

Balthasar (ed.)

International Commercial Arbitration

A Practitioner's Guide

C.H.BECK · Hart · Nomos

Balthasar
International Commercial Arbitration

International Commercial Arbitration

International Conventions,
Country Reports and
Comparative Analysis

edited by

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Preface

International arbitration has become one of the most challenging and exciting areas in international commercial law. In order to draft effective arbitration clauses and to develop strategies in arbitral proceedings, it is important for practitioners to understand not just the arbitration law of their home countries, but also that of other countries that have a link to the dispute due to the domicile of the parties, the seat of the arbitral tribunal or the place where recognition and enforcement is likely to occur.

This task is made difficult by practical, linguistic and cultural barriers. It becomes even more challenging due to the fast-changing and constantly evolving legal environment. Major jurisdictions such as Belgium, Brazil, France and the Netherlands revised their arbitration laws over the last few years. The landscape of international conventions is developing as well, most recently with the “United Nations Convention on Transparency in Treaty-based Investor-State Arbitration” of 2014. Landmark cases such as the *Gazprom* decision of the European Court of Justice of 13 May 2015 continue to shape arbitration law and practice.

This guide addresses the need for ready access to foreign arbitration laws and case law. It covers both international material and conventions, including protection afforded under investment treaties, and country reports on international commercial arbitration in major jurisdictions that are of great practical importance. It owes everything to the support from leading experts from various jurisdictions, and I wish to take this opportunity to express my gratitude to the authors who contributed to this guide and without whose efforts it would not have been possible to complete this project. I am greatly indebted to Dr Wilhelm Warth for his patience and his invaluable advice. I would also like to thank my colleagues Lee Meng Ng, Kulwant Thandi and Dr Wolfgang Winter for their generous help and support.

Le plus grand merci à Cécile, et à nos enfants, Emilie et Matthias.

Munich, 1 October 2015

Stephan Balthasar

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List of Abbreviations

AA 1996	Arbitration Act (England and Wales)
AAA	American Arbitration Association
ABGB	Allgemeines Bürgerliches Gesetzbuch (Austria)
AC	Law Reports, Appeal Cases
ACA 1996	Arbitration and Conciliation Act 1996 (India)
Act. dr.	Actualités du droit
ACWS	All Canada Weekly Summaries
ADRLJ	Arbitration and Dispute Resolution Law Journal
AG	Advocate General
AIR	All India Reporter
AJIL	American Journal of International Law
AJT	Algemeen juridisch tijdschrift
ALD	Andhra Legal Decisions
All ER	All England Law Reports
ALR	Australian Law Reports
Am. J. Int'l Arb.	American Journal of International Arbitration
AMC	American Maritime Cases
AppG	Appellationsgericht
APT	Administration publique – trimestriel
Arb.	Arbitration: The International Journal of Arbitration, Mediation and Dispute Management
Arb. Int'l	Arbitration International
ArbLR	Arbitration Law Reports and Review
Arr. Cass.	Arresten van het Hof van Cassatie
Art.	Article(s)
Asian Int'l Arb J	Asian International Arbitration Journal
Austr YIA	Austrian Yearbook on International Arbitration
BayObLG	Bayerisches Oberstes Landesgericht
BayObLGZ	Entscheidungen des Bayerischen Obersten Landesgerichts in Zivilsachen
BB	Betriebsberater
BCDR Int'l Arb Rev	BCDR International Arbitration Review
BCSC	Supreme Court of British Columbia
BeckRS	Beck-Rechtsprechung
BezG	Bezirksgericht
BGBI	Bundesgesetzblatt (Austria, Germany)
BGE	Entscheidungen des Schweizerischen Bundesgerichts
BGer	Bundesgericht
BGG	Bundesgerichtsgesetz (Switzerland)
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
BIT	Bilateral Investment Treaty
BLR	Business Law Review
BJM	Basler Juristische Mitteilungen
BOE	Boletín Oficial del Estado
Bom. LR	Bombay Law Reporter
BRAO	Bundesrechtsanwaltsordnung
BRH	Belgische rechtspraak in handelszaken
Brussels I Regulation	Regulation (EU) No. 1215/2012, OJ, 20 December 2012, L 351/1
Bull.	Bulletin de la Cour de Cassation
Bull ASA	Bulletin de l'Association Suisse de l'Arbitrage
BW	Burgerlijk Wetboek
BYBIL	British Yearbook of International Law
CA	Corte d'appello, Cour d'Appel, Court of Appeal
Cah. Arb.	Les Cahiers de l'Arbitrage
Cap.	Caput
CAS	Court of Arbitration for Sport

