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Vietnam's Legal Landscape in Digital Era: Navigating the 4.0 Evolution Through Progressive Regulation

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Abstract

Vietnam is undertaking an ambitious initiative to establish a comprehensive legal framework governing emerging technologies, including blockchain, digital assets, and artificial intelligence, marking a decisive shift in its regulatory approach to Industry 4.0 technologies. Recognizing that traditional legal frameworks prove inadequate to address the complexities inherent in AI and digital asset ecosystems, Vietnamese policymakers have adopted a progressive regulatory paradigm that seeks to foster innovation while ensuring robust legal frameworks, consumer protection, and legal certainty. This article examines Vietnam's

evolving legal landscape through a critical analysis of three groundbreaking regulatory developments: the Law on Digital Technology Industry 2025, Resolution No. 05/2025/NQ-CP establishing tokenized asset regulatory sandboxes, and the Draft Law on Artificial Intelligence currently under legislative consideration. These legislative initiatives collectively represent Vietnam's strategic approach to balancing technological innovation with prudential regulation, positioning the nation as a forward-thinking digital economy within Southeast Asia and the broader Asian region.

1. Vietnam's Legal Framework to Meet the Digital Economy

Under Resolution No. 57-NQ/TW dated 20 December 2024, of the Political Bureau on the breakthrough development of Science, Technology, Innovation, and National Digital Transformation, Vietnam's digital economy is projected to contribute at least 30% of GDP by 2030. This ambition is backed by strong current performance, with the digital economy estimated to contribute 18.3% of GDP by 2024, and is planned to reach \$52 billion by 2025¹. The rapid global adoption of artificial intelligence in business automation, blockchain in financial infrastructure, and tokenization in asset management presents Vietnam with unprecedented opportunities to leapfrog traditional development stages while simultaneously posing complex regulatory challenges. For a nation with robust digital adoption rates and a young, tech-savvy workforce, these technologies offer pathways to economic transformation—but only if accompanied by clear, balanced regulatory frameworks that protect consumers while fostering innovation.

¹ Performance report of 2024 by the Ministry of Science and Technology.

Given technology's pervasive impact on every aspect of the society, leaving emerging technological areas unregulated is no longer an option. Vietnam's legislature has responded swiftly and comprehensively, demonstrating the government's commitment to addressing the imperatives of digital transformation. Recent legislative milestones include:

- Law on Data 2024² and Law on Personal Data Protection 2024³, which together establish Vietnam's data governance framework.
- Law on Digital Technology Industry 2025⁴, which provides formal legal definitions and regulatory frameworks for digital assets, artificial intelligence, and related technologies.

Complementing these foundational laws are strategic resolutions designed to position Vietnam as a premier destination for investors and skilled professionals throughout Asia:

- **Resolution No. 222/2025/QH15**, enacted on 27 June 2025, and effective from 1 September 2025, establishes the international financial hub in Ho Chi Minh City and Da Nang *“under unified operations, management, and supervision; with separate orientations for product development that promote the strengths of each city; and ensures fairness and mutual support, aiming to become a leading international*

² **Law on Data No. 60/2024/QH15**, passed on 30 November 2024, and effective from 1 July 2025.

³ **Law on Personal Data Protection No.91/2025/QH15**, passed on 25 June 2025 and effective from 1 January 2026, totally replaced the Decree No.13/2023/ND-CP on personal data protection.

⁴ **Law on Digital Technology Industry No. 08/2025/QH15**, enacted on 14 June 2025, and set to take effect on 1 January 2026.

financial hub, elevating Vietnam's position in the global financial network associated with economic growth drivers.”⁵

- **Resolution No. 05/2025/NQ-CP**, promulgated on September 9th, 2025, launches a five-year pilot program for the crypto asset market and establishes strict licensing requirements for digital asset exchanges and trading platforms.

Most significantly, on 8 October 2025, the **Draft Law on Artificial Intelligence** was released for public consultation. The drafting Board expects the National Assembly to vote on its enactment by the end of 2025, with an anticipated effective date in 2026. This rapid legislative momentum reflects Vietnam's dual ambition: to lead in emerging technological trends and cultivate a high-quality technical workforce, while pioneering comprehensive regulation in the challenging domain of artificial intelligence, positioning itself as the first country in Southeast Asia with dedicated Artificial Intelligence (AI) legislation.

As Asia-Pacific nations race to position themselves as AI hubs, Vietnam, South Korea, and Singapore have adopted markedly different regulatory philosophies. While Vietnam and South Korea have opted for comprehensive legislation taking effect in January 2026, Singapore maintains its principles-based, voluntary framework that has attracted numerous AI projects to establish regional headquarters and conduct sandbox pilots in the city-state.

⁵ Clause 1 Article 4 of Resolution No.222

South Korea: Balanced Dual-Mandate Approach

South Korea's Basic Act on the Development of Artificial Intelligence and Establishment of Foundation for Trustworthiness (Law No. 20676), passed on 26 December 2024, and taking effect 22 January 2026, makes Korea the second country in the world to enact foundational AI legislation. According to the official Ministry of Science and ICT statement, the Act is designed to establish a national governance framework for AI, systematically foster the AI industry, and prevent potential risks associated with AI in advance, with three main focus areas: framework for AI development and trust-based infrastructure, support measures for the AI industry including R&D, training data, AI data centers and clusters, and safe and trustworthy foundation for high-risk AI and generative AI. The framework combines substantial industry support measures—including research and development funding, AI data centers, clusters, special SME support, and talent programs—with targeted regulatory obligations for high-risk and generative AI systems, alongside voluntary certification programs supported by government infrastructure. Minister of Science and ICT Yoo Sang-Im explicitly positioned the Act as essential for Korea to "take a leap forward as one of the world's top three AI powerhouses" while "resolving corporate uncertainty"⁶. However, as the Act has not yet come into effect, its actual impact on business operations and innovation remains to be tested in practice.

Singapore: Principles-Based Non-Legislative Framework

Singapore's Model AI Governance Framework, first released in January 2019 by the Personal Data Protection Commission and updated in January 2020, takes a

⁶ <https://www.msit.go.kr/eng/bbs/view.do?bbsSeqNo=42&mId=4&mPid=2&nttSeqNo=1071>, accessed on 21 November 2025.

non-legislative approach that provides detailed and readily implementable guidance to private sector organizations to address key ethical and governance issues when deploying AI solutions⁷. The Framework features two key guiding principles: decisions made by AI should be explainable, transparent, and fair; and AI systems should be human-centric, meaning they should be technically safe to use or equipped with appropriate human intervention to ensure safety. As the startup hub of Southeast Asia, Singapore's AI Governance Framework has supported numerous AI projects through advantageous infrastructure and programs, namely Google AI research center, ByteDance (TikTok) AI R&D hub, multiple AI healthcare startups conducting clinical trials, AI-powered financial services (robo-advisors, credit scoring), etc. The Monetary Authority of Singapore's FinTech Regulatory Sandbox allows testing of innovative financial AI solutions, with typical sandbox applications reviewed within 21 days⁸. IMDA developed AI Verify, positioned as the world's first AI testing toolkit that enables companies to demonstrate accountability and responsible AI practices through standardized tests validating AI system performance against 11 internationally recognized ethics principles, including transparency, explainability, repeatability, and reproducibility⁹. Additionally, Singapore's business environment offers robust intellectual property protection under a well-established legal framework, attracts global AI researchers and engineers as a tech talent hub, provides strategic access to the ASEAN market of 680 million people, extends government grants and tax incentives with co-investment schemes, maintains world-class cloud

⁷ <https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/press-releases/2024/public-consult-model-ai-governance-framework-genai>, accessed on 21 November 2025.

⁸ <https://www.mas.gov.sg/-/media/mas-media-library/development/regulatory-sandbox/sandbox-express/sandbox-express-guidelines-1-jan-2022.pdf>, accessed on 22 November 2025

⁹ <https://www.imda.gov.sg/resources/press-releases-factsheets-and-speeches/press-releases/2022/sg-launches-worlds-first-ai-testing-framework-and-toolkit-to-promote-transparency>, accessed on 22 November 2025.

infrastructure and data centers with superior connectivity, and imposes no AI-specific restrictions thus far.

However, the disadvantages of a non-legislative framework present several challenges. While Singapore's framework emphasizes practical governance integration rather than theoretical compliance, requiring organizations to demonstrate ongoing responsible AI practices, the lack of binding rules may not prevent harmful AI deployment and relies heavily on industry self-discipline. Furthermore, as global regulatory divergence intensifies, Singapore may face pressure to align with stricter international standards, potentially forcing the government to issue harder laws to control high-risk AI systems and maintain its position as a trusted AI hub.

Vietnam: Comprehensive Risk-Based Regulation with Holistic Digital Transformation

Vietnam's Draft AI Law adopts a mandatory, risk-tiered regulatory approach similar to the EU AI Act, categorizing AI systems into risk levels (high-risk, medium-risk, low-risk) with corresponding compliance obligations. Like South Korea's Basic Act, Vietnam's AI Law aims to balance risk control with innovation promotion but distinguishes itself through an exceptionally clear and comprehensive strategy to fully integrate AI across the economy and society.

The Vietnamese government has established an integrated strategy under the National Digital Transformation Program meaning for Vietnam to become "a digital, stable and prosperous country, pioneering in testing new technologies

and models; fundamentally and comprehensively innovating the management and operation activities of the Government, production and business activities of enterprises, the way people live and work, and developing a safe, humane and widespread digital environment”¹⁰. Unlike jurisdictions focusing primarily on business and economic aspects, Vietnam's approach encompasses digital transformation across multiple domains including digital government¹¹ (e-government progressing toward digital government with modernized administrative procedures), digital culture and digital citizenship (fostering cultural spread in the digital environment alongside lifelong learning initiatives), and comprehensive social development (ensuring citizens are digitally connected, equipped with necessary skills, and comprehensively protected). The Ministry of Culture, Sports and Tourism's Digital Transformation Strategy for 2025 - 2030 specifically targets the establishment of e-government and progression toward digital government, modernization of administrative procedures, organizational and business model overhaul, and fostering of digital culture and digital citizenship, all designed to support broader digital economy growth and the building of a digital society¹².

This holistic approach reflects Vietnam's recognition that AI development cannot succeed in isolation but must be integrated within a comprehensive digital ecosystem encompassing government operations, business processes, cultural

¹⁰ Decision No. 749/QD-TTg of the Prime Minister dated 3 June 2020 introducing program for national digital transformation by 2025, with orientations towards 2030.

¹¹ Decision No.942/QD-TTg of the Prime Minister dated 15 June 2021, approving strategy for development of e-government towards digital government for 2021 – 2025, with orientations towards 2030.

¹² Decision No. 4220/QD-BVHTTDL of the Ministry of Culture, Sports and Tourism dated 5 November 2025 , issuing the strategy on digital transformation for 2025 – 2030.

values, and social welfare—a strategic vision that positions Vietnam uniquely among Asian nations pursuing AI leadership.

Update note: The Law on Artificial Intelligence was enacted by Vietnam's National Assembly on 10 December 2025 and will take effect on 1 March 2026. This article has been updated to reflect the final enacted provisions, with material differences from the draft bill highlighted in the relevant sections below.

2. Law on Digital Technology Industry – A historic milestone

2.1 A Global First in Digital Technology Legislation

On 14 June 2025, Vietnam achieved a historic milestone by becoming the first country globally to enact a standalone law dedicated to the digital technology industry. The Law on Digital Technology Industry 2025 (“DTIL”) was passed during the ninth session of the 15th National Assembly with overwhelming support, receiving 441 out of 445 votes in favor, representing a 92.26 percent approval rate. This landmark legislation will take effect on 1 January 2026, marking a new era in Vietnam's digital transformation trajectory and positioning the country as a pioneer in comprehensive digital technology regulation, encompassing AI, blockchain, semiconductors, and other emerging technology sectors. This proactive approach underscores the Vietnamese government's commitment to establishing a robust legal infrastructure that can accommodate rapid technological advancements while protecting stakeholder interests.

2.2 Core Objectives and Demanding Scope

DTIL's scope extends beyond AI to encompass semiconductors, digital assets, data governance, and digital infrastructure. This integrated approach recognizes the interconnected nature of modern digital technologies and the necessity of holistic regulation. The Law provides strategic incentives for businesses in these sectors, including tax benefits, R&D support, and government procurement access, designed to attract domestic and international investment while positioning Vietnam as a global technology hub. DTIL establishes fundamental development policies that articulate Vietnam's strategic approach to emerging technologies, incorporating the following key elements:

- **Technology Development and Innovation:** Encouraging resource mobilization for investment in research and development, design, and technology transfer; gradually mastering digital technologies; and developing shared digital technology infrastructures at regional and national levels to facilitate digital technology industry activities.
- **Talent Development and Attraction:** Enhancing training programs to cultivate a high-quality, skilled workforce, while establishing special mechanisms to attract and retain elite digital technology professionals and talents both domestically and internationally.
- **Preferential Mechanisms:** Providing incentives across land allocation, credit facilities, taxation, and other domains for research, testing, development, production, and application of digital technology products and services. This includes implementing a set of regulatory sandbox regimes with liability exemptions for agencies, organizations, enterprises, and individuals during authorized testing phases.

- **Digital Data as Strategic Asset:** Recognizing digital data as a critical resource and production materials that serve as the foundational infrastructure for research and advancement of the digital technology industry.
- **AI Advancement:** Promoting AI development and application across specific sectors and socio-economic domains to transform AI into a novel production methodology; strengthen national endogenous capacity; and catalyze innovative economic models with superior productivity and value creation. The State commits to providing the highest preferential policies for AI research, development, implementation, and deployment.
- **Semiconductor Industry Leadership:** Adopting exceptional preferential policies to develop Vietnam's semiconductor manufacturing industry and design capabilities while establishing a comprehensive semiconductor industry ecosystem.

2.3 AI Regulation Framework Setting

DTIL establishes foundational principles for the development, supply, and deployment of AI, as well as strategies for research, improvement, and application across economic and social domains. Aligned with international best practices, Vietnam adopts a risk-based regulatory approach that includes AI system classification and identification requirements, while clearly defining the responsibilities of all stakeholders involved in AI development, provision, and deployment. These core provisions establish the framework that will be further detailed and harmonized with the forthcoming Law on Artificial Intelligence.

Update note: The AI provisions in the DTIL have been repealed and consolidated into the standalone Law on Artificial Intelligence (enacted 10 December 2025, effective 1 March 2026), creating a unified regulatory framework for AI development, deployment, and oversight.

2.4 Tokenization and Digital Assets: Legal Recognition

One of DTIL's most significant contributions is its explicit recognition of tokenization and digital assets, addressing a critical lacuna in Vietnamese commercial and property law. The statute formally defines digital assets—comprising virtual assets, crypto assets, and other digital assets—as legally recognized assets under the Civil Code 2015. This legal clarity proves transformative for Vietnam's digital economy development. Tokenized assets now possess formal recognition as legal property, conferring upon holders the identical protections and legal remedies available to owners of traditional tangible and intangible assets. The regulatory framework encompasses the entire lifecycle: creation, issuance, storage, transfer mechanisms, and establishment of ownership rights. It also delineates the rights and obligations of all participating parties while establishing stringent business conditions for Crypto Asset Service Providers (CASPs). Furthermore, the Resolution mandates robust compliance requirements across multiple, interconnected regulatory domains, including cybersecurity, data protection, and the prevention of Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF), with each area subject to its respective governing legislation.

3. Resolution No.5: The Tokenization Asset Sandbox

3.1 Paradigm Shift: From Prohibition to Controlled Regulation

Consistent with DTIL's regulatory philosophy, Resolution No.05/2025/NQ-CP, issued on 9 September 2025 ("Resolution 05"), represents a fundamental paradigm shift in Vietnam's regulatory approach to digital assets, establishing a five-year pilot framework for tokenized assets under stringent supervision. Historically, Vietnamese regulators maintained clear prohibitions¹³ regarding cryptocurrency usage, with ambiguous regulatory positions concerning broader crypto asset categories. Resolution 05 adopts a markedly different regulatory strategy, transitioning from categorical prohibition to controlled experimentation through a carefully structured pilot program. Inconsiderately, Resolution 05 specifically regulates pilot frameworks for tokenized asset platforms rather than cryptocurrency per se, though market participants may interpret this development as indicating potential regulatory openness toward broader digital asset categories in future policy iterations.

3.2 Tokenization Models and Asset Scope

Resolution 05 authorizes tokenization of real-world assets (RWA), with the explicit exclusion of securities and fiat currencies to avoid overlap with existing securities law and prevent interference with the Vietnamese Dong. This framework implies several tokenization applications:

¹³ Issuing, providing and using illegal payment instruments is prohibited under Clause 6 Article 6 of Decree 101 (amended by Decree No.80/2016ND-CP), and replaced by Clause 6 Article 8 of Decree No. 52/2024/ND-CP on Cashless Payment; and issuing, providing and using illegal payment instruments is punished according to point d Clause 6 Article 26 of Decree No.88/2019/ND-CP regarding penalties for administrative violations in monetary and banking sector.

