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Global Practice Guides

International Arbitration

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Gary Born

King & Spalding LLP

2026

Chambers Global Practice Guides

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INTRODUCTION

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King & Spalding LLP offers one of the largest and most experienced international arbitration and dispute resolution practices. The international arbitration team handles complex commercial, construction and investment treaty disputes across their full life cycle, from pre-dispute strategy through hearings, related court proceedings, enforcement and asset recovery. With experience in more than 140 countries, King & Spalding represents a broad range of clients across sectors and jurisdictions worldwide. The international arbitration team has been involved in more than 1,000 proceedings in recent years. Lawyers have successfully represented clients in a number of the largest institutional arbitrations and several of the most significant ad hoc arbitrations to arise in the past decade. In addition to representing clients as counsel, many lawyers regularly sit as arbitrators in international arbitrations.

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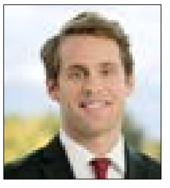

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INTRODUCTION

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Global Overview: International Arbitration in 2026

The international arbitration landscape in 2026 is dominated by macroeconomic and geopolitical factors. After a series of economic shocks in recent years, the global economy is on the brink of recession. Geopolitical conflicts, particularly in the Middle East, have profoundly disrupted the energy and shipping industries. The tariff war following the announcement of sweeping US tariffs in April 2025 has combined with elevated public debt levels, high sovereign borrowing costs and persistent inflation to leave the global economy in a precarious position: in April 2026, the International Monetary Fund (IMF) warned of a sharp global economic slowdown and a high risk of recession.

This macroeconomic uncertainty has combined with geopolitical events (including the rise of nationalist and protectionist policies and the increasing use of international sanctions) to present serious supply chain challenges and create a highly volatile and uncertain business environment. This instability and volatility has, in turn, led to a proliferation of disputes across a wide range of sectors. The areas that are seeing the most disputes are construction, energy and shipping. These are sectors in which arbitration has historically been, and continues to be, the preferred dispute resolution mechanism.

Against this background, it is hardly surprising that most leading arbitral institutions have reported a record – or close-to-record – caseload over the past year in terms of both the number of disputes referred to arbitration and the size of those disputes.

The USA-Iran War

The military conflict between the USA, Israel and Iran that broke out in March 2026 has severely disrupted global trade, primarily by triggering a de facto closure, the US naval blockade of the Strait of Hormuz and international sanctions. Many international businesses are unable to use critical trade corridors, which has made the performance of numerous existing commercial contracts more difficult and, in some cases, impossible. This has triggered a surge of international arbitrations concerning force majeure or contract frustration-based claims as parties seek to enforce, suspend or terminate supply contracts.

The USA-Iran conflict has also triggered a number of treaty-based claims. The most prominent treaty claim is Iran's new inter-governmental claim before the Iran-United States Claims Tribunal in The Hague, in which it has cited US military and economic actions in 2026 as violations of the 1981 Algiers Accords.

The ongoing military confrontation in the region is likely to continue to cause supply chain disruptions as shipping, flight and trade routes are suspended or disrupted, and many UAE-based businesses have activated contingency measures. These disruptions are, in turn, likely to trigger a further wave of international trade-related disputes that will be referred to arbitration over the coming months and years.

The Russia-Ukraine War

The effect of the Russia-Ukraine war on the arbitration landscape has changed over time. Initially, in 2022, there was a sharp decline in the number of Russia-related arbitrations as reported by the London Court of International Arbitration (LCIA) and other major institutions. The ensuing disruptions, however, have triggered a large number of Russia-related disputes. Since the invasion, many businesses have been forced to cease operations in Russia or have seen their operations taken over by the Russian government. In 2025, Naftogaz, Ukraine's largest national oil and gas company, and Net4Gas, the Czech Republic's gas transmission system operator, secured billion-dollar awards against Gazprom over its failure to make monthly payments under their gas transportation contracts.

Global sanctions against Russia and the anti-arbitration stance of the Russian courts have created complications for parties bringing claims against Russian sanctioned entities. Article 248 of the Russian Arbitrazh Procedure Code grants Russian courts exclusive jurisdiction over disputes involving sanctioned Russian entities. Since 2024, it has been invoked over 200 times to override exclusive jurisdiction clauses and/or to issue anti-arbitration injunctions. This stance has resulted in courts in both common and civil law jurisdictions ordering anti-suit relief against Russian proceedings.

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Technology and Generative AI

Investment in technology and AI continues to boom as companies have invested heavily, especially in the use of generative AI. This is having obvious and profound effects on the arbitration landscape. Many major arbitral institutions are either already using AI or considering it, for services including vetting and conflict checks, transcription and award scrutiny.

The extent to which tribunals may rely on AI remains highly controversial. Most recently, in April 2026, the Supreme Court of Quebec in *ARIHQ v Santé Québec*, 2026 QCCS 1360 (22 April 2026) set aside a domestic award because the arbitrator had cited fabricated cases and authorities, generated by a large language model, and had developed his analysis based on those AI hallucinations. We can expect further challenges to awards in other jurisdictions based on the Tribunal's use of AI.

Several initiatives have emerged to address, and seek to standardise, the use of AI in international arbitration. The most notable are the Guidelines on the Use of AI in Arbitration (2025) published by the Chartered Institute of Arbitrators, and the JAMS AI Rules published in April 2024. Another key, related development is the EU's AI Act, which entered into force on 1 August 2024, and is the world's first comprehensive AI law that provides for EU-wide rules on data quality, transparency, human oversight and accountability.

Together with an increased use of AI in the arbitral process, there has been a rise in technology and AI-related arbitrations. This increase is driven by the rapid growth of the tech industry and the increasing reliance on ever-more complex technologies and AI across a range of industries. According to recent statistics, information and communication-related technology disputes now represents around 10% of the caseload of the International Centre for Settlement of Investment Disputes (ICSID). Examples of such disputes include Chinese telecoms giant Huawei's treaty claim against the government of Sweden over its exclusion from the 5G network and Uber's dispute with Colombia. Investor-state technology disputes of this nature are likely to raise a host of new and topical issues including whether digital assets, blockchain, AI or decentralised assets qualify as investments.

Caseload of Arbitral Institutions

Arbitration continues to remain a preferred method of dispute resolution for many international businesses. A number of arbitral institutions recorded high numbers of new case filings. The International Chamber of Commerce (ICC) registered 895 new arbitrations in 2025, with a total of 1,896 cases being administered by the ICC Secretariat. The Singapore International Arbitration Centre (SIAC) recorded 886 new case filings, which is its second-highest annual caseload on record. Other institutions also recorded sizeable numbers with 318 new cases for the LCIA and 582 for the Hong Kong International Arbitration Centre (HKIAC).

The five most preferred sets of arbitral rules are the ICC, SIAC, HKIAC, LCIA and UNCITRAL Rules, according to the Queen Mary University of London and White & Case International Arbitration Survey, a recurring feature of the arbitration landscape that the industry has now grown used to seeing as a periodic barometer of its progress. In the most recent survey, the most preferred arbitral seat is London, with users citing the stability of its commercial law and highly regarded judiciary. Singapore was the second most popular seat, with users noting that it is receiving a larger share of Asian disputes as many US and Western companies have relocated out of Hong Kong.

