Reimagining Post-Award Dispute Resolution in Taiwan: Insights from Europe to Limit Judicial Intervention

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Arbitration has become a frequently chosen mechanism for resolving public construction disputes in Taiwan. Yet, recent experiences show that, despite arbitral awards often being issued within a reasonable period, subsequent court proceedings can take considerably longer, leading to dissatisfaction for the prevailing party. This article examines the possibility of cutting off the right to challenge arbitral decisions in court—either by eliminating that right through domestic legislation or by allowing contractual agreements to waive it. Ultimately, this piece offers modest legislative amendments to the Taiwan Arbitration Law and suggests how these changes could facilitate speedier resolutions for public construction conflicts by drawing on European insights to limit judicial intervention.

1. Introduction

In Taiwan, the cost of many public construction projects consistently surpasses one hundred million New Taiwan Dollars (TWD), which amounts to roughly three million USD.(1) These undertakings typically involve large-scale government operations—ranging from transportation infrastructure to essential public facilities—thereby making the quality and timeliness of construction particularly important. Any lapse in quality can pose direct risks to public health, safety, or economic stability. Moreover, such projects frequently require tight coordination among various government agencies and private contractors, further elevating the stakes when disputes arise.

Because of these high stakes, both government officials and industry experts stress the urgent need to settle public construction disputes swiftly and efficiently. Suppliers, who often must front significant capital to keep work progressing, are especially vulnerable to cash-flow disruptions if disagreements drag on.(2) Likewise, prolonged conflict can substantially delay the completion of public works, undermining community services and inconveniencing the public—a scenario that government entities aim to prevent or mitigate.(3)

Against this backdrop, Taiwan's legal framework actively promotes arbitration to expedite conflict resolution in public construction projects.(4) The theoretical advantages of arbitration include its relative speed compared to traditional litigation and the perceived finality of arbitral awards, which ordinarily can only be set aside on narrow grounds.(5) Arbitration thus ostensibly reduces the protracted nature of multiple court appeals, a well-known pitfall in litigation.(6)

1.1 Legal Foundations for Arbitration in Public Construction

The principal legislative vehicle for arbitration in Taiwan's public construction sector is the **Government Procurement Act** (GPA). Under Article 85–1(1), if a dispute arises over contract performance between a government agency and a supplier, the parties may opt for **mediation** before the Complaint Review Board for Government Procurement (CRBGP) or pursue **arbitration**.(7) Notably, for construction or technical service contracts, Article 85–1(2) stipulates a mandatory two-step framework from the governmental perspective: the supplier may initiate mediation before the CRBGP, and if the mediation fails—specifically due to the government's disagreement with the proposed resolution—the supplier is entitled to proceed with arbitration, which the government may not oppose.(8)

Another prominent mechanism for engaging private capital in public construction is through **concession agreements**, including Build-Operate-Transfer (BOT), Rehabilitate-Operate-Transfer (ROT), Operate-Transfer (OT), and Build-Own-Operate (BOO) models. These agreements fall under the **Act for Promotion of Private Participation in Infrastructure Projects** (APPPIP).(9) Under Article 48–1 of the APPPIP, such contracts must include provisions for a mediation committee, and suggest referring disputes to arbitration if mediation does not resolve the issue.(10) Collectively, these statutes highlight Taiwan's intent to streamline dispute resolution in an area crucial to both the economy and the public welfare.

1.2 Persistent Delays Despite Arbitration

Despite this robust legislative endorsement of arbitration, in practice, certain public construction conflicts have turned into lengthy legal sagas when the losing party seeks to annul the arbitral award in court. In some instances, these post-award proceedings last for years—or even exceed a decade—severely undermining arbitration's intended efficiency. The repercussions are considerable: suppliers are left in prolonged uncertainty, public construction timetables are disrupted, and taxpayer-funded projects face mounting costs.

While judicial review of arbitral awards is a vital safeguard against substantial procedural or substantive errors, the current structure of Taiwan's court system can inadvertently invite protracted litigation. Consequently, rather than seeing arbitration as a swift, conclusive remedy, some participants find themselves locked in an extended cycle of legal motions, appeals, and remands.

