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# COMMENTARIES ON PRIVATE INTERNATIONAL LAW

# THE PILIG NEWSLETTER

## Co-Chairs' Notes

We are pleased to present the newest Commentaries on Private International Law (Vol. 7, Issue 2), the Newsletter of the American Society of International Law (ASIL) Private International Law Interest Group (PILIG). The primary purpose of this newsletter is to share global updates on Private International Law (PIL). We aim to provide specific and concise information on recent PIL developments that our readers can apply in their daily work. This includes updates on new laws, rules and regulations, judicial and arbitral decisions, treaties and conventions, scholarly publications, conferences, proposed legislation, and more.

This issue has two sections. Section one features a Highlights segment on a Global Webinar held in September 2024 for the Book Launch of *Rethinking Private International Law Education*, edited by Professor Xandra Kramer (Erasmus University Rotterdam and Utrecht University) and Professor Laura Carballo (University of Vigo), published in 2024. The webinar offered fresh perspectives on the evolving landscape of Private International Law (PIL) education worldwide. Section two covers recent developments in PIL across Africa, Asia, Europe, North America, Oceania, and South America from July 2024 to December 2024. Additionally, some developments from January to June 2024 that were not included in the previous issue have also been incorporated into this edition to enhance completeness and integrity.

We express our sincere appreciation to our 2024 editorial team, which consists of editors from around the world:

- Alex Yong Hao (Jun He Law Offices);
- Corinna Chen (University of Sydney);
- Earvin Delgado (Independent Consultant);
- Esra Tekin (Dicle University);
- Isabela Tonon Da Costa Dondone (Federal University of Espírito Santo);
- Juan Pablo Gómez-Moreno (Independent Consultant);
- Kim Nguyen (University of Sydney);
- Lamine Balde (Shanghai Jiao Tong University);
- Milana Karayanidi (Dentons);
- Raphaella Revis (University of Technology Sydney);
- Theophilus Coleman (University at Buffalo School of Law);
- Yu Xu (Jun He Law Offices); and
- Zhuolu Chen (Jun He Law Offices).

We are also grateful for the proof-reading and styling service provided by Kim Nguyen (University of Sydney).

The chief editors are PILIG Co-Chairs Jie (Jeanne) Huang (University of Sydney) and George Tian (University of Technology Sydney).

PILIG is constantly looking forward to your suggestions to improve our services to our members. If you would like to contribute to the Newsletter, to propose an event idea, or bring our attention to an important private international law development in your region, please contact us at Jie (Jeanne) Huang Jeanne.huang@sydney.edu.au or George Tian George.Tian@uts.edu.au.

*All names are listed in the given name alphabetic order. Disclaimer: all maps used in this Newsletter are for illustration purposes only with no political, legal, or other intentions.

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# Highlights

**Rethinking Private International Law Education – Insights from a Global Webinar**

*Written by:* Corinna Chen, University of Sydney Law School, LLB student

Private international law (PIL) plays a critical role in shaping how future legal professionals and citizens engage with a complex, interconnected world. On September 23, 2024, the University of Sydney Law School hosted a webinar event in collaboration with the American Society of International Law (ASIL), Professor Xandra Kramer from Erasmus University Rotterdam and Utrecht University, and Professor Laura Carballo from the University of Vigo.

The webinar offered fresh perspectives on the evolving landscape of PIL education around the globe. Moderated by Associate Professor Jeanne Huang, co-director of the Centre for Asian and Pacific Law at Sydney Law School, the event featured insights from leading academics across Europe, Asia, and Africa. It also celebrated the launch of an exciting new book titled *Research Methods in Private International Law: A Handbook on Regulation, Research and Teaching*, which was co-edited by Professor Xandra Kramer and Professor Laura Carballo.

Professor Xandra Kramer began with a brief introduction to the motivations and themes explored in the book. Traditionally, research in PIL has been largely concentrated on the qualification and interactions of private and public international laws as well as comparative laws. However, Professor Kramer explained that this book seeks to broaden these horizons by integrating emerging themes such as empirical legal studies, law and economics, and feminism. The book consists of three main sections: the first part concerns the regulation of PIL; the second part explores different research methodologies; the third part discusses how the future of PIL can be shaped through wider educational aspects and served as the focus of the seminar discussion.

Professor Laura Carballo further elaborated on the importance of viewing PIL not only as a regulatory tool but a framework for global governance, embracing the contributions of colonialist, feminist and various other emerging perspectives from around the world. This broader view aligns with the changing demands of legal education, where students are increasingly required to engage with both local and international issues. The book's approach signals a shift towards making PIL more inclusive and responsive to contemporary challenges.

The first speaker, Professor Veronica Ruiz Abou-Nigm from the University of Edinburgh, began by stressing that PIL should not only be limited to legal professionals or students, but also plays a crucial role in shaping the next generation of citizens in society. She identified three key features that she considers crucial for understanding and teaching PIL: *intersystemic, heterarchical* and *pluralistic* thinking.

Professor Ruiz Abou-Nigm also argued that educators must cultivate intercultural competence, awareness and dialogue, all of which are essential in helping students to appreciate diverse cultural contexts and navigate different legal systems to solve real-world problems.

Next, Associate Professor Sai Ramani Garimella from South Asia University discussed how colonial legacies continue to shape PIL in South Asia. Interestingly, Associate Professor Garimella noted that although a significant amount of scholarship on international law had emerged in India over the past 50 years, the vast majority of such academia still viewed the PIL discipline as falling under the broad umbrella of domestic law.

Using the 1984 Bhopal gas tragedy in India as a case study, she explained how PIL mechanisms were underutilized, reflecting a reliance on outdated frameworks. Associate Professor Garimella emphasized the need for a shift towards localized legislation and jurisprudence that reflects regional realities, enabling PIL to serve justice more effectively in postcolonial contexts.

Echoing this sentiment, Dr Chukwuma Okoli from the University of Birmingham highlighted how PIL remains underdeveloped in many African countries, including Nigeria. He expressed concern over the lack of emphasis on PIL in Nigerian law schools as well as the scarcity of active scholarship in the field, significantly hindering students' ability to engage with cross-border legal issues. Dr Okoli also suggested creating more local moot court competitions focused on PIL to encourage student interest and practical learning in Africa.

Professor Aukje van Hoek from the University of Amsterdam highlighted the EU context of teaching PIL in the Netherlands. She advocates an approach that stimulates multilevel and interjurisdictional thinking. This approach equips students to work across legal systems, though Professor van Hoek cautioned against overloading students with too much content. She recommended focusing on critical attitudes and practical skills over rote learning, enabling students to construct creative arguments from different perspectives, rather than being confined to what is the ‘correct’ law.

During the panel discussion which ensued, the speakers grappled with the challenges of designing effective curricula and assessment regimes for PIL. One issue which educators often grappled with was whether to cover a wide range of topics or focus on specific areas such as commercial or family law.

An insightful discussion also took place regarding the traditional teaching sequence for subtopics in the PIL course and whether they vary across university classrooms. For example, whether the subject should start from jurisdiction, then choice of law, and finally judgments. This is the typical way for courts addressing PIL cases. However, due to the overlapping of jurisdiction and judgments, it is not unusual that these two subtopics are taught together.

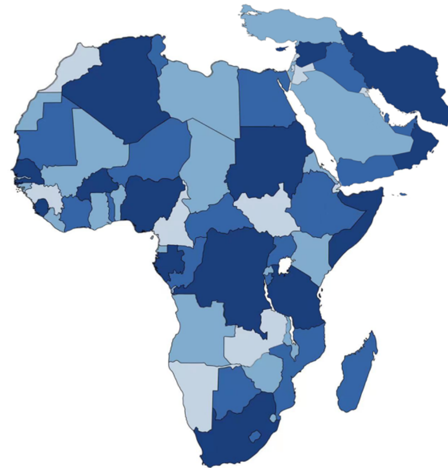
Moreover, the webinar underscored the need to move beyond Eurocentric and Anglocentric frameworks in PIL education. Professor Ruiz Abou-Nigm called for legal systems in the Global North to engage meaningfully with traditions from the Global South. Similarly, Associate Professor Garimella commented that including perspectives from South Asia and Africa enriches global legal discourse, promoting more inclusive frameworks.

Dr Okoli further stressed that comparative law can foster intellectual independence, encouraging African legal professionals to develop context-specific solutions rather than relying on borrowed precedents. The speakers unanimously agreed that collaboration across regions is essential for building a more dynamic and inclusive field.

The webinar session concluded with reflections on the future of PIL education, towards which Professor van Hoek harbors a simultaneously optimistic and pessimistic view. The speakers emphasized that teaching PIL is not just about technical expertise — it is about fostering openness, intercultural competence, and critical inquiry. By introducing students to critical theories and promoting cross-cultural dialogue, educators can better prepare them for the demands of an increasingly interconnected world.

A recording of the session can be found at https://www.youtube.com/watch?v=F9Vyd3xoXIs.

# AFRICA & THE MIDDLE EAST



## International Conventions

***Africa: African Continental Free Trade Area (AfCFTA) Guided Trade Initiative Update and Phase II & Phase III Protocols on Digitisation***

As of November 2024, 37/54 State Parties to the African Continental Free Trade Area Guided Trade Initiative have completed the procedures required, and as such allows for ‘accelerated trading’ to commence in due course. This benefits intra-African trade through reduced tariffs. Similarly, Phase II and Phase III protocols have been recently published, indicating harmonization on a framework for digitization that has a “trusted digital trade ecosystem” alongside transparency obligations. This will allow for protected cross-border data flows and digital payments during trade. https://www.trade.gov/market-intelligence/afcfta-update-november-2024 (Editor: Raphaella Revis)

## National Legislation

***Ghana: Ghana’s Anti-LGBTQ Bill (formally the Human Sexual Rights and Family Values Bill) is currently ineffective under Ghana’s Constitution***

The Anti-LGBTQ Bill, formally known as the Human Sexual Rights and Family Values Bill, was passed by Ghana's parliament on February 28, 2024, and aims to regulate sexual conduct and promote family values,

addressing issues related to LGBTQ+ rights and societal norms. It has sparked intense debate, with supporters arguing it upholds traditional values and critics claiming it infringes on individual freedoms.

Currently, the Bill is not operational by a convention under Ghanaian constitutional jurisprudence which provides that when a Bill is not assented into law by the President before the end of the tenure of the Parliament that commenced it, that Bill will be deemed to have lapsed and thus ineffective.

The Anti-LGBTQ+ Bill was not assented to by the former President of Ghana, whose tenure lapsed on the 7th of January 2025. A new President and Parliament (the 9th Parliament of Ghana's Fourth Republic) were also sworn in the same day after the dissolution of the previous Parliament (the 8th Parliament). The 8th Parliament worked on the Anti-LGBTQ+ Bill. Since the Bill could not become law before their dissolution, the convention considers such Bill as ineffective and "non-existent".

The full text of the Act can be found here: https://www.accessnow.org/wp-content/uploads/2024/03/Anti-LGBTQ-Bill-Human-Sexual-Rights-and-Family-Values-Bill-2024.pdf (Editors: Theophilus Coleman and Lamine Balde)

***Kenya: Trustees (Perpetual Succession) Act (Cap 164) of 2024:***

This act provides for the incorporation of certain trustees for the purposes of perpetual succession of property. It also outlines the framework for incorporating trusts, such as charitable trusts, irrevocable trusts, non-charitable purpose trusts, and family trusts. The Act also deals with the validity of trusts, classes of beneficiaries, the appointment of trustees and enforcers, and other formal requirements. https://new.kenyalaw.org/akn/ke/act/1923/12/eng@2024-04-26 (Editor: Theophilus Coleman)

***Lesotho: Administration of Estates and Inheritance Act (No. 2) of 2024***

The primary purpose of the Act is to review, consolidate, and reform the laws governing the administration, distribution, and inheritance of estates of deceased persons and expand the inheritance rights of children in Lesotho under both civil and customary rites. The overarching objective of the Act is to enhance efficiency in the implementation and enforcement of estates and inheritance matters. https://lesotholii.org/akn/ls/act/2024/2/eng@2024-04-02 (Editor: Theophilus Coleman)

***United Arab Emirates: Fronting Law Repealed***

On September 30, 2024, the UAE repealed the Federal Law No.17 of 2004 (Commercial Concealment Law) by enacting Federal Decree-Law No.26/2024, which had formerly been knowing as the 'Fronting Law' applying to foreign investors. As such, there is no longer a limit on percentage of company share capital that can be held by foreign investors. https://www.lexismiddleeast.com/eJournal/2024-11-11_19#:~:text=On%2030%20September%202024%2C%20the%20Federal%20Government%20of%20the%20United,as%20the%20"Fronting%20Law." (Editor: Raphaella Revis)

***Namibia: Dissolution of Marriages Act, 2024 (Act 10) of 2024 (Assented to on October 2, 2024)***

This legislation aims to reform the law on divorces relating to civil marriages. It seeks to abolish common law grounds for divorce and provide for custody, guardianship of and access to children of marriage, spousal maintenance, child maintenance, and financial and other consequences of divorce, among other things. Most importantly, the Act provides a framework for adjudicating marriage-related proceedings, including recognition of foreign divorces or foreign annulments of marriages. https://namiblii.org/akn/na/act/2024/10/eng@2024-10-24 (Editor: Theophilus Coleman)

***Dubai: DIFC Legal Framework Update***

Following the November 2024 amendment to the Law on the Application of Civil and Commercial Laws (DIFC Law No.3 2004), the DIFC can now hear cases from common law countries so long as the subject matter relates to developing, modifying or interpreting the DIFC law. https://chambers.com/articles/key-amendments-in-the-source-and-interpretation-of-difc-laws (Editor: Raphaella Revis)

***United Arab Emirates: AE Coin Receives Approval from UAE Central Bank***

In December 2024, the AE Coin has received the required regulatory approval, making it the first UAE Dirham pegged stable coin that is not only pegged to but also backed by dirhams. The AE Coin will be usable between individuals and companies both locally and cross border, following the

Circular No.2/2024 payment token framework as part of the Central Bank's 2-24-2026 broader strategy. https://www.agbi.com/banking-finance/2024/12/uae-stablecoin-ae-coin-approval-central-bank/ (Editor: Raphaella Revis)

***Malawi: Competition and Fair Trading Act No. 20 of 2024 (passed but has yet to be in force)***

The Act advances competition in the Malawian economy and prohibits anti-competitive trade practices. It also establishes the Competition and Fair Trading Commission, which is mandated to regulate and monitor monopolies and concentrations of economic power, protect consumers, and strengthen the efficiency of goods production, freedom of trade, digital products, and entrepreneurship, among other things. https://malawilii.org/akn/mw/act/2024/20/eng@2024-05-31 (Editor: Theophilus Coleman)

# National Case Law

***South Africa: Lindsey and others v. Conteh 2024 (3) SA 68 (SCA)***

In this case, the Supreme Court of Appeal of South Africa (SCA) was approached to determine whether a series of orders and two writs, one of possession and the other of execution, and cumulatively constituting a liquid document, granted by the Superior Court of California in the State of California, the United States of America may be enforced by way of provisional sentence (a summary remedy that speedily enables a creditor armed with a liquid document to attain relief without bring a trial action) in South Africa. The appellants, shareholders of African Wireless Incorporated (AWI), a corporation registered per the laws of the State of Delaware, and the respondent, Alieu Conteh, a businessman and a citizen of the United States of America but resides in Johannesburg (substituted by Brigitte Conteh in her capacity as *curatrix bonis*).