Real estate tokenization facilitates fractional ownership of commercial and residential properties through digital token mechanisms, rendering property investment accessible to retail investors who previously lacked sufficient capital for direct real estate acquisition. For instance, a residential villa valued at VND 20 billion could be subdivided into 1,000 digital tokens. It enables individuals with limited capital to acquire fractional property interests and participate in both capital appreciation and operational income distribution.

In addition to real estate applications, the regulatory framework may accommodate tokenization of diverse asset categories, including energy infrastructure projects, commodities, and other illiquid physical assets traditionally held by enterprises. This mechanism creates more direct and efficient capital mobilization channels, reducing corporate dependence on traditional bank credit facilities. Carbon credits and environmental assets supporting Vietnam's sustainability commitments similarly fall within the permissible regulatory scope.

3.3 Framework Principles and Stringent Participation Requirements

Prospective platform operators face exceptionally high regulatory barriers to entry. Applicants must maintain a minimum charter capital of VND 10 trillion (approximately USD 379-400 million), fully contributed in Vietnamese Dong, with institutional investors holding at least 65% of total equity. Within that institutional ownership component, a minimum of 35% must be contributed by at least two organizations from specified categories: commercial banks, securities companies, fund management companies, insurance companies, or technology

enterprises, all demonstrating two consecutive fiscal years of profitable operations supported by audited financial statements.

Only Vietnamese enterprises qualify for platform operator license applications, with foreign ownership capped at 49%, effectively requiring foreign participants to establish partnerships with Vietnamese entities. Additional regulatory requirements encompass technology systems meeting Level 4 security standards under Vietnamese cybersecurity frameworks, employment of qualified experts in specialized domains, and dedicated teams with expertise in AML/CFT compliance and risk management protocols. The Ministry of Finance anticipates licensing only five platforms under the pilot program, emphasizing regulatory quality and effective supervision over market quantity during this experimental phase.

3.4 Licensing Process and Grace Period

Resolution 05 mandates that pilot platform operators must first obtain a "License for Organizing a Crypto Asset Trading Market" issued by the Ministry of Finance before commencing operations. The regulatory framework establishes a six-month grace period following the licensing of the first authorized provider, after which all trading activities by domestic investors must be conducted exclusively through licensed platforms. Continued trading through unlicensed exchanges following this transition period may result in administrative or criminal sanctions under applicable Vietnamese law.

Under the Resolution's provisions, new crypto asset offerings in Vietnam may only be marketed to foreign investors and must be conducted through licensed providers, effectively prohibiting unregulated Initial Coin Offerings (ICOs) targeting domestic investors. Domestic investors retain authorization to establish accounts with licensed providers for custody, purchase, and sale of crypto assets they currently own, but must transition to licensed platforms within the designated grace period.

Given the formidable regulatory requirements—including the VND 10 trillion capital threshold, complex institutional shareholder requirements, Level 4 technology security compliance, and specialist personnel recruitment—industry experts estimate the preparation process requires at least 12 to 18 months of systematic institutional development. The Ministry of Finance's review process, conducted in coordination with the Ministry of Public Security and the State Bank of Vietnam, involves rigorous assessment and extended processing timelines.

3.5 Consumer Protection and Risk Management

Despite its controlled experimental nature, the pilot maintains robust oversight with all crypto transactions required to be conducted in Vietnamese Dong, and transaction fees capped at approximately 0.15%, all under the direct supervision of the Ministry of Finance. Foreign investors investing in crypto assets in Vietnam must open dedicated payment accounts in Vietnamese Dong with licensed local banks or foreign bank branches. Both the Resolution's statutory language and expert industry commentary suggest a mandatory technological integration requirement whereby tokenized asset trading platforms must interface with

NDACHain, Vietnam's national blockchain infrastructure. This integration provides participating platforms with access to standardized identity verification protocols and centralized data storage capabilities, thereby enabling Dong-denominated transactions and automated workflows for asset issuance, payment processing, and ownership transfer execution. The platform supports not only crypto transactions but also broader applications, including electronic citizen ID (VNelD) and inter-agency data exchange. Tax policy follows a securities model with approximately 0.1% transaction tax on the value of trades. Full KYC/AML compliance and system audit requirements ensure alignment with international Financial Action Task Force (FATF) standards, addressing Vietnam's previous placement on the FATF grey list.

4. Drafted Law on Artificial Intelligence¹⁴ – One Step Ahead in the Region

Vietnam's Draft AI Law positions the nation within a complex Asian regulatory landscape characterized by divergent approaches to AI governance. Understanding Vietnam's strategic positioning requires examining how other major Asian jurisdictions are addressing AI regulation, and situating these developments within the broader global debate between "hard law" (binding legislation) and "soft law" (voluntary guidelines) approaches.

4.1 The Hard Law vs. Soft Law Debate in AI Governance

Soft law proponents emphasize innovation velocity, arguing that binding regulations slow AI development through compliance burdens, while technological uncertainty means AI evolves too rapidly for rigid legal frameworks.

¹⁴ Version v1.0 dated 24 September 2025

They contend that regulatory overhead disadvantages domestic companies compared to competitors in less-regulated jurisdictions, and voluntary guidelines facilitate international harmonization more effectively than divergent hard law frameworks.

Hard law advocates counter that voluntary compliance proves insufficient when economic incentives favor cutting corners on safety, bias mitigation, or privacy. They argue businesses require clear rules for long-term investment, as ambiguous voluntary guidelines create uncertainty, deterring capital deployment. Binding obligations with enforcement mechanisms ensure companies bear responsibility for AI harms, while reputational concerns alone prove inadequate. Furthermore, legislatures—not corporations—should determine societal AI governance through democratic processes; without regulation, negative externalities such as bias, unemployment, and privacy violations remain unaddressed.

4.2 Comparative Analysis: Vietnam's AI Law in the Asian Context

Having examined Singapore's principles-based Model AI Governance Framework and South Korea's dual-mandate Basic Act of AI, Japan and China offer additional critical reference points for understanding Vietnam's regulatory positioning in the Asian context. Japan's AI Promotion Act represents the soft-law end of the spectrum, prioritizing innovation promotion through voluntary cooperation without enforcement penalties, while China occupies the opposite pole with stringent sectoral regulations mandating algorithmic oversight, content moderation, and ideological conformity. Together, these four Asian economies—

Singapore, South Korea, Japan, and China—illustrate the diverse regulatory philosophies shaping the region's AI governance landscape, against which Vietnam's comprehensive, EU-aligned framework must be evaluated.

Japan: Innovation-First Promotional Framework

On 28 May 2025, Japan's Parliament passed the Act on the Promotion of Research, Development and Utilization of Artificial Intelligence-Related Technologies (AI Promotion Act), marking a transition from guideline-based governance to formal legislation, with most provisions taking effect on 4 June 2025 and the entire Act was fully effected in September this year¹⁵. However, Japan's approach differs fundamentally from Vietnam's regulatory model.

The Japanese government announced its intention to position Japan as "the most AI-friendly country in the world" with a lighter regulatory approach than the EU, imposing only one simple obligation on the private sector to cooperate with government-led AI initiatives, with no explicit penalties. The AI Bill primarily focuses on establishing core principles, formulating the government's Fundamental Plan for AI, implementing basic national policies, and establishing an Artificial Intelligence Strategy Center. The majority of provisions set forth a framework for future laws rather than imposing specific requirements¹⁶.

¹⁵ <https://www.japaneselawtranslation.go.jp/outline/168/905R744.pdf>, access on 26 November 2025

¹⁶ <https://www.whitecase.com/insight-our-thinking/ai-watch-global-regulatory-tracker-japan>, accessed on 26 November 2025

Japan's framework relies on three pillars: the non-binding AI Promotion Act, which sets strategic direction, the 2024 AI Business Operator Guidelines, which translate principles into practice, and guidance on interpreting existing statutes to address generative AI issues. Where Vietnam mandates pre-deployment registration, impact assessments, and conformity evaluations for high-risk AI, Japan emphasizes voluntary compliance and sectoral self-regulation without prescriptive obligations or penalties.

China: Sectoral Regulation with Centralized Oversight

China has established a comprehensive regulatory framework for artificial intelligence through a strategy of "legislation first, ethical guidance, and classified governance." Rather than enacting a single, unified AI law, China layers sector-specific regulations atop its foundational legal frameworks for cybersecurity, data security, and personal information protection¹⁷.

A key milestone in this approach was the introduction of the Interim Measures for the Management of Generative Artificial Intelligence Services. Jointly issued by the Cyberspace Administration of China (CAC) and six other agencies, the measures took effect on 15 August 2023, forming one of the world's first comprehensive national rules for generative AI¹⁸. These measures mandate that generative AI services adhere to "Core Socialist Values," implement strict content moderation, and comply with data security and personal information

¹⁷ The foundational laws are the *Cybersecurity Law* (2017), the *Data Security Law* (2021), and the *Personal Information Protection Law* (2021). These establish the core principles of data governance, security, and sovereignty upon which AI-specific rules are built.

¹⁸ https://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm (Chinese original version) and , <https://www.chinalawtranslate.com/en/generative-ai-interim/#gsc.tab=0> (English translated version), accessed on 26 November 2025

protection laws. Providers must also submit to security assessments and filing procedures before public release¹⁹.

This sectoral regulation is further refined by rules targeting specific technologies. The earlier "Regulations on the Management of Deep Synthesis" already required the labeling of AI-generated content²⁰. This was reinforced by the subsequent "Measures for the Labeling of AI-Generated Synthetic Content" to ensure metadata labeling and transparency²¹. Similarly, the "Regulations on the Management of Algorithmic Recommendations" govern content distribution systems, giving users the right to opt out and requiring service providers to prevent algorithmic addiction²².

While an Artificial Intelligence Law has been listed as a preparatory project on the State Council's legislative agenda, no draft has been publicly released. For now, China's regulatory model emphasizes state oversight and ideological alignment, requiring AI systems to promote "Core Socialist Values" and subjecting them to security assessments—contrasting with frameworks in other jurisdictions that may prioritize risk management and consumer protection over content control.

¹⁹ Articles 4, 5, and 6 of the *Generative AI Measures*

²⁰ Article 12 mandates the labeling of AI-generated content.

²¹ *Measures for the Labeling of AI-Generated Synthetic Content*, implemented in September 2024 provide more detailed technical standards for the labeling and traceability of synthetic content.

²² Articles 8, 12, and 17.

4.3 Vietnam's Drafted AI Law: An overview

Vietnam's strategic direction, articulated through legislative intent and draft proposals, signals a decisive national commitment to establishing comprehensive AI legislation. This approach, focusing on mandatory requirements for high-risk AI systems (such as pre-deployment registration and conformity assessments), represents a proactive move towards hard law as the superior mechanism for achieving sustainable and accountable AI development. This strategic choice positions Vietnam to align closely with models prioritizing stringent oversight and risk management, such as the European Union (EU) and South Korea. Crucially, Vietnam aims for a framework that is unified and comprehensive rather than relying solely on the layered, sector-specific model seen in China, thereby establishing a distinct, risk-management-focused regulatory position in Asia.

Public Consultation and Fast-Track Timeline

Vietnam's National Assembly convened its 10th session beginning 20 October 2025—coinciding with the public consultation deadline for the Draft AI Law—with the legislation positioned for parliamentary passage in subsequent weeks. The Draft AI Law is scheduled to enter into force on 1 January 2026, not superseding but rather elaborating upon and harmonizing with AI regulatory provisions in DTIL. Tasked by the government with legislative drafting in late August 2025, the Ministry of Science and Technology expedited the draft's completion, reflecting governmental urgency in consolidating AI governance frameworks amid rapid technological evolution.

This accelerated legislative timeline positions Vietnam to become one of the few nations with comprehensive AI-specific legal frameworks, underscoring the country's ambition to establish itself as a regional pioneer in technology regulation. If enacted according to schedule, Vietnam would become the first Southeast Asian nation with dedicated artificial intelligence legislation, potentially serving as a regulatory model for neighboring jurisdictions confronting similar challenges in governing AI technologies.

Risk-Based Regulatory Architecture

The Draft AI Law introduces a tiered, risk-based regulatory framework classifying AI systems into four distinct categories based on potential societal impact:

- *Unacceptable Risk*: Prohibited AI systems posing fundamental threats to national security, human rights, or public safety.
- *High Risk*: AI systems deployed in critical sectors, including healthcare, financial services, education, transportation infrastructure, and judicial administration. These systems require multiple regulatory compliance measures, including formal classification procedures, comprehensive impact assessments, prior governmental approval, and mandatory registration in national AI databases.
- *Medium Risk*: AI systems involving direct human interaction or automated content generation, subject to transparency requirements and disclosure obligations but not requiring prior approval.
- *Low Risk*: All other AI systems are subject to minimal regulatory oversight, primarily governed by general legal principles and voluntary industry standards.

Update note: Under the enacted Law on Artificial Intelligence, the draft's four-tier system has been consolidated into three categories, merging "unacceptable risk" and "high risk" into a unified "High-Risk AI Systems" classification. This category is now defined broadly as systems that "may cause significant damage to human life, health, rights, and legitimate interests of individuals, organizations, national interests, public interests, and national security." The consolidation represents a fundamental shift from rigid categorical prohibition to flexible, case-by-case regulatory assessment. While this outcomes-based approach allows regulators to evaluate harm potential on a continuum rather than through predetermined boundaries, it grants Vietnamese authorities considerable discretion in risk classification—enhancing regulatory adaptability for emerging technologies but potentially reducing predictability for AI developers, uncertain whether specific applications will be permitted or prohibited.

The Draft Law explicitly prohibits AI applications posing systemic societal threats, including: real-time biometric surveillance in public spaces absent specific governmental authorization; large-scale facial recognition databases constructed through unauthorized data collection; and AI systems designed to manipulate public opinion or individual behavior through deceptive methodologies.

Update note: The enacted Law replaces these specific prohibitions with a broader principles-based framework under Article 7. Rather than enumerating particular applications, the final legislation establishes six general categories of prohibited conduct: (1) using AI to commit illegal acts or infringe rights; (2)

developing systems that deliberately deceive or manipulate behavior causing serious harm, exploit vulnerable groups, or create fabricated content threatening national security; (3) violating data protection and cybersecurity laws in AI development; and (4) obstructing human oversight mechanisms or concealing mandatory disclosures. This shift from categorical bans to general principles grants regulators greater discretion but may reduce predictability for developers determining which applications are permissible.

Vietnam's regulatory approach exhibits clear influence from both the European Union AI Act and South Korea's Basic Act on Artificial Intelligence in adopting a risk-based classification methodology. However, Vietnamese legislation places distinctive emphasis on national sovereignty considerations, data autonomy principles, critical infrastructure protection, and cultural stability preservation—reflecting specific national priorities and governance philosophies. *Notably, the enacted law's three-tier system diverges from the EU's four-tier model, prioritizing regulatory flexibility over categorical clarity.*

To implement five core regulatory principles—human-centered development, safety and transparency, inclusiveness and sustainability, balanced governance, and social harmony—the Draft Law establishes multiple governance layers, including the National AI Ethics Framework, comprehensive ethical guidelines, and clear responsibility allocation frameworks governing AI deployment in public sector applications.

A Comprehensive Framework for AI Application in Economy and Society

The Draft AI Law establishes foundational principles for AI development, delineates the roles and responsibilities of government authorities and AI developers, and introduces new schemes to regulate, manage, and promote AI innovation nationwide. Rather than limiting AI-driven industries, the law aims to create a controlled environment that encourages responsible innovation, investment confidence, and sustainable technological growth. The comprehensive nature of the legislation extends beyond conventional regulatory constraints to actively facilitate AI adoption across the Vietnamese economy and society through several innovative mechanisms, among others:

- Article 30 introduces a groundbreaking mechanism allowing data and AI models to be treated as lawful capital contributions in public-private partnership projects, representing a further step towards Vietnam's legal recognition of intangible digital assets.
- Article 34 regulates comprehensive national AI strategy development encompassing critical sectors, including public administration, healthcare, education, agriculture, transportation, manufacturing, cultural and social services, and national defense and security.
- Article 37 establishes the National AI Development Fund, a non-budgetary financing vehicle supporting AI research, innovation, and capacity building, funded through state allocations and private contributions, providing grants and loans to strategic AI projects.
- Article 48 prescribes targeted financial and regulatory support mechanisms for small and medium enterprises (SMEs), including preferential tax treatment, subsidized credit facilities, research and

development vouchers, facilitated participation in AI regulatory sandbox programs, and other incentives designed to reduce barriers to AI adoption among resource-constrained enterprises, ect.

Update note: The enacted Law maintains the draft's strategic orientation for AI application in the economy and society with substantively similar provisions. However, the final legislation restructures the organizational framework, adopts more principles-based language, and delegates greater implementation authority to the Government through subordinate regulations.

The Draft AI Law lays the groundwork for a national AI ecosystem designed to accelerate innovation while ensuring transparency and state oversight through the establishment of the National AI Database, which will serve as a registration and monitoring platform for AI systems operating in Vietnam.

The phased implementation schedule provides businesses with a strategic window to align with new standards: the AI Law expects to take effect from 1 January 2026, establishment of the regulatory infrastructure and initial implementation framework; from 1 July 2026, the National AI Commission becomes fully operational and National AI Development Fund commences to operation; from 1 January 2027 the prohibited activities provisions take effect and regulatory sandbox regime become operational; from 1 July 2027 comprehensive obligations for high-risk AI systems apply in full force.

