *Elliott v. Republic of Korea* ordered Korea to pay around US\$ 53.59 million plus interest to US-based hedge fund Elliott Investment Management in relation to the dispute surrounding a merger of two Samsung Group affiliates, Samsung C&T and Cheil Industries. The arbitration was initiated by Elliott, a New York-based activist fund, in 2018 demanding the compensation of around US\$ 770 million from the Korean government. Following the issuance of the arbitral award, Korea made a request with the tribunal to correct the ruling and filed a suit with a London court to set aside the arbitral award. In September 2023, a PCA arbitral tribunal in *Elliott v. Republic of Korea* issued a decision on Korea's Request for Correction and Interpretation of *Elliott v. Republic of Korea* arbitral award.

For more information, please visit [https://www.koreatimes.co.kr/www/nation/2023/11/113\\_355201.html](https://www.koreatimes.co.kr/www/nation/2023/11/113_355201.html) and <https://www.italaw.com/sites/default/files/case-documents/180319.pdf>. (Editor: A Joo Kim)

### ***Republic of Korea: Tribunal partly accepts the investor's claims in Mason Capital v. Republic of Korea arbitration***

In April 2024, a PCA arbitral tribunal in *Mason Capital v. Republic of Korea* arbitration ordered Korea to pay Mason Capital, a US-based hedge fund, US\$32 million over a 2015 merger of two Samsung affiliates. Mason Capital initially claimed US\$200 million in its case but the Tribunal only partly accepted its argument.

For more information, please visit <https://www.italaw.com/cases/6854> and <https://www.koreaherald.com/view.php?ud=20240411050771>. (Editor: A Joo Kim)

### ***Republic of Korea: Defeats an ICSID claim brought by a Chinese investor***

In May 2024, Korea won a US\$192 million ICSID claim brought by a Chinese investor under the Korea-China Bilateral Investment Treaty. The ICSID Tribunal found that the investments were part of an illegal scheme and dismissed the investor's claims.



For more information, please visit <https://www.italaw.com/cases/10444>. (Editor: A Joo Kim)

## Association and Events

### ***Mainland China: Shanghai International Arbitration Center introduced new arbitration rules***

On November 7, 2023, the Shanghai International Arbitration Center (“SHIAC”) introduced a set of new arbitration rules effective January 1, 2024. These comprise the SHIAC Arbitration Rules (2024), which replace those made in 2015, the SHIAC Arbitration Rules for Aviation, the SHIAC Arbitration Rules for Data and two guidelines for online arbitration and for assisting ad hoc arbitration. (Editor: Jane Willems)

### ***Mainland China: China International Economic and Trade Arbitration Commission (CIETAC) published new Arbitration Rules***

On January 1, 2024, the new version of China International Economic and Trade Arbitration Commission (CIETAC)’s new Arbitration Rules (“2024 Rules”) came into force. The 2024 Rules apply to CIETAC cases commenced on or after January 1, 2024.

The rule can be found at <http://cietac.org.cn/index.php?m=Page&a=index&id=531&l=en>. (Editor: Jane Willems)

### ***Hong Kong: The Hague Academy of International Law’s Advanced Course***

From December 11 to 16, 2023, the first edition of The Hague Academy of International Law’s Advanced Course in Hong Kong was held, co-organized by the Asian Academy of International Law and the Department of Justice of the Government of the Hong Kong Special Administration Region.

For a news report, see <https://conflictoflaws.net/2024/first-edition-of-the-hague-academy-of-international-laws-advanced-course-in-hong-kong-on-current-trends-on-international-commercial-and-investment-dispute-settlement/>. (Editor: Jie (Jeanne) Huang)

### ***Hong Kong: the Hong Kong International Arbitration Centre published its 2024 Administered Arbitration Rules***

On May 3, 2024, the Hong Kong International Arbitration Centre (“HKIAC”) published its 2024 ‘Administered

Arbitration Rules’ (the “2024 Rules”) which replace the HKIAC’s 2018 “Administered Arbitration Rules”. The 2024 Rules primarily seek to refine and improve the efficiency of the HKIAC’s existing arbitral procedure whilst placing a heightened emphasis on diversity, environmental and information security considerations. Overall, the HKIAC has adopted an approach of “evolution rather than revolution” with its new rules, albeit it is striking that such a major arbitral institution is taking steps to institutionalize a better approach to diversity and the environment. (Editor: Jane Willems)

### ***India: Launch of the Arbitration Bar of India (ABI)***

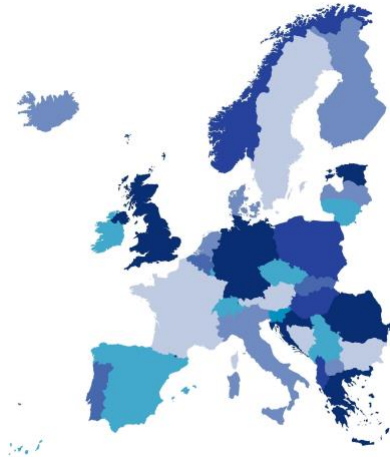
On May 11, 2024, the Arbitration Bar of India (ABI) was launched at a ceremony in New Delhi, India marking a milestone in the country’s arbitration landscape. Speaking at the ceremony, Gourab Banerji SA, the inaugural president of the ABI, highlighted India’s progress in making arbitration time-bound and reducing court intervention, stating, “*The inauguration of ABI marks the fruition of the idea to set up a dedicated arbitration bar.*”

Unlike any arbitral institution, this one of kind organization aims to foster a better landscape for arbitration in India by *inter alia* establishing a network for sharing insights and setting standards, influencing country’s policy reforms to strengthen the arbitration framework, and contributing to arbitration scholarship through research publications. The launch of the ABI underscores the nation’s commitment to advancing dispute resolution practices through a dedicated bar promoting excellence, integrity, and innovation in arbitration.

Find more about this at <https://arbitrationbarofindia.com/about.php>. (Editor: Suvethan G. Sundaralingam)



## EUROPE



## International Conventions

### ***United Kingdom: acceded to the United Nations Convention on International Settlement Agreements Resulting from Mediation***

On May 3, 2023, the UK signed the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the "Singapore Convention on Mediation".

