INTERNATIONAL LAW ASSOCIATION

VIENNA CONFERENCE (2026)

Committee on Conflict of Laws Issues in International Arbitration:

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FIRST INTERIM REPORT

12 July 2026

I. Introduction to the Committee

A. Establishment

The International Law Association's ("***ILA***") Committee on Conflict-of-Laws Issues in International Arbitration was set up on the initiative of Nikolaus Pitkowitz, who had been inspired by a lecture by Christian Koller that drew his attention to the topic ("***Committee***"). The Committee has 59 members from 36 jurisdictions[1] around the world. Nikolaus Pitkowitz and Wendy Lin are the Co-Chairs, and Mariel Dimsey and Matthias Lehmann are the Co-Rapporteurs (together "***Officers***"). The Committee's mandate was approved by the ILA Executive Council on 9 November 2024.

B. Aim

The aim of the Committee is to foster a harmonious approach to conflict-of-laws issues in international arbitral proceedings, both at the level of state authorities and that of arbitral tribunals. The project's focus is on commercial arbitration, yet its product may also be useful for investment arbitration.

The project will address difficulties arbitral tribunals face when determining the law that applies to certain legal questions, such as the validity of the arbitration agreement, arbitrability, the merits of the case, privilege, document production, or service of the award. These difficulties are further compounded by the fact that the arbitrators may have to deal with various national authorities that approach the same questions differently. These divergences can create a dilemma for the arbitral tribunal, which must choose between the laws applied by one or the other national authority.

C. Deliverables

The project shall elaborate methods, principles and, where possible, precise rules to solve these intricate conflict-of-laws issues in a harmonious manner. It shall overcome complexities, reduce costs, and increase legal certainty. In this way, it shall enhance the parties' interests, facilitate the task of arbitrators and judges, and increase the efficiency of arbitral and judicial proceedings.

The core deliverable is to develop conflict-of-laws principles that can be practically used by international arbitral tribunals. The project shall also elaborate a methodology that arbitrators can use to address conflict-of-laws issues. Where necessary and possible, rules shall be drafted that may be adopted as treaties, national law, or rules for arbitral institutions.

D. Agenda

In a first step, pervasive conflict-of-laws issues have been identified. Thereafter, a general methodology to solve these issues shall be elaborated. Next, principles for resolving conflict-of-laws issues are to be developed, which shall provide high-level guidelines to tribunals in the form of a soft law instrument. In a further step, more precise rules shall be proposed that may be adopted e.g., as model laws, as model contract terms, or as institutional rules. Finally, it may be possible and necessary to draft hard law rules, such as rules for an international convention.

[1] Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Caribbean (Trinidad and Tobago), Chile, China, Cyprus, Czech Republic, England, Finland, France, Germany, Greece, Gulf Cooperation Council, Ghana, Lithuania, Kazakhstan, Turkey, Hong Kong, Italy, Japan, Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Russia, Singapore, South Africa, Sweden, Switzerland, and United States of America.

The methodology shall be finished by the end of 2026. The principles shall be finalised by the summer of 2028. Potential rules are to be finalised by the summer of 2030.

II. Past Activities of the Committee

The Officers held an online webinar on 18 February 2025. The purpose was to present the background, the aims, and the timeline of the project, and to encourage participation by prospective members.

After constitution of the Committee, a first conference call took place on 24 September 2025. In this call, members had the chance to introduce themselves. Subsequently, a questionnaire was presented, which concerned various conflict-of-laws issues that may arise in arbitral and related judicial proceedings ("***Questionnaire***" – see Appendix). The members were asked to file national reports based on the Questionnaire ("***Reports***").

A third conference call took place on 19 May 2026. In this call, members were asked for assistance with the analysis of the Reports. The timeline of the future work of the Committee and a planned publication were discussed.

Between these meetings of the full Committee, the Co-Chairs and Co-Rapporteurs met frequently, together with Christian Koller, to discuss the next steps.

III. Questionnaire Distributed to Committee Members

The Questionnaire, reproduced in the Appendix, was distributed to all Committee members in November 2025. It consists of 15 broad topics, each comprising several questions. They concern various issues of conflict-of-laws, ranging from the law applicable to the arbitration agreement to the law governing issues such as *lis pendens* and *res judicata*. Committee members were asked to answer these questions as neutral observers of the law and practice in their jurisdiction, and to enrich them with their own personal experience. Where possible, they should analyse the questions both from the perspective of a state court and an arbitral tribunal. Furthermore, they were asked to report where solutions were found by other means than through conflict-of-laws rules, such as the application of soft law.

The reports were rendered in January and February of 2026. They proved to be very informative. Committee members had put in significant effort to explain the situation in their jurisdictions. The reports show where uncertainty is highest and indicate which questions the Committee's future work could most usefully focus on.

IV. Country Reports on the State of the Law

The following provides a short overview of the reports received. Space does not permit giving a more detailed account. However, the Committee plans to publish the national reports.

A. The Law Governing the Validity and Scope of Arbitration Agreements

The first question Committee members were asked was whether there exist statutory rules or case law in their country regarding the law governing the formal and substantive validity as well as objective and subjective scope of arbitration agreements. Across the surveyed jurisdictions, the following trends were observed:

First and foremost, the starting point for analysing the law governing both the validity and scope of arbitration agreements is party autonomy, i.e., specific and express choices of law by the parties concerning arbitration agreements prevail.

