# Settlement of foreign investment contract disputes through arbitration

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***Abstract*—International commercial arbitration is one of the most important alternative means of resolving investment contract disputes. It is widely used by both investors and host states seeking peaceful solutions to avoid lengthy and complex judicial procedures. This is due to the speed and simplicity of arbitration proceedings, as well as the confidentiality of the details of the cases of the parties involved, which preserves their commercial reputation. In addition, arbitration is less costly than judicial proceedings.**

**Investors also choose arbitration to avoid the application of host state laws that may be unfair or not in their interest. Some states also use arbitration as an incentive to attract investment. Despite the reservations expressed regarding it, particularly that some of its rulings are considered to undermine state sovereignty, international arbitration courts have witnessed considerable activity due to the large number of cases brought before them.**

***Keywords*—Foreign Investment Contracts, International Commercial Arbitration, Court of Arbitration, Arbitrator, Arbitral Tribunal, Domestic Arbitration, National Sovereignty, Alternative Means, Investor, Host State, Arbitral Award.**

## I. INTRODUCTION

In order to keep pace with economic, scientific and technological developments, every sovereign state in the world must promote the growth and development of its economy. This will enable it to attain a position among the developed economies worldwide by mobilising all the capabilities and means necessary to keep pace with current developments. Foreign investment is undoubtedly one of the most effective means of development, and states seek to attract it by providing all possible incentives and facilities. It is considered an important and essential source, as well as a solid foundation for building the economy and infrastructure, since no economy can exist without investment. All states, including developed countries and particularly developing ones, regard foreign investment as a means of advancing their economies towards development and keeping pace with progress. Meanwhile, developed countries consider it a means of increasing and expanding the activities of their companies and investing capital.

However, with economic development and the changing objectives and interests of the investing and host states, conflicts of interest may arise between the two parties: the former seeks profit, while the latter seeks development. Consequently, contractual disagreements may arise, leading to judicial disputes that harm the investment project due to lengthy litigation procedures and the complexities of national and international court proceedings. This can potentially cause losses for both parties. The host state may suffer greater harm, particularly if it is a developing country with deficiencies in its legal framework and limited experience in international dispute resolution. Likewise, the foreign investor may lose time, effort and profits through prolonged court proceedings.

To avoid this, the parties to international investment contracts have increasingly resorted to other alternative means that are less costly, less complex, and faster in terms of procedures. These means are known as alternative methods of dispute settlement, the most important in practice and the most widespread of which is international commercial arbitration. The latter has become the most sought-after alternative means of resolving international disputes, owing to its characteristics and advantages, which make it the most appropriate and effective method for settling disputes in this field.

According to statistics issued by the International Centre for Settlement of Investment Disputes (ICSID) for the 2026 financial year, the Centre experienced sustained and increasing demand for its services in 2026. From 1 July 2025 to 30 June 2026, the Centre received a record number of cases in a single year, reaching 363 — a figure never before recorded[1].

So, what is the nature of this alternative mechanism for settling international investment disputes? What characteristics make it more suitable and effective for resolving such disputes and have made it the focus of international law and bodies, as well as the preferred choice of disputing parties? This mechanism is the subject of a model law adopted by the United Nations: the UNCITRAL Model Law on International Commercial Arbitration.

The issues we will address in this research are divided into two sections. The first section examines the definitions of foreign investment and international commercial arbitration, divided into three subsections. The second section addresses the causes of investment contract disputes and justifications for resorting to arbitration. We have adopted a descriptive and analytical approach, concluding the research with a summary of the most important findings.

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## A. Chapter One: Defining the Nature of Foreign Investment and International Commercial Arbitration

International commercial arbitration has distinctive features that make it the most appropriate way to settle disputes over investment contracts. The specific nature of foreign investment contracts necessitates well-established mechanisms that are consistent with their particular characteristics. It is therefore necessary to examine these characteristics and their compatibility with investment.

## B. First section: The Nature of the Foreign Investment Contract

Investment contracts are a type of commercial contract. They may be domestic, where all parties belong to the same state, or international, where at least one party is from another state.

## C. First Subsection: Definition of Investment Contracts and Their Legal Nature

## D. First item: Definition of investment and the foreign element in the investment contract

**First: Definition of investment in legal and jurisprudential terminology:**

Legally, Law No. 22-08 relating to investment did not provide a direct definition of investment[2]. Instead, it defined the investor and the types of investment to which its provisions apply, and listed the different forms of investment. This is in contrast to the former Law No. 16-09[3], which was repealed, and which explicitly addressed the definition of investment in Article 2.

'Investment, within the meaning of this Law, refers to the following:

- The acquisition of assets for establishing new activities, expanding production capacities or rehabilitating them.

- Contributions to the capital of a company"[4].

From a jurisprudential perspective, investment is defined as follows:

'The conversion of savings into capital assets, such as machinery, equipment and buildings. It includes expenditure on establishing new projects, completing existing projects, or acquiring them wholly or partially.'

