EXTENDED CONTENTS

Preface xi
Table of cases and awards xii
Table of legislation xviii

1. INTERNATIONAL COMMERCIAL ARBITRATION IN THE EU – AN INTRODUCTION
   A. THE BRUSSELS I REGULATION AND INTERNATIONAL COMMERCIAL ARBITRATION 1.11
      1. The Brussels I Regulation 1.11
         1.1 Revision of the Brussels I Regulation 1.18
         1.2 Objectives 1.31
         1.3 Scope of application 1.34
      2. International commercial arbitration 1.40
         2.1 Definition of international commercial arbitration 1.43
         2.2 The 1958 New York Convention 1.54
            2.2.1 The scope of application 1.58
            2.2.2 Characteristics of the Convention 1.67
         2.3 The 1961 European Convention 1.76
            2.3.1 The scope of application 1.83
            2.3.2 The European Convention and the New York Convention 1.87
         2.4 The UNCITRAL Model Law 1.90
            2.4.1 The scope of application 1.99
   B. NATIONAL SOURCES OF LAW 1.104
      1. The 1999 Swedish Arbitration Act 1.107
      2. The 1998 German Arbitration Act 1.114
      3. The 1996 English Arbitration Act 1.121
      4. The 2011 French Arbitration Act 1.129

2. THE INTERFACE BETWEEN THE RECAST BRUSSELS I REGULATION AND INTERNATIONAL COMMERCIAL ARBITRATION
   A. THE ARBITRATION EXCLUSION IN THE RECAST BRUSSELS I REGULATION 2.02
      1. The interpretation of the arbitration exclusion 2.09
         1.1 Marc Rich and Van Uden 2.11
         1.2 West Tankers 2.15
         1.3 Gazprom 2.22
         1.4 The interpretation prior to the recast Regulation 2.29
      2. The recast arbitration exclusion 2.33
   B. THE INTERFACE 2.43

3. THE CONSEQUENCES OF THE INTERFACE BETWEEN THE RECAST BRUSSELS I REGULATION AND INTERNATIONAL COMMERCIAL ARBITRATION
   A. JUDGMENTS ON THE MERITS DISREGARDING AN ARBITRATION AGREEMENT AS AN INCIDENTAL QUESTION 3.04
      1. Recognition and enforcement of judgments 3.06
      2. Grounds for refusing recognition and enforcement 3.15
EXTENDED CONTENTS

3. Ban on reviewing the jurisdiction of the court of origin 3.26
4. The recast Regulation and other conventions 3.33
5. Implications of inclusion 3.41

B. REACTIONS TO JUDGMENTS ON THE MERITS THAT DISREGARD AN ARBITRATION AGREEMENT AS AN INCIDENTAL QUESTION 3.43
1. Arbitral awards 3.46
2. Declaratory judgments 3.56

C. THE CONSEQUENCES OF THE INTERFACE 3.60
1. Forum shopping, parallel proceedings and conflicting decisions 3.61
2. Dilatory tactics – an EU problem 3.67

4. THE EXISTENCE AND VALIDITY OF ARBITRATION AGREEMENTS
A. THE EU REGULATION OF AN ARBITRATION AGREEMENT’S EXISTENCE AND VALIDITY 4.09
B. THE INTERNATIONAL REGULATION OF AN ARBITRATION AGREEMENT’S EXISTENCE AND VALIDITY 4.14
1. Existence and validity at the pre-award stage 4.15
1.1 Formal validity 4.24
1.1.1 The 2006 UNCITRAL Amendments 4.36
1.1.1.1 Recommendations on Articles II(2) and VII(1) of the New York Convention 4.38
1.1.1.2 Amendments to Article 7 of the Model Law 4.51
1.2 Substantive validity 4.58
2. Existence and validity at the post-award stage 4.73
2.1 Formal validity 4.87
2.2 Substantive validity 4.92
2.2.1 Choice of law in the main contract 4.99
2.2.2 Article V(1)(a) of the New York Convention at the pre-award stage 4.104
2.3 Capacity to arbitrate 4.111
3. Uniform international rule on an arbitration agreement’s existence and validity? 4.116
3.1 Formal validity 4.116
3.2 Substantive validity 4.126
3.3 Capacity to arbitrate 4.134

