Regulation of arbitration: where it comes from, who it is for, and its impact on maritime arbitrators

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Introduction: rules and regulations

ICMA's host in Copenhagen, the Danish Institute of Arbitration, has an admirably succinct statement of 'fundamental principles' in Article 18(1) of its Rules of Arbitration Procedure (2013):

'The Arbitral Tribunal shall be fair and impartial and shall ensure that parties are treated with equality and that each party is given full opportunity to present its case. The Arbitral Tribunal shall ensure that the arbitration is conducted within reasonable time and in an efficient and cost-conscious manner.'

The Singapore International Arbitration Centre (SIAC), an important institution for shipping related arbitrations, has a 'Code of Ethics for an Arbitrator', which, amongst others, has regulations for disclosures to be made for assessments of impartiality and independence and a requirement that an arbitrator agrees to the remuneration settled by SIAC.

In response to the new legislation in Singapore, which permits third party funding (TPF) of claims in arbitration, SIAC has introduced a practice note, dated 31 March 2017, for arbitrator conduct in cases involving 'External Funding'. These regulations would, for example, allow an arbitrator to conduct enquiries into the existence of 'any funding relationship' and to seek certain details about it. If its definition of 'External Funding' includes P&I and defence clubs, this would be a first: no arbitral institution or other arbitral body has previously sought to make regulations for arbitrations in which a party is supported by a club.

This paper will discuss the growth of regulation in international arbitration. It will ask how much of it is really needed and whether it carries its own risks.

If self-regulation is the goal, it will query whether the international commercial arbitration community has an inclusive notion of self.

It will warn of the dangers for maritime arbitrators of not making their distinctive voices heard in the various bodies which seek to formulate new regulations.

In addressing these questions, I shall consider three aspects of regulation:

- where regulation comes from;
- who it is for; and
- its impact on maritime arbitrators.

Where regulation comes from: winter, climate change, and disease

Winter: self-regulate or perish

'Winter is coming', warned Gary Born in 2016.

Gary Born's name may not resonate in maritime arbitration circles. He is a partner in the US led international law firm, Wilmer Hale, and is based in its London office in Park Lane. He is currently President of the Singapore International Arbitration Centre (SIAC) court in Singapore. He is the author of textbooks on international arbitration and is a highly regarded authority on the subject.

In a lecture in New York in May 2016, Born is reported to have said that the arbitration community should be prepared to defend itself from those who would demand more government control of the arbitration process in the future.[2] A 'long golden summer' when everything went right for arbitration might be reaching its end.

Four years earlier, Sundaresh Menon, then Attorney-General of Singapore, in the opening address at the International Council of Commercial Arbitration (ICCA) congress of 2012, likewise spoke of a golden age of arbitration, which was facing signs of trouble. Is it 'the beginning of the end?', he asked.

Speaking of 'dissatisfaction with an unregulated industry', Menon said, 'As we contemplate these problems of moral hazard, ethics, inadequate supply and conflicts of interests associated with international arbitrators, it seems surprising that there are no controls or regulations to maintain the quality, standards and legitimacy of the industry.'[3]

Menon called for 'a code of conduct and practice to guide international arbitrators and international arbitration counsel'.

With its 2014 revisions to its Arbitration Rules, the London Court of International Arbitration (LCIA) introduced a new annex, 'General Guidelines for the Parties' Legal Representatives', eg a legal representative should not knowingly make false statements. Under new provisions in Article 18 of the LCIA Rules, an arbitral tribunal is empowered to order sanctions against legal representatives who violate those guidelines.

In the commentary which I co-authored on the 2014 LCIA Rules, I noted that the changes to Article 18 and the new Guidelines contributed to 'a general impression, which is new in this context, that an arbitration under the LCIA Rules is essentially an enterprise for lawyers.'[4]

Led by lawyers and academics, an arbitration ethics industry has emerged. Queen Mary University of London (QMUL) has an Institute for Ethics & Regulation associated with its Centre for Commercial Law Studies and its School of International Arbitration. Its Professor of Ethics, Regulation and the Rule of Law is Catherine A Rogers, author of *Ethics in International Arbitration*, published by OUP in 2014.

