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Reed Smith International Arbitration Report 2025

A multi-jurisdictional analysis of challenges to arbitration awards

ReedSmith

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01 Introduction

Introduction

We are pleased to present this report providing an analysis of court challenges to arbitration awards in the leading seats of arbitration around the world.

The study, drawing on the extensive knowledge of practitioners across our global international arbitration practice, examines the volume, nature, and outcomes of award challenges, as well as regional and multi-jurisdictional trends, over a minimum six-year period. We have drawn together hundreds of cases from across the world and extracted a wide range of data to prepare this report.

Each jurisdictional chapter that follows provides an overview of the statutory framework, key legal features, and an exploration of empirical data as it applies to challenges to arbitration awards made in the courts of New York, London, Paris, the Middle East, Singapore, and Hong Kong. Together, they offer a granular view of how courts in the leading arbitral seats approach similar questions of procedural irregularity, due process, jurisdiction, and public policy. We have also examined common and contrasting features in different jurisdictions.

In preparing this report, our aim has been not only to present data but also to contextualize it. Understanding how frequently awards are challenged, on what basis, and with what success rate is essential for assessing the real-world robustness of arbitration as a dispute-resolution mechanism.

Equally important is an appreciation of nuance in different fora, which helps to inform and explain the data collected. By analyzing these themes across multiple jurisdictions, we hope to illuminate some common themes of enforcement that may suggest convergence toward a shared judicial approach and to identify where meaningful divergences remain.

The comparative methodology also invites practical considerations for users of arbitration. Counsel selecting a seat, drafting arbitration agreements, or advising clients on post-award strategy will find in these chapters concrete indicators of how different courts determine applications to set aside awards. The data suggests that, while the overall success rate of challenges remains low, the grounds most frequently invoked – and the judicial responses to them – vary in ways that can affect risk assessments. For corporate decision-makers and policymakers alike, the findings contribute to a broader discussion about maintaining arbitration's legitimacy, ensuring procedural fairness, and strengthening the enforceability of awards.

We extend our sincere thanks to the authors of the individual chapters for their rigorous analysis and thoughtful commentary. Their contributions form the foundation of this report and reflect the depth of experience within our global arbitration practice.

In gathering data for this study, we have accessed publicly available cases from a range of sources. We cannot guarantee that all available material has been gathered, although we have made every effort to do so. We would be pleased to receive comments and corrections.

Whether you are a practitioner, in-house counsel, academic, or policymaker, we hope that this report provides a useful, data-driven perspective on how courts in key jurisdictions are engaging with challenges to arbitral awards and how those trends may shape practice in the years ahead.

Timothy Cooke
December 2025

02 Key Jurisdictions

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England and Wales | **I. Introduction**

Background

London has a decades-long reputation for being a "safe seat" for arbitrations. The Queen Mary University of London surveys have consistently demonstrated that arbitration users rank London as their preferred seat.

London's attractiveness as a seat has remained constant despite the growth of other seats globally. Many factors contribute to its success. England and Wales is a signatory to the New York Convention and has a robust legal framework for London-seated arbitration in the form of the English Arbitration Act 2025. The Law Commission, the statutory independent body tasked with keeping the laws of England and Wales under review, revisits the Arbitration Act and consults with users and stakeholders to determine whether changes are needed to ensure it remains current and effective. The recent reforms to the English Arbitration Act 1996 by means of the English Arbitration Act 2025 are a case in point. Where we refer in this report to the "Arbitration Act," we refer interchangeably to the English Arbitration Act 1996 and the English Arbitration Act 2025, except where we indicate specifically that we are referring to one or other of those Acts.

Perhaps most importantly, the English courts are known to be impartial, commercially sound and arbitration-friendly. The quality, legal knowledge, independence and professionalism of judges hearing applications in support of London-seated arbitrations and dealing with appeals from arbitration awards is universally acknowledged to be very high.

London also offers some of the leading arbitration hearing facilities, including the International Arbitration Centre and the International Dispute Resolution Centre. Geographically, London is considered a neutral ground for cross-border transactions. Parties can agree to have London-seated arbitrations administered by numerous different arbitral institutions (e.g., LCIA, ICC, SIAC, HKIAC, LMAA) or trade arbitration bodies (e.g., GAFTA, FOSFA, SAL), or none.

Setting-aside regime

While the Arbitration Act was drafted with England's rich arbitration heritage in mind, the Arbitration Act 1996 in particular was also influenced by the UNCITRAL Model Law on International Commercial Arbitration (Model Law). At the same time, the Arbitration Act diverges from the Model Law in certain respects including, significantly for the purposes of this report, in the regime for setting aside awards.

Court structure

Applications to challenge awards are made to the English High Court. A decision of the High Court may, with the permission of the relevant courts, be appealed on a point of law to the Court of Appeal and, ultimately, the Supreme Court.

Broadly, the philosophy that underpins the Arbitration Act is that English courts should not intervene excessively in arbitrations because the parties to an arbitration have actively chosen to submit their disputes to arbitration rather than the courts.

Nevertheless, the Arbitration Act contains three provisions under which parties may appeal to the English courts to set aside awards from arbitrations with a London seat, namely Sections 67, 68 and 69. Sections 67 and 68 are mandatory provisions that cannot be excluded by the agreement of the parties.

Section 67 provides that parties may challenge an award before English courts on the grounds of the tribunal lacking substantive jurisdiction (albeit that Section 67 is the subject of significant changes under the Arbitration Act 2025, as we discuss in the next paragraph). Section 68 may be invoked when the tribunal, arbitral proceedings or award have suffered serious irregularity. Section 69 provides that an award may also be appealed on a point of law.

Section 69 is not, however, a mandatory provision and can be excluded by the parties if they wish to dispense with the right to appeal on a point of law. Where parties have chosen institutional rules that provide that an award is final, or contain a waiver of the right to appeal on a point of law, Section 69 is taken to have been excluded by the parties.

> "The Arbitration Act contains three provisions under which parties may appeal to the English courts to set aside awards from arbitrations with a London seat, namely Sections 67, 68 and 69."

We examine each ground for appeal in further detail:

Grounds for appeal

Section 67

A challenge to the substantive jurisdiction of the tribunal can be made under Section 67 after either a jurisdictional award or the final award by the tribunal. "Substantive jurisdiction" is defined in the Arbitration Act as referring to questions of whether:

a. there is a valid arbitration agreement;

b. the tribunal is properly constituted; and

c. the dispute has been submitted to arbitration in accordance with the arbitration agreement.

The right to challenge under Section 67 may be lost if the objecting party participated in the arbitration without raising such an objection, except in circumstances where the party proves that it did not know and could not have discovered the grounds for the objection with reasonable diligence.

The Arbitration Act 2025 limits the scope of Section 67 proceedings. English courts will no longer approach Section 67 proceedings as a full rehearing. Instead, if the applicant has already taken part in the arbitration, and provided that the interests of justice do not provide otherwise, then any grounds for objection or evidence already considered by the arbitral tribunal cannot be reconsidered by the court, nor can new grounds for objection or evidence be considered.
The exception to this rule is that new grounds for objection or new evidence will be admissible if the applicant did not know and could not, with reasonable diligence, have discovered the grounds or put forward the evidence to the arbitral tribunal.

Section 68

A party may challenge an award on account of serious irregularity affecting the tribunal, the proceedings or the award. Section 68 contains an exhaustive list of grounds constituting "serious irregularity." The applicant may invoke one or more of these grounds:

a. failure by the tribunal to comply with its general duties as outlined in Section 33, which include:

  i. acting fairly and impartially as between the parties, giving each party a reasonable opportunity of putting their case and dealing with that of their opponent; and

  ii. adopting procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined;

b. the tribunal exceeding its powers (otherwise than by exceeding its substantive jurisdiction);

c. failure by the tribunal to conduct the proceedings in accordance with the procedure agreed by the parties;

d. failure by the tribunal to deal with all the issues that were put to it;

e. any arbitral tribunal (or other institution or person vested by the parties with powers in relation to the proceedings or the award) exceeding its powers;

f. uncertainty or ambiguity as to the effect of the award;

g. the award being obtained by fraud, or the award or the way in which it was procured being contrary to public policy;

h. failure to comply with the requirements as to the form of the award; or

i. any irregularity in the conduct of the proceedings or in the award that is admitted by the tribunal or by any arbitral or other institution or person vested by the parties with powers in relation to the proceedings or the award.

If a party is able to prove serious irregularity, the court has the option to either remit the award to the tribunal for reconsideration, set aside the award or declare the award to be of no effect, in whole or in part. The Arbitration Act provides that the court should preferably remit the award to the tribunal, unless it is satisfied that it would be inappropriate, in which case setting aside the award or declaring the award to be of no effect would be a more suitable remedy. As under Section 67, a party may lose its right to appeal under Section 68 if it does not first raise its objection in a timely manner before the tribunal, except where that party is able to prove that it was not aware of the circumstances surrounding its challenge and could not have discovered them through reasonable diligence.

Section 69

Section 69 of the Arbitration Act provides parties with a right of appeal on a question of law arising out of the award, unless the parties have agreed to exclude this right of appeal. There are two preconditions to an appeal on a point of law: (i) agreement of all parties to the arbitral proceedings, and (ii) leave of the court. The court's decision to grant leave to appeal is subject to the following considerations:

a. that the determination of the question will substantially affect the rights of one or more of the parties;

b. that the question of law is one that the tribunal was asked to determine;

c. that, on the basis of the findings of fact in the award:

  i. the decision of the tribunal on the question is obviously wrong; or

  ii. the question is one of general public importance and the decision of the tribunal is at least open to serious doubt; and

d. that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

Pursuant to an appeal under Section 69, the English court has the option to confirm, vary, remit to the tribunal for reconsideration or set aside the award, in whole or in part. Similar to Section 68, the court will remit the award to the tribunal unless it is inappropriate to do so.

Therefore, while the Arbitration Act and the Model Law both envisage the parties having limited exclusive recourse to the courts in terms of challenging an award, the key difference in approach is the provision in the Arbitration Act for a limited right of appeal on a point of law.

England and Wales | **II. Overview of the data**

Data collected

The data underlying this report consists of decisions of the English courts in the six years between January 1, 2018 and December 31, 2024 (Review Period).

Limitations

While extensive research has been conducted for this exercise, there are certain inherent limitations to the collection and review of data. In particular, the data has been collected from reported decisions and from considering the grounds invoked by the applicants. There are a number of challenges to arbitration that are not reported; it is likely that most of these unreported cases involve challenges that did not succeed (as it is those cases involving a real controversy over the appealed award that are most likely to be reported). There is therefore likely to be a degree of skewing in the data from reported cases toward successful appeals.

It might follow that where, for example, we have identified that 50% of all reported appeals under Section 69 were successful, the actual percentage of cases that succeeded under that ground is lower because some unsuccessful appeals are likely not to have been reported. The English Commercial Court helpfully publishes statistics that give an insight into the volume of appeals from arbitration awards it sees every year. Every year, such appeals make up a significant proportion of the cases before the Commercial Court (consistently averaging about 25% of its cases in recent years). Yet it appears that such appeals are rarely successful before the Commercial Court. The Court's reports for 2022-23 and 2023-24 indicate that only 19.5% and 19.2% respectively of Section 69 appeals to the Commercial Court were succesful.

The Section 69 appeals data relates to appeals for which permission to hear the appeal was granted and ignores cases where permission to appeal was not granted. That is, where we refer in this report to a Section 69 appeal having been "unsuccessful," we mean that the court granted permission to hear the appeal, but ultimately dismissed the appeal on merit.

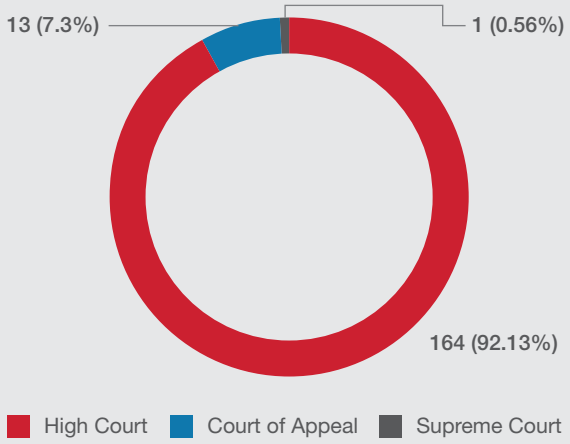
Key observations

The English courts saw 178 applications in which permission was granted to challenge an award in the Review Period.

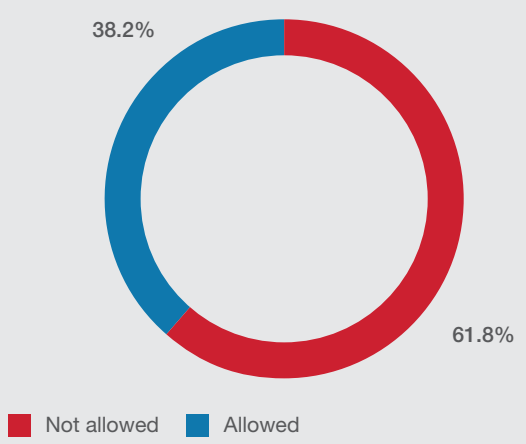
All applications were in respect of arbitrations with a seat in London. Of these, 164 were before the High Court, 13 were heard by the Court of Appeal and one was heard by the Supreme Court. The applications before the Court of Appeal and the Supreme Court were typically appeals from decisions of the High Court.

Of the 178 applications, 38% were successful; i.e., 68 applications succeeded, while 110 were dismissed.

Graph 1: Challenges by court



Graph 2: Application allowed?

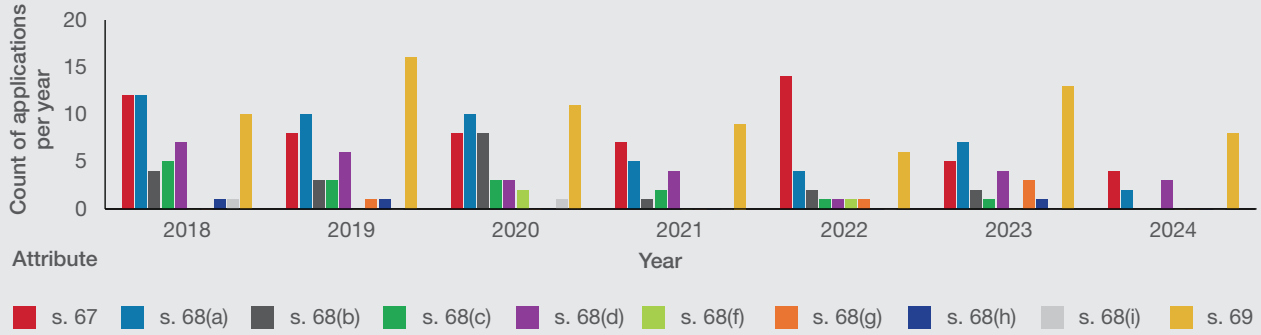


The data reveals that the majority of applications to the English courts relied on only one of the available grounds under Sections 67–69. In the Review Period, the applicants were found to have invoked a total of 255 grounds in their 178 applications. Of the 255 grounds argued by the applicants, the vast majority were declined by the English courts. Applicants were successful only in 27% of their attempts.

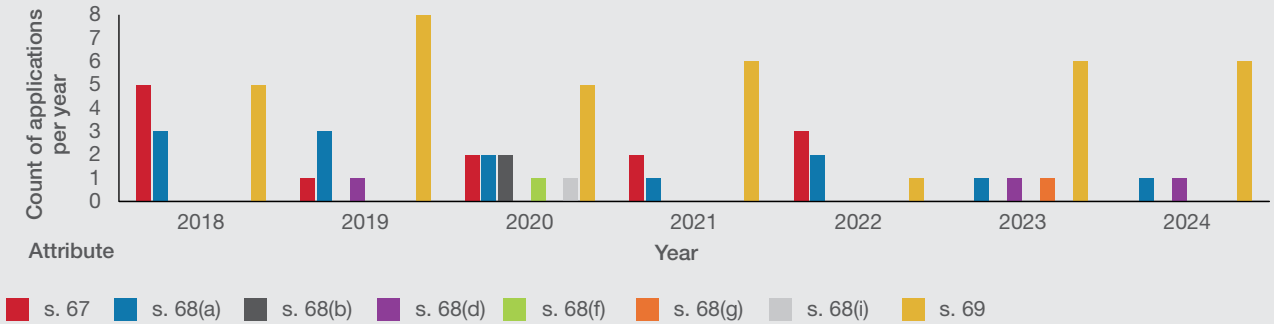
The charts on the right show that the grounds most frequently invoked were Section 69, Section 67 and Section 68(a), which were invoked 72, 58 and 49 times, respectively.

> “38% of appeals against awards have been successful before English courts.”

Graph 3: Total applications per ground by year



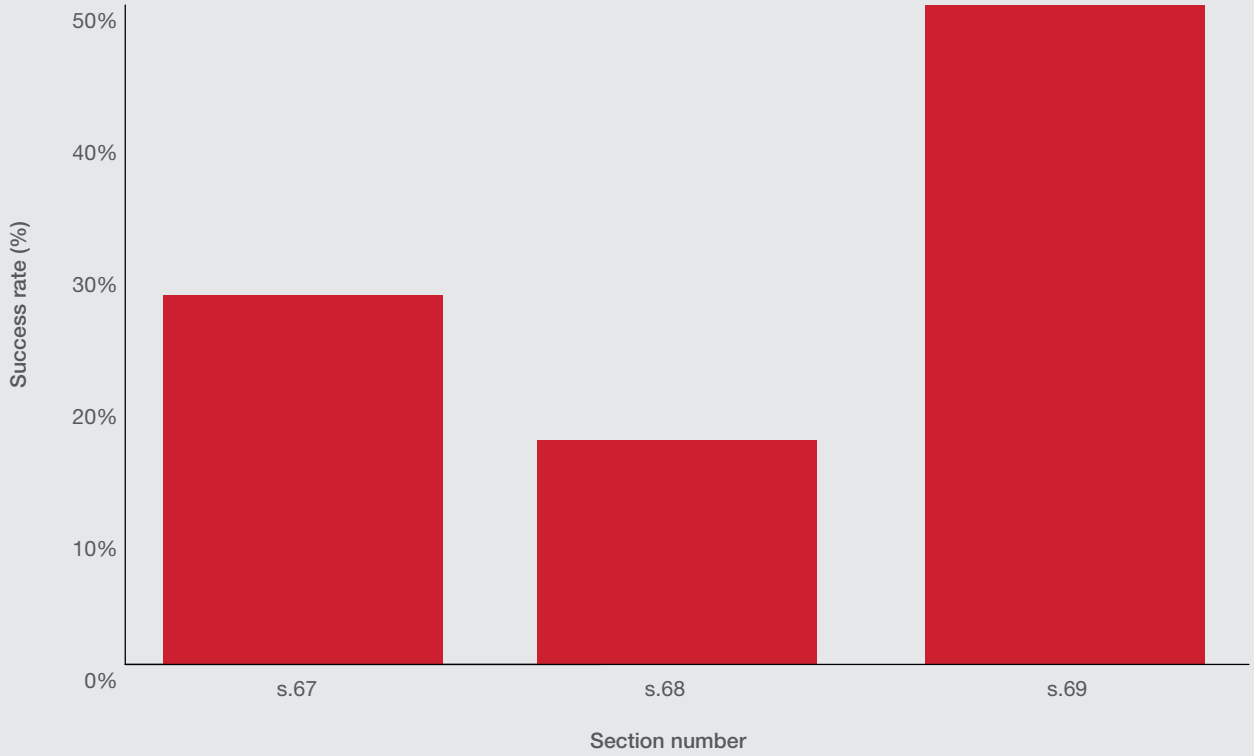
Graph 4: Successful applications per ground by year (argued and allowed)



Section 69, Section 67 and Section 68 were, respectively, argued successfully on 50%, 28% and 16% of the occasions on which they were invoked. These success percentages correlate with the number of times each ground was invoked. That is, the most popular ground for appeal (Section 69 – appeal on a point of law) was also the most successful.

Interestingly, all applications based on Sections 68(c) (i.e., the tribunal's failure to conduct proceedings in accordance with party agreement) and 68(h) (i.e., failure to comply with the form of an award) failed. No application was made on the basis of Section 68(e) (i.e., the tribunal exceeding its powers). Of the 178 applications, 13 were appeals before the Court of Appeal from a decision of the High Court. 46% of those appeals were successful. One application is pending appeal before the Court of Appeal, and permission to appeal to either the Court of Appeal or the Supreme Court has been granted in respect of seven other applications.

Graph 5: Comparative success rates (%) of Section 67, Section 68 and Section 69 challenges

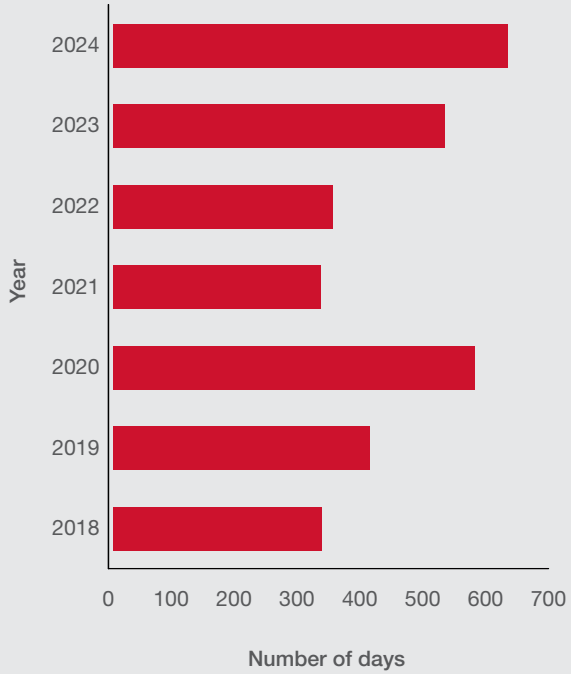


The average time between the date of the award and the English court's judgment on a challenge is around 419 days. However, we note that in the most recent two years of our review (i.e., 2023 and 2024), the average time was somewhat longer, at almost 540 days. This could be partly explained by the fact that 2023 and 2024 saw appeals going up to the UK Supreme Court and Court of Appeal, appeals against investment treaty awards, and the infamous *Nigeria v. P&ID* decision (in which 2,456 days passed between the award and the decision of the High Court).

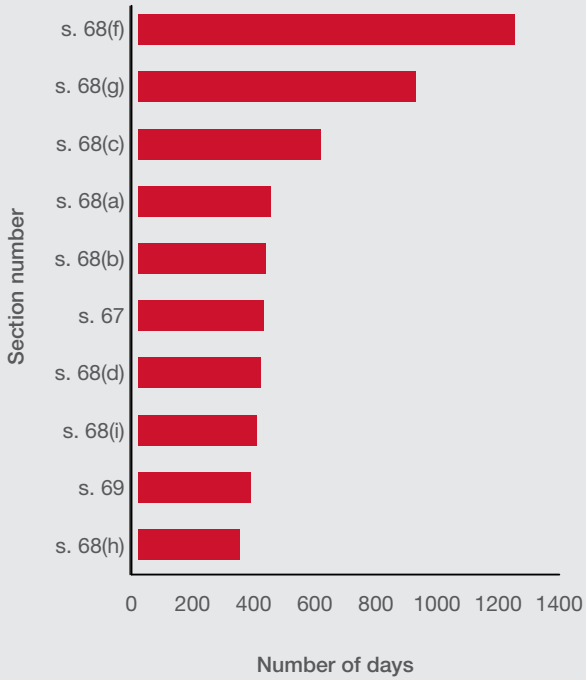
Based on our data, appeals under Sections 68(f) and 68(g) had the longest average duration, while those under Sections 68(h) and 68(i) had the shortest.

> "The average time between the date of the award and the English court's judgment on a challenge is around 419 days."

Graph 6: Average time for decision on challenge by year



Graph 7: Average time for decision on challenge by ground



Challenges versus awards made

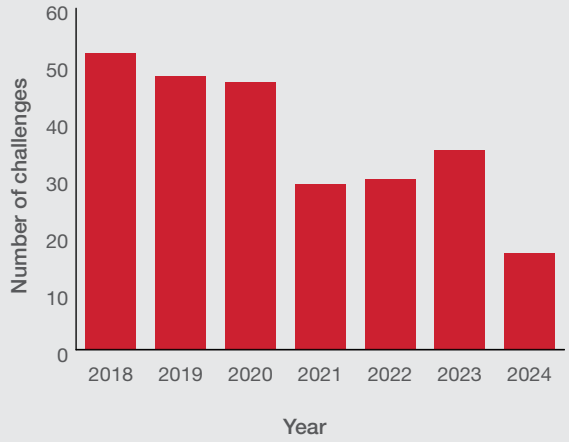
An extremely small minority of arbitral awards and decisions are challenged before the English courts.

Given the popularity of London as a seat, it is not surprising that a large number of awards are issued in London-seated arbitrations every year. It is not possible to discern what proportion of commercial arbitrations are appealed under the Arbitration Act. This is due to the confidential nature of arbitration, which means that awards that are voluntarily satisfied or in respect of which parties negotiate some form of compromised performance are not the subject of any reporting. While the exact number has not been surveyed (as far as the authors are aware), certain statistics provide an indication of the sizeable volume.

For instance, 529 awards were issued in LMAA arbitrations alone in 2019, a large number of which would have been seated in England. The total number of awards in English-seated arbitrations in 2019 was therefore, in our best estimate, somewhere between 700 and 1,000. Our data shows that only 24 awards and decisions issued in 2019 were challenged before the English courts.

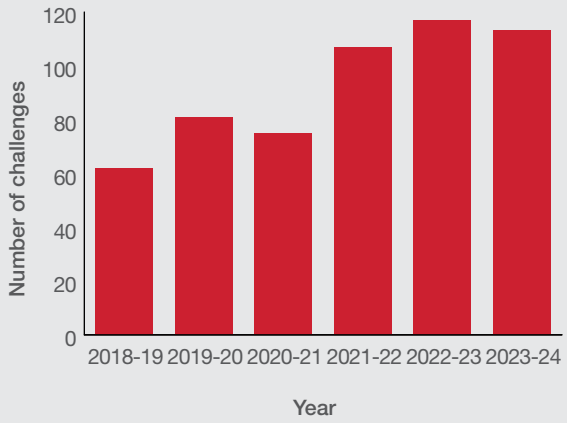
The chart on the right, based on data collected by Reed Smith, shows a gradual decline in the number of challenges against awards before the English courts during the Review Period.

Graph 8: Number of challenges by year



However, the statistics published by the Commercial Court for the years 2018 to 2024 show the opposite trend, which suggests that decisions on a significant number of challenges are not publicly available. It is very likely that the unreported decisions involve the Commercial Court dismissing applications quickly because those applications have no real chance of success. However, another reason is that a percentage of the challenges are discontinued, settled or transferred to another court and therefore not published.

Graph 9: Number of challenges by year based on Commercial Court reports



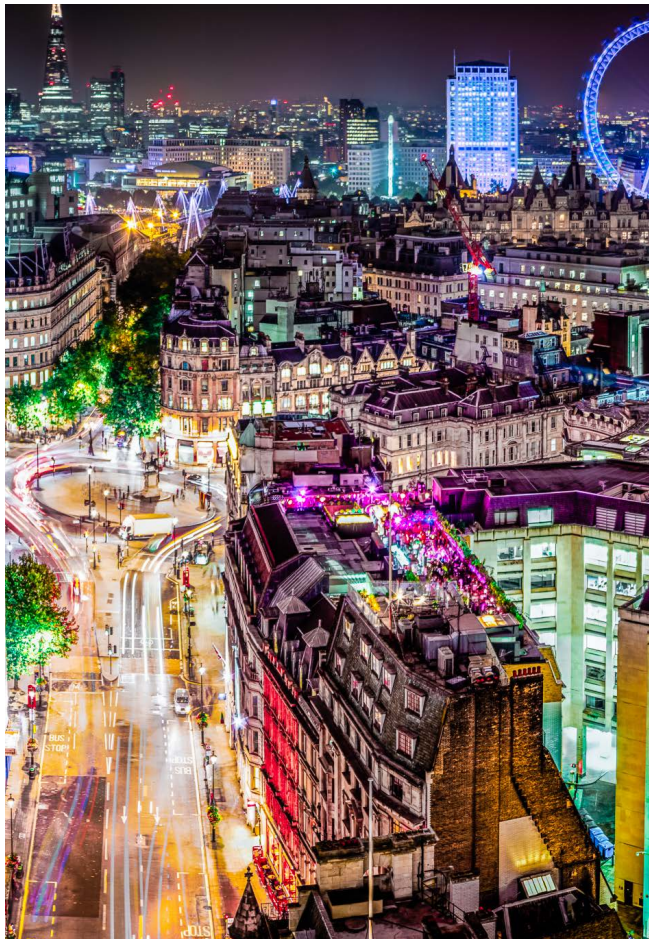
Costs

The level of legal costs recovered by a successful party on appeal in the High Court is usually 60–75% of the actual costs incurred. It is rare for the successful party to recover costs on an indemnity basis (i.e., closer to the actual costs incurred), even where the successful party is the party defending an appeal. That is a contrast to the position in, for example, Hong Kong, where indemnity costs are the presumptive consequence of an unsuccessful challenge. The percentage of costs recovered is, however, significantly higher than in, for example, Singapore, where the cost recovery regimes in the Singapore High Court and the Singapore International Commercial Court are generally more restricted.

The introduction of Section O of the Commercial Court Guide, aimed at reducing the number of speculative challenges under Sections 67 and 68 by imposing cost consequences, has had a positive cost-saving impact. Section O allows the Commercial Court to hear a Section 67 or 68 application on paper only. The Commercial Court may also impose indemnity costs where a claim is initially dismissed on the papers, the applicant requests a hearing of its claim, and the hearing also results in dismissal.

Although it is uncommon to receive more than 60–75% of the costs incurred, in absolute terms the quantum of legal costs (recovered and unrecovered) involved in appealing an arbitral award has increased significantly over the last five years due to inflation and other upward pressures on legal costs.

> “Successful parties can recover up to 60–75% of their cost of appeal from the English High Court.”



Motivations for appeal

Parties sometimes appeal arbitral awards in an attempt to delay the enforcement of those awards. As discussed above, the courts take on average around 419 days to determine a challenge to an award. This motivating factor may also explain, at least in part, why a majority of appeals from arbitral awards fail.

In the most dilatory cases, parties treated the challenge procedure before courts as a second bite at the cherry to strengthen their jurisdictional objections, usually through a kitchen-sink approach, attempting to bring appeals based on arguments and/or evidence that should have been properly raised before the tribunal.

The amendment to Section 67 by the Arbitration Act 2025 is aimed at reducing such tactics. By preventing a full-fledged rehearing before the courts and disallowing new arguments and evidence (not raised before the tribunal), legislators have laid a clear marker for the procedural efficiency and reduction in delays and costs that are expected in future arbitrations as well as in challenges to awards.

“In the most dilatory cases, parties treated the challenge procedure before courts as a second bite at the cherry to strengthen their jurisdictional objections.”

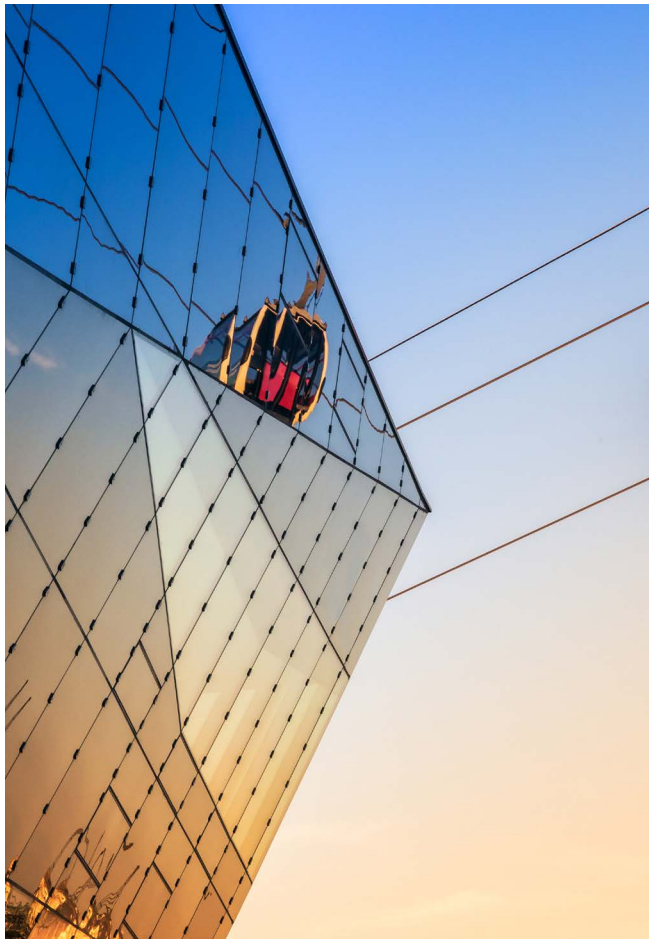
Challenges based on point of law

It is particularly noteworthy that nearly half of the challenges based on a point of law under Section 69 of the Arbitration Act succeeded.

The Arbitration Act is designed to minimize the involvement of the court in arbitration matters. The high number of appeals to the English courts on points of law, relative to other jurisdictions, can be attributed to the long-established and highly developed body of English commercial law that offers a genuinely specialized forum, which stems to a significant extent from maritime and trading matters, as well as insurance and finance.

Such references to the court are rarer than they once were, which has led to concern in some quarters about the potential impact on the speed of legal development when compared with the past (a phenomenon that was brought before the recent Law Commission review on the potential replacement for the Arbitration Act 1996). However, the combination of commercial arbitrators and trade representatives on the one hand, and a highly developed and active Commercial Court on the other hand, offers participants in trade arbitration the opportunity to be judged by their peers with the backstop of the court process.

> “The Arbitration Act is designed to minimize the involvement of the court in arbitration matters.”

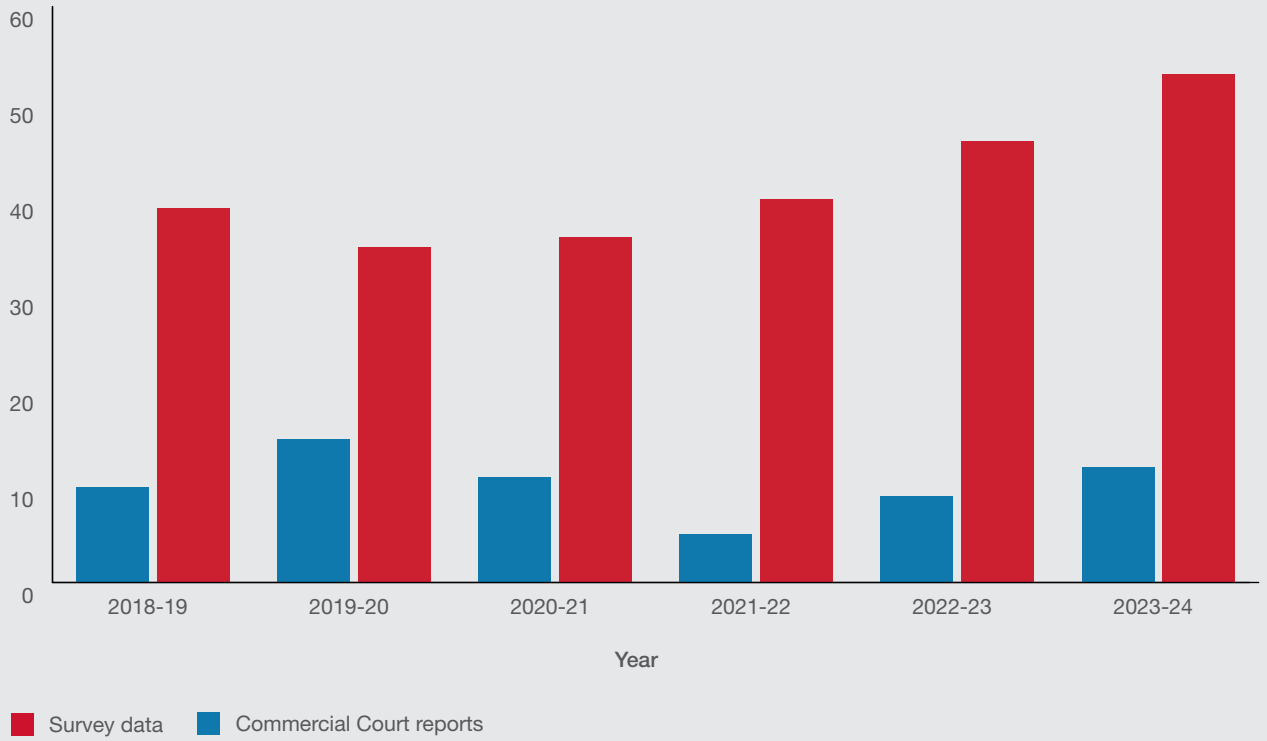


Challenges based on breach of natural justice

Applicants had limited success on grounds of breach of natural justice, including under Sections 68(a), 68(c) and 68(i) of the Arbitration Act. Those grounds were invoked 49, 15 and two times, respectively, during the Review Period. No party successfully managed to challenge an award under Section 68(c), while Sections 68(a) and 68(i) were successfully pleaded only in 12 and one cases, respectively. The overall success under these three grounds is therefore a low 20%. It is also notable that only one application based on breach of public policy under Section 68(g) was made successfully.

The English courts are more open to finding incorrect applications of English law rather than procedural irregularities or incorrect appreciations of facts. Compared to the 50% success rate of parties making Section 69 challenges, the success rate for a Section 67 challenge was just 28% and even lower, at 16%, for a Section 68 challenge.

Graph 10: Number of Section 69 challenges in survey data vs. Commercial Court reports



The most common of all the Section 68 challenges is one based on the arbitrators deciding the case – or, often, the quantum to be awarded – on a ground that was not raised in the arbitration. For example, the arbitrators might decide that the claimant's quantum calculation is inflated but, rather than awarding the claimant nothing, award damages calculated on an alternative basis that was not advanced by the respondent.

