Российский арбитражный центр

при Российском институте современного арбитража

ARBITRATION DIGEST MARCH 2021

CASE LAW DEVELOPMENTS

The US Supreme Court to Rule on Discovery in Arbitration

The US Supreme Court will look into whether federal courts may assist in discovery in international commercial arbitration. The rule involved is Section 1782 of the US Code that governs requests of evidence from parties to a foreign legal proceeding. Some US courts believe that the rule is inapplicable to international arbitration, while others are convinced that such assistance is possible.

The issue was raised in view of CIArb Rules-administered international commercial dispute that arose after the fire in January 2016 at the Boeing facility when testing the Rolls-Royce engine. As a result of the incident, Boeing claimed compensation for the losses caused by Rolls-Royce. After voluntarily compensating for the damages, Rolls-Royce approached the producer of the motor valve Servotronics for reimbursement. After the producer refused to repay the compensation for supplying an inoperable valve, Rolls-Royce initiated an arbitration claiming USD 12.8 million.

The future US Supreme Court's decision will be relevant for all international arbitral proceedings involving American companies.

Read

Third Party Funder Obtains a Winding-Up Order against the Funded Party

A court has granted an application filed by an Australian disputes funder, Omni Bridgeway (formerly IMF Bentham), on the winding-up of the Cayman-registered oil company GBC. The application was lodged after GBC failed to repay a USD 600,000 loan (debt owed to the Albania branch of the Austrian Raiffeisen Bank, paid by the sponsor) and the funding disbursed to it.

Under the funding agreement governed by the law of Ontario, GBC filed an ICC claim against Albania and the state oil company Albpetrol. IMF Bentham was to receive compensation for the funding extended and a share in the award should GBC's claim be satisfied. In any event, the loan was to be repaid irrespective of the outcome of the arbitration, at the funder's request.

The ICC ruled in favor of GBC awarding it only USD 12.6 million out of the claimed USD 90 million. That amount, however, was attached by the National Chamber of Private Bailiffs of Albania, since GBC owed Albpetrol USD 27 million.

The funder treated the bailiff's order as a default under the funding agreement and demanded that the USD 600,000 loan be repaid within 10 days. GBC did not comply.

Then, the funder initiated enforcement proceedings against GBC in the Ontario courts and later filed a winding-up application with respect to GBC in the Cayman Islands.

Justice Segal of the Grand Court of the Cayman Islands granted Omni Bridgeway's plea and ruled to wind GBC up, but only after the sponsor agreed to abandon the Ontario enforcement proceedings against GBC with respect to the ICC award.

Read

Joinder of Third Parties in Arbitration Once Again in Focus in Singapore

Third-party joinder in arbitration is in the limelight not only in the Willem C. Vis International Commercial Arbitration Moot, but also at the Singapore High Court (*CJD v CJE and another* [2021] SGHC 61). The Court has dismissed an application to set aside an award where the arbitral panel had refused to join a third party absent written consent. The dispute was heard by the LCIA panel sitting in Singapore. Three undisclosed parties (hereinafter, A, B, and C) executed a joint venture agreement. Party A initiated arbitration against Party B, requesting to join C as a party to the arbitration. The tribunal dismissed the joinder plea holding that that party had not given its clear consent to participation in the arbitration. According to the Court, an arbitration clause in the joint venture agreement is insufficient to conclude that all parties had agreed to resolve their disputes in one arbitration.

The judgment endorses the approach stated earlier in *PT First Media TBK v Astro Nusantara International BV and others and another appeal* [2014] 1 SLR 372; [2013] SGCA 57 and *The "Titan Unity"* [2014] SGHCR 4.

Read

The Costa Rica Supreme Court Upholds an Award against a Non-Signatory of the Arbitration Agreement

The Supreme Court of Costa Rica has confirmed a USD 23 million ICC award against the country's largest construction group, even though it had not signed the underlying arbitration agreement. The Court refused to analyze the legality of extending the arbitration agreement to a non-signatory since that issue had been heard by the courts in Panama, the seat of arbitration.

The dispute concerns the construction of a hydropower plant in Panama. The Panama enterprise San Lorenzo hired a Costa Rican construction company Saret to develop a project, having executed a FIDIC contract with that company's branch in Panama – Saret de Panama – that contained an arbitration clause.