In the absence of such express choice, however, the approaches diverge among the different jurisdictions, which can be grouped into two main models: On the one hand, several jurisdictions follow a "contract-first" model, presuming that the law governing the main contract (*lex causae*) also governs the arbitration agreement, with the law of the seat (*lex arbitri*) being applicable only subsidiarily.[2] On the other hand, several jurisdictions follow a "seat-first" model, presuming that the law of the seat (*lex arbitri*) also governs the arbitration agreement.[3]

In any case, while this "two-model-approach" can be used for ease of reference, in practice, most jurisdictions determine the law applicable to both the validity and scope of arbitration agreements based on general contract interpretation as well as an overall assessment of the respective parties' intention.

Further, regarding the objective scope of arbitration agreements, most jurisdictions employ pro-validity and pro-arbitration methods of interpretation, thereby often expressly or implicitly embracing an *in-favorem-validitatis* approach.[4] In this respect, courts and arbitral tribunals tend to apply a broad understanding of the terms "arising out of" or "in connection with" contained in arbitration agreements.

Lastly, regarding the subjective scope of arbitration agreements, most jurisdictions remain cautious in extending arbitration agreements to non-signatories, limiting it largely to signatories and their successors. However, a small number of jurisdictions have developed models and doctrines to also bind non-signatories to arbitration agreements in specific circumstances, where this is considered appropriate.[5]

B. The Law Governing Arbitrability

Committee members were asked to assess the law governing objective arbitrability (i.e., the type of disputes which may be submitted to arbitration) and subjective arbitrability (i.e., which parties may validly bind themselves to an arbitration agreement).

Regarding objective arbitrability, the overwhelming trend identified in the reports is to apply the *lex fori*, which several justify by the intimate connection between arbitrability and public policy (see also Art V(2)(a) and (b) New York Convention). Consequently, most Committee members report that the *lex fori* governs objective arbitrability, both at the pre-award stage (e.g., where jurisdiction of a state court is contested or where the arbitral tribunal has to decide about the validity of the arbitration agreement), and at the post-award stage (i.e. in annulment proceedings or when recognition and enforcement of the award is sought).

Some variances can nonetheless be observed. Even where objective arbitrability is assessed under the *lex fori*, it may raise preliminary issues, such as the question whether the dispute can be resolved by settlement; these issues may be submitted to foreign law.[6] Some legal systems apply an entirely different approach by assessing objective arbitrability under the proper law of the arbitration agreement unless recognition or enforcement of the award within their own jurisdiction is at issue.[7] Others distinguish between arbitration with and without domestic elements and depart from the strict *lex fori* approach for disputes that lack any domestic

[2] This concerns e.g., Austria, Australia, England, Hong Kong, Italy, Argentina, Brazil, Bulgaria, Canada, Chile, Germany, Poland, and Portugal.
[3] This concerns e.g., Sweden, Singapore, Cyprus, Greece, Norway, South Africa, and Trinidad and Tobago.
[4] Jurisdictions where the pro-validity approach is not applied (automatically) are e.g., the Netherlands and Sweden (where the objective scope of arbitration agreements is interpreted in a rather limiting manner).
[5] This concerns, notably, France (using the group of companies' doctrine) and certain common law countries, such as Australia and Canada.
[6] E.g., Sweden, where all disputes which may be settled by agreement are generally arbitrable, considers this as a preliminary question under the *lex causae*.
[7] E.g., Hong Kong and Australia.

element.[8] Finally, for one jurisdiction it is reported that arbitrability does not constitute a clear category, and is instead treated as part of the validity of the arbitration agreement.[9]

Regarding subjective arbitrability, a different approach is followed. As to capacity and representative authority, there is widespread consensus that the *lex fori* does not apply. Instead, in most jurisdictions such issues are resolved under the applicable general conflict-of-laws rules. Yet with regard to specific protective rules, in particular those relating to consumers, some jurisdictions prefer the *lex fori*.[10] Only a small number of Committee members report that the *lex fori* is exclusively relevant in their jurisdiction for the assessment of subjective arbitrability.

C. The Law Governing the Appointment, Independence, and Impartiality of Arbitrators

Committee members were asked to report whether conflict-of-laws rules exist within their jurisdictions with regard to the appointment, independence, and impartiality of arbitrators. Furthermore, they were asked to report how the applicable law would be determined if the seat of arbitration is located outside their jurisdiction (e.g., in cases of award enforcement or arbitrator liability).

With regard to the appointment of arbitrators, most Committee members report the absence of any statutory rules or specific case law in their jurisdiction. It seems courts in common and civil law systems submit these questions almost uniformly to the law of the seat, i.e., the *lex arbitri*. (This is of course also a conflict-of-laws rule, albeit an implicit one.) Some reports refer to institutional rules widely used in their jurisdiction as supplementing the *lex arbitri*.[11] Reference is also made to soft law instruments, such as the IBA Guidelines on Conflicts of Interest in International Arbitration.

With respect to the independence and impartiality of arbitrators, most jurisdictions take a multi-step approach. While the case is pending, the law of the seat is applied.[12] At the enforcement stage, it is reported by some jurisdictions that the courts at the place of enforcement will usually have regard to the *lex arbitri* when determining whether a ground to refuse recognition exists, usually under the New York Convention Article V(1)(d),[13] or similar grounds under local law.[14] If a lack of independence or impartiality means that the requirements of the law of the seat were not met, recognition may be refused. Other jurisdictions will look at their own legal framework to assess whether the conduct complained of justifies refusal of enforcement of the award.[15] Some members make reference to codes of conduct published in their jurisdictions by local regulatory bodies or arbitral institutions.[16]

D. The Law Governing Arbitration Proceedings

The Questionnaire further examines the law governing arbitration proceedings, more precisely whether the determination of a seat also implies the selection of the *lex arbitri* and whether parties can choose a procedural law that is different from the *lex arbitri*.

