

THE ROLE OF MEDIATION AS A FORM OF AMICABLE SETTLEMENT PRIOR TO ARBITRAL PROCEEDINGS UNDER BANI ARBITRATION CENTER RULES AND PROCEDURES

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ABSTRACT

In the matter of dispute settlement, there are various forms which can be pursued other than litigation. These methods are generally referred to as alternative dispute resolutions or ADR. Alternative dispute resolutions are typically classified as negotiation, mediation, conciliation and arbitration. This paper in particular will further discuss mediation and the responsibility it possesses as a form of amicable settlement before advancing to arbitral proceedings. Several arguments and insight will be presented based on existing arbitration regulations in order to further evaluate how arbitral proceedings progress as well as the role of mediation as a preexisting condition prior to an arbitration. The research method used in this paper is judicial normative research which will focus on the existing regulations, in particular their validity and enforceability. Furthermore, the statutory approach utilized in this article is applied with a literature review to enhance the discussions further elaborated. The author concludes that an arbitration is the last resort while a mediation, as an alternative dispute resolution, will provide a win-win solution.

Keywords: Arbitration, amicable settlement, alternative dispute resolutions, mediation, validity

1. PREFACE

When a conflict arises between two parties, it is common practice for the matter to be settled through litigation which involves the parties to enforce their rights with the guidance of a judge in court. However, in the matter of dispute settlement, there are various forms which can be pursued other than litigation. These methods are generally referred to as alternative dispute resolutions or ADR. Overall, ADRs support in lessening court caseloads and mitigating animosity among parties whose matters have been resolved by the tribunal [9].

In addition to protecting privacy, ADR provides an opportunity for parties to move on quietly as the procedure is convenient and confidential [10]. As a result of ADR, parties can save significant time and energy, since the process is expeditious and unlikely to waste their time [9]. There are situations in which the method of ADR might be inappropriate and detrimental to the interests of the parties [11]. For instance, insolvency laws vary from country to country, however it is common practice that insolvency is generally considered non arbitrable [19-22]. Regardless of its shortcomings, alternative dispute resolutions have gained popularity in many legal systems [12].

Alternative dispute resolutions are typically classified as negotiation, mediation, conciliation and arbitration. This paper in particular will further discuss mediation and the responsibility it possesses as a form of amicable settlement before advancing to arbitral proceedings.

The Application Of Ec Law In Arbitration Proceedings

Phillip Louis Landolt



The Application Of Ec Law In Arbitration Proceedings:

Comparative Law of International Arbitration Jean-François Poudret, Sébastien Besson, 2007 Guides practitioners through the international arbitration process from beginning to end This work covers each step of arbitral procedure from the conclusion of the arbitration agreement to the enforcement of the arbitral award from a comparative standpoint helping practitioners decide which jurisdiction's rules they wish to be bound by

The Application of EC Law in Arbitration Proceedings Natalya Shelkopyas, 2003 Recoge 1 EC law objectives pursued and requirements imposed 2 Interaction between arbitration and EC law 3 Grounds of application of EC law in arbitration 4 Safeguards of application of EC law in arbitration 5 Epilogue

Modernised EC Competition Law in International Arbitration Phillip Louis Landolt, 2006-01-01 Offers an analysis of the expectations and requirements of the Community legal order upon international arbitration as well as a dependable source of answers to the EC competition law questions which arbitration practitioners will ordinarily be faced with This guide is aimed at international litigation practitioners in Europe and globally

The application of EC law in arbitration proceedings (proefschrift). Natalya Shelkopyas, 2003

Jurisdiction and Judgments in Relation to EU Competition Law Claims Mihail Danov, 2010-12-09 This book sets out the way that through enhanced private antitrust enforcement reform private international law has a pivotal role in EU competition law disputes with an international element The author offers a thorough analysis of the post 2003 policy of the EU favouring private law enforcement of EU competition law and its implementation under the existing provisions for jurisdiction and recognition and enforcement of foreign judgments under the Brussels I regime The book also considers how the jurisdiction recognition and enforcement of judgments issues are dealt with in England under the common law rules applicable when Brussels I does not apply The complex private international law problems in respect of cross border class actions that have arisen in several countries as well as judgments in relation to antitrust infringements are also discussed The author further examines the choice of law issues that may arise before the English courts under Rome I and Rome II The potential problems regarding jurisdiction of arbitral tribunals and choice of law in arbitral proceedings in relation to EU competition law claims and the jurisdiction of English courts in proceedings ancillary to arbitration claims are dealt with accordingly This title is included in Bloomsbury Professional's International Arbitration online service