The above statistics must, however, be read in the context of the fact that not all challenges are publicly reported. Hence, the success rate for challenges under Sections 67, 68 and 69 are likely to be lower than in our statistics. For example, the graph on the left shows that the number of Section 69 applications received by the Commercial Court is consistently higher than the reported decisions on Section 69 captured in our dataset.

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France | **I. Introduction**

Background

France is one of the world's most active and mature arbitral jurisdictions. It is home to numerous arbitral institutions, the most important of which is the International Court of Arbitration of the International Chamber of Commerce (ICC). Other popular institutions include the Association française de l'arbitrage (AFA), the Centre de médiation et d'arbitrage de Paris (CMAP), Fédération Nationale des Travaux Publics (FNTP), the Chambre Arbitrale Maritime de Paris (CAMP) and the Delos Arbitration Centre.

France is one of the largest, most active, diverse and international communities of arbitration practitioners, counsel and arbitrators, and Paris is regularly ranked among the top five arbitral seats globally. The reasons for its allure are that France combines competence with a historically strong and efficient pro-arbitration framework, and the fact that French courts adopt a pro-arbitration stance. Although the history of arbitration in France is much more ancient, its modern approach dates back to reforms that took place in 1980 and 1981, which codified the pro-arbitration stance of French courts. Three decades later, Decree No. 2011-48 of January 13, 2011, further consolidated France's arbitration legislation by codifying jurisprudence to facilitate access to arbitration, establishing additional measures to promote the efficiency of arbitration and integrating into French law solutions from other legislation that had proven to be efficient in practice. French arbitration law is essentially codified in the French Code of Civil Procedure.

French arbitration law distinguishes between domestic and international arbitration. The rationale for this is a recognition that international matters require a more liberal regime and pro-arbitration stance than domestic arbitration. Whether an arbitration is international does not depend on the nationality of the parties, the applicable law or the seat of arbitration, but rather on whether "international commerce interests are at stake." The standard traditionally adopted by French courts is whether the transaction giving rise to the dispute involves a cross-border movement of funds. The dual regime gives rise to a number of differences between domestic and international arbitration, including that domestic arbitration is, in principle, confidential, domestic arbitral awards may be subject to appeal and more stringent conditions apply in relation to their validity.

For the purposes of this report, we have reviewed and analyzed arbitration awards that are considered to be international. References to arbitral awards in the discussion that follows concern international – rather than domestic – awards as defined under French law.

The French international arbitration regime is governed by "material rules," which are applicable as soon as French courts are seized, irrespective of the choice of the seat of arbitration, the law applicable to the procedure or the law that would be designated by conflict of law rules. The French material rules of international arbitration were created by jurisprudence, and continue to evolve. A number of these rules are well established, such as the principles of validity and autonomy of the arbitration agreement, under which annulment of the contract containing the arbitration clause does not affect the clause's validity, and the principle of *compétence-compétence*,[1] pursuant to which the arbitral tribunal has priority to determine its own jurisdiction. Courts may only consider a challenge to a tribunal's jurisdiction when the award is challenged, except where the arbitration agreement is manifestly void or manifestly inapplicable.

Other distinctive features of French arbitration law include the possible extension of the effects of the arbitration agreement to non-signatories in certain circumstances, the possible enforcement of international awards annulled at the seat of the arbitration, the principle of provisional enforcement of arbitral awards pending actions brought against them before French courts, and a distinctive and narrow definition in jurisprudence of an arbitral award.

1. This principle is also codified in the French Code of Civil Procedure.

Setting-aside regime

The enforcement regime applicable to awards is comparable to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, although more liberal as permitted under Article III of the Convention. The only grounds to set aside an arbitral award, as set out in Article 1520 of the French Code of Civil Procedure, are as follows:

a. The arbitral tribunal wrongly upheld or declined jurisdiction;

b. The arbitral tribunal was not properly constituted;

c. The arbitral tribunal ruled without complying with the mandate conferred upon it;

d. The principle of "contradiction" was violated; or

e. Recognition or enforcement of the award is contrary to international public policy.

The French principle of "contradiction" referred to above requires that each party be afforded the opportunity to present its case and respond to the other party's arguments. The principle is narrower than the common law concept of due process.

Parties may rely on multiple grounds to challenge an award. This is often the case, for example, where parties allege that the principle of contradiction was violated (Article 1520(4) of the French Code of Civil Procedure), as that principle is also a component of French international procedural public policy (Article 1520(5) of the French Code of Civil Procedure).

Court structure

Applications to challenge arbitral awards are brought before the Court of Appeal at the place where the award was rendered, whereas appeals of orders granting or denying recognition of foreign arbitral awards are brought before the Paris Court of Appeal. In practice, most awards made in France are usually rendered in Paris and, therefore, it is rare for decisions to be rendered by a court other than the Paris Court of Appeal.

Recourse against decisions of a Court of Appeal may be brought before France's supreme court, the *Cour de Cassation*. The *Cour de Cassation* does not conduct a full review but is limited to points of law, being bound by the Court of Appeal's findings of fact. If the *Cour de Cassation* decides to quash the Court of Appeal's decision, the case is referred either to a differently composed Paris Court of Appeal or to another Court of Appeal. That Court of Appeal's decision may again be referred to the *Cour de Cassation*. If the *Cour de Cassation* quashes the second Court of Appeal's decision, the case is again referred back to the Court of Appeal, which must then comply with and make a decision in accordance with the *Cour de Cassation*'s ruling.

In 2018, a new international chamber of the Paris Court of Appeal, referred to as the "CCIP-CA", was established to promote France as an efficient hub for international commercial disputes. The CCIP-CA quickly began handling challenges to international arbitral awards. Its procedure includes a protocol intended to enhance flexibility in international proceedings, including the following:

a. Parties may present witness and expert statements;

b. Parties are not obliged to provide French translations of exhibits in English;

c. Although oral pleadings are conducted in French, the use of English for foreign parties and their witnesses, experts and counsel is permitted (with interpretation as required); and

d. Requests for the production of documents are permitted when the documents are in the possession of the other party or a third party.

The CCIP-CA renders its decisions in French, and they are accompanied by an official English translation.

Pursuant to the law of June 13, 2024, which entered into force on June 1, 2025, the CCIP-CA now has exclusive jurisdiction to hear all challenges against international arbitral awards.

France | **II. Overview of the data**

We reviewed 222 decisions on applications to set aside awards rendered in France between June 1, 2011 and December 31, 2024 (Review Period).[2] We concluded our collection of court decisions on January 15, 2025.

There is no publicly available data regarding the total number of applications to challenge international awards in France. No single source of data compiles this information, and court decisions are not published automatically. Furthermore, there are no set timelines within which a decision is published, meaning some decisions might be published several months after they are rendered. Unless published in a law journal, older decisions might not have been publicly available at the time of our data collection. As a result, the 222 decisions we have collected and reviewed may not be exhaustive.[3]

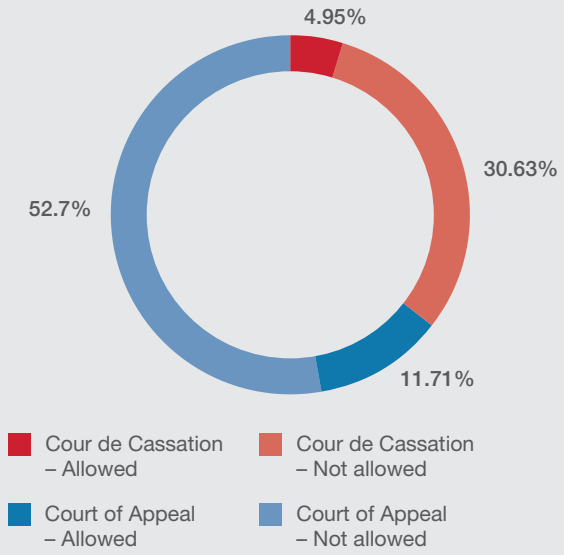
It is not possible to infer from the number of decisions collected the approximate number of arbitrations challenged during the Review Period. This analysis is rendered difficult because of several factors. First, as a result of the court structure in France, some cases have generated multiple decisions, as they are sometimes remitted more than once by the *Cour de Cassation* to a Court of Appeal.

Moreover, decisions may concern different arbitral awards – such as partial, interim or final awards – either collectively within the same case or individually among other awards in a case. Furthermore, where multiple awards rendered in a single case are not challenged simultaneously, the applicant may not always be the same party.

Key observations

Of the 222 decisions reviewed, 143 were rendered by the Court of Appeal and 79 by the *Cour de Cassation*. Applications had a global success rate of only 17%.

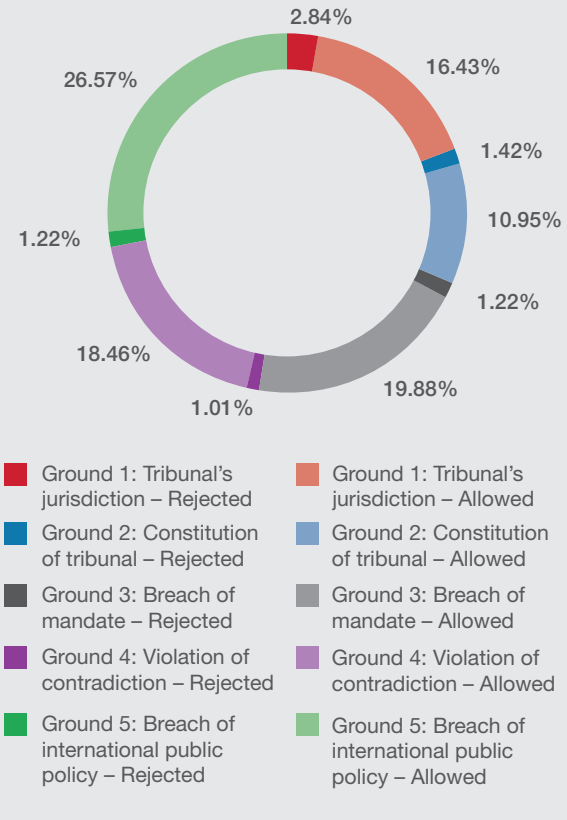
Graph 1: Decisions by court and success rate



[2] Decisions relating to appeals of orders granting or denying recognition of an arbitral award made abroad have not been included in the reviewed decisions.

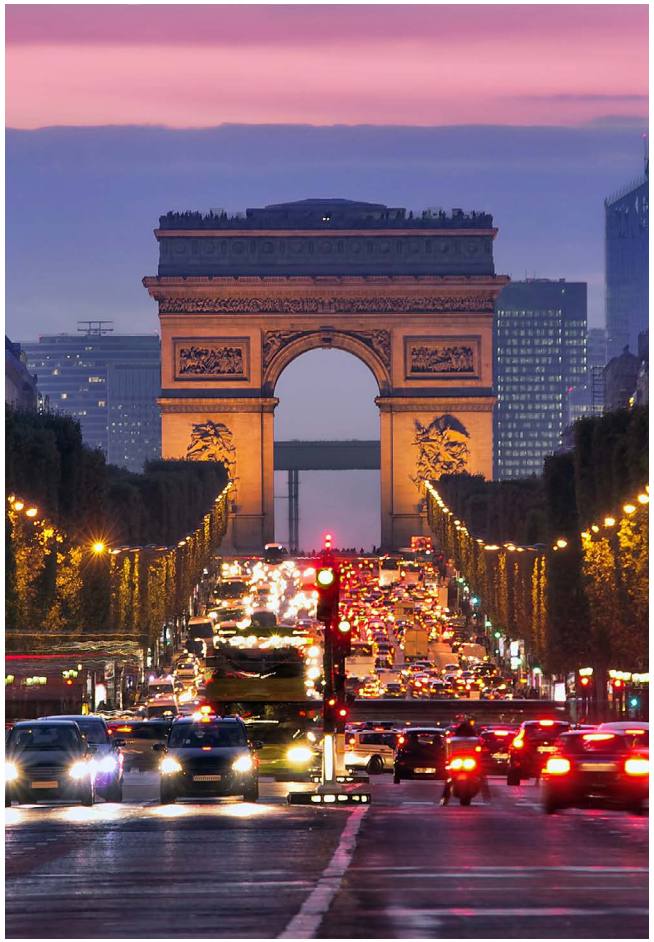
[3] We have collected decisions from various sources, including Legifrance.gouv.fr, the Cour of Cassation website, the CCIP website, Dalloz, LexisNexis, Lexbase, Kluwer, Jus Mundi and Pappers. Extracts or reports of decisions have not been included where a decision was not available.

Graph 2: Grounds argued under Article 1520 and success rate

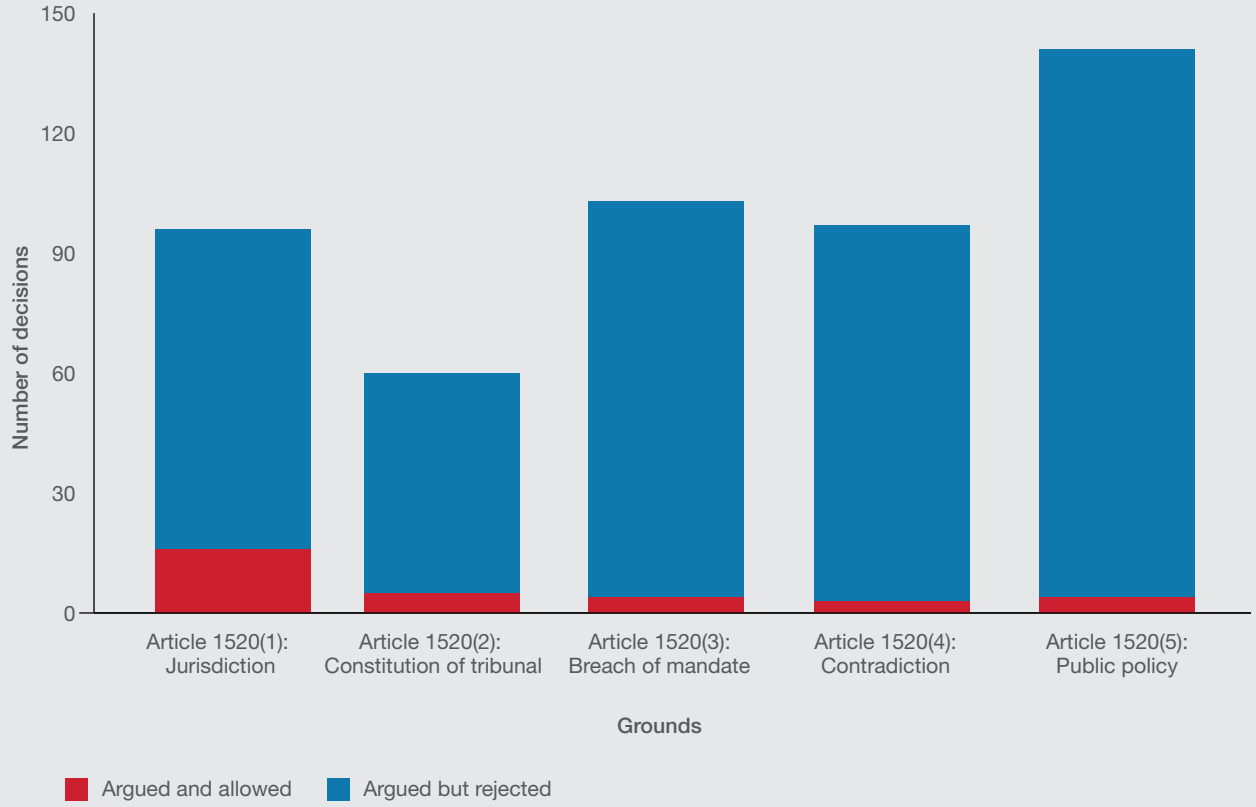


When examining the individual grounds invoked by the parties, the success rate ranges from 4% to 15%. The most frequently invoked ground is Article 1520(5) (i.e., that the recognition or enforcement of the award would contravene international public policy), which was argued 137 times. However, this ground is also the least successful, with only six successful arguments, giving a success rate of just 4%. This outcome should be read in light of the nature of the Article 1520(5) ground: since international public policy is not defined under French arbitration law, parties often invoke it systematically, even when the facts of the case clearly do not suggest a potential breach (see Section III.)

By contrast, Article 1520(1) – the arbitral tribunal's jurisdiction – is the ground most successfully relied upon. It has succeeded on 14 occasions, giving a success rate of 15%. This is hardly surprising given the scope of review exercised by French courts over jurisdictional issues. As explained below (see Section III) French courts conduct a *de novo* review, which increases the likelihood that this ground will be upheld.



Graph 3: Annual number of applications per ground



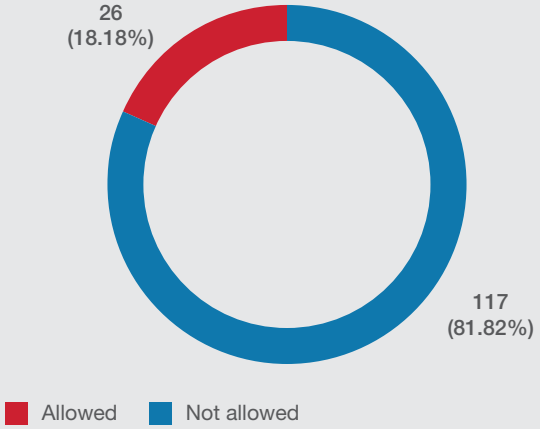
As explained above, the scope and extent of review of international awards differs between the Court of Appeal and the *Cour de Cassation*. Therefore, we have analyzed the cases heard by each of these courts.

The most frequently invoked ground is Article 1520(5) (i.e., that the recognition or enforcement of the award would contravene international public policy); however, this ground is also the least successful. By contrast, Article 1520(1) – the arbitral tribunal's jurisdiction – is the ground most successfully relied upon. It has succeeded on 14 occasions, giving a success rate of 15%.

Court of Appeal

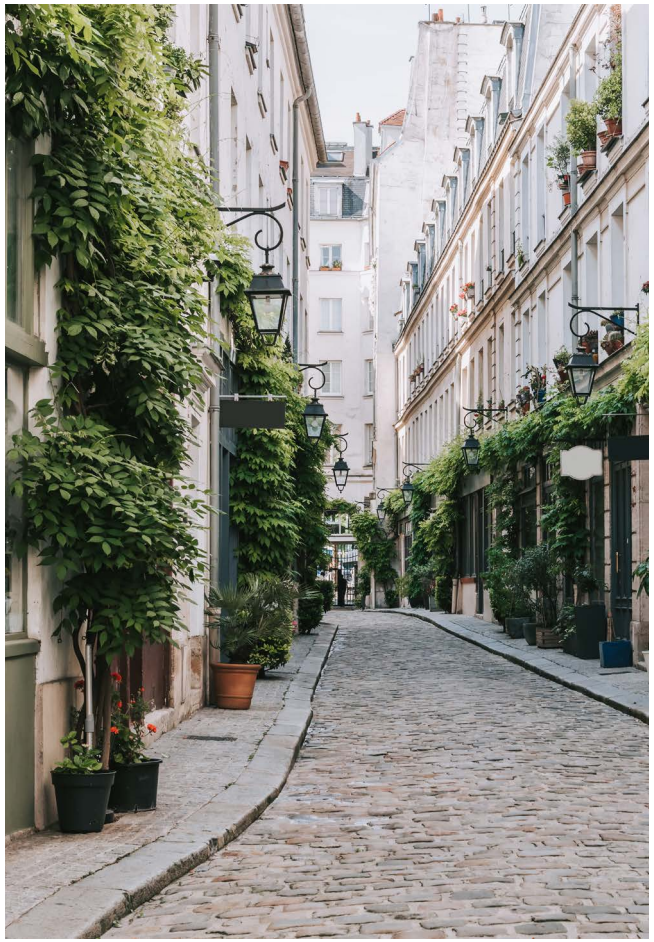
During the Review Period, 143 applications were referred to the Court of Appeal, 26 of which were successful, giving a success rate of 18%.

Graph 4: Court of Appeal number of applications and success rate

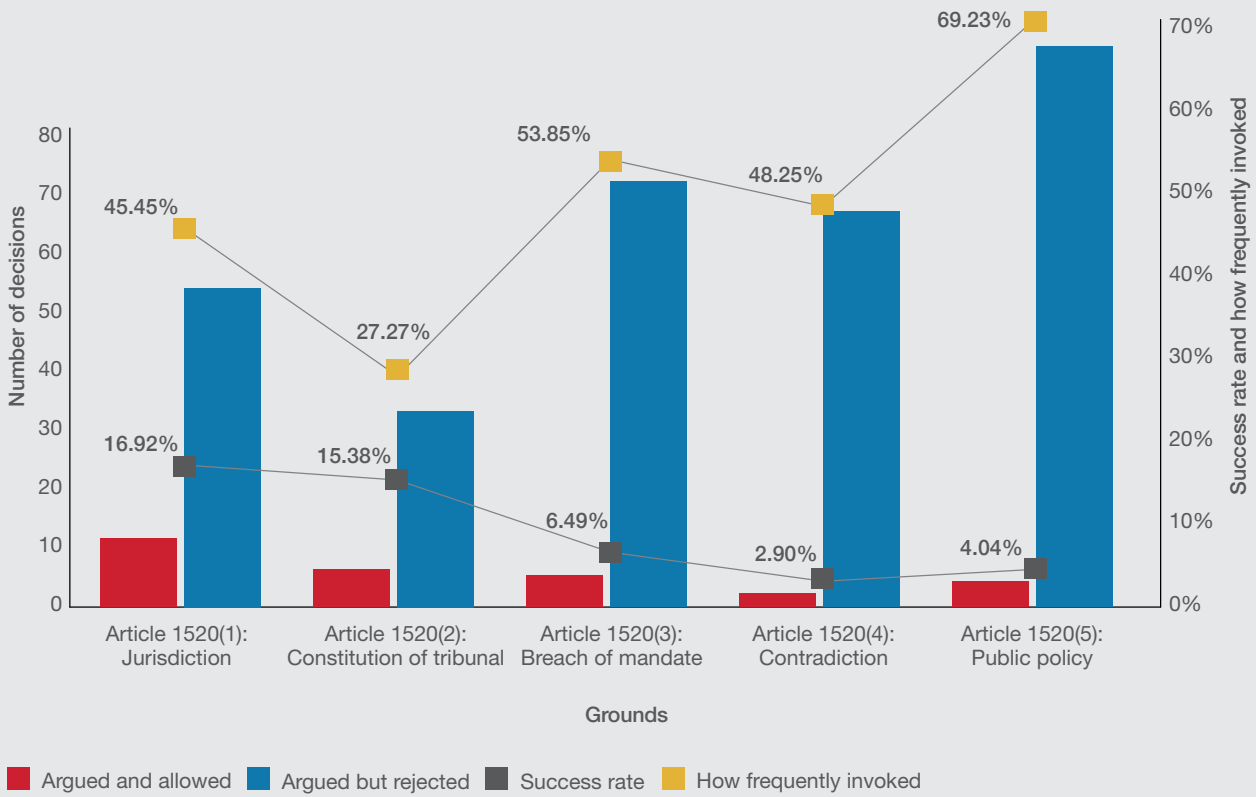


In terms of grounds argued, the international public policy ground (Article 1520(5)) was again most argued, in 69% of decisions, but it was only successful in 4% of the decisions in which it was raised, making it the second-to-last ground in terms of success. The other most frequently argued grounds are (i) Article 1520(3) – arbitral tribunal's failure to comply with its mandate, argued in 55% of decisions; (ii) Article 1520(4) – violation of the principle of contradiction, argued in 48% of decisions, (iii) Article 1520(1) – the arbitral tribunal's jurisdiction, argued in 45% of decisions; and (iv) Article 1520(2) – the improper constitution of the arbitral tribunal, argued in 27% of decisions.

The ground that has been most successfully argued is Article 1520(1) – jurisdiction of the arbitral tribunal – with a 17% success rate. However, as explained above, it was only invoked in 45% of decisions studied, placing it fourth in terms of grounds argued. The second most successful ground during the Review Period was the improper constitution of the tribunal, appearing in 16% of decisions.



Graph 5: Court of Appeal annual number of applications per ground



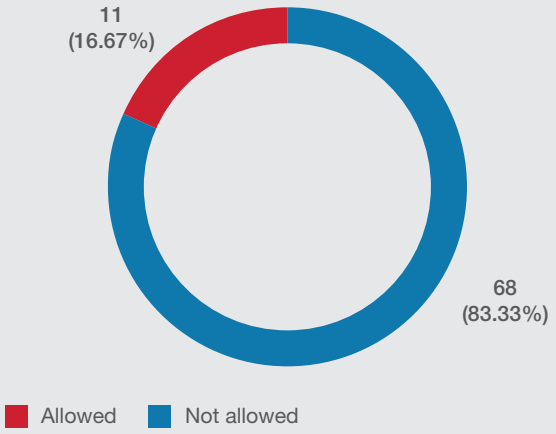
The average timeframe from the date of the award to the determination of a challenge is almost three years. Caution should be exercised when interpreting this figure. Some applications were brought against partial awards, final awards and/or addenda to the award simultaneously, while others were filed separately for each award, either at the same time or once the award in question was rendered. When a single challenge was brought against multiple awards, we have considered the date of the latest award when calculating the application's duration. Additionally, some cases were subject to back-and-forth proceedings between the Court of Appeal and the *Cour de Cassation*, as noted above. This has further increased the overall time required for an application to be determined.

Some applications were brought against partial awards, final awards and/or addenda to the award simultaneously, while others were filed separately for each award, either at the same time or once the award in question was rendered.

Cour de Cassation

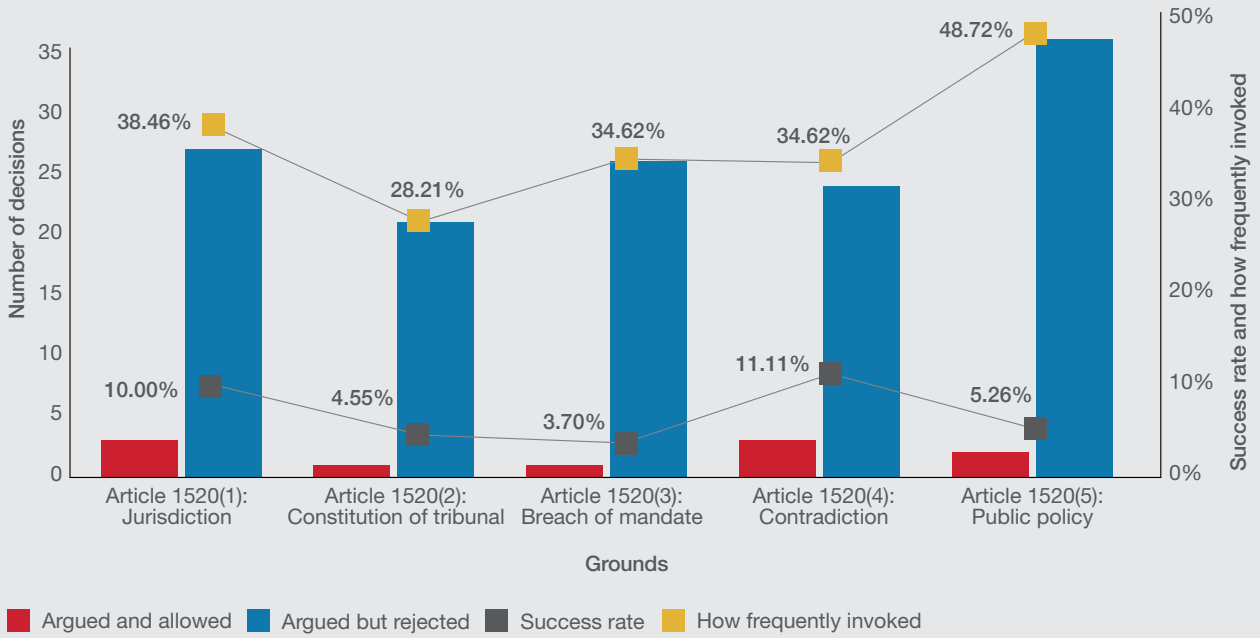
During the Review Period, 79 applications were referred to the *Cour de Cassation*, 11 of which confirmed the annulment of an award, giving a success rate of nearly 17%

Graph 6: Cour de Cassation number of applications and success rate



The ground of international public policy (Article 1520(5)) was the most frequently argued, in nearly 49% of decisions, followed by Article 1520(1) – the arbitral tribunal's jurisdiction – argued in 38% of reported cases. Article 1520(4) – the improper constitution of the tribunal – had the highest success rate at 11%. As can be seen, the success rates are generally low, reinforcing that the courts intervene only when they perceive there to be a grave error in the arbitration.

Graph 7: Cour de Cassation annual number of applications per ground



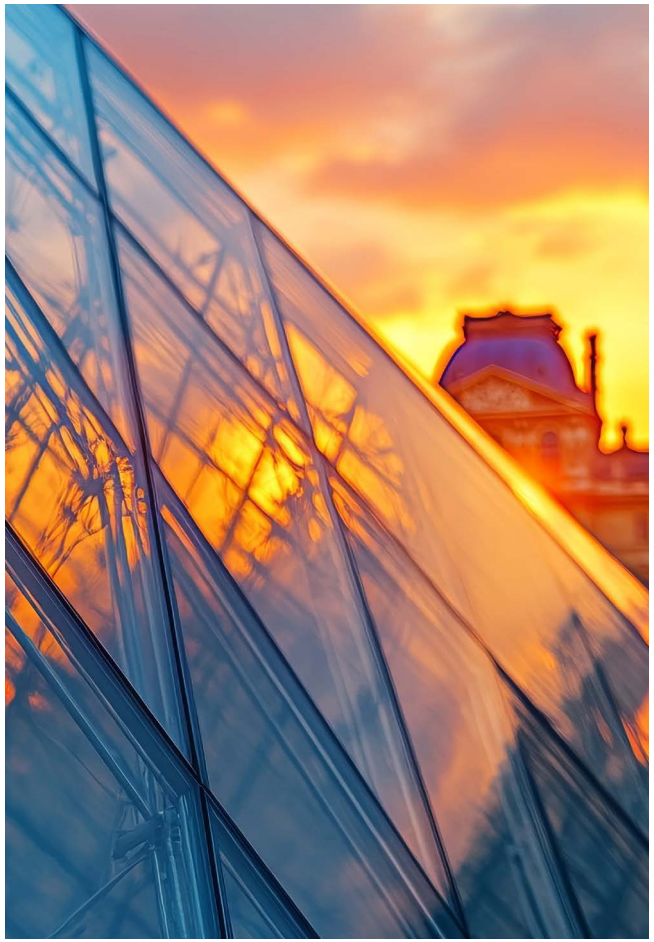
The average time to resolve applications, from the date of the award to the final decision by the *Cour de Cassation*, is almost five years. For reasons explained in our discussion on Court of Appeal decisions, caution should be exercised when interpreting this timeframe.

Single ground vs multiple grounds

Parties may challenge an award on the basis of one or several grounds. Where the facts of a case give rise to overlapping issues, a strategic approach is often adopted, relying on multiple grounds. Over the Review Period, before both the Paris Court of Appeal and the *Cour de cassation*, parties invoked a single ground in 77 cases and multiple grounds in 145 cases, representing 35% and 65%, respectively. A similar ratio is observed among successful applications: 33% relied on a single ground, while 66% invoked multiple grounds.

A closer look, however, shows that multiplying grounds of challenge does not proportionally increase the likelihood of success. Single-ground applications had a 16% success rate (12 out of 77); two-ground applications, 20% success rate (10 out of 50); three-ground applications, 15% success rate (10 out of 65); and four-ground applications, 21% success rate (12 out of 57). Notably, none of the 10 applications raising all five grounds succeeded. This is unsurprising, given the limited and specific nature of the setting-aside grounds: it is improbable that an arbitral award would cumulatively meet all five.

The takeaway is that doubling or quadrupling the number of grounds only modestly improves prospects of success (by 4 and 5 percentage points, respectively), while tripling them actually correlates with a slight decline (–1 percentage point).



France | **III. Analysis**

In the decisions reviewed, the parties raised a total number of 440 grounds, averaging roughly two per decision. This is likely because the facts of each case can give rise to multiple bases to challenge the award, but also because the scope of some grounds overlaps.

It is therefore common – indeed, almost systematic – for parties to rely on both grounds when alleging a violation of the principle of contradiction. Similarly, the requirement for the arbitral tribunal to respect its mandate (Article 1520(3)) may also implicate the arbitral tribunal's jurisdiction (Article 1520(1)). A further point is that a single ground may be invoked multiple times in the same case, based on different factual circumstances.

International public policy (Article 1520(5) CCP)

As explained above, according to the data collected, international public policy (Article 1520(5)) is the ground most frequently invoked by parties.

Under this ground, an award may be set aside if its recognition or enforcement in France would be contrary to international public policy as construed and understood by French courts.

Given the absence of a precise definition of the content of international public policy, parties tend to treat this ground as a "catch-all" provision, as demonstrated by the frequency with which it was invoked during the Review Period. In practice, it is often relied upon in response to almost any setback or frustration encountered in the arbitration. Such attempts, however, are generally dismissed outright.

The international public policy ground is divided into two types, which are subject to different regimes:

(i) Procedural international public policy (which arguably includes the principle of contradiction), the waiver of which is possible under certain conditions; and

(ii) Substantive international public policy, the waiver of which is not possible.

During the Review Period, this difference in regime has been recalled on a number of occasions.[4] As to the content of rights protected under the international public policy ground:

(i) Procedural international public policy includes, notably, equality of arms, the right to a fair trial, the right to a defense, the prohibition of procedural fraud, and, arguably, the principle of contradiction as explained above. Interestingly, during the Review Period, it was held that evidentiary loyalty is not part of international public policy except if it constitutes a procedural fraud.

(ii) Substantive international public policy encompasses the fundamental principles of competition (antitrust) and insolvency law, specific economic regulations, prohibition of corruption, money laundering and peddling, international sanctions and embargoes, fraud (a ground frequently argued but rarely admitted), foreign *lois de police* under certain conditions[5] and abuse of rights.[6]

4. Paris, January 22, 2019, *Klesch Chemicals v. Arkema*, No. 17/15605; *Cour de Cassation*, January 27, 2021, *Klesch Chemicals v. Arkema*, No. 19-20.967; Paris, April 2, 2019, *Ryan and others v. Poland*, No. 16/24358; Paris, October 12, 2021, *Tasyapi v. Committee of Roads of Kazakhstan*, n° 20/02301); Paris, October 19, 2021, *Heliotrop v. Manpower*, No. 19/23071.

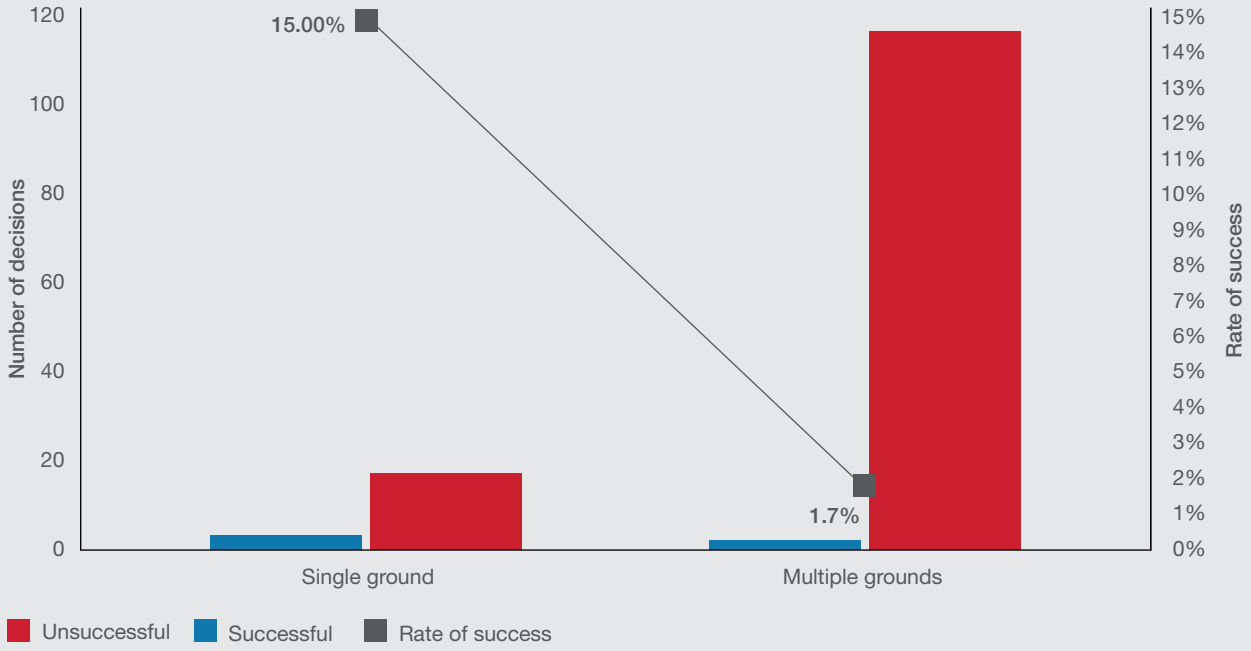
5. For an example during the Review Period, see: Paris, January 16, 2018, *MK Group v. Onix*, No. 15/21703.

6. For an example during the Review Period, see: Paris, October 3, 2023, *Projet Pilote Garoubé v. Cameroon*, No. 22/06903.

Another trend that explains the frequent invocation of the international public policy ground (Article 1520(5)) is the emergence in recent years of the issue of corruption. There has been an increasing number of challenges brought on the grounds of corruption, which is generally seen as a clear breach of international public policy. The Paris Court of Appeal and the *Cour de Cassation* have, however, held evolving and opposite views as to the extent of control exercised in relation to the international public policy ground for annulling awards in matters of corruption.

Historically, French courts' control of international public policy was limited to circumstances where the violation had to be flagrant, effective and concrete.[7] From 2014,[8] and more clearly from 2017,[9] the Paris Court of Appeal changed the extent (intensity) of its control in matters of corruption, requiring that the violation be manifest, effective and concrete – which is arguably a lower threshold and therefore a stricter control – and the court's examination of the corruption allegations was full, rather than limited to the contents of the award, and considerably lengthened.

