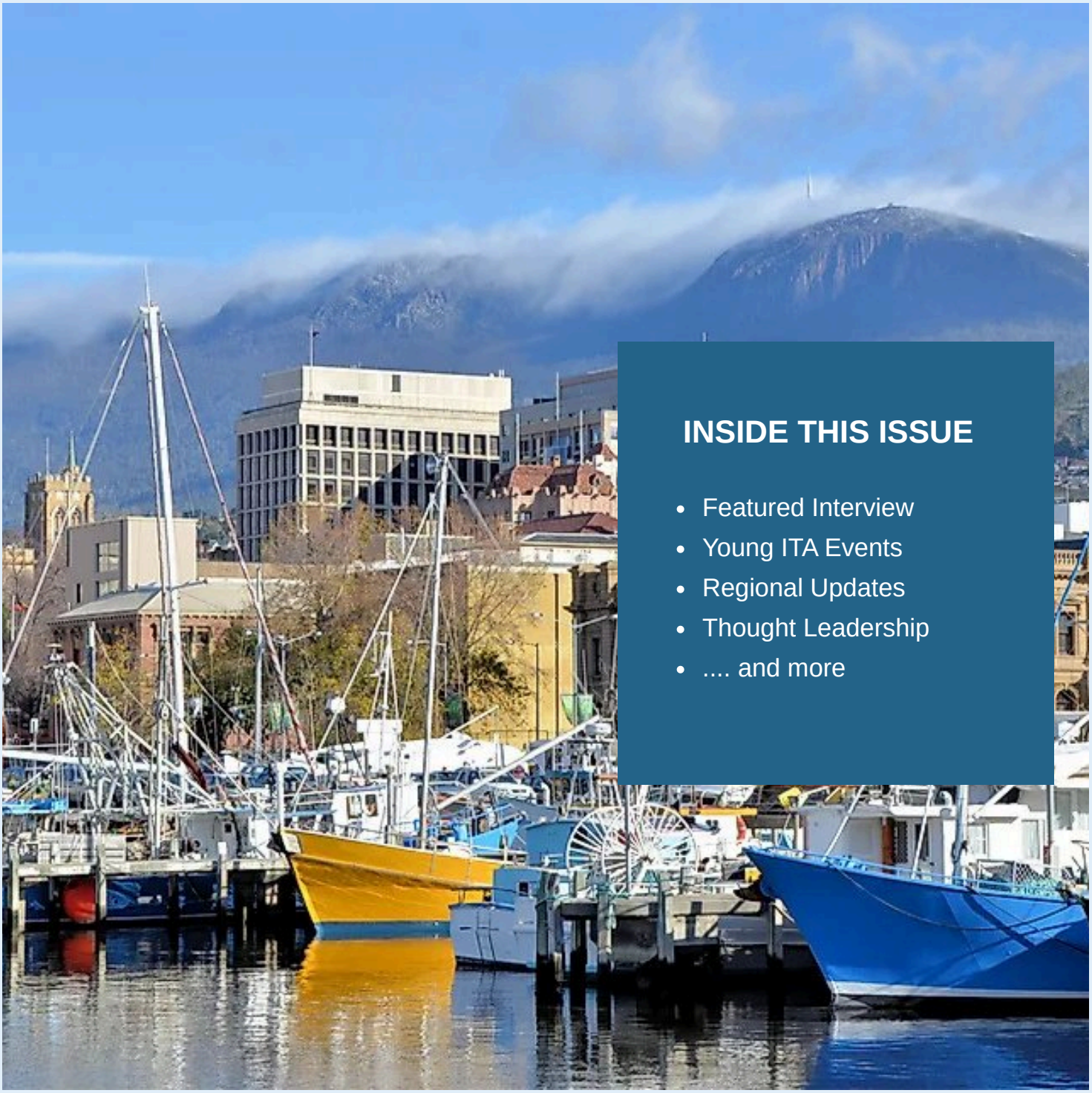
Institute for TRANSNATIONAL ARBITRATION

Vol. 7 No.2

Autumn 2026

Young ITA Newsletter



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From the Editorial Board

Dear Young ITA Community,

We are delighted to welcome you to the Autumn 2026 edition of the Young ITA Newsletter!

In this edition, we bring you a mix of recent developments and highlights from earlier Young ITA activities that we have not yet had the opportunity to share with you. We are also pleased to feature an insightful interview with Gillian Carmichael Lemaire, regional updates from Africa, Brazil, India and MENA, and thought-provoking contributions on international arbitration and investment law.

As always, this newsletter is a platform for our community, and we would love to hear from you. Have you attended or organised an event, published an article, received professional recognition or achieved a milestone worth celebrating? We encourage you to share your news and announcements with us for consideration in future editions.

There are many ways to get involved beyond the newsletter. Keep an eye on the Young ITA LinkedIn page for updates, upcoming events and opportunities to connect. You can also reach out to your Young ITA Regional Co-Chairs to learn how to contribute to activities in your region and become more involved in our global community.

We look forward to hearing from you, celebrating your achievements and working together to make future editions even more representative of the voices and ideas within Young ITA.

Thank you to our contributors and readers for your continued support. We hope you enjoy this edition!

Warm wishes,
The Young ITA Newsletter Editorial Team

Editorial Team

Ciara Ros

Demi Elemo

Emily Sherkey

Mark Konstantinidis

Mevelyn Ong

Santiago Peña

Robert Bradshaw

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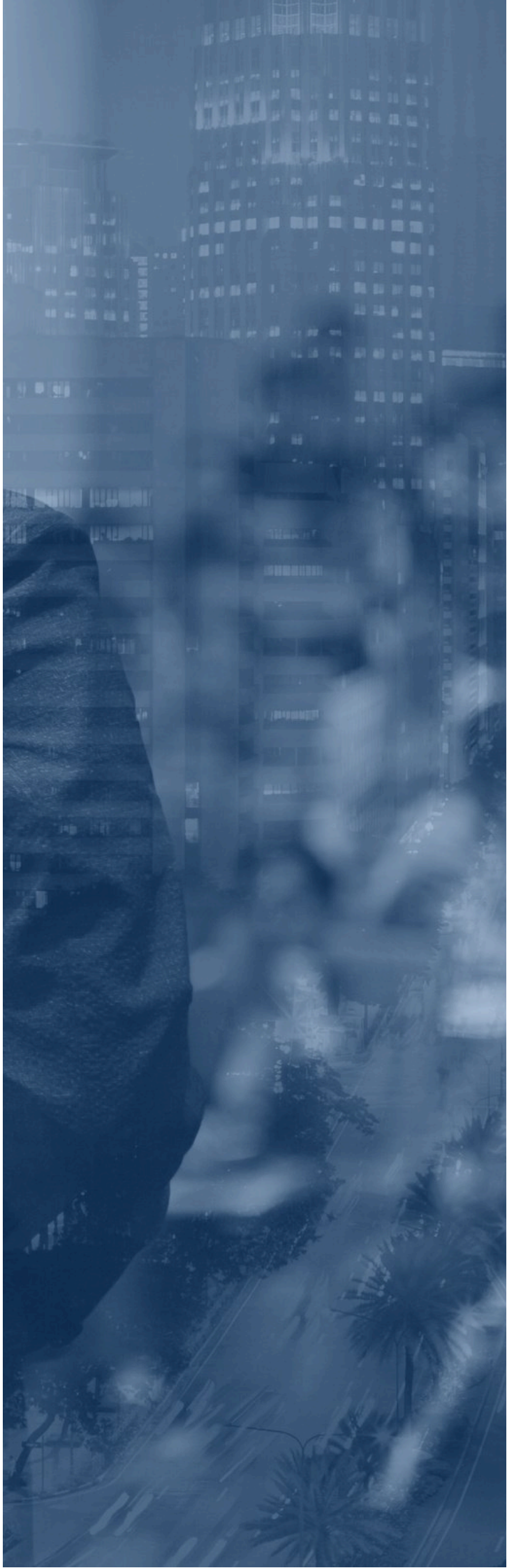
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Institute for TRANSNATIONAL ARBITRATION



An interview with a first class mediator and arbitrator

Interview with Gillian Carmichael Lemaire

Gillian Carmichael Lemaire is a bilingual (English/French) mediator and arbitrator working in the UK and internationally.
Gillian started out as a litigator in Scotland, representing individuals injured at work in the Glasgow shipyards. After moving to Paris, she spent most of her career in international arbitration and mediation, including partner roles in international law firms. She founded her own practice in Paris in 2014 and returned to the UK soon afterwards. Gillian is a former practising member of the Paris Bar (now an honorary member), a former solicitor (now a Fellow of the Law Society of Scotland), and Chair of the Board of the Scottish Arbitration Centre.

1. As Chair of the Scottish Arbitration Centre, what opportunities do you see for Scotland in the international arbitration landscape over the next decade, especially for young practitioners trying to build international careers from outside the traditional arbitration hubs?

I think the future in Scotland is bright for young arbitration practitioners who are prepared to have better conversations about how litigation, arbitration and mediation can better function together, and to put in the work to make that happen, both for domestic and international cases. In my view there needs to be better integration of adjudicative and non-adjudicative processes (the latter including, but not only, mediation).

"I think the future in Scotland is bright for young arbitration practitioners."

Far from negatively impacting the arbitration sector, I believe such an approach makes arbitration more credible and underscores the benefits of using it for many business disputes. I see opportunities in the energy sector for Scottish practitioners: although many energy contracts are traditionally governed by the law of England & Wales and have jurisdiction clauses providing for the English High Court or arbitration seated in London, arbitrations under those contracts could equally be seated in Scotland and administered by the Scottish Arbitration Centre. Also, we now have more onshore contracts connected to the energy sector where arbitration would be a suitable dispute resolution process.

2. Arbitration is often described as international and merit based, yet appointments can still feel concentrated within relatively small networks. What practical changes would you like to see institutions make to widen access to opportunities, particularly for younger practitioners?

Institutions are clearly making progress with widening access opportunities for younger practitioners. Many institutions have young practitioner networks which organise knowledge-sharing, networking and skills training events, in which experienced practitioners participate. Most

"There is no one way or process to resolve disputes."

institutions now make a point of offering suitable cases to new arbitrators. The ICC's 2025 dispute resolution statistics show that the ICC Court encourages the proposal/appointment of new/young arbitrators for less complex cases, as part of its ongoing efforts to promote generational diversity in arbitration and increase access to the arbitration pool worldwide. The Scottish Arbitration Centre was, to my knowledge, the first arbitral institution to introduce a provision in its rules (which were launched in 2022) that parties, their counsel, any appointed arbitrators and the Court of the Centre must take the Equal Representation in Arbitration Pledge and R.E.A.L. (Racial Equality for Arbitration Lawyers) into account when appointing arbitrators. The Centre's aim is to encompass all forms of diversity. The Centre's Mediation Rules launched in 2025 broadly mirror this requirement for mediator appointments. Some institutions, such as the Hong Kong International Arbitration Centre have since made similar provisions in their rules and I would like to see more institutions doing the same.

