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## International Arbitration

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## International Arbitration

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## **International Arbitration**

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International arbitration saw significant developments in 2019. Despite isolated setbacks, arbitration continues to grow as the preferred mechanism for dispute resolution in international business.

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## I. North America

### A. UNITED STATES

#### 1. *Delegation of Arbitrability*

The Supreme Court decided three arbitration cases in 2019, two of which addressed the delegation of arbitrability. In *Henry Schein v. Archer & White Sales*, the Court unanimously held that the “wholly groundless” exception is inconsistent with the Federal Arbitration Act (FAA) and precedent.<sup>2</sup> Under the “wholly groundless” doctrine, the Fifth Circuit and other Courts of Appeals determined that the court, rather than the arbitrator, should resolve threshold arbitrability questions if the argument for arbitration is “wholly groundless.” The Court explained that under the FAA, parties may agree to have an arbitrator decide “gateway” questions of arbitrability, if the agreement delegates that authority by “clear and unmistakable” evidence.<sup>3</sup> The Court reasoned that a court may not rule on the merits of an underlying claim that is delegated by contract to an arbitrator, “even if it appears to the court to be frivolous,”<sup>4</sup> and this applied with “equal force to the threshold issue of arbitrability.”<sup>5</sup> While the Court addressed the circuit split on the “wholly groundless” doctrine, it did not determine whether the arbitration agreement at issue in fact delegated the question of arbitrability to the arbitrator.

In *New Prime Inc. v. Dominic Oliveira*, the Court affirmed the First Circuit’s holding that (1) a court should decide for itself whether a particular dispute is excluded under section 1 of the FAA<sup>6</sup> before ordering arbitration, and (2) section 1’s “contracts of employment” exclusion applies to independent contractors as well as employees.<sup>7</sup>

#### 2. *Class Arbitration*

In a five to four decision, the Supreme Court held in *Lamps Plus Inc. v. Varela* that courts may not infer consent to class arbitration based on ambiguities in the arbitration agreement.<sup>8</sup> The district court had granted Lamps Plus’s motion to compel arbitration but, applying the California state-law principle of *contra proferentem* against Lamps Plus, had concluded

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2. *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524 (2019).

3. *Id.* at 531.

4. *Id.* at 529, (quoting *AT&T Technologies, Inc. v. Communications Worker*, 475 U.S. 643, 649-50 (1986)).

5. *Id.* at 530.

6. 9 U.S.C. § 1 (1947) (providing that the FAA does not apply “to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce”).

7. *New Prime Inc. v. Dominic Oliveira*, 139 S. Ct. 532, 537, 544 (2019).

8. *Lamps Plus Inc. v. Varela*, 139 S. Ct. 1407, 1419 (2019).

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that class-wide—not individual—arbitration was appropriate.<sup>9</sup> The Ninth Circuit had affirmed.<sup>10</sup>

Applying the holding in *Stolt-Nielsen v. AnimalFeeds Int’l Corp.* that compelling class arbitration must have a “contractual basis,”<sup>11</sup> the Supreme Court held that ambiguity in the contract could not provide the requisite basis.<sup>12</sup> Ambiguity was insufficient to reflect an intention by the parties to sacrifice the principal advantages of individual arbitration, namely, its informality, speed, and simplicity.<sup>13</sup> Further, the Court determined that application of the *contra proferentem* rule is “flatly inconsistent” with the FAA<sup>14</sup> because it seeks to vindicate public policy considerations rather than determine the parties’ intentions.<sup>15</sup>

Building on both *Lamps Plus* and *Henry Schein*, the Fifth Circuit in *20/20 Communications Inc. v. Crawford Inc.* determined that “class arbitrability is a gateway issue for courts, not arbitrators, to decide, absent clear and unmistakable language to the contrary.”<sup>16</sup>

### 3. *Enforcement of Awards*

#### a. Enforcement of ICSID Awards

In *Micula v. Gov’t of Romania*, the district court for Washington D.C. issued the first U.S. decision addressing the enforcement of an intra-E.U. investment treaty award since the judgment in *Slovak Republic v. Achmea BV*.<sup>17</sup> In *Achmea*, the Court of Justice of the European Union (CJEU) held that an arbitration clause in a Dutch-Slovak bilateral investment treaty (BIT) was invalid because it impermissibly allowed a tribunal, rather than an E.U. court, to interpret E.U. law.<sup>18</sup> In *Micula*, the court confirmed an ICSID award against Romania, concluding that *Achmea* did not foreclose the court’s jurisdiction under the arbitration exception of the Foreign Sovereign Immunities Act (FSIA).<sup>19</sup> The court reasoned that the concerns animating *Achmea*, namely “the un-reviewability of an arbitral tribunal’s determination of E.U. law by an E.U. court,” were not at issue.<sup>20</sup> Romania’s challenged actions occurred before it had joined the E.U., and the award did not concern substantive E.U. law.<sup>21</sup> It is uncertain how U.S. courts will proceed

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9. *Id.* at 1413.

10. *Id.*

11. *Id.* at 1415 (quoting *Stolt-Nielsen v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010)).

12. *Id.*

13. *Id.* at 1416.

14. *Lamps Plus*, 139 S. Ct. at 1418.

15. *Id.* at 1411.

16. *20/20 Comme’ns. Inc. v. Crawford Inc.*, 930 F.3d 715, 718-19 (5th Cir. 2019).

17. *Micula v. Gov’t of Romania*, 404 F. Supp. 3d 265, 268 (D.D.C. 2019).

18. *Id.* at 277.

19. *Id.* at 279.

20. *Id.*

21. *Id.*

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with other intra-E.U. investment treaty disputes, particularly if the challenged conduct occurred when a European State was an E.U. member.

