International Arbitration Law Library Arbitration In Complex International Contracts International Arbitration Law Library Series Set

Is privity of contract the reason why investor-state dispute settlement (ISDS) is open to critics, or could it contribute to solving the system ' s legitimacy crisis? Privity of contract essentially means that a subject must be a party to a contract, in order to acquire rights and assume obligations, to sue and be sued under that contract. Privity of contract came to land on the shores of ISDS and this has at least on one occasion been described as an ' original sin ' . Arbitral tribunals often need to decide whether they have jurisdiction in cases where a party to the investment contract is not the claimant but a related entity, or not the central government, but a state agency or state-owned enterprise. In light of the deep interconnection between, on the one hand, the criticism today surrounding investment treaty arbitration – be it called judicial activism and regulatory chill, or be it called abuse of law and indirect claims – and, on the other hand, the domains where privity of contract applies, this book ' s original and far-reaching analysis clearly lays out, via an in-depth examination of relevant case law, a possible use of the doctrine that can contribute to leading ISDS out of the crisis. The study ' s conclusions respond with thoroughly researched authority to such key questions as the following: In which domains of international investment arbitration does the notion of privity of contract operate, and with what effects? How are states and arbitral panels reacting to the persisting unresolved issues raised by the increasing pertinence of this legal doctrine? What solutions are advisable in the midst of the current criticisms surrounding ISDS? The author finds that the doctrine of privity of contract finds application in heterogeneous scenarios, from decisions on jurisdiction where there are forum selection clauses in investment contracts or fork-in-the-road provisions in investment treaties, to consolidation, counterclaims and umbrella clause claims. She proposes a flexible interpretation of the doctrine of privity of contract as a guiding principle arbitral tribunals should consider along with other factors (inter alia the tightness of the relation between the investor and its subsidiary and the host state ' s involvement in the organization and function of agencies or state-owned enterprises). The book ' s thorough and extensive examination of investment arbitration case law draws comparisons with other international adjudicatory bodies and identifies the most actual and compelling unresolved legal issues. Appendices include lists of many of the arbitration cases, international judgments and national judgments discussed. As a constructive contribution to the current debate, this enquiry is an extraordinary achievement. No other study has conducted such thorough research on the application of privity of contract in investment treaty arbitration. It will be of great interest to arbitration lawyers, arbitrators, foreign investors, host states and scholars in all areas of international arbitration and dispute settlement.

International Arbitration: Law and Practice (Third Edition) provides comprehensive and authoritative coverage of the basic principles and legal doctrines, and the practice, of international arbitration. The book contains a systematic, but concise, treatment of all aspects of the arbitral process, including international arbitration agreements, international arbitral proceedings and international arbitral awards. The Third Edition guides both students and practitioners through the entire arbitral process, beginning with drafting, enforcing and interpreting international arbitration agreements, to selecting arbitrators and conducting arbitral proceedings, to recognizing, enforcing and seeking to annul arbitral awards. The book is written in clear, accessible language, suited for both law students and non-specialist practitioners, as well as more experienced readers. This highly regarded work addresses both international commercial arbitration and the related fields of investment and state-to-state arbitration and is essential reading for any student of international arbitration and any practitioner seeking a complete introduction to the field. The Third Edition has been comprehensively updated to include recent legislative amendments, judicial decisions and arbitral awards. Among other things, the book provides detailed treatment of the New York Convention, the UNCITRAL Model Law on International Commercial Arbitration, all leading institutional arbitration rules (including ICC, SIAC, LCIA, AAA and others), the ICSID Convention and ICSID Arbitration Rules, and judicial decisions from leading jurisdictions. The Third Edition is integrated with the author ' s classic International Commercial Arbitration and with the online Born International Arbitration Lectures, enabling students, teachers and practitioners to explore particular topics in more detail. About the Author: Gary B. Born is the world ' s leading authority on international arbitration and litigation. He has practiced extensively in both fields in Europe, the United States, Asia and elsewhere. He is the author of International Commercial Arbitration (Kluwer Law International 3rd ed. 2021), International Arbitration and Forum Selection Agreements: Drafting and Enforcing (Kluwer Law International 6th ed. 2021), International Commercial Arbitration: Cases and Materials (Aspen 3rd ed. 2021) and International Civil Litigation in United States Courts (Aspen 6th ed. 2018).

The term ' attribution ' refers to the means by which it is ascertained whether the State is involved in a dispute governed by international law. The notion of attribution is primarily used to determine if the State is responsible for the wrongful conduct of persons or entities with links to the State. In the context of international investment law, the exponentially growing arbitration jurisprudence arising from international investment agreements (IIAs), especially bilateral investment treaties (BITs), reflects the extent and risk of attribution determined in investment relationships that often involve State enterprises. This book, the first in-depth study of the uses of attribution in international investment law, provides a deeply informed analysis of the treatment of attribution in applicable legal instruments and investment arbitration jurisprudence worldwide. The analysis responds to such questions as the following: - When is a conduct attributable to the State for the purposes of its responsibility under international investment law? - What legal instruments govern the question of attribution under international investment law? - In what circumstances is the State the proper party to a contract entered into by a State-owned enterprise with an investor protected by an investment treaty? - How can State policymakers minimise their international law responsibility within the existing framework of attribution in international investment law? - How can investors maximise their protection within the existing framework of attribution in international investment law? Also covered are the procedural treatment of attribution by investment tribunals, explication of such broad-brush wordings as ' elements of governmental authority ' and ' under the direction or control ' , and the impact of the rise of State-owned enterprises as investors. Ongoing and future trends in the jurisprudence are also taken into account. A one-stop reference on the question of attribution in international investment law, the analysis extracts identifiable commonalities among instruments and rulings, turning them into useful practice tools. This book will prove invaluable for practitioners advising States or investors in investment disputes. More generally, this book will be welcomed by arbitrators, in-house counsel for companies doing transnational business and international arbitration centres, as well as by academics in international arbitration.