For the status table of the Singapore Convention on Mediation, see [https://uncitral.un.org/en/texts/mediation/conventions/international\\_settlement\\_agreements/status](https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status). (Editor: Jie (Jeanne) Huang)

### ***Malta: the 2000 Protection of Adults Convention entered into force***

On July 1, 2023, the Convention of 13 January 2000 on the International Protection of Adults (2000 Protection of Adults Convention) entered into force for the Republic of Malta following the deposit of its instrument of ratification on March 8, 2023.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=924> (Editor: Jie (Jeanne) Huang)

### ***Curaçao: acceded to the 1980 Child Abduction Convention and the 1985 Trusts Convention***

On November 27, 2023, the 1980 Child Abduction Convention and the 1985 Trusts Convention, to which the Netherlands is a Contracting Party, were applied to Curaçao.

For the official announcement, see <https://conflictoflaws.net/2023/hcch-monthly-update-november-2023/> (Editor: Jie (Jeanne) Huang)

### ***Albania: signed the 2005 Choice of Court Convention and the 2007 Maintenance Obligations Protocol***

On February 13, 2024, the Republic of Albania signed the Convention of 30 June 2005 on Choice of Court Agreements (2005 Choice of Court Convention) and the Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (2007 Maintenance Obligations Protocol).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=962> (Editor: Jie (Jeanne) Huang)

### ***Moldova: deposited its instrument of accession to the 2005 Choice of Court Convention***

On March 14, 2024, the Republic of Moldova deposited its instrument of accession to the Convention of 30 June 2005 on Choice of Court Agreements (2005 Choice of Court Convention).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=969>. (Editor: Jie (Jeanne) Huang)

### ***Georgia: ratified the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol***

On May 14, 2024, Georgia deposited its instruments of ratification of the Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) and of the *Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations* (2007 Maintenance Obligations Protocol).

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=974>. (Editor: Jie (Jeanne) Huang)

### ***Malta: Seven additional States signed the United Nations "Beijing Convention on the Judicial Sale of Ships" in Valletta***

On June 19, 2024, a celebratory event for the United Nations



Convention on the International Effects of Judicial Sales of Ships (the “Beijing Convention on the Judicial Sale of Ships”) was held by the Ministry for Foreign and European Affairs and Trade of Malta, Comité Maritime International and the United Nations Commission on International Trade Law (UNCITRAL) in Valletta, Malta.

Antigua and Barbuda, Cote d’Ivoire, Croatia, Cyprus, Italy, Malta and Spain signed the Convention at the event.

For the official announcement, see <https://uncitral.un.org/en/judicialsaleofships>. (Editor: Jie (Jeanne) Huang)

#### ***United Kingdom: ratified the 2019 Judgments Convention***

On June 27, 2024, the United Kingdom of Great Britain and Northern Ireland deposited its instrument of ratification of the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention). The 2019 Judgments Convention will enter into force for the United Kingdom on July 1, 2025. The United Kingdom has made one declaration:

The United Kingdom declares, in accordance with Article 25, that the Convention shall extend to England and Wales only, and that it may at any time submit other declarations or modify this declaration in accordance with Article 30 of the Convention.

For the announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=985> For the official notification, see

[https://repository.overheid.nl/frbr/vd/013672/1/pdf/013672\\_Notificaties\\_12.pdf](https://repository.overheid.nl/frbr/vd/013672/1/pdf/013672_Notificaties_12.pdf) (Editor: Mukarrum Ahmed)

## **European Union Legislation**

### ***EU: Recent Development of the proposed EU legislation on the recognition of parenthood***

The proposed EU legislation on the recognition of parenthood aims to ensure that parenthood established in one EU member state is recognized across all member states. This proposal seeks to protect children's rights and provide legal clarity for families, addressing issues of discrimination regardless of how children were conceived

or the nature of their family. The European Parliament has adopted an opinion on this proposal, which emphasizes that the law does not require member states to accept practices such as surrogacy. Final decisions on the legislation will be made by EU governments. For more details, visit [Planned EU-wide recognition of parenthood](#) (January 31, 2024); and the European Parliament [legislative resolution](#) of December 14, 2023 on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood. (Editors: George Tian and Jie (Jeanne) Huang)

### ***EU: First official messages exchanged through iSupport***

On January 9, 2024, Germany and Sweden exchanged several official messages under the EU 2009 Maintenance Regulation using iSupport’s e-CODEX system, the secure digital communication solution developed by the European Union.

For the official announcement, see <https://www.hcch.net/en/news-archive/details/?varevent=952> (Editor: Jie (Jeanne) Huang)

### ***EU: MEPs Adopt Landmark Artificial Intelligence Act***

On March 8, 2024, the European Parliament passed the Artificial Intelligence Act, marking a significant milestone in the regulation of AI technologies within the European Union. This comprehensive legislation aims to set global standards for the development and deployment of AI, ensuring that all AI systems are safe, transparent, and accountable. The Act categorizes AI applications according to their risk levels, with stringent requirements imposed on high-risk applications in critical sectors such as healthcare, policing, and transport. Additionally, it bans certain practices deemed unacceptable, like social scoring and indiscriminate surveillance that could violate fundamental rights. The law also emphasizes the importance of data governance and the ethical use of AI, setting a precedent for other regions to follow. This legislative action underscores the EU's commitment to leading in ethical AI governance, promoting innovation while safeguarding citizen's rights.

More information can be found here: <https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law#:~:text=On%20Wednesday%2C%20Parliament%20ap>



[proved%20the,46%20against%20and%2049%20abstentions.](#)

### ***EU Parliament Approves Supply Chain Law***

On April 24, 2024, the European Parliament approved a new law focused on regulating supply chains, a significant step towards ensuring ethical practices in global trade. This legislation requires companies operating within the EU to conduct thorough due diligence on their supply chains to prevent human rights abuses and environmental damage. The law applies to a wide range of sectors, including electronics, clothing, and food, mandating transparency and accountability in business operations from raw material extraction to final product delivery. It also includes provisions for penalties and legal remedies for violations, thereby strengthening enforcement mechanisms. This law represents the EU's robust commitment to promoting sustainable business practices and protecting human rights across international supply chains.

