

The Powers and Duties of an Arbitrator

Liber Amicorum Pierre A. Karrer

EDITED BY
PATRICIA SHAUGHNESSY
SHERLIN TUNG



Wolters Kluwer

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The Powers and Duties of an Arbitrator

Editors

Dr Patricia Shaughnessy, Associate Professor, directs the Masters of International Commercial Arbitration Law Program (LLM) at Stockholm University and teaches and researches in related fields. She chairs the “Arbitration and Dispute Resolution Section” of the Stockholm Centre for Commercial Law at Stockholm University. Patricia is the Vice-Chair of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), having been on its Board since 2006. She sits as an arbitrator and acts as an expert in international cases and, as a consultant, she has led numerous projects related to commercial law and dispute resolution in a number of countries.

Sherlin Tung is currently the Litigation and Arbitration Counsel with Semperit AG Holdings, an international conglomerate specialized in industrial rubber products. Prior to Semperit, Sherlin was a Deputy Counsel with the Secretariat of the ICC International Court of Arbitration where she had the unique opportunity of working in both of its satellite offices (Hong Kong and New York). Sherlin supervised over 300 international arbitration matters with a focus in Asian, Australian, Middle Eastern and North American matters. She began her career in international arbitration in Zurich, Switzerland, where she worked under the direct supervision of Dr. Pierre A. Karrer. She has acted as tribunal secretary in over forty complex international arbitration matters (institutional and ad hoc).

Contributors

Gerald Aksen has many years of experience as counsel and arbitrator in domestic and foreign arbitrations in eighteen different countries. He has acted as arbitrator and mediator with the American Arbitration Association, National Futures Association, International Chamber of Commerce, London Court of International Arbitration, Japan Commercial Arbitration Association, Arbitration Institute of the Stockholm Chamber of Commerce and under UNCITRAL, ARIAS, BERMUDA FORM and other ad hoc rules, as well as with the United States District Court for the Eastern District of New York Early Neutral Evaluation Program. Gerald Aksen has also been an adjunct professor of law at New York University School of Law for thirty years, teaching courses on domestic and international arbitration.

Chiann Bao is the Asia Pacific Counsel for Skadden, Arps, Slate, Meagher & Flom and is based in its Hong Kong office where she focuses on international commercial disputes arising from Asia. Prior to joining Skadden, Ms. Bao served as the secretary-general of the Hong Kong International Arbitration Centre (HKIAC), where she managed hundreds of arbitrations before tribunals in Asia, with a specific focus in China. Ms. Bao worked at an international law firm in New York before joining HKIAC in 2010 where she advised clients in ad hoc and administered arbitrations. She was an adjunct professor at Hong Kong University (2014–2016) and is a frequent lecturer and author on international arbitration.

Louise Barrington FCIArb, C.Arb., is an Independent Arbitrator with over twenty years' experience, based in Hong Kong, Paris and Toronto. She has sat on ICC, HKIAC and ad hoc arbitrations, as sole arbitrator, party-nominated arbitrator and tribunal president, in Europe, Asia and North America. Her experience includes CISC, construction, shareholder agreements, distribution and licensing contracts and insurance. She regularly trains and assesses arbitrators for the Chartered Institute of Arbitrators and is chief editor of "The Danubia Files: Lessons in Award Writing from the Vis Moot." Louise speaks fluent English and French and conversational Spanish.

Klaus Peter Berger is Professor of domestic and international business and banking law, comparative and private international law at the University of Cologne and Director of the Institute for Banking Law and the Center for Transnational Law (CENTRAL) at the Cologne law faculty. He has been Honorary Lecturer and Member of the Global Faculty at the Centre for Energy, Petroleum and Mineral Law and Policy, University of Dundee, Scotland, and visiting professor at the University of Virginia School of Law and at Columbia Law School, New York City. He is also a Board Member of the German Institution of Arbitration (DIS)

George A. Bermann is Professor of Law at Columbia Law School (New York City) where he also directs the Center for International Commercial and Investment Arbitration (CICIA). He has served as international arbitrator since 1980. He presides over the Global Board of Advisors of the NY International Arbitration Center and is member of the Standing Committee of the ICC International Chamber of Commerce. He has authored many books and articles and spoken at many conferences on international arbitration, transnational litigation, comparative law, EU Law and related topics. Professor Bermann is also Chief Reporter of the American Law Institute's Restatement of the US Law of International Commercial Arbitration.

