

4 International Arbitration Trends To Monitor In 2024

By **Gregory Litt and Sharmistha Chakrabarti** (January 10, 2024)

According to World Bank reports, global growth slowed substantially in 2023, with weakness likely persisting into 2024.[1]

Underlying factors include geopolitical instability, a predicted economic slowdown in China fueled by its real estate crisis, the global economy's slow recovery from the COVID-19 pandemic and government measures to combat decades-high inflation.[2]

These economic drivers are likely to fuel four key trends in international arbitration this coming year.

Investor-State and Commercial Arbitration

As a direct consequence of Russia's invasion of Ukraine and resulting sanctions, many global companies exited their businesses in Russia. These businesses spanned the gamut, ranging from mining, oil and gas, to financial services and consumer goods.

Today, many businesses that had to abruptly cease operations in Russia in 2022 or had their business taken over at the behest of the Russian government are looking to arbitration as their recourse.[3]

Consequently, 2024 may witness a surge in investor-state arbitration against Russia, as well as commercial arbitration between foreign companies and their Russian counterparties.

On the investor-state front, Danish beermaker Carlsberg A/S has reportedly notified Russia of disputes under the country's bilateral investment treaties with Denmark, Germany and Sweden in connection with the alleged expropriation of its business.[4]

Similarly, Ukrainian state entity Energoatom has reportedly initiated a claim exceeding \$3 billion under the Russia-Ukraine bilateral investment treaty in claiming expropriation of its Zaporizhzhia nuclear power plant and other assets located in occupied Ukraine.[5]

On the commercial arbitration front, foreign companies are likely to be both claimants and respondents in disputes stemming from contracts that were terminated following the Russia-Ukraine conflict.

For example, India's state-owned gas company GAIL is the claimant in a \$1.8 billion arbitration at the London Court of International Arbitration against a former Gazprom unit that has ceased delivering liquefied natural gas under the parties' long-term supply contract after declaring force majeure, citing the war in Ukraine and international sanctions.[6]

Conversely, U.S. oilfield services company Baker Hughes Co. is the respondent in an International Chamber of Commerce arbitration commenced by Russian Yamal LNG defending against claims that it failed to perform under maintenance service contracts and improperly retained money advanced under those contracts.[7]

Increase in Arbitration Arising Out of China



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Turning to China, economists predict that the country's ongoing real estate crisis, coupled with diminished consumer confidence and investment in the country, poses significant risks for the global economy.[8]

In the international arbitration space, these risks have already translated into disputes and more are likely to be forthcoming in 2024.

For example, the crash of Chinese real estate giant Evergrande Group has triggered multiple arbitrations and ancillary cross-border litigation. In connection with one of the arbitrations, a Guangdong court enforced a \$860 million award issued by the Shenzhen Court of International Arbitration against Evergrande in favor of an investor.[9]

Another Hong Kong International Arbitration Centre arbitration initiated by an Evergrande investor — stayed by a Hong Kong court in favor of pending winding-up proceedings — was a reminder of the tensions that exist between arbitration and insolvency.[10]

The Evergrande-related controversies are in addition to an already steady stream of China-related intellectual property disputes arising in arbitration, often addressing the use by Chinese companies of patents, trade secrets, and trademarks developed and owned by their international competitors.

Stakeholder Disputes Triggered by Macroeconomic Factors

The confluence of current macroeconomic factors — geopolitical instability, war-disrupted energy markets, high inflation, rise in interest rates — and the business stress that they cause is also driving an increase in disputes within companies, joint ventures and partnerships.

These disputes may include conflicts over the control of a business, claims of oppression or mismanagement, and issues relating to a party's decision to exit a business venture, including the calculation of an exit price and whether the stakeholder has met contractual conditions allowing it to exit.

Arbitration is often the preferred choice of dispute resolution in documents governing such corporate relationships — e.g., shareholder, joint venture and partnership agreements — so we expect an increase in arbitrations and related litigation in this space.

The ongoing saga in *Anupam Mittal v. Westbridge Ventures*,[11] which relates to a private equity fund's efforts to exit its investment in an online Indian matrimonial company, is an example of the complex issues practitioners may face in cross-border stakeholder arbitrations. The private equity fund invoked the shareholder agreement's Singapore-seated ICC arbitration clause to arbitrate disputes relating to its proposed exit.

The founder of the company, however, alleged oppression and sought relief in the Indian courts claiming, among other things, that shareholder disputes are not arbitrable under Indian law, which was the governing law of the contract.

This single dispute has spawned multiple proceedings before multiple judicial forums in Singapore and India with the parties requesting anti-suit injunctions, anti-anti-suit injunctions and anti-arbitration injunctions, the net result of which is that the ICC arbitration is now reportedly enjoined.[12]

Increase in Intellectual Property Arbitration in Pharmaceutical and Tech

Industries

Finally, there is a growing trend toward arbitrating certain kinds of intellectual property disputes.

Historically, the domestic laws in many jurisdictions precluded arbitrating IP disputes. However, that default is now changing.

Many countries — including Singapore and Hong Kong — have enacted legislation explicitly allowing arbitration of IP disputes, and courts in other countries, including the United Kingdom and Australia, recognize the arbitrability of IP disputes, with the World Intellectual Property Organization concluding that "it is now broadly accepted that disputes relating to IP rights are arbitrable, like disputes relating to any other type of privately held rights."^[13]

Statistics published by the WIPO Arbitration and Mediation Center show that its caseload has exponentially increased, with most cases filed in 2022.^[14] This upward trend is likely to continue in 2024 given that arbitration has distinct advantages for parties involved in IP disputes, including confidentiality, which is quite often a key concern.

