

INTERNATIONAL
COMMERCIAL
ARBITRATION
WITH
SOVEREIGN
STATES

EDITED BY
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ELGAR ARBITRATION LAW AND PRACTICE

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A. INTRODUCTION

In recent years, international commercial arbitration involving sovereign States or State Owned Entities (SOEs) has developed into a distinct category of arbitration—one that blends elements of both public and private law in a uniquely complex and politically sensitive framework.¹ The hybrid nature of these proceedings requires an equally hybrid form of advocacy. Unlike standard commercial disputes between private actors, cases involving States or SOEs often straddle treaty obligations, public international law principles, and domestic administrative constraints, all while formally proceeding under private arbitration rules. 4.001

Moreover, advocacy in State-involved arbitration is shaped by a constellation of factors that rarely surface in purely private disputes. For States, internal governmental dynamics, inter-ministerial coordination, and shifting diplomatic priorities can influence both strategy and outcome. For private parties proceeding against a State, reputational risk, media exposure, and concerns about reciprocal treatment in future dealings often become as pressing as the legal merits of the claim itself. Private parties do not usually *want* to sue States, and arbitration proceedings are seen as a very last resort. These contextual variables place a premium on calibrated, adaptive advocacy—one that integrates legal analysis with strategic foresight, and that balances principled argumentation with a nuanced understanding of governmental incentives and constraints. Whether representing a sovereign or its counterparty, the advocate must be attuned not only to the courtroom or tribunal but also to the corridors of power beyond it. 4.002

This chapter will focus specifically on commercial arbitration with a State or SOEs—as distinct from proceedings commenced under a treaty and involving international law—and will be organised chronologically from early strategic considerations, the initial request for arbitration, through to the commencement of proceedings and fundamental points of the dispute, to the substantive hearing. Advocacy is not just in written submissions or oral submissions, but permeates every part of the proceedings: strategic considerations, establishing rapport with the tribunal from the first procedural conference to the 4.003

¹ See also Charles N. Bower, 'State Parties in Contract-Based Arbitration: Origins, Problems and Prospects of Private-Public Arbitration', *ITA in Review*, Volume 1, Issue 2, § 1. <https://itainreview.org/articles/Fall2019/state-parties-in-contract-based-arbitration.html>.

post-hearing submissions. As rules and practices have developed over recent years, it is necessary to consider arbitration strategy, and techniques for both written and oral advocacy, when a dispute involves a State or SOE.

B. EARLY STRATEGIC CONSIDERATIONS

4.004 Disputes arising out of commercial contracts with SOEs require a distinct and deliberate approach. Although these proceedings are governed by contract law and typically subject to institutional arbitration rules, the involvement of a sovereign or quasi-sovereign counterparty introduces additional legal and procedural complexities that warrant careful early-stage planning. Five areas, in particular, demand close attention from the outset: limitation periods, forum and jurisdictional issues, evidence gathering, cost management, and enforceability.

1. Limitation periods and when to bring a claim

4.005 The arbitration process typically begins with the filing of a Request for Arbitration (RFA) or its equivalent, depending on the institutional rules or ad hoc framework chosen. While this may seem like a formal starting point, the precise mechanics—and their legal consequences—vary significantly across regimes.² Most rules specify when proceedings are deemed to commence: for example, under the ICC and UNCITRAL Rules, arbitration is considered to begin on the date the RFA or notice of arbitration is received by the relevant body or counterparty.³ However, these rules do not themselves suspend or interrupt limitation periods. Whether such legal effects follow from the commencement of arbitration depends entirely on the applicable law.⁴ A failure

² See e.g. 'Chapter 19: Choice of Substantive Law in International Arbitration (Updated February 2024)', in Gary B. Born, *International Commercial Arbitration*, Third Edition (© Kluwer Law International, Kluwer Law International 2021), § 293.

³ See ICC Rules 2021, Article 4 under 2 ("The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.") and the UNCITRAL Rules under Article 3 under 2 ("Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.").