In general, investment is classified according to the investor's place of residence as either domestic or foreign. The latter is the subject of our concern in this context.

**Secondly, the investment contract containing a foreign element.**

Several criteria are used to distinguish foreign investment from domestic investment and determine its nature[5]. The most important of these is the criterion of the investor's place of residence. However, international and treaty law adopt the criterion of nationality, except in matters relating to freedom of movement, where residence is the determining factor.

Article 3[6] of Law No. 22-08 on investment adopted the nationality criterion, unlike the Monetary and Banking Law[7], which used the investor's actual place of residence to determine foreign status.

Foreign investment is defined as follows:

'Investment arising across borders, represented by the use of savings outside the geographical framework and territorial boundaries of a state, resulting from the transfer of investment capital and various economic resources to a foreign state, with the aim of generating profits and maximising benefits[8].'

The 2004 World Investment Report defines it as investment in which a natural person holding a nationality other than that of the host state owns the majority of the capital, involves a long-term commitment and plays an effective role in managing that investment. It therefore includes the initial investment and any subsequent investments resulting from it[9].

In essence, it is the utilisation of capital and economic resources by an investor in a host state, beyond the borders of their own state, with the objective of generating profits and implementing projects that serve the interests of the host state.

## E. Second item: the legal nature of investment contracts.

Opinions in jurisprudence have differed regarding the legal nature of investment contracts. Some classify them as administrative contracts, which are subject to public law, while others consider them to be private contracts, which are subject to the provisions of private law.

## F. First: Investment Contracts as Administrative Contracts:

Supporters of this view argue that the external appearance of investment contracts[10], which is to generate profit, is not sufficient to classify them as private law contracts. This is because, from the perspective of the host state, such contracts are intended to manage a vital public utility. Furthermore, the fact that one of the parties to an investment contract is the state or one of its affiliated institutions or agencies, together with the inclusion of exceptional and unusual clauses not commonly found in private law contracts, means that they fall within the category of administrative contracts[11].

**G. Second: investment contracts as private contracts:**

Supporters of this approach consider investment contracts to be governed by private law[12], rather than administrative law, even when the State or one of its affiliated institutions or agencies is a party to the contract.

They argue that investment contracts must enjoy a considerable degree of flexibility so that the host state can balance its interests with those of the foreign investor with whom it has entered into a contractual relationship. Such flexibility cannot be envisaged in the performance of an administrative contract.

Furthermore, the exceptional and unusual clauses contained in investment contracts benefit the foreign investor at the expense of the host state, rather than the other way around. In administrative contracts, however, such clauses are stipulated for the benefit of the administration rather than the investor.

Moreover, the host state cannot apply public law methods except in relation to its own nationals and within its territorial jurisdiction. These rules do not apply to foreign investors, since the limits of state sovereignty are confined to territorial boundaries.

Civil contracts are also considered more appropriate for investment and the promotion of international trade because, in many states, administrative contracts are not independent of civil contracts. Consequently, many investors refrain from entering into contracts with states that treat investment contracts as administrative contracts due to a lack of legal consistency[13].

**H. Second Section: Definition of International Commercial Arbitration and Its Distinction from Other Alternative Means**

**I. First Subsection: Definition of International Commercial Arbitration**

To clarify the concept of international commercial arbitration, we shall examine its linguistic and terminological definitions.

**J. First Item: Its Linguistic Definition:**

The word hukm (judgment), with a ḍammah, means adjudication. The expression hakamahu ila al-hakim means that he referred the matter to the judge, called upon him, and disputed with him. The expression hakkamahu fi al-amr tahkiman means that he appointed him to render a judgment on the matter, whereupon the parties submitted to his judgment and accepted his decision[14].

‘Linguistically, arbitration means delegating the authority to make a judgement to someone. Accordingly, the expression ‘ḥakkamtu al-rajul’ means ‘I delegated the authority to judge to him’. The terms ‘ḥakam’ and ‘muḥakkam’ are also used[15].”

‘It is the settlement of a dispute between two parties by an individual acting as an arbitrator or by an arbitral tribunal. It also refers to disputing parties submitting a matter in dispute to be decided by a neutral individual or group[16].”

**K. Second item: its terminological definition:**

Arbitration is one of the peaceful alternative means of resolving disputes that arise between states. It can also be defined as a means of settling disagreements between states through arbitrators, whether individuals or bodies, provided the states involved undertake to implement and respect the arbitrators’ decisions[17].

The Charter of the United Nations[18]. also considers arbitration to be one of the peaceful means of settling disputes, and states that parties to a dispute should initially seek a solution through arbitration

Article 37 of the 1907 Hague Convention for the Pacific Settlement of International Disputes provides that:

‘International arbitration has for its object the settlement of disputes between states by judges of their own choice and on the basis of respect for law.’

