Arbitration Procedures and Practice in the United States: Overview

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A Q&A guide to arbitration law and practice in the United States.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including information relating to any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

Use of Arbitration and Recent Trends

1. How is commercial arbitration used and what are the recent trends?

This Q&A principally addresses United States (US) federal arbitration law, with some reference to New York and California state arbitration laws.

Use of Commercial Arbitration

Commercial arbitration is used extensively to resolve a wide range of commercial disputes. The largest caseload involves the following industries: construction, energy, financial services, life sciences, technology, insurance, aviation/aerospace, entertainment, and real estate.

It is expected that, as the domestic courts continue to recover from backlogs and budget cuts resulting from the 2019 novel coronavirus disease (COVID-19) pandemic, parties will increasingly turn to arbitration as a dispute mechanism of choice.

Recent Trends

Expedited arbitration. There has been an increase in the use of expedited arbitration, which has resulted in amendments to institutional rules to incorporate provisions governing expedited proceedings. This includes the recent introduction of the:

- Revised International Centre for Dispute Resolution (ICDR)/American Arbitration Association (AAA) rules. Parties initiated 75 international expedited cases at the ICDR in 2020.
- Revised International Chamber of Commerce (ICC) rules. Parties initiated 101 expedited arbitrations at the ICC in 2020, compared to 15 in 2017.
- International Institute for Conflict Prevention and Resolution (CPR) Fast Track Rules for Administered Arbitration.

Emergency arbitration. Parties are increasingly using emergency arbitration proceedings, under which an emergency arbitrator is appointed before the constitution of a tribunal. The ICC has administered 149 emergency cases since the emergency arbitration provisions came into force in 2012. In 2020, parties brought 32 emergency arbitration proceedings at the ICC, and 23 of these proceedings had a US place of arbitration. 13 of these cases were in New York. As of 31 December 2020, parties had brought 119 emergency arbitration proceedings at the ICDR and AAA, including 85 applications under the ICDR International Rules and 32 applications under the AAA Commercial Arbitration Rules.

Summary adjudication. There is an increasing trend towards applications for summary adjudication of claims or defenses manifestly devoid of merit. Summary adjudication is explicitly provided for and implied under many updated institutional rules. The ICC, the ICDR/AAA, the Singapore International Arbitration Centre (SIAC) and the Stockholm Chamber of Commerce (SCC) are among those that recognize the arbitral tribunal's power of summary determination.

Diversity. There has been an increased focus on diversity in arbitral appointments. For example, the ICDR/AAA reported that 33% of its arbitrator appointments were "diverse" (referring to gender, racial, or ethnic diversity). The New York International Arbitration Center has adopted a Diversity and Inclusion policy and taken steps to increase diversity on its Board and Executive Committee.

Court intervention. Parties frequently resort to domestic US courts to compel the production of information by third parties. 28 U.S.C. § 1782 authorizes federal district courts to compel discovery in aid of a foreign or international tribunal. There is a split among US federal appellate courts on whether 28 U.S.C. § 1782 applies to private arbitral tribunals, and the US Supreme Court has recently agreed to decide this issue. A decision is expected next year.

Virtual hearings and digital tools. In response to COVID-19 and governmental health regulations, many parties, tribunals, and institutions opt for virtual hearings rather than postponing proceedings. Digital tools have also become more prominent. See *Practice Note, Arbitration vs. Litigation in the US: Importance of Flexibility During COVID-19*.

Data protection and cyber security. Data protection and cyber security have become increasingly relevant in international and domestic arbitration given the wide use of digital tools and awareness of security vulnerabilities. In the wake of several security breaches threatening the integrity of arbitration proceedings, several arbitral institutions have adapted their rules to take into account security concerns. For example, the ICC has published a report on Information Technology in International Arbitration that provides guidance on protecting data integrity. As a result of concerns regarding cybersecurity, on 21 November 2019, the *ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration 2020* (Protocol) was published. The Working Group that drafted the Protocol had a large number of US practitioners.

Advantages/Disadvantages

Advantages. US policy strongly favors international arbitration. It offers the following advantages over court litigation:

- **Flexibility.** Parties seeking to arbitrate disputes with a US entity or in a US place of arbitration can select the applicable substantive law, procedural law, place of arbitration, administering authority, applicable arbitral rules, and language of the arbitral proceedings. Parties are actively involved in the selection of arbitrators, which increases their comfort with the process and enables the selection of arbitrators with expertise and industry knowledge. See *Practice Note, Arbitration vs. Litigation in the US: Procedural Flexibility*.
- **Confidentiality.** US courts typically permit broad public access to court filings and proceedings, whereas arbitration offers commercial parties broader protection for their confidential business information. See *Practice Note, Confidentiality in US Arbitration*.
- **No right to appeal.** There is no right to appeal an award in court, although some administering bodies offer internal appeals processes. Rather, the grounds to challenge the validity or enforcement of an award are narrow under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) (implemented by the US in the Federal Arbitration Act (FAA) (*see Question 2, Principal Legislation*)). See *Practice Note, Arbitration vs. Litigation in the US: Finality*.
- **Disclosure.** Whereas discovery in the context of judicial proceedings can be extensive and burdensome, document disclosure in arbitration is generally limited and narrowly tailored. In addition, discovery depositions are typically not favored. See *Guidelines for the Arbitrator's Conduct of the Pre-Hearing Phase of International Arbitrations published by the New York State Bar Association*.

Disadvantages. Arbitration can be expensive, particularly in relation to document disclosure. The parties, however, can limit document disclosure in their arbitration clause. See *Practice Note, Limiting Disclosure (Discovery) in US Arbitration*.

There may also be issues with the enforcement of an arbitral award, in particular if the prevailing party seeks enforcement in a country that is not party to the New York Convention.

Legislative Framework

Applicable Legislation

> 2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

Principal Legislation

FAA. International arbitration in the US is governed principally by the FAA, a federal law that applies throughout the US. The FAA:

- Addresses the validity of arbitration agreements and provides for US courts to give effect to these agreements.
- Requires US courts to confirm awards (that is, convert them into a judgment) if certain conditions are satisfied.
- Defines the situations in which a court can decline to confirm an award.
- Implements the New York Convention and the Inter-American Convention of International Commercial Arbitration of 1975 (Panama Convention).

