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Focus on High Net Worth Disputes in International Law



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Quantum experts have become a critical component of modern dispute resolution, providing tribunals and courts with independent financial analyses that transform complex economic data into reliable and defensible assessments of loss. Their work not only supports damage calculations but also helps decision-makers understand the economic realities underlying a claim. This article provides three real-world case examples of the services quantum experts provided in international disputes.

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This article examines the transparency obligations embedded in the UNCITRAL Transparency Framework and evaluates their applicability to Nigeria's investment arbitration landscape. The authors contend that Nigeria's existing bilateral investment treaties, most of which predate the UNCITRAL framework and contain no transparency provisions, perpetuate a regime ill-suited to the public interest dimensions of investment arbitration. They propose a three-tiered reform agenda and conclude that these reforms would reposition Investor-State Dispute Settlement in Nigeria from a closed, technocratic process into a legitimate instrument of sustainable development and public governance.

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Family law counsel advising an ultra-high net worth spouse in divorce and intra-family fraud disputes may find themselves beyond familiar territory. These types of disputes demand a different expertise, one trained to trace wealth across jurisdictions and armed with U.S.-style discovery, cross-border insolvency tools, and enforcement mechanisms that convert judgments into real recoveries. This article draws on illustrative cases to offer strategic considerations for ultra-high net worth individuals embroiled in family-law disputes that wish to preserve and recover their rightful assets.

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20 • EB-5 Program Update and the Trump Gold Card Visa

Foreign nationals seeking to invest substantial funds in the United States have two options to apply for Lawful Permanent Resident ("green card") status: the EB-5 Immigrant Investor Program and President Trump's Gold Card Visa program. Both options are administered by the Department of Homeland Security and its administrative agency, U.S. Citizenship and Immigration Services. Both options also have their benefits and pitfalls. This article discusses these programs in detail, as well as guides practitioners on how to prepare and counsel their clients under the current landscape.

22 • Take a Bite of a Comparative Analysis of Disability Rights on an International Scale and *Dracula:* A Discussion of "Othering" and Reclaiming Power

This article discusses the concept of "disability" within the international landscape, with a focus on the Convention on the Rights of Persons with Disabilities, through a comparative lens and discussion of *Dracula* as a literary representation of analogous "othering" and reclaiming of power for those who have been marginalized on a large scale.



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From the Chair . . .



LAURA M. REICH

International disputes involving high net worth individuals rarely fit within a single area of law. Significant assets may be spread across jurisdictions; held through complex ownership structures; or intertwined with family, immigration, tax, estate-planning, and regulatory considerations. When disputes arise, counsel may find themselves navigating multiple legal systems at once.

That complexity makes the theme of this *International Law Quarterly* edition particularly timely: *Focus on High Net Worth Disputes in International Law*. The articles in this issue approach international practice from different perspectives but reflect the breadth and depth of cross-border legal work.

One of the things I have always valued about the International Law Section is the extraordinary breadth of experience within our membership. We are litigators and transactional lawyers, arbitrators and academics, immigration lawyers, estate planners, corporate lawyers, tax lawyers, and practitioners working in countless other areas. Some of us focus almost exclusively on international matters; for others, international issues may arise in the course of an otherwise domestic practice. What connects us is an understanding that once a matter crosses borders, the legal questions rarely stay confined to a single box.

High net worth disputes illustrate that point especially well. A dispute that began with a family relationship may quickly raise questions about asset recovery, corporate structures, trusts, real estate, taxation, or enforcement in another country. An investment dispute may intersect with immigration or tax concerns. An arbitration may require lawyers and experts from several jurisdictions and disciplines. The ILS is at its best when we can create opportunities for such lawyers and experts to build formal and informal connections with each other. When we have an opportunity to network with colleagues whose experience is different from our own, we build more than just social relationships. We develop an invaluable professional resource!

I hope you enjoy this edition, and I thank our authors, editors, and everyone who continues to make the *International Law Quarterly* such an important part of the International Law Section.

Laura M. Reich
Chair, International Law Section
The Florida Bar

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From the Editor . . .



JENNIFER MOSQUERA

Often in the international law context, practitioners encounter disputes amongst the ultra-wealthy that are not only complex but often involve matters of divorce, closely held businesses, and trusts. In this Fall 2026 edition of *International Law Quarterly*, our authors focus on "High Net Worth Disputes in International Law" and evaluate many of the considerations that international practitioners must account for when representing clients under these circumstances.

This edition's Quick Take, entitled "Panama Law 526 and Planning Opportunities for Non-U.S. Clients With U.S. Beneficiaries," by **Nicole A. Baudini** and **Jeffrey A. Hagen**, highlights an important development for international private clients and the planning opportunities that can arise when wealth and family relationships cross borders.

The first three articles, **Davy Aaron Karkason's** "Two Arbitration Acts, One State: The Florida International Commercial Arbitration Act After Fifteen Quiet Years – The Quiet Statute at the Center of Florida's International Arbitration Practice," **Antonio Pereira** and **Mark Funk's** "The Role of the Quantum Expert in Disputes and International Arbitration," and **Abasiemediong Etuk** and **Munachimso Ochiabutor's** "Public Interest, Private Disputes: An Assessment of Transparency Obligations in Nigerian Investor-State Arbitration Under the UNCITRAL Framework" all discuss considerations relating to international arbitration.

In the following piece, **Christopher A. Noel** and **Alejandro Rodriguez Vanzetti** explore asset recovery in the high net worth dispute context with their article "Beyond Family Court: The Asset Recovery Toolkit for the Ultra Wealthy."

Next, evaluate the overlap between forfeiture law and cultural property with **Clarissa Rodriguez** and **Matthew Akiba's** "When Cultural Property Becomes the Defendant: The Claws Behind Cultural Property Forfeiture Actions in the United States."

Our next feature pertains to developing legal considerations surrounding immigration cases, with **Larry Rifkin's** article entitled "EB-5 Program Update and the Trump Gold Card Visa." Directly following this piece, **Hannah L. Lamberg** presents an article focused on a comparative analysis of disability law entitled "Take a Bite of a Comparative Analysis of Disability Rights on an International Scale and *Dracula*: A Discussion of 'Othering' and Reclaiming Power."

As usual, we also present the ILS Section Scene, which in this edition features the Lunch & Learn with James Bacchus and ILS events held during the annual Florida Bar Convention in Orlando, Florida. Also, always included is the World Roundup, providing summaries of important legal updates in different countries and regions. This World Roundup features legal updates from Western Europe and Off World. We are actively seeking new contributors to our World Roundup column. If you would like to become a regular columnist for our publication on a particular region, please contact our editors to discuss this opportunity.

We hope this edition of *ILQ* leaves you with thoughtful pointers that will improve your international practice.

Best regards,

Jennifer Mosquera
Editor-in-Chief
Sequor Law

Quick Take: Panama Law 526 and Planning Opportunities for Non-U.S. Clients With U.S. Beneficiaries

By Nicole Baudini and Jeff Hagen, Miami



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For decades, families throughout Latin America and other Spanish-speaking jurisdictions have used Panamanian private foundations and Panama corporations as core estate and succession planning vehicles, valuing their privacy, cost efficiency, ease of administration, flexible governance, familiar language, and legal environment. Many structures were established by a patriarch or matriarch and then treated as fixed, almost untouchable arrangements, even as family members, assets, and objectives changed. It was also common for families with U.S. children to overlook the U.S. tax implications of these structures until after the parents' death, leaving those heirs with fewer planning options and burdensome reporting obligations. Panama Law 526, enacted 28 May 2026 (Law 526) now creates an important opportunity to reassess these long-standing structures before its effective date of 1 January 2027.[1]

Panama Law 526

Law 526 introduces economic substance rules for certain Panamanian entities that belong to a "multinational group," a term of art of this new law, and receive foreign-source passive income. The law identifies six principal categories of passive income: (1) dividends or profit distributions; (2) interest; (3) royalties; (4) capital gains; (5) income derived from movable and immovable capital; and (6) other income derived from movable capital.[2] The law conditions continued non-taxation of covered foreign-source passive income on demonstrating real activity, decision-making, personnel, facilities, and related expenses in Panama. Entities that fail to demonstrate adequate substance, or fail to properly report their foreign-source passive income on their Panamanian tax return, will be classified as "non-qualified entities," and their relevant net taxable income may become subject to a 15% Panamanian tax.[3] However, it is important to note that many Panama foundations and Panama corporations may still be exempt under Law 526 depending on their structuring and identity as a member of a multinational group.

Definition of Multinational Group

A central issue in classifying whether Panama entities are subject to tax and heightened reporting under Law 526 is whether the

definition of a "multinational group" applies to their structure. A multinational group is generally defined under Law 526 as a group of two or more entities linked by ownership or control that are "tax resident" in different jurisdictions, including the parent, its subsidiaries, and any permanent establishments.[4] Forming a company in Panama or in any other jurisdiction does not necessarily cause the company to be classified as a "tax resident" in such jurisdiction, so the required combination of (i) tax residency and (ii) multiple jurisdictions should result in Law 526 being less than universally applied. Nevertheless, there are likely to be reporting requirements for all Panama entities in relation to the new law, and traps for the unwary in structuring are certain to occur for unsuspecting clients. Panamanian entities that could fall within the scope of Law 526 include corporations (*Sociedades Anonimas or S.A.*), limited liability companies (*Sociedades de Responsabilidad Limitada*), and private foundations (*Fundaciones de Interest Privado*).[5] Based on the application of this definition, Law 526 clarifies its core intention: to tax cross-border groups rather than isolated Panamanian family entities. In practice, few families hold a single, isolated Panamanian entity. Most structures include a Panama private foundation, a trust, or a holding company as the shareholder of at least one subsidiary entity (such as a Panamanian *S.A*. or other foreign company). In turn, this foreign company holds the family's passive assets, such as shares of other holding companies, investments, or real estate. Because at least two connected tax resident entities (one of them Panamanian) will typically bring the structure within the multinational group definition, and because the income involved may fall within Law 526's passive income categories, clients should be wary of Law 526 and should consult with counsel to determine whether the law applies to their particular holding structure.

Reviewing current structures with counsel would likely involve understanding each entity's purpose in the structure, identifying streams of income produced by the structure, and determining whether the structure falls within the scope of Law 526. If it does, the client would need to decide based on the facts and circumstances whether to build and document adequate economic substance in Panama. Adequate substance may require local employees and office arrangements, directors with real decision-making authority, documented board meetings in Panama, and expenses related to the entity's activities.[6] Clients must weigh whether these heightened requirements combined with possible taxation make their current structure economically viable. Where the cost and complexity outweigh the benefits, clients may conclude structural modification to be preferrable, opening the door to a broader discussion of the best design for current and future beneficiaries. In our review, for non-U.S. clients with U.S. citizen or resident children, the law creates not just a compliance issue but also serendipitous planning opportunities.

Planning Opportunities

Law 526 should convince families who comfortably relied on Panamanian structures to reassess whether those structures still remain attractive as currently constructed. When U.S. beneficiaries are involved, a Panamanian structure must adequately address U.S. estate tax, income tax, succession planning, family and entity governance, and reporting considerations for the next generation, especially since not adapting the structure may expose it to a 15% tax. Through this analysis, many families looking for alternatives would be well served to consider utilizing trusts governed under U.S. law. U.S. trusts have potential to be more advantageous for U.S. beneficiaries than continuing with the status quo, which as mentioned may result in U.S. beneficiaries inheriting interests in foreign foundations, foreign trusts, and/or foreign companies to their detriment.

Families with a non-U.S. parent and U.S. children often face an inconsistency between the beneficial tax treatment afforded to the non-U.S. parent and the complications that arise when assets are passed to the U.S. beneficiaries. A non-U.S. person is generally subject to U.S. estate tax only on U.S.-situs assets, or U.S. income tax on those assets that generate U.S.-source income, while U.S. citizen and U.S. tax resident children are subject to U.S. income tax and U.S. estate tax on worldwide income and assets. U.S. persons may also face complex reporting obligations when they receive, own, or benefit from foreign corporations, trusts, foundations, or financial accounts.[7]

This mismatch becomes especially important when a Panamanian *S.A.* holds investment assets for a family whose children are U.S. persons. An election to treat an *S.A.* as a pass-through entity may not be available when the parents pass away,[8] and changes in control or distributions can become problematic and inefficient. U.S. beneficiaries may face classification questions, annual reporting,[9] potential controlled foreign corporation[10] or passive foreign investment company concerns,[11] foreign trust issues, and difficulties with fulfilling their tax reporting and payment obligations.

Law 526 thus creates a natural checkpoint. If a structure must be reviewed for Panamanian economic substance, the client should simultaneously ask whether it remains appropriate for U.S. succession. Often the best answer may be not merely adding substance in Panama, but reorganizing ownership,

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Two Arbitration Acts, One State: The Florida International Commercial Arbitration Act After Fifteen Quiet Years

By Davy Aaron Karkason, Miami



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In 2010, the Florida Legislature enacted the Florida International Commercial Arbitration Act (FICAA), chapter 684, Florida Statutes, a comprehensive framework for international commercial arbitration seated in this state.[1] The act directs courts to interpret its provisions "with regard to its international origin and to the need to promote uniformity in its application," a command that reflects its source in the United Nations Commission on International Trade Law (UNCITRAL) Model Law tradition.[2] Three years later, the Legislature refined the act and added a distinctive consent-to-jurisdiction provision.[3]

Fifteen years after enactment, the case law remains remarkably thin. As of this writing, a search of all reported and unreported state and federal decisions discloses only eight that cite the current chapter 684 at all. Of those, only six engage its provisions in any substantive way—every one of them a federal district court decision.[4] The Florida Supreme Court's sole reference to the act is a passing parenthetical citation to its arbitrator-immunity provision, and no Florida appellate court has construed any section of the act.[5] That silence is not a measure of irrelevance. Florida-seated international arbitrations routinely proceed, and awards rendered abroad are regularly brought to Florida courts for recognition and enforcement. This occurs under a framework in which FICAA operates alongside—and sometimes beneath—the Federal Arbitration Act (FAA),

9 U.S.C. §§ 1–208, and the New York Convention.[6] This article maps the statutory landscape, examines the decisions that have engaged FICAA, and offers drafting and practice guidance for counsel who wish to use—or avoid—the act deliberately rather than by accident.

Three Regimes, One Seat: FICAA, the Revised Florida Arbitration Code, and the FAA

FICAA applies to "international commercial arbitration," subject to any agreement in force between the United States and any other country.[7] An arbitration is "international" under the act if any of three conditions is met: the parties had their places of business in different countries when they concluded the arbitration agreement; the seat, the place of performance of a substantial part of the obligations, or the place most closely connected to the dispute lies outside the country of the parties' common place of business; or the parties have expressly agreed that the subject matter of the agreement relates to more than one country.[8] Most of the act applies only when the place of arbitration is in Florida, but the Legislature made seven provisions applicable regardless of where the arbitration is seated: those addressing judicial referral to arbitration, court-ordered interim measures, and the recognition and enforcement of both interim measures and awards.[9]

Within the act, the "court" is the circuit court,[10] and the supervisory functions such as appointment, challenge, and termination of arbitrators, and applications to set aside an award belong to the circuit court of the county in which the seat of the arbitration is located.[11] Judicial intervention is confined to the instances the act itself authorizes.[12]

FICAA does not stand alone. The Revised Florida Arbitration Code (RFAC), chapter 682, Florida Statutes, enacted in 2013, governs agreements to arbitrate made on or after 1 July 2013, and, since 1 July 2016, all agreements to arbitrate.[13] Notably, the RFAC contains no express carve-out for international arbitration: its only excluded disputes are those involving child custody, visitation, and child support.[14] The two chapters therefore overlap on their face whenever an international arbitration is seated in Florida, and no reported decision has yet resolved which chapter controls when their provisions diverge.[15] The better reading treats FICAA as the specific statute governing the international field that its scope provision claims, but the Legislature could remove all doubt with a one-sentence amendment, as proposed below.

The third regime is federal. Chapter 2 of the FAA implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the United States acceded in 1970.[16] As the Eleventh Circuit explained in *Industrial Risk Insurers v. M.A.N. Gutehoffnungshütte GmbH*, 141 F.3d 1434 (11th Cir. 1998), the Convention is codified in chapter 2 of the FAA, 9 U.S.C. §§ 201–208. It applies to "non-domestic" arbitral agreements and awards—a category that includes awards rendered in the United States in disputes involving foreign parties or foreign performance.[17] For a quarter century, Industrial Risk also stood for a second proposition: that the Convention's article V defenses supply the exclusive grounds for attacking a Convention award. As discussed below, however, the Eleventh Circuit sitting en banc has now overruled that rule for awards seated in the United States.[18]

What FICAA Adds: The Toolbox Practitioners Overlook

FICAA's value lies in a set of tools that neither the RFAC nor the FAA supplies in the same form. First, the act codifies competence-competence: the arbitral tribunal may rule on its own jurisdiction, and the arbitration clause is treated as separable from the contract that contains it. A tribunal's preliminary ruling that it has jurisdiction may be tested in the circuit court within thirty days—while the arbitration continues.[19]

Second, the act contains a complete interim-measures regime, one that tracks the modern interim-measures articles the Model Law added in its 2006 revision. The tribunal may order a party to preserve the status quo, prevent imminent harm, preserve assets from which an award may be satisfied, or preserve evidence.[20] Such an order requires a showing that irreparable harm outweighs the harm to the opposing party and that the requesting party has a reasonable possibility of success.[21] A party may even apply, without notice, for a preliminary order restraining the other side from frustrating a requested measure—although that order is binding but judicially unenforceable and expires in twenty days.[22] Tribunal-ordered interim measures, by contrast, must be recognized and enforced by the competent court regardless of the country in which they were issued. Refusal is permitted only on narrow grounds.[23] The circuit court also retains its own power to issue interim measures in aid of arbitration—wherever the arbitration is seated. The act declares such a request compatible with the agreement to arbitrate.[24]

Third, the act supplies practical machinery: court assistance in taking evidence,[25] judicial immunity for arbitrators to the same extent as judges,[26] and a choice-of-law rule providing that the parties' designation of a governing law refers to that jurisdiction's substantive law and not its conflict-of-laws

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The Role of the Quantum Expert in Disputes and International Arbitration

By Antonio Pereira, Miami, and Mark Funk, New York City



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In complex commercial disputes and international arbitration, winning a case often depends not only on establishing liability but also on proving the value of the damages claimed. Determining those damages requires the expertise of professionals who can translate financial data into persuasive, defensible analyses. Quantum experts play a critical role in this process, helping tribunals and courts to evaluate competing claims and arrive at informed decisions. Commercial disputes and international arbitration proceedings have become more complex, often involving sophisticated financial issues, cross-border investments, and multijurisdictional transactions. While establishing liability remains essential, the outcome of many disputes ultimately depends on the ability to quantify and substantiate damages. As a result, quantum experts have become a critical component of modern dispute resolution, providing tribunals and courts with independent financial analyses that transform complex economic data into reliable and defensible assessments of loss. Their work not only supports damage calculations but also helps decision-makers understand the economic realities underlying a claim.