Update note: The enacted Law streamlines this framework significantly. Effective **1 March 2026**, it replaces the multi-stage timeline with sector-based transition periods: **18 months** for medical, education, and financial AI systems; **12 months** for other sectors. Provisions for staged activation of the National AI Commission, Development Fund, prohibited activities, and high-risk obligations are omitted, with compliance requirements applying immediately, subject to these transition periods.

Vietnam's strategic decision to pursue comprehensive AI legislation, rather than relying on incremental or sectoral constraints, signals a determined intent to establish a complete ecosystem actively promoting the research, development, and trustworthy deployment of AI technologies across all societal and economic domains. By embedding AI governance within its broader National Digital Transformation Programme and adopting a rigorous, EU-aligned risk-based hard law approach, Vietnam carves out a distinct regulatory position in the Asia-Pacific landscape: it avoids the heavy-handed, ideological content control and regulatory layering characteristic of China, while offering mandatory safeguards and legal certainty that contrast sharply with the pro-innovation soft-law model and voluntary compliance emphasized by Japan. This integrated "responsible AI innovation" model—which combines comprehensive legal certainty with holistic ecosystem support across government, economy, culture, and society, a distinction from Singapore's voluntary framework and South Korea's dual-mandate structure—may prove strategically differentiating as global stakeholders increasingly demand AI solutions developed under internationally-aligned governance. For international investors and policymakers observing Asia-Pacific's AI race, Vietnam's framework suggests a valuable third path: one where

technological advancement succeeds precisely because it is embedded within a framework prioritizing social stability, consumer protection, and national interests, rather than pursued as a purely market-driven endeavor. The full enactment of Vietnam's and South Korea's comprehensive AI laws, scheduled for January 2026, collectively signals a fundamental transformation of the region's AI landscape—moving away from fragmented approaches toward cohesive national strategies that prioritize trustworthiness as the foundation for global competition.

Conclusion:

Vietnam's emerging legal framework for digital technologies represents a sophisticated balance between fostering technological innovation and maintaining consumer protection, financial stability, and national sovereignty. Through the Law on Digital Technology Industry 2025, Resolution 05/2025/NQ-CP, and the Law on Artificial Intelligence, Vietnamese policymakers have shown willingness to engage proactively with regulatory challenges rather than maintaining prohibitive stances or allowing regulatory vacuums to persist.

This progressive approach positions Vietnam competitively within the regional and global digital economy, potentially attracting significant technology investment and skilled personnel while providing legal certainty for market participants. However, successful implementation depends critically on regulatory capacity development, effective inter-agency coordination, and maintaining flexibility as technologies continue evolving rapidly.

As one of the first nations with comprehensive legal frameworks addressing AI, digital assets, and related technologies, Vietnam's regulatory experience may offer valuable insights for other jurisdictions confronting similar challenges. The effectiveness of this balanced approach—encouraging innovation through incentives and regulatory sandboxes while maintaining robust oversight—will be closely observed by policymakers, industry participants, and legal scholars regionally and internationally./.

The Emperor's New Jurisdiction: Lessons from the Sulu Arbitration

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ABSTRACT

On 9 December 2025, the Paris Court of Appeal annulled the USD 14.9 billion “Final Award” issued against Malaysia in the Sulu heirs claim, finding that the sole arbitrator lacked jurisdiction because no valid arbitration agreement bound Malaysia. This article examines what the Sulu case reveals about the limits of arbitral authority, the vulnerabilities exposed by third-party litigation funding, and

the systemic implications for the international arbitration community. Using Hans Christian Andersen’s tale of the Emperor’s New Clothes as an analytical framework, the article argues that arbitral legitimacy depends on consent, not confidence, and that the case offers an opportunity for institutional self-reflection about the gap between arbitration’s narrative of finality and its susceptibility to manipulation.

1. Introduction: The Procession and the Revelation

In Hans Christian Andersen’s tale, an emperor parades through his capital in clothes that do not exist, while his subjects, fearing to appear foolish, applaud garments they cannot see.¹ The illusion persists because everyone assumes someone else has verified the legitimacy of what they are witnessing. The emperor believes the tailors. The ministers believe the emperor. The crowds believe the ministers. No one asks the foundational question: Are the clothes there? The illusion collapses only when a child, unburdened by these assumptions, speaks the obvious truth. The emperor is naked. The procession continues, but its premise has collapsed.

On 9 December 2025, the Paris Court of Appeal delivered a judgment that functions as the child’s observation in the context of international arbitration.² The court annulled in its entirety the USD 14.9 billion “Final Award” rendered by

¹Hans Christian Andersen, (1837) “The Emperor’s New Clothes” (1837). In *Fairy Tales Told for Children. First Collection. Third Booklet (Eventyr, fortalte for Børn. Første Samling. Tredie Hefte)*. Copenhagen: **C.A. Reitzel**.

²Paris Court of Appeal, Judgment of 9 December 2025 (Pole 1, Chamber 1). The court ordered the claimants to pay EUR 200,000 in costs to Malaysia.

Spanish arbitrator Gonzalo Stampa against Malaysia in the claim brought by eight Philippine nationals asserting descent from the defunct Sultan of Sulu. The court found that Stampa lacked jurisdiction because no valid arbitration agreement bound Malaysia. The claimants were ordered to pay EUR 200,000 in costs.

The Emperor's New Clothes' metaphor as described by Professor Claus in his analysis of legal authority, the concept often relies on "*a signaling system*" rather than intrinsic moral right; it can be "*an illusion, conjured by self-interested claimants and their acolytes.*"³ The Sulu arbitration proceeded for years on the presumption that an arbitrator's confident assertion of jurisdiction was sufficient to clothe the proceedings in legitimacy. Headlines announced billion-dollar liability. Asset seizures were threatened across Europe. Luxembourg briefly granted enforcement measures. The procession was magnificent in its scale and its confidence. But when courts finally examined the source of the arbitrator's authority, they found what should have been visible from the start: the jurisdictional foundation was entirely absent. There was no valid arbitration agreement binding Malaysia. There never had been.

This article does not argue that the Sulu case represents an attack on arbitration. It argues that the case reveals how arbitral authority can be claimed without being conferred, how the spectacle of proceedings can substitute for the substance of jurisdiction, and how the international arbitration community's cultural reverence

³L Claus, (2009) "The Empty Idea of Authority" University of Illinois Law Review 1293, 1294.

for finality can be exploited by parties willing to manufacture the appearance of consent. The courts across Spain, France, the Netherlands and Luxembourg did not slay the emperor. They simply refused to dress him.

2. The Historical Background: Sabah and the 1878 Agreement

The dispute's roots lie in a 19th-century colonial instrument whose interpretation remains contested to this day. On 22 January 1878, Sultan Jamalul Alam of Sulu entered into an agreement with Baron de Overbeck and Alfred Dent, representing what would become the British North Borneo Company (BNBC).⁴ The agreement concerned territories in northern Borneo, now comprising the Malaysian state of Sabah, and established the arrangements under which the BNBC would administer those territories.

The agreement's language has generated interpretive disputes for over a century. The original Jawi text used the term "pajak" or "pajakan," which the claimants translated as "lease" and Malaysia translated as "grant" or "cession." The distinction matters enormously: a lease might entitle heirs to ongoing payments, while a permanent cession would extinguish any continuing claims. Malaysia's consistent position is that the 1878 agreement constituted a permanent grant and cession of sovereign territory, not a rental arrangement. As the High Court of Sabah observed in 2020, when examining the clause referring disputes to the

⁴The Deed of 22 January 1878 was executed between Sultan Jamalul Alam of Sulu and Baron de Overbeck and Alfred Dent, representing the British North Borneo Company.

British Consul-General, “*There is not an iota of evidence to infer that such reference ipso facto means [the Consul-General] act[ing] as arbitrator.*”⁵

The regional context adds further complexity. The 1885 Madrid Protocol between Great Britain, Germany and Spain acknowledged Spanish sovereignty over the Sulu Archipelago while recognising British control over North Borneo.⁶ Following the end of Spanish colonial rule in the Philippines (1898), then British North Borneo Company’s control (1946), and the end of British colonial rule in Borneo, sovereignty over Sabah passed to Malaysia upon the formation of the Malaysian federation in 1963. The Sultan of Sulu’s dominion, such as it was, had long since ceased to exist as a functioning political entity.

Malaysia, as successor to the British administration, continued paying annual sums to persons claiming to be Sulu heirs. The amounts were modest: reports indicate approximately RM 5,300 per year (roughly USD 1,200). Malaysia characterised these payments as *ex gratia*, a diplomatic courtesy rather than rent acknowledging any continuing obligation. The payments ceased in 2013 following the Lahad Datu standoff, when armed individuals claiming affiliation with the Sulu Sultanate entered Sabah, resulting in violence that killed dozens of people including Malaysian security personnel.⁷ The Philippine government distanced itself from the incursion, but Malaysia discontinued the payments.

⁵Government of Malaysia v Nurhima Kiram Fornan & Ors [2020] MLJU 425.

⁶The Protocol of 11 March 1885 between Great Britain, Germany and Spain.

⁷The Lahad Datu standoff of February-March 2013 involved armed individuals claiming affiliation with the Sulu Sultanate.

The 1878 agreement contained no arbitration clause in the modern sense. It referred disputes to “Their Majesties’ Consul-General for Borneo” (meaning the British Consul-General), a colonial administrative mechanism that ceased to exist with the end of British rule. This is the foundational jurisdictional problem that would eventually unravel the entire arbitration. The French Court of Cassation ruled that this designation was *intuitu personae* (inseparable from the specific office) and therefore lapsed when that office was abolished.⁸ The parties in 1878 agreed to submit disputes to a particular colonial official, not to “arbitration” as that term is understood in modern international practice. When the British Consul-General ceased to exist, so did any mechanism for dispute resolution under the original agreement.⁹

3. The King in Arbitration: Why Arbitrators Command Reverence

To understand how the Sulu proceedings continued for years despite their jurisdictional infirmity, one must appreciate the cultural and doctrinal position arbitrators occupy in international dispute resolution. Arbitration exists because parties consent to it. As Redfern and Hunter’s text observes, “*The agreement to arbitrate is the foundation stone of international arbitration. It records the consent of the parties to submit to arbitration, a consent that is indispensable to any*

⁸French Court of Cassation, Judgment of 6 November 2024 (First Civil Chamber, No. 23-18.334).

⁹C Kleiner, “Towards the End of the ‘Sultan de Sulu’ Case in France” Kluwer Arbitration Blog (25 February 2025). <https://legalblogs.wolterskluwer.com/arbitration-blog/towards-the-end-of-the-sultan-de-sulu-case-in-france-the-hidden-influence-of-the-new-york-convention-on-french-law-on-enforcement-of-arbitral-awards/>

*process of dispute resolution outside national courts.*¹⁰ Without consent, an arbitrator has no more authority than any other private citizen to determine another party's rights and obligations.

The doctrine of *kompetenz-kompetenz* grants arbitrators the power to rule on their own jurisdiction. This doctrine has both a “positive” effect (the tribunal can determine whether it has jurisdiction) and a “negative” effect (courts should generally defer to the tribunal's determination, at least initially). Gaillard and Banifatemi explain that “*recognising the arbitrators' priority in the determination of their jurisdiction...by no means suggests that domestic courts relinquish their power to review the existence and validity of an arbitration agreement.*”¹¹ The French approach to the negative effect is particularly strong, establishing “priority of arbitral competence” subject only to the manifest nullity of the arbitration agreement.¹²

This doctrine creates what Bermann has described as a distinction between “gateway” issues (which courts can and must decide) and “non-gateway” issues (reserved for arbitrators). The existence of a valid arbitration agreement is the fundamental gateway issue. If no agreement exists, there is no delegation of authority to any arbitrator.¹³ An arbitrator cannot bootstrap jurisdiction by simply

¹⁰N Blackaby and others, Redfern and Hunter on International Arbitration (6th edn, OUP 2015) para 2.01.

¹¹E Gaillard and Y Banifatemi (2008) “Negative Effect of Competence-Competence: The Rule of Priority in Favour of the Arbitrators” in E Gaillard and D Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards* (Cameron May 2008) 257 at 261

¹²ibid 262 to 263.

¹³G Bermann (2019), “Gateway and Non-Gateway Issues in the Enforcement of Agreements to

asserting that he has jurisdiction. The Third Circuit put the point forcefully in *China Minmetals*: “a contract cannot give an arbitral body any power, much less the power to determine its own jurisdiction, if the parties never entered into it.”¹⁴

Beyond doctrine, there are powerful institutional dynamics that create deference to arbitrators. Dezalay and Garth’s sociological study of international arbitration described an “invisible college” of practitioners, a “*small guild of Western (largely European) men who continuously refer cases and clients to each other. Reputation within this community is paramount; it substitutes for the public accountability of national judiciaries.*”¹⁵ Franck et al have documented the “repeat-player phenomenon” and raised questions about diversity and insularity in arbitral appointments, noting that “*with a lack of accurate, complete, and publicly available data about international arbitrators and practitioners, speculation about membership in the ‘invisible college’ of international arbitration abounds.*”¹⁶

The pro-enforcement bias embedded in the New York Convention reinforces this culture. Article III requires contracting states to recognise and enforce arbitral

Arbitrate” Columbia Law School Scholarship Archive
https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/5592/&path_info=Bermann_Gateway_and_Non_Gateway_Issues_in_the_Enforcement_of_Agreements_to_Arbitrate.pdf

¹⁴ *China Minmetals Materials Import & Export Co v Chi Mei Corp* 334 F.3d 274 (3d Cir 2003) 288.

¹⁵Y Dezalay and B Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press 1996) 23.

¹⁶S Franck et al, “Exploring the ‘Invisible College’ of International Arbitration” (2018) 38 *Washington University Journal of Law & Policy* 89.

awards, and Article V's grounds for refusing enforcement are construed narrowly. Courts generally approach Convention defences with scepticism, seeking to uphold awards rather than finding reasons to refuse them. This creates systemic pressure to treat awards as presumptively valid, which in turn creates incentives not to look too closely at jurisdictional foundations. Challenging an arbitrator's authority feels like heresy within this system. The presumption favours validity. The instinct is to defer rather than scrutinise.

This combination of doctrinal deference, professional insularity, and systemic bias towards enforcement explains how proceedings can continue even when their jurisdictional basis is questionable. The Sulu case reveals what happens when these presumptions encounter a proceeding that should never have existed in the first place.

4. The Illusion of the Unstoppable Award

The Sulu case generated years of alarming headlines. A USD 14.9 billion award against a sovereign state. Asset seizures threatened across Europe. Malaysia's credit rating potentially at risk. The spectacle preceded scrutiny. The procession was underway before anyone asked whether the emperor was clothed.

Nardell has posed the central question elegantly: "*What happens where the validity of [the arbitrator's appointment] is subsequently challenged? If the court rescinds an arbitrator's appointment, does that extinguish the appointee's*

*authority? Or does the compétence-compétence principle preserve authority to determine the effect of the court's order on the arbitral proceedings, and, potentially, to make an award?"*¹⁷ The Sulu case answered this question definitively. The Hague Court of Appeal, refusing enforcement, held that once the Madrid court had nullified Stampa's appointment, as the King Counsel in his article highlighted the Hague Court of Appeal held that "[Stampa] could not render a valid award. What he rendered in 2022 was an award in form only; it was not an 'arbitral award' within the meaning of the [New York Convention]."¹⁸

Yek's analysis described Stampa as having "gone rogue" and observed that the case "*compelled the dispute resolution communities to ponder the question, what if an arbitrator had 'gone rogue', given the fact that it enjoys the 'countless' immunity accorded to it by the law.*"¹⁹ The answer, it transpired, was that the immunity does not survive the annulment of the arbitrator's mandate. An arbitrator whose appointment has been revoked is no longer an arbitrator in any legally meaningful sense.

The myth of the unstoppable award persists for several reasons. Confirmation bias plays a role: successful enforcement cases receive publicity while quiet

¹⁷G Nardell KC, "Carry on Regardless? The Sulu Case, Arbitrator Authority and Principles of Recognition" Kluwer Arbitration Blog (3 February 2024).
<https://legalblogs.wolterskluwer.com/arbitration-blog/carry-on-regardless-the-sulu-case-arbitrator-authority-and-principles-of-recognition/>

¹⁸ibid.

¹⁹Ar David Yek Tai Wai, 'Aftershock of the Arbitrator Gone Rogue in the Sultan of Sulu v Government of Malaysia Saga: The Immunity of the Appointing Bodies or Its Arbitrators, Critically Reviewed in the Context of Malaysia' (2023) 4 *Malayan Law Journal* i

annulments do not. The dramatic enforcement of the *Yukos Award*²⁰ against Russia generated far more coverage than the many awards quietly refused enforcement on procedural grounds. There are also asymmetric incentives at work. Claimants and funders benefit from the narrative that arbitral awards are difficult to challenge; respondents lack an institutional voice to counteract this perception. Media coverage often treats arbitral awards as equivalent to court judgments without examining whether the tribunal had jurisdiction to issue them in the first place.

