US Supreme Court: Judgment in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) – A few takeaways

Written by Mayela Celis, Maastricht University

In June 2025, the US Supreme Court delivered its opinion in Smith & Wesson Brands, Inc. et al. v. Estados Unidos Mexicanos (Mexico) 605 U.S. 280 (2025). The Opinion is available here. We have previously reported on this case here, here and here (on the hearing).

As previously indicated, this is a much-politicized case brought by Mexico against US gun manufacturers, alleging *inter alia* negligence, public nuisance and defective condition. The basic theory laid out was that defendants failed to exercise reasonable care to prevent the trafficking of guns to Mexico causing harm and grievances to this country. In this regard, the complaint focuses on aiding and abetting of gun manufacturers (rather than of independent commission).

In a brilliant judgment written by Justice Kagan, the Court ruled that PLCAA bars the lawsuit filed by Mexico. Accordingly, PLCAAS's predicate exception did not apply to this case.

This case has attracted wide media attention and a great number of amici curiae briefs was filed urging both reversal and affirmance or being neutral. Those urging reversal far outnumbered the other two categories, some of which were filed by Attorney Generals of numerous US states, American Constitutional Rights Union, American Free Enterprise Chamber of Commerce, Chamber of Commerce of the United States of America, Firearms Regulatory Accountability Coalition, Inc., National Association for Gun Rights, Inc., National Rifle Association of America, Product Liability Advisory Council, Second Amendment Foundation, Sen. Ted Cruz and others, Gun Owners of America, Inc., etc.

Primary holding

Held: *Because Mexico's complaint does not plausibly allege that the defendant gun manufacturers aided and abetted gun dealers' unlawful sales of firearms to Mexican traffickers, PLCAA bars the lawsuit.*

Main federal statutes applicable and case law cited

The Protection of Lawful Commerce in Arms Act (PLCAA), 119 Stat. 2095, 15 U. S. C. §§ 7901–7903

18 U. S. C. § 2(a) – Principals

Direct Sales Co. v. United States, 319 U. S. 703 (1943)

Twitter, Inc. v. Taamneh, 598 U. S. 471 (2023)

Rosemond v. United States, 572 U.S. 65 (2014)

United States v. Peoni, 100 F. 2d 401, 402 (CA2 1938)

For further information (incl. PLCAA's predicate exception), please refer to the previous post on the hearing, here.

A few takeaways from the judgment are the following:

Plausibility

The Court clarified that *plausibly* "does not mean 'probably,' but 'it asks for more than a sheer possibility that a defendant has acted unlawfully.'" And Mexico did not meet that threshold (p. 291). Indeed, the Court goes even further and speaks of mere speculation as regards some of Mexico's allegations (p. 296).

Aiding and Abetting

The Court stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand): "an aider and abettor must 'participate in' a crime 'as in something that he wishes to bring about' and 'seek by his action to make it succeed.'" The Court said that Mexico failed to properly plead this to the level required (p. 294).

Considering that Mexico based its claims on aiding and abetting liability, the Supreme Court begins by setting forth the three ancillary principles: 1) Citing *Twitter*, the Court notes that aiding and abetting is a rule of secondary liability for specific wrongful acts. In the case of a broad category of misconduct, the participation must be pervasive, systematic and culpable; 2) Aiding and abetting usually requires misfeasance rather than nonfeasance (such as failure to act or an omission when there is no independent duty to act); 3) Incidental activity is unlikely to count as aiding and abetting (p. 292).

In this regard, the Supreme Court ruled that Mexico's allegations only refer to nonfeasance (or indifference) (p. 297). The Court also noted that contrary to normal practice in this type of cases, Mexico does not pinpoint any specific criminal transactions that the defendants allegedly assisted. And at the same time, Mexico sets the bar very high by alleging that all manufacturers assist a number of identified rogue dealers in their illegal pursuits (p. 294).

Importantly, the Court noted that "Mexico never confronts that the manufacturers do not directly supply any dealers, bad-apple or otherwise." (p. 295) Indeed, they

supply to middleman distributors that are independent. It is the conduct of rogue dealers, two levels down, that causes Mexico's grievance and Mexico does not name them (there is only a reference to a Washington Post article, see our previous post).

A note to the reader: Mexico did identify a distributor in its complaint (Witmer Public Safety Group, Inc., which does business as Interstate Arms), however its complaint barely mentioned it, that is why the Court decided for simplicity's sake to focus only on manufacturers (see footnotes 1 and 4 of the judgment).

The Supreme Court also dismissed Mexico's allegations that the industry had failed to impose constraints on their distribution chains to reduce unlawful actions (*e.g.* bulk sales or sales from homes), which the court considers as "passive nonfeasance" in the light of *Twitter*. Nor were the allegations regarding the design and marketing decisions of guns accepted as these products may also appeal to law-abiding citizens.

History of PLCAA

The Court ends with some analysis of PLCAA's purpose and the kind of suits it intended to prevent. The Court concludes that Mexico's suit closely resembles those suits and if it were to fall in the predicate exception, it would swallow the entire rule.

Comments

At the outset, please note that the comments already made regarding the hearing of this case apply to a large extent to the final judgment.

The Supreme Court rendered a judgment that is clear, logical and addresses key matters of the litigation, without testing the troubled waters of proximate cause. In particular, it avoids departing from previous precedents such as *Direct Sales* and *Twitter*, which in my view set clear standards with regard to aiding and abetting liability. It also helpfully stated the requirements of aiding and abetting derived from criminal law (as coined by Learned Hand) and applicable to the case at hand.

During the hearing of this case, there was much uncertainty regarding the different federal statutes applicable, as well as the relationship between the

different actors in the distribution chain of weapons. None of that confusion is seen in this judgment, which is extremely clear and well-thought through.

As regards the liability of merchants and their products (as referred to in my previous post, such as baseball bats and knives), the Supreme Court helpfully clarified that: “So, for example, an “ordinary merchant[ ]” does not “become liable” for all criminal “misuse[s] of [his] goods,” even if he knows that in some fraction of cases misuse will occur. Twitter, 598 U. S., at 489; see id., at 499. The merchant becomes liable only if, beyond providing the good on the open market, he takes steps to “promote” the resulting crime and “make it his own.” United States v. Falcone, 109 F. 2d 579, 581 (CA2) (L. Hand, J.), aff’d, 311 U. S. 205 (1940).” (p. 292)

Justices Thomas and Jackson (coincidentally the two black justices of the Court, a conservative and a liberal justice, respectively) filed Concurrent Opinions, which blurs the line between the two camps. In my view, these Opinions are more restrictive than the majority decision and make it more difficult to file a suit, requiring an *earlier finding* of guilt or liability in an adjudication regarding the violation (Thomas) or making non-conclusory allegations about a *particular* statutory violation under PLCAA (Jackson). In my view, the majority decision does not require either.

In sum, the majority Opinion greatly clarifies this area of law. A positive development, amid the tumultuous docket of the Court in this era of great uncertainty.

Photo by Thinkstock on Freeimages.com

French Supreme Court upholds asymmetric jurisdiction clauses in Lastre follow-up

by Jean-Charles Jais, Guillaume Croisant, Canelle Etchegorry, and Alexia Kaztaridou (all Linklaters)

On 17 September 2025, the French *Cour de cassation* handed down its decision on the *Lastre* case. This followed a landmark preliminary ruling of February 2025 from the CJEU, which laid out the conditions for a valid asymmetric jurisdiction clause under article 25 of the Brussels I recast regulation.

Asymmetric jurisdiction clauses allow one party to initiate proceedings in multiple courts or any competent court, while the other party has fewer options or is restricted to a specific jurisdiction. Such clauses are common in financial agreements (read more in our previous blog post here).

In the latest development of the *Lastre* case in France, the French Supreme Court opted for a pro-contractual autonomy stance, favouring the validity of asymmetric jurisdiction clauses.

Background to the decision

A French company had entered into a contract for the supply of cladding panels for a construction project with an Italian supplier. The supplier's general terms and conditions provided for the jurisdiction of the Italian court of Brescia but reserved its right to proceed against the buyer before "another competent court in Italy or abroad".

Following defects in the works in late 2019, proceedings were initiated before French courts against all contractors, including the Italian supplier. The latter challenged the jurisdiction of the French courts, relying on the above-mentioned

jurisdiction clause.

Consistent with previous precedents, the French First Instance Court and Court of Appeals dismissed the objection. These courts found that the clause granted the Italian supplier discretionary authority to select jurisdiction, rendering it invalid due to its failure to satisfy the foreseeability criterion outlined in article 25 of the Brussels I recast regulation.

The case was further appealed before the French Supreme Court, which referred preliminary questions to the CJEU. In its preliminary ruling, the CJEU clarified that the validity of asymmetric clauses was to be assessed using autonomous criteria derived from article 25 of the Regulation and set out the conditions for such clauses to be valid.

A pragmatic application of the CJEU's three-fold approach to "any other competent court" clauses

In last week's ruling, the French Supreme Court sought to follow the CJEU's three-fold approach in examining the validity of asymmetric clauses and recalled that such clause must (i) designate courts competent under the Brussels I recast regulation and/or the Lugano Convention; (ii) identify sufficiently precise objective criteria to allow the court seized to determine its competence; and (iii) not conflict with special or exclusive jurisdiction rules set out in the Brussels I recast regulation or the Lugano Convention.

The French Supreme Court then held that the CJEU leaves it to national courts to interpret asymmetric clauses which allow one party to initiate proceedings before "any other competent court", in accordance with the principles of party autonomy and practical effectiveness (*effet utile*).

On this basis, the French Supreme Court concluded that, in a case where the contractual relationship has no objective connecting factor with non-EU and non-Lugano States (*i.e.*, third-party states), the jurisdiction clause designating "any other competent court" must be interpreted as referring to competent courts under the general rules of jurisdiction laid out in the Brussels I recast Regulation and the Lugano Convention. The clause thus complied with the first condition set by the CJEU, even if it did not expressly refer to these two instruments.

Accordingly, the French Supreme Court overturned the Court of Appeals' decision

and upheld the validity of the asymmetric jurisdiction clause.

Practical implications for asymmetric jurisdiction clauses

What does this ruling imply for parties wishing to rely or already relying on asymmetric jurisdiction clauses, particularly in cross-border contracts within the EU?

A more favourable treatment of asymmetric clauses

The French Supreme Court's *Lastre* decision illustrates the Court's pro-contractual autonomy approach to jurisdiction clauses. This will reassure parties seeking flexibility in drafting these clauses, particularly in light of certain earlier decisions which adopted a more cautious approach towards one-sided jurisdiction clauses.

The French Supreme Court's contractual autonomy stance also appears in three decisions issued on the same day.

In one case, the Court followed its *Lastre* reasoning and upheld a bank's clause granting exclusive jurisdiction to Luxembourg courts, while allowing the bank to bring proceedings at the client's domicile or "other competent courts".

In two other cases, the Court found that the clauses which designated a specific EU court and provided an objective criterion for determining the alternative jurisdiction available to one of the parties were sufficiently precise. These criteria were the location of the guarantor's assets (case no. 23-18.785) and one of the parties' registered office or that of its branch (case no. 23-16.150). This is in line with previous decisions validating asymmetric clauses, such as, for instance, the *eBizcuss decision*, which rely on objective criteria and generally supports the enforceability of asymmetric clauses.

Limitations for clauses with links to third-party states

While the French Supreme Court's decision is a positive development for legal certainty and party autonomy, limitations and uncertainties remain.

First, the clause reviewed in the *Lastre* case conferred jurisdiction to the courts of a *Member State* (Brescia, in Italy), while reserving the possibility for one party to start proceedings before "any other competent courts". As a result, the French

Supreme Court did not address the validity of clauses that would also include the possibility for one party or both of them to start proceedings before one or several third-party state court(s), such as London or New York, a common feature in finance and banking contracts. The position on this remains uncertain.

Second, the ruling reinforces the material risk, stemming from the CJEU's *Lastre* decision, that a clause designating "any competent court" could be deemed invalid where the contract has significant objective connecting factors with third-party states.

Third, the French Supreme Court's interpretation is not binding on the courts of third-party states. However, in the scenario considered by the court (where there are no objective connecting factors to a third-party state), it is unlikely that a court in, for example, London or New York would accept jurisdiction. It would probably decline to hear the case under its own private international law rules.

Finally, this judgement does not guarantee a harmonised EU approach. It remains to be seen whether other Member State courts will adopt the same interpretation.