The School of International Arbitration of the Centre for Commercial Law Studies at Queen Mary University of London celebrated its 30th anniversary in April 2015 with a major conference featuring presentations by 35 international arbitration practitioners and scholars from many countries representing a variety of legal systems. This volume has emerged from that conference. What is striking is not only the range and diversity of the topics examined but also the emergence of new subjects for examination, demonstrating that arbitration law and practice do not stand still but are constantly evolving. The issues and topics covered include the following: - Evolution of case law and practice in international arbitration; - The concept and autonomy of arbitral award; - Parties in international arbitration; - Parallel proceedings in international arbitration; - Court review of arbitration awards; - Geographic expansion of international arbitration; - Counsel regulation and conflicts disclosures; - The use of technology in international arbitration; - Teaching and research in international arbitration. This superbly organised and edited volume, like earlier conference volumes from the School of International Arbitration, is sure to be welcomed and acclaimed, and like them will prove of lasting value.

Force Majeure and Hardship Under General Contract Principles

Arbitration Law

To Probe or Not to Probe

Rules of Evidence in International Arbitration

The Forces of Economic Globalization

An Annotated Guide

International Arbitration and the COVID-19 Revolution Edited by Maxi Scherer, Niuscha Bassiri & Mohamed S. Abdel Wahab The impact of the COVID-19 pandemic on all major economic sectors and industries has triggered profound and systemic changes in international arbitration. Moreover, the fact that entire proceedings are now being conducted remotely constitutes so significant a deviation from the norm as to warrant the designation 'revolution'. This timely book is the first to describe and analyse how the COVID-19 crisis has redefined arbitral practice, with critical appraisal from well-known practitioners of the pandemic's effects on substantive and procedural aspects from the commencement of proceedings until the enforcement of the award. With practical guidance from a variety of perspectives – legal, practical, and sector-specific – on the conduct of international arbitration during the COVID-19 pandemic and beyond, the chapters present leading practitioners' insights into the unprecedented and multifaceted issues that arise. They provide expert tips and challenges in such practical matters as the following: preventing and resolving disputes of particular types – construction, energy, aviation, technology, media and telecommunication, finance and insurance; arbitrator appointments; issues of planning, preparation and sample procedural orders; witness preparation and cross-examination; e-signature of arbitral awards; setting aside and enforcement proceedings; and third-party funding. Also included are an empirical survey of users' views and an overview of how the COVID-19 revolution has affected the arbitration rules of leading arbitral seats. With this timely and practical book, arbitration practitioners and scholars will gain up-to-date knowledge of sector-specific challenges brought about by the COVID-19 pandemic and approach arbitration proceedings with an understanding of the most important legal and practical considerations during the crisis and beyond.

The rise of international investment arbitration has resulted in the emergence of a number of intriguing legal and political challenges. One of those is the question of whether or not arbitral awards may constitute investments pursuant to existing investment treaties. In approaching the problem, it is the interconnection between theory and practice that delivers solutions. This book presents the first detailed analysis of the existing tribunals' approaches to date. In examining the principles of treaty interpretation, their application in arbitral practice, shortcomings and their ramifications and possible routes to improvement, the book addresses the following questions: - What is the foundation of interpretation in public international law and when is it adequately carried out? - Can arbitral awards constitute investments, offering relief from frustrated enforcement attempts? - Is there a trend of convergence of commercial and investment arbitration? - Do respective interpretative outcomes stem from adequate interpretation? - What are the ramifications, if interpretation is not fully adequate? - What are the feasible routes to greater interpretive discipline? The book is mindful of the underlying public international law principles, such as state sovereignty and the increasing legal and political dynamics of international investment law. This is the first in-depth treatise on arbitral awards' qualification as investments within international investment law. Its detailed analysis of the interpretive approaches, their foundation and consequences will, from a theoretical and practical point of view, prove of great value to international tribunals, counsel and sovereign entities. Maximilian Clasmeier has gained international arbitration experience in the dispute resolution practices of international law firms in Frankfurt, Düsseldorf and Singapore and worked for the World Bank Group in Washington, D.C.

Because document production can discover written evidence that would otherwise not be available, it is often the key to winning a case. However, document production proceedings can be a costly and time-consuming exercise, and arbitral awards in particular are often challenged on grounds that relate to document production orders. The task of balancing the conflicting interests of the parties in this context is a major responsibility of arbitral tribunals. This book's analysis focuses on whether there exist legal principles on which arbitrators should establish rules of document production in both civil law and common law countries, and shows how international arbitration is affected. The author examines the relevant discretion of arbitral tribunals under US, English, Swiss, German, and Austrian law, and under nine of the most important sets of institutional rules, including the ICC Rules, the LCIA Rules, and the Swiss Rules. The presentation mines case law and legal literature for concepts based on the common expectations of the parties, the legitimate expectations of a party, the duty to balance different procedural expectations of the parties, the presumed intent of the parties, the underlying hypothetical bargain, implied terms, and the arbitrators' discretion. Among the topics and issues investigated are the following: - procedural rules on document production versus procedural flexibility; - how arbitral tribunals can modify the IBA Rules on a case-by-case basis; - discretion granted by legislation in each country covered; - electronic document production; - how to deal with privilege and confidentiality objections; - how to formulate or answer document production requests; - effective sanctions in case of non-compliance with procedural orders of the arbitral tribunal; - what grounds for annulment and non-enforcement a losing party can raise in what countries. Perhaps the greatest benefit of the book is the inclusion of model clauses, commensurate with both civil law and common law expectations. The author explicates the advantages and inconveniences of each model clause, and clarifies the influence of each clause on the efficiency of the proceedings and the enforcement risk. For practitioners, the book not only gives counsel a thorough overview of possible arguments for and against document production, but also assists arbitrators find a way through the jungle of opinions on the interpretation of the IBA Rules. Legal academics will appreciate the author's deeply informed analysis and commentary and the book's contribution to increasing the predictability of arbitral decisions on document production and showing how issues in dispute can be narrowed by tailor-made rules, thus helping to raise the efficiency and reduce the costs of arbitral proceedings.

