

Role of Consent in Arbitration between States and Nationals of Other Countries before the International Center for the Settlement of Investment Disputes

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Abstract

This research aims at addressing important issues surrounding settling the investment disputes between the states and the national of other states when they decide resort to the international center for settling the disputes.

Specifically, this research focused on role of consent in arbitration, and degree to which the center commitment to Washington convention especially to article (25) from the convention. To avoid any possible contradictions in the process settling the dispute which will have negative impacts on the parties.

To achieve the objectives of this research, the researcher depended on the descriptive research method through in-depth review of a set of articles dissertations, websites and books.

Results of this research have implications to the parties involved in organizing the arbitration procedures according to principles of Washington convention underlying the arbitration centers provisions.

Keywords: arbitration, consent, ICSID, investment dispute settlement, jurisdiction, Washington convention

1. Introduction

The reasons that lead Contracting Parties in the investment contracts to accept arbitration before the Center as a means of resolving existing or potential disputes range from the jurisdictional immunity enjoyed by the host countries to investment, where they cannot be sued before a national jurisdiction of another State. In respect of disputes to which the State or one of organs is a party, the risk of the bias of the national judiciary against the interests of the contracted State shall be avoided by 1- virtue of its exclusive jurisdiction and a more impartial judiciary¹. Hence, the investor concerned with the State is keen to include the investment contract in the arbitration clause, which refers to arbitration of the International Center for the Settlement of Investment Disputes between States and nationals of other countries. At the same time while the latter is a means of encouraging investment for developing the countries. If the objective of the Center is to provide judicial guarantees foreign investors in order to encourage investment in the developing the countries and to remove the jurisdiction of national courts for the consideration of disputes arising out of any political risk or action by the State against them²; However, resort to the Center is service is based on the agreement of the parties.

This is confirmed by the fact that the founders of the Washington Convention for the Settlement of Investment Disputes stressed the need for investment contracts to include this principle or to agree upon the center arbitration after the break out of conflict³. Does the arbitration court comply with the agreement nature of the Washington Convention in order to accept the Center's jurisdiction? To answer this question, the joint consent of the parties to resort to arbitration of the Center in the form of an arbitration agreement (first topic) will be discussed, and then the Center will accept its specialization even in the absence of an arbitration agreement and the extent of influence on the contractual nature of arbitration. 2

¹ Al-meshali, A. (2013). Role of the judiciary in Applying and investment the international agreement in the investment disputes, Work paper, fourth conference of heads of supreme courts in the Arab countries held in Qatar from 24-26 September.

² Abdurrahman, A. (1991). Economic development contracts in the Special International Law, Al-Nasr library, Cairo University, p 7.

³ Alasad, B (2006). Investment Contract in the Special International Relations, Al-Halabi law publications, First Edition, Beirut, p. 328.

Consent In International Arbitration Consent In International Arbitration

**Thomas Schultz, Federico Ortino, Jason
Mitchenson**



Consent In International Arbitration

Consent in International Arbitration Andrea M. Steingruber, 2012-03-15 Examining the notion nature and extent of consent in both commercial arbitration and investment arbitration this book provides practitioners and academics with a thorough case related analysis of an issue which raises many questions Whilst considering the evolution of arbitration and its consensual nature enlargement of the parties freedom to consent to arbitration and development from commercial arbitration to investment arbitration it addresses important theoretical questions to offer practical solutions These include how consent to arbitrate is expressed and when mutual consent to arbitration is reached which law shall govern the arbitration agreement or more particularly consent as an element of the substantive validity of it and conversely according to which law will a possible lack of consent be judged how consent should be interpreted which relationship exists between consent as part of the substantive validity of an arbitration agreement and its formal validity which if any are the implied terms when consenting to arbitration how consent to arbitrate influences procedural aspects counterclaims joinder consolidation and which solutions adopted by treaties national laws or arbitration rules are or would be the most respectful of parties consent in this respect what in investment arbitration is the relationship between consent and most favoured nation clauses or the influence of umbrella clauses The book includes original arguments and puts forward new suggestions with regard to the changeable consensual character of arbitration It also provides a particular focus on problems that frequently arise in practice of international arbitration for example issues related to complex multiparty arbitration and to jurisdictional questions in investment arbitration

The Dilemma of Consent to International Arbitration in Investment Agreements without a Forum Fernando Tupa, 2023-02-17 Fernando Tupa addresses the sometimes overlooked yet fundamental principle that consent to international arbitration is forum specific and explores its significance and practical consequences for investment tribunals The author proposes that if there is only consent in principle to international arbitration by the host State in an investment agreement due to the lack of a forum or the unavailability of the forum contemplated therein a foreign investor would not be entitled to unilaterally initiate an investment claim against the host State under said agreement absent a subsequent agreement between the foreign investor and the host State on an arbitral forum He also draws some conclusions and warns against the dangerous consequences of ignoring this basic principle

Consent in International Arbitration Andrea Marco Steingruber, 2012 Covering the various forms of expressing consent this book also looks at the differences between consent under State legislation and through treaties It combines scholarly analysis with a detailed discussion of relevant cases laws and rules and focuses on problems that frequently arise in practice

