



## Laws & Treaties

### Saudi Arabia proposes modernised arbitration law

In October 2025, the Saudi Ministry of Justice published a draft arbitration law for public consultation, signalling a substantial shift towards international norms. The proposal, which would replace the current 2012 statute, is modelled closely on the UNCITRAL Model Law and seeks to improve clarity, flexibility, and procedural fairness in arbitral proceedings.

Among the key reforms is a provision specifying that, in the absence of party agreement, the law of the seat shall govern the arbitration agreement. This resolves ambiguity under the current regime and aligns with prevailing jurisprudence in other Model Law jurisdictions. Another notable change is the abolition of existing nationality and religious qualification requirements for arbitrators. Under the new draft, arbitrators would no longer need to be Saudi nationals or hold Sharia or law degrees, provided they possess suitable professional expertise. This widens the pool of eligible arbitrators and opens the door to greater international participation.

The draft law also introduces express provisions for joinder and consolidation. With party consent, third parties may now be joined to an arbitration, and related proceedings may be consolidated where the claims arise under connected contracts or involve common questions of fact or law. In parallel, the courts are granted power to determine jurisdictional challenges immediately, rather than forcing parties to await a final award. Interim measures ordered by arbitral tribunals are also explicitly recognised and may be enforced through Saudi courts without relitigating the underlying merits.

Additionally, the draft law clarifies the scope of judicial intervention and shortens the limitation period for annulment applications. These

procedural refinements, if adopted, are likely to improve efficiency and enhance confidence in Saudi-seated arbitrations. The draft reflects the Kingdom's continued efforts to position itself as a regional arbitration hub and is expected to attract significant comment from both domestic and international stakeholders before final enactment.

### IPOs shareholder arbitration clauses are upheld in the US

On 17 October 2025, the US Securities and Exchange Commission (SEC) announced that it would no longer object to initial public offerings (IPOs) solely on the basis that the issuer's corporate charter includes a mandatory shareholder arbitration clause.

This policy reversal departs from the SEC's long-standing reluctance to permit arbitration in the securities context. Previously, companies proposing such clauses faced effective veto, as the SEC refused to accelerate registration statements. Under the new position, acceleration may proceed if the issuer provides clear disclosures to investors regarding the arbitration requirement.

The change is grounded in the view that the Federal Arbitration Act, as interpreted by the US Supreme Court, generally upholds the enforceability of arbitration clauses, even in the context of federal statutory claims. Critics, however, argue that compelling shareholders to arbitrate individually undermines class actions and impairs collective enforcement of investor rights.

The SEC has not issued a formal rule change, leaving the door open for future litigation on the enforceability of such clauses under state corporate law. Stock exchange listing rules may also become a point of contention. Nevertheless, the Commission's announcement will likely embolden companies to reintroduce arbitration clauses into their IPO documentation. The long-term impact will depend on investor reactions and judicial willingness to uphold such provisions when challenged.

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## Arbitration centres

### Changes to Gafta contracts and arbitration rules

The Council of the Grain and Feed Trade Association (Gafta) has approved changes to their Contracts and Rules on 1 October 2025.

Rule 4.4 of the Gafta Arbitration Rules No. 125 has been amended to reflect current practice of case submissions. It reads: *“All submissions and evidence shall be served by sending them to the other party, with copies to Gafta, via email. All submissions and evidence are to be in English or with English translations. Hard copies shall be provided by the parties upon request from Gafta.”*

Rule 4.1 of Gafta Arbitration Rules No. 126 has been amended to reduce the timeframe for payment of the arbitration deposit. It reads: *“The Claimants shall deposit with Gafta such sum as Gafta considers appropriate on account of the costs, fees and expenses of the arbitration. If the deposit is not received by Gafta by 12 noon on the 30th consecutive day after the date on which it was called for, the application shall be deemed to be waived and barred.”*

The Domicile Clause in Gafta Contracts has been amended so that, for the purpose of any legal proceedings, each party shall be deemed to be ordinarily resident or carrying on business at the offices of Gafta in England.

Subclause (c) of the Payment clause in C&F/C&FFO/CIF/CIFFO Contracts has been reworded to allow for sellers/buyers to agree their own terms in contracts. It reads: *“(c) In the event of a complete set of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers may at their option, in exchange for payment by Buyers, provide a letter of indemnity entitling Buyers to obtain delivery of the goods. Such payment shall not prejudice Buyers’ rights under the contract when shipping documents are available.”*

Minor changes have also been made to the weighing clause of CIFFO contracts; the Appropriation and Default clause in CIF contracts; the Quality Clause and Certificate final clause in Gafta Contracts No. 47 and No. 49; and subclause (f) in the Default clause in CIF/CIFFO/C&F/C&FFO Contracts.

### Ciarb Guideline on Third-Party Funding

The Chartered Institute of Arbitrators (“Ciab”) announces the launch of its much-anticipated Guideline on Third-Party Funding.

As the use of third-party funding in arbitration rises, practitioners are interested in developing their knowledge of the funding process. The Guideline on Third-Party Funding is a comprehensive tool for alternative dispute resolution (ADR) practitioners that provides much needed transparency over the third-party funding process.

Ciarb’s Policy team worked with the Professional Practice Guideline Drafting Committee and a group of other funding experts from around the world to produce this Guideline with the overarching aim to demystify the third-party funding process. The Guideline was drafted by Mercy McBrayer FCI Arb and Mohamed Sadiq ACI Arb.

