



Laws & Treaties

China adopts revised Arbitration Law

On 12 September 2025, the Standing Committee of the National People's Congress passed the first major overhaul of the PRC Arbitration Law since its enactment in 1994. The reform will come into force on 1 March 2026 and represents an important step in aligning Chinese arbitration practice with international standards.

The amendments introduce the concept of an “arbitration seat” into Chinese legislation. Until now, the law referred only to the “place” of arbitration, a term that generated uncertainty in cross-border cases. By expressly adopting the notion of a legal seat, the revised law clarifies which procedural law governs the arbitration, the scope of court supervision, and the framework for recognition and enforcement.

Another significant innovation is the cautious introduction of ad hoc arbitration. Whereas the old law required that all arbitrations be administered by a recognised Chinese arbitral commission, the new law permits ad hoc arbitration in limited circumstances. These are restricted to foreign-related maritime disputes and, under special regulations, to certain free trade zones. The reform thus falls short of proposals that would have liberalised ad hoc arbitration more broadly, but it nonetheless signals Beijing's willingness to experiment with flexibility in the arbitration market.

The revised law also raises professional standards for arbitrators and accelerates proceedings by cutting the deadline for set-aside applications from six to three months. In combination, these reforms are intended to enhance the global credibility of China as a seat of arbitration, while maintaining careful control over its arbitral infrastructure.

EU approves the Mauritius Convention on Transparency

On 25 September 2025, the European Union deposited its instrument of approval of the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration, better known as the Mauritius Convention on Transparency.

The Convention, adopted in 2014, gives broad effect to the UNCITRAL Transparency Rules in treaty-based arbitrations. These rules require the publication of core documents, the opening of hearings to the public, and permit submissions by third parties such as NGOs. Prior to the Convention, transparency rules applied only to arbitrations conducted under treaties concluded after 2014 that expressly incorporated them. The Mauritius Convention extends the rules to older treaties where both parties to a dispute are bound by the Convention.

The EU's approval is significant because it acts on behalf of all its member States in treaty matters. This means that a very large block of treaties entered into by EU States with third countries will now be subject to enhanced transparency obligations in UNCITRAL arbitrations. In effect, investor-State arbitrations involving EU parties can no longer operate under the veil of secrecy that characterised earlier generations of treaty disputes.

At the same time, the EU lodged a reservation excluding the application of the Convention to intra-EU disputes under the Energy Charter Treaty, in line with its long-standing position post-Achmea and Komstroy. This signals the Union's determination to reconcile greater global transparency with its strategy of excluding intra-EU arbitration altogether. The approval thus represents both a step forward in transparency and a reinforcement of the EU's restrictive stance on intra-EU arbitrations.

CJEU rules on res judicata of arbitration awards

In Case C 600/23, the CJEU (Grand Chamber) has recently concluded that, according to EU law (Articles 19(1) TEU, 267 TFEU and 47 EU Charter), an arbitration award does not have the authority of res judicata within the territory of the Member State in which it was issued, if the consistency of that award with the principles and provisions of EU law which form part of EU public policy has not first been subject to effective review by a court or tribunal of that Member State. According to the CJEU's decision, the said award will have no probative value between the parties to that dispute, or between those parties and third parties.

Arbitration centres

SIAC launches Insolvency Arbitration Protocol

On 26 August 2025, the Singapore International Arbitration Centre (SIAC) unveiled its Restructuring and Insolvency Arbitration (RIA) Protocol, the first institutional framework designed specifically for disputes arising in insolvency and restructuring scenarios.

The Protocol, which parties may opt into by agreement, adapts the SIAC Rules to meet the demands of insolvency disputes. It provides for expedited timelines, streamlined pleadings, and the possibility of appointing arbitrators with specialist insolvency expertise. According to SIAC, the Protocol aims to address the tension between the collective nature of insolvency and the private, bilateral nature of arbitration. By tailoring procedures, it seeks to deliver efficient, enforceable outcomes without undermining insolvency regimes.

This initiative comes amid growing concern about how arbitration interacts with insolvency law, particularly in cross-border contexts. Insolvency practitioners often view arbitration as ill-suited to collective proceedings, while arbitral tribunals

must grapple with questions of arbitrability when insolvency is involved. The RIA Protocol represents a creative attempt to bridge this divide.

If widely adopted, the Protocol could place SIAC at the forefront of developing practice in this sensitive area and serve as a model for other institutions. Its success will likely depend on whether courts in key jurisdictions support enforcement of awards rendered under the Protocol, especially where insolvency moratoria are in play.

AAA-ICDR announces AI arbitrator initiative

On 17 September 2025, the American Arbitration Association (AAA) and its international division, the ICDR, announced that they will pilot an AI-native arbitrator. The initiative will first apply to documents-only construction disputes, beginning November 2025.

The system has been trained on a large corpus of anonymised arbitral awards and is designed to generate reasoned draft awards based on the parties' submissions. Crucially, it operates within a human-in-the-loop model: a panel of human arbitrators will review the AI's draft, validate its reasoning, and issue the final award. This is intended to ensure procedural fairness and safeguard parties' rights.

The AAA-ICDR has framed the project as an effort to deliver faster, more affordable dispute resolution while maintaining trust in arbitral outcomes. Its CEO emphasised that transparency and oversight are essential to prevent automation from undermining legitimacy. The plan is to extend the technology to other case types by 2026, depending on feedback.

