ARBITRATION TRENDS IN 2026

Big picture thinking

Insights into the key trends shaping arbitration

FRESHFIELDS

Welcome to our annual arbitration trends report

The world of international arbitration is undergoing rapid evolution as businesses confront geopolitical uncertainty, the acceleration of technological change and an increasingly complex regulatory environment.

Drawing on the insights of our global international arbitration team, this report identifies eleven trends that we believe will be critical in shaping the arbitration landscape over the next year.

Each trend is underpinned by our team's practical experience advising clients across markets and sectors. From sovereign risk and digital transformation to ESG compliance and new procedural advancements, our experts share forward-looking analysis and actionable guidance to help you stay ahead in an evolving business environment and legal order.

Why read this report?

The trends we highlight are not just legal developments. They enable business leaders to anticipate and respond to changing risk, regulatory and enforcement environments, which are key considerations in sustaining growth and protecting value. Businesses are using arbitration proactively to strengthen contracts, optimize investment structures and prepare for and resolve disputes, wherever they may arise.

> 2026 will be a defining year for international arbitration, with disputes expanding in complexity, reach and strategic importance for clients globally. The interplay of technological change, geopolitical developments and regulatory innovation is transforming not just what is arbitrated, but how and where disputes are resolved. At Freshfields, we are privileged to support clients at the center of this change by helping them protect value, navigate uncertainty and shape the outcomes that matter for their business.
>
> **Noiana Marigo and Boris Kasolowsky**
> Global Co-Heads, International Arbitration

We invite you to explore the report and connect with your usual Freshfields contact or any of the authors to discuss how these trends may affect your business.

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Risks for businesses operating in armed conflict zones: an evolving battleground

Risks for businesses operating in armed conflict zones: an evolving battleground

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In brief

The global landscape of armed conflict is the most complex and crowded since the Second World War. This includes international armed conflicts (e.g. the war in Ukraine), non-international armed conflicts (e.g. civil wars in Myanmar and Sudan) and situations that may not be straightforward to categorize (such as "drug wars" and terrorist insurgencies). Across the globe, geopolitical fragmentation and hybrid threats – combining cyberattacks with kinetic warfare – are redefining the operating environment for multinational businesses.

Companies now face increased exposure to sanctions, operational disruptions and other legal and reputational risks. As a result, we expect a surge in conflict-related commercial and investor-state arbitration, litigation and public international law disputes.

To manage these risks, businesses should integrate conflict analysis into due diligence, strengthen contractual and investment protections, establish robust documentation systems, monitor legal developments and anticipate disputes across multiple fora.

> The scope of risk for corporates operating in conflict zones is expanding, with companies facing increased litigation exposure across multiple jurisdictions, while also contending with accountability at the international law level, demanding robust due diligence and governance to mitigate legal and reputational risks.
>
> **Alexandra van der Meulen**
> Partner, Paris

The expanding risk landscape

Many businesses today are deeply embedded in conflict-affected economies. Energy and extractives, logistics, tech, construction and industrial firms often provide goods and services that sustain local markets. In addition, tech and defense companies frequently supply equipment to state actors, creating risks that such equipment may ultimately be used in ways that breach international law.

At the same time, companies looking to enter post-conflict environments, such as Syria or, eventually, Ukraine, face heightened compliance and security risks arising from changing sanctions frameworks, governance uncertainty and residual instability that may amplify operational and legal exposure.

> In a world where conflict is, unfortunately, a new constant, businesses need to hard wire conflict analysis into their decision-making – preparation will ensure resilience.
>
> **Joshua Kelly**
> Partner, London

The impact on arbitration

Commercial arbitration

Conflict amplifies contractual risk. In the current geopolitical context, we anticipate increased use of commercial arbitration as parties seek remedies for payment defaults, sanctions-related disruptions and halted operations. Tribunals are increasingly asked to interpret force majeure and frustration clauses, assess whether wartime conditions justify non-performance and navigate the legal grey zones created by sanctions and coercion. Disputes now commonly involve contractors unable to resume work in unstable regions, suppliers invoking force majeure due to security breakdowns, or financial institutions withholding payments to avoid breaching sanctions.

Investor-State arbitration

Investor-state arbitration is seeing a steep rise in conflict-related claims. Foreign investors have typically brought claims for losses suffered due to forcible actions – such as property damage, project halts, asset seizures, or expropriations. These actions may be taken by the host State's organs (e.g. military, police) or non-state actors (e.g. rioters or insurgents). Recent examples include claims against Azerbaijan, Iraq, Libya, Russia and Syria under bilateral and multilateral investment treaties.

Investors routinely invoke "full protection and security" (requiring the safeguarding of investments against harm) and "war damages" (providing compensation for losses caused by war or civil disturbance) clauses. These claims may raise complex issues of State responsibility, including attribution and the applicability of defenses. For instance, to limit liability, conflict-affected states may invoke "essential security interests" treaty exceptions and raise "necessity" or "force-majeure" defenses under customary international law.

As countries adopt ever-complex responses to conflict, including sanctions, export controls and asset freezes, the number and variety of conflict-related claims will likely increase. This includes claims against states not directly involved in the conflict.

For example, in 2025, Russian investors threatened or started arbitrations against European countries for freezing assets following Russia's invasion of Ukraine, alleging breaches of "free transfer," "expropriation" and "fair and equitable treatment" clauses. Moreover, investments by non-Russian investors in states not directly involved in the conflict have, at times, become collateral damage of the sanctions regime, leading these investors to explore potential claims.

Litigation exposure

Operating in conflict zones exposes businesses to significant and unpredictable litigation risks in the courts of the countries involved in the armed conflict and elsewhere. Companies may face lawsuits for not only direct involvement in conflict-related activities but also indirect activities, such as maintaining commercial operations perceived as supporting parties to the conflict (e.g. supplying equipment).

Jurisdictions such as the United States, United Kingdom, France and Germany are increasingly asserting jurisdiction over corporate conduct occurring outside of their territories, scrutinizing actions for potential violations of human rights, terrorism-related statutes, and international law.

In the United States, statutes like the Anti-Terrorism Act allow for civil claims against companies and individuals for aiding or abetting abuses. France's Duty of Vigilance Act and Germany's Supply Chain Act further require companies to proactively identify, prevent and address human rights and environmental risks throughout their global operations, with non-compliance leading to regulatory penalties or civil claims, as well as reputational harm. As a result, legal risk now travels with business.

Public international law and human rights

Conflict-related disputes are also playing out in an array of public international law fora. Human rights courts, such as the European Court of Human Rights, may provide an alternative to investor-state arbitration for companies. International compensation mechanisms, such as the newly established International Claims Commission for Ukraine, also provide compensation avenues for businesses affected by particular conflicts.

Corporate accountability is also in sharp focus. Several United Nations human rights bodies are increasingly scrutinizing the role of companies in conflicts. For example, UN Special Rapporteurs (independent experts) have published reports identifying companies alleged to be involved in furthering or supporting unlawful conduct in armed conflicts, and in some cases have sent allegation letters to such companies.

Further, businesses have faced complaints before the UN Working Group on Business and Human Rights or the OECD National Contact Points Grievance Mechanism. While non-binding, their decisions add significant reputational pressure and are increasingly being used by NGOs and prosecutors to bolster domestic prosecutions for aiding and abetting international crimes.

Practical takeaways

Operating in armed conflict zones is no longer a niche concern; it is a mainstream business risk. To manage this risk, companies will increasingly need to consider whether the following actions are advisable given the conditions they are facing:

- **Adopt comprehensive due diligence strategies:** Integrate conflict analysis into due diligence and implement rigorous assessment and cross-border risk mapping systems.
- **Secure optimal protection under contracts and treaties:** Strengthen contractual protections, assess investment protection frameworks and consider restructuring to avail protections.
- **Keep abreast of developments and maintain records:** Establish systems for continuous documentation to strengthen their position to seek reparation or defend claims and actively monitor legal developments in key jurisdictions.
- **Prepare for cross-border disputes and consider the most relevant dispute resolution fora:** Anticipate multi-fora disputes spanning litigation in the countries involved in armed conflicts and other jurisdictions, commercial arbitration, investor-state arbitration and public international law litigation.

Our international arbitration and public international law specialists are ideally placed to assist clients proactively manage these multidimensional disputes. Please contact us to learn more.

2.

Borders and beyond: sovereignty and boundary disputes driving arbitration

Borders and beyond: sovereignty and boundary disputes driving arbitration

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In brief

In 2026, sovereignty and boundary disputes will continue to be a driver of arbitration – not just between states but also for businesses, particularly those operating or invested in the energy, extractives and infrastructure sectors.

As states seek greater control over increasingly contested spaces, businesses face increased legal and geopolitical uncertainty, especially in environments affected by technological advancement, energy demand and trade tensions.

> Offering neutrality, a right to sue host States directly, and awards that are legally binding and enforceable in most countries, arbitration is an especially useful tool for businesses to proactively manage risk in projects affected by territorial disputes or in new frontiers.
>
> **Samantha Tan**
> Partner, Singapore

Disputes related to sovereignty and boundaries can give rise to several forms of arbitration, including:

- **State-to-state arbitrations:** Mechanisms for resolving sovereignty and boundary disputes under international law (as an alternative to litigation before the International Court of Justice).
- **Investor-state arbitrations:** Redress under investment treaties for foreign investors when state measures (such as expropriation, license revocation, unfair or discriminatory treatment, or a failure to provide adequate protection and security) arise from sovereignty and boundary disputes.
- **Contractual arbitrations:** Disputes between private parties (and/or involving state-owned entities) arising from project delays, force majeure claims or other contractual breaches due to sovereignty and boundary-related disruptions.

