

Eleanor McGregor

L'arbitrage en droit public suisse

Une comparaison avec la France,
les États-Unis et l'arbitrage
d'investissement



Larbitrage Droit Public Suisse Dinvestissement

Abdulhay Sayed



L'arbitrage Droit Public Suisse Dinvestissement:

International and Domestic Arbitration in Switzerland Bernhard Berger, 2025-05-15 This standard work is one of the leading authorities on Swiss arbitration law The fully revised and supplemented Fifth Edition provides up to date information on the law and practice of international and domestic arbitration in Switzerland The book provides a comprehensive analysis of all relevant aspects of arbitration including the concept of arbitration the sources of arbitration arbitrability and all aspects concerning the validity and scope of the arbitration agreement and its autonomy Other topics include competence competence the jurisdiction of the arbitral tribunal the arbitral procedure the effects and limits of arbitral awards setting aside as well as the recognition and enforcement of awards in Switzerland Frequently referred to in the case law of the Swiss Federal Supreme Court the book is an indispensable tool for legal scholars dealing in depth with a controversial issue At the same time it is an invaluable and user friendly source of information and reference for arbitration practitioners in Switzerland and abroad The book's appendices contain useful supplementary materials including a detailed table of cases and an accurate translation of the arbitration provisions of the Swiss Private International Law Act and the Swiss Code of Civil Procedure

L'arbitrage en droit public suisse Eleanor McGregor, 2015-10-06 Contrairement la situation qui prévaut en France le recours à l'arbitrage pour la résolution de litiges de droit public n'est pas en soi contraire au droit suisse Il n'est pas non plus comme en droit américain expressément autorisé Dans ce domaine le droit suisse se caractérise par son absence de législation Quant à la jurisprudence incohérente et disparate elle ne permet pas de combler ce vide juridique Le besoin est pourtant là comme l'attestent les nombreuses conventions intercantionales contenant des clauses arbitrales L'arbitrage est également utilisé quoique dans une moindre mesure pour résoudre les différends entre collectivités publiques et particuliers Le présent ouvrage cherche en premier lieu à déterminer quand les litiges de droit public peuvent être soumis au pouvoir juridictionnel d'un arbitre Il définit ensuite la procédure arbitrale Pour un sujet situé aux confins du droit administratif et de la procédure civile cela implique de choisir une solution adaptée à chaque situation L'étude s'achève par des propositions concrètes à l'attention du législateur L'ouvrage s'adresse avant tout aux praticiens du droit Il propose des solutions aux questions soulevées par l'incursion de l'arbitrage dans l'univers du droit public suisse Il s'inspire en cela des développements récents en matière d'arbitrage d'investissement ainsi que des approches adoptées en France comme aux États-Unis

Arbitrators as Lawmakers Dolores Bentalila, 2017-04-05 This book analyses how arbitrators make rules that guide constrain and define the process and substance of international arbitration Providing a thorough and multidisciplinary analysis of the actors process and outcome of arbitral lawmaking the study shows how arbitrators create principles of law through consistent arbitral decision making and through interacting with other members of the arbitral community This book investigates and responds to the following questions What is the relationship between international arbitration and the law and courts of the seat What is the role of international tribunals in assisting and controlling investment arbitration What is

the scope of arbitrators freedom in decision making What constraints limit arbitrators decision making and contribute to consistency Is international arbitration capable of paying deference to past arbitral decisions Which rules have arbitrators created in procedural and substantive matters What is the role and status of consistent arbitral decisions Is there an arbitral legal system The answers to these questions are drawn from actual arbitral decisions made available to the public clarifying important issues about jurisdiction procedure applicable law interpretation of substantive rules and instruments and remedies This is the first overarching study of whether and to what extent international commercial and investment arbitrators create norms and even generate a legal system As such it will be of immeasurable and lasting value to arbitrators practitioners scholars arbitral institutions and international organizations worldwide for all of whom it will not only clarify our understanding of arbitral decision making and arbitrator made rules but also foster transparency and accountability in arbitral decision making

