

The image features a dark blue background with a vertical orange bar on the left. The top right portion of the image shows a view of Earth from space, with white clouds and a blue horizon. The Mayer Brown logo is in the top left, and the title and subtitle are in the center left.

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How to Navigate International Arbitration

In the Americas and Europe

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Mayer Brown's Global Arbitration Guide

- Available on our website.
- Split by region
 - Americas
 - Europe
 - Africa
 - Asia-Pacific
 - Middle East
- Country specific information
 - New York Convention Status and ICSID Convention Status
 - Local Arbitration Institutions; Signed BITs and ICSID cases

Mayer Brown's Global Arbitration Guide

Germany

New York Convention
Ratified 30 June 1961. This state will apply the New York Convention only to the recognition and enforcement of awards made in the territory of another Contracting State.

ICSID Convention
18 May 1969

Local Arbitration Law
German Arbitration Act (1998) (sections 1025 to 1066 of the Code of Civil Procedure)

Enacts the UNCITRAL Model Law on International Commercial Arbitration (1985) entirely or in part?
Yes

Local Arbitration Institutions
Chinese European Arbitration Centre (CEAC); German Institute of Arbitration (DIS); German Maritime Arbitration Association

Bilateral Investment Treaties
134, 6 not yet in force

Key Conventions and Laws
Energy Charter Treaty (1994)

ICSID Cases
23 concluded, 23 pending

Participating in the Belt and Road Initiative?
No

Bilateral Investment Treaties

In force: Afghanistan, Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Barbados, Belarus, Benin, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Democratic Republic of the Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Gabon, Gambia, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iran, Jamaica, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lesotho, Liberia, Libya, Lithuania, Macedonia, Madagascar, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Nicaragua, Niger, Nigeria, Occupied Palestinian territory, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of the Congo, Romania, Russia, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Senegal, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, Somalia, South Korea, Sri Lanka, Sudan, Swaziland, Syria, Tajikistan, United Republic of Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen, Zambia and Zimbabwe

Not yet in force: Brazil, Iraq, Israel, Pakistan and Timor-Leste

ICSID Cases

Cases as Respondent State: Vattenfall AB and others v. Federal Republic of Germany (I) (ICSID Case No. ARB/12/12), pending

Vattenfall AB, Vattenfall Europe AG, Vattenfall Europe Generation AG v. Federal Republic of Germany (I) (ICSID Case No. ARB/09/18), settled

Cases as Home State of Claimant: Hochtief AG v. People's Republic of China (ICSID Case No. ARB/17/15), pending

Portigon AG v. Kingdom of Spain (ICSID Case No. ARB/17/15), pending

VC Holding (US) v. i. and others v. Italian Republic (ICSID Case No. ARB/16/29), pending

Sun-Flower Olinda GmbH & Co KG and others v. Kingdom of Spain (ICSID Case No. ARB/16/17), pending

Global Arbitration: Queen Mary's 2018 Survey

- London
 - Most preferred seat (64%)
 - LCIA second most popular institution
- Paris
 - Second most preferred seat (53%)
 - ICC most popular institution
- New York
 - Sixth most preferred seat (22%)

Arbitration Institutions – Europe

- London Court of International Arbitration (LCIA)
 - Leading global forum for dispute resolution, origins date to 1883
 - 285 arbitration referrals in 2017
 - 80% from outside UK
- Arbitration Institute of the Stockholm Chamber of Commerce (SCC)
 - Administered 200 cases in 2017
 - 48% international cases

Arbitration Institutions – Europe

- German Institution of Arbitration (DIS)
 - 125 proceedings in 2017
 - 44% with one or more international party
- Permanent Court of Arbitration (PCA)
 - Hears disputes concerning agreements between its 121 member states, international organisations and private parties
 - 97 investor-state arbitrations in 2017
 - 52 arbitrations involving State/ government organisation and another public or private entity

Arbitration Institutions – Europe

- Swiss Chambers Arbitration Institution (SCAI)
 - Over 150 years experience
 - 90% of cases under SCAI rules are international
- Vienna International Arbitration Centre (VIAC)
 - Founded in 1975, 48% of parties are international
 - Received 64 new cases in 2018
- Scottish Arbitration Centre
 - Leading regional institution

