

Insolvency Proceedings and International Commercial Arbitration

Abstract

This dissertation examines the consequences of the commencement of insolvency proceedings on the conduct of international commercial arbitration. It analyses and compares the theoretical principles of cross-border insolvency, on one hand, and international arbitration, on the other hand, as well as their mutual interaction. It describes legal instruments of both systems, with an emphasis on their interlinking elements. It examines to what extent insolvency proceedings interfere with the principle of party autonomy as a fundamental principle of international arbitration. The dissertation defines the recognition of a foreign insolvency decision as a key element of arbitrators' course of action after the commencement of insolvency proceedings against one of the parties to the dispute. An important part also comprises analysis of the procedure for determining the law applicable to the effects of insolvency proceedings on international arbitration. After these general parts, the dissertation deals with the effects of the insolvency proceedings on various individual aspects of arbitration. It examines whether and in what way the arbitration agreement is affected, whether it can be terminated and under which law. As the procedural capacity of the parties is essential for the continuation of the arbitration proceedings, it analyses to what extent it is affected by the insolvency proceedings and how it is transferred upon the insolvency administrator. Arbitrators regularly address the question of whether to stay arbitration after the commencement of insolvency proceedings, thus, the dissertation discusses the extent to which this is necessary and suitable. Specific issues comprise the objective arbitrability of the dispute and the position of the insolvency administrator in the arbitration. The commencement of insolvency proceedings may lead to the refusal of recognition and enforcement of the arbitration award by the court, and therefore the paper analyses various grounds for the refusal. Taking into account the complexity and inconsistency of expert opinions and court and arbitration practice, the author has created a description of a recommended model procedure for arbitrators in the event of initiation of insolvency proceedings on the party to the dispute. In conclusion, the author suggests possible future trends in the development of an analysed area of law, including personal recommendations.