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AIA Upcoming Events

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EMTPJ 2013 Report

AIA Recommends to attend

AIA Upcoming Events :

Future of Mediation in Belgium (FMB) Session
LOCATION: VUB University, Brussels DATE: 19th of December 2013
Email administration@arbitration-adr.org for details

European Mediation Training for Practitioners of Justice
LOCATION: Brussels, Belgium DATE: 18th- 30th of August, 2014
See more details on www.emtpj.eu

The Creation of Euresolve Ltd: A project of AIA

The AIA is pleased to announce the expansion of its network following the establishment of Euresolve Ltd incorporated in the UK, with a registered office in London. The creation of Euresolve resulted from several AIA Network meetings where it was decided that the creation of a new company would be an important foundation on which to build a tighter, more efficient network in order to enhance the exchange of information, experience and connections amongst all those interested in alternative dispute resolution.

Fundamentally, the launch of Euresolve will allow all members to grow and develop together and continue to increase public awareness of and insight into mediation and its advantages.

For ADR entities and organisations interested in becoming members of Euresolve, please email: administration@arbitration-adr.org for details.

AIA Partners with Practical Law

Using the links below, AIA members enjoy complimentary access to the full text of Arbitration and Dispute resolution multi-jurisdictional guides published by Practical Law.

<http://uk.practicallaw.com/resources/uk-publications/multi-jurisdictional-guides/arbitration-mjg>

<http://uk.practicallaw.com/resources/uk-publications/multi-jurisdictional-guides/dispute-mjg>

Each of the guides provides practical information on topical issues, country-specific Q&A overviews on each area of law and practice and also has its own comparative tool which allows the user to select a specific question or topic, select the jurisdictions they are interested in and the tool will compare the answers.

The Q&A chapters are written by leading local law firms in each jurisdiction. The questions are designed by PLC's team of ex-private practice lawyers alongside international editorial boards comprising of legal professionals (both in-house and private practice) active in that particular area.

This helps to ensure the guides address the key issues facing any international lawyer doing business in an unfamiliar jurisdiction. The guides also feature a useful comparative tool which allows a user to compare specific issues and the answers across selected jurisdictions. If any member would like more information on a contributing law firm or has any feedback regarding the guides, please contact

yani.paramova@practicallaw.com

Bahrain Conference

by Rafael Berdaguer Hijano



Johan Billiet, president of the Association for International Arbitration (AIA), held a conference on the 4th and 5th of September 2013, in collaboration with the Ministry of Industry & Commerce of the Kingdom of Bahrain, at the Crowne Plaza Hotel in Manama, under the topic: Overview of the main arbitration institutions in Europe and their practices.

This Conference focused on expanding the truly global network of Arbitration, and encouraging the use of arbitration and other effective and appropriate means of ADR on a local and international level, being very useful for all arbitrators, legal experts, academics, researchers and students who attended to expand their knowledge about Alternative Dispute Resolution in Europe.

Bahrain is Middle East's largest and most effectively regulated commercial and financial centre, with more than 400 licensed financial institutions.

Its growing importance and undeniable expansion are due to the richness of its multicultural influenced law. To maintain it, it is essential to study the developments and innovation of all legal structures worldwide.

The first day's agenda of the Conference consisted of an overview of the Association for International Arbitration and its Network and on the second day Mr. Billiet went through the main Arbitration Institutions of Europe, highlighting the main advantages and disadvantages of each institution, analyzing their procedures and costs. The institutions included the ICC, LCIA, SCC, CEPANI and the Institute of Arbitration.

As we live in a globalized world where we all are connected, the AIA provides its members with continuous exposure to the latest International developments, activities and opportunities, working as a support system for those who look to be up-to-date with the latest news and developments in the area of International Arbitration.

In 2010, the Bahrain Chamber for Dispute Resolution was launched. The Chamber is a joint venture between the Bahrain Ministry of Justice and the American Arbitration Association (BCDR-AAA), who said that it will "provide technical advice, administrative and systems know-how and staff training to the Bahraini Ministry of Justice, as well as (...) neutral skills training to Bahraini arbitrators and mediators."

BCDR-AAA's "Free Arbitration Zone" provides business with the jurisdictional and legal certainty to the recognition of arbitration awards without the involvement of the national courts, avoiding the problem of the delays and uncertainty arising out of litigation.

