INTERNATIONAL ARBITRATION NEWS

Quadrant CHAMBERS

ISSUE 04 - Spring 2017

EDITORIAL by Sir David Steel

As Simon Croall QC noted in his editorial of the first edition of this newsletter in Summer 2015, a main challenge for International Arbitration is to ensure that it evolves to meet the needs of end-users in an ever changing and dynamic trading world. In recent years, those end users have increasingly demanded that international arbitration be more efficient and cost effective. In response major international institutions are revising their Arbitration Rules to include express "cut through" procedural provisions aimed at streamlining their proceedings.

Examples can be found in the latest versions of the Arbitration Rules of SIAC, ICC, SCC and LMAA. The SIAC Arbitration Rules (effective from August 2016) include key changes focused on the efficiency of proceedings, including multi-contract arbitration, joinder and intervention, consolidation, early dismissal of a claim or defence and the expansion of powers for Emergency Arbitrators. Similarly the new Arbitration Rules of the SCC (effective from 1 January 2017) introduced a summary procedure for the determination of factual or legal disputes. Whilst most arbitral rules already gave implicit power to tribunals to conduct summary proceedings, the SIAC and SCC Rules mark the first significant attempt in international arbitration to put forward express rules on this subject.

The ICC Rules (effective from 1 March 2017) are aimed at further increasing the efficiency and transparency of ICC arbitrations and provide (for the first time) an expedited procedure for cases of lower value. In a similar vein the LMAA Rules (effective from 1 May 2017) have increased the limit for the small claims procedure and added an obligation on to the parties to "actively consider ways in which to make the arbitral process as cost-effective and efficient as possible".

The articles in the rest of this Newsletter provide thought provoking insights on other recent developments. We are delighted that these include those of our first guest contributor Leng Sun of Baker McKenzie into third party funding in Asia Singapore and Hong Kong.

THIRD PARTY FUNDING IN ASIA...

AUTHOR: Chan Leng Sun, SC

Third-party funding has been slow to take off in Asia, with the exception of New Zealand and Australia, where it is on the increase. Australia is in fact a market leader for third-party funding.

Fears that such funding might run foul of the doctrines of champerty and maintenance in common law jurisdictions such as Hong Kong (Unruh v Seeberger (2007) 10 HKCFAR 31) and Singapore (Otech Pakistan Pvt Ltd v Clough Engineering Ltd [2007] 1 SLR 989) have discouraged experiment. Civil law jurisdictions such as China and Japan do not have these prohibitive doctrines. Nonetheless, third-party funding has not yet gained much of a foothold in these countries, where the growth in arbitration is a relatively recent phenomenon. After years of deliberating, Singapore and Hong Kong are introducing legislation to set up a permissive framework for third party legislation in the same year. The law in Singapore came into effect on 1 March 2017. In Hong Kong, the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016 is making its way before the Legislative Council ("HK Bill"). For brevity, I will take the HK Bill as the Hong Kong position for now.

Both expressly permit third-party funding for arbitration only. In Singapore, the Civil Law Act was amended to permit third-party funding in respect of international arbitrations as defined under the International Arbitration Act. Only it is further stipulated that third-party funding may only be provided by funders whose principal business is funding claims and who

Continued Overleaf

UPCOMING EVENTS

Quadrant Chambers will be hosting its Annual Energy Disputes Seminar on **Wednesday 26th April 2017** which, with the generous co-operation of CMS, will be held in the CMS Academy at their offices.

Entitled **"Energy Disputes: Lawyering Your Way to a Solution"** the seminar will be delivered by a panel of specialist energy dispute lawyers, industry in-house legal counsel and barristers including **John Murray** of Premier Oil, **Rob Wilson** of CMS UK together with **Simon Rainey QC** and **Lionel Persey QC** both from Quadrant Chambers. The session will be chaired by **Sam Dunkley** of Oil & Gas UK.

To register your interest in attending please email: energyevent@quadrantchambers.com

Quadrant Chambers will be hosting an event on **Thursday 15 June 2017** entitled **"Support or interference? - The role of the Commercial Court in international arbitration?"** which will bring together a number of well-known practitioners and Arbitrators within this specialist field.

To register your interest in attending please email: IAEvent@quadrantchambers.com

Members of Quadrant Chambers hosted and spoke at an event at the DIFC in March 2017 on **"International Arbitration: Maximising Outcomes ...".** The event was chaired by **Simon Croall QC**. **John Passmore QC** spoke on written advocacy, **Robert Thomas QC** spoke on oral advocacy and **Robert-Jan Temmink QC** spoke on the enforcement of arbitral awards in the DIFC Court.

Continued from cover

have sufficient access to funds. Both countries allow funding to cover court and mediation proceedings related to the arbitration proceedings.