Across the surveyed jurisdictions, there is a strong convergence on the role of the seat in determining the law governing the arbitration proceedings. In almost all surveyed jurisdictions,

[8] See, e.g., the German and Austrian reports.
[9] This is reported for France.
[10] E.g., Hong Kong and South Africa.
[11] E.g., Australia, Chile, and Sweden.
[12] E.g., England.
[13] E.g., England and Canada (Québec).
[14] E.g., Japan.
[15] E.g., Hong Kong and Canada (common law provinces).
[16] E.g., Argentina, Chile, and the Czech Republic.

the designation of the seat is treated as the primary (and sole) connecting factor: Once the seat is fixed, the arbitration falls under that state's arbitration statute and related procedural framework.[17] This holds true across both Model Law jurisdictions[18] and non-Model Law systems.[19]

Therefore, the seat anchors both the "internal" *lex arbitri* (the framework within which the tribunal must operate) as well as the "external" *lex arbitri* (court support, supervision and setting aside). Even in legal systems that articulate a more delocalised conception of international arbitration (such as France), the seat remains central for issues such as setting aside proceedings and court control.

At the same time, party autonomy is broadly recognised in shaping the day-to-day conduct of arbitration proceedings. Therefore, parties may adopt institutional rules or even refer to foreign (i.e. different from the law of the seat) procedural laws to govern proceedings and arbitral tribunals enjoy wide discretion in shaping proceedings.

However, across the different jurisdictions, party autonomy operates only within a relatively consistent ring of non-changeable safeguards derived from the law of the seat (*lex arbitri*).[20] Mandatory provisions on due process and equality of arms, composition and challenge of arbitral tribunals, as well as the grounds for setting aside arbitral awards remain applicable and cannot be derogated, even when the parties purport to choose a procedural law different from the *lex arbitri*.

In summary, while the seat of arbitration determines the *lex arbitri* and thereby the state- and court-supervisory framework (similar to a "minimum standard"), parties and tribunals have considerable freedom to design the procedural rules within that framework.

E. The Law Governing the Merits of the Dispute

Committee members were asked about restrictions on free choice of law, the law applicable in the absence of a choice, decisions *ex aequo et bono*, and other factors to be considered in the tribunal's decision regarding the law governing the merits of the dispute.

Significant uniformity exists among those jurisdictions that have adopted Art 28 of the UNCITRAL Model Law on International Commercial Arbitration, which contains a tailor-made conflicts provision for these issues. However, even jurisdictions that have not adopted the Model Law feature similarly structured provisions.[21]

As a starting point, all Committee members report the recognition of party autonomy as regards the law applicable to the merits of the dispute, underlining its central role as a transnational principle in international arbitration. Some uncertainty exists with regard to the law governing the validity of the choice-of-law agreement (e.g., whether the so-called bootstrap method is followed or whether the *lex arbitri* is applied). However, most Committee members consider this question to be largely theoretical.

As regards the law applicable in the absence of a party choice, distinct approaches have been identified. One is the *voie indirecte* approach, which requires the arbitral tribunal to determine the applicable law pursuant to the conflict-of-laws rules which it regards as applicable. This approach is enshrined in Art 28(2) of the UNCITRAL Model Law and followed by about one-

[17] An exception to this approach is applied in France, where the seat of arbitration essentially concerns questions regarding appeal and recourse against arbitral awards but not (necessarily) the law applicable to the proceedings.
[18] E.g., Austria, Cyprus, the Czech Republic, Germany, Lithuania, Singapore, and Sweden.
[19] E.g., England, Brazil, Canada, South Africa, Turkey, and Argentina.
[20] See the approach taken by the UNCITRAL Model Law, as adopted e.g. in Austria and Germany.
[21] E.g., England.

third of respondent jurisdictions.[22] Many other states have instead opted for the second approach, called *voie directe*, which enables the tribunal to directly apply the substantive national law which it deems appropriate.[23] Several others impose the closest connection test, requiring the tribunal to apply the substantive law of the state it regards as most closely connected to the issue.[24] A handful of jurisdictions mandate adherence to the conflict-of-laws provisions of the *lex arbitri*.[25]

Additionally, various Committee members report that a decision *ex aequo et bono* is available to the parties if they have authorised the tribunal to act in such capacity. One report indicates that such decisions were not possible in the jurisdiction analysed,[26] while another Committee member reports that state entities would be excluded from submitting to a decision *ex aequo et bono*.[27]

F. Overriding Mandatory Rules

"Overriding mandatory rules", also called "public policy rules" or "lois de police", are those provisions that claim to be applicable irrespective of the otherwise applicable law under general conflict-of-laws rules. Members were asked whether this concept was accepted in their jurisdiction, whether the application of such rules differed between state courts and arbitral tribunals, and whether the overriding mandatory rules of third states would be considered.

The Committee members almost unanimously report the recognition of overriding mandatory rules, and their power to displace the law chosen by the parties. However, it appears that this concept is not always integrated into the conflict-of-laws apparatus. Instead, it is reported that a failure to apply certain rules of law may entail annulment of the award if disregard for the rule was tantamount to a violation of the seat's public policy. Although this will primarily result in the application of overriding mandatory rules of the seat, foreign provisions are occasionally considered. In this sense, one report highlights a "consensus test" applied by state courts in the jurisdiction, which seeks to assess whether the foreign rule in question protects overriding public interests that are also respected by domestic law.[28]

As regards third country overriding mandatory rules, several reports refer to the tribunal's general duty to render an enforceable award. They theorise that this duty may inform the tribunal's consideration of public policy rules in potential enforcement fora. This approach may be especially relevant where a court or tribunal cannot order parties to engage in conduct which is illegal at the place of performance.[29]

G. The Law Governing Privilege

Committee members were requested to assess the law governing different types of legal privilege, in particular legal advice privilege, settlement privilege, and privilege against self-incrimination. They were also asked to assess whether tribunals were more likely to apply a conflictual or a transnational substantive method in resolving cross-border privilege issues.

