News and Notes from

Institute for TRANSNATIONAL ARBITRATION

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ITA AMERICAS INITIATIVE HOSTS INNOVATIVE FORUM ON LATIN AMERICAN ARBITRATION IN NEW YORK

Conference Report by Julio Rivera Rios (Debevoise & Plimpton LLP, New York)

On October 1, 2024, over 40 attendees—including senior lawyers, arbitrators, and law school students—gathered at Debevoise & Plimpton LLP's New York office for a unique ITA Americas Initiative event entitled "Dialogues on Latin American Arbitration: Mining Disputes, China's Growing Influence, and Recurring Damages Issues," organized with the support of the Asociación Latinoamericana de Arbitraje ("ALARB"). This forum was the first-of-its-kind in New York to adopt an interactive format that replaced traditional speaker-led presentations with open, informal conversations among participants.

The evening commenced with opening remarks from Eric Franco (ITA Americas Initiative, Lima). He emphasized the importance of promoting arbitration as a civilized means of dispute resolution linked to the rule of law in the Americas and around the world. Mr. Franco highlighted the history and goals of the ITA and the Americas Initiative, discussing its efforts to foster collaboration and knowledge exchange within the arbitration community.

Following the introduction, Paul Di Pietro (ICC International Court of Arbitration, New York), provided valuable insights into the landscape of ICC arbitration in Latin America. He discussed the significant involvement of Latin American parties in ICC cases, noting that 14% of all parties in ICC arbitrations come from the region, with Brazil and Mexico among the top ten countries represented. Mr. Di Pietro highlighted trends including the prevalence of energy and construction disputes, the growing participation of state entities, and the increasing preference of Latin American parties to have more control over the constitution of arbitral tribunals.

Paul Di Pietro (ICC International Court of Arbitration, New York), Eric Franco (ITA Americas Initiative, Lima), Dietmar W. Prager (Debevoise & Plimpton LLP, New York), and Caline Mouwad (Chaffetz Lindsey, New York)

The forum then transitioned into moderated discussions. The first session, led by Dietmar W. Prager (Debevoise & Plimpton LLP, New York), focused on mining disputes in Latin America. Participants delved into the complexities arising from recent regulatory changes in countries like Mexico, where new mining laws have introduced challenges such as shortened concession periods and increased government oversight. The conversation explored the critical concept of "social license" and the necessity of engaging with local and indigenous communities. Attendees shared their experiences and perspectives on navigating evolving legal standards for community consultations and emphasized the importance of due diligence in advising mining companies.

The second session, moderated by Caline Mouawad (Chaffetz Lindsey, New York), centered on China's growing influence in the region. The discussion examined the substantial increase in Chinese investments across sectors such as mining, energy, and infrastructure, and how this surge affects the regional economy

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and dispute resolution landscape. Participants explored the preferences of Chinese companies in arbitration proceedings, including the tendency to select seats in Singapore or Hong Kong, considerations regarding applicable law, and the choice of language. Participants also discussed the cultural differences in litigation approaches, noting that Chinese companies often avoid litigation and instead prefer negotiation and settlement. Such preferences present unique challenges in arbitration contexts.

Throughout the event, key takeaways emerged on the importance of due diligence and compliance amid changing regulations and political climates. Attendees underscored the need for ongoing assessment of legal obligations, particularly concerning environmental, social, and governance ("ESG") standards, and the impact of foreign investments on local communities. Participants also discussed quantum issues in connection with environmental regulations, including the challenges that arise in quantifying damages for mining projects that have not yet begun commercial operations.

The evening concluded with a cocktail reception, where attendees continued their conversations against the backdrop of the New York City skyline. Organized by Julio Rivera Ríos (Debevoise & Plimpton LLP and ITA Americas Initiative, New York) and Sebastián Briceño (Debevoise & Plimpton LLP and ALARB, New York), the event's innovative format and enthusiastic participation were key to its success, highlighting the value of creating interactive spaces for dialogue in the arbitration community.

THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION: IMPLICATIONS AND CONSIDERATIONS

Article by Tatevik S. Karapetyan, PhD
(Director, Co-founder of Resolve Academy)

1. Introduction

Third-party funding ("TPF") has emerged as a significant force in the landscape of international arbitration, fundamentally altering how disputes are financed and managed. Historically prevalent in litigation, TPF has gained traction in arbitration due to its potential to mitigate financial risks and enable access to justice for parties lacking the resources to pursue or defend claims. This article delves into the growing role of third-party funders, exploring its implications for parties, arbitrators, and the arbitral process itself. We will examine issues of transparency, conflicts of interest, and ethical considerations that arise from the intersection of TPF and international arbitration.