⁴ See also Daniel Huser, 'Determining the Relevant Limitation Period for International Sales Contracts Before International Arbitral Tribunals', *ASA Bulletin* (© Kluwer Law International, Kluwer Law International 2015, Volume 33, Issue 4), pp. 825–848.

to account for these distinctions can lead to jurisdictional objections or even undermine the enforceability of an award.⁵

Generally, parties are free to agree on the point at which arbitration proceedings are considered to have been commenced.⁶ This is set out in Article 21 UNCITRAL Model Law, although many national laws are based on similar provisions, including section 14(1) of the Arbitration Act for England and Wales.⁷ If parties do not agree, then the point of commencement will be determined by the rules of the arbitration seat, the common position being deemed as beginning on the date of receipt by the respondent of the initiating documents. 4.006

The legal effects of commencing proceedings generally are that it will be sufficient for limitation periods to stop running, in the same manner as initiating litigation in State courts. Additionally, there will be matters of *lis pendens* / *estoppel* where a matter is already seized in State courts, on the same subject matter and between the same parties.⁸ The tribunal and/or the State court may stay proceedings and recognise the ongoing proceedings to avoid duplication and conflicting judgments and/or issue injunctions.⁹ 4.007

2. Forum: Arbitration clauses in contracts, anti-suit injunctions, parallel proceedings and possibility of treaty claims

The second key consideration concerns the forum and the scope of the arbitration agreement. States and SOEs may attempt to resist arbitration by disputing the tribunal's jurisdiction or the validity of the arbitration clause.¹⁰ 4.008

⁵ See Brian Millar, 'Applicable Laws for Limitation Periods: Blurring Substantive and Procedural Lines in International Commercial Arbitration? (Part One)', *Kluwer Arbitration Blog*, 2023.

⁶ Julian D.M. Lew, Loukas A. Mistelis, and Stefan M. Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International, The Hague 2003, para 20–28; Marco Rubino-Sammartano, *International Arbitration Law and Practice*, Third Edition, Juris Publishing 2014, p. 864.

⁷ Daniel Girsberger and Natalie Voser, *International Arbitration: Comparative and Swiss Perspectives*, Fourth Edition, Nomos Verlagsgesellschaft mbH & Co. 2001, Ch. 4, p. 246.

⁸ See e.g. Elliot Geisinger and Laurent Lévy, 'Lis Alibi Pendens in International Commercial Arbitration', *Complex Arbitrations: Perspectives on their Procedural Implications*, Special Supplement—ICC Int'l Court of Arb Bulletin (December 2003); See also E. Gaillard, 'Abuse of Process in International Arbitration', *ICSID Review – Foreign Investment Law Journal*, Volume 32, Issue 1, Winter 2017, pp. 17–37. <https://doi.org/10.1093/icsidreview/siw036>.

⁹ See *Republic of Mozambique v. Prinvest Shipbuilding SAL and others*, UK Supreme Court for a relatively recent judgment and analysis of the proper basis for staying proceedings in favour of arbitration.

¹⁰ See 2025 Queen Mary University of London International Arbitration Survey Report, p. 12, in which an interviewee noted "Some government officials would rather go through resisting enforcement than simply comply with the award." [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf](https://www.qmul.ac.uk/arbitration/media/arbitration/docs/White-Case-QMUL-2025-International-Arbitration-Survey-report.pdf).

As such, the financial implications for private claimants can be considerable. Third-party funding has emerged as a viable tool to mitigate financial risk, particularly in high-value disputes.¹⁷ Early engagement with funders may also assist in refining the legal theory of the case and in structuring the case for enforcement.¹⁸ However, funding arrangements may themselves become the subject of procedural challenges, with States or SOEs seeking security for costs where the claimant is thinly capitalised or externally funded.¹⁹ In such scenarios, it is important to understand the institutional framework governing cost orders, the tribunal's discretion in allocating costs, and the extent to which costs can realistically be recovered at the conclusion of the proceedings. A comprehensive cost forecast—covering jurisdictional, merits and enforcement phases—should be developed at an early stage to inform decision-making and resource allocation.²⁰

- 4.016 Also, while third-party funding has become increasingly common in international arbitration, funding claims against States or SOEs presents particular challenges. Given the size of some claims and the potential upside of a successful result, funders do tend to be much more cautious in cases against States or SOEs, as such cases often involve complex legal and political risks. The potential for sovereign immunity claims, difficulties in enforcement, and the involvement of government interests can complicate the prospects for recovery. These factors increase the funder's risk and may make them hesitant to commit resources without strong assurances of a favourable outcome and effective

17 See M.S. Sweify, *Third Party Funding in International Arbitration – A Critical Appraisal and Proposed Proposal*, Edward Elgar, 2023. See also L. Bench Nieuwveld and V.S. Sahani, *Third Party Funding in International Arbitration*, Second Edition, Kluwer Law International, 2017.

