

Global International Arbitration Update

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Legal Updates

ASIA

GOVERNMENT LAUNCHES PILOT SCHEME ON FACILITATION FOR PERSONS PARTICIPATING IN ARBITRAL PROCEEDINGS IN HONG KONG

29 June 2020: The HKSAR Government launched the Pilot Scheme on Facilitation for Persons Participating in Arbitral Proceedings in Hong Kong (the “**Scheme**”). The Scheme aims to facilitate the participation of non-Hong Kong residents in arbitral proceedings in Hong Kong to strengthen its position as an international centre for legal and dispute resolution services in the Asia Pacific Region.

Pursuant to the Scheme, (1) arbitrators, (2) expert and factual witnesses, (3) counsel and (4) parties to the arbitration who are nationals of countries who may visit Hong Kong visa-free and are in possession of a letter of proof (“**Letter of Proof**”) are allowed to participate in arbitral proceedings in Hong Kong as visitors without a need to obtain employment visas.

For administered arbitrations, a Letter of Proof shall be issued by one of the following arbitral institutions:

- HKIAC
- CIETAC
- Hong Kong Arbitration Center
- ICC – Asia Office
- Hong Kong Maritime Arbitration Group
- South China International Arbitration Center (HK)
- eBRAM

For ad hoc arbitrations, a Letter of Proof shall be issued by the venue providers: the HKIAC or the Department of Justice.

The length of stay in Hong Kong for participating in arbitral proceedings shall not exceed the visa-free period in force for the respective countries. Persons eligible under the Scheme remain subject to current COVID-19 restrictions on entering Hong Kong.

ONLINE PLATFORM LAUNCHED FOR SETTLING PANDEMIC-RELATED DISPUTES

29 June 2020: The Hong Kong eBRAM International Online Dispute Resolution Centre Limited launched its COVID-19 Online Dispute Resolution Scheme (the “**Scheme**”). Its purpose is to efficiently and cost-effectively deal with disputes related to the COVID-19 pandemic globally and locally. To be eligible for the Scheme:

1. The dispute must be directly or indirectly related to COVID-19;
2. The claim amount must be HK\$500,000 or less; and
3. Either one of the parties in the dispute (claimant or respondent) must be a Hong Kong resident or company.

The registration fee for the Scheme is USD 200 for each party. The fees for the mediators and/or arbitrators are to be paid by the Hong Kong government.

Under the Scheme, after registration, the parties are first encouraged to negotiate a resolution of their dispute, failing which, there will be a mediation. If mediation proves unsuccessful, the parties will proceed to arbitration for a final and binding award. The negotiation and mediation stages shall each take 3 days, or such other time as the parties may agree. The arbitration must commence and conclude, producing an award, within 5 weeks.

HKIAC “WOMEN IN ARBITRATION” ESTABLISHES ITS FIRST COMMITTEES

19 August 2020: The Hong Kong International Arbitration Centre Women in Arbitration (“**WIA**”) initiative established the first WIA Committee and Executive Committee.

The WIA Committee will be responsible for shaping the policies and activities of WIA for the purpose of promoting gender diversity in arbitration and related practice areas in China. The Executive Committee will work with the WIA Committee members to help implement such policies and activities.

Launched in February 2018, the WIA’s objective is to provide a forum to consider and discuss current topics, grow networks and business relationships, and develop the next generation of leading female practitioners.

HK-PRC INTERIM MEASURES ARRANGEMENT: HKIAC UPDATE

27 August 2020: The Hong Kong International Arbitration Centre (the “**HKIAC**”) reported that, since 1 October 2019, it has processed 25 applications made to the Mainland Chinese courts for interim measures under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (the “**Arrangement**”).

The Arrangement empowers parties to arbitral proceedings in Hong Kong administered by the HKIAC (or another qualified arbitral institution) to apply to Mainland Chinese courts for interim measures in relation to the arbitral proceedings.

According to the HKIAC, 24 of the applications sought the preservation of assets and the other requested preservation of evidence. Approximately 70% of the applications were made by parties from jurisdictions outside Mainland China.

The HKIAC stated it was aware of 17 successful applications granted under the arrangement and the total value of assets preserved following these decisions amounted to approximately RMB 8.7 billion.

These statistics are a testimony to the success and the high level of interest in the Arrangement. They provide a reason for parties to continue to select Hong Kong as the seat of arbitration, given that Hong Kong is currently the only jurisdiction with such an arrangement with Mainland China.

SINGAPORE CONVENTION ON MEDIATION ENTERS INTO FORCE AND OTHER MEDIATION DEVELOPMENTS IN SINGAPORE

12 September 2020: The Singapore Convention came into force on 12 September 2020, with 53 countries having signed the convention thus far. As at the time of publication, six member states have ratified the convention: Ecuador, Fiji, Singapore, Qatar, Saudi Arabia and Belarus.

The Convention applies to international settlement agreements resulting from mediation, and enables parties to easily enforce and invoke such settlement agreements across borders, before the national courts of participating member states.

In keeping with the spirit of facilitating mediation across borders, the Singapore International Mediation Centre (“**SIMC**”) has worked to ink mediation-related agreements with the Shenzhen Court of International Arbitration (“**SCIA**”) and the Japan International Mediation Centre (“**JIMC**”).

In September 2020, the SIMC and the JIMC launched the JIMC-SIMC Covid-19 Protocol which allows parties along the Singapore-Japan corridor to have mediations jointly administered by both institutions. One of its main benefits is the appointment of two mediators, with one from each institution, to preside over the mediation, catering to cultural sensitivities across parties.

AMENDMENTS TO THE INTERNATIONAL ARBITRATION ACT

5 October 2020: The Singapore Parliament has passed legislation to amend the country’s International Arbitration Act (Cap. 143A), introducing two main changes to the existing Act. The first change introduces default processes and timeframes for appointing arbitrators to the tribunal in multi-party arbitrations, in cases where parties’ agreements do not specify an appointment procedure. The second change expressly grants the Singapore High Court and arbitral tribunals the power to make orders or give directions to enforce confidentiality obligations between parties.

The changes are two of six proposals put forward in the country’s Ministry of Law’s consultation paper in June last year, the remaining four of which were not ultimately tabled before Parliament. The changes should strengthen Singapore’s legal framework for international arbitration ensuring it remains a highly attractive seat of arbitration.

REGIONAL TREATIES AND NEGOTIATIONS

15 November 2020: After approximately 7 years of protracted negotiations, including a withdrawal by India, leaders of fifteen Asia-Pacific countries signed the Regional Comprehensive Economic Partnership (“**RCEP**”) trade agreement on 15 November 2020.

The 15 RCEP countries are: Australia, China, Japan, New Zealand, South Korea, Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

The RCEP will create the most populous trade area in the world, and includes three economic heavyweights – Japan, China and South Korea. The RCEP is anticipated to allow manufacturers to develop new markets across the region, and to build more seamless supply chains throughout the RCEP bloc.

SIAC OPENS NEW YORK OFFICE AS US PARTIES TOP ITS FOREIGN USER RANKINGS

3 December 2020: The Singapore International Arbitration Centre (“**SIAC**”) launched its office in New York, its first representative office outside of Asia. The New York office adds to five other SIAC offices, located in Singapore, Mumbai, Gujarat, Seoul and Shanghai.

The New York office is envisioned to service US parties at the SIAC. Indeed, statistics over recent years have shown that US parties are consistently among the top foreign users of the SIAC, with US parties ranking as the top foreign user at the SIAC in 2018, and among the top 4 foreign users in 2019.

EUROPE AND THE MIDDLE EAST

DRAFT PROTOCOL FOR ONLINE CASE MANAGEMENT RELEASED

1 July 2020: Representatives from six international law firms launched a draft protocol for online case management in international arbitration. The protocol addresses the lack of guidelines with regards to the use of case management technology and aims to assist arbitration participants in the adoption of technologies in a safe and efficient manner.

According to the protocol, an online case management platform refers to “software that enables arbitral participants to store, share, manage and edit case related documents and other data in a single, shared, permissioned repository”.

In light of technological advancements and the impact of COVID-19, the use of technology in the international arbitration arena has increased. Online case management platforms “drive time and cost efficiencies throughout the arbitral process and help arbitral participants comply with their obligations to securely and effectively manage data

relating to the arbitral process". The protocol is intended to help technology providers better understand the needs and requirements of users, which will drive efficiencies and the development of platforms and technologies.

LCIA ARBITRATION RULES 2020 FOSTER A MORE MODERN, COST-EFFECTIVE AND EFFICIENT PROCESS

1 October 2020: The London Court of International Arbitration ("LCIA") has updated its Arbitration Rules (the "2020 Rules") to streamline the arbitral process and to reflect good practice. The 2020 Rules apply to arbitrations commencing on 1 October 2020 onwards, unless the parties have expressly provided that earlier LCIA Rules apply. The key amendments:

- permit the initiation of multiple arbitrations against multiple parties (or under multiple agreements) through a composite request;
- enable awards to be signed electronically and permit virtual hearings;
- offer consolidation in a much wider set of circumstances, as well as concurrent arbitrations;
- include provisions dealing with cyber security, data protection and compliance;
- encourage expedition (an award delivery time-frame of three months from final submissions and early determination procedure);
- provide a broad definition of nationality;
- include enhanced confidentiality provisions;
- reinforce the adopted position on party conduct and tribunal secretaries; and
- clarify the LCIA's position on requests to national courts for interim relief.

