Kluwer Arbitration Blog

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

Rekha Rangachari, Fatima Aslam, Kabir Duggal & Adeel Wahid, *It Is Not a BIT Race, It Is a BIT Marathon: Comparing Pakistan's and India's Evolving Approach to Investment Policy*

India and Pakistan initiated their journeys from distinct starting points, yet have since adopted similar approaches to structuring their investment policies. These two large, developing nations differ politically, but both seek to attract foreign investment and have faced many complicated investment disputes. Because of the significant role that each of these countries play in the developing world within their respective spheres of influence, it is worth examining their experience. Indeed, India has recently terminated numerous Bilateral Investment Treaties (BITs) after restructuring its investment policy while Pakistan is contemplating amendments to its existing investment regime and may adopt a similar approach. Related developments on the international plane could also further support the countries' stances on renegotiating and adopting a balanced approach to their investment policies. In the future, it would be interesting to observe whether other countries adopt similar approaches.

Dirk Wiegandt, *Blockchain, Smart Contracts and the Role of Arbitration*

Blockchain technology is considered one of the most disruptive technologies of our times. At the same time, by means of smart contracts stored on a blockchain, all or parts of an agreement can be executed automatically upon certain triggering events. Some consider that with smart contracts becoming more and more complete and self-executing, we will enter into an era of dispute resolution without the involvement of a neutral third party (conciliator, mediator, arbitrator) or even an entirely dispute-free environment. By contrast, it is submitted that disputes are inevitable. The question is not whether disputes arise, but which means of dispute resolution are best suited to resolve disputes arising in the context of blockchains and smart contracts. While not the only mechanism, it is submitted that arbitration is particularly well-suited for many types of disputes and, if adapted to the specific expectations and needs of (enterprise) users of blockchains and smart

contracts, may play a central role in a blockchain and smart contract environment.

Lisa-Marie Ross & Kathrin Asschenfeldt, Recent Developments of Third Party Joinder in International Arbitration

This article analyses the impact of the Singapore High Court decision CJD v. CJE and another [2021] SGHC 61 on the highly topical issue of third party joinder in international commercial arbitration. In its 2021 decision, the court applied a strict yardstick in view of party autonomy when interpreting consent requirements for joinder under the London Court of International Arbitration Rules 2014. A closer comparative analysis of the procedural rules of leading international arbitration institutions identifies the judgment's guidance to similarly constructed joinder rules, such as the International Chamber of Commerce Rules 2021. The comparative analysis recognizes a larger growth of caseloads in Asia and results suggest an incrementally developing preference for joinder rules which are constructed in a wide manner. This includes the arbitral tribunal's power to allow third parties to join already commenced arbitration proceedings based on a prima facie test, alongside express unanimous parties' consent.

Mark Mangan & Lukas Lim, The Pursuit of Net Zero Arbitration With the Aid of Carbon Emissions Scorecards

Carbon emissions scorecards could help achieve net zero arbitration within a reasonable timeframe. The scorecards could be prepared at the conclusion of an arbitration and the tribunal empowered, either through party agreement, a change to existing arbitration rules, or a procedural order, to take both the monetary and environmental costs into account when allocating the costs of the proceedings.

Carbon market forces could be brought to bear on the entire arbitral process to encourage a profound shift in behavior. All arbitration stakeholders, including counsel, experts, and even arbitrators could be required to account for their emissions at the point of their being paid. Likewise, arbitral institutions could be encouraged to report their annual emissions, which could be considered by parties when determining which institutions to support.

This would align the practice of arbitration with the journey to net zero that many users of arbitration have already embarked upon. Indeed, many corporations have recently linked executive and senior management remuneration to their ability to achieve stipulated climate goals. It would be a small leap to apply the same standards to arbitration professionals, and over time clients will demand it.

Marie-Laure Bizeau & Aleksandra Fedosova, 'Forum of Necessity': Using French Law's 'Juge d'appui' in Foreign-Seated Arbitrations as a Cure for Denial of Justice

This article explains how French arbitration law enables a party to turn to the French courts for arbitrations seated outside of France, when faced with the risk of denial of justice. It describes the jurisdiction and role of the French 'juge d'appui' (or 'supporting judge'), in preventing a denial of

justice in arbitrations that bear no connection to France. An analysis of French arbitration law and jurisprudence demonstrates that the French supporting judge is an effective solution to prevent a denial of justice when the arbitration agreement does not provide for a supporting judge.