While these forms of arbitration will continue to arise from traditional inter-state disputes in 2026, we also expect them to expand into new areas previously considered beyond any state's individual jurisdiction.

Borders and beyond: sovereignty and boundary disputes driving arbitration

Traditional sovereignty and boundary disputes

States have contested sovereignty and boundaries for centuries, often to secure access to valuable natural resources. Even where a boundary is settled, uncertainty can persist or unexpectedly arise, especially in areas of overlapping resources, creating long term risks for businesses and the potential for a wide range of disputes.

This is illustrated by the following examples.

Guyana v. Venezuela (Essequibo Region)

The territorial dispute over the oil-rich territory and its offshore waters has directly affected oil companies operating concessions in the area, exposing them to:

- **Physical risks to infrastructure and equipment,** such as the 2018 incident involving a drilling ship.
- **Delays or withdrawal of oil concessions:** Guyana's moratorium on further exploration in the area directly impacted existing and future oil concessions. Even absent such a moratorium, investing in disputed areas generally carries significant risk, as a change in state "ownership" may lead to the cancellation of concessions.

South China Sea

Sovereignty and boundary disagreements have, for decades, disrupted offshore resource development (see the South China Sea Arbitration between the Philippines and China, which concluded in 2016). More recently, such inter-state disputes have begun to extend beyond hydrocarbons, impacting subsea cables that are essential to global data transmission, with knock-on effects for private businesses. We have seen:

- **Interference and sabotage by foreign ships:** Growing reports of Chinese vessels scraping the seabed along subsea-cable routes pose national-security concerns and expose private cable owners to significant risks. With private technology companies now responsible for over 70 percent of global subsea-cable usage, such interference can lead to substantial losses and insurance claims, but also legal exposure from service interruptions.
- **Licensing delays:** Contested sovereignty in the South China Sea has also caused licensing delays that affect private operators of subsea-cables. The Southeast Asia–Japan 2 (SJC2) cable project was reportedly held up due to China's permitting requirements and concerns over potential espionage by the contractor.

Expanding frontiers: beyond national jurisdiction

Technological advances and rising demand for strategic minerals are transforming areas historically beyond any state's individual jurisdiction into commercially significant (and highly sought after) regions, including:

- **Extended continental shelves in the Arctic:** Melting sea ice and accelerating energy and minerals exploration are intensifying overlapping claims by states for an "extended continental shelf" – particularly among the Arctic States: Canada, Russia and Denmark/Greenland. In recent years, these states have begun authorizing exploration activities in disputed areas by private contractors, who will inevitably be operating with consequent risk and uncertainty. The map following shows the extent of states' overlapping claims.
- **Deep seabed mining (the Area):** Rapid technological advances, together with rising demand for critical minerals, are intensifying state interest in deep seabed mining. Exploration and exploitation activities in offshore areas beyond national jurisdiction (in the zone known as "the Area") are governed by the regime set out in the United Nations Convention on the Law of the Sea (UNCLOS), which requires an International Seabed Authority (ISA) contract and a sponsoring state license. Exploration licenses now exist, but exploitation licenses await agreement on the long delayed ISA Mining Code – intended to regulate exploitation in the Area. Meanwhile, the United States, acting outside UNCLOS, has established its own framework, issuing an April 2025 executive order to fast track deep seabed mining permits within and beyond national jurisdiction. This uncertain and conflicting legal environment seems ripe for disputes, including with and among private mining companies.

Borders and beyond: sovereignty and boundary disputes driving arbitration

Maritime jurisdiction and boundaries in the Arctic Region

- Canada territorial sea and exclusive economic zone (EEZ)
- Canada continental shelf beyond 200 M (see note 2)
- Denmark territorial sea and EEZ
- Denmark continental shelf beyond 200 M (note 3)
- Iceland territorial sea and EEZ
- Iceland continental shelf beyond 200 M (note 3)
- Norway territorial sea and EEZ / Fishery zone (Jan Mayen) / Fishery protection zone (Svalbard)
- Norway continental shelf beyond 200 M (note 4)
- Russia territorial sea and EEZ
- Russia continental shelf beyond 200 M (note 5)
- USA territorial sea and EEZ
- USA continental shelf beyond 200 M (note 7)
- Norway-Russia Special Area (note 6)
- Overlapping Canada / USA EEZ and territorial sea (note 8)
- Russia-USA Eastern Special Area (note 9)
- Seabed beyond any state's continental shelf (note 1)
- Straight baselines
- Agreed boundary
- Russia-USA maritime boundary (1990) in areas of overlapping shelves
- Median line
- Svalbard treaty area (note 10)
- Iceland-Norway joint zone (note 11)
- Main 'Northwest Passage' shipping routes through Canada claimed internal waters (note 12)
- Internal waters
- Land
- North Pole

- **Outer space:** Commercial resource exploration in space by states and private actors is also rapidly emerging as the next frontier for resource exploration. In 2024, US company, AstroForge, received the first license for a commercial deep-space mining mission. As we noted in our 2025 Trends Report, the expansion of private sector activity in outer space is exposing critical gaps in the legal framework governing space resources, once again providing fertile ground for disputes.

> Inter-state sovereignty and boundary conflicts have long been a source of uncertainty – and, in turn, a driver of associated commercial disputes – in resource-rich areas. That historical trend seems set to continue, as does the growing trend for exploration of areas beyond national jurisdiction, which will likely lead to new (and novel) disputes.
>
> **Will Thomas, KC**
> Partner, London

These new frontiers offer major opportunities for private actors but also introduce novel risks as a result of competing legal frameworks and regulatory uncertainty, including:

- **Adverse state action**, such as withdrawal or non renewal of authorizations, sudden regulatory changes and failure to protect operations from security or geopolitical risks in contested zones; and
- **Contractual disputes**, arising from delays or failures caused by overlapping claims to the same area, breakdowns in joint ventures and disputes following damages to infrastructure and equipment.

Practical takeaways

As sovereignty and boundary disputes increasingly affect energy, extractives and infrastructure projects, businesses should consider taking proactive steps to protect their investments and operations, such as:

- **Conduct thorough due diligence:** Before investing or contracting, assess the risk that disputed sovereignty and boundary claims could affect the project's viability or operations.
- **Draft for uncertainty:** Contractual agreements should anticipate sovereignty and boundary-related disruptions. Consider, for example, including appropriate warranties, as well as force majeure and stabilization clauses.
- **Diversify protection mechanisms:** Strategic investment treaty planning can help secure access to investor-state arbitration where disputes lead to expropriation or unfair treatment. Additional safeguards, such as political risk insurance, may also be put in place, tailored to the project's profile and location

With a thorough understanding of these complex issues, our international arbitration team helps clients anticipate and resolve disputes in this important sector. Please contact us to learn more.

3.

Navigating a changing defense landscape

Navigating a changing defense landscape

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In brief

The defense sector is undergoing significant transformation, driven by escalating geopolitical tensions, technological innovation and supply chain pressures. As defense spending climbs and the industry becomes more complex, disputes grow more sophisticated and increasingly sensitive. International arbitration offers defense stakeholders the flexibility, confidentiality and neutrality needed to safeguard both commercial interests and national security.

The evolving defense ecosystem

The shift towards decentralized supply chains

Global instability has led nations to prioritize defense. Defense spending in the European Union (EU) reached €343bn in 2024 and was projected to hit €381bn in 2025, up 63 percent since 2020. In the United Kingdom, annual defense spending increased by 30.2 percent over the past decade, reaching £60.2bn in 2024/2025. Meanwhile, military expenditure in the United States approached US$1tn in 2024.

In parallel, resource nationalism has escalated around critical raw materials essential for technologies like advanced batteries and drones. Export restrictions have surged as a result, intensifying competition for materials like copper, nickel and lithium.

Against this backdrop, supply chain resilience (both security of information and of supply) is critical, supported by initiatives like NATO's Defence-Critical Supply Chain Security Roadmap and the EU's Defence Industry Transformation Roadmap. Drawing on Ukraine's experience, the EU advocates shifting from centralized procurement authorities to decentralized supply chains involving a broader range of stakeholders for greater responsiveness and agility. Any related disputes are likely to span multiple jurisdictions and involve several parties, requiring proactive risk management.

The emergence of "New Defense" companies and new technologies

Advanced digital and cyber tools, such as AI-backed software and quantum technologies, are becoming central to national security, creating opportunities for startups and small-to-medium enterprises, often at the forefront of technological advancements. The emergence of these "New Defense" companies and the growing reliance on cutting-edge technologies increases the likelihood of disputes over intellectual property, data security breaches and liability for system failures.

Space: the new frontier for defense disputes

Space has become vital for defense, with satellites and other space-based assets underpinning surveillance, communication and strategic operations. Government investment in space is rising, with EU investment reaching a record €122bn in 2024. At the same time, private investment and mega-constellation projects are booming, led by companies such as SpaceX, Amazon, Eutelsat and new entrants like Canada's Telesat and China's SatNet. The race for orbital slots and frequency rights creates new flashpoints for disputes.

> The defense industry is undergoing profound change as new technologies, geopolitical shifts, and a wider range of market participants reshape traditional dynamics. Defense stakeholders must be prepared to navigate increasingly complex supply chains, emerging regulatory frameworks and the novel disputes these changes bring.
>
> **Kate Gough**
> Partner, London

Arbitration's enduring value in defense disputes

Arbitration remains the preferred method of resolving disputes under commercial defense contracts, including those involving state entities, and its relevance is only increasing.