Graph 8: 1520 (5) invoked as a single ground or in addition to other grounds



[7] Paris, November 18, 2004, *Thalès Air Defence v. GIE Euromissile*, No.2002/19606.

[8] Paris, March 4, 2014, *Gulf Leader*, No. 12/17681; Paris, October 14, 2014, *Commisimpex v. Congo*, No. 13/03410; Paris, November 4, 2014, *SAS Man Diesel & Turbo France v. Al Maimana General Trading Company Ltd*., No. 13/10256.

[9] Paris, February 21, 2017, *Valeri Belokon v. Kyrgyz Republic*, No. 15/01650.

Today, the prevailing approach of the Paris Court of Appeal and the *Cour de Cassation* is a rather maximalist one, justifying a stronger, more in-depth control by courts of the award and of the facts underlying the issues of corruption.

Article 1520(5) has only been invoked as a single ground 20 times out of 137, that is, in 15% of decisions in which Article 1520(5) was invoked. It was successful in 15% of the cases when invoked as a single ground, as opposed to 2% when invoked as a multiple ground. This tends to confirm that Article 1520(5) has been used by parties as a "catch-all" provision, but that the courts refuse to treat it as such.

It is also instructive to examine the various combinations of grounds involving Article 1520(5). This ground was invoked in 151 decisions across the entire corpus. The grounds most frequently invoked alongside it are Article 1520(3) (87 occurrences) and Article 1520(4) (82 occurrences). When focusing on pairwise combinations only (i.e., excluding other grounds), the most common pairings with Article 1520(5) are Article 1520(1) (27 occurrences) and Article 1520(3) (24 occurrences).

These patterns illustrate the close relationship between grounds, such as the arbitral tribunal's failure to respect its mandate (Article 1520(3)), the principle of contradiction (Article 1520(4)) and the concept of international public policy. In this sense, international public policy encompasses notions such as due process, which simultaneously underpins the overarching principle of contradiction.

Jurisdiction (Article 1520(1) CCP)

Although challenges based on the arbitral tribunal's jurisdiction are only the third most frequently invoked, they are the most successful overall. It was invoked on 95 occasions, 14 of which were successful, giving an approximate success rate of 15%. From a general standpoint, Article 1520(1) ensures that the arbitral tribunal has jurisdiction to render the award, or to take some of the decisions made in the award. Because the arbitral tribunal's jurisdiction is the very foundation of the validity of the award, French courts perform a *de novo* review when examining this ground. This explains its relative popularity among parties who hope that the *de novo* nature of the control – unlike other grounds – will increase their chances of success.

A notable trend concerns awards rendered in investment arbitration, where the arbitral tribunal's jurisdiction is frequently challenged during the proceedings by the respondent state. In such cases, French courts appear to have evolved toward a more restricted yet simultaneously more intense review of jurisdiction.[10] It remains to be seen whether this approach is isolated or will be consistently applied.

Similarly, in the context of investment arbitration challenges, the distinction between jurisdiction and admissibility has received increasing attention and has contributed to the frequent recourse to Article 1520(1). The stakes of the distinction are high, as issues of jurisdiction may justify the annulment of an award (and hence be reviewed by the French courts), whereas issues of admissibility may not. In the *Rusoro* case,[11] the *Cour de Cassation* quashed the Court of Appeal's decision that had characterized prescription as an issue of *ratione temporis* jurisdiction, instead of making it one of admissibility.

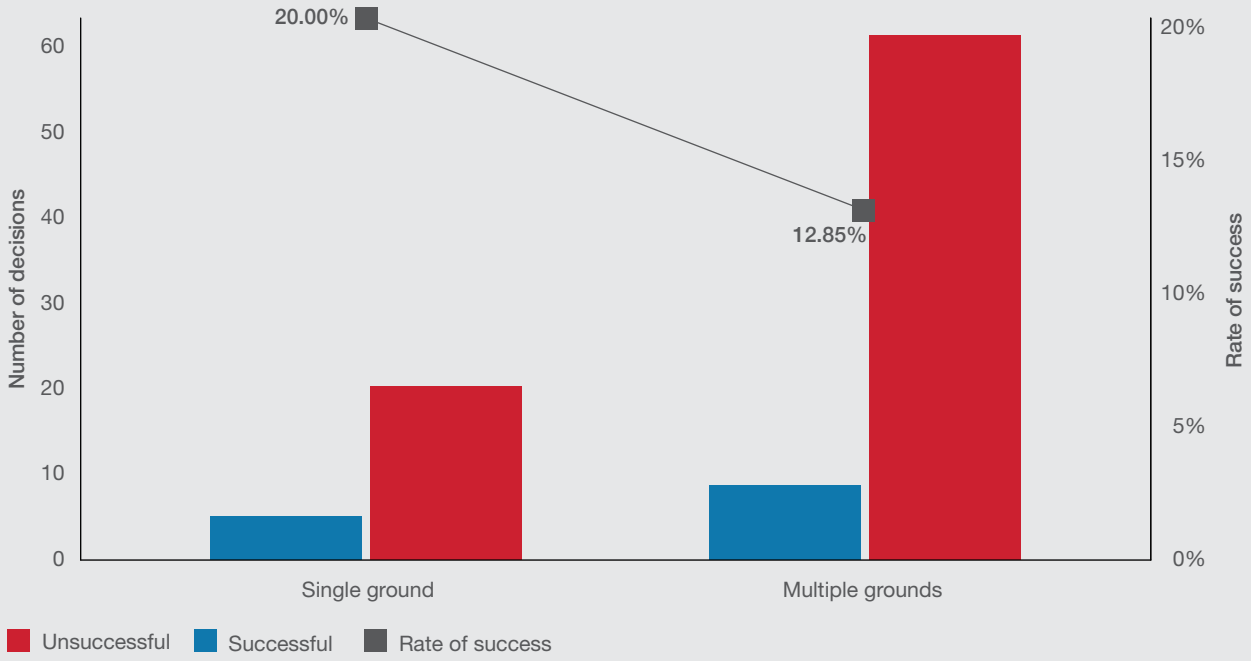
[10] Paris, March 30, 2021, *Federation de Russie v. Joint Stock Company "State Savings Bank of Ukraine"* (*JSC Oschadbank*), No. 19/04161; *Cour de Cassation*, December 7, 2022, *Joint Stock Company "State Savings Bank of Ukraine" (JSC Oschadbank) v. The Russian Federation,* No. 21-15.390.

[11] *Cour de Cassation*, March 31, 2021, n° 19-11.551.

Finally, Article 1520(1) has only been invoked as a single ground 25 times out of 95, that is, in 26% of decisions in which Article 1520(1) was invoked. It was successful in 20% of cases when it was invoked as a single ground, as opposed to nearly 13% when invoked as a multiple ground. This underscores the singular nature of Article 1520(1), which stands apart from the other grounds: if there is an issue with the tribunal's jurisdiction, the *de novo* review conducted by French courts may alone lead to the annulment of the award, without the need to examine any other grounds or issues. This is confirmed by the data on pairwise combinations (excluding other grounds): the most frequent pairing with Article 1520(1) is, unsurprisingly, itself (27 occurrences). Other grounds combined with Article 1520(1) appear with relatively similar – and low – frequency, ranging between 15 and 18 occurrences.

Finally, Article 1520(1) has only been invoked as a single ground 25 times out of 95, that is, in 26% of decisions in which Article 1520(1) was invoked.

Graph 9: 1520(1) invoked as a single ground or in addition to other grounds



Constitution of the tribunal (Article 1520(2) CCP)

Issues in the constitution of the arbitral tribunal have been invoked 60 times during the Review Period, and have been successful seven times, giving a rate of 12%. That being said, it would appear that the ground is less accepted in recent years.

Article 1520(2) addresses irregularities relating to the constitution of the arbitral tribunal, whether concerning the individual arbitrator or the procedures for appointing the tribunal. Regarding procedural irregularities in appointment, a challenge may arise where the parties' intentions, as set out in the arbitration agreement, have not been respected – either directly through the agreement's terms or indirectly by reference to applicable law or arbitration rules. Irregularities may also result from failure to comply with time limits; for example, where the arbitration agreement sets a deadline for the appointment of arbitrators, non-compliance may render the agreement void or time-barred. These scenarios, however, are less frequent than irregularities concerning the individual arbitrator. In this regard, arbitrators' lack of independence and impartiality is the most common allegation on the basis of Article 1520(2) CCP.

In fact, most of the cases (over 70%) reviewed relate to a claim of an alleged lack of independence and impartiality from one or several arbitrators.

One of the traditional tools to guarantee arbitrators' independence and impartiality is the use of disclosure obligations. Under French law, such an obligation is provided for by Article 1456(2) CCP, pursuant to which: "Before accepting a mandate, an arbitrator shall disclose any circumstance that may affect his or her independence or impartiality. He or she also shall disclose promptly any such circumstance that may arise after accepting the mandate."

It is worth noting that before reviewing the arbitrator's disclosures, courts verify whether the party raising the challenge had waived its right to challenge an award on this ground. This was notably reminded by the Paris Court of Appeal during the Review Period in the *Pharaon* case.[12] In this case, a party had challenged an arbitrator during the proceedings that were administered under the ICC Rules of Arbitration. As per these Rules, the ICC Court of Arbitration examined the challenge and rejected it.

Once the award was rendered, it was challenged before the Paris Court of Appeal on the grounds that the arbitral tribunal had not been properly constituted. The Paris Court of Appeal dismissed the challenge, notably on the basis that the mere fact that the arbitrator had been challenged before the ICC Court was not sufficient to escape the implicit waiver – the party should have reiterated its reservation of rights throughout the procedure.

In relation to the arbitrator's disclosing obligations, French courts' long-established position is that arbitrators should reveal circumstances that may, in the eyes of the parties, raise questions as to their independence and impartiality. While this is a subjective test (contrary to the objective test that is applied in common law jurisdiction), it has been applied relatively strictly. In addition, courts impose on the parties, at the time of the arbitrator's initial disclosure, a "duty of curiosity" and assess whether the circumstance was sufficiently "notorious" for the parties to have waived their right to challenge the arbitrator on this basis.[13]

[12] Paris, June 15, 2021, *CNAN Group SPA, International Bulk Carrier SPA v. CTI Group Inc. Iles Cayman, Commercial Investment Group Limited, Mr. [T] [R] [F]*, No. 20/07999; confirmed by *Cour de Cassation*, June 7, 2023, No. 21-24.968. See also, during the Review Period: Paris, October 3, 2023, *Projet Pilote Garoubé v. Cameroun*, No. 22/06903.

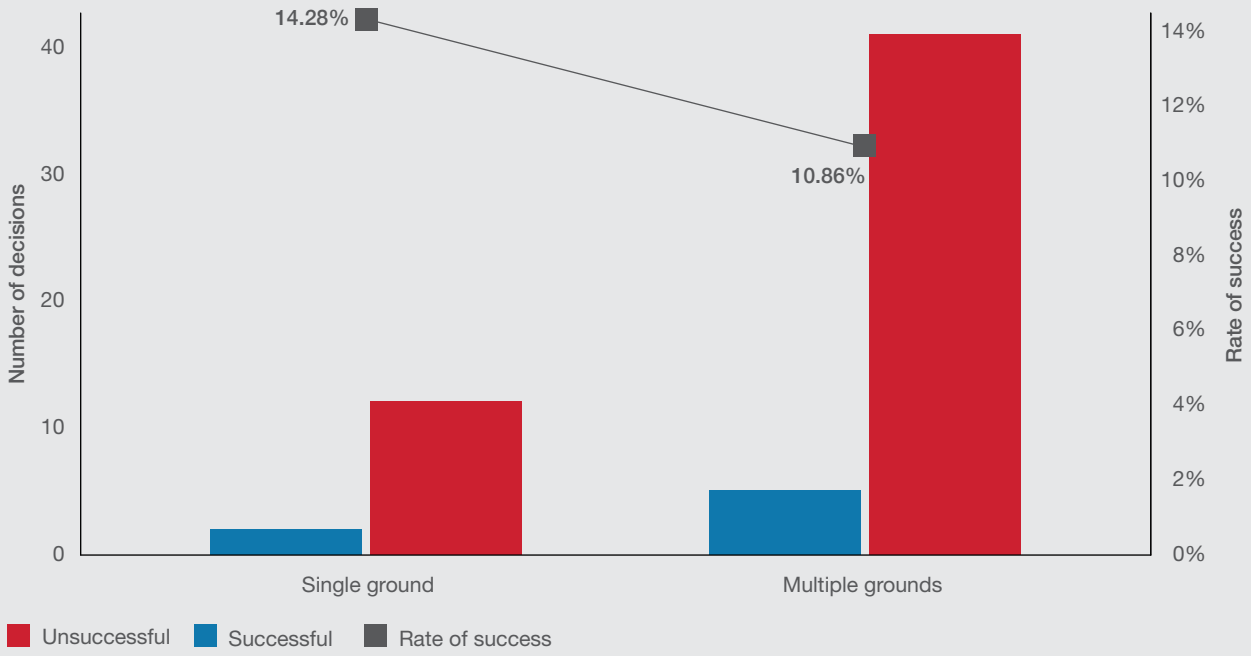
[13] Paris, January 26, 2021, PT *Ventures v. Vidatel and others*, No. 19/10666; Paris, May 23, 2023, *Trasta v. NOC*, No. 22/05278; Paris, February 22, 2022, *Bestful*, No. 20/05869.

Article 1520(2) has only been invoked as a single ground 14 times out of 60, that is, in 23% of decisions in which Article 1520(2) was invoked. It was successful in 14% of the cases when it was invoked as a single ground, as opposed to approximately 11% when invoked as a multiple ground.

Finally, it appears that the small number of decisions (seven) in which French courts upheld a challenge under Article 1520(2) has attracted disproportionate media attention and commentary relative to the subject's actual significance. This is largely because Paris-based arbitration practitioners form a close-knit community and tend to react strongly to cases involving the independence or impartiality – or alleged lack thereof – of one of their peers.

Finally, it appears that the small number of decisions (seven) in which French courts upheld a challenge under Article 1520(2) has attracted disproportionate media attention and commentary relative to the subject's actual significance.

Graph 10: 1520(2) invoked as a single ground or in addition to other grounds



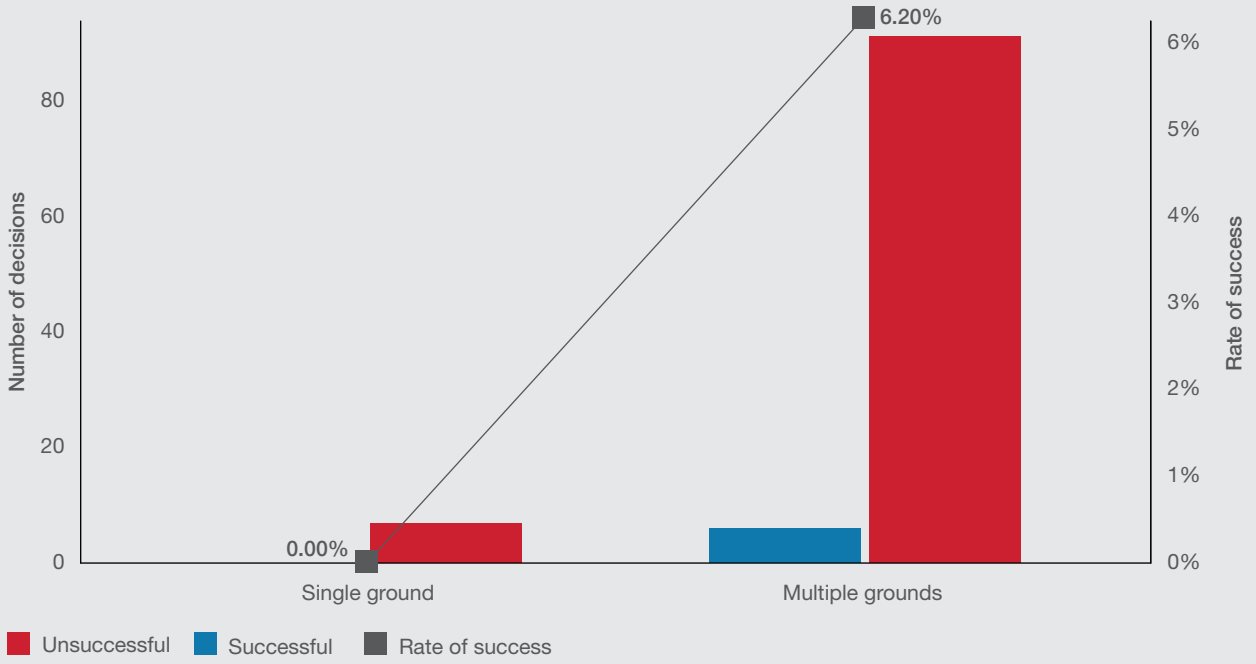
Mandate (Article 1520(3) CCP)

The arbitral tribunal's failure to respect its mandate or mission (Article 1520(3) CCP) is the second most frequently invoked ground during the Review Period (92 times) but was accepted only six times, giving a 6.2% success rate.

This ground has some overlap and is at times confused with that of jurisdiction, because an arbitral tribunal that does not comply with the mandate given by the parties has no jurisdiction to decide issues in excess of its mandate. Challenges based on the arbitral tribunal's mandate are rarely upheld by the courts, which generally consider that the arguments advanced amount to criticisms of the tribunal for errors of law or misstatement of facts – grounds that do not justify annulment of the award.

The arbitral tribunal's mandate extends to both substantive and procedural matters. However, for the award to be annulled on this basis, proof is required that a harm was suffered. For example, in cases of *infra petita*, the long-standing solution has been to complete the award rather than annul it entirely.

Graph 11: 1520(3) invoked as a single ground or in addition to other grounds



During the Review Period, the Paris Court of Appeal usefully clarified that, when the arbitral tribunal's non-compliance relates to a procedural matter, the award can only be annulled if the procedural irregularity had previously been raised before the arbitral tribunal and if it is established that said irregularity caused harm to a party, or had an effect on the solution to the dispute.[14]

Article 1520(3) has only been invoked as a single ground seven times out of 104, that is, in 7% of decisions in which Article 1520(3) was invoked. However, according to the data collected, it was never admitted as a single ground. This may be explained by the fact that the data collected is limited to decisions related to the setting aside of international awards rendered in France exclusively. This illustrates the limited scope and weak "resonance" of this ground for annulment before French courts, for the reasons already discussed. Challenges framed as criticisms of the arbitral tribunal's mission are inherently close to a review of the award's merits. While parties may be tempted to invoke this ground when dissatisfied with the tribunal's decision, annulment judges are equally likely to reject such arguments, as they constitute an impermissible attempt to circumvent the sacrosanct principle that arbitral awards are not subject to review on the merits.

Principle of contradiction (Article 1520(4) CCP)

Violation of the principle of contradiction ranks second-to-last in terms of popularity. During the Review Period, it has been invoked 96 times, but admitted only five times, giving an approximate success rate of 5%. The principle of contradiction refers to the French procedural conception of due process, and requires that any party has the opportunity to make arguments or to be heard. It does not, however, require a party to be comprehensive. In making its decision, the arbitral tribunal may depart from the parties' arguments as long as the parties have been able to debate all elements on which the decision is based.[15]

Because a violation of the principle of contradiction is inherently subjective (a losing party may understandably be under the impression that it has not been heard by the arbitral tribunal), this ground may serve as a "fallback" when the chances of success for the other pleaded grounds are weak. This can notably be inferred from the fact that it has only been invoked as a single ground 10 times out of 96, that is, in 10.46% of decisions in which Article 1520(4) was invoked.

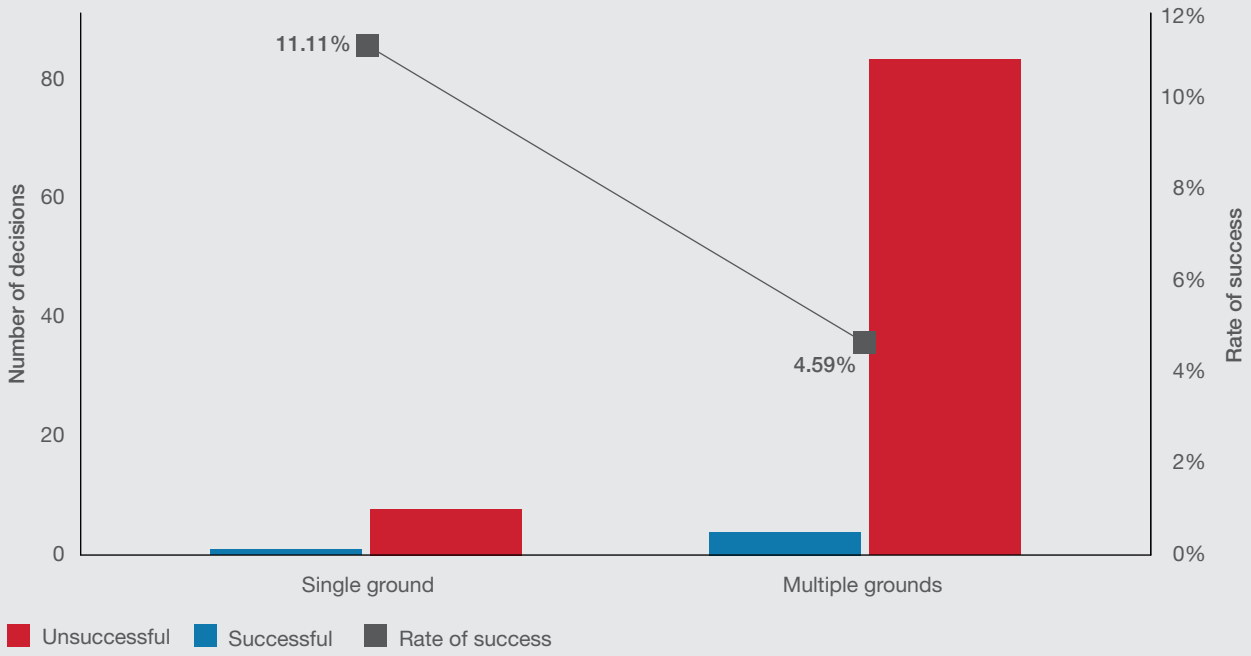
[14] Paris, October 20, 2020, *ITOC*, n° 19/05231.

[15] See, for a recent example, *Cour de cassation*, October 9, 2024, No. 23-13.599.

The courts perform an in-depth analysis of whether the principle of contradiction was indeed breached. They examine the parties' positions in the arbitration and the arbitral tribunal's reasoning to determine whether a party has not been afforded the opportunity to make its position known.

Because a violation of the principle of contradiction is inherently subjective (a losing party may understandably be under the impression that it has not been heard by the arbitral tribunal), this ground may serve as a "fallback" when the chances of success for the other pleaded grounds are weak.

Graph 12: 1520(4) invoked as a single ground or in addition to other grounds



Costs and abuse of process

As to cost orders, there is no "costs follow the event" principle, and parties only generally recover a fraction of the costs engaged.

Costs before French courts are divided between "*dépens*" and other legal costs.

"*Dépens*" are defined by the French Code of Civil Procedure (Article 695) and notably include court fees, translation and judicial expert fees, and regulated attorney fees. In principle, they are to be borne by the losing party unless the court orders the successful party to bear them in whole or in part (Article 696 CCP). These costs are generally very limited, if not insignificant.

The other costs include, notably, additional attorney fees. The principle governing the allocation of these fees is that the judge must consider both equity and the economic situation of the losing party in every case. The judge may, even on their own motion and for the same considerations, declare that no costs are to be ordered. Generally, however, the judge will order the losing party to bear the costs, but there have been notable exceptions.

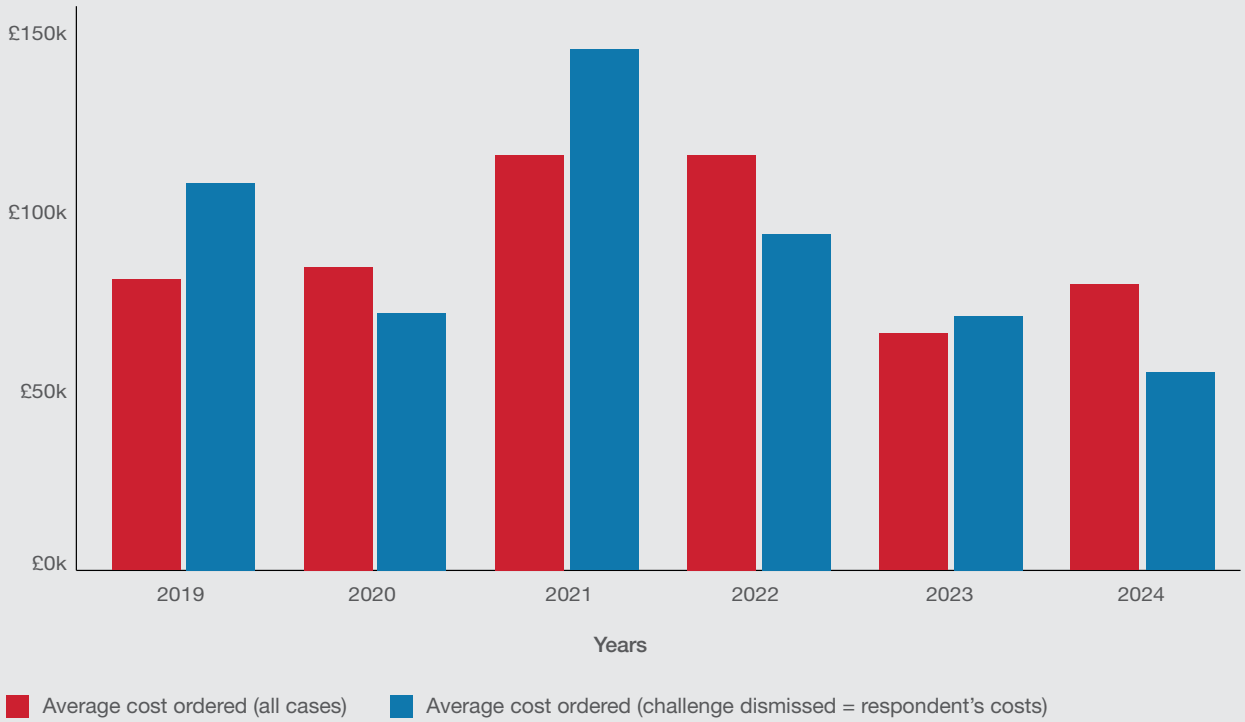
As to the amount of costs ordered, they are usually not assessed on the basis of actual costs incurred by a party, but on a discretionary basis. Their amount also differs depending on the court making the decision.

Before the Court of Appeal, during the Review Period, cost awards ranged from €6,000 to €400,000, with an average of approximately €77,000 when considering costs ordered to the claimant (i.e., successful challenges) and €81,000 when considering costs ordered to the respondent (i.e., challenges that were dismissed). It should be emphasized that this range of cost awards contrasts sharply with the practice of French courts in non-arbitration matters, where such awards rarely exceed a few thousand euros and only in exceptional cases reach tens of thousands. The more "generous" approach adopted in arbitration-related cases was a deliberate policy choice made several decades ago to enhance Paris's attractiveness as a seat of arbitration, by ensuring that cost awards more closely reflect the actual expenses incurred in challenge proceedings.

Based upon our data, the amount of costs awarded would appear to depend on the presiding judge, but this conclusion should be taken with caution.

As to the evolution of the cost awards, we can observe a relative slowdown:

Graph 13: Evolution of cost awards

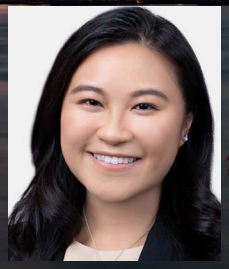


Costs awarded also appear to be lower before the new International Chamber, which began full operations in 2019; however, it is too soon to draw definitive conclusions.

Notably, a few applications for abusive procedure have been successful during the Review Period. These are exceptional, and the threshold to obtain damages for an abuse of process is extremely high. That being said, it is a useful tool to deter unsuccessful parties in the arbitration from challenging the award for the sole purpose of delaying its enforcement.

Before the *Cour de Cassation*, costs are typically awarded in the region of €3,000, with some instances slightly lower or slightly higher during the Review Period. This is largely explained by the limited scope of review at this stage: the *Cour de Cassation* only examines specific points of law; the substantive issues having already been dealt with by the Court of Appeal. Another factor to bear in mind is that parties must be represented by *Avocats au Conseil d'État et à la Cour de Cassation* – a specialized bar comparable to English barristers. Their fees are generally reasonable (though not aligned with the modest amounts awarded by the *Cour de Cassation*), and the involvement of the parties' regular counsel is usually minimal.

C Hong Kong



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Hong Kong | **I. Introduction**

Background

Hong Kong is a Special Administrative Region (SAR) of China. As such, it maintains a separate common law system and independent judiciary distinct from Mainland China's civil law tradition. After the 1997 handover from British to Chinese rule, Hong Kong has continued to base its legal system on the common law tradition. Under the "one country, two systems" framework, it has developed its own legal precedents that are separate from those of the English courts.

The Hong Kong Arbitration Ordinance (Cap. 609) (Ordinance) came into effect on June 1, 2011, replacing the former Arbitration Ordinance (Cap. 341), which had originally been enacted in 1963 and amended in 1982 and 1990. The Ordinance abolished the split regime for international and domestic arbitrations under Cap. 341, replacing it with a unified regime that governs all arbitrations in the region, to make the law more user-friendly to arbitration users and strengthen Hong Kong's status as a regional center for dispute resolution. For completeness, Schedule 2 of the Ordinance contains the key features of the old "domestic" regime that was based on the English Arbitration Act 1950; these provisions no longer automatically apply to arbitration agreements entered into after June 1, 2017, but parties may expressly opt into them.

The Ordinance adopts a strongly internationalist stance by incorporating many of the UNCITRAL Model Law (Model Law) provisions, aligning closely with the practices of other common law jurisdictions, such as Singapore.

Today, Hong Kong stands as one of the most popular arbitration seats in Asia and ranks among the top five most preferred seats worldwide. It adopts a "light touch" approach to arbitration, whereby the courts are supportive of the arbitral process and reluctant to interfere. The respect for parties' freedom to contract in matters of dispute resolution and the minimal curial intervention policy are highlighted in Section 3 of the Ordinance. This approach aims to preserve the autonomy and flexibility of arbitration as an alternative dispute resolution mechanism and fosters an environment where parties can resolve cross-border commercial disputes efficiently through arbitration in Hong Kong with minimal court intervention.

The Hong Kong International Arbitration Centre

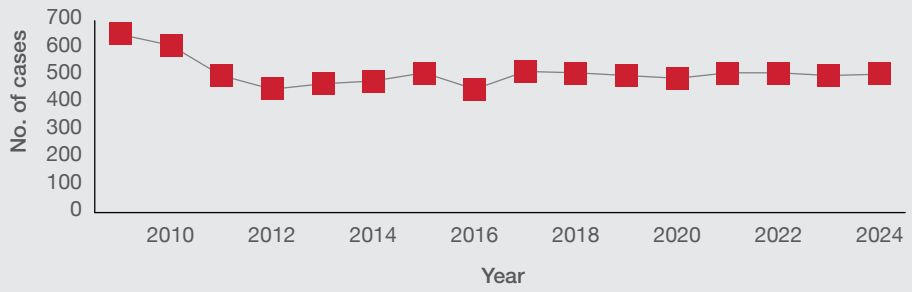
The predominant home-grown arbitral institution in Hong Kong, the Hong Kong International Arbitration Centre (HKIAC), has gone from strength to strength since its establishment in 1985.

The overall number of dispute resolution matters handled by the HKIAC has held steady at roughly 500 new cases each year, with the overall value and average value of disputes steadily increasing in the last decade. That caseload comprises domain name disputes, ad hoc cases administered by the HKIAC and those conducted according to the HKIAC Rules, although a detailed breakdown of the types of cases handled by the HKIAC is not published.

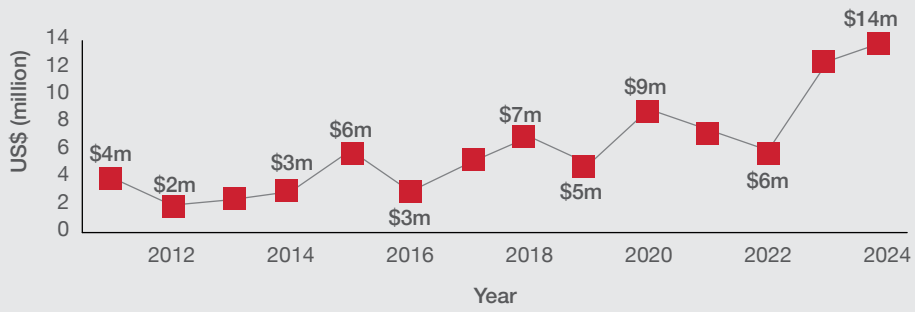
The HKIAC's case statistics reveal that a total of 503 cases were submitted to the institution in 2024. The total amount in dispute in all arbitration cases was HK$106 billion (approximately US$13.6 billion, which equates to a 14% increase from that in 2023), and the average amount in dispute in administered arbitrations was HK$375 million (approximately US$48.1 million). Of the 352 arbitrations submitted to the HKIAC in 2024, 249 were administered by the institution under various rules, including the HKIAC Administered Arbitration Rules and the UNCITRAL Arbitration Rules.

Graphs 1–3: The Hong Kong International Arbitration Centre

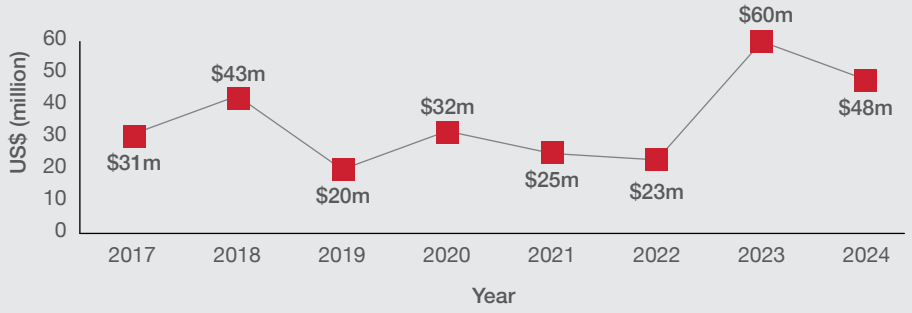
Graph 1: Overall number of handled cases



Graph 2: Overall value of disputes



Graph 3: Average value of HKIAC administered arbitration disputes



> “Today, Hong Kong stands as one of the most popular arbitration seats in Asia and ranks among the top five most preferred seats worldwide. It adopts a “light touch” approach to arbitration, whereby the courts are supportive of the arbitral process and reluctant to interfere.”

Hong Kong | **II. Statutory regime for setting aside**

The Arbitration Ordinance (Cap. 609)

The Ordinance provides for recourse against arbitral awards:

a. Section 81 gives effect to Article 34 of the Model Law, which provides for applications for setting aside as an exclusive recourse against an arbitral award.

b. Section 26 gives effect to Article 13 of the Model Law, and also establishes a narrower basis for setting aside an award on the basis that a court has upheld a challenge to one or more of the arbitrators comprising the tribunal rendering the award.

c. Sections 4 and 5 of Schedule 2 are the grounds to appeal arbitral awards under the optional "opt in" regime established under Part 11 of the Ordinance (see below). Section 4 of Schedule 2 is similar to Section 68 of the English Arbitration Act 1996, although in England and Wales the latter provision is mandatory and cannot be excluded by the parties. Hong Kong's "opt-in" regime draws heavily from Schedule 2 of the New Zealand Arbitration Act 1996.

For completeness, Part 10 of the Ordinance contains various provisions governing the recognition and enforcement of arbitral awards (including the grounds for refusal to enforce such awards). The Ordinance also sets out different enforcement regimes for New York Convention awards, Mainland Chinese awards, Macao awards and arbitral awards made in or outside of Hong Kong that do not fall within the previous categories. Hong Kong (alongside Macao) is one of the only jurisdictions outside Mainland China where parties to arbitral proceedings can routinely apply to the Mainland courts for interim measures.

The present study focuses on the grounds for setting aside and remitting of awards, and thus does **not** include decisions made under Part 10 of the Ordinance.

Grounds for setting aside/remitting an award

The grounds for setting aside or remitting an arbitral award are principally contained in Articles 34 and 13 of the Model Law, as given effect to by Sections 81 and 26 of the Ordinance. The grounds are exhaustive:

Model Law article	Summary of ground
Article 34(2)(a)(i)	The applicant proves that a party to the arbitration agreement referred to in Article 7 of the Model Law was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the laws of Hong Kong.
Article 34(2)(a)(ii)	The applicant proves that they were not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case.
Article 34(2)(a)(iii)	The applicant proves that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
Article 34(2)(a)(iv)	The applicant proves that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of the Model Law from which the parties cannot derogate or, failing such agreement, was not in accordance with the Model Law.
Article 34(2)(b)(i)	The court finds that subject-matter of the dispute is not capable of settlement by arbitration under the laws of Hong Kong.
Article 34(2)(b)(ii)	The court finds that the award is in conflict with the public policy of Hong Kong.
Article 13	The court upholds a challenge of the arbitrator pursuant to Article 13 of the Model Law.

Relevant section under the Ordinance	Summary of ground
Section 4 of Schedule 2	A number of procedural grounds, including: • failure to treat parties equally; • the tribunal exceeding its powers; • failure by the tribunal to deal with all issues put to it; • arbitral institution or other person exceeding its powers; • award was obtained by fraud or procured contrary to public policy; • failure to comply with the requirements as to the form of the award; • irregularity concerning the conduct of the proceedings.
Section 5 of Schedule 2	A party applies to the court to decide on a question of law, which is to be determined by the court based on the findings of fact in the award.

Approach of the court

The courts impose a high bar on a party seeking to set aside an award on grounds of procedural irregularity. The conduct complained of must be "sufficiently serious or egregious."

