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International Arbitration Newsletter

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Dentons' International Arbitration group comprises more than 500 lawyers, and is present in all major arbitration centers around the world. Dentons is listed among the top international arbitration groups globally, according to Global Arbitration Review (GAR) and Who's Who Legal. Please visit **Dentons Arbitration** page for more information.

In this issue

International Commercial Arbitration

Introducing Dentons' International Commercial Arbitration Toolkit

Capitalising on Dentons' extensive and deep global reach, Dentons' international arbitration group has launched a web-based toolkit which allows users to compare arbitration laws in various jurisdictions in the world. The toolkit was unveiled during Paris Arbitration week (click here for the video).

International commercial arbitration straddles multiple jurisdictions, national laws and judicial forums. For example, the seat court exercises supervisory jurisdiction over the arbitration proceedings in accordance with the law of the seat, whereas the court of the place of enforcement of an arbitral award determines whether an arbitral award should be enforced there based on the law of the place of enforcement.

An understanding of the various laws is important at the pre-dispute stage such as when selecting the relevant arbitral seat, as well as part of a comprehensive strategy when a dispute has arisen. This toolkit offers users the ability to select jurisdictions of interest, provides a quick snapshot on the laws and practices relating to such arbitration proceedings, and compares the approaches of different jurisdictions on a particular issue.

This toolkit showcases Dentons' ability to work across offices and jurisdictions to meet the clients arbitration needs at the different stages of arbitration. The toolkit features 30 jurisdictions, including popular seats such as Singapore, Hong Kong, England, and France. More jurisdictions will be added in due course.

Click here to access the toolkit

Regional News

Choosing supervisory courts in international arbitration

International arbitration is about party autonomy and choice. Parties choose the governing law of their transaction, the place of the arbitration and the arbitral procedure. Now, in Singapore, they may also choose the precise court that will supervise the arbitration, which in turn enables them to be represented by the same or similar counsel in their arbitration and to litigate in a manner familiar to them.

The Singapore High Court has a division known as the Singapore International Commercial Court ("**SICC**"), which was created to deal specifically with transnational commercial disputes. Its judicial panel comprises local High Court judges as well as qualified and experienced international judges from civil law and common law countries, and non-Singapore-qualified lawyers may register and appear in the SICC. The SICC has its own procedures, which draw from both legal traditions and international best practices in international arbitration.

In January 2023, the SICC launched the SICC Model Jurisdiction Clause for International Arbitration Matters, which was the result of a collaboration between the SICC and the Singapore International Arbitration Centre. The SICC Model Jurisdiction Clause provides parties with the additional choice of designating the SICC as the supervisory court for their arbitrations in Singapore. Designating the SICC allows arbitration counsel to seamlessly continue representing their clients in court. The flexible procedures in the SICC are designed to be familiar to lawyers of any legal tradition, and to encourage efficient resolution of disputes.

Along with the SICC Model Jurisdiction Clause, the Litigation-Mediation-Litigation Protocol was also launched by the SICC and the Singapore International Mediation Centre. Under the Protocol, parties may agree to settle their disputes through mediation, and thereafter request that the SICC record the terms of their settlement in the form of an SICC judgment, if necessary, or rely on the United Nations Convention on International Settlement Agreements Resulting from Mediation, where applicable, to enforce their settlement agreements.

Ultimately, the launch of the SICC Model Jurisdiction Clause reflects not only the continuing growth of international arbitration in Asia, but also the growing demand by parties for tailored dispute resolution options to suit their various needs. It is a complementary tool to the service that Dentons provides to its clients through its global arbitration practice comprised of arbitration practitioners based around the world.

Contributed by Lawrence Teh, Melissa Thng and Rachel Tan.

Regional News

India opens up to foreign law firms in International Commercial Arbitration

The Bar Council of India (BCI) recently notified the Bar Council of India Rules for Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022 (Rules). The Rules open the door for foreign lawyers and law firms and provides for their registration and regulation in India. The objects and reasons outline the longstanding demand for opening of the Indian legal sector to foreign lawyers and law firms.

