ISSN : 1875-4120
Issue : (Provisional)
Published : July 2023

This article will be published in a future issue of TDM (2023). Check website for final publication date for correct reference.

This article may not be the final version and should be considered as a draft article.

Terms & Conditions

Registered TDM users are authorised to download and print one copy of the articles in the TDM Website for personal, non-commercial use provided all printouts clearly include the name of the author and of TDM. The work so downloaded must not be modified. **Copies downloaded must not be further circulated.** Each individual wishing to download a copy must first register with the website.

All other use including copying, distribution, retransmission or modification of the information or materials contained herein without the express written consent of TDM is strictly prohibited. Should the user contravene these conditions TDM reserve the right to send a bill for the unauthorised use to the person or persons engaging in such unauthorised use. The bill will charge to the unauthorised user a sum which takes into account the copyright fee and administrative costs of identifying and pursuing the unauthorised user.

For more information about the Terms & Conditions visit www.transnational-dispute-management.com

© Copyright TDM 2023
TDM Cover v2.7

Transnational Dispute Management
www.transnational-dispute-management.com

Young-OGEMID Third Author Interview: Dr Lucas Clover Alcolea (Book: Arbitration of Trust Disputes)

by A.J. Mathew

About TDM

TDM (Transnational Dispute Management): Focusing on recent developments in the area of Investment arbitration and Dispute Management, regulation, treaties, judicial and arbitral cases, voluntary guidelines, tax and contracting.

Visit www.transnational-dispute-management.com for full Terms & Conditions and subscription rates.

Open to all to read and to contribute

TDM has become the hub of a global professional and academic network. Therefore we invite all those with an interest in Investment arbitration and Dispute Management to contribute. We are looking mainly for short comments on recent developments of broad interest. We would like where possible for such comments to be backed-up by provision of in-depth notes and articles (which we will be published in our 'knowledge bank') and primary legal and regulatory materials.

If you would like to participate in this global network please contact us at info@transnational-dispute-management.com: we are ready to publish relevant and quality contributions with name, photo, and brief biographical description - but we will also accept anonymous ones where there is a good reason. We do not expect contributors to produce long academic articles (though we publish a select number of academic studies either as an advance version or an TDM-focused republication), but rather concise comments from the author's professional 'workshop'.

TDM is linked to **OGEMID**, the principal internet information & discussion forum in the area of oil, gas, energy, mining, infrastructure and investment disputes founded by Professor Thomas Wälde.

Young-OGEMID Third Author Interview: Dr Lucas Clover Alcolea (Book: Arbitration of Trust Disputes)

Ashish Jacob Mathew[*]

Moderator: Prof. S.I Strong

December 2022 - Prof. Strong made opening remarks and Introduction about the author - Lucas Clover Alcolea is a lecturer in the University of Otago School of Law in New Zealand where he teaches a course on wills and trusts and was previously a postdoctoral associate in the Scheinman Institute on Conflict Resolution at Cornell University where he designed and taught a course on alternative dispute resolution. His research interests include international investment law, trusts, property law, dispute resolution and legal theory. Lucas obtained his undergraduate law degree from the University of Aberdeen in 2010, his LLM from Edinburgh University and his doctorate in law from McGill University. Lucas has published articles in the McGill Journal of Dispute Resolution, the Journal of International Dispute Settlement, the Chinese Journal of International Law, the Pepperdine Dispute Resolution Law Journal, the New Zealand Universities Law Review, the Alberta Law Review, and the Contemporary Asia Arbitration Review among others.

Lucas Clover Alcolea appreciated Professor Strong, Anton, and all for the rare opportunity to talk a little about my hobby horse, trust arbitration.

The book opens with a paradox, everyone seems to think trust arbitration is a good idea so why do so few do it? He discusses six reasons:

i) It is unclear whether trust disputes are arbitrable;
ii) Even if trust disputes are arbitrable it is unclear how trust arbitration agreements can bind third parties such as beneficiaries;
iii) The need to represent unborn, minor, incapable and unascertained beneficiaries are represented in trust arbitration in order to respect the principles of natural justice and the ECHR,
iv) General issues vis-à-vis Art 6(1) ECHR (right to a fair trial) given that arbitration is generally neither public nor will it amount to a body established by law and there are some complications of how a waiver of Art 6(1) would work in a trust arbitration scenario,
v) One of the main advantages of arbitration is the New York Convention but it isn't clear whether trust arbitration awards could be enforced under it both due to the writing requirement and the commercial reservation, and
vi) Choice of law complications.

The book is effectively built around exploring and, in so far as possible, providing solutions to these issues. In general, all of the alleged problems are not absolute barriers to trust arbitration they just require good drafting and a sympathetic judge, which you would usually get in an arbitration friendly jurisdiction. In particular, the concerns about arbitrability stem from old caselaw which was handed down when the courts were less favourable to arbitration than they are now and it is relatively uncomplicated to bind beneficiaries either through a condition precedent, i.e. you don't have a right to benefit under the trust unless and until you agree to

[*] Advocate, Chambers of Mr. Dama Seshadri Naidu, Senior Advocate, Supreme Court of India.

arbitration, or through a condition subsequent, i.e. if you refuse to arbitrate or go to court you lose your right to benefit under the trust. Most of the ECHR/Natural justice issues can be resolved by ensuring that beneficiaries have someone to represent their interests and that there is some means for impecunious litigants to fund actions to protect their interests, similarly it is likely that Art 6(1) compliant hearings would remediate any underlying ECHR issues. The NYC issues are some of the simplest to dispose of as most jurisdictions interpret both the writing requirement and the commercial reservation broadly and the choice of law complications can be resolved with reference to the Hague Trusts Convention.

However, there are some issues that probably couldn't be overcome. So, for example, it is very often the case that individuals will seek to vary a trust for tax benefits, and I think that sort of decision raises public policy issues that are probably better addressed by the courts than by an arbitral tribunal. Equally, it is relatively clear that the courts are less likely to be deferential in cases involving financial support re divorce or where parties are challenging what was, or was not, left to them in a will after the settlor died and claiming they should have been given more. That isn't to say that trust arbitration isn't possible in those cases but it might be better to have a carve out for it or provision for the tribunal to liaise more closely with the court, for example by asking the court to determine a preliminary point of law under s.45 of the Arbitration Act 1996.

The book closes with some general academic points regarding what to consider when drafting a trust arbitration clause.

Thanks and looking forward to questions.