Remedies and Procedures Before the EU Courts René Barents, 2020-01-09 The ongoing reform in the organisation of the European Union courts makes an updated edition of this indispensable resource essential Following the book established easy to use structure the second edition offers a reliable thorough guide to the renewed rules of procedure of the Court of Justice and the General Court as well as updated provisions and practice directions including the relevant case law together with a focus on the extensive treatment of remedies available in these courts and how to secure them With the expert guidance of one of Europe's foremost jurists the book clearly explains which rules apply and how to proceed in the course of any kind of case and any situation likely to arise From foundations and principles to specific issues regarding the

assignment of cases preliminary rulings rules on evidence annulment illegality failure to act pleas judgments and orders appeal and much more the book covers all essential elements of Court of Justice of the European Union procedure including the following division of competences between the Union courts admissibility rules regarding anonymity service of documents setting and extension of time limits hearings witnesses and experts deposit and recovery of sums application of competition rules rules on state aid and rules on trade protection rules in cases concerning intellectual property rights rules in actions brought on the basis of an arbitration agreement rules governing access to documents languages legal aid interim measures damages expedited procedures and scope of the rules on costs Any lawyer seeking appropriate remedies in any case before the European Union courts will benefit enormously from this book whether used as a hands on manual in particular cases or absorbed over time It is sure to serve as an essential resource for many years to come

Commercial Arbitration in Sweden Finn Madsen, 2007 The Arbitration Institute of the Stockholm Chamber of Commerce has become an important forum for international commercial arbitration with parties from more than 30 countries especially Western European countries and increasingly Russia other Eastern European Countries and China The author offers practitioners several background chapters on commercial arbitration in Sweden and a detailed analysis of each section of the Swedish Arbitration Act SAA This is a ready reference handbook analyzing Swedish arbitration the SAA the Rules and cases and also includes references and commentary with respect to international commercial arbitration in general The author's intention is to help practitioners in search of rapid guidance regarding the interpretation of a particular provision or who wish to solve a practical problem This Third Edition of *Commercial Arbitration in Sweden* provides us all with a valuable and up to date understanding of the Swedish system in operation and a comprehensive commentary on the SCC Rules both new and existing World business has the means through this work to see why Sweden and Stockholm are good choices for their international arbitrations Phillip Capper Head of International Arbitration Lovells Nash Professor of Engineering Law King's College University of London former Chairman of the Faculty of Law University of Oxford

Arbitration Law of Czech Republic: Practice and Procedure Alexander J. Belohlávek, 2013-03-01 A comprehensive review of the arbitration law and practice in the Czech Republic including discussion of arbitration practice and procedure an examination of the jurisdiction of the arbitral tribunal the appointment of arbitrators including the challenge and replacement of arbitrators an analysis of the various types of awards including a discussion on deliberations agreements settlements and the costs of arbitration a discussion on the amendment and challenge of awards including the liability of arbitrators and a review of the enforcement of domestic and foreign arbitration awards

Comparative International Commercial Arbitration Julian D. M. Lew, Loukas A. Mistelis, Stefan Michael Kröll, Stefan Kröll, 2003-01-01 This treatise describes the practice of international commercial arbitration with reference to the major international treaties and instruments arbitration rules and national laws It provides an analysis of the interaction between party autonomy and arbitration practice

International Investment Agreements and

EU Law Tomas Fecak, 2016-09-25 The rapidly growing number of investors disputes with states and the approach of arbitral tribunals perceived by some whether rightly or not as being too investor friendly underlie a contentious debate about the need to strike a more effective balance between investors rights under international investment agreements IIAs and the right of states to pursue legitimate regulation in the public interest In this regard the European Union with the exclusive external competence in foreign direct investment vested in it under the Lisbon Treaty is emerging as the leader and driving force in the future development of international investment law This book examines the competence of the EU to conclude investment treaties in the light of the investment protection rules of IIAs explores how far the EU regime for cross border investment and investors rights under IIAs can be considered comparable and brings about an extensive analysis of existing agreements of Member States and their compatibility with EU law with detailed investigation of how the potentially conflicting obligations of Member States under the two regimes can be reconciled The book covers such elements of the debate as the following standards of treatment under IIAs investment related provisions of EU law dispute settlement mechanisms and the conduct of investment disputes how recent controversies over bilateral investment treaties BITs shape emerging EU international investment policy effect of political and institutional interests transitional arrangements for BITs between Member States and third countries established by Regulation 1219/2012 CJEU decisions concerning BITs concluded between EU Member States and third countries significant arbitral awards involving intra EU BITs allocation of international responsibility for breaches of investors rights intra EU dimension of the Energy Charter Treaty ECT possibilities for review of arbitral awards by courts of Member States desirability of international protection of foreign investment in developed countries and role of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States ICSID Convention The author provides a number of well grounded recommendations taking into account throughout the legitimate interests and expectations of individual investors As an invaluable commentary on developments related to the interplay between international investment law and EU law and a guide to ameliorating the tensions and controversies surrounding this relationship this book will appeal to a wide variety of readers The questions dealt with are faced not only by negotiators and others involved in policymaking in the area of foreign investment but also by specialists in international investment law investment arbitration EU international relations law and anyone involved in cross border law as well as others who encounter these questions in the course of their professional or academic activities **International**