The High Court, the court *a quo*, concluded that the judgment from the Superior Court of California did not comprise a liquid document. Hence, *prima facie*, the judgment did not constitute a debt enforceable in South Africa. The High Court accordingly refused to grant a provisional sentence. The SCA upheld the High Court's conclusion and refusal of a provisional sentence. The SCA observed that the foreign judgment relied upon by the appellants is not a money judgment and, hence, not a liquid document. The SCA's decision was informed by a long-standing principle in conflict of laws that a foreign court's judgment was *prima facie* proof of debt or an acknowledgment of indebtedness of an amount sought in a judgment. (Editor: Theophilus Coleman)

***South Africa: Wagner N.O v. Gijsbers N.O and others (20876/19) [2024] ZAWCHC 155; 2024 (6) SA 296 (WCC)***

The Applicant brought an application seeking for the Western Cape High Court to recognize his appointment in Austria as an official Receiver of the insolvent estate of Jürgen Scheer according to South African laws, particularly section 113 of the Insolvency Act 24 of 1936. Recognizing the applicant as a receiver under South African law meant that they could remove any surplus funds of Jürgen Scheer (whose estate had been declared bankrupt by the Commercial Court in Vienna) in his South African insolvent estate to his Austrian insolvent estate for the benefit of the Austrian creditors. However, to Jürgen Scheer, the applicant lacked *locus standi* and opposed the application. To Jürgen Scheer, the Applicant's relief did not include relief to recognize a foreign bankruptcy order. As such, the application was premature and speculative as the shortfall in the Austrian estate had not yet eventuated. More so, Jürgen Scheer contended that there would be no shortfall. Further, he claimed that applying the principles of cross-border insolvency, particularly comity, convenience, and equity, the administration of his Austrian estate should first be finalized, and it is only after that that the South African court be positioned to determine whether the order requested by the Applicant be granted.

The Western Cape High Court first acknowledged that the scope for enforcing foreign bankruptcy orders differs from the regime for enforcing foreign judgments. However, for recognition of a foreign trustee, as was in the case, it is moot whether it is a foreign order or the appointment of a foreign representative to be recognized by a South African court. The High Court accordingly rejected the argument by the respondent. On the issue of the application being speculative and premature, the Court again held that the applicant had sufficiently established the real prospects that the Austrian assets would be insufficient to meet the claims and cost of those proceedings. Also, to the Court, a shortfall in the foreign estate is not a requirement for a request to recognize a foreign appointment in terms of the common law. On the issue of comity, equity, and convenience, the Court held that the facts showed that it was convenient and

equitable to recognize the Applicant under South African law. (Editor: Theophilus Coleman)

***South Africa: Kapci Coatings S.A.E v. Kapci Coatings SA CC and Another (042768/2023) [2024] ZAGP JHC 420***

The applicant sought an order for the High Court of South Africa, Gauteng Local Division, Johannesburg, to recognize and enforce an arbitral award made by the Cairo Regional Centre for International Commercial Arbitration (CRCICA). The respondent opposed the application because the CRCICA had no jurisdiction over him. The respondent submitted that he did not consent to a foreign arbitration, sign an agreement in his capacity, or agree to the location of the tribunal, the arbitrators, and substantive and procedural laws to be applied. In effect, the respondent submitted that it would be contrary to public policy to enforce an arbitral award against him, especially where he was not a party to the agreement upon which the arbitral award was made. The Court, after considering the provisions of the Constitution of the Republic of South Africa of 1996 and the International Arbitration Act 15 of 2017, held that courts are enjoined to enforce a foreign arbitral award and must make an order of the court if it complies with the provisions of the Act. The Court concluded that the respondent's claim that enforcing the arbitral award would be contrary to public policy was unmeritorious. To the Court, the respondent failed to demonstrate the existence of exceptional circumstances enjoining the court's refusal to recognize and enforce the arbitral award. (Editor: Theophilus Coleman)

***South Africa: Van Veluw Beheer BV v. Maxxliving Pty Ltd and Another (A2023/045208) [2024] ZAGPJHC 505***

The Applicant sought an order seeking to wind up the Respondent based on the combined readings of sections 346, 344(f) and 345 of the Companies Act 71 of 1973. The basis of the application was that the Respondent could not pay its debts. In opposing the application, the Respondent submitted that the Applicant had failed to establish a *prima facie* case to wind it up. The Respondent also raised a preliminary objection to the jurisdiction of the High Court. The respondent averred that the Court did not have jurisdiction because there was a choice of law clause in the agreement between them and the respondent in favor of the laws of the Netherlands. The respondent also submitted that the Applicant failed to demonstrate that the Netherlands law makes provision for the winding up of companies on the grounds of the said application. The respondent further contended that the applicable law of their sales agreement is governed and must be construed by the laws of the Netherlands. Most importantly, the respondent submitted that the High Court lacked jurisdiction to grant the winding up order considering the choice of law clause.

The Court concluded that the choice of law clause does not exclude the jurisdiction of South African courts. Commenting on the importance of whether a choice of law clause excludes the jurisdiction of South African courts, the High Court stated: "This particular clause does not exclude the jurisdiction of South African courts. This is important because the appropriate legal system governing the international contract under consideration must be identified as the proper law of the contract…each aspect of the foreign law is a factual question, and any evidence of that aspect must emanate from someone with the necessary expertise. It is assumed that on any relevant point, there is no difference between our law and the law in a foreign country. The result is that a party who wants the court to find that there is a difference, the party who in that sense relies upon a foreign law to assist him to a point where South African Law would not bring him, must produce such evidence." (Editor: Theophilus Coleman)

***South Africa: L.E v. L.A (1884/2018) [2024] ZAGPJHC 104; 2024 (5) SA 539 (GJ)***

This is an application in terms of section 20 of the Matrimonial Property Act 88 of 1984 for the immediate division of a joint estate of a foreign marriage. The parties were married to each other in Romania, following the laws of Romania. The applicant pleaded that the laws of Turkey govern the proprietary consequence of the marriage, alternatively Romania, and that they were married in a community of property, as no marital contract/antenuptial contract was executed or registered between them. On the contrary, the Respondent denies that a joint estate exists between himself and the wife and that their proprietary rights are governed by Turkish or Romanian Law. Accordingly, the Matrimonial Property Act of South Africa has no relevance to their marriage. The Respondent further denied that it was a common cause between them that their marriage regime was one in a community of property.

Before the court could address the immediate division application, it had to distinguish between substantive and procedural law and a private international law dimension.

To the Court, foreign law governs the proprietary consequences of the marriage (substantive law). In contrast, procedural law relates to the methodology applied by a South African court to enforce the proprietary consequences. The Court stated that the Matrimonial Properties Act serves as a source of procedural law regarding an order of immediate division of a joint estate in equal shares or on such a basis as the court may deem.

The legislative intent is to protect a spouse from proprietary abuse in a joint estate. The Court most emphatically stated: “As patriarchal and discriminatory as it is in our country’s hard-fought constitutional dispensation, the common rule remains that the proprietary consequence of a marriage is governed by the husband’s domicile at the time of the marriage. This is especially so where there is no antenuptial agreement. Proprietary consequences of marriage include issues of whether the marriage is in community of property or out of community of property or whether a regime of partial community is established and the division of the estate upon divorce”. Following an unbroken line of authorities, the court stated that the matrimonial domicile determines the law applicable to the proprietary consequences of the marriage, which cannot be changed during the subsistence of the marriage once adopted. The Court upheld the *lex domicilii matrimonii* and concluded that South African law does not apply to foreign marriages unless expressly provided through an antenuptial contract. The court reasoned that South African law is not the *lex causae* for such marriages. (Editor: Theophilus Coleman)

***Tanzania: Afriglobal Commodities D.M.C.C v. Nesch Mintech Tanzania Limited (Commercial Case No. 112 of 2023) [2024] TZHCComD 227***

The Plaintiff instituted a case in Dubai, the United Arab Emirates (UAE) against the defendant for breach of contract. The Dubai Court entered a Judgment/Decree against the defendant, who was notified via email. The Defendant was held liable to pay the plaintiff an amount of USD 929,158 or its equivalent in Dirhams along with legal interest of 5% per annum. The plaintiff could not execute it as the defendant had no known assets in Dubai. The Plaintiff accordingly sought to enforce the Decree against the defendant in Tanzania. However, when the enforcement action was instituted, there was no reciprocal arrangement between the United Republic of Tanzania and the UAE for direct recognition and enforcement of foreign judgments. The plaintiff averred that the defendant submitted to the jurisdiction of the Dubai Court. Also, it was submitted that the foreign judgment was final, not obtained by fraud nor contrary to the Public Policy of Tanzania, and that the rules of natural justice were observed.

Before the Court could hear the parties' submissions on the enforceability or otherwise of the judgment from the Dubai Court under common law, the defendant opposed the suit by raising a preliminary objection. The preliminary objection was that the Tanzanian Court lacked subject matter and geographical jurisdiction. The defendant also suggested that the suit was bad in law by misjoinder cause of action and that the court had been improperly moved. The defendant’s objection was grounded in the argument that there was a choice of law and forum selection clause in their contract. The Court overruled the objection and noted that the issue before it was a matter of enforcement of a foreign judgment and not a breach of a contract based on which the choice of forum and law clause would be applicable. The Court also concluded that with actions for recognizing and enforcing a foreign judgment at common law, the evidence should be received in writing by way of witness statements in lieu of affidavits. (Editor: Theophilus Coleman)

***Tanzania: Pula Group LLC & Another v. African Rainbow Minerals Ltd & 3 Others (Commercial Case No. 149 of 2023) [2024] TZHCComD 81***

The defendant objected to the jurisdiction of the High Court of Tanzania (Commercial Division) because their agreement contained a choice of law clause. The court again emphasized that a choice of another law other than Tanzanian laws does not necessarily constitute a choice of another forum for dispute resolution. The Court stated: “Choice of the governing law and choice of forum clauses deal with two distinct issues: (1) the choice of law that is to govern any dispute arising under the agreement; and (2) the choice of forum where disputes will be heard. It is common in international trade for parties to choose the applicable law to their contract as well as the forum to handle their dispute, and that forum can be an ordinary court or an arbitral tribunal”.

See also: ***Miraji Salimu Nyangasa v. Ramadhani Omary Sewando (As Administrator of Estate of the Late Hussein Omary Sewando)*** **(Civil Appeal No. 686 of 2023) [2024] TZCA 895**: On the question of choice of law between customary law and Islamic law to govern the administration of estates. (Editor: Theophilus Coleman)

***Tanzania: Continental Digital Media Co. Ltd v. Azercosmos Open Joint Stock Company (Civil Case No. 25 of 2023) [2024] TZHC 816***

The case dealt with the efficacy of forum selection agreements in commercial contracts. The Plaintiff, relying on a litany of cases (mainly mirroring the traditional treatment of jurisdiction clauses), argued that a forum selection clause does not oust the jurisdiction of the Tanzanian courts and that their agreement permitted them to institute proceedings in any jurisdiction, including Tanzania. The court had to address whether a forum selection agreement ousts the jurisdiction of courts. Upon careful examination of the forum selection clause, the Court stated that the provisions confer exclusive jurisdiction on the Azerbaijani courts. To the court, an attempt to invoke the jurisdiction of Tanzanian courts contravenes the provisions of their contract. The Court reasoned that in furtherance of the doctrine of sanctity of contract, parties to a contract must adhere to its terms, dictates, and obligations, including a choice of forum and law clauses. (Editor: Theophilus Coleman)

***Kenya: ET Timbers PTE Limited v. Defang Shipping Company Limited (A Claim in Rem Against the Owners of the Motor Vessel "Dolphin Star' of the Port of Panama); Kenya Ports Authority as the Harbor Master (Interested Party) [2024] KEHC 6270 (KLR)***

An admiralty case where the 'Dolphin Star' was arrested at the time it docked in Kenya. However, the defendant protested the jurisdiction of the High Court of Kenya, stating that there should be an arbitration in London. The court refused and overruled the objection of its jurisdiction because the exercise of its jurisdiction was in line with the statute (section 4 of the Judicature Act and Rule 7 of High Court (Admiralty) Rules, 1979) and the four main pillars ascertaining jurisdiction under Kenyan law: jurisdiction *ratione personae*, jurisdiction *ratione temporis*, jurisdiction *ratione materiae,* and jurisdiction *rational soli*. Jurisdiction ratione personae is upon the parties themselves in the context of whether they are in a position to be bound by the decision. Considering that the MV Dolphin Star was arrested in Kenya, the parties are subject to jurisdiction *ratione personae*. The Court, explaining it had the other three grounds of jurisdiction, stated: "The ship was arrested at the time it docked in Kenya and remained in Kenya throughout hence, jurisdiction *ratione temporis* was in place. This was not challenged. This also applies to jurisdiction *ratione materiae* over the subject matter. The ship is docked or came to Mombasa under Kenyan jurisdiction. The court has jurisdiction over it. The Court notes that the happenings occurred or ended in Kenyan territory. Therefore, this court sitting in Mombasa has jurisdiction *ratione loci* over the ship". (Editor: Theophilus Coleman)

***Kenya: Choice of Law***

There is a rise in cases of cross-border employment law-related issues in Kenya. Kenyan courts, particularly the Employment and Labor Relations Court (ELRC), have been approached on several occasions to deal with the conflict of laws regarding employment contracts. *See*: *Tonui v. DL Group of Companies Limited* [2024] KEELRC 2674 (KLR); *Guo v. Beijing Zhongji Jinju Integrated Housing Technology Company Limited & 2 others* [2024] KEELRC 1024 (KLR); *Abdikeir & 2 others v. Muslim World League & another* [2024] KEELRC 13217 (KLR). (Editor: Theophilus Coleman)

***Kenya: Opera Software Ireland Ltd v. Keraco Holdings Ltd [2024] KEHC 8699 (KLR)***

The judgment creditor sought to recognize and enforce a judgment given in the High Court of Justice, Kings Bench Division in the United Kingdom. The judgment, which was for a sum of USD 4,370,944.81 with interest, had not been satisfied, and no appeal had been filed against it. The judgment creditor sought for the judgment to be recognized and registered in Kenya. The judgment debtor deposed that the judgment was not registrable and should be set aside. The judgment debtor further contended that English Courts were bereft of jurisdiction because the terms and conditions of their contract prescribed that disputes would be settled by way of arbitration following the Rules of the London Court of Arbitration (LCIA). The judgment debtor further contended that judgment was unconscionable and given in breach of the rules of natural justice in that processes had not been served upon them. The main issue before the Kenyan Court was whether the judgment creditor had met the threshold requirements for recognition and enforcement of the UK judgment in Kenya.