The answers received reveal that privilege is an area rife with legal and practical uncertainty. Explicit rules on privilege in *leges arbitri* are rare. What is more, most jurisdictions lack an

[22] E.g., the UNCITRAL Model Law jurisdictions Canada and Singapore, but also the non-Model Law jurisdiction Cyprus.
[23] E.g., Argentina, Austria, France, and the Netherlands.
[24] E.g., Germany, Poland, and Portugal.
[25] This was reported for Norway and the Czech Republic.
[26] Bulgaria.
[27] Brazil.
[28] France.
[29] This is noted by the British report as a general principle of English public policy.

established methodology for addressing various issues of cross-border privilege. Even the question whether rules on privilege are to be characterised as procedural or substantive is unresolved between common and civil law jurisdictions.[30] The reports generally presume broad tribunal discretion to resolve these issues.[31] While comparable rules of the *lex arbitri* for state court proceedings may occasionally delineate a procedural baseline,[32] Committee members do not see such concepts as directly applicable to arbitral proceedings.

Where discretion exists, tribunals do not seem to follow a conflict-of-laws approach to resolve privilege issues. One report reasons that a closest-connection test for attorney-client communication may prove unequal where parties are subject to differing standards of privilege.[33] Such a test would also fail where the specificities of document production in arbitration require additional protections. Practice appears to prefer a uniform transnational approach, with many reports referring to the IBA Rules on the Taking of Evidence as a soft law basis for privilege defences.[34]

Nonetheless, some contours for conflict-of-laws rules are noticeable, in particular with respect to legal advice privilege. On the one hand, the place where an attorney is admitted is frequently mentioned as an appropriate connecting factor, on the grounds that attorney-client confidentiality is a professional duty under the specific set of bar rules applicable to each attorney.[35] On the other hand, the tribunal may instead apply the privilege law of the seat or the most-favourable potentially applicable privilege rule where the application of the rules at the place of admission would lead to an inequality of arms between the parties.[36]

H. The Law Governing Document Production

The Questionnaire further enquiries about the law governing document production in arbitration, including preservation duties, disclosure duties, and objections to production. It also asks whether the law applied in document production was more frequently determined through a conflict-of-laws method or by reference to transnational standards.

The national reports show a strong convergence in the area of document production. This issue is generally treated as a procedural matter and submitted primarily to the *lex arbitri*. According to the reports, the arbitral tribunal's power to determine the scope of document production is subject to the procedural framework chosen by the parties and any applicable (overriding) mandatory laws.

A further theme that emerges from the reports is the preference for targeted document production over broad discovery. Some Committee members highlight concerns regarding fishing expeditions and broad US-style discovery,[37] while others report that their jurisdiction would not recognise any general duty of disclosure or discovery.[38] Several Committee members emphasise that arbitral tribunals lack coercive powers and must rely on court assistance where compulsory production or preservation measures are required.[39]

Another notable trend is the growing influence of transnational standards. It is reported that

[30] Procedural: e.g., Australia. Substantive: e.g., Austria and the Netherlands.
[31] E.g., the British, Norwegian, and German reports.
[32] See, e.g., the Austrian, South African, and Singapore reports.
[33] See the German report.
[34] See Art 9(2)(b) and 9(4) of the IBA Rules on the Taking of Evidence, to which e.g. the British, Portuguese, Hong Kong, Singapore, and Austrian reports refer.
[35] See, e.g., the Portuguese, Greek, and Lithuanian reports.
[36] See, e.g., the German and the Australian report.
[37] See the German and the Austrian report.
[38] See the Swedish report.
[39] See, e.g., Sweden, the Czech Republic, Portugal, and South Africa.

tribunals frequently rely on the IBA Rules on the Taking of Evidence as a practical framework for document requests, objections, and confidentiality protections.[40] Accordingly, the Committee members underline that document production is more often shaped by transnational arbitral practice than by traditional conflict-of-laws analysis. The arbitral tribunal's procedural discretion may nevertheless be constrained by mandatory laws of the seat, the law of the place where the documents are located or where the relevant party is domiciled.

I. The Law Governing Counsel and Arbitrator Conduct and Ethics

Committee members were consulted on how the law governing counsel conduct and ethical duties of counsel in arbitration is determined within their jurisdiction. In particular, they were asked whether a home principle or host principle is generally applied to such questions, and whether different standards on conduct abroad apply to foreign counsel and domestic counsel.

With respect to arbitrator conduct, there is consensus on the applicability of the law of the state which has jurisdiction over the arbitrator. This is usually the law of the arbitral seat, or *lex arbitri*. In some countries, however, professional conduct rules of the jurisdiction where the arbitrator is admitted may be followed if they differ from the *lex arbitri*. Most reports mention that their jurisdiction does not have specific rules applicable to arbitrators. Some reports highlight the danger that arbitrators could be "caught" by the rules of their home jurisdiction pertaining to lawyers admitted to the bar/roll.

With respect to counsel conduct, most reports confirm that counsel would be bound by ethics rules applying in their home jurisdiction. To the extent different from the home jurisdiction, the rules of the seat of arbitration could also apply, although that would need to be assessed on a case-by-case basis. Based on the "home jurisdiction" principle, many reports acknowledge the potential for inequality of arms if counsel from different jurisdictions are subject to different rules concerning the conduct in which they are permitted to engage within the same arbitral proceeding.

