

# IBA ARBITRATION COMMITTEE

## Subcommittee on Recognition and Enforcement of Arbitral Awards

### COUNTRY REPORT ON LOCAL REQUIREMENTS FOR THE EXTENSION OF AN ARBITRATION CLAUSE TO, AND ENFORCEMENT OF AN ARBITRAL AWARD AGAINST, A NON-SIGNATORY

Rapporteur: Chad Catterwell

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*In completing this survey, we ask the respondents to consider the question of non-signatories in a broad manner. That is, please consider situations where (i) a party applies to a court to compel arbitration against a non-signatory, (ii) the arbitral tribunal extended the arbitration clause to a non-signatory, and the non-signatory, or another party to the arbitration, seeks to resist enforcement, or to set aside the award, on the basis that the arbitration clause should not have been extended to the non-signatory, and (iii) where the award creditor attempts to enforce the award against a non-signatory that was not a party to the arbitral proceedings and the award.*

| Australia  |  |              |   |
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| I. General |  | (Yes/No /NA) | Comments, if any.   |
| I.1        | <b>Must international arbitration agreements be in writing under the law of the country for which you are reporting?</b> | Yes          | <p>For the purposes of enforcing foreign arbitration agreements, see sections 3(1), 3(4) and 3(5) of the <i>International Arbitration Act 1974</i> (Cth) (IAA): These provisions adopt the definition of “arbitration agreement” from the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted in 1958 (New York Convention) (NYC), Art. II(1) and further clarify what constitutes an agreement in writing. See for example, <i>Trina Solar (US), Inc v Jasmin Solar Pty Ltd</i> [2017] FCAFC 6, [51].</p> <p>For the purposes of enforcing Australian seated international arbitration agreements, see section 16(2) of the IAA: See for example, <i>TCL Air Conditioner (Zhongshan) Co Ltd v Judges of the Federal Court of Australia</i> [2013] HCA 5. This provision adopts the definition of “arbitration agreement” from Option 1 of Article 7 of the UNCITRAL Model Law on International Commercial Arbitration 1985</p> |

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|      |   |           | (with the amendments adopted in 2006)<br><b>(Model Law):</b> <i>Lion-Dairy &amp; Drinks Pty Ltd v Huhtamaki Australia Pty Ltd</i> [2013] VSC 555, [26]-[31].  |
| I.2  | <p><b>Please describe the basic requirements for a valid international arbitration agreement in the country for which you are reporting and cite the relevant legislative, regulatory, or jurisprudential basis for these requirements.</b></p> <p><b>[Please provide your response in the comments column and limit it to one paragraph.]</b></p>  |           | The basic requirements for a valid international arbitration agreement is that the agreement is in writing and the parties undertake to submit to arbitration disputes which have arisen or may arise. For foreign international arbitration agreements, see section 3 of the IAA and Art. II(1) of the NYC. For Australian seated international arbitration agreements, see section 16(2) of the IAA and Option 1 of Article 7 of the Model Law.   |
| I.3  | <p><b>In the country for which you are reporting, do courts/arbitral tribunals generally decide the issue of the scope <i>rationae personae</i> of the arbitration clause (or, in other words, the issue of who are the parties to the arbitration agreement, including the issue of extending the arbitration agreement to a non-signatory) on the basis of a specific applicable law or on the sole basis of a factual analysis of the case without reference to an applicable law?</b></p>   |           | When determining who is a party, or who is bound by or can take the benefit of an arbitration agreement, courts/arbitral tribunals will have regard to both the specific applicable law and the facts of the case. See for example, <i>Jasmin Solar Pty Ltd v Trina Solar Australia Pty Ltd</i> (2015) 331 ALR 108 and <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303   |
| I.3a | <p>If courts/arbitral tribunals generally decide the issue on the basis of a specific applicable law, what law do they apply to decide the issue?</p> <p>[For example, the applicable law could be:</p> <ul style="list-style-type: none"> <li>• The law of the seat of arbitration.</li> <li>• The governing law of the contract.</li> <li>• The law of the place where the award might ultimately be sought to be enforced.</li> <li>• Transnational norms/international law.</li> <li>• The law reached at through a conflict of laws analysis.]</li> </ul> <p>[Please provide your response in the comments column, provide any citation to relevant legislation or jurisprudence, and limit your response to one paragraph.]</p> |           | A majority of the Full Court of the Federal Court of Australia (Beach J, Dowsett J agreeing) determined that, in a stay proceeding, while questions regarding the validity or interpretation of a contract would fall to be determined under the governing law of the contract, the question of whether a person has consented to and is therefore party to an arbitration agreement is governed by the law of the forum: <i>Jasmin Solar Pty Ltd v Trina Solar Australia Pty Ltd</i> (2017) 247 FCR 1, [1], [128]-[132]. |
| I.3b | <p>Does the legislation of your jurisdiction contain any directive in this respect?</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>   | <b>No</b> | Section 8(5)(b) of the IAA, and Article 36(1)(a)(i) of the UNCITRAL Model Law, provide that a Court may refuse enforcement of an arbitral award if the arbitration agreement is not valid under the law expressed in the agreement to be applicable to it or, where no law  |

