# *Arbitration Agreements in Bankruptcy and other Insolvency Cases: an International Comparative Perspective*

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The Convention on the Recognition and Enforcement of Foreign Arbitral Awards was adopted in 1958 and is widely known as the New York Convention. By 2025, 173 national governments had become parties to the New York Convention ("Contracting States"). The New York Convention generally requires Contracting States to enforce arbitration agreements and arbitration awards, but only "concerning a subject matter capable of settlement by arbitration." So, a State is not obligated to enforce an arbitration agreement or award concerning matters that State's lawmakers have declared nonarbitrable.

Most States hold that some bankruptcy and other insolvency matters are nonarbitrable. In most jurisdictions, only national courts (often specialized courts) have the authority to begin, administer, and wind-up bankruptcy and other insolvency proceedings, including proceedings that liquidate an insolvent company, reschedule its debs, operate it under some form of receivership or administration, or distribute payments to creditors. Disputes concerning these "core" bankruptcy functions are nearly always considered nonarbitrable, whether in domestic or international arbitrations, under the laws of developed jurisdictions.

However, States are split on the arbitrability of disputes merely involving a company in bankruptcy or other insolvency proceedings. This paper explains the tension between arbitration law's separation of related disputes into different forums for adjudication and insolvency law's emphasis on collective action involving several creditors of the same debtor. This paper proposes reconciling these tensions by staying arbitration when an insolvency proceeding begins and permitting the court overseeing the insolvency case to condition its order for arbitration on assurances about arbitration's privacy, speed, and cost.

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