

International Commercial Arbitration

International Conventions, Country Reports
and Comparative Analysis

A Handbook

edited by

Stephan Balthasar

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Preface

International arbitration remains one of the most challenging and exciting areas in international commercial law, in particular due to its cross-border dimensions. It is crucial for practitioners to understand not just the arbitration law of their home countries, but also that of other countries that have a link to a particular dispute. Questions that they may have to address may involve, for example, the law at the seat of the arbitral tribunal as well as the law of countries where recognition and enforcement is likely to occur. This guide aims at removing practical, linguistic and cultural barriers by providing access to various sources of arbitration law, covering the UNCITRAL Model Law on International Arbitration, the New York Convention, Investment Treaty Arbitration, as well as country reports on international commercial arbitration law in jurisdictions representing more than 60% of the global economy.

The second edition of this guide addresses recent changes and developments in the area of international arbitration, including hundreds of new decisions, legislative reform, and topical problems such as challenges to arbitrators for lack of impartiality and independence, review of arbitral awards, third party funding, the ECtHR decision in *Tabbanne* on fair trial requirements in arbitral proceedings, and the ECJ ruling in *Achmea* on the compatibility of investment treaty arbitration with EU law. The new edition states the law as of 1 May 2020.

This guide owes everything to the support from leading experts from various jurisdictions, and I wish to take this opportunity to express my deep gratitude to the authors who contributed to this guide and without whose efforts it would not have been possible to complete this project. I am greatly indebted to Professor Dr Florian Bien, Würzburg, Nadia Darwazeh, Paris, Dr Michele Potestà, Geneva, James Menz, Zurich, Dr Stephan Wilske, Stuttgart, Dr Wolfgang Winter, Munich, and Viktor von Essen, Bonn, for their generous advice and valuable comments. I also wish to thank Thomas Klich of C.H.Beck for his unfailing support with this new edition. Comments and suggestions from readers are welcome and can be sent to stephan.balthasar@cantab.net.

Le plus grand merci va à Cécile, et à nos enfants, Emilie et Matthias.

Munich, 1 October 2020

Stephan Balthasar

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List of Abbreviations

AA 1996	Arbitration Act (England and Wales)
AAA	American Arbitration Association
AAA Rules 2013	AAA Commercial Arbitration Rules and Mediation Procedures effective 1 October 2013
ABGB	Allgemeines Bürgerliches Gesetzbuch (Austrian civil code)
AC	The Law Reports, Appeal Cases
ACA 1996	Arbitration and Conciliation Act 1996 (India)
Act. dr.	Actualités du droit
ACWS	All Canada Weekly Summaries
ADRLJ	Arbitration and Dispute Resolution Law Journal
AG	Advocate General; Amtsgericht (German local court); Aktiengesellschaft (stock corporation)
AIR	All India Reporter
AJIL	American Journal of International Law
AJT	Algemeen juridisch tijdschrift
ALD	Andhra Legal Decisions
All ER	All England Law Reports
ALR	Australian Law Reports
Am. Rev. Int'l Arb.	The American Review of International Arbitration
AMC	American Maritime Cases
APC RF	Arbitrazh Procedure Code of the Russian Federation ("Арбитражный процессуальный кодекс Российской Федерации")
AppG	Appellationsgericht
APT	Administration publique – trimestriel
Arb.	Arbitration: The International Journal of Arbitration, Mediation and Dispute Management
Arb. Int'l	Arbitration International
ArbLR	Arbitration Law Reports and Review
Arr. Cass.	Arresten van het Hof van Cassatie
Art	Article(s)
ASA Bull.	Association Suisse de l'Arbitrage (ASA) Bulletin
Asian Int'l Arb. J.	Asian International Arbitration Journal
Austr. YIA	Austrian Yearbook on International Arbitration
BayObLG	Bayerisches Oberstes Landesgericht (Highest Regional Court of Bavaria)
BayObLGZ	Sammlung der Entscheidungen des Bayerischen Obersten Landesgerichts in Zivilsachen
BB	Betriebs-Berater
BBl	Bundesblatt (Switzerland)
BCDR Int'l Arb. Rev.	BCDR International Arbitration Review
BCSC	Supreme Court of British Columbia
BDSG	Bundesdatenschutzgesetz
BeckRS	Beck-Rechtsprechung
BezG	Bezirksgericht
BGBL	Bundesgesetzblatt (Austria, Germany)
BGE	Entscheidungen des Schweizerischen Bundesgerichts
BGer.	Bundesgericht (Switzerland)
BGG	Bundesgerichtsgesetz (Switzerland)
BGH	Bundesgerichtshof (German Federal Court of Justice)
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
BIT	Bilateral Investment Treaty
BJM	Basler Juristische Mitteilungen
BLR	Business Law Review
BOE	Boletín Oficial del Estado