Prof. Strong: Thanks very much for this, Lucas. Rather than jumping straight into some substantive questions (which I really want to do, but want to leave space for others!), could I just ask you to provide a short paragraph describing what a trust is and how it is used? It is very much a common law device, and although some civil law jurisdictions have similar mechanisms in the commercial context, many of our readers may not know the context of our discussion.

Lucas Clover Alcolea: So I think the easiest way to describe a trust is the legal relationship which arises when A (the Settlor) transfers property to B (the trustee) to be held for the benefit of C (the beneficiary). In the paradigm trust the Settlor simply drops out of the picture once he's transferred the property, though lawyers and settlors love to complicated things. It's also important to note that a trust is not a legal person, it's a relationship (between the trustee and the beneficiary). So strictly speaking when people sue a trust or a trust sues, it will actually be the trustee that is being sued or suing. It is also a fiduciary relationship, which further complicates things by imposing very strict legal obligations on the trustee, namely they always put the beneficiaries interests above their own so that, for example, they cannot profit from their position nor put themselves in situations where they have a conflict of interest. The specifics of those obligations and rules are debated and form the basis of a whole ever expanding field of literature so I shouldn't go into it much more.

I should also probably clarify the difference between internal and external trust disputes, the former are disputes between say trustees, beneficiaries and so on, they are internal to the trust relationship, and the latter are say between the trustee and their personal creditors or the beneficiary and their creditors, they are external to the trust relationship.

Prof. Strong: I would just add, at a slightly more basic level, that a trust is basically a legal fiction that is used to hold or convey property.

Since examples sometimes help, the stereotypical trust is created when grandparents want to benefit their entire family with their wealth, but for some reason don't want to make an outright gift. The grandparents (settlors) create the trust for the benefit of the beneficiaries, defined as their children and grandchildren (ie, the children and grandchildren get the benefit of the money) but the burden of figuring out investments and doing the accounting and disbursements is vested in one person - the trustee (either a person or company). The trust can endure past the lifetime of the grandparents with the trustee distributing the funds in accordance with the terms of the trust.

There are lots of variations on this theme, as Lucas suggests, but the relationship between the trustee and the beneficiaries is a fiduciary one, meaning the highest duty of confidence and faithfulness to the terms of the trust.

Dr. Eva Litina: Many thanks for this interesting presentation and congratulations on the publication of your monograph!

My question is also not a substantive one, but I believe that many people in this listserv may be interested in your insights. As you mention, arbitration of trust disputes raises some complications, so I was wondering what were the main difficulties you encountered during your research and writing of your thesis and monograph?

Lucas Clover Alcolea in Response to Eva: I think the main difficulties are combining two very different areas of law where those involved don't really mix with each other, so for example you will find trust practitioners discussing arbitrability without fully understanding it or arbitration practitioners discussing trusts without fully understanding some of the more complex trust law doctrines. Bringing those two worlds together is difficult, and it also requires you to master (or at least attempt to master) both which wasn't easy, and I really relied on my doctoral committee and supervisor for that.

Shreya Jain: Congratulations on publication of your monograph and thanks for introducing a very interesting topic – something I hadn't come across earlier.

I had a couple of conceptual questions in relation to arbitrability and consent (the first two points identified in your post):

1. You note that even if trust disputes are arbitrable it is unclear how trust arbitration agreements can bind third parties such as beneficiaries. Here, are you referring to arbitration in internal or external trust disputes or both? Could you elaborate on what issues arise with respect to consent in both these cases?
2. From the perspective of consent – can we draw any conceptual parallels to investment arbitration in such cases? For instance, investors are not parties to investment treaties but their beneficiaries; however, they have the right to commence arbitration against States and their notice of arbitration is deemed to constitute their 'acceptance' of the offer to arbitrate (contained in the treaty).

3. Are there any jurisdictions where trust disputes are expressly arbitrable or non-arbitrable?

Lucas Clover Alcolea to Shreya:

1. **You note that even if trust disputes are arbitrable it is unclear how trust arbitration agreements can bind third parties such as beneficiaries. Here, are you referring to arbitration in internal or external trust disputes or both? Could you elaborate on what issues arise with respect to consent in both these cases?**
   Just internal trust disputes as they are the ones where the most complications arise, the fundamental issue with consent is that the beneficiaries won't have been parties to the arbitration agreement as such. You could set up explicit agreement to arbitrate between the settlor, the trustees and others who are involved (such as protectors or the like) but its unlikely the beneficiaries will explicitly agree, for example because they may not know they are beneficiaries or because the trust has classes rather than specific individuals so it isn't possible to have them all explicitly agree. Another issue is where the beneficiaries are not legally capable of consenting, for example because they are children or have some capacity issue that affects their ability to consent. The issue of children and legally incapable parties comes up more often in trust disputes than other types of dispute because children and legally incapable parties are very often beneficiaries under a trust, in fact the whole point of setting up a trust might be to provide for children or a disabled person who cannot look after themselves after the settlor's death.
2. **From the perspective of consent – can we draw any conceptual parallels to investment arbitration in such cases? For instance, investors are not parties to investment treaties but their beneficiaries; however, they have the right to commence arbitration against States and their notice of arbitration is deemed to constitute their 'acceptance' of the offer to arbitrate (contained in the treaty).**
   There have been some attempts to draw parallels between third party beneficiaries under a contract or legal instrument, which is one view of what investors are under investment treaties, and beneficiaries under a trust. The difference of course is that trusts are not contracts so the remedies available are very different and the relationship itself is also very different, for example specific performance under a contract is (theoretically) the exception rather than the rule whereas 'specific performance' (for lack of a better word) of a trust is almost the default remedy, courts are also much more paternalistic and protective of beneficiaries under a trust than parties to a contract or other legal arrangement. I suppose it would be interesting to compare how investment tribunals treat investors and how common law courts treat trust beneficiaries. Looking at another area where trust and investment law meet, I know that trusts (or rather their beneficiaries or trustees) who have tried to sue in investment arbitration have often had issues as tribunals don't always understand the concept of a trust and deny those involved standing to bring a claim.
3. **Are there any jurisdictions where trust disputes are expressly arbitrable or non-arbitrable**?
   There are several jurisdictions which expressly allow trust arbitration, I deal with this in chapter 7 of my book. At that time this was The Bahamas, Guernsey, New Zealand, The DIFC, Florida, Arizona, New Hampshire, Missouri, South Dakota,

Wyoming, Delaware, and Ohio. Sometimes these jurisdictions explicitly mention arbitration, e.g. the DIFC and the Bahamas, other times they just refer to ADR generally, e.g. Guernsey. In terms of jurisdictions that explicitly forbid it, India is the only one I know due to the Supreme Court case of Vimal Kishor Shah & Ors vs Jayesh Dinesh Shah & Ors.[1] The reasoning in that case is quite formalistic and unconvincing in my opinion, but, as far as I understand, it remains the law.