White & Case's analysis of the *Sulu* case identified the "validation principle" (the presumption that courts and arbitrators should interpret arbitration clauses to give them effect) as having been stretched beyond its limits.²¹ The Paris Court of Appeal's reasoning explained that under the 1878 agreement's wording, the parties' intention was to have disputes heard by the British Consul-General specifically, not by any arbitrator generally. "*The choice of the British Consul General in [Borneo] to hear any dispute was a decisive factor in the parties' willingness to have recourse to arbitration. [That designation] appears 'inseparable from the wish to compromise.'*"²² When the designated forum ceased to exist, the arbitration clause could not survive. The validation principle cannot manufacture consent where none existed.

²⁰ *Yukos Universal Limited v Russian Federation*, Final Award, PCA Case No AA 227, ICGJ 481 (PCA 2014), 18th July 2014, Permanent Court of Arbitration

²¹ White & Case, "Two Courts Confirm the Logical Limits of the Validation Principle" (Insight Alert, 2023). <https://www.whitecase.com/insight-alert/two-courts-confirm-logical-limits-validation-principle>

²² Kleiner (n 9).

The Sulu case is a corrective to inflated expectations about award invincibility. The award was stopped at every turn because it was built on jurisdictional sand. The robes of jurisdiction (consent, mandate, valid appointment) were simply not there.

5. Who Dressed the King: Third-Party Funding and the Construction of Spectacle

The Sulu claim was funded by UK-based Therium Capital Management. The case exemplifies what Davitti and Vargiu term the “assetization” of international arbitration, a process by which legal claims are transformed into financial products tradable in secondary markets. Their analysis observes that “*Third Party Funding (TPF) is presented as a tool to help fund the cost of expensive litigation. In the context of Investment Arbitration, however, TPF has instead led to the commodification of justice, and raises concerns around its assetization.*”²³ They identify “*a two-fold movement: the first movement was to package TPF as a tool to ensure access to justice, and the second was to assert a ‘funding gap’ in access to justice that ad hoc TPF alone could not address.*”²⁴

The European Parliament’s Voss Report of 2022 addresses what it identifies as a “regulatory vacuum” surrounding third-party litigation funding. The Report

²³D Davitti and L Vargiu, “Litigation Finance and the Assetization of International Investment Arbitration” (2023) 24(3) *Journal of World Investment & Trade* 487. https://brill.com/view/journals/jwit/24/3/article-p487_6.xml?language=en&srsIid=AfmBOooKeiPOhqqqXGggE64bp6jqCap9OYAjMURWIm3LkWb3wo3qgptQ

²⁴*ibid* 489.

emphasises that “*justice systems prioritize redress for injured parties, and not the interests of private investors who might only be seeking commercial opportunities from legal disputes.*”²⁵ It calls for “*common minimum standards at Union level, including transparency, fairness, and proportionality*” in the regulation of third-party funders.²⁶

Reports indicated that Therium invested approximately USD 20 million in the Sulu claim through nine rounds of funding since 2017, with potential returns of up to 300% if enforcement succeeded.²⁷ Reports also indicated that Stampa received over USD 2.7 million from the claimants in fees. As one practitioner observed regarding the funding arrangement, “*The idea that a funder could see an arbitrator racking up north of \$2 million and not be concerned is trouble.*”²⁸

The Voss Report’s recommendations include capital adequacy requirements for funders (to ensure they can meet their obligations), adverse cost liability when funded claims fail, and fiduciary duties to act in claimants’ best interests rather than maximising funder returns.²⁹ The Sulu case demonstrates why such measures are needed. The asymmetric risk structure of litigation funding (funders lose their investment if claims fail but gain massively if claims succeed) creates

²⁵European Parliament Resolution of 13 September 2022 on responsible private litigation funding (2022/2104(INL)), known as the “Voss Report”. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2023_125_R_0002

²⁶ibid, recital 3.

²⁷Reported in Bloomberg Law News, “Arbitrator’s Guilty Verdict Puts UK Funder’s Investment at Risk” (22 December 2023). <https://news.bloomberglaw.com/business-and-practice/arbitrators-guilty-verdict-puts-uk-funders-investment-at-risk>

²⁸ibid.

²⁹Voss Report (n 25), recommendations section.

incentives to pursue speculative claims against deep-pocketed respondents, particularly sovereigns who cannot simply declare bankruptcy. Third-party funding did not create jurisdiction in cases like this: it will fund tailors who will dress an emperor in invisible clothes. It will amplify the procession, the trumpets, the crowd, the confidence, without asking whether the emperor was clothed at all.

The seat transfer from Madrid to Paris exemplifies forum shopping at its most aggressive. Rueda and Pérez explain that “*the principle of party autonomy has been described as the cornerstone of international arbitration. It extends to, among other things, the parties’ freedom and right to determine the legal seat, or place, of the arbitration. Along with the agreement to arbitrate and the procedural rules, the choice of seat is one of the most important expressions of party autonomy. It determines the courts with supervisory jurisdiction over the proceedings.*”³⁰ When the seat is included in the arbitration agreement, “the seat may only be changed by agreement of the parties.”³¹

Stampa, after the Madrid court annulled his appointment, purported to change the seat unilaterally via procedural order to Paris. France is known for its pro-arbitration orientation and, uniquely among major jurisdictions, has been willing under the *Putrabali* doctrine to enforce awards even when set aside at the seat.

³⁰D Rueda and D Pérez, “Do Tribunals Have the Power to Relocate the Arbitral Seat?” Freshfields Risk & Compliance Blog (21 June 2024).
<https://riskandcompliance.freshfields.com/post/102jaun/do-tribunals-have-the-power-to-relocate-the-arbitral-seat>

³¹*ibid.*

The claimants evidently hoped that French courts would enforce the award regardless of what Spanish courts decided. The gambit ultimately failed. French courts recognised that the validation principle has limits and that one cannot enforce an award based on a non-existent arbitration agreement, regardless of where the arbitrator claimed to sit.

6. When the Courts Looked Closely: The Jurisdictional Unravelling

The legal reasoning across jurisdictions reveals remarkable consistency. Every court that examined the jurisdictional foundation reached the same conclusion: there was no valid arbitration agreement binding Malaysia. Consent was absent. Without consent, there was no jurisdiction. Without jurisdiction, there was no award to enforce.

Spain: The Seat Court

The seat theory provides that an arbitration is anchored to the legal order of its seat, giving that state's courts supervisory jurisdiction over the proceedings.³² Madrid was designated as the original seat. On 29 June 2021, the Superior Court of Justice of Madrid annulled Stampa's appointment.³³ The court found that Malaysia, as a foreign sovereign state, had not been properly notified of the arbitrator appointment proceedings and had therefore not been afforded the opportunity to participate. The ruling stripped Stampa of his authority and wiped the procedural slate clean. Every step taken in the arbitration was nullified. The

³²R Jhanwar, "Seat Theory in International Commercial Arbitration" (2023) Dhaka University Law Journal.

³³Superior Court of Justice of Madrid, Contentious-Administrative Chamber, Order of 29 June 2021 (Case No. 28079310012021200080).

court required that Malaysia be summoned through proper diplomatic channels before any new arbitrator could be appointed.³⁴

The annulment was retroactive, rendering *Stampa functus officio* from the date of his original appointment. He lost not merely his authority going forward but the legal status that had supposedly authorised his prior actions. Stampa defied the court's orders. He issued a procedural order declaring that he remained in office and, at the claimants' request, relocated the arbitral seat to Paris. He then proceeded to issue the Final Award in February 2022. This defiance formed the basis of his subsequent criminal conviction.

France: The New Seat and Enforcement Forum

On 6 June 2023, the Paris Court of Appeal refused to recognise the Partial Award on jurisdiction.³⁵ The court found that no valid arbitration agreement bound Malaysia. The court approached the jurisdictional question in logical order. The arbitration agreement is what confers power on an arbitrator. Without examining that agreement first, asking whether the tribunal was properly constituted puts the cart before the horse. The threshold question is whether the parties agreed to arbitrate and under what conditions.

³⁴ibid.

³⁵Paris Court of Appeal, Judgment of 6 June 2023 (Pole 1, Chamber 1, Case No. 22/09080).

On 6 November 2024, the French Court of Cassation upheld this decision, ruling that the 1878 clause designating the British Consul-General was *intuitu personae* and therefore void.³⁶ The parties had agreed to submit disputes to a specific colonial official holding a specific position. When that office ceased to exist (as it did with the end of British colonial administration), the clause lapsed.³⁷ The *Cour de cassation* rejected the argument that the clause could be modernised by substituting any arbitrator for the defunct Consul-General position.

On 9 December 2025, the Paris Court of Appeal annulled the Final Award in its entirety and ordered the claimants to pay EUR 200,000 in costs to Malaysia. French courts, despite their general pro-arbitration orientation, recognised the limits of the validation principle. Courts cannot resurrect a corpse. They cannot manufacture consent where consent never existed.

Netherlands and Luxembourg

The Hague Court of Appeal upheld Malaysia's challenge on 27 June 2023, finding that the tribunal was "not properly composed" within the meaning of New York Convention Article V(1)(d).³⁸ The Dutch court treated the Spanish court's annulment of Stampa's appointment as a foreign judgment entitled to recognition, finding no due process defect in the Spanish proceedings. The Dutch Supreme Court dismissed the claimants' appeal in September 2024.³⁹

³⁶French Court of Cassation (n 8).

³⁷Kleiner (n 9).

³⁸Hague Court of Appeal, Judgment of 27 June 2023.

³⁹Dutch Supreme Court, September 2024.

Luxembourg, which had initially granted provisional measures against Malaysian assets (demonstrating how spectacle can produce real consequences even before courts examine merits), subsequently lifted those measures as the jurisdictional defects became apparent through decisions in other forums.

The common thread across all these jurisdictions is consent. The pro-enforcement bias of the New York Convention, while genuine, operates on the assumption that there is a valid award to enforce.⁴⁰ As the Third Circuit observed in *China Minmetals*, “a contract cannot give an arbitral body any power, much less the power to determine its own jurisdiction, if the parties never entered into it.”⁴¹ The courts did not attack arbitral autonomy. They enforced its prerequisites.

7. The Emperor’s Punishment: The Arbitrator’s Criminal Conviction

In Andersen’s tale, the emperor continues his procession, embarrassed but unpunished as it is cloaked with immunity. The story ends with discomfort, not accountability. The Sulu case departed from the parable in this respect. The emperor faced consequences.

On 22 December 2023, the Madrid Criminal Court found Stampa guilty of contempt of court (*desobediencia grave*) and unqualified professional practice

⁴⁰A van den Berg, “The New York Convention: Its Intended Effects, Evolution, and Future” in 50 Years of the New York Convention (ICCA Congress Series No. 14, 2009) 25.

⁴¹*China Minmetals Materials Import & Export Co v Chi Mei Corp* 334 F.3d 274 (3d Cir 2003) 288.

(*intrusismo profesional*) for continuing to act as arbitrator after his appointment was annulled. The court sentenced Stampa to six months imprisonment and a one-year ban from practising as an arbitrator.⁴² The Madrid Court of Appeal upheld the conviction on 17 May 2024. The appellate court found that Stampa's disobedience was neither accidental nor ambiguous. He knowingly and willfully defied clear rulings from the Madrid High Court of Justice. The court rejected any suggestion that Stampa's disagreement with those orders, or subsequent events in the arbitration, could excuse his conduct. Compliance was not optional.⁴³ The Spanish Supreme Court dismissed Stampa's final appeal on 8 October 2025. The conviction is now final.⁴⁴

This outcome is extraordinary. Arbitrators typically enjoy quasi-judicial immunity to ensure independent decision-making. The leading American case, *Baar v Tigerman*, declined to extend immunity to an arbitrator who failed to render a timely award, holding that “[a]rbitral immunity covers only the arbitrator’s quasi-judicial actions” and that cases “clothed arbitrators with immunity have involved disgruntled litigants who sought to hold an arbitrator liable for alleged misconduct in arriving at a decision” rather than failure to perform the arbitral function at all.⁴⁵ English law provides that an arbitrator is immune “unless the act or omission is shown to have been in bad faith.”⁴⁶ Spanish law, like many civil law jurisdictions, excepts bad faith, reckless or fraudulent acts from immunity protection.⁴⁷

⁴²Madrid Criminal Court, Judgment of 22 December 2023.

⁴³Madrid Court of Appeal, Judgment of 17 May 2024.

⁴⁴Spanish Supreme Court, Decision of 8 October 2025.

⁴⁵*Baar v Tigerman* 140 Cal App 3d 979 (Cal Ct App 1983).

⁴⁶English Arbitration Act 1996, s 29(1).

⁴⁷P Martinez-Fraga, “The U.S. and Absolute Immunity for International Arbitrators” (2024) 56

Yek's analysis of the Sulu case explains the theoretical framework: "*The immunity is functional: it protects arbitrators acting within their jurisdiction. Once Stampa's appointment was annulled, he lost the status of arbitrator.*"⁴⁸ His subsequent acts were private acts of defiance, not protected arbitral conduct. As one commentary observed, "*Criminal liability reminds us that with great authority comes great accountability, regardless of whether this is justified.*"⁴⁹

It should be noted, in the interest of fairness, that Stampa maintains his innocence. Him and 60 of his defenders argue that the conviction represents judicial overreach that undermines Madrid's credibility as an arbitration seat. They characterise the Spanish court proceedings as state pressure on an independent arbitrator and frame the annulment of his appointment as itself improper. Malaysia responds that the conviction vindicates the rule of law and confirms that the Sulu proceedings were conducted in defiance of binding court orders.

Whatever one's view of these competing narratives, the conviction establishes a principle: an arbitrator cannot claim the status of arbitrator while defying the court that appointed him. The label "arbitrator" does not confer immunity to ignore the rule of law. The Sulu case stands as perhaps the first instance of a criminal conviction of an arbitrator for acts performed during (purported) arbitral

NYU Journal of International Law & Politics 291.

⁴⁸Yek (n 20).

⁴⁹Aceris Law LLC, "Criminal Liability of Arbitrators" (Blog post, 17 November 2025).
<https://www.acerislaw.com/criminal-liability-of-arbitrators/>

proceedings. It may prompt important reflection on the balance between arbitrator independence and arbitrator accountability.

8. The Systemic Vulnerabilities Exposed

The Sulu case is not an aberration. It is an extreme manifestation of vulnerabilities that exist, to varying degrees, in ordinary arbitration practice. Scholars have long identified legitimacy concerns in the international arbitration system. Franck has described a “legitimacy crisis” arising from inconsistent decisions and lack of appellate review.⁵⁰ Van Harten and others have argued that *“investor-state arbitration suffers from a fundamental lack of accountability and legitimacy”* because *“decisions with major public policy impact are rendered by for-profit arbitrators, often practicing as lawyers in the same field, operating behind closed doors.”*⁵¹

The Sulu case reveals how consent can be manufactured from colonial-era instruments that bear no resemblance to modern arbitration agreements. The claimants relied on an 1878 agreement that predated modern arbitration entirely, contained no arbitration clause as that term is understood today, and referred disputes to a colonial official who no longer exists. The danger lies in the “validation principle” when applied without limits. Courts and arbitrators rightly seek to uphold the validity of arbitration agreements rather than rendering them

⁵⁰S Franck, *The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions* (2005) 73 Fordham Law Review 1521.

⁵¹G Van Harten et al, “Public Statement on the International Investment Regime” (31 August 2010).

void on technicalities. But the Sulu case shows where this principle meets its logical boundary: one cannot validate an agreement that never existed.

The case exposes how the arbitral seat can be manipulated. Stampa relocated from Madrid to Paris via unilateral procedural order after the seat court annulled his appointment. The lack of coordination between national courts on supervising arbitrations creates gaps that sophisticated parties can exploit. The “delocalization” theory (which suggests arbitration floats free of national legal orders) was tested and found wanting: France is pro-arbitration but does not countenance stateless arbitrations originating in contempt of court orders.

The enforcement mechanism itself can be weaponised. The claimants pursued enforcement simultaneously in multiple jurisdictions, forcing Malaysia into a multi-front defensive war that consumed substantial resources before any court examined the merits. Luxembourg’s initial provisional measures demonstrate how spectacle can produce real consequences. The system’s defences held in this case, but only because Malaysia mounted an exceptional response with a dedicated Special Secretariat War Room coordinating its multi-jurisdictional strategy. Not every respondent has those resources. Davitti and Vargiu observe that litigation funding *“leads to more claims and riskier claims against States and increases the risk of crippling compensation. This requires States to allocate public funds to the cost of litigation, rather than to other necessary public services.”*⁵²

⁵²Davitti and Vargiu (n 23) 490.

Third-party funding opacity compounds these problems. The difficulty of knowing who is funding claims and on what terms creates information asymmetries that can distort proceedings. Potential conflicts of interest between funders, counsel and arbitrators may go undetected. The Voss Report's concerns about funders controlling litigation strategy are well-founded.

