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CHAPTER 10
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Leonardo de Oliveira, Sara Hourani



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Arbitrability Loukas A. Mistelis, 2009-01-01 It often seems today that no dispute is barred from resolution by arbitration. Even the fundamental question of whether a dispute falls under the exclusive jurisdiction of a judicial body may itself be arbitrable. Arbitrability is thus an elusive concept yet a systematic study of it as this book shows yields innumerable guidelines and insights that are of substantial value to arbitral practice. Although the book takes the form of a collection of essays, it is designed as a comprehensive commentary on practical issues that emerge from the idea of arbitrability. Fifteen leading academics and practitioners from Europe and the United States each explore different facets of arbitrability always with a perspective open to international developments and comparative evaluation of standards. The presentation falls into two parts: in the first, the focus is on the general features of arbitrability, its rationale and the laws applicable to it. In the second, arbitrability is specifically examined in the context of administrative, criminal, corporate, IP, financial, commercial and criminal law. This book has its origins in an International Conference on Arbitrability held at Athens in September 2005. Seven papers presented there are here reviewed and updated and nine others are added. The subject of the book and arbitrability is one that is much talked about but seldom if ever given the in-depth treatment presented here. Arbitrators and other practitioners in the field will welcome the way the analysis moves logically from theory to practice regarding every issue and academics will recognize a definitive treatment of arbitrability as understood and applied in the settlement of disputes today.

International Arbitration: When East Meets West Neil Kaplan, Michael Pryles, Chiann Bao, 2020-10-09 As Asia, China in particular, gains economic momentum and increasingly attracts global attention, disputes between Asian and Western parties will inevitably increase. This book, the first to address issues arising from these types of disputes in depth, collects incisive articles by both well-known Asian arbitrators and non-Asian practitioners with extensive experience dealing with arbitrations involving Asian parties, all under the aegis of Michael Moser, a Western-trained lawyer who had the foresight to build a China-focused dispute resolution practice at a time when it was not fashionable to do so. The articles reflect Moser's exemplary career as an independent arbitrator who has navigated between Asian and Western legal cultures seamlessly for decades. The upshot is an authoritative investigation of the differences and similarities of international arbitration between two contrasting cultures, both from a legal and social perspective as well as a consideration of how each culture has influenced international arbitration practice overall. Issues covered include the following: interim measures in support of arbitration; the hybrid arbitration/mediation mode of dispute resolution; what China's investment treaties have to offer Moser's Triple A approach to mediation; witness conferencing; influence of rank or exercise of altruism; Chinese courts' approach to international arbitration; evolution of investment protection between China and Europe; disclosure versus state secrecy laws in China; and the standard for disclosure in rules of evidence. Given the increasing prevalence of arbitrations seated in Asia and the number of new players engaged in arbitration in Asia, this book is certain to attract a wide range of arbitration

