

# DAC Beachcroft International Arbitration Newsletter

## January 2017

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DAC Beachcroft's International Arbitration newsletter focuses on the latest developments in international arbitration, providing both a global overview of the dispute resolution scene, with a focus on Latin America, and useful technical updates.

In this issue, Chris Doran reports on important new guidance on the recoverability of third party funding costs in arbitration proceedings.

Rowan Planterose considers when it is sensible to "opt out" of Emergency Arbitrator provisions.

Turning to Latin America, Deirdre Lyons Le Croy reviews a US case on enforcement against Mexico's Pemex, which provides hope for parties who want to enforce a foreign arbitral award annulled at the arbitral seat, and Linda Sjoblom highlights the importance of parties' conduct in arbitral proceedings in a case involving the Republic of Peru. Finally, Matthew Wescott provides commentary on a welcome development in the enforcement of international arbitration awards in Brazil.

### Recovery of Third Party Funding Costs in Arbitration Proceedings

In the recent decision of *Essar Oil Fields Services Limited v Norscot Rig Management PVT Limited* [2016] EWHC 2361 (Comm), the court has given what has been commonly described as a "landmark" decision allowing the recovery of third party funding costs in arbitration proceedings. Third party funding arrangements typically involve a funder agreeing to advance legal costs and disbursements and, in the event of the claimant recovering damages, receiving either a multiple of the sum advanced or a percentage share of the damages recovered.

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### Emergency Arbitrators v. Court Powers

In *Gerald Metals SA v. Timis & Others* [2016] EWHC 2327 (Ch) a Commercial Court judge has in effect held that the Emergency Arbitrator provisions now in some arbitration rules will, on occasion, in effect "trump" the court powers exercisable in support of arbitration proceedings that might, in the absence of those provisions, be available under s.44 of the Arbitration Act 1996.

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### Commisa v Pemex: Second Circuit upholds vacated arbitral award

In a recent decision, *Corporación Mexicana de Mantenimiento Integral, S De RL De CV v Pemex-Exploración y Producción, No 13-4022 (2d Cir Aug 2, 2016)*, the US Court of Appeals for the Second Circuit ("Second Circuit") has affirmed a 2013 decision by the US District Court for the Southern District of New York ("Southern District"), which recognised and enforced an arbitral award for a Mexican subsidiary, *Corporación Mexicana de Mantenimiento Integral, S De RL De CV* ("Commisa"), of the US-based company KBR against the Mexican state oil and gas company, Pemex.

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### The Republic of Peru is denied recovery of legal costs despite win in Renco Group arbitration

The *Renco Group Inc v The Republic of Peru* (UNCT/13/1) an UNCITRAL tribunal decided to depart from the presumption that the unsuccessful party bears the costs of the arbitration, and instead ordered each party to bear its own costs and half of the arbitration costs. The tribunal's reason for doing so was based in part on Peru's jurisdictional objection and its effect on the efficient conduct of the arbitration proceedings.

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### Brazilian Superior Court of Justice grants freezing order in support of arbitral enforcement

In a decision that is likely to be met with the approval of the international arbitration community, the Brazilian Superior Court of Justice ("STJ") has granted an injunction to freeze the assets of a respondent in order to

### News

A round-up of the latest international arbitration news, with a focus on Latin America.

ensure that those assets were preserved for the purposes of enforcement.

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