This article delves into the prospect of **contractually excluding** the right to challenge arbitral decisions via "exclusion agreements," or alternatively **removing** this right through legislative reform. To illustrate the urgency of enacting such measures, it references a high-profile dispute—finally concluded in November 2022 after a protracted court battle lasting more than ten years. Building upon this real-world example, the discussion culminates in specific recommendations to **amend Taiwan's Arbitration**

Law and to adapt **government procurement practices** in ways that reinforce the efficiency and finality of arbitral proceedings.

2. Dispute over the Tainan Science Park High-Speed Rail Vibration Control Project

In January 1996, the National Science and Technology Council (NSTC) embarked on a significant development project by establishing the Southern Taiwan Science Park (STSP) in Tainan City. This venture aimed to bolster Taiwan's integrated-circuit and biotechnology industries, attracting both domestic and international investors.(12) However, the chosen route for the Taiwan High Speed Rail (THSR) extended for five kilometers through the STSP,(13) inciting worries among high-tech manufacturers about potential vibration damage to sensitive production lines and equipment.(14)

In 2003, the NSTC commissioned a technical service to formulate vibration-mitigation plans.(15) One year later, the STSP Bureau sought bids to implement these plans, ultimately awarding a contract worth TWD 8,059,868,000 (approximately USD 2.6 billion) to Sheus Technologies Corporation (Sheus).(16) Given the complex engineering challenges—requiring precise vibration control measures—numerous disputes surfaced during the contract's performance period.

Two arbitral awards issued in favor of Sheus spurred the STSP Bureau to pursue setting-aside actions in court. The first award, dated 27 March 2009, was upheld by Taiwan's Supreme Court in May 2022,(17) while the second (rendered on 18 February 2011) continues to be litigated. Each matter has surpassed a decade of judicial wrangling, demonstrating how even arbitration—heralded as a timely process—can become mired in appellate review.

2.1 Proposed Amendments from the Chinese Arbitration Association, Taipei

In response to such extensive delays, the Chinese Arbitration Association, Taipei (CAA), introduced a draft proposal to revise Taiwan's Arbitration Law. Among other suggestions, one prominent modification would allow parties to bypass the District Court and file set-aside petitions directly with the High Court, aiming to reduce the number of possible appeals.(19) Yet, the Tainan Science Park dispute highlights that the most pronounced bottlenecks often arise at the High Court and Supreme Court stages, where prolonged reviews and repeated remands can nullify any time saved by skipping the District Court.

A closer look at **STSP v. Sheus** demonstrates this phenomenon: the District Court took approximately 18 months to rule on the first award's annulment application,(20) but the High Court and Supreme Court spent an additional 12.5 years arriving at a final verdict.(21) Similarly, the second award's journey through the judicial system has proved even more convoluted. Although the District Court issued a decision within eight

months,(22) multiple higher-court reviews have kept the case active for over 11 years,(23) with no clear end in sight.

2.2 Can Parties Contractually Waive or Exclude Set-Aside Proceedings?

Amid these mounting concerns over lengthy judicial reviews, some contracting parties have looked to "exclusion agreements" as a way to expedite final resolution. By incorporating such clauses, the parties mutually waive their right to seek annulment of the arbitral award in court, rendering the award definitively final once issued. However, the enforceability of these agreements is a subject of debate among legal scholars,(24) with varying approaches emerging in different jurisdictions.

A key lesson Taiwan can adopt from Europe is the implementation of robust institutional arbitration frameworks, such as those established by the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA). These European institutions provide comprehensive and well-structured rules that limit judicial intervention by clearly defining the grounds and procedures for challenging arbitral awards. By emulating these frameworks, Taiwan can enhance the consistency and efficiency of its arbitration processes, thereby reducing the chances of prolonged court involvement and ensuring that arbitration remains a swift and reliable method for resolving public construction disputes.

Furthermore, Europe places a strong emphasis on the professionalization and accreditation of arbitrators through organizations like the Chartered Institute of Arbitrators (CIArb). These bodies offer rigorous training and certification programs that ensure arbitrators possess the necessary expertise and impartiality to handle complex disputes effectively. Taiwan can benefit from establishing similar accreditation standards, which would not only elevate the quality of its arbitral proceedings but also increase international confidence in Taiwan's arbitration system. This professionalization is crucial for maintaining the integrity and credibility of arbitration as a preferred dispute resolution mechanism in high-stakes public construction projects.

