

INDEX OF ISSUE 2

A

- Access to justice, 78–83
- African Mixing Technologies (PTY) Ltd v. Canamix Processing Systems*, 97–99
- Allocation of jurisdiction, 70
- Ambatielos Claim* case, 190, 191
- AnAn Group (Singapore) Pte Ltd v. VTB Bank (Public Joint Stock Co)*, 128
 - contrasting approaches, *Sian Participation*, 136–141
 - position in Singapore, 132–136
- Arbitrable petition debts
 - Hong Kong law
 - Guy Lam*, 161–162
 - pre-*Guy Lam* authorities, 158–160
 - Simplicity* and *Shandong*, 162–163
 - merits of dispute, 163–166
 - Sian Participation*
 - creditors, 168, 169
 - debtors, 168
 - and implications, 166–168
- Arbitral awards, enforcement of, 70–71
- Arbitration, 68
 - AI in, 76–78
 - consent, 183, 190–194
 - disputed debt subject, 127–141
 - and insolvency, 123–124, 127–128, 144
 - and TSCJ, 69
 - allocation of jurisdiction, 70
 - challenges, 73–84
 - enforcement of awards, 70–71
 - reinforcing rule of law norms, 72–73
 - standards for conduct, 72
- Article 9, Model Law, 92, 94, 98, 102, 117, 118
- Article 17J, Model Law, 92–94, 97, 99, 101, 104, 107–110, 118, 120
- Artificial intelligence (AI), 76–78

AsiaPhos Limited and Norwest Chemicals Pte Limited v. People's Republic of China, 183

arbitral consent and MFN clause

consent/fabrication of consent, 193–194

historical treatment, 190–191

rights and preconditions, 192–193

substantive *v.* procedural debate, 191–192

jurisdictional issues

dissenting opinion, 188–189

factual circumstances, 185

tribunal's ruling, 186–188

MFN clause, 184

Australia

duration of orders, 110–111

Duro v. Trans Global, 108

IAA, 106–107

jurisdiction, 108–109

subsequent authority, 111–116

Awangsa Bina Sdn Bhd v. Mayland Avenue Sdn Bhd, 172, 179

B

Barnwell Enterprises Ltd & Ors v. ECP Africa FII Investments LLC., 100

Bilateral Investment Treaty (BIT)

arbitration clauses, 183

AsiaPhos case

MFN clause, 186–188

resolution clause, 186

MFN clause, 184

BIT. *See* Bilateral Investment Treaty (BIT)

British Virgin Islands (BVI) law, 128

Arbitration Act, 130, 146, 153, 174

disputed debt, winding-up applications, 129

Insolvency Act, 2003, 146, 148, 153

liquidation proceedings, 146

triable issues test, 131

UK and Indian law, harmony in operation, 153–155

Bryan Cave Leighton Paisner survey, 2023, 77

Burlington Resources Inc v. Republic of Ecuador, 83

But Ka Chon v. Interactive Brokers LLC, 159–160

BVI. *See* British Virgin Islands (BVI)

C

Canada, 97–99, 117

Cetelem SA v. Roust Holdings Ltd, 106

China Machine New Energy Corp v. Jaguar Energy Guatemala LLC and another, 72

Climate change, 83–84
Complexification, 74–78
Corporate debtor, 148–152, 154–155
Corporate Insolvency Resolution Process (CIRP), 148
CXG v. CXI, 114

D

Daewoo Shipbuilding & Marine Engineering Co Ltd v. INPEX Operations Australia Pty Ltd, 114
David Aven v. The Republic of Costa Rica, 83
Dayang (HK) Marine Shipping Co, Ltd v. Asia Master Logistics Ltd, 139
Disputed debt subject, arbitration agreement, 127–141
Duro Felguera Australia Pty Ltd v. Trans Global Projects (TGP) Pty Ltd (in liq)
 decision, 91–94
 factual narrative, 90, 91
 interim measures
 international treatment of, 97–116
 preferred approach to, 116–121
 Model Law, 94–95
 tribunal and court, relationship, 95–97