David J. Branson has been engaged in the practice of international arbitration for forty years. He was a partner with Charles Brower at White & Case when Pierre Karrer was selected by the ICC to serve as the Chair arbitrator in the case Mr. Branson chose to write about in honor of Pierre.

Nadia Darwazeh is a partner in the International Arbitration Group of Curtis, Mallet-Prevost, Colt & Mosle LLP, based in Paris. She is a Solicitor Advocate and Rechtsanwältin. Nadia has extensive arbitration experience, acting both as counsel and arbitrator. Before joining Curtis, Nadia headed up the EMEA team at the ICC International Court of Arbitration. Prior to the ICC, Nadia practiced for a decade at leading international law firms in Shanghai, Frankfurt and London. Nadia is the first Secretary General of the Jerusalem Arbitration Centre, an ICC joint-venture. Nadia is fluent in French, German and English. She also speaks Dutch and Mandarin Chinese.

Dr. Mariel Dimsey is an international commercial and investment arbitration specialist based in the Hong Kong office of Hogan Lovells. She has over ten years' experience acting as advisor, advocate and arbitrator in numerous international arbitrations covering a wide range of legal systems and industries. She is an Australian Lawyer and received an LLM degree from the University of Cologne and a doctorate in law (Dr. iur.), *summa cum laude*, from the University of Basel, both in investment arbitration. She speaks and publishes regularly on international arbitration and international commercial law topics.

Professor Dr. Siegfried H. Elsing, LL.M. (Yale) is partner in the Düsseldorf office of Orrick, Herrington & Sutcliffe LLP and co-chair of the firm's International Arbitration group. He is admitted as an attorney in both Germany and New York and has more than

thirty years of experience as litigation and international arbitration counsel with a particular emphasis on M&A, investment protection, infrastructure, IP and energy related disputes. He also regularly serves as arbitrator in ad hoc as well as institutional arbitral proceedings. Siegfried is Honorary Professor at the University of Dusseldorf and regularly teaches and publishes on arbitration and commercial law subjects.

Emmanuel Gaillard founded and heads Sherman & Sterling's eighty-lawyer International Arbitration practice. He has advised and represented companies, States and State-owned entities in hundreds of international arbitrations. He also acts as arbitrator and expert witness. He is universally regarded as a leading authority and a star practitioner in the fields of commercial and investment treaty arbitration. Emmanuel Gaillard is also a Professor of Law at Sciences Po Law School and a Visiting Professor of Law at Yale Law School. He has written extensively on all aspects of arbitration law, co-authored a leading treatise in the field and authored the first published essay on the legal theory of international arbitration.

Robert Gaitskell, Q.C., practises from Keating Chambers, specialising in technology, engineering and construction disputes, often of an international nature. He was called to the Bar in 1978, appointed Queen's Counsel in 1994 and sat as a Recorder (part-time judge) from 2000–2010. He is both a lawyer and a professional engineer. Robert predominately acts as an arbitrator, adjudicator, dispute board member and mediator. He has conducted over 100 arbitrations throughout the world and regularly lectures on the subject, including for the ICC, SIMC and CI Arb. He writes extensively and lectures globally on legal/engineering subjects, including at CERN in Geneva and Xerox PARC in Silicon valley.

Teresa Giovannini is a founding partner of LALIVE specializing in international arbitration (including setting aside proceedings with the Swiss Supreme Court), as well as art law. She has acted – mainly as arbitrator – in more than 170 international arbitrations. Teresa Giovannini is the Swiss Member of the ICC Court of Arbitration and the ICC Commission on Arbitration and ADR since 1 July 2015 and she is part of several panels of arbitrators as well as of arbitration committees. Mrs Giovannini is also a frequent speaker on international arbitration and the author of various publications in the field.

Professor Dr. Daniel Girsberger is a founding member of the Faculty of Law of the University of Lucerne and a tenured professor for Swiss and International Private, Business and Procedural, as well as Comparative Law. Before accepting the Lucerne assignment, he taught at the University of Zurich Law School and as visiting professor at various universities worldwide. He is, moreover, the author of numerous publications focusing primarily on international business law and arbitration. Daniel Girsberger is also of counsel at Wenger & Vieli Ltd., a major Zurich business law firm. In the course of his profession, he has acted as chairman, arbitrator and counsel in various domestic and international arbitration cases.