Who is a quantum expert?

A quantum expert is typically a financial professional with expertise in valuation, accounting, economics, and forensic analysis. Their primary responsibility is to calculate the quantum of damages—the monetary value of losses claimed by a party in a dispute. This involves rigorous analysis of financial data, market conditions, contractual obligations, and industry benchmarks. Quantum experts are often engaged in commercial litigation, investor-state disputes, international arbitration proceedings, merger-and-acquisition-related disputes, and construction and infrastructure claims.

Role in Dispute Resolution

In disputes, the quantum expert's role begins with understanding the nature of the claim and the contractual framework. They work closely with legal teams to identify the basis of the claim, gather and analyze financial evidence such as audited statements, forecasts, and transaction

records, and develop damage models that reflect the claimant's loss accurately.

Collaboration Between Legal Counsel and Quantum Experts

Effective damages analysis requires close collaboration between legal counsel and quantum experts from the earliest stages of a dispute. While legal teams develop the liability case and legal arguments, quantum experts assess the financial consequences of the alleged conduct and identify the evidence required to quantify damages.

Early involvement of a quantum expert can help shape document requests, identify key financial records, evaluate the strengths and weaknesses of damage claims, and develop economically sound theories of loss. In many cases, preliminary damages assessments assist parties in evaluating litigation risks, determining settlement strategies, and allocating resources throughout the proceeding.

Throughout the dispute, quantum experts work alongside counsel to ensure that financial analyses are aligned with the facts of the case while remaining independent and objective. This collaboration enables legal teams to present a coherent narrative that integrates both liability and damages, enhancing the overall persuasiveness of the claim before a court or arbitral tribunal.

Independence and Objectivity

In international arbitration and commercial litigation, the credibility of a quantum expert often depends as much on their independence as on their technical expertise. Arbitrators expect experts to assist the tribunal rather than advocate for the party that retained them. This requires experts to evaluate both favorable and unfavorable evidence, clearly disclose assumptions, and apply valuation methodologies consistently. An independent and well-supported analysis is more likely to withstand scrutiny during cross-examination and contribute meaningfully to the tribunal's decision-making process.

Calculating Damages

Damages in commercial and investment disputes can be complex. Quantum experts employ various methodologies, including discounted cash flow (DCF), market comparables, cost-based approaches, and lost profits analysis. The choice of methodology depends on the nature of the dispute, availability of data, and industry norms.

Three Real-World Case Examples

1. *Occidental Petroleum v. Ecuador* (ICSID Case No. ARB/06/11): The tribunal awarded US$1.77 billion in damages after finding Ecuador had unlawfully terminated Occidental's investment. The quantum expert applied DCF valuation to assess future cash flows from oil production, adjusted for political risk and discount rates.

2. *Yukos v. Russian Federation* (PCA Case): One of the largest arbitration awards in history (US$50 billion). Quantum experts used market comparables and DCF to value Yukos's shares, factoring in expropriation and lost profits.

3. *CMS Gas Transmission v. Argentina* (ICSID Case No. ARB/01/8): The tribunal relied heavily on expert testimony to determine damages caused by Argentina's regulatory changes. The valuation applied international standards and sensitivity analysis to account for economic volatility.

Valuation Standards and Guidelines

Quantum experts adhere to recognized standards to ensure credibility and consistency: international valuation standards (IVS) by the International Valuation Standards Council (IVSC), ASA business valuation standards, international financial reporting standards (IFRS) and generally accepted accounting principles (GAAP) for financial reporting consistency, and IBA guidelines on party representation in international arbitration.

Expert Witness Testimony

Quantum experts frequently serve as expert witnesses, presenting their findings before courts or arbitral tribunals. This role demands independence and impartiality, clear communication, and defending methodologies under cross-examination.

Challenges Faced by Quantum Experts

Data limitations, assumption scrutiny, bias allegations, and evolving standards are common challenges faced by quantum experts in international arbitration.

Best Practices for Quantum Experts

Early engagement, robust documentation, scenario analysis, and effective communication are essential best practices for quantum experts.

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Public Interest, Private Disputes: An Assessment of Transparency Obligations in Nigerian Investor-State Arbitration Under the UNCITRAL Framework

By Abasiemediong Etuk, and Munachimso Ochiabutor, Lagos, Nigeria



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Introduction

The architecture of international investment law has undergone a fundamental transformation over the past half-century. As developing nations have increasingly competed for foreign direct investment (FDI), investor-state arbitration has evolved from an obscure mechanism of commercial dispute resolution into a powerful instrument of global economic governance. As a result, investor-state arbitration has become increasingly popular as a form of dispute resolution between foreign investors and host governments in developing nations, such as Nigeria.[1] Investor State Dispute Settlement (ISDS), also known as International Investment Arbitration, is a system that provides legal protection for FDIs and is guaranteed by a network of investment laws and international investment agreements. This system provides foreign investors with substantive legal protection and direct means for redress against states for breach of their obligations.[2] In this form of arbitration, a private person can directly pursue claims against sovereign states; such claims are instituted before the International Center for the Settlement of Investment Disputes (ICSID) of the World Bank[3] or other international arbitral tribunals governed by diverse rules or institutions, such as the London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), the Hong Kong International Arbitration Centre (HKIAC), or the ad hoc tribunals established pursuant to UNCITRAL Rules, as well as other arbitral forums that may be agreed upon by the parties under a treaty such as a bilateral investment treaty.[4]

While arbitration has long been recognized as a confidential, private process, this confidential nature has been heavily criticized because investment disputes frequently involve a public actor (state) and issues of public interest such as protection of the public health or environment, sovereign

regulation, or taxpayer exposure, but at the same time offer little or no opportunity for public participation. For these reasons, the general public and interest groups have pressed for access not only to final awards but also to proceedings and to reconsideration of the private versus public procedural design.[5] Thus, questions of transparency, including who has access to filings, hearings, and awards; how third parties participate; and demands for more transparent institutions and procedures, have recently been raised, becoming a crucial issue for accountability, legitimacy, and governance in regulating ISDS.[6] The very system that promises neutrality and legal certainty has also generated debate; public discourse on the issue of transparency revolves around the general public interest versus the interests of private actors. It is important to note that transparency in investor-state arbitration refers to the extent to which the public can access arbitral proceedings and the information they produce.[7]

Nigeria, as one of Africa's most populous countries, faces the dual challenge of attracting foreign direct investment while preserving regulatory space and public trust. This challenge is evident in the popularly followed case of *P&ID v. Nigeria*,[8] which highlights issues of corruption and transparency. In this case, the English High Court concluded that, given the significant public interest at stake in investor-state arbitration, including the possibility that arbitration may facilitate the corrupt transfer of public funds to private actors, they should not be conducted in private.[9] The transparency aspect of ISDS is especially important in nations such as Nigeria, where infrastructure, regulations, and the natural resource sector are closely entwined with public policy.[10] It is undeniable that Nigeria's vast natural resources and complex regulatory framework have created fertile ground for disputes that often involve public interest.

Against this backdrop, the UNCITRAL Transparency Framework offers both a normative benchmark and a practical model. This article analyzes the framework's core obligations, evaluates Nigeria's current position, extracts lessons for reform, addresses counterarguments and implementation challenges, and proposes a concrete pathway forward. The central thesis is that transparency, far from being antithetical to effective arbitration, is a precondition for a legitimate and sustainable ISDS regime, and that Nigeria stands to benefit strategically, institutionally, and economically from its adoption.

Understanding Transparency Obligations in Investor-State Arbitration

Transparency in investor-state arbitration refers to the extent to which the public can access arbitral proceedings and the information pertaining to them.[11] At a deeper level, it reflects a normative commitment to the proposition that the exercise of adjudicatory power over matters of public concern requires public justification. This proposition, while now widely accepted in principle, represents a significant departure from the historical foundations of arbitration as a confidential process.

Confidentiality in commercial arbitration has deep roots. As the English Court of Appeal observed in *Emmott v. Michael Wilson & Partners Ltd*,[12] privacy is almost universally recognized by institutional rules. On the other hand, only a minority of arbitration rules expressly address confidentiality. This rationale has considerable force in the commercial context, where parties choose arbitration precisely to avoid the publicity of court proceedings and where confidentiality protects legitimate commercial interests.[13] This commercial paradigm, where disputes were limited to parties and tribunals, was adopted by the early bilateral investment treaties (BITs) signed by Nigeria and other developing nations in the 1970's and 1990's.[14] These BITs show that there was no provision for transparency.[15] ISDS is not the same as private arbitration. As noted above, when a sovereign state is sued, national interests, regulatory decisions, and taxpayers are all at issue, and so it is not reasonable to keep such issues out of the public eye.[16] Following the surge of investor-state cases in the 1990's and 2000's, particularly those contesting environmental and public health regulations, there was an increased demand for transparency.[17]

Three essential transparency obligations include: (1) access to proceedings and public hearings; (2) documentary disclosure of awards, pleadings, and submissions; and (3) public participation.[18] These aspects are codified in the UNCITRAL Rules on Transparency, which mandate that arbitration documents and awards be made public unless there are particular confidentiality exceptions. This signifies a shift in perspective from secrecy to responsibility.[19] Conversely, Nigeria continues to uphold a largely confidential or private arbitration regime. Most of its BITs do not include transparency provisions, and domestic legislation tends to place greater emphasis on confidentiality than on disclosure,[20] thus keeping ISDS proceedings private. This has, in turn, eroded public trust and raised concerns about the accountability and legitimacy of these processes.

Transparency has long been recognized as controversial in investor-state arbitration. On 11 March 2001, an article in *The New York Times* stated:

> Their meetings are sacred. Their members are generally unknown. The decisions they reach need not be fully disclosed. Yet, the way a small group of international tribunals handles disputes between investors and foreign governments has led to national laws being revoked,

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Beyond Family Court: The Asset Recovery Toolkit for the Ultra Wealthy

By Christopher A. Noel and Alejandro Rodriguez Vanzetti, Miami



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When a disputed estate spans a holding company in the British Virgin Islands, a family office in Oman, and a superyacht in the Isle of Man, family law counsel advising an ultra-high net worth spouse in divorce and intra-family fraud disputes may find themselves beyond familiar territory. These types of disputes demand a different expertise, one trained to trace wealth across jurisdictions and armed with U.S.-style discovery, cross-border insolvency tools, and enforcement mechanisms that convert judgments into real recoveries. This article draws on illustrative cases to offer strategic considerations for ultra-high net worth (UHNW) individuals embroiled in family-law disputes that wish to preserve and recover their rightful assets.

Discovery in Support of Pending or Contemplated Proceeding

A well-resourced opposing party can quickly restructure holding companies and move crypto and hard assets across jurisdictions. And while a thorough investigation of public records and corporate registries is often a crucial starting point, discovery is imperative—even *before* any action is commenced. No jurisdiction offers the breadth of U.S.-style discovery, which can be employed by foreign litigants through 28 U.S.C. § 1782: a statute that authorizes federal district courts to order an entity or a person to give testimony or produce documents for use in a pending or contemplated proceeding abroad. In the context of UHNW family disputes, this tool is vital for tracing offshore assets, corporate structures, and bank accounts held by U.S.-based institutions or individuals.

Sergeeva v. Tripleton International Ltd. illustrates the statute's reach.[1] There, a wife who had ended her sixteen-year marriage in Russia litigated the division of marital assets in Moscow alleging that her ex-husband was hiding the estate behind offshore companies.[2] He "dodged, delayed, and opposed" her discovery efforts across Cyprus, Latvia, Switzerland, the British Virgin Islands, and the Bahamas, so she filed a § 1782 application in the Northern District of Georgia seeking

documents from an Atlanta firm she believed could prove his beneficial ownership of a Bahamian company.[3] The firm produced only twenty-three pages, arguing that § 1782 could not reach documents held by its Bahamian affiliate.[4] The Eleventh Circuit disagreed, holding as a matter of first impression that the offshore location of documents is not a per se bar and that the Atlanta firm "control[ed]" its affiliate's records; when it still refused to produce, the court affirmed a contempt judgment of US$234,983.58.[5] As the court observed, this case was no outlier: it is "not uncommon for a § 1782 action to originate in the financial and legal fallout of anagapesis abroad."[6]

Ultimately, § 1782 discovery may be used to support more than the merits of the foreign proceeding. For example, the statute has been used by UHNW individuals in support of a proprietary injunction freezing assets. Importantly, § 1782 is not confined to bank records and routine civil discovery. Courts have deployed § 1782 to compel an auction house to produce records over a disputed purchase of Da Vinci and Van Gogh paintings[7] and even obtain blood samples and paternity discovery.[8]

The Insolvency Route to Recovery

Another crucial tool in UHNW divorce proceedings is Chapter 15 of the United States Bankruptcy Code, which adopts the UNCITRAL Model Law on Cross-Border Insolvency and allows the representative of a foreign insolvency proceeding (often the representative of a disadvantaged spouse) to petition a U.S. bankruptcy court for recognition of that proceeding.[9] The foreign representative gains the automatic stay over the debtor's U.S. assets, broad discovery into the debtor's affairs, and the capacity to sue on both U.S. and foreign claims in courts across the United States.[10] In UHNW family disputes, a Chapter 15 proceeding may stem from a foreign divorce and a subsequent involuntary insolvency proceeding in the debtor's home jurisdiction. The foreign representative appointed there then brings the case to the United States by way of a Chapter 15 petition.

In re Al Zawawi is a prime example of the tools available to those that successfully obtain Chapter 15 recognition.[11] There, a UK court granted the ex-wife's divorce decree and entered a £24 million judgment and a worldwide freezing order.[12] The ex-husband failed to pay.[13] The ex-wife petitioned to place the ex-husband in involuntary bankruptcy in the UK.[14] The joint trustees appointed over his estate then turned to Florida, where the ex-husband held indirect interests in entities owning roughly US$94 million in real estate.[15]

The foreign representatives filed a Chapter 15 petition in the Middle District of Florida.[16] Recognition of the English bankruptcy as a foreign main proceeding triggered the automatic stay over the debtor's U.S. assets.[17] Recognition also authorized broad discovery into the debtor's assets, affairs, rights, and liabilities, examination powers far beyond what the English proceeding could reach on its own.[18] Bankruptcy Rule 2004 was deployed, allowing examinations broader than the Federal Rules of Civil Procedure typically permit in civil proceedings.[19] Discovery surfaced a stock purchase agreement by which the debtor claimed to have sold his shares in a Florida corporation to his brother, for a fraction of their value, weeks before the bankruptcy petition was filed in London.[20] The foreign representatives then converted discovery into recovery by pursuing avoidance claims arising under the foreign insolvency law itself, suing to unwind the share transfer as a transaction at an undervalue and a transaction defrauding creditors under the UK Insolvency Act, pleaded alongside turnover under section 542.[21] In a second adversary proceeding, the foreign representatives attacked certain transfers as sham loans through federal and Florida RICO, breach of fiduciary duty, and conversion claims, pleaded alongside a conspiracy claim under the law of England and Wales.[22] Chapter 15 recognition provided the foreign representatives with discovery and English avoidance claims in the very forum where the assets were located.

In sum, Chapter 15 may turn a party to a foreign insolvency proceeding into a fully empowered U.S. litigant. The automatic stay of a debtor's U.S. assets and broad examination powers have proven to be crucial tools for UHNW litigants. Together, they may allow a spouse to reach assets moved into U.S. companies or trusts.

Judgment Domestication and Enforcement

Converting a judgment to money is rarely automatic, particularly when dealing with UHNW judgment debtors. Assets move through nominees, holding companies, trusts, and registries in jurisdictions chosen precisely to resist enforcement.

The decision to file a domestication and enforcement lawsuit in U.S. federal court or state court will depend on several factors, including the jurisdictional criteria limiting the ability to file suit in a particular forum, the location of the foreign debtor's assets, and the relative ease of enforcement procedures in state versus federal court. Should all requirements be met, judgment creditors typically bring the judgment to the assets, domesticating it wherever they sit and deploying local remedies to freeze them. Few cases better illustrate the point than the Akhmedov litigation.

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When Cultural Property Becomes the Defendant: The Claws Behind Cultural Property Forfeiture Actions in the United States

By Matthew Akiba and Clarissa A. Rodriguez, Miami



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Introduction

In a civil forfeiture case involving a valuable painting, manuscript, antiquity, or religious object, the case caption immediately signals that ordinary rules may not apply: the cultural object itself is the named defendant. Its owner may have a bill of sale, years of peaceful possession, and a good-faith belief in clean title. Even so, the United States may arrest the object and seek forfeiture in rem.

For collectors, galleries, dealers, fiduciaries, and family offices, the consequences can be immediate. A seizure can freeze a sale, disrupt insurance coverage, cloud title, trigger contractual claims, and create reputational risk long before a court reaches the merits. The legal framework is equally easy to misunderstand. The 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Convention[1]) provides the international framework, but it is not self-executing and does not itself create a domestic forfeiture claim.[2] The Cultural Property Implementation Act (CPIA) provides the principal U.S. enforcement mechanism. Bilateral agreements, emergency restrictions, designated lists, customs statutes, and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions fill out the picture.