Earvin Delgado: First of all, congratulations on the release of your book! This is such an interesting and timely release, and I am sure that many of our listserv members in Young-OGEMID will benefit greatly from this discussion and from the topics you explore in your book.

In one of your points, you mentioned the "need to represent unborn, minor, incapable, and unascertained beneficiaries are represented in trust arbitration in order to respect the principles of natural justice and the ECHR." Even if parties to the trust arbitration are willing to cooperate and work together with regard to the interests of such beneficiaries, how does the arbitral tribunal make sure that internal trust disputes will not affect the outcome of the award, and that the said beneficiaries will be given their due?

I am also curious as to the appeals procedure for trust arbitration. Is it generally similar to that of a regular arbitration procedure, or would it be more limited?

Lucas Clover Alcolea to Earvin: Re beneficiaries being given their due, as long as they are fairly represented it is effectively the same as any other process. In other words either they can represent their own interests or if they are incapable/part of a large class/can't be found someone can be appointed to do it for them.

The appeals process for trust arbitration depends on the jurisdiction, but in general as with arbitration generally there isn't an appeals process merely a process of court review which is narrower than in ordinary litigation. The exception to this would be in family law cases where, at least English, courts take a broader approach for public policy reasons.

Prof Strong to Earvin: Just to supplement Lucas's answer, trust law already has various mechanisms in place (often called "virtual representation" or something similar) that allows existing beneficiaries to represent the interest of absent parties who are identically situated. Minors or other existing but legally incompetent persons can and should be represented by guardian ad litems and the like. Extending these mechanisms to trust arbitration should not pose any problems legally or conceptually.

Prof. Strong posed additional questions - Thank you for your excellent interventions thus far. The discussion has touched on a number of important issues, and I will hopefully raise a few more.

1. Lucas, you highlighted a number of problems with enforcing a trust arbitration award under the New York Convention based on the possibility that a trust may not be considered (a) a contract (though we should be careful to note that the NYC only discusses an arbitration agreement, which might encompass a trust even if it is not considered a contract) and (b) commercial. That might be true of the type of

[1] https://indiankanoon.org/doc/41329464/

intergenerational trusts I described in my example with the grandparents, since those trusts are typically considered donative (rather than contractual) and personal rather than commercial. What about commercial trusts (also called business trusts)? I believe the article that I wrote and circulated last week indicated that commercial trusts hold 90% of the billions of dollars held in trust around the world and are inherently commercial (they relate to things like mutual funds, pension funds, etc.). They are also more appropriately considered contractual rather than donative in nature, since the settlor/beneficiaries are expecting value on return. (For those who don't know, commercial trusts are often considered analogous to corporations). Should commercial trusts be considered (a) arbitrable and (b) enforceable under the NYC even if intergenerational trusts are not?

2. You mentioned that a number of jurisdictions - including trust-industry leaders such as Guernsey, the Bahamas and the US state of Florida - are legislatively permitting trust arbitration. Why is that? Why do they see a benefit in moving in this direction?
3. You mentioned that trust arbitration requires the melding of two worlds, trust law and arbitration law, that typically do not overlap. If that is true (I can count on one hand the number of people who I think truly understand both trusts and arbitration), then who should be arbitrating these types of disputes, particularly if there is a single arbitrator as opposed to a panel?
4. Here's a tricker one that I've addressed in later writings on trust arbitration - should legislative provisions allowing arbitration of internal trust disputes be placed in arbitration laws or in trust laws? One would assume that provisions in the arbitration law would control arbitrations in that jurisdiction and would not have extraterritorial effect, and provisions in the trust law would follow the trust to apply to arbitrations anywhere if that trust law was the substantive law of the trust. In the latter case, would other jurisdictions have to respect the trust arbitration provision in the trust law as a type of mandatory law, or would their own mandatory laws concerning the protection/oversight of trusts prevail? Is this the next great battle of trust arbitration?
5. Finally, how would you advise a party who wishes to include an arbitration provision in a trust to proceed? What substantive laws would govern the trust, what place of arbitration would you suggest, what language would you use in the trust itself? Are there any limits on settlor autonomy (remember, readers, the settlor is the one drafting the trust instrument) that cannot be drafted around?

I think this should be enough to keep you and our listserv members busy for a while - as you can tell, I love this subject and think that it's an important one for the international commercial arbitration community.

Lucas Clover Alcolea to Prof. Strong: Many thanks for your questions!

I'll answer them in turn below:

1. I think commercial trusts, for want of a better word, probably don't raise the same arbitrability issues under the NYC. For that matter, I think even traditional trusts wouldn't raise issues in most arbitration friendly jurisdictions, either because they don't have the commercial reservation or because they've interpreted it broadly. That said, commercial trusts raise their own trust law issues, for example the trustees duties are usually significantly attenuated (for example they might not have to intervene in the underlying decisions made by a company whose stock they hold)

and beneficiary control is usually also quite limited, that might raise issues about whether there is a valid trust at all.