Enforcement of Arbitration Awards – United Kingdom

- New York Convention
- ICSID Convention
- Arbitration Act 1996
 - Enacts UNCITRAL Model Law
 - Pro-arbitration approach
- Arbitration (Scotland) Act 2010
 - Statutory confidentiality

Enforcement of Arbitration Awards – United Kingdom

- Arbitration Act 1996: Section 100-104 – Recognition and Enforcement of New York Convention Awards
 - Section 101(2): “A New York Convention award may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.”
 - Section 104: a party can “enforce a New York Convention award at common law or under section 66.”
- Section 66 (enforcement of foreign and domestic awards):
 - (1) An award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect.
 - (2) Where leave is so given, judgment may be entered in terms of the award.

UK Court's Pro-Arbitration Approach

- Arbitration Act 1996 Section 44 - Court powers exercisable in support of arbitral proceedings
 - Allows the court to make orders taking or preserving evidence
 - Allows the court to grant interim injunctions
 - Non-mandatory provision – can be excluded through agreement
 - Court can make order even if there is a foreign arbitral seat
 - Can only make order where institution or tribunal *"has no power or is unable for the time being to act effectively"*

Enforcement of Arbitration Awards – Europe

- Germany
 - New York Convention
 - ICSID Convention
 - German Arbitration Act (1998)
- Switzerland
 - New York Convention
 - ICSID Convention
 - Swiss Private International Law Act (1989); Swiss Code of Civil Procedure (2011)

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Graphic available <https://investmentpolicyhub.unctad.org/IIA/CountryBits/221>

Bilateral Investment Treaties – Europe

- Over 1,352 BITs
- Over 218 intra-EU BITs
- Over 1,168 BITs between EU and non-EU states

Slovak Republic v Achmea BV (C-284/16)

EU:C:2018:158 (“Achmea”)

- March 2018
 - ECJ issued decision that arbitration clauses in many BITs are incompatible with EU law. Raised concerns about the validity of intra-EU BITs and the ECT
- July 2018
 - European Commission (EC) clarified that *Achmea* applies to all intra-EU BITs, including the ECT. Where do the pending intra-EU ECT cases stand?
- August 2018
 - *Vattenfall AB and others v Federal Republic of Germany* (ICSID Case No. ARB/12/12): ICSID Tribunal concludes *Achmea* does not apply to ECT

Fall out of *Achmea*

- October 2018
 - German Federal Court of Justice sets aside award in *Achmea* on the basis of the ECJ's March decision ([*Docket No. I ZB 2/15*](#)).
 - *United Utilities (Tallinn) B.V. and another v Republic of Estonia (ICSID Case No. ARB/14/24)*: ICSID Tribunal allows EC to intervene as a non-disputing party
 - *UP and another v Hungary (ICSID Case No. ARB/13/35)*: ICSID Tribunal holds that *Achmea* does not affect it hearing the case as dispute resolution provision was different to that in *Achmea*. Refused to grant EC permission to intervene.
- December 2018
 - EC refers Romania to ECJ for failing to recover compensation paid under an ICSID award – alleges constitutes illegal state aid

Fall out of *Achmea*

- January 2019
 - EU Member States issue declarations:
 - 21 consider *Achmea* means ISDS provisions in intra-EU BITs and ECT are incompatible with EU law
 - 6 disagree ECT is incompatible with EU law
 - But all Member States undertaken to terminate intra-EU BITs by 6 December 2019. Swedish court refuses to enforce ICSID award (obtained by the Miculas against Romania in 2013) on basis must comply with EC's decision.

