Kluwer Arbitration Blog

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Maxi Scherer (WilmerHale & Queen Mary University of London) · Monday, July 29th, 2019

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

Lucy Greenwood, Revisiting Bifurcation and Efficiency in International Arbitration Proceedings

In 2011, the author published an analysis of available empirical data on bifurcation of disputes in this journal. The article, 'Does Bifurcation Really Promote Efficiency?' (28(2) J. Int'l Arb. 105-11 (2011)) tested the 'generally accepted view that bifurcation of proceedings promotes efficiency' by analysing the available data on the time taken for bifurcated cases to conclude and comparing that data with time taken for non-bifurcated cases. The author noted that ideally, to test whether bifurcating a case does result in the case being resolved in less time, the comparison should be made between a case that was bifurcated to the same case without bifurcation. However, this was not possible in practice. Thus, the next best alternative approach, that of comparing different cases was adopted, although it was recognized that cases can vary significantly in terms of factual and legal complexity. Nonetheless, the empirical evidence, however imperfect, can be and was illustrative. This article revisits the available data relating to the bifurcation of international arbitration matters and expands the previous discussion.

Dorothee Ruckteschler & Tanja Stooss, International Commercial Courts: A Superior Alternative to Arbitration?

International commercial arbitration has long been the hallmark of international dispute resolution. However, with the increasing establishment of specialized English-speaking courts dealing solely with commercial disputes ('International Commercial Courts') the popularity of arbitration is being called into question. The phenomenon of International Commercial Courts is not completely new, but their number has significantly increased in recent times. In 2018 alone, China, the Netherlands, France, and Germany have, among others, announced the opening of specialized English-speaking courts and others are preparing to shortly follow their example. Whilst the arbitral process is often criticized for its costs, procedural delays, or lack of power against third parties, the question

remains whether International Commercial Courts will be able to deal with these issues any better. This article first examines the history and the features of International Commercial Courts, with a special focus on those recently established in Europe, before evaluating whether they are – or might be in the future – better suited to serve the needs of international commerce.

Mingji Qu, Status Quo of Enforcing Commercial Arbitral Awards in the People's Republic of China: An Empirical Study of the Enforcement Practices in China's Two Economically Less-Developed Regions

This article gives some insights into the practices for enforcing commercial arbitral awards in China's two anonymized economically less-developed regions. By virtue of the empirical and qualitative data contributed by empirical research, this article depicts this theme from three aspects, namely, the general sociocultural environment for enforcement; practitioners' perceptions; and the enforcement status of arbitral awards, highlighting the gaps between legislative perceptions and real-life practices. This article concludes that China's current sociocultural environment is suitable for accommodating the rapid growth of commercial arbitration, which indicates that the collision between modern arbitration practice and the sociocultural environment is unlikely to constitute a cause of difficulty in the China-seated enforcement of arbitral awards. This article also notes an innate scepticism towards the country's arbitration practice among Chinese practitioners, which could affect their perceptions towards the development prospect of commercial arbitration and the enforceability of arbitral awards, despite the pro-arbitration attitude shared by Chinese judicial organs. Meanwhile, the article observes preliminary evidence showing the impact of Chinese culture on the country's enforcement practices. Finally, the article statistically portrays the enforcement status of arbitral awards in the concerned regions, showing the regionally differentiated enforcement rates, competence of Chinese courts and other issues involved.

Julio César Betancourt, What Are the Arbitral Tribunal's Powers in Default Proceedings?

When the claimant serves on the defendant a notice in connection with the initiation of arbitral proceedings pursuant to an arbitration agreement, there is a legitimate expectation that both parties will actively participate in those proceedings and forcefully argue against one another in order to persuade the arbitral tribunal of the merits of the case in question. This expectation is generally met. However, there are cases in which the respondent decides not to take part in the proceedings, with the result that the arbitral tribunal is left with no option but to proceed on an ex parte basis. These types of cases have received relatively scant attention within the international arbitration literature. Nonetheless, the problem of default proceedings remains a matter of practical importance. This article is intended to fill this gap. It provides a practical insight into the arbitral tribunal's powers in these kinds of proceedings (whether *ad hoc* or institutional), particularly in the context of an international arbitration seated in London.

Michael Kotrly & Barry Mansfield, Recent Developments in International Arbitration in England and Ireland

This article considers developments in international arbitration in England and Ireland by way of a

review of arbitration-related judgments rendered in 2018 by the countries' respective courts.

Alain Farhad, The United Arab Emirates' New Arbitration Legislation: A Giant Leap Forward?

This article analyzes the new Federal Law No. 6 of 2018 (the 'New Arbitration Law') of the UAE which took effect on 16 June 2018. The New Arbitration Law brings the statutory framework for the practice of arbitration in the UAE into the twenty-first century. Compared to the previously applicable regime, the New Arbitration Law thus gives wider recognition to the principle of party autonomy, fully utilizes modern technology and takes into account the use of institutional (vs. ad hoc) arbitration. It also helpfully deals with some of the technical arguments, which litigants have traditionally relied on to attempt to disrupt or delay arbitration proceedings in the UAE.

BOOK REVIEW

Eckart J. Brödermann, Principles of International Commercial Contracts: An Article-By-Article Commentary, Alphen aan den Rijn: Kluwer Law International, 2018, ISBN 978-90-411-9956-0 (reviewed by François Dessemontet)

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