According to this article, arbitration is understood to be a means of resolving disputes between states, entrusted to experienced and elected judges selected by those states, with such settlements based on respect for rights.

Article 1007 of the Code of Civil and Administrative Procedure defines an arbitration clause as follows:

‘An arbitration clause is an agreement by which parties to a contract relating to rights within the meaning of Article 1006 above undertake to submit any disputes arising from that contract to arbitration[19].’

**L. Second subsection: The distinction between international commercial arbitration and other alternative means of dispute resolution**

Given the similarities between arbitration, mediation and conciliation in certain stages and procedures, we shall address the distinction between them.

**M. First item: Arbitration and conciliation:**

Conciliation, as defined by the Algerian legislator in Article 459 of the Civil Code, is:[20]

'A contract by which the two parties put an end to an existing dispute or prevent a potential dispute, whereby each party makes reciprocal concessions to the other.'

Conciliation is generally conducted by referring the dispute to a 'conciliation committee' composed of legal experts and jurists selected by the parties to the dispute. The committee thoroughly examines the substantive and legal aspects of the disagreement, listens to the parties' arguments and submissions, and then prepares an impartial report containing specific proposals and solutions for resolving the dispute in its conclusion[21].

Conciliation does not require the involvement of a third party, unlike arbitration and mediation. Furthermore, arbitration concludes with the issuance of an award by the arbitrator that is binding on both parties to the dispute, whereas conciliation brings the dispute to an end through the concessions made by both parties.

The United Nations has introduced several reforms aimed at resolving disputes amicably. In July 2026, for example, the United Nations Commission on International Trade Law (UNCITRAL) adopted a system for setting up the International Advisory Centre for Investment Dispute Settlement. The aim is to reinforce the Centre's role in helping states to resolve disputes amicably through conciliation before resorting to arbitration[22].

**N. Second item: Arbitration and Mediation:**

Mediation is one of the alternative means of peaceful dispute resolution. It is characterised by speed and confidentiality, and involves bringing the viewpoints of the parties to the dispute closer together. Newly developed dialogue techniques are employed with the aim of reconciling viewpoints and assessing legal positions under conditions of confidentiality[23].

In mediation, the mediator's role is limited to assisting the parties in reaching a solution by bringing their viewpoints closer together. In arbitration, however, the arbitrator acts as a judge and arbitral awards carry the same weight as judicial rulings. Furthermore, mediation is based on the parties making mutual concessions regarding certain rights in order to reach a compromise, whereas arbitration does not require such concessions.

According to a report by the International Centre for Settlement of Investment Disputes (ICSID), the Centre discontinued proceedings in 11 cases brought before it during the 2025 fiscal year because the parties had reached an amicable settlement or withdrawn the cases for other reasons. The report also confirmed that one-third of the cases brought before the Centre were settled before a final arbitral award was issued[24]. In 2026, the Centre received seven requests for mediation in investment disputes[25].

**O. Third section: The Legal Nature of Arbitration**

Opinions differ on the legal nature of arbitration, with some considering it a judicial act and others a contractual agreement.

**P. First Subsection: The Contractual Nature of the Arbitration Agreement**

Supporters of the contractual theory believe that arbitration is a contractual agreement because it is based on the arbitrator's role of settling disputes. They argue that arbitration is founded on the will of the parties and therefore has a contractual character. By agreeing to arbitration, the parties waive their right to bring judicial proceedings and confer authority upon the arbitrator through their unilateral will. Consequently, this authority cannot be considered judicial. According to this view, arbitration also aims to serve the interests of the disputing parties, whereas the judiciary serves the interests of the general public[26].

However, this theory has been criticised for exaggerating the role of the parties' will by assigning it a fundamental role. In reality, when settling a dispute, the arbitrator applies the will of the law rather than the intentions expressed by the parties. Furthermore, the argument advanced by supporters of this theory concerning the differences between the legal provisions governing arbitration and those governing judicial proceedings is attributable to the fact that, when settling a dispute, the arbitrator does not represent the state, unlike the judge. It is therefore natural that the arbitrator should be subject to legal provisions that differ from those applied by the judge[27].

**Q. Second subsection: The Judicial Nature of Arbitration**

Supporters of the judicial theory adopt this position, basing their theory on the premise that the arbitrator's function is a judicial act in itself and therefore a judicial function[28]. Accordingly, arbitration necessarily acquires a judicial nature. They conclude that arbitration is a form of justice that is binding on the parties once they have agreed to it and that the arbitrator's role is a way in which the state administers justice. Therefore, when the state authorises the parties to resort to arbitration, the arbitrator's role is merely a legal function[29].

However, despite its proximity to the logic of the judicial nature of arbitration, this theory has also not escaped criticism. The main criticism is that the arbitrator cannot be considered equivalent to a judge, since the latter performs a permanent and stable public function and enjoys immunity when carrying out their duties, whereas the arbitrator does not. Furthermore,

arbitration predates the judiciary in historical existence[30].