New Arbitral Rules

In 2025, the SIAC introduced new arbitration rules. One of the key changes in the SIAC Rules 2025 is to enhance its emergency arbitration procedure by permitting an emergency arbitrator to order ex parte interim relief. The SIAC is one of the first major arbitral institutions to permit an emergency arbitrator to order interim relief on an ex parte basis. Other key changes include:

- new rules on third-party funding to give tribunals wide-ranging powers to require details of third-party funding arrangements;
- a new "preliminary determination" procedure; and
- a new "streamlined procedure" for disputes of low value.

These new provisions all improve the time, cost-efficiency and attractiveness of SIAC arbitration.

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In 2026, the ICC introduced new arbitration rules that are effective from 1 June 2026. Under the new ICC Rules, the Terms of Reference, a well-established feature of ICC arbitration, are no longer mandatory. Instead, tribunals retain a general discretion to conclude Terms of Reference where they consider it helpful to do so. Other key changes include:

- clarification, and expansion, of arbitrator disclosure obligations;
- a new "highly expedited" opt-in arbitration procedure;
- a revised emergency arbitration framework, which extends the scope of tribunals' powers; and
- the introduction of early determination procedures, which enables parties to apply to the tribunal for the early determination of claims or defences that are manifestly without merit, or manifestly outside the tribunal's jurisdiction.

The updates are aimed primarily at improving procedural efficiency, and are to be welcomed.

The Reform of the Arbitration Act (England and Wales)

In the UK, the process of reform of the Arbitration Act 1996 has reached its conclusion as the Arbitration Act 2025 entered into force in late 2025.

The most significant reform of the Arbitration Act 2025 was to introduce a new statutory rule that, in the absence of an express choice from the parties of the governing law of the arbitration agreement, the applicable law will be the law of the seat. This reform overturned the effects of *Enka v Chubb*, a Supreme Court decision of October 2020 that decided the vexed question of how to determine the law applicable to an arbitration agreement. In *Enka v Chubb*, the Supreme Court held that the default choice is the law of the contract. This is significant because, where an arbitration agreement is governed by foreign law, key provisions of the Arbitration Act 1996 do not apply, with the result that parties are deprived of the full protection and support of the English courts for arbitrations seated in London.

The Arbitration Act 2025 now provides welcome clarity to the choice of law applicable to arbitration agreements by implementing a straightforward statutory rule that the arbitration agreement is governed by the law of the seat, in the absence of an express choice of law. As a consequence, parties who choose London as an arbitral seat – in the absence of an express choice of law applicable to the arbitration agreement – now know that any dispute as to the scope or validity of the arbitration agreement will benefit from an arbitration-friendly jurisdiction, offering a robust legal framework that supports and facilitates the arbitration process, and where arbitration agreements are respected and enforced.

Other key changes include the strengthening of arbitrator powers to make awards on a summary basis and to issue peremptory orders as well as a codification of the arbitrator's duty of disclosure.

The Development of Arbitral Jurisprudence

National apex courts have recently delivered several judgments that have had a meaningful impact on the development of arbitral jurisprudence. Perhaps the most prominent of these that captivated the attention of the arbitration community were rendered by the US Supreme Court.

Jules v Andre Balazs Properties

In May 2026, the US Supreme Court held that US courts staying claims pursuant to Federal Arbitration Act (FAA) Section 3 retain jurisdiction over post-award proceedings, including whether to later confirm or vacate the tribunal's decision. The Supreme Court observed that "nothing in the FAA eliminated that jurisdiction while the parties arbitrated". This means that courts maintain their authority but will not actively intervene during the arbitration itself. The practical implication of the decision is to streamline enforcement by ensuring that the same court that stays an arbitration under the FAA may retain jurisdiction to enforce or vacate an award.

Kingdom of Spain v Blasket Renewable Investments LLC

In June 2026, in *Kingdom of Spain v Blasket Renewable Investments LLC*, the US Supreme Court denied certiorari in award enforcement proceedings under the Foreign Sovereign Immunities Act (FSIA) against Spain. Spain argued that it had never consented to arbitrate and, therefore, the US courts lacked jurisdiction under the FSIA's arbitration exception. The DC Circuit Court of Appeals determined that whether Spain consented went to the scope of the arbitration agreement rather than basic jurisdiction and, therefore, was a question for the tribunal. The US Supreme Court denied certiorari and left intact the DC Circuit rulings. The decision confirms the USA as a pro-enforcement jurisdiction, including with respect to awards against sovereign states.

Smith v Spizziri

The US Supreme Court held that federal courts must stay, rather than dismiss, claims that are governed by an arbitration agreement. The decision is important as, while a party can immediately appeal an order dismissing an action, there is no immediate right of appeal from an order staying the proceedings. The decision resolves a circuit split over whether FAA, 9 USC Section 3 requires a court to stay proceedings after compelling arbitration. The Supreme Court's pro-arbitration decision reasoned that staying, instead of dismissing, lawsuits subject to an arbitration agreement is consistent with the supervisory role that the FAA envisions for the courts and allows parties to seek relief related to the arbitration without filing a new case.

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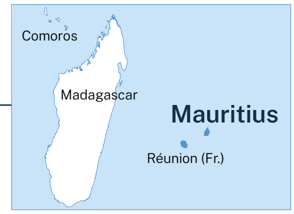

Law and Practice

Contributed by:
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BLC Robert & Associates is a leading independent business law firm in Mauritius, with eight partners and over 30 locally and internationally trained lawyers. It is a member of the Africa Legal Network (ALN), which is recognised by international directories as the leading legal network in Africa. The firm has four main practice areas: corporate and M&A; banking and finance; financial services and capital markets; and dispute resolution. It offers the full service of attorney (solicitor) and counsel in a range of commercial disputes, whether before the courts or arbitral tribunals. With the promulgation of the International Arbitration Act 2008 and the setting-up of institutions geared for international commercial arbitration in the jurisdiction, the firm has built its capacity in that area and has handled a range of high-value, complex arbitrations in contractual disputes, construction, hospitality, oil and gas, and private equity.

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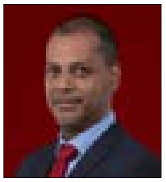

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1. General

1.1 Prevalence of Arbitration
International arbitration is common in the commercial landscape in Mauritius, especially in construction contracts, constitutions and shareholders' agreements of global business companies and commercial contracts where the parties are not of the same nationality. Parties also choose Mauritius as a seat of arbitration in commercial contracts and construction disputes governed by Mauritian law.

1.2 Key Industries
Increasingly more real estate disputes are being resolved by way of arbitration in Mauritius. Construction disputes remain a leading industry as contracts are based on standard forms that include arbitration clauses. By law, the constitutions of global business companies that include arbitration clauses must provide for Mauritius as the seat of arbitration. The increase in arbitration within the corporate and construction sector is continuous, and Mauritius remains a preferred neutral seat for cross-border disputes in the African region.

1.3 Arbitration Institutions
Both the Mauritius International Arbitration Centre (MIAC) and the Mauritius Chamber of Commerce and Industry Arbitration Centre (MARC) are commonly used, as they both have modern hearing centres and rules adapted for international arbitration, and are supported by reputable appointing bodies: the Permanent Court of Arbitration (PCA) in the case of MIAC and the MARC Court in the case of MARC.

