

## ARBITRATION WORLD

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### FROM THE EDITORS

Welcome to this 32nd edition of *Arbitration World*.

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We are very pleased to include in this edition, as part of our series of guest contributions from expert witnesses, an article by Howard Rosen and Noel Matthews of FTI Consulting, regarding how "country risk" can affect the value of investments and the approach towards this issue in damages calculations in international arbitration.

We review recent developments in arbitration in Qatar, including court decisions regarding the validity of arbitration agreements and the enforcement of arbitration awards. As part of a series of articles related to so-called "Bermuda Form" liability insurance policies, we look at the process of formation of the arbitral tribunal in Bermuda Form policies and whether such insurance policies may conflict with certain U.S. state laws regulating insurance.

We report on a recent decision of the English Commercial Court regarding enforcement of a tribunal's order for a provisional payment, as well as a recent UK Privy Council decision on the meaning and effect of permissive arbitration clauses. We review the new mediation rules of the Vienna International Arbitration Centre (VIAC) and report on the work of an International Bar Association (IBA) Subcommittee in assessing how states have defined the public policy exception under the New York Convention.

We review some recent decisions of the Federal Supreme Court of Switzerland on arbitration award set-aside applications in the past year. We are also very pleased to include a guest contribution from Ben Beaumont, a barrister from Thomas More Chambers and Chairman of the Arbitration Club, regarding a recent decision of the Federal Supreme Court of Switzerland on the role of a Dispute Adjudication Board (DAB) under the FIDIC Red Book regime.

We also provide our usual update on developments from around the globe in international arbitration and investment treaty arbitration.

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

## IN THIS ISSUE:

### **ARBITRATION NEWS FROM AROUND THE WORLD**

*by Sean Kelsey (London)*

Our usual survey of key recent developments in international arbitration.

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### **WORLD INVESTMENT TREATY ARBITRATION UPDATE**

*by Wojciech Sadowski and Patrycja Treder (Warsaw)*

The latest news from the investor-state arbitration scene.

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### **UNPACKING THE DISCOUNT RATE – PART 2**

*by Howard Rosen and Noel Matthews (FTI Consulting)*

As part of our series of guest contributions from expert witnesses, in part two of a two-part article, FTI Consulting explores how "country risk" can affect the value of investments and the approaches taken to incorporate this risk in damages calculations in international arbitration.

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### **QATAR – THE SHIFTING SANDS OF ARBITRATION**

*by Matthew Walker and Joseph Lee (Doha)*

*A review of recent developments in the progress of arbitration in Qatar, including recent court decisions related to the validity of arbitration agreements, the enforcement of arbitration awards, and the prospect of a new arbitration law.*

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## **BERMUDA FORM ARBITRATIONS FROM THE POLICYHOLDER'S POINT OF VIEW: TRIBUNAL FORMATION AND "FREQUENT FLYERS"**

*by John M. Sylvester (Pittsburgh)*

*As part of a series of articles related to so-called "Bermuda Form" liability insurance policies, this article looks at the process of formation of the arbitral tribunal in Bermuda Form policies and the risk of the process being tilted in favor of insurers.*

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## **TILTING THE BALANCE: THE EXPANDING USE OF PRO-INSURER ARBITRATION CLAUSES IN INTERNATIONAL INSURANCE POLICIES**

*by Thomas E. Birsic (Pittsburgh) and Max Louik (Pittsburgh)*

*A commentary on whether "Bermuda Form" liability insurance policies may conflict with certain U.S. state laws regulating insurance.*

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## **ENGLISH HIGH COURT ENFORCES TRIBUNAL'S PROVISIONAL ORDER TO PAY US\$100 MILLION**

*by John Gilbert (London)*

*A report on a recent decision of the English Commercial Court regarding the enforcement of a tribunal's order for a provisional payment, including considerations of issues of state immunity.*

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## **I'LL ARBITRATE IF I WANT TO: THE PRIVY COUNCIL'S RECENT DECISION ON THE MEANING AND EFFECT OF PERMISSIVE ARBITRATION CLAUSES**

*by Zaib Malik (London)*

*A review of a recent decision of the UK Privy Council regarding the meaning and effect of a permissive arbitration clause (a clause that appears to give the parties concerned an option to resolve disputes through arbitration)*

*rather than requiring that they do so).*

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## ***A LOOK AT THE NEW VIENNA MEDIATION RULES***

*by Ian Meredith (London) and Hendrik Puschmann (London/Frankfurt)*

*A commentary on the new mediation rules of the Vienna International Arbitration Centre (VIAC) which took effect on 1 January 2016.*

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## ***UNDERSTANDING THE PUBLIC POLICY EXCEPTION UNDER THE NEW YORK CONVENTION***

*by John Kelly and William KQ Ho (Melbourne)*

*A report on the project undertaken by an International Bar Association (IBA) Subcommittee in seeking to better understand how various states have defined the public policy exception to recognition and enforcement of arbitration awards under the New York Convention.*

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## ***A ROUNDUP OF RECENT ARBITRATION DECISIONS OF THE SWISS SUPREME COURT***

*by John Magnin (London) and Hendrik Puschmann (London/Frankfurt)*

*A review of three noteworthy decisions of the Federal Supreme Court of Switzerland on arbitration award set-aside applications in the past year.*

*To view this article, [click here](#).*

## ***FIDIC DISPUTE ADJUDICATION BOARD REFERRALS: LESSONS FROM A LANDMARK SWISS COURT JUDGMENT***

*by Ben Beaumont (Thomas More Chambers)*

*A review of a recent decision of the Federal Supreme Court of Switzerland on the role of a Dispute Adjudication Board (DAB) under the FIDIC Red Book regime and when parties do not need to formally commence DAB proceedings before referring a dispute to arbitration.*

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