Chapter 1 of the FAA applies to both domestic and international arbitration. It provides for, among other things:

- Enforcement of agreements to arbitrate.
- Compulsion of non-parties to give evidence in arbitral proceedings.
- Enforcement of arbitral awards.
- The grounds for setting aside arbitral awards.

State legislation. In addition to the FAA, each of the 50 states has enacted separate supplementary legislation governing arbitration in their respective jurisdictions. Where there are conflicts between the FAA and state law, the FAA generally prevails. See *Practice Note, Understanding US Arbitration Law: State Arbitration Law*.

Court decisions. US court decisions supplement the FAA by:

- Interpreting the FAA's express provisions.
- Filling in gaps in the FAA, addressing issues that the statute does not address.

UNCITRAL Model Law

The US has not adopted the UNCITRAL Model Law. However, a number of US states have adopted the UNCITRAL Model Law, such as California and Texas.

Mandatory Legislative Provisions

3. Are there any mandatory legislative provisions? What is their effect?

Under the FAA, New York law, and California law, written agreements to arbitrate are given full effect. There are no mandatory legislative provisions.

New York law prohibits the use of mandatory arbitration clauses in written consumer contracts for the sale or purchase of consumer goods.

4. Does the law prohibit any types of dispute from being resolved through arbitration?

The FAA does not restrict the types of disputes that can be resolved through arbitration, and US courts have historically avoided limiting the availability of arbitration as a means of dispute resolution. Some narrow categories of disputes over divorce or child custody have been held to be non-arbitrable (*Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Benjamin, 766 N.Y.S.2d 1, 6 (1st Dep't 2003)*).

More recently, there have been state legislative efforts to ban or limit arbitration clauses in cases brought by consumers and in employment disputes.

The New York State Legislature is also considering bills that would expand the prohibition of mandatory arbitration agreements in the context of consumer disputes to general employment disputes. Section 7515 of the New York Civil Practice Law and Rules (CPLR) prohibits employer-mandated pre-dispute agreements to arbitrate claims of discrimination and sexual harassment. The validity of this law is doubtful, as courts have held that it is pre-empted by the FAA (*White v. WeWork Cos., Inc., 2020 WL 3099969, at *5 (S.D.N.Y. June 11, 2020); Latif v. Morgan Stanley & Co. LLC, 2019 WL 2610985, at *2-3 (S.D.N.Y. June 26, 2019)*). For more information on employment arbitration, see *Practice Note, Employment Arbitration Agreements (US)*.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

The FAA contains certain time limits regarding the confirmation and vacation of awards:

- One year after the award to apply for confirmation (*9 U.S.C. § 9*).
- Three months after the award to move to vacate, modify, or correct the award (*§ 12*).

State statutes set limitation periods for bringing claims that vary depending on the category of claim. For example, in New York the periods are:

- Six years for contract claims (*CPLR 213*).
- Three years for personal injuries and property damage (*CPLR 214*).

However, arbitrators sometimes have the discretion to apply (or not apply) statutes of limitation that would be mandatory in the context of a state court litigation.

State law determines what event triggers or interrupts a limitation period. Generally, a limitation period is triggered by the occurrence of the allegedly unlawful conduct (that is, an injury giving rise to tort liability or a breach of contract) or when the unlawful conduct is discovered or reasonably should have been discovered. Under New York law, if a respondent seeks a judicial stay of arbitration on the basis that the respondent is not obliged to submit a claim to arbitration, the limitation period is tolled from the date of the arbitration demand until the court determines that the dispute is not subject to arbitration. However, the time within which the action must be commenced cannot be extended by this provision beyond one year after the final determination (*NYCPLR § 204(b)*).

Arbitration Institutions

6. Which arbitration institutions are commonly used to resolve large commercial disputes?

Parties with international contracts usually select one of the following arbitration institutions for dispute resolution:

- The AAA (*see Question 1*).
- The ICDR (*see Question 1*).
- The ICC (*see Question 1*).
- JAMS (formerly known as Judicial Arbitration and Mediation Services, Inc.).
- The CPR Institute for Conflict Prevention and Resolution (CPR).
- The London Court of International Arbitration (LCIA).
- The Singapore International Arbitration Centre (SIAC), which is increasingly used, for example by California entities engaging in business with Asia-based entities. SIAC is opening an office in New York in 2021.

Jurisdictional Issues

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognize the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

There is a presumption that courts will hear any objections as to whether the parties agreed to be bound by an arbitration clause and, if so, whether a dispute is within the scope of an arbitration clause. This presumption can be overcome by clear and unmistakable evidence that the parties intended for the arbitral tribunal to determine these issues.

The FAA does not expressly address the principle of kompetenz-kompetenz, but US courts have consistently recognized such a power where the parties have granted it to the tribunal. US courts have held that an arbitration agreement's incorporation of arbitration rules that grant the tribunal authority to rule on its own jurisdiction (that is, that contain a kompetenz-kompetenz clause) is sufficient evidence of the parties intention in this regard. In these circumstances, US courts review questions of arbitrability under a highly deferential standard. For more information, see *Practice Note, Jurisdictional issues in international arbitration: Kompetenz-kompetenz: Key jurisdictions: US*.

Arbitration Agreements

Validity Requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/Formal Requirements

An arbitration agreement must be written (*FAA*). Courts are flexible and recognize the validity of an arbitration agreement reflected in an exchange of e-mails. See *Practice Note, Agreements in Writing under US Arbitration Law*.

The only other permissible validity requirements are those imposed on all contracts by the state law that governs the arbitration agreement.

Separate Arbitration Agreement

No separate arbitration agreement is required, and the arbitration provision inserted within the contract can be sufficient. The arbitration provision can also be incorporated by reference to another document that is enforceable between the parties to the contract.