More information can be found here: <https://www.hrw.org/news/2024/04/24/eu-parliament-approves-supply-chain-law>

### ***EU: New EU Rules Criminalizing the Violation of EU Sanctions***

Effective from May 19, 2024, the European Union has implemented new rules that harmonize criminal offenses and penalties across member states for violations of EU sanctions. These regulations aim to uniformly criminalize and enhance the prosecution capabilities concerning breaches of EU restrictive measures, such as failing to freeze assets, breaching travel bans and arms embargoes, or providing false information to conceal funds. Notably, the rules establish a consistent framework for penalties applicable to both individuals and corporations and strengthen mechanisms for asset freezing and confiscation. This move is part of a broader effort to ensure rigorous enforcement of sanctions, particularly in light of ongoing geopolitical tensions, and to facilitate better cooperation among member states' authorities. The directive also aligns with the EU's objectives to deter sanction violations and secure the integrity of its financial and economic systems. Member states are required to incorporate these rules into their national laws by May 20, 2025.

More information can be found here: <https://neighbourhood-enlargement.ec.europa.eu/news/new-eu-rules->

[criminalising-violation-eu-sanctions-enter-force-2024-05-17-en.](#)

### ***EU: New EU Due Diligence Law Governing Big Business***

On May 24, 2024, ministers from the 27 EU member states passed a groundbreaking law, the Corporate Sustainability Due Diligence Directive (CSDDD), mandating large businesses to actively identify and mitigate adverse human rights and environmental impacts in their operations. This directive, heralded as a significant step in international business and human rights legislation, requires these companies to not only scrutinize their direct operations but also their extensive supply chains, including activities outside Europe. Set to be integrated into national laws of the member states soon, this legislation aims to elevate corporate accountability and ensure that businesses operating within the EU uphold stringent human rights standards, thereby setting a global benchmark for responsible business conduct.

The CSDDD can be found at: [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en).

### ***EU: Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation')***

The Directive seeks to ensure that individuals and organisations working on matters of public interest such as fundamental rights, allegations of corruption, protection of democracy or the fight against disinformation are given EU protection against unfounded and abusive lawsuits. The protection will apply to all cross-border cases except when both the defendant and claimant are from the same EU Member State or when the case is only relevant to one Member State.

See, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202401069](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069) (Editor: Mukarrum Ahmed).



## European Union and the UK Case Law

### *EU: Case C-753/22 (Bundesrepublik Deutschland)*

On June 18, 2024, the CJEU decided the Case C-753/22, where the Bundesgerichtshof (Federal Court of Justice, Germany) sought a preliminary ruling on whether Germany must recognize refugee status granted by another EU member state. The case involved a refugee granted asylum in one member state seeking recognition in Germany. The CJEU ruled that EU member states are not automatically required to recognize refugee status from another member state. While mutual recognition is a core EU principle, it does not unconditionally apply to asylum decisions. Member states can assess individual cases, particularly if there are concerns about the conditions or procedures under which the original status was granted. This ruling clarifies that member states retain discretion in handling asylum claims, ensuring they can address national security and public policy concerns while maintaining procedural safeguards.

For the judgment, see <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CN0753> (Editors: George Tian and Jie (Jeanne) Huang)

### *EU: Case C-296/23 (dm-drogerie markt)*

On June 20, 2024, in Case C-296/23, the Court of Justice of European Union (CJEU) ruled on the compliance of dm-drogerie markt's "skin friendly" advertising for biocidal products with EU regulations. The Bundesgerichtshof in Germany requested a preliminary ruling on whether such claims adhered to Regulation (EU) No 528/2012. On 20 June 2024, the CJEU emphasized that advertising must be substantiated by scientific evidence and should not mislead consumers about product safety and efficacy, reinforcing the importance of accurate advertising and consumer protection within the EU. For more details, visit: [CJEU Case C-296/23](#); and [EU Regulation on Biocidal Products](#) (Editors: George Tian and Jie (Jeanne) Huang)

### *EU: Case C-566/22 Inkreal*

The CJEU decided that parties to a contract established in the same EU Member State are not restricted from being able to agree on the jurisdiction of the courts of another Member State to settle their disputes, even if the contract has no other connection with the chosen Member State. In

doing so, the CJEU gives precedence to an unfettered jurisdictional party autonomy for an otherwise entirely domestic contract. This instance of regulatory escape may give rise to more serious ramifications in matters of jurisdiction than choice of law. In matters of choice of law, Articles 3(3) and 3(4) of the Rome I Regulation make express provision for reconciling competing Member State and European Union interests that are extrinsic to the will of the contracting parties involved in a cross-border contract by tempering the application of the chosen law. No similar restraints for choice of court agreements may be identified. Article 1(2) of the Hague Convention on Choice of Court Agreements 2005 also contradicts the CJEU's interpretation of Article 25(1) of the Brussels Ia Regulation in *Inkreal* as 'a case is international unless the parties are resident in the same Contracting State and the relationship of the parties and all other elements relevant to the dispute, regardless of the location of the chosen court, are connected only with that State'.

For the judgment see, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=282586&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=11586199> (Editor: Mukarrum Ahmed)

### *EU: Joined Cases C-345/22 and C-347/22 Maersk A/S v Allianz Seguros y Reaseguros SA and Case C-346/22 Mapfre España Compañía de Seguros y Reaseguros SA v MACS Maritime Carrier Shipping GmbH & Co.*

The CJEU decided that the enforceability of a choice of court clause against the third-party holder of the bill of lading is not governed by the law of the Member State designated by that clause. That clause is enforceable against that third party if, on acquiring that bill of lading, it is subrogated to all the rights and obligations of one of the original parties to the contract, which must be assessed in accordance with national substantive law as established by applying the rules of private international law of the Member State of the court seised of the dispute. Moreover, it was held that Article 25(1) of the Brussels Ia Regulation must be interpreted as precluding national legislation under which a third party to a contract for the carriage of goods concluded between a carrier and a shipper, who acquires the bill of lading evidencing that contract and thereby becomes a third-party holder of that bill of lading, is subrogated to all of the shipper's rights and obligations, with the exception of those arising under a choice of court clause incorporated in



the bill of lading, where that clause is enforceable against that third party only if the third party has negotiated it separately.