2. The Rise of Third-Party Funding

Third-party funding involves a financier, or funder, providing capital to a party involved in arbitration in exchange for a share of the proceeds if the claim is successful. This funding can cover legal fees, expert costs, and other expenses associated with the arbitration process. The key attraction for funders is the potential for a high return on investment, which is contingent upon the successful outcome of the arbitration.

Several factors have contributed to the growing prevalence of TPF in international arbitration:

- **Increased Costs of Arbitration:** The rising complexity and cost of international arbitration have made it more attractive for parties to seek external funding.
- **Access to Justice:** TPF can democratize access to arbitration by allowing financially weaker parties to pursue claims they might otherwise forgo.
- **Investment Opportunities:** Funders are drawn by the potential for significant returns in high-stakes arbitration cases.

For claimants, TPF can serve as a risk management tool, allowing them to undertake arbitration without bearing the full financial burden. This can be particularly advantageous in high-stakes disputes where the potential award is substantial. Conversely, funders may impose conditions on the claim, such as maintaining certain legal strategies or approving settlements, to safeguard their investment.

3. Considerations for Third-Party Funding

Parties must weigh the benefits of TPF against potential drawbacks. For instance, while funding can alleviate immediate financial pressures, it may also affect the party's control over the arbitration process. Funders typically require detailed reporting and involvement in strategic decisions, which may impact the party's autonomy in managing its case.

The involvement of third-party funders raises questions about transparency in the arbitral process. Arbitrators must ensure that the presence of a funder is disclosed to avoid potential conflicts of interest. Many arbitration rules and guidelines now mandate the disclosure of TPF arrangements to promote transparency. Failure to disclose can undermine the integrity of the proceedings and lead to challenges or annulments of awards.

The potential for perceived or actual bias increases with the involvement of funders. Arbitrators must be vigilant to maintain impartiality and avoid any actions or decisions that could be construed as favoring the funded party. Clear disclosure requirements and adherence to ethical guidelines are crucial in mitigating concerns about bias.

TPF can impact procedural fairness in arbitration. The funder's influence on the funded party's litigation strategy might affect the dynamics of the arbitration. For example, funders may push for aggressive tactics or prolonged proceedings to increase the pressure on the opposing party, potentially leading to delays or increased costs.

The presence of a funder can alter the settlement landscape. Funders may have specific objectives regarding the timing and terms of settlement, which could differ from the funded party's preferences. This dynamic may lead to different settlement strategies and negotiation approaches, potentially impacting the resolution of disputes.

The confidentiality of arbitration proceedings can be compromised if the funder is privy to sensitive information. Arbitrators and parties must take steps to protect confidentiality, ensuring that funders do not gain undue access to information that could be misused.

Lawyers and other advisors involved in funded arbitrations must adhere to high ethical standards. They must balance their duties to their clients with the demands and expectations of the funder, ensuring that their professional conduct remains uncompromised and aligned with ethical guidelines.

4. Future of Third-Party Funding

Various jurisdictions are beginning to regulate TPF more closely to address concerns related to transparency and ethics. For example, some national arbitration laws and institutional rules now include provisions requiring disclosure of TPF arrangements. International bodies, such as the International Bar Association ("IBA"), are also working on guidelines to govern TPF practices.

The future of TPF in international arbitration will likely see further evolution in regulatory frameworks and best practices. The growing awareness of the potential risks associated with TPF will drive the development of more comprehensive guidelines and regulations to ensure fairness and integrity in arbitration proceedings.

One notable example of third-party funding in international arbitration is the case of *ICC Case No. 21185/MCP*. This case involved a dispute where a party sought to use third-party funding to support its claim in an international arbitration under the International Chamber of Commerce ("ICC") rules. The claimant is a multinational corporation with a substantial claim concerning a contractual dispute but faced limited liquidity. The dispute concerned a complex contractual issue related to a joint venture agreement. The claimant argued that the respondent had breached certain terms, leading to substantial financial damages.

An investment firm specializing in litigation funding provided financial support to the claimant. The funder agreed to cover the claimant's legal costs in exchange for a share of any awarded damages or settlement proceeds.

The third-party funding allowed the claimant to pursue the arbitration despite its financial constraints. This enabled the claimant to maintain its operations and manage its cash flow while focusing on the legal dispute. The funding firm took on the financial risk associated with the arbitration. Their return depended on the outcome, so they had a vested interest in the success of the claimant's case.

By securing third-party funding, the claimant avoided the risk of depleting its own resources. It also gained leverage in negotiations, knowing it had the financial backing to sustain a lengthy arbitration process.

The success of third-party funding often hinges on the outcome of the arbitration. In this case, the claimant ultimately won the arbitration and received an award that covered both the claim and the funding costs. The funder received its agreed share of the award, which justified their investment.