The world of Arbitration is an exciting area in which to work, and we will continue to meet and bring inspired people together in forums like this, to ensure our association remains at the cutting edge.

The Use of Mediation in the Syria Conflict

by Adam Miller



During the last two-and-one-half years, there have been several attempts by the United Nations and other third parties to mediate a settlement to end the conflict in Syria; however, all such mediations have been considered unsuccessful. The failure of any third party to successfully mediate a settlement has allowed for the

conflict to transition into a civil war with significant international implications and escalating violence. Mediation scholars have attempted to explain the inability of third parties to negotiate a settlement to end the Syria conflict by analyzing standard elements of conflict management, the mediation process, and past outcomes of mediating civil wars. These elements include the number of parties involved in the conflict, the use of confidence-building and uncertainty in mediation, and the intensity and duration of violence in the conflict.

It is generally understood that when there are more parties involved in a conflict, the chances for mediation success become worse. This is because mediators have a difficult time coordinating the communications of several parties who each have different interests at stake. Additionally, when a conflict has a large number of parties, there is an increased risk that one of the parties will oppose a settlement, veto a settlement, or, if an agreement can be reached, fail to live up to the terms of the settlement. The conflict in Syria is mostly being fought by numerous groups of divided rebels, each with different goals and backgrounds. There have been unsuccessful attempts to unify the rebel groups in order to create a broad coalition group with more unified goals. Thus, it is believed that there are **too many parties involved in the Syria conflict because "it is difficult to simply identify all of the actors needed to participate in" a potential mediation.** (Greig, J. (2013) 'Intractable Syria? Insights from the Scholarly Literature on the Failure of Mediation', *Penn State Journal of Law & International Affairs*, Vol. 2, Issue 1, pp. 48-56).

The primary attempt to resolve the conflict through mediation occurred in March 2012 when Kofi Annan, the United Nations-Arab League mediator, introduced a "six-point peace plan" calling for a cessation of hostilities and the release of political prisoners. The Assad regime formally accepted the plan; however, the regime continued its military operations and ultimately failed to comply with the terms of the settlement. Failing to comply with Annan's plan has been interpreted as Assad testing the seriousness of the UN to see how strictly they would enforce the terms of the agreement and to determine if international military intervention was a legitimate threat.

Through the course of the mediation, Annan demonstrated a strategy to build confidence, attempting to reduce the uncertainty surrounding the conflict by creating trust between the numerous parties fighting in Syria in order to try to find a political way out of the crisis. This confidence-building strategy is often employed in international conflict resolution as a way to deescalate conflicts between



parties. It has been argued, however, that by trying to reassure all of the sides in Syria and build confidence to negotiate a settlement, Annan sacrificed too much leverage rather than taking advantage of the uncertainties surrounding the conflict. (Gowan, R. (2013) 'Kofi Annan, Syria and the Uses of Uncertainty in Mediation', *Stability: International Journal of Security and Development*, Vol. 2, No. 1, Article 8). A strategy of exploiting the uncertainties in the conflict could have been used "to persuade Assad that his [government's actions and] position [were] unsustainable," as opposed to using confidence-building to reassure Assad that there would be no regime change. (Gowan, R.). While this non-traditional approach of using uncertainty to gain leverage in mediation would not have guaranteed success, it might have been a more effective approach in the early attempts to settle the Syria conflict.

Whether the level of violence during a conflict is minimal or extreme has proven to influence the effectiveness of mediation. Analysis from mediation attempts during past civil wars has led scholars to believe that there are two major windows of opportunity where mediation is more likely to end a conflict. The first window exists prior to an escalation in violence, when the parties do not yet consider themselves to be warring sides or victims of the other. Violence during the initial stages of the Syria conflict was rather quick to escalate, causing casualties to increase sharply and creating an atmosphere of war that made it difficult for mediation efforts to be productive in the first window.