QMUL'S INTERNATIONAL ARBITRATION SURVEY 2020 ON ADAPTING ARBITRATION TO A CHANGING WORLD

8 October 2020: The School of International Arbitration at Queen Mary University of London ("QMUL") launched the '2020 International Arbitration Survey: Adapting Arbitration to a Changing World'.

The Survey shares information on how international arbitration has adapted, and may continue to adapt, in light of international changes, including

the impact of COVID-19. The survey closed 11 December 2020 and the results will be published in May 2021 in the form of a report.

CLAUDIA SALOMON RECOMMENDED AS 1ST WOMAN PRESIDENT OF ICC COURT

3 November 2020: Claudia T. Salomon has been recommended for election as President of the ICC International Court of Arbitration ("ICC Court") with effect from 1 July 2021, putting her on a path to becoming the first female President of the ICC Court in its almost 100-year history.

The current President of the ICC Court Alexis Mourre will step down on 30 June 2021. The ICC Executive Board's endorsement is required prior to Ms Salomon's formal election by the ICC World Council in June 2021.

IBA RULES ON THE TAKING OF EVIDENCE SET FOR REVISION

12 November 2020: The International Bar Association's arbitration committee announced its second proposed revisions to the IBA Rules on the Taking of Evidence ("IBA Rules") since their first publication in 1999. Given user satisfaction with the revised 2010 rules, the subcommittee proposed a "tune-up" rather than a comprehensive overhaul. The new proposed additions include:

- Cybersecurity: an explicit acknowledgement that consultation on evidentiary issues may address the treatment of any issues of cybersecurity and data protection;
- Remote hearings: tribunals may order that evidentiary hearings be conducted remotely;
- Illegally obtained evidence: tribunals "may", either at the parties' request or on its own motion, exclude illegally obtained evidence; and
- Document translations: translations are required only for submissions to the tribunal, and not for responses to document requests - unless the parties agree or the tribunal directs otherwise.

It is anticipated that the revised IBA Rules will enter into force in 2021, subject to the IBA Council's approval.

LAW SOCIETY PUBLISHES PLEA ON THE 2007 LUGANO CONVENTION

26 November 2020: In its letter to the President of the European Council, the Law Society of England and Wales urged the EU to approve the UK's application to accede to the 2007 Lugano Convention. The Convention is an international agreement that allows cross-border decision to be enforced and, through the Convention, courts may hear civil or commercial cross-border disputes. The letter refers to the potential damage should the EU and UK fail to implement a sound legal framework for jurisdiction after the end of the Brexit transition period in January 2021. It is likely that individuals and small businesses will suffer should the parties fail to bridge the gap. The letter concludes that the Convention is the solution and the obvious way forward. To preserve access to justice, the letter urges the EU to approve the UK's application to accede to the Convention.

SCC VIRTUAL HEARING SURVEY SHOWS BOTH POSITIVE AND HESITANT ATTITUDES

26 November 2020: The Stockholm Chamber of Commerce ("**SCC**") has published a press release announcing the results of a survey on virtual hearings obtained from arbitrators in 78 cases in October 2020.

Since the COVID-19 pandemic outbreak in March 2020 nearly 40% of the hearings in SCC arbitration cases were conducted online. Arbitrators reported a generally positive experience of virtual hearings, but some reported hesitations around technology and the assessment of witnesses. Overall, arbitrators reported a generally positive experience. The smooth transition to online hearings has saved time and costs and has minimised previous inconveniences of the practice. However the three main disadvantages listed relate to the loss of human interaction, the difficulty in assessing oral evidence and technical problems. As we continue to adapt to COVID-19 related restrictions and as technological efficiencies improve, it is possible that these issues will be ironed out, rendering online hearings the new normal.

NEW ICC ARBITRATION RULES 2021 PROMOTE EFFICIENCY, TRANSPARENCY AND FLEXIBILITY

1 December 2020: The revised ICC Rules of Arbitration (2021) were officially launched on 1 December 2020 and entered into force on 1 January 2021. According to the ICC, they shall "mark a further step towards greater efficiency, flexibility and transparency of the Rules, making ICC arbitration even more attractive, both for large, complex arbitrations and for smaller cases."

While the new Rules are not drastically different from the ICC's 2017 Rules, certain changes will have a significant impact on users. Significant changes include the requirement to disclose the existence of third-party funding and the funder's identity, a new power granted to the ICC Court to appoint a full tribunal of its choice (in exceptional circumstances), the tribunal's ability to exclude new party representatives due to conflicts of interest and the expanded applicability of the expedited procedure provisions to all cases with up to USD\$3 million in dispute.

AMERICAS

UNITED STATES-MEXICO-CANADA AGREEMENT COMES INTO FORCE

1 July 2020: The United States-Mexico-Canada Agreement ("**USMCA**") recently came into force, replacing its predecessor agreement, NAFTA. Key differences are noted in the investor-state dispute settlement ("**ISDS**") provisions between USMCA and NAFTA, including the following:

- Canada is not a party to the ISDS provisions, which means that ISDS claims cannot be brought by Canadian investors or against Canada; and
- While ISDS provisions remain in effect vis-à-vis US and Mexico, recourse to investor-state arbitration by Mexican and US investors are diluted. USMCA provides a distinction between (i) investors with covered government contracts (for example, in oil and gas or infrastructure sectors) and (ii) investors without covered government contracts. While the former will have unrestricted access to arbitration, the latter will only be able to commence arbitration proceedings under limited circumstances.

Nevertheless, investors have a three-year phase-out period during which they can still commence claims for investments made prior to 1 July 2020 under NAFTA, and enjoy the protections that NAFTA currently offers.

LAUNCH OF INTERNATIONAL LEGAL FINANCE ASSOCIATION

8 September 2020: The International Legal Finance Association (ILFA) based in London, has launched in Washington DC to give a global voice to the commercial litigation funding industry. It is an independent, non-profit global trade association promoting the highest standards of operation and service for the commercial legal finance sector.

ILFA's founding members comprise six highly reputable commercial legal finance firms, namely Burford Capital, Harbour Litigation Funding, Longford Capital Management, Omni Bridgeway, Therium Capital Management and Woodford Litigation Funding. Further firms have since joined ILFA, having satisfied its specific membership criteria.

The ILFA's self-appointed mission is to "engage, educate and influence legislative, regulatory and judicial landscapes as the global voice of the commercial legal finance industry". Further, the association aims to work with institutions in their respective jurisdictions to inform policy on legal finance, educate businesses about the industry, advocate for its members and promote the benefits of legal finance.

THE ARBITRATION CENTRE OF THE LIMA CHAMBER OF COMMERCE LAUNCHES A NEW SERVICE AND NEW RULES

24 November 2020: The Arbitration Centre of the Chamber of Commerce of Lima ("**the Centre**") launched a new service and a new set of Rules for the Administration of Dispute Boards ("**New Rules**"). Alejandro Lopez Ortiz and Alina Leoveanu from Mayer Brown's Paris office were appointed as members of the Drafting Committee of the New Rules.

Article 1.2 of the New Rules defines dispute boards as "an alternative dispute settlement mechanism,

conceived to be used by the parties to prevent and, eventually, to solve in an efficient manner the controversies that arise since the beginning of the performance of a project until the final reception of the works". Under the New Rules, the Centre acts as the designated private institution for the efficient administration and organisation of the Dispute Boards. The Dispute Board Members will be selected either by the parties or by the Centre itself from the Centre's List of Adjudicators which is currently being constituted. The New Rules are available [here](#) in Spanish.

MEXICO AND THE PCA SIGN A FRAMEWORK COOPERATION AGREEMENT

27 November 2020: The Permanent Court of Arbitration ("**PCA**") and the Mexican Ministry of Foreign Affairs concluded a Framework Cooperation Agreement (the "**FCA**") with the objective of promoting resort to peaceful dispute settlement mechanisms, such as arbitration, mediation and conciliation, during a ceremony that took place at the Peace Palace.

The FCA will help develop the Court's activities in Mexico, including the exchange of information; the organization of seminars, workshops and similar events; increasing the awareness of the Court's activities related to arbitration and dispute settlement; promoting an internship program; acting as a bridge between the academy and the private sector; and working on joint publications.

The FCA is believed to be the first step towards the eventual conclusion of a Host Country Agreement with Mexico in order to allow the PCA to establish a facility in Mexico.

Case Law Updates

ASIA

SHANGHAI COURT UPHOLDS ARBITRATION AGREEMENT DESIGNATING SIAC AS THE ADMINISTERING INSTITUTION

3 August 2020: In *Daesung Industrial Gases Co Ltd v Praxair (China) Investment Co Ltd* (2020) Hu 01 Min Te No. 83, the Shanghai No. 1 Intermediate People's Court (the "**Court**") upheld an arbitration agreement that provided for arbitration to be administered by the SIAC in Shanghai, finding that this arbitration agreement was valid as it fulfilled all 3 conditions under Article 16 of the Arbitration Law. This decision is welcome as it further shows the Chinese court's willingness to uphold such arbitration agreements (i.e. arbitration agreements designating a foreign arbitral institution to administer a PRC-seated arbitration), and conform to international standards.

The Court's decision to find that the arbitration agreement fulfilled the requirements of Article 16 follows a previous opinion of the Supreme Court of China ("**SPC**") in a previous case, (2013) *Min Si Ta Zi No. 13* (the "**Anhui Opinion**"), where the SPC opined that an ICC arbitration clause designating Shanghai as the place of arbitration was valid and fulfilled Article 16 of the Arbitration Law.