In *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, the Third Circuit affirmed an order of the U.S. District Court for the District of Delaware granting attachment of shares in *Petróleos de Venezuela Holding, Inc.* (PDVH), the wholly-owned U.S. subsidiary of the Venezuelan state-owned oil company *Petróleos de Venezuela, S.A.* (PDVSA), to satisfy a USD 1.2 billion ICSID award against Venezuela.<sup>22</sup> The district court had jurisdiction to attach PDVSA's shares in PDVH under *Bancec*,<sup>23</sup> even though PDVSA was a non-party to the merits action, because it was an alter ego of the judgment debtor, Venezuela.<sup>24</sup> An exception to immunity under the FSIA on the merits of the case sustained jurisdiction throughout the proceedings, including those for post-judgment collection.<sup>25</sup> Applying the FSIA's commercial-activity exception, the Third Circuit found that attachment of PDVSA's shares was not barred by immunity.<sup>26</sup>

b. Enforcement of Annulled Awards

In *Esso Exploration v. Nigerian Nat'l Petroleum Corp.*, the Southern District of New York limited the scope of the controversial Second Circuit decision in *Pemex*, which confirmed an award despite it being annulled at the place of arbitration.<sup>27</sup> Esso sought to enforce a partially-annulled USD 1.8 billion award against Nigeria's state-owned oil company.<sup>28</sup> The Nigerian Court of Appeal agreed that the set-aside by the lower court was proper, but restored a portion of the award providing for non-monetary relief.<sup>29</sup> Judge Pauley denied Esso's motion to enforce the award, finding no support for the idea that a "district court can fashion a \$1.8 billion award" in damages where the restored part of the award included only declaratory and injunctive relief.<sup>30</sup> Esso also argued that the Nigerian court's interpretation of local law was contrary to legal precedent and was "the equivalent of a retroactive application of the law," analogous to the circumstances underlying *Pemex*.<sup>31</sup> The court disagreed: all of the laws were enacted before the dispute arose,

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22. *Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, 932 F.3d 126, 133 (3d Cir. 2019).

23. See *First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 628 (1983).

24. *Crystallex*, 932 F.3d at 138-39.

25. *Id.* at 138.

26. *Id.* at 152.

27. *Esso Expl. & Prod. Nigeria Ltd. v. Nigerian Nat'l Petroleum Corp.*, 397 F. Supp. 3d 323, 354 (S.D.N.Y. 2019) (citing *Corporación Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploración Y Producción*, 832 F.3d 92, 99 (2d Cir. 2016)).

28. *Id.* at 350.

29. *Id.* at 331.

30. *Id.* at 350.

31. *Id.* at 352.

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whereas in *Pemex*, “the Second Circuit’s primary concern was that Mexico changed its law after the petitioner obtained a preliminary award.”<sup>32</sup>

c. Claim Preclusion

In an issue of first impression, the Ninth Circuit held in *NTCH-WA, Inc. v. ZTE Corp.* that when a federal court sitting in diversity confirms an arbitration award, the preclusion law of the state where that federal court sits determines whether preclusion applies.<sup>33</sup> Here, the District Court for the Middle District of Florida confirmed the award denying NTCH-WA’s claims against ZTE USA, and the Eleventh Circuit affirmed.<sup>34</sup> Subsequently, NTCH-WA brought suit against ZTE Corp, the parent of ZTE USA, in the Eastern District of Washington.<sup>35</sup> The Ninth Circuit affirmed the district court’s dismissals of NTCH-WA’s claims, explaining that because a federal district court in Florida confirmed the award, Florida law governed its preclusive effect.<sup>36</sup> The claims were barred under Florida claim preclusion rules.

4. *Interest Rates Applied to Foreign Arbitral Awards*

In *LLC Komstroy v. Republic of Moldova*, the U.S. District Court for the District of Columbia confirmed an award against Moldova under the Energy Charter Treaty, but denied plaintiff’s request to apply the state “statutory rate” of interest.<sup>37</sup> Although state law prescribed the prejudgment interest rate in diversity cases, the court had federal subject-matter jurisdiction and could thus follow the D.C. Circuit’s preference for the prime rate in cases confirming foreign arbitral awards.<sup>38</sup>

Separately, in *OI European Grp. BV v. Bolivarian Republic of Venezuela*, the D.C. District Court confirmed a USD 400 million ICSID award against Venezuela, applying the lower federal statutory rate as the post-judgment rate, and not the rate specified in the award.<sup>39</sup> Applying the common law doctrine of merger, the court concluded that a federal court’s confirmation of an award merges the award into the judgment, and the federal post-judgment rate presumptively applies.<sup>40</sup> While noting that parties may contract for a specific post-judgment rate, the court found no such intent.<sup>41</sup>

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32. *Id.* at 352 (emphasis in original).

33. *NTCH-WA, Inc. v. ZTE Corp.*, 921 F.3d 1175, 1178 (9th Cir. 2019).

34. *Id.* at 1178.

35. *Id.* at 1179.

36. *Id.* at 1181.

37. *LLC Komstroy v. Republic of Moldova*, No. 14-CV-01921, 2019 WL 3997385, at \*14 (D.D.C. Aug. 23, 2019).

38. *Id.*

39. *OI European Grp. B.V. v. Bolivarian Republic of Venezuela*, No. CV 16-1533, 2019 WL 2185040, at \*1 (D.D.C. May 21, 2019).

40. *Id.* at \*6.

41. *Id.*

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5. *Discovery Under 28 U.S.C. § 1782*

In *Abdul Latif Jameel Transp. Co. v. FedEx Corp.*,<sup>42</sup> the Sixth Circuit held that district courts may order discovery under § 1782 for use in proceedings before a private international arbitral tribunal. That decision conflicts with prior decisions of the Second and Fifth Circuits, which have found that the term “tribunal” applies only to “governmental or intergovernmental arbitral tribunals and conventional courts and other state-sponsored adjudicatory bodies.”<sup>43</sup>

In *In re del Valle Ruiz*,<sup>44</sup> the Second Circuit held that a district court has discretion to order the production of evidence located outside the United States, provided that the evidence is under the control of a party who is subject to the district court’s jurisdiction.<sup>45</sup>

B. CANADA

In *Telus Communications Inc. v. Wellman*, the Supreme Court of Canada confirmed that parties to a valid arbitration agreement must abide by their agreements, and that non-consumer parties to a valid arbitration agreement cannot “piggyback” onto consumer claims to avoid arbitration.<sup>46</sup>

Later, the Ontario Court of Appeal held that the arbitration clause in Uber’s Driver Services Agreement was invalid as an unlawful contracting out of Ontario’s Employment Standards Act and was unconscionable—reversing the lower court’s decision in *Heller v. Uber Technologies, Inc.*<sup>47</sup> The Supreme Court of Canada heard Uber’s appeal on November 6, 2019.

