

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

BG GROUP PLC v. REPUBLIC OF ARGENTINA**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

No. 12–138. Argued December 2, 2013—Decided March 5, 2014

An investment treaty (Treaty) between the United Kingdom and Argentina authorizes a party to submit a dispute “to the decision of the competent tribunal of the Contracting Party in whose territory the investment was made,” *i.e.*, a local court, Art. 8(1); and permits arbitration, as relevant here, “where, after a period of eighteen months has elapsed from the moment when the dispute was submitted to [that] tribunal . . . , the said tribunal has not given its final decision,” Art. 8(2)(a)(i).

Petitioner BG Group plc, a British firm, belonged to a consortium with a majority interest in MetroGAS, an Argentine entity awarded an exclusive license to distribute natural gas in Buenos Aires. At the time of BG Group’s investment, Argentine law provided that gas “tariffs” would be calculated in U. S. dollars and would be set at levels sufficient to assure gas distribution firms a reasonable return. But Argentina later amended the law, changing (among other things) the calculation basis to pesos. MetroGAS’ profits soon became losses. Invoking Article 8, BG Group sought arbitration, which the parties sited in Washington, D. C. BG Group claimed that Argentina’s new laws and practices violated the Treaty, which forbids the “expropriation” of investments and requires each nation to give “fair and equitable treatment” to investors from the other. Argentina denied those claims, but also argued that the arbitrators lacked “jurisdiction” to hear the dispute because, as relevant here, BG Group had not complied with Article 8’s local litigation requirement. The arbitration panel concluded that it had jurisdiction, finding, among other things, that Argentina’s conduct (such as also enacting new laws that hindered recourse to its judiciary by firms in BG Group’s situation) had excused BG Group’s failure to comply with Article 8’s requirement.

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On the merits, the panel found that Argentina had not expropriated BG Group’s investment but had denied BG Group “fair and equitable treatment.” It awarded damages to BG Group. Both sides sought review in federal district court: BG Group to confirm the award under the New York Convention and the Federal Arbitration Act (FAA), and Argentina to vacate the award, in part on the ground that the arbitrators lacked jurisdiction under the FAA. The District Court confirmed the award, but the Court of Appeals for the District of Columbia Circuit vacated. It found that the interpretation and application of Article 8’s requirement were matters for courts to decide *de novo*, *i.e.*, without deference to the arbitrators’ views; that the circumstances did not excuse BG Group’s failure to comply with the requirement; and that BG Group had to commence a lawsuit in Argentina’s courts and wait 18 months before seeking arbitration. Thus, the court held, the arbitrators lacked authority to decide the dispute.

Held:

1. A court of the United States, in reviewing an arbitration award made under the Treaty, should interpret and apply “threshold” provisions concerning arbitration using the framework developed for interpreting similar provisions in ordinary contracts. Under that framework, the local litigation requirement is a matter for arbitrators primarily to interpret and apply. Courts should review their interpretation with deference. Pp. 6–17.

(a) Were the Treaty an ordinary contract, it would call for arbitrators primarily to interpret and to apply the local litigation provision. In an ordinary contract, the parties determine whether a particular matter is primarily for arbitrators or for courts to decide. See, *e.g.*, *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582. If the contract is silent on the matter of who is to decide a “threshold” question about arbitration, courts determine the parties’ intent using presumptions. That is, courts presume that the parties intended courts to decide disputes about “arbitrability,” *e.g.*, *Howsam v. Dean Witter Reynolds, Inc.*, 537 U. S. 79, 84, and arbitrators to decide disputes about the meaning and application of procedural preconditions for the use of arbitration, see *id.*, at 86, including, *e.g.*, claims of “waiver, delay, or a like defense to arbitrability,” *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U. S. 1, 25, and the satisfaction of, *e.g.*, “‘time limits, notice, laches, [or] estoppel,’” *Howsam*, 537 U. S., at 85. The provision at issue is of the procedural variety. As its text and structure make clear, it determines *when* the contractual duty to arbitrate arises, not *whether* there is a contractual duty to arbitrate at all. Neither its language nor other language in Article 8 gives substantive weight to the local court’s determinations on the matters at issue between the parties. The litigation provision

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is thus a claims-processing rule. It is analogous to other procedural provisions found to be for arbitrators primarily to interpret and apply, see, *e.g.*, *ibid.*, and there is nothing in Article 8 or the Treaty to overcome the ordinary assumption. Pp. 7–9.