### AIAC Suite of Rules 2026 are unveiled

On 8 October 2025 the Asian International Arbitration Centre (AIAC) in Kuala Lumpur formally launched the AIAC Suite of Rules 2026. The new framework consolidates and updates AIAC’s arbitration, mediation, adjudication, and fast-track procedures into a cohesive package. The Rules will enter into force in January 2026.

Key updates include streamlined provisions on joinder, virtual hearings, and tribunal powers to manage multi-contract proceedings. AIAC has stated that the revision reflects current user expectations and incorporates global best practices. While full details remain pending, early indicators suggest that the Rules may enhance procedural economy while offering greater flexibility across AIAC-administered disputes.

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## Investment Arbitration

### ***Nova Group Investments v Romania, ICSID Case No. ARB/16/19..***

Award dated 13 June 2024 under the Netherlands-Romania BIT..

This award (released in October 2025) award arises from the collapse of Astra Asigurări, a major Romanian insurer owned by Nova Group Investments, a Dutch company linked to the Adamescu family. Nova Group Investments alleged that Romania's regulatory actions and criminal investigations constituted a politically motivated campaign in breach of the Netherlands-Romania BIT.

The tribunal unanimously rejected all claims. It held that Romania's conduct, including the appointment of a special administrator, regulatory interventions by the Financial Supervisory Authority, and subsequent insolvency proceedings, were within the ordinary bounds of regulatory discretion and pursued in good faith. The measures were found to be neither arbitrary nor discriminatory.

The ratio decidendi of the award rests largely on two points. First, the tribunal concluded that the fair and equitable treatment (FET) standard under the BIT does not immunise investors from legitimate regulatory risk. It reaffirmed that a violation of FET requires conduct that is manifestly arbitrary, grossly unfair, or egregiously inconsistent with due process. Here, the claimant failed to demonstrate that Romania's interventions crossed that threshold. The Tribunal drew a distinction between the FET clause and the non-impairment clause of the BIT. They said: *"To the extent there is a difference between the clauses, it relates to the impact of the [Contracting Party] conduct, not to the nature of the conduct itself. Thus, the FET clause requires each Contracting Party to 'ensure' FET treatment of qualifying investments, which inter alia means treating investments reasonably and without discrimination, and the non-impairment clause prohibits unreasonable or discriminatory measures which 'impair ... the operation,*

*management, maintenance, use, enjoyment or disposal of such investments. But there is no need to examine the impact of improper conduct (i.e., whether it 'impairs' important rights with respect to an investment) unless and until the underlying State conduct has been found improper in the first place (i.e., unreasonable or discriminatory). This is consistent with the approach taken by other tribunals, which have found that non-impairment claims should be addressed under the same rubrics of reasonableness and non-discrimination as considered for FET claims."*

Second, the tribunal accepted Romania's argument that part of the shareholding was acquired in violation of local corporate governance laws, and thus fell outside the BIT's protective scope. Although the tribunal retained jurisdiction over the remainder of the investment, it found no evidence of a breach even in that portion.

The award underscores a key message: investor protections under BITs do not extend to business failures caused by mismanagement or regulatory non-compliance. The burden of proof for establishing a breach of international standards remains high, especially where the host State's conduct can be justified as a proportionate and lawful response to financial distress or systemic risk.

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## Case note: England & Wales

### ***JSC Kazan Oil Plant v Aves Trade [DMCC [2025] EWHC 2713 (Comm)***

*Facts:* The claimant filed an appeal against an award ("Appeal Award") issued by a Board of Appeal of the Federation of Oils, Seeds and Fats Association ("FOSFA"). The appeal to the Court was made on a question of law pursuant to Section 69 of the Arbitration Act 1996 ("the Act"). The application was filed within 28 days after the appeal award was released to the parties, but more than 28 days after the date of the Appeal Award itself.

The defendant (who had been successful before the Board of Appeal), sought to strike out the

application on the basis that it had been brought out of time. It was accordingly necessary for the Court to determine the correct interpretation of section 70(3) of the Act, which provides as follows: *“Any application or appeal must be brought within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.”*

*Held:* : The Court was of the view that, based on authority relating to section 70(2) of the Act (which requires parties to exhaust any arbitral process of appeal or review before making a challenge to the English Courts), the words “arbitral process of appeal or review” had to be construed as encompassing appeals to the FOSFA or GAFTA Board of Appeal. Nonetheless, the Court held that time still ran from the date of the Appeal Award on the basis that the words “if there has been any arbitral process of appeal or review” had to be construed as meaning *“if there has been a process of arbitral appeal or review from the award that is the subject of the challenge to the Court”*. Accordingly, for challenges to the Court in respect of FOSFA or GAFTA appeal awards, time starts running from the date of the

award itself unless either party asks the relevant arbitral institution to review or appeal that award.

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## Tip of the Month:

- ☑ **Before you challenge an award, consider clarification or correction of the contentious point(s).**

Parties unhappy with an ambiguity or omission in an arbitral award often rush to challenge it before the courts of the place where the award was seated. However, there is a prior and sometimes necessary step: requesting correction or clarification directly from the arbitral tribunal. Courts expect parties to exhaust this remedy before seeking judicial intervention. Skip it, and your challenge may be deemed premature or abusive. A quiet request to the tribunal might save time, money, and face..

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**This publication does not constitute legal advice.**

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