Using Foreign Choice-of-Law Clauses to Avoid U.S. Law

Can private actors utilize choice-of-law clauses selecting the laws of a foreign country to avoid laws enacted by the United States? In this post, I argue that the answer is a qualified yes. I first examine situations where the U.S. laws in question are not mandatory. I then consider scenarios where these laws are mandatory. Finally, the post looks at whether private parties may rely on foreign forum selection clauses and foreign choice-of-law clauses—operating in tandem—to avoid U.S. law altogether.

Non-Mandatory Federal Laws

There are a handful of non-mandatory federal laws in the United States that may

be avoided by selecting foreign law to govern a contract. Contracting parties may, for example, opt out of the CISG by choosing the law of a nation that has not ratified it. (The list of non-ratifying nations includes the United Kingdom, India, Ireland, South Africa, and—maybe—Taiwan.) Contracting parties may also avoid some parts of the Federal Arbitration Act via a choice-of-law clause selecting the law of a foreign country.

Mandatory Federal Laws

Foreign choice-of-law clauses are sometimes deployed in an attempt to evade mandatory *state laws*. In these cases, the courts will generally apply Section 187 of the *Restatement (Second) of Conflict of Laws* to determine whether the choice-of-law clause should be given effect.

When a foreign choice-of-law clause is deployed in an attempt to avoid mandatory *federal laws,* the courts have taken a very different approach. In such cases, the courts will not apply Section 187 because state choice-of-law rules do not apply to federal statutes. Instead, the courts will typically look at the foreign choice-of-law clause, shrug, and apply the federal statute. A foreign choice-of-law clause—standing alone—cannot be used to avoid a mandatory rule contained in a federal statute. In such cases, the only question is whether the statute applies extraterritorially.

There is, however, an important exception. When the federal courts are applying federal common law—rather than a federal statute or a federal treaty—they will sometimes engage in a traditional choice-of-law analysis. They may look to Restatement (Second) of Conflict of Laws, for example, to determine whether it is appropriate to apply foreign law to the exclusion of federal common law in cases involving international transportation contracts or airplane crashes occurring outside the United States. When the case arises under federal maritime law—a species of federal common law—the courts will apply the test for determining whether a choice-of-law clause is enforceable articulated the Supreme Court in *Great Lakes Insurance SE v. Raiders Retreat Realty Company, LLC.* Even in maritime cases, however, a foreign choice-of-law clause will not be enforced when applying the chosen law would "contravene a controlling federal statute" or "conflict with an established federal maritime policy." This restriction means that, in practice, foreign choice-of-law clauses will rarely prove effective at avoiding mandatory federal laws even in the maritime context.

Finally, it is worth noting that U.S. courts generally will not apply the public laws of other countries due to the public law taboo. Even if a U.S. court were to conclude that a foreign choice-of-law clause was enforceable, that court is unlikely to apply the criminal, tax, antitrust, anti-discrimination, or securities laws of another nation.

Choice-of-Law Clauses + Forum Selection Clauses

Although mandatory federal laws cannot be evaded by foreign choice-of-law clauses in isolation, they may be avoided—at least sometimes—by adding a foreign forum selection clause to the agreement. If the defendant can persuade a U.S. court to enforce the forum selection clause, the question of whether the choice-of-law clause is enforceable will be decided by a court in a foreign country. In cases where the choice-of-law clause selects the law of that country, the chosen court is likely to enforce the clause regardless of whether enforcement will lead to the non-application of mandatory federal laws.

The U.S. Supreme Court, to its credit, has long been aware of the possibility that foreign forum selection clauses might be used as a backdoor way of enforcing foreign choice-of-law clauses. As early as 1985, it noted that "in the event the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue [federal] statutory remedies . . . we would have little hesitation in condemning the agreement as against public policy." The Court has never, however, held that a foreign forum selection clause was unenforceable for this reason.

The lower federal courts have been similarly chary of invalidating foreign forum selection clauses on this basis. In a series of cases involving Lloyd's of London in the 1990s, several circuit courts of appeal enforced English forum selection clauses notwithstanding the argument that this would lead to the enforcement of English choice-of-law clauses and, consequently, to the waiver of non-waivable rights conferred by federal securities laws. In each instance, the court held that no waiver of rights would occur because the securities laws of England offered protections that were equivalent to their U.S. counterparts.

In a similar line of cases involving cruise ship contracts, the Eleventh Circuit has enforced forum selection clauses choosing the courts of Italy even when it seems

clear that this will lead to the enforcement of Italian choice-of-law clauses and, ultimately, to the waiver of mandatory federal laws constraining the ability of cruise ships to limit their liability for their passengers' personal injury or death. The Second Circuit has also enforced an English forum selection clause over the plaintiff's objection, first, that the anti-discrimination laws of England were less protective than those in the United States, and, second, that the English court would apply English laws because the agreement contained an English choice-of-law clause.

Conclusion

If the goal is to evade mandatory federal laws in the United States, a foreign choice-of-law clause is not enough to get the job done. A foreign choice-of-law clause and a foreign forum selection clause operating in tandem, by contrast, stand a fair chance of realizing this goal. While the U.S. Supreme Court has stated that foreign forum selection clauses should not be enforced when this will lead to the waiver of non-waivable federal rights, the lower federal courts have been reluctant to find a waiver even in the face of compelling evidence that the foreign laws are less protective than federal laws enacted by Congress. The foreign forum selection clause, as it turns out, may the most powerful choice-of-law tool in the toolbox.

Civil Personal Status Law Litigation in the UAE – Between Lofty Ideals and Sour Realities

I. Introduction

It is not uncommon for scholars to debate whether private international law is needed as a distinct discipline, and whether it is truly indispensable. After all, could one not save the effort and complexity of applying foreign law by simply treating all cases as purely domestic? From a theoretical standpoint, the answer is yes, since no State is under an inherent obligation to apply foreign law. Yet, such an approach entails serious shortcomings, particularly when it comes to respecting vested or acquired rights, meeting the legitimate expectations of the parties, and fostering cross-border commerce. It follows that the costs of refusing to recognize and apply foreign law are far greater than the difficulties associated with maintaining a system of private international law. It is therefore unsurprising that private international law has established itself as a common language for managing the legal diversity inherent in transnational relations.

However, private international law is not uniform across jurisdictions. In some States, its operation may be severely constrained by the temptation to treat cases involving foreign elements as purely domestic. The situation becomes even more delicate when such an approach is not merely a matter of judicial practice but is elevated to explicit State policy. This is precisely the issue raised by the UAE's civil personal status legislations and related court practice, where the very *raison*

d'être of the new system appears to be the avoidance of the applying foreign law. Indeed, since the application of foreign law "in practice … could be costly, time consuming and complex", the lawmakers chose to (quasi) *substitute* it with a new system of civil personal status, described as "a better cultural fit for the expatriate community, particularly those who are non-Muslim." (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, p. 4).

This raises important questions about the balance between the "lofty ideals" that inspired the introduction of the civil personal status legislations and the "sour realities" of legitimate expectations being overlooked, or, at times, entirely disregarded.

II. Lofty Ideals …

In what can surely be considered an iconoclastic initiative in the region, the Emirate of Abu Dhabi introduced in 2021 a new system regulating civil marriage and its effects ("2021 ADCML") in parallel to the existing system of personal status based on and influenced by Islamic rules and principles (the 2024 Federal Decree Law No 41 on Personal Status ("2024 PSL"), which replaced the 2005 Federal Act on Personal Status as subsequently amended). The latter constitutes the *droit commun* (*lex generalis*), codifying various aspects of Islamic family law, whereas the former operated as a special law (*lex specialis*) entirely grounded in secular, non-religious values, most notably equality and non-discrimination between the parties regardless of gender, nationality, or religion; at least insofar as parties are non-Muslims, or if foreign Muslims, are nationals of countries that do not primarily apply Islamic sharia in matters of personal status (Article 5 of the 2022 Procedural regulation concerning the Marriage and Civil Divorce Procedures in the Emirate of Abu Dhabi). The system was later extended to the entire federation through the adoption in 2022 of Federal Decree-Law No. 41 on Civil Personal Status) ("2022 CPSL"), with the notable difference that the 2022 CPSL is strictly limited to non-Muslims, whether UEA citizens or foreigners (Article 1 of the 2022 CPSL; for a comparison between the two legislations, see my comments here).

The newly introduced system has been praised as one that "acknowledges the

complexities of [the UAE's] global population", provides " a comprehensive legal framework addressing family law matters through a lens of inclusivity and equality", and "[w]hile maintaining respect for cultural sensitivities", "embrace[s] principles long associated with international human rights and progressive family law: gender and parental equality, the imposition of greater financial consequence and obligation in divorce and the prioritisation of children's welfare" (Byron James, United Arab Emirates: Family Law).

Indeed, as explicitly stated in Article 2 of the 2021 ADCML, the system aims to "provide a flexible and elaborate judicial mechanism for resolving family disputes" that is "in line with international best practices," and which guarantees litigants "to be subject to an internationally recognised law that is close to them in terms of culture, customs and language." The law also seeks to "consolidate the Emirate's position and global competitiveness as one of the most attractive destinations for human talent and skills." These ideals are reflected, *inter alia*, in article 16 of the 2021 ADCML, echoed by Article 4 of the 2022 CPSL, concerning "equality between men and women as to rights and duties" in matters of testimony evidence, inheritance, right to request (unilateral) no-fault divorce and joint custody.

In a nutshell, the newly adopted legislations, which are "specifically designed to assist the expatriate community", strive to provide "tourists and residents" a "simple", "effective" "modern and flexible judicial mechanism" regulating their family relationships in the UAE "in accordance with civil principles as opposed to religious principles" and "protect the rights of all individuals by providing family law principles that are in line with best international practices as well as an accessible and straightforward judicial process" (Abu Dhabi Judicial Department, *Civil Marriage Law and Its Effect in the Emirate of Abu Dhabi (Q & A)*, 1st ed. 2023, pp. 3, 5).

III. … Sour Realities

1) Regarding the avoidance of applying foreign law

As I noted in earlier posts (see here and here), doubts remain as to whether relying almost entirely on a substantive law approach that is based on the direct

application of the civil personal status legislations in disputes involving foreign elements can truly achieve the objectives of the newly introduced family law system.

In practice, this approach risks being disruptive, undermining the ideals of private international law, namely decisional harmony and respect for the parties' legitimate expectations, regardless of how well-crafted the applicable substantive law may be. Under the new framework, it is often enough for judges to assume jurisdiction on tenuous grounds (see my comments here) for the civil personal status legislations to be applied almost automatically. It makes no difference whether, under the parties' *lex patriae* or the law normally applicable according to UAE choice of law rules (the *lex loci celebrationis* according to article 13 of the 1985 Federal Act on Civil Transactions), divorce is not permitted (as in the Philippines or certain Christian communities in the Middle East), or whether divorce would not be recognized unless the parties' personal law were applied (as in India).

It is true that under the federal law (though not in Abu Dhabi, as the wording of the law suggests), either party may request the application of their own law (Article 1 of the 2022 CPSL, on this provision see my comments here). In practice, however, this mechanism has rarely proved effective, as courts not only treat foreign law as a matter of fact whose content must be established by the party invoking it, but also impose onerous requirements, rendering the application of foreign law almost illusory (see my comments here).

2) Regarding the subsidiary application of the general law based on Islamic Sharia

The lofty ideals of the newly introduced civil personal status legislations also fade when the legal issue to be addressed is not covered by them. In such cases, the matter has to be governed by "the laws and legislation in force in the State" (Article 15 of the 2022 CPSL). In other words, the legal issue falls back on the general law of personal status (the 2024 PSL), which is based – as explained above – on Islamic rules and principles. This creates an extremely intricate situation: while the very purpose of the civil personal status law is to prevent non-Muslims from being subjected to the local Sharia-based legislation, and instead to

provide them with a "an internationally recognised law that is close to them in terms of culture, customs and language" (Article 2 of the 2021 ADCML), certain matters nonetheless remain governed by the local legislation in its subsidiary application.

The question of is guardianship (*wilaya*) provides a quintessential example. The civil personal status legislation regulates only custody (*hadhana*) but says nothing about guardianship (*wilaya*). In the absence of relevant rules, UAE judges turn to the general personal status law (the 2024 PSL) to fill the gap. The problem, however, is that under this law – which reflects Islamic law principles – guardianship (*wilaya*) is mainly the father's prerogative. As a result, the combined application of the civil personal status law and the general personal status law often leads UAE judges to grant joint custody (*hadhana mushtarika*) to both parents under the civil personal status laws, while conferring sole guardianship (*wilaya*) over the person and property of the child to the father in application of the general personal status law.

Again, these provisions apply automatically, irrespective of the parties' *lex patriae* or the law normally applicable according to UAE choice-of-law rules.