The courts also impose a narrow construction on each of the Section 34 grounds. For example:

Article 34(2)(b)(ii) (public policy)	The court will set aside an award on this ground only where to do otherwise would violate Hong Kong's most basic notions of morality and justice. Indeed, the words "contrary to public policy" have been held by the Court of Final Appeal to mean "contrary to the fundamental conceptions of morality and justice." For the public policy ground to be made out, there must be "substantial injustice arising out of an Award which is so shocking to the court's conscience as to render enforcement repugnant."
Article 34(2)(a)(ii) (notice and ability to present case)	Here too, a very high threshold must be satisfied. It is not enough to advance general allegations of what a party could have done if it had been given a chance by a tribunal. Instead, a party must show that the tribunal made an egregious error in the conduct of the arbitration that unfairly prevented the party from putting forward important evidence or mounting a material argument. Even then, the court will not lightly interfere with or second-guess a tribunal's case management decisions.
Article 34(2)(a)(iii) (jurisdiction and admissibility)	This ground would only engage those decisions that are clearly unrelated to or not reasonably required for the determination of the issues that have been submitted to arbitration. Where a party to the arbitration seeks to have an award set aside on the basis that the tribunal has no jurisdiction, the court does not simply review the tribunal's decision but makes its own *de novo* decision on the evidence before it. The court may consider new arguments and evidence and is not bound by or limited to the tribunal's findings or the evidence adduced before it. This ensures that the court will not be placed in a worse position to assess an issue of fact.

Outside of the "opt-in" regime, alleged errors of law are not grounds for review.

Finally, from as early as 2009, the Hong Kong courts have adopted the practice of awarding indemnity costs against unsuccessful applicants.

Court structure

Applications to challenge awards are made to the Hong Kong Court of First Instance (CFI), which has a specialist arbitration list of judges to hear such matters.

Where a party wishes to appeal a setting-aside decision of the CFI, leave from the CFI must be sought. If leave is refused, the matter concludes with no further avenue of appeal.

If leave is granted, the appeal will be heard by the Court of Appeal (CA). Further appeal from the CA is permitted if the CA grants leave, in which case the appeal will be heard by the Court of Final Appeal (CFA).

Hong Kong | **III. Overview of the data**

Scope

We have reviewed data from cases involving the nine setting-aside grounds outlined in Part II above, including:

a. Substantive decisions by the CFI, CA and CFA between January 1, 2018 and December 31, 2024 inclusive (Review Period); and

b. Decisions under the Ordinance, but not the former Arbitration Ordinance.

Limitations

This analysis has two key limitations, which result in the number of awards analyzed not being particularly large.

First, the data covers reported cases that are in the public domain but excludes unreported cases. There is also no publicly available data on the total number of applications made to challenge awards. That said, it may be reasonably assumed that the vast majority (if not all) unreported cases involve unsuccessful challenges.

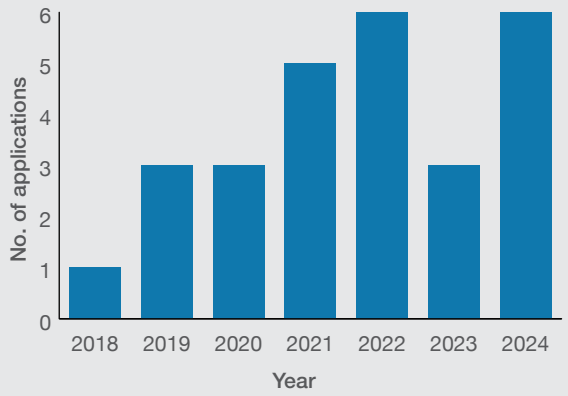
Consequently, the figures are likely to overstate the percentage of applications that result in successful challenges. For example, although we have identified that approximately 18.18% of all reported cases brought under Article 34(2)(a)(iii) of the Model Law were successful, the actual percentage is likely to be lower when unreported, unsuccessful applications are taken into account.

Second, the analysis excludes certain types of cases in order to allow for a meaningful comparison with other jurisdictions. For example, decisions on applications brought under Section 81(4) of the Ordinance for leave to appeal against an award are excluded because these applications are decided subject to a lower standard of proof, and thus the consideration given by the court to the set-aside grounds is different. Further, decisions made on applications brought under Part 10 of the Ordinance (to resist recognition and enforcement of awards) are excluded for reasons mentioned in Part II above.

Key observations

a. Number of reported cases at the CFI, CA and CFA on applications to set aside or remit arbitral awards under the grounds set out in Part II

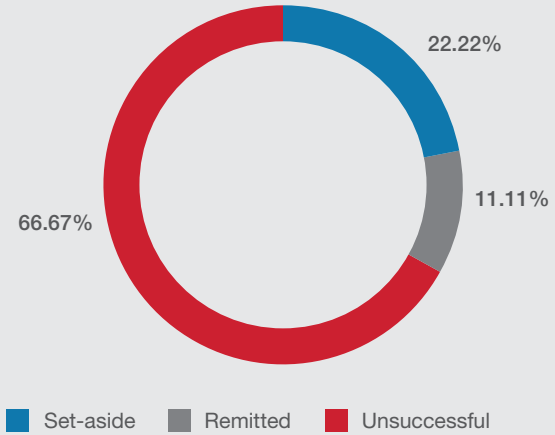
Graph 4: Total number of set-aside applications



Between January 1, 2018 and December 31, 2024, there were 27 reported cases at the CFI, CA and CFA levels dealing with applications to set aside an arbitral award. We have explained above the limitations to the scope of this study and thus the reasons for the fairly small number of reported decisions (particularly when compared to other seats, such as London and Singapore).

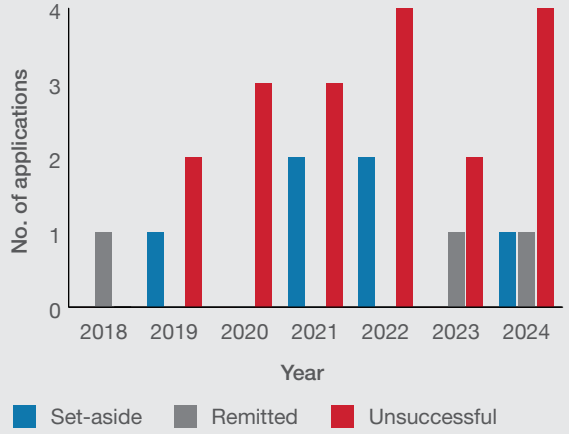
b. Number of successful applications

Graph 5: Overall outcome of applications



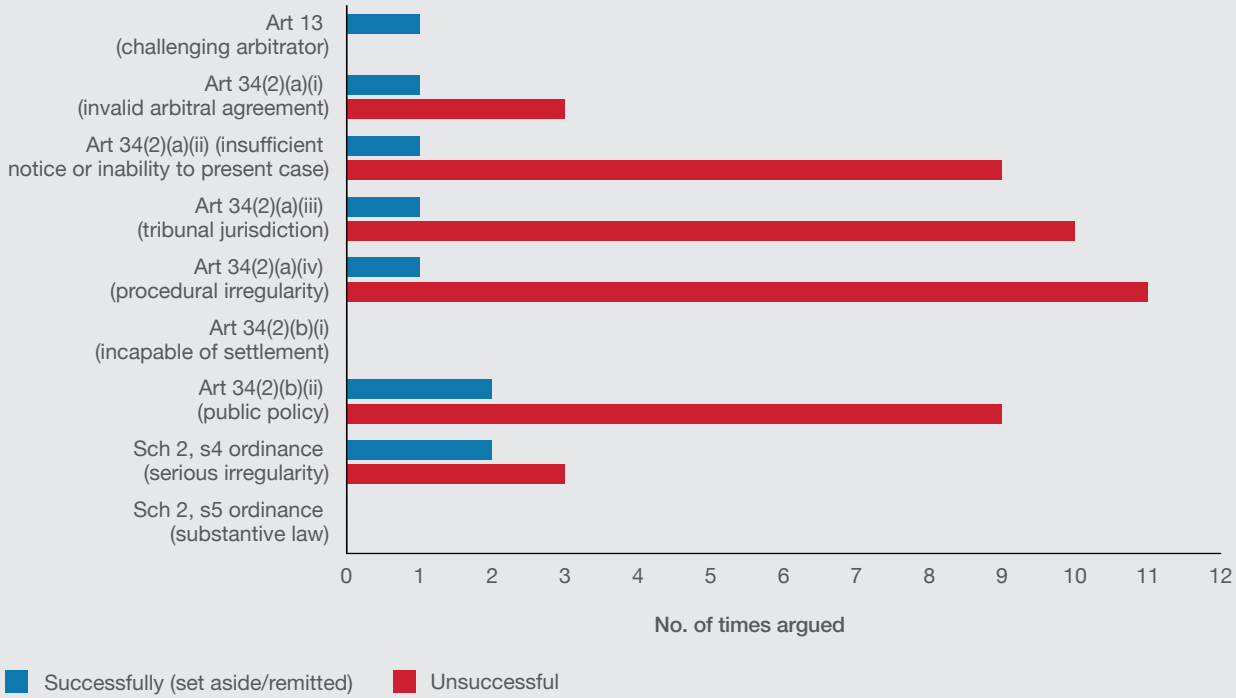
Of these reported cases, only 22.2% (six cases) led to a successful set-aside application, whereas another 11.1% (three cases) were remitted to the arbitral tribunal for reconsideration on certain issues. Most cases – 66.7% (18 cases) – were unsuccessful. Thus, in one-third of applications, the court found some merit in the claims brought.

Graph 6: Outcome of applications (year-on-year)



c. Breakdown of grounds argued

Graph 7: Distribution of grounds argued



1. In *AB v. CD* [2021] HKCFI 327, the Court found it unnecessary to deal with this ground but granted the set aside on other grounds.

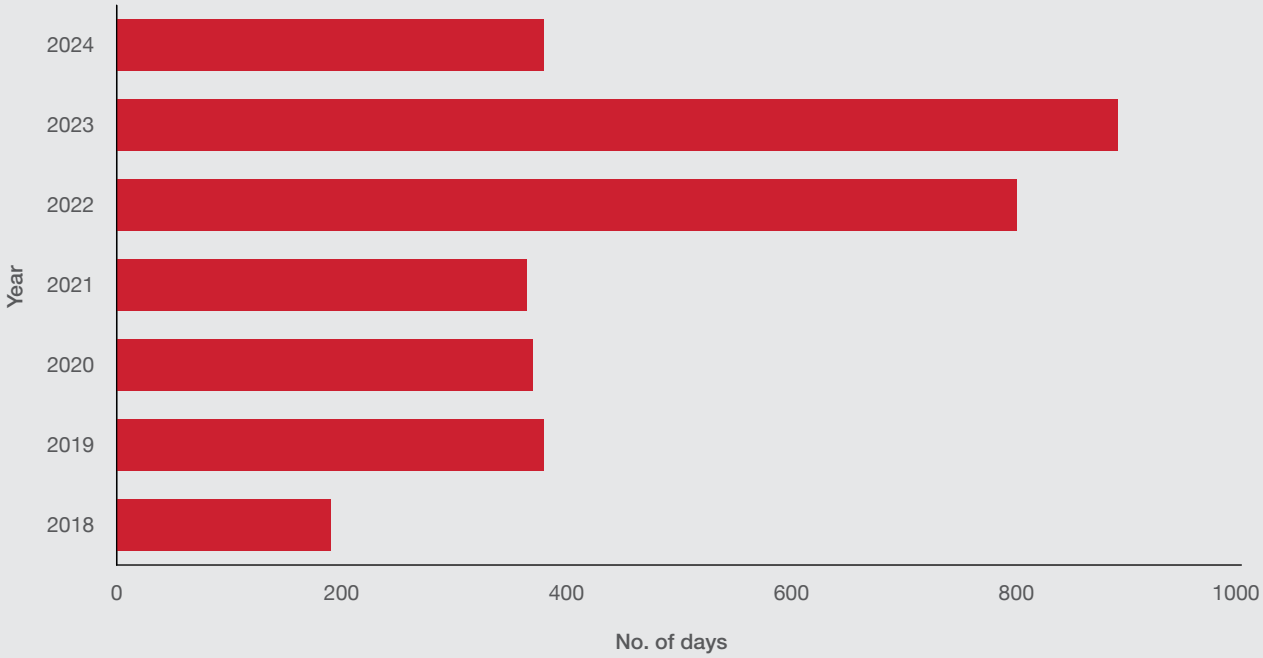
During the seven-year period between January 1, 2018 and December 31, 2024, applicants brought set-aside applications on the basis of seven out of the nine possible grounds under Articles 13 and 34, and Schedule 2 of the Ordinance (see Part II above).

The two grounds that have not been argued during the Review Period are under Article 34(2)(b)(i) of the Model Law (where the subject matter of the dispute was not capable of settlement by arbitration), and Schedule 2, Section 5 of the Ordinance (where there was an appeal on a question of law).

Given the uniqueness of each case and the limited number of reported cases, it is not possible to draw a generalized conclusion as to which ground is most likely to result in a successful outcome for an applicant.

d. Average time to determine a challenge from date of award to final decision

Graph 8: Average time to determine a challenge from date of award to final decision

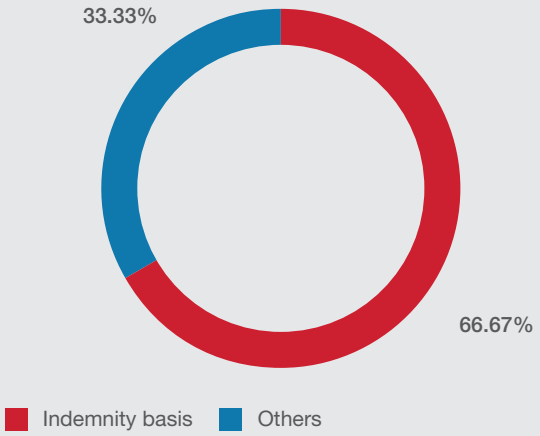


Some cases disclose the date of the arbitral award, making it possible to determine the length of time taken from the date of the award to the final disposal of a setting-aside application. However, the date of the award is not always apparent from the cases reviewed.

Subject to this caveat, the average time required to determine a challenge varies significantly, from 176 days (in a case that concerned an application for an extension of time to set aside an award, but which also examined the merits of the underlying setting-aside application) to 2,088 days. Most cases are disposed of within 500 days. The wide discrepancy is attributable to the various factors that will impact the progress of a case through the court process, such as the grounds relied upon, the complexity of the case and the court's availability and schedule. For example, *C v. D* [2023] CFA 16 was a case that took 2,088 days (nearly six years) and went through two appeals – from the CFI to the CA and finally to the CFA. The dispute concerned compliance with pre-arbitration requirements stipulated in the arbitration agreement. In a partial arbitral award, the arbitral tribunal found that D had duly complied with the procedures and ruled that C was in breach of the agreement. C applied to set aside the partial arbitral award under Section 81 of the Ordinance and Article 34(2)(a)(iii) of the Model Law, contending that the tribunal was wrong to decide that the pre-arbitration procedures had been complied with.

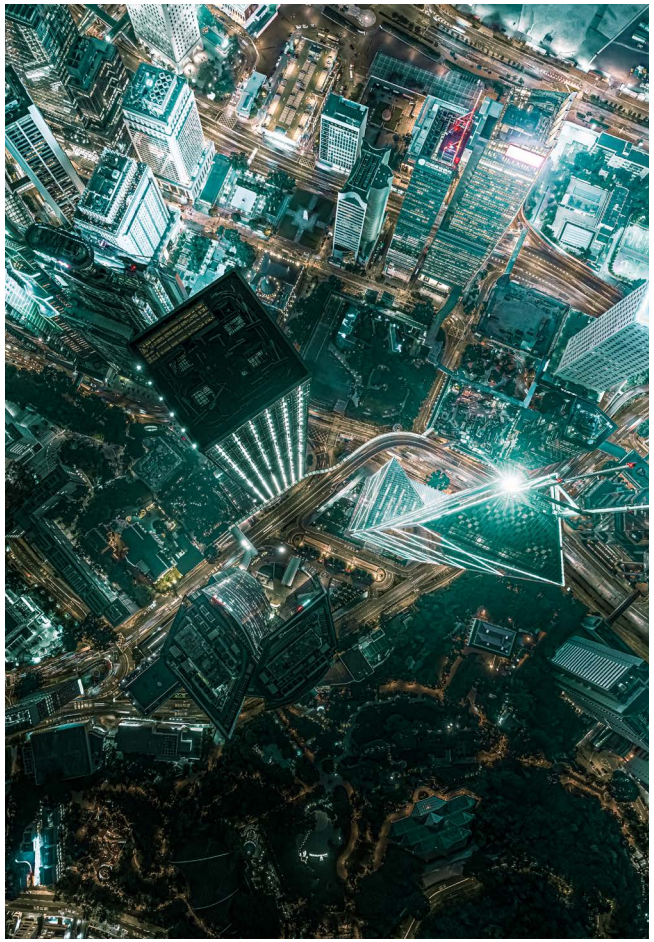
e. Costs

Graph 9: Costs awarded



In 2012, the Court of Appeal held that it should be a salutary practice for the courts, absent special circumstances, to award indemnity costs to the respondent where an applicant fails to set aside an arbitral award. Since then, indemnity costs have been ordered in all reported cases where setting-aside challenges have been unsuccessful, except for one case in which the court considered the facts to be unique and warranted a departure from the normal practice. In that case, the issue was the distinction between the admissibility of a claim versus the jurisdiction of the tribunal in the context of an application under Article 34(2)(a)(iii) of the Model Law. That distinction was clarified by a higher court only after the arbitral award was made. In those circumstances, the court considered it inappropriate to order indemnity costs against the application.

It is difficult to know whether the indemnity costs principle discussed above has led to a reduction in unmeritorious challenges. That principle was established in 2012, some years before the Review Period, and therefore no comparison can be made between the setting-aside applications made before and after its formation.



Hong Kong | **IV. Analysis**

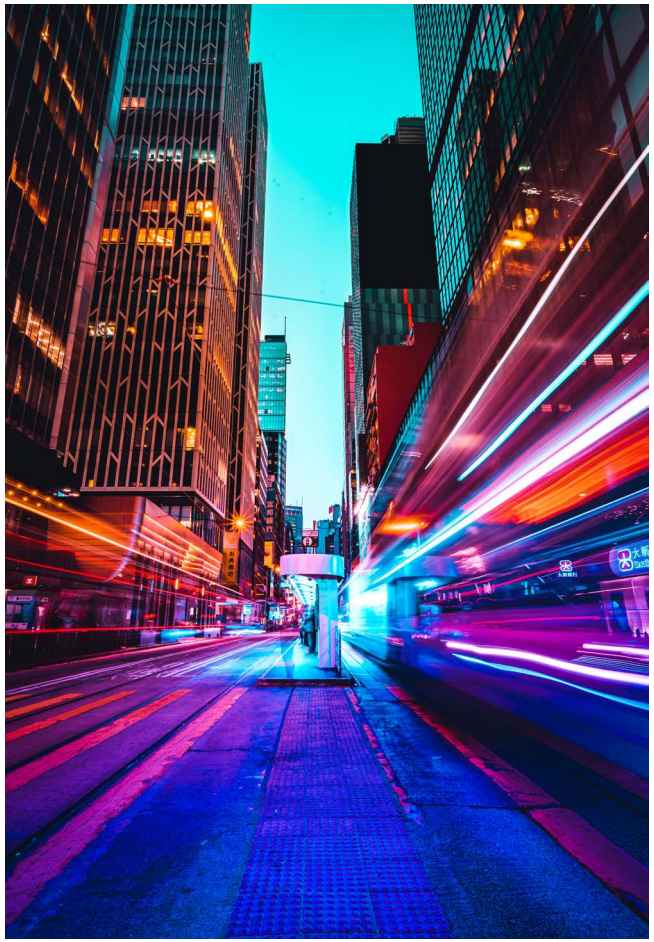
Successful challenges

We identified 27 challenges made to the Hong Kong courts on the grounds set out in Part II. Although there is insufficient data to identify a long-term trend, the data suggests a growing number of challenge applications in recent years (see Graph 4).

This is not the total number of challenges made to the Hong Kong courts: it is the number of cases after filtering through, based on the scope and limitations set out under Part III above.

> “Only 22.2% of the identified challenges were successful, with a further 11.1% remitted to the tribunal for reconsideration. This low success rate is consistent with the Hong Kong courts’ pro-arbitration stance and reluctance to set aside awards except on narrow grounds.”

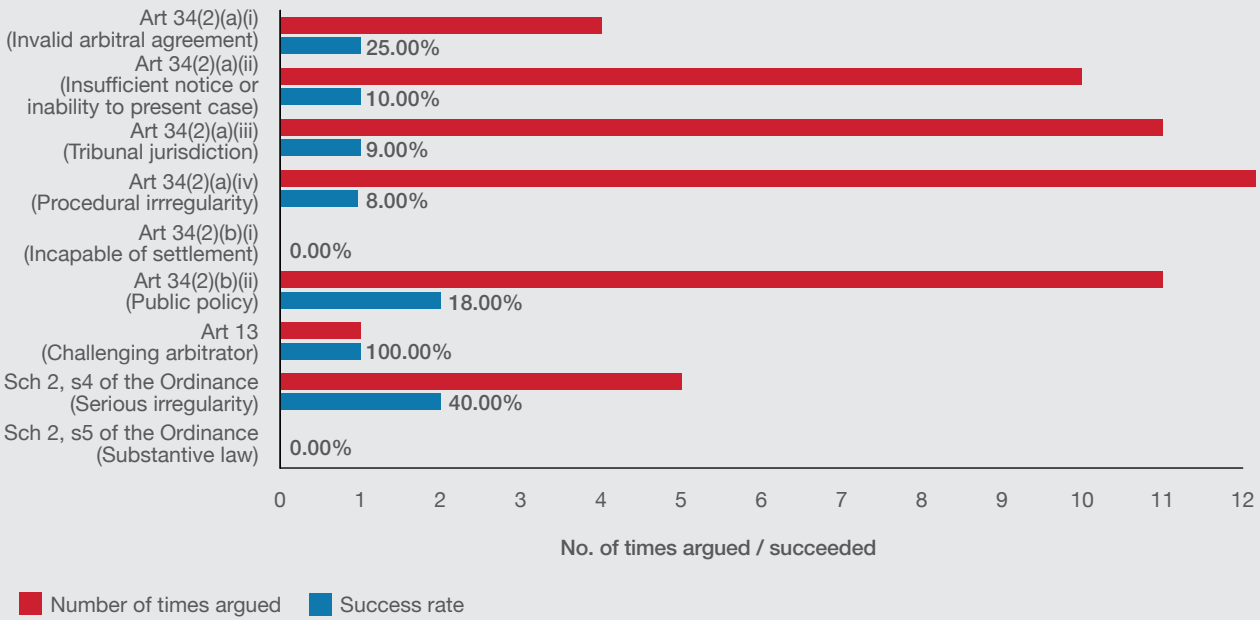
Only 22.2% of the identified challenges were successful, with a further 11.1% remitted to the tribunal for reconsideration. This low success rate is consistent with the Hong Kong courts’ pro-arbitration stance and reluctance to set aside awards except on narrow grounds. The combined success rate of 33.3% is, however, somewhat higher compared to other seats, such as England and Singapore. This may be a function of the small number of reported cases in Hong Kong, compared to a potentially large number of unreported, unsuccessful decisions. As mentioned above, it is also difficult to assess whether Hong Kong’s indemnity costs principle acts as a deterrent against unmeritorious challenges, thereby leading to a higher percentage of successful applications.



Grounds for setting aside/remitting to tribunal

The grounds most commonly invoked by applications are the procedural irregularity grounds found in Articles 34(2)(a)(ii), (iii), (iv) and 34(2)(b)(ii), each ground being relied upon 10 to 12 times. Despite this, the success rates for all of those grounds are low.

Graph 10: Grounds for setting aside/remitting to tribunal



There are no reported decisions involving Articles 34(2)(b)(i) or Schedule 2, Section 5.

The ground most successfully invoked (other than under Article 13 where there was only 1 case) is under Schedule 2, Section 4 (procedural irregularity in a domestic arbitration), with two successful cases out of five applications (40%). This ground is equivalent to that found in Section 68 of the English Arbitration Act. It can only be invoked where parties have expressly opted into the provision or in respect of arbitration agreements to which it is automatically applicable – namely, those agreements entered into between 2011 and 2017 that give rise to domestic arbitration.

Article 34(2)(a)(i) (invalid arbitral agreement) was cited as a ground for setting aside four times and was successful once, amounting to a success rate of 25%. The public policy ground in Article 34(2)(b)(ii) was successful in two out of eleven cases (18%). However, given the limited number of cases in the study, it is difficult to draw any conclusions as to whether these percentages reflect the general prospects of success for these grounds.

D Middle East

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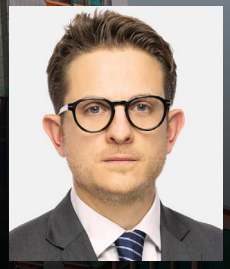

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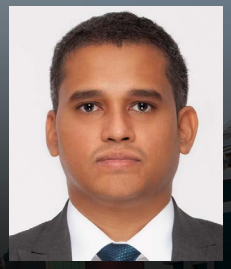

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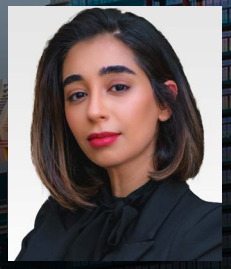

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Middle East | **United Arab Emirates**

Background

Multiple legal systems co-exist within the United Arab Emirates (UAE) legal framework. The Dubai and Abu Dhabi courts, along with the courts of other Emirates and federal courts, are part of the so-called "onshore" UAE legal system, which is based on French and Egyptian civil law, as well as Islamic jurisprudence, with court proceedings conducted primarily in Arabic. The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) courts are referred to as "offshore" UAE: the two free zones that are legal jurisdictions in their own right. The DIFC and ADGM are common law jurisdictions, with court proceedings conducted in English. Arbitrations may therefore be seated in several different jurisdictions in the UAE.

In this report, we analyze challenges to arbitral awards of the onshore courts of Dubai and Abu Dhabi, and the offshore DIFC courts. Due to the nascency of the jurisdiction and limited number of relevant court decisions, we have not analyzed the position in the ADGM courts.

In addition to our analysis of the UAE, and in collaboration with the Bahrain Ministry of Justice, we have examined challenges to arbitral awards before the courts of Bahrain.

> "The UAE has established itself as a regional leader in doing business, as the country continues to modernize and diversify its economy, with the legal landscape evolving in parallel. The UAE is poised to remain a competitive and reliable hub for regional and global business activity for the foreseeable future."

Middle East | **I. "Onshore" UAE**

Background

The introduction of the Federal Civil Procedure Code No. 11 of 1992 (CPC) led to a significant increase in the use of arbitration in the UAE. The UAE's transformation into a commercial hub in the Middle East and North Africa (MENA) region, alongside the liberalization of its economy, propelled arbitration as one of the preferred fora of commercial dispute resolution.

The UAE has steadily positioned itself as a prominent arbitration hub, especially since its accession to the New York Convention (the NY Convention) in late 2006. This move has streamlined the enforceability of arbitration awards within the UAE, providing stakeholders with greater assurance. The region then saw a further uptick in the number of arbitrations following the 2008 global financial crisis.

In 2018, in a bid to modernize its domestic arbitration laws, the UAE repealed the arbitration section of the CPC and enacted Federal Law No. 6 of 2018 on Arbitration[1] (the Federal Arbitration Law or FAL), further cementing the UAE's reputation as an arbitration venue. The Federal Arbitration Law is based on the 1985 UNCITRAL Model Law on International Commercial Arbitration (the Model Law), incorporating amendments adopted in 2006, with some region-specific differences.

The UAE simplified the process for ratification and enforcement of UAE-seated arbitration awards via the amendments introduced in the FAL.

Regional arbitral rules

The economic drive of the UAE, coupled with the continued development of its legal system, further solidified the UAE's position as one of the most rapidly growing arbitration venues. Recently, Dubai stood out as one of the most popular seats in the Middle East, ranked among the top seven seats in the world.[2]

The most prominent local arbitral institution in the region remains the Dubai International Arbitration Centre (DIAC), established in 1994. On March 21, 2022, DIAC introduced wide-reaching updates to its arbitration rules (the New Rules). The New Rules followed the abolition of the DIFC-LCIA Arbitration Centre and the Emirates Maritime Arbitration Centre and the consolidation of their operations and assets into DIAC in 2021, as well as wide-ranging changes to the DIAC Secretariat and case management team. The New Rules provide that the DIFC shall be the "initial" seat.

Most recently, Abu Dhabi International Arbitration Centre, known as arbitrateAD, was launched in Abu Dhabi, replacing the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC). The new arbitrateAD Rules took effect on February 1, 2024, and provide that the ADGM shall be the seat if the parties have not agreed a seat or place of arbitration, unless the arbitrateAD Court decides otherwise.

In addition to local arbitral centers, the rules of the International Chamber of Commerce International Court of Arbitration (ICC) and the London Court of International Arbitration (LCIA) are also regularly used by parties in the region. In December 2020, the ICC announced the opening of an office in Abu Dhabi from which it administers cases. ICC's 2024 statistics report that UAE parties represent the most frequent users of ICC arbitration in the Middle East, and the UAE is the fifth most frequent place of arbitration (seat) worldwide.

1. As amended by Federal Decree-Law no. 15 of 2023.
2. Queen Mary University of London thirteenth energy arbitration survey.

Setting-aside regime

UAE onshore courts apply the Federal Arbitration Law when recognizing or setting aside onshore seated arbitral awards. The Federal Arbitration Law includes the following grounds on which applicants may apply to set aside arbitral awards.

Article of FAL	Provision	Commentary
Grounds that largely align with the UNCITRAL Model Law		
Article 53(1)(a)	That no Arbitration Agreement exists or such agreement is void or has lapsed under the law to which the Parties have subjected it or, failing any indication thereon, under this Law.	This ground aligns with the second part of Article 34(2)(a)(i) of the Model Law.
Article 53(1)(b) and Article 53(1)(c)	That a party, at the time of conclusion of the Arbitration Agreement, was incompetent or lacking capacity according to the Law governing their legal capacity. That a person has no legal capacity to dispose of the disputed right, according to the law governing their legal capacity, as set out in Article 4 of this Law. Article 4(1) states as follows regarding adequate legal capacity: An Arbitration Agreement may only be concluded by a natural person who has the legal capacity to dispose of rights or by the representative authorized to agree on arbitration on behalf of a juristic person, otherwise the Agreement shall be null and void.	These grounds align with the first part of Article 34(2)(a)(i) of the Model Law. Unlike the Model Law, the FAL provides that the authority of the signatory is subject to the law to which that party is subjected (e.g., the law of the jurisdiction where a company is established). Article 61(2) of the CPC states as follows in relation to the special authority required to agree on arbitration in the UAE: Without a special authorisation, it is not permissible to acknowledge or waive the claimed right, make conciliation or **arbitration** therein […], (emphasis added). The threshold for an individual's authority to conclude an arbitration agreement is therefore higher than that required for entering into the remaining terms of the agreement. The UAE legal system typically requires individuals entering into arbitration agreements to have special authority to dispose of rights as opposed to the general capacity to act on behalf of a company. Notwithstanding that, the UAE courts' approach to interpreting provisions relevant to the arbitration authority has shifted throughout the years. Recent judgments have held that general managers are presumed to have the special authority to arbitrate unless they are explicitly deprived of such authority by the shareholders and/or board. Other recent judgments have held that where a company's name and stamp are set out in the agreement without the name or title of the signatory, it may be presumed that the signatory had sufficient authority to agree on arbitration. Caution is nonetheless advisable.
Article 53(1)(d)	That a party to the arbitration was unable to present their case because they were not duly notified of the appointment of an arbitrator or of the arbitration proceedings, or because the Arbitral Tribunal breached due process or for any other reason beyond the party's control.	This aligns with Article 34(2)(a)(ii) of the Model Law. Parties who fail to appear before a tribunal despite having been duly notified of the arbitral proceedings are unlikely to succeed in attempting to set aside any award based on this ground.
Article 53(1)(f)	That the composition of the Arbitral Tribunal or appointment of any of the arbitrators has been made contrary to the provisions of the present Law or the agreement of the Parties.	This is in line with Article 34(2)(a)(iv) of the Model Law, which relates to the constitution of the arbitral tribunal. Article 10 of the FAL sets out the requirements that must be met by arbitrators. Those requirements include, but are not limited to, the fact that each arbitrator must be a natural person, not declared bankrupt and does not have a direct relationship with any of the parties that would prejudice their independence, impartiality or integrity. Failing to meet any of these preconditions would threaten the validity of the arbitral award.

Article of FAL	Provision	Commentary
Article 53(1)(g)	[…] if the arbitral award was issued after the specified timeframe.	This ground allows the challenge of an award if it was issued late in accordance with the applicable arbitration agreement and arbitral rules. This could also be a ground to set aside an arbitral award under Article 34(2)(a)(iv) of the Model Law.
Article 53(1)(h)	That the arbitral award contains decisions on matters not covered by the Arbitration Agreement or falling beyond the scope thereof. Nevertheless, if the decision on matters submitted to arbitration can be separated from those falling beyond the scope, then only the latter parts of the award may be nullified.	This aligns with Article 34(2)(a)(iii) of the Model Law and reflects the importance of having a well-drafted dispute resolution clause, whether entered before or after the dispute has arisen.
Article 53(2)(a)	That the subject matter of the dispute is not capable of settlement by arbitration.	This condition mirrors Article 34(2)(b)(i) of the Model Law. Disputes that cannot be resolved via arbitration include, but are not limited to, criminal and family law cases. National courts have exclusive jurisdiction over such disputes.
Article 53(2)(b)	That the arbitral award is in conflict with the public order and the public morality of the State.	This condition is in line with Article 34(2)(b)(ii) of the Model Law. In the UAE, courts have considered various region-specific issues that may fall foul of this provision, such as real estate registrations, for example.
Grounds that are different to the Model Law		
Article 53(1)(e)	That the arbitral award has not applied the law agreed by the Parties to govern the subject-matter of the dispute.	This additional ground allows the challenge of awards on the basis that the tribunal failed to adhere to the parties' agreement with respect to the governing law.
Article 53(1)(g)	That the arbitration proceedings were void in a way that influenced the award, or if the arbitral award was issued after the specified timeframe.	The first part of this ground allows the challenge of an award that was marred by irregularities, which previously included failure to sign each page of the award. On August 4, 2025, the UAE Federal and Local Judicial Principles Unification Authority ruled that an arbitral tribunal is not required to sign each page of an arbitral award. The authority clarified that the tribunal's signature on the final page of the award alone is sufficient to validate it.

The FAL confirms that there is no right of appeal on the merits of an award. Article 52 of the FAL addresses the finality of arbitral awards. This is one of the main pillars of arbitration, given that swiftness and efficiency are key factors distinguishing it from other means of dispute resolution.

Court structure

Onshore UAE operates both federal and local court systems. Abu Dhabi, Dubai and two other emirates have their own local court systems, while the remaining three emirates operate based on the federal court system.

The judicial system of both the federal and local court systems comprises three separate stages: the Court of First Instance (federal and local), the Court of Appeal (federal and local), the Court of Cassation (at the local level) and the Federal Supreme Court (at the federal level). Disputes are generally adjudicated in Arabic, with interpretation and translation services being available for non-Arabic speakers. However, recent changes provide for English-language proceedings in limited circumstances. The jurisdiction of onshore courts extends to matters concerning individuals and businesses operating within the respective emirates. The absence of cost reallocation and the near-automatic right of appeal provided to the parties result in many cases reaching the highest stage (the Federal Supreme Court or the Court of Cassation).

Costs

In addressing the financial implications of set-aside applications, a notable divergence emerges between the onshore UAE courts, such as Dubai and Abu Dhabi, and other jurisdictions, including the offshore DIFC courts (addressed below).

Within the onshore UAE jurisdictions, the onshore courts do not award appropriate legal costs to the prevailing party, limiting recoveries to modest court costs and related expenses. This practice effectively means that the majority, if not all, of the counsel fees incurred during such proceedings are unlikely to be recuperated by the parties involved. This financial dynamic can inadvertently incentivize the filing of set-aside applications, including those with marginal chances of success, as the financial risk associated with pursuing such challenges is somewhat mitigated by the absence of substantial cost liabilities.

Overview of the data

Data collected

We reviewed cases from Dubai and Abu Dhabi courts, focusing on the period following the enactment of the Federal Arbitration Law, which came into force on June 16, 2018, through to December 31, 2024 inclusive (Review Period).

Limitations

The data presented in this analysis considers the decisions of cases that have been reported and published in legal research tools or otherwise made available to the public. However, this approach faces significant limitations due to the large number of cases that are either unreported or unpublished. This is particularly pertinent in the field of arbitration, where the confidentiality of proceedings inherently limits the availability of information.

It is presumed that a significant portion of unreported or unpublished cases involves unsuccessful challenges against arbitration awards, suggesting that the percentage of successful set-aside applications noted in this analysis is likely overstated. There is no public data on the total number of applications to challenge awards. Comparative analyses have shown that practitioner-led studies often report a higher rate of unsuccessful challenges compared to those conducted by judges, mainly due to cases being dismissed at the preliminary stage without being reported.

Our examination of UAE onshore data was confined to decisions made by the Dubai and Abu Dhabi Courts of Cassation. Given that most cases in the UAE onshore courts are appealed to the final court, consideration of the final decision is appropriate. Decisions of the final courts are also more widely reported. However, a minority of cases would not have been appealed to the final courts. Such cases would likely involve unsuccessful challenges.

Our analysis also does not take into account voluntary compliance with awards.

Another noted limitation concerns the brevity and lack of detailed reasoning in UAE judgments, which often leaves the basis of grounds alleged and the court's decision-making process open to interpretation.

In conclusion, while our analysis has identified a specific success rate (e.g., 10.87%) for set-aside challenges, the actual success rate is likely lower when considering the limitations set out above. Our analysis also remains subject to change should additional judgments become available.

Challenges versus awards made

In the landscape of Middle Eastern arbitration, providing a precise statistic that juxtaposes the number of challenges against the total number of awards made presents obstacles.

First, determining the absolute number of arbitration awards issued is not possible with any certainty. Numerous institutions operate in the jurisdictions with different approaches to the disclosure of case statistics. This variability extends to how and whether these institutions publish data on the awards they administer, leading to a fragmented and incomplete picture of arbitration activity.