The defense inquiry should not begin and end with the broad question of whether an object is part of another nation's cultural patrimony. The questions that usually matter are more

concrete: Which CPIA provision authorizes forfeiture? Does the object fit the statutory category? Was it exported or stolen after the controlling date? Has the government met its initial burden? And what documents, exemptions, or procedural defects may defeat the claim? This article answers those questions in practical terms.

The UNESCO Convention: Framework, Not Cause of Action

The UNESCO Convention urges states to "take measures to prohibit and prevent the illicit trafficking of cultural property."[3] It provides "a common framework for the State Parties on the measures to be taken to prohibit and prevent the import, export and transfer of cultural property."[4] Article 1 defines "cultural property" by reference to eleven categories of objects that a state party specifically designates as important to archaeology, history, art, science, religion, or related fields.[5] The UNESCO Convention then addresses several different problems, including theft from public institutions, archaeological pillage, unlawful export, and bilateral cooperation.[6]

Because the UNESCO Convention is not self-executing in the United States,[7] its immediate domestic effect is limited.[8] A foreign government cannot prevail simply by invoking the Convention. It still needs a domestic statutory basis, a proper procedural vehicle, and proof of the elements required by U.S. law.

Article 7(b) concerns cultural property stolen from a museum, religious or secular public monument, or similar institution, provided the object is documented as belonging to that institution's inventory.[9] Article 7(b)(ii) contemplates recovery and return at the request of the country of origin where qualifying cultural property was imported after the UNESCO Convention entered into force in both countries concerned.[10] Requests must be made through diplomatic offices, and the requesting country must supply the documentation and evidence necessary to establish its claim.[11]

Article 9 addresses the pillage of archaeological or ethnological materials.[12] When pillage endangers a state party's cultural patrimony, that country may seek a coordinated international response, including controls on imports, exports, and international commerce in specified categories of material.[13] Article 9 therefore supplies the treaty basis for country-specific U.S. import restrictions.[14] That distinction matters because, as discussed below, the CPIA treats "cultural property" differently from "archaeological or ethnological material."

Article 13 encourages recovery actions, subject to each nation's domestic laws and procedures,[15] and Article 15 preserves special bilateral or multilateral agreements concerning restitution.[16]

The dates matter. By its terms, the UNESCO Convention applies to property imported after the Convention entered into force in both states concerned.[17] It enters into force "three months after the deposit of its instrument of ratification, acceptance or accession."[18] The United States accepted the Convention on 2 September 1983, so it entered into force here on 2 December 1983.[19]

In other words, the UNESCO Convention supplies the international framework for cooperation, but not the cause of action in a U.S. forfeiture case. The CPIA supplies the authority, elements, burdens, and defenses.

The CPIA's Two Forfeiture Tracks

The CPIA, enacted on 12 January 1983, implements the UNESCO Convention in the United States—but it does not treat every cultural object the same way. The governing mechanism and burden of proof depend on whether the object is (1) "archaeological or ethnological material" or (2) "cultural property."[20]

Track One: Designated Archaeological or Ethnological Material

Section 2601(2) defines "archaeological or ethnological material" as an object of archaeological or ethnological interest "which was first discovered within, and is subject to export control by, the State Party."[21] It then sets specific limits on what qualifies as an object of archaeological interest:

> no object may be considered to be an object of archaeological interest unless such object—
>
> (I) is of cultural significance;
>
> (II) is at least two hundred and fifty years old; and
>
> (III) was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water.[22]

With respect to an object of *ethnological* interest:

> no object may be considered to be an object of ethnological interest unless such object is—
>
> (I) the product of a tribal or nonindustrial society, and
>
> (II) important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development, or history of that people.[23]

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EB-5 Program Update and the Trump Gold Card Visa

By Larry S. Rifkin, Miami



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Foreign nationals seeking to invest substantial funds in the United States have two options to apply for Lawful Permanent Resident ("green card") status: (1) the EB-5 Immigrant Investor Program and (2) President Trump's Gold Card Visa program. The former option has been around since 1990, with recent proposed rulemaking seeking to introduce new compliance requirements, expanded government oversight, enhanced fraud-prevention measures, and important protections for qualifying investors. The latter option was created by Executive Order in September 2025 and requires gifts of US$1 million for an individual and US$2 million for a corporate sponsor. Both options are administered by the Department of Homeland Security (DHS) and its administrative agency, U.S. Citizenship and Immigration Services (USCIS). Both options also have their benefits and pitfalls. This article will discuss these programs in detail, as well as guide practitioners on how to prepare and counsel their clients under the current landscape.

The First Option: Overview of the EB-5 Program

Filing of Immigrant Petition

USCIS administers the EB-5 Immigrant Investor Program, which Congress created in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors. Congress established the EB-5 immigrant visa classification for investors associated with employment creation as part of the Immigration Act of 1990.[1] The statute was later amended by the EB-5 Reform and Integrity Act of 2022 (RIA).[2] The EB-5 classification makes Lawful Permanent Resident (LPR) status available to aliens who invest at least US$1.05 million in a New Commercial Enterprise (NCE). An NCE is any for-profit organization formed in the United States for the ongoing conduct of lawful business that will create at least ten full-time jobs for qualifying employees in the United States.[3] The required investment amount is lowered

to US$800,000 if the investment is made in a Targeted Employment Area (TEA) or in an infrastructure project.[4] A TEA is a rural area or area designated by DHS as an area of high unemployment.[5] The Immigration and Nationality Act (INA) allots 7.1% of the worldwide level of employment-based visas (generally around 9,940 immigrant visas) each fiscal year for aliens seeking to enter the United States under the EB-5 classification.[6] The INA reserves annually 20% of these visas for qualified immigrants who invest in a rural area, 10% of these visas for qualified immigrants who invest in a high unemployment area, and 2% of these visas for qualified immigrants who invest in an infrastructure project.[7]

An alien seeking LPR status under the EB-5 immigrant visa classification must go through a multistep process. The alien must first file an EB-5 immigrant visa petition with USCIS, either as a standalone investor by filing a Form I-526, Immigrant Petition by Standalone Investor, or as a regional center investor by filing a Form I-526E, Immigrant Petition by Regional Center Investor. The Regional Center Program allows investors to pool their investments with other sources of capital to fund qualified projects. As of 11 May 2026, there are 567 approved regional centers.[8] Regional center investors tend to be less involved in the management and daily activities of the commercial enterprise when compared to standalone investors. The immigrant petition must be supported by evidence that the alien's lawfully obtained investment capital is invested (*i.e.,* contributed and placed at risk), or is actively in the process of being invested, in a new commercial enterprise in the United States that will create full-time positions for not fewer than ten qualifying employees.[9]

Filing of Adjustment of Status in the United States

If USCIS approves the EB-5 immigrant visa petition, the petitioner must take additional steps to obtain LPR status. In general, once USCIS has approved the petition and an immigrant visa is available, the petitioner may apply for a visa through a Department of State consular post abroad. Alternatively, if the petitioner is already in the United States in lawful nonimmigrant status and is otherwise eligible to adjust status, the petitioner may seek to adjust status to that of an LPR.[10] A petitioner does so by filing a Form I-485, Application to Register Permanent Residence or Adjust Status, with USCIS, which the petitioner may file concurrently with or any time after filing the EB-5 immigrant visa petition. The ability to obtain LPR status is limited because Congress has imposed limits on the availability of immigrant visas based on the category of visa and the immigrant's country of birth.[11]

While the RIA amended the INA to allow for filing the application for adjustment with the petition for classification or while the petition for classification is pending,[12] an immigrant visa needs to be "immediately available" for such an application to be considered properly filed.[13] Generally, an immigrant visa is considered "immediately available" if the petitioner's priority date for the EB-5 category is earlier than the relevant date indicated in the monthly Department of State Bureau of Consular Affairs Visa Bulletin.[14]

Consular Processing of Immigrant Visa

To request an immigrant visa while abroad, an EB-5 petitioner must apply at a consular post of the Department of State.[15] If a visa is available for the petition, the petitioner must generally wait to receive a notification from the National Visa Center to begin the visa application process. After receiving this notification, the petitioner must collect required information and file the immigrant visa application with the Department of State. The wait for an immigrant visa depends on the demand for immigrant visas in the EB-5 category and the petitioner's country of birth. The Department of State authorizes the issuance of a visa and schedules the petitioner for an immigrant visa interview for the month in which the priority date will be current. If the Department of State approves the petitioner's immigrant visa application, the consulate issues an immigrant visa and the petitioner, on the date of admission to the United States, obtains LPR status on a conditional basis.[16]

Conditional Residence

Whether obtained through the issuance of an immigrant visa or adjustment of status, LPR status based on an EB-5 petition for investors, their spouses, and minor, unmarried children is granted on a conditional basis, valid for two years.[17] Within the ninety-day period preceding the second anniversary of the date the alien investor obtains conditional permanent resident status, the alien investor must file Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status, with USCIS.[18] The investor's spouse and children may be included in the investor's petition to remove conditions.[19]

Failure to timely file Form I-829 results in automatic termination of the alien investor's conditional permanent resident status and the initiation of removal proceedings.[20] In support of the petition to remove conditions, the investor must establish that the investor invested, or was actively in the process of investing, the requisite capital and created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees.[21] If approved, the conditions on the investor's permanent residence are generally removed as of the second anniversary of the date the investor obtained

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Take a Bite of a Comparative Analysis of Disability Rights on an International Scale and *Dracula*: A Discussion of "Othering" and Reclaiming Power

By Hannah L. Lamberg, Coral Gables



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"Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,"[1]

"Well, I know that, did I move and speak in your London, none there are who would not know me for a stranger. That is not enough for me. Here I am noble. I am boyar. The common people know me, and I am mater. But a stranger in a strange land, he is no one; men know him not—and to know not is to care not for . . . ."[2]

The Intersection Between Disability Rights and Vampirism in *Dracula*

There is a colloquial saying known as the "Golden Rule." This "Golden Rule" refers to treating others the way you would wish to be treated. Essentially, this simple notion should mean that all humans would be treated equally in an archetypal utopian society, since every person would treat others well and receive the same in return. I hope that many people have been taught, or have at least heard of, this phrase, whether it be in a classroom, at a kitchen table, in a book, or in the Charter of the United Nations. This theme of equality is frequently embedded within the international legal landscape.

This article begins with an excerpt from the Convention on the Rights of Persons with Disabilities (CRPD). The quote is from the Preamble and appropriately defines the idea of a "disability," as well as stresses the notion that disability is an evolving concept. It is imperative that this often marginalized minority group is both acknowledged and addressed both domestically and internationally.

The concept of "othering" of a minority group is prevalent in many fields, notably literature. My favorite novel, *Dracula* by Bram Stoker, poses a narrative of the vampiric figure being "othered" and reclaiming its power over the course of the novel. Specifically, Dracula is portrayed as a grotesque, monster-like figure throughout the novel. This is a form of "othering" in that Dracula is not human and is a distinct creature with different abilities and a divergent makeup. Dracula reclaims power through the process of "reverse colonization" in that his literal bite and figurative transition of humans into vampires as a part of the "vampire race" strips the imperialistic citizens of England of their identities.

This article discusses the concept of "disability" within the international landscape, with a focus on the CRPD, through a comparative lens and discussion of Dracula as a literary representation of analogous "othering" and reclaiming of power for those who have been marginalized on a large scale.

The Convention on the Rights of Persons With Disabilities (CRPD)

The rationale behind the CRPD centers on the aforementioned concept of equality and arises from a fundamental need to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."[3] This excerpt comes from Article 1 of the CRPD, entitled "Purpose," and is consistent with numerous other conventions created by the United Nations.[4]

The United Nations adopted the CRPD and its Optional Protocol on 13 December 2006, at the United Nations headquarters in New York and was opened for signature on 30 March 2007.[5] On the opening day of the Convention, there were eighty-two signatories to the CRPD (the Convention itself), forty-four signatories to the Optional Protocol, and one ratification of the CRPD. The CRPD entered into force on 3 May 2008.[6]

When a state party elects to become a signatory to a convention, it is agreeing not to contravene the intent of the convention; however, a signatory to a convention is not explicitly required to abide by the provisions contained therein. A signatory may sign the convention intending to engage in a deeper investigation to decide whether to ratify the contents of the convention. When a state party ratifies a convention, it formally agrees to comply with the provisions of the convention and to be bound by the terms of the convention. This essentially means that the convention will become a part of that state's governing laws.

The CRPD alters the current attitude and understanding of persons with disabilities.[7] Specifically, the CRPD attempts to humanize those with disabilities and strip away their objectification and ostracization from society.[8] Specifically, Article 2 of the CRPD defines "Discrimination on the basis of disability" as follows:

> any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation . . .[9]

This excerpt from Article 2 of the CRPD provides a working definition of disability discrimination on an international scale.[10]

Furthermore, Article 5 of the CRPD provides that those with disabilities should be treated equally and be free from discrimination, as follows:

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.[11]

Article 5 of the CRPD reiterates the intent of the convention to prevent persons with disabilities from experiencing discrimination.

The intent to preclude discrimination against persons with disabilities extends beyond a mere desire to prevent discriminatory actions against such persons; the CRPD enumerates an explicit methodology to promote equality and decrease discrimination. For instance, the CRPD provides for equal protection under the law to prevent discrimination against those with disabilities. This notably includes implementation of reasonable accommodations and increasing awareness of disability rights.

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ILS Lunch & Learn
4 June 2026 • Orlando

Holland & Knight hosted the ILS Lunch & Learn in Orlando. Former U.S. Congressman James Bacchus led an inspiring and valuable discussion on international law, global governance, and the future of our interconnected world.

Bacchus is known worldwide as a global jurist, activist, writer, scholar, and statesman. He was a founding judge and was twice the chairman—the chief judge—of the highest tribunal of world trade, the Appellate Body of the World Trade Organization in Geneva, Switzerland. He has judged more international trade disputes in the WTO than anyone else in the world. He is a former member of the Congress of the United States, from Florida, and a former international trade negotiator for the United States. He is the distinguished university professor of global affairs and director of the Center for Global Economic and Environmental Opportunity at the University of Central Florida.

Thank you to Holland & Knight for hosting and to Brock McClane for serving as moderator.



ILS Lunch & Learn participants listen attentively to James Bacchus's presentation.



James Bacchus and Brock McClane



ILS Lunch & Learn participants

ILS Executive Council Meeting 18 June 2026 • Orlando

The ILS Executive Council held its final meeting of the Bar year in conjunction with the 2026 Florida Bar Convention in Orlando. The section recognized the service of outgoing officers and the accomplishments of award-winning members before swearing in the 2026–2027 ILS officers: Chair Laura M. Reich, Chair-Elect Davide Macelloni, Secretary Jeffrey S. Hagen, Treasurer Adrian Nuñez, Vice Treasurer Omar K. Ibrahem, and Immediate Past Chair Cristina Vicens Beard.

Congratulations to Our 2025-26 Award Winners

Distinguished Service Award
Larry Rifkin
Chair, Immigration Liaison Committee

Vis Pre-Moot Leadership Award
Pedro Jedlicka
Co-Chair, Richard DeWitt Memorial Vis Pre-Moot

iLaw Conference Leadership Award
Davide Macelloni
Co-Chair, iLaw2026

iLaw Conference Leadership Award
Adrian Nuñez
Co-Chair, iLaw2026

Publication Excellence Award
Alain Acanda
Editor, ILS Gazette

All-Around Excellence Award
Jennifer Mosquera
Editor, International Law Quarterly
Co-Chair, Richard DeWitt Memorial Vis Pre-Moot

ILS Executive Council Meeting 18 June 2026 • Orlando



2025–2026 ILS officers: Vice Treasurer Adrian Nuñez, Secretary Davide Macelloni, Chair Cristina Vicens Beard, Chair-Elect Laura Reich, and Treasurer Jeff Hagen







Clockwise from top: 2025–2026 ILS officers; Cristina Vicens Beard and Jennifer Mosquera; executive council meeting attendees













Clockwise from top left: Adrian Nuñez, Cristina Vicens Beard, and Davide Macelloni; Cristina Vicens Beard and Laura Reich; ILS board meeting; Cristina Vicens Beard recognizes Alain Acanda, recipient of the Publication Excellence Award; Cristina Vicens Beard and Jennifer Mosquera; Jennifer Mosquera and Alain Acanda

ILS Executive Council Meeting
18 June 2026 • Orlando



Cristina Vicens Beard congratulates Adrian Nuñez and Davide Macelloni, recipients of the iLaw Conference Leadership Award.



Cristina Vicens Beard recognizes Jennifer Mosquera, recipient of the All-Around Excellence Award.

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ILS Chair's Reception
18 June 2026 • Orlando

ILS Chair Cristina Vicens Beard found the perfect place for section members and their guests to chill out and enjoy an evening of camaraderie during the 2026 Florida Bar Convention in Orlando. Escaping the summertime heat of Central Florida, (almost) everyone donned jackets and gloves to enjoy the Chair's Reception at ICEBAR Orlando. Frozen surroundings, warm conversations, and a great night of connection made for an unforgettable night.



Chair Cristina Vicens Beard welcomes everyone to ICEBAR Orlando.



Baby it's cold inside! Everyone bundles up for an evening at ICEBAR Orlando. Pictured are Lana Demes, Michael Jackson, Jeff Hagen, Neha Dagley, Cristina Vicens Beard, Ana Barton, Robert Lee, Sylvie Lebrun Camille, Laura Reich, and Adrian Nuñez.



Adrian Nuñez, Valeria Angelucci, and Ana Barton



Alain Acanda, Ana Barton, and Matt Akiba



Arnie Lacayo, Jean Salas, Jennifer Mosquera, and Neha Dagley



Bob Becerra and Neha Dagley make peace with the cold.

