



Laws & Treaties

UK Joins the Multi-Party Interim Appeal Arbitration Arrangement

On 25 June 2025, the United Kingdom formally joined the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), a mechanism developed in response to the continued paralysis of the WTO Appellate Body. The MPIA provides a temporary but legally binding alternative for WTO members to resolve appeals in trade disputes, thereby maintaining the integrity of the two-tier dispute settlement system for participating countries.

This accession signals the UK's renewed commitment to a multilateral, rules-based, trading framework especially significant given the current backdrop of economic volatility, rising protectionism, and increased reliance on unilateral trade measures by major economies. The UK Department for Business and Trade described the move as "a demonstration of our commitment to an effective rules-based international trading system."

By joining the MPIA, the UK enhances its ability to protect British business interests abroad through predictable and enforceable WTO adjudication. It also positions the UK as a more engaged actor in WTO reform efforts post-Brexit, aligning with its goal of influencing the evolution of global trade governance while independently shaping its international legal footprint.

The MPIA currently counts over 50 WTO members, including the EU, Canada, Australia, and now the UK. As part of this framework, parties agree to arbitrate appeals under WTO rules using ad hoc tribunals that mirror the legal structure and procedural safeguards of the Appellate Body.

Reintroduction of the FAIR Act in the US

The U.S. Congress saw the reintroduction of the Forced Arbitration Injustice Repeal (FAIR)

Act, a sweeping legislative proposal that seeks to invalidate mandatory pre-dispute arbitration clauses in key areas such as employment, consumer protection, antitrust, and civil rights.

If passed, the FAIR Act would mark a profound shift in U.S. arbitration policy. It directly challenges decades of jurisprudence from the U.S. Supreme Court that has broadly upheld the enforceability of arbitration agreements under the Federal Arbitration Act (FAA), even where power imbalances exist.

The rationale behind the FAIR Act stems from mounting concerns that mandatory arbitration limits access to justice, especially for consumers and employees who may unknowingly waive their right to litigate. Critics argue that private arbitration can obscure systemic wrongdoing, lack transparency, and inhibit precedent-setting decisions in public courts.

While the bill faces strong opposition from industry groups and is unlikely to pass the Senate without significant amendments, its reintroduction underscores a growing bipartisan debate in the U.S. about the appropriate limits of arbitration. If enacted, the legislation would have far-reaching implications for how companies structure dispute resolution clauses in their contracts and could reshape the U.S. arbitration landscape across multiple sectors.

Arbitration centres

Host Country Agreement between Brazil and the Permanent Court of Arbitration

In early 2025, Brazil operationalised its Host Country Agreement with the Permanent Court of Arbitration (PCA), allowing the PCA to conduct hearings and administer cases through their

recently opened regional office in São Paulo. This development consolidates Brazil's standing as a leading seat for international arbitration in the Global South and underlines its institutional commitment to international dispute resolution under PCA auspices.

Unified Patent Court Arbitration Centre - Public Consultation on Draft Rules

On 4 June 2025, the Arbitration Centre of the Unified Patent Court (UPC) launched a public consultation on its Draft Arbitration Rules. The Centre, established under the UPC Agreement, is designated for patent disputes involving European and unitary patents.

The draft rules set out procedural provisions for arbitrations conducted within the UPC's framework and are designed to complement the UPC's litigation functions. Once adopted, these rules may establish the UPC Arbitration Centre as the principal venue for ADR in high-stakes, cross-border European patent disputes.

JAMS Opens International Arbitration Centre in Houston

Judicial Arbitration and Mediation Services, Inc. (JAMS) opened its new International Arbitration Center in Houston, Texas, on 11 June 2025. The state-of-the-art facility expands JAMS's ADR footprint in the U.S. Gulf Coast, a region with high arbitration demand due to its concentration of energy and infrastructure firms.

Equipped with advanced videoconferencing, private breakout rooms, and multilingual services, the Houston centre is accessible for hearings under any institutional rules. The initiative reflects the increasing regionalisation of arbitration in the U.S. and supports Houston's rising profile as an international arbitration seat.

Investment Arbitration

Portigon AG v. Kingdom of Spain, ICSID Case No. ARB/17/15.

Award rendered on 9 June 2025 under the ECT and ICSID Convention

In *Portigon AG v. Spain*, the ICSID tribunal addressed significant legal questions under the Energy Charter Treaty (ECT) and Article 25 of the ICSID Convention. The award confirms that project finance instruments, specifically long-term loans provided by a third-party bank, can constitute protected "investments" under international investment law. *Portigon AG*, a German financial institution, had financed several renewable energy projects in Spain before Spain enacted regulatory reforms that drastically reduced expected returns for investors in the sector.

Part of the ratio decidendi of the award revolves around the question whether debt instruments, especially loans made by entities that do not hold equity stakes, qualify for investment protection under the ECT. The tribunal answered affirmatively, holding that long-term loan agreements are covered by the broad definition of "investment" in Article 1(6) of the ECT, and satisfy the objective criteria of investment under Article 25 of the ICSID Convention, including contribution, duration, and risk.