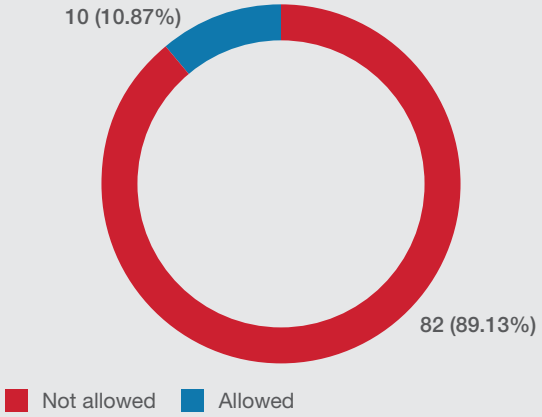
Second, as already addressed above, ensuring that our analysis encompasses at least a substantial majority of set-aside applications adds another layer of difficulty. The relevant court publication processes, coupled with the confidentiality that governs arbitration proceedings, mean that not all challenges to arbitration awards are publicly known or easily accessible for scholarly review.

Despite these challenges, an examination of specific datasets can shed some light on the dynamics between arbitration cases registered and the subsequent challenges lodged. Taking DIAC as a case study provides a glimpse into this relationship. In 2023, DIAC reported 355 arbitrations registered that year (DIAC did not publish awards rendered during this year; hence, the numbers cannot be compared without further analysis).
Our analysis identified 12 challenges from that year, which include challenges that do not relate to DIAC arbitrations. Not all judgments clearly indicate the institutional affiliation of the underlying award, further complicating the task of accurately mapping the arbitration landscape. Similarly, in 2022, DIAC registered 340 cases. Our analysis for the same period uncovered 19 challenges.

Key observations

In our analysis of set-aside decisions under Article 53 of the Federal Arbitration Law, several key observations have emerged. Through the examination of data collected over the Review Period, we have distilled our findings into a series of graphs that encapsulate the trends and outcomes of these legal proceedings.

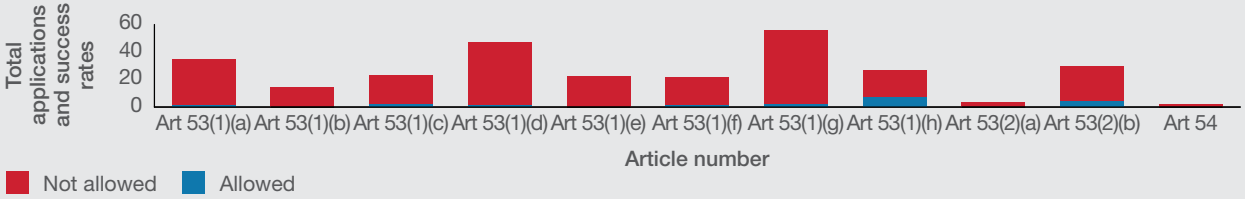
Graph 1: Total applications and success rates



This initial chart presents an overview of the set-aside application landscape, highlighting both the total number of applications filed and the proportion that resulted in the setting aside of the arbitration award. The low success rate of 10.87% underscores the challenges parties face in meeting the stringent criteria for overturning arbitration awards. As addressed under limitations, this figure is likely overstated.

The second graph delves deeper into the specifics of the grounds cited in set-aside applications, contrasting the frequency of arguments made against their success rate. Notably, although Article 53(1)(g) was the most argued ground, it resulted in only two successful applications, suggesting it represents a significant challenge for parties invoking this particular provision.

Graph 2: UAE grounds argued vs. grounds allowed per section



Graph 3: Average days from award to final determination
UAE average days from award to final determination

In contrast, applications based on Article 53(1)(h) and Article 53(2)(b), concerning due process and public order/ morality, respectively, have been relatively more successful, with seven and four successful outcomes, respectively.

The third graph considers the duration of the set-aside process, from the issuance of the arbitration award to the final court determination. The average duration of approximately one year signifies a substantial time investment for parties engaged in these proceedings. This duration exceeds the expectations set by the straightforward process outlined in the FAL, pointing to potential areas for procedural refinement or efficiency improvements. While the time has decreased somewhat in recent years, further improvements are necessary.

> "Overall, the low success rate demonstrates that onshore UAE is an arbitration-friendly jurisdiction."

Concluding remarks

Overall, the low success rate demonstrates that onshore UAE is an arbitration-friendly jurisdiction. The analysis underscores the importance of understanding both the legal grounds that are frequently invoked and those that have historically proven successful in challenging arbitration awards. However, the duration of the set-aside process highlights the need for parties to prepare for a potentially lengthy legal journey when contesting arbitration outcomes.

Analysis

General comments

The onshore courts of Dubai and Abu Dhabi have adjudicated a significant number of set-aside applications under Article 53 of the UAE Federal Arbitration Law.

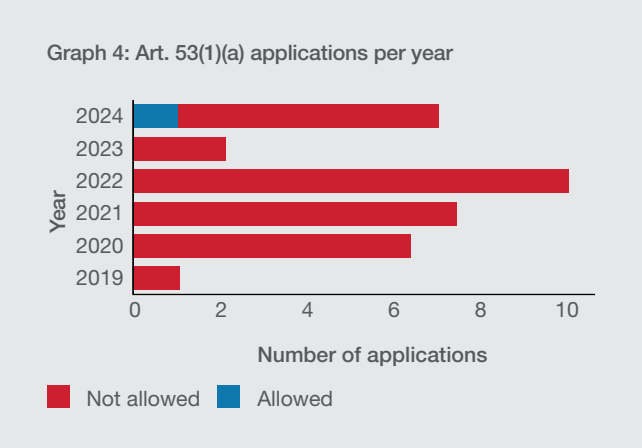
A recurring theme in these judgments is the unsuccessful attempt by parties to challenge arbitration awards on various grounds provided under Article 53, or indeed grounds that are not provided in the Federal Arbitration Law.

Allegations concerning merits

A notable aspect of these challenges is the frequent recourse to arguments that pertain to the merits of the arbitration decision. Such arguments have been consistently and roundly rejected by both Dubai and Abu Dhabi courts. Time and again, the judiciary in both emirates has emphasized that challenges based on the merits of the award do not align with the grounds for setting aside an award as outlined in Article 53. This legal stance firmly establishes that the assessment of the merits of an arbitration award is beyond the scope of set-aside proceedings under the UAE Federal Arbitration Law.

The following grounds fall within the ambit of Article 53 but have nonetheless been largely rejected by the courts.

Graph Article 53(1)(a)



Failure to adhere to pre-arbitration steps

Parties repeatedly rely on an alleged failure to adhere to pre-arbitration steps mandated by arbitration agreements. Typically, these arguments are advanced under Article 53(1)(a). They have been comprehensively rejected.

For instance, in Case No 1514/2022, the Dubai Court of Cassation held that an arbitration clause requiring the submission of a dispute to a consulting engineer prior to arbitration did not implicate jurisdictional issues and, as such, could not serve as a basis for annulment under Article 53(1). The court reasoned that at most, such requirements could delay arbitration proceedings but would not invalidate an ensuing award.

Similarly, in Case No 492/2022, the Abu Dhabi Court of Cassation dismissed challenges based on the failure to complete pre-arbitration steps, ruling that such arguments, if not raised within seven days of receiving the arbitration request, were forfeited pursuant to Article 25 of the Federal Arbitration Law. This judgment demonstrates that pre-arbitration steps concern admissibility rather than jurisdiction – a distinction further reinforced in the Dubai Court of Cassation (DCC) Case No 601/2022.

Non-payment of institutional fees by the respondent

Another commonly encountered ground in set-aside applications pertains to the non-payment of institutional fees by the respondent, an argument typically made under Article 53(1)(a) of the UAE Federal Arbitration Law. Historically, this argument has seen some success. However, this trend did not continue within the timeframe of our analysis.

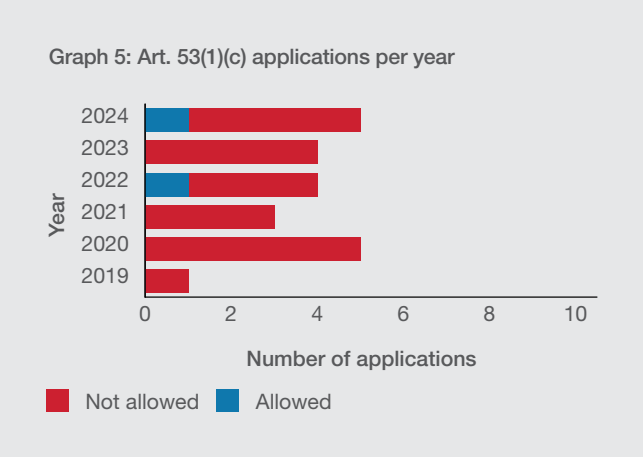
Throughout the period under analysis, attempts to set aside arbitration awards based on the argument of unpaid institutional fees were consistently rejected. This shift in judicial attitude is shown by the judgment in Case No 1514/2022. The Dubai Court of Cassation ruled unequivocally that the failure to pay arbitration fees does not invalidate an arbitration award. Furthermore, it clarified that such a failure bears no relevance to the validity of the arbitration agreement itself. In its binding General Assembly decision in Case No 10/2023 (24 October 2023), the DCC confirmed that the non-payment of institutional arbitration fees does not invalidate the arbitration agreement, which remains fully enforceable.

Failure to incorporate arbitration agreement by reference

A further ground frequently encountered in set-aside applications concerns the incorporation by reference of arbitration agreements, brought under Article 53(1)(a) of the UAE Federal Arbitration Law. This issue is often raised in the context of FIDIC (International Federation of Consulting Engineers) construction contracts, where the arbitration clause, found within the standard terms, is intended to be incorporated by reference into the specific terms between the parties. The ground has previously seen some success.

A recent illustrative example of this type of challenge is Case No 601/2022. The Dubai Court of Cassation reviewed and ultimately dismissed the argument that the arbitration agreement was not validly incorporated by reference. This judgment aligns with a broader judicial trend that recognizes the validity of arbitration clauses incorporated by reference, especially in standardized contracts, including those produced by FIDIC. Such contracts are prevalent in the construction industry.

Graph Article 53(1)(c)



Signatory to the arbitration agreement without proper authority

A further recurrent argument involves disputes over the signing authority under the arbitration agreement, typically invoked under Article 53(1)(c) of the UAE Federal Arbitration Law. This contention often centers on whether the individual who signed the arbitration agreement was duly authorized to bind the party to the arbitration process.

The argument was often successful under the old law, and also led to annulment in Abu Dhabi Court of Cassation Case No 688/2022 under the FAL, where the court found that the project manager did not have authority to sign the arbitration agreement; the general manager of a limited liability company would have had the relevant authority.

The DCC in case 1751/2022 rejected an argument that a sales manager had improperly signed the arbitration agreement. This decision aligns with the court's reasoning in case 1128/2021, where it dismissed a challenge regarding an unauthorized signatory on the grounds that the respondent had waived the right to object by failing to raise any jurisdictional objections during the arbitration proceedings.

These judgments underscore a pragmatic approach by the UAE courts, recognizing the realities of commercial operations where agents or representatives often act on behalf of a company or entity in entering into contracts, including arbitration agreements. The decisions also reflect a judicial emphasis on the parties' conduct during the arbitration process, particularly the importance of timely jurisdictional objections.

Multi-party and multi-contract matters

In the context of complex arbitration involving multiple parties and/or contracts, the UAE courts have previously shown a conservative stance. However, several encouraging decisions have emerged from the UAE judiciary, demonstrating a more sophisticated understanding and application of arbitration principles in multi-party and multi-contract disputes.

In Abu Dhabi Court of Cassation Case No 552/2022, the Abu Dhabi Court of Concession refused to annul an award that had considered issues arising from a related agreement that did not itself contain an arbitration clause. The court found that the related pledge agreement was intrinsically linked to the investment contract, which did contain an arbitration clause. The court held that these agreements could not be separated for the purposes of arbitration, thereby upholding the arbitrator's decision to include matters from the related agreement in the arbitration proceedings.

Abu Dhabi Court of Cassation Case No 1449/2020 involved an annulment application where one of the respondents was not originally a party to the arbitration agreement. The second respondent, acting as a guarantor for the first respondent, was included in the arbitration. The court dismissed the annulment application, supporting the tribunal's discretion to extend its jurisdiction to encompass the guarantor, given the interconnected nature of the obligations under the primary contract.

In Abu Dhabi Court of Cassation Case No 955/2022, the court dismissed a challenge which was based on the claim that only one of the three respondents had signed the arbitration agreement. The court accepted that the respondent who had signed was acting on behalf of all respondents as an agent. Thus, the signature was deemed sufficient to bind all parties to the arbitration agreement.

These decisions reflect a maturing approach by the UAE courts toward complex arbitration scenarios involving multiple parties and contracts. By acknowledging the interconnectedness of agreements and the roles of various parties within commercial operations, the courts have demonstrated a commitment to uphold the principles of arbitration.

Award delivered late

A frequently argued ground is that the award was delivered outside the permissible timeframe, often referencing the DIAC rules, which typically require an award to be issued within six months following the tribunal's constitution, subject to extension. This argument, however, has been dismissed by the courts. For instance, in Case No 465/2022, the Dubai Court of Cassation affirmed the award's timing as consistent with DIAC rules. However, in a surprising decision in Case No 28/2024, the Dubai Court of Cassation set aside an arbitration award on the ground that it exceeded the prescribed timeframe for the issuance of the award.

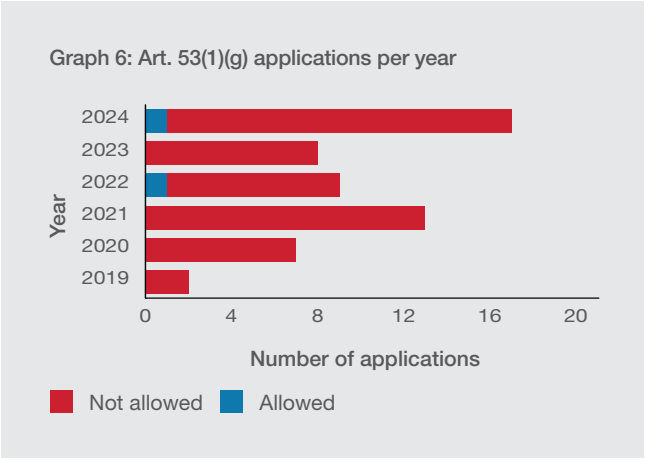
Award not signed on every page

Another ground that arose regularly involves the award not being signed on every page. Courts have taken diverging views in their response to this argument – sometimes dismissing it outright, while at other times exercising their authority under the Federal Arbitration Law to request a re-signature by the tribunal. Abu Dhabi Court of Cassation Case No 984/2022 is an example where the court dismissed the application after being satisfied that the award had previously been sent back to the tribunal and subsequently re-signed on all pages. In Dubai Court of Cassation Case No 1108/2022, the court also opted to send the award back for signature, illustrating the judicial discretion under the FAL in handling such procedural discrepancies.

On August 4, 2025, the UAE Authority for the Unification of Federal and Local Judicial Principles confirmed that it is sufficient for arbitrators' signatures to appear only on the final page of an arbitral award, and this principle is now binding on all UAE courts.

By acknowledging the interconnectedness of agreements and the roles of various parties within commercial operations, the courts have demonstrated a commitment to uphold the principles of arbitration.

Graph Article 53(1)(g)



No oath taken from witnesses

The requirement for witnesses to take an oath is another ground for set-aside applications, which has seen mixed outcomes. In Abu Dhabi Court of Cassation Case No 643/2023, the application was dismissed under Article 53(1)(g). However, there have been cases where awards were successfully annulled on this ground. It is therefore important to continue to take the oath of any witness, even if that is done virtually.

Tribunal ordered legal fees

While the argument that the tribunal improperly ordered legal fees has evolved over time, it continues to lead to inconsistent judgments.

In Abu Dhabi Court of Cassation Case No 244/2022, the court rejected the argument, finding that a general power of attorney was sufficient for lawyers to consent to the tribunal's authority to grant legal costs. Similarly, in Dubai Court of Cassation Case No 1514/2022, the court dismissed concerns over legal fees when parties had agreed to this in a procedural order, highlighting the acceptance of agreements on legal fees made at various stages of arbitration. The court found that an agreement to award legal fees can be made by the parties in the arbitration agreement, in a subsequent agreement, through institutional rules, in correspondence with the arbitration body or recorded in a procedural order.

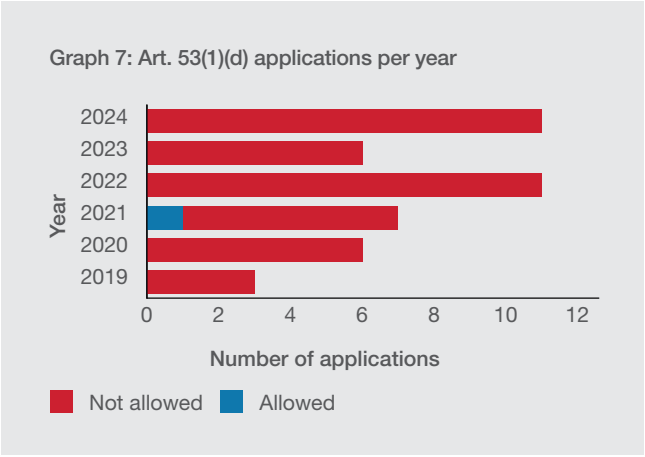
In Dubai Court of Cassation Case No 205/2019, the same argument was dismissed on the basis that under the applicable law, which was English law, attorney fees could be allocated by the tribunal.

However, in Dubai Court of Cassation Case No DCC 821/2023, the court partially annulled an award concerning legal costs in an arbitration governed by the ICC Rules. The ICC Rules are generally interpreted to grant tribunals discretion in awarding counsel costs. However, the ICC Rules do not explicitly refer to counsel costs. In contrast, in Dubai Court of Cassation Case No 33/2023, the court found that the DIAC Rules expressly allow the awarding of legal costs, upholding such an award. The DIAC Rules explicitly state that arbitration costs include "the fees of the legal representatives and any expenses incurred by those representatives." Most recently, it appears that the Court of Cassation has, in Case No 756/2024, determined that counsel costs can be ordered in ICC arbitrations.

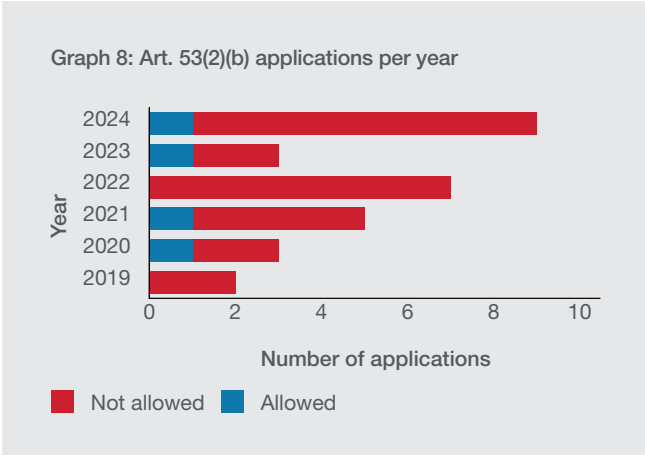
Notification of the respondent

Challenges based on the alleged improper notification of the respondent under Article 53(1)(g) are commonly dismissed. Dubai Court of Cassation Case No 1630/2022 exemplifies this, with the court validating electronic correspondence as adequate notice, thereby confirming the sufficiency of email communication in arbitration proceedings.

Graph Article 53(1)(d)



Graph Article 53(2)(b)



Conflicts of interest

The duty of disclosure of conflicts of interest by arbitrators is a crucial aspect of the arbitration process, ensuring fairness and impartiality. In Case No ADCC 1344/2021, the Abu Dhabi Court of Cassation annulled an award under Article 53(1)(d), due to the arbitrator's failure to disclose a conflict of interest concerning the legal representative of one of the parties, a critical oversight given their previous professional association in the same law office. The decision is an indicator of the UAE courts' commitment to upholding the integrity of the arbitration process.

Real estate registration and breach of public order

The issue of real estate registration frequently emerges as a ground for set-aside applications. Historically, under the old arbitration provisions, there were instances where arbitration awards were annulled on this basis. However, this position has evolved significantly over time, and under the Federal Arbitration Law, such arguments are now overwhelmingly dismissed by the courts.

For example, in Abu Dhabi Court of Cassation Case No 42/2022, the court rejected a set-aside application that invoked real estate registration as a breach of public order. The court reasoned that the arbitration award was intended to safeguard private rights and interests, and thus, invoking public order as a ground for annulment was unfounded.

On a separate but important issue, the court referenced Article 30 of the Federal Arbitration Law, noting that arbitrators are not bound by the procedural formalities applicable to court proceedings. Instead, arbitrators must adhere only to the procedures outlined within the Federal Arbitration Law itself. This distinction highlights the autonomy of arbitration processes and reinforces the principle that arbitration is a distinct mechanism for dispute resolution, governed by its own set of rules and procedures.

Other alleged breaches of public order as grounds for set-aside applications

Parties regularly make set-aside applications under Article 53(2)(b) of the Federal Arbitration Law, alleging breaches of public order, including matters such as the tribunal's consideration of forgery, perjury and issues relating to wealth or interest calculations. While certain applications under this article have been successful, as considered below, most arguments have been dismissed.

Courts have recently rejected arguments by parties that the arbitral tribunal overstepped its bounds by engaging with issues of a criminal nature, such as forgery or perjury. For instance, in Dubai Court of Cassation Case No 1161/2021, the court held that the discretion of an arbitrator in matters of evidence does not constitute grounds for challenging the validity of arbitration awards.

Similarly, Dubai Court of Cassation Case No 1162/2021 further solidified this stance by clarifying that, despite an allegation that the tribunal addressed a criminal issue, the court does not possess the authority to review the arbitration judgment on its merits.

Successful challenges under Article 53(2)(b) concerning public policy

Our analysis identified three cases where UAE onshore courts have applied Article 53(2)(b) to grant annulments on the basis of considered breaches of public policy.

In Abu Dhabi Court of Cassation Case No 817/2021, the court annulled an arbitration award on the ground that it contradicted earlier awards related to the same parties and subject matter. *Res judicata* matters are considered matters of public policy.

In Dubai Court of Cassation Case No 585/2023, an award was annulled because the underlying agreement was found to be void based on public policy considerations. Crucially, the court ruled that the entire agreement, including the arbitration clause, was null. This ruling has sparked considerable discussion, particularly regarding its potential conflict with the principle of separability – a fundamental doctrine in arbitration that treats the arbitration agreement as independent of the main contract.

Finally, in a somewhat exceptional interpretation, the Dubai Court of Cassation in Case No 1083/2019 annulled an award not signed on every page, considering this omission a matter of public policy. As addressed above, this issue will no longer serve as a ground for annulment.

While these latter two decisions are outliers, they may influence perceptions of the predictability and reliability of the arbitration process in the UAE. The nuanced interpretation and application of public policy in these cases underscore the dynamic nature of arbitration law in the UAE, highlighting its ongoing evolution and adaptation in response to complex legal and commercial realities.

> "Public policy in the UAE is a culturally rooted concept, shaped by a mix of civil law, Shariah principles, and local customs. It is not strictly defined, allowing courts broad discretion to assess what aligns with the country's moral, religious, and economic values."

Other notable issues

The Federal Arbitration Law has introduced several significant changes that have positively impacted the arbitration landscape.

(a) Partial annulment and remedial flexibility

One of the beneficial innovations under the new law is the ability to grant partial annulments of arbitration awards. This provision allows courts to annul only specific parts of an award that they find problematic, rather than nullifying the award in its entirety. An example of this can be seen where courts have opted to annul only the counsel costs granted within an award, preserving the rest of the decision.

Additionally, the law empowers courts to send an award back to the tribunal to address specific issues that need correction. This option has been effectively utilized in cases where awards were not signed on every page, allowing the tribunal to rectify these procedural deficiencies that previously may have led to an annulment. Such flexibility in dealing with procedural errors enhances the overall integrity and sustainability of arbitration proceedings by focusing on rectification rather than rejection.

(b) Misconceptions concerning jurisdiction

The many jurisdictions in the UAE have at times led to jurisdictional misconceptions. Notably, there has been strategic utilization of the DIFC court as a conduit jurisdiction, enabling parties to secure arbitration-friendly decisions that are enforceable in onshore UAE courts or indeed across the Gulf Cooperation Council (GCC). This tactic has been the subject of extensive legal debate.

A particular jurisdictional issue arose in two decisions from the Abu Dhabi courts concerning awards that were seated in Abu Dhabi but involved the ICC. The court refused jurisdiction in set-aside applications on the basis that the ICC awards, issued under the ICC's registered office in the ADGM, fell outside their jurisdictional purview. These decisions garnered considerable attention and were widely regarded as unfavorable. It is understood that subsequent discussions have taken place within the judiciary to address these concerns, ensuring that similar decisions do not set a precedent or reoccur, emphasizing the commitment to maintaining the UAE's reputation as an arbitration-friendly jurisdiction. While these judgments were unwelcome, they are not annulments of awards and therefore have not been counted as such in our analysis.

Middle East | **II. "Offshore" UAE: The DIFC**

Background

The UAE continues to stand out as a unique jurisdiction due to its synergy with its so-called offshore jurisdictions, the DIFC and the ADGM.[3] These offshore jurisdictions offer distinct regulatory frameworks and legal environments tailored to attract international businesses and investors. Onshore UAE adheres to federal and local laws and regulations, while the DIFC and ADGM operate as independent financial free zones with their own legal systems and courts.

The DIFC was established in 2004 and has an independent legal framework based on English common law principles. The DIFC operates under its own arbitration law – DIFC Arbitration Law No. 1 of 2008[4] (the DIFC Arbitration Law). The DIFC Arbitration Law is based on the Model Law.

Setting-aside regime

Similar to the Federal Arbitration Law, the DIFC Arbitration Law setting-aside regime is largely based on the Model Law. The grounds for setting aside awards are outlined in Article 41 of the DIFC Arbitration Law.

Article of the DIFC Arbitration Law	Provision	Commentary
Grounds that largely align with the UNCITRAL Model Law		
Article 41(2)(a)(i)	The party to the Arbitration Agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication thereon, under the law of the DIFC.	This aligns with Article 34(2)(a)(i) of the Model Law.
Article 41(2)(a)(ii)	The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.	This aligns with Article 34(2)(a)(ii) of the Model Law.

[3] We have not considered the ADGM in this report as it is still a nascent arbitration jurisdiction.

[4] As amended by DIFC Law no. 1 of 2013.

Article of the DIFC Arbitration Law	Provision	Commentary
Grounds that largely align with the UNCITRAL Model Law		
Article 41(2)(a)(iii)	The award deals with a dispute not contemplated by or not falling within the terms of the submission to Arbitration, or contains decisions on matters beyond the scope of the submission to Arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to Arbitration may be set aside.	This aligns with Article 34(2)(a)(iii) of the Model Law.
Article 41(2)(a)(iv)	The composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, in the absence of such agreement, was not in accordance with this Law.	This aligns with Article 34(2)(a)(iv) of the Model Law.
Article 41(2)(b)(i)	The subject-matter of the dispute is not capable of settlement by arbitration under DIFC Law.	This aligns with Article 34(2)(b)(i) of the Model Law.
Article 41(2)(b)(iii)	The award is in conflict with the public policy of the UAE.	This aligns with Article 34(2)(b)(ii) of the Model Law.
The following ground is not akin to the Model Law:		
Article 41(2)(b)(ii)	The dispute is expressly referred to a different body or tribunal for resolution under this Law or any mandatory provision of DIFC Law.	This additional ground allows parties to challenge an award on the basis that the DIFC Arbitration Law or another DIFC law expressly requires the dispute to be referred to another body or tribunal.

No right of appeal on the merits of the award

Similar to the onshore practice under the Federal Arbitration Law, the DIFC Arbitration Law provides for the finality of arbitral awards. Parties to arbitral proceedings cannot challenge awards on their merits.

Court structure

The DIFC courts have jurisdiction over certain civil and commercial matters. English is the primary language used in legal proceedings. The DIFC courts consist of a Court of First Instance, a Court of Appeal, a Small Claims Tribunal and certain specialized courts. Additionally, the DIFC has its own regulatory authority, the Dubai Financial Services Authority (DFSA), overseeing financial services and securities regulation within the DIFC.

> "The DIFC's legal infrastructure is expressly designed to attract international commerce, offering a common law-based dispute resolution mechanism that is distinct from the UAE's civil law system."

Overview of the data

Data collected

We considered DIFC court judgments concerning DIFC Arbitration Law Article 41 (recourse against award), covering the period from September 1, 2008 to December 31, 2024 inclusive. Our primary source is the DIFC court website, where cases have been systematically published.

The analysis presented is based on the data collected from arbitration cases publicly available on the DIFC court's website. Due to confidentiality constraints, not all arbitration cases are published on the website, and the DIFC courts sometimes use aliases to protect the identities of the parties involved.

The DIFC courts have confirmed that only cases published online are available for public analysis. As such, while every effort has been made to ensure the accuracy and reliability of the analysis presented, readers should exercise caution in drawing broad conclusions, as the dataset may not fully represent the entirety of arbitration cases decided by the DIFC courts.

Key observations

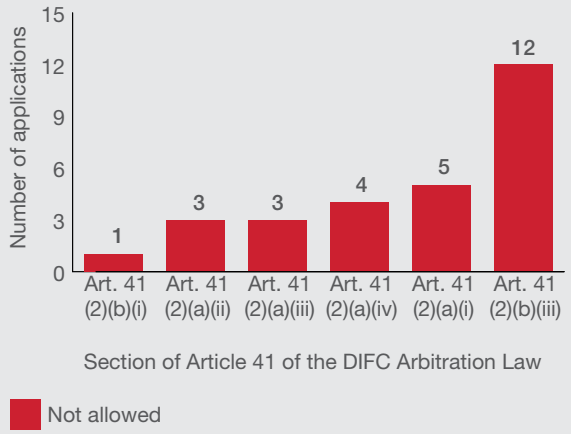
In our analysis of the DIFC courts' handling of set-aside applications, a total of 14 set-aside applications have been identified, all of which resulted in rejections. This translates to a 100% rate of rejection for set-aside applications, underscoring the DIFC's robust support for the finality of arbitration awards.

Graph 1: Total applications and success rates

The graph offers a snapshot of the set-aside application landscape, illustrating both the total volume of applications submitted and whether those applications led to the setting aside of the arbitral award. Of the 14 cases we reviewed, none resulted in a successful challenge, underscoring the consistently arbitration-friendly approach adopted by the DIFC courts. This reflects a firmly pro-arbitration judicial philosophy and a clear commitment by the DIFC courts to respecting the autonomy of the arbitral process and maintaining the finality of awards.

> "The DIFC Courts exemplify a pro-arbitration judicial framework, providing effective support for arbitration proceedings, including the enforcement of arbitral awards, and reinforcing Dubai's position as a premier international arbitration hub."

Graph 2: Grounds argued vs. grounds allowed
DIFC annual number of applications per section



The predominant ground relied upon before the DIFC courts, as revealed in our data, is Article 41(2)(b)(iii), which relates to an award being in conflict with the public policy of the UAE. However, given the limited number of cases available for review, it is challenging to extract comprehensive insights or identify definitive trends concerning the reliance on specific grounds.

Despite the small dataset, the absolute rate of rejections paints a positive picture of the DIFC as an arbitration-friendly jurisdiction. The positive outcome observed in the DIFC courts contributes to the DIFC's reputation as an arbitration-friendly seat, encouraging parties seeking arbitration to consider the DIFC as a seat with strong judicial support for the arbitration process and a clear commitment to the finality of arbitration awards.

Costs

Conversely to the onshore position, the DIFC courts adopt a markedly different approach to costs in arbitration-related litigation. The DIFC courts grant cost awards, often covering a significant portion of the legal expenses incurred by the successful party. The prospect of a substantial adverse costs order can serve as a potent deterrent against the initiation of frivolous or weak challenges. The potential financial consequences of engaging in litigation within the DIFC, particularly in the context of arbitration disputes, introduce a pragmatic consideration for parties contemplating the merits of pursuing a set-aside application. This cost dynamic within the DIFC courts thereby acts as a natural filter, discouraging the submission of challenges that are less likely to prevail and thereby streamlining the dispute resolution process.

Analysis

General comments

In our examination of DIFC courts set-aside applications or judgments under Article 41 of the DIFC Arbitration Law, we have identified a total of 14 published judgments.

Remarkably, all of these identified judgments resulted in the rejection of challenges. The result confirms the arbitration-friendly approach of the DIFC courts.

The small number of cases, coupled with their unanimous direction in favour of rejecting set-aside applications, constrains our ability to extract meaningful insights into the typical grounds invoked for such challenges within the DIFC jurisdiction. There is insufficient information to discern patterns or trends regarding the reasons for which parties may succeed – or, more to the point, fail – in challenging arbitration awards under the specific provisions of Article 41 of the DIFC Arbitration Law.

Notably, in 2024, in the case of *Novak v. Norwood*, Justice Shamlan Al Sawalehi in the DIFC Court of First Instance upheld a previous order recognizing an arbitral award worth more than $1.2 billion in favor of the defendants, Norwood and Numair. The claimants, Novak, Nola and Nadim, sought to set aside the award on public policy grounds. The court rejected these claims, emphasizing the high threshold for setting aside arbitral awards under the DIFC Arbitration Law. This decision underscores the DIFC courts' commitment to upholding arbitral awards and provides clarity on the application of public policy in set-aside proceedings. The decision also upheld the worldwide freezing order granted by the DIFC courts on May 12, 2023 against the claimants.

> "Remarkably, all of these identified judgments resulted in the rejection of challenges. The result confirms the arbitration-friendly approach of the DIFC courts."

Middle East | **III. Bahrain**

Background

The Bahraini legislator has consistently demonstrated a commitment to keeping pace with the evolving landscape of arbitration, following its widespread adoption for dispute resolution at the local, regional and international levels. Bahrain has made significant strides in developing its arbitration framework, establishing itself as one of the dispute resolution hubs in the Middle East.

Bahrain's journey toward becoming a modern arbitration hub began in 1988 with its accession to the NY Convention, demonstrating the Kingdom's commitment to international arbitration standards and greatly enhancing the enforcement of foreign arbitral awards within its jurisdiction, thus fostering a more reliable and predictable legal environment for international investors and businesses, laying the foundation for a modern and efficient dispute resolution system.

In December 1993, in its fourteenth summit held in Riyadh, the GCC Supreme Council adopted the Gulf Cooperation Council Commercial Arbitration Centre's Constitution (GCCCAC) as amended in 1999, which was then ratified by the Kingdom of Bahrain through Legislative Decree No. 6 of 2000. In 1995, the GCCCAC was established as an independent, non-profit organization that provides alternative dispute resolution services, headquartered in Bahrain. It was founded with the objective of promoting arbitration as a preferred method of dispute resolution in the region, offering a reliable and efficient alternative to traditional litigation.

The establishment of the Bahrain Chamber for Dispute Resolution (BCDR) in 2009, in partnership with the American Arbitration Association, marked a significant milestone in developing Bahrain's arbitration infrastructure. The BCDR has played a pivotal role in providing world-class alternative dispute resolution services, including arbitration and mediation.

Bahrain's legislative framework for arbitration underwent significant reform with the enactment of Arbitration Law No. 9 of 2015, which replaced the prior arbitration provisions found in the Civil and Commercial Procedures Law of 1971 and the earlier Arbitration Law No. 9 of 1994 (the Bahrain Arbitration Law). The Bahrain Arbitration Law is an exact copy of the UNCITRAL Model Law, which aligns Bahrain's arbitration practices with internationally recognized standards. The Bahrain Arbitration Law now universally applies to all arbitrations, regardless of the nature of the legal relationship at issue or the arbitration's location, whether inside or outside the Kingdom of Bahrain, as long as the parties have agreed to subject their dispute to this law or Bahrain is the seat of arbitration.

Bahrain arbitral institutions

The BCDR and the GCCCAC have significantly contributed to the development of Bahrain's arbitration landscape, establishing the Kingdom as a leading hub for alternative dispute resolution in the Middle East.

The BCDR, an independent, non-profit organization, was established by Legislative Decree No. 30 of 2009, as amended by Legislative Decree No. 64 of 2014 and Legislative Decree No. 26 of 2021. The BCDR operates under its own arbitration rules, first adopted in 2010, and subsequently revised in 2017, with the most recent amendments introduced in 2022. The GCCCAC provides arbitration services for commercial disputes involving GCC nationals or disputes between GCC nationals and other parties, whether natural or juristic persons. It has jurisdiction over disputes that arise from the implementation of the GCC Unified Economic Agreement and the resolutions issued for its implementation, provided that the parties have agreed in writing, either in an initial or subsequent agreement, to arbitrate within the framework of the GCCCAC, administered in accordance with its own set of arbitration rules (Arbitral Rules of Procedure), as ratified by Legislative Decree No. 6 of 2000, which provides a comprehensive framework for the conduct of arbitration proceedings.

Setting-aside regime

Setting aside of arbitral awards is governed by the Bahrain Arbitration Law, with limited exceptions concerning awards issued under the GCCCAC or the BCDR rules as addressed below.

The grounds for setting aside an arbitral award in Bahrain are identical to those under the Model Law. Article 34 of the Bahrain Arbitration Law stipulates that an arbitral award may be set aside by making an application to the High Civil Court.

> “Bahrain’s stable legal framework ensures business certainty within the country and across the region.”

Article of the Bahrain Arbitration Law	Provision
The permissible grounds for annulling an award that align with the Model Law	
Article 34(1)	Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
Article 34(2)(a)(ii)	The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case.
Article 34(2)(a)(iii)	The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.
Article 34(2)(a)(iv)	The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law.
Article 34(2)(b)(i)	The subject matter of the dispute is not capable of settlement by arbitration under the law of this State.
Article 34(2)(b)(ii)	The award is in conflict with the public policy of this State.

An application for setting aside an arbitral award must be made within three months from the date on which the party making the application received the award.

The grounds for setting aside an arbitral award in Bahrain are exhaustive and are intended to be applied narrowly. The courts generally defer to the decisions of arbitral tribunals.

