The European Arbitration Review

2019

England & Wales

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The European Arbitration Review provides an unparalleled annual update – written by the experts – on key developments in the region. The 2019 edition includes new chapters on Limits to the Principle of 'Full Compensation', as well as country overviews on 17 jurisdictions. In addition the rest of the review has been revised in light of recent developments in arbitration, including analysis of the Court of Justice of the European Union's judgment in Slovak Republic v Achmea in Energy Arbitrations, the impact of Brexit in England & Wales and the protection of investments in international armed conflicts in Ukraine.

England & Wales

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Summary

We continue to live in interesting times. If anything, the crystal ball has grown foggier over the course of 2018. In important respects, the UK's near future in 2019 is even more uncertain now than it seemed a year ago. Brexit negotiations between the United Kingdom and the European Union have made less progress than many would have hoped. Although others would argue this was to be expected, few would welcome this degree of uncertainty.

As it stands, international commercial arbitration may represent the nearest London has to a sure thing. While commerce has been forced to carry on in a climate of insecurity, at a high level, commercial arbitration has continued its business as usual. Arbitration clauses have been agreed, arbitrations commenced, awards made. Meanwhile, the English courts have handed down judgments broadly embodying their goal of 'Maximum support. Minimum interference.'[1]

The pillars of London's strength and appeal as an arbitral seat are independent of the UK's membership of the EU. Those pillars will stand untouched by Brexit – in principle. They existed before and so, the theory goes, they should exist after. But commercial arbitration is not an ivory tower whose inhabitants are sequestered from the real world. As Brexit approaches, there may be increasing doubt, even if that doubt remains unspoken, particularly in a world where other arbitral seats make no secret of their aspiration to take London's lead.

Here, we update you on developments since the publication of our last review in November 2017,[2] focusing on the future for arbitration in the UK,[3] not least in light of Brexit.

2018 DEVELOPMENTS

Third-party Funding Of Arbitration

Third-party funding of claims continues to have an important and expanding role within arbitration in the UK. The established funders are evolving and raising ever larger amounts from their investors. Investment funds and managers are looking at the returns being made. Arbitration is increasingly being seen as an investment or asset class. There has also emerged a secondary market in claims, and particularly in judgments and awards. For corporates with high volumes of litigation, third-party funding represents a way to de-risk their balance sheets. For some, at least, disputes are no longer just cost centres, something that just happens because you have no choice. Instead, disputes are becoming part of the business.

Some research suggests that the UK has the highest rate of growth, compared to the US and Australia, of the use of third-party funding.[4] The UK market is among the most developed, not least because such funding has long been legal and there is no statutory regulation. By comparison, Hong Kong's amendments to legalise and regulate third-party funding are expected to take effect in the latter half of 2018. In the UK, leading funders self-regulate as members of the Association of Litigation Funders (the Association). The Association's membership has expanded and now includes members registered outside of the jurisdiction.

Their Code of Conduct (the Code), first published in 2011, was amended in January this year, with little fanfare or discussion by commentators. While the substantive bulk of the Code was untouched, the Code is now expressed to apply to 'disputes whose resolution is to be achieved principally through litigation procedures in the Courts of England and Wales',-[5] rather than as formerly 'disputes within England and Wales'. The previous reference to arbitration was also deleted.[6] The Code states also that it 'shall only apply to a Funder in

relation to the funding of the resolution of [disputes to be achieved principally through English court litigation] and does not purport to regulate the activities of a Funder if it engages in any other kind of financial or investment transaction.'[7] As a result, although it does not quite say so expressly, the Code no longer applies to arbitration (and it is unclear whether it would apply to court litigation arising out of arbitration, such as challenges and enforcement proceedings).