2.3 Rationale for Supporting Exclusion Agreements

Party Autonomy

Advocates of exclusion agreements emphasize **party autonomy**, a cornerstone of arbitration. Parties already control vital elements of the arbitral process—such as choosing the arbitration itself, selecting arbitrators, determining procedural rules, and specifying governing law—so they argue that deciding the scope of judicial review should be a similarly negotiable aspect.(25)(26)(27)

Economic Advantages

Another key argument is the potential to alleviate pressure on courts, which may reduce

overall litigation expenses and delays.(28) Jurisdictions that allow parties to exclude judicial review can attract more arbitral proceedings and related business opportunities, thereby contributing to local economic growth.(29)(30)(31) As evidence, a 2009 Scottish policy memorandum highlighted that arbitration in London generates around EUR 3 billion annually,(32) suggesting considerable economic benefits for a region that positions itself as a supportive seat of arbitration.

Global Practices

Internationally, legal frameworks differ. France and Russia, for instance, tend to permit broad exclusion agreements if both sides clearly consent,(33) whereas other nations impose conditions—often linked to ensuring that local public policy is not jeopardized or that parties lack substantial ties to the seat of arbitration.

3. Objections to Exclusion Agreements

Protecting Fairness and Public Policy

Opponents underscore the necessity of judicial oversight to uphold fundamental due process. Ensuring that arbitrators neither exceed their mandate nor overlook key procedural safeguards remains a legitimate governmental interest.(34)(35)(36) Moreover, certain types of disputes (e.g., those involving corporate insolvency or personal status) are generally deemed outside the realm of arbitrability, reflecting broader public-policy considerations.(37)(38)(39) Even if the parties attempt to waive the set-aside procedure, courts can still refuse to enforce an award under provisions akin to Article 34(2)(b) of the UNCITRAL Model Law.(40)(41)(42) Notably, Switzerland, Sweden, and Belgium allow exclusions only if enforcement within their territories is unlikely, thereby safeguarding local public interest.(43)

4. Why Exclusion Agreements May Be Valid

Interestingly, various legal systems already permit a **unilateral, implicit** waiver of certain grounds for setting aside—such as failing to timely contest an arbitrator's jurisdiction.(44)(45) If unilateral waiver is acceptable, it seems inconsistent to forbid **mutual** waivers expressly drafted in a contract. Additionally, exclusion clauses do not foreclose **all** judicial safeguards; courts in enforcement jurisdictions can still refuse to recognize or enforce awards that fail basic standards of procedural fairness or that violate public policy. Therefore, supporters argue that exclusion agreements can strengthen party autonomy while preserving core protective measures.(46)(47)

By examining these debates and the evolution of both domestic and international practices, one can see how exclusion agreements, when carefully crafted, might help Taiwan's public construction sector achieve truly expedited and definitive resolutions—something notably lacking in its protracted court battles to date.

4.1 Introduction

In Taiwan, the contract values for public construction projects often exceed one hundred million New Taiwan Dollars (TWD), an amount that translates to roughly three million USD.(1) In many instances, especially for large-scale infrastructure developments—such as expressways, mass transit systems, or major public buildings—those figures can climb substantially higher. The urgency and magnitude of these undertakings frequently arise from government priorities related to public welfare, economic growth, and regional development. For example, new railway extensions or advanced technology research centers can have far-reaching effects on traffic patterns, industrial output, and employment opportunities. Hence, even modest delays or mishaps during construction can reverberate throughout the broader community.

Given the public funds at stake and the potential risks to public safety—imagine, for instance, structural failures in a critical rail link—both legislators and stakeholders have long stressed the importance of a streamlined dispute-resolution system. Suppliers and contractors rely on continuous funding to keep construction moving forward and cannot afford to be entangled in protracted legal proceedings.(2) Beyond that, stalled projects may stall vital public services, creating public dissatisfaction and undermining government credibility.(3) Consequently, successive Taiwanese governments have embraced arbitration as a means to expedite the settlement of construction-related disagreements, hoping it will reduce the notorious backlog of court cases and offer parties a more definitive outcome.