1.4 National Courts
Matters to be decided under the International Arbitration Act 2008 (IAA) or the Convention for the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 (the "2001 Act") are heard by "Designated Judges", who are judges of the Supreme Court appointed in that capacity by the Honourable Chief Justice. The Designated Judges are the only ones who can hear applications made under the IAA and the 2001 Act.

2. Governing Legislation

2.1 Governing Law
International arbitration is governed by the IAA and the 2001 Act, which incorporates the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). The IAA is founded on the UNCITRAL Model Law on International Commercial Arbitration (the "Model Law") and contains a specific provision that, inter alia, highlights the need to promote uniformity with the Model Law (Section 2B of the IAA). However, the IAA contains a few modifications, tailored to ensure better effectiveness of and support for international arbitration.

- Arbitration clause: once a party contends that the dispute is subject to an arbitration clause, the parties are referred to arbitration unless the opposing party "shows, on a prima facie basis, that there is

a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed" (Section 5 of the IAA).
- Jurisdiction: under Section 20 of the IAA, the Supreme Court decides on the issue of jurisdiction when an arbitral tribunal has decided it has jurisdiction and when it has decided it does not have jurisdiction to determine the dispute.
- Arbitration proceedings: under the IAA, the arbitral tribunal needs to give parties a "reasonable opportunity to present their case", whereas the Model Law provides that parties should be given "full opportunity".
- Awards: under the IAA, there are no distinctions between partial awards, interim awards and final interim awards – all awards are final and binding. In setting aside an award, the Supreme Court has the power to make consequential orders (Section 39A of the IAA).
- Grounds to set aside an award: under Section 39 of the IAA, two additional grounds to set aside an award have been added:
  (a) if the award was induced or affected by fraud or corruption; and
  (b) if there is a breach of natural justice during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

The Third Schedule to the IAA sets out the provisions of the Model Law to which the provisions of the IAA correspond, in order to assist international users in identifying where the Articles have been incorporated.

2.2 Changes to National Law
No changes have been made to the 2001 Act, the IAA or the Supreme Court (International Arbitration Claims) Rules 2013 (the "2013 Rules"). Under the Civil Appeal Act 2025, which came into effect on 5 January 2026, all civil appeal procedures have been consolidated into one framework. However, there are no changes to the right of appeal to the Judicial Committee of the Privy Council (the "Privy Council") against any decisions of the Supreme Court, including international arbitration matters under Sections 42 (2) and 44 of the IAA.

3. The Arbitration Agreement

3.1 Enforceability
Under Section 4 of the IAA, an arbitration agreement should be in writing and be in the form of either an arbitration clause in a contract or legal instrument or a separate agreement to be enforceable.

The addition of the term "legal instrument" under the IAA includes investment treaty arbitrations arising under investment treaties. Furthermore, Article II of the New York Convention, as incorporated into the 2001 Act, provides that contracting states should recognise agreements in writing, which includes an "arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams".

Under Section 4 (2) of the IAA, an arbitration agreement is in writing if:

- its contents are recorded in any form, whether or not the arbitration agreement or the contract has been concluded orally, by conduct or by other means;
- it is concluded by an electronic communication and the information contained in it is accessible so as to be usable for subsequent reference; or
- 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.

3.2 Arbitrability
No definitive pronouncement has yet been given on subject matters that may not be referred to arbitration. Courts apply a broad interpretation to arbitration agreements to give effect to the intention of the parties in entering arbitration agreements.

Referral to arbitration is governed by Section 5 of the IAA, which provides that, when an action is brought before any court and a party contends that the action is subject to an arbitration agreement, that court should "automatically" transfer the action to the Supreme Court if the party does so after submitting its first statement on the substance of the dispute. The Supreme Court will thereafter refer parties to arbitration, unless the other party shows "on a prima facie basis, that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed" (Section 5 (2) of the IAA), in which case it will itself determine whether the arbitration agreement is indeed null, void, inoperative or incapable of being performed. If the Supreme Court so finds, the matter is transferred back to the court.

The recent decision in *ECP Africa Fund IV A LLC v Galakha Enterprises Ltd*2026 SCJ 246 confirmed that the prima facie standard is a high one. In this case, the respondents' case was, inter alia, that they never consented to the arbitration agreement. After analysing the evidence, the Supreme Court held that they had failed to meet the required burden of proof and that the factual disputes on the scope or validity of the arbitration agreement "must be left to the arbitrator" in accordance with the competence-competence principle.

3.3 National Courts' Approach

No court has yet been tasked with determining the law governing an arbitration agreement. Nevertheless, the correct approach would be to give effect to the intention of the parties.

In fact, under Section 32 (1) of the IAA, which embodies Article 28 of the Model Law, the arbitral tribunal itself will decide the dispute in accordance with the rules of law chosen by the parties as applicable to the substance of the dispute. If there is any designation of the law or legal system of a state, it should be construed (unless otherwise expressly provided) as referring directly to the state's substantive law and not to its conflict-of-laws rules (Section 32 (2) of the IAA). If there is no such designation, the arbitral tribunal will apply the law determined by the conflict of law that it considers applicable.

Parties can expressly authorise an arbitral tribunal to decide the dispute ex aequo et bono or as amiable compositeur, meaning that it will determine the dispute on the basis of notions of fairness and equity without being bound by the strict rules of law (Section 32 (4) of the IAA). In any event, disputes are decided in accordance with the terms of the contract, and usages of trade applicable to the transaction are also considered by the arbitral tribunal (Section 32 (5) of the IAA).

Courts are willing to enforce arbitration agreements, and this is reinforced by Section 5 of the IAA and Article II(3) of the New York Convention.

3.4 Validity

The principle of the separability of an arbitration agreement is entrenched in Section 20 (2) of the IAA, which provides that an arbitration clause is an agreement independent of the other terms of the contracts in which it is contained, and therefore a decision of the arbitral tribunal that the contract is null and void will not invalidate the arbitration clause.

4. The Arbitral Tribunal

4.1 Limits on Selection

Section 12 (2) of the IAA provides that parties are free to agree on a procedure for appointing the arbitral tribunal, subject to the provisions of Sections 12 (4) and 12 (5) of the IAA, which provide for situations where the PCA can intervene to break deadlocks within the selection process, unless the agreement between the parties provides for other means for resolving such issues.

Under Section 12 (4) of the IAA, the PCA's intervention includes situations where:

- parties fail to act in accordance with the agreed procedure;
- parties or arbitrators are unable to reach an agreement; or
- a third party (including an arbitral institution) fails to perform any function entrusted to it under that procedure.

Any party may request the PCA to take any measures as necessary.

The PCA's power to intervene is further extended by Section 12 (5) of the IAA, which provides that any party may request the PCA to take any necessary measures in the event of any other failure to constitute the arbitral tribunal.

4.2 Default Procedures

Where any party has requested the PCA to intervene under Section 12 (4) or 12 (5) of the IAA, Section 12 (6) sets out the measures that may be taken by the PCA, including:

- giving directions as to the making of any necessary appointments;
- directing that the arbitral tribunal shall be constituted by such appointments (or any one or more of them) as have been made;
- revoking any appointment already made;
- appointing or reappointing any or all of the arbitrators; and
- designating any arbitrator as the presiding arbitrator.

In appointing an arbitrator, the PCA shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In the case of a sole or third or presiding arbitrator, the PCA shall also consider the advisability of appointing an arbitrator of a nationality other than those of the parties (Section 12 (7) of the IAA).