This interpretation has significant implications for the scope of investment protection. Traditionally, treaty claims have been associated primarily with equity-holding investors. By extending protection to project financiers, the tribunal signals a broader, more inclusive understanding of "investment" that enhances legal certainty for creditors in complex infrastructure projects. It reaffirms that non-equity stakeholders, whose financial input may be critical to a project's viability, can enjoy treaty protection against State conduct that adversely affects their economic expectations.

The tribunal's decision underscores a critical substantive limitation on recovery: while *Portigon* succeeded on jurisdiction and liability, it ultimately

failed to secure damages. The tribunal held that Portigon had not adequately demonstrated a quantifiable loss resulting from Spain's regulatory changes. This reflects a recurring theme in recent investment awards: even where legal standing and treaty breach are established, claimants must rigorously substantiate economic harm to obtain compensation. The evidentiary burden remains high, particularly in finance-based claims where the loss may be indirect or diffuse.

More broadly, this case aligns with a growing trend in investment arbitration to accommodate the evolving structures of international investment, particularly in the context of renewable energy and public-private partnerships. It highlights the tribunal's willingness to adapt treaty interpretation to modern financial realities, while still maintaining a strict evidentiary threshold for damages.

Portigon v. Spain contributes to the ongoing doctrinal development of investment law by clarifying that creditors can be "investors" under the ECT, but it also reinforces the principle that liability alone is insufficient without demonstrable loss. The award serves as a strategic reference point for financial institutions considering ISDS claims in similarly structured transactions.

Case note: England & Wales

***Mare Nova Inc v. Zhangjiagang Jiushun Ship Engineering Co Ltd* [2025] EWHC 223 (Comm)**

Facts: Mare Nova Inc, the owner of a commercial vessel, contracted Zhangjiagang Jiushun Ship Engineering Co Ltd, a Chinese shipyard, to carry out scheduled repairs in March 2021. After the vessel departed the shipyard, the crew detected a burning smell near the intermediate shaft bearing. The shipowner later discovered the bearing had been damaged during the shipyard's work and initiated London-seated arbitration under the ship repair contract. The respondent did not participate, claiming there was no valid arbitration agreement. Mare Nova proceeded and claimed over USD 652,937 in damages for breach

of contract, negligence, and under a six-month guarantee clause. The arbitrator awarded only USD 298,651 under the guarantee and rejected the broader damages claim, reasoning that the shipyard's liability had been discharged upon redelivery of the vessel under clauses 2.1 and 6.3 of the contract. Mare Nova challenged the award under section 68 of the Arbitration Act 1996, arguing that the arbitrator had decided the case on a legal issue that was never raised by either party and on which it had no opportunity to comment.

Held: The High Court upheld Mare Nova's challenge under section 68(2)(a), concluding that the arbitrator had acted unfairly by introducing a novel legal argument, discharge of liability, that had not been discussed in the proceedings: *"The evidence shows that the discharge of liability was never raised as an issue... The Tribunal did not raise it... The first mention of clause 6.3... was in the published Award."* The Court found this breached the tribunal's duty under section 33 of the Act to give each party a fair opportunity to present its case: *"The claimant had had no opportunity to put its case on the point and no opportunity to address the case for the defendant... on the point."*

This denial of procedural fairness was held to have caused substantial injustice, as the claimant lost a real chance to obtain a larger award: *"The claimant has lost the opportunity, which had a realistic prospect of success, to persuade the Tribunal that the defendant's liability was not discharged..."*. While Mare Nova also pursued a section 69 appeal on a point of law, this was dismissed as unnecessary. However, the Court nonetheless addressed the substance and held that the arbitrator's legal interpretation was clearly wrong. Clause 6.3 did not extinguish liability for prior breaches; rather, it defined the period during which the shipyard was liable as bailee: *"Clause 6.3... clearly has nothing at all to do with the discharge of an accrued liability... Rather, it defines the period of the Contractor's liability as bailee..."*

The Court reaffirmed the long-established principle that liability-limiting clauses must be explicit and unequivocal: *"Parties do not normally give up valuable rights without making it clear that they*

intend to do so (...) Clear express words must be used in order to rebut this presumption.”

The Court allowed the section 68 challenge and remitted the award to the tribunal for reconsideration in light of the correct legal principles.

Tip of the month

- ☑ **If an arbitration process felt unfair but the party did not object during the hearing, can they resist enforcement?**

Article v(1)(b) of the New York Convention of 1958 allows the refusal of the enforcement of an award if a party was unable to present his case. Yet, if that party failed to object during the process, many courts may see it as a waiver. The key takeaway is to not stay silent in the hope of challenging enforcement later. Procedural fairness arguments often fail if they are not addressed promptly.

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This publication does not constitute legal advice.

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