(b) The fact that the document at issue is a treaty does not make a critical difference to this analysis. A treaty is a contract between nations, and its interpretation normally is a matter of determining the parties' intent. *Air France v. Saks*, 470 U. S. 392, 399. Where, as here, a federal court is asked to interpret that intent pursuant to a motion to vacate or confirm an award made under the Federal Arbitration Act, it should normally apply the presumptions supplied by American law. The presence of a condition of "consent" to arbitration in a treaty likely does not warrant abandoning, or increasing the complexity of, the ordinary intent-determining framework. See, *e.g.*, *Howsam*, *supra*, at 83–85. But because this Treaty does *not* state that the local litigation requirement is a condition of consent, the Court need not resolve what the effect of any such language would be. The Court need not go beyond holding that in the absence of language in a treaty demonstrating that the parties intended a different delegation of authority, the ordinary interpretive framework applies. Pp. 10–13.

(c) The Treaty contains no evidence showing that the parties had an intent contrary to the ordinary presumptions about who should decide threshold arbitration issues. The text and structure of Article 8's litigation requirement make clear that it is a procedural condition precedent to arbitration. Because the ordinary presumption applies and is not overcome, the interpretation and application of the provision are primarily for the arbitrators, and courts must review their decision with considerable deference. Pp. 13–17.

2. While Argentina is entitled to court review (under a properly deferential standard) of the arbitrators' decision to excuse BG Group's noncompliance with the litigation requirement, that review shows that the arbitrators' determinations were lawful. Their conclusion that the litigation provision cannot be construed as an absolute impediment to arbitration, in all cases, lies well within their interpretative authority. Their factual findings that Argentina passed laws hindering recourse to the local judiciary by firms similar to BG Group are undisputed by Argentina and are accepted as valid. And their conclusion that Argentina's actions made it "absurd and unreasonable" to read Article 8 to require an investor in BG Group's position to bring its grievance in a domestic court, before arbitrating, is not barred by the Treaty. Pp. 17–19.

665 F. 3d 1363, reversed.

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BREYER, J., delivered the opinion of the Court, in which SCALIA, THOMAS, GINSBURG, ALITO, and KAGAN, JJ., joined, and in which SOTOMAYOR, J., joined except for Part IV–A–1. SOTOMAYOR, J., filed an opinion concurring in part. ROBERTS, C. J., filed a dissenting opinion, in which KENNEDY, J., joined.

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SUPREME COURT OF THE UNITED STATES

No. 12–138

BG GROUP PLC, PETITIONER *v.* REPUBLIC OF
ARGENTINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[March 5, 2014]

JUSTICE BREYER delivered the opinion of the Court.

Article 8 of an investment treaty between the United Kingdom and Argentina contains a dispute-resolution provision, applicable to disputes between one of those nations and an investor from the other. See Agreement for the Promotion and Protection of Investments, Art. 8(2), Dec. 11, 1990, 1765 U. N. T. S. 38 (hereinafter Treaty). The provision authorizes either party to submit a dispute “to the decision of the competent tribunal of the Contracting Party in whose territory the investment was made,” *i.e.*, a local court. Art. 8(1). And it provides for arbitration “(i) where, after a period of eighteen months has elapsed from the moment when the dispute was submitted to the competent tribunal . . . , the said tribunal has not given its final decision; [or] “(ii) where the final decision of the aforementioned tribunal has been made but the Parties are still in dispute.” Art. 8(2)(a).

The Treaty also entitles the parties to agree to proceed directly to arbitration. Art. 8(2)(b).

This case concerns the Treaty’s arbitration clause, and

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specifically the local court litigation requirement set forth in Article 8(2)(a). The question before us is whether a court of the United States, in reviewing an arbitration award made under the Treaty, should interpret and apply the local litigation requirement *de novo*, or with the deference that courts ordinarily owe arbitration decisions. That is to say, who—court or arbitrator—bears primary responsibility for interpreting and applying the local litigation requirement to an underlying controversy? In our view, the matter is for the arbitrators, and courts must review their determinations with deference.

I

A

In the early 1990's, the petitioner, BG Group plc, a British firm, belonged to a consortium that bought a majority interest in an Argentine entity called MetroGAS. MetroGAS was a gas distribution company created by Argentine law in 1992, as a result of the government's privatization of its state-owned gas utility. Argentina distributed the utility's assets to new, private companies, one of which was MetroGAS. It awarded MetroGAS a 35-year exclusive license to distribute natural gas in Buenos Aires, and it submitted a controlling interest in the company to international public tender. BG Group's consortium was the successful bidder.