The announcement has generated considerable debate within the arbitral community. Proponents argue it will improve consistency and efficiency. Critics question whether delegating core aspects of decision-making to an AI system, even with human review, complies with parties' consent to arbitration. Either way, the initiative places AAA-ICDR at the forefront of technological innovation in arbitration.

Investment Arbitration

Discovery Global LLC v Slovak Republic, ICSID Case No. ARB/21/35.

Award issued 17 January 2025 issued under the US-Slovakia BIT.

This recently published award sheds light on the tribunal's approach to fair and equitable treatment (FET) and the importance of investor due diligence. Discovery Global, a US investor, held licences for oil and gas exploration in Slovakia. It claimed that state measures, including lease non-renewals and new environmental requirements, violated Slovakia's obligations under the US-Slovakia BIT.

The tribunal dismissed the claims. It reaffirmed that legitimate expectations arise only from clear and specific assurances by the State, and that an investor's own conduct is relevant when assessing alleged breaches. The tribunal emphasised that Discovery Global had failed to carry out meaningful due diligence before committing capital. For instance, its assumption that it held rights to use a private access road proved mistaken. As the tribunal observed, *"this misunderstanding could have been avoided had the claimant conducted a meaningful due diligence exercise."*

In addition, the tribunal held that Slovakia's implementation of stricter environmental rules, consistent with EU law, did not amount to a breach of FET. Absent any stabilisation commitment, regulatory change was a normal risk of investment. Temporary setbacks and administrative hurdles were likewise insufficient to constitute treaty violations.

Having dismissed the FET claim and associated allegations of expropriation, the tribunal ordered Discovery Global to bear the full costs of arbitration and most of Slovakia's legal fees. The award reinforces the principle that investor protection does not shield claimants from ordinary regulatory risk or from their own failure to verify the legal and factual conditions of investment.

Case note: England & Wales

Tecnicas Reunidas Saudia for Services & Contracting Co Ltd v Petroleum Chemicals and Mining Co Ltd [2025] EWHC 1785 (Comm)

Facts: The dispute arose under a subcontract relating to a major petrochemical project in Saudi Arabia. The contract documentation was layered, consisting of a top-level Purchase Order, a Deviation List, and a set of General Conditions. The Purchase Order, which ranked highest under an order-of-precedence clause, provided for ad hoc arbitration in London under English law. The General Conditions, by contrast, contained an ICC arbitration clause with a seat in Riyadh.

Petroleum Chemicals and Mining Co Ltd (PCMC) commenced arbitration against Tecnicas Reunidas Saudia for Services & Contracting Co Ltd (Tecnicas) under the ICC Rules, seated in London. Tecnicas, in turn, appointed an arbitrator but expressly reserved its jurisdictional objection, arguing that the ICC clause contained in the General Conditions had been overridden by the Purchase Order. The tribunal upheld jurisdiction and issued a partial award. Tecnicas challenged the award in the High Court under section 67 of the Arbitration Act 1996.

Held: : Mr Justice Bryan upheld the challenge and set aside the tribunal's award in full. He held that the contractual hierarchy was decisive: "On the proper construction of the contract, the arbitration clause in the Purchase Order prevails. The agreement was for ad hoc arbitration in London. The parties never consented to arbitration under the ICC Rules. It follows that the Tribunal had, and has, no jurisdiction."

The judge rejected PCMC's contention that Tecnicas had waived its right to object by participating in the arbitration. He emphasised that nominating an arbitrator did not extinguish a party's statutory right to challenge jurisdiction: "It would be contrary to the ethos of the Arbitration Act to hold that a party loses its jurisdictional objection merely by appointing an arbitrator. Section 31(1) expressly preserves the right to object, provided it is raised in a timely manner, as Tecnicas did here."

What the parties agreed in the Purchase Order, in terms of governing law was English law (not Saudi Arabian law); what the parties agreed in the Purchase Order in terms of seat was London (not Riyadh); and what the parties agreed in the Purchase Order was an ad hoc arbitration not an institutional arbitration under ICC Rules. The provision as to an institutional arbitration administered by the ICC in accordance with the ICC Rules is simply inconsistent with the provision of an ad hoc nature of the arbitration agreed in the Purchase Order. According to the judge, “the reality is that ad hoc arbitration and an institutional arbitration under the ICC Rules are fundamentally different beasts, and indeed have fundamentally different contractual consequences.”

It was thus found that the arbitration agreement “is that as agreed, and agreed only, in the Purchase Order.” Accordingly, the court set aside the ICC tribunal’s award. The judgment underscores the English courts’ readiness to intervene in exceptional circumstances where tribunals exceed their jurisdiction, while reaffirming that participation in proceedings does not bar jurisdictional objections when properly reserved.

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Tip of the Month:

☑ Res judicata in international arbitration: how far does it extend?

The doctrine of res judicata prevents parties from re-litigating claims or issues already determined in earlier proceedings. While well established in national courts, its scope in international arbitration remains debated. Tribunals generally require identity of parties, cause of action, and subject matter, but recent awards illustrate divergences: some apply a strict triple-identity test, while others adopt a broader “abuse of process” standard. Practitioners should be alert that arbitral tribunals may give effect to prior findings not only from earlier arbitrations but also from court judgments, particularly where consistency and procedural economy weigh heavily.

This publication does not constitute legal advice.

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