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It is time to take a look back at the first months of 2023 and digest the recent updates and developments happening in the world of international arbitration. Recent court decisions present the new trends and shed light to the future of international arbitration. We have compiled decisions of Turkish courts as well as foreign courts, which may have global significance in terms of international arbitration. Furthermore, we have welcomed new and updated arbitration rules, as well as recent data that illustrate the past year and the developments and setbacks international arbitration has experienced.

In this seventh issue of Esin Arbitration Quarterly, we delve into the realm of international arbitration to provide insight on some of the most significant local and international court decisions and developments regarding international arbitration around the world in early 2023.

1. Significant court decisions in the last trimester concerning arbitration

1.1 Decision of the 14th Civil Chamber of Istanbul Regional Court on recognition of an interim arbitral award[1]

The dispute between the parties arose from a preliminary agreement (**"Letter Agreement"**) whereby two Turkish companies agreed to enter into a share purchase agreement for the future sale of another Turkish company's shares subject to the fulfillment of certain conditions. As an attachment to the Letter Agreement, the parties also drafted a share purchase agreement (**"Draft Agreement"**). There are separate arbitration clauses in each agreement.

The defendant in the enforcement lawsuit initiated arbitration proceedings for the transfer of the shares or alternatively, payment of the share price based on the arbitration clause in the Letter Agreement. The arbitral tribunal decided that the defendant should be paid the share price but in terms of the calculation of the purchase price the award was based not on the Letter Agreement but the Draft Agreement. Therefore, upon receiving the first arbitral award, this time the plaintiff initiated arbitration, claiming that the arbitral tribunal in the previous arbitration exceeded its authority by awarding damages based on the Draft Agreement rather than the Letter Agreement. The plaintiff further claimed that it was not possible to rely on the arbitration clause in the Draft Agreement as it was not yet executed and thus, become enforceable. The defendant objected to the arbitral tribunal's decision in the subsequent arbitration but the arbitral tribunal rejected this objection in an interim award. The plaintiff then sought to have the interim award on jurisdiction (rendered in the second arbitration) recognized in Türkiye. In response, the defendant argued that the arbitral award that was sought to be recognized was an interim award, which could not be recognized as it did not address the merits of the dispute.

The court of first instance ruled in favor of the defendant, stating that the plaintiff's aim was to prevent the enforcement of the final award in the first arbitration whereby compensation was awarded against it by having the interim award in the second arbitration enforced in Türkiye. The enforcement application, however, was dismissed for lack of legal interest pursuant to Article 114 of the Code of Civil Procedure (CCP), since no application had been filed for the recognition or enforcement of the aforementioned arbitral award rendered in the first arbitration against the plaintiff, in Türkiye.

The 14th Civil Chamber of Istanbul Regional Court ("Regional Court") upheld the decision of the court of first instance and dismissed the plaintiff's argument to recognize the interim arbitral award. The Regional court ruled that only foreign arbitral awards that are conclusive, executable or binding

1 The 14th Civil Chamber of Istanbul Regional Court File No.: 2017/284, Decision No.: 2017/309.

upon the parties are permitted to be enforced under International Private and Procedure Law No. 5718 (IPPL). Hence, the obstacles concerning the enforceability of interim awards was once again confirmed in this dispute as well.

1.2 Decision of the 6th Civil Chamber of the Court of Cassation on contradicting decisions regarding Turkish courts' authority to hear the objection to an interim measure[2]

The dispute arose from the inconsistency between the final judgments of the 15th Civil Chamber of Istanbul Regional Court (**"15th Civil Chamber"**) and the 45th Civil Chamber of Istanbul Regional Court (**"45th Civil Chamber"**).

The dispute before the 45th Civil Chamber arose from an architectural design contract in which the parties decided that the International Chamber of Commerce (ICC) is authorized to resolve any dispute and the seat of arbitration was determined to be Geneva, Switzerland. Before the initiation of the arbitration proceedings, an interim measure was obtained from Turkish courts. Following the initiation of the proceedings, the counterparty objected to the interim measure before the Turkish court from which the interim measure was granted. However, following the objection, the court of first instance ruled that since the arbitration proceedings had already started, the arbitral tribunal hearing the dispute is authorized to hear the objection to the interim measure. Upon the dismissal of the case, the defendant appealed the decision. The 45th Civil Chamber, hearing the appeal case, held that the power granted to the arbitral tribunal by Article 414 of the CCP to modify or revoke an interim measure was not applicable due to the foreign element in the dispute. In addition, it held that the revocation by a foreign arbitral tribunal of an interim measure granted by a Turkish court would constitute an interference in the jurisdiction of Turkish courts. The 45th Civil Chamber thereby ruled that Turkish courts have jurisdiction to hear an objection to an interim measure even if a subsequent arbitration has been initiated in cases where there is a foreign element in the dispute.

In the dispute before the 15th Civil Chamber, the place of arbitration was agreed to be outside of Türkiye in the construction contract between the parties. A Turkish court granted an interim measure regarding the plaintiff's request. However, with the defendant's objection to this interim measure, the 15th Civil Chamber held that since the arbitration proceedings had already commenced, only the arbitral tribunal is authorized to hear the objections to interim measures and Turkish courts were not authorized.

Following the issuance of two conflicting decisions, a request was made to the Court of Cassation to address the inconsistency between them. Thereupon, the Court of Cassation ruled that Turkish courts are authorized to decide on

2 The 6th Civil Chamber of the Court of Cassation File No.: 2022/3259, Decision No.: 2022/4699.

the objections to an interim measures issued by Turkish courts in connection with a dispute involving a foreign element and subject to arbitration even if the arbitration has been initiated.