At about the same time, Argentina enacted statutes providing that its regulators would calculate gas "tariffs" in U. S. dollars, and that those tariffs would be set at levels sufficient to assure gas distribution firms, such as MetroGAS, a reasonable return.

In 2001 and 2002, Argentina, faced with an economic crisis, enacted new laws. Those laws changed the basis for calculating gas tariffs from dollars to pesos, at a rate of one peso per dollar. The exchange rate at the time was roughly three pesos to the dollar. The result was that

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MetroGAS' profits were quickly transformed into losses. BG Group believed that these changes (and several others) violated the Treaty; Argentina believed the contrary.

B

In 2003, BG Group, invoking Article 8 of the Treaty, sought arbitration. The parties appointed arbitrators; they agreed to site the arbitration in Washington, D. C.; and between 2004 and 2006, the arbitrators decided motions, received evidence, and conducted hearings. BG Group essentially claimed that Argentina's new laws and regulatory practices violated provisions in the Treaty forbidding the "expropriation" of investments and requiring that each nation give "fair and equitable treatment" to investors from the other. Argentina denied these claims, while also arguing that the arbitration tribunal lacked "jurisdiction" to hear the dispute. App. to Pet. for Cert. 143a–144a, 214a–218a, 224a–232a. According to Argentina, the arbitrators lacked jurisdiction because: (1) BG Group was not a Treaty-protected "investor"; (2) BG Group's interest in MetroGAS was not a Treaty-protected "investment"; and (3) BG Group initiated arbitration without first litigating its claims in Argentina's courts, despite Article 8's requirement. *Id.*, at 143a–171a. In Argentina's view, "failure by BG to bring its grievance to Argentine courts for 18 months renders its claims in this arbitration inadmissible." *Id.*, at 162a.

In late December 2007, the arbitration panel reached a final decision. It began by determining that it had "jurisdiction" to consider the merits of the dispute. In support of that determination, the tribunal concluded that BG Group was an "investor," that its interest in MetroGAS amounted to a Treaty-protected "investment," and that Argentina's own conduct had waived, or excused, BG Group's failure to comply with Article 8's local litigation requirement. *Id.*, at 99a, 145a, 161a, 171a. The panel

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pointed out that in 2002, the President of Argentina had issued a decree staying for 180 days the execution of its courts' final judgments (and injunctions) in suits claiming harm as a result of the new economic measures. *Id.*, at 166a–167a. In addition, Argentina had established a “renegotiation process” for public service contracts, such as its contract with MetroGAS, to alleviate the negative impact of the new economic measures. *Id.*, at 129a, 131a. But Argentina had simultaneously barred from participation in that “process” firms that were litigating against Argentina in court or in arbitration. *Id.*, at 168a–171a. These measures, while not making litigation in Argentina’s courts literally impossible, nonetheless “hindered” recourse “to the domestic judiciary” to the point where the Treaty implicitly excused compliance with the local litigation requirement. *Id.*, at 165. Requiring a private party in such circumstances to seek relief in Argentina’s courts for 18 months, the panel concluded, would lead to “absurd and unreasonable result[s].” *Id.*, at 166a.

On the merits, the arbitration panel agreed with Argentina that it had not “expropriate[d]” BG Group’s investment, but also found that Argentina had denied BG Group “fair and equitable treatment.” *Id.*, at 222a–223a, 240a–242a. It awarded BG Group \$185 million in damages. *Id.*, at 297a.

C

In March 2008, both sides filed petitions for review in the District Court for the District of Columbia. BG Group sought to confirm the award under the New York Convention and the Federal Arbitration Act. See Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. IV, June 10, 1958, 21 U. S. T. 2519, T. I. A. S. No. 6997 (New York Convention) (providing that a party may apply “for recognition and enforcement” of an arbitral award subject to the Convention); 9 U. S. C. §§204, 207

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(providing that a party may move “for an order confirming [an arbitral] award” in a federal court of the “place designated in the agreement as the place of arbitration if such place is within the United States”). Argentina sought to vacate the award in part on the ground that the arbitrators lacked jurisdiction. See §10(a)(4) (a federal court may vacate an arbitral award “where the arbitrators exceeded their powers”).

