Kluwer Arbitration Blog

The Contents of Arbitration: The International Journal of Arbitration, Mediation and Dispute Management (Ciarb), Volume 91, Issue 1 (2025)

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First published in 1915, *Arbitration* now enters a new era, building on a rich legacy while looking towards the opportunities ahead. The upcoming arrival of Issue 91.1—the first issue for 2025—marks the first step into a new chapter, with Prof. S.I. Strong taking the helm as the journal's new Editor-in-Chief.

In her inaugural editorial, Prof. Strong reflects on how the field of international dispute resolution has evolved since her own first exposure to *Arbitration* and outlines her vision for the journal:

> *"I was a junior associate, desperate to understand the arcane world of international commercial arbitration, and finding Arbitration – then a slender, elegant volume available only in hard copy – was a huge turning point. I distinctly recall how the depth and diversity of articles piqued my intellectual curiosity while simultaneously providing me with a strong practical foundation in the field.*
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> *Fast forward to the present, when international dispute resolution is one of the hottest areas of practice in the world. Junior practitioners start their careers already well-versed in arbitration, mediation and similar mechanisms, having taken specialized classes in law school and competed in international moots like the Vis and the Vis East. Arbitration is now one of a score of publications dedicated to private forms of dispute resolution, and artificial intelligence is on the brink of revolutionizing the very nature of the legal profession. Given these changes, is there still a place for a journal first published in 1915?*
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> *The answer is a resounding yes. With a readership including more than 17,500 CIArb members from more than 150 jurisdictions, Arbitration is uniquely placed not only to reach a global audience but to solicit and publish internationally relevant articles that meet the scholarly and practice-oriented goals of dispute resolution specialists around the world.*

> *Going forward, my goal is to present articles that promote the same sense of wonder and enlightenment that I experienced when I first discovered Arbitration. Our Journal is perfectly situated to promote a broad, internationalist perspective that reflects and responds to the increasingly rapid changes in our field, and I am confident that we will continue to distinguish ourselves in that regard."*

While covering a diverse array of ADR topics across several jurisdictions, this issue comprises a special feature with four articles which provide a spotlight on ADR in the Middle East.

We are happy to announce that the latest issue of *Arbitration* is now available and includes the following contributions:

ARTICLES

Hilary HW SO, *Lex Contractus Arbitratus: A Critical Evaluation of Doctrine, Policy, and Law*

This article evaluates the strengths and weaknesses of the four-mainstream choice of law approaches in determining the governing law of the arbitration agreement ('*lex contractus arbitratus*') in the absence of any explicit appointment by the parties. These include: (1) *lex contractus*; (2) *lex loci arbitri*; (3) the a-national approach; and (4) the validity approach. This article determines that not only does the *lex loci arbitri* approach produce great commercial benefits by ensuring the enforceability of the arbitral award pursuant to the New York Convention and by mitigating legal complexity and unpredictability, but is also the most doctrinally compelling approach considering the doctrine of separability and close connection. This article concludes with the proposal that an ideal approach ought to begin with the presumption of *lex loci arbitri*, with possible countervailing factors such as the parties' true intention as evinced through parol evidence and the choice of law's effect on the validity of the arbitration agreement.

Simrin PANAG and Kanaga DHARMANAND, *Closed Doors: Confidentiality of Arbitral Deliberations in Australia*

Although confidentiality is widely accepted as one of the key attractions of international commercial arbitration, the nature of the obligation varies between jurisdictions. This article explores the extent to which arbitrators' deliberations are confidential in Australia. It examines international practice, and in particular the landmark Singaporean case of *CZT v. CZU* [2023] SGHC(I) 11, which extended the implied obligation of confidentiality to the deliberations of the arbitral tribunal. It then turns to consider Australia's various confidentiality rules: at common law, under the International Arbitration Act 1974 (Cth) (IAA), and under the Uniform Evidence Acts. The article considers the consequences of this network of rules and argues for a balanced approach to confidentiality which allows for exceptions where necessary in the interest of justice. Such an approach would align the Australian position with international standards.

Alexandra GOETZ-CHARLIER, *Alternative Dispute Settlement in the UN and the EU*

Internal Justice Systems: A Comparative Case Study

This article investigates whether informal dispute settlement may promote a faster and more efficient resolution of employment disputes in the United Nations (UN) reformed administration of justice. Some scholars have pointed out that it is difficult to answer this question without a benchmark. Accordingly, this article conducts a comparative analysis of UN and European Union (EU) alternative dispute resolution ('ADR') mechanisms for staff disputes. After describing how these organizations' internal judicial systems emerged, the first section argues that structural deficiencies remain in the UN system and create an imbalance between disputants, which prevents ADR from delivering its full potential. Despite the limited available data regarding these organizations' ADR practice, the second section contends that the European Ombudsman, a mechanism of good governance widely open to staff complainants, has legitimized ADR and led to durable positive institutional outcomes. Ultimately, this comparative study allows to draw both quantitative and qualitative findings to improve the UN system.

