

Ancel, Marion and Wynaendts on One Sided Jurisdiction Clauses

Marie Elodie Ancel (Université Paris Est), Lea Marion and Laurence Wynaendts (Clifford Chance Paris) have posted Reflections on One-Sided Jurisdiction Clauses in International Litigation (About the Rothschild Decision, French Cour de Cassation, 26 September 2012) on SSRN. It is the English version of a paper published in a French law journal.

By criticising the “potestative nature” of one-sided jurisdiction clauses, the Rothschild decision may be construed as imposing on litigants perfect equality in their access to justice. This decision therefore threatens many of our jurisdiction clauses. In fact, if clauses that give one party unfettered discretion to choose where to sue have to be set aside, the other type of one-sided jurisdiction clauses, those that are simply dissociative, should be upheld as long as they do not substantially disadvantage one of the parties.