Throughout the work, introductions and conclusions serve as overviews of particular components of the study, and set out the observations drawn. An overall summary and conclusion section crystallizes the points made

Multiparty, Multicontract, Multi-issue and Class Actions

International Arbitration in Italy

Complex Arbitrations

Attribution in International Investment Law

Arbitral Awards as Investments

International & Comparative Perspectives

Provides an analysis of the issues arising from multiparty-multicontract arbitrations, including those involving States and groups of companies. This work analyses theories on the basis of which courts and arbitral tribunals determine who are parties to the arbitration clause; and whether an arbitration clause may be extended to non-signatories.

Now in a fully updated second edition, Rules of Evidence in International Arbitration: An Annotated Guide remains an invaluable reference for lawyers, arbitrators and in-house counsel involved in cross-border dispute resolution. Drawing on current case law, this book looks at the common issues brought up by the evidentiary procedure in international arbitration. Features of this book include: An international scope, which will inform readers from around the world A focus on evidentiary procedure, with extensive case-based commentary and examples Extensive annotations, which allow the reader to locate key precedents for use in practice This book gives essential insight into best practice for practitioners of international arbitration. Readers of this publication will gain a fuller understanding of accepted solutions to difficult procedural issues, as well as the fundamental due process considerations of the use of evidence in international arbitration.

Most books on international commercial arbitration approach the subject through legal theory supported by anecdotal evidence. This remarkable book is distinguished by its focus on the application of quantitative empirical research to the study of international arbitration. It collects, together with commentary, the existing empirical literature on the subject, and also presents several studies published here for the first time. Beginning with a basic overview of the methods of empirical research (surveys, observational studies, experimental studies), the book goes on to reprint the existing empirical studies under six headings: why parties agree to arbitrate; arbitration clauses; arbitral procedures; arbitrator selection; rules of decision and applicable law; and, arbitration awards. Written in an easily accessible, non-technical manner, Towards a Science of International Arbitration provides the starting point for future empirical research on international arbitration by collecting the existing empirical literature in one place and by suggesting possible topics for research. It will be of inestimable value to lawyers and others involved in international dispute resolution, whether as arbitrators, parties, party representatives, or in-house counsel, as well as to academics interested in methods of resolving disputes in international commerce.

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 and– 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.

The Law, Economics and Culture of Arbitration

Exemption for Non-performance in International Arbitration

Collected Empirical Research

Environmental Interests in Investment Arbitration

The Public Order Exception in International Trade, Investment, Human Rights and Commercial Disputes

The Roles of Psychology in International Arbitration

In the process of resolving disputes, it is not uncommon for parties to justify actions otherwise in breach of their obligations by invoking the need to protect some aspect of the elusive concept of public order. Until this thoroughly researched book, the criteria and factors against which international dispute bodies assess such claims have remained unclear. Now, by providing an in-depth comparative analysis of relevant jurisprudence under four distinct international dispute resolution systems – trade, investment, human rights and international commercial arbitration – the author of this invaluable book identifies common core benchmarks for the application of the public order exception. To achieve the broadest possible scope for her analysis, the author examines the public order exception ' s function, role and application within the following international dispute resolution systems: relevant World Trade Organization (WTO) agreements as enforced by the organization ' s Dispute Settlement Body and Appellate Body; international investment agreements as enforced by competent Arbitral Tribunals and Annulment Committees under the International Center for Settlement of Investment Disputes; provisions under the Inter-American Convention of Human Rights and the European Convention of Human Rights as enforced by the Inter-American Court of Human Rights and the European Court of Human Rights, respectively; and the New York Convention as enforced by national tribunals across the world. Controversies, tensions and pitfalls inherent in invoking the public order exception are elucidated, along with clear guidelines on how arguments may be crafted in order to enhance prospects of success. Throughout, tables and graphs systematize key aspects of the relevant jurisprudence under each of the dispute resolution systems analysed. As an immediate practical resource for lawyers on any side of a dispute who wish to invoke or strengthen a public order exception claim, the book ' s systematic analysis will be welcomed by lawyers active in WTO disputes, international investment arbitration, human rights law or enforcement of foreign arbitral awards. Academics and policymakers will find a signal contribution to the ongoing debate on the existence, legal basis, content and functions of the transnational public order.

This book analyses how arbitrators make rules that guide, constrain, and define the process and substance of international arbitration. Providing a thorough and multidisciplinary analysis of the actors, process, and outcome of arbitral lawmaking, the study shows how arbitrators create principles of law through consistent arbitral decision-making and through interacting with other members of the arbitral community. This book investigates and responds to the following questions: - What is the relationship between international arbitration and the law and courts of the seat? - What is the role of international tribunals in assisting and controlling investment arbitration? - What is the scope of arbitrators ' freedom in decision-making? - What constraints limit arbitrators ' decision-making and contribute to consistency? - Is international arbitration capable of paying deference to past arbitral decisions? - Which rules have arbitrators created in procedural and substantive matters? - What is the role and status of consistent arbitral decisions? - Is there an arbitral legal system? The answers to these questions are drawn from actual arbitral decisions made available to the public, clarifying important issues about jurisdiction, procedure, applicable law, interpretation of substantive rules and instruments, and remedies. This is the first overarching study of whether and to what extent international commercial, and investment arbitrators create norms and even generate a legal system. As such, it will be of immeasurable and lasting value to arbitrators, practitioners, scholars, arbitral institutions, and international organizations worldwide, for all of whom it will not only clarify our understanding of arbitral decision-making and arbitrator-made rules, but also foster transparency and accountability in arbitral decision-making