**R. Third subsection: The Mixed Nature of Arbitration**

Proponents of this theory consider arbitration to have both a contractual and an adjudicative nature. They argue that its composite nature is reflected in its contractual aspect, established through the arbitration agreement, and its judicial aspect, represented by the binding arbitral award that settles the dispute. Thus, arbitration begins with a contractual nature through the parties' agreement to resort to arbitration, and ends with a judicial nature when an award is issued by the sole arbitrator or arbitrators[31].

However, while the parties' agreement to resort to arbitration in the event of a dispute highlights its contractual nature, attributing a judicial character to arbitral decisions does not make them judicial, owing to the difference in the body that issues them.

**S. Fourth Subsection: The Independent Nature of Arbitration**

The theory of the independent nature of arbitration is a modern concept. It holds that arbitration is a distinct social and economic function and that the concept of its contractual nature is inapplicable to arbitration, as evidenced by the existence of compulsory arbitration. Arbitrators may be appointed by the competent court or by permanent arbitration centres. Similarly, the judicial theory is inapplicable to arbitration due to the differences in the roles of judges and arbitrators. Proponents of this theory emphasise the autonomous and independent nature of arbitration, particularly in matters relating to international trade. This is because arbitration is based not only on domestic laws, but also on international instruments, the decisions of international organisations and the rules and regulations of arbitral institution[32].

In our view, arbitration is the closest to the correct position due to its independent nature. Although arbitration shares similarities with both contractual and judicial processes, legal provisions governing contracts and judicial decisions cannot be applied to arbitration simultaneously. This has therefore necessitated the establishment of specific legal provisions to govern arbitration.

**T. Second chapter: Causes of Investment Contract Disputes and Justifications for Resorting to Arbitration**

Given its characteristics, arbitration is considered the most appropriate means of settling foreign investment disputes, as these characteristics are consistent with the specific nature of investment contracts and their importance in the development of states' economies. Accordingly, this chapter will examine disputes arising in connection with foreign investments, the justifications for using arbitration to settle them and the procedures for arbitral tribunals to adjudicate disputes.

**U. First section: Investment Contract Disputes**

Disputes arising from general contracts usually result from a failure to perform rights or fulfil obligations. Investment disputes often arise due to a breach of obligations resulting from force majeure, unforeseen circumstances or measures taken by the host state.

**V. First subsection: Breach of Obligations Arising from Force Majeure or Unforeseen Circumstances**

A breach of obligations may occur as a result of force majeure, which neither the investor nor the host state can prevent, or unforeseen circumstances arising from a change in circumstances.

**The first item covers the impact of force majeure on the investment contract.**

Force majeure refers to an event, or series of events, that are unexpected and unavoidable, and occur as a result of circumstances beyond the control of the parties involved. Force majeure renders the performance of an obligation impossible and consequently extinguishes it, without the party invoking force majeure bearing liability for such non-performance. However, the situation differs in international investment contracts, particularly in large-scale investments where substantial sums of money are involved, as the investor must reap the benefits of their efforts and investments. Therefore, the parties tend to preserve the contractual relationship regardless of the occurrence of force majeure[33].

For this reason, parties to an investment contract often include a force majeure clause. Nevertheless, disputes may still arise concerning technical aspects in certain cases. Disputes may concern non-compliant performance in the presence of force majeure or the degree to which completion of the work has become impossible, necessitating termination of the contract. Disputes may also arise over the principle of compensation, such as when compensation is due under the agreed conditions, and the extent of such compensation[34].

One of the most recent cases in this field is the 2025 Shell v. Venture Global case, which sparked considerable controversy in the energy markets[35]. Shell argued that Venture Global had breached its contractual obligations by failing to supply the agreed gas shipments. However, the International Chamber of Commerce (ICC) arbitral tribunal ruled that Venture Global had not breached its contractual obligations to Shell by failing to supply American liquefied natural gas. The tribunal considered that the liquefaction facility had not yet entered the stage of full commercial operation, and consequently that the company was entitled to invoke force majeure.

**W. Second item: Unforeseen Circumstances in Investment Contracts**

The theories of unforeseen circumstances and force majeure are based on the same conditions: the event must be general, unforeseeable and unavoidable. However, the theory of unforeseen circumstances is distinct from that of force majeure, necessitating a distinction between the two. The effects also differ: force majeure renders the performance of an obligation impossible, thereby extinguishing the obligation. In contrast, the theory of unforeseen circumstances merely renders the obligation excessively onerous rather than impossible to perform[36]. Examples of unforeseen circumstances include security conditions, social unrest and strikes.

**X. Second subsection: Disputes arising from measures taken by the host state of investment**

In order to adapt to political and economic changes and developments, a State may sometimes undertake legislative or legal amendments that may directly or indirectly affect the provisions of an investment contract. It may also take unilateral measures by virtue of its sovereign authority, which may harm the other contracting party. This may consequently lead to disputes between the state and the affected investor with whom it has entered into a contract.