Safeguarding sensitive information

Defense disputes often involve classified information and proprietary technology. Arbitration offers a robust framework to safeguard this sensitive data. Most major arbitration rules include confidentiality provisions, and parties can agree on bespoke confidentiality protocols or "Attorneys and Experts' Eyes Only" regimes, to put in place further situation-specific safeguards.

Classified documents are protected under Article 9.2(f) of the 2020 IBA Rules on the Taking of Evidence, which allows tribunals the discretion to exclude them from evidence where compelling grounds exist. Parties and tribunals can, however, obtain security clearance or seek declassification under the applicable regulations to use classified documents in arbitration (as occurred in the ICSID case of *Gabriel v. Romania*).

Adapting to multi-contract and multi-party transactions

Modern defense projects link contractors, governments and suppliers globally. Arbitration's flexibility helps manage multi-party and multi-contract disputes. Arbitration rules generally allow the joinder of additional parties and the consolidation of related proceedings where cases share the same or compatible arbitration agreements, or common legal or factual issues. These mechanisms help to reduce fragmentation, save costs and ensure consistency of outcomes.

Ensuring neutrality

Neutrality is essential for defense stakeholders. Arbitration allows parties to select arbitrators with the relevant expertise while ensuring they have no home advantage. Many institutional rules provide that, absent party agreement, arbitrators should be selected from outside the parties' jurisdictions.

Recent geopolitical tensions have increased arbitrator scrutiny. Challenges based on perceived bias related to nationality or public stance on geopolitical issues have become more common. Careful arbitrator selection is thus essential for award enforcement.

Practical takeaways

As complexity in the defense sector grows, stakeholders should proactively consider adapting their dispute resolution strategies, such as:

- **Review contractual frameworks:** Ensure arbitration clauses in existing and new contracts are fit for purpose and compatible across the supply chain to allow joinder/consolidation.
- **Protect confidentiality:** Identify sensitive information and applicable secrecy/classification restrictions and incorporate robust confidentiality provisions into the arbitration clauses and early procedural orders.
- **Assess treaty protection:** Foreign investors should assess whether investment treaties could provide additional protection against adverse state measures, including revocation of licenses, export restrictions or termination of long-term supply agreements.
- **Evaluate enforcement risks:** Carefully evaluate asset location and whether relevant jurisdictions may challenge arbitrator neutrality on political grounds. Consider applicable immunity rules when contracting with states or state-owned companies, as well as supranational entities.

> Even as defense disputes become more complex and sensitive, arbitration continues to offer what the industry needs most: a neutral forum, procedural flexibility and confidentiality to protect commercial interests and national security. It remains the go-to solution when stakes are high and trust is paramount.

Christophe Seraglini
Partner, Paris

Our team understands these dynamics intimately and assists clients in proactively resolving disputes across this critical sector. Please contact us to learn more.

4.

State power and the reshaping of investor-state arbitration

State power and the reshaping of investor-state arbitration

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In brief

Investor-state arbitration faces a rapidly changing landscape as governments take a firmer hand in sectors viewed as critical to national interests and the energy transition. States are tightening controls over strategic investments, invoking national security and adopting policies to secure domestic access to vital resources. The mining sector, in particular, is under the spotlight, with growing demand for minerals like lithium and cobalt matched by new restrictions on foreign investment and increased state intervention. In parallel, disputes are moving beyond arbitration to national courts, from anti-arbitration injunctions to enforcement battles and EU sanctions.

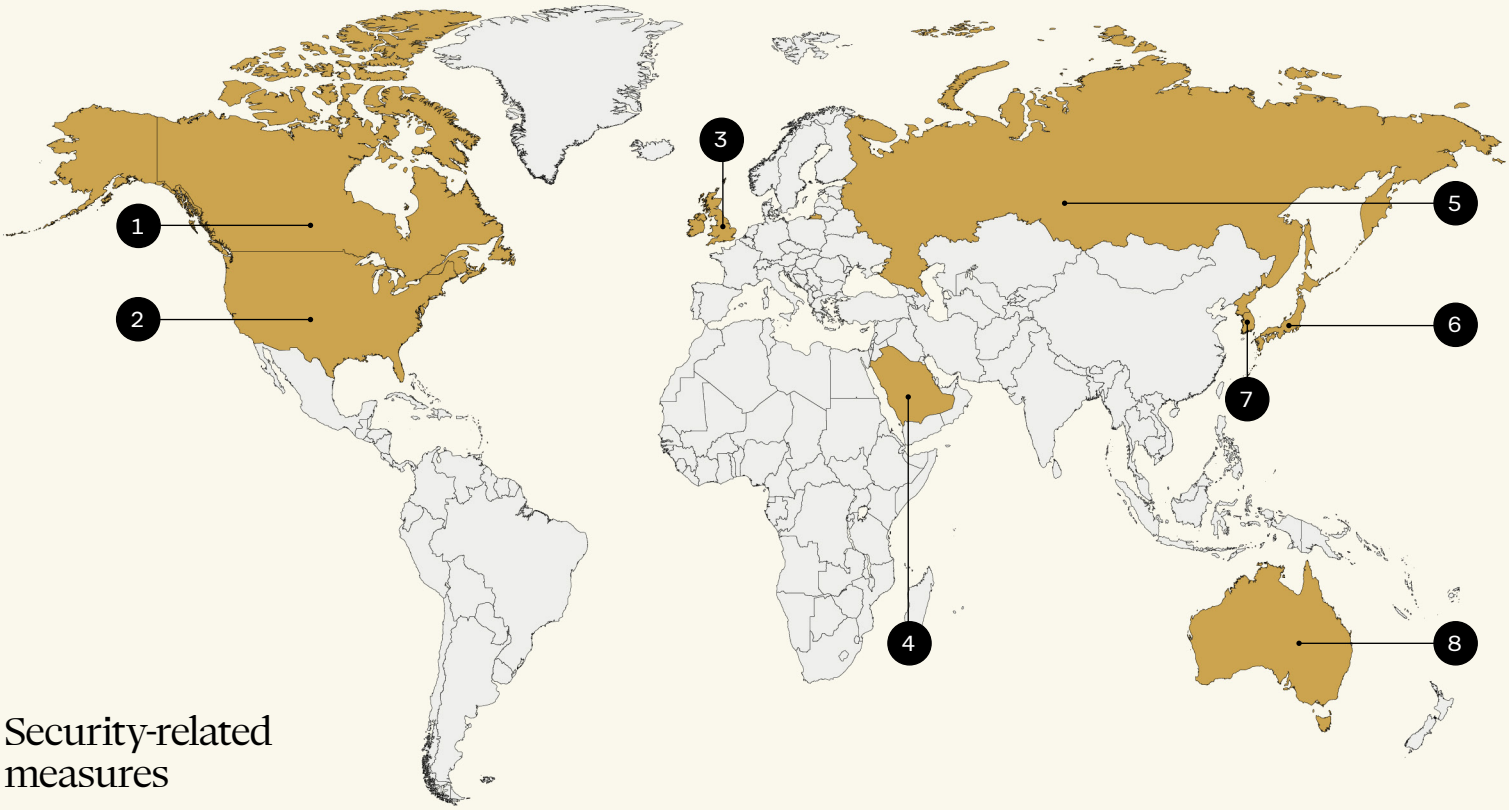
In this context, investors must adopt flexible, coordinated strategies to navigate a playing field that is more dynamic and complex than ever.

National security and investment claims

With intensified geopolitical tensions, governments have stepped up measures to monitor and, where needed, restrict or unwind foreign investments on security grounds. In 2025, eight G20 members adopted legislation designed to address potential security threats linked to foreign investments.

> In the next few years, we expect the national security lens to keep widening. Investors should increasingly anticipate state intervention early in a deal, and arbitrators will face greater pressure to weigh national policy concerns alongside treaty protections.
>
> **Noah Rubins KC**
> Partner, Paris

State power and the reshaping of investor-state arbitration



Security-related measures

1 Canada

Sensitive Technology List

Updated Guidelines on the National Security Review of Investments

2 United States

Final Rule, Provisions Pertaining to US Investments in Certain National Security Technologies and Products in Countries of Concern

Final Rule, Preventing Access to US Sensitive Personal Data by Countries of Concern or Covered Persons

3 United Kingdom

Procurement Act 2023

Procurement Regulations 2024

4 Saudi Arabia

Investment Law

Implementing regulations to the Investment Law

5 Russian Federation

Amendments to the Air Code of the Russian Federation

Certain legislative acts

6 Japan

Cabinet Order on inward direct investment

7 Republic of Korea

Amendment to the Act on the Prevention of Divulgence and Protection of Industrial Technology

Amendment to the Decree on the Prevention of Divulgence and Protection of Industrial Technology, No. 2005-463

8 Australia

Foreign Investment Policy

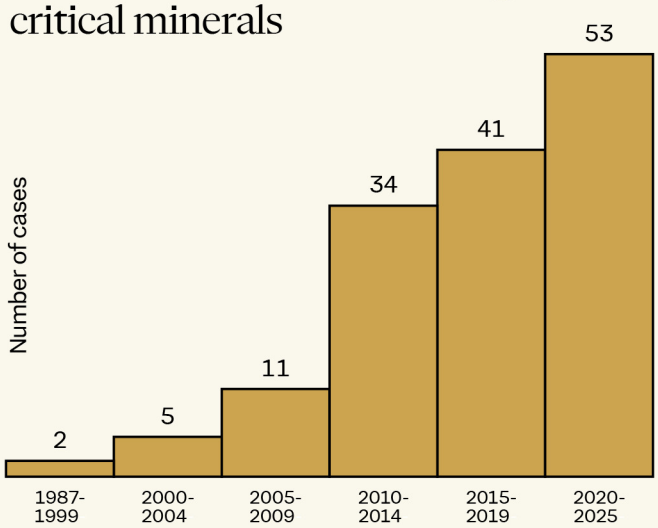
These measures often result in restricting, prohibiting, or compelling the divestment of foreign investments. Recent examples include Sweden's measures preventing Huawei from participating in the roll-out of 5G networks and requiring the removal of existing Huawei equipment.