Climate change: third party funders

The Institute at QMUL is involved in various projects, including the ICCA-QMUL Task Force on Third Party Funding (TPF), which was established in 2013. This project takes the regulatory

drive in arbitration beyond arbitrators, and legal representatives, to third parties. According to the Institute's web page, TPF has been described as 'the climate change in international arbitration.'[5]

TPF is said to give rise to a 'host of complex procedural, structural and ethical issues' but what then follows on the ethics institute's web page is a short list of what seasoned shipping lawyers would recognise as mundane features of arbitrations supported by insurers, eg security for costs, tensions between funders, parties and lawyers, and confidentiality.

The modern form of TPF is rarely encountered in maritime arbitration, which has been well served for more than a century by the P&I and FD&D clubs and by other insurance.[6] However, it is a growing phenomenon in arbitrations arising in other sectors, notably in the niche area of investor-state arbitration. The numbers of TPF supported claims in arbitration remain small, though, at a mere handful of new cases each year for a major provider, in comparison to well over a hundred arbitrations a year for a major FD&D club.[7]

There are indications that those who would seek to regulate the activities of the new TPF providers tend to be unfamiliar with claims and defences backed by insurers.[8] They have generally not involved insurers in their conversations and they have not drawn upon the clubs' long experience of funding arbitrations.

According to ICCA, the task force comprises representatives of 'all relevant stakeholders' for the purposes of making 'recommendations regarding the procedures, ethics, and related policy issues relating to TPF in international arbitration.'[9] It has already advised the International Bar Association (IBA) on revisions to its Guidelines on Conflicts of Interest in International Arbitration, which were introduced in 2014 and added (somewhat opaque) provisions relating to insurers alongside TPF. The task force's draft report is expected to be submitted for a short public consultation in the autumn of 2017 and it is at that stage that insurers will find out if any of the recommendations for regulation would target them and affect arbitrations which they fund.

Meanwhile a shipping law firm in Plymouth, Davies Johnson & Co (part of TM Law)[10], has made TPF history with a case, which put TPF sceptics into a tail-spin.

At the conclusion of a long running International Chamber of Commerce (ICC) arbitration relating to the management of an oil rig, the arbitrator, Sir Philip Otton, had awarded their client, the claimant, Norscot, its costs on an indemnity basis as a result of the behaviour of the respondent, Essar, in what he found to be a David and Goliath battle. In addition to its legal costs, he awarded to Norscot the costs of the funding which it had obtained and which was three times the amount advanced (£647,086). On a challenge to the award (brought under s68, Arbitration Act 1996), the Commercial Court held on 15 September 2016 that the arbitrator was entitled to treat the funding costs as 'other costs' under s59(1)(c), AA 1996 and 2012 ICC Rules, art 37(1).[11]

The real users of TPF, and their lawyers, in this case were not participants in the 'great debate'[12] about its ethics. The task force has not brought the debate to the commercial

disputes law firms of the kind who are represented at this international congress of arbitrators.

Instead, TPF has become a topic for discussion at the general international arbitration conferences organised by arbitral institutions and the arbitration press, whose delegates tend to come from the relatively small international arbitration groups in big law firms. Ethics and self-regulation have long been popular themes at such conferences. Keen to join, or remain, in the elite, and to obtain appointments as arbitrators but unable to demonstrate their legal knowledge to an international audience or to discuss cases which must necessarily remain confidential, lawyers can use the opportunity of a debate about ethics to advertise their own virtue.

In their important book, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, a collaboration between a French sociologist and an American law professor, Yves Dezalay and Bryant C Garth note, 'Only a very select and elite group of individuals is able to serve as international arbitrators. They are purportedly selected for their "virtue" – judgment, neutrality, expertise – yet rewarded as if they are participants in international deal-making.'[13] In more sociological terms, they say, arbitrators' *symbolic capital* is 'translated into a substantial cash value'.