International Arbitration Law Library Volume 59 The eastward shift in international dispute resolution has already involved initiatives not only to improve support for international commercial arbitration (ICA) and investor-state dispute settlement (ISDS) but also to develop alternatives such as international commercial courts and mediation. Focusing on these initiatives and their accompanying case law and trends in the Asia-Pacific region, this invaluable book challenges existing procedures and frameworks for cross-border dispute resolution in both commercial and treaty arbitration. Specially assembled for this project, an outstanding team of experienced and insightful arbitrators and scholars describes pertinent developments including: ICA and ISDS in the context of China ' s Belt and Road Initiative; the Singapore Convention on Mediation; the shift to virtual hearings and other challenges from the COVID-19 pandemic; mistrust of the application of the rule of law in certain East Asian jurisdictions; growing public concern over ISDS arbitration; tensions between confidentiality and transparency; and potential regional harmonisation of the public policy exception to arbitral enforcement. The contributors chart evolving practices and high-profile cases to make informed observations about where changes are needed, as well as educated guesses about the chances of reforms being successful and the consequences if they are not. The main jurisdictions covered are China, Hong Kong, Japan, Malaysia, India, Australia and Singapore. The first in-depth study of recent trends in dispute resolution practice related to business in the Asia-Pacific region, the book ' s practical analysis of new resources for dealing with the increasing competition among countries to become credible regional dispute resolution hubs will prove to be of great value to specialists in the international business law sector. Lawyers will be enabled to make informed decisions on which venue and dispute resolution methods are the most suitable for any specific dispute in the region, and policymakers will confidently assess emerging trends in international dispute resolution policy development and treaty-making.

Arbitrating cross-border business disputes has been common practice in Italy since centuries. It is no wonder, then, that Italian arbitration law and jurisprudence are ample and sophisticated. Italian courts have already rendered thousands of judgments addressing complex problems hidden in the regulation of arbitration. Italian jurists have been among the outstanding members of the international arbitration community, starting from when back in 1958, Professor Eugenio Minoli was among the promoters of the New York Convention. Being Italy the third-largest economy in the European Union and the eighth-largest economy by nominal GDP in the world, it also comes as no surprise that Italian companies, and foreign companies with respect to the business they do in the Italian market, are among the main ' users ' of international arbitration, nor that Italy is part to a network of more than 80 treaties aimed to protect inbound and outbound foreign direct investments and being the ground for investment arbitration cases. Moreover, in recent years, Italy has risen to prominence as a neutral arbitral seat, in particular for the settlement of ' intra-Mediterranean ' disputes, also thanks to the reputation acquired by the Milan Chamber of Arbitration which has become one of the main European arbitral institutions. This book is the first commentary on international arbitration in Italy ever written in English. It is an indispensable tool for arbitrators, counsel, experts, officers of arbitral institutions and judges who happen to be involved in arbitral proceedings or arbitration-related court proceedings somewhat linked to the Italian legal system, either because Italy is the seat of the arbitration, the Italian jurisdiction has been ousted by a foreign-seated arbitration, the assistance of Italian courts is sought for the granting of interim measures or the enforcement of a foreign award or the arbitration results from a multilateral or bilateral investment protection treaty to which Italy is a party. This book may also be of general interest for scholars and practitioners of international arbitration at large to the extent that it deals with the ' theory ' of international arbitration and illustrates original solutions offered by Italian arbitration law to various complex issues, such as: the potential conflicts (and required balance) between party autonomy and State sovereignty in the governance of arbitrations; the relationship between the New York Convention and the legal system of the State of the arbitral seat; the potential impact on cross-border arbitrations of insolvencies, human rights, or European Union law; the arbitrability of corporate disputes; the extension of arbitration agreements to ' necessary parties ' . Appendixes include an English translation of the main provisions of Italian law relevant to arbitration, a list of the investment protection treaties to which Italy is a party, and an English version of the Rules of Arbitration of the Milan Chamber of Arbitration. The author, who is full professor of international law, name partner of ArbLit (the first Italian boutique focusing on cross-border dispute settlement) and the current Italian member of the ICC Court of Arbitration, has written the book aiming to combine his academic background with his long-standing experience as counsel and arbitrator.

The Functions of Arbitral Institutions

Towards a Science of International Arbitration

Online Dispute Resolution

Provisional Measures in International Commercial Arbitration

Confidentiality in International Commercial Arbitration

Treaty Interpretation and the Dynamics of International Investment Law

Despite its many distinguished proponents over time, ex aequo et bono – the idea of deciding disputes on the basis of what an adjudicator regards as fair and equitable – has failed to take hold in international commercial arbitration (ICA). Formalisation and fossilisation of arbitral procedure, as manifested in the increasing use of litigation-style practice, unfortunately reign instead. This bold and challenging book argues that parties to an arbitration should be more willing for their cross-border disputes to be decided (and arbitrators should be more prepared to decide those disputes) in accordance with broad principles of equity and fairness, rather than by strict adherence to technical rules of law. Putting forward suggestions based on extensive research and doctrinal considerations, this book invites us to confront what ICA was supposed to be, what it now is and what it can be. In particular, Dr Teramura discusses how, by resorting to ex aequo et bono, arbitrators can: construe contractual terms, including the limits; apply trade usages; deal with mandatory rules of a given forum or place of performance; minimise the cost and length of time that arbitration takes; avoid the abuse of discretion; and ensure predictable results. The book examines significant differences in the way that ex aequo et bono arbitration is understood among various state and international institutions. It attempts to identify a 'common core' of universally accepted concepts underlying those different understandings. The book argues that ex aequo et bono has the potential to reform ICA without undermining its positive aspects. Along the way, it discusses the implications of ex aequo et bono arbitration on the now widely used UNCITRAL Model Law on ICA. It should thus appeal to lay business persons and commercial law practitioners who are looking for an economical and efficient way to solve business disputes within a globalised arbitration framework.

Pursuing international arbitration proceedings can be costly. As a result, it is becoming increasingly common for parties to transfer the costs and risks associated with international arbitration disputes to third-party funders. In recent years, institutional speciality providers of capital for dispute resolution - litigation funders - have entered the market for international arbitration claims. International arbitral procedures involving parties supported by litigation funders and other third-party funders have become a reality - one that has left many in the arbitration community puzzled until now. In this book, the author describes and analyses the role of third-party funding, notably litigation funding, in the context of international arbitration, taking into account contractual, industry-related, economic, empirical, ethical, regulatory, and procedural aspects. The book's focus is on procedure - that is, to examine which issues are likely to arise in the course of international arbitral proceedings involving funded parties, and to provide guidance on how these issues can be solved. Among these crucial issues covered are the following: - disclosure of third-party funding; - privilege protection of documentary evidence; - jurisdictional issues; - impartiality and independence of arbitrators; - confidentiality; - security for costs; and - awarding of costs. Each chapter offers concrete guidelines on how to deal with the respective procedural issues and situations. As the most comprehensive and systematic study of third-party funding in international commercial and investment arbitration to date, this book will be welcomed by professionals in the arbitral community worldwide as well as by funders, funded parties, corporate counsel, and academics.