3. Having worked across both common law and civil law traditions, while building your career between Scotland and Paris, how have different legal and cultural environments shaped your approach to disputes, and what can younger practitioners learn from engaging with international networks and perspectives early in their careers?

Being exposed to litigation in Scotland at an early stage was immensely helpful. The Scots approach to written submissions for court and areas such as document production is good training for anyone who aspires to work in the arbitration field. When I started out in arbitration in France, I learned different approaches, such as the use of memorials in most international arbitrations rather than pleadings. I also learned a great deal from being involved in litigation in France. As for mediation, the approach can be different again depending on the jurisdiction: in some jurisdictions, evaluative mediation may be the norm, whereas the approach is more likely to be facilitative in Scotland and in England & Wales. Even the way time is handled in mediations can vary depending on where you are mediating. Often in the UK jurisdictions parties aim to finish a commercial mediation in a day or two, whereas in France for example it is much more common to have a series of half days. There is no one way or process to resolve disputes. I think it is helpful to be exposed to different jurisdictions and cultures and learn about what works and what does not. The beauty of international arbitration is that, within reason, the parties can benefit from flexibility and choose procedures and practices that work best for their particular case. So, I would say that young practitioners should not necessarily accept that things must be done in a certain way and should be creative.

4. Mediation appears to be playing an increasingly important role in your practice. Do you see mediation and arbitration as competing processes, or increasingly complementary parts of the same dispute resolution ecosystem?

Yes, mediation has an increasingly important role in my practice. If there is one thing I would like to be able to say I have done during my tenure as Chair at the Scottish Arbitration Centre, it is being instrumental in the introduction of Mediation Rules last September and an administered mediation service last December at the Centre. I think it is important for Scotland to have available institutional or administered mediation rules. Although I firmly believe that mediation is now mainstream, knowledge and experience of mediation in the business community can still be patchy and it is probably fair to say that it is still not fully embedded in our dispute resolution system in Scotland, where the courts cannot compel ADR in the same way as in England & Wales, or at least not yet. Having a framework in the shape of mediation rules helps the public and business have confidence in the mediation process. Or as an in-house lawyer put it to me, in my negotiations with a counterparty, it is much easier to persuade them to put mediation in a contract if I can show them how it works and provide some form of certainty by reference to a set of rules. Also, having the Centre in the background helping with the administration tends to enhance trust in the

process, especially if you have parties from different countries and cultures.

I certainly do see arbitration and mediation as complementary parts of the same dispute resolution ecosystem. They should not be viewed as competing processes; sometimes only one is appropriate and sometimes both; one can benefit the other. When I say that they are complementary, I am looking beyond sequential escalation (step/multi-tiered) clauses (e.g. negotiation followed by mediation and then arbitration or litigation), to how different ADR processes may be combined to run in parallel with one another, or possibly even be integrated with one another, as occurs in some Asian jurisdictions in particular. Understanding cultural differences and presumptions about dispute resolution processes and how, in appropriate cases, mixed modes might be deployed effectively, is key and may call for the development of internationally accepted standards and guidelines.

"We need to work harder in relation to diversity in its broadest sense."

5. You have long been involved with ArbitralWomen, and the Scottish Arbitration Centre itself once attracted attention for having an all women board. Looking at the profession today, where do you think progress on diversity and representation has been most meaningful, and where does the profession still fall short?

In fact, the Scottish Arbitration Centre has never had an all women board. When the Centre set up its panels of arbitrators for both domestic and international arbitrations, it took the bold step of appointing all-female panels as a starting point, with the objective of achieving gender parity within a short timeframe, which is what happened. The Centre's Board, Court and panels all respect gender diversity. We need to work harder in relation to diversity in its broadest sense.

I have been a member of ArbitralWomen for many years and have served on both its Board and Advisory Council. The contribution that ArbitralWomen has made regarding gender diversity in particular is outstanding.

I think progress on diversity has been most meaningful in institutions, law firms and other organisations where there is a structured plan to tackle the issue. Diversity of all kinds falls short when parties themselves (usually advised by their lawyers) appoint arbitrators and mediators.

A look at some of the statistics is revealing (and indeed there is a shortage of statistics when it comes to different forms of diversity). According to the International Council for Commercial Arbitration's June 2026 update to its previous Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, in 2024 women only accounted for 37.7% of institutional appointments and 20.8% of party appointments. I have been in the dispute resolution field for over 40 years and whilst the appointment of women as arbitrators has increased during that time, gender equality still has not been achieved. The ICCA update contains a chapter which I highly commend on "Opportunities to Address Gender Diversity in Arbitrator Appointments". I am acutely conscious however that a great deal more work is needed to address diversity of all kinds, including age.

6. What do you consider to be the single greatest challenge currently facing international arbitration?

I think the greatest current challenge for international arbitration is that too many arbitrations go on for too long at significant cost when they could be settled and this does not help users' perceptions or experiences of the process. Some arbitration rules and case management guidance allow arbitrators to encourage the parties to consider settlement and even take steps to facilitate a settlement (e.g., the ICC Rules of Arbitration). We now see more arbitrators introducing windows in the arbitral process designed to allow parties, if they wish, to pause and consider settlement, possibly using mediation or another non-adjudicative process. In my view we will see many more hybrid processes and more cases settling at an earlier stage. I hope we will also see more counsel working in a collaborative way throughout an arbitration.

7. If you could reform one aspect of international arbitration immediately, what would it be and why?

The international arbitration community can seem inaccessible from a financial perspective if you do not have a firm or other employer covering the cost of various subscriptions and memberships and attending conferences. Also, practitioners and arbitrators from jurisdictions where it would be too costly to attend certain events in more "expensive" jurisdictions could be at a disadvantage. This means that the arbitration community is largely comprised of those who can afford to be part of it, which I would like to see change so that a more diverse international arbitration community can develop.

8. International arbitration has evolved significantly over the course of your career. What change in the profession has genuinely impressed you, and what development concerns you most?

I am most impressed by the opening up of regional arbitration centres and the expansion of the dispute resolution community to far more practitioners globally. I think this has been particularly prevalent since the Covid pandemic.

The development of AI concerns me most. Whilst on the one hand it is already making many tasks more efficient, on the other hand there are several areas of concern that have not yet been addressed satisfactorily. Respondents to the 2025 International Arbitration Survey conducted by the School of International Arbitration at Queen Mary University of London and White & Case ("The path forward: Realities and opportunities in arbitration") noted obstacles in relation to errors and bias, confidentiality, lack of experience and regulatory gaps. Not surprisingly, strong resistance was shown to the use of AI where discretion and judgment are used, which of course is at the very heart of an arbitrator's mandate.

"More diversity means better decisions."

9. Looking at the next generation of arbitration practitioners, what gives you optimism about the future of the profession?

The fact that arbitration is no longer conducted in a select group of European centres. This makes the international arbitration community more diverse. More diversity means better decisions.

10. Slightly less seriously: what is one stereotype about Scottish lawyers that is completely true?

I was away from Scotland for a long time, so it probably wouldn't be fair to comment. But when I was a trainee in Scotland, most lawyers dressed in very much the same way for meetings or court. I'm dismayed to say that my work style was probably quite Margaret Thatcher-ish when I was a 21-year-old trainee in Glasgow in the 1980s.

11. If your career in dispute resolution had a soundtrack, what song would probably play during the opening credits?

When I worked for a firm that will remain nameless, I found it excruciating that it tried to inspire its lawyers by playing Tina Turner's "Simply the Best" at some of its events. The very idea of my career having a soundtrack feels quite embarrassing and I would struggle to come up with a suitable track for the opening credits! Something upbeat with no lyrics possibly.

12. Finally, what has been your funniest or most unexpected experience as a mediator, without naming names of course?

As a mediator, my most unexpected experience is always when a dispute that seems intractable settles. One unexpected and touching experience (although this was as mediation counsel) was when the General Counsel of an opposing party sadly passed away before a settlement agreement had been signed. My client asked for the GC's contribution to reaching the settlement to be acknowledged in the settlement agreement and recognition of that was included. Of course, there are sometimes funny moments in mediations but I wouldn't wish to disclose any specifics! When comparing my experiences in litigation, arbitration and mediation, open court is the place where the most amusing gems have emerged.

13. And to close, what final piece of advice would you give to young practitioners hoping to build long term careers in international dispute resolution?

I think that to be fully effective in international dispute resolution, getting a mix of experience in adjudicative and non-adjudicative processes is indispensable, as well as being exposed to different cultures. It is a good idea to gain some general experience and go on to combine that with a more specialist area. Learning from other jurisdictions is helpful. Building networks is key. Fluency in more than one language is a plus. And let's not forget about good soft skills. That to me is the ideal profile - no pressure … I admire the impressive credentials of so many young practitioners and wish them all the very best in their dispute resolution careers.

"Learning from other jurisdictions is helpful. Building networks is key."


Young ITA
Events



Levelling the Playing Field: The Future of Sports Arbitration in India

By Surabhi Pandey, Adhisthanna Law Chambers, Delhi

Young ITA hosted a webinar titled “Levelling the Playing Field: The Future of Sports Arbitration in India” on 6 November 2025 to examine challenges in sports dispute resolution in India and ways to strengthen its framework. The background was the newly enacted National Sports Governance Act, 2025 (“Sports Act”), which marks a pivotal moment in India’s sports landscape.

The panel featured as speakers Dr. Annabelle Bennett AC SC (5 Wentworth), Dr. Anna Kozmenko (Curtis Mallet-Prevost), Jeffrey G Benz (4 New Square), Vidushpat Singhania (Krida Legal), and Namrata Chatterjee (sports law arbitrator and academic), moderated by Young ITA (India) Co-Chair Aayushi Singh (Three Crowns). In addition to India-focused insights, the speakers addressed global practices, including the CAS model, the rise of regional institutions, evolving stakeholder expectations, and the importance of independent experts.

The discussion started with Mr Singhania, who identified key shortcomings in India’s current sports dispute resolution framework. He noted that procedural delays remain the system’s greatest weakness, as ineffective internal mechanisms often drive parties to the High Courts, where significant backlogs result in prolonged listings and hearings.

Furthermore, many arbitrators continue to adopt traditional court-style practices, including repeated adjournments and extensions.

The Sports Act, Mr Singhania explained, was enacted to address these systemic inefficiencies by establishing a National Sports Tribunal with arbitrators trained in sports law. The Act also introduces a dual appellate system, with domestic appeals heading to the Indian Supreme Court and international appeals, such as those arising from the Olympics or Cricket World Cup, heading to established global bodies like CAS. Dr. Bennett pointed to potential advantages of arbitration over court proceedings such as flexibility, time-management, and party autonomy in choice of arbitrator, as opposed to judges who, due to roster changes and transfers, find it difficult to specialize in niche areas of law.