In recent years, the new TPF providers have been invited to give presentations at arbitration conferences and to take part in debates about their ethics. They are naturally delighted to attend because these are fantastic marketing opportunities. Insurers are rarely asked to join them. Having come across funders at conferences at various glamorous venues and having heard speakers warn about new and vital ethical issues, delegates can come away with the impression that their world of arbitration is indeed facing 'climate change'.

However, this is not the world of arbitration but a distorted reality zone. In terms of numbers, even one of the largest funders has only backed three or four arbitrations a year so far.[14] As for the issues never before encountered and so serious that arbitration lawyers might decide that TPF should not be allowed to exist in the first place[15], these are, as noted above, largely matters (often non-issues) which are familiar to lawyers who work with P&I and FD&D clubs, and other insurers.

Confusing freedom of judgment with freedom of action, some arbitration lawyers complain that funders seek to 'control' cases which they support and that this is unethical. Control is even seen as a definitional issue. This is based on the false notion that 'before-the-event insurers may be presumed to be less directly involved in the specifics of case management than third-party funders are'.[16]

However, as the Commercial Court and Court of Appeal made clear in the disastrous *Excalibur* litigation, funders ought to take 'rigorous steps short of champerty'.[17] Christopher Clarke LJ urged funders to conduct 'rigorous analysis of law, facts and witnesses, consideration of proportionality and review at appropriate intervals' in order to reduce the occurrence of the sort of circumstances that caused him to order indemnity costs. He considered that rigorous monitoring of this kind was 'an advantage and in the public interest'. This is normal procedure

from FD&D clubs and endorsed in their rules.[18] Ceding a level of control to a third party is nothing new. It is a boon to arbitration, not an evil.

If they would look at the facts and engage with the wider arbitration community, the academics and lawyers who have been making such a fuss about TPF ought to deny that it is causing climate change. That would be the right response, not only analytically and legally but also sociologically, demonstrating an understanding of the arbitration community's diversity.

Disease: legislitis

This failure to see the bigger picture is the result of the 'silo effect'. In her book of that title[19], the *Financial Times* journalist, Gillian Tett, brought her training as an anthropologist to bear on the fragmentation inside organisations and professions. She suggests that perfectly intelligent people, such as managers of multinationals and of banks, economists and civil servants, create and inhabit silos, which then trap them and lead them to fight with each other and to overlook dangerous and costly risks. As she warns, 'silos can create tunnel vision, or mental blindness, which causes people to do stupid things.'

The drive to regulate is partly the product of tunnel vision inside arbitration silos. Well intentioned as it might be, the arbitration ethics industry has already done 'stupid things'.

In practical terms, regulation manifests itself in the production of guidelines ('soft law') by institutions, professional bodies, associations of arbitrators, and committees and task forces, whether at their own initiative, or, as in Hong Kong and Singapore in the wake of recent reforms to legalise TPF, at the instigation of governments. The SIAC practice note, mentioned in the introduction, is an example of the latter.

Toby Landau QC has identified a new disease, which he has called 'legislitis' and which he has described as 'a virulent affliction that manifests itself in an involuntary urge to publish A6 booklets of rules, guidelines, or principles'.[20] If it moves, codify it. This condition, he says, derogates from the flexibility of arbitration.

In the US, the Financial Industry Regulatory Authority Inc (FINRA), which runs arbitration schemes for the industry and its customers, introduced more restrictive criteria for its arbitrators in 2015 to address users' concerns about neutrality. The new criteria created an 'eligibility gap' whereby certain otherwise qualified arbitrators were no longer able to serve, for example, if they happened to have a family member who was involved in certain financial services activities. FINRA's regulations had reduced the pool of arbitrators, thereby reducing choice and flexibility and leading to inefficiencies and extra costs.