Under Taiwan's existing legal framework, arbitration is not just encouraged but, in some scenarios, is practically mandatory for certain kinds of public construction disputes. (4) This approach hinges on two central assumptions: first, that arbitral proceedings are generally faster than litigation, which often winds through multiple levels of appellate review; and second, that arbitration's emphasis on finality discourages endless motions and appeals.(5) By limiting the grounds under which a party may contest an arbitral award, the system aims to curb drawn-out controversies and deliver more prompt resolutions.(6)

4.2 Legal Foundations for Arbitration in Public Construction

Two principal statutes guide Taiwan's policy toward resolving public construction disputes through arbitration: the **Government Procurement Act** (GPA) and the **Act for Promotion of Private Participation in Infrastructure Projects** (APPPIP). The GPA, particularly under Article 85–1(1), envisions two main pathways when a contractual performance dispute arises between a government entity and a supplier—mediation or arbitration—thereby offering an alternative to conventional litigation.(7) When the contract involves construction or technical services, Article 85–1(2) further stipulates that suppliers may require mediation before the Complaint Review Board for Government Procurement (CRBGP), and if the CRBGP's proposal is not accepted by the government side, the supplier can proceed to arbitration without facing governmental opposition.(8) This statutory scheme underscores the legislature's intent to integrate arbitration seamlessly into the public construction arena.

Meanwhile, concession agreements—covering frameworks like Build-Operate-Transfer (BOT), Rehabilitate-Operate-Transfer (ROT), Operate-Transfer (OT), or Build-Own-Operate (BOO)—fall under the APPPIP.(9) Enacted to encourage private investment in public infrastructure, the APPPIP also recommends a two-tiered approach: first, attempts at mediation, followed by arbitration if those talks fail.(10) Considering that such large infrastructure projects often involve specialized technology, sophisticated engineering designs, and multi-year timelines, lawmakers reasoned that an expedited resolution process would benefit both the private investors and the government. Moreover, arbitration's relative informality (compared to courtroom litigation) offers more flexibility in accommodating expert testimony, technical evidence, and industry-specific nuances.

4.3 Persistent Delays Despite Arbitration

Despite these legislative provisions, arbitration has not always fulfilled its promise of swift finality in real-world practice. Certain public construction disagreements have spiraled into long-running judicial proceedings due to losing parties seeking to annul unfavorable awards. In extreme cases, these attempts at setting aside the awards drag on for years, stalling project progress and imposing extra costs on both the public and private sectors.

One root cause is Taiwan's multi-level judicial structure, featuring District Courts, High Courts, and the Supreme Court. Although arbitration awards can be set aside only under limited grounds, some litigants resort to every possible procedural step, exploiting ambiguities and raising new arguments at each appellate level. This turns what was meant to be a relatively concise legal process into a marathon, thereby undermining arbitration's core value proposition as a time-saving dispute-resolution method.

Against this backdrop, this article investigates whether contracting parties can either **agree to exclude** the right to challenge an arbitral award—or whether Taiwan could enact legislative changes to **eliminate** or **curtail** such challenges altogether. It highlights a real-life dispute that took over a decade to resolve—concluding only in November 2022—to illustrate how these inefficiencies not only hamper private firms but also erode the public's trust in governmental processes. Ultimately, the discussion culminates in concrete proposals to **refine Taiwan's Arbitration Law** and **adapt procurement practices**, aiming to preserve essential safeguards without sacrificing timeliness in dispute resolution.

4.4 Dispute over the Tainan Science Park High-Speed Rail Vibration Control Project

In January 1996, Taiwan's National Science and Technology Council (NSTC) began developing the Southern Taiwan Science Park (STSP) in Tainan City, aspiring to establish it as a research and production hub for integrated-circuit and biotech

industries.(12) Yet, the planners did not fully anticipate the vibrations from the Taiwan High Speed Rail (THSR) passing through roughly five kilometers of the park.(13) Alarmed by the potential for vibration-induced defects in high-tech manufacturing, the NSTC engaged specialized consultants in 2003 to create a design that would minimize or absorb much of the THSR's vibration impact.(14)(15)

The STSP Bureau eventually put the ambitious construction project out to tender, resulting in a 2004 contract with Sheus Technologies Corporation (Sheus), valued at TWD 8,059,868,000 (over USD 2.6 billion).(16) As anticipated, the complexity of installing vibration-damping systems at such a scale generated several points of contention—leading to two separate arbitral awards in Sheus's favor. In turn, the STSP Bureau initiated court actions to challenge these awards, causing extensive delays. The first arbitral decision, issued in March 2009, managed to withstand judicial scrutiny only in May 2022 following multiple rounds of appeals,(17) while the second decision, dating from February 2011, is still under review.(18) Both cases stand as cautionary examples of how extended judicial back-and-forth can erode the efficiency benefits that arbitration is meant to secure.