This new and seemingly deliberate omission will be troubling to many. It leaves third-party funding of arbitration broadly unregulated in the UK (except to the limited extent a funder's activities also fall incidentally into the domain of the Financial Conduct Authority or its employees are members of regulated professions, such as solicitors or barristers). Last year, the government stated that it did 'not believe that the case has been made out for moving away from voluntary regulation', but that it 'is ready to investigate matters further should the need arise.'[8] In April this year, it was stated that 'the matter of third-party litigation funding is of course a matter of contract between two parties, and the Government would be slow to interfere in that contractual process'.[9] While these statements refer to litigation funding, it is not clear that any distinction was being made from arbitration funding. The government's present position is that self-regulation is working. This is a harder position to maintain if there is no self-regulation. If third-party funders of arbitration do not regulate themselves, they may open the door to other forms of regulation.

Despite the vigour of the market, since our last review there has been no English High Court judgment arising out of the third-party funding of commercial arbitration. Nevertheless, there have been cases whose principles are of potential application in arbitrations. In ***Sandra Bailey v GlaxoSmithKline***, a pharmaceutical group litigation, the claimants' funder was required to pay security for costs of the defendant in an amount substantially in excess of its facility commitment to the claimants.[10] It was viewed as relevant that the funder was not a member of the Association of Litigation Funders and its balance-sheet insolvency prevented it from complying with the Association's Code of Conduct. In ***Estera Trust v Singh***, minority shareholders bringing unfair prejudice proceedings were permitted to redact and withhold documents from their negotiation to secure funding because those documents would give clues as to the legal advice the claimants had received on their case.[11] In ***Progas v Pakistan***, arising from an investor-state arbitration, the judge 'struggle[d] to see why, as a matter of principle, there should be any special or different position where third party funders are involved' in an application for sums payable under an arbitral award to be secured pending determination of a challenge against it.[12]

In soft law, although of international significance, the International Council for Commercial Arbitration – Queen Mary University of London task force has now published its report on third-party funding in international arbitration.[13] The report aims to provide guidance on issues arising, but is not intended to be definitive. Whether or not you take issue with any of its contents, there is little doubt that it will be a recurrent reference in arbitrations, and potentially national courts, in an area where this was previously scant.

Challenges To Arbitrators

Challenges to arbitrators continue to attract great interest, despite or perhaps due to their relative infrequency – and perhaps giving the impression that challenges are more common than they are in reality. The Arbitration Act gives parties the right to apply to the English courts to remove an arbitrator on the grounds that there are justifiable doubts as to his or her impartiality or for not possessing the qualifications required by the arbitration clause.[14]

The importance of this right to apply to the courts is reflected in the fact that it cannot be excluded by agreement.[15] But a party must only go to court as a last resort having exhausted any available recourse to the arbitrator or arbitral institution.[16] There is no way to measure how many challenges are resolved confidentially before members of the tribunal itself. The number of challenges coming before arbitration institutions in 2017 appears remarkably similar to 2016. In 2017, 48 challenges were filed before the International Chamber of Commerce (ICC), of which six were accepted (compared to 810 cases commenced in 2017).[17] Six challenges were made before the London Court of International Arbitration (LCIA) (compared to 285 new cases). Three were rejected; one arbitrator resigned; and two decisions were pending at the time of the last published information.[18] As part of the move toward greater transparency, the LCIA has now published digests of 32 challenge decisions made from 2010 to 2017, of which its court rejected 25. During this period, challenges were heard in less than 2 per cent and were successful in only 0.4 per cent of over 1,600 cases.[19]

Since our last review, only two arbitrator challenges have proceeded to a judgment of the English courts.[20]

Halliburton v Chubb Bermuda Insurance arose from insurance claims following the explosion on the Deepwater Horizon oil rig in the Gulf of Mexico. The Court of Appeal considered the extent to which an arbitrator could, without disclosure, be appointed by the only common party in multiple arbitrations concerning overlapping facts without thereby giving rise to an appearance of bias.[21] The Court accepted that 'inside information and knowledge may be a legitimate concern',[22] but that 'the starting point is that an arbitrator should be trusted to decide the case solely on the evidence or other material adduced in the proceedings in question.'[23] The Court supported a lower threshold for early disclosure, including in borderline cases,[24] but said that 'You can only disclose what you know and there is no duty of inquiry.'[25] The Court of Appeal's reasoning may well become the first port of call when questions about conflicts and disclosure arise in the future.