As the discussion shifted to comparative perspectives, Mr Benz observed that the USA was the first country to envision a sports-centred tribunal through the Amateur Sports Act of 1978, which still provides the framework for sports arbitration. Instead of creating a specific sports tribunal, the USA integrated sports disputes into existing arbitral institutions like the American Arbitration Association and later JAMS.

This emphasized procedural efficiency and expert case management over sports-specific rules. By contrast, countries such as Australia and now India have pursued dedicated national sports tribunals.

The panel also delved into key regional and global trends. While the CAS continues to dominate high-profile and international disputes, new regional bodies are emerging, including in China, Portugal, and Morocco. Dr. Kozmenko elaborated that this trend reflects both confidence in arbitration as a system and growing efforts to localize dispute resolution. Dr. Bennett likewise acknowledged the growing space for regional arbitral bodies, while emphasising the value of maintaining a coherent body of jurisprudence to allow predictability and consistency remains pertinent.

Dr. Kozmenko discussed landmark decisions such as *Pechstein v. Switzerland* and *Semenya v. Switzerland*, which reinforced athletes' rights, requiring Swiss courts to undertake more substantive reviews when fundamental rights are at stake. Dr. Kozmenko stressed that a tribunal's credibility depends on its independence and expertise, citing the CAS "closed list" model as both a strength (quality and consistency) and a limitation (party autonomy).

It was noted that only a small pool of arbitrators handles most cases, underlining the need for broader representation and greater diversity.

Ms Chatterjee emphasized the need for Indian federations, together with the proposed National Sports Tribunal, to take the lead in developing a credible and specialized sports arbitration framework. She noted that challenges in sports dispute resolution cut across disciplines, with issues like doping, age fraud, and regulatory breaches appearing even at youth levels.

In conclusion, each panellist proposed ways to strengthen sports arbitration in India and align it with global standards. Among the panel's recommendations were structured training for arbitrators, streamlined and time-bound procedures; greater inclusion of local experts to promote cultural awareness and athlete-friendly hearings; the need to balance finality, fairness, and efficiency, as reflected in the Olympic ad hoc model; and accessibility and affordability as essential to building trust.





From Mine to Market: Key Takeaways from LIDW 2026

By Ciara Ros, Freeths

At LIDW 2026, Freeths and Young ITA hosted “From Mine to Market: Regulatory and Dispute Trends in the Global Critical Minerals Market”, on Thursday 4 June, bringing together industry and legal perspectives to explore how geopolitical pressure, Environmental, Social, and Corporate Governance (ESG) expectations and supply chain disruption are reshaping disputes across the mining sector.

Moderated by Ciara Ros (Freeths), the panel featured insights from Victoria Usova (Central Asia Metals), Tiago Duarte-Silva (CRA), Olivia Kaye (Outer Temple Chambers) and Patricia Snell (Covington & Burling), with a discussion that moved quickly from macro trends to practical dispute risk.

The panel took a global approach, moving across Africa, the Middle East, Central Asia, Canada and the United States to examine how legal frameworks, political priorities and commercial realities are driving disputes in different ways—yet often with common underlying themes.

A Truly Global Discussion

One of the defining features of the session was its breadth. The discussion highlighted how resource nationalism.

The discussion highlighted how resource nationalism, ESG pressures, pricing volatility and supply chain disruption are being felt across jurisdictions, but are manifesting differently depending on local regulatory structures and stakeholder dynamics.

From emerging critical mineral projects in Africa to more mature regimes in Canada, the panel explored how governments are increasingly focused on securing strategic resources, often leading to shifts in licensing regimes, fiscal terms and state participation—all of which create fertile ground for disputes.

ESG and Stakeholder Engagement at the Forefront

A central thread running through the discussion was the growing importance of ESG and, in particular, stakeholder and community engagement.

The conversation drew comparisons between jurisdictions with well-developed frameworks for engagement—such as Canada—and those where such processes are less embedded. A key takeaway was that early and meaningful engagement with local communities, including Indigenous groups, can play a critical role in mitigating disputes before they arise.

In contrast, where engagement is delayed or insufficient, issues are more likely to escalate into formal disputes that are harder to resolve.

This shift reflects a broader trend: ESG considerations are no longer peripheral but sit at the heart of dispute risk in the sector (and the availability of financing before parties can even commence a project, let alone reach disputes stage).

Increasing Complexity in Risk and Valuation

The panel also explored how volatility—whether geopolitical, regulatory or economic—is challenging traditional approaches to risk allocation and valuation. Pricing instability, project delays and shifting legal frameworks are making it more difficult to predict outcomes and quantify loss, particularly in arbitration.

As a result, both investors and states are operating in an environment where assumptions that once underpinned long-term mining projects are no longer as reliable.

> *"Disputes in the critical minerals space are becoming more complex, more political and more globally interconnected."*

Contracts Under Strain

These pressures are feeding directly into contractual relationships. The discussion highlighted a growing need for flexibility in drafting, including mechanisms to deal with pricing changes, regulatory shifts and multi-jurisdictional risk.

At the same time, many disputes continue to arise from legacy agreements that were not designed to accommodate today's realities—creating tension between historic contractual frameworks and the modern operating environment.

Conclusion

The session reinforced that disputes in the critical minerals space are becoming more complex, more political and more globally interconnected. While the drivers of disputes may vary by jurisdiction, the direction of travel is clear: greater scrutiny, greater volatility and greater emphasis on responsible and sustainable project development.

For those operating in the sector, the message was clear—understanding local dynamics is critical, but so too is taking a global view of how these trends are evolving and intersecting.



#YoungITATalks

Masterclass Series (Episode 1): Oral Advocacy at Arbitral Hearings

By Louise Liu, Intern at Han Kun Law Offices LLP, Hong Kong

On 10 July 2026, Young ITA China and Asia Co-Chairs, in collaboration with Han Kun Law Offices and Braddell Brothers LLP, hosted the inaugural session of the Young ITA Masterclass Series titled “Oral Advocacy at Arbitral Hearings”. The online session featured Frances Lok SC (Des Voeux Chambers), who shared practical insights and advocacy techniques drawn from her extensive experience in international arbitration and complex commercial disputes.

The session was moderated by Angelia Thng (Braddell Brothers LLP, Singapore, outgoing Young ITA Asia Co-Chair) and Sam Wong (Han Kun Law Offices LLP, Hong Kong, Young ITA China Co-Chair), who opened the discussion by highlighting the importance of advocacy skills in arbitral proceedings.

The four key themes discussed during the seminar are: (i) oral advocacy in court versus arbitration; (ii) common mistakes made by junior advocates in oral advocacy; (iii) cross-examination



in arbitration; and (iv) persuasion techniques and dealing with tribunal reactions.

The discussion commenced with a comparison between advocacy before courts and arbitral tribunals. Frances emphasized that although the basic principles of persuasion remain unchanged, successful advocates must adapt to the particular tribunal and 'know your tribunal'. Reflecting on her experience as lead counsel, she noted that occupying the "hot seat" demands a deeper level of preparation, as counsel must be ready to address every aspect of the case and respond to the tribunal's concerns in real time.

Turning to common mistakes made by junior advocates, Frances identified three recurring issues: being overly reliant on prepared scripts, failing to listen, and failing to respond

"Effective advocacy is founded on trust and credibility."

directly to the tribunal's questions. In her view, these are ultimately manifestations of the same problem. She encouraged advocates to develop a holistic understanding of the case rather than approaching it in a linear manner, anticipate potential weaknesses of their own case, and view issues from the tribunal's perspective, bearing in mind the findings and relief the tribunal will ultimately need to articulate in its award.

The discussion then focused on cross-examination. Frances explained that effective cross-examination is not an exercise in showcasing advocacy skills, but a process of eliciting key facts and identifying fundamental weaknesses in an opponent's case. Preparation should therefore focus on the core issues, supported by key documentary references, rather than a rigid list of scripted questions. She cautioned against overly conceptual questioning, observing that



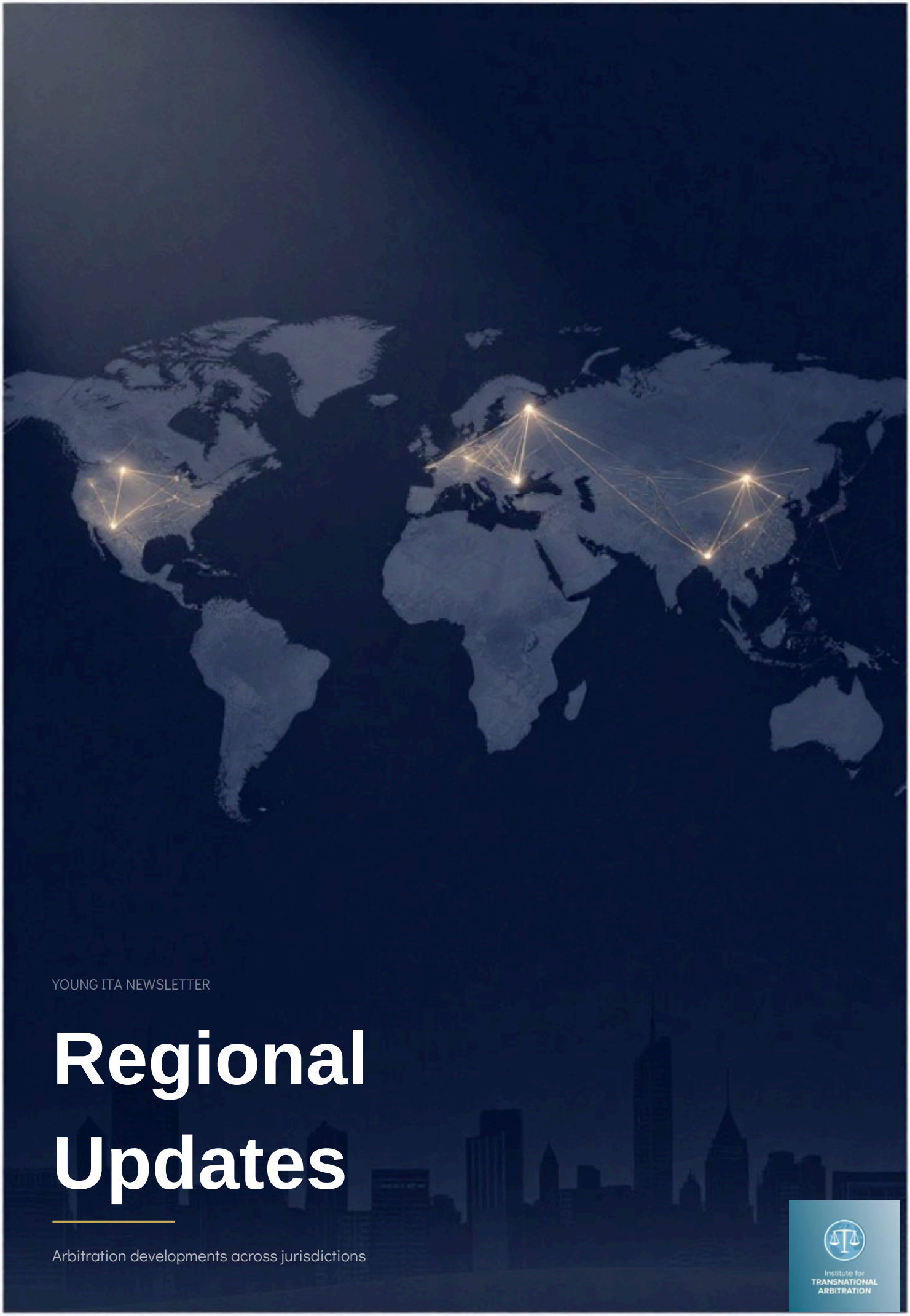
Frances Lok SC, Des Voeux Chambers

disciplined and fact-focused examinations are generally more effective in assisting the tribunal's decision-making process.