4.3 Court Intervention

The IAA does not give the court power to intervene in the selection of arbitrators in international arbitrations seated in Mauritius.

In domestic arbitrations, a judge in chambers may appoint an arbitrator or the tribunal where the parties cannot agree on the identity of arbitrators or an appointment procedure.

4.4 Challenge and Removal of Arbitrators

Parties can challenge arbitrators under Sections 13 and 14 of the IAA, or they can terminate the arbitrators' mandate under Section 15 of the IAA for failure or inability to act.

The appointment of an arbitrator may be challenged where the arbitrator has failed to disclose any circumstance giving rise to justifiable doubts as to their impartiality or independence, or where the arbitrator is seen to lack such qualifications as agreed by the parties (Section 13 of the IAA). Under Section 13 (4) of the IAA, arbitrators can only be challenged by a party who appointed them for reasons of which that party became aware after the appointment was made.

Parties are free to agree on a procedure for challenging an arbitrator (Section 14 (1) of the IAA). However, in the absence of an agreement, a party who intends to challenge an arbitrator must send a written statement of the reasons for the challenge to the arbitral tribunal within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance giving rise to justifiable doubts as to the arbitrator's impartiality or independence. Unless the challenged arbitrator withdraws from their office or the other party agrees to the challenge, it shall be up to the arbitral tribunal to decide on the challenge (Section 14 (2) of the IAA).

Where a challenge under any procedure as agreed by the parties or as per the above does not succeed, the challenging party may then, within 30 days of receiving notice of the decision rejecting the challenge, request the PCA to decide on the challenge (Section 14 (3) of the IAA). While the request made to the PCA is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make one or more awards (Section 14 (4) of the IAA).

With regards to termination, Section 15 of the IAA provides that if arbitrators become de jure or de facto unable to perform their functions, or fail to act without undue delay, their mandate shall terminate on their withdrawal from office, or upon agreement of the parties. Parties may request the PCA to resolve any remaining controversy on any of the grounds for termination.

4.5 Arbitrator Requirements

An arbitrator's duty to disclose any circumstance likely to give rise to justifiable doubts as to their impartiality or independence arises at the time when they are approached in connection with their possible appointment as an arbitrator, and is maintained from the time of their appointment and throughout the arbitral proceedings (Section 13 of the IAA).

5. Jurisdiction

5.1 Challenges to Jurisdiction

An arbitral tribunal can rule on a party's challenge to the tribunal's own jurisdiction, and the principle of competence-competence is catered for under Section 20 (1) of the IAA.

5.2 Circumstances for Court Intervention

A party can only challenge the jurisdiction of an arbitral tribunal up to the submission of the statement of defence, and it would not be precluded from doing so even if it participated in the appointment of the arbitrator (Section 20 (3) of the IAA). Furthermore, a plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings (Section 20 (4) of the IAA). However, the arbitral tribunal may admit a later plea under Section 20 (3) or 20 (4) if it considers the delay justified.

The arbitral tribunal can rule on its jurisdiction as a preliminary question or in an award on the merits of the dispute. If jurisdiction has been determined by the arbitral tribunal as a preliminary question, Section 20 (7) of the IAA states that any party may request the Supreme Court to decide the matter of jurisdiction within 30 days of receiving notice of that ruling. While such request is pending before the Supreme Court, the arbitral proceeding may continue, and one or more awards can be made by the tribunal.

Section 20 (7) of the IAA modifies the Model Law in a material aspect as it allows the Supreme Court to review rulings of the arbitral tribunal when it has ruled that it has jurisdiction, and also when it has ruled that it does not have jurisdiction. This was confirmed in the ruling of *Digame Investment Company Limited and Others v Apex Fund and Corporate Services* (*Mauritius*) *Ltd*2023 SCJ 273.

5.3 Timing of Challenge

The arbitral tribunal may rule on a plea of jurisdiction as a preliminary question or in an award on the merits. Where the tribunal does so as a preliminary question, any party may request the Supreme Court to decide the matter (Section 20 (7) of the IAA) within 30 days of receiving notice of that ruling. Nevertheless, the arbitral proceeding is not stayed while such a request is pending, and the tribunal can make one or more awards.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

The standard of judicial review for jurisdiction is "de novo", which means that the Supreme Court will make its own determination of the issue of jurisdiction by way of a full rehearing. The notion is that, as a matter of logic, the arbitral tribunal cannot itself finally resolve any matter going to its own jurisdiction and "thereby pull itself up by its own bootstrap" (the Mauritian International Arbitration Act 2008: Text and Travaux Préparatoires, paragraph 77, page 203). The decision in *Digame Investment Company Limited and Others v Apex Fund and Corporate Services* (*Mauritius*) *Ltd*2025 SCJ 429 illustrates how the court under Section 20 (7) of the IAA will make a de novo hearing and not a review or appeal of the arbitral tribunal's findings on jurisdiction.

5.5 Breach of Arbitration Agreement

Under Section 5 of the IAA, if a party contends that an action before a court is subject to an arbitration agreement, the court will automatically transfer the action to the Supreme Court, which in turn shall refer the matter to arbitration unless a party shows, on a prima facie basis, that there is a very strong probability that the arbitration agreement is null and void, inoperative or incapable of being performed. The referral under Section 5 of the IAA therefore caters for circumstances where a party is acting in breach of an arbitration agreement. The high threshold imposed on the party opposing a referral to arbitration is clear evidence of a reluctance to allow parties to act in breach of an arbitration agreement.

The decision in *SBM Africa Holdings Ltd v Khimji*2025 SCJ 445 confirmed that the Supreme Court can grant anti-suit injunctions under Sections 6 and 23 of the

IAA if proceedings are initiated before a foreign court in breach of an arbitration agreement. This is "ordinary granted unless the opposing side can show strong reasons to refuse injunctive relief", where the application is made promptly and before the "foreign proceedings are too far advanced". Further, this case also confirms that, if an anti-suit injunction is granted, costs may be awarded on an indemnity basis "irrespective of whether the losing party had acted in deliberate breach of agreement".

5.6 Jurisdiction Over Third Parties

An arbitral tribunal will not have jurisdiction over individuals or entities that are neither party to an arbitration agreement nor signatories to the contract containing the arbitration agreement. However, third parties may be affected in the following ways.

- If the parties expressly agree, under the arbitration agreement, that the supplementary provisions for international arbitrations under Schedule 1 to the IAA will apply ("Supplementary Provisions"), paragraph 4 of the Supplementary Provisions allows a party to the arbitration to make an application to the Supreme Court to determine that one or more persons be joined in the arbitration as a party, provided that such third person and the applicant party have consented thereto in writing. This would apply regardless of whether the third party is foreign or domestic.
- Unless agreed otherwise by the parties, an arbitration agreement is not discharged by the death, bankruptcy or winding-up of a party, so it can be enforced by or against representatives of that party (Section 7 of the IAA), even though the representative was not a party to the arbitration agreement per se.
- Another way that third parties may be affected is if the "corporate veil" is lifted.
- If an entity or individual has conducted themselves in a manner that shows they are intervening in a contract and agrees to be bound by its terms, that person can be considered to have become a party to the contract and will therefore be subject to the arbitration agreement.