Droit international de l'investissement : Un domaine en mouvement Complément aux Perspectives de l'investissement international OECD,2006-03-08 Les accords internationaux sur l'investissement renforcent les efforts nationaux de libéralisation et améliorent la sécurité juridique des investissements Récemment on a vu apparaître une nouvelle génération d'accords bilatéraux et régionaux

French Arbitration Law and Practice Jean-Louis Delvolvé, Jean Rouche, Gerald H. Pointon, 2009-01-01 Previous edition 1st published in 2003

Conférence de la Haye de droit international privé. Documents Hague Conference on Private International Law, 2010

Cours général de droit international public, 1973-09-19 The Academy is a prestigious international institution for the study and teaching of Public and Private International Law and related subjects The work of the Hague Academy receives the support and recognition of the UN Its purpose is to encourage a thorough and impartial examination of the problems arising from international relations in the field of law The courses deal with the theoretical and practical aspects of the subject including legislation and case law All courses at the Academy are in principle published in the language in which they were delivered in the Collected Courses of the Hague Academy of International Law

Dealing with Bribery and Corruption in International Commercial Arbitration Emmanuel Obiora Igbokwe, 2023-01-10 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

Les investissements étrangers Zakhour georges philippe, 2019-04-05 tablissant une relation entre un tat et un investisseur le droit des investissements trangers se meut au del de la distinction droit public droit priv A la jonction du droit international et du droit interne il pose d importantes questions relatives la loi applicable ainsi qu aux juridictions comp tentes Con u comme un ordre juridique sp cifique provenant de l interaction entre les ordres juridiques international et interne le droit des investissements engendre de multiples r percussions quant son interf rence avec l ordre juridique interne Quel serait le droit applicable si ces droits ont vocation s appliquer dans un m me litige Quelle juridiction prime si les institutions juridictionnelles internationales et internes sont comp tentes Cette tude d montre la pr minence du droit international de fond et de l arbitrage transnational

Klage an das Bundesgericht bei öffentlich-rechtlichen Streitigkeiten zwischen Bund und Kantonen oder zwischen Kantonen (Art. 120 BGG) Zheni Luks, 2022-01-27 ffentlich rechtliche Streitigkeiten zwischen Bund und Kantonen oder zwischen Kantonen f hren selten zu einer Beschreitung des Rechtswegs obwohl den f deralen Einheiten mit dem Klageverfahren nach Art 120 Abs 1 lit a und b BGG der direkte Gang an das Bundesgericht offensteht Es w re jedoch falsch aus der Seltenheit solcher Klageverfahren auf eine geringe Bedeutung dieses Rechtsschutzinstruments zu schliessen F derale Streitigkeiten k nnten ein hohes Schadenspotential aufweisen und in Extremf llen wie aus der bundesgerichtlichen Rechtsprechung hervorgeht die Beziehungen der Schweiz zu Nachbarstaaten gef hrden oder gar die Existenz des