Investor-state arbitration becomes key in this context. More than ever before, arbitral tribunals are likely to be called upon to assess the compliance of national security measures with investment protection treaties. New investment treaties increasingly incorporate "self judging" essential security interest exceptions to protection, which attempt to limit arbitral tribunals' scrutiny over state measures affecting foreign investments. Even in the absence of such exceptions, the debate continues over whether national security restrictions are compensable or legitimate and non-actionable under the "police powers" doctrine.

Mining disputes and the drive for critical minerals

Mining remained the largest source of investor-state dispute settlement (ISDS) claims for the tenth consecutive year in 2025, with nearly 30 percent of newly registered cases arising out of mining disputes.

Investor-state cases involving critical minerals



Note: The classification of relevant ISDS cases is based on UNCTAD's list of critical minerals by role in energy transition and other areas.

Source: UNCTAD

This trend is expected to continue, driven by surging demand for key critical minerals to support the energy transition. By 2040, demand for these materials is projected to be about six times higher for lithium, four times higher for graphite and twice as high for cobalt compared to today.

As these minerals grow more vital to national interests, resource-rich nations are increasingly implementing nationalist policies, such as prioritizing local supply chains, imposing export restrictions, or asserting greater state control over mining operations. For example, Indonesia has banned the export of unprocessed nickel, requiring foreign investors to refine minerals locally. Mexico has nationalized its lithium sector, granting exclusive control to a state enterprise, while Zimbabwe has banned raw lithium exports to build up domestic processing. These measures, along with China's export controls on gallium, germanium and graphite, aim to safeguard national interests and increasingly tie access to minerals to geopolitical considerations. This intense competition for resources is driving a new wave of government intervention, through policy shifts, investment restrictions and export controls, that brings additional complexity and risk for foreign investors.

Such developments are likely to fuel more disputes. The accelerating demand for critical minerals is unfolding in parallel with the broadening scope of ESG regulation, creating increasing points of regulatory friction. Governmental measures are evolving beyond a focus on environmental concerns to place a greater emphasis on social issues, such as inadequate community consultation, infringements of indigenous rights and deficiencies in social impact assessments. Allegations of this kind featured prominently in *Bear Creek v. Peru*, *South American Silver v. Bolivia*, *Cortec Mining v. Kenya*, and, most recently, *Gabriel Resources v. Romania*. Disputes are also arising with growing frequency from measures adopted by the judiciary.

Mining investors are therefore well advised to strengthen their due diligence practices – at the outset and throughout the entire life of their investments – to ensure full compliance with applicable social standards. Investors should also monitor domestic legal proceedings related to these issues from the outset and approach them not only from a domestic law perspective but also with future ISDS strategies in mind. This will improve their legal positions, should an investment dispute arise.

National courts as the new battleground: Investor protection beyond arbitration

ISDS has traditionally served as an alternative dispute resolution mechanism to local law remedies, with the objective of providing a level playing field independent of domestic law and state courts. Recent state practice has however begun to disrupt this notion.

> National courts are set to play an even greater role in ISDS as states push back on arbitration both before and after awards. Investors need integrated strategies that line up defenses in every relevant legal forum.
>
> **Nathalie Colin**
> Partner, Brussels

One striking example is the anti-arbitration injunction issued by the Moscow commercial court aimed at blocking arbitration proceedings initiated by German energy company, Wintershall, against Russia under a bilateral investment treaty. The judgment includes a penalty of no less than €7.5bn (the value of the arbitration claim) not only against Wintershall, but also against each of the arbitrators and the claimant's lawyers. Such high value injunctions aimed at counsel and arbitrators raise new concerns for foreign investors engaged in arbitrations involving Russia.

European governments are also making use of anti-arbitration injunctions (or similar tools) against ISDS. So far, the Netherlands, Germany and Spain have all resorted to German courts in a bid to halt investor-state arbitration that they consider to be contrary to European Union law. Meanwhile, the Netherlands also lodged a tort claim in the Belgian courts to block an investment arbitration over gas extraction activities.

After the arbitral award has been rendered, domestic courts in investors' home states have increasingly become a tool in respondent states' strategies to resist enforcement. Spain has appeared in the German courts against RWE and in the Dutch courts against AES, trying to do just that.

Sanctions policy adds another layer of restrictions on ISDS. Following a wave of ISDS claims initiated by sanctioned investors against Western states, including those brought by Russian oligarch, Mikhail Fridman, against Luxembourg, Cyprus and the United Kingdom, the EU enacted its 18th sanctions package in July 2025, whereby it prohibited such claims. In response, Russian investors have initiated proceedings before the Court of Justice of the EU to challenge this unprecedented measure. National courts have turned into a new battleground in ISDS disputes.

Practical takeaways

To succeed in this shifting environment, investors should:

- **Create a comprehensive dispute strategy:** Coordinate international and national actions from the outset to avoid inconsistent arguments and strengthen your overall position.
- **Assess the impact of national court decisions:** While these actions often do not have immediate impact on the investor-state arbitration itself, they can create additional risks, such as director liability, enforcement challenges, clawback actions, etc.
- **Leverage procedural tools:** Consider requesting interim measures from arbitral tribunals to block domestic proceedings and keep arbitrations on track.
- **Elevate your due diligence and compliance:** Ensure social and environmental risks are managed effectively throughout the investment lifecycle.

Our global international arbitration team has been representing clients in disputes raising these legal issues. Please contact us if you would like to learn more.

> We're seeing mining disputes shift from just environmental battles to real scrutiny on how companies work with local communities. The smartest investors will be the ones who genuinely engage with these social issues, not just tick the usual compliance boxes.

Noiana Marigo
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5.

Cross-border tax and tariff disputes move to center stage

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In brief

Tax measures are rapidly becoming a central catalyst for high-stakes, cross-border disputes. With governments adopting more assertive – and sometimes retroactive – fiscal policies, companies can expect heightened scrutiny and intervention across multiple jurisdictions. Local audits now often lead to complex, multifaceted disputes involving litigation, arbitration and even diplomatic channels. Businesses that prioritize fiscal risk management from the outset will be best positioned to navigate this evolving landscape.

Tax and fiscal disputes are here to stay

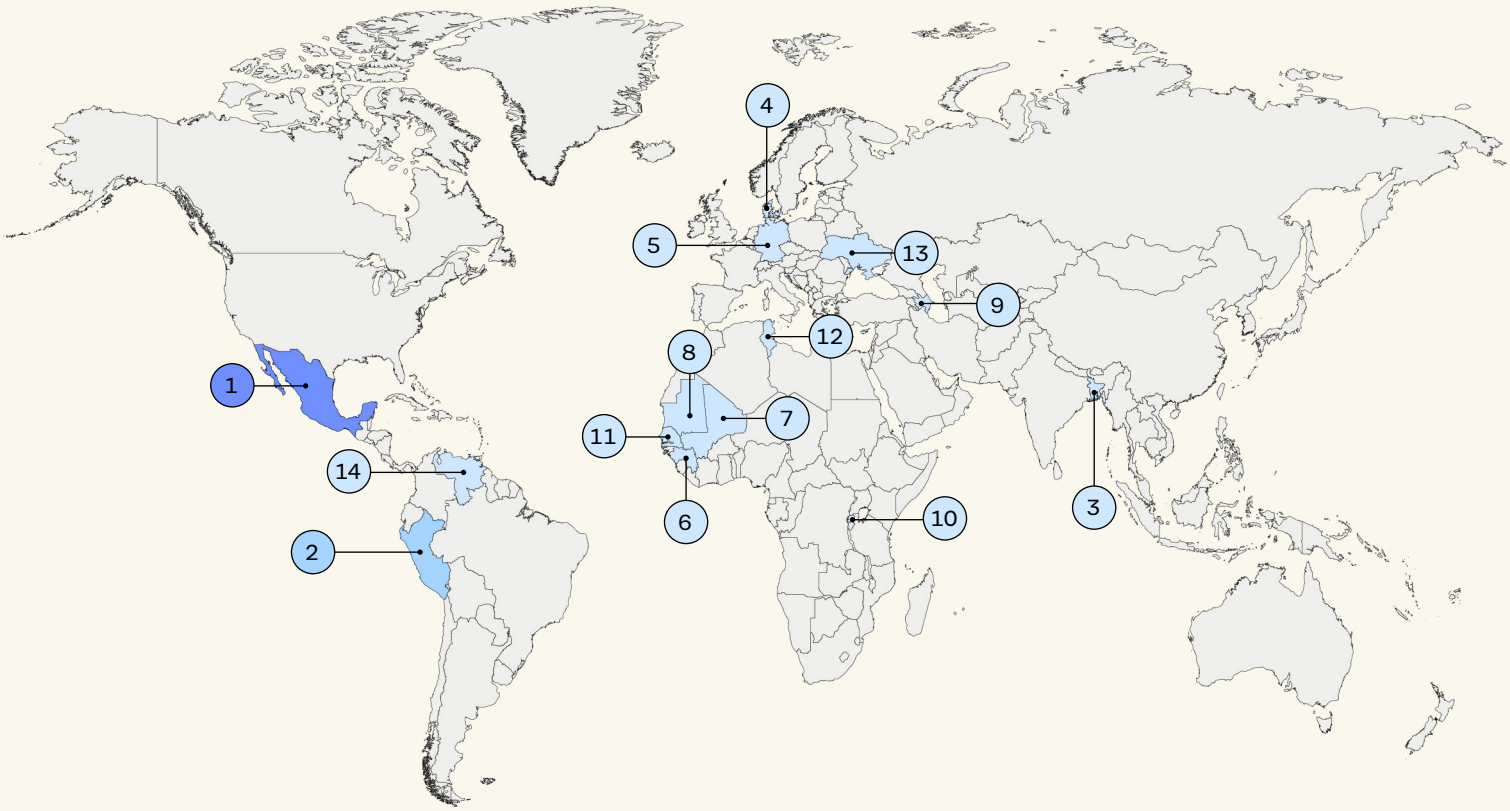
Tax and fiscal disputes have continued to evolve, with a noticeable increase in both frequency and complexity since our 2023 report. The continued prevalence of these disputes is driven by dynamic fiscal and political pressures: post-pandemic budget gaps, expanding defense expenditures and ongoing geopolitical shifts have prompted governments to pursue revenue more aggressively.