4.5 Proposed Amendments from the Chinese Arbitration Association, Taipei

Reacting to such high-profile, time-consuming cases, the Chinese Arbitration Association, Taipei (CAA) has drafted potential amendments to streamline Taiwan's Arbitration Law. One suggestion aims to let parties bypass the District Court stage entirely and file set-aside petitions directly with the High Court, reducing one layer of possible appeals.(19) However, the Tainan Science Park scenario highlights that even if the District Court is skipped, repeated remands between the High Court and the Supreme Court can still lead to significant delays, undermining any gains from eliminating an appellate tier.

In the **STSP v. Sheus** cases, for example, the District Court took about 18 months to address the first award's annulment request,(20) whereas the High Court and Supreme Court needed another 12.5 years to finalize the outcome.(21) An eerily similar pattern followed the second award: although the District Court ruled within eight months,(22) the litigation has persisted for more than eleven years and remains unresolved.(23) This indicates that more fundamental reforms—beyond merely skipping judicial levels—may be necessary to ensure arbitration leads to genuinely expedited dispute resolution.

4.6 Can Parties Contractually Waive or Exclude Set-Aside Proceedings?

Within this environment, a growing number of parties seek out "exclusion agreements," contractual clauses stating that no party may pursue an annulment of the arbitral award in court. If valid, these clauses render arbitration truly final, circumventing the potential for lengthy judicial review. Whether such provisions are enforceable under Taiwan's legal regime is a matter of ongoing debate,(24) and comparative law shows a variety of approaches worldwide.

5. Rationale for Supporting Exclusion Agreements

Party Autonomy

Advocates contend that **party autonomy** is a bedrock principle of arbitration. Because parties already decide on aspects like the seat of arbitration, the scope of issues to be arbitrated, the arbitrators themselves, and the procedural rules, it is logical they should also have latitude to determine whether (and to what extent) courts can revisit the arbitral outcome.(25)(26)(27)

Economic Advantages

Moreover, removing the possibility of protracted annulment proceedings can benefit both the public and private sectors. Courts are relieved of extra caseload, and project timelines face fewer interruptions. This can also enhance Taiwan's competitiveness as an arbitration-friendly seat, potentially attracting more international disputes and related legal services.(28)(29)(30)(31) A widely cited Scottish policy memorandum, for instance, underscored that London's arbitration market alone generated approximately EUR 3 billion annually in 2009,(32) suggesting a link between arbitration accessibility and economic benefits.

Global Practices

Different jurisdictions offer instructive contrasts. France and Russia broadly accept exclusion agreements with explicit party consent,(33) whereas other systems, like Sweden or Switzerland, typically impose specific conditions—often ensuring that local public interests remain protected if enforcement is ultimately sought within their territories.

One significant lesson Taiwan can draw from Europe is the adoption of streamlined judicial review processes, as evidenced by the Swiss arbitration model. Switzerland maintains a limited scope for setting aside arbitral awards, ensuring that only fundamental procedural or substantive errors can lead to annulment. This approach reduces the likelihood of prolonged litigation, thereby preserving arbitration's intended efficiency. By implementing similar restrictions, Taiwan can enhance the finality of arbitral decisions and prevent the cyclical delays observed in cases like the Tainan Science Park dispute.

Additionally, the European Union's emphasis on harmonizing arbitration laws across member states offers a valuable framework for Taiwan. The EU's adoption of the New York Convention standards and the development of uniform rules for the recognition and enforcement of arbitral awards facilitate cross-border dispute resolution and bolster arbitration's reliability. Taiwan could benefit from incorporating these standardized practices into its own Arbitration Law, thereby increasing its attractiveness as an arbitration-friendly jurisdiction and ensuring greater consistency and predictability in dispute outcomes.