The Court concluded that the judgment-creditor failed to meet the threshold required to recognize and enforce a foreign judgment in Kenya. Several factors informed the Kenyan court's decision. Chiefly was whether the parties had freely submitted to the jurisdiction of English courts

under an exclusive jurisdiction clause in the Standard Terms and Conditions of the judgment creditor. If so, whether that jurisdiction clause was not onerous and greatly inconveniences the judgment-debtor both logistically and financially. To the Court, the judgment-debtor was not informed and did not voluntarily consent to the jurisdiction clause. The Court also noted that even if the judgment debtor was informed about the jurisdiction clause, giving effect to such clause would have been onerous financially and logistically to the judgment debtor. Thus, the original court did not have jurisdiction to entertain the matter. (Editor: Theophilus Coleman)

***Kenya: PKC v. JJC* (Divorce Cause E025 of 2023) *[2024] KEHC 1392 (KLR)***

The High Court of Kenya was approached with an application to recognize and adopt the dissolution of marriage decree given in the State of Michigan in the Circuit Court for the County of Kent in the United States. The Application was brought under section 61 of the Marriage Act (Cap 150 of 2014 (revised in 2022) and the general statute on recognition and adoption of foreign judgments, the Foreign Judgments (Reciprocal Enforcement) Act Cap 43 of 1984. The court seized the opportunity to distinguish between recognition of foreign judgment and registration under the foregoing statutes. The Court explained: "Whereas the provisions of the Foreign Judgments (Reciprocal Enforcement) Act only regulate the registration of foreign judgments, it implies that judgments arising out of matrimonial causes are not registrable for enforcement purposes given that matrimonial causes are declaratory in nature for dissolution of a marriage which is personal right with no orders for enforcement, unlike commercial transactions". However, Foreign annulment and dissolution of marriage are now registrable under section 61 of the Marriage Act. Section 61 of the Marriage Act makes registering such orders a preserve of the marriage registrar and not for courts. The Court held that foreign judgments or orders annulling marriages or generally dealing with matrimonial proceedings are recognized in Kenya. (Editor: Theophilus Coleman)

***Kenya: Kansagra v. Kansagra & Another (Petition E341 of 2021) [2024] KEHC 3488***

A guardianship/custody petition case where the Kenyan High Court, discussing whether to register an order of the Supreme Court of India, reflected on the role of the private international law concept of comity. To the Court, the comity doctrine works perfectly where a reciprocal arrangement exists between Kenya and another country (in this case, there is no reciprocal arrangement between Kenya and India) or the countries concerned. However, in the absence of such formal reciprocal arrangements or a statute explicitly governing recognition of such judgment, in so far as the test under international comity is met, Kenya would recognize and enforce the judgment under common law. This rule applies where no statute prohibits such foreign judgment enforcement. Unfortunately, in issues of guardianship and custody, section 3(3)(e) of the Foreign Judgments (Reciprocal Enforcement) Act prohibits the application of reciprocity and comity doctrine in matters of guardianship and custody of children. Hence, the court emphasized that the doctrine of reciprocity and the principle of comity are not feasible and excluded in guardianship and custody matters. Suffice it to say, the court stated that the best a Kenyan court can do is to consider the judgment from India for its persuasive effect or as a relevant factor to consider in its conclusion. The rationale is that guardianship and custody of children are decided according to principles laid down by the Constitution and the laws of Kenya, where the primary focus is the child's best interest. (Editor: Theophilus Coleman)

***Kenya: Recent Cases on Recognition and Enforcement of Arbitral Awards under the Kenyan Arbitration Act 49 of 2022***

For recent cases on recognition and enforcement of arbitral awards under the Kenyan Arbitration Act 49 of 2022, *see* e.g., *Muhia v. Mimos Consortium Ltd* [2024] KEHC 9376 (KLR); *Christian & another v. Direct Pay Limited t/a DPO* [2024] KEELRC 1325; *National Water Conversation & Pipeline Corporation v. Runji & Partners Consulting Engineers & Planners Ltd* [2024] KEHC 1546 KLR; *Kamiti v. Oseko & Ouma Advocates LLP* [2024] KEHC 2431 (KLR); *Bluemoon Limited v. Stamford Limited* [2024] KEHC 517 (KLR); *Athi Water Works Development Agency v. Stansha Limited* [2024] KEHC 14483; *Safaricom Limited v. Abiero & another* [21024 KEHC) 15743 (KLR); *Sameer Africa PLC (Formerly Sameer Africa Ltd) v. Discount Tyres Galleria Limited* [2024] KEHC 265 (KLR); *County Government of Kitui v. Power Pump Technical Company Limited* [2024] KECA 1501 (KLR). (Editor: Theophilus Coleman)

***Zimbabwe: Tsindikidzo v. Connect Microfinance Zambia Limited (85 of 2024) [2024] ZWSC 85)***

The Appellant objected to the jurisdiction of Zimbabwean courts and contended that Zimbabwean courts do not have jurisdiction to hear and determine the matter. The appellant submitted that the surety agreement and the loan agreement between them and the respondent contained a forum selection clause, stipulating that disputes arising from the contract would be determined under Zambian law and by Zambian courts. The respondent, among other things, contended that he was only a party to the surety agreement, not the loan agreement. The respondent also stated that the contract was executed and registered in Zimbabwe following Zimbabwean law. The trial court upheld the respondent's argument and rejected the objection to its jurisdiction. On appeal to the Supreme Court of Zimbabwe, the appellant submitted that the trial court erred at law in exercising jurisdiction and disregarding the choice of forum and law clause.

The Supreme Court of Zimbabwe noted that, as a general rule, every court jealously guards its jurisdiction because it is the foundation of its existence and functionality. To the Court, without jurisdiction, "courts become dysfunctional and a useless bulldog. It is trite that the High Court of Zimbabwe has unlimited jurisdiction unless a statute provides otherwise…In the absence of any statute limiting its jurisdiction, the court a quo cannot be faulted for steadfastly holding onto and exercising its jurisdiction". The Supreme Court of Zimbabwe accordingly held that the court a quo, the High Court, had necessary jurisdiction to hear and determine the dispute between the parties. (Editor: Theophilus Coleman)

***Ghana:*** Following the passage of the **Human Sexual Rights and Family Values Act, 2024** (popularly referred to as the Anti-LGBTQ+ Bill) by the Parliament of Ghana, the President of Ghana was required by the Constitution of the Republic of Ghana of 1992 to assent to the Act to it a full force of law or refuse to assent and but provide reasons to Parliament for refusal. However, before the President could indicate his assent or otherwise to the Act, a suit challenging the constitutionality of the Act was filed at the Supreme Court against the President. The Supreme Court dismissed the suits challenging the constitutionality of the Act on 18 December 2024. Consequently, as required by the 1992 Constitution, the President must assent or refuse but provide reasons to Parliament. (Editor: Theophilus Coleman)

***Türkiye: Divorce Petition of Syrian Arab Republic Nationals in Türkiye***

In a recent decision of the 2nd Civil Chamber of the Court of Cassation (25.01.2024, Decision No: 2024/494), the 2nd Civil Chamber of the Court of Cassation decided to annul the decision of the court of first instance in the divorce case of a Syrian national couple, as the judgement was rendered without investigating the common national law of the parties.

In the case adjudicated by the Gaziantep 6th Family Court (the court of first instance), the plaintiff's legal counsel alleged that the defendant persistently engaged in verbal abuse and physical violence, failed to fulfil the family's needs, and restricted the plaintiff's freedom by prohibiting her from leaving the house. On these grounds, the attorney petitioned for a divorce decree to be issued in favor of the plaintiff. The court of first instance ruled in favor of the parties' divorce pursuant to Article 166 of the Turkish Civil Code (TCC) of 2001, determining that no fault could be attributed to the plaintiff, while the defendant was deemed to be at fault. According to Art. 166 of the TCC, if there is a severe breakdown of family life that the continuation of common life cannot be expected, either spouse can sue for a divorce. Following this decision, the defendant's legal counsel submitted an appeal to the regional court of justice. However, the appeal was dismissed on substantive grounds.

In this case, currently under appeal before the 2nd Civil Chamber of the Court of Cassation, the central issue concerns whether Turkish law should be applied to resolve the dispute. Syrians are not recognised as refugees because Türkiye has restricted the application of the 1951 Refugee Convention (Geneva Convention) to individuals who have become refugees as a result of events that took place in Europe. Syrians living in Türkiye have temporary protection status. In Article 91 of Law (No:6458) on Foreigners and International Protection; Temporary Protection is defined as the following:

"Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection."

Accordingly, the case involves foreign element with respect to its parties. Therefore, the applicable law will be determined pursuant to Article 1 of the Turkish Act on Private International Law and the Civil Procedure of 2007 (TAPIL). According to article 14 of the TAPIL, the grounds and provisions of divorce and separation are governed by the common national law of the spouses. If the parties have different nationalities, the law of the common habitual residence shall apply, and if not, Turkish law shall apply. The judge is required, ex officio, to apply Turkish conflict of laws rules as well as the foreign law determined to be applicable under these rules. The judge may seek the assistance of the parties in ascertaining the content of the applicable foreign law in this regard. If, despite all efforts to investigate, the provisions of the foreign law cannot be determined, Turkish law shall be applied. The conflict of laws rules of the applicable foreign law that authorize the application of another law shall only be considered in cases involving personal and family law, and the substantive provisions of that law shall be applied. If the provision of the competent foreign law applicable to a particular case is clearly contrary to Turkish public order, such provision shall not be applied; Turkish law shall be applied where necessary. Given that both parties are of Syrian nationality, it is essential to examine their common national law with respect to the grounds for divorce and to prioritize the application of this law. If, despite thorough investigation, the provisions of the applicable foreign law cannot be determined, or if the determined foreign law is clearly contrary to Turkish public order, Turkish law should be applied. However, it was deemed incorrect to issue a written judgment without first investigating the common national law of the parties.

For the full text of the judgment, see. www.legalbank.net (Editor: Esra Tekin)

## Association and Events

***South Africa: The Centre for Child Law at the University of Pretoria hosted the Hague Conference on Private International Law (HCCH)***

South Africa hosted the 2024 Hague Conference on Private International Law (HCCH) forum on "Domestic Violence and the application of Article 13(1)(b) of the 1980 Child Abduction Convention". The forum was also borne out of the collaborative efforts of the Department of International Relations and Cooperation (DIRCO) and the Department of Justice and Constitutional Development. https://www.up.ac.za/faculty-of-law/news/post_3264852-centre-for-child-law-hosts-the-forum-on-domestic-violence-and-the-operation-of-article-131b-of-the-1980-child-abduction-convention (Editor: Theophilus Coleman)

***African Union (AU) News and Updates: Continental Intelligence Strategy***

The African Union Executive Council endorsed the Continental Artificial Intelligence Strategy during the 45th Ordinary Session in Accra, Ghana, in July 2024. Underling the Continental AI Strategy is how African governments can leverage AI development as a springboard to propel new industries, advance innovation and economic growth, and create high-value jobs. At the heart of the Continental AI Strategy is the consensus that while technological innovation and creativity are essential, preserving African culture and integration is necessary.
https://au.int/sites/default/files/documents/44004-doc-EN-_Continental_AI_Strategy_July_2024.pdf (Editor: Theophilus Coleman)

***South Africa: Pioneering Publication Launched; African Principles on the Law Applicable to International Commercial Contracts***

As part of the University of Johannesburg Research Centre for Private International Law in Emerging Countries conference in September-October 2024, the *African Principles on the Law Applicable to International Commercial Contracts* published by UJ Press celebrated its' launch. The book, as expressed by the Vice-Chancellor Professor Letlhokwa Mpedi, marks a key time in recognising African legal scholarship as being prominent in commercial practice and contribution to international law.
https://news.uj.ac.za/news/uj-press-launches-landmark-book-on-african-principles-in-international-law/ (Editor: Raphaella Revis)

***Increasing Recognition of African Scholarship on Private International Law***

The Journal of Sustainable Development and Policy is currently in the process of releasing a special issue on "Private International Law and Sustainable Development in Africa", in recognition of the increasing need for research and scholarly works from this region. In particular, the issue looks to corporate social responsibility and accountability methods for multinational companies

on cross-border environmental protection issues, with editors invited to consider implications of the EU Directive 2024/1760 on corporate sustainability due diligence. https://www.afronomicslaw.org/category/news-and-events/call-papers-special-issue-journal-sustainable-development-and-policy-theme (Editor: Raphaella Revis)

***Morocco: ALFA International Africa & Middle East Regional Meeting***

ALFA International Africa & Middle East Regional Meeting took place from December 4 to 6, 2024, at the Casablanca Marriott Hotel, Morocco. The event brought together legal professionals to discuss key regional legal issues, including developments in private international law. For more information, see: https://www.alfainternational.com/event/2024-africa-middle-east-regional-meeting/(Editor: George Tian)

## Recent Scholarly Works

***Jan L. Neels, African Principles on the Law Applicable to International Commercial Contracts (2024 UJ Press)***

The African Principles on the Law Applicable to International Commercial Contracts (The 'African Principles') is a project by the Research Centre for Private International in Emerging Countries (RCPILEC) at the University of Johannesburg, South Africa. The African Principles outlines general principles and framework for determining the law applicable to international commercial contracts. Flying on the back of the Africa Union's Pan-African "Agenda 2063: The Africa We Want" to unleash economic growth through the special-purpose vehicle of the African Continental Free Trade Agreement (AfCFTA), the African Principles seeks to serve as a regional model law or a binding regional convention for the African Union Member States. The book is open to access here.