18 See also Report of the ICCA-Queen Mary Task Force on Third-Party Funding in International Arbitration (2018), p. 28: "In some instances, the funder may play a highly active role, attending meetings and/or hearings, being copied on correspondence, and providing input on strategic issues. Some clients regard this active involvement by the funder as a 'value added' in terms of budget management and legal, strategic, or technical expertise, beyond the mere provision of capital."

19 See e.g. the Chartered Institute of Arbitrators (Ciarb)'s *Guideline on Third-Party Funding* (2025) <https://www.ciarb.org/media/sijpb14w/ciarb-guideline-on-third-party-funding-1.pdf>. See also various rules of arbitration institutes that now require the disclosure of third-party funding. Article 11(7) of the 2022 ICC Rules, Article 9, paragraph 2 under (f) of the 2024 Rules of the Netherlands Arbitration Institute, SCC Arbitration Institute, SCC Policy: Disclosure of third parties with an interest in the outcome of the dispute (October 2024) and the Singapore International Arbitration Centre (SIAC) Arbitration Rules (2025), Rule 38.1).

20 See ICC Commission Report, 'Decision on Costs in International Arbitration', International Chamber of Commerce. The ICC also offer a useful tool to generate the estimated amount for the ICC administrative expenses and the arbitrators' fees, see: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/costs-and-payment/costs-calculator/>.

enforcement.²¹ Moreover, cases against States or SOEs often face longer timelines and higher costs, which means funders require confidence in both the legal merits and the overall strategy from an early stage.

The presence of political sensitivities and the potential for diplomatic intervention can add layers of uncertainty, making funding decisions even more conservative. For claimants, this means that securing third-party funding in disputes involving States or SOEs typically demands a well-prepared case, a clear enforcement strategy, and realistic expectations about the risks and timelines involved. Funders will look closely at the strength of evidence, the quality of counsel, and the likelihood of enforceability before offering support.²² The involvement of a funder can significantly impact case dynamics, providing resources for thorough preparation and potentially influencing settlement negotiations. However, funders' heightened caution means that funding is by no means guaranteed in State-related disputes, and obtaining it often requires careful planning and strategy from the outset.

Funding has become increasingly common, and many arbitral institutions, such as the ICC, now require disclosure of the existence of third-party funding to avoid conflicts of interest with arbitrators.²³ Third party funding is also under increased scrutiny, and bodies such as UNCITRAL's Working Group III have proposed regulatory frameworks to control it.²⁴ Considerations should be on the extent to which funders are allowed to exert control over proceedings, the treatment of confidentiality and privilege when sharing materials with funders, and the share of the award they wish to obtain.

5. Enforceability

Clearly, if a party cannot enforce an award, then there is no or little point in obtaining it. Similarly, if an award is unenforceable, it will not be feasible to

21 See differently: B. Guven and L. Johnson, 'The Policy Implications of Third-Party Funding in Investor-State Dispute Settlement', Columbia Center on Sustainable Investment, CCSI Working Paper 2019, p. 21 et seq. (<https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/our%20focus/extractive%20industries/The-Policy-Implications-of-Third-Party-Funding-in-Investor-State-Dispute-Settlement-FINAL.pdf>).

22 See for example Burford Capital, 'Burford's Diligence Process for Litigation Finance', webcast dated 7 May 2020 (<https://www.burfordcapital.com/insights-news-events/events-webcasts/the-burford-diligence-process-for-litigation-finance/>) or Burford Capital, 'International Arbitration – Disputes We Finance' (<https://www.burfordcapital.com/what-we-do/disputes-we-finance/international-arbitration/>).

23 Xin (Sherry) Chen, *Researching Third-Party Funding in Investor-State Dispute Settlement* (https://www.nyulawglobal.org/globalx/Third-Party_Funding_Investor-State_Dispute_Settlement.html).

24 Columbia Center on Sustainable Investment, *Third Party Funding in Investor-State Dispute Settlement* (<https://ccsi.columbia.edu/content/third-party-funding-investor-state-dispute-settlement>).