C. THE NATIONAL REGULATION OF AN ARBITRATION AGREEMENT’S EXISTENCE AND VALIDITY 4.137
1. Sweden 4.138
1.1 Substantive validity 4.138
1.2 Capacity to arbitrate 4.145
2. Germany 4.148
2.1 Substantive validity 4.148
2.2 Capacity to arbitrate 4.151
3. England 4.154
3.1 Substantive validity 4.154
3.2 Capacity to arbitrate 4.164
4. France 4.166
4.1 Substantive validity 4.166
4.2 Capacity to arbitrate 4.176
5. Uniform national rule on existence and validity of arbitration agreements? 4.178
5.1 Substantive validity 4.178
5.2 Capacity to arbitrate 4.182

D. EU, INTERNATIONAL AND NATIONAL REGULATIONS OF AN ARBITRATION AGREEMENT’S EXISTENCE AND VALIDITY 4.186

5. THE ARBITRABILITY OF A DISPUTE
A. THE EU REGULATION OF ARBITRABILITY 5.06
B. THE INTERNATIONAL REGULATION OF ARBITRABILITY 5.08
1. Arbitrability at the pre-award stage 5.09
2. Arbitrability at the post-award stage 5.19

Louise Hauberg Wilhelmsen - 9781788115056
Downloaded from Elgar Online at 07/10/2019 07:25:24PM via free access
2.1 The New York Convention 5.20
2.2 The Model Law 5.29
3. Uniform international rule on arbitrability? 5.37
C. THE NATIONAL REGULATION OF ARBITRABILITY 5.46
1. Sweden 5.47
2. Germany 5.54
3. England 5.66
4. France 5.77
5. Uniform national rule on arbitrability 5.81
D. EU, INTERNATIONAL AND NATIONAL REGULATIONS ON ARBITRABILITY 5.86

6. PARALLEL PROCEEDINGS
A. THE EU REGULATION OF PARALLEL PROCEEDINGS 6.09
B. THE INTERNATIONAL REGULATION OF PARALLEL PROCEEDINGS 6.21
1. The competence-competence principle 6.22
2. Direct and indirect court control 6.36
3. Lis pendens 6.46
4. Uniform international rule on parallel proceedings 6.57
C. THE NATIONAL REGULATION OF PARALLEL PROCEEDINGS 6.59
1. Sweden 6.65
1.1 The competence-competence principle 6.65
1.2 Direct and indirect court control 6.70
1.3 Lis pendens 6.76
2. Germany 6.77
2.1 The competence-competence principle 6.77
2.2 Direct and indirect court control 6.82
2.3 Lis pendens 6.90
3. England 6.91
3.1 The competence-competence principle 6.91
3.2 Direct and indirect court control 6.96
3.3 Lis pendens 6.103
4. France 6.111
4.1 The competence-competence principle 6.111
4.2 Direct and indirect court control 6.119
4.3 Lis pendens 6.122
5. Uniform national rule on parallel proceedings 6.124
D. EU, INTERNATIONAL AND NATIONAL REGULATIONS ON PARALLEL PROCEEDINGS 6.130

7. CONFLICTING DECISIONS
A. THE EU REGULATION OF CONFLICTING DECISIONS 7.05
1. Irreconcilable judgments 7.07
1.1 Article 45(1)(c) 7.14
1.2 Article 45(1)(d) 7.20
2. Public policy 7.27
3. The EU regulation of conflicting decisions 7.33
B. THE INTERNATIONAL REGULATION OF CONFLICTING DECISIONS 7.38
C. THE NATIONAL REGULATION OF CONFLICTING DECISIONS 7.53
1. Sweden 7.54
2. Germany 7.58
3. England 7.62
4. France 7.67
5. Uniform national rule on conflicting decisions? 7.75
D. EU, INTERNATIONAL AND NATIONAL REGULATIONS ON CONFLICTING DECISIONS 7.78

8. SUMMARY AND CONCLUSIONS
A. THE INTERFACE AND ITS CONSEQUENCES 8.03
1. Forum shopping 8.06
2. Parallel proceedings 8.12
EXTENDED CONTENTS

3. Conflicting decisions 8.15
   B. HOW TO ADDRESS THE CONSEQUENCES OF THE INTERFACE 8.17
      1. Uniform EU rules on arbitration agreements' validity and existence 8.23
         1.1 The substantive validity 8.29
         1.2 The arbitrability of disputes 8.31
         1.3 The parties' capacity to arbitrate 8.36
      2. Drafting arbitration agreements 8.38

Official reports and preparatory works 230
Bibliography 239
Index 249