2. I'm not entirely sure why certain jurisdictions have permitted trust arbitration, I think it is likely part of an 'arms race' to attract business from settlors to settle their trusts there and thereby benefit their economies. Of course, not all jurisdictions are convinced so Jersey went through a process where it considered allowing arbitration and decided not to as most submissions to the reform process were negative.
3. I think this is a good question, I think it is probably more important to have someone who understands trusts than someone who understands arbitration as the substantive law issues will likely be trust law ones. Of course, for higher value trust disputes (which may be where trust arbitration is most attractive) there will likely have a panel.
4. This is indeed a tricker question; NZ has put the arbitration provisions mainly in their trust law but effectively referred back to the arbitration law and I think several other jurisdictions have done the same. It probably makes more sense to put it in the trust law, as there are substantive issues from a trust law perspective, but ensure it is joined up with the arbitration law to avoid any odd situations. Of course, a state might well have their own feelings about whether trust arbitration should be permitted and there issues of recognition might arise. In fairness, I am not sure why jurisdiction A would much care if jurisdiction B allows trust arbitration and it is asked to recognize a trust arbitration award, the issue might be if a party in Jurisdiction A which doesn't allow trust arbitration, for example because it hasn't explicitly permitted it or, less likely, prohibited it, provides that their trust will be governed by the law of Jurisdiction B, which does allow it, and then an arbitration award is rendered which is sought to be enforced in jurisdiction A. This is one of the issues which comes up under the Hague Trusts Convention, so for example Italian settlors settling trusts in Italy using English law and then importing the trust into Italy via the backdoor. Italy has allowed that to happen, creating a so called 'trust interno' but its less clear other countries would be happy to allow say a Caymanian trust over English assets which has aspects contrary to English law, e.g. the beneficiaries have no rights of enforcement, to be imported into England.
5. I can't as such give legal advice, but I think the key things to consider is whether a jurisdiction is arbitration friendly, and select an arbitration friendly law for the trust deed, have it drafted by an expert in both fields and locate the assets in an arbitration friendly jurisdiction. Of course, the ideal would be to choose a jurisdiction which allows trust arbitration explicitly such as NZ, the DIFC and so on. It would make sense to consider whether to carve out disputes regarding divorce, financial provision after death (assuming the relevant jurisdiction has such rules) and possibly also the power to vary or amend the trust for tax reasons (or at least explicitly allow court guidance in such cases) due to the public policy issues involved.

Prof. Strong: Thanks, Lucas.

Following up on point one, which is admittedly more of a trust law issue than an arbitration issue, I am not sure why you would say that trustees in commercial trusts do not have sufficient power to act. The commercial trusts I'm talking about have trustees that effectively control the operation of the trust, just as the managers and directors of a corporation control the operation of a corporation. There are no additional layers regarding stock ownership, though the beneficiaries of the commercial trust hold what is akin to shares in stock of the commercial

trust. I know that Matthew Conaglen has written extensively about fiduciary duties of trustees and has occasionally ventured into the trust arbitration realm, but I'm not seeing this is as a trust arbitration issue. Granted, every country/jurisdiction has different rules on commercial or business trusts, so you may be thinking of a mechanism that is (literally) foreign to me, but the ones I know don't have any concerns in that regard.

Lucas Clover Alcolea: Thanks Stacie.

It's what's known as an anti-bartlett clause, the idea is that the trustees will leave management of the company to the directors of the company and not interfere in it's management even if they hold lots of it's stock. Some jurisdictions have taken this quite far, so the British Virgin Islands have a VISTA trust where the "The trustee is expressly prohibited from exercising its voting power or other powers attaching to the shares so as to interfere in the management of the company or the conduct of the business". You can see why this raises problems vis-à-vis acting in the best interests of the beneficiaries and the remedies they might have if the company goes belly up.

It isn't strictly speaking a trust arbitration issue but given that arbitration is inherently more international than litigation, and those that are interested in trust arbitration are more likely to create 'exotic' trust structures with these sorts of provisions, it's probably more likely to come up in trust arbitration than trust litigation.

Prof. Strong: Thanks for that, though I'm still not seeing it as even a trust issue. If the relevant legislation puts those limitations on the trustees' activities, but still classifies the instrument/entity as a trust, then it's a trust. The only other option would be to classify it as a corporation, and bodies such as the US Supreme Court have been very clear that they are not going to reform rules of procedure to analogize commercial trusts to corporations - they are instead going to treat commercial trusts as trusts, using intergenerational trust rules. See Americold Realty Trust v Conagra Foods or my article.[2] Again, different jurisdictions have different rules, so its very possible that we both are right, but this goes to show why trust arbitration can lead to more predictable results in the cross-border context.

Lucas Clover Alcolea:

I don't think there is any issue with commercial trusts as such, in fact they are also widely used in Australia, but when you start creating these more exotic commercial trust structures there is a risk that other jurisdictions would refuse to recognise such arrangements as trusts on the basis that they didn't have a key characteristic necessary for there to be a trust (the trustees being under an obligation to act for the beneficiaries interests) or that they simply ignore the law regarding trustees not being required to interfere in the running of a company. It would effectively be a public policy issue. It's worth noting that US law tends to allow settlors a great deal more leeway and be more focused on the trustees following the trust deed and the settlor's wishes (indeed settlors often have a continuing role in US trusts) whereas commonwealth law, with the exception of special trust structures and the offshore world, tend to be more focused on the trustee's duty to act in the beneficiaries’ interests and the Settlor generally drops out of the picture.

[2] S.I. Strong, "Congress and Commercial Trusts: Dealing With Diversity Jurisdiction Post-Americold,” 69 Florida Law Review 1021 (2017), https://scholarship.law.ufl.edu/flr/vol69/iss4/6/

Victoria Barausova: Thank you very much for the interesting introduction and the answers you have given so far.

I also have a couple of questions on which I would be curious to hear your thoughts:

1. You mentioned in the introduction that arbitration of trust disputes may give rise to a number of issues in relation to Art 6(1) ECHR. Given that a valid waiver of Art 6(1) ECHR is only possible in case of voluntary, as opposed to compulsory arbitration (*Mutu and Pechstein v Switzerland*), do you think trust arbitration would usually be seen as compulsory?
2. If so, what features would trust arbitration need to have to comply with Art 6(1)? Would such features undermine some of the perceived advantages of arbitration as an alternative to litigation in the context of trust disputes?
3. Although originally developed as an instrument for family provision, trusts are increasingly used in the commercial realm. This means that certain legal principles may require a degree of adaptation or development to reflect this changing context. One example that comes to mind is the way that courts approached the question of an appropriate remedy in *AIB* and *Target*. How can this need for adaptation and development of trust law be accommodated in arbitration, assuming that arbitrators are bound by the existing precedent when applying national law?

Lucas Clover Alcolea to Victoria Barausova: Thanks for your questions!

I'll answer, or try to answer, each of them in turn.

