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International Commercial Courts: A Global Disputes Practitioner's Perspective—Part II

Markus Burianski and Lisa Fleckenstein[1]

In this multipart article, the authors provide a perspective on international commercial courts. In the first part, published in the May-June 2025 issue of *Dispute Resolution Journal*, the authors set out a brief overview of five prominent international commercial courts with a description of their salient features. In this part, the authors discuss five characteristics of a high-quality dispute resolution process and make recommendations as to whether its emphasis is better reflected in arbitration or commercial court proceedings. Finally, in the next issue of *Dispute Resolution Journal*, the authors will provide guidance to the choice between the various international commercial courts, based on the substantive and procedural law applicable to them with a focus on the determination method for foreign law issues as well as the legal basis for the cross-border enforcement of commercial court judgments.

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An international commercial court can be broadly defined as a tribunal integrated in a national judicial system and specifically dedicated to the resolution of cross-border business disputes.

The following six features can be identified as common to international commercial courts: a set of procedural rules that are flexible to various degrees; multilingual court proceedings, usually with the possibility of conducting at least part of the hearing in English; the existence of an appeal mechanism; a certain threshold for the amount in dispute; composition of the courts with judges who have expertise in the respective subject areas; and certain forms of cooperation in cross-border enforcement.[2]

Some of these six features listed above already suggest that commercial courts go beyond the possibilities of typical state courts and have adopted features more associated with international commercial arbitration. They have become hybrids, in some respects, because they combine features of national courts with those of arbitration proceedings; for instance, case management conferences, remote hearings, witness cross-examination, and document production.[3] Ironically, it is the features similar to arbitration proceedings that are praised in the legal discourse as benefits of the international commercial courts.

One reason for this conceptual ambiguity within international commercial courts is that national legislators introduced them partly to create a counterbalance to the increasingly popular arbitration practice. According to the 2021 International Arbitration Survey, conducted by the Queen Mary University of London in partnership with White & Case, international arbitration is the preferred method of resolving cross-border disputes for 90 percent of respondents, either alone (31 percent) or in conjunction with alternative dispute resolution (ADR) (59 percent). These numbers have not gone unnoticed by national legislators and

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[2] See Quentin Loh, "The Limits of International Arbitration and Introduction to the Concept of the Singapore International Commercial Court," Festschrift Schütze, 1st ed., C.H. Beck 2014, p. 353.

[3] Dalma R. Demeter & Kayleigh M. Smith, "The Implications of International Commercial Courts on Arbitration," Journal of International Arbitration, 33, 2016, p. 466.

have led to an interesting imitation effect in the design of the international commercial courts.

Despite some similarities, there are still significant differences between the two methods of international dispute resolution. This comparison seeks to suggest, by reference to selected aspects, in which situations proceedings before an international commercial court may be advantageous and in which circumstances it is recommended to submit the case to international arbitration.

From parties' and legal advisers' perspectives, the key factors in choosing a high-quality dispute resolution forum are expertise and competence of the deciding body as well as time and costs of the resolution process. In this context, aiming for "quality" in dispute resolution does not necessarily mean a positive outcome for the client, which obviously is the goal, but rather a transparent and plausible decision process. The initial step in providing appropriate legal advice on the dispute resolution methods and venues should be to enable the user to make an informed decision.

The following five aspects (Expertise, Confidentiality, Joinder of Third Parties, Right to Appeal, Enforcement) are of particular importance to parties and their counsel when evaluating the various options for resolving their international commercial dispute.

Expertise

Participants in international and complex commercial proceedings, unlike conventional litigants, are not necessarily interested in conducting the legal dispute in their own home country. Rather, they are interested in receiving a fair and predictable trial and a well-founded decision of their legal dispute. From the users' perspectives, both the expertise and legal certainty within the decision-making body are more relevant than the geographical location of a commercial court or arbitration seat.

In comparison with international commercial courts, arbitration benefits from its head start, as it has been established for many years. Information on arbitration rules and on the arbitrators' experiences and empirical data are available and plentiful. This has created a first-mover advantage in favour of arbitration.