IV. Reactions Abroad

The experience of many litigants, mainly wives, with civil personal status litigation in the UAE has left them with bitter memories, as the lofty ideals of the newly adopted legislations did not meet their legitimate expectations. This is particularly true when their efforts to invoke and apply their national law, permitted in principle under Article 1 of the 2022 CPSL, proved futile for the reasons mentioned above (III(1)). Many have shared their stories on social media, including dedicated Facebook accounts. Recently, local media such as newspaper articles or radio podcasts have begun to shed light on the practice of civil personal status litigation in the UAE, drawing attention to the negative aspects of litigating personal status disputes in the UAE. For instance, a recent article published in the French newspaper *Le Parisien*, titled " *Dubaï, nouvel eldorado des divorces express* (Dubai, the new haven for first-track divorces)" describes the experiences and hardships of several women who went through such proceedings. Similar reports have also been broadcasted on radio programs

in France and Switzerland. More importantly, the phenomenon risks taking a political turn, as the question of the application of civil personal status law and the protection of the rights of French citizens in the UAE has been formally brought to the attention of the French authorities through a parliamentary question addressed to the Government by a member of the Senate, concerning international divorce proceedings in the UAE involving French couples.

Last but not least, reactions from some European courts were not long in coming: they have refused to recognize divorces issued in the UAE under the civil personal status legislation on the grounds of procedural irregularities (see Alejandra Esmoris, Recognition of Abu Dhabi divorce ruling in Switzerland: Case Law Analysis). Similar reactions are likely to multiply as more parties voice dissatisfaction with the system, particularly when its operation fails to meet the procedural guarantees and substantive safeguards expected under the standards of their personal (European) law. For instance, the *Le Parisien* article mentioned above, refers to petition filed in France by a French lawyer to bar the recognition of a Dubai court's divorce decision rendered in application of the 2022 CPSL. This trend may signal the beginning of broader scrutiny, and perhaps resistance, to the recognition of judgments rendered under the UAE's civil personal status framework.

V. Way forward

Several measures are needed to improve the current situation, the most important of which are a reconsideration of the role that private international law can play and the facilitation of the application of foreign law.

In addition, other procedural aspects require attention. These include the overly broad grounds for taking international jurisdiction, the complete disregard of parallel proceedings (see example, Abu Dhabi Civil Family Court, Judgment No. 86/2024 of 17 May 2024), the refusal to recognize foreign judgments and decrees unless they are first declared enforceable (see my comment here), and the practice of indiscriminately serving notifications via SMS in Arabic without English translation. The way cases are conducted online as reported in the abovementioned *Le Parisien* article (which described a party being represented

by her lawyer while seated in her car with her seatbelt on, during a trial conducted by a judge who had not turned on his camera) also raises concerns. Unless such issues are addressed, judgments rendered under the civil personal status legislations will continue to face denial of recognition and enforcement abroad (see Esmoris, *op. cit.*).

2025 New Chinese Arbitration Law: Improvements Made and To Be Further Made

(This post is written by Dr. Chen Zhi who is an Attorney at Zhiheng Law Firm Guangzhou Office, PRC).

I. Introduction

On September 12, 2025, the newly revised Arbitration Law (hereinafter New Arbitration Law) of the People's Republic of China (hereinafter "PRC") was adopted by the Standing Committee of the National People's Congress (hereinafter as "SCNPC") with the subsequent promulgation by the President of PRC, and will take effect on March 1, 2026. The New Arbitration Law features novelties such as the introduction of "arbitration seat", limited liberalization of *ad hoc* arbitration, enshrining online arbitration, a higher threshold for eligibility of arbitrator, and a shorter duration for applying for annulment of arbitral award from six months to three months. Nonetheless, some articles of the New Law leave room for further discussion. This article combs through the history of revision, delves into the highlights and remaining gaps of the New Arbitration Law, and provides insights into its significance for the development of commercial arbitration in Mainland China from the perspective of an arbitration practitioner in Mainland China.

II. A Snapshot of The Revision History

Since the enactment of the Arbitration Law in 1995, commercial arbitration in Mainland China has undergone overwhelming development from a blank slate to a non-ignorable hub in the arena of international arbitration. Nonetheless, for nearly three decades, the PRC Arbitration Law itself was left largely untouched, receiving only minor revisions to keep pace with other legislation in 2009 and 2017 (hereinafter collectively as the Old Arbitration Law).

On 30 July, 2021, a Draft Amendment to the Arbitration Law (hereinafter as 2021 Draft) released by the Ministry of Justice sparks the overhaul of arbitration legal framework, making it more in line with the common practice in international commercial arbitration such as the UNCITRAL Model Law by embedding competence-competence principle, tribunal's power over interim relief, extension of arbitration agreements, etc., while a long-term silence emerged in the subsequent three years with no further official documents.

However, the first amendment draft issued on 4 November 2024 (hereinafter as 1st Draft) by SCNPC had given rise to controversies and generated criticism, as many of the novelties and reformative features aligning Chinese arbitration with the international standards as set out in the 2021 version were removed, including the abovementioned two articles concerning the non-signatory issues.

The 1st Draft gave rise to strong criticisms from the circles of research and practice[i]. Nonetheless, some articles concerning foreign-related arbitration, *inter alia*, auxiliary proceedings for *ad hoc* arbitration by the court of the seat were retained.

On 1st May, 2025, the Second Draft Amendment (hereinafter as 2nd Draft) was issued, even though one of the most controversial proposed clauses was removed, inter alia, Art. 23 (3) in the 1st Draft, endowing the administrative bureau with the power to fine arbitration institutions, the conservative stance remained unchanged. After that, the New Arbitration Law was enacted in mid-September of 2025 with minor revisions compared to the 2nd Draft.

As there have been plenty of comments making comparisons between the New Arbitration Law and the former version of the Arbitration Law, with a myriad of appreciations[ii], this article brings into focus the substantial differences between

the adopted version and the working drafts to offer a more neutral and objective comment.

III. Revisions Concerning Arbitration Agreement: Breakthroughs and Limits

1. Revisions on the Formality and Substance of the Arbitration Agreement

Generally, the New Law retains the written-form requirement and the parties shall fix an arbitral institution. In case of any ambiguity about the arbitration institution, the parties shall reach a supplementary agreement subsequently, failing which the arbitration agreement will be rendered null and void as stipulated in Article 27 (1) and Article 29 of the New Arbitration Law. This promulgation is identical to that in the Old Arbitration Law[iii].

However, there are two novelties as to the arbitration agreement:

First, there is the implied consent to arbitrate by conduct *as per* Article 27 (2) of the New Arbitration Law, where the implied consent can be deemed to be reached if: (1) one party pleads the existence of an arbitration agreement when filing the Request of Arbitration; (2) the other party fails to object the existence of arbitration agreement before the first hearing on merits; (3) the silence is recorded in writing after express notice by the tribunal. The provision is in line with arbitral practice that tribunals routinely inquire parties' opinions on the jurisdiction and record via the minutes of hearing, while it is nuanced with the conduct-based estoppel as set out in Article 7 Section (5) (option I) of the 2006 UNCITRAL Model Law on International Commercial Arbitration[iv](hereinafter as UNCITRAL Model Law) where the implied consent is reached through exchange of statements of claim and defence, in other words, there will be no implied consent to arbitrate under Article 27 (2) in document-only hearing. The New Arbitration Law also sets up a higher threshold for implied consent by adding to the tribunal's obligation to notice and record, which is not found in the corresponding part of the 1st Draft.

Second, the recognition of *ad hoc* arbitration to a limited extent. Under the new law, *ad hoc* arbitration is permitted only for:(i) foreign-related maritime disputes; or(ii) foreign-related commercial disputes between enterprises registered in the

Pilot Free Trade Zone permitted by the PRC State Council, Hainan Free Trade Port or other districts permitted by relevant regulations. This scope is therefore drastically narrower than the promulgation in the 2021 Draft and the 1st Draft, which allowed for *ad hoc* arbitration in "foreign-related cases"[v]. Moreover, arbitrators of *ad hoc* proceedings must satisfy the statutory qualification requirements applicable to institutional arbitrators, superseding the looser requirement for "arbitrators engaging in foreign-related arbitration" as set out in the 1st Draft[vi].

Crucially, the New Law deletes the seat court's power to assist arbitration through the appointment of an arbitrator when the parties to *ad hoc* arbitration fail to agree upon the constitution of the tribunal (Art. 92 of the 1st Draft), and the deposit of the award by *ad hoc* tribunal (Art. 93 of the 1st Draft). Instead, the New Arbitration Law only stipulates that the tribunal must file a notice with the China Arbitration Association (which is yet to be established) within three working days upon its constitution. With the auxiliary role of the judiciary being vastly weakened, without the icebreaking function of the judiciary, the *ad hoc* proceedings will confront a grave challenge while deadlock arises, in particular where the parties are uncooperative as to the designation of arbitrators.

2. Introduction of the Arbitral Seat

For the first time, the New Arbitration Law defines the "seat" (???) to ascertain the "legal gravity" of the award, where the law governs the arbitration proceedings and the court possesses the power of supervision over the arbitration. A three-stage test is advanced in the ascertainment of the seat of arbitration: (i) party agreement; (ii) failing which, the arbitration rules; (iii) in the absence of such rules, the tribunal's determination. This sequencing aligns with international common practice as well as the courts' repeated judicial practice in Mainland China[vii].

Because courts' powers to assist with *ad hoc* arbitration have been repealed, the seat court's functions are largely confined to post-award judicial review. Also, the conflict-of-law rule that would have subjected the validity of the arbitration agreement to the law of the seat Art. 21) was also eliminated. Given that Art. 18 of the Law on the Application of Laws to Foreign-Related Civil Relations 2011 already provides an identical choice-of-law formula, the deletion avoids

redundancy and potential inconsistency.

3. Determination of Jurisdiction and the Chinese Style Competence-competence

The New Arbitration Law reinstates the separability doctrine of arbitration agreement from the matrix contract, adding up that the non-conclusion, ineffectiveness or rescind of main contract are not detrimental to the effectiveness of arbitration clause incorporated therein.

Art. 31 of the New Arbitration Law empowers the tribunal or the arbitration institution to rule on its own jurisdiction "upon the request of a party". This is considered the incorporation of competence-competence in statute by some commentators[viii]. However, Art. 31 is materially different from the competence-competence as set out in Art. 16 (3) of the Model Law, which only allows for the parties to resort to the court after the decision rendered by the tribunal, also promulgation of the New Arbitration Law fails to ensure"negative effect" of competence-competence which requires a *prima facie* review over the arbitration agreement by state court in pre-award stage, which is well established in jurisdictions like Singapore[ix], France[x], the UK[xi], and Hong Kong SAR[xii]. Under the New Arbitration Law, the court's priority regarding the decision on arbitral jurisdiction in most circumstances remains unchanged[xiii]. As per some commentators, this may give rise to problems such as the violation of the "minimal intervention principle"[xiv]. Therefore, Art. 31 of the New Arbitration Law is at best a Chinese-style competence-competence.

Overall, unlike the liberal approach in the 2021 Draft and the 1st Draft, the New Arbitration Law takes a more conservative stance, leaving room for further perfection. Nonetheless, there are some laudable novelties concerning arbitration agreements in integrating the well-settled arbitration practice (including the common practice by the judiciary) during the past 30 years.

IV. Revisions Concerning Arbitration Proceedings and Judicial Review

The New Arbitration Law makes minor revisions as to the conduct of arbitration proceedings and judicial review over the arbitral award, compared with the parts of the arbitration agreement. There are several aspects to be delved into below:

1. Novelties Concerning Arbitration Proceedings and Judicial Review

1.1. The Recognition of Online Arbitration

Art. 11 of the New Arbitration Law explicitly states that arbitration can be handled through electronic means, hence the virtual hearings , electronic delivery of files, and other relevant conduct online are put on the same footing as their physical equivalents, unless the parties have otherwise agreed. The opt-out model for online arbitration aligns the statute with the technical development in internet-era, ensuring the efficiency of commercial arbitration.

1.2. Separated Standard for Proper Notice in Arbitration

Article 41 of the New Arbitration Law clarifies that the proper notice issue in arbitration is subject to the parties' agreement or the applicable arbitration rules, rather than rules for service in civil litigation, this article has integrated Article 14 of the 2018 *Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases Regarding Enforcement of Arbitral Awards by the People's Courts* and can be extended to proceedings of setting aside. This ensures the confidentiality, efficiency and flexibility of proper notice in arbitration.