Commercial Arbitration Gary B. Born, 2014-10-01 The second edition of Gary Born s International Commercial Arbitration is an authoritative 4 408 page treatise in three volumes providing the most comprehensive commentary and analysis on all aspects of the international commercial arbitration process that is available The first edition of International Commercial Arbitration is widely acknowledged as the preeminent commentary in the field It was awarded the 2011 Certificate of Merit by the American Society of International Law and was voted the International Dispute Resolution Book of the Year by the Oil

Gas Mining and Infrastructure Dispute Management list serve in 2010 The first edition has been extensively cited in national court decisions and arbitral awards around the world The treatise comprehensively examines the law and practice of contemporary international commercial arbitration thoroughly explicating all relevant international conventions national arbitration statutes and institutional arbitration rules It focuses on both international instruments particularly the New York Convention and national law provisions in all leading jurisdictions including the UNCITRAL Model Law on International Commercial Arbitration Practitioners academics clients institutions and other users of international commercial arbitration will find clear and authoritative guidance in this work The second edition of International Commercial Arbitration has been extensively revised expanded and updated to include all material legislative judicial and arbitral authorities in the field of international arbitration prior to January 2014 It also includes expanded treatment of annulment recognition of awards counsel ethics arbitrator independence and impartiality and applicable law Overview of volumes Volume I covering International Arbitration Agreements provides a comprehensive discussion of international commercial arbitration agreements It includes chapters dealing with the legal framework for enforcing international arbitration agreements the separability presumption choice of law formation and validity nonarbitrability competence competence and the allocation of jurisdictional competence the effects of arbitration agreements interpretation and non signatory issues Volume II covering International Arbitration Procedures provides a detailed discussion of international arbitral procedures It includes chapters dealing with the legal framework for international arbitral proceedings the selection challenge and replacement of arbitrators the rights and duties of international arbitrators selection of the arbitral seat arbitration procedures disclosure and discovery provisional measures consolidation joinder and intervention choice of substantive law confidentiality and legal representation and standards of professional conduct Volume III dealing with International Arbitral Awards provides a detailed discussion of the issues arising from international arbitration awards It includes chapters covering the form and contents of awards the correction interpretation and supplementation of awards the annulment and confirmation of awards the recognition and enforcement of arbitral awards and issues of preclusion *lis pendens* and *stare decisis* *EU Ordre Public* Tim Corthaut, 2012-10-26 In a cogent detailed analysis the author reconstructs the legal order of the European Union in a way that best gives meaning to the Treaties the case law of the Court of Justice and the various underlying principles of integration that have emerged over the decades He focuses on instances or touchstones in relation to which EU law seems to be building and integrating an *ordre public* Among these are the following international trade law and arbitration public international law the ECHR and ECtHR public policy exceptions to the four freedoms European citizenship competition law national and EU procedural law and protection of social and labour standards In depth inquiry into questions which seem subject to very specific limitations such as when national or EU courts are under an obligation to raise issues of EU law of their own motion or norms from which private parties may not deviate captures the breadth of the EU *ordre public* greatly

clarifying the concept and the variety of ways it operates Seeking to reconcile numerous strands and processes of EU law in a principled manner the book reveals a significant potential for a deeper constitutional framework defining the EU ordre public and putting it into operation as a tool to help ensure unity in diversity It will be welcomed and read closely by jurists policymakers and interested academics in Europe and wherever the matter of European integration is studied

