公报文章

Two Major Developments in Cross-border Arbitration Law
跨境仲裁法律的两大发展

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We would like to update you on two significant developments in cross-border arbitration law.

UK Privy Council

In the recent judgment in *Gol Linhas Aereas SA (formerly VRG Linhas Aereas SA) (Respondent) v MatlinPatterson Global Opportunities Partners (Cayman) II LP and others (Appellants) (Cayman Islands)* [2022] UKPC 21, the Privy Council ruled on (i) the legal effect of a foreign judgment refusing recognition and enforcement of an arbitral award, (ii) the law applicable to the standard of "due process" in arbitration, and clarified (iii) the approach that courts should take when interpreting the scope of the arbitration clause.

A foreign court judgment refusing recognition and enforcement of an arbitral award may create an issue estoppel if such judgment meets the following requirements: (i) unity of parties, (ii) unity of the subject matter, (iii) the judgment must be given by a court of a foreign country with jurisdiction to give it and (iv) final and conclusive on the merits.

Second, it determined that what constitutes a violation of "due process" must be assessed applying local legal standards, but interpretation of those standards should have regard to international law. This involves identifying basic minimum, fundamental and generally accepted standards which are essential to a fair hearing.

Finally, the Privy Council clarified that any artificial attempt to construe the scope of the arbitration clause narrowly will be resisted. Instead, the arbitration clause should be construed liberally to keep up with the purpose of arbitration to provide "a flexible and effective means of resolving disputes and providing redress".

US Supreme Court

In a decision designed to resolve the conflict of approach between various circuits in the US judicial system, the US Supreme Court decidedly rejected the availability of disclosure relief under 28 USC 1782 to assist private international arbitration.

我们想向各位介绍一下跨境仲裁法律的两个重大发展。

英国枢密院

英国枢密院最近判决了 *Gol Linhas Aereas SA (formerly VRG Linhas Aereas SA) (Respondent) v MatlinPatterson Global Opportunities Partners (Cayman) II LP and others (Appellants) (Cayman Islands)* [2022] UKPC 21 一案，就以下事项作出了裁决 (i) 拒绝认可和执行某个仲裁结果的外国判决所具有的法律效力，(ii) 适用于仲裁中"正当程序"标准的法律，并澄清了 (iii) 法院在解释仲裁条款的范围时应采取的方法。

如外国法院的判决拒绝认可和执行某个仲裁结果，若该判决符合以下要求，则可能会产生既判争点禁重提：(i) 双方统一，(ii) 主题统一，(iii) 判决必须由具有管辖权的外国法院作出，以及 (iv) 理据最终及确凿。

第二，枢密院确定，必须应用当地法律标准来评估构成违反"正当程序"的行为，但对这些标准的解释应考虑到国际法。 这涉及确认对公平听证至关重要的最低标准、基本标准和普遍接受的标准。

最后，枢密院阐明，任何狭隘地解释仲裁条款范围的人为企图都将遭到抵制。相反，仲裁条款应被宽松的解释，好与仲裁旨在提供"一种灵活、有效的手段来解决争议及提供补救"的目的保持一致。

美国最高法院

在一项旨在解决美国司法系统中不同巡回法院之间方法冲突的判决中，美国最高法院断然否决了《美国法典》第 28 篇第 1782 条规定的披露救济的可用性以协助国际私人仲裁。

In *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401, the US Supreme Court clarified the meaning of "a foreign or international tribunal" with application to commercial and investment treaty arbitral tribunal. The Court determined that reference in section 1782(a) to "a foreign or international tribunal" must be construed as being a reference to "a governmental or intergovernmental adjudicative body" and does not cover a privately formed adjudicative body. The Court came to such conclusion after reviewing the history of the use and the purpose of section 1782(a) noting that one of the main drivers for introduction of this section was the principle of comity which is of little relevance in international arbitration.

Furthermore, since the scope of disclosure under section 1782 is broader than disclosure regime under the US Federal Arbitration Act which governs the domestic arbitration, its application in foreign arbitration would create imbalance.

Finally, the Court observed that reference to "a foreign or international tribunal" must necessarily carry with it an intent of the nation to entrust such tribunal with governmental authority, and that commercial and investment treaty arbitration tribunals are lacking such authority.

As a result, the US Supreme Court put an end to endless debate and uncertainty surrounding availability of section 1782 relief in international arbitration.

Conclusion

Arbitration law is continuously evolving across both continents. Such important decisions go to strategy at both assistance during, as well as enforcement after, the making of an arbitral award. For full judgments of both cases follow the links below:

https://www.jcpc.uk/cases/docs/jcpc-2020-0086-judgment.pdf

http://www.supremecourt.gov/opinions/21pdf/21-401_2cp3.pdf

This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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在 *ZF Automotive US, Inc. v. Luxshare, Ltd.*, No. 21-401 案中，美国最高法院明确了"外国或国际法庭"的含义，适用于商业和投资条约仲裁庭申请。最高法院确定，第 1782(a) 条中提及的"外国或国际仲裁庭"必须解释为"政府或政府间裁决机构"，并且不包括私人成立的裁决机构。最高法院在审核了第 1782(a) 条的使用历史和目的后得出了这样的结论，指出引入该条的主要驱动因素之一是礼让原则，这在国际仲裁中几乎没有相关性。

此外，由于第 1782 条下的披露范围比管辖国内仲裁的《美国联邦仲裁法》下的披露制度更广泛，因此其在外国仲裁中的应用会造成不平衡。

最后，最高法院注意到，提及"外国或国际法庭"必定带有国家赋予这种法庭政府权力的意图，而商业和投资条约仲裁庭缺乏这种权力。

结果是，美国最高法院结束了在国际仲裁中围绕第 1782 条救济的可用性发生的无休止辩论和不确定性。

结论

仲裁法律在两大洲不断发展。这些重要的判决在仲裁裁决期间的协助和裁决后的执行上都具有战略意义。欲了解两案的完整判决，请访问以下链接：

https://www.jcpc.uk/cases/docs/jcpc-2020-0086-judgment.pdf

http://www.supremecourt.gov/opinions/21pdf/21-401_2cp3.pdf

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