1.3 Stringent Rules for Qualification and Disclosure of Arbitrator

Articles 14 and 43 of the New Arbitration Law refine the appointment of the presiding or sole arbitrator: the parties may agree that the two co-arbitrators nominate the presiding arbitrator, failing which the presiding arbitrator or sole arbitrator must be appointed by the director of the arbitration institution "*in accordance with the procedure laid down in the arbitration rules*" instead of the mere discretion of the director, this provides more transparency in appointment of arbitrators.

Moreover, the New Arbitration Law also introduces a continuing obligation of disclosure by arbitrators where there is any circumstance that is likely to give rise to justifiable doubts, which builds up arbitrators' ongoing statutory duty of disclosure in the ascertainment of the arbitrator's impartiality and neutrality to ensure the integrity of arbitration proceedings[xv]. While the legislature cannot exhaust all circumstances, detailed guidance from institutions and practitioners—such as the three color lists provided by the IBA Guidelines on Conflicts of Interest in International Arbitrations—is required for more legal certainty.

Art. 22 of the New Arbitration Law succeeded the high condition for a qualified arbitrator to be listed in the roster of an institution, which is traditionally summarized as "three eight-year working experiences, two senior titles" (????)[xvi]. The New Arbitration Law provides more draconian requirements, *i.e.*, the limits and prohibitions on civil servants being qualified as part-time arbitrators[xvii], and the mandatory removal of arbitrators from the roster while they are disqualified from certain certificates (i.e., disqualified from being a lawyer due to a criminal offence)[xviii]. This high threshold is applicable to *ad hoc* arbitration with foreign-related factors. The high threshold is set up for fairness and integrity of arbitration, while whether the state's deep involvement in a gatekeeping role is more appropriate than the choice by the market-reputation is open to debate.

1.4. Shortening Time Limit for Application Setting Aside

For post-award judicial review, the time limit to apply for annulment is cut from six months upon the receipt of the award to three, bringing the law in line with international common practice like Article 34 (3) of the UNCITRAL Model Law. This warrants the finality of awards.

2. **Regulations That Remain Unchanged**

Many comments stress that the New Law adds pre-arbitral preservation and conduct preservation[xix], but from the author's perspective, these merely fill the loophole by aligning the statute with the Civil Procedural Law revised in 2012, which is not so notable. Article 43 of the 2021 Draft, which empowered both the court and tribunal to order interim relief in arbitration (two-tier system), is removed, leaving Mainland China among the few jurisdictions where arbitrators cannot issue interim measures (one-tier system). while this is to some extent compatible with the arbitration practice in Mainland China, which shall not be criticized heavily for the following reasons:

First, Chinese courts are likely to employ relatively lower threshold for granting asset preservation, which is always confined to a preliminary review on the formalities (i.e., whether there is a letter by the arbitration institution, or guarantee letter issued by competent insurance companies), instead of a review on merits concerning the risk of irreparable harm, proportionality, and urgency rate like the tribunal in international commercial arbitration seated outside

Mainland China[xx]. Hence, the lower standard for issuance of interim relief by courts in Mainland China ensures the efficiency and enforceability of interim relief and may overall meet the requirements of parties.

Second, the two-tier system for issuance of interim relief may give rise to problems concerning the conflict of powers, as per the decision of the Gerald Metals case[xxi] by the High Court of England and Wales, courts can only grant interim relief while the power of the tribunal is inadequate. Hence, the one-tier system may be more suitable for common practice in Mainland China, as courts are more preferable for their efficiency and enforcement in granting asset preservation.

Last but not least, some commentators disagree with the author's opinion for the reason that the lower standard is only applicable to asset preservation, while not applicable to other types of judicial preservation where the thresholds are relatively higher, and the tribunal shall be empowered to issue interim relief for recognition of the interim order outside Mailand China[xxii]. Nonetheless, the author disagrees with this position, as per the author's experience, in most arbitration cases, asset preservation is the only concern of parties; preservation of evidence and preservation of conduct are rarely seen. Also, the enforcement of interim relief outside Mainland China is insufficient to justify the tribunal's power over interim relief, for whether such relief is enforceable depends heavily on the law where the enforcement is sought, instead of the law where the order is rendered, see Art. 17 H (1) of the UNCITRAL Model Law: "An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article".

Other unchanged parts concerning arbitration proceedings and judicial review are not preferred, i.e., the high threshold for document-only hearing that only by the parties explicit agreement, the tribunal is not liable to conduct a hearing on evidence (unlike the UNCITRAL Arbitration Rule, which provides that a hearing shall be conducted at the request of one party). The evidence adduced shall be presented in the hearing for the comment by other parties ????, while the comment on evidence by exchange of written submissions, which has been widely used in arbitration practice, has been omitted, producing uncertainty for the efficiency and flexibility of arbitration. Also, the statutory limbs for annulment of

arbitral award remain untouched, that the concealment of evidence or forgoing evidence may lead to the annulment of the award, which opens the door for review on the merits of the arbitral award, incompatible with the minimal intervention.

V. Other Changes in the New Arbitration Law

The New Arbitration Law makes notable adjustments to the terminology of arbitral institutions. It replaces the former term "arbitration commission" with "arbitral institution" across the board, clarifies that no hierarchy exists among different institutions, and expressly defines their legal nature as "non-profit legal persons" as per Art. 13 (2) of the New Arbitration Law, which keeps the arbitration institution's independence from governmental institutions and avoids administrative intervention. In Art. 86, it also encourages domestic institutions to expand overseas and allows foreign institutions to operate within China on a limited basis. This reflects the ruling party's enthusiasm for improving the arbitration system and establishing world-class arbitration institutions, as revealed in the Resolution by the 20th Central Committee of the Communist Party of China in its third plenary session dated 18 July 2024.[xxiii]

As for the long-delayed and yet to be founded China Arbitration Association, the New Law once again underscores its role in supervision of arbitration institutions across the country, however, whether this will accelerate its establishment remains to be seen.

VI. Conclusion

In short, while the New Law runs substantially longer than the Old Arbitration Law, its substantive changes fall short of the 2021 Draft and even the 1st Draft, taking "two steps forward and one step back." Yet many of its revisions merit praise: they consolidate three decades of innovation in Chinese arbitration practice and should help advance both the arbitration sector and the broader rule-of-law business environment. Through a skyrocket development in the past 30 years, Mainland China has been a non-negligible hub for commercial arbitration, with collectively 285 institutions, 60,000 listed arbitrators by 31 July 2025, and 4,373 foreign-related arbitrations being handled by Chinese institutions in 2024[xxiv], the revision of Arbitration Law worthy more in-depth discussion.

[i] Zhong, Li , *Dissecting the 2024 Draft Amendment to the PRC Arbitration Law: A Stride Forward or a Step Back?*, available at https://arbitrationblog.kluwerarbitration.com/2024/12/03/dissecting-the-2024-draft-amendment-to-the-prc-arbitration-law-a-stride-forward-or-a-step-back/, last visited on 19 September, 2025.

[ii] See i.e., Mingchao Fan, *An Unexclusive Comparative Analysis of the New Chinese Arbitration Law and the English Arbitration Act 2025*, available at Shanghai Arbitration Commission, https://mp.weixin.qq.com/s/l-Q0HUEoAdJ09H8AkkjgnQ, See also Juanming He, *A Quick Comment on 2025 Arbitration Law with 10 Thousand Words: Walking Steadily with Promising Future* (?????????2025???——??????????), available at https://mp.weixin.qq.com/s/lUPUysV1bAfUHjGhP4DS0Q , last visited on 19 September, 2025.

[iii]That includes:"(a) an expression of the parties' intention to submit their dispute to arbitration; (b) the matters to be submitted for arbitration; and (c) the parties' chosen 'arbitration commission' which is generally recognized as the equivalent of an 'arbitral institution'." See Art. 16 of the Old Arbitration Law, see also Art. 27 (1) of the New Arbitration with only one minor revision (replacing arbitration commission with arbitration institution)

[iv](5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

[v] Art. 91 of the 1st Draft: "Parties to commercial disputes with foreign-related factors may either refer the dispute to agreed arbitration, or submit to an *ad hoc* arbitral tribunal agreed upon by the parties. Ad Hoc arbitration commences upon the date when the respondent receives the request for arbitration by the claimant. In the event the seat is absent or ambiguous, the tribunal may decide on the place of arbitration base on circumstances of specific case."(Original text: "??")

[vi] Article 88 of the 1st Draft: "Professionals who are specialized in law,

arbitration, economy and trade, scientific technology can be designated to be arbitrators in foreign-related arbitrations." (Original text: "??")

[vii] Gao Xiaoli: *positive practice of Chinese courts in recognizing and enforcing foreign arbitral awards*, available at https://cicc.court.gov.cn/html/1/219/199/203/805.html, last visited on 19 September, 2025

[viii] See *i.e.* Author Dong, Chen, Yuwai, *Comments on the Highlights, Expectation and Outlook* ??????????<???>?????????????, available at https://mp.weixin.qq.com/s/nl4R_V77AS0c_P88hXIoAw, last visited on 19 September, 2025.

[ix] Tomolugen Holdings Ltd and Another v. Silica Investors Ltd and other appeals [2015] SGCA 57.

[x] See Société Coprodag et autre c Dame Bohin, Cour de Cassation, 10 May 1995 (1995?, *cf.* Nadja Erk-Kubat, Parallel Proceedings in International Arbitration: A Comparative European Perspective, (Netherlands: Kluwer Law International, 2014), p.39.

[xi] Joint Stock Company 'Aeroflot-Russian Airlines v. Berezovsky & Ors [2013] EWCA Civ 784.

[xii] Private Company "Triple V" Inc v. Star (Universal) Co Ltd & Another [1995] 2 HKLR 62.

[xiii] See i.e. Article 3 of Reply of the SPC on the Confirmation of the Validity of Arbitration Agreements, which states that: "1. If one party requests the arbitration institution to confirm the validity of the arbitration agreement while the other party requests the people's court to declare the arbitration agreement invalid, the people's court shall reject the party's request provided that the arbitration institution has already ruled on the validity of the arbitration agreement. 2. If the arbitration institution has not yet made a ruling, the people's court shall accept the request and order the arbitration institution to terminate the arbitration." *Cf*. Fu, Panfeng, *The Doctrine of Kompetenz-Kompetenz A Sino-French Comparative Perspective*: Hong Kong Law Journal, Vol. 52 Part 1 (2022), p. 276.

[xiv] See Xie, Xiaosong, *Reform of Arbitration System from The Len of New Arbitration Law: Highlights and Shortcomings*? ????????????????????? available at https://mp.weixin.qq.com/s/1PWooLr9unRoBfs7nfys9Q, last visited on 19 September 2025

[xv] Art. 45 of the New Arbitration Law: ”Where any circumstance exists that may give rise to justifiable doubts as to an arbitrator’s impartiality or independence, the arbitrator shall, without delay, disclose such circumstance in writing to the arbitral institution.” (Original text:??”)

[xvi]These conditions are:“(1) engaged in arbitration work for (at least) eight years;(2) practiced as a lawyer for (at least) eight years;(3) served as a judge for (at least) eight years;(4) been involved in legal research or law teaching as well as holding a senior academic title; or(5) been professionally involved in economic and trade matters, and also possess an understanding of the law as well as having a senior academic title or its specialized equivalent.” Lu, Song, *National Report for China (2020 through 2024)*, in Lise Bosman (ed), ICCA International Handbook on Commercial, Kluwer Law International 2023, p. 14. It is also notable that “three eight-year working experiences, two senior titles” applies only to nationals domiciled in Mainland China, persons with identities of foreign country or Hong Kong, Macao, Taiwan are generally not subject to it.

[xvii] Art. 22 (2) of the New Arbitration Law: ”Where laws like the Supervisory Officials Law, the Judges Law or the Public Prosecutors Law of the People’s Republic of China provide that the relevant public officials may not concurrently serve as arbitrators, those provisions shall prevail; any other public official who wishes to serve simultaneously as an arbitrator shall comply with the applicable regulations” (Original text: “??”)

[xviii] Art. 23 (2) of the New Arbitration Law : “Arbitrators who are disqualified from civil servant, lawyer’s license or senior titles, or the occurrences of other circumstances that deprive him of condition for arbitrator, shall be removed from the roster of institution ” (Original text:“??”)

[xix] See *i.e*. Author Dong, Chen, Yuwai, *Comments on the Highlights, Expectation and Outlook* ??????????<???>?????????????, available at https://mp.weixin.qq.com/s/nl4R_V77AS0c_P88hXIoAw, last visited on 19 September, 2025.

[xx] Stephen Benz, *Strengthening Interim Measures in International Arbitration*, Georgetown Journal of International Law, Vol. 50, 2018, p. 147.