The second window for mediation opportunities exists when a "hurting stalemate" emerges in the conflict, which means that "both sides must feel unacceptably painful conflict costs and each must perceive that it cannot win the conflict and impose its own terms of settlement." (Greig, J.). From 1945-1997, a hurting stalemate has emerged in 15 different civil wars, and in 13 of those cases a settled negotiation was agreed upon. (Keating, J. (Sep. 19, 2013) 'How do civil wars usually end?' *Slate.com*). While it remains to be seen, it is possible that a hurting stalemate is currently emerging in the Syria conflict. The criterion that indicates the existence of a hurting stalemate where mediation has a chance for success is when fighting has lasted for 130 months and more than 33,000 deaths have occurred. Although the Syria conflict has only been ongoing for 30 months, it is estimated by numerous sources that more than 100,000 deaths have occurred. Most of these deaths have been suffered by the rebels and civilians, both of whom are likely to feel they have experienced unacceptably painful conflict costs.

Furthermore, international interventions that support rebel oppositions in civil wars have been shown to create a mutual hurting stalemate that make a negotiated settlement more likely. For 30 months the Assad regime has consistently acted as if it had impunity and thus could impose its own terms of settlement in mediation because there had been no credible threat of international intervention. Their actions during September 2013, however, indicate that the regime is somewhat wavering in confidence and no longer acting with a sense of impunity. Following the extensive evidence suggesting the Assad regime used chemical weapons on civilians, the United States has issued the most credible threat to intervene with military force against Assad since the conflict began. As a result, for the first time in its history, the Syrian government admitted to possessing chemical weapons, announced its intention to sign on to the 1993 Chemical Weapons Treaty banning chemical weapons, and agreed to turnover its stockpile of chemical weapons.

It is difficult to determine if the Syrian government turning over its chemical weapons is a legitimate diplomatic breakthrough; and even if it is, the Syria conflict will remain a complex dispute to resolve through mediation. Although this new focus on Syria's chemical weapons has temporarily suspended talks of mediation to reach a negotiated settlement to end the civil war, the chemical weapons debate has in fact created somewhat of a stalemate in the conflict. Thus, this potentially appears to be a critical moment in the Syria conflict due to the existing circumstances that makes it ideal for a third party to attempt to mediate a final settlement.

Book Review: Collection of ICC Arbitral Awards/Recueil des sentences arbitrales de la CCI 2008-2011

by Maria Karampelia



The ICC Court of Arbitration is a leading arbitral institution and its arbitral awards are well respected for their consistency, high quality and diversity of disputes addressed. The cases handled by ICC become broadly accessible and offer a valuable insight to the reasoning of arbitral awards provided by experienced international arbitrators.

The "Collection of ICC Arbitral Awards" series, published jointly by Kluwer Law and ICC, is now supplemented with its sixth volume that contains the awards published between 2008 and 2011 in the "Yearbook Commercial Arbitration" and in the "Journal du Droit International" (Clunet), although they may have been rendered in previous years.

Thus, it is comprised of awards originally published in English and French, respectively, and there are cases that were published simultaneously in both journals and are, consequently, reproduced in both languages.

The sixth volume is edited by Jean-Jacques Arnaldez, a lecturer in the Panthéon-Sorbonne University, Yves Derains, a Parisian lawyer, and Dominique Hascher, a Judge of the French Supreme Judicial Court. Similar to the previous volumes, the sixth volume includes updated analytical tables that refer to the entire series, in order to facilitate the reader's research. Additionally, the cases are accompanied by notes and expert commentaries, ensuring a better understanding for the reader.

This book serves as a practical reference tool for arbitration practitioners who can use it in three different ways: (1) To look for a specific case when its number is known; (2) to search all cases that deal with a certain question by means of key words; or (3) to obtain the complete references of an award by recourse to the Table of Cross-Referenced Cases. Scholars, ADR specialists and anyone interested in international commercial arbitration can find a wealth of information on the interpretation and application of contractual clauses, international conventions and the law of international trade.



For more information visit the website of Kluwer Law International: <http://www.kluwerlaw.com/Catalogue/titleinfo.htm?WBCMODE=presentation%2525252560unpublished%2525252522?ProdID=9041149163>

A Successful Mediator, A Successful Mediation

by Rafael Berdaguer Hijano

The Objective

A successful mediation is one in which all parties work together toward a settlement or fair resolution of the dispute in course, with the help of an impartial mediator who helps to establish the communications between the parties and prevents impasses that could obstruct the proper ending of the settlement. In mediation, the objective is resolution. Achieving resolution requires a significant amount of time toward finding options that will satisfy both parties, or else there is no deal. The primary focus of the mediator is to encourage the disputants to communicate with each other concerning the dispute, being impartial and observant.