ILS Chair's Reception
18 June 2026 • Orlando



Michael Jackson and Lana Demes



Jeff Hagen, Cristina Vicens Beard, Laura Reich, and Adrian Nuñez



Valeria Angelucci, Cristina Vicens Beard, and Ana Barton



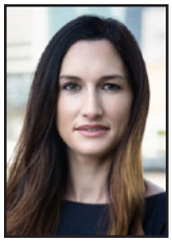
Looking cool: Jeff Hagen, Jocelyne Macelloni, Cristina Vicens Beard, and Ana Barton



Cristina Vicens Beard takes a walk on the wild side. Bob's not scared ...

WORLD ROUNDUP

WESTERN EUROPE



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Migration to Spain's Ceuta surges following Supreme Court ruling on migrants intercepted at sea.

The unprecedented migration surge into the Spanish enclave of Ceuta in late July 2026, during which tens of thousands of migrants crossed from Morocco over the course of several days, has reignited debate over the legal framework governing irregular border crossings at the European Union's external borders. Reported figures vary, with some estimates placing the number of arrivals at around 49,000 and others considerably higher. The scale of the influx overwhelmed local reception facilities and prompted emergency discussions among European Union interior ministers. Contrary to widespread public perception, however, the crisis was not triggered by any legalization of irregular migration. Instead, it followed a significant judgment of the Spanish Supreme Court (STS 814/2026, 29 June 2026), which clarified the procedural rules applicable to migrants intercepted at sea.

The legal issue concerned Spain's rules on so-called "hot returns" (*devoluciones en caliente*), which allow migrants attempting to cross the borders of Ceuta and Melilla irregularly to be immediately returned. Under Spanish immigration law, this mechanism is formally known as "rejection at the border" (*rechazo en frontera*) and has traditionally been applied to migrants attempting to cross the border fences.

In STS 814/2026, the Supreme Court held that this exceptional procedure is limited to attempted crossings of the land border infrastructure and cannot be extended to migrants intercepted while approaching the enclaves by sea, including those swimming to shore. Accordingly, such individuals must instead be processed under the ordinary administrative return (*devolución*) procedure prescribed by Spanish immigration law.

Unlike the expedited border rejection mechanism, the ordinary return procedure requires individualized administrative action, including identification of the migrant, a formal return decision, access to legal safeguards, and an opportunity to seek international protection where applicable. Importantly, the judgment did not legalize irregular entry, create a right to remain in Spain, or prevent the return of migrants. Rather, it clarified that removals in these circumstances must comply with the procedural guarantees established under Spanish law. Reports suggest the ruling was subsequently misrepresented on social media and by migrant-smuggling networks as preventing Spain from returning migrants arriving by sea. Spanish authorities rejected this interpretation, emphasizing that the decision merely altered the applicable legal procedure, not the state's power to remove persons who lack a lawful right to enter or remain.

EU adopts twenty-first sanctions package against Russia.

On 23 July 2026, the Council of the European Union adopted its twenty-first package of sanctions against Russia, introducing one of the most comprehensive sets of restrictive measures since the start of the war in Ukraine. The package expands sanctions on Russia's financial sector by targeting more than ninety banks, additional crypto-asset service providers, and entities facilitating sanctions evasion. It also strengthens restrictions on Russia's energy revenues by sanctioning more shadow fleet vessels, oil refineries, and energy-related entities. Further measures target Russia's military-industrial complex, impose new trade restrictions, and enhance legal protections for EU operators against sanctions-related litigation in Russian courts.

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OFF WORLD



Neha S. Dagley, Miami
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Office of Space Commerce advances mission authorization proposal.

On 23 July 2026, the United States Department of Commerce's Office of Space Commerce (OSC) announced it was moving forward with its proposed Space Commerce Certification, a voluntary process for the authorization of novel space activities. OSC stated that it would publish a Federal Register call for interest for initial applications.

Article VI of the 1967 Outer Space Treaty requires non-governmental space activities to receive authorization and continuing supervision from the appropriate state party. U.S. regulatory authority is allocated by function. The Federal Aviation Administration (FAA) licenses commercial launch and reentry; the Federal Communications Commission (FCC) regulates satellite communications and spectrum; and OSC licenses private remote-sensing systems. These approvals may cover mission components without providing a clear authorization pathway for novel in-space operations.

OSC identifies as novel those activities not clearly or straightforwardly governed under existing regulatory frameworks. Examples include *rendezvous and proximity operations*, such as satellite servicing; *in-space manufacturing*; *in-space computing*, including orbital data centers; *lunar surface and orbital operations*; and *space resource utilization*, including lunar mining. Communications and remote-sensing satellites, already regulated, would not be eligible.

The proposed certification will be available to U.S. entities on a voluntary, per mission basis, and without a fee. A single request could cover multiple space objects, even if they are not launched together, provided their planned activities can be anticipated when the application is filed.

Annex 1 provides that an application would include the name, address, and contact information of the U.S. nationals responsible for the activities; proof that the applicant is a U.S. entity; the date and location of each launch and the launch provider, if manifested; a description of the physical form and composition of the space objects; and a description of the proposed operations, including when and where they would occur and terminate. The applicant would also agree to notify the government of any material change to the certified activities and attest both that it will comply with the requirements of the certification and that the space objects are not weapons and do not carry nuclear or other weapons of mass destruction. Information that the applicant considers protected from public disclosure because of trade secret or export control restrictions could be identified through paragraph-level markings.

OSC would conduct basic due diligence while circulating the application for interagency review to the State Department, national security agencies, FAA, FCC, NASA, and NOAA. Reviewing agencies would have thirty days, subject to two possible thirty-day extensions. The secretary of commerce would issue a decision within 120 days of a complete application, with a maximum of 180 days. The outcomes would be certification, certification subject to conditions, or denial. The proposal also addresses the grounds for denial, interagency objections and dispute resolution, amendments following material mission changes, continuing supervision, revocation, and requests for reconsideration.

The Space Commerce Certification is best understood as a proposed, voluntary, mission-specific process for novel in-space activities, not as a substitute for existing federal approvals. It remains nonbinding and would not displace applicable FAA, FCC, or remote-sensing requirements. As OSC moves toward initial applications, the proposal provides an early indication of how the United States may approach the authorization and continuing supervision of emerging commercial activities beyond established regulatory regimes.

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Quick Take: Panama Law 526 and Planning Opportunities..., continued from page 9

separating U.S. and non-U.S. assets, modernizing governance documents, or moving assets into a structure designed with U.S. heirs in mind. Even if no modifications are ultimately recommended, a thorough review should provide the next generation with certainty regarding the choice to maintain the structure.

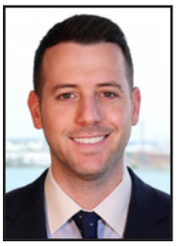
A coordinated review can help determine whether the client and his family should maintain the Panamanian entity or structure with enhanced substance, simplify or liquidate the entity, migrate assets to a different holding structure, or establish a U.S.-centric succession vehicle (often, a U.S. governing law trust) before the children take control of the family assets. While non-U.S. persons maintain substantial control over a trust or foundation, it can remain taxed as a foreign trust even despite U.S. governing law. Upon the death of the non-U.S. parents who establish the trust, it then seamlessly can transition into a U.S. tax-paying trust once controlled by the next generation who are U.S. taxpayers.

Panama Law 526 should not be viewed only as a new compliance burden. For cross-border families, it is an opportunity to modernize wealth structures before the next generation inherits them. Non-U.S. persons with U.S. children should use Law 526 as a trigger to review whether their Panamanian entities remain necessary, whether they have sufficient substance, whether they preserve U.S. estate tax efficiency, and whether they are practical for U.S. heirs to own or benefit from. For many families, a U.S. trust will best meet those needs, benefiting non-U.S. parents and U.S. children alike while advancing the family's succession objectives. Families that act now can turn a regulatory change into a strategic planning advantage.

Disclaimer: *Regulations that go into further detail regarding implementation of Panama Law 526 are expected to be published within ninety days of the enactment of the law, meaning that such regulations may be published after the date of submission of this article but before the date of print. If such regulations materially change the information provided in this article, we will follow up with a Part II to clarify such changes.*



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Endnotes

1 Gaceta Oficial de Panamá, Gaceta Oficial No. 30534-B, Law No. 526 of 28 May 2026, https://www.gacetaoficial.gob.pa/storage/gacetas/2026/05/30534_B/102942.pdf.

2 Economic Substance Requirements for Foreign-Sourced Passive Income Becomes Law, Deloitte (29 July 2026), https://www.taxathand.com/article/41335/Panama/2026/Economic-substance-requirements-for-foreign-source-passive-income-become-law.

3 *Id.*

4 *Id.*

5 *Id.*

6 *Id.*

7 31 U.S.C. § 5314.

8 Treas. Reg § 301.7701-3(b)(8).

9 I.R.C. § 951.

10 I.R.C. § 957.

11 I.R.C. § 1297.



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Two Arbitration Acts, One State ..., continued from page 11



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rules—a codified answer to a recurring drafting dispute.[27] The act also contains an express waiver rule: a party that proceeds with the arbitration without timely objection to a known defect waives the right to object later.[28]

Finally, the act's award chapter mirrors the Convention. An application to set aside is the exclusive recourse against a Florida-seated award and must be brought within three months of receipt of the award—a period measured from the disposition of any timely correction request.[29] Awards "irrespective of the country in which" they were made must be recognized and enforced, subject to refusal grounds that track article V of the Convention nearly verbatim.[30]

The Case Law: A Handful of Decisions, Four Worth Close Study

Sural (Barbados) Ltd. v. Government of the Republic of Trinidad, No. 1:15-cv-22825, 2016 WL 4264061 (S.D. Fla. Aug. 12, 2016), was the first decision to engage FICAA's award provisions on the merits. Sural resisted confirmation of an International Chamber of Commerce (ICC) award in favor of a sovereign counterparty, invoking both article V(1)(b) of the Convention and FICAA's vacatur grounds. Sural argued that the tribunal's evidentiary rulings denied it the opportunity to present its case.[31] The court confirmed the award in its entirety and denied the motions to vacate. It observed that Sural's failure to raise timely objections triggered both the ICC Rules' waiver provision and FICAA's own express waiver rule, and it found no violation of due process in the tribunal's procedural management.[32] *Sural* thus illustrates both that federal courts will engage FICAA's grounds when a party invokes them and that the act's waiver provision has real teeth.

Dominicana Renovables, S.L. v. Dominican Republic, No. 21-cv-21796, 2022 WL 521191 (S.D. Fla. Feb. 12, 2022), *report and recommendation adopted,* 2022 WL 604145 (S.D. Fla. Mar. 1, 2022), is the fullest judicial treatment of FICAA's set-

aside mechanics. The petitioner sought to confirm an award in part and to set aside, under FICAA, the portion denying its lost-profits claim.[33] The magistrate judge walked through section 684.0046—including its three-month limitation period and the tolling effect of a correction request under section 684.0044—before recommending that the award be confirmed in its entirety. The recommendation applied then-controlling Eleventh Circuit precedent under which a Convention award could be refused confirmation only on one of the seven defenses enumerated in article V.[34]

IS Prime Risk Services, Inc. v. TF Global Markets (AUST) Ltd., No. 21-80434-CIV, 2021 WL 8154844 (S.D. Fla. June 4, 2021), is the only decision construing FICAA's consent-to-jurisdiction provision. The plaintiff argued that an Australian entity's participation in a Florida-seated arbitration subjected it to personal jurisdiction under section 684.0049.[35] The court disagreed, holding that the exercise of jurisdiction on the facts presented would exceed the plain language of section 684.0049 and, in any event, would violate the Due Process Clause; the complaint was dismissed for lack of personal jurisdiction.[36]

PTA–FLA, Inc. v. ZTE USA, Inc., No. 3:11-cv-510-J-32JRK, 2015 WL 12819186 (M.D. Fla. Aug. 5, 2015), engages the act's predecessor. In addressing whether objectors to confirmation of a Jacksonville-seated award were subject to personal jurisdiction, the court noted that an agreement to arbitrate in the district supports jurisdiction under 9 U.S.C. § 9. The court also observed that Florida had repealed former section 684.30—the provision of the pre-2010 act under which the conduct of an arbitration in Florida itself conferred personal jurisdiction.[37]

The remaining decisions cluster at the margins but complete the picture. In *Costa v. Celebrity Cruises, Inc.,* 768 F. Supp. 2d 1237 (S.D. Fla. 2011), crewmember plaintiffs resisted confirmation of a foreign arbitral award by invoking chapter 1 of the FAA and the Florida act's refusal grounds. The court held that the Convention, not those regimes, governed confirmation.[38] *Gonsalvez v. Celebrity Cruises, Inc.,* 935 F. Supp. 2d 1325 (S.D. Fla. 2013), reached the same destination, reasoning that the Convention and chapter 2 of the FAA exclusively govern arbitrations between United States citizens and foreign parties and that enforcement did not offend public policy.[39] In *Gavaldon v. Standard Chartered Bank International, Inc.,* No. 16cv590-LAB, 2017 WL 766726 (S.D. Cal. Feb 28, 2017), a California federal court construed the act's scope and termination provisions to interpret when a Florida-seated arbitration "concluded" for contractual purposes.[40] And in *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court cited the act's arbitrator-immunity provision in a parenthetical string citation—the closest any Florida appellate court has come to the statute in fifteen years.[41]

When Does Federal Law Displace FICAA? The Landscape After *Corporación AIC*

The displacement question has a before and an after. Before 2023, the rule in this circuit came from *Industrial Risk*: the article V defenses were the exclusive grounds for resisting a Convention award. District courts applied that rule to turn away arguments grounded in chapter 1 of the FAA and in FICAA alike—Costa and Gonsalvez did so for crewmember awards, and Dominicana did so for a FICAA-based set-aside application.[42]

The Eleventh Circuit changed course in *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.,* 66 F.4th 876 (11th Cir. 2023) (en banc). Sitting en banc, the court overruled *Industrial Risk and Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte International GmbH,* 921 F.3d 1291 (11th Cir. 2019). Drawing on the Supreme Court's reasoning in *GE Energy Power Conversion France SAS v. Outokumpu Stainless USA, LLC,* 140 S. Ct. 1637 (2020), it held that in the primary jurisdiction where an award is made, domestic law acts as a gap-filler. Under section 208 of the FAA, the grounds for vacating a United States-seated Convention award are those set out in chapter 1 of the FAA.[43]

Corporación AIC sharpens, rather than settles, the question that matters for Florida practice. In federal court, vacatur of a Florida-seated Convention award now proceeds on chapter 1 grounds. But FICAA declares the set-aside application of section 684.0046 to be the exclusive recourse against a Florida-seated award in the circuit court, on grounds drawn from the Model Law rather than from chapter 1.[44] Whether a state-court set-aside proceeding under FICAA supplies part of the "domestic law" of the primary jurisdiction remains an open question. How any daylight between FICAA's grounds and chapter 1's would be resolved has not been addressed by any reported decision.[45] In practice, the gap is narrow. FICAA's refusal grounds were drafted to track article V, and entire fields the act covers—tribunal constitution, competence-competence review, interim measures and their enforcement, evidence assistance, arbitrator immunity—have no federal analogue at all. Several apply even when the seat lies outside Florida.[46] *Sural* shows that a federal court may engage FICAA's grounds on their merits when a party invokes them.[47]

The Rise, Fall, and Rebirth of Arbitral Long-Arm Jurisdiction

Florida's treatment of personal jurisdiction over foreign participants in Florida arbitrations traces a legislative arc worth knowing. Under former section 684.30, the conduct

of an arbitration within the state, or a written undertaking providing for arbitration here, itself operated as consent to Florida jurisdiction.[48] The 2010 act repealed that provision without replacement—a gap the *PTA–FLA* court noted in 2015.49 In 2013 the Legislature responded, enacting section 684.0049. Under that provision, initiating arbitration in Florida, or contracting to arbitrate here, now "constitutes a consent to exercise in personam jurisdiction by the courts of this state in any action arising out of or in connection with the arbitration and any resulting order or award."[50]

IS Prime then supplied the caution: the provision is not boundless, and its application must in every case satisfy the plain statutory text and due process.[51] The practical lesson for transactional counsel is to treat section 684.0049 as a supplement to—never a substitute for—express consent-to-jurisdiction and service-of-process clauses.

Drafting for the Act: Five Practice Points

First, designate the seat with precision. Naming a Florida city as the seat selects not only FICAA as the lex arbitri but also the supervisory forum, because the act assigns appointment, challenge, and set-aside functions to the circuit court of the county of the seat.[52]

Second, draft the choice-of-law clause knowing the act's default: a designation of a jurisdiction's law refers to its substantive law, not its conflicts rules, unless the parties say otherwise.[53]

Third, plan interim relief in layers. A tribunal measure is enforceable in court—including measures issued by tribunals seated abroad. An ex parte preliminary order, by contrast, is binding on the parties but judicially unenforceable and short-lived. Where speed or third parties matter, the circuit court's own interim-measures power remains available without breaching the arbitration agreement.[54]

Fourth, calendar objections and challenges aggressively. The act's waiver rule converts silence into consent,[55] arbitrator challenges must be raised within fifteen days of learning the ground,[56] and the set-aside window closes three months after receipt of the award.[57]

Fifth, when the counterparty or performance is foreign, assume the Convention and the FAA will supply the enforcement and vacatur standards for any award in federal court—article V for enforcement, and after *Corporación AIC,* chapter 1 for vacatur of a Florida-seated award—and draft and litigate with both sets of grounds in view from the outset.[58]

A Modest Proposal for the Legislature

Two clarifications would repay the drafting effort. The first is boundary-setting. The RFAC applies to every agreement to arbitrate and excludes only family-law disputes, while FICAA claims the international field. An express provision—in either chapter—stating that arbitrations within FICAA's scope are governed by chapter 684 to the exclusion of chapter 682 would eliminate an overlap the courts have not yet been asked to untangle.[59] The second is completion. The RFAC authorizes judicial consolidation of separate arbitration proceedings, but FICAA contains no consolidation provision at all. This leaves Florida-seated international arbitrations without a statutory mechanism their domestic counterparts enjoy.[60] Both amendments would strengthen Florida's claim to be a first-rank international seat.