**Y. First item: Disputes arising from legislative changes introduced by the host state**

Major investment companies with substantial resources now rely on market research strategies before undertaking any investment project or entering into any investment contract, particularly when the host states are developing countries. They examine these states' legal systems with regard to tax, health, environmental and other relevant legislation, as well as the stability of their laws.

**Z. First: The law applicable to foreign investment contracts**

The specific nature of investment contracts involving a foreign element raises the issue of which legal rules apply to this type of contract. Should the law of the host state apply, or should another law apply? However, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) grants the parties the right to choose the applicable law, whether it is the law of the host state or another law[37]. Furthermore, the Algerian Civil Code generally subjects contracts to the parties' chosen law, while Article 1040[38] of the Code of Civil and Administrative Procedure permits the application of the chosen law or the law governing the subject matter of the dispute.

However, foreign investors often seek to avoid the application of the host state's law, particularly in developing countries, due to legal instability in most of these states. Instead, they seek to apply another law. Sometimes they fail to do so, which has led many investors to include a legislative stability clause in investment contracts[39].

**AA. Secondly, the legislative stability clause:**

The term 'stabilisation clause' refers to a contractual clause agreed upon between a foreign investor and a host state whereby the two parties agree not to apply any legislative amendment introduced after the conclusion of the contract to their contractual relationship or to compensate the foreign investor whenever compliance with such an amendment causes economic harm to the investor[40].

If this clause is not included in the contract and a dispute arises concerning legislative changes affecting the investor's rights or the performance of the contract, the parties will resort to judicial or alternative dispute resolution methods, provided they have agreed to do so.

**AB. Second item: Disputes arising from a unilateral measure taken by the state**

The host state may take unilateral measures that adversely affect the contractual relationship governing the investment project, or lead to its cancellation. Examples include the nationalisation of oil wells that were subject to a concession under an investment contract or expropriation. Such measures may result in the creation or termination of the legal positions of one of the parties, giving rise to disputes concerning the legality of the unilateral act and the appropriate compensation for resulting damage[41].

**AC. Second Section: The Justifications for Resorting to Arbitration and Its Advantages**

Arbitration has advantages that make it an attractive option for parties to a dispute. However, it is also subject to certain reservations that may adversely affect some States, given their international standing and position.

**AD. First Subsection: Characteristics of Arbitration That Are Compatible with the Nature of Investment Contract Disputes**

As a means of settling investment disputes, arbitration is characterized by important features that make it the most appropriate method for resolving this type of dispute.

**AE. First item: speed of proceedings**

The flexibility and speed of arbitration proceedings save considerable time and money. Investment contracts are subject to specific completion deadlines, and failure to comply with these or delays in completion may result in substantial financial penalties. Furthermore, lengthy dispute resolution processes in the courts may result in the freezing of project financial liquidity, which can have serious consequences.

Arbitration offers two important factors that contribute to expediting proceedings. First, the arbitrator(s) are obliged to settle the submitted dispute within a timeframe determined by the parties, which they may not exceed. Secondly, the award issued by the arbitrator has the authority of res judicata and cannot be challenged through ordinary means of appeal, except by way of annulment and only on the grounds expressly provided for by law[42].

One of the most significant amendments to the ICC arbitration rules adopted in 2026 was the introduction of an expedited arbitration mechanism. Article 33 of these rules states that: 'Where all the parties agree, the arbitration shall be conducted as an expedited arbitration, in accordance with the provisions governing expedited arbitration set out in Appendix VI.[43]'

**AF. Second item: Confidentiality of hearings and awards**

Arbitration hearings are confidential and conducted in private, and arbitral awards are not subject to publication. This protects secrets relating to the contract and the investor's business affairs, as making arbitration proceedings and disputes public could affect investors' financial and economic positions and damage their commercial reputations. Furthermore, arbitrators swear an oath to uphold impartiality and confidentiality[44].

Among the most significant amendments to the arbitration rules adopted by the International Chamber of Commerce (ICC) in 2026, the Chamber reaffirmed the confidentiality of information relating to arbitration. Article 12(8) provides as follows:

'Arbitrators shall maintain the confidentiality of all matters relating to the arbitration, unless such matters are publicly available, the parties have agreed otherwise, disclosure is required under applicable law, or disclosure is necessary to protect a legal right or to comply with disclosure obligations[45].'

**Thirdly, the parties have the freedom to choose arbitration and the arbitrator:** An arbitrator is selected by the parties to the dispute, unlike a judge who is appointed by the relevant authorities. This places the parties in the best position to select the most competent, suitable and experienced arbitrator or arbitral tribunal. Since the parties have chosen the arbitrator, they must accept their decisions and cannot challenge them, unlike the decisions of a judge[46].