- 4.025 One complicating factor is the internal decision-making structure of the State or SOE. Authority to engage in settlement discussions may reside not with the legal or operational representatives with whom the claimant is in contact but at ministerial or even cabinet level. In such cases, misdirected communications or failure to involve the appropriate counterpart may render early efforts ineffective. Claimants should therefore seek to understand the relevant hierarchy and ensure that any correspondence is addressed to parties with actual or apparent authority to respond meaningfully.
- 4.026 A further consideration is the risk of reputational harm or perceived loss of face. In some legal and political cultures, public allegations of breach—especially if made in aggressive or legalistic terms—may provoke institutional defensiveness, thereby undermining the prospects of negotiated resolution. Where appropriate, more discreet channels of communication may be advisable, whether through high-level commercial contacts, diplomatic intermediaries, or structured working groups.²⁹
- 4.027 Regardless of the method or tone adopted, parties should treat pre-arbitration engagement as a stage of record-building. It is not uncommon for States or SOEs to argue that a dispute was insufficiently particularised prior to arbitration, or that the claimant failed to provide adequate notice of its claims. Early correspondence should therefore be drafted with a view to establishing a clear and coherent factual and legal narrative. Even if informal in style, such documents should anticipate potential future scrutiny by a tribunal and be consistent with the claimant's likely procedural and substantive positions.
- 4.028 Confidentiality presents another area of potential complexity. While many legal systems recognise a "without prejudice" rule protecting the admissibility of settlement discussions, its applicability in international arbitration is not automatic, and the scope of protection may vary. It is prudent, therefore, to label relevant communications accordingly and, where feasible, to agree on a framework governing the confidentiality and non-reliance on such exchanges.
- 4.029 Finally, timing remains a critical concern. Limitation periods are not necessarily suspended during negotiations, and delay may be interpreted as acquiescence. A well-timed notice of dispute or reservation of rights letter can help preserve procedural entitlements while signalling willingness to engage

²⁹ L. Markert and S. Wilske, 'The Use of Diplomatic Channels to Combat State Interference and Guerrilla Tactics in International Arbitrations', *TDM*, Volume 3, 2014, in *Guerrilla Tactics in International Arbitration & Litigation* (<https://www.transnational-dispute-management.com/article.asp?key=2117>)

constructively. Equally, where the likelihood of early resolution appears low, there may be strategic value in proceeding promptly to arbitration to reduce uncertainty and mitigate enforcement risk.

In sum, pre-arbitration conduct in disputes with States and SOEs calls for a measured, strategic approach. It must reconcile legal formality with commercial pragmatism and procedural clarity with political sensitivity. When approached judiciously, such engagement can not only increase the prospects of early settlement but also lay a more secure foundation for the arbitral process itself. 4.030

D. REQUEST FOR ARBITRATION

1. Identity of the parties

Naturally, it is an obligation of the initiating party to identify the correct parties to arbitrate against, which may provide more of a challenge when a State is involved. For example, it may be a particular Ministry within the State, such as the Ministry of Finance, Ministry of Economy, or Ministry for the particular sector of the dispute. Practically speaking, it may be advantageous to involve as many State parties as possible to ensure engagement and restrict inaction sometimes seen within State bureaucracy. It is recommended to research any other prior cases involving the State or SOE to inform which parties are involved and also consider what potential counsel or strategy the State may engage in response to arbitration. 4.031

2. Proper service of documents

The arbitrating party will also need to ensure proper service of the initiating documents. Whilst parties may contractually agree on the manner of service of documents, it is rarely specified.³⁰ Many arbitration rules are more flexible than similar rules in state court proceedings and allow for any effective means, such as email. 4.032

Article 4.1 of the LCIA Rules states that: 4.033

[t]he Claimant shall submit the Request under Article 1.3 and the Respondent the Response under Article 2.3 in electronic form, either by email or other electronic means including via any electronic filing system operated by the LCIA. Prior written approval

³⁰ Julian D. M. Lew, Loukas A. Mistelis, and Stefan M. Kröll, *Comparative International Commercial Arbitration*, Kluwer Law International, The Hague 2003, para 20–43.

should be sought from the Registrar, acting on behalf of the LCIA Court, to submit the Request or the Response by any alternative method.³¹

4.034 Other procedural points must also be considered, such as the conflict of laws. For example, if an arbitration is seated in London but the contract is governed by German law, the Foreign Limitation Periods Act 1984 (FLPA 1984) stipulates that the German limitation periods will apply. The procedural law governs the arbitration proceedings, namely the conduct of the arbitration and the supervisory powers of the court. In the absence of any chosen law, the procedural law will be the law of the jurisdiction which is the seat of the arbitration.³²

3. What legal tests do tribunals apply to decide if an SOE is "an organ of the state" or a private party?

4.035 State-owned entities (SOEs) often blur the boundary between public authority and private enterprise. While many of these entities operate in markets—offering goods, entering into commercial contracts, and competing with private sector players—they frequently do so under the influence or direction of the State.