Conclusion

FICAA is neither dormant nor displaced; it is underused. The decisions that engage it show federal courts taking its provisions seriously. They apply its limitation periods, enforce its waiver rule, and police the limits of its jurisdictional consent—even as *Corporación AIC* reshapes the federal framework that surrounds it. Counsel who understand where the act governs, what its toolbox adds, and where federal law takes over can draft clauses and manage proceedings that use each regime deliberately. Fifteen quiet years is long enough; the statute deserves a place in every Florida international practitioner's working library.



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Endnotes

1 Ch. 2010-60, § 2, Laws of Fla. (codified at Fla. Stat. §§ 684.0001–684.0048); Fla. Stat. § 684.0001 (2025) (short title).

2 Fla. Stat. § 684.0004(1) (2025).

3 Ch. 2013-164, Laws of Fla.; *see* Fla. Stat. § 684.0049 (2025).

4 *See Dominicana Renovables, S.L. v. Dominican Republic*, No. 21-cv-21796, 2022 WL 521191 (S.D. Fla. Feb. 12, 2022), *report and recommendation adopted*, 2022 WL 604145 (S.D. Fla. Mar. 1, 2022); *IS Prime Risk Servs., Inc. v. TF Glob. Mkts. (AUST) Ltd*., No. 21-80434-CIV, 2021 WL 8154844 (S.D. Fla. June 4, 2021); *Gavaldon v. Standard Chartered Bank Int'l, Inc*., No. 16cv590-LAB, 2017 WL 766726 (S.D. Cal. Feb. 28, 2017); *Sural (Barbados) Ltd. v. Gov't of the Republic of Trinidad*, No. 1:15-cv-22825, 2016 WL 4264061 (S.D. Fla. Aug. 12, 2016); *PTA–FLA, Inc. v. ZTE USA, Inc.*, No. 3:11-cv-510-J-32JRK, 2015 WL 12819186 (M.D. Fla. Aug. 5, 2015) (discussing the predecessor act); *Gonsalvez v. Celebrity Cruises,* Inc*., 935 F. Supp. 2d 1325 (S.D. Fla. 2013); Costa v. Celebrity Cruises, Inc.*, 768 F. Supp. 2d 1237 (S.D. Fla. 2011); *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025) (citing the act in a parenthetical).

5 *Vericker*, 406 So. 3d 939 (citing Fla. Stat. § 684.0045 (2024) as an example of statutory immunity).

6 9 U.S.C. §§ 1–208; Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517 [hereinafter New York Convention].

7 Fla. Stat. § 684.0002(1) (2025).

8 Fla. Stat. § 684.0002(3) (2025).

9 Fla. Stat. § 684.0002(2) (2025) (excepting §§ 684.0009, 684.001, 684.0026, 684.0027, 684.0028, 684.0047, and 684.0048 from the requirement that the place of arbitration be in Florida).

10 Fla. Stat. § 684.0003(1)(d) (2025).

11 Fla. Stat. § 684.0008 (2025).

12 Fla. Stat. § 684.0007 (2025).

13 Ch. 2013-232, Laws of Fla.; Fla. Stat. § 682.013(1), (4) (2025).

14 Fla. Stat. § 682.25 (2025).

15 The author's search of Florida and federal decisions disclosed no case construing the relationship between chapters 682 and 684.

16 9 U.S.C. §§ 201–208; *see Dominicana Renovables*, 2022 WL 521191, at *3 (noting the United States' 1970 accession).

17 *Indus. Risk Insurers v. M.A.N. Gutehoffnungshütte GmbH*, 141 F.3d 1434, 1440 (11th Cir. 1998), *overruled in part by Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876 (11th Cir. 2023) (en banc).

18 *Corporación AIC*, 66 F.4th at 886–87.

19 Fla. Stat. § 684.0017 (2025).

20 Fla. Stat. § 684.0018 (2025); see UNCITRAL Model Law on International Commercial Arbitration arts. 17–17 J (as amended 2006).

21 Fla. Stat. § 684.0019(1) (2025).

22 Fla. Stat. §§ 684.002, 684.0021(4)–(5) (2025).

23 Fla. Stat. §§ 684.0026–684.0027 (2025).

24 Fla. Stat. §§ 684.001, 684.0028 (2025).

25 Fla. Stat. § 684.0038 (2025).

26 Fla. Stat. § 684.0045 (2025).

27 Fla. Stat. § 684.0039(1) (2025).

28 Fla. Stat. § 684.0006 (2025).

29 Fla. Stat. § 684.0046(1), (3) (2025); see Fla. Stat. § 684.0044 (2025) (correction and interpretation of award).

30 Fla. Stat. §§ 684.0047–684.0048 (2025); *cf*. New York Convention, *supra* note 6, art. V.

31 *Sural*, 2016 WL 4264061, at *1, *4.

32 *Id*. at *5–6; *see* Fla. Stat. § 684.0006 (2025).

33 *Dominicana Renovables*, 2022 WL 521191, at *1.

34 *Id*. at *3–5 (citing *Indus. Risk*, 141 F.3d at 1440).

35 *IS Prime*, 2021 WL 8154844, at *1.

36 *Id*.

37 *PTA–FLA*, 2015 WL 12819186, at *8 (quoting former Fla. Stat. § 684.30).

38 *Costa*, 768 F. Supp. 2d at 1240–41.

39 *Gonsalvez*, 935 F. Supp. 2d at 1328–29.

40 *Gavaldon*, 2017 WL 766726, at *5 (discussing Fla. Stat. §§ 684.0002(1)–(2), 684.0043(1)).

41 *Vericker*, 406 So. 3d 939.

42 *Indus. Risk*, 141 F.3d 1434; *Costa*, 768 F. Supp. 2d at 1240–41; *Gonsalvez*, 935 F. Supp. 2d at 1328–29; *Dominicana Renovables*, 2022 WL 521191, at *3–5.

43 *Corporación AIC*, 66 F.4th at 886–87 (citing *GE Energy Power Conversion Fr. SAS v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1645 (2020)); *see* 9 U.S.C. § 208.

44 Fla. Stat. § 684.0046(1) (2025).

45 *See supra* note 15.

46 *Compare* Fla. Stat. § 684.0048(1) (2025), *with* New York Convention, *supra* note 6, art. V; *see* Fla. Stat. §§ 684.0002(2), 684.0011–684.0017, 684.0018–684.0028, 684.0038, 684.0045 (2025).

47 *Sural*, 2016 WL 4264061, at *4–6.

48 Former Fla. Stat. § 684.30, *quoted in PTA–FLA*, 2015 WL 12819186, at *8.

49 *PTA–FLA*, 2015 WL 12819186, at *8.

50 Fla. Stat. § 684.0049 (2025) (added by ch. 2013-164, § 7, Laws of Fla.).

51 *IS Prime*, 2021 WL 8154844, at *1.

52 Fla. Stat. § 684.0008 (2025).

53 Fla. Stat. § 684.0039(1) (2025).

54 Fla. Stat. §§ 684.001, 684.0021(5), 684.0026, 684.0028 (2025).

55 Fla. Stat. § 684.0006 (2025).

56 Fla. Stat. § 684.0014(2) (2025).

57 Fla. Stat. § 684.0046(3) (2025).

58 *Corporación AIC*, 66 F.4th at 886–87; 9 U.S.C. §§ 207–208.

59 *Compare* Fla. Stat. §§ 682.013, 682.25 (2025), *with* Fla. Stat. § 684.0002 (2025).

60 Fla. Stat. § 682.033 (2025); Fla. Stat. ch. 684 (2025) (containing no consolidation provision).



The Role of the Quantum Expert ..., continued from page 13

Conclusion

The quantum expert is indispensable in modern dispute resolution and international arbitration. Their ability to quantify damages with precision and to present findings persuasively ensures that tribunals can render fair and informed decisions. As global commerce grows more complex, the demand for skilled quantum experts will continue to rise, making their role central to achieving justice in high-stakes disputes. Their contributions also help parties assess risks, evaluate settlement opportunities, and support more efficient and transparent outcomes throughout the dispute resolution process. As disputes become increasingly international and damages models more sophisticated, tribunals are placing greater emphasis on well-supported quantum evidence. An experienced quantum expert not only quantifies losses but also assists decision-makers in understanding the economic realities underlying a claim.



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Public Interest, Private Disputes: An Assessment of Transparency ..., continued from page 15



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> justice systems being questioned, and environmental regulations being challenged. And it is in the name of protecting the rights of foreign investors under the North American Free Trade Agreement (NAFTA).[21]

Transparency is essential for good governance, justice, the rule of law, and equity. When arbitrators, parties, and representatives know they are being observed by the public, they proceed with caution. When awards and decisions are not rendered behind closed doors, arbitrators are more likely to examine the case carefully to avoid criticism.[22]

Traditional investment treaties have been silent on transparency. However, several efforts have been made to increase transparency in investment arbitration. Transparency in investor-state arbitration has been firmly established in recent years. The NAFTA's Free Trade Commission (FTC) was the first to depart from non-transparency. In 2001, the FTC issued an interpretative note determining that nothing in NAFTA imposed a general duty of confidentiality. Subject to the redaction of confidential or privileged information, NAFTA parties undertook to publish all documents submitted to or issued by a Chapter II arbitral tribunal.[23] Some states and regional international economic organizations have also incorporated provisions pertaining to transparency into their international investment agreements.[24]

In 2006, the International Center for the Settlement of Investment Disputes (ICSID) added a few minimal transparency measures to its Rules of Procedure for Arbitration Proceedings (ICSID Rules). The recent initiatives of the United Nations Commission on International Trade Law (UNCITRAL) are more noteworthy and global in scope. These include the creation of the Transparency Registry, the Rules on Transparency in Treaty-Based Investor-State Arbitration (Transparency Rules, 2013; came into effect on 1 April 2014), and the Convention on Transparency in Treaty-Based Investor-State Arbitration (Mauritius Convention, adopted 10 December 2014, in force 18 October 2017), which was approved by the General Assembly.[25]

The preamble and explanatory notes of these instruments emphasize legitimacy, accountability, rule-development, and public confidence in the ISDS system.[26] Briefly, this article examines the scope and application, core transparency obligations, safeguards and limits, benefits, and policy justification of the UNCITRAL transparency rules.

The UNCITRAL Transparency Framework: Key Elements

Scope and Application

Article 1 of the UNCITRAL Transparency Rules explicitly sets out the scope of application, specifying when and how the rules apply. It provides:

> 1. The UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration shall apply to Investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors (treaty) concluded on or after 1 April 2014, unless the Parties to the treaty have agreed otherwise.

> 2. In investor-state arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these rules shall apply only when:
>
> (a) The parties to an arbitration agree to their application in respect of that arbitration; or
>
> (b) The parties to the treaty or, in the case of a multi-lateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

The provision cited above reveals that the regime is treaty-based, i.e., consent is required and does not automatically cover all arbitrations.[27] One must, however, note that the emphasis on arbitration initiated under the Arbitration Rules does not exclude altogether investor-state arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings. The preamble of the UNCITRAL Rules on Transparency explicitly states:

> Noting also that the Rules on Transparency are available for use in Investor-State arbitrations initiated under rules other than the Arbitration Rules or in ad hoc proceedings.[28]

The Mauritius Convention further complements this view, providing:

> Whether bilateral or multilateral, the UNCITRAL Rules on transparency shall apply to any Investor-State arbitration, whether or not initiated under the UNCITRAL Arbitration Rules . . .[29]

This implies that the Transparency Rules, whether initiated under the UNCITRAL Arbitration Rules or not, remain covered by the UNCITRAL Rules on Transparency, meaning that an investor-state agreement or an arbitration of any kind could be heard under those rules.

The Core Transparency Obligations

The Transparency Rules impose multiple obligations on parties and tribunals when they apply. Some of these key obligations include:

Notice of Arbitration

The Rules provide:

> Once the notice of arbitration has been received by the respondent, each of the disputing parties shall promptly communicate a copy of the notice of arbitration to the repository under Article 8.[30] Upon receipt of the notice of arbitration from the respondent, or upon receipt of the notice of arbitration and a record of its transmission to the respondent, the repository shall promptly make available to the public information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made.[31]

The above provision obligates the repository to publish a notice of arbitration containing the names of the disputing parties, the economic sector, the treaty invoked, and a summary of the claim. By promoting transparency and public access to information, this obligation encourages arbitrators, parties, and representatives to act prudently under public scrutiny, thereby reinforcing the principles of fairness and accountability.[32]

Publication of Key Documents

This obligation takes life under Article 3 of the Rules on Transparency. It provides:

> Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or written submission by any disputing party: a table listing all exhibits to the aforesaid documents and to expert reports and witness statements . . .[33]

This obligation, as explained above, also ensures fairness and accountability in investor-state arbitral proceedings.

Public Hearings and Transcripts

The Rule on Transparency obligates the publication of hearings and transcripts; it provides:

> Subject to article 6, paragraph 2, and 3, hearings for the presentation of evidence or for oral argument (hearings) shall be public.[34]

It does, however, make room for confidentiality. It provides:

> When there is a need to protect confidential information or the integrity of the arbitral process pursuant to Article 7, the arbitral tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.[35]

Submission by a Third Party

The Rule on Transparency also makes provision for third-party submission; however, these submissions must be published. The Rule provides:

> . . . the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing party to the treaty (third person(s)), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.[36]

This provision aligns with the ICSID Rules, which also contain express provisions relating to a third party or an amicus curiae submission. It provides:

> After consulting both parties, the tribunal may allow a person or entity that is not a party to the dispute . . . to file a written submission with the tribunal regarding a matter within the scope of the dispute.[37]

The provision above was aptly illustrated in *Biwater Gauff Ltd v. United Republic of Tanzania*,[38] where an amici was successfully invoked. The tribunal granted five non-governmental

organizations the right to make written submissions. The tribunal concluded that the non-disputing parties' written submissions had a reasonable potential to assist the arbitral tribunal by bringing a perspective, knowledge, or insight that was different from that of the disputing parties.

In light of the foregoing, it is clear that these obligations not only ensure fairness and accountability in investor-state arbitration but also promote the consideration of public interest in arbitral proceedings, enhance access to information, give visibility to ISDS proceedings, facilitate learning from awards, and allow for public scrutiny.

Safeguards and Limitations

While the Rules on Transparency promote openness and transparency,[39] the provisions of the Rules on Transparency are not without certain limitations and safeguards. Article 7 expressly provides for the protection of confidential information. This provision is an exception to transparency. It provides:

> The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public . . .[40]

Benefits and Policy Justification of the UNCITRAL Transparency Rules

The policy justifications for ISDS transparency operate at multiple levels. At the systemic level, transparency enhances the legitimacy of the ISDS regime by demonstrating that arbitral decisions are the product of fair, reasoned, and publicly accountable processes. In an era of growing skepticism toward international investment law, this legitimacy function is critical to the system's survival.

At the jurisprudential level, the publication of awards and reasoned decisions contributes to the development of a coherent body of investment law, promotes legal certainty, and enables states and investors to make informed decisions about their rights and obligations. Without published awards, investment law cannot develop the consistency and predictability that the rule of law requires.

At the governance level, transparency enables democratic oversight of the state's conduct in arbitration, including the adequacy of its legal representation, the appropriateness of settlements, and the fiscal implications of adverse awards. This oversight function is particularly important in developing countries, where governance institutions may be less robust and the risks of corruption or mismanagement are correspondingly greater.

At the participatory level, transparency enables affected communities, civil society, and non-disputing treaty parties to engage in the arbitral process, ensuring that the public-interest dimensions of investment disputes are adequately considered. This participatory function is not merely an add-on to the arbitral process; it is a necessary corrective to the structural asymmetry inherent in a system in which one party is a sovereign state and the other a private investor, yet the interests most affected may belong to neither.

Nigeria's Investor-State Arbitration Landscape

Nigeria occupies a unique position in the global investment landscape. As Africa's most populous nation, with a population exceeding 200 million, and as the continent's largest oil producer and one of the world's top fifteen petroleum exporters, it attracts substantial foreign investment across multiple sectors.[41] Beyond hydrocarbons, Nigeria possesses significant deposits of tin, iron ore, coal, zinc, and limestone, and has been identified as one of the continent's emerging markets in financial services, telecommunications, and entertainment.[42]

This economic profile, however, generates a particular set of vulnerabilities in the ISDS context. The dominance of extractive industries means that a significant proportion of foreign investment in Nigeria involves the exploitation of natural resources, activities that inevitably raise questions of environmental protection, community rights, land tenure, and the distribution of resource revenues. These are quintessentially public interest matters, and their resolution through confidential arbitral proceedings creates an acute accountability deficit.[43]

Nigeria's BIT Architecture

Nigeria has entered into several BITs with other nations, and its regulations affect various industries, including infrastructure, mining, oil and gas, and power generation. Nigeria currently has more than thirty BITs signed with various countries, of which fifteen are in force. All of these BITs explicitly afford various protections in cases of disputes and provide a right of recourse to international arbitration.

The BITs with France, Germany, Korea, the Netherlands, and the United Kingdom provide for exclusive ICSID arbitration. All other BITs allow investors to pursue an arbitration claim through ICSID or ad hoc arbitration in accordance with the UNCITRAL Rules or any other rules mutually agreed by the parties.[44] As mentioned, BITs typically provide for arbitration (often under the auspices of ICSID, UNCITRAL, or ad hoc rules) and protections for foreign investors. Even though Nigeria has not been the focus of as many high-profile ISDS claims as other states, it has witnessed a number of ISDS claims based on BITs.

A critical deficiency of Nigeria's BIT portfolio is the near-total absence of transparency provisions. The vast majority of these treaties were concluded during a period when confidentiality was the unquestioned norm in investment arbitration, and they reflect this orientation. They contain no requirements for the publication of awards, no provision for open hearings, and no mechanism for third-party participation. This is not merely a historical artifact; it is an ongoing structural weakness that exposes Nigeria to the high risks that the UNCITRAL Transparency Framework was designed to address.