Saterjeet SEN, ***Beyond Stamps – The NN Global Saga and Section 11 Proceedings***

In December, 2023, a seven-judge bench of the Supreme Court of India (hereinafter 'Supreme Court') unanimously overruled a five-judge Bench's judgment in NN Global-II, and held that the Court at the stage of appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter 'Arbitration Act') can appoint an arbitrator and leave the issue of stamping to be decided by the arbitrator. It is imperative to note that the five-judge Bench Reference was essentially borne out of a three-judge bench decision in NN Global-I, wherein the Supreme Court doubted the correctness of view taken by a coordinate bench in Vidya Drolia that the non-payment of stamp duty on a contract would invalidate even the arbitration agreement, and render it non-existent in law. The three-judge bench expressed its disagreement with the Vidya Drolia Bench's decision that the Court must first impound the unstamped instrument in pursuance of Section 33 of the Stamp Act, 1899, and thereafter appoint an arbitrator under Section 11 of the Arbitration Act. The majority in the Constitutional Bench had come to a conclusion that non-stamping or insufficient stamp duty on the main agreement containing the arbitration clause would render invalid the arbitration clause, thereby approving the holding in SMS Tea, Garware, and Vidya Drolia, thus indicating that the position adopted by the three-judge bench in NN Global is no longer valid. Against this background, this article attempts to critically analyze the issue whether the Court should be barred from acting upon an unstamped instrument and appointing an arbitrator at the Section 11 stage.

A SPOTLIGHT ON ADR IN THE MIDDLE EAST

Dr Gordon BLANKE, ***The Enforceability of DIFC-LCIA Arbitration Clauses in the Light of Decree No. 34/2021: A View from Inside and Outside the UAE***

This article discusses recent court rulings that deal with the enforceability of a Dubai International Financial Centre (DIFC)-London Court of International Arbitration (LCIA) arbitration clause following the entry into force of Decree No. 34/2021. It will be seen that the local UAE (United Arab Emirates) and the DIFC Courts take a markedly different, more liberal approach when compared to the approach taken by foreign courts, such as the courts of Louisiana and Singapore.

Defaulting DIFC-LCIA arbitration clauses to a Concerning the Dubai International Arbitration Centre (DIAC) forum seriously undermines the concept of party autonomy in arbitration, sufficiently so to raise concerns with an experienced, international arbitration judiciary. Caution must be exercised by those who wish to safeguard the enforceability of their arbitration obligation in a non-DIAC forum.

Dr Khaled Ali ALHADHRAMI, ***Challenges and Solutions in Enforcing Foreign Arbitral Awards: A Case Study of the UAE***

This article studies the challenges that are faced in enforcing foreign arbitral awards in the United Arab Emirates (UAE) and develops solutions. UAE is committed to aligning its arbitration system with international arbitration standards such as the New York Convention but also faces challenges due to the complexities of Sharia principles and local legal frameworks. This study underscores such critical legal, judicial and procedural challenges and cultural barriers as the prohibition of interest (Riba) and Sharia principles. The paper employed a qualitative methodology, conducting in-depth interviews with ten experts in international arbitration. The findings revealed that legislative reforms, such as Federal Law No. 6 of 2018, support and enhance arbitration procedures and enforcement, but practical bottlenecks due to court backlogs and complicated documentation may hinder the process. The article also highlights the importance of Sharia-compliant agreements and the engagement of local legal expertise to facilitate the arbitral awards, as well as the use of digital tools to further streamline enforcement. The article recommends future comparative research into arbitration practices in similar jurisdictions as a way to identify best practices. The findings from this research provide actionable insights for lawyers, arbitrators, businesses, and policymakers, and offer practical strategies to empower the UAE's arbitration environment.

Dr Emad HUSSEIN, ***Beyond Litigation: The Promise of Mandatory Mediation in Saudi Arabia***

This article critically examines the implementation of mandatory mediation in Saudi Arabia, following the enactment of the Commercial Courts Law (CCL) and its Implementing Regulations. It situates this development within the broader global trend toward mandatory mediation, comparing the Saudi framework to established models in England and Wales and in Singapore. The study explores the theoretical foundations of mandatory mediation, assessing its potential benefits, such as the facilitation of access to justice and promotion of party autonomy and efficiency, alongside its inherent challenges. Through a detailed analysis of the design and outcomes of the CCL's mediation provisions, this article identifies areas for enhancement within Saudi Arabia's unique legal and cultural context. By addressing a notable gap in the literature, the findings contribute valuable insights for legal scholars, practitioners, and policymakers, ultimately advocating for the optimization of alternative dispute resolution (ADR) mechanisms to foster efficient and amicable commercial dispute resolution in the Kingdom.

CONFERENCES

Dr Gordon BLANKE, ***Closing Remarks from Dubai Arbitration Week (DAW 24): Common and Civil Law Synergies in the UAE's Judicial Free Zones: A Living Laboratory of Legal***

Traditions beyond the Common and Civil Law Divide

These closing remarks discuss the unique role of the Dubai and Abu Dhabi-based judicial free zones as a living laboratory of civil and common law legal, and more specifically, arbitration practice beyond the civil and common law divide.

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