The *ICC Case No. 21185/MCP* illustrates the significant impact of third-party funding on international arbitration. It highlights how such funding can enable parties with limited resources to pursue claims, influence strategic decisions, and affect the dynamics of the arbitration process. The involvement of third-party funders introduces additional considerations related to confidentiality, disclosure, and the tribunal's management of the case. Overall, third-party funding can be a powerful tool for accessing justice, but it also requires careful management and consideration of its implications on the arbitration proceedings.

5. Conclusion

Third-party funding thus has undeniably transformed the field of international arbitration by offering new opportunities and by raising significant challenges. Its growing role necessitates a careful examination of its implications for all stakeholders involved. Addressing issues of transparency, conflicts of interest, and ethical considerations is crucial to maintaining the fairness and effectiveness of the arbitral process. As TPF continues to evolve, ongoing dialogue and regulatory advancements will be essential in navigating its impact and ensuring the integrity of international arbitration.

A. V. B. & ORS (HONG KONG INTERNATIONAL ARBITRATION CENTRE'S ("HKIAC") NON-CONFIRMATION OF THE FIRST CO-ARBITRATOR DESIGNATED BY CLAIMANTS), HKIAC CASE ID CD2023/09/01, 01 JUNE 2023

Report by Hong Kong International Arbitration Centre

1. Facts of the Case

A. Arbitration Clause

The Agreement on Securing Payment of Debts (the "Agreement") provides that:

"This agreement shall be governed by the Laws of Japan, except in the case of the mandatory Laws and Regulations of PRC shall apply. Any dispute arising out of or in connection with this agreement, either party may submit it to Hong Kong International Arbitration Centre for arbitration. The seat of arbitration shall be Hong Kong" (the "Arbitration Clause").

[English translation prepared by HKIAC.]

B. Background

The dispute arose out of the Agreement, pursuant to which R1, the joint venture company, agreed to guarantee R2's payment of the share price to Claimants in accordance with the Joint Venture Agreement (the "JV Agreement"). R2 and R3 are the shareholders of R1. In the Agreement, R2 and R3 also agreed that their respective claims against R1 were inferior to the guaranteed claims of Claimants against R1.

By way of a Notice of Arbitration (the "Notice"), Claimants commenced this arbitration against Respondents (the "Current Arbitration"), claiming that (i) R1 breached the Agreement by failing to perform its obligations of guarantee under the Agreement, and (ii) R2 and R3 breached the Agreement by failing to ensure R1's performance of its obligations under the Agreement. Claimants sought, inter alia, (i) R1's payment of the share price, (ii) an order for R2 and R3 to compel R1's performance under the Agreement, and (iii) interest and costs.

In the Notice, Claimants (i) clarified that the 2018 Rules applied because the parties explicitly chose HKIAC as the arbitral institution in the Arbitration Clause, (ii) submitted a request for the arbitration to be conducted in accordance with the Expedited Procedure under Article 42 of the 2018 Rules (the "EP Application"), and (iii) proposed that the number of arbitrators be one because the dispute was relatively simple and straightforward, given that R2 had been ordered to pay to Claimants [a sum] in a related arbitral award (the "Related Arbitral Award").

R3 submitted that the Agreement had not been properly executed by its former director, thus it was not bound by the Agreement. Respondents jointly (i) objected to the EP Application, (ii) proposed to refer the dispute to three arbitrators considering the large amount in dispute, and (iii) agreed to conduct the arbitration in Chinese.

HKIAC informed the parties that (i) HKIAC had decided to proceed with this arbitration under the 2018 Rules on a prima facie basis, (ii) HKIAC had decided to reject the EP Application, and (iii) HKIAC had decided that the number of arbitrators in this arbitration shall be three.

Claimants designated the first co-arbitrator ("Arbitrator A"). Arbitrator A confirmed their availability, impartiality, and independence to act as co-arbitrator and made the following disclosure:

"I have been previously designated by Claimants and acted as co-arbitrator in the [Related] Arbitration proceedings as mentioned by Claimants in its Notice of Arbitration (see paragraph 23 of the Notice of Arbitration)" (the "Arbitrator A's Disclosure").

[English translation prepared by HKIAC]

Claimants indicated that they had no objections in respect of Arbitrator A's Disclosure. Although participating, Respondents failed to (i) comment on Arbitrator A's Disclosure, (ii) submit their Answer to the Notice of Arbitration, or (iii) jointly designate the second co-arbitrator.

2. Judgment of the Court - Analysis and Decision

A. Comparison of the Related Arbitration and the Current Arbitration

First, HKIAC identified the following commonalities and/or relatedness between the related arbitration in which Arbitrator A served as the co-arbitrator (the "Related Arbitration") and the Current Arbitration: The Related Arbitration and the Current Arbitration were commenced under related underlying contracts, *i.e.*, the Agreement was concluded to ensure the performance of the JV Agreement by R2 and R3. Claimants' claims in the Related Arbitration and the Current Arbitration both concerned R2's non-payment of the share price.