In *Tonicstar v Allianz*, the Commercial Court and then the Court of Appeal considered the rarer issue of an arbitrator's qualifications.[26] This reinsurance arbitration arose from the Port of New York's losses from the attack on the World Trade Centre on 11 September 2001. When the insurer challenged the reinsurer's appointment of an English barrister of over 30 years' call, the Court had to decide whether his experience in the law satisfied the arbitration agreement that each arbitrator should have 'not less than ten years' experience of insurance or reinsurance.' The first instance judge removed the lawyer arbitrator, reluctantly following an unreported extempore Commercial Court decision from 2000, and so gave permission to appeal. The Court of Appeal, unconstrained by the earlier decision, reinstated the arbitrator, concluding: there is 'no such thing as insurance or reinsurance "itself" which is separate and distinct from the law of insurance and reinsurance . . . a person who has practised as a barrister specialising in the field of insurance and reinsurance for more than 10 years would naturally be regarded as qualified for appointment as an arbitrator.' The Court of Appeal weighed the importance of judicial consistency against the ability of the appellate system to correct previous judicial errors: 'a commercial party should be able to rely on [natural] meaning without having to scour legal textbooks in order to find out whether the clause has been given a different and unnatural meaning by a court.'[27]

BREXIT – STILL LOOKING GOOD FOR ARBITRATION IN THE UK?

In our last review, we set out how the foundation of arbitration in London is independent of the UK's membership of the EU. The arbitral law and supervisory court will continue to be as business-friendly, neutral and supportive. English contractual law will continue to be as commercially practical and predictable: the 'river of the common law of contract will flow on regardless.'[28] English arbitration awards will remain enforceable in the EU. (And English-qualified advocates and arbitrators will remain as hard-working and effective!) Because that all remains true, London should remain as good a forum to shop in and a seat of choice.

'The fundamentals are sound' has come to represent a largely consistent cross-party line among the government, judiciary, institutions and practitioners.[29] In Lord Justice Hamblen's words, 'Brexit will not impact on the essential reasons for [choosing English law, English jurisdiction and English arbitration] and you should ignore the mythmakers.'[30]

That said, there is also a note of caution. There is a heightened awareness that dispute resolution in the UK cannot rest on its laurels. Even if '[i]t seems obvious that Brexit will not affect the popularity of London . . . as an arbitral centre',[31] that theory has yet to be put fully to the proof by reality. Commercial arbitration is not insulated from commerce. If people do less business with and in the UK, they are less likely to arbitrate in the UK. Conversely, if – as can only be hoped – Brexit does promote greater trade with a greater range of countries, it should stimulate English law and dispute resolution.[32] As Lord Justice Gross put it, 'CityUK and LegalUK enjoy a symbiotic relationship.'[33]

Perceptions can influence reality. If the future of arbitration in the UK is perceived as uncertain – however wrong in principle that perception may be – then the future of arbitration in the UK will be rendered uncertain. Instability may be a self-fulfilling prophecy.

Furthermore, Brexit itself is not the only factor. A number of jurisdictions were keen to attract legal business away from the UK even before Brexit. The newly instituted International Chamber within the Paris Court of Appeal, for example, can use the English language and some quasi-English procedures. Frankfurt, Brussels and Amsterdam have also announced their plans to establish their own English-speaking commercial courts. As other jurisdictions 'are throwing a great deal of money at the problem', as the Chancellor of the High Court said, 'If one were a cynic, one might think that some of them were hoping to capitalise on the uncertainties created by Brexit'.[34]

For now, London appears to remain the most preferred seat of arbitration (followed by Paris, Singapore, Hong Kong, Geneva, New York and Stockholm). So far, London's popularity as a seat has not obviously fallen in the two years since the Brexit referendum. Indeed, Queen Mary University of London's International Arbitration Survey in 2018 suggests that London may even have lengthened its lead on Paris in the past couple of years since the 2015 survey.[35] Asked for their view on the impact of Brexit, 55 per cent of respondents (a larger majority than those who voted leave in the referendum) thought that Brexit was unlikely to bring about any change as far as the use of London as a seat is concerned.[36] But 37 per cent thought London would suffer to some degree, great or small. 9 per cent said London would experience a positive impact.