San Lorenzo filed an arbitration claim both against Saret de Panama and Saret, although the latter had never signed the contract.

In April 2016, the arbitral tribunal held that Saret was actively involved in the implementation of the project, which allowed it to extend the arbitration agreement to that company.

Saret tried to have the jurisdiction and merits awards set aside by the Panama courts, but without success.

Read

A War against Alter Egos in the ICC

A branch of the aircraft leasing company Cessna approached the US District Court for the Southern District of New York with an application seeking enforcement of aUSD 90 million ICC award against the directors of the Abu-Dhabi-based holding Al Ghaith Holding Company (AGH) (Cessna Finance Corporation v. Al Ghaith Holding Company PJSC).

According to Cessna's branch – Cessfin, three AGH general directors were engaged in fraudulent transfers of assets to their families to avoid paying under the award.

The award in the dispute on non-performance of a business jet lease was issued back in 2015 in favor of Cessna, which then assigned its award-based claims to Cessfin.

Read

Brexit: EU Strikes the UK through Arbitration

The UK's second attempt at getting away with circumventing its obligations under the Withdrawal Agreement once again failed. While the first time the EU confined its response to a formal notice on the UK's breach of its obligations, now that the UK Government unilaterally changed the terms of its Protocol on Ireland and Northern Ireland with the EU, the European Commission intends to initiate formal proceedings against the UK. In that case, the dispute will be referred to arbitration unless the UK enters into negotiations within a month.

The relevant breaches consist in the UK's prolongation of the Northern Ireland Protocol's grace period for several products supplied to Northern Ireland from other parts of the UK for six more months until 1 October 2021, while the term agreed upon with the EU expired on 1 April 2021.

Read

An Expert Firm Sues a Competitor over a Fake Review

And so the saga of Secretariat International UK Ltd, its competitors and conflicting appointments in the ICC arbitration continues. To recall, back in January the Court of Appeal in London issued an injunction to Secretariat International UK Ltd on rendering expert services in the case due to a conflict of interests (*Secretariat Consulting PTE Ltd & Ors v A Company [2021] EWCA Civ 6)*.

Now, on 8 March, Secretariat lodged a complaint with the US District Court for the Central District of California, accusing the expert firm HKA and its responsible employee for business development Toby Hunt of creating a fake Glassdoor profile and pretending to be an employee with Secretariat's London office. The "employee's" review mentioned that Secretariat breached "ethics" in the abovementioned Secretariat Consulting PTE Ltd & Ors v A Company case. According to the firm, the competitors wished to thereby damage Secretariat's reputation and launch a misinformation campaign making insinuations about Secretariat's integrity (*Secretariat Advisors LLC v HKA Global Limited and Toby Hunt*).

Read

A "Sanction"-Related Award against an Iranian Gas Company Upheld

The Federal Court of Switzerland upheld an ICC award issued in a dispute between the National Iranian Gas Company (NIGC) and Turkmengaz over the discontinuation of gas supplies due to sanctions against Iran that obliged NIGC to pay over EUR 1.5 billion to Turkmengaz.

The Court did not accept the argument that the US 2007-2008 sanctions and the EU 2012 sanctions prevented Iran from making payments in US Dollars and Euro and confirmed the ICC award. According to the Court, there are no EU or UN sanctions that would preclude payments of compensation in Euro, and NIGC failed to prove that the US sanctions constituted force majeure.

Read

A French Court Finds that the ICC Had Jurisdiction

The Paris Court of Appeal granted an application filed by the UAE-based Libyan oil refinery (LERCO) on the partial setting aside of an ICC award made in favor of Libya's National Oil Corporation (NOC). The Court noted that the arbitral panel should not have found that it had no jurisdiction over the USD 91 million claims, including with respect to the unauthorized use of the oil refinery. The Court thus set aside the ICC's jurisdictional rulings, allowing LERCO to go to arbitration once more.

In 2013, LERCO sued NOC, accusing the state enterprise of overstating oil prices and failing to ensure the committed volume of supplies. The company also claimed that the oil refinery had been unlawfully used when its operations were suspended during the civil war in Libya. NOC, in turn, filed a counterclaim, demanding that LERCO pay USD 4.4 billion as undertaken under the agreement.