practitioners especially those engaged in arbitrations involving Asian parties As a comparative study of Asian and Western arbitration theory and practice it is peerless Scholars of arbitration worldwide are sure to learn from the insights detailed here of practitioners with consummate experience in arbitrations involving cross cultural parties This is an excellent and wide ranging publication that rightly pays tribute to Michael s career as a multi faceted doyen of international arbitration he has had his base in Asia but at all times he has held a global and even minded view Many of us and the overall institution of international arbitration owe so very much to him Matthew Gearing QC former Chair of HKIAC This wide ranging and insightful volume pays tribute to the distinguished career of Michael Moser a true Renaissance figure who has traversed both East and West and helped so many others bridge the two Gary Born WilmerHale *International Arbitration in Portugal* André Pereira da Fonseca,,Dário Moura Vicente,Mariana França Gouveia,Alexandra Nascimento Correia,Filipe Vaz Pinto,2020-08-19 Parties to cross border disputes arising anywhere in the vast Portuguese speaking world a community of more than 230 million in a space that offers a wide array of investment opportunities across four continents increasingly seek Portugal as their preferred seat of arbitration A signatory to all relevant international conventions Portugal has proven to be an arbitration friendly jurisdiction This volume is the first and so far only book in English that provides a thorough in depth analysis of international arbitration law and practice in Portugal Its contributing authors are among the most highly regarded legal names in the country including scholars arbitrators and practitioners The authors describe how international arbitration proceedings are conducted in Portugal what cautions should be taken and what procedural strategies may be suitable in particular cases They provide insightful answers to questions such as the following What matters can be submitted to arbitration under Portuguese law What are the validity requirements for an arbitration agreement How do the State courts interact with arbitration proceedings and what is the attitude of such courts toward international arbitration What are the rules governing evidentiary matters in arbitration How is an arbitration tribunal constituted How are arbitrators appointed How may they be challenged How can an international arbitral award be recognized and enforced How does the Portuguese legal system address the issue of damages and what specific damages are admitted How are the costs of arbitration proceedings estimated and allocated The book includes analyses of arbitration related to specific fields of the law notably sports administrative tax intellectual property rights especially regarding reference and generic medicines and corporate disputes Each chapter provides for the topics it addresses an examination of the applicable laws rules arbitration practice and views taken by arbitral tribunals and state courts as well as those of the most highly considered scholars As a detailed examination of the legal framework and of all procedural steps of an arbitration in Portugal from the drafting of an arbitration agreement to the enforcement of an award this book constitutes an invaluable resource for parties involved in or considering an international arbitration in this country The guidance that it seeks to provide in respect of any problem likely to arise in this context can be useful to arbitrators judges academics and interested lawyers **The European Convention**

on International Commercial Arbitration Gerold Zeiler, Alfred Siwy, 2019-01-15 Originally drafted during the Cold War era to facilitate trade between Western and Eastern European countries the European Convention on International Commercial Arbitration ECICA has come to the fore in recent years as commercial relationships proliferate between Western Europe and such resource rich countries as Russia Ukraine and Kazakhstan This commentary is the first comprehensive overview in English of the Convention s provisions annexes subsequent agreements and relevant case law and scholarship Following three introductory chapters on subjective arbitrability applicable law and ordre public in enforcement procedures the book provides detailed commentary and analysis of each of the Convention s articles in turn Detailed answers will be found to such questions as the following Which law is applicable to the substance of a dispute within the Convention s scope of application Can a defective arbitration clause be saved and if so how In which circumstances can awards be enforced which have been set aside in the state of origin In which circumstances may courts decide in a matter governed by an arbitration agreement In contrast to the other major international commercial arbitration body of rules the New York Convention the ECICA goes beyond enforcement and recognition of awards and codifies standards of conduct and procedure These innovative provisions are discussed in depth Arbitration disputes are increasing across the vast geographical region in which the ECICA is applicable and practitioners acting in such disputes will welcome this thorough commentary on the functionality advantages and disadvantages of each of the Convention s provisions They will approach national courts and arbitral tribunals with full knowledge of the rules of procedure and benefit from analysis of court decisions Global firms particularly in the oil and gas industry will also appreciate the book s masterful explication of this powerful instrument in international commercial arbitration

Dealing with Bribery and Corruption in International Commercial

Arbitration Emmanuel Obiora Igbokwe, 2023-01-10 International Arbitration Law Library Volume 65 International commercial arbitration is by no means free from bribery and corruption Although a plethora of legal scholarship clearly affirms this contention a thorough study on the particularly important question of the authority and duty of international commercial arbitrators to investigate a suspicion or indication of bribery or corruption sua sponte that is on their own initiative has been surprisingly lacking This important book fills this gap inter alia by locating sua sponte authority in the position of arbitral tribunals in establishing the facts of a case and ascertaining and applying the applicable normative standards In addition to providing a comprehensive examination of how the issue of bribery and corruption is dealt with in contemporary international commercial arbitration the book also highlights the role of arbitrators in global efforts to combat transnational commercial bribery and corruption Among others the following critical issues are thoroughly investigated arbitrability of issues of public interests intermediary contracts role of arbitrators in the fact finding process party autonomy versus overriding mandatory rules iura novit curia in international commercial arbitration in the context of bribery and corruption notion of transnational or truly international public policy arbitrators duty to act as guardians of international