Unilateral or Optional Clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

Certain courts have given effect to one-sided arbitration agreements giving one party an option to select arbitration or court litigation. A federal court of appeal rejected the contention that a one-sided arbitration clause was unconscionable, but noted that one-sided agreements to arbitrate are not favored. In New York, mutuality of remedy is not required in arbitration contracts (*Sablosky v. Edward S. Gordon Co., 538 N.Y.S.2d 513, 516 (1989)*), but lack of mutuality may be considered as a factor in determining whether the agreement to arbitrate is unconscionable (*Deutsch v. Long Island Carpet Cleaning Co, 158 N.Y.S. 2d 876 (1956)*). Other courts have considered that these one-sided clauses are invalid and unenforceable, particularly with respect to cases involving employees or consumers. In *U.S. ex rel. Birckhead Elec., Inc. v. James W. Ancel, Inc., 2014 WL 2574529 (D. Md. June 5, 2014)*, for example, the court, applying Maryland law, refused to enforce an arbitration clause in a construction subcontract that provided "All disputes...at the Contractor's sole option, be resolved by arbitration". The court held that the arbitration agreement was not supported by mutual consideration. (*See also Noohi v. Toll Bros., 708 F.3d 599, 609 (4th Cir. 2013).*)

Third Parties

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

Arbitration agreements generally bind only the parties, but joinder of non-signatories is possible in certain circumstances. The FAA is silent on the issue of joinder and intervention. Typically, case law, state statutes, and institutional rules address this topic.

Applying ordinary principles of contract law, US Federal and State courts have held that third-party non-signatories can be bound by arbitration agreements based on theories of estoppel, agency relationships with a party, assumption of the contract containing the arbitration agreement, third-party beneficiary status under the contract, or piercing the corporate veil (see, for example, *Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985)*). For more information, see *Practice Note, Joining Nonsignatories to an Arbitration in the US*.

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

The US Supreme Court unanimously held that the New York Convention, as implemented by the FAA, permits non-signatories to international arbitration agreements to compel arbitration, on the basis of domestic-law equitable estoppel doctrines (*GE Energy Power Conversion France SAS v. Outokumpu Stainless USA LLC, 140 S. Ct. 1637 (2020)*).

Traditional concepts of contract law similarly allow an arbitration agreement to be enforced by non-parties to the contract. These concepts include assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, and waiver.

Separability

12. Does the applicable law recognize the separability of arbitration agreements?

An arbitration provision is severable from the remainder of the contract and can be enforced separately.

Unless the challenge is to the arbitration clause itself, a challenge to the validity of the contract (for example, on the grounds of fraud, duress or illegality) as a whole must be adjudicated by the arbitrator in the first instance (*Buckeye Check Cashing v. Cardegna, 546 US 440, 449 (2006)*). For more information, see *Practice Note, Separability of Arbitration Agreements in US Arbitration*.

Breach of an Arbitration Agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court Proceedings in Breach of an Arbitration Agreement

If a party commences court proceedings in breach of an arbitration agreement, the counterparty can seek to stay this action (*9 U.S.C. § 3*) or compel arbitration in accordance with the parties' arbitration agreement (*9 U.S.C. § 4*). For more information, see *Compelling and Staying Arbitration in the US Toolkit*.

Arbitration in Breach of a Valid Jurisdiction Clause

A party that objects to the arbitral tribunal's jurisdiction can raise its objection before the arbitral tribunal. If that fails, it can seek an injunction from a court of competent jurisdiction, prohibiting the claimant from proceeding with the arbitration. Courts have held that they should have the power to prohibit arbitration where arbitration is inappropriate, unless the parties' arbitration agreement delegates questions of arbitrability to the arbitrator (*see* *Practice Note, Compelling and Enjoining Arbitration in US Federal Courts: When the Arbitrator Decides Arbitrability*).

> 14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

US courts have issued anti-suit injunctions to prohibit a party from pursuing proceedings abroad in violation of an arbitration agreement. Courts typically consider international comity when deciding a motion for an anti-suit injunction.

Courts can refuse to grant an anti-suit injunction if there is a dispute over the validity of the arbitration agreement. For more information, see *Practice Note, Anti-Suit Injunctions and Anti-Arbitration Injunctions in the US Enjoining Foreign Proceedings*.

Arbitrators

Number and qualifications/characteristics

> 15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

Number, Qualification and Characteristics

The FAA does not impose any requirements regarding the number of arbitrators, their qualifications, or other characteristics. However, parties often state the number of arbitrators in the arbitration agreement, or by adopting institutional rules containing arbitrator selection procedures.

Most arbitration organizations in the US provide for tribunals consisting of a sole or three arbitrators. For example:

- **ICDR Rules.** If the parties have not agreed on the number of arbitrators, one arbitrator must be appointed unless the arbitration organization determines that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.
- **ICC.** The ICC frequently asks the parties to consider the appointment of a sole arbitrator and, if the Expedited Procedure Provisions (*Article 30, ICC Arbitration Rules*) apply, may appoint a single arbitrator notwithstanding a contrary provision in the arbitration clause.

Nationality

An arbitrator need not be a national of, or licensed to practice in, the US to serve as an arbitrator.

Independence/Impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

FAA

The FAA does not contain any specific requirements regarding arbitrator independence, impartiality, or the disclosure of potential conflicts of interest. However, it creates an implicit standard by providing that an award can be set aside on the ground of evident partiality or corruption in the arbitrators. Under that standard, US courts have generally held that a mere failure to disclose a potential conflict of interest is not a sufficient basis to annul an award. Instead, the challenging party must demonstrate that the partiality is direct, definite, and capable of demonstration rather than remote, uncertain or speculative (*Republic of Argentina v. AWG Group Ltd., 894 F.3d 327, 334-35 (D.C. Cir. 2018); Scandinavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co., 668 F.3d 60, 74 (2d Cir. 2012)*). For more information, see *Practice Note, Challenges Based on Arbitrator Bias in US Arbitration*.