In *Instrubel v. Republic of Iraq*, the Quebec Court of Appeal confirmed a writ of seizure before judgment, allowing for garnishment of fees collected on behalf of the Iraqi Civil Aviation Authority by the International Air Transport Authority, headquartered in Montreal, in connection with two international arbitration awards against Iraq.<sup>48</sup>

C. NAFTA

The United States-Mexico-Canada Agreement (USMCA) was signed on November 30, 2018, but, as of December 2019, has been ratified only by Mexico (on June 19, 2019); accordingly, NAFTA remains in effect.<sup>49</sup>

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42. *Abdul Latif Jameel Transp. Co. v. FedEx Corp.* (In re Application to Obtain Discovery for Use in Foreign Proceedings), 939 F.3d 710, 714 (6th Cir. 2019).

43. See *El Paso Corp. v. La Comision Ejecutiva Hidroelectrica Del Rio Lempa*, 341 F. App’x 31, 33 (5th Cir. 2009); *Republic of Kazakhstan v. Biedermann Int’l*, 168 F.3d 880, 883 (5th Cir. 1999); *Nat’l Broad. Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184, 190 (2d Cir. 1999).

44. *In re del Valle Ruiz*, 939 F.3d 520, 524 (2d Cir. 2019).

45. *Id.*

46. *TELUS Commc’ns Inc. v. Wellman*, [2019] S.C.R. 19, para. 76 (Can.).

47. *Heller v. Uber Tech. Inc.*, (2018) O.N.C.S. 718, para. 47 (Can. Ont. Sup Ct. J.).

48. *Instrubel c. Republic of Iraq*, [2019] Q.C.C.A. 78 (Can. Qc.).

49. Miguel Angel Lopez & Dave Graham, *Mexico first to ratify USMCA trade deal, Trump presses U.S. Congress to do same*, REUTERS (June 19, 2019), <https://www.reuters.com/article/us->



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If NAFTA ultimately terminates with the full ratification of the USMCA, Annex 14-C of the USMCA provides that for investments made before NAFTA's termination, investors may continue to initiate arbitrations under NAFTA Chapter Eleven for three years.<sup>50</sup> This provision, however, does not apply to claims arising out of "covered government contracts" in "covered sectors" under Annex 14-E of the USMCA (i.e., contracts with a "national authority" of a state in the oil and natural gas, power generation, telecommunications, transportation, and infrastructure sectors).<sup>51</sup> With respect to investments made after termination of NAFTA, the USMCA has no provision for arbitration by Mexican or U.S. investors against Canada, or for Canadian investors against Mexico or the United States. Consequently, protections for new investments will be limited to those causes of action available under domestic law after the three-year phase-out.

Although Annex 14-D of the USMCA allows U.S. investors to initiate arbitrations against Mexico, and Mexican investors to initiate arbitrations against the United States, it limits the types of claims that can be brought.<sup>52</sup> Investors may claim direct expropriation, breach of national treatment, and MFN (but not in the establishment or acquisition of an investment). Fair and equitable treatment and full protection and security claims are limited to the, sometimes, narrow scope of customary international law. Indirect expropriation claims—which are among the most robust protections included in NAFTA—are excluded from USMCA arbitration. U.S. and Mexican investors may initiate arbitration only after they have sought relief in the other country's courts and either have obtained final judgment from a court of last resort or have waited thirty months.<sup>53</sup>

Canada is awaiting U.S. ratification,<sup>54</sup> which has been held up by Congressional demands for changes to the treaty's pharmaceutical provisions, as well as for tougher enforcement of Mexican labor reforms.<sup>55</sup>

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usa-trade-mexico-usmca/mexico-first-to-ratify-usmca-trade-deal-trump-presses-us-congress-to-do-same-idUSKCN1TK2U3.

50. Office of the U.S. Trade Rep., Exec. Office of the President, United-States-Mexico-Canada Agreement Text ch. 14 (2019), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [hereinafter USMCA].

51. *Id.*

52. *Id.*

53. *Id.*

54. Naomi Powell & Jesse Snyder, *USMCA: Ratification is getting there but 'difficult issues' remain*, FIN. POST (November 29, 2019 6:01 PM), <https://business.financialpost.com/news/economy/usmca-ratification-is-getting-there-but-difficult-issues-remain>.

55. David Lawder, *Mexico sees progress in talks to revise USMCA, says drug protections to ease*, REUTERS (December 4, 2019), <https://www.reuters.com/article/us-usa-trade-mexico/mexico-sees-progress-in-talks-to-revise-usmca-says-drug-protections-to-ease-idUSKBN1Y825X>.

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## II. Europe

### A. ENGLAND AND WALES

In England, the courts have issued a series of judgments clarifying the test for challenges to an arbitral award under section 68 (serious irregularity) of the Arbitration Act of 1996. In *K v. S*, the court held that challenges under section 68 are limited to questions of due process; such challenges cannot be directed against procedural orders,<sup>56</sup> nor can they be used to appeal points of law or fact.<sup>57</sup> In *Pakistan v. Broadsheet LLC*,<sup>58</sup> the court held that inadequate reasoning in an award does not amount to serious irregularity under section 68 and a tribunal does not have to deal with each point made by the parties. In *P v. D*,<sup>59</sup> a successful section 68 application, the court held that a core issue not put to a witness in cross-examination breached due process and principles of fairness. Finally, *Koshigi Ltd and another v. Donna Union Foundation* and another<sup>60</sup> illustrated that pursuing a weak section 68 application may result in indemnity costs being awarded.

### B. FRANCE

In September 2019, the Paris Court of Appeal rendered a decision regarding the enforcement of an arbitral award against Libya in connection with the seizure of a tourism-development concession previously granted to the claimant.<sup>61</sup> The decision clarified the criteria for determining whether a body is a state entity. The court mainly examined the extent of the functional independence of the entity (composition of its council, employees' status, tax exemptions, and state oversight).<sup>62</sup> The court determined that the body in this case, the Libyan Investment Authority, was a state entity despite its apparent independent status and funds.<sup>63</sup>

The court also analyzed the nature of the asset to be seized. If the state has not waived its immunity from enforcement, the claimant must prove that the state did not use assets specifically for purposes other than non-commercial public service ones.<sup>64</sup>

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56. The authority for the award instead of procedural order issue that was cited and confirmed was a decision handed down earlier in 2019: *ZCCM Investments Holdings PLC v. Kansanshi Holdings PLC and Kansanshi Mining PLC* [2019] EWHC (Comm) 1285 (Eng.).

57. *K v. S*. [2019] EWHC 2386 (Comm).

58. *Pakistan v. Broadsheet LLC* [2019] EWHC (Comm) 1832 (Eng.).

59. *P v. D* [2019] EWHC 1277 (Comm).