**Fourthly, arbitration is specialised and free from procedural constraints:** Arbitrators are usually selected from individuals with substantial expertise and specialised knowledge in their fields. They are sufficiently familiar with matters relating to the dispute in question and with international trade law. Furthermore, arbitration is not subject to the complex and lengthy legal procedures applicable to court proceedings. Arbitration is characterised by speed, and the parties agree on the deadlines, which cannot be exceeded[47].

**AG. Section Two: Criticisms of International Commercial Arbitration**

Despite its advantages, successful applications and contribution to resolving numerous investment disputes, arbitration has not been free from criticism and reservations in various contexts involving the settlement of investment disputes, particularly international ones.

**AH. Firstly: Encroachment on the national sovereignty of states.**

One of the parties to an investment contract may be a public legal entity or another person governed by public law. This raises the issue of the binding force of arbitral awards, given that such entities are subject to, and dependent on, the state. The arbitral process may also conflict with the principle of public policy. Furthermore, demanding legislative stability constitutes interference with state sovereignty, as freezing the application of one of a state's laws limits the exercise of its sovereign authority.

A state's acceptance of an arbitral system in which a private-law entity is a party to proceedings against the state may be regarded as an affront to its sovereignty and a waiver of its immunity in itself. This principle was adopted by the International Chamber of Commerce (ICC) arbitral tribunal in Paris in its 1995 award in Case No. 8035 concerning a dispute between a state and a foreign entity arising from an oilfield concession agreement[48].

Some Arab states, including Saudi Arabia and Algeria, have opposed the submission of disputes involving state-owned public institutions to arbitration on the grounds that this infringes national sovereignty. In Algeria, public legal entities could only submit hydrocarbon contract disputes to arbitration. However, this restriction was subsequently abandoned in response to economic pressures and the perceived necessity of opening the country up to foreign investment, as set out in the Code of Civil and Administrative Procedure[49].

Submission to arbitration in Algeria is also restricted by the principle of public policy. Arbitration is not permitted in matters relating to public policy or public morals, as stipulated in Article 1006 of the Code of Civil and Administrative Procedure[50].

**Secondly, there are differences between legal systems:** Unlike national court proceedings, which are governed by a single body of law (national law), the different nationalities and affiliations of the parties to arbitration raise the issue of divergent legal systems. The law of the arbitrator or arbitral tribunal may differ from the laws of the parties to the dispute, requiring the arbitrator to study provisions of unfamiliar applicable laws. This could have an adverse effect on the arbitral process, potentially prolonging and complicating the proceedings and thereby diminishing one of arbitration's key advantages: procedural speed[51].

**Thirdly, enforcement of the arbitral award:** At the final stage of arbitration, the enforcement stage, a party to the dispute may encounter a serious problem if the other party refuses to comply with or enforce the arbitral award. The party seeking enforcement may then be compelled to take action in the national courts to force the other party to comply. However, some national laws may permit an arbitral award to go unenforced in specified circumstances. The losing party may also challenge the award if the case falls within grounds recognised under its national law for refusing enforcement. In such circumstances, the successful party may find itself undertaking procedures that it initially sought to avoid by resorting to arbitration, effectively returning to square one. This has led many states to accede to conventions on the recognition and enforcement of arbitral awards, including the New York Convention[52].

### AI. Third requirement: The procedures and stages of arbitration

Arbitration involves several stages, beginning with an agreement to arbitrate or the inclusion of an arbitration clause, and continuing until the arbitral award or decision is enforced.

### AJ. Section One: The Arbitration Clause and the Submission Agreement

International arbitration may be agreed upon before a dispute arises, either in the project contract or in a separate agreement. This is known as an 'arbitration clause'. Alternatively, the parties may agree to arbitrate after a dispute has arisen, in which case it is known as a submission agreement.

**First: The arbitration clause (la clause compromissoire):** When concluding a contract, the parties may agree to include a clause providing for arbitration in the event of a dispute between them. This dispute may concern any financial, practical or legal matter arising from the performance or implementation of the investment contract. The arbitration agreement may also take the form of a separate contract, provided it is concluded before the dispute arises[53].

**Secondly, a submission agreement (le compromis)** is an agreement concluded by the parties after a dispute has arisen between them. Unlike an arbitration clause, it is not a clause in the original contract or a separate agreement made in advance to provide for arbitration in the event of a dispute. Rather, it is concluded only after a dispute arises during the performance of the contract[54].

Article 1011 of the Algerian Code of Civil and Administrative Procedure refers to the submission agreement as an 'arbitration agreement' and requires it to be made in writing. It must also specify the subject matter of the dispute, the names of the arbitrators and how they will be appointed.

The difference between an arbitration clause and a submission agreement is that the former is concluded before a dispute arises and concerns a future or potential dispute. Its defining feature is that it precedes the dispute. By contrast, a submission agreement is an agreement to resort to arbitration after a dispute has arisen.