Philipp Habegger is the principal of **Habegger Arbitration** in Zurich, Switzerland. He has acted in more than 170 commercial arbitrations under a variety of arbitration rules and applicable laws. He has been involved in disputes arising out of joint ventures, mergers and acquisitions, international sales, agency and distribution, licensing, franchising, construction and engineering projects, across a wide range of industries. Philipp used to be president of the Arbitration Court of the Swiss Chambers' Arbitration Institution, court member of the ICC International Court of Arbitration, and vice chair of the IBA Arbitration Committee. He teaches international arbitration at the University of Zurich.

Professor Dr. Kaj Hobér is Professor of International Investment and Trade Law at Uppsala University (Sweden). He is Chairman of the Board of the SCC Institute in Stockholm, as well as an associate member of Three Verulam Buildings, Gray's Inn, London.

Günther J. Horvath is partner and leads the International Arbitration Group in the Vienna office of Freshfields Bruckhaus Deringer LLP. His experience comprises around 150 high-profile cases as counsel and arbitrator under the Rules of ICC, VIAC, SCC, Swiss Rules and in ad-hoc arbitrations. His practise specialises in international commercial arbitration with a primary focus on energy, joint venture matters, corporate disputes and industrial engineering. Günther holds law degrees from the University of Graz and New York University. He speaks German, English and some Italian.

Professor Dr. Hans van Houtte is President of the Iran-United States Claims Tribunal and an independent arbitrator. He was a professor of law at the KU Leuven (Belgium) where he taught international public law, international private law, international business law and still teaches arbitration. He sits frequently in commercial and investment arbitrations. He has i.a. been President of the Eritrea-Ethiopia Claims Commission, Judge of the Claims Tribunal for Dormant Accounts and member of the United Nations Claims Commission and the Commission for Real Property Claims in Bosnia.

Benjamin Hughes is an independent arbitrator with Fountain Court Chambers in London and The Arbitration Chambers in Singapore, and Associate Professor of Law at Seoul National University Law School. Prior to launching his practice as an independent arbitrator in 2013, Ben practiced as international arbitration counsel with major US and Korean law firms. Ben has been appointed as arbitrator in over sixty international arbitrations with a total value in dispute exceeding USD 1 billion. Chambers & Partners has recognized Ben as one of the *"Most in Demand Arbitrators"* in the Asia-Pacific Region.

Michael Hwang S.C. currently practices as an international arbitrator and mediator based in Singapore. He also serves as the non-resident Chief Justice of the Dubai International Financial Centre Courts. He has two law degrees from Oxford University, to which he gained admission by winning an open scholarship examination. In 2014 he was conferred an Honorary LL.D degree by the University of Sydney. His past and present appointments include: (a) Judicial Commissioner of the Supreme Court of

Singapore; (b) Senior Counsel of the Supreme Court of Singapore; (c) Singapore's non-resident Ambassador to Switzerland and Argentina; (d) President of the Law Society of Singapore; (e) Adjunct Professor, National University of Singapore; (f) Commissioner of the United Nations Compensation Commission; and Vice Chair of ICC International Court of Arbitration.

Florence Jaeger, is currently a Visiting Scholar and Ph.D. candidate at Columbia Law School in New York. Florence received her Bachelor's and Master's degrees in Law from the University of Basel.

Professor Doug Jones is a leading independent international commercial and investor/state arbitrator. He is an arbitration member at Arbitration Place, a door tenant at Atkin Chambers in London, and has chambers in Sydney, Australia. The arbitrations in which he has been involved include infrastructure, energy, commodities, intellectual property, commercial and joint venture, and investor-state disputes spanning over thirty jurisdictions. Prior to his full-time arbitration practice, Doug had forty years' experience as an international transactional and disputes projects lawyer. He is an Officer of the Order of Australia, and one of only four Companions of the Chartered Institute of Arbitrators.