Significantly, the Court made four observations to support its finding. First, the Court observed that the parties to the agreement had willingly entered into the arbitration agreement, and that as a matter of substance the issue did not implicate the question of whether the Chinese arbitration market should open up. Secondly, the Court noted that judicial explanations issued by the SPC had the force of law, and that following the Anhui Opinion, an arbitration agreement designating a foreign arbitral institution administering a PRC-seated arbitration was valid as long as the arbitration agreement fulfilled Article 16 of the Arbitration Law. Thirdly, the Court observed that there was no express legal prohibition supporting the Respondent's argument that a foreign arbitral institution could not administer a PRC-seated arbitration, and that this argument was against the trend of developing international commercial

arbitration. Fourthly, the Court made the striking observation that the Arbitration Law had been promulgated without an international perspective, was clearly not exhaustive, and was "out of touch" with international commercial arbitration. The Court further observed that legislation and judicial law should be complementary, and the Respondent's focus on the inadequacy of arbitration legislation – where it is unclear whether foreign arbitral institutions can administer arbitrations in China – ignored the SPC's binding judicial pronouncement that such clauses are effective, which was an improvement to shore up a gap in the arbitration legislation to conform to trends in international commercial arbitration.

HK COURT CONFIRMS PRINCIPLES FOR INTERIM INJUNCTION TO STAY ARBITRATION

14 August 2020: In *Atkins China Ltd v China State Construction Engineering (Hong Kong) Ltd* [2020] HKCFI 2092 the Hong Kong Court of First Instance confirmed the rules for applying for interim injunctions to stay arbitration proceedings.

Disputes arising between the plaintiff and the defendant under a design agreement (which contained an arbitration clause) were settled by a settlement agreement (which lacked an arbitration clause) expressed to be in "full and final settlement of all claims and counterclaims arising under the Agreement". The defendant later served a Notice of Arbitration seeking damages for the plaintiff's defective design under the design agreement.

The plaintiff sought an interim injunction to restrain the arbitral proceedings on the basis that the settlement agreement did not contain an arbitration clause and covered the relevant disputes. Since the application for the injunction was served less than 2 clear days before the hearing, it was treated as an *ex parte* application on notice.

The Court refused to grant the interim injunction as there was no urgency justifying its grant on an *ex parte* with notice basis, depriving the defendant of (i) an *inter parte* hearing of the summons, and (ii) the opportunity to file evidence in opposition. It also found there would be little prejudice against the plaintiff if the interim injunction was not granted which could not be compensated by costs or money.

The Court indicated that a stay to arbitration might ultimately be granted, but that the conditions had not been made for an interim injunction. This case is a reminder to all users of international arbitration to take note of the rules of local court systems when seeking court-based relief in support of an arbitration.

HK COURT GIVES GUIDANCE ON CORRECTION OF ARBITRAL AWARDS AND ISSUING ADDITIONAL AWARDS

24 August 2020: In *SC v OE1* [2020] HKCFI 2065, the Hong Kong Court of First Instance (“**HKCFI**”) provided valuable guidance on the circumstances in which an arbitral award may be corrected, or an additional award issued.

An arbitral award found that SC was in breach of the relevant agreement, ordered SC to pay the costs of the arbitration, and stated that “all other claims and reliefs sought by the Parties are rejected”.

OE applied to the tribunal to (a) correct the award or (b) make an additional award to correct the award alleging that the tribunal had failed to address claims that it had made in the arbitration for a perpetual license and injunctions. The tribunal acceded, stating that it had made a “wrongful omission” and issued an “Addendum to the Award”, awarding the perpetual license and injunctions.

SC applied to the HKCFI to set aside the addendum on the basis that the tribunal lacked the power to issue the addendum because it was *functus officio* after the issue of the award or because the correction was outside the scope of the tribunal’s power to issue corrections to awards.

The HKCFI held that while the tribunal could not issue the addendum as a correction to the award, it still had the power to issue the addendum as an additional award: it was not *functus officio* as it had admitted that it had made a “mistaken omission” which could rightly be the subject of an additional award. SC appealed the HKCFI’s decision but the appeal was refused on 10 November 2020.

HK COURT REITERATES PRINCIPLES FOR STAY TO ARBITRATION, FOCUSING ON CONTRACTUAL INTERPRETATION OF A DISPUTE RESOLUTION CLAUSE

24 August 2020: In *Cheung Shing Hong Ltd v China Ping An Insurance (Hong Kong) Co Ltd* [2020] HKCFI 2269, the High Court of Hong Kong issued a stay to arbitration, stating principles for interpreting the scope of an arbitration clause.

An insurance company sought to stay court proceedings in favour of arbitration, based on the wording of the arbitration clause: “if any difference shall arise as to the amount to be paid under this Policy such difference shall be determined by arbitration in accordance with the prevailing Arbitration Ordinance”. The insured under the policy resisted on the basis that the arbitration clause only covered disputes “as to the amount to be paid under this Policy” (i.e. quantum).

The court held that the arbitration clause covered all the relevant disputes (i.e. both liability and quantum). It emphasised that this was a question of interpretation taking into account the precise wording of the clause, the agreement and the surrounding circumstances. The court stated that where an arbitration clause is identical to one analysed in earlier cases, the court will usually follow the construction of the earlier case. In this case, the wording was not identical to any case identified by the parties, and so the court relied upon “good commercial sense” and a presumption that (absent express wording) parties intend all disputes to be dealt with in a single forum (e.g. arbitration or via the courts).

HONG KONG COURT GIVES GUIDANCE ON APPEALING A QUESTION OF LAW ARISING FROM AN ARBITRAL AWARD

7 September 2020: Where an arbitration is seated in Hong Kong, parties may “opt in” to provisions in Schedule 2 of the Arbitration Ordinance (Cap. 609). One such provision allows parties to appeal the decision of a tribunal on a question of law arising out of an arbitral award on the basis that the question is of general importance and at least open to serious doubt. In *MC v. SC* [2020] HKCFI 2337, the Hong Kong Court of First Instance provided further definition as to what is required for such an application to succeed.

MC sought to appeal the decision of a tribunal as to whether it had repudiated a sub-contract with SC, arguing that this was a question of law and of general importance because the sub-contract

contained standard form special conditions of sub-contract commonly used in the building industry in Hong Kong.

The Court refused to give leave to appeal because (i) the sub-contract had been supplemented by a further bespoke agreement containing terms relevant to the dispute, meaning the interpretation of the sub-contract was no longer of general importance to the building industry in Hong Kong; and (ii) whether a contract has been repudiated is not a question of law, but a mixed question of fact and law, and the Court would not review the arbitrator's findings of fact.

This case is a reminder that the grounds on which an appeal on a question of law under Schedule 2 of the Hong Kong Arbitration Ordinance (Cap. 609) will be granted are narrow.

SINGAPORE HIGH COURT FINDINGS IN REPUBLIC OF INDIA V VEDANTA RESOURCES PLC

8 October 2020: In *Republic of India v Vedanta Resources plc* [2020] SGHC 208, the plaintiff, the Republic of India ("**India**") was the respondent in a Singapore-seated investment-treaty arbitration ("**Vedanta Arbitration**") brought by the defendant, Vedanta Resources, a UK-incorporated company ("**Vedanta**"). India was also the respondent in another investment-treaty arbitration seated in Netherlands ("**Cairn Arbitration**"). India sought two declarations from the Singapore High Court – that documents disclosed or generated in the Vedanta Arbitration are not "confidential or private"; and that it will not breach any obligation of confidentiality or privacy if it were to disclose, for the purposes of the Cairn Arbitration, any of the documents which were disclosed or generated in the Vedanta Arbitration. In the Vedanta Arbitration, the tribunal ("**Vedanta Tribunal**") had held in a procedural order ("**PO**") that there was a general obligation of confidentiality in Singapore-seated investor-treaty arbitration and that cross-disclosure to the Cairn Arbitration must be by application. The Vedanta Tribunal had also issued two other POs on applications for cross-disclosure.

The Singapore High Court did not expressly opine on the question of whether the general obligation of confidentiality extended to investor-treaty arbitrations, although its rejection of India's

application could be seen to be an implicit acknowledgment of the tribunal's findings on this (i.e. that under Singapore law, the general obligation of confidentiality applies to investor-treaty arbitrations, even though there is scope for an exception for selective disclosure – based on public interest considerations of transparency – in such cases). Conversely, the decision made by the Court could also be seen as a manifestation of the Court's reluctance to interfere (even indirectly) with procedural decisions made by an arbitral tribunal.

The court made a number of interesting findings, including:

1. The Model Law applies to investment-treaty arbitrations (i.e. investment-treaty arbitration falls within the meaning of "international commercial arbitration" in Article 1(1) of the Model Law);
2. India's application, being an application for declarations on Singapore arbitration law, did not concern a matter governed by the Model Law within the meaning of Article 5, and would not be an impermissible intervention in the arbitration. However, this was only on the basis of India's undertaking that it would not act unilaterally to ignore the Vedanta Tribunal's POs if the Court granted any declaration, but instead take such a declaration back to the Vedanta Tribunal for it to reconsider and revise the POs. The Court's view was that if its grant of declaratory relief enabled India to ignore the Vedanta Tribunal's POs without consequence, it would clearly amount to intervening in the Vedanta Arbitration in a matter governed by the Model Law; and
3. It was entirely within a tribunal's power to ascertain, develop, and apply the principles of common law (whether substantive law or the *lex arbitri*) where it was necessary for it to do so to resolve the dispute.