But what is even more important is that parties to arbitration proceedings are free to select precisely the one person they consider as most competent for resolving the dispute as their arbitrator. None of the international commercial courts offer this choice. Instead, commercial courts offer a roster of usually 10 to 25 judges who are usually recognised and highly respected experts in the field of international commercial law. The panel of judges is then selected from this roster through an internal process. Although this provision is at the detriment of party autonomy, it may be advantageous for parties requiring independently appointed judges.[4]

However, experience has shown that the opportunity to influence the composition of the arbitration tribunal leads to a high level of acceptance of the arbitration procedure and its outcome. The emotional aspect behind this observation is obvious: Of course, acceptance of any type of decision is typically higher if the person affected by it was able to (co)determine the decision. In addition, it is also true that many complex commercial disputes require not only legal expertise for a well-founded decision but also a practical understanding of the sector or industry in which the dispute arises. For example, in the context of (post)-M&A (mergers and acquisitions) disputes, parties of arbitration proceedings regularly choose arbitrators with special expertise in the business area of the company in dispute.

This is not an option for parties to commercial court proceedings. They must simply trust the panel of judges, which was appointed for them and not by them. Building this trust will be particularly successful if the individual commercial courts can be associated with specific areas of expertise and a good reputation. These factors are the currency of trust for potential parties and their advisors. In the long term, commercial courts need to become distinct centers of excellence for certain types of disputes and economic sectors similar to the London commercial court, which has succeeded in concentrating a large proportion of international commercial, banking, and financial disputes in London.

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[4] Sundaresh Menon, Lecture, "The Transnational System of Commercial Justice and the Place of International Commercial Courts," Bahrain, 9 May 2023, p. 36.

In the context of the deliberations about the new German commercial courts, the legislator estimated that 21 cases with a value in dispute of more than €1 million would be referred to the five commercial courts to be established. Recognizing that this number would likely be too low to permit five courts to develop the necessary expertise, the threshold was reduced to €500,000 in the hope to increase the case load and, thus, the ability to build up expertise. Other commercial courts are also advertising their areas of expertise, from which potential parties can derive a first impression as to which court might be suitable for their legal dispute.

Except for London, however, no eminent centers of expertise have yet emerged, which is mainly due to the moderate case numbers that most commercial courts record. In almost all commercial courts, it can be observed that out of the moderate case numbers, even fewer cases have been brought there on the basis of the parties' choice of court clauses but rather through transfers from other courts. This information can be interpreted as a cautious and reserved response of the dispute resolution community toward the expertise of the commercial court panels.

This observation and sentiment may change over time, but for the time being, parties in particularly difficult, complex, high-value, or sector-specific cases may be on the "safer" side by opting for arbitration proceedings, unless one of the following aspects outweighs the expertise aspect.

Confidentiality

If a legal dispute arises between two contracting parties, there is usually an underlying conflict giving rise to the risk of mutual malice and harmful behaviour. Business people, corporations, and their representatives want to resolve their dispute, but they do not want sensitive commercial information or even business secrets to leave the walls of the courtroom. In some cases, a leak of information could even cause greater monetary or reputational damage than losing the actual case.

There are four weak points in the course of both arbitration and commercial court proceedings where information could be

leaked to the public. These are the hearings, the case file, the process of document disclosure, and the judgment.

Although not all arbitration proceedings are completely confidential, as it depends ultimately on the seat's jurisdiction, arbitration proceedings are at least private (in the sense of not taking place in a public forum) and can usually be made more confidential by party agreement, which may be explicitly included in the arbitration agreement.[5]

Privacy means the non-public nature of the proceedings and the subsequent exclusion of persons not necessarily required for the conduct of the proceedings. Confidentiality goes beyond that and entails the obligation of all participants to maintain confidentiality about the content of the proceedings, documents, actions, or information obtained through the presentation of evidence.

Where no confidentiality agreement is in place, parties can apply institutional arbitration rules to their dispute. The 2018 DIS Rules (German Arbitration Institute) any many others (London Court of International Arbitration Rules 2020, Singapore International Arbitration Centre Rules 2025, Stockholm Chamber of Commerce Arbitration Rules 2023) contain a default confidentiality provision that introduces a duty of confidentiality upon the parties, the arbitrators and the employees involved in the administration of the arbitration proceedings. The UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules, on the other hand, do not provide for an express presumption of confidentiality.[6]

For international commercial courts the general rule is that proceedings and hearings are held in public and decisions are rendered publicly as well although they are published in anonymised form.