Legislitis had turned into myxomatosis: a disease intended to regulate arbitration had killed arbitrators off in unintentionally large numbers and was itself threatening the system. In July 2017, FINRA proposed a rule change to relax the eligibility criteria for 'non-public' arbitrators in a bid to cure some of the problems which had been created by its regulations.[21]

Who it is for: an ethical no-man's land and Big Law's footprint

The ethical abyss and the self-regulation parachute

According to Prof Catherine Rogers, 'those participating in international arbitration dwell in an ethical no-man's land' where nobody knows which ethical rules apply.[22]

An 'ethical abyss' is most evident with respect to lawyers. Whilst arbitrators can be expected to have high ethical standards, questions remain about impartiality obligations and transparency of the selection process. As for experts and third party funders, Rogers believes that there are new and unexplored questions about what rules apply to them and that this is an increasingly important concern.[23]

Ethical issues lying in this no-man's land, as distilled from Rogers' treatise, can be listed as follows:

- Arbitrators
    - Conflicts of interest (on accepting appointment)
    - Communications with appointing party
    - Conduct of arbitration
    - Confidentiality of deliberations and of proceedings

- Parties' representatives
    - Conflicts of interest (on appointing an arbitrator)
    - Communications with witnesses
    - Document disclosure obligations
    - Conduct during proceedings
    - Confidentiality and privilege

- Third parties: funders
    - Conflicts of interest (in nominating an arbitrator for appointment)
    - Control of the arbitration
    - Confidentiality and privilege

Rogers proposes a cure-all, one that fits with Menon's call in 2012: self-regulation for the entire international arbitration community. Her book proposes that 'international arbitration extend the tradition of self-regulation expressly and intentionally to the ethical conduct of all its participants.'[24] This, she submits, will increase confidence in the legitimacy of the arbitral process.

What the international arbitration community is and what it thinks

Rogers' call for self-regulation finds itself endorsed in the QMUL 2015 International Arbitration Survey, which was sponsored by the US led law firm, White & Case. That innovative and important survey is frequently cited in articles, conferences, and on international arbitration blogs. It showed overwhelming support for guidelines and 'soft law' instruments in arbitration with only 5% of respondents saying that they were not useful.

But who were the respondents? More than half of them (51%) had personally been involved in 10 or fewer arbitrations in the past 5 years. It is perhaps unsurprising that the relatively inexperienced will be keen to endorse regulation if the question is asked of them.

Were the respondents to the survey representative of the majority of users of international arbitration? Ian Gaunt of the LMAA (now its president) thought not: 'Billed as a survey of international commercial arbitration however, it must regrettably again be questioned whether the contents correspond with the label on the tin.'[25] Gaunt protested that the survey gave the distorted impression that almost all international commercial arbitration was institutional whereas ad hoc predominated in the field which was probably most productive of arbitration cases, namely maritime and commodities.

In the survey, 79% of respondents' arbitrations over the previous 5 years were administered by institutions, not ad hoc, which was noted to be consistent with findings in previous surveys in 2006 (73%) and 2008 (86%). Such a high proportion of institutional arbitrations is not consistent with statistics for international arbitration worldwide.

In his textbook *International Commercial Arbitration,* Gary Born has a table of cases filed with leading arbitral institutions between 1993 and 2013.[26] Of the institutions listed, the LMAA is the only one whose annual numbers are consistently in the thousands. The total number of international cases in all of the institutions in Born's table in the 5-year period 2009 to 2013 inclusive is 42,102. Of these, 18,307 or 43 % were with the LMAA. For comparison, the International Centre for Settlement of Investment Disputes (ICSID) had 169 cases (0.4%). Of course, as everyone at this congress knows, the LMAA is not an institution. Arbitrations conducted pursuant to the LMAA Terms are ad hoc.

It is worth noting at this juncture that other types of international arbitration survey similarly ignore ad hoc arbitration, for example surveys on gender diversity.[27] The LMAA's record on the inclusion of women in its Full Membership is disappointing and ought to be recognised in the wider arbitration community but surveys do not bring this out.

Self-discovery in parallel universes

Gaunt's protest about the QMUL survey was met with the response that ad hoc shipping and commodities arbitration resided in a 'parallel universe' to international commercial arbitration, encompassing construction, energy and investment cases. [28]

Maritime arbitration is not in a parallel universe. It is larger, in terms of the numbers of cases, than the other sub-categories of commercial arbitration cited and it often overlaps with them: for example, it is not exclusively ad hoc and is also present in the same institutions as them. SIAC reported that 17% of its new arbitrations in 2015 were in the maritime/shipping sector. The LCIA likewise reported that, in 2016, 13.44% of its new arbitrations were in shipping/commodities with a further 1.58% in marine construction.