[xxi] Gerald Metals v. Timis and ors, [2016] EWHC 2327(Ch), para. 8 (Accordingly, it is only in cases where those powers, as well as the powers of a tribunal constituted in the ordinary way, are inadequate, or where the practical ability is lacking to exercise those powers, that the court may act under section 44.)

[xxii] See Xie, Xiaosong, *Reform of Arbitration System from The Len of New Arbitration Law: Highlights and Shortcomings* (??????????????????????), available at https://mp.weixin.qq.com/s/1PWooLr9unRoBfs7nfys9Q, last visited on 19 September, 2025.

[xxiii] Resolution of the Central Committee of the Communist Party of China on Further Deepening Reform Comprehensively to Advance Chinese Modernization, available at https://www.chinadaily.com.cn/a/202407/22/WS669db327a31095c51c50f2f8.html, last visited on 20 September, 2025.

[xxiv] The statistic is drawn from the conference concerning foreign-related arbitration hosted by Ministry of Justice on 31 July, 2025, available at https://www.moj.gov.cn/pub/sfbgw/fzgz/fzgzggflfwx/fzgzggflfw/202409/t20240910_505751.html, last visited on 20 September, 2025.

Major amendment to Chinese

Arbitration Act after three decades

This guest post is written by Jie Zheng, Assistant Professor & Research Fellow, Shanghai University of Finance and Economics

On 12th September 2025, the 17th session of the Standing Committee of the 14th National People's Congress passed the Amendment to the Arbitration Law of the People's Republic of China (hereinafter "Chinese Arbitration Act") to be effective from 1st March 2026[1], which was first adopted in 1994. Since its adoption, China has undergone enormous economic reforms and a more urgent need to align the legislation with international arbitration practices. There were only two minor revisions in 2009 and 2017 to fix technical inconsistencies with other procedural laws. In July 2021, the Ministry of Justice of China released a Draft Revision of the Arbitration Law for public consultation. [2] This was the first comprehensive reform since 1994. The draft was reviewed by the Sanding Committee of the National People's Congress three times.

The first draft was reviewed by the Standing Committee of the NPC in November 2024, covering legal aspects of foreign-related arbitration reforms, improvement of the international reputation of Chinese arbitration, streamlining of procedure rules, and arbitration institutional reforms.[3] The second draft was reviewed in April 2025, focusing on the internal governance of arbitration institutions and the judicial support and review of arbitration.[4] The third draft review was completed on 12th September 2025 (the latest Amendment), adding rules on online arbitration and interim measures in the pre-arbitration stage, ensuring the investigation powers of the arbitral tribunal, and expanding the scope of *ad hoc* arbitration as outlined in the previous draft.[5]

I. The urgent necessity of the amendment to the Chinese Arbitration Act

The current Chinese Arbitration Act has been effective since 1995. Back then, there were a few arbitration institutions, among which, CIETAC, CMAC are the most famous ones. According to the statistics, by August 2025, there are currently 285 arbitration institutions in China, taking over cases of parties from more than 100 nations or regions, involving financial disputes, e-commerce disputes, construction disputes, maritime disputes, intellectual property disputes, etc. [6]

Facing the global economic recession and anti-globalization trend, China has furthered its opening-up policies, including the initiation of its Belt and Road projects for foreign investment, establishing free trade zones and free trade ports to test advanced trade policies to be in alignment with the global trade practices. The amendment of the Chinese Arbitration Act is one of the necessary legislative reforms to promote the use of arbitration in international commercial disputes and enhance the attractiveness of foreign investment in China. The latest Amendment intends to serve for a high-quality and advanced level of opening-up, and create a business attractive environment to settle economic disputes. It includes Chinese characteristic features, together with foreign-related arbitration rules compatible with international practices.

II. Major aspects of the latest Amendment to the Chinese Arbitration Act

- Arbitration institutional reforms

Legal nature of the arbitration institution in China

The term “arbitration institution” is applied to replace the old term “arbitration commission”. This shows the understanding of Chinese legislators towards the nature of arbitration institutions. The wording “arbitration commission” represented an administrative and bureaucratic feature, as they were established by the local government and business associations. Now, it is clearly stipulated in Article 13 of the amendment that arbitration institutions are charitable not-for-profit legal persons, stressing the independence of arbitration institutions.

The Amendment no longer distinguishes between domestic arbitration institutions and foreign-related arbitration institutions, as most arbitration institutions in China accept foreign-related arbitration disputes nowadays. Nevertheless, unlike in other jurisdictions where arbitration institutions are self-regulated under their statutes and supervised by judicial powers[7], in China, the arbitration institutions are still registered and supervised by the administrative department of justice pursuant to Article 14 and Article 26 of the Amendment.

Internal governance of arbitration institutions

The arbitration institution shall comprise one chairman, two vice chairmen, and seven to eleven members. There is an additional requirement on the qualifications of the members in Article 18 of the Amendment. Firstly, at least two-thirds of the members shall have expertise in law, trade and economics, and scientific technology. Secondly, the composition of the members should be adjusted every five years, and at least one-third of the members should be replaced to avoid conflict of interest.

- Support for online arbitration

Online arbitration has become a common practice in recent years in China.[8] Article 11 of the Amendment has confirmed the legality of online arbitration and the effectiveness of online arbitration. The parties may opt out of online arbitration if they do not agree.

- Arbitrators

Article 22 of the Amendment has excluded the double-heading of arbitrators who are prosecutors, judges, or any civil servants, who are restricted by law to act as arbitrators. It also welcomes foreign experts in law, trade and economics, maritime, and scientific technology to act as arbitrators.

Article 45 further requires the arbitrators to disclose any potential situations to the arbitration institutions in which a reasonable doubt could be cast on the independence or impartiality of the arbitrator.

Regarding the appointment of the third arbitrator in case of a three-member arbitral tribunal, Article 43 allows the parties can agree on different options: 1) the chief of the arbitration institution to appoint; 2) the parties to appoint themselves; 3) the already appointed two arbitrators to appoint.

- Interim measures in pre-arbitration proceedings

Article 39 of the Amendment has confirmed the possibility of the parties to apply for interim measures or injunctions before the initiation of the arbitration proceedings. The people's court has the responsibility to proceed with the parties' application.

- Arbitral tribunal's extended powers

Article 55 empowers the arbitral tribunal's power to collect evidence and request that relevant authorities assist. In the past, the arbitral tribunal had limited resources to collect evidence, except for requesting the parties to provide relevant evidence. With this latest amendment, the relevant authority has the duty to assist the arbitral tribunal if the evidence is hard to obtain by the arbitral tribunal.

- Setting aside and non-enforcement of arbitral awards

According to Article 72 of the latest Amendment to Chinese Arbitration Act, the time limit for applying for setting aside an arbitral award has been changed from 6 months to 3 months only. This is to enhance the efficiency of arbitration and avoid the party abusing the right of objection to delay the enforcement of arbitral awards.

During the enforcement stage, the respondent can invoke the same legal grounds of setting-aside the arbitral awards in Article 71 first paragraph to resist the enforcement of the arbitral awards. The Amendment has unified the legal grounds for setting-aside and non-enforcement applications of arbitral awards.

- Foreign-related Arbitration

Foreign-related arbitration refers to the two-track regime of arbitration in China, where domestic arbitration falls within a stricter judicial review over arbitral awards.[9] China traditionally uses a three-tiered approach to determine whether a dispute involves foreign-related elements: it looks at (1) who the parties are to the disputes, it assesses the (2) subject matter of the disputes, and looks at the (3) legal natures of the disputes.

Seat of arbitration

Before, Chinese Arbitration Act used the word “location of the arbitration commission” to determine the nationality of the arbitral awards. This point of view has been shifted by the judiciary towards the “seat theory” together with the development of case law.[10] In Article 81 of the Amendment, it is emphasized that the seat of arbitration should be chosen by the parties. In the absence of such choice in the arbitration agreement, the arbitration institutional rules should be used to determine the seat of arbitration. If there are no stipulations in the arbitration institutional rules regarding the seat of arbitration, the arbitral tribunal has the power to determine the seat of arbitration in accordance with the convenience principle. In the absence of the parties’ agreement, the applicable

law to the arbitration proceedings and to the judicial review of arbitral awards should be the law of the seat of arbitration. The legislative bodies have confirmed the judicial practices supporting the seat theory and explored ways to ascertain the seat of arbitration.

Ad hoc arbitration

Article 82 of the Amendment allows parties in foreign-related maritime disputes, and parties from Free Trade Pilot Zones[11], Hainan Free Trade Port, and other regions approved by the Chinese government to choose *ad hoc* arbitration. The parties should nevertheless inform the Association of Chinese Arbitration about the parties' names, seat of arbitration, the composition of the arbitral tribunal, and the arbitration rules, within three days after the establishment of the arbitral tribunal. The people's courts should provide judicial support for the interim measures applied by the parties.

Foreign arbitration institutions welcomed in China's FTZs

Article 86 of the Amendment supports foreign arbitrations to establish business entities in the free trade pilot zones, Hainan Free Trade Port, or other regions that are approved by the government in China. No further stipulations are made regarding the types of activities that such entities can engage in.

III. Future alignment with international commercial arbitration practices: the way ahead

Compared with the 1994 Chinese Arbitration Act, the latest Amendment is an

applaudable endeavor showing the determination of the Chinese government to modernize its arbitration laws and align with international practices. Nevertheless, in contrast to the draft amendment by the Ministry of Justice in 2021, the latest Amendment was a step backward.

First of all, the validity requirement of the arbitration agreement has not been amended. Considering that *ad hoc* arbitration is currently only allowed in a limited scope of practices, the requirement of a named arbitration institution has been kept. However, as perceived from the *Longlide* case[12], the validity requirement of a named arbitration institution also includes foreign ones.

Secondly, the Amendment did not change the competence-competence rules in the Chinese Arbitration Act. The court still has the primary role in determining the jurisdiction of the arbitral tribunal, but it is worth mentioning that Article 31 of the Amendment has added *the arbitral tribunal*, together with the arbitration institution and the court, to be able to determine the jurisdiction of the tribunal in case the parties have objections against the validity of the arbitration agreement.

Thirdly, the tribunal still has no power to rule on parties' applications for interim measures, which is left to the people's court. Such an application must be passed from the arbitral tribunals to the courts.

Lastly, it's a pity that *ad hoc* arbitration has a limited scope of application. It is restricted to maritime disputes and parties from FTZ-related areas, without further expansion to foreign-related arbitration.

As a conclusion, the Amendment demonstrates major advancement of the arbitration rules, but much can be done in the future with the economic development and international commercial practices proceeding in China.

[1] Amendment to the Arbitration Law of the People's Republic of China, President's Order No. 54, <https://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202509/t20250913_525029.html > accessed 15 September 2025.

[2] Ministry of Commerce, Draft Amendment to the Arbitration Law of the PRC for public consultation, < https://www.moj.gov.cn/pub/sfbgw/lfyjzj/lflfyjzj/202107/t20210730_432967.html> accessed 15 September 2025.

[3] He Rong, Minister of Ministry of Justice, Explanations on the Draft Amendment to the Arbitration Law of the PRC, < http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447719.html> accessed 15 September 2025.

[4] NPC, the Second Draft Amendment of the Arbitration Law of the PRC intends to further implement the foreign-related arbitration regime, < http://www.npc.gov.cn/npc/c2/c30834/202504/t20250425_444888.html> accessed 15 September 2025.

[5] Xinhua Net, Amendment to Arbitration Law of the PRC, effective from 1st March 2026, < http://www.npc.gov.cn/npc/c2/c30834/202509/t20250912_447759.html>. The full text of the Amendment can be accessed via < https://www.moj.gov.cn/pub/sfbgw/gwxw/xwyw/202509/t20250913_525029.html > accessed 15 September 2025.

[6] People's Court Daily?Chief of the National People's Congress Legislative Committee Civil Law Branch Answering Questions regarding the amendment of Chinese Arbitration Act,<https://www.zcia.cn/info/10990.html> accessed 15 September 2025.

[7] Such as ICC, SIAC, ICSID.

[8] See Online Arbitration Rules of various arbitration institutions, including CIETAC, Guangzhou Arbitration Commission, Shenzhen Court of International Arbitration, etc.

[9] See Article 71 and Article 83 of the Amendment to Chinese Arbitration Act.

[10] Brentwood Industries v. Guangdong Fa Anlong Machinery Equipment Co., Ltd. (2015) Sui Zhong Fa Min Si Chu Zi No. 62. In this case, Guangzhou Intermediate People's Court rendered a judgment considering an arbitral award made by an ICC tribunal in Guangzhou as a foreign-related *Chinese* award that is subject to the enforcement regime under the Chinese Civil Procedure Law.