As The UK-EU Withdrawal Negotiations Stretch Out, Is Arbitration The Safer Choice?

Research suggests that enforcement persists in being the most valued characteristic of international arbitration (closely followed by the desire to avoid particular legal systems or national courts).[37] In principle, at least, an arbitral award from any one of the 159 states

party to the New York Convention can be enforced in any of the other 159 states.[38] Every EU member state is a party to the New York Convention, making this wider treaty the mechanism by which arbitral awards are enforced between EU states. Brexit does not touch this.

By contrast, the primary mechanism for the enforcement within the EU of the judgments of EU member state courts – the Recast Brussels Regulation – is itself a creature of EU law. When we wrote a year ago, there was uncertainty about the basis on which judgments could be enforced between the EU and the UK after Brexit. Writing now, there is still uncertainty. Under the EU's February 2018 draft of the Withdrawal Agreement, the existing regime would apply only to judgments handed down before the end of a two-year post-Brexit transition period. Subsequently, in June, EU and UK negotiators jointly announced that they had instead reached agreement that the existing regime will continue to apply to judgments given in legal proceedings begun before the end of the transition period.[39]

What happens thereafter is yet to be agreed. The UK government desires 'a new, bespoke agreement across the full range of civil judicial cooperation', including whose courts will have jurisdiction and the cross-border enforcement of judgments.[40] Taken in isolation, this would seem in both sides' interests to agree. But if 'nothing is agreed until everything is agreed', there is the possibility that negotiation about future judicial mutual recognition becomes a hostage to politics. Reaching no agreement on jurisdiction and enforcement may be 'a recipe for confusion, expense and uncertainty.'[41] This risk may not be high perhaps – some see this as a storm in a teacup – but, until everything is agreed, the risk will remain.

If enforcement is a real concern for your business, why take that chance? Last year, we suggested that arbitration may represent a safe haven. An early 2018 study suggests that there had been a degree of movement in practice away from the uncertainty and toward arbitration.[42] Of the hundred or so respondents, 10 per cent had replaced litigation with arbitration in their clauses. Within this minority, most favoured London as the seat and half were significantly influenced by uncertainty about the future enforcement of UK–EU judgments. A 65 per cent majority of respondents, however, had not yet altered their approach to dispute resolution; but of these, 40 per cent were intending to think again if no significant progress was made in the Brexit negotiations and 20 per cent of these suggested they would switch to arbitration (the majority of whom would choose London).

If the negotiators shortly agree to clone the existing enforcement regime, then the influence of Brexit on businesses' choice between arbitration or litigation is likely to be relatively minor and temporary. Alternatively, the longer the issue is left unresolved, the more it will affect decision-making. By the time you read this, hopefully matters will be clearer.

When The UK Leaves The EU, Will The English Courts Be Free To Injunct Litigation In The EU To Protect An Arbitration Agreement?

Anti-suit injunctions from the English court are available to assist defendants faced by foreign litigation wrongly brought in breach of an arbitration agreement. In 2009, however, the interpretation in ***West Tankers*** by the Court of Justice of the European Union (CJEU) (disagreeing with the UK's highest court) brought anti-suit injunctions to an end between EU states.[43] One EU state's court could no longer prevent a party from proceeding in another EU state's court.