Institutional Rules

The rules of the major arbitration institutions expressly address the requirements for independence, impartiality, and disclosure. For example, the ICC, ICDR, AAA, CPR, and JAMS require the arbitrators and the parties to disclose any circumstances that may give rise to justifiable doubts regarding the arbitrator's impartiality or independence. Parties can challenge an arbitrator whenever these circumstances become known. The duty to disclose is ongoing during the arbitration. A party cannot, however, wait to see the results of the final award to challenge the arbitrator's independence or impartiality, if the basis for the challenge was known earlier (*Lucent Techs., Inc. v. Tatung Co., 379 F.3d 24, 31 (2d Cir. 2004); Meyer v. Kalanick, 477 F. Supp. 3d 52, 55 (S.D.N.Y. 2020)*).

Parties have been increasingly trying to vacate awards on the basis of undisclosed conflicts. Courts, however, are reluctant to set aside an arbitral award because of an arbitrator's alleged failure to disclose information, particularly

if the arbitrators lacked knowledge of the conflicts at issue at the time they authored the awards (*Ometto v. ASA Bioenergy Holding A.G., 2013 WL 174259 (S.D.N.Y. Jan. 9, 2013), aff'd, 549 F. App'x 41 (2d Cir. 2014)*).

Guidelines

The following guidelines regarding conflicts of interests are widely followed by arbitration organizations:

- The ABA Code of Ethics for Arbitrators in Commercial Disputes.
- The IBA Rules of Ethics for International Arbitrators.
- The IBA Guidelines on Conflicts of Interest in International Arbitration.

Appointment/Removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of Arbitrators

Arbitration organizations' default provisions. US courts and arbitration organizations typically defer to procedures provided in the parties' arbitration agreement. Arbitration organizations have default mechanisms in the event that the parties fail to nominate an arbitrator, or fail to agree on the selection of a chairperson. These mechanisms include, among other things, the administrative appointment of an arbitrator, or the circulation of lists of potential chairpersons to the parties with a request that the candidates be ranked.

Court assisted appointment. Where a party refuses to appoint an arbitrator in accordance with the parties' agreement, the other party can file a motion with a court to compel the appointment of an arbitrator in accordance with the provisions of the arbitration agreement (*9 U.S.C.§ 6*).

On application by either party, a court must appoint arbitrators who will act under the arbitration agreement with the same force and effect as if they had been appointed by the parties (9 U.S.C.§ 6). A court can exercise this appointment authority in three situations:

- When the arbitration agreement does not establish a procedure for selecting the arbitrator(s).
- When one or more parties does not follow the established procedure.
- If for any other reason there is a lapse in the naming of an arbitrator.

New York law also empowers courts to appoint arbitrators in these circumstances (*CPLR 7504*).

Removal of Arbitrators

Arbitral institutions' rules govern the removal of arbitrators. Arbitral institutions rule on challenges to arbitrators at the earliest possible opportunity, usually at the outset of an arbitration proceeding. The AAA has published standards for removing arbitrators and established the Administrative Review Council (ARC), an executive-level, administrative decision-making authority created to resolve issues such as objections to arbitrators. The ICDR has similarly created an ARC.

The FAA does not address the challenge or removal of arbitrators. Therefore, US federal courts have consistently found that they lack authority to remove arbitrators during an arbitration (*In re Sussex, 781 F.3d 1065 (9th Cir. 2015)*). Instead, they consider arbitrator bias or misconduct in the context of a challenge to the award after it is rendered.

New York state courts, by contrast, have found that they have the "inherent" authority to disqualify an arbitrator before an award is rendered when there exists a real possibility that injustice will result (*Matter of Excelsior 57th Corp. (Kern), 630 N.Y.S.2d 492, 494 (1st Dep't 1995)*). Whether the FAA rule pre-empts the New York rule is not settled.

Procedure

Commencement of Arbitral Proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

Neither the FAA nor the New York CPLR contain default rules regulating the commencement of arbitral proceedings.

Courts generally find that parties are bound by their arbitration agreement. If the parties included a mandatory period to attempt negotiation or mediation before the arbitration, courts typically enforce these tiered agreements.

Applicable Rules and Powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable Procedural Rules

Arbitrators are typically bound by the arbitration rules and procedures agreed on by the parties in their arbitration clause. There are no mandatory procedural rules that arbitrators must follow.

Default Rules

The FAA does not provide default rules governing the procedure where the parties fail to designate applicable rules. There are a few exceptions to this, such as section 7, which vests arbitrators with the power to subpoena witnesses in certain instances.

Similarly, the New York CPLR does not provide comprehensive rules for the arbitral process.

Where the parties fail to designate applicable rules, the arbitrator decide on questions of procedure after consultation with the parties, on an ad hoc basis.

Evidence and Disclosure

> 20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

The applicable arbitration institutions' rules govern the arbitrator's authority to order the disclosure of documents or witness testimony. The FAA vests an arbitral tribunal with the authority to summon any person to testify and supply documentary evidence. Federal and state courts, where they have jurisdiction, can enforce an arbitral subpoena.

An arbitral tribunal lacks the enforcement mechanisms that a judicial court has to compel document disclosure or testimony. The courts' assistance may be required to obtain information from third parties. For more information, see *Practice Note, Compelling Evidence from Non-Parties in Arbitration in the US*.

Evidence

> 21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of Disclosure

Arbitrations seated in a common law jurisdiction, such as the US, often involve some disclosure of information and documents. In general, the scope of disclosure of information is narrower in arbitration than in litigation. The FAA does not contain specific rules regarding the scope of disclosure and use of information in international arbitration. Arbitral tribunals have wide discretion to determine the scope of disclosure of information and applicable privileges. Arbitrators typically comply with any guidance or limitations on the scope of disclosure that the arbitration clause imposes.

The IBA Rules on the Taking of Evidence in International Arbitration reflect generally accepted principles in international arbitration. For example, each party must disclose to the tribunal and the other party all documents on which it will rely (*Article 3*). In addition, each party can submit requests to the tribunal and the other party for documents that are relevant and material to the outcome of the case (*Article 3*).