List of Abbreviations

Cass.	Corte Suprema di Cassazione (Italy), Cour de Cassation (Belgium, France)
CC	Code civil (Belgium, France), Codice civile (Italy), Código civil (Spain)
CCBE	Council of Bars and Law Societies of Europe
CEPANI	Centre Belge d'Arbitrage et de Médiation
Cf.	Confer
CF	Constituição federal (Brazil)
Ch	Chancery division
Cir.	Circuit
Civ.	Civil
CJ	Code Judiciaire (Belgium)
CLC	Commercial Law Cases
CLJ	Cambridge Law Journal
Comm	Commercial Court
CPC	Code de Procédure Civile (France), Codice de processo civile (Italy), Código de Processo Civil (Brazil)
CPR	Civil Procedure Rules
Col. J. Transnat'l L.	Columbia Journal of Transnational Law
D.	Recueil Dalloz
D.Alaska	District of Alaska
DAOR	Le Droit des affaires – Het Ondernemingsrecht
D.Ariz.	District of Arizona
DB	Der Betrieb
D.C.Cir.	District of Columbia Circuit
D.Conn.	District of Connecticut
D.D.C.	District of Columbia
D.Del.	District of Delaware
Dir. mar.	Il Diritto Marittimo
Disp. Res. J.	Dispute Resolution Journal
DLR	Dominion Law Reports
DLT	Delhi Law Times
DJ	Diário da Justiça
D.Mass.	District of Massachusetts
D.N.J.	District of New Jersey
ECHR	European Convention on Human Rights 1950
ECJ	European Court of Justice
ECLI	European Case Law Identifier
ECR	European Court Reports
ECT	Energy Charter Treaty
ed., eds	Edition, editor(s)
E.D.La.	Eastern District of Louisiana
E.D.N.Y.	Eastern District of New York
E.D.Pa.	Eastern District of Pennsylvania
E.D.Va.	Eastern District of Virginia
e.g.	Exempli gratia
EG	Estates Gazette
E.J.	Echtscheidingsjournaal
EO	Exekutionsordnung (Austria)
et al.	Et alii
et seq.	Et sequentes
EuC	European Convention on International Commercial Arbitration, 21 April 1961
EurLF	European Legal Forum
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
F., F.2d, F.3d	Federal Reporter; Federal Reporter, 2nd Series; Federal Reporter, 3rd Series
F.Supp., F.Supp.2d	Federal Supplement; Federal Supplement, 2nd Series
FAA	Federal Arbitration Act
Fasc.	Fascicule
FC	Federal Court Reports (Canada)
FCA	Federal Court of Australia

List of Abbreviations

FC AFC	Federal Court of Australia, Full Court
FCR	Federal Court Reports (Australia)
Fed.Appx.	Federal Appendix
FLR	Federal Law Reports (Australia)
fn.	Footnote
Fordh. Int'l L. J.	Fordham International Law Journal
Foro it.	Il Foro Italiano
Foro pad.	Il Foro Padano
FRD	Federal Rules Decisions
George Wash. Int'l L. Rev.	George Washington International Law Review
GesZR	Der Gesellschafter – Zeitschrift für Gesellschafts- und Unternehmensrecht
Govt	Government
GWB	Gerechtelijk Wetboek (Belgium)
HK	Hong Kong
HKC	Hong Kong Cases
HKCFAR	Hong Kong Court of Final Appeal Reports
HKEC	Hong Kong Electronic Citation
HKIAC	Hong Kong International Arbitration Centre
HKLR	Hong Kong Law Reports
HKLRD	Hong Kong Law Reports & Digest
HL	House of Lords
Hof	Gerechtshof
HR	Hoge Raad der Nederlanden
IAA	International Arbitration Act
IBA	International Bar Association
Ibid.	Ibidem
ICAC	International Commercial Arbitration Court (Russian Federation Chamber of Commerce and Industry)
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
ICLQ	International Comparative Law Quarterly
ICSID	International Centre for the Settlement of Investment Disputes
ICSID Rev.	ICSID Review
i.e.	id est
IEHC	High Court of Ireland
IHR	Zeitschrift für Internationales Handelsrecht
IIA	International Investment Agreement
ILM	International Legal Materials
IL Pr.	International Litigation Procedure
Int'l Arb. L. Rev.	International Arbitration Law Review
IPrax	Praxis des Internationalen Privat- und Verfahrensrechts
IPRG	Bundesgesetz über das Internationale Privatrecht (Switzerland)
IPRspr	Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts
J	Justice
J. Int'l Arb.	Journal of International Arbitration
JAMS	Judicial Arbitration and Mediation Services
Jap. Ann. Int'l L.	Japanese Annual of International Law
JEV	Journal für Erbrecht und Vermögensnachfolge
JBl	Juristische Blätter
JCP	Jurisclasseur périodique, édition G
JDI	Journal du droit international – Clunet
JLMB	Revue de Jurisprudence de Liège, Mons et Bruxelles
JN	Jurisdiktionsnorm
JORF	Journal Officiel de la République Française
JoJ	Jornal da Justiça
JPIL	Journal of International Private Law
JT	Journal des tribunaux
JTT	Journal des tribunaux du travail
JWIT	Journal of World Investment and Trade
J Int'l Arb	Journal of International Arbitration

