

**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

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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 .....	Staten 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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