P&ID v. Nigeria: *A Cautionary Tale*

Process and Industrial Developments Ltd v. Nigeria deserves sustained analysis, not merely as an illustration of the risks of opacity but as a case study in the systemic failures that can occur when investor-state arbitration operates without adequate transparency safeguards.

The dispute originated in a 2010 Gas Supply and Processing Agreement (GSPA) between the Nigerian government and Process and Industrial Developments Ltd. (P&ID), a company incorporated in the British Virgin Islands, for the construction of a gas processing facility in Nigeria's Cross River State. When the project failed to materialize, P&ID initiated arbitration and obtained an award of approximately US$6.6 billion, representing roughly 20% of Nigeria's foreign currency reserves at the time. The magnitude of this award, for a project that never advanced beyond the planning stage, was extraordinary.

The subsequent proceedings before the English courts revealed a pattern of corruption that permeated the entire arbitration. The court found evidence that P&ID had bribed Nigerian officials to secure both the GSPA and favorable conduct in the arbitration, and that the arbitral proceedings had been conducted without the transparency that might have exposed these irregularities at an earlier stage. The English High Court's conclusion that investor-state arbitrations involving significant public interests should not be conducted in private was a powerful judicial endorsement of the transparency principle.[45]

The *P&ID* case is instructive on multiple levels. First, it demonstrates that opacity in ISDS does not merely deprive the public of information; it creates the conditions in which corruption can flourish. In a transparent system, the irregularities that characterized the *P&ID* proceedings, including the suspicious circumstances of the GSPA's negotiation, the inadequacy of Nigeria's legal representation, and the disproportionality of the award, would likely have been identified and challenged far earlier.

Second, the case exposes the inadequacy of ex post remedies for procedural failures in ISDS. While Nigeria ultimately succeeded in having the award set aside on grounds of fraud, the process required years of costly litigation in the English courts. A transparency regime that had exposed the arbitration to public scrutiny from the outset would have been a far more efficient mechanism for preventing the fraud than the after-the-fact judicial intervention that was ultimately required.

Third, and perhaps most fundamentally, the *P&ID* case reveals the connection between transparency and institutional capacity. Nigeria's inability to mount an effective defense in the original arbitration was, in part, a function of institutional weaknesses in the management of investor-state disputes, weaknesses that opacity allowed to persist unchecked. In a transparent regime, the scrutiny of Parliament, the media, and civil society would create external pressure for the development of adequate institutional capacity, a dynamic that confidential proceedings cannot generate.

Why Transparency Is Imperative for Nigeria

Nigeria's circumstances make the case for ISDS transparency particularly compelling, for reasons that extend beyond the P&ID dispute.

First, the resource and regulatory interface poses challenges as to why transparency is important. Major foreign investment in Nigeria encompasses various sectors such as mining, agribusiness, infrastructure, oil and gas, and related industries. Transparency is especially crucial because major foreign investments in Nigeria usually involve a public interest component and substantial regulatory intervention by the state (licensing, environmental regulation, community consultation, and indigenous-rights issues (an example is *SERAC and CESR v. Nigeria*).[46] As noted by a scholar, although Nigeria has laws in place to support oil and gas arbitration, procedural clarity is lacking, which could lead to unnecessary delays and inefficiencies.[47]

Second, the Transparency International Helpdesk brief on investor-state arbitration and corruption highlights that lack of transparency in contract-based ISDS in Nigeria creates challenges, emphasizing that there is a need to know the contract structure and that there is no justification for conducting investor-state arbitration in secret.[48] An example of Nigeria's transparency challenges is highlighted in *P&ID v. Nigeria*.[49] The English High Court in the case concluded that, given the significant public interest at stake in investor-state arbitration, including the possibility that arbitration may facilitate the corrupt transfer of public funds to private actors, they should not be conducted in private.[50]

Third, when a state like Nigeria enters into investment treaties or contracts that permit arbitration, there is a potential

for financial liability if the state is found to have violated treaty obligations or contract commitments, and without transparency, such liabilities may not be adequately monitored by the Parliament, the auditor-general, or the public, and other relevant bodies.[51]

Fourth, the rule of law, governance norms, and investors' confidence are all tied to transparency and enhanced by a transparent investor-state arbitration regime, whereas opaque regimes have the potential to compromise these.[52]

Lessons From the UNCITRAL Framework for Nigeria

An analysis of the UNCITRAL Transparency Framework and Nigeria's ISDS landscape yields several interconnected lessons, each of which addresses a specific dimension of Nigeria's transparency deficit.

Embed Transparency in Treaty Design

The UNCITRAL Framework's emphasis on the significance of consent and transparency in treaty design is among its most compelling messages. Unless the parties opt out, the Transparency Rules may automatically apply to investment treaties concluded on or after 1 April 2014 (under the UNCITRAL Arbitration Rules).[53] Only with the parties' consent do the rules apply to older treaties.[54]

Nigeria should ensure that the Transparency Rules, or equivalent transparency clauses, are explicitly included in any future BITs or investment-chapter agreements. Transparency will remain optional without such reference, leaving it open to discussion or compromise. The inclusion of such clauses serves a dual function: it ensures that future arbitrations are conducted with appropriate openness, and it signals to investors and the international community that Nigeria is committed to good governance in the management of investment disputes.

It is worth noting, however, that treaty design alone is insufficient. Transparency clauses must be drafted with sufficient specificity to be effective in practice. Vague references to "transparency" or "good governance" are unlikely to produce meaningful change. The clauses should specify, at a minimum, the obligation to publish notices of arbitration, key documents, and awards; the presumption of open hearings; the mechanism for third-party participation; and the procedures for protecting legitimately confidential information.

Review and Update Existing Treaties

Another compelling lesson from the UNCITRAL Framework is the need to review and update existing treaties and domestic policies to incorporate transparency obligations. A strategic review of Nigeria's current treaty portfolio is necessary because many of its BITs were signed before 1 April 2014[55] and may not include confidentiality requirements. Existing treaties could be evaluated by the following criteria:

1. Whether there is the presence of a transparency clause or reference to the UNCITRAL Transparency Rules;

2. Whether these treaties allow the ability to arbitrate disputes between states and investors under the UNCITRAL Arbitration Rules;

3. The risk profile of each treaty (sector, likely claims, fiscal exposure); and

4. The potential for renegotiation, termination, or replacement.

Nigeria may attempt to renegotiate or adopt side letters or protocols to incorporate transparency terms where transparency obligations are lacking. Further, in cases where Nigeria is a respondent, it should at least enact a domestic policy statement or regulation mandating that the filing, awards, and decisions be made public (subject to confidentiality)[56] or that a central registry be established.[57]

Develop a Transparency Registry or Publication Portal

Transparency is not merely a matter of legal obligation; it requires institutional infrastructure. Nigeria should establish a national registry for investor-state arbitration, modeled on the UNCITRAL Transparency Registry under Article 8 of the Transparency Rules.[58] The registry should serve as a centralized, publicly accessible repository for all non-confidential information relating to investor-state arbitrations involving Nigeria, including notices of arbitration, key procedural documents, awards, and plain-language summaries of decisions.

The value of such a registry extends beyond the simple provision of information. It would serve as an institutional memory for the management of investment disputes, enabling the government to track its exposure to arbitral claims, to identify patterns in investor complaints, and to develop more effective litigation strategies. It would also facilitate parliamentary oversight, media reporting, and civil society engagement, creating the feedback loops necessary for a well-functioning accountability system.

Complementing the registry, Nigeria should consider amending domestic arbitration legislation, including the Arbitration and Mediation Act 2023, to require or permit the publication of awards in investor-state arbitrations involving the state, to provide for open hearings with appropriate confidentiality protections, and to establish a statutory basis for amicus participation.

Balance Transparency With Confidentiality

One of the most instructive aspects of the UNCITRAL Framework is its recognition that transparency and confidentiality are not binary opposites but complementary elements of a well-functioning arbitration system. Article 7 of the Transparency Rules provides a structured mechanism for protecting confidential information, including confidential business information, information protected under the treaty or applicable law, and information whose disclosure would impede law enforcement.

Nigeria must adopt a similarly calibrated approach. The legitimate interests of investors in the protection of commercially sensitive information must be respected, and the state itself may have valid reasons for restricting the disclosure of certain categories of information, such as national security matters or ongoing regulatory deliberations. The key is to ensure that confidentiality claims are subjected to rigorous scrutiny and that the default position remains one of openness.

The experience of other jurisdictions offers useful guidance. Canada, the European Union, and the United States, through agreements such as the Comprehensive Economic and Trade Agreement (CETA) and the United States-Mexico-Canada Agreement (USMCA), have adopted open ISDS proceedings while carving out targeted exemptions for confidential commercial data.[59] These frameworks demonstrate that it is possible to maintain robust transparency while providing adequate protection for legitimate confidentiality interests.

Increase Legitimacy and Stakeholder Engagement

Encouraging meaningful stakeholder engagement, establishing legitimacy, and strengthening accountability are all aspects of transparency that go beyond publication of non-confidential information. For Nigeria, this would mean allowing amicus briefs or written observations relevant to the dispute at hand to be submitted in investor-state arbitrations by non-disputing treaty parties, such as Nigeria's treaty partner, third parties, and other stakeholders. Nigeria's arbitration policy should support this while maintaining procedural justice.

This is also reflected in Article 4 of the UNCITRAL Framework.[60] Similarly, the aforementioned *Biwater Gauff Ltd v. United Republic of Tanzania*,[61] in which an amicus was successfully invoked, aptly illustrates the need to recognize third-party submissions. The tribunal granted five non-governmental organizations the right to make written submissions. The tribunal concluded that the non-disputing parties' written submissions had a reasonable potential to assist the arbitral tribunal by bringing a perspective, knowledge, or insight that was different from that of the disputing parties.[62] Thus, stakeholder engagement not only enhances public trust but also increases legitimacy.

Challenges in Incorporating Transparency Obligations in Nigeria's Investment Climate

Incorporating transparency obligations into Nigeria's investment climate is not without challenges; regulatory chill, financial capacity, and other issues can pose challenges. This section will briefly discuss these challenges.

Regulatory Chill

Regulatory chill is one of the many challenges that can potentially hinder the incorporation of transparency obligations in ISDS arbitration in Nigeria. Regulatory chill occurs when governments hesitate or refrain from enacting policies that could be seen as unfriendly to foreign investors.[63]

This hesitation often stems from the potential for legal disputes in international investment arbitration. While ISDS is designed to protect investors' rights and to provide a neutral platform for resolving disputes, critics argue that it can discourage governments from passing progressive laws. For instance, regulations related to public health, environmental protection, labor rights, or consumer safety may face challenges if they are perceived to reduce the value of foreign investments.[64]

For Nigeria, this could entail reluctance to implement retroactive measures, environmental regulations, or licensing. To mitigate this, Nigeria needs to reiterate its authority to impose regulations in the public interest and emphasize that openness is a tool for accountability rather than a restriction on regulation.

Confidentiality

Another challenge that can potentially hinder Nigeria's incorporation of transparency obligations in ISDS is the confidentiality of commercial investor data. A broad disclosure of trade secrets, proprietary information, or data that is commercially sensitive may be legitimately resisted by investors.[65]

Nigeria needs to ensure that confidentiality measures are robust, including allowing redactions, protecting business-sensitive data, and implementing protective orders. The UNCITRAL Framework provides these protections under Article 7, which stipulates confidentiality in ISID arbitration.[66] Comparatively, Canada, the EU, and the United States, through recent agreements (like CETA[67] and USMCA[68]), have adopted open ISDS proceedings while carving out exemptions for confidential commercial data. These frameworks require public access to documents and hearings, but allow

confidential filings or closed sessions when sensitive data is involved.

Institutional and Financial Capacity

The administrative requirements of a transparency regime, including the publication of documents, the maintenance of a registry, the management of third-party submissions, and the conduct of open hearings, impose costs and require institutional capacity that Nigeria may currently lack. These are real constraints, but they are not insuperable. International technical assistance, partnerships with institutions such as UNCITRAL and ICSID, and the development of digital platforms can significantly reduce the cost and complexity of implementing transparency measures.

Moreover, the costs of transparency must be weighed against the costs of opacity. The *P&ID* case alone demonstrates that the financial risks of conducting ISDS without adequate transparency far exceed the administrative costs of maintaining a transparency regime. A national registry, a clear confidentiality protocol, and trained personnel represent a modest investment relative to the potential fiscal exposure of a single adverse award.

Strategic Benefits of Transparency

Despite these challenges, incorporating a robust transparency framework in investor-state arbitration can yield significant strategic benefits. An open and transparent arbitration system signals commitment to the rule of law, attracting higher-quality investors, reducing risk, and promoting sustainable, long-term investment.

Transparency also enhances the coherence of investment policy by enabling Parliament, civil society, and local communities to monitor investor-state claims and hold government actors accountable for their regulatory decisions and exposure to arbitration. It strengthens legal and regulatory institutions, thereby improving investor confidence and reinforcing other dispute resolution mechanisms.

In addition, greater openness facilitates better budgeting, deters weak or frivolous claims, and reduces the risk of hidden liabilities that might otherwise emerge from opaque proceedings. Ultimately, visible and participatory investor-state arbitration supports inclusive and sustainable development goals by empowering affected communities to access information and have a voice in matters that impact them.

Thus, implementing or adopting transparency requirements early on would put Nigeria ahead of its peers and genuinely conform to international standards.

Implementation Pathway for Nigeria

Flowing from the analysis above, the following strategic roadmap is suggested for Nigeria based on the lessons learned thus far.

First, Nigeria should ensure that every future BIT, investment chapter in a free trade agreement, or regional investment agreement contains a specific transparency clause that incorporates or references the UNCITRAL Rules on Transparency. The clause should mandate the publication of notices, filings, and awards; provide for open hearings as the default, with targeted exceptions for confidential information; establish mechanisms for third-party participation; designate a central repository for arbitral documents; and affirm the state's regulatory authority in the public interest.

Second, Nigeria's existing treaty portfolio should be subject to a systematic review. Where feasible, transparency provisions should be incorporated into existing treaties through renegotiation, side letters, or protocols. Where bilateral renegotiation is impractical, ratification of the Mauritius Convention would provide a multilateral mechanism for extending the Transparency Rules to pre-2014 treaties.

Third, Nigeria should establish a National ISDS Transparency Registry to serve as a centralized, publicly accessible repository for non-confidential information relating to investor-state arbitrations involving Nigeria. The registry should publish notices of arbitration, key procedural documents, awards, decisions, and plain-language summaries accessible to the general public.

Fourth, domestic legislation, including the Arbitration and Mediation Act 2023, should be amended to provide a statutory basis for transparency in investor-state arbitrations involving the state. The amendments should address the publication of awards, the conduct of open hearings, the participation of amici curiae, and the protection of legitimate confidential information.

Fifth, Nigeria should establish a transparent confidentiality protocol for investor-state arbitrations, specifying the categories of information eligible for protection, the procedures for claiming confidentiality, the burden of proof applicable to confidentiality claims, and the tribunal's authority to order that certain hearings or documents be restricted from public access.

Sixth, Nigeria should ratify the Mauritius Convention and other relevant international instruments that promote transparency in ISDS, thereby aligning its practice with evolving international standards and signaling its commitment to good governance in the management of investment disputes.

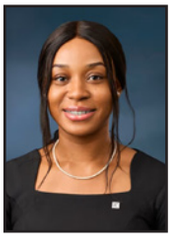
Seventh, Nigeria should invest in the training of government lawyers, arbitration practitioners, and institutional stakeholders in the management of transparent investor-state proceedings, including document management, registry administration, and the handling of third-party submissions.

Conclusion

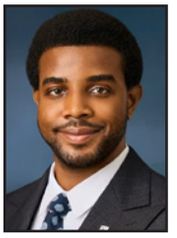
Transparency in investor-state arbitration is no longer an aspirational ideal; it is a requirement of legitimate and effective governance. The UNCITRAL Transparency Framework, comprising the Rules on Transparency and the Mauritius Convention, provides a comprehensive, calibrated, and practically implementable model for achieving this transparency. Its core obligations, the publication of notices, documents, and awards, the conduct of open hearings, the participation of third parties, and the protection of legitimate confidentiality interests, represent a coherent response to the accountability deficit that has characterized traditional ISDS.

For Nigeria, the case for adopting this framework is compelling. The country's dependence on extractive industries, its history of governance challenges, and the lessons of the *P&ID* case collectively demonstrate that opacity in ISDS is not a neutral procedural choice but a vulnerability that exposes the state to corruption, fiscal risk, and reputational damage. Transparency, by contrast, serves multiple strategic objectives: it deters corruption by subjecting arbitral proceedings to public scrutiny; it enhances institutional capacity by creating external pressure for the development of adequate dispute management systems; it strengthens investor confidence by signaling commitment to the rule of law and good governance; and it supports democratic accountability by enabling Parliament, civil society, and affected communities to monitor and engage with processes that affect their interests.

The reforms proposed in this article, encompassing treaty-level transparency clauses, the review and updating of existing BITs, the establishment of a National ISDS Transparency Registry, amendments to domestic legislation, the ratification of the Mauritius Convention, and investment in institutional capacity, constitute a comprehensive and achievable agenda. Their implementation would transform Nigeria's ISDS regime from a closed, opaque process into a legitimate instrument of public governance, demonstrating that justice, transparency, and integrity are not peripheral concerns but central pillars of Nigeria's economic diplomacy. In an era when the legitimacy of international investment law is under sustained scrutiny, such a transformation would serve not only Nigeria's national interests but also the broader project of building an international economic order grounded in the rule of law.



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53 This aligns with the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration art. 1, which allows parties to agree otherwise for treaties concluded on or after 1 April 2014 (". . . concluded on or after 1 April 2014 unless the Parties to the treaty have agreed otherwise").