Many reports mention the relevance of soft law instruments for conduct and ethics. For arbitrators, the 2014 IBA Guidelines on Conflicts of Interest and the 2024 UNCITRAL Code of Conduct for Arbitrators in International Investment Dispute Resolution would be relevant. For counsel, the IBA Guidelines on Party Representation in International Arbitration are highlighted. Reference is also made to codes of conduct and guidelines published by arbitral institutions.

Many reports note that acting as counsel or as arbitrator in their jurisdiction does not require admission as a local lawyer or, in many instances, even as a lawyer at all. Consequently, foreign lawyers would not be required to follow the rules of their home jurisdiction either. An exception would apply to lawyers registered as foreign lawyers in the state where the arbitral proceedings take place, since they are usually subject to the same rules as locally admitted lawyers, also within the EU. Similarly, lawyers admitted in the one jurisdiction acting as counsel or arbitrator in another country would usually be bound primarily by the professional rules in their home jurisdiction. Whether they would be bound by rules in another jurisdiction is considered by the reports not so much a conflict-of-laws question but as rather depending on the general rules in the foreign jurisdiction in question. However, a couple of reports acknowledge the existence of a general principle that lawyers admitted in the jurisdiction who act abroad should try to comply with the rules of the foreign jurisdiction to the extent that they do not contradict rules in their home jurisdiction.[41]

[40] See the reports on Singapore, Brazil, China, Lithuania, Australia and Turkey.
[41] E.g., Hong Kong and potentially England.

J. The Law Governing the Taking of Evidence

In most jurisdictions, there are no specific statutory rules or cases on the law governing evidentiary issues. Generally, the taking of evidence is classified as procedural, with the consequence that the *lex arbitri* applies. Many *leges arbitri*, in turn, provide for the right of the parties to agree on the specifics of the procedural rules to apply to their dispute, including with respect to the taking of evidence. This is often achieved by agreement on a set of institutional rules and/or on soft law instruments, such as the IBA Rules on the Taking of Evidence in International Arbitration (2020). Many reports acknowledge that institutional rules generally lack detailed rules on the taking of evidence but defer to party agreement and grant wide-ranging discretion to the arbitral tribunal.

A number of reports from civil law jurisdictions note the mandatory nature of the provisions in the arbitral procedural law related to the tribunal's power to freely evaluate evidence. With respect to experts, most Committee members note that interactions with experts are per se subject to a different law, namely the *lex contractus*, although the latter would be more relevant to the expert's claim to payment and liability questions than the taking of evidence.

With respect to the use of artificial intelligence in evidentiary issues, most Committee members note that no specific rules exist. However, reference is made to some instruments governing the use of AI generally, including the AI Act of the EU.

K. The Problem of Characterisation

The national reports reveal that no jurisdiction has an express framework for delineating procedural and substantive issues. In most jurisdictions, case law and doctrine aim to fill this legislative vacuum by developing various theoretical demarcations. Approximately two-thirds of the Committee members, across common and civil law, make a functional distinction, considering the effect and purpose of the rules: whilst substantive law regulates the existence and extent of rights and obligations, procedural law primarily relates to the conduct of proceedings and the enforcement of said substantive rights. The law governing characterisation remains a debated point, although some reports identify the *lex arbitri/fori* as decisive.[42]

When asked about concrete, frequently occurring issues, the Committee members paint a differentiated picture. Questions regarding limitation periods are predominantly viewed as substantive, with 24 reports characterising them as such.[43] Likewise, pre-award interest is heavily characterised as substantive by 21 reports.[44] This majority narrows slightly for matters of post-award interest, where 17 reports[45] argue for a substantive characterisation against nine advocating for a procedural one[46]. However, the issue is highly controversial in a number of jurisdictions. In stark contrast, provisions on interest and cost rules are almost unanimously viewed as procedural in nature. A majority treats issues relating to standard of proof as

[42] E.g., Greece, Hong Kong, Kazakhstan, and Sweden.

[43] Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, China, the Czech Republic, England & Wales, Finland, Germany, Greece, Italy, Japan, Kazakhstan, Lithuania, Norway, Pakistan, Poland, Portugal, Qatar, South Africa, Sweden, and Turkey. The Committee members for Hong Kong and Singapore distinguish between limitation periods for remedies, which are qualified as procedural, and substantive limitation periods extinguishing rights.

[44] Austria, Bulgaria, Chile, China, the Czech Republic, Finland, Germany, Greece, Hong Kong, Italy, Japan, Kazakhstan, Lithuania, Norway, Pakistan, Poland, Portugal, Qatar, South Africa, Sweden, and Turkey.

[45] Austria, Bulgaria, Chile, Finland, Germany, Greece, Hong Kong, Italy, Japan, Kazakhstan, Lithuania, Poland, Portugal, Qatar, South Africa, Sweden, and Turkey.

[46] Argentina, Australia, Canada (in Québec), China, Cyprus, the Czech Republic, England & Wales, Finland, and Singapore.

procedural, whereas burden of proof is the most contested issue, with 14 reports[47] favouring a substantive characterisation, 11[48] a procedural one, and three advocating for a case-by-case approach.

The reports further suggest that characterisation issues regarding the distinction between contract and tort claims are frequent in practice, especially concerning questions of (pre-contractual) liability. Confidentiality and matters of insolvency law are also identified as potential sources of characterisation disputes.

L. The Law Governing Costs

Committee members were asked to discuss the law governing allocation of costs in international arbitration, and to what extent cost rules for state court proceedings are also applied in arbitration.

There is an overwhelming consensus that cost rules are procedural in nature. Thus, it is not entirely surprising that the *lex arbitri* is universally accepted as governing cost allocation.