The Oxford Handbook of International Arbitration Thomas Schultz, Federico Ortino, Jason Mitchenson, 2020 The Oxford Handbook of International Arbitration A team of leading experts from across academia and practice provide an authoritative account of international arbitration Discussion ranges from the practicalities of how arbitration technically

works to big picture analysis of the forces that underpin it Incorporates insights from a range of disciplines beyond law including history sociology literature and economics Book jacket *Pervasive Problems in International Arbitration* Loukas A. Mistelis, Julian D. M. Lew, 2006-01-01 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

International Arbitration and Technology Pietro Ortolani, André Janssen, Pieter Wolters, 2022-10-11 Digitalization is increasingly impacting the practice of international arbitration Especially in the wake of COVID 19 technological solutions are adopted by counsel tribunals and arbitral institutions This trend is likely to continue in the future thus changing the way in which international arbitration is practiced International arbitration and technology offers the first up to date and comprehensive overview of the interplay between technology and international arbitration with a specific focus on the technological developments which are currently available and already practically relevant The authors practical perspectives on the impact of technology on arbitration yield valuable insights for arbitrators tribunal secretaries international arbitration counsel and arbitral institutions As many aspects of their work are already impacted by technology they will find much value within this book's pages Furthermore the book is of interest for academics working in the fields of international dispute resolution and law and technology **Procedure and Evidence in International Arbitration** Jeffrey

Waincymer, 2012-05-23 Central to the book's purpose is the procedural challenge facing arbitrators at each and every stage of the arbitral process when fairness arguments conflict with efficiency concerns and trade offs must be determined Some key themes include how can a tribunal be fair and in particular be neutral if parties are so diverse How can arbitration be made efficient and cost effective without undue inroads into fairness and accuracy How does a tribunal do what is best if the parties are choosing a suboptimal process When can or must an arbitrator ignore procedural choices made by the parties The author thoroughly evaluates competing arguments and adds his own practical tips expertly synthesizing and engaging with the conference literature and differing authors views He identifies criteria that offer a harmonized approach to each stage of the arbitral process with particular attention to such aspects of international arbitration as appropriate trade offs between flexibility and certainty the rights duties and powers of arbitrators appointment and challenge of arbitrators responses to guerilla tactics drafting of arbitration agreements including specialty clauses drafting of required commencement notices and response documents set off fast track arbitration and other efficiency options strategic use of preliminary conferences and timetabling online arbitration multi party multi contract class arbitration amicus and third party funders pre arbitral referees and interim relief witness evidence both factual and expert documentary evidence production obligations and challenges to production identifying applicable law and remedies and costs Understanding International Arbitration Tony Cole, Pietro Ortolani, 2019-10-08 Understanding International Arbitration introduces students to the primary concepts necessary for an understanding of arbitration making use of illustrative case examples and references to legal practice

throughout This text offers a comprehensive overview of the subject for those new to arbitration Making use of a unique two part structure in each chapter Understanding International Arbitration provides a clear and simple statement of rules followed by detailed discussion of the ideas underlying those rules illustrated with relevant comparative law and case examples Designed with students of arbitration in mind this text provides both a clear introduction to the subject and a comprehensive course text that will support students in their preparation for exams and practical assessments

Practitioner's Handbook on International Arbitration and Mediation - Third Edition Richard Chernick, Daniel M. Kolkey, Barbara Reeves Neal, 2012-04-01 The Practitioner's Handbook on International Arbitration and Mediation 3rd Edition is a unique work with each chapter written by a well known practitioner and expert in the field It covers each step of the international arbitration and mediation process and offers separate chapters that summarize the laws of leading arbitral venues This Handbook is intended to make the reader into a better practitioner or arbitrator mediator Moreover each chapter has been written to provide practical advice and guidance Unlike many works with multiple authors this work is not simply a collection of essays on a general subject This book is a unified work with cross references among the chapters and a consistent format throughout The Practitioner's Handbook is divided into three parts Part One describes in detail each step of the international arbitration process and offers tips Part Two deals with each step and facet of an international mediation Each of these chapters is filled with Practitioners Expert Commentary Part Three summarizes the laws of leading arbitral jurisdictions like Hong Kong England Switzerland and France These chapters give you detailed guidance on the laws governing international arbitration in that particular jurisdiction As a result the chapters in Part Three are a bit more technical as the authors realized that the reader would need citations to and commentary on the local arbitration statutes and rules The CD ROM that accompanies this Work contains relevant original source material that is germane to the text A review of the table of contents of the material contained on the CD ROM will acquaint you with the range of material covered

International Commercial Arbitration Gary B. Born, 2020-11-23 International Commercial Arbitration is an authoritative 4 250 page treatise in three volumes providing the most comprehensive commentary and analysis on all aspects of the international commercial arbitration process that is available The Third Edition of International Commercial Arbitration has been comprehensively revised expanded and updated To include all legislative judicial and arbitral authorities and other materials in the field of international arbitration prior to June 2020 It also includes expanded treatment of annulment recognition of awards counsel ethics arbitrator independence and impartiality and applicable law The revised 4 250 page text contains references to more than 20 000 cases awards and other authorities and will enhance the treatise's position as the world's leading work on international arbitration The first and second editions of International Commercial Arbitration have been routinely relied on by courts and arbitral tribunals around the world including the highest courts of the United States United Kingdom Singapore India Hong Kong New Zealand Australia the Netherlands and Canada and

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