Neil Kaplan CBE QC SBS, has been a full-time practicing arbitrator since 1995. He has been involved in several hundred arbitrations as arbitrator. Called to the Bar of England in 1965, Mr. Kaplan has practiced as a barrister, Principal Crown Counsel at the Hong Kong Attorney General's Chambers, and served as a Judge of the Supreme Court of Hong Kong in charge of the Arbitration List. He was Chair of HKIAC for thirteen years and President of the Chartered Institute of Arbitrators in 1999/2000. Since 2017 he has been the President of the Court of the Mauritius Chamber of Commerce and Industry Arbitration and Mediation Centre.

Jennifer Kirby is an internationally recognized arbitration expert, who acts as counsel and sits as arbitrator in a wide variety of arbitration matters. Jennifer served as both Counsel and Deputy Secretary General of the ICC International Court of Arbitration before leaving to join a multinational firm as a partner in their arbitration group. In 2010, Jennifer founded her own boutique arbitration practice, Kirby, in Paris. Jennifer has been recognized by *Chambers Global* as "a true expert in ICC-related disputes" and by *The Who's Who of International Arbitration* as a "very sharp" global player in the field.

Professor Dr. Richard Kreindler is a Partner of the law firm of Cleary Gottlieb Steen & Hamilton LLP and has specialized in international arbitration and litigation matters since 1985. He is a US national, was educated in the US and Germany, is admitted to the Bar in New York and Paris, and is also a professor of law in Germany. He has acted as counsel, arbitrator, expert and mediator in several hundred disputes under the major arbitral rules and regimes, with a focus on post-M&A, construction & infrastructure, energy and intellectual property.

Professor Dr. Stefan Kröll is an independent arbitrator in Cologne and an honorary professor at Bucerius Law School in Hamburg. He is one of the directors of the Willem C. Vis Arbitration Moot Court and Germany's national correspondent to UNCITRAL for arbitration. Stefan has acted as arbitrator or emergency arbitrator in over seventy cases with private and state parties and is regularly listed as one of the leading arbitrators in Germany. Stefan has published widely in the field of international commercial arbitration and commercial law.

Lynnette Lee, graduated with an LL.B. from Monash University and was an intern with Michael Hwang Chambers LLC.

Dr. Werner Melis is an independent international arbitrator. He was the former President of the Vienna International Arbitration Centre and is now Honorary President. He was also the former Vice-president of the International Council for Commercial Arbitration and of the London Court of International Arbitration as well as other leading arbitral institutions. He has been an arbitrator in more than 150 international arbitrations world-wide. Dr. Melis has been a member of the Austrian delegation in the negotiations of the UNCITRAL Arbitration Rules, the UNCITRAL Conciliation Rules and the UNCITRAL Model Law on International Commercial Arbitration.

Dr. Michael Moser Michael Moser is an international arbitrator with Twenty Essex Street Chambers, with offices in Hong Kong, Singapore and London. He is Honorary Past Chairman of the Hong Kong International Arbitration Centre, current board member of the Singapore International Arbitration Centre and the Vienna International Arbitration Centre, and past member of the LCIA Court and the SCC Stockholm Chamber of Commerce Arbitration Institute. He has sat as arbitrator in more than 200 cases around the globe.

Alexis Mourre is President of the ICC International Court of Arbitration and past chair of the IBA arbitration committee. He has participated as counsel or arbitrator in more than 230 arbitration proceedings under most international arbitration rules and since 1 May 2015 has established his independent arbitrator practice. He is the author of several books and many articles on international arbitration and private international law. He is fluent in French, English, Spanish and Italian and has good knowledge of Portuguese.

Professor William W. Park is a Professor of Law at Boston University where he teaches courses in tax and financial law. After studies at Yale and Columbia, Park practiced in Paris until returning home to Boston. Park is General Editor of Arbitration International and former President of the London Court of International Arbitration. He served on the Claims Resolution Tribunal for Dormant Swiss Accounts and the International Commission on Holocaust Insurance Claims. The United States appointed Park to the ICSID Panel of Arbitrators. His books include Arbitration of International Business Disputes, International Forum Selection, ICC Arbitration (with Craig &

Paulsson), International Commercial Arbitration (with Reisman, Craig & Paulsson) and Income Tax Treaty Arbitration (with Tillinghast).