The final discussion centred on persuasion techniques and managing tribunal reactions. Frances emphasized that effective advocacy is founded on trust and credibility. Where a tribunal appears sceptical or confused, advocates should identify the source of the difficulty and address it rather than simply leaving the issue to written submissions. She further highlighted the value of simplicity in advocacy, observing that well-designed charts, timelines and other visual aids can often be more effective than lengthy explanations in assisting tribunals navigate complex disputes.

The key takeaway from the session is that effective oral advocacy is not about delivering the perfect script, but about understanding the tribunal, responding to its questions and concerns, and maintaining credibility throughout the hearing. Across the topics discussed, Frances repeatedly emphasized that successful advocates combine thorough preparation with flexibility, remain focused on the issues that truly matter, and assist the tribunal in reaching a well-reasoned decision.

"Effective oral advocacy is not about delivering the perfect script, but about understanding the tribunal."

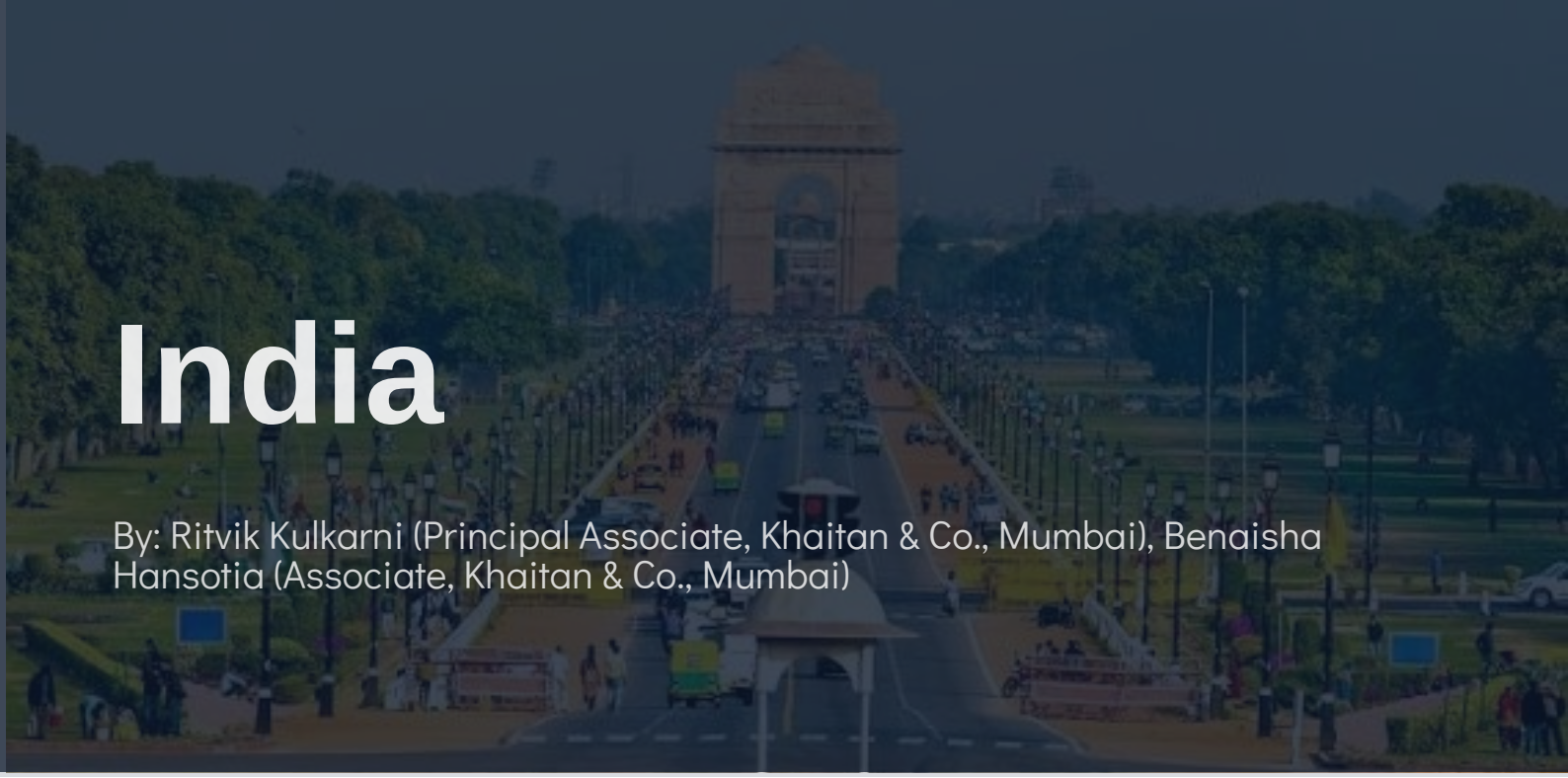


YOUNG ITA NEWSLETTER

Regional Updates

Arbitration developments across jurisdictions

Institute for TRANSNATIONAL ARBITRATION



India

By: Ritvik Kulkarni (Principal Associate, Khaitan & Co., Mumbai), Benaisha Hansotia (Associate, Khaitan & Co., Mumbai)

Union of India v. Reliance Industries Limited & Ors., 2025 SCC OnLine Del 841

This India update considers a recent decision that presents a curious addition to India's patent-illegality conundrum. On 14 February 2025, a division bench of the Delhi High Court ('**Division Bench**') in *Union of India v. Reliance Industries Limited & Ors*, 2025 SCC OnLine Del 841 set aside an arbitral award for patent illegality within the meaning of Section 34(2A) of the Arbitration and Conciliation Act, 1996 ('**Arbitration Act**').

Background

The dispute arose from a Product Sharing Contract ('**PSC**'), under which the Union of India ('**UOI**') licensed Reliance Industries Limited ('**RIL**') to extract petroleum from a designated area in the Krishna-Godavari basin. However, the UOI claimed that RIL unjustly enriched itself by extracting gas from an adjoining block. It was also alleged that RIL was in material breach of the PSC by failing to disclose an expert-report ('Report') which suggested a connectivity of the **gas** reservoirs in question. The UOI claimed USD 1.55 billion along with interest. Therefore, RIL commenced arbitration in 2016.

In 2018, the arbitral tribunal, by a 2:1 majority, held that the PSC did not prohibit the extraction of migrated gas within the designated area ('**Award')**. While RIL should have disclosed the Report, its failure to do so did not constitute a material breach since the UOI, despite having numerous opportunities to order joint development inquiry under the Petroleum and Natural Gas Rules, 1959 ('Petroleum Rules'), declined to do so.

The Challenge

The UOI challenged the Award before a Single Judge of the Delhi High Court. The UOI claimed that the Award suffered from patent illegality. Since RIL participated in the PSC with a foreign consortium-partner, the arbitration was an 'international commercial arbitration' ('**ICA**') and therefore, the ground of patent illegality is not available to challenge the foreign Award. The Single Judge also upheld the Tribunal's findings on merits ('**Single Judge Decision**').

The UOI filed an appeal under Section 37.

Appellate Decision

Since RIL was the lead consortium partner, the Division Bench disagreed that the arbitration was an ICA and held that the Award was subject to challenge on the ground of patent illegality. The Division Bench observed that the Tribunal's interpretation of the PSC and Petroleum Rules was not even a 'possible view.' The Tribunal ought to have held RIL's non-disclosure of the Report as a material breach.

The Tribunal failed to apply the public trust doctrine. RIL breached the aforesaid doctrine since the transaction by its nature involved and affected public interest and resources. The UOI's failure to expressly object did not countenance RIL's unlawful extraction of the migrated gas. Accordingly, the Award was set aside for being patently illegal.

"It is rare for an arbitral award to be set aside for patent illegality."