The Bahraini courts have consistently demonstrated a pro-arbitration stance and have rarely set aside arbitral awards. This approach reflects Bahrain’s commitment to upholding the finality and enforceability of arbitral awards and promoting the Kingdom as a reliable and supportive jurisdiction for international arbitration.

GCCCAC awards

The grounds for annulling arbitral awards issued by the GCCCAC are governed by the Centre's Rules of Arbitration Proceedings and the Centre's Constitution, as ratified by Legislative Decree No. 6 of 2000. Article 36 of Legislative Decree No. 6 of 2000 and Article 61 of the Rules of Arbitration Proceedings govern the proceedings before the Centre.

The GCCCAC Arbitration Rules emphasize the finality and binding nature of arbitral awards.

Articles 14 and 15 of the Centre's Constitution stipulate that the parties' agreement to refer their dispute to the GCCCAC precludes the reference of the dispute or any action pursued before any other judicial authority in any state. It shall also preclude any challenge against the arbitration award or any of the actions required for hearing it before any other judicial authority in any state. The application for annulment can only be submitted as a counterclaim to an application for enforcement.

BCDR awards

The BCDR outlines specific grounds pursuant to which arbitral awards can be annulled, as stipulated in Legislative Decree No. 30 of 2009. According to Article 24, parties may submit a request to the Court of Cassation within 30 days from the date the award is issued or notified, to challenge the arbitration award or contest enforcement orders issued by the High Court of Appeal.

Article of the GCCCAC	Provision	Commentary
The permissible grounds for annulling an award that align with the Model Law		
Article 61(2)(a)	If it has been rendered in the absence of an Arbitration Agreement, on the basis of an Arbitration Agreement, or on the basis of an invalid Agreement, or if it expired due to exceeding the deadline, or if the Arbitrator arbitrated beyond the limits of the Agreement.	This aligns with Article 34(2)(a)(i) and (iii) of the Model Law.
Article 61(2)(b)	If the award has been rendered by Arbitrators who have not been appointed in accordance with the law or some of whom have not been authorized to arbitrate in the absence of others, or on the basis of an Arbitration Agreement, the subject matter of the dispute for which has not been specified, or by a person who has no capacity to agree on arbitration.	This aligns with Article 34(2)(a)(i),(iii), (iv) of the Model Law. In the event of any of the above grounds, the competent judicial authority must verify the validity of the request for annulment and rule that the award is not to be enforced.

Article of the BCDR Law	Provision	Commentary
Article 24(1)	Nullity of the Agreement to settle the dispute before the Chamber due to incapacity of one of the parties or due to this agreement contravening provisions of the applicable law chosen by the parties.	This aligns with Article 34(2)(a)(i) of the Model Law.
Article 24(2)	The challenger or the petitioner was not served a notice in a proper manner regarding the appointment of a member of the Dispute Resolution Tribunal or the dispute resolution procedures or was not enabled to present his defense.	This aligns with Article 34(2)(a)(ii) of the Model Law.

Article of the BCDR Law	Provision	Commentary
The permissible grounds for annulling an award that align with the Model Law		
Article 24(3)	Composition of the Dispute Resolution Tribunal or the dispute resolution procedures is contrary to what was stipulated in the parties' agreement.	This aligns with Article 34(2)(a)(iv) of the Model Law.
Article 24(4)	The Dispute Resolution Tribunal award dealt with an unintended dispute or one not contained in the submitted agreement or contains orders in matters outside the scope of the agreement. However, if it was possible to isolate the orders related to the submitted matters to the Tribunal from the other orders not submitted thereto, then it is not permissible to set aside the Dispute Resolution Tribunal award except that part which contains the orders related to the matters which were not to be submitted to the tribunal.	This aligns with Article 34(2)(a)(iii) of the Model Law.
Article 24(5)	The award issued by the Dispute Resolution Tribunal contradicts the public order in the Kingdom of Bahrain.	This aligns with Article 34(2)(b)(ii) of the Model Law. Challenges or petitions must be filed using standard legal procedures, and the statement of claim must specify the grounds for annulment. Failure to clearly state these grounds will render the challenge void.

The court structure

Bahrain's judicial system is structured in three tiers: the Courts of First Instance, the Courts of Appeal and the Court of Cassation. Traditionally, Arabic has served as the official language for court proceedings within the Kingdom. However, recognizing the needs of an increasingly globalized legal environment, the Bahraini legislator enacted significant amendments to the Judicial Authority Law through Law No. (27) of 2021, aimed at facilitating the conduct of disputes involving parties of foreign nationalities. These amendments allow disputing parties to agree in writing, before initiating legal proceedings, to use a language other than Arabic for their court proceedings. This provision is particularly beneficial in disputes involving international parties or in complex commercial cases, facilitating clearer and more accessible communication.

Moreover, the agreement to conduct arbitration in English, once made, automatically applies to related judicial proceedings, including cases concerning the enforcement or annulment of arbitral awards where the award value exceeds BHD 500,000 (approximately US$1.3 million), as well as to proceedings involving the appointment of arbitrators. This ensures consistency in language use throughout the legal process, enhancing efficiency and understanding for all parties involved.

Overview of the data

Data collected

We collected judgments from Bahrain courts concerning requests to annul arbitration awards that were submitted covering the period from 2018 to 2024 inclusive. The court's online system was the primary source.

Limitations

The data presented in our analysis relates to all the applications for setting aside heard by the Bahraini High Civil Court, which is the competent court in hearing matters relating to arbitration. The data does not cover any setting aside cases where the award was issued under the BCDR Rules, as these cases are heard by the High Court of Appeal pursuant to the BCDR Law.

There is no public data on the total number of applications to challenge awards. However, there is often a significant focus on awards that have been set aside, which can skew the data. In reality, awards were set aside in very limited circumstances.

Challenges versus awards made

It is not possible to determine an accurate number of arbitral awards issued as most of the arbitrations in Bahrain are ad hoc.

We understand that there were 26 awards rendered in BCDR arbitrations during the relevant period.

Costs

The framework governing court fees in the Bahraini judicial system is established under Legislative Decree No. (3) of 1972 regarding Judicial Fees. Under Bahraini law, the unsuccessful party is ordinarily ordered to bear the legal costs of the prevailing party at all stages of litigation. These costs include attorney's fees, although their assessment has been shaped primarily by judicial discretion rather than statutory prescription. As a result, courts have historically awarded nominal amounts that did not reflect the actual legal expenses incurred.

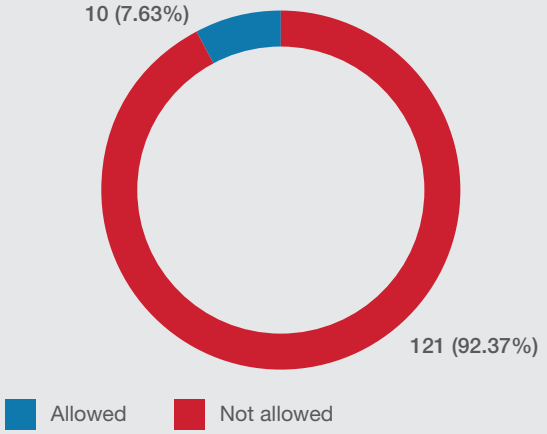
In recent years, however, Bahraini courts have demonstrated a growing willingness to depart from this traditional approach by awarding the actual attorney's fees incurred, provided that the amounts claimed are both reasonable and properly substantiated. This development is particularly significant in arbitration-related proceedings—especially applications to set aside arbitral awards—where the financial implications can be considerable. Because such applications may be appealed through to the Court of Cassation, the cumulative costs of litigation can increase substantially.

To enhance the prospects of cost recovery, parties seeking attorney's fees should submit clear, detailed, and well-documented evidence of the legal expenses claimed.

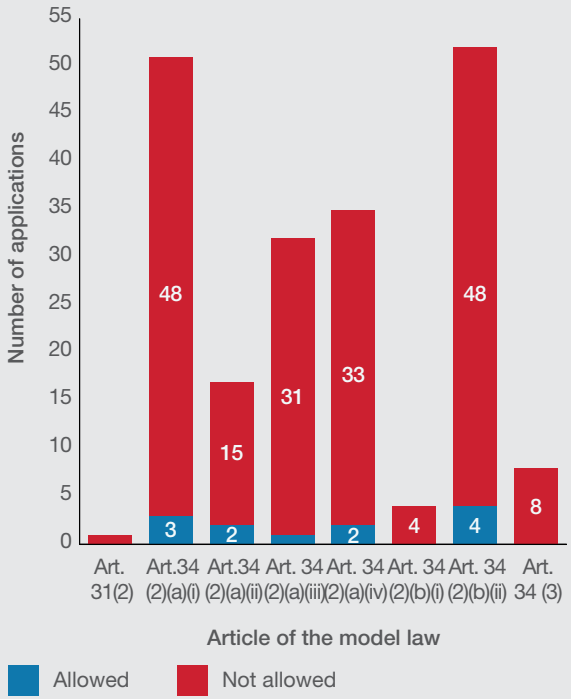
Analysis

General comments

Graph 1: Total applications and success rates



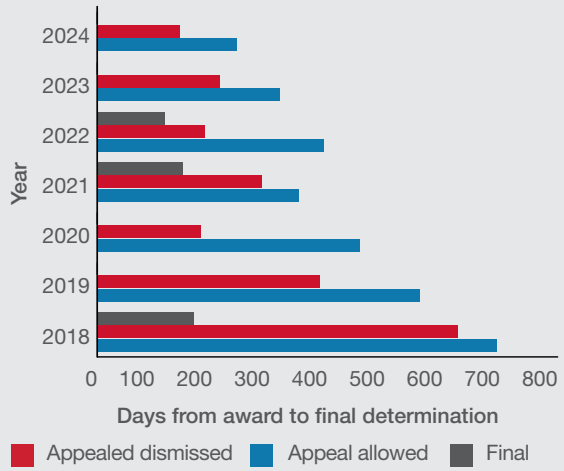
Graph 2: Grounds argued vs. grounds allowed
Bahrain number of applications per section



The first graph presents an overview of the set-aside application landscape in Bahrain, detailing both the total number of applications filed and the proportion that led to arbitral awards being set aside. The data reveals a success rate of only 7.63%, highlighting the challenge of meeting the high legal threshold necessary to overturn an award. In contrast, the remaining 92.37% of awards were upheld. However, this figure should be interpreted with caution due to the limitations discussed in this report.

The second graph shows the grounds argued versus the grounds ultimately allowed in Bahrain. Among the most frequently invoked were Article 34(2)(a)(i) and Article 34(2)(b)(i), each with 48 applications rejected, followed closely by Article 34(2)(a)(iv) with 33, and Article 34(2)(a)(iii) with 31. However, appellants have rarely succeeded in persuading the courts on these grounds, highlighting the challenges in overturning arbitral awards based on such arguments. For example, applications under Article 34(2)(b)(ii) succeeded in only 4 cases, Article 34(2)(a)(i) in just 3 cases, Articles 34(2)(a)(ii), 34(2)(a)(iv), and 34(2)(a)(iv) each in only 2 cases.

Graph 3: Average days from award to final determination



The third graph examines the duration of set-aside cases, revealing that, on average, these cases took more than a year to resolve. This highlights the prolonged nature of such proceedings, which can lead to increased legal costs, uncertainty for the parties involved and potential delays in achieving final resolutions. However, as in many instances the party requesting enforcement does not file the application immediately after the award is rendered. If the duration is measured from the date of filing to the date of the court's decision, the average time frame would likely be shorter.

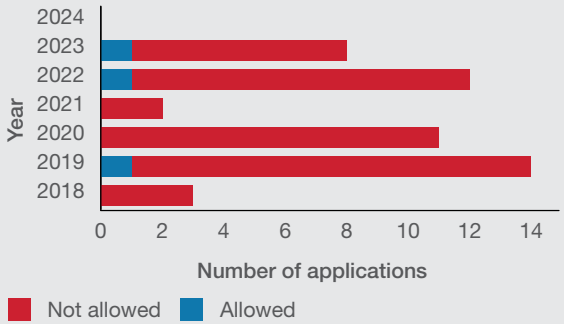
A number of grounds were submitted by parties challenging arbitral awards.

Allegations concerning merits

A notable aspect of these challenges is the frequent recourse to arguments that pertain to the merits of the arbitration decision. Such arguments have been consistently and roundly rejected by courts in Bahrain. The commercial courts emphasize that the merits of the award fall outside the exclusive grounds for setting aside an award as outlined under Article 34 of the Bahrain Arbitration Law. This legal stance firmly establishes that the assessment of the merits of an arbitration award is beyond the scope of set-aside proceedings in Bahrain.

Graph Article 34(2)(a)(i)

Graph 4: Art. 34(2)(a)(i) applications per year



Failure to comply with the multi-tiered dispute resolution clause

The Court of Cassation clarified that the failure to refer a dispute to an expert before resorting to arbitration is a matter of admissibility rather than a precondition to arbitration affecting the jurisdiction of the arbitral tribunal.[5] Consequently, this discrepancy does not provide grounds for challenging the award. It is noteworthy that the tribunal duly addressed this objection within its award, thereby affirming its jurisdiction and legitimacy in adjudicating the dispute.

Application of arbitration agreements to non-signatories

The commercial court determined that individuals inheriting the liabilities of a party to an arbitration agreement cannot automatically be considered parties to the arbitration proceedings.[6] This ruling was based on the rationale that these heirs were not signatories to the original agreement, notwithstanding their financial responsibility limited to the estate they inherited. Thus, while liable for the claimed amount within the scope of the estate, their status as parties to the arbitration remains contingent upon explicit inclusion within the terms of the original agreement.

[5] Case No 54/2023.

[6] Case No 8723/2023.

The courts have consistently upheld the principle that when arbitrators are appointed by the court on behalf of parties, it signifies the validity of the arbitration clause and the dispute's alignment with its parameters. Consequently, these circumstances do not constitute grounds for challenging subsequent awards, provided that the tribunal adhered to the parties identified by the court during its appointment process.

Furthermore, challenges regarding the absence of all arbitration parties as signatories to the agreement have been dismissed by commercial courts in numerous instances. Notably, the court rejected such a challenge where the court appointed the tribunal in proceedings where all arbitration parties were duly represented, and where the parties involved in the arbitration proceedings consented to and signed the terms of reference during the course of proceedings.[7] The court emphasized that any objections on this matter should have been raised promptly, underscoring the importance of timeliness in procedural matters.

Signatory to the arbitration agreement without proper authority

A recurrent point of contention in arbitration disputes pertains to the authority to sign the arbitration agreement, typically invoked under Article 34(2)(a)(i) of the Bahrain Arbitration Law. This challenge commonly revolves around whether the individual signing the arbitration agreement on behalf of the entity was duly authorized to bind the party to arbitration proceedings. Despite its frequent invocation, this argument has consistently been refuted by the commercial courts.

A challenge on the premise that the legal representative of the company lacked the authority to engage in arbitration agreements was dismissed, with the court holding that the legal representative of any company inherently possesses the authority to execute arbitration agreements on its behalf.[8]

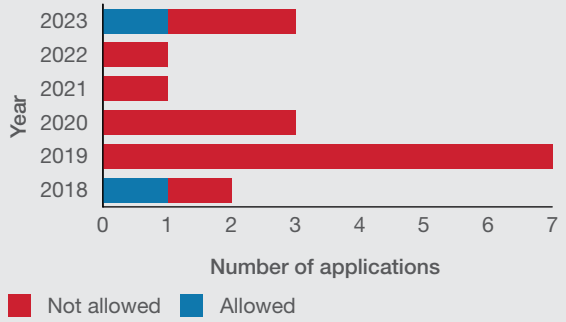
These rulings underscore the pragmatic stance adopted by Bahraini courts, acknowledging the practicalities of commercial transactions. Moreover, the decisions highlight the judiciary's focus on the parties' behavior throughout the arbitration proceedings, emphasizing the significance of promptly addressing jurisdictional or procedural concerns.

Notification of the respondent

A challenge regarding the purported improper notification of the arbitration to the respondent under Article 34(2)(a)(i) was upheld by the commercial court.[9] The tribunal failed to adhere to legal notification requirements. Notably, the respondent in this instance was a ministry, subject to specific procedures mandated by the Bahraini Civil and Commercial Procedures Law for lawful notification of government entities. These procedural requirements were not met in the present case, which led to the award being set aside.

Graph Article 34(2)(a)(ii)

Graph 5: Art. 34(2)(a)(ii) applications per year



[7.] Case No 7030/2023.

[8.] Case No 9285/2018.

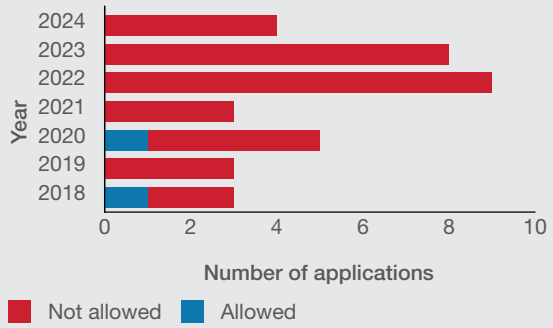
[9.] Case No 5788/2018.

Arbitrator's conflict of interest

A challenge pertaining to the chair of the arbitral tribunal representing a claimant in court against one of the parties to the arbitration was dismissed by the courts.[10] The commercial courts deemed this challenge to fall outside the exclusive grounds stipulated in Article 34 of the Bahrain Arbitration Law.

Graph Article 34(2)(a)(iv)

Graph 6: Art. 34(2)(a)(iv) applications per year



Tribunal consisted of two arbitrators

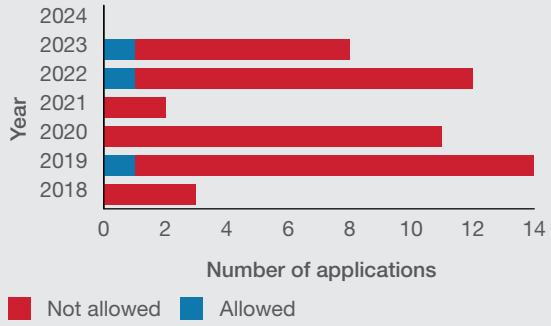
In Case No 5/01020/2020/02, a challenge based on the issuance of an award by two arbitrators was rejected by the court. The court clarified that the law does not mandate the tribunal to consist of an odd number of arbitrators. The court noted that under Article 10(1) of the Model Law, the parties are free to determine the number of arbitrators, and if the parties to the arbitration agreement have chosen two arbitrators, the court has to give effect to their agreement.

Bahrain is not the seat of arbitration

Bahraini commercial courts routinely dismiss challenges to arbitral awards when Bahrain is not the seat of arbitration.

Graph Article 34(2)(a)(i)

Graph 7: Art. 34(2)(a)(i) applications per year

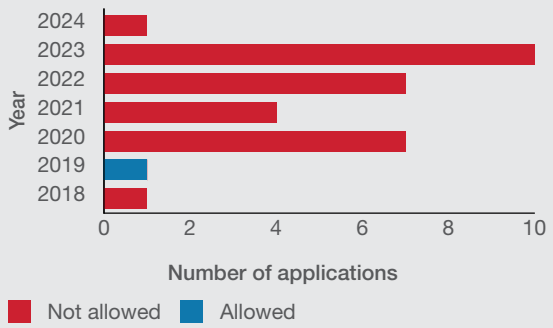


Award delivered late

A frequently raised argument revolves around the assertion that an award exceeded the permissible timeframe for delivery. Nonetheless, this contention has consistently been rejected by the courts. The court reaffirmed that exceeding the timeframe alone does not warrant setting aside an award.[11]

Graph Article 34(2)(a)(iii)

Graph 8: Art. 34(2)(a)(iii) applications per year



[10] Case No 12213/2019.

[11] Case No 1823/2022.

Dispute is subject to *res judicata* as a ground of public policy

Numerous challenges have been predicated on the principle of *res judicata*, drawing from previous court judgments or arbitral awards as grounds under Article 34(2)(b)(ii).

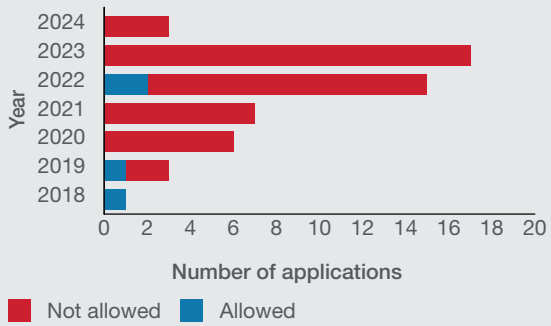
A challenge under Article 34(2)(a)(iii) argued that an award rejecting a claim on *res judicata* grounds rendered the dispute beyond the scope of the arbitration agreement.[12] The commercial court, however, determined that delving into whether the dispute was previously adjudicated by the court would entail a review of the tribunal's factual analysis and legal application – a step deemed impermissible under the law.

In an exceptional case, the court acknowledged that where liability for a fire had already been determined by the courts, the arbitral tribunal lacked jurisdiction to reconsider the matter, given its status as *res judicata*.[13] Consequently, this fell under the public policy exception of Article 34(2)(b)(ii).

Public policy

Graph Article 34(2)(b)(ii)

Graph 9: Art. 34(2)(b)(ii) applications per year



Challenges on the grounds of public policy have been raised recurrently, including alleged breaches of mandatory provisions of the Bahraini Companies Law and Civil and Commercial Procedures. Despite these assertions, the courts typically reject such challenges, upholding the integrity of arbitral awards.

[12] Case No 4635/2020.

[13] Case No 1623/2022.

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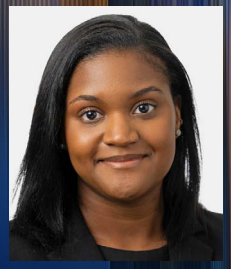

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New York | **I. Introduction**

Interplay between the New York Convention and the Federal Arbitration Act

The United States, as a signatory to the New York Convention, recognizes and enforces foreign arbitral awards issued in other contracting states. The Federal Arbitration Act (FAA) implements the New York Convention in Chapter 2, granting federal courts jurisdiction over enforcement. In case of conflict, section 208 of the FAA gives precedence to the New York Convention.

The FAA, originally enacted in 1925, was codified in 1947 to promote arbitration as an alternative to litigation, reversing judicial hostility toward arbitration agreements. The Supreme Court supports a liberal federal policy favoring arbitration but recently clarified that courts cannot create rules favoring arbitration over litigation.

The FAA also implements the Panama Convention (Chapter 3), which governs enforcement of awards from signatory states. If both the New York Convention and Panama Convention apply, the Panama Convention takes precedence if a majority of the parties are from Panama Convention countries; otherwise, the New York Convention applies.

At the state level, arbitration laws vary, but many follow the Uniform Arbitration Act or the Revised Uniform Arbitration Act. Some states, such as California, Florida and Texas, have adopted the UNCITRAL Model Law. While the FAA supersedes conflicting state laws, parties can agree to apply state arbitration laws in certain aspects.

Understanding the FAA's interaction with international conventions and state laws is critical for enforcing arbitral awards in the United States.

Courts in the United States have categorized awards into three groups: (i) foreign, (ii) non-domestic, and (iii) purely domestic. **Foreign arbitral awards** refer to awards made outside the United States in a country that is a party to the New York Convention. **Non-domestic awards** are made in the United States and contain a foreign component. This means that the award was made in accordance with foreign law, the parties involved are foreign, the property is located abroad or there is a reasonable connection with a foreign state or states. The New York Convention and the FAA apply to these awards. **Domestic awards** are made in the United States but have no foreign component, and, as such, the New York Convention does not apply to their enforcement. Domestic awards are subject to the applicability of the FAA set forth in section 1 and related case law.

Grounds to vacate or set aside an award in the United States

The New York Convention lays down the criteria for a court to refuse recognition and enforcement of an award. However, in the United States, section 10 of the FAA provides the exclusive grounds for vacatur under the FAA.

Under section 10(a), awards may be vacated where:

i. The award was procured by corruption, fraud or undue means;

ii. There was evident partiality of the arbitrators;

iii. The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or

iv. The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

A fifth ground? Manifest disregard of the law – a judicially created concept or a species of section 10 challenge?

Over the years, many courts have referred to the concept of "manifest disregard of the law" as a ground for not enforcing an arbitration award. This principle is said to apply when the arbitrator knew and understood the law, but the arbitrator disregarded the applicable law, including whether the award disregarded the terms of the relevant agreement between the parties. The manifest disregard standard is deferential to the arbitrator and, by design, is said to be difficult to satisfy. Manifest disregard means more than error or misunderstanding with respect to the law. Some courts in the United States have recognized the "manifest disregard of the law" as a valid reason to vacate arbitral awards. This legal doctrine stems from the 1953 *Wilko v. Swan* case. *Wilko v. Swan,* 346 U.S. 427,436-37 (1953). While some U.S. courts accept it as an independent ground for review or as a judicial gloss for vacatur, others have rejected it as a valid ground for vacatur of an arbitration award under the FAA, creating a circuit split.

In the Second Circuit, vacatur under manifest disregard has been held to be warranted only when an "arbitrator strays from interpretation and application of the agreement and effectively dispenses their own brand of industrial justice." *Weiss v. Sallie Mae, Inc.*, 939 F.3d 105, 109 (2d Cir. 2019). This standard requires more than just a legal error or misunderstanding. Rather, a court must find that the arbitrator knew of a governing legal principle, refused to apply it or ignored it altogether, and the ignored law was well-defined, explicit and clearly applicable to the case.

The Second Circuit views manifest disregard as an extension of FAA section 10(a)(4) (arbitrators exceeding their powers), whereas some circuits treat it as a standalone ground for vacatur. There are at least three circuit splits on this: courts accepting it as an independent ground, courts accepting it as a judicial gloss for vacatur and courts rejecting it as a valid ground for vacatur.

Approach of the court

A party moving to confirm an award may file a complaint or petition to confirm in a trial court. Motions or petitions to vacate can be filed in opposition to a party's move to confirm an award. Alternatively, a party may preemptively move to vacate an award without waiting for the opposing party to seek confirmation. Under the FAA, the award debtor has three months from the rendering of the award to challenge its confirmation. Failure to move within this three-month period bars any later attempt to challenge the award's validity, even if the opposing party has not yet sought confirmation.

New York | **II. Overview of the data**

Examining vacatur of non-domestic awards in U.S. courts: A comparative analysis

As part of our comparative study on vacatur of arbitral awards in New York, we analyze the four statutory grounds for setting aside an award under FAA section 10, as well as the judicial doctrine of manifest disregard of the law. Our focus has been on non-domestic awards, defined as awards where the seat of arbitration is New York, and where there is at least one international component (parties, applicable law, property, etc.). We have reviewed decisions from all district and appellate courts in the U.S. District of New York between January 1, 2018, and December 31, 2024 (Review Period).

New York is a leading seat for international arbitration in the United States and globally. It is home to key arbitral institutions and benefits from a judiciary with deep experience in complex international arbitration matters. Parties choose New York as the seat of arbitration due to its predictable legal standards, its arbitration-friendly courts and the availability of highly qualified arbitrators.

Scope and limitations of the data

Our analysis is based on published written opinions that have been reported and are publicly available. There may be decisions on the confirmation or vacatur of awards that were issued without publication of an opinion. Based on the limited judicial review of awards, the heavy presumption in favor of the confirmation of awards and deferring to an arbitrator's decision, and the overall trend in unsuccessful challenges, it is reasonable to assume that the majority – if not all – unreported cases involve unsuccessful challenges. It follows that the data likely overestimates the success rate of challenges to non-domestic arbitral awards.

There is no centralized public database detailing the total number of applications filed to challenge arbitral awards in U.S. federal courts. To ensure a comprehensive dataset, we conducted a broad search of all publicly available cases, striving for the most inclusive sample possible.

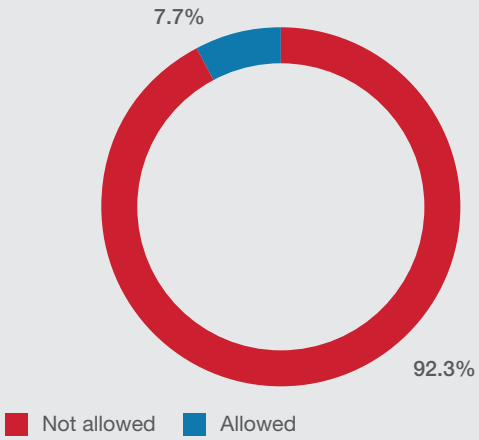
We excluded cases where there was no opposition to confirmation of the award or where the resolution was based on jurisdictional or procedural grounds (e.g., untimely vacatur motions or challenges unrelated to FAA standards such as lack of jurisdiction by the court or procedural deficiencies such as failure to provide proper notice).

As a result, our dataset represents a subset of all motions to confirm and vacate arbitral awards filed in U.S. federal courts during the relevant period.

> “Parties choose New York as the seat of arbitration due to its predictable legal standards, its arbitration-friendly courts and the availability of highly qualified arbitrators.”

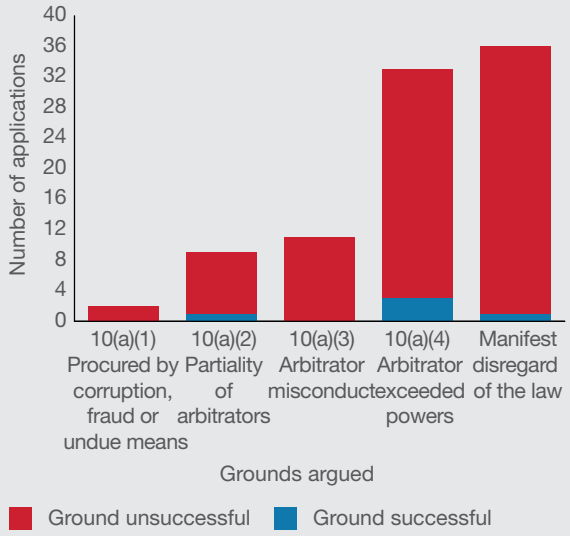
New York | **III. Key observations and analysis of data**

Graph 1: Number of applications in New York and success rate (%)



Between January 1, 2018, and December 31, 2024, we identified 52 reported cases in the New York federal district courts involving applications to set aside a non-domestic arbitral award.[1] Of these, very few – four cases (7.7%) – were successful, reflecting the consistent approach of U.S. federal courts in favoring the confirmation of arbitral awards and limiting vacatur.

Graph 2: Applications based on grounds argued



Most of the applications to set aside a non-domestic award involved multiple grounds of challenge. In total, applicants argued 91 grounds of challenge within the 52 reported applications to set aside. Five grounds of challenge were successful, or 5.5%. One of the four successful applications to set aside an award was successful on two grounds: on the basis of section 10(a)(4) and manifest disregard of the law.

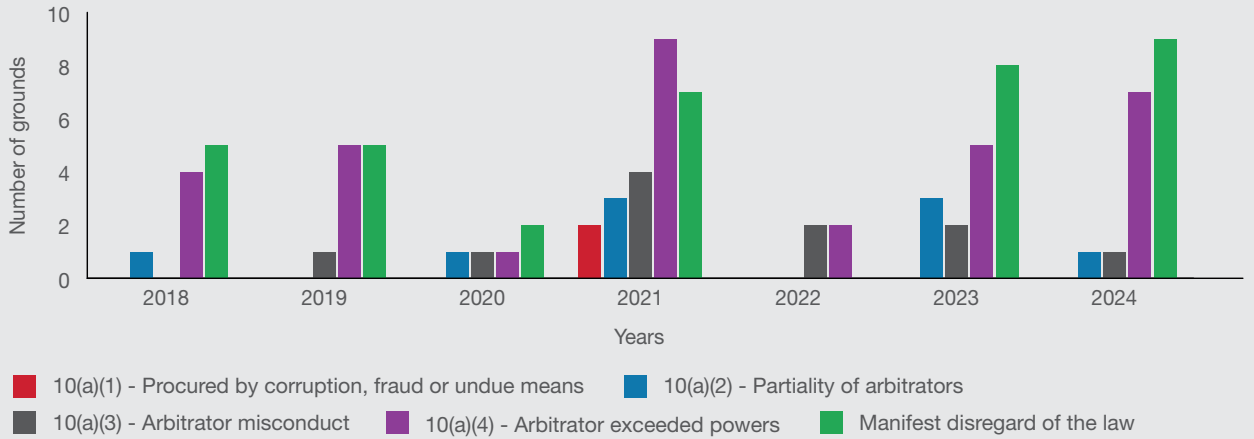
[1] This includes both district court cases and appeals. There was one case, *KT Corporation et al. v. ABS Holdings Ltd*, 2018 U.S. Dist. LEXIS 115268 (S.D.N.Y. July 10, 2018) in which the District Court issued a corrected Opinion and Order: the initial Opinion and Order and the corrected Opinion and Order were counted as the outcome of one application, rather than two.

Breakdown of grounds argued

Between January 1, 2018, and December 31, 2024, applicants filed motions to vacate non-domestic arbitral awards based on all available grounds under 9 U.S.C. section 10(a). Overall, only 7.7% (four cases) resulted in a successful set-aside application. The overwhelming majority (92.3% or 48 cases) were unsuccessful, with the motion to vacate denied and the award confirmed. The most frequently cited grounds for vacatur were section 10(a)(4) (arbitrator exceeded their powers) and manifest disregard of the law, although they were largely unsuccessful: Section 10(a)(4) (arbitrator exceeded powers) had only a 9.1% success rate, while challenges based on manifest disregard were successful only 2.8% of the time.

Section 10(a)(2) (evident partiality of arbitrators) was the most successful ground, achieving an 11.1% success rate (although this percentage reflects the fact that the ground was only argued nine times, with one successful application). Challenges based on arbitrator misconduct and fraud/corruption were the least effective (with no challenges on these grounds succeeding).

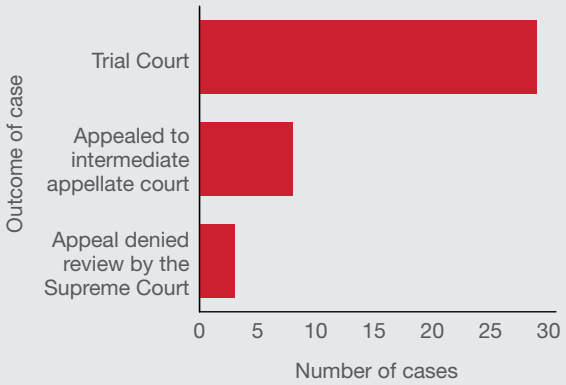
Graph 3: Grounds argued in setting-aside applications
Grounds argued on per-year basis



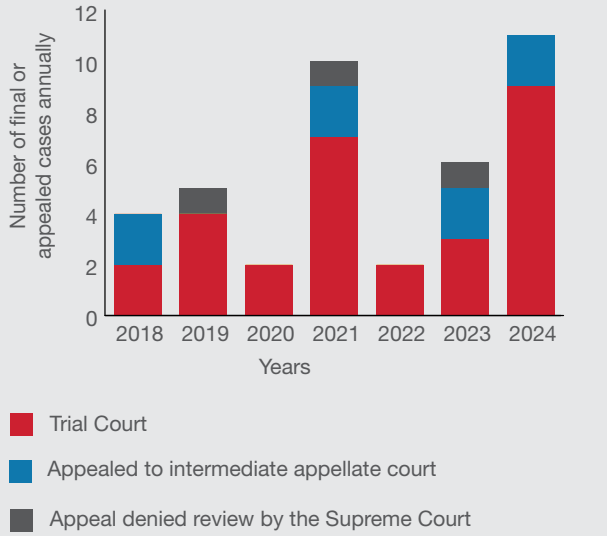
Finality of trial court decisions

Trial court decisions on confirmation or vacatur tended to be final: 72.5% of trial court decisions were not appealed. Generally, parties do not require permission to appeal a trial court's final decision or an interlocutory order. Appeals to the U.S. Supreme Court appealing the appellate circuit decision, however, require the court to grant a writ of certiorari. To appeal a trial court decision, parties must identify a valid basis for appeal, such as an error with the trial court's procedural application, or misinterpretation or misapplication of the governing law. Of the appeal cases considered within the Review Period, three were further appealed to the highest court, i.e., the U.S. Supreme Court. The Supreme Court declined to review the appeal of any of these three cases (i.e., it did not grant a writ of certiorari for the appeal of these cases).

Graph 4: The number of trial court decisions that were final (i.e., not appealed) and cases that went to the intermediate appellate court or U.S. Supreme Court



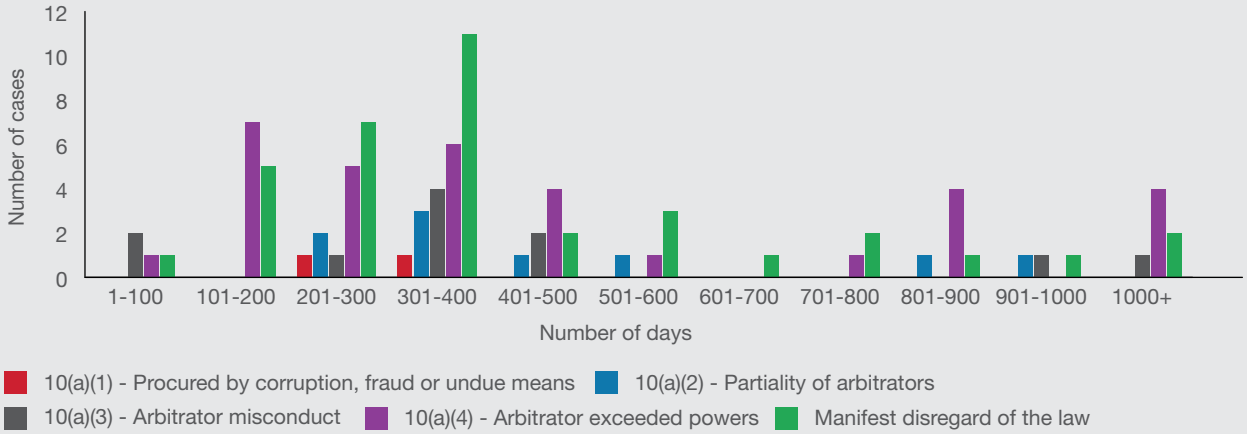
Graph 5: Annual breakdown of final cases and appeal outcomes



Average time to determine a challenge from date of award to final decision

The data suggests that the District Court takes around 442 days to reach a trial court. It ought to be noted, however, that the numbers may be skewed by "outliers." Such outliers, especially where there is an inordinately long time between the award date and decision date, may exist for reasons outside of court efficiency. For example, there are a variety of reasons (strategic or otherwise) why an award creditor might choose not to enforce an award quickly (subject to the time limitations of the jurisdiction). Another possible reason includes where an award, or aspects of an award, is remanded to the arbitral tribunal for decision.[2] Removing the two fastest- and slowest-decided cases from the data, the median amount of time taken by the District Court to determine a challenge is 331 days.