Dr. Tom Christopher Pröstler, LL.M. (Sydney) is a registered foreign lawyer with CMS Hong Kong and a visiting lecturer at Humboldt-Universität zu Berlin. His legal practice focuses on representing clients and acting as tribunal secretary in international arbitration proceedings under all major arbitration rules, with a special focus on disputes between western and Asian parties. Dr Pröstler studied law at Humboldt-Universität, Université de Genève and University of Sydney and process management at Ruhr-Universität-Bochum. He obtained his doctorate on a comparative law subject from Humboldt-Universität. Prior to joining CMS Hong Kong, he worked at CMS's Munich office and was a fellow at Humboldt-Universität.

Dr. Axel Reeg is the founding partner of REEG RECHTSANWAELTE, a German niche law firm active in cross-border dispute resolution. Axel holds a Ph.D. in law and is admitted to the Bars in Germany and Spain. He lectures on International Arbitration at the University of Heidelberg. Axel has extensive experience in cross-border dispute resolution, both as an arbitrator, as counsel in international arbitration and before state courts. Axel is, *inter alia*, a member of the Board of Trustees of the Chartered Institute of Arbitrators.

Professor Dr. Klaus Sachs is a partner in the law firm of CMS Hasche Sigle. After attending schools in Paris, Bonn and Brussels, Mr Sachs graduated from Heidelberg University in 1973. He obtained a doctor juris degree in 1975 and was admitted to the bar in 1976. Klaus Sachs has over twenty-five years of experience as party's counsel, co-arbitrator, sole arbitrator and chairman in both ad hoc and institutional arbitration proceedings. He has also acted as chair or co-arbitrator in so far more than fifteen investment treaty arbitrations under the ICSID Rules or the UNCITRAL Arbitration Rules. He is honorary professor for international arbitration law at the Munich University.

Professor Dr. Ulrich G. Schroeter is a Professor of Private Law and Comparative Law at the University of Basel (Switzerland). Prior to starting his position in Basel, he was a Professor at the University of Mannheim (Germany) where he was the Chair for Private Law, International Corporate and Financial Markets Law, European Business Law. Ulrich was educated at the Albert-Ludwigs-University Freiburg (Germany) and the University of Lausanne (Switzerland). He received a *Doctor iuris* from the Freie Universität Berlin. Ulrich works and publishes in the areas of contract law, international trade law, arbitration, treaty law, commercial law, financial markets regulation and European Union law. He regularly speaks at conferences worldwide.

Professor Dr. Ingeborg Schwenzer is the Dean of the Swiss International Law School (SiLS), Professor emerita of Private Law at the University of Basel (Switzerland) and Chair of the CISG Advisory Council. She has also been an adjunct professor at City University of Hong Kong and Griffith University in Brisbane (Australia). She has

published numerous books and over 200 articles in the fields of the law of obligations, commercial arbitration as well as family law. She is the editor and main contributor of the world's leading Commentary on the Convention on the International Sale of Goods and its German, Spanish, Portuguese and Turkish counterparts. Ingeborg also regularly acts as arbitrator, counsel and legal expert in international disputes.

Matthew Secomb is a partner in White & Case's International Arbitration Group in Singapore. He specializes in international commercial arbitration, with a focus on energy-related and construction disputes. He has been involved in arbitrations under most of the major arbitral rules, as well as in *ad hoc* arbitrations. In addition to his counsel work, Matthew acts regularly as arbitrator. Before moving to Singapore in 2015, he was based in White & Case's Paris office for nearly ten years. Prior to joining White & Case in 2006, Matthew was counsel to the ICC International Court of Arbitration.

Alexander Shchavelev, LL.M. (UNSW, Sydney) is an associate in the Düsseldorf office of Orrick, Herrington & Sutcliffe LLP and member of the firm's International Arbitration group. His practice focuses on domestic and international arbitration and litigation, with a particular emphasis on M&A, energy and construction related disputes. Another focus are Russia related cross-border transactions and disputes. Alexander also regularly acts as administrative secretary of arbitral tribunals. He holds a PhD in Law from the University of Freiburg and a Master of Laws degree from the University of New South Wales and regularly publishes on arbitration and commercial law subjects.

Jingzhou Tao is the Managing Partner responsible for developing the Asia Practice of Dechert LLP. He has advised many Fortune 500 companies on international mergers and acquisitions, arbitration and corporate matters involving China for more than thirty years. Mr. Tao has represented major American and European and Japanese companies in hundreds of transactions in China involving joint ventures, tax planning, strategic alliances and intellectual property protection. He also has significant experience in international arbitration proceedings both in China and before the major international arbitration institutions.

