

Kluwer Arbitration Blog

The Contents of Journal of International Arbitration, Volume 32, Issue 5, 2015

Maxi Scherer (WilmerHale & Queen Mary University of London) · Thursday, October 15th, 2015

Queen Mary University of London & Wilmer Cutler Pickering Hale and Dorr LLP

Volume 32 (2015) Issue 5 contains:

ARTICLES SECTION

Seung CHONG & C.L. LIM, The Convergence of China's Foreign and Domestic Investment Regimes and China's Investment Treaty Commitments

Abstract: The Ministry of Commerce of the People's Republic of China (PRC) has issued a Draft Foreign Investment Law that proposes to cause the convergence of the PRC's foreign and domestic investment regimes. That convergence in its current form will result in existing rights of foreign investors being extinguished or compromised. We discuss the loss of such rights in the light of the types of investors' remedies that are currently provided for under China's Bilateral Investment Treaties. In doing so, we show how the issues raised by the newly proposed investment regime can be framed as claims under the various standards of PRC treaty protection and the particular complexities that arise for consideration.

Sam LUTTRELL & Isuru DEVENDRA, Inherent Jurisdiction and Implied Power to Stay Proceedings in Aid of Arbitration: "A Nice Question"

Abstract: In recent years, Australia has seen an exponential growth in the use of arbitration. This has necessitated greater involvement by courts in facilitating arbitral proceedings. In this context, one of the issues most frequently encountered by the courts is whether to stay court proceedings in aid of arbitration. This article considers the basis of a court's power to grant such an order. In doing so, the article explores both the statutory and the inherent jurisdiction of a court, including recent jurisprudence that highlights the uncertainty in the field. The article suggests interpreting domestic arbitration legislation in a manner that is consistent with Australia's pro-arbitration policy and advocates reconsideration of early High Court authority as to the inherent powers of courts in this area.

Deyan DRAGUIEV, The Effect of Insolvency on Pending International Arbitration: What Is and What Should Not Be

Situations in which the respondent in international arbitral proceedings is declared insolvent in its

jurisdiction of incorporation while the arbitration is still pending are not uncommon. They raise a number of choice of law issues both in terms of substantive and procedural law. While the roots of arbitration lie in party autonomy, insolvency laws are often comprised of mandatory rules protecting the interests of different classes of stakeholders. This article attempts to devise an abstract model of the various choice of law and characterization problems regarding the cross-border effect of the insolvency and provide reasoned options and solutions for the arbitral tribunal faced with the interaction between insolvency and pending arbitration proceedings.

NOTES SECTION

Benoit LE BARS, Recent Developments in International Energy Dispute Arbitration

Nitish MONEBHURRUN, *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*: Enshrining Legitimate Expectations as a General Principle of International Law?

BOOK REVIEWS

Kate DAVIES, Book Review – Arbitrating under the 2014 LCIA Rules: A User’s Guide, by Maxi Scherer, Lisa Richman & Remy Gerbay

Christopher BOOG, Book Review – Trade Sanctions and International Sales: An Inquiry into International Arbitration and Commercial Litigation, by Mercédeh Azeredo da Silveira

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