In any event, the notion that maritime and commodities arbitration can be distinguished from international commercial arbitration runs counter to its treatment in the English courts (see

H v L below) and to the UNCITRAL Model Law on International Commercial Arbitration (1985 and amended in 2006), which opens with definitions of 'international', 'commercial' and 'arbitration'. Maritime arbitration falls squarely within the Model Law's definitions.[29]

Self-regulation has to start with an understanding of who the self is. As far as international commercial arbitration is concerned, the UNCITRAL Model Law is a good starting point; who attends arbitration conferences and who is invited to take part in surveys is not.

Arbitrator Intelligence and dealing in power

Rogers proposed in her book a new 'Arbitrator Intelligence' project aimed at reducing information asymmetries in the arbitrator selection process, making critical information more generally accessible and increasing arbitrator accountability.[30] This is to be a 'regulator' with targeted collection and dissemination of information being a form of regulation. As Rogers notes, 'The mere potential for feedback may be an effective deterrent for arbitrators otherwise inclined to dally at the margins of ethical conduct'.

The Arbitrator Intelligence Questionnaire was launched in June 2017 with the signing of a cooperation agreement with SIAC. AIQ has been designed to provide feedback on arbitrator performance and decision making across the entire spectrum of commercial, investment and sports arbitrations worldwide, thereby assisting parties in selecting arbitrators. However, its focus on institutional arbitration undermines that ambition. Its questions assume that every arbitration requires a team of lawyers and they make no allowance for ordinary cases arising from international commerce, which are dealt with by claim handlers in insurance companies and clubs, and which are commenced by the appointment of an arbitrator, not by 'filing' a Request for Arbitration with an institution.

In a perceptive article, Magdalene D'Silva notes, 'shifting the power over arbitration information to a consolidated single network between arbitral institutions and law schools, seems to be really about just shifting the networks.'[31] D'Silva posits the alternative hypothesis that affective networks of trust between individuals in international commercial arbitration necessarily function as quality assurance gatekeepers in arbitrator appointment.

<u>Impact of regulation on maritime arbitrators</u>

The IBA Guidelines in the English Courts

Trust is fundamental in arbitration. When it is lost, arbitrators can face challenges to their appointments.

In *Cofely Ltd v Bingham and another* [2016] EWHC 240 (Comm), the arbitrator was successfully challenged after the respondent in the arbitration learned about the manner in which he had been appointed in another case involving its opponent. Cofely ascertained that he had taken 25 appointments as arbitrator or adjudicator in the previous 3 years in cases in

which its opponent, Knowles, a claims consultant, was either a party or was representing a party.

Analogies can be drawn between claims consultants in the construction industry and defence clubs in the shipping industry: both support parties in pursuing claims in arbitration. However, no club has been reported to have devised 'blacklist' schemes to ensure the appointment of a particular arbitrator.

Paragraph 3.1.3 of the Orange List in the IBA Guidelines, which requires disclosure of repeat appointments, was invoked by Cofely but was only a peripheral consideration in the circumstances of the case. Hamblen J did not analyse the question of whether it applied to appointments made in cases in which Knowles was not itself a party.

New General Standard 6(b) of the Guidelines (introduced to deal with TPF) might mean that a 'before the event' insurer is considered to 'bear the identity' of the party which it supports but the wording is opaque. Whilst the exception for maritime arbitrations, in a footnote to paragraph 3.1.3 of the Orange List, might exempt FD&D clubs, it would be of no avail to a club which behaved in a manner similar to Knowles.

According to the QMUL 2015 international arbitration survey, 72% of respondents agreed that repeat nominations of the same arbitrator in multiple commercial arbitrations should be 'regulated'.

However, what emerges from this judgment is that what matters in a case, at an English seat, is not whether boxes in the IBA Guidelines, or other regulations, are ticked but whether the arbitrator's conduct would lead a fair minded and informed observer to conclude that there was a real possibility that he was biased.