60. *Koshigi Ltd v. Donna Union Found.* [2019] EWHC (Comm) 122 [59] (Eng.).

61. Cour d'appel [CA] Paris, Sept. 5, 2019, 18/17592.

62. *Id.*

63. *Id.*

64. French law also specifies that the asset to be seized has to be connected with the entity against which the proceeding was directed ([C. Civ.] [French Code of Civil Enforcement Proceedings] L. 111-1-2).

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C. GERMANY

In a marked departure from prior case law, the Munich Higher Regional Court held that applications for a declaratory judgment on the invalidity of arbitrator appointments were inadmissible.<sup>65</sup> The German Supreme Court concluded that if an arbitrator or an expert violates his or her disclosure obligation, it provides an independent ground for his or her dismissal only if the violation itself raises doubts as to his or her impartiality; in particular, the weight of the undisclosed circumstances must be taken into account.<sup>66</sup>

The German Federal Ministry of Justice and Consumer Protection (BMJV) is increasingly supporting the initiative of Equal Representation in Arbitration, in which lawyers, arbitrators, company representatives, states, arbitration institutions, and academics involved in international arbitration aim to increase the representation of women as arbitrators.<sup>67</sup>

D. IRELAND

In *K&J Townmore Constr. Ltd. v. Kildare and Wicklow Educ. and Training Bd.*, the Irish High Court analyzed exceptions to the enforceability of arbitration agreements.<sup>68</sup> The parties had implemented various dispute resolution procedures, including expert determination, leading to a number of determinations being issued in K & J's favor.<sup>69</sup> The court held that an expert determination process is, by default, "final and binding."<sup>70</sup> Consequently, it held that the original agreement's conciliation clause was inapplicable and that the related arbitration clause was "inoperative."<sup>71</sup>

In *Cavanaghs of Charleville Ltd. v. Fitzpatrick*,<sup>72</sup> the High Court considered the prohibition on appeals of orders staying arbitration proceedings,<sup>73</sup> finding judicial review proper where, in staying arbitration, the Circuit Court had "made an error so fundamental that" it failed to remain within its

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65. Oberlandesgericht München [OLG München] [Higher Regional Court Munich] June 26, 2019, 34 SchH 6/18 (Ger.).

66. Bundesgerichtshof [BGH] [Federal Court of Justice] Jan. 31, 2019, I ZB 46/18 (Ger.); Viktoria Schneider et al., *The Consequences of the Non-Disclosure of Conflict of Interest on the Enforceability of Awards: The German Stance*, KLUWER ARB. BLOG (Oct. 19, 2019), [http://arbitrationblog.kluwerarbitration.com/2019/10/19/the-consequences-of-the-non-disclosure-of-conflict-of-interest-on-the-enforceability-of-awards-the-german-stance/?print=print&doing\\_wp\\_cron=1591316336.4024319648742675781250](http://arbitrationblog.kluwerarbitration.com/2019/10/19/the-consequences-of-the-non-disclosure-of-conflict-of-interest-on-the-enforceability-of-awards-the-german-stance/?print=print&doing_wp_cron=1591316336.4024319648742675781250) (discussing the above court decision).

67. See Bundesministerium der Justiz und für Verbraucherchutz [Federal Ministry of Justice and Consumer Protection], Arbitration, <https://www.bmjv.de/DE/Themen/GerichtsverfahrenUndStreitschlichtung/Schiedsgerichtsbarkeit/Schiedsgerichtsbarkeit.html>.

68. *K&J Townmore Constr. Ltd. v. Kildare and Wicklow Educ. and Training Bd.*, [2019] IEHC 666 (H. Ct.) (Ir.); see also Arbitration Act 2010 (Act No. 1/2010) sch. 1 ch. II art. 8(1) (Ir.), <http://www.irishstatutebook.ie/eli/2010/act/1/enacted/en/print>.

69. *K&J Townmore*, [2019] IEHC 666 ¶ 4.

70. *Id.* ¶ 91.

71. *Id.* ¶ 125.

72. *Cavanaghs of Charleville Ltd. v. Fitzpatrick* [2019] 161 IEHC (H. Ct.) (Ir.).

73. See Arbitration Act 2010 § 11.

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jurisdiction.<sup>74</sup> The Circuit Court had not applied the statutory test on exceptions to enforceability,<sup>75</sup> where judicial review was permitted.<sup>76</sup>

**E. RUSSIA**

In March 2019, further changes to arbitration legislation came into force. They address some aspects of the significant arbitration reforms implemented in 2015.<sup>77</sup>

First, the amendments made it easier and more transparent for administering institutions to apply for recognition as permanent arbitration institutions, which permits Russian and foreign institutions to administer arbitrations on a permanent (as opposed to ad hoc) basis.<sup>78</sup> If a foreign arbitral institution has not received such recognition, and Russia is the seat of arbitration, the arbitral institution's award is deemed to be ad hoc.

For foreign institutions seeking recognition, it is now sufficient to prove an internationally acknowledged reputation. This led to recognition of the HKIAC and VIAC.<sup>79</sup>

Second, disputes arising, inter alia, out of shareholders' agreements and claims challenging a company's transactions may be referred to arbitration if an arbitration agreement is in place between the parties to the shareholders' agreement or respective transaction.<sup>80</sup> This amendment replaced an excessive and widely criticized requirement of arbitration agreements between all shareholders of the company and the company itself.

**F. SPAIN**

Following a change in its magistrates, the High Court of Justice of Madrid, which decides actions to set aside arbitration awards rendered in Madrid (TSJ), seems once again to favor the recognition and enforcement of awards. During the last few years, the TSJ had applied a broad interpretation of public order that led to the annulment of awards after a review of the merits. But in two recent judgments,<sup>81</sup> the TSJ has rejected actions to set aside awards based on the breach of public order, clarifying that the scope of its control includes protection of the right of defense and

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74. *Cavanagh*, 161 IEHC at ¶ 36.

75. *Id.* ¶ 38.

76. *Id.* ¶ 36.

77. об арбитраже (третейском разбирательстве) в российской федерации [Law on the Incorporation of Amendments to the Federal Law 'On Arbitration in the Russian Federation' and to the Federal Law 'On Advertising'], Rossiiskaia Gazeta [Ros. Gaz.] Dec. 27, 2018 [hereinafter Amendments to Arbitration and Advertising].

78. *Id.* § 1.