The District Court denied Argentina’s claims and confirmed the award. 764 F. Supp. 2d 21 (DC 2011); 715 F. Supp. 2d 108 (DC 2010). But the Court of Appeals for the District of Columbia Circuit reversed. 665 F. 3d 1363 (2012). In the appeals court’s view, the interpretation and application of Article 8’s local litigation requirement was a matter for courts to decide *de novo*, *i.e.*, without deference to the views of the arbitrators. The Court of Appeals then went on to hold that the circumstances did not excuse BG Group’s failure to comply with the requirement. Rather, BG Group must “commence a lawsuit in Argentina’s courts and wait eighteen months before filing for arbitration.” *Id.*, at 1373. Because BG Group had not done so, the arbitrators lacked authority to decide the dispute. And the appeals court ordered the award vacated. *Ibid.*

BG Group filed a petition for certiorari. Given the importance of the matter for international commercial arbitration, we granted the petition. See, *e.g.*, K. Van-
develde, *Bilateral Investment Treaties: History, Policy & Interpretation* 430–432 (2010) (explaining that dispute-resolution mechanisms allowing for arbitration are a “critical element” of modern day bilateral investment treaties); C. Dugan, D. Wallace, N. Rubins, & B. Sabahi, *Investor-State Arbitration* 51–52, 117–120 (2008) (referring to the large number of investment treaties that provide for arbitration, and explaining that some also impose prearbitration requirements such as waiting periods, amicable negotiations, or exhaustion of local remedies).

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II

As we have said, the question before us is who—court or arbitrator—bears primary responsibility for interpreting and applying Article 8’s local court litigation provision. Put in terms of standards of judicial review, should a United States court review the arbitrators’ interpretation and application of the provision *de novo*, or with the deference that courts ordinarily show arbitral decisions on matters the parties have committed to arbitration? Compare, *e.g.*, *First Options of Chicago, Inc. v. Kaplan*, 514 U. S. 938, 942 (1995) (example where a “court makes up its mind about [an issue] independently” because the parties did not agree it should be arbitrated), with *Oxford Health Plans LLC v. Sutter*, 569 U. S. ___, ___ (2013) (slip op., at 4) (example where a court defers to arbitrators because the parties “bargained for” arbitral resolution of the question (quoting *Eastern Associated Coal Corp. v. Mine Workers*, 531 U. S. 57, 62 (2000))). See also *Hall Street Associates, L. L. C. v. Mattel, Inc.*, 552 U. S. 576, 588 (2008) (on matters committed to arbitration, the Federal Arbitration Act provides for “just the limited review needed to maintain arbitration’s essential virtue of resolving disputes straightaway” and to prevent it from becoming “merely a prelude to a more cumbersome and time-consuming judicial review process” (internal quotation marks omitted)); *Eastern Associated Coal Corp.*, *supra*, at 62 (where parties send a matter to arbitration, a court will set aside the “arbitrator’s interpretation of what their agreement means only in rare instances”).

In answering the question, we shall initially treat the document before us as if it were an ordinary contract between private parties. Were that so, we conclude, the matter would be for the arbitrators. We then ask whether the fact that the document in question is a treaty makes a critical difference. We conclude that it does not.

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III

Where ordinary contracts are at issue, it is up to the parties to determine whether a particular matter is primarily for arbitrators or for courts to decide. See, *e.g.*, *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U. S. 574, 582 (1960) (“[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit”). If the contract is silent on the matter of who primarily is to decide “threshold” questions about arbitration, courts determine the parties’ intent with the help of presumptions.

On the one hand, courts presume that the parties intend courts, not arbitrators, to decide what we have called disputes about “arbitrability.” These include questions such as “whether the parties are bound by a given arbitration clause,” or “whether an arbitration clause in a concededly binding contract applies to a particular type of controversy.” *Howsam v. Dean Witter Reynolds, Inc.*, 537 U. S. 79, 84 (2002); accord, *Granite Rock Co. v. Teamsters*, 561 U. S. 287, 299–300 (2010) (disputes over “formation of the parties’ arbitration agreement” and “its enforceability or applicability to the dispute” at issue are “matters . . . the court must resolve” (internal quotation marks omitted)). See *First Options, supra*, at 941, 943–947 (court should decide whether an arbitration clause applied to a party who “had not personally signed” the document containing it); *AT&T Technologies, Inc. v. Communications Workers*, 475 U. S. 643, 651 (1986) (court should decide whether a particular labor-management layoff dispute fell within the arbitration clause of a collective-bargaining contract); *John Wiley & Sons, Inc. v. Livingston*, 376 U. S. 543, 546–548 (1964) (court should decide whether an arbitration provision survived a corporate merger). See generally *AT&T Technologies, supra*, at 649 (“Unless the parties clearly and unmistakably provide otherwise, the

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question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator”).