We expect future tax and fiscal disputes to arise from large-scale assessments stemming from reinterpretations of existing law, retroactive adjustments, the introduction or increase of royalties and special levies in extractive industries and the creation of new sector-specific taxes. Tax-related issues are increasingly at the forefront of both investor-state and contractual disputes, underscoring the importance of effective tax risk management as a strategic imperative, especially given the significant effect that fiscal regimes have on project economics.

Across different regions, this trend is taking shape in unique ways:

- **Latin America:** Many countries in Latin America are in the midst of fiscal reforms. Tax authorities in Mexico and Argentina, for example, are implementing higher levies on extractive and consumer-facing industries, expanding both the scope and enforcement of indirect taxes (e.g. VAT). In Brazil, the reintroduction of a 10 percent withholding tax on dividends paid to non-residents – ending a 30-year exemption – has triggered immediate friction regarding the computation of effective tax rate caps for refunds and the application of transitional "grandfathering" rules.

Cross-border tax and tariff disputes move to center stage



Key regions where tax investor-state disputes have arisen

Cases related to tax issues 2021-2025

1	Mexico	5	5	Germany	1	10	Rwanda	1
2	Peru	4	6	Guinea	1	11	Senegal	1
3	Bangladesh	1	7	Mali	1	12	Tunisia	1
4	Denmark	1	8	Mauritania	1	13	Ukraine	1
	European Union	1	9	Azerbaijan	1	14	Venezuela	1

- **Africa:** Resource-rich countries across the continent are revising royalty rates, introducing new levies and adopting new interpretations of traditional tax rules. The evolving environment is leading to more frequent and complex investor-state and contractual disputes, especially where the retroactive enforcement of new rules or interpretations is in play.
- **Europe and Asia:** Several European jurisdictions are signaling interest in sector-specific taxes for digital and high-value industries, while some Asian countries are also contemplating updates to their royalty and tax frameworks.

Navigating multiple dispute resolution pathways

Effective management of tax and fiscal disputes requires proactive planning and a strategic understanding of all available dispute resolution avenues – including domestic litigation, arbitration, Mutual Agreement Procedures (MAPs) under tax treaties and negotiated settlements. Rather than seeing complexity as a challenge, businesses should see it as an opportunity to optimize their approach and leverage the full spectrum of options.

Key practical steps businesses should consider include:

- **Mapping out the options:** Identify all relevant dispute mechanisms and understand how they interact. Evaluate how tax and investment treaties may overlap with or complement each other to choose the optimal path and maximize available protections. Proper coordination can streamline your strategy and drive more efficient resolutions.
- **Monitoring critical deadlines:** Strategic management of relevant deadlines (including mandatory negotiation periods, exhaustion of local remedies and statutes of limitation, among others) is crucial, especially where steps taken, or not taken, in one forum might affect your rights in another. Forward planning is essential to ensure a coherent overall strategy and strict adherence to procedural requirements where necessary.
- **Coordinating closely:** Where claims are pursued through multiple channels, close coordination is required to maintain consistency in legal arguments and to develop a robust evidentiary foundation. This approach strengthens credibility and helps secure more favorable outcomes.

> As tax controversies surge globally, a holistic forward-thinking strategy is key. Understanding how to leverage various paths – local proceedings, arbitration and negotiations through government channels – maximizes the chances of a favorable result.
>
> **Carsten Wendler**
> Partner, Frankfurt

Partnering with counsel experienced in tax disputes ensures you remain well-positioned to navigate, monitor and coordinate these issues to achieve the most efficient and robust outcomes.

Tariffs: high stakes, low caseload – for now

While tariff-related headlines have surged over the past year, relatively few formal disputes have arisen focused exclusively on tariffs. This is likely due to political sensitivities and the fact that any such disputes might more readily be resolved through high-level political negotiations, if at all.

However, for 2026 and beyond, it will be important for businesses to treat tariffs as part of their broader fiscal risk management strategy, on par with tax. To prepare for this, companies should review and fortify key contractual provisions (including pricing and hardship clauses) and ensure their supply chains and investment planning take potential tariffs into account.

Practical takeaways

To effectively manage tax and fiscal disputes in an evolving regulatory landscape, businesses should consider taking the following actions:

- **Map your exposure:** Create a global heat map to pinpoint where your organization is most vulnerable, focusing on jurisdictions, sectors and counterparties that are facing or anticipating significant fiscal reforms.
- **Stress-test contracts and dispute clauses:** Systematically review contracts, especially those with governments and state-owned entities. Ensure that change-in-law, stabilization, tax and dispute resolution clauses are sufficiently robust to handle evolving risks.
- **Plan for multi-track disputes:** Develop clear internal guidelines on when to pursue domestic legal remedies, arbitration or MAPs under tax treaties to ensure a swift and coordinated response.
- **Integrate tax planning with dispute strategy:** Design tax structures and investment holdings with potential disputes in mind, ensuring that your planning facilitates both compliance and effective recourse in the event of a challenge.
- **Invest in early international law risk assessment:** Engage experienced international counsel to assess the legal risks from a legal perspective in addition to tax legal advisers. Early identification helps prevent issues from escalating across jurisdictions and ensures your position is well protected in any eventual arbitration or legal proceeding.

If you would like to discuss any of these topics in more detail, your Freshfields contact would be glad to assist.

6.

Venezuela's turning point: opportunity amid recovery

Venezuela's turning point: opportunity amid recovery

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In brief

After close to two decades as a pariah State, Venezuela now stands at a crossroads. Under close oversight from the United States government, the country is moving toward a structured recovery. Notably, a US Executive Order in January 2026 placed Venezuelan oil revenues under US control, aiming to support both oil sector reconstruction and reform of Venezuela's Petroleum Law. These changes are likely to fundamentally reshape foreign investment models, but significant uncertainty remains. Venezuela still lacks strong and independent institutions, and the political transition creates legal grey areas, with many countries not recognizing the current administration. For award creditors and investors, this presents an opportunity to revisit strategies for extracting value from awards and dormant claims, though caution remains essential.

Turning awards into strategic assets

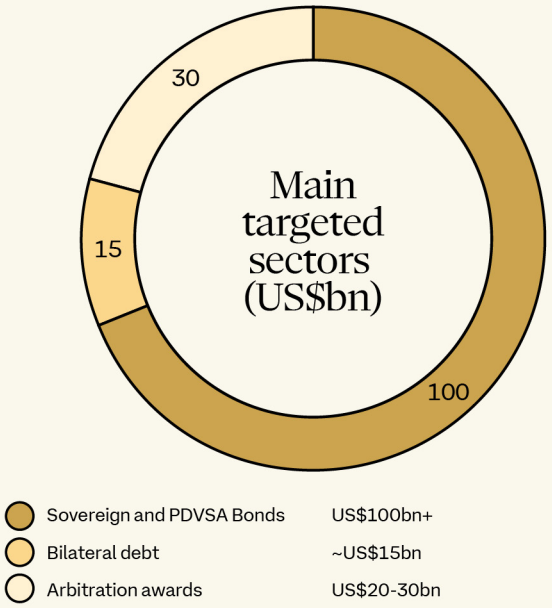
Venezuela has long been a key target of investment arbitration in the Americas, with over 50 claims and an estimated US$20-30bn in outstanding award liabilities.

The last decade saw attempts at direct enforcement of some of those awards against assets of Petróleos de Venezuela SA (PDVSA), such as the shares of PDV Holding (which in turn holds major US-based refiner and distributor, Citgo) in proceedings before the US District Court for the District of Delaware.

In light of recent events, negotiation may offer an alternative path to realizing value. With the possibility of a sovereign debt restructuring, award creditors could consider using their unpaid awards as negotiation leverage.

> With Venezuela on the brink of major change, creditors now have an opportunity to dust off their playbooks, reevaluate exposures and think creatively about recovery strategies beyond simple enforcement.
>
> **Nigel Blackaby KC**
> Partner, Washington, DC

Venezuela – estimated outstanding debt exposure



Source: Can Venezuela settle its debts?

Securing a new deal: Credits and reinvestment

The Venezuelan legislature has passed a new Petroleum Law endorsed by the United States. This law removes the requirement that state-owned PDVSA retains majority control, clarifies legal uncertainties under the old regime, greatly reduces fiscal burdens and allows access to arbitration in the event of disputes.

US involvement and the reform of the Petroleum Law has renewed global interest in Venezuela's energy sector and related industries. Those who can use their legacy awards or trade receivables towards new commercial ventures are well positioned. Concrete advantages may include:

- Priority status in upcoming joint venture opportunities;
- Enhanced contractual protections and license extensions; and
- More favorable fiscal terms tailored to the new economic reality.