Second, upon review of the Related Arbitral Award and Claimants' submissions under the Current Arbitration, HKIAC identified at least one issue, elaborated below, that the tribunal in the Related Arbitration had already decided, and that the tribunal in this arbitration would likely need to decide anew, namely, R2's non-payment of the share price.

As stated above, R2 had been ordered to pay to Claimants [a sum] in the Related Arbitral Award. In the Related Arbitration, Claimants contended that R2 was in breach of the JV Agreement and had failed to purchase the shares of R1 as agreed. In the Notice, Claimants appeared to request the tribunal to apply the factual and legal findings in the Related Arbitration to the Current Arbitration. In this regard, Claimants could be relying on issue estoppel and/or res judicata with respect to R2's non-payment of the share price.

The common issues and apparent overlap between the issues decided in the Related Arbitral Award and the issues to be decided in the Current Arbitration necessitated an analysis of the impartiality and independence standards required of the tribunal in the Current Arbitration against this background.

B. Standards of Impartiality and Independence

Pursuant to Article 9.1 of the 2018 Rules, all designations of an arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by HKIAC. The factors to be considered by HKIAC when deciding whether to confirm a designation are set out in Article 9.3 of the 2018 Rules, which provides, "The designation of an arbitrator shall be confirmed taking into account any agreement by the parties as to an arbitrator's qualifications, any information provided under Article 11.4 [confirmation and disclosures of impartiality and independence], and in accordance with Article 10 [fees and expenses]."

Article 9.1 does not specify a test to be applied in the confirmation of arbitrators. However, HKIAC is mindful that if HKIAC were to confirm Arbitrator A, HKIAC would want to be certain that Arbitrator A could survive a potential challenge on the same grounds. In previous cases, HKIAC decided that it would be appropriate to apply the test for a challenge pursuant to Article 11 of the 2018 Rules with a sufficient margin of error, meaning that the test for confirmation in borderline cases may be stricter than for challenges, primarily to ensure that the arbitrator in question would survive a potential challenge once appointed.

HKIAC had concerns about the matter addressed in Arbitrator A's Disclosure, which had the potential to result in a challenge against Arbitrator A based on justifiable doubts as to their impartiality and independence. Arbitrator A's participation in the Related Arbitration, which on Claimants' own admission was related to the present matter, raised concerns regarding predisposition and prejudgment of matters in dispute, unavoidable breaches of confidentiality, and asymmetry of information between tribunal members.

In the past, HKIAC had decided on situations invoking similar concerns and had declined to confirm designees based on the grounds that (i) the co-arbitrator designee concurrently served as co-arbitrator in a related arbitration, which appeared to be related to the HKIAC arbitration in that involved related parties and identical counsel but no other common arbitrator, and (ii) the presiding arbitrator designee concurrently served as presiding arbitrator in another HKIAC arbitration involving an identical respondent but no other common arbitrator, and the two cases, though not related, appeared to share similar underlying contracts, factual patterns, the relief sought, and defenses raised.

HKIAC noted two recent decisions not to confirm the arbitrator, where the arbitrator had been the presiding arbitrator in a previous arbitration between the same parties and may have had to decide the same issues between the same parties in the new arbitration.

In both cases, HKIAC relied on the principles stated in *Stubbs v The Queen* [2019] AC 868 and *Komal Patel v Chris Au* [2016] 1 HKLRD 328 where, in determining questions of actual and/or apparent bias, the following were considered relevant considerations:

"*(1) Where the judge/arbitrator has determined some issues in a previous case, the nature of the previous and current issues, their proximity to each other, and the terms in which the previous determinations were made: Stubbs at §16.*

(2) Whether a judge has formed, or given the impression of having formed, a concluded view on an issue prior to hearing full argument in the relevant hearing: Stubbs at §17; Komal Patel at §17."

Following the decisions in *Stubbs* and *Komal Patel*, a reasonable apprehension of actual and/or apparent bias can be concluded in cases where (i) an arbitrator has determined similar issues in a previous case, or (ii) where the arbitrator has formed or given the impression to have formed a view on the issue prior to hearing the full argument in the relevant hearing. HKIAC then noted its previous decision to uphold a challenge to the arbitrator on the basis that the arbitrator had acted as co-arbitrator in another arbitration, which involved the claimant as one of the three claimants therein, and it would have had to decide the same or similar issues in the new arbitration.