For further commentary and critique of the African Principles, see: Chukwuma Okoli & Richard Frimpong Oppong, *Enhancing the Draft African Principles on the Law Applicable to International Commercial Contracts: Innovations for the African Context*, 88 RABELZ J. COMPAR. INT'L PRIV. L. 694-733 (2024); Theophilus Edwin Coleman, *Re-assessing the African Principles on the Law Applicable to International Commercial Contracts through the Prism of African Traditional Values*, 2024 J. S. AFRI. L. 75-95 (2024). (Editor: Theophilus Coleman)

# AMERICAS

## Mexico, Central & South America

In the second half of 2024, significant legal developments shaped the landscape across Latin America. Uruguay joined the Hague Judgments Convention, streamlining the recognition and enforcement of foreign judgments in civil and commercial matters. Paraguay became the first Latin American nation to ratify the Luxembourg Rail Protocol, completing its adoption of the Cape Town Convention's four protocols, enhancing its legal framework for secured transactions and access to credit. The Dominican Republic signed the Beijing Convention on Judicial Sale of Ships, promoting a harmonized framework for international trade. Conversely, Honduras filed its notice to withdraw from the ICSID Convention, marking a shift in its stance toward international investment arbitration.

Other countries tackled key judicial and legislative reforms. Colombia announced plans to renegotiate arbitration clauses in trade agreements to address legal imbalances, and Ecuador clarified its position on enforcing foreign arbitral awards, deeming homologation requirements unreasonable. Guatemala's Constitutional Court eliminated the presumption of mandatory arbitration in commercial contracts, emphasizing the need for explicit agreements.

Meanwhile, Argentina and Venezuela faced complex arbitration and enforcement disputes in international courts.

# International Conventions

***Paraguay Ratifies Luxembourg Rail Protocol***

On January 3, 2024, Paraguay became the first Latin American country to ratify the Luxembourg Rail Protocol, effective March 1, 2025. This milestone completes Paraguay's adoption of all four Cape Town Convention protocols, enhancing its legal framework for secured transactions and access to credit.

UNIDROIT Secretary-General Ignacio Tirado praised Paraguay's leadership, calling it a pivotal step for economic development and infrastructure financing.

For the official announcement, see https://www.railworkinggroup.org/wp-content/uploads/docs/R1072.pdf (Editor: Juan Pablo Gómez-Moreno)

***Honduras: The country files its written notice to withdraw from the ICSID Convention***

On February 24, 2024, the World Bank announced it received Honduras' written notice of withdrawal from the ICSID Convention, which will take effect on August 25, 2024.

For the official announcement, see https://icsid.worldbank.org/news-and-events/communiques/honduras-denounces-icsid-convention#:~:text=On%20February%2024%2C%202024%2C%20the,from%20the%20Republic%20of%20Honduras (Editor: Juan Pablo Gómez-Moreno)

***Brazil (South America): Brazilian Center for Mediation and Arbitration (CBMA) signs a cooperation agreement with the International Arbitration Court in Prague (PRIAC)***

In August 2024, during the 7th CBMA International Arbitration Congress, CBMA and PRIAC signed a cooperation agreement between the institutions. This agreement aims to promote alternative and consensual solutions that suit the needs of the parties involved. It is expected that with this new partnership, arbitration and dispute resolution can be improved both in Brazil and from an international perspective.

The full text of the text can be found here: https://cbma.com.br/cbma-firma-acordo-de-cooperacao-com-priac/ (Editor: Isabela Tonon da Costa Dondone)

***Dominican Republic: Dominican Republic Signs Beijing Convention on Judicial Sale of Ships***

On September 27, 2024, the Dominican Republic became the 29th signatory to the Beijing Convention on the Judicial Sale of Ships at the United Nations Headquarters in New York. The treaty, adopted by the UN General Assembly in 2022 and prepared by UNCITRAL, establishes a harmonized framework for the international recognition of judicial ship sales. The convention aims to maximize ship sale proceeds for creditor distribution and promote international trade. It will enter into force 180 days after the deposit of the third ratification.

For the announcement, see https://unis.unvienna.org/unis/pressrels/2024/unisl365.html (Editor: Juan Pablo Gómez-Moreno)

***Uruguay: Hague Judgments Convention enters into force***

On October 1, 2024, the Hague Judgments Convention of 2019 entered into force for Uruguay, following its ratification on September 1, 2023. Uruguay becomes the latest of 28 states and the European Union to join the convention, which facilitates the recognition and enforcement of foreign judgments in civil and commercial matters.

For the status table of the Hague Convention, see https://www.hcch.net/en/instruments/conventions/status-table/?cid=137 (Editor: Juan Pablo Gómez-Moreno)

***Paraguay (South America): 2007 Child Support Convention and Protocol Ratified***

On October 25, 2024, Paraguay signed and ratified the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol through its Ambassador to Belgium, H.E. Mr. Enrique Miguel Franco Maciel.

The ceremony, held at the Ministry of Foreign Affairs of the Netherlands, saw representation from both Paraguay and HCCH officials. With Paraguay's ratification, 52 States and the European Union are bound by the Convention, and 34 States and the European Union by the Protocol. Both will take effect for Paraguay on February 1, 2025.

Paraguay, a HCCH Member since 2005, is now a Contracting Party to eight HCCH Conventions and instruments.

For more information, visit the Child Support Section of the HCCH website: https://www.hcch.net/en/news-archive/details/?varevent=1019 (Editor: George Tian)

***Belize (Central America): Belize joins the 1996 Child Protection Convention***

On December 12, 2024, Belize deposited its instrument of accession to the 1996 Child Protection Convention on jurisdiction, applicable law, recognition, enforcement, and cooperation concerning parental responsibility and child protection measures.

Belize's accession brings the total number of Contracting Parties to 56, with the Convention set to enter into force for Belize on October 1, 2025.

The ceremony took place at the Ministry of Foreign Affairs of the Netherlands, depositary of the HCCH Conventions. Belize was represented by H.E. Dr. Gianni Avila, Ambassador to Belgium, while HCCH Secretary General Dr. Christophe Bernasconi and Dutch official Mr. Rieks Boekholt were also present.

Although Belize is not a HCCH Member, it is now a Contracting Party to five HCCH Conventions.

More details are available on the HCCH website's Child Protection Section: https://www.hcch.net/en/news-archive/details/?varevent=1032 (Editor: George Tian)

## National Legislation

***Brazil: Brazilian Supreme Court ratifies reparation agreement for environmental tragedy in Mariana and notifies courts in England and Netherlands - PET 13157-DF***

On November 6, 2024, the president of the Brazilian Supreme Court decided to ratify the judicial agreement for reparation for the Fundão mud barrage collapse, which happened in 2015 and affected over 40 cities in Brazil. The value of the agreement is 170 billion reais, of which 100 billion will be destined to the states and cities affected. The Court also informed Courts in England and Netherlands on the subject of the agreement due to the lawsuits being filed in those countries over the case.

The full text of the text can be found here: https://www.conjur.com.br/2024-nov-06/stf-homologa-acordo-de-reparacao-por-tragedia-em-mariana-mg/ (Editor: Isabela Tonon da Costa Dondone)

***Brazil: Brazilian government expands international cooperation on the Taking of Evidence Abroad in Civil or Commercial Matters***

Under the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Brazil is now able to request and receive legal cooperation more quickly between the states of Macedonia, Norway, Kuwait and Malta. In this sense, legal proceedings involving companies or family matters, for example, will be able to proceed internationally effectively through the Central Authorities of each country. Brazil has already established the same partnership with more than 50 states.

The full text of the text can be found here: https://www.gov.br/mj/pt-br/assuntos/noticias/governo-amplia-cooperacao-internacional-para-a-obtencao-de-provas-processuais?fbclid=PAZXh0bgNhZW0CMTEAAaZdDPoKU2CwqClDkTLZUatLLTwfurN6xfcurxogbCVtLPWzplP9FP_ncdU_aem_0C2-uAVZJqecFhRLK4S2dw (Editor: Isabela Tonon da Costa Dondone)

***Colombia to Renegotiate International Arbitration Clauses in Trade Agreements***

In November and December 2024, Colombia's Ministry of Commerce, Industry, and Tourism announced plans to renegotiate international arbitration clauses in existing trade agreements. This initiative aims to address perceived legal imbalances between the state and foreign investors. The decision follows a recent ICSID ruling favoring Telefónica, which contradicted a 2017 arbitration outcome by a tribunal before the Bogota Chamber of Commerce. (Editor: Juan Pablo Gómez-Moreno)

## National Case Law

***Venezuela: Swiss Court upholds a US$104 million investment award rejecting public order objections***

On April 26, 2024, the Swiss Federal Supreme Court upheld a US$104 million investment treaty award requiring Venezuela to compensate US-based Clorox for losses caused by price control measures. The court rejected

Venezuela's bid to annul the UNCITRAL award on public order grounds.

The full text of the decision in French may be found here: https://www.bger.ch/ext/eurospider/live/de/php/aza/http/index.php?highlight_docid=aza://26-04-2024-4A_486-2023&lang=de&zoom=&type=show_document. (Editor: Juan Pablo Gómez-Moreno)

***Ecuador: Recognition of Foreign Awards Clarified***

On May 9, 2024, Ecuador's Constitutional Court, through Ruling No. 3232-19-EP/24, resolved a long-standing debate by confirming that requiring recognition prior to enforcing foreign arbitral awards is unreasonable under Ecuadorian law. The case involved CW Travel Holdings N.V., which initiated a Paris-seated arbitration against Seitur Agencia de Viajes y Turismo under ICC rules (Case No. 19058/GFC). CW Travel secured an award of approximately US$2.14 million and later sought its enforcement in Ecuadorian courts.

The full text of the decision may be found here: https://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcnBldGE6J3RyYW1pdGUnLCB1dWlkOidiNTY3Njc5Ny03OThiLTQ4ZjYtODQ5ZS0yZTM1YjU0NmVkOWMucGRmJ30= (Editor: Juan Pablo Gómez-Moreno)

***Colombia: Supreme Court denies recognition of Rusoro ICSID award***

On June 20, 2024, Colombia's Supreme Court issued Judgment No. SC1453-2024, refusing to recognize an ICSID award favoring Rusoro Mining Ltd. against Venezuela. Despite prior recognition by the U.S. and French courts, the Colombian Court referenced sovereign immunity again to deny recognition. The case involved claims under the Canada–Venezuela BIT following Venezuela's nationalization of Rusoro's gold mining operations.

The full text of the decision may be found here: https://www.italaw.com/sites/default/files/case-documents/181765.pdf (Editor: Juan Pablo Gómez-Moreno)

***Guatemala: Constitutional Court eliminates mandatory arbitration presumption in commercial contracts***

On July 11, 2024, Guatemala's Constitutional Court ruled against the presumption of mandatory arbitration under Article 291 of the Commercial Code. The Court declared that arbitration requires explicit agreement by the parties and cannot be imposed by default. The decision emphasized that the previous presumption of arbitration violated constitutional rights, including judicial protection and contractual freedom.

The full text of the decision may be found here: https://carrillolaw.app.box.com/s/eyz3cz9l1nitz27zjhg9w1r9nqooolbn (Editor: Juan Pablo Gómez-Moreno)

***Venezuela: Creditors clash over arbitral debts at US courts, Third Circuit affirms district court decision***

On December 5, 2024, the U.S. Third Circuit Court of Appeals upheld ConocoPhillips' ability to enforce its USD $10.8 billion (plus interest) ICSID award against Venezuela. This decision is part of one of the world's largest international arbitration award enforcement campaigns. The campaign seeks to recover over USD $10 billion in judgments and arbitration awards against the Republic of Venezuela and related state-owned entities, stemming from awards and claims obtained in the ICSID and the International Chamber of Commerce.

ConocoPhillips successfully invoked the "alter ego" theory, establishing Venezuela's state-owned oil company, Petróleos de Venezuela, S.A. and its subsidiary PDV Holding, as extensions of the Venezuelan sovereign. This allowed ConocoPhillips to target PDV Holding's Delaware shares, which indirectly own the Texas-based oil refiner CITGO. The Court had previously granted ConocoPhillips the right to pursue these shares based on this theory, further solidifying their enforcement efforts.

The full text of the decision may be found here: https://www.italaw.com/sites/default/files/case-documents/italaw10402.pdf. (Editor: Juan Pablo Gómez-Moreno)

***Colombia: Supreme Court recognizes ICC arbitral award with conditional approach***

On December 21, 2024, Colombia's Supreme Court recognized a Paris-seated ICC arbitral award in a case involving Chilean and Swiss companies. This decision highlights the Court's application of the pro-recognition principle. The case centered on a conflict between the formal requirements under the New York Convention and those outlined in Law 1563 of 2012, which governs arbitration in Colombia and incorporates the Convention's provisions into domestic law.

The Court resolved the conflict by favoring the less stringent requirements of Article 111 of Law 1563, ensuring that procedural formalities do not unduly obstruct the recognition and enforcement of arbitral awards.

The full text of the decision may be found here: https://www.redjurista.com/appfolders/images/news/CSJ_SCC_SC2821-2024_(2024-00239-00)_2024.pdf (Editor: Juan Pablo Gómez-Moreno)

## Association and Events

***Buenos Aires:* ASADIP Annual Conference Focuses on International Private Law in Latin America**

The American Association of Private International Law (ASADIP) held its annual conference in Buenos Aires on October 15-17, 2024. The event centered on harmonizing regional legislation and enhancing judicial cooperation across Latin America. Key topics included international arbitration, choice of law in cross-border contracts, and the Hague Conventions' role in the region.

For more information see: https://www.asadip.org/v2/ (Editor: Juan Pablo Gómez-Moreno)

***Peru: Biennial IBA Latin American Regional Forum Conference***

The Biennial IBA Latin American Regional Forum Conference, titled "The Road to 2030 in Latin America," is scheduled for March 19-21, 2025, at The Westin Lima Hotel & Convention Center in Lima, Peru. This conference, organized by the International Bar Association's Latin American Regional Forum, will address critical topics shaping the region's legal and business landscape

For more information see: https://www.ibanet.org/conference-details/CONF2607?utm_source=chatgpt.com (Editor: Juan Pablo Gómez-Moreno)

# North America

## International Conventions

***El Salvador: Accedes to the 1996 Child Protection Convention***

On September 10, 2024, El Salvador deposited its instrument of accession to the 1996 Child Protection Convention, bringing the total Contracting Parties to 55. The Convention will enter into force for El Salvador on July 1, 2025.