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|     |   | <p>is so expressed to be applicable, under the law of the country where the award was made.</p> <p>However, the application of Section 8(5)(b) of the IAA, and Article 36(1)(a)(i) of the UNCITRAL Model Law in the context of a question regarding whether a person is a party to an arbitration agreement is now subject to the application of the majority reasoning in <i>Jasmin Solar Pty Ltd v Trina Solar Australia Pty Ltd</i> (2017) as discussed above.</p>  |
| I.4 | <p><b>Is the question of whether parties agree to arbitrate ultimately decided by arbitrators as opposed to courts in the country for which you are reporting? Please cite the relevant legislative, regulatory, or jurisprudential basis for your answer.</b></p> <p><b>[Please provide your response in the comments column and limit it to one paragraph.]</b></p> | <p>Pursuant to section 16 of the IAA, the Model Law has the force of law in Australia. Article 16 of the Model Law provides that the arbitral tribunal may rule on its own jurisdiction. Therefore, typically the arbitral tribunal ultimately decides whether parties have agreed to arbitrate. In <i>Dialogue Consulting Pty Ltd v Instagram, Inc</i> [2020] FCA 1846 at [155] “<i>The competence-competence principle is a tenet of faith amongst the arbitration set: simply stated, an arbitrator usually has the power to determine his own jurisdiction including any challenge to the validity or existence of the arbitration agreement. So, if prima facie there is a valid arbitration agreement which appears to cover the matter in dispute, then this principle would ordinarily dictate that the matter should be referred to arbitration including any challenges to the existence, validity or scope of the arbitration agreement. And in that eventuality, no finding by the Court on the balance of probabilities that a valid arbitration agreement exists is necessary.</i>”</p> <p>However, an award can be challenged where a party claims the arbitration agreement is not binding on it because it was never a party to the arbitration agreement: section 8(5)(b) for foreign awards and Article 36(1)(i) of the Model Law for Australian awards. While the provisions only expressly deal with the question of the validity of the arbitration agreement, it is generally accepted that they also extend to non-party claims: see <i>Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan</i> [2010] UKSC 46 at [77] cited in <i>Liaoning Zhongwang Group Co Ltd v Alfield Group Pty Ltd</i> [2017] FCA 1223. In that context, when courts are deciding whether to exercise their discretion to refuse to enforce an arbitral award, courts can review the arbitral tribunal’s finding on whether parties have agreed to arbitrate: See for example,</p> |

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|     |   |     | <i>Transurban WGT Co Pty Ltd v CPB Contractors Pty Ltd</i> [2020] VSC 476 [157]-[161]; <i>Dialogue Consulting Pty Ltd v Instagram, Inc</i> [2020] FCA 1846. |
| I.5 | <p>Is there anything in the <u>legislation</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of relevant legal theories, jurisprudence, and examples.]</p> | Yes |   |