The system of international arbitration is built on private contractual relations, yet has been endorsed by governments around the world as a fair and reliable alternative to litigation in State courts. As a private process, however, its authority and legitimacy derive entirely from the views and actions of those involved in the arbitral process, whether arbitrators, counsel, or parties. It is, though increasingly clear that psychological factors complicate, and in some cases radically change, every arbitral proceeding. In this context, psychological insights are crucial for understanding how international arbitration genuinely operates, and whether the legal framework currently applied to it is well-suited to achieving the aims of ensuring a fair and reliable dispute resolution procedure. This is the first book to focus on this important issue: the insights into international arbitration that can be gained from contemporary psychology. With contributions from nineteen internationally known figures in their fields – arbitrators, mediators, lawyers, law professors, psychology professors, psychologists – and drawing from a longer term project on the role of psychology in arbitration, this ground-breaking volume addresses a range of topics, including the following: - the decision-making processes of arbitrators; - the ability of arbitration to serve as a genuine dispute resolution mechanism; - the impact of particular procedures on the arbitral process; - bias, self-deception and vested interests in judgment and decision-making; - the role of arbitrators in managing the arbitral process; - cultural differences in the evaluation of arguments; - psychological influences on witness testimony; - the impact of tribunal composition on arbitral decision-making; - the influence of arbitration's professional context on arbitrators and legal counsel; and - methods for arbitrators and legal counsel to more effectively manage the arbitral process. Informed by the behavioural insights in these essays, counsel and arbitrators will be enabled to think critically about the underlying assumptions and the potential behavioural effects of a prospective arbitration, while individuals researching arbitration will gain a greater understanding of the psychological context in which every arbitration occurs. This book meets the increasingly recognized need for understanding the role of psychology in arbitral proceedings, and forms an indispensable foundation for subsequent work in this area. Its innovative and forward-thinking analysis will be of immeasurable value to the international arbitration community, as well as to institutions supporting arbitration and to academics in the field.

While thousands of cross-border disputes are successfully resolved each year through institutional arbitration, there appears to be little understanding of the functions exercised by arbitral institutions and their impact on the proceedings they administer. Much like the user of a computer may operate, with relative success, a machine which he does not fully comprehend, users of institutional arbitration have for many decades resolved their disputes successfully through institutional arbitration without fully understanding the precise nature of the functions of what is a key player in the process. This book rectifies this paradoxical gap. It offers a clear yet nuanced overview of the diverse and complex reality of institutional arbitration, while challenging the assumptions conventionally held as to the role of arbitral institutions. This book is the product of a systematic study of the activities performed by over forty leading international arbitration institutions worldwide in their administration of cases (including the ICC, LCIA, ICDR, SCC, SIAC, HKIAC, JAMS, CIETAC, KLRCA, DIS, DIA, NAI, CEPANI etc.). This book also examines a wealth of court decisions and bibliographical sources from the leading civil law and common law jurisdictions (e.g., France, England & Wales, the United Sates, Switzerland, Germany). This book is invaluable to academics and practitioners interested in furthering their theoretical and practical understanding of institutional arbitration and arbitral institutions.

China-Africa Dispute Settlement

The Evolution and Future of International Arbitration

Challenges for Contemporary Justice

Sources and Strategies

Ex Aequo et Bono as a Response to the 'Over-Judicialisation' of International Commercial Arbitration

Pervasive Problems in International Arbitration

Lawyers involved in international commercial transactions know well that unforeseen events affecting the performance of a party often arise. Not surprisingly, exemptions for non-performance are dealt with in a significant number of arbitral awards. This very useful book thoroughly analyzes contemporary approaches, particularly as manifested in case law, to the scope and content of the principles of exemption for non-performance which are commonly referred to as 'force majeure' and 'hardship.' The author shows that the 'general principles of law' approach addresses this concern most effectively. Generally accepted and understood by the business world at large, this approach encompasses principles of international commercial contracts derived from a variety of legal systems. It's most important 'restatements' are found in the 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) and the UNIDROIT Principles of International Commercial Contracts (UPICC). Establishing specific standards and "case groups" for the exemptions under review, the analysis treats such recurring elements as the following: contractual risk allocations; unforeseeability of an impediment; impediments beyond the typical sphere of risk and control of the obligor; responsibility for third parties (subcontractors, suppliers); legal impediments (acts of public authority) and effect of mandatory rules; involvement of states or state enterprises; interpretation of force majeure and hardship clauses; hardship threshold test; frustration of purpose; irreconcilable differences; comparison with exemptions under domestic legal systems (impossibility of performance, frustration of contract, impracticability) The book is a major contribution to the development of the use of general principles of law in international commercial arbitration. It may be used as a comprehensive commentary on the force majeure and hardship provisions of the UPICC, as well as on Art. 79 of the CISG. In addition, as an insightful investigation into the fundamental question of the limits of the principle of sanctity of contracts, this book is sure to capture the attention of business lawyers and interested academics everywhere.