On the other hand, courts presume that the parties intend arbitrators, not courts, to decide disputes about the meaning and application of particular procedural preconditions for the use of arbitration. See *Howsam, supra*, at 86 (courts assume parties “normally expect a forum-based decisionmaker to decide forum-specific *procedural* gateway matters” (emphasis added)). These procedural matters include claims of “waiver, delay, or a like defense to arbitrability.” *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U. S. 1, 25 (1983). And they include the satisfaction of “prerequisites such as time limits, notice, laches, estoppel, and other conditions precedent to an obligation to arbitrate.” *Howsam, supra*, at 85 (quoting the Revised Uniform Arbitration Act of 2000 §6, Comment 2, 7 U. L. A. 13 (Supp. 2002); emphasis deleted). See also §6(c) (“An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled”); §6, Comment 2 (explaining that this rule reflects “the holdings of the vast majority of state courts” and collecting cases).

The provision before us is of the latter, procedural, variety. The text and structure of the provision make clear that it operates as a procedural condition precedent to arbitration. It says that a dispute “shall be submitted to international arbitration” if “one of the Parties so requests,” as long as “a period of eighteen months has elapsed” since the dispute was “submitted” to a local tribunal and the tribunal “has not given its final decision.” Art. 8(2). It determines *when* the contractual duty to arbitrate arises, not *whether* there is a contractual duty to arbitrate at all. Cf. 13 R. Lord, *Williston on Contracts* §38:7, pp. 435, 437; §38:4, p. 422 (4th ed. 2013) (a “condition precedent” determines what must happen before “a contractual duty arises” but does not “make the *validity* of the contract depend on its happening” (emphasis added)).

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Neither does this language or other language in Article 8 give substantive weight to the local court’s determinations on the matters at issue between the parties. To the contrary, Article 8 provides that *only* the “arbitration decision shall be final and binding on both Parties.” Art. 8(4). The litigation provision is consequently a purely procedural requirement—a claims-processing rule that governs when the arbitration may begin, but not whether it may occur or what its substantive outcome will be on the issues in dispute.

Moreover, the local litigation requirement is highly analogous to procedural provisions that both this Court and others have found are for arbitrators, not courts, primarily to interpret and to apply. See *Howsam, supra*, at 85 (whether a party filed a notice of arbitration within the time limit provided by the rules of the chosen arbitral forum “is a matter presumptively for the arbitrator, not for the judge”); *John Wiley, supra*, at 555–557 (same, in respect to a mandatory prearbitration grievance procedure that involved holding two conferences). See also *Dialysis Access Center, LLC v. RMS Lifeline, Inc.*, 638 F. 3d 367, 383 (CA1 2011) (same, in respect to a prearbitration “good faith negotiations” requirement); *Lumbermens Mut. Cas. Co. v. Broadspire Management Servs., Inc.*, 623 F. 3d 476, 481 (CA7 2010) (same, in respect to a prearbitration filing of a “Disagreement Notice”).

Finally, as we later discuss in more detail, see *infra*, at 13–14, we can find nothing in Article 8 or elsewhere in the Treaty that might overcome the ordinary assumption. It nowhere demonstrates a contrary intent as to the delegation of decisional authority between judges and arbitrators. Thus, were the document an ordinary contract, it would call for arbitrators primarily to interpret and to apply the local litigation provision.

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IV

A

We now relax our ordinary contract assumption and ask whether the fact that the document before us is a treaty makes a critical difference to our analysis. The Solicitor General argues that it should. He says that the local litigation provision may be “a condition on the State’s consent to enter into an arbitration agreement.” Brief for United States as *Amicus Curiae* 25. He adds that courts should “review de novo the arbitral tribunal’s resolution of objections based on an investor’s non-compliance” with such a condition. *Ibid.* And he recommends that we remand this case to the Court of Appeals to determine whether the court-exhaustion provision is such a condition. *Id.*, at 31–33.

1

We do not accept the Solicitor General’s view as applied to the treaty before us. As a general matter, a treaty is a contract, though between nations. Its interpretation normally is, like a contract’s interpretation, a matter of determining the parties’ intent. *Air France v. Saks*, 470 U. S. 392, 399 (1985) (courts must give “the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties”); *Sullivan v. Kidd*, 254 U. S. 433, 439 (1921) (“[T]reaties are to be interpreted upon the principles which govern the interpretation of contracts in writing between individuals, and are to be executed in the utmost good faith, with a view to making effective the purposes of the high contracting parties”); *Wright v. Henkel*, 190 U. S. 40, 57 (1903) (“Treaties must receive a fair interpretation, according to the intention of the contracting parties”). And where, as here, a federal court is asked to interpret that intent pursuant to a motion to vacate or confirm an award made in the United States under the Federal Arbitration Act, it should nor-

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mally apply the presumptions supplied by American law. See New York Convention, Art. V(1)(e) (award may be “set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made”); Vandeveld, *Bilateral Investment Treaties*, at 446 (arbitral awards pursuant to treaties are “subject to review under the arbitration law of the state where the arbitration takes place”); Dugan, *Investor-State Arbitration*, at 636 (“[T]he national courts and the law of the legal situs of arbitration control a losing party’s attempt to set aside [an] award”).