Both countries supplement the legislative framework with "soft laws", in the form of codes of conduct. In Singapore, there are three independent bodies covering different stakeholders. The Singapore Institute of Arbitrators' draft Guidelines for Third Party Funders have been released for public consultation. The Law Society of Singapore will issue a Guidance Note for Lawyers and the Singapore International Arbitration Centre has have a Practice Note on Arbitrator Conduct in Cases Involving External Funding. The HK Bill provides that a body authorized by the Secretary of Justice shall draw up a code of practice with which third-party funders are expected to comply. These codes of practice are not reinforced by legislative sanctions for now but, naturally, the authorities will be monitoring the degree of compliance with ethical and practice guidelines to see if firmer measures are warranted.

These new frameworks are welcome in bringing funding to the two leading arbitration seats in Asia, in line with other major arbitration jurisdictions where it is already permitted.

Leng Sun is Baker McKenzie's Global Head of Arbitration and Head of Dispute Resolution practice in Baker & McKenzie Wong & Leow. He is qualified in Malaysia, Singapore and England and was appointed Senior Counsel (Singapore) in 2011. He is a Chartered Arbitrator and the President of the Singapore Institute of Arbitrators. He is named amongst the world's top litigators and arbitration lawyers in directories such as Chambers Global and Who's Who Legal.

No jurisdiction to order security for an award as a condition for a party to be allowed to resist enforcement

AUTHOR: Koye Akoni

The Supreme Court [2017] UKSC 16 has now had its say in the latest incarnation of the long-running saga of IPCO v NNPC, in which IPCO has spent the last 13 years trying to enforce a Nigerian award which, including interest, is now in the order US $350million.

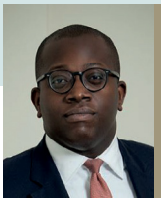
The Supreme Court had before it a narrow, but important question: whether an English Court (as an enforcing court) has jurisdiction to order that a party seeking to resist enforcement of an award on public policy grounds in the enforcing court pursuant to s. 103(3) of the Arbitration Act 1996 (Article V of the New York Convention) can only do so if it provides security for some or all of the award.

The question arose because the Court of Appeal had ordered that NNPC put up security for US $100million as a condition for resisting the enforcement of the award in England on the basis that IPCO had obtained it by fraud (the CA having found that the allegation was made bona fide and that NNPC had a good prima facie case).

Lord Mance (with whom the rest of the Justices agreed) explained that the jurisdiction to order security pursuant to s.103(5) of the 1996 Act (Article VI of the New York Convention) only extends to ordering security as the price of adjourning enforcement proceedings because there is an extant challenge to the award in the court of the seat. It does not extend to imposing security as the price for a substantive challenge to enforcement being heard and decided by the enforcing court.

The Court also rejected the application of r.3.1(3) of the Civil Procedure Rules in this context. That power is aimed at the imposition of a condition as a price for obtaining a discretionary relief or a concession from the Court, not as a price for exercising a right to raise a properly arguable challenge to enforcement.

The judgment raises a further factor to consider when determining how and where to seek enforcement, and how best to resist the enforcement of an award.



Koye's international commercial practice includes experience of international commercial arbitration, particularly under the major international arbitration institutional rules. Prior to joining Quadrant Chambers, Koye worked in the litigation team (EMENA) of an energy multinational between 2012 and 2014, including acting as advocate in a number of ICC and LCIA arbitrations.

In March 2017 **Robert Thomas QC** became a Part II registered practitioner with rights of audience before the DIFC Courts. He joins **Robert-Jan Temmink QC**, and **Chirag Karia QC** as registered practitioners from Quadrant Chambers.

Simon Kverndal QC delivered a paper on "**Arbitrator Bias – a fresh look?**" as part of a panel on strategies and case management practices in International Arbitration in Delhi in January 2017. Simon's paper can be found at http://www.quadrantchambers.com/seminars/trends-on-international-commercial-investment-treaty-arbitrations

Lebanese brothers bringing an ICSID claim against Greece (ICSID arbitration Case No. Arb/16/20) have failed to unseat the state's appointee to the tribunal, Brigitte Stern, on the basis that her repeated appointments to tribunals by states create grounds for doubting her impartiality. **Guy Blackwood QC** was the lead advocate on behalf of the Government of Greece. A fuller recital of the challenge and decision is reported in Global Arbitration Review http://globalarbitrationreview.com/article/1134962/challenge-against-stern-fails-in-greek-shipyard-case

If there are any topics you would like covered in future editions of the newsletter or enquiries arising out of this edition please contact **Simon Slattery**.

Contacts
Simon Slattery
simon.slattery@quadrantchambers.com

Gary Ventura
gary.ventura@quadrantchambers.com

Quadrant House, 10 Fleet Street, London EC4Y 1AU DX: London/Chancery 292 Tel: +44 (0)20 7583 4444

Quadrant CHAMBERS
www.quadrantchambers.com