# Current Issue of the Journal of International Arbitration

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Maxi Scherer (General Editor, Journal of International Arbitration, WilmerHale & Queen Mary University of London )

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ARTICLES SECTION

Ank Santens & Jaroslav Kudrna, The State of Play of Enforcement of Emergency Arbitrator Decisions

Abstract: The 2015 Queen Mary/White & Case International Arbitration Survey found that 79% of respondents considered the enforceability of emergency arbitrator decisions to be the most important factor influencing their choice between state courts and emergency arbitration when seeking urgent relief before the constitution of the arbitral tribunal. Given that the enforceability of emergency arbitrator decisions is a major concern for users of international arbitration, it is useful to explore the state of play of the enforcement of these decisions. This article provides an overview of all cases reported globally to date involving a request for enforcement of an emergency arbitrator decision and discusses key questions that arise in that context. The authors conclude by analysing the impact of the enforceability of emergency arbitrator decisions on whether users should seek emergency relief from an emergency arbitrator or a state court.

Beata Gessel-Kalinowska Vel Kalisz, UNCITRAL Model Law: Composition of the Arbitration Tribunal Re-considering the Case upon Setting Aside of the Original Arbitration Award

Abstract: In this article, the author analyses the question whether it is possible for the arbitrators, after their original award had been annulled, to sit on the arbitration tribunal hearing the case again, to reconsider the case, and to issue a second award in the same case in light of the UNCITRAL Model Law regulations. This question is addressed from two basic perspectives. The first one relates to arguments rooted in the functus officio principle, especially in reference to rectification and remission proceedings, as laid down in relevant regulations. The second perspective, meanwhile, encompasses the ethical principles and usages concerning appointment of arbitrators in international commercial arbitration, including the concept of prejudgment. In her conclusions, the author rejects a blanket prohibition on re-appointment of arbitrators, arguing that it does not duly account for all the nuances of the notion of impartiality in the context of actual practice.

Jakob B. Sorensen & Kristian Torp, The Second Look in European Union Competition Law: A Scandinavian Perspective

Abstract: Under European Union (EU) law, arbitrators and national courts are obligated to apply, ex

officio, EU competition law. Also according to EU law, any failure by an arbitral tribunal to apply such rules, or any erroneous interpretation or application hereof, constitute grounds for setting aside the subsequent award, if and when such measure is dictated by the Member State's procedural rules. This article examines the relevant procedural rules in Denmark and Sweden based on two recent decisions by the national Supreme Courts. It concludes that under Scandinavian procedural law, courts will generally limit their inquiry to a superficial review of the premises of the award and will only reluctantly set aside an otherwise valid award based only on matters of merit. The main purpose of the article is to provide an up-to-date analysis of the position of the Scandinavian courts, thus helping to 'map' the European arbitration landscape. Even so, we have attempted to include and contribute to a few of the main discussions concerning the landscape in which the decisions were rendered in the introductory section. In the last section, we build on the reasoning of the two Supreme Courts in order to propose a framework for understanding the interplay between national and EU law, at least in the Scandinavian countries.

César R. Ternieden, Tarek Badawy & Sarwat Abd El-Shahid, Arbitrability and Choice of Law in Transfer of Technology Agreements under Egyptian Law

Abstract: This article analyses the mandatory provisions of Article 87 of the Egyptian Trade Law of 1999 concerning the arbitration of disputes on transfer of technology agreements, and attempts to shed light on this problematic topic of Egyptian law, particularly in light of the dearth of relevant Egyptian jurisprudence. This article demonstrates the contradiction between the Egyptian Supreme Constitution Court's view of the 'mandatory' nature of the Arbitration Provision of Article 87(1) and the plain language of the statutory provision, that is not synchronized with the current Egyptian Arbitration Law. Most importantly, the Supreme Constitutional Court's judgment of 2007 is not yet finally conclusive with respect to the 'mandatory' nature of the arbitration provision, as it did not issue an interpretive decision. Absent the full legal consequences of an official interpretive decision by that Court, the Supreme Constitutional Court's view should be considered obiter dictum, and parties should carefully consider pursuing the argument that the clear language of the statute dictates that they remain free to refer disputes related to transfer of technology agreements to arbitration with the seat of their choice, particularly in light of the ambiguities in the Egyptian Arbitration Law.

Philippe Hovaguimian, The Res Judicata Effects of Foreign Judgments in Post-Award Proceedings: To Bind or Not to Bind?

Abstract: This comparative analysis explores the question of preclusive effects arising from arbitration-related judgments, particularly when a foreign court has already ruled upon an issue relevant to the grounds for refusal under Article V of the 1958 New York Convention. It argues that arbitration-related judgments like exequatur or non-annulment decisions, along with the res judicata and estoppel effects arising from them, can be subject to recognition in other countries. The article thereby rejects some of the views contending that various legal obstacles stand in the way of such recognition, including its compatibility with the 1958 New York Convention. However, risks of forum shopping and undue imbalances in the parties' rights ultimately support restricting this recognition of judgments rendered at the arbitral seat only. Such judgments should be able to preclude the re-litigation of identical issues in non-seat countries as a matter of res judicata and estoppel.

BOOK REVIEWS

International Commercial Arbitration Handbook (ed. Stephan Balthasar) (2016), reviewed by Volker Triebel

Reto Marghitola, Document Production in International Arbitration (2015), reviewed by John V.H. Pierce

Practising Virtue: Inside International Arbitration (eds. David D. Caron, Stephan W. Schill, Abby Cohen Smutny & Epaminontas E. Triantafilou), reviewed by David Pusztai & Philip Devenish