Most Common Reasons for Failure

Mediation will fail without an effective communication between the disputants together with the commitment to resolve the matter. Sometimes in mediation you reach a point where the disputants are either unable or unwilling to communicate with each other, because they feel discouraged, frustrated or disenchanted. The following are the main reasons for failure, and parties should try to avoid them in any mediation:

a) Inappropriate mediator

Any person may be selected as a mediator, provided that **the parties are satisfied with the mediator's qualifications**. However, training and experience in mediation are often expected for effective mediations. It is difficult to succeed in any mediation when the mediator does not have the abilities to resolve impasses and obstacles that may arise in the communication between the parties.

b) Lack of preparation for the mediation

The failure to prepare for the mediation will most assuredly result in slowing the mediation process to a crawl and causing valuable time to be wasted.

c) The parties have no commitment to resolve the dispute

If a disputant or attorney informs the mediator that he or she has no intentions to settle the case, it immediately puts the mediation in jeopardy.

d) Impediments and obstacles to settlement

Many obstacles such as hidden intentions or resentments can slow down the mediation process or even frustrate it.

Be IPO: Impartial, Patient, Observant

Mediators must always be impartial, patient and observant, regardless of their qualifications, relevant training, education, and experience.

Be Impartial: A mediator has to conduct the mediation in an impartial manner, avoiding conducts that may give the appearance of partiality toward one of the disputants. The quality of the mediation process is augmented when the parties have confidence in the impartiality of the mediator. The mediator should guard against prejudice or any other kind of **partiality based on the parties' personal characteristics, background or performance.**

Be Patient: Parties involved in mediation typically believe they are right about the dispute. One of the parties may not distinguish their own interests from those of the other party, and each party may have unrealistic expectations. It takes time to address difficult issues, and it takes time for people to change their minds. It is important for parties in mediation to allow time for these changes to occur, and the mediator has to be a symbol of patience in the process.

Be Observant: An appropriate mediator has to be able to work through difficult matters carefully to avoid or overcome any barriers to a successful mediation. The mediator must analyze whether the disputant truly has no commitment to resolve the dispute, or whether the disputant is merely discouraged and needs help to communicate effectively. If the disputants feel forced, coerced, or misled to the mediation table, it will not succeed. An impasse may be caused by differences in values, orientations or perceptions, cultural differences or communication difficulties. Observing any one or more of these impediments enables the mediator to root out the communication problems that arise from an impasse.

Online Mediation, is it going to succeed?

Non verbal-communication is a very important part of mediation that is absent from in online mediation. It is much **easier to interpret what's being said if a mediator is present**. Words may be said, but the meaning of those words can change depending on how they are said. If the mediator cannot use all his tools to facilitate the mediation it will most certainly interrupt the dispute resolution process and raise the stress levels in an already tense situation. Other problems with online mediation might be that the mediator has to deal with people who are probably skeptics and distrustful of technology. Therefore, in order to mimic face-to-face mediation as much as possible, technology has to be up-to-date and prepare professionals to flawlessly succeed in an online mediation process.

Cross-border Disputes in the Financial Sector: A Trend towards Arbitration after the Release of the ISDA Arbitration Guide

by Maria Karampelia

Financial market participants traditionally opt for the sophisticated English or New York court jurisdictions to resolve disputes arising out of complex financial transactions. However, the globalization of financial markets and the increasing involvement of emerging market jurisdictions forces stakeholders to seek alter-



native methods of dispute resolution, which cultivates favorable conditions for the emergence of international arbitration as a means for resolving cross-border financial disputes.

Arbitration vs. Litigation

Lately, arbitration in financial disputes appears to have gained an edge over the traditional court practice mainly due to its distinct advantages regarding enforceability. Still, the financial sector moves towards arbitration with cautiousness, considering its basic shortcomings. A recent survey held by the Queen Mary University of London and PricewaterhouseCoopers revealed that the great majority of financial services counsels consider arbitration as "well suited" to their industry, nevertheless when they were asked to make a choice, they decided on litigation.

Their approach is effortlessly justified by two perceived advantages of litigation. First, the availability of summary and default judgments, which become relevant in common overdue payments cases; second, the relatively short length of civil law proceedings and the inherent conviction that "bank-friendly" jurisdictions exist, a belief that derives from the distinctive strictness of English law in the field of contractual obligations, which rarely deviates and thus, allows a degree of predictability.