As a starting point, though, the vast majority of the Committee members underscore the role of party autonomy, noting that party agreement on costs takes precedence over "fallback" provisions prescribed in domestic arbitration laws. Additionally, agreed-upon institutional provisions on costs are to be respected.

In most jurisdictions, arbitral tribunals are vested with broad discretion when it comes to deciding on cost matters. When exercising their discretion, tribunals must take the specific circumstances and the outcome of the individual case into account. It follows from this that cost rules governing state court proceedings are not (directly) applicable in most jurisdictions. Some reports contend that they may be used as guidance by tribunals.[49] Conversely, other reports suggest that state court rules are applied also in the arbitration context.[50] In one jurisdiction, the law expressly refers to cost rules relating to domestic courts, but a reform striking this provision is imminent.[51]

Further, the Committee members highlight numerous critical and frequently occurring issues regarding costs in arbitration. In some jurisdictions the possibility of security for costs orders is codified[52] or debated in the literature[53]. Several reports mention the permissibility of separate costs awards if an accurate assessment of costs is only possible after the proceedings have ended.[54]

Additionally, the Committee members indicate that most domestic laws follow the "loser pays" or "costs follow the event" principle, whereas the "costs lie where they fall" rule would be less prominent. However, this debate is less pronounced in international arbitration as there is usually no necessity to apply a rigid regime.

[47] Australia, Austria, Canada (in Québec), Chile, China, the Czech Republic, England & Wales, Finland, Germany, Italy, Poland, Portugal, South Africa, and Turkey.
[48] Argentina, Brazil, Bulgaria, Cyprus, Hong Kong, Japan, Kazakhstan, Lithuania, Norway, Pakistan, and Sweden.
[49] E.g., Cyprus, Italy, Singapore, South Africa, and Turkey.
[50] Chile and Sweden.
[51] See the Finnish report.
[52] Canada (in Québec) and Norway.
[53] Austria.
[54] E.g., the Austrian, German, and Portuguese report.

M. The Law Governing the Formalities and Service of the Award

The Questionnaire asks whether jurisdictions differentiate between domestic and foreign awards for the purpose of formal requirements, and in the affirmative, how the rules governing formal requirements of foreign awards are determined. It also enquires about the law governing proper service of an arbitral award.

Committee members suggest distinguishing between domestic and foreign awards when it comes to the law governing the formalities of arbitral awards. For domestic awards, i.e. those rendered by arbitral tribunals seated within their jurisdiction, most states prescribe basic formal requirements, such as that the award be in writing, be signed by the arbitrators, give reasons unless otherwise agreed, and state the date and place of arbitration. These rules are often aligned to Article 31 UNCITRAL Model Law, although some jurisdictions impose additional local requirements.

For foreign awards, however, many jurisdictions do not apply the same requirements as for domestic awards. Instead, recognition and enforcement are commonly assessed by reference to the New York Convention, particularly the requirement to produce the original or certified copy of the award and arbitration agreement, with translations where necessary. This creates a relatively uniform set of documentary requirements at the recognition and enforcement stage. Still, whether the award was validly made and complied with the applicable formal requirements is generally determined in accordance with the law at the seat of the arbitral tribunal.

A recurring practical issue is the treatment of electronic signatures and electronic service. Some jurisdictions expressly recognise qualified electronic signatures or electronic execution of awards.[55] In contrast, uncertainty remains in jurisdictions in which wet-ink signatures continue to be regarded as the safer approach for enforcement purposes.[56] As a result, the Committee members express a continued preference in practice for wet-ink signed awards and suggest caution where enforcement may be sought in jurisdictions with less developed electronic signature rules.

Approaches to service are less uniform. While a number of jurisdictions treat delivery of the award as a procedural matter governed principally by the *lex arbitri* or applicable institutional rules, others apply the law of the place where service is affected, particularly in the context of enforcement proceedings.

N. The Law Governing the *lis pendens* Effects of Parallel Proceedings and *res judicata* Effects of Arbitral Awards

The reports by the Committee members reveal a tendency to treat both *lis pendens* and *res judicata* as procedural issues governed by the *lex arbitri*.[57] In these jurisdictions, the effect of parallel proceedings, the preclusive effect of prior awards, and the management of overlapping claims are generally treated as matters of arbitral procedure rather than matters of substantive law.

A related theme is the widespread acceptance of the competence-competence principle as the primary mechanism for addressing parallel proceedings. In some jurisdictions, courts are generally required to defer to arbitration agreements, and arbitral tribunals retain authority to

[55] See, e.g., Greece, the Netherlands, Portugal, and Poland.
[56] See, e.g., Turkey and Pakistan.
[57] See the reports from Sweden, Greece, Portugal, Singapore, Turkey, Cyprus, Japan, Lithuania, Kazakhstan, and Germany.

proceed while jurisdictional challenges are resolved.[58] Several jurisdictions also recognise procedural tools such as consolidation, stays, or anti-suit injunctions to reduce the risk of inconsistent decisions.[59]

One area where some divergence emerges concerns the characterisation of *res judicata*. While many reports regard it as procedural and governed by the *lex arbitri*, some jurisdictions recognise competing approaches. One report notes the debate between characterising *res judicata* as procedural (*lex fori*) or substantive (*lex causae*),[60] while another suggests that certain aspects of *res judicata* may be governed by the law applicable to the underlying contract.[61] A distinctive approach is to rely on transnational principles reflected in the International Law Association Recommendations rather than either the *lex arbitri* or the *lex causae*.[62] Despite these differences, the tendency remains to treat *lis pendens* and *res judicata* as issues of arbitral procedure governed principally by the *lex arbitri*.

