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Maxi Scherer (WilmerHale & Queen Mary University of London) · Saturday, February 15th, 2025

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

Zongyao (Eric) Li, Revisiting the Arbitrability of Corporate Disputes: Proposing a Unified Approach

The concept of arbitrability is dynamic, and its applicability to corporate disputes – such as shareholder disputes – can vary among jurisdictions and change over time. This creates uncertainty about the validity of arbitration agreements and the enforceability of arbitral awards, leading to less frequent use of arbitration in corporate disputes as compared to broader commercial disputes. To determine arbitrability, this article recommends that tribunals facing a challenge to arbitrability should apply both the lex arbitri (law governing arbitration) and the lex societatis (law governing the corporation). This cumulative approach aligns with parties' expectations and balances interests across jurisdictions, promoting consistency in outcomes. The article also recommends establishing a presumption of arbitrability for corporate disputes. This would promote the use of arbitration while recognizing the rights of non-parties. Modern arbitration practices allow non-parties to engage meaningfully through mechanisms like joinder and consolidation, addressing most concerns about the impact on non-participating parties. However, this presumption of arbitrability may be rebutted by the existence of certain factors, including the exclusive jurisdiction of national courts or the presence of significant interests affecting non-participating parties.

Thomas Adams, Non-compliance of Security for Costs Orders

Although security for costs has seen a steady rise in recent years, the tools available to tribunals to address the non-compliance of security for costs orders is far less established. The purpose of this article is to shine a light on this theme, which has gained traction in English case law and in the investment arena. That development goes hand in hand with increasing coverage of the issue in institutional rules and national arbitration laws.

This article is divided into six sections, first examining the indisputable rise of security for costs in international arbitration (surveyed through available data and academic commentary), then

examining the non-compliance of security for costs orders in common law and civil law jurisdictions, in the investment landscape, and coverage in institutional rules. It then moves onto a brief discussion and wrap-ups with some concluding remarks. The hope is that readers will be better informed of the current lay of the land with respect to the non-compliance of security for costs orders, and the tools available to those facing such non-compliance. That includes whether a case can be suspended or terminated for want of non-compliance, and also whether a termination can be made with prejudice to a claimant's right to bring the same action in the same or separate fora.

Dara Sahab, SCCA Saudi Case Law Study: Three Years in Review

In 2021, driven by the interest in understanding the arbitration ecosystem in Saudi Arabia and promoting Riyadh as an arbitral seat, the Saudi Center for Commercial Arbitration (SCCA) collaborated with the Saudi Ministry of Justice (MOJ) in soliciting over 1400 judgments of courts of appeal, as well as certain Supreme Court judgments, issued between 2017 and 2022 relating to motions in aid of arbitration proceedings and motions to enforce or annul arbitral awards. It was particularly important for SCCA to attach empirical data to the enforceability (or not) of arbitral awards in Saudi Arabia. This article outlines SCCA's statistical findings based on the culmination of three years of case law review and summarizes certain interesting decisions that arose in the review process. Indeed, the case law study revealed results far beyond SCCA's expectations, demonstrating a consistent record of an enforcement rate exceeding 92% in every batch of reviewed judgments. The case law study also revealed the courts' deference to arbitration and an unwillingness to assert jurisdiction in those cases.

Yazan Al Maaiteh, Joining Non-signatory Third Parties to Arbitration Agreements in Jordan

This research paper examines the legal framework of arbitration agreements in Jordan, focusing particularly on the controversial issue of involving non-signatory third parties in arbitration proceedings. The judiciary in Jordan has broadened the scope of arbitration clauses to encompass disputes involving parties not directly bound by a contract, igniting discussions about the clarity and enforcement of the Arbitration Law. The absence of extensive legal literature in Jordan has resulted in inconsistent legal practices and uncertainties in proceedings, underscoring the critical need for revisions to the Arbitration Law.

By considering international conventions like the Model Law and the International Centre for the Settlement of Investment Disputes (ICSID) Convention, this paper proposes a more comprehensive legal structure that permits the addition and participation of third parties in arbitration agreements. It also explores the consequences of fundamental legal doctrines, such as the Doctrine of Privity of Contract, on arbitration agreements, with the goal of improving the legal framework for effective dispute resolution in both local and global settings. The study highlights the significance of a thoroughly documented legal literature in Jordan to guarantee a dependable legal environment conducive to domestic and international business. It scrutinizes a pivotal court ruling that extends the influence of arbitration clauses to non-signatory entities, stressing the necessity for precise comprehension of arbitration stipulations in construction contracts.

In summary, this paper advocates for an all-encompassing legal system in Jordan that promotes

equitable and effective dispute resolution by means of a detailed understanding of arbitration agreements and the inclusion of non-signatory third parties.

Jamil Ddamulira Mujuzi, The Status of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards in Seychelles: A Comment on Complete Energy Solutions Limited v. Vetivert Tech (Pty) Ltd [2024] SCCA 13 (3 May 2024)

In 1976, Seychelles became a party to the New York (NY) Convention (the Convention) through succession and domesticated it (incorporated into domestic law) through Articles 146– 150 of the Commercial Code (1977). In 1985 Seychelles withdrew from (repudiated) the Convention. However, this was not accompanied by repealing Articles 146–150 of the Commercial Code. In 2017, the Court of Appeal held that since Seychelles had repudiated the Convention, it was not enforceable. In 2020, Seychelles acceded to the Convention. In May 2024, the Court of Appeal held in Complete Energy Solutions Limited v. Vetivert Tech (Pty) Ltd that the Convention was enforceable in Seychelles through Articles 146–150 of the Commercial Code. In this article, I argue that the Court's decision in Complete Energy Solutions Limited v. Vetivert Tech (Pty) Ltd is debatable for at least two reasons. First, Articles 146–150 of the Commercial Code were enacted to domesticate the Convention and when Seychelles repudiated that Convention, those articles ceased to have legal effect. Second, the declaration that Seychelles made in 2020 when it acceded to the Convention contradicts Article 147(1) of the Commercial Code. These two arguments substantiate the view that the Convention is not part of Seychelles domestic law. Thus, until the Convention is domesticated through enacting the relevant legislation, it should not be the basis for the enforcement of foreign arbitral awards in Seychelles. This does not mean that foreign arbitral awards will not be enforceable. They can still be enforced if they are 'converted' into foreign judgments or orders. In one of its cases, the Court of Appeal held that if a foreign arbitral award is 'converted' into a judgment in a foreign country, it can be enforced in Seychelles as a foreign judgment.

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