Economic Analysis of the Arbitrator's Function Bruno Guandalini Arbitration has become an important market, where arbitrators are rational economic agents maximizing their utility. Although this is self-evident, it is rarely discussed. This penetrating book is the first to comprehensively analyze the market for arbitrators and arbitrators' economic role within it. In great depth, the author tackles such salient issues as the following: effect of perceived inefficiencies and high costs on arbitration legitimacy; alleged commercialization of the arbitrator's function; possible ethical problem raised by financial remuneration for rendering justice; what motivates a person to arbitrate; market for arbitrators' functioning and failures, providing a better understanding of how actors could behave in such a specific market; structural and artificial entry barriers; effect of an arbitrator's strategic behavior on the arbitrator's function; limitations on an arbitrator's rationality; and preventing and correcting these limitations. Numerous references to customs and procedures in major arbitral jurisdictions and to international laws and conventions affecting the efficiency of the arbitrator's function are included. Pursuing a non-prescriptive analysis, the author draws on the discipline of law and economics, rational choice theory, behavioral economics, and psychological work on bounded rationality. Understanding the arbitrator's function as a legal institution that is influenced by the market, this pioneer in developing and systematizing the study of the market for arbitrators and how it works will prove of inestimable value to all stakeholders in the arbitration market. Arbitrators, policymakers, regulators, and academics will be enabled to open the way to a more efficient market for arbitrators and betterment in arbitration worldwide.

This is the second volume to appear in the new and already successful AIJA Law Library series. This volume has been prepared by members of the AIJA Standing Commission on International Arbitration under the editorship of Peter Eijsvoogel. It is intended to be a reference work for practitioners in the field of international arbitration, both counsellors and arbitrators. Twenty national reports from major jurisdictions outline the general character of the legal system in respect of ADR procedures, sources of procedural rules for arbitration, law and practice on documentary evidence and submissions, testimonial evidence and the involvement of experts. In addition, the book contains a detailed analysis of the legal rules pertaining to the taking of evidence in both civil and common law systems, and highly practical contributions relating to deposition skills.

Due to the ongoing recent expansion of public interest issues worldwide, the state's right to regulate has been recaptured as a prominent concept in international investment law. The fair and equitable treatment (FET) standard provision in the text of an international investment agreement (IIA) has become a detailed clause clarifying the specific obligations of a state towards an investor under the FET standard. However, striking the right balance between the interests of host states and investors in these new treaty formulations has proved to be challenging. This book greatly clarifies the field by offering the in-depth analysis of the application of the state's right to regulate in relation to FET standard provisions in IIAs and to decisions by arbitral tribunals in FET cases. Recognising that the role of tribunals is to balance the state's public interests and the interests of the investor when interpreting and applying the FET standard, the author pursues such seminal issues and topics as the following: the legitimacy of the objective of the state's measure; obligations and responsibilities of investors towards a host state; the nature and impact of a change to a national regulatory framework; special economic and sociopolitical circumstances in a host state; and due diligence and risk assessment as a condition for the protection of an investor's legitimate expectations. Multiple IIAs concluded by the OECD Member States, as well by Russia and China between the developing countries, and the prominent investment law cases on the FET standard are examined in detail. The analysis pays particular attention to how investment jurisprudence in FET cases has been reflected in such new IIAs as the Comprehensive Economic and Trade Agreement between the European Union (EU) and Canada (CETA), the EU-Vietnam FTA and the EU-Singapore FTA. These case studies demonstrate the evolution of the IIAs' FET standard provisions and how they balance the application of the FET standard and the state's right to regulate. Suggestions are provided for drafting formulations of the FET standard that can contribute to achieving such a balance. In the clear light it sheds on the legal conditions under which states may regulate in the public interest and its contribution to the reforms that are currently taking place in the field of international investment law, this book constitutes an exemplary framework to evaluate investment decisions on the FET standard and the right to regulate. It is sure to prove extremely useful for practitioners who work on investment cases, policymakers involved in negotiating and drafting of IIAs, policy advisors of governmental and non-governmental organisations and academics in international investment law.

International Arbitration: Law and Practice

Corruption in International Trade and Commercial Arbitration

Arbitrability

Document Production in International Arbitration

Third-Party Funding in International Arbitration and Its Impact on Procedure

Challenges to the Regime of International Commercial Arbitration

"This important book will be of great interest to arbitration lawyers, international lawyers and business people, as well as to academics, libraries, and students of dispute resolution."--Publisher's website.

This book provides both experienced and inexperienced practitioners, as well as advanced students, with a guide to the strategies associated with researching international commercial arbitration as well as the sources associated with that field of law. Up until very recently, the field of international commercial arbitration was populated solely by specialists who knew the sources and strategies for researching relevant authorities. However, as the practice and business of law has become more international and more diversified, generalists have begun to enter the field while the number of specialized sources associated with international commercial arbitration has grown exponentially. The book combines instructional text with a bibliography of sources to teach readers where to find relevant material. The instructional chapters discuss the most important methods by which one conducts research in international arbitration, while the bibliography provides guidance on where to find that material. Furthermore, the book will offer tips on how to present a case to an international tribunal, which is quite different than presenting a case to a national court. In effect, the book walks the reader through the steps associated with researching and presenting issues in international commercial arbitration. For example, the book covers: ·Where to find reported international arbitral awards (as opposed to judicial decisions) ·Where to find specialist treatises and journal articles on international arbitration ·How to use the various sources and evaluate the weight of competing authority ·How to present one's findings to an international arbitral panel ·How to consider the special issues that relate to international arbitration Additionally, the book takes advantage of empirical research into the conduct of arbitration, giving an insider's view of the process.

International Arbitration Act 1974 (Australia) (2018 Edition) The Law Library presents the complete text of the International Arbitration Act 1974 (Australia) (2018 Edition). Updated as of May 15, 2018 This book contains: - The complete text of the International Arbitration Act 1974 (Australia) (2018 Edition) - A table of contents with the page number of each section