Despite this, international commercial courts have taken precautions to protect particularly sensitive information.

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[5] Juan Carlos Urquidi Herrera, "International Commercial Courts: Similarities and Disparities," Business Law Review, Volume 40, Issue 6, 2019, p. 233.

[6] Upadhyay Shaurya, "Confidentiality," Jus Mundi, 30 October 2023, https://jusmundi.com/en/document/publication/en-confidentiality.

In proceedings before the NCC, for instance, the case file is confidential, which means that submissions, motions, and exhibits are not published or disclosed to third parties or the public. Document disclosure is limited in scope and, in any event, is not required if there are compelling reasons opposing the disclosure. However, the public is only excluded from the hearings in very exceptional circumstances.[7]

German commercial courts hold public proceedings but according to the recently passed legislation (Justizstandort-Stärkungsgesetz) they may categorise disputed information as "wholly or partially confidential" upon a parties' request if it is a trade secret within the meaning of the Trade Secrets Protection Act.[8] The information classified as confidential must then be treated confidentially in accordance with Section 16 para. 2 of the Trade Secrets Protection Act. If the court issues a confidentiality order, the parties to the proceedings are prohibited from using or disclosing the protected information for the duration of the proceedings from the time of filing the claim, unless the information has been obtained outside the proceedings. In addition, the court may, upon request, limit access to procedural documents and information to a certain persons and otherwise exclude the public from the proceedings, in particular, the hearings.

In the International Commercial Chambers of the Paris Commercial Court (ICPC) proceedings are public as well unless the court decides that this might adversely affect individual privacy. The court can also limit publicity if all the parties so request or if disturbances arise that may disrupt the atmosphere of the proceeding (Article 5 of the ICPC rules in connection with Article 435 of French Code of Civil Procedure). French domestic law does not provide for any further means of safeguarding trade secrets or overall confidentiality.

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[7] Such circumstances include public policy or good morals, the security of the state, the interests of minors or the privacy of parties, or the sound administration of justice, https://www.rechtspraak.nl/English/NCC/Pages/FAQ.aspx#87c8c2d4-cab9-4d8d-8d77-b0fa595528e83b30cf08-128a-4d70-bafb-f157998a18a623.

[8] BGBl. 2024 I Nr. 302, 10 October 2024, p. 3.

Furthermore, Germany, France, and the Netherlands are subject to the EU Directive 2016/943[9] (Trade Secrets Directive). According to Article 9 no. 2 of the Directive, member states may restrict access to documents or hearings in legal proceedings when trade secrets or alleged trade secrets may be disclosed.

According to the DIFC (Dubai International Financial Centre) Courts Rules, a hearing may be in private if it involves confidential information (Article 35.4). For the same reason, documents can be excluded from document production (Article 28.28). Furthermore, according to Article 25.42 of the rules, confidential exhibits do not need to be served but they must be made available for inspection by the respondent in the presence of the applicant's legal representatives.

With regard to the AIFC (Astana International Financial Centre) Court, it is possible for the court to order that a hearing shall continue in private (Section 22.5 of the AIFC Court Rules). The rules even stipulate that the judgment may not be made public (Section 22.7), which is a comparatively far-reaching provision.

The Singapore International Commercial Court (SICC) is the only international commercial court that allows for private and confidential proceedings[10] upon a party's application and only to offshore disputes where the parties have an agreement on the orders to be made (Article 97 of SICC Practice Directions, dated 1 July 2023, Order 16 no. 9 of the SICC Rules). There are three kinds of confidentiality orders parties may apply for: (1) an order that the case be heard on camera, (2) an order that no person may reveal or publish any information or document relating to the case, and (3) an order that the court file be sealed. Cases are considered to be "offshore" if they have no substantial connection with Singapore. Apart from the narrow scope of application, the

[9] EU Directive 2016/943, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32016L0943.