1. ECHR waiver is a really complex issue, this being why the ECHR chapter is the longest in my book. In general, I think you can say that waiver occurs in most trust arbitration situations where the beneficiaries right is conditional on them agreeing to arbitration and they accept a benefit under the trust, they have then impliedly waived their Art 6(1) rights (or at least some of them). The issue is whether there are any rights under Art 6(1) you can't waive, for example the right to an unbiased decision maker. To date the ECtHR hasn't been clear about this. There is also a risk that if a beneficiary is totally dependent on money under the trust, their waiver might not be considered free but rather under constraint and thus not valid. In fairness this situation is likely to be fairly rare, but there are some parallels with sports arbitration cases. Another problem would be where minors or legally incapable parties are involved, here the question is whether someone can consent on their behalf and also represent them in the proceedings.
   If their waiver isn't valid, or the arbitration is considered compulsory, the primary issues under Art 6(1) are the right to have the trial in public and the fact that the body isn't one created by law. In theory, these issues can be remediated by art 6(1) complaint court proceedings. Additionally, it's worth noting that even where the ECtHR has found a violation of the ECHR it usually awards pitiable compensation that is far below the cost of litigating the claim, so it's probably fair to say they aren't very sympathetic to these sorts of claims.
2. As implied above, it's unlikely that if the arbitration is in breach of art 6(1) it could be fixed except through later art 6(1) compliant court proceedings as the arbitral tribunal will likely never be held to be established by law (though again there is some interesting ECtHR jurisprudence here regarding the court of arbitration for sport). That said, if the issue is that the arbitrators were appointed in a way that

unfairly benefited one party (or there was a breach of impartiality), an easy fix would be to ensure that all parties have an equal say in arbitrator appointment and if this isn't possible, perhaps all the arbitrators could be appointed by the court or administering institution (as happens in multi party cases under the ICC rules in certain situations).

3. In terms of adaptation, this is something that is already happening for commercial trusts generally. So for example, NZ has special rules for certain types of commercial trusts and in general judges give more leeway in validating commercial trusts than non-commercial trusts by being less protective of the beneficiaries.

Anne-Marie Doernenburg: I'd be curious to know more about how civil law jurisdictions view trust arbitration. I understand Switzerland is generally open to enforcing awards related to trust arbitration, but was wondering whether more civil law countries consider it as a legitimate regime.

Also, while there have been some developments on institutional level (AAA, ICC, etc.), what approaches do you expect the various arbitral institutions to adopt going forward? Might we see a specialised "court of arbitration" similar to the CAS, or the ones for art and aviation?

Lucas Clover Alcolea: Yes, I think Switzerland was even considering its own version of the trust, but I am not sure exactly where they are with that. I also dealt with this in my book, in general civil law states tend to treat the trust by equating it with some combination of legal institutions they have in their own system, e.g. mandate and agency or the like. I think it is fairly rare that they simply refuse to enforce it at all. Of course, if they have ratified the Hague Trusts Convention then they are required to give it effect as a trust, i.e. not to translate it into an institution that exists in their own legal system. The number of civil law states that have ratified the HTC is fairly small however, but does include Italy, the Netherlands, Panama, Switzerland, Cyprus, Italy and common law states such as Canada (excluding Quebec), Australia, and the UK.

I think that a specialist institution for trust arbitration is an interesting idea, it could be very helpful to, for example, have approved lists of arbitrators with skills in both trusts and arbitration, specialized rules dealing with representation of vulnerable beneficiaries and so on. I am not sure the time is right to launch such an institution, you would probably need more widespread use of trust arbitration, but I suppose it's also possible that such an institution would spur uptake of trust arbitration, a chicken and egg situation if you will. The ICC has already updated its trust arbitration clause once so I am not sure I see it doing much more, but I could always be wrong and it's always possible US institutions could also update their rules, perhaps also for succession disputes generally.

Anne-Marie: Thank you for your responses. I agree that it may take some time until we see any specialist institution developing for trust arbitration. Thank you for introducing us to this fascinating area of law.

Barry Leon: If I may intervene from the sidelines with a bit of information and a few thoughts on some possible ways forward for trust arbitration …

First, while not an arbitral institution, some of you may wish to be aware of the International Trust Arbitration Organisation (ITAO) which "is an independent body promoting ADR for fiduciary arrangements of mostly Commonwealth jurisdictions".[3]

The ITAO's Director-General is John Bender, and it has an Advisory Board (of which I am honoured to be a part) https://www.trustarbitration.org/advisoryboard. Its website is designed to try to be helpful in providing general background on trust arbitration.

The ITAO Advisory Board considers many of the issues being discuss during this Young OGEMID interview, and presents "awareness programmes" such as in London as part of London International Disputes Week (LIDW) and in the Caribbean during BVI International Arbitration Week, as well as to organisations such as the Global Partnership for Family Offices.

In addition, we have encouraged the implementation or improvement of trust arbitration legislation in various jurisdictions, most notably in England and Wales (as part of 14th Programme of Law Reform which is looking at the Arbitration Act 1996 but, as I understand it, the Law Commission decided to leave trust arbitration for consideration when trust law is considered), the Bahamas (which is in the process of considering and implementing enhanced arbitration and ADR legislation)[4], and BVI (which improved its trust legislation but has not yet considered whether to implement trust arbitration legislation).

Second, whether a specialised arbitral institution for trust disputes is needed in a world with existing strong arbitral institutions may be debatable, and as noted, the ICC does have an updated trust arbitration clause.

Third, among the things that it seems would be beneficial for trust arbitration would be (1) a greater understanding of the benefits of trust arbitration, particularly among those involved in advising on and drafting trust instruments and those involved in handling trust disputes, (2) ongoing creative thinking on the ways to handle the specialised challenges of arbitrating certain types of trust disputes (and enforcing awards arising from them), and (3) greater consideration by a number of jurisdictions of legislation to try to overcome the specialised challenges. Of course also important for trust arbitration are (4) having academic consideration of trust arbitration, (5) having academics / legal scholars write about it (as happily Stacie, Lucas and others are doing), and (6) having those involved in advising on and drafting trust instruments, and those involved in handling trust disputes, consider and discuss trust arbitration (with open minds).

This interview and this discussion of trust arbitration among Young OGEMID, and the report that will follow, should prove to be important contributors to a greater understanding and wider acceptance of trust arbitration.

Ideally, a comparable interview and discussion should take place among 'Young Trust Practitioners' (if there is such a group), and indeed among all those advising on and drafting

[3] https://www.trustarbitration.org/itao

[4] Arbitration (Amendment) Bill, 2023 www.transnational-dispute-management.com/downloads/BahamasArbitrationAmendmentBill2023.pdf (Copy Laid In House); International Commercial Arbitration Bill, 2023 www.transnational-dispute-management.com/downloads/BahamasICABill2023.pdf (Copy Laid In House); (The Bahamas' Senate passed these laws on 22 May 2023).

trust instruments, and all those involved in handling trust disputes, who after all are the ones ultimately ‘driving the bus’ on how trust disputes will be resolved.