9. Lessons for the ADR Community

For arbitrators, the Sulu case clarifies that jurisdiction is not self-validating. *Kompetenz-kompetenz* is a power to determine jurisdiction, not a guarantee that jurisdiction exists. The “negative effect” described by Bermann means courts must have the final say on gateway issues.⁵³ When appointing courts annul appointments, the annulment has consequences that cannot be wished away by procedural orders. Ignoring a court's decision is not independence; it is defiance. The Stampa conviction establishes this clearly. Arbitrators contemplating whether to continue proceedings in the face of court orders should consider carefully whether they wish to test the boundaries of their immunity.

For counsel, the case counsels vigilance about jurisdictional foundations. Advise clients on the existence and validity of arbitration agreements before initiating or defending proceedings. Scrutinise historical or unusual clauses carefully. Be alert to speculative funded claims that rely on procedural aggression rather than legal

⁵³Bermann (n 13).

merit. Do not assume awards are enforceable until jurisdictional prerequisites are satisfied. Where possible, investigate funding arrangements, which may reveal conflicts of interest or explain litigation strategy.

For arbitral institutions, the case supports mandatory disclosure requirements for third-party funding, consistent with the Voss Report's recommendations.⁵⁴ Institutions should develop mechanisms to address arbitrator misconduct short of criminal prosecution. Self-regulation is preferable to state intervention, but self-regulation requires honest self-assessment. The Sulu case exposed a gap between arbitration's narrative of neutrality and finality and its vulnerability to manipulation. Institutions that fail to acknowledge this gap risk inviting regulatory responses that may be less sympathetic to arbitral autonomy.

For sovereigns and corporate respondents facing funded claims, the Sulu case demonstrates that even large awards can be defeated when jurisdictional foundations are absent. Do not be intimidated by the spectacle of aggressive enforcement proceedings. Challenge jurisdiction early and across jurisdictions. Coordinate legal strategy and public communications. Malaysia's War Room approach serves as a model for multi-jurisdictional defence against well-funded claims. Early and sustained engagement with the legal and factual issues can prevent the narrative from being controlled by claimants alone.⁵⁵

⁵⁴Voss Report (n 25).

⁵⁵Malaysia Sulu Case Special Secretariat, Press Release (10 December 2025).
<https://www.kln.gov.my/web/guest/-/press-statement-the-paris-court-of-appeal-annuls-the-purported-final-award-in-the-sulu-case-10-december-2025>

For regulators, the case strengthens arguments for third-party funding disclosure and oversight. Courts should scrutinise jurisdictional foundations before granting provisional enforcement measures; Luxembourg's initial measures show the danger of premature action based on spectacular claims. Funders should bear adverse cost liability when funded claims fail on jurisdictional grounds. The moral hazard created by insulating funders from downside risk encourages speculative claims that burden courts and respondents alike.

10. Conclusion: The Emperor Without Robes

The Sulu case did not destroy arbitration. It did not slay the emperor. It simply revealed that the emperor had no clothes. The authority was claimed but not conferred. The jurisdiction was asserted but not established. The award was issued but not valid. The procession lasted years. It traversed Europe. It generated headlines and panic. But when courts finally examined the source of the arbitrator's authority, they found what should have been obvious from the start: there was no valid arbitration agreement binding Malaysia.

The 1878 Deed's reference to the British Consul-General was not an arbitration clause in any sense that modern arbitration law recognises. It was a colonial administrative mechanism that died with the empire. The arbitrator purported to succeed to that colonial office. The courts correctly refused to recognise the succession. The French Court of Cassation's *intuitu personae* doctrine captured the fundamental problem: the parties in 1878 agreed to submit their disputes to

a specific colonial official, not to “arbitration” as an abstract method of dispute resolution. When that official’s position ceased to exist, so did any agreement to resolve disputes through third-party adjudication.

The lesson is not that arbitration is dangerous. The lesson is that reverence without scrutiny is dangerous. Jurisdiction is not symbolism; it is substance. Consent is not optional; it is foundational. The “pro-enforcement bias” of the New York Convention exists to serve legitimate arbitration, not to shield its imitation. For Malaysia, the case ends a years-long ordeal and vindicates its consistent position that sovereignty over Sabah is non-negotiable and that the Sulu arbitration lacked any legal foundation.⁵⁶ For the funders, it represents a loss on a substantial speculative investment, the “gold and silk” vanishing into legal ether when the award collapsed. For the arbitrator, convicted of contempt by Spanish courts, it means professional consequences that may serve as a cautionary example for others.

For the ADR community, the case offers an opportunity for reflection. The system’s legitimacy depends on its willingness to distinguish genuine arbitral authority from its imitation. The fear of an unstoppable award arose not from law but from spectacle. The Sulu case will be studied for years. Let it be studied honestly. Let it remind arbitrators that their authority flows from consent, not confidence. Let it remind funders that sovereignty is not a commercial asset to

⁵⁶Malaysian Bar, Press Release (11 December 2025).
<https://www.malaysianbar.org.my/article/news/press-statements/press-statements/press-release-malaysia-s-sovereignty-is-upheld-with-the-resolution-of-the-sulu-claim>

be monetised through aggressive litigation. Let it remind courts that asking, “where does this authority come from?” is not anti-arbitration. It is the foundation on which arbitration’s legitimacy depends.

The child spoke. The emperor was revealed. The procession is over.

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International Arbitration: Foundations, Frameworks, Trends, and Contemporary Developments

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Datuk Professor Sundra Rajoo is a distinguished Malaysian legal professional, architect, town planner and chartered arbitrator, internationally recognised for his contributions to arbitration, construction law, and alternative dispute resolution. He is the Founding President of the Asian Institute of Alternative Dispute Resolution (AIADR) and has served twice as Director of the Asian International Arbitration Centre (AIAC).

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Abstract: International arbitration has evolved into the primary mechanism for resolving cross-border commercial and investment disputes, underpinned by its neutrality, enforceability, and adaptability to the complexities of globalization. This paper provides a comprehensive analysis of international arbitration, covering its conceptual and historical foundations, core characteristics that drive its popularity, legal frameworks including the New York Convention and UNCITRAL Model Law, the fundamental role of arbitration agreements and the doctrine of separability, recent regional reforms in key jurisdictions (the United Kingdom, China, and Singapore), emerging trends such as the integration of artificial intelligence (AI) and the impact of economic sanctions. By examining these dimensions, the paper aims to offer a systematic understanding of the current landscape of international arbitration and its future trajectory, highlighting its significance in sustaining global commerce and the rule of law beyond national boundaries.

Keywords: International Arbitration; New York Convention; UNCITRAL Model Law; Arbitration Agreement; Separability Doctrine; Regional Reforms; Artificial Intelligence; Economic Sanctions

1. Introduction

1.1 Background and Significance

In an era of unprecedented globalization, cross-border trade, investment, and supply chain integration have interconnected nations and businesses across diverse legal, linguistic, and cultural contexts. These interconnections, while

generating immense economic opportunities, has also given rise to complex cross-border disputes that transcend national jurisdictions. Traditional national courts, constrained by territorial limits and procedural disparities, often struggle to provide effective resolution for such disputes. International arbitration, as a neutral, flexible, and enforceable alternative, has emerged as the preferred mechanism for addressing these challenges, serving as the "rule of law beyond the nation-state".

China's increasing participation in global trade has enhanced its influence in international dispute resolution, making the study of international arbitration particularly relevant. The increasing importance of international arbitration is underscored by the rising number of arbitral institutions, the widespread adoption of international conventions, and ongoing legislative reforms in major jurisdictions aimed at enhancing the efficiency and attractiveness of arbitration as a dispute resolution tool. National courts, though essential to the administration of justice, are often constrained by their territorial reach and procedural differences. This is where international arbitration plays a vital role. It offers a neutral, flexible, and enforceable means of dispute resolution — one that transcends national boundaries. Parties from different legal, linguistic, and cultural backgrounds can agree on a common, neutral forum. They can select their arbitrators, choose the applicable law, and determine their own procedure. Most importantly, arbitral awards can be enforced in over 170 countries under the New York Convention, something that gives arbitration a unique global legitimacy.

1.2 Research Objectives and Structure

This paper seeks to provide a comprehensive overview of international arbitration by addressing the following core objectives: (1) Clarify the concept, nature, and

historical evolution of international arbitration; (2) Analyze the key factors contributing to its popularity as a cross-border dispute resolution mechanism; (3) Examine the legal frameworks that govern international arbitration, including the New York Convention and the UNCITRAL Model Law; (4) Explore the foundational role of arbitration agreements and the doctrine of separability; (5) Review recent regional reforms in the United Kingdom, China, and Singapore; (6) Investigate emerging trends such as the application of AI and the impact of economic sanctions.

The structure of the paper is organized as follows: Section 2 delves into the concept, nature, and historical development of arbitration, followed by an analysis of its core advantages. Section 3 examines the legal framework, focusing on the New York Convention and the UNCITRAL Model Law. Section 4 explores arbitration agreements and the doctrine of separability. Section 5 presents recent regional reforms in key jurisdictions. Section 6 analyzes emerging trends, including AI integration and the impact of sanctions. Finally, Section 7 concludes with a summary of key findings and reflections on the future of international arbitration.

1.3 Research Scope and Methodology

This paper adopts a doctrinal and comparative research methodology, drawing on international conventions, model laws, national legislation, judicial precedents, academic literature, and empirical surveys (such as the Queen Mary University of London and White & Case International Arbitration Survey). The research scope covers both theoretical foundations and practical developments, with a

focus on contemporary reforms and emerging challenges. By synthesizing and analyzing these sources, the paper aims to provide a holistic and up-to-date account of international arbitration.

2. Concept, Nature, and Core Advantages of International Arbitration

Arbitration is fundamentally defined as a dispute resolution method wherein parties agree to submit their disputes to one or more independent arbitrators, whose decision (award) is final and binding¹. Unlike litigation, which is imposed by the coercive power of the state, the binding force of arbitral awards derives from the parties' voluntary agreement to submit to arbitration. This voluntary nature, combined with its private and consensual characteristics, distinguishes arbitration from other dispute resolution mechanisms. That decision is final and binding on the parties—and it is final and binding because the parties have agreed that it should be, rather than because of the coercive power of any state². It's sometimes suggested that international commercial arbitration is a product of the 20th century³. However, historical evidence shows that arbitration has been used for resolving international and cross-border business disputes for many centuries. Back then, the distinction between arbitration and other dispute resolution methods wasn't always clear⁴. Arbitration sometimes resembled a

¹ Nigel Blackaby and others, *Redfern and Hunter on International Arbitration* (6th edn, OUP 2015) para 1.04.

² *Ibid.*; see also David Williams and Amokura Kawharu, *Williams & Kawharu on Arbitration* (LexisNexis 2011) para 1.1.1; Gary B Born, *International Commercial Arbitration* (2nd edn, Kluwer Law International 2014) 69.

³ Amr Shalakany, 'Arbitration and the Third World: A Plea for Reassessing Bias under the Specter of Neoliberalism' (2000) 41 *Harvard International Law Journal* 419, 430.

⁴ Gary B Born, *International Commercial Arbitration* (3rd edn, Wolters Kluwer 2021).

state-sponsored or compelled alternative to legal proceedings or non-binding conciliation.

Ancient societies did not possess legal systems comparable to those of the modern era⁵, yet they frequently relied on respected members of the community to resolve civil disputes on behalf of the state. Notwithstanding the relative lack of institutional clarity in ancient legal orders, there is considerable evidence demonstrating the existence of alternative dispute resolution mechanisms for commercial disputes, many of which exhibit functional similarities to modern arbitration⁶. China, in particular, provides a notable historical example of the use of conciliation arbitration in dispute resolution, practices that are deeply rooted in the Confucian emphasis on social harmony⁷. During the Qing dynasty, historical accounts indicate that property disputes were sometimes resolved by groups consisting of relatives and trusted acquaintances, who collectively examined the relevant facts and negotiated a mutually acceptable compromise. Such compromises were subsequently submitted to, and endorsed by, local courts, thereby incorporating informal dispute resolution processes into the formal judicial framework⁸. In the contemporary period arbitration centres and institutions in Asia have experienced significant growth in both usage and international recognition, as reflected in the 2021 Queen Mary University of London and White Case International Arbitration Survey (the UOL Survey)⁹. The

⁵ Derek Roebuck, *Ancient Greek Arbitration* (Holo Books 2001) 46 – 47. *Indeed, “litigation” in many historical settings bore little resemblance to contemporary processes, making the categorization of arbitration as “alternative” dispute resolution misleading.*

⁶ Above n 4.

⁷ ‘International Commercial Arbitration in China: History, New Developments and Current Practice’ (1995) 28 *John Marshall Law Review* 539, 540.

⁸ Jingzhou Wang, ‘The Unification of the Dispute Resolution System in China: Cultural, Economic, and Legal Contributions’ (1996) 13(2) *Journal of International Arbitration* 5, 8 – 9.

⁹ White & Case LLP and Queen Mary University of London, ‘2021 International Arbitration

survey identifies Singapore and Hong Kong as leading arbitral seats worldwide with Singapore, for the first time, sharing the top position with London as the most preferred seat for arbitration. Singapore was also ranked as the most favoured arbitral seat within the Asia-Pacific region while Hong Kong consistently placed among the top five seats globally across all regions. The survey further indicates that three of the world's most preferred arbitral institutions are based in Asia namely Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre (HKIAC), China International Economic and Trade Arbitration Commission (CIETAC), which ranked second, third and fifth respectively. Notably, this represents CIETAC's first appearance among the top five most preferred arbitral institutions worldwide. The sustained expansion of Asia's arbitration landscape underscores the growing confidence of both Asian and international parties in resolving disputes within the region and highlights the region's increasing centrality in the global arbitration framework.

2.1 The Popularity of International Arbitration

The underlying reasons for the widespread preference for arbitration have been articulated by the Singapore courts, most notably in *Sumito v. Antig Invs.*¹⁰ In that case, the Court of Appeal observed that parties may choose arbitration over litigation for a variety of reasons. A principal consideration is that an arbitral award is capable of immediate enforcement, both domestically and internationally, in jurisdictions that are party to the relevant enforcement treaties. In addition,

Survey: Adapting Arbitration to a Changing World' (2021)
<https://arbitration.qmul.ac.uk/media/arbitration/docs/LON0320037-QMUL-International-Arbitration-Survey-2021_19_WEB.pdf> accessed 29 January 2026.

¹⁰ *Sumito v Antig Investments Pte Ltd* [2009] SGCA 41; see also Gary B Born, *International Commercial Arbitration* (3rd edn, Wolters Kluwer 2021) para 1.02[B].

parties may be influenced by factors such as confidentiality, procedural flexibility, and the ability to appoint arbitrators possessing specialised technical or legal expertise appropriate to the nature of the dispute or the applicable law. The Court further emphasised the significance of finality in arbitration. Unlike court litigation, which is often regarded as the commencement of a multi-tiered appellate process, arbitration is designed to function as the primary and conclusive mechanism for dispute resolution, with limited scope for subsequent review.

2.1.1 Neutrality of Forum

Although it is not possible to address every factor contributing to the popularity of arbitration, several core considerations warrant particular attention. International arbitration agreements are designed to provide a fair and impartial forum for dispute resolution, insulated from the influence of the parties themselves or their respective home governments¹¹. The emphasis on neutrality has been consistently highlighted by both practitioners and academic commentators and has long been regarded as a defining feature of international commercial arbitration¹². In practice, parties frequently engage in pre-dispute negotiations over forum selection with the objective of securing the most advantageous dispute resolution mechanism, rather than a neutral one¹³. This often results in a preference for the courts of the party's principal place of business, which offer familiarity and convenience to that party and its legal advisers. However, such

¹¹ Christopher R Drahozal and Stephen J Ware, 'Why Do Businesses Use (or Not Use) Arbitration Clauses?' (2010) 25(2) *Ohio State Journal on Dispute Resolution*.

¹² Richard W Naimark and Stephanie E Keer, 'International Private Commercial Arbitration: Expectations and Perceptions of Attorneys and Business People' (2002) 30 *International Business Lawyer* 203.

¹³ Above n 10.

fora may be unfamiliar, inconvenient, or perceived as biased by the opposing party. Moreover, where local courts are subject to external influences such as political considerations or media scrutiny, the incentive for a party to favour its domestic courts may be further reinforced¹⁴. Consequently, the very attributes that render a local court attractive to one party may simultaneously render it objectionable to the other.

This practice helps mitigate the risks of national bias, local prejudices, or any other forms of partiality¹⁵. The neutrality of international arbitration further depends to a significant extent on the composition of the arbitral tribunal¹⁶. A defining feature of international arbitration is the degree of autonomy afforded to parties in the constitution of the tribunal, including the ability to appoint a sole arbitrator or a presiding arbitrator whose nationality differs from that of the disputing parties. This mechanism serves to reduce the risk of national bias, local prejudice, or other forms of partiality in the adjudicative process¹⁷.

2.1.2 Commercial Competence and Expertise of Tribunal

Another significant factor contributing to the popularity of international arbitration lies in its capacity to provide a dispute resolution process conducted by decision-makers with a high level of expertise and subject-matter knowledge. In certain jurisdictions, domestic courts lack sufficient experience in dealing with

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Gary B Born, *International Commercial Arbitration* (3rd edn, Wolters Kluwer 2021) para 12.05.

