Kluwer Arbitration Blog

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Maxi Scherer (ArbBoutique & Queen Mary University of London) · Saturday, March 29th, 2025

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

V.K. Rajah SC, *Courting Global Commerce: The Shifting Dynamics Between International Arbitration and International Commercial Courts*

Globalization continues to flourish through international trade and interconnected economies, despite the rise of economic nationalism. Even as trends like onshoring gain traction, the importance of global trade and effective dispute resolution remains unchanged. Businesses still demand swift, cost-effective, and enforceable outcomes, which is where International Commercial Courts (ICCs) play a role. These courts fall into three categories: Global (e.g., Singapore's SICC), National (e.g., China's CICC), and Hybrid (e.g., those in Gulf financial zones), each focused on supporting cross-border commerce in distinct ways. Though arbitration is largely insulated from judicial intervention, it still depends on court cooperation for enforcement. Arbitration enjoys strong support in commercial hubs, where judicial interference is typically limited to extreme cases. However, systemic challenges persist, including the lack of uniform ethical standards and effective enforceability mechanisms for professional lapses. While ICCs prioritize transparency and discharge public functions, arbitration remains a private process that benefits only the involved parties, with no authoritative public case law generated. Both systems share a common goal of providing effective justice, aligned with commercial norms, but they offer complementary advantages that support global trade. This dual approach allows businesses to choose between public judicial mechanisms and the confidentiality and flexibility of private arbitration. Arbitration's unique strengths – confidentiality, procedural adaptability, expert arbitrators, and broad enforceability under the New York Convention, which is recognized by 172 countries – make it unlikely to be replaced by commercial courts. Arbitration awards are often easier to enforce than court judgments, which can face significant hurdles. Additionally, the neutrality of arbitration addresses concerns about bias in national courts, reinforcing its status as the preferred method for resolving international commercial disputes. While ICCs strive for similar neutrality, they have yet to match arbitration's global enforceability, unless conventions like the Hague Judgments Convention gain broader adoption. Arbitration processes and ICCs complement each other but do not directly engage each other on the prevailing creases. To iron this out, the establishment of a forum where arbitrators and judges collaborate could drive innovation in cross-

border disputes, enhance the synergy between arbitration and judicial systems, and strengthen global commerce.

Kabir Duggal & Elizabeth Ebelechukwu Arubalueze, *CAVEAT ARBITRATOR!: Examining the Responsibility of Arbitrators to Probe Corruption: Lessons to Be Learned from the P&ID Saga*

As international arbitration's popularity rises, arbitral tribunals are increasingly confronted with issues traditionally handled by courts – specifically, issues relating to corruption and other forms of wrongdoing. However, there is consensus that the tools available to arbitral tribunals have limited efficacy (or none at all) in examining evidence relating to corruption, particularly when there are third parties. The recent decision of the English High Court in Nigeria v. Process & Industrial Developments Ltd (P&ID), however, introduces a new obligation on arbitrators to investigate allegations of corruption more seriously. Considering the importance of English law in international arbitration, this decision has truly wide-reaching implications for how arbitrators should address such allegations.

Pedro Lins, *Le Bien, Le Mal: A Tale of Contactless Anti-suit Injunctions and Foreign Arbitral Seats*

Under English law, the arbitration agreement gives rise to an actionable right to restrain breach through an anti-suit injunction (ASI). While an ASI is readily available in cases where the seat of arbitration is in England, until recently the question as to whether the same relief could be obtained in support of foreign-seated arbitrations had remained uncertain. This issue was raised for the first time in a series of recent cases in which the English High Court issued divergent decisions. Nevertheless, before the Court of Appeal the prevailing position was that, provided personal jurisdiction over the defendant is established under Part 6 of the Civil Procedure Rules (CPR), an ASI will generally be granted irrespective of the foreign seat and despite the absence of a stronger geographical nexus with England and Wales. The UK Supreme Court (UKSC) upheld the ASI but found it unnecessary to express a view on the proposition as to whether personal jurisdiction was a sufficient condition for relief. This article asserts that the proposition is both consistent with previous authority, and in conformity with comity and international law in general. More broadly, the decisions shed light on the basis and contours of ASI as a form of equitable relief, which is meant to correct the injustice arising from the breach of legally binding promises not to submit disputes arising under an arbitration agreement to other fora.

Alexandra Kosta-Foti & Mariam Del Carmen Ibrahim, *Party Autonomy, Comity and the RusChemAlliance Saga*

In September 2024, the English Supreme Court made a landmark ruling on anti-suit injunctions in UniCredit Bank GmbH v. RusChemAlliance (RCA) LLC [2024] EWCA Civ 64. This decision followed two earlier prominent judgments: Deutsche Bank v. RCA [2023] EWCA Civ 114 and Commerzbank v. RCA [2023] EWHC 2510 (Comm). This article explores this recent case law trilogy on anti-suit injunctions through two competing lenses: first, party autonomy; and second,

comity and the need to respect state sovereignty. The purpose of this article is to shed light on the remaining uncertainty pertaining to how these two interests materialize in practice – particularly because of the repeated references to 'caution' in the commentary on anti-suit injunctions. It will be argued that, although the English case law reveals a pro-contractual enforcement and pro-arbitration approach, uncertainty and inconsistency persist in two ways: (1) the problematic application of Enka v. Chubb in determining the law governing the arbitration agreement (AA); (2) the jurisprudence on comity.

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