The 2018 award dismissed some of LERCO's claims for the compensation of USD 813 million worth of damages, while for the rest of the claims, the arbitral tribunal found that it lacked jurisdiction. NOC's counterclaim was granted in part in the amount of USD 116 million.

Read

ICC Disqualifies an Arbitrator from a Case after His Appointment as an ICSID Arbitrator

ICC has disqualified an arbitrator from a case against Georgia due to his appointment by the state in a related ICSID case. The ICC Court has concluded that although there were no reasons to doubt that the case would be heard justly and in good faith, one cannot rule out the risk of unconscious prejudgment as a result of the arbitrator's involvement in two related arbitrations, Moreover, the arbitrator can also have access to information that would be unavailable to his co-arbitrators in the ICC arbitration.

Read

LCIA Corrects a Calculation Error in the Delovye Linii Case

The London Court of International Arbitration (LCIA) has corrected anerror made in its award of USD 58 million to Mikhail Khabarov for the loss of his option with respect to 30% in Delovye Linii.

Due to the LCIA's initial mistake in the calculations, the Russian court refused to recognize and enforce the LCIA award, and the High Court in London ordered revisions.

After that, the LCIA ordered recovery of USD 49 million from Alexander Bogatikov in favor of Mikhail Khabarov.

Read

Conflicts of Interests in the Panama Canal Case

The multi-million dispute between the consortium of construction firms Grupo Unidos por el Canal, S.A. and the Panama Canal operator Autoridad del Canal de Panama that sponsored the construction, raised the issue of a potential conflict of interests of the ICC arbitrators seized with the dispute (*Grupo Unidos por el Canal, S.A. v. Autoridad del Canal de Panama*, Case No. 1:20-cv-24867 (S.D. Fla.)).

A panel of three ICC arbitrators awarded USD 238 million to the operator, having also reversed a decision of the dispute review board established under the contract.

Disagreeing with the award, the consortium applied to the US District Court for the Southern District of Florida seeking to set it aside and arguing that there was a perceived conflict of interests due to "multiple cross-appointments and interrelationships among themselves and other involved in the dispute." In particular, the consortium claimed that the presiding arbitrator was appointed as the operator's arbitrator in another dispute, as well as took part in the hearing of core issues in an earlier proceeding between the parties, etc.

In turn, the operator submitted that neither of the circumstances listed by the consortium resulted in a conflict of interests.

Read

A Hong Kong Court Sets Aside an Award Naming a Wrong Respondent

A Hong Kong court has set aside a USD 18 million HKIAC award against a Chinese pipeline company related to the Belt and Road economic initiative, after concluding that the wrong entity was named as the respondent.

The claimant's notice of arbitration named China Petroleum Pipeline Bureau as the respondent; however, later the claimant received emails from the representatives of China Petroleum Pipeline Engineering, informing that the Bureau was now known as Engineering. The claimant asked for permission to change the respondent's name in the arbitration, relying on the information from the website of Engineering. The arbitrator granted the claimant's request and issued an award in March 2020 on the recovery from China Petroleum Pipeline Engineering of USD 18 million.

The Hong Kong court, however, believed that although at the time of execution of the agreement Engineering was Bureau's subsidiary, the contract lacked any clear references to it as a party thereto. According to the court, even if Engineering had been a party, the correct course of action would be to join that company as a co-respondent, instead of changing the initial respondent's name. Moreover, Engineering's website did not expressly say that Bureau became Engineering after a restructuring.

Read

INVESTMENT ARBITRATION NEWS

A Presidential Battle in Arbitration

Disputes between Nicolás Maduro and Juan Guaidó over which of them is the President of Venezuela continue affecting international arbitral proceedings. While in November the Commercial Court in London held, in an LCIA dispute on the ownership of the gold reserves of the Venezuelan Central Bank, that Juan Guaidó was the one to represent Venezuela (*Banco Central de Venezuela v Bank of England and others* [2020] EWCA Civ 1249), now an ICSID tribunal came to the opposite conclusion.