1.3 Decision of the 11th Civil Chamber of the Court of Cassation on the arbitral tribunal's duty to inform the parties regarding expiration of the arbitration term [3]

The dispute between the parties arose from a contract containing an arbitration clause. Article 17.3.i.v of the contract specifically states that the parties shall equally share the arbitration costs.

During the arbitration proceedings, one of the parties filed a request to replace an arbitrator. This request was brought to the arbitral tribunal, which informed the parties that a court should handle the request to replace the arbitrator. The plaintiff then requested from Turkish courts that the arbitrator be replaced. The arbitral tribunal suspended the arbitration proceedings until the Turkish court renders a decision, which was then dismissed because there were no grounds for replacing the arbitrator.

The arbitration term had expired during this time period and therefore the arbitral tribunal notified the parties that its jurisdiction over the dispute had ceased and rendered an award addressing arbitration costs only. Thereupon, the plaintiff initiated a set-aside lawsuit and argued that the arbitral tribunal violated its duties by failing to notify the parties before the arbitration term expired, which was contrary to public order according to the plaintiff. The defendant, on the other hand, argued that Turkish law only lists a limited number of grounds for set-aside, and that the arbitral award exclusively addressed the arbitrators' fees and arbitration costs, which cannot be set aside as there is no violation of public policy.

The regional court concluded that the arbitration proceedings were over since the arbitration term had run its course. The regional court ruled that the plaintiff had not asked the arbitral tribunal or the court to extend the arbitration term according to Article 472/2 of the CCP. The parties should have been aware of the arbitration term and should have requested an extension if they wanted the arbitration procedures to progress. As a result, the Court of Cassation upheld the decision of the regional court.

1.4 Decision of the 11th Civil Chamber of the Court of Cassation on the interpretation of public order [4]

The dispute between the parties is related to the Media Broadcasting Rights Agreement (**"Agreement"**) signed between a sports organization (plaintiff) and a Turkish joint-stock company (defendant). The Agreement contains an arbitration clause foreseeing the application of Istanbul Arbitration Centre (ISTAC) Arbitration Rules and International Arbitration Law (IAL) in the event of any dispute. Based on the Agreement, the plaintiff claimed in the arbitration proceedings that the defendant was in default because it had not paid the broadcasting rights fee under the terms of the Agreement for the 2015-2016 and 2016-2017 seasons.

The plaintiff filed a set-aside lawsuit after the arbitral tribunal rendered its decision, alleging that the decision was made without considering its counterclaims. The plaintiff claimed that notwithstanding the award's wording that *"all other claims of the parties are dismissed"*, the arbitral award makes no mention of its counterclaims. The plaintiff further argued that there had been a breach of public order because

3 The 11th Civil Chamber of the Court of Cassation File No.: 2021/8979, Decision No.: 2022/5142.
4 The 11th Civil Chamber of the Court of Cassation File No.: 2020/1859, Decision No.: 2022/1005.

(i) the arbitral award did not state the way and time period to initiate the set-aside proceedings against the arbitral award and (ii) the arbitral award is contrary to the Article 59 of the Turkish Constitution on development of sportive activities because it struck a heavy blow to Turkish sports.

The regional court noted in its evaluation that the restricted grounds for set-aside cases are governed by Articles 439 of the CCP and 15/A of the IAL. Despite the plaintiff's assertion that the arbitral award does not address how and when it can be challenged, the plaintiff properly initiated a set-aside lawsuit against the arbitral award within the necessary period. The failure to indicate a legal remedy and its duration cannot be acknowledged as a public policy ground to set-aside the arbitral award. Besides, even though the arbitral award does not explicitly state that the counterclaim was dismissed, it was indicated that it can easily be inferred from the phrase "dismissal of all other claims" that the counterclaims had been dismissed. The regional court further stated that the plaintiff is an autonomous private law person and the fact that the plaintiff lost a contractual receivables case does not disrupt the dissemination of sport to the masses, as the plaintiff claims. In light of all these reasons, the regional court dismissed the set-aside lawsuit. The Court of Cassation upheld the decision of the regional court, dismissing the plaintiff's appeal.

1.5 German court judgment concerning full review of antitrust awards

The German Federal Court of Justice put an end to a long-lasting debate in Germany about the review of competition awards on the merits and ruled that an arbitral tribunal's improper application of German competition law would be against German public policy.[5]

The subject matter of the dispute was a lease agreement concerning a basalt quarry. After several attempts to terminate the lease agreement, as a last resort, the lessor had initiated arbitration proceedings to evacuate the lessee from the property. While the lessor was penalized for violating German competition law over its first attempt in termination, an arbitral tribunal ordered the lessee to evacuate the quarry.

The lessee resorted to legal action before German courts to have the award set-aside on the grounds that it was against German public policy because it violated German competition law. Although it was found that the arbitral award did indeed violate German competition law, the set-aside lawsuit was dismissed as a full merits examination of the arbitral award would violate autonomy of the parties.

5 You may access the German Federal Court of Justice's judgment in German **here.**

Upon appeal, the Federal Court of Justice reversed the ruling and held that arbitral awards that concern German competition law can be reviewed in terms of merits in an unlimited manner. The reason is that competition law not only serves the interests of the parties to the arbitration agreement, but also protects public interest by ensuring the proper functioning of markets. The Federal Court of Justice subsequently found that the arbitral tribunal had misapplied German competition law and set-aside the award accordingly.