On the other hand, the increasing attractiveness of investments in emerging markets has rendered the jurisdiction issues to be more complicated. Judgments made by local courts may fail to be effectively enforced due to the absence of reciprocal enforcement arrangements among the jurisdictions involved. Arbitration offers a straightforward solution to those difficulties through the application of the New York Convention, which has been ratified by almost every trading nation.

Furthermore, the parties resorting to arbitration have the discretion to choose arbitrators who demonstrate technical knowledge applicable to the dispute. Financial transactions and investment products can be extremely complicated, rendering the expertise of the decision-maker a necessity.

Finally, apart from the already well-known benefits of an arbitration procedure concerning confidentiality, neutrality, party autonomy, cost and time effectiveness, as well as finality, recent developments in the field have been promoted to address further issues in relation to the settlement of financial disputes. For example, the LCIA and P.R.I.M.E. arbitration rules allow for shorter timelines aiming at prompt dispute resolution and the ICC has introduced the emergency arbitral proceedings. Additionally, most institutions consent on the publishing of arbitral awards with the parties' anonymity preserved in order to enhance transparency and to gradually form a precedent through a reachable database of arbitral awards.

The ISDA Arbitration Guide

The observable trend towards arbitration has been confirmed by the initiative of the International Swaps and Derivatives Association (ISDA) to form Model Arbitration Clauses for its Master Agreements. ISDA is the international developer and provider of standard documentation material for over-the-counter (OTC) derivative transactions, ensuring the enforceability of their netting and collateral provisions and helping to significantly reduce credit and legal risk. ISDA Master Agreements traditionally included litigation clauses, but the ISDA has recently placed an emphasis on arbitration, which is supposed to have a global impact.

On September 9, 2013, ISDA released its "Arbitration Guide" (the Guide), which indicates the use of arbitration as an effective tool to address disputes in the swaps and derivatives markets. The Guide is the result of a long consultation process, which began in January 2011 and aimed at monitoring the potential interest in the use of arbitration under Master Agreements by those involved in financial markets. The consultation process was completed a year later with the contribution of multiple level practitioners from all jurisdictions, who provided feedback on the practical aspects of using arbitration in derivatives markets. Since the Guide's release, the community's interest in international arbitration for financial disputes has increased.

In its final form, the ISDA Arbitration Guide contains eleven Model Arbitration Clauses divided into seven appendices, each one corresponding to one of the recommended institutions. The Model Clauses are primarily designed to be included in the new agreements, but they can also be added to the 1992 and 2002 ISDA Master Agreements. The Guide also comprises an explanatory memorandum to provide an overview of arbitration and the Model Clauses are accompanied by explanatory notes regarding their practical implementation.

Each Model Clause provides for the law governing the Master Agreement and contains an arbitration clause covering the choice of procedural rules, seat, language, number of arbitrators and appointment process. In addition, each Model Clause contains transitional provisions, revoking the existing jurisdiction clauses and amending the wording of those sections of the ISDA Master Agreements that are affected by the arbitration clause.

The combinations of arbitration rules, seat and governing law are presented below. (See Table 1). It is noteworthy that during the consultation process it was debated whether substantive sets of rules other than the English and New York law should be encompassed; this option was finally rejected for the sake of maintaining the universal standard offered by ISDA Master Agreements.

Procedural Rules	Seat	Substantive Law
ICC	London	English Law
	New York	New York Law
	Paris	English or New York Law
LCIA	London	English Law
AAA-ICDR	New York	New York Law
HKIAC	Hong Kong	English or New York Law
SIAC	Singapore	English or New York Law
Swiss Rules	Geneva or Zurich	English or New York Law
P.R.I.M.E. Finance	London	English Law
	New York	New York Law
	The Hague	English or New York Law

Table 1:
As indicated in the Guide, the Model Clauses may be amended by the parties according to their specific preferences or may be supplemented with



provisions adapted to the particular requirements of each agreement. In any case, though, ISDA recommends that members shall pay great attention and ask for expert advice before amending the Model Clauses, since uninformed alterations could lead to enforcement difficulties in certain jurisdictions.