V. Conclusions Drawn from the Reports

The reports have provided a clearer picture of the various approaches state courts and arbitral tribunals adopt when identifying the applicable law in arbitration. They will be instrumental in shaping the Committee's future work.

In some areas, a coherent and consistent practice has been found regarding the applicable law. In these areas, it may be worthwhile to lay down institutional rules that reflect such practice. This concerns, for instance, the law governing objective arbitrability, arbitrator conduct and ethics, the rules on costs or service.

In other areas, the governing law is highly uncertain. This may be due to different techniques or to strong policy divergences. Where the reasons are mostly of a technical nature, it may be possible to devise specific conflict-of-laws to settle the issues. This may concern e.g., subjective arbitrability, parallel proceedings, or privilege. Where the issue is due to different policies, however, mere guidance or advice can be given. This seems to be the case e.g., with regard to the law applicable to the merits and overriding mandatory rules.

In sum, an improvement of the current situation should be possible. Any suggestions have to take account of the specificities of the question, in particular whether a coherent and consistent practice exists, and if not, the reasons for such incoherence or inconsistency. The Committee will therefore take a differentiated approach and split its work into different streams.

VI. Summary and Outlook for the Committee's Work

The Officers wish to extend their sincere appreciation to all Committee members for their outstanding work and ongoing engagement, in particular in relation to preparing the Reports.

In the coming months, the Officers look forward to working closely with those Committee members who have expressed interest in contributing to the in-depth analysis of the Reports and to complete the development of the general methodology.

In this context, the Officers are especially looking forward to the ILA Biennial Conference in Vienna in August 2026, at which the Committee will organise both a plenary panel on Wednesday, 19 August 2026, and a closed session on Thursday, 20 August 2026. The plenary panel, entitled "*From Disparity to Clarity: Redefining the Conflict-of-Laws Landscape in*

[58] See, e.g., Greece, Germany, Canada, Australia, France, Qatar, and Bulgaria.
[59] See, e.g., the Netherlands, Brazil, Australia, and Hong Kong.
[60] See the Dutch report.
[61] See the English report.
[62] See the arbitral case mentioned in the Italian report.

International Arbitration", will be convened by Nikolaus Pitkowitz and will feature Mariel Dimsey, Christian Koller, and Matthias Lehmann as panellists.

Building on the general methodology, from 2027 onwards, the Committee intends to develop soft law principles for addressing conflict-of-laws issues. In this regard, the Officers intend to schedule a meeting with all Committee members, the exact timing of which will be discussed at the ILA Biennial Conference in Vienna.

Conflict-of-Laws Issues in International Arbitration ***20. November 2025***

Committee on Conflict-of-Laws Issues in International Arbitration

Nikolaus Pitkowitz and Wendy Lin (Co-Chairs)
Mariel Dimsey and Matthias Lehmann (Co-Rapporteurs)

JURISDICTIONAL QUESTIONNAIRE

General Guidelines:

1. Please take the role of a neutral observer of the law and practice in your jurisdiction. Where a question is regulated in statute, case law, practice, or institutional rules connected to your jurisdiction, provide those rules. Where that is not the case, provide your best assessment as to how the question may be approached in your jurisdiction.
2. The answers should be as precise and concise as possible. There is no need to provide lengthy elaborations, however, we ask you to submit leading authorities and sources that support your positions.
3. We encourage you to supplement each set of questions with comments from your practical experience.
4. Please note if you consider a specific question moot in your jurisdiction, for example if soft law is applied (e.g., the IBA Rules on the Taking of Evidence in International Arbitration).
5. Some questions are formulated on the assumption that the parties may choose the applicable law by agreement. In this case, please also address (1) the conditions under which such an agreement is valid, and (2) the law applicable in the absence of a valid agreement.
6. Some questions may arise both for arbitral tribunals and state courts (during setting-aside, enforcement or parallel proceedings, or in their supervisory function). In such cases, please analyse the question both from the perspective of an arbitral tribunal and a state court. Other questions may prove relevant only for an arbitral tribunal (particularly questions E, G, H, I, J, and L). In that case, you can limit your response to the perspective of a tribunal.
7. The questions should be answered in English. Terms in other languages may be supplemented in parentheses if they cannot be precisely translated or where this aids comprehensibility.

8. Where several members from the same jurisdiction have been appointed to the Committee, they should jointly produce one response to the questionnaire for that jurisdiction.
9. The answers should be submitted by **15 January 2026** in a Word document containing the names of the authors, the jurisdiction and chapter headlines. It is contemplated to publish the answers.

A. The law governing the arbitration agreement: In your jurisdiction

1. Are there specific statutory rules or case law regarding the law governing the validity and scope of the arbitration agreement? If so, which law applies to:
   a. The formal and substantive validity of the arbitration agreement?
   b. The objective scope of the arbitration agreement (i.e., which disputes or claims it encompasses)?
   c. The subjective scope of the arbitration agreement (i.e., which entities or individuals are bound by it)?

B. The law governing arbitrability: In your jurisdiction

1. Do state courts and arbitral tribunals apply foreign law to determine:
   a. Objective arbitrability (i.e., the type of disputes which may be submitted to arbitration)?
   b. Subjective arbitrability (i.e., which parties may validly bind themselves to an arbitration agreement)?

C. The law governing the appointment, independence and impartiality of arbitrators: In your jurisdiction

1. Are there statutory rules or case law regarding the law applicable to the appointment, independence, and impartiality of arbitrators?
2. How would the law governing independence and impartiality be determined if the seat is outside of your jurisdiction (e.g., in cases of enforcement or liability claims against arbitrators)?
3. Which law governs arbitrator conduct and the ethical rules applicable to arbitrators?