There has been some argument that revisions to the EU Regulation since 2009 had the effect of enabling intra-EU anti-suit injunctions once again in the context of arbitration.[44] This year, in the first reported judgment on this question, Mr Justice Males dismissed that argument.-

[45] Males J ordered a recently nationalised Russian bank to discontinue Russian court proceedings that belonged in arbitration, but concluded he had no power to restrain related court proceedings in Cyprus. The Court of Appeal refused permission to appeal from his decision. From an English perspective at least, the CJEU decision in ***West Tankers*** 'remains an authoritative statement of EU law'.[46]

The result is that the EU-law position may be clearest in a jurisdiction in which this law may cease to apply soonest. The UK courts lost their power as a result of EU law. Leaving the EU may return that power. Many in the UK at least would look forward to this. Recently, Lord Justice Gross described the CJEU's decision in ***West Tankers*** to curtail this 'robust common law remedy' as one of the more obvious 'troubling aspects of the CJEU jurisprudence, perhaps appearing to place doctrinal purity ahead of commercial practicality.'[47] Again, however, all depends on the actual form taken by Brexit. The current draft of the Withdrawal Agreement suggests there would be no change until at least the end of a transition period on 1 January 2021. If the UK and EU also agree to replicate existing regulation thereafter, then Brexit may change nothing in this particular respect.

Will Brexit Benefit Investor-state Dispute Settlement In The UK?

By far the most discussed, and divisive, judicial decision of the year has been that of the CJEU itself in ***Slovak Republic v Achmea***.[48] Achmea succeeded in 2012 in obtaining a damages award against Slovakia under the Netherlands–Slovakia bilateral investment treaty (BIT). Slovakia had argued in vain to the tribunal that the investor-state dispute settlement (ISDS) provisions in the BIT were unlawful under EU law. Slovakia's argument met with as little success in the Frankfurt court, the seat of the arbitration. On appeal, the German Federal Court of Justice was also minded to disagree with Slovakia, but made a preliminary reference to the CJEU given the significance of the issue. In 2016, the CJEU was asked whether the dispute resolution provisions in investment protection treaties entered into between two EU member states – intra-EU BITs – are incompatible with EU law.

The CJEU disagreed with the tribunal, the court at first instance and the appeal court – ruling that the ISDS provisions in the Netherlands-Slovakia BIT were precluded by the Treaty on the Functioning of the European Union (TFEU). The CJEU was concerned that ISDS under the BIT removed the interpretation of EU law from the jurisdiction of the CJEU: 'it is for the national courts . . . and the Court of Justice to ensure the full application of EU law in all member states and to ensure judicial protection of the rights of individuals under that law'.

An analysis of the rights or wrongs of the CJEU's reasoning is beyond the scope of this chapter and we do not take a position. But it is fair to say that the CJEU's answer has raised many questions. Is it the end of ISDS in all 196 intra-EU BITs? Or just those with ISDS provisions worded like the Netherlands-Slovakia BIT? Where do the 1,400 BITs stand between EU states and non-EU states? And what about multilateral agreements? And commercial arbitration? In Lord Justice Gross's words, 'the decision and its reasoning could aptly be described as troubling more generally'.[49] Ironically, the CJEU, in its desire to ensure the uniformity of EU law, has disrupted its interpretation more than any ISDS arbitral tribunal ever could.

This year, the English Court of Appeal was forced to navigate between the UK's obligations as an EU member state on the one side and its obligations as a party to the ICSID Convention on the other. In ***Micula v Romania***,[50] the Court upheld a stay of enforcement of the Micula brothers' ICSID award against Romania under the Sweden–Romania BIT, pending

the decision of the General Court of the European Union whether to annul a decision of the European Commission that enforcement of the arbitral award would constitute prohibited state aid. The three Lord Justices arrived at the same decision, but reached it by differing paths – testifying to the difficulty of the questions asked of them.