For the judgment see, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=285187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2850148>; For analytical commentary see, <https://conflictoflaws.net/2024/who-is-bound-by-choice-of-court-agreements-in-bills-of-lading/>

(Editor: Mukarrum Ahmed)

### **EU: Case C-590/21 Charles Taylor Adjusting Ltd**

The question of the compatibility of the right to damages for breach of settlement and exclusive choice of court agreements with EU public policy during the recognition and enforcement of an English High Court decision in Greece was settled by this CJEU ruling. The CJEU's decision in *Charles Taylor Adjusting* confirmed the characterisation of an English judgment awarding damages for breach of settlement and exclusive choice of court agreements as a 'quasi anti-procedural injunction' ("quasi" injonctions anti-procédure) and therefore contrary to public policy.

For the judgment see, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=277063&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12724505> (Editor: Mukarrum Ahmed)

### **EU: Case C-90/22 'Gjensidige' ADB**

The CJEU decided that Article 45(1)(a) and (e)(ii) of the Brussels Ia Regulation does not allow a Member State court to refuse to recognise the judgment of another Member State court where the latter court declared itself to have jurisdiction to adjudicate on a contract of international carriage of goods by road, in breach of a choice of court agreement under Article 25, that forms part of that contract.

For the judgment see, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=284084&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12725823> (Editor: Mukarrum Ahmed)

## National Legislation

### **England and Wales and Northern Ireland: Arbitration Bill**

On September 6, 2023, the Law Commission of England and Wales published its final report, recommending targeted reforms to the Arbitration Act 1996. These recommendations follow an extensive review process that began in March 2021. Key reforms include codifying the duty of disclosure (as decided by the UK Supreme Court in *Haliburton v Chubb* [2020] UKSC 48), enhancing arbitrator immunity, introducing a power for summary disposal of disputes, and clarifying court powers in support of arbitration proceedings. The report also suggests new rules for determining the governing law of arbitration agreements, aiming to align the approach in England and Wales with international practice and improving legal certainty. Under the proposed statutory provision, the arbitration agreement would be governed by the law of the seat of arbitration absent any agreement between the parties, simplifying the composite legal test laid down by the UK Supreme Court in *Enka v Chubb* [2020] UKSC 38. These changes are expected to modernize the arbitration framework and maintain London's status as a leading arbitration centre.

The Arbitration Bill reforming the Arbitration Act 1996 has not been included in the 'wash-up' period which allows certain bills to be enacted on a fast-track basis after a general election has been called. Whether similar legislation will be introduced in the next Parliament will be a decision for the new government.

For more details, please visit <https://lawcom.gov.uk/project/review-of-the-arbitration-act-1996/>; <https://researchbriefings.files.parliament.uk/documents/LLN-2023-0047/LLN-2023-0047.pdf>; (Editors: George Tian, Jie (Jeanne) Huang, and Mukarrum Ahmed)

### **UK: Retained EU Law (Revocation and Reform) Act 2023**

The Retained EU Law (Revocation and Reform) Act 2023 ('the Act') revokes certain retained EU law, makes provision for the interpretation of retained EU law and its relationship with other law and creates powers to modify,





restate, replace or update retained EU law. Notably, this is a compromise from the incessant political rhetoric desirous of an all-encompassing sunset clause that would have abolished the last vestiges of retained EU law in the UK. The Act has removed the special features of EU law that governed its interpretation and application. This includes revoking the duty that required UK courts to interpret domestic legislation consistently with EU laws. Retained EU law has been renamed ‘assimilated law’ as of 1 January 2024.

The retained Rome I Regulation and the retained Rome II Regulation are not on the list of revoked legal instruments in Schedule 1 of the Act. Section 6 of the Act provides for new tests for departure from retained CJEU case law and retained domestic EU case law, but these provisions will enter into force in the future via regulations pursuant to Section 22(3) of the Act.

For further details see, <https://www.legislation.gov.uk/ukpga/2023/28> (Editor: Mukarrum Ahmed).

### ***England and Wales: Litigation Funding Bill***

On 19 March 2024, the Litigation Funding Agreements (Enforceability) Bill was introduced in Parliament, aiming to reverse the effect of the UK Supreme Court decision in *Paccar* [2023] UKSC 28. In the latter decision, it was held that litigation funding agreements that provide for the funder to receive a share of damages are Damages-Based Agreements (or DBAs) and are therefore unenforceable unless they comply with the restrictive regulatory regime that applies to such agreements.

The Litigation Funding Agreements (Enforceability) Bill has not been included in the “wash-up” period which allows certain bills to be enacted on a fast-track basis after a general election has been called. Whether similar legislation will be introduced in the next Parliament will be a decision for the new government.

For further details see, <https://bills.parliament.uk/publications/54762/documents/4592> (Editor: Mukarrum Ahmed).

## **Association and Events**

### ***Selected Private International Law Conferences***

On June 21, 2023, Lancaster University organized a Conference on Challenges in Contemporary International Litigation, which facilitated the engagement/exchange of expertise on a broad range of private international law topics of contemporary practical significance.

On December 6, 2023 and January 19, 2024, the University of Stirling’s Seminar Series on International Perspectives on Scots Law was organized on the topics of internationalisation of Scots Law from the perspective of private international law.

For further details of both events, see <https://www.lancaster.ac.uk/law/news/leading-experts-converge-in-lancaster-to-discuss-contemporary-challenges-in-international-litigation> ; <https://www.stir.ac.uk/about/faculties/arts-humanities/law-and-philosophy/law-research/international-perspectives-on-scots-law/> (Editor: Mukarrum Ahmed).

### ***The Permanent Bureau of the Hague Conference on Private International Law released its annual report***

In March 2024, The Permanent Bureau is pleased to announce the publication of the HCCH 2023 Annual Report.