6. Preliminary and Interim Relief

6.1 Types of Relief

Section 21 of the IAA provides that, unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures in the form of an award or in another form, by which it orders a party to do the following at any time before making the award by which the dispute is finally decided:

- maintain or restore the status quo pending determination of the dispute;
- take action that would prevent the arbitral process itself, or refrain from taking action that is likely to cause current or imminent harm or prejudice to such process;
- provide a means of preserving assets out of which a subsequent award may be satisfied;
- preserve evidence that may be relevant and material to the resolution of the dispute; or
- provide security for costs.

The arbitral tribunal may modify, suspend or terminate an interim measure that it has granted upon the application of any party or, in exceptional circumstances and on prior notice to the parties, on the arbitral tribunal's own initiative (Section 21 (5) of the IAA).

6.2 Role of Courts

Generally, court intervention is permitted only in certain circumstances, and in respect of international arbitrations seated in Mauritius. However, the grant or recognition of interim relief is not limited to international arbitrations seated in Mauritius (Section 3A of the IAA).

Section 6 of the IAA provides that a party can request an interim measure of protection in support of arbitration from the Supreme Court or a court in a foreign state, before or during arbitral proceedings. An application to the Supreme Court must be made and determined in accordance with Section 23 of the IAA, which provides for the powers of the Supreme Court to issue interim measures.

Section 22 of the IAA deals with the recognition by the Supreme Court of interim remedies granted by an arbitral tribunal. Section 22 (1) of the IAA provides that an interim measure granted by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the Supreme Court, regardless of the country in which it was issued. The party who is seeking or has obtained recognition or enforcement of an interim measure is required to promptly inform the Supreme Court of any termination, suspension or modification of that measure (Section 22 (2) of the IAA).

Upon an application for the recognition or enforcement of an interim measure, and if it considers it proper, the Supreme Court may order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security, or where such a decision is necessary to protect the rights of third parties (Section 22 (3) of the IAA).

Section 22 (4)(a)(i) of the IAA provides that the recognition or enforcement of an interim measure may be refused at the request of the party against whom it is invoked where the court is satisfied that one of the grounds for exclusive recourse against an award under Section 39 (2)(a) applies – namely, that the party making the application has furnished proof that:

- it was under some incapacity, or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Mauritius law;
- it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
- the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration, or contains a decision on a matter beyond the scope of the submission to arbitration; or
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the IAA.

Recognition or enforcement may also be refused at the request of the party against whom it is invoked where the court is satisfied that the arbitral tribunal's decision with respect to the provision of security in connection with the measure issued by the arbitral tribunal has not been complied with (Section 22 (4)(a)(ii) of the IAA), or where the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the state in which the arbitration takes place or under the law under which that interim measure was granted (Section 22 (4)(a)(iii) of the IAA).

Furthermore, under Section 22 (4)(b) of the IAA, recognition or enforcement of an interim measure may be refused where the court finds that the measure is incompatible with the powers conferred on the court, unless the court decides to reformulate the measure to the extent necessary to adapt it to its own power and procedures for the purposes of enforcing that measure and without modifying its substance, or unless any of the following grounds set out in Section 39 (2)(b) apply to the recognition and enforcement of the measure:

- the subject matter of the dispute is not capable of settlement by arbitration under Mauritius law;
- the award is in conflict with the public policy of Mauritius;
- the making of the award was induced or affected by fraud or corruption; or
- a breach of the rules of natural justice occurred during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

Where the arbitral tribunal is unable to exercise its powers in granting or recognising an interim measure as provided for under Section 21 of the IAA, Section 23 sets out the powers of the Supreme Court to issue interim measures. The tribunal shall have the same power to issue an interim measure in relation to arbitration proceedings as it has in relation to proceedings in court, whether the juridical seat of the arbitration is in Mauritius or not, and whether that power is exercised by a judge in chambers or otherwise. In so doing, the court shall have regard to the specific features of international arbitration. However, the court must exercise its power in such a manner as to support and not disrupt the existing or contemplated arbitral proceedings (Section 23 (2A) of the IAA).

Where the case is one of urgency, the court may make such order as it thinks necessary, on the ex parte application of a party or proposed party to the arbitral proceedings (Section 23 (3) of the IAA).

Where the case is not one of urgency, the court must act only on the application of a party to the arbitral proceedings made on notice to the other parties and to the arbitral tribunal, and with the permission of the arbitral tribunal or the agreement in writing of the other parties (Section 23 (4) of the IAA).

Under Section 23 (5) of the IAA, other than in urgent circumstances, the Supreme Court can only order interim measures if the applicant has obtained the permission of the arbitral tribunal or written agreement of the other parties. In addition, the Supreme Court can act only if, and to the extent that, the arbitral tribunal and any other arbitral or other institution or person vested by the parties with powers regarding interim measures has no power or is unable for the time being to act effectively. Where the court so orders, an order made by it shall cease to have effect on the order of the arbitral tribunal or of any such arbitral or other institution or person having power to act in relation to the subject matter of the order (Section 23 (6) of the IAA).

Recently, in *Intermediate Investment Holdings Limited v Imevbore and Others*2026 SCJ 186, the Supreme Court held that, where an arbitral tribunal has not been constituted and it would be impractical to appoint an emergency arbitrator given the urgency of the circumstances, it still retained its jurisdiction under Sections 6 and 23 of the IAA to issue interim measures given that the conditions under Section 23 (5) of the IAA would be satisfied.

In terms of costs, in deciding whether to order costs under Rule 19 of the 2013 Rules, the Supreme Court will consider the circumstances including the conduct of parties, whether the party has succeeded on part of its case and whether there was any admissible offer to settle which was drawn to the Court's attention (Rule 19 (3) of the IAA). In *Valluvar Khuzhumam Private Limited and Another v APC International and Another*2025 SCJ 510, costs was awarded as the applicant had delayed in initiating arbitration and insisted with its court application, although an interim order was refused. Additionally, in *Inside Capital Partners Ltd v Sadar*2026 SCJ 177, costs were awarded where an applicant moved to withdraw a freezing order in the nature of a *Mareva* injunction under the IAA without explanation and after putting the respondent through the trouble of appearing and filing its affidavit evidence.

6.3 Security for Costs

Parties can be entitled to apply for an order for security for costs if the parties have agreed that the arbitration agreement shall be governed by specific rules that provide for such. Under the IAA, the arbitral tribunal can order a party to provide a means of preserving assets out of which a subsequent award may be satisfied (Section 21 (1)(c) of the IAA) or to provide security for costs (Section 21 (1)(e) of the IAA).

Furthermore, under Section 39 (6) of the IAA, where an application is made to set aside an award, the court may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application.

It is also provided under Rule 28 of the 2013 Rules that a "defendant to any arbitration claim may apply for security for his costs of the proceedings". Such an application is to be supported by written evidence, either by way of affidavit or in the form of one or more witness statements accompanied by any supporting documents (Rule 28 (2)). Where the court decides to make an order for security for costs, it shall determine the amount of security, direct the manner and time in which the security shall be given, and make an order specifying the consequences of a breach of the order for security for costs.