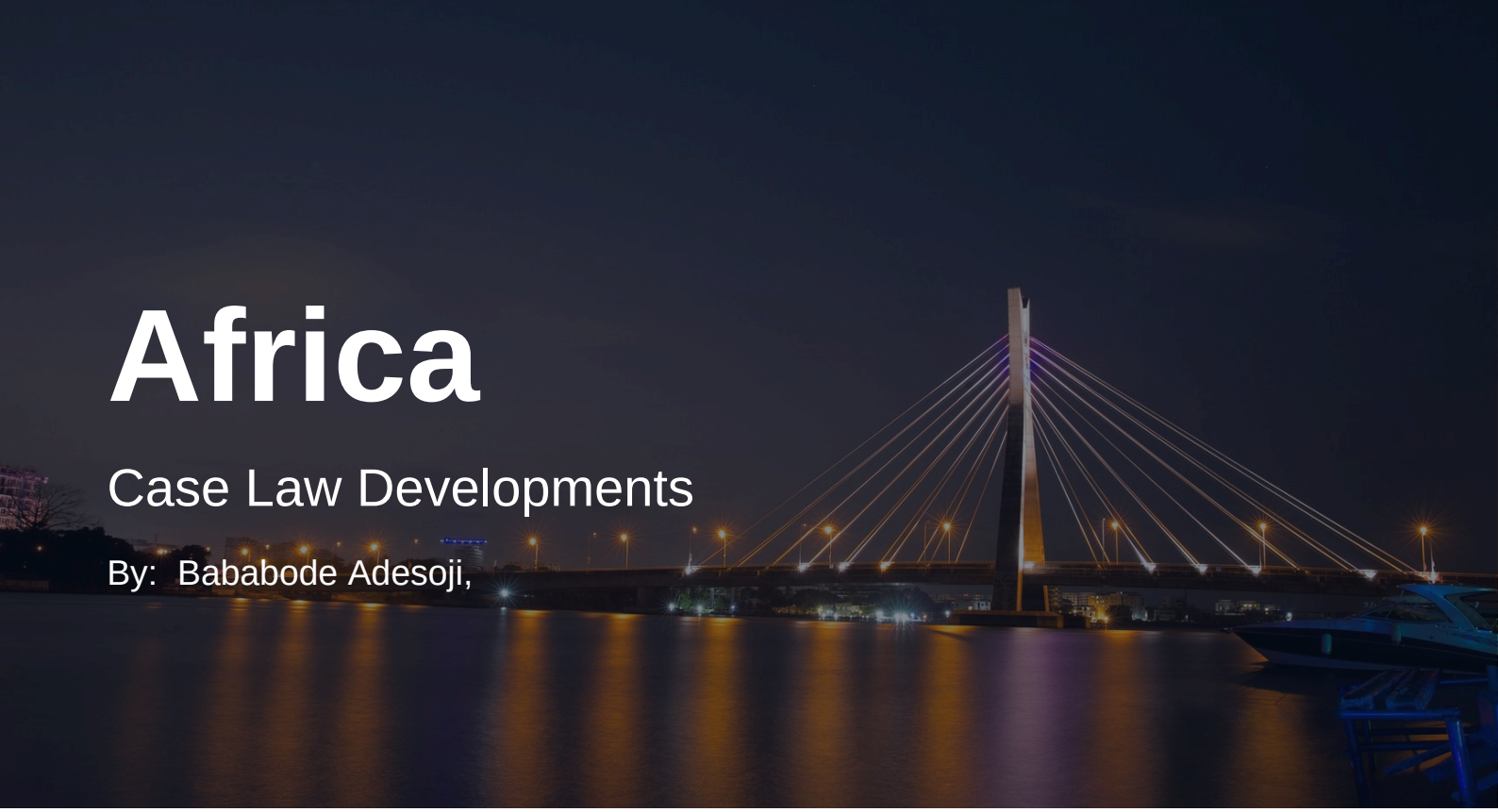
Conclusion

Given the high threshold to challenge an award on the grounds of patent illegality, it is rare for an arbitral award to be set aside for patent illegality. Narrower still is the scope for review at the appellate stage, particularly when the award was upheld at the first instance.[1]

If RIL appeals, it will be interesting to have the Supreme Court's assessment of the patent illegality doctrine in this dispute and, crucially, whether public law principles apply to inter-partes disputes.



[1] *Larsen Air Conditioning and Refrigeration Company v. Union of India and Ors.* (2023) 15 SCC 472.



Africa

Case Law Developments

By: Bababode Adesoji,

South Africa

Kingdom of Lesotho v. Frazer Solar GmbH and Others (2026) ZASCA 75

In this May 2026 decision, the Supreme Court of Appeal of South Africa considered the relationship between the rescission of an order enforcing an international arbitral award and an application to set aside the award itself under Article 34 of the UNCITRAL Model Law.

The Kingdom of Lesotho ("KOL") sought to rescind an order recognising and enforcing a €50 million arbitral award arising from a failed renewable energy project. It also sought to set aside the award, contending, among other things, that the agreement and arbitration clause had been concluded without the requisite governmental authority. The Court upheld the rescission application, finding that the KOL had provided a reasonable explanation for its failure to participate in the enforcement proceedings and had established a bona fide defence with prima facie prospects of success.

The Court, however, dismissed the application to set aside the award. It held that Article 34(3) of the Model Law imposes a peremptory three-month period for applications to set aside international arbitral awards and does not confer a general power on courts to extend that period by condonation. The Court considered the time limit necessary to preserve the finality, certainty and predictability of international arbitration and held that it constituted a constitutionally justified limitation on access to courts.

The decision is significant in drawing a clear distinction between challenging the enforcement of an award and challenging the award itself. Rescission of an enforcement order does not revive an expired right to seek the setting aside of the award. The judgment therefore underscores the importance of participating in arbitral and enforcement proceedings and complying strictly with the statutory time limits for challenging an award.

Nigeria

Emerging Markets Telecommunications Services Ltd (9Mobile) v. Afdin Ventures Ltd & Ors (2026) LPELR-83327(SC)

In a significant pro-arbitration decision, the Supreme Court of Nigeria on 06 March 2026 upheld the recognition and enforcement of an arbitral award arising from a commercial transaction governed by contracts containing arbitration clauses. The appellant challenged the award on the basis that it was not a signatory to the arbitration agreement and that allegations of fraud deprived the arbitral tribunal of jurisdiction.

The Supreme Court dismissed the appeal and affirmed the enforcement of the award. Addressing the issue of non-signatories, the Court adopted a modern and commercially oriented approach, holding that persons bound by an arbitration agreement are not necessarily limited to those whose signatures appear on the contract.

Relying on the definition of "party" under the Arbitration and Mediation Act 2023, which includes a person claiming through or under a party, the Court found that the appellant had substantially participated in and benefited from the underlying transaction and could not rely on privity of contract to evade the consequences of the arbitration agreement.

In reaching its decision, the Court recognised established legal bases upon which non-signatories may be bound by arbitration agreements, including assignment, agency, equitable estoppel, alter ego, piercing the corporate veil, and the group-of-companies doctrine.

The Court also rejected the argument that allegations of fraud rendered the dispute non-arbitrable. It held that the mere allegation of fraud does not automatically oust arbitral jurisdiction where the dispute remains contractual and civil in nature. Reaffirming the doctrine of separability, the Court further held that allegations affecting the underlying contract do not, without more, invalidate the arbitration agreement itself.

"The mere allegation of fraud does not automatically oust arbitral jurisdiction."

The decision reinforces Nigeria's pro-enforcement stance, confirms the limited grounds for resisting arbitral awards, and signals judicial support for extending arbitration agreements to non-signatories where the commercial realities of the transaction justify such an outcome.



Brazil

By: Catarina Bandeira Diaz, Miguel Reginato and Igor Bechtlufft

Special Appeal (Recurso Especial) No. 2,223,325/RJ, STJ, Third Panel, 20 May 2026

In this case, the Superior Court of Justice analysed the conditions applicable to the enforcement of arbitral awards against state entities. In May 2026, the Brazilian Superior Court of Justice (STJ), responsible for ensuring the consistent application of federal law throughout Brazil, rendered a landmark judgement discussing whether arbitral awards rendered against state entities may bypass the mandatory payment mechanism provided under the Brazilian Constitution.

The dispute arose within an agreement to structure a public-private partnership for public lighting infrastructure, entered between the Municipality of Rio de Janeiro and an international organization. Under the contractual framework, the organization was entitled to a success fee, payable upon the successful completion of a bidding process. However, under municipal instructions, the winning bidder deposited the required success fee amount into a public fund, which would then act as security.

Following a subsequent disagreement regarding contractual performance, the organization initiated arbitration and secured a final award ordering the Municipality to transfer it the deposited funds. Once enforcement was sought before state courts, the Municipality argued that the enforcement of arbitral awards against state entities should strictly follow the precatórios regime, contending that an immediate transfer of funds from a state account would infringe the Brazilian Constitution.

For context, arbitral awards have the same force as judicial rulings in Brazil, pursuant to Article 31 of the Brazilian Arbitration Act and Article 515 of the Brazilian Civil Procedure Code. Consequently, the procedure for enforcing monetary arbitral awards against the state mirrors that of domestic court rulings: when an order is rendered for a state entity to pay a specific sum, direct asset attachment is prohibited; instead, claims must be processed through the constitutional precatórios system under Article 100 of the Brazilian Constitution.

This specific regime places public debts into a centralized, budget-backed chronological queue spanning years, guaranteeing equal treatment among state creditors and protecting public tax revenues from unexpected attachments.

On this controversy, the STJ understood that while monetary rulings against state entities must indeed follow standard enforcement procedures via precatórios, this payment system does not extend to arbitral awards that impose obligations to perform an act.

It concluded that, since the arbitral award in question did not create a new debt to be satisfied out of public tax revenues but merely

directed the release of a pre-existing sum held in escrow as security, this constituted an obligation to perform rather than a monetary one. Consequently, the STJ found that releasing these funds to the organization did not trigger, much less violate the constitutional precatórios system.

Ultimately, the ruling reflects a balanced approach by the STJ, maintaining constitutional guarantees for public finances while upholding contractual commitments and safeguarding the efficacy of arbitral awards.

Special Appeal (Recurso Especial) No. 2,223,683/SP, STJ, Third Panel, 5 August 2026

In this case, the Superior Court of Justice found that late arbitrator disclosure violates good faith and does not prevent the annulment of awards. In August 2026, the Brazilian Superior Court of Justice (STJ) held that the late disclosure of relevant facts by an arbitrator does not cure a breach of the duty of disclosure, finding that such violations to the standard of objective good faith may lead to the annulment of an award.

The case concerned a dispute between two companies operating in the energy sector. Upon accepting the appointment, one of the arbitrators declared that he had served on the board of an arbitration association alongside the partner of the law firm representing one of the parties, with whom he had also appeared on arbitrator lists and academic events. The arbitrator understood that such circumstances did not affect his independence or impartiality, and the arbitration proceeded.

Nine months later, however, the same arbitrator issued an additional disclosure letter informing the parties that the counsel in question had been retained by a client of his own law firm to act as an expert in an unrelated proceeding. It also came to light that the arbitrator had previously nominated that same counsel to preside over another arbitral tribunal in proceedings concluded in 2017, a fact which had not been disclosed.