For the report, see <https://assets.hcch.net/docs/38e412a5-f4b0-48cb-a5ea-5e3e076bdfe9.pdf>. (Editor: Jie (Jeanne) Huang)

### ***The Hague Academy of International Law appointed a new president of the Curatorium***

In May 2024, The Hague Academy of International Law appointed Prof. Fernández Arroyo as the president of the Curatorium. He is the first Latin American to ever hold that position. (Editor: Jie (Jeanne) Huang)

### ***The Hague Academy of International Law – Summer Courses***

The Hague Academy of International Law’s Private International Law Summer Courses will be held on-site from July 29, 2024 to August 16, 2024. Further information on The Hague Academy is found here: <https://www.hagueacademy.nl/programmes/the-summer-courses>. (Editor: Jie (Jeanne) Huang)



### ***The Hague Academy of International Law – Winter Courses***

The Hague Academy of International Law's renowned Winter Courses on International Law will be offered from January 16-24, 2025. In contrast to the summer courses, this program combines aspects of both Public and Private International Law and therefore provides for a particularly valuable academic experience.

Further information on The Hague Academy is found here: <https://www.hagueacademy.nl/programmes/the-winter-courses/>. (Editor: Jie (Jeanne) Huang)

## **Recent Scholarly Works**

Here are some scholarly books on private international law published in 2024 by publishers located in Europe:

***"European Private International Law – Commercial Litigation in the EU"*** by Geert van Calster, published in January 2024. This fourth edition provides a thorough overview of European private international law, addressing key regulations such as the Brussels I, Rome I, and Rome II Regulations, as well as private international law and insolvency, freedom of establishment, and the impact of Brexit ([EAPIL](#)). (Editors: George Tian and Jie (Jeanne) Huang)

***"Research Methods in Private International Law – A Handbook on Regulation, Research and Teaching"*** edited by Xandra Kramer and Laura Carballo Piñeiro, published in May 2024. This book offers perspectives on the diverse methodological approaches to private international law, examining both regulatory and educational aspects. Contributors include prominent scholars such as Ralf Michaels and Christoph A. Kern ([EAPIL](#)). (Editors: George Tian and Jie (Jeanne) Huang)

***"Private International Law – Idealism, Pragmatism, Eclecticism"*** by Symeon C. Symeonides, published in 2024. This book compares the historical and modern developments in private international law, focusing on the transition from the idealism of the nineteenth century to the pragmatic eclecticism of the twenty-first century. It provides a detailed analysis of the progress and changes in private international law over the last fifty years ([Brill](#)). (Editors: George Tian and Jie (Jeanne) Huang)

***Academic Position Paper on the Reform of the Brussels Ibis Regulation*** by Burkhard Hess and team at the University of Vienna may be accessed [here](#). (Editor: Mukarrum Ahmed)

## **OCEANIA**



## **International Conventions**

***Australia: Signed the United Kingdom Formal Accession to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)***

On July 16, 2023, the governments of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam, the countries who are party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), signed the United Kingdom's Accession Protocol to enable the United Kingdom to join the CPTPP.

The official text of the partnership agreement, and the UK's Accession Protocol can be found here: <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership>. (Editor: Kim Nguyen)



***Australia and New Zealand: Updated the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA)***

On August 21, 2023, Australia signed the Second Protocol to Amend the AANZFTA Agreement, establishing the ASEAN-Australia-New Zealand Free Trade Area. The Agreement is between ASEAN nations, Australia and New Zealand.

The joint media release on this development can be found here: [https://www.trademinister.gov.au/minister/don-farrell/media-release/deepening-economic-ties-our-asean-partners?\\_gl=1\\*tc3adi\\*\\_ga\\*MTM1MTgyODEwNi4xNjk3Njg3MzAx\\*\\_ga\\_8Z18QMQG8V\\*MTY5NzY4NzMwMC4xLjEuMTY5NzY5MDg5Mi42MC4wLjA](https://www.trademinister.gov.au/minister/don-farrell/media-release/deepening-economic-ties-our-asean-partners?_gl=1*tc3adi*_ga*MTM1MTgyODEwNi4xNjk3Njg3MzAx*_ga_8Z18QMQG8V*MTY5NzY4NzMwMC4xLjEuMTY5NzY5MDg5Mi42MC4wLjA). (Editor: Kim Nguyen)

***Australia and Fiji: Signed a renewed and elevated Fiji-Australia Vuvale Partnership***

On October 18, 2023, the government of Australia and Fiji signed a renewed and elevated Vuvale Partnership to strengthen the relationship and cooperation between Fiji and Australia.

The full text of the signed partnership can be found here: <https://www.dfat.gov.au/geo/fiji/fiji-australia-vuvale-partnership>. (Editor: Kim Nguyen)

***Australia: Entry into force for Australia of the Convention between Australia and Iceland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance and its Protocol***

On November 6, 2023, the Convention between Australia and Iceland for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance and its Protocol, which was signed on October 12, 2022, enters into force for Australia

The full text of the signed agreement can be found here: <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/2023/10.pdf>. (Editor: Kim Nguyen)

***Australia, New Zealand and Fiji: Signed the Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience***

On November 14, 2023, the government of Australia, New Zealand and Fiji signed the Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience with Brunei Darussalam, India, Indonesia,

Japan, Korea, Malaysia, Philippines, Singapore, Thailand, United States of America, and Vietnam.

The full text of the signed agreement can be found here: <https://www.mofa.go.jp/files/100581548.pdf>. (Editors: Jie (Jeanne) Huang and Kim Nguyen)

***Australia: Commenced the bilateral Social Security Agreement with Serbia***

On February 1, 2024, the governments of Australia and the Republic of Serbia commenced the new bilateral social security agreement, to improve access to retirement benefits for eligible people who have moved between the two countries.

The media release on this development can be found here: <https://www.foreignminister.gov.au/minister/penny-wong/media-release/australia-commences-new-social-security-agreement-serbia>. (Editor: Kim Nguyen)

***Australia: Entry into force of the Indo-Pacific Economic Framework Supply Chain Agreement***

On February 24, 2024, the Indo-Pacific Economic Framework (IPEF) Supply Chain Agreement, which was concluded in May 2023 by the governments of Australia and the 13 other IPEF members, entered into force.