79. See *The List of Foreign Arbitration Institutions Recognized by Permanent Arbitration Institutions*, MINISTRY OF JUST. OF THE RUSS. FED'N (July 11, 2019), <https://minjust.ru/ru/deyatelnost-v-sfere-treteyskogo-razbiratelstva/perechen-inostrannyh-arbitrazhnyh-uchrezhdeniy>.

80. Amendments to Arbitration and Advertising § 1.

81. S.T.S.J.M., Sept. 12, 2019 (R.G.D., No. 64/2018) (Spain); S.T.S.J.M., Sept. 12, 2019 (R.G.D., No. 46/2018) (Spain).

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requiring an adequate motivation of the award, but that it cannot correct the analysis of the facts or mistakes in the application of the law.

**G. SWEDEN**

In the first E.U. domestic court judgment since *Achmea* to address the enforceability of an award issued in an intra-E.U. BIT arbitration, the Svea Court of Appeal largely upheld two arbitral awards rendered in *PL Holdings v. Poland* under Poland's BIT with the Belgium-Luxembourg Economic Union.<sup>82</sup> The Court held that *Achmea* did not prohibit States and investors within the E.U. from entering into an implicit or express agreement to arbitrate a specific dispute based on the intentions of the parties, and it concluded that Poland's conduct in the arbitration evidenced such an agreement.<sup>83</sup> The Court also held that Poland's *Achmea*-based objection to the validity of the arbitration agreement was untimely and, thus, had been waived under the Swedish Arbitration Act.<sup>84</sup> The Swedish Supreme Court has agreed to review the decision.

**H. SWITZERLAND**

The Supreme Court considered the requirements of Article II of the New York Convention.<sup>85</sup> Before the Court was the question of whether the parties were properly compelled to arbitrate their dispute pursuant to Article II(3), where the Respondent was a non-signatory to the arbitration agreement. Claimant/Appellant argued that the lower court had erred in so ordering because there was no "agreement in writing" between Claimant and Respondent as required by Article II. In rejecting the appeal, the Court recalled its prior holdings that the written-form requirement of Swiss arbitration law applies only to the original arbitration agreement and does not prevent its subsequent extension to third parties. The Court held that this case law applies equally under Article II of the New York Convention, which does not prevent a written arbitration agreement duly signed by the (original) parties from being extended to third parties.<sup>86</sup> The Court left open what exactly Article II(2) requires as to form and whether or not its definition of an "agreement in writing" is exhaustive.<sup>87</sup>

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82. Hovrätt [HovR] [Court of Appeals] 2019-02-22 T 8538-17 (Swed.), <https://www.italaw.com/sites/default/files/case-documents/italaw10374.pdf>.

83. *Id.* § 3.2.3.

84. *Id.* § 5.1.

85. Bundesgericht (BGer) [Federal Supreme Court] Apr. 17, 2019, 145 ENTSCHEIDUNGEN DES SCHWEIZERISCHEN BUNDESGERICHTS [BGE] III 199 (Switz.).

86. *Id.* § 2.4.

87. *Id.*

### I. UKRAINE

Ukraine adopted the Law on Concessions, which explicitly provides for free choice of dispute resolution under a concession agreement: mediation, expert determination, or commercial or investment arbitration.<sup>88</sup>

Ukrainian courts also considered enforcement of incorrectly drafted arbitral agreements and established that such agreements shall be enforced so long as it is possible to establish unequivocally which institution or rules the parties intended to choose.<sup>89</sup>

## III. Pacific Rim

### A. AUSTRALIA

In 2019, a report from the Western Australia Arbitration Initiative confirmed the increase in the number and value of domestic and international arbitrations in Australia, and that ACICA is currently gathering data in a nationwide survey.

Australian courts also maintained their pro-arbitration stance. In *Rinehart v. Hancock Prospecting Pty Ltd.*,<sup>90</sup> the High Court of Australia referred disputes concerning the validity of a deed and substantive claims regarding the management of a trust to arbitration. It adopted a pro-arbitration approach to interpretation, finding that the claims fell within an arbitration agreement which referred “any dispute under this deed” to arbitration.<sup>91</sup>

The High Court also made a significant ruling which could make it easier to join parties and/or consolidate related disputes into a single arbitration. By majority, it upheld a cross-appeal, allowing participation in the arbitration by three companies who were not contractual parties to the deed containing the arbitration agreement. The companies were allowed to join the arbitration because they were claiming “through or under” a party to the arbitration.<sup>92</sup>

### B. CHINA AND HONG KONG

The Hong Kong Government and the Supreme People’s Court of China signed the “Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region.”<sup>93</sup> Under

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88. Zakon Ukraini Pro Kontsesiïu [Law of Ukraine About the Concession], No. 155-IX, at art. 45 (Oct. 03, 2019), <https://zakon.rada.gov.ua/laws/show/155-20>.

89. Verkhovny Sud Ukrainy [Supreme Court of Ukraine] Sept. 3, 2019, No. 904/927.18.

90. *Rinehart v. Hancock Prospecting Pty Ltd.* [2019] HCA 13 (Austl.).

91. *Id.* at 28.

92. *Id.* at 23.

93. *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region*, PKULAW.CN (Sept. 26, 2019), <http://en.pkulaw.cn/display.aspx?cgid=d383d31cc1516bb1bdfb&lib=law>.

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the arrangement, parties to arbitration proceedings in Hong Kong may seek interim relief from courts in Mainland China, and parties to arbitration proceedings in Mainland China may seek injunctions and other measures in Hong Kong courts to maintain or restore the status quo pending determination of a dispute.<sup>94</sup> Parties involved in a China or Hong Kong-related matter may now elect Mainland China or Hong Kong as the venue of arbitration and may have arbitration proceedings administered by their desired arbitration institution.<sup>95</sup>

Further, Hong Kong's Arbitration Ordinance was amended to permit a third party, with no interest recognized by law in the arbitration, other than under a funding agreement, to provide funding to a party in arbitration proceedings in Hong Kong.<sup>96</sup>

Finally, China enacted "Measures for the Administration of the Lin-gang Special Area of China (Shanghai) Pilot Free Trade Zone" to permit foreign arbitral tribunals or institutions registered with the administrative department of the Shanghai local government or China's Ministry of Justice to handle arbitrations relating to international commerce, maritime disputes, and disputes arising out of investment in the free trade zone.<sup>97</sup>

### C. JAPAN

The Japan Commercial Arbitration Association (JCAA) introduced new optional arbitration rules, the "Interactive Arbitration Rules."<sup>98</sup> The new rules are unique in that they (i) compel the arbitral tribunal to disclose preliminary views to the parties and (ii) introduce a system of fixed compensation for arbitrators.<sup>99</sup>

The new rules require that, before deciding whether to hold a hearing for witness examination, the tribunal must provide a written summary of its preliminary views on issues in the case. In addition, in contrast to the time-based arbitrator compensation scheme, the new rules introduced a relatively low fixed fee based on the amount in controversy.

