

Kluwer Arbitration Blog

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Maxi Scherer (WilmerHale & Queen Mary University of London) · Friday, April 29th, 2016

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

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Volume 33 (2016) Issue 2 contains:

ARTICLES SECTION

Nadia Darwazeh & Adrien Leleu, Disclosure and Security for Costs or How to Address Imbalances Created by Third-Party Funding

Abstract: The growth of third-party funding (TPF) in international arbitrations seems to have intensified recently, as suggested by the rise in the number of publicly-known cases involving funders. TPF is here to stay and it can play an important and commendable role in the arbitral process when it provides an impecunious party with access to justice. However, the flipside is that the addition of funders to the arbitral equation also creates imbalances where there were none before. This article provides an innovative perspective into the issue of TPF, by analysing how funders have impacted the arbitral process. The arbitral community should be aware of these imbalances and seriously consider effective remedies to redress them, thereby safeguarding the integrity and efficiency of the arbitral process. Currently, there is virtually no regulation of TPF conduct in international arbitration, and funders have been left to define their own rules of conduct. In the absence of appropriate and consistent regulation, two remedies can already be implemented to address the imbalances created by TPF. First, a funded party should communicate upfront and transparently about TPF. Second, arbitral tribunals should be more amenable to granting security for costs, especially when an impecunious claimant is being funded and the respondent is faced with a serious risk of a hit-and-run arbitration.

Melis ÖZDEL, Enforcement of Arbitration Clauses in Bills of Lading: Where Are We Now?

Abstract: Arbitration is consensual, and this brings with it the questions of what should be understood by ‘consent’ and how it should present itself to justify enforcement of an arbitration agreement to a third party. In the context of bills of lading, the issue of consent has various dimensions, all of which can be best understood with reference to the enforcement of arbitration clauses in bills of lading. This article discusses how effectively arbitration clauses in bills of lading can be enforced against the bill of lading holders in light of English case law, the decisions of the

European Court of Justice (ECJ) and the Rotterdam Rules.

Iain SHERIDAN, Qualitative Analytical Models for Arbitration

Abstract: The author identifies three analytical models that may contribute to improving the processes and outcomes of international arbitration. The three analytical models selected are: (1) mind map diagrams that enable the accurate, condensed summarizing of complex, voluminous cases; (2) simplified evidence charts that set out the arguments and supporting evidence relied on by the applicant, the respondent or both; and (3) cause and effect diagrams that facilitate the retrospective dissection of a case as a means of identifying areas for improvement.

Mateus Aimoré CARRETEIRO, Appellate Arbitral Rules in International Commercial Arbitration

Abstract: Arbitral proceedings are praised for the finality of their arbitral awards. One cannot ignore, however, that parties to complex and high-stakes disputes may be concerned about potential errors. In certain disputes, therefore, an internal appellate tribunal may be an interesting option for effective review of awards. After reviewing the role of appeals in litigation, this article analyzes the reasons in favor of appeals in international commercial arbitration and reviews how arbitral institutions have structured appellate arbitral rules and other potential issues that may arise. In conclusion, this article suggests that appeals, in the context of certain international commercial arbitrations, may improve the arbitration system and be crucial instruments to protect parties against erroneous decisions and to safeguard the integrity of the arbitration process.

Nduka IKEYI & Jirinwayo Jude ODINKONIGBO, *Statoil v. NNPC*: A Question of Absence of Jurisdiction or Exercise of Discretion Not to Exercise Jurisdiction

Abstract: Section 34 of Nigeria's Arbitration Act provides that '[a] court shall not intervene in any matter governed by this Act, except where so provided in this Act'. Relying on this provision, the Court of Appeal recently set aside the interim order of a High Court restraining arbitration proceedings, reasoning that the High Court lacked the jurisdiction to make the order. It is argued in this comment that the Court of Appeal may have reached the right decision in that case, but for the wrong reason. Nigerian courts of superior record derive their powers from the Constitution; the Arbitration Act cannot operate to diminish the powers granted to these courts by the Constitution.

BOOK REVIEWS

Nikos Lavranos, Book Review – International Investment Law: A Handbook, by Marc Bungenberg, Jörn Griebel, Stephan Hobe & August Reinisch

Panayotis M. Protopsaltis, Book Review – Interaction and Conflict of Treaties in Investment Arbitration, by Ahmad Ali Ghouri


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The graphic features a black background with white text and a circular icon. The icon depicts a group of five stylized human figures, with a magnifying glass positioned over the central figure. The background is accented with horizontal lines in blue and green, and the Wolters Kluwer logo is located in the bottom left corner.

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