Optional Clauses

In the interim, optional arbitration clauses could offer a flexible solution, as they allow the parties to make a well-versed decision on either litigation or arbitration after a dispute has actually arisen, depending on the pros and cons in connection with a particular dispute. They must be confronted with caution though, so as to comply with the enforceability requirements imposed by the New York Convention and each jurisdiction involved.

Summary

Ultimately, the inclusion of arbitration clauses in ISDA documentation should work as a catalyst in the promotion of arbitration as a mechanism for effective dispute resolution in other sectors of the financial industry. It is a great opportunity for arbitration professionals to further examine the potential applications of this binding ADR process in the constantly evolving and demanding—but at the same time promising—financial sector.

Book Review: International Arbitration in Sweden: A Practitioner's Guide

by Adam Miller



During the last century Sweden has developed into a prominent destination for international arbitration. *“International Arbitration in Sweden: A Practitioner's Guide,”* provides excellent insight about the context in which Sweden evolved into a hub for international arbitration, including a discussion about how the country's traditions have fostered an environment ripe for arbitration.

The book begins by addressing Sweden's domestic legal framework, which has traditionally encouraged business disputes to be settled through arbitration. As a result, the book explains, the Swedish judiciary is accustomed and supportive of arbitration. Following this brief history, the authors enlighten the audience on why Stockholm is an ideal forum for investment arbitration, before providing a general introduction illustrating the essential elements of arbitration agreements and jurisdiction.

The main issues addressed in the book are the fundamental principles of international arbitration in Sweden; an introduction to the formation and scope of arbitration agreements; jurisdiction of the arbitral tribunal; an overview of the statutory provision for interim measures; the qualifications, appointment, and removal of arbitrators; the applicable law during an arbitration; the arbitral proceedings, including conduct, evidence, confidentiality, and costs; recourse to the courts against an arbitral award; and application of the New York Convention by Swedish Courts.

The book was written by thirteen distinguished arbitration practitioners who introduce international arbitration in Sweden with skill, allowing for the material to be accessible and

understandable. In addition, the editors—Ulf Franke, Annette Magnusson, Jakob Ragnwaldh, and Martin Wallin—are at the forefront of Swedish arbitration, being significantly involved with the Arbitration Institute of the Stockholm Chamber of Commerce.

The AIA recommends *“International Arbitration in Sweden: A Practitioner's Guide,”* for both students and practitioners interested in learning the history, essential components, and methods of conducting international arbitration in Sweden.

For more information visit the website of Kluwer Law International: <http://www.kluwerlaw.com/Catalogue/titleinfo.htm?ProdID=9041137955&name=International-Arbitration-in-Sweden.-A-Practitioner's-Guide>

Mediation in Greece: an Overview by Maria Karampelia



The legal framework

The Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters has been transposed into the Greek legal order since December 2010 with the Law 3898 (Greek Mediation Act). The Law 3898/2010 sets the legal framework concerning the disputes subject to mediation, the training, certification and accreditation of mediators, the procedural rules, the confidentiality and the enforceability of mediation agreements.

It is further supplemented by:

- (a) The Presidential Decree 123/2011, which stipulates the conditions and requirements for the authorization and operation of mediators' training centers for civil and commercial matters;
- (b) The Ministerial Decision 10987/2011, which constitutes the Mediators Certification Committee;
- (c) The Ministerial Decision 10988/2011, which sets up the procedure for recognizing mediators accredited abroad and the Accredited Mediators Code of Conduct;
- (d) The Ministerial Decision 1460/2012 that provides for the legal fees of mediators;
- (e) The Ministerial Decision 34802/2012 that regulates the operation of Committee for the Examination of Candidate Mediators and sets up the procedure through which mediators training centers and accredited mediators will be tested; and
- (f) The Ministerial Decision 85485/2012 on the procedural fees applicable to mediation.

Apart from the regulation of mediation in civil and commercial matters in general, Greek law includes provisions that deal with mediation in certain types of disputes. In particular, Article 15 of the law 4013/2011 provides for the establishment of special committees to act as dispute settlement boards in commercial rent review cases, Article 7 of the law 4055/2012 (introducing Art. 214 B in the Greek Code of Civil Procedure) stipulates court-annexed mediation and law 3869/2010 for the settlement of claims against excessively indebted individuals incorporates an out-of-court dispute resolution scheme, parallel



to mediation.