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Bom. LR	Bombay Law Reporter
BRAO	Bundesrechtsanwaltsordnung
BRH	Belgische rechtspraak in handelszaken
Brussels I Regulation	Regulation (EC) No. 44/2001, [2001] OJ L12/1
Brussels Ia Regulation, Brussels I Regulation (recast)	Regulation (EU) No. 1215/2012, [2012] OJ L351/1
Bull.	Bulletin des arrêts de la Cour de Cassation
BW	Burgerlijk Wetboek
BYBIL	British Yearbook of International Law
CA	Corte d'appello (Italy), Cour d'Appel (Belgium, France), Court of Appeal
Cah. Arb.	Les Cahiers de l'Arbitrage
Cap.	Capitulum
CAS	Court of Arbitration for Sport
Cass.	Corte Suprema di Cassazione (Italy), Cour de Cassation (Belgium, France)
CC	Code civil (Belgium, France), Codice civile (Italy), Código civil (Spain)
CCBE	Council of Bars and Law Societies of Europe
CEPANI	Centre Belge d'Arbitrage et de Médiation
Cf.	Confer
CF	Constituição federal (Brazil)
Ch.	The Law Reports, Chancery division
CIETAC	China International Economic Trade and Arbitration Commission
Cir.	Circuit
CISG	United Nations Convention on Contracts for the International Sale of Goods (11 April 1980)
Civ.	Civil division (Court of Appeal for England and Wales)
CJ	Code Judiciaire (Belgium)
CLC	Commercial Law Cases
CLJ	Cambridge Law Journal
Col. J. Transnat'l L.	Columbia Journal of Transnational Law
COMECON	Council for Mutual Economic Assistance (Совет экономической взаимопомощи)
Comm	Commercial Court (High Court of England and Wales)
Comp. L.Y.B. Int'l Bus. ...	Comparative Law Yearbook of International Business
Contemp. Asia Arb. J.	Contemporary Asia Arbitration Journal
CPC	Code de Procédure Civile (France), Codice di procedura civile (Italy), Código de Processo Civil (Brazil)
CPC RF	Civil Procedure Code of the Russian Federation ("Гражданского процессуального кодекса Российской Федерации")
CPR	Civil Procedure Rules
D.	Recueil Dalloz
D.Alaska	District of Alaska
DAOR	Le Droit des affaires – Het Ondernemingsrecht
D.Ariz.	District Court for the District of Arizona
DB	Der Betrieb
D.C.Cir.	Court of Appeals for the District of Columbia Circuit
D.Conn.	District Court for the District of Connecticut
D.D.C.	District Court for the District of Columbia
D.Del.	District Court for the District of Delaware
Dir. mar.	Il Diritto Marittimo
DIS	Deutsche Institution für Schiedsgerichtsbarkeit (German Arbitration Institute)
DIS Rules 2018	DIS Arbitration Rules effective 1 March 2018
Disp. Res. J.	Dispute Resolution Journal
DLR	Dominion Law Reports
DLT	Delhi Law Times
DJ, Dje	Diário da Justiça, Diário da Justiça Eletrônico
D.Mass.	District Court for the District of Massachusetts