The new rules will govern a dispute if the parties had expressly agreed to these rules in their arbitration agreement or if they notify the JCAA of this selection before selecting arbitrators.<sup>100</sup>

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94. Qibo Jiang et al., *The Understanding and Application of the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Honk Kong Special Administrative Region*, INT'L CHAMBER OF COMMERCE, at 4, <https://iccwbo.org/content/uploads/sites/3/2019/12/arrangement-interim-measures-spc-commentary-unofficial-english-translation.pdf> (last visited May 27, 2020).

95. *Id.*

96. Arbitration Ordinance, (2011) Cap. 609, 10A-8-10, §§ 98J-M (H.K.).

97. Measures for the Administration of the Lin-gang Special Area of China (Shanghai) Pilot Free Trade Zone Shanghai Government of the People's Republic of China, (Aug. 20, 2019), <http://en.pkulaw.cn/display.aspx?cgid=7d920e1816db6cdd81e6141142bae24abdfb&lib=law>.

98. INTERACTIVE ARBITRATION RULES 2019 (JAPAN COMMERCIAL ASS'N 2019).

99. *Id.* at art. 56, 94-95.

100. *Id.* at art. 3.

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D. SINGAPORE AND SOUTHEAST ASIA

In Singapore, the Ministry of Law conducted a public consultation on proposed amendments to the International Arbitration Act, inviting comments on: allowing parties to appeal awards on questions of law, introducing a default position for the appointment of arbitrators in multi-party proceedings, permitting parties to jointly request that arbitrators rule on jurisdiction at a preliminary stage, and confirming the powers of tribunals and the High Court to enforce confidentiality obligations in arbitrations.<sup>101</sup>

Further, the Court of Appeal held that a non-participating respondent was not precluded from seeking to set aside a final arbitral award, even though it had not challenged the tribunal's jurisdictional ruling within the statutory time limit.<sup>102</sup> The Court of Appeal also confirmed that a stay of court proceedings would be appropriate only if the proper determination of the issues before the court depended on the resolution of the related arbitration.<sup>103</sup> Finally, the High Court has confirmed the high threshold to set aside arbitral awards: a breach of natural justice or procedural irregularity.<sup>104</sup>

The Singapore Parliament also passed the Intellectual Property (Dispute Resolution) Bill into law to clarify the IP dispute resolution process. The new law explicitly permits the arbitration of IP disputes in Singapore and states that awards in such cases bind the arbitrating parties and not third parties.<sup>105</sup>

On August 8, 2019, the Beihai Arbitration Commission (BAC) opened the Beihai Asia International Arbitration Centre (BAIAC) in Singapore to focus on providing services to Chinese firms investing in ASEAN, as part of the Belt and Road Initiative.<sup>106</sup>

In Thailand, an amendment to the Arbitration Act became effective in April, permitting foreign arbitrators or representatives to provide services in Thailand without first having to apply for a temporary work permit.<sup>107</sup>

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101. *Public Consultation on International Arbitration Act*, SINGAPORE MINISTRY OF LAW (June 26, 2019), <https://app.mlaw.gov.sg/news/public-consultations/public-consultation-on-international-arbitration-act>.

102. *Rakna Arakshaka Lanka LTD v. Avant Garde Maritime Services (Private) LTD*, [2019] SGCA 33, at ¶ 77 (Sing.).

103. *Rex Int'l Holding LTD v. Gulf Hibiscus LTD*, [2019] SGCA 56, at ¶ 11 (Sing.).

104. *BSM v. BSN*, [2019] SGHC 185, at ¶¶ 30, 59 (Sing.).

105. Denise Mirandah, *SINGAPORE: New Intellectual Property Bill Heralds Significant Reform to IP Landscape*, in 74 INT'L TRADEMARK ASS'N BULLETIN No. 16 (Sept. 15, 2019), [https://www.inta.org/INTABulletin/Pages/singapore\\_7416.aspx](https://www.inta.org/INTABulletin/Pages/singapore_7416.aspx).

106. *New International Arbitration Centre in Singapore to Focus on China-Asean Disputes*, STRAITS TIMES (Aug. 7, 2019), <https://www.straitstimes.com/business/economy/new-international-arbitration-centre-in-singapore-to-focus-on-china-asean-disputes>.

107. *Amendment to Thai Arbitration Act*, IN-HOUSE CMTY. (Aug. 28, 2019), <https://www.inhousecommunity.com/article/amendment-thai-arbitration-act>.



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The Myanmar Arbitration Centre (MAC) opened in August, as set forth under the Myanmar Arbitration Law of 2016.<sup>108</sup>

E. TAIWAN

On December 7, 2018, Taiwan's Chinese Arbitration Association (CAA)—which takes more than eighty percent of arbitration cases in Taiwan—registered the CAA International Arbitration Centre (CAAI) in Hong Kong.<sup>109</sup> CAAI adopted the Chinese Arbitration Association International Arbitration Rules 2017 (CAAI Rules). The CAAI Rules seek to address procedural issues associated with having international arbitrations seated in Taiwan, which is not a signatory to the New York Convention. To attract international parties, the Model Arbitration Clause for the CAAI Rules designates Hong Kong as the default seat of arbitration.<sup>110</sup>

In addition, the CAA announced Case Management Conference (CMC) Guidelines for Arbitrators and Parties. The CMC Guidelines provide a procedural timetable and terms of reference similar to those in the ICC Rules of Arbitration.<sup>111</sup>

**IV. Africa**

In April, the *Cour Africaine de Médiation et d'Arbitrage* was launched with the ambition of strengthening Africa's capacity to handle international disputes involving national interests.<sup>112</sup> In May, the Agreement Establishing the African Continental Free Trade Area (AfCFTA) entered into force,<sup>113</sup> which aims to create a free trade bloc akin to the EU common market. It is unclear whether the AfCFTA Agreement will provide investors access to ISDS.<sup>114</sup>

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108. *Arbitration Centre Launches in Myanmar*, ASIA BUS. L. J. (Sept. 11, 2019), <https://www.vantageasia.com/myanmar-launches-arbitration-centre>.

