

The Relevance of Prejudice in International Commercial Arbitration

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The aim of this paper is to establish what prejudice is and its role in international commercial arbitration. Based on that, this paper will set out the following guidelines: first, where the ground for non-enforcement or setting aside of the arbitral award under the Model Law is a procedural ground, prejudice should *prima facie* be relevant as a requirement subject to certain scenarios. Second, where the ground for non-enforcement or setting aside of the arbitral award is jurisdictional, prejudice should only be considered as a factor. Third, where the ground addresses neither procedural nor jurisdictional issues, prejudice plays no role in the analysis. Taken together, the proposed framework provides guidance for determining when prejudice is relevant and will be helpful to parties and counsel to determine whether they have to raise issues of prejudice.

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