However, with legal reforms still underway and broad recognition of the government unsettled, investors should proceed with caution and careful due diligence. Contracts signed with the current administration may face challenge in courts abroad, or in Venezuela itself if prospects of a political transition materialize. Recent years have also seen Venezuela withdraw from the ICSID Convention and some investment treaties, affecting international protection.

> For those who previously absorbed losses or held back from pursuing formal claims, 2026 opens the door for creative recovery strategies – and new opportunities in a revitalizing market.

Carsten Wendler
Partner, Frankfurt

Practical steps for success

For investors and creditors with Venezuelan arbitration (claim or award) exposure, agility is the key to securing the best results.

- **Monitor US policy developments:** In addition to monitoring US policy developments at the Office of Foreign Assets Control, also watch for key moves by the State Department's Foreign Terrorist Organization designations and shifts in how oil revenues are managed, as these can affect both timing and leverage.
- **Stay informed of local developments:** As we have seen with the Petroleum Law, local initiatives under the guidance of the US are quickly changing the local regulatory landscape and need to be taken into account. Look out for any new legislation to protect foreign investment or steps to rejoin multilateral institutions such as ICSID.
- **Consider the secondary market:** For those seeking a quicker exit, renewed activity on the secondary market (e.g. sale of awards or sale of claims to investment funds) could unlock new liquidity options, though be aware that pricing remains highly sensitive to restructuring developments.
- **Develop reinvestment scenarios:** Consider debt-for-equity swaps or "credit-to-contract" conversions but do so with as many protections in place as possible. In this uncertain environment, contracts approved or guaranteed by the US may offer additional comfort.

Successfully navigating Venezuela requires technical skill, sound judgment and deep market insight. Drawing on decades of experience managing Venezuelan investments and claims, including securing over US$10bn in arbitral awards, our our international arbitration and corporate teams are ready to help you assess the environment, mitigate risk and capitalize on new opportunities as the market evolves.

7.

AI's industrial revolution: a new frontier for disputes

AI's industrial revolution: a new frontier for disputes

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In brief

Artificial intelligence is no longer just a technology; it is an economic force requiring deeply interconnected global supply chains that span semiconductors, data centers and energy. This "industrial revolution" has created a new paradigm fundamentally altering risk profiles for businesses across all sectors. The immense capital investment, coupled with intense geopolitical competition, is creating fertile ground for a new wave of complex, high-stakes disputes. In 2026, we anticipate a rise in arbitrations at the intersection of technology, trade and geopolitics, compelling businesses to rethink how they allocate risk and structure their commercial relationships.

A new global industrial ecosystem

The rapid expansion of AI has forged a new, high-stakes industrial ecosystem. At its heart are semiconductors, where soaring demand and massive R&D investment in specialized AI chips have ignited fierce geopolitical competition. Governments in the United States, the European Union and Asia are intervening with subsidies and export controls to secure strategic control over chip design and fabrication.

Fueling this hardware boom are two other critical sectors: data and energy. The race to build data centers (further details can be found in Trend 9 below) for model training is accelerating globally – from North America and Europe to Africa and the Middle East – often supported by significant governmental incentives. This, in turn, creates immense energy demands, with projections showing data center power needs doubling by 2030. This is spurring significant investment in energy infrastructure, especially renewables and novel strategies like co-locating data centers with nuclear power plants. This capital-intensive build-out creates long-term dependencies in a highly volatile environment.

AI's ripple effect across industries

Beyond this ecosystem, AI is a general purpose technology being rapidly integrated across sectors from life sciences and mining to professional services. In life sciences, AI is accelerating drug discovery through novel collaborations. In the mining industry, it is optimizing exploration and operational efficiency through proprietary geological models. Professional services firms now license proprietary AI tools for consulting and audit work, changing how professional advice is prepared, the content of that advice and its associated risks. This proliferation of AI-driven partnerships creates new opportunities but also new vectors for disputes.

AI as a catalyst for disputes

This economic shift is inevitably creating friction points that may well lead to disputes.

The geopolitical-regulatory nexus

Certain governments are increasingly using regulation to favor domestic champions and protect national security interests, creating significant risk for foreign investors. Sudden policy shifts, new export controls, data localization rules and stringent AI safety regulations could crystallize into investment treaty claims for unfair treatment or expropriation, particularly after significant capital has been deployed.

A new breed of commercial risk

The uncertain AI landscape creates new and complex commercial risks. Disputes will focus on the allocation of scarce resources like chip capacity, ownership of IP in proprietary models and liability for data breaches, particularly over data sharing and royalty structures.

Separately, M&A deals face greater transactional risk as closing conditions may be frustrated by rigorous investment screening of critical digital infrastructure. More fundamentally, obligations like "best efforts" or "fitness for purpose" may be interpreted under a new lens, with disputes arising from both the decision to use – and not to use – AI. This will also trigger a new wave of insurance coverage disputes as traditional cyber, tech E&O and D&O policies are tested against these novel risks.

> We are seeing AI turn familiar risk categories – regulatory change, sanctions, data and IP – into a more tightly connected system. For cross-border businesses in 2026, that means the same AI driven investment can trigger disputes in multiple fora, from commercial arbitration to investment treaty claims.
>
> **Natalia Zibibbo**
> Counsel, Madrid

Practical takeaways

As AI continues its rapid integration into the global economy, businesses must adapt their strategies to navigate this trend. To prepare for the challenges ahead, consider the following practical steps:

- **Assess AI supply chain vulnerabilities:** Stress-test supply chain dependencies by mapping reliance on AI components – semiconductors, cloud infrastructure, energy – and assessing geopolitical and regulatory risks in key regions.
- **Modernize and future-proof contracts:** Future-proof commercial agreements by clearly defining terms around IP, data usage and resource allocation in AI partnerships. Update clauses like "best efforts," force majeure and liability caps for AI-specific risks.
- **Enhance dispute resolution mechanisms:** Strengthen dispute resolution frameworks by ensuring your contracts contain robust arbitration clauses to resolve complex technical issues and stay informed about AI's impact on proceedings (see Trend 8 below).
- **Structure AI investments for protection:** For capital-intensive AI infrastructure, such as data centers or fabrication plants, structure investments to benefit from bilateral investment treaties and other international protections against adverse regulatory changes.
- **Build organizational resilience:** Build resilience by investing in compliance programs, cyber risk management and insurance coverage tailored to the unique AI risks.

As the AI economy evolves quickly, now is the time to review your contracts, risk management strategies and dispute resolution mechanisms. Our global international arbitration team is ready to help you navigate these opportunities and challenges.

> Many businesses don't think of themselves as part of the 'AI industry,' yet their operations are increasingly dependent on a geopolitical supply chain for chips, cloud and energy. The strategic question in 2026 is how consciously that risk is being managed across contracts and investments.
>
> **Patrick Schroeder**
> Partner, Hamburg

8.

AI-generated procedural challenges in international arbitration

AI-generated procedural challenges in international arbitration

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In brief

The integration of AI in international arbitration has moved from novelty to necessity. While its promise of increased efficiency and cost-effectiveness is clear, the expanded use of AI tools for document analysis, drafting, research and more is creating a new species of procedural challenges. Safeguarding the integrity of the arbitral process now requires further attention to transparency, data security and the "human in the loop" requirement for decision-making. With no unified regulatory framework yet in place, arbitrators, counsel and parties are left to navigate a growing patchwork of institutional guidelines.

The disclosure dilemmas

Disclosure obligations generally ensure the integrity of the arbitral process. While there is a trend towards disclosure of AI use, the scope of disclosure remains a point of debate. For example, institutions differ in their approach:

- **The broad view** (2025 AAA-ICDR Guidance on Arbitrators' Use of AI Tools): The AAA Guidance encourages disclosure where AI tools materially impact the arbitration process or the arbitrators' reasoning. However, the guidance leaves open the precise content of the disclosure obligation.
- **The targeted view** (2024 Silicon Valley Arbitration & Mediation Center Guidelines on the Use of Artificial Intelligence in Arbitration): The SVAMC guidelines suggest that general AI use does not require disclosure. Where appropriate, however, they suggest that the following details may help reproduce or evaluate the output of an AI tool: (1) the name, version and relevant settings of the tool used; (2) a short description of how the tool was used; and (3) the complete prompt and associated output.

In practice, parties and counsel will likely resist disclosing the "internal" use of AI (e.g., specialized legal AI), arguing it is no different from using a search engine, provided that the tool operates within a secure environment and does not itself create a risk of confidentiality or data breaches. The challenge for 2026 is standardizing the "materiality threshold", i.e., the point at which AI's role moves from efficiency aid to substantive contributor.

> The central challenge of integrating AI in arbitration is balancing its promise of efficiency against the need to safeguard procedural fairness, transparency and the legitimacy of the arbitral process.
>
> **Rohit Bhat**
> Partner, Singapore

Evidentiary integrity and AI "hallucinations"

A critical procedural risk is the submission of AI-generated "hallucinations" – fictional case law or fabricated evidence. To some extent, the occurrence of hallucinations can be minimized through more precise prompting by users as they become more adept at using AI tools. At the same time, providers of AI tools are taking steps to further mitigate the risk of hallucinations. Even so, with an increasing number of documented cases globally of AI-generated fake citations, tribunals may consider imposing a duty of human verification, i.e., requiring parties to certify that a human has reviewed all submissions for factual and legal accuracy. Such measures would align AI assisted drafting with existing duties of candor and could be reflected in early procedural orders or soft law instruments.

