

The Healthy Award

Challenge in International Commercial Arbitration

Dr. Christoph Liebscher

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The Healthy Award Christoph Liebscher, 2003 Covers 5 jurisdictions Austria England France Germany and Switzerland

Bias Challenges in International Commercial Arbitration Sam Luttrell, 2009-01-01 Shows how dirty challenge tactics are made viable primarily by the prevalence of a judicially derived test for bias which focuses on appearances rather than facts and He argues that the most commonly used test of bias the reasonable apprehension test makes it easy to allege a lack of impartiality and independence

Arbitration and Mediation in International Business Christian Bühring-Uhle, Lars Kirchhoff, Gabriele Scherer, 2006-01-01 Arbitration and mediation in international business was first published in 1996 and was one of the first comprehensive studies on the practice of international business dispute resolution covering both international commercial arbitration and the so called alternative techniques such as mediation The book also provided an empirical analysis of how both arbitration and mediation are conducted in a crossborder context along with a normative guide to the relative costs and benefits of these two methods This second edition is not just an updated version of the first edition but a new book in itself Benefitting from the contributions of two co authors the work has been enhanced by discussions of innovative tools for making settlement negotiations more effective and by the in depth analysis of practical techniques to integrate mediation and arbitration in international business Also a comprehensive new empirical survey was conducted in order to capture new trends in this rapidly developing field The result is a must have resource for anyone having to deal with potential conflict in international business relationships Publisher's website

Party-Appointed Arbitrators in International Commercial Arbitration Alfonso Gómez-Acebo, 2016-04-26 The agreement of disputing parties to each make a unilateral appointment of an arbitrator is among the most distinctive features of arbitral practice A detailed examination long overdue of how this feature affects the actual process of arbitration is presented in this book The study includes a historical analysis of unilateral nominations a critical assessment of how the unilateral appointments system currently works and an empirical study of challenges of arbitrators The author's critical assessment addresses several issues including limits to the right of the parties to make unilateral appointments the principle of equality of the parties in the constitution of the arbitral tribunal arbitrators duty to be impartial and independent specific problems of bias in tribunals with party appointed members the question of whether a different standard of impartiality and independence in party appointed arbitrators makes any sense the presumption that party appointed arbitrators can do things that presiding arbitrators cannot and the question of whether it is worth keeping the system of unilateral appointments as the default method for the constitution of multiple member tribunals or keeping it at all The empirical study in which the author offers a comparative analysis of challenges of arbitrators taking into account the method of appointment of the arbitrator reveals interesting differences and coincidences between party appointed and non party appointed arbitrators The book ends with some suggestions on how the system of unilateral appointments could be improved namely in order to increase the trust of

each party in the arbitrator appointed by the other party and to allow an accurate match between what arbitration end users may want from party appointed arbitrators and what they ultimately get For both its thorough and well informed analysis and its sound recommendations the book is sure to be welcomed by professionals in the arbitral community worldwide as well as by arbitration law academics

Good Faith in International Commercial Arbitration Sabrina

Pearson-Wenger,2024-07-15 From the perspective of users of international commercial arbitration the uncertainties surrounding the application of good faith by an arbitral tribunal create an unwelcome unpredictability Acknowledging this prevalent situation this book is the first to study in depth the available international arbitral awards that have applied good faith thus providing detailed guidance on how this notion is and can be applied by tribunals in international commercial arbitration Moreover the author proposes a set of deeply informed guidelines for the future application of good faith by arbitral tribunals to both the parties contract and the arbitration agreement This book provides a comprehensive description of the role and scope of good faith under governing laws in key jurisdictions England New York Switzerland France Germany China Singapore Hong Kong Australia and Canada as well as under the CISG the UNIDROIT Principles and other uniform law and soft law instruments The book greatly clarifies the source and role of good faith with respect to the following issues surrounding the arbitration agreement formal validity of the arbitration agreement incorporation of the arbitration agreement by reference interpretation of the arbitration agreement capacity and power of the parties to arbitrate extension of an arbitration agreement to a non signatory party pre arbitration requirements to negotiate or mediate and performance of the arbitration agreement Proposed guidelines for the application of good faith to each of these issues are included along with useful figures summarizing the content of the obligations to negotiate or mediate in good faith prior to resorting to arbitration as well as the obligation to arbitrate in good faith By analysing the role and scope of good faith under different national and non national laws this book will prove of inestimable value not only by providing invaluable insight into the recourse to good faith by arbitral tribunals but also by providing guidance on how good faith should be applied to the parties contract in international commercial arbitration Arbitrators as well as users of arbitration will welcome the clarity on how good faith is applied to the various issues surrounding the arbitration agreement and in particular to the pre arbitration requirements to negotiate or mediate as well as the performance of the arbitration agreement