5.1 Objections to Exclusion Agreements

Protecting Fairness and Public Policy

On the flip side, detractors stress the need for a judicial "safety valve" to uphold fairness principles and ensure that arbitrators do not overstep their authority.(34)(35)(36) The public policy dimension cannot be overlooked: disputes involving public resources, social welfare, or high-risk infrastructure may demand an available route for courts to correct serious mistakes or address issues that implicate wider societal concerns.(37)(38)(39) Accordingly, even parties who try to waive set-aside proceedings could face a refusal of enforcement if an award is incompatible with fundamental legal standards—akin to the checks in Article 34(2)(b) of the UNCITRAL Model Law.(40)(41)(42) Belgium, Switzerland, and Sweden exemplify how states often limit the scope of exclusion agreements to protect local residents or when enforcement is foreseeable within the forum.(43)

Legal scholarship points out an apparent inconsistency: parties can **unilaterally** waive set-aside grounds by, for example, failing to object to an arbitrator's jurisdiction before submitting a defense,(44)(45) so it seems contradictory to deny them the chance to **mutually** waive those same grounds in a contract. Additionally, an exclusion agreement does not prevent other jurisdictions' courts from refusing to enforce an award if it violates essential principles of due process or public policy. Thus, in theory, the key safeguards remain intact.(46)(47)

Given Taiwan's challenges—exemplified by decade-long litigations over major infrastructure projects—exclusion agreements might help realize the streamlined outcomes arbitration was initially supposed to deliver. The following sections delve into how these agreements could be incorporated into Taiwanese law, how they intersect with broader questions of fairness, and the legislative or contractual modifications needed to make them fully effective.

5.2 Potential Elimination of Set-Aside by Statute?

A more ambitious proposal, which has surfaced in various jurisdictions at different times, is to **abolish set-aside proceedings altogether** via statutory reform. Proponents draw upon similar arguments used to justify exclusion agreements: namely, preserving the **freedom of contract** and minimizing judicial interference in arbitration.(48) They reason that if parties willingly submit their disputes to arbitration, the results should be final unless the award breaches core public policy.

Despite these arguments, few legal systems have fully embraced the notion of **isolating arbitration** from any form of review by national courts. Arbitration requires at least some degree of judicial support, particularly for enforcing awards, compelling witnesses, and managing other procedural issues.(49)(50)(51) Without an established avenue for judicial involvement, the benefits of arbitration—such as reliable enforcement—could be

seriously undermined. Even so, the potential advantages of abolishing set-aside rights must be weighed against the disadvantages, especially for the losing party and for maintaining the integrity of the arbitral process.

5.3 Significance of Set-Aside for the Losing Party

Set-aside proceedings occur exclusively in the courts of the seat of arbitration.(52)(53) Thus, if a losing party can show the award violates fundamental procedural or substantive principles, the seat court has the authority to **annul** it, effectively erasing its legal validity worldwide. Once an award is set aside, the parties can initiate **fresh proceedings**—either before a new arbitral tribunal or in a conventional court—thereby giving the losing party a genuine second chance to present its case.(54)

However, if **only** enforcement is contested, the losing party can challenge the award in individual jurisdictions one by one, wherever the winning party attempts to collect or enforce the judgment. Absent a set-aside mechanism, the award itself remains legally intact if it is recognized in any forum. Consequently, the losing party could face multiple enforcement disputes in different places, each of which might demand significant legal costs and time.(55)(56)(57) In other words, eliminating the option to set aside the award at the seat might put the losing party at a profound disadvantage, forcing it to defend against piecemeal enforcement actions across multiple jurisdictions.

Abolishing set-aside also raises questions about **fundamental fairness**—not only from a domestic standpoint but under international human rights instruments. Several experts have argued that eradicating set-aside could conflict with widely accepted **due process** norms, including those articulated in the European Convention on Human Rights (ECHR).(58)(59)(60)(61)(62)(63)(64)(65) The ECHR requires that individuals have access to a fair trial; if a state completely shutters the path for judicial review of potentially flawed awards, it risks contravening that principle.

5.4 Belgium's Unsuccessful Experiment

One high-profile instance of statutory reform in this vein took place in **Belgium**. In 1985, Belgian legislators revised Article 1717 of the Judicial Code, creating a rule under which **set-aside petitions** could only be filed if at least one of the parties was Belgian or maintained a Belgian address or branch office.(66)(67)(68)(69) The objective was straightforward: remove the possibility for obstructive annulment requests in purely international disputes, thereby streamlining arbitration and supposedly making Belgium an attractive hub for arbitrations.

