

# Consent In International Arbitration

## Oxford International Arbitration

Treaty Interpretation in Investment Arbitration The Oxford Handbook of International Arbitration Oxford International Arbitration Series CONSENT IN INTERNATIONAL ARBITRATION 2ND ED. International Investment Arbitration Emergency Arbitration International Arbitration and EU Law Interest in International Arbitration International Investment Arbitration A Guide to General Principles of Law in International Investment Arbitration Dealing with Bribery and Corruption in International Commercial Arbitration The Interpretative Practice of International Investment Arbitral Tribunals Jurisdiction and Arbitration Agreements in Contracts for the Carriage of Goods by Sea Third Parties in International Commercial Arbitration Good Faith in International Investment Arbitration Alternative Dispute Resolution in Energy Industries The Evolution of International Arbitration Consent in International Arbitration Corruption in International Investment Arbitration Tribunal Secretaries in International Arbitration J. Romesh Weeramantry Thomas Schultz ANDREA MARCO. STEINGRUBER Campbell McLachlan Cameron Sim José R. Mata Dona Matthew Secomb Johan Billiet Patrick Dumberry Emmanuel Obiora Igbokwe Claudia Salgado Levy Jonatan Echebarria Fernández Stavros L. Brekoulakis Emily Sipiorski Mustafa Oğuz Tuna Alec Stone Sweet Andrea M. Steingruber Aloysius P. Llamzon J. Ole Jensen

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this systematic and comprehensive analysis of the interpretation of treaties in investment arbitration presents a wealth of material and a thorough assessment of the practice of foreign investment arbitral tribunals

this handbook brings together many of the key scholars and leading practitioners in international arbitration to present and examine cutting edge knowledge in the field innovative in its breadth of coverage chapter topics range from the practicalities of how arbitration works to big picture discussions of the actors involved and the values that underpin it the book includes critical analysis of some of international arbitrations most controversial aspects whilst providing a nuanced account overall that allows readers to draw their

own informed conclusions the book is divided into six parts after an introduction discussing the formation of knowledge in the field part i provides an overview of the key legal notions needed to understand how international arbitration technically works such as the relation between arbitration and law the power of arbitral tribunals to make decisions the appointment of arbitrators and the role of public policy part ii focuses on key actors in international arbitration such as arbitrators parties choosing arbitrators and civil society part iii examines the central values at stake in the field including efficiency legal certainty and constitutional ideals part iv discusses intellectual paradigms structuring the thinking in and about international arbitration such as the idea of autonomous transnational legal orders and conflicts of law part v presents the empirical evidence we currently have about the operations and effects of both commercial and investment arbitration finally part vi provides different disciplinary perspectives on international arbitration including historical sociological literary economic and psychological accounts

arbitration of international investment disputes is one of the fastest growing areas of international dispute resolution this book surveys the substantive principles which are being applied to disputes by international investment tribunals

this is the first work to provide clear guidance on the increasingly utilized procedure of emergency arbitration setting out the procedural frameworks common to the leading emergency arbitration rules and establishing fifteen common principles it provides greater control and certainty in bringing and defending applications for emergency measures

this book examines the intersection of eu law and international arbitration based on the experience of leading practitioners in both commercial and investment treaty arbitration law it expertly illustrates the depth and breadth of eu law's impact on party autonomy and on the margin of appreciation available to arbitral tribunals

interest plays a vital and increasing role in international arbitration proceedings with almost every case having an element of interest involved however until now the topic has received very little attention meaning that arbitrators have had very little concrete foundation on which to judge decisions on interest awards this book is the first authoritative guidance to address this providing a uniform approach to the awarding of interest in international arbitration interest in international arbitration aligns arbitrators decisions with standard commercial practice offering a practical and logical approach to how interest should be awarded it sets out traditional approaches that arbitrators have followed in the past such as using conflict of law to apply a statutory rate from a given law or awarding instead a subjectively reasonable rate and examines how these inconsistent approaches have resulted in a variety of awards and decisions the author uses this analysis as a basis for a uniform approach to the issue granting compound interest at appropriate rates unless constrained by truly mandatory law the author sets out the calculation method explores the benefits and limitations and presents a thorough argument for the movement toward a uniform approach to interest awards

investment arbitration is a multi billion dollar venture it is an area of international dispute resolution which has undergone tremendous growth in recent years and resulted in the signature of thousands of bilateral investment treaties bits between foreign states and several multilateral investment treaties mits numerous disputes involving these instruments are resolved through international arbitration

arbitral tribunals have rendered many awards ordering the payment of large sums of money this handbook provides an explanatory introduction into the area of investment arbitration differentiating it from commercial arbitration and state to state arbitration it examines the legal framework and the general course of an international investment arbitration in particular it focuses on the standards of protection in international investment agreements the concept of jurisdiction in international investment arbitration and the arbitral award including the notions of recognition enforcement and execution moreover this cutting edge publication contains relevant and recent case law in the area and deals with contemporaneous issues such as the ongoing controversy regarding the future of intra eu bits and free trade agreements as well as the link between vulture funds and investment arbitration the handbook aims at arbitrators lawyers practitioners academics students and everyone with an interest in international investment arbitration

this book provides the actors involved in investor state arbitration with a set of comprehensive guidelines to better understand the nature meaning and function of general principles of law in the field of international investment law