Bundesstaates in Frage stellen Eine eingehende rechtsdogmatische Untersuchung der Klage nach Art 120 BGG wurde bislang nicht vorgenommen Die Autorin leistet diese indem sie das Instrument vertieft untersucht und in der Rechtsprechung und Lehre gefestigte Meinungen kritisch hinterfragt Sie diskutiert Themen wie die verfassungsrechtlichen Vorgaben betreffend die Ausgestaltung des Verfahrens die Geltung der Verfahrensgrundrechte f r Bund und Kantone und die Zul ssigkeit der gerichtlichen berpr fung von Kantonsverfassungen So erm glicht dieses Buch ein detailliertes Verst ndnis dieses Klageverfahrens und beantwortet zentrale rechtsdogmatische Fragen zu diesem Rechtsschutzzinstrument Recueil Des Cours, Collected Courses, 1969 Academie De Droit International De La Ha,1970-12-31 The Academy is a prestigious international institution for the study and teaching of Public and Private International Law and related subjects The work of the Hague Academy receives the support and recognition of the UN Its purpose is to encourage a thorough and impartial examination of the problems arising from international relations in the field of law The courses deal with the theoretical and practical aspects of the subject including legislation and case law All courses at the Academy are in principle published in the language in which they were delivered in the Collected Courses of the Hague Academy of International Law Der öffentlich-rechtliche Gesamtarbeitsvertrag Lukasz Grebski,2021-09-30 Das vorliegende Werk befasst sich mit den rechtlichen Aspekten des ffentlich rechtlichen Gesamtarbeitsvertrags folglich mit der konsensualen Gestaltung generell abstrakter Arbeitsbedingungen und sozialpartnerschaftlicher Rechtsbeziehungen im ffentlichen kollektiven Arbeitsrecht Es tangiert damit einen noch wenig erforschten Schnittbereich zwischen dem kollektiven Personalrecht einerseits das massgeblich vom privaten kollektiven Arbeitsrecht geformt und beeinflusst ist und dem Staats und Verwaltungsrecht einschliesslich zahlreicher Aspekte der Rechtsetzungslehre andererseits Mit dieser Arbeit will der Autor nicht zuletzt dazu beitragen das Wesen und die Mechanismen ffentlich rechtlicher Gesamtarbeitsvertr ge tiefgehend zu analysieren und systematisch zu erfassen um damit der Praxis Wissenschaft und Gesetzgebung den Zugang zu diesem interessanten Institut zu ebnen sowie die zahlreichen sich in Zusammenhang mit ffentlich rechtlichen Gesamtarbeitsvertr gen stellenden Rechtsfragen koh renten und praxistauglichen L sungen zuzuf hren **Internationales Zivilprozessrecht - unter Einbezug der internationalen Schiedsgerichtsbarkeit** Jolanta Kren Kostkiewicz,Alexander Markus,2016-07-28 Im Rahmen von njus ch werden allj hrlich in einzelnen separaten B nden die Entwicklungen des vergangenen Jahres in der Rechtsetzung der Rechtsprechung und der Literatur eines bestimmten Praxisgebiets aufgezeigt In der Reihe njus ch sind B nde ber die Entwicklungen in folgenden Gebieten erschienen Agrarrecht Aktienrecht Datenschutz Erbrecht Finanzmarktrecht Gesellschaftsrecht Haftpflicht und Privatversicherungsrecht Handelsregisterrecht Internationales Zivilprozessrecht Kartellrecht Kauf Miet Werkvertrags und Auftragsrecht Kennzeichenrecht Patentrecht Personengesellschafts und GmbH Recht Pharmarecht Raumplanungs Bau und Umweltrecht Recht der beruflichen Vorsorge Sachenrecht Schuldbetreibungs und Konkursrecht Sozialversicherungsrecht Allgemeiner Teil Telekommunikationsrecht Recht der audiovisuellen Medien Stromversorgungsrecht