In *Laporte EGL v Laporte MAR*2025 SCJ 35, the Supreme Court confirmed that security for costs can be obtained pending an appeal before the Privy Council in the amount equivalent to the arbitral award. It reiterates the importance of preserving the rights of the successful party to damages. This was reaffirmed in the recent case of *Super-Max Mauritius v Actis Consumer Grooming Judicial Committee Products Limited*2026 SCJ 28 such that, even where a stay pending appeal to the Privy Council is refused, the court may, in the interests of justice, direct that the sums payable pursuant to the award be held in an escrow account pending the determination of the appeal and that it only be removed after the disposal of the appeal.

7. Procedure

7.1 Governing Rules

Subject to the IAA, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting arbitral proceedings.

7.2 Procedural Steps

As the parties have the liberty to agree on the procedure to be followed by the arbitral tribunal under the IAA framework, the procedural steps will depend on the chosen law and/or rule.

7.3 Powers and Duties of Arbitrators

Under Section 24 (1) of the IAA, every arbitral tribunal has the duty to:

- "treat parties with equality and give them a reasonable opportunity of presenting their case"; and
- "adopt procedures which are suitable to the circumstances to the case, avoiding unnecessary delay and expenses, so as to provide a fair and efficient means for the resolution of the dispute between the parties".

7.4 Legal Representatives

Legal representatives include barristers-at-law, attorneys-at-law and notaries, and are subject to the Law Practitioners Act 2008. Under Section 31 of the IAA, unless otherwise agreed by the parties, a party to an arbitral proceeding can be "represented in the arbitral proceedings by a law practitioner or other person chosen who need not be qualified to practise law in Mauritius or in any other jurisdiction".

8. Evidence

8.1 Collection and Submission of Evidence

Subject to the IAA, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral tribunal may, subject to the IAA, conduct the arbitration in such manner as it considers appropriate, and determine all the procedural and evidential matters (Section 24 (2) and (3) of the IAA).

8.2 Rules of Evidence

In the absence of an agreement between the parties, the arbitral tribunal can determine all procedural and evidential matters (Section 24 (3)(d) of the IAA).

8.3 Powers of Compulsion

In the absence of an express agreement on the collection and submission of evidence at the pleading stage and at the hearing, an arbitrator can compel a party to disclose documents under Section 24 (3)(d) of the IAA. While the foregoing only applies to parties to the arbitration, Section 29 of the IAA further provides that the arbitral tribunal can request the Supreme Court to provide assistance through the issue of relevant summons to non-parties to give evidence or produce documents or other material, or to order any witness to submit to examination on oath before the arbitral tribunal or before an officer of the court or any person for the use of the arbitral tribunal.

9. Confidentiality

9.1 Extent of Confidentiality

A strict application of the IAA does not render an arbitration confidential, but the parties can (and typically do) agree to the confidentiality of arbitration proceedings and their constituent parts either by express agreement or in the rules they have chosen to govern the arbitration.

Section 42 (1B)(a) of the IAA provides that, upon application by a party, international arbitration-related cases before the Supreme Court can be heard in private where:

- all the parties agree; or
- the court considers that publicity would prejudice the interests of justice, taking into account the specific features of international arbitration, including any expectation of confidentiality that the parties may have had when concluding their arbitration

agreement, or any need to protect confidential information.

Only the announcement of the court's decision would then be public.

Section 42 (1C) of the IAA further provides that the Supreme Court can prohibit the publication of all information relating to the court proceedings, upon the application of one or all of the parties and where the interests of justice so require.

In addition, Rule 12 of the 2013 Rules provides that any judgment of the Supreme Court can be edited before being published and that any evidence, court records and documents must be kept in the manner in which the Supreme Court directs.

10. The Award

10.1 Legal Requirements

Section 34 (1) and (2) of the IAA provide that, unless otherwise agreed by the parties, the arbitral tribunal can make more than one award at different points in time in the arbitration proceedings on a specific issue or on claims or counterclaims submitted to it for decision. The key legal requirements of an award include the following (Section 36 of the IAA):

- it must be in writing and signed by the arbitrator or more than one arbitrator, or by the majority of arbitrators or the presiding arbitrator, provided that the reason for omitting any signature is stated;
- it must state the reasons on which it is based, unless the parties have agreed otherwise;
- it must state the date on which it was made and shall always be deemed to have been made at the juridical seat of the arbitration; and
- after an award is made, a signed copy must be delivered to each party.

10.2 Types of Remedies

Unless otherwise agreed by the parties, the arbitral tribunal has the following powers.

- It may make a declaration as to any matter to be determined in the proceedings.
- It may order the payment of a sum of money in any currency.
- It has the same powers as a court in Mauritius to:
  - (a) order a party to do or to refrain from doing anything;
  - (b) order specific performance of a contract; and
  - (c) order the rectification, setting-aside or cancellation of a deed or other document.
- It may award simple or compound interest for such period and at such rate as it considers meets the justice of the case.

It is worth noting that the law or rules chosen by the parties as applicable to the substance of the dispute will determine any issue of limitation or prescription (Sections 32 and 41 of the IAA).

However, for recognition and enforcement of an award under Section 4B of the 2001 Act, notwithstanding any other enactment, the limitation period under the laws of Mauritius is not applicable to the recognition and enforcement of an arbitration award under the New York Convention. This was confirmed in the ruling of *Pueblo Holdings Limited v Emirates Trading Agency LLC*2023 SCJ 223, in which the Supreme Court held that the limitation period prescribed for default judgments under the Mauritian Civil Code of Procedure did not apply to arbitral awards under the IAA and the 2001 Act.

10.3 Recovering Interest and Legal Costs

The award of costs depends on either the arbitration agreement of the parties or the rules applicable to the arbitration. Under the IAA, costs of the arbitration mean "the costs of the PCA in discharging its functions… the fees and expenses of the arbitral tribunal, the legal and other expenses of parties, and any other expenses related to the arbitration".

Section 33 (2) of the IAA provides that, unless agreed otherwise by the parties, the cost of arbitration shall be fixed and allocated by the arbitral tribunal in an award, applying the following general principles:

- costs should follow the event, except where it appears to the arbitral tribunal that this rule should not apply or not apply fully; and

- the successful party should recover a "reasonable amount reflecting the actual costs of the arbitration and not only a nominal amount", and, if the award does not allocate costs, "each party shall be responsible for their own costs and shall bear in equal share the costs" of the arbitration, fees and expenses of the arbitral tribunal and any other related expenses.

The conduct of the parties is one of the factors considered in awarding costs.

11. Review of an Award

11.1 Grounds for Appeal

While there is no general right of appeal against an award under the IAA, the following applies:

- the First Schedule to the IAA provides for a right of appeal on any question of Mauritius law – parties can opt into the First Schedule, but its application is mandatory in arbitrations on the constitution of global business companies; and
- Section 39 of the IAA provides an exclusive recourse on limited grounds for the setting-aside of an award made in an arbitration seated in Mauritius.

Under Section 39 (2) of the IAA, an arbitral award may be set aside by the Supreme Court only in the case of the following.

- Where the party making the application furnishes proof that:
  - (a) a party to the arbitration agreement was under some incapacity or the agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under Mauritius law;
  - (b) it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
  - (c) the award deals with a dispute not contemplated by, or not falling within the terms of, the submission to arbitration, or contains a decision on a matter beyond the scope of the submission to arbitration; or
  - (d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the IAA.
- Where the Court finds that:
  - (a) the subject matter of the dispute is not capable of settlement by arbitration under Mauritius law;
  - (b) the award is in conflict with the public policy of Mauritius;
  - (c) the making of the award was induced or affected by fraud or corruption; or
  - (d) a breach of the rules of natural justice occurred during the arbitral proceedings or in connection with the making of the award by which the rights of any party have been or will be substantially prejudiced.