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| I.5a  | <p>If your answer to question <u>I.5</u> is yes, please cite and describe the applicable rules contained in any relevant legislation or regulations.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>   |                     | <p>Both a party to a foreign arbitration agreement, and “a person claiming through or under a party” may seek a stay of proceedings to enforce a foreign arbitration agreement: see section 7 of the IAA. See also, <i>Rinehart v Hancock Prospecting Pty Ltd</i> (2019) 267 CLR 514; <i>Tanning Research Laboratories Inc v O’Brien</i> (1990) 169 CLR 332.</p> <p>The definition of ‘party’ is not so extended in any other part of the IAA, such as for Australian seated international arbitrations and in respect of the enforcement of foreign international arbitral awards.</p>                            |
| I.6   | <p><b>Is there anything in the <u>jurisprudence</u> of the country for which you are reporting that (i) could preclude the extension of an arbitration clause to non-signatories, or (ii) could permit the extension of an arbitration clause to non-signatories?</b></p> <p>[Note that the answer to this question is designed to provide the reader with a quick yes or no answer, plus to flag the key legal criteria. The series of questions in Section II provide the reader with a more detailed discussion of the relevant legal theories, jurisprudence, and examples.]</p> | Yes                 |  |
| I.6a  | <p>If your answer to question <u>I.6</u> is yes, please cite and describe the applicable tests or rules applied by the courts of the country for which you are reporting.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  |                     | <p>Australian law has the doctrine of “privity” of contract, which operates such that only a party to a contract may enforce or be bound by its terms: <i>BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd</i> (2008) 168 FCR 169 at [18].</p> <p>An exception to this doctrine is the legislative intervention in section 7 of the IAA which extends the definition of “party” to “a person claiming through or under a party” in the context of seeking a stay of proceedings in favour of a foreign arbitration agreement: <i>Rinehart v Hancock Prospecting Pty Ltd</i> (2019) 366 ALR 635 at [77].</p> |
| <b>II. Specific Legal Theories Concerning Non-Signatories</b> |  | <b>(Yes/No /NA)</b> | <b>Additional comments, if any.</b>  |
| II.1  | <p><b>Can the assignment or assumption of a contract containing an international arbitration agreement commit the non-signatory assignee to international arbitration in the country for which you are reporting?</b></p>  | Yes                 |  |

|        | <b>Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b>   |     |   |
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| II.1.a | <p>If your answer to question <u>II.1</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> |     | <p>An assignee of a contract containing an arbitration agreement is considered to be a person that can claim “through or under” a party to the arbitration agreement in the context of section 7 of the IAA (an application to stay court proceedings in favour of a foreign arbitration agreement): <i>Tanning Research Laboratories Inc v O’Brien</i> (1990) 169 CLR 332 at 341–342; <i>Heller Financial Services Ltd v Thiess Contractors Pty Ltd</i> [2000] FCA 802; <i>BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd</i> (2008) 168 FCR 169, [13].</p> |
| II.1.b | <p>If your answer to question <u>II.1</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul>  | NA  |   |
| II.2   | <b>Can incorporation by reference (i.e., where a contract incorporates an arbitration clause contained in a separate document) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b>   | Yes |   |
| II.2.a | <p>If your answer to question <u>II.2</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> |     | <p>An arbitration clause can be incorporated by reference in Australia, such that parties to the main contract are bound: <i>Warner Bros Feature Productions Pty Ltd v Kennedy Miller Mitchell Films Pty Ltd</i> [2018] NSWCA 81. See also <i>Joban Kosan Co Ltd v Flame SA</i> [2018] NSWSC 1754 at [45]. Australian courts have not yet considered whether this will be the case where the parties are non-signatories to the main agreement.</p>   |
| II.2.b | If your answer to question <u>II.2</u> is no, please:  | NA  | NA  |

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|        | <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>   |    |  |
| II.3   | <p><b>Can an arbitration clause commit a non-signatory third-party beneficiary of a contract to international arbitration in the country in which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b></p>   | No |  |
| II.3.a | <p>If your answer to question <u>II.3</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> | NA | NA   |
| II.3.b | <p>If your answer to question <u>II.3</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  |    | <p>A non-signatory third party beneficiary will not be considered a party to the arbitration agreement, but might be a person who can claim “through or under” a party to the arbitration agreement in section 7 of the IAA: <i>BHPB Freight Pty Ltd v Cosco Oceania Chartering Pty Ltd</i> (2008) 168 FCR 169, [26]-[27].</p> |