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

legal interpretation is crucial to striking the right balance between what a norm is or should be and its meaning as applied in a concrete case given the complex hybrid nature of investor state arbitration the act of interpretation acquires particular significance this far reaching work explores how investment arbitral tribunals accomplish their task of interpreting the different rules of law within the international investment framework and how they address the interpretative problems they face in its wide ranging coverage of the interpretative practice of international investment arbitral tribunals the author provides the following in depth analysis of how investment arbitral tribunals interpret multiple sources of law including treaties customary international law general principles national laws contracts and transnational law critical evaluation of the interpretative methods used by tribunals highlighting their strengths in protecting foreign investments and their limitations in promoting a cohesive investment law regime and exploration of the self imposed interpretative limitations of arbitral tribunals encompassing their reliance on *de facto* precedents their duty to ensure the enforceability of awards and their awareness of the risk of annulment for misinterpretation of the law extensive review of relevant arbitral awards jurisprudence and case studies illustrates how tribunals navigate legal sources the author also examines possible reasons for tribunals interpretative flexibility and indicates the limitations to their interpretative exercise with its insights into how tribunals interpretative choices influence the consistency legitimacy and predictability of the investment arbitration system this book will help legal practitioners and scholars to understand the complexities and challenges faced by investment arbitral tribunals thus enabling an anticipation of the scope and limits of arbitral interpretative reasoning it offers a major contribution to the ongoing debate on the development of a cohesive and predictable international investment law framework by revealing how interpretation shapes legal outcomes

jurisdiction and arbitration agreements in contracts for the carriage of goods by sea focuses on party autonomy and its limitations in relation to jurisdiction and arbitration clauses included in contracts for the carriage of goods by sea in case of any cargo dispute the author takes the perspective of the shipping companies and the shipowners as these are the driving forces of the shipping industry due to their strategic importance the book provides an analysis of the existing law on the recognition and validity of jurisdiction and arbitration clauses in the contracts for the carriage of goods by sea the author also seeks to provide conclusions and to learn lessons for the future of the non recognition and the non enforcement of the clauses in the existing fragmented legal framework at an international european union and national level england wales and spain the interface between the different legal regimes reveals the lack of international harmonisation and the existence of forum shopping when a cargo interest sues the shipowner or the party to whom the shipowner charters the vessel this concise book provides a useful overview of existing research for students scholars and shipping lawyers

this volume addresses the role and the interests of third parties in international arbitration through a clear overview and in depth critical commentary the book explores existing case law and its related academic literature as well as offering an insight into more practical concerns

written by a leading legal researcher this book offers a comprehensive study of the principle a frequently invoked but rarely analysed aspect of investment arbitration it is a thorough and expansive study that

considers the application of good faith by arbitral tribunals and parties in international investment disputes encompassing both procedural and substantive aspects of good faith expertly negotiating a complex principle this book diligently follows the arbitral process from jurisdiction through merits and to cost decisions identifying the various applications of good faith in investment disputes the author offers detailed analyses of the role of good faith in defining nationality and investor as well as in pre dispute admissibility requirements the study then delves into the ways the principle guides parties arguments and informs tribunals decisions regarding evidence substantive protections and costs it further addresses the role of good faith in the behaviour of arbitrators and other actors this is a guide for anyone wishing to understand this important principle that has accompanied the developing system of international investment law

the disputes that arise between host states and investors in the energy sector put a high number of valuable and vital projects in the countries at risk investment treaty arbitration mechanisms as the traditional remedy have provided a solution to these problems for decades however as the number of disputes increases the sufficiency of arbitration in responding to disputes became questionable in addition to the long lasting and costly cases accordingly adr mechanisms outside the arbitration cannon have triggered growing interest among practitioners despite the attraction and the apparent benefits of adr such as being cheaper faster and with better outcomes compared to arbitration there are also hurdles in front that hinder the application of adr this has lead to the underuse of adr in appropriate contexts this study has been conducted to research the gap for the applicability of the adr methods for investment disputes in the energy sector with the doctrinal analysis of the existing literature either promoting or opposing adr its findings provide guidance for alternative dispute resolution practitioners on when to use adr how to use adr and on what disputes adr to be used to resolve conflicts in international energy investment

the development of international arbitration as an autonomous legal order comprises one of the most remarkable stories of institution building at the global level over the past century today transnational firms and states settle their most important commercial and investment disputes not in courts but in arbitral centres a tightly networked set of organizations that compete with one another for docket resources and influence in this book alec stone sweet and florian grisel show that international arbitration has undergone a self sustaining process of institutional evolution that has steadily enhanced arbitral authority this judicialization process was sustained by the explosion of trade and investment which generated a steady stream of high stakes disputes and the efforts of elite arbitrators and the major centres to construct arbitration as a viable substitute for litigation in domestic courts for their part state officials as legislators and treaty makers and national judges as enforcers of arbitral awards have not just adapted to the expansion of arbitration they have heavily invested in it extending the arbitral order's reach and effectiveness arbitration's very success has nonetheless raised serious questions about its legitimacy as a mode of transnational governance the book provides a clear causal theory of judicialization original data collection and analysis and a broad relatively non technical overview of the evolution of the arbitral order each chapter compares international commercial and investor state arbitration across clearly specified measures of judicialization and governance topics include the evolution of procedures the development of precedent and the demand for appeal balancing in the public interest legitimacy debates and proposals for systemic reform this book is a timely assessment of how arbitration has risen to become a key component of international economic law and why its future is far from settled

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

this text presents a study on corruption in international investment arbitration the book considers the limited effectiveness of efforts to combat transnational corruption in international law and the emergence of international investment arbitration as a singular means for effective control of corruption within the international legal order the case law on corruption by investment tribunals is studied exhaustively jurisprudential trends are identified and reforms aimed at enhancing the effectiveness and fairness of investment arbitration as a mechanism to combat corruption are proposed

tribunal secretaries in international arbitration adopts a transnational approach to systematically answer questions about tribunal secretaries often discussed but thus far unresolved with useful analysis and practical guidelines it is an essential tool for all practitioners and academics involved in international arbitration

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