Validity of Parties' Agreement as to Rules of Disclosure

The parties generally establish disclosure rules in the arbitration agreement or in a subsequent agreement entered into in anticipation of the arbitration. The parties can adopt or agree to be guided by established rules, such as the IBA Rules on the Taking of Evidence in International Arbitration, or agree to bespoke rules.

Confidentiality

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The FAA does not address the confidentiality of arbitral proceedings and US courts are reluctant to find any implied duty of confidentiality in arbitral proceedings. Arbitration organizations' rules may contain provisions regarding confidentiality, but may be limited to imposing obligations on the arbitrators or the institution, rather than the parties themselves.

Therefore, parties often enter into confidentiality agreements to govern proceedings. Courts generally enforce these confidentiality agreements. However, given the public policy of access to documents filed in open court, arbitral awards and certain underlying evidence may become public on the filing of a motion to confirm or vacate an arbitral award. If confidentiality is a significant issue, the arbitration clause or confidentiality agreement should address this topic to maximize the chances that filings in court will be made under seal. For more information, see *Practice Note, Confidentiality in US Arbitration*.

Courts and Arbitration

23. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Intervention

US courts do intervene to assist arbitration proceedings in certain circumstances.

A party can apply to a court for injunctive relief before the appointment of the arbitral tribunal to preserve the status quo (for example, to prevent the termination of a contract before the tribunal is constituted). The court examines whether the typical requirements for issuance of injunctive relief are satisfied. Alternatively, a party can seek the appointment of an emergency arbitrator to preserve the status quo. For more information, see *Practice Note, Interim, Provisional and Conservatory Measures in US Arbitration*.

Parties can seek court intervention during arbitral proceedings, for example to compel the attendance of witnesses or the production of evidence (*see Question 20*).

Applicable Court

A party can seek court intervention from a state court or, if the jurisdictional requirements are satisfied, a federal court. Although the FAA confers original jurisdiction on the federal district courts over matters arising from the New York Convention or the Panama Convention, the FAA does not establish an independent basis for federal jurisdiction. Parties generally direct applications for intervention to federal courts to support an international arbitration.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of Court Intervention

There is generally a low risk of unwanted court intervention because US policy favors arbitration and courts are reluctant to encroach on arbitral proceedings.

Delaying Proceedings

A party can make applications to a court in an attempt to delay arbitral proceedings. However, when determining the merits of a case and how to apportion costs, tribunals take into account the way in which a party conducted itself.

Insolvency

25. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

Automatic Stay

The initiation of insolvency proceedings results in an automatic stay of all civil proceedings brought against the debtor, including claims brought in arbitration (*11 U.S.C. § 362(a), Bankruptcy Code*).

Application to Lift a Stay

An arbitration counterparty can ask a bankruptcy court to lift the stay, which the court is permitted to do "for cause" (*Bankruptcy Code*). A decision to lift the stay is ultimately a matter of the bankruptcy court's discretion. In considering whether to lift a stay and allow an arbitration to proceed, a bankruptcy court conducts a four-part inquiry to determine whether the:

- Parties agreed to arbitrate.
- Dispute falls within the arbitration clause.
- Claims involve "core" matters (that is, matters that arise under the US Bankruptcy Code that relate directly to the bankruptcy, such as administration of the bankruptcy estate) or "non-core" bankruptcy matters (that is, that do not relate to Bankruptcy Code matters directly).
- Court should stay any non-arbitral claims pending the outcome of the arbitration.

For more information, see *Practice Note, Enforceability of Arbitration Clauses in Bankruptcy*.

Remedies

26. What interim remedies are available from the tribunal?

Interim Remedies

The FAA does not expressly address whether arbitral tribunals seated in the US can order interim measures. However, consistent with the general rule of giving effect to the parties' arbitration agreement, courts broadly accept that tribunals can order interim relief if the arbitration agreement or applicable arbitration rules grant them the

authority to do so. Preliminary or interim relief typically takes the form of an injunction (for example, ordering the parties to preserve the status quo or an attachment).

Emergency arbitrators also have the authority to order interim relief.

Ex Parte/Without Notice Applications

The rules of most arbitral institutions require a party that is seeking emergency relief to notify the other parties (for example, Rule 38(b), AAA and Article 6, ICDR Rules).

Security

Arbitral tribunals have the authority to grant any interim relief necessary to secure assets to satisfy a final award. For example, a tribunal can order that a party deposit funds into escrow or can attach certain assets of a party to preserve them in the event of a judgment against that party.

27. What final remedies are available from the tribunal?

The FAA does not limit the types of remedies that an arbitral tribunal can award. However, the parties can agree to limits. If the substantive law governing the contract allows for equitable remedies such as specific performance or rescission or reformation of a contract when damages are inadequate, the arbitrators can order those remedies (*EGI-VSR, LLC v. Coderch Mitjans, 963 F.3d 1112, 1124 (11th Cir. 2020)* (confirming award granting specific performance); *Benihana, Inc. v. Benihana of Tokyo, LLC, 2016 WL 3913599, at *1 (S.D.N.Y. July 15, 2016)* (confirming award granting permanent injunction)).

If the tribunal's award exceeds limits established by the parties, a reviewing court can set aside the award. The governing law may establish other limitations on the remedies available, for example, by prohibiting the recovery of punitive damages.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of Appeal/Challenge

There is no right to appeal an arbitration award. Rather, the losing party can either challenge the enforcement of the award, or move to vacate it before local courts. This can only be done on limited grounds set out in the FAA or relevant state statues (such as the New York CPLR).

Exceptionally, AAA and CPR rules provide the option for appellate arbitration, but this must be stipulated by the parties in the arbitration agreement or a later submission agreement. Appeals under these rules are available on the following grounds:

- An error of law that is material and prejudicial.
- Determinations of fact that are clearly erroneous.

(*Article 10, AAA Rules*.)

Very few appellate arbitrations have been brought.

Grounds and Procedure

Grounds. An award can be vacated in any of the following circumstances:

- Where the award was procured by corruption, fraud, or undue means.
- Where there was evident impartiality or corruption in the arbitrators (or one of them).
- Where the arbitrators were guilty of misconduct in refusing to postpone the arbitration hearing even where sufficient cause was shown, or in refusing to hear evidence pertinent and material to the controversy (or any other misbehavior the result of which any party's rights have been prejudiced).
- Where the arbitrators exceeded their power, or so imperfectly executed them that a mutual, final, and definite award on the subject matter submitted was not made.

