

# Kluwer Arbitration Blog

## The Contents of Journal of International Arbitration, Volume 35, Issue 6, 2018

Maxi Scherer (WilmerHale & Queen Mary University of London) · Monday, December 10th, 2018

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

### **Gordon Blanke, *Free Zone Arbitration in the United Arab Emirates: DIFC v. ADGM (Part II)***

This is Part II of a two-part article that deals with the phenomenon of free zone arbitration in the United Arab Emirates. Part I, which was published in the last issue of this journal, discussed in some detail the concept and practice of free zone arbitration in the Dubai International Financial Centre (DIFC). This Part II discusses free zone arbitration in the more recently established Abu Dhabi Global Market (ADGM) and highlights the main differences between the two. In doing so, Part II will take a closer look at the judicial and legislative framework of the ADGM, including in particular the main provisions and the operation of the 2015 ADGM Arbitration Regulations, the institutional framework of arbitration in the ADGM, the curial function of the ADGM Courts in ADGM-seated arbitrations and the recognition and enforcement of domestic (non-)ADGM and foreign arbitral awards in the ADGM. Part II also explores to what extent the ADGM Courts are envisaged to serve as a host or conduit jurisdiction in the terms proposed and practiced by their DIFC counterparts.

### **Heiko A. Haller & Annette Keilmann, *In Claimant's Hands? Admissibility and Consequences of a Withdrawal of Claim in International Arbitration***

The withdrawal of claim is not explicitly dealt with in most arbitral rules. As a consequence, it can be unclear whether a withdrawal is without prejudice or with prejudice (*i.e.*, a 'waiver' of the claims). Also, it is questionable whether, in case of a withdrawal with prejudice, the respondent is entitled to object to a withdrawal. Finally, there may be doubt whether a cost decision has to be taken and who decides on the allocation of the costs when a claim is withdrawn. This article concludes that – unless the claimant clarifies that its withdrawal is one with prejudice – the withdrawal is only without prejudice. The respondent may object to such withdrawal. From the moment when the respondent has received the detailed request for arbitration or the statement of claim, even the respondent's consent is required. Regarding a withdrawal with prejudice, no consent of the respondent is needed. Finally, although any effective withdrawal of a claim terminates the arbitration proceedings with immediate effect, the arbitral tribunal remains competent to decide on the allocation of the costs of the proceedings.

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## **Joachim Drude, *Fiat Iustitia, Ne Pereat Mundus: A Novel Approach to Corruption and Investment Arbitration***

Corruption has existed forever. Notwithstanding a seemingly universal condemnation as reflected in a number of international conventions, levels of corruption continue to be quite high across the globe. The public sector is most troubled with it. There are countries where grand corruption deeply rooted at highest government levels constitutes the very essence of state policy. This article analyses whether it is appropriate in the investment arbitration context to deny contracts or investments procured by corruption any form of protection as the tribunals in *World Duty Free*, *Metal-Tech* and *Spentex* have done, relying on considerations of international (transnational) public policy. Based on a comparative analysis of how several jurisdictions deal with the issue, the article concludes that, subject to certain limitations, it is not against international (transnational) public policy to accord protection to contracts and investments tainted by corruption.

### NOTES SECTION

#### **Shaun Pereira, *Deferred Challenges to Jurisdiction Under the Model Law***

This note discusses a recent decision of the Singapore High Court, which decided that a party's failure to bring a challenge against an arbitral tribunal's preliminary ruling on jurisdiction under Article 16 of the UNCITRAL Model Law precluded that party from applying to set aside the merits award on the jurisdictional grounds which could have been challenged earlier. This note argues that a better interpretation of the Model Law is that parties are entitled to choose between the two alternatives of a challenge under Article 16 or a subsequent setting-aside application on those jurisdictional grounds. That interpretation is more consistent with the drafting history of the Model Law and makes good practical sense, and any undesirable conduct can be adequately regulated through the cognate doctrines of waiver and estoppel.

### BOOK REVIEWS

**Patrick Dumberry, *A Guide to State Succession in International Investment Law*, 1st edition, Edward Elgar Publishing 2018, ISBN: 978-1788116602 (reviewed by Dr Hanno Wehland)**

**Jose Daniel Amado, Jackson Shaw Kern & Martin Doe Rodrigues, *Arbitrating the Conduct of International Investors*, 1st edition, Cambridge University Press 2018, ISBN: 9781108415729 (reviewed by Dr Crina Baltag)**

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