[10] Georgia Antonopoulou, "The 'Arbitralization' of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts," Journal of International Dispute Settlement, 14, 2023, p. 347.

definitive decision on the matter of confidentiality depends on the court's discretion.[11]

The brief comparison shows that international commercial court proceedings are in essence public, despite their individual measures to protect privacy. Unlike in arbitration proceedings, the fact that the parties are having a dispute at all cannot remain confidential.[12] Extensive confidentiality of the proceedings is therefore not granted by any of the commercial courts discussed here. However, the public nature of commercial courts is often considered as an opportunity to further develop the law, especially in areas that were previously negotiated exclusively in secret arbitration proceedings (e.g., post-M&A disputes). This can thereby contribute significantly to predictability and, ultimately, legal certainty for the parties.[13]

Those parties whose legal dispute is likely to involve sensitive business segments and practices, or who are interested in protecting personal information, are therefore encouraged to submit their case to arbitration. Yet, even in arbitration, it is important to ensure that the scope of confidentiality is defined as precisely as possible in a specific agreement, as otherwise it cannot be guaranteed that, for example, the disclosure of information by third parties will be prevented.

In terms of the commercial courts, parties may assess whether the mere existence of the dispute will likely negatively affect, for example, their ability to obtain financing, or harm the company's value through a drop in share price. Conversely, parties could benefit from a potential marketing advantage regarding their public image by demonstrating a pursuit of certain claims.

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[11] Dalma R. Demeter & Kayleigh M. Smith, "The Implications of International Commercial Courts on Arbitration," Journal of International Arbitration, 33, 2016, p. 449.

[12] Dalma R. Demeter & Kayleigh M. Smith, "The Implications of International Commercial Courts on Arbitration," Journal of International Arbitration, 33, 2016, p. 449.

[13] Hannah Eckhoff, Leane Meyer & Paul Schiering, "Die Attraktivität Deutschlands als Forum internationaler Streitbeilegung," RIW, 2023, 804, p. 807.

It is therefore essential to discuss with clients which concept is best suited to their specific situation. This also includes analysing how sensitive the client's information is and which scenarios could potentially lead to the disclosure of this information.

Joinder of Third Parties

A frequently expressed advantage of commercial courts over arbitral tribunals is said to be that the former have the power to involve (and in some instances force) third parties in the dispute, even in cases where they are not party to the underlying agreement.[14]

An arbitral tribunal certainly has no comparable means or power to make orders or awards against third parties that are not a part of the arbitration agreement. Some institutional arbitration rules recently allow third parties to join, but under the condition that any subsequent joining of new parties must be approved by all parties affected by the agreement. This is because arbitral tribunals derive their legitimacy from the parties' consent and the principle of party autonomy. Despite these comprehensible reasons, the lack of joinder mechanisms creates problems in multiparty or multicontract relationships or in contracts where there is no arbitration agreement to ensure a common case for potentially related issues.[15] This often concerns construction projects or supply chains, for example.

International commercial courts, on the other hand, can force third parties into the dispute if certain conditions are met.[16] At their core, commercial courts are state courts and therefore

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[14] See, e.g., "The Year 2021 in Review," SICC News, Issue 27, February 2022, https://www.judiciary.gov.sg/docs/default-source/sicc-docs/media-resources/sicc-news-no-27-(feb-2021).pdf, p.4.

[15] Pietro Ortolani & Bas van Zelst, "International Commercial Courts and EU Law Easing Tension," Journal of International Dispute Settlement, 2023, 14, 76-90, p. 443.

[16] Johannes Landbrecht, "The Singapore International Commercial Court (SICC)—An Alternative to International Arbitration?," ASAB, 2016, p. 118; see NCC Rules Section 2.2.2; SICC Rules Order 10, rules 5-7; AIFC Rules Section 12.5, DIFC Court Rules 20. 28.

exercise sovereign power and can override the will of the parties. This has the advantage that parties affected by the outcome of the legal dispute do not have to initiate concurrent or subsequent arbitral or court proceedings.[17]

Yet, some authors[18] rightly point out that domestic jurisdiction is also subject to considerable limits:

> International commercial courts derive their jurisdiction primarily from choice of court agreements by the parties. This voluntary jurisdiction prevents third parties from being joined to pending international commercial court proceedings against their will. This means that if a case was brought to an international commercial court because of a party agreement on jurisdiction, the commercial courts (similar to arbitral tribunals) may not force non-consenting third parties to proceedings.[19] However, if the jurisdiction of the court is not based on an agreement, but instead on the transfer from another court (as may be the case with the SICC, ICPC or NCC, for example) or on the exclusive jurisdiction resulting from the parties' membership of the DIFC or AIFC, joinder of a third party is possible in accordance with the respective requirements.