The initial dispute between the American oil company Exxon and Venezuela concerns Venezuela's expropriation of the investments of Exxon's subsidiaries in the oil projects Cerro Negro and La Ceiba of the Orinoco belt. The 2014 tribunal ordered that Venezuela pay USD 1.6 billion worth of damages, but the annulment committee reduced the compensation to USD 188 million, forcing Exxon to file another claim against Venezuela in 2018.

On 1 March 2021, an ICSID tribunal in *Venezuela Holdings BV and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/27) refused representatives of Juan Guaidó legal team to to appear in the case. According to the tribunal, it was Maduro's Prosecutor General who had led Venezuela's defense in the initial dispute and then took part in the annulment proceedings, was entitled to represent Venezuela. The issue was resolved by the ICSID without requested the position of the World Bank, since, the tribunal opined, the award did not constitute recognition of any specific Venezuelan government and preserved the *status quo*.

Read

Germany Settles with Vattenfall

Germany has finally agreed to pay EUR 1.4 billion to settle an ICSID dispute because of the termination of the use of nuclear energy in the country after the Fukushima-1 Nuclear Power Plant disaster in 2011 – more than 8 years after the filing of the claim by a Swedish nuclear energy company Vattenfall against the German Government (Vattenfall AB and others v. the Federal Republic of Germany (ICSID Case no ARB/12/12)).

Apart from Vattenfall, compensation will also be paid to RWE – EUR 880 million; EnBW – EUR 80 million; and E.ON – EUR 42.5 million. All companies agreed to withdraw their claims in the still pending proceedings against Germany (including under the ECT), as well as waived their right to file any future claims.

Before it enters into force, the settlement agreement needs to be approved by the boards of directors of all companies, the German Parliament, and the European Commission.

Read

Arbitration and All That Jazz

The Swiss investor Eugenio Montenero – formerly the CEO of the Hong Kong company H&M Production and organizer of the annual international jazz festival on the island of Hainan – is threatening to take China to arbitration after H&M Production was stripped of the right to hold the festival only a few months prior to the scheduled date in 2014. China refused to negotiate with the investor and ignored notice of the dispute, so after the six months cooling period under the Switzerland-China BIT expires, the investor plans to start an arbitration.

Read

Egypt Agrees to Settle the Dispute over an LNG Plant

Egypt has finally managed to settle its long-standing dispute with the Spanish Naturgy and Italian Eni over a gas liquefaction (LNG) plant.

On 10 March, Egypt's Ministry of Petroleum and Mineral Resources announced the entry into force of an arrangement comprising over 40 separate agreements, that officially marked the end of various disputes over a plant in the port of Damietta. The Ministry also stated that the transaction would ensure the continuation of LNG production at the plant that had stopped operating due to a decade-long absence of gas supplies.

Read

India Files an Appeal in the Cairn Energy Case

India has filed an appeal with a Netherlands court against an international arbitral award recovering from it over USD 1 billion in favor of Cairn Energy for unjust retroactive taxation of the company (*Cairn Energy PLC and Cairn UK Holdings Limited (CUHL) v. Government of India*, PCA Case No. 2016-7).

In support of its appeal, India argued that taxation-related disputes were not covered by the UK-India BIT and, therefore, the arbitral tribunal had no jurisdiction over the dispute.

Read

Sundance Resources Initiates a Multi-Billion-Dollar Dispute against Congo

Sundance Resources reported that it has filed an arbitration claim in London under the ICC Rules based on a dispute resolution clause contained in a "mining convention" – a form of investment agreement made by Congo with the company's local subsidiary, Sundance, Congo Iron. Sundance intends to recover compensation of damages of USD 8.76 billion for the unlawful expropriation of the right to develop the country's iron ore mines by revoking the license. Other companies that, similarly to Sundance, were dissatisfied with the revocation of mining licenses, are Equatorial Resources and Avima Iron Ore.

As stated by the Australian company, the right to develop the mines was unexpectedly transferred to an unfamiliar Chinese investment company registered in non-transparent jurisdictions, with a charter capital of just USD 1.

Read

Japan to Face the First Claim under Its Investment Treaty with Hong Kong

After the Fukushima-1 Nuclear Power Plant disaster, the Japanese Government decided to develop alternative energy: private investors were offered tariff benefits, and the number of solar power plants in Japan soared.

Shortly thereafter, the Japanese Government started lowering the reduced tariff rates and introducing other statutory restrictions. As a result, over 250 solar energy companies have gone bankrupt since 2018.