TRIBUNAL'S WRONG DECISION ON RES JUDICATA DOES NOT CONSTITUTE AN ISSUE OF PROCEDURAL PUBLIC POLICY UNDER SINGAPORE LAW

23 October 2020: In *BTN and another v BTP and another* [2020] SGCA 105, the Singapore Court of Appeal ("**CA**") affirmed the High Court's decision to uphold an arbitral tribunal's award (the "**Award**"). The Award had found that the

Appellants were precluded – both as a matter of contractual interpretation as well as a matter of *res judicata* – from bringing certain factual arguments on the basis of determinations made by the Malaysian Industrial Court (“MIC”). The crux of the Appellants’ case was that the Award had deprived them of the opportunity to be heard. The CA found that the Award did not breach any rule of natural justice (since the Parties in the arbitration had a full chance to be heard on this very issue – which was in an agreed List of Issues) and was not against public policy. The CA once again confirmed that the public policy ground for setting aside is a narrow one and that it did not have the power to review the merits of an arbitral decision.

Importantly, the CA rejected the relatively novel submission that a party may seek to challenge an award on a public policy ground, if that award rests on an error of law by reason of which error the tribunal considered that it was not able to exercise its mandate and determine the merits of either party’s position. The Court confirmed that decisions on *res judicata* are not jurisdictional decisions but decisions on admissibility (relying on Paulsson’s nomenclature), and that there was no good reason for erroneous decisions on admissibility to be treated differently from any other errors of law. In doing so, the Court rejected several foreign authorities suggesting that an erroneous decision on *res judicata* would fall within the scope of “procedural public policy” and be capable of being set aside.

Min Jian Chan from the Singapore office successfully represented the respondents in this case as instructed counsel.

SPECIFIC JURISDICTION CLAUSE MAY BE INTERPRETED AS A CARVE-OUT OF A MORE GENERAL ARBITRATION CLAUSE

16 November 2020: In *Silverlink Resorts Limited v MS First Capital Insurance Limited* [2020] SGHC 251, the Singapore High Court considered a case where there were conflicting arbitration and jurisdiction clauses in an insurance policy. In this case, there was an arbitration agreement and a jurisdiction clause in favour of the Singapore courts in the same contract between the parties.

The arbitration agreement, which was wide, was capable of covering disputes that the narrower and more specific jurisdiction clause also covered. The

Singapore High Court declined to follow the *Paul Smith* approach which had been applied in the previous case of *BXH v BXI* (i.e. that the submission to jurisdiction was only to the Singapore courts’ supervisory jurisdiction over the arbitration), finding instead that the parties intended for the jurisdiction clause to govern a specific type of dispute under the parties’ agreement and that the jurisdiction clause was therefore a carve-out from the parties’ agreement to arbitrate.

While the Singapore High Court acknowledged that the *Paul Smith* approach was consistent with the Singapore courts’ generous approach to interpreting arbitration clauses, such an approach to the interpretation of arbitration agreements depended on the intention of the parties, objectively ascertained. The court found that, in instances where the arbitration clause applied to all disputes, and the jurisdiction clause only applied to certain specific disputes, courts can interpret the jurisdiction clause as having carved out the specific disputes from the scope of the arbitration clause.

This case highlights the importance of proper drafting of dispute resolution clauses. It reminds practitioners and users that the *Paul Smith* approach is merely one approach; the approach to be taken by the court must be based on the fundamental consideration of the parties’ intention, objectively ascertained, rather than a mechanical application of one test or another.

EUROPE AND THE MIDDLE EAST

IMPORTANCE OF TIMELY JURISDICTIONAL OBJECTION

3 June 2020: The Dubai Court of Cassation case No. 240 / 2020 has highlighted the importance of raising any pleas on jurisdiction under the UAE Arbitration Law No. 6 of 2018 in a timely manner. This case involved a challenge to a DIFC-LCIA arbitral award on the basis of the tribunal’s lack of jurisdiction to hear the matter. A key issue was when the jurisdiction challenge needed to be made.

The Appellant, before the Court of Cassation argued that the tribunal lacked jurisdiction because the subject matter of the dispute was not arbitrable under Egyptian Law (being the law governing the parties’ contract). However, the Appellant did not

raise any such objection during the arbitration, but rather raised this objection for the first time during the annulment proceedings.

The Court thus rejected the Appellant's request for annulment. In doing so, the Court relied upon Article 20 of the UAE Arbitration Law, which provides that "[a] plea to the jurisdiction of the Arbitral Tribunal shall be raised not later than the submission of the respondent's statement of defence ... A plea that issues raised by the other party during the proceedings are beyond the scope of the Arbitration Agreement shall be raised not later than the next hearing following the hearing at which the plea was raised, otherwise the right to such plea shall be waived." The Court held that Article 20 requires that any jurisdictional objection had to be raised within a period that did not exceed the statement of defence.

DUBAI COURT OF CASSATION PUTS AWARD DEBTOR BACK IN ITS SEAT

3 June 2020: In our July 2020 update, we highlighted the decision of the Joint Judicial Committee (the "JJC") in Cassation No. 8 of 2019, *AF Construction Company LLC v Power Transmission Gulf*, in which it held that the seat of the arbitration is the relevant jurisdiction for hearing applications relating to the award. In a subsequent appeal - No. 268 / 2020 - brought by the respondent / award debtor in that case, the Dubai Court of Cassation considered that it did not have jurisdiction to hear the case on the basis that the award had been ratified in the DIFC Court in accordance with the JJC's earlier decision that it was the proper forum for hearing any applications in relation to the award.

The Court of Cassation held that the DIFC Court's judgment was *res judicata* and that, accordingly, the parties to the claim in which such judgment was issued were prevented from discussing the settled matter in any subsequent claim in which such dispute was raised, even by reliance on points of law or fact not previously raised, or raised but were not included in the judgment thereon.

LANDMARK DECISION OF THE SPANISH CONSTITUTIONAL COURT LIMITING THE SCOPE OF PUBLIC POLICY AS GROUND FOR ANNULMENT OF AWARDS

15 June 2020: the Spanish Constitutional Court ("SCC") has rendered a decision by which it has critically narrowed the notion of public policy for the purposes of setting aside arbitral awards, confirming that the merits of the case are not to be reviewed by the courts.

The background of the case relates to a lease agreement subject to arbitration administered by the institution AEADE. The landlords filed for arbitration to claim payment of unpaid rents from the tenants. In his award, the arbitrator declared the termination of the lease agreement, ordered the tenants to make payment of the outstanding debts and ordered their eviction. The tenants then initiated proceedings to set aside this award before the High Court of Madrid ("**High Court**") on the basis that the arbitration agreement was abusive and breached laws for the protection of consumers. Later on, the parties settled the dispute and filed a motion with the Court requesting the termination of the annulment proceedings. However, the High Court ignored their motion and issued a decision rejecting the request of the parties to abandon the proceedings to set aside the award, declaring that there was a general interest in removing any awards that were contrary to public policy.

The decision of the High Court has been revoked by the SCC in proceedings started by the parties seeking constitutional protection. The SCC considers that irrespective of whether the grounds for annulment of the award dealt with issues of public policy, the parties were free to put an end to a dispute of a private nature. The SCC also found that the purpose of arbitration would be distorted if arbitral awards were subject to the revision of the courts and that public policy should not be used as a pretext to re-examine the merits of the case.

This decision of the SCC should be welcomed as it represents a clear endorsement by the highest interpreter of the constitution in Spain of the need to respect arbitral awards for them to provide an effective extrajudicial solution to a conflict.

GERMANY NOT SUCCESSFUL IN CHALLENGING VATTENFALL PANEL

9 July 2020: In *Vattenfall AB and others v Federal Republic of Germany* (ICSID Case no ARB/12/12) Germany was not able to challenge the ICSID proceedings by Vattenfall amounting to a EUR 4.7 billion claim against Germany for discontinuing the nuclear energy generation in Germany. Germany argued that the arbitrator, Brower, allegedly failed to disclose a conflict. Germany also contended that a virtual hearing, due to COVID-19, on complex quantum issues was not suitable. However, no conflict was found and it was held that the tribunal did not show a lack of independence or impartiality.

GERMANY SUED FOR CANCELLED CAR TOLL PROJECT

29 July 2020: In *Kapsch, CTS Eventim AG & Co and autoTicket v Germany*, the joint venture partners filed a EUR 560 million claim against Germany at the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit, (DIS)) in connection with the cancellation of Germany's car toll project. Germany cancelled the joint venture partners' contract to build and operate the toll system as the European Court of Justice ruled that the planned toll system was violating EU law. The joint venture partners are claiming lost profits and compensation for termination costs, including claims of subcontractors.

ENGLISH HIGH COURT FINDS ESTOPPEL PREVENTS PARTY FROM RAISING NEW CLAIMS BY AMENDMENT IN SAME PROCEEDINGS

1 September 2020: In *Daewoo Shipbuilding & Marine Engineering Company Limited v (1) Songa Offshore Equinox Limited And (2) Songa Offshore Endurance Limited*, Daewoo brought an appeal under sections 68 and 69 of the Arbitration Act 1996 against the tribunal's decision to refuse amendment to its original claim submissions after it lost at the preliminary issue hearing. The preliminary issue concerned responsibility for design errors under the contracts and Daewoo agreed in writing that if it lost the preliminary issue, it would not make new claims regarding the rigs. But afterwards, it nevertheless sought to raise new claims, premised substantially on the same facts.

Permission to amend was refused by the tribunal who considered this would amount to an abuse of process.