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[17] Dorothee Ruckteschler & Tanja Stooss, "International Commercial Courts: A Superior Alternative to Arbitration?," Journal of International Arbitration, 36, Issue 4, 2019, p. 6 f.

[18] Dorothee Ruckteschler & Tanja Stooss, "International Commercial Courts: A Superior Alternative to Arbitration?," Journal of International Arbitration, 36, Issue 4, 2019, p. 6 f; Johannes Landbrecht, "The Singapore International Commercial Court (SICC)—An Alternative to International Arbitration?," ASAB, 2016, p. 119.

[19] Georgia Antonopoulou, "The 'Arbitralization' of Courts: The Role of International Commercial Arbitration in the Establishment and the Procedural Design of International Commercial Courts," Journal of International Dispute Settlement, 14, 2023, p. 345, emphasizing that the SICC is an exception to this rule as the SICC Rules explicitly grant the court the ability to join third parties even if jurisdiction derives from an exclusive choice of forum.

The second limitation results from the fact that the jurisdiction of international commercial courts ends at the borders of state territory. Often, the courts simply lack the competence to join foreign third parties into the proceedings of the forum state. To do so, they would have to resort to the instruments of international legal assistance, a procedure that usually incurs additional procedural steps and therefore additional time and money.[20]

When deciding in favour of or against proceedings before a commercial court, it is therefore advisable to examine the specific facts of the case to determine whether other parties could be affected by the outcome of the proceedings. If this is the case, efficiency and, ultimately, also financial considerations may argue in favour of conducting proceedings before a commercial court and involving the third party in order to avoid the latter initiating a concurrent lawsuit against the client given that the requirements for such joinder are met.

Right to Appeal

Good legal advice acts with foresight. It considers the potential outcome of a trial before it even begins. This is particularly challenging in question of appeals because the desire for an appeal typically only occurs at the very moment the judgment does not turn out in the client's favour. Conversely, the prevailing party hopes that the judgment will become final immediately in order to be able to commence enforcement as quickly as possible.

Almost all international commercial courts grant parties a right to appeal the decision based on procedural errors as well as the merits of the decision to their respective courts of appeal.[21]

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[20] Dorothee Ruckteschler & Tanja Stooss, "International Commercial Courts: A Superior Alternative to Arbitration?," Journal of International Arbitration, 36, Issue 4, 2019, p. 7.

[21] Juan Carlos Urquidi Herrera, "International Commercial Courts: Similarities and Disparities," Business Law Review, Volume 40, Issue 6, 2019, p. 5.

This procedural element is one of the most significant differences to international arbitration where the finality of awards is one of the main characteristics. Only a few international arbitration statutes allow for an appeal on the merits of the case to a state court, and very few arbitral institutions include an internal appeal mechanism to the arbitration itself.[22] Many believe that this is one of the reasons why arbitration proceedings are often more time and cost effective than court proceedings, despite the complex issues they deal with.

This assessment seems to correspond with the findings of the 2018 International Arbitration Survey, where only 14 percent of respondents stated that the lack of opportunity to appeal the decision was a disadvantage of international arbitration.[23]

By contrast, the SICC's figures indicate a certain demand for appeal proceedings. In 2021, the SICC recorded 19 judgments on appeals and 47 notices of appeal in proportion to 85 published first-instance judgments.[24]

However, in the SICC, the right to appeal may be excluded or varied by a written agreement between the parties, providing at least some degree of flexibility to the parties. In the DIFC Courts and the AIFC Court, on the other hand, the right to appeal cannot be waived. An exception to the general existence of an appeal mechanism is the International Commercial Court China (CICC), where the judgments and rulings made by the CICC are, by default, final and binding to the parties.

