
Kluwer Arbitration Blog

The Contents of the Asian International Arbitration Journal, Volume 18, Issue 2 (2022)

Lawrence Boo (The Arbitration Chambers) · Thursday, December 22nd, 2022

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

Nolan ‘Youngkwang’ Lee, Richard Garnett & Lee Carroll, *Enforcement of Arbitral Awards in South Korea*

Not only is South Korea an economic powerhouse, but it is also a pro-arbitration and pro-enforcement jurisdiction. This article examines the enforcement framework of both domestic and foreign arbitral awards in South Korea, considering the latest amendments to the Korean Arbitration Act (KAA). In doing so, the authors argue that South Korea is a sophisticated jurisdiction for arbitration and its regime for enforcement is consistent with leading Model Law jurisdictions in the Asia-Pacific region. Most notably, enforcement proceedings in South Korea follow an expeditious ‘decision to enforce’ process, akin to a common law summary judgment type procedure and South Korean courts only require the bare minimum documents to be submitted as proof. Furthermore, South Korean courts take an internationalist and narrow approach to the defences to enforcement, requiring a serious breach or impact on due process before granting refusal. The pro-arbitration nature of South Korea is particularly noticeable in the context of arbitrability and public policy. Competition and intellectual property matters are now both likely arbitrable in South Korea, and South Korean courts maintain a high threshold for refusing to enforce awards under the public policy ground.

S.R. Subramanian, *Disclosure, and challenge of arbitrators under the Indian Model BIT: A step towards enhancing the legitimacy of investment arbitration?*

Legal provisions for disclosure and challenge of arbitrator are very crucial to restore the confidence of the parties in the arbitral process when it is upset by complaints of lack of independence or impartiality of arbitrators. However, detailed and binding rules on the challenge and disqualification of arbitrators are not forthcoming. Against this backdrop, the revised Indian Model Bilateral Investment Treaty (BIT) of 2015, as a first-of-its-kind, has taken the initiative of including a detailed framework in the form of treaty rules to address the disclosure requirements and the grounds and procedure for challenge of arbitrators. In this connection, the article attempts

to determine how the disclosure and arbitrator challenge mechanisms are structured across the leading international (investment) instruments and later use this as a benchmark to evaluate the disclosure obligations of arbitrators and their challenge under the Indian Model BIT.

Weiyao Han, Ad Hoc Arbitration Reform in China: A Step Forward

In July 2021, the Ministry of Justice (MoJ) released its proposed revisions to the Arbitration Law (AL) for public consultation, sparking hope for the liberalization of ad hoc arbitration in China. However, the planned reform is unlikely to be comprehensive, as it is limited to foreign-related commercial disputes and burdened with procedural requirements. This study finds that the favourable treatment of foreign-related sectors and the insufficient quality of domestic arbitration contribute to China's pattern of 'half-measure' ad hoc arbitration reforms. Since it will take a long time to reduce the disparity between the legal performance of foreign-related and purely domestic sectors, China has adopted 'gradualism' in its legal reform. In doing so it seeks to minimize instability during its transition and maintain the reliability of arbitration. To achieve these goals, this article suggests that further reform of China's ad hoc arbitration proceed on its dual track, temporarily shutting out domestic sectors while further internationalizing foreign-related ones.

Ankur Singhal, Cox Kings v. SAP India: Questioning the Use of the 'Group of Companies' Doctrine

The 'group of companies' doctrine had been initially introduced by the Supreme Court of India into the arbitration jurisprudence. Since its introduction, this doctrine has been increasingly used to rope in non-signatories to the arbitration agreement. In a recent landmark judgment of Cox Kings Limited v. SAP India Private Limited and Another, the Supreme Court has questioned the use of the 'group of companies' doctrine and has referred the matter to a larger bench. This case comment analyses the judgment, the merits and demerits and the position of this doctrine from an Indian and cross-jurisdictional perspective.

Shreya Singh, Enforcing Foreign Awards Against Non-signatories: Analysis of Gemini Bay Transcription Pvt Ltd. v. Integrated sales service Ltd

Even though non-signatories to an arbitration may be affected by the outcome of an arbitration, they are often treated as strangers in the process. However, non-signatories can seek their involvement in an arbitration from the stage of reference to an arbitration, till enforcement of the arbitral award. The Supreme Court in its recent judgment of Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd. & Ors. has clarified the position of non-signatories to the extent of enforcement of foreign awards by allowing the same.

Delphine Ho, Book Review: Franco Ferrari & Friedrich Rosenfeld (eds), Handbook of Evidence in International Commercial Arbitration: Key Issues and Concepts (2022)


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