The IBA Guidelines are only a voluntary code. In *W Ltd v M SDN BHD* [2016] EWHC 422 (Comm), Knowles J was prepared to hold that the non-waivable red list could be set to one side if the factual circumstances were such that a fair-minded observer would not find that the arbitrator was apparently biased.

In *H v L and others* [2017] EWHC 137 (Comm), a challenge to an arbitrator in a Bermuda Form insurance arbitration, Popplewell J confirmed that the IBA Guidelines did not represent English law on apparent bias and disclosure. The advisory requirement to disclose 'Orange List' circumstances imported no presumption of doubt as to the arbitrator's impartiality arising from them. The judge held that it was 'a regular feature of international arbitration in London that the same underlying subject matter gives rise to more than one claim and more than one arbitration without identity of parties.' He noted that this was common in maritime disputes, for example.

Popplewell J gave leave to appeal his judgment, noting that 'various arbitration communities' might welcome authoritative guidance on the question of whether an arbitrator may, without

disclosure, accept appointments in overlapping cases with only one common party without giving rise to an appearance of bias.

Changing in order to remain the same

It is, of course, open to an arbitration community to formulate its own regulations. Indeed, this is precisely how self-regulation should operate.

The International Cotton Association (ICA) is a trade association, based in Liverpool, which dates back to the 1840s. In recent years, it has taken steps to modernise its arbitration service.

Aldcroft v ICA [2017] EWHC 642 (Comm) concerned a rule in the ICA's Arbitrators Code of Conduct, the '3 and 8 rule' introduced in 2014. This rule limits the number of appointments from the same (or related) party in a calendar year (the 3 rule) and the number of active ICA arbitrations in which an arbitrator is involved (the 8 rule).

Mr Aldcroft contended that both limbs of the 3 and 8 rule constituted an unreasonable restraint of trade but the court held that the ICA's objectives of promoting a perception of impartiality and of avoiding delay in the production of awards were legitimate and that the mechanisms adopted by the ICA to meet them were reasonable.

There was no evidence of any party to an ICA arbitration raising the issue of repeat appointments before the introduction of the 3 and 8 rule. The judge considered that the ICA was entitled to be proactive. ICA representatives had visited members in India, Bangladesh and Dubai and noted views that costs of ICA arbitration were too high and that references were taking too long to complete. It was legitimate for the ICA to stress its commitment to impartiality and to incentivising arbitrators to complete arbitrations with due expedition.

The ICA was also entitled to reach its own view as to the appropriate approach and to reinforce the confidence of users by adopting stricter standards than those applied by the court on a challenge.

Such a restriction, particularly on the number of active arbitrations, is unlikely to be appropriate for LMAA arbitrators, for example. However, as *Cofely v Bingham* and *H v L* illustrate, questions around repeat appointments in arbitrations are increasingly being ventilated. It may be time for the maritime arbitration community to consider its own response.

Conclusion

A contrast can be drawn between the conscientious way in which the ICA went about consulting its users before introducing its reforms and the way in which such projects as the ICCA-QMUL Task Force and AI are being conducted without due regard to long established and diverse traditions and practices in the wider world of arbitration.

Maritime arbitrators should be vigilant. Where regulations are to be proposed for the entire international commercial arbitration community, they should ensure that they contribute to the deliberations.

It should also be the responsibility of the proponents of regulation to engage with maritime arbitrators and to learn from them.

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[1] *The views expressed in this paper are entirely the author's own and are not necessarily those of his current or any former employer or of any organisation with which he is, or has been, associated.*

[2] *'Winter is coming for commercial arbitration', says Born, Law 360, 20 May 2016 (https://www.law360.com/articles/798830)*

[3] *http://www.arbitration-icca.org/media/0/13398435632250/ags_opening_speech_icca_congress_2012.pdf*

[4] *Shai Wade, Philip Clifford and James Clanchy, A Commentary on the LCIA Arbitration Rules 2014 (London: Sweet & Maxwell, 2015), p207*

[5] *http://www.ccls.qmul.ac.uk/research/regulation-ethics/ (accessed 15 July 2017)*