The Hong Kong investor filed the first known investment treaty claim against Japan for reducing subsidies into renewable energy sources. The details of the dispute are as yet unknown since the parties signed a non-disclosure agreement prohibiting public discussion of the facts of the case.

Such conduct of Japan may potentially translate into numerous disputes as it happened to Spain.

Read

A US Mining Company Files an ICSID Claim against Mongolia

The American company WM Mining Company filed an ICSID claim under the US-Mongolia BIT concerning mining licenses previously held by WM Mining, for the development of the alluvial gold mine Big Bend in the basin of the Tuul River in Northern Mongolia.

The investor was supported by the US Government's Overseas Private Investment Corporation (OPIC) that performed an environmental impact assessment in the region. Despite OPIC's claims to the effect that WM

Mining “will perform their mining activities with the ultimate intent of returning the mined area to a high level of environmental integrity and with sensitivity to the social fabric of the region,” the Mongolian Centre for Human Rights and Development has become seriously concerned with environmental issues: the River Tuul is the main source of drinking water for many local people, and, according to the Centre, has suffered from the mining projects.

The Centre also stated that the mining projects were implemented irresponsibly as regards the environment and its restoration.

GAR believes that WM Mining no longer holds a license, which was what caused the arbitration.

Read

Private Investors Threaten to File an ICSID Claim against Costa Rica

Around 25 years ago, the Grünninger family from Germany purchased land in the eastern province of Costa Rica and invested in eco-tourism, nature protection, and forestry projects.

In 2015, Costa Rica’s state energy company ICE expropriated the land plots held by several investors to vacate the land and build a major hydropower plant worth USD 1.4 billion.

Although all affected landowners received compensation, the Grünningers believe that the compensation of USD 400,000 is inadequate. The investors moreover claim that the construction inflicted environmental harm to the adjacent land that they still own, reducing its value.

The investors argue that the experts appointed by the Costa Rican court agreed that ICE had not performed a proper environmental impact assessment in its expropriation reports.

The notice of arbitration features breaches of the protections from expropriation, full protection, and security, as well as fair and equitable treatment. The investors are claiming compensation of several million dollars.

Read

Arbitrators Dismiss Claims against Egypt on the Sinai Air Crash

In 2015, Metrojet Flight 9268 crashed in Egypt’s Sinai Peninsula. International investigators have found that the crash was likely caused by a bomb explosion. All 224 passengers of the flight, most of them Russian tourists, died in the crash.

Metrojet (a Kogalymavia Airlines brand) and the Prince Group tour operator filed an arbitration claim in 2017, seeking compensation both for the direct losses caused by the crash and for the loss of their

investments into Egypt's economy. The airline which went bankrupt shortly after the crash, claimed compensation of USD 90 million, while Prince Group claimed USD 111 million.

The claimants argued that Egypt had known long before the attack that the security systems in its airports did not meet the international standards and that years after the air crash the Egyptian authorities have not as yet published an official statement about its causes.

The arbitral tribunal found that it had no jurisdiction over Metrojet's claims, since performing charter flights is not an investment in the territory of the host state under the Russia-Egypt BIT.

At the same time, the arbitrators ruled that booking hotel rooms to offer to tourists constituted an investment under the Turkey-Egypt BIT, but then found Prince Group's claims inadmissible, since that BIT required the investor to first litigate the dispute in local courts for two years.

Interpretation of the Turkey-Egypt BIT proved to be challenging: three versions of the treaty in Turkish, Arabic, and English were ambiguous as regards the requirement on litigation in local courts. In the end, the arbitrators based their decision on the Arabic version submitted by Egypt.

Read

ARBITRATION NEWS

The New York Convention Welcomes New Parties

Several states at once – Iraq, Belize, and Malawi – became parties to the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In March, Iraq, a Central American state Belize and the South African Malawi joined the treaty, making the total number of its parties 167.

Read

UNCITRAL Working Group III Publishes a Report on Its 40th Session

Working Group III, in charge of discussing the investor-state dispute settlement reform, has published a preliminary version of its report on its 40th session that took place in Vienna from 8 to 12 February 2021.