¹⁷ Pierre Lalive, 'On the Neutrality of the Arbitrator and of the Place of Arbitration' in Claude Reymond and Ernst Bucher (eds), *Swiss Essays on International Arbitration* (Schulthess 1984) 23, 24.

international commercial transactions or disputes arising from cross-border business activities¹⁸. This deficiency may hinder a full appreciation of the commercial context and contractual arrangements underlying the parties' dispute. Judges in national court systems are typically generalists and may not possess specialised knowledge of complex commercial matters, let alone familiarity with specific transaction types such as mergers and acquisitions or joint ventures, or with industry-specific practices in sectors such as oil and gas or insurance¹⁹. These structural limitations may adversely affect both the efficiency and the substantive quality of dispute resolution in litigation. As one commentator has observed²⁰:

“while the civil justice system often selects its triers of fact on the basis that they know little or nothing about the subject of the dispute, a hallmark of arbitration is the presence of one or more decisionmakers with pertinent knowledge or experience. The theory is that an individual familiar with the commercial context of the dispute, including industry customs and vocabulary, is better suited to dispense justice than laypersons who might be hampered by their relative lack of business experience and understanding of trade practices.”

This assessment is shared not only by commercial actors but also by certain national courts. By way of illustration, a United States trial judge observed that arbitrators “know more about the value of peach orchards, their productivity and

¹⁸ Above n 10, para 1.01[B][2].

¹⁹ Christopher R Drahozal, ‘Why Arbitrate? Substantive Versus Procedural Theories of Private Judging’ (2011) 22 *American Review of International Arbitration* 163, 174.

²⁰ ‘Rethinking American Arbitration’ (1987) 63 *Indiana Law Journal* 425, 435 – 38.

earning power than I do²¹ ”This judicial acknowledgment underscores one of the central factors underpinning the success and continued popularity of international arbitration, namely the possibility for parties to select the members of the arbitral tribunal themselves, rather than being assigned a randomly selected judge whose experience, expertise, and suitability for the dispute may be uncertain.²².

2.1.3 Finality of Award.

Another notable feature of international commercial arbitration that contributes to its effectiveness and popularity is the limited scope of appellate review for arbitral awards in most jurisdictions. Judicial oversight of awards in many developed countries is generally confined to procedural matters, questions of jurisdiction, and considerations of public policy. Substantive review of the arbitrators’ decisions is typically minimal and accorded significant deference. This approach contrasts sharply with national court systems, where appellate review of initial judgments may permit full reconsideration of both factual and legal issues, including the possibility of a new trial. The limited availability of appellate mechanisms in arbitration entails both advantages and potential drawbacks²³. On the one hand, the absence of an appellate review process substantially reduces litigation costs and procedural delays, particularly in cases where a successful appeal in the courts would necessitate retrial at first instance, potentially followed

²¹ *Gramling v Food Machinery & Chemical Corp* 151 F Supp 853 (WD SC 1957) 858.

²² Queen Mary University of London, 2018 *International Arbitration Survey: The Evolution of International Arbitration* (2018) 7.(“ability of parties to select arbitrators” is fourth among most valuable characteristics of international arbitration).

²³ Some empirical research suggests that a majority of users do not favor an institutional appeal mechanism. See, e.g ., Queen Mary University of London, 2018 *International Arbitration Survey: The Evolution of International Arbitration* (2018) 7 – 8.

by further appeals. On the other hand, this limitation implies that highly unusual or erroneous arbitral decisions are not readily subject to correction.

Anecdotal evidence and empirical research indicate that business users generally regard the efficiency and finality of arbitral procedures positively, even when this entails forgoing appellate rights²⁴. Moreover, certain legal systems permit parties, through contractual provisions, to incorporate a limited form of appellate review over the arbitrators' substantive decisions or to select arbitral procedures that provide for appeals within the arbitration framework itself²⁵. Despite this possibility, international commercial parties typically prioritize procedural speed and the finality of awards over the availability of appellate review²⁶.

2.2 Ad Hoc Arbitration vs Institutional Arbitration²⁷

International arbitration typically assumes one of two principal forms: ad hoc arbitration or institutional arbitration. Ad hoc arbitration is fundamentally a process conducted independently of any arbitral institution. In this framework, the parties retain the autonomy to determine the rules and procedures governing their arbitration, provided that these rules ensure fairness and afford each party a reasonable opportunity to present its case. In practice, however, few parties construct such procedures entirely from first principles. The majority instead

²⁴ Steven Shavell, 'Alternative Dispute Resolution: An Economic Analysis' (1995) 24 *Journal of Legal Studies* 1, 9.

²⁵ Above n 10.

²⁶ *Ibid.*

²⁷ Nigel Blackaby and others, Redfern and Hunter on International Arbitration: Student Version (7th edn, OUP 2023) paras 1.150 - 1.177.

adopt established procedural rules, among which the UNCITRAL Arbitration Rules are the most widely employed.

The UNCITRAL Arbitration Rules constitute a procedural framework developed through broad international consensus under the auspices of the United Nations. These rules enjoy widespread acceptance because they are free from the bias or influence of any specific national institution or commercial interest. Such neutrality renders them particularly suitable for disputes involving States or parties to public sector contracts. Although ad hoc arbitration offers procedural flexibility and independence, its effectiveness is contingent upon the cooperation of the parties and the support of the legal system at the seat of arbitration. Should one party fail to participate—for instance, by neglecting to appoint its arbitrator—the arbitration process may be stalled at its inception. This potential vulnerability can be mitigated under the UNCITRAL Rules, which permit the designation of an appointing authority to ensure that proceedings can continue even in the absence of cooperation from a recalcitrant party.

In contrast, institutional arbitration is conducted under the auspices of a recognised arbitral institution. Such institutions administer arbitrations according to their own procedural rules, which govern the proceedings from initiation to the issuance of the final award. Notable examples include the London Court of International Arbitration (LCIA) and the International Chamber of Commerce (ICC), among others, each operating under its respective rulebook. By incorporating an institutional arbitration clause into their contract, the parties not only adopt a comprehensive set of procedural rules but also secure the administrative support of an experienced institution responsible for overseeing the process. In cases where a party seeks to obstruct the arbitration, the

institution has the authority to ensure the constitution of the arbitral tribunal and to facilitate the efficient continuation of the proceedings.

The advantages of institutional arbitration are clear. The rules are well-tested, regularly updated, and shaped by the experience of leading practitioners. Institutions also provide administrative support — ensuring that arbitrators are appointed, fees are paid, and deadlines are observed. Their staff can guide counsel through procedural difficulties and help the process run smoothly. Of course, institutional arbitration is not without disadvantages. The main drawbacks are cost and structure. The institution charges administrative fees, which can add to the overall expense, and some may feel that the additional layer of institutional management is unnecessary. Yet, these administrative functions must be performed in any arbitration, and if not by the institution, they would have to be carried out by the tribunal or its secretary — meaning the savings may not be as significant as expected.

The selection of an appropriate arbitral institution has become a critical consideration in contemporary international arbitration. In recent years, arbitral institutions have assumed a central role in the arbitration landscape. Leading institutions provide a comprehensive range of services, including established procedural rules, often modelled on the UNCITRAL framework, thereby reducing the need for parties to draft bespoke procedural provisions. A competent institution ensures the timely appointment of arbitrators, addresses challenges to their independence or impartiality, and supervises the conduct of the arbitration. Prior to the issuance of the final award, many institutions undertake a limited review—frequently aimed at correcting minor errors—thereby enhancing the quality and credibility of the resulting award. Such awards are often identified by

reference to the administering institution, as exemplified by the designation of an “ICC Award.”

However, caution is needed. Not every organization calling itself an “arbitration centre” is a genuine arbitral institution. It is important to verify that the institution has credible premises, qualified staff, and a track record of genuine arbitral administration. There have been instances of fraudulent entities masquerading as arbitral bodies, issuing invalid “awards.” Finally, location and quality matter. Regional arbitral institutions have gained prominence and credibility. Parties today can look beyond traditional European or American centres to reputable regional institutions, such as those based in Asia, the Middle East, or Africa. The selection of arbitrators and the quality of awards issued under an institution’s rules are equally important. The true measure of an institution lies in the competence of the tribunals it helps to constitute and the soundness of the awards it produces.

Ultimately, a good award, rendered by a qualified tribunal under the auspices of a reputable institution, should be able to withstand most challenges. Though the award remains that of the tribunal, it inevitably carries the imprimatur of the institution under which it was made — a mark of credibility and trust in the world of international arbitration.

3. Legal Framework

3.1 The New York Convention²⁸

²⁸ Albert Jan van den Berg, ‘The New York Convention of 1958: An Overview’ in Emmanuel

One of the most significant milestones in the evolution of international arbitration is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, better known as the New York Convention of 1958. This Convention stands as the cornerstone of the modern arbitral framework. It provides the mechanism by which arbitral awards made in one country can be recognized and enforced in another, ensuring that arbitration serves as an effective and reliable means of resolving cross-border disputes. Adopted in New York on 10 June 1958, the Convention obliges contracting States to give effect to two fundamental actions.

The first is the recognition and enforcement of foreign arbitral awards — that is, awards made in the territory of another State. Under Article III, States must recognize such awards as binding and enforce them in accordance with their own procedural rules. The party seeking enforcement need only present two key documents: the arbitral award itself, and the arbitration agreement on which it was based. The second action concerns the referral to arbitration. Under Article II(3), when a national court is seized of a dispute covered by a valid arbitration agreement, it must, at the request of one of the parties, refer the matter to arbitration. In this way, the Convention not only facilitates enforcement of awards but also protects the parties' original agreement to arbitrate by preventing unnecessary judicial interference.

The field of application of the Convention is broad. It applies primarily to arbitral awards made in the territory of another State — these are the so-called foreign awards. However, it also extends to certain non-domestic awards, namely those

Gaillard and Domenico Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitral Awards – The New York Convention Practice* (Cameron May 2008).

which, though made within the enforcing State, are not considered domestic due to their international elements. This may include awards rendered under foreign arbitration law or between parties of different nationalities. In terms of reservations, States are allowed to limit the Convention's application in two specific ways. The reciprocity reservation, found in Article I(3), enables a State to apply the Convention only to awards made in other Contracting States. The commercial reservation permits a State to restrict the Convention's application to disputes considered "commercial" under its national law. It is worth noting that the practical significance of the reciprocity reservation is diminishing. This is due to the growing number of countries signing and ratifying the New York Convention. As of present, there are 172 state parties to the Convention, with the most recent addition being Timor-Leste in January 2023.

Importantly, the Convention does not govern the setting aside of arbitral awards, that power remains with the courts of the seat of arbitration. However, if an award is annulled in the country of origin, its enforcement may be refused elsewhere under Article V(1)(e). At the heart of the Convention lies Article V, which sets out the limited and exhaustive grounds on which enforcement may be refused. These include the absence of a valid arbitration agreement, violation of due process, the arbitral tribunal exceeding its authority, irregularity in the tribunal's composition or procedure, and the award being set aside or suspended in its country of origin.

In addition, enforcement may be refused on the court's own motion if the subject matter is not capable of settlement by arbitration or if recognition would violate public policy. However, courts have consistently emphasized that these exceptions must be construed narrowly, reflecting what is often described as the

Convention's pro-enforcement bias. This judicial philosophy ensures that an arbitral award will be denied enforcement only in exceptional circumstances, for example, where enforcement would offend the most basic notions of morality and justice of the forum State. The Convention also recognizes that parties should not be disadvantaged by restrictive domestic laws. Article VII(1), known as the "more-favourable-right" provision, allows a party seeking enforcement to rely on more generous rules of recognition and enforcement found in a country's domestic law or other treaties. This flexibility reinforces the Convention's overall objective — to make arbitral awards truly international, capable of moving freely across borders with minimal judicial obstruction.

In summary, the New York Convention of 1958 provides the essential legal infrastructure for international arbitration. It harmonizes the recognition and enforcement process, balances respect for national judicial systems with the autonomy of arbitral proceedings, and ensures that arbitration remains an effective, neutral, and enforceable method of resolving international disputes. Today, the Convention's influence is such that nearly every modern arbitration regime, whether national law, institutional rules, or model legislation such as the UNCITRAL Model Law, draws from its principles. The New York Convention is widely recognized as the cornerstone of the modern international arbitration system, underpinning the enforceability of cross-border arbitral awards.. As what Lord Mustill calls "the most effective instance of international legislation in the entire history of commercial law"²⁹.

²⁹ MJ Mustill, 'Arbitration - History and Background' (1989) 6 *Journal of International Arbitration* 2, 43; see also Rainer Briner and Victor Hamilton, 'The History and General Purpose of the Convention: The Creation of an International Standard to Ensure the Effectiveness of Arbitration Agreements and Foreign Arbitral Awards' in Emmanuel Gaillard and Domenico Di Pietro (eds), *Enforcement of Arbitration Agreements and International Arbitration Awards: The*

3.2 The UNCITRAL Model Law

The UNCITRAL Model Law on International Commercial Arbitration (“Model Law”) is a legislative framework developed by the United Nations Commission on International Trade Law (“UNCITRAL”) to assist States in modernising and harmonising their national arbitration laws. The initiative for the Model Law originated from a proposal by the Asian–African Legal Consultative Committee, which sought to supplement the New York Convention with an additional protocol addressing arbitration rules adopted by the parties. The origins of the UNCITRAL Model Law are outlined in a report by the UN Secretary-General titled “Possible Features of a Model Law of International Commercial Arbitration.”³⁰ In this report, it was stated that the “ultimate goal of a Model Law would be to facilitate international commercial arbitration and to ensure its proper functioning and recognition,” among other objectives. As such, the Model Law was crafted to be adopted by national legislatures, aiming to further standardize the treatment of international commercial arbitration across different countries. In 2006, UNCITRAL adopted a limited number of amendments to the Model Law.

It comprises 36 articles, which comprehensively address the issues commonly encountered in national courts concerning international arbitration. These include provisions covering the validity and enforcement of arbitration agreements (Articles 7-9), the appointment and removal of arbitrators (Articles 10-15), the jurisdiction of arbitrators (Article 16), provisional measures (Article 17), the conduct of arbitral proceedings including language, seat, and procedures

New York Convention 1958 in Practice (Cameron May 2008) 21.

³⁰ UNCITRAL, Report of the Secretary-General on the Possible Features of a Model Law on International Commercial Arbitration UN Doc A/CN.9/207 (1981) XII *Yearbook of the United Nations Commission on International Trade Law* 75.

(Articles 18-26), evidence-taking and discovery (Article 27), the applicable substantive law (Article 28), arbitral awards (Articles 29-33), setting aside or annulling awards (Article 34), and the recognition and enforcement of foreign awards, including grounds for non-recognition (Articles 35-36).

The Model Law explicitly establishes a principle of judicial non-intervention³¹ in the arbitral process. It also upholds the parties' autonomy regarding arbitral procedures³² and, in the absence of agreement between the parties, grants the tribunal authority to determine such procedures.³³ The fundamental approach of the UNCITRAL Model Law towards arbitral proceedings is to outline a basic set of procedural rules that the parties are generally free to modify by agreement, subject to a limited number of essential mandatory principles of fairness, due process, and equality of treatment.³⁴ Additionally, the Model Law includes provisions for judicial assistance to the arbitral process in certain aspects, such as provisional measures, the constitution of a tribunal, and evidence-taking.³⁵ The Model Law and its revisions signify a notable progression beyond the New York Convention, aiming to establish a predictable "pro-arbitration" legal framework for commercial arbitration. Similar to the New York Convention, the effectiveness of the Model Law ultimately relies on its interpretation and application by national courts.

³¹ UNCITRAL Model Law on International Commercial Arbitration art 5.

³² UNCITRAL Model Law on International Commercial Arbitration art 19(1).

³³ UNCITRAL Model Law on International Commercial Arbitration arts 19(2) and 24(1).

³⁴ UNCITRAL Model Law on International Commercial Arbitration art 18 ('The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case') and art 24(2) ('The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents').

³⁵ UNCITRAL Model Law on International Commercial Arbitration arts 9, 11 - 13 and 27.

As of the end of 2023, legislation based on or influenced by the Model Law has been adopted in 91 States in a total of 124 jurisdictions,³⁶ among them includes 6 of the 10 ASEAN Countries (Brunei Darussalam, Cambodia, Malaysia, Myanmar, Philippines, Singapore, Thailand). The German Ministry of Justice explained several reasons for adopting the UNCITRAL Model Law during Germany's enactment of legislation largely based on the Model Law:³⁷

“If we want to reach the goal that Germany will be selected more frequently as the seat of international arbitrations in the future, we have to provide foreign parties with a law that, by its outer appearance and by its contents, is in line with the framework of the Model Law that is so familiar all over the world. This is necessary, in particular, in view of the fact that in negotiating international contracts, usually not much time is spent on the drafting of the arbitration agreement. The purpose of the Model Law, to make a significant contribution to the unification of the law of international arbitration, can only be met if one is willing to prefer the goal of unification instead of a purely domestic approach when it comes to the question of the necessity and the scope as well as to the determination of the contents of individual rules.”

From the reading of the above, we can identify that there are largely 3 main benefits of adopting the Model Law, accessibility, international uniformity and a

³⁶ UNCITRAL, ‘Status: UNCITRAL Model Law on International Commercial Arbitration’ <https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status> accessed 30 January 2026.