The Solicitor General does not deny that the presumption discussed in Part III, *supra* (namely, the presumption that parties intend procedural preconditions to arbitration to be resolved primarily by arbitrators), applies both to ordinary contracts and to similar provisions in treaties when those provisions are not also “conditions of consent.” Brief for United States as *Amicus Curiae* 25–27. And, while we respect the Government’s views about the proper interpretation of treaties, *e.g.*, *Abbott v. Abbott*, 560 U. S. 1, 15 (2010), we have been unable to find any other authority or precedent suggesting that the use of the “consent” label in a treaty should make a critical difference in discerning the parties’ intent about whether courts or arbitrators should interpret and apply the relevant provision.

We are willing to assume with the Solicitor General that the appearance of this label in a treaty can show that the parties, or one of them, thought the designated matter quite important. But that is unlikely to be conclusive. For parties often submit important matters to arbitration. And the word “consent” could be attached to a highly procedural precondition to arbitration, such as a waiting period of several months, which the parties are unlikely to have intended that courts apply without saying so. See, *e.g.*, *Agreement on Encouragement and Reciprocal Protec-*

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tion of Investments, Art. 9, Netherlands-Slovenia, Sept. 24, 1996, Netherlands T. S. No. 296 (“Each Contracting Party hereby consents to submit any dispute . . . which they can not [*sic*] solve amicably within three months . . . to the International Center for Settlement of Disputes for settlement by conciliation or arbitration”), online at www.rijksoverheid.nl/documenten-en-publicaties/besluiten/2006/10/17/slovenia.html (all Internet materials as visited on Feb. 28, 2014, and available in Clerk of Court’s case file); Agreement for the Promotion and Protection of Investments, Art. 8(1), United Kingdom-Egypt, June 11, 1975, 14 I. L. M. 1472 (“Each Contracting Party hereby consents to submit” a dispute to arbitration if “agreement cannot be reached within three months between the parties”). While we leave the matter open for future argument, we do not now see why the presence of the term “consent” in a treaty warrants abandoning, or increasing the complexity of, our ordinary intent-determining framework. See *Howsam*, 537 U. S., at 83–85; *First Options*, 514 U. S., at 942–945; *John Wiley*, 376 U. S., at 546–549, 555–559.

2

In any event, the treaty before us does *not* state that the local litigation requirement is a “condition of consent” to arbitration. Thus, we need not, and do not, go beyond holding that, in the absence of explicit language in a treaty demonstrating that the parties intended a different delegation of authority, our ordinary interpretive framework applies. We leave for another day the question of interpreting treaties that refer to “conditions of consent” explicitly. See, *e.g.*, United States-Korea Free Trade Agreement, Art. 11.18, Feb. 10, 2011 (provision entitled “Conditions and Limitations on Consent of Each Party” and providing that “[n]o claim may be submitted to arbitration under this Section” unless the claimant waives in writing “any right” to press his claim before

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an “administrative tribunal or court”), online at www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text; North American Free Trade Agreement, Arts. 1121–1122, Dec. 17, 1992, 32 I. L. M. 643–644 (providing that each party’s “[c]onsent to [a]rbitration” is conditioned on fulfillment of certain “procedures,” one of which is a waiver by an investor of his right to litigate the claim being arbitrated). See also 2012 U. S. Model Bilateral Investment Treaty, Art. 26 (entitled “Conditions and limitations on Consent of Each Party”), online at www.ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf. And we apply our ordinary presumption that the interpretation and application of procedural provisions such as the provision before us are primarily for the arbitrators.

B

A treaty may contain evidence that shows the parties had an intent contrary to our ordinary presumptions about who should decide threshold issues related to arbitration. But the treaty before us does not show any such contrary intention. We concede that the local litigation requirement appears in ¶(1) of Article 8, while the Article does not mention arbitration until the subsequent paragraph, ¶(2). Moreover, a requirement that a party exhaust its remedies in a country’s domestic courts before seeking to arbitrate may seem particularly important to a country offering protections to foreign investors. And the placing of an important matter prior to any mention of arbitration at least arguably suggests an intent by Argentina, the United Kingdom, or both, to have courts rather than arbitrators apply the litigation requirement.

