Kluwer Arbitration Blog

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Lawrence Boo (The Arbitration Chambers) and Gary B. Born (Wilmer Cutler Pickering Hale and Dorr LLP) · Thursday, October 4th, 2018

Kluwer Law International and the Singapore International Arbitration Centre (SIAC) are pleased to announce their new partnership in publishing the latest edition of the Asian International Arbitration Journal (AIAJ). In this 2018 publication, Mr Gary Born, President of the SIAC Court of Arbitration, joins Professor Lawrence Boo as a General Co-Editor of the AIAJ.

The AIAJ seeks to be a thought leader on issues in international commercial arbitration in the Asia-Pacific region. Published twice yearly since 2005, this cutting edge, practical publication will provide insights into latest institutional developments and regulatory changes, as well as updates on recent case law, legislative enactments and arbitral awards in Asia.

The contents of the latest issue of the journal is now available and includes the following contributions:

V. K. Rajah, ***The Case For Singapore To Take The Lead In International Arbitration Ethics***

There has in recent times been much hand wringing within the international arbitral community about the difficulties of reaching a consensus on ethical standards. This paper presents a simple thesis: it is in Singapore's enlightened self-interest to set the highest pragmatic standards for its professionals regardless of where they operate and to ensure that all matters seated here are ethically policed by common standards. While Singapore should continue to steadfastly contribute to international thought leadership in this area, it cannot afford to adopt 'wait-andsee' approach for the rules to be imposed internationally. First, being ethics agnostic is not the Singapore way. Second, instead of harming its competitive edge, stricter ethical standards will pay dividends both professionally and commercially. To this end, greater weight should be given to the business and financial community in assessing both the desirability and urgency for reform. Third, Singapore should not be ethically disingenuous by upholding one standard of ethics before the courts and another lower standard before arbitral tribunals. Axiomatically, it is in Singapore's self-interest to take the lead. The jurisdictions that best address the very patent desire by users for enforceable ethical standards will over time benefit enormously as first movers.

Gracious Timothy Dunna, *Supreme Court In Centrotrade 2016: Too Quick To Nod At The Validity Of The Two-Tier Arbitration Clause?*

In a decade's time since the Supreme Court's ruling in Centrotrade in 2006, a plethora of questions opened relating to two-tier arbitrations: What is the nature of the awards in the first and second instances; where is the appellate tribunal seated; what may be the grounds of appeal; and what authority is exercised by appellate tribunals? In 2016, nevertheless, the Supreme Court reflected upon several of these questions, and answered them using certain fundamental principles of arbitration. This piece tries to holistically understand appellate arbitrations and its entailments, and provides an alternative view as to why the Supreme Court erred in enforcing the appellate arbitration clause in Centrotrade.

Sai Anukaran, *'Scope Of Arbitrability Of Disputes' From The Indian Perspective*

Arbitration essentially involves ouster of jurisdiction of civil courts by mutual consent of the parties in lieu of jurisdiction conferred upon a specific set of persons known as arbitrators to adjudicate the dispute. International Arbitral Standards require the states to keep their National Arbitral Legislation open-ended without limiting the scope of arbitrability of disputes, providing grounds only for setting aside of arbitral awards in violation of the Public Policy of the country. Thus, the interpretation of 'Scope of arbitrability' is left to the determination of the courts. The instant article explores the meaning of term 'arbitrability of disputes' and discusses the 'Scope of arbitrability of disputes' in Indian Perspective. The article critically analyses the case of Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd., wherein the Supreme court for the first time evolved test of arbitrability of disputes and further enumerated an illustrative list of disputes, which are incapable of being decided by arbitration. The article then maps the evolution of tests of arbitrability by various courts based on the Judgement of the Supreme Court and critically analyses them.

Mohamed H. Negm and Huthaifa Bustanji, *Particularity Of Arbitration In International Intellectual Property disputes: Fitting Square Peg Into Round Hole*

With the world more and more dependent upon technology of all types, the continued and growing importance of intellectual property cannot be understated. There has been, and will continue to be, an accompanying explosion in the number and complexity of transactions in which intellectual property is a critical, if not the critical, element. Many of these transactions cross national boundaries; as do the disputes which inevitably arise from them. This article will serve as a handy reference and guide for navigating through the complex maze of intellectual property and arbitration. The main characteristics of intellectual property disputes and the results offered by domestic litigation and arbitration are scrutinized in this article. It starts by exploring how and why arbitration can provide a better way to resolve these disputes. It then deals with the issue of arbitrability of intellectual property disputes with special emphasis placed on public policy rationales. Finally, the questions of the applicable law and limitations to party autonomy are adequately addressed.

Elizabeth Wu and Lawrence Boo, *Of Moving Frontiers And Notes Verbales: Ascertaining The Intentions Of State Parties In Bits*

The 1969 Vienna Convention on the Law of Treaties (the VCLT) provides an interpretive framework to ascertain State parties' respective treaty obligations. In bilateral investment treaties (BITs), State parties mutually undertake to protect investments made by the nationals of the other contracting State. In its decision in Sanum Investments Ltd v. Government of the Lao People's Democratic Republic [2016] SGCA 57, the Singapore Court of Appeal held that a Macanese investor was a protected national under a BIT between the Lao People's Democratic Republic (Laos) and the People's Republic of China (China). This ruling was made against the views of Laos and China, expressed through an exchange of Notes Verbales after the dispute arose, that the BIT did not cover Macau. This article examines the Court's use of an evidentiary 'critical date rule' to exclude the consideration of these Notes Verbales. It questions whether the Court's approach coheres with the principles of treaty interpretation encapsulated in the VCLT.

Contributions to the AIAJ should be submitted by softcopy, in a word document, to publications@siac.org.sg. The editorial guidelines for the AIAJ may be found at the following link.

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