1.6 U.S. Third Circuit Court decision illustrates that email conversation can be sufficient to constitute a valid arbitration agreement[6]

This recent case relates to whether an email conversation between the parties, through which they exchanged a draft agreement containing an arbitration clause, can be deemed sufficient to bring the dispute to arbitration even if the agreement is not signed. Initially, the China International Economic and Trade Arbitration Commission decided that the relevant agreement shows the parties' intention for arbitration and ruled in favor of the claimant. However, when the claimant submitted the arbitral award to a US district court for the recognition and enforcement of the arbitral award, the district court rendered that an arbitration agreement was not formed in compliance with regard to the relevant provisions of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (**"New York Convention"**). The claimant appealed the district court's decision and took the case to the Third Circuit Court. In its judgment, the Third Circuit Court reversed the district court's decision by emphasizing that under the New York Convention, even a "letter or telegram" may constitute the written form of an agreement.

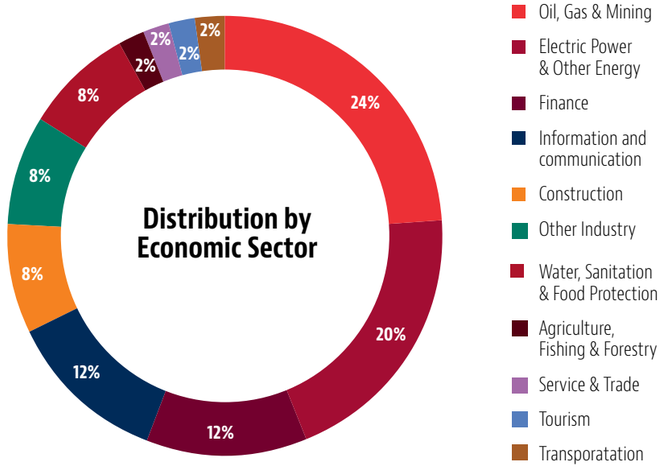
2. Developments concerning international arbitration practice

2.1 Collaboration and statistics of the arbitration institutions

(a) ICSID 2022 caseload statistics

After publishing its fiscal year caseload statistics in October[7] for 2021, the International Centre for Settlement of Investment Disputes (ICSID) has once again shared its caseload statistics, this time for 2022.[8] The data provides insights on the investment disputes administered in the past year and reveals details about the disputes, such as diversity of cases and arbitrators and recent investment trends.

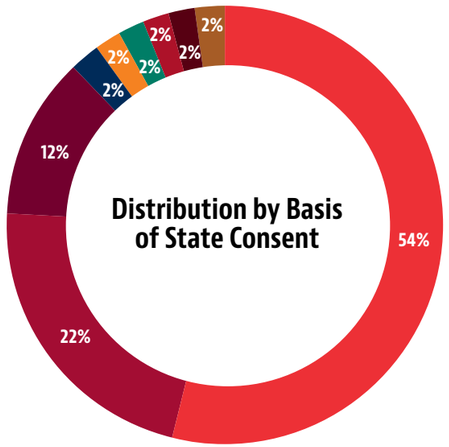
The first essential finding that requires emphasis is the fact that, while the previous data showed that 70 new cases were registered in 2021 (noted as a record number), the current data shows that only 41 new cases were registered under ICSID in 2022. Among the newly registered cases, seven was under ICSID Additional Facility Rules.



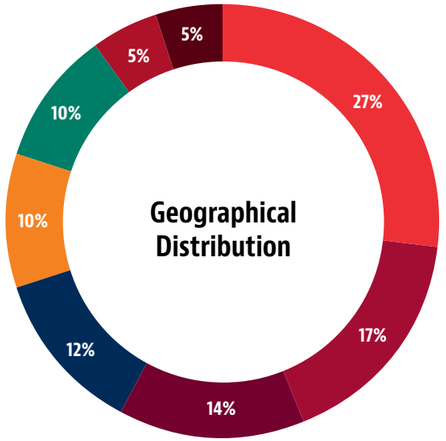
The data shows that disputes concerning the energy sector account for almost half of all newly registered cases in 2022. Furthermore, both the finance and information & communication sectors made up around 12% of all the cases registered in 2022.

More than half of the cases registered in 2022, under the jurisdiction of ICSID, were bilateral investment treaty disputes. Unsurprisingly, due to the current rush to exit the Energy Charter Treaty, Energy Charter Treaty disputes accounts for almost 25% of all the cases registered under ICSID in 2022.

6 Jiangsu Beier Decoration Materials Co. v. Angle World LLC, No. 21-3143 (3d Cir. Nov. 3, 2022).
7 You may refer to the 6th issue of Esin Arbitration Quarterly for the fiscal year caseload statistics of ICSID **here.**
8 You may access the caseload statistics **here.**



- Bilateral Investment Treaty
- Energy Charter Treaty
- Investment Contract between the Investor and the Host-State
- North American Free Trade Agreement
- United States-Mexico-Canada Agreement
- Investment Law of the Host-Sate
- Dominican Republic-Central America Free Trade Agreement
- ASEAN-China Investment Agreement
- Canada-Peru Free Trade Agreement



- Eastern Europe & Central Asia
- South America
- Middle East & North Africa
- Western Europe
- Central America & the Caribbean
- South & East Asia & the Pacific
- North America
- Sub-Saharan Africa

In terms of the geographic distribution of the states involved in the cases registered under ICSID in 2022 as parties to the dispute, Eastern Europe and Central Asia accounted for over 25% of the new cases, followed by South America, Middle East & North Africa, and Western Europe with 17%, 14%, and 12% of the newly registered cases, respectively. Lastly, North America and Sub-Saharan Africa were parties to only a few new registered ICSID cases; the states of the two regions combined to 10% of the new cases registered under ICSID Convention in 2022.

While almost half of the cases concluded in 2022 have been decided by arbitral tribunals, the other half were concluded due to either being settled between the parties or as a result of arbitration proceedings being discontinued due to various reasons, such as the request of parties or lack of payment.