[11] China has approved 22 Free Trade Zones and 1 Free Trade Port (Hainan) across the country to experiment with new regulations and explore ways to improve business environment. See < https://investinchina.chinaservicesinfo.com/investspecials/chinapilotfreetrade/> accessed 17 September 2025.

[12] Longlide Packaging Co Ltd v BP Agnati SRL [2013] Min Si Ta Zu Di 13 Hao.

Personal Jurisdiction, Consent, and the Law of Agency

I have long argued – in articles, blog posts, and amicus briefs – that it violates due process to invoke a forum selection clause to obtain personal jurisdiction over a defendant who was not a party to the agreement in which the clause appears. This position has not yet achieved universal acceptance. The state courts in New York, in particular, have repeatedly held that forum selection clauses can be used to assert personal jurisdiction over non-party defendants who are "closely related" to the parties or the transaction. In this blog post, I use a recent case—*Bandari v. QED Connect Inc.*—decided by Magistrate Judge Gary Stein (SDNY) to highlight some of the problems with the "closely related" test.

The dispute in *Bandari* grew out of a stock purchase agreement. The plaintiff, Jalandher Bandari, was a resident of Texas. He agreed to purchase shares in QED Connect, Inc., a New York holding company, from David Rumbold, a resident of Illinois. The sale was orchestrated by Nanny Katharina Bahnsen, the chief executive officer of QED and a resident of Colombia. There were three parties to the stock purchase agreement: Bandari, Rumbold, and QED. (Bahnsen signed the

contract on behalf of QED.) The agreement contained an exclusive forum selection clause choosing the state and federal courts sitting in New York City.

Although Bandari tendered the purchase price (approximately $150,000), he never received the shares he was promised. When Bandari asked for his money back, Bahnsen made excuses and eventually stopped responding to his emails. Bandari subsequently brought a lawsuit in federal court in New York against QED, Rumbold, and Bahnsen. After none of the defendants appeared to defend the suit, Bandari moved for a default judgment.

The federal courts in New York will not grant a default judgment until they determine that personal jurisdiction exists. The court quickly concluded that it had personal jurisdiction over Rumbold and QED because they had signed the contract containing the New York forum selection clause. The court then went on to conclude—wrongly, in my view—that Bahnsen was also subject to personal jurisdiction in New York because she had negotiated the sale and signed the contract on behalf of QED:

> *A party to a contract with a forum-selection clause may invoke that clause to establish personal jurisdiction over a defendant that is not party to the contract but that is "closely aligned" with a party, or "closely related" to the contract dispute itself, such as corporate executive officers. As the CEO of QED and the individual who negotiated the transaction with Bandari and signed the Agreement on behalf of QED, Bahnsen is "closely related" to both a party to the Agreement and to the dispute. Thus, she is also bound by the forum selection clause.*

This conclusion is inconsistent with basic principles of agency law; an agent is not a party to a contract that the agent signs on behalf of a disclosed principal. It is inconsistent with basic principles of contract law; a person may not be bound by an agreement without their express consent. And it is inconsistent with basic principles of personal jurisdiction; a person who lacks minimum contacts with the forum is not subject to personal jurisdiction unless she consents. Nevertheless, the court concluded that Bahnsen was subject to personal jurisdiction in New York because she was "closely related" to the parties and the transaction.

This conclusion is made all the more jarring by that fact that the court also held that Bandari had failed to state a valid claim for breach of contract against

Bahnsen *because she was not a party to the agreement*. In the court's words:

> *[A]lthough Bandari's breach of contract claim is asserted against all three Defendants, there is no basis for a finding of contract liability as to Bahnsen. Bahnsen is not a party to the Agreement and she signed the Agreement solely on behalf of QED. It is well established that a corporate officer who signs a contract on behalf of the corporation cannot be held personally liable for the corporation's breach, absent a showing that the officer was the alter ego of the corporation. The Complaint does not adequately plead an alter ego theory of liability against Bahnsen and hence it does not state a viable breach of contract claim against her.*

The court held, in other words, that Bahnsen (1) was subject to personal jurisdiction in New York by operation of the forum selection clause, but (2) could not be held liable for breach of contract because she was not a party to the agreement containing the forum selection clause. The hand that authored the personal jurisdiction section of the opinion was seemingly unaware of what the hand that authored the breach of contract section of the opinion was doing.

One can, of course, reconcile these conflicting statements by taking the position that forum selection clauses are not subject to the usual rules of agency law, contract law, and personal jurisdiction. There are, however, constitutional problems with such an approach. Under this line of reasoning, a person residing in a foreign country (Colombia) is subject to personal jurisdiction in New York when she negotiates and signs a contract that contains a New York forum selection clause on behalf of the entity that employs her even though she is not the alter ego of the company and is not herself a party to the agreement. These actions are, in my view, insufficient to subject her to personal jurisdiction in New York.

Although the court declined to enter a default judgment against Bahnsen on the claim for breach of contract, it did enter a default judgment against her on the plaintiff's claims for securities fraud and common law fraud. A contract to which she was not a party, therefore, paved the way for the assertion of jurisdiction and the imposition of liability. New York has long sought to attract litigation business from around the world. It has been largely successful in those efforts. If that state continues to assert personal jurisdiction over foreign executives merely because

they negotiate and sign contracts in their corporate capacity, however, one wonders whether these executives may start directing the company's attorneys to choose another jurisdiction.

[This post is cross-posted at Transnational Litigation Blog.]

Can a Seat Court Injunct a Foreign Non-Party to an Arbitration? Singapore High Court clarifies in Alphard Maritime v Samson Maritime (2025) SGHC 154

This guest post is posted on behalf of Kamakshi Puri, Senior Associate at Cyril Amarchand Mangaldas, Delhi, India, and dual-qualified lawyer (India and England and Wales).

The Singapore High Court recently clarified the scope of the court's jurisdiction over foreign non-parties to the arbitration. In an application to set aside two interim injunctions, in *Alphard Maritime Ltd. v Samson Maritime Ltd. & Ors. (2025) SGHC 154*,[1] the court held that the the seat *per se* did not confer jurisdiction against non-parties to an arbitration, and that jurisdiction would first have to be established through regular service-out procedures before the seat court could grant an injunction against a non-party.

Factual Background

Briefly, the applicant, Alphard Maritime ("**Alphard**"), initiated SCMA arbitration[2] against its debtor, Samson Maritime ("**Samson**"), and Samson's wholly owned subsidiary, Underwater Services ("**Underwater**"), for alleged breach of a settlement agreement for the sale of approx. nine vessels and Samson's shareholding in Underwater to Alphard ("**Subject Assets**"). Alphard initiated arbitration upon receiving information of the pledge/mortgage of the Subject Assets to J M Baxi Marine Services ("**Baxi**") in breach of the Settlement Agreement. In addition to *the ex-parte* freezing order against Samson and Underwater, Alphard had received from the seat court, acting in support of the arbitration, an *ex-parte* prohibitory injunction restraining Baxi and other creditors of Samson from *assisting in or facilitating the dissipation of, or dealing with, any of Samson and Underwater's assets worldwide*. Baxi was not a party to the Settlement Agreement. While one of the defendants was based out of Singapore, Samson and Underwater were bound by the jurisdiction conferred to the seat court; however, Baxi was a foreign non-party to the arbitration.

While the interim freezing injunction against Samson and Underwater was vacated on the finding that there was no evidence of dissipation or risk of dissipation of assets, and the court observed that there was no basis for the injunction which in effect prohibited Baxi and/or the lenders from asserting their own contractual rights or enforcing proprietary rights against Samson which pre-dated the Settlement Agreement, the injunction was vacated primarily on the finding that the Singapore court, as the seat court, had no jurisdiction over Baxi or the foreign lenders.

Seat Court's Jurisdiction over Foreign Defendants

A court must have *in personam* jurisdiction to grant an injunction against a party. Under Singapore law, which follows the English law on jurisdiction, jurisdiction is based on service of proceedings, and the court assumes jurisdiction over a foreign party (not having a presence in Singapore and not having submitted to the proceedings) through permission for service out of the claims. [3] The court allows permission for service out where "*the Singapore Court is the appropriate*

forum for hearing the proceedings".[4] For the assessment of whether permission for service out should be granted, *i.e.*, that Singapore Court is the appropriate forum, the claimant is required to meet the following three-prong assessment: [5]

1. *A good arguable case that there is sufficient nexus with the Singapore court;*
2. *Singapore is the forum conveniens; and*
3. *There is a serious question to be tried on the merits of the claim*.

The "sufficient nexus" refers to the connection between the court and the defendant and follows the logic that a party may only be called to a foreign court where they have a sufficiently strong connection to the state. Practice Directions 63(3)(a) to (t) set out "Factors" that guide as to the possible connection that the foreign defendant may have with the Singapore court. ***[6]***

Alphard relied on 2 factors – *first*, PD 63(3)(d), a claim to obtain relief in respect of the breach of a contract governed by the laws of Singapore. This was held to be inapplicable, as Baxi was neither a party to the contract, nor committed any breach. *Second*, PD 63(3)(n) claims made under any other written law of Singapore. In this regard, it was contended that the claim against Baxi was under Section 12A of the International Arbitration Act, *i.e.*, an exercise of the Singapore court's power to grant an injunction against non-parties in support of Singapore-seated arbitration, which wide power ensured that non-parties did not collude with the defendants to frustrate the fruits of a claim. The court accepted PD 63(3)(n) as a relevant factor.

However, since sufficient nexus with the court is not enough for permission to service out, the court proceeded to the next equity, i.e., whether Singapore was the '*forum conveniens*'. *Forum conveniens* is an exercise in determining the most appropriate court for deciding the lis. It is the assessment of the connection of the dispute with the Singapore court. The 'dispute' here was the prohibitory

injunction against Baxi. The court held that to be the 'appropriate court' for interim relief against a *specific party*, it required more than the arbitration being seated in Singapore. The seat court would be the appropriate court if the dispute with the specific party could be traced to the arbitration, or assets/obligations were substantially that of party to the arbitration, *i.e.*,

1. Was the non-party bound by the arbitration agreement even if it was not a party to the arbitration?
2. did the non-party hold assets in Singapore, which arguably belonged beneficially to a party to the arbitration (non-party was a trustee / pass-through for the assets)
3. was the non-party a corporate entity held/owned by the party to the arbitration, and therefore, did the dissipation of assets of the party amount to the dissipation of value of the party (merger of identity between the party and non-party)?

The Court held that in the absence of any of the above, the seat court would not be the *de facto* appropriate forum for injunctions against all non-parties even when the injunction is in aid of Singapore-seated arbitration. The court did not find any reason for Baxi, an entity pursuing its independent remedy against the Alphard, to be brought before the Singapore court.

Notably, Alphard had already pursued interim relief under Section 9 of the (Indian) Arbitration and Conciliation Act, 1996, against the Defendants, including Baxi, before the High Court of Bombay. [7] The Bombay High Court, acting further to its power for making interim orders for protection of the subject matter in arbitration, including in international commercial arbitration where the place of arbitration is outside India [8], granted a status quo injunction, including on Baxi, on further dealing in or creating any further third-party interests in the shares held by Samson in Underwater and a disclosure order in respect to the transaction for pledge created in favour of Baxi.

Concluding Thoughts

For the known benefits of enforcement and limited grounds of challenge of awards under Singapore law and before Singapore courts, foreign parties regularly opt for Singapore as the neutral seat of arbitration. In such cases, the only nexus of the dispute with the court is its designation as the seat court. Separately, arbitral tribunals do not have jurisdiction over non-parties to an arbitration; thus, courts assume adjudication for interim relief applications against non-parties to the arbitration. With this decision, the Singapore court has confirmed the non-seat court's interference for interim reliefs where parties require protective orders vis-a-vis non-parties to the arbitration.

[1] Available here.

[2] Arbitration under the Singapore Chamber of Maritime Arbitration ("**SCMA**") Rules.

[3] S. 16(1)(a)(ii) of the Supreme Court of Judicature Act 1969: "***16.***—*(1) The General Division has jurisdiction to hear and try any action in personam where — (a) the defendant is served with an originating claim or any other originating process — …(ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules.*"

[4] *Rules of Court 2021, Rule 1(1) of Order 8 of ROC 2021 "****1.****—(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action"* .

[5] Supreme Court Practice Directions 2021, Para 63(2).