An appeal against any final decision of three Designated Judges of the Supreme Court can only be made to the Privy Council (Section 44 of the IAA). It is worth noting that a party seeking a stay of execution of the judgment pending an appeal to the Privy Council has the burden of "bringing compelling reasons and to demonstrate not only by argument, but also by evidence why the judgment should not be executed pending the appeal" (*Super-Max Mauritius v Actis Consumer Grooming Products Limited*2026 SCJ 28).

Under Section 39 (4) of the IAA, an application for setting aside may not be made more than three months after the date on which the party making that application has received the award or, if a request has been made under Section 38 of the IAA (for correction or interpretation of an award or for an additional award), from the date on which that request has been disposed of by the arbitral tribunal.

When asked to set aside an award, the court may, where appropriate and so requested by a party, suspend the setting-aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside (Section 39 (5) of the IAA), and may order that any money made payable by the award shall be brought into court or otherwise secured pending the determination of the application (Section 39 (6) of the IAA).

It is for the parties to select which, if any, of the provisions of the First Schedule they wish to opt into. In order to avoid any controversy as to whether parties have opted into the Schedule or any specific provision thereof, the IAA requires that the parties expressly refer to the First Schedule of the IAA or to the specific provision in question in their agreement (Section 3B of the IAA). As an exception, the provisions of the First Schedule apply mandatorily to any disputes arising out of the constitution of a Global Business Licence company, where there is an arbitration clause.

The “opt in” options are:

- the determination of a preliminary point of Mauritius law by the court;
- appeals on questions of Mauritius law;
- the consolidation of arbitral proceedings; and
- joinder.

Leave to appeal shall not be granted by the court unless it considers that, having regard to all circumstances, the determination of the question of Mauritius law concerned could substantially affect the rights of one or more parties (Paragraph 2 (2), First Schedule of the IAA).

11.2 Excluding/Expanding the Scope of Appeal

The IAA does not expressly authorise parties to waive any rights of challenge to an award by agreement before the dispute arises. The procedure and grounds for setting aside an award are mandatory provisions of the law.

11.3 Standard of Judicial Review

Under Section 39 of the IAA (or an application for the recognition and enforcement of a foreign arbitral award under the 2001 Act), no review on the merits of the dispute is allowed before the courts, so that the arbitral award is truly final on the merits of the dispute, even if an arbitral tribunal may have committed errors of fact and/or errors of law. Where the First Schedule to the IAA applies, the court may overturn the arbitral tribunal’s conclusions on a point of Mauritian law. Therefore, except in relation to interim measures granted by the arbitral tribunal in the form of an award pursuant to Section 21 of the IAA, an award shall be final and binding on the arbitral tribunal with respect to the matters determined therein (Section 36 (8) of the IAA).

12. Enforcement of an Award

12.1 New York Convention

Mauritius is a signatory to the New York Convention (without reservation), which has been given force of law in the Schedule to the 2001 Act. The New York Convention is applicable irrespective of reciprocity (Section 3A of the 2001 Act), allowing the enforcement of foreign arbitral awards rendered even in non-signatory states.

12.2 Enforcement Procedure

As well as foreign arbitral awards, the IAA provides that the 2001 Act (which contains the New York Convention) “shall” apply to the recognition and enforcement of awards rendered under the IAA – ie, awards made in international arbitrations whose juridical seat is Mauritius (Section 40 of the IAA).

Applications for the recognition and enforcement of arbitral award applications are governed by Rule 15 of the 2013 Rules, as follows.

- An application is made by way of an arbitration claim and is initially made without notice to any respondent.
- Written evidence in support of the enforcement claim should include the documents as set out in Article IV of the New York Convention (the duly authenticated original award or a duly certified copy and the original or a duly certified copy of the agreement).
- The application should state the name and the usual or last known place of residence or business of the applicant or, if a body corporate, the registered address of the person against whom it wishes to enforce the award.

- The application should state whether the award has been complied with or the extent to which it has not been complied with.
- The application should include a draft order granting recognition of the award and, where appropriate, authorising the enforcement of the award.
- The application is dealt with by the Chief Justice and, if the above requirements have been complied with, a provisional order is granted recognising the award and authorising the enforcement of the award in the same manner. The Chief Justice can specify the parties on which the order should be served.
- Within 14 days after receipt of the provisional order, the applicant has to cause the enforcement claim and provisional order to be served on the respondent or any such parties as ordered by the Chief Justice. It is worth noting that an application can also be made to extend the delay to allow service to be effected outside the jurisdiction (Rule 8 of the 2013 Rules).
- The respondent may apply to set aside the provisional order and enforcement claim within 14 days of receipt or within such period as specified by the order if it has been served outside the jurisdiction. The grounds on which the respondent can rely to set aside the provisional order are limited to those contained in Article V of the New York Convention.
- The award only becomes enforceable once the period given to the respondent to set aside the provisional order has lapsed or, if the respondent has made an application to set aside the provisional order, when the respondent's application has been finally dealt with.

If an award has been set aside by the court in the seat of the arbitration, the Supreme Court still has discretion to enforce it in Mauritius. Article V(1)(e) of the New York Convention provides that the court may refuse recognition and enforcement if the respondent furnishes proof that the award:

- has not yet become binding; or
- has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

When an award is subject to ongoing set-aside proceedings, the court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to furnish suitable security (Article VI of the New York Convention).

There is currently no specific law on state immunity at the enforcement stage or under the IAA. This question therefore remains subject to customary international law.

12.3 Approach of the Courts

On the whole, the Mauritian courts have taken a pro-enforcement stance in the recognition and enforcement of arbitral awards. The Supreme Court in *Super-Max Mauritius v Actis Consumer Grooming Products Limited*2024 SCJ 449 confirmed it is not possible to challenge the recognition and enforcement of arbitral awards on the basis of procedural formalities that conflict with the spirit of the New York Convention, and that fall outside the IAA and the 2013 Rules.

The courts would refuse to engage anew in the merits of an award unless the arbitration was seated in Mauritius and the parties had expressly agreed to the Supreme Court of Mauritius having the power to hear appeals on Mauritian law.

If the international arbitration is seated in Mauritius, the Supreme Court of Mauritius has the power to set aside the award under Section 39 of the IAA, based on grounds similar to those found in Article V of the New York Convention. If the international arbitration is seated outside Mauritius, the Supreme Court of Mauritius may refuse recognition and enforcement under Article V of the New York Convention. Some illustrations of the approach taken are set out below.

Public Policy

Betamax Ltd v State Trading Corporation 2021 UKPC 14

This case concerned an application to set aside an award on the ground that the arbitration agreement was void and the award contravened public policy. The Supreme Court held that an award that gave effect to an illegal contract was contrary to public policy and should be set aside. The Privy Council overturned this decision and held that the court was debarred from determining the legality of the contract under which the dispute arose when the arbitral tribunal had addressed the issue of the illegality of the underlying contract. The award was therefore final and binding. Furthermore, the Supreme Court of Mauritius, whose judgment had been overturned, had previously confirmed that the public policy to be looked at was international public policy rather than the domestic public policy of Mauritius.