(*9 U.S.C § 10*.)

In April 2021, the Tenth Circuit Court of Appeal agreed with the majority view that parties can seek to vacate an international award issued in the US under the standards provided in the FAA (*Goldgroup Res., Inc. v. DynaResource de Mexico, S.A. de C.V., 994 F.3d 1181 (10th Cir. 2021)*).

In addition, a few courts have vacated awards on the grounds of an award's manifest disregard of the law. The FAA does not explicitly provide for this ground. It is extremely rare to vacate an award on this ground, as recent state and appellate decisions in New York confirm that courts are highly deferential to arbitral awards. This was confirmed by a report issued by the NYC Bar Association, arguing that empirical data reveals that litigants are rarely successful in invoking the doctrine of "manifest disregard" before federal and state courts. Litigants wishing to raise this challenge face a heavy burden, as it is not sufficient to merely claim an error of law.

Procedure. A party challenging an arbitral award must file a petition to vacate the award with a court of competent jurisdiction. Notice must be given to the adverse party, who can oppose.

With respect to enforcement, the US is a signatory to the New York Convention, which it incorporates in the FAA. Article V of the New York Convention allows recognition to be declined on limited grounds, including where the

arbitration agreement was invalid, the tribunal's composition was improper and the award enforcement would be contrary to public policy. Federal case law makes it clear that the Article V grounds should be read narrowly.

Waiving Rights of Appeal

Courts are split as to whether the FAA allows parties to an arbitration to waive judicial review in whole or in part. Some US courts have held or implied that parties can validly agree to waive judicial review of an arbitration award (*Bowen v. Amoco Pipeline Co., 254 F.3d 925, 931 (10th Cir. 2001*). The prevailing view rejects the enforceability of agreements to waive judicial review of arbitration awards (*Hoeft v. MVL Grp., Inc., 343 F.3d 57, 64-67 (2d Cir. 2003); M&C Corp. v. Erwin Behr GmbH, 87 F.3d 844, 847 (6th Cir. 1996)*). However, parties can, as in any civil action, renounce the possibility of an appeal from an adverse ruling in the district court, but the waiver needs to be express and unequivocal, usually in the arbitration agreement itself (*MACTEC, Inc. v. Gorelick, 427 F.3d 821, 827-830 (10th Cir. 2005), cert. denied, 547 U.S. 1040 (2006)*).

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The limitation period for actions to vacate or challenge an international arbitration award rendered in the US depends on the arbitration seat's law.

Under the FAA, notice of a motion to vacate or challenge an award must be served on the adverse party or their attorney within three months after the moving party receives the award (*9 U.S.C. § 12*). Applications to vacate awards under New York state law are subject to a 90-day limitation period (*CPLR 7511(a)*).

Costs

30. What legal fee structures can be used? Are fees fixed by law?

Legal Fees

Legal fees are freely determined between the parties and their counsel. Arrangements can include a retainer fee, a cap fee, hourly rates, task-based billing, conditional fee agreements, and other fee structures. Many arbitrators prefer to award legal fees to the prevailing party, based on their authority under arbitral rules.

Third Party Funding

Third party funding is gaining prominence in arbitration and US courts accept this. Most states allow third party funding as long as client confidences are preserved, and clients control the case. The critical issue is whether the funding arrangement must be disclosed.

Lawyers often have contacts with third party funders and facilitate the client's funding agreement with the third-party funder. If the law firm is the counterparty to the funding agreement, these arrangements raise concerns with respect to the law firm's ethical obligations, if the funding is not structured as a loan. A lawyer or law firm must not share legal fees with a non-lawyer (*Rule 5.4(a), Model Rules of Professional Conduct* (a federal law provision adopted in every state)). Courts are split, however, as to whether funding agreements where law firms assign their fee interests in exchange for funding violate Rule 5.4. Recent trial court decisions have held that third-party financing arrangements do not constitute fee splitting (see, for example, *Hamilton Capital VII, LLC, I v. Khorrami, LLP, 2015 WL 4920281, at *5 (N.Y. Sup. Ct. Aug. 17, 2015)* (finding that "[p]roviding law firms access to investment capital where the investors are effectively betting on the success of the firm promotes the sound public policy of making justice accessible to all, regardless of wealth"); *Lannan Foundation v. Gingold, 300 F.Supp.3d 1, 18 (D.D.C. 2017)* (citing *Hamilton* with approval)). For more information, see *Practice Notes, Third-Party Litigation Financing in the US* and *Third-Party Litigation Financing: Ethical Issues for Attorneys*.

Security for Costs

Respondent parties often seek protection from the risk that the claimant parties are unable to pay arbitration costs if directed to do so. This protection is typically sought in the form of an application for security for costs. Although the US law does not have express provisions dealing with security for costs, tribunals' power to award security for costs is widely recognized as falling within the scope of tribunals' power to grant interim measures. Tribunals rarely award security for costs.

> 31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost Allocation

The applicable arbitration rules determine whether tribunals have the discretion to allocate costs and generally grant significant discretion to arbitrators. The parties' arbitration clause can limit the tribunal's discretion, but this is not frequently done.

The "American Rule" of costs holds that each party generally bears its own costs and attorneys' fees in litigation, regardless of outcome absent an explicit agreement to the contrary (*Arcambel v. Wiseman, 3 U.S. 306, 306 (1796)*). Merely choosing as the law governing the contract a foreign law that provides for prevailing party attorneys' fees is not sufficient (*Atomi, Inc. v. RCA Trademark Mgmt., S.A.S., 2015 WL 1433229, at *5 (S.D.N.Y. Mar. 30, 2015)*). Following this rule, the New York CPLR prohibits arbitrators in domestic cases from allocating attorneys' fees (but not other costs of the arbitration) to be paid by a losing party, unless there is express instruction in the parties' agreement to arbitrate, or incorporation of institutional rules that provide for the award of attorneys' fees (*CPLR 7513*).

