

ARBITRATION WORLD

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Welcome to the 36th edition of K&L Gates' *Arbitration World*

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FROM THE EDITORS:

Welcome to the 36th edition of *Arbitration World*, a publication from K&L Gates' International Arbitration Group that highlights significant developments and issues in international and domestic arbitration for executives and in-house counsel with responsibility for dispute resolution.

In this edition, we include our usual update on developments from around the globe in international arbitration and investment treaty arbitration, including a report on the potential implications of the Achmea decision of the Court of Justice of the European Union.

We look at a recent decision on the interpretation and application of eligibility criteria for arbitrators in arbitration clauses, specifically regarding a term in an insurance policy requiring that the arbitrator must have insurance-related qualifications. We look at the potential benefits of machine translation technology in multilingual arbitration. We also look at means of efficiently and effectively managing disputes in the offshore engineering and construction projects, which frequently involve many issues and can be very document heavy.

On the institutional side, we review the new Rules of Arbitration of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., or DIS), effective from March 1, 2018, and report on the publication by the Hong Kong International Arbitration Centre (HKIAC) of data on the average cost and duration of HKIAC arbitration proceedings, and draw a comparison to other arbitration institutions.

We also consider the current split in the United States circuit courts regarding who gets to decide the gateway issue of arbitrability — the arbitral tribunal or the court — and the implications when it comes to drafting an arbitration agreement. We report on some recent arbitration appeals heard by the Swiss Federal Supreme Court, which are always the subject of international scrutiny and interest. Finally, we review two recent cases that illustrate the developing approach of the English courts to the public policy exception in the context of enforcing arbitral awards.

We hope you find this edition of *Arbitration World* of interest and we welcome any feedback (e-mail ian.meredith@klgates.com or peter.morton@klgates.com).

Arbitration News from Around the World by Ben Mackinnon (London)

Our regular update of notable, recent developments in international arbitration.

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World Investment Treaty Arbitration Update by *Wojciech Sadowski (Warsaw)*

The latest news from the investor-state arbitration scene, including a report on the potential implications of the Achmea decision of the Court of Justice of the European Union.

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Calling All "Insurance" Arbitrators – or Not: Arbitrator Qualifications in Insurance Coverage Arbitrations by *Carolyn Branthoover and Julian Veintimilla (Pittsburgh)*

Insurance policies will frequently include an arbitration agreement that specifies insurance-related qualifications for the arbitrators. We look at a recent English Court of Appeal decision regarding the interpretation and application of such a clause, how such issues might be dealt with by a U.S. court and what policyholders can do when presented with such clauses.

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To listen to the podcast HUB Talks: Arbitration World, click [here](#).

Leveraging Machine Translation Technology for Multi-lingual Arbitrations by *Julie Anne Halter and Lori Steidl (Seattle)*

Machine translation technology has the potential to offer considerable benefits in multilingual arbitration. We look at the relevant considerations in deciding when and how the technology might usefully be deployed.

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Documents and Data in Complex, Multi-issue Offshore Engineering and Construction Disputes – How to Get Ahead of the Game and Gain Strategic Advantage by *Jeremy Farr, Clare Kempkens, and Charles Lockwood (London)*

Disputes arising from offshore engineering and construction projects frequently involve many issues and can be very document heavy. We look at means of seeking to manage the dispute resolution process cost efficiently and effectively.

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New Arbitration Rules of the German Institution for Arbitration by *Johann von Pachelbel (Frankfurt)*

A summary of the revised arbitration rules of the German Institution of Arbitration (Deutsche Institution für Schiedsgerichtsbarkeit e.V., or DIS), effective from March 1, 2018, and aimed at enhancing the efficiency and flexibility of arbitral proceedings.

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Average Costs and Duration of HKIAC Arbitration – New Data Published *by Sacha Cheong (Hong Kong)*

We report on the publication earlier this year by the HKIAC of data on the average cost and duration of HKIAC arbitration proceedings, and how they compare to other arbitration institutions.

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Arbitrability in the United States: To Decide or Not to Decide, That Is the Question *by Carolyn Branthoover and Max Gelernter (Pittsburgh)*

A review of the approach in the United States to the question of who gets to decide the gateway issue of arbitrability — the arbitral tribunal or the court - the split in the circuits in the United States to the issue and the implications when it comes to drafting an arbitration agreement.

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A Roundup of Recent Arbitration Decisions of the Swiss Federal Supreme Court *by John Magnin and Matthew Gibbon (London)*

A review of some recent arbitration appeals heard by the Swiss Federal Supreme Court including consideration of (1) penalty clauses and punitive damages; (2) an appellant's right to be heard and the principle of equal treatment; and (3) appeals against procedural orders.

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The New York Convention – Recent Decisions Highlight Approach of the English Court to the Public Policy Exception *by Clarissa Coleman and Jonathan Graham (London)*

We review the approach of the English courts to the public policy exception to enforcement of arbitration awards under the New York Convention by reference to two recent decisions, both involving considerations of fraud.

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