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We are happy to inform you that the latest issue of the journal is now available and includes the following contributions:

Dina D. Prokić, *SIAC Proposal on Cross-Institution Consolidation Protocol: Can It Be Transplanted into Investment Arbitration?*

Investment arbitration has been increasingly criticized as being, among other things, slow, cumbersome and unpredictable, in light of contradictory awards arising from similar factual situations. Recent renewable energy proceedings against Spain, Italy and the Czech Republic have prompted the author to revisit the idea of creating a consolidation facility in order to address some of these short-comings. Unlike earlier attempts, however, which focused on the possibility of consolidating disputes that are conducted under one set of procedural rules, the author, inspired by the recent Singapore International Arbitration Centre (SIAC) Proposal on Cross-Institution Consolidation Protocol, explores the possibility of consolidating disputes that are conducted under different rules. After analysing SIAC's Proposal, the author assesses the need for a similar instrument in the realm of investment arbitration. The article subsequently discusses existing consolidation mechanisms of NAFTA, certain BITs and newer trade agreements (CETA, TTIP and the EU-Singapore Investment Protection Agreement). The author then considers different aspects of this new consolidation facility. The article concludes with a brief overview of potential hurdles that this consolidation facility might face on route to acceptance.

Hanno Wehland, *Domestic Courts and Investment Treaty Tribunals: The Effect of Local Recourse against Administrative Measures on the Breach of Investment Protection Standards*

Investment treaty tribunals have repeatedly held that an investor's failure to use available local remedies against administrative measures may reduce its chances of being successful in claiming that investment protection standards have been breached. At the same time, where an investor seeks local recourse against an administrative measure in the host State's domestic courts and the measure is confirmed, a number of tribunals have taken the view that this confirmation can limit the review in a later investment treaty arbitration. The combined effect of these findings is that local remedies risk becoming simultaneously a requirement for and an impediment to successfully bringing claims under an investment treaty. This situation makes it difficult for investors to decide whether or not to pursue them.

This article seeks to solve this conundrum by reassessing the relationship between investment treaty tribunals and domestic courts. It shows that the confirmation of an administrative measure by the courts of a host State can neither preclude a treaty tribunal from considering whether that measure breaches an investment treaty nor undo a treaty breach that already exists. It further suggests that proceedings in the domestic courts can breach an investment treaty even without amounting to a denial of justice. Finally, it argues that the decisions of the domestic courts of a host State should never have any binding effect for a treaty tribunal. By proposing clear rules in an area that has lent itself to a considerable amount of confusion in the past, the article aims to provide investors with much-needed certainty regarding the effect of local recourse.

Markus Burgstaller & Agnieszka Zarowna, *Effects of Disposal of Investments on Claims in Investment Arbitration*

In case of a perceived violation of an investment treaty, an investor may no longer be interested in retaining their investment. They may be faced with strategic decisions as to whether to continue with their investment and whether and how the potential divestment will affect their recourse against the host State under the investment treaty. This article considers the situation of investors who decide to dispose of their investments and effects of such a disposal on the transferor's claims in investment arbitration. It sets out international arbitral practice on point and considers certain issues pertaining to the effects of disposal of investments on the rights of the transferor. It also looks at the implications that the disposal of an investment may have on the quantum of any claim.

William Hooker, Nathalie Allen Prince & David Turner, *How Can Arbitrators Best Protect Their Deliberations from Disclosure: New Challenges and Opportunities in England*

A 2017 decision in the English High Court, together with a 2017 decision of the UK Information Commissioner, have left open the possibility that arbitrators may be compelled to disclose their deliberations, communications and working papers to the parties in certain circumstances. Whilst such circumstances are likely to be rare, it remains uncertain precisely when arbitrators are entitled to withhold such documents, and when disclosure will be required. It will require further litigation or new statutory developments to establish the precise boundaries of confidentiality and what circumstances, if any, will justify an order for disclosure. This article argues that the best path to clarity would be through recognition of a category of legal professional privilege that attaches to documents prepared by arbitrators for the sole or dominant purpose of their conduct of the arbitration. It explains that while such a category of privilege ought to be capable of being established via the common law, it may be appropriate for necessary changes to be reflected in any forthcoming amendment to arbitral law in England.

Andrea Martignoni, Christopher Holland & Freya Dinshaw, *Australia's Bilateral Investment Treaties: A Laid-Back Approach to Consent?*

This article considers the requirement in a number of Australian investment treaties that a host state, following the referral of a dispute to arbitration before the International Centre for the Settlement of Investment Disputes, provide written consent to arbitration. The uncertainty around the practical operation of such provisions is problematic. It remains to be seen how International Centre for the Settlement of Investment Disputes (ICSID) tribunals will address this requirement as Australian investors become more engaged with investor-state arbitration. One would hope that a more 'laid back' approach to consent prevails.

BOOK REVIEW

Maud Piers & Christian Aschauer (eds), *Arbitration in the Digital Age* (Cambridge University Press,

2018), reviewed by Gauthier Vannieuwenhuyse