The media release on this development can be found here: [https://www.trademinister.gov.au/minister/don-farrell/media-release/ipef-supply-chains-agreement-more-resilient-supply-chains-uncertain-times?\\_gl=1\\*37izz5\\*\\_ga\\*MjgzMjc3NjYwLjE3MTgyNjg0Nzc\\*\\_ga\\_8Z18QMQG8V\\*MTcxODQ3MDQ3Ny4yLjEuMTcxODQ3MjAzMS40MC4wLjA](https://www.trademinister.gov.au/minister/don-farrell/media-release/ipef-supply-chains-agreement-more-resilient-supply-chains-uncertain-times?_gl=1*37izz5*_ga*MjgzMjc3NjYwLjE3MTgyNjg0Nzc*_ga_8Z18QMQG8V*MTcxODQ3MDQ3Ny4yLjEuMTcxODQ3MjAzMS40MC4wLjA). (Editor: Kim Nguyen)

***Australia: Signed the Agreement relating to Air Services with the Government of the Kingdom of Cambodia***

On March 5, 2024, the governments of Australia and the Kingdom of Cambodia signed the bilateral Air Service Agreement, relating to the capacity entitlements of Australian and Cambodian airline operators.

The official Australian Government announcement release of this development can be found here: <https://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/3328431b218f8d59ca256ae1000029b8/2cc983426782be7dca258af3007eefce?OpenDocument>. (Editor: Kim Nguyen)

***Australia: Released a joint statement with the Republic of Korea on Australia-Republic of Korea (ROK) Comprehensive Strategic Partnership (CSP)***



On May 1, 2024, the governments of Australia and the Republic of Korea released a joint statement on the Australia-Republic of Korea (ROK) Comprehensive Strategic Partnership (CSP), which is aimed at the commitment to expanding cooperation in the Indo-Pacific region.

The full text of the statement can be found here: <https://www.minister.defence.gov.au/statements/2024-05-01/australia-republic-korea-22-joint-statement>. (Editor: Kim Nguyen)

***Australia: Signed the multilateral Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge***

On May 27, 2024, the governments of Australia and members of the World Intellectual Property Organization (WIPO) concluded the Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, recognizing the use of Indigenous peoples' genetic resources and associated traditional knowledge.

The media release on this development can be found here: <https://www.foreignminister.gov.au/minister/penny-wong/media-release/historic-global-agreement-recognising-first-nations-cultural-knowledge>. (Editor: Kim Nguyen)

***Australia: Signed the IPEF Clean Economy Agreement, the IPEF Fair Economy Agreement, and the Agreement on the Indo-Pacific Economic Framework for Prosperity with other IPEF member states***

On June 6, 2024, the government of Australia and the 13 other IPEF members signed three agreements under the Indo-Pacific Economic Framework (IPEF): the IPEF Clean Economy Agreement, the IPEF Fair Economy Agreement, and the Agreement on the Indo-Pacific Economic Framework for Prosperity.

The full text of the IPEF Clean Economy Agreement can be found here: <https://www.dfat.gov.au/sites/default/files/ipef-piii-clean-economy-agreement.pdf>.

The full text of the IPEF Fair Economy Agreement can be found here: <https://www.dfat.gov.au/sites/default/files/ipef-piv-fair-economy-agreement.pdf>.

The full text of the Agreement on the Indo-Pacific Economic Framework for Prosperity can be found here: <https://www.dfat.gov.au/sites/default/files/ipef-overarching-agreement.pdf>. (Editor: Kim Nguyen)

***Fiji: Signed the Paris Convention for the Protection of Industrial Property***

On October 19, 2023, Fiji deposited its instrument of accession to the Paris Convention for the Protection of Industrial Property, with a declaration pursuant Art. 28(2) whereby Fiji does not consider it bound by Art. 28(1). The Convention entered into force for Fiji on January 19, 2024.

A World Trade Organization media release addressing Fiji's accession to the Convention can be found here: [https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty\\_paris\\_227](https://www.wipo.int/wipolex/en/treaties/notifications/details/treaty_paris_227) (Editor: Benjamin Hayward)

***Fiji: Approved the Indo-Pacific Economic Framework***

On May 21, 2024, the Parliament of Fiji approved the Indo-Pacific Economic Framework (IPEF)'s Overarching Agreement, Clean Economy Agreement, and Fair Economy Agreement.

A relevant entry in the Government of Fiji Gazette can be found here: <https://www.parliament.gov.fj/wp-content/uploads/2024/05/Extra-Gazette---Approval-of-Treaties---Wednesday-22-May-2024.pdf> (Editor: Benjamin Hayward)

***Pacific, Caribbean, African States, and European Union: Concluded the Samoa Agreement***

On November 15, 2023, a signing ceremony was held in Apia, Samoa, in relation to a partnership agreement between the European Union, European Union Member States, and the Organization of African, Caribbean and Pacific States. Consent to concluding the partnership was given by the European Parliament on April 10, 2024.

Information regarding the Samoa Agreement can be found here: <https://www.consilium.europa.eu/en/policies/samoa-agreement/>; and a Briefing from the European Parliament can be found here: [https://www.europarl.europa.eu/thinktank/sv/document/EP\\_RS\\_BRI\(2024\)762333](https://www.europarl.europa.eu/thinktank/sv/document/EP_RS_BRI(2024)762333) (Editor: Benjamin Hayward)

***Papua New Guinea: Ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters***

On August 31, 2023, Papua New Guinea deposited its instruments of ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base



Erosion and Profit Shifting, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Both treaties entered into force for Papua New Guinea on December 1, 2023.

An OECD media release addressing these accessions can be found here: <https://www.oecd.org/tax/treaties/papua-new-guinea-deposits-its-instrument-for-the-ratification-of-key-multilateral-conventions-against-tax-evasion-and-avoidance.htm> (Editor: Benjamin Hayward)

### ***New Zealand: Signed the European Union and New Zealand Free Trade Agreement***

On July 9, 2023, New Zealand and the European Union signed the European Union and New Zealand Free Trade Agreement.

The full text of the Agreement can be found here: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/5072/eu---new-zealand-fta-2023->. (Editor: Kim Nguyen)

### ***New Zealand: Entry into force of the Protocol to the Digital Economy Partnership Agreement***

On March 19, 2024, the Protocol to the Digital Economy Partnership Agreement (DEPA), which was signed by the governments of New Zealand, Chile and Singapore on July 15, 2023, entered into force. The DEPA Protocol brings greater legal clarity to the operation of four provisions in the DEPA; Non-Discriminatory Treatment of Digital Products, Information and Communication Technology Products that Use Cryptography, Cross-Border Transfer of Information by Electronic Means, and Location of Computing Facilities.