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| II.4   | <p><b>Can a theory of agency (i.e., where an agreement containing an arbitration clause has been entered into by a person who expressly or impliedly did so as a representative of a non-signatory) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b></p>   | Yes |   |
| II.4.a | <p>If your answer to question <a href="#">II.4</a> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> |     | <p>The possibility of agency operating to enable a principal to be bound by, or to enforce an arbitration agreement has been acknowledged in Australia: <i>Jasmin Solar Pty Ltd v Trina Solar Australia Pty Ltd</i> (2015) 331 ALR 108, [107] et seq.</p> <p>Although the Australian courts have not specifically addressed this point, we would expect them to follow the English decision <i>Filatona Trading Ltd &amp; Anor v Navigator Equities Ltd &amp; Ors</i> [2020] EWCA Civ 109, where it was found that an undisclosed or disclosed principal may sue or be sued under an arbitration agreement, provided that the terms of the agreement do not interfere with the rights and obligations of the principal.</p> |
| II.4.b | <p>If your answer to question <a href="#">II.4</a> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  | NA  | NA  |
| II.5   | <p><b>Can a theory of estoppel, good faith, or abuse of right (i.e., where a party benefitting from, and acting in accordance with, a contract containing an arbitration clause is estopped from claiming that it is not bound by certain provisions of the contract) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b></p>       | Yes |   |

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| <p>II.5.a</p> | <p>If your answer to question <u>II.5</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> | <p>Yes</p> | <p>The decision in <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303 at [281]-[282] demonstrates that the courts will consider the application the estoppel doctrine. The Victorian Court of Appeal held at [321]: “<i>In the present case, IMCS, which denied that it was a party to the arbitration agreement, was not obliged to participate in the arbitration proceeding or to apply to the Mongolian courts to set aside the award. In the circumstances of this case, IMCS’s failure to take these steps cannot give rise to an estoppel precluding it from denying that it was a party to the arbitration agreement or from challenging the validity of that agreement in this court.</i>”</p> <p>However, Australian courts have not to the authors’ knowledge considered whether the theories of good faith or abuse of rights could commit a non-signatory party to an international arbitration.</p> |
| <p>II.5.b</p> | <p>If your answer to question <u>II.5</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  | <p>NA</p>  | <p>NA</p>   |

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| II.6   | <p><b>Can “implied consent” (i.e., where a party’s active participation in the negotiation, execution, performance and/or termination of a contract containing an arbitration clause provides evidence for its intent to consent to arbitration) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b></p>                   | Yes | <p>The legislation and jurisprudence are silent. However, we would expect that the Australian courts would consider the position of other common law jurisdictions such as the UK and Canada in determining such issues</p> <p>Note: In <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303 at [281]-[282], the Victorian Court of Appeal considered whether a non-party had implied consented to becoming a party to an arbitration proceeding under <u>Mongolian law</u>, holding at [289]: “<i>Notwithstanding the assertions contained in Mr Batdorj’s affidavits that IMCS was regarded by the tribunal as a party to the arbitration agreement and to the arbitration proceeding, none of the interim award, the preliminary hearing document or the award stated or implied that IMCS consented to becoming a party to the arbitration agreement or that the parties to the arbitration at any time extended beyond Altain and IMCM. Accordingly, IMCS has established on the balance of probabilities that it did not consent to becoming a party to the arbitration agreement.</i>”</p> |
| II.6.a | <p>If your answer to question <u>II.6</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> | NA  | NA  |
| II.6.b | <p>If your answer to question <u>II.6</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  | NA  | NA  |