Pervasive Problems in International Arbitration Loukas A. Mistelis, Julian D. M. Lew, 2006-01-01 This important book will be of great interest to

arbitration lawyers international lawyers and business people as well as to academics libraries and students of dispute resolution Publisher s website

Confidentiality in International Commercial Arbitration Ileana M.

Smeureanu, 2011-07-14 After neutrality and international enforcement the next most valued feature of international commercial arbitration is confidentiality For reasons easy to imagine businessmen do not want their trade secrets business plans strategies contracts financial results or any other types of business information to be publicly accessible as would

commonly happen in court proceedings Yet the case law of arbitration shows that in practical terms confidentiality is not to be taken for granted in fact it has become one of the most undetermined matters in international arbitration Although the emperor of arbitration may have clothes as one scholar has quipped his raiments of secrecy can be torn with surprising ease This book deciphers the current degree of confidentiality in international commercial arbitration as reflected by the most important arbitration rules national laws other arbitration related enactments and practices of arbitral tribunals and domestic courts globally Drawing on this data and analysis the author then sets forth criteria to assess the breach of confidentiality in international arbitration and the proper rules for protecting or sanctioning such breaches What do we understand by confidentiality in arbitration What are its limitations Who is bound to observe it How can we quantify its breach In addressing these questions the book engages such issues as the following reasons for disclosure e g for the establishment of a defence for the enforcement of rights in the public interest or in the interests of justice disclosure by consent express or implied circumstances triggering statutory obligation of disclosure recent trends towards greater transparency in investor State arbitration court measures in support of arbitral confidentiality such as award of damages for breach of confidentiality and categories of persons bound by confidentiality including third parties such as witnesses and experts Structured along the main stages of the arbitral process the analysis covers the duty of confidentiality from the initiation of arbitral proceedings through their unfolding to the issuance of the award and after The scope of confidentiality is reviewed in the practice of arbitral tribunals and domestic courts and from the perspective of international arbitration institutions with detailed attention to various arbitration rules and numerous significant cases In its elucidation of the amount of confidentiality that veils each phase of the arbitral process and its ground breaking identification of patterns of disclosure this book is sure to raise awareness about the various facets and problems posed by confidentiality in arbitration Although its scholarly contribution to the law of international commercial arbitration cannot be gainsaid corporate counsel worldwide will quickly prize its more practical value

Document Production in International Arbitration Reto

Marghitola, 2015-10-20 Because document production can discover written evidence that would otherwise not be available it is often the key to winning a case However document production proceedings can be a costly and time consuming exercise and arbitral awards in particular are often challenged on grounds that relate to document production orders The task of balancing the conflicting interests of the parties in this context is a major responsibility of arbitral tribunals This book's analysis focuses on whether there exist legal principles on which arbitrators should establish rules of document production in both civil law and common law countries and shows how international arbitration is affected The author examines the relevant discretion of arbitral tribunals under US English Swiss German and Austrian law and under nine of the most important sets of institutional rules including the ICC Rules the LCIA Rules and the Swiss Rules The presentation mines case law and legal literature for concepts based on the common expectations of the parties the legitimate expectations of a party