The full text on the Protocol can be found here: <https://www.mfat.govt.nz/assets/Trade-agreements/DEPA/DEPA-Protocol-signed-version.pdf>. (Editor: Kim Nguyen)

### ***Vanuatu: Membership of the Permanent Court of Arbitration***

On June 12, 2024, Vanuatu deposited its instrument of accession to the Hague Convention for the Pacific Settlement of International Disputes. By doing so, Vanuatu has become a Contracting Party to the Permanent Court of Arbitration.

For a Permanent Court of Arbitration press release addressing this accession, see: <https://docs.pca->

[cpa.org/2024/06/969536dd-pca-press-release-accession-of-vanuatu-to-pca-founding-conventions.pdf](https://cpa.org/2024/06/969536dd-pca-press-release-accession-of-vanuatu-to-pca-founding-conventions.pdf) (Editor: Benjamin Hayward)

## **National Legislation**

### ***Australia: Announced the Supreme Court Amendment Rules 2024 (WA), amending the Rules of the Supreme Court 1971 (WA)***

On March 26, 2024, the government of Australia published the *Supreme Court Amendment Rules 2024 (WA)*, which amends the *Rules of the Supreme Court 1971 (WA)*, amending the current RSC Order 10 (Service outside the jurisdiction), Order 11 (Service of foreign process) and Order 11A (Service under the Hague Convention).

The full text of the legislation can be found here: [https://www.legislation.wa.gov.au/legislation/prod/filestor.e.nsf/FileURL/mrdoc\\_46938.pdf/\\$FILE/Supreme%20Court%20Amendment%20Rules%202024%20-%20%5B00-00%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestor.e.nsf/FileURL/mrdoc_46938.pdf/$FILE/Supreme%20Court%20Amendment%20Rules%202024%20-%20%5B00-00%5D.pdf?OpenElement). (Editor: Kim Nguyen)

### ***Papua New Guinea: Enacted the Arbitration (International) Act 2024***

On February 20, 2024, the government of Papua New Guinea passed the *Arbitration (International) Act 2024*, which implements Papua New Guinea's obligations under the New York Convention on the Recognition and Enforcement of Foreign Awards 1958, and adopts a new framework that is based on the UNCITRAL Model Law on International Commercial Arbitration, with some departures.

The full text of the legislation can be found here: <https://www.parliament.gov.pg/uploads/acts/24A-02.pdf>. (Editor: Kim Nguyen)

## **National Case Law**

### ***Australia: Yin v Wu [2023] VSCA 130***

On June 1, 2023, the Court of Appeal of the Supreme Court of Victoria set aside a judgement which affirmed the enforcement of a Chinese judgment by an Associate Justice of the Supreme Court on the basis that the judgment debtor was denied natural justice, or procedural fairness, before the Chinese court.



The full judgment can be found here: <https://jade.io/article/1031737>. (Editor: Jie (Jeanne) Huang)

***Australia: Care A2 Plus Pty Ltd v Gensco Laboratories, LLC (doing business as Gensco Pharma) [2023] FCA 1246***

On October 18, 2023, the Federal Court of Australia granted leave to appeal the previous interlocutory ruling which had dismissed the application for an anti-suit injunction on Gensco pursuing proceedings in Florida, USA. This is substantially by reference to the ground that the foreign proceedings were vexatious and oppressive, and that Gensco, by bringing a proceeding in the Federal Court of Australia, had elected not to proceed with other claims in another jurisdiction.

The full text of the judgment can be found here: <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca1246>.

The full text of the interlocutory judgement can be found here:

<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca1024>. (Editors: Jie (Jeanne) Huang and Kim Nguyen)

***Australia: CCDM Holdings, LLC v Republic of India (No 3) [2023] FCA 1266***

On October 24, 2023, the Federal Court of Australia dismissed India's application to set aside an investor's application to recognize and enforce an investment arbitration award against India on the basis of sovereign immunity. The Federal Court of Australia held that India had waived sovereign immunity and submitted to the Court's jurisdiction "by agreement" within the meaning of the Foreign States Immunities Act 1985 (Cth) because: (a) India was a signatory of the New York Convention; and (b) the Mauritian investors had tendered a copy of an arbitral award against India together with a prima facie arbitration agreement.

The full text of the judgment can be found here: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1266.html>. (Editors: Jie (Jeanne) Huang and Kim Nguyen)

***Australia: Carmichael Rail Network Pty Ltd v BBC Chartering Carriers GmbH & Co KG [2024] HCA 4***

On February 14, 2024, the High Court of Australia held that whether a foreign arbitration clause would be null and void

under the scheme of the *Carriage of Goods by Sea Act 1991* (Cth) under Article 3(8) of the amended version of the International Convention on the Unification of Certain Rules of Law (the "Hague Rules"), will depend on whether, on the balance of probabilities, the contractual clause relieves or lessens the carrier's liability based on all the facts and circumstances of the case (being past, present, or future).

The full text of the judgment can be found here: <https://jade.io/j/?a=outline&id=1062866>. (Editor: Kim Nguyen)

***Australia: Bolin Technology Co Ltd v BirdDog Technology Ltd [2024] FCA 286***

On March 26, 2024, the Federal Court of Australia decided interlocutory claims in a dispute between the BirdDog companies, incorporated in Australia with principal places of business in Victoria, and Bolin, organized under Chinese law. Bolin had initiated Australian proceedings regarding 10 disputed purchase orders, after BirdDog previously initiated proceedings covering similar ground in California. The Federal Court (a) rejected BirdDog's application for a permanent stay of the Australian proceedings on "clearly inappropriate forum" grounds; (b) rejected BirdDog's application for a temporary stay either until the Californian proceedings were completed, or for 90 days; and (c) upheld an anti-anti-suit injunction that had previously been granted regarding the Californian proceedings.