List of Abbreviations

KG	Kammergericht (Berlin), Kort Geding
KGR Berlin	KG Report Berlin
Ktr	Kantongerecht
LA	Lei de Arbitragem no. 9.307, of 23 September 1996 (Brazil), Ley de Arbitraje (Spain)
LAV	Lei de Arbitragem Voluntária no. 63/2011, of 14 December 2011 (Portugal)
LCIA	London Court of International Arbitration
LEC	Ley 1/2000, de Enjuiciamiento Civil, of 7 January 2000 (Spain)
LJ	Lord Justice
Lloyd's Rep.	Lloyd's Reports
Ltd	Limited
LQR	Law Quarterly Review
LSF	Lag om skiljeförfarande (Sweden)
Lugano Convention	Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, OJ, 10 June 2009, L 147/5
MBCA	Manitoba Court of Appeal
M.D.N.C.	Middle District of North Carolina
MDR	Monatsschrift für Deutsches Recht
Mh. L. J.	Maharashtra Law Journal
ML	UNCITRAL Model Law on International Commercial Arbitration (2006)
ML 1985	UNCITRAL Model Law on International Commercial Arbitration (1985)
mn., mns.....	Margin number(s)
MünchKomm	Münchener Kommentar
MvA	Memorie van Antwoord
MvT	Memorie van Toelichting
NAFTA	North-American Free Trade Agreement
NAI	Nederlands Arbitrage Instituut
N.D.Cal.	Northern District of California
N.D.Ga.	Northern District of Georgia
N.D.Ill.	Northern District of Illinois
N.D.Ohio	Northern District of Ohio
N.D.Tex.	Northern District of Texas
NJ	Nederlandse Jurisprudentie
NJA	Nytt juridiskt arkiv
NJB	Nederlands Juristenblad
NjW	Nieuw Juridisch Weekblad
NJW	Neue Juristische Wochenschrift
NJW-RR	Neue Juristische Wochenschrift, Rechtsprechungsreport
No	Number
NSWSC	New South Wales Supreme Court
NYC	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958
N.Y.S.	New York Supplement
NZLR	New Zealand Law Reports
OG	Obergericht
OGH	Oberster Gerichtshof
OJ	Official Journal of the European Union
OLG	Oberlandesgericht
OLGR	OLG-Report
OR	Ontario Reports
P&B	Revue de droit judiciaire et de la preuve – Proces en Bewijs
p.	Page
Pace L. Rev.	Pace Law Review
para., paras	Paragraph(s)
Parl. St.	Parlementaire Stukken
Pas.	Pasicrisie belge
Pepp. Disp. Resol. L.J.	Pepperdine Dispute Resolution Law Journal
PC	Privy Council
QB	Law Reports, Queen's Bench
QCCA	Quebec Court of Appeal
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht

List of Abbreviations

RABG	Rechtspraak Antwerpen Brussel Gent
Rb.	Rechtbank
RCJB	Revue critique de jurisprudence belge
RDIPP	Rivista di diritto internazionale privato e processuale
Rep. Jurispr.	Repertorio de Jurisprudencia
Rev. arb.	Revue de l'arbitrage
Rev. C. Esp. Arb.	Revista de la Corte Española de Arbitraje
Rev. crit. DIP	Revue critique du droit international privé
Rev. not. b.	Revue du notariat belge
RIS	Rechtsinformationssystem
Riv. arb.	Rivista dell'arbitrato
Riv. dir. int.	Rivista di diritto internazionale
Riv. dir. proc.	Rivista di diritto processuale
RIW	Recht der internationalen Wirtschaft
RJQ	Recueil de jurisprudence du Québec
Rome I Regulation	Regulation (EC) No. 593/2008, OJ, 4 July 2008, L 177/6
Rome II Regulation	Regulation (EC) No. 864/2007, OJ, 31 July 2007, L 199/40
RRD	Revue Régionale de Droit
RS	Rechtssatz
RTD com.	Revue trimestrielle de droit commercial
Rv	Wetboek van Burgerlijke Rechtsvordering
RW	Rechtskundig Weekblad
RZ	Österreichische Richterzeitung
S.	Sentence
S. Ct.	Supreme Court Reporter
SAL Ann. Rev.	Singapore Academy of Law Annual Review
SC	Supreme Court
SCC	Supreme Court Cases (India); Stockholm Chamber of Commerce
SCR	Supreme Court Reports (Australia, Canada, India)
SchiedsVZ	Zeitschrift für Schiedsverfahren
SchKG	Bundesgesetz über Schuldbetreibung und Konkurs (Switzerland)
S.D.Cal.	Southern District of California
S.D.Fla.	Southern District of Florida
S.D.Ohio	Southern District of Ohio
S.D.Tex.	Southern District of Texas
Sec.	Section
SFS	Svensk författningssamling
SGCA	Singapore Court of Appeal
SGHC	Singapore High Court
SGHCR	Singapore High Court Registrar
SI	Statutory Instrument
SIAC	Singapore International Arbitration Centre
SJZ	Schweizerische Juristen-Zeitung
SLR	Singapore Law Reports
SLR(R)	Singapore Law Reports (Reissue)
SOU	Statens offentliga utredningar
Stb	Staatsblad
STJ	Superior Tribunal de Justiça
Sw.U.L.Rev.	Southwestern University Law Review
SZ	Sammlung Zivilrecht
T. Vred.	Tijdschrift van de Vrede- en Politiechters
Tex. Int'l L. J.	Texas International Law Journal
TBH	Tijdschrift voor Belgisch handelsrecht
TFEU	Treaty on the Functioning of the European Union
TGI	Tribunal de Grande Instance
TGR	Tijdschrift voor Gentse Rechtspraak
TJMG	Tribunal de Justiça de Minas Gerais
TJRJ	Tribunal de Justiça do Estado do Rio de Janeiro
TJSP	Tribunal de Justiça São Paulo
TPI	Tribunal de première instance
TPR	Tijdschrift voor Privaatrecht
Trib. Supr.	Tribunal Supremo

List of Abbreviations

TST	Tribunal Superior do Trabalho
Tul. J. Int'l Comp. L.	Tulane Journal of International and Comparative Law
TvA	Tijdschrift voor Arbitrage
TWVR	Tijdschrift voor West-Vlaamse Rechtspraak
UK	United Kingdom
UKHL	United Kingdom House of Lords
UKPC	United Kingdom Privy Council
UKSC	United Kingdom Supreme Court
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
Unif. L. Rev.	Uniform Law Review
UNTS	United Nations Treaty Series
U.S., US	United States of America, United States Supreme Court Reports
USA	United States of America
USC	United States Code
UST	United States Treaties and Other International Agreements
YCA	Yearbook Commercial Arbitration
YIA	Yearbook on International Arbitration
v.	Versus
VCLT	Vienna Convention on the Law of Treaties
VersR	Versicherungsrecht
VIAC	Vienna International Arbitral Center
viz	Videlicet
Vol.	Volume
WASC	Western Australia Supreme Court
wbl	Wirtschaftsrechtliche Blätter
WIPO	World Intellectual Property Organization
WL	Westlaw Transcripts
WLR	Weekly Law Reports
WM	Wertpapiermitteilungen
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie
Yale J. Int'l L.	Yale Journal of International Law
YCA	Yearbook Commercial Arbitration
YIA	Yearbook International Arbitration
ZDAR	Zeitschrift der Deutsch-Amerikanischen Juristenvereinigung
ZEV	Zeitschrift für Erbrecht und Vermögensnachfolge
ZfRV	Zeitschrift für Rechtsvergleichung
ZIP	Zeitschrift für Wirtschaftsrecht
ZPO	Zivilprozessordnung (Austria, Germany, Switzerland)
ZZP	Zeitschrift für Zivilprozess

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