

Enforcing International Arbitration Agreements: the Remedial Powers of Federal Courts

Daniel S. Tan (*O'Melveny & Myers LLP*) has posted an article on "**Enforcing International Arbitration Agreements in Federal Courts: Rethinking the Court's Remedial Powers**" on the Social Science Research Network (SSRN) that will be published in the *Virginia Journal of International Law* in Spring 2007. The abstract reads:

The area of remedies in private international law is largely unexplored, but provide the very means by which the courts can advance private international law aims such as controlling international litigation and enforcing forum selection. The contractual nature of arbitration agreements and the policy in favor of arbitration make this a good starting point from which a wider remedial framework can be developed.

In practice, the U.S. federal courts invariably enforce arbitration agreements with the statutory remedies in the Federal Arbitration Act. Yet, there is no reason why this should be. Where the statutory remedy is deficient or inappropriate, the courts may appeal to their wider inherent remedial powers to fashion suitable relief. The domestic law of remedies suggests that the courts may use specific and (antitrust) injunctive relief to enforce the parties' right to the arbitral forum, or to award ordinary contractual damages to vindicate what is a straightforward breach of contract. Private international law remedies such as stays of proceedings and nonrecognition of judgments obtained in breach of arbitration agreements are other remedial

alternatives that can be used to enforce such agreements. All the same, development of each of these remedies must be done within the context of an overarching remedial scheme – akin to that which exists in domestic law. The domestic law of remedies offers an interlocking set of remedial responses to vindicate wrongs. To effectively control international litigation and improper attempts at forum shopping, the courts must endeavor to develop a similar remedial framework in the private international law context, in order that they may be able to render the most appropriate remedial relief to enforce agreements to arbitrate and advance the policy in favor of arbitration.

You can download the full article [here](#).