International Commercial Arbitration Gary Born, 2009 International Commercial Arbitration Third Edition is an authoritative treatise providing the most complete available commentary and analysis on all aspects of the international commercial arbitration process This completely revised and expanded edition of Gary Born's authoritative work is divided into three main parts dealing with the International Arbitration Agreement International Arbitral Procedures and International Arbitral Awards The Third Edition provides a systematic framework for both current analysis and future developments as well as exhaustive citations from all leading legal systems INTERNATIONAL ARBITRATION AGREEMENTS Legal Framework for International Arbitration Agreements International Arbitration Agreements and the Separability Presumption Choice of Law Governing International Arbitration Agreements Formation Validity and Legality of International Arbitration Agreements International Arbitration Agreements and Competence Competence Effects and Enforcement of International Arbitration Agreements Interpretation of International Arbitration Agreements INTERNATIONAL ARBITRAL PROCEDURES AND PROCEEDINGS Legal Framework for International Arbitral Proceedings Selection Challenge and Replacement of Arbitrators in International Arbitration Rights and Duties of International Arbitrators Selection of Arbitral Seat in International Arbitration Procedures in International Arbitration Disclosure and Discovery in International Arbitration Provisional Measures in International Arbitration Consolidation Joinder and Intervention in International Arbitration Choice of Substantive Law in International Arbitration Confidentiality in International Arbitration Legal Representation and Professional Conduct in International Arbitration INTERNATIONAL ARBITRAL AWARDS Legal Framework for International Arbitral Awards Form and Content of International Arbitral Awards Correction Interpretation and Supplementation of International Arbitral Awards Annulment of International Arbitral Awards Recognition and Enforcement of International Arbitral Awards Preclusion Lis Pendens and Stare Decisis in International Arbitral Awards **Czech and Central**

European Yearbook of Arbitration - 2012: Party Autonomy versus Autonomy of Arbitrators Alexander J. Bělohávek, Prof. JUDr. Naděžda Rozehnalová, 2012-04-01 Following the first volume of the Czech Central European Yearbook of Arbitration CYArb the second volume of CYArb thematically concurs that the points of friction between arbitration as an alternative dispute resolution mechanism are the freedom parties have in setting up the methods and mechanisms for the dispute settlement and the state organized court proceedings with its obligatory jurisdiction and strict rules The state organized court proceedings guarantee the firm borders and equality of means regarding the protection of the fundamental rights of the parties during the proceedings The primary focus of CYArb is the issue of autonomy throughout the arbitration

process The principle of autonomy represents the backbone of arbitration as the ADR mechanism It provides to the parties the necessary freedom to stipulate the adequate method for the solution of the dispute On the other hand the autonomous approach of the parties creates an informal relationship among the subjects involved in dispute resolution The informality provides room for the autonomy of the arbitrators or that of the arbitral tribunal be it in ad hoc or institutional proceedings on how to advance the dispute The CYArb project aims to highlight the potential pitfalls of each of the categories of the autonomous parties present during the various types of arbitral proceedings in order to analyze the role of autonomy as a leading principle in the ADR mechanisms in its mutual interaction The topic therefore provides a wide spectrum of interesting issues to be addressed from the practice and academic points of view particularly with regard to the comparison of the specific national and international approaches of the permanent arbitral courts The project concept and editors are drawn from Czech Yearbook of International Law CYIL The ideological similarity between CYIL and CYArb is primarily reflected in its concept The third volume of CYIL is in preparation and will be published by JURIS The CYArb annual volume will be published exclusively in English with abstracts of the articles provided in Czech Slovak French German Polish Russian and Spanish The website dedicated to the project www.czechyearbook.org is operational in a total of 16 languages A vital part of the project is the cooperation with leading figures and institutes in the field In the Czech Republic endeavor has the cooperation of the particular departments of the following institutions University of West Bohemia in Pilsen Faculty of Law Department of International Law Department of Constitutional Law Masaryk University in Brno Faculty of Law Department of International and European Law V B TU Ostrava Faculty of Economics Department of Law Institute of State and Law Academy of Sciences of the Czech Republic In the Slovak Republic Pavol Jozef af rik University in Ko ice Faculty of Law Department of Commercial Law Non academic institutions participating in the CYArb Project International Arbitral Centre of the Austrian Federal Economic Chamber Vienna Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania Bucharest Arbitration Court attached to the Hungarian Chamber of Commerce and Industry Budapest Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic Prague Arbitration Court attached to the Czech Moravian Commodity Exchange Kladno Czech Republic ICC National Committee Czech Republic The Court of Arbitration at the Polish Chamber of Commerce in Warsaw

International Antitrust Litigation Jurgen Basedow, Stephanie Francq, Laurence Idot, 2012-02-03 The decentralisation of competition law enforcement and the stimulation of private damages actions in the European Union go hand in hand with the increasingly international character of antitrust proceedings As a consequence there is an ever growing need for clear and workable rules to co ordinate cross border actions whether they are of a judicial or administrative nature rules on jurisdiction applicable law and recognition as well as rules on sharing of evidence the protection of business secrets and the interplay between administrative and judicial procedures This book offers an in depth analysis of these long neglected yet practically

most important topics It is the fruit of a research project funded by the European Commission which brought together experts from academia private practice and policy making from across Europe and the United States The 16 chapters cover the relevant provisions of the Brussels I and Rome I and II Regulations the co operation mechanisms provided for by Regulation 1 2003 and selected issues of US procedural law such as discovery that are highly relevant for transatlantic damages actions Each contribution critically analyses the existing legislative framework and formulates specific proposals to consolidate and enhance cross border antitrust litigation in Europe and beyond