The Rules define a 'Foreign lawyer' as a person, including a law firm, limited liability partnership, company or a corporation, by whatever

name called or described who/which is entitled to practice law in a foreign country. The Rules provide that foreign lawyers can register with the BCI subject to several terms and conditions regarding eligibility, primary amongst which is the principle of reciprocity. Only those foreign lawyers can register in India whose country of origin permits Indian lawyers (advocates as they are called under Indian law) to practise law in that country (on a reciprocal basis). This is subject to a certificate from the Indian Government certifying that India recognises the existence of an effective legal system in the foreign country and that it has no objection to such registration. A certificate is also required from the foreign country's government or regulator certifying that Indian advocates are permitted to practise law in the foreign country in the manner and extent to which the Rules allow foreign lawyers to practice in India. The BCI has the power to refuse the registration in certain circumstances with a view to protect the interest of Indian law firms/lawyers.

Once registered, foreign lawyers and firms can open law offices in India and provide legal advice on foreign and international law but are not allowed to appear before Indian courts or tribunals. They are also required to follow the BCI's code of ethics and conduct, which includes rules on confidentiality, conflict of interest, and advertising (lawyers are not permitted to advertise in India).

Though foreign lawyers are not permitted to appear before any courts, tribunals or other statutory or regulatory authorities, they shall be allowed to carry on transactional /corporate work such as joint ventures, mergers and acquisitions and intellectual property rights matters, drafting contracts and other related matters on a reciprocal basis in order to represent their foreign clients. There could be certain ambiguities in this regard which may require clarification.

Arbitration

The rules are much more liberal so far as representation by foreign lawyers and law firms are concerned in matters of international commercial arbitration. Foreign lawyers are now permitted to represent their clients in arbitrations seated in India irrespective of whether the arbitration is governed by Indian or foreign law. International commercial arbitration has been defined in the Rules as 'an alternative method of resolving disputes concerning commercial transactions which is conducted in India in which all or any of the parties are persons/entities who have their registered address or principal office or head office in a foreign country.'

Contributed by Abhinav Sharma.

Third Party Funding

Ireland to permit third-party funding of international arbitration

Practitioners expect an increase in recourse to arbitration in Ireland following the publication by the Irish Government of draft legislation that would permit litigation funders to finance arbitrations for the first time.

Under existing laws third-party funding of litigation is strictly prohibited in Ireland with some limited exceptions under the old common law rules of champerty and maintenance, a relic of Ireland's colonial past which date back to Charles II and were originally aimed at preventing noblemen from surreptitiously funding legal actions against the Crown. The Supreme Court has on two occasions declined in recent years to amend, saying that the absence of litigation funding clearly impacted access to justice but required legislation (see, for example, *Persona Digital Telephony Ltd. v. The Minister for Public Enterprise* [2017] IESC 27. There is an exception where the third party, such as a shareholder, has a "legitimate interest" in the proceedings and an existing connection to the litigating party. As the law stands a funder who invests commercially with a view to obtaining a share of an award is liable in tort and also commits a criminal offence.

The Irish Government has been wary of amending the law given the risk of a wave of claims against the State but has been persuaded that there is merit in permitting funding for international commercial arbitrations. On 22 November 2022 an amendment was added to a bill making its way through the Irish parliament, the Courts and Civil Law (Miscellaneous Provisions) Bill 2022, which would allow for third-party funding of international commercial arbitration having its seat in Ireland. The amendment abolishes the offences of champerty and maintenance insofar as they relate to international commercial arbitration only and the prohibition will remain for litigation. The Bill will likely become law towards the end of 2023. It will then be for the Minister for Justice to issue an Order commencing the provisions in relation to arbitration funding, which may take place soon after that.

This is a significant development which clears the way for international funders to get involved in Irish disputes for the first time.

Contributed by Karyn Harty and Aaron McCarthy.

Institutional News

New Stockholm Chamber of Commerce Arbitration Rules enter into force

The revised version of the SCC Arbitration Rules has entered into force on 1 January 2023. The 2023 Arbitration Rules replaced the 2017 Rules.