After any Brexit transition period (or, if no such agreement is reached, Brexit itself), the EU Treaty provisions at issue in ***Achmea*** and ***Micula*** will no longer bind the UK. This would not cut the Gordian knot and unravel all the complexity – indeed, it would raise novel questions and the EU may seek to negotiate away any consequential competitive advantage to the UK – but, to the extent Brexit makes any difference, it can only increase the attraction of the UK to investors claiming against EU states.

NO REFORM, QUITE YET

Last year, it was unclear whether England's 20-year old Arbitration Act was to be reformed. The Law Commission had sought views on whether changes to the Arbitration Act could help preserve the UK's position and help it 'compete with other jurisdictions'.[51] Progress was delayed by the general election following the Brexit referendum; and when the Commission eventually launched its 13th programme of law reform, some six months after it had originally planned, arbitration was not included on the list.

But reform may still be coming. The Law Commission was unable to secure the necessary cross-government support in time for the start of its reform programme. The Commission, nevertheless, remains hopeful that it will be able to work in this area. In particular, the Commission is interested in 'the use of a statutory summary judgment style procedure' and 'including in the Act a wider range of summary powers for arbitrators, for example to strike out an unmeritorious claim or defence'.[52] As the Commission recognises, it is arguable that such power already implicitly exists, but there has been a historic conservatism about adopting summary procedures. This reluctance may arise from the insecurity of not having an express power and hence that it is better to have an enforceable award later, than an unenforceable award earlier.[53]

Change comes at an inherent price of certainty. As most English cases show, English arbitral law has settled over the years and attained a high degree of certainty. The Arbitration Act 1996 has generally well served English arbitration and the parties who choose to use it. It is hard to imagine that if 'rival jurisdictions such as Hong Kong, Singapore, Paris and Dubai could soon "catch up"' (as the Law Commission is concerned), this will be due to the state of the Arbitration Act. Many consider that 'If it ain't broke, don't fix it'. But there may be sense in tinkering. The Commission is not looking for wholesale change but rather considers 'small changes could make a difference'[54] and there is room for 'reform [that] could have a subtle but positive impact on London's attractiveness as an arbitration venue.' [55] Although there is debate about their scope in practice, few would disagree with these general statements of principle. If England amends its Arbitration Act, other jurisdictions are watching closely.

Balancing Arbitration And The Court

Last year, we reported how a speech by Lord Thomas, then Lord Chief Justice, had sent waves of concern through the arbitral community by suggesting that there should be greater access to appeal from arbitrations to the English courts on points of law.[56] In fact, as we explained, his proposal to rebalance the relationship between court and arbitration was more nuanced than sometimes made out and Lord Thomas himself arguably softened his initial position.[57]

This year, Lord Justice Gross of the Court of Appeal gave a speech in which he publically 'part[ed] company with the approach canvassed by Lord Thomas'.[58] Again, these were his own views, not official judicial policy. Lord Justice Gross cautions that a 'balance which reflects an arbitral and litigation culture of "maximum support: minimum interference" could all too easily be lost',[59] and considers 'Broadly speaking, we have the balance right':[60] 'If the careful balance struck in the 1996 [Arbitration] Act were to be upset, there would be a risk that both the courts and arbitration in London would be harmed.'[61]

It is fair to say that the storm of commentary sparked by Lord Thomas has subsided without changing anything. Lord Thomas has since retired as a judge. Indeed, he is now practising as an arbitrator. Lord Thomas's initial comments were also made before the Brexit referendum. Although similar suggestions will remain a recurring feature of debate, for now it seems less likely that any senior figure will wish to cast any unnecessary doubt over one of the more certain things that the UK has. But, if Brexit – once the meaning of Brexit is known – precipitates a large shift from litigation toward arbitration, then the balance of power will be called into question once again.[62]

Notes

[1] 'Commercial Dispute Resolution – Courts and Arbitration', Lord Thomas, National Judges College, Beijing, 6 April 2017, paragraph 25, quoted and affirmed by Lord Justice Gross in 'Courts and Arbitration', Jonathan Hirst QC Commercial Law Lecture, 1 May 2018, and 'A Good Forum to Shop in: London and English Law Post-Brexit', 35th Annual Donald O'May Maritime Law Lecture, 1 November 2017.