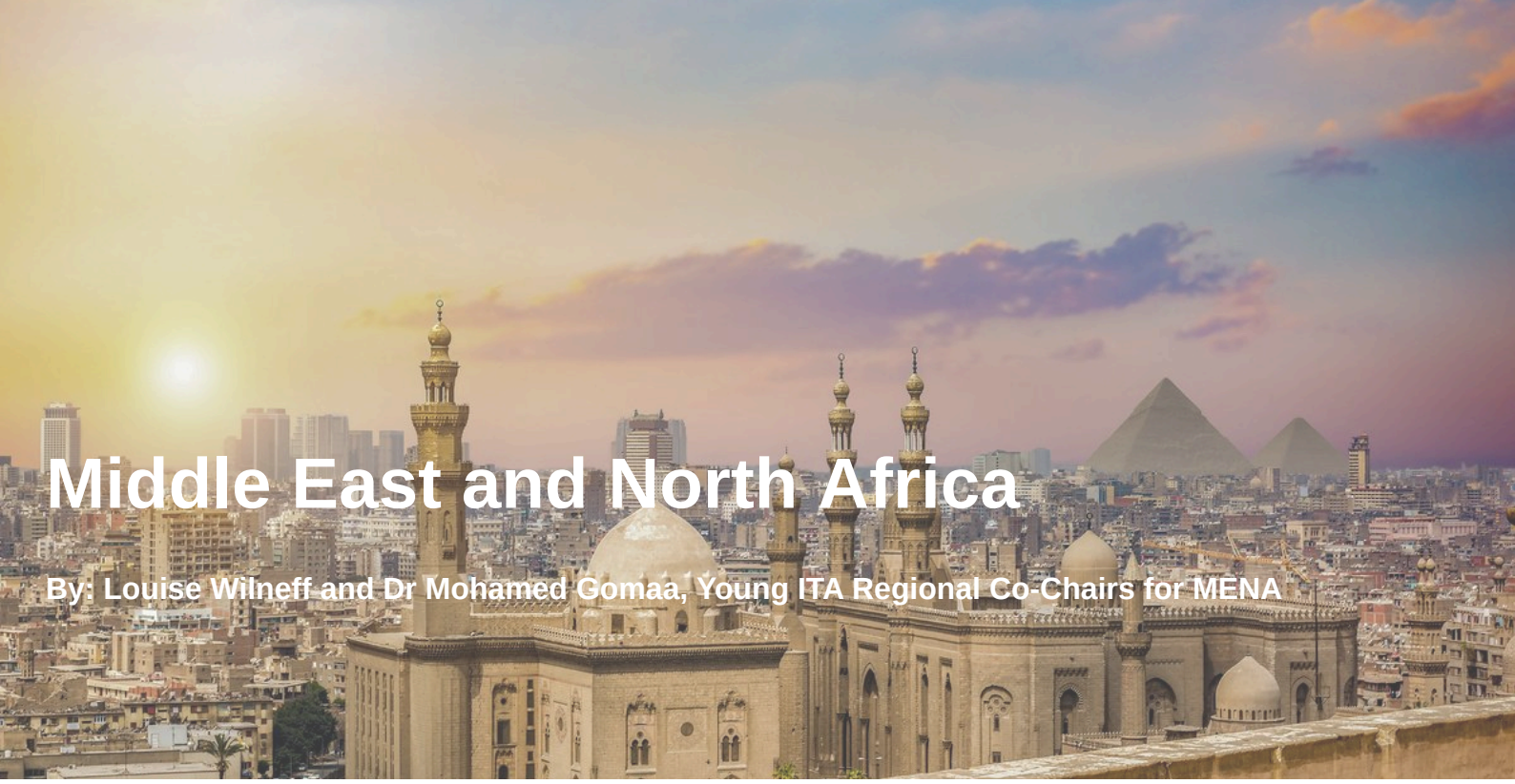
On that basis, one of the parties filed an annulment claim before the judiciary. Although the claim was initially dismissed, the state court of São Paulo ultimately voided the award based on a breach of Article 14 para. 1 of the Brazilian Arbitration Act (BAA), which regulates the duty of disclosure.

The counterparty then filed a special appeal before the STJ, posing that the undisclosed facts were publicly available and that the activities in discussion had ceased before the arbitration commenced.

The Third Panel of the STJ dismissed the special appeal, upholding that the duty of disclosure requires the complete and timely disclosure of any circumstances capable of giving rise to reasonable doubt as to the arbitrator's impartiality and independence. As the reporting Minister put it, the initial omission of a relevant professional relationship between an arbitrator and counsel undermines parties' trust and amounts to a breach of objective good faith warranting annulment.

Although the case reinforces the importance of timely disclosure, a word of caution is nonetheless warranted as to framing of the ruling. The typical route for annulment in such cases runs through Article 32, II and VIII, together with Articles 14 and 21 para. 2 of the BAA: an award may be voided only when there are objective grounds evidencing a breach of independence/impartiality. Simple failure to disclose does not suffice.

By holding instead that the arbitrator's omission constituted a breach of objective good faith capable of grounding annulment, the ruling comes dangerously close to elevating a general clause of Brazilian contract law to the status of an autonomous ground for annulment, an outcome the BAA does not contemplate and one that appears difficult to reconcile with the existing legal framework surrounding arbitration.



Middle East and North Africa

By: Louise Wilneff and Dr Mohamed Gomaa, Young ITA Regional Co-Chairs for MENA

As public-private partnerships (PPPs) and state-backed infrastructure developments expand across the Middle East and North Africa, regional courts are continually refining the balance between state sovereignty, administrative law doctrines, and the finality of international commercial and investment arbitration.

Historically, many of the MENA jurisdictions have treated contracts involving government entities differently from ordinary commercial contracts. This reflects the civil law concept of administrative contracts. That is, where a contract is entered into by a public entity for a public purpose and contains features associated with public service or exceptional governmental powers, disputes may engage mandatory principles of administrative law rather than ordinary private law rules.

The contemporary trend, however, is not necessarily towards eliminating that distinction, but towards greater accommodation of arbitration within it

Across the MENA region, major infrastructure, energy and PPP projects increasingly involve government counterparties and arbitration clauses. The important question is therefore shifting from whether a dispute has a public law dimension to which aspects of that public law framework constrain the parties' ability to arbitrate, the tribunal's jurisdiction, or the remedies it may award.

In general, the trend observed across the MENA jurisdictions is that the authority of public bodies to consent to arbitration remains a gateway issue. This is one of the clearest points at which public law “intrudes” into what would otherwise be an ordinary question of simple contractual consent between the parties.

The policy question arising for many MENA governments is not whether governments should arbitrate at all, but rather under what statutory conditions they may do so.

Egypt

Case Law Developments

Supreme Administrative Court, Appeal No. 3432 of Judicial Year 59

Cairo Court of Appeal (Commercial Arbitration Circuit), Challenge No. 58 of Judicial Year 131

Under Egyptian arbitration practice, which strongly influences procedural frameworks across several Arab jurisdictions, Article 1 of Law No. 27 of 1994 (the Egyptian Arbitration Law, as amended by Law No. 9 of 1997) mandates that arbitration clauses in administrative contracts must receive explicit prior approval from the competent Minister or the official vested with ministerial authority.

Recent rulings from the Supreme Administrative Court and the Cairo Court of Appeal have reaffirmed the mandatory public-order nature (ordre public) of this statutory condition. Where foreign contractors enter into concession, EPC, or infrastructure agreements with state-owned entities or public administrative bodies, the absence of documented ministerial authorization renders the arbitration agreement null and void ab initio.

Crucially, these recent decisions clarify that general corporate authority or standard institutional delegation does not substitute for the explicit ministerial consent required by public procurement and administrative statutes. This reinforces the necessity for international counsel to conduct rigorous ultra vires due diligence at the contract-formation stage, ensuring that all sovereign counterparties fulfil internal regulatory approvals before execution.

Institutional Updates

CRCICA Arbitration Rules 2024: Judicial Oversight vs. Arbitral Autonomy

A parallel development concerns the interface between arbitral interim relief and municipal judicial support. Under the modernized Cairo Regional Centre for International Commercial Arbitration (CRCICA) Arbitration Rules (in force as of 15 January 2024), the procedural framework for provisional and emergency measures has been substantially updated.

- **Tribunal-Ordered Interim Measures (Article 26):** Article 26 grants arbitral tribunals broad powers to order interim or conservatory measures (such as asset preservation, preserving evidence, or maintaining the status quo) in the form of an interim award or procedural order.
- **Emergency Arbitrator Proceedings (Article 26 bis and Annex 2):** Introduced under the 2024 revision, Article 26 bis and Annex 2 (Emergency Arbitrator Rules) establish a dedicated expedited mechanism allowing parties to seek urgent interim relief prior to tribunal constitution. The emergency arbitrator must decide on the application within 14 days of receiving the file (Annex 2, Article 8).
- **Parallel Judicial Recourse (Article 26(9)):** Article 26(9) confirms that a party's request to a competent municipal judicial authority for interim or conservatory measures is not deemed incompatible with the arbitration agreement or a waiver thereof.

Historically, securing coercive enforcement of arbitral interim orders required independent, parallel applications before municipal summary judges under Article 14 of Egyptian Law No. 27 of 1994. However, regional courts have increasingly recognized that orders issued by arbitral tribunals regarding asset preservation, security for costs, or the non-calling of unconditional performance bonds should be respected, provided they comply with due process and do not infringe on mandatory local public policy.

Recent judicial practice from local appellate courts indicates a growing willingness to stay concurrent court actions where parties have contractually submitted their urgent disputes to emergency arbitrator mechanisms. This reflects a significant institutional alignment between local judiciaries and international arbitral practice, promoting procedural efficiency and reducing conflicting judicial-arbitral remedies.

Saudi Arabia

Legislative Developments

Government Approval of Arbitration Agreements

Saudi Arabia's Arbitration Law (Article 10(2)) establishes the principle that government bodies require governmental approval (specifically from the Prime Minister or authority derived from statute) to enter into arbitration agreements unless otherwise permitted by legislation.

However, the first draft of the new arbitration law, published in October 2025 but not yet in force, contains no such requirement. As of yet, it is not clear whether such a provision will, in fact, be added in the final version of the new arbitration law and whether this will result in any practical change in the process of agreeing arbitration with a government entity in Saudi Arabia.

Strategic Takeaways for Practitioners

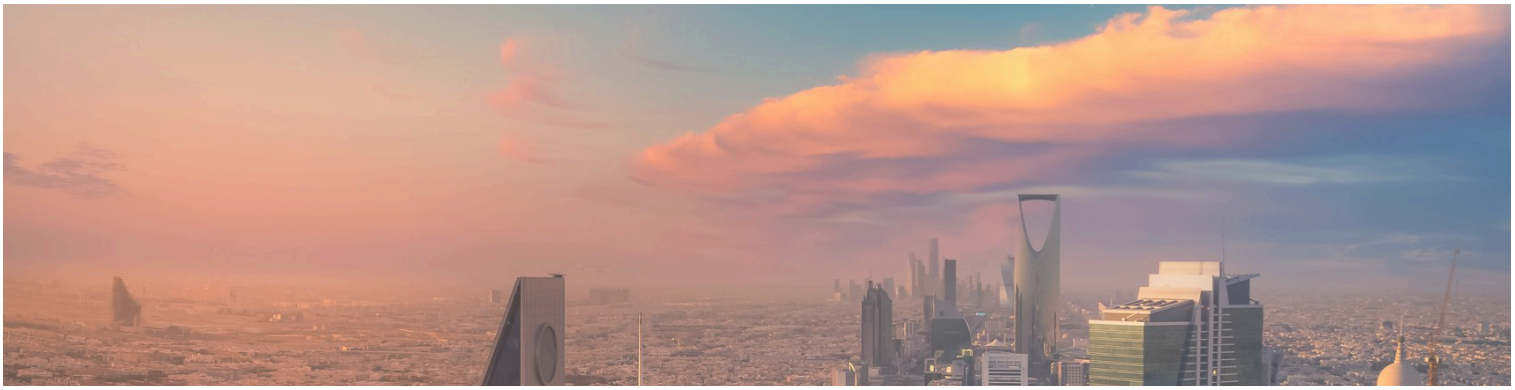
For young practitioners and regional specialists navigating public infrastructure and commercial disputes in the MENA region, these developments underscore three practical imperatives.