Marc D. Veit is a Partner at LALIVE and specializes in international arbitration and litigation. He has acted as counsel and arbitrator in a large number of international arbitrations, both *ad hoc* (including UNCITRAL) and under institutional rules (ICC, Swiss rules, HKIAC, SIAC, SCC, IATA) involving the substantive and/or procedural laws of Switzerland, Germany, Austria, France, England, China, Turkey, Sweden, Singapore, Hong Kong, Georgia, Ukraine, Korea and Albania. He has been ranked for many years by Chambers Global as a leading individual in Arbitration and Litigation in Switzerland, and by Legal 500 as a recommended practitioner in Dispute Resolution in Switzerland.

Jeffrey Waincymer has over thirty-two years' experience as a legal practitioner in all aspects of international arbitration, international trade and investment, customers and commercial law. He has acted as arbitrator and expert witness in international arbitration proceedings. Jeffrey has published extensively on international arbitration and litigation and was formerly a Professor of Law at Monash University and Deakin University in Australia.

Professor Janet Walker (JD, DPhil, FCIArb) is a Professor of Law (past associate dean) at Osgoode Hall Law School, a member of the Ontario Bar, and licensed legal consultant of the New York State Bar. She authors Canada's main text on private international law and is general editor of works on comparative procedure and group actions. For more than fifteen years she has served as arbitrator, co-arbitrator and chair under various institutional rules. Janet is based in Toronto at Arbitration Place and in London at Outer Temple Chambers. She has a good working knowledge of Spanish and French.

Jane Willems is an Associate Professor of Law at Tsinghua Law School, Associate Director of the International Arbitration and Dispute Settlement LLM (IADS). She teaches international investment law, private international law and international commercial arbitration. Her Ph.D. thesis focused on Sino-foreign joint ventures contract disputes before international arbitrators. She has participated in numerous international commercial and investment arbitrations and other forms of ADR. She has served as an arbitrator and commercial arbitrations involving the ICC, HKIAC, CI-ETAC, BAC and UNCITRAL Rules. Jane Willems is a member of the California and the Paris (France) Bar.

Stephan Wilske Dr. iur., Maître en Droit (Aix-Marseille III), LL.M. (The University of Chicago; Casper Platt Award), Rechtsanwalt (Germany) and Attorney-at-Law (New York), admission to various U.S. federal courts, including the U.S. Supreme Court, FCIArb (Chartered Institute of Arbitrators); partner at Gleiss Lutz, Stuttgart; lecturer at the Universities of Heidelberg and Jena. Stephan is a member of the American Law Institute (ALI) and the SIAC Users' Council. He is also an Advisory Committee Member of the Swiss Arbitration Academy, Senior Committee Member of the Contemporary Asia Arbitration Journal and International Correspondent (Germany) of the Revista Română de Arbitraj.

Foreword

It is an honor for us to join in this celebration of Pierre Karrer's 75th birthday. Pierre has been a friend and a respected colleague whom we have both had the good fortune to know throughout our professional careers. We have had the pleasure of working with Pierre in many capacities: as a committee member colleague working on the IBA Rules of Evidence and other reforms, as co-arbitrator, as an arbitrator hearing our cases, as an officer of various arbitration institutions, and as a fellow aficionado of classical music, among others.

Pierre's is undoubtedly one of the great names in international arbitration. He and his work have influenced practitioners around the world. His contributions to the IBA Rules of Evidence were substantial; his training on both sides of the Atlantic and his global experience enabled him to propose solutions that bridged the common law/civil law divide. As the first Vice Chair of the Arbitration Institute of the Stockholm Chamber of Commerce after it internationalized its Board, he helped devise and implement procedures that offer substantial Board input into every major decision that the Institute needs to make in each case, including in particular the selection of arbitrators.

Pierre is as organized and dedicated an arbitrator as one could hope for – indeed it would be no exaggeration to say that these attributes have become the stuff of legend, sufficient to intimidate anyone ill-advised enough even to think about turning up to a hearing unprepared. He has an extensive box of tools, literally and figuratively, to carry out his trade. In each case, he applies his experience to work with the parties to determine the procedures best suited to that particular arbitration. His presence and demeanor exude efficiency, as do his solutions, but he wears his abilities lightly, so that proceedings before him are always managed with fairness and with a humanity that is readily appreciated. As the hearing progresses, his deft touch is even more keenly felt. Because Pierre is so well prepared in every case, he is able to guide the parties through the case effectively.