109. CAA International Arbitration Centre, <http://www.caa-arbitration.org> (last visited May 27, 2020).

110. CAAI ARBITRATION RULES ART. 19 (CAA INT'L ARBITRATION CENTRE 2019).

111. *News and Events*, CHINESE ARB. ASS'N, TAIPEI [http://en.arbitration.org.tw/news\\_into.php?id=80](http://en.arbitration.org.tw/news_into.php?id=80) (last visited May 27, 2020).

112. Gregory Travaini, *Arbitration Centres in Africa: Too Many Cooks?*, KLUWER ARB. BLOG (Oct. 1, 2019), <http://arbitrationblog.kluwerarbitration.com/2019/10/01/arbitration-centres-in-africa-too-many-cooks> (quoting Abdelkrim Benkhalfallah, Vice-President of CAMAR).

113. *Agreement Establishing the African Continental Free Trade Area*, AFRICAN UNION <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>, (last visited May 27, 2020).

114. Uche Ewelukwa Ofofile, *Dispute Settlement Under the African Continental Free Trade Agreement: What do Investors Need to Know?*, KLUWER ARB. BLOG (Sept. 29, 2019), <http://arbitrationblog.kluwerarbitration.com/2019/09/29/dispute-settlement-under-the-african-continental-free-trade-agreement-what-do-investors-need-to-know>.

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A. EGYPT

In October, Egypt's Supreme Court set aside the fraudulent USD 18 billion sham award made against Chevron in the purported International Arbitration Centre of Cairo.<sup>115</sup>

B. ZAMBIA

The government's decision to seek an ex parte order from the Lusaka High Court for the appointment of a provisional liquidator against one of the country's biggest employers in the mining industry sent a negative signal to international investors.<sup>116</sup>

**V. Latin America**

A. ARGENTINA

In Argentina, the decision of the Supreme Court of Justice in *Deutsche Rückversicherung AG v. Caja Nacional de Ahorro y Seguro en liquidac. y otros*<sup>117</sup> addressed the impact of the complex set of mandatory rules governing the restructuring of Argentine national debt on the enforcement of arbitral awards rendered against the State or other public entities.

In October, a regional office of the Permanent Court of Arbitration opened in Buenos Aires, the first office of the institution set up in Latin America.<sup>118</sup>

B. BRAZIL

In Brazil, five decisions of the Superior Court of Justice (STJ) mark key developments in commercial arbitration.

In *Alstom v. Mitsui*, the STJ recognized a foreign arbitral award awarding damages against Mitsui for that company's subrogation of rights and obligations held by a third company against Alstom.<sup>119</sup>

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115. Cosmo Sanderson, *Egypt's Top Court Defines Arbitral Institutions*, GLOBAL ARB. REV. (Nov. 8, 2019), <https://globalarbitrationreview.com/article/1210758/egypt%E2%80%99s-top-court-defines-arbitral-institutions>.

116. Sadaff Habib and Abdul Jindau, *Vedanta Resources v. Zambian State Mining Company ZCCM-IH: Does Anyone Win?* KLUWER ARB. BLOG (Oct. 8, 2019), <http://arbitrationblog.kluwerarbitration.com/2019/10/08/vedanta-resources-v-zambian-state-mining-company-zccm-ih-does-anyone-win>.

117. Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 24/9/2019, "Deutsche Rückversicherung AG c. Caja Nacional de Ahorro y Seguro en liquidac. Y otros s/ proceso de ejecución," Fallos (342:1524) (Arg.).

118. See Press Release, Permanent Court of Arbitration, Permanent Court of Arbitration to Set up Office in Buenos Aires (Oct. 21, 2019) (available at [https://pca-cpa.org/wp-content/uploads/sites/6/2019/10/PCA-288658-v2-Press\\_Release\\_re\\_Buenos\\_Aires\\_Office.pdf](https://pca-cpa.org/wp-content/uploads/sites/6/2019/10/PCA-288658-v2-Press_Release_re_Buenos_Aires_Office.pdf)).

119. See S.T.J. No. 14930-EX (2015/0302344-0), Relator: Og Fernandes, 19.04.2017 DJe 27.06.2019 (Braz.), [https://www.editoraroncarati.com.br/v2/phocadownload/sec\\_14930.pdf](https://www.editoraroncarati.com.br/v2/phocadownload/sec_14930.pdf).

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Next, in a confidential decision, the STJ denied a request to set aside an award rendered by a tribunal that refused to conduct an expert investigation in the course of the proceedings, holding that this did not constitute a violation of the complainant's due process rights.<sup>120</sup>

In a third case, *Centrais Eléctricas Belém S.A. v. Prece*, the STJ held that a state court may garnish credit arising out of arbitration proceedings to secure another credit held by a third party against the winning party in the arbitration.<sup>121</sup>

Finally, the STJ ruled in two consumer arbitration cases, holding that: (i) consumer-law restrictions on arbitration do not prohibit the conclusion of submission agreements;<sup>122</sup> and (ii) the principle of *kompetenz-kompetenz*, will apply even where the subject matter of the arbitration is a consumer dispute.<sup>123</sup>

### C. CHILE

In Chile, the Supreme Court<sup>124</sup> again refused to revise the merits of an arbitral award and denied an opposition to enforcement based on grounds not provided by Chile's International Commercial Arbitration Act.<sup>125</sup> Likewise, the Court of Appeals of Santiago reaffirmed that annulment is the only recourse available against an international arbitral award.<sup>126</sup>

The first private litigation fund in the country was launched in 2019.<sup>127</sup> However, political and social unrest during the latter part of 2019, which resulted in a referendum for a new constitution to be held in 2020, may create uncertainty and undermine attempts to promote Chile as an attractive seat for international arbitration.

### D. COLOMBIA

Colombia's Constitutional Court began to shed light on the admissibility of constitutional injunctions (*Tutela*) in international arbitration. In August,

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120. *See id.*

121. *See* S.T.J. No. 1678224-SP (2016/0327010-8), Relator: Nancy Andrighi, 07.05.2019 DJe 09.05.2019.

122. *See* S.T.J. No. 1742547-MG (2018/0121028-6), Relator: Nancy Andrighi, 02/12/2019 DJe 04/12/2019.