For challenges, it is not necessary to show actual bias; apparent bias is sufficient. Under Hong Kong law, the *lex arbitri* of this case, the test for apparent bias is that enunciated in *Jung Science Information Technology Co Ltd v ZTE Corp* [2008] 4 HKLRD 776 at 49: "*whether an objective fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the tribunal was biased.*"

As for soft law instruments, HKIAC considers that it was entitled to have regard to the 2014 IBA Guidelines on Conflicts of Interest in International Arbitration (the "IBA Guidelines"), which reflect widely accepted guiding principles in respect of potential situations of conflict of interest. Paragraph 2.1.2 of the Waivable Red List of the IBA Guidelines (Part II) states that a conflict of interest exists where "[t]he arbitrator had a prior involvement in the dispute." The term "dispute" can reasonably be read to include related arbitrations that hinge on the same facts, issues and law.

HKIAC noted that Respondents, although participating in these proceedings, had not commented in respect of Arbitrator A's confirmation nor otherwise on the constitution of the arbitral tribunal. Notwithstanding the foregoing, in determining whether to confirm Arbitrator A, it was necessary to ask whether being a co-arbitrator in the Related Arbitration would lead an objective fair-minded and informed observer, having considered the relevant facts, to conclude that there was a real possibility that Arbitrator A was biased.

C. Issues

Based on the overview of the applicable standards above, HKIAC was of the view that any of the arbitrators who had reviewed evidence and/or considered issues in the Related Arbitration would be unsuited to sit as arbitrator in the Current Arbitration for the following reasons:

- Pursuant to the above comparison, an arbitrator who sat in the Related Arbitration and the Current Arbitration (the "Overlapping Arbitrator") may have previously reviewed the same evidence that would be presented in the Current Arbitration and may have to decide on the same issues that arose in the Related Arbitration. Such an Overlapping Arbitrator may have, or be seen to have, prejudged certain issues prior to hearing full arguments thereon.
- Based on the information available to date, Claimants may be relying on estoppel of certain issues in the Current Arbitration. If so, the Overlapping Arbitrator would likely have to review the same issues again in determining the applicability of estoppel, which gave rise to the concern that the Overlapping Arbitrator could not approach these issues in an unbiased and impartial manner.
- Although participating, Respondents failed to (i) comment on Arbitrator A's Disclosure, (ii) submit their Answer to the Notice of Arbitration, or (iii) jointly designate the second co-arbitrator. They thus cannot be presumed to have agreed to the appointment of Arbitrator A, which would have been a mitigating factor in this analysis.

D. Decision

Based on the analysis above, HKIAC was of the view that the designation of the first co-arbitrator could give rise to concerns regarding predisposition and prejudgment of matters in dispute and there was no mitigating factor since Respondent could not be presumed to have agreed to such appointment. As such, HKIAC did not confirm Arbitrator A designated by Claimants as the first co-arbitrator and requested Claimants to re-designate its co-arbitrator.

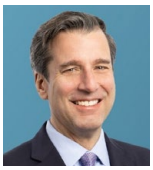
This case was reported by ITA reporter HKIAC. The full text of this award and other summaries of awards from HKIAC and other institutions are available on Kluwer Arbitration."

Institute for
TRANSNATIONAL ARBITRATION

INSTITUTE FOR TRANSNATIONAL ARBITRATION EXPERTS...IN THE NEWS UPDATES

Sustaining Member **Baker Botts** has designated **Ana Martinez Valls** as an Advisory Board representative under 40.

Sponsoring Member **A&O Shearman** has designated **David Ingles** as their Advisory Board representative.



Arbitral Institution Member the **Shenzhen Court of International Arbitration ("SCIA")** has designated **Wenhui Chi** as their Advisory Board representative.

Supporting Member **Berkeley Research Group ("BRG") LLC** has designated **Kenneth W. Grant** as a member of the Advisory Board.

Sustaining Member **Exxon Mobil Corporation** has designated **Estuardo Sierra** as a member of the Advisory Board.

Jaime M. Crowe of **Paul Hastings LLP** has joined ITA as an Associate Member.

Arbitral Institution Member the **International Centre for Settlement of Investment Dispute ("ICSID")** has designated **Martina Polášek** as their Advisory Board representative.

Ignacio J. Minorini Lima of **Bruchou & Funes de Rioja** has joined ITA as an Associate Member.

Advisory Board Member **Ben Love**, partner at **Boies Schiller Flexner**, was recently appointed as Co-Chair of 2024 Practitioners' Forum Committee for the Midyear Meeting of the American Society of International Law.