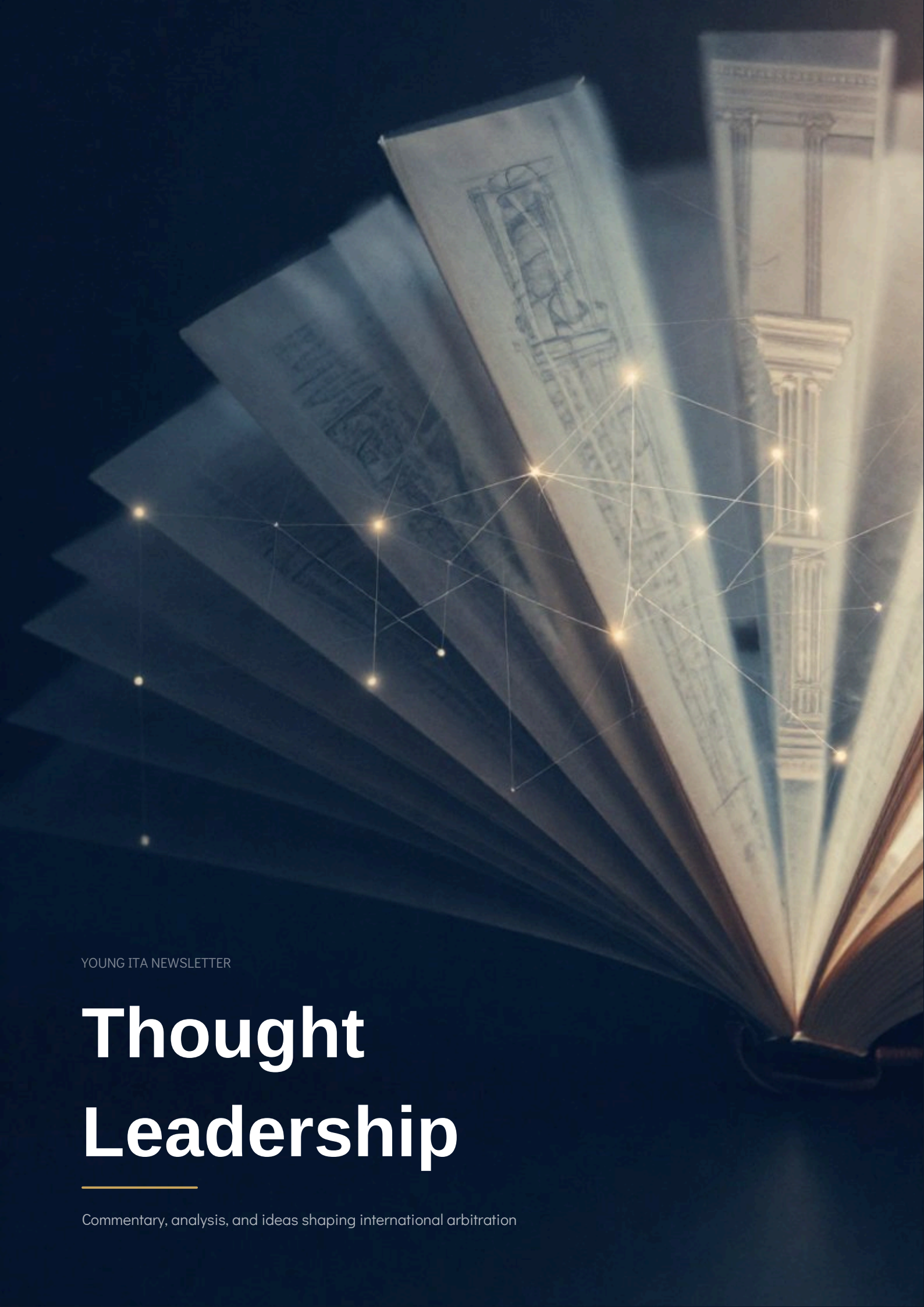
• **Pre-Dispute Due Diligence:** Always verify and document explicit ministerial or statutory approvals for any arbitration clause involving state entities or administrative concessions. For example, any arbitration clause in administrative contracts involving Egyptian PPPs requires ministerial consent in accordance with Article 1 of Egyptian Law No. 27/1994. In Saudi Arabia, the approval requirement under Article 10(2) should be checked until the position under the new law is settled.

• **Dual-Track Emergency Strategy:** In certain MENA countries, when seeking urgent interim relief involving state assets or project sites, coordinate closely with local summary judicial procedures to secure enforceability. For example, this is applicable for interim relief sought under the CRCICA 2024 Rules (Article 26 bis and Annex 2) in line with Article 14 of Egyptian Law No. 27/1994.

• **Substantive Administrative Law Nuances:** Recognize that arbitrating disputes with public authorities in civil law MENA jurisdictions requires an integrated approach that harmonizes international arbitral rules with mandatory administrative public policy.

As the region gears up for landmark fixtures, such as the forthcoming Dubai Arbitration Week 2026, the continued dialogue between administrative judges, arbitral institutions, and practitioners will remain vital in fostering a predictable, arbitration-friendly legal environment across the MENA corridor.





YOUNG ITA NEWSLETTER

Thought Leadership

Commentary, analysis, and ideas shaping international arbitration



New developments in the 2026 ICC Rules

By Katia Paulette Hernández Castellanos, Associate and Jocelyn Marín Montañez, Intern
Commercial Arbitration practice, Bufete Asali

The 2026 ICC Rules entered into force on 1 June 2026 and apply to arbitrations commenced on or after that date (Art. 1(2)). This article highlights eight developments for practitioners and clients using ICC arbitration clauses.

1. Highly Expedited Arbitration Procedure

Article 33 and Appendix VI introduce a procedure for disputes of lower complexity, a limited factual scope or discrete contractual questions requiring a prompt answer. Parties must expressly agree to use it, either in their clause or after the dispute arises. There is no monetary threshold.

Front loaded pleadings. The Request includes a full statement of claim, legal grounds, facts and, so far as possible, supporting evidence. The Answer and Statement of Defence follow within thirty days. Extensions require party agreement, removing the Secretariat's ordinary discretion (App. VI, Arts. 2(1), 2(2), 2(5) and 2(9)).

Sole arbitrator. If the parties have not jointly nominated an arbitrator within twenty days, the Court appoints a suitable person without a National Committee proposal. Challenges must be made within seven days (App. VI, Arts. 4(2) and 5).

The case management conference must take place within seven days and the award within three months. The tribunal may refuse document production, limit submissions or decide on documents alone. Parties may agree to an unreasoned award (App. VI, Arts. 6(1) to 6(3), 7(1) and 7(2)).

Joinder and consolidation are excluded (App. VI, Art. 3). If the Secretary General is not prima facie satisfied that an agreement to use this procedure may exist, the arbitration continues under the Expedited Procedure Provisions or the Rules generally. The parties or the Court may also remove a case from this procedure (App. VI, Arts. 2(3) and 1(2)).

2. Early determination

Article 30 expressly recognises the tribunal's power to dispose of claims or defences that are manifestly without merit or manifestly outside its jurisdiction.

The tribunal first decides whether an application may proceed, then determines the procedure after consulting the parties. The Rules specify no application or decision deadline, leaving sequencing to case management under Article 23(2) (Art. 30(2)).

3. Emergency arbitration

Proceedings may extend to a person where the President is satisfied, on the Application, that a binding arbitration agreement may exist. The determination may be partial, allowing proceedings to continue against some parties (App. IV, Arts. 1(2)(c) and 1(7)).

A party may seek an order preventing another from frustrating the Application, without prior notice. The Secretariat sends the Application and request to the emergency arbitrator first. Other parties are notified after the decision and must immediately receive a reasonable opportunity to be heard (App. IV, Arts. 7(1) to 7(4)).

The timetable remains short: appointment normally within two days; an order within fifteen days; challenges within three days; and termination if no Request reaches the Secretariat within ten days. The tribunal must decide claims arising from compliance or noncompliance with the order, providing an express basis for damages claims (App. IV, Arts. 2(1), 6(4), 3(1), 1(8) and 6(11)).

"Parties and tribunals may still use them where convenient."

4. Expedited Procedure

The threshold for automatic application rises to US$4,000,000, determined by the date of the arbitration agreement, not the Request.

Agreement concluded:
- 1 March 2017 to 31 December 2020: US$2,000,000.
- 1 January 2021 to 31 May 2026: US$3,000,000.
- On or after 1 June 2026: US$4,000,000.

(App. V, Arts. 1(3)(a) to 1(3)(c)).

5. Terms of Reference

Terms of Reference are no longer mandatory. They remain available where useful, especially for multiple parties, complex jurisdictional questions or parties wishing to define the dispute early. Their removal responds to concerns about the delay and cost of preparing them.

Under Article 25, new claims after the initial case management conference require tribunal authorisation. The tribunal considers the claim's nature, the procedural stage and cost implications. The same point governs claims between multiple parties (Art. 9(1)).

6. Case management conference

The conference must take place within thirty days of the tribunal receiving the file, subject to extension by the Secretary General (Art. 24(1)).
It becomes the point for defining the procedure's structure and sequence, approving the timetable and identifying priority issues and efficiency measures. The timetable is communicated to the Secretariat and parties (Art. 24(2)).
The tribunal may revise the timetable, convene further conferences, request case management proposals in advance and require party attendance (Arts. 24(3) to 24(5)).

7. Transparency

Doubt about disclosure must be resolved in favour of disclosure, and the duty continues towards the Secretariat and parties (Arts. 12(2) and 12(3)). Disclosure alone does not establish a lack of independence or impartiality (Art. 12(4)).
Parties must identify the people and entities arbitrators should screen, with reasons. Funding by third parties must be disclosed promptly. Court decisions on appointment, confirmation, challenge and replacement are final (Arts. 12(5) to 12(7)).

8. Digitalisation, confidentiality and flexibility

The Rules codify established practices: electronic communication with the Secretariat; hearings and conferences held in person, remotely or in hybrid form; remote deliberations; and electronic signatures, counterparts and notification of awards, subject to applicable law (Arts. 3(1), 3(2), 27(1), 24(5), 19(3) and 38(1)).

Article 12(8) requires arbitrators to maintain confidentiality, subject to information in the public domain, party agreement, applicable law, and what is necessary to protect a legal right or satisfy disclosure obligations. Tribunal secretaries have the same duty (Art. 44(2)). Parties remain outside an automatic confidentiality obligation; an order may be sought under Article 23(3).

"The Rules still impose no automatic confidentiality on the parties."

Other amendments

Truncated tribunals. After the last hearing or substantive submissions, the Court may allow remaining arbitrators to continue following an arbitrator's death or removal (Art. 16(5)).

Tribunal secretaries. Appointment follows consultation with the parties. Decision making cannot be delegated. Impartiality and confidentiality duties apply; reasonable expenses may be reimbursed, but direct fee arrangements with parties are prohibited (Art. 44; App. III, Art. 7).

Correction of awards. The tribunal's own initiative period increases to forty five days from Secretariat notification. Party applications remain due within thirty days of receipt (Arts. 39(1) to 39(3)).

Mediation. Where ICC arbitration follows ICC mediation, half the mediation's administrative expenses are credited against arbitration administrative expenses (App. III, Art. 6(12)).