Prof. Strong: Thanks for this intervention, Barry. All excellent points.

With respect to your idea about a presentation to a "young trust practitioner" group, I couldn't agree more. One of the things I found when doing my research on this subject (starting ten years ago, which is scary) is that the two fields really know very little about the other specialty. Thus, special trust arbitration rules devised by the American Arbitration Association fail entirely to take the special nature of trusts into account, while the arbitration rules devised by the American College of Trust and Estate Counsel (ACTEC) failed to reflect best practices in arbitration. The best rule set I found for arbitration was the DIS Supplementary Rules on Corporate Disputes, which were designed for closely held corporations. Though the rule does not apply to trusts (I don't know whether Germany has a trust device - I doubt it), the notice provisions in particular would be incredibly well-suited to internal trust disputes.

Lucas Clover Alcolea: Dear Barry,

I did not know about this so it is very interesting to hear about this development and it is definitely something I would like to get involved in!

I suppose one of the challenges with legislative reform is that whilst it fixes issues in one jurisdiction, it doesn’t necessarily help with the acceptance of trust arbitration in others. So, for example, simply providing that a trust arbitration agreement counts as a valid arbitration agreement and all the parties involved are deemed to consent to it doesn’t mean that other states, where a trust arbitral award is sought to be enforced, will accept it as such. I think that is where some of the benefit of pushing the envelope from a common law perspective arises, as well as the use innovative drafting techniques which build on time honoured traditions, e.g. conditions precedent or forfeiture clauses.

Dante Figueroa: Concerning your preliminary question on the notion of trusts in civil and common law jurisdictions, allow me to kindly point you to my article on the subject "Civil Law Trusts in Latin America: Is the Lack of Trusts an Impediment for Expanding Business Opportunities in Latin America?".[5]

Per your suggestion [Prof. Strong], I prepared the notes below on the fly (wish I had more time to elaborate further).

Discrete Notes on the Difference between Common and Civil Law Trusts. Notes Taken from “Civil Law Trusts in Latin America: Is the Lack of Trusts an Impediment for Expanding Business Opportunities in Latin America?”

DIS-Trust Between Civil and Common Jurisdictions concerning the Trust

- The institution of the Anglo-American trust finds no exact and - according to some authors - not even a remote equivalent in civil law systems.

[5] Dante Figueroa "Civil Law Trusts in Latin America: Is the Lack of Trusts an Impediment for Expanding Business Opportunities in Latin America?", Arizona Journal of International & Comparative Law Vol. 24, No. 3 2007, http://arizonajournal.org/wp-content/uploads/2015/11/4.-Figueroa-9x6.pdf

- In 1936, the Supreme Court of Switzerland, a civil law country, decided a case where a party sought recognition of a common law trust in that jurisdiction. The court evidenced its frustration at not finding an exact civil law equivalent and "denied the existence of a trust and ruled that the underlying legal concept should be explained as a 'contract *sui generis*,'" that is an institution of special, undefined nature.
- Civil law experts have regarded the Anglo-American trust as "functionally unnecessary in light of the many existing civilian mechanisms which may be used to accomplish the same ultimate results."
- According to an expert, "common law scholars have not attempted a comparative study of the civil law institutions, while civil law scholars have not attempted a comparative study of trusts."
- Due to its flexibility, the trust is considered one of the most useful legal tools for promoting business in the United States. In Latin America, for example, in contrast, the trust (*fideicomiso*) is used only in limited circumstances in the commercial and financial realms and has been described as a rigid and outdated institution.
- The Latin American trust is called *fideicomiso*. There is no possible equivalent between the Anglo-American trust and the *fideicomiso*.
- In the Anglo-American world, trusts are used as a device to achieve many different objectives: sometimes as a tool for the preservation of family assets, and chiefly for the protection of mentally and physically incompetent persons; to raise capital for commercial transactions, to channel investment for financial ventures, and for other related uses.
- Trusts are "one of the most flexible Anglo-American legal devices in that it can play a part in almost any sphere of life
- Key Elements of the Dissent
- Key differences between Anglo-American common law and [Latin] American civil law take place because of the subdued role of equity in one and its vitality in the other.
- The quintessential Latin American *inter vivos* trust is always contractual, as opposed to the unilateral approach to trust creation found in common law.
- The typical *inter vivos* Latin American *fideicomisos* work as follows: the grantor creates the trust, primarily for the benefit of the *fiduciario* and then for the *fideicomisario* or *fideicomisarios*. The *fiduciario* holds title, possession and use of the trust's assets on his own right, both legal and equitable. The rights of third parties, namely, the *fideicomisario(s)*, do not limit the *fiduciario*. This means that the only limitation affecting the *fiduciario* is that he has to transfer the trust corpus to other *fideicomisario(s)* upon the occurrence of a condition.
- While the first *fideicomiso* is pending, the *fideicomisario* does not have any rights over the trust corpus: she will only receive what is left according to the use or disposition the *fiduciario* has made in compliance with the grantor's instructions.
- They key difference lies in that the *fiduciario* is under the obligation to transfer the assets to the *fideicomisario* once a condition occurs. Unlike the Anglo-American trustee, the *fiduciario* does not hold the property for another, namely, the beneficiary. In that sense, and more clearly, neither the *fiduciario*, nor the *fideicomisario* - who takes what is left after the *fiduciario's* rights expire- are beneficiaries in Anglo-American terms.