Furthermore, of all the arbitrators, conciliators and ad hoc committee members appointed in ICSID-administered alternative dispute resolution services, 65% were from either Western Europe or North America, followed by South America with 20%. The other regions were comparatively underrepresented.

Final data that demands emphasis concerns the gender diversity of the appointments made in the cases registered under ICSID in 2022. Accordingly, women accounted for only 23% of all the arbitrators, conciliators and ad hoc committee members appointed for newly registered ICSID cases.

(b) ICSID and SCC collaborate and strengthen their relationship

ICSID and the Stockholm Chamber of Commerce Institute of Arbitration (SCC) have announced that they will expand their partnership to support the use of alternative dispute resolution tools and methods, including most notably, arbitration and mediation.

With the agreement, the two institutions will cooperate through events, such as seminars and trainings, and thereby support and update each other on dispute resolution and emerging trends and technologies related thereto.

With regard to this recent development, **ICSID's Secretary-General Meg Kinnear** said that:

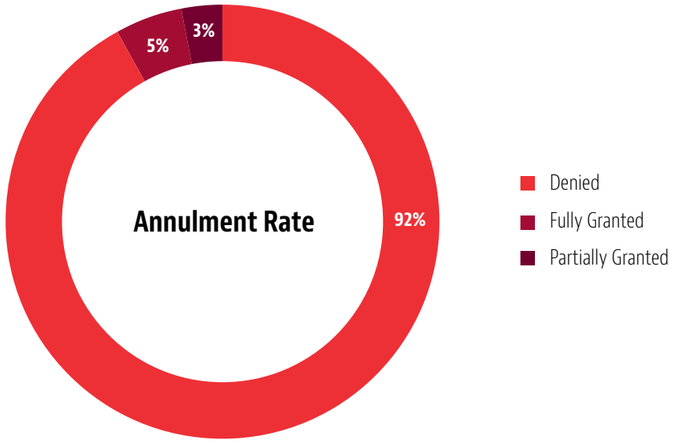
> ICSID and SCC have a long-standing relationship and we look forward to building on this partnership with this agreement.

(c) Saudi Center for Commercial Arbitration shares data on annulment rate of arbitral awards

At an event organized as part of Dubai Arbitration Week, the Saudi Center for Commercial Arbitration (SCCA) shared research on the rate of annulment of arbitral awards in Saudi Arabia. Accordingly, the data illustrates that while the rate of annulment of arbitral awards in Saudi Arabia is only 8%, no foreign arbitral award has been annulled under public order or Sharia law related grounds until the last quarter of 2022 (when the event was held). The study covers a total of 720 judgments issued by Saudi courts between 2017 and 2021.

There were 131 judgments reviewed in the study, concerning annulment requests. The data illustrates that 92% of the judgments denied the request whereas, in 5% and 3% of the judgments, the request was granted in full and in part, respectively.

The report shows that only 3.8% of the 131 judgments approved requests to annul on the grounds of breach of public policy or Sharia law. According to the SCCA, the study also shows that Saudi courts have a tight and narrow understanding of what constitutes a violation of Sharia law and public policy and will not arbitrarily annul arbitral awards.



2.2 New rules and guidelines concerning international arbitration

(a) Amended rules of CEPANI entered into force

On 1 January 2023, the new rules of The Belgian Centre for Arbitration and Mediation (CEPANI) (**"Rules"**) came into force. The first focus of this amendment was to promote and increase diversity and inclusion among arbitrators. In order to achieve this objective, the amended Article 15.1 of the Rules stipulates that diversity and inclusion will be a factor to consider in the appointment of arbitrators. Therefore, complying with CEPANI's pledge on diversity and inclusion dated 2016, this provision is an important step toward achieving gender equality as well as providing equal opportunities to all potential arbitrators, regardless of their religion, gender, sexual orientation, race, color, nationality, disability or socioeconomic status. According to recent statistics, 35% of CEPANI-appointed arbitrators in 2021 were women.

The second important amendment to the Rules relates to virtual hearings under its Article 24. The use of virtual hearings has become a widespread practice due to the pandemic, and with the new amendments, it will now be at the sole discretion of the arbitrators to decide on whether to hold the hearings virtually or in-person. This is in line with the trend observed in the arbitration rule amendments of other internationally recognized arbitral institutions such as the ICC and ICSID.

Finally, although the Rules have not yet made any progress in this regard, CEPANI has been working on the drafting of a green protocol on sustainability and green arbitration. A study group has been assembled to achieve this objective.

(b) GIAC has updated its Arbitration Rules

The amended Georgian International Arbitration Centre (**"GIAC Rules"**), which came into force on 1 January 2023, aims to adapt to the recent needs and current dynamics of arbitration.[9] The most crucial development is certainly the abolishment of the necessity to file the request of arbitration physically. In accordance with the green arbitration principles, the GIAC Rules allow parties to initiate arbitration proceedings electronically. Furthermore, a drawback that arbitration faced during the pandemic was holding physical arbitration hearings. Accordingly, like many other arbitration institutions, GIAC Rules adopt a rule that will allow hearings to be held remotely. Lastly, the amended GIAC Rules aim to provide clarity and efficiency to parties and, as a result, intend to offer reliability to parties.

(c) SCC has updated its Arbitration Rules

Since the latest revision in 2014, the SCC Arbitration Rules have been in the spotlight because of their outdated nature, which rendered them inadequate given the current dynamics of the world of arbitration and the situation after the pandemic. However, the latest update to the rules, which entered into force on 1 January 2023, aims to provide clarity and efficiency to users.