In the Netherlands, appeals against NCC District Court judgments are dealt with by the appeals chamber (NCC Court of Appeal) in English. It is even possible to take the proceedings a step further as appeals against NCC Court of Appeal will be

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[22] Dalma R. Demeter & Kayleigh M. Smith, "The Implications of International Commercial Courts on Arbitration," Journal of International Arbitration, 33, 2016, p. 449 et seq.

[23] 2018 International Arbitration Survey, Queen Mary University of London in partnership with White & Case, https://arbitration.qmul.ac.uk/research/2018, p. 8.

[24] "The Year 2021 in Review," SICC News, Issue 27, February 2022, https://www.judiciary.gov.sg/docs/default-source/sicc-docs/media-resources/sicc-news-no-27-(feb-2021).pdf, p.1.

allowed to the Netherlands Supreme Court but with the constraint that the Supreme Courts only operates in Dutch and will only deal with questions of the law.

With respect to German Commercial Courts, an appeal to the Federal Court of Justice (BGH) against first-instance decisions will be possible in English (in agreement with the competent segment of the BGH) and without prior admission. Appeals and complaints against decisions rendered by the Commercial Chambers will be conducted in English at the Commercial Courts if the proceedings in the first instance were conducted in English as well. It is not possible to waive or amend the right to appeal by party agreement.

The appeal process does not only have benefits but also generates additional and usually considerable costs. If the parties have not waived the right to appeal, they face significant legal costs in the event of appeal procedures, which will likely exceed the costs of seemingly expensive arbitration proceedings, as cost comparison conducted by Dorothee Ruckteschler and Tanja Stoos demonstrate.[25] The model calculation shows that in the case of high-value disputes, same or even higher costs are incurred in state courts than in arbitration proceedings if the dispute has to be heard by a court of appeal. In addition, some procedural systems allow for a switch in the court language in the second instance (e.g., NCC and ICPC), which may result in additional (re)translation costs for the parties.

For the process of deciding in favour of or against a waiver clause on the right to appeal, it is advisable to point out in the consultation that proceedings in the second instance generate additional costs, which can be higher overall than in one arbitration procedure.

Considering costs only, it is therefore advisable for high-value disputes to choose arbitration proceedings or a commercial court and waive the right to appeal. However, if costs are not the first priority and the defendant is more interested in retaining a "loophole" in case of losing an international commercial court may be a

[25] Dorothee Ruckteschler & Tanja Stooss, "International Commercial Courts: A Superior Alternative to Arbitration?," Journal of International Arbitration, 36, Issue 4, 2019, pp. 5, 6.

better alternative to arbitration. The losing party is given a chance to have the legal dispute reviewed by a higher court. Errors made by the lower court can be revised in these proceedings. Since the Court of Appeal usually only reviews the legal dispute in terms of law and not in terms of the fact, the right to appeal will be of particular interest for legal disputes that focus on the legal issues rather than the determination of the facts.

Enforcement

The fifth and final aspect concerns one of the most vital issues of the international dispute resolution practice, which is the enforcement of a foreign court's judgment. Aside from a court's own qualities, recognition of its judgments by other states can particularly promote a successful outcome for litigants. Each one of the already mentioned indicators for a high-quality dispute resolution process is meaningless if the claim cannot ultimately be enforced in another state.

If the losing party voluntarily pays, no court action is necessary. Otherwise, unless the assets of the losing party are located in the country where the court judgment was rendered, the winning party needs to obtain a court decision in the jurisdiction where the other party resides or where its assets are located.[26]

Arbitration proceedings undoubtedly profit from the universal scope of the New York Convention, which enables the recognition and enforcement of foreign arbitration awards in more than 160 states[27] worldwide, particularly in the most relevant trading nations like the United Kingdom, United States, and China. The success of the convention is reflected in the fact that enforceability of awards ranked as the number one most

[26] An exception to the procedure described above applies between EU member states, as the "Brussels I" Regulation provides for direct enforcement without an intermediate recognition (exequatur) procedure.