The ability to choose who decides the disputes — by nominating arbitrators with relevant experience — is another key reason why parties are increasingly opting to arbitrate IP disputes.

In particular, both the pharmaceutical and tech industries have been witnessing an increase in IP-related arbitrations.

While most of these cases are shrouded in confidentiality, recent cases that have spilled into the public view include:

- An LCIA arbitration commenced by HDT Bio Corp. against Indian pharmaceutical manufacturer Emcure alleging that the Indian company breached the parties' licensing agreement to develop and sell HDT's COVID-19 vaccines in India and misappropriated HDT's trade secrets;^[15] and
- A dispute between Japan's Fujitsu and Cypress Semiconductor Corporation relating to the manufacture of semiconductor microchip wafers, which was sent to arbitration before the Japan Commercial Arbitration Association.^[16]

Conclusion

2023 was a momentous year in international arbitration, with landmark decisions being handed down in connection with corruption, ethical standards, Section 1782 discovery and arbitrator bias.

Continuing that trend, this coming year is likely to be equally significant for international arbitration practitioners and users alike, with a geographic focus on cases arising out of BRIC countries and an industry focus on technology, IP and real estate.

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[1] Dominik Peschel & Philip Kenworthy, *The Global Economic Outlook in Five Charts*, Jun. 8, 2023, *Global Economic Prospects*, The World Bank Group at <https://blogs.worldbank.org/developmenttalk/global-economic-outlook-five-charts-1>; (last accessed Dec. 11, 2023).

[2] See Pierre-Olivier Gourinchas, *Resilient Global Economy Still Limping Along, With Growing Divergences*, Oct. 10, 2023, *IMF Blog* at <https://www.imf.org/en/Blogs/Articles/2023/10/10/resilient-global-economy-still-limping-along-with-growing-divergences>; (last accessed Dec. 11, 2023).

[3] See Caroline Simson, *3 International Arbitration Trends to Watch In 2024*, Jan. 1, 2024 (last accessed Jan. 3, 2024).

[4] See *Carlsberg Threatens Russia with International Suit Due to the Situation Around 'Baltica'*, Nov. 8, 2023, *Interfax*, at <https://www.interfax.ru/russia/929541>; (translated from Russian) (last accessed Dec. 12, 2023).

[5] See *Energoatom Press Release*, at <https://www.energoatom.com.ua/app-eng/eng-1404232.html>; (last accessed Jan. 3, 2024).

[6] See *GAIL Seeks \$1.8 bn From Former Gazprom Unit*, Dec. 1, 2023, *The Economic Times*, at <https://economictimes.indiatimes.com/industry/energy/oil-gas/gail-seeks-1-8-bn-from-former-gazprom-unit/articleshow/105660299.cms>; (last accessed Dec. 12, 2023).

[7] See Maxim Kulkov and Anastasia Khalyavina, *Commercial Court of the Yamalo-Nenets Autonomous District accepts sanctions restrictions as grounds for freezing injunction in support of future arbitration claim*, Aug. 29, 2023, *Practical Law UK Legal Update Case Report*.

[8] See *supra* n. iii.

[9] See *China Evergrande Group Disclosure*, May 12, 2023, at <https://www1.hkexnews.hk/listedco/listconews/sehk/2023/0512/2023051201489.pdf>; (last accessed Jan. 3, 2024).

[10] See *China Evergrande Group v. Triumph Roc International Ltd.*, [2023] HKCFI 2432 ¶¶ 28, 45; see also Jennifer Permesly, Sharmistha Chakrabarti, Liz Downing, *3 Cases Show Tensions Between Arbitration And Insolvency*, Oct. 26, 2023, at <https://www.law360.com/articles/1728595/3-cases-show-tensions-between-arbitration-and-insolvency>; (last accessed Jan. 3, 2024).

[11] See *Anupam Mittal v. Westbridge Ventures II Investment Holdings*, [2023] SGCA 1.

[12] NCLT, Mumbai bench: *In the matter of Anupam Mittal v. People Interactive (India) Pvt. Ltd. and others*, CA/392/2023 in CP/92(MB)2021, (Sept. 15, 2023).

[13] WIPO, *Why Arbitration in Intellectual Property*,

at <https://www.wipo.int/amc/en/arbitration/why-is-arb.html> (last accessed Jan. 3, 2024).

[14] WIPO Caseload Summary, at <https://www.wipo.int/amc/en/center/caseload.html>; (last accessed Jan. 3, 2024) (While WIPO's caseload includes mediations and expert determinations in addition to arbitrations, it is indicative of an increased appetite to resolve IP disputes through alternative dispute resolution.).

[15] Rachel Riley, Wash. Judge Nixes HDT's \$950M mRNA Vax Trade Secrets Suit, Dec. 4, 2023, at <https://www.law360.com/articles/1773095/wash-judge-nixes-hdt-s-950m-mrna-vax-trade-secrets-suit> (last accessed Jan. 3, 2024).

[16] Fujitsu Semiconductor Limited v. Cypress Semiconductor Corporation, Case 5:22-mc-80313-VKD (N.D. Cal.) (Jun. 5, 2023).