the duty to balance different procedural expectations of the parties the presumed intent of the parties the underlying hypothetical bargain implied terms and the arbitrators discretion Among the topics and issues investigated are the following procedural rules on document production versus procedural flexibility how arbitral tribunals can modify the IBA Rules on a case by case basis discretion granted by legislation in each country covered electronic document production how to deal with privilege and confidentiality objections how to formulate or answer document production requests effective sanctions in case of non compliance with procedural orders of the arbitral tribunal what grounds for annulment and non enforcement a losing party can raise in what countries Perhaps the greatest benefit of the book is the inclusion of model clauses commensurate with both civil law and common law expectations The author explicates the advantages and inconveniences of each model clause and clarifies the influence of each clause on the efficiency of the proceedings and the enforcement risk For practitioners the book not only gives counsel a thorough overview of possible arguments for and against document production but also assists arbitrators find a way through the jungle of opinions on the interpretation of the IBA Rules Legal academics will appreciate the author s deeply informed analysis and commentary and the book s contribution to increasing the predictability of arbitral decisions on document production and showing how issues in dispute can be narrowed by tailor made rules thus helping to raise the efficiency and reduce the costs of arbitral proceedings

The Interpretation and Uniformity of the UNCITRAL Model Law on International Commercial Arbitration Dean Lewis, 2016-03-22 Numerous jurisdictions worldwide have augmented their ratification of the New York Convention of 1958 with the UNCITRAL Model Law 1985 UML which takes a giant step forward toward global uniformity in legal application and understanding of the arbitration process This book develops a standard or benchmark for the UML objective of uniformity using the relevant legislation and case law of Hong Kong Singapore and Australia to consider whether a uniform approach to implementation of the UML and its interpretation is being achieved across those jurisdictions The author s methodological tools are eminently adaptable to other jurisdictions Given the importance of the ability to set aside an arbitral award the body of case law on setting aside and the directly related area of enforcement the emphasis throughout is on Article 34 In addition the study considers the meaning of uniformity in law and in the context of the UML the correct approach to interpretation of the UML pre and post Article 2A the interpretational relationship between the UML and the Convention on Contracts for the International Sale of Goods CISG the relationship between the UML and the New York Convention the degree of textual uniformity of Article 34 with the three jurisdictions focused on and the degree of applied uniformity of Article 34 both in terms of juristic methodology and similarity of results The author with more than thirty years of practice in the field of commercial arbitration in Hong Kong has had access to voluminous cases spanning decades and brings his specialist expertise to the subject This book considers whether the UML has succeeded in its aim of achieving uniformity It serves as a guide both academic and practical to exploring and adopting the correct approach to the interpretation of the UML as well as

to the method of classification of court decisions under the UML This study is of immeasurable academic and practical value

Twilight Issues in International Arbitration George Bermann, 2023-03-09 There are many issues of arbitral practice that remain largely unaddressed or very poorly addressed in the sources to which tribunals and counsel conventionally turn for procedural guidance the arbitration agreement the lex arbitri and rules of procedure This book brings together the most frequently recurring of such twilight issues so called because all participants in the arbitral process when facing them find themselves in the dark showing in each case where it is best for arbitrators counsel and parties to look for solutions offering logic certainty and predictability The issues ably covered by the author include among others the following Is a non signatory bound by or entitled to invoke an arbitration agreement When may res judicata or collateral estoppel subject Should a tribunal issue an anti suit injunction When may a tribunal treat as mandatory a law other than the chosen one On what basis may a witness invoke testimonial privilege When may a tribunal sanction counsel for what it considers misconduct By what standards is a determination of corruption to be made How should a tribunal determine the interest rate applicable to an award On what basis are costs to be allocated Examining in turn the guidance that may be provided by normative sources national law and if so which one simple exercise of good judgment or international standards derived from soft law arbitral jurisprudence international law and scholarly and professional commentary the analysis clearly shows how when conventional sources of legal guidance are unavailing decisions on important matters of arbitral practice and procedure are best made The book will prove of major relevance and value to any and all stakeholders in the international arbitral process whether commercial or investor state

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