The use of AI by arbitrators

AI has the potential to improve both the efficiency and quality of arbitrators' work. However, the arbitration community is still grappling with when and how it is appropriate for arbitrators to delegate tasks to AI and how to ensure that such use does not encroach on the arbitrators' mandate to exercise independent judgement. This creates a practical dilemma.

On the one hand, there is growing pressure to harness AI to manage increasingly complex and document heavy cases. On the other, there is a need to preserve the integrity, transparency and perceived legitimacy of the arbitral process and to avoid over reliance on tools that may be opaque or prone to error.

Guidance issued by the Chartered Institute of Arbitrators (CIArb), Silicon Valley Arbitration and Mediation Centre (SVAMC), American Arbitration Association-International Center for Dispute Resolution (AAA-ICDR) and the Stockholm Chamber of Commerce permits arbitrators to use AI as a support tool. It nevertheless emphasizes that arbitrators must retain full control over decision making and that AI must not replace their independent analysis. In practice, this forces tribunals to draw a line between permissible back office support (for example, drafting assistance or initial issue spotting) and impermissible delegation of evaluative or decision-making functions to AI.

Institutional evolution

Arbitral institutions are likely to continue developing and formalizing institution-wide frameworks to govern the use of AI. Pending the adoption of comprehensive rules (which tends to be a prolonged process), institutions are taking interim steps to regulate AI use, for example by offering model AI clauses and draft procedural orders that address AI-related issues.

CIArb, for instance, has produced a model agreement and a draft procedural order on the use of AI, which arbitrators and parties can choose to incorporate into their proceedings. Over time, repeated use and adaptation of such model language is likely to crystallize into de facto standards, even in the absence of formal institutional rule amendments.

Practical takeaways

AI is already reshaping the conduct of international arbitration, and its procedural implications cannot be ignored. To stay ahead, tribunals, parties and counsel should consider these practical steps:

- **Address AI upfront:** Proactively address disclosure and, verification early in the proceedings and equality of arms issues, ideally from Procedural Order No. 1 onwards.
- **Certify accuracy:** Ensure any AI-generated materials are reviewed and certified by a qualified human, minimizing the risk of errors or hallucinations.
- **Monitor evolving guidance and best practice:** Emerging institutional guidance offers useful building blocks, but practice will develop case by case.
- **Educate your team:** Ensure your arbitration and legal teams are trained on both the capabilities and risks of AI in proceedings.

The challenge for 2026 and beyond is to ensure that AI enhances efficiency without compromising fairness, transparency or the legitimacy of the arbitral process. These principles are embedded in the way we work. Please contact us to discuss how we can support you.

9.

Building tomorrow's digital backbone: risks in data center construction

Building tomorrow's digital backbone: risks in data center construction

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In brief

Data centers underpin our digital economy, powering everything from AI to e-commerce. With global demand for data center capacity predicted to triple by 2030, the sector's exponential growth brings complex environmental, construction and regulatory risks. These risks are likely to fuel a rise in high-value disputes, with arbitration emerging as the preferred forum for resolution.

Around 70 percent of the increase in global demand for data centers is attributable to surging AI usage, which alone requires around US$1.6tn investment in infrastructure. Markets worldwide are experiencing unprecedented growth in both construction and investment: in 2024, the United States had 6.4 GW of capacity under construction (representing US$74bn in investment) and EMEA's pipeline surged 43 percent to 14 GW (around €170bn), while China expects to spend around US$40bn by 2030 to double its capacity. This puts construction of data centers at the heart of digital transformation.

Data center construction has its own specificities. First, data centers have high energy demands (with uninterrupted power required) and produce commensurate GHG emissions if traditional energy sources are used. Second, significant cooling systems are required to prevent servers from overheating, typically requiring large volumes of water (or other innovative cooling solutions). Third, physical and cyber security are crucial due to the sensitive nature of stored data. Fourth, centers need flexibility to accommodate technological advancements and demand increases.

These challenges give rise to certain risks, which have the potential to spill over into disputes.

Data centers: what makes them so complex to build?

- Energy supply for uninterrupted service
- Cooling systems to protect servers
- Security to protect data
- Flexibility and adaptability to meet demand and accommodate innovation

Environmental and community challenges

Data centers must be close to end-users, but they also have large environmental footprints. Site selection is a significant risk, with markets such as the Singapore, Spain and the United Kingdom being slow to bring new energy supply online, upgrade grid infrastructure and secure timely grid access, leading to potential disagreements and claims with governments and regulators.

To avoid these constraints and make projects more sustainable, some companies are building data centers in locations with good access to renewable energy and water and a favorable climate. Others are turning to nuclear energy. However, these solutions can bring their own complexities and face their own ESG, construction and regulatory disputes risks.

In some cases, scrutiny from shareholders, investors, regulators, local communities and NGOs could precipitate disputes for failure to adhere to ESG obligations. These may result in litigation before local courts or commercial arbitration (where there is an arbitration agreement), or, in certain circumstances, be raised as defenses or counterclaims by states in investor-state arbitration.

Disputes surrounding construction of data centers

As with any infrastructure project, disputes may arise between employers, contractors, subcontractors, suppliers and/or investors relating to delays, cost overruns or failure to meet technical specifications. While the disputes risk may be lower where modular construction is used for the main construction works, the intricate interfaces between the various systems forming part of a data center, which are typically delivered by separate contractors, increases complexity and can result in multi-party disputes. This risk can be exacerbated by poorly drafted or misaligned contracts creating "gap risk," leading to disputes about scope, allocation of liability and/or performance failures.

Global supply chain instability, especially for critical components, can also lead to claims for additional time, increased costs and/or liquidated damages. Further, rapid technological advancements or surges in demand may outpace initial designs, leading to disputes over cost responsibility or project valuation if changes or even termination become necessary mid-construction.

Regulatory and permitting risks

Changing regulations, including zoning, environmental permits and resource governance, add further layers of complexity. Governments and local authorities may reevaluate incentives (such as tax breaks, power supply contracts or permits) for construction of data centers or supporting energy projects, particularly in the face of community opposition or growing environmental or climate concerns.

When incentives change mid-project, as notably seen in Italy and Spain in the context of solar projects, the economics can shift dramatically. This can lead to contractual claims between the relevant parties and, in some cases, investment treaty claims by foreign investors against host governments.

Practical takeaways

Given these complexities, we expect data center construction disputes to become more frequent and higher in value. In this context, project stakeholders should consider the following:

- **Pressure-test contracts and dispute resolution provisions:** Ensure clear risk allocation and interface responsibilities across all project documents.
- **Build evidence management capacity:** Robust project documentation and monitoring are essential for risk prevention and supporting arbitration.
- **Proactively manage supply chains and resources:** Early procurement and contingency planning for critical equipment and labor can reduce exposure to delay and cost escalation claims.
- **Monitor regulatory and community developments:** Anticipate changes in energy, environmental and zoning laws, and design agile compliance strategies for each market.
- **Secure arbitration-friendly investment structures and treaty protections:** Arbitration remains the most common form of dispute resolution for such projects due to the need for confidentiality, flexibility and access to expert arbitrators with engineering or operational experience. To mitigate risks arising from regulatory or policy changes, when investing in this sector, foreign investors should consider structuring their investment to benefit from protection under international treaties.

> Given the pace of technological change and demand growth in data center projects, parties should expect heightened risk of mid-construction changes, with corresponding exposure to cost and valuation disputes

Matei Purice
Head of Global Projects Disputes Continental Europe

Our team supports stakeholders from project inception through to dispute resolution, helping clients to identify and manage risks, optimize contracts and deliver commercially focused, efficient solutions to protect investments and secure successful outcomes. Please contact us if you would like to learn more.

10.

Technology disputes in arbitration: an expanding frontier

Technology disputes in arbitration: an expanding frontier

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In brief

As technology companies continue to drive economic growth, we are seeing a corresponding increase in complex disputes. Recent developments include an uptick in post-M&A disputes, a new wave of mass arbitrations targeting major tech companies, and a rise in disputes concerning digital assets. With innovation outpacing regulation and geopolitical pressures on the rise, we expect these tech-related disputes to continue into 2026.

Post-acquisition disputes

We anticipate a rise in post-M&A arbitration in the tech sector in response to record investments in cutting-edge, untested tech projects, many of which will also see increased volatility caused by economic uncertainty, geopolitical shifts, tariffs, sanctions, supply chain disruptions and large-scale regulatory changes. In particular, the race to invest in all aspects of the AI economy has led to high valuations and a surge in acquisitions of companies without a proven track record of revenue generation. Some of those investments are already leading to claims, for example in relation to price adjustments, earnouts and breaches of representations and warranties.

Tech companies are also increasingly relying on arbitration to preserve the confidentiality of their deals and disputes, and to ensure that arbitrators with the right experience and expertise are involved in the process. We expect that this trend will continue to drive post-M&A disputes in the tech space.

> In a global tech landscape disrupted by unpredictable tariffs, sanctions, geopolitical shifts and rapid regulatory changes, arbitration offers a degree of commerciality and objectivity that national courts – particularly in politically sensitive jurisdictions – cannot.
>
> **Elliot Friedman**
> Partner, New York

Mass arbitration: a new reality

Mass arbitration is the filing of hundreds or thousands of coordinated arbitrations at once, usually against a single respondent. Among the potential targets are the world's largest tech companies, which often use arbitration agreements in their consumer, employment and commercial contracts. Recent data from the American Arbitration Association reported 180,000 filings against tech companies in 2024 – and this number is likely to grow. Paradoxically, mass arbitrations against tech companies have been enabled by the rapid growth of social media and advertising tools, which allow plaintiff firms to advertise potential claims to massive audiences at low cost.