The present landscape

Resulting from these legal provisions, the actual situation for mediation practice in Greece is as follows:

Subject Matter: The abovementioned Greek Mediation Act applies to all mediations on civil and commercial disputes which take place in Greece, regardless of whether they are domestic or cross-border. Parties are free to opt for mediation as a mechanism of dispute settlement whenever the nature of the dispute allows it, but it also provides that they may be obliged to use mediation by law in the future. **Mediation is defined as “a structured process, where two or more parties to a dispute voluntarily attempt to resolve this dispute by an agreement reached with the assistance of a mediator.”**

Required Qualifications: For domestic disputes, only qualified lawyers are competent to acquire the status of mediator once they are trained, certified and accredited in line with the law. Furthermore, senior judges and judges presiding at first instance courts can be appointed as mediators where court-annexed mediation is applicable without having formerly received any training, certification or accreditation.

On the other hand, when it comes to cross-border disputes, the Greek law complies with the requirements of EU law and allows professionals other than lawyers to serve as mediators once they are certified.

Mediation is not currently mandatory in Greece, however—contrary to EU legislation—mediation advocacy is an obligation for the parties (Art.8 of the Greek Mediation Act). Parties to mediation must be accompanied by an attorney at law throughout the process both in domestic and cross-border disputes.

Court annexed-mediation: Court annexed-mediation refers to the option of a court before which an action is brought, at any stage of the trial, to invite the parties to use mediation so as to settle their dispute. Upon approval of this invitation, the initiated trial is postponed for a period of at least 3 months, but cannot exceed 6 months.

Confidentiality: The confidentiality of mediation is imposed by Art. 10 of the Greek Mediation Act. All parties to mediation are committed in writing to preserve the procedure's privacy and they cannot be forced to act as witnesses or produce evidence in any subsequent judicial or arbitral proceedings, except when public policy reasons prevail.

Enforceability: As for the enforceability of mediation agreements, it can be achieved through the submission of the mediation settlement agreement, signed by the mediator, the parties and their lawyers, to the Secretariat of the Court of First Instance of the local jurisdiction where the mediation took place. The submission can be executed by the mediator unilaterally, upon the request of one of the parties.

Training: Mediators Training Centers have to be founded by at least one Greek Bar Association and one Greek Professional Chamber, provide training of at least 40 hours, and comply with the educational content and evaluation system provided by the law. At the moment, there exist three legitimate mediation training centers in Athens, Piraeus and Thessaloniki.

Fees: The minimum hourly rate of the mediator's fee is specified at 100 Euros. Unless the parties agree otherwise, each party is obliged to pay half of the mediator's fees and his/hers own attorney's fees.

Future developments

Overall, mediation is a newly introduced institution in the Greek legal order and the lawmakers' choice to retain it is optional in all types of proceedings, which has caused it to slowly develop. However, Greek lawyers demonstrate a strong interest in mediation. They have massively enrolled in training courses and actively participate in conferences and events organized across the country. It is gradually being realized that mediation can lead to timely and cost effective settlement of various disputes, especially those related to family matters and minor claims.

At the moment, with a finalized legal framework and three well-respected Mediators Training Centers operating to place efforts on the promotion of mediation, the overall climate can be deemed positive for the expansion and wide application of this ADR method.

It is noteworthy that the business community plays an important role in supporting initiatives in the field of mediation by seeking more effective and flexible dispute settlement methods.

Further developments should be encouraged by the competent authorities, such as the introduction of mediation in the law schools' syllabus, the promotion of court-annexed mediation or even the introduction of compulsory mediation for certain disputes and the creation of incentives (e.g. free of charge procedures, fast dispute settlement) for recourse to mediation.

ICAL CONFERENCE Report: 29th-30th of August 2013 at the Grand Hotel in Stockholm

The 10th Anniversary Conference of the Master Program in International Commercial Arbitration Law at Stockholm University was organized by the ICAL Alumni Association with the cooperation of the SCC, SAA, UNCITRAL and Stockholm University. AIA was represented as one of four conference media partners, alongside GAR, the Moscow Arbitration Forum, the American Society for International Law and TOM: Transnational-dispute-management.com.

260 delegates from over 60 different countries registered for the conference which was divided into two key modules. The first: MASTERING ISSUES OF PUBLIC INTERESTS IN PRIVATE DISPUTES and the second: MASTERING CONFLICTS BETWEEN PARTY AUTONOMY AND ARBITRATORS' POWERS.