[6] Prior to 2021, this condition was similar to English law, i.e., the "*Good and arguable case that a gateway applies*". While "gateways" have been done away with, the Practice Directives have set out a non-exhaustive list of factors (PD 63(3)(a)–(t)) which a claimant "should refer to" in order to meet the requirement under PD 63(2)(a). These factors mirror the gateways with were earlier found in the Rules of Court 2014. See Ardavan Arzandeh, The New Rules of Court and the Service-Out Jurisdiction in Singapore, (2022) Singapore Journal of Legal Studies

191–201.

[7] Alphard Maritime Ltd. v Samson Maritime Limited & Ors. Commercial Arbitration Petition (L) No.7499 of 2025, Order dated 02.04.2025, available here.

[8] Section 9 read with Section 2(2) of the Arbitration Act, 1996.

AI in Arbitration: Will the EU AI Act Stand in the Way of Enforcement?

This guest post was written by Ezzatollah Pabakhsh, Master's Student at the University of Antwerp

The European Union has taken an unprecedented step by regulating artificial intelligence (AI) through the EU AI Act, which is the world's first comprehensive legal framework for AI governance. According to Recital 61, Article 6(2) and Annex III, 8(a), AI tools used in legal or administrative decision-making processes—including alternative dispute resolution (ADR), when used similarly to courts and producing legal effects—are considered high risk. These tools must comply with the strict requirements outlined in Articles 8 through 27.

These provisions are designed to ensure transparency, accountability, and respect for fundamental rights. This obligation will take effect on August 2, 2026, according to Article 113. Notably, the Act's extraterritorial scope, as outlined in Articles 2(1)(c) and (g), applies to any AI system that affects individuals within the European Union. This applies regardless of where the system is developed or used. It also applies to providers and deployers outside the EU whose output is used within the Union. This raises a critical question: can non?compliance with the EU AI Act serve as a basis for courts in EU Member States to refuse recognition or enforcement of an arbitral award on procedural or public?policy grounds?[1]

Consider the following scenario: Two EU-based technology companies, one Belgian and one German, agree to resolve their disputes through US-seated arbitration. Suppose the ADR center uses AI-powered tools that do not comply with the EU AI Act's high-risk system requirements. How would enforcement of the resulting award play out before national courts in the EU?

This scenario presents a direct legal conflict. If the winning party seeks to enforce the award in a national court of an EU Member State, two well-established legal grounds for refusing enforcement may arise.[2] First, the losing party may invoke Article V(1)(d) of the 1958 New York Convention, together with the applicable national arbitration law. They could argue that reliance on AI systems that do not comply with the EU AI Act constitutes a procedural irregularity, as it departs from the parties' agreed arbitration procedure and undermines the integrity of the arbitral process.[3] Second, under Article V(2)(b) of the Convention, the enforcing court may refuse recognition on its own motion if it finds that using non-compliant AI violates the forum's public policy, especially when fundamental rights or procedural fairness are at stake.[4] The following section will examine these two scenarios in more detail.

Scenario 1: Procedural Irregularity under Article V(1)

Imagine that the ADR center uses an AI tool to assist the tribunal in drafting the award during the proceedings. This AI system uses complex algorithms that cannot produce transparent, human-readable explanations of how key conclusions were reached. The final award relies on these outputs, yet it offers no meaningful reasoning or justification for several significant findings. Furthermore, the tribunal does not disclose the extent to which it relies on the AI system, nor is there any clear evidence of human oversight in the deliberation process.

When the losing party in Belgium contests enforcement of the award, they invoke Article V(1)(d) of the New York Convention, arguing that the arbitral procedure did not align with the parties' expectations or the applicable law. This objection is also found in Article 1721 of the Belgian Judicial Code (BJC), inspired by Article 36 of the UNCITRAL Model Law and, to a large extent, mirroring the grounds of Article V of the New York Convention. Among these, two are especially relevant to the use of AI in the arbitral process and are central to the objection in this case.

First, under Article 1721(1)(d), a party may argue that the award lacks proper

reasoning[5], which violates a core procedural guarantee under Belgian law.[6] This requirement ensures that parties can understand the legal and factual basis for the tribunal's decision and respond accordingly.[7] In this case, however, the award's reliance on opaque, AI-generated conclusions, particularly those produced by "black box" systems, renders the reasoning inaccessible and legally inadequate.[8] The EU AI Act further reinforces this objection. Articles 13, 16, and 17 require transparency, traceability, and documentation for high-risk AI systems. Meanwhile, Article 86 grants limited right to explanation for affected persons where a deployer's decision is based on Annex III systems and produces legal effects. If an award fails to meet these standards, it may not align with Belgian procedural norms.

Second, under Article 1721(1)(e), a party may argue that the tribunal's composition or procedure deviated from the parties' agreement or the law of the seat. For example, if the arbitration agreement contemplated adjudication by human arbitrators and the tribunal instead relied on AI tools that materially influenced its reasoning without disclosure or consent, this could constitute a procedural irregularity. According to Article 14 of the EU AI Act, there must be effective human oversight of high-risk AI systems. Where such oversight is lacking or merely formal and AI outputs are adopted without critical human assessment, the legitimacy of the proceedings may be seriously undermined. Belgian courts have consistently held that procedural deviations capable of affecting the outcome may justify refusal of recognition and enforcement.[9]

Scenario 2: Public Policy under Article V(2)(b)

In this scenario, the court may refuse to enforce the award on its own initiative if it is found to be contrary to public policy[10] under Article V(2)(b) of the New York Convention, Article 34(2)(b)(ii) of the UNCITRAL Model Law, or Article 1721(3) of the Belgian Judicial Code (BJC). These provisions allow courts to deny recognition and enforcement if the underlying procedure or outcome conflicts with fundamental principles of justice in national and European legal systems.[11]

In comparative international practice, public policy has both substantive and procedural dimensions. When a breach of fundamental and widely recognized procedural principles renders an arbitral decision incompatible with the core values and legal order of a state governed by the rule of law, procedural public policy is engaged. Examples include violations of due process, lack of tribunal

independence, breach of equality of arms, and other essential guarantees of fair adjudication.[12]

In this case, the use of non-transparent AI systems may fall within this category.[13] If a tribunal relies on these tools without disclosing their use or without providing understandable justifications, the process could violate Article 47 of the Charter of Fundamental Rights of the European Union. This article guarantees the right to a fair and public hearing before an independent and impartial tribunal. This issue, along with case law, could provide a reasonable basis for refusal based on public policy.[14] When applying EU-relevant norms, Belgian courts are bound to interpret procedural guarantees in accordance with the Charter. [15]

Comparative case law provides additional support. In Dutco, for example, the French Cour de cassation annulled an arbitral award for violating the equality of arms in the tribunal's constitution, which is an archetypal breach of procedural public policy.[16] Similarly, in a 2016 decision under § 611(2)(5) ZPO, the Austrian Supreme Court annulled an award where the arbitral procedure was found to be incompatible[17] with Austria's fundamental legal values.[18] These rulings confirm that courts may deny enforcement when arbitral mechanisms, especially those that affect the outcome, compromise procedural integrity.

Belgian courts have consistently held that recognition and enforcement must be refused where the underlying proceedings are incompatible with ordre public international belge, particularly where fundamental principles such as transparency, reasoned decision-making, and party equality are undermined.[19] In this context, reliance on non-transparent AI—without adequate procedural safeguards—may constitute a violation of procedural public policy. As a result, enforcement may lawfully be denied ex officio under Article V(2)(b) of the New York Convention and Article 1721(3) of the Belgian Judicial Code, thereby preserving the integrity of both the Belgian and broader EU legal frameworks. Ultimately, courts retain wide discretion under public policy grounds to decide with real control whether or not to enforce AI-assisted awards.[20]

These potential refusals of enforcement within the EU highlight a broader trend, as domestic procedural safeguards are increasingly influenced by global regulatory developments, prompting questions about whether the EU's approach to AI in arbitration will remain a regional standard or evolve into an international

benchmark.

The EU AI Act as a Global Regulatory Model?

The EU has a proven history of establishing global legal benchmarks—rules that, while originating in Europe, shape laws and practices far beyond its borders.[21] The GDPR is the clearest example of this. Its extraterritorial scope, strict compliance obligations, and enforcement mechanisms have prompted countries ranging from Brazil to Japan to adopt similar data protection frameworks.[22]

In arbitration, a comparable pattern could emerge. If EU courts apply the EU AI Act's high-risk requirements when deciding on the recognition and enforcement of arbitral awards, other jurisdictions may adopt comparable standards, encouraging convergence in AI governance across dispute resolution systems. Conversely, inconsistent enforcement approaches could foster fragmentation rather than harmonisation. In any case, the Act's influence is already being felt beyond Europe, prompting arbitration stakeholders to address new questions regarding procedural legitimacy, technological oversight, and cross-border enforceability.

Conclusion

The interplay between the EU AI Act and the enforcement of arbitral awards highlights how technological regulation is shaping the concept of procedural fairness in cross-border dispute resolution. Whether the Act becomes a catalyst for global standards or a source of jurisdictional friction, parties and institutions cannot ignore its requirements. As AI tools move deeper into arbitral practice, compliance will become not just a regulatory obligation but a strategic necessity for ensuring the enforceability of awards in key jurisdictions.

[1] Tariq K Alhasan, 'Integrating AI Into Arbitration: Balancing Efficiency With Fairness and Legal Compliance' (2025) 42 Conflict Resolution Quarterly 523, 524.

[2] ibid 525.

[3] Jordan Bakst and others, 'Artificial Intelligence and Arbitration: A US

Perspective' (2022) 16 Dispute Resolution International 7, 23; Sanjana Reddy Jeeri and Vinita Singh, 'Soft Law, Hard Justice: Regulating Artificial Intelligence in Arbitration' (2024) 17 Contemporary Asia Arbitration Journal 191, 222.

[4] Sean Shih and Eric Chin-Ru Chang, 'The Application of AI in Arbitration: How Far Away Are We from AI Arbitrators?' (2024) 17 Contemporary Asia Arbitration Journal 69, 81.

[5] Horst Eidenmuller and Faidon Varesis, 'What Is an Arbitration? Artificial Intelligence and the Vanishing Human Arbitrator' (2020) 17 New York University Journal of Law and Business 49, 72.

[6] Dilyara Nigmatullina and Beatrix Vanlerberghe, 'Arbitration Related Lessons: Insights from the Supreme Courts around the World' (2020) 2020 b-Arbitra | Belgian Review of Arbitration 307, 354.

[7] Gizem Kasap, 'Can Artificial Intelligence ("AI") Replace Human Arbitrators? Technological Concerns and Legal Implications' (2021) 2021 Journal of Dispute Resolution 209, 230, 249.

[8] Shih and Chang (n 4) 79.

[9] Koen De Winter and Michaël De Vroey, 'Belgium' in *Baker McKenzie International Arbitration Yearbook: 10th Anniversary Edition 2016–2017* (Baker McKenzie 2017), 81, 82, 85.

[10] Eidenmuller and Varesis (n 5) 80–81; Bernard Hanotiau, 'Arbitrability; Due Process; and Public Policy Under Article V of the New York Convention Belgian and French Perspectives' (2008) 25 Journal of International Arbitration 721, 729–730.

[11] Kasap (n 7) 252; Annabelle O Onyefulu, 'Artificial Intelligence in International Arbitration: A Step Too Far?' (2023) 89 Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 56, 63.

[12] Nigmatullina and Vanlerberghe (n 6) 351–352.

[13] Shih and Chang (n 4) 86.

[14] Nigmatullina and Vanlerberghe (n 6) 353.

[15] A de Zitter, 'The Impact of EU Public Policy on Annulment, Recognition and Enforcement of Arbitral Awards in International Commercial Arbitration' (University of Oxford 2019) 5, 251–253.

[16] Stefan Kröll, 'Siemens – Dutco Revisited? Balancing Party Autonomy and Equality of the Parties in the Appointment Process in Multiparty Cases | Kluwer Arbitration Blog' <https://legalblogs.wolterskluwer.com/arbitration-blog/siemens-dutco-revisited-balancing-party-autonomy-and-equality-of-the-parties-in-the-appointment-process-in-multiparty-cases/> accessed 18 August 2025; Nigmatullina and Vanlerberghe (n 6) 351.

[17] Alexander Zollner, 'Austrian Supreme Court Set aside an Arbitral Award Due to a Violation of the Procedural Ordre Public' (*Global Arbitration News*, 21 June 2017) <https://www.globalarbitrationnews.com/2017/06/21/austrian-supreme-court-set-aside-arbitral-award-for-violation-of-public-policy/> accessed 18 August 2025. ; Franz Schwarz and Helmut Ortner, 'Austria' in Giacomo Rojas Elgueta, James Hosking and Yasmine Lahlou (eds), *Does a Right to a Physical Hearing Exist in International Arbitration?* (ICCA Reports, 2020) 26, https://www.arbitration-icca.org/right-to-a-physical-hearing-international-arbitration accessed 5 August 2025

[18] Nigmatullina and Vanlerberghe (n 6) 351.