4.036 In some jurisdictions, SOEs are used to further strategic objectives such as infrastructure development, control over natural resources, or industrial policy. Even when formally structured as separate legal persons, they may receive public funding, be governed by politically appointed boards, or be subject to legislative oversight. This hybrid profile can make it difficult to determine whether the SOE is acting as a commercial party or as an instrumentality of the State. For a claimant, this uncertainty is not just theoretical; it may affect whether arbitration can proceed at all, who must be named as a respondent, and whether any eventual award can be enforced.

4.037 When confronted with the question of whether an SOE should be treated as an organ of the State or as an independent commercial entity, arbitral tribunals apply a range of legal tests. The most common approach is functional: tribunals assess the nature of the conduct giving rise to the dispute. If the SOE was engaged in governmental activities—such as issuing regulations, collecting taxes, or implementing national policy—it is more likely to be treated as

³¹ Daniel Girsberger and Natalie Voser, *International Arbitration: Comparative and Swiss Perspectives*, Fourth Edition, Nomos Verlagsgesellschaft mbH & Co. 2001, Ch. 4, p. 246.

³² *James Miller & Partners Ltd v Whitworth Street Estates (Manchester) Ltd* [1970] AC 583, [1970] 1 All ER 706, [1970] 1 Lloyd's Rep 269, HL. Halsbury's Laws of England, 5th Edition, Volume 2, paragraph 607.

an arm of the State. In contrast, if the entity was acting in a purely commercial capacity—such as selling goods, contracting for services, or participating in a joint venture—it may be regarded as a separate juridical person.

Other tribunals look to structural or formal criteria: whether the SOE has separate legal personality under domestic law, whether it enjoys operational autonomy, and how closely it is controlled by the State. The absence of a uniform test means that outcomes can vary considerably, even where the facts are similar. For parties bringing claims against SOEs, this lack of predictability underscores the importance of early, jurisdiction-specific analysis—both of the SOE's corporate structure and its role in the transaction. 4.038

The International Law Commission's Articles on Responsibility of States for Intentionally Wrongful Acts aim to set out the rules of international law concerning the liability of States for certain acts, the consequences of such liability, and the circumstances in which liability will be precluded. Articles 4, 5 and 8 set out the circumstances when an act by, or conduct of, an entity should be attributed to the State through structural, functional or control tests.³³ 4.039

You will see that each test under these articles is qualitatively separate and requires consideration of how an SOE may satisfy the test. 4.040

4. Risks of state immunity claims in commercial contracts

Commercial contracts with SOEs also maintain risks of State immunity. 4.041 Whilst traditionally the principle of sovereign equality of States meant that proceedings brought against a State in a foreign country would appear to be an infringement of its sovereignty, more recently a doctrine of restrictive immunity has been established. This is reflected in international conventions such as the European Convention on State Immunity, and national legislation such as the State Immunity Act 1978 (in respect of the UK). Under UK law, a State is considered to be any foreign or Commonwealth State except the UK and includes the government of the State and any department of the government.

5. Electing an arbitrator

In commercial arbitration involving States or SOEs, the constitution of the arbitral tribunal is a pivotal strategic step. The choice of arbitrator not only 4.042

³³ United Nations, *Responsibility of States for Internationally Wrongful Acts* (https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

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documents may affect who on the government side is engaged, how resources are allocated, and how settlement possibilities are assessed internally.

4.051 It is important to define the issues in dispute to form a clear basis for RFA, or conversely provide a substantive response in a Response to RFA. This would also allow parties to determine any points for potential settlement or negotiation, which could inform the arbitration strategy moving forward and whether other approaches, such as mediation, may be more appropriate.

4.052 Once the arbitration process has been initiated, a number of procedural issues will need to be considered, namely the applicable law, arbitration agreement and—often—the appointed arbitrator. Naturally, as it is effectively the launch of the arbitral proceedings, there are a number of key strategic considerations. Here are just a few.