The full text of the judgment can be found here: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/286.html> (Editor: Benjamin Hayward)

***Australia: Kingston Securities Ltd v Lee [2024] NSWSC 402***

On April 15, 2024, the New South Wales Supreme Court set aside the judgement of the Court entered in favor of the plaintiff against the defendant. The judgement set aside had enforced a foreign judgement of the High Court of the Hong Kong Special Administrative Region. The reasons for the judgement being set aside was due to the failure to give the defendant notice of the Hong Kong proceedings in sufficient time to enable him to defend the proceedings in accordance with s 7(2)(a)(v) of the *Foreign Judgments Act 1991* (Cth).



The full text of the judgment can be found here: <https://www.caselaw.nsw.gov.au/decision/18ee9f27239ded2bae69404d>. (Editor: Kim Nguyen)

***Australia: Greylag Goose Leasing 1410 Designated Activity Company v P.T. Garuda Indonesia Ltd [2024] HCA 21***

On June 5, 2024, the High Court of Australia dismissed an appeal from the New South Wales Supreme Court, finding in favor of the respondent that the original process should be set aside on the basis that the Supreme Court lacked jurisdiction because the respondent enjoyed the immunity from the jurisdiction of an Australian court conferred on a separate entity of a foreign State by ss 9 and 22 of the *Foreign States Immunities Act 1985* (Cth), and the exception from the immunity for which provision is made in ss 14(3)(a) and 22 applies to a proceeding for the winding up.

The full text of the judgment can be found here: [https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2024/21.html?context=1;qquery=public%20international%20law;mask\\_path=au/cases/cth/HCA](https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2024/21.html?context=1;qquery=public%20international%20law;mask_path=au/cases/cth/HCA). (Editor: Kim Nguyen)

***New Zealand: Kea Investments Ltd v Wikeley Family Trustee Limited [2023] NZHC 466***

On March 10, 2023, the High Court of New Zealand granted an interim anti-enforcement injunction in relation to a default judgment from Kentucky against Wikeley Family Trustee Limited (WFTL), a New Zealand company, and Mr Wikely, the sole shareholder and director of the company.

The full judgment can be found here: [https://www.justice.govt.nz/jdo\\_documents/workspace/SpacesStore\\_eb417c26\\_4916\\_40c8\\_a9a2\\_5a8989b6559f.pdf](https://www.justice.govt.nz/jdo_documents/workspace/SpacesStore_eb417c26_4916_40c8_a9a2_5a8989b6559f.pdf). (Editors: Jie (Jeanne) Huang and Kim Nguyen)

***New Zealand: A-Ward Limited v Raw Metal Corp Pty Limited [2024] NZHC 736***

On April 9, 2024, the High Court of New Zealand dismissed an application by a New Zealand company, A-Ward Ltd, for an anti-suit injunction to prevent the continuation of a claim against it by an Australian company, Raw Metal Corp Pty Ltd, in the Federal Court of Australia. The High Court of New Zealand held that an anti-suit injunction in respect of an Australian proceeding is precluded by s 28 of the *Trans-Tasman Proceedings Act 2010* (NZ), rejecting the applicant's argument that s 28 does not preclude an anti-suit

injunction because enforcement of a choice of forum clause is different in nature from a stay on traditional *forum non conveniens* grounds.

The full text of the judgment can be found here: [https://www.justice.govt.nz/jdo\\_documents/workspace/SpacesStore\\_7763af1f\\_8ca7\\_4581\\_b38e\\_468e208166d5.pdf](https://www.justice.govt.nz/jdo_documents/workspace/SpacesStore_7763af1f_8ca7_4581_b38e_468e208166d5.pdf). (Editor: Kim Nguyen)

***New Zealand: Maritime Mutual Insurance Association (NZ) Limited v Silica Sandport Inc [2023] NZHC 793***

On April 14, 2023, Gault J in the New Zealand High Court granted an interim anti-suit injunction to stop Guyana proceedings commenced by Silica Sandport Inc in breach of an agreement to arbitrate, in favor of the Maritime Mutual Insurance Association Limited. The decision was made on the basis that the parties had agreed to arbitrate any dispute in New Zealand or England, and even though comity was an important consideration when granting an anti-suit injunction, comity played “a smaller role” in cases involving arbitration (or jurisdiction) agreements.

The full judgment can be found here: [https://www.justice.govt.nz/jdo\\_documents/workspace/SpacesStore\\_9a3fa9c9\\_ea38\\_4c74\\_bf39\\_63a828078d0b.pdf](https://www.justice.govt.nz/jdo_documents/workspace/SpacesStore_9a3fa9c9_ea38_4c74_bf39_63a828078d0b.pdf). (Editor: Jie (Jeanne) Huang and Kim Nguyen)

***New Zealand: Bathurst Resources Ltd v LMCHB Ltd [2024] NZHC 1058***

On May 3, 2024, the High Court of New Zealand declined to set aside a cost award arising out of an arbitration related to a long-running commercial dispute between Bathurst and LMCHB. The arbitrator had decided that the parties were broadly similar in their successes and, as a result, costs should lie where they fall. The costs award was held not to be in conflict with New Zealand public policy for the purposes of the Arbitration Act 1996 (NZ) sch 1 art 34(2)(b)(ii). Key to the court finding that public policy was not engaged was the fact that the arbitrator was deciding a different issue to those addressed in previous litigation. The prior courts' approaches to and decisions on costs were therefore not binding on the arbitrator.

The full text of the judgment can be found here: <http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZHC/2024/1058.html> (Editor: Benjamin Hayward)



## Association and Events

### ***Australia: The Australia International Arbitration Conference 2023***

The Australia International Arbitration Conference 2023, serving as the flagship event for Australian Arbitration Week, took place on October 9, 2023 in Perth, Australia. This conference is a collaborative effort between the Australian Centre for International Commercial Arbitration (ACICA) and Chartered Institute of Arbitrators (Australia).

More information can be found here: <https://aaw.acica.org.au>. (Editor: Jie (Jeanne) Huang)

### ***The Australasian Association of Private International Law First General Meeting of Members***

On July 11, 2024, the Australasian Association of Private International Law (“AAPrIL”) will organize its first meeting. AAPrIL is being established to promote understanding of private international law in Australia, Aotearoa New Zealand, and the nations of the Pacific Islands.

More information can be found here: <https://privateintlawausasia.wordpress.com/>. (Editor: Jie (Jeanne) Huang)