³⁷ Bundestags-Drucksache No 13/5274 (12 July 1996), reprinted in KP Berger, *The New German Arbitration Law* (Kluwer Law International 1998) 140, quoted in KP Berger, ‘The New German Arbitration Law in International Perspective’ (2000) 26 *Forum Internationale* 4.

tested structure. However, some distinguished practitioners view the Model Law as a conservative and excessively detailed foundation for national arbitration legislation.³⁸ Nevertheless, the Model Law's contributions to the international arbitral process are substantial, and it continues to be the predominant "model" for national legislation concerning international commercial arbitration. Crucially, courts in jurisdictions that have adopted the Model Law are starting to establish a reasonably consistent international body of precedent regarding its interpretation and application.³⁹ Various collections of these decisions are available, such as UNCITRAL's 2012 Digest of Cases⁴⁰, UNCITRAL's "CLOUT"⁴¹ database, and the McGill Model Arbitration Law Database.⁴²

Additionally, decisions in jurisdictions that have implemented the UNCITRAL Model Law have underscored the close connection between the Model Law and the New York Convention. Authorities under one instrument often inform decisions under the other. As one court aptly reasoned:⁴³

³⁸ Emmanuel Gaillard and John Savage (eds), *Fouchard Gaillard Goldman on International Commercial Arbitration* (Kluwer Law International 1999) para 204; see also Michael Kerr, 'Arbitration and the Courts: The UNCITRAL Model Law' (1985) 34 *International and Comparative Law Quarterly* 1, 19.

³⁹ Association for International Arbitration, *The UNCITRAL Model Law on International Commercial Arbitration: 25 Years* (2010).

⁴⁰ UNCITRAL, *Digest of Case Law on the Model Law on International Commercial Arbitration* (2012).

⁴¹ UNCITRAL, *Case Law on UNCITRAL Texts (CLOUT)*
<https://www.uncitral.org/uncitral/en/case_law.html>
accessed 30 January 2026.

⁴² McGill University, *McGill Model Arbitration Law Database* <<https://www.maldb.org>>
accessed 30 January 2026.

⁴³ *TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia* [2013] HCA 5.

“The origin of some of [the Model Law’s] key provisions, including Arts 35 and 36, may be traced to provisions of the [New York Convention] ... Those considerations of international origin and international application make imperative that the Model Law be construed without any assumptions that it embodies common law concepts or that it will apply only to arbitral awards or arbitration agreements that are governed by common law principles. The first of those considerations makes equally imperative that so much of the text of the Model Law as has its origin in the New York Convention be construed in the context, and in the light of the object and purpose, of the New York Convention.”

These developments are of particular importance given the constitutional character of the Convention, which foresees and requires decisions by national courts to give effect to the broad terms of the Contracting States under Articles II, III and V.

4. Arbitration Agreement

Against the backdrop of the foregoing analysis of the overarching legal framework—encompassing the New York Convention, which safeguards the enforceability of arbitral awards, and the Model Law on International Commercial Arbitration, which serves to harmonize arbitration procedures across jurisdictions—this study now shifts its focus to the foundational element underpinning the entire arbitral process: the arbitration agreement. A valid arbitral proceeding cannot be instituted in the absence of a valid arbitration agreement, which constitutes the quintessential embodiment of party autonomy. By concluding such an agreement, the parties exercise their autonomous right to exclude their disputes from the adjudicative jurisdiction of national courts and to

submit such disputes for resolution by a private arbitral tribunal instead.

4.1 Types of Arbitration Agreement⁴⁴

There are two principal categories of arbitration agreement: arbitration clauses and submission agreements. First, arbitration clauses, which deal with future disputes, are the most common form. These are forward-looking provisions that parties insert into their commercial contracts before any dispute arises. Typically, they provide that “any dispute arising out of or in connection with this contract shall be referred to arbitration.” Such clauses are often concise, drawing on standard model wording recommended by arbitral institutions such as the ICC, SIAC, LCIA, or AIAC.

Historically, arbitration clauses were sometimes referred to as “midnight clauses” — a rather evocative term reflecting the fact that they were often added hastily, at the end of lengthy contract negotiations, sometimes literally at midnight. Parties, eager to finalise their deal, would give little thought to how potential disputes might be resolved in the future. As a result, many of these hastily drafted clauses were pathological — incomplete, ambiguous, or internally inconsistent. Inevitably, such defects gave rise to jurisdictional challenges and procedural complications later on.

However, in modern international commerce, parties and lawyers have grown increasingly aware of the crucial importance of drafting clear and enforceable arbitration clauses. After all, an entire contractual relationship — and the

⁴⁴Nigel Blackaby and others, *Redfern and Hunter on International Arbitration: Student Version* (7th edn, OUP 2023) paras 2.01 – 2.14.

enforcement of rights arising from it — may ultimately depend on a single dispute resolution provision. A well-drafted arbitration clause provides not only certainty but also efficiency and predictability in the resolution of potential disputes.

The second category is the submission agreement, also known by its French term *compromis*. Unlike the arbitration clause, a submission agreement is concluded after a dispute has already arisen. Because the nature and scope of the dispute are already known, such agreements tend to be more detailed and tailored to the circumstances of the particular conflict. A submission agreement often specifies the seat of arbitration, the applicable substantive law, the appointment of arbitrators, and sometimes even procedural arrangements, such as document production, the exchange of witness statements, and hearing timetables.

Negotiating a submission agreement, however, is often far more challenging than agreeing to a pre-dispute arbitration clause. By the time a dispute arises, relations between the parties have typically deteriorated, and there is little appetite for compromise. Each side tends to propose procedural terms that serve its own strategic interests — for example, the claimant may want a swift process, while the respondent may seek delay. Consequently, reaching consensus on a submission agreement can be a long and difficult process. For these reasons, submission agreements are now much less common than arbitration clauses. Most commercial parties prefer to anticipate and plan for dispute resolution at the outset of their contractual relationship, rather than after a dispute has already erupted.

4.2 Doctrine of Separability

Having discussed the nature and types of arbitration agreements, it is important to appreciate one of the most fundamental legal doctrines that underpin the effectiveness and autonomy of arbitration — the Doctrine of Separability. This doctrine flows directly from the principle that the agreement to arbitrate is the foundation stone of the arbitral process. However, as we have seen, the arbitration clause is usually contained within a broader commercial contract — the “main contract.” A critical legal issue arises when the main contract is alleged to be invalid, void, or terminated: whether the arbitration clause remains effective.

The doctrine of separability refers to the autonomy of an arbitration clause. This theory considers the arbitration clause (or agreement) to be independent from the contract including it. In other words, there are conceptually two separate arrangements between the parties, and it may be established prior to the latter. The arbitration agreement emphasises the parties' commitment to use arbitration to resolve current and future disputes. Meanwhile, the main contract is the underlying agreement that is subject to arbitration if a disagreement develops.

This doctrine dictates that where the main contract is ruled defective, it will not automatically invalidate the arbitration agreement. Likewise, if the main contract is valid, that alone will not rescue an otherwise defective arbitration agreement. Moreover, if the arbitration agreement is deemed to be invalid, the main contract is not rendered invalid. The principle of separability is widely accepted in international arbitration. One prominent example is the Model Law's inclusion of the separability doctrine, specifically in Article 16(1):

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

Many other countries have adopted statutory frameworks similar to section 16(2), which allow the arbitral tribunal to decide its jurisdiction as well as the validity of the arbitration agreement apart from the contract. The doctrine of separability has also been mentioned and upheld in numerous case law. For example in the case of *Lesotho Highlands Development Authority v Impregilo SpA*⁴⁵, Lord Steyn said that separability is now ‘part of the very alphabet of arbitration law’. Furthermore in *Beijing Jianlong Heavy Industry Group v Golden Ocean Group*⁴⁶ the court considered the validity of arbitration clauses contained in guarantees that were ‘unenforceable by reason of illegality’. Mackie QC J upheld the doctrine of separability, and said that:

“... an arbitration agreement may be rendered void or unenforceable if it is directly impeached on grounds which relate to the arbitration agreement itself and are not merely a consequence of the invalidity of the underlying contract.”

⁴⁵ *Lesotho Highlands Development Authority v Impregilo SpA* [2005] UKHL 43.

⁴⁶ *Beijing Jianlong Heavy Industry Group v Golden Ocean Group* [2013] EWHC 1063 (Comm).

5. Regional updates

After analyzing the legal foundations of international arbitration, this chapter turns to the latest developments in key jurisdictions worldwide, some of the most significant recent developments and trends in international arbitration.

5.1 United Kingdom⁴⁷

On 1 August 2025, the Arbitration Act 2025 officially came into force, marking the most significant reform of the UK's arbitration framework since the original Arbitration Act 1996. This reform followed an extensive review by the Law Commission of England and Wales, which sought to modernize the 1996 Act, strengthen London's position as a global arbitration hub, and ensure that the legislative framework remains efficient, predictable, and aligned with best practices worldwide. The 2025 Act preserves the solid foundation of the 1996 Act — which has served international commerce remarkably well — while introducing a series of targeted updates aimed at clarity, procedural efficiency, and fairness. Let me highlight some of the key reforms.

5.1.1 Governing Law of the Arbitration Agreement

One of the most important clarifications concerns the governing law of the arbitration agreement. Under the old framework, this question often led to extensive litigation, particularly in cases where the parties failed to specify the governing law. The English courts had adopted various approaches, most notably in *Enka v Chubb* (2020), where the Supreme Court held that, in the

⁴⁷ Andrew Cannon and Elizabeth Kantor, 'A New UK Arbitration Act 2025: The Draft Arbitration Bill Receives Royal Assent' (Herbert Smith Freehills Kramer, Arbitration Notes, 25 February 2025) <https://www.hsfkramer.com/notes/arbitration/2025-02/A-new-UK-Arbitration-Act-2025--the-draft-Arbitration-Bill-receives-Royal-Assent> accessed 24 October 2025.

absence of express agreement, the arbitration agreement was governed by the law of the main contract, unless that choice was inconsistent with the seat of arbitration.

The new Arbitration Act 2025 resolves this uncertainty once and for all. It establishes a default rule: where the parties have not expressly chosen a governing law, the arbitration agreement will be governed by the law of the seat. This rule not only codifies the majority approach from *Enka* but also brings greater predictability and coherence to English-seated arbitrations, ensuring that the governing law will generally be one that supports and upholds arbitration rather than undermining it.

5.1.2 Summary Disposal of Claims and Defences

Another important innovation is the introduction of an express power for tribunals to make summary determinations. Arbitrators may now dismiss claims or defences that have no real prospect of success, using the same test applied by the English courts. This is a notable step towards enhancing efficiency and reducing costs, ensuring that hopeless claims cannot be used to delay proceedings or increase expenses unnecessarily. While this mechanism mirrors court litigation practice, it remains non-mandatory, parties may opt out if they wish to preserve a more traditional, fully developed process. However, this development demonstrates the UK's commitment to maintaining arbitration as a cost-effective and time-efficient mechanism for dispute resolution.

5.1.3 Strengthened Arbitrator Immunity

The 2025 Act also strengthens the immunity of arbitrators, which is vital to safeguarding their independence and confidence in decision-making. Under the

revised law, arbitrators are now protected from liability for costs even if they are removed following a party’s application, provided they have not acted in bad faith. They are also protected from liability upon resignation, unless that resignation is found to be unreasonable in all the circumstances. These changes are designed to encourage capable professionals to serve as arbitrators without fear of personal exposure to litigation or cost orders. At the same time, the “bad faith” exception ensures accountability in cases of serious misconduct.

5.1.4 Enhanced Duty of Disclosure

Next, the Act codifies a statutory duty of disclosure — a reform inspired by the UK Supreme Court’s decision in *Halliburton v Chubb* (2020). Arbitrators must now disclose any circumstances that might reasonably give rise to justifiable doubts as to their impartiality. This duty is ongoing and applies both to matters the arbitrator actually knows and those they ought reasonably to know. The reform aligns English law with international best practice, including the IBA Guidelines on Conflicts of Interest, and emphasizes the importance of transparency. The purpose is not to demand perfection or absolute independence which is often unrealistic, but to ensure that parties have full confidence in the fairness of the process.

5.1.5 Jurisdictional Challenges and Finality of Awards

The new legislation also refines the approach to jurisdictional challenges under section 67 of the 1996 Act. Under the old system, parties could often relitigate the entire question of jurisdiction before the court, leading to unnecessary duplication, delay, and cost. The 2025 Act limits this practice. Courts are now directed to show greater deference to the tribunal’s findings and to avoid a complete re-hearing unless there are compelling reasons to do so. This reform

reinforces the finality and efficiency of arbitral proceedings, key values at the heart of the arbitration process.

5.2 China⁴⁸

China's arbitration landscape has entered a transformative era. The past year has witnessed unprecedented developments, both legislative and institutional, signalling China's commitment to becoming a global leader in international dispute resolution. The most significant milestone came on 12 September 2025, with the long-awaited adoption of the revised Arbitration Law of the People's Republic of China, set to take effect on 1 March 2026. This reform marks the first comprehensive overhaul of China's arbitration legislation since its original enactment in 1995, following limited amendments in 2009 and 2017.

This New Arbitration Law represents a major step in aligning China's arbitration framework with international standards and in enhancing its attractiveness for cross-border commercial arbitration. It introduces progressive concepts such as the seat of arbitration, the recognition of ad hoc arbitration in certain designated areas, and the authorisation for foreign arbitral institutions to administer foreign-related arbitrations within Mainland China — particularly in pilot free trade zones and the Hainan Free Trade Port. Article 81 of the new law formally codifies the concept of the seat of arbitration — a principle long recognised in judicial practice but previously absent from legislation. This not only clarifies the applicable

⁴⁸ Louise Azmi and Ning Huang, 'Significant strides in progressing China's arbitration regime' (Law.asia, 2025) <<https://law.asia/china-arbitration-reform-2025/>> (accessed 24 October 2025), See also: Weina Ye, Cathy Liu, Kathryn Ye et al., 'PRC adopts new Arbitration Law' (Herbert Smith Freehills Kramer – Arbitration Notes, 20 October 2025)<<https://www.hsfkramer.com/notes/arbitration/2025-10/prc-adopts-new-arbitration-law>> (accessed 24 October 2025)

procedural law and supervisory jurisdiction but also reinforces the territoriality principle that underpins international arbitration worldwide.

Article 86 goes further, providing a clear legal basis for foreign arbitral institutions to establish offices and administer foreign-related arbitrations in specified regions. This provision transforms what was once a pilot regulatory experiment in cities like Shanghai and Beijing into a nationwide legislative framework, signalling China's openness to greater international participation in its dispute resolution market. Equally significant is the measured introduction of ad hoc arbitration under Article 82. For the first time, parties may now resolve certain foreign-related disputes, particularly those involving enterprises registered within pilot free trade zones and the Hainan Free Trade Port — through non-institutional arbitration. While such arbitrations must be registered with relevant arbitration associations for administrative purposes, this development marks an important step towards procedural flexibility and party autonomy within China's arbitration ecosystem.

The New Arbitration Law also strengthens the role and obligations of arbitrators. It formalises the power of co-arbitrators to jointly appoint a presiding arbitrator (Article 43) and expands arbitrators' disclosure obligations (Article 45), requiring them to promptly declare any circumstances that might cast doubt on their independence or impartiality. These provisions reflect best international practices already adopted by China's leading arbitral institutions and ensure uniform standards across the country. Other key updates include a shortened time limit for setting aside arbitral awards, now reduced from six months to three, aligning with the UNCITRAL Model Law, and express support for Chinese arbitral

institutions to establish overseas offices and strengthen cooperation with foreign arbitral bodies and international organisations.

At the policy level, reform has been driven by high-level government directives. In July 2024, the Third Plenary Session of the 20th Central Committee of the Communist Party of China announced a resolution to “cultivate world-class international arbitration institutions.” This represents a significant endorsement of arbitration as a strategic national priority. The Ministry of Justice followed up with concrete initiatives to implement this vision, identifying 22 leading domestic institutions to be developed into international-standard arbitral bodies. These include the China International Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission (BAC/BIAC), the Shanghai International Economic and Trade Arbitration Commission (SHIAC), and the Shenzhen Court of International Arbitration (SCIA).

China currently has 285 arbitration institutions, with over 60,000 registered arbitrators, including more than 3,400 foreign professionals. In 2024 alone, these institutions collectively handled more than 4,300 foreign-related cases, with a combined value of RMB197.8 billion, or roughly USD27 billion. This remarkable scale, combined with strong government support and a growing international orientation, reflects China’s determination to build arbitration institutions capable of competing with established global centres such as London and Singapore. The ultimate goal is to develop “world-class arbitration with Chinese characteristics”, institutions that meet international standards while reflecting China’s legal culture and policy priorities.

5.3 Singapore⁴⁹

Turning now to Singapore, one of the most established arbitration hubs in the world. The past year has also seen notable movement in legislative and policy reform aimed at fine-tuning its arbitration framework. Earlier this year, Singapore's Ministry of Law completed a public consultation on proposed amendments to the International Arbitration Act 1994 (IAA). This review reflects Singapore's continued commitment to ensuring that its arbitration legislation remains robust, efficient, and aligned with global best practices. The proposed reforms specifically target the post-award phase, particularly in relation to applications to set aside arbitral awards — an area crucial to maintaining user confidence in Singapore as a reliable and arbitration-friendly jurisdiction.