Dismissing the applications, the court held that the claims should have been raised before the determination of the preliminary issue and that *Henderson v Henderson* applied. According to *Henderson v Henderson*: "the court requires the parties to that litigation to bring forward their whole case ... and will not permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward". This case reminds parties to take care when framing the issues of their case and when proposing a preliminary issue.

ENGLISH COURT GRANTS NIGERIA SIGNIFICANT EXTENSION OF TIME TO CHALLENGE AWARD ON BASIS OF FRAUD

4 September 2020: The 2020 decision in *Process & Industrial Developments Limited ("P&IDL") v The Federal Republic Of Nigeria* marks the latest update in a notoriously long-standing dispute between the parties since 2012. Due to breaches of the parties' agreement for the supply of natural gas, a tribunal awarded P&IDL USD 6.6 billion in a final award, which it sought to enforce in the English Courts. In December 2019, almost 3 years later, and 5.5 years respectively after the awards in the case were issued, Nigeria applied for an extension of time to submit a challenge under sections 67 and 68(2)(g) of the Arbitration Act 1996 on the grounds that P&IDL had perpetrated an elaborate fraud which had tainted the awards.

While recognising that the delay in applying for the extension was "extraordinary", the court found a strong *prima facie* case of fraud and applying the "*Kalmneft factors*" - set out in *AOOT Kalmneft v Glencore* - it exercised its discretion under section 80(5) of the Arbitration Act 1996 to extend the 28-day time limit under sections 67 and 68 in favour of Nigeria.

In the judgment, the court reiterated that there is a high hurdle to set aside awards under section 68, including for fraud, and rather than setting aside the awards, it allowed Nigeria to argue the merits of its fraud allegations.

UNDER RARE ARTICLE 45 APPLICATION ENGLISH HIGH COURT FINDS DAMAGES ARE AVAILABLE IN ADDITION TO DEMURRAGE

7 September 2020: The *Eternal Bliss* case is a rare example of the use of section 45 of the Arbitration Act 1996 and is a significant decision for the shipping industry. The High Court determined a preliminary point of law arising during the arbitration pursuant to the section 45 application, namely when a charterer has failed to load or discharge cargo within the permitted laytime causing deterioration of the cargo and significant loss and damage for the owners, is the owner entitled to damages for breach of contract and/or an indemnity (in addition to demurrage).

After thoroughly reviewing the authorities, the court held that demurrage “serves to liquidate loss of earnings resulting from delay” due to the failure to load or discharge the cargo within the laytime. However, where a different type of loss – cargo claim liabilities, in this case - stems from such failure, damages are recoverable without the need to show a separate and independent breach of contract (a point which had, until now, been long debated).

ENGLISH HIGH COURT GRANTS ANTI-SUIT INJUNCTION FINDING FOREIGN AVOIDANCE CLAIMS ARBITRABLE

23 September 2020: *Riverrock Securities Limited v International Bank of St Petersburg (Joint Stock Company)* is a significant decision which confirms the arbitrability in England of avoidance claims brought on behalf of a company under foreign insolvency proceedings.

The parties entered into a range of contracts for the sale of securities which were governed by English law and had LCIA arbitration clauses with an English seat. The International Bank of St Petersburg (“IBSP”) became insolvent and its receiver commenced Russian bankruptcy proceedings on its behalf, seeking to set aside the contracts as transactions at an undervalue. The High Court granted Riverrock an anti-suit injunction (“ASI”) restraining pursuit of these proceedings. The case follows a number of judgments which have sought to protect parties’ arbitration agreements through the issuance of ASI’s.

In granting the ASI, the court found that the avoidance claims, being contractual in nature, fell

within the scope of the arbitration agreements and, adopting a pro-arbitration stance, held them to be arbitral under English law. The Court concluded that the general rule by which courts respect foreign insolvency proceedings would not prevent the court from upholding the parties’ arbitration agreement. Finally, applying the Court of Appeal’s decision in *Enka v. Chubb*, it held that the English court had the power to grant an injunction as the parties had submitted to the jurisdiction of the English courts by choosing an English seat.

FRENCH COUR DE CASSATION SETS ASIDE ARBITRATION AGREEMENT IN CONSUMER DISPUTE

30 September 2020: The French Cour de Cassation, in the *PWC Landwell* decision (Cour de cassation, First Civil Chamber, No 18.19-241) set aside an arbitration agreement contained in a contract entered into by a consumer on the grounds that the standardized arbitration clause had not been negotiated and was manifestly unfair. Consequently, the court decided, on the basis of European law and French consumer law, that Article 1148 of the French Civil Code, establishing the principle of competence-competence, cannot deprive a consumer from the protections provided under European consumer law.

This decision is a shift from the court’s previous case law with respect to arbitration clauses and consumer disputes in international arbitration, notably the *Jaguar* and *Rado* cases, in which the French Cour de Cassation applied the principle of competence-competence and considered consumer disputes to be arbitrable, unless the arbitration agreement is manifestly void.

FRANKFURT COURT HEARS SET ASIDE CLAIM AGAINST EUR 270 MIO. INSURANCE AWARD

November 2020: The Frankfurt Higher Regional Court, in *Lixil v American International Group (AIG)*, heard a challenge to a DIS arbitral award in favor of insurer AIG in a dispute amounting to over EUR 270 million in losses by Japanese Lixil construction group in connection with its 2014 acquisition of German bathroom fittings manufacturer Grohe from TPG Capital and Credit Suisse. Lixil has warranty and indemnity policies with AIG and a group of 20 insurers. Each layer of insurers is liable up to a certain coverage, amounting in total to EUR 270 million in damages for fraud and misconduct.

Lixil is trying to set aside the award arguing that the tribunal ignored witness evidence presented in the hearing and failed to address arguments. The ruling (not yet published) will likely have an outcome on future arbitral proceedings by Lixil against the other insurers.

ANOTHER SUCCESSFUL S68 APPLICATION IN THE ENGLISH COURT OWING TO ERROR WITH DAMAGE QUANTIFICATION

23 November 2020: In *Republic of Kazakhstan v World Wide Minerals Limited*, the English Commercial Court upheld a challenge under Section 68 of the Arbitration Act 1996, setting aside the offending parts of the award and remitting the quantification of damages to the tribunal for determination.

The claims for relevant BIT breaches failed, save for two proven breaches. The tribunal awarded damages, applying a damages formulation premised on success on the totality of the claims. The court found that there had been a serious irregularity in the tribunal's failure to act on a submission that, if the tribunal found some but not all of the alleged breaches proven, it should render a further partial award on liability and revert to the parties for evidence or submissions on damages for that liability. The court also held that a substantial injustice had occurred because it was satisfied that had the Republic of Kazakhstan been given the chance to address the assessment of damages caused by each of the breaches, the tribunal might have reached a different conclusion from that reached in the award and produced a significantly different outcome.

ARBITRATOR'S IMPARTIALITY AND THE DUTY OF DISCLOSURE

27 November 2020: In *Halliburton Company v Chubb Bermuda Insurance Ltd (formerly known as Ace Bermuda Insurance Ltd)*, the Supreme Court handed down a long-awaited judgment. The case concerned an arbitration in which three arbitrators were appointed; one arbitrator chosen by each party, and the chair chosen by the English High court (as on this occasion, the co-arbitrators failed to agree when appointing a chair arbitrator). The chair, The chair, Kenneth Rokison QC (henceforth "KR"), disclosed that he had previously acted as an

arbitrator in various disputes in which Chubb, the respondent, had participated (including as Chubb's appointee). The claimant did not object to the appointment on this basis and the matter proceeded. Later, in separate proceedings, KR was appointed by Chubb in a second arbitration, and then was appointed as chair in a related third arbitration. KR failed to inform the claimant of his appointments in these second and third arbitrations. As a result, the claimant sought an order for KR to be removed and replaced pursuant to sections 24(1)(a) and 33 of the Arbitration Act 1996. It was argued that KR's conduct had given rise to the 'appearance of bias', although no actual allegation of bias or lack of impartiality was made against KR. On appeal, the Supreme Court rejected the claimant's arguments and dismissed the appeal.

The upshot of the case is that English and Welsh courts will apply an objective test, considering whether a fair-minded and informed observer would consider there to be a real possibility of bias. Further, the courts will consider and weigh the particular characteristics of international arbitration as compared to judicial courts. With regards to an arbitrator's continuing duty of disclosure, there is a legal duty to disclose "facts or circumstances which would or might lead the fair-minded and informed observer, having considered the facts, to conclude that there was a real possibility that the arbitrator was biased" (this duty falls within Section 33 of the Arbitration Act 1996). While this duty does not override an arbitrator's duty to maintain privacy and confidentiality, the failure to disclose "may in certain circumstances amount to apparent bias".

It therefore concluded that when an arbitrator accepts appointments in multiple arbitrations concerning the same, or overlapping subject matters with only one common party, there is not a presumption of bias, as it "would not necessarily cause the fair-minded and informed arbitrator to conclude that there was a real possibility of bias", unless, objectively, the facts suggest otherwise.