### AK. Section Two: Constitution of the Arbitral Tribunal

### AL. First: Method of selecting arbitrators

The parties to a dispute are free to select the arbitral tribunal, which may consist of one or more arbitrators. The tribunal may take different forms. In a sole arbitrator tribunal, the parties agree on one person to serve as the arbitrator[55]. In a two-member tribunal, each party appoints an arbitrator and the two arbitrators agree on a resolution to the dispute. This form is generally used in bilateral investment contracts.

Article 10 of the UNCITRAL Model Law on International Commercial Arbitration states that if the parties have not agreed on the number of arbitrators, the tribunal shall consist of three arbitrators[56]. The most common form of tribunal in international commercial arbitration is a three-member tribunal: each party appoints one arbitrator, while the third may be selected by agreement of the parties, by agreement of the two appointed arbitrators, or by an independent body or the institution administering the arbitration[57].

**Secondly,** the requirements for serving as an arbitrator are that the person must enjoy civil rights and be a natural person[58], as prescribed by Algerian legislation. In this respect, it follows Article 1452(1) of the French Code of Civil Procedure. Egyptian law expressly provides that an arbitrator must not be a minor, legally incapacitated or bankrupt without having been rehabilitated[59]. An arbitrator must also be impartial; they must not favour either party, have a relationship with either party or have a direct interest in the dispute[60].

The 1987 Arab Convention on Commercial Arbitration also stipulates that 'the arbitrators appointed may not be nationals of either of the parties'[61].

### AM. Section Three: Conduct of the Arbitral Proceedings

According to Article 1043 of the Algerian Code of Civil and Administrative Procedure[62] and Article 19 of the UNCITRAL Model Law on International Commercial Arbitration[63], the parties to the arbitration proceedings are free to agree on the procedure governing those proceedings, either in the arbitration agreement or by reference to an agreed procedural law. If the parties have not reached such an agreement, the arbitral tribunal shall conduct the proceedings in the manner it considers appropriate.

### AN. First: The place and language of arbitration

### AO. Place of arbitration

The parties are free to choose the place where the arbitral tribunal will convene. If they cannot agree on a location, the tribunal may designate an alternative location, taking into account the circumstances of the case and the parties involved. However, as an exception, unless the parties have agreed otherwise, the tribunal may meet elsewhere for deliberations, to hear witnesses, the parties or experts, or to inspect property or premises[64].

### AP. Language of arbitration

The parties are free to choose the language to be used in the arbitration proceedings. If they cannot agree, the tribunal will decide which language or languages to use. Unless the parties have agreed otherwise, this applies to any written statement, oral hearing, decision, communication or arbitral award[65].

**Secondly, regarding the submission of claims and defences:** Article 23[66] of the UNCITRAL Model Law on International Commercial Arbitration sets out the procedure for submitting these in arbitral proceedings. The claimant must state the facts supporting the claim, the relief sought and any other matters relevant to or connected with the dispute. The respondent must submit documents and evidence supporting their defence, unless the parties have agreed on a different procedure.

During the proceedings, the parties may amend or supplement their claims and defences unless they have agreed to prohibit this, or unless the arbitral tribunal considers the amendment or supplement inappropriate because it was submitted late.

When carrying out their duties, arbitrators or arbitral tribunals shall examine the claims, defences and documents submitted, conduct inquiries and hear the parties, while observing impartiality and strict confidentiality.

Thirdly, the issuance of the arbitral award involves two stages: deliberation and a second stage not specified in the source text.

### AQ. First: Deliberation

In ordinary court proceedings, deliberation takes place after the conclusion of oral arguments. It consists of consultations among the judges of the court concerning the form and content of the judgment before it is delivered. Deliberations are held in camera so that judges may express their opinions freely. The position in arbitration is broadly similar. Where there is a sole arbitrator, no particular issue arises. Where the arbitral tribunal consists of several arbitrators, they discuss and deliberate on the claims and defences submitted and reach a decision by majority or unanimously.

The deliberative process in international commercial arbitration differs from that in domestic arbitration because the arbitrators in international proceedings may be of different nationalities. This may lead the presiding arbitrator to adopt different procedures, such as preparing a draft decision and circulating it to the other members for their feedback, with the aim of reaching a final version of the arbitral award[67].

Where the tribunal consists of several arbitrators, the international arbitral award is issued by majority vote. This is set out in Article 25 of the ICC's Rules of Arbitration and Article 16 of the LCIA Rules[68].

Following the 2026 amendments to the International Arbitration Rules, Article 38 stipulates that, after consulting the parties and considering all relevant circumstances, the arbitral tribunal may sign the award electronically. The Rules permit electronic signatures where applicable law allows them. They also permit the award to be issued in multiple counterparts, with each arbitrator signing a separate counterpart that forms part of the same award. The amendments also allow the award to be notified by different means: the arbitral tribunal may request that the Secretariat notify the award in hard copy, electronically, or by any other means permitted by law[69].

