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Maxi Scherer (WilmerHale & Queen Mary University of London) · Sunday, December 24th, 2017

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ARTICLES SECTION

Mauro Rubino Sammartano, A Second (Quasi-Perfect?) Storm Also in Arbitration?

Abstract: Many users of international arbitration, particularly in-house counsel, have repeatedly expressed concern about the lack of adequate information on arbitrators, resulting in arbitrator selection based on a vague and general reputation often informed by word of mouth or anecdotal information. Arbitral institutions and arbitration circles cannot remain indifferent to this need. A first step to deal with this issue is the disclosure by arbitrators of the information contained in the arbitrator's pledge launched by the European Court of Arbitration; another step is the issuance of an official acknowledgement as a 'certified arbitrator' by arbitral institutions, and eventually the requirement that certified arbitrators abide by a universal code of ethics.

Michael Polkinghorne & Benjamin Ainsley Gill, Due Process Paranoia: Need We Be Cruel To Be Kind?

Abstract: Due process paranoia is one of arbitration's 'hot topics', but does it merit the heat? This article takes a view of the sources of and supposed justifications for due process paranoia in those (fortunately rare) cases where parties or counsel try to rig the arbitral process. It looks at who might be to blame for the reluctance of arbitrators to take measures to combat such activity, and considers some of the solutions that have been proposed to help deal with it. Overall, the authors suggest that all arbitration stakeholders are to a certain extent to blame, although arbitrators perhaps have the most work to do. It is therefore fortunate that they have the wide support of domestic judges and the arbitral institutions, as well as a substantial toolbox at their disposal with which to combat recalcitrant or bad faith parties.

Hanno Wehland, Blue Bank International v Venezuela: When Are Trust Assets Protected Under International Investment Agreements?

Abstract: The award rendered by a tribunal in proceedings conducted under the auspices of the International Centre for Settlement of Investment Disputes (ICSID) between Blue Bank International and Venezuela in April this year is the first public decision addressing in detail the question of whether trustees can be considered protected investors with regard to trust assets under International Investment Agreements. This article analyses the findings of the Blue Bank tribunal with a view to more generally identifying requirements for the protection of trust assets under

investment treaties. Based on a review of the relevant treaty provisions and the jurisprudence of arbitral tribunals it concludes that, in the absence of beneficial ownership, trustees will typically not be protected. By contrast, trust assets can be protected either where a treaty admits trusts themselves as investors or where the rights of beneficiaries are specific enough to amount to beneficial ownership.

Luke Nottage & James Morrison, Accessing and Assessing Australia's International Arbitration Act

Abstract: This review identifies many positive trends in international commercial arbitration law and practice in Australia, especially over the last decade. Yet much work remains to be done, in light of some ongoing uncertainties in the statutory regime and associated case law, and comparatively few international arbitration case filings. The biggest challenge is for law reformers in relation to more controversial issues such as the arbitrability of various types of disputes, mandatory laws impacting on forum selection and choice of laws, the precise contours of the competence-competence principle, and confidentiality of arbitration-related court proceedings. Hopefully, a new phase of comprehensive legislative reform will be conducted through more open and structured public consultation than the three piecemeal amendments since 2015.

Lucian Ilie & Amy Seow, International Arbitration and EU Competition Law Complement Rather than Contradict One Another

Abstract: The relationship between international arbitration and EU competition law is of practical importance because of the increasing number of cases in which arbitrators are called on to apply competition rules. This article addresses both the theoretical and practical aspects of arbitrating competition law disputes, to give an overall picture of the relationship between international arbitration and competition law.

This article shows that the two are not in conflict. Rather, they complement each other, and arbitration can be a method of resolving competition law disputes. This article considers the arbitrability of competition law disputes (section 2); the powers and duties of arbitrators in applying competition law (section 3); the relationship between arbitrators and public enforcers of competition law (section 4); and the scrutiny of awards in which competition law issues are implicated, under both the New York Convention and the International Centre for Settlement of Investment Disputes (ICSID) Convention (section 5).

BOOK REVIEW

Prof Dr Gerhard Wagner, Jake Lowther & Anastasios P. Andrianesis, Orsolya Toth, The Lex Mercatoria in Theory and Practice (Oxford University Press, 2017; ISBN 978-0-199-68572-1)

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