Environmental Interests in Investment Arbitration Challenges and Directions Flavia Marisi Economic growth, social inclusion, and environmental protection stand at the core of sustainable development, which aims to deliver long-term growth for current and future generations. Foreign Direct Investment (FDI) can play a key role in sustainable development. Host states' benefits descending from FDI inflows include tax revenues, technology transfer, specialised training of local human resources, network with satellite activities, better availability of quality products and customer-centric services. These downstream effects jointly stimulate economic growth and social inclusion. This thoroughly researched book explores the relationship between environmental protection – the third component of sustainable development – and FDI. In practice, the intersection between environmental protection and foreign investment not only has generated remarkable success stories such as cross-sectoral green investment but has also in some instances led to severe cases of environmental degradation. Certain foreign investments resulted in open-pit mines leaking harmful

substances into the soil, excessive deforestation, improper treatment of water, pollution of groundwater and contamination of mud pits following oil exploitation, leaving the host state with significant environmental damage. Some other cases have witnessed the host state withdrawing or infringing its own environmental policies, which could, in principle, lead to a decrease in the value of the foreign investment as a result of natural resources deterioration. In recent years, an increasing number of investment arbitration cases have seen a clash between the states' commitments towards their citizens, which include the duty to protect the environment, their health and well-being, and the commitment towards foreign investors to protect their investments. In this book, the author focuses on investor-state cases in which environmental protection measures have been contested and discusses substantive mechanisms in treaty drafting, rules of Customary International Law, and interpretation doctrines, which are aimed at taking environmental concerns into consideration. The topics covered include the following: statistical analysis of investor-state cases where environmental protection measures have been contested; the role of environmental principles in investor-state arbitration; treaty mechanisms addressing environmental concerns; legal tools available under Customary International Law to address environmental interests; the application of the doctrines of proportionality, police powers, and margin of appreciation; and environmental counterclaims as an instrument to claim compensation for environmental damage. The author provides a detailed framework on the normative architecture, offers an extensive analysis of the relevant case law, and proposes concrete solutions to the identified clashes, aimed at refining the balance between environmental and investment protection. With its in-depth analysis and careful documentation, this book aptly captures the inherent fragmentation of international law and undoubtedly represents an invaluable resource for both international law practitioners and scholars. The solution-oriented approach adopted in the book will be welcomed by legal counsel, law firms, investment treaty negotiators, and decision makers at the different stages of investment lawmaking and practice, as well as by international institutions and academics.

International Arbitration Act 1974 (Australia) (2018 Edition)

Research and Practice in International Commercial Arbitration

Original Sin or Useful Tool?

Economic Analysis of the Arbitrator's Function

Challenges and Directions

Evidence in International Arbitration Proceedings

After neutrality and international enforcement, the next most valued feature of international commercial arbitration is confidentiality. For reasons easy to imagine, businessmen do not want their trade secrets, business plans, strategies, contracts, financial results or any other types of business information to be publicly accessible, as would commonly happen in court proceedings. Yet the case law of arbitration shows that in practical terms confidentiality is not to be taken for granted - in fact, it has become one of the most undetermined matters in international arbitration. Although 'the emperor of arbitration may have clothes, ' as one scholar has quipped, his raiments of secrecy can be 'torn with surprising ease'. This book deciphers the current degree of confidentiality in international commercial arbitration as reflected by the most important arbitration rules, national laws, other arbitration-related enactments, and practices of arbitral tribunals and domestic courts globally. Drawing on this data and analysis, the author then sets forth criteria to assess the breach of confidentiality in international arbitration and the proper rules for protecting or sanctioning such breaches. What do we understand by confidentiality in arbitration? What are its limitations? Who is bound to observe it? How can we quantify its breach? In addressing these questions, the book engages such issues as the following: reasons for disclosure - e.g., for the establishment of a defence, for the enforcement of rights, in the public interest or in the interests of justice disclosure by consent, express or implied; circumstances triggering statutory obligation of disclosure; recent trends towards greater transparency in investor-State arbitration; court measures in support of arbitral confidentiality such as award of damages for breach of confidentiality; and categories of persons bound by confidentiality, including third parties such as witnesses and experts. Structured along the main stages of the arbitral process, the analysis covers the duty of confidentiality from the initiation of arbitral proceedings through their unfolding to the issuance of the award and after. The scope of confidentiality is reviewed in the practice of arbitral tribunals and domestic courts, and from the perspective of international arbitration institutions, with detailed attention to various arbitration rules and numerous significant cases. In its elucidation of the amount of confidentiality that 'veils' each phase of the arbitral process, and its ground-breaking identification of 'patterns of disclosure', this book is sure to raise awareness about the various facets and problems posed by confidentiality in arbitration. Although its scholarly contribution to the law of international commercial arbitration cannot be gainsaid, corporate counsel worldwide will quickly prize its more practical value.

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.

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.

To an extent that may surprise many, international arbitral proceedings are prone to serious interference from the obstructive or even criminal behaviour of interested and'stakeholdersand'. Numerous anecdotes involving not only bribery and subornation but actual violent threats of retaliation have emerged since the editors of this book addressed an audience at the Vienna Arbitration Days 2010, at which time they used the popular term guerilla and– denoting such tactics as ambushes, sabotage, and intimidation and– to evoke their topic, and called for effective means to combat this undermining of the integrity and popularity of international arbitration. Their call bore fruit, and this collection of contributions by a wide spread of seasoned arbitration practitioners and– the driving forces in their field and– as well as leading academics with distinguished backgrounds and reputations bears powerful witness to the importance of the subject. Going beyond anecdote, these authors adopt an analytic view of guerrilla tactics in arbitration as a broad collective of unconventional means that undermine the mechanismand's envisioned mode of operation. They offer eminently practical, and'hands-onand' discussions that give this topic foundation and elaborate on the issue in detail, from the perspectives of counsel, arbitrators, and arbitral institutions, to the specifics and intricacies of national and international litigation and the role of international institutions, to an intensive discussion on ethics in international arbitration, and and– most importantly and– the way forward. Among the specific topics are the following: dealing with state entities; sanctions available for arbitrators to curtail guerrilla tactics; influence of international institutions; and use of diplomatic channels. The book describes actual experiences from all major legal systems worldwide. Further practical guidance includes details of how to seek assistance from state courts, bar associations, the IMF, and the World Bank. As an invaluable source of knowledge and guidance, particularly as an instrument available to practitioners faced with arbitration guerrillas in jurisdictions all over the world, this book will rapidly become an indispensable handbook for use in difficult factual situations where time and means of recourse are limited.