The FAA is silent on whether arbitrators can allocate costs to the losing party (*see Practice Note, Understanding the Federal Arbitration Act: Award of Costs*). However, the Second Circuit has held that attorneys' fees can be allocated under the FAA, even where the parties choose New York as the seat of the arbitration, if the arbitration agreement at least implicitly encompasses that right (*PaineWebber Inc. v. Bybyk, 81 F.3d 1193, 1201 (2d Cir. 1996)*).

Cost Calculation

The arbitration rules generally identify different types of costs, including the:

- Arbitrators' fees and costs.
- Fees and costs incurred by the parties in the preparation of their case.
- Arbitration institution's administrative fees.

Institutional and arbitrator's costs can generally be determined either on the basis of a predefined scale or on an hourly fee basis.

Factors Considered

Arbitral tribunals frequently consider the:

- Extent to which a party has prevailed in the arbitration.
- Reasonableness of the fees and costs incurred by the prevailing party.
- Complexity and size of the case.
- Parties' conduct in the arbitration, including the extent to which they conducted the arbitration in an expeditious and cost-effective manner.

Enforcement of an Award

Domestic Awards

32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Arbitration awards are generally enforceable in US courts, subject to the exceptions provided in the FAA. Each state also has its own laws on enforcing arbitration awards, which closely follow the Uniform Arbitration Act.

The FAA's domestic arbitration provisions do not confer original jurisdiction on the federal district courts. Therefore, before a federal court can act on a party's application for confirmation of an arbitral award, the party must invoke federal question (*28 U.S.C. § 1331*), maritime jurisdiction (*28 U.S.C. § 1333*), or show that it arises out of a dispute between diverse parties (as defined by US law) and involves an amount in controversy of more than USD75,000 (*28 U.S.C. § 1332*). The mere fact that confirmation proceedings are governed by the FAA does not provide an independent basis for federal question jurisdiction (*Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 26, n.32 (1983)*). Where there is no basis for federal jurisdiction, the party seeking to enforce the award must proceed in state court (usually in the state in which the award was rendered).

Foreign Awards

33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

The US is a party the New York Convention, which it implements in the FAA. The US has reciprocity and commercial reservations to the convention.

The US is also a party to the Panama Convention.

34. To what extent is a foreign arbitration award enforceable?

Foreign arbitration awards are enforceable in the US courts under the New York Convention and the FAA, which restrain the right to challenge the award on limited grounds.

The US made the reciprocity reservation authorized by Article I(3) of the New York Convention (*9 U.S.C. § 201*). Although the caselaw is minimal, Chapter 1 of the FAA can be applied to a non-New York Convention award rendered abroad "only if the parties had agreed that judgment on the award may be entered in a specific United States court" (*In re Arb. Between Int'l Bechtel Co. Ltd. & Dep't of Civ. Aviation of Gov't of Dubai, 360 F. Supp. 2d 136, 137 (D.D.C. 2005)*). An agreement to seat an arbitration in a non-New York Convention state is unlikely to provide this.

35. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The statute of limitations period for enforcing a foreign arbitration award in the US is three years after the arbitral award is made.

If a foreign court issued judgment on an arbitral award, there may be state law requirements on the enforcement of the foreign judgment.

Once a foreign judgment is entered, most states have time periods for enforcing those judgments (for example, 20 years under the New York CPLR).

Length of Enforcement Proceedings

36.How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

Depending on the court's docket at the time, and the speed with which the court reviews these types of applications, the timing may range between a few months and more than a year. The procedure is the same for domestic and foreign awards. Judicial confirmation of an arbitration award is a summary proceeding that provides the party prevailing in arbitration with an expedited process for judicial enforcement of the award.

Reform

37. Are any changes to the law currently under consideration or being proposed?

Some circles are keen for Congress to adopt the Forced Arbitration Injustice Repeal Act (H.R. 963/S. 505). This seeks to generally prohibit pre-dispute arbitration agreements from being valid or enforceable, where the agreement requires forced arbitration of an employment, consumer, or civil rights claim against a corporation. However, this Act faces opposition from the US Chamber of Commerce. The bill is opposed by virtually all Republicans and is unlikely to obtain sufficient votes in the Senate to overcome a filibuster (supermajority requirement).

At state level, there have been recent efforts to reform arbitration laws, particularly in jurisdictions where arbitration most often takes place. The New York State Legislature has for years considered bills that would require arbitrators to disclose, in advance of their appointment, facts that could affect their impartiality. This includes whether they have a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with any of the parties, their counsel or representatives, a witness, or another arbitrator. The New York City Bar Association has cautioned the New York State Legislature against legislating any requirements for commercial arbitration (*see Report on Legislation by the Arbitration Committee, International Commercial Disputes Committee, and Insurance Law Committee, May 2019)*.

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Professional and academic qualifications. Admitted to practice in California, New York, and England and Wales; Juris Doctor, Berkeley Law; Bachelor of Arts, Political Science, University of California Berkeley.

Areas of practice. International investment and commercial arbitration; international litigation; United Nations Practice Group.

Recent transactions

- Chair of the firm's United Nations Practice Group, in which advises states on matters before the United Nations and its bodies and acts in proceedings before the International Court of Justice, regional human rights tribunals as well as human rights and State-sovereign cases before US courts under the Alien Tort Statute, Torture Victim Protection Act, Foreign Sovereign Immunities Act, among others.
- Sole Arbitrator, Co-Arbitrator, Emergency Arbitrator in numerous arbitrations under ICC, ICDR, AAA and UNCITRAL rules in the areas of construction, energy, hospitality, franchise, and supply chain. Also a CEDR-certified mediator.
- Counsel in international commercial arbitration (ICC, ICDR, AAA, LCIA, UNCITRAL and Swiss Rules) and investment treaty disputes (ICDR and UNCITRAL), ranging from construction matters to energy pricing and supply and solar power disputes, under EPC contracts, sale and purchase agreements, power purchase agreements, offtake agreements, and long-term lease agreements, among others.