AMERICAS

DISCOVERY IN PRIVATE FOREIGN ARBITRATION PROCEEDINGS

8 July 2020: The US Court of Appeals for the Second Circuit reaffirmed that a party in the Second Circuit may not use 28 U.S.C. § 1782 (“**Section 1782**”) to obtain documents or other discovery for use in a foreign private international commercial arbitration. Section 1782 authorizes federal district courts to compel production of materials “for use in a proceeding in a foreign or international tribunal” upon “the application of any interested person.” In *In re Guo*, Petitioner Guo initiated arbitration against a music streaming company and its former executive before the China International Economic and Trade Arbitration Commission (“**CIETAC**”), alleging that due to a series of misleading, extortionate, and fraudulent transactions, he sold his shares in the eventually-acquired companies for less than they were allegedly worth, prior to an American IPO. Guo then submitted a Section 1782 application in the Southern District of New York, seeking discovery from four New York investment banks related to their work as underwriters in the American IPO.

The District Court denied Guo’s application on the grounds that the CIETAC was not a “foreign tribunal” within the meaning of Section 1782, relying on *Nat’l Broad. Co., Inc. v. Bear Stearns & Co.*, 165 F.3d 184 (2d Cir. 1999), which found that the drafters of Section 1782 intended that the statute only apply to governmental entities. On appeal the Second Circuit affirmed, reiterating that Section 1782 relief is not available in a private commercial arbitration, and held that CIETAC was more akin to a private commercial arbitral tribunal than a foreign, governmental tribunal. Several factors influenced the Second Circuit’s decision. For example, private parties are free to select which arbitrators would preside over their case, and CIETAC’s jurisdiction is limited to disputes between parties who contractually elected for such arbitration, and certain contractual disputes between investors and Chinese governmental entities. Additionally, potential arbitrators are not required to hold a position in the Chinese government, and CIETAC and its oversight council receive limited funding from the government.

This decision widens a circuit split on the scope and applicability of Section 1782 in these circumstances. The Second Circuit is joined by the Fifth Circuit and the Seventh Circuit in taking the position that Section 1782 does not authorize a district court to compel discovery for use in private foreign arbitration. On the other hand, the Fourth Circuit and Sixth Circuit have reached the opposite conclusion on this issue, opining that Section 1782 application may be used in order to obtain documents in aid of a foreign, private arbitration. This significant circuit split increases the likelihood that the U.S. Supreme Court will ultimately weigh in on this issue in the near future.

BRIBERY AND PUBLIC POLICY

16 July 2020: In *Vantage Deepwater Co. v. Petrobras Am., Inc.*, the United States Court of Appeal for the Fifth Circuit held that courts must defer to an arbitrator’s finding that alleged bribery did not invalidate the parties’ contract. Petrobras had argued that a USD 622 million arbitral award issued to Vantage Deepwater, an oil rig operator, following a dispute over an oil drilling contract could not be enforced under Article V(2)(b) of the Panama Convention because the contract was unlawfully obtained as part of the Lavo Jato (Operation Carwash) bribery scandal. Article V(2)(b) of the Panama Convention, like Article V(2)(b) of the New York Convention, allows an enforcing court to refuse to recognize or enforce an award that “would be contrary to the public policy of that country.”

Petrobras terminated the contract in 2015, claiming that Vantage materially breached the contract and that the contract was invalid because it was procured through bribery and subsequently initiated arbitration.

The United States District Court for the Southern District of Texas held that the award would not violate public policy because the tribunal found that Petrobras had ratified the contract. The Fifth Circuit held that the district court properly deferred to the arbitrators’ findings that Petrobras had not proved Vantage was aware of the alleged bribery and, additionally, that Petrobras knowingly ratified the contract. While the ultimate determination of whether an award violates public policy is for the enforcing court, the court makes its legal determination on the facts as found by the arbitrator.

COVID-19 AND REMOTE HEARINGS

13 August 2020: In *Legaspy v. Fin. Indus. Regulatory Auth., Inc.*, No. 20 C 4700, 2020 WL 4696818 (N.D. Ill.), in what appears to be the first U.S. court to address the issue in the context of the COVID-19 pandemic, an Illinois federal court denied a request to enjoin a remote arbitration hearing. In February 2019, Legaspy's clients initiated a Financial Industry Regulatory Authority ("FINRA") arbitration against him seeking to recover brokerage account losses. The parties agreement provided that "in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of FINRA" and that "the arbitration will be conducted in accordance with the FINRA Code of Arbitration Procedure." In response to the pandemic, FINRA cancelled the in-person hearing and ordered a remote hearing. Legaspy objected, the tribunal overruled those objections, and Legaspy filed suit in federal court to enjoin the virtual hearing.

The court denied Legaspy's motions for a temporary restraining order and preliminary injunction, thus allowing the virtual arbitration to proceed. The court noted that arbitrators are to address procedural questions, not courts, and further that the FINRA Code of Arbitration allows arbitrators to order virtual hearings.

COURT OF APPEALS OF THE STATE OF SÃO PAULO SET ASIDE AN ARBITRAL AWARD DUE TO THE PARTIALITY OF THE PRESIDING ARBITRATOR

24 August 2020: The Court of Appeals of the State of São Paulo (TJ-SP) set aside an arbitral award because the presiding arbitrator failed to disclose that he had been appointed by one of the parties in another arbitration proceeding. As per article 14 of the Brazilian Arbitration Act, arbitrators have a duty to disclose any facts that may give rise to questions as to his independence and impartiality.

ARBITRATOR'S DUTY OF DISCLOSURE

14 September 2020: The US Court of Appeals for the Fifth Circuit in *OOGC America, L.L.C. v. Chesapeake Exploration, L.L.C.* (5th Cir. No. 19-20002) held that an arbitrator's failure to disclose a relationship was not sufficient to support vacatur under its evident partiality standard. Specifically, the court held that the following connections with a third party, whose relationship

with one of the parties to the arbitration was an issue in the arbitration, were insufficient: (1) the arbitrator's relationship with the chair of the board of directors of the third party, (2) the arbitrator's recent legal representation of that third party, and (3) connections with that chair's daughter and with the third party's in-house counsel. The court found that the arguments of the party seeking vacatur of the award were speculative and not concrete enough to warrant vacatur. The court therefore vacated the district court order vacating the arbitration award.

INTERPRETATION OF 'FOREIGN OR INTERNATIONAL TRIBUNALS'

22 September 2020: In *Servotronics Inc. v. Rolls-Royce PLC et al.*, the United States Court of Appeals for the Seventh Circuit deepened the circuit split on the question of whether 28 U.S.C. § 1782(a) authorizes district courts to order a person or entity to give testimony or documents for use in private foreign arbitrations. The Seventh Circuit sided with the Second Circuit and Fifth Circuit in holding that Section 1782(a) permits courts to provide discovery assistance only to state-sponsored foreign tribunals, not private international arbitrations.

The Seventh Circuit's decision relied primarily on what it described as "statutory context" and its belief that a broad interpretation of "foreign or international tribunal" under Section 1782(a) would conflict with the Federal Arbitration Act ("FAA"). The court declined to rely on dictionary definitions of "tribunal" or the ruling in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004)—the only United States Supreme Court case addressing Section 1782(a).

Instead, the Seventh Circuit noted that when Congress adopted the Commission's proposed legislation revising Section 1782 in 1964, the same legislation included revisions to two other statutes that use "foreign or international tribunal" in the context of judicial assistance in a foreign country. In addition, Seventh Circuit also favored a narrow interpretation of Section 1782(a) to avoid any conflict with the FAA. Based on this analysis, the court concluded that the correct interpretation of the phrase "foreign or international tribunal" in § 1782 is that it refers only to state-sponsored tribunals and does not include private arbitration panels.

THE SUPREME COURT OF THE UNITED STATES DENIES CERTIORARI REGARDING FIFTH CIRCUIT AFFIRMED \$62.9 MILLION ARBITRAL AWARD

19 October 2020: In January 2020, the U.S. Court of Appeals for the Fifth Circuit affirmed a USD 62.9 million arbitral award in favor of Soaring Wind Energy, LLC (“**Soaring Wind**”) and its investors against Catic USA Inc. (“**Catic**”). Soaring Wind argued that Catic violated an exclusivity provision by pursuing wind power projects outside of a joint venture. The arbitration tribunal found Catic, as well as non-signatories to the agreement, were jointly and severally liable based on an “alter ego theory.” On October 19, 2020, the U.S. Supreme Court denied two related petitions for certiorari challenging the Fifth Circuit’s ruling.

The petitions argued that the Fifth Circuit erred by asserting jurisdiction based on the New York Convention because all the parties to the underlying agreement were domestic entities. The petition also challenged the fairness of the arbitration, asserting that one side “elect[ed] a supermajority of the panel,” and requested the U.S. Supreme Court to consider whether courts should review arbitrability for non-signatories to an agreement before arbitration begins. The denial of the certiorari petitions does not necessarily imply that the U.S. Supreme Court agrees with the Fifth Circuit’s ruling. Thus, it is likely that these issues, particularly the issue of courts reviewing arbitrability for non-signatories, will make their way to the U.S. Supreme Court again in the future.

Firm Updates

2020: Alejandro Lopez Ortiz, Alina Leoveanu (both Paris) and Gustavo Scheffer da Silveira (São Paulo) have been included in the Roster of International Adjudicators of the National and International Arbitration Center of the Lima Chamber of Commerce (2020-2021 term).

June 2020: Mayer Brown was ranked in Dispute Resolution: International Arbitration in the 2020 edition of The Legal 500 US.

12 August 2020: The premier Pan-African weekly news magazine, Jeune Afrique, ranked Dany Khayat (Paris) in the 8th position in the top 100 most influential business lawyers in francophone Africa in 2019, and distinguished him as one of the two “Leading Lawyers” in the Litigation sub-category. Click [here](#) to read more.

September 2020: The 2021 edition of Chambers Asia Pacific ranked Mayer Brown for Arbitration: International.