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| II.7   | <p><b>Can piercing the corporate veil or the alter ego doctrine (i.e., where, typically due to misuse or abuse of rights or fraud, the separate legal form of a non-signatory that uses its dominating authority over a signatory is disregarded so that both are treated as a single entity) commit a non-signatory party to international arbitration in the country for which you are reporting? Or is the legislation and jurisprudence in the country for which you are reporting silent on the issue?</b></p> |    | The legislation and jurisprudence are silent.   |
| II.7.a | <p>If your answer to question <u>II.7</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>                            |    | <p>However, we would expect that the Australian courts would consider the position of other common law jurisdictions such as the UK (<i>Egiazaryan &amp; Anor v OJSC OEK Finance &amp; Anor</i> [2015] EWHC 3532 (Comm), [17]) in determining such issues.</p> <p>Note: In <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303 at [281]-[282], the Victorian Court of Appeal considered whether the tribunal found that a party was the alter ego of its related entity. This might imply that the Australian courts would be willing to consider the application of the alter ego doctrine, albeit it is expected that the doctrine will be applied with a great degree of caution.</p> |
| II.7.b | <p>If your answer to question <u>II.7</u> is no, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country’s jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>                             | NA | See above.  |
| II.8   | <p><b>In the country for which you are reporting, are there any other legal theories that can be used to commit a non-signatory to international arbitration?</b></p>   | No | NA  |

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| II.8.a   | <p>If your answer to question <u>II.8</u> is yes, please:</p> <ul style="list-style-type: none"> <li>• Cite and describe the applicable rules contained in any relevant legislation or regulations.</li> <li>• Provide examples from your country's jurisprudence highlighting which parties are ultimately bound, and the circumstances under which they are likely to be bound.</li> </ul> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p> | NA                  | NA   |
| <b>III. Enforcement of an Arbitral Award against a Non-Signatory</b> |  | <b>(Yes/No /NA)</b> | <b>Additional comments, if any.</b>  |
| III.1  | <p><b>Have there been court cases in the country for which you are reporting where a party has objected to the enforcement of an award, on the basis that the arbitral tribunal extended the arbitration clause to one or more non-signatories?</b></p>  | Yes                 |  |
| III.1.a  | <p>If your answer to III.1 is <u>yes</u>, please explain which provision(s) of the New York Convention, or any other bilateral or multilateral convention on the enforcement of arbitral awards, was (were) relied upon as the basis for the application/objection.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>  |                     | Articles I to V of the New York Convention were referred to at [78] of <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303.   |
| III.1.b  | <p>If your answer to III.1 is <u>yes</u>, please explain whether set-aside/enforcement was finally granted or refused, and the court's reasons for reaching this result.</p> <p>[Please provide your response in the comments column and limit it to one paragraph.]</p>   |                     | In <i>IMC Aviation Solutions Pty Ltd v Altain Khuder LLC</i> (2011) 38 VR 303, the Victorian Court of Appeal overturned the decision of a lower court to enforce an award against a Mongolian mining company and its related Australian company, IMC Mining Solutions Pty Ltd ( <b>IMCS</b> ). The Court refused enforcement on the basis that the arbitration agreement did not validly extend to IMCS, and therefore the tribunal had exceeded its jurisdiction in make an award against IMCS. |
| III.2  | <p><b>Have there been court cases in the country for which you are reporting in which the enforcement of an award was requested against a non-signatory third party (a company/individual/state that was a non-signatory to the arbitration agreement and not a party to the arbitral proceedings/award)?</b></p>  | No                  | NA   |

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|                        | <b>[Please provide your response in the comments column and limit it to one paragraph.]</b>   |                     |                                     |
| III.2a                 | If the answer to III.2 is <u>yes</u> , please explain on what legal basis the enforcement was requested.<br><br>[Please provide your response in the comments column and limit it to one paragraph.]  | No                  | NA                                  |
| III.2b                 | If the answer to III.2 is <u>yes</u> , please explain whether the enforcement was finally granted/refused and the court's reasons for reaching this result.<br><br>[Please provide your response in the comments column and limit it to one paragraph.]   | No                  | NA                                  |
| <b>IV. Miscellanea</b> |   | <b>(Yes/No /NA)</b> | <b>Additional comments, if any.</b> |
| IV.1                   | <b>Is there anything else that a party considering the issue of the extension of an arbitration clause to a non-signatory should take into account with respect to the country for which you are reporting?</b><br><br>[Please provide your response in the comments column and limit it to one paragraph.] | No                  | NA                                  |
| IV.2                   | <b>Is there anything else that a party considering trying to enforce a foreign arbitral award against a non-signatory should take into account with respect to the country for which you are reporting?</b><br><br>[Please provide your response in the comments column and limit it to one paragraph.]     | No                  | NA                                  |

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