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D.N.J.	District Court for the District of New Jersey
EC	European Community
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (4 November 1950)
ECJ	European Court of Justice
ECLI	European Case Law Identifier
Ecolex	ecolex, Fachzeitschrift für Wirtschaftsrecht
ECR	European Court Reports
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
ed., eds	Edition, editor(s)
E.D.La.	Eastern District of Louisiana
E.D.N.Y.	Eastern District of New York
E.D.Pa.	Eastern District of Pennsylvania
E.D.Va.	Eastern District of Virginia
e.g.	Exempli gratia
EGLR	Estates Gazette Law Reports
E.J.	Echtscheidingsjournaal
EO	Exekutionsordnung (Austria)
et al.	Et alii
et seq.	Et sequens, sequentes
EU	European Union
EuC	European Convention on International Commercial Arbitration, 21 April 1961
EurLF	European Legal Forum
EWCA	England & Wales Court of Appeal [Neutral Citation]
EWHC	England & Wales High Court [Neutral Citation]
F., F.2d, F.3d	Federal Reporter; Federal Reporter, 2 nd Series; Federal Reporter, 3 rd Series
F. App'x	Federal Appendix
F. Supp., F. Supp. 2d	Federal Supplement; Federal Supplement, 2 nd Series
FAA	Federal Arbitration Act
Fasc.	Fascicule
FC	Federal Court Reports (Canada)
FCA	Federal Court of Australia
FCAFC	Federal Court of Australia, Full Court
FCR	Federal Court Reports (Australia)
Fed. Appx.	Federal Appendix
FLR	Federal Law Reports (Australia)
fn.	Footnote
Fordh. Int'l L. J.	Fordham International Law Journal
Foro it.	Il Foro Italiano
Foro pad.	Il Foro Padano
FRD	Federal Rules Decisions
GDPR	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), [2016] OJ L119/1–88
George Wash. Int'l L.	George Washington International Law Review
Rev.	Der Gesellschafter – Zeitschrift für Gesellschafts- und Unternehmensrecht
GesZR	Der Gesellschafter – Zeitschrift für Gesellschafts- und Unternehmensrecht
Govt	Government
GWB	Gerechtiglijk Wetboek (Belgium)
HK	Hong Kong
HKC	Hong Kong Cases
HKCFAR	Hong Kong Court of Final Appeal Reports
HKEC	Hong Kong Electronic Citation
HKIAC	Hong Kong International Arbitration Centre

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HKIAC Rules 2018	HKIAC Administered Arbitration Rules effective 1 November 2018
HKLR	Hong Kong Law Reports
HKLRD	Hong Kong Law Reports & Digest
HL	House of Lords
Hof	Gerechtshof
HR	Hoge Raad der Nederlanden
IAA	International Arbitration Act
IAICA	Inter-American Convention on International Commercial Arbitration of 1975
IBA	International Bar Association
ibid.	Ibidem
ICAA	International Commercial Arbitration Act of the Russian Federation (Закон Российской Федерации от 7 июля 1993 года № 5338-I “О международном коммерческом арбитраже”)
ICAC	International Commercial Arbitration Court (Russian Federation Chamber of Commerce and Industry)
ICC	International Chamber of Commerce
ICC Rules 2021	ICC Rules of Arbitration effective 1 January 2021
ICCA	International Council for Commercial Arbitration
ICCLR	International Company and Commercial Law Review
ICLQ	International & Comparative Law Quarterly
ICSID	International Centre for the Settlement of Investment Disputes
ICSID Rev.	ICSID Review – Foreign Investment Law Journal
i.e.	id est
IEHC	High Court of Ireland [neutral citation]
IHR	Internationales Handelsrecht – Zeitschrift für das Recht des internationalen Warenkaufs und Warenvertriebs
IIA	International Investment Agreement
IL Pr.	International Litigation Procedure
ILM	International Legal Materials
Int. A.L.R., Int’l Arb. L. Rev.	International Arbitration Law Review
Int’l J. Arab Arb.	International Journal of Arab Arbitration
IPrax	Praxis des Internationalen Privat- und Verfahrensrechts
IPRG	Bundesgesetz über das Internationale Privatrecht (Switzerland)
IPRspr.	Die deutsche Rechtsprechung auf dem Gebiete des Internationalen Privatrechts
J	Justice
J. Int’l Arb.	Journal of International Arbitration
JAMS	Judicial Arbitration and Mediation Services
Jap. Ann. Int’l L.	Japanese Annual of International Law
JBl	Juristische Blätter
JCP	Jurisclasseur périodique, édition G
JDI	Journal du droit international – Clunet
J.E.C.L. & Pract.	Journal of European Competition Law and Practice
JEV	Journal für Erbrecht und Vermögensnachfolge
J.L. & Comm.	Journal of Law and Commerce
JLMB	Revue de Jurisprudence de Liège, Mons et Bruxelles
JN	Jurisdiktionsnorm (Austria)
JORF	Journal Officiel de la République Française
JPIL	Journal of International Private Law
JT	Journal des tribunaux
JTT	Journal des tribunaux du travail
JWIT	Journal of World Investment and Trade
KG	Kammergericht (Berlin), Kort Geding
KGR	KG Report Berlin
Ktr	Kantongerecht
LA	Lei de Arbitragem no. 9.307, of 23 September 1996 (Brazil), Ley de Arbitraje (Spain)