## II. CONCLUSION:

In summary, based on the preceding analysis, international commercial arbitration has become the principal mechanism for resolving international disputes, particularly investment disputes. As an alternative and peaceful means of dispute resolution, it has become the option most frequently chosen by parties to international disputes, thanks to its distinctive characteristics. It serves as a safeguard and incentive for foreign investors by offering protection against the unpredictability and procedural complexities of host states' courts. It also encourages and attracts investment, as host states seeking to benefit from foreign currency contributions to their economies accept arbitration clauses in international investment contracts, despite

the reservations it continues to attract.

## III. FINDINGS:

- The safeguards available to host states in arbitral proceedings are insufficient in the context of economic and political dominance. Additional safeguards are therefore needed to ensure equality, protect state sovereignty, and safeguard domestic laws.
- The language used in arbitration raises fundamental issues, particularly with respect to understanding and interpreting the contents of written submissions. We therefore propose that arbitral tribunals prepare arbitration documents in multiple versions using the languages of the parties to the dispute.
- Developing countries should modernise their domestic legal frameworks governing arbitration to ensure consistency with international law.
- The high costs of arbitration may place a significant financial burden on some states and individuals. Arbitration costs should therefore be reconsidered.
- The integrity and impartiality of arbitrators remain matters of debate. Strict requirements and safeguards should therefore be established for their appointment.
- The weaker party to an arbitral dispute requires protection in the form of safeguards incorporated into international investment contracts.
- The provisions of the Algerian Code of Civil and Administrative Procedure should be reconsidered to clarify ambiguous provisions.

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[7] - Article 144 of Law No. 23-09 of 21 June 2023, containing the Monetary and Banking Law, provides: "Residents in Algeria are authorised to transfer capital abroad to finance activities abroad that complement their activities relating to the production of goods and services in Algeria."

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[17] - Khaled Mohamed Al-Qadi, Encyclopedia of International Commercial Arbitration, Dar Al-Shorouk, Cairo, Egypt, 1st ed., 2002, p. 102.

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[33] - Lama Ahmed Koujan, with a foreword by Judge Ghassan Rabah, Arbitration in Investment Contracts, Zain Legal Publications, Beirut, Lebanon, 2008, p. 77.

[34] - Mouna Boukhtala, Arbitration as a Means of Settling Disputes in the Field of Investment, Master's Thesis in Public Law, Faculty of Law, University of Constantine, Academic Year 2013–2014, p. 86.

[35] - Website of the World Organization for International and Digital Arbitration: https://woida.us/ accessed on 10 October 2025, at 20:41.

[36] - Zouak Nadjet, "The Theory of Exceptional Circumstances and Its Applications in International Contracts," Academic Journal of Legal and Political Research, Vol. 5, No. 2, 2021, p. 1471.

[37] - Article 18 of Ordinance No. 75-58 of 26 September 1975, as amended and supplemented by Law No. 07-05 of 13 May 2007, containing the Civil Code, provides: "Contractual obligations shall be governed by the law chosen by the contracting parties, provided that it has a genuine connection with the contracting parties or the contract."

[38] - Article 1040(2) of the Code of Civil and Administrative Procedure provides: "An arbitration agreement shall be valid as to its subject matter if it satisfies the conditions laid down either by the law chosen by the parties, or by the law governing the subject matter of the dispute, or …"

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[44] - Menani Farah, Arbitration as an Alternative Means of Dispute Resolution, op. cit., p. 31.

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[56] - The UNCITRAL Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985 (Article 10), provides: 'Number of arbitrators: - The parties are free to determine the number of arbitrators.' - Failing such determination, the number of arbitrators shall be three.”

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[58] - Article 1014 of the Code of Civil and Administrative Procedure provides: “The task of arbitration may only be entrusted to a natural person who enjoys full civil rights. Where an arbitration agreement designates a legal person, the latter shall appoint one or more of its members as arbitrator.”

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[60] - Dr Menani Farah, Arbitration as an Alternative Means of Dispute Resolution, op. cit., p. 132.

[61] - Ilham Azzam Waheed Al-Kharrar, International Commercial Arbitration within the Conflict-of-Laws Approach: A Comparative Study, op. cit., p. 22.

[62] - Article 1043 provides: “The arbitration agreement may specify the procedures to be followed in the proceedings, either directly or by reference to arbitration rules. These procedures may also be subject to the procedural law designated by the parties in the arbitration agreement. Where the agreement contains no such provision, the arbitral tribunal shall, where necessary, determine the procedures directly or by reference to a law or set of arbitration rules.”

[63] - Article 19 provides: “- Subject to the provisions of this Law, the parties are free to agree on the procedures to be followed by the arbitral tribunal in conducting the proceedings. - Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate …”

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