The accession ceremony, held at the Ministry of Foreign Affairs of the Netherlands, was attended by representatives from El Salvador, the HCCH, and the depositary.

El Salvador, a HCCH Member since 2022, is now a Contracting Party to six HCCH Conventions. More information is available on the HCCH website's Child Protection Section. https://www.hcch.net/en/news-archive/details/?varevent=1001 (Editor: George Tian)

***Dominican Republic and El Salvador: 1965 Service Convention Takes Effect***

On October 1, 2024, the 1965 Service Convention entered into force for the Dominican Republic and El Salvador, following their deposit of instruments of accession on March 21, 2024.The Convention now has 84 Contracting Parties, facilitating international cooperation in the service of judicial and extrajudicial documents.

The Dominican Republic, a HCCH Member since 2020, and El Salvador, a HCCH Member since 2022, are both

Contracting Parties to six HCCH Conventions. More details are available on the HCCH website's Service Section.https://www.hcch.net/en/news-archive/details/?varevent=1007 (Editor: George Tian)

***Canada: Finalized trade deal with Indonesia***

On November 15, 2024, the Prime Minister of Canada, Justin Trudeau and the President of Indonesia, Prabowo Subianto, issued a joint statement to announce the conclusion of negotiations for a Canada-Indonesia Comprehensive Economic Partnership Agreement (CEPA).

CEPA is expected to create well-paying jobs, attract investment into Canada, and open new markets for Canadian businesses, entrepreneurs, and farmers while also advancing progress on other shared priorities. It will also bring in new opportunities for Canadian business by eliminating or reducing tariff and non-tariff barriers, enhancing access to Southeast Asian supply chains, and establishing a more transparent and predictable environment for trade and investment.

For the official press release, see: https://www.pm.gc.ca/en/news/backgrounders/2024/11/16/canada-indonesia-comprehensive-economic-partnership-agreement (Editor: Earvin Delgado)

# National Legislation

***United States: California introduces arbitration certification program***

On September 29, 2024, California passed into law Senate Bill No. 940 which introduced a certification process for alternative dispute resolution practitioners, including firms and other providers. Such a certification system would include different levels of tiers for certification and would authorize The State Bar of California to charge a fee to cover the reasonable costs of administering such a program.

For more information, see: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB940 (Editor: Earvin Delgado)

***Canada: Canada's Office of the Commissioner for Federal Judicial Affairs releases guidance on AI use in courts***

On November 20, 2024, Canada's Office of the Commissioner for Federal Judicial Affairs, particularly its Action Committee on Modernizing Court Operations, has published three new documents: *Use of AI by Courts to Enhance Court Operations*, *Use of AI by Court Users to Help Them Participate in Court Proceedings*, and *Demystifying Artificial Intelligence in Court Processes* The committee was co-chaired by the Chief Justice of Canada, the Right Honourable Richard Wagner, and the Minister of Justice and Attorney General of Canada, the Honourable Arif Virani.

To access the documents, please visit: https://fja-cmf.gc.ca/COVID-19/index-eng.html (Editor: Earvin Delgado)

# National Case Law

***United States: U.S. Supreme Court upheld the constitutionality of the Mandatory Repatriation Tax as a valid exercise of Congress's taxing power***

On June 20, 2024, the U.S. Supreme Court issued a decision in Moore v. United States, holding that the Mandatory Repatriation Tax (MRT), which attributes the realized and undistributed income of an American-controlled foreign corporation to the entity's American shareholders, and then taxes the American shareholders on their portions of that income, does not exceed Congress's constitutional authority under the Sixteenth Amendment. The Court held that Congress has the constitutional authority to tax income either directly or by attributing it to shareholders or partners, as seen in longstanding practices like taxing partners on partnership income and American shareholders of foreign corporations on certain undistributed income. The MRT follows this established pattern and is therefore not meaningfully different from these other longstanding taxes.

For a full text of the case opinion, please visit: https://www.supremecourt.gov/opinions/23pdf/22-800_jg6o.pdf (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: U.S. Supreme Court held that SEC must pursue civil penalties for securities fraud in federal court under the Seventh Amendment***

On June 27, 2024, the U.S. Supreme Court ruled on Securities and Exchange Commission v. Jarkesy, holding that the Seventh Amendment entitles defendants accused of securities fraud to a jury trial when the SEC seeks civil penalties. As a result, such actions must be brought in federal court. The Court further ruled that the SEC's reliance on administrative law judges (ALJs) to adjudicate certain fraud cases violated the Seventh Amendment's right

to a jury trial and constituted an improper delegation of legislative power to the agency.

For a full text of the case opinion, please visit: https://www.supremecourt.gov/opinions/23pdf/22-859_1924.pdf (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: U.S. Supreme Court barred nonconsensual third-party releases in Purdue Pharma bankruptcy settlement***

On June 27, 2024, the U.S. Supreme Court issued its 5-4 decision in Harrington v. Purdue Pharma L.P., holding that the Bankruptcy Code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a non-debtor without the consent of affected claimants. However, the Court did not express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party non-debtor. The Court also did not address whether its reading of the Bankruptcy Code would justify unwinding reorganization plans that have already become effective and have been substantially consummated.

For a full text of the case opinion, please visit: https://www.supremecourt.gov/opinions/23pdf/23-124_8nk0.pdf (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: U.S. Supreme Court overruled Chevron deference to administrative agencies' interpretations of statutes***

On June 28, 2024, the U.S. Supreme Court issued its 6-3 decision in the consolidated cases of Loper Bright Enterprises v. Raimondo, Secretary of Commerce and Relentless, Inc. v. Department of Commerce, overturning Chevron USA v. National Resources Defense Council and ending the federal judiciary's decades-long practice of deferring to agencies' reasonable interpretations of ambiguous federal statutes. The Court found that Chevron was inconsistent with both the constitutional obligation of courts to say what the law is, and with the Administrative Procedure Act (APA). The Court held that courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.

For a full text of the case opinion, please visit: https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: Third Circuit denied Red Tree Investments' motion to intervene in the sale of a Venezuela government subsidiary's shares***

In Crystallex Int'l Corp. v. Bolivarian Republic of Venez. Red Tree Invs., LLC, Crystallex obtained a $1.2 billion judgment against Venezuela in the U.S. and sought to auction shares owned by Venezuela's state-owned energy company, Petróleos de Venezuela, S.A. ("PDVSA"), to satisfy its judgment. As a creditor to PDVSA, Red Tree Investments secured a $260 million judgment against PDVSA and filed a motion to intervene and be named a Sale Process Party. On July 9, 2024, the U. S. Court of Appeals for the Third Circuit affirmed the U. S. District Court for the District of Delaware's decision to deny Red Tree Investments' motion because it was untimely. The court identified three factors that provide a useful framework for assessing timeliness: (1) how far the proceedings have gone when the movant seeks to intervene, (2) prejudice which resultant delay might cause to other parties, and (3) the reason for the delay.

For a full text of the case opinion, please visit: https://law.justia.com/cases/federal/appellate-courts/ca3/23-1117/23-1117-2024-07-09.html (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: Second Circuit decided that discovery cannot be used in an ICSID arbitration under 28 U.S.C.§1782***

On July 19, 2024, the U. S. Court of Appeals for the Second Circuit ruled on Webuild S.P.A. v. WSP USA Inc., affirming the decision of the U.S. District Court for the Southern District of New York which vacated an order that granted the ex parte application of Webuild to obtain discovery from respondent WSP USA for use in an ICSID arbitration under 28 U.S.C.§1782. Citing the U.S. Supreme Court's decision in ZF Automotive US, Inc. v. Luxshare, Ltd., the Second Circuit held that 28 U.S.C. § 1782 authorizes discovery orders only for use in proceedings before foreign or international tribunals that exercise governmental or intergovernmental authority, and an ICSID arbitration tribunal is not such an entity.

For a full text of the case opinion, please visit: https://ww3.ca2.uscourts.gov/decisions/isysquery/80f35a6e-3268-42fb-b273-cbb327ac58f4/1/doc/23-

73_opn.pdf#xml=https://ww3.ca2.uscourts.gov/decisions/isysquery/80f35a6e-3268-42fb-b273-cbb327ac58f4/1/hilite/ (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***United States: D.C. Circuit held that federal courts have jurisdiction under the FSIA's arbitration exception to confirm the arbitration awards against Spain***

In Nextera Energy Glob. Holdings B.V. v. Kingdom of Spain, Nextera secured an ICSID arbitration award against Spain based on an arbitration clause in the Energy Charter Treaty (ECT). Since the Court of Justice of the European Union held that the ECT arbitration provision does not apply to disputes between a national of one EU Member State and another EU Member State, the arbitration award is invalid under EU law. Nextera thus filed an enforcement petition in the U.S. District Court for the District of Columbia. The case was later appealed to the U.S. Court of Appeals for the District of Columbia Circuit. The D.C. Circuit held that the district court had jurisdiction to enforce the arbitration award under the arbitration exception in the Foreign Sovereign Immunities Act (FSIA). To proceed under the FSIA's arbitration exception, a district court must find three jurisdictional facts: (1) an arbitration agreement, (2) an arbitration award, and (3) a treaty potentially governing award enforcement.

For a full text of the case opinion, please visit: https://media.cadc.uscourts.gov/opinions/docs/2024/08/23-7031-2070416.pdf (Editors: Alex Yong Hao, Yu Xu, and Zhuolu Chen)

***Canada: B.C. Supreme Court issues injunction enacting UNCITRAL Model Law***

On August 1, 2024, the Supreme Court of British Columbia (B.C.) in the case of ONE Lodging Holdings LLC v. American Hotel Income Properties REIT (GP) Inc. issued an injunction enacting the UNCITRAL Model Law.

The Court held that it has jurisdiction to issue an interim injunction prohibiting arbitration from proceeding while deciding whether to stay litigation and refer the parties to arbitration. Applying the domestic litigation test for interim injunctions, the Court determined that uncertainty over the arbitration agreement's validity justified preserving the status quo with an injunction. Additionally, the Court ruled that being compelled into a contested dispute resolution process can constitute irreparable harm under the interim injunction test.

For full decision, see: https://www.canlii.org/en/bc/bcsc/doc/2024/2024bcsc1573/2024bcsc1573.html (Editor: Earvin Delgado)

***United States: Google loses major antitrust case***

On August 5, 2024, the United States (U.S.) District Court for the District of Columbia, in the case of United States of America v. Google, ruled against Google in a major antitrust case filed by the U.S. Government and several other states.

The U.S. Government and several states accused Google of illegally enhancing its dominance by spending billions of dollars to ensure Google search is the default feature on smartphones and web browsers, and to automatically process search queries through Google.

The court ruled that Google engaged in illegal conduct to maintain its monopoly on online search. Judge Mehta wrote: "Google has violated Section 2 of the Sherman Act by maintaining its monopoly in two product markets in the United States—general search services and general text advertising—through its exclusive distribution agreements."

For full decision, see: https://static01.nyt.com/newsgraphics/documenttools/f6ab5c368725101c/43d7c2a0-full.pdf (Editor: Earvin Delgado)

***United States: U.S. Court of Appeals, D.C. Circuit ruled New York Convention applies to investment arbitration awards***

On August 9, 2024, the United States (U.S.) Court of Appeals for the District of Columbia Circuit in the case of Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria, the Court addressed the applicability of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted on June 10, 1958, in New York (New York Convention) to enforcement of arbitral awards issued in non-ICSID investor-state arbitration proceedings.

The D.C. Circuit confirmed that the New York Convention applies to such arbitral awards.

For the full decision, see: https://media.cadc.uscourts.gov/opinions/docs/2024/08/23-7016-2069169.pdf (Editor: Earvin Delgado)

***United States: U.S. Court of Appeals, D.C. Circuit ruled 12-year D.C. limitation period applies to ICSID arbitration award***

On August 24, 2024, the United States (U.S.) District Court for the District of Columbia in the case of Titan Consortium 1 LLC v Argentine Republic issued a memorandum and order which addressed whether the enforcement of an ICSID arbitration award in the District of Columbia is governed by the three-year statute of limitations under the Federal or D.C. Arbitration Act, or the 12-year period under D.C. Code § 15-101, which applies to court judgments. The U.S. District Court ruled that the 12-year D.C. limitation period applies, making Titan's enforcement timely.

On appeal, the District Court's reasoning suggests that counsel seeking to enforce ICSID awards in U.S. federal courts should consider the "most closely analogous" local statute of limitations in the relevant jurisdiction. This approach emphasizes the importance of understanding state or local laws when enforcing such awards in the 50 states, D.C., or Puerto Rico. Until higher courts resolve this issue, practitioners should evaluate local statutes carefully to ensure timely enforcement actions for ICSID arbitration awards.

For the memorandum, see: https://casetext.com/case/titan-consortium-1-llc-v-argentine-republic (Editor: Earvin Delgado)

***Greenland: Kvanefjeld Rare Earth Project, Greenland updates on legal proceedings***

On August 30, 2024, Energy Transition Minerals Ltd (ETM) provided an update on ongoing legal and arbitration proceedings concerning its Kvanefjeld Rare Earth Project in Greenland.

Greenland Minerals A/S (GMAS), ETM's subsidiary, initiated parallel legal proceedings in Greenlandic and Danish courts in 2024 to preserve its legal rights after the Greenlandic government rejected its exploitation license applications. These court proceedings run alongside arbitration proceedings in Copenhagen against Greenlandic and Danish authorities.

For more information, see: https://www.listcorp.com/asx/etm/energy-transition-minerals-ltd/news/update-on-legal-proceedings-3077798.html (Edited by: Earvin Delgado)

***United States: U.S. Court Recognizes Arbitration Award Against Mexico***

On November 8, 2024, the U.S. District Court for the District of Columbia recognized an arbitration award in United Mexican States v. Lion Mexico Consolidated. The case centered on Lion Mexico Consolidated (LMC), a Canadian company that financed real estate projects in Mexico. After businessman Hector Cárdenas Curiel defaulted on loans, LMC faced years of alleged judicial fraud, including forgery and manipulated legal actions. Mexican courts dismissed LMC's attempts to present evidence of fraud. LMC initiated NAFTA Chapter 11 arbitration, asserting Mexico failed to protect its investments under Article 1105(1). The court upheld the arbitration award, denying Mexico's petition to vacate it. Judge Ana C. Reyes highlighted the significance of addressing judicial fraud in such disputes. For full details, see the court's Memorandum Opinion and Order here. (Editor: George Tian)

***United States: U.S. Court of Appeals, D.C. Circuit issues decision on the future of TikTok***

On December 6, 2024, the United States (U.S.) Court of Appeals for the District of Columbia Circuit issued the decision on the future of social networking app, TikTok, in the U.S.. In the case of TikTok Inc. and ByteDance Ltd. v. Merrick B. Garland, the Court upheld the law forcing TikTok to either be sold or shut down in the country.