These considerations, however, are outweighed by others. As discussed *supra*, at 8–9, the text and structure of the litigation requirement set forth in Article 8 make clear that it is a procedural condition precedent to arbitration—

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a sequential step that a party must follow before giving notice of arbitration. The Treaty nowhere says that the provision is to operate as a substantive condition on the formation of the arbitration contract, or that it is a matter of such elevated importance that it is to be decided by courts. International arbitrators are likely more familiar than are judges with the expectations of foreign investors and recipient nations regarding the operation of the provision. See *Howsam, supra*, at 85 (comparative institutional expertise a factor in determining parties' likely intent). And the Treaty itself authorizes the use of international arbitration associations, the rules of which provide that arbitrators shall have the authority to interpret provisions of this kind. Art. 8(3) (providing that the parties may refer a dispute to the International Centre for the Settlement of Investment Disputes (ICSID) or to arbitrators appointed pursuant to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL)); accord, UNCITRAL Arbitration Rules, Art. 23(1) (rev. 2010 ed.) (“[A]rbitral tribunal shall have the power to rule on its own jurisdiction”); ICSID Convention, Regulations and Rules, Art. 41(1) (2006 ed.) (“Tribunal shall be the judge of its own competence”). Cf. *Howsam, supra*, at 85 (giving weight to the parties' incorporation of the National Association of Securities Dealers' Code of Arbitration into their contract, which provided for similar arbitral authority, as evidence that they intended arbitrators to “interpret and apply the NASD time limit rule”).

The upshot is that our ordinary presumption applies and it is not overcome. The interpretation and application of the local litigation provision is primarily for the arbitrators. Reviewing courts cannot review their decision *de novo*. Rather, they must do so with considerable deference.

C

The dissent interprets Article 8's local litigation provi-

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sion differently. In its view, the provision sets forth not a condition precedent to arbitration in an already-binding arbitration contract (normally a matter for arbitrators to interpret), but a substantive condition on Argentina's consent to arbitration and thus on the contract's formation in the first place (normally something for courts to interpret). It reads the whole of Article 8 as a "unilateral standing offer" to arbitrate that Argentina and the United Kingdom each extends to investors of the other country. *Post*, at 9 (opinion of ROBERTS, C. J.). And it says that the local litigation requirement is one of the essential "terms in which the offer was made." *Post*, at 6 (quoting *Eliason v. Henshaw*, 4 Wheat. 225, 228 (1819); emphasis deleted).

While it is possible to read the provision in this way, doing so is not consistent with our case law interpreting similar provisions appearing in ordinary arbitration contracts. See Part III, *supra*. Consequently, interpreting the provision in such a manner would require us to treat treaties as warranting a different kind of analysis. And the dissent does so without supplying any different set of general principles that might guide that analysis. That is a matter of some concern in a world where foreign investment and related arbitration treaties increasingly matter.

Even were we to ignore our ordinary contract principles, however, we would not take the dissent's view. As we have explained, the local litigation provision on its face concerns arbitration's timing, not the Treaty's effective date; or whom its arbitration clause binds; or whether that arbitration clause covers a certain kind of dispute. Cf. *Granite Rock*, 561 U. S., at 296–303 (ratification date); *First Options*, 514 U. S., at 941, 943–947 (parties); *AT&T Technologies*, 475 U. S., at 651 (kind of dispute). The dissent points out that Article 8(2)(a) "does not simply require the parties to wait for 18 months before proceeding to arbitration," but instructs them to *do* something—to "submit their claims for adjudication." *Post*, at 8. That is

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correct. But the something they must do has no direct impact on the resolution of their dispute, for as we previously pointed out, Article 8 provides that only the decision of the arbitrators (who need not give weight to the local court's decision) will be "final and binding." Art. 8(4). The provision, at base, is a claims-processing rule. And the dissent's efforts to imbue it with greater significance fall short.

The treatises to which the dissent refers also fail to support its position. *Post*, at 3, 6. Those authorities primarily describe how an offer to arbitrate in an investment treaty can be accepted, such as through an investor's filing of a notice of arbitration. See J. Salacuse, *The Law of Investment Treaties* 381 (2010); Schreuer, *Consent to Arbitration*, in *The Oxford Handbook of International Investment Law* 830, 836–837 (P. Muchlinski, F. Ortino, & C. Schreuer eds. 2008); Dugan, *Investor-State Arbitration*, at 221–222. They do not endorse the dissent's reading of the local litigation provision or of provisions like it.