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The Institute for Transnational Arbitration

A Division of THE CENTER FOR AMERICAN AND INTERNATIONAL LAW

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(as of October 3, 2024)

ABBREVIATIONS

NY	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly, 1958 New York Convention)
ICSID	Convention on the Settlement of Investment Disputes between States and Nationals of Other States (commonly, ICSID Convention 1965)
IA	Inter-American Convention on International Commercial Arbitration (commonly, Panama Convention) (1975)
USBIT	United States Bilateral Investment Treaty
TIP	US Treaties with Investment Protection Provisions
ECT	Energy Charter Treaty (1998)
MC	United Nations Convention on Transparency in Treaty-based Investor-State Arbitration (commonly, Mauritius Convention) (2017)

SYMBOLS

S	Signed, but not ratified
R	Ratified, acceded or succeeded
A	Subscribed, but not signed, ratified or paid
(*)	Capital-exporting country under MIGA
N/A	Not applicable

CHANGES FROM PREVIOUS ISSUE

NY	None
ICSID	Equatorial Guinea (S)
IA	None
USBIT	None
ECT	None
MC	European Union (S)
TIP	None

NATION	NY[1]	ICSID[2]	ECT[3]	IA	USBIT	TIP[4]	MC
Afghanistan	R	R	R			R	
Albania	R	R	R		R		
Algeria	R	R				S	
Andorra	R						
Angola	R	R				S	
Antigua and Barbuda	R					R[23]	
Argentina	R	R		R	R	R	
Armenia	R	R	R		R	S	
Australia	R	R	S			R / S[19]	R
Austria	R	R	R				
Azerbaijan	R	R	R		R		
Bahamas	R	R				R[23]	
Bahrain	R	R			R	R / S[24]	
Bangladesh	R	R			R		
Barbados	R	R				R[23]	
Belarus	R	R	S[20]		S		
Belgium	R	R	R				S
Belize	R	S				R[23]	
Benin	R	R				S[22] / R[29]	R
Bhutan	R						
Bolivia[6]	R			R		S[31]	R
Bosnia and Herzegovina[7]	R	R	R				
Botswana	R	R				R[26]	
Brazil	R			R		R	
Brunei Darussalam	R	R				R / R[27]/S[19]	
Bulgaria	R	R	R		R		
Burkina Faso	R	R				S[22] / R[29]	
Burundi	R	R				R[25] / R[30]	
Cambodia	R	R				R / R[27]	
Cameroon	R	R			R		R
Canada	R	R				R[8] / S[19]/S[21]	R

Cape Verde	R	R				S[22]	
Central African Republic	R	R					
Chad		R					
Chile	R	R		R		R / S[19]	
China (People's Republic)[9]	R	R					
Colombia	R	R		R		R / S[31]	
Comoros	R	R				R[30]	
Congo	R	R			R		S
Congo (Democratic Republic of)	R	R			R	R[30]	
Cook Islands	R						
Costa Rica	R	R		R		R[10]	
Côte d'Ivoire	R	R				S[22] / R[29]	
Croatia[7]	R	R	R		R		
Cuba	R						
Cyprus	R	R	R				
Czech Republic	R	R	R		R		
Denmark[11]	R	R	R				
Djibouti	R	R				R[30]	
Dominica	R					R[23]	
Dominican Republic	R	S		R		R[10]	
Ecuador	R	R		R		S[31]	
Egypt	R	R			R	R / R[30]	
El Salvador	R	R		R	S	R[10]	
Equatorial Guinea		R					
Eritrea						R[30]	
Estonia	R	R	R		R		
Eswatini		R				R[26] / R[30]	
Ethiopia	R	S				R[30]	
Fiji	R	R					
Finland	R	R	R				S
France[12]	R	R	R[32]				S
Gabon	R	R					S
Gambia		R				S[22]	R
Georgia	R	R	R		R	R	
Germany	R	R	R[33]				S
Ghana	R	R				R / S[22]	
Greece	R	R	R				
Grenada		R			R	R[23]	
Guatemala	R	R		R		R[10]	
Guinea	R	R				S[22]	
Guinea-Bissau		S				S[22] / R[29]	
Guyana	R	R				R[23]	
Haiti	R	R			S	R[23]	
Holy See (Vatican City)	R						
Honduras	R	R		R	R	R[10]	
Hungary	R	R	R				
Iceland	R	R	R			S	
India	R						
Indonesia	R	R				R[27]	
Iran	R						
Iraq	A	R				S	R
Ireland	R	R	R				
Israel	R	R				R	
Italy	R	R					S
Jamaica	R	R			R	R[23]	
Japan	R	R	R			S[19]	
Jordan	R	R	R		R	R	
Kazakhstan	R	R	R		R	R[28]	
Kenya	R	R				R[25] / R[30]	