Initially, supporters believed these changes would strengthen Belgium's position as a competitive seat of international arbitration, enticing global businesses to choose Belgium for their arbitral proceedings. The reformers assumed that limiting annulment proceedings would reassure parties that awards could not be easily derailed by vexatious litigation. However, the reality turned out quite differently. Many arbitration users

deemed it **too risky** to sit in Belgium when there was **no** reliable local remedy for correcting serious defects in the arbitration process. Businesses and legal counsel became reluctant to choose Belgium, fearing they might be stuck with an irredeemably flawed award.(70)

Scholars and practitioners soon observed an **inverse effect**: rather than boosting the country's status as a premier arbitration seat, the 1985 amendment actually drove parties to look elsewhere. Parties began to worry that if an award was severely compromised—whether by an arbitrator's bias, procedural errors, or a misapplication of the parties' chosen law—they would have limited recourse under Belgian law. As a consequence, the reform backfired: Belgium's share of international arbitration cases declined.(71)

Acknowledging this unintended outcome, Belgium enacted further changes in 1998, reverting to a **more flexible** approach. Under the revised law, parties could **opt to waive** annulment as a matter of contract, but such a waiver would not be imposed automatically.(72) In other words, Belgium moved from mandatory elimination of set-aside proceedings to a system that allowed parties to voluntarily exclude them—mirroring the practice in various other jurisdictions.

5.5 Exclusion Agreements Amid Power Imbalances

An additional concern in discussions around excluding or waiving set-aside proceedings is the risk that one party might be effectively **coerced** into acceptance due to unequal bargaining positions. A classic example is the Swiss case of **Cañas v. ATP Tour**, in which professional tennis player Guillermo Cañas had no real choice but to agree to the ATP's arbitration terms if he wished to participate in professional tennis events.(73)(74)(75)(76)(77)(78)(79) The Swiss Federal Tribunal found that this lack of real negotiating freedom invalidated the exclusion agreement, stressing the necessity of ensuring that any waiver of judicial recourse must be genuinely voluntary.

Taiwanese contract law addresses coercion and unfairness through several statutes. **Article 92** of the Civil Code allows a party to revoke a contract formed under fraud or duress, offering immediate relief when one party's freedom to contract is fundamentally violated.(80) For less extreme but still significant power asymmetries, Taiwan's courts have the authority to assess whether contract terms are **"manifestly unfair"** or **"obviously unfair."** If the imbalance in bargaining strength means a provision unduly burdens the weaker party, the courts may invalidate that specific provision rather than voiding the entire agreement. This framework surfaces in various legal contexts, including **Article 28(2) of the Code of Civil Procedure**, **Article 12(1) of the Consumer Protection Act**, and **Article 247-1 of the Civil Code**.(81)

Crucially, Taiwan's approach aims to **strike a balance** between preserving party autonomy and preventing stronger parties from imposing draconian clauses on weaker counterparts. Rather than presuming any power imbalance invalidates the entire contract,

the judicial focus is typically on the clause's actual substance and its real-world consequences. This measured approach allows courts to shield vulnerable parties without unduly hampering freedom of contract in scenarios where negotiations are genuinely arm's-length and equitable.

6. Recommendations for Implementing Exclusion Agreements in Taiwan's Public Construction

Given the debate around eliminating or narrowing set-aside rights, this section outlines how Taiwan might **integrate exclusion agreements** into both its statutory framework and its contractual practices for public construction. The proposals encompass two principal strategies: amending the **Arbitration Law** directly and updating **model procurement contracts** to reflect new norms.

