



Marque Lawyers International Arbitration Update

Marque has its first book publishing deal! Well at least its first chapter in a book...

Earlier this year, Damian Sturzaker and Kim Middleton were asked to contribute the Australian chapter for a book called "Arbitration". The book provides an outline of the laws and practice of arbitration in 47 jurisdictions worldwide.

Damian is also the author of a similar chapter in a book called Dispute Resolution which examined the dispute resolution practices in 50 jurisdictions. Both contributions can be accessed at www.gettingthedealthrough.com.

Foreign Arbitral Proceedings- act fast or you will pay later!

A recent judgment handed down by the Supreme Court of NSW highlights both the importance of acting fast upon being given notice of foreign proceedings as well as the robust approach that Australian courts take in respect of the enforcement of foreign arbitral awards. A copy of the full decision can be found at http://www.austlii.edu.au/au/cases/nsw/supreme_ct/2009/223.html

Briefly, the plaintiff in this case instituted foreign arbitral proceedings against a company and an individual, being a director of that company. The defendants choose not to participate in the arbitration proceedings which were conducted in China and ultimately an award was rendered against them both. The plaintiff ultimately sought to enforce the award against the defendants in Australia.

The defendants' ability to resist enforcement was limited due to the non-participation in the foreign proceedings. With very few limited exceptions, a foreign arbitral award will be enforced by Australian courts. One of the few exceptions that is sometimes relied upon by those wishing to resist enforcement is the public policy exception. This was relied upon by the defendants in this case however the Court found that the award was not contrary to public policy without any detailed examination of the nature and scope of the public policy "defence" as it exists in Australian law.

This decision, however, highlights the tendency for Australian courts to adopt a restrictive approach towards the public policy exception, and the desire to uphold the finality of arbitral awards. This decision also illustrates the dangers of not actively participating in a foreign arbitration and waiting until enforcement proceedings before seeking to resist enforcement.

Kim Middleton, Partner at Marque Lawyers acted in this matter.

For further details, please contact:

Kim Middleton

Partner

M: 0412201672

E: kimm@marquelawyers.com.au