The key revisions are summarised below:

- The revised Article 23(1) provides that the arbitral tribunal "shall" conduct the arbitration as it considers appropriate (subject to the Arbitration Rules and any agreement between the parties). This represents a shift from the word "may" used in the 2017 Rules.
- The revised Article 29(1) provides that the parties' "written submissions" should include "facts and other circumstances" the party relies on. This represents a shift from the phrase "factual and legal basis" used in the 2017 Rules.
- The revised Article 32(2) allows the arbitral tribunal to decide whether to hold hearings in person or remotely. This reflects an adaptation to changing arbitral practices, especially since the COVID-19 pandemic.
- The revised Article 45(2) gives discretion to the arbitral tribunal to terminate the arbitral proceedings by issuing either an award or an order. The 2017 Rules only provided for termination by issuing an award.
- The new Article 51(5) authorises the arbitral tribunal to terminate a case in whole or in part if a party fails to pay the advance on costs. This represents a shift from the 2017 Rules which authorised only the SCC Board to dismiss a case for failure to pay the advance on costs.

- The SCC's model arbitration clause has been amended to remove the recommendation that the parties agree in their arbitration clause on the number of arbitrators.
- While the arbitrators' fees remain the same, the SCC's administrative fees have increased under the new schedule of costs.

Similar amendments were made to the SCC Expedited Arbitration Rules (which replaced the 2017 Rules for Expedited Arbitrations).

The updated rules were timed to accompany a change of the Arbitration Institute of the Stockholm Chamber of Commerce denomination to the "SCC Arbitration Institute".

Also in January 2023, the SCC reinforced its cooperation with ICSID. The two institutions signed an agreement to establish a framework for increased information exchange and mutual support for proceedings administered by either ICSID or the SCC as applicable.

Contributed by Anna Crevon and Asha Rajan.

Institutional News

New Brazil-Canada International Chamber of Commerce Arbitration Rules enter into force

The Center for Arbitration and Mediation of the Brazil-Canada International Chamber of Commerce is one of the most traditional and respected Arbitration Centers in Brazil. With more than 40 years of history, the Center is a common choice by Brazilian contracting parties as the venue for their disputes. According to its latest **Statistical Report**, throughout 2020/2021, the Center initiated 233 new Arbitration Proceedings with an aggregate value of BRL 19.3 billion (approximately USD 3.7 billion).

In 2022, the Center released new Arbitration Rules, modernizing its 2012 version.

We summarise below the most relevant changes:

i. **Disclosure of Information:** The new Rules obligate the parties to disclose information related to third party funding as well as potential related parties (e.g. a parent or a sister company) that might have an interest in the dispute. The Arbitrators also have the obligation to reveal to the parties any circumstance that might create a doubt about their impartiality or independence.

ii. **Protection of Data:** The Center must protect personal information related to the parties/ arbitrators. If there is a suspicion of a data breach, the Chamber has to inform the parties immediately. After the Arbitration's conclusion, case information has to be preserved only to the extent needed for the fulfillment of legal obligations by the Chamber, being then anonymised and discarded.

iii. **Expedited Arbitration:** In more simple cases involving smaller amounts, the parties can opt into a fast track proceeding with shorter deadlines and tailor-made for a less complex discovery phase.

iv. **Emergency Arbitrator:** If one of the parties needs an injunction prior to the formation of the Arbitration Tribunal, that party can present its request to an Emergency Arbitrator thus avoiding a precautionary lawsuit before a State Court.

These changes are an important step towards a more efficient, transparent and secure Arbitration proceeding. Considering the leading role of the Center for Arbitration and Mediation of the Brazil-Canada Chamber of Commerce, other Arbitration Chambers might follow suit and pursue similar adjustments in their respective set of rules.

Contributed by Antonio Celso Pugliese and Erik Sernik.

What's happening at Dentons

Dentons recognised again as one of the world's top 20 arbitration firms

Global Arbitration Review has ranked Dentons among the top 15 international arbitration law firms in the world in its annual GAR30 ranking, unveiled on 30th of March, 2023. Dentons' International Arbitration Group has gained increasing recognition for its work, obtaining its highest-ever ranking yet at 11th place, and climbing 23 places from 2021 and 7 more from 2022. The ranking confirms the exceptional talent of the firm's International Arbitration team and their dedication to delivering top quality and seamless cross-border legal advice to clients across the globe.

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