The Working Group has discussed the selection and appointment of arbitrators in the ICSID and the mechanism of appeals in investment arbitration. The next session is scheduled to be held on 4-5 May 2021 in Vienna.

Read

A Report on Human Rights-Compatible International Investment Agreements

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises has called for contributions by any stakeholders, including arbitrators, to its report on "Human Rights-Compatible International Investment Agreements."

The report aims to provide practical guidance to states on negotiating new investment agreements, as well as to introduce amendments into the existing agreements to make them consistent with the UN Guiding Principles on Business and Human Rights (UNGPs).

Read

Robots in Arbitration: The New Normal?

Since the beginning of the pandemic, online hearings and videoconferences have become the "new normal" of international arbitration. But are we ready for robot arbitrators and predictive justice? The Milan Chamber

of Arbitration, as well as such international arbitration specialists as Maxi Scherer, Niuscha Bassiri, Toby Landau, Loretta Malintoppi, Jin En Lee, Anne Marie Whitesell, and Mohamed Abdel Wahab, have studied how artificial intelligence technologies affect international arbitration and the potential for the collaborative use of robots.

In particular, they expressed an opinion that AI is commonly used at all stages of international arbitration even today, but that its use should be limited, for instance, in the arbitrator's writing of the award. Furthermore, AI is unable to take account of cultural differences, regional specifics, and is difficult to use and understand in terms of the mechanics of its work. Nevertheless, automatization of the proceedings may have certain advantages, hence the speakers conceded that we are to expect the collaborative use of robots, or "cobots", assisting the arbitration. "Cobots" are used even now in Singapore.

Read

Review of Case Law on the Issues of Arbitration for Q4 2020

The Young IMA Committee composed of Boris Glushenkov, Victor Rykov, Alexander Chereshnev, under the capable guidance of Dmitry Andreev, has prepared a new review of court practice on the issues of arbitration.

The review sets out practice on notifying the parties via texts, arbitration agreements in international treaties, bills of lading and electronic communications, extension of arbitration clauses to non-signatories, and arbitration of inheritance disputes.

Read

The ICDR Presents Updated Arbitration and Mediation Rules

The International Centre for Dispute Resolution (ICDR) has revamped its arbitration and mediation rules that entered into force on 1 March.

Eric Tuchmann, the ICDR General Counsel and Corporate Secretary, says that the amendments reflect the ICDR's efforts "to continuously improve international arbitration and mediation through innovation, and by providing procedures that promote efficiency, transparency, and party control."

The amendments concern the rules on the impartiality and independence of arbitrators, disclosure of information on third party funders, appointment of arbitral tribunal's secretaries, as well as expanding the opportunities for consolidating and joining arbitral proceedings.

The ICDR announced that in drafting the amendments, it took account of the new reality of working during the COVID-19 pandemic: the issues of cybersecurity, confidentiality, transparency, and data protection.

Read

Uzbekistan Adopts a New Law on International Commercial Arbitration

The new Law was adopted in order to establish a separate legal regime applicable to international commercial arbitration, increase the efficiency of arbitral proceedings, as well as minimize interference from courts. The ICA Law was drafted based on the UNCITRAL Model Law on International Commercial Arbitration.

The Law largely reproduces the UNCITRAL Model Law's provisions and governs the forms of arbitration agreements, interim measures and preliminary orders, conduct of the arbitral proceedings, issuance of the arbitral award, and appeals against it.

The Law was drafted together with the representatives of the Uzbekistan ministries, including the Ministry of Investments and Foreign Trade and the Ministry of Justice, the Uzbekistan Chamber of Commerce and Industry, the Tashkent International Arbitration Centre (TIAC) with the assistance of the Asian Development Bank.

Read

The IBA Publishes a Toolkit on Insolvency and Arbitration

The IBA Toolkit on Insolvency and Arbitration comprises three parts.

The first part covers national survey-based reports prepared by experts from 19 countries in the form of answers to 35 standard questions on the correlation of insolvency and arbitration. According to the authors, the need to include those reports into the Toolkit was due to the national laws being the starting point for an answer to the question of how insolvency affects arbitration, while the seat of the bankruptcy procedure may be one of the places where an award will need to be enforced.