commerce investigative tools available to arbitrators dealing with manifestly recalcitrant parties possible consequences of violating the obligation to sua sponte investigate and the view from developing countries The analysis leans primarily on Swiss law as Switzerland is one of the most important jurisdictions in international commercial arbitration Switzerland has also been involved in some of the most famous and controversial arbitration cases wherein bribery and corruption became an issue However the study also includes a comparative analysis of the relevant laws jurisprudence and doctrine of other major arbitration venues particularly England France and Germany Not only in the light it sheds on how and whether international commercial arbitrators have hitherto justified the trust States have placed in them regarding the protection of the public interests but also in the practical solutions it offers arbitrators faced with issues of bribery and corruption this deeply researched book equips arbitration practitioners and arbitration institutions with a hitherto lacking in depth analysis on the question of sua sponte investigation It also provides invaluable insights on how this issue might affect the future legitimacy and expansion of this dispute settlement mechanism Outside the field of arbitration the book also provides jurists legal scholars in house counsel for companies doing transnational business and public officials with highly enlightening perspectives on the interaction between international commercial arbitration and public interests

Insolvency in Commercial Arbitration Fabian van den Ven, 2023-08-31 The settling of disputes in international trade and in large and technically complex construction projects can hardly be imagined without the institution that is arbitration Another thing we can be sure about is that insolvency will also remain a part of the lifecycle of business entities within the currently existing economic system Whereas insolvency proceedings are heavily regulated with little leeway for the parties the central tenet of arbitration is the autonomy of the parties Hence this book aims to thoroughly investigate the many legal issues arising in arbitral proceedings when insolvency and arbitration clash This interaction is increasingly frequent today Providing much needed practical guidance derived from a broad and deep theoretical discussion the book covers such aspects as the following the effect of insolvency on the arbitration agreement the arbitration procedure including a potential mandatory stay of proceedings the arbitrator's contract and the arbitral award the position of insolvency and arbitration within a legal order the arbitrability of insolvency related issues and claims the possibility of determining claims in insolvency via arbitration the determining of applicable law and conflict of laws rules in particular when insolvency is opened in a different jurisdiction than that of the arbitration and insolvency in arbitration within the application of the European Insolvency Regulation After a chapter on the relevant background theories the two main chapters of the book focus first on general issues that can arise in a domestic situation and second on problems particular to international cases of insolvency in arbitration The primary domestic perspective is the German one with abundant additional detail to fully embrace the international relevance of the discussion The author concludes with a number of considerations informed by practitioner feedback discussions throughout the work and as many arbitration case law examples as possible for tribunals dealing with insolvency in arbitration Based on

a systematic application of arbitration and insolvency theory the book provides an all encompassing and holistic discussion from before an arbitration is started to after the award has been enforced In this way the book provides a one stop shop for practitioners both lawyers and arbitrators helping tribunals to navigate the treacherous waters of insolvency in arbitration

Access to Justice in Arbitration Leonardo de Oliveira, Sara Hourani, 2020-11-17 Access to Justice in Arbitration Concept Context and Practice Edited by Leonardo V P de Oliveira ramifications of arbitration clauses in contracts ensuring fairness and efficiency arising from technological innovations applied to arbitration legal framework applicable to online dispute resolution and blockchain based arbitration especially with regard to recognition and enforcement and access to justice in arbitrations involving sexual harassment The book concludes with three chapters on access to justice under the rules of arbitral institutions as revealed by studies of the World Intellectual Property Organisation the Singapore International Arbitration Centre and the International Centre for Settlement of Investment Disputes Arbitration provides a final binding decision that can be challenged on very limited grounds thus with arbitration settling disputes that were originally a prerogative of the judiciary securing fairness in such procedures is paramount to the survival of arbitration For this reason arbitration practitioners institutions and academics will appreciate this deeply informed analysis and commentary on a crucial aspect of a highly significant and rapidly evolving area of practice