International Commercial Arbitration and the Commercial Agency Directive Jan Engelmann, 2017-02-07 This book investigates the tensions between EU law and international commercial arbitration i e tensions between two phenomena at opposite ends of the public to private ordering continuum It focuses on the Commercial Agents Directive s regime for indemnity and compensation as one of the most frequent source of these tensions To mitigate the consequential problems the book proposes and describes a comprehensive framework for a preferable system of reviewing arbitration agreements and arbitral awards To this end it explores the prerequisites of this system through comparative legal analysis of the German Belgian French and English systems of review an assessment of the observable aspects of arbitral practice game theoretical analysis of the arbitral process and microeconomic analysis of the cross border market for commercial agency

The Law of Open Societies Jürgen Basedow, 2015-06-02 This book endeavours to interpret the development of private international law in light of social change Since the end of World War II the socio economic reality of international relations has been characterised by a progressive move from closed to open societies The dominant feature of our time is the opening of borders for individuals goods services capital and data It is reflected in the growing importance of ex ante planning as compared with ex post adjudication of cross border relations between individuals and companies What has ensued is a shift in the forces that shape international relations from states to private actors The book focuses on various forms of private ordering for economic and societal relations and its increasing significance while also analysing the role of the remaining regulatory powers of the states involved These changes stand out more distinctly by virtue of the comparative treatment of the law and the long term perspective employed by the author The text is a revised and updated version of the lectures given by the author during the 2012 summer courses of the Hague Academy of International Law

International Arbitration and EU Law Nikos Lavranos, Stefano Castagna, 2024-08-06 In this substantially revised and updated second edition this work examines the intersection of EU law and international arbitration based on the experience of leading practitioners in both commercial and investment treaty arbitration law It expertly illustrates the depth and breadth of EU law s impact on party autonomy and on the margin of appreciation available to arbitral tribunals This second edition covers all relevant new developments in law and practice and tracks the ever increasing influence of EU law and the jurisprudence of the Court of Justice of the EU CJEU in international arbitration

EU and US Antitrust Arbitration Gordon Blanke, Phillip Louis Landolt, 2011-01-01 EU and US

Antitrust Arbitration is the first book that deals with how both of the world's leading antitrust systems US and EU law are treated in international arbitration. In forty nine chapters written by renowned experts this book provides an in depth examination of all relevant topics from drafting arbitration clauses to arbitrability provisional measures the applicability of antitrust law in arbitrations dealing with economic evidence and experts in relation to antitrust law to relations with courts and regulators remedies and recognition and enforcement of arbitration awards dealing with antitrust issues. Both antitrust and merger control are covered. The perspectives of the arbitrator and the in house "user" of arbitration are included. Two chapters outline and explain US antitrust law and EU antitrust law with special reference to matters particularly likely to arise in arbitration. One chapter is devoted to ICC antitrust arbitrations and another to the emerging area of EU State aids in arbitration. There are industry specific chapters such as on telecommunications and pharmaceuticals and much else. In this substantial book practitioners will find helpful and easy to understand guidance to their questions on antitrust arbitrations.

Arbitration and Human Rights Toms Krūmiņš, 2020-08-12. This book presents a creative synthesis of two ostensibly disparate fields of law arbitration and human rights. More specifically it focuses on various legislative approaches to excluding the annulment of arbitral awards setting aside proceedings at the seat of arbitration and evaluates the compatibility of such approaches with the European Convention on Human Rights ECHR in particular the right to a fair trial under Article 6 1. The book first assesses the applicability and impact of the ECHR in particular Article 6 1 on international commercial arbitration. It then analyses a number of legislative approaches to excluding setting aside proceedings focusing on two synergetic phenomena exclusion agreements and the total lack of setting aside proceedings in national arbitration law. Lastly the book investigates to what extent the lack of setting aside proceedings in national arbitration law may lead to a violation of arbitrating parties right to a fair trial under Article 6 1 and puts forward certain de lege ferenda recommendations on how to best approach the regulation of setting aside proceedings in national arbitration law from the standpoint of compliance with the ECHR.

Unveiling the Energy of Verbal Beauty: An Mental Sojourn through **The Application Of Ec Law In Arbitration Proceedings**

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