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LAV	Lei de Arbitragem Voluntária no. 63/2011, of 14 December 2011 (Portugal)
LCIA	London Court of International Arbitration
LCIA Rules 2020	LCIA Arbitration Rules effective 1 October 2020
LEC	Ley 1/2000, de Enjuiciamiento Civil, of 7 January 2000 (Spain)
LJ	Lord Justice
Lloyd's Rep.	Lloyd's Law Reports
LNTS	League of Nations Treaty Series
LQR	Law Quarterly Review
LSF	Lag om skiljeförfarande (Sweden)
Ltd	Limited
Lugano Convention	Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, [2009] OJ L147/5
MBCA	Manitoba Court of Appeal [neutral citation]
M.D.N.C.	District Court for the Middle District of North Carolina
MDR	Monatsschrift für Deutsches Recht
Mh. L. J.	Maharashtra Law Journal
ML	UNCITRAL Model Law on International Commercial Arbitration (2006)
ML 1985	UNCITRAL Model Law on International Commercial Arbitration (1985)
mn., mns.....	Margin number(s)
MünchKomm(-BGB, -ZPO)	Münchener Kommentar (zum Bürgerlichen Gesetzbuch, zur Zivilprozessordnung)
MvA	Memorie van Antwoord
MvT	Memorie van Toelichting
NAFTA	North-American Free Trade Agreement
NAI	Nederlands Arbitrage Instituut
N.D.Cal.	District Court for the Northern District of California
N.D.Ga.	District Court for the Northern District of Georgia
N.D.Ill.	District Court for the Northern District of Illinois
N.D.Ohio	District Court for the Northern District of Ohio
N.D.Tex.	District Court for the Northern District of Texas
N.D.W. Va.	District Court for the Northern District of West Virginia
NJ	Nederlandse Jurisprudentie
NJA	Nytt juridiskt arkiv
NJB	Nederlands Juristenblad
NjW	Nieuw Juridisch Weekblad
NJW	Neue Juristische Wochenschrift
NJW-RR	Neue Juristische Wochenschrift, Rechtsprechungsreport Zivilrecht
No.	Number
NSWSC	New South Wales Supreme Court (neutral citation)
NYC	Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958
N.Y.S.	New York Supplement
NZLR.....	New Zealand Law Reports
OG	Obergericht (Switzerland)
OGH	Oberster Gerichtshof (Austria)
OJ	Official Journal of the European Union
OLG	Oberlandesgericht (Austria, Germany)
OLGR	OLG-Report
OR	Ontario Reports
p.	Page
P&B	Revue de droit judiciaire et de la preuve – Proces en Bewijs
Pace L. Rev.	Pace Law Review
para., paras	Paragraph(s)
Parl. St.	Parlementaire Stukken
Pas.	Pasicrisie belge
PC	Privy Council

List of Abbreviations

Pepp. Disp. Resol. L.J.	Pepperdine Dispute Resolution Law Journal
QB	Law Reports, Queen's Bench Division
QCCA	Québec Court of Appeal (neutral citation)
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RABG	Rechtspraak Antwerpen Brussel Gent
Rb.	Rechtbank
RCJB	Revue critique de jurisprudence belge
RDIPP	Rivista di diritto internazionale privato e processuale
Rep. Jurispr.	Repertorio de Jurisprudencia
Rev. arb.	Revue de l'arbitrage
Rev. Bras. Arb.	Revista Brasileira de Arbitragem
Rev. C. Esp. Arb.	Revista de la Corte Española de Arbitraje
Rev. crit. DIP	Revue critique du droit international privé
Rev. not. b.	Revue du notariat belge
RIS	Rechtsinformationssystem
Riv. arb.	Rivista dell'arbitrato
Riv. dir. int.	Rivista di diritto internazionale
Riv. dir. proc.	Rivista di diritto processuale
RIW	Recht der internationalen Wirtschaft
RJQ	Recueil de jurisprudence du Québec
Rome I Regulation	Regulation (EC) No. 593/2008, OJ, 4 July 2008, L 177/6
Rome II Regulation	Regulation (EC) No. 864/2007, OJ, 31 July 2007, L 199/40
RRD	Revue Régionale de Droit
RS	Rechtssatz
RTD com.	Revue trimestrielle de droit commercial
Rv	Wetboek van Burgerlijke Rechtsvordering
RW	Rechtskundig Weekblad
RZ	Österreichische Richterzeitung
S.	Sentence
S. Ct.	United States Supreme Court Reporter
SAL Ann. Rev.	Singapore Academy of Law Annual Review
SALR	South African Law Reports
SC	Supreme Court
SCC	Supreme Court Cases (India); Stockholm Chamber of Commerce
SchiedsVZ	Zeitschrift für Schiedsverfahren
SchKG	Bundesgesetz über Schuldbetreibung und Konkurs (Switzerland)
SCC Rules 2017	Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce effective 1 January 2017
SCR	Supreme Court Reports (Australia, Canada, India)
S.D.Cal.	District Court for the Southern District of California
S.D.Fla.	District Court for the Southern District of Florida
S.D.Ohio	District Court for the Southern District of Ohio
S.D.Tex.	District Court for the Southern District of Texas
Sec.	Section
Sem. Jud.	La Semaine Judiciaire
SFS	Svensk författningssamling
SGCA	Singapore Court of Appeal
SGHC	Singapore High Court
SGHCR	Singapore High Court Registrar
SI	Statutory Instrument
SIAA	Singapore International Arbitration Act
SIAC	Singapore International Arbitration Centre
SIAC Rules 2016	Rules of arbitration at the SIAC effective 1 August 2016
SJZ	Schweizerische Juristen-Zeitung
SLR	Singapore Law Reports
SLR(R)	Singapore Law Reports (Reissue)
SOU	Statens offentliga utredningar
SPC	Supreme People's Court, China (最高人民法院)
Stb	Staatsblad
STJ	Superior Tribunal de Justiça (Brazil)