In its decision, the Court held that, "On the merits, we reject each of the petitioners' constitutional claims. As we shall explain, the parts of the Act that are properly before this court do not contravene the First Amendment to the Constitution of the United States, nor do they violate the Fifth Amendment guarantee of equal protection of the laws; constitute an unlawful bill of attainder, in violation of Article I, § 9, clause 3; or work an uncompensated taking of private property in violation of the Fifth Amendment."

For the full decision, see: https://media.cadc.uscourts.gov/opinions/docs/2024/12/24-1113-2088317.pdf (Editor: Earvin Delgado)

## Association and Events

***Canada: CIArb Young Members Group 2024 Annual Global Conference***

On September 19-20, 2024, the Global Steering Committee of the CIArb Young Members Group held their 2024 Annual Global Conference in Toronto, Canada. The Conference, with the theme, *Adapt and Thrive: Succeeding in an Evolving Arbitration Landscape*, was conducted at The Arbitration Place on its first day, and The National Club

on its second day. International arbitrator Shan Greer was the keynote speaker of the Conference. (Editor: Earvin Delgado)

# ASIA

## International Conventions

***Kazakhstan:*** In March 2024, Kazakhstan ratified the 1997 Convention on the Law of Non-Navigational Uses of International Watercourses, known as the United Nations (UN) Watercourses Convention, to resolve the question of joint use of waters of transboundary rivers and manage shared water resources sustainably. https://astanatimes.com/2024/01/kazakhstan-joins-un-watercourses-convention-to-enhance-cross-border-cooperation/#:~:text=ASTANA%20%E2%80%93%20Kazakhstan%20joined%20the%20Convention,Resources%20and%20Irrigation%20on%20Jan (Editor: Milana Karayanidi)

***Kazakhstan:*** In June 2024, Kazakhstan and the International Labor Organization (ILO) agreed to a Roadmap to promote decent work in the country from 2024–2025. Key areas in the new Roadmap include occupational safety and health and the enforcement of workplace standards through labor inspection. Other priority areas of work are fair wages and comprehensive social protection. The roadmap also foresees amending existing legislation aimed at preventing violence and harassment in the workplace, and opening discussions on the ratification of the Violence and Harassment Convention, 2019 (No. 190). https://www.ilo.org/resource/news/ilo-kazakhstan-sign-roadmap-promote-decent-work (Editor: Milana Karayanidi)

***Kyrgyzstan***: The first in the region, in June 2024, Kyrgyzstan ratified the 2019 ILO Violence and Harassment Convention. The convention affirms the fundamental right of individuals to a workplace free from violence and harassment. It is the first international labor standard to comprehensively address violence and harassment at work. https://www.ilo.org/resource/news/ilc/112/kyrgyzstan-ratifies-ilo-violence-and-harassment-convention-2019-no-190 (Editor: Milana Karayanidi)

***Kyrgyzstan***: In June 2024, Kyrgyzstan and the European Union signed an Enhanced Partnership and Cooperation Agreement (EPCA), providing a new legal basis for reinforced political dialogue and deepening cooperation in many mutually beneficial areas. These include trade and investment, sustainable development and connectivity, research and innovation, education, environment and climate change, as well as rule of law, human rights and civil society. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3462 (Editor: Milana Karayanidi)

***India: Signs Memorandum of Understanding on Economic Cooperation with SADC***

On July 2, 2024, the Southern African Development Community (SADC) and the Government of the Republic of India signed a new Memorandum of Understanding (MoU) on Economic Cooperation. The MoU establishes a framework for strengthening economic cooperation between India and SADC, considering the regional priorities of SADC enshrined in the Regional Indicative Strategic Development Plan (RISDP 2020-2030) and the SADC Digital Transformation Strategy.

A press release on this development can be found here: https://www.sadc.int/latest-news/sadc-and-india-sign-memorandum-understanding-economic-cooperation (Editor: Kim Nguyen)

***Bangladesh: Bangladesh Accedes to the 1961 Apostille Convention***

On July 29, 2024, Bangladesh deposited its instrument of accession to the 1961 Apostille Convention, bringing the total Contracting Parties to 127. The Convention will enter into force for Bangladesh on March 30, 2025. The accession ceremony, held at the Ministry of Foreign Affairs of the Netherlands, was attended by representatives from

Bangladesh, the HCCH, and the depositary. This marks Bangladesh's first participation in a HCCH Convention, making it the 158th Party connected to HCCH's work. More information is available on the HCCH website's Apostille Section. See https://www.hcch.net/en/news-archive/details/?varevent=997 (Editor: George Tian)

***Philippines: PCA hearings to be hosted at the Philippines Dispute Resolution Center***

On August 28, 2024, a cooperation agreement was signed between the Philippine Dispute Resolution Center (PDRC) and the Permanent Court of Arbitration (PCA) to host PCA tribunal hearings through the PDRC. According to Ambassador J. Eduardo Malaya, the Philippine Ambassador to the Netherlands and Acting President of the PCA Administrative Council, "The signing of the PDRC-PCA Cooperation Agreement raises the international reputation of the Philippines as a preferred arbitral forum and promotes the use of arbitral institutions located in the country." The PCA and PDRC will collaborate towards the organization of PCA meetings and hearings at the PDRC's facilities in Bonifacio Global City, Taguig as well as PDRC meetings and hearings at the PCA's premises in the Netherlands in addition to holding conferences, seminars and specialized events.

For more information, see: https://pdrci.org/pdrc-paves-way-for-pca-arbitration-hearings-in-ph (Editor: Earvin Delgado)

***India: Entry into Force of the Bilateral Investment Treaty between India and the United Arab Emirates***

On August 31, 2024, the Bilateral Investment Treaty (BIT), which was signed on February 13, 2024, between the Government of the Republic of India and the Government of the United Arab Emirates (UAE), entered into force. The enforcement of this new BIT with UAE gives continuity of investment protection to investors of both the countries, as the earlier Bilateral Investment Promotion and Protection Agreement (BIPPA) between India and UAE signed in December 2013 expired on September 12, 2024.

A press release on this development can be found here: https://pib.gov.in/PressReleasePage.aspx?PRID=2062692 (Editor: Kim Nguyen)

***India: Signs Agreements focused on Clean Economy, Fair Economy, and the IPEF Overarching arrangement under Indo-Pacific Economic Framework for Prosperity***

On September 21, 2024, India signed and exchanged the first-of-its-kind agreements focused on Clean Economy, Fair Economy, and the IPEF Overarching arrangement under Indo-Pacific Economic Framework (IPEF) for prosperity at Delaware, USA.

A press release on this development can be found here: https://pib.gov.in/PressReleasePage.aspx?PRID=2057489#:~:text=India%20signed%20and%20exchanged%20the,on%203%2Dday%20visit%20to (Editor: Kim Nguyen)

***Kyrgyzstan: 2007 Child Support Convention Takes Effect in Kyrgyzstan***

On November 1, 2024, the 2007 Child Support Convention entered into force for the Kyrgyz Republic, following its deposit of the instrument of accession on October 27, 2023.

With Kyrgyzstan's inclusion, the Convention now binds 52 States and the European Union, facilitating international cooperation in recovering child support and family maintenance.

Although not yet a HCCH Member, Kyrgyzstan is a Contracting Party to four HCCH Conventions. More details are available on the Child Support Section of the HCCH website: https://www.hcch.net/en/news-archive/details/?varevent=1022 (Editor: George Tian)

***Uzbekistan***: Uzbekistan acceded to a number of conventions in 2024, including the ILO Convention on Occupational Safety and Health, marking a new chapter in the country's efforts to enhance workplace conditions, and the ILO Convention on Work with Reduced Hours. https://kun.uz/en/news/2024/10/03/uzbekistan-ratifies-ilo-convention-on-occupational-safety-and-health; https://www.uzdaily.uz/en/uzbekistan-ratifies-another-ilo-convention/ (Editor: Milana Karayanidi)

## National Legislation

***Japan: Amendments to Japan's Arbitration Act Came into Force***

On April 1, 2024, the amendments to Japan's Arbitration Act (Act No 138 of 2003), which was passed by Japan's Diet, the national legislature, on April 21, 2023, came into force. Japan's Diet passed the amendments to modernize Japanese arbitration law and realign Japan with other jurisdictions that adopted the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL). These

amendments included those relating to the enforceability of interim measures ordered by arbitral tribunals and changes to the jurisdiction of Japanese courts over arbitration-related cases.

An article on this development can be found here: https://dailyjus.com/world/2024/04/amendments-to-japans-arbitration-act (Editor: Kim Nguyen)

***Kyrgyzstan***: In April 2024, Kyrgyzstan enacted a law requiring all non-profit organizations carrying out “political activity” and receiving foreign financing must register as “foreign representatives.” https://cbd.minjust.gov.kg/4-5321/edition/6031/ru (Editor: Milana Karayanidi)

***Philippines: Philippine Competition Commission issues guidelines on merger remedies***

On July 11, 2024, the Philippine Competition Commission (PCA) announced in a press release the publication of its *Guidelines on Merger Remedies* which outlined the PCC’s approach in assessing merging parties’ proposals to address competition concerns arising from merger and acquisition (M&A) transactions.

The guidelines may be accessed in the PCC’s website: https://www.phcc.gov.ph/merger-remedies-guidelines/ (Editor: Earvin Delgado)

***Kyrgyzstan***: Since September 5, 2024, new rules come into effect requiring certain foreign citizens who visit Kyrgyzstan for reasons other than study, work, and business, to provide additional documents in order to stay longer than established period. Specifically, citizens of Armenia, Belarus, Kazakhstan, and Russia will need such documents to stay longer than 90 days within each 180-day period, and citizens of Tajikistan, Georgia, Azerbaijan, and Moldova will have to provide such documents to stay longer than 60 days within each 120-day period. https://digital.gov.kg/press/novyj-poryadok-registraczii/ (Editor: Milana Karayanidi)

***China: Amended the Civil Procedure Law of the PRC to introduce forum non conveniens and a new jurisdiction ground***

China’s newly amended Civil Procedure Law, which came into effect on January 1, 2024, introduced the doctrine of forum non conveniens in Articles 281 and 282, and incorporated “other appropriate connections” as a jurisdiction ground. Article 281 is about how to find the more convenient court to hear the case and Article 282 proposes five conditions for the application of forum non conveniens.

Article 282(1) restricts the determination of “convenience” to cases where “it is evidently inconvenient for a people’s court to try the case and for a party to participate in legal proceedings since basic facts of disputes in the case do not occur within the territory of the People’s Republic of China”. Article 282(4) narrows the exclusion from a vague standard of “national interest” to a clearer standard of “national sovereignty, security, or public interest”.

Article 282(2) provides that after the Chinese court applied the forum non conveniens exception to dismiss the action, if the foreign court refuses to exercise jurisdiction or does not take necessary measures to hear the case or does not conclude the case within a reasonable period, the Chinese court shall accept the case.

Articles on this development can be found here: https://conflictoflaws.net/2024/the-development-of-forum-non-conveniens-in-the-chinese-law-and-practice/ and https://conflictoflaws.net/2024/other-appropriate-connections-chinas-newly-adopted-jurisdiction-ground/ (Editor: Kim Nguyen)

# International and National Case Law

***China: Enforcement of a Thai Monetary Judgment, highlighting Presumptive Reciprocity in China-ASEAN Region***

On June 18, 2024, the China-ASEAN Free Trade Area Nanning International Commercial Tribunal under the Nanning Railway Transportation Intermediate Court in Guangxi ruled to recognize and enforce a Thai monetary judgment. Apart from being the first case of enforcing Thai monetary judgments in China, it is also the first publicly reported case confirming a reciprocal relationship based on “presumptive reciprocity”, a concept which was outlined in the Nanning Statement signed by the judiciary of China and the ASEAN countries in 2017.

An article on this development can be found here: https://conflictoflaws.net/2024/first-thai-monetary-judgment-enforced-in-china-highlighting-presumptive-reciprocity-in-china-asean-region/ (Editor: Kim Nguyen)

***Japan: Japanese Court Enforces a Singaporean Judgment Ordering the Payment of Child Living Expenses***

On July 19, 2024, the Chiba District Court granted the plaintiff's application for an enforcement judgment under Article 24 of the Civil Enforcement Act to enforce a portion of a Singaporean judgment rendered in November 2010, requiring the defendant (the plaintiff's ex-husband), to pay, inter alia, living expenses for two of their three children until they reached the age of majority.

An article on this development can be found here: https://conflictoflaws.net/2024/japanese-court-enforces-a-singaporean-judgment-ordering-the-payment-of-child-living-expenses/ (Editor: Kim Nguyen)

## Association and Events

***Japan: 2024 Webinar on the HCCH 1980 Child Abduction Convention in Asia and the Pacific***

On November 19, 2024, the Ministry of Foreign Affairs of Japan, together with the Hague Conference on Private International Law (HCCH), co-hosted the "2024 Webinar on the HCCH 1980 Child Abduction Convention in Asia and the Pacific".

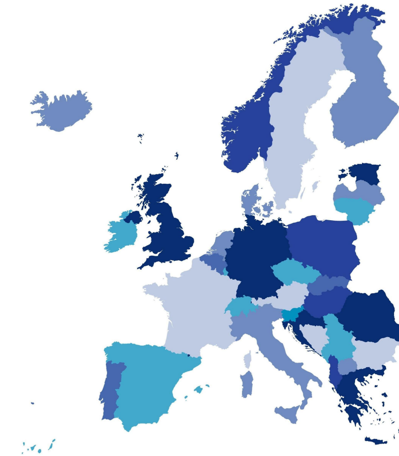
A press release on this development can be found here: https://www.mofa.go.jp/press/release/pressite_000001_00744.html (Editor: Kim Nguyen)

***China: Conference on Private International Law and Sustainable Development in Asia***

On November 23, 2024, the Conference on Private International Law and Sustainable Development in Asia was held at Wuhan University School of Law in Wuhan, China. This international symposium was organized by Wuhan University Academy of International Law and Global Governance, Wuhan University School of Law and China Society of Private International Law to critically and constructively engage with the functions, methodologies and techniques of private international law in relation to sustainable development from the Asian perspective.