[19] Alhasan (n 1) 5–6.

[20] Shih and Chang (n 4) 87; Hanotiau (n 10) 737.

[21] Arturo J Carrillo and Matías Jackson, 'Follow the Leader? A Comparative Law Study of the EU's General Data Protection Regulation's Impact in Latin America' (2022) 16 ICL Journal 177, 178; Michelle Goddard, 'The EU General Data Protection Regulation (GDPR): European Regulation That Has a Global Impact' (2017) 59 International Journal of Market Research 703, 703–704.

[22] Carrillo and Jackson (n 21) 242–245.

Clearly Inappropriate Down Under: Isaacman v King [No 2] and the Outer Limits of Long-Arm Jurisdiction

By Dr Sarah McKibbin, University of Southern Queensland

The Supreme Court of New South Wales' decision in *Isaacman v King [No 2]*[1] is the kind of case that tempts one to say 'nothing to see here', and yet it richly rewards a closer look. On a conventional application of *Voth v Manildra Flour Mills*[2] — the leading Australian authority on *forum non conveniens* — Garling J stayed proceedings that attempted to litigate a New York relationship dispute in Sydney, being 'well satisfied' that the NSW Supreme Court was a clearly inappropriate forum.[3] The reasons, though brief by design,[4] illuminate the transaction costs of jurisdictional overreach,[5] show how the *Voth* framework handles an *extreme* set of facts, and offer a careful case study for empirical debates about Australian 'parochialism' in jurisdictional decision-making.

The Factual Background

The facts almost read like a hypothetical designed to test the outer limits of exorbitant, or long-arm, jurisdiction. A US biotech executive residing in New York sued his former partner, an Australian marketing consultant, in the NSW Supreme Court for alleged negligent transmission of herpes simplex virus during their relationship in New York. The relationship began and ended in New York; the alleged transmission occurred there; the plaintiff's diagnosis and treatment took place there; and the defendant, though Australian, lived overseas and was only ordinarily resident in Victoria when in Australia. The plaintiff had a four-month period in 2022 split between Sydney, New South Wales, and Melbourne,

Victoria, with visits to Queensland, while exploring business opportunities for skincare ventures. He pointed to social friendships in Sydney and his one-off membership of the North Bondi Returned Services League Club.[6]

None of this impressed Garling J as a meaningful link to New South Wales. As Garling J readily observed in the case's earlier procedural judgment, there was 'no connection whatsoever between either of the parties, and the pleaded cause of action and the State of New South Wales.'[7] The RSL membership did not establish 'any connection at all with the forum'.[8] The pleading itself underscored the foreignness of the dispute: by notice under New South Wales' court rules,[9] the plaintiff relied on New York law, in particular New York Public Health Law § 2307, alongside common law claims available under New York law.[10]

The decision

The stay analysis proceeded squarely under *Voth*. Garling J recited the familiar principles: the onus lies on the defendant; the question is whether the local court is a clearly inappropriate forum, not whether an alternative is more convenient; it is relevant that another forum can provide justice; and the need to determine foreign law is not conclusive but is a significant factor.[11] The only explicit nod to the English test in *Spiliada Maritime Corporation v Cansulex Ltd*[12] came through the High Court's own endorsement in *Voth* of Lord Templeman's aspiration for brevity in such applications. [13] Yet Garling J noted that an issue arising in oral submissions required further written submissions, precluding an ex tempore disposition, but nonetheless kept the reasons concise.[14]

On the facts, the connecting factors all pointed away from New South Wales. The conduct giving rise to the claim, the governing law, and the evidentiary base were in New York. Neither party had assets in NSW, so any judgment, whether for damages or for costs, would have to be enforced elsewhere, compounding expense.[15] Garling J accepted, and the parties did not dispute, that New York courts could exercise *in personam* jurisdiction over the defendant; that acceptance underpinned the conclusion that there was another forum where the plaintiff could 'obtain justice'.[16] The upshot was decisive but orthodox: the Supreme Court of New South Wales was a clearly inappropriate forum, and the

proceedings would be stayed.[17]

The conditional order deserves to be recorded with some precision. The stay was to take effect seven days after publication of the judgment. Within that same seven-day period, the defendant was to file and serve a written undertaking that, if the plaintiff brought civil proceedings in the State of New York concerning the subject matter of the NSW suit, she would not plead any New York limitations defence, provided the plaintiff commenced in New York within three months of the stay taking effect and provided the claims were not statute-barred when the NSW proceeding was commenced.[18] Framed this way, the undertaking did not expand the analysis beyond *Voth*. It neutralised limitation prejudice, as long as the plaintiff did not delay commencing proceedings, and ensured practical access to the natural forum. Garling J also ordered the plaintiff to pay the costs of the *forum non conveniens* application.[19]

Two ancillary applications were left untouched. A motion seeking transfer to the Supreme Court of Victoria and a late-filed non-publication motion were not determined.[20] Given the stay, it was not appropriate to go on to decide further issues between the parties. Garling J added that ordering a transfer could impinge on the plaintiff's own choices about where to proceed next; and with the matter stayed, non-publication orders served no useful purpose.[21]

Comments

Situating *Isaacman v King [No 2]* in the post-*Voth* jurisprudence helps explain both the ease and the limits of the result. *Voth*'s 'clearly inappropriate forum' test was announced as only a slight departure from the English *Spiliada* test,[22] but, as Richard Garnett's early survey of the doctrine shows,[23] its operation had been variegated.[24] In the years immediately after *Voth*, Australian courts often refused stays where there were meaningful Australian connections — even if the governing law or much of the evidence was foreign — and sometimes gave generous weight to local juridical advantages.[25] Mary Keyes' analysis in the Australian family law context underscores why this felt unpredictable: a forum-centric test with broad judicial discretion risks certainty, predictability and cost.[26] Understandably then, Keyes argues for an explicitly comparative, *Spiliada*-style inquiry that focuses on effective, complete and efficient resolution,

the parties' ability to participate, costs and enforceability.[27]

At the same time, the High Court tempered *Voth* in specific contexts. In *Henry v Henry*,[28] the majority effectively created a presumption in favour of a stay where truly parallel foreign proceedings between the same parties on the same controversy were already on foot, explicitly invoking comity and the risks of inconsistent outcomes.[29] In *CSR Ltd v Cigna Insurance Australia Ltd*,[30] the High Court went further. Even without identity of issues, the 'controversy as a whole' analysis could render local proceedings oppressive where their dominant purpose was to frustrate access to relief available only abroad.[31] These qualifications that, outside the special case of parallel litigation, *Voth* directs attention to the suitability of the local forum in its own terms; but where duplication looms in the form of parallel proceedings, the analysis necessarily broadens. That broader, comparative posture is also what Ardavan Arzandeh shows Australian courts actually do in practice, despite *Voth*'s formal language.[32]

Isaacman v King [No 2] belongs to a different, more straightforward strand in that story: the 'little or no connection with Australia' cases in which stays have been ordered because the action and the parties' controversy are overwhelmingly foreign.[33] Unlike the contested margins Garnett identifies, there was no pleaded Australian statutory right of a kind sometimes relied on as a juridical advantage; no contest about the availability of a competent foreign forum; and no tactical race between parallel proceedings. Garling J canvassed the classic connecting factors, noted the New York law pleaded, recorded the practical burdens of proof and enforcement, and concluded that New South Wales was clearly an inappropriate forum. That emphasis on concrete, case-specific connections and on consequences for the conduct and enforcement of the litigation fits both Keyes' call for structured, predictable decision-making and Arzandeh's demonstration that Australian courts, in substance, weigh the same considerations as *Spiliada*.[34]

Two implications follow. First, the decision is a neat instance of *Voth* doing exactly what it was designed to do when the forum is only nominally engaged. It offers little purchase for testing the harder comparative question whether, at the margins, *Voth*'s rhetoric yields different outcomes from *Spiliada*'s 'more appropriate forum' inquiry. That is consistent with Arzandeh's view that the supposed gap is, in practice, vanishingly small.[35] Secondly, it gives texture to

the practical burdens that inappropriate forum choices impose. Expert evidence on New York law would have been required; witnesses and records are in the United States; neither party's assets are in New South Wales; and the court itself, even in this 'easy' case, could not resolve the application wholly on the basis of oral submissions because an issue warranted further written argument. Those are precisely the private and public costs Keyes highlights as reasons to favour a clearer, more comparative framework ex ante, rather than leaving calibration to ex post discretion.[36]

There is, then, a narrow lesson and a broader one. Narrowly, *Isaacman v King [No 2]* confirms that Australian courts will not entertain a claim whose only local anchors are social relationships and what amounts to a meal-discount club card. Broadly, it supplies one more controlled observation for comparative and empirical work: an extreme outlier that aligns with 'no connection' line of authority.[37] It also leaves open — indeed, usefully highlights — the need for data drawn from genuinely contested cases, where juridical advantage and practical adequacy are engaged on the evidence, if we are to assess how far *Voth* diverges, in practice, from its common law counterparts.[38]

Conclusion

Isaacman v King [No 2] therefore earns its place not because it breaks doctrinal ground, but because it shows the doctrine working as intended. The plaintiff's Sydney friendships and RSL membership could not anchor a transatlantic dispute in a NSW court; New York law, evidence and enforcement pointed inexorably elsewhere; and a conditional stay ensured that the plaintiff would not be procedurally disadvantaged by being sent to the forum where the dispute belongs. If some *forum non conveniens* applications can be resolved quickly,[39] this was not one of them. But it was, in the end, a straightforward exercise of judicial discipline about where litigation should be done.

[1] [2025] NSWSC 381.

[2] (1990) 171 CLR 538 ('*Voth*').

[3] *Isaacman v King [No 2]* (n 1) [50].

[4] *Voth* (n 2) 565.

[5] See Andrew Bell, *Forum Shopping and Venue in Transnational Litigation* (Oxford University Press, 2003; J J Spigelman, 'Transaction Costs and International Litigation' (2006) 80(7) *Australian Law Journal* 438, 441–3.

[6] Ibid [22].

[7] *Isaacman v King* [2024] NSWSC 1291, [85]. The earlier judgment dealt with preliminary procedural matters including the plaintiff's failed attempt to proceed pseudonymously.

[8] *Isaacman v King [No 2]* (n 1) [41]–[42].

[9] *Uniform Civil Procedure Rules 2005* (NSW).

[10] *Isaacman v King [No 2]* (n 1) [14], [45]–[46].

[11] Ibid [35]–[36].

[12] [1987] AC 460.

[13] *Isaacman v King [No 2]* (n 1) [37], quoting *Voth* (n 2) 565. One wonders how often Lord Templeman's aspiration is realised.

[14] *Isaacman v King [No 2]* (n 1) [37]–[38].

[15] Ibid [43], [46]–[49].

[16] Ibid [47].

[17] Ibid [39]–[51].

[18] Ibid [4], [56].

[19] Ibid [56].

[20] Ibid [7], [52]–[53].

[21] Ibid [8], [52]–[55].

[22] *Voth* (n 2) 558.

[23] Richard Garnett, 'Stay of Proceedings in Australia: A "Clearly Inappropriate" Test?' (1999) 23(1) *Melbourne University Law Review* 30.

[24] Cf Ardavan Arzandeh, 'Reconsidering the Australian *Forum (Non) Conveniens* Doctrine' (2016) 65 *International and Comparative Law Quarterly* 475.

[25] Garnett (n 22) 39–48.

[26] Mary Keyes, 'Jurisdiction in International Family Litigation: A Critical Analysis' (2004) 27 *UNSW Law Journal* 42, 63–4.

[27] Ibid.

[28] (1995) 185 CLR 571.

[29] Ibid 590–1; Garnett (n 22) 52–4.

[30] (1997) 189 CLR 345.

[31] Ibid 400–1; Garnett (n 22) 57–9.

[32] Arzandeh (n 23) 485, 486.

[33] Garnett (n 22) 45–6.

[34] Keyes (n 26) 63–4; Arzandeh (n 23).

[35] Arzandeh (n 23) 491.

[36] Keyes (n 26) 59–60.

[37] Garnett (n 22) 45–6.

[38] On the need for empirical research in this area, see Christopher A Whytock, 'Sticky Beliefs about Transnational Litigation' (2022) 28(2) *Southwestern Journal of International Law* 284.

[39] *Spiliada* (n 12) 465.