5.3.1 Empowering Courts to Make Costs Orders After Successful Set-Aside Applications

At present, there exists a lacuna in the IAA. While Section 10(7) empowers courts to award costs when a party successfully challenges a tribunal's jurisdictional ruling, there is no equivalent provision for costs following a successful set-aside application under Section 24 of the IAA or Article 34(2) of the UNCITRAL Model Law. The Ministry has proposed filling this gap by giving courts discretion to issue costs orders following successful set-aside applications — or to remit the issue

⁴⁹ Ashish Chugh and Darrell Lee, 'Staying Ahead of the Curve – A Review of the Recommended Changes to the Singapore International Arbitration Act 1994' (Global Arbitration News, 16 September 2025) <<https://www.globalarbitrationnews.com/2025/09/16/staying-ahead-of-the-curve-a-review-of-the-recommended-changes-to-the-singapore-international-arbitration-act-1994/>> accessed 24 October 2025; see also Alastair Henderson, Gitta Satryani, Tomas Furlong, Daniel Waldek, Daniel Chia and Jeet H Shroff, 'Singapore: Amending the Set-Aside Regime in its International Arbitration Statute' (Herbert Smith Freehills Kramer, Arbitration Notes, June 2025) <https://www.hsfkramer.com/en_US/notes/arbitration/2025-06/singapore-amending-set-aside-regime-international-arbitration-statute> accessed 24 October 2025.

of costs back to the arbitral tribunal, provided both parties consent and it serves the interests of justice.

This proposal promotes fairness and judicial completeness; however, requiring mutual party consent for remission could in practice create delays, especially in cases where the tribunal remains best placed to determine costs efficiently. The consultation therefore invites further consideration on balancing judicial discretion with procedural practicality.

5.3.2 Leave Requirement for Appeals to the Court of Appeal

Another key proposal is the introduction of a leave requirement for appeals to the Court of Appeal following unsuccessful set-aside applications. Currently, such appeals are automatic — a feature that, while protective of appellate rights, can also prolong proceedings and increase costs. The new proposal, consistent with the approach in Hong Kong and England & Wales, would require parties to obtain leave before appealing. This change would streamline Singapore's post-arbitral process, ensuring that only appeals raising substantial or significant questions of law proceed. To maintain efficiency, it has been suggested that such leave applications be determined swiftly, preferably without a hearing unless deemed necessary, and potentially coupled with requirements such as security for costs or deposit of award sums.

5.3.3 Time Limit for Filing Set-Aside Applications

Under Article 34(3) of the Model Law, the current time limit for filing a set-aside application is three months from the date of receiving the award. The consultation recommended retaining this timeframe, but allowing courts limited discretion to extend it in exceptional cases involving fraud or corruption, where the relevant

facts may emerge only later. Some commentators have proposed a more calibrated approach — shortening the general period to two months while granting judicial discretion for extensions in specific cases — thereby promoting procedural discipline while safeguarding fairness.

Taken together, these reforms reflect Singapore’s proactive and consultative approach to legislative development in international arbitration. The Ministry of Law’s willingness to engage with stakeholders, including practitioners, arbitral institutions, and international law firms, underscores its vision to keep Singapore at the forefront of global arbitration practice.

6. Developing Trends

6.1 Artificial Intelligence

The integration of Artificial Intelligence (AI) has become a prominent trend in international arbitration, affecting multiple stages of dispute resolution. Once perceived as a conservative domain resistant to technological disruption, international arbitration is now witnessing the steady integration of AI tools across various stages of the dispute resolution process. From document review to award drafting, AI is emerging as an indispensable assistant to both arbitrators and practitioners. Yet, as with all technological innovations, its use invites a range of legal, ethical, and procedural considerations.

AI’s current role in arbitration is largely supportive rather than substitutive, aimed at enhancing human decision-making rather than replacing it. Common use cases include:

6.1.1 Document Review and Legal Research

AI-driven tools can analyse extensive sets of documents to identify relevant evidence, patterns, and inconsistencies. Natural language processing (NLP) allows algorithms to extract key information from pleadings, contracts, and correspondence, accelerating the discovery and research process. Predictive analytics also helps parties evaluate case strengths and probable outcomes. These applications have proven particularly valuable in complex construction and investment arbitrations involving voluminous evidence. For example, Kira Systems⁵⁰ and Luminance⁵¹ are widely used for document review and due diligence. Both platforms employ machine learning to identify clauses and anomalies across thousands of pages. In arbitration, firms use them to review contracts and disclosure bundles efficiently.

6.1.2 Transcription, Translation, and Case Management

In cross-border arbitrations, AI transcription and translation tools improve communication efficiency by generating real-time transcripts and multilingual outputs. Case management systems integrated with AI are now used to organize documents, tag evidence, and even automate procedural correspondence.⁵² Such tools are enhancing administrative precision and allowing tribunals to focus

⁵⁰ Kira Systems, ‘Kira Systems | LinkedIn’ (LinkedIn) <<https://www.linkedin.com/company/kirasystems/?originalSubdomain=ca>> accessed 24 October 2025.

⁵¹ Luminance Technologies Ltd, ‘Luminance: Legal-Grade™ AI for the Legal Profession’ (Luminance 2025) <<https://www.luminance.com/>> accessed 24 October 2025.

⁵² White & Case LLP, ‘2025 International Arbitration Survey – The Path Forward: Realities and Opportunities in Arbitration’ (2025) <<https://www.whitecase.com/insight-our-thinking/2025-international-arbitration-survey-arbitration-and-ai>> accessed 24 October 2025.

on substantive matters. For example, Verbit⁵³ and Otter.ai⁵⁴ provide AI-based real-time transcription services used in arbitration hearings. Meanwhile, Opus 2⁵⁵ integrate AI to manage case files, link exhibits, and support hybrid or virtual hearings.

6.1.3 Decision-Support and Predictive Analytics

Although still in developmental stages, AI is being tested to predict arbitral outcomes or recommend procedural strategies by analysing past awards and case data. However, given that many arbitral awards remain confidential, the predictive power of such tools remains limited and potentially biased. For example, Lex Machina⁵⁶ and Premonition⁵⁷ offer litigation and arbitration analytics that predict case outcomes based on historical data.

6.1.4 Pros and Cons of using AI

The advantages of adopting artificial intelligence in arbitration are increasingly evident across practice and procedure. Automation of document analysis and administrative tasks has significantly reduced the duration of proceedings, leading to substantial efficiency gains and time savings. By streamlining

⁵³ Verbit, ‘Verbit: Professional AI Transcription & Captioning Services’ (Verbit 2025) <<https://verbit.ai/>> accessed 24 October 2025.

⁵⁴ Otter.ai Inc, ‘Otter.ai: Meeting Agent - AI Notetaker, Transcription & Insights’ (Otter.ai) <<https://otter.ai/>> accessed 24 October 2025.

⁵⁵ Opus 2, ‘Opus 2 - APAC Region’ (Opus 2) <<https://www.opus2.com/en-apac/>> accessed 24 October 2025.

⁵⁶ Lex Machina, ‘Lex Machina | Legal Analytics Platform’ (LexisNexis 2025) <<https://www.lexisnexis.com/en-us/products/lex-machina.page>> accessed 24 October 2025.

⁵⁷ Premonition Analytics, ‘The World’s Largest Litigation Database’ (Premonition.ai) <<https://premonition.ai/>> accessed 24 October 2025.

traditionally labour-intensive work such as document review, transcription, and procedural drafting, AI also lowers overall costs, thereby making arbitration more accessible to a wider range of parties. Moreover, AI tools enable enhanced data analysis by identifying trends, drawing correlations, and offering outcome forecasts that assist counsel and clients in developing effective case strategies. The technology also plays a vital role in supporting multilingual and virtual proceedings, as AI-powered translation and transcription services improve accessibility and comprehension in cross-border disputes. Finally, automated drafting functions contribute to greater consistency and accuracy, ensuring uniformity and reducing clerical errors in procedural orders and arbitral awards.

Nevertheless, despite these notable benefits, the use of AI in arbitration presents several challenges that cannot be overlooked. A primary concern is transparency, often referred to as the “black box” problem, since many AI systems operate on opaque algorithms that lack explainability, thereby raising accountability concerns when such systems are used to inform arbitral reasoning. Data bias and the limited availability of training datasets also pose risks; as relatively few arbitral awards are publicly accessible, AI tools often rely on incomplete or skewed data, which can result in biased or unreliable conclusions. Confidentiality and data security further complicate adoption, as the use of third-party AI services may expose sensitive case information to external threats if not adequately safeguarded. Additionally, the unconsented use of AI could undermine procedural fairness and the equality of arms between parties, potentially jeopardizing the enforceability of resulting awards. Lastly, overreliance on automation may erode the arbitrator’s independent judgment and contextual understanding, which remain essential to maintaining the integrity of the arbitral process.

Recognising these emerging concerns, the arbitration community has begun developing and issuing formal guidance to regulate the responsible use of artificial intelligence in arbitral proceedings. In 2025, the Chartered Institute of Arbitrators (CI Arb) released its Guidelines on the Use of Artificial Intelligence in Arbitration,⁵⁸ which set out key principles to preserve the integrity and fairness of the process. The Guidelines emphasise that arbitrators remain fully responsible for the decisions they render and must not delegate their judgment to an AI system. They further require that any AI tool employed during the proceedings be transparent and verifiable, that parties be informed of its use and given the opportunity to comment, and that all AI-generated outputs be independently reviewed and verified by the human decision-maker. Complementing this initiative, Norton Rose Fulbright's 2025 report *New Frontiers: Regulating Artificial Intelligence in International Arbitration*⁵⁹ similarly advocates for greater procedural transparency. The report recommends that arbitral tribunals disclose any use of AI in procedural orders, ensure strict adherence to confidentiality and data protection obligations, and maintain detailed logs of AI-generated material to enhance accountability and safeguard the legitimacy of the arbitral process.

6.2 Sanctions and Their Growing Impact on International Arbitration

Another critical issue that continues to shape the landscape of international arbitration in 2025 is the question of economic sanctions. Over the past few

⁵⁸ Chartered Institute of Arbitrators, *Guideline on the Use of AI in Arbitration* (March 2025) <https://www.ciarb.org/media/m5dl3pha/ciarb-guideline-on-the-use-of-ai-in-arbitration-2025-final_march-2025.pdf> accessed 24 October 2025.

⁵⁹ Tamlyn Mills and Mrithula Shanker, 'New Frontiers: Regulating Artificial Intelligence in International Arbitration' (Norton Rose Fulbright 2025) <<https://www.nortonrosefulbright.com/en/knowledge/publications/3cb82b55/new-frontiers-regulating-artificial-intelligence-in-international-arbitration>> accessed 24 October 2025.

years, we have witnessed a steady increase in the use of sanctions as a tool of foreign policy, particularly following Russia’s invasion of Ukraine in 2022, and amidst the escalating strategic and economic competition between major powers, including the United States, the European Union, and China.

These developments have not only created complex challenges for global trade and investment but have also had a significant ripple effect on international arbitration, influencing almost every stage of the arbitral process. Sanctions have moved from being a peripheral issue to becoming a central feature of modern arbitration practice, often determining not only the substance of disputes but also their procedural viability and enforceability. In many cases, the existence or imposition of sanctions gives rise to the dispute itself—for example, where one party becomes unable to perform its contractual obligations due to sanctions-related restrictions. However, the impact of sanctions extends far beyond the merits of the dispute and now touches on a wide array of procedural and practical concerns.

First, sanctions affect the arbitrability of disputes. Certain jurisdictions may deem disputes involving sanctioned parties or subject matter to be non-arbitrable on the grounds of public policy or national security. This can depend on the law governing the arbitration agreement, the seat of arbitration, or the governing law on the merits. Second, sanctions influence the choice of legal representation. Parties may find themselves unable to instruct counsel from sanctioned jurisdictions, or conversely, lawyers may be prohibited from representing sanctioned clients without obtaining a licence from their government’s sanctions authority.

Third, sanctions can complicate the constitution of arbitral tribunals. Arbitrators themselves may be subject to restrictions, or institutions administering arbitrations may be required to obtain licences to process payments involving sanctioned parties. Some institutions have responded proactively. For example, the LCIA obtained a general licence from the UK's sanctions authority in 2022 to allow it to handle cases involving sanctioned parties. In the United States, the New York City Bar Association has sought a similar general licence from the Office of Foreign Assets Control (OFAC) to permit U.S. persons to participate in arbitration proceedings involving sanctioned entities under certain conditions.

Sanctions issues also extend to the appointment of experts, where individuals may be unable to provide opinions or share data because of export controls or restrictions on dealing with sanctioned goods and technologies. Furthermore, sanctions directly affect the substance and enforcement of arbitral awards. Tribunals must consider whether sanctions excuse non-performance of a contract, whether a suspension or termination of obligations was lawful, and whether a party remains liable for damages. Even after an award is rendered, enforcement may be obstructed—for example, where a successful party's assets are frozen or where national courts refuse enforcement on public policy grounds.

Recent disputes involving Russian parties have starkly illustrated these challenges. Russian courts, invoking amendments to the Arbitrazh Code of Procedure, have increasingly claimed exclusive jurisdiction over disputes involving sanctioned entities. In one high-profile case between Gazprom's joint venture, RusChemAlliance LLC, and the German multinational Linde plc, Russian courts refused to recognize the parties' HKIAC arbitration clause, ordering Linde to cease arbitral proceedings in Hong Kong. Despite this, Linde

successfully obtained an anti-suit injunction from the Hong Kong courts to restrain RusChemAlliance from litigating in Russia, leading to directly conflicting judgments between national courts and arbitral tribunals.

In another instance, Russian courts went even further, allowing the seizure of over €700 million in assets held by European banks, despite the presence of valid arbitration clauses under English and ICC arbitration frameworks—decisions which directly contravene rulings by foreign courts. These examples reveal the deepening jurisdictional and enforcement tensions that sanctions have introduced into the international arbitration system.

Beyond these high-profile cases, sanctions raise profound systemic concerns for the arbitral community. The number of sanctions regimes has increased dramatically, with overlapping and sometimes contradictory measures imposed by different jurisdictions. The extraterritorial reach of certain sanctions—particularly those enacted by the United States and the European Union—creates additional complexity, often placing arbitrators and institutions in a position where compliance with one regime could mean violation of another.

Moreover, the ambiguity of many sanctions regulations, coupled with the growing number of authorities responsible for their enforcement, has created a heavy compliance burden for parties, arbitrators, experts, and arbitral institutions alike. Going forward, these developments underscore a vital point: sanctions are no longer a background consideration in arbitration; they are an integral and evolving challenge that must be addressed at every stage—from drafting arbitration clauses and appointing tribunals, to conducting proceedings and enforcing awards. As we look ahead, it will be increasingly important for parties,

counsel, and institutions to develop a sophisticated understanding of the interaction between sanctions law and arbitration practice.

7. Conclusion

In closing, international arbitration has firmly established itself as a cornerstone of global dispute resolution. Evolving from its origins in private commercial practice into a sophisticated and institutionalised system, it is now underpinned by a robust network of international conventions, model laws, and arbitral institutions. Instruments such as the New York Convention and the UNCITRAL Model Law have together created a uniform and predictable legal framework that facilitates the cross-border recognition and enforcement of arbitral awards. At the same time, foundational doctrines such as separability and the principle of party autonomy safeguard the independence and integrity of the arbitral process, ensuring that arbitration remains responsive to the needs of international commerce and investment.

The regional developments we have examined—in the United Kingdom, China, and Singapore—demonstrate that arbitration is not static but constantly adapting to meet the demands of fairness, efficiency, and modernisation. The UK’s reforms under the Arbitration Act 2025 reaffirm London’s leadership in ensuring procedural efficiency and judicial restraint. China’s comprehensive new Arbitration Law marks a milestone in its ambition to create “world-class arbitration with Chinese characteristics,” while Singapore’s continual fine-tuning of its legislative framework underscores its commitment to remain at the forefront of arbitration innovation in Asia. Together, these reforms signify an era of renewed confidence in arbitration as a truly international mechanism of justice.

Yet, the arbitration community also faces new frontiers. The growing influence of Artificial Intelligence and the complex implications of international sanctions are redefining how arbitrations are conducted and enforced. These challenges require balance—between technological efficiency and human judgment, between neutrality and geopolitical realities. Institutions and practitioners must ensure that technological adoption enhances, rather than undermines, the principles of due process, confidentiality, and fairness that form the foundation of arbitration. Likewise, navigating the intersection between sanctions law and arbitral autonomy demands prudence, consistency, and an unwavering commitment to the rule of law.

Looking ahead, the future of international arbitration will depend on its ability to remain responsive, principled, and inclusive. Ongoing dialogue among jurisdictions, arbitral institutions, and practitioners will be essential to shaping a system that not only resolves disputes efficiently, but also sustains confidence in cross-border commerce and international cooperation. At its best, international arbitration is more than a private mechanism of dispute resolution; it functions as a bridge between nations, legal traditions, and cultures.

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