- Another important distinguishing characteristic of the *fideicomiso* is that - as a reaction against the Old Regime - the Napoleonic Civil Code eliminated the possibility of constituting two or more successive *fideicomisos*.
- The civil law *fiduciario* holds trust property “for his own benefit,” and the *fideicomisario* (or *fideicomisarios*) have “no vested rights but merely a non-transferable expectancy, a contingent interest.
- The central concept of holding the trust assets for the benefit of another, as it happens with the beneficiary in the Anglo-American express *inter vivos* trust, is absent, for example, in the Latin American *fideicomiso*.
- There is not a single or an unanimously accepted definition for the Anglo-American trust: and much debate has taken place as to what lies at the core of the Anglo-American trust. Some commentators have stated that it is to be found in the “duty of confidence imposed upon a trustee in respect of particular property and positively enforceable in a Court of Equity by a person. For others, the core of the trust is found in the “beneficiaries’ rights to enforce the trust and make the trustees account for their conduct with the correlative duties of the trustees to the beneficiaries.
- This definition is valid only for *inter vivos* contractual trusts an “equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called beneficiaries or cestuis que trust), of whom he may himself be one, and any one of whom may enforce the obligation” is valid only for *inter vivos* contractual trusts, which are but a small portion of the trusts available in today’s Anglo-American legal world.
- Among its shortcomings, the above definition does not recognize that trusts may be created irrespective of and even against the settlor’s desires and that beneficiaries might not necessarily be “born” persons but also unborn fetuses or even buildings or pets. Moreover, it overlooks the fact that trusts may also benefit causes, ideas, or movements -as in the case of trusts created for the promotion of literacy or religion.
- In common law, the voluntary _expression_ of the settlor’s will -essential in all contracts- is definitely not a fundamental element when it comes to the creation of a trust. In fact, for centuries and based on equitable principles, Anglo-American courts have imposed trusts upon individuals. Not even the trustee’s express acceptance is a requirement for the establishment of an Anglo-American trust. Thus, it can never be said that a contract lies at the essence of the Anglo-American trust.
- In sum, the three categories -the settlor or grantor, a trustee, and a beneficiary- can and are often intertwined and mixed in common law trusts: namely, the same person can simultaneously be the settlor, the trustee, and the beneficiary of a trust. Alternatively, a person can simultaneously be both the trustee and the beneficiary of a trust. Furthermore, trusts in which the beneficiary or beneficiaries are not specifically determined at the creation of a trust can still subsist and be valid.

Efforts to Bridge the Differences in Trusts

- A serious structural obstacle to the reception of the Anglo-American trust in civil law jurisdictions is the unitary concept of ownership, which is completely inconsistent with the common law idea that two types of interests [or ownership rights] co-exist in common law trusts: equitable rights and legal rights. The Napoleonic Code decidedly rejected this split.

- The idea of incorporating a civil law version of the Anglo-American trust has met reactions ranging from initial reluctance to outright opposition.
- Legal experts in different civil law jurisdictions have long tried to find a simile of the Anglo-American express *inter vivos* trust in the civil law world. History shows efforts to find an institution akin to the Anglo-American trust in the Roman law *fideicommisum*, which still "exists in Roman law countries such as Italy and France and Spain, and in Latin American countries which trace their law to the law of Spain, such as Chile." Those efforts have included references to the notions of "agency, deposit, contracts for the benefit of third parties," and other civil law institutions. But these proposals are inherently defective, because in the absence of an explicit *inter vivos* agreement, no *fideicomiso* may exist, for example, in Latin America.
- The flexibility in the administration of Anglo-American trusts is a key reason for their popularity in the Anglo-American world. Any efforts to equalize civil law trusts to common law trusts should address some or all of the following aspects present in the more advanced common law trust:
    - The trust is not a corporate entity
    - The trust is not an agency
    - Has tax benefits
    - There can be discretionary and nondiscretionary trusts
    - Revocable or irrevocable
    - Lingering powers of grantors
    - The publicity requirement
    - Divided concepts of estate and interests applicable to land trusts
    - Extent of powers of appointment of trustees
    - Intervention of courts in trusts
    - Remedies available for the breach of trust duties
    - Termination of trusts
    - Existence of government trusts
    - Enormous availability of specific trusts in common law:
        - § Purpose trusts
        - § Asset-protection or protective trusts
        - § Offshore trusts
        - § Securitization trusts
        - § Financial trusts
        - § Trusts for financial operations
        - § Mortgage trusts
        - § Blind trusts
        - § Flee clauses or "grasshopper" trusts
        - § "Blackhole" trusts
        - § Unit trusts
        - § Custodian trusts
        - § Subordination trusts
        - § Retention trust funds
        - § Trust proceeds clause
        - § Client account trusts
        - § Voting trusts
        - § Trust receipt
- Conclusion: the road ahead: trust law is a genuine common law byproduct, so it can only be fully understood within the nuts and bolts of Anglo-American legal

principles. Any attempts at equalizing Anglo-American and civil law trust need to address the overarching issue of the relationships between both legal systems. More specifically, without the idea that courts may use equitable powers to enforce trusts, as it happens in Anglo-American legal systems, there could never be a total identification of trust institutions in both legal worlds, because "melding of the two signifies a profound alteration of each."

Prof. Stacie Strong: A source who I believe wishes to remain anonymous has just alerted me to the recent decision of Virginia Supreme Court in Boyle v. Anderson[6], 871 S.E.2d 226 (2022), in which it held that neither the Virginia Uniform Arbitration Act, Code §§ 8.01-581.01 to -.016, nor the Federal Arbitration Act, 9 U.S.C. §§ 1-16, compels enforcement of an arbitration clause in a trust. The case involved an "inter vivos irrevocable trust that was divided into three shares for his children and grandchildren. The trust contained an unambiguous arbitration clause. Plaintiff filed a complaint against Defendant, the trust's trustee, alleging breach of duty. Defendant filed a motion to compel arbitration, which the circuit court denied. The Supreme Court affirmed, holding (1) a trust is neither a contract nor an agreement that can be enforced against a beneficiary; and (2) therefore, neither the VUAA nor the FAA compel arbitration."

The Supreme Court stated: "We conclude that a trust is not a contract and, therefore, the [Virginia Uniform Arbitration Act] and the [Federal Arbitration Act] do not require arbitration on that basis. We further conclude that a beneficiary of a trust is not a party to an agreement to arbitrate and, therefore, the provision of the [Virginia Uniform Arbitration Act] compelling arbitration when there exists a written agreement to arbitrate likewise does not apply."

For more, see "Virginia Supreme Court Declines to Enforce Arbitration Clause in a Trust, Agrees Trusts Aren't "Contracts" Under FAA and Virginia Law".[7]

Lucas Clover Alcolea: Very interesting! Curious that they analysed the FAA, as I am not sure it would even be applicable in trust and estates cases in the first place as these issues are usually regulated at the state rather than the federal level (the issue of the FAA's overreach in general as a result of the Supreme Court's interpretation is a subject for another day). Also, surprising that they didn't apply the contractarian approach to trusts as that is very much in vogue in the US, although I agree trusts are not contracts. It would also seem the court took somewhat of a literalist approach to the statutes as, for example, arbitration agreements can come into existence by virtue of conduct and agreement and contract are not necessarily synonymous.

Prof. Strong: The FAA would be applicable if the trust had an international or interstate issue, which is often the case. The fact that trusts are typically governed by state rather than federal law would not affect whether the FAA or the state arbitration law would apply. I don't know if the FAA truly did apply here – that portion of the case may be dicta (I admit I haven't seen the case yet – rushing to get to a meeting) – but that analysis could be persuasive to other courts.