An article on this development can be found here: https://conflictoflaws.net/2024/private-international-law-and-sustainable-development-in-asia-at-wuhan-university-report/ (Editor: Kim Nguyen)

# EUROPE



## International Conventions

***Albania: Ratifies the 2005 Choice of Court Convention and 2007 Maintenance Obligations Protocol***

On June 25, 2024, Albania ratified the 2005 Choice of Court Convention and the 2007 Maintenance Obligations Protocol, bringing the total Contracting Parties to 34 States and the European Union for the Convention and 33 States and the European Union for the Protocol. Both instruments will enter into force for Albania on October 1, 2024. Albania, a HCCH Member since 2002, is now a Contracting Party to 16 HCCH Conventions and instruments. More details are available on the HCCH website's Choice of Court and Child Support Sections, at https://www.hcch.net/en/news-archive/details/?varevent=992 (Editor: George Tian)

***Romania: Romania Signs the 2000 Protection of Adults Convention***

On August 29, 2024, Romania signed the 2000 Protection of Adults Convention, represented by H.E. Mr. Lucian Fătu, Ambassador to the Netherlands.

The Convention, currently with 16 Contracting Parties, will enter into force for Romania only after depositing its instrument of ratification under Article 53(2).

The signing ceremony, held at the Ministry of Foreign Affairs of the Netherlands, included Romanian and HCCH representatives.

Romania, a HCCH Member since 1991, is now bound by eleven HCCH Conventions and one Protocol. More details are available on the HCCH website's Protection of Adults Section: https://www.hcch.net/en/news-archive/details/?varevent=998 (Editor: George Tian)

***Georgia: 2007 Child Support Convention and Maintenance Protocol Take Effect***

On September 1, 2024, the 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol entered into force for Georgia, following the deposit of its ratification instruments on May 14, 2024.

With Georgia's inclusion, the 2007 Child Support Convention now binds 51 States and the European Union, and the 2007 Maintenance Obligations Protocol applies to 33 States and the European Union.

Georgia, a HCCH Member since 2001, is now a Contracting Party to eight HCCH instruments. More information is available on the HCCH website's Child Support Section: https://www.hcch.net/en/news-archive/details/?varevent=999 (Editor: George Tian)

***Albania: Albania Signs the 2019 Judgments Convention***

On September 12, 2024, Albania signed the 2019 Judgments Convention through Ms. Evi Naku, Head of Cabinet of the Minister of Justice.

The Convention will enter into force for Albania only after depositing its instrument of ratification under Article 28(2). Currently, 30 HCCH Members are either bound by the Convention or awaiting its entry into force.

The signing ceremony, held at the Ministry of Foreign Affairs of the Netherlands, included representatives from Albania, the HCCH, and the depositary.

Albania, a HCCH Member since 2002, is a Contracting Party to 16 HCCH Conventions and instruments. More information is available on the HCCH website's Judgments Section: https://www.hcch.net/en/news-archive/details/?varevent=1003 (Editor: George Tian)

***Switzerland: Switzerland Accedes to the 2005 Choice of Court Convention***

On September 18, 2024, Switzerland deposited its instrument of accession to the 2005 Choice of Court Convention, bringing the total Contracting Parties to 35 States and the European Union. The Convention will enter into force for Switzerland on January 1, 2025.

The accession ceremony, held at the Ministry of Foreign Affairs of the Netherlands, included representatives from Switzerland, the HCCH, and the depositary.

Switzerland, a HCCH Member since 1957, is now a Contracting Party to 21 HCCH Conventions. More details can be found on the HCCH website's Choice of Court Section: https://www.hcch.net/en/news-archive/details/?varevent=1004 (Editor: George Tian)

***Kosovo: Kosovo Signs 2005 Choice of Court and 2019 Judgments Conventions***

On September 19, 2024, Kosovo signed the 2005 Choice of Court Convention and the 2019 Judgments Convention, represented by H.E. Dr. Dren Doli, Ambassador to the Netherlands.

The 2005 Choice of Court Convention, currently binding 35 States and the European Union, and the 2019 Judgments Convention, with 30 HCCH Members bound or pending entry into force, will apply to Kosovo after it deposits instruments of ratification.

The signing ceremony, held at the Ministry of Foreign Affairs of the Netherlands, included officials from Kosovo and the HCCH.

More details on these Conventions can be found on the HCCH website's Choice of Court and Judgments Sections: https://www.hcch.net/en/news-archive/details/?varevent=1005 (Editor: George Tian)

***Albania: 2005 Choice of Court Convention and 2007 Maintenance Obligations Protocol Take Effect***

On October 1, 2024, the 2005 Choice of Court Convention and the 2007 Maintenance Obligations Protocol entered into force for Albania, following the deposit of its ratification instruments on June 25, 2024.

With Albania's inclusion, the 2005 Choice of Court Convention now binds 35 States and the European Union, and the 2007 Maintenance Obligations Protocol applies to 33 States and the European Union.

Albania, a HCCH Member since 2002, is now a Contracting Party to 16 HCCH Conventions and instruments. For additional details, visit the HCCH website's Choice of Court and Child Support Sections: https://www.hcch.net/en/news-archive/details/?varevent=1014 (Editor: George Tian)

***North Macedonia: North Macedonia Ratifies 2005 Choice of Court Convention***

On November 21, 2024, North Macedonia ratified the 2005 Choice of Court Convention, bringing the total number of Contracting Parties to 36 States and the European Union. The Convention will enter into force for North Macedonia on March 1, 2025.

The ratification ceremony took place at the Ministry of Foreign Affairs of the Netherlands, with representatives from North Macedonia, including H.E. Ms. Beti Jacheva, Ambassador to the Netherlands, and HCCH officials led by Dr. Christophe Bernasconi, Secretary General.

North Macedonia, a HCCH Member since 1993, is now a Contracting Party to 11 HCCH Conventions. More details are available on the Choice of Court Section of the HCCH website: https://www.hcch.net/en/news-archive/details/?varevent=1026 (Editor: George Tian)

***Switzerland: 2005 Choice of Court Convention Takes Effect***

On January 1, 2025, the 2005 Choice of Court Convention entered into force for Switzerland, following its deposit of the instrument of accession on September 18, 2024.

With Switzerland's inclusion, the Convention now binds 36 States and the European Union, enhancing international legal cooperation.

Switzerland, a HCCH Member since 1957, is a Contracting Party to 21 HCCH Conventions. More information is available on the Choice of Court Section of the HCCH website: https://www.hcch.net/en/news-archive/details/?varevent=1036 (Editor: George Tian)

# European Union Legislation

***European Union: The EU AI Act (Regulation 2024/1689) entered into force***

On August 1, 2024, the European Union Artificial Intelligence Act (Regulation 2024/1689), which lays down harmonized rules on artificial intelligence (AI), has entered into force and will be progressively applicable to several (private and public) organizations within transnational AI value chains connected to the EU internal market. The Regulation covers in principle all hazardous AI systems and models, and is of a binding legal nature going beyond classical AI ethical principles.

The official text of the Regulation can be found here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL_202401689 (Editor: Kim Nguyen)

***The 28th Regime discussion has been restarted at Darvos by the European Commission***

On January 21, 2025, Ursula von der Leyen of the European Commission proposed the 28th regime in a more refined manner at the Darvos World Economic Forum. The regime is proposed to be a rulebook which European companies in the single market can refer to in an attempt to harmonize the myriad of national legislations on legal, tax and finances. In this way, the European Commission hopes to retain company bases in the EU rather than relocating to the United States mostly due to simplified paperwork and legislation. Notably, formalizing the regime is expected to be a somewhat lengthy process requiring consent of EU governments (some of whom have disapproved previous iterations) prior to European Parliament launch. https://www.reuters.com/markets/europe/commission-wants-one-set-rules-across-eu-innovative-firms-2025-01-21/ (Editor: Raphaella Revis)

# European Union and the UK Case Law

***United Kingdom: UniCredit Bank GmbH v. RusChemAlliance LLC [2024] UKSC 30***

On September 18, 2024, the United Kingdom Supreme Court upheld the judgement of the Court of Appeal, which had granted an anti-suit injunction under section 37(1) of the Senior Courts Act 1981 to enforce an English law-governed arbitration agreement with a Paris seat against a Russian party that had commenced proceedings in Russia in breach of the arbitration agreement.

The full judgement can be found here: https://www.supremecourt.uk/cases/uksc-2024-0015 (Editor: Kim Nguyen)

***France: French Supreme Court defines legal effects of Foreign Surrogacy in a judgement of October 2, 2024***

On October 2, 2024, the French Cour de Cassation (Supreme Court) ruled that a foreign surrogacy recognized in France produces the legal effects provided by foreign law and need not be considered as a full adoption of French law. The facts of the case involve a couple of French men who had contracted with a surrogate mother in California. The French Supreme Court recognized and

enforced the Californian 'prenatal judgement' that established that the French men were the legal parents of the child, and that neither the surrogate mother nor her husband were legal parents and had any obligation towards the child.

The full judgement can be found here: https://www.courdecassation.fr/decision/66fd40c0d7274a31b711a73d (Editor: Kim Nguyen)

***Italy: Product liability scope clarified for defective products in the Ford Italia (Case C 157/23) in December 2024***

On December 19, 2024, the Court of Justice of the European Union passed the judgment for the Ford Italia case which held that a supplier can be considered a producer for defective products if the name on the product is the same as that one the trademark. https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-12/cp240204en.pdf (Editor: Raphaella Revis)

***United Kingdom - France: Advancement in Clifford Chance LLP v. Societe Generale***

On January 20, 2025, the United Kingdom Court of Appeal ruled that the ongoing lawsuit by Clifford Chance over the firm's representation can continue to be heard in London. As background information, Societe Generale, a former client of Clifford Chance, is suing them for negligence in France. However, there has since been a dispute over the jurisdiction in which the case can be heard based on the instructions originally received in the UK office. Importantly for those interested in private law jurisdiction questions, the Court of Appeal did not prohibit the lawsuit from continuing in France, instead commenting they are to considering the French Court would be "...reluctant to duplicate in France proceedings in England as to the alleged negligent conduct by English solicitors of Commercial Court proceedings in London." https://www.reuters.com/business/clifford-chances-lawsuit-against-socgen-can-continue-london-appeal-court-rules-2025-01-20/ (Editor: Raphaella Revis)

# National Legislation

***Corporate International Responsibility Act Bill implementing the EU Corporate Sustainability Due Diligence Director 2024/1670 (CSDDD)***

There is current consultation on this proposed draft bill which would require large scale companies to consider climate change, human rights and the environment at a national level under Dutch law. It is proposed to focus on due diligence, transparency and supervision and enforcement on these areas, as well as strategy against climate change. Further, the proposed Act is to be regulated by the Dutch Authority for Consumers and Markets. Administrative matters will be considered by both the District Court of Rotterdam and Trade Industry Appeals Tribunal.

On November 18, 2024, consultation was published by the Ministry of Foreign Affairs and submissions closed on December 29, 2024. https://www.regulationtomorrow.com/the-netherlands/esg-the-netherlands/consultation-on-the-implementation-of-csddd-into-dutch-law (Editor: Raphaella Revis)

# Association and Events

***European Union: The GEDIP/EGPIL's 34th Meeting***

On September 27-29, 2024, the Groupe Européen de droit International Privé (GEDIP)/European Group for Private International Law (EGPIL) held its 34th meeting in Paris, France. At the meeting, the GEDIP/EGPIL adopted a specific rule on stolen or illegally exported goods and guidelines on the influence of EU law on the law of nationality of States, and also examined draft guidelines on the treatment of renvoi in the European Regulation on applicable law. The GEDIP/EGPIL also discussed Directive 2024/1069 ('SLAPP') and Directive 2024/1760 on corporate sustainability due diligence and the procedural status of conflict rules and foreign law.

More information can be found here: https://gedip-egpil.eu/en/2024/paris-2024-2/ (Editor: Kim Nguyen)

***France: French Supreme Court Conference on Current Developments in Private International Law from a French Perspective***

On November 18, 2024, the French *Cour de Cassation* (Supreme Court) held a conference on the latest developments in private international law, in which it presented recent case law in various areas of private international law and considered the future prospects for this field. The topics discussed at the conference included conflicts of laws in contractual and delictual matters; jurisdiction and exequatur; conflicts of laws including jurisdictions concerning personal status and family law; PIL and privileges; and the role of a judge.

More information can be found here: https://eapil.org/2024/10/28/conference-on-current-developments-in-private-international-law-from-a-french-perspective/ (Editor: Kim Nguyen)

## Recent Scholarly Works

***Ekaterina Aristova newly published titled by Oxford University Press; 'Tort Litigation against Transnational Corporations: The Challenge of Jurisdiction in English Courts'.***

Ekaterina Aristova is currently a Research Fellow at the Bonavero Institute of Human Rights at the University of Oxford Faculty of Law, and has an extensive background in corporate law including in-house and private practice. In her book, recently published in April 2024, Aristova focuses on private claims and jurisdiction of English-based parent companies and foreign subsidiaries. The book inquiries on the responsibility, governance, and other transnational concerns in questioning whether English courts should follow 'economic enterprise theory' to broaden their competence.

Following the publication of the book, the EAPIL Blog editors organized a six-post symposium on their platform in December 2024, allowing participants to discuss in the post comments. This provided a platform for academics, lawyers and other legal professionals worldwide to engage directly with such topical scholarly work.

https://eapil.org/2024/12/08/introduction-to-the-online-symposium-on-e-aristovas-tort-litigation-against-transnational-corporations/
(Editor: Raphaella Revis)

***France: Olivier Cachard, Walid Ben Hamida and Rémi Dalmau co-authored the fourth edition of Cachard's textbook on International Commercial and Investment Law (Droit des affaires internationales – Commerce international et investissement)***

Olivier Cachard (University of Nancy), Walid Ben Hamida (University of Lille) and Rémi Dalmau (University of Nancy) are the authors of the fourth edition of Cachard's textbook on International Commercial and Investment Law (*Droit des affaires internationales – Commerce international et investissement*). The book, published on September 17, 2024, covers commercial conflicts and uniform law, including CISG and conventions on carriage of goods and persons, international company law, including insolvency, international contracts, international commercial arbitration, and international investment law.