The amendments to the SCC Arbitration Rules

The first change to the SCC Arbitration Rules that needs underlining is the clarification on hearings. According to the revised Article 32, it is within the arbitral tribunal's discretion to decide whether to hold hearings in person or remotely. This change is clearly intended to adapt the rules to the post-pandemic arbitration practice.

Another addition is to Article 45, which now gives to the arbitral tribunal the authority to issue an award or order recording of the termination of the arbitral proceedings. This is for cases excluding settlement, where the arbitral

9 You may access the GIAC Rules **here.**

proceedings come to an end before a final award is rendered.

The revised SCC Arbitration Rules have also modified the required content of both the statement of claim and statement of defense.

Under the modified Article 29, the following aspects should be included in the statement of claim: (i) the specific relief sought, (ii) the facts and other circumstances the claimant relies on, and (iii) any evidence the claimant relies on.

On the other hand, with the revised SCC Arbitration Rules that came into force, the statement of defense shall contain: (i) any objections concerning the existence, validity or applicability of the arbitration agreement, (ii) a statement whether, and to what extent, the respondent admits or denies the relief sought by the claimant, (iii) the facts and other circumstances the respondent relies on, (iv) any counterclaim or set-off and the facts and other circumstances on which it is based, and (v) any evidence the respondent relies on.

Finally, the model arbitration clause has been revised to exclude the recommended wording on the number of arbitrators. In addition, the above summarized changes have been reflected in the SCC Expedited Arbitration Rules.

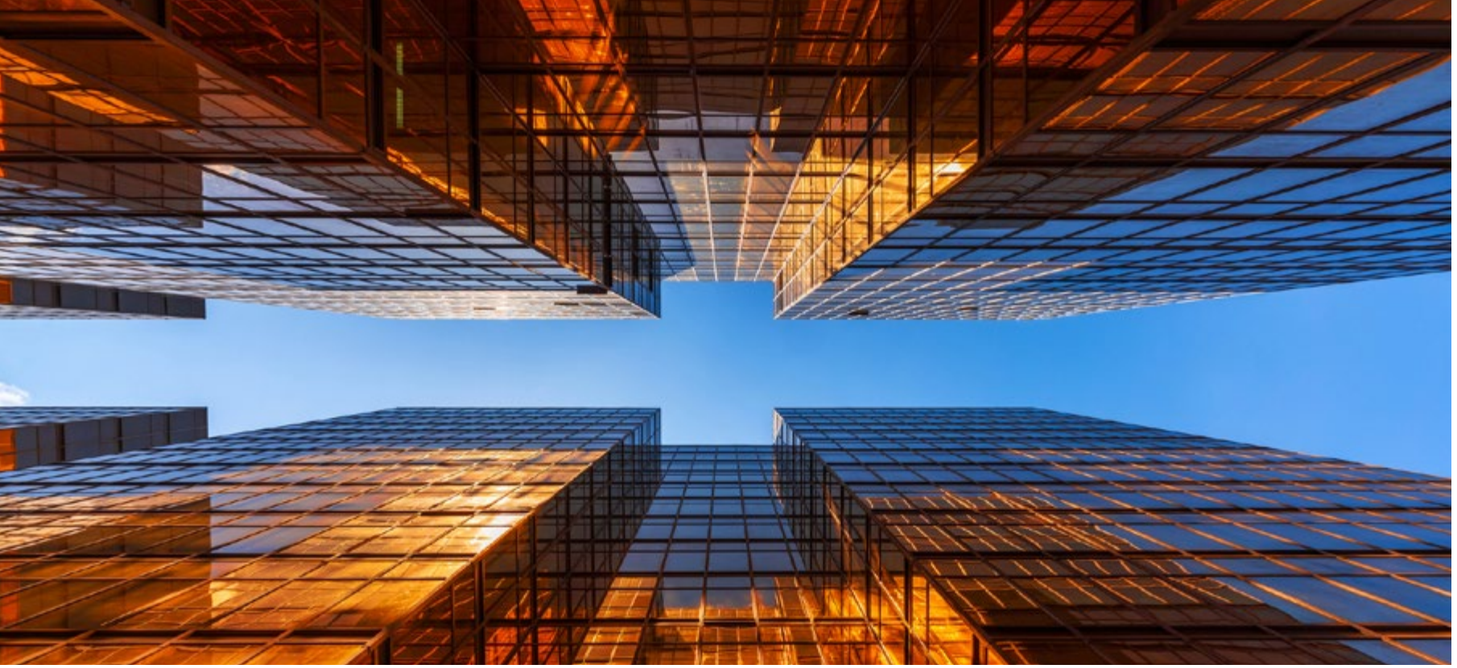
(d) ICDR offers guidelines on the use of a tribunal secretary in arbitration

After collaborating with various professionals and experts in arbitration, the International Centre for Dispute Resolution (ICDR), an internal division of American Arbitration Association, has published the newly assembled guidelines to assist parties, arbitral tribunals and potential tribunal secretaries to achieve efficiency and success in arbitration proceedings.[10] The guidelines, which came into effect on 1 December 2022, essentially define the scope of work of the tribunal secretaries. They also underline that the decision-making process still stands with the arbitral tribunal and the tribunal secretaries' essential aim should be to provide assistance. Furthermore, while the tribunal secretaries are not involved in the decision-making process, just like arbitrators, they are bound by the same ethical standards and should avoid casting doubt on arbitration proceedings. Lastly, the guidelines also emphasize that, although tribunal secretaries play a crucial role during arbitration proceedings and have the ability to improve the quality of the process (while also lowering the cost of arbitration), the appointment of a tribunal secretary for an arbitration is not mandatory and can only be appointed with the consent of all parties. In conclusion, the newly published guidelines clearly define the tribunal secretaries' scope of work and clarify uncertainties to achieve quality and low arbitration costs in complex arbitrations.