[2] As at the time of writing.

[3] Strictly, England and Wales. The United Kingdom also includes the jurisdictions of Scotland and Northern Ireland, which have separate arbitration statutes. We refer to the 'UK' loosely for convenience.

[4] '2017 Litigation Finance Survey', Burford Capital, p 10.

[5] 'Code of Conduct for Litigation Funders', Association of Litigation Funders, November 2014 & January 2018, paragraph 1.

[6] See paragraph 2.2.

[7] Paragraph 17.

[8] 'Parliament: Civil Proceedings: Third party financing: written question – HL4216', Lord Keen, 24 January 2017.

[9] 'Legal Aid', Lord Keen, *Hansard*, 19 April 2018.

[10] *Sandra Bailey & Others v GlaxoSmithKline UK Ltd* [2017] EWHC 3195 (QB).

[11] *Re Edwardian Group Ltd aka Estera Trust (Jersey) Ltd v Singh* [2017] EWHC 2805 (Ch).

[12] *Progas Energy Ltd v Pakistan* [2018] EWHC 209 (Comm).

[13] 'Report of the ICCA Queen Mary Task Force on Third-Party Funding in International Arbitration', International Council for Commercial Arbitration, April 2018.

[14] Arbitration Act 1996, s24(1)(a), (b).

[15] Arbitration Act 1996, s4.

[16] Arbitration Act 1996, s24(2).

[17] *ICC Dispute Resolution Bulletin*, 2018, Issue 2, pp 52, 57. The challenges figures were almost identical to the previous year: the ICC received 50 challenges and accepted five (*ICC Dispute Resolution Bulletin*, 2017, Issue 2, pp 109-110).

[18] 'Facts and Figures 2017: Casework Report', LCIA, p. 17. The same number as 2016 cf. 'Facts and Figures – 2016: A Robust Caseload', p 22.

[19] 'LCIA Releases Challenge Decisions Online', LCIA, 12 February 2018.

[20] The principles of the Privy Council in *Almazeedi v Penner* [2018] UKPC 3 (with Lord Sumption dissenting) are also relevant to arbitration, but the judgment itself arose out of a challenge to a judge in the Grand Court of the Cayman Islands, not an arbitrator. The Court of Appeal in *Halliburton v Chubb Bermuda Insurance* took the Privy Council's judgment into account.

[21] *Halliburton Co v Chubb Bermuda Insurance Ltd* [2018] EWCA Civ 817, the appeal of H v L [2017] EWHC 137 (Comm) noted in our last review.