October 2020: Gustavo Fernandes de Andrade (Rio de Janeiro), Luiz Aboim (London) and Gustavo Scheffer da Silveira (São Paulo) featured as recommended arbitration lawyers by Leaders League 2021 Edition.

October 2020: Mayer Brown strengthens Lusophone Africa and Latin American international arbitration capabilities in London with the addition of partner Luiz Aboim. Luiz advises on corporate and commercial high-stakes disputes involving various sectors, notably oil and gas, projects and infrastructure. He has considerable experience advising on disputes involving investments in Brazil, Latin America and Lusophone Africa. Luiz will work closely with the Firm’s International Arbitration team in Paris, Brazil and the US to service our clients, and contribute to Mayer Brown’s efforts in those regions.

October 2020: Paul Teo joins as a partner in Mayer Brown’s Singapore Office adding further strength to its International Arbitration practice in Asia given he has over 23 years of experience in arbitration, ADR and litigation matters. He has a particular focus on China-outbound (including Belt & Road disputes) and Japan-outbound matters, with experience acting for clients on disputes arising out of major projects in the Gulf region, Central Asia,

Africa and Latin America. Paul is a chartered arbitrator and is listed on the Chartered Institute of Arbitrators' Presidential Panel of Arbitrators, as well as on the panels of various leading arbitral institutions.

October 2020: Gustavo Fernandes de Andrade (Rio de Janeiro) and João Marçal Martins (São Paulo) were praised by clients in dispute resolution: arbitration and in dispute resolution: litigation in The Legal 500 – 2021 Edition.

October 2020: Tauil & Chequer Advogados in association with Mayer Brown was ranked in dispute resolution: arbitration and in dispute resolution: litigation in The Legal 500 – 2021 Edition.

October 2020: João Marçal Martins (São Paulo) joined the list of arbitrators of CBMA- Brazilian Center of Mediation and Arbitration.

December 2020: The 2021 edition of Chambers Asia Pacific ranked Mayer Brown for both Arbitration: International in the Asia-Pacific Region and Dispute Resolution: Arbitration in Singapore.

December 2020: Gustavo Scheffer da Silveira has been re-nominated co-coordinator of the ICC Brasil's Infrastructure subcommittee.

Mayer Brown Key Upcoming Events

14 January 2021: Dany Khayat (Paris) will speak at the 6th EFILA Annual Conference on the topic of "The Renewed Role of States in Arbitration Proceedings".

The full programme is available [here](#).

14 January 2021: Alina Leoveanu (Paris) will give a lecture about "The ICC Rules explained : the old, the new and the magic" to the LLM students of The Hague University of Applied Science.

10 February 2021: Mayer Brown Paris will host an ICC YAF event on the topic of "Equality of Parties Before International Investment Tribunals". The keynote speech will be delivered by Toby Landau QC and will be followed by a panel discussion moderated by William Ahern (Paris).

13 February 2021: Alain Farhad (Dubai) has been invited by the President of Peruvian Chamber of Business to Participate in the Training Course for Arbitrators Specialised in a National & International Commercial Arbitration - 2020 Edition.

We are currently in the process of planning a number of online events to take place throughout 2021. Once details have been confirmed we will email you an invitation with further details. Alternatively, please check our website which will be updated regularly.

Mayer Brown Key Past Events

8 June 2020: B. Ted Howes (New York) moderated a panel of international arbitrators titled “The International Arbitrator’s Point of View”, at the “PLI International Arbitration 2020”.

9 July 2020: Alina Leoveanu (Paris) spoke at the webinar organised by the SVAMC on “Experts in Technology Arbitration – Best Common Law and Civil Law Practices!”.

9 July 2020: Charles E. Harris, II and Sarah Reynolds (both Chicago) participated as speakers on a webinar titled “What Arbitrators need to Know: UCC “Battle of the Forms” and Arbitrability”.

10 July 2020: Alina Leoveanu (Paris) spoke at the webinar organised by FTI Consulting on “Construction Arbitration: It’s not All about the Money” organised as part of the virtual Paris Arbitration Week 2020.

10 July 2020: Dany Khayat and Alina Leoveanu (both Paris) hosted a webinar on “Investor-State Mediation: Breaking Down Misconceptions” organised as part of the virtual Paris Arbitration Week 2020.

23 July 2020: João Marçal Martins (São Paulo) spoke about “Evidence and International Dispute Resolution” during a webinar hosted by the Chamber of Conciliation, Mediation and Arbitration CIESP-FIESP.

27 August 2020: Yu-Jin Tay (Singapore) spoke about “IP-related disputes in International Arbitration” during a webinar hosted by the Singapore Institute of Arbitrators, the Intellectual Property Office of Singapore and the National University of Singapore Faculty of Law.

3 September 2020: Gustavo Fernandes de Andrade (Rio de Janeiro) and Gustavo Scheffer da Silveira (São Paulo) spoke at the Mayer Brown webinar “Arbitration Around the World: the pandemic, investments and arbitration: the updates of the Lusophone Africa”.

4 September 2020: Raid Abu-Manneh (London) and Gustavo Fernandes (Rio) spoke at an event hosted by the ICC Brazil. The topic was “Dispute Boards: The perspective of the parties and their counsel”.

28 September 2020: Dany Khayat (Paris) organized and hosted the 2nd Sciences Po Mayer Brown Arbitration Lecture (SPMBAL) which was delivered by Professor Pierre Mayer on the topic: “Must Justice be a goal for the arbitrator?” The lecture was followed by a debate with Matthieu de Boisséson, Jennifer Kirby & Stéphanie Smatt Pinelli and was co-hosted by Dany Khayat and Professor Diego P Fernández Arroyo.

The recording of the SPMBAL is available [here](#).

8-10 October 2020: Mauro Pedroso Gonçalves (Brasília), João Marçal Martins (São Paulo) and Caio Viana de Barros Tomé (São Paulo) represented the firm by acting as arbitrators in the VI edition of the Southeast Regional of CAMARB Pre Moot.

15 October 2020: Sarah Reynolds and James Coleman (both Chicago) hosted a Mayer Brown virtual event on “Silicon Docks, Silicon Valley: International Arbitration in Ireland and the US.” The event was a success, including a panel of both US and Irish arbitration practitioners (including the former Taoiseach of Ireland) and had over 50 people attend.

19 October 2020: Gustavo Fernandes de Andrade (Rio de Janeiro) spoke at the VII CAM-CCBC Congress on Arbitration. He moderated the panel on “Arbitration and Public Administration Issues on the agenda in the post-pandemic scenario”.

21 October 2020: Alina Leoveanu (Paris) spoke at the first ICC YAF organized in North Macedonia on the topic of “Challenges and Opportunities in International Arbitration”. Over 50 participants joined from North Macedonia, but also from India, Botswana, Nigeria, the UK, Austria and Romania and contributed to a lively discussion between Ioana Knoll-Tudor, Anne-Karin Grill, Peter Rižnik, András Dániel László, Sebastiano Nessi, Ilija Mitrev Penusliski and Alina Leoveanu. The first part focused on the challenges encountered throughout an arbitration procedure, while in the second part the speakers exchanged different perspectives and tips on where to start and how to advance your career in arbitration.

5 November 2020: Alina Leoveanu (Paris) spoke at the webinar and online book launch “Mediation in International Commercial Disputes”.

More details about the event are available [here](#).

10 November 2020: Gustavo Scheffer da Silveira (São Paulo) spoke at the webinar “Dispute Boards: the Regulation in Brazil and in the world”, organized by the Minas Gerais Chapter of the Brazilian Arbitration Committee - CBAr.

11 November 2020: Gustavo Fernandes de Andrade (Rio de Janeiro) spoke at the Mayer Brown webinar “Digital Revolutions in the commercial market: network algorithms, defect consents, blockchain and responsible business: where does LGPD fits into?” Jose Moscati (Accenture – Market Unit Legal Director) also spoke at the webinar.

13 November 2020: Gustavo Scheffer da Silveira (São Paulo) spoke at the V Oxford Arbitration Day Webinar on the panel “Complex Construction Arbitrations”.

16 November 2020: Dany Khayat (Paris), Raid Abu-Manneh, and Miles Robinson (both London) partnered with ILFA’s Chairman, Leslie Perrin, and Harbour’s Co-founder Susan Dunn, for an exclusive webinar about the newly launched ILFA - the global trade association devoted to the commercial legal finance industry – and other interesting industry trends. The webinar covered recent issues relating to funding Investor State cases, global trends, including in emerging markets (notably the Middle East), and the impact of third party funding on commercial litigation in the UK.

16 November 2020: Gustavo Scheffer da Silveira (São Paulo) spoke at the 1st Construction Law Conference for the State of Paraná. The event was organized by the University of Londrina and included speakers from Brazil and other Latin American countries.

17 November 2020: Alejandro Lopez Ortiz (Paris) took part in the first panel of the XVI Rio de Janeiro International Arbitration virtual conference organized by Canal Arbitragem and tackled the topic of “Technical issues and the law in construction disputes”.

20 November 2020: João Marçal Martins (São Paulo) gave a lecture on “Complex Negotiations” at the Litigation 4.0 course promoted by Future Law (powered by Thomson Reuters).

24 November 2020: Gustavo Fernandes de Andrade (Rio de Janeiro), Gustavo Scheffer da Silveira (São Paulo) and Alejandro López Ortiz (Paris) spoke at the Mayer Brown webinar “Arbitration Around the World -Infrastructure and Arbitration with State Entities: The Chilean and Peruvian Experiences.”