Fall out of *Achmea*

- February 2019
 - *Sodexo Pass International SAS v Hungary (ICSID Case ARB/14/20)*: Tribunal considered *Achmea* ruling did not bind an ICSID tribunal deriving its authority from the self-contained system of the ICSID convention
 - *Edenred v Hungary (ICSID Case. ARB/13/21)*: Tribunal refused to take account of *Achmea* in ICSID Revision proceedings. Application of *Achmea* is a question of law whereas revision applies when a “new fact” could decisively affect an award
 - *PL Holdings v Poland (Svea Court of Appeal)*: 2 SCC awards largely upheld; Poland had left it too late to raise *Achmea*-based objection but court still dismissed argument on its merits in view of “fundamental” importance of the issue

Recent Court Decision – England

- *Halliburton Company v Chubb Bermuda Insurance Ltd* [2018] EWCA Civ 817
 - Court of Appeal suggested that arbitrators have an obligation under English law to disclose circumstances and facts where there are issues of apparent bias or partiality
 - Reiterates that English law will apply the “objective observer” test when determining doubts as to an arbitrator’s impartiality, even though arbitral rules/guidelines apply a stricter, more subjective test

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Arbitration Institutions – France

- International Chamber of Commerce (ICC)
 - Formed in 1923, Largest arbitration institution in the world
 - 810 new cases in 2017
 - 104 seats in 63 countries in 2017
- Paris Center for Mediation and Arbitration (CMAP)
 - 305 cases in 2017
 - 9% international cases
- Association Française d'Arbitrage (AFA)
 - Founded in 1957 with the aim of promoting arbitration and mediation both in France and abroad, it hears national and international commercial disputes

Enforcement of Arbitration Awards – France

- New York Convention
- ICSID
- New Code of Civil Procedure (amended in 2011)

Key Recent Court Decisions – France

- *Société MK Group c/ S.A.R.L. Onix et Société Financial Initiative, Cour d'appel de Paris, No. 15/21703* – ICC award set aside on grounds of public policy
- *Cass. civ. 1, République de Moldavie c/ société Komstroy, n° 16-16.568* – decision to set aside ECT award overturned
- *J&P AVAX v Tecnimont SpA, No. 16-18.349* – award upheld by the Court of Cassation on basis that only serious doubts about arbitrator's independence discovered after tribunal constituted would justify set aside

Enforcement of Arbitration Awards – Spain

- New York Convention
- ICSID
- Ley 60/2003, de Arbitraje

Arbitration Institutions – Spain

- Corte de Arbitraje de Madrid
 - Handles domestic and international matters
- Corte Española de Arbitraje
- Project to create a single court which will handle all international matters

Arbitration Institutions – Latin America

- Centre of Arbitration and Conciliation of the Chamber of Commerce of Bogotá (CAC–CCB)
 - Hears Columbian and international arbitrations
 - 1,477 cases over 5 years (2010-15)
- Centre of Arbitration and Mediation of the Brazil-Canada Chamber of Commerce) (CAM–CCBC)
 - One of the regions busiest arbitral institutions hears Brazilian and international disputes
 - 141 new cases in 2017

Arbitration Institutions – Latin America

- Arbitration and Mediation Centre of the Santiago Chamber of Commerce (CAM Santiago)
 - Hears national and international commercial and investment treaty disputes
 - Over 1,500 arbitrations since 1992
- Arbitration Centre of the Chamber of Commerce of Lima (Peru) (CCL)
 - Leading Peruvian institution with a remarkable number of cases

Enforcement of Arbitration Awards – Latin America

- New York Convention

New York Convention	
1 Argentina	11 Guatemala
2 Bolivia	12 Haiti
3 Brazil	13 Honduras
4 Chile	14 Mexico
5 Colombia	15 Nicaragua
6 Costa Rica	16 Panama
7 Cuba	17 Paraguay
8 Dominican Republic	18 Peru
9 Ecuador	19 Uruguay
10 El Salvador	20 Venezuela

- National legislation: following UNCITRAL Model Law

- Argentina: Ley 27449, de Arbitraje Comercial Internacional, 4th July 2018
- Uruguay: Ley 19636, de Arbitraje Comercial Internacional, 13th July 2018

Investment Arbitration ICSID – Latin America

- ICSID Convention
 - Absence of Brazil
 - Denunciation by Bolivia, Ecuador and Venezuela