Unable to Present Its Case

Essar Steel Limited v ArcelorMittal USA LLC 2021 SCJ 248

Essar Steel Minnesota Limited (ESML) and ArcelorMittal USA LLC (AMUSA) entered into a contract for the supply of iron pellets, which was then amended to include a holding company, Essar Steel Limited (ESL), as party. Following a dispute, AMUSA terminated the contract and ESML entered into bankruptcy proceedings. Pursuant to an arbitration clause, AMUSA referred its dispute to arbitration and, although ESL had filed an answer and counterclaim, it did not participate in the evidential hearings. When an award was delivered in favour of AMUSA and a provisional order was granted to recognise and enforce the award, ESL sought to set aside the award on the ground that it had been unable to present its case as, inter alia, it had no access to ESML's documents. The Supreme Court was not persuaded and held that ESL had a substantial burden to show that there was a "serious, grave denial of procedural fairness" and that a party had forfeited its opportunity if it had been notified and refused to participate in the proceedings.

Breach of Natural Justice and Public Policy

Peepul Capital Fund II LLC and Another v Vsoft Holdings LLC 2018 PRV 84

Vsoft Holdings LLC appealed against the Supreme Court's decision to set aside its application under Section 39 of the IAA to set aside an award on grounds that it was in breach of natural justice (Section 39 (2)(b)(iv) of the IAA) and public policy (Section 39 (2)(b)(ii) of the IAA). Vsoft sought to argue that its counsel had not abandoned its case. However, the agreed transcript of the arbitral proceedings, placed before both the Supreme Court and the Privy Council, confirmed that there was no breach of natural justice as:

- the counsel had been afforded an adjournment to seek proper instructions;
- it was clear that Vsoft had abandoned its case and conceded the claimants' claims; and
- the arbitrator was right to only determine the quantum.

Furthermore, Vsoft's case was that the award was in contravention of public policy as it afforded the successful party (the investors) a form of double recovery, as the award did not contain a provision that they could not continue to enjoy the benefit of being equity shareholders once they were paid. The Privy Council found that this was a "hopeless submission", that the arbitrator had no obligation to include such condition and that, in any event, Vsoft had not taken any administrative steps to remove the investors from the share register.

Laxmanbhai & Co (Mauritius) Ltd v Minaco (Pty) Ltd 2025 SCJ 21

It was the contention of Laxmanbhai that it was not open to the arbitrator to depart from the agreed grounds between the parties without giving an opportunity to Laxmanbhai to address the relevant issues, and that by doing so the arbitrator had breached the rules of natural justice. Upon consideration of the facts, the Court found that the arbitrator did not go beyond the scope of the arbitration. The Court found that Laxmanbhai had failed to demonstrate that there were any vitiating factors set out in Section 39 (2) of the International Arbitration Act warranting the intervention of the Court.

Breach of Natural Justice as the Wrong Arbitral Rules Had Been Applied

Flashbird Ltd v Compagnie de Sécurité Privée et Industrielle SARL (Respondent) (Mauritius) [2021] UKPC 32

This was an appeal against the Supreme Court's decision to dismiss an application to set aside an arbitral award on the ground that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties. Under the arbitration clause, the following applied:

- the applicable law was that of the MARC;
- the applicable rules were the Rules of Arbitration of the International Court of the International Chamber of Commerce (the "ICC Rules"); and
- the arbitrators were to be appointed in accordance with the ICC Rules.

The issue to be determined was whether the MARC or the ICC had jurisdiction to arbitrate the dispute. Flashbird contended that the arbitration clause was a "hybrid arbitration" that allowed the arbitrator to follow the ICC Rules and not the MARC Rules, which was agreed by the parties. The Privy Council held that, for an award to be set aside on this ground, the applicant must show "a material breach of the arbitration agreement that was not an inconsequential irregularity". It was held that Flashbird suffered no substantial prejudice from the alleged breach of the ICC Rules and that, in any event, minor and technical errors will not necessarily lead to an award being set aside.

Breach of Natural Justice and Mandate

Compagnie de Sécurité Privée et Industrielle v Flashbird Limited 2025 SCJ 471

Compagnie de Sécurité Privée moved to set aside an ICC arbitral award on the grounds that, inter alia, the arbitral tribunal had exceeded its mandate, thereby depriving it of a fair hearing. The respondent, Flashbird Limited, had submitted its claim to the ICC based on the first contract between the parties. The arbitral tribunal, however, awarded damages based on a second contract that was entered into between the parties, which had already been determined and/or subject to a previous award delivered by the MARC. The ICC award was set aside and the Supreme Court held, inter alia, that the arbitral tribunal had breached the right to a fair hearing by deciding on a contractual basis not raised by either party, thereby depriving the applicant of an opportunity to present its case, and should that breach not have occurred, the outcome of the ICC award would have been different.

13. Miscellaneous

13.1 Class Action or Group Arbitration

There is no procedure in Mauritius that provides for class action arbitration or group arbitration. However, different persons may jointly enter a case based on a common cause of action. Alternatively, those parties may enter separate cases and retain their respective attorneys and counsel to appear for them. When the respective cases are in shape for hearing, the court may allow them to be consolidated and heard together, in accordance with paragraph 3 of the First Schedule to the IAA.

13.2 Ethical Codes

There are no specific codes of ethics and/or codes of conduct applicable to arbitrators, but the respective Mauritian Codes of Ethics for Barristers-at-Law and Attorneys-at-Law are applicable. The Law Practitioners (Disciplinary Proceedings) Act 2025 sets out a disciplinary framework in relation to professional misconduct of barristers, attorneys and notaries.

13.3 Third-Party Funding

Mauritius laws on arbitration do not provide for any rules or restrictions on third-party funders. To the extent that there is no legislation prohibiting third-party funding, it may be considered to be permitted in Mauritius.

Although not commonly used in Mauritius, third-party funding is increasingly being considered, especially by parties to complex arbitration matters and enforcement proceedings before the Supreme Court of Mauritius where the value of the claim involved is significant. In those cases, litigants have recourse to funders established internationally. To date, however, there is no public information available on cases in which parties have resorted to third-party litigation funding.

In *OGD Services Holdings Ltd v Norscot Rig Management Pvt Limited* (*Mauritius*)2023 SCJ 455, the Supreme Court held that a costs award in an English-seated arbitration allowing the successful party to recover third-party litigation costs did not contravene Mauritius public policy.

13.4 Consolidation

An arbitral tribunal seated in Mauritius and a court can consolidate separate arbitral proceedings if all parties agree. Under the IAA, parties can expressly opt for the Supplementary Provisions set out in Schedule 1 of the IAA to be applied to their arbitration. If they have done so, paragraph 3 of the Supplementary Provisions allows an arbitral tribunal to consolidate separate arbitral proceedings upon the application of at least one party. The arbitral tribunal will do so on such terms as it thinks just, and can also order that one of those arbitral proceedings be stayed (paragraph 3 (1) of the Supplementary Provisions of the IAA). If the arbitral tribunal refuses or fails to make such order, the Supreme Court may make such order in lieu of the arbitral tribunal, upon the application of a party to any of the proceedings.

13.5 Binding of Third Parties

A third party, whether domestic or foreign, will not be bound by an arbitration agreement or award if it was not or did not become a party to it.

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