[2018] EWCA Civ 817, paragraph 49.
[22] Paragraph 50.
[23] Paragraphs 65–66, 83–91.
[24] Paragraph 69.
[25] [2017] EWHC 2753 (Comm); [2018] EWCA Civ 434. *Tonicstar Ltd v Allianz Insurance Plc (formerly Cornhill Insurance Plc)* *Allianz Insurance Plc (formerly Cornhill Insurance Plc) v Tonicstar Ltd*
[26] See also 'Challenging an Arbitrator for Lack of Required Qualification' and 'Challenging an Arbitrator for Lack of Required Qualification – Revisited', , 21(1) (February 2018) / 21(4) (August 2018), by John Mathias and Thomas Wingfield. *International Arbitration Law Review*
[27] 'Myths of Brexit', Lord Justice Hamblen, Brexit Conference, Hong Kong, 2 December 2017, paragraph 7.
[28] 'A Good Forum to Shop in: London and English Law Post-Brexit', Lord Justice Gross, 1 November 2017, paragraph 1. See also, for example, 'English Law, UK Courts and UK Legal Services after Brexit: the View Beyond 2019', Judicial Office, 13 June 2017; 'The Strength of English Law and the UK Jurisdiction', LegalUK, August 2017; 'The UK Jurisdictions After 2019', Sir Geoffrey Vos, 20 June 2017; 'The Future for the UK's Jurisdiction and English Law after Brexit', Sir Geoffrey Vos, Legal Business Seminar, Frankfurt, 28 November 2017; 'Opening of the Business and Property Courts for Wales', Lord Thomas, 24 July 2017; 'Myths of Brexit', Lord Justice Hamblen, 2 December 2017.
[29] 'Myths of Brexit', paragraph 35.
[30] 'Myths of Brexit', paragraph 43.
[31] cf. 'Myths of Brexit', paragraphs 19, 44.
[32] 'A Good Forum to Shop in: London and English Law Post-Brexit', paragraph 3.
[33] 'The UK Jurisdictions After 2019', paragraph 6.
[34] '2018 International Arbitration Survey: The Evolution of International Arbitration', Queen Mary University of London (QMUL), p. 9; cf. '2015 International Arbitration Survey: Improvements and Innovations in International Arbitration', p 12.
[35] '2018 International Arbitration Survey', p 11.
[36] '2015 International Arbitration Survey', p 6; '2018 International Arbitration Survey', p 7.
[37] The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.
[38] 'Joint statement from the Negotiators of the European Union and the United Kingdom Government on Progress of Negotiations under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union', 19 June 2018.
[39] 'Framework for the UK-EU Partnership: Civil Judicial Cooperation', UK Government presentation, 13 June 2018.
[40] 'Dispute Resolution in Uncertain Times', Lord Briggs, The Hague, 22 January 2018, paragraph 23.
[41] 'The Impact of Brexit on Dispute Resolution Clauses – Survey Report', Thomson Reuters, 23 July 2018. The survey itself was open from 31 January 2018 to 27 February 2018.
[42] (C-185/07); [2007] UKHL 4. For further background, see our 2018 chapter. *Allianz SpA and Generali Assicurazioni Generali SpA v West Tankers Inc* *West Tankers Inc (Respondents) v RAS Riunione Adriatica di Sicurta SpA and others (Appellants)*
[43] See, e.g., Advocate General Wathelet's opinion in ' ' OAO (C-536/13). *Gazprom*
[44] [2018] EWHC 1343 (Comm). *Nori Holding Ltd v Public Joint-Stock Co Bank Otkritie Financial Corp*
[45] [2018] EWHC 1343 (Comm), paragraph 99.
[46] 'Courts and Arbitration', Lord Justice Gross, 1 May 2018, paragraph 37.
[47] (Case C-284/16), 6 March 2018. *Slovak Republic v Achmea B.V.*
[48] 'Courts and Arbitration', Lord Justice Gross, 1 May 2018, paragraph 38.
[49] [2018] EWCA Civ 1801. *Micula v Romania*
[50] 'Should we include these projects in the 13th Programme? Arbitration – could the Arbitration Act 1996 be improved to make arbitrations less costly or lengthy?' Law Commission, 13th Programme of Law Reform, October 2016.
[51] 'Thirteenth Programme of Law Reform', Law Commission, printed 13 December 2017, paragraph 4.54.
[52]

[53] See 'Summary Awards In International Arbitration – Slow Getting Up to Speed?' *Mealey's International Arbitration*, December 2017, by Charlie Lightfoot, James Woolrich and Thomas Wingfield.

[54] 'Should we include these projects in the 13th Programme?' Law Commission.

[55] 'Thirteenth Programme of Law Reform', paragraph 4.54. The Commission also considers that 'where trust law and arbitration meet, this jurisdiction is lagging behind its international competitors.'

[56] 'Developing Commercial Law Through the Courts: Rebalancing the Relationship Between the Courts and Arbitration', Lord Thomas, Bailii Lecture, 9 March 2016.

[57] 'Commercial Dispute Resolution – Courts and Arbitration', Lord Thomas, 25 April 2017, paragraph 29.

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