Many arbitral institutions have responded with new rules and fee structures for mass arbitrations, some of which have been challenged in court. We anticipate that these challenges will persist and that arbitral institutions will continue to adapt their rules to meet new procedural realities. As consumer-facing AI platforms continue to expand, mass arbitration will likely play an increasing role in resolving claims against AI companies.

Digital asset disputes

The exponential growth of digital assets has fueled a parallel surge in associated disputes, with arbitration often emerging as the preferred venue due to the cross-border and technical nature of these conflicts. Arbitration offers unique benefits because digital asset disputes may not be specific to a particular country or even region, and because parties to those disputes typically want them to remain confidential. Many digital asset, cryptocurrency and fintech businesses are therefore increasingly using arbitration clauses in their agreements.

We expect to see jurisdictions and arbitral institutions actively competing to position themselves as the premier venues for these disputes. Hong Kong, for example, is positioning itself as an arbitral seat of choice through a favorable regulatory environment for both digital assets and arbitration. US and European arbitral institutions are also following suit, supported by the current wave of crypto and stablecoin regulation that should further establish cryptocurrencies as traditional financial assets.

The Middle East is also actively situating itself as a regional seat for digital asset disputes through introducing dedicated legislation (DIFC Digital Assets Law 2024) and establishing a specialized Digital Economy Court in the DIFC with secure third-party custody and blockchain analytics to support preservation, tracing and evidence. These tools are crucial in fraud, breach of trust and enforcement scenarios.

Investor-state disputes in the tech sector

An increase in tech regulation also provides fertile ground for investor-state claims based on value-eroding government measures. The telecommunications sector, for example, saw a jump in investor-state arbitration filings in the past year. ICSID reports that claims in the information/communication sector rose to 8 percent of its caseload in FY2025, a significant increase from just 2 percent in the previous year. These claims are making the news. In October 2025, it was reported that Huawei threatened Poland with a claim under the Energy Charter Treaty over a Polish law that invokes national security grounds to restrict "high risk" telecommunication suppliers.

2026 may also see the first investor-state dispute squarely focused on digital assets. Some states have introduced plans to regulate crypto mining and digital assets, including through new licensing regimes or the implementation of robust anti-money laundering measures. This area continues to see massive investment and the uncertain regulatory environment may lead to disappointed investors and legal claims against host States.

Practical takeaways

We expect an increase in post-M&A disputes and digital asset disputes, as both tech M&A and digital currencies continue to be on the rise. Businesses should consider:

- **Detailed review of contractual terms:** Players in this sector should ensure that their contracts provide for efficient and confidential resolution of disputes, with careful consideration of the legal frameworks applicable to the transaction, in particular in cross-border operations.
- **Early assessment of multi-faceted case strategies in case of mass claims:** In the United States, we also recommend that tech companies ensure that their arbitration clauses take advantage of the latest innovations in response to mass arbitration, which can change the playing field significantly when faced with a mass claim.
- **Ongoing monitoring of legal developments in key jurisdictions:** In the context of fast-evolving political and economic landscapes, tech regulations are changing rapidly. Industry investors should remain well-informed of these developments and consistently evaluate the associated risks with their activities.

Drawing on our extensive experience in commercial arbitration, tech sector disputes and investor-state arbitration, our global international arbitration team is fully equipped to advise you across all of these areas.

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Patent disputes: the growing role of arbitration

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In brief

Parties are increasingly looking to resolve patent disputes through arbitration, reflecting the growing value and complexity of patents, especially in the tech and life sciences sectors. Arbitration offers parties efficiency, confidentiality and global enforceability (via the New York Convention), avoiding costly multi-jurisdictional litigation and the risk of conflicting decisions. New arbitration institutions and patent-specific arbitration rules, like the Arbitration Rules of the Patent Mediation and Arbitration Centre (PMAC) of the Unified Patent Court (UPC), launching in 2026, will further support and accelerate this trend.

Patent arbitration is on the rise. This trend reflects the growing importance of patents as strategic assets, especially for businesses in technology and life sciences. As the value of these intellectual property assets increases, parties need to find ways to protect and enforce their patents swiftly and effectively across multiple jurisdictions. Arbitration is increasingly seen as an attractive alternative to litigation, which is often limited to a specific jurisdiction, expensive, slow and played out in the public domain.

A recent high-profile example illustrates the benefits of arbitration over traditional litigation in multi-jurisdictional patent disputes. The global patent dispute between AutoStore and Ocado involved multiple proceedings before national courts in the United States, United Kingdom, Germany and the European Patent Office, centering on infringement claims and validity challenges over automated warehouse technologies. Ultimately, a worldwide settlement in 2023 saw the parties withdraw all litigation and cross-license key patents. Had international arbitration been pursued, the parties may have achieved a centralized, efficient and potentially faster resolution, avoiding the complications and risks of navigating litigations in numerous jurisdictions.

Pursuing concurrent claims in multiple jurisdictions – potentially including the United States, China, the European Union and Japan – can be prohibitively complex and costly and can result in inconsistent findings. By contrast, arbitration can provide a single forum for the streamlined resolution of disputes over patent rights in multiple jurisdictions. While arbitration may be less suitable when it comes to validity challenges to individual portfolio patents, it is a beneficial forum for licensing disputes.

The expanding scope of patent and SEP arbitration

One area where arbitration can be particularly helpful is disputes involving standard-essential patents (SEPs) and related fair, reasonable and non-discriminatory (FRAND) licensing terms. Because technical standards are usually global, SEP licenses are in many cases global, as well. As technological standards continue to proliferate across interconnected industries and geographies, the number and complexity of SEP-related disputes will grow. Arbitration provides a specialized toolset for resolving these matters, offering technical expertise (through the availability of specialist arbitrators) and procedural flexibility in one central forum.

Enforceability, expertise and institutional innovation

A further hallmark advantage of arbitration is enforcement: the 1958 New York Convention makes arbitral awards easier to enforce globally than court judgments. National court systems generally only offer effective enforcement regimes within their own borders or, at best, on a regional basis, such as the UPC in Europe. In contrast, arbitral awards are enforceable under the New York Convention in a predictable manner and with limited judicial review in nearly all jurisdictions. Arbitration therefore enables parties to secure outcomes with broader enforceability, which is particularly critical in cross-jurisdictional disputes.

Arbitration also offers procedural flexibility, allowing parties to tailor the process to their preferences on matters such as document disclosure, timing, and evidence. Confidentiality is another key benefit – an important consideration where trade secrets or commercially sensitive information are at stake. In addition, parties have the opportunity to select arbitrators who possess technical and subject-matter expertise or have a proven track record with complex cases, a capability not always assured in national court litigation.

Many arbitral institutions have panels of arbitrators specializing in patent disputes, including the World Intellectual Property Organization (WIPO), the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre and the New York-based International Centre for Dispute Resolution and American Arbitration Association.

Another reason for the expected growth in patent arbitration is the increasing interest of institutions to offer arbitration rules that are specifically shaped for patent disputes. Notably, WIPO has offered arbitration rules for IP disputes since 1994. To address rising SEP litigations, the Munich IP Dispute Resolution Forum in 2018 developed specific FRAND ADR Case Management Guidelines.

More recently, a new arbitral institution with a focus on patent disputes is set to launch: the Patent Mediation and Arbitration Centre of the UPC is expected to open in June 2026. PMAC's arbitration rules are specifically designed for patent disputes. An early draft form of these rules is already available, with the final rules expected to be released in early 2026.

PMAC's aspirations reach beyond the jurisdictional scope of the UPC which is limited to European patents, European patents with unitary effect and Supplementary Protection Certificates. Both the Draft Arbitration Rules and the Draft PMAC Rules of Operation indicate that PMAC will also be able to administer "related disputes" – and it is expected that PMAC will broaden its scope further to include non-EU patents, so long as at least one EU patent is also involved in the dispute. In its initial phase, PMAC anticipates that most of its arbitration (and mediation) cases will be referrals from the busy UPC, but PMAC's long-term goal is to attract direct filings, positioning itself as a comprehensive venue for complex, multi-jurisdictional patent conflicts.

We expect that users will embrace PMAC's offering, just as holders of global patent portfolios will increasingly seek to have their disputes resolved by way of arbitration.

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> This accelerating trend towards arbitration for patent disputes is expected to continue as more parties seek efficient, confidential and globally enforceable resolutions. Institutions are responding with purpose-built rules and forums that accommodate the increasing sophistication and international scope of patent disputes. As arbitration becomes even more accessible and tailored for intellectual property issues, we expect parties with global patent portfolios to be increasingly adopting it as a primary method for resolving their disputes.

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Practical takeaways

- **Consider arbitration clauses early:** When negotiating patent-related agreements, consider proactively including arbitration clauses tailored for multi-jurisdictional patent disputes. Consider the inclusion of arbitration clauses in SEP license agreements where follow-on licenses are likely to be required.
- **Assess global enforcement needs:** Arbitration can be especially helpful if country-by-country litigation is burdensome and a swift solution in one forum is crucial for your business objectives.
- **Protect sensitive information:** Arbitration's confidentiality helps shield trade secrets and commercially sensitive data from public exposure.
- **Choose the right arbitrators:** Leverage the ability to appoint subject-matter experts with relevant technical and legal expertise as arbitrators.
- **Monitor institutional developments:** Stay informed about new venues like PMAC and evolving patent-specific rules to optimize dispute resolution strategies.
- **Reduce risk and cost:** Arbitration can help streamline proceedings, avoid conflicting judgments and minimize costs and disruptions associated with parallel litigation.

Please get in touch if you would like to discuss your dispute resolution strategy for patent disputes.

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