Kiribati							
Korea (Republic) (South)	R	R				R	
Kosovo		R					
Kuwait	R	R				S / S[24]	
Kyrgyzstan	R	R	R		R	R[28]	
Lao People's Democratic Republic	R					R / R[27]	
Latvia	R	R	R		R		
Lebanon	R	R				S	
Lesotho	R	R				R[26]	
Liberia	R	R				R/S[22]	
Libyan Arab Jamahiriya						S / R[30]	
Liechtenstein	R		R				
Lithuania	R	R	R		R		
Luxembourg	R	R	R[34]				S
Madagascar	R	R				R[30]	S
Malawi	R	R				R[30]	
Malaysia	R	R				R / R[27] / S[19]	
Maldives	R					R	
Mali	R	R				S[22] / R[29]	
Malta	R	R	R				
Marshall Islands	R						
Mauritania	R	R					
Mauritius	R	R				R / R[30]	R
Mexico	R	R		R		R[8]/S[19]/S[21]	
Micronesia		R					
Moldova	R	R	R		R		
Monaco	R						
Mongolia	R	R	R		R	R	
Montenegro	R	R	R				
Morocco	R	R			R	R	
Mozambique	R	R			R	R	
Myanmar (Burma)	R					S / R[27]	
Namibia		S				R[26]	
Nauru		R					
Nepal	R	R					
Netherlands[13]	R	R	R[36]				S
New Zealand[14]	R	R				R / S[19]	
Nicaragua	R	R		R	S	R[10]	
Niger	R	R				S[22] / R[29]	
Nigeria	R	R				R	
North Macedonia[7]	R	R	R				
Norway	R	R	S				
Oman	R	R				R / S[24]	
Pakistan	R	R					
Palau	R						
Panama	R	R		R	R	R	
Papua New Guinea	R	R					
Paraguay	R	R		R		S	
Peru	R	R		R		R / R[18]/S[19] / S[31]	
Philippines	R	R					
Poland	R		R[35]		R	R[27]	
Portugal	R	R	R[37]				
Qatar	R	R				S / S[24]	
Romania	R	R	R		R		
Russian Federation	R	S	S		S		
Rwanda	R	R			R	R / R[25]	
Saint Kitts and Nevis		R				R[23]	
Saint Lucia		R				R[23]	
St. Vincent and the Grenadines	R	R				R[23]	

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Senegal	R	R			R	S[22] / R[29]	
Serbia[7]	R	R					
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Sierra Leone	R	R				S[22]	
Singapore	R	R				R / R[27]	
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Slovenia[7]	R	R	R[38]				
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South Africa	R					R / R[26]	
South Sudan		R				R[25]	
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Sudan	R	R				R[30]	
Suriname	R					R[23]	
Sweden	R	R	R				S
Switzerland	R	R	R			R	R
Syrian Arab Republic	R	R					S
Taiwan							
Tajikistan	R		R			R[28]	
Tanzania	R	R				R[25]	
Thailand	R	S				R / R[27]	
Timor Leste	R	R					
Togo		R				S[22] / R[29]	
Tonga	R	R					
Trinidad and Tobago	R	R			R	R[23]	
Tunisia	R	R			R	R[30]	
Turkey	R	R	R		R	S	
Turkmenistan	R	R	R			R[28]	
Tuvalu							
Uganda	R	R				R[25] / R[30]	
Ukraine	R	R	R		R	S	
United Arab Emirates	R	R				S / S[24]	
United Kingdom[15]	R	R	R[40]				S
United States of America[16]	R	R		R	N/A	N/A	S
Uruguay	R	R		R	R	R	
Uzbekistan	R	R	R		S	R[28]	
Vanuatu							
Venezuela	R			R			
Vietnam	R					R /S[19] / R[27]	
West Bank and Gaza[17]	R						
Yemen		R	R			R	
Zambia	R	R				R[30]	
Zimbabwe	R	R				R[30]	