54 This finds expression in the UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration art. 1(2) (". . . pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when: (a) the parties to an arbitration agree to their application in respect of that arbitration").

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Beyond Family Court: The Asset Recovery Toolkit ..., continued from page 17



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In December 2016, the English High Court awarded Tatiana Akhmedova over £453 million against her former husband, Russian billionaire Farkhad Akhmedov, and entered a worldwide freezing order five days later.[23] Akhmedov's superyacht *Luna*, insured at US$487 million, had been placed in an Isle of Man company and then purportedly sold to a Panamanian entity in a transaction funded entirely from Akhmedov's own bank account.[24] The yacht was then moved to another Panamanian entity and then to a Liechtenstein anstalt.[25] After judgment entered against that anstalt, and in breach of both the English and Liechtenstein freezing orders, the yacht moved once more to a new Liechtenstein entity incorporated two months after judgment.[26]

Akhmedova answered with a coordinated campaign spanning the Isle of Man, Liechtenstein, Switzerland, and Dubai.[27] When *Luna* arrived in Dubai, her counsel saw the opening by utilizing the Dubai International Financial Centre (DIFC) courts, which apply common law enforcement principles and operate a "conduit jurisdiction" into the onshore Dubai courts.[28] That is, taking judgments registered in the DIFC courts to courts of Dubai for execution.[29] A DIFC freezing injunction issued on 8 February 2018; five days later, the Dubai courts attached the vessel at Port Rashid.[30] With the asset immobilized, the English court found a "continuing deliberate and dishonest campaign" to evade the judgment, held the offshore entities to be Akhmedov's "ciphers" holding the yacht for him beneficially, and pierced the corporate veil.[31] The court ordered the yacht transferred to the wife, set the transfers aside under the Insolvency Act 1986, and ordered that, in default, the entities pay the yacht's full value.[32] Ultimately, the remedies in this action came from the asset recovery toolbox, not the matrimonial one.

The Akhmedova enforcement campaign reached the United States as well with the filing of § 1782 applications[33] and a judgment recognition action[34] under New York law, converting the judgments into an enforceable New York judgment. It was the combined weight of all global proceedings that likely led to a settlement in 2021.[35]

Practical Considerations

Regardless of the tool counsel deploys against recalcitrant UHNW individuals, all share a common set of obstacles.

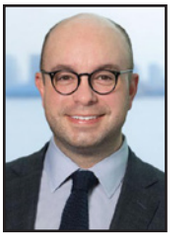
Delay is the clearest. Each month of procedural and substantive skirmishing provides a pathway to move assets beyond reach or transfer ownership to nominees. Proactivity is therefore crucial. In the United States, as in many other countries, delay is oftentimes achieved through serial appeals, contesting every order at every forum. A well-funded adversary will exhaust every avenue of review and take months if not years to see resolution.

Further, as cross-border cooperation among courts and authorities remains uneven, pre-trial discovery efforts and enforcing an award or a judgment can require coordinated relief in multiple other jurisdictions. Practitioners should avoid

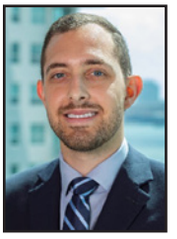
proceeding on multiple fronts in isolation, instead turning to cross-border coordination: U.S. counsel must align their strategy with counsel across other jurisdictions and maintain common goals. Relatedly, counsel should consider the differing disclosure regimes across jurisdictions, as civil law systems often offer narrower, court-controlled evidence gathering while common law systems offer broader party-driven discovery. Consequently, sequencing proceedings to conform with the global strategy is essential.

Consider a common scenario. An ex-wife, anticipating enforcement, has run the marital assets through a chain of nominees and holding companies, spread across several jurisdictions. A freezing order aimed at the wrong entity or a judgment domesticated in an asset-less jurisdiction will only delay recovery. Discovery can therefore do more than build the merits, by, for example, aiding an application for injunctive relief, which in turn may be used to protect assets prone to dissipation and may uncover fresh claims. A well-reasoned recovery strategy, with the help of experienced asset recovery and judgment enforcement lawyers, can preserve value for UHNW individuals.

Sequor Law serves as counsel to parties in In re Al Zawawi. *The views and opinions expressed in this article are those of the authors and do not necessarily reflect the views of the firm or its clients.*



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***When Cultural Property Becomes the Defendant ...*, continued from page 19**



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"Designated archaeological or ethnological material" is narrower still.[24] The object must be covered by a CPIA agreement or emergency action and included on a regulatory list issued under § 2604.[25]

The president of the United States may enter into a bilateral or multilateral agreement after making statutory findings concerning pillage, the need for restrictions, and the availability of less drastic remedies.[26] The government may also impose temporary emergency restrictions in specified circumstances. Once an agreement or emergency action exists, the federal government must publish a list identifying the covered types or classifications of material.[27]

Section 2604 requires the federal government to publish a regulatory list identifying the types or classifications of archaeological or ethnological material covered by an agreement or emergency action.[28] The list must be specific enough to confine the restriction to covered materials and give importers fair notice.[29] It need not identify each individual object; categories are enough.[30]

Section 2606 bars the importation of designated material exported from the state party after designation unless the state party provides documentation showing that the export complied with its laws.[31] The sequence is critical. Cultural significance alone is not enough. The government must

connect the object to the operative agreement and the designated list—and then prove the relevant export date.

United States v. Eighteenth Century Peruvian Oil on Canvas Painting shows how the framework operates in practice. The claimant brought two seventeenth- and eighteenth-century paintings from Bolivia into the United States through Miami International Airport.[32] He took them to a gallery for restoration and consignment, subject to providing ownership documentation.[33] That documentation described how he acquired the paintings, identified them with the Cuzco School, and stated that they originated in Alto, Peru (now Bolivia).[34] A Virginia art dealer and Peruvian-art expert later concluded that the paintings were stolen and contacted the FBI.[35] The FBI sent images to Peru's National Institute of Culture, which concluded that the works belonged to Peru's cultural patrimony and reflected its colonial artistic production.[36] The FBI seized the paintings pursuant to the CPIA.[37] After the claimant contested forfeiture, the United States filed a verified in rem complaint,[38] and the court ultimately granted summary judgment for the government.[39]

At the time of the decision, the United States and the Government of Peru had entered into the 1997 Memorandum of Understanding Between the United States of America and the Government of Peru Concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru[,]" which had been extended twice[40] (the Peru MOU).[41] The Treasury of the United States then entered "Decision 97-50," which pertained to the Peru MOU and contained "a complete description of specific items or categories of . . . ethnological material designed by agreement as coming under the protection of the CPIA."[42] The list at the time included objects "that were used for religious evangelism among indigenous peoples."[43] "It also name[d] a number of specific types of objects used for religious evangelism during the Colonial Period, including paintings."[44] As the court summarized:

> [T]he CPIA makes it illegal to import into the United States a (1) Colonial-era painting; (2) produced in Peru; (3) by indigenous people; (4) used for religious evangelism among those people; and (5) that is important to the cultural heritage of those people; (6) without documentation from Peru certifying that the exportation from Peru (whether or not that export was directly into the United States) did not violate Peruvian law.[45]

The court then engaged in a statutorily imposed burden-shifting analysis—which will be discussed in more depth below—holding that there was no dispute of material fact regarding the allegation that the paintings were:

> designated ethnological material exported from a State that is a party to the UNESCO Convention and a bilateral agreement with the United States to apply the import restrictions set forth in § 2606. See 19 U.S.C. §§ 2606, 2604, 2602. There is also no dispute that Claimant exported the Defendant Paintings from their country of origin without the documentation required by 19 U.S.C. § 2606(a). Therefore, the Defendant Paintings were "imported into the United States in violation of [19 U.S.C. § 2606]" and are thus subject to forfeiture under the CPIA. 19 U.S.C. § 2609(a).46

Thus, the CPIA's designated-material framework requires more than a generalized showing that an object is culturally significant or that a foreign government considers it part of its cultural patrimony. The government must prove that the object fits within the statutory definition of archaeological or ethnological material, falls within the applicable designated list, and was exported from the state party after the relevant designation date without the documentation required by § 2606.

Track Two: Stolen Cultural Property

The second track applies to stolen "cultural property." Under the CPIA, the term "cultural property" includes the definitions enumerated in article 1(a) through (k) of the 1970 UNESCO Convention, "whether or not any such article is specifically designated as such by any State Party. . . ."[47] Section 2607 provides the applicable prohibition with respect to objects falling under the definition of cultural property, to wit:

> No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which is stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the United States.[48]

This track does not depend on a country-specific designated list. The government instead must prove the institutional inventory and post-effective-date theft elements. In *United States v. An Original Manuscript Dated November 19, 1778*, evidence connecting a manuscript to Mexico's national archive, including an inventory record and corroborating scholarship, supported the government's claim.[49]

The distinction between sections 2606 and 2607 can decide the case. An archaeological object may fall outside section 2606 because it was exported before designation. A manuscript or painting may fall outside section 2607 because the government cannot prove that it appeared in a qualifying institutional inventory or was stolen after the controlling date. A complaint that blurs the two tracks may also fail to give the claimant fair notice of the case to be met.

Who Bears the Burden—and When?

CPIA forfeiture actions use an unusual burden-shifting framework. Most federal civil forfeitures are governed by the Civil Asset Forfeiture Reform Act (CAFRA).[50] But CAFRA excludes forfeitures under federal law unless the particular forfeiture statute is specifically exempted in 18 U.S.C. § 983(i)(2)."[51] "Because 18 U.S.C. § 983(i)(2)(A) 'specifically exempt[s]' provisions codified in Title 19, however, CAFRA does not apply to forfeiture proceedings brought under the CPIA[.]"[52] Instead, 19 U.S.C. § 1615 supplies the applicable burden rules.[53]

Under Section 1615, the claimant ordinarily has the initial burden of proof.[54] Under the CPIA, however, the initial burden is on the government; the burden differs depending on whether the government is seeking forfeiture pursuant to Section 2606 (relating to designated archaeological or ethnological material) or pursuant to Section 2607 (relating to stolen cultural property).

In the case of a seizure under Section 2606, the government has the initial burden to show "that the material has been listed by the Secretary in accordance with section [2604.]"[55] "Thus, in a CPIA forfeiture action [under Section 2606], the United States bears the initial burden to show that the seized property is listed in accordance with 19 U.S.C. § 2604 and properly subject to the import restrictions of 19 U.S.C. § 2606."[56][57]

In the case of a seizure under 2607 (stolen cultural property), the government has the initial burden to show that the article:

> (A) is documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in a State Party; and
>
> (B) was stolen from such institution after the effective date of this title, or after the date of entry into force of the Convention for the State Party concerned, whichever date is later.[58]

Once the government meets that initial burden, the claimant must prove by a preponderance of the evidence that the property is not forfeitable or that an affirmative defense applies.[59]

No reported cases demonstrate what evidence is sufficient to rebut the government's initial burden of proof in the case of stolen cultural property under Section 2607. To show that the property is not subject to forfeiture under Section 2606 (for designated archaeological or ethnological material), however, a claimant can show that the object was imported subject to the state party's issuance of "a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.").[60] If there is no such documentation, the claimant can show that such material was exported from the state party:

> (A) not less than ten years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than one year before that date of entry, or
>
> (B) on or before the date on which such material was designated under section 305 [19 USCS § 2604].[61]

One final point: once the government satisfies its initial burden, the burden does not shift back.[62]

Procedure Matters: Supplemental Rule G

Forfeiture actions brought under the CPIA are brought in rem, naming the subject object as the defendant. "FRCP Supplemental Rule G governs forfeiture actions in rem such as this."[63] Under Rule G, the complaint must (a) be verified; (b) state the grounds for subject matter jurisdiction, in rem jurisdiction over the defendant property, and venue; (c) describe the property with reasonable particularity; (d) state the location of the property when any seizure occurred and, if different, the location of the property at the time the action is filed; (e) identify the statute under which the forfeiture action is brought; and (f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.[64]

If the property is already in government custody, the clerk must issue a warrant to arrest it. If the property is not in government custody, the court must find probable cause before issuing the warrant.[65]

The government must also send the complaint and notice of the action to anyone who reasonably appears to be a potential claimant.[66] The notice must identify the date sent, set a claim deadline of at least 35 days, explain that an answer or Rule 12 motion is due within twenty-one days after the claim, and identify the government attorney to be served.[67]

The contents of the claim are also governed by Supplemental Rule G, which provides that a person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending, which "must: (a) identify the specific property claimed; (b) identify the claimant and state the claimant's interest in the property; (c) be signed by the claimant under penalty of perjury; and (d) be served on the designated government attorney."[68] The time limits for filing a claim are prescribed by Supplemental Rule G(5)(a)(ii), but presumably the deadline, unless the court for good cause sets a different time, is by the time stated in a direct notice.[69] Like the ordinary Federal Rules of Civil Procedure, an answer to the complaint or a motion under Rule 12 must be filed and served within twenty-one days after filing the claim.[70]

Unless a party demands a jury under Rule 38, the case proceeds to a bench trial.[71] The ordinary Federal Rules of Civil Procedure also apply, except where they conflict with the Supplemental Rules.[72]

Defenses and Exemptions

The available defenses depend in part on which CPIA track the government invokes. Some apply only to designated archaeological or ethnological material; others apply to stolen cultural property or to both categories.

Section 2611 sets out several exemptions.[73] Most concern objects imported for public exhibition at a museum or religious or secular monument, provided the statutory conditions are satisfied.[74] The statute also excludes objects that have:

> been within the United States for a period of not less than ten consecutive years and the State Party concerned has received or should have received during such period fair notice (though such adequate and accessible publication, or other means, as the Secretary shall be regulation [sic] prescribe) of its location within the United States.[75]

The CPIA also excludes certain objects that have remained in the United States for at least twenty consecutive years, provided the claimant purchased them for value without knowledge or reason to believe they were illegally imported.[76]

The CPIA also recognizes a limited innocent purchaser defense in the case of stolen cultural property.[77] If the claimant establishes that it purchased the article for value without knowledge or reason to believe it was stolen, forfeiture shall not be decreed unless:

> (A) the State Party to which the article is to be returned pays the claimant an amount equal to the amount which the claimant paid for the article, or
>
> (B) the United States establishes that such State Party, as a matter of law or reciprocity, would in similar circumstances recover and return an article stolen from an institution in the United States without requiring the payment of compensation.[78]

The reported decisions on the innocent-purchaser defense are sparse. The principal example is *United States v. An Original Manuscript Dated November 19*. There, an antique manuscript dealer bought an eighteenth-century manuscript at a Mexico City flea market.[79] The claimant—new to the market for valuable documents—later met the dealer in a hotel room and asked where the manuscript came from.[80] The dealer did not disclose that it had appeared in Mexico's national archives, but assured the claimant that he owned it and could sell it.[81] The claimant paid US$16,000 in cash and received only limited provenance information.[82] He then consigned the manuscript to Sotheby's. After it failed to meet the reserve, Sotheby's retained it for a possible private sale.[83] Mexico learned of the manuscript and asked the United States to assist in recovering it.[84]

After the government met its initial burden establishing a factual predicate for forfeiture, "the onus now [lays] on the claimant to establish by a preponderance of the evidence that 'the factual predicates for forfeiture have not been met.'"[85] In doing so, the claimant alleged he was an innocent purchaser.[86] In refusing the claimant's defense, the court held that "[t]he facts clearly show that [the claimant] was willfully blind to the suspicious nature of the manuscript transaction."[87] Specifically, the court reasoned "that [the dealer's] actions, his lack of documentation of the history of the Manuscript and his failure to inquire into the provenance of the Manuscript is highly suspicious and [the claimant] cannot claim to be an innocent owner under such circumstances."[88]

The court separately considered whether the claimant was entitled to compensation as an innocent purchaser.[89] It held that he was not, both because he was not an innocent purchaser and because the government proved that Mexico would, as a matter of law or reciprocity, return a comparable stolen U.S. object without requiring compensation.[90]

The practical point is that CPIA defenses are narrow and evidence driven. The statutory exemptions require concrete proof of qualifying exhibition, notice, or long-term presence in the United States. And for stolen cultural property, innocent-purchaser status may affect compensation more than the government's ability to pursue forfeiture.

The reported record is also sobering: the authors found no reported CPIA decision in which a claimant successfully carried the ultimate burden.

Conclusion

The UNESCO Convention provides the international framework, but domestic law decides a U.S. forfeiture action. The result turns on the correct CPIA track, the operative agreement or designated list, the controlling dates, the customs-law burden, and Supplemental Rule G.

For owners and custodians of valuable cultural property, speed and precision are essential. Counsel should promptly file a verified claim, pin down the government's exact theory, build the chronology, preserve provenance and location evidence, and test every statutory element. In these cases, the object may be the named defendant—but the paper trail usually decides its fate.



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Endnotes

1 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property arts. 1, 7, 9, 13, 15, adopted 14 Nov. 1970, 823 U.N.T.S. 231 (entered into force in the United States on 2 Dec. 1983).

2 *Beierwaltes v. L'Office Fédérale de la Culture de la Confédération Suisse*, 999 F.3d 808, 815 (2d Cir. 2021) (recognizing that "as the [UNESCO] Convention was not self-executing, it had very little immediate effect.").

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4 *Id.*

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12 *Id.* art. 9

13 *Id.*

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17 *Id.* art. 7(a)

18 *Id.* art. 21.

19 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 Nov. 1970, 823 U.N.T.S. 231, T.I.A.S. No. 83-1202; UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, UNESCO Legal Instruments, https://www.unesco.org/en/legal-affairs/convention-means-prohibiting-and-preventing-illicit-import-export-and-transfer-ownership-cultural (last visited 15 July 2026) (listing the United States' acceptance date as 2 Sept. 1983, and entry-into-force date as 2 Dec. 1983).

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24 *Id.* at § 2601(7) (emphasis added).

25 *Id.*

26 *Id.* at § 2602.

27 *Id.* at §§ 2602–2604.

