International Construction Law
Academic Monograph

Author: Dmitry Semenovich Belkin (ORCID: https://orcid.org/0009-0003-1532-1958)

Associate Professor, Department of International Law, Slavic-Greek-Latin Academy, Moscow, Russian Federation. Email: dmitryb81@gmail.com

DOI: 10.64457/icl.en.ch13

Dual Nationality Risk Management in Cross-Border Construction Contracts: Enforcement, Taxation and Dispute Resolution Strategies

Recommended citation: Dmitry Semenovich Belkin. Dual Nationality Risk Management in Cross-Border Construction Contracts: Enforcement, Taxation and Dispute Resolution Strategies. In: International Construction Law. Moscow: Slavic Greek Latin Academy, 2025. DOI: 10.64457/icl.en.ch13.

The chapter scrutinises how multiple citizenship reshapes the performance of cross-border construction contracts, relying exclusively on comparative legislation, twelve landmark arbitral awards (Champion Trading, Siag & Vecchi, Ballantine, etc.) and the 2024 global panel on dyadic dual-citizenship acceptance. Four risk clusters emerge: jurisdictional uncertainty, tax exposure, labour-mobility constraints and due-diligence disclosure. Case evidence confirms that access to the International Centre for Settlement of Investment Disputes or UNCITRAL tribunals turns on the claimant's

passport at critical moments and the application of "dominant" or "genuine" nationality tests. Contractual tools—citizenship clauses, mandatory audits of beneficiaries' passports and harmonised treaty wording—are advanced to curb forum shopping and strengthen legal certainty for large-scale infrastructure ventures.

Dual citizenship – holding the nationality of two states – has become increasingly common in the globalized economy, especially among individuals and companies involved in major international construction projects. Such projects often use standardized forms (e.g. FIDIC contracts) with neutral dispute-resolution mechanisms. A party subject to two jurisdictions simultaneously may find that its contractual obligations are interpreted and enforced under both legal systems. It is therefore necessary to consider both public international principles (defining nationality and diplomatic protection) and private international principles (jurisdiction and choice of law). International instruments like the UNCITRAL Model Law on Arbitration, the UNIDROIT Principles of International Commercial Contracts, and Hague Conference conventions, as well as arbitral jurisprudence, offer guidance on nationality issues in cross-border contracts. For example, the UNCITRAL Model Law is designed to cover every stage of the arbitral process and embodies a worldwide consensus on key aspects of arbitration practice.

Under international law, nationality is the legal bond between a person and a state. A dual national has legal nationality in two jurisdictions at once. Traditionally, diplomatic protection is available only if the claimant's nationality differs from that of the respondent state – a rule often implemented by a "dominant and effective nationality" test. For instance, in the case Pey Casado v. Chile, a dual Spanish-Chilean national was allowed to claim against Chile because his Spanish nationality was deemed dominant. In contrast, the ICSID Convention applies a strict rule: Article 25(2)(a) bars a natural person who is a national of both the host state and another contracting state from ICSID arbitration against the host, unless the host consents to treat that person as if only the other nationality applies. In effect, a person with dual nationality that includes the respondent state loses the right to ICSID arbitration against that state.

Article 25(2)(b) of the ICSID Convention provides an exception for investors who have a "substantial business activity" in the other state of nationality. This allows some dual nationals to claim arbitration access if their primary operations are linked to their non-host nationality. Nevertheless, ICSID requires strict nationality criteria at two points in time (consent and registration). By contrast, the UNCITRAL Arbitration Rules contain no nationality restrictions on the parties. Article 1(1) of the UNCITRAL Rules applies to any arbitration agreement without regard to nationality, and Article 17(1) empowers the tribunal to rule on its own jurisdiction (including objections based on nationality). As a result, UNCITRAL tribunals have discretion to evaluate dual nationality case-by-case, often considering which nationality is dominant.

Several cases illustrate these contrasts. In Pey Casado v. Chile (UNCITRAL), the tribunal held that the claimant's Spanish nationality was dominant. Conversely, in Saba Fakes v. Turkey (ICSID), a claimant with Turkish–Jordanian citizenship was denied jurisdiction because he could not demonstrate a dominant non-Turkish nationality. These examples show that in investment arbitrations, outcomes can hinge on which rules apply. Tribunals often invoke the principle of effective nationality in UNCITRAL cases, whereas ICSID strictly follows its treaty's criteria.

In international commercial arbitration (including construction disputes), neutrality is key. Under the UNCITRAL Model Law, for instance, Article 11 states that "No person shall be precluded by reason of his nationality from acting as an arbitrator", and Article 18 mandates equal treatment of the parties. These norms prevent nationality-based discrimination in the composition and procedure of tribunals. Domestic courts, by contrast, determine jurisdiction based on factors like domicile or presence. For example, Russian law treats a dual national solely as Russian when considering jurisdiction, effectively ignoring the second nationality within Russia.

In private international law of contracts, dual nationality may affect choice-of-law or jurisdiction rules, though modern contracts typically specify governing law and forum to avoid uncertainty. Recognition and enforcement of judgments is also governed by treaties. Notably, the 2019 Hague Judgments

Convention establishes that the nationality or character of the parties does not affect its application. Thus a civil or commercial judgment given in one contracting state must be recognized in another regardless of whether a party has dual citizenship.

Dual citizenship therefore poses special risks in international construction contracts. A party may be viewed as domestic in one country and foreign in another, exposing it to disparate regulations (e.g. on licensing, bonding, or currency). It may face tax obligations in both states. Changes in political relations (such as sanctions) may hinder cross-border performance. To mitigate these risks, contracts should include clear choice-of-law and dispute-resolution clauses (often favoring international arbitration). International principles (UNCITRAL, UNIDROIT, Hague instruments) emphasize party autonomy and fairness so that dual nationals can enforce contracts without bias. It is also important to note that BRICS countries vary in approach: China and India do not allow dual nationality; Russia regards its dual nationals solely as Russian; whereas Brazil and South Africa permit full dual nationality. These differences should be taken into account in drafting and performing international construction contracts so that dual citizenship does not become an insurmountable obstacle to fulfilling contractual obligations.

Note on the publication of the main research results

Academic specialty: 5.1.5. International legal studies.

Population and nationality in international law.

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