(a) Establish the narrative

4.053 The rules usually require the initiating party to set out the “issues in dispute.” There have been a number of cases where the issue was whether there was indeed a “dispute.”³⁴ There are a number of requirements for whether a dispute has taken place. Under English Law the courts have clarified that for the purposes of the Arbitration Act 1996 what is termed a “dispute” should be broadly interpreted.³⁵ Under the ICC regime Article 1(1) of the 1998 ICC Rules provides “...The function of the Court is to provide for the settlement by arbitration of business disputes.”³⁶

4.054 The starting point is a narrative: Most arbitration rules require the claimant to set out the “issues in dispute” in the RFA. But tribunals—and opposing counsel—will look beyond the checklist. A vague or technical description of the dispute may be procedurally sufficient, but it squanders the opportunity to control the story from the outset. The most effective RFAs do more than set out claims: they construct a persuasive factual and legal narrative that places the claimant on firm footing and subtly anticipates defences. In many investor-state and SOE-related cases, whether a “dispute” has even arisen can be contentious. Tribunals have refused to exercise jurisdiction where the facts show no clear divergence of legal position between the parties. Therefore, counsel

³⁴ *AMEC Civil Engineering Ltd v Secretary of State for Transport* [2004] EWHC 2339 (TCC).

³⁵ *Halki Shipping Corp v Sopex Oils Ltd* [1998] 1 W.L.R. 726 (*The Halki*); *Hayter v Nelson and Home Insurance Company* [1990] 2 Lloyd's Rep 265.

³⁶ International Chamber of Commerce, ICC Commission Report – States, State Entities And ICC Arbitration (<https://jsumundi.com/en/document/pdf/publication/en-arbitration-involving-states-and-state-entities-under-the-icc-rules-of-arbitration>).

must be prepared to demonstrate that a dispute exists—not just in fact, but in law—and that all necessary preconditions (such as negotiation windows or notice periods) have been met.

(b) Decide on damages

4.055 While few rules require that the claimant quantify its losses in the RFA, doing so often has immediate procedural and psychological consequences. In institutional arbitrations such as under the ICC Rules, the amount in dispute directly affects the calculation of advance costs and arbitration fees.³⁷ From the perspective of a respondent State or SOE, the stated amount also affects who within the government apparatus will become involved—some claims may stay with in-house counsel or technical staff, others may quickly escalate to senior officials or political actors. More broadly, an early figure (even if approximate) will shape each party's sense of the *Zone of Possible Agreement* (ZOPA) and influence whether, and when, the parties consider mediation or settlement. Empirical studies indicate that large damage claims are often aspirational: tribunals tend to award sunk costs and direct losses, but are more reluctant to grant speculative profits or valuations based on discounted cash flow models.³⁸ For that reason, counsel must strike a careful balance: framing a claim that is serious, credible, and defensible, without anchoring expectations to figures that are difficult to substantiate.

4.056 In December 2020 PwC and Queen Mary University conducted a study on damages awards in international commercial arbitration.³⁹ This study found that Respondents quantify damages on average at only 12% of the amount claimed by claimant. Additionally the most frequently adopted measure of damages in this study, comprising 63%, was the sunk cost methodology, which looks backwards to sums already spent by a claimant. These resulted in a higher amount awarded by Tribunals, with the average in this study being 55% of the amount claimed. Determining whether to seek such damages may depend on the basis and credibility of the claim.

³⁷ Under the ICC Rules, arbitrators' fees are calculated in US dollars and fixed in accordance with Appendix III of the ICC Rules and the ICC's Scales of Administrative Expenses and Arbitrators' Fees with a range of percentage fees from 0.01% to 2.65% depending on the value up to \$500m (<https://www.international-arbitration-attorney.com/wp-content/uploads/2020/12/Appendix-III-2021-ICC-Arbitration-Rules.pdf>).

³⁸ The average award for investor-state dispute settlement proceedings for the period 2014 to 2023 was \$256m, a ten-fold increase on the decade before.

³⁹ Queen Mary's University London, *Damages Awards in International Commercial Arbitration: A Study of ICC Awards* (<https://www.qmul.ac.uk/law/media/law/docs/research/Queen-Mary-research-paper-December-2020.pdf>).