[6] *James Clanchy, Navigating the Waters of Third Party Funding in Arbitration, 2016, 82 Arbitration, 222 – 232. Reprinted in the LMAA's 2016/2017 newsletter and available online. See also James Clanchy, Money Makers, New Law Journal, 24 June 2016*

[7] *J Clanchy, Funders, Clubs and Rules: Can Maritime Arbitration be Different? in Update on Arbitration – focus on Funding Issues and Apparent Bias, papers from London Shipping Law Centre (LSLC) seminar 14 June 2017*

[8] *James Clanchy, Third Party Funding in Arbitration: Breaking down Barriers and Building Bridges,Croatian Arbitration Yearbook Vol 23 (2016), pp 53 - 69*

[9] *http://www.arbitration-icca.org/projects/Third_Party_Funding.html (accessed 18 July 2017)*

[10] *https://www.thomasmiller.com/news-media/article/thomas-miller-acquires-specialist-marine-law-firm-133366/ (accessed 10 June 2017)*

[11] *Essar Oilfield Services Ltd v Norscot Rig Management Pvt Ltd, Queen's Bench Division (Commercial Court)15 September 2016, [2016] EWHC 2361 (Comm)*

[12] *Jonas von Goeler, 'Show Me Your Case and I'll Show You the Money', Kluwer Arbitration Blog, 8 October 2016*

[13] *Yves Dezalay & Bryant C Garth, Dealing in Virtue, Chicago, The University of Chicago Press, 1996*

[14] *Susan Dunn of Harbour Litigation Funding, interviewed in The Lawyer on 6 June 2016*

[15] *Maximilian Szymanski, 'Recovery of Third Party Funding Ordered by ICC Tribunal and Confirmed by the English High Court – An Under-Theorised Area of the Law, Kluwer Arbitration Blog, 8 October 2016*

[16] *William W Park and Catherine A Rogers, "Third-Party Funding in International Arbitration: The ICCA Queen Mary Task Force" (2014) Penn State Law Legal Studies Research Paper No. 42-2014*

[17] *Excalibur Ventures LLC v Texas Keystone Inc and other companies [2014] EWHC 3436 (Comm) and [2016] EWCA Civ 1144*

[18] *James Clanchy, Rigorous steps short of champerty, New Law Journal, 17 March 2017*

[19] *Gillian Tett, The Silo Effect, London, Little Brown, 2015*

[20] *Toby T Landau QC and J Romesh Weeramantry, A Pause for Thought, in Albert Jan van der Berg (ed) 'International Arbitration: The Coming of a New Age?', ICCA Congress Series Vol 17 (Kluwer 2013), 496 – 537, p503*

[21] *http://www.finra.org/sites/default/files/rule_filing_file/SR-FINRA-2017-025.pdf*

[22] *Catherine A Rogers, Ethics in International Arbitration, Oxford, Oxford University Press, 2014, p18*

[23] *Ibid, p19*

[24] *Ibid, pp19-20*

[25] *2015/2016 LMAA Newsletter*

[26] *International Commercial Arbitration, 2nd ed, Wolters Kluwer, 2014, at p94*

[27] *BLP International Arbitration Survey, 2016: Diversity on Arbitral Tribunals (http://www.blplaw.com/media/download/BLP-_Diversity_on_Arbitral_Tribunals_-_Survey_Report.pdf); Gender Diversity in International Arbitration – Statistics, Global Arbitration News (Baker McKenzie Blog) (https://globalarbitrationnews.com/gender-diversity-in-international-arbitration-some-statistics/)*

[28] *Prof Loukas Mistelis quoted in Global Arbitration Review, 6 May 2016*

[29] *UNCITRAL Model Law Article 1 and footnote 2*

[30] *Catherine A Rogers, Ethics in International Arbitration, Oxford, Oxford University Press, 2014, p340*

[31] *Magdalene D'Silva, Dealing in Power: Gatekeepers in Arbitrator Appointment in International Commercial Arbitration, Journal of International Dispute Settlement, 2014, 5, 605 – 634*

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