

ReSolution: In Brief

New Zealand reclaims its ranking as the least corrupt in the world

Transparency International's Corruption Perceptions Index for 2016 placed New Zealand first-equal with Denmark. With 19 out of the 30 Asia Pacific countries included in the index scoring less than 40 out of 100, New Zealand stands out as a clear leader in the region and globally. Following on from an 8th place ranking (1st in the Asia Pacific region) in the World Justice Project Rule of Law Index, New Zealand is well placed as a highly respected, independent, and lawful jurisdiction for international commercial arbitrations and mediations.

Enquiries regarding international dispute resolution in New Zealand may be directed to NZIAC website. NZIAC offers fully administered dispute resolution processes, including arbitration, mediation, and arb-med, and is due to launch its revised rules shortly. Watch this space.

Financial Conduct Authority CEO calls for dispute resolution mechanism for SMEs

Andrew Bailey, the CEO of the UK FCA, is looking to develop an independent dispute resolution service for small and medium sized enterprises which have a complaint against a financial institution, and his statement presented to the UK Treasury Committee last year has recently been debated in the House of Commons.

The Financial Ombudsman Service is available to resolve complaints from individuals and micro enterprises (employing less than ten people and with a turnover of 2 million Euro or less. There is no word yet as to whether this service will simply be expanded or a separate scheme introduced.

See the House of Commons Hansard debates for more.



New Year's Honours

Two of the luminaries of dispute resolution in New Zealand were recognised in the New Years Honours with David A R Williams QC being made a knight companion, and Derek Firth, one of NZDRC's highly respected panellists, being named a Member of the New Zealand Order of Merit.

Our warmest congratulations to both.

Time to say sorry

The Hong Kong Government introduced the Apology Bill into the Legislative Council on 8 February 2017. This piece of legislation sets out the legal consequences of making an apology in certain proceedings and legal matters. The primary objective is to promote and encourage apologies to facilitate the amicable resolution of dispute, providing disputing parties with certainty as to the legal implications of making an apology. Under the Bill as drafted, an apology does not constitute an admission of fault or liability. Further, it cannot be taken into account or be admissible as evidence for the purpose of determining fault or liability to the detriment of the party making the apology. An apology will also not void or affect any relevant insurance cover.

The Hong Kong Department of Justice's Final Report and Recommendations is available on the website of the Department of Justice.

Baring Head bridge dispute heading to court-ordered mediation

A longstanding dispute between the Greater Wellington Regional Council and Alan Loan as to who must pay for a new bridge over the Wainuiomata River is on its way to mediation. Mr Loan is refusing to pay \$224,000 towards the total \$750,000 costs of the new bridge. Without the bridge, Mr Loan cannot access his Baring Head property but that same bridge is intended to be used by thousands of cyclists, when it becomes part of the Rimutaka Cycle Trail.

On the topic of court-ordered mediation...

A 64-year old man in Gary, Indiana, was charged last month in Lake Criminal Court with strangulation (a level 6 felony) after police alleged he strangled another man during a recent court-ordered mediation. The mediation became so heated, an affidavit says, that the man tore up the victim's papers before allegedly throttling him with both hands.

Sony Pictures: Arbitrator to determine gateway issue of arbitrability

The United States District Court, Middle District of Florida, Orlando Division, has granted Sony's motion to arbitrate a dispute brought by Possibility Picture, arising from the cyber-attack on Sony enabling the film *To Write on Her Arms* to be downloaded for free almost 20,000 times. Judge Daniel Irick, in his [Report and Recommendations](#), recommended that the parties be compelled to arbitration for consideration by the arbitrator of the gateway issue of arbitrability of the claim and that the case be stayed pending arbitration.

In other Hollywood news

In other Hollywood news, the Kardashians – best known for their reality tv series – have had their motion to compel arbitration of Kroma Makeup, EU's claims against them for cosmetics trademark infringement declined.

The Court of Appeals for the Eleventh Circuit found that, whilst policy was generally in favour of arbitration, ultimately the question was a matter of contract. In this case, the Kardashians were seeking to enforce an arbitration clause in an agreement to which they were not parties.



The Kardashians argued that, whilst they were not signatories to the agreement, they ought to be entitled to compel arbitration of the claim against them by using Florida's doctrine of equitable estoppel. Under that doctrine, any non-signatory defendant to an agreement containing an arbitration clause, is able to force arbitration of a signatory's claims when the signatory...must rely on the terms of the written agreement in asserting its claims against the nonsignatory... (*Allscripts Healthcare Sols Inc v Pain Clinic of Nw. Fla, Inc* 158 So. 3d 644,646 (Fla. 3d DCA 2014)). The doctrine cannot however, be invoked to compel arbitration of claims that are outside of the scope of the arbitration clause.

The Court held that the doctrine permits a non-signatory to an agreement to avail herself of an arbitration clause only when the claims asserted against her fall within the scope of the clause that the signatories had agreed upon. In this case the claim fell outside the scope of the clause, and accordingly, the district court's judgment was affirmed.