Notes: (1) Extends to metropolitan and overseas constituent territorial subdivisions but not to overseas dependent territories. Consult UNCITRAL for definitive status, as well as for the reservations to the Convention. (2) Extends to metropolitan and overseas constituent territorial subdivisions and to overseas dependent territories unless specifically excluded. (3) 1991 European Energy Charter was signed by the the United States of America (US or USA). European Union and EURATOM have ratified the ECT. (4) Treaties signed or ratified by the US with provisions on investments. (5) See also 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. (6) ICSID Convention entered into force for Bolivia on July 23, 1995. On May 2, 2007, Bolivia denounced the ICSID Convention, with effect on November 3, 2007. The Government of Bolivia delivered notice to the United States on June 10, 2011, that it was terminating the "Treaty Between the Government of the US and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment." As of June 10, 2012 (the date of termination), the treaty ceases to have effect, except that it continues to apply for another 10 years to covered investments existing at the time of termination. (7) As of 4 February 2003, The Federal Republic of Yugoslavia has changed its name to "Serbia and Montenegro." Montenegro declared itself independent from Serbia on June 3, 2006. Bosnia & Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, and Slovenia are separated successor states to parts of the former Yugoslavia and have succeeded to the NY. The Former Yugoslav Republic of Macedonia changed its name to the Republic of North Macedonia on 12 February 2019. (8) Included in the North American Free Trade Agreement among the United States, Canada and Mexico. (9) NY: includes Hong Kong Special Administrative Region. (10) Included in the Dominican Republic - Central America - United States Free Trade Agreement. (11) NY: includes Faeroe Islands and Greenland. (12) NY: includes, inter alia, French Guiana, French Polynesia, Guadeloupe, Martinique, Mayotte, New Caledonia, Réunion, and St. Pierre and Miquelon. (13) NY: includes Aruba and Netherlands Antilles. (14) ICSID Convention: excludes Cook Islands, Niue and Tokelau. (15) NY: includes Bermuda, Cayman Islands, Gibraltar, Guernsey, Isle of Man, and British Virgin Islands. ICSID Convention: excludes British Indian Ocean Territory, Pitcairn Islands, British Antarctic Territory and Sovereign Base Areas of Cyprus. ICSID Convention: continues to include Hong Kong Special Administrative Region. (16) NY: includes, inter alia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico and US Virgin Islands. (17) West Bank and Gaza are not recognized as states by the United States. (18) United States - Peru Trade Promotion Agreement. (19) Trans-Pacific Partnership signed on February 4, 2016. (20) The State has signed the ECT and it applies it provisionally, under Art. 45 of the ECT. (21) USMCA signed on November 30, 2018. (22) Economic Community of West African States (ECOWAS) – US Trade and Investment Framework Agreement (TIFA) signed on August 5, 2014. (23) Caribbean Community (CARICOM) – US TIFA, in force on May 28, 2013. (24) Gulf Cooperation Council – US Framework Agreement signed on September 25, 2012. (25) East African Community – US TIFA, entered into force on July 16, 2008. (26) Southern African Customs Union – US TIFA, entered into force on July 16, 2008. (27) Association of South-East Asian Nations (ASEAN) – US TIFA, entered into force on August 25, 2006. (28) Central Asia – US TIFA, entered into force on June 1, 2004. (29) West African Economic and Monetary Union (WAEMU) – US TIFA, entered into force on April 24, 2002. (30) Common Market for Eastern and Southern Africa (COMESA) - US TIFA, entered into force on October 29, 2001. (31) Andean Community (ANCOM) – US Trade and Investment Council signed on October 30, 1998. (32) France withdrawal from the Energy Charter Treaty shall take effect on 8 December 2023. (33) Germany withdrawal from the Energy Charter Treaty shall take effect on 21 December 2023. (34) Luxembourg withdrawal from the Energy Charter Treaty shall take effect on 17 June 2024. (35) Poland withdrawal from the Energy Charter Treaty shall take effect on 29 December 2023. (36) The Netherlands withdrawal from the Energy Charter Treaty shall take effect on 28 June 2025. (37) Portugal withdrawal from the Energy Charter Treaty shall take effect from 2 February 2025. (38) Slovenia withdrawal from the Energy Charter Treaty shall take effect from 14 October 2024. (39) Spain withdrawal from the Energy Charter Treaty shall take effect in 17 April 2025. (40) United Kingdom withdrawal from the Energy Charter Treaty shall take effect on 27 April 2025.

SOURCES:

This issue was compiled by Co-Editors Crina Baltag and Monique Sasson of The Institute for Transnational Arbitration based on the following sources: United Nations; ICSID; UNCITRAL; Organization of American States; Energy Charter Secretariat; UNCTAD and the Office of the United States Trade Representative. The Scoreboard is designed to be a convenient reference and it is not intended to be relied on as legal advice. Please consult the sources directly to confirm the status of any particular ratifications, reservations, changes, special conditions or new developments.

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NOV 7
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NOV 12-13
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Conference Co-Chairs: **Simon Greenberg** (Clifford Chance, Paris, France), **Santiago Montt** (Los Andes Copper Ltd., Santiago, Chile) and **Martin J. Valasek** (Bennett Jones, Toronto, Canada)

APR 16
22nd ITA-ASIL Conference
WASHINGTON, D.C.

Conference Co-Chairs: **Christina L. Beharry** (Foley Hoag, Washington, D.C., USA) and **Prof. Charles T. Kotuby, Jr.** (University of Pittsburgh School of Law, Pittsburgh, PA, USA)

JUNE 11-15
37th Annual ITA Workshop and Annual Meeting
TBD

Workshop Co-Chairs: **Stavros Brekoulakis** (National University of Singapore, Singapore), **Michael Ostrove** (DLA Piper, Paris, France) and **Natalie Reid** (Debevoise & Plimpton LLP, New York, NY, USA)

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