Unternehmenssteuerrecht Urheberrecht Verein Stiftung Trust Zivilprozessrecht Im Bereich der Rechtsetzung werden bereits beschlossene Änderungen sowie Rechtsetzungsprojekte dargelegt Im Teil ber die Rechtsprechung wird insbesondere eine Darstellung der wichtigsten amtlich und nicht amtlich publizierten Bundesgerichtsentscheidungen geboten Und bezuglich der Literatur wird nicht nur umfassend auf Neuerscheinungen hingewiesen sondern es werden von ausgewählten Publikationen auch deren Hauptaussagen zusammengefasst njus ch ermöglicht den Leserinnen und Lesern in kürzester Zeit auf den neuesten Stand der Entwicklungen in einem bestimmten Rechtsgebiet zu gelangen Bildprobe Corruption in International Trade and Commercial Arbitration Abdulhay Sayed, 2004-01-01 Descreve como a corrupção julgada na arbitragem comercial internacional Procura explicar porque não há uma uniformidade na política arbitral em relação à corrupção Analisa casos relativos à corrupção e arbitragem Examina a legislação sobre corrupção assim como convenções internacionais relevantes **Vers une lex méditerranéenne de l'arbitrage** Filali Osman, Lotfi Chedly, 2015-04-02 Une lex mercatoria méditerranéenne de l'arbitrage Le but principal est de fonder sur l'idée d'une unification et d'une harmonisation du droit des affaires d'une intégration régionale méditerranéenne est-il souhaitable et réalisable la veille du 7e anniversaire de la naissance de l'Union pour la Méditerranée l'arbitrage peut-il aux côtés d'autres modes alternatifs de règlement des différends commerciaux constituer un instrument au service de la promotion des investissements entre les 43 pays des rives sud et nord de la Mer Nostrum La méditerranéisation des économies requiert-elle la méditerranéisation du droit de l'arbitrage Enfant gâté des travaux internationaux l'arbitrage fait l'objet de nombreux instruments internationaux convention de New York de 1958 pour la reconnaissance et l'exécution des sentences arbitrales traité-type de la CNUDCI sur l'arbitrage commercial international du 21 juin 1985 etc Critiqué par certains en raison de la judiciarisation dont il est l'objet ou de l'instauration supposée d'un rapport de force entre pays riches et pays pauvres l'arbitrage a fait l'objet de formes importantes de la part des législateurs des pays de l'Union pour la Méditerranée Mais le droit du commerce international peut-il suffire comme modèle alors qu'il subsiste nombre d'obstacles parmi lesquels l'absence d'harmonisation du droit processuel des États membres Lors de la Conférence ministérielle Processus de Barcelone Union pour la Méditerranée qui s'est tenue à Marseille les 3 et 4 novembre 2008 les ministres des Affaires étrangères des 43 pays ont affirmé la nécessité de mieux promouvoir les investissements en étudiant les possibilités d'améliorer les procédures d'arbitrages dans la région par exemple en créant une cour d'arbitrage méditerranéenne Est-ce là une piste de travail pour le législateur méditerranéen N'est-ce pas le simple chant des sirènes auquel il devra résister Quelle que soit la réponse l'arbitrage a-t-il encore des vertus qui permettent au législateur méditerranéen d'asseoir une lex méditerranéenne qui servira elle-même de modèle d'autres intégrations régionales Cet ouvrage est issu d'un colloque international organisé à Tunis les 11 et 12 avril 2014 par la Faculté des sciences juridiques politiques et sociales de Tunis Unité de recherche Relations internationales privées commerce arbitrage et migration le Centre de recherches juridiques de l'Université de Franche-Comté CRJFC EA 3225 le Centre de recherche sur le droit des marchés et des investissements internationaux CREDIMI UMR CNRS n° 6295 Université

de Bourgogne En partenariat avec l'Université Jean Moulin Lyon III AEDN l'Université d'Oran Algérie l'Université Hassan 1er de Settat Maroc l'Université du Québec Canada l'Université Kemerburgaz d'Istanbul Turquie et l'Université Ca Focari de Venise Italie Il bénéficie du soutien financier de la Fondation Hanns Seidel au Maghreb

L'arbitrage en droit belge et international Marcel Huys, Guy Keutgen, 1981 Monograph commenting on provisions and jurisprudence of voluntary arbitration in the civil law of Belgium and in international law covers the nature of national level conventions on and international agreements on arbitration the jurisdiction and structure of arbitral courts procedures in the administration of justice etc Bibliography pp 747 to 757 and references