Graph 6: Days from the award being granted until a final determination by the courts



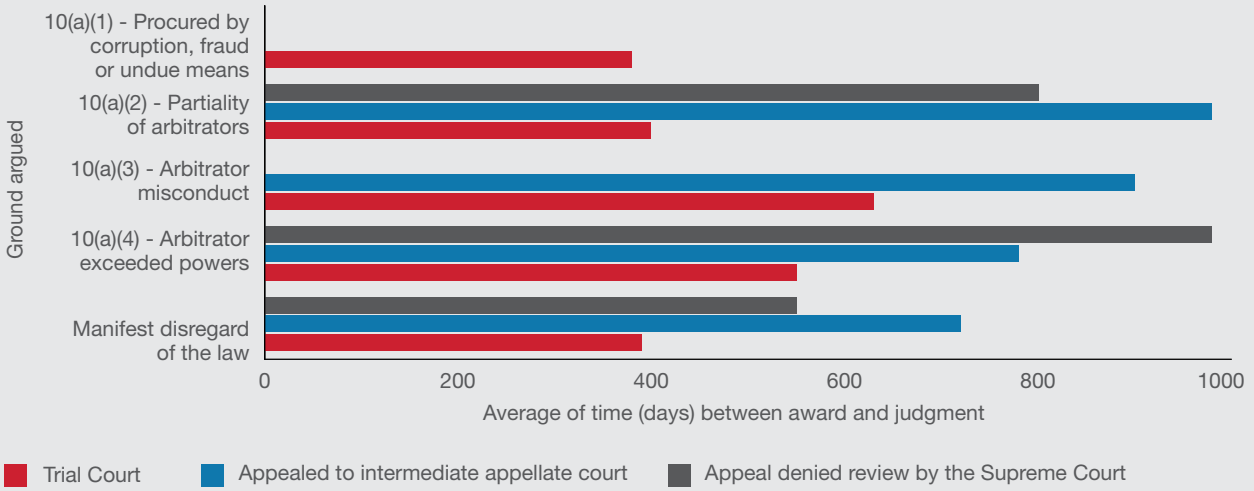
[2] The case that took the longest time from date of award to date of decision – 3,057 days – encountered both these situations.

Of all the District Court cases considered, 27.5% were appealed, leading to a further decision by the intermediate appellate court.[3] Of the 12 appeal cases that we considered (10 from District Court cases decided within the time period, and two from cases that were decided outside the time period), the appellate court took an average of 851 days to issue a final decision from the date of the award (i.e., about 2.5 times longer than trial court decisions issued by the District Court).

While two of the appealed cases resulted in an award being set aside, these decisions merely confirmed the result in the District Court (rather than overturning any finding of the District Court not to set aside). None of the appeals produced a successful vacatur where a vacatur had previously been denied, reinforcing New York's reputation for being a pro-arbitration jurisdiction.

Of interest is the difference in time taken by the courts to determine appeals brought on differing grounds – appeals brought on the ground of misconduct tended to take the longest to be determined, while fraud challenges were decided the quickest out of all the grounds for challenge.

Graph 7: Time from publication of award to final court determination by ground



Costs

There were no costs assessed in any of the identified cases. This is consistent with general U.S. litigation practice, including in New York, where each party typically bears its own legal fees and costs. Unlike many other common law jurisdictions, there is no default "loser pays" rule in the United States; fee-shifting occurs only when authorized by statute, contract or a specific procedural rule.

[3] This does not include two cases in which an appeal was lodged but ultimately withdrawn, but includes one case in which an appeal was pending as of December 31, 2024.

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Singapore | **I. Introduction**

Background

Under Singapore law, international arbitrations are governed by the International Arbitration Act 1994 (the IAA), which gives the force of law to the UNCITRAL Model Law on International Commercial Arbitration (as adopted on June 21, 1985, with the exception of Chapter VIII) (the Model Law). While domestic arbitrations are governed by a separate statute, namely the Arbitration Act 2001, the applicable setting-aside regime is largely similar to that for international arbitrations under the IAA and the Model Law.

As the name suggests, the Model Law was devised as a model for use and adaptation as required by individual states; unlike a convention, it was not intended to be implemented as a replacement for national arbitration legislation. The enactment of the IAA, which firmly embraced the Model Law, heralded a paradigm shift in Singapore's arbitral framework, which up to that point had been guided by the English arbitration regime.

The IAA came into force on January 27, 1995. In the three decades that have passed since its enactment, Singapore has witnessed tremendous growth as an arbitral seat. Such growth in popularity is by no means fortuitous. It is the result of a confluence of intentional measures, including strong support from the Singapore government in establishing an arbitration-friendly legal framework that is subject to regular review to ensure its relevance and evolution; the establishment of and government support for the Singapore International Arbitration Centre (SIAC), which is globally lauded as one of the world's most preferred arbitral institutions;[1] and the pro-arbitration and minimal curial intervention policy adopted by the Singapore judiciary since the introduction of the IAA.

Today, Singapore is widely regarded as one of the key global arbitral seats. In a 2021 survey, Singapore was listed as one of the five most preferred arbitral seats alongside London, Hong Kong, Paris and Geneva.[2]

The growth of Singapore's arbitration scene is also evident from the significant increase in the caseload of the SIAC over the years. From only two cases in 1991 and a total of 406 cases from 1991 to 1999, the SIAC saw a dramatic increase in case numbers, with 625 new filings in 2024 alone. Of these, 94% were SIAC administered and 91% were international in nature. In the same year, the SIAC also saw one of its highest-ever total sums in dispute: SGD 16.12 billion. The SIAC recently published the latest edition of its rules, which came into force on January 1, 2025. The rules introduce innovations such as a streamlined procedure for low-value cases and an expanded emergency interim relief procedure that allows emergency arbitrators to issue *ex parte* preliminary orders.

1. Queen Mary University of London and White & Case, "2021 International Arbitration Survey: Adapting arbitration to a changing world" (May 2021).

2. Queen Mary University of London and White & Case, "2021 International Arbitration Survey: Adapting arbitration to a changing world" (May 2021). In 2022, Singapore was also selected as the second most popular seat (after London) for resolving international energy arbitrations – see Queen Mary University of London and Pinsent Masons, "Future of International Energy Arbitration Survey Report 2022" (January 20, 2023).

Setting-aside regime

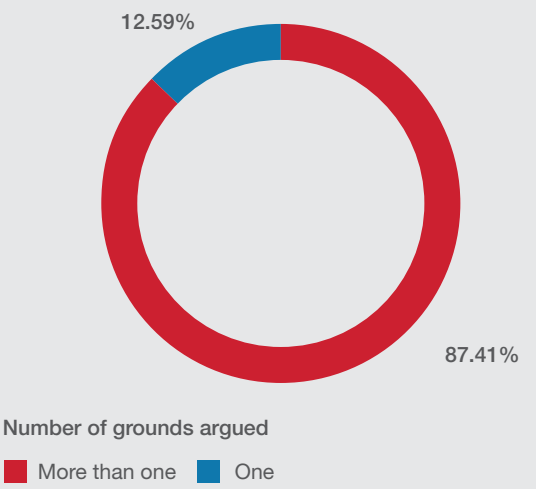
There is no right of appeal on the merits of an international arbitral award. In line with Singapore's well-settled policy of minimal curial intervention in arbitral proceedings, the Singapore courts have repeatedly emphasized that the court of the seat has no jurisdiction to examine the substantive merits of the arbitration. Consequently, the only recourse against an award under the IAA is to set it aside.

In Singapore, the grounds on which an international arbitral award can be set aside are exhaustively prescribed in Article 34 of the Model Law and Section 24 of the IAA, as follows:

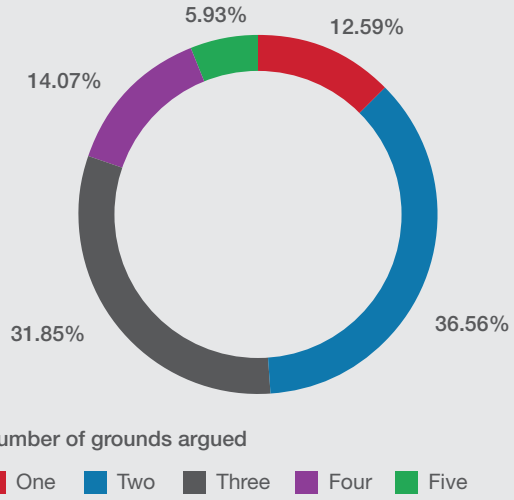
- **Model Law, Article 34(2)(a)(i):** "A party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of [Singapore]."
- **Model Law, Article 34(2)(a)(ii):** "The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case."
- **Model Law, Article 34(2)(a)(iii):** "The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside."
- **Model Law, Article 34(2)(a)(iv):** "The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law."
- **Model Law, Article 34(2)(b)(i):** "The subject-matter of the dispute is not capable of settlement by arbitration under the law of [Singapore]."
- **Model Law, Article 34(2)(b)(ii):** "The award is in conflict with the public policy of [Singapore]."
- **IAA, Section 24(a):** "The making of the award was induced or affected by fraud or corruption."
- **IAA, Section 24(b):** "A breach of the rules of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced."

At first glance, the above provisions seem to contain distinct grounds for challenging an award. In practice, however, it is not uncommon for there to be overlaps in these grounds, and statistics show that it is rare for an applicant to rely solely on a single ground to set aside an award.

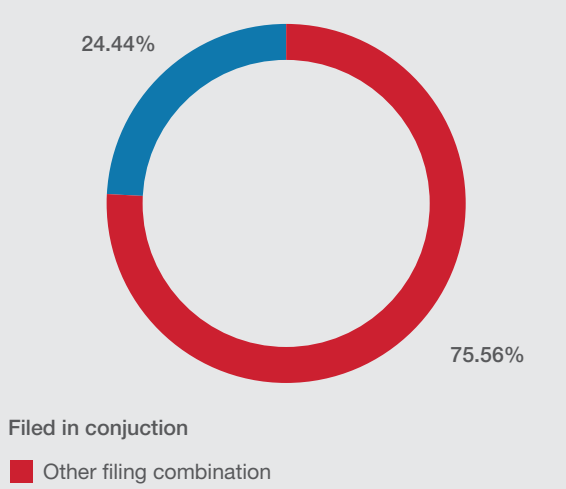
Graph 1: Proportion of cases where more than one ground argued



Graph 2: Proportion of cases by number of grounds argued



Graph 3: Proportion of cases on grounds of Section 24(b) and/or Article 34(2)(a)(ii)



Specifically, the Singapore courts have acknowledged that Article 34(2)(a)(ii) of the Model Law (insofar as it relates to a party's ability to present its case) is "co-extensive in scope and result" with Section 24(b) of the IAA; these grounds therefore tend to be dealt with together in the courts' determination.[3] This may explain the noticeable trend whereby most applications relying on a breach of natural justice under Section 24(b) of the IAA would typically also allege an inability to present their case under Article 34(2)(a)(ii) of the Model Law.

[3] See *CEF and another v. CEH* [2021] SGHC 114 at [98]-[99].

Court structure

An application to set aside an award must be made to the Singapore High Court within three months of the later of (i) the date on which the claimant received the award, or (ii) if a request is made for a correct interpretation or an additional award under Article 33 of the Model Law, the date on which such request is disposed of by the arbitral tribunal (see Order 48, rule 2(3) of the Rules of Court 2021 and Order 23, rule 7(3) of the Singapore International Commercial Court Rules 2021).

Such an application may be heard at the first instance by the General Division of the Singapore High Court or by the Singapore International Commercial Court (SICC). Appeals from both first instance courts lie as of right to Singapore's final appellate court, the Court of Appeal.

Singapore | **II. Overview of the data**

The underlying dataset forming the basis of this report encompasses a wide range of case law dating as far back as January 1, 2001. In line with Singapore's explosive growth into one of the top international arbitration hubs, however, a large portion of the data comprises recent case law decided from January 1, 2018, to December 31, 2024.

While the dataset allows for an in-depth statistical analysis of the setting-aside regime in Singapore based on reported cases (including a breakdown of the grounds and decisions in each case), it does not purport to be a complete archive of setting-aside applications heard or decided in Singapore. In reality, a large number of challenges to arbitral awards are likely to be unreported. To date, there is no publicly available data on the total number of setting-aside applications filed in the Singapore courts each year.

Given the relative importance of a decision to set aside an award (attributable to Singapore's well-established policy of minimal curial intervention in arbitral proceedings), it may be assumed that the vast majority, if not all, unreported cases are unsuccessful challenges.

It should be noted that where the analysis below refers to percentages of success, such percentages are derived from statistics on the reported decisions. It therefore follows that where, for instance, this report indicates that 25% of all reported cases brought under Article 34(2)(a)(iii) of the Model Law were successful, the actual percentage of successful cases (as a subset of the total number of cases filed, whether reported or unreported) under this ground is likely to be lower.

In reality, a large number of challenges to arbitral awards are likely to be unreported.

“... where, for instance, this report indicates that 25% of all reported cases brought under Article 34(2)(a)(iii) of the Model Law were successful, the actual percentage of successful cases (as a subset of the total number of cases filed, whether reported or unreported) under this ground is likely to be lower.”

Key observations

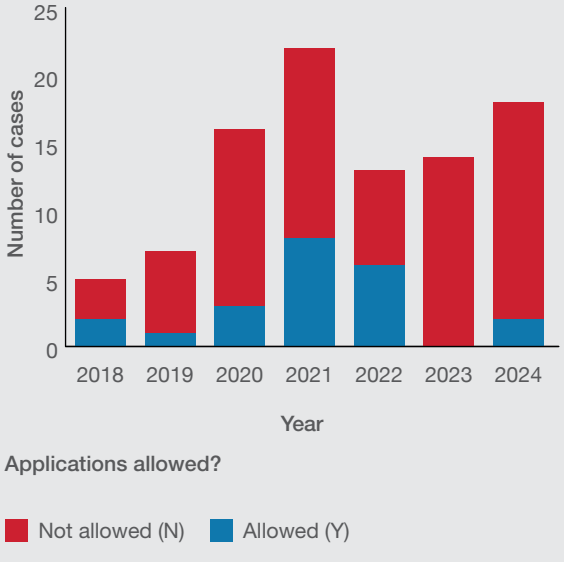
Before delving into our analysis and takeaways from critical data findings and trends, it is useful to first highlight the key observations distilled from the dataset.

In the years 2018 to 2024, the Singapore courts heard 95 setting-aside cases (including both first instance cases and appeals) that resulted in reported decisions. 22 (i.e., 23%) of these 95 applications were successful in setting aside arbitral awards.

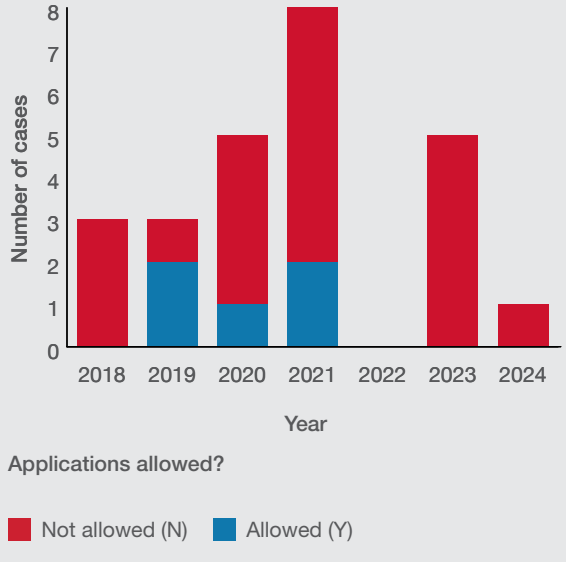
Appeals to the Singapore Court of Appeal made up 26, (i.e., 27.4%), of the 95 reported setting-aside applications. 11 (i.e., 42.3%) out of the 26 appeals resulted in awards being set aside by the final appellate court.

In the years 2018 to 2024, the Singapore courts heard 95 setting-aside applications (including both first instance cases and appeals) that resulted in reported decisions.

Graph 4: Success rate of all reported decisions from 2018 to 2024



Graph 5: Success rate of the appealed High Court and SICC decisions from 2018 to 2024

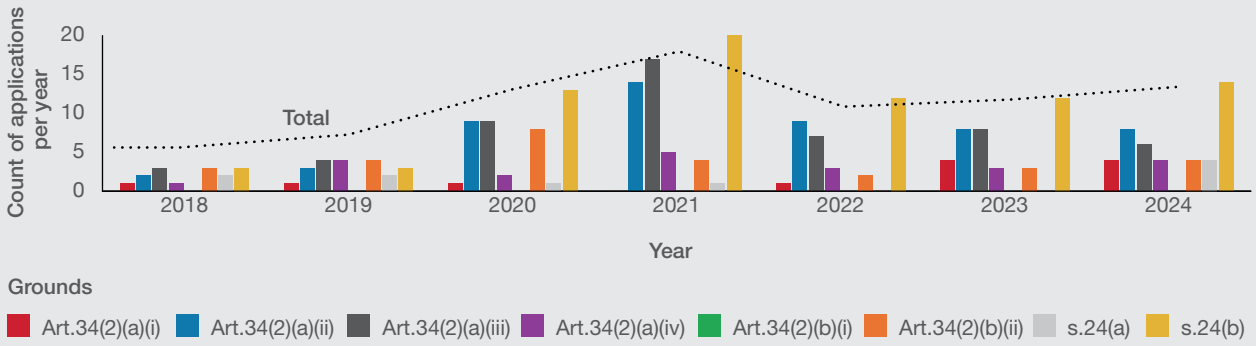


Grounds for challenges

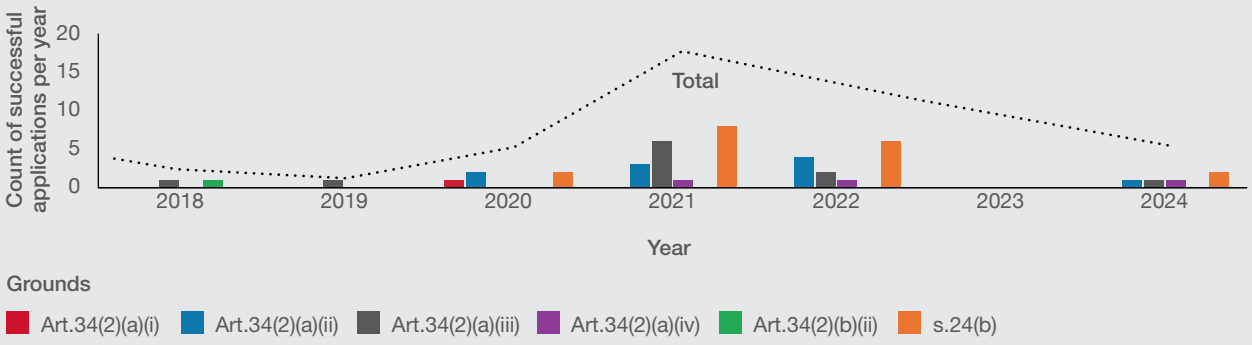
Out of the 69 first-instance challenges from 2018 to 2024, a total of 192 grounds were relied on. Approximately 15.9% of these applications (and approximately 12.5% of these grounds) were allowed by the Singapore courts. The breakdown of the 192 grounds is as follows: Article 34(2)(a)(i) was raised eight times; Article 34(2)(a)(ii) was raised 40 times; Article 34(2)(a)(iii) was raised 38 times; Article 34(2)(a)(iv) was raised 18 times; Article 34(2)(b)(i) was never raised; Article 34(2)(b)(ii) was raised 23 times; Section 24(a) was raised 7 times; and Section 24(b) was raised 58 times.

The data trend of applicants relying noticeably more on a breach of natural justice under Section 24(b) as a ground for challenging an award is further discussed below in Chapter III (Analysis). For now, it is interesting to note that in respect of first instance challenges, Section 24(b) had a relatively high success rate of 17.2% as a ground for setting aside an award from 2018 to 2024.

Graph 6: Total reported decisions per ground by year



Graph 7: Successful reported decisions per ground by year



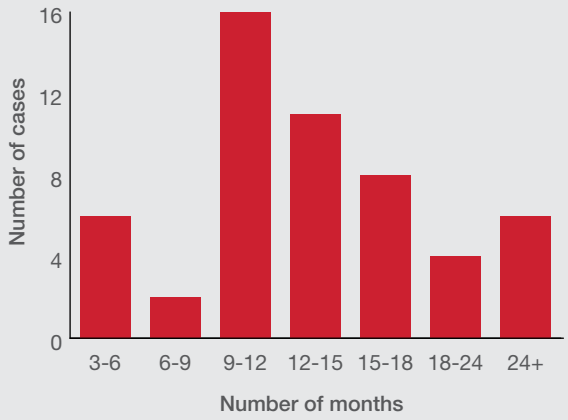
Time between arbitral award and final judgment

This trend carries through to decisions of the Court of Appeal in the period of 2018 to 2024, which shows that setting-aside applications on the basis of Section 24(b) succeeded 40% of the time. Another crucial indicator for contracting parties when considering arbitration is the time taken between the issuance of an arbitral award and the court judgment.

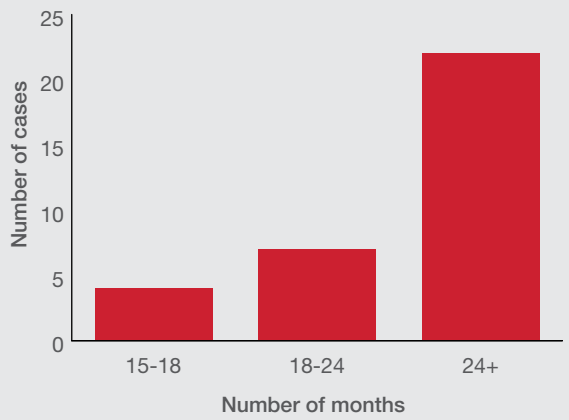
On average, for cases heard from 2018 to 2024, Singapore courts decided cases at first instance within 506 days of the issuance of the arbitral award. Reported Court of Appeal decisions averaged 921 days from award to a final decision by the Court of Appeal. The number of days between the award and the issuance of a final court judgment (disregarding non-final first instance decisions) averaged 656 days, or almost two years.

> “Another crucial indicator for contracting parties when considering arbitration is the time taken between the issuance of an arbitral award and the court judgment.”

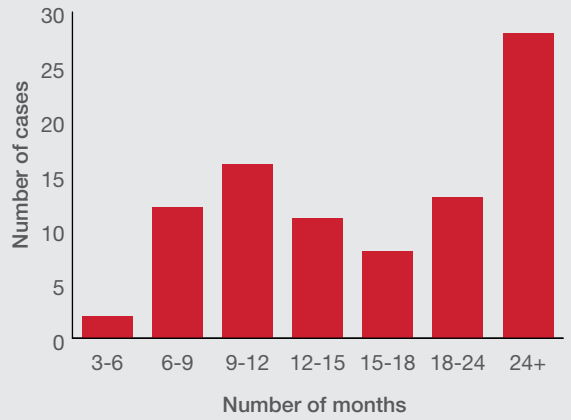
Graph 8: Number of reported first instance decisions from 2018 to 2024 measured against time taken to issue award



Graph 9: Number of reported appeal decisions from 2018 to 2024 measured against the time taken to issue award



Graph 10: Number of reported final decisions from 2018 to 2024 measured against time taken to issue award

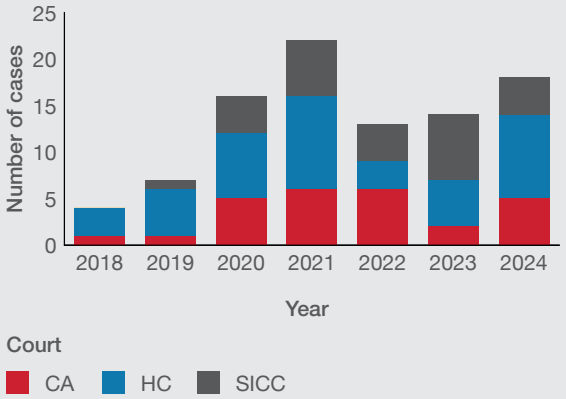


Challenges heard by the SICC

The SICC is a relatively new division of the Singapore High Court. Introduced in January 2015 and structured as a subdivision of the General Division, the SICC was specifically designed to hear international commercial disputes. Pursuant to Section 18D(2)(a) of the Supreme Court of Judicature Act 1969, the SICC has jurisdiction to hear proceedings relating to international commercial arbitration. A case heard by the SICC may either be commenced there or transferred to it.

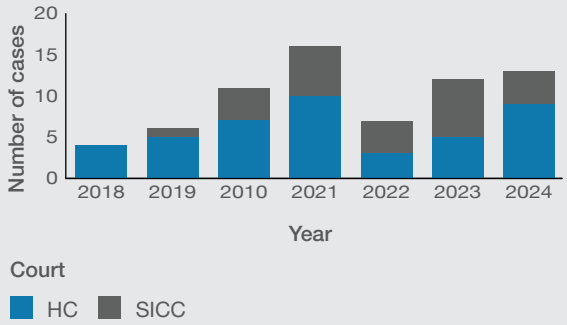
As can be observed from the chart below, since its introduction in 2015, the SICC has decided a growing number of setting-aside applications. In the first three years following its inception (2015 to 2018), no setting-aside applications were heard by the SICC. In 2019, Justice Anselmo Reyes decided the SICC's first setting-aside application (out of the seven applications filed in the Singapore courts that year). By contrast, in 2023, the SICC heard seven of the 14 challenges (i.e., 50%) filed in Singapore. And in 2024, the SICC heard four of 18 challenges (i.e., 22.2%) filed in Singapore.

Graph 11: Reported decisions by courts on a per year basis

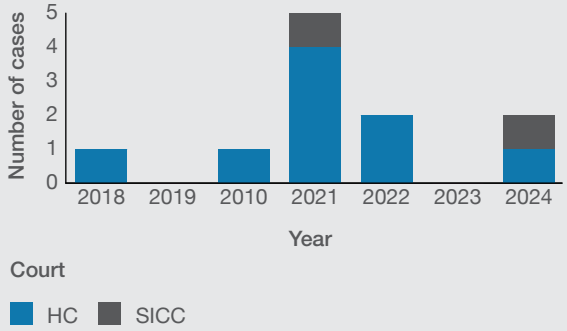


Since its establishment in 2015, the SICC has been gaining popularity and has become a serious contender as parties' court of choice for challenging an award. As will be further discussed in Chapter III (Analysis) below, this trend may be attributable to the differences in the courts' cost regimes, as cases heard by the SICC tend to offer better prospects for recovering legal costs.

Graph 12: Reported decisions heard in High Court vs SICC on a per year basis



Graph 13: Successful reported decisions in High Court and SICC on a per year basis



Challenges versus awards made

The SIAC has issued annual reports publishing case data since 2010, with the amount of data provided increasing over the years. Paired with the data that can be drawn from cases involving challenges to arbitral awards, there is potentially a wealth of analysis that can be performed. However, due to the small sample size of the data available, it may be difficult to draw firm conclusions at this time.

By conducting basic statistical hypothesis testing, we have sought to compare the number of SIAC awards issued each year against the number of setting-aside applications to see if there is any correlation between these sets of figures. The null hypothesis (H_0) is that there is no significant difference/relationship between the variables (i.e., between the number of SIAC awards issued each year and the number of decisions on setting-aside applications issued per year). The alternative hypothesis (H_1) is that there is a difference/relationship between the variables in question.

We have made the following assumptions:

a. The number of SIAC awards issued each year correlates closely with the number of Singapore-seated arbitral awards issued each year.

b. Limited by the data available from the SIAC,[4] we have used the total number of final arbitral awards made each year as a proxy for the number of Singapore-seated arbitral awards made in that year.

c. We have assumed that the number of unreported decisions is proportional to the number of reported decisions.

Based on the above assumptions, a dataset containing the following for the period of 2013 to 2023 was obtained:[5]

a. Number of SIAC awards (final);

b. Total number of reported first instance decisions in the High Court and the SICC (based on the date of award);[6] and

c. Total number of reported decisions (based on the date of award).[7]

4. Except for 2019, the SIAC annual reports from 2013 to 2023 provide a breakdown of the number of awards issued in respect of emergency arbitration. As a result, we had to rely on the total number of arbitral awards issued each year, rather than excluding awards issued in respect of emergency arbitration.

5. As the cutoff date for our collation of reported decisions was 31 December 2024, the record of decisions relating to arbitration awards issued in 2024 was incomplete. For this reason, we have excluded 2024 in our analysis.

6. The number of first instance decisions in each year was determined based on the date of the respective arbitral award.

7. Similarly, the number of final decisions in each year was determined based on the date of the respective arbitral award.

We performed an analysis on the data above to determine the Pearson correlation coefficient, t-statistic and p-value. This was done to assess the relationship between the number of arbitral awards issued by the SIAC and the number of applications to the Singapore courts to set aside those awards from 2013 to 2023.

a. **Pearson correlation coefficient:** This is a number between 1 and –1 that indicates whether there is a positive or negative linear correlation between the two variables (the number of SIAC awards in a year against the number of reported first instance decisions; and against the total number of reported decisions) and whether the correlation is strong. The closer the number is to 1 (or –1), the stronger the positive (or negative) correlation. The closer the number is to 0, the more likely it is that there is no linear relationship between the variables.

b. **t-statistic:** This is used to determine whether to support or reject the null hypothesis, i.e., that there is no linear correlation between the number of SIAC awards issued in a year and the number of setting-aside applications to the Singapore courts. It is interpreted together with the p-value to arrive at a conclusion.

c. **p-value:** This is a number between 0 to 1 that describes the likelihood of obtaining the null hypothesis (H_0); i.e., it determines the significance of the statistical results of the Pearson correlation coefficient. The larger the p-value, the more likely that the null hypothesis is correct, while a smaller p-value means that the data is less likely to support the null hypothesis, and therefore the alternative hypothesis is more likely to be accepted, i.e., that there is a relationship between both variables.

	Total first instance decisions (based on date of award)[8]	Total decisions (HC, SICC and CA, based on date of award)[9]
Pearson correlation coefficient	0.78	0.79
t-statistic (statistical significance)	3.71	3.91
p-value (two-tailed test)[10]	0.0035	0.0024

The above results suggest that there is a statistically significant positive correlation between the number of SIAC awards issued each year and the total number of first instance decisions as well as the total number of decisions.

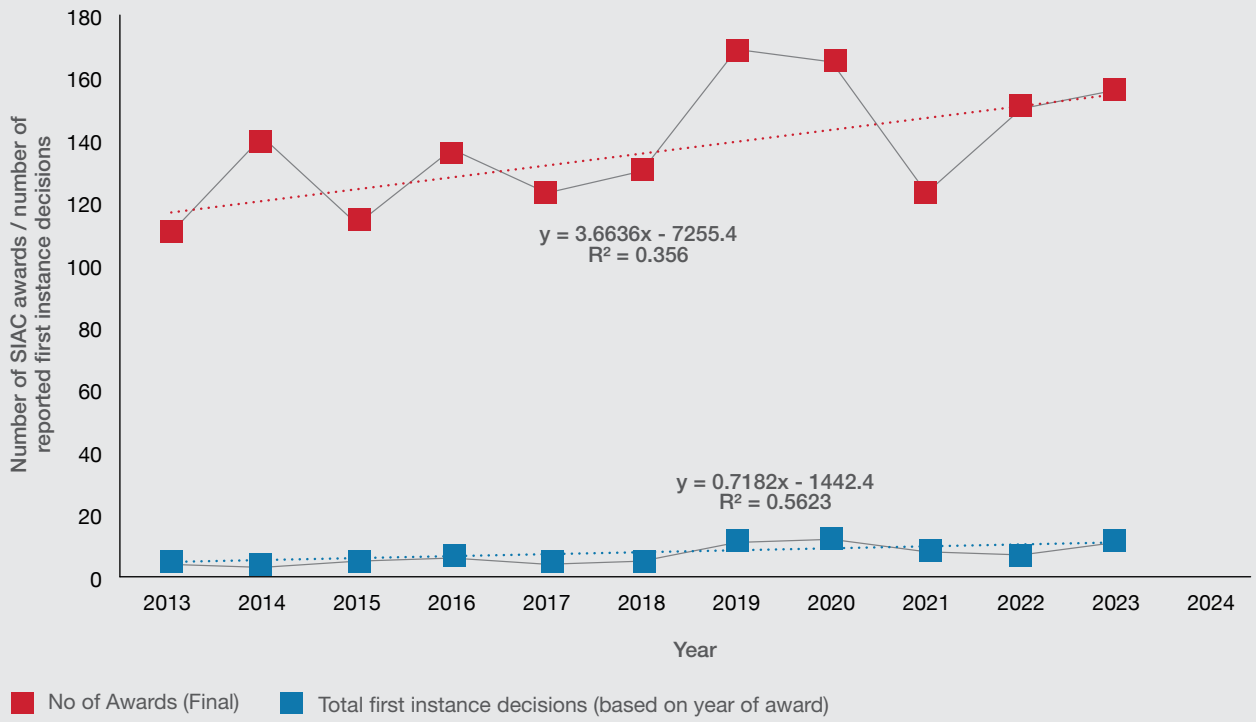
8. The number of first instance decisions in each year was determined based on the date of the respective arbitral award.

9. Similarly, the number of final decisions in each year was determined based on the date of the respective arbitral award.

10. A two-tailed test is used in statistical hypothesis testing to determine if there is a statistically significant correlation (which can be either positive or negative) between two sets of numbers. In this instance, we tested the number of arbitration awards issued in a year against the number of decisions (in various configurations) issued by the Singapore courts.

Looking at the graphical image plotting the number of SIAC awards issued annually against the total first instance reported decisions and total reported decisions, we can see this correlation:

Graph 14: Trends for number of SIAC awards and number of reported first instance decisions annually



The analysis suggests that there is also a strong relationship between the number of SIAC awards issued and the total number of reported decisions (including court of appeal decisions) each year.

Analyzing the relationship between the total number of first instance decisions (based on the year of the arbitral award) and the number of new arbitral cases filed each year, we note a Pearson correlation coefficient of 0.78, a t-statistic of 3.71 and a p-value of 0.0035, which suggests that there is a strong positive correlation between both variables. A similar conclusion is arrived at when analysing the total number of reported decisions (based on the year of the arbitral award) against the number of new arbitral cases filed each year.

One interesting observation from analyzing the case data is that the main grounds under which parties bring challenges tend to fall under Article 34(2)(a)(ii) (procedural lapses in the appointment of arbitrators and the inability of a party to present its case), Article 34(2)(a)(iii) (scope of the arbitral award and matters dealt with by the arbitrator), and Section 24(b) (issues of natural justice). Given the broad nature of these grounds for challenging arbitration awards and the limited cost consequences for unsuccessfully bringing such a challenge (see section below), it is not surprising that these are often relied upon by parties seeking to challenge an arbitration award as this strategy effectively delays the enforcement of the award by up to a year in exchange for having to pay the award creditor's relatively restricted legal costs.

Breach of natural justice (due process and procedural irregularities)

Section 24(a) only featured as a ground of challenge 13 times from 2001 to 2024, whereas Section 24(b) features as a ground of challenge 110 times in the same period.

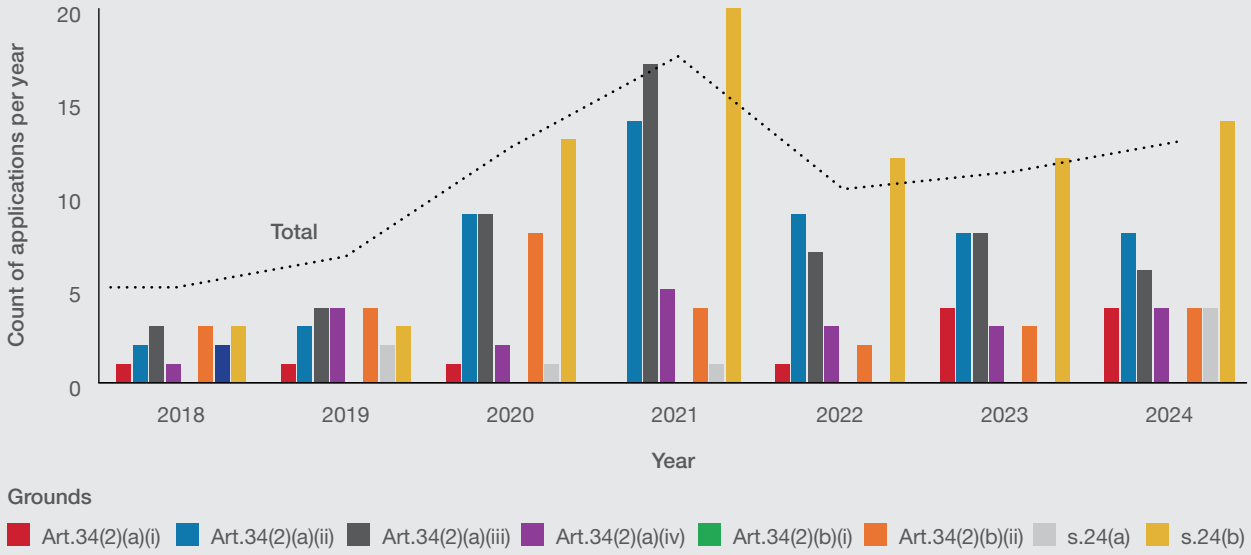
However, unlike Section 24(a) (which relates specifically to awards induced or affected by fraud and corruption), Section 24(b) (which relates to breaches of natural justice) clearly emerges from the data as the most popular ground relied on in setting-aside applications.