(e) UNCITRAL Working Group III has published draft commentary on the Code of Conduct for Arbitrators and Judges in Investment Arbitration

The draft commentary on the Code of Conduct for Arbitrators and Judges in Investment Arbitration (**"Code of Conduct"**) (**"Commentary"**) was published by UNCITRAL Working Group III for arbitrators and judges in international investment dispute resolution to explain the articles of Code of Conduct.[11] Although the Commentary refers to a "judge," it then defines it as any member of the standing mechanism. As a result, the Commentary is not exclusively designed for judges and is applicable to arbitrators who are members of the "standing mechanism" in arbitration.

10 You may access the Arbitral Tribunal Secretary Guidelines **here.**
11 You may access the Commentary **here.**



Commentary on Article 3 of the Code of Conduct states that arbitrators must be independent from the time of their appointment until the end of their mandate, and they must avoid any conflict of interest.

Under the Commentary on Article 4 of the Code of Conduct, arbitrators are prohibited from holding any political or administrative office other than their own. In addition, arbitrators may not practice any other profession incompatible with their obligations of independence and impartiality. Most notably, the Commentary emphasizes that, to avoid ethical conflicts and casting a shadow upon arbitral proceedings, arbitrators should refrain from accepting an expert witness and other roles in other relevant disputes.

Article 7 of the Code of Conduct prohibits *ex parte* communications by an arbitrator to a disputing party, its counsel or other relevant persons to the dispute in the absence of the other disputing party or their counsel. The Commentary provides that a communication not concerning the dispute or an email correspondence where all other parties are copied is not prohibited.

The obligation of confidentiality is imposed on arbitrators under Article 8 of the Code of Conduct and it continues indefinitely. The obligation of confidentiality is a prohibition on the arbitrator making any information acquired during the proceedings public or disclosing it to other persons or entities not participating in the proceedings. This prohibition also covers the use of information obtained during the proceedings, i.e., the use of such information outside the proceedings. However, it should be noted that this article does not prohibit the use of such information for the purposes of the proceedings, for example, discussion among the arbitral tribunal. Furthermore, exceptions can be made to the obligation of confidentiality either when it is legally required to disclose an information or when arbitrators disclose an information to safeguard their rights.

The disclosure obligations are set out in Article 11 of the Code of Conduct, and pursuant to the Commentary, they aim to identify potential conflicts of interest that could lead to a lack of independence and impartiality. According to the standard to be followed, if a reasonable person with knowledge of the pertinent facts and circumstances believes that there is a chance that the arbitrator's judgment may be affected by considerations other than the merits of the case as put forth by the disputing parties, then there is cause for doubt.

According to the Commentary, Article 11 of the Code of Conduct provides for the disclosure of information on potential conflicts arising from financial, commercial, professional or personal relationships that the arbitrator may have with other persons or entities involved in the proceedings. The article also stipulates the disclosure of any financial or personal stake in the outcome of the case, as well as any previous cases involving the same measure, the same disputing party, or an entity that the opposing party has named. Financial stake excludes compensation

received as a judge or the payment of costs incurred during the proceeding. Additionally, the arbitrator is required to disclose all investment disputes and related proceedings in which they have acted as an arbitrator, legal representative or expert witness during the preceding five-year period.

(f) The OAC has published Code of Ethics for arbitrators, mediators and experts

Oman Commercial Arbitration Centre (OAC) has recently announced the OAC Code of Ethics for Arbitrators, Mediators & Experts (**"Code"**).[12] The Code aims to inform and guide arbitrators, mediators and experts regarding the general standards and requirements expected from their roles during the proceedings.

The below rules apply by default to all arbitrations and meditations administered by OAC, thus, arbitrators, mediators and experts of OAC administered arbitrations and mediations are obligated to comply with the below provisions.

i. Code for ethics for arbitrators

According to the Code, prospective arbitrators shall only accept an appointment only if they can fully commit to conduct the arbitration proceedings with necessary care and diligence, in a cost-effective manner and if they have the necessary qualities to handle the proceedings. Furthermore, the Code states that, prospective arbitrators who are not willing to act in compliance with the provisions of the Code, should refrain from accepting the appointment.

Under the Code, an arbitrator is bound to decide on an arbitration with regards to the facts and the legal base of the case and, shall refrain from any positions that can have a negative impact on their impartiality and independence. If any situation occurs that may affect their impartiality and independence, arbitrators are under the duty to disclose this information to other arbitrators and to the parties. The duty to disclose any information that can cast doubt upon arbitration proceedings continues throughout the arbitration until its end. Arbitration is usually preferred over litigation to ensure that the dispute is handled with care and diligence, as a result, arbitrators are under the duty to conduct arbitration proceedings with professionalism and in an efficient manner.

Moreover, arbitrators should avoid being involved in ex parte communications with parties, as it casts a shadow upon the proceedings. While conducting the proceedings, arbitrators are welcomed to have an assistant to help them on their case but, the arbitrators should avoid disclosing any information regarding the arbitration proceedings and the merits of the dispute to third parties. The same applies to anyone assisting the arbitrators. Finally, arbitrators should not get in touch with the OAC's administrative bodies, or the parties to ask for appointment in future arbitrations.

ii. Code for ethics for mediators

According to the Code, mediators' initial purpose is to inform parties about the nature and goal of the mediation process, as well as, their role during the proceedings. Mediators are under the duty to ensure that the parties are free from influence and have consented to the mediation process. Furthermore, prospective mediators should only accept appointments only if they can commit themselves to the mediation proceedings and if they are available. On the other hand, prospective mediators should refrain from accepting the

12 You may access the Code **here.**

appointment, if they believe that they are unable to meet the relevant requirements that the mediation proceedings demand and incapable of meeting the necessary knowledge and capacity the role requires. Prospective mediators should avoid putting themselves in a position that can have an impact on their independence and impartiality and, if they are unable to isolate themselves from situations that can constitute a conflict of interest, should not accept the appointment or resign from their roles. Unless the parties agree or required by the law, mediators should keep the mediation purely confidential.