The Right of States to Regulate in International Investment Law

New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution

Guerrilla Tactics in International Arbitration

International Arbitration and the COVID-19 Revolution

International arbitration law library

Insolvency Proceedings and Commercial Arbitration

In a world governed by speed, the Internet plays a growing role in many of today's innovations, and the resolution of disputes using electronic means of communication may soon be part of everyday legal practice. This book offers a survey of the current state of play in online dispute resolution, from the methods and information technology currently in use to the range of regulatory solutions proposed by shareholders. Taking their analysis a step further, the authors also address this new field's most pressing issues, including possible amendments of existing legislation, treaties, and arbitration and other ADR rules. Online Dispute Resolution: Challenges for Contemporary Justice is an in-depth study of online dispute resolution today, discussing among other topics: the different methods of ODR; fields of use; ways to bring parties to online dispute resolution; validity and effects of clauses entered into online and providing for online mediation or arbitration; issues surrounding electronic communications and evidence in arbitration; and, enforcement of online dispute resolution outcomes, both through court proceedings and built-in enforcement mechanisms. This book also covers issues related to security and e-commerce in general. As a special feature, it contains a section on existing online dispute resolution providers, complete with interviews and statistics. Online Dispute Resolution: Challenges for Contemporary Justice is a significant resource for legal counsel, to arbitral institutions, ODR and ADR service providers, governments and governmental and non-governmental organizations, as well as to those with a more academic interest. This book will provide a greater understanding of online dispute resolution to persons in the fields of arbitration and ADR, e-commerce, intellectual property, civil procedure, international law, international trade and commerce, and information technology.

Due to the nature of the arbitration process, provisional measures-especially interim protection of rights-tend to play a disproportionate role in international commercial arbitrations. Indeed, the need to clearly define such measures often constitutes the major stumbling block on the path to an effective resolution of a commercial dispute. This concise but enormously useful volume offers practitioners the information and advice they need to overcome this obstacle in the best possible way every time. The Author covers all the relevant avenues of research and practice, from an overview of the concept of provisional measures to an in-depth analysis of the weight and enforceability of such measures. Along the way the treatment covers such crucial topics and issues as the following: scholarly analysis of the problems and uncertainties surrounding provisional measures, and their solutions in light of arbitral and judicial practice; the complex interaction of historical prejudices, political will, and business needs that impact the usefulness of provisional measures; choice of forum to seek provisional measures and the problems associated with such choice; complementary mechanisms to arbitration for interim protection of rights; standards of principles and procedures for the grant of provisional measures; and a comprehensive review of the arbitrators' power to grant provisional measures and court assistance to arbitration. The presentation examines, compares, and analyses seventy sets of arbitration rules on provisional measures (including the arbitration rules of the ICC, AAA, and LCIA), all of the major state laws on commercial arbitration, and detailed analyses of numerous ICC and AAA awards, most of which have not been published before. This new and fully researched book fulfils and important need for user-friendly and complete practical coverage of provisional measures in international commercial arbitration. It wil be of great value to corporate counsel, international lawyers, and business people, as well as to students of dispute resolution.

The agreement of disputing parties to each make a unilateral appointment of an arbitrator is among the most distinctive features of arbitral practice. A detailed examination, long overdue, of how this feature affects the actual process of arbitration is presented in this book. The study includes a historical analysis of unilateral nominations, a critical assessment of how the unilateral appointments system currently works and an empirical study of challenges of arbitrators. The author's critical assessment addresses several issues including: - limits to the right of the parties to make unilateral appointments; - the principle of equality of the parties in the constitution of the arbitral tribunal; - arbitrators' duty to be impartial and independent; - specific problems of bias in tribunals with party-appointed members; - the question of whether a different standard of impartiality and independence in party-appointed arbitrators makes any sense; - the presumption that party-appointed arbitrators can do things that presiding arbitrators cannot; and - the question of whether it is worth keeping the system of unilateral appointments as the default method for the constitution of multiple-member tribunals, or keeping it at all. The empirical study, in which the author offers a comparative analysis of challenges of arbitrators taking into account the method of appointment of the arbitrator, reveals interesting differences and coincidences between party-appointed and non-party-appointed arbitrators. The book ends with some suggestions on how the system of unilateral appointments could be improved, namely in order to increase the trust of each party in the arbitrator appointed by the other party and to allow an accurate match between what arbitration end-users may want from party-appointed arbitrators and what they ultimately get. For both its thorough and well-informed analysis and its sound recommendations, the book is sure to be welcomed by professionals in the arbitral community worldwide, as well as by arbitration law academics.

Provides a comprehensive and up to date account of the law related to arbitration.

Dealing with Bribery and Corruption in International Commercial Arbitration

Party-Appointed Arbitrators in International Commercial Arbitration

Privity of Contract in International Investment Arbitration

The Search for Balance Between Public Interest and Fair and Equitable Treatment

Arbitrators as Lawmakers

Descreve como a corrupção é julgada na arbitragem comercial internacional. Procura explicar porque não há uma uniformidade na política arbitral em relação à corrupção. Analisa casos relativos à corrupção e arbitragem. Examina a legislação sobre corrupção, assim como convenções internacionais relevantes.

Economic Globalization: Challenges to the Regime of International Commercial Arbitration examines some of the challenges facing the regime of international commercial arbitration in the contemporary global economy. It considers the debates concerning the transformation of the global order and the role of nation states within the context of international commercial arbitration. Issues discussed include the transformative effect of economic globalization, the role of the epistemic community and the increased institutionalization within the international arbitral regime, the nationalization of international commercial arbitration and the denationalization and harmonization trends, the competitive nature of legislative reform, convergence and divergence in the international arbitral process, multilateralism and regionalism, market modernization and transnationalism, globalization and lex mercatoria, and the development of online arbitration schemes in cyberspace. This book seeks to analyze the inner penetration of a form of world polity or transnational order ? comprised of part epistemic community, institutional networks, national laws and multilateral conventions, norms, rules, principles and transnational ideology ? on the traditional notion of state sovereignty within the international arbitral regime. The book will interest practitioners and academics with an interest in international commercial arbitration.