60 Years of the New York Convention Katia Fach Gomez, 2019-03-22 Worldwide interest in the recognition and enforcement of arbitral awards has never been higher and the New York Convention of 1958 currently adhered to by 159 States including the major trading nations remains the most successful treaty in this area of commercial law This incomparable book marking the Convention's 60th anniversary provides a fully updated analysis of the Convention's application from international comparative and national perspectives Drawing on a global conference held in Seville in April 2018 that was actively supported by UNCITRAL the book's 27 chapters by highly qualified international practitioners and academics from different jurisdictions address the subject with critical eyes well aware of current developments and future challenges in the field of arbitration Among the issues and topics covered are the following Multi tiered dispute resolution clauses Applicability of the UN Convention on the Use of Electronic Communications in International Contracts Complexities of enforcing orders determined by software Enforcement of annulled awards European Union law and the New York Convention Enforcing awards against States and State entities Sovereign immunity as a ground to refuse compliance with investor State awards Enforcement against non signatories Public policy exception Arbitrating and enforcing foreign awards in specific countries and regions including China sub Saharan Africa and the ASEAN countries Ample reference is made throughout to leading cases and practice Familiarity with the intricacies of the New York Convention as the most universally acknowledged framework in which cross border economic exchanges can flourish is essential for judges practitioners legal staff business people and scholars working with or applying international commercial arbitration anywhere in the world This book's combination of highly thought provoking topics and the depth with

which they are addressed will prove invaluable to all interested parties *China-Africa Dispute Settlement* Won Kidane, 2011-11-02 The nature and magnitude of the growth in China Africa economic relations in recent years is unprecedented and extraordinary According to recent estimates the value of China's trade with African nations grew from a mere USD 10 million in the 1980s to USD 55 billion in 2006 and to more than USD 100 billion by the end of 2009 at which time nearly 1 600 Chinese companies were doing business in Africa with a direct stock investment of about USD 7 8 billion The accelerating impetus of China Africa trade has overtaken some crucially important features of an effective trade regime most notably a fully trustworthy dispute resolution system It is the current and potential future efficacy of such a system that is taken up in this book with great understanding and skill The author evaluates existing mechanisms of dispute resolution in all aspects of China Africa economic relations in light of the parties economic and cultural profiles and their evolving legal traditions and goes on to propose a comprehensive institutional model of dispute resolution that takes full account of the economic needs and legal cultures of both China and the various African countries Among the topics and issues that arise in the course of the book are the following suitability of the WTO's dispute resolution mechanism for China Africa trade relations domestic bilateral regional and multilateral law sources affecting China Africa commerce the role of intra Africa bilateral investment treaties competing interests that underpin international investment law relevant legal economic and political challenges and cultural barriers permissible scope of regional trade regimes national treatment versus duty to compensate and harmonization initiatives model laws incoterms restatements The author includes in depth analysis of how China Africa economic relations fare in the varieties of dispute resolution methods available at the major arbitral European and American institutions ICSID AAA ICC LCIA PCA as well as under the rules of the China International Economic and Trade Arbitration Commission CIETAC and the important arbitral fora in Cairo Kuala Lumpur and Lagos Endorsing institutional arbitration as the most appropriate form of resolving trade investment and commercial disputes arising between China and African countries this ground breaking analysis outlines the obstacles and shortcomings of the available means of dispute settlement both in international and domestic contexts and offers deeply informed recommendations for improvement of the existing system Although the book will be welcomed by interested scholars and practitioners for its detailed discussion of how China Africa trade relations are situated within the global trade regime its most enduring value lies in its thorough evaluation of the available options and its proposals for structuring a legal framework within which future disputes will be effectively resolved Bias Challenges in International Commercial Arbitration Sam Luttrell, 2009-01-01 Shows how dirty challenge tactics are made viable primarily by the prevalence of a judicially derived test for bias which focuses on appearances rather than facts and He argues that the most commonly used test of bias the reasonable apprehension test makes it easy to allege a lack of impartiality and independence

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