ICSID Convention	
1	Argentina
2	Chile
3	Colombia
4	Costa Rica
5	Dominican Republic (not yet in force)
6	El Salvador
7	Guatemala
8	Haiti
9	Honduras
10	Mexico
11	Nicaragua
12	Panama
13	Paraguay
14	Peru
15	Uruguay

Bilateral Investment Treaties – Latin America

- 337 BITs with non-regional partners
- Brazil has never ratified any BITs
 - New Treaties on Facilitation of Foreign Investment
- Bolivia and Ecuador have denounced all of its BITs
 - Ecuador aims at signing BITs based on its new model
- Venezuela has denounced its BIT with the Netherlands

Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP")

- Chile, Mexico and Peru are signatories
- Other non-regional signatories: Australia, Brunei, Canada, Japan, Malaysia, New Zealand, Singapore and Vietnam
- Colombia has expressed interest in joining; Chile and Peru yet to ratify
- Narrowed ISDS provisions
 - Aimed at protecting states' right to protect public interest and prevent unwarranted claims
 - Private entities cannot make ISDS claims regarding investment contracts with governments
 - Excluded between Peru and New Zealand
 - Chile declaration on ISDS provisions that it will *"consider evolving international practice and the evolution of ISDS including through the work carried out by multilateral international fora"*

Key Recent Court Decisions – Latin America

- *REsp. No 1.639.035 – SP* – Brazilian Court of Justice ruled that it is possible to extend the arbitration agreement in the main contract to ancillary contracts
- *Consortio Ferrovia – Sainc v. Carbones del Cerrejón Ltd.*, Corte Suprema de Justicia [Supreme Court of Justice], Sala de Casación Civil [Civil Chamber], 19 December 2018, Ruling No. SC5677-2018, M.P. Margarita Cabello Blanco – Highest Colombian Court confirmed country's pro-arbitration approach

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Arbitration Institutions – United States

- The American Arbitration Association (AAA)
 - Focuses on domestic commercial, construction, employment, labor, government, and consumer disputes
- International Centre for Dispute Resolution (ICDR)
 - International arbitrations of the AAA
- The International Chamber of Commerce (ICC)
 - Leading international commercial arbitration institution – over 950 cases a year, involving over 3,000 parties from 137 countries and territories
- The Institute for Conflict Prevention and Resolution (CPR)
 - Aims to reduce the cost of litigation by encouraging in-house counsel and their law firms to pursue ADR mechanisms before filing a lawsuit
- JAMS
 - Partnered with an ADR Centre in Italy and elsewhere to form JAMS International

Enforcement of Arbitration Awards

- Legal Framework
 - United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”)
 - Inter-American Convention on International Commercial Arbitration (“Panama Convention”)
- Majority of arbitration awards are complied with voluntarily
 - Queen Mary, University of London, 2008 International Arbitration Study - Corporate Attitudes and Practices: Recognition and Enforcement of Foreign Awards
 - 84% of the participating corporate counsel indicated that in more than 75% of their arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award

Enforcement of Arbitration Awards

- Article V(1) of the New York Convention sets out grounds on which a party may rely on to resist enforcement:
 - (a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
 - (b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
 - (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
 - (e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made

Enforcement of Arbitration Awards

- Article V(2) of the New York Convention sets out additional grounds on which recognition and enforcement of an arbitral award may also be refused
 - Specifically, if the competent authority in the country where recognition and enforcement is sought finds that:
 - (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) The recognition or enforcement of the award would be contrary to the public policy of that country
- Article 5 of the Panama Convention sets out similar grounds for non-recognition of an arbitral award

Enforcement of Arbitration Awards – United States

- Federal Arbitration Act Section 207 (9 U.S.C.S § 207):
 - “Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court **shall** confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.”

Enforcement of Arbitration Awards – United States

- Federal Arbitration Act Section 304 (9 U.S.C.S § 304):
 - “Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.”