Languages. English, Greek

Professional associations/memberships. Executive Council Member to the American Society of International Law; Term Member at the Council on Foreign Relations; Member of the New York International Arbitration Center (NYIAC); Member of the ICC Commission on Arbitration and ADR; ICDR Panel of Arbitrators, AAA Commercial Panel of Arbitrators, CPR Panel of Neutrals; Member of the International Arbitration Club of New York.

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Areas of practice. Litigation; business and commercial disputes; commercial arbitration; securities litigation; hedge funds; international litigation and arbitration; closely held business and shareholder disputes; real estate and development; State Attorney General Investigations.

Recent transactions

- Successfully defended a brokerage firm in multi-day arbitration hearings against claims that CMO investments were unsuitable for an institutional client.
- Prevailed in a major international arbitration liability hearing over the breach of an agreement to acquire a telecommunications company.
- Chaired an arbitration panel in an international dispute over a merger and acquisition transaction.
- Won a stock exchange arbitration involving failed securities trades on behalf of a brokerage firm.
- Mediated a dispute over liabilities assumed in a corporate takeover.
- Successfully defended a publishing company in an arbitration seeking to enforce provisions of a shareholders' agreement.
- Served as the court-appointed mediator in a series of disputes over bond defaults by a Latin American country.

Languages. English.

Professional associations/memberships. Past president of the New York State Bar Association; Delegate for New York to the American Bar Association's House of Delegates for which he chairs the New York delegation; Member, Steering Committee, ABA Nominating Committee; Member, ABA Committee on the American Judicial System; Member, Association of the Bar of the City of New York (Past Member, Committee on Arbitration; Past Secretary, Task Force on Civil Courts); Member, Governor's Judicial Screening Committee, First Department; Member, Chief Judge's Commercial Division Advisory Council;

Member, Task Force on Commercial Litigation in the 21st Century; Fellow, Chartered Institute of Arbitrators; Mediator, United States District Court, Southern District of New York, Eastern District of New York; Advisory Board, Financial Markets Regulatory Institute; Board of Directors, CPR Institute for Dispute Resolution (Past Chair, Executive Advisory Committee; Chair, International Committee); Board of Directors, Fund for Modern Courts (Member, Executive Committee); Founding Board Member and Vice Chair, New York International Arbitration Center; Advisory Council, Brooklyn Legal Services.

Publications

- Co-author, "COVID-19's Impact on Commercial Transactions and Disputes", PLI Current: The Journal of PLI Press (30 October 2020).
- Co-author, "Commercial Division Sees Uptick, Followed by Flattening in Case Filing", New York Law Journal (19 August 2020).
- Co-author, "Virtual Lawyering Practice: Arbitration", Virtual Lawyering: A Practical Guide (August 2020).

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Areas of practice. International arbitration; litigation; white collar crime and government investigations.

Recent transactions

- Leads the international arbitration and litigation practice of Foley Hoag's NY office. Served as chair, sole arbitrator, co-arbitrator, emergency arbitrator, appellate arbitrator, and counsel in domestic and international arbitrations, including five expedited arbitration proceedings and five emergency arbitration proceedings. Serves as Chair of an international arbitral tribunal in a USD350 million arbitration.
- Represents clients, including major French and other European groups, in international commercial litigation in the US and international corruption investigations. This includes securing a unanimous jury verdict for Orange SA in federal court in San Francisco.
- Represented major groups, such as Air France, Laboratoires Pierre Fabre, Caceis, and Credit Agricole Corporate & Investment Bank in international disputes.

- Hague Convention Commissioner.

Languages. English, French

Professional associations/memberships. Member of the Executive Committee and a Board member of the New York International Arbitration Center (NYIAC); Member of the International Commercial Disputes Committee of the New York City Bar Association; Member of the ICC Commission on Arbitration and ADR; ICDR Panel of Arbitrators, AAA Commercial Panel of Arbitrators, CPR Panel of Neutrals; Member of the International Arbitration Club of New York; Fellow of the Chartered Institute of Arbitrators (F. ClArb); Members Paris Place de Droit.

Publications

- Co-authored a multimedia e-book, Le Procès Civil en Version Originale, which received the award for best law book of the year from Cercle Montesquieu in France.
- Author of articles published in Le Monde, Dalloz Avocats, le Code Monétaire et Financier, Practical Law, and the New York Law Journal.

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Languages. Arabic, French, English, Spanish

Professional associations/memberships. ASIL; CIArb; Young ICCA; Arbitral Women; Arbitration Intelligence.

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Areas of practice. International arbitration; litigation.

Recent transactions

- Represents the Republic of Peru in five investment arbitrations before the International Centre for Settlement of Investment Disputes (ICSID) and Permanent Court of Arbitration (PCA).
- Represents the Republic of Panama in two separate investment arbitrations commenced by two separate investors in connection with the Panama Canal Expansion.
- Represents the Metropolitan Municipality of Lima in four construction arbitrations related to the toll road concessions.

- Represents a Nicaraguan company in an ICC arbitration against a Colombian company related to the acquisition of a participation in an alternative energy company.
- Represents a Nicaraguan agricultural company an ICC arbitration against a Colombian sugar company arising from agricultural land administration contracts.

Languages. English, Spanish, Portuguese

Professional associations/memberships. Member of the International Council for Commercial Arbitration (ICCA); International Bar Association (IBA); American Bar Association (ABA), International Law Section; American Society of International Law (ASIL); Member, List of Arbitrators, Peru International Arbitration Court (AMCHAM-PERU); Member, List of Arbitrators, Dispute Resolution Commission of the Guatemalan Chamber of Industry (CRECIG).

Publications

- "Comity Towards Nullity?: The New York Convention and Enforcement of Annulled Awards", ILSA Journal of International and Comparative Law (2019).
- "The Use of Experts in Common Law Jurisdictions", Construction Law International (CLInt) Quarterly Magazine (2019).
- "Most Favored Nation Clause: Attempting a Consistent Analytical Framework", Investment Arbitration Forum: Developments and Trends. 1st ed. (2013).

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