Joinder. After an arbitrator is confirmed or appointed, an additional party may join if it accepts the tribunal's constitution and the tribunal accepts the request. The tribunal weighs prima facie jurisdiction, timing, conflicts and procedural impact. Existing parties' consent is no longer required (Art. 8(6)).

Award deadlines. The President fixes or extends the deadline by reference to the procedural timetable, replacing six months from signature of the Terms of Reference (Art. 34).

Further changes. Time limits may be modified, not merely shortened (Art. 4(2)). Article 40(8) addresses bank guarantees for advances on costs, also covering a defaulting party's unpaid share. The English Rules prevail over translations (Art. 48).

Practical Takeaways: Three Actions and a Final Check

- **Audit arbitration clauses.** Below US$4,000,000, decide deliberately whether the Expedited Procedure should apply. Relevant wording includes:

"The parties agree that the arbitration shall be conducted in accordance with the Highly Expedited Arbitration Provisions set out in Appendix VI".

"The Expedited Procedure Provisions shall not apply to any arbitration commenced under this clause."

- **Update templates.** The numbering changes from former Article 4 onwards.
- **Diarise award deadlines separately.** Distinguish forty five days for tribunal corrections, thirty days for party applications and the annulment period at the seat.
- **Check references and costs.** Compare article numbering with the ICC's official compared version and revisit budgets using the current Schedule of Fees.



State responsibility, social conflict and investment protection in the mining sector: Lessons from Lupaka v Peru

By Oscar Yalta Esterripa, Associate
Rebaza, Alcázar and De las Casas

On 30 June 2025, an ICSID tribunal issued its final award in Lupaka Gold Corp. v Republic of Peru, a dispute under the Canada–Peru Free Trade Agreement (FTA). The dispute arose from the occupation of a mining project by members of the Parán Rural Community and the Peruvian authorities' response to the resulting disruption.

The tribunal found breaches of the obligations to provide full protection and security (FPS), fair and equitable treatment (FET), and protection against unlawful expropriation. It ordered Peru to pay US$40.4 million in compensation and approximately US$4.22 million in costs, both plus interest. The award examines the attribution of community conduct to the State and the measures required when social conflict threatens an investment.

Background to the dispute

In 2012, Lupaka acquired its interest in the Invicta Gold Project, situated in Huaura, north of Lima. Its investment comprised mining concessions held through its subsidiary, Invicta Mining Corporation.

Between June 2018 and February 2019, members of the Parán Rural Community occupied the mining facilities, appropriated resources and blocked the access road, preventing operations from continuing. The disruption persisted until August 2019. Unable to generate revenue and meet its financing obligations, Lupaka ultimately lost its shares in Invicta following its lender's enforcement of a security interest.

During the occupation, Invicta repeatedly sought assistance from the Ministry of Energy and Mines, the Peruvian National Police and other authorities. It requested measures to restore access to the mine, protect personnel and facilitate an agreement with the community. The authorities convened dialogue and negotiation roundtables, but these efforts did not resolve the dispute or restore operations. Disturbances associated with the occupation also resulted in the death of a security guard hired by Lupaka.

Lupaka commenced arbitration in 2020, alleging breaches of FPS, FET, the prohibition of expropriation and most favoured nation treatment. Peru contested the claims and raised two jurisdictional objections.

Jurisdiction

Peru's first objection concerned whether Lupaka qualified as an investor under Article 847 of the FTA after losing its investment. Peru argued that the treaty required the claimant to retain its investment when submitting its claim. The tribunal rejected this interpretation, finding that the definition also covered an investor that had made an investment in the past. Continued ownership at the commencement of arbitration was therefore unnecessary.

The second objection concerned the absence of a waiver on Invicta's behalf under Article 823(1). That provision requires the relinquishment of rights to pursue certain domestic proceedings, thereby preventing duplicative claims. The tribunal applied the exception in Article 823(5), finding that Peru had itself deprived Lupaka of control over Invicta. Lupaka could not consequently be required to submit a waiver for a company it no longer controlled.

"A State must refrain from conduct harming an investment and take appropriate measures to counter harmful conduct by others."

The tribunal's findings

Lupaka argued that Peru's failure to respond effectively to its requests for assistance, combined with the protesters' conduct, caused the loss of its investment. Without access to the mine, it could not generate revenue or service its debt.

Peru attributed the loss to Lupaka's own decisions. It argued that the company had failed to establish an appropriate relationship with the Parán Community and obtain a social licence to operate. Peru also maintained that Lupaka had assumed financial obligations beyond its capacity to perform.

Attribution of community conduct

Applying Article 4 of the International Law Commission's Articles on State Responsibility, the tribunal concluded that rural communities constituted organs of the Peruvian State. It examined their legal status and powers under the Constitution, Law No. 24656 on Rural Communities and other relevant provisions.

The tribunal identified features comparable to local or regional government: defined territories, governance structures and responsibility for providing security through the Rondas Campesinas. It also considered the weapons and training provided by the State. On that basis, it attributed the Parán Community's conduct to Peru.

This finding formed one basis for responsibility. The tribunal also examined whether Peru's own omissions breached the treaty, even if the community's conduct could not be attributed to the State. The award therefore addressed both attribution and the independent consequences of inadequate State protection.

Full protection and security

The tribunal explained that FPS entails both negative and positive obligations. A State must refrain from conduct harming an investment and take appropriate measures to counter harmful conduct by others.

Having attributed the Parán Community's conduct to Peru, the tribunal found a breach of FPS. Alternatively, Peru had failed to exercise due diligence in responding to the occupation and violence. Convening dialogue while leaving the investor to safeguard its own security did not constitute an adequate response to the crisis.

The tribunal also considered Invicta's protective measures. In May 2019, the company hired security personnel to support an anticipated police operation to recover the mine. Those personnel were subsequently arrested. The circumstances illustrated the difficulties confronting the investor as it sought to regain access and resume operations.

Fair and equitable treatment

Applying Article 805 of the FTA and the approach adopted in Waste Management v Mexico II, the tribunal found that the community's conduct was arbitrary, grossly unfair and contrary to due process. Lupaka's personnel had faced threats and physical violence, culminating in the taking of the mine.

As with FPS, the tribunal identified an alternative basis for liability. Even without attributing the community's conduct to Peru, the authorities' inaction and ineffective response would themselves have breached FET. The finding thus rested on both the treatment inflicted on the investor and the State's failure to address it.

Expropriation

The tribunal considered direct and indirect expropriation under Article 812(1) of the FTA. It explained that direct expropriation can arise through formal deprivation of title or the outright taking of an investment. It found that the Parán Community's conduct fell within the latter category.

Alternatively, if the community were not a State organ, Peru's failure to respond to the seizure and subsequent exploitation of the mine amounted to indirect expropriation. The prolonged deprivation of access ultimately caused the complete loss of Lupaka's investment.

Conclusions

The award connects responsibility for the community's conduct with Peru's failure to adopt timely and adequate protective measures. Across FPS, FET and expropriation, the tribunal considered both attribution and the alternative consequences of State inaction. The analysis demonstrates why the legal status of rural communities and the effectiveness of public authorities' responses can become central to investment disputes arising from social conflict.

For mining companies, the award reaffirms the availability of treaty protection where State acts or omissions harm an investment. It also emphasises the value of sustained community engagement, coordinated with public authorities, so that mining projects can benefit investors and local communities. Peru's mining potential remains attractive, but the presence and interests of rural communities require attention throughout a project's development and operation.

Contractual risk management remains relevant where political uncertainty and social conflict threaten operations. Investors should assess the protections available under their agreements and applicable treaties, seek advice on provisions addressing disruption and violence, and clarify the measures expected from public authorities. Such planning can help identify responsibilities before a dispute escalates, alongside the international protections available if those responsibilities are not fulfilled.

For the Peruvian State, the award underscores the need for a clear framework governing rural communities' rights, powers and obligations. Their extensive presence across mining regions makes clarity essential to peaceful coexistence and productive activity. Dialogue remains valuable, but convening negotiations alone may be insufficient where violence continues and access to an investment remains obstructed. Competent authorities must respond peacefully and effectively to the circumstances confronting the project.

The discussion also highlights the need to clarify the legal nature and operation of social licences to operate. A clearer framework could define the respective rights and obligations of communities, investors and public authorities, and support more consistent approaches to community relations and conflict prevention. The award follows Bear Creek v Peru in demonstrating the significance of social licence issues in mining disputes.

Although ICSID awards do not create binding precedent, their reasoning can inform the interpretation of investment protections and the development of public policy. The significance of Lupaka therefore extends beyond the compensation awarded: it offers guidance on the relationship between community governance, investment protection and the State's response to social conflict.

Accordingly, the findings in Lupaka v Peru should be regarded as relevant guidance for the development of a clearer regulatory framework governing rural communities, as well as for the formulation of State policies aimed at preventing conflicts and strengthening the protection of foreign investment.

> "Dialogue remains valuable, but convening negotiations alone may be insufficient where violence continues and access to an investment remains obstructed."



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Aksel Kolstad

Oceania



Joshua Wong

South America Spanish



Fabio Núñez del Prado
Martín Rosati

UK



Matteo Angelini
Olivia Kaye

Western Europe



Sebastian Green Martínez

For full profiles

https://www.cailaw.org/Institute-for-Transnational-Arbitration/Young-ITA/index.html



Newsletter Guidelines

Share your expertise, research and regional developments with the global Young ITA community.

Young ITA welcomes original contributions from members across our international network. Whether you are analysing recent developments in arbitration, reporting on regional events, or sharing insights from practice or academia, we encourage you to contribute to future editions of the **Young ITA Newsletter**, our quarterly publication reaching students, practitioners, academics and professionals around the world.

Who Can Contribute?

Contributions are welcome from **Young ITA members** and must be original, unpublished work.

What Can You Submit?

Young ITA welcomes articles and reports on topics including:

- Recent developments in international arbitration
- New laws, regulations or policy developments
- Significant court decisions or arbitral awards
- Reports from conferences, webinars and Young ITA events
- Regional developments and commentary
- Other topics of interest to the Young ITA community

Submission Guidelines

Please ensure that your submission:

- Is between **300 and 500 words**
- Is submitted in **Microsoft Word** format
- Includes the author's name, email address, organisation and city/country
- Includes a one or two-sentence abstract and five keywords
- Acknowledges all sources, while keeping endnotes to a minimum
- Has not been previously published

To maximise the opportunity for publication, contributors are encouraged to submit articles **at least two months before the publication month** of the relevant newsletter issue. All submissions are considered based on their relevance, timeliness, quality and consistency with these guidelines.

Interested in Reporting?

Young ITA also welcomes volunteers to report on future Young ITA events, whether held in person or virtually.

If you are interested in contributing as an event reporter or submitting an article for a future issue, please contact the **Young ITA Thought Leadership**, **Internal Communications**, or **External Communications Co-Chairs**.

We look forward to hearing from you and showcasing the diverse perspectives of the Young ITA community.