[27] For a current list of contracting states, see the New York Convention homepage, www.newyorkconvention.org/list+of+contracting+states.

valuable characteristic of arbitration, according to 65 percent of respondents in the 2015 International Arbitration Survey.[28]

The signatories of the New York Convention are obliged to recognize and enforce awards in their jurisdiction as if they were local judgments. Parties can rely on the award being enforced as long as it is in writing and signed. If these simple requirements are met, a local court has very limited grounds left to refuse to enforce the award.[29] The New York Convention therefore burdens the resisting party with the proof of presumption of validity of awards, and as a result, simplifies and expedites proceedings.

With regard to the cross-border enforcement of state court and international commercial court decisions, there is currently no equivalent reciprocal enforcement agreement in force.[30] Although reference is often made to the Hague Choice of Court Convention and the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, their effectiveness is currently very limited, as far fewer states have ratified the conventions compared to the New York Convention.

The Hague Choice of Court Convention[31] entered into force in the European Union and Mexico on 1 October 2015 and gives effect to the recognition and enforcement of exclusive choice of court agreements and the corresponding decisions and judgments. Judgments from a court designated in such clause will be entitled to recognition and enforcement in other Hague Convention signatory states. There are, however, grounds for refusal,

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[28] 2015 International Arbitration Survey, Queen Mary University of London in partnership with White & Case, https://arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf, p. 6.

[29] With the most uncertain reason to prevent enforcement being the "public policy" loophole as it is a highly subjective term that might even change over time due to sociopolitical implications.

[30] William Blair, "The New Litigation Landscape: International Commercial Courts and Procedural Innovations," International Journal of Procedural Law, no. 2, 2019, p. 229.

[31] Full text available at www.hcch.net/en/instruments/conventions/full-text/?cid=98.

which are similar to those under the New York Convention on arbitration awards. Other parties to the Convention are Denmark (1 September 2018), United Kingdom (in force since 1 January 2021), Ukraine (1 August 2023), Singapore (1 October 2016), and most recently, Albania (1 October 2024), and Switzerland (1 January 2025).[32]

The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and commercial Matters (Judgments Convention) is an international treaty that came into force in the European Union and Ukraine on 1 September 2023.[33] The procedure is governed by the law of the enforcing state, but it is wider in scope than the Choice of Court Convention. The Judgments Convention is not limited to judgments given by courts specified in exclusive jurisdiction agreements, and it applies to a wider range of disputes, including, for example, consumer and employment matters, and tortious matters where the act or omission causing harm occurred in the state of origin.

Within its scope of signatory states, the Judgments Convention governs the recognition of judgments in civil and commercial matters but, to date, the convention is still nowhere near as effective as the New York Convention.

The reason being that the Judgments Convention has only been ratified by the European Union, Uruguay, and Ukraine and its scope is at least until 2024 limited to these three signatories. However, this situation is not set in stone as the United States, for example, has already signed the Judgments Convention although it has not ratified it yet.[34] In June 2024 the United Kingdom ratified the Judgments Convention, and it will enter into force on 1 July 2025. Parties with potential claims should be aware that it is the date proceedings are commenced, and not the date the judgment is given, that is relevant for the applicability of the Judgments Convention to their proceedings. The UK‘s

[32] Current list of countries available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=98.

[33] Current list of countries available at https://www.hcch.net/en/instruments/conventions/status-table/?cid=137.

[34] Treaty data available at https://verdragenbank.overheid.nl/en/Treaty/Details/013672.

ratification of the conventions is a significant step and shows that the Judgments Convention has the potential to significantly expand its scope beyond the European Union.

However, it must also be clearly recognised that even if the existing signatories were to ratify it in the long-term, the number of countries covered by the Judgments Convention would still not reach a standard comparable to the New York Convention.

Again, those who want to ensure that their claim can be enforced in another state are, for the time being, better advised to conduct arbitration proceedings in order to benefit from the broad scope of the New York Convention. However, for those litigants who know exactly where the defendant's assets are and will be located or who can assume that the enforcement of the judgment will not be objected to by the other party (e.g., where parties have waived their right to defend against an action based on the judgment in any jurisdiction), the Judgments Convention offers an option.

For dispute practitioners, it is therefore recommended to obtain an understanding of where the potential debtor has or will have significant assets that could be relevant for future enforcement measures.

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Editor's note: This article will continue in the next issue of the *Dispute Resolution Journal*.