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Supr. Trib.	Supremo Tribunal de Justiça (Portugal)
Swiss Rules 2012	Swiss Rules of International Arbitration effective 1 June 2012
Sw.U.L.Rev.	Southwestern University Law Review
SZ	Sammlung Zivilrecht – Entscheidungen des österreichischen Obersten Gerichtshofes in Zivil- und Justizverwaltungssachen
T. Vred.	Tijdschrift van de Vrede- en Politiechters
TBH	Tijdschrift voor Belgisch handelsrecht
Tex. Int'l L. J.	Texas International Law Journal
TFEU	Treaty on the Functioning of the European Union
TGI	Tribunal de Grande Instance
TGR	Tijdschrift voor Gentse Rechtspraak
TJMG	Tribunal de Justiça de Minas Gerais
TJRJ	Tribunal de Justiça do Estado do Rio de Janeiro
TJSP	Tribunal de Justiça São Paulo
TPI	Tribunal de première instance
TPR	Tijdschrift voor Privaatrecht
Trib. Supr.	Tribunal Supremo (Mexico, Spain)
TST	Tribunal Superior do Trabalho
Tul. J. Int'l Comp. L.	Tulane Journal of International and Comparative Law
TvA	Tijdschrift voor Arbitrage
TWVR	Tijdschrift voor West-Vlaamse Rechtspraak
UK	United Kingdom
UKHL	United Kingdom House of Lords (neutral citation)
UKPC	United Kingdom Privy Council (neutral citation)
UKSC	United Kingdom Supreme Court (neutral citation)
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
Unif. L. Rev.	Uniform Law Review
UNTS	United Nations Treaty Series
U.S.	United States Supreme Court Reports
US, USA	United States (of America)
USC	United States Code
UST	United States Treaties and Other International Agreements
v.	Versus
VCLT	Vienna Convention on the Law of Treaties
VersR	Versicherungsrecht
VIAC	Vienna International Arbitral Center
Vienna Rules 2018	Vienna Rules and Vienna Arbitration Rules effective 1 January 2018
viz.	videlicet
Vol.	Volume
WASC	Western Australia Supreme Court
wbl	Wirtschaftsrechtliche Blätter
WIPO	World Intellectual Property Organization
WL	Westlaw Transcripts
WLR	Weekly Law Reports
WM	Wertpapiermitteilungen
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie
Yale J. Int'l L.	Yale Journal of International Law
YCA	Yearbook Commercial Arbitration
YIA	Yearbook International Arbitration
ZDAR	Zeitschrift der Deutsch-Amerikanischen Juristenvereinigung
ZEV	Zeitschrift für Erbrecht und Vermögensnachfolge
ZfRV	Zeitschrift für Rechtsvergleichung
ZIP	Zeitschrift für Wirtschaftsrecht
ZPO	Zivilprozessordnung (Austria, Germany, Switzerland)
ZZP	Zeitschrift für Zivilprozess

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