The full text of the book can be found here: https://www.lgdj.fr/droit-des-affaires-internationales-9782275090993.html (Editor: Kim Nguyen)

# OCEANIA

## International Conventions

***New Zealand: the New Zealand-European Union Free Trade Agreement entered into force.***

On May 1, 2024, the New Zealand-European Union Free Trade Agreement (previously signed on July 9, 2023) entered into force.

The full text of the Agreement can be found at: https://investmentpolicy.unctad.org/international-investment-agreements/treaties/treaties-with-investment-provisions/5072/eu---new-zealand-fta-2023- (Editor: Corinna Chen)

***Australia: Released the UK-Australia Free Trade Agreement Joint Committee Statement***

On July 2, 2024, the governments of Australia and the United Kingdom released a Joint Committee Statement following the meeting on June 11, 2024, to discuss the United-Kingdom Free Trade Agreement.

The official text of the Joint Committee Statement can be found here: https://www.dfat.gov.au/trade/agreements/in-

force/aukfta/news/ukfta-inaugural-joint-committee-meeting-joint-statement (Editor: Kim Nguyen)

***Australia: Circulated the Joint Statement Initiative on Electronic Commerce with Japan and Singapore, amongst the WTO***

On July 26, 2024, at the request of the governments of Australia, Japan and Singapore, the World Trade Organization (WTO) circulated the Joint Statement Initiative on Electronic Commerce, following the conclusion of a five-year negotiation amongst WTO member nations that had been jointly convened by Australia, Japan and Singapore. The Joint Statement documents the new agreement on trade rules for electronic commerce and the digital economy.

The official text of the Joint Statement can be found here: https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/INF/ECOM/87.pdf&Open=True.

The media release on this development can be found here: https://www.dfat.gov.au/news/media-release/new-trade-rules-digital-economy (Editor: Kim Nguyen)

***New Zealand: Signed the Cooperative Arrangement between The Central Board of Indirect Taxes and Customs of the Government of the Republic of India and the New Zealand Customs Service***

On August 6, 2024, the governments of New Zealand and the Republic and India signed the Customs Cooperative Arrangement to provide a framework for New Zealand to share information with India to identify, prevent and investigate customs offences.

The official text of the Cooperative Arrangement can be found here: https://www.customs.govt.nz/globalassets/documents/legal-documents/cooperative-arrangement-between-the-central-board-of-indirect-taxes-and-customs-of-the-government-of-the-republic-of-india-and-the-new-zealand-customs-service---english.pdf (Editor: Kim Nguyen)

***Australia: Australia-Tuvalu Falepili Union Treaty entered into force.***

On August 28, 2024, the Australia-Tuvalu Falepili Union Treaty (signed on November 9, 2023) officially entered into force. This treaty marks the first time Australia has recognized – through a legally binding treaty – the continuing statehood and sovereignty of Tuvalu. Additionally, the Treaty imposes obligations on Tuvalu to safeguard and facilitate the smooth operation of the migration pathway between the two nations.

The full Treaty text and explanatory memorandum can be found at: https://www.dfat.gov.au/geo/tuvalu/australia-tuvalu-falepili-union-treaty (Editor: Corinna Chen)

***Australia: Signed the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA)***

On November 6, 2024, the governments of Australia and the United Arab Emirates (UAE), signed the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA) to strengthen Australia's trade in the UAE through eliminating tariffs on over 99 per cent of Australia's exports to the UAE and providing UAE market access and preferential treatment to Australian farmers, producers, manufacturers and services providers.

The official text of the partnership agreement can be found here: https://www.dfat.gov.au/trade/agreements/not-yet-in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text.

The media release on this development can be found here: https://www.trademinister.gov.au/minister/don-farrell/media-release/678-million-boost-australian-exports-uae?_gl=1*1s1nb4w*_ga*NjI5ODU2MzgzLjE3MzI0NDc2NzM.*_ga_8Z18QMQG8V*MTczMjQ0NzY3My4xLjEuMTczMjQ0NzY5OC4zNS4wLjA (Editor: Kim Nguyen)

***Australia: Signed the Agreement between Australia and UAE on the Promotion of Investments***

On November 6, 2024, the governments of Australia and the United Arab Emirates (UAE), as part of the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA), signed the Agreement between Australia and UAE on the Promotion of Investments, which will include investment protections for Australian and UAE investors and a Council on Investment that will be established to facilitate continued political exchanges on the investment relationship.

The official text of the investment agreement can be found here: https://www.dfat.gov.au/sites/default/files/uaecepa-official-text-investment-agreement.docx (Editor: Kim Nguyen)

***Australia: Signed five Investment memoranda of understanding with the UAE***

On November 6, 2024, the governments of Australia and the United Arab Emirates (UAE), as part of the Australia-UAE

Comprehensive Economic Partnership Agreement (CEPA), signed five Investment Memoranda of Understandings (MOUs) in sectors of national priority including Green and Renewable Energy, Data Centers and Artificial Intelligence Projects, Food and Agriculture, Minerals and Infrastructure.

The official text of the five investment MOUs can be found here: https://www.dfat.gov.au/trade/agreements/not-yet-in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text (Editor: Kim Nguyen)

***Australia and Nauru: Signed the Naura-Australia Treaty***

On December 9, 2024, Australian and Nauru government representatives officially signed the Naura-Australia Treaty in Canberra, with the aim of enhancing bilateral relations and ensuring Nauru's long-term economic resilience and security. The Treaty promises ongoing banking services through the Commonwealth Bank of Australia and fiscal certainty with $100 million in budget support over five years, alongside an additional $40 million allocated for Nauru's policing and security. Both nations commit to cooperative engagement in critical infrastructure, with the treaty expected to enter into force in 2025. Full details of the agreement are available at: https://www.foreignminister.gov.au/minister/penny-wong/media-release/nauru-australia-treaty (Editor: Corinna Chen)

# National Legislation

***Australia: Passed the Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Expansion) Bill 2024***

On October 10, 2024, the government of Australia passed the *Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Expansion) Bill 2024*, which implements the Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership by amending the *Customs Tariff Act 1995* to provide a free rate of customs duty for certain originating goods of the United Kingdom and specify phasing rates of customs duty for certain originating goods of the United Kingdom that will incrementally reduce to free.

The full text of the bill can be found here: https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/bills/r7242_aspassed/0000%22 (Editor: Kim Nguyen)

# National Case Law

***Australia: Tesseract International Pty Ltd v. Pascale Construction Pty Ltd (2024) 418 ALR 539***

On August 7, 2024, the High Court of Australia held that the proportionate liability schemes apply to arbitral proceedings, notwithstanding the inability to join all alleged concurrent wrongdoers to the arbitration. The Court emphasized that the parties' choice of law was of utmost importance and should be respected, the relevant proportionate liability schemes formed part of the law applicable to the substance of the dispute on the basis of that choice, and on their proper construction, those schemes were not themselves "incapable of settlement by arbitration."

The full judgment can be found here: https://jade.io/j/?a=outline&id=1085636 (Editor: Kim Nguyen)

***Australia: Saudi Arabian Cultural Mission v. Alramadi [2024] FCA 1060***

On September 12, 2024, the Federal Court of Australia allowed an application for leave to extend the time to appeal from an interlocutory decision of the Federal Circuit and Family Court of Australia which dismissed the applicants' application for the respondents' proceedings to be summarily dismissed for want of jurisdiction because it was immune from jurisdiction by reason of s 9 of the *Foreign States Immunities Act 1985* (Cth). The Court's reasoning was that the initiating process had not been duly served on the applicants in accordance with the requirements of s 24 of the *Foreign States Immunities Act 1985* (Cth) and rr 10.42, 10.43 and 10.51 of the *Federal Court Rules 2011* (Cth).

The full judgment can be found here: https://jade.io/article/1089771?at.hl=private+international+law (Editor: Kim Nguyen)

***Australia: Shinetec (Australia) Pty Ltd v. The Gosford Pty Ltd; The Gosford Pty Ltd v Bank of China Ltd (No 5) [2024] NSWSC 1287***

On October 15, 2024, the Supreme Court of New South Wales refused to grant a request to lift the stay on its proceeding on the basis that comity required that the stay

should continue until a reasonable time after the scheduled hearing in the Court of the People's Republic of China.

The full judgment can be found here: https://jade.io/article/1093214?at.hl=private+international+law (Editor: Kim Nguyen)

***Australia: Aguasa v. Hunter [2024] WASC 380***

On October 17, 2024, the Supreme Court of Western Australia held that the requirement to give a concerns notice pursuant to s 12B of the *Defamation Act 2005* (NSW) for a defamation claim should be characterized as substantive law, and not a procedural law, and thereby dismissed the proceedings on the basis that the plaintiff commenced proceedings in contravention of s 12B(1).

The full judgment can be found here: https://jade.io/article/1093542?at.hl=private+international+law (Editor: Kim Nguyen)

***Australia: Fujian Rongtaiyuan Industrial Co Ltd v. Zhan [2024] NSWSC 1318***

On October 25, 2024, the Supreme Court of New South Wales granted the orders sought by the plaintiff to enforce the judgement from the High People's Court of Fujian Province in the People's Republic of China, which was found to have the effect of establishing a substantive obligation falling on the defendant personally and as well falling on Xiamen, a party to the contract in dispute, itself to pay the plaintiff the sums ordered by the High People's Court.

The full judgment can be found here: https://jade.io/article/1105529?at.hl=private+international+law (Editor: Kim Nguyen)

***Australia: Wikeley v Kea Investments Ltd [2024] QCA 201***

On October 29, 2024, the Court of Appeal of Queensland dismissed an appeal against the primary judge's decision to order an anti-enforcement injunction in relation to a judgment obtained in the State of Kentucky, United States of America.

The full judgment can be found here: https://jade.io/article/1105204?at.hl=private+international+law (Editor: Kim Nguyen)

***Australia: HNOE Limited v. Angus & Julia Stone Pty Ltd [2024] NSWCA 271***

On November 19, 2024, the Court of Appeal of New South Wales granted an application for leave to appeal from the primary judge's decision to refuse summarily to dismiss and stay proceedings, finding that the plaintiff's claims for breach of statutory duty were untenable and claims for restitution and contractual breach were within the scope of the parties' exclusive jurisdiction clause.

The full judgment can be found here: https://jade.io/article/1108398?at.hl=private+international+law (Editor: Kim Nguyen)

***New Zealand: Wikeley v. Kea Investments Limited [2024] NZCA 609***

On November 21, 2024, the Court of Appeal of New Zealand allowed an appeal against a permanent anti-suit and anti-enforcement injunction in relation to a default judgment from Kentucky, which the plaintiff alleged had been obtained by fraud. The Court upheld the findings of fraud but nevertheless concluded that an injunction could only be granted as a step of last resort, based on the principles of comity.

The full judgment can be found here: http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZCA/2024/609.html?query=%22private%20international%20law%2.

The media release of this decision can be found here: https://conflictoflaws.net/2024/new-zealand-court-of-appeal-allows-appeal-against-anti-enforcement-injunction/ (Editor: Kim Nguyen)

***Australia: Harman v. Opus Recruitment Solutions - Australia Pty Ltd (Stay Application) [2024] FCA 1356***

On November 26, 2024, the Federal Court of Australia refused to grant a stay on proceedings on the basis that the existence of a factual overlap between the claims, the fact that the respondents are related and there are two exclusive jurisdiction clauses provide strong countervailing reasons in favor of departing from the exclusive jurisdiction clause and not granting the stay.

The full judgment can be found here: https://jade.io/article/1109091?at.hl=private+international+law (Editor: Kim Nguyen)

## Association and Events

***Australia: The Sixth Meeting of the Korea-Australia Free Trade Agreement Joint Committee***

On September 3, 2024, the governments of Australia and the Republic of Korea held the sixth meeting of the Korea-Australia Free Trade Agreement (KAFTA) Joint Committee meeting in Perth, Australia, to acknowledge the 10-year anniversary of KAFTA's entry into force and the importance of the Australia-Republic of Korea economic relationship.

The media release of this development can be found here: https://www.dfat.gov.au/trade/agreements/in-force/kafta/news/sixth-meeting-korea-australia-free-trade-agreement-joint-committee (Editor: Kim Nguyen)

***Australia: Attended the RCEP Ministers' Meeting***

On September 24, 2024, the Third Regional Comprehensive Economic Partnership Agreement (RCEP) Ministers' Meeting was held in Vientiane, Laos. The Meeting was attended by representatives from ASEAN, Australia, China, Japan, Korea and New Zealand, who reaffirmed their commitment towards ensuring the effective utilization of the RCEP Agreement by businesses in the region to contribute to and further deepen regional economic integration. The full text of the joint media statement can be found at: https://asean.org/wp-content/uploads/2024/09/RMM3-JMS-of-the-3rd-RCEP-MM-adopted.pdf (Editor: Corinna Chen)

***Australia: The Australia International Arbitration Conference 2024***

The Australia International Arbitration Conference 2024, serving as the flagship event for Australian Arbitration Week, took place on October 14, 2024, in Brisbane, Australia. This conference is a collaborative effort between the Australian Centre for International Commercial Arbitration (ACICA) and the Chartered Institute of Arbitrators (Australia).

More information can be found here: https://aaw.acica.org.au/international-arbitration-conference/ (Editor: Kim Nguyen)

***New Zealand: The New Zealand Agriculture and Climate Change Conference 2024***

The New Zealand Agriculture and Climate Change Conference took place on December 3-4, 2024, in Wellington, New Zealand. This conference is a collaborative effort between the New Zealand Agricultural Greenhouse Gas Research Centre (NZAGRC), the Ministry for Primary Industries (MPI) and AgriZero.

More information can be found here: https://www.nzagrc.org.nz/news-and-events/conference/ (Editor: Kim Nguyen)

***Australia and New Zealand: launch the Australasian Association of Private International Law***

On December 5-6, 2024, the Australasian Association of Private International Law (AAPrIL) was launched, bringing together private international law academics and lawyers from across Australia and New Zealand. The hybrid online and offline event, held at Corrs Chambers Westgarth in Melbourne, featured speeches from prominent figures including Chief Justice Andrew Bell of New South Wales and The Honourable David Goddard of the New Zealand Court of Appeal. The Inaugural President, Professor Mary Keyes of Griffith University, also addressed the attendees in her speech which can be found at: https://conflictoflaws.net/2024/report-on-the-2024-asia-pacific-colloquium-of-the-journal-of-private-international-law-jpil/ (Editor: Corinna Chen)