E

Elton v. ten Start Events Inc, 98
Emilio Augustin Maffezini v. Kingdom of Spain, 190–191
English Arbitration Act, 1996, 172
ENRC Marketing AG v. OJSC ‘Magnitogorsk Metallurgical Kombinat’, 107
E.S. Krishnamurthy and Ors v. Bharath Hi Tech Builders Private Limited, 151

F

FamilyMart China Holding Co Ltd v. Ting Chuan, 174
The Federal Republic of Nigeria v. Process & Industrial Developments Limited, 73
Financial creditor
 definition, 148
 insolvency applications by, 149–152
Financial debts, 125, 148–151, 153, 154
Foreign Judgments Act, 92, 116
Formerank Ltd v. Luo, 112
Fortuna injunction, 179–181
Freezing orders, 90–92, 96, 103, 107–110, 112, 115–116

G

Global depository receipts (GDRs), 132
Grande Meadow Developments Ltd v. Clark Road Developments Ltd, 105

H

Hong Kong

interim measures

duration of order, 102–104

Top Gains, 100–102

law, tracing development

Guy Lam, 161–162pre-*Guy Lam* authorities, 158–160*Simplicity and Shandong*, 162–163**I**IAA. *See* International Arbitration Act, 1974 (IAA)IBC. *See* Insolvency and Bankruptcy Code, 2016 (IBC)*Impregilo S.p.A.*, 194

Indian case law

on insolvency and arbitration

financial creditors, 149–152

operational creditors, 152–153

UK and BVI law, 153–155

Indus Biotech Private Limited v. Kotak India Venture Fund-I, 150*Innovative Industries Limited v. ICICI Bank and Anr*, 149

Insolvency

and arbitration, 123–124, 127–128, 144

in India, 147–149

Indian case law

application by operational creditors, 152–153

applications by financial creditors, 149–152

Insolvency and Bankruptcy Code, 2016 (IBC), 147–148

CIRP process, 148

corporate debtor, 149

default, definition of, 149

financial debts, 154

Interim measures. *See also* *Duro Felguera Australia Pty Ltd v. Trans Global Projects (TGP) Pty Ltd (in liq)*

decision

jurisdiction, 92

terms of order, 92–94

Duro, factual narrative, 90, 91

international treatment of

Australia, 106–116

Canada, 97–99

Hong Kong, 100–104

Mauritius, 99–100

New Zealand, 104–105

Singapore and the UK, 105–106
US, 106
Model Law regime, 94–95
preferred approach to
jurisdiction, 116–118
terms of order, 118–120
tribunal and court, relationship, 95–97
International arbitration, 79, 81, 113, 115, 118–120
International Arbitration Act, 1974 (IAA), 92
Australia, 106–107
section 7(3), 120
International Commercial Arbitration Act, 1990, 98
International Steel Services Inc v. Dynatec Madagascar SA, 98, 99
Investor-State Dispute Settlement (ISDS), 193, 194

K

K Kishan v. M/S Nirman Company Pvt Ltd, 152
Kompetenz–kompetenz principle, 70
Ku-Ring-Gai Council v. Ichor Constructions Pty Ltd, 111

L

Lao Holdings NV v. Government of the Lao People's Democratic Republic and another matter, 73
Lasmos Limited v. Southwest Pacific Bauxite (HK) Limited (Hong Kong), 178
Link claims, 114

M

Malaysia. *See also Salford Estates (No 2) Ltd v. Altomart Ltd (No 2)*
Awangsa Bina Sdn Bhd v. Mayland Avenue Sdn Bhd, 172, 179
Privy Council's reasoning in *Sian*, 173–175
Sian and beyond, 181–182
Sian impact in
mandatory stay provision, 176–178
pro-arbitration policy, 178–180
V Medical Services M Sdn Bhd v. Swissray Asia Healthcare Co Ltd, 172, 173
Mauritius, 99–100
Mobilox Innovations Private Limited v. Kirusa Software Private Limited, 152
M. Suresh Kumar Reddy v. Canara Bank & Ors, 151