Finally, appointed mediators should conduct the mediation proceedings with good faith and approach the proceedings with respect and in accordance with the requirements of the dispute and, should not get in touch with the OAC's administrative bodies or the parties to ask for appointment in future mediations.

iii. Code of ethics for experts

First and foremost, experts should refrain from disclosing confidential information regarding the merits and details of the case to third parties. Furthermore, while experts should avoid any situations that can affect their independence and impartiality, they are also obligated under the Code to disclose any information that can cast doubt upon the proceedings. Experts are under an overriding duty to assist the arbitral tribunal to clarify uncertainties regarding the dispute and should guide tribunals to what is correct in accordance with their expertise. Thus, experts owe their duties to arbitral tribunals and not to the parties that have appointed them. Finally, experts should not get in touch with the OAC's administrative bodies to ask for appointment in future arbitrations.

2.3 Other developments

(a) Azerbaijan has launched first known biodiversity arbitration against Armenia

The Ministry of Foreign Affairs of Azerbaijan has initiated arbitration proceedings against Armenia with regard to environmental and biodiversity concerns over its territory, which was under Armenian control for the past 30 years. The claim is brought under the European Convention for the Protection of Wildlife and Natural Habitats (**"Bern Convention"**). Azerbaijan mainly accuses Armenia of widespread deforestation, pollution and depletion of natural resources, as well as putting endangered endemic species at risk and causing pollution through transborder rivers flowing from Armenia. Therefore, Azerbaijan is asking the arbitral tribunal to require Armenia to stop all current Bern Convention violations and requesting full reparation for the environmental damages.

The Bern Convention entered into force in 1982. While the relevant arbitration marks the first known arbitration thereunder, the Convention's objectives include preserving wild flora, animals and habitats; protecting vulnerable and endangered species, especially migratory species; and encouraging state cooperation in this regard.

(b) YAWP brings together women arbitrators from different parts of the world with arbitral institutions

In order to ensure gender equality in the appointment of arbitrators and to support women engaged in international arbitration practice, the Young Arbitral Women Practitioners' (YAWP) is launching the "YAWP Meet the Arbitral Institution" series in March 2023. YAWP is an organization comprising many dynamic women arbitrators with various legal and linguistic skills, and its aim is to connect these successful women with arbitral institutions. As part of this series, representatives from different reputable arbitral institutions around the world, such as ICSID, SCC, LCIA, PCA and many more, will hold interactive online meetings with the participants. They will discuss the considerations for appointment in the respective institutions, the qualities that an institution looks for in arbitrators, and how to make them stand out in front of the respective institutions. The applications will be open until the end of February 2023.

(c) Mute Off Thursdays has published a guide to support women in arbitration

The first edition of the Compendium of Unicorns - A Global Guide to Women Arbitrators (**"Compendium"**) was published by Mute Off Thursdays in December 2022. The Compendium compiles the profiles of over 170 women arbitrators coming from diverse professional, cultural, sectoral and geographical backgrounds. The Compendium enables users to easily access comprehensive information on each arbitrator such as their areas of expertise and past experience. The Compendium aims to promote gender equality by increasing the representation of women in the role of arbitrator.

(d) SICC has published new model clause for arbitration-related court proceedings

The Singapore International Commercial Court (SICC) has drafted and shared a model clause concerning arbitration-related litigation arising under Singapore's international arbitration legislation.[13] Subsequently, in early January 2023, the Singapore International Arbitration Centre (SIAC) announced that they will incorporate the new model clause in their model arbitration clause in cases where the seat of arbitration is Singapore.

The model clause is as follows:

"In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court; and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC."

The SICC is authorized to hear cases covered by the Singapore International Arbitration Act. The new model clause serves to clarify that the SICC has been selected as the authorized court for arbitration-related court proceedings. Unless specifically excluded, all appeals will go to the Court of Appeal.

(e) Suriname and Timor-Leste's accession to the New York Convention

Suriname and Timor-Leste became the latest states to join the New York Convention. With their accessions as the 172nd and 173rd states, respectively, the application of the New York Convention further extended across the Americas' continental regions and Asia. While the New York Convention came into effect in February 2023 for Suriname, the Convention will enter into force on 17 April 2023 for Timor-Leste.

13 You may access the arbitration model clause **here.**

With these developments, arbitral awards rendered in the other states party to the New York Convention can be more easily recognized and enforced by the courts of Suriname and Timor-Leste. This creates a more reliable and a tempting environment for foreign investors in the relevant countries.

Suriname has made two reservations: accordingly, the New York Convention applies only to commercial disputes and it applies only if there is reciprocity.

(f) ICC has published its Centenary Declaration on Dispute Prevention and Resolution

The ICC Court of International Arbitration was established in 1923 to assist parties in international commercial disputes and to ensure that arbitration became the preferred method of dispute resolution in international trade, and this year marks exactly 100 years since its establishment.