D. The law governing arbitration proceedings: In your jurisdiction

1. Will the determination of a seat also imply the selection of the *lex arbitri*?

   a. Does it make a difference if the determination of the seat is made by the parties, the arbitral tribunal, an arbitral institution, or another entity?

2. Can parties choose a procedural law that is different from the *lex arbitri?*

   a. In this case, will the mandatory rules for international arbitration procedures seated in your jurisdiction apply?

E. The law governing the merits of the dispute: In your jurisdiction

1. How is the law governing the merits of the dispute in international arbitration determined?

   a. If the parties can choose the applicable law to the merits, which law applies to the validity of the choice-of-law agreement?

   b. Will the laws of your jurisdiction impose any restrictions on the choice of law?

   c. Which law will be applied in the absence of an agreement?

2. Are there specific conflict-of-laws rules regarding international arbitration?

3. Are arbitral tribunals obliged to follow the general conflict-of-laws rules at the seat of arbitration when determining the law applicable to the merits of the dispute?

4. Are arbitral tribunals permitted to apply non-state rules?

   a. May or must the arbitral tribunal take into account usages of international trade or commerce in its award?

   b. May the arbitral tribunal decide the dispute ex aequo et bono or as amiable compositeur?

F. Overriding mandatory rules: In your jurisdiction

1. Is the concept of overriding mandatory rules (*lois de police, Eingriffsnormen*) recognized in international arbitration?

   a. If so, are there different approaches between state courts and arbitral tribunals when applying such overriding mandatory rules?

2. The overriding mandatory rules of which jurisdiction(s) are applied (e.g., only those of the seat of arbitration, the law governing the merits, the laws of potential places of enforcement or also third states)?

G. The law governing privilege: In your jurisdiction

1. How is the law governing the following types of privilege generally determined in arbitral proceedings?

  a. Attorney-client privilege (legal advice privilege)
  b. Settlement privilege (without-prejudice privilege)
  c. Privilege against self-incrimination
  d. Other privileges existing in your jurisdiction.

2. Is such a law more frequently determined through a conflict-of-laws method or by reference to a transnational standard of privilege?

H. The law governing document production: In your jurisdiction

1. Which law applies to issues regarding document production, including:
   a. Preservation of documents
   b. Disclosure requirements
   c. Objections on the basis of:
      - Confidentiality
      - Illegality
2. Is such a law more frequently determined through a conflict-of-laws method or by reference to a transnational standard of practice?

I. The law governing counsel and arbitrator conduct and ethics: In your jurisdiction

1. Which law governs counsel conduct and the ethical duties of counsel and – to the extent not addressed under C – of arbitrators? For example:
   a. Assessment of a conflict of interest?
   b. Assessment of ex parte communications?
   c. Issues of false submissions of fact or evidence?
   d. Remedial measures for false submissions?
   e. Remedial measures to address misconduct by a party representative?
   f. Relations to party representatives with fact witnesses and expert witnesses (e.g., witness preparations)?
2. Are these issues governed by the rules of their home jurisdiction (home principle) and/or by the rules applicable at the seat of arbitration (host principle)?

   Do different conflict-of-laws rules apply to

   a. Foreign counsel or arbitrator acting in your jurisdiction?

   b. Counsel or arbitrator of your jurisdiction acting in a foreign jurisdiction?

J. The law governing the taking of evidence: In your jurisdiction

1. Are there specific statutory rules or case law on the law governing evidentiary issues (including admissibility and assessment) in arbitral proceedings, including the following (to the extent not already addressed):
   a. Documents
   b. Witnesses of fact
   c. Party-appointed experts
   d. Tribunal-appointed experts
   e. Inspection
   f. Evidentiary hearing
   g. Application of artificial intelligence

K. The Problem of Characterization: In your jurisdiction

1. How is the distinction between procedural and substantive issues generally made, if at all? Are there doctrinal approaches or case law that demarcate procedural and substantive issues?
2. Do the following issues fall under procedural or substantive law:
   a. Whether the limitation period (time bar) for a claim has elapsed?
   b. Burden of proof (i.e., which party must prove a certain allegation)?
   c. Standard of proof (i.e., to which degree of certainty a party must prove a certain allegation)?
   d. Pre-award interest?
   e. Post-award interest?
   f. Cost rules? (See also below)
3. Have you encountered any other characterization issues in your practice (e.g., contract vs. tort law)?

L. The law governing the cost rules in arbitration: In your jurisdiction

1. What law governs the allocation of costs, including potential discretion of the arbitral tribunal (e.g., legal fees, arbitration costs, administrative expenses)?

2. To what extent are cost rules for state court proceedings at the seat of arbitration applied?

M. The law governing the formalities and service of an award: In your jurisdiction

1. Is there a differentiation between the formal requirements (including admissibility of electronic signature) for domestic and foreign awards?
    a. If so, how are the formal requirements for foreign awards determined (conflict-of-laws method or uniform standard)?
2. What law governs the proper service (including admissibility of electronic service) of an arbitral award (e.g., the law of the place where the award was rendered or the law where the award is to be served)?

N. The law governing the *lis pendens* effects of parallel proceedings and *res judicata* effects of arbitral awards: In your jurisdiction

1. How is the law governing the *lis pendens* effects of parallel proceedings on arbitration proceedings pending in your jurisdiction determined?
2. How is the law governing the *res judicata* of arbitral awards determined?

O. Any other relevant information: In your jurisdiction

1. Is there relevant literature on conflict of laws in international arbitration?
2. Are there leading cases on conflict of laws in international arbitration?
3. Do you wish to share your professional experience in regard to conflict-of-laws issues that have not been addressed in this questionnaire?

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