The range and quality of articles in this *Liber Amicorum*, and the diversity and excellence of its contributors, are a testament as much to the esteem and affection in which Pierre is held as to his influence upon, and to his own broad interests in improving, the practice of arbitration. At a time when arbitration is under ever greater

scrutiny and subject to ever more searching and sometimes hostile enquiry, his work is an example of how good the process can be when it is in the hands of a master. This volume will be one more substantial contribution resulting from Pierre's career, but more to the point, we hope that he will enjoy it both for its content and as a mark of the appreciation of his professional colleagues and friends for all that he has achieved. We, for our part, offer our warmest congratulations to Pierre and we wish him the happiest of birthdays.

John Beechey and David W. Rivkin***

* **John Beechey CBE** is among the best known arbitrators in the world. He has served as chairman, party-appointed arbitrator, or sole arbitrator on international arbitral tribunals in both 'ad hoc' (including UNCITRAL) and institutional arbitrations under the Rules of, *inter alia*, the European Development Fund (EDF), International Chamber of Commerce (ICC), International Centre for Dispute Resolution/ American Arbitration Association (ICDR/AAA), International Center for the Settlement of Investment Disputes (ICSID), London Court of International Arbitration (LCIA), Permanent Court of Arbitration (PCA), Singapore International Arbitration Centre (SIAC), and the Stockholm Chamber. He is a past President of the International Court of Arbitration of the ICC (2009-2015).

** **David W. Rivkin** is Co-Chair of Debevoise & Plimpton's International Dispute Resolution Group and The Immediate Past President of the International Bar Association (IBA). A litigation partner in the firm's New York and London offices, Mr. Rivkin has broad experience in the areas of international litigation and arbitration. Mr. Rivkin is consistently ranked as one of the top international dispute resolution practitioners in the world. He has handled international arbitrations throughout the world and before virtually every major arbitration institution. Mr. Rivkin also represents companies in transnational litigation in the US, including the enforcement of arbitral awards and arbitration agreements.

Preface

Dr. Pierre A. Karrer stands out as an exceptionally accomplished international arbitrator, practitioner and expert. The authors who have contributed to this book – all of whom are also prominent in the field of international arbitration – have come to know and respect Dr. Karrer from sitting with him on tribunals, appearing before him as counsel, and/or working with him on projects such as the IBA Rules on the Taking of Evidence. We the editors had the fortune of getting to know Dr. Karrer through his role as a teacher and mentor. It is within this role that he has enthusiastically helped foster the interest, knowledge, skills and networks of generations of young lawyers. We are therefore pleased and delighted to honor Dr. Karrer's remarkable contributions to developing international arbitration and to enhancing the professionalism and collaboration of the global arbitration community.

When putting together this project, we sought to find a theme that would focus on an important feature of Dr. Karrer's philosophical and practical approach to arbitration. After some brainstorming, there was no doubt in our minds that the theme of the book celebrating Dr. Karrer's career should focus on the powers and duties of an arbitrator.

Dr. Karrer exemplifies the characteristics of a “maestro” arbitrator who has built and earned his reputation with talent, skill, creativity, integrity and congeniality. His reputation for his good judgment in an expansive array of cases reflects his wide range of knowledge and interests as well as his openness to new ideas and diverse cultures. Dr. Karrer believes in the importance of the arbitrator conducting the proceedings with attention to detail, careful preparation, a firm hand and an open-mind. He believes in the powers of the arbitrator to ensure a fair and efficient conduct of an arbitration and he takes the duties and responsibilities of the arbitrator seriously. It is well known that “an arbitration is only as good as the arbitrator,” and all of the contributors to this book know that when Dr. Karrer is the arbitrator, the arbitration will be expertly conducted.

Attracting prominent contributors to this book was an easy task as Dr. Karrer enjoys professional and collegial friendships across the globe. We tried to bring together a diverse group of his colleagues in this book. Many have enjoyed long careers over many years of interacting with Dr. Karrer, while others more recently had the fortune of getting to know him when they were young practitioners and benefited from