28 *Id.* § 2604.

29 *Id.*

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31 19 U.S.C. § 2606(a); *United States v. Eighteenth Century Peruvian Oil on Canvas Painting*, 597 F. Supp. 2d 618, 621 (E.D. Va. 2009).

32 *Id.* at 619.

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 *Id.*

38 *Id.* (citing 19 U.S.C. § 2609).

39 *Id.* at 626.

40 Pursuant to 19 U.S.C. § 2602, the president of the United States "may extend any agreement that enters into force with respect to the United States for additional period of not more than five years each if the President determines" certain factors. 19 U.S.C. § 2602(e).

41 *Id.* at 621.

42 *Id.*

43 *Id.*

44 *Id.* at 621–22.

45 *Id.* at 622.

46 *Id.* at 625.

47 19 U.S.C. § 2601(5).

48 19 U.S.C. § 2607.

49 *U.S. v. An Original Manuscript Dated November 19, 1778*, Civil Action No. 97-6651, 1999 U.S. Dist. LEXIS 1859 at *17 (S.D. N.Y. Feb. 19. 1999) (finding government met its burden in showing the subject article was documented as appertaining to the inventory of a state party where the article was identified as being found in the general national archive of Mexico, it appeared in the 1993 microfilm inventory of the national archive, and a dealer of rare manuscripts in Los Angeles testified that he saw the subject article in a Sotheby's catalogue in 1996 and became suspicious after comparing it to the one contained in a scholarly work).

50 *United States v. 3 Knife-Shaped Coins*, 246 F. Supp. 3d 1102, 1112 (D. MD. 2017).

51 *Id.*

52 *Id.* (quoting *Eighteenth Century Peruvian Oil*, *supra* note 31 at 622).

53 *Id.*

54 *Id.*

55 19 U.S.C. § 2610(1). *See also U.S. v. Ancient Coin Collectors Guild*, 899 F.3d 295, 317 (4th Cir. 2018) (summarizing the burden-shifting framework for seizure proceedings brought under Section 2606).

56 "[M]aterial becomes subject to § 2606 at the time it is 'listed in accordance with section 2604[.]'" *U.S. v. 3 Knife-Shaped Coins*, 246 F. Supp. 3d at 1113, n. 9. This suggests that as part of the government's initial burden, it must show that the article was imported *after* the designation was made pursuant to Section 2604.

57 *Eighteenth Century Peruvian Oil*, *supra* note 31 at 623.

58 19 U.S.C. § 2610(2).

59 *Eighteenth Century Peruvian Oil*, *supra* note 31 at 623.

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61 *Id.* § 2606(b).

62 *Eighteenth Century Peruvian Oil*, *supra* note 31 at 622 ("it thus appears that 19 U.S.C. 2610 places the initial burden on the Government to show that CPIA Applies. After that is accomplished, 19 U.S.C. § 1615 places the burden of proof in the remainder of the action on the claimant").

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69 Fed. R. Civ. P. Supp. R. G(5)(a)(ii).

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74 *Id.* § 2611(1)–(2)(A)–(B).

75 *Id.* § 2611(2)(C).

76 *Id.* § 2611(2)(D).

77 *Id.* § 2609(c)

78 *Id.*

79 *United States v. An Original Manuscript Dated November 19*, 96 Civ. 6221 (LAP), 1999 U.S. Dist. LEXIS 1859 at *3 (S.D.N.Y. Feb. 19, 1999).

80 *Id.* *4.

81 *Id.* * 4–5.

82 *Id.* *5.

83 *Id.*

84 *Id.** 7.

85 *Id.* *19

86 *Id.*

87 *Id.* *20 (citing *United States v. All Funds Presently on Deposit*, 832 F. Supp. 542, 564 (S.D.N.Y. 1993) (claimant must establish he was not willfully blind to illegal activity in order to maintain an innocent owner defense)).

88 *Id.*

89 *Id.* *21.

90 *Id.* (citing 19 U.S.C. § 2609(c)(1)(B).



EB-5 Program Update and the Trump Gold Card Visa…, **continued from page 21**



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conditional permanent resident status.[22] For investors who file a Form I-829 petition based on an underlying Form I-526 or Form I-526E petition filed on or after enactment of the RIA, DHS may, in its discretion, extend the investor's conditional status by one year. DHS may grant such an extension if the investor is actively in the process of creating the requisite employment and will do so before the third anniversary of the date the investor obtained conditional permanent resident status.[23]

EB-5 Proposed Rule

On 2 July 2026, USCIS published a Notice of Proposed Rulemaking in the Federal Register entitled "EB-5 Reform and Integrity Act of 2022; Ensuring the Integrity of the EB-5 Program; Automatic Revocation of Petitions for Immigrant Classification."[24] With this rule, which is currently in the comment period for sixty days, DHS proposes the following revisions, among others, to the EB-5 program regulations, formally implementing the integrity and compliance provisions introduced by RIA:

- Protecting the EB-5 program from fraud and threats to national security;
- Clarifying eligibility requirements, including new capital investment amounts, duration of investment, job creation requirements, and evidentiary requirements;
- Eliminating the use of repaid bridge financing as a basis to demonstrate job creation in the EB-5 program;
- Establishing enforcement provisions, including monetary penalties, suspensions, debarments, and terminations; and
- Implementing audits.[25]

Before the RIA, USCIS could not always timely terminate a regional center actively engaged in fraud to prevent larger losses to immigrant investors and to bolster the ongoing integrity of the EB-5 program.[26] Under the proposed rule, USCIS may make a determination that a petition, application, or benefit request poses a threat to the public safety or national security of the United States, including those filed before the enactment of the RIA.[27] If it makes such a determination, USCIS will deny or revoke the approval of any petition, application, or benefit request; terminate the permanent resident status of an immigrant investor, whether conditional or not; and terminate and permanently debar any regional center, NCE, or Job-Creating Entity (JCE) from participation in the Regional Center Program.[28]

With regard to capital, under this new rule, DHS will require more thorough evidence and documentation applicable to sources and lawfulness of capital, geographic scope of economic activity, high-unemployment areas, and job creation estimation methods.[29] DHS also proposed an increase in regional center monitoring to oversee the investment offerings, business activities, and job creation of associated new commercial enterprises to provide increased assurance that the ongoing use of the capital complies with all applicable immigration laws, federal and state securities laws, and the terms and conditions of the investments under the regional center.[30] DHS has also historically permitted investors and their associated new commercial enterprises to claim credit for jobs created by interim, temporary, or bridge financing that is later replaced by EB-5 capital.[31] DHS is proposing in this rule to eliminate the use of bridge financing repaid from EB-5 investment capital as a basis to demonstrate job creation in the EB-5 program.[32]

This proposed rule would also implement regular site visits from DHS to EB-5 projects; audits of regional centers; biometrics collection for individuals associated with regional centers, new commercial enterprises, and job-creating entities; and expanded recordkeeping requirements.[33] As portended by this notice of proposed rulemaking, increased government oversight and new compliance requirements are on the horizon.

The Second Option: The Gold Card Visa Program

Executive Order

On 19 September 2025, President Trump signed Executive Order 14351 to create the Gold Card Visa program, facilitating expedited immigration for aliens who make significant financial gifts to the United States.[34] The Order directed the secretary of commerce, in coordination with the secretaries of state and homeland security, to establish a "Gold Card" program that facilitates expedited immigrant visas for aliens donating US$1 million individually or US$2 million if paid for by a corporation or similar entity on behalf of an individual.[35] The secretary of state and the secretary of homeland security shall treat the gift as "evidence of eligibility under 8 U.S.C. 1153(b)(1)(A), of exceptional business ability and national benefit under 8 U.S.C. 1153(b)(2)(A), and of eligibility for a national-interest waiver under 8 U.S.C. 1153(b)(2)(B)."[36] The purpose of this program is to attract wealthy investors and entrepreneurs to the country and supercharge the United States' economic growth and position.[37]

The dedicated website for the program, trumpcard.gov, states that, in exchange for a US$15,000 DHS processing fee and, after background approval, a US$1 million contribution, the individual will receive "U.S. residency in record time with the Trump Gold Card."[38] Each family member is subject to an additional US$15,000 DHS processing fee and US$1 million gift.[39] The website also announces that a Trump Platinum Card is coming soon for individuals who pay the processing fee and give a US$5 million contribution. These individuals will have the "ability to spend up to 279 days in the United States without being subject to U.S. taxes on non-U.S. income."[40]

Immigrant Petition

The first step in the immigrant process is the filing of new Form I-140G with USCIS.[41] Once the petition is approved and there is an immigrant visa number available in the requested employment-based classification, the individual may apply for adjustment of status in the United States or complete consular processing with the U.S. Department of State at an embassy or consulate to get an immigrant visa and travel to the United States to be admitted as a Lawful Permanent Resident.[42] More specifically, the Gold Card program provides eligibility for two separate immigrant visa classifications: (1) preference alien of extraordinary ability; and (2) preference alien of exceptional ability who is seeking a National Interest Waiver (NIW).[43] In order to establish eligibility for the immigrant petition, the applicant, or corporation on behalf of an individual, must establish that the person or entity has sufficient funds to make the required unrestricted gift to the Department of Commerce, and that those funds were obtained through lawful means.[44] The nonrefundable filing fee for Form I-140G is US$15,000 per person.[45]

DHS will then begin the applicant's vetting process. Upon successful vetting, the applicant will be asked to submit a gift to the United States to demonstrate his or her ability to provide a substantial benefit to the United States.[46] Upon receiving an email after vetting is complete, applicants, or their corporate sponsors, should instruct their banks to use an ACH debit or Swift Wire Transfer (U.S. and international bank accounts) to make the US$1 million or US$2 million gift payment.[47] The individual applicant must still evidence admissibility to the United States. Because the Trump Gold Card is a visa, it may be revoked based on national security concerns or significant criminal risks.[48]

Statistics and Challenges

As of May 2026, the Gold Card program received 338 applications, of which 65 applicants paid the US$15,000 fee, while 59 had advanced to DHS paperwork.[49] Only one applicant had received official approval.[50] Applicants who receive the card are granted LPR status. LPRs are subject to tax on worldwide income from all sources and must report all taxable income and pay taxes, creating a tax burden for investors whose businesses, accounts, and assets span several countries.[51] The tax burden has become the program's central selling problem.[52]

Besides the sparse number of applicants, the Gold Card program also faces a legal challenge. On 3 February 2026, the American Association of University Professors, joined by a group of immigrant professionals, filed suit in the U.S. District Court for the District of Columbia arguing that the program is unlawful.[53] The core argument is that only Congress can create a visa category and define its eligibility, and that "allowing a monetary payment to substitute for the statutory criteria of the EB-1 and EB-2 categories violates federal immigration and administrative law, including the notice-and-comment requirements of the Administrative Procedure Act."[54] The United Auto Workers joined the case through an amended complaint in May 2026, and the case remains pending.[55]

Comparison of Trump Gold Card and EB-5 Program

The Trump Gold Card program requires a substantial monetary gift, compared to the EB-5 program, which requires a financial investment and job creation. The financial investment is roughly the same: US$1 million for individuals for the Gold Card, while the EB-5 program currently requires US$1.05 million (or US$800,000 in TEAs). The promoted processing time on the website for the Gold Card is a few weeks, while the EB-5 program normally takes years for adjudication. The Gold Card program currently faces a significant legal challenge in federal court, while the EB-5 program is generally stable, but with increased oversight and restrictions on the horizon if the proposed rule is finalized. Both programs present unique challenges for practitioners.

Conclusion

There are two options for wealthy investors seeking Lawful Permanent Resident status in the United States: (1) the EB-5 program, and (2) the Gold Card program. Practitioners must stay informed regarding the latest updates to properly counsel and prepare their clients.



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Endnotes

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4 INA § 203(b)(5)(C)(ii), 8 U.S.C. § 1153(b)(5)(C)(ii).
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***Take a Bite of a Comparative Analysis of Disability ...,* continued from page 23**



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The CRPD defines a "reasonable accommodation" as follows: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms . . ."[12] Requiring "reasonable accommodation" is a way that persons with disabilities can "reclaim their power" with respect to promoting and achieving equality in various settings, such as education and work.

The CRPD further provides that state parties should engage in efforts to increase awareness regarding equality and justice for persons with disabilities. The relevant language from Article 8 states:

> 1. States Parties undertake to adopt immediate, effective and appropriate measures:
>
> a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;
>
> b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
>
> c. To promote awareness of the capabilities and contributions of persons with disabilities.[13]

This language highlights the CRPD's intent and rationale for promoting disability rights and equal treatment for persons with disabilities. Raising awareness may increase overall knowledge and understanding about differing

abilities while simultaneously creating an international legal framework for promoting equality and a mechanism for enforcing it.

The CRPD is intended to act primarily as a humanitarian instrument to promote equal treatment of those persons with disabilities.[14] It provides a framework that incorporates numerous categories and classifications of persons who fall under the "umbrella" of the CRPD.[15] A major purpose of the CRPF is to reaffirm that "all persons with all types of disabilities must enjoy all human rights and fundamental freedoms."[16] This is indicative of CRPD's mission to promote equality of those who may have been "othered" by their minority status of having different abilities. This concept of "othering" is also prevalent in the novel *Dracula* by Bram Stoker.

"Othering" in *Dracula* by Bram Stoker

Dracula is a Victorian novel written during the end of the nineteenth century (1897). It tells a gripping tale of reverse colonization, reclaiming of power by the oppressed, gender quality, and bodily autonomy. *Dracula* begins with a solicitor, Jonathan Harker, traveling to Count Dracula's castle-like abode in the Carpathian Mountains in Transylvania.[17] Dracula wishes to organize his business affairs prior to a voyage to London.[18] Without giving away the entire plot of the novel, Dracula, as a character, arguably represents an archetypal character of a monster and a perversion of what is expected from humanity. Moreover, an examination and discussion of *Dracula* highlights the fact that on an international scale, those who are labeled as different can still be highly successful and are entitled to equal treatment in both a humanitarian sense and a practical sense.

Dracula provides a literary example of an "othered" being taking control of his innate power and reclaiming it. Specifically, the vampire as a species has the ability to attack the colonial residents of England in two distinct ways: (1) through the vampire's literal fanged bite, and (2) through their figurative ability to "de-racinate" citizens from their formal colonial identities and "re-racinate" them into the vampire race.[19]

While initially barbaric to envision, this "bite" into imperialism represents a reclaiming of power by the vampiric creatures in *Dracula* so that those who were once "othered" by society are now equal to, if not more powerful than, the imperialistic beings in colonialist England. This process of "reverse colonization" both increases the anxiety of the colonizer while empowering those who have often been "othered" by society.[20]

Dracula is from Eastern Europe, specifically Romania, and is often described as grotesque and monstrous throughout the novel. He is "othered" based upon his background and different appearance and abilities, as he describes throughout the novel. For example, Dracula voices his distinct feeling of being different from those in London to Jonathan Harker, the solicitor called upon to handle Dracula's business affairs and transition into London society (see the quote referenced at the beginning of this article).

This excerpt establishes that Dracula is different from both typical humans and the citizens of London. This concept of being different from those around him and from society, in general, is also illustrated in the following quote from the novel: "We are in Transylvania, and Transylvania is not England. Our ways are not your ways, and there shall be to you many strange things."[21] As evidenced by the two excerpts, which are representative examples from the novel, Dracula often experienced "othering" by self-imposing it, as well as from societal expectations and norms.

"Othering" in Today's Society and a Look Forward

This concept of "othering" is prevalent in today's society as well, often amongst those who have been diagnosed with a disability. Approximately 15% of the world's population, or an estimated one billion people, live with disabilities.[22] This represents the world's largest minority group, according to the World Health Organization (WHO),[23] and this statistic is increasing due to population growth, medical advances, and the aging process.[24]

Whether it be "othering" in the context of the modern-day interpretation of the need for the CRPD or the examples illustrated in the novel *Dracula*, everyone deserves to be treated equally and to have access to justice. The CRPD is an instrument with both a plan to provide and promote equality for persons with disabilities and a mechanism by which such equality and access to justice can be achieved. In this vain, *Dracula* is a novel that illustrates how a differently abled person can reclaim power through their own being. Ultimately, equality is something that is owed to everyone, whether that be a human being in the real world or a vampire in a novel, and hopefully, society bites at the chance to treat others the way they wish to be treated, vampire or not.



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Endnotes

1 *See* The Convention on the Rights of Persons with Disabilities Preamble, ¶ e. 12 Dec. 2026, 2515 U.N.T.S. 3. [hereinafter CRPD].

2 *See* Bram Stoker, Dracula 33 (Chiltern 2020).

3 *See* CRPD, *supra* note 1, art. 1.

4 *See id.*

5 United Nations, Dep't of Econ. & Soc. Affs., *Convention on the Rights of Persons with Disabilities (CRPD)*, https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-crpd (last visited 24 Aug. 2026).

6 *Id.*

7 *See id.*

8 *Id.*

9 *See* CRPD, *supra* note 1, art. 2.

10 *Id.*

11 *Id.* at art. 5.

12 *Id.* at art. 2.

13 *Id.* at art. 8.

14 United Nations, Dep't of Econ. & Soc. Affs., Social Inclusion, *Convention on the Rights of Persons with Disabilities (CRPD), supra* note 5.

15 *See id.*

16 *Id.*

17 *See generally,* Stoker, *supra* note 2.

18 *See generally id.*

19 *See generally* Amanda Shipman, Dracula's Harem: Feminine Otherness and Reverse Colonization of the Male Body, 24 J. Dracula Stud. 3 (2022).

20 *See generally* Stephen D. Arata, The Occidental Tourist: "Dracula" and the Anxiety of Reverse Colonization, 33 Victorian Stud. 621–45 (1990).

21 *See* Stoker, *supra* note 2, at 34.

22 *See* World Health Org., *Disability and Health*, https://www.who.int/news-room/fact-sheets/detail/disability-and-health (last visited 24 Aug. 2026).

23 *Id.*

24 *Id.*



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