N

National Company Law Appellate Tribunal (NCLAT), 148, 152
National Company Law Tribunals (NCLT), 148, 152
New Zealand, 104–105

New Zealand Association of Credit Unions v. Finzsoft Solutions (New Zealand) Ltd,
105

NFC Labuan Shipleasing I Ltd v. Semua Chemical Shipping Sdn Bhd, 176

O

Operational creditor

definition of, 148

insolvency applications by, 149, 152–155

Operational debt, 148, 149, 152, 155

P

Prevention of relitigation, 70–71

Proof of debt claims, 155

PT Bayan Resources TBK v. BCBC Singapore Pte Ltd, 92

R

Re Asia Master Logistics Ltd, 160

Re Hongkong Bai Yuan International Business Co Ltd, 160

The Republic of India v. Deutsche Telekom AG, 70

Re Southwest Pacific Bauxite (HK) Ltd, 159

Rule of law norms, 72–73

Rules of the Supreme Court 1971, 109

S

Safe Kids in Daily Supervision Ltd v. McNeill, 104

Salford Estates (No 2) Ltd v. Altomart Ltd (No 2), 128

prima facie test, pre-*Sian*, 172

Sian, impact of, 172–173

mandatory stay provision, 176–178

pro-arbitration policy, 178–180

Salini v. Jordan, 191

Sian Participation (In Liquidation) v. Halimeda International Ltd (Virgin Islands),

123–125, 171–172, 181–182

analysis of, 173–175

and *AnAn*, 136–141

bona fide test, 172

development of authority, Malaysia, 176–180

disputed debt subject, 127–141

facts, 128–129

facts and decision, 145–147

Hong Kong courts

creditors, 168, 169

debtors, 168

- and implications, 166–168
- insolvency, common law harmony, 143–156
- Privy Council’s decision, 129–132
- triable issues standard, 136–137
- winding up proceedings, 128

Singapore, 105–106

Singapore Court of Appeal (SGCA), 70, 72, 128, 132–133, 135, 136, 138–139

Sino Dragon Trading Ltd v. Noble Resources International Pte Ltd, 107

Smith Elements & Controls Ltd v. EPI Group Ltd, 104

Swiss Ribbons Pvt. Ltd & Anr v. the Union of India & Ors, 149

T

Tata Consultancy Services Ltd v. Vishal Ghisulal Jain, Resolution Professional, SK Wheels Private Limited, 154

Tecnicas Medioambientales Tecmed S.A. v. The United Mexican States, 193

Tomolugen Holdings Ltd and another v. Silica Investors Ltd and other appeals, 70

Top Gains Minerals Macao Commercial Offshore Ltd v. TL Resources Pte Ltd, 101–103, 117

Transnational system of commercial justice (TSCJ)

- challenges, 73
 - access to justice, 78–83
 - climate change, 83–84
 - complexification, 74–78
- description, 68
- place of arbitration
 - allocation of jurisdiction, 69, 70
 - enforcement of awards and prevention of relitigation, 70–71
 - reinforcing rule of law norms, 69, 72–73
 - standards for conduct, 69, 72

Transurban WGT Co Pty Ltd v. CPB Contractors Pty Ltd., 113

Triable issues test, 128

TSCJ. *See* Transnational system of commercial justice (TSCJ)

U

The UK, 105–106

UNCITRAL Model Law on International Commercial Arbitration, 69, 89, 130, 144, 177

- Article 9, 92, 94, 98, 102, 117, 118
- Article 17J, 92–94, 97, 99, 101, 104, 107–110, 118, 120
- interim measures, 89, 90, 94–95
- interpretation provisions, 95
- Mauritius, 99–100

V

Vidarbha Industries Power Limited v. Axis Bank Limited, 150–151

Vinmar Overseas (Singapore) Pte Ltd v. PTT International Trading Pte Ltd, 137, 138

W

Winding-up applications, 127–141

Winding-up petition, 145, 157–161, 164, 166–169, 172–179, 181