123. *See* S.T.J. No. 1598220-RN (2016/0115824-0), Relator: Paulo de Tarso Sanseverino, 25.06.2019 DJe 01.07.2019.

124. Corte Suprema de Justicia [C.S.J.] [Supreme Court], 9 julio 2019, "Bose Corporation c. Musicworld Audiovision Limitada," Rol de la causa: 12710-2018 (Chile).

125. Law No. 19.971, Sobre Arbitraje Commercial Internacional, Septiembre 10, 2004 (Chile) (closely based on the 1985 UNCITRAL Model Law).

126. *See* Corte de Apelaciones [C. Apel.] [Court of Appeals], 28 enero, 2019, "Gym S.A. c. Ossa," Rol de la causa: 613-2019 (Chile) (declaring a *recurso de queja*, an action intended to correct breaches of duty or misconduct in an award inadmissible).

127. *See En Evento Privado, se Lanza Primer Fondo de Litigios de Chile con Financiamiento Inicial de US\$ 1 Millón*, LA TERCERA (Sept. 29, 2019), <https://www.latercera.com/pulso/noticia/evento-privado-se-lanza-primer-fondo-litigios-chile-financiamiento-inicial-us-1-millon/839138/>.

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the Court issued judgment T-354/19, reviewing the admissibility of a *Tutela* action submitted by a state-owned company and its subsidiary against an international arbitral award.<sup>128</sup> The Court found that a *Tutela* action against an international arbitral award is admissible, explaining that the prohibition of judicial intervention in international arbitrations does not supersede rights granted under the Constitution.<sup>129</sup> A *Tutela* action is therefore admissible, albeit under exceptional circumstances.<sup>130</sup> Further, the Court held that annulment proceedings must be exhausted before a *Tutela* action is admissible.<sup>131</sup>

E. PARAGUAY

In Paraguay, a Host Country Agreement between Paraguay's Minister of Foreign Affairs and the Secretary-General of the Permanent Court of Arbitration was signed in the city of Asunción in October.<sup>132</sup>

F. PERU

In Peru, arbitration took center stage as the Lava Jato Case Special Prosecution Group continued to reckon with the aftershocks of the Odebrecht corruption scandal.<sup>133</sup> The inquiry culminated in November, when a Peruvian judge ordered the pre-trial detention without bail of fourteen arbitrators based on suspicions that they had taken bribes from Odebrecht in exchange for favorable outcomes in disputes that cost the country an estimated USD 250 million.<sup>134</sup> One Peruvian arbitrator, Horacio Cánepa, reportedly received as much as USD 3 million in payments from Odebrecht.<sup>135</sup> Cánepa is alleged to have ruled in Odebrecht's favor in sixteen cases that yielded an estimated USD 150 million for the company.<sup>136</sup> The decision sent shockwaves through the international arbitration

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128. Corte Constitucional [C.C.] [Constitutional Court] agosto 6, 2019, M.P: Dr. Antonio José Lizarzo Ocampo, Expediente T-7.033.416 (Colom.), available at <http://www.corteconstitucional.gov.co/relatoria/2019/t-354-19.htm>.

129. *Id.* §§ III(1)-(3); see also L. 1563, julio 12, 2012, Dario Oficial [D.O.] (Colom.) (“In matters governed by this section, no judicial authority may intervene, except in cases and for the purposes in which this section expressly so provides.”).

130. Corte Constitucional [C.C.] [Constitutional Court] Agosto 6, 2019, M.P: Dr. Antonio José Lizarzo Ocampo, Expediente T-7.033.416, § III (3).

131. *Id.*

132. See Press Release, Cour Permanente D'Arbitrage, Permanent Court of Arbitration Enters into Host Country Agreement with the Republic of Paraguay (Oct. 17, 2019) (available at <https://docs.pca-cpa.org/2019/10/20191017-PCA-Press-Release-Paraguay-HCA-English.pdf>).

133. Per Prosecutor's Office: Arbitrators Allegedly Paid by Odebrecht, ANDINA (Feb. 6, 2019), <https://docs.pca-cpa.org/2019/10/20191017-PCA-Press-Release-Paraguay-HCA-English.pdf>.

134. Cosmo Sanderson, *Arbitrators Jailed in Peru Amid Odebrecht Corruption Scandal*, GLOBAL ARB. REV. (Nov. 7, 2019), <https://globalarbitrationreview.com/article/1210721/arbitrators-jailed-in-peru-amid-odebrecht-corruption-scandal>.

135. *Id.*

136. *Id.*

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community and raised significant due process concerns for the detained arbitrators.

Peruvian lawmakers are reportedly drafting legislation that would encourage transparency and safeguard against corruption in arbitrations involving Peru.<sup>137</sup> The proposed requirements would include a restriction against appointing arbitrators who are subject to administrative sanctions or enforceable debts, as well as those that have had any professional link with any of the parties for the last three years.

**G. URUGUAY**

In July, Uruguay enacted the International Commercial Arbitration Act, Law 19.636,<sup>138</sup> modeled after the UNCITRAL Model Law. Uruguayan Courts also reaffirmed their generally favorable attitude towards the recognition of the jurisdiction of arbitral tribunals and the effects of arbitral awards. Decision No 54/2019, rendered in May by the Court of Appeals of the 6th Term, affirmed once again the principle of “*Kompetenz-Kompetenz*.”<sup>139</sup> Similarly, the Court of Appeal of the 7th Term, in its decision No 39/2019 in May, affirmed that arbitral awards shall be treated in the same manner as local judgments for the purpose of recognition in a bankruptcy proceeding.<sup>140</sup>

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137. Currently, under Peruvian law, all disputes arising under State contracts must be submitted to arbitration. See LEY DE CONTRATACIONES DEL ESTADO [State Procurement Law] No. 30335, Art. 45.1 (Peru), <https://portal.osce.gob.pe/osce/sites/default/files/Documentos/legislacion/ley/Ley%2030225%20Ley%20de%20contrataciones-julio2014.pdf>.

138. Ley No. 19.636, 13 July 2018, Arbitraje Comercial Internacional [International Commercial Arbitration], DIARIO OFICIAL [D.O.], 26 July 2018 (Uru.).

139. Tribunal Apelaciones Civil 6th [6th Court of Civil Appeals] May 29, 2019, Sentencia Interlocutoria No. 54/2019 (Uru.).

140. Tribunal Apelaciones Civil 7th [7th Court of Civil Appeals] May 5, 2019, Sentencia Interlocutoria No. 39/2019 (Uru.).

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