To the contrary, the bulk of international authority supports our view that the provision functions as a purely procedural precondition to arbitrate. See 1 G. Born, *International Commercial Arbitration* 842 (2009) ("A substantial body of arbitral authority from investor-state disputes concludes that compliance with procedural mechanisms in an arbitration agreement (or bilateral investment treaty) is not ordinarily a jurisdictional prerequisite"); Brief for Professors and Practitioners of Arbitration Law as *Amici Curiae* 12–16 (to assume the parties intended *de novo* review of the provision by a court "is likely to set United States courts on a collision course with the international regime embodied in thousands of [bilateral investment treaties]"). See also Schreuer, *Consent to Arbitration*, *supra*, at 846–848 ("clauses of this kind . . . creat[e] a considerable burden to the party seeking arbitration with little chance of advancing the settlement of

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the dispute,” and “the most likely effect of a clause of this kind is delay and additional cost”).

In sum, we agree with the dissent that a sovereign’s consent to arbitration is important. We also agree that sovereigns can condition their consent to arbitrate by writing various terms into their bilateral investment treaties. *Post*, at 9–10. But that is not the issue. The question is whether the parties intended to give courts or arbitrators primary authority to interpret and apply a threshold provision in an arbitration contract—when the contract is silent as to the delegation of authority. We have already explained why we believe that where, as here, the provision resembles a claims-processing requirement and is not a requirement that affects the arbitration contract’s validity or scope, we presume that the parties (even if they are sovereigns) intended to give that authority to the arbitrators. See Parts III, IV–A and IV–B, *supra*.

V

Argentina correctly argues that it is nonetheless entitled to court review of the arbitrators’ decision to excuse BG Group’s noncompliance with the litigation requirement, and to take jurisdiction over the dispute. It asks us to provide that review, and it argues that even if the proper standard is “a [h]ighly [d]eferential” one, it should still prevail. Brief for Respondent 50. Having the relevant materials before us, we shall provide that review. But we cannot agree with Argentina that the arbitrators “exceeded their powers” in concluding they had jurisdiction. *Ibid.* (quoting 9 U. S. C. §10(a)(4)).

The arbitration panel made three relevant determinations:

(1) “As a matter of treaty interpretation,” the local litigation provision “cannot be construed as an absolute impediment to arbitration,” App. to Pet. for Cert. 165a;

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(2) Argentina enacted laws that “hindered” “recourse to the domestic judiciary” by those “whose rights were allegedly affected by the emergency measures,” *id.*, at 165a–166a; that sought “to prevent any judicial interference with the emergency legislation,” *id.*, at 169a; and that “excluded from the renegotiation process” for public service contracts “any licensee seeking judicial redress,” *ibid.*;

(3) under these circumstances, it would be “absurd and unreasonable” to read Article 8 as requiring an investor to bring its grievance to a domestic court before arbitrating. *Id.*, at 166a.

The first determination lies well within the arbitrators’ interpretive authority. Construing the local litigation provision as an “absolute” requirement would mean Argentina could avoid arbitration by, say, passing a law that closed down its court system indefinitely or that prohibited investors from using its courts. Such an interpretation runs contrary to a basic objective of the investment treaty. Nor does Argentina argue for an absolute interpretation.

As to the second determination, Argentina does not argue that the facts set forth by the arbitrators are incorrect. Thus, we accept them as valid.

The third determination is more controversial. Argentina argues that neither the 180-day suspension of courts’ issuances of final judgments nor its refusal to allow litigants (and those in arbitration) to use its contract renegotiation process, taken separately or together, warrants suspending or waiving the local litigation requirement. We would not necessarily characterize these actions as rendering a domestic court-exhaustion requirement “absurd and unreasonable,” but at the same time we cannot say that the arbitrators’ conclusions are barred by the Treaty. The arbitrators did not “stra[y] from interpretation and application of the agreement” or otherwise “effectively “dispens[e]”” their “own brand of . . . justice.” *Stolt-Nielsen S. A. v. AnimalFeeds Int’l Corp.*, 559 U. S.

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662, 671 (2010) (providing that it is only when an arbitrator engages in such activity that “his decision may be unenforceable” (quoting *Major League Baseball Players Assn. v. Garvey*, 532 U. S. 504, 509 (2001) (*per curiam*))).

Consequently, we conclude that the arbitrators’ jurisdictional determinations are lawful. The judgment of the Court of Appeals to the contrary is reversed.

It is so ordered.