6.1 Amending the Arbitration Law

a. Explicitly Validating Exclusion Agreements

A fundamental initial measure is for the legislature to **formalize** the permissibility of exclusion agreements in the Arbitration Law. Article 40(1) presently sets out nine grounds for seeking annulment, beginning, "A party may apply to a court to set aside the arbitral award in any of the following circumstances … ." By adding a subsection clarifying that "**parties may, by written agreement, exclude or limit their right to bring set-aside proceedings**," lawmakers can remove any ambiguity. This adjustment would preempt courts from rejecting such agreements simply because they are not explicitly supported by the current statutory text.

b. Harmonizing Judicial Review for Setting Aside and Enforcement

Taiwan's Arbitration Law distinguishes the grounds for **refusing enforcement** (Article 38) from those for **setting aside** (Article 40).(82) If the law embraces exclusion agreements, it may have to **expand Article 38** so that serious flaws that currently trigger set-aside can also be invoked at the enforcement stage—even when parties have waived or excluded set-aside itself. This prevents the creation of loopholes where an egregiously flawed award could slip through enforcement simply because the parties waived their right to seek annulment. Ensuring that certain core defects (e.g., arbitrator bias or fundamental due process breaches) remain reviewable at the enforcement stage preserves a baseline of fairness.

7. Adjusting Model Contracts and Tender Processes

7.1 Adding an Exclusion Clause to Standard Contracts

Taiwanese government agencies typically use standardized templates for public procurement and concession agreements.(83) Although these contracts normally include

arbitration provisions, they rarely mention set-aside exclusions. Incorporating an **optional** clause that explicitly states, for instance:

"*If the parties choose arbitration, any resulting arbitral award shall be final and binding, and neither party may initiate court proceedings to set aside or appeal the award.*"

can foster broader acceptance of such exclusions. Additionally, the model could introduce a "partial exclusion" variant, allowing parties to preserve essential grounds for judicial review (like fraud or public policy concerns) but forgoing others.

7.2 Encouraging Government Entities to Adopt Exclusion Agreements

Government bodies may remain cautious about deviating from established methods, especially if they worry about legal challenges or negative public opinion. Policymakers can look to well-known incentives—similar to **price preferences** for green products or awards for environmentally friendly procurement strategies(84)(85)(86)—to motivate agencies to opt in. For example, an internal reward system or performance metrics for quick dispute resolution could encourage adoption of exclusion clauses, illustrating that streamlined arbitration practices yield positive outcomes, such as reduced legal costs and faster project delivery.

7.3 Granting Private Parties the Option to Opt In

Once a contract is awarded, private contractors often have little leverage to alter terms. If an exclusion clause is presented on a take-it-or-leave-it basis, it could be disputed as **"manifestly unfair"**(87) given the power imbalance between a government entity and a smaller contractor. Thus, it is crucial that the final contract includes an **opt-in mechanism** whereby private parties can willingly agree to the exclusion arrangement, or decline if they prefer conventional judicial review. This structure mitigates potential claims of coercion and encourages genuine consent to a truncated judicial-review process.

8. Conclusion

Arbitration's effectiveness in Taiwan's public construction sector has been undercut by the possibility of drawn-out court proceedings whenever an award is challenged. Allowing parties to **exclude or curtail** set-aside rights—so long as it is done with transparency and voluntary consent—could reinforce arbitration's hallmark benefits: speed, cost-effectiveness, and finality.

To achieve this objective, the author recommends a **targeted legislative amendment** to explicitly acknowledge exclusion agreements in Taiwan's Arbitration Law, coupled with modifications to **standard public procurement contracts**. Further, **policy incentives** can encourage government agencies to adopt these clauses while an **opt-in** approach safeguards against one-sided arrangements. This multi-pronged approach strikes a balance between preserving vital procedural guarantees and expediting necessary public

projects, thereby serving both private entrepreneurs and the government's overarching responsibility to protect the public interest. By undertaking these reforms, Taiwan stands poised to elevate the efficiency of its arbitration landscape, particularly in the high-stakes domain of public construction.

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15. Procurement record from the Government e-Procurement System.
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18. Supreme Court Civil Judgment 108 Tai-Shang-Tzu No. 106.
19. See Art. 57 of the CAA's draft amendment.
20. Taiwan Tainan District Court Judgment 98 Chung-Su-Tzu No. 1.
21. E.g., Taiwan High Court Tainan Branch Court Judgment 100 Chung-Shang-Tzu No. 18; Supreme Court Civil Judgment 102 Tai-Shang-Tzu No.683; and subsequent rulings.
22. Taiwan Tainan District Court Judgment 100 Chung-Su-Tzu No. 1.
23. E.g., Supreme Court Civil Judgment 108 Tai-Shang-Tzu No.106; Taiwan High Court Tainan Branch Court Judgment 109 Chung-Shang-Geng 3 No.14; etc.
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