Interesting speakers took the floor at the event, including Pierre-Jerome Abric, the vice-president of the legal department and general counsel of the litigation at AREVA. Inc.; Manuel Arroyo, a partner at Meyerlustenberger Lachenal in Zurich; Crina Baltag, an attorney at law in Romania and Sao Paulo, Brazil; and Luiz Olavo Baptista, a lawyer, counsel and arbitrator. The con-



ference was divided into seven sessions which considered issues spanning from arbitrability, mandatory laws versus party autonomy, corruption in arbitration and sovereign immunity to challenges to arbitrators.

Ultimately, the Alumni Association plans to expand its activities and become a platform for the development of international arbitration among its alumni who represent the program in different regions of the world.

EMTPJ 2013 Report

by Olivia Staines

On the 19th-31st of August 2013, the AIA held its fourth European Mediation Training for Practitioners of Justice (EMTPJ) Program. The 100 hours of training began with the theory of mediation and continued by examining contract law, international mediation and an analytical study of conflict resolution methods. This was followed by EU ethics in mediation, interventions in specific situations, EU law and mediation acts, and the function of party experts and counsel in the mediation process.

This first part of the course allowed participants to gain knowledge of the basic elements of cross border mediation in civil and commercial matters before moving on to practical workshops. All the lecturers in this area were experts in the field and covered both the original legislation concerning the particular points raised, as well as taking into consideration recent changes in the law and areas for reform. For example, students were able to think critically about the implications of the ADR Directive and ODR Regulation for consumers and what these developments mean for the future of Dispute Resolution.

Conversely, a real advantage of the practical training was its flexibility. Students were able to shift from the role of mediator to that of counsel or the parties in the dispute with ease. This gave everyone the opportunity to see what it was like to be in a mediation case from more than one perspective. The mock mediation cases were also very varied, thus enabling prospective mediators to be prepared for all sorts of facts, situations and circumstances which might arise in the real world.

The intensity of the course was challenging but made the experience very worthwhile. An intensive course over a short period of time allows participants to focus fully on the material and retain as much information as possible in the long term. The outcome was very positive because students left the course feeling motivated and—certainly from my perspective—with a feeling of great achievement.

Finally, the EMTPJ was a concrete opportunity to meet new people in an international environment. Students travelled this year from as far as Turkey, the US and Barbados. Lecturers in turn, travelled from all over Europe and Australia to take part in the EMTPJ, thereby making it a truly memorable experience for all.



AIA Recommends to Attend

Seminar with Robert Cialdini on the Science of Influence hosted by Concilia

Dr. Robert Cialdini has spent his entire career researching the science of influence earning him an international reputation as an expert in the fields of persuasion, compliance, and negotiation. His books including, *Influence: Science & Practice*, are the result of decades of peer-reviewed research on why people comply with requests.

The seminar will take place in Milan on November 22, 2013 and the participants will have the opportunity to learn how to:

- Quickly create (and maintain) a relationship of trust and cooperation with customers, employees, business partners
- Strengthen immediately the perception that the other has of our reliability, authority and seriousness
- Avoid 'traps' typical of persuasion manipulative
- Achieve lasting results by implementing small changes in attitude and strategies
- Do all this by reconciling ethics and productivity

For further information and registration details, including details of the Programme, please contact: concilia@concilia.it

Croatian Chamber of Trades and Crafts (CCTC) will host the 4th International Conference on Alternative Dispute Resolution:

Possibilities of Cooperation between the Judiciary and the Economic Sector.

Speakers at the 4th CCTC conference on ADR will be foreign and Croatian experts in the field of alternative dispute resolution, with an emphasis on mediation (conciliation) and out of court dispute resolution before the Court of Honor of CCTC.

We expect an interesting view of economic and legal experts, scientific professionals and practitioners on possible solutions to create a quality environment for domestic and foreign investments and increase the competitiveness of businesses in Croatia.

The conference will be held on 15th and 16th October 2013 in Zagreb, Croatia.

ICC Canada's Annual International Arbitration Conference

ICC Canada's Annual International Arbitration Conference will be held at the InterContinental Toronto Centre on Friday, October 25. For program details and further registration information please see the link below:

http://iccnorthamerica.org/file_depot/0-10000000/30000-40000/34886/associatedFiles/