The second part – the explanatory report – was prepared in line with the same structure as the national reports. There, the authors summarized the approaches set out in the national reports. It has two sections, the first of them further subdivided into three subsections. The first section discusses the impact of insolvency on domestic arbitration and arbitration outside of a country. Subsection one analyzes such issues as:

- prohibition of arbitration involving the debtor;
- exclusion of certain matters from arbitral jurisdiction;
- the insolvency practitioner's right to enter into new arbitration agreements.

Subsection two covers procedural issues, including:

- whether the debtor may participate in an arbitration on its own behalf;
- whether insolvency proceedings affect certain arbitral orders, for instance, on interim measures;

- whether the debtor retains the right to settle the dispute.

Subsection three examines the possibility of enforcement of an arbitral award made.

The second section focuses on issues of impact of insolvency proceedings initiated outside the jurisdiction under review on arbitrations with a seat in that jurisdiction.

The Russian part of the IBA Toolkit was prepared by Leonid Kropotov, Olga Prokaeva, and Sergey Usoskin.

Read

EVENTS ON ALTERNATIVE DISPUTE RESOLUTION

St. Petersburg International Legal Forum 9 ¾ Online

On 18 – 22 May 2021, one of the most important legal events of the year – the St. Petersburg International Legal Forum – will be held online. This year's title of the Forum speaks magic: SPBILF 9 ¾: The Law Vaccine.

One of the planned themed events is the section on "Dispute Resolution. Litigation and Arbitration Practice," one of the announced topics being "Arbitration Battle Online: Cross-Examination," to be organized by the Russian Arbitration Center at the Russian Institute of Modern Arbitration.

See the terms of participation and register here.

Read

Arbitration Forum on CIS-Related Disputes: Treaties, Sanctions, Compliance and Enforcement

On 25-26 May 2021, the CIS Arbitration Forum will assemble practitioners, scholars and arbitrators to discuss the most challenging problems that lawyers face in resolving disputes related to Russia, Ukraine, Kazakhstan, and other countries in the region.

Prominent arbitration specialists will discuss bilateral investment treaties of the USSR and the CIS countries, sanctions and how they affect resolving disputes in international arbitration and domestic litigations, as well as cover the issues of enforcement of foreign arbitral awards.

Read

XII Moscow Vis Pre-Moot

On 12-14 March, the XII Moscow Vis Pre-Moot took place, uniting over 600 people in a single weekend!

On the eve of the online rounds, a conference on the occasion of the rounds was held featuring as its speakers the world's leading arbitration and IP experts Ingeborg Schwenzer, Andrey Shirvindt, Loukas Mistelis, Milena Djordjević, Dorothee Schramm, Boris Malakhov, Nadine Lederer, Nadia Smahi, Oliver Loksa, and Yulia Mullina.

As a result of the online rounds of 13 and 14 March, the finalists of the Moscow Vis Pre-Moot were the teams of the Lomonosov Moscow State University and SASTRA University. The arbitrators – Margaret

Moses, Andrey Shirvindt, and Ian Polson – awarded the title of the winning team to the Lomonosov Moscow State University.

Read

Fireside Chat on the Eve of the 28th Willem C. Vis International Commercial Arbitration Moot

On 24 March, on the eve of the Willem C. Vis Moot Global Rounds, the Russian Institute of Modern Arbitration, together with UNCITRAL and Young IMA held a “fireside chat.”

In the constantly changing world, each practicing arbitration specialist tends to ponder the future of international arbitration. The bright and distinct development prospects were superseded by a murky, obscure vision of the future in 2020. That is why the event speakers – Anna Joubin-Bret, Gary Born, and Andrey Gorlenko – discussed the new trends and how they will affect the future evolution of international arbitration. You can watch the discussion at the RAC Youtube channel.

Read

Presenting the Moot Alumni Association

Another side event to the Willem C. Vis Moot Global Rounds held on 24 March was a presentation introducing the Moot Alumni Association.

The Moot Alumni Association preserves and strengthens the ties between the former, current, and future participants of the Willem C. Vis Moot across the globe. The MAA also creates an international contacts network that facilitates sharing professional, social and cultural experience among its participants.

The event speakers were Elena Mazetova and Navin Ahuja. Listen to them talking about various unique opportunities that come with the Moot Alumni Association membership at the RAC Youtube channel.

Read

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