Claudia Salomon, the first woman president of the ICC Court of International Arbitration, shared the ICC Centenary Declaration on Dispute Prevention and Resolution (**"Declaration"**), which sets out the ICC's vision for the next 100 years.[14]

In summary, the Declaration emphasizes promoting access to justice and the rule of law; ensuring independence and neutrality; providing thought leadership; creating a worldwide community through local engagement; increasing transparency; training and capacity building; utilizing technology; promoting diversity, equality and inclusion; ensuring sustainability; and finally, providing cooperation.

(g) GAR's latest guide to regional arbitration has been published

In its latest edition, the Global Arbitration Review (GAR) Guide to Regional Arbitration provides its users with details of all arbitration institutions and what these arbitration institutions promise to offer to practitioners and their clients.[15] It aims to provide a list of reliable arbitration institutions. Therefore, the list also includes a "White List," which highlights the most dependable and trustworthy arbitration institutions in the last year. Notably, this is the first edition of the list without the LCIA-DIFC Arbitration Centre. The list includes familiar names such as (i) ISTAC, (ii) SCCA, (iii) DIS German Arbitration Institution and (iv) the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

(h) ICCA has introduced new project on dispute resolution mechanism under the Paris Climate Agreement

The current mechanism under the Paris Climate Agreement provides that, unless an agreement exists between member states providing for submitting disputes to the International Court of Justice (ICJ) or arbitration, any dispute shall be resolved by interstate conciliation.[16] Considering that states usually refrain from submitting their disputes to the ICJ or a rbitration, conciliation appears to be the prime method of dispute resolution for the Paris Climate Agreement.

As a result, an initiative has been announced within the scope of the International Council for Commercial Arbitration (ICCA) to fill the void of express rules for disputes under the Paris Climate Agreement. Accordingly, the project is designed to establish a panel of experts, experienced especially in climate change disputes and conciliation, that is tasked with developing a "proposed draft conciliation annex for the Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC)", which can be effectively adopted by member states. Essentially, the panel believes that a conciliation mechanism can sustain and further develop the relationship between member states, provide a space for communication between member states and offer different perspectives.

The panel intends to introduce the draft conciliation annex in November 2023, just in time for the 2023 United Nations Climate Change Conference.

14 You may access the ICC Centenary Declaration on Dispute Prevention and Resolution **here.**
15 You may access GAR Guide to Regional Arbitration **here.**
16 Article 14 of the United Nations Framework Convention on Climate Change and Article 24 of the Paris Climate Agreement.

3. Conclusion

It is beyond doubt that 2023 started busy for the world of international arbitration. We see various updates on many fronts in early 2023. In addition to the legal developments mentioned above, on the technical side, many locally and internationally recognized arbitration institutions are updating their rules with a notable trend toward making arbitration a greener, more technology-integrated and diverse dispute resolution method. Furthermore, the statistics published by arbitral institutions shed light to some local and more global trends, with the ICC taking an inspiring step to establish its vision for the coming century.

Finally and as elaborated, national jurisprudence concerning international arbitration is continuing to develop around the globe. A notable common point of discussion appears to be merits review of arbitral awards by national courts due to public policy considerations. It is possible to say that there is no unified approach regarding in which cases public policy will allow such merits review, with different jurisdictions, or sometimes different courts within the same jurisdiction, adopting different views. We will continue to report on these issues as well as new developments in the world of international arbitration in the upcoming issues of Esin Arbitration Quarterly.

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Events Calendar

March 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 Arbitration Forum 2023: Turn to the East (RAA) Moscow, Russia Practical Tips for Navigating Cybersecurity & Data Privacy Issues in Arbitration (NYSBA) New York, US (Hybrid)	3	4
5	6 Recent Developments in International Arbitration (HKIAC) Central, Hong Kong	7	8 International Women's Day 2023: Embrace Equity (CIArb) United Kindom (Webinar)	9 11th ICC Brazilian Arbitration Day (ICC) Sao Paulo, Brazil 5th IBA French-Spanish Day (IBA) Madrid, Spain 16th Annual Arbitration Institute (ABA) New York, US Investment Arbitration 101: A Primer - 2023 (SIAC) Singapore	10	11
12 ICC Argentine Arbitration Day (ICC) Buenos Aires, Argentina	13	14	15	16	17	18
19	20	21	22 Dispute Resolution and SEPs - A Virtual Event (IAM) United Kingdom (Webinar)	23	24	25
26	27 7th ICC European Conference on International Arbitration (ICC) Paris, France	28	29 Arbitrating Renewable Energy Disputes, with a Special Focus on the CEE Region Paris, France	30 GAR Live: Construction Disputes 2023 (GAR Live) Paris, France GAR Awards 2023 (GAR) Paris, France	31	

Organized by: RAA NYSBA HKIAC CIArb ICC IBA ABA SIAC IAM PAW GAR

Events Calendar

April 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13 24th Annual IBA Arbitration Day (IBA) Lisbon, Portugal	14	15
16	17	18 1st ICC Tokyo Arbitration Day (ICC) Tokyo, Japan	19	20	21	22
23	24	25 Litigation Network Legal Update (ACC) US (Webinar)	26	27	28	29
30						

Organized by: IBA ICC ACC

Events Calendar

May 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3 Annual IBA Litigation Forum (IBA) Buenos Aires, Argentina	4	5	6
7	8	9	10 25th Annual Dispute Resolution Spring Conference Las Vegas, US	11	12	13
			ACC Asia-Pacific Annual Meeting 2023 (Lexology) Singapore		Vienna Arbitration Days 2023 (VIAC) Vienna, Austria	
14	15	16	17 GAR Live: BITs (GAR) London, UK	18	19	20
21	22	23	24	25	26	27
28	29	30	31 7th ICC Africa Conference on International Arbitration (ICC) Lagos, Nigeria			

Organized by: IBA ABA ACC VIAC GAR ICC

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