Also, just as a correction, the US primarily follows the donative theory of trusts, not the contractarian theory. While the Restatement First of Trusts did, I believe, lean toward the contractarian theory, all subsequent Restatements of Trusts have clearly held that the donative theory should apply. However, the recent Restatements have also explicitly excluded

[6] https://www.vacourts.gov/opinions/opnscvwp/1210382.pdf
[7] https://www.jdsupra.com/legalnews/virginia-supreme-court-declines-to-9925406/

commercial (business) trusts from the discussion, which opens the door to having the contractarian theory apply in the commercial context.

Daniel Pakpahan: Congratulations on your monograph's publication. As Barry mentioned in his intervention, it is important to have more academic discussions to shed light on this unique combination of trust and arbitration, not only for trust practitioners but also arbitration practitioners which may not be familiar with complex trust arrangements due to their legal background.

Apologies for taking the discussion back to the basics as I am not quite familiar about the specialised procedural challenges that are unique to the arbitration of trust disputes. We have so far heard about arbitrability of trust disputes and whether trust amounts to a contract and may contain an arbitration agreement, but are there specific considerations relating to due process and procedural fairness when arbitrating certain type of trust disputes that trust practitioners need to be aware of to ensure their awards are enforceable?

In addition, your initial post mentioned choice of law as one of the issues discussed in the book. Could you explain a little bit what are the issues surrounding this, i.e., is it tied to the understanding that trust is not deemed a contract and cannot contain a choice of foreign law, or is there a problem of law governing the arbitration clause? Appreciate your insight on this.

Lucas for Daniel: Thanks for your questions.

Yes, for procedural challenges given that minors and legally incapable parties will be involved, something which is uncommon in arbitration generally, it is quite important that their interests are protected by impartial representatives. In certain cases and jurisdictions that might even involve asking the court to appoint someone to act on their behalf. Additionally, there is the risk that in a trust which has a very wide class of beneficiaries it is impossible to have every possible beneficiary represented and thus individuals might have to be appointed to represent that class, again these are issues of natural justice and, in relevant countries, the ECHR.

The choice of law issues revolve around public policy issues for certain types of trusts and the general unfamiliarity of arbitrators with applying choice of law rules vis-à-vis trusts.

Alexander Stonyer-Dubinovsky: Thank you for your interesting presentation on the topic of trust and arbitration. I have enjoyed hearing how you explore the relationship that this common law legal feature has with civil law jurisdictions. In this respect, I would like to pose two questions:

First, where do you see the future of trust arbitration? Do you see Switzerland's adoption of its own version of trust signalling the start of a similar phenomenon in France, Germany and beyond? If this occurs and the traditional concept of a trust is expanded and intermingled with civil law concepts - how do you see this impacting the future of trust arbitration?

Second, you mentioned that it is rare that a state will simply refuse to enforce a trust at all - I would be interested to know of any examples of this occurring?

Lucas to Alexander: Thanks for your questions.

I am not sure whether or not more states might start adopting the trust, it is attractive from a financial point of view as the trust is so widely used commercial and by high-net-worth individuals, but I think there are risks importing a common law idea into a civil law state. It's a specialist topic, but in comparative law literature there is the idea of 'malicious legal transplants'[8], I am not sure that systems which are considering importing the trust purely for financial reasons have considered whether the trust is compatible with their legal system as a whole. Legal systems after all represent the jurisdictions, and peoples, that created them (an idea I adopt from Savigny) and not every jurisdiction or people might need or want a trust. Of course, there is always the possibility that States create a civil law quasi-trust which is properly adopted to their system, this has already been attempted in several countries such as China for example, and if that was the case then I suspect trust arbitration might well become more widespread.

I'm afraid I don't yet know of specific examples where a trust has been refused recognition, but I am sure Civilian lawyers might have examples.

YO' s Last Day Questions

Prof. Strong: I know we have some substantive questions still pending, and you all are welcome to continue the discussion, but I don't want to be remiss in posing my closing questions to Lucas.

Those of you who have seen the PBS series, 'Inside the Actors Studio,' know that the long-time host, James Lipton, used to conclude the formal interview with a series of questions he said were based on those asked by French talk-show host Bernard Pivot. Pivot's questions were themselves based on a questionnaire developed by Marcel Proust. I have come up with our own list of questions that are in the same spirit. These questions are asked of all our interviewees.

To that end, I ask Lucas to answer the following questions:

1. What is your favourite word?
   Lucas: Behove
2. What is your least favourite word?
   Lucas: No
3. Which fictional hero do you consider your own personal hero?
   Lucas: Batman, but probably one of the darker versions (for those in the know, something on the lines of 'The Dark Knight Returns')
4. Which historical figure do you identify most with?
   Lucas: Augustine (of hippo)
5. What sound or noise do you love?
   Lucas: Laughter
6. What sound or noise do you hate?
   Lucas: Babies crying (sorry!)
7. What profession other than your own would you like to attempt?
   Lucas: Theologian or maybe being a politician?

[8] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3162239

8. What profession would you not like to do?
   Lucas: Banker (the hours!)
9. What is your own personal motto?
   Lucas: Doing what has to be done
10. What do you hope your colleagues will say about you when you retire?
   Lucas: I hope they'll say I was a contrarian who travelled too much, liked to have a tipple or two, and genuinely cared about his research, students, friends, and family.

Prof. Strong: Thanks, Lucas! Great answers.

And with that, I will wrap up our third author interview. Hopefully this has piqued people's interest in trust arbitration and in Lucas's book. Remember, there's a discount on purchase if you're interested - see the first introductory email on Monday.

Many thanks to Lucas for answering all our questions, and to all of you for your questions! Lucas will remain on the listserv for at least a few more days if you have anything else you'd like to ask, but I would like to take this opportunity to ask you all to join me in a round of virtual applause to thank Lucas for his time.

Transnational Dispute Management is a peer-review online journal publishing about various aspects of international arbitration with a special focus on investment arbitration.

This article was made available as a free download from www.transnational-dispute-management.com/.

Young professionals and students with an interest in transnational disputes, international investment law developments and related issues, are hereby invited to join the Young-OGEMID discussion group. Membership is free.

Simply visit www.transnational-dispute-management.com/young-ogemid/ and fill in the registration form. Other summaries of our Young-OGEMID virtual seminars focussing on career development can also be found there.