Bilateral Investment Treaties – United States

No.	Partners	Status	Date of signature	Date of entry into force
1	Albania	In force	11/01/1995	04/01/1998
2	Argentina	In force	14/11/1991	20/10/1994
3	Armenia	In force	23/09/1992	29/03/1996
4	Azerbaijan	In force	01/08/1997	02/08/2001
5	Bahrain	In force	29/09/1999	30/05/2001
6	Bangladesh	In force	12/03/1986	25/07/1989
7	Belarus	Signed (not in force)	15/01/1994	
8	Bolivia, Plurinational State of	Terminated	17/04/1998	06/06/2001
9	Bulgaria	In force	23/09/1992	02/06/1994
10	Cameroon	In force	26/02/1986	06/04/1989
11	Congo, Democratic Republic of the	In force	03/08/1984	28/07/1989
12	Congo	In force	12/02/1990	13/08/1994
13	Croatia	In force	13/07/1996	20/06/2001
14	Czech Republic	In force	22/10/1991	19/12/1992
15	Ecuador	Terminated	27/08/1993	11/05/1997
16	Egypt	In force	11/03/1986	27/06/1992
17	El Salvador	Signed (not in force)	10/03/1999	
18	Estonia	In force	19/04/1994	16/02/1997
19	Georgia	In force	07/03/1994	10/08/1999
20	Grenada	In force	02/05/1986	03/03/1989
21	Haiti	Signed (not in force)	13/12/1983	
22	Honduras	In force	01/07/1995	11/07/2001
23	Jamaica	In force	04/02/1994	07/03/1997
24	Jordan	In force	02/07/1997	12/06/2003

25	Kazakhstan	In force	19/05/1992	12/01/1994
26	Kyrgyzstan	In force	19/01/1993	12/01/1994
27	Latvia	In force	13/01/1995	26/12/1996
28	Lithuania	In force	14/01/1998	13/06/2004
29	Moldova, Republic of	In force	21/04/1993	26/11/1994
30	Mongolia	In force	06/10/1994	04/01/1997
31	Morocco	In force	22/07/1985	29/05/1991
32	Mozambique	In force	01/12/1998	03/03/2005
33	Nicaragua	Signed (not in force)	01/07/1995	
34	Panama	In force	27/10/1982	30/05/1991
35	Poland	In force	21/03/1990	06/08/1994
36	Romania	In force	28/05/1992	15/01/1994
37	Russian Federation	Signed (not in force)	17/06/1992	
38	Rwanda	In force	19/02/2008	01/01/2012
39	Senegal	In force	06/12/1983	25/10/1990
40	Slovakia	In force	22/10/1991	19/12/1992
41	Sri Lanka	In force	20/09/1991	01/05/1993
42	Trinidad and Tobago	In force	26/09/1994	26/12/1996
43	Tunisia	In force	15/05/1990	07/02/1993
44	Turkey	In force	03/12/1985	18/05/1990
45	Ukraine	In force	04/03/1994	16/11/1996
46	Uruguay	In force	04/11/2005	31/10/2006
47	Uzbekistan	Signed (not in force)	16/12/1994	

Graphic available at <https://investmentpolicyhub.unctad.org/IIA/CountryBits/223>

US-Mexico-Canada Agreement (“USMCA”) – The “New NAFTA”

- No US/Canada ISDS Arbitrations
 - USMCA eliminates ISDS arbitrations between Canadian parties invested in the United States and vice versa (*i.e.*, US parties invested in Canada)
- Limited US/Mexico ISDS Arbitrations
 - USMCA prevents many US and Mexican investors from asserting certain claims, such as certain indirect expropriation and discrimination claims
- Continued Anti-Dumping and Countervailing Duties Arbitration
 - NAFTA’s binational arbitration process for resolving disputes over anti-dumping and countervailing duty measures remains in place

Key Recent Court Decisions – United States

- *Henry Schein, Inc. et al., v. Archer and White Sales, Inc.*, 139 S. Ct. 524 (2019)
- *Certain Underwriting Members of Lloyds of London v. Florida Department of Financial Services*, 892 F.3d 501 (2d Cir. 2018)
- *General Re Life Corp. v. Lincoln National Life Insurance*, 909 F.3d 544 (2d Cir. 2018)



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