27 November 2020: Gustavo Scheffer da Silveira (São Paulo) spoke at the event “Arbitration as an autonomous legal order” hosted by the State Arbitration Centre in Peru.

Mayer Brown Publications

PARIS ARBITRATION WEEK: SAILING THE WINDS OF CHANGE AT THE 4TH ICC EUROPEAN CONFERENCE ON INTERNATIONAL ARBITRATION

14 July 2020: Alina Leoveanu (Paris) published an article on the Kluwer Arbitration Blog covering the two conference panels of the 4th ICC European Conference on International Arbitration held during the Paris Arbitration Week, the first one tackling the topic of “Tariff Wars and Supply Chains: Disputes in the Making?” and the second one addressing the topic of “The European Green Deal and Climate Law: What is the impact on dispute resolution?”.

To read the article click [here](#).

SECOND CIRCUIT: § 1782 NOT AVAILABLE FOR PRIVATE FOREIGN ARBITRATION PROCEEDINGS

23 July 2020: B. Ted Howes (New York), Michael Lennon (Houston), Charles Harris (Chicago), Mark Hachet (New York) and Robert Hamburg (New York) authored a legal update on “Second Circuit: § 1782 Not Available For Private Foreign Arbitration Proceedings”.

To read the article click [here](#).

MATERIAL NON-DISCLOSURE RESULTS IN HONG KONG COURT’S DISCHARGE OF ENFORCEMENT ORDER FOR ARBITRATION AWARD

6 August 2020: The decision in *1955 Capital Fund I GP LLC v Global Industrial Investment* emphasises the importance of full and frank disclosure of all material facts in applications for leave to enforce arbitration awards, particularly in affirmations or affidavits in support of such enforcement applications. Mei Ling Lew and James Lewis (both Hong Kong) discuss the case, noting the Hong Kong Court’s duty to comply with relevant procedures in enforcement applications.

To read the article click [here](#).

HONG KONG COURT CONFIRMS PRINCIPLES FOR INTERIM INJUNCTION TO STAY ARBITRATION

21 August 2020: Mei Ling Lew and James Lewis (both Hong Kong) discuss the position in *Atkins China Ltd v China State Construction Engineering*, in which the courts refused to grant an interim injunction to stay an arbitration due to a lack of urgency on the facts. However, the Court indicated that continuing arbitration proceedings where the claims in question are covered by a settlement agreement (without an arbitration clause) might be considered sufficient grounds to grant an injunction.

To read the article click [here](#).

MARITIME ARBITRATION: THREE DEVELOPMENTS THAT STRENGTHEN HONG KONG MARITIME ARBITRATION

4 September 2020: Bill Amos (Hong Kong) authored an article discussing the developments that strengthened Hong Kong’s position as a maritime arbitration hub in the Hong Kong Lawyer.

To read the article click [here](#).

HONG KONG COURT’S GUIDANCE ON CORRECTION OF ARBITRAL AWARDS AND ENFORCEMENT

10 September 2020: *SC v OE1* provides a cautionary tale for parties involved in applications to set aside or resist the enforcement of an arbitral award, as discussed by Mei Ling Lew and James Lewis (both Hong Kong) in their article, “Hong Kong Court’s Guidance on Correction of Arbitral Awards, Additional Awards, and Applications to Set-Aside or Resist Enforcement”.

To read the article click [here](#).

HONG KONG COURT REITERATES PRINCIPLES FOR STAY TO ARBITRATION, FOCUSING ON CONTRACTUAL INTERPRETATION OF A DISPUTE RESOLUTION CLAUSE

16 September 2020: Mei Ling Lew and James Lewis (both Hong Kong) discuss the case of *Cheung Shing Hong Ltd v China Ping An Insurance*. Here the High Court addressed the question of whether a dispute between the parties to an arbitration agreement fell within the ambit of the arbitration agreement, and provided guidance on the role of previous court decisions on the interpretation of arbitration agreements.

To read the article click [here](#).

THE NEW 2021 ICC RULES

22 September 2020: Rachael O'Grady, Mark McMahon (both London) and Lisa Dubot (Paris) published an article entitled "The New 2021 ICC Rules: Efficiency, Flexibility and Transparency", for Thomson Reuters. The article discusses the new changes to the ICC Rules of Arbitration which are expected to have a significant impact on users.

To read the article click [here](#).

ADMISSIBILITY OF EVIDENCE

22 September 2020: William Ahern (Paris) discusses the admissibility of evidence in a Wiki Note available through the Wiki Tree on [jsumundi.com](#).

To read the article click [here](#).

LCIA ARBITRATION RULES 2020: SIGNIFICANT UPDATES AND DRAFTING CONSIDERATIONS

24 September 2020: In an article published in PLC Magazine in October 2020 and available on [practicallaw.com](#) from 24 September, Rachael O'Grady (London) and Lisa Dubot (Paris) discuss the significant changes made by the LCIA's 2020 Arbitration Rules and provide a list of considerations when drafting future LCIA arbitration clauses.

To read the article click [here](#).

SPLIT ARBITRATION CLAUSES: AN INTERNATIONAL OVERVIEW

October 2020: The article "Split Arbitration Clauses: an International Overview" was published in the American Review of International Arbitration in October, as published by Venna Cheng (Hong Kong), Sarah Reynolds (Chicago), Rosalyn Han (Beijing), Rachael O'Grady (London) and Patricia Revilla (Paris). It examines the approaches taken by different jurisdictions to the validity of split arbitration clauses.

To read the article click [here](#).

THE SEVENTH CIRCUIT PICKS A SIDE IN SERVOTRONICS V ROLLS-ROYCE

1 October 2020: Sarah Reynolds (Chicago), Michael Lennon (Houston) and Charles Harris (Chicago) authored a legal update on "The Seventh Circuit Picks a Side in the Debate Regarding Section 1872(a)". The article is republished in the AIADR's Quarterly Journal in November 2020.

To read the article click [here](#).

DISCLOSURE IN ARBITRATION FOR CONSTRUCTION LAWYERS

13 October 2020: Lisa Dubot (Paris) updated the Lexis PSL's practice note on "disclosure in arbitration for construction lawyers".

To read the article click [here](#).

HONG KONG COURT GIVES GUIDANCE ON APPEALING A QUESTION OF LAW ARISING FROM AN ARBITRAL AWARD

19 October 2020: The article discusses the case of *MC v SC* in which the Hong Kong Court of First Instance addressed an application for leave to appeal on a question of law arising out of an arbitral award on the basis that the question was of general importance and at least open to serious doubt. Mei Ling Lew and James Lewis (both Hong Kong) discuss the pro-arbitration stance the Court took, through which it emphasised that it was important for the relevant facts found by the arbitrator to support this contention.

To read the article click [here](#).

ICC DISPUTES RESOLUTION BULLETIN: GE ENERGY POWER CONVERSION V OUTOKUMPU

November 2020: Sarah Reynolds (Chicago) authored an article for the ICC Dispute Resolution Bulletin (2020/3) entitled "United States Supreme Court Rules That New York Convention Does Not Preclude Non-Signatories From Enforcing Arbitration Agreements". The article discusses the Supreme Court's ruling that the New York Convention does not negate non-signatories' ability to enforce arbitration agreements in the case of *GE Energy Power Conversion France SAS v Outokumpu Stainless USA*.

To read the article click [here](#).

CONTROVERSIAL ASPECTS OF CIVIL RESOURCES

November 2020: Mauro Pedroso Gonçalves (Brasilia) is co-author of the book "Controversial aspects of civil resources and related issues: volume 15", published by Revista dos Tribunais-Thomson Reuters.

HONG KONG COURT OF APPEAL PREVENTS SUB-CONTRACTOR FROM RELYING IN ARBITRATION ON CONTRACTUAL BASIS NOT PREVIOUSLY NOTIFIED

17 November 2020: Venna Cheng and James Lewis (both Hong Kong) discuss the case *Maeda Corporation and China State Construction Engineering Limited v Bauer Hong Kong Limited* in their article. In the case, the Hong Kong Court of Appeal decided that a party cannot advance a different contractual basis of claim in a subsequent arbitration. This judgment is favourable to employers or contractors who seek to resist claims down the line.

To read the article click [here](#).

TO DISCLOSE OR NOT TO DISCLOSE?

27 November 2020: In the article "To disclose or not to disclose? UK Supreme Court defines standards for arbitrator's impartiality and duty of disclosure", Rachael O'Grady (London), Lisa Dubot (Paris) and Mark McMahon (London) discuss the principles which arose in *Haliburton Company v Chubb*. The article delves into arbitrators duty to act fairly and impartially between parties and duties of disclosure, under sections 24 and 33 of the Arbitration Act 1996.

To read the article click [here](#).

MAINLAND CHINA AND HONG KONG SAR ENHANCE ARRANGEMENT CONCERNING MUTUAL ENFORCEMENT OF ARBITRAL AWARDS

8 December 2020: Thomas So and Simon Wong (both Hong Kong) discuss the new "Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region" between the Supreme People's Court of the People's Republic of China and the government of the Hong Kong SAR.

To read the article click [here](#).

THE 2021 ICC ARBITRATION RULES: CHANGES TO THE ARBITRAL TRIBUNAL'S POWERS

4 January 2021: Alina Leoveanu (Paris) published an article on the Kluwer Arbitration Blog which focuses on the changes made under the new ICC Rules to the Arbitral Tribunal's Powers.

To read the article click [here](#).

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