The only other grounds that even come close are Articles 34(2)(a)(ii) (69 times) and (iii) (79 times), with Article 34(2)(b)(ii) receiving an honorary mention. However, all those grounds overlap with and are commonly argued together with applications under Section 24(b).

Together, these grounds featured in a significant majority of all setting-aside applications from 2001 to 2024.

Why are these grounds, which share a common thread of natural justice, so popular?

Graph 15: All reported decisions per ground



The New Zealand Law Committee was hesitant about including a breach of the rules of natural justice as a ground for setting aside an award, on the basis that this was an expansive approach to judicial review by the courts that was felt to contradict the adoption of the Model Law's policy of minimal curial intervention. Its hesitation turned out to be prescient – counsel and parties have found creative ways to attack awards, often blurring the lines between an application to set aside an award and an appeal against the award itself.

The Singapore courts have responded to this by repeatedly espousing the principle of minimal curial intervention, refusing to nitpick at an award and requiring that any breaches be more than arid, hollow and technical and have a material effect on the award that causes prejudice to a party. Despite frequent judicial pronouncements to this effect, parties have not been deterred. In 2018, the four grounds for a breach (Art. 34(2)(a)(ii) and (iii), Art. 34(2)(b)(ii) and s. 24(b)) featured only 11 times. This increased to 56 in 2021 before settling back down to the low 30s in 2022 to 2024.

The success rates suggest that the outcome of an application largely depends on the specific facts before the court. In 2022, 50% of Section 24(b) applications succeeded, but in 2023, none succeeded, although the number of Section 24(b) challenges was the same in each year. In 2024, the rate of success of Section 24(b) applications remained low at 14%.

Is the prevalence of such challenges a uniquely Singaporean feature?

In France, due process arguments seem to be a last resort for counsel in distress and are rarely admitted (6%).

In the UK, the number of challenges on the basis of due process or procedural irregularity dropped by nearly 75% in 2018 to 2019. This was not surprising given that from January 2015 to March 2018, only one of 112 challenges on this basis was successful.[11] This seems to have been part of a concerted attempt by the bench, with one judge remarking that parties were hearing the message that the hurdle for these applications is high.[12]

“The success rates suggest that the outcome of an application largely depends on the specific facts before the court. In 2022, 50% of Section 24(b) applications succeeded, but in 2023, none succeeded, although the number of Section 24(b) challenges was the same in each year. In 2024, the rate of success of Section 24(b) applications remained low at 14%.

11. England and Wales Commercial Court Users' Group: Meeting Report (March 2018).

12. England and Wales Commercial Court Users' Group (November 20, 2019).

First-instance versus appeal decisions

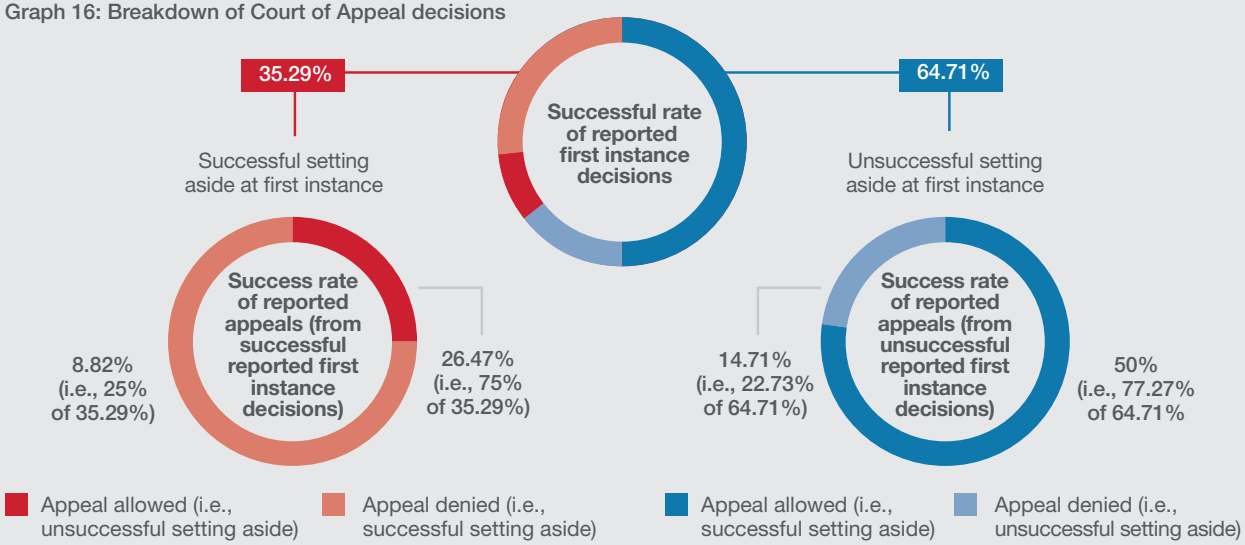
An interesting aspect of the data collated is the propensity of the Court of Appeal to overturn decisions of the High Court and the SICC. While at first glance, there appears to be a surprisingly high successful setting-aside rate of 41.18% of the 34 reported appeals between 2001 and 2024 (as compared with the 19.8% success rate of first instance decisions), this divergence is a presentational one. It has to be viewed in the context that 35.29% of those reported appeals involved first instance decisions in which the awards were successfully set aside.

Of the appeals that led to a setting aside, more than half (64.3%) of them were successful in the first instance court. Therefore, the number of appeals that resulted in the overturning of unsuccessful setting-aside applications in the first instance is 22.73% – a figure largely in line with the 20% success rate in first-instance cases. Interestingly, the Court of Appeal also overturned 25% of the appeals in which the first instance court had ordered the setting aside of the arbitral award. On average, the Court of Appeal overturned 23.53% of the first instance decisions, regardless of the outcome of the first instance decision.

Half of all the appeal cases within this 23-year timeframe were decided in three consecutive years (i.e., 17 appeal cases were issued in 2020 to 2022). The decisions in these years also accounted for three of the four years with the highest number of appeal cases (2020, 2021, 2022 and 2024).

The most popular grounds of challenging an award on appeal were Article 34(2)(a)(iii) of the Model Law and Section 24(b) of the IAA. These were also the most successful, with ~38% success rates on each of these grounds. Given that Singapore treats jurisdictional challenges as something that a reviewing court can consider *de novo*, it is no surprise that Article 34(2)(a)(iii) – under which certain objections can be cast as 'jurisdictional' – is a popular ground on appeal.

Graph 16: Breakdown of Court of Appeal decisions



Costs

Based on the data collected, a clear trend emerges: the courts tend now to award higher costs (in terms of absolute quantum) to successful litigants in setting-aside cases. This trend appears to be driven by both external and internal factors.

a. On a global scale, arbitration – especially international arbitration – has become increasingly complex (and hence more expensive). In many cases that go to international arbitration, sophisticated commercial parties hire large international law firms to prepare and advance their case; voluminous materials and highly complex legal arguments are often put forward. Despite the policy of "minimal curial intervention" and the soft-touch approach that the Singapore judiciary promotes, a proper examination of such voluminous material will inevitably incur more costs. The Singapore judiciary appears to recognize this to some degree when awarding costs.

b. Locally, an increasing number of cases are being heard by the SICC. Following a number of cases in 2022 and 2023 debating the applicability of domestic costs guidelines to setting-aside cases, the settled position in Singapore is that the SICC is not bound by domestic costs guidelines, and tends to make higher costs orders that more closely approximate the fees incurred by parties. In practice, we see this as an indication that more setting-aside cases will go to the SICC as long as the thresholds for transfer are met. Indeed, the highest reported costs awarded to a successful litigant to date were in an SICC case.[13]

Notwithstanding this trend, the Singapore courts do not award indemnity costs to successful parties in setting-aside cases unless they can demonstrate "exceptional circumstances."[14] The Singapore courts have expressly disavowed the Hong Kong position, where the default rule is that indemnity costs will be granted when an arbitral award is unsuccessfully challenged in court proceedings unless special circumstances can be shown[15] (i.e., the reverse of the Singapore position).

Rather, the Singapore position is informed by domestic court rules and a developed jurisprudence in relation to when indemnity costs might be available to a successful party in civil litigation. Setting-aside cases by themselves do not trigger the "exceptional circumstances" threshold and are treated like any other civil litigation case in this regard. In practice, this means two things:

a. First, there is generally an "expectation gap" for international parties who are successful in international arbitration. Such parties expect to recover all of their reasonable costs in full (i.e., on an indemnity basis) if they win an international arbitration, but will rarely – if ever – recover more than 50% of their costs in defending an award from being set aside in Singapore.

b. Second, award debtors will usually (assuming the award is substantial enough) see little disadvantage in making an application to set aside the award. The costs of doing so are outweighed by the potential benefits – in practical terms, even if the application is a difficult one, the award debtor will be able to enjoy the use of the award debt while the parties contest the setting-aside application.

13. *CNA v. CNB and another and other matters* [2023] SGHC(I) 6.

14. *BTN v. BTP* [2021] 4 SLR 603 at [10]. In this case, the High Court fixed costs of SGD 50,000 and disbursements of SGD 6,183.56.

15. *BTN v. BTP* [2021] 4 SLR 603 at [6] citing *A v. R* [2010] 3 HKC 67. Interestingly, *A v. R* was a case decided by Anselmo Reyes J, who now sits as an international judge in the SICC.

There is a credible argument that the availability of indemnity costs could play a deterrent role in unmeritorious setting-aside applications being made. Hong Kong – which does have a robust costs regime in place for unmeritorious challenges to arbitration awards – had more than 70% fewer setting-aside cases compared to Singapore in the years 2018 to 2024 despite the SIAC and HKIAC having similar caseloads. On the other hand, success rates reported in Hong Kong and Singapore were quite similar in these years (approximately 22% for Hong Kong vs 23% for Singapore). Furthermore, Hong Kong experienced mostly year-on-year growth in the number of setting-aside cases in its docket in the years we examined. These factors suggest that while the inclusion of a more robust regime, such as in Hong Kong, may help to deter unmeritorious applications and more fairly compensates an award creditor for rightfully defending its right to immediate enforcement of the award, not to mention its lost time and use of the award debt, there will still be unmeritorious cases that are challenged in court (possibly because of the quantum of the dispute or other strategic reasons).

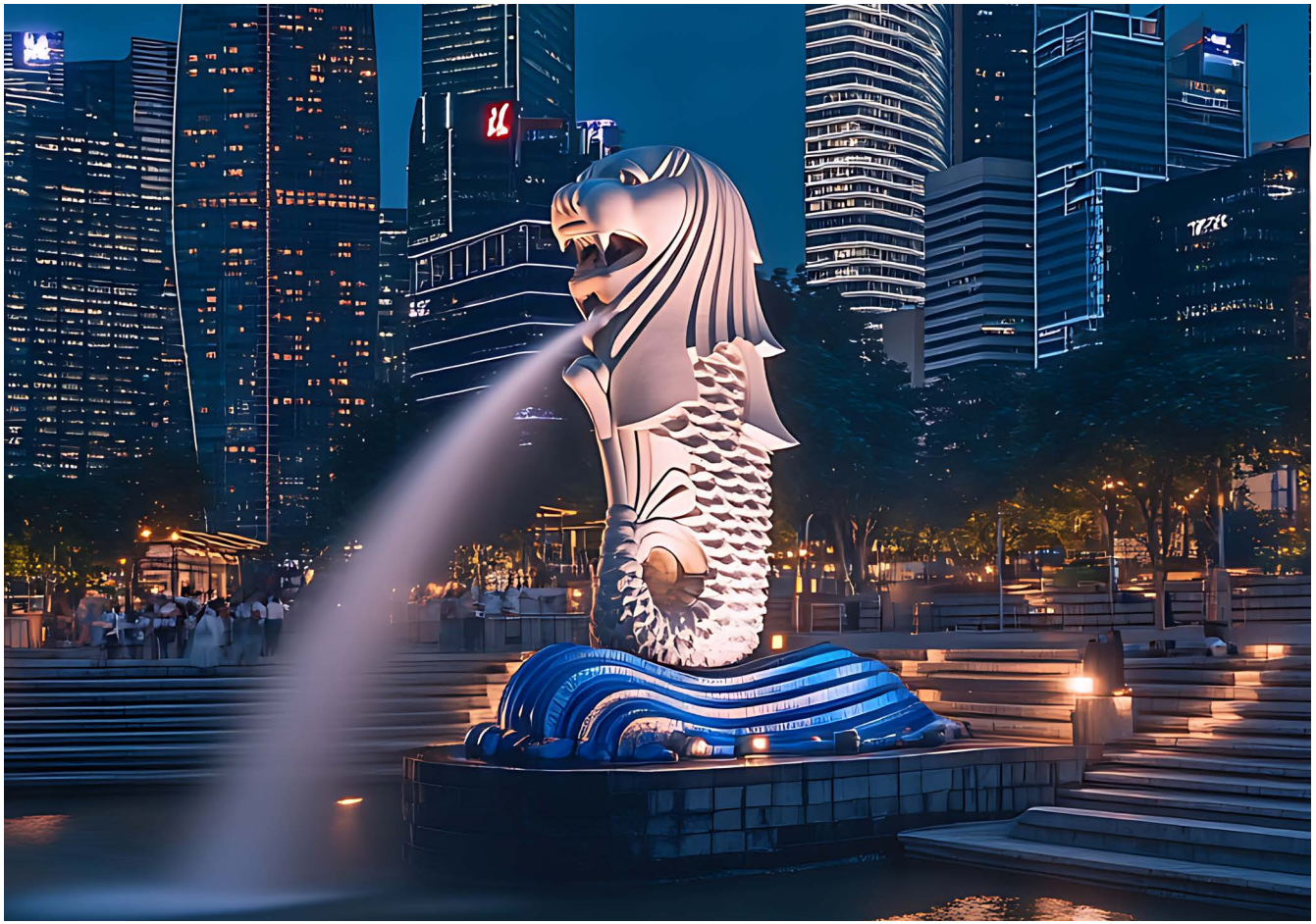
Setting-aside cases by themselves do not trigger the "exceptional circumstances" threshold and are treated like any other civil litigation case in this regard.

A limitation of this comparison with Hong Kong data is that the indemnity costs regime in Hong Kong was introduced prior to the start point of our dataset (i.e., the case of *A v. R*, which was decided in 2010).

Given the different statutory regimes in Singapore and Hong Kong, one possible way for Singapore to deal with unmeritorious setting-aside applications may be to introduce a fast-track procedure for straightforward setting-aside cases. This might reduce the load on the Singapore courts and relieve pressure on judges' hearing diaries, while allowing disgruntled parties to pursue genuinely meritorious setting-aside applications. Such an approach could be timely, as Singapore contemplates introducing amendments to the International Arbitration Act to permit parties to opt-in to curial review on questions of law: the English experience tells us that applications based on errors of law are the most popular, and most successful, grounds of challenge, and such amendments will likely increase the caseload of the courts hearing setting-aside cases in Singapore, if parties opt-in to such an appeal procedure.

> "… one possible way for Singapore to deal with unmeritorious setting-aside applications may be to introduce a fast-track procedure for straightforward setting-aside cases. This might reduce the load on the Singapore courts and relieve pressure on judges' hearing diaries, while allowing disgruntled parties to have their day in court to set aside what they believe are awards that were wrongly granted."

A secondary trend observed is that cost data on reported cases is now more frequently available, which in turn makes it easier for parties to gauge the costs of their disputes (and, in turn, potentially inform settlement proceedings). This is mostly due to the larger number of reported cases in general – from 2001 to 2010, there were only three years with more than one reported case, and none with more than three, compared to multiple cases being reported from 2011 onwards. This could also be attributed to what we posit is a shift towards greater transparency in deciding setting-aside cases, which has manifested in other ways as well (e.g., "naming and shaming" tribunals that get things wrong).



03 Global Trends

Global Trends | **I. Introduction**

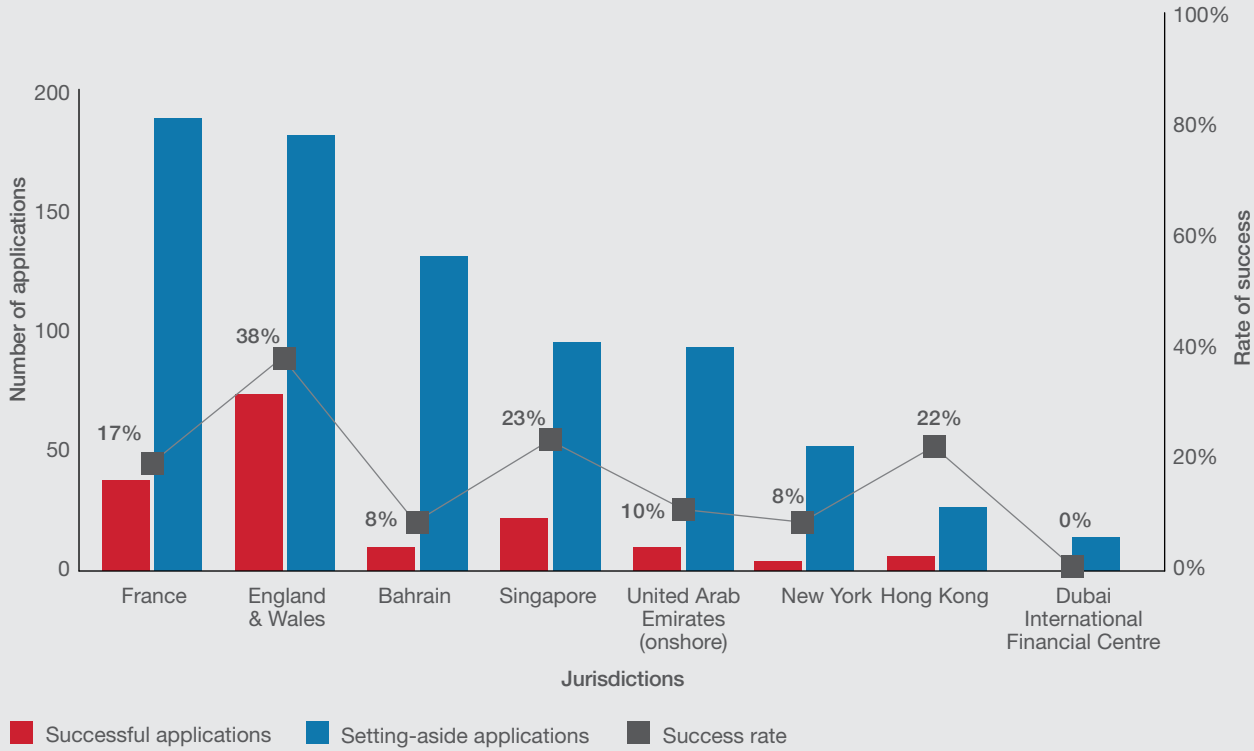
In the preceding chapters, we have examined data relating to setting-aside applications from the leading arbitral seats in the world. In this chapter, we take a global view of that data to compile some broader observations and conclusions.

Global Trends | **II. Overall numbers – trends**

The jurisdictions with the most active dockets of setting-aside applications in the period between January 1, 2018, to December 31, 2024[1], were, in order: (1) Paris; (2) England and Wales; and (3) Bahrain. The number of cases in England and Wales and Paris is not surprising, given the importance and popularity of these seats. What might be surprising to the reader is the number of setting-aside cases in the Middle East: Bahrain saw 131 setting-aside applications – more than Singapore and Hong Kong combined – and the UAE courts (Dubai and Abu Dhabi) saw 92, the fifth-highest total after England and Wales, Paris, Bahrain and Singapore. This contrasts with the latest results from the 2025 International Arbitration Survey: the five most preferred seats for arbitration globally are London, Singapore, Hong Kong, Beijing, and Paris (in that order). While Dubai featured as a preferred seat for respondents from Africa and the Middle East, Bahrain was not mentioned.

The statistics for each of these jurisdictions are set out below.

Graph 1: Overview of setting aside applications January 1, 2018 to December 31, 2024 (with success rates rounded to the nearest whole number)



1. With the exception of onshore UAE cases, which were collected from the enactment of the Federal Arbitration Law i.e., 16 June 2018. In the case of France, Singapore, and the DIFC, we extracted the relevant data from this period from the wider dataset collected to ensure a like-for-like comparison.

We set out below some observations on these numbers, as well as the underlying factors for some of the more surprising results.

It is important to note that these figures take into account only case information that was reported or otherwise publicly available. These numbers are therefore most likely skewed toward a higher success rate due to unreported cases (which would tend toward a rejection of a setting-aside application). Because this factor affects every jurisdiction, its effect on the data is likely to be equalized. What this means, however, is that each of the jurisdictions surveyed will likely have heard (and presumably rejected) more applications than those reported, and that, as a consequence, the true success rates for each jurisdiction are likely lower than those reported.

What is immediately obvious is England and Wales's surprisingly high percentage of success in setting aside awards, at 38%… However, an analysis of the underlying figures reveals that this percentage is likely due to the high success rate (50%) of applications to set aside under Section 69 of the English Arbitration Act (AA).

England and Wales: Setting-aside paradise?

What is immediately obvious is England and Wales's surprisingly high percentage of success in setting aside awards, at 38%. This compares with significantly lower success rates in its traditional "rival" seats. For example, Paris has a far lower success rate (less than half) on a similar caseload.

However, an analysis of the underlying figures reveals that this percentage is likely due to the high success rate (50%) of applications to set aside under Section 69 of the English Arbitration Act (AA). This section allows for a limited appeal on a question of law arising out of the award. Set-aside applications based on other grounds were much more in line with success rates in other jurisdictions (i.e., 28% on jurisdictional grounds under Section 67 of the AA, and 16% on grounds of serious irregularity under Section 68). However, as already discussed in the England and Wales chapter, this high rate of success can be explained by the fact that permission to appeal is required from the Court to bring an application under this section; applications not granted permission to appeal have not been included in this figure (although they should be considered unsuccessful in outcome).

This figure also does not include unreported cases. As a sense check, the Commercial Court's reports for the years 2022-2023 and 2023-2024 indicate that only 19.5% and 19.2% of such Section 69 appeals to the Commercial Court were successful, respectively (i.e., far lower than the reported 50%). This suggests that the Court handles a substantial number of unreported, unsuccessful challenges to awards.

It is difficult to assess whether such a ground of setting aside contributes to a higher (or even lower) rate of success for setting-aside applications. Hong Kong has a provision allowing appeals on a point of law on an opt-in basis; curiously, there has been no setting-aside application under that provision. Consultations are currently ongoing in Singapore to amend its legislation to permit appeals on a point of law on an opt-in basis. Time will tell whether this has a long-term impact on the number and success rates of setting-aside applications, not least because the possible amendment may include questions of foreign law – long treated by the Singapore courts as a question of fact – as an appealable question of law. This would broaden the scope of possible appeals beyond that available under the English Arbitration Act.

Singapore and Hong Kong: A tale of two cities

Another notable statistic is that Singapore had more than three times the number of setting-aside applications as Hong Kong, despite the comparable caseloads of the SIAC and HKIAC. Surprisingly, Hong Kong had relatively few setting-aside cases, despite being the third-most preferred seat among respondents to the 2025 International Arbitration Survey.

One possible explanation for the difference in volume is Hong Kong's robust costs regime, which allows indemnity costs to be granted against a party making an unsuccessful challenge. Hong Kong is unique among the leading arbitral seats in this regard. It could explain the comparably low volume of setting-aside cases relative to the other established seats. However, Hong Kong's numbers tell another story in parallel: the success rates of the cases heard in Hong Kong are very similar to those in Singapore. This is somewhat surprising, although if our previous hypothesis is correct, it may suggest that the cases brought in the Hong Kong courts are already the most meritorious, and that the success rate therefore reflects this phenomenon.

France: Many cases lead to many failures

Setting-aside cases in France have a low success rate of 17%. Interestingly, Paris had the highest number of setting-aside cases of all the seats reviewed. This is despite it being the fifth-most preferred seat among respondents to the 2025 International Arbitration Survey. There are a number of factors that may explain this. One possibility is the availability, under French law, for setting aside on the basis that an award is contrary to international public policy, which was the most frequently invoked ground in French setting-aside cases. There is no precise definition of "international public policy" that encompasses both procedural and substantive international public policy, leading parties to "take a chance" in setting-aside cases. Another factor is the relatively low cost of setting-aside proceedings in France. The administrative cost is negligible, and legal fees are much lower than in typical arbitration proceedings. The losing party in a Paris-seated arbitration may therefore see no harm in taking their chances on a setting-aside application.

Setting-aside cases in France have a low success rate of 17%. Interestingly, Paris had the highest number of setting-aside cases of all the seats reviewed, by quite some margin… One possibility is the availability, under French law, for setting aside on the basis that an award is contrary to international public policy, which was the most frequently invoked ground in French setting-aside cases.

New York: Robustly pro-arbitration

Contrast this with New York, which had both a low success rate and a small number of cases. We posit that this reflects the general sentiment in New York, and the United States generally, that setting aside an arbitration award is very difficult. The low success rate of setting-aside cases supports this view and shows that a strict regime can itself deter unmeritorious applications, despite the absence of cost consequences, since parties typically bear their own legal fees and costs in U.S. litigation. That said, the cost of legal services in New York is generally higher than in the other jurisdictions surveyed, which could also serve as an "indirect" deterrent against frivolous applications.

UAE and Bahrain: Models of the Middle East

The Middle East jurisdictions reviewed – namely, the UAE, DIFC, and Bahrain – all reported very low success rates for setting aside awards, despite handling a significant volume of cases; in the case of the DIFC, the success rate was 0%. The "onshore" UAE courts (Abu Dhabi and Dubai), as well as Bahraini courts, actually saw a far higher number of setting-aside cases than more traditionally popular seats such as Singapore, Hong Kong, or New York. In fact, the number of applications heard in the Bahraini courts was more than four times the number heard in Hong Kong. This is particularly interesting given that the onshore UAE courts have several grounds for setting aside that differ from the usual Model Law-type grounds.

The Middle East jurisdictions reviewed – namely, the UAE, DIFC, and Bahrain – all reported very low success rates for setting aside awards, despite handling a significant volume of cases; in the case of the DIFC, the success rate was 0%.

Again, it is possible that the practical consideration of costs was driving these numbers. Until recently, Bahraini and onshore Dubai courts have awarded nominal legal costs amounts that did not reflect the actual legal costs incurred, which may have led to frivolous set-aside applications being filed.

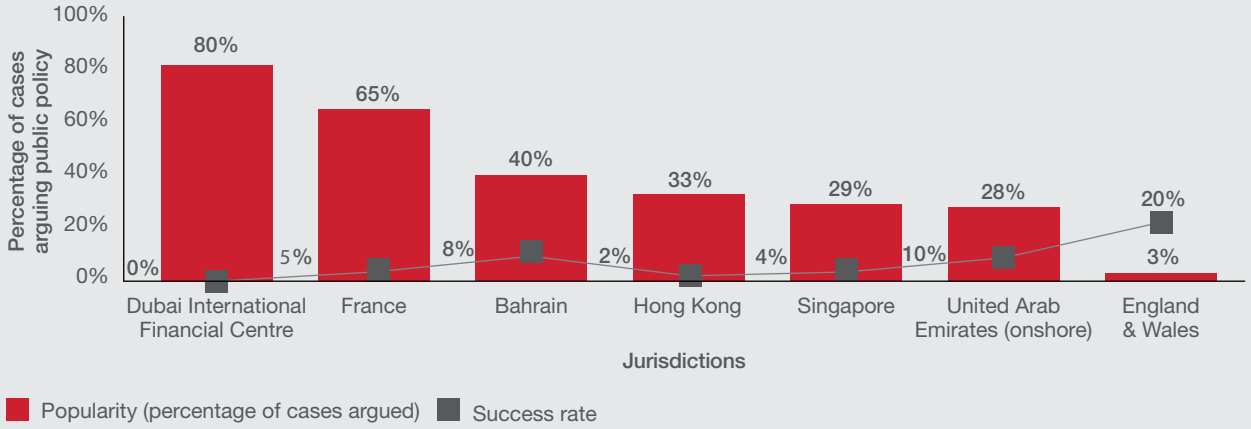
In recent years, however, Bahraini courts have demonstrated a growing willingness to depart from this traditional approach by awarding reasonable attorney's fees incurred. It may therefore be that in future the number of set-aside applications in Bahrain decreases.

By comparison, in the DIFC courts, where substantial costs orders are the norm, the volume of set-aside applications remains low.

Public policy: The unruly horse

Most jurisdictions we reviewed had some level of curial oversight and recourse for breaches of public policy by way of setting aside.[1] Because practitioners and users of arbitration may regard such a ground as a "catch-all" to express arguments on perceived unfairness, most jurisdictions saw a significant number of setting-aside cases on the basis of public policy, but with little success. England and Wales is a notable exception – there were very few applications relying on public policy as a ground to set aside awards in England and Wales, with only five out of 178 (2.81%). This is significantly lower than the jurisdiction with the next fewest such applications (UAE, with 29 out of 103 or about 28.2% – 10 times more than England and Wales). This suggests a clear trend in England and Wales, compared to all other jurisdictions, to avoid making such arguments, possibly because other grounds (such as appeals on points of law) are more likely to capture the grievances of the party seeking to set aside the award.

Graph 2: Setting aside applications on public policy grounds (with success rates rounded to the nearest whole number)



Nevertheless, the success rate of such challenges is very low across the board. The percentage for England & Wales is somewhat of an outlier because it saw so few cases, which means that any successful case would have an 'outsized' effect in percentage terms – the 20% success rate reflects the fact that 1 out of the 5 set-aside cases on this ground was successful. This is despite varying notions of public policy in the jurisdictions analyzed.

The starkest example is a case in the UAE in which an award that was not signed on every page was found to be void for public policy. Further, in the UAE and Bahrain, questions of *res judicata* are generally considered issues of public policy – an approach that has been rejected in Singapore, which treats errors in determining questions of *res judicata* as errors of law.

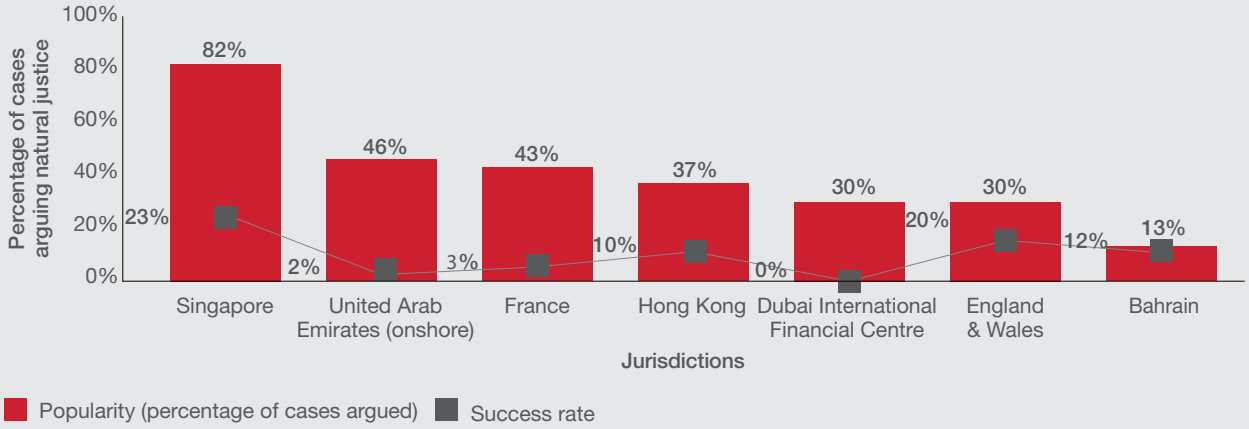
1. There is no public policy ground per se in New York; however, there is a ground of setting aside on the basis that the award was procured by corruption, fraud, or undue means, which would generally fall under a public policy ground in other jurisdictions.

Natural justice: Weapon of choice?

Most jurisdictions reviewed had grounds for setting aside awards on the basis of natural justice or due process concerns (i.e., the arbitration was carried out in a way that did not allow a party a reasonable opportunity to present its case).[2] This is unsurprising, given that the concept of setting aside arbitral awards issued by the parties' chosen arbitrators is commonly understood to encompass such procedural issues in the making of the award.

In general, parties seeking to set aside awards on these grounds enjoyed relatively greater success compared to public policy grounds. In England and Wales and Singapore, natural justice grounds were argued far more frequently than public policy. This is likely to be due to the stringent conception of "public policy" in Singapore and England and Wales.

Graph 3: Setting aside applications on natural justice grounds (with success rates rounded to the nearest whole number)



[2] Again, there is no direct equivalent in New York, although various grounds to set aside an award are couched in terms that would likely, in other jurisdictions, justify an application on the basis of public policy (i.e., corruption, fraud).

Costs: The elephant in the room

The general convention in international arbitration is that the winning party will expect to recover its reasonable costs from the losing party, most often on an indemnity basis. However, our survey of the various jurisdictions suggests that there is a large expectation gap between costs allocation in the underlying arbitration and in proceedings to set aside an award.

In particular, almost all of the jurisdictions surveyed (except Hong Kong and the DIFC) had only limited costs recovery, even where an application to set aside was unmeritorious.

Accordingly, award creditors will generally have to be out of pocket to defend setting-aside proceedings, despite being (in theory) in a far better position than before they received an award. This expectation gap creates a window for award debtors to arbitrage (e.g., by negotiating a slightly smaller payment or an installment plan). The lack of meaningful costs consequences could, as posited in the sections above, be a factor in explaining the volume of cases in certain jurisdictions, although it might also be argued that whether setting-aside costs serve as a significant deterrent is likely to depend on the size of the award.

Jurisdiction	General costs rule
France	Costs follow the event, although the absolute quantum is discretionary and not directly tied to the costs actually incurred by the prevailing party.
England and Wales	Costs follow the event, with a significant level (60–75%) of recovery by the successful party.
Singapore	Costs follow the event, but indemnity costs are not a default. Higher costs may be recovered if the case is heard in the Singapore International Commercial Court.
Hong Kong	Costs follow the event, with the presumption of indemnity costs in the event of an unsuccessful challenge against an award.
New York	Parties generally pay their own costs.
UAE – onshore (Abu Dhabi and Dubai)	Courts do not award significant legal costs to the prevailing party, limiting recoveries to modest court costs and related expenses.
UAE – offshore (DIFC)	The DIFC courts grant cost awards that often cover a significant portion of legal expenses incurred by the successful party.
Bahrain	Until recently, courts only awarded nominal legal costs. However, courts are increasingly willing to award reasonable and substantiated legal fees.

Global Trends | **III. Conclusion**

The data collected for the purpose of this report invites many potential avenues of comparison and analysis. We draw three conclusions from our survey of the data.

1. Many setting-aside cases are heard and dismissed without being reported in a written decision accessible to the public. Each jurisdiction is subject to this limitation, which presents an added complexity to interpreting the data. The existence of unreported decisions is most striking in the analysis of data for England and Wales, suggesting an artificially high success rate for applications made under Section 69 of the UK Arbitration Act (as discussed above).

2. The popularity of a seat may not always correlate with the popularity of setting aside as a remedy in that seat. Hong Kong consistently ranks as at least the third-most popular seat globally, but sees the lowest number of awards set aside among all the jurisdictions we reviewed, with the exception of the DIFC. This, of course, may be a feature rather than a bug: Hong Kong is unique among the leading arbitral seats in prescribing indemnity costs against an unsuccessful setting-aside plaintiff, something which may be a factor both in its popularity and in the low volume of setting-aside cases.

3. While national conceptions of public policy and natural justice may differ, most courts set the bar for public policy challenges much higher than breaches of natural justice.[3] This suggests a strong intuition that public policy challenges – frequently couched in the language of outrage – are simply catch-all provisions that serve as vehicles for parties' complaints rather than legitimate concerns with the arbitral process.

[3] With the exception of the UAE and France. For UAE, this could be due to the definition and understanding of "public policy". In the case of France, the success rates of both grounds are so low (3% for natural justice and 5% for public policy) that it is impossible to draw this conclusion. We note that, in the wider dataset for cases in France, 5% of natural justice challenges were successful, while 4% of public policy challenges were successful, suggesting a robust approach by the French courts towards both types of challenges.

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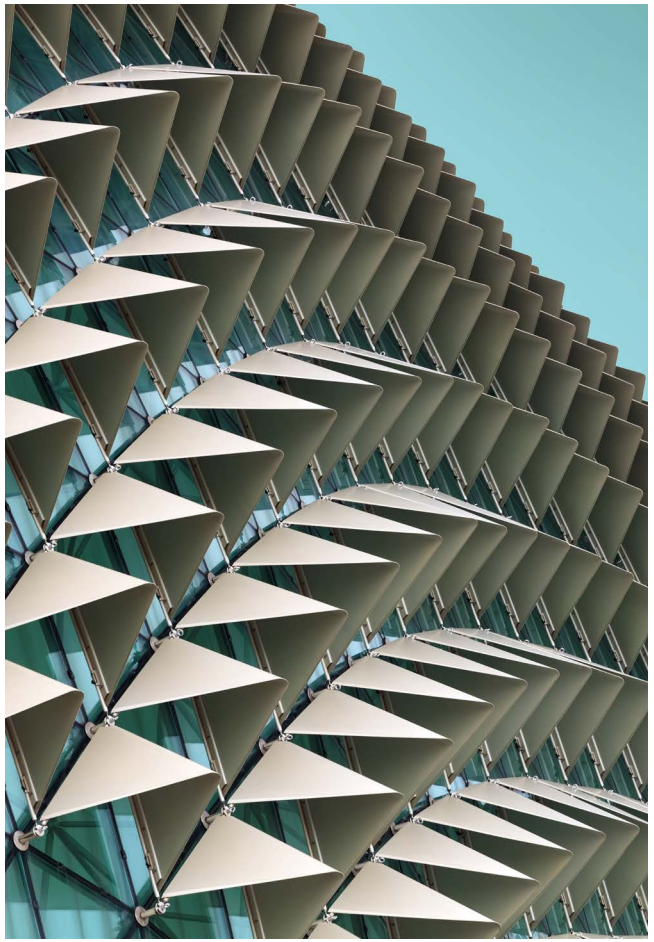

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