Droit international public Samantha Besson, 2024-04-30 Ce précis propose une introduction au droit international public général et certains domaines choisis du droit international public spécial Il couvre notamment l'histoire la théorie les sujets et les sources du droit international mais aussi les relations entre droit international et droit interne la responsabilité internationale le règlement pacifique des différends le droit international et européen en des droits de l'homme l'interdiction du recours à la force armée ainsi que le droit des conflits armés et de la neutralité Présentée de manière concise la matière est illustrée à l'aide de nombreux exemples de citations de jurisprudence et d'extraits de documents officiels en langue originale L'une des caractéristiques de l'ouvrage est de proposer en annexe une collection des résumés de la jurisprudence internationale européenne et suisse la plus importante Contenu avant tout pour les étudiants et étudiants suisses ce précis met en lumière différents aspects de la pratique suisse du droit international public Il constituera dès lors aussi un outil de travail précieux pour les praticiennes et praticiens suisses confrontés des questions de droit international

Recueil Des Cours, Collected Courses, 1975, 1978-10-20

Le tabac en droit international Zied Ghedira, 2022-11-01 Ces dernières années la thématique des restrictions de la distribution et de la publicité pour les cigarettes a occupé de nombreux organes et tribunaux internationaux En raison de la fragmentation du droit international et du règlement des litiges y correspondant il existe un risque de réglementation incongrue et surtout insatisfaisante dans laquelle la protection de la santé les intérêts économiques des producteurs et le commerce international ne sont pas facilement pris en compte et coordonnés de manière satisfaisante Ce travail de thèse met pour la première fois en lumière de manière exhaustive les aspects du droit de l'Organisation mondiale de la santé OMS de l'Organisation mondiale du commerce OMC commerce et droits de propriété intellectuelle liés au commerce et du réseau d'accords bilatéraux de protection des investissements existants ainsi que les jugements et sentences arbitrales et les controverses qui en découlent Les considérations de politique de santé y compris le droit la santé et la protection des mineurs et les réglementations applicables du droit international économique sont comparées et leur cohérence est remise en question Les questions qui en résultent seront extrêmement importantes pour la recherche ultérieure et la prise de décision par les organes politiques au niveau national et dans les négociations internationales Cette thèse combine plusieurs domaines juridiques habituellement traités séparément : droit de la santé droit de l'OMC droit de la protection des investissements droit de la propriété intellectuelle Elle traite en outre des aspects médicaux psychologiques sociologiques et

conomiques fondamentaux n cessaires la compr hension de la probl matique Il s agit donc d un travail interdisciplinaire d une certaine ampleur Parall lement les diff rents domaines juridiques sont pr sent s avec une pr cision ad quate afin de permettre au lecteur de comprendre le contexte et les pr misses politiques

L'arbitrage en droit belge et international Guy Keutgen, Georges-Albert Dal, 2015-10-26 La loi belge sur l arbitrage a t fondamentalement revue et amend e par la loi du 24 juin 2013 Cette loi prend appui sur un texte bien connu des praticiens de l arbitrage la loi type du 25 juin 1985 amend e le 7 juillet 2006 relative l arbitrage commercial international de la Commission des Nations Unies pour le droit commercial international CNUDCI Elle est aussi bas e sur une analyse de droit compar quant la mani re dont cette loi type a en tout ou en partie t reprise par un certain nombre de l gislations nationales comme la loi allemande et sur une tude des droits qui ne prennent pas en compte la loi type comme les lois fran aise et n erlandaise Elle tient aussi compte de l ancienne loi belge dans ses dispositions qui ont t re ues positivement par la pratique et dont l application n a pas suscit de difficult s particuli res La nouvelle l gislation a rendu n cessaire cette 3 me dition Le pr sent volume ax sur le droit belge prend appui sur l dition pr c dente de 2006 qu il revoit d veloppe et compl te l aune de la nouvelle loi Il n est pas inutile de rappeler ici que cette nouvelle loi ne trouve s appliquer qu aux proc dures d arbitrage engag es apr s le 1er septembre 2013 de sorte que l dition de 2006 de l ouvrage conserve toute sa valeur et sa pertinence pour les arbitrages en cours au 1er septembre 2013 L esprit qui a pr sid l ouvrage de 1981 et celui de 2006 est conserv commenter les diff rents aspects de l arbitrage d velopper leur propos une r flexion critique relever les implications pratiques des diff rents th mes abord s

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