Kluwer Arbitration Blog

Winds of Change in International Arbitration

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Indicating signals of the evolution of international arbitration, as a response to the need to keep up with a globalised legal and financial market, is not an easy task. It is not an easy task because of the different ways evolution is perceived by different circles. For some, a wind of change in international arbitration would signify a major institutional reform, such as the creation of specialised arbitral tribunals or the creation of free zone jurisdictions. For others, a wind of change could be seen as any element that shapes the international arbitration culture, such as the analysis of how market forces influence the needs of arbitration users.[1)]

Such a developmental process in the field of international arbitration can clearly be pictured in what Gordon Blanke refers to as "supranational arbitration".[2)] It has been suggested that the private enforcement of EU competition law claims through arbitration has given rise to the formation of supranational arbitration, a new type of arbitration that sanctions the active involvement as amicus curiae of the European Commission, being the EU regulator responsible for matters of competition within the internal market and the guardian of the EU Treaties. A variation of the theme has since become the use of arbitration as a monitoring tool within the context of EU merger control, a subject that has attracted much academic and professional attention on the European continent and that has prompted parallel developments in the US and Canada.

Another example of winds of change, in an attempt to respond to sector-specific needs, is the emergence of arbitration in the banking and finance sector.[3)] Such a change is prompted by the increase in the complexity of financial products that give rise to disputes in the modern world of finance, in particular within the context of cross-border swaps and derivatives transactions. Some jurisdictions have established arbitration centres dedicated to finance arbitration. These include most importantly the London City Dispute Panel, Euroarbitration and P.R.I.M.E. Finance (the Panel of Recognised International Market Experts in Finance). A variation of the theme are existing arbitration centres that branch out into finance arbitration-specific products by offering a specific set of rules for application in finance arbitrations.

Along the same lines, financial and legal concerns arise in the world of cryptocurrencies and dispute resolution. The issue of how cryptocurrencies can be used as a means to attract foreign investors and whether investment arbitration could be the way of settling disputes relating to

central bank digital currency triggers a need for further evolution. Santiago Rodriguez Senior acknowledges that digital currencies are an emerging market, and develop some of the benefits they possess over the use of fiat currencies.[4] However, there is a growing discussion among states of whether to adopt their own form of digital currency, and how states with hostile reputations towards foreign investors will use these digital currencies as a new way to attract foreign investment, but also to limit their sovereign immunity. What can be said with certainty is that we are entering into a new revolution in humanity's history, the tech revolution. Technologies such as blockchain and cryptocurrencies will reshape our understanding of the financial industry within the coming years.

In whichever way someone views development in arbitration, the underlying force triggering such change is, inevitably, the way arbitration users and arbitration viewers assess its functions. The continuously emerging needs of this dispute resolution field are clearly connected to economic, legal and political concerns that strive for an effective response.

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References

?1 Published in CIArb's Academic Journal: International Journal of Arbitration, Mediation and Dispute Management. *The Journal welcomes the submission of articles for publication (see here the guidelines for submissions)*

?2, ?3 Gordon Blanke, "Winds of Change in International Arbitration, Keynote Address, 3rd CARTAL Conference, 29–30 September 2018" 85(1) CIArb Journal of International Arbitration (2019) 98.

?4 *Santiago E Rodriguez Senior*, "May Central Bank Digital Currencies Become a Tool for Hostile States to Avoid Investor-State Arbitration?" 85(1) CIArb Journal of International Arbitration (2019) 24.

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